

COMMERCIAL DISPUTES WEEKLY – ISSUE 118

24 MAY 2022 • ARTICLE



BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"The purpose of MII Insurance is to protect the Bank against the risk of non-payment under the Owners' policy... by reason of the Owners' misconduct..."

Piraeus Bank AE v Antares Underwriting Ltd and others

Mortgagee's Interest Insurance

A vessel was detained in Venezuela for 14 months as the crew were suspected of attempting to smuggle diesel oil. The mortgagee bank claimed for the loss under its mortgagee's interest insurance (MII) but the claim was rejected. The MII insurance required the loss to be covered in principle by the underlying policy, however the owner's war risks policy had an exclusion for action taken by the state under its criminal law or on the grounds of alleged contravention of the laws of the state. The detention had not been unlawful as a matter of Venezuelan law and therefore fell within the exclusion.

Piraeus Bank AE v Antares Underwriting Ltd and others, The ZouZou [2022] EWHC 1169 (Comm), 17 May 2022

Arbitration – enforcement

The Privy Council has upheld a decision of the Cayman Court of Appeal that a party had not established a defence to enforcement of an arbitration award under the

New York Convention on the basis that they had not been able to present their case. The relevant provisions of the New York Convention were not directly applicable in the Cayman Islands but had been incorporated exactly into domestic law. The meaning of the statute was therefore a question of domestic law but in assessing whether there had been due process, the Court should have regard to a standard of due process capable of application to any international arbitration whatever the applicable procedural law and nationality of the participants. The Court should seek to identify and apply basic minimum requirements which would generally be regarded throughout the international legal order as essential to a fair hearing.

Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP and others [2022] UKPC 21, 19 May 2022

FSMA – Fraudulent Misrepresentation

In a dispute arising out of the acquisition of the entire issued share capital of Autonomy Corporation Ltd, two directors have been found liable for fraud, fraudulent misrepresentation, breach of duty as employees or directors and concealment of information, as well as claims under the Financial Services and Markets Act 2000 (FSMA). The directors were held to have been ‘persons discharging managerial responsibilities within the issuers’ under FSMA. The claimants had reasonably relied on published revenue and business information and misrepresentations in deciding to purchase the shares in Autonomy and had suffered significant losses as a result.

[Autonomy and others v Lynch and others \[2022\] EWHC 1178 \(Ch\), 17 May 2022](#)

Solicitor’s breach of duty

A law firm and one of its former partners have been found liable for a number of significant failings, including acting against the client’s (ENRC) interests, negligence, breach of duty and the tort of inducement of breach of contract. The firm had been engaged to lead an investigation into activities of an ENRC subsidiary. The partner was held to have, among other things, leaked information to the press, failed to record in writing his own advice, given wrong advice about ENRC’s potential criminal liability and risk of raids by the SFO and sent confidential and privileged information to the SFO. Certain individuals in the SFO were also found to have been in serious breach of their duties by engaging with the partner and taking information that was plainly unauthorised.

[Eurasian Natural Resources Corp Ltd v Dechert LLP and Gerrard \[2022\] EWHC 1138 \(Comm\), 16 May 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:

Robert Fidoe

Ryland Ash

Charles Buss

Nikki Chu

Dev Desai

Sarah Ellington

Andrew Hutcheon

Alexis Martinez

Theresa Mohammed

Tim Murray

Mike Phillips

Rebecca Williams

KEY CONTACTS



JOANNE CHAMPKINS
KNOWLEDGE COUNSEL
• LONDON

T: +44 203 036 9859

jchampkins@wfw.com



REBECCA WILLIAMS
PARTNER • LONDON

T: +44 203 036 9805

rwilliams@wfw.com

ANDREW WARD
PARTNER • LONDON
T: +44 20 7863 8950
award@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.