



PUMP COURT  
CHAMBERS

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**CASE LAW UPDATE BY ELEANOR BRUCE**

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## RECENT DEVELOPMENTS IN THE WORLD OF CREDIT HIRE

***Pattni v First Leicester Buses Ltd***  
[2011] EWCA Civ 1384

The issue in this appeal was the Claimant's entitlement to interest on credit hire charges for the period between the end of the hire of the replacement car and the date of the judgment finalising the claim.

Pattni hired a car on credit terms after his vehicle was damaged in an accident. At trial, his hire claim was reduced to reflect a lower daily rate of hire and a shorter period of hire. The hire agreement required him to pay contractual interest on any outstanding hire charges from the end of the hire period until the charges were paid after settlement of the claim. The Claimant sought to recover a sum representing the contractual interest which had accrued on those hire charges awarded by the court.

The Claimant advanced three arguments to support a recovery of interest:

- i) A contractual entitlement under the agreement;
- ii) An award of interest on the spot rate or Basic Hire Rate (BHR) i.e. money the Claimant would have

been deprived of if he had paid the charges;

- iii) An award pursuant to s69 County Courts Act.

The Court of Appeal, with Aikens LJ giving the lead judgment, rejected all three arguments. The main argument of contractual entitlement was rejected on the basis that the interest charge constituted the cost of an "additional benefit" to the Claimant, namely the delaying of payment beyond the date it would otherwise have been due, and in light of the analysis in *Dimond v Lovell (2002)* that was not recoverable by a claimant who was not "impecunious".

The Court also rejected the suggestion that the interest should be recoverable since this was a subrogated claim because of a payment made by an Insurer: "*Subrogated Insurers cannot be in a better position to recover damages than the nominal claimant*".

The latter two arguments were rejected on the basis that the Claimant had not made any payment, and therefore had not been kept out of any money.

The decision is a welcome clarification of the law on this point and it is

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## RECENT DEVELOPMENTS IN THE WORLD OF CREDIT HIRE

likely that this judgment will bring an end to litigation over interest on hire charges.

### ***Darren Bent v Highway Utilities Construction & Allianz Insurance*** [2011] EWCA Civ 1384

This was the second appeal to the Court of Appeal in a claim by England footballer, Darren Bent, for the cost of hiring an Aston Martin DB9 replacement vehicle on credit for a period of 94 days in 2007 for the total sum of £63,406.90.

In this long running matter, in 2010 the Court of Appeal ordered a retrial on one issue: determination of the spot hire rate of a reasonably equivalent vehicle. HHJ Plumstead determined this to be £396.00 applying the principles stated by Jacob LJ in the Court of Appeal:

*"... one must not be hypnotised by any supposed need to find an exact spot rate for an almost exactly comparable car. Normally, the replacement need be no more than in the same broad range of quality and nature as the damaged car. There may be a bracket of spot rates for cars rather "better" and rather "worse". A judge who considered that bracket and aimed for some sort of reasonable average would not be going wrong."*

Accident Exchange appealed that decision seeking determination of the proper method for calculating the spot rate, or BHR (Base Hire Rate) as Aikens LJ has now christened it.

The Court of Appeal summarised the principles a judge has to apply to find the BHR:

1. The starting point in any case in which credit hire rates are claimed, is to determine whether or not it was reasonable for the claimant to hire a replacement vehicle in any event. If not, no claim in respect of hire charges can be sustained;
2. If it were reasonable for the claimant to hire a vehicle, the court must then go on to consider if it were reasonable to hire the particular type of car chosen at the particular rate agreed. The court only goes on to consider the issue of the "impecuniosity" of the claimant if it is

satisfied that both the type of vehicle **and** the level of hire charges are reasonable;

3. If the claimant is not impecunious then the task of the judge is to assess the BHR in respect of the vehicle hired, and not to aim for the higher end of a range of average BHRs for similar vehicles;
4. The best evidence of the relevant BHR is that relating to the actual type of vehicle hired at the time, but the court is entitled to take into account indirect evidence of the BHR of similar vehicles at different times, in appropriate cases (thereby upholding the authority of the Court of Appeal in the first Bent Appeal).

The Court did not believe that Jacob LJ intended to suggest that *"some sort of reasonable average"* for cars rather *"better or worse"* would produce the correct basic hire rate.

