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Part A: SECTOR NEWS

IMO Secretary-General visits Nigeria, commends Maritime Security Gains, Deep Blue Project, and Blue Economy Policy

The Secretary General of the International Maritime Organization (IMO), Mr. Arsenio Domínguez, has praised Nigeria's maritime achievements, highlighting its three-year streak of zero piracy incidents and the success of the Deep Blue Project as a model for regional cooperation in the Gulf of Guinea. He commended Nigeria's investment in maritime safety infrastructure and its Blue Economy Policy, which promotes sustainable marine resource development. Mr. Domínguez also reaffirmed the IMO's support through technical assistance, training, and capacity-building, while urging continued investment in modern equipment and readiness for global challenges like energy transition and biofuel adoption.

To enforce this, NIMASA has issued a Marine Notice outlining obligations, and will intensify monitoring and enforcement efforts, while collaborating with industry stakeholders. The move reflects Nigeria's commitment to safeguarding its marine environment and promoting sustainable shipping practices. It also signals a stricter regulatory oversight for maritime operators, with a view to meeting emission standards.

Nigeria Unveils Marine Logistics and Blue Economy Policy

The Nigerian government has unveiled a comprehensive National Marine Logistics and Blue Economy Policy aimed at transforming the country into a regional logistics hub for West and Central Africa. Announced at the 2025 TCAN Annual Summit, the policy seeks to reduce logistics costs, enhance trade competitiveness, and attract private sector investment in the transport and maritime sectors. It promotes seamless intermodal integration across road, rail, barge, and pipeline systems, with key infrastructure interventions including the Lagos-Ibadan Standard Gauge Rail, expansion of barge operations at Lagos and Onne ports, completion of the Apapa-Oshodi Expressway, and commissioning of the Lekki Port Access Road. Inland dry ports in Ibadan, Kaduna, Kano, and Funtua are also being developed to ease pressure on seaports and support regional economies.

For business operators, the policy presents significant opportunities and implications. It promises a more efficient logistics environment, potentially lowering operational costs and improving turnaround times. The emphasis on digital, green, and climate-resilient logistics solutions aligns with global sustainability trends, encouraging innovation and compliance with emerging standards. Businesses in logistics, infrastructure development, and maritime services stand to benefit from increased investment and a more integrated transport system.

Nigeria Starts First Domestic Container Shipping Line

Nigeria has launched its first fully indigenous container shipping line, a Clarion Shipping West Africa, marking a significant milestone in the country's maritime sector. The inaugural vessel, *Ocean Dragon*, arrived at Tin Can Island Port in Lagos after a 60-day voyage from China. Though registered in Panama, the ship boasts a 70% Nigerian crew, with plans to



increase local participation. With a capacity of 349 TEU, the vessel will initially serve domestic routes between Nigerian ports, offering faster and more cost-effective transport compared to road logistics. The company aims to expand its service across West Africa, including Benin, Togo, Ghana, Cameroon, Sierra Leone, and Ivory Coast, with future plans for routes to South Africa and Egypt. It is also advocating for stricter enforcement of cabotage laws to protect local operators and support the domestic maritime economy.

By positioning itself as a local alternative to global giants like Maersk and MSC, Clarion hopes to reduce reliance on transshipment and strengthen regional trade. The initiative also promotes enforcement of cabotage laws and positions Nigeria for greater regional trade competitiveness.

Tinubu to Inaugurate \$400m Crude Oil Export Terminal in Rivers State

President Bola Tinubu is set to inaugurate the \$400 million Otakikpo Onshore Crude Oil Export Terminal in Rivers State, the first new crude export facility built in Nigeria in over 50 years. Developed by Green Energy International Limited (GEIL), this wholly indigenous owned terminal is located in Ikuru Town, Andoni LGA, and is designed to address long-standing evacuation challenges in the oil sector. With an initial storage capacity of 750,000 barrels, expandable to 3 million barrels, and a loading capacity of 360,000 barrels per day, the terminal is expected to serve over 40 stranded oil fields, unlocking millions of barrels of previously inaccessible crude.

The project is seen as a strategic move to boost crude oil production, reduce operational costs, and restore investor confidence in Nigeria's oil industry, which has faced issues like pipeline vandalism, oil theft, and declining output. It also marks a significant milestone in indigenous participation in the energy sector.

