



Claim Form

In the HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES BUSINESS LIST (CHD)		OFFICE COPY HIGH COURT ROLLS BUILDING OF JUSTICE	HIGH COURT OF JUSTICE 30 Jan 2018 THE BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
Fee Account no.			
Help with Fees – Ref. no. (if applicable)	H W F - BL 2018-000228		

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

Claim no.	
Issue date	

Claimant(s) name(s) and address(es) including postcode

- (1) Global Distressed Alpha Fund III Limited Partnership
One Bermudiana Road
Hamilton HM 11
Bermuda
- (2) Global Distressed Alpha Capital I Limited
One Bermudiana Road
Hamilton HM 11
Bermuda
- (3) Global Distressed Alpha Fund Management Limited
One Bermudiana Road
Hamilton HM 11
Bermuda

Defendant(s) name and address(es) including postcode

Hamilton Downing Quinn LLP
Ruskin House
London WC1A 1LT
United Kingdom

SEAL

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06.16)

This form is reproduced from <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do> and is subject to Crown copyright protection. Contains public sector information licensed under the Open Government Licence v3.0

© Crown Copyright 2016

Brief details of claim

This is a claim for professional negligence by the Claimants against the Defendant firm of solicitors, which acted for the Claimants (as set out in the Particulars of Claim) in relation to an investment in litigation in South Africa.



The Claimants seek the following:

- (1) Damages in respect of the amount lost by the Claimants (or any of them) caused by the negligence and/or breach(es) of contract by the Defendant in conducting due diligence for the Claimants in respect of, and/or advising the Claimants in relation to, an investment made in 2013.
- (2) Damages and/or an indemnity in respect of costs and expenses being incurred to pursue the sureties/guarantors under the investment agreements, which would not be necessary but for the negligence and/or breach(es) of contract by the Defendant, and any future steps taken by the Claimants in reasonable attempts to mitigate their loss.
- (3) An account in respect of sums paid by the Claimants to the Defendant on 18 July 2013 for the purposes of the abovementioned investment and an order that the Defendant pay the Claimants such sum as found due upon the carrying out of the said account, or damages in respect thereof.

Value

The total value of the claim is in excess of £18,250,000, plus interest and costs.

You must indicate your preferred County Court Hearing Centre for hearings here (*see notes for guidance*)

Defendant's
name and
address for
service
including
postcode

Hamilton Downing Quinn LLP
Ruskin House
London
WC1A 1LT
United Kingdom

	£
Amount claimed	in excess of 18,250,000.00
Court fee	10,000.00
Legal representative's costs	To be assessed
Total amount	Unspecified

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998? ☐ Yes ☒ No

Particulars of Claim (attached)(to follow)

Particulars of Claim attached.

Statement of Truth

I believe that the facts stated in these particulars of claim are true.

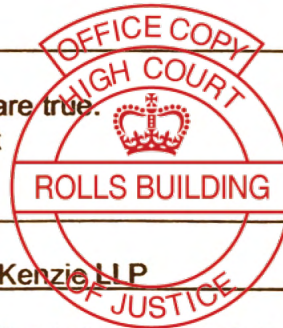
I am duly authorised by the claimant to sign this statement

Full name Nicholas John Hutton

Name of claimant's legal representative's firm Baker & McKenzie LLP

signed [Signature]
(Claimant)

position or office held Director
(if signing on behalf of firm or company)



**delete as appropriate*

Baker & McKenzie LLP
100 New Bridge Street
London EC4V 6JA
United Kingdom
Ref: KAAS/ASXP
Fax: +44 207 919 1999
DX: No 233 Chancery Lane

Claimant's or claimant's legal
representative's address to which
documents or payments should be
sent if different from overleaf including
(if appropriate) details of DX, fax or e-
mail.

