

HOW DO PARTIES NOW PROVE THEIR CASE?

Professor Stavros Brekoulakis (QMUL), Marion Smith KC, Melissa Shipley,
James Bradford and Nicholas Higgs (39 Essex Chambers)

LIDW - 19 May 2023

Are witness statements worth the time and money?

- *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm)
- *Blue Manchester Ltd v Bug-Alu Technic GmbH* [2021] EWHC 3095 (TCC)
- *Mad Atelier International BV v Mr Axel Manes* [2021] EWHC 1899 (Comm)
- *Thomas Barnes & Sons Plc v Blackburn with Darwen Borough Council* [2022] EWHC 2598 (TCC)
- *Cumbria Zoo Company Ltd v The Zoo Investment Company Ltd* [2022] EWHC 3379 (Ch)
- *Mullberry Homes Ltd v Barrow-In-Furness Council* [2023] EWHC 38 (TCC)
- ICC Arbitration and ADR Commission Report on the Accuracy of Fact Witness Memory in International Arbitration: <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/icc-arbitration-and-adr-commission-report-on-the-accuracy-of-fact-witness-memory-in-international-arbitration/>

What makes a witness statement credible?

- *SS (Sri Lanka) R (on the application of) v The Secretary of State for the Home Department* [2018] EWCA Civ 1391

Lost in translation?

- CPR PD 32 paragraph 18.1
- CPR 57AC paragraph 3.3
- *Bahia v Sidhu* [2022] EWHC 875 (Ch)
- *Correia v Williams* [2022] EWHC 2824 (KB)

Pleading and proof by sampling/extrapolation

- *Building Design Partnership Ltd v Standard Life Assurance Ltd* [2021] EWCA Civ_1793
- *Standard Life v Gleeds* [2020] EWHC (TCC)
- *Amey LG Ltd v Cumbria County Council* [2016] EWHC 2856
- *Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd (No 2)* [2017] EWHC 1763

- 'Building a Claim by Extrapolation – The Legal and Evidential Blocks', HHJ Stephen Davies, SCL Paper Number 235: <https://www.scl.org.uk/papers/building-claim-extrapolation-legal-and-evidential-blocks>

Deploying expert evidence effectively

- *Advantage (Cheshire) Limited v GB Building Solutions Limited* [2023] EWHC 802 (TCC)
- *Dana UK Axle Ltd v Freudenberg FST GmbH* [2021] EWHC 1413 (TCC)
- *Lalana Hans Place Limited v Michael Barclay Partnership LLP* [2017] EWHC 29 (TCC)
- *Jackson v Marley Davenport Ltd* [2004] EWCA Civ 1225
- The IBA Rules (2020): <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b>
- The CI Arb Guidelines:
<https://www.ciarb.org/media/6824/partyappointedexpertsinternationalarbitration.pdf>

39 Essex blog posts on the topic include:

- [Witness Evidence in 2023 – Naming and Shaming](#) (25 January 2023)
- [Witness Evidence: What's New in 2022](#) (21 September 2022)
- [PD 57AC – Further Guidance and Sanctions](#) (29 March 2022)
- [Practice Direction 57AC: Case Update](#) (31 January 2022)
- [Practice Direction 57AC in Practice](#) (11 January 2022)
- [How is Practice Direction 57AC Bedding Down: Reform or Revolution](#) (15 November 2021)