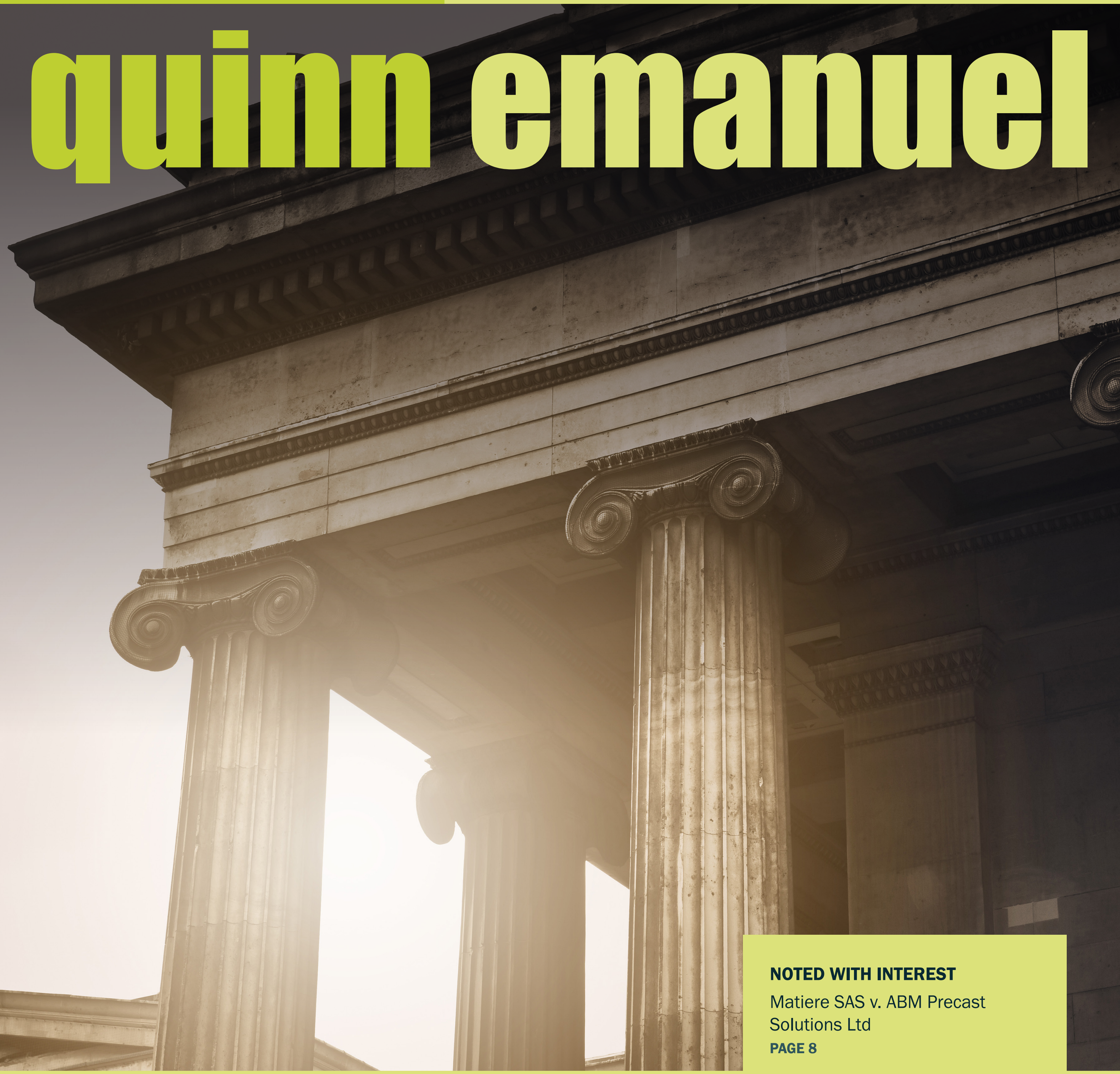
quinn emanuel



DECEMBER 2025

Business Litigation Report

SECTION 72 OF THE UK ARBITRATION ACT: RIGHTS OF PARTIES WHO DO NOT PARTICIPATE AT ALL IN ARBITRATION PROCEEDINGS TO CHALLENGE AWARDS

Section 72 of the UK Arbitration Act 1996 concerns the rights of parties alleged to be parties to an agreement to arbitrate, but who have taken no part in arbitration proceedings, to challenge awards.

