

Shipping and Energy

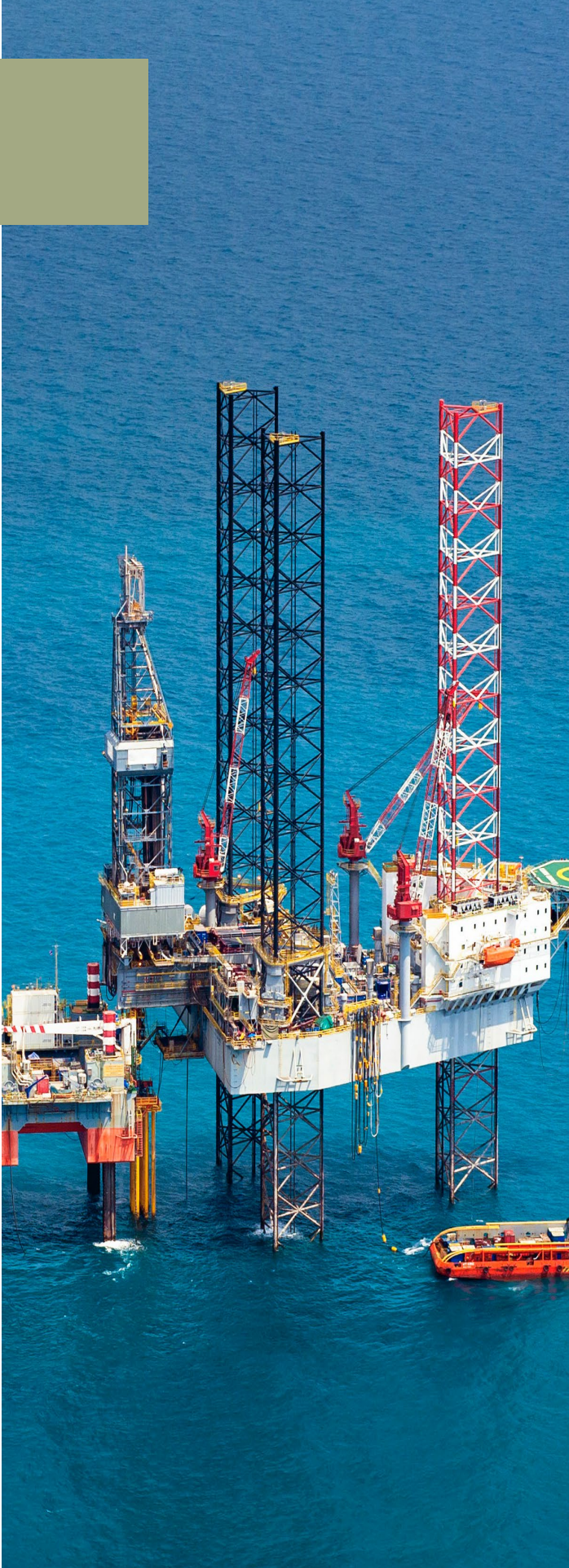
LONDON OFFICE NEWSLETTER DIGEST
2023 YEAR IN REVIEW



Newsletter Digest 2023

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Welcome

Welcome to the Shipping and Energy: Year in Review 2023 from the London Office of Haynes and Boone.

Following the success of the Shipping and Energy: Year in Review 2022, it is my pleasure to bring you our second annual digest of our quarterly newsletters. This allows you to access all the alerts, articles, publications, podcasts and videos that we have produced throughout the year in one place and to read, listen or watch any that you may have missed.

For the main sections of this publication – [shipping](#), [offshore energy](#), [autonomous vessels](#), [renewable energy](#), [dispute resolution](#) and also the hot topic of [artificial intelligence](#) – you will find an introduction from a member of the team, commenting on the developments in that sector in 2023, and reflecting on the content we have produced. I hope you find these interesting.

This year, I am pleased that we are able to provide you with articles on a breadth of industry-related topics and to deliver some of our information via video and podcast, as well as the more traditional alerts and articles. I also have included access to two external publications – Lexology Getting the Deal Through – Shipbuilding 2023: England and Wales and the Legal 500 Country Comparison Guides: UK: Project Finance.

If you have any questions arising from the content, myself or any of the authors would be happy to discuss these with you. Our contact details can be found on the [contacts page](#) at the back of this publication.

During the year, we have presented talks on a wide variety of topics related to shipbuilding, ship conversion, ship sale and purchase, offshore energy, renewable energy and dispute resolution. I have included some examples of the talks that we have given recently [here](#). If any of these are of interest to your company, please email: shippingenergynewsletter@haynesboone.com.

For those interested in our [London office](#) generally, I have included details of the new partners, associates and trainee solicitors who have joined us here in London over the past year, as well as news of promotions. There is also information about the successful [diversity events](#) that we have held: Security in Maritime Energy and Critical Infrastructure in support of the Royal Naval Association and a breakfast and a tour of the Gabrielle Chanel Fashion Manifesto exhibition for Women in Shipping and Energy.

Finally, I hope you enjoy reading our Year in Review and have appreciated receiving our newsletters this year. If you have any colleagues who would be interested in this content, please forward it to them and ask them to subscribe. If you are reading our Year in Review for the first time and are not a subscriber to our quarterly newsletter, there are details of how to subscribe [here](#).

Happy reading,



Fiona Cain
Editor and Counsel

Shipping Digest 2023



Introduction by Mark Johnson, Partner and Andreas Silcher, Partner



Mark Johnson



Andreas Silcher

Throughout 2023 we have supported existing and new clients as they undertake a diverse range of projects (many cutting edge) globally, navigating today's complex regulatory and geopolitical landscape and ever-developing ESG considerations.

We have experienced an uptick in shipbuilding and conversion activity across a range of sectors, many involving working methods at the forefront of technological development (including FPSO and FLNG projects, icebreakers, wind turbine installation vessels and electric (battery/diesel hybrid propelled vessels). We have also experienced a lively market for asset sale and purchase transactions in the conventional shipping sectors and the offshore sectors (including floating production units) as well continued involvement in the recycling of ships.

July 2023 saw the ratification of the [Hong Kong International Convention for the Safe and](#)

[Environmentally Sound Recycling of Ships](#), which will enter into force in June 2025. Closer to home, as part of the UK's refresh to its National Shipbuilding Strategy, the UK Department for Business and Trade announced the launch of the [Shipbuilding Credit Guarantee Scheme](#) to be delivered by UK Export Finance.

Three years on from the publication of the leading practitioner's text on the [Law of Shipbuilding Contracts](#), the Haynes Boone shipping team has been published in [Lexology Getting the Deal Through – Shipbuilding 2023](#). The chapter on shipbuilding contracts governed by the law of England and Wales has been updated this year to include relevant case law on guarantees, sanctions and liquidated damages clauses, as well as developments with alternative fuels.

In respect of standard form industry contracts, in Autumn 2023 BIMCO approved a series of new clauses and revised versions of existing contracts. A significant clause among these is the introduction of the new "[Ship Sales Further Trading Clause 2023](#)", which is important for sellers of older (but not recycling) tonnage for potential inclusion in their sale and purchase contracts. The Haynes Boone team has also been actively involved in providing consultation stage feedback on proposed BIMCO SHIPMAN revisions.

Shipping Alerts and Articles

[Legal Issues Facing Nuclear-Powered Commercial Ships](#)

By Andreas Dracoulis | Jack Spence in *Ship Management International*

March 01, 2023

The prospect of nuclear-powered commercial vessels has arguably been on the horizon for some time. A basic framework is contained in SOLAS 1974 with more detailed requirements set out in IMO's 1981 Code of Safety for Nuclear Merchant Ships. However, aside from some limited examples of commercial nuclear vessels, there was little progress.

That would appear to be about to change, given the ongoing drive to reduce shipping emissions combined with recent global events (in particular Russia's invasion of Ukraine).

[Read more here](#)

[Contract or “mere receipt”?: Unicredit Bank A.G v Euronav N.V](#)

By Jonathan Morton

May 31, 2023

The interrelationship between a bill of lading and the underlying charterparty is notoriously complex. If there is a conflict as to whom goods should be delivered under these two documents, a carrier can find itself caught between the proverbial Scylla and Charybdis and at risk of mis-delivery claims.

One particular issue arises where a bill of lading is held by the voyage charterers, but the charterparty is novated and the voyage charterers are no longer “charterers” under that contract. If the charterparty provides for discharge without a bill of lading, and the goods are discharged on that basis, can the original charterers, or any party they have endorsed the bill of lading to, claim for mis-delivery pursuant to that bill of lading? Or is the bill of lading in such a situation simply a “mere receipt” with no contractual force? The recent Court of Appeal decision in *Unicredit Bank A.G v Euronav N.V* [2023] EWCA Civ 471 dealt

decisively with this issue and provided a useful overview of the relevant case law.

