

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM:

THE COURT OF APPEAL OF ENGLAND AND WALES (CIVIL DIVISION)

BETWEEN:

Appeal CA-2024-000180

**THE LONDON STEAM-SHIP OWNERS’
MUTUAL INSURANCE ASSOCIATION LIMITED**

Appellant

- and -

THE KINGDOM OF SPAIN

Respondent

AND BETWEEN:

Appeal No CA-2024-000182

**THE LONDON STEAM-SHIP OWNERS’
MUTUAL INSURANCE ASSOCIATION LIMITED**

Appellant

- and –

THE FRENCH STATE

Respondent

M/T “PRESTIGE”

STATEMENT OF FACTS AND ISSUES

I. THE PROCEEDINGS BELOW

1. Court of Appeal of England and Wales:
 - 1.1. The citation for the judgment is [2024] EWCA Civ 1536, [2025] 1 WLR 3011. 7/153
 - 1.2. The hearing lasted 7 days (29 October – 1 November and 4-6 November 2024), of which the appeals under the Arbitration Act 1996 (the “**1996 Act**”) occupied approximately 2 ½ days of oral argument (1 and 4-5 November 2024): see paragraph 39 below.
2. King’s Bench Division (Commercial Court):
 - 2.1. The citations for the judgments are:
 - 2.1.1. [2023] EWHC 2473 (Comm), [2024] 1 WLR 2331 (in respect of the 12/243
Kingdom of Spain (“**Spain**”)); and
 - 2.1.2. [2023] EWHC 2474 (Comm), [2024] 2 All ER (Comm) 175 (in respect 13/337
of the French State).
 - 2.2. The hearings lasted:
 - 2.2.1. 12 days (2-3, 7-10 and 17-18 December 2020 and 15-18 May 2023, of which the applications under the 1996 Act occupied approximately 2 days of oral argument on 15-18 May 2023 only: see paragraphs 20-35 below) (in respect of Spain); and
 - 2.2.2. 2 days (8-9 August 2023) (in respect of the French State).

II. THE FACTUAL BACKGROUND

3. This case arises out of the total loss of the M/T “PRESTIGE” (the “**Vessel**”) off the coast of Spain in November 2002. The incident caused widespread oil pollution and extensive damage to, in particular, the Spanish and French coastlines.
4. The Club is a mutual insurance association providing Protection and Indemnity (“**P&I**”) insurance to its members. For the year 2002, the Club provided P&I cover to the Owners and Managers of the Vessel in respect of, *inter alia*, pollution liabilities up to a maximum aggregate amount of USD 1bn for any one occurrence, subject to the Club’s *Rules of Class 5 – Protecting and Indemnity*, which contained a “pay to be paid” clause (Rule 3.1)

and an English law and London arbitration clause (Rule 43.2) (the “**Contract of Insurance**”).

5. In late 2002, shortly after the casualty, criminal proceedings were commenced in Spain against, *inter alia*, the Master, Chief Officer and Chief Engineer of the Vessel. Those proceedings lasted for many years including an investigation stage at the outset. In 2010, after the criminal investigation stage was closed and the oral proceedings stage had been opened allowing civil claims also to be brought, civil claims were brought against, *inter alia*, the Master of the Vessel, the Owners (as vicariously liable for the acts of the crew) and the Club (as the Owners’ P&I insurer) (the “**Spanish Proceedings**”).
6. The civil claims were brought on behalf of a significant number of claimants but the largest value claims by some measure were those of: (i) Spain, in its own right and as the subrogee of the claims of individuals and entities it had paid under a compensation scheme set up in Spain; and (ii) the French State, in its own right. The relevant civil claims were served on the Club in England in June 2011.
7. In those proceedings, two types of civil claim were brought by, *inter alia*, Spain and the French State (together, the “**States**”) against the Club: (i) claims pursuant to the terms of the International Convention on Civil Liability for Oil Pollution Damage 1992 (the “**CLC**”), which provides a right of direct action against an insurer that has agreed to act as the compulsory insurer pursuant to the terms of the CLC (the “**CLC claims**”); and (ii) distinct claims pursuant to Art 117 of the Spanish Penal Code 1995 (the “**Penal Code**”), which gives a third party victim certain rights of direct action against the insurer of a wrongdoing assured in respect of its voluntary insurance between the insurer and the assured (the “**non-CLC claims**”).
8. The CLC claims were subject to Spanish jurisdiction.¹ Shortly after the incident the Club arranged the deposit with the Spanish courts of a fund in the amount of its maximum liability under the CLC (c. EUR 22 million).

¹ CLC, Art IX.

9. The Club's case was (and is) that, as a matter of English conflict of laws principles, the non-CLC claims were to be characterised as contractual and, under the equitable principle of "conditional benefit" in English law, were subject to the terms of the Contract of Insurance that were inherent conditions on the Owners' right to indemnification (if any) under the policy, including the governing law clause and the London arbitration agreement therein. Furthermore, the Club's position was (and is) that, pursuant to the "pay to be paid" clause, in the absence of payment of any liability by the Owners, the Club was not obliged to indemnify in respect of the incident and therefore had no liability to the States in respect of the non-CLC claims.²
10. The States' position (although this was rejected by Hamblen J and the Court of Appeal) was that the right under Art 117 of the Penal Code is an independent statutory right and not one based on or constrained by the terms of a contract to which claimants (in this case, including the States) are not parties, such that Spanish law rather than English law applied to claims pursuant to Art 117.
11. Accordingly, in January 2012, after service of the non-CLC claims against the Club in the Spanish Proceedings in June 2011, the Club commenced London arbitration proceedings against each State seeking relief to that effect. The States were invited to participate but did not. By Awards and Reasons dated 13 February 2013 (Spain) and 3 July 2013 (the French State) (the "**Schaff Awards**"), Alistair Schaff QC granted declarations in each arbitration that³:

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"1) the Respondent is bound by the arbitration clause contained in Rule 43.2 of the Club Rules and such claims must be referred to arbitration in London;

2) (i) actual payment to the Respondent of the full amount of any insured liability by the Owners and/or Managers (out of monies belonging to them absolutely and not by way of loan or otherwise) is a condition precedent to any direct liability of the Claimant to the Respondent in consequence of the 'pay as may be paid clause' contained in Rule 3.1;

² The Fanti and The Padre Island (No 2) [1990] 2 Lloyd's Rep 191.

