

7.3.2.3 Failure or disruption of supplies

Page 296, para 2, line 5, **insert** –

For instance, in *CTI Group Inc v Transclear SA* [2008] EWCA Civ 856, C planned to export a cargo of cement to Mexico to try to break a cartel operated by Cemex in the market. It asked T to source cement. T was unable to do so because of Cemex's influence. Frustration was not found because T had not specified that he was going to provide the cement from a particular source which failed; but had made an unqualified promise to sell.

7. 3.2.4 Delay and hardship

Page 297 before (ii) add –

- ✘ In *Edwinton commercial Corporation (2) Global Trade Ways Ltd v Tsavlis Russ (Worldwide Salvage and Coach Ltd) The Sea Angel* [2007] EWCA Civ 547 a 20-day charter of a vessel to a salvor to transship oil from a casualty which had caused a major pollution incident was not frustrated where before redelivery the vessel was unlawfully detained for three months by port authorities. The Court of Appeal held that comparing the probable length of the delay with the unexpired duration of the charter was not the decisive test. Delay was an important consideration but only the starting point. The delay of a vessel in the course of a major conflict was quite unlike the instant case, since it was not possible to negotiate or litigate one's way out of such consequences of war. In the instant case the purpose of the charter had been performed and the contractual risk of detention by local authorities arising out of a salvage situation where there was a concern about pollution was in general terms foreseeable. Moreover, the risk was foreseeable by the salvage industry and was provided for by the terms of the special compensation protection and indemnity clause which was incorporated in the charter. The particular risk which occurred was within the provisions of that clause. There was no frustration until the strategy of commercial negotiation had

failed, so that the instant case was one of "wait and see" and not one in which the charter was frustrated then and there by the supervening event.