[Read more here](#)

[Maritime nuclear energy: opportunities and challenges](#)

By Andreas Dracoulis | Jack Spence in *Nuclear Institute's Journal*

June 27, 2023

Nuclear-powered propulsion in commercial vessels has been in contemplation and use since the time that nuclear fission was developed as a power source. In 1959 the first nuclear-powered merchant ship, the NS Savannah, was launched in the US and for a short period until 1970 operated as a demonstration vessel. However, the development of nuclear-powered merchant ships, leaving aside Russia's ice-breaking vessels, has not progressed since the early demonstration projects..

[Read more here](#)

[Ships on the High Seas: Implications of the UN High Seas Treaty](#)

By Mark Johnson | Fiona Cain | Alethea Barretto

July 05, 2023

On 19 June 2023, after years of negotiations, a historic marine biodiversity treaty was adopted by the United Nations (“UN”) in respect of areas beyond national jurisdiction.

The objective of the Agreement under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, referred to as the Biodiversity Beyond National Jurisdiction Treaty or the UN High Seas Treaty (the “Treaty”), is to protect, care for and ensure the responsible use of the marine environment, maintain the integrity of ocean ecosystems, and ensure the present and long term conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.

[Read more here](#)

[Hong Kong Convention: an important step forward in ship recycling](#)

By Mark Johnson | Fiona Cain | Kayley Rousell

July 10, 2023

Initially adopted in May 2009, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the “Hong Kong Convention”) has reached the seminal moment of ratification and will enter into force in June 2025. The Hong Kong Convention seeks to ensure that a ship is recycled when it reaches the end of its operational life and does not become a threat to the environment or human health and safety.

Whilst the ratification is undeniably a positive development, what is yet to be seen is how the Hong Kong Convention will operate alongside and more importantly the extent it will complement or complicate the position in relation to the existing European Ship Recycling Regulations 2013 (the “2013 Regulations”) and other relevant legislation.

[Read more here](#)

[New UK Shipbuilding Credit Guarantee Scheme - July 2023](#)

By Mark Johnson | Fiona Cain | Jack Spence

August 15, 2023

As part of the UK’s refresh to its National Shipbuilding Strategy, the United Kingdom Department for Business and Trade (“UKDBT”) announced the launch of the Shipbuilding Credit Guarantee Scheme (“SCGS”) to be delivered by UK Export Finance.

The scheme will provide a partial guarantee to lenders making a loan to ship buyers or operators ordering newbuilds, or undertaking refit, retrofit or repair works on existing vessels in UK shipyards.

[Read more here](#)



[BIMCO’s Ship Sales Further Trading Clause 2023](#)

By Mark Johnson | Fiona Cain | Kayley Rousell

November 15, 2023

Following a meeting of the BIMCO Documentary Committee last month, a series of new clauses and revised versions of existing contracts have been approved. This alert will focus on the introduction of the new “Ship Sales Further Trading Clause 2023 (the “Further Trading Clause”) and why it is important for a seller (particularly of older but not recycling tonnage) to consider including such a clause in their sale and purchase contracts.

[Read more here](#)

Shipping Publications



Lexology Getting the Deal Through – Shipbuilding 2023: England and Wales

By William Cecil | Mark Johnson |
Fiona Cain | Mette Duffy

March 21, 2023

The chapter on shipbuilding contracts governed by the law of England and Wales is written by Haynes and Boone, LLP's William Cecil, Mark Johnson, Fiona Cain and Mette Duffy. It has been updated this year to include recent case law on guarantees, sanctions and liquidated damages clauses, as well as developments with autonomous vessels and alternative fuels.

[Read more here](#)

Offshore Energy Digest 2023



Introduction by Glenn Kangisser, Partner



Glenn Kangisser

I am again delighted to introduce the Offshore Energy section of the Haynes and Boone Shipping and Energy Newsletter Annual Digest.

The offshore energy content during 2023 has reflected our traditional focus on legal issues affecting the offshore oil and gas sector while anticipating the energy transition and the UK's march towards Net Zero in 2050. This is evident from our focus on the decommissioning industry and its critical role as part of the UK's energy transition

In this section you will find the following:

- At the start of the year, Glenn Kangisser and Shu Shu Wong authored an article, [The Oil and Gas Year in Review](#) in Energy Voice, reviewing the issues affecting the oil and gas sectors in 2022.
- Glenn Kangisser and Shu Shu Wong also authored two pieces on decommissioning:
 - In [“Offshore Decommissioning in the UK Outlook and Key Trends,”](#) they examined the ever-growing decommissioning industry which is forecasted to be worth around £20 billion to the supply chain by 2031. There is also an exploration

of trends published by the UK trade association, Offshore Energies UK; and

- A very useful guide called [‘How to tap the UK’s Decommissioning Sector’](#) in Infrastructure Investor.
- Picking up on legal developments covered in their 2022 publication [‘Knocking at an open door’](#), Glenn Kangisser and Teena Grewal authored:
 - [“Update on contractual indemnities under English law”](#) discussing how recent caselaw may be moving the goal posts; and
 - In [“When is a loss considered to be a “loss of profit”?”](#), they discussed the issue of what is considered a loss of profit in commercial contracts.
- Finally, [“Disclosure of Climate-Related Risks in Public Market Transactions”](#) is an excellent piece written early in the year by Martin Pugsley and Michael Byrne. This examines the action between large climate change pressure group, ‘ClientEarth’ and the Financial Conduct Authority, regarding the failure of the Financial Conduct Authority to consider section 80 of the Finance Services and Markets Act 2000 in approving a prospectus.

Offshore Energy Alerts and Articles

[The Oil and Gas Year in Review](#)

By Glenn Kangisser | Shu Shu Wong in
Energy Voice

December 27, 2022

2022 has been a year of challenge with the effects of the Covid-19 pandemic still impacting markets and the war in Ukraine affecting so many. Consequences of such a tumultuous year include the energy supply crisis, the fluctuation in commodity prices, the cost-of-living crisis and the onset of recession, which are all inextricably linked.

[Read more here](#)

[Disclosure of Climate-Related Risks in Public Market Transactions](#)

By Martin Pugsley | Michael Byrne

March 06, 2023

ClientEarth, the climate change pressure group, is seeking a judicial review of the Financial Conduct Authority's (the "FCA") decision to approve the prospectus of Ithaca Energy Plc (the "Company"). ClientEarth allege that the prospectus approved by the FCA failed to adequately describe the climate-related risks associated with investing in the Company, given the sector (oil and gas) and locations (the North Sea) in which the Company operates.

[Read more here](#)

[Offshore Decommissioning in the UK Outlook and Key Trends](#)

By Glenn Kangisser | Shu Shu Wong

March 24, 2023

Activity in the offshore energy infrastructure decommissioning sector in the UK is forecasted to be worth around £20 billion to the supply chain by 2031.

Together with the ongoing development of the offshore wind sector (amongst other less carbon intensive sources of energy), and the lack of political consensus around supporting the oil and gas industry in recent years, there is a renewed focus on decommissioning activity, particularly in the North Sea.

[Read more here](#)

[Update on contractual indemnities under English law](#)

By Glenn Kangisser | Teena Grewal

August 17, 2023

Contractual indemnities are an important tool for the allocation of risk in a contract. They may be intended to reflect a party's ability to insure against (or bear) certain risks. When drafting indemnities in a contract, it is important that the indemnities are clearly drafted to reflect the parties' intentions.

In *PA(GI) Limited v Cigna Insurance Services (Europe) Limited* [2023] EWHC 1360 (Comm), the Commercial Court has found in favour of the claimant, PA (GI) Limited ("PAGI"), in a trial of preliminary issues relating to claims for indemnification of payment protection insurance ("PPI") mis-selling liabilities and related costs under a business transfer agreement and a deed of warranty and indemnity.

[Read more here](#)



[How to tap the UK's Decommissioning Sector](#)

By Glenn Kangisser | Shu Shu Wong in
Infrastructure Investor

September 14, 2022

Decommissioning is a key driver in the UK's plans to achieve net zero by 2050. The sector focuses on emission reductions during operations, repurposing existing infrastructure for CO2 storage, identifying reuse opportunities during onshore disposal, and supporting the offshore wind industry, and is anticipated in the UK to be worth around £20 billion (\$25.7 billion; €23.1 billion) by 2031, according to trade association Offshore Energies UK.