64/1613

³ The third paragraph was made only in the Award against Spain (in the light of the value of the States' respective claims).

and accordingly (ii) pursuant to the ‘pay as may be paid clause,’ and in the absence of any such prior payment, the Claimant is not liable to the Respondent in respect of such claims;

3) The Claimant’s liability to the Respondent in respect of such claims shall, in any event, not exceed the amount of US\$1,000,000,00 (US Dollars One Billion).”

12. In March 2013 (as against Spain) and in July 2013 (as against the French State), the Club sought relief from the High Court for leave to enforce the Schaff Awards in the same manner as a judgment and for judgment to be entered in their terms pursuant to s.66 of the 1996 Act. The States resisted these applications on the basis that the tribunal lacked jurisdiction and in addition sought their own relief by way of separate applications pursuant to ss.67 and/or 72 of the 1996 Act seeking orders setting aside the Schaff Awards and/or declarations that they were of no effect and that the States were not bound to arbitrate the non-CLC claims.
13. On 22 October 2013, Hamblen J (as he then was) handed down judgment on the applications.⁴ The Judge granted the s.66 relief and dismissed the States’ ss.67/72 applications. Accordingly, the Club was given permission to enforce the Schaff Awards as judgments of the court and judgment was also entered in their terms, including declarations that the States were bound to pursue the non-CLC claims in London arbitration and that the Club was not liable to the respective States (the “**S.66 Judgments**”). 95/2447
20/742
21/747
14. In November 2013, the Provincial Court in Spain acquitted the Master of the crime of serious negligence against the environment but convicted him of the crime of disobedience. None of the defendants were found civilly liable. However, cassation appeals were brought against that decision to the Spanish Supreme Court.
15. On 1 April 2015, on appeals brought by the States, the English Court of Appeal upheld the orders of Hamblen J thereby confirming that the States were bound to arbitrate the

⁴ [2013] EWHC 3188 (Comm), [2014] 1 Lloyd’s Rep 309.

non-CLC claims.⁵ The Court of Appeal held, additionally, that the States had submitted to the English Court's jurisdiction. The States did not seek permission to appeal to the Supreme Court.

16. At this point, the States did not withdraw their claims in Spain and there was a hearing before the Spanish Supreme Court in September 2015. In January 2016, that Court handed down judgment reversing the decision of the Provincial Court. The Master was convicted of an aggravated offence against the environment, and civil liability for the total loss was imposed on the Master, the Owners (vicariously) and the Club (directly), subject (in the case of the Club) to the USD 1bn limit in the Contract of Insurance.
17. The proceedings were then remitted to the Provincial Court in Spain to determine the quantum of the claims. The Club had not appeared in the Spanish Proceedings at any stage leading to its judgment on liability. However, the Club appeared in the quantum proceedings under protest stating that it was doing so in order to mitigate its losses arising from the breach of the States' obligations to arbitrate. These proceedings culminated in an execution order of the Provincial Court dated 1 March 2019 in favour of over 260 claimants (the "**Spanish Judgment**"). The States, and in particular Spain, were by far the largest judgment creditors under the Spanish Judgment. Spain was declared entitled to seek enforcement against the defendants of up to EUR 2,355,015,655.69 (inclusive of interest and various costs) and the French State was entitled to seek enforcement against the defendants of up to EUR 117,070,889.70 (again inclusive of interest and various costs).
18. In the case of the Club, the Provincial Court declared that such liabilities were subject to the insurance policy limit of USD 1bn, which the Court declared to be a global limit of liability in the sum of EUR 855,493,575.65 (this being the Euro equivalent at that date, less a sum of c. EUR 22 million which the Club had deposited with the Spanish Courts in 2003 in respect of its compulsory insurance obligations as regards claims made under the CLC: see paragraph 8 above). This is the principal amount (or the proportions thereof to which Spain or the French State are entitled in respect of the amounts awarded to them under the Spanish Judgment) in respect of which the Club contended in the arbitrations

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⁵ [2015] EWCA Civ 333, [2015] 2 Lloyd's Rep 33.

that are the subject of the present Appeals that it has suffered loss or may suffer loss in any jurisdiction in which the Spanish Judgment is recognised. In addition, the Club contends that it has suffered losses incurred in defending the non-CLC claims.

19. Thereafter, Spain applied without notice to the Queen’s Bench Division to have the Spanish Judgment registered in England. The French State took preparatory steps by applying and obtaining a certificate for enforcement in Spain under the Brussels I Regulation but has never made an equivalent application for registration in England. On 28 May 2019, Master Cook granted Spain’s application (the “**Registration Order**”).
20. On 26 June 2019, the Club issued an “appeal” (i.e. set aside application) against the Registration Order under Art 43 of Regulation (EU) No 44/2001 (the “**Brussels I Regulation**”, the “**Brussels I Appeal**”). 38/943
21. In the meantime, in or before January 2019, the Club commenced further arbitration proceedings against the States. Those claims sought relief in the form of declarations, injunctions, and monetary relief from the States in respect of their pursuit of the non-CLC claims in breach of their obligations to arbitrate, as declared in the Schaff Awards and the S.66 Judgments. The monetary relief was sought in respect of the costs incurred in defending the non-CLC claims and any sums incurred or as may be incurred in respect of the Spanish Judgment obtained against the Club notwithstanding the States’ obligation to arbitrate those claims.
22. The States did not respond to the notices of arbitration and the Club applied to the Commercial Court under s.18 of the 1996 Act to constitute a tribunal in respect of the references. The French State did not defend that application and by order of Foxton J dated 18 February 2020 Dame Elizabeth Gloster was appointed sole arbitrator in the reference. The French State did not appeal that order. Spain did defend the equivalent s.18 application, invoking immunity from suit and contending that it was not bound by the arbitration agreement in respect of the Club’s further claims against it and that the arbitrator had no jurisdiction to entertain claims for equitable compensation, damages under s.50 of the Senior Courts Act 1981 (i.e. Lord Cairns’ Act damages), or injunctive relief because such remedies were not available in law.

