



Press Summary

28 October 2026

The Kingdom of Spain and another (Respondents) v The London Steam-Ship Owners' Mutual Insurance Association Limited (Appellant) No 2

[2026] UKSC 36

On appeal from: [2024] EWCA Civ 1536

Justices: Lord Lloyd-Jones, Lord Leggatt, Lord Burrows, Lord Doherty and Lord Snowden

Background to the Appeal

This case has its origin in an environmental disaster. In November 2002, an oil tanker called “Prestige” was damaged in a storm and sank off the Spanish coast. This caused widespread pollution damage to the Spanish and French coastlines.

The appellant (the “**Club**”) is an association which provides insurance for its members against third-party liabilities. At the relevant time, the Club insured the owners of the Prestige under an insurance contract. This contract contained an arbitration clause requiring disputes to be referred to London arbitration under English law.

Article 117 of the Spanish Penal Code 1995 gives third parties a direct right of action against insurers of liabilities arising from an insured event. Spain and France (the “**States**”) brought proceedings against the Club under article 117 (the “**Spanish proceedings**”). They obtained judgment in their favour in March 2019 (the “**Spanish judgment**”).

Meanwhile, the Club commenced London arbitration proceedings against each State. Applying English conflict of laws rules, the arbitrator characterised the States’ direct claims under the Spanish statute as contractual claims deriving from the insurance contract. The conditional benefit principle in English law states that a third party taking the benefit of a contract must also take related obligations. By bringing proceedings against the Club, the States therefore became bound by, and breached, the arbitration clause in the insurance contract. The arbitrator found that the Club was not liable to the States because the owners of the Prestige had not paid their members’ liabilities as required by ‘pay to be paid’ clauses in the contract.

The Club was granted permission by the High Court to enforce these arbitration awards as judgments, and the States’ appeals from that decision to the Court of Appeal were dismissed.

The Club later commenced further London arbitrations against the States, alleging that the States had pursued the Spanish proceedings and obtained the Spanish judgment in breach of their obligations to arbitrate. The arbitrators awarded declaratory, monetary and (against France) injunctive remedies. The States appealed these arbitration awards to the High Court, which upheld the “equitable compensation” awards. The Court of Appeal allowed the States’ appeal, finding that monetary remedies should not have been awarded because there was no power to award equitable compensation. The Club now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. A third party bringing proceedings under the conditional benefit principle, contrary to a contractual obligation to arbitrate, breaches a contractual (and therefore common law) obligation rather than an equitable obligation. The appropriate remedy is therefore common law damages for breach of contract, not equitable compensation for an equitable wrong. But the monetary compensation awarded by the arbitrators was justified as awards of common law damages. Lord Leggatt and Lord Burrows give the judgment, with which the other members of the Court agree.

Reasons for the Judgment

The Court of Appeal held that there is no power to award equitable compensation against a state for breach of an equitable obligation to arbitrate. This assumes that the obligation to arbitrate arises in equity, rather than in common law [40]. There are important consequences that flow from this distinction. For example, equitable compensation is discretionary and is subject to defences which do not directly apply to common law damages [44].

The conditional benefit principle operates equally in situations governed by the common law and equity [52]. The principle dictates that a third party who takes the benefit of the contract should be under the same obligation as the original party. That means that the obligation must retain its original character as legal or equitable and the remedies available for a breach should be the same [60].

In this case, the conditional benefit principle treats the third party (each of the States) as a party to the insurance contract for the purposes of the arbitration clause. Therefore, a breach of the obligation to arbitrate is a breach of a contractual obligation [61]. So, the Court of Appeal’s judgment is mistaken in assuming that the obligation to arbitrate is an equitable obligation attracting an equitable remedy. Rather, the obligation is a contractual one attracting common law damages [65].

The mistaken assumption can be traced back to the judgment of Hobhouse LJ in *Shiffahrtsgesellschaft Detlev von Appen GmbH v Voest Alpine International GmbH* [1997] 2 Lloyd’s Rep 279 [68]. Several subsequent cases misunderstood this judgment and proceeded on the same incorrect premise [82]-[98].

The mistaken assumption affected how this case was analysed by both the parties and the Court of Appeal. But some of the Court of Appeal’s reasons for holding that there was no power to award equitable compensation would, if valid, apply equally to a claim for damages for breach of a contractual obligation. The Court addresses each of the Court of Appeal’s four reasons in turn [101].

The first reason was that the obligations that arise in conditional benefit cases are solely of a negative or defensive kind and cannot found a claim to be paid money [102]. The Court disagrees, since there is no principled basis for excluding monetary relief [103]. There is also case law showing that the conditional benefit principle can found a claim for such positive relief [106].

The Court of Appeal's second reason was based on its analysis of section 50 of the Senior Courts Act 1981 ("**section 50**") [110]. This gives a court with jurisdiction to award an injunction or specific performance the power to award damages in substitution for those remedies ("**equitable damages**"). Here the Court of Appeal held that, because an injunction cannot be granted against a state, there is therefore no power under section 50 to award equitable damages against the States [113]. This precludes a claim for equitable damages in substitution for an injunction to restrain future breaches of the obligation to arbitrate [114]. But that still leaves the possibility of the tribunal awarding compensation for future losses likely to result from past breaches of that obligation. This possibility is not affected by the availability (or not) of equitable damages under section 50 [115].

The Court of Appeal's third reason was that the Club's losses were not - and in the future would not be - caused by the States' breaches of the obligation to arbitrate. Rather, their sole cause is the fact that the Spanish courts did not apply the insurance contract's 'pay to be paid' clause, which made payment of members' liabilities a condition precedent to their right of recovery [117]. This is not a convincing argument and in any case was not a permissible ground for interference with the arbitrators' awards as it was not within the scope of the arbitration appeals [118], [121]-[124].

The Court of Appeal's fourth reason relied on considerations of international comity to suggest that the awards interfered with the enforcement of a foreign judgment in other jurisdictions [125]. As with the third reason, the Court of Appeal should not have considered this question at all, since it was not within the scope of the arbitration appeals. The States did not argue this point in the arbitration, the arbitrator was not asked to determine it, and it is not one for which the States sought, or were granted, permission to appeal, or which the High Court decided on the appeal [127]-[129].

The Court therefore concludes that none of the reasons given by the Court of Appeal and relied on by the States justifies allowing the States' appeals from the arbitrators' monetary awards [132]. The critical question is whether, if the Club's claim had been correctly framed as a claim in contract, the arbitrators might have refused some or all of the relief which was challenged on the States' appeal. If so, the awards should be remitted. If not, the awards should be confirmed [146].

The arbitrators awarded compensation for future as well as past losses. Outside section 50, monetary compensation cannot be awarded in respect of future wrongs [149]. But the arbitrators ordered compensation to be paid if, and when, loss arises in the future from breaches of contract which have already occurred. There is authority - and it is not disputed by the States - that there is power to make such a conditional award of damages, and there is no convincing reason of principle or policy for denying such a conditional award in a case such as this [150]-[151]. The Court concludes that there is no warrant for remitting the awards to the arbitrators to reconsider the relief granted [154].

The Court therefore allows the appeal and confirms the awards, subject to amendments clarifying the legal rather than equitable basis on which the monetary relief is upheld.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)