

Case Alert: The Court of Appeal Affirms the Jurisdiction of the BVI court to Award Pre-Judgment Interest

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In the recent Court of Appeal decision of [Steadroy Matthews -v- Garna O'Neal](#), BVIHCVAP 2015/0019 ("*Steadroy Matthews*") the Court upheld an award of pre-judgment interest on general damages in a ruling which offered much needed clarity on the power of the Court to grant such relief.

The uncertainty which befell this area was not least as a result of the 2009 decision of Bannister J in *Ocean Conversion (BVI) Limited* ("*Ocean Conversion*"), where the Learned Judge departed from the 1997 Court of Appeal decision of *Alphonso -v- Ramnath* and held instead that the BVI Court had no power to award pre-judgment interest absent a BVI statute directly conferring that jurisdiction.

The Appellant in *Steadroy Matthews* relied on *Ocean Conversion* in support of the assertion that the master erred in awarding pre-judgment interest on damages. The Court of Appeal rejected that submission and ruled in favour of the Respondent, establishing firmly that a BVI court *does* have the jurisdiction to make awards of pre-judgment interest on the following bases:

- (i) Section 7 of the *West Indies Associated States Supreme Court (Virgin Islands) Act* confers on the BVI High Court the same powers and authorities incidental to its jurisdiction, as those vested in the High Court of England as of 1 January 1940 (which includes the power to award such interest);
- (ii) The power also derives from a more general common law principle as stated by Lord Herschell in *London, Chatman and Dover* that a party from whom money is wrongfully withheld ought to be compensated in interest when recovering the amount due to him; and
- (iii) The Court of Appeal's previous decision in *Adamovsky -v- Malitskiy* ("*Adamovsky*") affirmed that the BVI Court does have the jurisdiction to award such interest. In that case, interest was awarded on the claimants' compensation for the diminution in value of their shareholding on the basis that the parties were entitled to an award reflecting the time value of the money from which they were wrongfully deprived.

This is now welcome clarity that courts in the BVI do possess the jurisdiction to award pre-judgment interest, and based on the Court's ruling in *Adamovsky*, it is clear that the Court is willing to adopt a commercially sensible approach which incorporates compensation for the time value of money wrongfully withheld.

Alecia Johns appeared for the Respondent before the Court of Appeal in the *Steadroy Matthews* case.

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