23. On 18 June 2020, Henshaw J dismissed Spain’s challenges, holding that Spain was bound to arbitrate and had no immunity in respect of the application and that there was a good arguable case in respect of the relief sought.⁶ By order dated 28 September 2020, Sir Peter Gross was appointed sole arbitrator in the reference. On 4 November 2021, the Court of Appeal dismissed an appeal by Spain against that order, and in so doing held that Sir Peter Gross had jurisdiction in respect of the reference, rejecting Spain’s plea of state immunity.⁷ Spain sought permission to appeal from the Court of Appeal on that question, which the Supreme Court refused. [97/2491](#)
24. In December 2020, the Club’s Brussels I Appeal was heard at a trial before Butcher J. On 21 December 2020, the Judge referred three questions to the CJEU on the interpretation of the Brussels I Regulation. The Court of Appeal held⁸ that the reference should not have been granted and an appeal from that decision was listed to be heard before the Supreme Court in June 2022. However, on 20 June 2022, the CJEU handed down judgment upon that reference with the result that the appeal to the Supreme Court was stayed (and later dismissed for being academic). The parties liaised to arrange a resumed hearing of the Brussels I Appeal before Butcher J, which was fixed for May 2023.
25. On 6 January 2023, Sir Peter Gross rendered his First Partial Award in the arbitration against Spain and held as follows:⁹ [14/365](#)
- 25.1. The Tribunal had jurisdiction in respect of the claims: [46]-[51]. [14/387](#)
- 25.2. The claims were governed by English law: [52]-[94]. [14/390](#)
- 25.3. The CJEU had not ruled on the question of whether Spain was bound to arbitrate its claims and, if necessary, the CJEU judgment was not binding on an English court or the Tribunal: [95]-[139], [141]. [14/410](#)

⁶ [2020] EWHC 1582 (Comm), [2020] 1 WLR 4943. [97/2491](#)

⁷ [2021] EWCA Civ 1589, [2022] 1 WLR 3434. [98/2546](#)

⁸ [2022] EWCA Civ 238, [2022] 4 WLR 39.

⁹ A summary of the arguments is at pp 5-9 of the First Partial Award.

- 25.4. Spain was in breach of its equitable obligation to arbitrate and the Tribunal would grant the declarations sought: [142]-[150]. 14/438
- 25.5. The Tribunal had power/jurisdiction to award equitable compensation in respect of Spain's breaches of its obligation to arbitrate: [151]-[185]. 14/442
- 25.6. The Tribunal rejected Spain's case that the Club caused its own loss or failed to mitigate by failing to appear in the Spanish Proceedings to seek a stay based on the arbitration agreement and/or to invoke the "pay to be paid" clause: [140], [186]-[226]. Based on the expert evidence: 14/437
14/457
- 25.6.1. An application for a stay of the proceedings in Spain based on the arbitration agreement would have been speculative at best and the Club could not be said to have acted unreasonably in not making such an application. It did not break the chain of causation or constitute a failure to mitigate: [140], [193]-[202], [221]-[226]. 14/436
14/461
14/472
- 25.6.2. The Club's defence based on the "pay to be paid" clause ought to have succeeded in Spain but there was a real risk it would not have done so. The Club did not act unreasonably in not appearing in the Spanish Proceedings in order to raise this defence. It neither broke the chain of causation nor amounted to a failure to mitigate: [203]-[220], [221]-[226]. 14/464
14/472
- 25.7. Spain's case that the losses would have been incurred in any event by reason of the CLC claims and/or the claims pursued by the Spanish Public Prosecutor was rejected: [227]-[262]. 14/474
- 25.8. Spain's defence that the Club's losses had to be reduced by reference to claims brought by other claimants or in respect of amounts to which Spain had been subrogated was rejected: [263]-[265]. 14/485
- 25.9. The Tribunal had power to render an injunctive award against a State and was not prevented from doing so by s.13 of the State Immunity Act 1978 (the "1978 Act") 34/912

- although it was not appropriate to do so as a matter of discretion: [266]-[293], [314]. 14/486
- 25.10. In the light of its power to grant an injunction, the Tribunal had power to award Lord Cairns' Act damages in lieu of an injunction, as well as the power to award equitable compensation: see paragraph 25.5 above. The Tribunal in its discretion would grant monetary compensation subject to the terms of the relief on which it would hear further argument: [294], [313]-[321]. 14/497
14/503
26. On 27 March 2023, Sir Peter Gross rendered his Second Partial Award setting out the formal terms of the relief he had decided to grant. 15/509
27. On 8 February 2023, Dame Elizabeth Gloster rendered her First Partial Award in the arbitration against the French State and held as follows: 16/515
- 27.1. The Tribunal had jurisdiction in respect of the claims: [57]-[62]. 16/541
- 27.2. The Club did not submit to the Spanish Proceedings and no question as to estoppel arising from the Spanish Judgment or waiver of the arbitration agreement arose: [63]-[81]. 16/548
- 27.3. In the event its defences on estoppel/waiver were rejected, the French State conceded that, in the event that the Tribunal was against it in relation to the arguments on submission and waiver, it made no separate submission to the effect that the declaratory relief sought by the Club was not appropriate or that there was no utility in such a declaration being made: [82]-[85]. 16/555
- 27.4. The Tribunal had power to award equitable compensation as a matter of law: [87]-[112]. The French State's argument that compensation could/should not be awarded in respect of a foreign judgment on liability was rejected: [113]-[115]. The Tribunal rejected the French State's argument that relief should not be granted on discretionary grounds, viz. that: (i) the Club should have sought a stay of the Spanish Proceedings; and/or (ii) that monetary relief could not be granted to neutralise a foreign judgment: [116]. The Tribunal had power to award such 16/557
16/586
16/589

compensation in the form of an indemnity and it was appropriate to do so as a matter of discretion: [117]-[148].

