

**ENGLISH HIGH COURT INJUNCTS INTERNATIONAL LAW FIRM FROM
ACTING IN US\$2 BILLION DISPUTE**

Georgian American Alloys, Inc & Or v White & Case LLP & Anor [2014] EWHC 94

Introduction

On 31 January 2014, the English High Court released its decision in *Georgian American Alloys, Inc & Or v White & Case LLP & Anor* [2014] EWHC 94, granting an injunction which prevent international law firm White & Case LLP from acting in Commercial Court proceedings between three Ukrainian businessmen.

Background

This decision arose from an application for a permanent injunction to restrain law firm White & Case from acting for or advising Mr Victor Mikaylovich Pinchuk in proceedings brought in the Commercial Court against Mr Igor Kolomoisky and Mr Gennadiy Bogolyubov (the ultimate owners of the Claimant companies in this application).

In 2010, White and Case (through its London and Moscow offices) was engaged to act in relation to a dispute between Mr Pinchuk against Mr Kolomoisky and Mr Bogolyubov. In 2011, White and Case (through its New York office) was subsequently engaged by the Claimant companies in relation to a proposed restructuring and IPO. During its engagement by the Claimant companies, White & Case carried out far-reaching investigations and became privy to a substantial amount of information concerning the identity of the Claimants' assets, their location and the identity and structure of the corporate vehicles used to hold such assets, along with related party transactions between the Claimant companies and Mr Kolomoisky and Mr Bogolyubov.

In relation to these engagements, White and Case conducted conflict checks but decided that there was no conflict. It did not put in place any information barriers between the two offices/teams of lawyers.

In May/June 2012, White and Case (again through its London and Moscow offices) began evaluating potential claims against Mr Bogolyubov and Mr Kolomoisky, and identifying the assets of Mr Bogolyubov and Mr Kolomoisky. A conflict check was carried out in June which established that the New York engagement posed no conflict. Ethical screens (preventing staff working on one matter from accessing information relating to a client on the other matter) were then put in place, but were not notified to the clients.

On 12 March 2013, claims were served on Mr Bogolyubov and Mr Kolomoisky with Mr Pinchuk as claimant, and on 2 August 2013, a Request for Arbitration brought by Mr Pinchuk

was served on Mr Bogolyubov and Mr Kolomoisky and Mr Spector (through the LCIA). The amounts in dispute in the Commercial Court action and the LCIA arbitration totaled over US \$2 billion.

On 13 November 2013, the Claimants issued the proceedings seeking an injunction restraining White & Case from acting in both the Commercial Court and the LCIA proceedings. On 17 December 2013, White and Case announced that they would cease acting in the arbitration.

Decision

Mr Justice Field granted the application injuncting White and Case from appearing on behalf of Mr Pinchuk.

In his judgment, Mr Justice Field cited *Bolkiah v KPMG* [1999] 2 AC 222 which required a plaintiff seeking to restrain his former solicitor from acting in a matter for another client to establish:

- (i) that the solicitor is in possession of information which is confidential to him and to the disclosure of which he has not consented and
- (ii) that the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own.

In the present case, Mr Justice Field held found that White and Case did hold confidential information, and there was a real risk that the confidential information in issue came into the possession of some of the London/Moscow team prior to the ethical barriers being put in place, and accordingly use of that information (at least inadvertently) had been or would be made in the Commercial Court action.

Mr Pinchuk made presentations that if the injunction were granted, he would be gravely prejudiced given his close relationship with White and Case, and the great difficulty he would have in finding another firm with a London office with the necessary expertise and Russian speakers, not to mention the additional costs. However, Mr Justice Field held that the impact on Mr Pinchuk was not a relevant consideration when deciding whether to grant the Claimants' application.

A link to the full judgment can be found at:

<http://www.bailii.org/ew/cases/EWHC/Comm/2014/94.html>

18th February 2014

