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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "In my view, therefore the Extrapolated Claim does not give rise to unfair commercial pressure on [the defendant]. I think the alternative course [pleading the remaining 3,437 variations] might well have done."
>
> Building Design Partnership Limited v Standard Life Assurance Limited

Pleading Extrapolated Claims

In a case where the cost of a property development doubled following 3,604 variations in the building contract and other issues, the Court of Appeal upheld a decision by the TCC not to strike out the claimant developer's extrapolated claim for abuse of process. The developer was permitted to plead a professional negligence claim against the project design team partly by carrying out a detailed examination of responsibility for a sample of 167 variations and extrapolating those results in order to plead a global claim for the 3,437 remaining variations.

Building Design Partnership Limited v Standard Life Assurance Limited

Insurance – Non Avoidance Clauses (NACs)

An assured's broker had mistakenly failed to pass on a policy amendment (including a non-standard Transaction Premium Clause (TPC) and an NAC) to follow on underwriters in the first policy year. This failure had a knock on effect in the second year in that the same underwriters were induced to sign the renewal for the second year (containing the TPC and NAC) by a representation that the terms were as per the previous year ("as expiry"). Notwithstanding that the statements by the assured's broker could have been sufficient to give rise to an estoppel by convention or estoppel by representation, the NAC clause prevented the underwriters from relying on such estoppels as a basis for rejecting claims under the TPC.

ABN Amro Bank N.V. v Royal & Sun Alliance Insurance plc & Ors

Bills of Lading – Incorporation of Terms

War risk provisions in a voyage charter whereby the charterer paid for the additional insurance premium for Kidnap and Ransom ("K&R") cover to allow the vessel to traverse the Gulf of Aden meant that when the owner's insurers eventually had to pay a ransom to pirates who held the vessel for ten months, contribution for this ransom could not be sought from the charterers. As between owners and charterers, the K&R cover was to be the sole fund for this purpose. However, notwithstanding that the bills of lading carried general language incorporating "all terms of the charterparty" this particular regime for ransom payments was held not to be incorporated and therefore owners were not prevented from seeking general average contributions from the bill of lading holders.

Herculito Maritime Limited & Ors v Gunvor International BV & Ors

Sale of Goods – Advance Payment

The Court of Appeal upheld a decision of the Commercial Court in a dispute over a repayment obligation under an advance payment of 90% of the purchase price for a cargo on low sulphur diesel oil. The court rejected the seller's argument that a force majeure clause which provided that termination after a force majeure event shall not "impair the obligations by the Seller to repay … the amount of the advance payment" did not itself contain an obligation to repay and the that the true obligation to repay was contained in a separate comfort letter which the buyer received from the Russia based refinery supplying the diesel oil (which the court described as "commercially useless").

Nord Naphtha Limited v New Stream Trading AG

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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