Its first limb (72(1)) empowers such persons to apply to the Court for a declaration, injunction, or other appropriate relief in respect of the following questions: (a) Is there a valid arbitration agreement?; (b) Has the tribunal been properly constituted?; and (c) Have the matters referred to arbitration been so referred in accordance with the arbitration agreement? For a party to seek such relief, no arbitral award needs to have been rendered by the tribunal. The second limb (72(2)), however, applies where an arbitration award *has* been rendered, and provides a means for those same non-participants to challenge those awards (either by way of an application under s. 67 on grounds of lack of jurisdiction or s. 68 on grounds of serious irregularity). In this sense, 72(2) is not a freestanding form of relief, but rather an avenue through which non-participants can seek recourse under section 67 and 68).

The rationale underpinning s. 72 was enunciated by the Departmental Advisory Committee on Arbitration Law (the committee tasked with reviewing the draft bill that eventually became the UK's 1996 Arbitration Act), as follows:

> To our minds this is a vital provision. A person who disputes that an arbitral tribunal has jurisdiction cannot be required to take part in the arbitration proceedings or to take positive steps to defend his position, for any such requirement would beg the question whether or not his objection has any substance and thus be likely to lead to gross injustice. Such a person must be entitled, if he wishes, simply to ignore the arbitral process, though of course (if his objection is not well-founded) he runs the risk of an enforceable award being made against him. Those who do decide to take part in the arbitral proceedings in order to challenge the jurisdiction are, of course, in a different category, for then, having made that choice, such people can fairly and properly be required to abide by the time limits etc. that we have proposed.

The provision thus strikes a sensible balance: ensuring on the one hand that arbitral proceedings are not delayed, and awards not evaded, by the raising of jurisdictional objections that ought to have been discovered and raised earlier; whilst at the same time preserving a party's genuine entitlement to ignore an arbitral proceeding it views as invalid (see Walker J in *London Steam Ship Owners Mutual Insurance Association v Spain* [2013] EWHC 2840 (Comm)).

FIRM HIGHLIGHTS

Kevin Chu Wins National Law Journal Rising Stars Award

The National Law Journal Awards 2025 recognized partner Kevin Chu in the Washington, D.C. Rising Stars category. This program honors the region's 40 most promising lawyers aged 40 and under who have wielded influence in their practice areas and demonstrated strong leadership. Kevin focuses on intellectual property litigation before the International Trade Commission, where he has represented clients in more than forty Section 337 investigations over the past decade.

Women & Diversity in Law Awards Nominate Kate Vernon

London partner Kate Vernon has been nominated for the Women & Diversity in Law's 2026 Woman of the Year award. This honor recognises exceptional achievement by a woman in the legal profession who demonstrates skill, judgment, leadership, and integrity, while simultaneously inspiring future generations of leaders. Kate advises clients across the full spectrum of competition law and commercial disputes, and she has particular expertise in the financial services, retail, sports, media, pharmaceutical, and technology sectors.

Quinn Emanuel Receives Legal Services Innovation Award

The American Lawyer recognized Quinn Emanuel for the Legal Services Innovation Award at its 2025 Industry Awards. This recognition honors the transformative work of our AI & Data Analytics Group, led by New York partner Christopher Kercher and Lead Innovation Counsel Jennifer Reeves. The results speak for themselves: our team became the first documented AI-enabled trial team according to *The American Lawyer*.

An oft-cited characteristic of English jurisprudence in recent years is its pro-arbitration sentiment, evinced by countless judgments upholding and enforcing agreements to arbitrate, intervening to assist and enforce awards, and enjoining the prosecution of court proceedings in favor of arbitration. The extent to which that is a truly contemporary phenomenon remains the subject of debate (see Brekoulakis, Stavros. "The Historical Treatment of Arbitration under English Law and the Development of the Policy Favouring Arbitration." *Oxford Journal of Legal Studies 39*, no. 1 (2019): 124–50). Yet what remains clear is that this sentiment can fairly be said to derive from a cornerstone principle in English jurisprudence: party autonomy. Put simply, if parties have agreed to arbitrate, that intention should – save in exceptional circumstances – be given effect to; and vice-versa.

In this sense, s. 72 stands not only as an important counterweight to the increasingly apparent pro-arbitral sentiments of English judges (particularly on the Commercial bench), and to an unprincipled broadening of the principle of *kompetenz-komptenz*, whilst simultaneously reinforcing the foundational principle of party autonomy, by ensuring parties are not forced to arbitrate against their will.

Recent Approaches

That balance is an important one to strike. It is precisely in view of its importance that the provision has been construed relatively generously by English courts. This approach was brought most acutely into view in 2010, with the UK Supreme Court's judgment in *Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC 46. The judgment gave birth to the eponymous "Dallah" principle: that a party who disputes jurisdiction is entitled not to participate in arbitration proceedings if it took the view that the proceedings were invalid; even if the tribunal has ruled positively on its own jurisdiction. That principle was notably affirmed in *London Steam Ship v The Kingdom of Spain* [2013] EWHC 2840 (Comm), where Walker J – in emphasising the primacy of the Dallah principle – declined to confine s. 72(1) to the *pre*-Award position, and held that it was appropriate to grant an extension of time to allow the non-party, Spain, to use all means at its disposal in challenging the award and its enforcement.

