

Jon Lang Mediation

Professional Negligence – mediation examples

Accountants/Tax advisors

an accountants negligence action arising out of tax advice given on the structuring of a share option plan;

a professional negligence action against a firm of accountants arising out of a film sale and leaseback scheme falling within the Disclosure of Tax Avoidance Schemes (DOTAS) regime, subsequently challenged by HMRC resulting in the issue of PPN's, raising issues as to the precise scope of advice given, due diligence and level of acceptable risk;

an accountants negligence action arising out of tax advice given on the purchase of a luxury yacht.

a negligence action brought against accountants in relation to the setting up of a share option plan and the tax consequences thereof;

a claim by liquidators against various professional services firms arising out of the collapse of a litigation funding scheme;

a multi-party mediation of a dispute involving claims against various professional services firms in four separate pieces of litigation arising out of the failed rescue of an insolvent company;

a professional negligence action against tax advisors arising out of alleged negligent advice given on the financial structuring of a business sale;

Architects

an architects negligence action brought by a prime contractor on a large inner city development project;

an architects negligence action arising out of the development of a property and, in particular, the laying of foundations (with the builder brought in as third party), the

primary allegation being that the original specification prepared by the architect and subsequent instructions issued by him, were negligent;

a professional negligence action against an insolvent architect and a party wall surveyor raising various issues as to areas of responsibility in relation to the scope of a party wall award made under the Party Wall etc. Act 1996;

Barristers

a claim against barristers arising out of the management of various inter-related arbitration claims;

a claim against a barrister arising out of a failed tax scheme;

a claim against a barrister arising out of an alleged under-settled prior case;

Brokers

a negligence action against insurance brokers for failure to make timely notification of a claim to professional indemnity insurers resulting in insurers declining the claim for late notification;

Consultants/Service providers

a claim against planning consultants by a waste management company arising out of refusals of planning consent and associated delay;

a professional negligence action against a stock auditing firm retained by a finance company as part of its oversight/risk management of companies to whom finance had been advanced to ensure that stock positions were accurately reported;

Construction related

a negligence action concerning the foundations of a major structure with negligence alleged against various parties including geotechnical, soil and environmental engineers;

a dispute arising out of the construction of a harbour involving allegations of negligent design, misinterpretation of geological data concerning strength of strata, misinterpretation of borehole logs, the mediation raising a number of issues around

wave modelling analysis, appropriate 'fill' for pre-cast concrete slabs given wind and wave strength etc;

a three-party dispute between a developer, an insured architect and uninsured contractor concerning construction works at a number of properties, with the sharing of responsibility between architect (as designer and contract administrator) and contractor being in issue, as well as mitigation in relation to a proposed remedial scheme, the discussion focusing on whether the true cause of loss was workmanship or design related, certain RIBA contract conditions and the feasibility or otherwise of a proposed remedial scheme;

Financial advisors/Corporate advisors

a professional negligence action against the professional indemnity insurer of an (insolvent) corporate advisor retained to provide services in connection with the raising of funds from private investors (bondholders) in the expectation of a return from property development activities, most of whom lost their investment, with debate focusing on scope of duty, including continuing duties and the applicability/enforceability of a limitation of liability clause;

a claim against independent financial advisors;

a claim against a bank by a high net worth individual claiming that he was negligently advised to enter into certain investments;

a multi-party professional negligence action against financial advisors and solicitors arising out of a claim by a high net worth individual for advice given in relation to the restructuring of financial affairs in the light of change of domicile and estate planning;

Solicitors

A solicitors negligence action arising out of the sale of land and the adverse impact of various overage provisions;

a multi-party professional negligence action against various legal advisors arising out of advice given to a company and trustees of a pension scheme in relation to its closure to future accrual of final salary pension benefits, raising issues of fetters on power of amendment, proper valuation of the pension fund to assess loss e.g. buy-out basis, technical provisions basis, etc;

a solicitors negligence action arising out of a time-barred personal injury action;

a solicitors negligence action concerning the drafting of an earn-out provision in an acquisition agreement;

an action against a solicitors practice in which negligence in the settlement of an ancillary relief claim was alleged;

a multi-party professional negligence action arising from alleged shortcomings in a procurement process commenced by an OJEU Notice, which ultimately led to a claw-back of a proportion of EU funding earlier awarded;

a group claim against a firm of solicitors following declinature of PI cover, the mediation focusing on alleged dishonesty and the application of the SRA's minimum terms and conditions, in particular, the dishonesty/fraud exclusions and also the aggregation of claims provisions;

an action against a firm of solicitors for errors made on a property transaction leading to disputes between a second wife and children of a deceased (and first wife), both claiming against the firm of solicitors and each other given the uncertainty as to whether the property was held as joint tenants or tenants in common, and the resulting issue of whether the property passed by survivorship to the second wife (leaving an insolvent estate) or the deceased's property interest formed part of the estate. (There were also claims under the Inheritance (Provision for Family and Dependents) Act 1975);

a claim brought by a protected party by a litigation friend against a firm of solicitors involving allegations of taking instructions from an individual lacking capacity to understand a particular financial transaction, raising various issues including under *Masterman-Lister v Jewell* and *Dunhill v Burgin*, and also under s61 Trustee Act 1925;

a professional negligence action against a law firm relating to a property transaction and in particular the requirements under the Electronics Communications Code (set out in Schedule 3A Communications Act 2003) and its interaction with the Landlord & Tenant Act 1954 (and Digital Economy Act 2017) when seeking vacant possession from telecommunications operators;

a professional negligence action against a law firm in connection with the setting up of a disabled persons trust, its conversion to a relevant property trust on death of a beneficiary and the IHT ramifications of the arrangements, including the availability of the spousal exemption;

a number of actions against firms of solicitors arising out of allegedly 'under-settled' claims;

Valuers/Surveyors

a claim brought against a valuer by an asset-based lender for alleged negligence in valuing the gross development value of a commercial property and surrounding land, including issues such as the 'bracket' of non-negligent acceptability, causation and reliance, and contributory negligence (e.g. failure to follow internal lending guidelines on LTV and generally);

a pre-action mediation arising out of the alleged negligence of a valuer in advice provided in connection with a hearing before the Leasehold Valuation Tribunal for determination of the premium payable on a leasehold extension under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993;

a claim brought by a lending bank against valuers for overvaluation of land and its development potential;

an action brought by a bank against a monitoring surveyor arising out of alleged negligence in the monitoring of a failed property development venture, with debate focusing on RICS guidance on project monitoring, reliance, causation, quantum (SAAMCO) and contributory negligence (in relation to initial lending decisions and acceptable LTC and LTCDV ratios);

a multi-party dispute arising out of the development of a brown field site involving various lenders who were party to a master participation agreement supplying development finance to a development company which subsequently went in to receivership, with claims against and between guarantors, allegedly negligent valuers and quantity surveyors;

several valuer negligence claims involving argument over the proper application of the SAAMCO principles;

an action brought against a party wall surveyor appointed under s10(1) of the Party Wall etc. Act 1996 involving an analysis of duties (and their interaction) within the scope of the statutory appointment and alleged duties outside of the statutory appointment;

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