

**CITY OF LONDON LAW SOCIETY ("CLLS") COMMERCIAL LAW COMMITTEE
(THE "COMMITTEE")**

Minutes of the Committee Meeting held at 1:00 p.m. on 7 March 2024 at the offices of RPC, Tower Bridge House, St Katherine's Way, London E1W 1AA (the "Meeting")

- Present:**
- Mr. Oliver Bray, RPC ("**OB**") (Chairman)
 - Mr. Jonathan Davey, Addleshaw Goddard ("**JD**")
 - Mr. Richard Marke, Bates Wells ("**RM**")
 - Mr. Anthony Woolich, HFW ("**AW**") (Zoom)
 - Ms. Megan Paul, CRS ("**MP**")
 - Mr. Stephen Sidkin, Fox Williams ("**SS**")
 - Mr. Richard Brown, Travers Smith ("**RB**")
 - Ms. Jo Farmer, Lewis Silkin ("**JF**")
 - Mr. Kevin Hart, City of London Law Society ("**KH**") (Zoom)
 - Mr. Jeremy Sivyver, Bishop & Sewell ("**JS**") (Zoom)
 - Mr. Mark Dewar, DLA Piper ("**MD**")
 - Ms. Julia Hemmings, Baker McKenzie ("**JH**")
 - Ms. Helen Brown, Baker McKenzie ("**HB**")
 - Mr. Richard Shaw, Bryan Cave Leighton Paisner ("**RS**")
- In attendance:**
- Mr. Edward Warren, RPC (minutes)
- Apologies:**
- Ms. Jane Finlayson-Brown, Allen & Overy ("**JFB**")
 - Mr. Rohan Massey, Ropes & Gray (Secretary) ("**RBM**")
 - Megan Paul, Charles Russell Speechlys ("**MP**")
 - Mr. Anthony Woolich, HFW ("**AW**")
 - Ms. Jo Farmer, Lewis Silkin ("**JF**")

1. Welcome from the Chair (OB)

OB gave a short introduction and welcome.

2. Minutes of last full meeting and other comments (September 2023) (OB/SS)

- 2.1** No comments on the minutes of the last meeting. Minutes from the last meeting were approved.

3. Apologies (SS)

Apologies from the individuals above had been received.

4. CLLS update / AI committee link (KH)

KH updated the committee on governance matters. KH noted that CLLS have established "bridges", whereby a member of the main CLLS committee is attached to each of the CLLS specialist committees. The aim is to increase communications between the specialist committees and the main CLLS Committee.

KH noted that Salome Coker ("SC"), who had volunteered to be this committee's bridge contact on the main CLLS Committee had intended to attend this meeting, so would attend a future meeting. KH then provided some information on SC and her legal background.

KH provided an update on the revised procedure guide stating that it is near finalisation. KH noted that the update was not expected to be controversial. It outlined the role and membership of the committees. The big change has come relating to those firms which could be corporate members but who choose not to be becoming subject to a limit of 2 committee members per firm across all available CLLS speciality committees. This will not be retrospective so will just apply to the new memberships.

RM requested some clarification on the geographical catchment area for the committee. KH stated that the catchment area is one mile in any direction from the Bank of England as well as Canary Wharf.

OB said that he wished to publicly thanked SS for all his work on the procedure guide.

SS asked KH to clarify the rationale behind the limiting of non-corporate members in the specialist committees of CLLS, and whether this is a drive to gain more corporate members. Increasing corporate membership is one of the rationales, but not the only rationale behind the changes.

OB and KH updated the committee on the recent CLLS annual banquet that took place at the beginning of February at Mansion House. Both recalled the event as being a great success and as being a good opportunity to increase the profile of CLLS within the legal community, including by bringing clients.

Next Steps: Ensure SC has the dates for upcoming committee meetings.

AI Committee

The CLLA AI Committee has now been established and had its first meeting just before Christmas. There is an AI insurance event set to take place on the 27 March, which will look at AI and its impact on the insurance market. It was highlighted that this committee should help to publicise the event.

With reference to the above comments on committee "bridges", OB raised whether any committee members would like to offer to be the bridge with the new AI committee. JH and JFB both offered to take on the role.

