

MARITIME DISPUTES NEWSLETTER – NOVEMBER 2020: OTHER NOTABLE DECISIONS

25 NOVEMBER 2020 • ARTICLE



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

Governing law of arbitration agreement

The question of what law governs an arbitration agreement in the absence of an express choice has been a contentious questions for some time. The Supreme Court has now sought to answer that question by holding that where the parties have specified the governing law of the underlying contract, the assumption is that this will be the governing law of the arbitration agreement. However, where no express choice has been made it will be necessary to look to the system of law which has the closest connection with the arbitration agreement, which will generally be the law of the seat, even if this is ultimately different from the law which is found to govern the underlying agreement.

Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb [2020] UKSC 38

"In this case, we are presented with an intriguing question of law which courts and commentators have been grappling with for many years. What is the proper law ... of an arbitration agreement where there is no express choice of law clause in the arbitration agreement?"

Enka Insaat Ve Sanayi
AS v OOO Insurance
Company Chubb)

Over a barrel: what is reasonable in the exercise of contractual consent provisions?

In an interesting decision on the interpretation of terms which provide that consent to contract amendments will not "be unreasonably withheld", the Commercial Court has found that by imposing a condition on consent which would increase the tariffs payable under an agreement for the transportation of oil ashore from the North Sea, a consent-provider had acted unreasonably. The decision confirms that English courts will be reluctant to permit parties to a contract to fundamentally rewrite their bargain and allocation of risk, even where a contract is drafted to allow for some flexibility in the relationship.

Apache North Sea Ltd v INEOS FPS Ltd [2020] EWHC 2081 (Comm)

[Click here for the FULL ARTICLE](#)

Clearing the knotweed: a future path for reflective loss

In a landmark decision, the Supreme Court has clarified that the so-called “reflective loss” principle, which bars claims against third parties which reflect loss suffered by a company, will only preclude claims by shareholders in relation to a reduction in the value of their shares or distributions, and does not extend to claims by other creditors. In doing so the decision has cut back a principle which has been described by one commentator as “some ghastly legal Japanese knotweed”.

Sevilleja v Marex Financial Ltd [2020] UKSC 31

[Click here for the FULL ARTICLE](#)

Loan agreements and sanctions

Emphasising that in circumstances where a contract is a standard form, evidence of the particular factual background will have a more limited part to play in the process of interpretation, the Court of Appeal has upheld a decision that a borrower was not immediately obliged to make payments under a facility agreement in light of the effect of US secondary sanctions on the lender.

Lamesa Investments Limited v Cynergy Bank Limited [2020] EWCA Civ 821

[Click here for the FULL ARTICLE](#)

"The expansion of the so-called “principle” that reflective loss cannot be recovered has had unwelcome and unjustifiable effects on the law."

Sevilleja v Marex
Financial Ltd

Construction of exemption clauses

Holding that an exemption clause in an intercreditor agreement meant that receivers would only be liable for breach of the equitable duties they owed to a mortgagor in cases of gross negligence or wilful misconduct, the Commercial Court has commented that even if the construction of exemption clauses involves the same approach as that used for the construction of other contractual terms, special principles of construction traditionally used to construe exemption clauses still remain relevant to that exercise.

CNM Estates (Tolworth Tower) Limited v VeCREF I Sarl & Ors [2020] EWHC 1605

READ ABOUT RECENT MARITIME DECISIONS.

GO BACK TO THE MARITIME DISPUTES NEWSLETTER HOMEPAGE.

KEY CONTACTS

ANDREW WARD

PARTNER • LONDON

T: +44 20 7863 8950

award@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.