None of this is to say parties may invoke s. 72 with free reign. Indeed, recent judgments highlight that parties should consider carefully what – if any steps – they are to take in an arbitration if they later wish to rely on the protection afforded by s. 72.

In *Broda Agro Trade v Alfred C Toepfer International GmbH* [2010] EWCA Civ 1100, for example, the Court held that a person who had not taken part in arbitration proceedings leading to an interim award on jurisdiction, but had thereafter taken part in the substantive proceedings on the merits, could not make an application under s. 72 questioning the validity of the arbitration agreement in question. He was instead bound by the procedure afforded to him in s. 67 (challenges to jurisdiction) and the appropriate time limits therein. Likewise, in *Frontier Agriculture Ltd v Bratt Bros (A Firm)* [2015] EWCA Civ 611, the Court held that the right to commence court proceedings under s. 72 is likely to be lost by unqualified participation in the appointment of an arbitrator.

That being said, more anodyne forms of participation will unlikely preclude a party from relying on s. 72. For example, the dictum of Gloster J in *Excalibur Ventures LLC v Texas Keystone Inc and others* [2011] EWHC 1624 (Comm) at [61] clarified that merely writing to the ICC to set out a party's objection to jurisdiction will be unlikely to constitute arbitral participation; or *Caparo Group Ltd v Fagor Arrasate Sociedad Cooperative 1998* [2000] ADRLJ 254, in which a request submitted to the ICC to reject the claimant's request for arbitration did not amount to taking part in proceedings. The ration in *Caparo* admittedly has been cited as sitting at the more generous end of the spectrum for what constitutes 'non-participation' (noting that the ICC is empowered to take *prima facie* decisions on questions of tribunal jurisdiction). There is, in any case, a fine distinction between correspondence with a tribunal to inform if of the party's position, and a formal submission that the tribunal lacks jurisdiction (see *Sovarex SA v Romero Alvarez SA* [2011] EWHC 1661 (Comm), wherein Hamblen J distinguished between: (a) asserting that the issue should be decided by some other court or tribunal, and (b) asking the tribunal to consider the issue (the latter being likely to constitute 'participation' and thus precluding section 72 rights).

2025 Considerations

Notwithstanding the considerable judicial dicta on the topic, the provision continues to generate case law. Indeed, 2025 has witnessed no fewer than three decisions on the topic, which are considered in turn.

ABC v Def [2025] EWHC 711 (Comm): In this case, the Defendant (D) commenced two LCIA arbitrations under contracts providing for the supply of pharmaceutical goods against (i) ABC, (ii) its direct subsidiary, UKCo and (iii) an indirect subsidiary, MalaysiaCo (all named as respondents). ABC was not a party to either contract.

ABC – which (it was common ground) took no steps in the arbitration – applied to the Court seeking a s. 72 order that there was no valid arbitration agreement between it and D.

When commencing the arbitration, D's justification for naming ABC as a respondent had been that it had always dealt with ABC, and that accordingly, ABC shares or is responsible for the liabilities of UKCo and MalaysiaCo. In its responsive

witness evidence before the Court, however, D claimed ABC had performed, at least in part, the obligations of both subsidiary companies under the relevant contracts and that, by consequence, it was properly a party to the arbitration agreement relied upon. D also claimed that any jurisdictional issues ought to be resolved by the arbitrator given the purportedly heavy overlap between those issues and the substantive issues engaged in the reference. At the time of skeleton arguments, however, D's case morphed yet again: it instead submitted that, as a result of ABC (part) performing the obligations of UKCo and MalaysiaCo, there had arisen an implied contract between D and ABC, as a result of which an arbitration agreement came about by implication.

HHJ Pelling, considering Lord Sumption's dictum in *Prest v Petrodel Resources* (that a Court may only permit a parent and subsidiary to be treated as the same to the extent necessary to prevent an abuse of the concept of corporate personality itself) held that there was no clear intention of ABC being a party to the relevant agreement. The Judge further described D's argument about the existence of an implied contract as "fatal" to its opposition to ABC's application: as said implied contract had not been pleaded in the arbitration, so fell outside the scope of the arbitration reference (and, it follows, the arbitrator's jurisdiction). To introduce that argument in the arbitration would represent a profound change to D's jurisdictional case, which would unlikely be permitted. The application was thus granted.

