

CONTENTS

1. News
2. Laws & Treaties
3. Landmark rulings
4. Notes
5. Contributors

1. NEWS

Costs and length in ICC arbitrations

A working commission of the International Chamber of Commerce (ICC) has issued a report about the costs and duration of arbitral proceedings conducted through the ICC. The report concludes that, on average, the costs are distributed as follows: 82 % for the parties' representation (Counsel, lawyers, expert witnesses, in-house costs, etc.), 16% for the arbitrators' fees, and 2% for the administrative costs of the ICC.

"Rule B" attachment of EFTs overturned

In *STX Panocean (UK) Co. v. Glory Wealth Shipping Pte. Ltd.*, of 16 Oct. 2009, the United States Court of Appeal for the Second Circuit overturned the effects of the "Winter Storm" decision in 2002, which allowed the attachment in marine claims of a defendant's U.S. dollar Electronic Funds Transfers (EFTs), while passing, as they all do, through New York Banks. Once made, the attachment became security for an admiralty claim conducted anywhere in arbitration. The "Rule B" has since 2002 been a commonplace in admiralty claims worldwide and constituted 33% of all the lawsuits filed in the Southern District of New York. From

Oct. 1st 2008 until Jan. 31st 2009 alone, 962 Rule B lawsuits sought to attach a total of US\$1.35 billion. According to the US Appeal Court, EFTs made in US dollars, while in temporary possession of an intermediary bank, are not deemed to be the property of either the originator or the beneficiary under New York law and, therefore, they cannot be subject to an attachment order. Thus, Rule B may no longer be of use to attach EFTs.

ICMA XVII Congress

Hamburg hosted the 17th International Congress of Maritime Arbitrators between 5th and 9th October 2009. The conference started with lectures updating in total 171 delegates from 20 countries on maritime arbitration around the world. Further lectures covered procedural questions such as those of evidence, costs and enforcement of awards but also non-procedural aspects such as laytime/demurrage or arbitrating speed and consumption claims. The conference closed on Friday with the venue for the next congress being announced: ICMA XVIII will take place in Vancouver in 2011. ICMA XVII's program and the organisers' contact details can be found on www.icma2009.org.

National Arbitration Center in Cambodia

The Royal Government of Cambodia (RGC) is facilitating the establishment of the country's first commercial arbitration body - the National Arbitration Center (NAC). The NAC will offer the business community an alternative commercial dispute resolution mechanism to the courts and enable businesses to resolve their disputes quickly, inexpensively and with certainty. It thus promises to enhance the private sector's comfort level for engaging in business transactions. Understanding the importance of alternative dispute resolution, the RGC has developed the necessary legal framework by passing commercial arbitration legislation in 2006 and by recently issuing a sub-decree on the operations of the NAC. Once established, the NAC will operate as an independent entity from the government and will be managed by an Executive

Board elected by NAC members. The International Finance Corporation with financial support from the European Commission will assist the establishment and initial operations of the NAC, in collaboration with other development partners.

2. LAWS & TREATIES

The Rotterdam Rules

The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 11 December 2008) opened for signatures since 23 September 2009 and it has already been signed by 19 States. The Convention (known also as “Rotterdam Rules”) is a comprehensive set of rules for all the parties involved in the maritime transport. Considering that 80% of the goods worldwide are carried by sea, the Rotterdam Rules will give the world trade a boost. Chapter 15 deals with arbitration matters. It contains provisions related to the arbitrability of disputes related to carriage of goods by sea, the seat of arbitration, the arbitration agreements in non-liner transportation, and the possibility to arbitrate after a dispute has arisen.

New BIT between Venezuela and Russia

A new Bilateral Investment Treaty (BIT) was signed, according to Venezuela’s Official Gazette of 2 June 2009. Article 9 of the Russia-Venezuela BIT permits aggrieved investors to make a choice for arbitration at a tribunal in the host country, an *ad hoc* tribunal under UNCITRAL Rules or at the Arbitration Institute at the Stockholm Chamber of Commerce. ICSID arbitration, much criticized by Venezuela’s President, does not appear as an option under the BIT. The June 2nd Official Gazette also announced a joint venture between state-owned oil company PDVSA and the Russian National Petroleum Consortium Ltd. for the exploitation of two blocks in the Orinoco Oil Belt.

“Provisions” in Guangdong

On 13 Sep. 2009, the High Court of Guangdong Province in Southern China and the Guangdong Provincial Public Security Department issued a circular known as “Several Provisions Regarding Tracking and Controlling Parties against Whom Enforcement Action is taken and their Vehicles”.

