Neutral Citation Number: [2008] EWHC 3087 (Comm)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2008

Before :

MR. JUSTICE TEARE

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Between:
Claim No.2006 Folio 1287
MARKEL INTERNATIONAL INSURANCE COMPANY LIMITED
Claimants

and

(1) SURETY GUARANTEE CONSULTANTS LIMITED
(2) TIMOTHY PATRICK THOMAS HIGGINS
(3) BARRY WILLIAMS
(4) CLIFFORD EDWARD FELSTEAD
(5) RALPH BRUNSWICK
(6) GENERAL COMMERCIAL LIMITED
Defendants

AND

Claim No.2007 Folio 67

QBE INSURANCE (EUROPE) LIMITED
AMALFI UNDERWRITING LIMITED
Claimants

and

(1) SURETY GUARANTEE CONSULTANTS LIMITED
(2) TIMOTHY PATRICK THOMAS HIGGINS
(3) BARRY WILLIAMS
(4) CLIFFORD EDWARD FELSTEAD
(5) RALPH BRUNSWICK
(6) GENERAL COMMERCIAL LIMITED
Defendants

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Michael Swainston QC (instructed by **Steptoe and Johnson**) for **Markel**
Derrick Dale (instructed by Davies Arnold Cooper) for **QBE and Amalfi**
Ben Quiney for the **Second Defendant (**instructed by **Hannah & Mould)**
The Third Defendant represented himself
The other Defendants were not represented

Hearing dates: 8-9 December 2008
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Judgment

Mr. Justice Teare :

1. On 3 June 2008 I gave judgment in these two actions. The trial had taken place over 5 weeks in February and March 2008 and was intended to deal with all issues in the action. However, it was not possible to determine all issues relating to the quantum of the damages, equitable compensation or secret profits to which the Claimants were entitled and so an inquiry into damages was ordered. It was envisaged, at least by me, that what remained was a relatively straightforward calculation of quantum; see paragraphs 263-264 of my judgment. Directions for the determination of quantum were given on 3 July 2008. On 3 October 2008 I heard submissions as to the length of time required for the inquiry as to damages. I ordered that a hearing of 1-2 days take place to determine issues of law or principle on the issue of quantum. It was considered that if the Claimants succeeded on those issues, as they said they would, the detailed arithmetic could then be rapidly agreed or, if necessary, determined. If the Defendants won on any of those issues it was considered possible that a further hearing, involving further evidence, might be required before quantum could be finalised. The hearing to determine the issues of law or principle took place on 8 and 9 December 2008.

2. Both Claimants were represented before me. The Second Defendant was represented but the Third Defendant represented himself. No other Defendants were present or represented.

3. The Claimants seek damages under the following heads:

   i) The sums in which claims on unauthorised bonds have been settled.

   ii) An indemnity in respect of future claims.

   iii) Premium on unauthorised bonds which have produced no claims.

   iv) Costs of investigating claims

   v) Interest.

4. Markel have settled 5 claims. It is not disputed that the three RTT claims have been reasonably settled. (The figure mentioned in paragraph 263 of my judgment appears to relate to them.) In respect of the remaining two, Curzon and WWA, which have been settled since the date of my judgment, it is said that there has been insufficient disclosure. However, a statement dated 28 July 2008 has been provided by Mr. Stovin of Markel who has been responsible for negotiating the settlement of claims. It is clear from his statement that the Curzon claim was settled for less than 100% of the claim. The initial correspondence and settlement agreement has been disclosed. It is also clear from that statement that the WWA claim has been settled for less than 100% of the claim and that credit for recovery under a personal guarantee has also been given. The initial correspondence and settlement agreement has been disclosed. It seems to me that the statement and correspondence which has been disclosed is sufficient to enable the Defendants to form a firm view as to whether the settlements were reasonable or not. Counsel did not suggest any reason why the settlements might be regarded as unreasonable.

5. The total sums claimed by Markel in respect of settlements are therefore £2,546,746.03 and Euros411,444.

6. QBE/Amalfi have settled claims under the Canadian Shipping bonds. Evidence about this settlement was given during the trial; see paragraph 264 of my judgment. Further recoveries from the bankruptcy of Canadian Shipping have been made. The revised claim is £530,299.22 as appears from a further witness statement of Mr. O'Shea who gave evidence at the trial. There does not appear to be any basis on which it could be suggested that this settlement was unreasonable. Nor has it been suggested that it was unreasonable.