HHJ Pelling acknowledged the importance of balancing the principle of kompetenz-kompetenz with judicial oversight conferred by section 72, and emphasised the need to approach applications under the provision with a degree of caution (especially in fact-sensitive jurisdiction issues that may encroach into the terrain of the substantive dispute), but held that the threshold for such caution necessarily lowers in circumstances where it is plain that there is no valid arbitration agreement and such a factual inquiry would be unnecessary.

A&N Seaways v Allianz Bulk Carriers and another [2025] EWHC 2126 (Comm): This case concerned a dispute that had arisen over withdrawal of a vessel (as a result of non-payment of hire). An arbitration was commenced by the vessel's owners under the relevant Charterparty against the Charterers. The Charterers served an "interim response" alleging that the Charterparty was the result of a fraud between one its directors and the vessel's owners. It subsequently sought the tribunal's permission for an extension of time in which to file substantive submissions, although they did not do so, leading the tribunal to rule that it would treat said response as the Charterers' substantive defence in the proceeding. The allegations in the interim response were ultimately denied by the owners in their reply. The Tribunal accepted the owners' arguments (included the owners' allegation that the Charterparty had in any case been affirmed by the Charterers' conduct). An award was rendered of US$295.5 million.

Twenty-eight days after the award, the Charterers issued an application to the Commercial Court under section 72(2)(a). The Charterers sought to challenge the part of the award wherein the arbitrator held he had jurisdiction to determine the owner's claim presented in the reference on the same basis as alleged in the arbitration: i.e., that the arbitration agreement had no legal effect because it had been entered into by one of its directors without the authority of the charterer. The owners entered a Respondents' Notice and filed a skeleton seeking to have the claim struck out, on grounds that (*inter alia*) the claim had no reasonable prospect of success, and that the Charterers' had participated in the arbitration, so were unable to bring a s. 72(2) challenge. The Charterers filed a short reply, denying both these allegations, but advancing several serious allegations of fraud against the owners that had not been properly pleaded out in the Claim Form and for which no material evidence was provided (in the court proceedings, at least). The Charterers sought leave to amend the claim form accordingly.

The Court refused the Charterers' application. First, it was out of time. The Act provided that any application or appeal against an award (i.e., under section 67 or 68, but brought by a non-participant under section 72(2)) must be brought within 28 days, yet the charterer was introducing allegations of fraud *after* the expiry of that period. It should be noted in this regard that 72(2) differs from 72(1) in the applicability of the 28 day rule: on the face of the Act, it is not apparent that any time limit applies to 72(1). This was noted obiter by Tindal J at para [43] ("This means s.72(1) is more flexible and can be used earlier than s.72(2)(a): there is no time-limit in s.72(1) as there is no point of the process from which time "runs"").

In those circumstances (where the application was out of time), it fell to the Court to consider: (i) whether the length of the delay was material (it was not – the Charterers' delay in seeking permission to amend was made four months after the date of its original claim form); (ii) whether the delay was reasonable (it was not – the Charterers had articulated no good reason for the delay); and (iii) whether the respondent or the arbitrator caused or contributed to the delay (they did not). The Court also found the claim to be defective, as the grounds for allegations of fraud had not been properly pleaded in accordance with the principles in *Sofer v SwissIndependent Trustees*, so had no real prospect of success. Accordingly, the claim was struck out.

African Distribution Company v Aastar Trading [2025] EWHC 2428 (Comm): This case concerned a point of timing. In this case, Aastar commenced arbitration in accordance with GAFTA rules under 16 contracts. The Claimant did not respond to the notice of arbitration (which had been sent to two generic company email addresses and then GAFTA), or to any of the subsequent emails sent to the same addresses. Instead, it claimed it had not been served with notice of the proceedings – or known of their existence – until the eventual receipt of the arbitral award on 8 July 2024 in Ivorian enforcement proceedings brought by Aastar.

The Claimant thus brought a claim on 27 August 2024, in which it sought: (i) to challenge an award under ss. 67 and 68 of the Arbitration Act, (ii) for declaratory relief in relation to the award under section 72; and (iii) for an extension of time in relation to that challenge (noting that it was issued over 28 days after the date of the award).

The extension application was dismissed on grounds that (i) the Claimant failed to demonstrate sufficient risk of unfairness, or justify its significant delay, when weighed against the importance of expedition to arbitration as a forum for dispute resolution; (ii) it failed to take proper advice on challenging the award promptly; and (iii) in any case, it had an alternative remedy in the form of s.72(1). In respect of (iii), the Judge reflected that a factor relevant to the exercise of the Court's discretion was whether the s. 67/68 applications was whether or not alternative relief was hypothetically available under s. 72. If it was, that would necessarily reduce any prejudice resulting from the refusal. In any event, the Court held that no time limit applied to post-award applications under s. 72(1). Such applications were freestanding remedies available to non-participants. Accordingly, whilst the Claimant was out of time for its applications under ss. 67 and 68, it application under s. 72 could nonetheless proceed.

