



## **Cozen O'Connor London Office**

### **2013 YEAR IN REVIEW**

**Comments on select cases and developments in Insurance Coverage, Subrogation, Dispute Resolution and Commercial Matters**

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The Cozen O'Connor London office is pleased to provide you with our 2013 Year In Review, a newsletter discussing select cases in insurance coverage, subrogation, dispute resolution and commercial matters. The newsletter has articles on a variety of topics, including:

- Warranties and basis of contract clauses in insurance
- Claim Co-Operation Clauses in facultative insurance
- Subrogation against co-insureds
- Breach of duty in the context of omissions
- New insurance rules in Chile
- A decision by the Dubai International Centre on its jurisdiction regarding a reinsurance dispute
- The costs consequences of failing to mediate
- The importance of costs estimates in litigation
- A warning from the Court of Appeal on lengthy written arguments
- Information exchange agreements between the UK and its overseas territories

We trust that you will find the articles both interesting and informative. As always, we welcome your inquiries and look forward to assisting you in the new year.

Cheers,

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## INSURANCE AND REINSURANCE

### Basis of Contract Clauses - Breach of Warranty: Genesis Housing v. Liberty Syndicate Management<sup>1</sup>



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In *Genesis Housing v. Liberty Syndicate Management* case, the Court of Appeal reconfirmed that insurers of commercial risks are entitled to be discharged from liability entirely even where an insured innocently makes an incorrect statement in a proposal form, that is stated to form the “basis of contract” of the insurance.

The insured, Genesis, was a housing association. Genesis intended to build affordable housing, and took out insurance covering the risk of the builder’s insolvency during construction. The name of the builder was entered on the proposal form that, significantly, contained a “basis of contract” clause. Unfortunately, the wrong name was entered for the builder but the form was signed. It stated that the contractor was “Time and Tide Construction Ltd” instead of “Time and Tide (Bedford) Ltd”.

The policy was issued, following insurers’ investigations as to the insolvency risk of the wrongly identified builder. During construction the builder went into administration, Genesis appointed other contractors to complete the work and a claim was made under the policy for the additional costs that were incurred. Insurers denied liability citing a breach of warranty. In the Technology and Construction Court, Justice Akenhead dismissed the claim. Genesis appealed.

The Court of Appeal unanimously dismissed the appeal. The court reconfirmed that where a proposal form contains a “basis of contract” clause, it has contractual effect (even if the policy contains no reference to the proposal form). The statements in the proposal form constituted warranties on which the insurance contract was based. By answering the question wrongly, even innocently, Genesis was in breach of warranty. Insurers were accordingly discharged from liability entirely.

<sup>1</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1173.html>

In this case there was no doubt that Genesis had acted innocently in their mistake and had no intention to deceive. The case highlights to insureds and their brokers the importance of very carefully checking every statement made in a proposal form.

### Policy Construction / Breach of Warranty in Reinsurance *Amlin v Oriental (“The Princess of the Stars”)*<sup>2</sup>



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This case is a reminder of the potentially draconian effects of a breach of warranty in English law. The case is a little unusual in that it concerned a warranty in a reinsurance contract, as opposed to insurance.

The “Princess of the Stars” was a Ro-Ro vehicle and passenger ferry that sank in June 2008 with the loss of many lives, having sailed into the eye of a typhoon, despite typhoon warnings. An action was brought in London, under the reinsurance, for a declaration that the departure of the vessel constituted a breach of the Typhoon Warranty, and that accordingly reinsurers were not liable under the reinsurance.

The Typhoon Warranty stated:

“Notwithstanding anything contained in this policy ... it is expressly warranted that the ... vessel shall not sail or put out of Sheltered Port when there is a typhoon or storm warning at that port nor when her destination or intended route may be within the possible path of a typhoon or storm announced at port of sailing, port of destination or any intervening point. Violation of this warranty shall render this policy void.”

Reinsurers’ action was pre-emptive in the sense that Oriental Assurance (the vessel’s insurer) had made no claims against Reinsurers, despite facing at least 40 inwards claims itself. These claims were expected to take many years to work through the courts of the Philippines.

Under s. 33(3) Marine Insurance Act 1906, a “warranty is a condition which must be exactly complied with, whether it

<sup>2</sup> <http://www.bailii.org/ew/cases/EWHC/Comm/2013/2380.html>

be material to the risk or not. If it be not so complied with, then, subject to any express condition in the policy, the insurer is discharged from liability as from the date of the breach of the warranty.” (NB in this case the warranty expressly provided for the avoidance of the policy as opposed to discharge of liability.)