HHJ Plumstead had erred in concentrating on 2009 rates rather than using the 2007 rates that Steve Evans of Accident Exchange provided in evidence for the Aston Martin DB9 and the Defendant had not proved that the BHR was less than the credit rate. Therefore the Claimant was able to recover the credit rate, subject to the question of whether reduced rates should be applied to reflect an extended period of hire.

The Court rejected the Claimant's argument that it was wrong to apply a 28 day hire rate. It was clear in this case the repair time would exceed 28 days. A reduction of 12% was applied to the rate to reflect the difference between the rates.

The court in future will no longer be seeking to assess a "spot rate" at the higher end of a range average but will determine a basic hire rate by finding one objectively assessed figure referable to the type of reasonable vehicle hired.

**MARK ASHLEY**

# Newsletter

## TRIPPING THROUGH A STRAITENED 2011

Read on if you seek an overview of the law as it relates to tripping on public highways, seen through two appeals to the higher courts in 2011.

First, the principal modern authority on tripping cases, ***Mills v Barnsley Metropolitan Borough Council*** [1992] PIQR P 291. I will not rehearse sections 41, 58 and 329 of the Highways Act 1980 herein (ed. would have a fit), but have them to mind/hand.

On Wednesday 1 March 1989, Mrs Mills tripped and fell when walking along Market Street, Barnsley. She was wearing relatively high-heeled shoes. The area consisted of paved slabs broken up with paving bricks. The corner of one of the paving bricks had broken away. The heel of Mrs Mills' shoe became caught in the gap created (some 2" at its widest point and some 3/4" deep). She fell, sustaining injury.

The Defendant Council was the highway authority. The highway was inspected once a month. Had the missing corner of the brick been noticed it would have been treated as a minor defect. Judgment was entered against the Council at first instance.

The following extracts are from Lord Justice Steyn's judgment (as he then was):

"The principles laid down are clear. In order for a plaintiff to succeed against a highway authority in a claim for personal injury for failure to maintain or repair the highway, the plaintiff must prove that:

1. the highway was in such a condition that it was dangerous to traffic or pedestrians in the sense that, in the ordinary course of human affairs, danger may reasonably have been anticipated from its continued use by the public;
2. the dangerous condition was created by the failure to maintain or repair the highway; and
3. the injury or damage resulted from such a failure. Only if the plaintiff proves these *facta probanda* does it become necessary to turn to the highway authority's reliance on the special defence under section 58(1) of

the 1980 Act, namely, that the authority had taken such care as in all the circumstances was reasonably required to secure that the particular part of the highway was not dangerous to traffic. On this aspect the burden rests on the highway authority.

I do not consider that it would be right to say that a depression of less than one inch will never be dangerous but one above will always be dangerous. Such mechanical jurisprudence is not to be encouraged. All that one can say is that the test of dangerousness is one of reasonable foresight of harm to users of the highway, and that each case will turn on its own facts.

...

In the same way as the public must expect minor obstructions on roads, such as cobblestones, cats eyes and pedestrian crossing studs, and so forth, the public must expect minor depressions ... there was no evidence of any other tripping accident at this particular place although thousands of pedestrians probably passed along that part of the pavement while the corner of the brick was missing. Nor is there any evidence of any complaint.

...

It is important that our tort law should not impose unreasonably high standards, otherwise scarce resources would be diverted from situations where maintenance and repair of the highways is more urgently needed. This branch of the law of tort ought to represent a sensible balance or compromise between private and public interest."

***Kent County Council v Josie Lawrence*** [2011] EWHC 1590 (QB)

On Tuesday 7 November 2006, Ms Lawrence was walking along a pavement in Newbury Avenue, Maidstone when she tripped over a manhole cover, sustaining injury. The extent of the protrusion was at least 15mm. The Defendant Council was the highway authority. Judgment was entered against the Council at first instance.

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## TRIPPING THROUGH A STRAITENED 2011 CONTINUED

In his judgment Mr Justice Eady made extensive reference to *Mills*. He had the following to add:

“The fundamental question is whether the relevant part of the highway (in this case the metal surround of the manhole cover) was such that it could be characterised as sufficiently “dangerous” to amount to a breach of s.41. It is said that not only must a claimant establish that it was reasonably foreseeable that harm would occur, but that the court also needs to carry out a balance between private and public interests, since the expenditure of public funds on highways has to be prioritised, and the threshold should not be set unrealistically high.”

