

Appellant's notice

(All appeals except small claims track appeals)

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

| For Court use only | |
|-----------------------|-------------|
| Appeal Court Ref. No. | 2015 / 3753 |
| Date filed | 13 Nov 2015 |



Section 1 Details of the claim or case you are appealing against

Claim or Case no. Fee Account no.

Name(s) of the Claimant(s) Applicant(s) Petitioner(s)

Name(s) of the Defendant(s) Respondent(s)

Details of the party appealing ('The Appellant')

Name

Address (including postcode)

| | |
|---------|------------------------|
| Tel No. | 212-710-6567 |
| Fax | |
| E-mail | mmauro@yorkcapital.com |

Details of the Respondent to the appeal

Name

Address (including postcode)

| | |
|---------|--------------------------|
| Tel No. | 020 7456 2000 |
| Fax | 020 7456 2222 |
| E-mail | tony.bugg@linklaters.com |

Section 2 Details of the appeal

From which court is the appeal being brought?

The County Court at

The Family Court at

High Court

Queen's Bench Division

Chancery Division

Family Division

Other (please specify)

What is the name of the Judge whose decision you want to appeal?

David Richards J

What is the status of the Judge whose decision you want to appeal?

District Judge or Deputy

Circuit Judge or Recorder

Tribunal Judge

Master or Deputy

High Court Judge or Deputy

Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

9 October 2015

To which track, if any, was the claim or case allocated?

Fast track

Multi track

Not allocated to a track

Nature of the decision you wish to appeal

Case management decision

Grant or refusal of interim relief

Final decision

A previous appeal decision

Section 3 Legal representation

Are you legally represented?

Yes No

If 'Yes', please give details of your solicitor below

Name of the firm of solicitors representing you

Michelmores LLP

The address (including postcode) of the firm of solicitors representing you

48 Chancery Lane,
London,
WC2A 1JF.

| | |
|---------|---------------------------------|
| Tel No. | 0207 659 7660 |
| Fax | 0207 788 63011 |
| E-mail | charles.maunder@michelmores.com |
| DX | DX63 London Chancery Lane |
| Ref. | 109072/1 |

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLSF) certificate?

Yes No

Is the respondent legally represented?

Yes No

If 'Yes', please give details of the respondent's solicitor below

Name and address (including postcode) of the firm of solicitors representing the respondent

Linklaters LLP,
One Silk Street,
London,
EC2Y 8HQ

| | |
|---------|--|
| Tel No. | 020 7456 2000 |
| Fax | 020 7456 2222 |
| E-mail | tony.bugg@linklaters.com |
| DX | DX 10 London City EC3 |
| Ref. | Tony Bugg / Euan Clarke / Jared Oyston |

Section 4 Permission to appeal

Do you need permission to appeal?

Yes No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

Date of order granting permission

9 October 2015

Name of Judge granting permission

David Richards J

Box A

I

the Appellant('s solicitor) seek permission to appeal.

Box B

If permission to appeal has been granted in part by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

The declarations recorded in paragraphs (iii), (iv), (v), (viii), (x), (xviii) and (xix) of the first Order of David Richards J in this matter dated 9 October 2015 (the Tranche A Order).

Have you lodged this notice with the court in time?
(There are different types of appeal -
see Guidance Notes N161A)

Yes No

if 'No' you must complete
Part B of Section 9

Section 6 Grounds of appeal

Please state, in numbered paragraphs, on a separate sheet attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out on a separate sheet and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

Section 8**What are you asking the Appeal Court to do?**

I am asking the appeal court to:-
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

That the relevant paragraphs of the Order appealed against be replaced with the following:

(iii) Statutory interest (SI) is to be calculated on the basis of notionally allocating dividends first to the payment of SI and then in reduction of principal.

(iv) A creditor entitled to SI is entitled to compensation in respect of the time taken for SI to be paid.

(v) If SI paid to a creditor on a proved debt is less than the amount of interest to which that creditor would otherwise have been entitled, the creditor has a non-provable claim for the difference.

(viii) Where SI is payable at a compounding rate, accrued SI continues to compound following the payment in full of the principal amount.

(x) The words "the rate applicable to the debt apart from the administration" include the rate applicable to a foreign judgment which might have been obtained regardless of whether a foreign judgment has actually been obtained.

(xviii) Where a creditor with a claim originally denominated in a foreign currency receives SI on a Sterling admitted claim at the Judgments Act Rate and such SI is less than the amount of interest at the Judgments Act Rate which the creditor would have received on his claim in the original foreign currency, the creditor has a non-provable claim in respect of the difference.

