Neutral Citation Number: [2010] EWHC 2878 (QB)

Case No: HQ09XO2891

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 11 November 2010

Before:

MR JUSTICE HICKINBOTTOM

- -

Between:

LONMAR GLOBAL RISKS LIMITED
(FORMERLY SBJ GLOBAL RISKS LIMITED)

Claimant

- and -

(1) BARRIE WEST
(2) LAURENCE NIEL MEE
(3) STEPHEN KARPUS
(4) TYSER & CO LIMITED

Defendants

Richard Leiper and Michael Lee (instructed by **Hammonds LLP**) for the **Claimant**
Chris Quinn (instructed by **Grant Saw Solicitors LLP**) for the **First Defendant**
Charles Ciumei (instructed by **Edwin Coe LLP)** for the **Second Defendant**
Damian Brown (instructed by **Russell Jones & Walker**) for the **Third Defendant**
Martin Palmer (instructed by **Birketts LLP**) for the **Fourth Defendant**

Hearing dates: 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, and 29 October 2010

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Approved Judgment

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Mr Justice Hickinbottom:

Introduction

1. The Claimant ("Global Risks") is a Lloyd's insurance and reinsurance broker. The Fourth Defendant ("Tyser") is in the same market, and is a direct competitor of Global Risks. The First, Second and Third Defendants ("Mr West", "Mr Niel Mee" and "Mr Karpus") worked for Global Risks until mid-2009 when, with others, they left: each was summarily dismissed on the basis that his conduct whilst employed by Global Risks – particularly in soliciting clients and other employees, and taking steps to move both work and employees away from Global Risks, largely towards Tyser – amounted to a repudiatory breach of his employment contract.

2. In these proceedings, Global Risks claims approximately £2.5m against each of those defendants for breach of contract and breach of fiduciary duty, and against each of those defendants and Tyser for inducing breaches of contract and conspiracy. That figure represents the net value of the work allegedly lost by Global Risks as a result of the unlawful acts alleged. Although most of the defendants accept some wrongdoing on their part, all deny that any wrongdoing admitted or found against them caused Global Risks any loss at all.

3. This judgment is made up of the following sections (with the relevant paragraph numbers):

Background

4. Both Global Risks and Tyser provide a variety of services to insurance companies and members of the public, but the majority of their work is wholesale, i.e. it is work that does not involve direct contact with individuals who have risks to be insured, but is rather obtained from international brokers or agents who wish to access the Lloyd's insurance market in London and who need to work through a registered intermediary to do so. As an intermediary, it shares both standard and profit commission. Standard commission derives from the client, who will agree to share it with an intermediary for the services that that intermediary renders. Profit commission is a reverse payment returning from the underwriters in respect of profits made by them, which is dependent upon (amongst other things) the level of claims made.

5. Much of the business in the international intermediary broking market is conducted through coverholders, i.e. agents to whom a Lloyd's syndicate, through a lead underwriter, has delegated its underwriting authority. The scope of that authority is set out in a formal contract of delegation, known as a binding authority. The scope differs from contract to contract, but coverholders usually issue the insurance documentation and often handle claims. Coverholding enables Lloyd's syndicates to underwrite internationally, but without the need for a local infrastructure: and it enables local insurers access to the Lloyd's market. About 30% of the Lloyd's premium income is now produced through coverholders.

6. Binding authorities are usually renewable on an annual basis. During the term of a binding authority, it is possible for a client to change its intermediary, usually by way of a broker of record letter authorising the transfer of all the paperwork to the new company. In those circumstances, an agreement is usually reached as to how the intermediary's commission during the balance of the binding authority period will be dealt with (it often continues to be received by the original intermediary, unless the transfer dictates otherwise) – and also how claims being dealt with by the original broker are to be run off (often by the new intermediary).

7. By their nature, such intermediaries require salesmen or "producers", who are able to obtain and retain business from international brokers. That is a producer's prime, if not sole, job; many not servicing the actual business themselves, that being done by back-up brokers (who place the business on the market) and insurance technicians (who obtain the necessary information from both clients and underwriters, and otherwise service the business). Brokers and technicians are undoubtedly skilled in what they do. However, to a business such as Global Risks or Tyser, the most

valuable employees are the producers, i.e. the ones who bring in the work for others to broke and service. Consequently, producers are more likely to be handsomely rewarded – and more likely to be sought by a competitor, particularly if that competitor wishes to move into a specific market in which the producer has a good name and following.

8. It was the common evidence of all the many witnesses who work in the industry from whom I heard, that there are often strong relationships between producers and clients, such that, if a producer moves from one broking house to another, there is a tendency for those clients to follow him, and most do. Although of course it will depend upon the particular producer and the particular client, there was considerable evidence before me of clients following producers through several moves during a professional lifetime, over many years.

9. Global Risks was incorporated as Steel Burrill Jones Limited, later changing its name to SBJ Limited and then to SBJ Global Risks Limited, a company that formed part of the SBJ Group. In March 2008, the SBJ Group was acquired by AXA Advisory Holdings Limited, a subsidiary of AXA UK plc and ultimately French-owned; and, with the exception of Global Risks, the group was fully integrated into the AXA Group. In August 2009, following lengthy negotiations, Global Risks itself was the subject of a management buy-out, through a company called Visionrange Limited, later renamed Centrix Insurance Holdings Limited. Global Risks became a subsidiary of that company, and was renamed Lonmar Global Risks Limited in March 2010. The management buy-out was effected with the assistance of loans from the AXA Group, in the form of a £5.58m short-term loan note (repaid in December 2009), and £10m long-term loan notes repayable in instalments in 2014-16, as well as personal individual investments by the management team.

10. Tyser are a long-established broking house, slightly smaller than Global Risks. In 2008, they wished to expand internationally, and in particular wished to expand into the French market.

11. Mr Niel Mee has been working in the insurance broking industry since 1976. He is a fluent French-speaker, and has for many years specialised in French insurance, particularly in obtaining business from retail insurance brokers in France and other Francophone countries and placing it in London. He is a producer, who spends much of his time travelling round and otherwise keeping in touch with actual and potential clients in France. He is not concerned with the technical side of broking and, once he has obtained the work, he requires a back-up team in London to service it.

12. From 1994-8, he was employed by the London brokers, Craven & Partners. In 1998, he was approached by Global Risks, and agreed to join them. An agreement was reached between his old and new employers, whereby he took all of his clients with him, together with two employees, Mr David Lee (a senior broker, with whom he had worked for over 15 years) and Ms Susan Clark (a technician). At Global Risks, they were placed in the International Division. In 2000, the back-up team was joined by Mr Karpus. There were other members of the team from time to time, more recently in the form of Miss Anne-Sophie Petit and Miss Maud Geadas, both translator/technicians. By 2008, these four (Mr Lee, Mr Karpus, Miss Petit and Miss Geadas) formed the core of Mr Niel Mee's back-up team, although others (including Ms Clark) assisted with the work. All of the team's work was generated by Mr Niel

Mee, the brokerage fees generated being assigned within the company to a particular account, i.e. Special Account LI – those initials standing for "Laurence [Mr Niel Mee's first name] International". Mr Niel Mee and those who serviced his work were known internally as "the French team".

13. When Mr Niel Mee joined Global Risks in 1998, his annual earned brokerage fees were just short of £0.5m, but these were built up to exceed £1m by 2003 and hit nearly £1.7m by 2005 before falling back to £1.35m in 2007. From December 2005, he was appointed "Managing Director, Special Account LI", a purely executive title; and those working on Special Account LI business were required to report to him. Mr Niel Mee was to report direct to the Chairman and Chief Executive of Global Risks, Mr Jim Clark.

14. His starting salary was £74,500, supplemented by a discretionary bonus determined taking into account the brokerage income generated. This bonus was replaced with effect from 12 April 2001 with a contractual bonus scheme, again linked to income, the bonus amounts varying from time to time. From 1 January 2005 Mr Niel Mee received no bonus on the first £0.5m of fees earned, 30% on the next £1m and 40% on any fees exceeding £1.5m. The bonus was payable on all team income "debited in 2005 (and for which payment has been received)": the scheme appears to have rolled on, year on year. The bonus was payable in March of the year after the year of account. It was expressly not payable if, at "the due date", Mr Niel Mee was working under notice of termination or was the subject of any disciplinary proceedings: that, in context (and particularly having regard to paragraph 1 of the agreement), appears to be a reference to the date when income was payable/paid by a client. As a result of the new scheme, in addition to his then-basic salary of £150,000, Mr Niel Mee received a bonus of over £281,000 for 2004 and £375,000 for 2005. The only other member of the team working on a contractual bonus arrangement was Mr Lee, who earned a bonus on a sliding scale to 6.5% on brokerage fees of over £575,000. With National Insurance, the total cost to Global Risks of contractual bonuses to Mr Niel Mee and Mr Lee for 2005 was £507,000 on team income of £1,687,000. On any view, Mr Niel Mee's bonus scheme, based as it was (unusually) upon income rather than profit, was generous.

15. One French retail insurance broker with whom Mr Niel Mee dealt was SEGAP SARL ("SEGAP"), a company owned and managed by M Philippe Legrand and his wife. It has always placed the majority of its business on the Lloyd's market, and as such has needed a Lloyd's broker. From the mid-1990s, when he worked for Craven & Partners, M Legrand used Mr Niel Mee, transferring his work to Global Risks in 1998 when Mr Niel Mee moved there. Over the years, M Legrand, who speaks no English, relied heavily upon Mr Niel Mee, not only in respect of insurance broking matters but in relation to commercial matters generally. M Legrand said that they had had, over more than 15 years, a close relationship as business associates and as friends. In 1998, for example, Mr Niel Mee helped him to establish Legrand Limited, an English intermediary and registered Lloyd's coverholder in its own right, again owned by M Legrand and his wife, through which SEGAP put its business on its way to Global Risks. Whilst Legrand Limited performed no substantive function and had no staff or facilities, it acted as a tax efficient conduit between SEGAP and Global Risks which took advantage of the lower tax regime in the UK. I shall return to M Legrand and his companies, which are at the heart of the claim against Mr Niel Mee, shortly.

16. However, despite the generosity of his financial package, in 2007-8, a number of things happened that made Mr Niel Mee less content at Global Risks.

17. First, at the end of 2007, Mr Clark announced his retirement, and Mr Simon Rice was appointed Chief Executive Officer with effect from 1 January 2008. Since 2005, he had been Managing Director of the International Division, but Mr Niel Mee and Mr Lee had previously reported to Mr Clark and not to Mr Rice, with whom neither had got on. Mr Niel Mee had tended to run his own show in France, and had been lightly managed: but, when Mr Rice became Chief Executive Officer, he was determined to manage the business effectively and more closely. Mr Niel Mee was a challenge to manage; and, after 2007, he felt more and more marginalised by the new corporate structure. In particular, he was concerned that Mr Lee had become so unhappy with the working arrangements in London, where he was based, that he might retire or otherwise leave Global Risks; and Mr Niel Mee did not want to be left isolated if that happened.

18. Second, the sale of Global Risks to AXA was potentially damaging to Mr Niel Mee's business. The AXA Group was French-owned, and sold insurance through local agents direct to customers in France – thereby being a direct competitor to some of Mr Niel Mee's clients, including SEGAP. He was concerned that those clients might move away because of that conflict.

19. Third, he went through a divorce, the settlement of which left him without a home base in London and with high maintenance payments to his wife. As a result, and given that he spent a great deal of time in France in any event, he wished to relocate to Monaco with the tax advantages that that would bring. From early 2007, for practical purposes, Mr Niel Mee did relocate to Monaco, and was infrequently in London. However, discussions between Mr Niel Mee and his superiors in Global Risks about the new working relationship continued, particularly with regard to his regular expenses following his relocation to Monaco. During these negotiations, Global Risks considered terminating his employment: and Mr Niel Mee was required to attend a meeting in November 2008 to sort out outstanding matters – in respect of both management lines, and expenses – which, in Mr Rice's view, was effectively a disciplinary meeting (Transcript 14 October 2010, pages 41-3).

20. Mr Niel Mee's expenses were finally agreed at the rate of €66,402 per year, and, by an amendment to his contract of employment dated 29 May 2009 (signed by Mr Niel Mee on 1 June 2009), in recognition of the fact that Mr Niel Mee would be based in Monaco and reflecting what had been the case in practice for over a year in any event, he was assigned no duties in the UK and no management responsibilities. His duties were restricted to general relationship servicing of clients (including visiting their offices where necessary), and developing new business.

21. In the previous November, Tyser had contacted Mr Niel Mee to enquire whether he would be interested in joining them. Indeed, prior to that, he had been actively considering leaving Global Risks, and had been approached by two other broking houses before Tyser. However, before dealing with the details of his conduct with those companies, I shall briefly touch upon the background of other individual defendants.

22. Mr Karpus is a French-speaking broker with a detailed knowledge of French insurance law. He began his working life as an insurance clerk in 1969, and has been in the industry ever since. He first met Mr Niel Mee and Mr Lee in 1970, when they were all working for the same broking house. Their employment paths then took different routes, until Mr Karpus was employed as a broker by Global Risks in its International Division in 2000, having been made redundant by his previous employer. Mr Karpus does not produce work himself. However, in addition to working on the floor as a broker, he does some of the technical service work for clients, being a broker/technician hybrid. His work was almost entirely on the wholesale side and, by 2009, was overwhelmingly on business produced by Mr Niel Mee, 80% of his work being on Special Account LI matters.

23. Mr West is nearly 70 years of age, and has been in the insurance broking industry for over 50 years mainly in Lloyd's. For the last 20 years, he has been involved as a producer, involving the exploitation of broking opportunities arising out of North America and the Caribbean. He also places that business at Lloyd's as a broker.

24. He joined Global Risks in December 2004, at a starting salary of £80,000, after his previous firm had gone into liquidation. He formed, with others, a new North America Division. He brought with him a small number of loyal clients (including one, MSI Assurances and Reassurances ("MSI"), based in Monaco), with brokerage fees of £0.25-0.3m. He was not on a bonus arrangement, which was perhaps a reflection of the steady state of his clients' business. He had a few steady clients who had been with him for many years, and his anticipated brokerage was fairly static. He had assistance servicing the work he brought in, but no one formally reported to him and he had no management duties within Global Risks. He never worked for the French team or on Special Account LI business.

25. Unlike Mr Niel Mee and Mr Karpus (and, indeed, Mr Legrand), Mr West did not give evidence at trial.

26. In addition to the individual parties, it may assist at this stage to identify the other players in this claim.

27. Several Tyser executives gave evidence, namely Christopher Spratt (Chairman), Quintin Heaney (Chief Operating Officer) and Henrietta Butcher (Managing Director, US Property & Casualty Division). In addition to those, two further executives featured in the case, but did not give evidence: Gary Andrews (Managing Director, North American Division) and Christopher Elliott (Chief Executive Officer).

28. For Global Risks, the following executives gave evidence: Howard Steeples (Non-executive Chairman from January 2008), Simon Rice (Head of International Division from early 2005 to December 2007: Chief Executive Officer from January 2008), Duncan Vinten (Chief Operating Officer), Peter Ross (Finance Director), David Pexton (Managing Director, Non-Marine Division), George Boden (Non-executive Director), Sue Kidds (Senior Executive Officer, Non-Marine Division), Mark Lerrigo (Divisional Director), and Nicholas Down (Director, Agency Division). In addition, Jim Clark (Chairman and Chief Executive Officer to December 2007) and Frances Merritt (Divisional Director) played a part in the relevant events, but did not give evidence.

29. Finally, on quantum, I heard from two expert accountants: Alastair Campbell FCA instructed on behalf of Global Risks, and Hugh Mathew-Jones FCA instructed on behalf of the defendants.