Referring to the Judge at first instance he said:

“What is not apparent from the judgment is whether he asked himself, or answered, the different question of whether, notwithstanding the undoubted risk of injury from a protruding manhole cover, the Defendant was under a statutory duty to eliminate a risk of that particular type by expenditure from its obviously finite budget. One has to pose, it seems to me, the question whether a risk of that kind is simply something which the local residents have to put up with.”

Eady J then took the Judge at first instance to task as follows. It had not been appropriate for him to ask any of the witnesses what they thought, as opposed to what they saw or did. That was not their function and, in any event, they were not necessarily applying the appropriate tests as laid down in the authorities. The Judge had regarded a contemporaneous work instruction to make the manhole cover safe as some kind of admission as to danger. However, there was clear authority that the fact that work has been carried out does not mean that there was a duty to carry it out. It is a non sequitur. An instruction to “make safe” meant that the risk, such as it was, should be eliminated. It begged the question completely of whether the risk was such as to be categorised, for statutory purposes, as a danger. The inspector’s opinion was not relevant to the issue. Otherwise one would be getting to the point where a highway authority’s legal obligations could be defined not on the basis

of judicial determination, but according to the opinion of one of its own employees.

You guessed it, the Council’s appeal was allowed!

**Dalton v Nottinghamshire County Council** [2011] EWCA Civ 776

On Friday 20 October 2006, Mrs Dalton was walking across a pedestrianised area, The Square, in Beeston town centre at or close to the mouth of an alleyway (known locally as a twitchell) running from The Square towards Broxtowe Town Hall. Mrs Dalton fell on a loose, raised and wobbling paving block, sustaining injury. The Defendant Council was the highway authority. Judgment was entered against the Council at first instance.

The paving blocks (each the size of a traditional house brick) were laid in a herringbone pattern. At the area where Mrs Dalton fell the integrity of the herringbone pattern had been compromised due to the close proximity of four irregularly situated “utility service valves”. The particular block which caused Mrs Dalton to fall was approximately one quarter the size of a complete block. The differential between it and its neighbours was over three-quarters of an inch.

There had been no public liability claims relating to The Square since March 2000. It was classified as a primary walking route and was subject to safety inspections at monthly intervals. The area had been inspected 9 days before and 11 days after Mrs Dalton’s fall, and nothing untoward had been recorded. The defect as claimed would represent a category 1 defect (immediate/imminent hazard) and would prompt an emergency repair within 24 hours.

Again, *Mills* was referred to extensively. In giving judgment Lord Justice Tomlinson said:

“We accept that highway authorities are not guarantors of public safety and that they are rightly sensitive to attempts to impose upon them, and thus upon their hard-pressed council tax payers, a standard of inspection and maintenance which is unrealistic or disproportionate.

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## TRIPPING THROUGH A STRAITENED 2011 CONTINUED

...

It was, we think, a location which attracted the need for particular vigilance in inspection. The reason for this is twofold. Firstly, it was an area ... where small irregularly shaped part blocks had the obvious potential to work loose. Secondly, the twitchell formed the natural route between the Town Hall complex and the pedestrianised shopping area.

...

When walking on a country path or track one can reasonably expect to encounter stones underfoot upon which one may either trip or by which one may be thrown off balance because they wobble or shift. When walking on an urban pedestrian area one must be aware of reasonable height differentials but one does not expect the structure underfoot to be shifting in nature

... We have no doubt that the condition of the block on 20 October 2006 was dangerous in the sense that, in the ordinary course of human affairs, danger may reasonably have been anticipated from the continued use of that area by the public. The block was loose, unstable, wobbling, proud of its neighbours and moreover its height relative to its neighbours was capable of being altered. This was not therefore a case in which the danger lay only in a difference in level between two adjacent surfaces. It was also a block which had the potential to wobble underfoot and cause a pedestrian to overbalance."

One for a claimant, one against. But the references to expenditure from an "obviously finite budget" and "hard-pressed council tax payers" may herald a raising of the paving slab.

**RICHARD TUTT**

## CASE LAW UPDATE

### **SEAN ROBERT DELANEY v (1) SHANE PICKETT (2) TRADEWISE INSURANCE SERVICES LTD (2011) [2011] EWCA Civ 1532**

A car passenger could not claim under the Motor Insurers' Bureau Agreement after he had been injured while in possession of cannabis with intent to supply, as the vehicle was being used in the course or furtherance of a crime within cl.6(1)(e)(iii) of the Agreement. Further, "crime" in that clause could not be read as being restricted to "serious crime"; that would leave the clause with little practical purpose.