7. The sums claimed by Markel in relation to premium are £567,657, US$218,691 and Euros27,369. The sums claimed by QBE/Amalfi in relation to premium are £598,945.01.

Issue 1: Are the Claimants entitled as a matter of law to the remedy of an indemnity against future losses ?

8. This issue arises because it is possible that claims may be made by the beneficiaries of unauthorised bonds in the future. That possibility means that all issues of quantum of loss cannot yet be finally determined. The Claimants therefore seek an indemnity in respect of any future settlement of such claims. It was not disputed that a declaration could be made that the Claimants were entitled to an indemnity in respect of reasonable settlements of any further claims.

9. The Claimants requested that the court also declare that it would be reasonable for the Claimants to settle any future claims at anything up to 100% of the claim. It is obviously the case that any refusal to pay 100% of a claim on a bond apparently lawfully issued on behalf of the Claimants will risk damaging the reputation of the Claimants in the insurance market. The bond may have been issued without SGC having any actual authority to do so but there appears to be much to be said for the view that such bonds were issued with the apparent authority of the Claimants (notwithstanding that Markel have argued in response to the Curzon and WWA claims that there was no apparent authority). For that reason it can be envisaged that a settlement of 100% of a claim will be regarded as reasonable. However, of the 5 claims so far settled by Markel none was at 100% of the claim and it is not inconceivable that claims may be made in circumstances where it is apparent that a settlement at 100% of the claim would be unreasonable. I am therefore hesitant about making the further declaration and so do not consider that I should do so.

Issue 2: Are the Defendants prevented from pursuing one or any of their allegations in defence of the claims on the basis that the issue has already been determined and/or that it is too late to raise it for the first time ? If so, to which of the issues set out herein does this apply ?

10. This issue raises the question of estoppel *per rem judicatam* and abuse of process. It is preferable to deal with such matters as and when they arise in the subsequent issues.

Issue 3: On the issue of causation:

> "3.1 Are Mr. Higgins, Mr. Felstead and Mr. Brunswick liable to pay damages/equitable compensation in respect of all of the unauthorised bonds identified in the Judgment or some only. If some only, which ones ?"

> "3.2 Is Mr. Williams liable to pay damages/equitable compensation in respect of all the unauthorised bonds that he signed as identified in the judgment or some only? If some only, which ones? Should the fact that Mr. Williams has not been found liable for conspiracy affect the level of equitable compensation that he is to pay?

11. As to Issue 3.1 it proved to be common ground that the three defendants were liable to pay damages in respect of all of the unauthorised bonds. This necessarily followed from paragraph 265 of my judgment.

12. As to Issue 3.2 in relation to Mr. Williams the Claimants invited me to find that he was liable to pay equitable compensation in respect of all of the unauthorised bonds.

13. It is first necessary to examine the findings I made in my judgment. I did not find that Mr. Williams was party to the conspiracy to defraud to which Mr. Higgins, Mr. Felstead and Mr. Brunswick were party. I did however find that he was liable for breach of fiduciary duty. In paragraph 231 I said:

> "Mr. Williams was not party to that conspiracy but in my judgment he also acted in breach of his fiduciary duty to Markel and QBE/Amalfi. For the reasons I have given he cannot honestly have believed that what he was doing was an accepted way of doing business. When signing bonds in excess of the stated limits he was reckless as to the rights and interests of Markel and QBE/Amalfi. This was not mere incompetence, which would not amount to a breach of fiduciary duty. It plainly crossed the line. He neither acted honestly nor in the best interests of Markel and QBE/Amalfi."

14. In paragraph 270 I said:

> "Mr. Williams did not share the aim of Mr. Higgins and Mr. Felstead to make secret profits. However, he nevertheless acted in breach of his own fiduciary duty and that breach of duty enabled the secret profits to be made. But for his breach of fiduciary duty the secret profits would not have been made. He is therefore liable in respect of those secret profits albeit that he did not receive or seek to receive them himself."

15. After judgment was handed down counsel for Mr. Williams (who had not represented him at the trial) sought clarification of my finding and also drew my attention to an authority which showed that I was wrong to say that Mr. Williams could be liable for secret profits if he had not received them. Counsel for the Claimants agreed that I had

not been referred to the relevant authority at trial and consented to the judgment being amended.

