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Case No: LM-2026-000116

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 September 2026

Before :

Thomas Raphael KC, Sitting as a Deputy Judge of the High Court

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Between :

INTRALINKS INC	**Claimant/ Respondent**
- and -	
NEXANS SA	**Defendant/ Applicant**

- -
- -

Stuart Benzie (instructed by **Fladgate LLP**) for the **Defendant/Applicant**
Daniel Khoo (instructed by **Fieldfisher LLP**) for the **Claimant/Respondent**

Hearing dates: 27 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THOMAS RAPHAEL KC, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Introduction

1. This judgment resolves a jurisdiction challenge in a case about virtual data rooms.

2. The Claimant, Intralinks Inc ("Intralinks") is a US company which provides information technology services, in particular virtual data rooms for corporate finance transactions. At the time of the events it operated out of New York City. Since April 2026 its primary business address is in Waltham, Massachusetts.

3. The Defendant, Nexans SA ("Nexans") is a French company principally operating in the cable and optical fibre industry, which used Intralinks' services. Its headquarters and registered office is in La Defense, Paris.

4. The parties had entered into previous contracts, but this case concerns a contract for "Project Otto", agreed on 2 or 3 October 2024 (the "Contract"). There is disagreement about when and how the Contract was concluded.

5. Nexans says the Contract was formed principally on the terms of work order no. 535958 dated 2 October 2024 (the "2 October Work Order"), which incorporates a Master Services Agreement ("MSA") providing for French law and jurisdiction (the "French MSA").

6. Intralinks says the Contract was formed on the terms of work order no. 5355137, dated on its front page 2 October 2024, but signed on 3 October 2024 (the "3 October Work Order"). The 3 October Work Order incorporates an MSA providing that it is governed by English law (the "English MSA").

7. A dispute has arisen as to performance of and payment under the Contract.

8. The Contract's charging structure includes payments that vary according to the amount of data uploaded into the data room. Intralinks says Nexans uploaded documents in August 2025 which triggered payments of €2,193,147.70 (the "Disputed Sums"). Nexans denies these Disputed Sums are due.

9. On 19 December 2025, Nexans commenced proceedings in France (the "French Proceedings") in which it alleges the English MSA should not be treated as agreed and the French MSA should be treated as incorporated. On the substance it contends the Disputed Sums were charged in circumstances which amount to bad faith in breach of contract. It claims damages for bad faith of €2,093,147.00. The French Proceedings were served on Intralinks in the USA on 22 January 2026.

10. On 24 March 2026, Intralinks issued a claim before the London Circuit Commercial Court for payment of the Disputed Sums. Intralinks applied for permission to serve proceedings abroad. It argued that jurisdiction could be established under Gateway 6(c) and Gateway 7. It also argued that England and Wales ("England" for brevity) was the proper place to bring the claim.

11. His Honour Judge Bird granted permission for service abroad on 31 March 2026, and the claim was served on Nexans in France. Nexans challenged the jurisdiction of the Court by application under CPR Part 11 dated 27 May 2026.

12. Nexans denied that a valid jurisdictional gateway was satisfied and said it had not been shown that England was the proper place to bring the claim.

13. Nexans' application came on for hearing on 27 July 2026. I heard able argument from Mr Stuart Benzie for Nexans and Mr Daniel Khoo for Intralinks.

14. For the reasons below, I conclude that Intralinks has satisfied Gateways 6(c) and 7 and shown that England is the proper place to bring the claim. The jurisdiction challenge therefore fails.

Legal Structure

15. The framework for whether the Court has jurisdiction over a foreign defendant who is not present in England is set out in the rules for service of proceedings abroad contained in CPR 6.36 and 6.37 and CPR PD 6B, §3.

16. To justify the Court assuming jurisdiction, Intralinks must show: that (a) there is a "*serious issue to be tried*"; (b) one of the gateways set out in PB 6B applies for each claim (CPR 6.36); (c) England is "*the proper place in which to bring the claim*" (CPR 6.37(3)); (d) in all the circumstances the Court ought to exercise its discretion to permit service out of the jurisdiction. See Altimo Holdings and Investment v Kyrgz Mobil Tel [2011] UKPC 7, [71].

17. The burden of proof of establishing each requirement is on Intralinks: Altimo, [71]. Nexans did not dispute that there was a serious issue to be tried, nor did it dispute that, if (b) and (c) were satisfied, this would be an appropriate case for the discretion to permit service out to be exercised.

18. To show that a gateway applies, Intralinks must establish a "*good arguable case*" that the conditions of the gateway are satisfied. This requires, where there are factual disputes as to the satisfaction of the relevant conditions, that provided the Court can reach a reliable assessment (which it can here), Intralinks must show it has "*the better of the argument*" on the material available, "*having regard to the limitations which an interlocutory process imposes*". The test is "*context-specific and 'flexible'*", and does not turn on satisfying the civil standard at trial, of proof on the balance of probabilities. In expressing a view for the purposes of jurisdiction, "*the court must be astute not to express any view on the ultimate merits of the case*". See Kaefer Aislamentos v AMS Drilling Mexico [2019] 1 WLR 3514 (CA), [73]-[80]. However, if a question of law goes to the existence of jurisdiction, such as the meaning of a gateway, the Court will normally decide the question, instead of assessing whether the claimant has a good arguable case on it: Altimo, [81].

19. To satisfy the requirement that England is the "*proper place*" to bring the claim, Intralinks must show that England was "*clearly*" the "*appropriate*" forum to hear the claim: Spiliada Maritime v Cansulex [1987] AC 460, 481D-E. This is the question of "*forum conveniens*", explored below.

The Events and the Facts

20. In this section I address: (1) the evidence; (2) the parties and the *dramatis personae*; (2) their previous contractual relationships; (3) the formation of the Contract; (4) the

performance of the Contract; (5) the dispute. In doing so I will address the respective cases on how and on what terms the Contract was formed.

21. This is the hearing of a jurisdiction challenge, as an interlocutory matter, and the factual evidence is incomplete. I am not reaching conclusions on the merits of the case. Factual issues are resolved for the purposes of this jurisdiction challenge only, on the basis of the evidence currently available, and applying the standards of proof required by the tests for jurisdiction.

The Evidence

22. Intralinks' initial evidence came from its solicitor, Ms Mukherjee, who told Intralinks' story and laid out the documents. She was generally careful to distinguish submission, what was supported by documents, and what was derived from information provided by others. She was later supported by evidence from Mr Hoffmann and Mr Lepierre as to matters within their personal knowledge. In addition, Maître Meriguet, Intralinks' lawyer in the French proceedings, gave limited evidence as to those proceedings. (Maître is the courtesy title for a French avocat, abbreviated "Me".) Mr Hoffmann and Mr Lepierre's evidence was not challenged by Nexans in response. Intralinks' evidence was presented in a careful and measured way, and on matters of fact was consistent with the documents.

23. Nexans' witness evidence came from its French avocat, Maître Koehler-Magne, who does not seem to have been involved in the primary events, and I anticipate will not be a witness at trial. His evidence was not confined to the French Proceedings but also advanced Nexans' position as to the facts of this case. There are problems with his evidence. It was largely argument, and at points in tension with the natural reading of the documents. It often asserted Nexans' position as fact on matters not within his personal knowledge, without identifying his source.

24. It also included a number of what seem to be accidental factual errors, such as: (1) stating Nexans discontinued Intralinks services on Project Walter altogether from around June 2023, when Nexans continued to use a limited functionality data room; (2) stating the Preferred Pricing Agreement was signed by Nexans on 19 April 2023, when it is much more likely it was signed on 19 April 2024.

25. I make no criticism of Me Koehler-Magne's probity. As Nexans' French litigating avocat he could hardly do anything else than argue Nexans' case in a way consistent with Nexans' case in the French Proceedings. The problems arise from Nexans using its foreign lawyer to give evidence here which argues Nexans' position at the same time as giving evidence as to the facts. But the consequence is I must exercise caution before treating his statement as evidence of fact where it goes beyond the documents. Large parts fall to be treated as argument.

The Parties and the *Dramatis Personae*

26. Both Intralinks and Nexans are large companies with global operations.

27. Intralinks's centre of business is in the USA. It has offices outside the US.

28. Intralinks also has a Euro bank account with JP Morgan in England, which is used for all its euro receivables (the "JP Morgan Account"). Intralinks' invoices to Nexans directed payment to the JP Morgan Account, and all Nexans' payments to Intralinks were made there, both under this Contract and the previous contracts.

29. Some of the Intralinks employees involved were US based, including Daniel Gurney who as Divisional Controller on 3 October 2024 signed the 3 October Work Order.

30. But two of the persons centrally involved were Nicolas Lepierre, who is French, and works out of Intralinks' Paris office; and Felix Hoffmann, who is German, and from Intralinks' office in Frankfurt. Mr Lepierre conducted some of the negotiations for the Contract, and provided the 2 October 2024 Work Order on which Nexans relies. Mr Hoffmann had concluded a previous contract between Intralinks and Nexans for "Project Walter", and it was Mr Hoffmann who finalised the 3 October 2024 Work Order, and arranged for its signature.

31. Mr Hoffmann and Mr Patrick Kraus, also of Intralinks' Frankfurt office, were the connection between Intralinks and Evercore Gmbh ("Evercore"), who were Nexans' financial advisors. Evercore is a German company based in Frankfurt.

32. Ms Mukherjee's evidence was that Intralinks' likely witnesses would be based in Germany, France, Switzerland, and the USA. The reference to a Swiss-based witness appears to refer to George Howard, Mr Hoffmann's line manager, who (from his email footer) is based in Zurich.

33. Intralinks' evidence was that its witnesses all speak English with business-proficient fluency, and so could give evidence in English. In contrast its non-French witnesses would not be able to give evidence in French.

34. Turning to Nexans, Me Koehler-Magne called it a French company whose place of business is in France. Mr Khoo sought to argue that it was more of a global multinational than a really "French" company. But there had been no previous argument, nor evidence, from Intralinks to displace the natural assumption that Nexans' centre of business is in Paris. Its headquarters and corporate seat is in La Defense, Paris, and the relevant employees of Nexans involved in the events were French and based in France. They included in particular Jean-Francois Pirot, Nexans' M&A Director, who signed the previous Project Walter contract in 2021 and was involved in the negotiations for this Contract; Pierre-Adrien Periat who signed the 3 October 2024 Work Order; Max-André Delannoy, who was involved in the later performance of the Contract and attempts at renegotiations, and Nino Cusimano, Nexans' "Senior Corporate VP General Counsel".

35. The main relevant individuals at Evercore were Oscar Kobeling, Rheto Gödel, and Aleksander Grabanica, who are German. The negotiations for Project Walter were between Evercore for Nexans, and Mr Hoffmann and Mr Kraus of the Intralinks' Frankfurt office. Evercore was also involved in the negotiation and conclusion of the Contract here for Nexans. Its role was incompletely addressed by the evidence, and the evidence from Nexans, who would know best, was unrevealing. But I conclude for present purposes that it had a significant role.

36. Further, it seems likely that Evercore were Nexans' agents for certain purposes. Mr Benzie argued they would not have been agents to conclude contracts. That may be right,

but it does not matter, as they did not try to do so. He also said they had "*no clear authority*", although he accepted they might have some authority in an advisory role. Yet he advanced no real reasons to doubt that Evercore would have authority to receive and pass on proposals. The documents show Evercore negotiating on behalf of Nexans, and passing on proposals, for a number of transactions, including Project Walter, and also Project Otto. I conclude that Intralinks has the better of the argument that Evercore were Nexans' agents at least for the purposes of receiving and passing on information and proposals.

37. Nexans' evidence was that its witnesses would likely include Mr Periat, Mr Delannoy, and Mr Cusimano. However, Mr Pirot has left Nexans and so is unlikely to give evidence. All of those persons are French and located in France.

38. Nexans did not say whether it would adduce evidence from Evercore personnel. However, whether or not they give evidence, it seems likely that their role and personal knowledge would be relevant. The Evercore personnel were involved in the formation of the Contract, as explained below.

39. French and German are the respective native tongues of the French Nexans and German Evercore employees, but otherwise the evidence did not address their linguistic talents. There is no evidence the Evercore personnel speak French well. Nexans' evidence did not address communications with Evercore. Mr Benzie accepted it could be inferred that the Nexans and Evercore personnel concerned would all speak business-proficient English, which is likely in businesses like this. It is likely they would all be comfortable giving evidence in English.