With the ongoing development of the offshore wind sector (among other less carbon-intensive sources of energy), coupled with the lack of political consensus around supporting the oil and gas industry in recent years, there is a renewed focus on decommissioning activity, particularly in the North Sea.

[Read more here](#)

[When is a loss considered to be a "loss of profit"?](#)

By Glenn Kangisser | Teena Grewal

September 22, 2023

Commercial contracts often include exclusion clauses which seek to exclude a party's liability for the other party's loss of profit in the case of a claim for breach of contract. Such clauses are an important means of allocating risk for such losses between the parties, especially as such losses can be very substantial and adequate insurance is normally not available to cover such losses.

The recent case of *EE Limited v Virgin Mobile Telecoms Limited* [2023] EWHC 1989 (TCC) considered questions of whether the losses sought to be recovered by one party, EE Limited ("EE") against the other party, Virgin Mobile Telecoms Limited ("VM") for a breach of an exclusivity obligation should be properly classified as a "loss of profit", which was excluded under the agreement between them.

[Read more here](#)

Autonomous Vessel Digest 2023

Introduction by Mark Johnson, Partner and Fiona Cain, Counsel



Mark Johnson



Fiona Cain

The number of autonomous vessel projects announced continued to grow throughout 2023. The year also witnessed an ever-diversifying range of projects (including an autonomous LNG carrier and uncrewed surface vessels for the offshore wind sector) as well as testing being performed of autonomous systems on a wide range of existing vessels. Of particular interest is:

- Japan's Meguri 2040 autonomous ship programme which has recently completed a test coastal voyage by a ro-ro vessel using autonomous navigation. In addition, ClassNK has issued an Approval in Principle for the Advanced Maneuvering Assistant System, the core technology for the autonomous navigation system used on the Meguri 2040 programme.
- The growing Ocean Infinity fleet, which has now taken delivery of six 78 metre vessels that will be light crewed. As part of the testing for these vessels, the company

recently announced that it has remotely launched, operated and recovered a remotely operated vehicle from one these vessels.

These developments are encouraging but as has been the focus of our articles and alerts in 2023, the regulation of autonomous vessels continues to lag behind. We provided an overview of the position both in the UK and internationally in our article for Riviera Maritime - [Autonomous vessels: Legislating for a new Generation of Ships](#), which we revisited in our article for Ship Technology Global - [A Stop On the Route to Regulating Autonomous Vessels](#). More recently, the UK government published its response to the consultation on the Future of transport regulatory review: maritime autonomy and remote operations in relation to Maritime Autonomous Surface Ships ("MASS") and has recommended that existing maritime legislation is amended to legislate for the operation of MASS in UK waters, which we discussed in our alert - [UK Sets Out the Future Regulation of Autonomous Vessels](#). In addition, Mark spoke on the Legal, Liability and Regulatory Issues Panel at the Autonomous Ship Expo in June 2023 and expects to be speaking at the Expo again in 2024.

These developments, together with the assistance that we continue to provide companies in the sector, indicate that the year ahead will be another important year for autonomous vessels.

Autonomous Vessels Alerts and Articles

[Autonomous vessels: Legislating for a new Generation of Ships](#)

By Mark Johnson | Fiona Cain | Kayley Rousell in *Riviera Maritime*

April 14, 2023

Several trials and pilot projects have been carried out using autonomous and remote-controlled vessels in the past five years, but no national and international legislation is yet available. When unmanned vessels enter commercial operation, there are no global international regulations and relatively few national regulations dealing specifically with their operation.

This lack of regulatory clarity is currently being addressed by IMO's Maritime Safety Committee (MSC), which has approved a road map to develop an international goal-based instrument in respect of maritime autonomous surface ships (MASS), to be adopted H2 2024.

[Read more here](#)

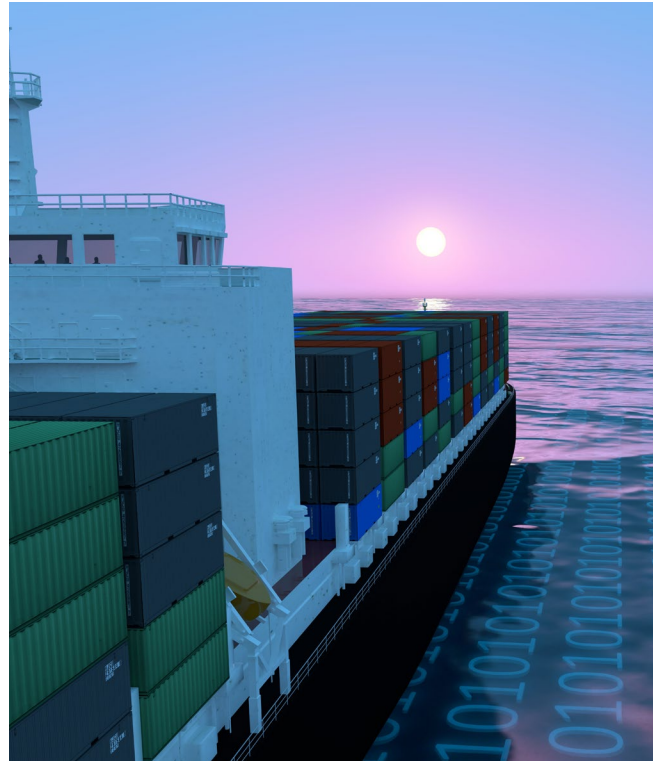
[A Stop On the Route to Regulating Autonomous Vessels](#)

By Mark Johnson | Fiona Cain | Kayley Rousell in *Ship Technology Global*

June 09, 2023

There have been significant developments with respect to the regulation of autonomous vessels, including Remotely Operated Manned Vessels (ROUVs) and Maritime Autonomous Surface Ships (MASS), in recent weeks – both domestically within the UK and at an international level.

Following a public consultation by the UK's Maritime and Coastguard Agency (MCA) for a new statutory instrument, The Merchant Shipping Small Workboats and Pilot Boats Regulations 2023 and its accompanying Workboat Code Edition 3 in 2022, the MCA has released the results of this consultation and the corresponding feedback.



Separately, the IMO has published the outcomes of the April 2023 meeting of the Joint Maritime Safety Committee (MSC), Legal Committee, and Facilitation Committee Working Group on MASS (the Working Group), which recorded meaningful developments in respect of key definitions and regulatory concepts.

[Read more here](#)

[UK Sets Out the Future Regulation of Autonomous Vessels](#)

By Mark Johnson | Fiona Cain | Milad Amani

November 02, 2023

The MASS market already consists of over 1,000 vessels and has an estimated market value of US\$88 billion worldwide. It is projected that this could grow to US\$150 billion by 2030, and the UK, through strategies such as Maritime 2050 and the Technology and Innovation in UK Maritime route map, is hoping to achieve a 10% market share.

[Read more here](#)

Renewable Energy Digest 2023

Introduction by Conrad Purcell, Partner



Conrad Purcell

Two of the key themes of 2023 have been the increased focus on the hydrogen industry and the need for a clear sense of direction from the UK government both in policy terms and in the form of a legal framework for the energy sector. The passing of the Energy Act 2023, one of the largest pieces of energy legislation ever created, will hopefully provide both more certainty and clear support for sectors such as green hydrogen production, transport and storage. However, much of the implementation of the Energy Act 2023 will require the passing of secondary legislation.

One area where the UK has historically been very successful is in offshore wind farm development.

However, a disappointing allocation round for the UK contract for difference (which is the mechanism through which most offshore wind farm developers plan to receive their project revenues) in 2023 resulted in no bids being received for any offshore wind farms. The reason for the lack of bids was largely due to the strike price, set by the Government, being too low to take account of developers' increased costs resulting from inflation affecting their supply chain. In this section of the newsletter we have written about some of the issues faced by developers in relation to [offshore wind farm supply chains in particular](#).

Finally we include links in this section to a [video series](#) on project finance and renewable energy which set out some of the key considerations that need to be factored into successfully developing and financing a renewable energy project.

Renewable Energy Alerts and Articles

[Hydrogen as a Fuel – Decarbonising the UK’s Energy Sector](#)

By Conrad Purcell | Shu Shu Wong in *Energy Voice*

December 13, 2022

Unlike hydrocarbons, which produce carbon dioxide, heat and water when combusted in the presence of oxygen, hydrogen produces only heat and water. As we seek to decarbonise the UK’s energy sector one of the paths that is being explored is the use of hydrogen within a grid connected gas fired power plant in the UK.