16. As a result by an Order dated 3 July 2008 I stated for the avoidance of doubt that the finding of breach of fiduciary duty by Mr. Williams related to those bonds in excess of the stated limits which he signed (as stated in paragraph 231 of the Judgment) and directed that the judgment be amended by substituting the following sentence for the last sentence of paragraph 270:

> "The question whether Mr. Williams is liable in respect of the gross premium which gave rise to those secret profits will be determined at the Inquiry as to relief."

17. That seemed the appropriate way of dealing with the issue. I do not recall it being suggested that the issue could or should have been resolved on 3 July.

18. At this hearing the Claimants sought a finding that Mr. Williams was liable in respect of premium paid in respect of all unauthorised bonds, not merely those which he signed, because in breach of his fiduciary duty he kept deliberately silent when he should have spoken out when he signed the first unauthorised bond. If he had done so no unauthorised bonds would have been issued.

19. I do not consider that I can properly make the requested finding. In my judgment I identified the actions in respect of which Mr. Williams had breached his fiduciary duty. Those actions were the signing of unauthorised bonds. I do not consider that I can now identify further actions as constituting a breach of that fiduciary duty, namely, a failure to inform the Claimants as to what was going on. That is particularly so in circumstances where I was asked to clarify my finding and did so by stating that the breach of fiduciary duty related to those unauthorised bonds which he signed. It seems to me that the Claimants are estopped *per rem judicatam* from contending that Mr. Williams was in breach of his duty in ways additional to those which I found in my judgment.

20. In paragraph 270 of my judgment, as amended, I held that Mr. Williams' breach of duty enabled the secret profits to be made.

> "But for his breach of fiduciary duty the secret profits would not have been made. The question whether Mr. Williams is liable in respect of the gross premium which gave rise to those secret profits will be determined at the Inquiry as to relief."

21. By that I meant that when Mr. Williams breached his fiduciary duty by signing a bond he thereby enabled the secret profits on that bond (then equated with the gross premium on that bond) to be earned. But for his breach of fiduciary duty in signing an unauthorised bond the secret profits on that bond, that is the gross premium, would not have been made. The issue which was referred to the Inquiry was whether Mr. Williams was liable in respect of that premium.

22. It was and is common ground that the "but for" test is the appropriate test when considering liability for breach of fiduciary duty; see *Target Holdings Ltd. v Redferns* [1996] AC 421. The answer to Issue 3.2 is therefore (subject to the point next

discussed) that Mr. Williams is liable to pay equitable compensation but only in respect of those bonds which he signed.

Issue 10: On the Schedule 1 Sections 2 and 3 bonds, are the withheld premiums claimed recoverable from the Defendants as damages and/or equitable compensation as a matter of law.

23. It is convenient to answer this question at this stage. It was asked because, at some stage after I had given judgment, the Claimants clarified the relief or remedy that they were seeking. They no longer sought "secret profits" against Mr. Higgins, Mr. Felstead, Mr. Brunswick or Mr. Williams. Instead they sought the premium which had been diverted from the Claimants as damages at common law (for the tort of conspiracy) and/or as equitable compensation (for the equitable wrongs of breach of fiduciary duty or dishonest assistance of a breach of trust). The reason for this was that it could not be established that any of the gross premium had been retained by any of the individual defendants. The Claimants further restricted their claim in respect of the premium to the gross premium less commission (the "net premium").

24. Counsel for Mr. Higgins submitted that unless the net premium could be described as loss it was not recoverable. He accepted that where a claim had been made on an unauthorised bond and such claim had been reasonably settled the Claimants had suffered a loss in the amount of the settlement. But where no claim had been made and no sum had been paid in settlement then the Claimants had not suffered a loss.

25. I shall first consider the claim in conspiracy to defraud. I described the conspiracy as one to injure the Claimants by obtaining a secret profit; see paragraphs 177, 184 and 260 of my judgment. That meant that the conspirators sought to divert premium from the Claimants. The injury they intended to inflict was that the Claimants would be deprived of the premium on those bonds which SGC had written in the name of the Claimants in breach of the limits in the binding authority. They succeeded in causing that injury. Bonds were issued on behalf of the Claimants and yet the Claimants did not receive the premium which those who took out the bonds agreed to pay.

26. In those circumstances it is, in my judgment, mistaken to suggest that the conspirators caused no injury to the Claimants. They plainly did. The Claimants' loss was the premium which would have been paid to them had not the conspirators diverted the premium away from them.