40. On the material available, it appears that all contract documentation, written proposals, invoices, and more formal written communications (such as the letters starting the dispute in late 2025), between the parties were in English, leaving aside the documentation from or serving the French proceedings. Letters between Nexans and Intralinks' US operations were in English. Emails and I infer oral discussions between Mr Lepierre and Mr Pirot were in French. Emails and I infer oral discussions between Mr Hoffmann and Evercore were mostly in German, and anyway not in French, but some exchanges may have been in English: the bundles include one email in English. But three-way emails between Mr Delannoy of Nexans, and Mr Lepierre and Mr Hoffmann of Intralinks, were in English (see the emails of July 2025 relating to a possible renegotiation). This reflects the general point that it is only in English that all the relevant Intralinks, Evercore and Nexans persons could communicate in common.

The Previous Contracts

41. Intralinks charges on a layered basis for its data room services, depending on the level of service, the period, and the amount of information in the virtual data room. It commonly sets a base fee for an initial period and a set amount of data, with the charges increasing if more data is used and/or if the period is extended.

42. Under the Contract itself (on both versions), the base fee was €36,000 for six months for 100,000 pages (the "Included Use Limit"). Data above 100,000 pages was charged at €0.45 per extra page. A fixed price extension fee was charged for use beyond the initial excluded use period, at €0.08 for each extension of 1 month, times either the included use limit or the total usage whichever is the greater. There is a possible issue as to the

"*conversion rates*" by which the contractual page count is calculated for different types of electronic documents like excel files and pdfs.

43. Ms Mukherjee's evidence was that Intralinks and Nexans have had a commercial relationship since 2020. Four aspects were addressed by the evidence: Project Walter, Project Leonardo, the Preferred Pricing Agreement, and Project Otto.

44. Project Walter. Intralinks was introduced to Nexans in 2021 for the purposes of a transaction called Project Walter by Evercore. (Project Walter later developed into Project Otto.) Negotiations for Project Walter were between Mr Hoffmann and Mr Kraus for Intralinks and Evercore, through Mr Gödel and Mr Koberling, for Nexans. These led to an initial Project Walter contract concluded on 23 November 2021, drafted by Mr Hoffmann, for an initial period of nine months, on the basis of Work Order No 5246355. It was governed by English law with disputes to be settled by arbitration in London. The signatories were Mr Gurney for Intralinks and Mr Pirot for Nexans. It was later extended on 1 August 2022 by an agreed extension, again negotiated through the Intralinks Frankfurt office and Evercore, and signed by the same signatories, for a further initial period of six months, expiring in February 2023, after which Nexans paid extension fees.

45. During Project Walter, there was a dispute in February-March 2022, when Nexans uploaded a number of excel files which led to a sharp increase in page count, leading to €137,568.15 in incremental fees claimed by Intralinks. Nexans objected and after commercial negotiations, conducted between Mr Hoffmann for Intralinks and Evercore for Nexans, the sum was reduced to €99,568.15.

46. Ms Mukherjee relies on this as evidence that Nexans was aware of how the charging structure worked, how charges could be increased by uploading large excel documents, and that Nexans was aware of the conversion rates for electronic documents. However, I will not be reaching any conclusions on those questions, which will be matters for trial, and do not need to be resolved for the purposes of this jurisdiction challenge.

47. In around June 2023 Project Walter stalled. Nexans asked to close the data room under the Project Walter contract, and shifted to a temporary Deal Preparation virtual data room. "Deal Prep" rooms are provided by Intralinks at no charge but with lesser functionality, because documents cannot be shared with clients.

48. Project Leonardo. In around April 2024 there were discussions between Nexans and Intralinks about services for a separate deal called Project Leonardo. These were conducted between Mr Pirot for Nexans and Mr Lepierre for Intralinks. The evidence does not tell us what happened on Project Leonardo.

49. Its relevance is twofold. First, it is an example of the negotiation channel in French between Mr Lepierre and Mr Pirot. Second, Ms Mukherjee drew attention to communications in April 2024 in which Mr Pirot raised questions about the pricing structure's relationship to the volume of documents used, and received explanations from Mr Lepierre, including as to the "*conversion rate*" for electronic documents. During this, Mr Pirot asked about why the Project Walter data use (and charging) was "*heavy*" and whether there was a correlation between file size and pages, in response to which Mr Lepierre explained that the conversion rate varies depending on the document type (excel, pdf, etc). Again, Ms Mukherjee relies on this as evidence to show that Nexans

was aware of how the charging structure worked. But again, I am reaching no conclusions on that.

50. The Preferred Pricing Agreement, or "PPA", bears a date on its face of 1 March 2024, but was signed by Nexans on a date which seems most likely to have been 19 April 2024. It is a framework agreement not an agreement under which services are provided. It sets out 3 pricing options with different periods, different included storage and accordingly varied incremental fees and extension fees. It attaches the "*Sample Terms*" of a Work Order, but is not in fact a work order for any particular services. It is common ground that it was intended to serve as a benchmark for the pricing of future work orders.

51. There are factual oddities about the PPA. First, there is an uncertainty about the dating. The documents show a signature by Mr Pirot on "19 April 2023", Koehler-Magne 1 said it was dated 19 April 2023, and there is an email of 25 September 2024 from Mr Pirot saying it was agreed "*last year*". However, there are emails discussing the PPA between Mr Pirot and Mr Lepierre between 28 March and 19 April 2024 which strongly indicate it was not signed until 19 April 2024, when it was returned by Mr Pirot to Mr Lepierre. Ms Mukherjee said that the date of "19 April 2023" was a typographical error, Mr Lepierre stated that the PPA was signed by Nexans on 19 April 2024, Mr Hoffmann said it was agreed in April 2024, and Me Koehler-Magne's responsive evidence did not dispute this. I conclude for present purposes that it is much more likely the PPA was signed by Nexans on 19 April 2024, and Me Koehler-Magne was wrong on this detail. Second, there is no documentation actually showing Intralinks signing or otherwise agreeing the contract in return. This may warrant further investigation in due course. However, all of Ms Mukherjee, Mr Lepierre, Mr Hoffmann, and also Me Koehler-Magne, stated that the PPA had been agreed. For present purposes, I proceed on the basis that it was agreed on or around 19 April 2024.

52. There are two material points of dispute about the PPA.

53. First, there is a dispute about what if any contractual effect the PPA has on Project Otto. Ms Mukherjee described it as only a framework arrangement which was not incorporated into the Contract. Me Koehler-Magne argued it was part of the contract for Project Otto, together with the 2 October 2024 Work Order.

54. Intralinks has much the better of the argument on this point. On its face, the PPA is a framework arrangement only, which can be departed from. Neither of the competing contractual documents from 2-3 October 2024 purport to incorporate the PPA, and they are each on their face freestanding. Ms Mukherjee, but also Mr Lepierre who was actually involved, gave evidence that while the PPA was a framework and a benchmark for pricing, it was not part of the actual Contract, and their evidence was consistent with the documents. The pricing adopted for the Project Otto Contract was different to any of the PPA pricing options. While Me Koehler-Magne's evidence asserted the PPA was part of the Project Otto Contract, he was not involved in the actual events, and did not explain how this worked. I treat his statements in this regard as argument. In conclusion, Nexan's case on this issue thus appears weak on the material available.

55. The second disputed question concerned whether, as Nexans argued, the PPA incorporated the terms of Intralinks' standard MSA using the "French MSA" version, with a French law and jurisdiction clause. The core logic appears to be:

a) At the end of the "*Sample Terms*", the PPA states that "*This Work Order incorporates by reference and shall be governed by the Master Services Agreement, set forth at www.intralinks.com/terms ...*".

b) On the "terms" page of Intralinks' website (the "Website"), we find: "*Thank you for your interest in Intralinks. Completion of any order is on the condition of client acceptance of the applicable Terms and Conditions. Terms and Conditions vary by region, please select the applicable Terms and Conditions from the following.*" A list of hyperlinks to different regionally or nationally differentiated versions of the MSA follow, including versions adapted to the USA, France and other countries (but not the UK). If you click on the "France" hyperlink, you get to a "France" version of the MSA (in English) which at clause 11.14 provides for the agreement to be governed by French law and that the parties "*irrevocably submit to the jurisdiction of the Commercial Court (Tribunal de Commerce) located in Paris, France for the adjudication of any case or controversy arising out of or in connection with this Agreement.*" In the French Proceedings, Nexans has described this as a non-exclusive French jurisdiction clause.

c) According to Me Koehler-Magne, Nexans had "*selected*" France; although no concrete evidence was given as to when and how this had been done, or what that meant.

d) Thus, the terms of the French MSA were incorporated into the PPA.

56. Mr Benzie did not pursue this point orally. In any event, in my judgment, Intralinks has much the better of the argument on this point on the material available. Each link in the chain of incorporation snaps. First, the PPA is a framework agreement, not a work order agreeing to services. Second, as their title shows, the "*Sample Terms*" are sample terms for future work orders, not contractual terms of the PPA itself. So the reference in the sample terms to "*This Work Order*" incorporating MSA terms, by reference to the Website, is part of sample terms for a possible future work order, not words incorporating the MSA terms into the PPA. Third, the Website's reference to various national MSAs is not a form of contractual incorporation. It explains that completion of any order will require agreement to the terms of the MSA, but that is just informing the reader about how things would work for a future work order. The words "*Please select the applicable Terms*" are for information, explaining to the potential client where to find a potentially applicable set of MSA terms. They are not an offer to contract with a client who clicks on the hyperlink. Further, the MSA terms are "back end" terms, framed to work with and be incorporated into an agreed work order which will contain the primary terms. They could not form a coherent contract on their own, and do not fit with the PPA either, since the PPA is not a work order.

57. Consequently, even if Nexans could be viewed as having in some way "*selected*" the French MSA, for example by clicking on the link, this is not capable of incorporating the MSA into the PPA or forming a contract on the terms of the French MSA. That would require an actual separate contractual agreement to a work order incorporating the French MSA.

58. Nor does it follow that the French MSA is necessarily exclusively appropriate for French clients. The word "*applicable*" does not bear that weight, and can just mean "*which the user thinks applicable*". The Website does give a general indication that a French MSA

may well be used for contracts connected to France. But that does not displace what is actually agreed in any particular contractual situation by any particular work order's terms.

59. Thus the PPA does not define any governing law which is applicable. That is consistent with it being merely a benchmark for pricing future orders.

60. This conclusion does not affect Nexans' argument that the French MSA was directly incorporated into the 2 October Work Order. That is a separate point.

The Formation of the Contract

61. The central facts relating to the formation of the Contract for Project Otto are, on the material available, as follows:

a) Project Otto was a revival of Project Walter.

b) There were two channels of communication, one between Mr Lepierre for Intralinks and Mr Pirot for Nexans (in French), and the second between Mr Hoffmann for Intralinks, and Evercore as agents for Nexans (mostly in German, with one email in English). Quotes below are in translation.

c) In the Lepierre/Pirot channel, on 24 September 2024 Mr Pirot explained that the "Walter" data room was currently in the limited deal preparation mode, and they would need a full-service data room with the new name "Otto" to which the "*relevant architecture*" of the Walter room would be transferred. He asked for "*a new contract (or P.O?), aligned with the Preferred Pricing Agreement signed last year, for a term of 6 months and 100,000 pages*".

d) In an email to Mr Pirot of 2 October 2024 at 12:39 CET Mr Lepierre said he had opened data room no. 17780235 and said he was "*sharing the contract accordingly*", attaching the 2 October Work Order.

e) The 2 October Work Order provides, by referring to a link to the French Terms of the MSA on Intralinks' Website, that it incorporates the French version of the MSA, which as stated above provides for French law and jurisdiction clause 11.14. Like all the Intralinks work orders, it has signature blocks, and anticipates it will be concluded by signature. The final words of the orders state: *"in the event that Client's details: i) are not provided at the top of this Work Order; or ii) are missing from the signature block below; or iii) contain clerical errors, Client herewith authorizes Intralinks to make necessary modifications following signature of this Work Order by Client.*"

f) At 13:51 on 2 October, Mr Pirot responded to say: "*Fine by me. Thank you for opening it. Should I sign it? (If you send a Docusign, it should be sent to Pierre-Adrien Periat)*".

g) In the Hoffmann/Evercore channel of communication, on 24 September Evercore's Mr Godel, on behalf of Nexans, had also previously got in touch with Mr Hoffmann about "*Project Walter (now called Project Otto)*". Mr Hoffmann sent a commercial proposal to Mr Gödel.

h) A full-service data room for Project Otto, no. 17731705, had then been opened by Mr Hoffmann for the use of Evercore and Nexans.

i) So there was some initial duplication of negotiation channels. However, Mr Hoffman and Mr Lepierre's evidence, which I find plausible for present purposes, is that because Evercore had initially referred Intralinks to Nexans for Walter/Otto, and Evercore was Mr Hoffmann's contact, it was confirmed during that day in discussions between Mr Hoffmann and Mr Lepierre that Mr Hoffmann should be responsible for finalising the Contract. Mr Hoffmann says that he was not aware of Mr Lepierre's 2 October 2024 Work Order at the time.