Under the Provisions, if a Court judgment or an arbitral award is being enforced before a local Court in Guangdong and the debtor or respondent is not cooperative in this regard, he / she (in the case of individuals) or the company’s legal representative, such as General Manager or the Chairman of Board of Directors (in the case of companies / corporate entities) may be prohibited by the public security authority from leaving China pending the full payment of the debt. Hopefully, that will make the enforcement of any Court judgment or arbitral award more effective, at least in Southern China.

Arbitration and the “Gas Act” in Brazil

Law 11,909, known also as “The Gas Act”, was published in the Official Gazette and came into force on March 5, 2009. This law provides rules for the natural gas transportation, treatment, processing, storage, liquefaction, regasification, and trade. Until then, those activities were intrinsically linked to the oil industry and respective legislation, which have their own and distinct characteristics. One of the characteristics of the oil legislation is the adoption of arbitration in agreements executed by state-owned companies, including the relevant concession agreements. This issue is quite important as public-utilities concession agreements are ruled by the public interest and their submission to arbitration may be challenged by the courts in case of lack of legal authorization. As an example, the Companhia Paranaense de Energia – COPEL, a power state-owned company, has successfully been able to obtain in 2003, judicially, the annulment of an arbitration clause of a power supply agreement it had previously signed. By expressly accepting the adoption of arbitration by state-owned companies, the Gas Act gives a considerable step towards reaffirming and strengthening the legislative interest in adopting arbitration in public-utilities agreements, thus motivating the increase and expedition of foreign investments in the Brazilian market of gas projects.

Ecuador quits ICSID

On June 12, 2009, Ecuador’s Congress voted to withdraw their membership from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). In accordance with Article 71 of the ICSID Convention, the denunciation will take effect six months after Ecuador’s notice of withdrawal was received on July 7, 2009. On June 24 Ecuador joined membership to the Bolivarian Alternative for the Americas (ALBA), a group, which aims to integrate nations in Latin

America and in the Caribbean. ALBA was formed in 2004 under the leadership of Venezuela's President Hugo Chavez and includes Cuba, Bolivia, Honduras, Nicaragua, and various smaller nations in the Caribbean. Ecuador is facing arbitration cases worth more than \$10 billion.

3. LANDMARK RULINGS:

France

Renunciation to arbitration; Competence-competence: On 4 June 2009, the Supreme Court ruled in a first leg that a participation to a judiciary expertise by a party to a contract, without invoking an arbitration clause contained in the contract does not amount to a renunciation by such party to submit to arbitration disputes on the merits arising from the contract. A renunciation must be patent and unequivocal. In a second leg the Supreme Court reaffirmed the principle competence-competence in its negative aspect as established by the Supreme Court on 16 October 2001, i.e. that the judges should refrain from ruling on the validity and interpretation of an arbitration clause before the arbitrators designated in the clause have had an opportunity to do so, unless the arbitration clause is "obviously null or inapplicable". The Supreme Court considered that an arbitration clause designating two different forums may not be deemed "obviously inapplicable" as it does not dismiss the clear willingness of the parties to refer to arbitration. Therefore, it was up to the arbitrators, in the event designated by the judge competent to clarify an arbitration clause (i.e. the President of the Tribunal de Grande Instance of the agreed place of arbitration), to rule as a matter of priority on the validity and extent of their designation. *Ineos European Holding Ltd, Ineos France, Ineos Manufacturing France, Total Petrochemicals France v. UOP NV, Cour de Cassation, 1ère Chambre Civile, 4 June 2009.*

Germany

Interruption of time-bar. An application for conciliation proceedings filed thirteen months before it is actually served on the opposing party serves to interrupt the time bar. That is so even when the applicant had been informed, right after filing the application, that the conciliation service is -due to the court's workload- unable to process the matter in the foreseeable future. The Federal Supreme Court clarifies that the rules for the interruption of time bars by filing an application for conciliation or a statement

of claim are conformed to even if the institution in question takes an unusual amount of time to serve the matter on the opponent. That rule is likely to apply also to arbitration proceedings and provides a degree of comfort since the conciliation procedure is a cost effective way to stop the running of time (and possibly find a solution with the opponent) outside an arbitration. A conciliation procedure is permitted irrespective of an agreement to arbitrate. *Bundesgerichtshof, Federal Supreme Court, Judgement of 22 Sept. 2009, Case Ref. XI ZR 230/08, parties undisclosed.*

