

COMMERCIAL DISPUTES WEEKLY – ISSUE 97

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"I am satisfied that the non-compliances do not justify striking out the witness statements. That is a very significant sanction which should be saved for the most serious cases."

Blue Manchester
Limited v Bug-Alu
Technic GMBH & Anor

Evidence

In this decision the TCC considers applications to strike out or alternatively to redraft witness statements for failure to comply with Practice Direction 32 – Evidence and PD 57AC – trial witness statements in the Business and Property Courts. The case concerns a negligence claim by the responsible tenant against cladding sub-contractors and project architects. The court declined to strike out but ordered redrafting by scheduling the offending paragraphs and the remediation in each case. Following the introduction of new rules with regard to witness statements earlier this year, such applications are becoming part of the procedural landscape to commercial disputes.

[Blue Manchester Limited v Bug-Alu Technic GMBH & Anor](#)

Defamation

In this QB judgment the court considers preliminary issues as to the natural and ordinary meaning of passages in a book, "Putin's People" (subtitled "How the KGB Took Back Russia and Then Took on the West") and whether they are defamatory to Rosneft. The passages included comments on events between 2003 and 2006 connected with the acquisition of Severnaya Neft, Yukos and the 2006 London IPO of Rosneft shares. The court found that one of the passages (re Severnaya Neft) was defamatory but the others were not. Issues as to causation of loss and damages are yet to be determined. A separate defamation claim by Roman Abramovich against the defendants concerning the same book was also the subject of a preliminary issues judgment on the same day.

[Public Joint Stock Company Rosneft Oil Company v HarperCollins Publishers Limited and Anor](#)

Without Prejudice Save as to Costs (“Calderbank”) offers

The Court of Appeal considers costs in a case involving split trials for liability and quantum where no offer under Part 36 had been made but one party made a global Calderbank offer. The judgment was in the context of an unfair prejudice petition where the successful petitioner received an order for costs after the liability trial pending valuation notwithstanding that the court was aware that an undisclosed global Calderbank offer had been made. In addition to generally considering the effect of Part 36 offers, *O’Neill* offers (to purchase shares at a price to be determined by valuation) and Calderbank offers. The judgment discusses the distinction between the court’s powers under CPR Part 36 where cases are part-decided and the courts general powers and discretion to award costs under CPR Part 44.2.

[McKeown v Langer](#)

Maritime Letters of Indemnity (“LOI”)

The Commercial Court considers the obligation of a voyage charterer to indemnify a vessel owner where pursuant to an LOI a cargo of naphtha was allegedly wrongfully delivered to Hin Leong tanks at a terminal in 2020. The bill of lading holder subsequently sued for misdelivery. The defendant was not represented at the hearing. The judgment considers an alleged precondition to the obligation to indemnify and confirms the breadth of the LOI to cover damages for loss of use of the arrested vessel, specific performance of the requirement to provide security and a declaration of liability to indemnify the owner for ongoing costs in defending the claim brought by the bill of lading holder.

[Navig8 Chemicals Pool Inc v Aeturnum Energy International Pte Ltd](#)

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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