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June 07, 2025

Palmali Shipping SA v Litasco SA [2025] EWHC 1149 (Comm) (23 May 2025) — Contract Sinks as Swiss Law Torpedoes Authority, Ratification, and $120M Claim

Palmali Shipping SA v Litasco SA [2025] EWHC 1149 (Comm)

Date: 23 May 2025

Judge: His Honour Judge Pelling KC

Key Words:

Arbitration, Enforcement, Conflict of Interest, Public Policy, Jurisdiction, Binding Intent, Charterparty, Lugano Convention, Indemnity, International Enforcement, Swiss PILA, Contract of Affreightment, Authority, Ratification, Swiss Law, English Law, Exclusive Jurisdiction, Estoppel, Waiver, Set-Off, Cargo Obligations, Commercial Contract, Liability, Evidential Burden, Contemporaneous Documents, Credibility of Witnesses, Maritime Transport

Summary

This judgment, delivered by HH Judge Pelling KC in the Commercial Court, resolved liability issues in two linked claims between Palmali Shipping SA (PSSA) and Litasco SA (LSA). The primary dispute concerned the enforceability and effect of a 2005 Contract of Affreightment (CoA), by which PSSA alleged it had an exclusive right to transport Lukoil's oil products for 10 years, extended to 15 years in 2010. PSSA claimed LSA breached this agreement, seeking damages of approximately US$120 million.

LSA denied the CoA was binding, arguing it was procured through a corrupt relationship between its then-CEO Mr Golovushkin and PSSA's owner Mr Mansimov, leading to a serious conflict of interest. It asserted the CoA was void under Swiss law and not subsequently ratified under English law. The judgment conducted detailed analysis of the facts and expert evidence on both Swiss and English legal principles, including authority, ratification, conflict of interest, and the credibility of key witnesses.

The court found Mr Golovushkin acted under a serious conflict of interest and that PSSA, through Mr Mansimov, knew of this. It rejected PSSA's assertion that the CoA was authorised by Lukoil's president or ratified later. Accordingly, the CoA was held void and unenforceable.

In the secondary 2018 Claim, which concerned unpaid sums under separate charterparties, the court

determined that although the sums claimed were established in principle, LSA's counterclaims and rights of set-off prevented any net recovery by PSSA.

The judgment concluded that PSSA failed entirely in its primary claim, and although the 2018 Claim was partly valid, it was extinguished by LSA's counterclaims.

Authorities:

Case Law:

1. ***Witness Credibility and Evaluation of Evidence***

    1. ***Gestmin SGPS SA v Credit Suisse (UK) Ltd*** [2013] EWHC 3560 (Comm) — [para 15]

        Principle: Human memory is fallible and prone to distortion over time; contemporaneous documents and inherent probabilities should be prioritised over oral recollection, especially in cases involving long-past events.

    2. ***Onassis and Calogeropoulos v Vergottis*** [1968] 2 Lloyd's Rep 403 — [para 15]

        Principle: Evaluation of witness testimony should be guided by the consistency of evidence with undisputed facts and documents, and the plausibility of the narrative.

    3. ***Kogan v Martin*** [2019] EWCA Civ 164 — [para 15]

        Principle: All available evidence must be considered, but there is no bar to placing more weight on contemporaneous documents and objective factors over oral recollection.

    4. ***Bailey v Graham*** [2012] EWCA Civ 1469 — [para 15]

        Principle: Post-event conduct can be relevant in evaluating the credibility of witnesses and the probability of alleged events.

2. ***Burden and Standard of Proof in Civil Cases***

    Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 — [para 16]

    Principle: While the civil standard of proof is the balance of probabilities, the more serious the allegation, the more cogent the supporting evidence must be.

3. ***Adverse Inference from Failure to Call Witnesses***

    1. ***Efobi v Royal Mail Group Ltd*** [2021] UKSC 33 — [para 58]

        Principle: There is no rigid rule for drawing adverse inferences from the absence of a witness; rather, courts apply common sense based on availability, relevance, and the context of the missing evidence.

    2. ***Wisniewski v Central Manchester Health Authority*** [1998] PIQR P324 — [para 58]

Principle: Where a party fails to call a witness who could provide material evidence, and no good reason is given, the court may draw adverse inferences if it is just to do so.

4. ***Estoppel and Waiver***

   Kodric v Bitstamp Holdings NV [2022] EWHC 210 (Ch) – [para 229]

   Principle: For an estoppel to arise, there must be reliance and detriment.