OB mentioned work with a current client on AI and how this could be a potential seminar topic going forward. KH noted that this could also be a joint seminar / event with the AI committee.

RM highlighted that the Society for Computers and Law (SCL) have put out a precedent bank of standard clauses on contracting with AI. Multiple members noted the usefulness of the precedent bank as a reference point.

5. LinkedIn page (SS)

OB updated the committee on the launching of the CLLS LinkedIn page, and showed the slides attached as **Annex 1**. OB thanked RB for Travers Smith's contribution to the first article. OB discussed the article and how the committee have worked to create posts that will engage users.

OB went through the scheduling table of upcoming topics. A key point of the posts is to attract the future generation of CLLS members, and to encourage senior associates in particular to engage with article writing. Committee members then discussed a list of potential senior associates who would be good to add to the list of contributors. These include: Eleanor Harley (RPC); Rich Offord (Travers Smith) [both Eleanor and Rich are the core participants so far], Rachel Bell (CSR), Kate Jeffery (BCLP), and Lucinda Bailey (Addleshaw Goddard) and Leela Fair (Bates Wells).

OB discussed how the page has already grown significantly over the past three weeks since its inception. KH stated that there is already a good start in terms of its outreach and followership.

The committee is interested to see how far this can go and are aware that consistency and longevity are key here. The committee is aiming to post one article a week. OB thanked RS for his support of the work on the page so far.

Next Steps: Committee members should gather together a list of associates who will draft future articles and encourage their involvement in the posts. Discussion of the LinkedIn page should be kept as a recurring agenda item on these committee meetings.

6. Commercial Committee Seminar Update (SS)

OB stated he hoped MD and JD could convene to get this going, and OB himself will step back from the process. KH would also like to be kept in the loop about the progression of seminar topics and dates. KH highlighted how the CLLS training committee are leveraging their website and LinkedIn platforms to good effect, and how this committee may employ similar tactics to grow to showcase events.

JD and OB emphasised the opportunity for the CLLS and committee members' firms to work collaboratively on projects and that the key is the continued growth of CLLS membership. We should consider the committee's impact on the overall commentary in the commercial legal sphere, and how we can engage members of our respective firms. We should also reinforce the idea that this is for the next generation (as much as it is for current members), which links back to the point about engaging senior associates to participate in article writing.

Action points: Invite relevant senior associates to the drinks event on 16 November at Fox Williams. Begin confirming dates for seminars.

7. Interesting cases and/or practice points (JD/ALL)

7.1 JD discussed the following cases:

- *Amathus V EAGK* [2023] EWHC 2312:
 - **Outcome:** The Court rejected an application to strike out a claim in tort alleging a duty of care owed to the claimants, which included the buyers and sellers of the entire share capital of a company, by the defendant, an audit company who had prepared an erroneous Completion Certificate pursuant to a Share Purchase Agreement (the SPA), despite the existence of a "Bannerman" disclaimer.
 - **Case details:** In August 2015, the Buyers agreed to acquire all shares of a company. The defendant, a firm of accountants, was hired by the Buyers to conduct due diligence and prepare financial documents. The defendant also audited the company's accounts and issued a disclaimer limiting its responsibility to the company and its members. Later, the Buyers alleged fraud had inflated the company's balance sheet, causing them to overpay by £400,000. They claimed the defendant breached contractual and common law duties by failing to detect the fraud in their audit work and preparation of financial documents. The defendant sought to dismiss the claim or obtain summary judgment. The court dismissed the claim in contract and granted summary judgement in favour of the defendant. In relation to the claim in tort, the court accepted the claimant's submissions that showed continuing communications between the parties after the date of the audit engagement illustrative of an ongoing commercial relationship. The court dismissed the application for summary judgement on this basis.
 - **Interesting points flagged by JD:** The accountant may end up being liable but it is important to note that we are not at the judgement stage in this case. The question for the court was whether the auditor's standard form disclaimer operated as expected so as to exclude liability. From this initial hearing it appears to be arguable that the actions of the accountants, including direct communications with the purchasers and the purchasers solicitors could override the disclaimer.
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7.2 SS discussed the following case:

