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The United Kingdom, UK Supreme Court, UKSC 2018/0100, Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd (Formerly known as Ace Bermuda Insurance Ltd) (Respondent), Supreme Instance, 13 November 2019.

Member State

United Kingdom

Topic

Independence and impartiality of arbitrators, with a special focus on the lack of impartiality or equidistance from the parties (internal aspect).

Deciding Court Original Language

UK Supreme Court

Deciding Court English translation

UK Supreme Court

Registration N

N/A

Date Decision

13 November 2019

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence

Not mentioning EU law but relevant to it in light of the Opinion 1/17 and the ECJ‘s case-law on independence and impartiality of judicial bodies.

ECtHR Jurisprudence

Not applicable

Subject Matter

In this dispute, the internal aspect of independence is at stake. In particular, the arbitrator was found to have a compromising relationship with one of the parties.

Legal issue(s)

The case is related to impartiality.

Request for expedited/PPU procedures

Not applicable

Interim Relief

Not applicable

National Law Sources

Not applicable

Facts of the case

Claims arising out of the Deepwater Horizon incident were made against Halliburton, which had provided offshore services in relation to the project. Halliburton then sought to claim under its excess liability insurance policy with Chubb. Chubb rejected the claim and in January 2015 Halliburton commenced arbitration against Chubb. The claim was brought under the Bermuda Form policy in question, which was governed by New York law and provided for London-seated ad hoc arbitration.

The parties were unable to agree on the selection of the presiding arbitrator and the English High Court appointed Kenneth Rokison Q.C. in June 2015. Mr Rokison had been proposed by Chubb,

but Halliburton had opposed his appointment on the grounds that Mr Rokison was an English lawyer, whereas the policy was governed by New York law.

Before he was appointed in June 2015, Mr Rokison disclosed that he had previously been an arbitrator in arbitrations involving Chubb, including some appointments on behalf of Chubb. The judgment does not set out the number of appointments involved, or the timescales. He also disclosed that he was acting as arbitrator in relation to two current references involving Chubb.

After Mr Rokison took up his appointment in the arbitration between Halliburton and Chubb, he accepted two appointments in additional arbitrations relating to the Deepwater Horizon incident: (a) in December 2015, he was appointed by Chubb in an arbitration relating to a claim under the same excess liability cover, which Chubb had sold to another insured party, Transocean; and (b) in August 2016, he was appointed by Transocean, in an arbitration relating to a claim Transocean was bringing against a different insurer that related to the same layer of insurance. Mr Rokison did not disclose the December 2015 and August 2016 appointments to Halliburton, but Halliburton became aware of them in November 2016.

Halliburton then asked Mr Rokison to resign, but he stated that he did not feel he could do so, as he had been appointed by the court. Mr Rokison noted that the issues under consideration were neither the same nor similar. He stated that he had been independent and impartial throughout and that this would continue to be the case. Halliburton then made an application to the English court for his removal under s24 of the Arbitration Act 1996. The application was unsuccessful and Halliburton then appealed to the Court of Appeal, which also rejected the challenge. Halliburton appealed to the Supreme Court.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Supreme Court rejected an appeal from the Court of Appeal which had concluded that the mere fact that an arbitrator accepts appointments in multiple references concerning the same or overlapping subject matter with only one common party does not in itself give rise to an appearance of bias.

Relation of the case to the EU Charter

The case relates to the impartiality standards applicable in the EU to judicial bodies as resulting from the Charter and the ECJ‘s case law.

Relation between the EU Charter and ECHR

Not applicable

Use of Judicial Interaction technique(s)

The Court relies on domestic law and domestic case-law.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Court borrows heavily from previous domestic cases.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Not applicable

Strategic use of judicial interaction technique (purpose aimed by the national court)

The main purpose of the national court is to achieve systemic coherence with previous cases.

Impact on Legislation / Policy

This case, as other cases analysed above, have certainly played a role in the shaping of those provisions of EU investment agreements relating to the issue of double hatting, which can take many different forms (as the variety of situations commented in this casebook clearly demonstrates).

Notes on the national implementation of the preliminary ruling by the referring court

Not applicable

Impact on national case law from the same Member State or other Member States

Not applicable

(Link to) full text

https://www.supremecourt.uk/cases/uksc-2018-0100.html

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History of the case: (please note the chronological order of the summarised/referred national

judgments.)