

And the winner is ... West Tankers (again)

Another win for the West Tankers' team in the latest round of the long running litigation. In a decision delivered on 4 April 2012 ([2012] EWHC 854 (Comm)), Flaux J held that EU law (specifically, the decision of the CJEU in West Tankers (Case C-185/07)) did not exclude the jurisdiction of the arbitral tribunal to award damages (specifically, equitable damages) for breach of an arbitration agreement by the bringing of proceedings before a national (Italian) court.

In his Lordship's view (para. 68):

“In my judgment, arbitration falls outside the Regulation and an arbitral tribunal is not bound to give effect to the principle of effective judicial protection. It follows that the tribunal was wrong to conclude that it did not have jurisdiction to make an award of damages for breach of the obligation to arbitrate or for an indemnity.”