OffshoreAlert



Claim No

BL-2018-000228

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BETWEEN

- (1) GLOBAL DISTRESSED ALPHA FUND III LIMITED PARTNERSHIP
(2) GLOBAL DISTRESSED ALPHA CAPITAL I LIMITED
(3) GLOBAL DISTRESSED ALPHA FUND MANAGEMENT LIMITED

Claimants

- and -

HAMILTON DOWNING QUINN LLP

Defendant

PARTICULARS OF CLAIM

THE PARTIES AND OVERVIEW

1. The First Claimant, Global Distressed Alpha Fund III Limited Partnership ("GDAF"), is a limited partnership formed and registered in Bermuda. The Second Claimant, Global Distressed Alpha Capital I Limited ("GDAC"), is a limited liability company incorporated in Bermuda and the general partner of GDAF, through which GDAF acts pursuant to a limited partnership agreement dated 1 October 2010 ("the GDAF Partnership Agreement"). The Third Claimant, Global Distressed Alpha Fund Management Limited ("GDAFM"), is a limited liability company incorporated in Bermuda, and the management company for GDAF. At all material times, both GDAC and GDAFM acted as agent for GDAF.
2. Unless otherwise stated, all references to GDAF in these Particulars of Claim are also references, in the alternative, to GDAC and/or GDAFM.
3. At all material times, the Defendant, Hamilton Downing Quinn LLP, was a limited liability partnership registered in England and Wales (Registration No OC359980) with its registered office at



Ruskin House, 40/41 Museum Street, London, WC1A 1LT. The Defendant is and was, at all material times, a firm of solicitors.

4. Mr Walton Eddlestone ("**Mr Eddlestone**") is and was, at all material times, a partner and designated member of the Defendant.
5. In overview, this is a claim for damages arising out of negligence and/or breach of contract by the Defendant in conducting due diligence and advising GDAF in relation to an investment made in 2013.

THE BACKGROUND FACTS

6. GDAF is one of a number of funds within a wider group known as the Commercial Intelligence Funds Group ("**CIFG**"). CIFG specialise in investing in litigation across the world, principally in Africa, Asia, the Middle East, and Latin America.
7. Mr Michael Shone ("**Mr Shone**") was the directing mind of CIFG at all material times. He was also a director and the majority shareholder of GDAC. The funds within CIFG shared management personnel and resources, and accordingly many representatives of those funds used general CIFG-branded email addresses when acting on their behalf. Unless stated to the contrary, any employee or representative of CIFG referenced in these Particulars of Claim acted as agent for GDAF at all material times.
8. The Defendant, and in particular Mr Eddlestone, had a longstanding relationship with both GDAF and CIFG generally.
 - 8.1. Mr Eddlestone has provided legal services to Mr Shone and CIFG since its inception in 1987.
 - 8.2. The Defendant regularly advised funds within CIFG in relation to litigation that those funds were considering investing in.
 - 8.3. The Defendant also provided ongoing monitoring services to CIFG, providing updates and legal advice in relation to litigation that CIFG funds were invested in.
 - 8.4. Although Mr Eddlestone of the Defendant was the most frequently engaged, Ms Hilary Cohen and Mr Nick Gore ("**Mr Gore**") of the Defendant also provided services to funds within CIFG on a regular basis.



8.5. In relation to GDAF in particular, Mr Eddlestone had advised it in relation to a possible investment on at least one occasion prior to 2013. At all material times, Mr Eddlestone used his Hamilton Downing Quinn email address.

8.6. Mr Eddlestone also attended a CIFG 'Advisory Board' meeting, held for the purpose of discussing matters relating to GDAF, at the Defendant's offices on 21 September 2012.

9. By way of example, the Defendant had been retained previously by GDAF in relation to a claim brought in South Africa by Mr David Sidenberg ("**Mr Sidenberg**") against Federation Internationale de Football Association ("**FIFA**").
10. Funds within CIFG would commonly invest in litigation through the use of special purpose vehicles. Simba Capital VIII Sarl ("**Simba VIII**") was incorporated in Luxembourg in or around November 2012 for use by GDAF as a special purpose vehicle for investing in South African litigation. The Defendant was aware that Simba VIII was being incorporated for the purpose of being used by GDAF to invest in foreign litigation with a view to making significant profits. As to this and by way of example:

- 10.1. Mr Gore of the Defendant sent an email timed at 12:13 on 26 October 2012 to GDAF's Luxembourg lawyers (who were responsible for incorporating Simba VIII) setting out the intended purpose of Simba VIII:

As you know, Simba Capital VIII Sarl (Simba VIII) will acquire the rights to a litigation claim. All costs relating to the claim will be funded by an investment fund, Global Distressed Alpha Fund III LLP [sic], which is a limited partnership registered in Bermuda and which will also be responsible for paying all administration and maintenance costs of Simba VIII. Simba VIII will hold the rights to the claim in Trust for Global Distressed Alpha Fund III LLP [sic].

