



BRINGING IN THE SUPPLIER

Part 20 claims for tour operators

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1 November 2012

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Bringing in the supplier

- ” About this talk
- ” Why bring in the supplier?
- ” When to start proceedings?
- ” Procedural considerations
- ” Contract claims
- ” 1978 Civil Liability (Contribution) Act
- ” Jurisdiction/applicable law
- ” Limitation

Why bring in the supplier?

Advantages

- “Decision of the court binds the supplier”
- “Formal judgment against supplier”
- “Encourage meaningful engagement”

Disadvantages

- “Commercial relationships damaged”
- “English judgment unenforceable?”
- “May not be helpful in evidence?”

The sooner the better

Additional claim form issued with defe

“No permission needed to issue claim
CPR 20.7(3)

“Court under duty to manage both cla
together insofar as possible CPR 20.1

“Provision for case management to be
separate if appropriate CPR 20.9 and

The sooner the better

Application for permission to join

“Applications without notice CPR 20.7(5)

“Evidence in support should include:

- o stage proceedings have reached including time date
- o nature of issues in additional claim
- o factual summary
- o name and address of Third Party
- o explanation for any delay 20 PD 2.3

The sooner the better

Factors which the Court will consider

“Delay

“Explanation for delay

“Nature of issues to be determined:
evidence, witnesses, overlap, risk of
irreconcilable judgments

“Vacation of trial date

Contract claims

- ” Who is the correct contracting party?
- ” Is it a legal entity in accordance with laws of the place where incorporated?
- ” What are the terms of the contract?
 - in writing?
 - standard terms and conditions?
 - special limitation terms?
 - notification requirements?

Contract claims

” Applicable law

- Contracts concluded before 18 December 2009: Rome Convention
- Later contracts: Rome I Regulation 593/2007

” Choice of law clause

” Implied choice

Contract claims

- “ Contracts without a choice of law
- “ Rome I: Articles 4(1)(a) and (b)
- “ Contract for the sale of goods or provision of services governed by the laws of the country in which the provider of goods/services has his habitual residence
- “ Rome Convention: Article 4(2)

Contract claims

Limitation

"Governed by the 'pro

"Claims for damages for breach of contract
years from the date of breach

"Claims for a contractual indemnity: caus
action arises once liability to C established
of admission of claim/judgment/settlement

Contract claims

Jurisdiction

“Jurisdiction clauses: Article 23 of Reg 44/2001

“Otherwise: European domiciled defendant
place of performance which is characteristic
of the contract Article 5(1)(b) 44/2001
where services should have been provided

Contract claims

Jurisdiction

Where no choice of jurisdiction clause and su
domiciled outside EU:

“Permission needed to serve claim form outside
jurisdiction CPR 6.36 and PD 6B para 3.1

“ ‘ Gateway ’ in contract :
or governed by English law or breach within
jurisdiction PD 6B para 3.1 (6)

Contract claims

Jurisdiction

"Without notice application on duty of full and frank disclosure" A party were represented that party would the court that **ABC v Banque** war

Franco-Tunisienne [1996] 1 Lloyd

"England and Wales' p claim' CPR 6.37(3)

The Spiliada [1987] AC 460: a convenient forum

Contribution Act 1978 claim

Contribution Act 1978

“Accidents/incidents prior to 11 January
Private International Law (Miscellaneous Provisions) Act 1995

“*Arab Monetary Fund v Hashim (Times, 11 October 1994)*

“Even where foreign applicable law

“Limitation 2 years from date of liability

Contribution Act 1978 claim

Rome II cases

“Claims for contribution are non-contractual and governed by Regu

“Explanatory memorandum says covered applicable law

“Position unclear, but likely that may be s to law of place where accident took plac

Contribution Act 1978

Jurisdiction

“European domiciled Defendant: Article 44/2001

“Not in teeth of jurisdiction clause *Hough v P&O Containers [1999] Q.B. 834*

“Court still has discretion whether to a claim *Kongress Agentur v Zeehaghe [1990] ECR I-1845*

Contribution Act 1978

Barton v Golden Sun Holidays v Avlida Hotel Ltd
[2007] 151 SJLB; [2007] 1 L Pr 57, Wyn Williams
J

"Gastro group claimant liability admitted in defence

"Assessment of damages issue 2 years apart
20 application until just before limitation

"No written contract with Cypriot hotel

"Cypriot law had no equivalent to 1978 A

Contribution Act 1978

Reunion Europeenne v The Zurich Espania
[2005] ECR I-40

“Proceedings must not be solely for the purpose of removing the TP from the jurisdiction of the court which would otherwise be competent.”

“A nexus must exist between the main and the additional claim to come within Article 6(1) as a close connecting factor (paragraph 46).”

“Joinder serves no purpose where the main claim is no longer ‘live’.”

Contribution Act 1978

Defendants from the rest of the world

“Gateway: paragraph 3.1(4) of CPR **‘necessary or proper party’ where the claim is an additional claim**

“*The Baltic Flame* [2001] EWCA Civ 418; [2001] 2 Lloyd’s Rep 203: where law of other country allows no contribution remedy, this factor permit the court to exercise discretion to service out.

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