27. In my judgment the Claimants therefore suffered loss in the amount of the net premium as a result of the conspiracy. It follows that Mr. Higgins, Mr. Felstead and Mr. Brunswick are liable to the Claimants in respect of the net premium on the unauthorised bonds.

28. Mr. Williams was not party to the conspiracy. But, as stated above, he acted in breach of his fiduciary duty when he signed an unauthorised bond. He is therefore liable in respect of such loss as would not been have suffered by the Claimants but for his breach of his fiduciary duty. But for his breach of duty the Claimants would not have suffered the loss of net premium on those bonds which Mr. Williams signed. It follows that Mr. Williams is liable to the Claimants in respect of the net premium on the unauthorised bonds which he signed.

Issue 4: In order to recover equitable compensation for dishonest assistance, is it necessary as a matter of law for the Claimants to prove that the sums claimed arise from assisting a payment made in breach of fiduciary duty or is it sufficient that they arise from assisting a breach of fiduciary duty? If the former, can the Claimants prove that?

29. In my judgment it is sufficient that the sums claimed arise from assisting a breach of fiduciary duty. I did not understand counsel for Mr. Higgins to argue to the contrary. Rather, he argued the question whether any loss could be proved where no claim had been settled on a bond. I have already resolved that question.

Issue 5: On the issue of monies held by third parties:

5.1 Do the Claimants have a proprietary interest in any money held by SGC and/or Templeton and/or GCL?

5.2 If so, are the Claimants obliged to:

5.2.1 seek to recover such monies in order to mitigate their claim against the Defendant; and/or

5.2.2 set-of such monies against any damages they seek to recover?

30. The trial in February and March 2008 was intended to deal with all issues of liability and quantum. A List of Issues was prepared in accordance with the report of the Commercial Court Long Trials Working Party. I determined those issues; see paragraph 64 of the judgment. That list did not raise any issue of mitigation or set-off such as now appears in Issue 5.

31. The Claimants say that it is an abuse of the process of the court for the Defendants now to raise such issues and to require the Claimants to re-call witnesses who gave evidence in order to deal with the new allegations. The Defendants say that the appropriate test is that set out by Lord Bingham in *Johnson v Gore Wood* [2002] 2 AC 1 at p.31. There should be a

> "broad merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

32. It has long been recognised that the duty to mitigate does not require an injured party to embark upon a complicated and difficult piece of litigation against a third party; see *Pilkington v Wood* [1953] Ch 770. However, there are cases where a claim against a third party is so normal and straightforward that it would be considered unreasonable for a claimant not to pursue that course; see the cases collected in *Professional Negligence and Liability* by Simpson at para.2.69.

33. It was asserted on behalf of Mr. Higgins that SGC held £1.4m of premium in an identified account, that such sum was beneficially owned by the Claimants, that the Claimants would therefore have priority in respect of that sum in the liquidation of SGC and that claiming such sum from the liquidator was a normal and straightforward action such that it was unreasonable for the Claimants not to take it.

34. Notwithstanding the attractive manner in which this submission was made I am persuaded that it is a submission doomed to fail. Firstly, whilst it appears that there may well be an identified account in the name of SGC containing a substantial sum, the state of accounting in SGC was such that (notwithstanding the assistance given by Mr. Williams in 2007 to ascertain where the monies went) it is likely to be a complex and uncertain exercise to show that the sums in the account represent premium on unauthorised bonds. My recollection of the accounting evidence in the trial supports this as does the summary placed before me by counsel for Markel of some of the accounting difficulties identified by the Claimant's expert accountant at the trial. I consider that whilst a proprietary claim in respect of premium on unauthorised claims is likely to succeed in principle proof of such a claim will be "complicated and difficult" rather than "normal and straightforward". Secondly, the Claimants have in fact submitted a proof of their claims to the liquidator of SGC. He has stated in a witness statement dated 24 July 2008 that if the claim to beneficial ownership is not agreed by the creditors there will have to be a "highly involved and technical exercise" and that he will have to apply to the court for an order that his remuneration be paid from the monies in the account. Thirdly, in a complex case of fraud it is reasonable for the injured party to seek redress first from those whom he considers to be responsible for the fraud. Obviously, any recoveries from other sources will serve to reduce his loss and credit will have to be given for such recoveries but it does not follow that the injured party has failed to mitigate his loss by failing to make those recoveries before suing those responsible for the fraud.

