

# Interview with...

# GEORGINA SQUIRE

**Charlotte Parkinson, Modern Claims, spoke to the Head of Dispute Resolution and Partner at Rosling King LLP about two landmark cases which have changed the scope of professional negligence claims, and whether the Insurance Act 2015 creates a level playing field between policyholders and insurers.**

**Q** Has the landscape for professional negligence claims changed in recent years, and if so why?

**A** Yes it has changed, particularly in the last 3 years. There are a number of reasons for this: the financial downturn and recession have led to a lot more scrutiny of advice provided by professionals because as a result of the downturn, people have suffered greater losses. The landscape has also changed because lenders that have suffered losses on a variety of commercial and residential loans have started to look at the causes for some of the losses. There were two landmark court decisions, one on residential mortgages, *Webb Resolutions Ltd v E.Surv Ltd* [2012] EWHC 3653, which set the framework for claims by lenders against valuers. Mr Justice Coulson looked through a large number of authorities going back many years, and gave a view of the way a valuer's position on a mortgage loan should be analysed. The second case was the decision in *Titan Europe 2006 - 3 plc v Colliers International UK plc (in liquidation)* [2014]. This was a landmark decision in that it was the first Court judgment on a claim against a valuer on a commercial mortgage-backed security (CMBS) loan. CMBS was prevalent at the height of the market in 2006-7 and is still active today. It usually involves a series of loans secured on real estate being combined into one CMBS structure with the notes (shares) classed in different layers and traded. This was the first case brought by one of those securitisation structures against a valuer. The Court of Appeal agreed with the first instance judge that the issuer is the correct party to stand as Claimant. The other main issue over the last 2 or 3 years (whatever the area of professional advice) has been the limitation period and how long liability lasts for. There are also debates around causation, which is the concept of how much of the loss can be put back on the professional if it can be proven that they were negligent, and whether this should be restricted in any way.



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## Rosling King LLP

Rosling King is a UK-based law firm specialising in serving the needs of financial institutions and the real estate, private equity and construction sectors.

From our headquarters in the City of London, our lawyers offer the highest quality of advice and service to clients across the world.

Our firm has developed a respected breadth of practice over many years with distinctive skills and capability in the often complex, challenging and fast-moving worlds of commerce and finance.

Our clients, many of them banks, financial institutions and insurance companies, require legal advisers who are expert in their specialist areas and can bring clarity to complexity.

The ethos of Rosling King is to value and respect our clients and be wholly committed to help them find a better way.

'The 2015 Insurance Act is fantastic, as it will bring us in line with everyone else, and puts London right back in the centre of the insurance world'

**Q Rosling King acts for a range of commercial clients, from banks to insurance companies - which sector presents the biggest challenge and why?**

**A** The area where there is most challenge is where people have purchased debt or loans and they are looking to make recoveries for losses, but they were not the commercial entity which entered into the contract or the retainer with the professional at the outset. We have seen quite a lot of this with banks selling off large swathes of loans over the last few years. It is not insurmountable, but needs some thought to ensure the claim is brought correctly. There are also issues around jurisdiction, where corporate entities who are based in the U.K. wish to bring claims here, but the problem has arisen on real estate security which is based overseas. As an example, on the Titan case, the underlying security was in Germany but we brought the claim here and there wasn't a problem. In terms of professional sectors, the valuer sector has been hardhit by the numbers of claims brought against it, which have largely arisen out of lender valuations.

**Q Has the role of mediation changed in relation to claims/dispute resolution as a wider issue?**

**A** Mediation has certainly become more widely used over the last 5 years to solve commercial disputes. The Court of Appeal case, *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002, outlined the types of cases that would not be suitable for mediation and this encouraged people to mediate more. There have been subsequent authorities again trying to encourage people to mediate rather than litigate. We always try and push for early negotiation and settlement. Our aim is to try and avoid litigation and mediation can be a fantastic way of doing this. Mediation continues to

be popular as everyone can come to the mediation safe in the knowledge that if they don't want to do the deal, they can walk out. It also gives people an opportunity to vent their feelings to one another, as well as the opportunity for the parties to listen to what the other has to say. Very often, those types of discussions can change someone's view over the course of the day, which culminates in a private and confidential commercial resolution. We find that the commercial entities we act for generally want this. They don't want the publicity, financial or time investments of the litigation process.

