

## ***Milner v Carnival (T/A Cunard)* [2010] EWCA Civ 389**

### **Court of Appeal Guidance on the measure of damages for loss of enjoyment in holiday cases**

#### **Background**

- 1) The case of *Milner v Cunard*, gave the Court of Appeal the opportunity to give “*authoritative guidance*” on the principles for the correct quantification of damages in ruined holiday (cruise) cases.
- 2) Mr and Mrs Milner were passengers on the maiden voyage of *QUEEN VICTORIA* departing Southampton 6 January 2008 for 106 days. The total cruise cost, after discount, was £59,052.
- 3) Leg 1 – Southampton to New York, the vessel encountered heavy weather and the Milners suffered two sleepless nights due to noise caused by deck flexion.
- 4) Leg 2 – New York to Los Angeles, the Milners were provided with alternative, and upgraded, accommodation for 17 days.
- 5) Leg 3 – Los Angeles to Hawaii – the Milner’s suffered one further interrupted nights sleep and were provided again with upgraded accommodation for the duration.
- 6) The Milners then elected to disembark in Hawaii after only 28 days and spent 6 weeks in a luxury hotel before returning to Southampton on the QEII.

7) Liability for a breach of contract was conceded.

### **The Milner's claim**

In the Bradford County Court the Milners claimed:-

- £50,000 for their distress, disappointment and inconvenience.
- £8,500 for the alleged diminution in the value of their cruise
- £13,440 for the return journey from Hawaii to Southampton on the QE2
- £4,300 for “*wasted expenditure*” on 21 formal evening gowns purchased by Mrs Milner.

### **The Award of HHJ Spencer**

- £2,500 each for diminution of value
- £7,500 each for distress and disappointment. “*A platinum award for a platinum product*”.
- £2,000 for the wasted expenditure on formal gowns

Total Award £22,000

[NOTE – By the time of trial, Mr and Mrs Milner had received a refund of £48,270 i.e. – net cruise cost £10,182]

### **Damages Awarded on Appeal**

- On 20 April 2010 before Lord Justices Ward, Richards and Goldring, Cunard won their appeal. Damages were reduced to:-
- £3,500 Diminution in value
- £8,500 Distress and disappointment
- No award for alleged wasted expenditure on the gowns.

### **The Court of Appeal's Approach**

- 1) The two distinct limbs which must be considered separately.
  - a) Diminution in value; and
  - b) Damages for consequential losses, distress and inconvenience.
- 2) The two limbs above should not overlap – to avoid duplication when awarding damages.
- 3) Each case must however be decided upon its own facts and merits.
- 4) Having assessed both heads of loss, stand back and consider both figures in a round.

### **Diminution in Value**

- 1) As a guide only (not a benchmark), take actual cost of holiday/cruise (following a discount) and calculate daily rate for applicable period.  
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- 2) Then assess difference between what should have been provided contractually and what was actually provided (- consider accommodation, entertainment, sports, dining, excursions, etc).
- 3) Do not include any assessment of how the passenger felt about the diminution in service they received (i.e. “the mental element”).

**(In Milner, the Court of Appeal took the balance of cruise costs (£10,182) and deducted one third)**

### **Distress and Disappointment**

- 1) Compare expectations with reality – was the cruise to be an exceptional lifetime experience, full of expectation?
- 2) Consider comparables for other ruined holiday/cruise cases i.e.
  - i) Planned marriage on holiday – up to £4,000.
  - ii) Honeymoons – up to £2,000
  - iii) Specialist sporting holidays – up to £2,000
  - iv) Other holiday cases – up to £1,900

- 3) Then compare with General Damages awarded in personal injury cases for distress
- i) As per the JSB guidelines, minor distress in a psychiatric context £2,500 - £5,000
  - ii) Affront to feelings in sexual and racial discrimination cases £500 - £5,000 where a one-off incident
  - iii) Distress for bereavement – statutory award of £10,000

### **Conclusion**

- (1) Add assessment of a) diminution and b) distress and disappointment together.
- (2) Again step back, and review against the net cruise costs (as a guide) and as against comparables for ruined holidays with equivalent expectations.