

## AN ENGLISH LAW CLAUSE DOESN'T AUTOMATICALLY LEAD TO THE ENGLISH COURTS

The recent judgment of Eder J in *Mujur Bakat and SMS Ship Management Services v Uni Asia General Insurance & Ors.* [2011] EWHC 643 (Comm) (18 March 2011) has once again highlighted that even though the parties may agree English law will govern a contract there is no guarantee that any subsequent dispute will end up before an English court.

The case related to a vessel that had suffered a steering failure during a voyage from East Timor to East Java. The vessel became incapacitated and then later ran aground suffering damage. When its owners sought to make an insurance claim a dispute arose with the insurers. Despite the insurance policy incorporating the Institute Time Clauses Hulls 01/10/83, which were expressly stated as being "subject to English Law and practice," the owners' application to serve English proceedings out of the jurisdiction was challenged by the insurers on the basis that as all of the parties, witnesses, key documents and place of damage were in Malaysia, England was not the appropriate venue for the dispute.

Eder J agreed and found that the owners had failed to establish that England was the appropriate venue. Relying upon Lord Goff in *"The Spiliada"* [1987] AC 460 HL he observed that the fact English law was to apply to a particular contract may be of very great importance or it may be merely incidental when looked at in the context of the whole case. An important factor was, of course, whether the courts of another jurisdiction would properly apply English law in any subsequent proceedings, but he found no evidence that the Malaysian courts would fail in this regard, and the matters at issue did not present any particular novel, complex or undecided issues of English law. In so finding he set aside the order obtained by the owners for service out of the jurisdiction, leaving the parties to bring their dispute before the Malaysian courts.

This judgment underlines the fact that parties to an agreement need to be aware of difficulties which may arise in the absence of an agreement on jurisdiction. In cases where neither party to a contract is within the jurisdiction of the English courts and the contract is performed outside the jurisdiction, unless they expressly agree that the English courts will have jurisdiction over any disputes, or a dispute raises novel, complex or undecided issues of English law, a party may struggle to satisfy an English court to accept jurisdiction solely on the basis of an agreement that English law will govern the agreement.

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