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Philip Hooley – case studies

Case Study: BCCI

BCCI

Client: Ernst &Young and their insurers

The Bank of Credit and Commerce International was an international bank founded in 1972 by Agha Hasan Abedi. The bank was registered in Luxembourg with head offices in Karachi and London. It was set up with financial backing from Abu Dhabi. It operated in 78 countries with over 400 branches and $20bn in assets.

Although BCCI's published results showed ever-rising profits, by the late 1970's the bank was suffering an alarming level of bad debts due to reckless lending. BCCI came under the scrutiny of numerous financial regulators and intelligence agencies in the 1980's due to concerns that it was poorly regulated. Reality was not reflected in BCCI's accounts because the losses were concealed in a Cayman Islands subsidiary, a bank within a bank known internally as 'the dustbin', safe from regulatory scrutiny. As the losses mounted, Abedi resorted to more and more desperate ways of keeping the bank afloat. He tried 'proprietary trading', but the results were further huge losses. The bank only kept going by fraudulent accounting and massive misappropriations of depositors' funds. Desperately in need of new sources of deposits and revenue, from the early 1980s BCCI's Panama branch acted as money-launderer for Latin America's drug barons. Subsequent investigations and the inquiry report in June 1991 for BCCI by Price Waterhouse, at the behest of Bank of England, code named 'Sandstorm Report', revealed that BCCI was involved in massive money laundering and other financial crimes, and illegally gained controlling interest in a major American bank. The report indicated massive manipulation of non-performing loans, fictitious transactions and charges, unrecorded deposit liabilities, fictitious profits and concealment of losses. Uncovering of BCCI's fraud and illegal operations in the 1991 probe led to a massive regulatory battle in 1991. Eventually on July 5, 1991 customs and bank regulators in seven countries moved quickly to seize and take over the bank's branches in the UK, US, France, Spain, Switzerland, Luxembourg and the Cayman Islands. BCCIs assets were ultimately liquidated, and a pool was established to reimburse depositors who had lost their funds when the bank shut down. The BCCI scandal was the biggest bank fraud in history. Its closure left 150,000 depositors around the world scrambling to recover lost money.

Ernst & Young were the joint auditors of BCCI, before PWC eventually took over the sole audit in 1987. With the collapse of BCCI, both firms were sued for negligence by the Liquidator of BCCI, Deloitte, for the losses incurred. The case was not only the biggest bank fraud in history, but one of the biggest liquidations and one of the biggest negligence claims. It involved multiple jurisdictions, parties and chains of litigation. It also involved millions of documents from a total of 100 million involved in the liquidation.

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The challenge for Ernst & Young and their insurers was how to manage such a huge case, with severe potential implications for the firm and its reputation. The sums involved, the seriousness of the allegations, the complexity of the issues involved and the number of documents was without precedent.

We decided to Salami slice the case down into its constituent parts both geographically, by company, by time, by type of allegation. We then attacked each part for its weakest link and took an aggressive approach with each part using all areas of the law and procedure to knock away the claims. Piece by piece, the structure was reduced.

The claim was resolved after many years of litigation, on the most favourable of terms to the client (which remain confidential).

Bahamas Electricity Corporation

Client: Bahamas Electricity Corporation and their insurers

Bahamas Electricity Corporation ("BEC") is a government corporation that provides electricity to all of the Bahama Islands except for Grand Bahama. The corporation operates power plants at 25 locations throughout the islands, with 95,000 customers. In terms of gross domestic product per capita, the Bahamas is one of the richest countries in the Americas (following the United States and Canada), with an economy based on tourism and finance.

BEC had transformers in places throughout the islands in order to distribute electricity and in some cases these were on private land. An incident occurred where young teenager became very severely burned by coming into contact with the transformer situated on his father's property. The father was a wealthy businessman. The case was reported as being the fault of BEC due to a failure to maintain the transformer. The teenage boy was transferred to Florida to undergo extensive treatment for life changing burns. After the loss adjusters report and a further investigation by the insurer, the matter seemed settled.

