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In the case of **King John Bari-Iyiedum Berebon & Others v Shell Petroleum Development Company of Nigeria** the Technology and Construction Court (“TCC”) was asked to consider two applications in respect of two oil spills that occurred in the vicinity of the Bodo Creek in Nigeria. The first occurred in August 2008 when an erosion caused a spillage of crude oil into the creek which continued until October/November 2008. The second incident occurred on 7 December 2009 when there was another eruption of a pipeline that caused a spillage of crude oil that continued until February 2009.

The Claimants were applying for a restoration of the claims that had been subject to a stay since 2014. The Defendants were seeking an order that the claims be struck out.

In October 2014, the parties entered into an agreement setting out agreed facts and assumptions that would form the basis of compensation to be paid, subject to an exception in respect of a clean-up and remediation claim that was being mediated separately and so the Claimant’s clean-up claims were stayed pending that mediation. There were several applications to extend the stay in 2019, 2020 and 2021. The Defendant argued that the clean-up was almost complete and the clean-up claim should come to a natural end as the parties clearly had every intention of seeing it through to completion. The Claimants raised various concerns about the adequacy of the clean-up operation.

The cumulative effect of the various orders that had been made over the years was that the proceedings had been stayed since the end of 2014. Fifteen years after the oil spills occurred and more than 10 years after the proceedings commenced, despite a substantial settlement of the claim for compensation and an agreed remediation initiative, the parties were in dispute as to what had been achieved and how any outstanding issues should be resolved.

The Claimants’ position was that there was a real dispute between the parties as to the adequacy of the clean-up undertaken to date and so the clean-up claim should be restored. The Defendant contended that the claims should be struck out on the basis that the clean-up process was substantially complete and it would be disproportionate to order a costly and complex trial of the clean-up claim.

The Court held that although there was clear evidence that the clean-up process was almost complete and that there was a real dispute between the parties as to the adequacy of the work undertaken which was not suitable for summary disposal.

The Court was satisfied that the claim was not bound to fail and the Defendant’s application was dismissed. As there was an arguable case that the Claimants might establish an entitlement to damages, it would not be appropriate for the court to strike out the claim.

When considering the Claimants’ application to restore the proceedings, the Court firmly rejected the assumption that it requires a costly and complex trial as the remaining issues were limited and most of the factual investigations were documented and not in dispute. Although both parties were committed to the clean-up effort, positions had become entrenched and neither party was requesting a stay.

On that basis, the time had come for the claim to be restored and case managed to a swift and final trial.

Nord Stream AG v Lloyd’s Insurance Company and Arch Insurance

A claim has recently been issued by **Nord Stream AG** against various insurers subscribing to an excess Offshore Operating All Risks Policy under the Property Damage and Terrorism sections.

The Claimant is the operator of two natural pipelines that are laid through territorial waters of Russia and other surroundings countries.

The claim relates to damages resulting from physical damage to the pipelines caused by two explosions. The explosions were said to have taken place within a short time though, according to the Claimant, were not simultaneous.

We shall continue to monitor the progress of this claim, which is estimated between €1.2 – 1.35bn.

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