

## COMMERCIAL DISPUTES WEEKLY – ISSUE 30

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

We appreciate that our clients, partners and friends are currently facing unprecedented challenges as a result of the spread of the COVID-19 virus. Click [here](#) for a message from our Managing Partners, and [here](#) for all of our latest updates and articles on the subject. If you have any questions or require support, please do not hesitate to speak to your usual contact at WFW.

#### Costs budgeting

The High Court has rejected arguments that an underspend in respect of sums in a costs budget constituted a “good reason” to depart from the budget, commenting that if an underspend were to amount to a good reason, it would be liable to substantially undermine the effects of costs budgeting and the aim of reducing the need for and scope of detailed assessments. However, an underspend was contrasted with the situation where a budgeted phase is not substantially completed, where it would be unjust for a receiving party to receive the full amount of a budgeted sum where only a modest amount of the expected work had been done.

Utting v City College Norwich

**"Any attempt to draw a bright line between management and operation would be fraught with difficulty."**

**Splitt Chartering APS & Ors v Saga Shipholding Norway AS & Ors (The STEMA BARGE II)**

#### Enforcement

Although a third party debt order can be an effective method of enforcing a money judgment, the Commercial Court has emphasised that such an order can only be made where the debt from the third party is due or accruing due to the judgment debtor.

Michael Wilson & Partners Limited v Sinclair & Ors

#### Jurisdiction

The English Commercial Court has declined jurisdiction in respect of very significant claims of fraud and bribery regarding the allocation of an oil prospecting licence, holding that the claims involved the same cause of action and the same parties as

proceedings before the Italian courts, and the English court was therefore bound to decline jurisdiction pursuant to the *lis pendens* provisions in the Brussels Recast Regulation.

The Federal Republic of Nigeria v Royal Dutch Shell Plc & Ors

## Maritime

In a notable decision for those engaged in the management and operation of seagoing ships, the Admiralty Court has construed the meaning of “manager” and “operator” under the 1976 Limitation Convention, commenting that the manager is the person entrusted by the owner with sufficient tasks involved in ensuring a vessel is safely operated, properly manned, properly maintained and profitably employed to justify describing that person as the manager of the ship, and that while there may often be little scope for operator to have any wider meaning than that of manager, when dealing with a dumb barge, it could include an entity which, with the permission of the owner, directs its employees to board the unmanned ship and operate her in the ordinary course of business.

Splitt Chartering APS & Ors v Saga Shipholding Norway AS & Ors (The STEMA BARGE II)

## Settlement

Emphasising the difference between Calderbank offers (without prejudice offers made save as to costs) and Part 36 offers, the High Court has confirmed that a Calderbank offer remained open for acceptance once a detailed assessment hearing had commenced and so could be accepted by the receiving party, although accepting a Part 36 offer would have required the court’s permission. The offer had not lapsed following a reasonable time, and had not been withdrawn.

MEF v St George’s Healthcare NHS Trust

## FOR MORE INFORMATION

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

- Andrew Ward
- Rebecca Williams
- Charles Buss
- Dev Desai
- Andrew Hutcheon
- Robert Fidoe
- Thomas Ross

## KEY CONTACTS

### ANDREW WARD

PARTNER • LONDON

T: +44 20 7863 8950

[award@wfw.com](mailto:award@wfw.com)



### REBECCA WILLIAMS

PARTNER • LONDON

T: +44 203 036 9805

[rwilliams@wfw.com](mailto:rwilliams@wfw.com)

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