The Contractual Arrangements

30. Global Risks has standard terms of employment for its executives, including the following unsurprising terms:

> "Duties and powers
>
> 3(A) The Executive shall during the continuance of his employment hereunder… devote the whole of his working time attention and abilities to the duties of his office and shall use his best endeavours to promote the general interests and welfare of the Company…
>
> (B) The Executive shall exercise such powers perform such duties (if any) and comply with such directions being consistent with his appointment hereunder... as the Board may from time to time confer upon or assign or give to him…
>
> (C) The Board shall be entitled pursuant to sub-clauses 3(A) and 3(B) to direct the Executive to perform no duties and to direct that the Executive shall not enter or remain on any (or any specified) premises of the Company… and any such direction may be given subject to any condition which the Board in its discretion shall determine provided always that the Executive shall continue to receive salary and other such benefits as he is contractually entitled to from time to time.
>
> …
>
> Confidential information
>
> 12(A) The Executive shall not either before or after the termination of his employment hereunder for any reason use (other than for the purposes of the Company)… or disclose to any person any confidential information of which he has become or may have become possessed whilst in the service of the Company except in the proper course of his duties hereunder or as authorised by the Board or as ordered by a Court of competent jurisdiction provided always that this shall not apply to confidential information which is or comes into the public domain unless that is as a result of a breach by the executive of this or any other agreement. The provisions of this Clause 12(A) are without prejudice to the duties and obligations of the Executive at common law in relation to trade secrets and confidential information.
>
> …

Exclusive service

13 The Executive shall not (except with the consent in writing of the Board, such consent not to be unreasonably withheld) be directly or indirectly engaged or interested in any other business whatsoever other than that of the Company…

Non-solicitation

14(A) The Executive shall not during the continuation of his employment by the Company nor, subject to sub-clause 14(B) below, at any time during the period of twelve months from the termination date whether directly or indirectly or on his own behalf or on behalf of any other person:

(i) solicit or entice or endeavour to solicit or entice with a view to providing or provide or endeavour to provide Restricted Services to or on behalf of any Client or Indirect Client of the Company…with whom or which the Executive shall have dealt directly in the course of his employment at any time in the period of twelve months preceding the termination date;

(ii) solicit or entice or endeavour to solicit or entice with a view to providing or provide or endeavour to provide Restricted Services to any Client or Indirect Client of the Company… with whom or which the Executive shall not have dealt directly but in respect of whose business the Executive has become possessed during the course of his employment of knowledge which constitutes Confidential Information;

(iii) without the written permission of the Board (such permission not to be unreasonably withheld or delayed and in particular such permission will not be withheld if the Company considers that the employee concerned has neither a personal influence with any Client or Indirect Client nor is in possession of Confidential Information) solicit the services of or employ any individual who was an employee or director of the Company… at any time during the period of twelve months preceding the Termination Date and with whom the Executive had dealings whether or not such person would commit any breach of his contract of employment with the relevant company by reason of his leaving service.

For the purposes of this Clause and Clauses 12(A)… the following expressions shall have the following meanings

…

"Restricted Services" means broking or advisory or administration services in respect of

> Business which services are the same as or similar to such services as are provided by the Company…; and
>
> "Termination Date" means the date of termination of the Executive's employment.
>
> (B) Clause 14(A) shall apply in the event of termination of the Executive's employment in all circumstances except the termination by the Company in breach of this Agreement.
>
> Termination
>
> 15 This agreement shall be subject to termination by the Company by summary notice in writing and without making any further payment beyond the amount of any remuneration payable [hereunder] accrued due to the date of termination if the Executive:
>
> (i) shall have committed any material breach of obligations hereunder…
>
> …
>
> Interpretation
>
> 22(A) Unless the context otherwise requires in this Agreement the following words and phrases have the meaning given below:
>
> …
>
> "Confidential Information" means any information relating to the business of the Company... and shall include (without limitation) lists and details of any Client and Indirect Client and their respective Business, risk information, claims information, renewal dates, terms of business, remuneration and markets, business methods including any software made by the Executive or developed during business hours and/or through the use of the facilities of the Company… and details of discussions with underwriters relating to the insurances of any Client or Indirect Client or any Prospective Client or Indirect Client, tenders and future business strategy…"

31. Both Mr West and Mr Niel Mee entered into a contract of employment with Global Risks on these terms, except that, in Mr Niel Mee's case, clause 14(B) read:

> "Clause 14(A) shall apply in the event of termination of the Executive's employment in all circumstances except unlawful termination by the Company."

I deal with the possible relevance of this below (paragraphs 39-42).

32. Therefore, in summary, under the express provisions of this standard form particularly relevant to these proceedings:

    (i) During the period of employment, an executive employee is required (a) to devote himself to the work of Global Risks during working time, and is prohibited from doing other work except with the permission of Global Risk, and (b) to "use his best endeavours to promote the general interests and welfare of [Global Risks]".

    (ii) For the period of his employment, together with a 12 month period following termination of employment (unless Global Risks terminates the contract of employment "in breach of this Agreement" (Mr West) or "unlawfully" (Mr Niel Mee)), an executive employee is prohibited from soliciting either the clients as defined, or employees, of Global Risks.

    (iii) During a notice period, Global Risks is entitled to put an executive employee on "gardening leave", i.e. suspension on full pay.

    (iv) An executive employee is prohibited from using information properly confidential to Global Risks in protection of its business interests.

33. Leaving aside the port-termination restrictions, to a large extent, these express provisions amplify and extend the general implied duty of fidelity, i.e. the duty of an employee to provide faithful service, which encompasses duties to follow reasonable instructions given in the course of employment, not to compete with the employer, and not to induce fellow employees to leave the employer. In these proceedings, however, Global Risks also relies upon (i) an employee's implied duty to disclose information to his employer, e.g. another employee's wrongdoing, or information that employees have received approaches from (or intend to move to) a competitor: and (ii) an employee's fiduciary duty to disclose to his employer wrongdoing (of himself or others), and conduct which, whilst not amounting to wrongdoing, may damage the best interests of the employer: and to persuade clients and employees to remain with an employer even when he (the employer) is leaving. I deal with these below (paragraphs 148 and following), after I have considered the factual background.

34. Returning for the time being to the express terms, Mr West entered into an employment contract on those standard terms on 23 February 2005, his notice period being agreed as six months (Clause 2).

35. Mr Niel Mee first entered into an agreement with Global Risks on 10 December 1998, in the form of a letter agreement, under which he was required to sign a service agreement in accordance with Global Risks' standard form. However, in respect of the non-solicitation provisions (Clause 14), it was agreed that, for the first six months of his employment, that would only apply to non-French business and identified agents. He entered into an agreement in standard form on 10 April 2001, the notice period being twelve months (Clause 2). As indicated in paragraph 14 above, on 23 August 2004 his hitherto discretionary bonus arrangements were put on a contractual basis with effect from 1 January 2005: his duties were clarified with effect from December 2005: and, as indicated in paragraph 20 above, the scope of his duties and travelling expenses were varied by the letter agreement dated 29 May 2009, which

expressly confirmed that, other than the variations set out in that letter, the terms of his service agreement continued in full effect.

36. The contract of Mr Karpus – presumably because he was below executive status – was in different, although similar, terms. His contract, effective from 1 January 2001, contained the following terms:

> 17. Confidential information
>
> You shall not at any time whether during or after the determination of your employment by the company make use of or disclose to any person firm or company whatsoever (other than in the proper performance of your duties) any confidential information relating to the Company… or its… clients or prospective clients, consultants, underwriters, or potential underwriters, product and/or cover details, premiums, commissions, specific cover arrangements or terms of business which may come to your knowledge in the course of your duties hereunder.
>
> This shall not prevent the disclosure of confidential information by you when ordered by a court of competent jurisdiction and shall not apply to information in the public domain except as a result of a breach of this undertaking by you.
>
> 18. Exclusive service
>
> You shall not at any time during your employment engage on your own behalf (whether alone or in partnership) or as an employee of any other person, partnership or company, or as a Director, in any trade, business or profession, or fee earning activity without the written permission of the Company.
>
> 19. SBJ Group clients
>
> You shall not for a period of twelve months after the termination of your employment solicit or endeavour to entice away from the Company the insurance business of any person firm or company who was a client of the Company… and with whom and in relation to which insurance business you personally dealt with in the course of your duties at any time during the twelve months prior to such termination.
>
> 20. SBJ Group employees
>
> You shall not at any time whilst employed by the Company nor for a period of twelve months after the termination of your employment, procure that any employee or director employed by the Company and with whom you had dealings in the course of your employment be employed by any other person, firm or corporation with the intention or in such circumstances that

> such person shall divulge any confidential information of the Company or shall use the same for the benefit of his/her then employer, or himself/herself.

37. The notice provisions were to be set out in Global Risks' employee handbook (Clause 13), namely, after the initial probationary period, one week for each year of employment.

The Restrictive Covenants

38. The individual defendants' restrictive covenants are set out above. In these proceedings, they gave rise to a number of issues, with which it would be convenient to deal now.

39. First, Mr Ciumei submitted that, as a matter of construction, the disapplication of the non-solicitation restrictions in clause 14(A) by clause 14(B) of Mr Niel Mee's contract applies to circumstances in which an employee has been dismissed unfairly contrary to Part X of the Employment Rights Act 1996 as well as to circumstances in which he has been wrongfully dismissed at common law (i.e. in breach of contract). By way of reminder, clause 14(B) in Mr Niel Mee's contract provided that:

> "Clause 14(A) shall apply in the event of termination of the Executive's employment in all circumstances except unlawful termination by the Company."

40. Mr Ciumei submitted that section 94 of the 1996 Act gives an employee a statutory right not to be unfairly dismissed: and therefore, if an employee is unfairly dismissed, that would fall within the definition of "unlawful termination" on the ordinary meaning of those words. He submitted that the wording of the contract was clear and unambiguous: but, if it were not, as it was Global Risks' wording, it should be construed against it in any event.

41. That submission was attractively put, but, in my judgment, it fails to get home. I do not consider clause 14(B) to have been well drafted – and perhaps that is why it had been redrafted by the time Mr West came to enter into his contract of employment some years later. However, although section 95 defines "dismissal by the employer" in terms of "termination", the 1996 Act (notably in section 95 itself) uses the term "terminated" specifically and only in relation to bringing the contract to an end at common law. I consider that is how the term is used in clause 14(B). The reference to "unlawful termination" means "unlawful termination of the contract at common law", i.e. termination of the contract in breach of the contractual terms.

42. Indeed, in the context of restrictive covenants and clause 14(B), that appears to me to be the natural meaning of the term in any event. In most cases, it will not matter whether or not "unlawful termination" includes unfair dismissal within the terms of the 1996 Act, because the substantial grounds for dismissal include "conduct of the employee" (section 98(2)(b)): but it may matter where the employer has shown such a substantial reason for dismissal, but not that he acted reasonably in treating that reason as a sufficient reason for dismissal. In considering reasonableness, procedural as well as substantive matters are taken into account. If Mr Cuimei's construction were correct, it would mean that an employee would not have the burden of the

restrictions if the termination of his employment was unfair (e.g. because of an error in its investigation by the employer), even if he had been guilty of gross misconduct (which might comprise solicitation). That would be a curious result, in my judgment beyond the contemplation of the parties: and it is a result which in my view merely confirms that that construction is wrong. When taken in its proper context, "unfair termination by [Global Risks]" in clause 14(B) means a termination of the contract wrongful at common law.

43. Mr Ciumei relied upon a second construction point. Mr Niel Mee's discretionary bonus scheme had the following provision in it (letter dated 15 May 2000):

> "The scheme is a rolling discretionary bonus with 12 months notice of cancellation or alteration on either side. In the event of notice of cancellation being given by [Global Risks] or notice of alteration made which is unacceptable to you, clause 14 of your service contract is deleted in respect of any business handled by you which is identified with a 'policy prefix LI'. In such event, clauses 17 and 12(A) of your service contract shall not apply in respect of that business which is directly associated with policies stating prefixes 'LI'".

Clause 17 concerned the return of company (including client) papers, and clause 12(a) concerned use of confidential information.

44. When his contractual terms were changed on 12 April 2001 (see paragraph 14 above), paragraph 9 of the variation letter provided:

> "For the avoidance of doubt, the previous discretionary scheme is discontinued and replaced by this contractual scheme."

45. Mr Ciumei submitted that that was a cancellation of the discretionary bonus scheme, which had the effect of deleting the clause 14(A) restrictions in respect of the French team work.

46. The provision in paragraph 9 of the 12 April 2001 letter appears to me to have been a commercially understandable and sensible term, which prevented Global Risks unilaterally terminating the discretionary bonus scheme without permitting Mr Niel Mee to leave – and, in effect, take his established clients with him. In my view, the punctuation has been used with care – and the words in the 15 May 2000 letter "which is unacceptable to you" applies (and clearly applies) to both "notice of cancellation being given by [Global Risks]" and "notice of alteration". In other words, the clause 14 restrictions would continue to apply unless and until the bonus arrangements were changed without Mr Niel Mee's agreement. Indeed, it would have been extraordinary if the mere consensual conversion of the discretionary scheme into a contractual scheme, which could only benefit Mr Niel Mee, had the effect that all non-solicitation and non-dealing post-termination restrictions (as well as the provisions relating to use of confidential information and return of company documents) were deleted, enabling Mr Niel Mee to move out of Global Risks with his clients whenever he chose. In my judgment, that is not the result on the true construction of the earlier agreement. Mr Niel Mee agreed to the bonus scheme being put onto a contractual basis: and, as we shall see, continued to accept that the non-solicitation provisions applied.

47. Third, it was submitted on behalf of Mr Niel Mee and (to a lesser extent) Mr West that the post-termination restrictions imposed upon them were unenforceable as being unreasonably wide.

48. The relevant general principles in relation to enforceability of restrictive covenants in an employment context were helpfully reviewed by Sir Christopher Slade in Office Angels Ltd v Rainer-Thomas [1991] IRLR 214 at paragraphs 21-25. I need not set them out in full here. I have them well in mind.

49. It is trite law that covenants in restraint of trade are generally unenforceable, and an employer cannot rely upon restrictive covenants merely to protect himself from competition. However, he can rely upon such restraints insofar as they are reasonably necessary to protect his own legitimate business interests, such as his confidential information, his client connections and the stability of his workforce. The principle has not been better put than in the speech of Lord Wilberforce in Stenhouse Limited v Phillips [1974] AC 391 (at page 400):

> "The employers' claim for protection must be based upon the identification of some advantage or asset inherent in the business which can properly be regarded as, in a general sense, his property, and which it would be unjust to allow the employee to appropriate for his own purposes, even though he, the employee, may have contributed to its creation."

50. In relation to the reasonableness of covenants, the burden of course lies on the employer seeking to enforce. Global Risks has satisfied me that the restraints imposed upon Mr West and Mr Niel Mee were reasonable as between the parties themselves, and also reasonable in the public interest. In coming to that view, I have particularly taken into account the following (paragraphs 51-54).

51. On the evidence before me, post-termination non-solicitation and non-dealing clauses are the norm in contracts between brokers and producers. Mr Quintin Heaney, Tyser's Chief Operating Officer, said that Tyser expected both Mr West and Mr Niel Mee to be subject to such provisions at Global Risks (Transcript 26 October 2010, page 16 lines 20-24). No witness of the many I heard suggested that restraints such as these, and their terms in respect of Mr West and Mr Niel Mee, were anything other than usual in the business they are in.

52. Each case of course depends upon its own facts: but, as a matter of law, it is not unreasonable for an employer to seek to protect its contacts with clients introduced by an employee. Lord Wilberforce indicated as much in Stenhouse Limited v Phillips, quoted above (paragraph 49). Although most clients of Mr West and Mr Niel Mee had followed them from previous employers to Global Risks, whilst they were at Global Risks those clients were Global Risks' clients. Both Mr West and Mr Niel Mee were paid to maintain and develop Global Risks' relationship with its clients, and were reimbursed their expenses for so doing. Global Risks clearly had a legitimate interest in protecting its client connections. Particularly given the value of some of its employees, it also had a legitimate interest in maintaining the stability of its workforce.

53. Much of the work of both Mr West and Mr Niel Mee was done on an annual renewal basis. A 12 month period of restraint on non-solicitation and non-dealing was consequently reasonable: any shorter period would not have enabled Global Risks to have adequately protected its connections with its clients. Similarly, a former executive employee's influence over his erstwhile colleagues is likely to be at least 12 months.

54. It was suggested by Mr Ciumei that the restrictions could not be said to be reasonable so far as Mr Niel Mee was concerned, because there were circumstances in which they would not apply, namely (i) if he left within 6 months of joining Global Risks (see paragraph 35 above), or (ii) if his contract of employment was unlawfully terminated (clause 14(B): see paragraph 30 above). I do not consider that that suggestion has force. The fact that the restrictions might not apply in certain circumstances does not mean that Global Risks' legitimate business interests did not reasonably need protection if those circumstances did not apply. Indeed, that there were such exceptions (which appear to me to be patently understandable in the commercial context in which they were made) appears to me to strengthen the argument that the restrictions that were imposed were reasonable.

55. In the circumstances, I am satisfied that the restrictions imposed were no more than were necessary to protect the legitimate business interests of Global Risks: and were enforceable.

The Events Leading to the Claim

56. I now turn to the factual background, and the events that led to this claim.

57. Mr West had been at Global Risks for about 2 years, when he first made significant contact with Tyser. Mrs Henrietta Butcher has been in the broking industry for over 25 years, mostly with Tyser; and she has been the Managing Director of Tyser's US Property and Casualty Division since 2001. She had known Mr West for several years when, in July or August 2007, she spoke with him about the possibility of his moving to Tyser from Global Risks. He was potentially of interest in part because of his age: Tyser hoped that it would retain his business when he retired (Henrietta Butcher Statement 14 June 2010, paragraph 4). She said – and I accept – that they initially spoke possibly on the telephone, and she pressed him for, not names, but a breakdown of his income and brokerage projections. In fact, unsolicited, he sent her an undated letter setting out not only his total then-current annual brokerage income (£300,000), but also a break-down of his largest clients and the projected income from each, namely First Insurance ("First") ($150,000), Red Hook ($75,000) and MSI (€50,000). Each of those clients had been built up over many years. It is Mr West's pleaded position (Defence, paragraph 4.4(2); and the Further Information served thereunder on 20 September 2009), and appears uncontentious, that each had been a client of Mr West for many years and each had followed him to Global Risks when he had joined. The figures given to Mrs Butcher at that first meeting also seem a fair assessment of his portfolio of business, the actual figures for 2008 being First $186,653, Red Hook $62,423 and MSI €90,968 respectively. Mr West's letter also set out some other contacts he purported to have, in what appears to have been the first puff intended by Mr West to make himself more important and more valuable in the eyes of Tyser during the course of his dealings with them.