j) The double channels of communication led to some initial confusion. At 15:23 on 2 October, Mr Gödel emailed Mr Hoffmann to say they had received an "Otto" virtual data room from Nexans, no. 17780235, which they had to use. This was the data room opened by Mr Lepierre earlier that day. However, at 17:50 Mr Hoffmann responded to Evercore to say, "*My colleague spoke with Nexans, and apparently the 'Project Otto" VDR is to be used. 17731705, and I'm to finalise the contract.*" This referred to the virtual data room which Mr Hoffman had previously opened, which he was saying should be used in place of Mr Lepierre's. For present purposes, it seems Evercore received this as Nexans' agent. Nexans' evidence was silent as to its communications with Evercore, but it seems likely that Evercore was reporting to Nexans. Either way, for present purposes Intralinks has the better of the argument on the material available to show that Nexans was aware that the contract would be finalised by Mr Hoffmann.

k) Further, Mr Lepierre's evidence is that while he cannot remember exactly what happened, he thinks it is likely he informed Mr Pirot orally that Mr Hoffmann rather than him would finalise the contract.

l) At 19:13, Mr Lepierre wrote to Mr Pirot, in response to Mr Pirot's message of 13:51, that "*Pierre-Adrien should receive a Docusign shortly*". At 19:52, Mr Pirot wrote to say "*I have received the Docusign. Has it also been sent to Pierre-Adrien?*". The evidence is unclear as to what Docusign this was, what contract terms it included, or who sent it. Mr Hoffmann's evidence says he does not remember precisely, and has not been able to find a record of it. The Docusign records he exhibits show only the Docusign sent to Mr Periat the next day which Mr Periat signed. But Mr Hoffmann infers that it was he that sent it, since he had agreed with Mr Lepierre that he would be the person responsible for finalisation of the Contract. Mr Lepierre's evidence is that this Docusign was not sent by him, and he understood at the time it had been sent by Mr Hoffmann. He infers from the fact that it was received by Mr Pirot, and not queried, that he had likely already told Mr Pirot that Mr Hoffmann would be finalising the Contract.

m) It is not necessary to resolve this, although Mr Hoffmann's explanation may well be right. If so, it appears that some confusion may have been initially caused by Mr Hoffmann sending a Docusign to Mr Pirot but not Mr Periat. Mr Hoffmann may not have known it was meant to go to Mr Periat.

n) What matters is that, in any event, no such Docusign was signed by Mr Pirot, and Mr Pirot did not sign any version of the 2 October Work Order. (There may be a misstatement as to timing in Mr Hoffmann's evidence when he says at Hoffman

§29 that a Docusign was "*sent*" at "*19:57*", referring to the email of 19:52, but no point was taken on this.)

o) At some point on 2-3 October 2024, Mr Hoffmann prepared the 3 October Work Order. This had the date of 2 October on its front page, and signature boxes. It stated in "*Agreement*" that it "*incorporates and by reference and shall be governed by the Master Services Agreement, set forth below*", and then attaches within the document, and before the signature block, an "English" MSA. Clause 11.14 provides: *"Governing law; Jurisdiction. This Agreement is governed by and is to be construed in accordance with English law. ...*", but there is no jurisdiction or arbitration provision. In providing for English law, it was like the Project Walter contract, but it differed in not providing for London arbitration as well. Mr Hoffmann's evidence was that including English law clauses was his standard practice. I find that plausible for present purposes, although he did not explain the difference compared to Project Walter with regard to the arbitration clause.

p) The 3 October Work Order is materially different to the 2 October Work Order as circulated by email the day before in a number of respects of detail: (a) it contains an incorporated English MSA whereas the 2 October Work Order only incorporated a French MSA by reference; (b) it has a different contract ID number; (c) it includes the Project Name ("Otto") in the header whereas the 2 October Work Order does not; (d) it has slightly different terms for payment: "*Due Upon Receipt*" as opposed to "*Net 45*", that is payment 45 days after invoice.

q) The 3 October 2024 Work Order has no wording incorporating the terms of the PPA nor the Website.

r) Mr Hoffmann then circulated the Docusign for the 3 October 2024 Work Order at 10:57 CET on 3 October (although he was actually in a time zone 6 hours ahead), and it was docusigned by Mr Periat at 10:58. At 11:02 Mr Lepierre responded to Mr Pirot's email of 19:52 on 2 October to say, "*All Good*" ("*C'est tout bon*"). The work order was then docusigned by Mr Gurney of Intralinks at 16:32 CET.

s) The document produced by the Docusigns is a formally signed contract, on the terms of the 3 October Work Order and the incorporated "English" MSA, with an English governing law provision. In the signature block it is signed by Mr Gurney for Intralinks and Mr Periat for Nexans and dated 3 October 2024.

62. In the light of the facts, it was Intralinks' case that no contract had ever been agreed on the terms of the 2 October Work Order, and the Project Otto Contract had been formed at 16:32 CET on the terms of the 3 October Work Order, when both parties had signed it by Docusign. Nexans' case was that the Project Otto contract had been formed on the terms of the 2 October Work Order, or alternatively the Contract was concluded under a mistake and/or should be rectified.

63. Nexans' formation argument was advanced in four main ways. First, Me Koehler-Magne argued the contract was formed by an offer by Mr Lepierre's email of 12:39, accepted by Mr Pirot's email of 13:51 on 2 October. He argued, second, that the use of the "English" version of the MSA in the later Docusign of the 3 October 2024 was "*a result of either a clerical error or an initiative by Mr Hoffmann*". Nexans could not be expected to have spotted the change. Nexans reasonably believed that the contract being agreed was on

the form of the French MSA, and believed that the MSA uploaded to the Docusign platform was the French MSA (§28). Third, he argued the Contract had in any event been formed by the data room going live on 2 October, which amounted to acceptance of the terms of the 2 October Work Order. Fourth, he argued the effect of Intralinks' website was to make it the client's "*prerogative*" to select the MSA version "*concerning*" them, and Intralinks had chosen the French version (§§24, 32).

64. In my judgment, Intralinks has the better of the argument on the material available. Further, to the extent relevant, it is much more likely to be correct.

65. I assess this applying English principles of contractual formation, since neither party suggested that any other law (such as French law) should be applied to formation for this jurisdiction challenge, nor advanced evidence to show the relevant principles of any other applicable law were different to English law.

66. In any event, formation of a contract on the terms of the 3 October 2024 Work Order, would be judged by English law according to Article 10(1) Rome I Regulation (which is assimilated EU law), unless Article 10(2) applied, which Nexans did not contend for. But this would override any prior agreement, given the Entire Agreement clause in the MSA (see below).

67. Turning to the key points:

    a) Intralinks' position is simple, straightforward and much more plausible on the documents and evidence available. That is, the contract was formed when it was formally signed by both parties on 3 October and was agreed on the terms signed, that is the terms of the 3 October Work Order and attached "English" MSA. It does not matter whether subjectively Nexans did or did not believe it was concluding a contract on these terms as the Contract was objectively formed by the Docusign signatures. See RTS Flexible v Molkerei Alois Muller GmBH & Co [2010] 1 WLR 753 (SC), [45]. (Intralinks could possibly also have relied on the principle in L'Estrange v Graucob, but the authorities on this were not developed at the hearing, so I do not address it further here.)

    b) Nexans' argument that the Contract was formed on 2 October by Mr Pirot's email at 13:51 is much less persuasive. On a natural reading of that email, Mr Pirot is not saying he is agreeing a contract, but asking whether he should sign it. "*Fine by me*" is not an unequivocal acceptance of a contractual offer, but merely records that he was content with the terms. The 2 October Work Order's own terms envisaged that it would be contractually agreed by signature by both parties, and neither signed the 2 October Work Order at any point. Ms Mukherjee's evidence, which was not contradicted, was that previous agreements between the parties had been signed by Docusign. That is what had happened for the Project Walter contract and amendment thereto. Consequently neither Mr Lepierre's provision of an unsigned version of the work order at 12:39, nor Mr Pirot's email of 13:51, would naturally be read as contractual offers or acceptances.

    c) Nexans' third argument that the "*offer*" of 12:39 was accepted on 2 October by the opening of the virtual data room, or its use by Nexans, is also unpersuasive. Both Ms Mukherjee (relying on what she has been told by Mr Hoffmann and Mr Lepierre), and Mr Lepierre, stated that it was common for the data room to be

opened before a contract was concluded and that its opening did not signify that the contract was yet binding. I find their evidence plausible at this stage. Indeed, Mr Lepierre's data room had actually been opened by Intralinks before Mr Lepierre's "offer", and no communication in this regard as to the use of that data room by Nexans is identified by Nexans after Mr Lepierre's email of 12:39, which could amount to an unequivocal acceptance. Further, again, as already discussed, the terms and context of the Work Orders show objectively that it was anticipated that they would become concluded contracts only upon signature. That makes it unlikely that the parties should be objectively interpreted to have concluded a contract by informal conduct.

d) Further, even if a contract had been formed on the terms of the 2 October 2024 Work Order at some point on 2 October, that would have occurred informally. A formal contract was then signed on 3 October by both parties on the terms of the 3 October Work Order. That incorporates an Entire Agreement Clause at MSA clause 11.10, which provides: "*This Agreement contains the complete, full and exclusive agreement between the Parties pertaining to the subject matter thereof . The Agreement supersedes all prior and contemporaneous agreements, understandings, representations, warranties, proposals, requests for proposals and negotiations, if any related to the subject matter hereof, and any other terms set forth in a Client purchase order for the Services.*" Intralinks therefore has, if necessary, much the better of the argument that the signature of the 3 October Work Order created a new contract which overrode any previous contract on the terms of the 2 October Work Order. This point also defeats any argument that the terms of the PPA are incorporated into the 3 October Work Order.

e) Nexans' fourth argument, advanced by Me Koehler-Magne, that the Website means it is the client's "*prerogative*" to select the terms of the MSA is difficult to grasp, and unpersuasive. I have already explained why I am unpersuaded by the contention that the Website incorporates the "France" MSA into the PPA. The 2 October 2024 Work Order incorporates the "France" MSA directly, not because of the Website's wording providing for selection. The terms of the 3 October 2024 Work Order incorporate neither the PPA, nor any MSA on the Website, nor the Website, but instead directly incorporates the relevant "English" version of the MSA.

f) That means the "prerogative" argument, if seriously pursued, would have to be different: an argument that in some way the Website creates a separate obligation to allow the client to select the MSA terms. But no legal basis for that is identified. In my judgment, the Website's words on the "*Terms*" page do not do that. They are simply identifying potentially applicable MSA terms for information purposes. Thus, they are not some form of freestanding contractual offer to be accepted by conduct (applying Carlill v Carbolic Smoke Ball [1893] 1 QB 256). Nor is any concrete reason given why they create any other identifiable legal obligation. They cannot prevent the parties freely contracting on other terms by a later signed contract.

g) In the end Mr Benzie accepted he could not go so far as saying that the Website created a contractual option, arguing instead that the relevance of the Website was only to show that the practice of Intralinks was to offer terms relative to a particular country. However, as explained, I think that this overstates the position. All the

Website does is indicate that terms adapted for a particular country may be used for a contract connected to that country. It does not establish any concrete practice. Further, it provides no strong basis to change the reading of the contractual offer and acceptance in a case such as this. Thus, the fact that the Website has a link for the French MSA does not provide a persuasive argument to contradict the straightforward position that the Contract was agreed on the terms of the 3 October Work order including the English MSA.