We decided to investigate the matter further following clues which we felt had not been fully explained. We recommended that we carry out an on-site investigation in the Bahamas and interview witnesses there at the time of the accident. It turned out that the overwhelming probability was that the son had broken into the transformer because that was where he took drugs, unbeknown to his father, and it was where he had probably kept his supply.

The matter was settled on the most favourable of terms to the client (which remain confidential). It pays to investigate matters thoroughly where appropriate and to talk to the witnesses on the ground and examine the original documents.

Lloyd's R&R

Client: Lloyds's Syndicates

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During the mid-1990s the Lloyd's Market was forced to restructure. Under the chairmanship of Sir David Rowland and chief executive Peter Middleton, an ambitious plan entitled "Reconstruction and Renewal" (R&R) was produced in 1995, with proposals for separating the ongoing Lloyd's from its past losses. Liabilities for all pre-1993 business (other than life assurance) were to be compulsorily transferred (by Reinsurance to Close RITC) into a special vehicle named Equitas (which would require the approval of the UK's Department of Trade and Industry) at a cost of around $21bn. Many Names (members of the Lloyd's syndicates) faced large bills, but the plan also provided for a settlement of their disputes, a tax on recent profits, and the write-off of nearly $5bn owed in the form of "debt credits", skewed towards those with the worst losses. The plan was debated at length, modified, and eventually strongly supported by the Association of Lloyd's Members (ALM) and most leaders of Names' action groups. Money was raised in many ways, including the sale and leaseback of the Lloyd's building, and a tax on future business. Individual offers of settlement were accepted by 95 per cent of Names. The past liabilities on the 1992 and prior years were transferred to Equitas in September 1996, including those under Lioncover and Centrewrite (two previous mutuals created by Lloyd's to deal with problem syndicates' run off).

In the years to the finalisation of R&R, there was a huge move to try to finalise the proper liabilities of the 1992 and prior years of account for all syndicates, so as to reach some certainty on the figures. A large wave of arbitrations and Court cases occurred to determine those liabilities once and for all. At the same time there were multiple actions by Members against their Members and Managing Agents, who were responsible for placing them on syndicates and running those syndicates. Those agents claimed on their E&O (errors and omissions) insurance. This resulted in about 60 actions or potential actions. The total claims were estimated to be over £6bn and this did not take account of potential future actions.

Overall value $18bn.

We dealt with a huge number of actions in an effective and efficient way to determine the liabilities of the parties and create more certainty. Cases were selected where possible for their precedential value in guiding other decisions.

The E&O Members and Managing Agents cases involved assessing the inter-relationship of hundreds of policies over many years insured with different parties for varying amounts and with different claims, sometimes with multiple competing claims on the same policy. To calculate the best case to run from a financial as well as a precedential point of view, we created a new and unique computer algorithm working with experts in Washington. This enabled us to choose which cases to run and when and to see what impact any judgment or settlement would have. By creating a theoretical mirror image of this algorithm and system, we could not only track the impact of the cases, but play hypothetical games to see a myriad of different options in terms of running the cases in different ways or in different orders and with varying results.

The many underlying cases were dealt with in an efficient and effective way to determine liabilities for 1992 and prior years of account.

The E&O cases were marshalled and dealt with in the most effective way so as to reduce the liabilities of the E&O market and establish suitable precedents.

Case Study: LME - Sumitomo
Sumitomo
Client: London Metal Exchange

This was the biggest scandal in the history of commodities trading and ranks in the top six trading losses in financial history. Sumitomo Corporation is a Japanese trading house, which is currently one of the largest worldwide trading companies headquartered in Tokyo, Japan. In the 1990's Sumitomo owned large amounts of both physical copper, which was stored in warehouses and factories, as well as numerous futures contracts. Copper was a relatively small market compared to other metals, such as aluminium. Copper is an illiquid commodity that cannot be easily transferred around the world to meet shortages. For example, a rise in copper prices due to a shortage in the United States will not be immediately cancelled out by shipments from countries with excess copper. This occurs because moving copper between storage and delivery costs money, which can cancel out the price differences. Yasuo Hamanaka was the chief copper trader of this trading house and attempted to corner the entire world's copper market.