First LNG-powered Containership, MV Sapphire, Berths at APM Terminals:

The berthing of *MV Sapphire*, Nigeria's first LNG-powered containership, at APM Terminals Apapa marks a major milestone in the country's maritime and sustainability journey. Built in 2024 and sailing under the Singapore flag, the vessel has a capacity of 7,800 TEUs and features advanced LNG propulsion technology. Its arrival is seen as a symbol of progress, cost efficiency, and environmental responsibility, aligning with global efforts to reduce carbon emissions and support the UN Sustainable Development Goals.

The initiative supports Nigeria's goal of becoming a hub for green shipping in West Africa, with expectations that sister vessels will follow. It also reflects growing collaboration among shipping lines to meet international climate targets and drive economies of scale through sustainable practices.

Nigerian Maritime Administration and Safety Agency (NIMASA) Orders Compliance of Ships Operating on Nigerian Waters

The Nigerian Maritime Administration and Safety Agency (NIMASA) has directed all ships operating within Nigerian waters to strictly comply with MARPOL Annex VI, a global convention aimed at preventing air pollution from ships. This directive, backed by Nigeria's Merchant Shipping Act of 2007, mandates shipowners, charterers, and shipping companies to reduce harmful emissions such as sulphur and nitrogen oxides. NIMASA's Director General, Dr. Dayo Mobereola, emphasized that compliance is non-negotiable as Nigeria aligns its maritime operations with international environmental standards.

To enforce this, NIMASA has issued a Marine Notice outlining obligations and will intensify monitoring and enforcement, while collaborating with industry stakeholders. The move reflects Nigeria's commitment to safeguarding its marine environment and promoting sustainable shipping practices. It also signals stricter regulatory oversight for maritime operators, with potential implications for operational costs and vessel retrofitting to meet emission standards.

PART B: LEGISLATIVE UPDATE

THE NIGERIAN INSURANCE INDUSTRY REFORM ACT 2025 (NIIRA): A REVIEW

Introduction

For several decades, marine insurance in Nigeria was governed by the **Marine Insurance Act (MIA) (Cap M2 LFN 2004)**, which was adapted from the Marine Insurance Act of 1906.¹ The MIA was generally a comprehensive statutory framework that seemed to serve the insurance community adequately. However, concerns arose regarding the fairness of certain absolute provisions, especially those relating to the duty of good faith and warranties, as those provisions enabled insurers to escape liability even for minor breaches, thereby appearing to prejudice policyholders.

This prompted significant reform through the enactment of the Insurance Act of 2015 in the United Kingdom (UK) to address some of the inadequacies of the former statute.

On 5 August 2025, Nigeria followed suit when President Bola Tinubu signed the **Nigerian Insurance Industry Reform Bill** into law. Part XIV of the new Nigerian Insurance Industry Reform Act (NIIRA) governs marine insurance. In this short piece, we consider the innovations introduced by the new statute.

¹ This legislation was one of three notable colonial era statutes drafted by prominent British Parliamentary Counsel and judge, Sir MacKenzie Chalmers. The other two – the Bill of Exchange Act 1882 and the Sale of Goods Act 1893 – have been slightly amended but are still in force in Nigeria

Key Reforms Under The NIIRA 2025

A. The Duty of Fair Presentation

Section 131 of the **NIIRA 2025** replaces the absolute duty of good faith with the duty of fair presentation of the risk, which only requires the insured to exercise "**reasonable care**" when disclosing material circumstances. The insured is required to disclose all material circumstances that they know or *ought to know* in a manner that is reasonably clear and accessible to the insurer.



Under the repealed Marine Insurance Act, the principle of **utmost good faith** (*uberrimae fidei*) imposed an absolute and severe duty on the insured ² to disclose all material facts to the risk to be undertaken. Any failure to disclose a material circumstance, whether innocent, accidental, or fraudulent, entitles the insurer to avoid the contract *ab initio*, thereby escaping liability and potentially resulting in the forfeiture of premiums.

The new regime creates a more equitable framework, as this lowers the risk of major insurance claims being jeopardised solely on the basis of non-fraudulent, technical or minor errors made during policy placement.