- *Motoring Organisation Ltd v Spectrum Insurance Services Ltd* [2024] EWHC 261:
 - **Outcome:** The court found the existence of fiduciary duties in the context of a commercial relationship where the claimant had trusted the defendant to act exclusively in the claimant's interests when exploiting the sales opportunity because of the oral agreement entered into between the parties.
 - **Case Details:** The involved companies, previously linked through shared directors, discussed potential collaboration from 2015 to 2019, including a proposed sale of Spectrum's majority shares to The Motoring Organisation (TMO). TMO introduced

Spectrum to business opportunities such as extended warranty cover for SsangYong car purchasers and a list of dealerships for potential insurance coverage. Although TMO would have represented Spectrum for business underwritten by Acasta in the merger plan, issues existed between TMO and Acasta. The merger failed, leading to a dispute. Spectrum, however, capitalized on opportunities presented by TMO's introductions. In a liability-focused trial, TMO alleged Spectrum breached contract, fiduciary duties, confidentiality, and was unjustly enriched regarding the SsangYong business and the 2020 customers. On the breach of fiduciary duties point, the judge ruled that whilst it is unusual for such duties to arise in the context of a solely commercial relationship, the defendant in this case was precluded from putting his own interests ahead of the claimant.

- **Interesting Points:** The case is an interesting interpretation of fiduciary duties. Here the defendant had been entrusted to act purely for the claimant's benefit because of the oral agreement between the parties which was agreed in the context of potential collaboration. This is an unusual decision that points towards the existence of fiduciary duties outside of the established categories of fiduciary relationship.
- *Aston Martin MENA Limited v Aston Martin Lagonda Limited* [2023] EWHC 3285:
 - **Outcome:** The court decisively dismissed the claim that defendant breached duties of good faith after the termination of its agreement with claimant, ruling that only certain express duties applied during a Transitional Period, rejecting any broader implied duties, and ultimately finding the defendant's actions to be in good faith and fulfilling its obligations.
 - **Case Details:** The Defendant, Aston Martin Lagonda (Lagonda), renowned for manufacturing Aston Martin cars, appointed the Claimant, Aston Martin Middle East and North Africa (AMMENA), as its exclusive Distributor for the Middle East and North Africa under a long-term agreement until 2059. Simultaneously, they entered an Agency Agreement, with Lagonda acting as AMMENA's agent for distribution operations. The Agency Agreement ended in April 2021, with a transitional phase before AMMENA resumed distributor responsibilities in October 2021. Both parties filed debt claims based on the Agency Agreement. AMMENA sought unpaid Manager Committed Minimum Profit (MCMP), while Lagonda pursued indemnification for losses from terminated Retail Dealers in Bahrain and Saudi Arabia. The court dismissed AMMENA's MCMP claim for 2021, stating there was no obligation for Lagonda to pay during the transitional phase. AMMENA conceded Lagonda counterclaim for Bahrain but disputed the portion concerning Saudi Arabia, which the court rejected.
 - **Interesting Points flagged by SS:** The central aspect of the case revolved around AMMENA's claim that Lagonda violated duties of good faith during the Transitional Period after terminating the Agency Agreement. However, the Court firmly dismissed this claim:
 - i. The Court determined that only specific express duties of good faith in the Agency Agreement applied during the Transitional Period, rejecting AMMENA's argument for broader implied duties.

- ii. After reviewing relevant recent precedents, the Court concluded that AML was not required to consider AMMENA's financial interests in its decision-making processes.
- iii. Additionally, the Court examined AMMENA's nine allegations of breach in detail, rejecting each one based on evidence presented. It concluded that Lagonda had acted in good faith throughout and fulfilled all obligations.

8. AOB (OB)

OB thanked all attendees for another successful meeting.

Next meeting

Thursday June 20th – 1pm – Hosted by Helen Brown & Julia Hemmings @ Baker & McKenzie

Thursday September 19th – 1pm – Hosted by Jo Famer @ Lewis Silkin

Thursday November 14th – **5.30pm** November – Hosted by Megan Paul @ CRS