16/590

27.5. The Tribunal had power to render an injunctive award against a State and was not prevented from doing so by s.13 of the 1978 Act: [150]-[178]. It was appropriate to grant an anti-enforcement injunction as a matter of discretion and the Club was not guilty of any delay: [179]-[202].

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27.6. It was not necessary to decide whether Lord Cairns' Act damages should be awarded and the Tribunal declined to do so: [203]-[204].

16/635

28. On 2 May 2023, Dame Elizabeth Gloster rendered her Second Partial Award (together with her First Partial Award and the First and Second Partial Awards of Sir Peter Gross, the "**Awards**") setting out the formal terms of the relief she had decided to grant.

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29. The States each sought permission to appeal on one or more questions of law arising from the Awards under s.69 of the 1996 Act (the "**Spanish Arbitration Claim**" and the "**French Arbitration Claim**"). Spain sought permission to appeal to the High Court on four questions of law, as follows:

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"1. The Tribunal misinterpreted the binding determinations of EU law in the CJEU Judgment and failed to give effect to relevant EU law principles by finding it had no impact on Spain's alleged obligation to arbitrate, and no impact on any of the equitable relief sought by the Club. The Court should determine the following question of law in the Claimant's favour: "What is the proper interpretation and effect of the CJEU Judgment as a matter of EU and English law, in particular, as regards: (i) The jurisdiction of the arbitrator, (ii) Spain's alleged breach of its equitable obligation to arbitrate its direct action claims against the Club, and (iii) Spain's alleged liability for equitable and/or statutory relief?"

2. The Tribunal misdirected himself in law by deeming himself not bound by the CJEU's determinations of EU law in [54-73] of the CJEU Judgment. The Court should determine the following question of law in the Claimant's favour: "Whether the Tribunal was bound

(or the Court is bound) to give effect to the reasons and determinations of EU law in [53-74] of the CJEU Judgment?

3. The Tribunal erred by holding he had the jurisdiction and power to grant injunctive relief against Spain pursuant to s. 48(5) of the Arbitration Act 1996, despite s.13(2) of the State Immunity Act 1978 (“SIA”). The Court should determine the following question of law in the Claimant’s favour: “Whether the Tribunal had the jurisdiction and/or power pursuant to s.48 of the Arbitration Act 1996 to grant an injunction against Spain?”

4. The Tribunal erred by holding that a remedy of ‘equitable compensation’ was available generally when the case fell outside the types of case established by authority and when the power pursuant to s.50 of the Senior Courts Act 1981 is not available. The Court should determine the following question of law in the Claimant’s favour: “Does a tribunal or a court have jurisdiction to award ‘equitable compensation’ for breach of an ‘equitable obligation to arbitrate’ arising from the conditional benefit principle, when there is no power to grant injunctive or specific relief within s.50 of the Senior Courts Act, as applied by s.48(5) of the Arbitration Act?”

30. The Club filed a Respondent’s Notice under the procedure in CPR PD62 para 12.6 *inter alia* on the ground that Sir Peter Gross’ First Partial Award¹⁰ should be upheld for the further or alternative reason that, even if a court or arbitrator were precluded from granting injunctive relief against a State, a court (and therefore a tribunal) could have awarded monetary relief by way of Lord Cairns’ Act damages.
31. The question of permission to appeal was allocated to Butcher J to be determined on a rolled-up basis with any appeal should permission be granted together with the resumed hearing of the Club’s Brussels I Appeal. That hearing took place on 15-18 May 2023.
32. The French State filed an application under s.69 of the 1996 Act against the First and Second Partial Awards of Dame Elizabeth Gloster. It sought an extension of time (if

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¹⁰ Spain initially issued its Arbitration Claim Form following the issuance of the First Partial Award. With the Club’s consent, it amended the Claim Form to include a challenge to the Second Partial Award after that decision was issued.

required) in relation to the appeal against the First Partial Award and permission to appeal on four questions of law, as follows:

*“a. **Ground 1:** whether the arbitral tribunal has the power to grant an injunction against the French State under s.48(5) Arbitration Act 1996;*

*b. **Ground 2:** whether the arbitral tribunal has the power to award equitable compensation for breach of an equitable obligation to arbitrate arising by application of the conditional benefit principle, or whether equitable compensation is otherwise available in those circumstances;*

*c. **Ground 3:** whether an anti-enforcement injunction can be granted where its effect is to restrain enforcement of a foreign judgment which is granted recognition under English law; and*

*d. **Ground 4:** whether equitable compensation can be granted where its effect is to neutralise the effect of a foreign judgment which is granted recognition under English law.”*

33. The Club filed a Respondent’s Notice under the procedure in CPR PD62 para 12.6 *inter alia* on the ground that Dame Elizabeth Gloster’s First and Second Partial Awards should be upheld for the further or alternative reason that the tribunal could have awarded monetary relief by way of Lord Cairns’ Act damages and (if appropriate) the matter should be remitted to her to decide whether to award such relief, because: (i) the Tribunal had power to grant an injunction against a State and therefore had power to award Lord Cairns’ Act damages; and/or (ii) even if a court or arbitrator were precluded from granting injunctive relief against a State, a court (and therefore a tribunal) could have awarded monetary relief by way of Lord Cairns’ Act damages.
34. These applications also came before Butcher J and were heard on a rolled-up basis on 8-9 August 2023 after Spain’s application had been heard but before judgment had been given.

