ICDR (INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION)

ICDR Case No. 01-14-0000-8050

GENERAL ELECTRIC COMPANY V. SAMPO ENTERPRISE CO. LTD. AND SAMPO CORPORATION

FINAL AWARD

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03 February 2016

Tribunal:
John Wilkinson (Co-Arbitrator)
Victoria Kummer (President)
Louis A. Craco (Co-Arbitrator)

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Final Award

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated February 8, 2002 and amended on July 8,2002, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby AWARD as follows:

I. Claims and Procedural History

[1]. In-person hearings in this case were held in New York City on November 9, 10 and 11, 2015. Claimant General Electric Company ("GE") appeared and was represented by Arthur Maravelis and Sarah Shipley of Tang and Maravelis, P.C. Respondent Sampo Corporation ("Sampo Corp.") appeared and was represented by Craig Penn of Penn & Associates, LLP, and Paul Marrow. Respondent Sampo Enterprise Co. Ltd. ("Sampo Enterprise") did not appear in this arbitration, including the in-person hearing, despite the fact that the ICDR had timely sent a Notice of Hearings (and other notifications about the proceedings in this case) by a courier delivery services to an address provided to the ICDR by Claimant.

[2]. This case involves a claim for indemnification by GE for costs incurred in connection with a 2013 Missouri lawsuit that non-party Sabreliner Corporation ("Sabreliner") brought against GE due to a GE-branded refrigerator that caught fire and damaged Sabreliner property in May 2012. Sabreliner's claim against GE in the Missouri lawsuit was initially for approximately $6 million, and, after investigation by Sabreliner's insurer Travelers, the claim was reduced to approximately $4.3 million. When GE's own investigators concluded that they were not likely to reduce the claim much more, and GE's attorneys concluded that the company faced nearly certain liability for this sum, GE settled the Sabreliner lawsuit following mediation in early 2015 (after this arbitration was underway) for $2.5 million.

[3]. The refrigerator had been manufactured by Sampo Enterprise and sold to GE affiliate GE Appliances Asia Ltd. ("GEAA") by Sampo Corp. GE sought indemnification from Sampo Enterprise and Sampo Corp. and eventually commenced arbitration pursuant to the arbitration clause contained in the Contact Manufacturing Agreement ("CMA") dated February 8, 2002, by and between Sampo Enterprise, GEAA and GEA Parts LLC (also an indirect subsidiary of GE). The CMA was amended on July 8, 2002 to add Sampo Corp. as a party.

[4]. The CMA is governed by New York law. Under paragraph 4 of the CMA, Sampo Enterprise and Sampo Corp. agreed:
(D) Sampo shall at all times indemnify GE (which will control its own defense) and GE's customers against any actual or threatened liability, claim, cost, or expense (including reasonable attorneys' fees and other reasonable dispute resolution costs):

(1) Involving death or injury to any person or damage to any property (including economic or financial loss) that actually or allegedly results directly or indirectly from (i) any failure of Products to comply with the description or specifications set forth in a PO; (ii) Sampo's negligence in designing, manufacturing, or otherwise handling Products; (iii) defects in Products giving rise to claims based on strict or product liability; or (iv) failure of products to perform in accordance with their intended use; or

(2) Directly or indirectly resulting (i) from Sampo's failure to satisfy its obligations under this Contract, or (ii) because any representation of Sampo in this Contract proves untrue. GE shall, however, pursue any indemnification claims against Sampo, and Sampo and GE shall jointly defend any "Covered Third-Party Claims," in accordance with the joint defense and arbitration provisions attached as Exhibit J.

[5]. Under Exhibit J to the CMA, the parties agreed:
1. As used in this Exhibit J, a "Covered Third-Party Claim" means any claim by a third party, including a civil action, against Sampo or GE or both, or against their affiliates, divisions, subsidiaries, employees, agents or representatives, for personal injury, property damage, or other loss that is alleged to have been caused, directly or indirectly by Products.

2. As required by paragraph 4(D)(1) of the Contract of which this Exhibit J is a part, Sampo shall indemnify GE (and GE's distributors, dealers, affiliates, and customers) against any liability, claim, cost, or reasonable expense resulting from any Covered Third-Party Claim.

[6]. Pursuant to the CMA, GE notified Sampo Enterprise and Sampo Corp. as soon as it learned of the possibility of a claim by Sabreliner. When neither company accepted GE's tender of the claim, GE commenced this arbitration by submitting a demand for arbitration dated June 25, 2014, against Sampo Enterprise and Sampo Corp. Therein, GE sought a declaration regarding the respondents' obligation to defend GE in the Sabreliner case (a claim that is now moot because the case has settled), and indemnification for GE's costs in defending the Sabreliner case, including attorneys' fees.

[7]. Despite the fact that Sampo Enterprise (a Chinese company) was notified about the arbitration, Sampo Enterprise has never appeared in the case. Sampo Corp. (a Taiwan company) submitted an answer dated July 22, 2014, generally denying the allegations and contending that Sampo Corp. could not be held liable because it did not manufacture the refrigerator.

[8]. In June 2015, the parties submitted cross-applications under Section R-33 of the AAA's Commercial Arbitration Rules to submit dispositive motions. The panel denied their respective requests, finding that neither proposed motion was likely to succeed or narrow any issue in the case. In-person hearings were held in New York City on November 9-11, 2015. After the hearings ended, the parties submitted post-hearing briefs on December 11, 2015, and replies thereto on December 21, 2015. The record closed on December 21, 2015.

[9]. The parties have requested a reasoned award and agreed that the award should be made within 45 days from the date of closing the hearing.