58. Given the level of business that Mr West indicated that he did in the US Virgin Islands, Mrs Butcher was concerned about possible conflicts, as Tyser already had a mature account there within its North American Division. However, the Managing Director of that Division (Mr Gary Andrews), Mrs Butcher and Mr West met several times over the ensuing months, and that was not regarded as insuperable. Tyser made a provisional offer to Mr West on 21 February 2008, for employment in its US Property & Casualty Division. Mr West responded by saying that he was considering his options – that was the time during which the AXA purchase of Global Risks was being worked through, and he thought something good for him might come of that – and, as a result, Tyser withdrew its offer on 18 March 2008, but in a letter which left the door open to him for the future.

59. Mr West and Mr Niel Mee largely dealt in different areas (although Mr West had some small Monegasque business, namely MSI), and appear to have had very little to do with each other. Mr Niel Mee was not in London a great deal, he was the more productive producer, and, from his evidence generally, he appears to have had little time for Mr West – holding him in little professional regard.

60. However, they appear to have had a conversation in about July 2008. I do not have Mr West's version of it, but Mr Niel Mee said it concerned an approach he had had in late 2007 from a French insurance broker to work in their retail insurance business in Monaco. For the reasons I have given, Monaco was an attractive place of residence for Mr Niel Mee at that time: but the approach came to nothing. In the summer of 2008, Mr West met Mr Niel Mee in the corridor and started to question him about this approach, about which he had heard. He had some interest in it, because he (Mr West) did some business with the broker concerned, which might have been at risk. Mr Niel Mee simply said that he had nothing to fear, but otherwise he refused to discuss the matter. That is consistent with the general attitude of Mr Niel Mee to Mr West.

61. Mr West reported that conversation to Mr David Pexton, the Managing Director of Global Risks' Non-Marine Division, a post to which he succeeded in 2008 when he became Mr Niel Mee's direct line manager. That conversation is recorded in a memorandum dated 10 July 2008 sent by Mr Pexton to Mr Simon Rice, the Chief Executive Officer and Mr Pexton's immediate boss. From that it seems that Mr West had suggested that he had been approached by Mr Niel Mee to assist in the running of a new UK arm of a French insurer: and that he had no interest in it. Mr West is recorded as saying that he believed Mr Niel Mee would stay with Global Risks. I accept the evidence of Mr Niel Mee as to the nature of his conversation with Mr West – as Mr Niel Mee said, he had little in common with Mr West; and a non-French speaker aged nearly 70 years would not be an attractive proposition for any such French enterprise – and I also accept the gist of the memorandum from Mr Pexton, i.e. Mr West had inflated his own role in the matter.

62. The withdrawal letter in March 2008 had left the door open to Mr West to re-approach Tyser. Following a chance meeting between Mr West and Mrs Butcher in Lloyd's at the end of September, they met again to discuss his possible employment by Tyser, on 2 October 2008. That meeting appears to have gone well and, following it, Mr West appears to have contacted various of his clients to ascertain whether they would follow him to Tyser if he moved – and on 4 October he confirmed to Mrs Butcher that "France/Red Hook/Florida" had all confirmed that they would, and that,

although he had been unable to get hold of his contact at First Insurance, he was sure that she would "be delighted if he were to join" Tyser. On 27 October, he reconfirmed that Red Hook, to whom he had clearly spoken again, appeared willing to move. He was, as Mrs Butcher accepted in her evidence, sounding out his clients as to whether they would follow him if he moved to Tyser. He continued to relay information concerning his client's business to Tyser during this period (see, e.g., his email to Mrs Butcher and Mr Andrews dated 18 November 2008).

63. Tyser made Mr West a second provisional offer of employment on 17 November 2008, in their US Property & Casualty Division. That offer was conditional upon Mr West's confirmation that he would not, during any period of restrictions, breach his contract with Global Risks. He apparently went round to collect the offer late that morning, from Tyser's offices.

64. Mr Niel Mee had had no relevant contact with Tyser until November 2008. However, Mrs Butcher said that, at one of her meetings with Mr West in October, he gave her Mr Niel Mee's name as someone who was unhappy at Global Risks. Although Mr West could not have known of this, as I have indicated, Mr Niel Mee had in fact previously been cold-called by two other brokers in 2008. Mrs Butcher categorically denied asking Mr West whether there was anyone else at Global Risks who "might come over": and, although it must have been clear that Mr Niel Mee's name was given to Mrs Butcher as someone who may wish to leave Global Risks for Tyser, I accept that. Mr West did not give her any contact details for Mr Niel Mee, but she saw Mr Lee on the Lloyd's floor shortly afterwards and asked him to ask Mr Niel Mee to ring her on a personal matter, giving no further details. I do not find the fact that her statement said that she had asked Mr Lee for Mr Niel Mee's contact details (rather than requesting Mr Lee to ask Mr Niel Mee to call her) either correct or, in any event, of any significance.

65. Nor do I find of any significance an email sent by Mr West to Mr Niel Mee at about 5pm on 3 October 2008, in these terms:

> "L,
>
> Understand you r in on Monday.
>
> We're need to speak please reserve 15 mins for me – perhaps an expresso at 11.30 ish.
>
> Or call me over the week end at home [and he gave his number].
>
> It will keep unless your Monday plans change.
>
> Baz."

66. Mr Leiper for Global Risks suggested that this was sent the day after Mr West had given Mr Niel Mee's name to Mrs Butcher as a potential recruit, and the use of "L" and "Baz" showed that Mr Niel Mee and Mr West were by then intimates, and, indeed, intimates engaged in the early stages of a joint operation to move the French team to Tyser. I do not accept that. Mr Niel Mee had a low professional regard for

Mr West: he said (and I accept) that he did not even respond to this email, and there is no evidence that he (Mr Niel Mee) contacted Mrs Butcher as a result. If Mr West had told him of the possible interest of Tyser, one would have expected Mr Niel Mee not to have awaited an approach but perhaps to have made contact with Tyser himself. He is a person who was not slow in coming forward in his own interest at other times. In fact, Mrs Butcher did get his details from Mr Lee, and eventually contacted him, in early November 2008 with the suggestion that they meet. It appears that it was well-known in the market that Tyser were seeking to expand its French business: and Mr Lee had told Mr Niel Mee that that was so (Mr Niel Mee Statement 15 June 2010, paragraph 53). In the event, Mr Niel Mee met Mrs Butcher, Mr Andrews and Mr Christopher Elliott (Tyser's Chief Executive Officer) in Paris on 5 November.

67. Mr Niel Mee said that, generally, although he needed a team to service the work he produced, he only regarded Mr Lee as an essential individual in his team. Although no doubt he might have preferred to have had service colleagues with whom he was familiar (especially Mr Karpus, who was a fairly experienced broker), he did not regard any of the French team other than Mr Lee as irreplaceable. Further, although he said he kept Mr Lee informed as to what he was doing insofar as other potential jobs were concerned, he said he never tried to persuade him to leave with him: because, he said, that was unnecessary. He was confident that Mr Lee would, in due course, follow him to any new employer as he had done in the past. Mr Lee is, of course, not a party to these proceedings, and no allegations (e.g. of breach of his employment contract) are made against him.

68. I accept that that was Mr Niel Mee's stance with regard to the rest of the French team. Mr Quintin Heaney, Tyser's Chief Operating Officer, became heavily involved in the negotiations for Mr Niel Mee to join Tyser. As Mr Niel Mee said (Transcript 22 October 2010, page 95 lines 18):

> "As far as I was concerned, I didn't care who was behind Lee and myself. Obviously I was friendly towards the people that worked with me and I would have been delighted if they had followed me, but in sheer – Mr Heaney is an accountant and he reasons in numbers. The discussions were related to me and whether Lee would follow. As far as individuals behind the two of us are concerned, that was a purely accounting exercise. The identity of that team, as far as I was concerned and as far as Mr Heaney was concerned, was less, if at all, relevant."

Some might consider that that was a stance that is not entirely becoming, lacking loyalty to junior members of the team: but it was a commercially realistic stance based upon the premise that it was easier to find individuals to service broking work than individuals to produce it. The only individual who Mr Niel Mee required was Mr Lee: he thought he needed him to broke the work that he produced. He was not concerned by the identities of the other members of the back-up team, although he would have been pleased if some had followed him. He also, clearly, expected that some might wish to do so.

69. I did not hear from Mr Lee. However, there was the suggestion – and I think it was a suggestion, rather than a specific allegation - that Mr Niel Mee spoke to Mr Lee with a view to inducing him to breach his contract with Global Risks or otherwise act

unlawfully. Mr Niel Mee accepted that he did keep Mr Lee informed of his discussion with Tyser from November 2008; but he denied any attempt positively to entice or induce Mr Lee to breach his contract of employment, and there is no evidence (and certainly no compelling evidence) that he did so. I accept that Mr Niel Mee did not do so. He did not have to do so, because of his confidence that Mr Lee would, in fact, follow him if and wherever he went. Mr Niel Mee gave firm evidence as to that; and I accept it. As I have said, there is no suggestion that Mr Lee did in fact breach his contract of employment with Global Risks. Given Mr Lee's loyalty to Mr Niel Mee, had the latter induced him to breach his employment contract, one might have expected him to do so.

70. The evidence of what was discussed at the 5 November meeting is thin (perhaps to an extent because Mrs Butcher was apparently ill during it). However, given that attitude, I accept Mr Niel Mee's evidence that, at that meeting, the discussion was solely based upon his own position, and other team members (including even Mr Lee) were not discussed at all. I accept, as Mr Niel Mee said, they simply did not crop up as a topic for discussion.

71. The next meetings between Mr Niel Mee and Tyser took place on 17 and 18 November at Tyser's offices in London. On 17 November, he again met Mrs Butcher and Mr Andrews in a late morning meeting that ran up until lunchtime. Mrs Butcher and Mr Andrews asked him to lunch, which he initially declined because it was his birthday and he had arranged to meet Mr Lee for lunch. However, Mrs Butcher and Mr Andrews persuaded him to change his plans, on the basis that Mr Lee also joined them for lunch, which he did. During the lunch, Mr West (who had, that very morning, received a provisional offer of employment from Tyser) telephoned Mr Lee's mobile phone, and ended up speaking to Mr Andrews who invited him to join the lunch, which he did. It is unclear at precisely which stage of the lunch Mr West joined it: but Mrs Butcher in her statement said she recalled it was after they had finished eating, and Mr Niel Mee said that Mr West arrived after he had finished eating, which he recalled because he had somewhere to go on to (namely an interview with another broking house). Mr West sent an email the following day referring to how good the food was, which prompted Mrs Butcher in her oral evidence into thinking that he must have eaten with them, although she could not recall him having done so. On all the evidence, I am satisfied that he joined the gathering late, after Mr Niel Mee had finished eating: and that he stayed on after Mr Niel Mee had left.

72. I accept that this evidence shows that Mr West was taking a considerable interest in the French team, and whether they would join Tyser. The fact that he telephoned Mr Lee at lunchtime on the day that he (Mr West) had picked up his provisional offer letter from Tyser might suggest that. Further, Mr Niel Mee would have known that day that Tyser had made a provisional offer to Mr West – Mrs Butcher referred to the fact that he (Mr West), again perhaps seeking to inflate his own position, referred to the fact that he had the letter in his pocket.

73. However, the evidence does not suggest that this was a planned meeting between Mr Niel Mee, Mr West and/or, for that matter, Mr Lee, and Tyser. It was an *ad hoc* event. I accept the evidence of Mrs Butcher and Mr Niel Mee that, despite Mr West making it clear that he had received an offer from Tyser that day, there was no discussion at the lunch of the terms offered; or the possibility of anyone else leaving Global Risks and joining Tyser. Given Mr Niel Mee's rather disdainful view of Mr

West – and the confidence he had in Mr Lee following him wherever he might go – I am also satisfied that there were no discussions that day, either at the lunch or the more formal meeting that preceded it, with regard to the move of the French team (or anyone in it other than Mr Niel Mee himself); nor, at the lunch, any discussion of even the possible move of Mr Niel Mee. Those involved who gave evidence denied that there was. Mr Niel Mee simply had no professional or other interest in what Mr West might or might not do. Further, at this stage, Mr Niel Mee was also still considering the possibility of moving to two other brokers and, indeed, he left the lunch early to enable him to go to an interview with one of them: for him to have discussed at lunch the possibility of joining Tyser would, in the circumstances, have been not only inappropriate but unlikely. Finally, those findings are consistent with Mr Niel Mee's evidence that, when he met Mr Heaney the following day, for the first time he indicated that he thought Mr Lee would follow him if he were to move to Tyser.

74. More importantly, they are also consistent with Mr Niel Mee's approach to the continuing negotiations with Tyser. He met Mr Heaney again on 15 December 2008 and 12 January 2009. The resulting documents produced by Tyser (an email from Mr Heaney on 15 December after the meeting, and a note of issues raised by Mr Niel Mee prepared by Mr Heaney after the 12 January meeting, and dated 20 January 2009), as well as Mr Niel Mee's own evidence, make abundantly clear that he was negotiating solely with regard to his own position and terms and not on the basis that others would follow him from the French team.

75. The issues paper is perhaps the most instructive. Mr Niel Mee's putative Tyser team are referred to only twice: he wished to have a say in how bonuses were distributed between members of the team (paragraph 7), and there is a reference to the general effect of staff bonuses on profit and in particular the effect on profitability "if two of the support staff did not come across" (paragraphs 8 and 9). I fully accept that the reference to staff "coming across" is suggestive of French team staff moving from Global Risks to Tyser; but the whole tenor of the paper is otherwise counterindicative of the suggestion that Mr Niel Mee was envisaging a team move. As I have said, this is entirely consistent with his general attitude to his particular support staff: whilst perhaps he did hope that some might move to Tyser to support him, all but Mr Lee were, in his eyes, not required as specific individuals. There is nothing in these documents that suggests that Mr Niel Mee was negotiating for a team move, rather than a move for himself with Mr Lee following, and with satisfactory French-speaking back-up in one form or another: or, although no doubt he expected some to do so, that he cared over-much whether members of the French team at Global Risks (other than Mr Lee) came with him or not. Indeed, the reference in paragraph 8(d) of the paper – that Mr Niel Mee said that it was critical that, following any move to Tyser, all support staff were fluent in French – makes clear that he did **not** envisage his French team moving across as a team. He obviously knew the capability of his team members to speak French, and this reference belies the suggestion that he was expecting a team move. In the event, a number of the French team did wish to move and did move to Tyser in due course: and, therefore, if, prior to 20 January 2009, he had sought their views on whether they would come across as a team, he would not have had to be concerned about his putative Tyser team's ability to speak French. He was clearly not working on the basis that the members of his team at Tyser would necessarily be the same as the French team at Global Risks.

76. Mr West continued to negotiate with Tyser over the Christmas 2008 period, with a further provisional offers of employment being made on 24 December and 27 January 2009, both subject to Mr West's confirmation that he would not breach his contract with Global Risks in the period of restrictions. Both of these offers, however, were not for the US Property and Casualty Division, but in the International Division.

77. Mr Leiper submitted that these offers to recruit Mr West into the International Division were significant, in evidencing links between Mr West and Mr Niel Mee, and a plan by Tyser to draw both Mr West and Mr Niel Mee's team across to work in the same team. Mrs Butcher explained (Statement 14 June 2010, paragraph 18) that it was at her suggestion to Tyser's Business Development Group that it might be more suitable if Mr West joined the International Division rather than the US Division, because (i) of the potential conflict of interest between some of Mr West's business and the US Division's own Caribbean accounts, and (ii) Tyser's were looking to expand their International Division and were already in talks with "potential acquisitions that had French and Australian specialism" – she confirmed that the reference to "French... specialism" was to Mr Niel Mee – and Mr West had worked out of those areas, as well as South Africa and the US/Caribbean, over the years.

