

JUDGMENT of the
SWEDISH SUPREME COURT

Case No.

given in Stockholm on 12 November 2001

Ö 1245-01

APPELLANT

American Pacific Corporation, 3770 Howard Hughes Parkway, Suite 300,
Las Vegas, Nevada 89109, USA

Counsel: Advokat Magnus Dahlén, Box 11235, 404 25 GÖTEBORG

COUNTERPARTY

1. Sydsvensk Produktutveckling AB in bankruptcy, Reg. No. 556172-1407,
Box 156, 246 22 LÖDDEKÖPINGE
2. J.A., 441104-4136, Møllegatan 22, 244 02 FURULUND
Counsel to 1 and 2: advokat Magnus Nedström and advokat Johan
Sigeman, Stortorget 8, 211 34 MALMÖ

MATTER

Compensation for costs in matter of enforcement of foreign arbitral award

APPEALED JUDGMENT

Svea Court of Appeal, dep. 1, decision of 21 March 2001, in case Ö 4859-00

Appealed judgment

see Appendix

JUDGMENT OF THE SUPREME COURT

The Supreme Court amends the judgment of the Court of Appeal and orders Sydsvensk Produktutveckling AB in bankruptcy and J.A. to jointly and severally compensate the American Pacific Corporation its costs before the Court of Appeal in the amount of SEK two-hundred-thirteen-thousand two-hundred-twenty-three (213,223), of which SEK 174,375 comprises of costs for legal counsel, plus interest according to Section 6 of the Swedish Act on Interest from 21 March 2001 until the day of payment.

Sydsvensk Produktutveckling AB in bankruptcy and J.A. are jointly and severally ordered to compensate the American Pacific Corporation for its litigation costs before the Supreme Court in the amount of SEK fourteen-thousand four-hundred (14,400), all comprising of costs for legal counsel, plus interest according to Section 6 of the Swedish Act on Interest from the date of the Supreme Court's decision until the day of payment.

MOTIONS BEFORE THE SUPREME COURT

The American Pacific Corporation has moved that the Supreme Court shall grant its claim to be compensated for litigation costs before the Court of Appeal firstly in the amount requested before that court, or in the alternative, in the amount of SEK 150,000, all comprising of costs for legal counsel, plus interest according to Section 6 of the Swedish Act on Interest from 21 March 2001 until the day of payment.

Sydsvensk Produktutveckling AB in bankruptcy and J.A. have disputed any amendments to the judgment of the Court of Appeal.

The American Pacific Corporation has claimed compensation for its litigation costs before the Supreme Court.

GROUNDINGS

On 5 June 2001, the Supreme Court dismissed the appeal of Sydsvensk Produktutveckling AB in bankruptcy and J.A., and as a consequence the judgment on enforcement of the Court of Appeal remains in force.

The sections on recognition and enforcement of foreign arbitral awards etc. (Sections 52-60 of the Swedish Arbitration Act) do not contain a provision on the possibility for a party to be compensated by the counterparty for litigation costs in matters of enforcement of foreign arbitral awards before Svea Court of Appeal. Nor is there a provision thereon in other legislation concerning declarations of enforceability by Svea Court of Appeal. No firm principle has been established by case law.

The provisions of Chapter 18 of the Swedish Code of Judicial Procedure are applicable only to litigation costs before public courts. Section 32 of the Act on handling of court matters (SFS 1996:242) (*Sw. ärendelagen*) provides that the court may, in matters where private subjects are counterparties, order one party to compensate the other for its litigation costs in the matter by applying Chapter 18 of the Swedish Code of Judicial Procedure. However, the Act on handling of court matters is not, according to Section 1 thereof, applicable to matters handled by a Court of Appeal as first instance.

The foregoing does not preclude, however, that in certain circumstances the provisions of Chapter 18 of the Swedish Code on Judicial Procedure may be applied also to matters that do not fall within the scope of the Act on handling of court matters (cf. NJA 1994 p. 33 and p. 749, and further references to earlier case law referenced in the former case).

An application for a declaration of enforceability made to Svea Court of Appeal is preceded by a dispute between the parties having resulted in an arbitral award, with which the losing party fails to comply. When an application for a declaration of enforceability is made, and the counterparty is

awarded the right to object thereto, such a relationship between the parties must be deemed to be established thereby, that the provisions of Chapter 18 of the Swedish Code of Judicial Procedure should be applied.

In the present matter, the American Pacific Corporation has before the Supreme Court as grounds for its secondary claim specified which portion of the costs before the Court of Appeal that is directly related to the actual application and the written exchange of opinions, respectively. The counterparties should however be ordered to compensate the American Pacific Corporation in the entire claimed amount.

Having regard to the foregoing, the American Pacific Corporation shall also be compensated for its costs before the Supreme Court.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Supreme Court Justices G., B. (Reporting Justice), S., W. and P.
Reporting clerk: W.