

MARITIME DISPUTES NEWSLETTER – JULY 2020: OTHER NOTABLE DECISIONS

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SCROLL DOWN FOR DECISIONS ON GENERAL CONTRACT TOPICS MADE BY THE ENGLISH COURTS.

Rights to possession as contractual bailor

In a significant matter for parties engaged in trade finance, which will also be of interest to parties asserting rights to possession in respect of cargo, the Commercial Court has held that although a foreign law pledge over copper was invalid, a lender was entitled to bring a claim for damages arising out of the loss of the copper pursuant to its rights to possession as a contractual bailor under the terms of a collateral management agreement.

Scipion Active Trading Fund v Vallis Group Limited (formerly Vallis Commodities Limited) [2020] EWHC 1451 (Comm)

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An end to uncertainty? Court of Appeal guidance on determining the proper law of arbitration agreements

The Court has handed down an important decision on the governing law of arbitration agreements, clarifying that the general rule should be that, where there is no express choice of governing law, the governing law of the arbitration agreement should be the law of the seat. The Court also confirmed that the court of the seat is the appropriate court to determine whether or not to grant an anti-suit injunction in support of the arbitration. However, since the Supreme Court has now given permission to appeal, this may not be the end of the story.

Enka Insaat Ve Sanayi AS v OOO “Insurance Company Chubb” & Ors [2020] EWCA Civ 574

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Indemnities for OFTO assets

"The time has come to seek to impose some order and clarity on this area of the law, in particular as to the relative significance to be attached to the main contract law on the one hand, and the curial law of the arbitration agreement on the other, in seeking to determine the [proper law of an arbitration agreement]."

Enka Insaat Ve Sanayi AS v OOO "Insurance Company Chubb" & Ors

A decision which arose in the context of an OFTO transaction has emphasised the importance of precise drafting of indemnity provisions to ensure that parties' intentions regarding risk allocation are reflected accurately. The court held that a provision in a sale and purchase agreement which provided for the seller to indemnify the purchaser if any of the relevant assets were destroyed or damaged prior to completion only covered the costs of reinstating assets if they were damaged during the period between signing of the agreement and completion, and not where damage may have occurred at any time before completion, including prior to the execution of the agreement.

Gwynt Y Mor Ofco PLC v Gwynt Y Mor Offshore Wind Farm Limited & Ors [2020] EWHC 850 (Comm)

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Going nuclear: showing a real risk of dissipation when seeking a freezing order

In the context of applications for freezing orders, the Court of Appeal has helpfully confirmed that, where the court accepts that there is a good arguable case that a defendant has engaged in wrongdoing against an applicant which is relevant to the

issue of dissipation, that will point powerfully in favour of demonstrating a real risk of dissipation for the purposes of obtaining the freezing order.

Lakatamia Shipping Company Limited v Morimoto [2019] EWCA Civ 2203

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