Oriental argued that the warranty had not been breached because there was no storm warning “prohibiting” or “advising against” the vessel’s departure. The court recalled that the burden of proving the breach lay with the reinsurers, and restated important rules of construction:

(i) Lord Hoffman’s first rule of construction from the decision of the House of Lords in *Investors Compensation Scheme Ltd v West Bromwich Building Society*<sup>1</sup> is that:

“Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person all the background knowledge that which would reasonably have been available to the parties in the situation in which they were at the time of the contract.”

(ii) The words of a warranty must be given their ordinary and natural meaning, unless the background indicated that such meaning was not intended.

(iii) Bearing in mind the draconian effect of a breach of continuing warranty, in that its breach automatically terminates cover regardless of whether the loss is causally connected to the breach, underwriters should express warranties in clear terms.

(iv) Where the language used has more than one potential meaning, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other (*Rainy Sky SA v Kookmin Bank* [2012]). However, where the parties have used unambiguous language, the court must apply it, however improbable the result.

The court preferred reinsurers’ construction of the warranty, noting that its “manifest object ... is to protect the reinsurers from liability arising from the grave danger of typhoons that cannot reliably be predicted .... The underlying policy of the warranty is ‘safety first.’” The wording of the warranty did not import a requirement for weather circulars to ‘prohibit’ the sailing of vessels. If the parties has intended this, they could have drafted such a term.

The court also rejected Oriental’s second argument, that the word “announced” qualified the “possible path” of the vessel so that regard must be had to the announced predicted path of the typhoon when determining whether the intended route of the vessel may have been in the possible path of the typhoon. This construction was not supported by the “ordinary and natural” meaning of the words in the warranty, especially bearing in mind the “safety first” policy underlying the warranty.

Accordingly, the warranty was breached, and the policy avoided entirely, as provided for by the wording.

## Reinsurance - Claims Cooperation Clause: *Beazley Underwriting v Al Ahleia*<sup>2</sup>



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Beazley and others (reinsurers) reinsured Al Ahleia and others (reinsured). The reinsurance contained a common form of Claims Co-Operation Clause (CCC) stating, in relevant part, that:

“Notwithstanding anything contained in the Reinsurance Agreement and/or the Original Policy Wording to the contrary, it is a condition precedent to liability under this Reinsurance that ...

(a) the Reinsured shall upon knowledge of any loss or losses which may give rise to a claim under this Policy, advise the Reinsurers thereof as soon as reasonably practicable ...

(c) No settlement and/or compromise shall be made and no liability admitted without the prior approval of Reinsurers ...”

The reinsureds sought to claim indemnity from reinsurers in respect of an inwards claim. Reinsurers contended that the reinsured had breached the CCC in dealing with the inwards claim. It was common ground that if reinsurers could establish a breach of the CCC, then reinsurers would be discharged from liability. On somewhat convoluted facts, the court held that the CCC had not been breached. Of more general interest is the court’s observations regarding

<sup>1</sup> [1998] 1 WLR 896

<sup>2</sup> Commercial Court, March 2013: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Comm/2013/677.html>

the construction of parts of the CCC. We consider here the court's discussion of part (c) of the CCC in particular.

Firstly, did the prohibition in clause (c) apply to **any** settlement or compromise, or only those "losses which might give rise to a claim under this Policy"? The court held that clause (c) must be construed to as to refer to settlements or compromises where there is a "matching" liability under the reinsurance. It cannot refer to a settlement for the reinsured's own retention, for example. The court added the reinsureds should be able to settle, compromise or admit liability under the insurance policy if such settlement etc. was not in connection with loss or losses that may give rise to a claim under the reinsurance. Accordingly, a settlement by the reinsured's co-insurer and of the reinsured's retention did not amount to a breach.

Secondly, the court asked: does the concept of "settlement" include a "without prejudice" settlement? The court held that the word "settlement" imports: "at the very least, either a legally binding agreement ... including what are sometimes described as 'ex gratia payments'."

Thirdly, what is meant by an "admission of liability"? The court held that an "admission of liability had to be clear and unequivocal for the draconian consequences [of breach of the CCC] to apply; in particular, to trigger the clause, it is my view that any 'admission of liability' must at the very least be communicated in clear and unequivocal terms by one party to the other." The court also agreed that admission of the whole claim would not be necessary and that admission of liability for a part of the claim would be sufficient.