Conclusion

The fact that s. 72 judgments continue to be published by the Courts (with an ostensible regularity) demonstrates the caution with which parties should approach arbitral participation – so too do the mixed judgments of pre-2025 decisions which demonstrate a fine line that ought to be traversed. The three 2025 judgments themselves, however, demonstrate something more specific.: that parties should, when taking part in an arbitration and attempting to dispute the jurisdiction of an arbitral panel, act promptly and ensure that any jurisdictional objection is not only raised as soon as possible, but is also properly and consistently pleaded.

NOTED WITH INTEREST

Matiere SAS v. ABM Precast Solutions Ltd: A Reminder How English Courts Interpret and Enforce Express Obligations of Good Faith in Commercial Contracts

In June 2025, Alexander Nissen KC (sitting as a Deputy Judge of the High Court) released a significant decision from the English Technology and Construction Court on express good faith obligations in commercial contracts. The decision considered whether Matière SAS (a French designer, fabricator and installer of civil engineering structures) had breached express obligations of good faith under various agreements it had entered into with ABM Precast Solutions Ltd (a UK engineering company which specialises in pre-cast reinforced concrete products) in order to bid together for work on the United Kingdom HS2 "Green Tunnels Project."

In short, the Court held that Matière had acted in breach of its express good faith obligations. The Court also accepted that ABM had a real and substantial chance of being awarded the sub-contract, with that chance diminishing over time. However, the Court held that the breaches did not cause ABM loss as the bid for the project would have been rejected anyway.

This decision is a useful example on the interpretation and enforcement of express good faith obligations and a reminder that an innocent party, in order to be awarded damages, needs to ensure it can prove not just breach(es) of the good faith obligations but also that the breach(es) actually caused the loss claimed.

Background

The claim arose from the fallout of the joint venture arrangement formed between Matière and ABM in order to bid together for work as a joint venture subcontractor for tunnelling works for the troubled HS2 project.

To give effect to that arrangement, the parties entered into a Collaboration Agreement and a Consortium Agreement. Both agreements included clauses with express good faith obligations. By way of example, Clause 3.3 of the Consortium agreement provided: "In the course of their performance of their obligations pursuant to this Agreement each of ABM and Matière shall act in good faith toward the other and use reasonable endeavours to forward the interests of the Consortium…."

The joint bid failed and Matière subsequently entered into a subcontract without ABM for installation work relating to the project. ABM blamed Matière for the failure, in particular by allegations that Matière acted in breach of good faith during the lengthy and complicated bid process.

Whereas Matière initially brought the claim against ABM for unpaid fees, ABM brought a counterclaim alleging breach of good faith obligations and claiming loss of chance to win the bid.

Breach of Good Faith Obligations?

ABM asserted that Matière was in breach of the two Agreements in three material ways:

1. By undermining in various ways the plan (contained in the bid) to build a bespoke factory to manufacture the pre-cast concrete;
2. By giving in 2019 or 2020 a slide presentation in respect of the plans for the project to another company which was a key competitor of ABM and which was ultimately engaged for the concrete elements for the project; and
3. By entering into a further Professional Services Contract and sub-contract for the same project.

The Court, having considered the recent guidance of the Court of Appeal in Re Compound Photonics Group Ltd [2022] EWCA Civ 1371, held that both agreements contained enforceable express duties of good faith. In particular, the Court found that the relevant clauses required the parties to (1) act honestly with each other, (2) not engage in conduct which would be considered commercially unacceptable to reasonable and honest people, and (3) keep fidelity to the bargain (because the common purpose and aim of the parties was apparent from the contract).

The Court held that Matière had acted in breach of its good faith obligations by undermining the joint venture bid. In particular, the held that Matière deliberately undermined the choice of particular factory to the project's main contractor without ABM's knowledge, agreement or input, including by criticising the site's suitability and by offering alternative site options. Such actions were considered to be dishonest and/or regarded as commercially unacceptable and were also not keeping fidelity to the bargain. Rather, the actions had the potential to render the bargain worthless or significantly less valuable. ABM's other allegations of breach (such as in relation to the competitor presentation) were not accepted by the Court.

In summary, this decision demonstrates that conduct which is dishonest, commercially unacceptable, or which undermines the contract's purpose may be held to be a breach of express good faith obligations. That is, a breach of good faith can arise not just when there is dishonest conduct.

Loss and Causation?

Having determined that there were breaches of both the Consortium Agreement and the Collaboration Agreement, the Court turned its mind to the question of loss and causation.

ABM's primary claim was for loss of the chance in winning the bid, which it said was "virtually certain" but became "nil or virtually nil" after the alleged breaches. ABM valued its lost chance at 90% applied to its claim for lost profit primarily pleaded as a loss of £18.92 million.