35. Similar claims of a failure to mitigate were made in relation to GCL, a company registered in the British Virgin Islands. It is, I think, common ground that GCL retains £200,000 (after £288,000 had been paid to SGC; see paragraph 276 of my judgment). An analysis by the accounting expert at trial suggested that these sums related to premium on unauthorised bonds and I so found; see paragraphs 175 and 276 of my judgment. I subsequently ordered that GCL pay the sum of £200,000 to the Claimants so long as there was no objection from the liquidator of SGC. However, there does appear to be an objection from the liquidator. He does not accept that the sums are referable to premium on unauthorised bonds; see his witness statement dated 24 July 2008. Thus, whilst a claim to the remaining sum held by GCL may well succeed as against the liquidator of SGC, the pursuit of such a claim cannot fairly be described as normal and straight forward.

36. The same applies to the suggestion that the Claimants have failed to mitigate by recovering a sum of about £323,500 said to be held by Templeton. Solicitors for Templeton have denied that they retain any premium on unauthorised bonds and proof that they do is likely to be very difficult. Indeed, counsel for Mr. Higgins acknowledged that it was difficult to say that a claim against Templeton would be normal and straight forward.

37. If any of these suggested courses of action were normal and straight forward steps to take in mitigation of the Claimants' losses one would have expected that they would

have been pleaded before the trial and included in the list of issues to be resolved in the trial but they were not. They have every appearance of having been thought up after I delivered judgment.

38. If any of these arguments were to be pursued it seems to me that it would necessary to recall both factual witnesses from the Claimants and the expert accountant. That would be unfair to the Claimants who were entitled to assume that all issues of substance had been identified for the trial. It would also be contrary to the public interest that there should be finality in litigation. I have asked myself whether it would be unfair to Mr. Higgins not to permit him to raise these arguments now. I have concluded that it would not be unfair because the arguments have no realistic prospects of success. Making the broad merits-based judgment referred to by Lord Bingham I have therefore concluded that it would be a misuse or abuse of the court's processes to allow Mr. Higgins or any other defendant to raise these matters now when they could have been raised and determined in the trial earlier this year.

39. Issue 6 related to reinsurance but is not pursued and I need not say anything about it.

Issue 7: On the role of Peter Smith:

7.1 Did he fail to exercise care in protecting the interest of the Claimants as alleged ?

7.2 If so, does this failure represent a break in the chain of causation ?

40. At the trial several issues were raised in connection with Mr. Smith; see paragraphs 99 and 120 of the judgment. I gave detailed consideration to them and determined them; see paragraphs 121-141. It was not argued that Mr. Smith's failure to exercise care in protecting the interests of the Claimants was a break in the chain of causation running from the fraud. It seems to me that this argument has been developed since I gave judgment. Moreover, I regard it as an argument doomed to fail. Even if one assumes that Mr. Smith managed the binding authorities in a careless manner and in a manner of which his superiors would not have approved it is wholly unrealistic to suggest that a person who, on my findings, had conspired to defraud the Claimants, can say that the negligent failure of the Claimant's employee to protect the interests of the Claimants had such causative potency that it obliterates the causative potency of the underlying fraud. The negligence of the employee may be a cause of the Claimant's losses but, in the case of fraud, it would be contrary to common sense to say that it breaks the chain of causation from the underlying fraud so that it becomes the only cause of those losses.

41. I have therefore concluded, essentially for the same reasons that I have given in relation to the arguments on mitigation, that it would be a misuse or abuse of the court's processes to allow Mr. Higgins or any other defendant to raise this issue of causation now when the issue could have been raised and determined in the trial earlier this year.

42. Issues 8 and 8A relate to contributory negligence and are no longer pursued, at least before me.

Issue 9: On Curzon: Should Markel only be entitled to recover the element of the bond claim that was unlawfully in excess of the SGC binder (ie the balance above the £1m authority under the binder)?

43. There were other sub-issues under Issue 9 but they need not be set out. As explained in oral argument this was another mitigation argument. It was said that Templeton was obliged to indemnify Markel in relation to sums over £1m. on the Curzon bond. Reliance was placed, in particular, upon a statement by Mr. Maule dated 26 January 2007 which was in evidence at trial. Mr. Maule was a claims manager at Templeton between 2003 and 2006.