**Q What is the most memorable case you have worked on and why?**

**A** It has to be the *Titan v Colliers* case, because it was a landmark decision and the whole of the CMBS market was awaiting the outcome. There are a lot of problems arising out of CMBS loans and there was an element of caution as to how these claims can be brought because of the complexities of the financial and corporate structure. It was an extremely challenging case but we have managed to break the boundaries and set new law, which has been confirmed by the Court of Appeal.

**Q What are the most fundamental changes to the insurance industry over the last 12 months and how have these changes impacted your work?**

**A** The Insurance Act 2015 is undoubtedly the biggest change in the industry in over one hundred years. We do a lot of work for commercial policyholders on coverage issues and we are already seeing the impact of this legislation. We had been falling behind the rest of the EU's main insurance centres in terms of our coverage laws. We have been dealing with the challenges of out of date legal principles, often with draconian outcomes. The 2015 Insurance Act is fantastic, as it will put London right back in the centre of the insurance world.

**Q Does the Insurance Act 2015 put pressure on policyholders and was the Act the right step for the industry?**

**A** It was the right step for the industry and I don't think it puts undue pressure on policyholders. It creates a more level playing field between policyholder and insurer. There is more transparency and the outcome for anyone failing to provide information inadvertently is much fairer under the new Act. The old outcomes were too stringent.

**Q Could the Insurance Act 2015 change the nature of claims/dispute resolution?**

**A** Undoubtedly, there will be a lot more claims around what constitutes a fair presentation of risk - which is where I anticipate the majority of issues will arise. There will be disputes and litigation as a result but I hope there will be less coverage disputes around this issue. One of the reasons I think avoidance disputes have carried on over the last few years is that it is an all-or-nothing result, where the insurer can walk away, leaving the policyholder without insurance (a disastrous result for them). Under the new Act, however, if there is some information missing, the consequences must be looked at and remedied accordingly; whether that is achieved by increasing the premium or the insurer not paying out for some or all of a particular claim is open for discussion, but there will be fairer and more proportionate options. Overall, the Act creates more of a balance and I am hoping there will be less litigation as a result.

**Q What is next for you and Rosling King?**

**A** More of the same. We love our business and client base and are looking to build on our reputation as problem solvers and specialists within our specialist sectors of private equity, financial institutions, real estate and construction. We are not looking to do anything dramatically different, just continue with more of the same.

'There will be disputes and litigation as a result [of the Insurance Act 2015] but I think there will be less coverage disputes'



**Georgina Squire**

Georgina is the Head of the Dispute Resolution Group at Rosling King and advises on a broad spectrum of commercial disputes.

She acts in cases across most of the commercial divisions of the High Court, resolving disputes through arbitration and many forms of ADR, including mediation, expert determinations and mini-trials.

Acting for lenders, investors, financial institutions, private equity funds and loan servicers on all forms of disputes arising from their businesses, Georgina is known for her expertise in professional negligence claims, having advised the claimant in most of the precedent case law in this field.

She also advises on insurance and reinsurance claims, concentrating on coverage and professional indemnity disputes and has been involved in many high profile cases in the Court of Appeal and the Supreme Court.

Georgina has considerable expertise in advising on construction and real estate related disputes. She has handled many claims arising from construction projects and also acts for lenders, developers, investors and other parties involved in the real estate and real estate finance sectors.

Having qualified as a solicitor in 1983, Georgina is also a qualified mediator. She is the past Chair of the Law Society Litigation Committee, a founder committee member of TeCSA and has served on the TCC Users Committee. She currently sits on the committees of both the London Solicitors Litigation Association and the Chancery Users group.