For ten years, Yasuo Hamanaka had successfully managed to control the world's price of copper. He eventually came to control five percent of the entire supply of copper, which meant that with the inherent challenges that exist in the copper market in the movement and delivery of the metal and the fact that even the largest traders in the market owned an even smaller percentage, Hamanaka's five percent was very significant.

During the ten years of his manipulation, he was able to use Sumitomo's size and large cash reserves to corner and squeeze the market through the London Metal Exchange. The London Metal Exchange is a futures and options trading exchange that operates the world's largest marketplace for trading base metals. Furthermore, the London Metal Exchange's copper price essentially dictated the world's copper price at the time.

Hamanaka was taking a long futures position on copper and simultaneously buying up a substantial amount of physical copper as well. This caused any one trader who took a short futures position to have to buy long positions in order to cancel out their short positions. Due to the fact that Hamanaka had a large number of long positions, those people looking to buy them had to pay increasingly higher prices. These skyrocketing futures prices are what Hamanaka was able to control; the more the prices rose, the more money he made. This is because those with short positions were still paying this higher price in order to liquidate those positions. Another way that Hamanaka was making money was that while these prices continued to rise, some people holding short positions thought that instead of paying a high price for a long position they would buy the physical copper and deliver it to the holder of the long positions. So, because Hamanaka also owned 5% of the physical copper he could charge a very high price to those with short positions because they didn't want to keep paying money to liquidate their short positions. Essentially, he was making money by owning long futures as well as physical copper.

Yasuo Hamanaka, also referred to as "Mr.Copper," was the copper trading chief for Sumitomo Corporation. Hamanaka is the key player who is held responsible for Sumitomo's 2.6 billion dollar loss over a ten-year period. Mr. Hamanaka was solely responsible for the unauthorized trading. His attempted action to corner the world's entire copper market by falsifying financial records and forging signatures created this significant loss for the company as well as damage to other traders and the market.

To restore confidence in the market, the London Metal Exchange ("LME") was required by the authorities to take action where appropriate against its Members. There are currently only 9 ring dealing Members of the LME, who carry out the open outcry trading which helps determine the price of the metals traded, but there are about 100 other members. The LME had to investigate the members to determine if any rules of the LME had been broken and if so take action against the member. This was the first time in its history (founded in 1877, but the market traces its origins back to 1571), that the LME had taken serious action against its members.

We investigated the members who had participated in the copper trading with Hamanaka and reported back to the LME. Proceedings were then taken against several investment banks and in one case against a ring dealing member, with that case going to a full hearing. In the event all cases were settled with a penalty.

The reputation of the LME was preserved, the rules tested and the members brought into line.

Case Study: Lord Napier
Lord Napier v RF Kershaw (1993)
Client: PSL Market

This is the leading case on subrogation. Members of the Outhwaite syndicate had received £116m in settlement for losses following the introduction to the troubled syndicates by Outhwaite and other companies. We represented the personal stop loss underwriters of those members, effectively their reinsurers.

The clients, 24 leading reinsurance syndicates and companies, were concerned that they had a claim on these funds in a certain proportion and that these funds would soon be distributed to members of the Outhwaite syndicate located across the world.

There were two issues at stake, both pure points of law:

1. Was the correct way to distribute the funds due to each policyholder and their PSL insurer on a top-down basis as we alleged or was the policyholder to be paid out in full first.
2. Was the money due to the PSL insurer a matter of money had and received or, as we alleged, held in trust.

We managed to agree with the other side an agreed set of facts. Even more remarkably, we managed to persuade the Court to hear two pure points of law, which they are very disinclined to do, having been warned many times by the House of Lords (now the Supreme Court) not to do so, save in exceptional circumstances. The matter was urgent given that the monies might be distributed across the world. An undertaking not to distribute them was obtained from the other side in the meantime.

