

## COMMERCIAL DISPUTES WEEKLY – ISSUE 187

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"Neither would have caused the loss without the other. It was the combination that made the damage inevitable..."

University of Exeter v Allianz Insurance PLC

#### Insurance

During construction work, a World War II bomb was discovered near the University of Exeter's halls of residence. A controlled explosion was carried out which caused damage to the University buildings. The University claimed for the damage on its insurance policy but the insurers declined the claim based on the war exclusion. The Court of Appeal upheld the lower court decision in favour of the insurers. There were two causes of the damage; the original dropping of the bomb and the controlled detonation. The two causes operated with equal efficiency and it could not be said that one was a proximate cause more than the other. The relevant case law provided that where there were concurrent causes, one of which was an exclusion and the other a covered peril, the exclusion would prevail. It did not

matter that 80 years had passed between the dropping of the bomb and its detonation.

[University of Exeter v Allianz Insurance PLC \[2023\] EWCA Civ 1484, 14 December 2023](#)

#### Maritime – Construction

The parties entered into a contract for the claimant to replace berthing and mooring piles at a pontoon at Fowey Harbour on the River Fowey, Cornwall. A dispute arose and was referred to adjudication. The adjudicator found that the claimant was owed £335,000 but the defendant raised a jurisdictional objection. For a contract to be a 'construction contract' as defined by section 104 of the Housing Grants, Construction and Regeneration Act 1996, such that disputes could be referred to adjudication, the construction works must be carried out in England, Wales or Scotland. The River Fowey is a tidal river or estuary used as an inland waterway and the pontoon was some distance inland from the river mouth. The judge had to decide whether the pontoon was in England. He concluded that it was. England ends at the mouth of a river and 'land' could include land that was covered with water. The adjudicator therefore had jurisdiction and the award was enforceable.

[Van Elle Ltd v Keynvor Morlift Ltd \[2023\] EWHC 3137 \(TCC\), 8 December 2023](#)

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## Arbitration

Bluequest agreed to sell liquid caustic soda to Palmat. Palmat agreed to sell aluminium to Bluequest. Palmat would pay for the liquid caustic soda in aluminium, or cash if the value of the aluminium could not be agreed. Bluequest delivered the liquid caustic soda but Palmat failed to deliver any aluminium or pay cash. An arbitration tribunal made an award in Bluequest's favour. Palmant challenged it under sections 67 and 68 of the Arbitration Act 1996. The Commercial Court rejected Palmat's argument that the transaction was a barter and not a sale, therefore Bluequest's terms, including an arbitration agreement were not incorporated. As a matter of construction, the arbitration agreement contained in the general terms was clearly incorporated into the agreement of the parties however the substantive nature of that relationship was properly to be characterised.

[Palmat NV v Bluequest Resources AG \[2023\] EWHC 2940 \(Comm\), 7 December 2023](#)

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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