

## COMMERCIAL DISPUTES WEEKLY – ISSUE 194

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...remoteness is  
central to this  
appeal"

Armstead v Royal & Sun  
Alliance Insurance  
Company

#### Damages – Remoteness

The claimant was driving a hire car when she was hit by a negligent driver. The hire terms provided that if the car was damaged, the driver was liable to pay for the hire company's loss of use of the car whilst it was being repaired. The Supreme Court held that the claimant could recover the sum that she was contractually liable to pay the hire company from the negligent driver as part of the damages resulting from his negligence. It was not a pure economic loss (which is normally irrecoverable in the tort of negligence) because it arose from the damage to property that was in the claimant's possession. Previous cases had established that a contractual liability

could be recovered as damages as long as it was consequential on physical damage to the claimant's property. The sum was held to be a reasonable pre-estimate of the hire company's loss of use and so it was a reasonably foreseeable loss, not a penalty and not too remote to be recoverable.

[Armstead v Royal & Sun Alliance Insurance Company \[2024\] UKSC 6, 14 February 2024](#)

#### Adjudication

The Technology and Construction Court ("TCC") has enforced an adjudication decision that was challenged on the basis of lack of jurisdiction. Usually, an adjudicator must be appointed within seven days of the notice of adjudication, but here the contract provided for the adjudicator to be selected from the Bellway panel and the seven days was instead 'as soon as reasonably possible after'. The TCC held that this clause was not contrary to the requirements of the Housing Grants, Construction and Regeneration Act 1996 and so applied in full. The adjudicator was therefore validly appointed.

[Bellway Homes Limited v Surgo Construction Limited \[2024\] EWHC 269 \(TCC\), 12 February 2024](#)

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## Court Procedure – Restoration of Claim

The TCC has ordered the reinstatement of proceedings brought by the Bodo Community arising out of oil spillages in 2008 and 2009 from Shell pipelines in the Bodo Creek, Nigeria. The proceedings were stayed following a settlement agreement for compensation and clean-up operations. The parties are now in dispute as to the extent of the clean-up that has been achieved. The court held that the claimants had an arguable case to an entitlement to an injunction or damages. Although much of the clean-up was complete, there was still a significant proportion remaining, such that a trial on those aspects would not be disproportionate or an abuse of process. Any concerns could be addressed by appropriate costs and case management. The court ordered the restoration of the residual clean up claim and set out case management directions for a swift and final trial.

**Berebon and others v Shell Petroleum Development Company of Nigeria [2024] EWHC 276 (TCC), 12 February 2024**

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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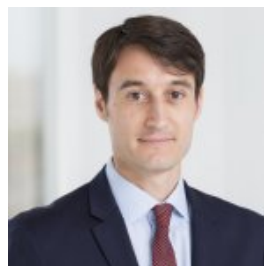
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