Lebanon

Arbitrator being former *ex parte* Counsel: In a recent key judgment, the Court of First Instance in Beirut held that an arbitrator can be revoked only for reasons that occur or become known after his appointment. The Court was considering an application made for the dismissal of the arbitrator on the ground that he acted, prior to his appointment as arbitrator for the resolution of the dispute pending between the parties, as counsel to one of them. The Court held that this fact did not constitute a valid reason for the dismissal of the arbitrator because the applicant was aware of it at the time of execution of the arbitration agreement. The Court relied on Section 770 of the Code of Civil Procedure which subjects the application for dismissal of the arbitrator to a time-limit of fifteen days running from the date when the fact justifying the dismissal becomes known to the applicant. *Shalouh vs. Tbele, Civil Court of First Instance in Beirut, no. 16/50, June 6, 2009.*

Peru

Confirmation of award; Substantive issues. The First Superior Court of Appeals of Lima confirmed the validity of an award issued by a court of arbitration. The arbitrators declared in the award that the Peruvian State had violated the Concession Contract signed with Telefónica del Perú S.A.A. The breach of contract consisted in that the Peruvian State has allowed individual citizens to offer the public telephone service without being submitted to the regulation of the Peruvian telecommunications authorities. According to the Concession Contract signed with Telefónica del Perú S.A.A., the public telephone service can only be provided by individuals or companies that obtain a concession by the Peruvian State. Both the Peruvian Telecommunication Supervisor and the Ministry of Telecommunication TC argued that the arbitration award was void because, according to them: (i) the decision to allow third parties without concession

given by the State to provide public telecommunication services was a sovereign decision and could not be discussed in Arbitration, and (ii) the award contained an undue motivation. Finally, the Judiciary denied the claim for the annulment of the award and found that the arbitral seat was the appropriate forum to entertain a claim and an alleged breach of Concession Agreement. *Peru v. Telefonica del Peru SAA, Appeal decision of July 20, 2009.*

Russia

Shipping tax: The limited liability company "The Karelian Navigable Company" (further - the ltd.) addressed the Court of Arbitration of Republic Karelia with an application for cancellation of the decision of the inspection of the Federal Tax Service of Russia of the city of Petrozavodsk. The Board of judges of the Supreme Court of Arbitration considered in the judicial sitting the statement of the inspection of the Federal Tax Service of Russia of the city of Petrozavodsk of 27.07.2009 regarding revision according to supervisory review procedure of the decision of the Federal Court of Arbitration of North-Western district from 19.05.2009 with regard to case N À26-3434/2008 of the Court of Arbitration of the Republic Karelia, passed upon the application of the limited liability company "Karelian Navigable Company" of the inspection of the Federal Tax Service of Russia of the city of Petrozavodsk about invalidation of decisions of the inspection from 29.05.2008 N 3.1-19/563 (2623). *Supreme Court of Arbitration of the Russian Federation, Aug. 27th, 2009 N 10677/09.*

Spain

Judicial determination of quantum: Judgment was issued by the first instance court of Madrid on the *quantum* of damages due by Caldos del Norte S.L. to Expafrimex S.L. It derived from an arbitration award which had been issued by the arbitral tribunal of the Spanish Chamber of Commerce of Madrid. Under the award, compensation became due in an indeterminate sum to Expafrimex S.L. The award attributed liability to Caldos del Norte S.L. due to the unlawful termination of an agency contract in their capacity of principals, and a subsequent unjust enrichment made at the expense of Expafrimex S.L. The contract incorporated an arbitration clause calling for the Chamber of Commerce of Madrid. Caldos del Norte S.L. sought neither the clarification nor the annulment of the award, but contested Expafrimex's application for adjustment of the quantum by the court. The Court of Appeal refused to reopen the merits, as these had

already been settled by the arbitrators, but agreed instead to revisit questions of fact which, though they had been already placed before the arbitrators, proved to be of relevance yet for the determination of the quantum by the court. *Court of Appeal of Madrid, Appeal no. 261/2009 (Sec. 20), July 21, 2009.*