(xix) Where a creditor with a claim originally denominated in a foreign currency receives SI on a Sterling admitted claim at a contractual rate and such SI is less than the amount of interest at the contractual rate which the creditor would have received on his claim in the original foreign currency, the creditor has a non-provable claim in respect of the difference.

- order a new trial

Section 9**Other applications**

Complete this section only if you are making any additional applications.

Part A

- I apply for a stay of execution. (You must set out in Section 10 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 10 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- I apply for an order that:

(You must set out in Section 10 your reasons and your evidence in support of your application.)

In support of my application(s) in Section 9, I wish to rely upon the following reasons and evidence:

Statement of Truth – This must be completed in support of the evidence in Section 10
I believe (The appellant believes) that the facts stated in this section are true.

Full name

Name of appellant's solicitor's firm

signed

Appellant's solicitor position or office held
(if signing on behalf of firm or company)

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the county court or High Court:

- three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the legal aid or CLSF certificate (if legally represented).

In the Court of Appeal:

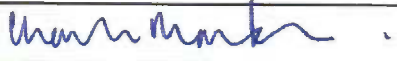
- three copies of the appellant's notice and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondent;
- one copy of the grounds of appeal on a separate sheet attached to each of the appellant's notices filed;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- a copy of the order allocating the case to a track (if any)
- one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the legal aid or CLSF certificate (if legally represented).

Reasons why you have not supplied a document and date when you expect it to be available:-

| Title of document and reason not supplied | Date when it will be supplied |
|--|--|
| One copy of the sealed (stamped by the court) order being appealed | When court approve the order as agreed between the parties |
| Skeleton Argument | As per the attached letter |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Section 12 The notice of appeal must be signed here

Signed



Appellant's Solicitor

1 SECTIONS 1 & 3 – DETAILS OF ADDITIONAL PARTIES

1.1 Second Respondent

Name:

Burlington Loan Management Limited

Address (including postcode):

c/o Schulte Roth & Zabel International LLP
One Eagle Place
London SW1Y 6AF
Ref. Sonya Van de Graaff

| | |
|--------|---------------------------|
| Tel. | 020 7081 8000 |
| Fax | 020 7081 8010 |
| E-mail | sonya.vandegraaff@srz.com |

Name and address (including postcode) of the firm of solicitors representing the respondent:

Schulte Roth & Zabel International LLP
One Eagle Place
London SW1Y 6AF

| | |
|--------|---------------------------|
| Tel. | 020 7081 8000 |
| Fax | 020 7081 8010 |
| E-mail | sonya.vandegraaff@srz.com |
| DX | |
| Ref. | Sonya Van de Graaff |

1.2 Third Respondent

Name:

CVI GVF (Lux) Master S.à.r.l.

Address (including postcode):

c/o Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS
Ref. Christopher Robinson

| | |
|--------|--------------------------------------|
| Tel. | 020 7936 4000 |
| Fax | 020 7832 7001 |
| E-mail | christopher.robinson@freshfields.com |

Name and address (including postcode) of the firm of solicitors representing the respondent:

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

| | |
|--------|--------------------------------------|
| Tel. | 020 7936 4000 |
| Fax | 020 7832 7001 |
| E-mail | christopher.robinson@freshfields.com |
| DX | DX 23 Chancery Lane |
| Ref. | Christopher Robinson |

1.4 Fourth Respondent

Name:

Hutchinson Investors LLC

Address (including postcode):

c/o Ropes & Gray International LLP
60 Ludgate Hill
London EC4M 7AW
Ref. James Douglas

| | |
|--------|-----------------------------|
| Tel. | 020 3201 1500 |
| Fax | 020 3201 1501 |
| E-mail | james.douglas@ropesgray.com |

Name and address (including postcode) of the firm of solicitors representing the respondent:

Ropes & Gray International LLP
60 Ludgate Hill
London EC4M 7AW

| | |
|--------|-----------------------------|
| Tel. | 020 3201 1500 |
| Fax | 020 3201 1501 |
| E-mail | james.douglas@ropesgray.com |
| DX | |
| Ref. | James Douglas |

1.5 Fifth Respondent

Name:

Wentworth Sons Sub-Debt S.à.r.l.