B. Remedies for Breach of Fair Presentation

While the previous Act allowed the insurer the far-reaching remedy of avoiding the contract for any misrepresentation or non-disclosure (MIA S. 20), the NIIRA 2025 under Section 137, provides a layer of proportionate remedies based on the insured's state of mind. For **fraudulent breach**, the insurer retains the right to avoid the contract and keep the premium. For a **non-fraudulent Breach (innocent or negligent)**, the remedy is tied to the insurer's likely action had disclosure been fair. If a higher premium would have been charged in the

² Sections 17 and 18 of the MIA.

event of full disclosure, the payout is adjusted proportionally to reflect the actual premium (the "walk-back" remedy). Avoidance is reserved only for cases where the insurer proves they would not have underwritten the risk at all but for the misrepresentation, in which case the premium must be returned.

C. Warranties no longer regarded as conditions

Under the old Marine Insurance Act, warranties were generally treated as conditions precedent to the insurer's liability. This meant that strict compliance with the warranties was required, whether material to the loss or not. Non-compliance resulted in the discharge of the insurer from liability from the date of the breach, whether or not the breach occasioned a loss.

The NIIRA 2025 amends this regime principally by abolishing the rule of law that voids insurance contracts for breach of warranties and introducing a suspensive regime in this regard. Under section 147 of the new Act, a breach of warranty no longer automatically discharges the insurer's liability permanently. Instead, the insurer's liability is suspended for the duration of the breach. If the breach is remedied before any loss occurs, the insurer's liability is automatically restored. This change ensures that a temporary technical non-compliance does not allow the insurer to escape liability for a subsequent loss where the risk profile has been returned to its agreed state.

Other Provisions

The NIIRA enhances policyholder security by mandating **Timely Claims Settlement (S. 210)** with strict timelines and regulatory penalties (fines plus interest) for delays. It also establishes the **Policyholders Protection Fund (S. 212)**, financed by industry levy, to serve as a safety net, compensating policyholders in the event of an insurer's insolvency.

A. Ambiguity in Proportionate Remedies for Misrepresentation

The NIIRA (S. 137(3)) adopts a proportionality approach in providing remedies for misrepresentation but lacks the detailed, mandatory three-tiered scheme for non-deliberate misrepresentation found in the UK Insurance Act of 2015. The UK Act defines three distinct remedies: **Avoidance** (with premium return) if the insurer proves they would not have entered the contract; an **Imposed Contractual Term** if they would have entered on different terms; or a **Proportional Claim Reduction** (the 'walk-back' remedy) if they would have charged a higher premium. Given the omission of a similar structure in the Nigerian statute, the court will likely determine the appropriate remedy depending on the circumstances and gravity of the misrepresentation and perhaps the motive of the party, where ascertainable.



B. Remedy for late Claim Payment

This is a major consumer protection gap. The UK's *Enterprise Act 2016* (S. 13A) implies a term that claims must be paid in a reasonable time, allowing the assured to claim common law **damages (compensation) for consequential loss** caused by the delay (e.g., loss of a contract). The Nigerian IIRA (S. 210), conversely, only provides a regulatory tool—statutory penalties (fines plus interest) enforced by the National Insurance Commission (NAICOM). It does not grant the assured a private right to recover damages for economic harm caused by the late payment.

C. Inadequate Suspension of Warranties Provision

While the NIIRA introduced the suspension of warranties, it misses a critical safeguard found in the UK Insurance Act 2015 (S. 11). The UK Act states an insurer cannot rely on a breach of a term if the breach could not **potentially have increased**

the risk of the loss that occurred (e.g., a paperwork breach cannot defeat a hurricane claim). Since the new Act lacks this provision, a technical breach entirely unconnected to the cause of a loss can still serve as a basis to defeat a claim, leaving the assured vulnerable.

A Complete Transformation?

Despite major overhauls, the NIIRA retains most of the provisions of the Old MIA in the areas of policy formation and indemnity. For instance, it preserves the strict requirement of **proximate cause** (S. 166(1)) for loss determination, which preserves the complex legal fight over the dominant cause of loss in disputes. Furthermore, the remedy for unexcused deviation or unreasonable delay remains the harsh, automatic "**discharge from liability**" from that time (S. 159 & S. 161), an identical and strict remedy compared to the old rules.

Finally, the compulsory application of the **principle of average** for partial loss remains unchanged (S. 191), meaning if the assured is insured for less than the value, they are "deemed to be his own insurer in respect of the uninsured balance."

Conclusion

The NIIRA 2025 has transformed Nigerian marine law by addressing several notable concerns and goes further to enhance the stability of the system – e.g., through the Policyholders Protection Fund. It will be interesting to see how these provisions will be interpreted in Nigerian courts.