We lost both points at the hearing and were refused leave to appeal. We immediately picked up the papers and walked through to the Court of Appeal and obtained leave to appeal. When the case was heard, we won the first point but lost the second. We were refused leave to appeal to the House of Lords. We had to advise the clients on what to do next – if they were granted leave and appealed successfully to the House of Lords, they might lose both points, or lose one and gain the other, whichever way round. We recommended they should be bold and appeal. We had to seek leave to appeal from the House of Lords, which was granted and of course the opponents appealed the point they had lost.

We won both points in the House of Lords, having personally written the brief that examined 250 years' worth of law going back to the earliest recorded law cases involving piracy on the high seas to demonstrate why we were correct in our interpretation. Lord Goff of Chieveley, who wrote the book on The Law of Restitution, chaired the panel. Afterwards, his textbook had to be updated to take account of the development in the law.

The monies were restrained in a London bank account and then distributed in accordance with the law laid down by the House of Lords on a top-down basis. The case was important not only in establishing the correct principles to apply in subrogation, but as a precedent for all the subsequent cases and distributions that occurred in the Lloyd's R&R $18bn debacle that ensued.

Case Study: Maxwell

Maxwell

Client: confidential

Maxwell Communications Corporation was a leading British media company. It was listed on the London Stock Exchange and was a constituent of the FTSE 100 Index. The company was established in 1964 as the British Printing Corporation. In 1967 it acquired a majority stake in Haymarket Group. In July 1981, Robert Maxwell launched a dawn raid on the company acquiring a stake of 29 per cent. In 1982 he secured full control over the company and changed the name of the Company to British Printing & Communications Corporation and to Maxwell Communications Corporation in October 1987. The company acquired Macmillan Publishers, a large US publisher, in 1988 and Science Research Associates and the Official Airline Guide later that year. By the end of the 1980s the Maxwell Empire, comprising more than 400 companies was loosely organized into three clusters. The two publicly listed companies: the Mirror Group, which published the Daily Record, the Sunday Mail and Racing Times, as well as the Mirror newspapers; Maxwell Communication, the flagship company which controlled such concerns as Macmillan books, the Official Airline Guides and P.F. Collier Encyclopedias; and the Robert Maxwell Group which was privately held and owned 100 per cent by the family whose operations included the Oxford United Football Club and publications like the European, as well as stakes in newspapers in Israel, Hungary and Kenya. All the three holding companies were also directly and indirectly linked to dozens of other family-controlled enterprises.

In November 1991, chairman of the group companies Robert Maxwell, 68, was found drowned floating beside his luxury yacht near the Canary Islands. In a matter of weeks of the mysterious death of Maxwell, the global empire of publishing and other businesses collapsed amidst scandal about shocking financial manoeuvres. Investigations revealed that Maxwell's group companies owed £2.8 billion to its bankers. Maxwell's untimely death triggered a flood of instability with banks frantically calling in their massive loans. His two young sons Kevin and Ian struggled to hold the empire together but were unable to prevent its collapse. Furthermore, the most famous UK pension scandal of all time came to light when £530 million hole in the pension funds of 16,000 employees of Mirror Group Newspapers was discovered. The thousands of employees of the Mirror Group had paid into pension funds totalling many millions of pounds, which Maxwell had 'borrowed' in a desperate attempt to prop up the ailing Maxwell Communication. The Company went into administration following the death of Robert Maxwell. Its properties were sold to various media companies. The London based Maxwell Communication Corporation- parent of the giant U.S. book publisher Macmillan also filed the Chapter 11 bankruptcy petition in New York, in part, because bulk of its revenue and operating profit was generated in the United States. The Maxwell case was one of the most important transnational insolvencies of modern times. The empire of Maxwell was an unusual one with its true "seat" in London, where it was administered and nearly all of its financial affairs (especially loans and the grant of security) were managed, but its principal assets were in the United States in the form of various large operating companies. This ambiguous structure gave rise to a double-headed proceeding: an administration in the United Kingdom and a Chapter 11 bankruptcy in the United States.