78. Mr Leiper submitted that the situation became more suspicious by virtue of Mr Heaney's unconvincing evidence as to Mr West's divisional destination at Tyser (Transcript 25 October 2010, pages 133 and following): the fact that Mr Niel Mee's consultancy agreement with Tyser included credit of MSI income, as well as income from a company called Ascoma, to him: and an email sent by Mr Andrews to Mr Elliott, Mrs Butcher and Mr Heaney on 11 September 2009 (after these proceedings were underway). I will return to the consultancy agreement (paragraph 81 below). At the time of the email, Mr West had still not joined Tyser. The email read:

> "I have now been informed certain Directors within [North American Division] of the plan to switch [Mr West] from [International] and that he will be joining us on Monday and working in [US P&C]. You will recall that, ultimately I had obtained acceptance from my team for [Mr West] to join the company on the basis that he would be working outside of our [North American Division] area and that his main concentration would be on International business with an emphasis on his existing French account and working with [Mr Niel Mee]....
>
> Chris, I would request that you provide instruction today for [Mr West] to join the International Division as planned and that he starts on Monday in their team. That was always the plan and frankly, if the change of mind was based on the legal position then we should not allow [Mr West] to start at all until things are clear."

79. That, Mr Leiper submitted, indicated that the plan all along was for Mr West to come across to Tyser with Mr Niel Mee, and to work with him to develop the French business. It betrayed a plan involving Tyser, Mr Niel Mee and Mr West as active participants.

80. In my view, that goes too far. It was clearly not Tyser's plan from the start to recruit Mr West and Mr Niel Mee to work together in the International Division. Initially, Tyser intended Mr West to join its US Division: the initial offers (including that of 17 November 2008: see paragraph 63 above) were in those terms. There was a change in Tyser's view in November/December 2008, and I accept Mrs Butcher's evidence as to the dual nature of the reason for that change. However, I do not accept that, from November 2008, that meant that Tyser treated the recruitment of Mr West and of Mr Niel Mee as part of a joint exercise. Tyser generally kept the exercises apart, running in parallel. Nor do I accept that Mr West and Mr Niel Mee were acting in concert: the other evidence to which I have referred is overwhelmingly to the effect that they were not, either in November/December 2008 or at any other time. It is noteworthy that, in November 2008, Tyser's discussions with Mr Niel Mee were at a very early stage, and it was far from probable that he would be joining them at all. Tyser was, however, desirous of recruiting some producer who could increase the French market, whether Mr Niel Mee or another. Further, whatever Mr Andrews thought in September 2009, one reason for Tyser seeking to recruit Mr West was that he had clients (predominantly US/Caribbean) who it thought it might retain on his retirement (see paragraph 57 above).

81. Nor am I impressed with the evidential weight of the terms of Mr Niel Mee's consultancy agreement with Tyser. Mr Niel Mee's evidence about the terms of the consultancy was not the clearest, but he said that the intention was that Ascoma income was to be included, even if the Ascoma business was fronted by MSI: it was not the intention to include any other MSI business (Transcript 25 October pages 47 and following). The agreement certainly appears to go beyond that. Mr Niel Mee's evidence was that he thought the final contract had been amended, but Mr Heaney said that this was its final form. All of that evidence is unsatisfactory. However, what I do not consider this evidence shows, in its full context, is that it was always intended that Mr West was brought across effectively as part of "the French team" or that there was a plan, involving Tyser, Mr West and Mr Niel Mee that he did so.

82. Mr Leiper also relied upon an email of 19 January 2009, from Mr West to Mr Elliott, as follows:

> "I understand from [Mr Sanders] that the talks with [Mr Niel Mee] are still progressing. [Mr Niel Mee] has told me privately that he is encouraged by them so far and I believe subject to a suitable agreement being reached he too will start the process of the account transfer. I am convinced that a deal is there for Tyser although his personal circumstances make them far from straightforward by necessity. I can assist as a go between here if you feel these would help as we talk with him daily and I can reach him as and when needed."

Mr Leiper suggested that "we" referred to Mr West and Mr Lee, who certainly was in regular contact with Mr Niel Mee.

83. This email of course shows that Mr West was prepared to assist Tyser in its negotiations with Mr Niel Mee. However, Mr Niel Mee said that Mr West had simply made most of this email up: he did not talk to Mr West about his possible recruitment

by Tyser, and there was no chain of communication with him through Mr West or (in respect of the negotiations with Tyser) Mr Lee.

84. I accept that this email was essentially puff from Mr West. I do not accept that he had any ready line of communication to Mr Niel Mee (whether or not through Mr Lee), nor do I consider that Mr Niel Mee had shared any confidences with Mr West about how any negotiations with Tyser were going. There is no evidence that Mr West did in fact perform that function. This email was, in a phrase used during the trial, Mr West "bigging himself up" with Tyser.

85. Returning to the chronology, Mr West decided to accept the 27 January offer: and, the following day, he resigned from Global Risks. Under the provisions of his contract with them, his notice period was due to run until 27 July 2009, and the period of his post-termination non-solicitation and non-dealing restrictions (see paragraph 30 above) until the end of July 2010. (A formal offer of employment, with a start date to be advised, was issued by Tyser on 30 January and signed by Mr West on 4 February 2009.)

86. Upon handing in his notice on 28 January 2009, Mr West was not put on gardening leave by Global Risks, but rather required to work his notice period. However, during that period, he was in contact with clients both to ensure (so far as he could) they transferred business to Tyser, and put new business through Tyser.

87. Crump International had not previously been a client of Mr West: but, during the spring of 2009, he passed work from them through to Tyser rather than Global Risks. On 3 February, in an email to Tyser (including Mrs Butcher) following a rejection of a bid from Mr West, Mr West said that he "could not risk [Global Risks] property guys doing a good job on this without me being involved as this could make it awkward for [his contact at Crump] to come over to Tyser with his business". His contact had said that he would meet Tyser with Mr West, but would prefer not to use them until he had done so. On 11 February, Mr West told his contact at Crump that he had gone to Tyser for a quick response on new business: Mrs Butcher, who was copied in, responded, "Am on the case!" Further Crump work was referred to Tyser (with Mrs Butcher at least copied in) on 17 and 18 February, and 21 May. The last-mentioned included a request to Crump that they use his home email, with an apology for "all this cloak and dagger" (although, from the evidence as a whole, Mr West seemed rather to enjoy it). On 2-3 March, Mr West arranged a meeting between representatives of Crump and Tyser.

88. Work for First Insurance was also deflected away from Global Insurance towards Tyser. On 11 February, he wrote to Mrs Butcher saying that he had to arrange broker of record letters to be written from First and MSI, in order to have files transferred from Global Risks to Tyser: and, on 12 May, he wrote to his contact at First asking her to write to Global Risks in given terms stating that First had decided not to renew its contract and would be moving to Tyser: she said that she would do so: that exchange was copied to Mrs Butcher. On 11 June, he wrote pressing First for a broker of record letter soonest: the letter was in fact sent the following day. On 4 June, there is email evidence that Mr West was working for First on behalf of Tyser, and another note to Crump telling them to use only his home email address: and, on 15 June, Mrs Butcher asked Mr West to do work on behalf of Tyser on the First account, to which he responded the following day that he was "on the case behind the

scenes". On 17 June, Mr West wrote to a contact at First who had written to his Global Risks email address, indicating that it was embarrassing that she sent it to that address, but the work would be done at Tyser: and, from 29 July, he would be her "man in London".

89. Most of this activity involved Crump and First, but it was not restricted to those two clients. On 17 February, Mr West passed onto Tyser enquiries from two other brokers. On 18 February, he asked Mrs Butcher whether he should leave Red Hook with Global Risks or refer it to another broker (Tyser not being interested in Red Hook work). On 4 June, he wrote to his contact at MSI, indicating that other agents were writing to change brokers to Tyser effective 1 August, and could they transfer the files. Mr West said that he was leaving Global Risks on 28 July, and joining Tyser "thereafter".

90. Therefore, Mr West certainly engaged in business activity on behalf of Tyser, whilst still employed by Global Risks. However, on the evidence before me, it is difficult to identify any actual income-producing work that derived from this activity, or losses to Global Risks that ensued as a result of the activity. I shall return to that aspect of the case, when I deal with the individual claims.

91. To continue the chronology of events, I have to return to M Legrand and his companies. As I have described, SEGAP was a French retail broker that sought to place its business on the Lloyd's market, through Mr Niel Mee at Craven & Partners and then Global Risks when he moved there. The business was sent through Legrand Limited, a Lloyd's coverholder but not one that performed any substantive function, because of the tax advantages of that route.

92. In 2007, Lloyd's rules changed such that Legrand Limited lost its coverholder status because it did not have a physical presence in the UK. M Legrand wished to recover his tax efficiency, and initially talked to Mr Niel Mee about how Legrand Limited's coverholder status might be restored. One possibility was that a UK broker "housed" Legrand Limited, by setting up a physical presence on its premises, in the form of staff etc.

93. The evidence is quite clear that Mr Niel Mee had discussions with Mr Rice about the general issue which had arisen as a result of the deregistration of Legrand Limited, in late 2007 or, more probably, in early 2008 (after Mr Rice had become involved in Mr Niel Mee's direct reporting line: see paragraph 17 above). The content of that discussion is in dispute. One potential resolution discussed appears to have been a grandfathering arrangement that involved registering Legrand Limited in France as an approved French-domiciled broker: M Legrand refers to that being reported back to him in late 2007 or January/February 2008 (Statement 11 June 2010, paragraph 12), a solution unacceptable to M Legrand in the event. However, although M Legrand recalled discussing with Mr Niel Mee the possibility of Global Risks themselves providing housing facilities three times in 2007-early 2008 (Statement 11 June 2010, paragraph 11), and that Mr Niel Mee "had discussed the matter with [Global Risks]", M Legrand did not say that Mr Niel Mee told him that Global Risks were not interested in providing such an arrangement for him. When asked about this by Mr Leiper in cross-examination, Mr Niel Mee said that he possibly did not in terms raise the issue of a sub-contracted housing arrangement with Mr Rice at that time (Transcript 22 October 2010, page 113 line 11).

94. However, I do not find these early discussions significant. M Legrand and Mr Niel Mee were considering a number of options, including housing and grandfathering arrangements. The housing arrangement was not at that stage a front-runner, and there were doubts about its lawfulness and practicability. On the basis of his cross-examination, it is unlikely that Mr Niel Mee did in terms discuss the housing arrangement option with Mr Rice – but, in the events that followed, in my view it is not material either way.

95. After those early discussions, M Legrand looked to other solutions, particularly using a vehicle in one of a variety of other territories, including Ireland. None came to fruition; and over time his thoughts increasingly focused again on reregistering Legrand Limited at Lloyd's.

96. Mr Niel Mee met Mr Rice on 16 September 2008, particularly to talk about his expense levels which were being renegotiated (see paragraph 20 above). However, in his cross-examination, he said that he thought that, at that meeting he had "alluded to" and "touched upon" the subject of Global Risks providing housing facilities for Legrand Limited, and "it was shot down [by Mr Rice] as 'not being our cup of tea'" (Transcript 22 October 2010, pages 113-115). Mr Rice could not recall that proposal ever being discussed between Mr Niel Mee and him. Mr Niel Mee also referred to various discussions with Mr Duncan Vinten (Global Risks' Chief Operating Officer) on the overall subject of solutions following the deregistration of Legrand Limited, although not housing arrangements in depth (Transcript 22 October 2010, page 115 line 20 to page 116 line 3). Mr Vinten denied any such discussions took place.

97. As to whether Mr Niel Mee discussed the possibility of Global Risks providing the housing arrangement in 2008, the evidence of Mr Niel Mee and the relevant Global Risks witnesses therefore appears in stark contrast. I do not consider that Mr Niel Mee and Mr Vinten had any meaningful discussions about the issue. I find that it was at least raised with Mr Rice in early 2008, and may have been raised again superficially in the 16 September 2008 meeting, by when (Mr Niel Mee said: see Transcript 22 October 2010, page 114 line 21 and following) it was becoming increasingly obvious that a housing arrangement was the way forward. I accept that Mr Rice was not enthusiastic: but I do not accept that he shot down the idea, and certainly did not do so to the extent that he indicated Global Risks would not consider it in any circumstances. However, what is in my view important as matters moved into 2009, is that Mr Niel Mee accepted that at no time did he tell Mr Rice (or any other superior at Global Risks) that a competitor, to whom he had introduced M Legrand, was considering and then offering to provide housing arrangements for Legrand Limited (see, especially, Transcript 25 October 2010, page 12 line 21 to page 13 line 2).

98. That brings me to events in 2009. In early 2009, having investigated and rejected other options, M Legrand told Mr Niel Mee that he was looking to have Legrand Limited reinstated at Lloyd's, through a housing arrangement: Mr Niel Mee told him that he knew of two brokers who might be able to assist, Tyser and another broking house with whom he was in his own discussions. In that same conversation, Mr Niel Mee told M Legrand that he was very unhappy at Global Risks, and was probably going to leave, Tyser and the other firm he had mentioned being firms he might join (Statement 11 June 2010, paragraph 18).

99. Mr Niel Mee was, at this time, in discussions with Tyser. He had, for example, met Mr Heaney on 12 January 2009 (see paragraph 74 above). On 29 January, Mr Heaney had a conversation with Mr Niel Mee from which the former believed that they "had a deal" (email Mr Heaney to, amongst others, Mrs Butcher dated 30 January 2009). Mr Niel Mee said, and I accept, that, at that stage, there was no deal – he was tending towards Tyser, but keeping his options open – but that email shows the advanced stage negotiations had reached.

100. During the course of these discussions, Mr Niel Mee mentioned to Mr Heaney that M Legrand, as a major client of his at Global Risks, had a problem following the deregistration of Legrand Limited (Mr Heaney Statement 11 June 2010, paragraph 40). Indeed, it is clear from the email from Mr Heaney to Mr Niel Mee dated 15 December 2008 that they had discussed the possibility of Tyser providing such a housing arrangement before that date. Mr Heaney indicated they could do so, and had done so for another client. He also indicated that he hoped that Tyser could provide a "one-stop solution that is satisfactory to all parties". Further, in the 25 January 2009 issues paper prepared by Mr Heaney (see paragraphs 74-5 above), it was envisaged that Mr Niel Mee would procure a hefty contribution towards the housing arrangement fee ("in addition to any commission Tysers may earn in respect of their business") which clearly shows that Mr Niel Mee and Tyser had substantial discussions concerning the housing arrangement possibility before Tyser made any contact with M Legrand. The 15 December email suggests that Tyser were hopeful that they would obtain both housing arrangement and brokerage commission from at least Legrand Limited: whilst the hefty contribution towards the costs of the housing arrangement in the January 2009 issues paper suggests hope tempered by the reality that they may only get the housing arrangement, if that.

101. The first contact between Tyser and M Legrand was in mid-February 2009, when Mr Christopher Spratt (Tyser's Chairman, and a French-speaker) called M Legrand to offer Tyser's advice and help in relation to the housing arrangement issue. As I have indicated, that call was not entirely "cold", as Mr Niel Mee had of course spoken to M Legrand about the possibility of Tyser assisting. Mr Spratt said that he was, at that time (and despite the optimism of Mr Heaney), sanguine about Mr Niel Mee joining Tyser – but thought that a fee arrangement for the housing arrangement would be worthwhile for Tyser even though they could not guarantee earning brokerage fees from SEGAP/Legrand Limited. Indeed, he said that Tyser were happy to proceed with the housing arrangement "without any realistic hope" of getting brokerage commission (Transcript 22 October, page 24 line 1 to page 25 line 3). In all of the circumstances, I do not accept that, by mid-February 2009, there was no realistic hope that Mr Niel Mee would join Tyser. Nevertheless, whatever the realism of that, Tyser clearly hoped that, by getting to know M Legrand and setting up the housing arrangement, that might advantage them in the future – although they believed that M Legrand, his companies and their work would follow Mr Niel Mee wherever he might go. That hope is understandable; and appears to have been justified, because M Legrand in fact intended, as part of the housing arrangement, to appoint Tyser as his broker in relation to any new business put through Legrand Limited (Transcript 20 October, page 16 lines 22-25 and page 19 line 21 and following).

102. A meeting between Tyser and M Legrand was set up in Paris, on 23 February 2009. Mr Heaney, Mr Spratt and Mrs Butcher attended for Tyser. Mr Niel Mee also

attended, at the request of M Legrand. Mr Niel Mee said that his sole role that day was as M Legrand's translator, and he denied that his presence aided the development of a commercial relationship between M Legrand and Tyser (Transcript 22 October 2010, page 125 lines 12-14). M Legrand and the Tyser witnesses who attended the meeting also said that Mr Niel Mee acted only as a translator. However, Mr Niel Mee asked Mrs Butcher to attend (Transcript, 22 October 2010, page 124 lines 15-17), which suggests a more substantive role than mere interpreter: and, in any event, Mrs Butcher said that the meeting was to talk about the Legrand account and whether "Tyser would be a good fit for them" (Transcript 16 October 2010, page 219 lines 3-6).

