

## COMMERCIAL DISPUTES WEEKLY – ISSUE 120

14 JUNE 2022 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"In the absence of such a clause, the PPJC... has nothing to bite on."

AIG Europe SA  
(formerly AIG Europe  
Ltd) v John Wood  
Group Plc

#### Insurance – Contract Interpretation

The Court of Appeal has determined the applicable jurisdiction for disputes arising out of a tower of insurance policies where the clauses conflicted. The primary policy did not contain any choice of law and jurisdiction clause, however the excess policies provided for disputes to be subject to the same law and jurisdiction as the primary policy (the PPJC or Primary Policy Jurisdiction Clause). The standard terms of the excess policies also provided for English law and jurisdiction to apply. The Court of Appeal held that where the primary policy did not contain a law and jurisdiction clause, the PPJC in the excess policies did not apply. The choice of English law and jurisdiction in the excess policies was therefore applicable.

AIG Europe SA (formerly AIG Europe Ltd) v John Wood Group Plc [2022] EWCA Civ 781, 10 June 2022

#### Arbitration

The Commercial Court has confirmed that in arbitration it is a matter of procedural, not substantive, law to deal with the principle that a party is precluded from raising in subsequent proceedings any matters which were not, but could have been raised in earlier proceedings (known as *res judicata*). The contract in dispute was governed by Indian law but the arbitration was seated in London and therefore English law governed the arbitral procedure. The court rejected a challenge to the tribunal's decision based on the question of *res judicata* being threshold principles of Indian constitutional law and therefore Indian law should have been applied. It had been confirmed in the Supreme Court that *res judicata* was a procedural power and so English law as the law of the seat of arbitration should apply.

Union of India v Reliance Industries Ltd [2022] EWHC 1407 (Comm), 9 June 2022

## Adjudication – Binding Nature

An adjudication decision issued during the project has been held not to bind the parties in relation to the contractual mechanism for final determination of the completion period (the contract was on the JCT Construction Management Trade Contract 2011 form). This meant that claims which were calculated by reference to the completion period could change between adjudication and final contract account (such as for liquidated damages or time extensions). However, the contract did not permit the reconsideration or revaluation of variations that had been agreed or determined. Therefore, the adjudication was binding in relation to such variations. Careful analysis of each claim was required to conclude whether it had already been decided by the adjudicator and it could not be resolved by general decree of the court.

Essential Living (Greenwich) Ltd v Elements (Europe) Ltd [2022] EWHC 1400 (TCC), 8 June 2022

## Adjudication – Enforcement

FTH, a company in a Company Voluntary Arrangement, sought enforcement (and summary judgment) of two adjudication awards against Varis that arose out of a design and build contract. Varis resisted enforcement at this time given FTH's financial position and its own cross claims. Where the claimant is in insolvent liquidation, adjudication decisions will not be upheld by way of summary judgment as it creates unfairness between the parties because the company can recover in full but the creditor must prove in the liquidation against the fund. With a CVA, the company can trade out of its difficulties, so it requires a different approach depending on the facts. The court refused FTH's application for summary judgment on the basis that there was a real risk of Varis being deprived of security for its cross claims, given the evidence that the CVA would only achieve partial recovery against all the claims and there was insufficient evidence that FTH was trading profitably.

FTH Limited v Varis Developments Limited [2022] EWHC 1385 (TCC), 8 June 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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