

# Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF  
SWINNERTON MOORE

## Swinnerton Moore go wet and dry!

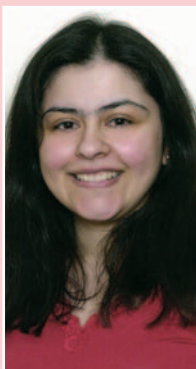


**S**winnerton Moore are delighted to welcome on board Adam Poynter. Adam has been a partner with Bentleys Stokes and Lowless since 1972. Adam will strengthen the dry expertise of the firm and brings his considerable experience of charterparty and bill of lading disputes; cargo claims; general average; claims arising under marine insurance policies; collision; salvage; wreck removal; oil pollution; joint ventures; agency; shipbuilding and financing agreements; sale and purchase of ships and demolition contracts.

*The new look line up at Swinnerton Moore, from left to right: Adam Poynter, Lewis Moore and Tony Swinnerton.*

### Software Update...

As part of the ongoing practice development Swinnerton Moore have purchased the Laserform Partnership Suite which will greatly improve the service the firm can provide to its clients. The partners were pictured at the signing during the recent legal software exhibition in London.



### Nooshin Moafi LL.M

The firm was also joined in September 2003 by Nooshin Moafi who is completing her training with Swinnerton Moore. Nooshin has an LL.M and gave a dissertation in marine pollution. Nooshin is also a fluent Farsi speaker.

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### 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 making way and under way

In April 2004 Swinnerton Moore move to new offices at:

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Cannon Street  
London EC4N 6AE

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## Case Notes...

Over the recent months there have been a number of interesting cases, one concerns the ever pressing issue of costs.

### Arkin-v-Borchard Costs Issues

Mr. Arkin brought a claim against Borchard Lines for breach of the Rome Treaty Articles 81 and 82. After some three months of hearings in Court the claim failed because, *inter alia*, the Conferences had not caused Mr. Arkin's business to fail. Three costs issues were, however, raised during and subsequent to the Judgment.

The judgment in the main action can be read in [2003] Lloyd's Rep pages 225-326.

#### Costs Strike 1

Mr. Arkin's lawyers in this case were acting on conditional fee arrangements. A pre-trial costs Order was made against Mr. Arkin during the run up to Trial. Mr. Arkin sought to set-off against that Order pre-trial costs which had been ordered in his favour. The Defendants (who were, no doubt, looking for any opportunity to avoid bringing this heavy case to Trial) argued that as his solicitors and Counsel were acting on a conditional fee agreement, he was, unless successful, under no liability for his own solicitors costs and Counsel's fees. Therefore they said there was no set-off. The Court disagreed.

#### Costs Strike 2

Part of Mr. Arkin's claim was funded by a third party funder who provided funds to enable expert evidence be called by Mr. Arkin. The successful Defendants sought against those professional funders an indemnity for their costs against the third party funder. Weighing up the principles of public policy involved in this case, i.e.

- (i) bad claims should not be encouraged and people with rights should be protected;

- (ii) impecunious claimants should be able to bring their cases to Court; and
- (iii) funders should be discouraged from interference;

the Court held that the funder would not be liable for costs. This decision is under Appeal.

#### Costs Strike 3

Finally, this year the Defendant Borchard sought costs against a part 20 Defendant which Borchard had brought into the action (Part 20 Defendants are what used to be called "third parties"). The reason for this was that whilst Borchard had succeeded with its defence of the action and therefore had a costs order against the Claimant this was not going to be enforceable.

As a result Borchard sought costs against a Part 20 Defendant which had, in fact, been a useful party in the action and had provided evidence which assisted Borchard. However, as there had been no costs sharing agreement made between Borchard and the third party the Court was not prepared to impose a burden of costs on the third party.

This is a case of winning all the battles but losing the war.

### Bang to Rights and the Collision Regs

In the *Saint Jacques II and Gudermes* the Admiralty Court considered that where a fishing vessel was navigating the wrong way through the English Channel Traffic Separation Scheme contrary to Rule 10 of the Collision Regulations and the Owner had regularly engaged in this practice the Owner could not limit liability without Trial.

The London Convention provides that a person shall not be entitled to limit his liability if the loss resulted from his personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. The Owner sought summary Judgment of his rights to limit. The Court refused this even

though it is virtually axiomatic that Owners are entitled to limit and the Court held that this was one of the rare cases which should go to Trial because there was a real prospect that the right to limit would be defeated.

### No laytime between traders when Letter of Credit not opened

The Court of Appeal has recently held in *Kronos Worldwide Ltd v. Sempra Oil Trading S.A.R.L.* that laytime does not run as between traders under the Sale Contract until after the Buyer has opened his Letter of Credit and can call for shipment of the cargo.

### Stamp Duty Land Tax

On 1st December 2003 the stamp duty regime in the UK underwent a radical transformation with the introduction of Stamp Duty Land Tax (SDLT).

The rates of SDLT for freehold transfers and assignments of existing leases are as follows:

RESIDENTIAL	
Consideration	Rate
Up to £60,000	0%
£60,001 - £250,000	1%
£250,001 - £500,000	3%
£500,001+	4%

NON-RESIDENTIAL / MIXED	
Consideration	Rate
Up to £150,000	0%
£150,001 - £250,000	1%
£250,001 - £500,000	3%
£500,001+	4%

For the grant of new leases SDLT is also charged at 1% of the "next present value" of the lease which means the total of all rents payable over the lifetime of the lease. The rents are then discounted at a rate of 3.5% to reflect the fact that they are receivable in the future.

Swinnerton Moore is regulated by the Law Society.

This Newsletter is not a substitute for legal advice. In case of doubt, consult a solicitor.