103. I have no doubt that this meeting was set up to enable high level representatives to meet M Legrand, primarily to discuss the possible housing arrangement with him. He was concerned that, whoever might provide the facilities, such an arrangement might not be lawful or practicable. Following the meeting – the following day (24 February 2009) – in an email to which I shall return, Mr Spratt told Mr Heaney that they should send Mr Bryan details of the threshold conditions for the reregistration of Legrand Limited.

104. However, one cannot ignore the reality of the circumstances surrounding the meeting. Mr Niel Mee was in advanced negotiations with Tyser to join them. M Legrand was aware that Mr Niel Mee might well join Tyser. Given their long-standing commercial relationship and friendship, it was very likely indeed that, if Mr Niel Mee moved firm, then M Legrand's work would follow. Tyser were as aware of that as Mr Niel Mee and M Legrand themselves. They were also aware that, if they offered a housing arrangement for M Legrand that may hold them in good stead with both him and Mr Niel Mee: and that, if Mr Niel Mee joined them, they would very likely obtain the work from M Legrand. Of course, the entire project could fail – as Tyser were well aware, it was possible that Mr Niel Mee would not join them – but Tyser's high level visit to Paris to see M Legrand should be seen more in terms of an investment than a gamble.

105. Mr Niel Mee continued to be involved in the potential housing arrangement by Tyser of Legrand Limited. M Legrand said that, following the February meeting, on 23 April 2009, he had a meeting in Paris with Mr Niel Mee, Mr Bryan (an accountant introduced to M Legrand by Mr Niel Mee) and M Legrand's step-son, M Geraud Puechaldou (a fluent English-speaker), "to discuss the Housing Arrangement" (Statement 11 June 2010, paragraph 20). After this meeting, M Legrand decided he would instruct Tyser to assist with it, and he instructed Mr Bryan to liaise with Tyser and prepare the necessary documentation. Mr Niel Mee accepted that, by June 2009, M Legrand "sensed" that Mr Niel Mee was going to Tyser (Transcript 25 October 2010, page 35 line 24 and following). However, I am satisfied that, even by April, he expected Mr Niel Mee to move. I accept that Mr Niel Mee had not made a final decision – he was still negotiating the level of expenses with Global Risks which he probably would not have done or done so vigorously if he had been sure of leaving, and he had still not had his discussion with Global Risks about what benefits he might obtain from the management buy-out (those being discussed at a meeting on 12 May 2009 and Global Risks formal offer to Mr Niel Mee being made 10 days later) – but, as I indicate below, Tyser were confident enough about having French work in place within a reasonable time to advertise for French-speaking staff in March 2009: and,

by April, there was clearly a very good chance that Mr Niel Mee would join Tyser. Given their very close relationship, it is difficult to think that Mr Niel Mee did not keep M Legrand reasonably informed as to his intentions with regard to Tyser, from time-to-time: but, in any event, I am satisfied that M Legrand well-knew in April that it was likely that Mr Niel Mee would at some stage join Tyser.

106. By 29 May, Mr Bryan had prepared a draft consultancy agreement between Legrand Limited and Tyser, *a propos* the housing arrangement. On its face, it was restricted to the housing arrangement, including provision for a £12,000 per year fee but without any reference to brokerage commission at all. M Legrand sent the draft to Mr Niel Mee by email that day, asking what he thought of it and in particular what paragraph 5 of the draft (which concerned reimbursement of expenses) meant. He sent it because he had understood that Mr Niel Mee was dealing with the housing arrangement on behalf of Tyser (Transcript 20 October 2010, page 18 line 24 to page 19 line 2). He sent it for Mr Niel Mee's advice. That was entirely in line with M Legrand's business dependence upon Mr Niel Mee, particularly in relation to matters in the English language and in respect of Lloyd's business. As M Legrand said (Statement 11 June 2010, paragraph 21), it was his common practice to ask Mr Niel Mee for help on such matters; and he had helped him establish Legrand Limited in 1998 and "had helped with the Housing Arrangement". Mr Niel Mee's response was to telephone M Legrand to remind him that he had asked him in April 2009 not to send him emails to his Global Risks email address, and asking him to send a further email to say that the first had been sent in error. M Legrand did so, in terms that the first email had been intended for someone else, although that was of course untrue. The draft had been sent to Mr Niel Mee for his general advice upon it.

107. To put this into perspective chronologically, Mr Niel Mee agreed his future expense provision as a resident in Monaco, with Mr Rice and Mr Vinten, on 18 May. He received the formal offer of shares in the Global Risks management buy-out on 22 May. The offer was disappointingly small, and he did not respond to it. He received the draft agreement between Legrand Limited and Tyser on 29 May. He was sent a draft offer of employment and draft terms by Tyser on 1 June. I have no doubt that Mr Niel Mee had decided to move to Tyser by 29 May, and, again, that M Legrand was aware that that was at least very likely.

108. Mr Niel Mee accepted in his cross-examination that, except for paragraph 5, it would have been wrong for him to have advised on the draft agreement whilst employed by Global Risks, and, he said, he did not think he had done so (Transcript 25 October 2010, page 21 line 2 to page 28 line 18), that M Legrand's request had put him into a difficult position (page 21 lines 2-18), and indeed eventually that he told M Legrand that he could not advise him on the agreement (page 24 line 10 to page 25 line 3). M Legrand said that he had sent him that document for advice because Mr Niel Mee had been dealing with the housing arrangement until then (Transcript 20 October 2010, page 18 line 24 to page 19 line 2): but that he did not press Mr Niel Mee for advice on the terms, once Mr Niel Mee had indicated that he could not assist him. However, M Legrand had been dependent upon Mr Niel Mee on London commercial matters for over 15 years, and I simply do not accept that Mr Niel Mee did not continue to offer his advice on the terms of the housing arrangement. I am satisfied that he did. The circumstances of the retraction email (referred to in paragraph 106 above) evidence that Mr Niel Mee did continue to assist M Legrand in respect of the housing

arrangement terms, and in a manner in which he believed that that assistance would not come to the attention of Global Risks.

109. M Legrand emailed Tyser on 4 June 2010, in an email which (he said) he drafted but which was translated by his stepson. It is certainly in fluent business English. It responds to two different agreements: a consultancy agreement, but also a draft broking business agreement which includes provision for an additional housing arrangement fee. The agreement appears to reflect M Legrand's intention to put new Legrand Limited broking business through Tyser if the housing arrangement were set up with them (see paragraph 101 above), but also an intention to broke SEGAP work through Tyser. In the covering email, M Legrand says:

> "In the second paragraph of the sub-heading entitled "Remuneration" I have deleted the figure of GBP 1,000 per month and replaced this with an amount to be agreed and expressed it on a per annum basis. It is important for you to be aware that a not inconsiderable proportion of my London-placed book of business will continue to be routed to Lloyd's or London company insurers via SEGAP (and consequently Tyser) and not Legrand Limited. For example, Legrand Limited will be the vehicle utilised for Professional Indemnity and Garantie Financiere business only in the initial stage. SEGAP (a French-registered broker) will be the vehicle utilised for the placement of Loss of Rent (Loyers Impayés), "Dommages Ouvrage", Open Market cases and newly created Binding Authorities and facilities other than those whose new products concerning Professional Indemnity or Garantie Financiere business.
>
> In view of the very substantial commission that you will be earning from my combined accounts I believe that it is not appropriate to charge me at a rate of GBP 12,000 per annum particularly as Legrand Limited will only be the conduit for part of my account I do however recognise that there will be an element of work that Tyser will be engaged in over and above that of exclusively London placing broker but I am not prepared to pay at a rate of GBP 12,000 per annum. In my view the figure should be symbolic. I therefore propose that Legrand pays you the sum of GBP 4,000 in full per annum. Should you encounter protracted negotiations that render any unexpected costs for 'housing' of Legrand in London then of course I would consider any request for additional funding sympathetically providing these costs could be substantiated and properly quantified. I do feel however that the brokerage that you are going to generate from the handling of my account both in the name of SEGAP and Legrand should amply satisfy your requirements."

110. M Legrand said that he thought there was still a possibility that SEGAP work would stay with Global Risks: but that possibility was in fact by this stage vanishingly small, and the language of this email is unequivocal. M Legrand expected both Legrand

Limited and SEGAP business to be broked in London through Tyser in the near future. He used the commercial leverage of the brokerage commission to reduce the housing arrangement fee. Given that he wished to follow Mr Niel Mee, this can only have been on a firm expectation that Mr Niel Mee would join Tyser.

111. There were further emails, including one dated 11 June 2009 sent by Mr Heaney, saying:

> "Happy to sign the outsourcing agreement. Clearly the consultancy agreement(s) cannot be signed until the relevant French speaking staff are on board and members of the Tysers team. We need to coordinate the timing of the signing, resignations and other details. Time is moving on"

112. In the same vein, there was an exchange of emails between Mr West and Mr Shilton of MSI, as follows:

> Mr West (5 June 2009): I believe the LNM [i.e. Mr Niel Mee]/and team scenario will break in the next three weeks or so in some form or other.
>
> Mr Shilton (9 June 2009): ... Spoke to Laurence [i.e. Mr Niel Mee] on Saturday and he said that the whole team should be at Tysers within three weeks, that he will be the last man standing [Global Risks] awaiting dismissal rather than giving in his notice; that he is running round France and Corsica for the next two weeks, and then on holiday for a week."

By 9 June, Mr Karpus, Miss Geadas and Miss Petit had accepted offers from Tyser. Mr Lee applied for a position there on 28 April: it is unclear from the papers when he was offered a position.

113. M Legrand emailed Tyser on 12 June, asking Mr Heaney "to send ... some resignation templates (Legrand Limited and SEGAP) regarding our covers with [Global Risks] and paper for transfer to Tyser". That further evidences M Legrand's expectation of early transfer.

114. The SEGAP business was in fact transferred to Tyser on 31 July 2009. However, before I deal with the run up to that transfer, I need to take one step backwards, to deal with the events as they affected other members of the French team.

115. As I have indicated (paragraph 103), following the 23 February meeting, Mr Spratt emailed Mr Heaney about sending Mr Bryan details of the threshold conditions for reregistration of Legrand Limited. In the same email he said:

> "The second matter which needs attention is the recruitment of staff, and I believe that one way of dealing with this is to place recruitment advertisements in the trade press and to get the people we are seeking to respond to those advertisements. ..."

116. By this stage, negotiations with Mr Niel Mee were advanced, and Mr Leiper submitted that this email showed that what was proposed was a team move and Tyser were preparing a strategy for it appearing that appointments of members of the French team had been made as a result of a response to an advertisement rather simple collusion. Mr Spratt's initial reaction when cross-examined about this was that it was gibberish (Transcript 22 October 2010, pages 34-6): but it is in fact perfectly lucid and, upon reflection, he accepted that, on its face, it appeared to indicate that Tyser might have been targeting individuals - although he denied that they in fact were. Indeed, he said that, at that time, Tyser had no real prospect of Mr Niel Mee joining them, and the advert related to staff that would be needed to service the housing arrangement team – not work that he might produce, as and when he joined them.

117. I am afraid I found that evidence entirely unconvincing. At the end of February 2009, it was anything but a certainty that Mr Niel Mee would join Tyser, He had other brands in the fire, including, not only other brokers, but the possibility that he would stay with Global Risks. However, even at that stage, it was likely that he would join Tyser. It is certainly not correct to say that there was no realistic prospect of him doing so; and, although Mr Spratt was not, of course, at the heart of the negotiations with Mr Niel Mee, it is difficult to understand how Mr Spratt could have thought that to have been the case.

118. In any event, Tyser did not act as if there was no such prospect. In fact, a draft advertisement was produced by Mr Heaney the following day – and, after amendments, it was placed on Tyser's website on 5 March 2009. On its face, it sought French-speaking insurance technicians, the advertised salary being for a technician (rather than a broker). Although Mr Spratt, as I understood his evidence (Transcript 22 October 2010, pages 34 and following), suggested that this was to find French-speakers who could simply service the housing arrangement, the advert was clearly intended to find personnel who could service a French broking team. Indeed, Tyser admit (Admissions 15 June 2010, paragraph 3.3) that Mr Niel Mee told them the names of the individuals in the French team at Global Risks, and they "advertised vacancies in the hope that these individuals would apply for work with [Tyser]". After the 23 February meeting, Tyser began to seek French work, for example by sending out letters to prospective clients. Mr Heaney accepted that they did so because they were confident of having a team in place in a reasonable time (Transcript 26 October 2010, page 30, lines 3-14).

119. In any event, members of the French team did respond to the advertisement, and applied for a post: Miss Geadas on 16 March, Mr Karpus on 17 March and Miss Petit on 25 March and Mr Lee on 28 April. Mr Karpus said – and I accept – that Mr Niel Mee referred him to the advert (Statement, paragraph 28: and Transcript 26 October 2010, page 96 lines 2-5, and page 121 line 17 and following): and Mr Niel Mee accepted by formal admission that:

> "In March 2009 [he] told [Mr Karpus] the fact that the advertisement was for insurance technicians should not put Mr Karpus off applying for the position."

120. Mr Karpus, Ms Geadas and Ms Petit were all interviewed on 27 March: there do not appear to have been any other interviewees. All were offered posts, contracts being drafted on 30 March and sent out on 2 April. Miss Geadas accepted the offer on 19

April, and Mr Karpus on 28 April 2009: the date of Miss Petit's acceptance is not known, but it must have been about that time.

121. On 8 April, there was a fire alarm at Global Risks, and everyone had to leave the building in the usual way. After all of the staff had returned, Mr Rice saw Mr West returning to the building with Miss Geadas and Miss Petit. Mr West had of course given notice by that stage, but Mr Rice said that he was not suspicious of any wrongdoing at that stage. Nevertheless, he made a file note that he had seen them "returning from a meeting/coffee date?", which was apparently placed on Mr West's personnel file.

122. This incident was considered by Mr Rice "strange", because Mr West and the French team did not have anything to do with one another. In his first statement (Statement 9 June 2010, paragraph 71), he said that the incident occurred on 8 June 2009 and he regarded it as suspicious behaviour by Mr West: but in his oral evidence he accepted that the incident was in April at a time when he had no suspicions about Mr West or any of the French team. Mr Rice considered, with the benefit of hindsight (Statement 9 June 2010, paragraph 71), that "the only logical conclusion is that Mr West was talking to Ms Geadas and Ms Petit about his and Mr Niel Mee's team move plans". I return to this conversation – which is one of the few evidenced contacts between Mr West and any of the French team – when I deal with the claims against Mr West below (see paragraphs 220-219, especially paragraph 212): but that does not appear to me to be the only, or even the most likely, conclusion. Despite his statement, this incident was clearly not regarded by Mr Rice as suspicious at the time. There was no follow up at all.

123. On 15 June, Mr Karpus handed in his resignation to Mr Pexton. (For completeness, I should say that Mr Lee resigned on 26 June, and Ms Petit and Ms Geadas resigned in July). Under his terms of employment (see paragraph 36 above), Mr Karpus was on 8 weeks' notice. Mr Pexton told him that it might be possible to shorten that, but only if Mr Karpus divulged where he was going, which he would not do. Mr Karpus told Mr Pexton that it was his priority, during his notice period, to renew the SEGAP cover before he left. He told him that that was due on 1 July, and would probably require a 30 day extension (Statement 15 June 2010, paragraph 38).

124. The following day (16 June), Mr Pexton told Mr Karpus that he should not have any meetings with the underwriters on the SEGAP business without Mr Nicholas Down going with him. Mr Down was Director of Global Risks' Agency Division, dealing substantially with Swiss business that required placement in London, and reporting to Mr Pexton.

125. In fact, the week before, Mr Karpus had arranged a meeting with Mr Julian Brown of the lead underwriter of the SEGAP business for 4.45pm that day – a meeting which, in the event, he attended without Mr Down and without informing him of it. Mr Karpus's reasons for not informing or inviting him – that it was a mundane discussion about what further information Mr Brown needed to enable him to reach a view on renewal in the light of backdated losses, and the meeting was outside usual office hours (Statement 15 June 2010, paragraph 46) – sounded thin in the cold light of these proceedings. However, it is very clear that, in not inviting Mr Down, Mr Karpus was not being covert or sinister. There was no suggestion in the evidence that Mr Karpus said or did anything improper at the meeting, or indeed did anything that was not

intended to progress the SEGAP renewal. The following day, he told Mr Pexton that he had seen Mr Brown, and told him he was going to email M Legrand with the further information required from him (which he did on 18 June) – an email he later that day copied, in English, to Mr Pexton and Mr Down. Mr Lee and Mr Niel Mee (to whom Mr Karpus reported) knew of the position with regard to the SEGAP renewal. Mrs Kidds was aware that the cover had been temporarily extended by 30 days (to 31 July).

126. On Friday 19 June, Mr Karpus briefly met Mr Brown on the floor of Lloyd's, for just a few minutes, when Mr Brown indicated some further information he required from M Legrand. He gave Mr Karpus a note of that, but Mr Karpus did not action it before his suspension when he arrived for work on Monday 22 June.