Maxwell was in deep debt following large acquisitions. The borrowings were personal as well as on company accounts. The company borrowed $3 billion in 1988 to buy the US publishers Macmillan and Official Airlines Guide. In fact, Maxwell wanted to buy everything from American book publishers to British soccer teams to Israeli and German newspapers. He piled debt upon debt by pledging the assets of the companies under his control. It was discovered later that Maxwell had pledged the same assets as collateral for various loans. By the end of the 1980's the Maxwell empire, comprising more than 400 companies, was experiencing acute financial difficulties and was only kept afloat by shifting funds around his maze of inter-locking private companies, misappropriating pensioners' funds, and relentless deal-making. Months before Maxwell vanished from his yacht, there was a growing fear that he was having trouble meeting his repayment schedule. With the American and European economies starting to sour, Maxwell was faced with declining cash flow and debilitating debt payments. Despite his eroding financial condition, however, he was able to pass annual audits by leading European accountants Coopers & Lybrand and Deloitte. That enabled Maxwell to add on more debt in March 1991, when he purchased the Daily News from the Tribune Co. by assuming as much as $35 million in obligations. In 1991, desperate for money, Maxwell sold Pergamon and floated Mirror Group Newspapers as a public company. But it was too late. The stock of Maxwell Communication plunged to $2.18 on 5 November 1991, (the day Maxwell disappeared) from a high of $4.28 a share in April 1991, and further dropped to $0.63. The decline in stock value was of special concern to Maxwell's creditors, since most of the family's 68 per cent stake in the company was pledged as collateral for loans. The untimely death of Maxwell triggered a wave of uncertainty amongst the lenders and creditors which ultimately led to the collapse of the empire of Robert Maxwell based around Maxwell Communications Corporation.

These events led to the investigation carried out by the Department of Trade and Industry (DTI) by order of the Secretary of State into the Flotation of MGN (Mirror Group Newspapers) in 1991. Our role was to advise one of the principal advisers that had been responsible for this Flotation at a critical time for the Maxwell Empire.

Piper Alpha

Client: Insurance Market London and international

Piper Alpha was an oil production platform in the North Sea approximately 120 miles north-east of Aberdeen, Scotland, that was operated by Occidental Petroleum (Caledonia) Limited. It began production in 1976, initially as an oil-only platform but later converted to add gas production.

An explosion and resulting oil and gas fires destroyed Piper Alpha on 6 July 1988, killing 167 people, including two crewmen of a rescue vessel; 61 workers escaped and survived. Thirty bodies were never recovered. The total insured loss was $3.4 bn (£5bn in 2021), making it one of the costliest manmade catastrophes ever. At the time of the disaster, the platform accounted for approximately ten percent of North Sea oil and gas production, and the accident is the worst offshore oil disaster in terms of lives lost and industry impact.

The case was fought through the Scottish Courts to the Court of Session and then went on appeal to the House of Lords (now the Supreme Court). The costs and damages having been paid out, the issue was the correct distribution of liability between the contractors given the cross-liability clauses in the contracts. This involved the application of principles of subrogation.

I was involved in writing the Brief that was used for the basis of the case in the House of Lords.

This case was accepted by the House of Lords.

Environmental Damage

Client: QBE

A large Mexican mining company had extensive mining works in a part of Mexico that were found to have been producing lead pollution. This not only imperilled the environment, but those living and working around the site. Although for many years this was not challenged and was considered acceptable, in more recent times this has not been the case as higher standards are expected
The company claimed the amount on their insurance, which the local insurer was inclined to accept. The client insurer wanted us to investigate the claim. The claim was investigated and resisted on the basis that it did not fall within the terms of the policy.

Value $250m.

If the claim had been accepted, it would be contrary to the proper interpretation of the policy and the reinsurers would not have been able to claim the amount from their reinsurers (the retrocessionaires). We resisted the claims. Negotiations were held in New York and again in Mexico. Interesting issues arose as to interpretation, approach, as well as cultural issues and diplomacy. In the event the decision to reject the claim was accepted by the company.

