

Point 45



Commercial, maritime and arbitration law bullet points from 4-5 Gray's Inn Square

SC RULES INSURERS CANNOT SUE VESSEL MORTGAGEES IN ENGLAND TO RECOVER BACK PAYOUT

- Mortgagees not bound by choice of jurisdiction clause in policy in absence of suing under it.

- Insurers' claims were "Matters relating to insurance" in section 3 of the Brussels Regulation (Recast) and must be brought against Netherlands based mortgagee's in the place of their domicile.

- Issue of whether Insurers' claims for restitution were matters relating to tort, delict or quasi-delict for purposes of article 7(2) of the Brussels Regulation recast left open.

ASPEN UNDERWRITING LTD AND OTHERS V. CREDIT EUROPE BANK NV [2020] UKSC 11 SC, 1 April 2020

The claimant insurers had settled a claim in the sum of US\$22m for the total loss of the "ATLANTIK CONFIDENCE" under a hull and machinery policy containing an exclusive jurisdiction clause in favour of the English courts. The policy had been assigned to the Dutch based defendant bank, who were mortgagees of the vessel and sole loss payees under the assignment.

The settlement agreement was made with the vessel owners and the payment was, at the defendant's direction, made to the insurance brokers who, after payment of certain debts, remitted some US\$21.9 million to the defendant.

Subsequently, in a limitation action in the Admiralty Court, it was held that the vessel had in fact been scuttled by its owners. Insurers brought proceedings in England, inter alia against the defendant mortgagees of the vessel for recovery of the settlement monies which they had received, serving them in the Netherlands without permission pursuant to the Brussels Regulation Recast (CPR 6.33).

Teare J granted the defendant's application to set aside service of the proceedings which decision was upheld by the Court of Appeal and, in this decision, by the Supreme Court.