- 10.2. The above email was forwarded to Mr Eddlestone of the Defendant by an email from Ms Gemma Tresser of CIFG, timed at 5:22 PM on 7 November 2012, with a request for his approval for a payment to GDAF's Luxembourg lawyers for Simba VIII's incorporation fees.



- 10.3. By an email timed at 11:29 AM on 8 November 2012, Mr Eddlestone replied approving the payment and asking to be informed when Simba VIII was ready to begin use as a special purpose vehicle for GDAF's investments.

The Vodacom Litigation

11. In or around 2008, proceedings were issued by Mr Nkosana Kenneth Makate ("**Mr Makate**") against Vodacom (Pty) Ltd ("**Vodacom**") in the Gauteng Division of the High Court of South Africa (case number 209809/2008) ("**the Vodacom Litigation**").
12. Mr Makate alleged that in around March 2001, when he was working for Vodacom, he had invented a product that was later known widely as the "Please Call Me" system. The system enabled the user to generate an automatic SMS (Short Messaging Service) text message that was then sent to an intended target, requesting that the target call the user. The concept enabled the user to generate and send the "Please call me" message even if they had no available phone credits. Vodacom would then make money from the recipient's return call. Mr Makate had made it clear from the outset of the product's development that he wanted to be paid for providing Vodacom with the product idea, in the sum of 15% of the gross income derived from the product. Senior officers of Vodacom made documented promises to Mr Makate that commercial terms would be agreed if the product was a commercial success. Vodacom is estimated to have made more than Rand 45.5 billion from the product. Mr Makate brought the Vodacom Litigation to enforce the alleged agreement to negotiate, on commercial terms, a payment for his invention of the product.
13. Mr Eddlestone was aware of the Vodacom Litigation by 29 September 2011. On that date, Mr Eddlestone sent an email timed at 14:13 to Mr Shone, Mr Mikkell Herman and Mr John Smith, all of whom were directors and/or shareholders of GDAC. In his email, Mr Eddlestone advised that he had received information about the Vodacom Litigation from Mr Errol Elsdon ("**Mr Elsdon**") and Mr Christiaan Schoeman ("**Mr Schoeman**") (two persons who had introduced other investment opportunities to CIFG previously).
14. By an email dated 20 June 2013, Mr Errol Elsdon contacted Mr Eddlestone again to enquire whether a fund within CIFG would be interested in investing in the Vodacom Litigation. Mr Elsdon proposed an investment of \$300,000 on the basis of a funding agreement entered into between "*a fund nominated by Commercial Intelligence ('the funder')*" and *Black Rock Mining Ltd*".



15. On the following day, by an email timed at 7:25am on 21 June 2013, Mr Schoeman sent an email to Mr Eddlestone regarding the Vodacom Litigation:

Dear Walton,

I refer to our discussion yesterday. You intimated to me that you were thinking of persuading Michael to "have a punt" on this one. Personally I think that is a good idea. It is relatively cheap at US\$300 000.00 and you are getting 5% of gross, plus your money back. I think it is a safe bet because obviously you take your money off the top and I think even the most pessimistic of us believe we will do better than US\$300k.

However, allow me to tell you why we are going to make stacks of money!...

Mr Schoeman then went on to set out further detail on the strengths he perceived in Mr Makate's claim in the Vodacom Litigation.

16. By an email timed at 12:28am on 10 July 2013, to which Mr Eddlestone was copied in, Mr Elsdon chased Mr Shone for an answer regarding the Vodacom Litigation:

Hello Michael, it was great seeing you and Walton last week. I'm still in London and tried calling you earlier to update on Vodacom. Please give me a shout when you get a gap on my UK phone...

