

KS Torm Eastern

Denmark

Copenhagen 23rd August 2021

Posl br. St-397/2013

N/p.: g. Velimir Vukoic, stečajni sudac
N/p.: g. Zoran Miletić, stečajni upravitelj
N/p.: Skupština Vjerovnika

TRGOVAČKI SUD U SPLITU
Sukoišanska ulica 6
21000 SPLIT

Predmet-. Parnica na Trgovačkom sudu Split posl. br. P-597/2020

Obraćamo Vam se skupno u cilju da Vam skrenemo pažnju na parnicu u tijeku pred Trgovačkim sudom u Splitu posl. br. P-5977/2020 tužitelja Split Ship Management d.o.o. u stečaju (SSM) protiv tuženika Croatia osiguranje d.d. (CO), radi plaćanja osigurnine (SSM Parnica).

Za isti zahtjev, iz potpuno istog događaja, u tijeku je identična parnica na Trgovačkom sudu u Zagrebu posl. br. P-1005/2020 tužitelja K/S Torm Eastern Danska (Torm) vs CO., radi plaćanja osigurnine (Torm Parnica).

Obje parnice odnose se na plaćanje osigurnine iz CO-ove police osiguranja brodskog trupa i stroja, u kojoj su Torm i SSM označeni kao osiguranici. Međutim, iako po propisima o osiguranju više osiguranika mogu biti ugovoreni u policu kod zaključenja ugovora o osiguranju, osigurnina može biti plaćena samo onom tko u trenutku nastupanja osiguranog slučaja ima „osigurljiv interes“. Takav prigovor je CO odmah uložila u obje parnice, osporavajući aktivnu procesnu legitimaciju za vođenje parnice i SSM-u i Torm-u.

U Torm Parnici, koja je u fazi glavne rasprave u ponovljenom postupku, Trgovački sud u Zagrebu je u presudi posl br. P-1775/2013 od 22. ožujka 2017. već prihvatio Tormov osigurljiv interes, isto kao i Visoki trgovački sud RH u rješenju posl. br. PŽ-3111/2017. od 1. lipnja 2020. prihvaćanjem Tormove žalbe i vraćanjem predmeta na ponovni postupak. U protivnom, Tormova žalba bi bila odbijena, a prvostupanijska presuda potvrđena zbog nedostatka aktivne procesne legitimacije Torma.

U SSM Parnici, koja je u početnoj fazi, pripremno ročište je zaključeno 5. srpnja 2021. a prvo ročište za glavnu raspravu zakazano je za 4. listopada 2021.

Tormov osigurljiv interes po pokriću osiguranja je jasan i neosporiv zbog sljedećih razloga:

- Torm je imao sva vlasnička prava na brodu,
- Torm je organizirao i proveo popravak šteta na brodu nastalih iz osiguranog događaja,
- Torm je platio popravak broda,
- Torm nije prijavio nikakvo potraživanje prema SSM-u u stečajnom postupku,
- Tormova aktivna procesna legitimacija je već priznata u Tormovoj Parnici.

Jasno je i nedvojbeno da samo jedan tužbeni zahtjev može biti uspješan, i da će jedan tužitelj izgubiti parnicu protiv CO-a zbog nedostatka osigurljivog interesa odnosno aktivne procesne legitimacije.

Odvjetnički troškovi za svaku procesnu radnju u SSM Parnici prijavljeni po CO-ovim odvjetnicima iznose 60.817,25 kn uvećano za PDV od 15.204,32 kn. Broj procesnih radnji stranaka se povećava sa svakom

KS Torm Eastern

Denmark

daljnjom procesnom fazom parnice, koja je iako u biti jednostavna, postala činjenično i pravno vrlo složena zbog CO-ovog ulaganja velikog broja prigovora.

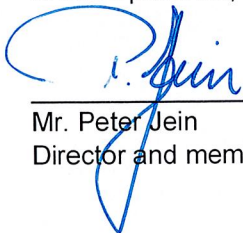
Iako SSM kao bivši tehnički poslovođa i poslovođa posade, i Torm s vlasničkim pravima na m/b "Navision Logger" imaju iste interese, umjesto da ih ujedine, dvije parnice za istu osigurninu, stavljaju SSM i Torm u suprostavljene položaje i daju CO-u nepravednu prednost povećavajući troškove obje parnice.

Budući su SSM i Torm imali dobru poslovnu suradnju koja je poremećana SSM-ovim poslovnim problemima nepovezanim s Tormom, a SSM je djelomično doprinio u likvidaciji štete neposredno nakon nastupanja osiguranog slučaja, Torm je spreman da pokrije SSM-ove troškove postupka u iznosu od 15.000,00 eura ako SSM povuče tužbu i odrekne se tužbenog zahtjeva do 4. listopada 2021.

