

CASE LAW ALERTER 2013

MCMANUS SEDDON RUNHAMS V EUROPEAN RISK INSURANCE CO

[2013] EWHC 18 (Ch), Chancery Division, [2013] EWHC 18 (Ch), Vivien Rose QC, 17 January 2013

Insurance (liability) – Claims made policy – Notification of circumstances – Whether notification valid without identifying claimants and transactions – Declaratory relief in advance of claims being made against the assured

NULTY V MILTON KEYNES BOROUGH COUNCIL

[2013] EWCA Civ 13, Lord Justice Longmore, Lord Justice Toulson and Lord Justice Beatson, 24 January 2013

Insurance (public liability) – Test for determining cause of loss – Third Parties (Rights against Insurers) Act 1930

MITCHELL V GREAT LAKES REINSURANCE UK LTD

[2013] ScotCS CSOH_14, Court of Session, Outer House, Lord Malcolm, 25 January 2013

Insurance (personal injury) – Policy applying to injury “resulting solely and directly from accidental outward violent and visible means” – Assured injured in motor accident – Died from heart disease – Whether accident was sole cause of death

SINGH V YAQUBI

[2013] EWCA Civ 23, Court of Appeal, Lord Justice Pill, Lady Justice Black and Sir Stanley Burnton, 29 January 2013

Insurance (motor) – Cost of hiring replacement vehicle – Business use – Whether claimant established a need for a replacement vehicle

INTERNATIONAL ENERGY GROUP LTD V ZURICH INSURANCE PLC UK BRANCH

[2013] EWCA Civ 39, Court of Appeal, Lord Justice Maurice Kay, Lord Justice Toulson and Lord Justice Aikens, 6 February 2013

Insurance (employers’ liability) – Mesothelioma – Claim against employer governed by law of Guernsey – Employer liable only for proportion of loss – Effect on insurance claim

AIOI NISSAY DOWA INSURANCE CO LTD V HERALDGLEN LTD

[2013] EWHC 154 (Comm), Queen’s Bench Division, Commercial Court, Mr Justice Field, 8 February 2013

Reinsurance – Aggregation – Whether 9/11 attacks on WTC constituted one event or two

DIGITAL SATELLITE WARRANTY COVER LTD V FINANCIAL SERVICES AUTHORITY

[2013] UKSC 7, Supreme Court, Lord Neuberger, Lady Hale, Lord Mance, Lord Clarke and Lord Sumption, 13 February 2013

Insurance (regulation) – Repair and replacement of defective or damaged equipment – Whether amounting to insurance business for miscellaneous financial loss – Winding up of unauthorised insurer - Financial Services and Markets Act 2000, sections 19 and 367 - Financial Services and Markets Act 2000 (Regulated Activities) Order 2000, SI 2001/544, article 10, class 16

TJK (NZ) LTD V MITSUI SUMITOMO INSURANCE CO LTD

[2013] NZHC 298, High Court of New Zealand, Justice Miller, 22 February 2013

Insurance (property) – Measure of indemnity – Building destroyed by earthquake – Whether assured entitled to payment of indemnity before reinstatement

ASTRAZENECA INSURANCE COMPANY LTD V XL INSURANCE (BERMUDA) LTD

[2013] EWHC 349 (Comm), Queen’s Bench Division, Commercial Court, Mr Justice Flaux, 28 February 2013

Reinsurance – Liability insurance – Bermuda Form – Whether New York law relevant – Liability of assured to policy holder for defence costs and settlement – Whether reinsured had to prove liability of assured as a matter of law – Whether reinsured liable for defence costs where claim itself not covered by policy

DKV BELGIUM SA V ASSOCIATION BELGE DES CONSOMMATEURS TEST-ACHATS ASBL

[2013] EUECJ Case C-577/11, Court of Justice of the European Union, 7 March 2013

Insurance (health) – Direct insurance other than life assurance – Restrictions in national law of rate of annual increases in premium and excess – Freedom to set rates – Health insurance contracts not linked to professional activity – Restrictions – Overriding reasons in the public interest – Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) and Article 8(3) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 92/49 – TFEU article 49 and 56

AJ BUILDING AND PLASTERING LTD V TURNER

[2013] EWHC 484 (QB), Queen's Bench Division, Mercantile Court, His Honour Judge Keyser QC, 11 March 2013

Insurance (property) – Insurers appointing contractors to repair insured premises – Sub-contractors appointed – Insurers paying contractors – Sub-contractors unpaid – Whether sub-contractors had a claim for payment against assureds

ACE EUROPEAN GROUP LTD V CHARTIS INSURANCE UK LTD

[2013] EWCA Civ 224, Lord Justice Longmore, Lord Justice Moses and Sir Alan Ward, 22 March 2013

Insurance (marine) – Cargo damaged – Whether damage occurred before or after delivery – Doctrine of proximate cause – Proof of cause

BEAZLEY UNDERWRITING LTD V AL AHLEIA INSURANCE COMPANY

[2013] EWHC 677 (Comm), Queen's Bench Division, Commercial Court, Mr Justice Eder, 27 March 2013

Reinsurance – Claims Co-operation Clause – Whether reinsured had compromised or settled claim – Whether reinsurers had been given opportunity to control negotiations

O'LOUGHLIN V TOWER INSURANCE LTD

[2013] NZHC 660, New Zealand High Court, Justice Asher, 5 April 2013

Insurance (property) – Building damaged by earthquakes – Whether “loss” or “damage” sustained – Measure of indemnity

NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LTD V R+V VERSICHERUNG

[2013] NZHC 690, New Zealand High Court, Justice Mackenzie, 9 April 2013

Reinsurance – Excess of loss treaty – Loss settlement clause – Limit of indemnity – Aggregation of losses

JOYCE V O'BRIEN

[2013] EWCA Civ 546, Court of Appeal, Lady Justice Rafferty, Lord Justice Elias and Mr Justice Ryder, 17 May 2013

Insurance (motor) – Duty of care – Ex turpi causa – Claimant injured while leaving scene of a theft in a van driven by the defendant – Whether claimant could recover from defendant for negligent driving

M J GLEESON GROUP PLC V AXA CORPORATE SOLUTIONS ASSURANCE SA

Queen's Bench Division, Manchester District Registry, His Honour Judge Raynor QC, 4 June 2013

Insurance (public liability) – Policy triggered by damage to property – Extension to policy for defective workmanship – Whether physical damage required

VERSLOOT DREDGING BV V HDI GERLING INDUSRIE VERSICHERUNG AG

[2013] EWHC 1666 (Comm), Queen's Bench Division, Commercial Court, Mr Justice Popplewell, 14 June 2013

Insurance (marine) – Time policy – Institute Time Clauses Hulls 1983 – Institute Additional Perils Clauses – Perils of the seas – Inchmaree Clause – Negligence of crew and repairers – Due diligence – Whether vessel unseaworthy – Measure of indemnity – Fraudulent claim – Fraudulent means and devices – Marine Insurance Act 1906, sections 39(5), 55 and 69

RIDGECREST NZ LTD V IAG NEW ZEALAND LTD

[2013] NZCA 291, New Zealand Court of Appeal, Justice O'Regan (President), Justice Arnold and Justice Harrison, 10 July 2013

Insurance (property) – Successive unrepaired partial losses followed by total loss in the same policy year – Whether assured could recover for all losses – Construction of the policy

SEA GLORY MARITIME CO V AL SAGR NATIONAL INSURANCE CO, THE NANCY

[2013] EWHC 2116 (Comm), *Queen's Bench Division, Commercial Court, Mr Justice Blair, 17 July 2013*

Insurance (marine) - Misrepresentation - Non-disclosure - Materiality and inducement - Warranty that vessel was ISM compliant - Proper construction of warranty - Whether warranty broken - Illegality - Warranty of legality - Marine Insurance Act 1906. sections 18, 20 and 41

ARB INTERNATIONAL LTD V BAILLIE

[2013] EWHC 2060 (Comm), *Queen's Bench Division, Commercial Court Robin Knowles QC, sitting as a Deputy High Court Judge, 12 July 2013*

Reinsurance - Broker - Claim against managing director following mid-term broker change - Whether managing director in breach of duty - When commission was earned

WEST MIDLANDS TRAVEL LTD V AVIVA INSURANCE UK LTD

[2013] EWCA Civ 887, *Court of Appeal, Lord Justice Moore-Bick, Lord Justice Rimer and Lord Justice Underhill, 18 July 2013*

Insurance (motor) – Bus damaged in motor accident – Measure of damages for public service vehicle

IAG NEW ZEALAND LTD V JACKSON

[2013] NZCA 302, *New Zealand Court of Appeal, Justice O'Regan, President, Justice Arnold and Justice Miller, 15 July 2013*

Insurance (professional indemnity) – Insurance broker failing to obtain insurance – Broker subsequently fraudulently stating that insurance was in place – Whether exclusion for claims in connection with fraud was applicable

OAKAPPLE HOMES (GLOSSOP) LTD V DTR (2009) LTD AND SJ CATLIN SYNDICATE 2003 AT LLOYD'S

[2013] EWHC 2394 (TCC), *Queen's Bench Division, Technology and Construction Court, Mr Justice Ramsey, 31 July 2013*

Insurance (professional indemnity) – Effect of exclusion for liability arising other than in contract

AMLIN CORPORATE MEMBER LTD V ORIENTAL ASSURANCE CORPORATION

[2013] EWHC 2380 (Comm), *Queen's Bench Division, Commercial Court, Mr Justice Field, 31 July 2013*

Reinsurance – Marine policy – Warranty in reinsurance against leaving port or adopting intended route where a typhoon or storm warning was in force – Construction of warranty – Whether warranty broken

GARD MARINE & ENERGY LTD V CHINA NATIONAL CHARTERING CO LTD

[2013] EWHC 2199 (Comm), *Queen's Bench Division, Commercial Court, Mr Justice Teare, 30 July 2013*

Insurance (marine) – Subrogation – Co-insurance – Demise charterer and owners co-assured under marine policy – Warranty by demise charterer that port would be safe – Breach of warranty – Whether insurers had subrogation rights against demise charterers

R V HUGHES

[2013] UKSC 56, *Supreme Court, Lord Neuberger, Lord Mance, Lord Kerr, Lord Hughes and Lord Toulson, 31 July 2013*

Insurance (motor) – Uninsured driver involved in accident causing death – Driver not at fault – Whether driver committed offence under Road Traffic Act 1988, section 3ZB

TEAL ASSURANCE COMPANY LTD V WR BERKLEY INSURANCE (EUROPE) LTD

[2013] UKSC 57, *Supreme Court, Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption and Lord Toulson, 31 July 2013*

Reinsurance – Allocation of liabilities to underlying policies – Effect on reinsurance