Although the court found the CCC not to have been breached on the facts, the case is a useful reminder of the possible efficacy to reinsurers of a properly framed CCC, and provides helpful guidance as to the court's approach.

## SUBROGATION AND RECOVERY

### **Insurers Recover Riot Losses - Riot (Damages) Act 1886: Mitsui Sumitomo & Anor v The Mayor's Office For Policing and Crime<sup>1</sup>**



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This subrogated action by insurers reaffirms an injured party's right to recover loss suffered due to riot under the Riot (Damages) Act 1886 (the Act). Until relatively recently, the Act had been considered by some to be an arcane historical relic, but recent judgments have shown this not to be the case. For example, in *Yarl's Wood Immigration v Bedfordshire Police Authority* [2010] a private prison operator was found to be entitled to recover under the Act from the local police authority in respect of damage to the prison managed by the private operator itself.

The present case concerned damage to a Sony warehouse in East London during the London riots of 2011. Youths looted the building and threw fire bombs, destroying it, causing both property damage and consequential loss. Sony's insurers had paid indemnity and sought to recover losses from the Police Authority (the Mayor's Office) by way of subrogation.

The first issue was whether the property has been damaged by "any persons riotously and tumultuously assembled together" as provided for in the Act. The court considered the purpose of the Act to be to require police authorities to compensate victims of riots where the "notional responsibility" of the police to protect the public from rioters is engaged; in other words where the "riotous and tumultuous assembly" manifests itself in such a way that the police should or could have been aware of it, as opposed to furtive, covert actions. The court noted that, in addition to the requirement for a "riot" at common law: (1) the element of "tumult" must be also satisfied under the Act. This would require the involvement of substantial number of people, ("certainly more than 3 or 4"). The involvement of 20-25 was

<sup>1</sup> <http://www.bailii.org/ew/cases/EWHC/Comm/2013/2734.html>

enough. (2) That the rioters must be acting in an “excited volatile manner ... also making a noise, rather than acting stealthily,” but that the noise need not be “tremendous”. “The real touchstone is that there must be some ‘public’ element to the behavior to which the police could, notionally have responded ....” The court found these elements had been satisfied on the facts.

As to the type of damages recoverable under the Act, the court confirmed that compensation payable is limited to physical damage to the premises or property, and not to consequential losses such as loss of rent or profit.

Comment: The Act is an early form of state backing for acts of civil disturbance, and indirectly ensures that riot cover is routinely available in standard UK insurance policies. The government has published proposals to update the act, but has recommended that its key component, the liability of police authorities for riot, be maintained.

## Subrogation - Claims Against Co-Insureds: *Rathbone Bros & Anor v Novae*<sup>1</sup>



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*Rathbone Bros & Anor v Novae* considered, amongst other things, whether a subrogated action can be brought against a co-insured, in the context of a professional indemnity policy.

London underwriters had insured Rathbone Brothers PLC and “insured persons” defined under the policy to include persons employed in the performance of “professional services.” A claim had been brought against a personal trustee of Jersey Trust for breach of trust. Rathbones had agreed, by contract, to indemnify the same personal trustee against liability arising from his acting as personal trustee, when acting under the aegis of Rathbone. The court was satisfied on the facts that the trustee was indeed a co-insured party under the policy.

The policy contained a provision stating that: “the insurer shall be subrogated to all insured’s rights of recovery, contribution and indemnity before or after any payment under this policy.” (The subrogation clause).

The court was not prepared to conclude, notwithstanding the wording, that a right of subrogation can exist, and/or can be enforced before the insurer has paid its claim. The court agreed that the “right of subrogation cannot be exercised until payment is made by the insurer.”

Finally, although Rathbones was a co-insured of the trustee, were insurers entitled to be subrogated to the claim against Rathbones? The court answered in the affirmative. The reason was that the claim under the indemnity was not covered by the policy, and such a claim had not been excluded in the policy. However, the subrogated action could only be commenced after payment by insurers of the claim.

## Causation Test for Omissions - Subsidence: *Robbins v London Borough of Bexley*<sup>2</sup>



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The Court of Appeal upheld the decision by HHJ Edwards-Stuart awarding the claimant damages for nuisance and negligence against the London Borough of Bexley.

The CA applied House of Lords decision in *Bolitho v City & Hackney Health Authority* [1988] AC 232 regarding the test for causation where the breach of duty arises due to an omission.