Address (including postcode):

c/o Kirkland and Ellis International LLP
30 St Mary Axe
London EC3A 8AF
Ref. Partha Kar / Kon Asimacopoulos

| | |
|--------|-------------------|
| Tel. | 020 7469 2000 |
| Fax | 020 7469 2001 |
| E-mail | pkar@kirkland.com |

Name and address (including postcode) of the firm of solicitors representing the respondent:

Kirkland and Ellis International LLP
30 St Mary Axe
London EC3A 8AF

| | |
|--------|--------------------------------|
| Tel. | 020 7469 2000 |
| Fax | 020 7469 2001 |
| E-mail | pkar@kirkland.com |
| DX | |
| Ref. | Partha Kar / Kon Asimacopoulos |

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT
CHANCERY DIVISION
COMPANIES COURT
DAVID RICHARDS J
[2015] EWHC 2269 (Ch)

Appeal Ref: []

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN
ADMINISTRATION)**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

B E T W E E N

(1) YORK GLOBAL FINANCE BDH LLC

Appellant

-and-

(1) ANTHONY VICTOR LOMAS
(2) STEVEN ANTHONY PEARSON
(3) PAUL DAVID COPLEY
(4) RUSSELL DOWNS
(5) JULIAN GUY PARR

**(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL
(EUROPE) (IN ADMINISTRATION))**

(6) BURLINGTON LOAN MANAGEMENT LIMITED
(7) CVI GVF (LUX) MASTER SÀRL
(8) HUTCHINSON INVESTORS LLC
(9) WENTWORTH SONS SUB-DEBT SÀRL

Respondents

GROUND OF APPEAL

The Appellant, York Global Finance BDH LLC (“York”) appeals against the judgment of David Richards J with the neutral citation [2015] EWHC 2269 (Ch) (the “Tranche A Judgment”), in particular paragraphs (iii), (iv), (v), (viii), (x), (xviii) and (xix) of the judge’s order in this matter dated 9 October 2015 (the “Tranche A Order”). The grounds of appeal are set out below.

1. By their application for directions dated 12 June 2014 (the “Waterfall II Application”), the Joint Administrators of Lehman Brothers International (Europe) sought directions from the Court as to the correct method of calculating interest (“Statutory Interest”) under rule 2.88 of the Insolvency Rules 1986 (the “Rules”) and various related matters. By order of the Court, the Waterfall II Application was

divided into three tranches. This appeal is against certain aspects of the Tranche A Judgment and the Tranche A Order.

Allocation of dividends (paragraph (iii) of the Tranche A Order)

2. The judge noted that:

- (1) In bankruptcies prior to the Bankruptcy Act 1883 (“the 1883 Act”) and in company winding up prior to the Insolvency Act 1986 (“the 1986 Act”), in the event of a surplus, for the purposes of calculating entitlements to post insolvency interest dividends were treated as having been allocated first to discharge of interest, and secondly to discharge of principal (that is, in the manner explained in *Bower v Marris* (1841) Cr & P 351, 41 ER 525): Tranche A Judgment paras 87-88.
- (2) The rule in *Bower v Marris* also applies to the administration of the estates of deceased persons, both as regards legacies and the payment of creditors: Tranche A Judgment para 84.
- (3) The rule in *Bower v Marris* has also been applied to corporate insolvencies in Australia, Canada, Ireland and the USA, including in contexts where the statutory background was similar to the Insolvency Act 1986: Tranche A Judgment paras 79-84 and 127.

3. The judge nonetheless held that:

- (1) The rule in *Bower v Marris* no longer governs the calculation of Statutory Interest, because the 1986 Act introduced “*a new code*” which “*represented a complete change to the law concerning the payment of interest on debts proved in a winding up*”: Tranche A Judgment paras 128, 129 and 132.
- (2) As far as Statutory Interest was concerned, the 1986 Act adopted the rules as they applied to bankruptcy after the 1883 Act, and the 1883 Act impliedly excluded the operation of the rule in *Bower v Marris*: Tranche A judgment para. 139.

- (3) Rule 2.88 directs the administrator as to how any surplus "*remaining after payment of the debts proved*" is to be applied, and therefore impliedly excludes the operation of the rule in *Bower v Marris*: Tranche A Judgment para 134.
- (4) Furthermore, the rule in *Bower v Marris* is based on there being two outstanding debts payable by the debtor to the creditor (principal and interest) at the point at which payment is made. However, the right to Statutory Interest does not arise until payment in full of principal, and therefore the rule in *Bower v Marris* cannot apply: Tranche A judgment paras 144, 149 and 150.