[Read more here](#)

[Key Trends in UK Renewables and What to Expect in 2023](#)

By Conrad Purcell | Shu Shu Wong in *Energy Voice*

December 29, 2022

All aspects of renewable electricity generation in the UK are currently affected by policy uncertainty. The UK government’s stated policy goals are to decarbonise electricity generation through increased deployment of offshore wind, carbon capture utilisation and storage, hydrogen and nuclear.

2022 has been a tumultuous year for the energy sector and, though renewable energy sources are of greater importance than ever, the market remains unstable

[Read more here](#)

[Diving In: Solving the Supply Chain Issues in Offshore Wind](#)

By Conrad Purcell | Andreas Dracoulis | Jonathan Morton in *Energy Voice*

May 16, 2023

Exponential growth seems on the horizon. It is estimated around 20,000 turbines are needed by 2050 to meet the global target of 300GW, and the UK target for 2030 requires a five-fold increase of current capacity to 50GW, with 5GW to come from floating wind. But there remain challenges. Larger projects require port infrastructure and supply chain development and expansion to avoid bottlenecks and control manufacturing costs. Wide-ranging obstacles exist, from the manufacturing of component parts to vessel availability for installation.

Most pressingly for the UK, current industrial capacity falls short of this anticipated demand and without investment, projects will be reliant on foreign manufacturing, particularly of foundations (both fixed and floating), with the attendant increases in costs and risks in their transport.

[Read more here](#)

[Alternative Funding Sources for Renewable Energy Projects](#)

By Conrad Purcell in *Clean Energy Pipeline*

June 09, 2023

Over the last decade, as renewable energy investment has matured into an established asset class there has been significant diversification in the methods used to fund renewable energy installations.

From long term, more traditional syndicated loan arrangements to a rise in community focused funding strategies, what is clear is that there are now more options than ever for financing renewables

[Read more here](#)



[Building a Strategy: Hydrogen's role in energy security and the decarbonisation of the UK's energy sector](#)

By Conrad Purcell | Shu Shu Wong in *Global Hydrogen Review*

June 30, 2023

Against the backdrop of the UK's Hydrogen Strategy, which was announced in 2021 and was hailed as a 'green industrial revolution', hydrogen has played an increasingly critical role in the decarbonisation of the UK's energy system.

Across the UK, a number of pilot projects have used hydrogen. For instance, last year Centrica Business Solutions announced that it will commence a 12-month trial to inject hydrogen into its existing 49 MW gas peaking plant in Brigg, Lincolnshire, England, with the use of HiiROC's technology that produces so-called 'emerald hydrogen' – a type of hydrogen created using a process known as methane pyrolysis to produce hydrogen and solid carbon

[Read more here](#)

[Embracing Change: Developing Standard Contracts for Offshore Wind](#)

By Jonathan Morton in *Energy Voice*

July 25, 2023

The International Federation of Consulting Engineers (FIDIC) announced earlier this month that they have begun work on a new standard contract form for offshore wind farm projects. A committee of experts including engineers, contractors and project specialists are working to produce the new contract, likely by the end of 2025.

Similarly, the International Marine Contractors Association (IMCA) recently published a set of 28 contracting principles for the sector to follow and is campaigning for the agreement of a standard form, with an eye to the successful agreement of the LOGIC forms by the oil and gas industry in the 1990s.

These developments are to be welcomed, though it remains to be seen how long this process will take and whether the resultant standards will be embraced by the industry.

[Read more here](#)

[Offshore Wind: Widening the Bottleneck](#)

By Jonathan Morton in *Riviera Maritime*

August 09, 2023

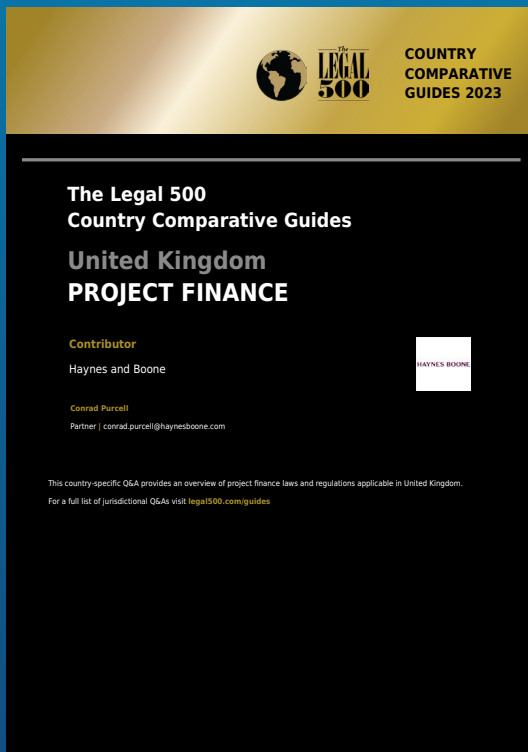
Installation of the first commercial offshore wind project in the United States has begun just off Martha's Vineyard, and the Biden Administration has announced its goal of 30 GW of offshore wind energy by 2030. China has overtaken more established players in the field to have by far the largest amount of installed capacity in the world. Global exponential growth seems on the horizon. But there remains a problem.

Larger projects require port infrastructure investment, supply chain development, and decisions on operation and maintenance methods. The pace of permitting continues to be a global issue. Negotiation of contracts remains slow, and the development of standard forms for the industry is still in its infancy. Costs are still high, and many see potential storm clouds on the horizon.

[Read more here](#)



Renewable Energy Publications



[The Legal 500 Country Comparative Guides: United Kingdom: Project Finance](#)

March 2023

Conrad Purcell contributed a chapter to the First Edition of the **Legal 500: Project Finance Comparative Guide** published by Legalease. The chapter addresses the key project finance laws and regulations applicable in the United Kingdom.

[Read more here](#)

Renewable Energy Videos

Conrad Purcell has published a series of six videos answering key questions on project finance and renewable energy.

- [What is a Corporate PPA?](#)
- [How early in the life of a project does a project company need to be incorporated?](#)
- [Can foreign investors develop energy or infrastructure projects in the UK?](#)
- [What kind of security do lenders commonly require over projects?](#)
- [What sources of funding are available for renewable energy projects?](#)
- [What are the key risks that need to be addressed when financing a project?](#)

Dispute Resolution Digest 2023

Introduction by William Cecil, Partner, and Andreas Dracoulis, Partner



William Cecil



Andreas Dracoulis

Our lawyers have provided insight and commentary on a broad range of perennial issues that arise in the context of disputes. This included: [whether a breach of contract was “material” for the purposes of exercising a termination right](#); [the perils of inconsistent and mutually exclusive rights to terminate a contract](#); the court’s approach in assessing the reliability of witness evidence and [the importance of contemporary records](#); three different cases in which the English courts considered [whether parties had concluded a binding contract](#); and the importance of [clear words and certainty of operation](#) of contractual mechanisms, when interpreting the meaning and effect of complex contracts.

One area where we have seen increasing activity is the technology sector. We dealt with two cases connected to provisions seeking to exclude or limit a party’s liability. The [first case](#) arose from a contract for the supply and maintenance of telematic devices and data technology and addressed the question of whether a limitation or exclusion clause was fair, reasonable and enforceable. The [second case](#) related to an agreement for the provision of an IT system for billing and smart metering facilities and explored the scope and effect of a limitation clause.

Focusing on shipbuilding disputes, much of which are determined in confidential arbitration proceedings, a recent case in Singapore (a common law jurisdiction very similar to English law) looked at [post-delivery warranty obligations](#). The dispute arose in the context of welding defects in the pontoons of a semi-submersible accommodation unit, which had been discovered after the contractual warranty period had expired.

Recently, we also turned our attention to the use of mediation and compulsory alternative dispute resolution (ADR). We looked at this both in the context of the [Singapore Convention on Mediation](#) (to which a growing number of states are signatories) and a recent County Court decision on whether claimants were obliged to engage in ADR prior to commencing proceedings before the English courts. The decision was referred to the Court of Appeal, which determined that a court can lawfully stay proceedings for parties to engage in ADR. We will be considering this judgment and its implications for ADR (including mediation) in a piece for the Solicitors Journal due out shortly.

During the course of the year, we have continued to advise clients in relation to UK sanctions. In this area, we looked at the difficult question of [“control” of corporate entities by “designated persons” under the UK sanctions regime](#). This arose in two recent cases, one in the Court of Appeal and a subsequent High Court decision.

Finally, we were delighted to announce earlier in the year that our disputes team had grown organically following the qualification, as a solicitor, of Jack Spence.

