Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF SWINNERTON MOORE

ISSUE 4 ▸ NOVEMBER 06

Lewis Moore, partner, congratulates Sotos Skinitis at the recent opening of the Law Office Skinitis.

New Waves in Greece!

Swinnerton Moore is pleased to announce its association with Law Office Skinitis in Piraeus. Law Office Skinitis is a newly established Law Office on Akti Miaouli. The Principal is Sotos Skinitis an English trained lawyer who spent his training contract with Lewis Moore. Sotos is a specialist in shipping litigation and will offer on the spot service with back up from the resources of Swinnerton Moore in London. This marks an exciting development in the networking of Swinnerton Moore and it is a particular pleasure to be associated with Sotos again and to see him sailing under his own flag in Piraeus. The details of Law Office Skinitis are included in the addresses on this newsletter. All of us at Swinnerton Moore take this opportunity of wishing Sotos every success for the future.

Report or Repent

By Peter Crowley – Consultant with Swinnerton Moore

Underwriter clients of the firm recently had to decline an Assured's wreck-removal claim because it had been notified to them too late for them to take any part in the removal operation.

The Assured had made a basic but very common mistake: he thought he had complied with the policy's prompt-notice provisions by reporting the casualty to the brokers - but they unfortunately did not pass the information on to Underwriters for six weeks!

At English law, notice to an Assured's broker does not amount to valid notice to the Underwriter because the broker is the Assured's agent, not the Underwriter's – and any failure by the broker to do his job properly lies with his principal, the Assured.

And so it was here: the arbitrator found that the policy made prompt notice to Underwriters a condition precedent to cover; and that even if it didn't, Underwriters had anyway been prejudiced by the late notice because they would have wanted to at least have a surveyor attend the removal to ensure that it was being undertaken in a safe and economical way.

No doubt the unlucky Assured is now "having words" with his broker!

Peter Crowley steps on board

Swinnerton Moore is delighted to welcome Peter Crowley to the team. Peter is joining the firm as a Consultant. Peter has a lengthy experience starting with the London Club and having practised for many years in firms of shipping solicitors in the City of London. Peter's particular strong suits are Charterparty claims, marine insurance and personal injury.

Why make waves?

We adopted the motto ***"why make waves?"*** to represent our approach to our clients and their work. The motto is intentionally ambiguous. It is designed to make our clients think and to show that we think. We see it as meaning:

- do you need to make waves?
- if there is no need to make waves, don't;
- but where the need arises – *full ahead!*

Swinnerton Moore Solicitors

Cannongate House
62-64 Cannon Street
London EC4N 6AE
T: +44 (0) 20 7236 7111
F: +44 (0) 20 7236 1222
E: info@swinmoore.com
W: swinmoore.com

Law Office Skinitis

99 Akti Miaouli
Piraeus 185 38
Greece
T: +30 210 42 90 478
F: +30 210 42 90 472
M: +30 694 702 4846
E: soto@swinmoore.gr

Remedy Law Firm

40-42 Nevskiy Prospect
St. Petersburg, 191011
Russia
T: +7 812 703 5100
F: +7 812 325 3247
E: general@remedy.spb.ru
and
2nd Floor, 3 Skakovaya str
Moscow, 125040
Russia
T/F: +7 095 789 8939
E: general@remedy.spb.ru

INVESTOR IN PEOPLE

LEXCEL

Testing the World's Transactions

CEDR Accreditation

Lewis Moore has now successfully completed the CEDR Accreditation Course and is a CEDR accredited mediator. So far this year Lewis Moore has undertaken four mediations on behalf of clients, of which three were settled on the day.

Lewis Moore is looking forward to developing his mediation practice and will be delighted to undertake mediation on behalf of clients or to act as a mediator for any third parties.