127. Consequently, by the end of the trial, the only specific things that it was alleged Mr Karpus did wrong were not to comply with an express instruction which was, in Mr Down's words, "rather daft of him" (Statement 10 June 2010, paragraph 9): and failing to pass on the additional requests for information Mr Brown gave him on 19 June when he was suspended first thing the following working day. He had left the request for information on the relevant file. Those failures had no consequences adverse to Global Risks, nor did Mr Karpus have any intention that it should have such consequences.

128. The reaction to Mr Karpus failing to take Mr Down to a meeting on 16 June can perhaps better be understood in the light of the fact that the following day (17 June), just shortly before Mr West's notice period was due to expire, Global Risks received a broker of record letter requiring it to transfer the First Insurance account to Tyser. That put Global Risks on alert; they interrogated Mr West's emails and found some of the emails to which I have referred above. That led to his suspension, too, on 22 June. They suspected a conspiracy: one that involved Mr West and Mr Karpus.

129. Mr Niel Mee was not in London, but was told of Mr Karpus's suspension on 25 June, when he too was suspended. Mr Lee resigned from Global Risks' employ the following day. Ms Petit followed on 15 July, and Ms Geadas on 21 July.

130. The individual defendants in these proceedings were duly summarily dismissed for gross misconduct following disciplinary proceedings as follows: Mr West 26 June, Mr Karpus 30 June and Mr Niel Mee 7 July – and later appeals by Mr Karpus and Mr Niel Mee were dismissed by 31 July. All three gave undertakings in relation to their post-termination restrictions, and there is no claim that any has breached those undertakings. The period for post-termination restrictions having expired, those undertakings are no longer in force.

131. The only outstanding issues relate to claims for damages arising out of the defendants' conduct prior to the termination of their employment; and the defendants' cross claims, primarily for wrongful dismissal.

132. However, some post-suspension events are relevant to these proceedings, particularly the steps taken by Global Risks to retain the work that had, prior to suspension, been conducted by the individual defendants and particularly the SEGAP business.

133. To deal briefly with Mr West, other than some very brief correspondence with Red Hook, there is no evidence that Global Risks took any positive steps to retain any of the work Mr West had conducted, either in his period of notice or after his suspension and then termination.

134. Global Risks' original schedule of quantum (which stood until the first day of the trial) assumed that, to retain the work of the French team, someone of Mr Niel Mee's calibre or, more importantly for quantum purposes, cost would have been required. However, that assumption was changed in their final schedule, permission for which I gave on the first day of the trial. That assumes that, although some limited additional back-up would be required, most of the work that had been previously done by the French team (and all of the work done by Mr Niel Mee) could and would been absorbed by existing Global Risks personnel if the team had gone (as it did) but the work had been retained (as it was not). Further, by trial, it was Global Risks' case that that was their intention: they intended to draft in Mr Down to cover all of Mr Niel Mee's work, as well as some of his existing Swiss work – and that the balance of the Swiss work previously done by Mr Down would have been transferred to other existing employees.

135. Given the assumption in the original schedule of loss (which was prepared, not by an expert, but by Mr Vinten), I find that intention difficult to accept. However, leaving that aside for the moment, my very firm view is that it would have been in any event an intention that was hopeless and bound to fail.

136. Mr Niel Mee is a singular man. It is clear that he has engendered great loyalty in some of those who have worked with him (notably Mr Lee), but it is equally clear that he has an individualistic, but clearly successful, way of working. He spends much time on the road, understanding clients and clients' business, and engenders great loyalty from a small number of clients, with lucrative and repeat work, to which he is particularly committed. M Legrand is just one example, albeit the biggest source of income for Mr Niel Mee in recent years. Much of Mr Niel Mee's brokerage commission however derives from new business each year – he estimated, and I accept, that at least 30% of his business needed to be replaced every year – and that new business is also obtained by committed salesmanship and hard work on the road. His success as a producer is reflected in the generous benefits package he obtained from Global Risks, with a bonus related to income and not profit.

137. In general terms, it would be a remarkable and curious thing if a broking house could obtain and retain such business without Mr Niel Mee or some replacement at substantial if not similar cost. It seems to me that, if it were so, Mr Niel Mee would technically have been redundant.

138. But I do not have to consider matters generally. I have to consider them in the light of the actual facts of this case. Those were that Global Risks intended Mr Down to take over the whole of Mr Niel Mee's producing work, and their quantum schedule is based upon his ability to maintain that level of French business.

139. Mr Down in fact took very few steps to take over Mr Niel Mee's French business. On 23-24 July 2009, he visited M Legrand with Ms Frances Merritt (a French speaker, who was then a Divisional Director at Global Risks) and Mr Brown, a meeting instigated by Mr Brown's wish to obtain from M Legrand outstanding

information about the premium on his account. In September 2009, Mr Down went to a major insurance event in Paris (La Journee des Courtages), where he met a couple of possible French broking business leads, which he did not follow up. In November 2009, he visited Gras Savoye (the largest broker in France) and Pilliot, in one trip. Another French broker visited him in London, in December 2009. That was the extent of his (and Global Risks') French marketing efforts following Mr Niel Mee's departure.

140. Mr Leiper submitted that the efforts were that limited because Mr Niel Mee's breaches had robbed them of an effective opportunity to retain the business. But I am unimpressed by that submission. First, it ignores the general tendency of clients to follow producers when those producers move to another broking house, to which I have referred. Second, as I have said, the original schedule of quantum, settled by Global Risks themselves, was based upon Mr Niel Mee being replaced in cost terms, rather than Mr Down managing to retain all of his work without further expenditure. Third, Mr Down indicated that (i) he did not consider that he was ever meant to replace Mr Niel Mee (Transcript 21 October 2010, page 93 lines 17-8): and (ii) he would have been reluctant to take on the role (page 94 line 1). Mr Down clearly has his own professional attributes, but I do not accept that they are such that he would, under any circumstances, have made any significant inroads into Mr Niel Mee's French business.

141. In the circumstances, I am not persuaded that it ever was Global Risks' intention to use Mr Down to replace Mr Niel Mee. Although he was used, briefly, to deal with some of Mr Niel Mee's ongoing work, particularly the SEGAP account, because it was all hands to the pump at that time (Transcript 21 October 2010, page 117 line 18), he was not used as part of an intentional plan to take over Mr Niel Mee's role as a French business producer. Although Global Risks hoped to complete the SEGAP renewal, there was no such plan. That, I find, was because Global Risks took the view that, whatever the circumstances of the termination of his employment, Mr Niel Mee's work would eventually follow him, and it was not worth the cost or effort of trying to retain that work. In my judgment, given the evidence before me of the general market and Mr Niel Mee's relations with his particular clients, that was an understandable commercial decision.

142. Finally, I have to deal with the events immediately leading to the transfer of the SEGAP business from Global Risks to Tyser at the end of July 2009.

143. M Legrand suggested the following reasons why he wished to transfer his business to Tyser.

144. First, he was concerned about AXA's role in Global Risks. However, whilst I accept that that concern was initially genuine – AXA was effectively a competitor of SEGAP, in France – by June 2009, M Legrand was aware of the proposed management buy-out. In my view, this reason had very limited causal potency.

145. Second, M Legrand said he was concerned with difficulties he was having with claims that were being administered by Global Risks. There was evidence of considerable numbers of claim that had to be run off – but there is very little evidence of concern being expressed by M Legrand about claims handling at the time. Again, I do not consider that this was an important factor in the decision.

146. Third, it was suggested that Global Risks were to blame for the delay in renewal. I am unconvinced that this, in its bare form, has any substantial force – the delays were ultimately caused by M Legrand himself failing to provide information (despite his assertion that all information had been provided earlier) and/or the underwriters' failing to make a decision on the renewal. However, that misses the force of the point. M Legrand was, undoubtedly and understandably, concerned about the fact that the cover had not in fact been renewed and that Mr Brown (as the lead underwriter) had expressed concern about renewing the cover (which was eventually renewed through another lead underwriter). I do not consider for a moment that M Legrand deliberately withheld information from Global Risks to derail the renewal process. As 31 July 2009 neared, he had increasing concerns about the failure to renew, or even extend. On 30 July 2009, M Legrand on behalf of SEGAP sent a letter to Tyser authorising them to take over the SEGAP account with immediate effect. The cover was due to expire the following day and, in the event, it was not renewed or extended that day because one underwriter had not agreed to either. In the light of the history I have related, I have no doubt that, by the end of July 2009, M Legrand had long since decided to transfer his business from Global Risks. Mr Niel Mee had left – he had been suspended and then dismissed. The work, at some stage, would have followed him to Tyser or wherever he went: the overriding reason why M Legrand decided to move transfer his business out of Global Risks was because he wished, at least in due course, for Mr Niel Mee to deal with his work.

147. However, Mr Niel Mee could not handle that work without being in breach of his restrictive covenants, and I find that, had Global Risks been in a position to confirm renewal or extension by 30 July, then M Legrand would have allowed them to renew or extend. The immediate cause of his transfer to Tyser was Global Risks' failure to do either, and the risk that his clients would be exposed to uninsured risk. I firmly find that that was the case. I am entirely unpersuaded that M Legrand simply used Global Risks' admitted failure as a reason for proceeding on a course to which he was already committed, i.e. to transfer at the end of July 2009 in any event.

An Employee's Implied Duties and Fiduciary Duties

148. Global Risks complain of the individual defendants' failure to inform them of the wrongdoing of employees, and the conduct of other employees falling short of wrongdoing but which nevertheless damaged the best interests of Global Risks. As I have indicated (paragraph 33 above), they found this part of the claim on two bases: (i) an employee's implied duty to disclose information to his employer, e.g. information as to another employee's wrongdoing, or information that employees have received approaches from (or intend to move to) a competitor: and (ii) an employee's fiduciary duty to disclose to his employer wrongdoing (of himself or others), and conduct which, whilst not amounting to wrongdoing, may damage the best interests of the employer. (Global Risks also allege that Mr West and Mr Niel Mee owed them a duty to persuade clients and employees to remain with them, even when they intended to leave: but my understanding of Mr Leiper's closing is that this obligation was based upon fiduciary duty only, and not as implied contractual duty.)

149. The legal basis of these two duties is entirely different, the duty of fidelity being implied as a matter of contract, whilst a fiduciary obligation is imposed as a matter of equity by virtue of relationship. This was explained by Elias J (as he then was) in Nottingham University v Fishel [2000] ICR 1462 ("Fishel"), in what is rightly seen as

an exposition of the law which is illuminating (PMC Holdings Limited v Smith (unreported, 23 April 2002, at [5], per Burton J) and authoritative (Helmet Integrated Systems Limited v Tunnard [2006] EWCA Civ 1735; [2007] FSR 16, ("Tunnard"), at [37], per Moses LJ).

150. Some relationships – trustees and beneficiaries, directors and companies – require the imposition by law of fiduciary duties that arise because the essence of the relationship is such that one party is obliged to act for the benefit of another (Fishel, at page 1491C-D). However, the employment relationship is not a fiduciary relationship in that classic sense. As Elias J explained:

> "[T]he essence of the employment relationship is not typically fiduciary at all. Its purpose is not to place an employee in a position where he is obliged to pursue his employer's interests at the expense of his own. The relationship is a contractual one and the powers imposed upon the employee are conferred by the employer himself. The employee's freedom of action is regulated by the contract, the scope of his powers is determined by the terms (express or implied) of the contract, and as a consequence the employer can exercise (or at least he can place himself in a position where he has the opportunity to exercise) considerable control over the employee's decision making powers. This is not to say that fiduciary duties cannot arise out of the employment relationship itself. But they arise not as a result of the mere fact that there is an employment relationship. Rather they result from the fact that within a particular contractual relationship there are specific contractual obligations which the employee has undertaken which have placed him in a situation where equity imposes these rigorous duties in addition to the contractual obligations. Where this occurs, the scope of the fiduciary obligations both arises out of, and is circumscribed by, the contractual terms; and it is circumscribed because equity cannot alter the terms of the contract validly undertaken...". (Fishel, page 1491E-H)

151. Therefore, the hallmark of a fiduciary duty is a requirement that a person pursues the interests of another at the expense of his own: but an employment relationship does not in itself require an employee to pursue his employer's interests at the expense of his own. Generally, therefore, an employee is under no obligation to report to his employer his own misconduct (Bell v Lever Brothers [1932] AC 161), or the misconduct of his fellow employees (Sybron v Rochem [1983] ICR 801); nor is he under a restraint from legitimate preparation for himself engaging in future competition with his employer (Tunnard), or informing another employee of his plans to do so and offering him a potential job in that competitor in the future (Tither Barn v Hubbard (EAT/532/89 (Wood J), unreported, 7 November 1991). If it is not unlawful for an employee to inform a fellow employee of plans to set up in competition, and (without inciting him to breach his contract with his current employer) offer him a job in the future, then the employee to whom such matters are confided cannot sensibly be under a general obligation to inform his employer of those plans and offer.

152. That is the general position. However, as the cases to which I have referred make clear, the particular functions of an employee may require him to pursue the interests of his employer to the exclusion of other interests, including his own. The hallmark of a fiduciary obligation in an employment context is therefore a particular contractual obligation which requires the law to impose a duty positively to act in the best interests of an employer, it being necessary to look at the particular duties imposed on the employee and "to ask in all the circumstances whether he has placed himself in a position where he must act solely in the best interests of his employer" (Fishel, page 1493E-G) in respect of that particular duty, with the fiduciary obligation arising as a result. Care must be taken not to equate the duty of good faith and loyalty owed by every employee with a fiduciary obligation (Fishel at page 1493D, per Elias J: and Tunnard at [36], per Moses LJ). As Ferris J said of employees who are not directors in ABK Limited v Foxwell [2002] EWHC 9 (Ch) at [73]:

> "The importation of fiduciary duties into an essentially commercial relationship is something which may occasionally be done, [but] a great deal of caution needs to be exercised in doing it".

Fiduciary duties are onerous, and will not be imposed lightly, not least because of the equitable remedies that flow from the finding of breach (Tunnard at [36], per Moses LJ: and Attorney General v Blake [1998] Ch 439, in which the Court of Appeal adopted the salutary warning about superimposing fiduciary duties on common law duties in Norberg v Wynrib (1992) DLR (4th) 449 at page 481).

153. Of course, the breach of a fiduciary duty owed by an employee to an employer may be significant in practice; for example, where the wronged employer wishes to take advantage of equitable remedies, or where an alleged failure to report in breach of a fiduciary duty is a failure to report conduct which falls short of wrongdoing but is nevertheless conduct not in the best interests of the employer. However, even where such a fiduciary obligation is owed, a claim of breach will not always add anything of substance to a claim that that employee has breached the express terms of his employment contract and/or implied contractual duty of fidelity. Where an employee commits wrongdoing (e.g. steals from his employer), it will usually be that wrongdoing which causes the employer loss, rather than any failure on the employee's part to report that wrongdoing, even where the employee might have an obligation to so report.

154. In these proceedings, Global Risks claim that Mr West and Mr Niel Mee (but not Mr Karpus: Response to Request for Further Information 7 May 2010, paragraph1) owed them an obligation of disclosure of wrongdoing by, and conduct of, employees (including themselves).

155. These claims are put on alternate bases, i.e. that such conduct was either a breach of the implied duty of fidelity or a breach of a fiduciary obligation owed to Global Risks. Duties to disclose have been analysed jurisprudentially in the cases both in terms of an implied duty and a fiduciary duty imposed by equity. However, as cases such as Fishel indicate and explain, although such fiduciary duties in fact arise out of the contractual obligations of an employee, the relationship of employer/employee does not give rise to such duties *per se* and the contractual duty of fidelity does not as a general rule incorporate an obligation to report to an employer wrongdoing of

employees, yet alone conduct falling short of wrongdoing which may nevertheless not be in the best interests of the employer.

156. To the extent that Mr Leiper submitted that Kynixa Limited v Hynes [2008] EWHC 1495 (QB) at [283] is authority for the proposition that there is a broad implied duty in a contract of employment requiring an employee who owes no fiduciary obligation and who is not acting in concert with others or otherwise unlawfully, to disclose to an employer that fellow employees are being recruited by a competitor, I do not agree. It seems to me that the decision in Kynixa was particularly fact specific: and the comments at paragraph 283 appear to be obiter, as the relevant defendant had positively misled the employer about the intentions of her and her fellow employees (rather than merely non-disclose) which might give rise to a fiduciary obligation on a different basis. To the extent that the comments suggest such an implied duty, I would not be minded to follow them. Such a proposition runs contrary to Fishel and other well-established authority. In my respectful judgment, it falls foul of the warning in Fishel by eliding the duty of fidelity and fiduciary obligations.