35. On 6 October 2023, the Judge handed down two judgments, the first on the Brussels I Appeal and the Spanish Arbitration Claim that had been heard in May 2023 (the “**Butcher Spain Judgment**”)¹¹, and a shorter judgment on the French Arbitration Claim that had been heard in August 2023 (the “**Butcher France Judgment**”).¹²

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13/337

III. RECORD OF HOW THE COURTS BELOW DECIDED THE ISSUES

36. At first instance below, in the Butcher Spain Judgment, the Judge:

36.1. Allowed the Brussels I Appeal and set aside the Registration Order: [83]-[296].

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36.2. Granted Spain permission to appeal in part on Ground 1 (on the impact of the CJEU Judgment on the questions of whether Spain was bound to arbitrate its claims or liable to the Club, but not on the question of whether it deprived Sir Peter Gross of jurisdiction) and granted permission to appeal on Ground 2 (whether the arbitrator was bound by the Judgment of the CJEU) but dismissed both grounds: [305]-[314].

12/323

36.3. Granted Spain permission to appeal on Ground 3 and allowed the appeal. The Judge held that in the absence of agreement an arbitrator seated under the 1996 Act had no power to render an injunctive award against a State: [338]-[363].

12/330

36.4. Held that he did not need to address the Club’s Respondent’s Notice point but said that he would not have accepted it. In his view, a court did not have power to grant Lord Cairns’ Act damages against a State: [364]-[367].

12/335

36.5. Granted Spain permission to appeal on Ground 4 but dismissed the appeal. The Judge held that Sir Peter Gross had power/jurisdiction to award equitable compensation for breach of an equitable obligation to arbitrate in a case of conditional benefit: [323]-[337].

12/326

37. At first instance below, in the Butcher France Judgment, the Judge:

¹¹ [2023] EWHC 2473 (Comm), [2024] 1 WLR 2331.

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¹² [2023] EWHC 2474 (Comm), [2024] 2 All ER (Comm) 175.

13/337

- 37.1. Held that the French State required an extension of time: [15]-[22]. 13/345
- 37.2. Allowed the French State an extension of time in respect of Grounds 1 and 2 (whether the arbitrator had jurisdiction/power to award injunctive relief or equitable compensation): [23]-[41]. 13/347
- 37.3. Allowed the appeal in respect of Ground 1 (injunctive relief): [44]-[56]. 13/355
- 37.4. Dismissed the appeal in respect of Ground 2 (equitable compensation): [57]-[70]. 13/358
- 37.5. Held that he did not need to address the Club's Respondent's Notice point (whether Lord Cairns' Act damages could be awarded): [71]. 13/361
- 37.6. Refused the French State an extension of time in respect of both Ground 3 (whether an anti-enforcement injunction can be granted where its effect is to restrain enforcement of a foreign judgment which is granted recognition under English law) and Ground 4 (whether equitable compensation can be granted where its effect is to neutralise the effect of a foreign judgment which is granted recognition under English law). The Judge held that the decision of Dame Elizabeth Gloster was not open to serious doubt such that he would not have granted permission to appeal to the High Court and therefore would not grant an extension of time for an appeal that was bound to fail: [23]-[43], [72]-[83]. 13/349
13/361
38. From his decision, the Judge granted:
- 38.1. Spain permission to appeal to the Court of Appeal in respect of the Brussels I Appeal.
- 38.2. The States permission to appeal to the Court of Appeal under s.69(8) of the 1996 Act on the question of equitable compensation.
- 38.3. The Club permission to appeal to the Court of Appeal under s.69(8) of the 1996 Act on the questions of injunctive relief and Lord Cairns' Act damages.

39. The States filed Appeals and the Club filed Respondents' Notices and (in relation to injunctive relief against the French State) a Cross-Appeal in relation to the arbitration matters. These were heard (along with Spain's Appeal in the Brussels I Appeal) together from 29 October to 1 November and 4-6 November 2024.

40. In relation to the question of equitable compensation, a question arose on the Appeals as to the scope of the question of law before the Court under s.69 of the 1996 Act. The Club submitted that the question of law was confined to the question of whether there was jurisdiction/power to award equitable compensation for breach of an equitable obligation to arbitrate in a case of conditional benefit and that no permission to appeal had been granted to the High Court on any other question of law or in respect of the exercise of the arbitrators' discretion. The States submitted, *inter alia*, that the fact that their respective Grounds of Appeal referred to "the circumstances of the case" permitted such circumstances to be taken into account.

41. On 12 December 2024, the Court of Appeal handed down its judgment.¹³ The Court of Appeal held that: 7/153

41.1. In respect of the Brussels I Appeal, in disagreement with the Judge, the CJEU's judgment was binding on the English Court in respect of the question of whether the S.66 Judgment against Spain could be relied upon as an inconsistent judgment precluding enforcement of the Spanish Judgment in England under Art 34(3) of the Brussels I Regulation. However, in agreement with the Judge, the Spanish Judgment could not be registered in England and Wales under Art 34(1) of the Regulation because it was contrary to English public policy by reason of a *res judicata* arising from the Schaff Award against Spain, the question under Art 34(1) not being one the CJEU had decided: [109]-[164]. Spain's Appeal was therefore dismissed.

41.2. The arbitrators had no jurisdiction/power under the 1996 Act to award injunctive relief against the States: [165]-[172], [193]-[198] (Sir Geoffrey Vos MR) and [238]

¹³ [2024] EWCA Civ 1536, [2025] 1 WLR 3011.

(Andrews and Falk LJJ). The Club's Respondent's Notice points on that topic and Cross-Appeal were dismissed.

41.3. The arbitrators had no jurisdiction/power to award Lord Cairns' Act damages against the States: [165]-[172], [185]-[191], [199]-[204], [237] (Sir Geoffrey Vos MR) and [238], [250]-[269] (Andrews and Falk LJJ). The Club's Respondent's Notice points on that topic were dismissed.