However, the Court held that the breaches did not cause ABM to lose any real and substantial chance of securing the subcontract and therefore the counter-claim was dismissed. The Court considered that, overall, it had to be satisfied that ABM had a real or substantial chance (and not a non-existent nor negligible chance) of winning the subcontract and that the breaches were the effective or dominant cause in a reduction of that chance. In summary:

- The Court was satisfied that at the time of the earliest breach there was a real and substantial chance of winning the subcontract and that within six months there was no real prospect at all of winning the subcontract (rather the prospects had been reduced to negligible).
- However, the Court considered that, on the evidence, ABM had not proven that any of the breaches played a material part in the reduction of ABM's prospects of being appointed. By way of example, the Court held that whenever Matière undermined the factory, it did so in response to or at the behest of the main contractor. Serious concerns about ABM were held within the main contractor for reasons unconnected with Matière. Further, there were other factors which occurred over time so as to diminish to non-existent such prospects of winning the subcontract.

This decision is a useful demonstration of the application of the relevant principles to a claim which arises from a course of conduct over an extended period. Further, it demonstrates the challenges that can exist for parties seeking substantial damages based on a loss of chance caused by breach of good faith obligations and reiterates that care should be taken in the preparation of a sufficient evidential basis to support a claim. Claimants must show that the breaches were the effective cause of the loss rather than any other factors and cannot simply hope to rely on seemingly prejudicial allegations of breach of duty as a basis for claiming loss.

PRACTICE AREA UPDATES

Shareholder Activist Update:

Permissibility of Poison Pills for Closed-End Funds

The United States District Court for the Southern District of New York recently evaluated a modern form of the classic "poison pill" as adopted by a closed-ended investment fund for the alleged purpose of entrenching fund management against activist shareholders. In *Saba Capital Master Fund, Ltd. v. ASA Gold and Precious Metals, Ltd.* (S.D.N.Y. Mar. 28, 2025) ("ASA Gold"), the Court found that although such poison pills do not violate the ratability requirement of the Investment Company Act ("ICA"), poison pills under the ICA must be time-limited to no more than 120 days in duration, and successive authorizations of the poison pill will be deemed to violate the 120-day limit. This case raises important implications for activists seeking sustained pressure on funds governed by the ICA.

Section 18(d) of the ICA, which regulates closed-end investment funds, provides that "[i]t shall be unlawful for any registered management company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance." Congress created this prohibition (with the limited 120-day exception) to address previous abuses in investment company management practices—particularly entrenchment by management and attendant self-dealing by management—for the benefit of the owners of those companies' funds.

It was in this context that Saba Capital rapidly increased its ownership stake in ASA Gold and Precious Metals (a closed-end investment fund) from 5% to over 16% during 2023. To prevent Saba's "creeping control," ASA's board adopted a shareholder rights plan in December 2023 that would have substantially diluted Saba's shares if triggered (i.e., a classic poison pill rights plan). ASA continuously extended this

"poison pill" plan through identical successive adoptions—in April 2024, August 2024, and December 2024—with each new plan adopted before the prior one expired. Saba brought suit in the Southern District of New York in response, asserting primarily that the ICA's 120-day limit was violated for each rights plan adopted by ASA Gold after December 2023.

Finding that it did not require discovery to resolve a pure question of law, the district court in ASA Gold granted summary judgment to Saba and invalidated the then-operative poison pill, finding that all plans entered during and after April 2024 violated the ICA's 120-day maximum length for shareholder rights plans. Specifically, because each successive plan was substantively identical and was adopted before its predecessor expired, the December 2023 plan never truly expired, and was found to effectively be in continuous operation well beyond 120 days. Allowing a successive poison pill plan to be adopted while a prior plan remained in effect, the court reasoned, would render the expiration requirement "meaningless" and allow funds to maintain poison pills "ad infinitum," contrary to the ICA's purpose of preventing management entrenchment and self-dealing.

Importantly, however, the district court in ASA Gold did not reach the question of whether successive rights plans, adopted after a prior one has expired, would violate the 120-day requirement. The court thus left open the question of whether a company could allow a plan to expire for some de minimis amount of time beyond 120 days in order to avoid the statutory 120-day prohibition before immediately reimposing a substantially similar plan. Doing so would, seemingly, satisfy a court strictly undertaking a plain language analysis of the ICA text, though it remains to be seen whether a future court considering such a fact pattern would look beyond form to the function of type of regulation-eschewing gambit.