68. Finally, I address Me Koehler-Magne's assertions that Nexans could not have been expected to spot the change, and subjectively and reasonably believed that the contract had been formed on the terms of the 2 October 2024 Work Order, which is what it reasonably thought was being docusigned (the second point above). These were as I understand it principally advanced as part of Nexans' arguments of mistake and rectification which I address below. To the extent they were also advanced as arguments on objective formation, I find that, at this stage and for present purposes, they are much less persuasive than Intralinks' position:

    a) It is possible for an acceptance/counter-offer objectively to respond to earlier offer rather than an intermediate offer. But in this case on the material presently available, the natural reading of the documents available that crossed the line between the parties much more strongly supports the conclusion that the objective consensus formed by offer and acceptance was reached on the terms of the 3 October Work Order by the docusigns.

    b) Any proposition that a person in the parties' position would have reasonably concluded that the document being docusigned was the 2 October Work Order is contradicted by (1) the signature of the 3 October Work Order itself and (2) the communications crossing the line, including to Evercore, indicating that Nexans had been informed that Mr Hoffmann not Mr Lepierre would be concluding the contract.

    c) Mr Benzie argued that Mr Pirot's email of 13:51 was a request for a docusign version of the 2 October Work Order; and so, implicitly, it was reasonable to conclude that the document being docusigned on 3 October was based on the 2 October Work Order. However, the email of 13:51 simply says that if "*you*" (i.e. Mr Lepierre) send a Docusign, it should be sent to Mr Periat. After that, the communications indicate to Nexans that Mr Lepierre is stepping back and Mr Hoffmann is taking over. Mr Hoffmann then does not say he is sending a Docusign on the same terms as Mr Lepierre. In that context, it is well arguable that the change of negotiation channel would reasonably indicate the possibility of change of the terms. More directly, the natural reading of the offer made by Mr Hoffman is that its terms were contained in the Docusign itself. Consequently, much the better case on the material available is the context does not justify reading the offer by the Docusign at 10:57 on 3 October 2024 as anything other than an offer on the terms of the 3 October 2024 Work Order which it included.

    d) I am conscious that (a) the communications on 2 October show some confusion; and (b) Mr Periat signed the Docusign within one minute of receiving it. Nevertheless, on the material presently available, Intralinks has much the better of the argument.

e) Further, were it relevant, Nexans' evidence as to its alleged subjective understandings is at present weak, and for the purposes of understanding what was being objectively agreed, adds no context to the communications that crossed the line. Although Me Koehler-Magne makes assertions as to Nexans' understanding, he has no personal knowledge of what happened at the moment of contracting, and he identifies by report no concrete evidence from anyone who does. It is also informative that he is silent about communications with Evercore. It seems likely that Nexans had communications behind the scenes with Evercore on 2-3 October, yet if they were helpful to Nexans case, they would presumably have been relied upon.

f) Me Koehler-Magne refers to Nexans' later letter of 26 September 2025 in which Nexans asserted it had contracted on the terms of the 2 October Work Order, and also exhibits Nexans' letter of 5 November 2025 in which it says it had intended to contract on French law and jurisdiction, and had not intended to contract on the terms of the "English" MSA. However, those were argumentative letters written in the context of a live dispute. Further, (1) The 26 September 2025 letter contains factual errors when, in support of Nexans' case, it asserts that Intralinks' invoices of 6 July 2025 and 6 August 2025, which Nexans paid, referred to the 2 October Work Order, no. 5355958. In fact they refer to the 3 October Work Order, no. 5355137. (2) The assertions in Nexans' letter of 5 November 2025 that it would not have agreed to contract on the terms of an English law MSA had it known about this, is undermined by the fact, which is not addressed, that Nexans had done so in Project Walter. These points weaken the force of those later letters as useful evidence of what Nexans had thought earlier. There is no concrete evidence that at the time Nexans paid any regard to the choice of law and jurisdiction clauses in the respective MSAs.

g) Nexans' skeleton argued that in a context where the Website invited it to select the appropriate MSA, there is no reason to believe Mr Pirot would have chosen English law and it is overwhelmingly likely that the French MSA would have been selected, since Nexans is a French company seeking the provision of services in France. This is not persuasive. First, the Website statements are not contractual, but for information only. Second, there are many reasons why a French company may agree an English choice of law. This is very common, and Nexans had done this on Project Walter.

Arguments of Rectification and Mistake

69. Nexans argued that, even if the "Project Otto" Contract was formed on the terms of the 3 October Work Order, this was due to a mistake, and the Contract should be rectified, to be governed by the French MSA.

70. The burden of proof for rectification is on Nexans, who for standard continuing common mistake rectification must "*show that at the time of executing the written contract the parties had a common intention (even if not amounting to a binding agreement) which, as a result of mistake on the part of both parties, the document failed accurately to record. This requires convincing proof to displace the natural presumption that the written contract is an accurate record of what the parties agreed*": FSHC v Glas [2020] Ch 365 (CA), [46]. The intention referred to is a subjective common intention: [52], [53],

[73]-[74], [102], [146]-[147], [173], [176]. It must continue to the point of contracting: [100], [162], [176]. There must also be an outward prior common expression of accord although not a prior contract [73], [77], [88], [176]; and it must be equitable to rectify.

71. There is also a doctrine of unliteral mistake rectification. Its scope is sometimes debated, but simply stated it at least requires, in essence, that A knows that B is proceeding under a mistake as to the terms: FSHC v Glas, [103]-[105], [147].

72. In this case, Intralinks has much the better of the argument that Nexans fails to make good the requirements of rectification:

    a) For "common mistake" rectification, I can focus solely on the primary requirement of a continuing common subjective intention. Nexans arguments that there was a common intention to contract on the terms of the French MSA and/or the 2 October 2024 work order are much less persuasive than Intralinks' position that there was not. First, the Intralinks witnesses denied this, in credible terms. Mr Hoffmann said he subjectively intended to contract on the terms of the 3 October 2024 Work Order and specifically that he intended to include the "English" MSA. He adds that it was his general practice to use an "English" form of MSA. His evidence is consistent with the documents. Nexans failed to identify any strong reason why his evidence was to be disbelieved for now, although it will of course be open to testing in the light of full evidence at trial. Second, as explained, Nexans' current evidence about its subjective intentions is insufficient.

    b) Mr Benzie sought to identify evidence of a common subjective intention from Mr Lepierre's statement at 12:39 on 2 September that he was "*sharing the contract accordingly*". However, this general phrasing does not contain any significant indication that either he or Mr Pirot were thinking closely about the terms of the MSA. It does not come close to proving any common intention shared by Mr Hoffmann and Mr Periat, or Intralinks and Nexans more widely. which is contrary to the terms of the docusigned contract.

    c) It does not seem that Nexans was relying on unilateral mistake, but were it to have done so, Intralinks would have had the better of the argument. There is no solid basis for any argument that Intralinks knew Nexans was making a mistake. That would be contrary to Mr Hoffmann's evidence, which says that at no time was he aware that Nexans had a preference for the governing law position (Hoffmann §28). His evidence is plausible in the light of the documents. Nothing concrete has been identified to undermine it.

Performance of the Services

73. The Project Otto data room was used by Nexans under the Contract. Upon expiry of the Contract's initial six-month term in April 2025, Nexans began paying monthly extension fees. No difficulty arose as to these for April, May and June.

74. On 7 July 2025, Intralinks invoiced Nexans for €74,383.00, including €52,824.60 for incremental fees, for a 117,388-page excess upload, for the period to 2 July 2025, and a workspace term extension fee for the period between 3 July and 2 August 2025. The 7 July Invoice is titled: "*Account Project Name: Germany – M&A – Evercore – Rheto*

Goedel – Project Otto Virtual Data Room 03Oct24" and has "*Deal ID*" 5355137 - the number of the 3 October Work Order.

75. In July 2025, Max-Andre Delannoy for Nexans opened a renegotiation seeking a new fixed price extension deal using one of the PPA options. Those discussions continued into September but did not result in a new agreement. Nexans also says that in them it also contested the charging approach in the 7 July invoice. I do not need to reach a conclusion on that point.

76. On 6 August 2025, Intralinks invoiced Nexans for €26,531.22, made up of an incremental fee for 9,364 excess pages for the period to 2 August 2025, and a workspace term extension fee, for the period 3 August 2025 to 2 September 2025. The "*Account Project Name*" was "*Germany – M&A – Nexans SA – Project Otto*" and the Deal ID was again 5355137.

77. Both invoices provide for payment to "*JP Morgan Chase Bank, NA, London*", with "*Bank Address: Chaseside-0212, Hampshire Building HB01-0320, BH7 7DA, Bournemouth, United Kingdom*", an account number, n IBAN, and a BIC number. It is not wholly clear where the bank account is located. One reading is that it is in Bournemouth. The other possibility is that the account is in London, but the relevant back-office function is in Bournemouth. This does not matter.

78. On or about 4 August 2025, Nexans uploaded a large number of extra documents, which were primarily large Excel files. Intralinks has calculated that these equated to over 4 million pages using what it says are the applicable conversion rates for excel files. It contends they generated incremental fees of €1,843,157.70 for the period between 3 August and 2 September 2025.

79. The applicable conversion rates are not spelled out in the Contract, either in the Work Order or MSA. However, Ms Mukherjee's evidence is that Nexans was aware of them. I reach no conclusion on these issues. The correct position as to what should be the appropriate contractual charge for this upload, will be a matter for the trial of the merits.

80. In September 2025, Intralinks orally informed Nexans of the proposed incremental charge and a workspace extension fee charge of €349,900, again driven by the amount of uploaded pages, for a total bill of €2,193,197, which it would be billing in an upcoming invoice. There were discussions as to a possible compromise which did not succeed.

The Dispute

81. Disputes arose as to the continued provision of the services, and it seems Intralinks suspended the services on 19 September 2025. According to Nexans, on 22 September 2025, it then paid the invoices of 7 July 2025 and 6 August 2025 under protest to obtain restoration of the services.

82. On 26 September 2025, Nexans sent a letter disputing the invoices of 7 July and 6 August and the proposed upcoming invoice. It argued that the Contract was on the terms of the 2 October Work Order and that French law and jurisdiction applied. (As part of this, it asserted the 7 July and 6 August Invoices referred to the 2 October Work Order, although in fact they cite the 3 October Work Order). Intralinks' charging structure was described

as "*incomprehensive, unjustified, and completely disconnected from the Services actually provided*", and in breach of the Contract. Intralinks' position was said to be unjustified under French law. Nexans notified termination of the Contract with effect from the end of the current extension period, that is with effect from 2 October 2025.

83. On 29 September 2025, Intralinks wrote to disagree. It argued the Contract was formed on the 3 October Work Order and under the terms of the "English" MSA and subject to English law. It disagreed with Nexans' arguments about the charging structure and affirmed that the sums claimed were legitimate, and due.

84. On the same day, Intralinks provided an invoice dated 29 September for the disputed sum of €2,193,147.00. The Account Project Name was "Germany-M&A – Nexans SA – Project Otto". This invoice was based on an incremental fee of €1,843,157.70 for 4,095,.906 pages for the period to 2 September, and a workspace term extension fee of 349,990 for 4,374,874 pages for an extension period of 3 September 2025 to 2 October 2025. The invoice identified as the destination of payment the same bank details as the previous invoices, namely the JP Morgan Account, with the Bournemouth bank address.

85. On 5 November 2025, Nexans wrote to reaffirm its position, arguing that the contract was agreed on the French MSA and any agreement on the English MSA was a mistake, which Nexans would ask the court to rectify. There were a number of factual errors in that letter, including an assertion that the two contract versions were identical apart from the choice of law clauses. Nexans stated that any attempt to commence proceedings in England "*will be challenged*".

86. On 5 December 2025, Intralinks' English lawyers Fieldfisher sent a letter before action asserting that the Contract was on the terms of the 3 October Work Order and governed by English law; claiming the sums allegedly due; and requiring a response, and payment of the sums claimed (to the JP Morgan Account) by 26 December 2025. The letter explained it was being sent in accordance with the CPR's Pre-Action Protocol. Nexans was invited to meet to discuss "*acceptable resolutions*". However, Fieldfisher stated that absent a satisfactory response, they were instructed to commence proceedings, which would be issued in England. The English court would have jurisdiction under CPR Part 6 because the applicable law was English law.

87. Nexans did not reply but on 19 December 2025 commenced the French Proceedings before the Tribunal des Activités Economiques de Nanterre (the "French Court"). This was done without prior warning. Despite the requirement of clause 11.14 (in either MSA) that the parties "*agree to use good faith efforts to resolve any dispute ... prior to the commencement of any litigation*" it seems that Nexans had not engaged with Fieldfisher's invitation to discuss. I conclude the French Proceedings were commenced in this way to pre-empt the claim by Intralinks in England which Nexans knew was coming.

