PENNINGTONS MANCHES COOPER

REDUCING COSTS IN YOUR MARITIME ARBITRATION AT THE SCMA

Maritime arbitrations are not always about huge sums of money. Opponents sometimes do not bother turning up to fight a claim. In situations such as these, being able to proceed cost-effectively is crucial. **To achieve this you need to take action at the point of contracting.**

This brief article highlights two key costs your arbitration clause could help to reduce or eliminate, and how.

COSTS OF THE TRIBUNAL

One of the main costs of an arbitration (other than lawyer's fees) is the cost of the Tribunal. Logically, having one arbitrator instead of three should reduce costs. However, if the parties have not agreed on the number of arbitrators, the SCMA Rules 2015 (Rule 6.1), like the rules of other leading maritime arbitration centres, state there will be three arbitrators. Accordingly, the number of arbitrators should be dealt with in your clause.

HEARING COSTS

Hearings are another source of significant costs in arbitrations. At the risk of stating the obvious, the best way to avoid hearing costs is to not have a hearing at all! Under the SCMA Small Claims Procedure the Tribunal alone decides if there is to be a hearing. However, if you are above the maximum monetary threshold for the Small Claims Procedure to kick in (USD150,000, per Rule 46.1) then Rule 28.1 provides for **mandatory hearings** unless the parties agree not to have one. This means a hearing will have to take place even if the opponent does not engage in the arbitration, or refuses to agree to dispense with the hearing (which they might refuse if they want to play for time or to make you feel some pain). Whilst changes to Rule 28.1 are being addressed in the Rules revision currently under way, until a change is implemented, the effect of Rule 28.1 needs to be considered when drafting.

THE SOLUTION

The solution is relatively straightforward. You need to ensure your arbitration clause:

1. states there shall only be a hearing if the Tribunal so decides (i.e. displacing Rule 28.1);
2. raises the maximum monetary threshold for the Small Claims Procedure to kick in (e.g. USD400,000); and,
3. either:
   a. that all claims should be before a sole arbitrator; or, alternatively,
   b. that for any claim above the Small Claims Procedure threshold, if one party appoints its arbitrator and the opponent does not appoint its arbitrator within 'X' number of days then the first appointed arbitrator shall be appointed as sole arbitrator (this is the scheme of the *SCMA BIMCO ARBITRATION CLAUSE*).

It is that simple. For convenience you could take one of the Model SCMA Clauses as a starting point and amend it to suit your purpose. Please do so with care!

FIND OUT MORE

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