United Kingdom

Jurisdiction of arbitration appeal tribunal; Correctness of award. A variety of applications were brought before the Court regarding the challenge of a FOSFA appeal award. The applicant (K) had commenced a FOSFA arbitration against the respondent (U) on the basis that there had been a failure by U to deliver to it a bulk cargo of crude oil. A first-tier arbitration tribunal held that there was a binding contract between the parties and awarded K damages with costs. The finding that there was a binding contract was upheld on appeal, but the award of damages and costs to K was substantially reduced. Both parties sought to challenge the FOSFA appeal award. K contended that (1) the appeal award should be set aside as there had been a serious irregularity, namely that the Board of Appeal had improperly considered the evidence as to the termination date of the contract, and hence the quantum of damages was affected; (2) leave to appeal against the appeal award on a point of law should be granted, as the Board of Appeal erred in law in calculating the termination date of the contract. U contended that (3) the Board of Appeal lacked the jurisdiction to make an award, as K had failed to open a letter of credit, so that no binding contract was ever concluded between U and K and thus, there was no arbitration agreement between the parties; (4) the Board of Appeal erred in law in finding that there was a binding contract and that it was entitled to assess damages. The Court made the following decision: (1) The Board of Appeal had considered all the material that pertained to the termination date of the contract and thus no issue of irregularity had arisen, let alone a serious irregularity. Moreover, K had failed to lodge an appeal within the time required by the Arbitration Act 1996; (2) on the findings set out in the appeal award the Board of Appeal was entitled to conclude that the contract was terminated on the date that it found, and its assessment of the evidence as to that date disclosed no legal error; (3) there was nothing in the negotiations between the parties to disclose that there was any obligation on K to open a transferable letter of credit as a contingent condition precedent to the conclusion of a binding contract; accordingly, there was a contract between the parties and thus, an arbitration agreement; (4) the Board of Appeal had not erred in law in reaching its

conclusion that there was a binding contract between the parties and that it was entitled to assess damages. In the event, the Court ruled that the applications had no merits and the FOSFA appeal award survived all the challenges pursued by both parties. *U.R. Power GmbH and Kuok Oils and Grains Pte Ltd* [2009] EWHC 1940 (Comm) (31 July 2009).

Challenges for serious irregularity and on questions of law; Appropriateness of award. The respondent company (Churchgate) had brought an arbitration claim against the applicant shipowner (Pace) on the basis that a cargo of rice carried by Pace and delivered to it was damaged and that there had been short delivery. Pace denied liability and disputed that Churchgate had title to sue. The arbitration tribunal found that there was nothing to suggest that Churchgate became the holder of the bills of lading other than lawfully. The tribunal was satisfied that the immediate and proximate cause of the transfer of the bills of lading was the sale contracts and the payments made thereunder to Churchgate's respective sellers. Pace challenged the arbitration award before the Court on grounds of serious irregularity and applied for leave to appeal on two questions of law: firstly, the endorsement and delivery of the bills of lading could only have been effected "in pursuance of" the sale contracts if Churchgate had been entitled to receive the bills of lading under the sale contracts and that the tribunal either rejected that proposition or failed to adequately address it and secondly, the tribunal either misdirected themselves as to the doctrine of proximate cause or reached a conclusion which no tribunal properly instructed as to the relevant law could have reached. The essence of the serious irregularity challenge was that the tribunal's conclusion was ambiguous and inexplicable and was supported by no or no sufficient reasoning. The Court rejected such challenge. The conclusion of the tribunal was not ambiguous. The reasoning was explicable and made sense. With regard to the challenge on the points of law, the first question of law was not one that the tribunal had been asked to determine; and as to the second alleged error in law it could not be said that the tribunal had misdirected itself or reached a decision which a properly directed tribunal could not reach. Pace's application for leave to appeal on both questions of law was also dismissed. *Pace Shipping Co Ltd v Churchgate Nigeria Ltd* [2009] EWHC 1975 (Comm) (31 July 2009).

Penalty clauses; Late redelivery of vessel under time charterparty. This is a Court of Appeal case concerning the appellant shipowner's appeal against