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7/200
7/203
7/212
7/214

41.4. The arbitrators had no jurisdiction/power to award equitable compensation: (i) at all, in a case where neither an injunction nor Lord Cairns' Act damages were available; or (ii) on the facts of this case: [165]-[184], [205]-[224], [237] (Sir Geoffrey Vos MR) and [238], [250]-[269] (Andrews and Falk LJJ). The States' Appeals to that extent were allowed and the monetary awards of the arbitrators in each reference were set aside. The Club contends that the Court of Appeal did not address the Club's submissions as to the confined scope of the Appeals and that the Court of Appeal exceeded its statutory remit in a number of respects under s.69 of the 1996 Act.

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7/205
7/212
7/214

IV. ISSUES FOR THE SUPREME COURT TO DECIDE

42. Spain sought permission to appeal to the Supreme Court in respect of the Brussels I Appeal. Permission to appeal was refused on the ground that the Supreme Court had no jurisdiction to entertain a second appeal: Order dated 6 May 2025 (UKSC/2025/0031).

43. The Club sought permission to appeal to the Supreme Court in respect of the availability of Lord Cairns' Act damages (Ground 1), in respect of the jurisdiction/power to award equitable compensation for breach of an equitable obligation to arbitrate in a case of conditional benefit (Ground 2), whether the Court of Appeal exceeded the statutory limits of the scope of the Appeals under s.69 of the 1996 Act (Ground 3), and in respect of the jurisdiction/power to award injunctive relief (Ground 4). The Club was granted permission to appeal on Grounds 2 and 3 and was refused permission to appeal on Grounds 1 and 4 on the basis these did not disclose arguable questions of law: Order dated 2 May 2025 (signed 6 May 2025) (UKSC/2025/0034).

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44. In the result, the Club has permission to appeal on the following two issues:
- 44.1. Ground 2: whether the Court of Appeal erred in concluding that a court or tribunal in an *ad hoc* arbitration seated in London under the 1996 Act had no jurisdiction or power to award equitable compensation for breach of an equitable obligation to arbitrate in a case of conditional benefit against a State.
- 44.2. Ground 3: whether the Court of Appeal erred in exceeding the statutory limits of the scope of the appeal under s.69 of the 1996 Act.
45. If the Appeal is allowed, the Club invites the Supreme Court to vary the Order of the Court of Appeal so as to restore the Order of Butcher J who dismissed the States' respective appeals to the High Court under s.69 of the 1996 Act in respect of the monetary awards granted by the arbitrators.
46. The States oppose the restoration of the Order of Butcher J and will invite the Supreme Court to uphold the Order of the Court of Appeal.

V. CHRONOLOGY

47. A chronology in tabular form is provided in Annex A to this document.

Signed by Counsel for all parties:

[REDACTED]

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Twenty Essex

For the Club

[REDACTED]

THOMAS DE LA MARE KC

Blackstone Chambers

For the Club

[REDACTED]

CHARLOTTE TAN

Brick Court Chambers

For the Club

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ALEXANDER THOMPSON

Twenty Essex

For the Club

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.....

ANNA DILNOT KC

Essex Court Chambers

For the Kingdom of Spain and the French State

[REDACTED]

.....

NAOMI HART

Essex Court Chambers

For the Kingdom of Spain and the French State

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM:
COURT OF APPEAL OF ENGLAND AND WALES (CIVIL DIVISION)

BETWEEN:

Court of Appeal Ref: CA-2024-000180

**THE LONDON STEAM-SHIP OWNERS’
MUTUAL INSURANCE ASSOCIATION LIMITED**

Appellant

-and-

THE KINGDOM OF SPAIN

Respondent

AND BETWEEN:

Court of Appeal Ref: CA-2024-000182

**THE LONDON STEAM-SHIP OWNERS’
MUTUAL INSURANCE ASSOCIATION LIMITED**

Appellant

-and-

THE FRENCH STATE

Respondent

"M/T PRESTIGE"

ANNEX A
TO THE STATEMENT OF FACTS AND ISSUES
CHRONOLOGY

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
20 February 2002	Certificate of Entry.				
19 November 2002	Loss of the Vessel.				
19 November 2002	Corcubión Investigation Court No.2 commenced Preliminary Investigation (i.e. commencement of criminal proceedings) in response to complaint of 16 November 2002 (jurisdiction subsequently refused in favour of Corcubión Investigation Court No. 1).				
28 May 2003	Club constituted the CLC Fund (€22,777,986).				

¹ Comprising relevant dates in the Kingdom of Spain (“**Spain**”)’s application to enforce against the Club in England the Order of the Provincial Court dated 1 March 2019, including the preliminary reference to the CJEU.

² Comprising relevant dates in the first arbitration against Spain and the prior English court proceedings (s.66 and ss.67/72 applications) (the “**First Spanish Arbitration**”); and the second arbitration against Spain and court proceedings relating to this arbitration (the “**Second Spanish Arbitration**”).

³ Comprising relevant dates in the first arbitration against the French State and the prior English court proceedings (s.66 and ss.67/72 applications) (the “**First French Arbitration**”); and the second arbitration against the French State and court proceedings relating to this arbitration (the “**Second French Arbitration**”).

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
5 May 2010	Corcuación Investigation Court No. 1 declared investigative stage of the case concluded and ordered the Public Prosecutor and private parties to file accusation pleadings, requesting the opening of the next stage of proceedings (i.e. the oral proceedings).				
2, 7 June 2010	The Public Prosecutor and Spanish State Lawyer filed accusation pleadings in respect of criminal charges against the Master for serious negligence against the environment under Art 325, 331 of the Spanish Penal Code (“CP”) and disobedience to the Spanish authorities; as well as civil claims against the Master for civil liability arising from a criminal offence under Art 116 CP; the Owners as vicariously liable for the loss of the Master (their employee) under Art 120.4 CP; and the Club as liable for the loss of the Owners (their assured) under Art 117 CP.				