PART C: CASE LAW DEVELOPMENTS

MT. ORYX TRADER & ARIAL MARINE COMPANY v. WRIST SHIPPING SUPPLY (2025) 13 NWLR (Pt. 2001) 171

Caveat – against arrest – against release – what amounts to – distinction from arrest order.

Introduction

The appeal borders on the legal distinction between caveats issued against the release of vessels already under arrest and additional arrest orders which subsequent maritime claimants are entitled to procure against such a vessel.

Factual Background

The 1st Appellant, MT Oryx Trader (the **Vessel**), is a shipping vessel owned by the 2nd Appellant, Arial Marine Company (**AMC** or the 2nd Appellant) (collectively known as the Appellants). The Respondent, Wrist Shipping Supply (**Wrist**), is a Norwegian shipping company that provided supplies to the Vessel and issued invoices to AMC in the sum of **Sixty Thousand, Four Hundred and Seventeen Euros, Twenty-Six Cents (€60,417.26)**, for the said supplies and interests on the outstanding sum.

Due to the Appellants' failure to settle the invoices, Wrist was entitled to commence an *in rem* action against the Appellants and to procure the ex parte arrest of the Vessel as security for the said *in rem* action. However, on discovering that the Vessel had already been arrested by other maritime claimants by virtue of orders issued by the Federal High Court (FHC) in **Suit Nos.: FHC/L/CS/223/2020 – KPI Bridge Oil A/S v. MV Oryx Trader & Anor** (the KPI Suit); **FHC/L/CS/916/2020 – Pak Marine & Shipping Limited Services v. MV Oryx Trader & Anor** (the PAK Suit); and **FHC/L/CS/210/2020 – Seaport Global Services Limited & Anor V. MV Oryx Trader & Anor** (the Seaport Suit), Wrist thought it unnecessary to procure yet another arrest order as the Vessel was practically not at risk of sailing away. Therefore, Wrist entered a caveat against the release of the Vessel in the Seaport and KPI Suits and undertook to indemnify the Appellants should it be held that the caveat ought not have been entered.

As admiralty caveats are only valid for one (1) year, the caveats were entered on 30 April 2020 and expired on 29 April 2021. Subsequently, the FHC discharged the arrest order which it had issued in the Seaport Suit but maintained the arrest orders issued in the PAK Suit and the KPI Suit (even after the KPI Caveat had lapsed). Therefore, despite the lapse of the Seaport Caveat and the KPI Caveat on the one hand, and the subsequent discharge of the arrest order in the Seaport Suit, the Vessel remained under the court's custody in the PAK and KPI Suits.

AMC had executed a charterparty with Europa Shipping SA on 1 January 2020 for the charter of the Vessel for a daily hire of Six Thousand, Eight Hundred United States Dollars (US\$6,800.00) which it was allegedly unable to perform on account of the subsisting caveats. AMC then issued a letter dated 27 August 2021 to Wrist and demanded that Wrist pay AMC the sum of Two Million, Nine Hundred and Sixty-Four Thousand, Eight Hundred United States Dollars (US\$2,964,800.00) as hire lost on account of Wrist's caveats.

Wrist refused to respond. The Appellants then commenced action against Wrist for wrongful detention of the Vessel by virtue of the caveats and lost hire income from 29 February 2020 to 9 July 2021 – in the total sum of Three Million, Four Hundred and Seventy-Four Thousand, Eight Hundred United States Dollars (US\$3,474,800.00). The FHC dismissed the Appellants' case on the ground that the Respondent was entitled to file the caveat and that the caveat had been validly filed.

The Appellants unsuccessfully appealed to the Court of Appeal (CA). The Appellants then appealed to the Supreme Court which agreed with the concurrent judgments of the CA and FHC, and dismissed the Appellants' appeal. In its judgment, the Supreme Court for the first time provided a detailed explanation as to the distinction between caveats against release of ships and ship arrests.

Decision

The sole issue for determination at the Supreme Court was whether the filing of a caveat by Wrist against the release of the Vessel amounted to a wrongful arrest to justify the award of damages against Wrist in favour of the Appellants.