### **MARY HARVEY v MOTOR INSURERS' BUREAU (2011) QBD (Merc) (Manchester) (Judge Hegarty QC) 21/12/2011**

It was not appropriate to grant leave to appeal against an arbitrator's decision that the victim of a road traffic accident was not entitled to compensation for personal injury because there was no evidence that the untraced motorist involved had been driving negligently. Appeals under the Arbitration Act 1996 s.69 were only permissible where the arbitrator had made some error of law,

and the arbitrator's decision was, essentially, a factual matter not giving rise to any question of law.

### **MAYNARD v WIGAN METROPOLITAN BOROUGH COUNCIL (2011) CA (Civ Div) (Lloyd LJ, Dame Janet Smith) 21/12/2011**

A judge had not erred in implicitly accepting a witness' evidence as truthful and accurate in holding that a local authority had breached a duty of care owed to a visitor despite not clearly expressing his reasoning and consequent findings.

### **RUST-ANDREWS (Appellant) v FIRST TIER TRIBUNAL (SOCIAL ENTITLEMENT CHAMBER) & ANOR (Respondent) & CRIMINAL INJURIES COMPENSATION AUTHORITY (Interested Party) (2011) [2011] EWCA Civ 1548**

The Court of Appeal held that the Upper Tribunal had not erred in upholding a limit placed by the First-tier Tribunal on a claimant's claim for future loss of earnings. The court also gave guidance on when a decision was "given" for the purposes of lodging a notice of appeal under CPR PD 52 para.17.4A.

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### ***KELLY MINIO-PALUELLO v COMMISSIONER OF POLICE OF THE METROPOLIS (2011)***

**[2011] EWHC 3411 (QB)**

A protestor who sustained a fractured arm in the course of a pro-Palestinian demonstration was entitled to compensatory damages from the police for assault. The degree of force and method used by a police officer to get the protestor to her feet had been neither reasonable nor proportionate.

### ***SEAN TITSHALL v QWERTY TRAVEL LTD (2011)***

**[2011] EWCA Civ 1569**

The court discussed the correct approach to determining whether a customer had been sold a "package" within the meaning of the Package Travel, Package Holidays and Package Tours Regulations 1992 reg.2(1). In determining whether components were sold or offered for sale at an inclusive price, it was necessary to answer the factual question of whether the services were being sold or offered for sale as components of a combination, or whether they were being sold or offered for sale separately, but at the same time.

### ***DUFOSSE v MELBRY EVENTS LTD (2011)***

**CA (Civ Div) (Rix LJ, McFarlane LJ, Sir Mark Potter) 14/12/2011**

An event management company was in breach of its duty to a visitor who suffered a leg injury after tripping and falling over a plastic icicle during a visit to Santa's grotto. Although a safe system had been devised for checking the floor of the grotto, it had failed on that occasion.

### ***NUTTING v ANDREWS HAULAGE LTD (2011)***

**QBD (Stockdale QC) 12/12/2011**

An employer was not liable for personal injuries sustained by an employee as, on the balance of probabilities, the accident occurred as he walked along the back of a lorry, rather than due to a faulty seat, which did not amount to a breach of the employer's statutory or common law duty of care.

### ***MALASI v ATTMED (2011)***

**QBD (Judge Seymour QC) 5/12/2011**

While a road traffic accident in which a cyclist was injured had been caused by a taxi driver's excessive speed, the cyclist had been contributorily negligent by failing to stop at a red traffic light and failing to brake in sufficient time to avoid the collision. Damages for personal injury were therefore

reduced by 80 per cent.

### ***COMMISSIONER OF POLICE OF THE METROPOLIS v H SHAW (2011)***

**EAT (Underhill J (President), R Chapman, H Singh) 29/11/2011**

An employment tribunal had erred when making an award of aggravated damages by focusing on the seriousness of the employer's conduct in subjecting an employee to an unlawful detriment rather than the impact of that conduct on the employee, thereby introducing a punitive element. Aggravated damages were compensatory only in nature and represented an aspect of compensation for injury to feelings rather than a separate head of damages.