5. ***Construction and Rectification of Contracts***

   (No express case cited under this heading as central interpretation points relied more on factual matrix and credibility rather than authorities on construction of contracts.)

6. ***Conflict of Interest and Voidability under Swiss Law***

   (No English case cited specifically; principles primarily derived from Swiss legal expert evidence.)

Note: Other cited authorities were referenced only tangentially, if at all, and did not materially contribute to the core legal reasoning adopted in the judgment.

Legislation:

1. ***Evidential Rules and Civil Procedure***

   Civil Evidence Act 1995 — [paras 13–14, 58]

   Principle: Allows for admissibility of witness evidence in written form where appropriate; the judgment refers to multiple witnesses whose statements were admitted under the Civil Evidence Act. It also discusses the impact of a party's failure to call a potentially key witness and the weight of evidence given under this Act in the absence of oral testimony.

2. ***Choice of Law and Jurisdiction***

   None cited explicitly within the judgment text as statutory sources. The choice of English law and Swiss law arises from contractual agreement and expert evidence, not direct statutory interpretation.

3. ***Foreign Arbitration Procedure***

   Swiss Private International Law Act (PILA) – Applied to assess validity and procedure of Swiss-seated arbitration [paras 88–91, 111–112].

Note: No other specific UK or foreign statutes or regulations were expressly identified or relied upon in the legal reasoning of the judgment. All legal principles beyond the Civil Evidence Act were either

derived from case law or presented via expert interpretation (particularly in relation to Swiss corporate law and authority/conflict principles).

Legal Texts & Commentary:

1. ***Swiss Corporate Law – Conflict of Interest and Authority***

   Joint Expert Memorandum of Mr Hauenstein and Dr Gross on Swiss Law — [paras 22–27]

   Principle: This joint memorandum provided the applicable Swiss legal framework for assessing whether Mr Golovushkin's signing of the CoA on behalf of LSA was void due to a conflict of interest. It set out three cumulative conditions for voidness: a conflict of interest, failure to neutralise it, and bad faith (actual or constructive knowledge) on the part of the counterparty. The experts also debated the required seriousness of the conflict, with Dr Gross's view ultimately preferred by the judge.

   Supplemental Report of Mr Hauenstein — [para 26]

   Principle: Argued that a conflict of interest requires directly opposed interests to invalidate a contract. His view was rejected in favour of Dr Gross's more flexible, circumstance-specific test.

   Swiss Federal Tribunal Case (referenced in expert commentary) — [para 27]

   Principle: Though not a separate legal text, referenced within the expert reports to support the interpretation that mere appearance of bias may suffice in Swiss law, especially for those in quasi-judicial or fiduciary roles.

2. ***General Legal Commentary on Witness Memory and Evaluation***

   Academic material relied on by Mr Hauenstein (not named) — [para 27]

   Principle: Cited in support of a narrow reading of conflict of interest doctrine in Swiss law. However, it was found not to substantiate his position on close scrutiny and was rejected by the judge.

Note: No English legal commentaries or textbooks (such as Chitty, Dicey, or Snell) were cited in the judgment. The reasoning primarily relied on factual analysis, case law, statutory reference (Civil Evidence Act), and the detailed Swiss legal expert commentary.

Key Themes:

1. ***Conflict of Interest and Authority under Swiss Law***

   The central issue was whether LSA's then-CEO, Mr Golovushkin, had authority to bind the company to the CoA, or whether his actions were vitiated by a serious conflict of interest, particularly arising from his daughter's hidden interest in companies that stood to benefit from the CoA. The court accepted the Swiss legal position that such a conflict renders a contract void if not neutralised and known to the counterparty.
   [paras 17–30, 34–63]

2. ***Assessment of Witness Credibility and the Role of Contemporaneous Evidence***

   Given the historic nature of events (dating back over a decade), the court placed significant emphasis on the credibility of witnesses and the consistency of their testimony with documentary evidence and inherent probabilities. The oral evidence of PSSA's key witness, Mr Mansimov, was found unreliable in material respects.
   [paras 15–16, 41–55]

3. ***Ratification and the Role of English Law in Post-Facto Validation***

   Although Swiss law governed authority, whether LSA's conduct ratified the CoA (if otherwise unauthorised) was governed by English law. The court rejected the argument that ratification had occurred through LSA's subsequent dealings, holding that the required elements of ratification under English law were not satisfied.
   [paras 20–21, 90–101]