A significant claim was successfully resisted on a correct application of the policy, that would otherwise have resulted in an unrecoverable loss. The ultimate insured who was used to winning all their battles was persuaded that their case had no merit in legal terms, even though this was hard for them to accept. Differences in culture, language and interpretation were dealt with and overcome.

The case is an example of many cases where oversight of a matter from London, albeit that proceedings are being conducted abroad, can be of value. Handled with care and understanding there is a need for interpretation both ways, not just in terms of language, but in understanding how different countries and cultures will approach problems and finding a way where each side can understand the approach and interpretation and attitude of the other and at the end of the day a successful resolution can be found.

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Severn Trent Water

Client: Confidential - The world's leading IT supplier ("ITS")

Severn Trent Water ("STW") is a FTSE 100 company. It wanted to create a leading edge corporate wide IT system that would manage its functions including its customer relationships. The massive project redesigned their systems to their requests, but ran into difficulties and a dispute arose concerning changes to the design, performance of the system and the role and performance of ITS. There were 22 or more issues in this legally and technically complicated matter.

Value: £40m.

We identified all the issues and analysed them and then isolated three that were the most important and one that was crucial to the case. We endeavoured to resolve the matter by using a managed strategy using special dispute techniques that had been developed (this is different from mediation). STW did not agree and the matter could not be resolved. We then commenced proceedings to resolve what we saw as the critical issue. We won at first instance and again in the Court of Appeal. We then took that result back to combine it with the rest of the issues and had an overwhelming result in a mediation that followed.

The client was paid, the matter resolved effectively, by isolating the most important issues and then driving that case hard on those issues to resolve the matter in the client's favour.

Sleipner

Client: London and international insurance market

Sleipner A is a combined accommodation, production and processing offshore platform at the Sleipner East gas field in the Norwegian sector of the North Sea. It is a Condeep type oil platform built in Norway by Norwegian Contractors for Statoil.

On 23rd August 1991, it had a catastrophic collapse due to a design flaw due to an error caused by the use of concrete construction codes that were not sufficiently conservative and inaccurate finite element analysis modelling of the Tricell, which formed part of the ballasting/flotation system.

The platform is designed to accommodate 160 people. The platform deck is 60 by 140 meters, with a height of 210 meters.

The original hull was a gravity base made up of support pilings and concrete ballast chambers from which three or four shafts rise and upon which the deck sits. Once fully ballasted, the hull was to sit on the sea floor. There were 24 chambers, of which four formed the 'legs' supporting the facility on top in the case of the Sleipner A oil rig.

The original hull collapsed during the final construction because of a design flaw. It was towed into Gandsfjord, where it was to be lowered in the water in a controlled ballasting operation at a rate of 1 meter per 20 minutes. This was necessary for the fitment of the deck platform to the hull. As the hull was lowered to the 65-meter mark, rumbling noises were heard followed by the sound of water pouring into the unit. A cell wall had failed and a serious crack had developed, and sea water poured in at a rate that was too great for the deballasting pumps to deal with. Within a few minutes the hull began sinking at a rate of 1 meter per minute. As the structure sank deeper into the 210-meter fjord, the buoyancy chambers imploded and the rubble struck the floor of the fjord, creating a Richter magnitude scale 3 earthquake.

No one was injured during the accident. The post-accident investigation by SINTEF in Norway discovered that the root cause of the failure resulted from inaccurate NASTRAN calculations in the design of the structure. Stresses on the ballast chambers were underestimated by 47% and some concrete walls were designed too thin to resist foreseeable hydrostatic pressure when submerged. As the pressure increased, the walls failed and cracked, allowing sea water to enter the tank at an uncontrolled rate, eventually sinking the hull.

Value $700m.

The case involved huge volumes of highly technical construction documents which had to be effectively analysed to determine the cause of the collapse. We established an effective system to do this and working with others examined the causes of the collapse.

The claim was resolved after many years of litigation, on the most favourable of terms to the client (which remain confidential).

Telecoms Infrastructure

Client: Confidential - The world's leading IT supplier ("ITS")

ITS was an established supplier of a crucial part of the telecoms infrastructure used by telecoms companies throughout the world. The system was specialised and complex. There were competitors, but it was expected that once a particular system became established that was the leading system for up to a decade until new technology replaced it.