The French Proceedings

88. The French Proceedings were served on Intralinks in the USA on 22 January 2026. A number of points are worth highlighting:

a) Nexans asserts that the French court has jurisdiction under Article 14 of the Code Civil, which gives jurisdiction to the claims of French plaintiffs: "*A foreigner, even if not resident in France, may be summoned before the French courts for the performance of obligations contracted by him in France with a French citizen; he may be brought before the courts of France for obligations contracted by him in a foreign country towards French citizens.*" It describes the French jurisdiction clause as non-exclusive.

b) The argument on contract terms is different in its logic to the arguments advanced in England. It seems that it is not argued that a contract was formed on 2 October 2024 on the terms of the 2 October Work Order. Indeed the terms of the 3 October 2024 Work Order are not disputed save for the English MSA. The essential argument is that the incorporation of the English MSA was an error and therefore the French MSA must apply.

c) In doing so it is argued that Nexans would never have agreed to a contract governed by English law, "*which it is unfamiliar with*". As noted, this assertion is inconsistent with Nexans' prior contract for Project Walter.

d) The argument on the merits contends that Intralinks' conversion rates were not incorporated into the contract and are illegitimate. It is argued that Intralinks' conduct in respect of the charges was in bad faith. Intralinks' pricing conduct "*maintained total price opacity*", and if Nexans had been informed in advance of the likely charges it would not have uploaded the files. This performance in bad faith caused damage to Nexans.

e) Consequently Nexans claims damages for breach of good faith for the difference between the €2,193,147.00 billed and an amount that could have been due for the data it would have downloaded had it been properly informed of the costs. It estimates its damages at no less than €2,093,147.00.

f) Nexans therefore asks the French Court in particular: (1) to "*Cancel*" "*the Master Services Agreement signed on the Docusign platform on October 2, 2024*" (sic); (2) declare that the Contract of October 2, 2024 is governed by French law; (3) order Intralinks to pay Nexans €2,093,147.00 in damages, and (4) to dismiss all Intralinks' claims.

g) Nexans' case in France is therefore proceeding on the basis that French law should apply to the Contract.

89. The differences in the contractual logic adopted by Nexans in the French Proceedings and here are probably due to the different framework of French law. There was no evidence of French law before me, but it is well known that French contract law adopts a (partly) subjective approach to formation and interpretation, and imposes duties of good faith which English law does not impose in the same way. This is reflected in the way the arguments are advanced in the French claim.

90. Ms Mukherjee has objected that the claim in the French proceedings is illogical, because since the 29 September invoice has not been paid, there can be no logical basis for a claim for damages. I do not accept this criticism is made good for present purposes. It was not pursued by Intralinks' avocat Me Meriguet.

91. The evidence does not closely explore the logic of the French claim under French law. But it could for example logically proceed on the basis that if the sums invoiced were otherwise due and payable, they can be recovered in damages to the extent of €2,093,147.00, so that only the net difference is payable.

92. Intralinks has stated that it will challenge the jurisdiction of the French court in the French proceedings at the appropriate time. But the French proceedings have not proceeded far. There have been procedural hearings on 9 April 2026, to deal with registering of appointed counsel and timetabling, and 29 May 2026, to deal with service of evidence and deadlines for submissions. The next procedural hearing is listed to take place on 18 September 2026.

93. According to Me Meriguet, whose evidence was not disputed in this regard, *"Intralinks intends to challenge the jurisdiction of the French Court. Such a challenge in France must be made before submissions are made on the merits and will be determined prior to the merits, at a separate hearing on jurisdiction and/or lis pendens. No date has yet been fixed for the final hearing evidence on the merits. Given the current procedural timetable and the need for a separate hearing in relation to jurisdiction and/or lis pendens, a final determination cannot reasonably be expected before mid-2027."*

94. There was no evidence as to the impact on the French Proceedings if this jurisdiction challenge failed. After this had been raised at the hearing, Mr Benzie stated on instructions that Nexans' position was the French Court would have a power to stay proceedings before it, but that it was unlikely it would. However, I have no useful concrete evidence as to how likely this would be.

Gateway 6(c)

95. Gateway 6(c) permits jurisdiction if: "*(6) A claim is made in respect of a contract where the contract – ... (c) is governed by the law of England and Wales*".

96. I have concluded above that Intralinks has much the better of the argument that the Contract was formed on the terms of the 3 October 2024 Work Order including the English governing law clause. Consequently, Intralinks has a good arguable case that the factual conditions of Gateway 6(c) are satisfied.

Gateway 7

97. Gateway 7 permits jurisdiction if: "*A claim is made in respect of a breach of contract committed, or likely to be committed within the jurisdiction.*"

98. Intralinks' argument is that Nexans' alleged breach of contract was constituted by non-payment of the disputed invoice, which it argues Nexans was obliged to pay at the JP Morgan Account in England. Consequently, the breach of contract was committed within the jurisdiction within Gateway 7. The invoice for the Disputed Sums of 29 September 2025 specified payment to the JP Morgan Account. Further, Intralinks's uncontradicted evidence was that its previous invoices to Nexans under this Contract, and under its previous contracts with Nexans, consistently provided for payment at the JP Morgan Account in England and were consistently paid by Nexans at that account.

99. Nexans' position is that the default rule for the place of performance of a debt obligation is where the creditor is located, here the USA, and that there is no contractual term which overrides that default rule. There was no contractual obligation to pay to the bank account specified in the invoices. Subsequent conduct by invoicing and payment does not amount to a contractual variation. Consequently the gateway does not apply.

100. This is a question of law, where the facts are not materially in dispute. It will not affect the trial on the merits. It is appropriate for me to decide the question rather than approach it on a good arguable case basis.

101. In this regard, it does not matter whether the JP Morgan Account is in London or Bournemouth. Either way it is in England.

102. I assume that to show a breach was "*committed within the jurisdiction*" within Gateway 7, a claimant has to show that the obligation allegedly breached was contractually required to be performed in England, and that it is not sufficient to show that the obligation breached, if complied with, would in fact have been or likely to have been performed in England. Intralinks did not argue to the contrary.

103. The Contract does not expressly provide where payment has to be made. Clause 3.1 of the MSA provides: "*Fees. Client shall pay the Intralinks the fees and charges set forth on the Client's invoice*", and the invoice for the Disputed Sums provides for payment to the JP Morgan Account. But clause 3.1 does not contain express words requiring payment to be made to the account specified in the invoice.

104. The case law embeds and the textbooks record an old presumption that if the contract does not expressly or impliedly agree where payment is to be made, the debtor must pay the creditor at the creditor's place of business: Chitty on Contract (36th ed 2025), §25-053. Chitty adds the presumption is "*readily displaced implicitly and not just explicitly*" (fn 274). The rationale is that in the absence of anything to the contrary it is to be inferred that payment should be made where the company is situated (Duval v Gans [1904] 2 KB 685, 692). If this presumption applied, it would mean that the breach was committed in the USA where Intralinks is based, not in England.

105. Yet the presumption has an antique air in a modern world of multinational companies, electronic bank transfers, and payments through Fintech. If it means physical payment in cash at the creditor's residence or corporate seat, it can no longer stand for commercial transactions. In another case it may be necessary to reconsider the presumption, or what it should mean in modern conditions.

106. Mr Khoo indeed argued that the presumption should not be regarded as rule of law or default implied term, but should be understood as a condensation of a default inference of objectively inferred intentions so that where there are grounds objectively to infer different intentions, the presumption should be displaced.

107. Similarly Chitty says the presumption applies "*unless there is evidence of a contrary intention*" (§25-053). But if that is intended to suggest an easier threshold for displacement of the presumption, by identifying a contrary "*intention*" rather than contrary contractual agreement, it is not made good by the cases footnoted for this by Chitty and put before me, which appear to envisage that you need proof of contrary

agreement, express or implied (Duval v Gans at 689-691, 692 ("*necessary implication*"); see also Rein v Stein [1892] 1 QB 753).

108. However, I did not have full argument or citation of authority on these deeper issues. Further, in this case there is no need to resolve them. Whatever the nature and force of the presumption in modern conditions, and even if I assume that contrary contractual agreement express or implied is required to displace it, I conclude that the presumption is displaced here by a contrary implied term.

109. In Canyon Offshore v GDF Suez [2015] Bus LR 578, HHJ Mackie had to decide the place of performance of an obligation to make payment, in the context of a invoicing clause in apparently somewhat similar terms, for the purposes of applying Article 5(1) (as it then was) of the Brussels I Regulation. He reasoned:

> [38] The presumption that the debtor must seek out the creditor at his place of business and pay him there is of long standing but it is readily displaced implicitly and not just expressly: see Chitty on Contract, 31st ed (2012), para 21—055. The court can take account of modern ways of making commercial payment based on its daily experience and without having to rely on evidence from the parties' solicitors. As I see it the terms of the alleged contract are essentially the same as those provisions of the trenching contract which give rise to the liability to pay and to payment itself. These provided that Cecon was obliged to pay Canyon within 30 days from receipt of a correctly prepared invoice. It was not, as it were, required to travel to Aberdeen with a wad of cash. Mr Fealy is right to submit that the terms of the invoices as later issued under that contract and what happened in practice with payments are inadmissible to construction of the trenching contract. The position is less clear with the alleged contract as the factual matrix is a little different to that of the trenching contract and includes a later period of time. It seems to me however to be implicit in the obligation on Cecon to pay a correctly prepared invoice that Canyon was to provide payment details and arrangements in that invoice (or in some other way) which were reasonably consistent with conventional commercial practice for making payments. Canyon had done that with past invoices and required payment by bank transfer in London or by other means to Aberdeen. As GDF was undertaking to perform Cecon's payment obligation it follows that, one way or another, the place of performance of the obligation was prescribed by the invoices and was equally England or Scotland.

110. The thrust of HHJ Mackie's reasoning is cross-applicable here. I conclude, on the material available and for the purposes of this jurisdiction challenge, that a term should be implied into Clause 3.1 of the MSA that the client must pay fees due and properly invoiced according to the payment arrangements specified by Intralinks in the invoice, provided that those are reasonably consistent with conventional commercial practice. This should be implied because:

    a) The client cannot validly pay how and where it chooses. A pile of cash at the North Pole would not do, and it would not be better if it were dumped on Intralinks' doorstep. The place of payment is not relevant only to Gateway 7, but also to what would be a valid tender. There must be some obligation as to how and where payment is made.

b) In commercial transactions payment into bank accounts is the normal practice, but only to the account requested by the payee. Not all bank accounts are equal and payment into undesired ones could cause confusion, or cost. The payor would not reliably know which account to make payment to unless specified by the payee. So it will be generally anticipated by reasonable commercial persons that the payee will be entitled to specify the bank account to receive payment.

c) In this Contract, the provisions of clause 3.1, requiring payment to be made of the fees in the invoice, impliedly convey that payment should be made *according* to the invoice, if its provisions are consistent with the Contract.

d) This is reinforced by the factual matrix, which included that the invoices under the previous parallel Walter contract had specified the JP Morgan Account, and Nexans had always made payment there.

e) In the circumstances, if, hypothetically, the parties had been asked by the officious bystander whether the client should pay to the bank account specified in the invoice, they would have said "*obviously yes*", subject to the qualification I will address. I conclude it represents the obvious but unexpressed intentions of the parties.

f) As HHJ Mackie saw, some qualification is required to deal with the possibility of an invoice specifying an unusually problematic bank account, such as perhaps, an account located in a country subject to sanctions. It is not necessary here to address with precision how this should be framed, because there was no suggestion that payment into the JP Morgan Account was problematic in any way. It is sufficient to say that most dimensions will be captured by HHJ Mackie's phrasing that the account must be reasonably consistent with conventional commercial practice.

g) I add that I do not think it is necessarily the case that breach of the implied term would make payment an invalid tender. On appropriate facts, like a technical breach by payment to a similarly functional account, it could potentially be a valid tender even if in breach, and merely sound in damages, if any. It is not necessary to resolve such questions here.

111. It is not necessary for Intralinks to rely on the subsequent pattern of invoicing and payment under the Contract. Intralinks does not need to rely on any variation nor on post-contractual conduct. The obligation to pay where invoiced was to be implied from the start.

112. The result of this reasoning, and of Canyon, is that the presumption will very often be displaced in modern commercial contracts. But that is not a concern, given the antique nature of the presumption, in its conventional formulation.

113. As a result, Gateway 7 is satisfied. The implied term displaces the presumption. The invoice for the Disputed Sums required payment into the JP Morgan Account. No reason has been identified why there was anything problematic about payment to that account to engage any qualification. So pursuant to the implied term, Nexans had to pay to the JP Morgan Account in England. Non-payment of the Disputed Sums, if a breach, is a breach committed in England.

The Law on Appropriate Forum

General Principles

114. English law has adopted the doctrine of *forum conveniens* with the enthusiasm of a convert. Yet the chain of cases which achieved this, starting with The Atlantic Star [1974] AC 436, and passing through MacShannon v Rock Wear Glass [1978] AC 795, involved a gradual and sometimes painful process of development (Spiliada 475D-476B). It is only with Lord Goff's luminous judgment in Spiliada that the modern doctrine of *forum conveniens* take form. So judgments on this topic between 1973 and 1987 must be handled with care.

115. The heart of the law should be taken from Spiliada. The basic principle is:

> It is proper therefore to regard the classic statement of Lord Kinnear in *Sim v. Robinow* (1892) 19 R. 665 as expressing the principle now applicable in both jurisdictions. He said, at p. 668:
>
> > "the plea can never be sustained unless the court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice."
>
> (p. 474C-D)

.