17. By an email timed at 4:19 PM on 12 July 2013, Mr Eddlestone told Mr Elsdon that Mr Shone was inclined to try to have a fund within CIFG invest in the Vodacom Litigation, but required further information about the co-investors and expected returns.
18. By an email timed at 8:27 PM on 12 July 2013, Mr Elson responded to Mr Eddlestone's previous email, providing detail on the proposed investment:

Dear Walton,

Your e-mail under reply refers.

- 1) The case was brought to us by Kevin Jenkins. You may recall that he brought us a number of matters previously.*



- 2) *We did a deal with the plaintiff Nkosana Makate, on a 60/40 split, in his favour. The deal was done with one of my companies, known as Black Rock Mining Ltd in the BVI and Black Rock has the obligation to fund the matter.*

...

- 6) *We are now faced with funding the experts plus our "special witness".*
- 7) *Consequently, we have needed to restructure the deal...*
- 8) *That leaves us with a "free residue" of about 5%. It is this 5% that we are offering CI and propose the following:-*

[a] CI puts in 250,000 Pounds Sterling at no risk. We guarantee the return of your investment and provide as security our interest in the LHUT case. If the Vodacom case is lost, we pay back the 250,000 within 90 days.

[b] If we win, you get back your investment of 250,000 Pounds plus 5% of the proceeds.

...

19. The structure of the proposed investment in the Vodacom Litigation was therefore as follows ("**the Proposed Investment**"):

- 19.1. £250,000 would be advanced to Black Rock Mining Ltd ("**Black Rock**") on the premise that Black Rock had contracted with Mr Makate to provide the funding for the Vodacom Litigation in return for a stake in any proceeds of that litigation;
- 19.2. If the litigation was successful, Black Rock would remit the sum of the original investment, plus 5% of the total proceeds of the litigation;
- 19.3. If the litigation was unsuccessful, the original investment of £250,000 would be returned, either by Black Rock, or by Mr Elsdon and/or Mr Schoeman as guarantors.

20. By an email timed at 8:51 AM on 15 July 2013 to Mr Stone and Mr Christoph Rommel ("**Mr Rommel**") at CIFG, Mr Eddlestone recommended an investment in the Vodacom Litigation, stating



that he thought it was "*probably worth a shout*". By the same email, Mr Eddlestone enquired as to whether there was available capital to fund the investment.

21. Mr Rommel replied to Mr Eddlestone by an email timed at 08:13 on 15 July 2013, with the subject line "*Re GDAF III / Vodacom*";

..since Pamodsi had an approved cost budget within the fund, this capital is indeed available for another claim, if Pamodsi does not materialise.

22. In the premises, Mr Eddlestone knew, no later than 15 July 2013, that GDAF was the fund within CIFG that had been chosen as the potential investor in the Vodacom Litigation.
23. By an email timed at 6:58 AM on 15 July 2013 (but in response to Mr Eddlestone's email timed at 08:51, likely due to changes in time zone) Mr Shone agreed in principle to Mr Eddlestone's recommendation of an investment in the Vodacom Litigation.
24. By an email timed at 17:01 on 17 July 2013, Mr Eddlestone confirmed to Joanna Lee of CIFG that GDAF would be investing in the Vodacom Litigation, and asked her to arrange for the investment sum of £250,000 to be transferred to the Defendant's client account in order to proceed:

Dear Joanna,

I have now agreed to take, as discussed with Michael and Christoph, the Vodacom claim into GDAF as it does not look like we will be taking the Pamodzi claim.

I attach a copy of an Agreement which I am proposing to enter into with Chris Schoeman and Errol Elsdon, the terms of which are self-explanatory. The trial for this matter starts on Monday, therefore I would be grateful if you could arrange for £250,000 to be sent to my firm's client account upon receipt of this e-mail. I need to have funds in my account by Friday to ensure I can comply with my obligations hereunder. My client account details are:-

...

