

## COMMERCIAL DISPUTES WEEKLY – ISSUE 119

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"Each vessel breached an important obligation...however... WESTERN MOSCOW's poor lookout was especially striking."

Wilforce LLC and another v Ratu Shipping Co SA and another

#### Maritime – Collision

The Admiralty Court has considered, for the first time, the issue of collision liability in a Precautionary Area (an area of traffic crossing in which ships must navigate with particular caution). The WESTERN MOSCOW was found to be 75% liable for not keeping a proper lookout, which led to the vessel failing to alter course to starboard in sufficient time to avoid the collision. The WILFORCE was 25% liable as the vessel failed to reduce speed when the risk of collision became apparent. The vessel should have been in a maximum state of manoeuvring readiness. The Court declined to decide whether the crossing rules applied because it was unnecessary; the general duty of seamanship required the vessels to take the same action as under the crossing rules.

[Wilforce LLC and another v Ratu Shipping Co SA and another, The WILFORCE and the WESTERN MOSCOW \[2022\] EWHC 1190 \(Admlty\), 20 May 2022](#)

#### Adjudication – Natural Justice

An adjudicator has been held to have breached natural justice by reaching his decision on a mistaken assumption as to what one party had conceded, that the other party had not contended and which had not been identified as an issue for his determination. The party who had allegedly made the concession was given no opportunity to make submissions on the issue. These actions were fundamental departures from the obligation to follow a fair process and the adjudication decision was therefore unenforceable as a matter of law.

[Liverpool City Council v Vital Infrastructure Asset Management \(Viam\) Ltd \(in administration\) \[2022\] EWHC 1235 \(TCC\), 24 May 2022](#)

## Expert Evidence

A claimant has been given permission to substitute his expert witness, where the existing expert had given a number of weak reasons why he could no longer act. In the circumstances, he was clearly an unwilling witness. Although the court was resistant to expert shopping, the question was whether the claimant could have a fair trial. There was nothing to suggest that the claimant knew of the potential difficulties when they instructed the original expert and the case was still at an early stage. Expert evidence was central to the case and it was in the interests of justice to allow the claimant to appoint a new expert.

Hussain v QIC Europe Ltd [2022] Leeds County Court, 16 May 2022 (*judgment not yet publicly available*)

## Adjudication – Pay Less Notices

The TCC has upheld an adjudication decision that a pay less notice was invalid. The Court takes a commonsense and practical view of pay less notices and will not adopt an unnecessarily strict interpretation of the notice. The notice must comply with the statutory provisions in substance and form to be valid. The notice must also relate to a specific payment notice in which the notified sum is identified. The relevant pay less notice was in substance and form a response to Application 25. It did not give notice of an intention to pay less than the notified sum in Application 24 and was therefore an invalid pay less notice for Application 24.

Advance JV v ENISCA Ltd [2022] EWHC 1152(TCC), 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:

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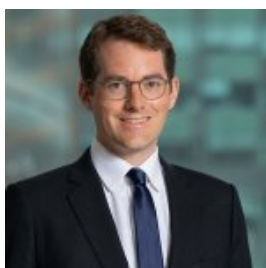
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