The Supreme Court explained that, in accordance with Order 8 Rule 6 of the Admiralty Jurisdiction Procedure Rules 2011 (the "**Old AJPR**")³ a vessel is said to have been arrested when, in exercise of its admiralty jurisdiction, the Federal High Court directs that the Admiralty Marshal detain her on the terms that the court would specify as security for a maritime claim which the plaintiff may seek to prosecute in that suit or in the course of an arbitration, but excludes any seizure of a vessel in execution or satisfaction of a judgment of court.

The apex court noted however, that a caveat against release is filed by another maritime claimant against a vessel that has already been arrested to enable the caveator receive: (a) notice before the release of the vessel and (b) service of processes filed in the suit. Their Lordships rightly held that although maritime claimants are entitled to explore either method in securing their maritime claims, these two concepts are intrinsically different. For example, it is only when a vessel has already been detained by an arrest order that a caveat against release may be entered.

The Supreme Court observed that, by the Appellants' clear admission, Wrist only entered a caveat and till the date of the judgment, had not procured the Vessel's arrest. The apex court then rightfully held that because Wrist had never procured the arrest of the Vessel, Wrist could not possibly be liable to the Appellants for the Vessel's wrongful arrest.

³ Now Order 8 Rule 7 of the Admiralty Jurisdiction (Procedure) Rules 2023, with the additional condition that the person has not commenced action in rem before filing a caveat against the release of the ship or other property. Where security has been provided in respect of the caveat against release, the caveator must file an action in respect of the claim for which the caveat against release was filed, otherwise the security will be cancelled and released by the Admiralty Marshal.

Comments

Although this case deals with a seemingly straightforward difference between an order of arrest and a caveat, the prosecution of this action all the way to the Supreme Court demonstrates the importance of judicial precedent on this aspect of admiralty law.



Arrest orders are issued by the court to detain a vessel upon a claimant's fulfilment of specified conditions and entail payment to the Admiralty Marshall of the costs of maintaining the Vessel while under arrest. No timeframe is usually attached to the validity of arrest orders and such orders are usually discharged upon the provision of security by the owner or demise charterer, or if the court finds that the order was wrongly made.

On the other hand, caveats against release do not have the effect of detaining vessels. They are filed to ensure that the caveator is notified of applications for the release of the vessel, to avoid the release of the vessel without the knowledge of the caveator. The only costs borne by the caveator are those relating to the filing of the caveat and perhaps the costs of procuring security in support of the caveat. Caveats have a lifespan of one year from the date of filing.

In the case under consideration, as the Supreme Court rightly held, there can be no liability for wrongful arrest where there was no arrest in the first place. When an arrest order is procured, the

arrestor will only be liable for wrongful arrest where it is procured unreasonably, without good cause, for an improper motive, malicious intent, bad faith or by gross negligence⁴. In essence, the elements of a wrongful arrest will entail: (a) an order of arrest as a result of which the Vessel is detained and; (b) a finding that the order of arrest was wrongfully procured. None of the elements existed in this case, hence the concurrent decision of all three courts dismissing the Appellant's claims.

⁴ See the decision of the Supreme Court in *OAN Overseas Agency Nigeria Limited v. Bronwen Energy Trading Limited & Ors.* (2022) 11 NWLR (Pt. 1842) 489 at 517–518.

UNIVERSAL AFRICA LINES BV v KNIDOS SHIPPING CORPORATION

[2024] EWHC 1888 (Comm)

Admiralty Jurisdiction – Arbitration – Freezing Orders – Whether a freezing order can be granted in aid of a future, unquantified claim that is not yet "crystallized."

Introduction

The Claimant, Universal Africa Lines BV (UAL or the Claimant), brought an application for a freezing order in the Commercial Court of the High Court of England and Wales against Knidos Shipping Corporation (Knidos or the Defendant), in support of London Maritime Arbitrators Association (LMAA) arbitration proceedings.

A key reason for UAL's court application was that the LMAA arbitration tribunal did not have the power to grant a freezing order; hence, UAL sought permission from the tribunal to apply to the English court under **Section 44 of the Arbitration Act 1996**, which allows the court to grant interim relief in support of an arbitration.

The central issue was whether the court had the power to grant a freezing order in respect of a cause of action that was yet to fully crystallize.

Factual Background

The dispute arose out of a time charterparty between UAL, the charterer and Knidos, a one-ship company registered in Panama, which owned the vessel, the Knidos (the Vessel). UAL sub-chartered the vessel to Cargill BV for the transportation of a cargo of cocoa beans from Ghana to the Netherlands. The bills of lading for the cargo named UAL as the contractual carrier.