Dispute Resolution Alerts and articles

[When is a Breach “Material”?](#)

By Jonathan Morton

March 14, 2023

Contracts sometimes contain specific provisions entitling a party to terminate where a “material breach” has occurred. However, while the drafter may have intended this to provide recourse when things go wrong, in reality, without a clear definition, such wording often just leads to uncertainty and a dispute. This is because, under English Law, there is no legal definition of what constitutes material breach.

Whether or not a breach of contract is serious enough to be “material” is something which will be dependent both on the specific facts of the case and the wording of the contract itself.

[Read more here](#)

[Elections and Russian sanctions: a salutary reminder of the perils of inconsistent rights](#)

By Andreas Dracoulis | Alethea Barretto

March 24, 2023

This is a case that provides an interesting and informative analysis of English law’s approach where a party is presented with inconsistent courses of action under a contract. The case was also decided against the backdrop of the EU sanctions regime related to Russia’s invasion of Ukraine.

The Havila Group in Norway required coastal passenger vessels and had arranged for four vessels to be constructed at a Turkish shipyard. These vessels would be put in to service under long term charters to the Norwegian Ministry of Transport.

[Read more here](#)

[Is There a Contract?](#)

By Fiona Cain

June 20, 2023

As a party to contractual negotiations, it is important to ensure that the parties have entered into a binding contract. Failure to do so, can result in the parties not being bound by the terms that have been negotiated and may mean that a party is not entitled to be paid if they have gone on to perform the contract.

In certain instances, parties may enter into a signed agreement, such as “heads of terms”, to record a preliminary agreement, with the intention to enter into a detailed contract in due course, but such a document may not address all the relevant terms adequately. These are issues that the English courts have considered this year in three different cases and are reviewed in this alert. From these cases we have identified some helpful practical tips that negotiating parties could use during their contract negotiations..

[Read more here](#)

[English High Court applies ‘reasonableness’ test in determining enforceability of limitation or exclusion clauses](#)

By Glenn Kangisser | Shu Shu Wong

June 22, 2023

In March 2023, the English High Court ruled in *Microlise Ltd v James Kemball Ltd* [2023] EWHC 579 (KB) that the starting point in considering whether a limitation or exclusion clause would be enforceable is the ‘reasonableness’ test in section 11 of the Unfair Contract Terms Act 1977 (“UCTA”). The judgment also highlights the need for certainty in determining the applicable terms and conditions that govern the commercial relationship between parties and in identifying the contracting parties.

[Read more here](#)

[Managing liabil-I.T. - the construction of limitation clauses in IT services contracts](#)

By James Brown | Jack Spence

June 26, 2023

The judgment of Mr Justice Waksman in *Drax Energy Solutions Limited v. Wipro Limited* [2023] EWHC 1342 TCC considered a limitation of liability clause in a contract for the supply of software services.

The case serves to emphasise that parties to software supply agreements, and indeed contracting commercial parties generally, should ensure that such clauses are carefully drafted to avoid disputes about what they mean, and to ensure that the contract provides for what each party thinks it does.

[Read more here](#)

['I'll Note You in My Book of Memory': The Importance of Contemporary Records](#)

By Jonathan Morton for *The Global Legal Post*

July 17, 2023

Parties that take contemporary notes rather than relying on memory are more likely to succeed when it comes to disputes. Nobody wants to run a project with their eye constantly on potential disputes, but should the worst happen, too often we find that 'innocent' parties face an uphill battle proving events and agreements not documented at the relevant time. Things are said on the ground and decisions are made during management of the project that could turn out to have significant impact on the legal rights of the parties, but no evidence exists save that of the memory of the individuals involved. And memory is a notoriously fickle beast.

In growing awareness of the unreliable nature of memory, changes in the English Court rules on witness evidence over the last few years have placed even greater emphasis on the importance of contemporary records

[Read more here](#)

[Quarterly Wind Disputes](#)

By Andreas Dracoulis | Jonathan Morton in *Finance Quarterly*

August 04, 2023

In Q2 the offshore wind market has continued to grow, with most developments taking place in the bottom-fixed space in Europe. However, the floating offshore wind sector is seeing progress, with several auctions and tenders planned for later in the year (including in the UK, Spain and Portugal) and France pressing ahead with tenders off the coasts of Brittany and Marseille.

As is often the case in a hot market, disputes have arisen at early stages during the floating wind tender process. An example can be seen in the recent Scottish Court decision in *Moray Offshore Renewable Power Limited v Bluefloat Energy UK Holdings Limited*, a dispute between two developers..

[Read more here](#)

[Mediation in the UK: Singapore Convention on Mediation and Compulsory ADR?](#)

By Charlotte Mullis

September 05, 2023

The Singapore Convention on Mediation, or to give it its full name the United Nations Convention on International Settlement Agreements Resulting from Mediation, (the "Singapore Convention" or the "Convention"), is new and currently relatively unknown but the hope is that it will soon become as renowned and important to dispute resolution as its elder sister, the New York Convention.

[Read more here](#)



[Clear words and certainty of operation: the holy grail of contractual drafting](#)

By Andreas Dracoulis

September 26, 2023

A good example of the interpretation of contracts, in practice, arose in *Havila Kystruten AS v Abarca Companhia De Seguros, SA* [2022] EWHC 3196 (Comm), a case that concerned the disputed termination of two shipbuilding contracts.

Lawyers are routinely required to advise their clients on the likely meaning and effect of contractual provisions, in so doing seeking to predict the outcome of a determination by a court or arbitration tribunal. So the opportunity to consider a detailed judgment on the meaning of complex provisions in a shipbuilding contract merits further consideration. This is all the more so given that these types of disputes are generally subject to confidential arbitration proceedings, i.e. the reasoning employed in determining the outcome is normally not publicly available.

[Read more here](#)

[Expired warranty: liability for defects in shipbuilding sub-contract](#)

By Fiona Cain | Tenzin Woden

November 21, 2023

The High Court of the Republic of Singapore recently considered the liability of a subcontractor for welding defects discovered in portions of a vessel in *Seatrium*

New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co, Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd) [2023]. This judgment, although provided by the Singaporean High Court, serves as an important reminder to those entering into a shipbuilding contract under English law on the scope of the builder's warranty obligations.

[Read more here](#)

[Control by a Designated Person under UK Sanctions Legislation: Litasco SA v Der Mond Oil & Gas](#)

By Andreas Dracoulis

December 05, 2023

The recent Commercial Court decision of Mr Justice Foxton in *Litasco SA v Der Mond Oil & Gas and another* [2023] EWHC 2866 provides useful guidance on the question of "control" of corporate entities by "designated persons" under the UK sanctions regime.

Background

The decision arose out of an application for summary judgment by the claimant in the dispute, Litasco. That means the issues were decided without a trial and a more detailed investigation of the facts. Summary judgment is a procedure adopted precisely where such an investigation is unnecessary because the respondent to the application, here Der Mond, has no real prospect of succeeding with its case..

[Read more here](#)

Artificial Intelligence Digest 2023

Introduction by James Brown, Partner



James Brown

This year, 2023, has perhaps been the year in which the notion of Artificial Intelligence (AI), and the changes it is likely to bring, moved to the forefront of most people's awareness.

Governments around the world appear similarly to have grasped the potentially immense power of AI and the impact it may have on society, and soon. As such, there is an urgency now towards considering how best to protect against the risks to which it may give rise, whilst at the same time ensuring that the benefits – economically and otherwise – that it may bring are not stifled. [The UK Government earlier in this](#)

[year published a White Paper setting out its view on how best to manage the risks whilst allowing for the benefits](#) – which involves a “light touch” regulatory approach, without the introduction of new legislation at least initially - and is currently considering the results of a public consultation on this. At the same time, [the European Union is moving towards its own approach, being rather a legislative one](#), that will impose strict sanctions for failure to adhere to the new laws that are to be implemented in due course. Throughout the year, we have been monitoring and reporting on these developments and will continue to do so into 2024 and beyond, as concrete steps are implemented to regulate AI.

AI Alerts and Articles



[What direction for the UK regulation of Artificial Intelligence?](#)

By James Brown

June 15, 2023

Like electricity or the internet, artificial intelligence (“AI”) has the potential to change our world. Whilst it may bring huge benefits, there is also a considerable risk of harm. Though there is some legislation and regulation in the UK that is of potential application to AI, the UK government is now consulting on imminent cross-sectorial regulation.

[Read more here](#)

[Europe Takes the Lead in the Race to Regulate Artificial Intelligence](#)

By James Brown

June 19, 2023

On Wednesday 14th June, the European Union significantly advanced the adoption of its proposed legislation that is intended to guard against the serious possible harms that may be brought about by the uncontrolled development and use of AI technologies.

