

## **Bolt Burdon Commercial Enews – 30 June 2006**

### **Time Please!**

Many businesses have found themselves in dispute with another business which may ultimately lead to legal action. Inevitably time will have to be spent in investigation of the dispute.

The business will have to deploy existing resources in investigating the dispute, reviewing records, compiling reports etc. This may have a direct impact on the profitability of the business because, whilst those employees are engaged in work investigating the dispute, they cannot do the work they were actually employed to do. Alternatively, the business must employ additional resources to assist in the investigations. Either way, there is likely to be a direct loss to the business.

It was generally thought that the business must simply absorb this loss and, in any subsequent litigation those wasted costs could not be recovered. This was confirmed by the High Court in 2002 when it said that it was not possible for a business to recover the expense of wasted management time unless the company could show there was an additional expense that had been incurred, eg, taking on extra staff or paying existing staff overtime or showing that there was a *direct* loss of revenue.

But good news! In a recent decision, the High Court has said that wasted management time can be recoverable even if there was no loss of profit. This however is conditional upon the business being able to show that the time spent on the investigation led to the business being unable to use the resource of its employees for a period of time.

The question that must be answered is '*Were the employees being significantly diverted from their normal activities?*' If so, additional compensation can be recovered.

There is one caveat - the threshold for 'significant' has still to be determined but compensation for lost management time can now be recovered in appropriate circumstances.

It follows that it is imperative that any business which finds itself facing potential litigation, either in bringing or defending a claim, should ensure that it keeps a complete and accurate record of management time spent in dealing with the dispute. This will greatly assist the court in determining what further compensation may be awarded.

If you have any questions about this subject then please feel free to contact Marcella Cox on [marcellacox@boltburdon.co.uk](mailto:marcellacox@boltburdon.co.uk) or Ryan Mowat on [ryanmowat@boltburdon.co.uk](mailto:ryanmowat@boltburdon.co.uk) or by telephone on 020 7288 4700 to the Commercial Litigation Department. For details of all the services we offer, please visit our website at [www.boltburdon.co.uk](http://www.boltburdon.co.uk)

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