



In this week's Insurance Bulletin:

1. Court cases and arbitration

England and Wales: *BPE Solicitors v Hughes-Holland*: Supreme Court affirms SAAMCO principle

2. Market developments

UK: General Data Protection Regulation – LMA co-ordinates industry response

3. HFW publications and events

France: HFW to attend ICC Conference on International Arbitration and the Paris meeting of the ICC Commission on Arbitration and ADR in Paris

Dubai: HFW to present at Onshore Energy Conference

Costas Frangeskides, Partner, costas.frangeskides@hfw.com

Andrew Bandurka, Partner, andrew.bandurka@hfw.com

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hfw 1. Court cases and arbitration

England and Wales: *BPE Solicitors v Hughes-Holland*: Supreme Court affirms SAAMCO principle

In an important decision that will be particularly welcomed by professional indemnity insurers, the Supreme Court has confirmed the principle that a professional will not be liable for losses caused by factors outside of that professional's scope of duty to advise, or where such a loss would have been suffered in any event.

The case related to a failed property transaction. Following a meeting in a pub, Mr Richard Gabriel agreed to lend £200,000 to a builder friend, Mr Peter Little. Mr Gabriel believed that the money would be used to finance the development of office space on land occupied by a disused heating tower situated on Kemble Airfield in Gloucestershire, which would then be sold on for profit. However, Mr Little actually used the money to discharge a bank loan that his company owed in respect of the heating tower site and left nothing to fund the development. Mr Gabriel instructed BPE Solicitors (BPE) to act for him in relation to the loan agreement. BPE knew that Mr Little's real intentions were to use the funds to repay the loan, but nevertheless drafted a facility letter containing statements that the money would be used to fund the development. Mr Gabriel sued BPE in negligence.

At first instance, the court held that BPE had breached its professional duties. The court said that Mr Gabriel would not have lent the money had he known of Mr Little's intentions, and that BPE should have explained what the true purpose of the funds was. BPE appealed.

The Court of Appeal overturned the first instance ruling. The court ruled



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SIMON BANNER, ASSOCIATE

that BPE was not under a duty to advise on the commercial viability of the loan, but merely to draft the facility documentation. The consequences of the negligent drafting of this letter did not extend to the entire loss. The court ruled that BPE was only liable for the foreseeable consequences of providing the wrong information to Mr Gabriel.

In making its decision, the court reaffirmed what has become known as the 'SAAMCO principle', according to which damages claimed for the negligence of a professional advisor must fall within that adviser's 'scope of duty'. The principle comes from the ruling of Lord Hoffman in *South Australia Asset Management Corp v York Montague Ltd.*¹ The court also ruled that Mr Gabriel could not show that his £200,000 investment would have resulted in a return or an increase in value of the tower. Mr Gabriel (now bankrupt, and represented by his trustee in bankruptcy Mr Peter Hughes-Holland) appealed.

The Supreme Court upheld the decision of the Court of Appeal, ruling that none of the losses suffered by Mr Gabriel fell within the scope of BPE's duty because as a matter of legal duty BPE had assumed no responsibility for Mr Gabriel's decision to lend the funds. The losses arose from commercial misjudgements, which were no concern of BPE as solicitors. The court drew

a distinction between professionals providing 'advice' and those providing 'information'. In relation to 'advice', a professional may be liable for the entire loss flowing from the transaction. In relation to 'information', such as this case, where the professional provides information which is part of the material on which the client relies when deciding whether or not to enter into the transaction, the professional can only be liable for the financial consequences of the decision being wrong. Lord Sumption gave the only judgment, with which the other judges all agreed.

This decision provides a welcome clarification of the SAAMCO principle and this will probably mean that the principle is rarely misapplied in future. The decision will now be the leading case on how to apply the SAAMCO principle and will be welcomed by professionals resisting liability for the consequences of their clients' poor commercial judgments. Its scope of application will extend beyond claims against solicitors to many other professionals.

The judgment is available [here](#).

For more information, please contact [Simon Banner](#), Associate, London, on +44 (0)20 72648289, or simon.banner@hfw.com, or your usual contact at HFW.



hfw 2. Market developments

UK: General Data Protection Regulation – LMA co-ordinates industry response

The Lloyd's Market Association has provided a co-ordinated industry response to the Information Commissioner's Office (ICO) on its guidance as to how entities should obtain express consent from policyholders and beneficiaries of insurance cover for the purposes of processing sensitive personal data.

The General Data Protection Regulation comes into effect on 25 May 2018. It will introduce additional requirements for UK businesses, including those relating to consent, and will lead to specific issues for the insurance market. It is essential that the market is clear on how these rules will affect its business.

Many insurance products rely on personal data being provided at both the underwriting and claims stages. For health or travel insurance some of this data is naturally sensitive. The concern for the industry is that the ICO needs to recognise that the provision of sensitive data is essential if a policyholder wants insurance protection and claims to be paid. Whilst the healthcare sector has a specific ground under the General Data Protection Regulation for processing sensitive personal data, the insurance industry has no such ground. The insurance industry's position is that either the ICO's guidance must clearly acknowledge and allow consent for the



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LAURA STEER, SENIOR ASSOCIATE

processing of data in connection with the provision of insurance services, or the industry needs a dedicated ground for processing such data.

The LMA, ABI, IUA, BIBA, LIIBA and BIPAR have provided a joint response to the ICO and have asked the Department of Culture Media and Sport (the ICO's sponsoring department within government) to consider a new dedicated processing ground for the insurance industry.

For more information, please contact [Laura Steer](#), Senior Associate, London, on +44 (0)20 7264 8032, or laura.steer@hfw.com, or your usual contact at HFW.

hfw 3. HFW publications and events

France: HFW to attend ICC Conference on International Arbitration and the Paris meeting of the ICC Commission on Arbitration and ADR in Paris

Costas Frangeskides (Partner, London) is attending the 1st ICC Conference on International Arbitration in Paris on 24 April 2017, which launches the first Paris Arbitration Week. As a member of the ICC Commission on Arbitration and ADR, Costas is also participating in the Paris Commission meeting on 25 April 2017.

Dubai: HFW to present at Onshore Energy Conference

Sam Wakerley (Partner, Dubai) and Nigel Wick (Partner, London) are presenting at the Onshore Energy Conference in Dubai on 26 April 2017. They will be looking at some of the key clauses in onshore energy policies from a construction and operational perspective. Costas Frangeskides (Partner, London) and John Barlow (Partner, Dubai) are also attending the conference.

hfw Editor's note

We're taking a short break for Easter and our next bulletin will be published in the first week in May.

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