

## Anti-Suit Injunctions: *West Tankers Sails On*

Enforcement of Arbitration Agreements and Awards  
- Harmonization or Divergence?

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WILMER CUTLER PICKERING HALE AND DORR LLP 

### West Tankers: Headlines

- “West Tankers: end of the anti-suit in Europe?” “[A] weapon in enforcing arbitration agreements could soon be lost.”
- “The end of anti-suit injunctions within the European Union?”
- “ECJ in West Tanker Shocker: London Anti-suit Injunctions Fall Foul of EC Law.”



## West Tankers: Feared Effect

- "... **final nail in the coffin** of anti-suit injunctions in Europe..."
- "... **cornerstone to a "perverse situation"** where the ECJ will promote a broken system."
- "... **kiss of death** for anti-suit injunctions issued by EU Member States ...."



## Post West Tankers: EU Law Reform

- Brussels I and Arbitration Exception
- Separate expert group constituted on arbitration (3 meetings in July, September and October 2010)
- Many stakeholders "recognised a problem and supported future action"
- Several arbitral associations concerned about impact on leading role of European arbitration centres world-wide

## Post West Tankers: EU Law Reform

### Commission's Legislative Proposal

- Published on 14/12/2010
- If adopted, the Regulation would not apply to arbitration, save in the limited case provided for therein.
- In particular, it would not apply to the form, existence, validity or effects of arbitration agreements, the powers of the arbitrators, the procedure before arbitral tribunals, and the validity, annulment, and recognition and enforcement of arbitral awards.

(Recital (11))

## Post West Tankers: EU Law Reform

### Article 29(4)

“Where the *agreed or designated* seat of an arbitration is in a Member State, the courts of another Member State whose jurisdiction is contested on the basis of an arbitration agreement shall stay proceedings *once the courts of the Member State where the seat of the arbitration is located* or the arbitral tribunal have been seized of proceedings to determine, as their main object or as an incidental question, the existence, validity or effects of that arbitration agreement.”



## Post West Tankers: EU Law Reform

### Parliament's Committee on Legal Affairs' Draft European Parliament Legislative Resolution

28/06/2011

- Does not follow Commission's Proposal
- Draft Resolution proposes that "*all aspect of arbitration must be clearly and unambiguously excluded from the scope of the Regulation.*"
- If adopted, appears to return pre-West Tankers era of anti-suit injunctions
- First plenary reading of the Parliament scheduled 2/07/2012



## Post West Tankers: English Anti-Suit

### English cases on anti-suit injunctions / stay of proceedings

- **2007** – 8 reported cases
  - 6 granted (1 with EU parties)
  - 1 rejected (with non-EU party)
  - 1 referral to the ECJ (West Tankers itself)
- **2008** – 8 reported cases
  - 4 granted (2 involved non-EU party; 2 with UK parties)
  - 4 rejected (1 with UK parties, 3 with non-EU party)
- **2009** – 9 reported cases
  - 3 granted (2 with non-EU party; 1 with UK parties)
  - 6 rejected (3 with non-EU party, 1 with EU party; 2 with UK parties)

## Post West Tankers: English Anti-Suit

### English cases on anti-suit injunctions / stay of proceedings

- **2010** – 7 reported cases
  - 5 granted (1 reversed in 2012)
  - 2 rejected
- **2011** – 8 reported cases
  - 6 granted (1 set aside in 2012)
  - 1 rejected
- **2012** – 1 case so far concerned anti-suit injunction which was granted

## Post West Tankers: English Anti-Suit

- *Claxton Engineering Services Ltd v TXM Olaj-ES Gazkutato KTF* [2011] EWHC 345 (Comm)
- *Claxton Engineering Services Ltd v TXM Olaj-Es Gazkutato KFT* [2010] EWHC 2567 (Comm)
- *National Navigation Co v Endesa Generacion SA* [2009] EWCA Civ 1397 (Transcript)

## West Tankers Sailed On



## West Tankers Sailed On ...

- *West Tankers Inc v Allianz SPA & Anor* [2012] EWCA Civ 27 (24 January 2012)
- *African Fertilisers and Chemicals NIG Limited v BD Shipnavo GMBH and Co Reederikg KG (the Christian D)* [2011] EWHC 2452 (Comm)



## And On.

- *West Tankers Inc v Allianz SpA & Anor* [2012] EWHC 854 (Comm)
  - *Flaux J allowed appeal*
  - *“the tribunal was not deprived, by reason of European law, of the jurisdiction to award equitable damages for breach of the obligation to arbitrate.”*