

## BRITISH VIRGIN ISLANDS

### COURT OF APPEAL

#### ***Fairfield Sentry Limited -v- Farnum Place LLC (June 2018)***

#### ENFORCEMENT OF TRADE CONFIRMATION AGREEMENT FOLLOWING LIQUIDATION - CLAIM UNDER US SECURITIES INVESTMENT PROTECTION ACT ("SIPA") – VARIATION OF COSTS FOR EXPERT OPINION FOLLOWING APPEAL

The appellant, Fairfield Sentry Limited ("Fairfield Sentry"), a BVI company operated as a feeder fund for Bernard L Madoff Investments Securities LLC ("BLMIS"). BLMIS went into liquidation under the *United States Securities Investment Protection Act* ("SIPA"). As a result, the respondent, Farnum Place LLC ("Farnum") sought an order from the Court that Fairfield Sentry carry out certain obligations recorded in an agreement ("the Trade Confirmation") entered into between Fairfield Sentry and Farnum. Farnum also sought the approval by the Court and United States Bankruptcy Court of the assignment of Farnum's claim brought under SIPA. In approving the Trade Confirmation, the Learned Judge accepted the opinion of Farnum's expert, Professor Axelrod. The Judge directed Fairfield Sentry to make the relevant application to the United States Bankruptcy Court who approved the Trade Confirmation on the basis that the sale of the SIPA claim was not reviewable under the United States Bankruptcy Code.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

In dealing with the costs of the originating application, the Court made an order awarding costs to Farnum on the basis that Farnum was the successful party before it and USA United States Bankruptcy Court.

Fairfield Sentry appealed the decision and was dismissed. However, it was successful on a further appeal to United States Court of Appeal for the Second Circuit ("SCCA"), holding that the SIPA claim was subject to a review, overturning the decision of the first appeal. The SCCA decision being at variance with Professor Axelrod's expert opinion which was accepted in the Court, Fairfield Sentry appealed to the Court of Appeal for a variation or reversal of the court order of the Commercial Court.

The Learned Judge, in allowing the appeal, varied the cost order to disallow the costs of Professor Axelrod on the basis that there was a material change in the circumstances by the SCCA decision rejecting the opinion of Professor Axelrod and thus Farnum could no longer be regarded as the overall successful party and should therefore bear the costs of Professor Axelrod's opinion.

**Richard Evans of Conyers was instructed by the appellant led by Sue Prevezer AC.**