

COMMERCIAL DISPUTES WEEKLY – ISSUE 47

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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.

"As a matter of principle and authority there are ... strong reasons why an agreement on a choice of law to govern a contract should generally be construed as applying to an arbitration agreement set out or otherwise incorporated in the contract."

Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb

Arbitration

In an important judgment on the law applicable to an arbitration agreement, handed down late last week, the Supreme Court has overturned the Court of Appeal's decision that where no choice of law is specified an arbitration agreement should be governed by the law of the chosen seat, instead holding that the governing law of the underlying contract will generally apply to an arbitration agreement which forms part of that contract.

Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb

Damages

When assessing damages for breach of contract, the Commercial Court has accepted that when applying the "net loss approach", which takes into account expenses saved and non-collateral benefits obtained by the claimant as a result of the breach as well as expenses caused or benefits lost, there may be circumstances in which a liability to make a payment should not be brought into account, or not accounted for in full. However, in this case the evidence did not support an argument that liabilities under ship management agreements should not be brought into account when assessing the claimants' damages claim for breach of a contract of affreightment.

Palmali Shipping SA v Litasco SA

Expert evidence

The High Court has refused to order the disclosure of expert reports prepared for use in related foreign proceedings, emphasising that absent some evidence of a material inconsistency, expert witnesses' previous proofs of evidence in other claims will not normally fall within the scope of standard disclosure.

Byers & Ors v Samba Financial Group

Maritime

In his last judgment before retiring as an Admiralty Judge, Mr Justice Teare has commented on the value of reconstruction animation videos in collision cases, noting that in a case where it was necessary to know where a number of vessels were in relation to submarine cables at different times, a video based on VDR data which could be paused and restarted at will was of considerable assistance.

Owners of the Vessel Sakizaya Kalon v Owners of the Vessel Panamax Alexander & Ors

Reflective loss

In the first reported judgment to consider the rule on reflective loss following the Supreme Court's decision in *Marex Financial Ltd v Sevilleja* (2020), the High Court has confirmed that claims by a shareholder arising out of a failure to transfer assets to a joint venture vehicle were barred by the rule – the shareholder's loss was merely reflective of the loss suffered by the joint venture vehicle. However, the rule did not extend to bar claims by a "second or third degree" shareholder.

Broadcasting Investment Group Limited & Ors v Smith & Ors

Undue influence

In a significant case, in which Watson Farley & Williams acted for the successful claimant lenders, the Commercial Court has provided helpful clarification on the law of undue influence, holding that two sons of a shipping magnate had not been "unduly influenced" to enter into personal guarantees of shipping loans. [Read our full briefing here.](#)

YS GM Marfin II LLC & Ors v Lakhani & Ors

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:

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