Date	Spanish Proceedings	Brussels I Enforcement Proceedings ¹	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
9 June 2010	The French State filed its accusation pleading including civil claims against the Master, the Owners, and the Club.			
30 July 2010	Corcuación Investigation Court No. 1 declared oral proceedings stage open and that a public trial of the criminal and civil claims was to take place before the Audiencia Provincial of La Coruña (the “ Provincial Court ”). The court ordered service of the accusation writs on the defendants.			
24 June 2011	Civil claims were served on the Club by letter rogatory.			
28 November 2011	Criminal proceedings were transferred from Corcuación court to the Provincial Court.			
16 January 2012			Club commenced London arbitration proceedings by Notice of Arbitration dated 16 January 2012.	Club commenced London arbitration proceedings by Notice of Arbitration dated 16 January 2012.
27 July 2012			Club obtained an Order of Christopher Clarke J, ordering appointment of Alistair Schaff QC as sole arbitrator.	
16 October 2012	Trial commenced in the Provincial Court.			

Date	Spanish Proceedings	Brussels I Proceedings ¹	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
15 and 17 January 2013			Hearing of the Club's arbitration claims before Alistair Schaff QC. Spain did not participate.	
5 February 2013				Hearing of Club's s.18 AA 1996 application. The French State did not attend hearing. Christopher Clarke J ordered appointment of Alistair Schaff QC as sole arbitrator.
13 February 2013			Alistair Schaff QC rendered his Award.	
14 March 2013			Club issued s.66 AA 1996 arbitration claim form and documents served on Spain.	
10 June 2013				Hearing of the Club's arbitration claims before the Tribunal. The French State did not participate.
3 July 2013				Alistair Schaff QC rendered his Award.
9 July 2013				Club issued s.66 AA 1996 arbitration claim form and application for permission to serve out of the jurisdiction.
10 July 2013	Trial ended.			

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
2 August 2013					S.66 application and documents served on French State.
5 August 2013				Spain issued arbitration claim form seeking relief under ss.67/72 AA 1996 and declarations that Spain is not bound to arbitrate its civil claims against the Club.	
19 August 2013					French State issued arbitration claim form seeking relief under ss.67/72 AA 1996 and declarations that Spain is not bound to arbitrate its civil claims against the Club.
3-4, 7-10, 14 October 2013				Trial of the Club's and the States' applications under AA 1996 heard together before Hamblen J.	
22 October 2013				Hamblen J judgment and order granting the Club's s.66 application and dismissing the States' ss. 67/72 applications.	
13 November 2013 (amended by an error correction ruling dated 20 December 2013)	Provincial Court acquitted the Master of the crime of serious negligence against the environment but convicted him of the crime of disobedience. None of the defendants were found civilly liable.				

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
13 December 2013				States appealed against orders of Hamblen J dated 22 October 2013.	
June 2014	Appellant parties (including Master, Public Prosecutor, Spain and French State) filed appeal submissions on appeal before Supreme Court appeal (in respect of liability).				
5 December 2014	Appellant parties (including Master and Public Prosecutor) filed rebuttal submissions in Supreme Court appeal (liability).				
20-22 January 2015				Court of Appeal hearing from Hamblen J's orders.	
1 April 2015				Court of Appeal judgment and order dismissing the States' appeals.	
29 September 2015	Supreme Court hearing on appeal from Provincial Court judgment (liability).				
26 January 2016	Supreme Court handed down judgment in respect of the cassation appeal (liability) (judgment dated 14 January 2016).				

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
11 February 2016	Proceedings remitted to Provincial Court to determine quantum in respect of the civil claims upheld on appeal.				
10 June 2016	French State filed a pleading in the quantum proceedings before the Provincial Court seeking c €67.5m damages.				
5 July 2016	Public Prosecutor filed a pleading in the quantum proceedings seeking €4,328,130,000 damages for Spain.				
7 July 2016	Spanish State Lawyer filed a pleading in the quantum proceedings seeking damages of c. €2,143,477,768.				
23 January 2017	Club was served with the Supreme Court liability judgment.				
18/21 April 2017				Club sent first notice of arbitration to Spain and the French State's English solicitors (K&L Gates LLP), the Spanish State Lawyer's office and the French State's Spanish lawyers requesting that Spain and the French State withdraw the non-CLC claims being pursued in Spain contrary to the obligations declared in the Awards and the judgment and orders of Hamblen J, failing which the Club indicated its intention to commence further arbitration proceedings against Spain and the French State seeking to recover its losses and invited Spain and the French State to agree to the appointment of an arbitrator.	

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
21 April 2017	Club filed (under protest and reservation of rights) notice of appearance in Spain opposing claims in the Provincial Court quantum proceedings.				
15 November 2017	Provincial Court quantum judgment awarded Spain €1,573,622,827.92 and the French State c. €61m, subject (in the case of the Club) to the global limit of \$1bn in the Contract of Insurance.				
22, 23 November 2017; 16, 18, 19 January 2018	Appellant parties (including Public Prosecutor, Owners, Master, Club, the Spanish State Lawyer, and French State) filed appeals against Provincial Court quantum judgment to the Supreme Court.				
19 December 2018	Supreme Court quantum judgment allowed appeals in part and increased award in favour of French State to c. €67.5m, reduced the award of damages in favour of Spain to €1,441,562,989.33, and maintained the Club's \$1bn limit of liability.				

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
2 January 2019	Spanish State Lawyer applied to the Provincial Court for <i>ejecución</i> (enforcement) of the Spanish judgments and orders dated 15 November 2017, 11 January 2018 and 19 December 2018. Spain sought enforcement in the total sum of €2,353,127,858.57.				
8/9 January 2019				Club served second notice of arbitration on Spain.	
8/11/14 January 2019					Club served second notice of arbitration on French State.
21 January 2019	Supreme Court clarification order in respect of the judgment dated 19 December 2018 (quantum).				
29 January 2019	French State applied for <i>ejecución</i> (enforcement) of the Provincial Court quantum judgment and clarification order and Supreme Court quantum judgment, seeking enforcement in the sum of c €90m (plus costs), subject in the case of the Club to the global limit of \$1bn in the Contract of Insurance.				

