
SETTLEMENT OF SHIPPING CLAIMS IN FRENCH JURISDICTION

INTRODUCTION

Our firm is specialized in contentious aspects of international trade and transportation. We deal with matters involving most aspects of shipping litigation and arbitration practice, concentrating on C/P and B/L but also on shipping casualties: grounding, pollution, collision.

Most of the cargo claims are directly settled between cargo insurers and the P&I clubs. The difficult claims are sent to French lawyers, and there again, many of them are settled between lawyers in the course of litigation/arbitration proceedings.

Experience shows that alternative dispute resolution will not come prior to court proceedings, but afterwards and in parallel to court proceedings.

Most of shipping claims are heard by Commercial Courts or alternatively, when the parties agreed thereon, to the Chambre Arbitrale Maritime de Paris. Conciliation and mediation procedures are available both before commercial courts and the CAMP, but are not very popular.

Indeed, most of the cases are settled amicably by lawyers, in parallel to court/arbitration proceedings.

1. LITIGATION

1.1 Pre-trial tools

Commercial courts offer a rather wide range of protective measures. The powers of the President of a Commercial Court are quite large:

- *Pre trial attachments*
An order authorizing the conservatory arrest of a ship, bank accounts, titles; or money owed by a third party can be granted *ex parte* and very quickly (in one or two days or even if need be in several hours).
(Article 875 CPC)
(Articles 67 and sq of the law n° 91-650 of July 9, 1991)
- *Appointment of a court surveyor*
An order authorizing the appointment of a court surveyor who will collect evidences can be granted also very quickly either *ex parte* or in summary proceedings.
(Article 145 CPC)

- *Allowance of an interim payment*
An order authorizing an interim payment can be granted in summary proceedings where the claimant has a prima facie claim
(Article 873 CPC)
- *Allowance of an injunction to do or to stop doing something*
An order giving injunction to the other party to stop doing something or to do something can be granted in summary proceedings. This order is usually associated with a daily penalty in order to induce the other party to satisfy this injunction.
(Article 873 CPC)

1.2 **Trial/court proceedings**

French judicial system offers 2 degrees of jurisdiction plus a control by the Cour de Cassation that the law was properly applied:

1.2.1 Commercial Court

- The Court is seized by a writ of summons served by the claimants
- The proceedings are mainly written: each party have to file their defence submissions. There is no witness examination.
- Each party selects the documents they are willing to disclose. There is no discovery proceedings
- Shortly before the final hearing, the parties have to send their brief to the Court containing the precedents, the documents and the arguments.

The proceedings before the Commercial Court normally last between one and two years maximum.

However, **proceedings can be speeded up or slowed down**

- A claimant can use the fast track in sea or air matters where a writ of summons may be served at very short notice if concerns urgent or interlocutory matters.
(Article 858 CPC)
- The parties can also request the stay of proceedings for a certain period of time, usually when survey proceedings are pending.

1.2.2 Court of appeal

- The losing party has to file his appeal submissions within three months from the date of the appeal.
- The defendants then have two months to file their own submissions and documents.
- Proceedings is mainly written
- The parties have to send their brief containing the precedents, the documents and the arguments prior to the hearing.
- During the final hearing, the parties present their arguments and reply to the eventual queries of the Court

The proceedings before the Court of Appeal normally last between one and two years maximum.

1.2.3 Cour de Cassation

There is no rehearing of the case in front of the *Cour de Cassation* where the points of facts are not examined and where the parties are not entitled to submit new evidences. Appeal must only be on points of law.

- The proceedings are only in writing.
- There is no oral hearing.
- The submissions must be filed through specialized *avocat à la Cour de Cassation*

1.3 Costs

- Costs of a proceeding in France are reasonable: For a usual cargo claim, the fees and costs - depending on time spent - usually amount to around 5000 euros. Indeed, proceeding is mainly written.
- The same must apply for the proceedings before the Court of Appeal.
- The costs for a proceeding before the Cour de Cassation are also around 4 000 and 6 000 Euros
- The losing party may be condemned to pay costs by the Court but is always a lumpsum amount, usually between 1 000 and 5 000 Euros

Therefore, there is no real cost pressure to find an alternative dispute resolution: If no agreement can be reached, there is no problem to go to Court, as the costs incurred are reasonable.

2. ARBITRATION

Apart from London arbitration, charter parties very often provides for arbitration with *Chambre Arbitrale Maritime de Paris*.

There are also arbitration proceedings before *Chambre de Commerce Internationale* but it is more expensive and mostly used for international trade disputes concerning major industrial projects.

I will shortly present proceedings before *Chambre Arbitrale Maritime de Paris*

2.1 CAMP Proceedings:

Please note that before the CAMP, as before commercial court, there is a fast track arbitration (Article XXII) and precautionary notices (Article V) where arbitration can be stayed for a maximum of 2 years.

The rules of CAMP are available in English http://www.arbitrage-maritime.org/us/2_arbitrage.php

2.1.1: First degree proceedings

- Arbitration proceedings are issued by sending a claim letter to *Chambre Arbitrale Maritime de Paris* mentioning the names of the parties and presenting the dispute. The applicant must pay an amount of 2 400 Euros for the administrative costs

- Each parties appoint their arbitrator and the Chambre Arbitrale Maritime de Paris appoint the third arbitrator, who shall be the chairman of the arbitration panel
- When both claimants and defendant have filed their submissions, the arbitrators then organize an oral hearing which last a few hours.
- The arbitrators then issue their award on first degree which may be appealed by one of the party.

