

**HIGH COURT GRANTS EXTENSION OF TIME FOR SPAIN'S CHALLENGE TO  
ARBITRATION AWARD**

*London Steam Ship Owners Mutual Insurance Association Ltd v The Kingdom of Spain*  
[2013] EWHC 2840

**Introduction**

In a judgment handed down on 20 September 2013 (as revised and corrected on 17 October 2013) in *London Steam Ship Owners Mutual Insurance Association Ltd v The Kingdom of Spain* [2013] EWHC 2840, the High Court considered whether to allow an extension of time for objecting to the enforcement of an award, where the party objecting had taken no part in the arbitral proceedings.

**Background**

The case arose out of the Prestige Oil Spill, an oil spill off the coast of Galicia in Spain caused by the sinking of an oil tanker in 2002, the largest environmental disaster in the history of both Spain and Portugal. The Claimant, pursuant to a contract of insurance provided protection and indemnity insurance, along with freight, demurrage and defence ("FD&D") insurance in respect of the sunken vessel.

In July 2010 a Spanish court ordered that certain civil claims should be tried against the Master, Chief Officer, and Chief Engineer, against the owners and managers, and against the Claimant.

The Claimant refused to participate in the Spanish proceedings, and commenced arbitration proceedings in London against Spain on the basis that the insurance contract was made on terms set out in the Claimant's rules, which provided that the insurance contract was governed by English law and any disputes were to be referred to arbitration in London. Spain contested the jurisdiction of the arbitral tribunal, and refused to participate.

The Claimant obtained an award in its favour and sought enforcement of that award in England under Section 66 of the Arbitration Act 1996. Spain applied to the High Court seeking to challenge the award under Sections 67 (on the grounds that the tribunal did not have substantive jurisdiction) and/or 72 of the Arbitration Act 1996 (on the basis that there was no valid arbitration agreement). Spain also sought an extension of the 28 day deadline applicable to challenges. The issue for the Court was whether to allow such extension of time given Spain's failure to participate in the arbitration proceedings.

**Judgment**

At a hearing on 5 July 2013, the High Court granted Spain's application for an extension of time. Mr Justice Walker delivered his reasons for that judgment on 20 September 2013.

Mr Justice Walker held that it was in the interests of justice to grant such extensions as would be necessary to ensure that Spain could deploy its full armoury of objections to enforcement of the arbitration award, and the arbitration award itself.

In his judgment, Mr Justice Walker cited a number of previous authorities which had considered the availability of extensions of time, and in particular, *AOOT Kalmneft v Glencore International AG* [2002] 1 Lloyd's Rep. 128, *Dallah Real Estate & Tourism Holding Co v Pakistan* [2010] UKSC 46; [2011] 1 A.C. 763 and *Terna Bahrain Holding Co WLL v Al Shamsi* [2012] EWHC 3283 (Comm); [2013] 1 Lloyd's Rep. 86, please see our previous [alert](#).

A party which objected to the jurisdiction of an arbitral tribunal was entitled not to participate in the arbitral proceedings where it took the view that those proceedings were invalid.

In his judgment, Mr Justice Walker cited Lord Mance in *Dallah Real Estate v Pakistan*, who stated that “a person who denies being party to any relevant arbitration agreement has no obligation to participate in the arbitration or to take any steps in the country of the seat of what he maintains to be an invalid arbitration leading to an invalid Award against him”, holding that this principle was so fundamental that it should not be “whittled down” unless the interests of justice so required.

5<sup>th</sup> November 2013