### ***TTT v KINGSTON HOSPITAL NHS TRUST (2011)***

**QBD (Owen J) 25/11/2011**

On a conservative approach, a third interim payment in a clinical negligence claim, to allow for building works to a property and to pay for care and therapy requirements until a case management conference, when added to two previous interim payments did not exceed 90 per cent of the capital sum likely to be awarded at trial.

### ***SIMON GREGORY EDEN v FRANCES RUBIN (2011)***

**[2011] EWHC 3090 (QB)**

An appeal against the striking out of a loss of earnings claim because of failure to comply with unless orders was dismissed because of the claimant's persistent defaults and the scale of his failure to comply.

### ***MATTHEW McDERMOTT v PAUL JOSEPH PETTIT (2011) [2011] EWHC 3074 (QB)***

A pedestrian who had been knocked down by a speeding driver in the early hours of the morning had been partly responsible for the collision. Liability was apportioned 90:10, the driver being overwhelmingly to blame.

### ***ALI v D'BRASS (2011)***

**CA (Civ Div) (Longmore LJ, Black LJ, Sir David Keene) 23/11/2011**

A judge had erred in finding that a defendant who had been driving too close to a claimant's vehicle and had driven into the rear of it when the claimant had applied the brakes for no good reason, bore no liability for the accident and that the fault lay entirely with the claimant. The defendant was 60 per cent liable and the claimant 40 per cent.

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## CASE LAW UPDATE

### ***MARKS & SPENCER LTD v CASTLE (2011)***

**[2011] EWHC 3195 (QB)**

Although a personal injury claimant had been entitled to receive the costs of and occasioned by the defendant's application to withdraw its admission of liability, the defendant's conduct had not been so serious as to merit awarding the claimant all of the costs incurred to date.

### ***DONALD BERRY (A PROTECTED PARTY BY HIS WIFE & LITIGATION FRIEND CAROL BERRY) v ASHTEAD PLANT HIRE CO LTD & ORS (2011)***

**[2011] EWCA Civ 1304**

The word "defendants" in CPR r.25.7(1)(e)(ii) meant the defendants against whom an order for interim payment was sought and so, where a claimant applied for an interim payment against a number of defendants on the basis that one or another was liable and they were all insured, it did not matter that there was also another defendant who was not insured.

### ***GILL GERMANY v GAVIN FLATMAN ; BARCHESTER HEALTHCARE LTD v RICHARD WEDDALL (2011)***

**[2011] EWHC 2945 (QB)**  
A disclosure order was granted to enable successful defendants in two personal injury claims to gain information on whether the impecunious claimants had been funded by their solicitors, for the purpose of a potential application for a third party costs order against the solicitors.

### ***ARLENE FORTUNE v JONATHAN ROE (2011)***

**[2011] EWHC 2953 (QB)**

Where judgment on liability was entered with damages to be assessed in favour of a claimant prior to them entering into a conditional fee agreement with solicitors, a success fee of 100 per cent was unreasonable as the main risks of litigation had gone and non-recovery of charges would only have arisen if the claimant rejected an offer under CPR Pt 36 and subsequently failed to beat that offer.

### ***NASIR HUSSAIN v (1) BRADFORD TEACHING HOSPITAL NHS FOUNDATION TRUST (2) KEITH JEPSON (2011)***

**[2011] EWHC 2914 (QB)**  
A claimant failed to establish causation where a hospital had been negligent in failing to diagnose

and treat Cauda Equina Syndrome but the claimant's condition had deteriorated so rapidly that even if appropriate emergency diagnosis and treatment had occurred the prospects of a good recovery were less than 50 per cent.

### ***(1) NICHOLAS ANDREW MANNING (2) MICHAEL JOHN BEGGS (PERSONAL REPRESENTATIVES OF THE ESTATE OF GARY RICHARD MANNING, DECEASED) v KING'S COLLEGE HOSPITAL NHS TRUST (2011)***

**[2011] EWHC 2954 (QB)**  
In an appeal and cross-appeal following a complex personal injury trial where the claimant's personal representatives had been substituted as claimant after the hearing but before judgment was handed down, the court was required to resolve issues arising from the assessment of costs in connection with conditional fee agreements. The main focus was upon relief from sanctions after the claimant's solicitors omitted to give due notice to the defendant of the success fee in a second conditional fee agreement.