Thus, the European Parliament adopted its negotiating position on the Artificial Intelligence (AI) Act, which now paves the way for talks with EU member states in the form of the European Council towards the final determination and implementation of the law.

[Read more here](#)

[Advent of AI – time of doom and uncertainty or opportunity?](#)

By Karma Samdup | Andrew Pannell | Ronan McCann and Caroline Hammond for *Startups Magazine*

June 20, 2023

ChatGPT was barely known as a brand or a tool until OpenAI released an early demo of the chatbot on 30th November 2022, and by January 2023, the company announced that it had taken around \$11.3 billion in funding from Microsoft and others. And boy has it shaken up the ecosystem, reaching an estimated 100 million users and becoming the fastest-growing consumer application in history a mere eight weeks after launching.

[Read more here](#)

[What Direction Is Artificial Intelligence Regulation Headed in the UK and EU?](#)

By James Brown

August 21, 2023

Like electricity or the internet, artificial intelligence (“AI”) has the potential to change our world. Whilst it may bring huge benefits, there is also a considerable risk of harm.

Many jurisdictions are currently considering the extent to which AI needs to be regulated, and the approach to be taken, including the UK and the EU. As matters currently stand, the UK looks likely to take a different approach from the EU, though time will tell if divergent approaches are indeed implemented..

[Read more here](#)

[Private Members' Bill on Artificial Intelligence Introduced in House of Lords](#)

By James Brown

November 30, 2023

On 22 November 2023, a Private Members' bill was introduced into the UK's House of Lords by Lord Holmes of Richmond (Conservative) titled the Artificial Intelligence (Regulation) Bill (the "Bill"). Private Members Bills are public bills introduced by Members of Parliament and Lords who are not government ministers. The intention of them is to change the law as it applies to the general population, however, they are different from public bills introduced by the government, and generally speaking, the majority of them are not passed and so do not bring about a change in the law directly. However, they are often introduced because of concern about particular issues and to raise awareness, and as a result may sometimes indirectly bring about legislative changes.

[Read more here](#)



AI Podcast

[AI Chats Episode 31: Current State of AI Regulation in the UK and Europe](#)

With Dina Blikshteyn and James Brown

September 01, 2023

This podcast talks about the current status in both the UK and the EU towards the regulation of AI.

The press has recently been full of "doomsday" stories about AI, and whilst perhaps some of this is very overplayed, governments are certainly waking up to the need to consider whether protections should be put in place to control AI so as to protect against its possible harms. However, as we will explore today, there is of course the possibility for different approaches to be taken, depending on the perception of the risk that arises from these technologies and the view taken of the risk versus the possible benefits that arise from it. [Read more here](#)

Case Summaries and Legislation 2023

This is a collection of the case summaries that have been included in our newsletters over the year and covers issues that we consider would be of interest to those operating in the shipping, offshore energy and renewable energy sectors. If you would like further details on any of these cases, please email shippingenergynewsletter@haynesboone.com.

High Court provides consideration of sanctions regime on parties seeking to bring claims

The High Court considered claims brought by two banks which were sanctioned as a result of Russia's invasion of Ukraine. While the defendant argued that the court should not enter judgment for the sanctioned entity, the court found that, while entering a judgment in favour of the claimant could be seen as creating a resource of value for the sanctioned claimant, it would not constitute "dealing" with frozen funds. As such the claimant's claim could continue. *PJSC National Bank Trust v Mints* [2023] EWHC 118 (Comm)

This decision has since been confirmed by the Court of Appeal in [2023] EWCA Civ 1132.

Charterer Purchaser able to make payment into frozen bank account to purchase vessel

Under two charterparties, Gravelor Shipping Limited ("Gravelor") had the right to purchase two vessels from GTLK Asia M5 ("GTLK"). In March 2022, Gravelor exercised the payment options under the charterparties, but in April 2022 GTLK was listed by US authorities as a Specially Designated National because of its connections to the Russian state, and accordingly payment in USD (required by the charterparties) could not be made. The charterparties contained a clause providing that, where payment was incapable of being made because the owner became subject to sanctions, delays in payment resulting from this would not be an event of default. The court found that Gravelor was entitled to pay the relevant sums into either a frozen bank account, or into court, and that the court would then order specific performance of the transfer of the vessels to GTLK, notwithstanding that Gravelor could not actually access the funds.

Gravelor Shipping Limited v GTLK Asia M5 Limited [2023] EWHC 131 (Comm)

A consideration of promissory estoppel

The claimants, a hire purchase firm, claimed that they had terminated a number of hire purchase agreements with the defendants due to non-payment. The defendants claimed that the claimant could not terminate the contracts because of non-payment because the defendant had previously, regularly, accepted late payments and were therefore estopped from terminating on this ground. The court rejected that the claimant was estopped from terminating – it had made clear that it would exercise its right to terminate for non-payment before and, in any event, the defendant's (now) arrears were far greater than those which it had previously had. *JBR Capital Ltd v JM Investments/Trading Ltd and another* [2023] EWHC 174 (Comm)

Battle of the forms and requirement to be fit for purpose, even when this requires going beyond the contractual terms

In the context of a contract between a builder and supplier for the supply of "slate", it was held that the contract was formed on the terms of the purchase order issued by the builder, rather than those of the delivery note provided by the supplier. It was found that there was "no possible basis" that it could be said that a member of the builder's site team would have had authority to enter into a contract on the terms set out in the supplier's delivery note. While "slate" (in the local sense of the word) had been delivered by the supplier, the supplier had known that it was going to be used externally and, as such, needed to be fit for this purpose (which it was not). Therefore, even though the supplier had complied with the strict specifications of the contract, it had nevertheless breached the contract by failing to supply stone which was fit for purpose.

BDW Trading Ltd v Landtoom Ltd [2023] EWHC 183 (TCC)

This decision has since been appealed and is awaiting a hearing date before the Court of Appeal.

CASE SUMMARIES AND LEGISLATION 2023 CONTINUED

The need to show actual impact of a force majeure event to obtain relief

PD Teesport (“PDT”) brought a claim against P&O for a failure to process a minimum quantity of units via PDT’s port arguing that a shortfall payment was due under their contract. P&O defended this on the basis that clause 12.3 provided that it was excused if “a Force Majeure event affecting [PDT] prevents [P&O] from importing or exporting Units via a Vessel at [Teesport]” and required only that the event was capable of affecting PDT. The Court disagreed, finding that the event needed to have actually affected PDT, before P&O could rely upon it.

PD Teesport Limited v P&O North Sea Ferries Limited [2023] EWHC 857 (Comm)

Rent acceleration clause found to be applicable and enforceable

An aircraft lease agreement provided that “Upon the occurrence of any Event of Default...Lessor may, at its option and without notice to Lessee, declare this agreement to be in default and Lessor may exercise one or more of the following remedies...” including (at clause 23.2.2(y)), “all remaining Rent due until the redelivery of the serviceable Aircraft shall become due and payable to Lessor”. The Lessor therefore claimed the rent due until the contractual date of re-delivery. The Court ultimately accepted this, while finding that the clause was somewhat ambiguous, and rejecting that this acceleration clause amounted to a penalty.

VS MSN 36118 CAV Designated Activity Company v SpiceJet Limited [2023] EWHC 1146 (Comm)

Hague Visby time bar applies to mis-delivery after discharge

In a case concerning the mis-delivery of cargo carried under bills of lading incorporating the Hague Visby rules (where the cargo was held in a customs stockpile after discharge and delivery was made therefrom later, upon presentation of documents), the Court of Appeal considered whether the timebar

under Article III.6 of the Hague Visby Rules applied where mis-delivery occurred after discharge. The Court of Appeal held that it did, drawing on the travaux préparatoires to the Hague Visby Rules and the broader language used when compared to the Hague Rules.

FIMBank PLC v KCH Shipping Co Ltd [2023] EWCA Civ 569

This is a case that we covered at first instance in the Year in Review 2022 and has now been appealed and is awaiting a hearing date before the Supreme Court.

Internal hedging does not mitigate a party’s loss

Vitol brought a claim under a Charterparty with Rhine as a result of late delivery. Vitol had entered into a number of internal “swap” transactions to hedge against price increases caused by any delay in loading. The Court ultimately found that these processes were not the same as an external “hedge” and did not reduce the loss suffered by Vitol, there being no external counterparties.

Rhine Shipping DMCC v Vitol SA [2023] EWHC 1265 (Comm)

This decision has since been appealed and the Court of Appeal is scheduled to hear the appeal in April 2024.

When is a day not a day?