44. However, in the course of my judgment I found that the bonds said to have been issued by Templeton were "bogus bonds" produced so that auditors of SGC might be persuaded that the exposure of Markel and QBE/Amalfi was within the agreed limits; see paragraphs 242-258, in particular paragraphs 248 and 253. In those circumstances there is no basis upon which it can be asserted that Templeton had an obligation to indemnify Markel in relation to the Curzon bond. Such assertion is inconsistent with my findings. The Defendants are estopped *per rem judicatam* from making that assertion.

45. I must therefore reject the contentions of Mr. Higgins in issue 9. The issue also asks whether the settlement of the Curzon claim was unreasonable and unnecessary. On the material which has been placed before the court it was both reasonable and necessary. The evidence of Mr. Stovin has not been tested by cross-examination but since the Defendants have not suggested any reason why the settlement might be unreasonable cross-examination would serve no purpose.

46. Issue 10 I have already dealt with.

47. There remained, in connection with the Markel claims, a number of issues concerning particular bonds.

48. Issue 11, which related to on demand bonds, was not pursued. It was common ground that these were unauthorised and that Mr. Higgins was liable in respect of them. Mr. Williams would only be liable in respect of them if he signed them.

49. Issue 12, which related to the Sun Opta bond, was not pursued. It was common ground that it was unauthorised and that Mr. Higgins was liable in respect of it. Mr. Williams would only be liable in respect of it if he signed it. However, Mr. Williams contended that Markel were indemnified in respect of this bond by a Company Counter Guarantee dated 11 October 2005. This therefore appears to be a further mitigation argument. It was not raised at the trial. I consider that it cannot be pursued for the same reasons that I have given in relation to the other mitigation arguments.

50. Issue 13, which related to the WWA Holdings bond, was not pursued. It was common ground that it was unauthorised and that Mr. Higgins was liable in respect of it. Mr. Williams would only be liable in respect of it if he signed it.

51. There were then a number of issues which related to the QBE/Amalfi claim.

52. Issue 14: Amalfi has no proven claims.

53. Issue 15: This raises the causation argument on Mr. Smith which I have determined cannot be pursued. It also raises the contributory negligence point which is not pursued, at least before me.

54. Issue 16: This raises a particular causation point with regard to the Canadian bonds and Mr. Smith's acts or omissions. It cannot be pursued for the reasons I have already given. In so far as it asks whether the settlement of the Canadian bonds claim was reasonable, nothing emerged from the cross-examination of Mr. O'Shea at trial to suggest that it was not reasonable. I find, in so far as I have not already done so, that the settlement was reasonable.

55. Issues 17 and 18 raise again the question whether the Claimants have suffered a loss in respect of those bonds which have not given rise to a claim which has been settled. I have already determined that question.

56. Issue 19, which related to the Gala bond, was not pursued. It was common ground that it was unauthorised and that Mr. Higgins was liable in respect of it. Mr. Williams would only be liable in respect of it if he signed it.

57. Issue 20 related to the IWA bond. It was suggested, based upon Mr. Williams' evidence, that this was a bond with which Mr. Higgins had nothing to do and should therefore not be liable in respect of it. However, counsel for QBE/Amalfi referred me to Mr. Higgins' own evidence to the effect that he authorised the bond and to a passage in Mr. Williams' cross-examination to the same effect. I consider that the conspirators and Mr. Williams are liable in respect of this bond.

58. Issue 21 related to the Energybuild bond. I referred to this bond at paragraph 123 of my judgment. The suggestion was that QBE's decision to sign the bond broke the chain of causation flowing from the initial writing of this bond in breach of the financial limits. As with other such arguments on causation I consider there is no merit in it and that it cannot now be pursued. Mr. Williams said that it was clear from the bond that it was for a sum in excess of the limits. But, as I said in paragraph 123 of the judgment, the debate focused on the signatory and not on the amount. There was no clear evidence that Mr. Smith or anyone else at QBE/Amalfi appreciated that SGC was ignoring the limit in the binding authority.

59. Issue 22 related to the Admiral Harding bond. It is agreed that it was an "on demand bond" and that it was unauthorised. The breach of limits was not ratified or accepted by QBE/Amalfi; see paragraphs 91-98 of my judgment. Mr. Williams said that it was a Customs and Excise bond but as an on demand bond it was excluded from the binding authority.

60. Issue 23. There is no claim in relation to the Japanese Knotweed bonds.

61. In the light of my decisions on these issues of law and principle it should be possible for the parties to agree the terms of an order setting out the monetary, and other relief, to which the Claimants are entitled.