The claimant’s 1930s house began to suffer cracking in 2003 and 2006. The property was 30 metres from a row of poplar trees, growing in a council-owned park. In November 2012, Mrs. Robbins was awarded £150,000 in compensation by the High Court. The trial judge found that the council was aware in early 1998 that roots from the poplars had been found 33 metres from properties. Therefore, it was reasonably foreseeable by the council that any house in Radnor Avenue with an extension within 35 metres of one of the trees was at a real risk of subsidence. Further, although the council could not be criticised for failing to fell the tree, the damage to the claimant’s property would probably have been prevented had a “proper and adequate” system of regular pruning been put in place. Accordingly the council was held liable for the subsidence.

<sup>1</sup> [www.bailii.org/ew/cases/EWHC/Comm/2103/3457.html](http://www.bailii.org/ew/cases/EWHC/Comm/2103/3457.html)

<sup>2</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1233.html>

The council appealed on the basis that having made two clear findings, the High Court's decision that causation has been established, was incorrect. The findings were:

(a) on the basis of current expert knowledge in 1998, it would have been reasonable for the council to have undertaken a programme of cyclical reduction in the crowns of the poplars by 25 percent every three or four years from 1998; and

(b) even if such a programme had been undertaken, it would not in fact have prevented the damage to Mrs. Robbins' property.

In response, the claimant argued that, following the decision in *Bolitho v. City and Hackney Health Authority* [1998] AC 232 (*Bolitho*), the correct causation question is:

**not:** what should the defendant have done in order to fulfill its duty to the claimant?

**but:** what would the defendant have in fact done if it had fulfilled its duty to the claimant?

*Bolitho* was a medical negligence concerning serious injury to a child, because a doctor failed to attend an appointment. In that case, even if the doctor had attended, she would not have intubated the child, so the injury would have still occurred in any case. Lord Browne-Wilkinson held that in all cases of causation:

“the primary question is one of fact: did the wrongful act cause the injury? But in cases where the breach of duty consists of an omission to do an act which ought to be done (e.g., the failure of the doctor to attend) that factual enquiry is, by definition, in the realms of hypothesis. The question is what would have happened if an event which by definition did not occur had occurred.”

The CA held that the *Bolitho* test for causation was the correct test in this case. In other words, the court should ask what would have happened had the council done something, rather than nothing. On this basis the CA said the trial judge had been justified, on the evidence, in inferring that had crown reduction works started in 1998, a programme of very severe pruning would likely have occurred, and damage likely avoided.

This decision re-affirms the *Bolitho* causation test. It also highlights the importance of considering separately the (a) duty of care; (b) breach of duty; and (c) causation, when pursuing negligence cases.

## INTERNATIONAL INSURANCE AND REINSURANCE DEVELOPMENTS

### New Insurance Law in Chile



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On 1 December 2013, a new insurance code came into effect in Chile. The new law recognises forms of coverage that have been de facto been available for many years, including business interruption insurance. Civil Liability insurance is formally recognised for the first time. Surprisingly perhaps, third-party victims can be considered “beneficiaries” under such policies. The limitation period is reduced to four years in general, although in civil liability insurance the period cannot be shorter than the period in which the third party has to bring its claim against the insured. The law clarifies rules about concurrent causes of loss, and extends the definition of “marine insurance” (to which average may apply) to include loading, unloading and stevedoring. The law, for the first time, recognises the concept of reinsurance and provides for the law to take into account international rules and practice. This is a welcome development, because until now, reinsurance has operated in something of a legal vacuum. Provision is also made requiring insurance disputes to be referred to arbitration. This will likely lead to the emergence of a body of specialist insurance arbitrators.

### Dubai International Financial Centre (“DIFC”) Court Takes Jurisdiction Over Reinsurance Dispute: *Allianz Risk Transfer AG Dubai Branch v Al Ain Ahlia Insurance Company*<sup>1</sup>



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*Allianz Risk Transfer AG Dubai Branch v Al Ain Ahlia Insurance Company* was the first reinsurance case considered by the DIFC Court and illustrates that court's

<sup>1</sup> [http://www.7kbw.co.uk/media/uploaded\\_files/DIFC\\_Court\\_Judgment - Allianz v Al Ain Ahlia - Jurisdiction 24.04.13 3.PDF](http://www.7kbw.co.uk/media/uploaded_files/DIFC_Court_Judgment_-_Allianz_v_Al_Ain_Ahlia_-_Jurisdiction_24.04.13_3.PDF)

willingness to assert its jurisdiction, even over a party domiciled in Abu Dhabi (i.e., within the UAE but outside the DIFC).