Vjerujemo da ćete posvetiti pažnju ovoj stvari, detaljno se upoznati s njom, razmotriti sve bitne činjenice i prepoznati nepovoljne posljedice nastavka SSM-ove Parnice.

Stojimo vam na raspolaganju za sve potrebe u vezi sa ovom stvari.

Srdačni pozdravi,



Mr. Peter Jein
Director and member of Board

For and on behalf of
K/S Torm Eastern
as per authority

Navision Shipping Company A/S
as agents only

Prilozi:

- Presuda Trgovačkog suda u Zagrebu posl. br. P-1755/2013 of 22. ožujka 2017.,
- Rješenje Visokog trgovačkog suda RH posl. br. PŽ-3111/2017 of 1. lipnja 2020.

KS Torm Eastern

Denmark

Copenhagen 23rd August 2021

File no. St-397/2013

Attn.: Mr Velimir Vukoic, Bankruptcy Judge
Attn.: Mr Zoran Miletić, Bankruptcy Trustee
Attn.: Creditors' Assembly

COMMERCIAL COURT IN SPLIT
Sukoišanksa ulica 6
21000 SPLIT

Subject -. Litigation before the Commercial Court in Split file no. P-597/2020

We are addressing you collectively with the aim to draw your attention to the litigation ongoing before the Commercial Court in Split file no. P-597/2020 of the Plaintiff Split Ship Management d.o.o. in bankruptcy (SSM) vs Croatia osiguranje d.d (CO) for payment of insured sum (SSM Trial).

For the very same claim, from the very same event, there is ongoing identical litigation before the Commercial Court of Zagreb file no. P-1005/2020 of the Plaintiff K/S Torm Eastern vs CO for the payment of insured sum (Torm Trial).

Both trials refer to the payment of the insurance sum under CO's H&M insurance policy, which states Torm and SSM as co-insureds. However, under the rules of law, although a few co-insureds are allowed at the time of the entering into the insurance contract, insurance sum is payable to only one who has "insurable interest" at the later time of insured event. Such defence has been already given by CO in both trials, challenging standing to sue of each of them, SSM as well as Torm.

In Torm Trial, which is in the main hearing repeated proceeding before the first instance court, Commercial Court of Zagreb in the judgment file no. P-1755/2013 of 22nd. March 2017 already recognised Torm's insurable interest, as well as the High Commercial Court in the ruling in the file no. Pz-3111/2017 of 1st June 2020. which accepted Torm's appeal. Otherwise, Torm's appeal would be refused and the first instance judgment uphold on the ground of Torm's lack of standing to sue.

In the SSM Trial, which is in the very beginning stage, the preliminary hearing was concluded on 5 July 2021 and the first main hearing is set for 4th October 2021.

Torm's insurable interest under the insurance cover is clear and indisputable from the following facts:

- . Torm has enjoyed all ownership rights on the vessel,
- . Torm organised repairs of all damages on the vessel caused by the insured event,
- . Torm paid repairs of the vessel,
- . Torm has not reported any claim vs SSM in this bankruptcy proceedings,
- . Torm's standing to sue had been already recognised in Torm Trial.

It is clear and undoubtful that only one claim may be successful and one Plaintiff will lose the case on the ground of lack of insurable interest.

Attorneys' fees of every procedural action reported by CO's attorneys in SSM Trial amounts to 60.817,25 kn plus VAT of 15.204,32 kn. Number of parties' procedural actions increases with more

KS Torm Eastern

Denmark

advanced proceeding stage, which although simple, turned into the factually and legally complex trial because of CO's defence with numerous objections.

Although SSM as former technical and crewing agent, and Torm enjoying all ownership rights on the vessel "NL" have the same interest, two litigations for the same insured sum, put SSM and Torm in contradictory positions instead to unite them, thus giving to CO unjust advantage in both litigations and increasing the proceedings costs to both.

Since Torm and SSM had good business relationships which was disturbed with SSM's troubles unrelated to Torm, and SSM partly contributed in liquidation of the damages from the insured occurrence in the initial stage, Torm is ready to cover SSM's trial proceeding costs in the sum of 15.000,00 EUR in exchange for SSM's withdrawal and waiver of the claim in SSM Trial before 4th October 2021.

We trust that you will pay attention to this matter, familiar with it, consider all relevant facts and recognize unfavourable consequences for SSM to continue this SSM Trial.

We are available to you for all your needs in this matter.

Your faithfully,

For and on behalf of
K/S Torm Eastern
as co-plaintiff

Nayision Shipping Company A/S
as agents only

Mr. Peter Jein
Director and member of Board

Attachments:

- Commercial Court of Zagreb, judgment file no. P-1755/2013 of 22nd March 2017,
- High Commercial Court, Decree file no. Pz-3111/2017 of 1st June 2020