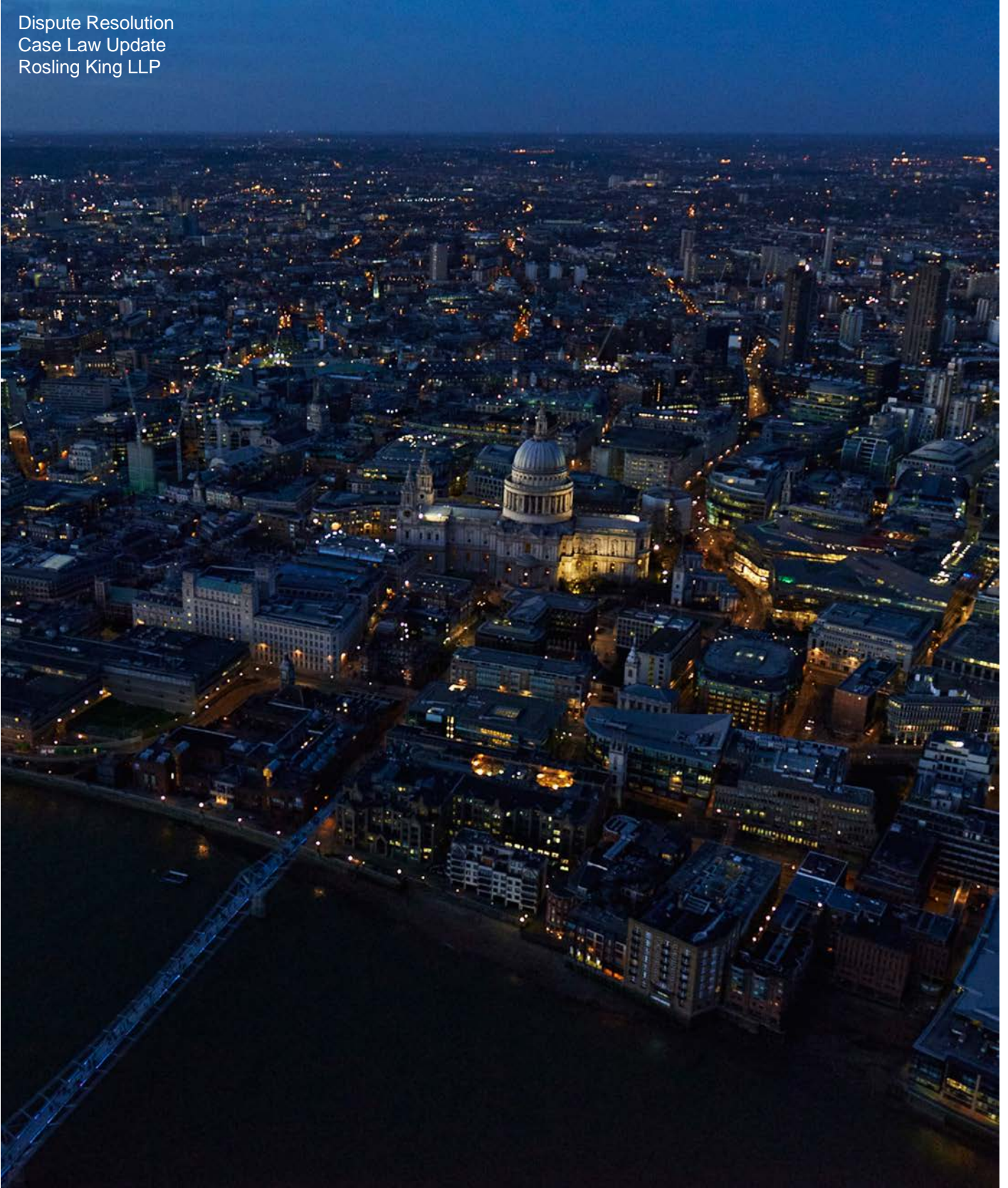


Dispute Resolution
Case Law Update
Rosling King LLP



This case concerns the Court of Appeal decision in relation to a claim brought against a firm of solicitors acting for the claimants in a matter where the defendants had failed to notify their professional indemnity insurers of the claim during the course of proceedings and where the insurer consequently was able to avoid the policy.

The Facts

The Claimants Mr. and Mrs. Dowling (“Dowling”) had employed Alan Philips Associates Limited (“APAL”) to perform architectural and design services in 2001. A dispute arose between the parties and APAL brought a claim against Dowling for unpaid fees in 2003. Dowling instructed the Defendant firm of solicitors Bennett Griffin (“Bennett Griffin”) to act on their behalf in the matter against APAL. Dowling brought a counterclaim against APAL in respect of losses caused by negligence and Dowling successfully defended the claim brought against them by APAL and also won on liability in respect of the counterclaim brought against APAL.

APAL failed to notify its professional indemnity insurers of the counterclaim brought against it until after the trial, and the insurers subsequently avoided the insurance policy on the grounds of non-disclosure, misrepresentation and late notification. Dowling were able to recover £95,000 from the architect in charge of APAL (“AP”) personally after APAL was put into insolvent liquidation, however Dowling were unable to recover all its losses.

Dowling subsequently brought a claim against Bennett Griffin in 2009. Dowling alleged that Bennett Griffin had acted negligently in their handling of the counterclaim. In particular Dowling contended that Bennett Griffin:

1. Acted negligently in failing to ensure that APAL’s insurance cover was in place;
2. Acted negligently in allowing APAL to be substituted as defendant to the counterclaim; and
3. Acted negligently in failing to advise Dowling that there had been strong reasons to think that APAL would not satisfy judgment.

The Decision at First Instance

The trial judge at first instance rejected Dowling’s claims. Dowling appealed.

The Appeal

Dowling appealed the decision. In particular Dowling claimed that Bennett Griffin were negligent when they failed to apply to the court to enforce disclosure of details of APAL’s insurance situation during the course of proceedings. Dowling argued that the court had this power under the CPR and that a reasonably competent solicitor would have applied to the court to exercise its discretion. Additionally, it was asserted that there was an implied term to the effect that APAL would inform its Indemnity Insurers of any claim made against it which should and could have been enforced by injunction.

The Court of Appeal dismissed the appeal and found that at the relevant time the authority regarding the court’s powers under the CPR was limited. Particularly the Court of Appeal

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considered two subsequent decisions of the High Court where it was found that the court had no power to order disclosure of insurance information under the CPR. The Court of Appeal found that in light of these decisions it could not be argued that a solicitor had been negligent in following this authority.

Commentary

This case demonstrates the very limited powers available to the court to enforce disclosure of insurance information outside of personal injury matters and in absence of insolvency of the insured.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.