The DIFC Court was established in 2004 by the government of Dubai to hear civil and commercial disputes arising out of the DIFC and/or where the parties have agreed to submit their disputes to the DIFC Court. The DIFC Court has jurisdiction over parties within the DIFC, although the parties contractually submit disputes elsewhere. The DIFC Court applies Common Law, unlike the courts of the rest of the UAE. It has been said to be a “common law island within a civil law ocean.”

In this case, a Jordanian broker had arranged facultative reinsurance with Allianz’s DIFC branch, and others, for a Al Ain Ahlia, an Abu Dhabi insurer/cedant. The underlying insured had a range of businesses throughout the Middle East, including Egypt. Claims arose in Egypt arising from the Arab Spring rising of 2011. The insured settled inwards claims, notwithstanding exclusions for political violence in the insurance and reinsurance.

The reinsurer declined to indemnify the cedant, and started proceedings in the DIFC for a declaration of non-liability. The cedant responded by arguing that the Court of Abu Dhabi should hear the claim, because that was the place of its domicile. The cedant also argued that, the DIFC was not the *forum conveniens* for the dispute. The cedant asked for the DIFC proceedings to be stayed.

The parties’ contract had not stated any governing law. The court noted that the jurisdiction of the DIFC Court is determined by Article 5 of the Dubai Law No. 12 that provides jurisdiction over: “(a) civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC establishment or Licensed DIFC Establishment is a party. (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC ....”

Allianz was a registered DIFC entity, and it was not disputed that the reinsurance had been signed in the DIFC. Accordingly, the court was satisfied it had jurisdictions under limbs (a) and (b) of Law No. 12.

As to whether the DIFC was the *forum conveniens* for the dispute, the court referred to English case law on this point (*Spiliada Maritime v Canulex*) but said that the doctrine could only be relevant to international disputes. Rather, in the event of divergent decisions of different parts of the courts of the UAE (the DIFC and Abu Dhabi), UAE law provided for such

differences ultimately to be resolved by the UAE Supreme Court. The common law doctrine of *forum conveniens* was not therefore applicable in that, internal, context.

This dispute would likely not have arisen had the parties clearly addressed the question of governing law and jurisdiction in their contract. The case shows that the DIFC Court is willing robustly to exercise its jurisdiction, notwithstanding the possibility of a parallel claim in one of the UAE Emirates. What remains unclear is how the UAE Supreme Court might resolve a conflict between this decision, and a possible competing decision in another Emirate.

## GENERAL LITIGATION AND ARBITRATION

### Consequences of Failing to Mediate: *PGF II SA V OMFS Company 1 Limited*<sup>1</sup>



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The Court of Appeal handed down an important judgment heightening the costs consequences of a failure to mediate a litigated dispute. It is an important judgment for litigators as it puts the conduct of litigation when offers to mediate are made firmly in the spotlight when it comes to recovery of a client’s costs. It may well render mediation, and/or raise a perception that mediation is, effectively mandatory whenever one side (or the court) invites it.

The appeal raised the question of what the court’s response should be to a party that, when invited to mediate, simply failed to reply. It has long been established that an unreasonable refusal to mediate should be penalised in costs, but what should the court do if a party simply doesn’t respond to an offer? The conclusion was that this too is an instance where a court can deprive a party of costs that it might otherwise be entitled. The court went further and found that in some circumstances, it might even justify a reversal of the liability for costs; and also made significant pronouncements as to how the courts should now approach a refusal to engage in alternative dispute resolution (ADR).

<sup>1</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1288.html>

## Costs Management / Jackson Reforms: *Mitchell v News Group Newspapers*<sup>1</sup>



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The case of *Mitchell v News Group Newspapers* concerns Andrew Mitchell MP's libel claim against the News Group Newspapers and the alleged 'plebgate' incident.

The Jackson reforms, which came into force on April, have brought with it a number of measures designed to control the costs of litigation. One of the main requirements is that each party file budgets (Precedent H) with the court at least seven days before the first Case Management Conference (CMC), and meet with opponents to discuss budgets and other issues. Where a party fails to file its Precedent H on time, the budget will be treated as comprising only court fees unless the breach is trivial or there is good reason for it. Good reasons are likely to be those that arise from circumstances outside of the defaulting party's control, such as a debilitating illness, accident or unexpected developments in the case that render the time for compliance unreasonable.