116. Lord Goff added an important clarification, sometimes forgotten:

> I feel bound to say that I doubt whether the Latin tag forum non conveniens is apt to describe this principle. For the question is not one of convenience, but of the suitability or appropriateness of the relevant jurisdiction. However the Latin tag (sometimes expressed as forum non conveniens and sometimes as forum conveniens) is so widely used to describe the principle, not only in England and Scotland, but in other Commonwealth jurisdictions and in the United States, that it is probably sensible to retain it. But it is most important not to allow it to mislead us into thinking that the question at issue is one of "mere practical convenience." Such a suggestion was emphatically rejected by Lord Kinnear in *Sim v. Robinow*, 19 R. 665, 668, and by Lord Dunedin, Lord Shaw of Dunfermline and Lord Sumner in the *Société du Gaz* case, 1926 S.C.(H.L.) 13, 18, 19, and 22 respectively. Lord Dunedin, with reference to the expressions forum non competens and forum non conveniens, said, at p. 18:
>
> > "In my view, 'competent' is just as bad a translation for 'competens' as 'convenient' is for 'conveniens.' The proper translation for these Latin words, so far as this plea is concerned, is 'appropriate.'"
>
> Lord Sumner referred to a phrase used by Lord Cowan in *Clements v. Macaulay* (1866) 4 Macph. 583, 594, viz. "more convenient and preferable for securing the ends of justice," and said, at p. 22:

> "one cannot think of convenience apart from the convenience of the pursuer or the defender or the court, and the convenience of all these three, as the cases show, is of little, if any, importance. If you read it as 'more convenient, that is to say, preferable, for securing the ends of justice,' I think the true meaning of the doctrine is arrived at. The object, under the words 'forum non conveniens' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends."

In the light of these authoritative statements of the Scottish doctrine, I cannot help thinking that it is wiser to avoid use of the word "convenience" and to refer rather, as Lord Dunedin did, to the *appropriate* forum.

(pp. 474-475)

117. Turning then to *"How the principle is applied in cases of stay of proceedings"*:

> (a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.
> …
> (d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum. These are the factors which Lord Diplock described, in *MacShannon's* case [1978] A.C. 795, 812, as indicating that justice can be done in the other forum at "substantially less inconvenience or expense." Having regard to the anxiety expressed in your Lordships' House in the *Société du Gaz* case, 1926 S.C. (H.L.) 13 concerning the H use of the word "convenience" in this context, I respectfully consider that it may be more desirable, now that the English and Scottish principles are regarded as being the same, to adopt the expression used by my noble and learned friend, Lord Keith of Kinkel, in *The Abidin Daver* [1984] A.C. 398, 415, when he referred to the "natural forum" as being "that with which the action had the most real and substantial connection." So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction (as to which see *Credit Chimique v. James Scott Engineering Group Ltd*., 1982 S.L.T. 131), and the places where the parties respectively reside or carry on business.
>
> (pp. 476-477)

118. The above describes the "first stage" of Spiliada. Under the second stage:

> (f) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the

court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction; see the *The Abidin Daver* [1984] A.C. 398, 411, per Lord Diplock, a passage which now makes plain that, on this inquiry, the burden of proof shifts to the plaintiff.

(478C-E; the duplicate "the *The*" is in the original)

119. Turning then to *"How the principle is applied in cases where the court exercises its discretionary power under R.S.C., Ord. 11*" (now CPR 6.36-7):

> .. the question in both groups of cases must be, at bottom, that expressed by Lord Kinnear in *Sim v. Robinow*, 19 R. 665, 668, viz. to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice. That being said, it is desirable to identify the distinction between the two groups of cases. These, as I see it, are threefold. The first is that, as Lord Wilberforce indicated, in the Order 11 cases the burden of proof rests on the plaintiff, whereas in the forum non conveniens cases that burden rests on the defendant. A second, and more fundamental, point of distinction (from which the first point of distinction in fact flows) is that in the Order 11 cases the plaintiff is seeking to persuade the court to exercise its discretionary power to permit service on the defendant outside the jurisdiction. Statutory authority has specified the particular circumstances in which that power may be exercised, but leaves it to the court to decide whether to exercise its discretionary power in a particular case, while providing that leave shall not be granted "unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction:" see R.S.C., Ord. 11, r.4(2).
> …
>
> The effect is, not merely that the burden of proof rests on the plaintiff to persuade the court that England is the appropriate forum for the trial of the action, but that he has to show that this is clearly so. In other words, the burden is, quite simply, the obverse of that applicable where a stay is sought of proceedings started in this country as of right.
> …
>
> It is also significant to observe that the circumstances specified in Order 11, r. 1(1), as those in which the court may exercise its discretion to grant leave to serve proceedings on the defendant outside the jurisdiction, are of great variety, ranging from cases where, one would have thought, the discretion would normally be exercised in favour of granting leave (e.g., where the relief sought is an injunction ordering the defendant to do or refrain from doing something within the jurisdiction) to cases where the grant of leave is far more problematical. In addition, the importance to be attached to any particular ground invoked by the plaintiff may vary from case to case. For example, the fact that English law is the putative proper law of the contract may be of very great importance (as in *B.P. Exploration Co. (Libya) Ltd. v. Hunt* [1976] 1 W.L.R. 788, where, in my opinion, Kerr J. rightly granted leave to serve proceedings on the defendant out of the jurisdiction); or it

> may be of little importance as seen in the context of the whole case. In these circumstances, it is, in my judgment, necessary to include both the residence or place of business of the defendant and the relevant ground invoked by the plaintiff as factors to be considered by the court when deciding whether to exercise its discretion to grant leave; but, in so doing, the court should give to such factors the weight which, in all the circumstances of the case, it considers to be appropriate.
>
> (pp. 480-482)

120. It may assist to tease out two of the strands of this reasoning.

121. First, the analysis of connecting factors is aimed at establishing what is the appropriate forum to try the case. It is not a blind assessment of factual connections. Legal connections can be central. Thus the "*law governing the relevant transaction*", "*could be of very great importance*".

122. Second, for the same reason, the assessment of connecting factors is not solely a question of "*convenience or expense*". What matters is how the factors make a forum "*more suitable for the ends of justice*". So the relevance of location should not solely be assessed by reference to practical advantages. It can be distinct to issues of convenience and expense (Spiliada 478A-B).

123. As Popplewell LJ explained in Limbu v Dyson [2024] EWCA Civ 1564: "*The domicile of the parties … is, however, an important factor. The reason it is an important connecting factor in relation to jurisdiction is because presence here is the basis for establishing the court's jurisdiction, and domicile here connotes a degree of permanence and allegiance to the country's institutions, including its courts …*" That was said when considering the relevance of domicile in the context of service within the jurisdiction, but point that the location of the parties may matter for *forum* because it "*connotes a degree of permanence and allegiance to the country's institutions, including its courts*" is of general significance. People are usually more likely to understand and be comfortable with their home country's legal system compared to more alien systems.

124. It is worth adding a clarification about Popplewell LJ's use of "*domicile*". For appropriate forum, as Spiliada tells us, it is generally the place where the parties substantially "*reside*" or "*carry on business*" (478B), rather than technical domicile, that has weight. In Spiliada 481F, Lord Goff said that a technical residence like a tax haven would have little weight. Yet it was central to his approach that a real, substantial location would ordinarily have weight (Macsteel Commercial Holdings v Thermasteel [1996] CLC 1403, 1406-1407).

Specific factors

125. The relevance and weight of particular connecting factors depends on their interplay with the issues in the particular case, and is for the Judge to assess in all the circumstances (see Novus Aviation v Onur Air [2009] EWCA Civ 122 at [79], per Lawrence Collins LJ, and Spiliada at 481G, 482A). Extrapolations from the fact-specific reasoning in other decisions should therefore be handled with care. However, there is useful learning on central factors.

Applicable Law

126. There have been differences of emphasis as to the role and weight of the applicable law. But the essential modern principle is stated in Spiliada. The law governing the relevant transaction is generally a relevant connecting factor. Its importance depends on the circumstances, but it may be of very great importance: Spiliada 478B, 481G-H; Novus [74], [77], [79].

127. In VTB v Nutritek [2013] 2 AC 337, Lord Mance observed in a tort case: "*The governing law, which is here English, is in general terms a positive factor in favour of trial in England, because it is generally preferable, other things being equal, that a case should be tried in the country whose law applies. However, that factor is of particular force if issues of law are likely to be important and if there is evidence of relevant differences in the legal principles or rules applicable to such issues in the two countries in contention as the appropriate forum*" [46]. (See also Lord Clarke in the minority at [218]-[219]). An express contractual choice of law may confer additional weight to the law chosen.

128. The English courts, and the French courts, are well able to apply foreign law, and the English commercial courts have considerable experience in doing so. Yet a national court will in general be better placed to apply its own law than foreign law, in particular where complex legal issues arise: see Novus, [39]-[40]

129. In Macsteel, Sir Thomas Bingham MR observed that a choice of law " *is a factor of importance, in particular, where there is some distinction or some arguable distinction between the law of the two competing jurisdictions.*" Yet in the case before him "*there is no suggestion in the evidence that the law of England and the law of Ontario are in any way different on the apparently straightforward issues raised by this dispute.*" (p. 1407). Yet it was an error of principle to conflate a choice of law with a choice of jurisdiction. A jurisdiction clause is of very great weight, but a choice of law is not an implied choice of jurisdiction. By choosing English law but not including an English jurisdiction clause the parties have deliberately decided not to agree positively on English jurisdiction (pp. 1407-1408, also Millett LJ at p. 1408). They might even not have wanted English jurisdiction; although the more natural inference is usually that they have just left the question of jurisdiction open.

130. In The Channel Ranger [2014] 1 Lloyds Rep 337, [61], Males J said:

> As for the significance of the express choice of English law, such a choice is capable of being a factor of significant and even decisive weight, particularly if the foreign court's application of a different law would or might lead to a different result as that would be to deprive the claimant of the benefit of its bargain: *The Lucky Lady* [2013] EWHC 328 (Comm), [2013] 2 Lloyd's Rep 104 at [28], where Andrew Smith J reviewed the applicable authorities, including the comments of Lord Mance in *VTB Capital Plc v Nutritek International Corporation* [2013] UKSC 5, [2013] 1 Lloyd's Rep 466 at [46] …

131. Males J thought that, if the claim was to proceed in Morocco, it was likely that Moroccan law would be applied which would likely produce a different result. So "*the need to litigate in a forum which would apply English law as the law expressly chosen*" outweighed the location of witnesses and evidence: [62], [64].

132. In Novus, where there were disputes about formation, Aikens J had reasoned that because the issues were likely to include disputes as to the application of English contract law, the putative proper law of the contract, the choice of English law was a significant factor. The English courts would be better able to deal with those issues than Turkish courts: [39]-[40]. On appeal, Lawrence Collins LJ held this contained no error in principle [81]. He added that a choice of English law could be of particular significance if *"the foreign forum, notwithstanding the express choice of English law, may instead apply its own law*" [78].

133. In Macsteel, there is an observation by Millett LJ that the choice of English law was "*not an insignificant factor and it could be decisive if the issue were otherwise nicely balanced as between England and some other jurisdiction. But I do not see how it can be decisive where the issue is not so balanced ...*" (p. 1409). This might suggest choice of law has limited force. But it was *obiter*, and not reflected in Sir Thomas Bingham LJ's judgment with which Millett LJ agreed (Pill LJ agreed with both). It is inconsistent with Spiliada, and has not been picked up in the case law. When in Novus, [74], [79], Lawrence Collins LJ considered Macsteel, he did not pick up on these observations. Instead he took the Spiliada approach that the significance of the choice of law depends on the circumstances and issues, but could be of very great importance.

Lurssen

134. Nexans relied on FR Lurssen Werft v Halle [2009] EWHC 2607 (Comm). Simon J observed on *forum*:

> (2) Where the only basis relied on by a claimant to establish jurisdiction is that the claim is made in respect of a contract governed by English law, particular caution will be required, and the burden on the claimant of showing good reasons justifying service out of the jurisdiction is a 'particularly heavy one': *Ilyssia Compania Naviera SA v Bamaodah (The Elli 2)* [1985] 1 Lloyd's Rep 107 at p.113, *The Spiliada* at p.479- 480 and *Novus Aviation v. Onur Air Tasimacilik AS* [2009] EWCA Civ 122, Lawrence Collins LJ at [32].
> (3) Although different expressions have been used to characterise the nature of the jurisdiction, it is clearly recognised that it is an exceptional course to require a foreigner to litigate in the English Court purely on the basis that English law is the Governing law of the contract. It may be a less exceptional course, as Mr Thomas acknowledged, where there has been a choice of law under the Rome Convention.