4. In so holding, the judge erred in law:

- (1) The rule in *Bower v Marris* is a longstanding principle of insolvency law both in England and in every other common law jurisdiction where the point has arisen, and is supported by strong policy justifications (namely, to properly compensate creditors from loss arising as a result of the insolvency of the debtor). Its abolition would require clear legislative language.
- (2) Although the 1986 Act made changes to Statutory Interest (principally to extend the right to interest in winding up to debts which did not bear a contractual right of interest), there was nothing in the Act or in any of the pre-legislative materials to suggest that Parliament had intended to abolish the rule in *Bower v Marris*.
- (3) Similarly, there was nothing in the 1883 Act to suggest that Parliament had intended to abolish the application of the rule in *Bower v Marris* in relation to bankruptcy.
- (4) The language in rule 2.88 directing the payment of interest "*after payment of the debts proved*" does not exclude the rule in *Bower v Marris*. The rule in *Bower v Marris* acknowledges that principal is paid first, but requires any subsequent interest calculation to be performed *as if* interest had been paid first.

- (5) It is wrong to say that the rule in *Bower v Marris* is necessarily dependent on there being two accrued outstanding debts payable by the debtor to the creditor (principal and interest) at the time at which payment is made by the debtor. Such a condition to the application of the rule does not form part of the reasoning in authorities in which the rule has been considered and applied.
5. The judge should have held that, on the true construction of rule 2.88(7) of the Rules, Statutory Interest is to be calculated on the basis of notionally allocating dividends first to the payment of accrued Statutory Interest and then in reduction of the principal debt.

Non-provable claim to further interest or other compensation where payment of Statutory Interest is delayed, or where the amount paid by way of Statutory Interest is less than the amount of interest to which a creditor would otherwise have been entitled (paragraphs (iv)-(v) of the Tranche A Order)

6. The judge held that:
- (1) Rule 2.88 represents a complete code for the payment of post-administration interest, and a creditor entitled to Statutory Interest is not entitled to any further interest in circumstances where the Statutory Interest recovered under rule 2.88 is less than the interest that would otherwise have been recovered: Tranche A judgment para 164.
- (2) Nor is the creditor entitled to damages or any other form of compensation in respect of the time taken for Statutory Interest to be paid: Tranche A judgment paras 165-167.
7. In so holding, the judge erred in law:
- (1) Rule 2.88(1) provides that interest arising after the commencement of the administration is not provable. However, there is nothing in rule 2.88 which excludes a *non-provable* claim to post-administration interest. There is no justification or basis for the judge's conclusion that rule 2.88 represents a "complete code" in this respect.

- (2) It is a fundamental principle of insolvency law that no person should be prejudiced by the delay which takes place in realising and distributing the assets of a debtor in insolvency proceedings. Failing to give some form of compensation or further interest to creditors for late payment of Statutory Interest would prejudice creditors. In particular, removing a creditor's right to recover such compensation or interest to the extent that it is not recovered under rule 2.88(7) would be a very significant departure from the basic principle that, in corporate insolvency, creditors are entitled to make a full recovery before any funds are paid to shareholders.
- (3) In any event, the judge's reliance on the literal meaning of the words "*after payment of the debts proved*" and "*in paying interest on those debts*" in rule 2.88(7) was misplaced. Rule 2.88(7) cannot be construed in a strictly literalist fashion as conferring a right to interest on only debts actually proved. Preferential creditors in an administration are entitled to receive payment without first submitting a proof, but would nonetheless be entitled to interest under rule 2.88(7).
- (4) Furthermore, administrators have a duty to pay Statutory Interest in the event of a surplus arising in a distributing administration. Interest losses are claimable in English law as damages for late payment of a debt or for breach of statutory duty in accordance with *Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners* [2008] 1 AC 561.

8. The judge should therefore have held that a creditor is entitled to further interest or damages or some other form of compensation in respect of the time taken for Statutory Interest to be paid.

Whether compound interest continues to compound following payment in full of principal (paragraph (viii) of the Tranche A Order)

9. The judge held that where Statutory Interest is payable at a "*rate applicable to the debt apart from the administration*" and such rate is a compounding rate, accrued Statutory Interest does not continue to compound following the payment in full of the principal amount through dividends, because under the terms of rule 2.88(7) interest,

whether simple or compound, is payable only for the period that the proved debt, or part of it, is outstanding: Tranche A judgment para 26.

10. In so holding, the judge erred in law:
 - (1) Absent an insolvency, where a debt of £100 bears compound interest, and (after some amount of interest has accrued), payment of £100 is made, it is fundamental to the concept of compound interest that it continues to accrue on the unpaid remainder.
 - (2) There is no sensible reason why the position under rule 2.88 should be any different.
 - (3) The language of rule 2.88(7) does not preclude this normal method of calculation. Although the statutory scheme requires principal to be discharged before interest, it does not preclude interest from being calculated *as if* part of the principal debt remained outstanding.
 - (4) Indeed, the very notion of compound interest relies upon capitalising interest at each stop so that accrued interest is treated *as if* it were principal, which then bears interest.
 - (5) It is therefore inherent in the concept of compound interest (which is recoverable under rule 2.88) that it continues to accrue until the entire liability (principal and interest) is discharged.
11. The judge should therefore have held that accrued Statutory Interest does continue to compound following the payment in full of the principal amount through dividends.

