

## COMMERCIAL DISPUTES WEEKLY – ISSUE 60

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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.

"I would wish to leave open the possibility that, by tendering a draft bill containing a statement that the cargo is in apparent good order and condition, the shippers make an implied representation that they are not actually aware of any hidden defects or damage which, if known to the master, would mean that he could not properly sign the bill as tendered."

(Noble Chartering Inc v Priminds Shipping Hong Kong Co Ltd ("Tai Prize"))

#### Costs budgeting

Providing useful guidance on the proper approach to costs budgeting in high value cases where the ratio of costs to the amount in dispute will be relatively low, the High Court has commented that where the work involves considerable skill, specialised knowledge and responsibility, done under circumstances of considerable pressure, substantial costs could be justified.

Benyatov v Credit Suisse Securities (Europe) Ltd

#### Disclosure

Emphasising that pre-action disclosure is not the norm and will not normally be ordered, the High Court has refused an application for pre-action disclosure in relation to a potential claim for breach of an alleged oral agreement, noting that where the applicant was able to plead his case, any delay in waiting for documents until standard disclosure was complete was not of sufficient weight to make an order.

Corbyn v Evans

#### Fraud

In a decision which highlights the importance of properly pleading allegations of fraud, the High Court has allowed an appeal against an order refusing to strike out a claim in deceit, noting that it is not enough to make a bare assertion and that if a case rests upon the drawing of inferences about the defendant's state of mind, the

relevant facts must be clearly pleaded.

Kasem v University College London Hospitals NHS Foundation Trust

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## Maritime

The Court of Appeal has upheld a decision that a shipper was not liable for a “clean on board” representation in a draft bill of lading, observing that the bill of lading contains a representation by the master based upon the reasonable examination of the cargo undertaken by the master – to hold that the draft bill of lading gave rise to an implied representation by the shipper would be confusing, was neither necessary nor so obvious as to go without saying, and ran counter to the scheme in the Hague Rules. *Noble Chartering Inc v Priminds Shipping Hong Kong Co Ltd (“Tai Prize”)*

## Service

Care should always be taken to ensure that proceedings are validly served. Nevertheless, despite rejecting arguments that service on an English registered company amounted to valid service on a foreign company in the same group, the High Court has made an order for alternative service, noting that the claim form had been brought to the defendant’s attention and the order would avoid significant delay and expense.

*Alli-Balogun v On The Beach Ltd & 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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