

# Timothy St. John Ogilvie Carlisle

**Called 1984**

Timothy's background in competitive sport and business before he came to the Bar has given him a liking for tactical and strategic thinking and he is known to take on cases where careful planning about the best approach towards resolution is required.



Tim has been a CEDR accredited mediator since 2000 and has experience of handling large scale mediations as an advocate within a team.

If you would like any further information regarding Timothy Carlisle's practice, please contact his [clerks](#) or call +44 (0)20 7405 6114.

## AREAS OF EXPERTISE

- Company / commercial
- Property
- Personal injury
- Mediation
- Insolvency
- Professional negligence
- Human rights

## COMPANY & COMMERCIAL

Tim represented one of several former partners who had managed an offshore Hedge Fund within a web of company holdings. The case concerned rights to information, breach of

commercial confidentiality, malicious suit, loss of carried interest, management fees and other losses consequent upon inability to close funds. This case, worth three figure millions of Euros, settled following two days of mediation.

**Group Shareholders' claim:** for negligent valuation of shares: a case where Tim represented a group of shareholders claiming against one of the world's major firms of accountants for a negligent valuation of shares made shortly before a flotation. The case settled during the first day of trial.

**Warranty of Authority:** a case in which Tim represented an agent facing a claim for breach of his warranty of authority; where the litigation was spread over many areas and the downside risks were appreciable. The trial lasted six weeks at first instance: (1) *AMB Generali Holdings Ag*, (2) *Manches (a firm)*, (3) *Sprecher Grier Halberstamm* (4) *Portner & Jaskel (Appellants) v SEB Trygg Liv Holding Aktiebolag (Respondent): Portner & Jaskel (Part 20 Appellant) v (1) AMB Generali Holdings Ag, (2) Alec Merrifield (Part 20 Respondents)* [2005] EWCA Civ 1237, [2006] 1 All ER 437, [2006] 2 All ER (Comm) 38, [2006] 1 WLR 2276, [2006] 1 Lloyd's Rep 318, [2005] NLJR 1781, (2005) Times, 1 December, [2005] All ER (D) 136 (Nov): (reversing in part) *SEB Trygg Holding Aktiebolag (claimant) v (1) Manches (a firm), (2) Sprecher Grier Halberstamm, (3) Portner & Jaskel (Part 20 claimant), (4) AMB Generali Holdings Ag (& Part 20 Defendant) & (1) Buckhard Schulze Wierling, (2) Alec Merrifield (Part 20 Defendants)*. [2005] EWHC 35 (Comm), [2005] 2 Lloyd's Rep 129, [2005] All ER (D) 307 (Feb)

**Partnership:** Tim represented one of several former partners who had managed an offshore Hedge Fund within a web of company holdings. The case concerned rights to information, breach of commercial confidentiality, malicious suit, loss of carried interest, management fees and other losses consequent upon inability to close funds. This case, worth three figure millions of Euros, settled following two days of mediation.

**Commercial property/Waste Management licence:** a case where the landlord, for whom Tim acted, forfeited commercial property. The circumstances at trial involved the late production of fabricated documents as they were found to be upon lengthy cross-examination, the process of waste management, breach of covenants. The landlord won.

**Investment Banking: Conflict of Laws – choice of law clauses: Council**

**Regulation (EC) 44/2001:** An investment banking case involving, at this stage: conflict

of law in contract and tort, anti-suit injunctions; choice of law clauses – whether exclusive or non-exclusive; the contractual bargain effects of exclusive clauses as against non-exclusive clauses; foreign judgments, stay of proceedings; Art 2 Council Regulation (EC) 44/2001 on Jurisdiction and the Recognition and Enforcement of judgments in Civil and Commercial matters; *Owusu v Jackson* [2005] All ER (D) 47 (Mar) distinguished. One part of this case is proceeding to the appeal court in Guernsey. *Winnetka Trading Corp v (1) Julius Baer International Ltd, (2) Bank Julius Baer & Co Limited (Guernsey Branch)* [2008] EWHC 3146 (Ch): [2009] All ER (D) 94 (Feb) – to be reported in the Business Law Reports series.

## PROPERTY: NOTABLE CASES

- *Irwin v Wilson & ors in the Court of Appeal* [2011] All ER (D) 244: [2011] EWHC 326 (Ch) 23 Feb 2011. This case concerned contracts for the sale of a residential flat. Seller sought to terminate agreement on basis of contractual term. Buyers unsuccessfully sought specific performance. Buyers appealed. Whether contractual term for sole benefit of buyers. Whether contractual term severable. Whether Contract had been terminated so that buyers had lost right to waive term for their benefit. Whether buyers entitled to specific performance. Tim acted for the successful claimant at first instance and was also successful on appeal.
- *Hus Haus GmbH & Co KG v Lai Chin Beh*. This case concerned a multi-million pound pre-fabricated house provided by the claimant and erected on the Defendant's land in the UK. The claimant, a foreign company, incorporated and registered in Switzerland sought a summary judgment against the Defendant, who had pleaded a Defence (not drafted by counsel). The claimant also sought a freezing injunction on all assets of the Defendant up to a value of €970,000.00 or approximately £970,000.00. Tim acted for the Defendant and successfully resisted the summary judgment and Mareva in a lengthy hearing in front of the High Court Judge. The case involved construction law in connection with the design and proper erection of the house, and the law relating to contracts for the sale of land: Law of Property (Misc Pov) Act 1989 s.2 (1), and the law relating to deceit and the proper measure of damages where land is concerned.
- *Re: NHS – Unit 4*. This case involved a lease for the NHS where the NHS wished to remain in a particular building beyond the date which a previously served section 26 Notice requesting a new tenancy would have terminated the current continuation