### ***(1) MUBAREK AMIN (2) SAJIDA MUBAREK v IMRAN KHAN & PARTNERS (2011)***

**[2011] EWHC 2958 (QB)**

The defendant firm of solicitors had been negligent in several respects when handling a claim for damages against the Prison Service arising from the killing of a young offender by his cellmate.

### ***JOHN ROBERT PYKETT (ADMINISTRATOR OF THE ESTATE OF GRAEME PYKETT) (Claimant) v (1) EBONY CLEMENT (2) NIG INSURANCE PLC (Defendants) (3) AVIVA (Part 20 Defendant) (2011)***

**[2011] EWHC 2925 (QB)**

A driver had not contributed to or caused a road traffic accident by speeding up as another driver attempted to overtake him. He had maintained a steady course in all the circumstances and the accident had been caused by the unsafe driving of that other driver.

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## CASE LAW UPDATE

### **ANDREA LYNDON v ROYAL FREE HAMPSTEAD NHS TRUST (2011)[2011] EWHC 2904 (QB)**

The claimant had established that a stroke which she had suffered had been caused by a negligent failure, 14 years earlier, to diagnose rheumatic fever and prescribe a continuing course of penicillin.

### **JGE v (1) ENGLISH PROVINCE OF OUR LADY OF CHARITY (2) TRUSTEES OF THE PORTSMOUTH ROMAN CATHOLIC DIOCESAN TRUST (2011) [2011] EWHC 2871 (QB)**

A Roman Catholic diocese could be vicariously liable for the wrongful acts of one of its priests given the nature and closeness of the relationship between them.

### **R (on the application of KATE CAIRNS) (Claimant) v HM DEPUTY CORONER FOR INNER WEST LONDON (Defendant) & (1) JOAO PEDRO CORREIA LOPES (2) TRADEX INSURANCE CO LTD (Interested Parties) (2011) [2011] EWHC 2890 (Admin)**

A coroner had been entitled to refuse to adjourn an inquest into the death of a cyclist in an accident with a heavy goods vehicle, and there could be no complaint about the coroner's handling of the inquest. The coroner could not have summoned a jury to sit with her, as there was no prospect that some action could have been taken to prevent the recurrence of similar accidents.

### **CRISPIN v WEBSTER (2011) QBD (Haddon-Cave J) 4/11/2011**

A judge refused an application for an interim payment to purchase a particular property where he was not satisfied that the trial judge would hold that the purchase was reasonably necessary to meet the applicant's needs.

### **MARK SIMON SMITHURST v SEALANT CONSTRUCTION SERVICES LTD (2011) [2011] EWCA Civ 1277**

It had been appropriate for a judge to adopt an acceleration approach to the assessment of a claimant's damages for a back injury where medical evidence supported the conclusion that there was a near certainty of him suffering a very similar injury by a given cut-off date.

### **BARNSELY MBC v ANNAPOORNAMMA YERRAKALVA (2011)[2011] EWCA Civ 1255**

When exercising its discretion to order costs under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 Sch.1 para.40, the employment tribunal should look at the whole picture of what happened in the case and ask whether there had been unreasonable conduct by the claimant in bringing and conducting it; if there had been such conduct, the tribunal should identify it, what was unreasonable about it and what effects it had.

### **FARADAY REINSURANCE CO LTD v (1) HOWDEN NORTH AMERICA INC (2) HOWDEN BUFFALO INC (2011)[2011] EWHC 2837 (Comm)**

The court declined to set aside service out of the jurisdiction in respect of proceedings in which an insurer sought a declaration that an excess public and products liability policy was governed by English law.

### **IN THE MATTER OF MARK ROGER MCCrackEN sub nom MARK ROGER MCCrackEN (Appellant) v CPS (Respondent) & LINDA MCCrackEN (Interested Party) (2011) (2011) [2011] EWCA Civ 1620**

CPR r.69.10 was not to be construed as prescriptive or exhaustive as to the circumstances in which an application to discharge a receiver might be made, and did not limit the power to discharge to cases where the receiver had completed his duties. In particular, that rule was not intended to override the power to discharge or vary the appointment of an enforcement receiver under the Criminal Justice Act 1988 s.80 following confiscation proceedings, especially where an order carried the implication that an interested party could apply to vary or discharge it.

**ELEANOR BRUCE**

## PERSONAL INJURY PRACTICE GROUP

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