a decision of the Judge upholding the LMAA tribunal's finding that a clause in a time charterparty concerning payment of further hire for late redelivery was unenforceable on the ground that it was a penalty. The clause provided that if the last voyage exceeded the maximum period under the charter and the market rate of hire exceeded the charter rate, the charter rate would be adjusted to reflect the market rate from the 30th day prior to the last date for redelivery. The shipowner claimed further hire under that clause for the late redelivery of the vessel. The charterer disputed the shipowner's entitlement to that sum and the matter was referred to an LMAA arbitration. The tribunal determined as a preliminary issue that the relevant clause did not contain a genuine pre-estimate of damages and was accordingly a penalty. The shipowner appealed that decision before the Judge. The Judge dismissed the appeal having found that the primary purpose of that clause was to deter the charterer from breaching its obligation to redeliver the vessel in time, and whilst such a purpose might be understandable because of the limits to the shipowner's knowledge about the likely length of the final voyage at the time of the order, the clause was a penalty, and not a genuine pre-estimate of damage resulting from a breach of contract. The shipowner's appeal was dismissed. The Court of Appeal found that the Judge had been entitled to come to the conclusion he had. In the ordinary case in which a charterer gave orders for an illegitimate last voyage there was no basis for implying a request by the charterer that the shipowner should perform the voyage outside the charterparty and on terms that it would pay for the voyage at the market rate. On the contrary, the charterer was instructing the shipowner to perform a voyage under the charterparty. If the charterparty in this case had not contained that clause, the measure of damages would have been that accepted by the charterer and held by the Judge, namely the days that the vessel was overdue at the market rate. A provision for payment, as compensation for late redelivery, of a higher market rate for the period overrun and also for the period of the last 30 days of the contracted period was penal and therefore unenforceable. *Lansat Shipping Co Ltd v Glencore Grain BV (The Paragon)* [2009] EWCA Civ 855 (31 July 2009).

Arbitration agreement; Disputing the Court's jurisdiction. Shell applied for permission to appeal on points of law arising out of the final, partial award made in an arbitration between Shell and Centurion. Centurion cross applied for an order that the Court had no jurisdiction to hear Shell's application. Disputes had arisen under a farm-in co-operation agreement between the two parties in

relation to two concessions for crude oil and gas exploration. The agreement included a mandatory arbitration clause. The dispute was referred to an arbitral tribunal under the UNCITRAL Rules. The award was made in favour of Centurion. The Court granted Shell's application for permission to appeal and dismissed Centurion's cross application. It was found that the phrase "final, conclusive and binding", as it appeared in the agreement between the parties, could not be construed as an agreement that excluded the parties' right of appeal in relation to a question of law under Section 69 of the Arbitration Act 1996. In order to amount to such an exclusion, sufficiently clear wording to that effect would have been required. In the arbitration context, the use of the words "final, conclusive and binding" in isolation did not convey the meaning that the parties had agreed to exclude all rights of appeal on point of law under Section 69. Moreover, the use of the term "final and binding" in an arbitration context had long been used to state the well recognised rule in relation to arbitration that an award was "final and binding" in the traditional sense, creating a *res judicata* between the parties. Finally, the addition by the parties of the extra word "conclusive" in the clause, did not connote by its normal or any other meaning, that the parties were agreeing to exclude their statutory right of appeal on points of law. It certainly did not do so with sufficient clarity to amount to an exclusion agreement. Accordingly, there was a sufficiency of material upon which it could be said that Shell's appeal raised questions of law and in those circumstances permission would be granted to appeal against the arbitral award. *Shell Egypt West Mansala GmbH v Dana Gas Egypt Ltd (formerly Centurion Petroleum Corp)* [2009] ewhc2097 (comm.) (7 August 2009).

Appeal on points of law. The appellant charterer (G) appealed on points of law against an award of arbitrators relating to the substitution of vessels under a long-term time charter. The charter defined the "Vessel" as "the LNG Tanker KHANNUR or a substitute LNG Tanker as provided in clause 59". G's case was that the "Khannur" had not been validly substituted and had never been delivered into service under the charter. G claimed hire which had been paid under protest and the respondent disponent owner (M) counterclaimed in respect of deductions from hire. The arbitrators held that the "Khannur" had been validly substituted under the terms of the time charter. The appeal on the points of law was dismissed. (1) There was no express provision in clause 59 or any other part of the charter as to where a substitute vessel was to be made available if the charterer had not at the time of substitution given orders identifying the next loading