II. Findings and Conclusions

A. The Sale of the Sabreliner Refrigerator Was Under the CMA

[10]. Sampo Corp. contends that it cannot be held liable for indemnification under the CMA because the CMA expired in November 2005, and there is no evidence that the subject refrigerator was sold before the CMA expired. The panel rejects this contention, finding that GE amply satisfied its burden of proving that fact by a preponderance of the evidence, and concluding that Sampo Corp.'s case to the contrary was speculative. GE adduced sufficient evidence for the panel to conclude that the subject refrigerator was manufactured and sold well before November 2005. In particular, the subject refrigerator's compressor was conclusively shown to have been manufactured in December 2003, and the evidence shows that compressors are installed in refrigerators during the refrigerator manufacturing process within 3-6 months of the compressors' manufacture. The evidence further shows that these refrigerators are sold within a few months of being manufactured. Therefore, the panel concludes that the Sabreliner refrigerator, with a compressor manufactured in December 2003, was almost certainly manufactured and sold before November 2005, and therefore its sale was governed by the CMA.

B. The Provisions of the CMA Extend to GE

[11]. Sampo Corp. also contends that it has no obligation to indemnify and defend GE because GE is not a party to the CMA. The panel rejects this argument. The indemnification and defense obligation in paragraph 4 of the CMA extends beyond GEAA to GEAA's distributors, dealers, customers and affiliates. GE is both a customer and an affiliate of GEAA, and therefore Sampo Corp.'s indemnification and defense obligation extends to GE.

C. GE's Conduct and Settlement of the Sabreliner Litigation Was Reasonable

[12]. Sampo Corp. takes issue with the amount of the Sabreliner settlement, and contends that GE improperly excluded Sampo Corp. from the Missouri lawsuit and settlement, and agreed to an unreasonable sum in settlement. The panel rejects these contentions. The record shows clearly that GE attempted to involve Sampo Enterprise and Sampo Corp. in the Sabreliner lawsuit as soon as the claim arose, and tendered the defense immediately. Sampo Corp. and Sampo Enterprise refused to become involved. Indeed, GE notified Sampo Corp. and Sampo Enterprise of the mediation and invited them to attend. Sampo Corp. sent a representative who did not participate. Even if GE's ultimate settlement of the Sabreliner lawsuit had been unreasonable (which it was not), Sampo Corp. cannot be heard to complain of it because it chose to remain uninvolved.

1. The Settlement Amount Was Reasonable

[13]. The panel concludes that the amount of the settlement was reasonable. The panel was persuaded by the attorney for GE's insurer, Mr. Solomon, who testified regarding the significant exposure GE could have faced if the Sabreliner lawsuit went to trial, and the rigorous efforts GE and its experts undertook to analyze that potential exposure. Again, it is easy for Sampo Corp. to complain after the fact, but Sampo Corp. chose not to become involved in that analysis at the time, and therefore cannot be heard to complain about the conclusion GE reached.

2. GE's Defense Costs and Attorneys' Fees Were Reasonable

[14]. Likewise, we conclude that the amounts GE paid in defense of the Sabreliner case were shown to be reasonable by the testimony of Mr. Solomon. Sampo Corp. offered no proof of any specific excess, and its suggestion of bad faith in the approval of those payments was not supported by the evidence. We find on the whole record that those payments were "reasonable expenses" for which indemnity is due pursuant to Exhibit J, paragraph 2 of the CMA.

3. GE Did Not Exclude Sampo Corp. And Sampo Enterprise From the Sabreliner Litigation

[15]. Sampo Corp. incorrectly asserts that GE excluded the Sampo Corp. and Sampo Enterprise from the Sabreliner litigation, and that the CMA permitted GE to take total control of the Sabreliner lawsuit. The evidence shows, however, that GE repeatedly attempted to tender the case to Sampo Corp. and Sampo Enterprise and involve them in it. The CMA provides for a "joint defense", not total control by GE, and Sampo Corp.'s and Sampo Enterprise's refusal to accept the tendered case left GE with no choice but to make all decisions about the lawsuit without input from Sampo Corp. and Sampo Enterprise. In doing so, GE's actions were reasonable.

D. GE Had No Duty To Mitigate

[16]. Finally, Sampo Corp. complains that GE failed to mitigate because it did not plead over against the manufacturer of the component that caused the fire. The panel rejects this contention. There was no conclusive determination as to what had caused the fire, and therefore there is no way that GE could identify the party, if any, against whom it could assert a third party claim.

III. Award

[17]. For the reasons stated above, we award as follows:
1. Within thirty (30) days from the date of transmittal of this Final Award to the parties, Sampo

Corporation and Sampo Enterprise Co. Ltd. shall, jointly and severally, pay to General Electric Company the sum of $3,051,817.22, consisting of $2,500,000 on General Electric Company's indemnity liability claim, $171,174.81 on General Electric Company's claim for attorneys' fees and costs incurred in connection with defending the Sabreliner case, and $380,642.41 in pre-judgment interest representing 9% (simple, per annum) of the foregoing sums from the date of the demand for arbitration through the date of this award (19 months).

2. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR), totaling US$11,450.00, and the compensation and expenses of the panel totaling US$70,262.50, shall be borne 50% by General Electric Company and 50% jointly and severally by Sampo Corporation and Sampo Enterprise Co. Ltd. Therefore, Sampo Corporation and Sampo Enterprise Co. Ltd. shall, jointly and severally, pay to General Electric Company the sum of US$17,430.85, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by General Electric Company.

3. This Final Award is in full settlement of all claims submitted to this arbitration. Any claims not referred to above are denied.

4. This Final Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, U.S.A.