135. Mr Benzie relied on this to contend that, where Gateway 6(c) is the "*only basis*", a claimant had to satisfy a "*heavy burden*", and thus a higher threshold. However, in my view, these observations do not further Nexans' case, and are not the law.

136. To begin with, such reasoning would only it seems apply where the sole gateway of jurisdiction is Gateway 6(c), or perhaps where English applicable law is the sole factual basis for saying England is the appropriate. Yet that is not so here. Intralinks has established two gateways, not just 6(c), and (as discussed below) relies on connecting factors beyond English law. Further, Simon J allowed the position might be different for an express choice of law, which is the case here.

137. Further, such dividing lines would be arbitrary. The gateways give a range of different connections. Some have lesser weight in themselves than choice of law. In principle, it

does not seem justified to say that using the "English law" gateway alone should impose an unusual burden. The straightforward principle which the modern case law generally adopts is that, if any gateway is passed, the Court then considers all relevant connecting factors and gives them their appropriate weight, when applying the single test of whether England is the most appropriate forum. In doing so, a choice of English law can be a very significant factor.

138. Simon J cited The Elli 2 [1985] 1 Lloyds Rep 107, Spiliada, and Novus. But the archaeology of these cases reveals Simon J's propositions are not now the law.

a) Their historical roots lie in Amin Rasheed v Kuwait [1984] AC 50. Lord Diplock described the English law gateway in Order 11 r. 1(1)(f)(iii), as "*exorbitant*". So leave to serve out under it should be exercised "*with circumspection*" (p. 65) and *"The exorbitance of the jurisdiction sought to be invoked where reliance is based exclusively upon r. 1 (1) (f) (iii) is an important factor to be placed in the balance against granting leave."* (p. 68). This could be outweighed if "*justice could not be obtained by him in the alternative forum, or could only be obtained at excessive cost, delay or inconvenience*". But Lord Wilberforce adopted a different principle, holding in more modern terms that the correct approach was to look at all the connecting factors and ask whether there were good reasons to permit service out (p. 72D-F). The conflict between Lord Diplock's approach and Lord Wilberforce's then played out in the subsequent case law.

b) In The Elli 2, still before Spiliada, the focus was on whether Lord Diplock's exceptions were the only possibilities. Ackner LJ concluded not: "*Lord Diplock was emphasizing that where exclusive reliance is placed upon r. 1(1)(f)(iii) then the burden of showing good reasons justifying service out of the jurisdiction is a particularly heavy one, and he illustrated this by the examples which he gave of situations which were capable of taking tipping the balance. Thus constructed ... there is no conflict between Lord Diplock's statement and that of Lord Wilberforce ...*" (113rhc). By this he dissolved some of the rigidity of Lord Diplock's approach but in doing so transmuted it into his "*heavy burden*" Yet when applying the law to the facts, he did not apply any constraining burden, and accepted the judge had been entitled to give conclude that the choice of English law, where the relevant issues were likely to turn on complex points of English law, was decisive. May LJ (pp. 118-119) took still a more circumspect approach to Lord Diplock's observations, describing them as *dicta* and not a statute. The '*heavy burden*" language was not used. May LJ said merely that jurisdiction based solely on a choice of English law should be exercised with "*considerable caution*".

c) In Spiliada, Lord Goff made clear that the old law was being departed from; and that he needed to resolve the differences between Lord Wilberforce and Lord Diplock in Amin Rasheed (473C-E, 475F-H). Turning to Elli 2, he interpreted it as adopting Lord Wilberforce's reasoning not Lord Diplock's (480C), and viewed Lord Wilberforce's approach as close to the correct principle, but clarified the true modern principle as now being the doctrine of *forum conveniens* derived from Scottish law (480G-H), whose single core concept was to ask where the matter can most suitably be tried in the interests of justice. He cast doubt on Lord Diplock's use of the word "*exorbitant*" as old fashioned (481E). Turning to gateways and connecting factors, he concluded: "*the importance to be attached to any*

particular ground invoked by the claimant may vary from case to case", including choice of English law, which "*may be of very great importance*", but "*the Court should give to all such factors the weight which, in the circumstances of the case, it considers appropriate*" (481-482). Lord Goff does this elegantly, deftly and politely, but the result is Lord Diplock's approach in Amin Rasheed is deliberately displaced, and so is any doctrine of "*heavy burden*" from Elli 2, or any particular "*circumspection*" in the use of the English law gateway. While Spiliada is a judgment of the Privy Council, it is accepted it states modern English law.

d) In the modern judgments of the Supreme Court, it has been made further clear that treating the gateways as exorbitant and governed by "*muscular presumptions*" against service out of the jurisdiction is an out-of-date approach: see Abela v Baadarani [2013] 1 WLR 2043 (SC), [53]; Brownlie v Four Seasons [2018] 1 WLR 192 (SC), [31].

e) Finally, [32] of Novus (CA) which Simon J also cites is not part of the Court of Appeal's reasoning, but a paraphrase of Aikens J's judgment, recording him as adopting Ackner LJ's "*heavy burden*" approach. Yet that was not picked up by the Court of Appeal. At [73]-[74] Lawrence Collins LJ did not follow Lord Diplock's reasoning in Amin Rasheed, and instead adopted the approach in Spiliada. This departs not only from Amin Rasheed, but also from the "*heavy burden*" approach in The Elli 2.

f) Thus, Spiliada and Novus, although cited by Simon J, in fact contradict the propositions quoted from Lurssen above at (2)-(3).

g) The modern cases do not adopt any logic of "*heavy burden*" and this aspect of Lurssen has not been followed. Indeed, in Lurssen itself, Simon J went on to weigh the importance of the choice of English law in a conventional way, and conclude that it was a key factor in showing England was the most appropriate forum: [53].

139. I conclude that the correct approach is stated in Spiliada. The test for forum is simply to ask whether England is clearly the most appropriate forum, taking into account all relevant connecting factors. There is no different burden or test, simply because Gateway 6(c) is the gateway relied on. The weight for *forum* of English law being the applicable law depends on all the facts and circumstances. But it can be very important.

The location and language of documents; the location and nationality of witnesses

140. The case law has explored the weight to be given to the language of documents and the nationality of witnesses. Again, it must be borne in mind the relevance of such factors is for the Judge in each case to assess in all the circumstances. However, the way in which this is done in other cases is instructive.

141. First, since the use of English in international commercial transactions is ubiquitous, the sole fact that documentation or negotiations are in English has been said to be not of great weight. See Novus [80]. Yet in other cases, the language of documents has been given greater weight. Even in an age of improved machine translation the need to engage with foreign language documents increases cost, complexity, and the risk of error. A judge has an advantage in understanding documents in her native tongue. The importance of the language of documents increases where issues may turn on the meaning of language.

See Novus [80] referring to The Magnum [1989] 1 Lloyds Rep 47 (CA), 51; Joyvio Group Co Ltd v Moreno [2024] EWHC 2493, [87]-[88] (Nigel Cooper KC).

142. Second, it has been said that the location of documents and witnesses may matter less in modern circumstances than previously, given the easy use, storage and transferability of electronic documents, the ease of modern travel, and the availability of video-link: Cockerill J in Al Mana Lifestyle Trading v United Fidelity [2022] EWHC 2049 (Comm), [98]. This is particularly so for the physical location of documents: Joyvio at [87]. Nevertheless, the location of evidence and witnesses can remain relevant, as Spiliada envisages: see VTB at [62]. Modern technology shrinks distance but it cannot fully substitute for physical presence. For example, evidence in person is superior to examination through video-link.

143. In addition, the physical location of witnesses is not the only aspect of "where they are from" which matters. First, the native tongues and linguistic skills of the likely witnesses are relevant. Witnesses generally give better evidence in a language they are comfortable with, while the use of interpreters is costly, generally awkward and prone to error: see Joyvio at [87]; and VTB at [62]. So it is a factor in favour of a forum that the language of its courts is the one in which most of the likely witnesses are most comfortable.

144. Second, even independent of questions of language, as already discussed, people are usually more likely to understand and be comfortable with their home country's legal system, or similar legal systems, compared to more alien systems. So the national culture of witnesses and their likely relative familiarity with the alternative possible legal systems can be a relevant connecting factor.

Overlapping foreign proceedings

145. The existence of overlapping proceedings in a foreign forum is a relevant connecting factor. Their force depends on the circumstances. This was common ground between the parties, although key authority was not cited. It is helpful to refer to the well-known leading judgment of Lord Goff in De Dampierre v De Dampierre [1988] AC 92, 108B-D, in which he held that overlapping foreign proceedings should be addressed within the Spiliada framework, and observed:

> … the existence of such proceedings may, depending on the circumstances, be relevant to the inquiry. Sometimes they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction, or the proceedings have not passed beyond the stage of the initiating process. But if, for example, genuine proceedings have been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when considering whether the foreign jurisdiction provides the appropriate forum for the resolution of the dispute between the parties.

146. Other factors affecting the weight to be given to the foreign proceedings will include, I consider, the degree of overlap, the extent of substantial priority in time, the risks of a multiplicity of proceedings, and the risk of conflicting judgments.

147. In The Channel Ranger, Males J reasoned on the facts before him, at [60]:

> While there have been cases in which multiplicity of proceedings has been a decisive factor against English jurisdiction, I regard the existence of proceedings in Morocco in this case as being of no weight (and therefore need not consider further the issue about the extent to which I am permitted to take those proceedings into account). They were commenced only after the defendants were served with the present proceedings, and well after the receiver at any rate was aware of these proceedings. If this court was the appropriate forum at the time when permission was granted for service out of the jurisdiction, at which time the Moroccan proceedings did not exist, I do not see how the defendants' own decision to bring proceedings in Morocco (ex hypothesi not the appropriate forum in the absence of those proceedings) can alter this assessment. If the existence of proceedings in two different jurisdictions is a problem for the defendants, they have the remedy in their own hands, namely to discontinue the proceedings in Morocco and contest the merits here.

The Appropriate Forum in this Case

148. Nexans argued that Intralinks could not show that England was clearly the most appropriate forum, and instead that France was the most appropriate forum, because: (1) The Contract is (on Nexans' case) governed by French law and subject to French jurisdiction. (2) The Contract was (according to Nexans) negotiated principally in France and in French between French people. (3) Nexans is French, and none of the parties have close links to England. (4) Many of the witnesses and much of the evidence would be in France, and none would be in England. (5) The services were consumed by Nexans, principally in France. (6) Any connections to England created by payment of the invoices at the JP Morgan Account were weak, and (on Nexans' case) there was no obligation to pay in England. (7) The use of English for the Contracts and other documents was a weak connecting factor. (8) Even if, contrary to Nexans' case, the contract was governed by English law, this was a weak connecting factor in this case. (9) The pre-existing French proceedings were a strong connection to France. The French proceedings are at a more advanced stage than this action.

149. In my judgment, however, England is clearly the most appropriate forum.

150. It is necessary, first, to sketch the landscape of the likely issues. This is not entirely easy because Nexans' likely defence in these proceedings was not generally explained. While its position on formation can be discerned, its position on performance and the alleged debt is less clear. And while indications can also be drawn from its positive case in France, the way the case is run in France is shaped by the different context of French law. Nevertheless, it can be said that the issues will likely include (a) in England and France, debates as to formation and rectification and the incorporation of the English and French MSAs; (b) in both countries debates about the legitimacy of the incremental charges in the September 29 invoice, which under French law may well be framed in terms of good faith, but in England might be framed under other doctrines, including perhaps arguments as to the incorporation of the conversion rates, implied terms or estoppels, or claims for misrepresentation.

151. Intralinks argued that at least as to performance and breach, the case might not involve much evidence. However, I do not think that can be said confidently at this stage. It would also be circular to assess what issues will likely arise solely from the perspective of how the issues would be tried in England. Instead this must be approached neutrally taking into account the issues that could arise in the case wherever it is tried. So I proceed on the basis that witness and documentary evidence will likely be relevant to both halves of the case.

