

LEVEL

TWENTY
SEVEN

C H A M B E R S



Arbitrating with Guerrillas and Gorillas
Ethics & Remedies

Shane Monks

Liability limited by a Scheme approved under professional standards legislation

>> Case study 1: Deepwater Horizon

- *H v L and others* [2017] 1 WLR 2280 (Popplewell J, QBD)
- *Halliburton Co v Chubb Bermuda Insurance Ltd* [2018] 1 WLR 3361 (CA)
- *Halliburton Co v Chubb Bermuda Insurance Ltd* Case ID UKSC 2018/100, heard 12 and 13 November 2019

>> Test for Removal

- *H v L and others* [2017] 1 WLR 2280 (Popplewell J, QBD)
- *Halliburton Co v Chubb Bermuda Insurance Ltd* [2018] 1 WLR 3361 (CA)
- *Halliburton Co v Chubb Bermuda Insurance Ltd* Case ID UKSC 2018/100, heard 12 and 13 November 2019

>> A Tame Gorilla?

- Arbitrator disclosed he had acted in a number of arbitrations in which Chubb was involved, including appointments by Chubb.
- Disclosed he was currently acting in 2 arbitrations involving Chubb.
- Then appointed by Chubb in a reference brought by Transocean. Disclosed to Transocean but **NOT** to Halliburton

>> Duty of Disclosure

IBA Guidelines:

- circumstances that **MAY** in the eyes of the parties give rise to doubts as to the arbitrator's impartiality or independence

>> Duty of Disclosure (cont.)

Model Law Article 12

Rule 5.4 LCIA Rules 2014

Rule 16.3 ACICA Rules 2016

- circumstances **LIKELY** to give rise to doubts as to the arbitrator's impartiality or independence

>> Best Practice

- Popplewell J - no obligation to disclose circumstances that in fact would not raise a real possibility of impartiality, although it may be prudent to avoid the risk of challenge.
- Court of Appeal - best practice to disclose and accordingly as a matter of law, disclosure should have been made.

>> Appeal Issues

- Was the failure to disclose enough to justify removal? Popplewell J said, without more is a ‘bootstraps’ fallacy.
- Which result will best protect the reputation of London arbitration?
- A ‘magic number’ of appointments?
- Arbitrator’s response when challenged.
- What about specialist sectors?

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