157. Therefore, generally, in my judgment, the better legal analysis for an employee having any obligation of reporting or persuasion is by way of fiduciary duties, as indicated in Fishel as approved in Tunnard, for the reasons given in those cases: and that these duties do not arise by way of implied term, in circumstances in which a fiduciary duty does not arise. Furthermore, insofar as the claim that Mr West and Mr Niel Mee owed Global Risks an obligation to persuade clients and employees to stay is, contrary to my understanding, put on the alternative basis of an implied duty, the same reasoning applies: the better analysis is that any such obligation arises out of a fiduciary duty. In my judgment, these claims are reliant upon Global Risks showing that Mr Niel Mee and/or Mr West owed a relevant fiduciary obligation.

158. But, in any event, I do not consider the difference material in this case. It was rightly common ground before me that duties of disclosure as alleged by Global Risks in these proceedings do not arise simply out of the employee/employer relationship: there must be an additional element that gives rise to the duty, by way of imposition or implication. The same would apply to an obligation to persuade, to which I refer below in the context of the specific claims against particular defendants. On the facts of the cases against Mr Niel Mee and Mr West, it was not submitted by Mr Leiper with any force that there could be circumstances in which common law would imply a duty of disclosure or persuasion, where equity would not impose a similar fiduciary duty. I do not consider that any claim of failure to report or persuade in this case turns upon any difference between an implied and an imposed duty.

159. Therefore, both because I consider it to be the proper legal analysis and because Global Risks cannot succeed on an implied duty claim if it fails on a fiduciary duty claim, I focus my consideration of the disclosure and persuasion claims on fiduciary duties.

The Claims: Introduction

160. Before I deal with the claims brought against the individual defendants, it may assist if the decks are cleared. There are three points.

161. First, during the course of the trial, various substantive and procedural allegations were made with regard to matters such as the intention behind the prosecution of these proceedings, non-disclosure of documents and the failure of a party to put a particular part of the case. Some were put with great vigour. However, generally, I found the pursuit of such allegations unhelpful, and I do not deal with them in this judgment. I do not need to do so properly to determine the issue between the parties. I am quite satisfied that, on the evidence before me, I am in a position fairly and justly to decide the determinative issues between the parties. Having said that, of course the burden of proof lies on the Claimant, and evidential deficiencies on its part may affect its ability to prove its case: but that is an unexceptional observation.

162. Second, Global Risks initially pursued a case that the defendants in breach of contract disclosed confidential information to Tyser, in the course of committing their other breaches of contract and the conspiracy. By the end of the trial, this claim was not separately pursued. On the evidence, that was a perfectly appropriate course. Little that might have been confidential was in fact disclosed – and that which may have been confidential (such as client lists and historic brokerage figures) was not only small but also forms an integral part of the other wrongdoing alleged. The claim was not separately pursued, and I do not separately deal with it in this judgment.

163. Third, Global Risks seeks damages on the basis that they have lost a real and substantial opportunity of obtaining a financial benefit on what I described during the course of the trial as "a top down" approach, i.e. on the basis that all of the budgeted business of Mr Niel Mee and Mr West respectively was lost as a result of their wrongdoing, with credit being given for business that was in fact retained and costs not expended. This may be an appropriate method of quantum calculation on the tort claims – the conspiracy claim, and possibly on the inducement of breach of contract claim (depending on the findings as to who induced whom to do what) – but Mr Leiper accepted that that approach would not be appropriate on the breach of contract claims. The quantum of those breach of contract claims would have to be calculated "bottom up", i.e. by looking at specific clients and identifying the opportunity of business lost to Global Risks from that client, and hence the loss suffered by Global Risks (Transcript 19 October 2010, pages 1-8, but particularly page 5). That concession too was properly made. The damages for any successful breach of contract claim must be assessed by identifying the identifiable and provable loss applicable to that breach.

164. I will now deal with the claims made against the individual defendants, in turn. As most of the quantum in relation to the breach of contract claim attaches to Mr Niel Mee, I will deal with the claims against him first (paragraphs 165-192), before dealing with the claims against Mr Karpus (paragraphs 193-7), Mr West (Paragraphs 198-216) and Tyser (paragraphs 217-221). As the claim of conspiracy affects all defendants, I deal with that separately at the end of this section (paragraph 225-7). As Global Risks' claim developed during the course of the trial, I have taken the claims relied upon primarily from Mr Leiper's written closing submissions.

The Claims against Mr Niel Mee

165. Global Risks makes claims against Mr Niel Mee on the following bases.

166. Soliciting clients and conducting business on behalf of a competitor: It is alleged that Mr Niel Mee, in the course of his employment with Global Risks, acted unlawfully with regard to the SEGAP and Legrand Limited accounts by (i) introducing M Legrand to Tyser, (ii) encouraging and assisting M Legrand to enter into a housing arrangement with Tyser and (iii) facilitating the movement of the SEGAP account from Global Risks to Tyser.

167. Soliciting employees: It is alleged that Mr Niel Mee arranged or endeavoured to arrange the move of the French team to Tyser, and, in the course of that, solicited the services of a number of employees for the benefit of a competitor.

168. It is also alleged that Mr Niel Mee induced Mr West's breach of employment contract with Global Risks, particularly by positively responding to his 3 October 2008 email.

169. Both of these claims are made on the bases that Mr Niel Mee's conduct was in breach of (i) the express terms of his employment contract, (ii) the implied duty of fidelity and (iii) his fiduciary duty owed to Global Risks. However, it is difficult to see what the claims based upon implied duties and any fiduciary duty add to the claim based, simply, on a breach of the express terms of his contract.

170. Breach of Fiduciary Duty: However, in addition, the following are claimed as breaches of his duty of fidelity and/or his fiduciary obligation saved to Global Risks:

    (i) his failure to seek to persuade SEGAP and Legrand Limited to remain with Global Risks after his departure; and his failure to persuade Mr Karpus, Mr Lee, Miss Petit and Miss Geadas to remain with Global Risks: and

    (ii) his failure to inform Global Risks that Legrand Limited was considering entering into a housing arrangement with a competitor, and that there was a risk that the SEGAP account would move to Tyser.

    Whilst the latter claim is put on the alternative basis of an implied term, for the reasons set out above (paragraphs 154-9), I consider it only on the basis of a claim of breach of a fiduciary obligation.

171. I will deal with these claims in turn.

Soliciting clients and conducting business on behalf of a competitor

172. The only allegation concerning soliciting clients and the related allegation that Mr Niel Mee performed work for a competitor concerns SEGAP/Legrand Limited. It is not alleged that Mr Niel Mee solicited – or improperly worked for – any other client. The relevant factual background is set out above.

173. Mr Ciumei for Mr Niel Mee submitted that Mr Niel Mee's conduct in introducing M Legrand to Tyser and acting as a facilitator in relation to the housing arrangement between Legrand Limited and Tyser whilst employed by Global Risks was admittedly unwise, but was not in breach of contract and not such as to evince an intention to refuse to perform his contract of employment with Global Risks.

174. I cannot agree.

175. I accept that Global Risks (notably, Mr Rice – but other senior executives as well) were aware of the removal of Legrand Limited's coverholder status and M Legrand's wish to have some tax efficiency restored: that those executives did not suggest that a housing arrangement in Global Risks was a possible solution and, insofar as Mr Niel Mee did raise that possibility in 2008, they exhibited no enthusiasm for it: and that there was evidence that such arrangements were not standard for a broking house, and that Global Risks had not implemented such arrangements for any other client. I also accept that Mr Niel Mee, in pursuing a housing arrangement in London, was doing what he considered to be in the best interests of his client, Legrand Limited. I am less moved by the suggestion that the AXA takeover was a good reason for M Legrand to rule out Global Risks as a houser – the management buy-out was being negotiated in early 2008, confidentiality of the buy-out proposal could have been addressed by Global Risks management waiving it, and there came a stage when M Legrand was aware that it was going to happen. Nor do I consider persuasive the submission that the housing arrangement in itself did not mean that Global Risks would lose brokerage fees – M Legrand had in mind to put at least some work through any revived Legrand Limited, and allow the houser the commission (see paragraph 101 above).

176. However, in my judgment, in introducing M Legrand to Tyser for the purposes of them advising upon and implementing a housing arrangement, whilst employed by Global Risks and without informing them, was a breach of (most obviously) clause 13 of his contract of employment: but also clause 14(A) – housing arrangements clearly fall within the definition of "restricted services" for the purposes of clause 14(A) – and possibly clause 3(A). That is so, even if Global Risks had been less than enthusiastic in themselves offering that service to that client. Mr Niel Mee accepted that, in 2009, he introduced M Legrand to Tyser for the purposes of Tyser performing those services for Legrand Limited, without informing Global Risks or giving Global Risks an opportunity to offer to perform those services themselves.

177. The breach was compounded by the continuing involvement of Mr Niel Mee in the negotiations between Tyser and M Legrand over the housing arrangement, as set out above. His role went beyond that of a mere interpreter at one meeting: as M Legrand said, he involved him in the discussions because he believed he (Mr Niel Mee) was dealing with the housing arrangement plans for Tyser. His assistance to M Legrand was persistent, and covert.

178. I consider it is somewhat artificial to address the question of the extent to which Mr Niel Mee was active in facilitating the transfer of the SEGAP account from Global Risks to Tyser. He was well aware that, if he moved from Global Risks, M Legrand would, almost certainly, move his business (whether it be that of SEGAP or Legrand Limited) to wherever he went. The introduction of M Legrand to Tyser, the assistance that Mr Niel Mee gave him in relation to the housing arrangement there as I have found, together with M Legrand knowing that Mr Niel Mee might (and then would probably, and then would almost certainly) be moving to Tyser made it inevitable that he would move his business there, at some stage. The gravamen of the breaches of contract, in my judgment, lay in the covert introduction and work on the housing arrangement, in the light of the information that Mr Niel Mee might move there. In my view, those breaches were grave breaches, given their nature and given that Mr Niel Mee was a producer. They were, in my judgment, such as to be likely to

destroy or seriously damage the relationship of trust and confidence, and were consequently a repudiatory breach entitling Global Risks to summarily dismiss him, as it did.

179. However, whether Global Risks are entitled to damages for such breach is a different matter. Whilst never conceding that his conduct amounted to a repudiatory breach of contract, one main plank of Mr Niel Mee's defence has throughout been that, if he was in breach, then it did not cause Global Risks any loss.

180. Indeed, in my judgment Global Risks have singularly failed to show that any loss resulted from these breaches.

181. In relation to the housing arrangement alone, that arrangement has never (as I understand it) been put into effect: if it had been, the only loss to Global Risks would have been the net profit on the arrangement. Given that the annual fee was fixed at £4,000, and for Lloyd's purposes actual staff would have had to be deployed on the work, the evidence is that it would not have made any profit at all: Mr Heaney appears to have accepted that the arrangement would have made a loss, even at an annual fee of £12,000 (Statement 11 June 2010, paragraph 83).

182. In relation to the alleged solicitation of SEGAP, again I am not persuaded that Mr Niel Mee's breach has caused Global Risks any loss. In my view, for reasons I have given, Global Risks stood no realistic prospect of retaining M Legrand's business once Mr Niel Mee had left them, and certainly not after he was available lawfully to work on SEGAP matters. In terms of future work, they lost no real opportunity. In relation to the renewal of the SEGAP account in July 2009, I have indicated why Global Risks lost that: (paragraph 147) the immediate cause was not any conduct of Mr Niel Mee, but Global Risks' failure to obtain a renewal (or extension) in good time, or in time at all.

183. Therefore, in relation to these alleged breaches, I find that, in his conduct in relation to Legrand Limited and SEGAP, Mr Niel Mee was in repudiatory breach of contract such as to warrant his dismissal: but that that breach resulted in no loss to Global Risks.

Soliciting employees

184. This claim fails for two reasons.

185. First, I am not satisfied on the evidence that Mr Niel Mee solicited any of the French team to join Tyser. The only individual that he wished to move with him was Mr Lee. Mr Niel Mee's evidence was that he kept him informed of the discussions with Tyser – that is the subject of an express admission (Admission 11, 15 June 2010) – but that falls short of unlawful solicitation (Tither Barn v Hubbard, cited at paragraph 151 above). There is no evidence of actual solicitation of Mr Lee; and positive evidence that such solicitation was unnecessary. It was very likely indeed that Mr Lee would follow Mr Niel Mee, wherever he went, as he had done in the past. Of the other members of the team, he told Mr Karpus that he may leave for Tyser and informed him of the Tyser advertisement (and even that he should not be put off by its terms): but that falls short of solicitation. There is no evidence that he spoke or otherwise enticed either Miss Geadas or Miss Petit. Other than Mr Lee, he simply did not mind

whether those who serviced his work at Global Risks moved with him or not – he said he would be pleased if they did, and no doubt he hoped that all or some of them would move – but he was confident that Tyser could find French-speaking brokers and technicians elsewhere, if necessary. Whilst Mr Niel Mee was dependent upon others servicing his work, he was not dependent upon any of the individuals in the Global Risks' French team other than Mr Lee.

186. I am not satisfied that, in relation to solicitation of employees, Mr Niel Mee was guilty of any breach of contract. In any event – and this is the second reason why this claim in substance fails – any loss to Global Risks was caused by Mr Niel Mee moving. As evident from the facts as set out above, once he had left, there was no work for any in the French team to do. There was no suggestion that any of the support staff had any power to draw clients. Following Mr Niel Mee's loss, the loss of those staff could only have saved Global Risks money. Even if, contrary to my finding, Mr Niel Mee was guilty of soliciting employees, Global Risks have not shown any resultant loss.

187. The specific claim that Mr Niel Mee induced Mr West to breach his employment contract is based upon his alleged positive response to the 3 October 2008 email. I have found that he made no response (paragraph 66 above). Mr Niel Mee had little professional regard for Mr West, and neither had any influence over the other so far as future employment was concerned. Mr West was committed to Tyser, and had handed in his notice to Global Risks, well before Mr Niel Mee had decided to move. Mr Niel Mee was his own man. There is no basis for this claim.

Breach of Fiduciary Duty

188. In addition to the above breaches of contract, Global Risks complain of Mr Niel Mee's conduct in (i) failing to inform Global Risks that Legrand Limited was considering entering into a housing arrangement with a competitor, and that there was a risk that the SEGAP account would move to Tyser: and (ii) failing to seek to persuade (a) SEGAP and Legrand Limited to remain with Global Risks after his departure; and (b) Mr Karpus, Mr Lee, Miss Petit and Miss Geadas to remain with Global Risks.

189. I am unpersuaded that Mr Niel Mee owed Global Risks any relevant fiduciary duty.

190. In considering whether any fiduciary duty should be imposed, unsurprisingly one must have regard to all relevant circumstances (Fishel at page 1493F). The starting point is the contract of employment. Does that contain any provision that required Mr Niel Mee to pursue the interests of Global Risks at the expense of any other interests, including his own? It is true that clause 3A requires him to "use his best endeavours to promote the general interests and welfare of the Company…": but, in my view, that is a general clause which, certainly without more, could not require the law to impose wide-ranging duties to report wrongdoing and conduct that might be contrary to the interests of Global Risks, or to persuade clients or employees to stay when he is going.

191. Other relevant factors are as follows. Mr Niel Mee was never a statutory director – his title was executive only – and was never part of senior management. He was a somewhat lonesome salesman. At all material times (i.e. from 2008) he had no

management responsibilities or duties at all (see paragraph 20 above): although other employees serviced his work, they did not report to him in doing so. It is true that he was a salesman, who was exposed to Global Risks' clients largely unsupervised – but that alone is not sufficient to impose upon him the onerous duties of a fiduciary. There is no evidence that he deliberately misled Global Risks as to the matters they allege he failed to disclose.

192. I find no element in the circumstances of this case which promoted Mr Niel Mee into a fiduciary, in relation to reporting or persuading clients and employees to stay with his employer.

The Claims against Mr Karpus

193. The claims against Mr Karpus are narrow, namely that he was in breach of the implied duty of fidelity in that (i) he failed to comply with the express instruction of Mr Pexton to take Mr Down to all meetings with the underwriters of the SEGAP account and (ii) he failed to pass on the additional requests for information Mr Brown gave him on 19 June when he was suspended first thing the following working day. The latter was not pleaded in the Particulars of Claim, but arose during the course of Mr Karpus's cross-examination; and I propose to deal with it. There were claims originally pleaded that Mr Karpus had failed to service the SEGAP account – for example, by delaying the renewal – in such a way as to damage the interests of Global Risks, but that claim was not pursued to the end of the trial, and rightly so. There was no evidence to substantiate that claim.

194. I do not consider the latter was arguably any breach of the implied or express terms of his employment contract. Mr Karpus had indeed met Mr Brown very briefly on the floor on Friday 16 June 2009, and had made a note of the additional information requests he had for M Legrand. He did not have time to action them before he was suspended when he arrived at work the following working day (Monday 19 June). He was patently not being covert: he left a note of the request on the relevant file. As conceded by Global Risks, Mr Karpus's historical reporting line was through Mr Lee, and he had not been informed of any change in that line (Reply and Defence to Counterclaim, paragraph 28(e)): and there was no evidence that Mr Lee was not fully aware of the position on the SEGAP renewal at all times. There is no evidence that Mr Karpus acted in any way to destabilise the SEGAP account, as had earlier been alleged (Response to Request for Further Information 7 May 2010, paragraph 13(a)). There is no arguable breach of contract here.