4. ***Allocation of the Burden and Standard of Proof***

   The judgment clarified that PSSA bore the legal burden of proving its claims on the balance of probabilities, and that serious allegations (e.g. fraud, dishonesty, or void contracts) require proportionately stronger evidence.
   [paras 16, 58–61]

5. ***Set-Off and Quantum in the Secondary (2018) Claim***

   The court accepted the existence of debts owed by LSA to PSSA under the 2018 Claim but found those claims extinguished by LSA's counterclaims and rights of set-off relating to loans and prepayments.
   [paras 12, 114–125]

6. ***Interpretation and Enforceability of Commercial Agreements***

   While not dependent on formalistic interpretation principles, the judgment assessed the CoA's terms and commercial context. The judge emphasised the factual matrix, including vessel types, cargo volumes, and contractual conduct, to determine whether the CoA was binding and enforceable.
   [paras 3–11, 64–89]

Background

Palmali Shipping SA (PSSA) brought proceedings against Litasco SA (LSA) claiming damages of approximately US$120 million for breach of a Contract of Affreightment (CoA) allegedly entered on 18 January 2005, under which LSA was said to have granted PSSA the exclusive right to transport oil products over a 10-year term, later extended to 15 years [paras 1, 3–4, 10].

PSSA contended that the CoA obliged LSA to provide between 400,000 and 700,000 metric tonnes of cargo per month in lots not exceeding 10,000 MT, and that this was not honoured [paras 4, 8–9].

LSA denied the CoA was binding, asserting that it was entered into under a conflict of interest by its then-CEO, Mr Golovushkin, who was allegedly compromised by a relationship with PSSA's owner, Mr Mansimov, and whose daughter held undisclosed interests in companies that profited from the contract [paras 17, 34–36].

LSA maintained that, as a result of this undisclosed and serious conflict, Mr Golovushkin lacked authority under Swiss law to bind LSA, and that no valid ratification occurred under English law [paras 20–21, 22–30].

PSSA alternatively argued that the CoA had been ratified by LSA's conduct and relied on a purported prior authorisation from Lukoil's president, which the court later found unsubstantiated [paras 20, 50–54, 90–101].

A secondary 2018 Claim was also brought by PSSA for unpaid invoices under various charterparties and bills of lading totalling US$4.1 million, which was partially agreed at US$3.85 million but remained subject to LSA's defences of set-off and waiver [para 12].

The case proceeded to trial in the Commercial Court on liability only, with quantum reserved, and involved extensive factual and expert evidence over several weeks [paras 1, 13–14].

Legal Issues and Analysis

1. **Was the Contract of Affreightment (CoA) binding on LSA?**

   Issue: Whether the CoA, signed in 2005, constituted a binding agreement between PSSA and LSA [paras 3, 11, 17–21, 64–89].

   Analysis: The court concluded that the CoA was void ab initio due to a serious conflict of interest involving LSA's then-CEO, Mr Golovushkin, whose daughter had an undisclosed beneficial interest in entities profiting from the contract [paras 34–63, 126–134]. The court found that no steps were taken to neutralise this conflict in accordance with Swiss corporate law, and PSSA's principal, Mr Mansimov, had actual knowledge of the conflict. Dr Gross's expert evidence was preferred on the threshold of seriousness required to invalidate the contract [paras 26–30].

2. **Did Mr Golovushkin have authority under Swiss law to sign the CoA?**

   Issue: Whether Golovushkin had actual or ostensible authority to bind LSA [paras 22–30, 126–137].

   Analysis: The court held that because the conflict of interest was serious and undisclosed to LSA's corporate decision-making bodies, and because it involved financial benefit to a family member, Golovushkin lacked authority. The agreement was thus void as a matter of Swiss law [paras 130–134].

3. **Was the CoA subsequently ratified under English law?**

   Issue: Whether conduct following the signing could amount to ratification under English law [paras 20–21, 90–101, 157–159].

   Analysis: The court found no evidence of unequivocal conduct by LSA amounting to

ratification. It emphasised that continuing to transact or cooperate in related commercial activities was insufficient to imply affirmation of the CoA as a legally binding instrument [paras 157–159].

4. **Was the CoA extended in 2010?**

   Issue: Whether the CoA was validly extended to 2020 [paras 3, 11, 90, 100, 160–162].

   Analysis: The court found that even if a factual extension occurred, it had no legal effect because the original CoA was void and could not be resurrected by extension without valid authority or novation [paras 160–162].

5. **Was PSSA's 2017 Claim time-barred, waived, or estopped?**

   Issue: Whether the claim would fail regardless of validity, due to limitation or other procedural bars [para 11, 194–195].

