

## COMMERCIAL DISPUTES WEEKLY – ISSUE 54

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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.

**"There is a legal duty of disclosure in English law which is encompassed within the statutory duties of an arbitrator under section 33 of the 1996 Act and which underpins the integrity of English-seated arbitrations."**

**Halliburton Company v Chubb Bermuda Insurance Ltd (formerly known as Ace Bermuda Insurance Ltd**

Bermuda Insurance Ltd)

#### Arbitration

In a rare case of a successful challenge to an arbitration award under section 68 Arbitration Act 1996, the English court has set aside parts of an arbitration award where the tribunal assessed damages without giving the parties the opportunity to adduce evidence or advance submissions on what damages could be recoverable for the breaches proved.

**The Republic of Kazakhstan v World Wide Minerals Ltd & Anr**

#### Agency

In a decision arising out of the sale of a painting thought by some to be the work of famous Dutch Golden Age painter Frans Hals, the Court of Appeal has rejected arguments that authorities on sub-agency applied, holding instead that pursuant to the normal principles of agency relating to an unnamed principal, privity of contract existed between the parties.

**Sotheby's v Mark Weiss Ltd & Ors**

#### Arbitration

In a significant and long awaited judgment, the Supreme Court has upheld a decision that an arbitrator's failure to disclose his appointment in potentially overlapping arbitrations did not give rise to an appearance of bias, although a failure by an arbitrator to disclose relevant matters will be a factor for the fair-minded and informed observer to take into account in assessing whether there is a real possibility of bias. Read more about the decision in our article, [here](#).

**Halliburton Company v Chubb Bermuda Insurance Ltd (formerly known as Ace**

## Contempt

Notwithstanding the fact that defendants had a strong *prima facie* case that a claimant had falsified evidence and made a deliberately false statement of truth in her Reply, the High Court has refused to give permission to make a contempt application before trial in a case involving rights to sell a work by Pablo Picasso, holding that it would be premature and a distortion of the normal trial process.

Cole v Carpenter & Ors

## Experts

The High Court has emphasised that where expert evidence is not necessary to resolve an issue, permission to adduce such evidence will only be given if it is reasonably required. In this matter the costs of admitting the evidence, as well as the fact that the proposed issues were not technical issues, meant permission was refused.

Davies v Ford & Ors

## Foreign law

In further support for the presumption or default rule that, in the absence of satisfactory evidence of foreign law, the court will apply English law, the Commercial Court has held that the costs of a claimant amending its Particulars to plead foreign law in response to the defendants pleading of foreign law should be costs in the case.

Suppipat & Ors v Narongdej & Ors

## Settlement

The Commercial Court has given judgment pursuant to the terms of a Tomlin Order, holding that the claimants' entitlement to seek judgment after a certain date was not conditional on it using reasonable endeavours to reach a full and final settlement of its claims against the defendant by that date.

NIHL Limited & Anr v Infinite Limited (in liquidation) & 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:

- Andrew Ward
- Rebecca Williams
- Charles Buss
- Dev Desai
- Andrew Hutcheon
- Robert Fidoe
- Thomas Ross
- Marcus Dodds
- Ryland Ash

## 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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