Your sincerely

WALTON EDDLESTONE



25. During 17 and 18 July 2013, Mr Eddlestone was also engaged in negotiating the final form of the Memorandum of Agreement with Black Rock (**"the Black Rock Agreement"**). For example, by an email timed at 17:00 on 17 July 2013, Mr Eddlestone sent a draft of the Black Rock Agreement to Mr Elsdon, containing several amendments, including an increased return of 7% of the proceeds. Mr Eddlestone also suggested the inclusion of a *"backstop date"* in the final clause of the Black Rock Agreement, whereby the guarantees to be given by Mr Schoeman and Mr Elsdon could be called upon after one year. Mr Elsdon responded by an email of the same day timed at 20:16 in which Mr Elsdon accepted some of the amendments, but was unable to agree the increased return:

...spoken to Makate and I cannot get him to agree to reduce any further... please can we leave the 5% as is; you have my word that I will do my best to readjust when the time comes.

26. Mr Eddlestone responded by an email timed at 12:21 on 18 July 2013 confirming that the return of 5% was agreed and that the Defendant was now *"in funds"*.
27. By a letter dated 18 July 2013 and addressed to the Defendant, Mr Elsdon provided Mr Eddlestone with a signed copy of the final version of the Black Rock Agreement, for countersignature.

The Black Rock Agreement

28. A signed copy of the Black Rock Agreement, dated 18 July 2013, is attached at **Appendix A**.
29. The Black Rock Agreement had five parties:
- 29.1. Simba VIII (referred to as *"the financier"* within the agreement);
 - 29.2. Black Rock;
 - 29.3. Mr Elsdon;
 - 29.4. Mr Schoeman;
 - 29.5. Mr Makate's lawyer, Ms Wilna Lubbe (**"Ms Lubbe"**), of Stemela & Lubbe Inc of 889 Justice Mahomed, Brooklyn, Pretoria.
30. The Black Rock Agreement contained the following recitals in its Preamble:

WHEREAS A Black Rock has entered into an agreement ("the agreement") with Nkosana Kenneth Makate ("Makate") to finance his on-going litigation with Vodacom ("the litigation"), and



WHEREAS B *Black Rock is entitled in terms of the agreement to receive 50% of the gross income from the proceeds of the litigation, and*

WHEREAS C *the financier has agreed to supply additional funding to Black Rock*

31. Under the terms of the Black Rock Agreement:

- 31.1. Simba VIII was to advance a total of £250,000. £100,000 was to be held by the Defendant to the order of Ms Lubbe, in her capacity as Mr Makate's lawyer. The remaining £150,000 was to be paid to Black Rock, on the instruction of Mr Elsdon, to an account and beneficiary nominated by him.
 - 31.2. All proceeds of the Vodacom Litigation were to be paid to Ms Lubbe, pending an account to the parties in accordance with the Black Rock Agreement.
 - 31.3. Provided that Simba VIII had complied with its own obligations, Ms Lubbe was irrevocably directed to pay Simba VIII £250,000, plus 5% of the gross proceeds of the Vodacom Litigation.
 - 31.4. In the event that there were no proceeds from the Vodacom Litigation, or the proceeds were insufficient to pay Simba VIII £250,000, Mr Elsdon and Mr Schoeman bound themselves, jointly and severally, to pay any shortfall up to £250,000 as sureties and co-principal debtors.
32. By an email timed at 7:15pm on 18 July 2013, Mr Eddlestone explained the terms and effect of the Black Rock Agreement to Ms Jane Wallace of CIFG ("**Ms Wallace**"). In addition, he stated that "*Michael and I did detailed due diligence on this in New York and on the plane to and from.*"

The Payments

- 33. In accordance with the Black Rock Agreement, GDAF, through Simba VIII as its agent, invested £250,000 in the Vodacom Litigation.
- 34. As recorded by an email from Ms Wallace to Mr Eddlestone timed at 03:15 on 18 July 2013, the transfer was split between two accounts due to a daily transfer limit on GDAF's bank account:



34.1. £125,000 was sent on 18 July 2013 (bank ref PTT130718584148) to the Defendant by GDAF;

34.2. £125,000 was sent on 18 July 2013 (bank ref PTT130718584134) to the Defendant by Orient Administration Pte Ltd ("**Orient**"), on behalf of GDAF.

