

## COMMERCIAL DISPUTES WEEKLY – ISSUE 108

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The mere offer of a speed and consumption warranty should not of itself be held to involve an implied representation as to current or recent performance."

SK Shipping Europe PLC  
v Capital VLCC 3 Corp

#### Maritime – charterparty

The Court of Appeal dismissed the charterers' appeal against a decision that they were liable to owners for breach of a charterparty. Owners had not made any representations as to the vessel's future or expected performance, and the offer of a speed and consumption warranty was not an implied representation as to the vessel's fuel consumption. Although charterers had reserved their rights in relation to the vessel's performance and alleged misrepresentation of consumption capabilities, their order for the vessel to undertake a sub-fixture was an affirmation of the contract.

SK Shipping Europe PLC v Capital VLCC 3 Corp and another (The "C CHALLENGER")  
[2022] EWCA Civ 231, 25 February 2022

#### Insurance – Covid-19 losses

A hospitality business was able to recover under its business interruption insurance for losses due to the Covid-19 lockdown closures. The clause provided cover for loss *"resulting from interruption or interference with the business where access to your premises is restricted...arising directly from...the actions taken by police or any other statutory body in response to a danger or disturbance at your premises or within a 1 mile radius..."* As long as there was an outbreak within the radius, it did not matter that there were other outbreaks outside the radius. The danger did not just have to be local but could apply to a generalised danger.

Corbin & King Ltd and others v AXA Insurance UK PLC [2022] EWHC 409 (Comm), 25 February 2022

#### Company law – damages

The High Court has struck out a claim brought by former shareholders in a company that went into administration. They claimed that the loss of the company arose after misrepresentations by the defendant in entering into an agreement with the business and breaches of contract that led to the administration. Their claim was struck out because the shareholders were bringing claims for the company's loss, not their own personal loss. They could not do this because a shareholder has no legal or equitable interest in the company's assets.

Burnford and others v Automobile Association Developments Ltd [2022] EWHC 368 (Ch), 28 February 2022

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## Legal professional privilege

The Commercial Court has prevented a claimant from using in English litigation documents obtained lawfully in another jurisdiction. Under English law, the documents remained privileged in spite of being provided following a Thai Court order. Nor had privilege been lost as a result of the documents being provided to others by the defendant. They had been provided to a limited number of people for limited purposes where it was obvious that the material was confidential and the recipients plainly should have understood that.

Suppipat and others v Siam Commercial Bank Public Company Limited and another [2022] EWHC 381 (Comm), 2 March 2022

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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