195. The former was, of course, a breach. An employee has to obey the express instructions of his employer, in the course of his work. Mr Karpus did not do so. He had no reasonable excuse.

196. However, that breach was plainly very minor: and fell far short of the sort of breach that might justify an employer in dismissing an employee. It was plainly not conduct that was calculated or likely to destroy or seriously damage the relationship of trust and confidence. Mr Pexton in cross-examination readily and appropriately conceded that there was nothing improper in Mr Karpus's conduct (Transcript 15 October 2010, page 146 line 21): and that he would not have dismissed him for simply failing to obey that instruction in the manner he did (page 148 line 24).

197. The contractual claims against Mr Karpus therefore fail.

The Claims against Mr West

198. Global Risks makes claims against Mr West which are largely parallel to those made against Mr Niel Mee set out above, as follows.

Soliciting clients and conducting business on behalf of a competitor

199. On 15 June 2010, Mr West made the following admissions in relation to soliciting clients and conducting business for and on behalf of Tyser whilst employed by Global Risks:

> "(i) [Mr West] admits to soliciting and/or endeavouring to solicit the following business for the benefit of [Tyser] whilst employed by [Global Risks]:-
>
> (a) First Insurance Agency;
> (b) MSI Assurances and Reassurances;
> (c) Red Hook;
> (d) Crump International.
>
> (ii) [Mr West] admits to endeavouring to solicit Red Hook for the benefit of Glencairn whilst employed by [Global Risks].
>
> (iii) [Mr West] further admits that, when behaving as is set out above, he failed to promote the interests of [Global Risks] and that he conducted business for or on behalf of [Tyser].
>
> (iv) [Mr West] admits to carrying out business on behalf of [Tyser] in that he sent business enquiries to [Tyser] whilst still employed by [Global Risks]. [Mr West] also arranged and attended a business meeting between Crump International and [Tyser] whilst still employed by [Global Risks].
>
> (v) [Mr West] admits to attending meetings with [Tyser] during the course of his contract negotiations. Such meetings took place during normal office hours."

Further, in relation to the use of confidential information, Mr West made admissions as follows:

> "[Mr West] admits to disclosing confidential information to [Tyser]. The confidential information disclosed was the identification of business which [Mr West] believed would follow him should he be employed by [Tyser] and providing information relating to brokerage earned from such business. Such information was disclosed during employment negotiations with [Tyser]."

200. Mr Leiper submitted in closing that those bare admissions do not portray the extent of the wrongdoing by Mr West insofar as soliciting clients and working for a competitor

is concerned: but the claim has not proved anything beyond the admissions. The evidence upon which the admissions are based – which Mr West did not seek to controvert – is set out above.

201. Insofar as Mr Leiper invited me to draw from Mr West's failure to give evidence the adverse inference that the scope of his attempts at soliciting clients away from Global Risks is significantly larger than that portrayed by the evidence before me, I do not draw such an inference. First, there is no evidence of a greater scope. Second, the positive assertions made by Mr West in his defence that were not accepted by Global Risks' witnesses were minor. Third, Mr West has provided, through his Counsel, an explanation as to why he did not give evidence – he considered, with some justification, that he had no case to answer beyond his admissions. In not calling him to give evidence, his Counsel Mr Quinn properly noted the principles that evidence should not be called unless required for the purpose of determining an issue between the parties, and proportionality.

202. In relation to confidential information, Global Risks does not seek to go beyond the admission made (see paragraph 162 above).

203. I therefore find breaches proved, to the extent of Mr West's admissions. Those breaches were clearly sufficient to warrant his dismissal. Mr West admits as much (Admission, 1 October 2010).

204. However, again, that leaves the question of quantum: and, again, in my view, Global Risks' claim is found to be wanting.

205. They have sought to claim a sum representing the alleged loss of profit and overheads on the entire income budgeted for Mr West for a 12 month period. Only one specific client is identified, namely First Insurance. However, the evidence was not only that First was already a client of Tyser, but that Tyser already handled about 85% of First's work in London. A letter from the Executive Vice President and Regional Manager for First to Tyser dated 1 July 2009 indicates that:

> "... I wanted to confirm to you that our decision to transfer our business from [Global Risks] was taken entirely on the basis of my desire to consolidate our overall position in the London market. [Tyser] already handles around 85% of our overall London volume and the smaller amount being handled by [Global Risks] will be better serviced and coordinated within the market alongside your existing interests. This was the basis for my decision which I hope will be respected by all parties."

That letter also acknowledges that First's work could not be dealt with by Mr West during the period of his contractual restrictions. Whilst Mr West may have courted such a letter, I see no reason why that letter should not be taken at face value: it is clear that First were determined to move their work to Tyser in any event. There was no loss of any opportunity of substance. The breaches by Mr West in relation to First were not causative of any loss for Global Risks.

206. No other losses have been identified or evidenced in respect of any other clients. This is not surprising. In relation to the four clients which Mr West admits soliciting, it is

uncontentious that First Insurance, MSI and Red Hook had been his client since the 1980s or 1990s, through several employers. MSI and Red Hook left Global Risks at their respective annual renewal dates on 31 December 2009, six months after Mr West had left. With the exception of Red Hook (which did not transfer to Tyser), Global Risks took no steps following Mr West's resignation or dismissal to retain these clients. Crump has never been a client of Mr West.

207. Despite the level of wrongdoing activity of Mr West, there is no evidence that any of it resulted in Global Risks losing any particular client or any particular piece of work or any money in respect of which they might be entitled to compensation. In short, Global Risks have failed to show that they have suffered any loss as a result of the (admitted) breaches of contract.

Soliciting employees

208. Global Risks allege that Mr West breached the terms of his employment contract by arranging or endeavouring to arrange the move of the French team from Global Risks to Tyser, and by soliciting or endeavouring to solicit the services of a number of employees (i.e. the French team) for the benefit of Tyser, a competitor.

209. The evidence of such wrongdoing is extremely thin. I have found that there was nothing untoward about the lunch meeting of 17 November 2008 suggestive of collusion between Mr West and Mr Niel Mee, or of enticement of one by the other. The fact that Mr West had a coffee with the two junior members of the French team during a fire alarm (see paragraphs 121-2 above) also lacks evidential weight. I appreciate that this occurred in April 2009, but the circumstantial evidence is not sufficient to persuade me that, on the balance of probabilities, they were discussing their respective intentions to move to Tyser. There is no evidence that there was talk about "[Mr West's] and Mr Niel Mee's team move plans". Even if there were, that would not necessarily amount to soliciting. I am far from persuaded by Global Risks that they have shown anything that amounts to an endeavour to solicit employees by Mr West. As indicated above, employees merely discussing their future plans is not enough.

210. However, even if there was endeavour on the part of Mr West, Global Risks are simply unable to show a causal link between the soliciting and Mr Niel Mee or any member of the French team leaving Global Risks for Tyser. It will be clear from the factual background set out above that Mr Niel Mee was not – and never would be – slightly influenced by whatever Mr West might do or say. He did not respond to the 3 October 2008 email. He responded to an approach from Tyser through Mr Lee. Similarly, on the evidence, it is not realistic to suppose that the other members of the French team would have been influenced at all by Mr West, even if he had attempted to entice them away. Whatever puff there might have been from Mr West, there is no evidence that it had any influence over Mr Niel Mee or any other member of the French team.

211. This claim fails.

Breach of fiduciary duty

212. In addition to the above breaches of contract, Global Risks complain of Mr West's conduct in failing to seek to persuade Mr Karpus, Mr Lee, Miss Petit and Miss Geadas to remain with Global Risks. Given his lack of any management function in Global Risks, or any influence over the French team, this claim lacks merit.

213. There is further an allegation that Mr West breached a fiduciary obligation, namely that he failed to inform Global Risks that clients he serviced were moving to Tyser, and of a number of business opportunities that he moved to Tyser: and that he took deliberate measures to prevent his employer finding out about the transfer of work, notably by asking clients to use his private email address.

214. In relation to the allegations of non-disclosure, on 15 June 2010, Mr West made the following admissions:

> (i) [Mr West] admits to failing to inform [Global Risks] of the planned move of clients who formed part of [Mr West's] contact base/ account to [Tyser].
>
> (ii) [Mr West] admits to not providing full information when requested to do so by [Global Risks] at a meeting on 17 June 2010. [Mr West] did not inform [Global Risks] of the likelihood that MSI and Harbor America would follow [Mr West] to [Tyser].

Mr West also patently failed to tell Global Risks that he was aware that Mr Niel Mee and other members of the French team may move to Tyser.

215. However, for the reasons set out above, Mr West would only owe such duties if he were a fiduciary towards Global Risks. He clearly was not. The case against him is similar to that against Mr Niel Mee, but considerably weaker. The contractual provisions and limited function as a salesman were the same. Mr West never had any management responsibilities. No one ever reported to him. The only alleged positive misleading – which he admits – is in relation to two clients and whether they would follow him to a competitor. That is not sufficient, either alone or with all other factors, to warrant imposing fiduciary duties on Mr West.

Inducement of breach of contract

216. For the same reasons that the claim that Mr West solicited employees failed, this claim too fails. Global Risks have not remotely satisfied me that there was any causal link between Mr West's conduct and any actions by any of the French team.

Tyser

217. The claim against Tyser is that they induced both Mr West and Mr Niel Mee to breach their respective contracts of employment, in that they induced them to solicit both clients and employees of Global Risks to their advantage.

218. On 15 June 2010, whilst denying inducement as alleged, Tyser made several admissions, that, in summary:

(i) Tyser ought reasonably to have been aware that the implied duty of fidelity in its component parts formed part of the contract of employment of each of the three individual defendants.

(ii) Tyser were aware of Mr West's solicitation of Global Risks' clients by way of email contact with them whilst he was employed by Global Risks: and they knowingly took advantage of business opportunities provided to them by Mr West in breach of his duty of fidelity to Global Risks.

(iii) Tyser were informed of Mr Niel Mee's name by Mr West.

(iv) Tyser were informed by Mr Niel Mee of the persons who supported him by servicing the business of the French team at Global Risks.

219. I appreciate that Mrs Butcher said (and I accept) that she warned Mr West about his activities in April 2009; and I accept that, in September 2009 (after the issue of these proceedings), Tyser revoked its offer of employment to Mr West as it considered that, in breach of the terms of its offer letter, he had been in breach of his duty of fidelity to Global Risks. However, over and above Tyser's admissions, it is clear from the evidence that senior executives in Tyser – such as Mrs Butcher and Mr Andrews – were aware of the duty of fidelity that Mr West and Mr Niel Mee owed to Global Risks, and must have been aware, from Mr West's emails and from Mr Niel Mee's activities in relation to the housing agreement from Legrand Limited, that they were or may well have been acting in breach of those obligations.

220. Nevertheless, mere knowledge of breach is insufficient. To prove the tort of inducement to breach a contract, a claimant must show that a defendant intended to interfere with the claimant's contractual arrangements with (in this case) his employee. In this case, on my findings set out above, there is very little evidence of Tyser positively and expressly encouraging Mr West and Mr Niel Mee to solicit clients and employees. The main thrust of the claim is that Tyser were well aware of what was going on and, by not seeking to prevent further breaches or commenting upon past breaches, they effectively encouraged Mr West and Mr Niel Mee to commit further breaches. As a matter of law, I am sure that even silence in certain circumstances can be persuasive in encouraging a breach of contract and can intend to do so. However, on the basis of my factual findings, I have grave doubts as to whether Tyser's conduct in this case would warrant a finding that they intended to procure a breach of contract by Mr West and/or Mr Niel Mee: and I would not so find, if required.

221. However, Global Risks face an even greater hurdle with this claim. Inducing a breach of contract is a tort that requires a claimant to prove, not just wrongful interference with contractual relations, but also that he has been damaged by the breach of contract to which the tort is an accessory. In this case, I have found that none of the breaches relied upon – by Mr West or Mr Niel Mee, in solicitation of clients or employees – caused Global Risks any proved damage. The claim against Tyser, for that reason alone, must fail.

Conspiracy

222. Finally, I come to the conspiracy claim, which is made against all defendants. It is summed up in Mr Leiper's written closing submissions (paragraph 131), as follows:

> "It is submitted that West, Niel Mee and Tyser agreed [i.e. combined] to bring over to Tyser [Global Risks'] French team and as many of their respective clients as possible. They did so in the collective knowledge, or being wilfully blind to the fact that this would lead to (i) West and Niel Mee acting in breach of their contractual and fiduciary obligations in recruiting their clients and colleagues; (ii) Tyser inducing those breached; and (iii) West and Niel Mee inducing each other to breach those obligations. Further, around the time that Karpus accepted Tyser's offer he was recruited to the conspiracy. He was aware, at the very least, that a team move had been planned by the remaining defendants, and that M Legrand intended to move his account to Tyser. Karpus's role was to keep [Global Risks'] management as far away from the management of SEGAP binding authority as possible, and to play his role in the move of the French team when instructed."

223. On the basis of my findings, this conspiracy does not withstand any scrutiny.

(i) Mr Karpus was not possibly a member of any conspiracy, as suggested. I am sure that Mr Karpus has many qualities, but, on the evidence I have seen, being a conspirator is unlikely to be one of them. Having seen Mr Brown alone on 16 June 2009, he immediately told Mr Pexton he had done so, and kept him informed as to the outstanding information required from M Legrand. On 19 June, having seen Mr Brown briefly again, he placed Mr Brown's note of the further requirements on the file. Global Risks accept that he did everything he reasonably could have done to effect the SEGAP renewal. Far from trying to keep Global Risks' management out of the loop, he kept them informed.

(ii) Nor can the conspiracy stand insofar as it relies upon Mr West or Mr Niel Mee having fiduciary duties towards Global Risks. They had none.

(iii) Nor can it be suggested, on my findings, that Mr West and Mr Niel Mee combined to do anything. Despite Mr West's endeavour and puff, Mr Niel Mee would not have any of it. The recruitment by Tyser of Mr West and Mr Niel Mee were separate exercises, not part of a single combined plan.

(iv) In respect of Tyser/Mr West and Tyser/Mr Niel Mee, I have dealt with the allegations of inducement to breach contract above. I am not persuaded that Tyser did procure any breach. I am satisfied that Tyser negotiated in parallel with Mr West and Mr Niel Mee (which they did under different internal project names). In relation to the other matters, "conspiracy" does not add anything of substance to the specific allegations made.

(v) The tort of conspiracy requires proof of loss. For the reasons given above, Global Risks have failed to show that they have suffered any loss either as a

> result of any of the unlawful activities relied upon in the conspiracy, or from the conspiracy itself.

224. Taking into account the acts of wrongdoing that have been admitted by the defendants, or found by me, taken in their full context, I am not satisfied that the defendants, or any combination of them, combined to use unlawful means; or that Global Risks suffered any loss as a result of any conspiracy.

Counterclaims

225. Of Mr Niel Mee's counterclaims, those for loss of entitlements during his 12 month notice period fail, on the basis of my finding that his summary dismissal was lawful.

226. That leaves a small counterclaim, which arises as follows. In 2008, a proportion of Mr Niel Mee's brokerage income was withheld from the calculation of his bonus, as a bad debt provision was made against that income. At Mr Niel Mee's request, on the explanation of the retention, Mr Vinten on behalf of Global Risks agreed to the following being added:

> "At the time the bad debt provision is released you [i.e. Mr Niel Mee] will be credited with the proportion of your commission. This will form part of your 2008 bonus agreement."

That was signed by both Mr Niel Mee and Mr Vinten on 1 June 2010, effectively becoming a contractual term.

227. The brokerage has now been paid, and it is agreed that Mr Niel Mee's proportion of the commission would be €20,960.83. However, Global Risks submit that, as Mr Niel Mee was the subject of disciplinary proceedings when it came in, he is not entitled to that bonus (see paragraph 14 above).

228. I do not agree with that construction. The 1 June 2009 agreement meant that, whenever the outstanding brokerage came in, Mr Niel Mee's proportion of it would be payable as if it fell within 2008 and hence payable to him in March 2009, i.e. in effect, immediately. That overrode the "due date" provision of the 23 August 2004 agreement, referred to in paragraph 14 above.

229. For those reasons, this claim succeeds. Mr Niel Mee is entitled to the sum of €20,960.83, and I will enter judgment in that sum.

230. Mr Karpus seeks a declaration that his dismissal was unlawful and in breach of contract. I make such declaration.

231. Mr West and Tyser make no counterclaim.

Conclusion

232. For those reasons, I will dismiss the substantive applications for damages against the defendants: and enter judgment for Mr Niel Mee in the sum of €20,960.83. I will hear submissions on other relief and the form of order, in the light of my findings above.