FK claimed that the standard form JCT subcontract which it had entered into with Elements, which said that a payment application had to be received “... not later than 4 days prior to the Interim Valuation Date for the relevant payment” meant that it needed to be received 4 clear days before the Interim Valuation Date. The TCC however, rejected this argument – finding that the natural language required only that it was served inside the fourth day before the relevant payment date (and as late as 23:59:59).

Elements (Europe) Ltd v FK Building Ltd [2023] EWHC 726 (TCC)

CASE SUMMARIES AND LEGISLATION 2023 CONTINUED

A rare example of establishing the terms of a contract through a course of dealings

A rare example of establishing the terms of a contract through a course of dealings.

A series of agreements between Addax and Petro Trade concerning various hydrocarbon products, were found by the High Court to have been made on terms sent after the parties had discussed the core contractual arrangements and exchanged recaps on the basis of a “course of dealing sufficient to conclude that the written terms of the spot contract... did form part of the binding agreement”.

Addax Energy SA v Petro Trade Inc [2023] EWHC 1609 (Comm)

A second attempt at termination

Topalsson entered into a contract with Rolls Royce to supply software to allow customers to see a virtual mock up of their proposed purchases, but the supply of this software was delayed. Rolls-Royce served a notice purporting to terminate the contract for failure by Topalsson to adhere to project milestones but this was rejected by Topalsson, and the parties continued with the project for a short period having agreed new milestones, before Rolls-Royce served another termination notice on the basis that these new milestones hadn't been met. The Court found that, while there were initially no sufficiently clear “milestones” when the original termination notice was sent by Rolls Royce, the latter agreed milestones were, so that Rolls-Royce's second termination notice was valid. Topalsson could also not rely on the repudiatory breach that the first, wrongful, notice would have constituted, because it had elected to affirm the contract.

Topalsson GmbH v Rolls-Royce Motor Cars Ltd [2023] EWHC 1765 (TCC)

This decision is currently the subject of an application for permission to appeal to the Court of Appeal.

Electronic Trade Documents Act 2023

Electronic documents, which contain information which would, if in paper form, constitute a document of a type typically used in connection with the “trade in or transport of goods” or “financing such trade or transport” and “possession of the document is

required as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation”, will now under this act be of the same legal effect as their paper counterparts.

Novation – capable of being prevented by a non-dealing clause, but can be cured by subsequent conduct

The Court of Appeal found that a clause which prevented a party from “assign[ing], transfer[ing] ... or deal[ing] in any other manner with any of its rights and obligations” under an agreement without written consent arguably included novation because novation could be considered as a form of “dealing” with the rights/obligations under the contract. Nevertheless, the court found that breach of the provision requiring written consent could be retrospectively cured through waiver by the other party, including where that other party was estopped by conduct. This therefore differs from the approach taken in respect of no oral modification clauses (which were held by the Supreme Court in *Rock Advertising v MWB* [2018] UKSC 24 to be enforceable).

Musst Holdings Ltd v Astra Asset Management UK Ltd [2023] EWCA Civ 128

Equal bargaining power and standard terms

The court considered the application of the test of reasonableness of standard terms under the Unfair Contract Terms Act 1977 (“UCTA”) in the context of a contract excluding terms implied under the Sale of Goods Act 1979. The court held that it was not right to consider whether the parties were of equal bargaining strength generally, but what should be considered was whether the parties were on equal footing as regards the specific standard terms being considered. In the present case, given that there were no different terms available in the market and the Defendant would not have contracted without the exclusion clause, the parties were prima facie not of equal bargaining power in respect of those terms (even though, more generally, they were of roughly equivalent bargaining power).

Last Bus Ltd v Dawsongroup Bus and Coach Ltd [2023] EWCA Civ 1297

CASE SUMMARIES AND LEGISLATION 2023 CONTINUED

The challenges in finding a duty of good faith

EE informed Phones 4U (“P4U”) that it would not be extending its agreement with P4U, which P4U argued was intended to cause P4U to go into administration, so that EE could avoid paying further sums to P4U under the agreement. P4U argued that this was contrary to a duty of good faith upon EE. The court rejected that there was such a duty. EE and P4U were in competition, which was antithetical to a relational contract, typically required for such a duty to exist.

The court also rejected that an express duty of good faith under the agreement not to carry out any activity to reduce P4U’s revenue could be used to found a general duty of good faith, beyond that set out in the wording of the clause.

Phones 4U Ltd (In Administration) v EE Ltd and others [2023] 2826 EWHC (Ch)

Offering a sign on assignments

Offering a useful reminder of the need to observe formalities in the assignment of agreements at law, but the alternative means upon which a similar outcome can be reached by the court in equity, the

court found that the benefit of two loan agreements and a guarantee had not been assigned because the requirements of section 136 of the Law of Property Act 1925 had not been complied with. A signature by an attorney, under a power of attorney, did not comply with the requirement under section 136 that the assignment is made under the hand of the assignor. Nevertheless, the court found that there had been an assignment at equity, notwithstanding the failure to comply with formality requirements. *Frischmann v Vaxeal Holdings SA* [2023] EWHC 2698 (Ch)

The Energy Act 2023

The Energy Bill has become law, forming a pillar of the UK government’s plans for the UK’s energy system. The Act which covers energy production and security, and the regulation of the energy market provides for licensing of carbon dioxide transport and storage, commercial arrangements for carbon capture and storage and for hydrogen production and transportation, and environmental protection, licensing and decommissioning in the offshore energy production.



Talks

During the year, we have presented talks on a wide variety of topics related to shipbuilding, ship conversion, ship sale and purchase, offshore energy, renewable energy and dispute resolution. Here are some examples of the talks that we have given recently:

Hot Topics

- **The UK sanctions regime against Russia:** Considers the general sanctions landscape in the UK, the background to the UK Regulations, specific measures implemented in relation to Russia and related contract management issues.

Contract Negotiation and Interpretation

- **Contract interpretation under English law:** The modern approach to determining the meaning and legal effect of English law contracts.
- **Letters of Intent and other side documents:** A presentation on considerations when using letters of intent and side letters.
- **Signed, sealed and delivered:** This presentation covers the basics of English contract law.
- **Two is a Company and Three is a Crowd:** A presentation looking at assigning, novating and dealing with third parties.
- **Eliminating or limiting your liability:** Reviewing the English law landscape concerning provisions that seek to exclude or limit one party's liability to another.
- **"Consequential loss" under English law:** A common-sense approach to "consequential loss" under English law drawing on recent judicial authority.
- **Exhaustive remedies:** The extent to which parties' rights may be curtailed either through express "sole and exclusive remedies" provisions or on the basis of detailed contractual schemes said to be exhaustive of rights.
- **Force Majeure in a post Covid world:** Where are we now? A practical consideration of the operation of force majeure provisions taking account of example clauses that have given rise to disputes.

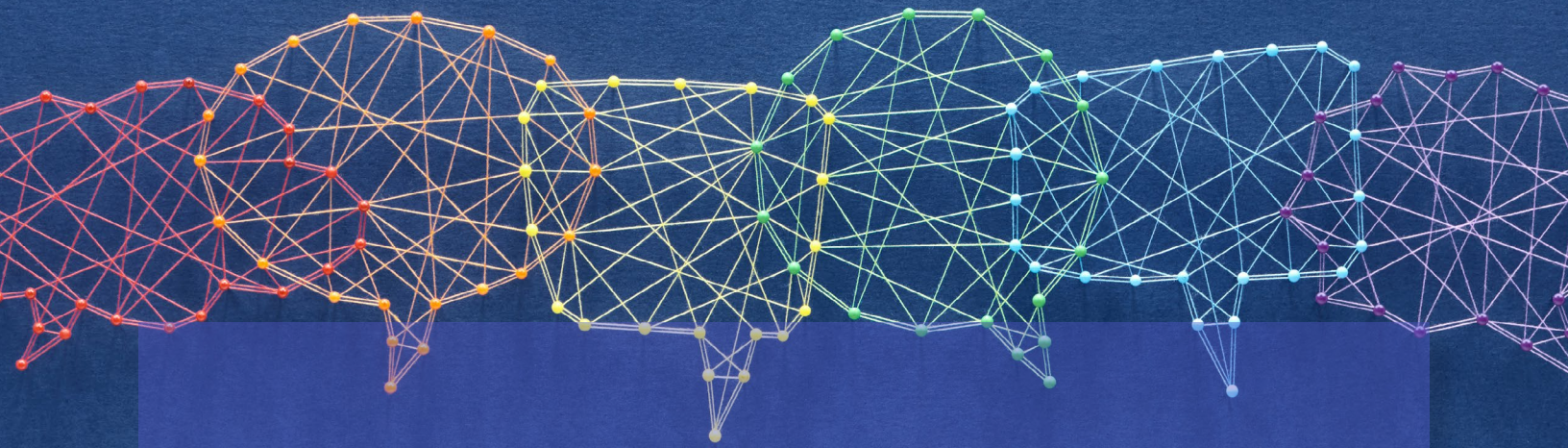


Marine Construction / Shipping

- **The Law on Shipbuilding:** English Case Law Update: An introduction to shipbuilding contracts under English law, including an assessment of recent case law on the English courts' application of the law. This session will be delivered by one of the co-authors/contributors of *The Law of Shipbuilding Contracts* (Routledge, 2020), currently in its fifth edition.
- **Shipbuilding v Ship conversion projects – key differences:** Key differences between shipbuilding and ship conversion projects and review what strategies and approaches the parties should employ for each.
- **Vessel and offshore asset sale and purchase:** An overview of considerations for buyers and sellers of vessels and offshore assets.
- **Shipbuilding in a Rising Market:** Challenges for the buyer negotiating shipbuilding contracts in a builder's market.