tenancy, by section 26 (5) of the 1954 Act. Tim advised on the interrelation between sections 24, 26, 27, 64 of the 1954 Act, the cases of *Polyviou v Seeley* in the Court of Appeal, and *Stile Hall Properties Ltd v Gooch*, *Single Horse Properties Ltd v Surrey County Council*, *Sun Life Assurance plc v Thales Tracs Ltd* and considered also the question of any necessity for bona fides in an application for a new lease, and the effects of discontinuance. A way was found to accommodate the NHS as they wished using the complicated statutory procedures.

- *Re Zoppi*. In this case, involving development land in a suburban residential environment, requirement for visibility splays at entrances and the upkeep of land to the edge of an ancient highway, Tim advised an offshore development company on the extent of the public highway, its boundaries, the usual presumptions, and the deviations the extent of the public highway, its boundaries, the usual presumptions, and the deviations therefrom, the construction of evidence from old surveys and maps, the effect of enclosure.
- *In the affairs of P...in the Court of Protection*. In this case (still ongoing at the time of submission) involving a patient under the Mental Capacity Act 2005, the powers of a Deputy and the possibility of executing a new statutory will so as to deal with property owned by the patient in a different manner from the way in which he had left the property by will when he was of capacity, an interested party had made an application under section 8 (6) of the Act so as to ‘ringfence’ monies and substantial real property left by the patient while he was of capacity. This is fairly new law, namely: The Mental Capacity Act 2005 and the Code of Practice produced pursuant to sections 42 and 43 of the Act and the Court of Protection Rules 2007 plus a raft of Practice Directions.

## PERSONAL INJURY: NOTABLE CASES

Timothy’s practice includes high value personal injury and clinical negligence work.

### Notable Cases

- *Oseland v Thomas Jones & Ors* 7BM 077728 (county court reference) and continuing at the time of submission. Value in excess of £2.6 million. In this high value personal injury, two young layclients were on a fairground attraction when the car at the end of one of the octopus type arms became detached and they flew to the ground. One layclient, about to qualify as a teacher, was badly injured and is now wheelchair dependent. The other

layclient was less seriously injured.

- The claim is a complicated one, partly ongoing at the time of submission, and there are seven Defendants in one action and a further two in a parallel action as yet proceeding separately. The case involves negligence in many areas and breach of duty in design and manufacture. In addition there are issues concerning the liability for sub-contractors where the undertaking is extra hazardous. Finally there is an interesting lack of cover insurance question connected to an aspect of an independent sub-contractor's performance of its undertaking and the contractor's obligations in relation to that. Lower tier insurers for some of the parties have already paid over nearly £1 million on a no admission (open) basis and the case continues on a variety of grounds and defences.
- *M v A Limited* (settled late 2009 before issue – further details available), at the time of submission, continuing in China. Value on future care loss alone is £2.3 million. High value case where the prospective claimant suffered an accident when a foldaway stool gave way under him while he was at a friend's house. He fell and struck his head and neck on the kitchen worktop. He is now severely disabled, paralysed from the chest down and partially ventilator dependent. The stool was manufactured in Fujian province in China. The applicable law concerned, primarily, the Consumer Protection Act 1987 and The General Product Safety Regulations (GPS) 2005, which implemented Directive 2001/95/EC. The importer admitted liability, but that company's insurance was limited to £1 million. The case therefore involved also intensive investigation into the prospects of enforcing a UK judgment in China and/or suing the manufacturer in Fujian province in The People's Republic of China pursuant to the Civil Procedure Law. Consequently there is a case ongoing in Fujian province as the various treaty obligations were not deemed sufficient in practice to enable a UK judgment to be enforced as a matter of practice. Commercial arbitral awards are a different matter. A further aspect of this case was the proposal by the insurers to the importer to pay the limit of indemnity to the insured small, and possibly fragile, company and thereafter to step aside. This was met by the drafting of Mareva proceedings to secure against the possibility of the £1 million being put at risk amongst the company's creditors. The UK proceedings have now settled in the UK, with input from the company direct.
- *Mace v (1) Burskys, (2) MIB 9BM 10289*. Value excess £4 million. An ongoing case involving a young passenger badly damaged in a car accident where the driver had been taking drink and drugs and was uninsured. There are questions to be resolved concerning the knowledge of the driver's incapacity through drink and drugs and his lack of

insurance, and the voluntary assumption thereby of risk. The claimant, for whom Tim acts, now lacks capacity and acts through his litigation friend.

## DIRECTOR'S DISQUALIFICATION

A case where Tim represented the only director out of several to succeed in resisting disqualification after a long complex trial lasting several weeks: *Secretary of State for Trade & Industry v Dennis George Hollier & 5 ors* [2007] Bus LR 352; [2007] BCC 11; [2006] EWHC 1804 (Ch).

## MEDIATION

Tim is an accredited CEDR and SPCP mediator with experience of conducting mediations in a wide range of disputes. He has recently successfully mediated a dispute with very high emotional content concerning a valuable residential property held in a TOLATA trust.

## EDUCATION

- DipL