Regardless, ASA Gold is an important decision to be considered for activists considering challenges to incumbent management, as it demonstrates that not all investment structures are alike from the perspective of activist/management relations. Although poison pills have been an accepted and lawful form of takeover protection for typical public companies for several decades, ASA Gold shows that investment companies regulated under the ICA are subject to a different scheme that affects both management and shareholder rights. Other tradeable securities may be subject to a different regime still. Thus, it is imperative that activists deeply analyze their particular investment and its associated regulatory regime when formulating strategy and executing it.

Commodities and Derivatives Litigation Update:

NEW GREENHOUSE GAS REMOVAL BUSINESS MODEL AND DRAFT CONTRACT

In August 2025, the UK Department for Energy Security and Net Zero published a new Greenhouse Gas Removal (GGR) business model, and accompanying draft GGR Contract. The aim of this new regime is to recognize that investment into carbon renewal projects and technologies will be significant, both to take necessary steps to remove carbon from the atmosphere and rebalance emissions, and to create a valuable economic impact, including significant job creation, by way of early investment into an emerging sector. The summary of the new framework published by the Department for Energy Security and Net Zero states that GGR technologies have the potential to play a key role in the plan to the UK to deliver clean power by 2030 and to accelerate to net zero across the economy by 2050. The vision of the department is to develop a sustainable market in which engineered GGR projects are funded by polluting industries, to compensate for their residual emissions. This recognizes the the need to encourage private investment into the GGR market, by way of seeking to establish suitable market conditions for such investment.

THE GGR CONTRACT FUNCTIONS AS A CONTRACT FOR DIFFERENCE

The contract is a "Contract for Difference", which is an arrangement entered into typically by a "buyer" and "seller", which provides that the buyer will pay to the seller the difference between the current value of an asset, and its value at the time that the contract was entered into. Under the GGR Contract, developers are given a price guarantee for qualifying GGR credits, in the form of a “strike price” that reflects the cost of the removal of 1 tonne of carbon dioxide from the atmosphere. Over the course of the term of the contract, the parties will negotiate the strike price based on the costs of the project being conducted by the developer (which can take into account eligible operational expenses and repayment of capital expenditure) plus a return rate on capital investment. The “Reference Price” under the GGR Contract reflects the market value of GGR Credits. In circumstances where there is no market for carbon removal, or no reliable price benchmark, this Reference Price will be based on the “Achieved Sales Price” for GGR Credits for initial projects. Under the GGR Contract, where the agreed strike price is higher than this reference price, the developer will be paid the difference by the Government. Where the Reference Price is higher than the Strike Price, the Developer will pay the difference to the Government. As a result, this provides a guaranteed income stream for developers, and provides for the risk of investing in GGR projects to be shared between the investor and the Government. There is also a Price Discovery Incentive, which is provided as an incentive for higher sales prices and projects. This regime is intended to create confidence among investors, in order to encourage private investors to invest into GGR Projects. It is also intended that this will help to build a sustainable GGR market, which will enable government intervention to reduce over time.

OTHER CONTRACTUAL TERMS

The GGR Contract is a private law contract with a fifteen-year term. The Parties to each GGR Contract will be a GGR developer and a government entity. The government intends to establish an entity named Low Carbon Contracts Company Ltd which will fulfil this purpose. The draft GGR Contract is governed by English law, and provides for disputes arising under it to be resolved by way of a specified dispute resolution procedure. The dispute resolution procedure requires the parties to first endeavour to resolve disputes through negotiation, following the failure of which, they may refer the dispute for resolution by way of arbitration under the LCIA Rules. Certain disputes may also be resolved through an expert determination procedure where this is explicitly specified under the contract, or whether the parties have agreed as such in writing.

Further financial terms of the GGR Contract include a sales cap, which places a limit on the subsidy that is available to the GGR Developer. There is a defined “Initial GGR Contract Sales Cap,” which reflects the forecast total GGR Credits during the operational period of the GGR Contract. What this means in practice for each contract will be negotiated and agreed in respect of the particular project that is under consideration. During the term of the GGR Contract, GGR Credits will be accrued. Once the total reaches the GGR Contract Sales Cap, the developer will be considered to have achieved its return on investment, such that no further subsidy will be paid, and the GGR Contract will automatically expire. There is also an annual limit on the subsidy that is available to the GGR Developer, which is calculated pro-rata from the GGR Contract Sales Cap.

The GGR Business Model also includes an opportunity for developers to receive a capital grant, which may amount to up to 50% of the project capex. The purpose of offering this grant is to support projects during their construction phase.

EXPECTED IMPACT

The new GGR regime represents an interesting use of Contracts for Difference, in order to encourage investment into the sector. Greenhouse Gas Removal projects are likely to be an important part of the UK’s pursuit of its net-zero targets, because such projects seek to counterbalance the impact of other sectors which generate significant emissions, and in respect of which reduction of remissions is more challenging. The pursuit of public-private partnerships by way of the new GGR Business Model and draft GGR Contract seeks to achieve important investment into the sector, by introducing sharing of risk between the Government and the developers. This ensures that the burden of providing investment is not held solely by the Government, and that private developers that invest into GGR projects have some guarantee of return on investment. The new GGR Business Model and draft Contract therefore represents an important milestone in the pursuit of a net zero UK economy.