2.1.2: Second degree arbitration

- The losing party may lodge an appeal on second degree. If so they have to pay their share of the arbitration costs on first degree plus 100% of the second degree arbitration costs.
- The three arbitrators on second degree are appointed by Chambre Arbitrale Maritime. They normally have six months for issuing the award after having read the claimants submissions, defendants submissions and the oral hearing

2.2 CAMP costs

- The main advantage of CAMP arbitration is the costs which depends on the amount at stake and not on the time spent
- Please find below the details of the costs which depends on the amount at stake

	Sum of the claim	Proportional share	Lumpsum share	Total
For	15.000 €	0 €	3.850 €	3.850 €
For	50.000 €	3.850 €	3.850 €	7.700 €
For	100.000 €	4.100 €	7.700 €	11.800 €
For	200.000 €	7.000 €	11.800 €	18.800 €
For	500.000 €	10.800 €	18.800 €	29.600 €
For	1.000.000 €	16.300 €	29.600 €	45.900 €
For	3.000.000 €	13.200 €	45.900 €	59.100 €
For	7.500.000 €	14.000 €	59.100 €	73.100 €

For instance for a claim of 200 000 Euros the total arbitration costs will amount to 18 800 Euros to be paid on 50% by claimants and 50% by defendants

It appears from the above that the costs of judicial proceedings and arbitration proceedings in France are very reasonable.

Furthermore, there is also no costs pressure on losing party, who will be condemned to pay a few thousand euros only for the costs.

In my opinion, this explains why mediation is not very developed in France

3. MEDIATION/CONCILIATION

3.1 Before commercial courts

3.1.1 Amicable compounder

When a dispute has arisen, the parties can confer upon the judge a mandate to determine a case as an amicable compounder (*Article 12 CPC*)

3.1.2 Conciliation

Conciliation process can be set up on the initiative of the parties or upon the initiative of the judge at any time of the proceedings. It is never compulsory. The agreement reached by the parties is recorded in a document signed by the judge and the parties. This document is enforceable (*Articles 127 to 131 CPC + Articles 862 to 869 CPC*)

3.1.3 Mediation

Similarly, the judge after having obtained the consent of the parties may appoint a third party who will hear them and confront their points of view to help them resolve disputes. If the parties reach an agreement, this agreement shall be homologated by the judge and will be then enforceable (*Articles 131-1 to 131-15 CPC*).

Conciliation and mediation are parenthesis in the court proceedings. They are very rarely used, especially in shipping disputes.

3.2 Before CAMP

The same tools are available before the CAMP :

- Amiable compounder (*Article 12*)
If the parties expressly so agreed
- Conciliation/mediation Rules

See the rules in English language: http://www.arbitrage-maritime.org/us/3_reglements.php

4. SETTLEMENT NEGOTIATION

Most of the cargo claims are directly settled between cargo insurers and the P&I clubs.

The difficult claims are sent to lawyers, and there again, many of them are settled.

Practically, settlement discussions are carried out between lawyers in parallel with court proceedings.

4.1 Advantages of settlement negotiation carried out by lawyers

- Discussions are privileged. Therefore, negotiation remains privileged until the agreement is signed.
- Discussions can be stopped or resumed at any stage of the proceedings
- Pending proceedings are a guarantee of the enforcement of the agreement.
Settlement agreements provided that it is always in consideration of actual payment, proceedings will be discontinued.

4.2 On the terms and conditions of the agreement.

Settlement agreements are governed by article 2044 and following of the Code Civil which set out the following principles:

- The settlement agreement must be put in writing
- Each party must make mutual concession
- Penalty can be stipulated against the party who fails to perform the agreement
- The agreement has between the parties the authority of *res judicata* final judgment.
- The settlement is binding only for the parties who signed the agreement

4.3 On the enforcement of the agreement

For the reason explained below, the enforcement of the agreement is very rarely an issue.

Should it be the case, a party can request in summary proceedings the enforcement of the agreement under penalty.

5. ENFORCEMENT OF COURT SETTLEMENT IN FRANCE.

A court settlement issued in a member State of the EC shall be enforced in France on the application of any interested party (article 58 of the R 44/2001).

The application is lodge before the President of the High Court.

The President will only check that (1) the settlement is enforceable in its State of origin and (2) it is not manifestly contrary to French public policy.

A court settlement issued in another State outside the EC shall be enforced in France the same way.

CONCLUSION

The Directive n° 2008/52 on certain aspects of mediation in civil and commercial matters has been partly implemented in France.

Some of the objectives described by this text are already achieved in our legal system.

- Time is suspended during mediation (*article 2238 Code Civil*)
- The agreement resulting from mediation can be made enforceable by the President of the High Court (*article 1441-4 CPC*)

Experience shows that most of time, mediation or conciliation are used because they are quicker and less expensive than litigation or arbitration.

But litigation or arbitration in France are not that expensive. This is certainly the reason why conciliation or mediation procedures are not very often used.

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