Offshore Drilling

- **To Protect and Preserve:** An introductory talk covering the key things to look for when reviewing a drilling contract governed by English law.
- **Market recovery in offshore drilling:** Re-balancing risk between Company and Contractor: an exploration of legal issues for drilling contractors to take heed of in a rising market reflecting on the previous “boom” in the early 2010s covering issues that we have previously handled in connection with longer term drilling contracts e.g. dayrate adjustment, third party assignments, change of locale, force majeure and mutual indemnities.
- **Knock for knock Indemnities:** An introductory talk on the customary knock for knock and pollution indemnities in offshore contracts and the English courts' approach in interpreting them and some recent trends (i.e. attempts to shift more risk to the contractor).
- **Limiting Your Liability:** A discussion of overall liability caps in offshore drilling contracts and tips for limiting the guarantor's liability in a Parent Company Guarantees.
- **Avoiding Uncertainty in Contract Drafting: Key Principles of Contract Interpretation and the “Best v Reasonable” Endeavours Obligation:** Understanding the key principles of contract interpretation under English law to ensure certainty of drafting and the difference between best and reasonable endeavours clauses in drilling contracts.



Key English Law Cases in Offshore Drilling

- **Risky Business:** An examination of the English court’s decision in *Seadrill v Tullow* arising out of the termination of the drilling for the “West Leo” for force majeure and in this context assessing risk allocation under a drilling contract.
- **After the “Arctic III”: Negotiating Aims for Drilling Contractors:** A talk on the English court decision in *Transocean v Providence* covering dayrates as a complete code, a contractor’s liability for spread costs and the scope of its maintenance and repair obligations.

Offshore Wind

- **Into the Unknown: Offshore Floating Wind:** Looking at the opportunities and pitfalls in this rapidly developing industry, in particular at some of the unique contractual issues likely to arise, and how best to mitigate risk.

Arbitration & Litigation

- **How to succeed in disputes you can’t avoid:** How to handle, and succeed, in large-scale and complex litigation or arbitration proceedings.
- **International commercial arbitration:** A practical consideration of agreements to arbitrate including the legal effect, benefits of arbitration, issues related to forum choice and drafting tips.
- **Arbitrating under LMAA terms:** The LMAA terms are commonly applicable in the context of marine construction disputes – this talk provides an overview of the terms and likely procedure drawing on our experiences.
- **Getting from Dispute to Resolution:** Drawing on our experience successfully handling a significant arbitration (with claims and counterclaims worth in aggregate over USD 800 million), this will outline some key lessons learned covering the pre-contract, post-contract and arbitration phase.

If any of these talks are of interest to your company, please email: shippingenergynewsletter@haynesboone.com

Diversity and Events

[International Women's Day'](#)

To mark International Women's Day in March 2023, **Fiona Cain, Amanda Larrington** and **Charlotte Mullis** published an alert 'Celebrating 100 Years of Women in English Law' reflecting on the progress of women who were first permitted to practice as solicitors in England and Wales just 100 years ago.

[Read more here](#)



Dame Rose Heibron by Elliot & Fry, 1949
© National Portrait Gallery, London

Events

The London office hosted two fantastic events this year which recognise the firm's commitment to Diversity Equity and Inclusion:



[Security in Maritime Energy and Critical Infrastructure](#)

Mark Johnson moderated a panel of academics and retired senior military personnel discussing Security in Maritime Energy and Critical Infrastructure in support of the Royal Naval Association.

This follows the announcement earlier this year that the firm has pledged financial assistance to the Royal Naval Association to support its charitable activities throughout the year.

[Read more here](#)

Women in Shipping and Energy and the Gabrielle Chanel Fashion Manifesto exhibition



Fiona Cain, Amanda Larrington and Teena Grewal hosted a breakfast event for Women in Shipping and Energy at the V&A. We enjoyed a tour of the wonderful Gabrielle Chanel Fashion Manifesto exhibition in the company of women who had travelled from across Europe to see the timeless work of Coco Chanel.



“FASHION IS NOT SOMETHING THAT EXISTS IN DRESSES ONLY. FASHION IS IN THE SKY, IN THE STREET, FASHION HAS TO DO WITH IDEAS, THE WAY WE LIVE, WHAT IS HAPPENING.”

— COCO CHANEL



[Legal 500 UK 2024](#)

The **Legal 500 U.K. 2024** ranked six Haynes and Boone, LLP practice areas among the best in the nation including Oil and Gas and Shipping and **14 Haynes Boone lawyers** were recommended including Partners **William Cecil, Andreas Dracoulis, Mark Johnson, Glenn Kangisser, Andreas Silcher**, and Associate **Shu Shu Wong**.

Projects, Energy and Natural Resources – Oil and Gas

Client
Quotes
about the
Haynes
Boone
Oil and
Gas Team

“Haynes Boone’s Oil & Gas team in the U.K. has a deep understanding of the legal, commercial and practical issues involved in upstream and downstream transactions.”

“An incredibly user-friendly team who make genuine efforts to understand client drivers/ pinch points to enable advice to be delivered in a tailored fashion and in an understandable format. They understand that the advice will be read by non-lawyers and adjust the messaging to suit. Very proactive with instructions, with an ability to think outside of the box in complex matters and with a willingness to provide creative solutions. We consider their team members to be thought partners in a variety of instructions.”

Transport – Shipping

Client
Quotes
about the
Haynes
Boone
Shipping
Team

“Andreas Dracoulis has an impressive background in maritime and shipping law, allowing him to provide specialised advice in this niche area.”

“The team has an excellent reputation about newly built drilling rig arbitration, legal, contractual and commercial matters, and a very good understanding of the technical as well, which is quite rare.”

Chambers UK 2024

Three firm practice groups were ranked by Chambers UK in its 2024 directory including Shipping (UK-wide). The directory also recognized seven lawyers including Partners **William Cecil**, **Mark Johnson**, **Andreas Silcher**, and Senior Counsel **Simon Curtis**.



Shipping

Client Quotes about Haynes Boone Shipping Team

“Haynes Boone understand[s] the nuances and positions of stakeholders and can devise a structure to accommodate.”

“The team [has] great experience. They’re very responsive and attentive.”



William Cecil

“He is very experienced and a great lawyer to reach out to with shipping concerns.”

“William has excellent charter party experience and knowledge.”



Andreas Silcher

“Andreas is very experienced, knowledgeable and provides valuable insights.”

“Andreas is brilliant. He is on the ball, quick, proactive and has great relationships.”

“He does excellent work. He’s very flexible and handles complex work.”



Mark Johnson

“Mark is very proactive and has great attention to detail. He’s also technical and commercial.”

“He navigates issues extremely well.”



London Office Growth



Promotions in Shipping and Energy



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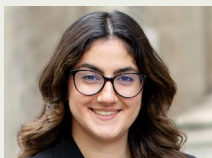


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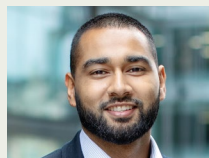


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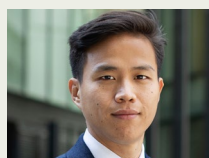
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2023 Newsletters



The London office of Haynes Boone produces a Shipping and Energy newsletter with alerts, articles, publications, podcasts, videos and case summaries related to shipping, autonomous shipping, offshore energy and renewable energy as well as covering dispute resolution and AI developments in England and Wales. It also includes news about the London office.

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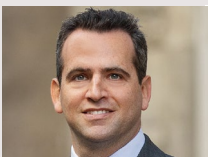
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