Upon the vessel's discharge in the Netherlands, a portion of the cargo was found to have suffered heat and smoke damage. It was alleged that the damage was caused by a hot sodium light that had been left on in the vessel's hold.

Cargill, the consignee and cargo owner, initiated proceedings in the Rotterdam District Court against UAL as the contractual carrier. Cargill arrested the Vessel in Rotterdam to secure its cargo claim and was subsequently released following the provision of security in the form of a P & I Club letter of undertaking. About one year later, in June 2023, Cargill and its insurers brought court proceedings in Rotterdam in respect of the cargo claim against both Knidos and UAL.

While the Rotterdam proceedings were ongoing, UAL commenced arbitration proceedings against Knidos under the London Maritime Arbitrators Association (LMAA) Rules in London for declaratory relief regarding the unseaworthiness of the vessel and legal costs. No monetary relief was sought at this stage because the charterparty incorporated the **Interclub Agreement (ICA) 1984**, which makes a claim for indemnity under the ICA contingent upon the settlement of a cargo claim. UAL indicated its intention to expeditiously settle the Rotterdam claim and consequently, amend its arbitration claim to include a claim for monetary relief.

In September 2024, the Vessel collided with another vessel and sank. As the Vessel was Knidos's only tangible asset, its sole remaining asset was a forthcoming payout from its hull and machinery insurance policy. As a result, UAL was concerned that Knidos would receive the insurance proceeds and dissipate them, thereby rendering any future arbitral award unenforceable. After lengthy correspondence between the parties' solicitors failed to secure any agreement on alternative security, UAL obtained the LMAA tribunal's permission and applied to the court for a freezing order.



Issues and Arguments

In its application, UAL addressed the following legal points:

- a) Whether the application was one which ought to be dealt with *ex-parte*.
- b) Whether there was a good arguable case for a freezing order in aid of a future, unquantified claim.
- c) Whether there was a realistic risk of dissipation of assets.
- d) Whether the granting of the freezing order was just and reasonable in the circumstances.

On the preliminary issue, which was whether the application for the freezing order could be made *ex-parte*, UAL submitted that the circumstances justified making the order without giving Knidos prior notice. Its counsel argued that Knidos' conduct over a two-month period, which included a failure to respond to a simple security proposal, was compelling evidence of a deliberate ploy to delay payment. It contended that the delay was intended to buy Knidos time to receive and dissipate the insurance funds once they were released; thus, putting Knidos on notice would have had the effect of rendering the freezing order pointless.

On the substantive points – namely, whether there was a good basis for granting the order, the existence of a risk of dissipation and whether the grant of the order would be just and reasonable- UAL’s counsel initially argued that there was a good case on Knidos’ liability supported by expert evidence.

Regarding the risk of dissipation, UAL highlighted that Knidos was a single-ship company registered in Panama, a jurisdiction known for limited financial transparency. Furthermore, UAL pointed to Knidos’ consistent and prolonged unwillingness to proactively engage with a straightforward security proposal for the arbitration claim. It was argued that this conduct, in the context of the Panamanian registration and one-ship structure, was a powerful and reasonable inference of an intent to evade enforcement and make itself judgment-proof.

Finally, on whether the granting of the freezing order was just and reasonable in the circumstances, UAL addressed two specific concerns raised by the court. The first was whether the freezing order ought to have been limited in scope to the insurance proceeds alone. UAL successfully argued that the order should instead be for a broader amount, based on the full quantum of the claim, and not restricted to a single asset. The second point was whether UAL, being a company registered in the Netherlands, should provide security for its cross-undertaking in damages. UAL addressed this by pointing to its sound financial standing and reputation provided sufficient assurance.

Decision

The Court accepted the Claimant's argument as to why the order was sought through an *ex-parte* application. The court found that the defendant's protracted delays in responding to the Claimant's proposal regarding the provision of security, gave rise to a reasonable apprehension that the Defendant was about to receive the proceeds of the insurance policy and that the benefit of the order would be lost if the Defendant was notified. The judge also noted that the Defendant was adequately protected by being able to apply to set aside the order and by the relatively short return date.

On whether there was a good arguable case, the court held that there was no requirement for the right to an indemnity under the ICA to have fully "crystallized" at the time a freezing order application is made. Relying on the principles in *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKSC 24, the judge found that it was sufficient to be satisfied with a "sufficient degree of certainty that a right to bring proceedings for a monetary claim...will arise in the near future." UAL's undertaking to expeditiously settle Cargill's cargo claim and then amend its arbitration claim was enough to meet this test.