A review in HQ of ITS decided that all territorial companies of ITS around the world should endeavour to reduce headcount by 10%. The UK arm achieved this, but in doing so, the special unit that was developing the next generation of the telecoms equipment became an independent unit and acted as a consultancy ("TPC").

In the event a dispute later broke out between TPC and ITS. This threatened ITS's established position in the telecoms equipment market and could affect their position for the next decade. An

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entire division in the UK involving hundreds of engineers and scientists was dedicated to making this equipment.

Value: £100m.

The issues in the dispute were analysed and those that were most important were pursued. The strategy that was plotted, recommended and carried out was then to purchase TPC.

The client was able to protect a leading position in the telecoms equipment industry and secure that position for the next decade. Valuable lessons were learnt for the future.

Van Oppen – Sports Injury Liability of the School

Van Oppen v The Clerk to the Bedford School Trustees (1990)

Client: The Clerk to Bedford School Trustees and their insurers

Van Oppen was a student at Bedford School, an independent school in Bedfordshire. He was very seriously injured and rendered a paraplegic playing rugby, by making a tackle on an opponent. The school was sued by the parents on behalf of the child on the basis that it was negligent in the teaching of rugby and had not taught the boy to tackle properly and that it had breached a duty of care to advise parents of the availability of personal accident insurance to cover such events.

The events that occurred and the case represented an important challenge to the school's reputation and although they were covered for the case by their own insurance, it was important to defend their reputation and yet handle the case with care and consideration for the boy and to preserve his dignity.

The case went to the Court of Appeal and is a landmark case in this area. We went to great lengths to examine the teaching of rugby at the school, which is well known for this sport and recruited an ex-England player as an expert, as well as examining how rugby was taught in other schools. The Court of Appeal found that rugby had been correctly taught at the school.

The Court of Appeal also found that there was no duty on the school to put in place personal accident insurance as this would be to impose a duty to protect against economic loss. The court found that the parents did not rely on the school to advise in relation to personal accident insurance.

The case was won and a precedent set. The school's reputation was preserved and the case handled carefully and sensitively. Schools can decide whether to arrange personal accident insurance for their pupils but can do so against the background of this leading legal case.

Vertex

Client: Confidential - The world's leading IT supplier ("ITS")

Vertex was set up by one of the major utility companies to run their customer relationship management system involving millions of clients and holding their data. ITS were engaged by Vertex to renew their integrated corporate IT systems. The work was large and complicated. The utility company wanted to create a system that not only satisfied its current needs but might go on to support multiple utility companies with the same function. This was an important new potential area for ITS and with cutting edge technology and systems being deployed, it wanted the project to succeed so as to beat off competition and expand into the whole utility client space. The project ran into difficulties.

At the same time, another large supplier ("F") was carrying out similar work for another utility company, albeit not with the same ambitions in terms of further utilisation of the system. That project also ran into difficulties. F's lawyers took a very aggressive approach. Proceedings were launched for the large sums due under the project. The case was run through the Courts and F lost at first instance. They then lost in the Court of Appeal.

Value: £30m.

We adopted a managed strategy using special dispute techniques that had been developed (this is different from mediation). We managed to resolve the problems under the project, obtain the huge payments due, restore the project to a working system and re-establish client relations with Vertex and the Utility company on the one hand and ITS on the other.
F, the competitor, was castigated in the industry press for the way the matter had been handled.

ITS gained plaudits from their Utility company client. Instead of being a problem site and a disastrous start to ITS's ambitions in this sector, the Utility company offered to become a reference site. The result was that ITS cleaned up the vast majority of the work in the industry sector. A problem was turned into an opportunity. The law was used as a tool to achieve the business ambitions of the client.

Fortune 50 Chemicals Company
Fortune 100 Industrial Company
Client: XL Insurance

These were two separate cases with different insured companies. XL Insurance together with a company called Ace were set up by a number of large US corporates to provide large insurance cover for the Fortune 500 US companies in amounts that were very difficult to obtain on the world insurance markets. Insurance could run to hundreds of millions of dollars in large tranches of $30m, $50m or more.

