



# Bingham's Corner

TONY BINGHAM

Is an Arbitrator, Mediator and Barrister.  
As well as that, Tony is a renowned writer,  
commentator and lecturer.



**CAN YOU CLAIM FOR ALL THE HASSLE TIME SPENT SORTING OUT A PROBLEM CAUSED BY SOMEONE ELSE? WELL, A CASE IN THE SCOTTISH COURTS MAY PROVIDE AN ANSWER**

## TAKE THIS FOR YOUR TROUBLE

**"IF A SUPPLIER COMMITS A BREACH OF CONTRACT AND THE MANAGING DIRECTOR HAS TO SPEND TIME ON REMEDIAL MEASURES, THAT IS A LOSS"**

I took my black, nicely cut, gabardine trousers to Sketchley dry cleaners. What came back was a pair of baggy, dark grey pants with truncated inside leg and outsize waistline. Sketchley had lost my trousers. The hassle began. The supervisor, eventually, instructed me to get a new pair. Sketchley would pay. I did; it did. I pondered how much the adventure had cost me. True, the cheque for £99 covered the garment. But what about all my hassle time – the phone calls, the claim form, the trundling to the shop, the petrol ... Must have come to two, perhaps three hours. Would Sketchley pay for three hours at a barrister's modest hourly rate?

This brings me to my point: is hassle time payable when you and the other party to the contract get at odds? Is the management time in trying to sort out a breach of contract claimable?

Take for example a couple of problems run into by Euro Pools. It designs and installs all that ironmongery that heats, pumps and filters swimming pool water. We bless Euro Pools after half a dozen toddlers have relieved their bladders in the shallow end. The technical gubbins include steel cylinders shaped like missiles. The missile lining for some of its work came adrift, it is said. Goodness knows what the toddlers had been drinking.

Euro says the tank supplier, Clydeside Steel Fabrications, is to blame. That remains to be seen. Meanwhile it is calling for compensation for the time spent by the managing director and his staff in dealing with the problem – staff are diverted from their projects, the phones get hot, the fax melts ... But, then again, the firm was going to pay their salaries whatever they did, so it hasn't lost money. Or has it?

## Bingham's Corner Cont...

Euro Pool's managing director, it says, spent 20 hours organising and co-ordinating the tank repairs. It wants £55 an hour for him, plus 60p a mile for travel. Similarly, his colleagues went hither and thither and it all cost. The defendant says none of these staff management claims get off the ground.

In *Euro Pools plc vs Clydeside Steel Fabrications Ltd* (January 2003, Scottish Court of Session), the argument run is best explained in the example of the claim for the managing director's time. Clydeside said that there was no suggestion that Euro's managing director had been deflected from other remunerative duties; his salary would be paid by the company whatever work he did, so no extra costs were incurred. In any case, the law of damages explains that the alleged disruption to Euro's business for which the managing director's time is claimed is not a direct result of the alleged defective tanks. If anything, it was a remote loss and not something the supplier could ordinarily have foreseen when it entered into the contract.

Euro said in reply that its claim was based on the disruption to its business as a whole, measured by the cost of staff time. Its claim was for the cost of trouble and inconvenience.

The judge usefully recapped on the law of damages in Scotland. Additional works caused by a breach of contract constitute a loss. The role of the managing director is a little obscure. Has he had to do additional work? The judge could see that someone on a fixed salary will not be paid any more because of the problem. There is no direct cost to the employer as a result of the rectification work. In reality, though, there is a loss. A managing director will normally be expected to devote the whole of their working time in the affairs of their employer – searching for new markets, new products, and so on. So, said the judge, if a supplier commits a breach of contract and in consequence they are required to spend time supervising remedial measures, that time is lost to the other tasks. That, said the judge, is a loss to the company because it has been deprived of the employee's services.

As for such a head of claim being too remote, this too was rejected. Modern commercial conditions suggested it was inconceivable that the consequences would not be known.

As for Sketchley, having lost the trousers, it might now lose its shirt!