Subsequent Discoveries

35. The Claimants have subsequently been informed that, contrary to the recitals contained in the Black Rock Agreement, Black Rock never had any agreement with Mr Makate to finance the Vodacom Litigation. Accordingly, Black Rock had no contractual entitlement to receive 50% of any proceeds of the Vodacom Litigation, or any other proportion.
36. The Claimants instead discovered that a funding agreement, dated 7 November 2011, was entered into between Mr Makate and Mr Schoeman, "*in his capacity as an authorised representative of a Company*" ("**the Funding Agreement**", attached at **Appendix B**). For the avoidance of doubt, the reference to "*a Company*" is not a reference to Black Rock.
37. Indeed, by an agreement dated 24 April 2014 ("**the Nomination Agreement**", attached at **Appendix C**), Mr Schoeman purportedly nominated Raining Men Trade (Pty) Ltd ("**Raining Men**") as the relevant company for the purposes of the Funding Agreement.
38. The Claimants understand that, on 22 December 2014, Mr Schoeman informed Stemela & Lubbe that he had no authority to nominate Raining Men under the Nomination Agreement and Raining Men had never accepted the nomination. Thereafter, Mr Makate proceeded to cancel the Funding Agreement with Mr Schoeman, and there is an ongoing dispute between Mr Makate, Mr Schoeman and Raining Men on this issue.
39. If and to the extent that the foregoing is correct, Black Rock had no contractual entitlement to any of the proceeds of the Vodacom Litigation, and the investment attempted through the mechanism of the Black Rock Agreement was therefore ineffective, incapable of succeeding, and a failure.
40. Further, even if Simba VIII were to receive any proportion of the proceeds, no legal mechanism was put in place by the Defendant for sums received by Simba VIII to be owned beneficially by GDAF. As set out in the email of Mr Gore timed at 12:13 on 26 October 2012, when GDAF made investments through Simba VIII, a Deed of Trust was required to be executed to ensure that GDAF



had an express beneficial entitlement to any sums received by Simba VIII. No Deed of Trust was executed in relation to Simba VIII's rights under the Black Rock Agreement.

41. On 30 April 2014, Black Rock was struck off the BVI Register of Companies for non-payment of fees over a period of 7 years, and dissolved.

Progress of the Vodacom Litigation

42. On 1 July 2014, Mr Makate's claim was dismissed by Coppin J sitting in the High Court (Johannesburg)(Case No. 209809/2008). However, Mr Makate was granted permission to appeal to the Constitutional Court.
43. On 26 April 2016, the Constitutional Court issued judgment overturning the High Court's decision and ordering Vodacom to pay reasonable compensation to Mr Makate in an amount to be negotiated between the parties.
44. Mr Makate has therefore been successful in the Vodacom litigation.

Loss & Mitigation

45. Despite Mr Makate's success in the Vodacom litigation, GDAF has not received its share of the profits of the Vodacom litigation. Furthermore, GDAF has lost both the £250,000 advanced in relation to the Proposed Investment and the sums spent on legal and other costs in relation to the transaction, which categories of loss and damage are recoverable from the Defendant.
46. GDAF is currently attempting to mitigate its loss by pursuing proceedings in South Africa against Mr Elsdon and Mr Schoeman. In so doing, GDAF is incurring further costs and expenses that it otherwise ought not to have incurred had it been placed in a position where its investment was made via an enforceable agreement, where there was no risk of counterparties being able to argue that the agreement was unenforceable.

THE RETAINER

47. GDAF retained the Defendant in relation to work connected with its interest, or potential interest, in the Vodacom Litigation. As to this, and without prejudice to the matters set out elsewhere herein:

- 47.1. It is not disputed that the Defendant sent a letter of engagement to GDAFM, acknowledging the existence of a retainer;



- 47.2. At all material times, GDAFM acted as agent for GDAF, in accordance with its authority to do so as set out in clause 3.02 of the GDAF Partnership Agreement :

The General Partner and its designees (including without limitation the Management Company...) shall have the power on behalf and in the name of the Partnership and to perform all acts which it may, in its discretion, deem necessary desirable or convenient, including without limitation, the power to: ...

