

Commercial Arbitration Funding

Woodsford Case Study

A large offshore oil rig is shown at night, illuminated by numerous yellow lights. The rig's complex structure, including cranes and multiple smokestacks, is clearly visible against the dark blue sky. The lights create a strong reflection on the dark water in the foreground. The overall scene is industrial and dramatic.

Commercial Arbitration Funding

In a landmark ‘David versus Goliath’ commercial case, relative minnow Norscot Rig Management was pitted against the much larger Essar Oilfields in a dispute over \$12 million in unpaid costs that eventually resulted in a landmark ruling in relation to the recovery of third party litigation funding fees.

The two companies operate in the oil and gas sector: Norscot provide consultancy, drilling and rig management services to operators in the North Sea, Russia, Far East and India and had contracted their specialist services to Essar. At a certain point in the working relationship a dispute arose that resulted in legal proceedings starting. However the subsequent conduct of Essar in relation to the proceedings had far reaching consequences.

The dispute between the two parties eventually went to arbitration but matters were complicated by Essar’s refusal to pay any of the considerable monies owed to Norscot. The sums involved were so considerable that it caused the claimant severe financial problems, significant enough to make it impossible for them to pursue the case without external funding.

When Norscot looked for an external funding solution, Woodsford was able to provide funding of £647,000 to allow them to pursue their case with the legal resource required. The case was heard in an ICC arbitration before Sir Phillip Otton who held that Essar was in repudiatory breach of an operations management agreement and awarded Norscot damages and various other sums under the agreement, totalling over US\$12 million.

Having prevailed in the case, Norscot sought to recover the costs of arbitration from Essar including the cost of the litigation funding arrangement with Woodsford which it had been forced to seek out due to the behaviour of Essar. In an award issued in December 2015 and clarified in March of 2016, Sir Philip criticised Essar’s conduct and ordered it to pay Norscot’s costs on an indemnity basis, including the sum of £1.94 million, which Norscot owed to Woodsford pursuant to the litigation funding arrangement.

Sir Philip went on to conclude that Essar had deliberately put Norscot in a position where it could not fund the arbitration on its own and that it was reasonable for it to obtain litigation funding from Woodsford on the terms that it did. Additionally such litigation funding costs were “other costs” for the purposes of s59(1)(c) of the Arbitration Act and therefore recoverable from Essar. This landmark ruling was subsequently upheld by the Commercial court on appeal.

Full details of the English High Court: Essar Oilfields Services Limited v Norscot Rig Management PVT Limited [2016] EWHC 2361 (Comm) can be found at: <http://woodsfordlitigationfunding.com/classic-case-david-v-goliath/>



The finding in Essar v Norscot...is a game changer for the litigation funding market.



The Times (London)



About Woodsford

Founded in 2010 and with a presence in London, New York, Brisbane, Philadelphia and Minneapolis, Woodsford is a leading ESG, access to justice and litigation finance business.

Whether it is helping consumers achieve collective redress, ensuring that investors and universities are properly compensated when Big Tech infringes intellectual property rights, or helping shareholders in collaborative, escalated engagement up to and including litigation with listed companies, Woodsford is committed to ensuring the highest ESG standards while providing access to justice.

Working globally with many of the world's leading law firms, our legal experience, investment, business and technical expertise, in tandem with our significant financial muscle, makes us a powerful partner and a formidable adversary.

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