

# Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF  
SWINNERTON MOORE

Welcome to Swinnerton Moore's first newsletter of 2008

## New Crew on Board!

From left to right: Lewis, Tony, Ed and Joe.



In December 2007 Ed Turner joined Swinnerton Moore. Ed specialises in charterparty, bill of lading, ship building and cargo disputes, together with enforcement work. He has wide connections particularly with Scandinavia and Italy and will add a wide range of new contacts to the firm's client base.

In addition, Joe Atkinson joined the firm in January 2008. Joe is an admiralty practitioner with considerable experience in salvage and collision work. Together with Adam Poynter and Lewis Moore, Joe adds considerable depth to the firm's ability to deal with wet work.

Joe and Ed both join as partners. We all look forward to a happy and successful association.

### Lexcel and Investors in People

The firm successfully passed the three year review for IIP and the annual review for Lexcel in February. The assessor said "...that the firm are to be commended for the development and implementation of a very comprehensive approach to both quality in the round and a risk management framework."

The firm is delighted to have again met the quality standards and will continue to use every effort to improve and enhance the care it takes of its clients.

### Conversion to LLP

On 2 January 2008 the firm ceased to practice as a partnership and commenced practice as an LLP. Having Ed Turner and Joe Atkinson join was a great incentive to move from partnership to limited liability which provides a more modern and convenient business model.

### Making Waves in Riga and Hamburg

With effect from January 2008 we are delighted to have associated offices in Riga and in Hamburg. The contact details appear opposite.

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## Client due diligence

One of the challenges that professionals (and their clients) will face is the enhanced due diligence requirements under the Money Laundering Regulations 2007 in response to the European Union's directive 2005/60/EC. The Regulations require more detailed due diligence to be undertaken in the fight against money laundering and terrorism, and for firms to assess the requirements to undertake due diligence on a risk based approach. In some cases this will require more detailed enquiries to be made from clients and it will, also, increase the administrative costs of maintaining files. The overall objective of the regulations is, however, to wipe out the scourge of money laundering and terrorism. It is essential that all parties use every means at their disposal to achieve this important end.

## Property Matters

### HIPS update by Christopher Christou

From 14 December 2007 all residential properties marketed for sale in England and Wales, with some limited exceptions will need a Home Information Pack. ("HIP").

The HIP must include an Energy Performance Certificate together with Local Authority and Drainage Searches, a sale statement and title information and index. Most of the packs are being prepared by the selling agents. In order not to delay matters personal Local Authority searches are being requisitioned, however these are limited and missing information which must be obtained from the Local Authority direct, usually by the Buyer. Unfortunately the advent of HIPS increases costs for lawyers and sellers while adding little value.

## Shipping Matters

### Man v Lendoudis

In this case Swinnerton Moore represented the successful defendant. Under the Arbitration Act 1996 Arbitration Awards become time barred after six years. The Claimants sought to circumvent this problem by seeking to register a Greek Enforcement Order as a Judgment in England. As judgments cannot be registered between EU countries in arbitration disputes, the Claimants sought to persuade the Court that it should give judgment in England. on the Greek Enforcement Order. This was refused as the Claimant did not persuade the Court that the Greek Judgment was for a debt or fixed sum of money or was final and conclusive. Furthermore, the Greek Judgment at first

instance had also been obtained more than six years ago and was, itself, time barred.

Accordingly, for a myriad of reasons, the claim failed.

### Achilleas – House of Lords gives permission for appeal to go ahead

Pending hearing of the appeal Charterers must continue to be aware that even a short delay in redelivering a vessel could give rise to substantial damages. Standard clauses can be used in these situations and the firm will be happy to advise if required. We shall endeavour to advise all parties who have an interest in the case of the progress of the appeal.

### "Golden Victory"

In this case the House of Lords, by a slim majority, traded certainty for pragmatism. The Owners' claim for damages was reduced to take into account post-breach events. It will be remembered that the Gulf War had commenced after the Charterers had redelivered the Vessel and was an event which would have permitted the Charterers to redeliver. As a result the time of the hearing on a claim for damages in cases where a contract has been prematurely terminated becomes extremely relevant. Again, there are clauses that can be incorporated into Charterparties which will require Arbitrators to disregard post-termination events and the firm will be happy to advise.

### SECA and SOx

Annex VI of MARPOL 73/78 requiring the use of low sulphur bunkers for the prevention of air pollution applies to the North Sea and English Channel from 22nd November. Enforcement may be by Port State Control or through the courts.

There have already been charterparty disputes and it is important to ensure that there are proper safeguarding provisions in the charterparty if trading into a SECA area. We can assist with the wording of suitable provisions.

### Sellers beware!

In CTI Group v Transclear S.A. an FOB contract was not frustrated by failure of an intended source of supply. In the absence of a force majeure or similar provision (under FOB) sellers take the risk of a failure of intended source of supply. We advise that sellers should:

- (a) make a binding and enforceable contract with the supplier; or
- (b) include provisions in the sale contract making the promise to sell conditional on the goods being available for delivery.

### Frustrating but not frustrated

In the "SEA ANGEL" the Court of Appeal ruled that a 20 day time charter was not frustrated by a three month detention by the local government authority. Comparing the probable length of the delay with the unexpired duration of the charter is relevant for frustration. However it should be in the context of the allocation of the risk of delay under the contract and whether it would be just to relieve the charterer of the consequences of the bargain where the risk of unreasonable detention was foreseeable.

### Making Waivers

In Ocean Pride Maritime v Qingdao Ocean Shipping, NOR could only be given at the outer anchorage of the loading terminal if the vessel had been compelled to wait for a berth due to lack of space at the inner anchorage. Charterers waived the invalidity of the NOR given at the outer anchorage, where that notice had been accepted by the terminal with the Charterers' implied authority to do so. As a matter of commercial practicality, an intended recipient of the NOR must have implied authority to waive a condition as to the commencement of laytime.