

SETTLEMENT OF SHIPPING CLAIMS IN FOREIGN JURISDICTIONS.

SETTLEMENT OF SHIPPING CLAIMS IN MEXICO

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I.- BACKGROUND.

Even though the United Mexican States (México) has a vast coast line both in the Pacific and the Gulf of México, México is not a maritime nation, since its major trading partner is the United States of America and most of the trading is done by truck or railroad.

As a result of the above, our courts are not familiar with Maritime matters and settlement of maritime claims should always be considered to avoid placing the matter in the hands of a Federal Judge who has very limited knowledge of Maritime matters.

II.- NEGOTIATIONS.

In the case of México, we strongly recommend that negotiations be done in person rather than by emails or videoconferences, especially when the claim involves the Mexican government.

It is also important to know and understand the Mexican culture in order to be able to reach a settlement, to think that in England or Norway claims are handled in a certain way and that therefore Mexicans should conform to those international standards is not going to take you very far. You must understand that even important Mexican companies involved in international transactions, prefer to deal with claims according to their national practice.

However, Mexicans have a saying: “ A bad deal is better than a good trial”, so it is in fact possible to settle cases in México, even with a Mexican governmental entity.

III.- TIMING.

Timing is an important factor when negotiating in México, especially when you are dealing with a governmental entity. As a general rule, although there are always exceptions, our experience is that the earlier you can start settlement discussions with the other party, the better your chances of reaching an agreement are.

You also need to keep in mind that maritime claims that derive from bills of lading or charter parties have a one year statute of limitation period under Mexican law while most of the other maritime claims have two years; also it is important to consider that extensions of suit time are not valid in Mexico, hence placing the parties in a limited period of time to negotiate a claim, before a lawsuit must be filed.

IV. AUTHORITY AND ENFORCEMENT OF SETTLEMENT AGREEMENTS.

Authority to settle a claim is an important aspect under Mexican law, since authority to settle a claim is only granted through a power of attorney, which must clearly evidence the chain of command from the Company's shareholders to the person acting on its behalf in the settlement discussions, otherwise the settlement reached will not be binding or enforceable.

Mexican courts will enforce a settlement agreement, unless the parties have agreed to submit its enforcement to a foreign court, in which case Mexican courts will honor the agreement of the parties to submit the enforcement of the settlement agreement to a foreign jurisdiction.

In addition, Mexican courts will honor the agreement of the parties to consider the settlement agreement as a final judgment and their waiver to file any recourse against its enforceability, provided that said waiver is expressly and clearly stated in the settlement agreement.

V. MISSING PARTIES.

Mexican law is very clear that unless the missing party has granted to any of the parties engaged in the settlement discussions a power of attorney to act on its behalf, any settlement reached would not be enforceable against the missing party, with the exception of joint obligors, in which case the settlement, novation or set off reached with any of them will bind the other joint obligors.

VI. PREJUDICE.

There is nothing in Mexican law that prevents either party to use in trial the information obtained during the settlement discussions; consequently, the parties must be very careful as to the documentation that is exchanged in settlement discussions not to prejudice their rights or defenses.

VII.- SETTLEMENT, RESTRUCTURING OR TERMINATION AGREEMENTS.

Mexico is an extremely formalistic country; consequently all agreements must be made in writing and signed by the duly appointed attorney in fact of the parties, to ensure that the agreement is valid and enforceable.

In addition to the above it is also advisable to execute the agreement before a notary public, who will certify the authority of the parties to act, as well as the identity of the individuals signing the agreement, all this to secure the enforceability of the agreement.

When it comes to settlement of claims which are already in the hands of a court of law or an administrative tribunal it is important to consider that Mexican practice normally requires the parties not only to file the settlement agreement but the ratification of same is normally order by the court. This could lead to absurd results as the one we had in a recent case where one of the parties dismissed their complaint but never appeared before the authority to ratify same, ending up with the ridiculous situation where the dismissing party obtained a ruling in their favor notwithstanding that it had previously dismissed their own claim.

VIII.- ALTERNATIVE DISPUTE RESOLUTION/MEDIATION.

The law that regulates shipping matters in México does not provide for compulsory mediation. Mediation procedures are only contemplated in Mexican laws that regulate contracts with the Mexican government, but even in those laws, mediation is not compulsory but rather an option for the parties to resolve their disputes and it must be carried out before a governmental entity predetermined by law; consequently, the parties are not allowed to agree on the mediator thus causing the mediation procedure to be partial and ineffective.

There are private organizations in Mexico to whom the parties can turn to assist with mediation procedures, but as stated above this could only be accomplished through the agreement of the parties and it is very seldom used in Mexico.

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