THE PRESTIGE RULING / UK SUPREME COURT

The cost of ignoring an arbitration clause.

28 OCT RULING

The UK Supreme Court has upheld an insurer's compensation awards against Spain and France in the Prestige dispute.



The Prestige under emergency tow, before it sank.

WHY BREAKING THE DUTY TO ARBITRATE CAN LEAD TO COMPENSATION

[1] Paras 1-9, 99, 132, 154-155. Photograph [A]. Judgment: 28 October 2026.

THE BACKGROUND / AN OIL SPILL AND AN INSURANCE DISPUTE

Why the countries sued the insurer.



Clean-up after the Prestige spill / O Grove, December 2002.

The Prestige tanker sank off Spain in November 2002. The resulting pollution affected both Spain and France, which sought compensation from the ship's insurer, the London P&I; Club.

Spanish law allowed them to sue the insurer directly. In March 2019, a Spanish court set the recoveries shown below, subject to the policy's US$1bn limit.

€2.355bn	€117m	US$1bn
SPAIN / UP TO ABOUT	FRANCE / UP TO ABOUT	POLICY COVER LIMIT

Background: 2019 Spanish judgment and insurance cover limit.

[1] Paras 3-6, 11-18. Historical monetary figures: para 6. Photograph [B].

THE POLICY / THE CLAUSES AT THE CENTRE OF THE CASE

The policy set two key conditions for claims.

01 / WHERE DISPUTES GO

London arbitration



Disputes had to be decided by arbitrators in London, under English law.

02 / THE "PAY TO BE PAID" CLAUSE

The shipowner must pay first

The shipowner had to pay its liability in full before the insurer had to reimburse it.

The owners had not paid. The first arbitrator therefore ruled that the insurer did not have to pay Spain or France. He also held that their claims had to be brought in London arbitration.

[1] Paras 4, 7-16. Clauses and early arbitral findings are reported as described by the Court.

THE THIRD-PARTY QUESTION / CONDITIONAL BENEFIT

Why they had to arbitrate in London.

Spain and France had not signed the policy. But their claims relied on its cover. Applying English law, the Court held that they had to accept the London arbitration clause when claiming those rights.

1 **Claim the policy's protection**

The States used Spanish law to seek compensation directly from the insurer.

2 **Follow the policy's arbitration clause**

Their claims relied on the policy, so its requirement to arbitrate also applied.

3 **Pay for losses caused by a breach**

Taking those claims to court instead could make them liable for the insurer's resulting losses.

[1] Paras 7-9, 60-65, 99. This principle concerns claims to contractual benefits.

THE ROUTE TO THE SUPREME COURT

How the compensation awards reached the Court.



UK Supreme Court, London / archive photograph.

2023

The insurer wins compensation

Spain and France were ordered to pay the insurer. The High Court upheld those awards.

2024

The States win their appeal

The Court of Appeal set the awards aside, ruling that this form of compensation was unavailable.

2026

The Supreme Court restores the awards

It upheld the compensation as damages for breach of contract, while correcting the legal wording.

[1] Paras 18-39, 132, 154-155. [2] Background and Judgment. Photograph [C].

THE RULING / A CORRECTION TO THE LEGAL BASIS

What changed was the legal basis for payment.

EARLIER LEGAL BASIS

Equitable compensation

The label used for the compensation awarded by the arbitrators.

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SUPREME COURT

Contract damages

Compensation for losses caused by breaking a contractual duty.

Damages for breach of contract

The Supreme Court said that the duty to arbitrate was contractual. A claimant who takes rights under a policy must follow its arbitration clause. If it breaks that duty, the usual rules on compensation for breach of contract apply.

That meant the insurer could keep its compensation awards. The Court saw no need to send the dispute back to the arbitrators: the outcome would have been the same. The awards needed changes explaining the correct legal basis.

[1] Paras 40-44, 60-65, 99, 132, 145-155. The appeal was unanimously allowed: [2].

THE BOUNDARY / STATE IMMUNITY

Why state immunity did not stop compensation.

State immunity protects countries from certain court orders. Here it prevented an injunction - an order telling the States to stop - but did not rule out compensation for past breaches.

UNAVAILABLE HERE

An order to stop the proceedings

The States had not consented in writing to an injunction. Payment instead of such an order was also unavailable.

UPHELD HERE

Money for losses already caused

The insurer could still recover losses caused by the States' earlier breaches of their duty to arbitrate.

The two remedies serve different purposes. An injunction would control what a State does next. Damages compensate the insurer for harm caused by conduct that has already broken the arbitration obligation.

[1] Paras 2, 108-116, 132. State Immunity Act 1978, s 13(2)(a); Senior Courts Act 1981, s 50.

THE DISTINCTION / FUTURE LOSS AND FUTURE BREACH

A past breach can cause losses later.

The timing of the breach matters. The Court allowed compensation for losses that may arise later, where they result from a breach already committed. That is different from paying for a breach that has not happened.

A BREACH HAS ALREADY OCCURRED

The resulting loss may arise later

If enforcing the Spanish judgment makes the insurer liable to pay a State, that State must pay the same amount to the insurer. This covers losses from the earlier breach.

ONLY A FUTURE BREACH IS THREATENED

The breach has not happened yet

Common-law damages cannot be awarded just because a party threatens a future breach. The separate power to award payment instead of an injunction was unavailable here.

[1] Paras 112-115, 147-154, especially paras 149-152. Conditional payment is described in para 152.

THE APPEAL / LIMITS UNDER SECTION 69

The appeal was not a chance to retry everything.

Section 69 allows a limited appeal on a legal question arising from an award. It does not let a court reconsider the whole dispute. The appeal must stay within the questions properly put before it.

s 69

WHY PART OF THE APPEAL COURT'S REASONING FAILED

The Court of Appeal had relied on arguments about what caused the insurer's losses and whether the awards interfered with foreign courts. The Supreme Court said those points were outside the permitted appeals and could not justify overturning the awards.

The result: the compensation awards were upheld. Their wording must be changed to show that payment is due as damages for breach of the duty to arbitrate.

[1] Paras 121-129, 132-135, 154-155. Section 69 is a limited appeal, not a general merits rehearing.

THE RECORD / PRIMARY SOURCES AND IMAGE CREDITS

Read the ruling.

The Kingdom of Spain and another v The London Steam-Ship Owners' Mutual Insurance Association Ltd (No 2)

[2026] UKSC 36 / 28 October 2026

[1] Full Supreme Court judgment OPEN

[2] Official press summary OPEN

KEY PASSAGES IN THE JUDGMENT

Background and policy

Paras 3-18: the spill, policy terms and the first claims and awards.

What compensation was allowed

Paras 108-116, 147-155: immunity, future losses and the awards.

Why they had to arbitrate

Paras 60-65, 99, 132: claiming under the policy meant following its arbitration clause.

Why the appeal was limited

Paras 121-129: the questions an appeal court could properly decide.

[A] Prestige / Bahamas Maritime Authority / CC BY-SA 4.0.

[B] Clean-up / Adela Leiro / CC BY-SA 3.0.

[C] Supreme Court / Christine Smith / CC BY-SA 4.0.

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