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Chemicals Company

In this case, one of the largest chemical companies in the world had produced a fertiliser for improving crop yields dramatically. It was used throughout Florida and further afield across the US. The problem was that it was discovered to be destroying the crops. Worse than that, it was also determined to cause anophthalmia and microphthalmia, where pregnant women would give birth to children born with no eyes or with small eyes that have no usable function.

The chemical company was pursued for damages in cases across the US, with other cases accumulating. They fought the cases with great vigour. At one point a US judge wishing to penalise the company for failing to give proper disclosure bemoaned that there was no financial penalty that he could impose that would have an impact on the company. This was a company to whom $50m was small change and would make no impact whatsoever.

The insurers asked us to investigate the history of the company's production of this chemical and their claim under the insurance policy to recover the losses. We determined the case should be challenged. Value $1.5bn.

The second case involved an explosion at a US industrial company producing chemicals.

Again, the insurers asked us to investigate the history of the events leading up to the explosion and the claim for losses under the insurance policy. We determined the case should be challenged.

Value $1bn.

We fought both cases. Both were the subject of international arbitration, with an international panel of arbitrators, the law applied was New York law, but with policies issued out of Bermuda and the procedural issues determined by English procedure. In the first, after protracted litigation, a settlement was reached on the most favourable of terms to the client (which remain confidential). The second case was also defeated.

These large claims were carefully examined in detail and after full consideration were turned down and the subsequent disputes resisted, saving huge sums that would have been claimed on the policies.

Case Studies: SBSA and SBV
State Bank of South Australia
State Bank of Victoria

Clients: PWC and their insurers in relation to State Bank of South Australia ("SBSA")
KPMG and their insurers in relation to State Bank of Victoria ("SBV")

These were two separate matters and pieces of litigation, but with similar causes.

SBSA

The State Bank of South Australia was established in 1984 and owned by the Government of South Australia. The bank became the subject of a two-year South Australian Royal Commission upon collapse in 1991 to the tune of A$3.2bn. The bank's financial implosion in 1991 was one of the biggest economic disasters in the state's history. As a government-owned bank, deposits were guaranteed by the Government of South Australia. The key cause of financial distress was the non-performing assets of the bank, its loan portfolio. The non-performing assets were corporate and property-related loans made by the bank. At the time of the bailout, non-performing assets exceeded 30% of the loan book. To a lesser extent, its investments in major subsidiaries acquired between 1985 and 1990 also performed poorly and were a contributory cause.

The bank failed to adequately manage the debt, capital, interest rate risk and liquidity risk of the bank due to policy and procedural inadequacies, and the lack of effective supervision and control of certain of the bank's activities, contributed to the mismanagement of the business of the Bank as a whole.

SBV

A government-controlled savings bank had been founded on 1 January 1842 as the Savings bank of Port Philip. Other independent savings banks merged over time and this development was recognised by legislation in 1912, which reconstituted the bank as the State Savings Bank of Victoria. In 1980 its name was changed to the State Bank of Victoria. The State Bank collapsed due to the weight of the grossly irresponsible lending made in the 1980s, in particular by its merchant bank subsidiary Tricontinental, after the Reserve Bank of Australia’s decision to increase interest rates in 1989 brought about the deep recession that put pressure on those financial institutions that were heavily exposed to the property market.

Another contributor to the State Bank’s decline was its acquisition of the already troubled Australian Bank in January 1989. Tricontinental eventually collapsed with losses of A$1.5 billion and the overall loss was A$2.75bn.

Both cases involved voluminous documents and huge sets of proceedings, as well as separate Royal Commission Inquiries and an Auditor General’s report in the case of SBSA.

These were separate cases in separate State Courts with different parties and issues. However, a common thread was a need to successfully demonstrate that the Directors of the companies were the ones responsible for the losses rather than the accountants.

Both cases were successfully defeated independently on the most favourable of terms to the clients (which remain confidential).

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