The CEDR course is a rigorous qualification. It develops negotiating, problem solving and communication skills and enables the mediator to deploy them from a position of independence and neutrality so that parties can make progress where direct negotiations have stalled. Faced with ever increasing costs of litigation and demands for executive time mediation is an important option which should always be considered where there is a dispute.

eFfective Service

By Fanos Theophani – Assistant Solicitor with Swinnerton Moore

In Bernuth Lines Limited v. Highseas Shipping Limited [2006] 1 Lloyd's Law Reports 537, Swinnerton Moore represented the Owners who brought arbitration proceedings to recover a balance of hire. The interesting feature of this case, (apart from the fact that the Owners won!) was that the arbitration proceedings had been commenced by email to the Charterers' agent at its "info" mailbox which was given both in the 2005 Lloyd's Directory and on the Charterers' website.

Further correspondence was sent by Swinnerton Moore, the Secretary of LMAA and the sole arbitrator appointed by the LMAA by email. No reply was received from the Charterers. Accordingly the Arbitrator proceeded to an Award in the absence of submissions on the part of the Charterers and found in Owners' favour.

The Charterers applied to the court to set aside the Award alleging that the arbitration proceedings had not been properly brought. The Judge would not accept this argument and found that email was an effective means of service in writing in accordance with Section 5(6) of the Arbitration Act 1996. The Act further provided at Section 76 that the parties are free to agree on the manner of service and, importantly that a notice or other document may be served by any "effective means". The Charterers had sought to argue that the English Civil Procedure Rules applied which do not permit email service unless a party has indicated that it is willing to accept service by email and has given its email address for service. The Judge held that this was not relevant in arbitration proceedings.

The Charterers then suggested that they were entitled to disregard the emails because they were "spam". The Judge did not accept this argument either. If the Charterers were prepared to give an email address then they have to run the risk that people would use it.

Accordingly it seems that disregarding emails is a dangerous course and unless they are obviously spam they cannot be safely overlooked.

Property Matters

HIPS replacement

By Christopher Christou – Associate

In our last Newsletter we mentioned the introduction of the Home Information Packs. From November 2006, the Government will be carrying out trials in various areas of the country on a voluntary basis as a "dry-run" in order to deal with any issues that may arise before the introduction date in June 2007. The Home Condition Report which we also mentioned earlier is no longer compulsory but it will remain part of the Home Information Pack on a voluntary basis.

Shipping Matters

Laytime up front

In "THE FRONT COMMANDER" the court was again asked to consider Notices of Readiness and held that once the earliest layday had been waived, by allowing a notice of readiness to be served in advance of it and by ordering the vessel to berth and load in advance of it, the charterer had consented to the early commencement of laytime.

Garlic Pea Souper

In "THE TOLEDO CARRIER" a claim for alleged wet damage to a cargo of garlic was dismissed. The Judge said "while the result leaves an element of mystery over quite what happened at the beginning of 2002 it is in my view clear that Claimants have failed to establish a breach of Article III Rule 1 or 2 of the Hague Rules." This case is a timely reminder that even a cargo claimant must prove his claim.

Subject to subject

In "THE BOTNICA" the court held that in charterparty terms a "signing subject" provision had the effect of preventing a binding contract from being created until both parties had signed the terms and conditions agreed, but one party had waived that requirement and elected to be bound by the Charterparty. The parties' common assumption that the vessel was operating under the charterparty terms had also created an estoppel by convention.

I see, ICA

In the "KAMILLA" the court was asked to deal with the Inter Club Agreement. It upheld the decision of the arbitrators and said that "The agreement prevails over the provisions of the charterparty, since it represents an agreed interpretation of the provisions of the charterparty dealing with liability for loss of or damage to cargo. Any questions as to the interpretation of the ICA must therefore depend on the construction of the ICA itself and not on the construction of the charterparty".

Indisputable

In Exfin Shipping –v– Tulani Shipping the court considered the nature of a "dispute" and held that the failure to make a payment admittedly due constituted a dispute arising under a charterparty within the charterparty arbitration clause so that arbitration proceedings could be pursued to an award.

In confidence

In GUS –v– Lebeouf the court considered the position of solicitors and held that solicitors who had confidential information relating to a former client were entitled to act against that client in an arbitration where various precautions taken, including the implementation of an ethical wall system, would effectively protect the confidential information of the former client from the risk of disclosure and misuse.

Swinnerton Moore is regulated by the Law Society. This Newsletter is not a substitute for legal advice. In case of doubt, consult a solicitor.