   Analysis: The court observed that it was unnecessary to reach a final conclusion on these defences, having already found the CoA void. Nonetheless, it considered that LSA's arguments on waiver and estoppel had some merit and would have required close examination had the CoA been valid [paras 194–195].

6. **Is PSSA entitled to any sum under the 2018 Claim?**

   Issue: Whether PSSA could recover the US$3.85 million agreed sum, subject to set-off [para 12, 197–209].

   Analysis: While the court accepted the sum was contractually due in principle, it was extinguished by LSA's counterclaims — notably, a US$7.5 million loan balance, a US$1.46 million double payment in respect of the Minerva Zoe, and a US$2.6 million overpayment — all of which were substantiated and upheld [paras 197–209, 222–230].

7. **Was the counterclaim established and quantified appropriately?**

   Issue: Whether LSA's counterclaims were legally and evidentially sound [paras 189–193, 222–230].

   Analysis: The court was satisfied that LSA's counterclaims were supported by sufficient evidence and that amounts claimed were either admitted or not effectively challenged. The counterclaims exceeded the value of the 2018 Claim and fully extinguished any net entitlement PSSA may have had [paras 222–230].

Conclusion

The court held that the Contract of Affreightment (CoA) between Palmali Shipping SA and Litasco SA was void from the outset due to a serious, undisclosed conflict of interest involving LSA's then-CEO and his daughter's hidden financial stake in companies benefitting from the arrangement [paras 22–30, 34–63, 126–134]. The court rejected claims that the CoA was ratified by later conduct or

extended in 2010, finding no sufficient acts of adoption or formal re-execution [paras 90–101, 157–162].

The judgment further dismissed PSSA's alternative claim for US$3.85 million under separate contracts (the 2018 Claim), as LSA's counterclaims — relating to loans, duplicative payments, and overpayments — were upheld and exceeded the amounts owed [paras 197–209, 222–230].

Critically, the court's conclusions rested not only on legal principles under Swiss and English law but also on a withering assessment of witness credibility, particularly Mr Mansimov, whose evidence was found to be inconsistent, evasive, and in several instances plainly false [paras 42–55, 130–134, 145–152].

Key Takeaway:

A contract tainted by undisclosed and serious conflicts of interest will be void under Swiss law, particularly where authority is not properly delegated and the counterparty knows of the conflict [paras 22–30, 126–134].

Subsequent cooperation or silence is not enough to ratify a void contract under English law; clear, authorised acts of affirmation are required [paras 90–101, 157–159].

A party asserting a high-value commercial contract must do more than rely on signatures — it must prove valid authority, neutralised conflicts, and credible evidence throughout [paras 34–63, 130–134].

Where oral evidence is contradicted by contemporaneous documents and unsupported by reliable witness testimony, it will be rejected — particularly where key witnesses change their stories or conveniently recall critical facts mid-trial [paras 42–55, 145–152].

Even a valid secondary claim can be wholly neutralised by robust, well-substantiated counterclaims; the arithmetic of justice doesn't favour the loudest, but the best evidenced [paras 197–209, 222–230].

Parting Thoughts

It's one thing to claim a $120 million contract was breached. It's quite another to persuade a court that the contract ever existed—especially when the individual who signed it was, allegedly, involved in undisclosed dealings benefiting his family. That, ultimately, was the hurdle Palmali Shipping SA couldn't overcome..

This judgment isn't just a lesson in conflict of interest — it's an instructional in what happens when a paper trail leads straight into murky waters. The court dissected the so-called Contract of Affreightment with the precision of a surgeon and the scepticism of a forensic accountant. What emerged wasn't a binding agreement but a textbook example of how corporate governance, if ignored, will scuttle even the most elaborate legal vessel [paras 22–30, 126–134].

PSSA's fallback strategy — claim a few million on unrelated contracts — didn't float either. Litasco simply opened its accounting ledger and pointed to unpaid loans, double payments, and advance transfers that more than cancelled out the claim. Result? Zero dollars, no recovery, and a masterfully executed set-off [paras 197–209, 222–230].

The court's tone was measured, but the message was unmistakable: if your star witness can't decide which version of events to stick with — and offers new revelations mid-cross-examination like plot twists in a soap opera — don't expect sympathy. Or success [paras 42–55, 145–152].

So, here lies the ghost ship of a grand shipping contract — void from launch, unmoored at port, and

now permanently anchored in the shallows of judicial scepticism.

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