port. The arbitrators were right that in such circumstances the substitute vessel could be made available to the charterer elsewhere than at the location where the substituted vessel was withdrawn. A requirement that the substitute vessel be positioned in the place where the substituted vessel was withdrawn could well lead to a pointless waste of time, effort and money. If prior to the substitution the charterer had identified the next loading port then clause 59 would protect it. If prior to the substitution the charterer had not identified the next loading port, then there was at that stage no basis for saying that the charterer would have to pay hire and bunkers for a journey half way round the world. If the next loading port had not been determined it could not be said that any difference in position of the substitute and substituted vessels would adversely affect the charterer. Substitution could only sensibly take place at a stage when the cargo had been discharged, and by that time the charterer ought in the normal course to have given orders identifying the next loading port. (2) The arbitrators were entitled to hold that G's message to M, that the vessel which M was obliged to provide had to be in a position to load at a port specified by G, whatever that vessel might be, was not as a matter of fact an order to the vessel. The arbitrators did not make a finding that G was in the circumstances under a legal obligation to give orders "without prejudice" when it disputed that the vessel was lawfully substituted. In context the arbitrators were doing no more than explaining what G could have done. Thus, the arbitrators' conclusion did not involve any error in law. *Gas Natural Aproxvisionamientos SDG SA v Methane Services Ltd (The "khannur")* [2009] EWHC 2298 (Comm) (25 September 2009).

United States

Award enforcement against States and "minimum contacts" requirement. The State Oil Company of the Azerbaijan Republic ("SOCAR") was ordered to pay Frontera Resources Azerbaijan Corporation ("FRAC") \$1.24 million plus interest under an arbitration award. FRAC filed a petition in the federal court in the Southern District of New York to confirm the award pursuant to Article II(2) of the 1958 New York Convention. The district court set aside the petition for two reasons: (1) lack of jurisdiction *in personam* on the ground that SOCAR lacked sufficient contacts with the United States to meet the Due Process Clause's minimum contacts requirements; (2) lack of jurisdiction *in rem* because FRAC had failed to identify specific assets of SOCAR within the court's jurisdiction. On appeal, the Second Circuit found that foreign states do not enjoy Due Process protections

under the U.S. Constitution. For that reason, a plaintiff generally need not satisfy the "minimum contacts" requirements where the defendant is a foreign state. Whether a corporation owned by or affiliated with a foreign government is a "foreign state," however, depends on whether the foreign government "exerted sufficient control over" the entity "to make it an agent of the State." The case was thus remanded back to the district court for a determination of whether SOCAR is an agent of the Azerbaijani state, and, as such, lacks due process rights. *Frontera Resources Azerbaijan Corporation v. State Oil Company of the Azerbaijan Republic*, Docket No. 07-1815-cv, F. 3d, 2009 WL 3067888 (2d Cir. Sept. 28, 2009).

“Rule B” Attachment; Admiralty jurisdiction.

Kulberg sold to Spark a cargo of barley on c.i.f. terms. The contract contained an agreement to Gafta arbitration in London and subject to English Law. Demurrage was “payable as per charterparty”. The charterparty Kulberg had concluded with the shipowners provided that English Law applied, and contained an English arbitration clause. A demurrage dispute arose in the performance of the sale contract, and Kulberg commenced arbitration proceedings in London against Spark. Kulberg then sought to attach Spark’s assets in New York under Rule B. Spark moved to vacate the maritime attachment on the grounds that the US District Court (SDNY) lacked subject matter jurisdiction over Kulberg’s claims. The court admitted that the admiralty jurisdiction might be exercised over “mixed” contracts containing both maritime and non-maritime elements if the contract fell within one of two exceptions: (a) the non-maritime elements were incidental to the maritime portions, or (b) if the claim arose from a breach of maritime obligations that were severable from the non-maritime obligations of the contract. Kulberg’s claim for demurrage was found to be a case within the second exception and the jurisdiction of the court was thus affirmed. Thereafter, Kulberg had to discharge the burden of proof that he had a valid *prima facie* admiralty claim against Spark. That question was not of a procedural nature, but of a substantive one and, as such, it had to be determined under the substantive law of the sale contract; that is, under English law. From the evidence, however, Kulberg failed to persuade the court that theirs was “a claim in respect of which the admiralty jurisdiction of the English High Court could be invoked”. Their claim was not listed, at least not

explicitly, as an Admiralty claim of Sec. 61(2)(3). The Rule B attachment would be vacated. *Kulberg Finances Inc. v. Spark Trading DMCC et al.*, US District Court (SDNY), June 18, 2009.

4. NOTES:

Fosfa arbitration: permission to appeal.

A commentary of one of our contributors has been posted [online](#) about the last turn in *Papas Olio JSC v Grains & Fourrages SA and another [2009] EWHC 1257 (QBD, Comm. Court)*, which was reviewed in our former Issue No. 2/2009.

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This is a non-exhaustive review. Do not rely on its contents without seeking legal advice from experts in the relevant jurisdiction. New contributors are welcome in the next issues. We thank those who contributed in the present one. Editor: Albert Badia.