

Which Strategy for West Tankers?

As reported yesterday, West Tankers has now won its arbitration against the insurers of Erg Petroli and obtained a judgment in England in the terms of the award.

The purpose of this last move, it seems, was to create a defense against the enforcement in England of any forthcoming Italian judgment finding in favour of the insurers. This would create a conflict of judgments in England, and West Tankers hopes that pursuant to Article 34 of the Brussels I Regulation, the English judgment (in the terms of the award) would prevail.

If this strategy was to prevail, this would mean that the Italian judgment could not be enforced in England. But West Tankers may have assets in other European jurisdictions where the Italian judgment would be recognised almost automatically. In particular, it is likely that it owns vessels which could be attached in any European harbour where they stop. It might therefore be that the Italian judgment could be enforced in France, Greece, Spain, etc...

It seems, therefore, that West Tankers has two ways forward.

The most obvious one would be to seek recognition of the arbitral award in most jurisdictions of Europe, and hope that in each of these jurisdictions, a local judgment declaring the award enforceable would be considered as a judgment in the meaning of Article 34 of the Brussels I Regulation. The insurers would then be left with Italy, that West Tankers' vessels might find wise to avoid.

Alternatively, West Tankers might want to focus on the UK and try to rely on the English judgment to obtain restitution of any payment it would be forced to make abroad on the basis of the Italian judgment (for a similar example, see here). I have no idea whether this could work as a matter of UK law. But it might be a theoretical question, as the Italian insurers of Erg Petroli might not have assets there.