

## Middle East & Africa Technology, IP and Sourcing Focus

### Gross negligence – what does it mean?

In the case of *Camatra Property Inc v Credit Suisse Securities (Europe) Ltd* [2011] EWHC 479 (Comm) the English courts have recognized that the concept of gross negligence should be interpreted as a standard requiring a party to act in a manner more negligent than ordinary negligence; the concept is capable of embracing “not only the conduct undertaken with actual appreciation of the risks involved, but also serious disregard of or indifference to an obvious risk”.

“Gross negligence” will be interpreted by the English courts on a case by case basis, with reference to the wording and context of the contract as a whole. Such interpretation is likely to require the negligent party to have an appreciation of the risk of harm and some degree of fault or blame, such fault or blame being more exceptional than that required for ordinary negligence.

It is important to highlight, however, that the concept of gross negligence in English contract law remains undefined and caution should be exercised when drafting contracts to avoid uncertainty. Certainly, “gross negligence” is harder to apply as a limit on liability than a defined financial cap, and a party at fault may be inclined in a dispute to deny that liability has arisen. It is suggested that the terms “wilful misconduct” and “deliberate default” are better understood under English law, though these terms have also been the subject of extensive case law.

### Conclusion

Parties should exercise caution when agreeing exemption clauses and, ideally, should set out in the contract the type of conduct which would prevent reliance on limitation or exclusion clauses, as well as the type and amount of damages to be excluded or limited. In this way the parties will benefit from greater certainty as to what is expected of them in their performance of the contract, and the courts will have clearer guidance as to the parties’ intentions in the event of a dispute.

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