In this case Mitchell's solicitor, Atkins Thomson, have had their budget set at court fees only having unsuccessfully applied for relief from sanctions imposed for:

- Failing to engage with the Defendant in relation to budgets and budget assumptions.
- Failing to submit their costs budget at least seven days before the CMC .

In relation to the failure to serve the costs budget seven days before the Case Management Conference, the Court of Appeal said:

"... the purpose of costs management (including costs budgets) is to enable the court to manage the litigation and the costs to be incurred so as to further the overriding objective. This cannot be achieved unless costs budgets are filed in good time before the first case management conference. No less important is the requirement that parties should discuss with each other the assumptions and timetable on which their respective budgets are based. This is to enable the hearing for which the costs budgets are required to be conducted efficiently and in accordance with the overriding objective."

<sup>1</sup> <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2013/1537.html>

The Court of Appeal took the opportunity to consider and set out some guidelines in relation to the operation of the new CPR 3.9, the relief from sanctions provisions. The court will consider all the circumstances of the case ... including:

- (a) the litigation to be conducted efficiently and at proportionate cost; and
- (b) to enforce compliance with the rules, practice directions and orders

In short, the guidance provided by the Court of Appeal was:

- The starting point is was the sanction imposed properly?
- There will usually be relief granted for trivial breaches.
- Non-trivial breaches require good reason.
- Administrative difficulties not likely to be a good reason.
- Applications should be made promptly.

In conclusion, the Court of Appeal said, "In the result, we hope that our decision will send out a clear message. If it does, we are confident that, in time, legal representatives will become more efficient and will routinely comply with the rules, practice directions and orders."

The message is clear. Budgets must be filed on time, and the penalties for failing to comply can be severe.

## Case Management - Lengthy Skeleton Arguments - A Warning From 1596! *Standard Bank v Via Mat*<sup>2</sup>

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In recent years the English courts have encouraged the use of "skeleton" arguments, which are to be exchanged by the parties shortly before the hearing. *Standard Bank v Via Mat* emphasised, in very colourful terms, that skeleton arguments should not substitute the pleadings, or our tradition of oral advocacy.

For a one-day hearing before the Court of Appeal, the claimant's skeleton ran to 116 pages. The court's practice

<sup>2</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2013/490.html>

direction provides for a 25-page limit. The court made clear that it will penalise in costs a party that ignores these rules.

In passing, the court recalled that lengthy pleadings are not a new problem, noting that in *Mylward v Weldon* (1596) the author of a 60 page pleading was ordered to be imprisoned until he paid a fine to the King and the defendants and in addition that:

“... that the Warden of the Fleet [Prison] shall take the said Richard Mylward ... and shall bring him into Westminster Hall on Saturday next, about ten of the clock in the forenoon and then and there shall cut a hole in the myddest of the same engrossed replication ... and put the said Richard’s head through the same hole and so let the same replication hang about his shoulders with the written side outward; and then, the same so hanging, shall lead the same Richard, bare headed and bare faced, round about Westminster Hall, whilst the Courts are sitting and shall shew him at the bar of every of the three Courts within the Hall and shall then take him back to the Fleet...”

This warning could not be clearer!

## COMMERCIAL

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### Banking update and exchange of Information



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On 5 November 2013, the Cayman Islands government became the first overseas territory (OT) to sign an agreement on automatic information exchange with the UK. The agreement is similar to the recently announced UK-Crown Dependency Agreements and is closely aligned with the key timings, requirements and definitions introduced by US FATCA.

Under the agreement, financial institutions in the Cayman Islands will broadly be required to identify and report on UK persons holding accounts. As with US FATCA and other UK agreements, the requirements are implemented from 1 July 2014 with some tasks to complete in advance of this date.

However, it should be noted that the first reporting date in respect of UK persons will be 2016 and, unlike the Crown Dependencies versions, there will be no reciprocal reporting requirement for UK financial institutions.

Interestingly, the announcement also confirmed the Cayman Islands’ commitment to developing a multilateral platform for exchange alongside the UK, France, Germany, Italy and Spain. It is understood that parties are working to agree on a common global standard for information exchange by 2014, with implementation scheduled for the following year. This is a relatively tight timeline and businesses should continue to monitor developments closely.

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