VICTORIES

Sweeping Summary Judgment Secured for OpenAI in "Open AI" Trademark Dispute

Quinn Emanuel secured a decisive victory for OpenAI, invalidating a fraudulent trademark registration and obtaining a permanent injunction in a hard-fought infringement battle that clears the path for the AI leader's brand.

In a comprehensive 19-page order issued on July 21, 2025, U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California granted complete summary judgment in favor of Quinn Emanuel's client, OpenAI. The ruling brings an end to a contentious trademark dispute against Open Artificial Intelligence, Inc. and its founder, Guy Ravine. The Court not only permanently enjoined the defendants from using the "Open AI" name but also ordered the USPTO to cancel their trademark registration, ruling that the defendants had procured it through clear and convincing evidence of fraud.

The dispute centered on a clash over senior rights. The court noted that Ravine purchased the open.ai domain in March 2015 but did not file for trademark protection until December 11, 2015—the very day OpenAI announced its founding. Crucially, the court found a persistent pattern of deception in how Ravine secured this registration. His initial application was rejected by the USPTO in March 2016 because his website merely promised an "announcement soon," failing to show actual use in commerce. Facing a final deadline to salvage his application, Ravine submitted a substitute specimen depicting a product called "Hub." Relying on this new submission, he managed to overcome the rejection and ultimately obtained a registration on the USPTO's Supplemental Register in August 2017.

However, Quinn Emanuel presented forensic evidence proving this pivotal specimen was a fabrication. The court found that Ravine submitted images with date stamps removed to conceal that his purported products did not exist at the time of his original application. The court also found that Ravine's claimed "commercial activity" was illusory. The "user comments" visible in the specimen were not from genuine customers but were planted by Ravine's own employee to create a false appearance of market traction. Based on this "unrebutted evidence," Judge Gonzalez Rogers held that there was no genuine dispute that Ravine knowingly intended to deceive the USPTO to secure the registration.

In granting summary judgment on OpenAI's infringement claims, the court dismantled the defendants' argument that they were the senior user. The Judge ruled that "no reasonable juror could conclude that OpenAI did not acquire secondary meaning by November 2022," the critical date when the defendants pivoted to launch copycat products named "Boom" and "Ava." The decision cited extensive evidence of OpenAI's rapid ascent. By September 2022, DALL·E 2 boasted over 1.5 million active users generating 2 million images daily. Following the release of ChatGPT, the court noted tech journals described the platform as "one of the fastest growing services ever," achieving over 100 million weekly users. The Court further observed that by March 2022, search engines like Google and Bing exclusively associated the term "OpenAI" with the plaintiff, effectively making it a household name.

In contrast, the court found the defendants' claims of continuous use legally insufficient. Despite claiming to offer various collaboration tools since 2017, forensic analysis revealed that their "Evolved Collaboration Tool" website had a mere 37 visitors in the United States. Even worse, the court noted that their "Decentralized" website had only about 10 "unique editors" over a five-year period—many of which were exposed as test accounts or fake registrants with email addresses such as "mike@mike.com." The court concluded that the defendants had almost no genuine commercial footprint before pivoting to infringe on OpenAI's brand.

Finding that the defendants' conduct caused actual consumer confusion, Judge Gonzalez Rogers issued a sweeping permanent injunction. The order prohibits Ravine and his affiliates from using "Open AI," "open.ai," or any colorable imitation in connection with AI products, services, or social media handles.

This victory not only vindicates OpenAI's intellectual property rights but also eliminates a source of significant marketplace confusion, allowing the company to continue its innovation without the burden of fraudulent legal challenges.

Published by Quinn Emanuel Urquhart & Sullivan, LLP as a service to clients and friends of the firm. It is written by the firm's attorneys. The Noted with Interest section is a digest of articles and other published material. If you would like a copy of anything summarized here, please contact Elizabeth Urquhart at +44 20 7653 2311.

- We are a business litigation firm of more than 1,300 lawyers — the largest in the world devoted solely to business litigation and arbitration.
- As of January 2025, we have tried over 2,500 cases, winning 86% of them.
- When we represent defendants, our trial experience gets us better settlements or defense verdicts.
- When representing plaintiffs, our lawyers have garnered over US$80 billion in judgments and settlements.
- We have won eight 9-figure jury verdicts and five 10-figure jury verdicts.
- We have also obtained fifty-one 9-figure settlements and twenty 10-figure settlements.

quinn emanuel