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
1 February 2019	Spain amended the amount it sought to enforce to €2,355,015,655.69.				
1 March 2019	Provincial Court execution order declared Spain entitled to seek enforcement of up to €2,355,015,655.69 and French State entitled to seek enforcement in the sum of c €117m (being c €90m and costs), subject in the case of the Club to the insurance policy limit of \$1bn, which the Court declared to be a global limit in the sum of c €855m (being the Euro equivalent of US\$1bn, less the CLC Fund of c €23m) (the “Spanish Judgment”).				
22 March 2019				Club issued arbitration claim form seeking appointment of a sole arbitrator pursuant to s.18 AA 1996.	
25 March 2019					Club issued arbitration claim form seeking appointment of a sole arbitrator pursuant to s.18 AA 1996.

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
26 March 2019		Spain issued <i>ex parte</i> application to register the Execution Order in the Queen's Bench Division pursuant to the Brussels I Regulation.			
8 April 2019				Knowles J Order granting permission to serve s.18 application out of the jurisdiction on Spain.	
28 May 2019		Order of Master Cook registering the Execution Order in the Queen's Bench Division (the " Registration Order ").			
26 June 2019		Club issued appeal proceedings pursuant to Art 43 of the Brussels I Regulation and CPR Part 52 seeking to set aside the Registration Order (the " Brussels I Appeal ").			
14 February 2020					Foxton J heard and granted Club's s.18 AA application for appointment of Dame Elizabeth Gloster as sole arbitrator.

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
20 February, 28-30 April 2020				Hearing before Henshaw J in respect of Club's s. 18 application and Spain's Part 11 Application based <i>inter alia</i> on state immunity and that the arbitrator would lack jurisdiction.	
18 June 2020				Judgment of Henshaw J dismissing Spain's Part 11 Application and granting the Club's s.18 application.	
29 September 2020				Order of Henshaw J dismissing jurisdiction challenge and appointing Sir Peter Gross as sole arbitrator.	
3 November 2020		Spain issued application seeking Preliminary Reference of 6 questions to the CJEU to be determined at the trial of the Club's appeal. against the Registration Order.			
9 November 2020	Provincial Court of Coruña issued an order that a Brussels I enforcement certificate should be issued to the French State.				

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
2-17 December 2020		Trial before Butcher J of Club's appeal against the Registration Order. On 17 December, Butcher J gave <i>ex tempore</i> judgment by which he decided to refer three questions concerning the interpretation of Art 34 of the Brussels I Regulation to the CJEU.		
21 December 2020		Order of Butcher J (" Order for Reference ") referring three questions to the CJEU for a preliminary ruling (the " Reference ").		
25 January 2021			Order of Males LJ granting Spain permission to appeal against the order of Henshaw J.	
6-8 and 19-22 July 2021				Hearing of Club's claims before Dame Elizabeth Gloster.
14-17 September 2021			Hearing before Sir Peter Gross comprising openings and expert evidence (continued on 25-28 January 2022).	
11-15 October 2021			Court of Appeal hearing in respect of Spain's appeal against order of Henshaw J.	

Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³	
4 November 2021				Court of Appeal judgment dismissing Spain's appeal against the order of Henshaw J.		98/2546
25-28 January 2022				Resumed hearing of arbitration before Sir Peter Gross comprising closings/legal argument.		
20 June 2022		Judgment of the CJEU.				113/2891
28 October 2022				Supreme Court refused Spain permission to appeal from the order of Henshaw J.		
6 January 2023				Sir Peter Gross issued First Partial Award in the Second Spanish Arbitration.		14/365
3 February 2023				Spain filed arbitration claim form challenging the First Partial Award of Sir Peter Gross pursuant to ss. 67, 68, and 69 AA 1996 (the " Spanish Arbitration Claims ").		23/790
8 February 2023					Dame Elizabeth Gloster issued First Partial Award in the Second French Arbitration.	16/515
27 March 2023				Sir Peter Gross issued Second Partial Award.		15/509

Date	Spanish Proceedings	Brussels I Enforcement Proceedings¹	Spanish Arbitrations/Related Court Proceedings²	French Arbitrations/Related Court Proceedings³
2 May 2023				Dame Elizabeth Gloster issued Second Partial Award.
15-18 May 2023		Combined hearing before Butcher J (continuation of the hearing in the Brussels I Appeal following the Reference and hearing of the Spanish Arbitration Claims).		
30 May 2023				French State filed arbitration claim form seeking extension of time to appeal and appealing the Awards of Dame Elizabeth Gloster pursuant to s. 69 AA 1996 (the “ French Arbitration Claims ”).
8-9 August 2023				Hearing before Butcher J in relation to the French Arbitration Claims.
6 October 2023		Butcher J handed down judgments in relation to the Brussels I Appeal, the Spanish Arbitration Claims and the French Arbitration Claims.		
15 December 2023		Orders of Butcher J.		
19 December 2023		Permission to appeal judgment of Butcher J.		
26, 29 January 2024		States filed Appeal Notices against the Orders of Butcher J dated 15 December 2023.		
16 March 2024		Club filed Respondent’s Notices and Cross-Appeal Notice.		
29 October to 1 November, 4-6 November 2024		Court of Appeal hearing.		
12 December 2024		Judgment of the Court of Appeal.		

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Date	Spanish Proceedings	Brussels I Proceedings ¹	Enforcement	Spanish Arbitrations/Related Court Proceedings ²	French Arbitrations/Related Court Proceedings ³
22 January 2025		Order of the Court of Appeal.			
2/6 May 2025		Order of the Supreme Court dated 6 May 2025 refusing Spain permission to appeal in respect of the Brussels I Appeal. Order of the Supreme Court dated 2 May (signed 6 May 2025) granting the Club permission to appeal (in part) in respect of the Spanish Arbitration Claims and the French Arbitration Claims.			

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