



# International Arbitration

## NEWS IN BRIEF

### **New *West Tankers* Decision Confirms Impact of EU law on Arbitral Tribunals**

In the latest installment of the *West Tankers* dispute, the English Commercial Court held that a tribunal wrongly declined jurisdiction to award equitable damages or an indemnity for losses arising from a breach of an arbitration clause (*West Tankers Inc v Allianz SPA & Generali Assicurazione Generali SPA* [2012] EWHC 854 (Comm)). The dispute arose after a collision in Italy involving a vessel chartered by Erg Petrol SpA (Erg) from West Tankers. The charterparty provided for arbitration in London. Erg commenced an arbitration against West Tankers, proceedings to which Erg's insurers were later joined as claimants. Separately, Erg's insurers commenced proceedings against West Tankers before the Italian courts. Last year, West Tankers applied to the English courts for an anti-suit injunction to restrain the Italian court proceedings, which it argued were in breach of the arbitration agreement. The matter was referred to the European Court of Justice (ECJ), which held that the Italian courts (as the courts first seized) had jurisdiction over the dispute and an anti-suit injunction from the English courts restraining those proceedings was not compatible with the Brussels Regulation.

In parallel to its unsuccessful application for an anti-suit injunction, West Tankers applied to the arbitral tribunal for damages or an indemnity for any costs or liability arising in the Italian proceedings on the grounds that these court proceedings had been brought in breach of the arbitration agreement. The tribunal declined jurisdiction to award the requested relief on the basis that it was obliged to give full effect to the "underlying theme" of the ECJ's judgement and that it should accordingly defer to the Italian courts, as the courts first seized of the matter. West Tankers successfully appealed to the English courts. In the Commercial Court's recent decision, Flaux J held that arbitration is specifically excluded from the scope of the Brussels Regulation and that the arbitral tribunal was accordingly not compelled to defer to the Italian courts. The practical effect of this decision is that a party may be able to seek damages or an indemnity from an arbitral tribunal for costs or liabilities incurred in proceedings brought in the courts of an EU Member State in breach of an arbitration agreement. The court has granted permission to appeal and further developments on this issue may be expected.

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