

Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF
SWINNERTON MOORE

Lexcel and Investors in People Accreditation

The firm was delighted to be awarded the Lexcel and IIP quality marks in 2005. Lexcel is the Law Society's quality mark. The firm's quality control systems are rigorously reviewed by an external examiner to ensure that they comply with the standard.

Investors in People (IIP) demonstrates that we involve all our people in providing an excellent service.

Left to right: Lewis Moore, Tony Swinnerton and Steve Owner the consultant who piloted us through the process.



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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!

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Swinnerton Moore are now
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Property Department

The firm has been joined by Mr. Antony Nolan who came from another City firm.

Antony's speciality is all manner of property transactions and he will work with Christopher Christou in broadening the property base of the firm. We are always happy to give quotes for property work.

Trainees

The lifeblood of any firm is its trainees and this year we are delighted to welcome on board three newcomers; Maxine Falomo wishes to

specialise in property law; Michaela Domijan-Arneri joins the firm from a major P&I Club; and Vicky Matthews who has just

completed her training...we all wish them well.

Left to right: Vicky Matthews, Maxine Falomo and Michaela Domijan-Arneri.



Case Notes...

Over the recent months there have been a number of interesting cases.

Arkin-v-Borchard – More costs issues

Mr. Arkin had been unable to fund the litigation so part of the expenses of Mr. Arkin's case were funded by a professional funder who had hoped to share in the fruits of the litigation. The Court of Appeal ordered that the professional funder had to pay the costs of the successful Defendants up to the limit which he had been prepared to support the Claimant's costs. The Court thought that this would encourage professional funders to take care in considering which cases to support whilst assisting impecunious claimants to gain access to justice.

Damages on wrongful repudiation of Charterparty

A softening in the shipping market may lead to repudiation issues being considered. An important case on this was The "GOLDEN VICTORY". The Charterer wrongfully repudiated before its expiry but the Charterparty did contain a war cancellation clause. After the repudiation the second Gulf war erupted and the Court held that as the Charterer would have been able to terminate the Charterparty at that time he would not be held liable for damages for the period after the outbreak of war.

Options

Where an Option Agreement provided that the person exercising the option had to pay a commitment fee simultaneously with the declaration of the option that the payment of the commitment fee was a condition precedent to exercising the option. As the commitment fee was not paid simultaneously the other party to the contract was entitled to say that the option had not been validly exercised.

This is an issue which could arise on new building contracts while there remains a scarcity of berths.

Detention

A useful case on interpretation of the off-hire clause in the NYPE Form *The "DORIC PRIDE"* was heard by the High Court earlier this year. The Vessel was awaiting inspection by the U.S. Coast Guard as a "high interest vessel". It was the vessel's first trip to a U.S. Port and it was anticipated that a security boarding by the USCG would be undertaken. The vessel was prohibited from entering the lower Mississippi and instructed to await inspection by a USCG boarding team. The Court held that a vessel was detained when she was prevented from proceeding as directed under the Charterparty within the meaning of the off-hire clause.

Whose ship is it?

In *Lady Navigation Inc. v. Lauritzen* the Court held that where Vessels had been withdrawn from a pool, an Injunction restraining the Shipowner from carrying out other services (which would effectively be the same as specific performance) was available particularly where the case did not involve personal skills or talents.

Contracts (Rights of Third Parties) Act 1999

This provision was introduced in order to circumvent the English Rule of Privity of Contract which is often frowned upon by our Continental brethren. The response of the English lawyer has been to expressly exclude the effect of the Act.

In *Laemthong International Lines Co. Ltd v. Fahem & Co.* the Court construed a Letter of Indemnity in the light of the Act. There had been a chain of Charterparties and the Receiver had opened an LOI in favour of the Charterer of the Vessel and, back to back, the Charterer had opened an LOI in favour of the Owner. Pursuant to the Act the Court held that the Owner was able to enforce the Receiver's LOI even though it was

addressed to the Charterer.

No doubt this is a case at which P&I Clubs will look very carefully before giving LOIs in the future.

Costs in Sub-Arbitrations

Chain Arbitrations are becoming more and more prevalent and in order to save costs concurrent Hearings are often ordered even though claims are not consolidated. There remains a difficulty in recovering costs where the defence of the claim is successful. The man in the middle is still likely to find that he is unable to recover all his costs.

If you do not bring the sub-arbitration proceedings you may lose the right to an indemnity and if you do bring them you may end up paying the costs of the sub-arbitration.

Whilst one would hope that co-operation could be achieved, perhaps the answer is for the sub-arbitration to be put on ice pending the hearing of the head arbitration particularly where it is thought that there is a good defence.

Breaking the limit

The case of the *Saint Jacques II and Gudermes* which the English Court had held 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 has settled, so unfortunately our hopes that there would be a decision throwing greater light on when limitation could be broken have been scuttled.

Agents/Brokers Commission

The court recently considered when an agent was entitled to his commission. An estate agent was held to be entitled to his agreed commission when a binding contract had been made but the transaction was not completed. The court held that the agent had done the job for which he was engaged and that under the agreed terms he was entitled to his commission. The ruling can apply to all agents and well drawn terms of business are clearly important.