152. In the light of that picture of the issues I turn to the relevant connecting factors.

153. First, I agree the location of the parties and the relevant events does point more to France than England (leaving aside the place of payment and the choice of law which I address separately), but the position is more nuanced than Nexans allows:

    a) Nexans' location in France is a significant factor pointing towards France. On the other side, Intralinks is not English and no relevant operations in England were identified other than the bank account.

    b) But while Nexans' centre of business is French, its connection to this Contract is not solely French-focussed. Nexans ignored the role of Evercore. But Evercore in Germany were closely involved in Project Walter/Otto and in the negotiations. Further, the services are delocalised web-based services, yet other than the inferences that can be drawn from Nexans' French centre of business, there was no evidence that the use of the services was solely or principally focussed on France. They would have likely been used by Evercore as well; and the invoices record that Project Otto and the Contract had connections to "*Germany*" (see the invoices of 7 July, 6 August and 29 September 2025). So on the Nexans side, this was not just a French transaction, and it had strong German elements.

    c) On Intralinks' side, France is connected through Mr Lepierre but I regard the Intralinks Frankfurt office and also Intralinks' US operations as having more significance. Nexans' attempt to present the negotiations as principally French-centred is incorrect; they were at least as much German-centred. The disputes as to performance, breach and debt would be likely to involve Intralinks in the US and its US personnel, like Mr Gurney, but also have German and to a lesser extent Swiss connections, given the role of Evercore and Intralinks' Frankfurt office and Mr Howard's involvement, and also the apparent connection (from the invoices) of Project Otto to Germany. Further, again, the services were delocalised web-based services. There was no evidence as to where they were really provided "*from*", and that may not mean very much, but I note that clause 5 of the contract says that the default position is that Exchanges (virtual data rooms) are hosted in the USA. So from Intralinks' perspective, this is only in part a French transaction and dispute. It is more international, with major US connections due to Intralinks' centre of business, but a strong German connection.

    d) Further, while Nexans can rely on its greater familiarity and comfort with its home legal system, its evidence considerably overstated the position. Nexans had agreed English law with no apparent difficulty in Project Walter; the terms of the Intralinks MSA on either version adopt what seems to be an English approach to contract drafting; and Evercore have no identified connection to France. On the other side of the ledger, while no English company was involved, US companies are generally

more likely to be familiar with and comfortable with the operation of a common law system like English law than with French law, and many international businesspeople are comfortable with English law, as illustrated by the frequency with which it is used in international contracts. Bearing in mind the warnings in Macsteel, it is important not to let recognition of this slip into a default assumption of the appropriateness of English jurisdiction, and so such considerations generally have lesser weight than the connection of a party to its own legal system. Nevertheless, taking all these factors together, it seems to me that (before considering choice of law), the relative proximity to the different legal systems was much more balanced than Nexans allowed, although probably still weighted towards France as the country of Nexans' home legal system.

154. Second, the position as to the location and languages of witnesses and evidence is also much more balanced that Nexans allows.

a) With regards to *location* of witnesses and evidence, on Nexans' side, its employee witnesses will likely be French, but the knowledge and documents of the Evercore personnel is also likely to be relevant, even if Nexans chooses not to call them. On Intralinks' side its witnesses seem likely to be principally US and German, as well as Mr Lepierre in France. (Mr Howard, while based on Switzerland, appears to be English-speaking and not French, as his emails are in English). The documentary evidence seems likely to come from France for Nexans, and Germany or Switzerland and the US and in part France for Intralinks. No evidence is directly linked to England, other than the facts of payment. Thus, the location of witnesses and evidence points much more to France compared to England, but it does not dominantly point to France compared to the rest of the world. Further, modern communications mean this factor has less weight than it would have had in earlier days.

b) On the other hand, the *languages* of documents, contemporaneous discussions, and the language abilities of witnesses, overall point away from France, and to a material extent, towards England.

c) To begin with, the negotiations were partly in French, as will be many of Nexans' documents. But much of the negotiations were in German, through Evercore. So far as concerns performance and breach, some exchanges passing between Mr Lepierre and Nexans seem to have been in French, but much else will have been in English. The key contractual documents, and the parties' main correspondence, are in English, and Intralinks' internal communications will likely be in English. Further in this case, language will likely matter to the resolution of the issues. Debates as to the charging structure will likely depend in significant part on understanding principally English-language documents and communications. The issues of contract formation and rectification are likely (in England) to involve questions of how things are phrased, and oral witness evidence.

d) In addition, while English is not the sole language of the witnesses and their exchanges, it has the advantage of being the only language in which all the relevant persons concerned will be comfortable. The French witnesses will be competent in English, but in contrast it is fairly likely that the German witnesses, and even more so the US witnesses, could have difficulty in a French-language environment. As

reflected in Novus [81], it would be an error to treat the role of the English language as having anything close to the weight of an agreed choice of jurisdiction. I do not do so. But the relevant candidates here are only France and England. Taking these matters in the round, I conclude that the role of English has material weight as a connecting factor to England.

155. Third, contrary to Nexans' submissions, I consider the payments and obligations to pay in England are a significant connecting factor. All payments were made to England in fact, and I have found for the purposes of this jurisdiction challenge, contrary to Nexans' arguments, that Nexans were obliged to pay in England. Nexans argued this was merely a matter of accounting, but payment was Nexans' essential obligation under the Contract. From an international perspective, it is not unnatural for a party to find itself sued for payment in a place where it was obliged to pay.

156. Further, fourth, the choice of English law is in the circumstances of this case a strong factor connecting this case to England, which outweighs the factors pointing towards France, and makes England clearly the most appropriate forum:

a) Mr Benzie argued that because choice of law was disputed and not being finally decided, the uncertainty meant it was of weaker weight. I do not accept this should significantly downgrade the weight of choice of law. Intralinks has much the better of the argument that the contract provides that it is governed by English law. Nexans' arguments are much weaker. For jurisdiction purposes that is sufficient to make out the relevant gateway.

b) In this case, the choice of English law, when proven to that standard, has heavy weight for two main reasons.

c) First, the dispute is likely to turn centrally on debates as to aspects of English contract law, as the putative proper law of the contract formed by the 3 October Work Order. The formation and rectification debates would seem likely to turn on legal issues, including from an English law perspective, issues on the operation of the objective test and the scope of rectification, as to which English and French law are likely to differ. In relation to performance and debt, the disputes are likely again involve potentially complex legal questions on which English and French law are likely to take materially different approaches, including possibly disputes about the incorporation of the conversion rates, implied terms and the construction of express terms, and the existence of any relevant duties of good faith or equivalents, and possibly claims in misrepresentation.

d) Second, a realistic view of the overall landscape of the overlapping proceedings is that a central aim of the French proceedings is to rely on doctrines of French law to create a very different legal framework, more favourable to Nexans, to that which would apply in England under English law. That is not to say that Nexans would lose on the merits in England or win in France, a point which I could not and do not seek to assess. Nor of course am I suggesting that English law, or the English courts, are in any way superior to French law or the French courts. But it is evident that Nexans views the application of French law as more favourable to it, and that it is central to the motivation of the French proceedings to create a situation where a different result could well occur due to the differences of national law. Further, Nexans have done so in reaction to the letter before action, and to pre-empt

Intralinks' threatened English claim. In circumstances where I have found Intralinks has much the better of the argument that the parties have chosen English law, this is a significant factor indicating England is more appropriate to try the case.

e) While there was no specific French law expert evidence on these questions, this reality was apparent from Me Koehler-Magne's evidence and French claim as a whole, and for example: (1) In relation to formation, the French claim's reliance on a subjective approach, and reliance on provisions of the French civil code as to "error" (see Articles 1132-1133, relied on at p. 7 of the translation); (2) in relation to performance and breach, the French claim for breach of the general duty of good faith, which would not exist (at least not in the same way) in English law.

f) Mr Benzie argued that the French court might apply English law to the substance, and Me Meriguet confirmed that was possible. That would be a matter for the French court. But Nexans' evidence did not suggest this was likely. For her part Me Meriguet did not address which law would likely be applied in France. (Both sides were facing two ways on this question.) Nevertheless, it is plainly Nexans' aim, asserted in the French claim and avowed by Me Koehler-Magne, to apply French law in France and I infer Nexans thinks it has at least good chances of achieving this.

g) Indeed Me Koehler-Magne takes the position that the difference of legal frameworks is central, as the French claim "*concerns the interpretation and enforcement of contractual provisions under the French civil code*", and therefore "the *French courts are best placed to determine such issues*" (§67). This illustrates the force of the applicable law as a connecting factor.

h) I remind myself of the caution in Macsteel, that the choice of English law is not a choice of English jurisdiction and should not have the same weight. The parties have deliberately not positively agreed on English jurisdiction. The weight to be attributed to the choice of English law must depend on the specific facts of the case. But given the two specific features of this case which I have identified, I conclude that here the choice of English law is a strong factor. Where Intralinks has much the better of the argument that English law has been chosen, the English courts are the most appropriate to determine the issues of law arising.

157. Finally, the French Proceedings do not greatly diminish the force of the considerations pointing towards England. While they provide a connection to France, it is much less strong than Nexans contends, and does not outweigh the force of the factors which make England clearly the most appropriate forum:

a) First, the French Proceedings were launched without warning after the English letter before action, and I infer they were intended to pre-empt the English action which Fieldfisher had indicated would be commenced. I do not regard their priority in time as having real weight. While the English proceedings then followed just over two months later not immediately after, that is perhaps explicable by the need to consider what had happened, and I do not think it greatly changes the landscape.

b) Second, the French Proceedings have not proceeded far. All that has happened so far is two limited procedural hearings. Jurisdiction has not been determined. Intralinks has not yet filed any submissions, whether in relation to jurisdiction, the

admissibility of Nexans' claims, or the merits of those claims. The French Proceedings are unlikely to be concluded before mid-2027. In contrast in England I am resolving jurisdiction now and if the English proceedings were proceeded with expeditiously, which they should be, there are real prospects that they will advance more quickly.

c) In this regard, Nexans argued that the costs so far incurred in France were considerable while costs in England were limited. However, that was not supported by the evidence. Me Koehler-Magne's evidence does not say that the costs incurred in France so far are considerable, while Me Meriguet gives evidence that only limited work has been done and cost incurred so far by Intralinks in France. She estimates Intralinks' costs in France so far as only €20,000 - although Nexans' costs would be more, because it has had to formulate its substantive claim. In contrast, she states that Intralinks' costs in England exceed £185,000 and extensive work has been done.

d) Third, Mr Benzie relied on what he referred to as a "*Cambridgeshire*" factor. The principle as explained in Spiliada is that a developed base of knowledge and experience among lawyers, experts and the judiciary in a country of a certain type of issue – in that case, the technical issues relating to damage to a ship arising from the carriage of a wet sulphur cargo, which had previously been fought in England in the Cambridgeshire litigation - can be a factor in favour of that country: see Spiliada 466H-468D, 484G-486C. Properly understood, I do not think this factor has any traction here. There is nothing to show that the French courts have any superior developed experience of virtual data room disputes generally. The question of the French courts' involvement in these proceedings is different. But in any event, the French proceedings have not yet developed far.

e) Fourth, it is a significant factor against giving weight to the French proceedings, that their essential thrust is an attempt by a defendant to apply a different legal framework, which Nexans views as more favourable. If that were to work to contradict an English *forum*, it would allow defendants by bringing reactive proceedings to undermine the effect which, in appropriate cases, the law attributes to English choice of law clauses.

f) Fifth, while there is an obvious risk of duplicative proceedings and inconsistent judgments if jurisdiction is upheld here, the weight of that is mitigated by three factors. First, Mr Benzie accepted that if this jurisdiction challenged failed, Intralinks would be able to seek some form of stay in France, although the results of that were uncertain. Second, there is an analogy to The Channel Ranger, as Nexans would be able to avoid duplication by withdrawing its parallel proceedings, which I have concluded were pre-emptive and reactive. Third, if this matter were to proceed to trial and judgment swiftly, and before the French judgment, the risks of duplication and inconsistent judgments could be mitigated.

g) In the circumstances, as in The Channel Ranger, I do not think that Nexans' French proceedings should prevent litigation proceeding in England which would otherwise be the more natural forum. England remains clearly the more appropriate forum.

158. Finally, I record that Mr Benzie made the submission that I should stand back, and ask whether on a commonsense analysis one would regard this case as more closely connected to France. However, in my judgment, this argument was in truth inviting me to adopt an incorrectly narrow focus, and to strip out legal connections from the analysis and focus only on factual connections. That would be a distortion of the true principle of Spiliada.

159. I note that Intralinks did not argue that substantial justice could not be done in France, under the second stage in Spiliada. However, Intralinks did not need to do so, as it has established that England is clearly the most appropriate forum independent of such considerations.

160. Consequently, Intralinks have satisfied its burden of showing that England is clearly the most appropriate forum to try the claim.

Conclusion

161. The jurisdiction challenge is dismissed. Intralinks has shown that it has a good arguable case that Gateway 6(c) applies and I conclude that Gateway 7 applies. Intralinks has also shown that England is the proper place to hear the claim. It is appropriate for the discretion to permit service out of the jurisdiction to be exercised.

162. I will hear the parties on the form of order. The order should include initial directions as to the progress of the case and the listing of a case management conference.