On whether there was a reasonable risk of dissipation, the court found there was a real risk of dissipation, which it inferred from the entire factual context. The judge noted that the nature of the asset had changed from a tangible ship to a liquid fund that was easily moveable. The most compelling factor, however, was the defendant's conduct. The judge explicitly stated that the defendant's unwillingness to engage with the security proposal and its failure to instruct its P&I club to provide a letter of undertaking—despite the club's willingness to do so—demonstrated a calculated intent to delay and avoid giving security.

The Court made two key findings on whether the order was just and reasonable. It determined that a general freezing order was appropriate as there was no evidence of other assets, and the risk of dissipation applied broadly. It also ruled that the Claimant was not required to provide security for its cross-undertaking in damages, as it was a viable trading enterprise registered in the Netherlands, a jurisdiction with reciprocal judgment enforcement with the UK. The court accepted UAL's undertaking to file evidence confirming the ease of enforcement.

The court also dealt with two final issues which touched on service of the order and the appropriate forum for the claim given the relatively low sum ("a smidgeon short of \$5million") claimed. On service, the court granted an order for alternative service on the defendant's London solicitors, holding that this was an "exceptional circumstance" justified by the need for the Knidos to be immediately aware of the coercive order. The court provisionally deemed it appropriate to transfer the claim to the London Circuit Commercial Court, noting that claims of that quantum were typically transferred there as a matter of course.

Finally, on whether the granting of the freezing order was just and reasonable in the circumstances, UAL addressed two specific concerns raised by the court. The first was whether the freezing order ought to have been limited in scope to the insurance proceeds alone. UAL successfully argued that the order should instead be for a broader amount, based on the full quantum of the claim, and not restricted to a single asset. The second point was whether UAL, being a company registered in the Netherlands, should provide security for its cross-undertaking in damages. UAL addressed this by pointing to its sound financial standing and reputation provided sufficient assurance.

Commentary

This judgment demonstrates the willingness of the English Court to provide interim relief in support of international commercial disputes. The decision offers insights into the court's pragmatic approach in balancing the competing rights and interests of parties, especially in a case of this nature involving a one-ship company whose singular ship had sunk.

The court's willingness to grant the order on a **without-notice** basis signals that arbitration-friendly courts in common law jurisdictions will likely not afford a potentially mischievous defendant an opportunity to frustrate the process. In essence, a defendant's bad faith in commercial negotiations can help a claimant fulfil the urgency requirement for an *ex parte* application for interim relief.

The court's analysis of the "**good arguable case**" provides an important clarification regarding the requirement for a freezing injunction and whether such an injunction could be sought in respect of an inchoate claim. Freezing orders are often needed to secure assets for future, unquantified claims – such as those tied to a pending arbitration. The ruling confirms that the right to claim a specific monetary value need not fully crystallize at the time of the application. The test, following the authority in ***Broad Idea International Ltd v Convoy Collateral Ltd***, is whether there is a sufficient degree of certainty that the right to bring proceedings for a monetary claim will arise in the near future. This makes freezing orders more accessible and useful for claimants in commercial disputes.

Finally, in pronouncing on the **risk of dissipation**, the judge made it clear that a defendant's conduct, specifically the "unwillingness to engage" with a straightforward security proposal, can be the most compelling factor proving an intent to dissipate assets.

Given the influence of English law in maritime contracts and the sheer volume of LMAA arbitrations, it is not surprising that the English court once again demonstrated a pro-arbitration stance and adopted an approach which ensured that the Claimant would not walk away with a pyrrhic award, if ultimately successful in the arbitration.

The Nigerian Courts are likely to adopt this approach in granting a freezing injunction pursuant to section 19 of the Arbitration and Mediation Act 2023. In addition, for admiralty matters within the exclusive jurisdiction of the Federal High Court, section 24 of the Federal High Court Act empowers a Federal High Court judge to exercise the same powers vested in a High Court judge in England.

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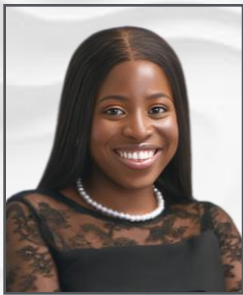
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