Foreign judgment rates of interest (paragraph (x) of the Tranche A Order)¹

12. The judge held that the words "*the rate applicable to the debt apart from the administration*" in rule 2.88(9) of the Rules include a foreign judgment rate of interest

¹ York's Grounds of Appeal in respect of paragraph (x) of the Tranche A Order are without prejudice to the consequential issues arising from the Part A Judgment which remain to be determined as at the date hereof. York reserves the right to amend these Grounds of Appeal in the light of the High Court's determination of those issues.

applicable to a foreign judgment obtained prior to the Date of Administration but do not include:

- (1) a foreign judgment rate of interest applicable to a foreign judgment obtained after the Date of Administration; or
- (2) a foreign judgment rate of interest which would have become applicable to the debt if the creditor had obtained a foreign judgment (when it did not in fact do so).

13. In excluding a foreign judgment rate of interest applicable to a foreign judgment obtained after the Date of Administration and a foreign judgment rate of interest which would have become applicable to the debt if the creditor had obtained a foreign judgment (when it did not in fact do so), the judge erred in law:

- (1) The policy and object of Statutory Interest is, so far as possible, to give the creditor what he would have received if the debtor had not gone into an insolvency process.
- (2) The language "*rate applicable apart from the administration*" is necessarily directed at what the position would have been if the insolvency process had not commenced and the creditor had been able to bring individual enforcement action in respect of his claim.
- (3) Where the collective process of insolvency has been substituted for the creditor's ability to bring an individual enforcement action, it is correct that the creditor should be able to recover the rate of interest which he would have been entitled to receive if he had been able to bring that individual enforcement action, and there is no reason why he should be deprived of this benefit

14. The judge should therefore have held that the words "*the rate applicable to the debt apart from the administration*" in rule 2.88(9) of the Rules include a foreign judgment rate of interest which would have been awarded had an action been brought before a foreign court, regardless of whether such a judgment had in fact been obtained prior to the Date of Administration.

15. In the alternative, if the judge's conclusion on this issue was correct, then the reasoning applies equally to all debts to which a contractual or other rate of interest was not in fact applicable as at the Date of Administration, whether by reason of the debt being contingent or future at that date or for any other reason.

Interest on debts originally denominated in a foreign currency (paragraphs (xviii)-(xix) of the Tranche A Order)

16. The judge held that:

- (1) rule 2.88 of the Rules represents a complete code for the payment of post-administration interest, leaving no room for the possibility of the payment of further post-insolvency interest as a non-provable debt out of the surplus remaining after payment of Statutory Interest (Tranche A judgment para 164), and no room for interest on a currency conversion claim where the underlying foreign currency obligation is not itself interest-bearing (Tranche A judgment para 169), therefore;
- (2) where a creditor with a claim originally denominated in a foreign currency receives Statutory Interest on a Sterling admitted claim at the Judgments Act Rate and such Statutory Interest is less than the amount of interest at the Judgments Act Rate which the creditor would have received on his claim in the original foreign currency, the creditor has no non-provable claim in respect of the difference; and
- (3) where a creditor with a claim originally denominated in a foreign currency receives Statutory Interest on a Sterling admitted claim at the "*rate applicable to the debt apart from the administration*" and such Statutory Interest is less than the amount of contractual interest which the creditor would have received on his claim in the original foreign currency, the creditor has no non-provable claim for the difference.

17. In so holding, the judge erred in law.

- (1) Rule 2.88 provides that interest arising after the commencement of the administration is not provable. However, there is nothing in rule 2.88 which

excludes a *non-provable* claim to post-administration interest. There is no justification or basis for the judge's conclusion that rule 2.88 represents a "*complete code*".

(2) It is a fundamental principle of insolvency law that no person should be prejudiced by the accidental delay which takes place in realising and distributing the assets of a company in insolvency proceedings. Removing a creditor's right to recover whatever interest it is owed that is not recovered under rule 2.88(7) would be a very significant departure from the basic principle that creditors are entitled to make a full recovery before any funds are paid to shareholders.

18. The judge should therefore have held that where a creditor with a claim originally denominated in a foreign currency receives Statutory Interest on a Sterling admitted claim and such Statutory Interest is less than the amount of interest at the same rate which the creditor would have received on his claim in the original foreign currency, the creditor has a non-provable claim in respect of the difference.