

## COMMERCIAL DISPUTES WEEKLY – ISSUE 140

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...her officers were passive and insufficiently in command, trusting the Suez Canal pilots more or less blindly to take charge and do a good job..."

VTB Commodities  
Trading DAC v JSC  
Antipinsky Refinery and  
Petraco Oil Company  
SA

#### Maritime

The Admiralty Court has considered the application of the collision rules to an incident in which a damaged vessel, the Panamax Alexander, was further damaged after its stern mooring lines broke when a convoy of vessels, including the NYK Falcon, went past it in the Suez Canal. The Panamax Alexander swung out across the channel and was struck by the Orpheus. The court held that the Panamax Alexander should have been more carefully secured and the tugs been used more actively, and that the crew failed to alert the convoy that she was swinging out into the channel. The Orpheus approached the scene at excessive speed, should have kept a better watch and gone immediately Crash Astern and dropped anchors. The NYK Falcon should have navigated past the Panamax Alexander more cautiously than she did. Liability was apportioned 5:5:2 between the Panamax Alexander, Orpheus and Falcon respectively.

MV Pacific Pearl Co Limited v NYK Orpheus Corp and another [2022] EWHC 2828 (Admlty), 11 November 2022

#### Adjudication

A dispute arose under a contract to construct water treatment works on the NEC3 Engineering and Construction Contract Option C because of cost overruns, delays and quality issues. An adjudicator decided in favour of the claimant. The TCC rejected the defendant's application for a stay of the adjudication enforcement claim under section 9 Arbitration Act 1996 whilst it appealed to an arbitration tribunal. The contract expressly provided that the adjudicator's decision was binding and enforceable until revised in arbitration. Further, the defendant had not raised any jurisdiction challenge and it was now too late to do so. The defendant had lost the right to challenge the validity of the adjudication decision but could refer the underlying issues to arbitration. The adjudication decision was enforceable in the interim.

Northumbrian Water Ltd v Doosan Enpure Ltd and another [2022] EWHC 2881 (TCC), 14 November 2022

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## Service

The Commercial Court ordered that alternative service of a contempt application by email was appropriate where the respondent was domiciled in Ukraine and exceptional circumstances applied. Ukraine had issued a notice indicating that there was a risk of it having difficulty complying with its obligations under the Hague Service Convention. Existing lines of communication with the defendant (namely email) had clearly been effective to date and so there would be no prejudice to the defendant. A contempt application should be dealt with expeditiously and the Russian invasion had led to delays in following the Hague Service Convention procedures. There were also grounds to indicate that the respondent would attempt to avoid service. *Olympic Council of Asia v Novans Jets LLP and others* [2022] EWHC 2910 (Comm), 16 November 2022

## Brexit

A Part 20 claim form to join additional parties to the proceedings was issued by the defendant on 30 December 2020 and then served out of the jurisdiction without permission of the court. This was on the basis that the contract between the defendant and additional parties contained an exclusive English jurisdiction clause and article 6(2) of the Lugano Convention applied during the Brexit transition period for claims issued before 31 December 2020. The court rejected the additional parties' arguments that there was no express saving for service under the Lugano Convention during the transition period. Further, the fact that the main claim had settled did not affect the applicability of art 6(2). There had been sufficient connection when the Part 20 claim form had been issued. It would be undesirable and create uncertainty if developments in the litigation led to changes in the jurisdiction position.

*CA Indosuez (Switzerland) SA v Afriquia Gaz SA* [2022] EWHC 2871 (Comm), 11 November 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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