



## TABLE OF CONTENTS

- **THE CITY LAWYER - January 2013**
- **Case: ACE European Group v Standard Life Assurance Ltd [2012] EWCA Civ 1713**
- **Case: FCL (London) Ltd v Voice [2012] EWHC 3684 (QB)**
- **Feature: 3 Hare Court in practice: Premier Model Management Ltd v Bruce and others [2012] EWHC 3509 (QB)**

## THIS MONTH'S CONTRIBUTOR

**Alexander Halban**



Click here to view Alexander's [website profile](#).

## Seminars & workshops

3 Hare Court members

## THE CITY LAWYER - January 2013

The business law update from 3 Hare Court

3 Hare Court continues to lead the field in providing practical advisory and advocacy services to business clients. In these monthly updates we outline recent developments in litigation ranging from general contract law, to injunctions, to specialist areas such as banking and finance. In addition, we will provide either a commentary piece or a feature on a recent 3 Hare Court case. We hope you enjoy this January edition.

### Case: ACE European Group v Standard Life Assurance Ltd [2012] EWCA Civ 1713

In January 2009, Standard Life's pension fund dropped nearly 5% in value overnight, due to the adoption of a new method of valuing the securities in the fund. To stop public criticism and prevent possible legal action, Standard Life restored the fund's value with a cash injection of £100m. It claimed this amount against its liability insurance policy with ACE European, who denied liability. At trial, it was held that the cash injection was a 'mitigation cost', recoverable under the policy, and judgment was given for Standard Life.

On appeal, ACE argued that the cash injection was made for the dual purpose of mitigating possible legal action (an insured risk) and preventing reputational damage (an uninsured risk). Therefore its liability had to be apportioned only to cover part of the cash injection. It relied on the principle of apportionment in marine insurance, whereby an insurer is only liable for a proportion of the expenses of recovering cargo which corresponds with the proportion of the cargo's value which it insured.

The Court of Appeal held that this principle had no

regularly provide seminars and workshops to individual firms or groups of practitioners. If you have a request for a seminar or lecture, or would like further information then please do not hesitate to get in touch with our marketing manager, [Mika Thom](#).

### **Conferences**

We are often invited to speak at conferences in the UK and abroad. If you have a query concerning a conference then please get in touch with our marketing manager, [Mika Thom](#).

### **Clerks**

We have an experienced and approachable clerking team who will be happy to assist with recommendations, fees, our service protocol or general enquiries. Please contact the [clerks](#) on 0207 415 7800. Alternatively you can contact our Senior Clerk, [James Donovan](#).

### **Feedback**

As always at 3 Hare Court we welcome your feedback. In particular, any feedback or suggestions on this and forthcoming monthly updates will be gratefully received.

Please contact our

application to liability insurance. First, it held that marine insurance is a special case. In liability insurance, if a loss is covered by the policy, the insured recovers all of that loss up to the policy maximum sum, not merely a proportion of the total loss. Secondly, apportionment would lead to uncertainty: the liability has not arisen at the time the policy is taken out and, particularly when a potential liability is avoided, its size cannot be accurately quantified. Thirdly, the fact that a cost has a dual purpose does not mean that it cannot be recovered in full under a policy.

This case indicates that settlement costs are still recoverable under a policy, even if they also help avoid uninsured losses, such as reputational damage - often a significant commercial factor which persuades companies to settle claims.

This decision also removes a potential conflict of interest where solicitors act for both insurer and insured. If apportionment were permitted, the insurer would only be liable for settlement costs which avoid insured risks, whereas the insured would seek to have all its costs covered, putting solicitors in a position of conflict. Now that it is clear that the insurer is liable for all settlement costs, solicitors will be able to advise insurer and insured jointly on settlement, whatever the insured's motives are for the settlement.

## **Case: FCL (London) Ltd v Voice [2012] EWHC 3684 (QB)**

This case – which concerns accountants' fees for tax advice on funds held in Switzerland but not disclosed to HM Revenue and Customs – provides a useful summary of the different principles involved in the interpretation of written and oral contracts.

The principles derived from decisions of the House of Lords and Court of Appeal are as follows:

(a) the interpretation of a purely written contract is a matter of law, and depends on an objective assessment of the surrounding context, excluding the parties' subjective understanding of the agreement;

(b) the interpretation of an oral contract is a matter of fact and the parties' subjective understanding of what they agreed is admissible;

(c) in the case of an oral (or partly oral) contract, evidence of

marketing manager, [Mika Thom](#), or alternatively the barristers:

[Asela Wijeyaratne](#)

[Alexander Halban](#) or

[Helen Pugh](#)

### About Us

For further information about chambers, please see our [website](#).

### To Subscribe or Unsubscribe

If you wish to subscribe to or unsubscribe from this update, please email our marketing manager, [Mika Thom](#) or click on the 'Unsubscribe' link below.

things said or done after the contract is concluded is admissible to help decide what the parties actually agreed;

(d) since the construction of a written contract is a matter of law, it can be overturned on appeal if the appellate court disagrees with the judge's construction;

(e) in the case of an oral contract, an appellate court will not readily overturn the judge's findings as to the terms of the contract unless:

- (i) they are obviously wrong,
- (ii) they are unreasonable findings on the evidence, or
- (iii) they produce a result unsustainable in law.

As this summary indicates, the principal differences between the construction of written and oral contracts are the type of evidence which is admissible and the extent to which the decision can be appealed. This is particularly important when preparing witness statements for trial and submissions for an appeal.

## Feature: 3 Hare Court in practice: Premier Model Management Ltd v Bruce and others [2012] EWHC 3509 (QB)

**Rupert Butler** appeared for the internationally renowned model agency, Premier Model Management, in its claim for fraud, misuse of confidential information and breach of contract against one of its former booking agents, Jon Bruce, as well as his partner Paulo Ribeiro and PRM, the rival model agency they set up, as accessories.

Premier successfully proved that the Defendants had disclosed confidential information about Premier, its clients and models, and diverted business opportunities away from Premier. Premier also proved that Mr Bruce had defrauded Premier's models and clients by inflating travel expenses, the proceeds of which he spent on lavish first-class travel and five-star accommodation on himself and Mr Ribeiro.

The judge gave judgment for Premier, granting an injunction restraining Mr Bruce, Mr Ribeiro and PRM from acting in competition with Premier, soliciting its employees and clients and misusing confidential information. The judge also awarded damages for the sums claimed fraudulently by Mr Bruce.

Chambers of James Dingemans QC

You're receiving this email because you have shown an interest in our services. Should you no longer wish to receive emails from us, please use the 'unsubscribe' link below.

**[Edit your subscription](#) | [Unsubscribe](#)**

3 Hare Court  
Temple  
EC4Y 7BJ  
DX: 212 LDE  
T: 020 7415 7800