(f) employ, on behalf of and at the expense of the Partnership, and dismiss from such employment any and all attorneys... or other agents... on such terms and for such compensation as the General Partner may determine...

- 47.3. For the avoidance of doubt, GDAFM is the designated "Management Company" for the purposes of the Partnership Agreement under clause 3.01(b);
- 47.4. In the premises, GDAFM entered into the retainer with the Defendant as an agent of GDAF. GDAF, as principal, was the client to whom obligations under the retainer were owed.

48. The said retainer was evidenced, inter alia, by the fact that:

- 48.1. Mr Eddlestone referred to himself as being a "legal advisor" to GDAF in an email timed at 11:37 on 7 March 2014 to Mr Patrick Fitzgerald of CIFG.
- 48.2. The Defendant's invoice dated 28 June 2013 (invoice number 11741), in respect of fees due to the Defendant for Mr Eddlestone's initial due diligence work on the Proposed Investment in the Vodacom Litigation, was addressed to Commercial Intelligence Opportunity Fund III. Ms Wallace of CIFG subsequently emailed Mr Eddlestone on 26 July 2013, advising of the error and asking Mr Eddlestone to ensure that the Vodacom Litigation invoice was re-addressed to GDAF.

49. In acting for GDAF, the Defendant, by Mr Eddlestone in his capacity as a partner and designated member of the Defendant, carried out a range of roles and services:

- 49.1. Mr Eddlestone purported to have conducted "detailed due diligence" into the Proposed Investment in the Vodacom Litigation;



- 49.2. Mr Eddlestone advised GDAF in relation to the Proposed Investment in the Vodacom Litigation;
- 49.3. Mr Eddlestone negotiated and/or drafted the Black Rock Agreement on behalf of and in the interests of GDAF;
- 49.4. Mr Eddlestone, on behalf of the Defendant, also assumed a general responsibility for advising on and handling all legal matters related to the Proposed Investment

OBLIGATIONS OWED TO GDAF

- 50. It was an implied term of the said retainer that the Defendant was obliged to exercise the reasonable skill and care of a firm of solicitors holding themselves out as having specialist experience in advising and assisting with investments in, and funding of, litigation (including in foreign jurisdictions).
- 51. In particular, and without prejudice to the generality of the foregoing, the Defendant owed the Claimants a duty to take reasonable care:
 - 51.1. To advise GDAF about the best contractual structure for its investment;
 - 51.2. To advise GDAF about, and ensure that it was aware of, any material risks involved in the Proposed Investment in the Vodacom Litigation;
 - 51.3. To protect GDAF from the risk that the Black Rock Agreement was unenforceable, alternatively the risk that the counter-parties to the Black Rock Agreement could contend that it was unenforceable;
 - 51.4. To ensure that GDAF (or its agent(s)) were able to take effective and swift steps to enforce its rights under the Black Rock Agreement;
 - 51.5. Not to expose GDAF to the risk of litigation in relation to the Black Rock Agreement;
 - 51.6. To ensure that the terms of the Black Rock Agreement were as advantageous as possible based on the principal terms that the counter-parties had agreed;



51.7. To ensure that any sums received by Simba VIII would be owned beneficially by GDAF and would be recoverable by GDAF;

51.8. To inform GDAF about any deficiencies in the Black Rock Agreement or the structure of the Proposed Investment.

52. Further or alternatively, the Defendant owed GDAF a like duty of care in tort.

BREACH

53. The Defendant, in breach of contract and/or negligently:

53.1. Failed, adequately or at all, to conduct due diligence into the Proposed Investment. In particular, the Defendant failed to take any or adequate steps to identify whether a funding agreement existed between Black Rock and Mr Makate.

53.2. Wrongly advised GDAF to make the Proposed Investment.

53.3. Failed, adequately or at all, to advise GDAF, of the material risks involved in the Proposed Investment. In particular, failed, adequately or at all, to advise GDAF about the risk that no funding agreement existed between Black Rock and Mr Makate or the ramifications of any lack of a funding agreement.

53.4. Failed, adequately or at all, to protect the sums advanced by GDAF under the Black Rock Agreement. In particular, the Defendant failed to execute a deed of trust expressing any rights held by Simba VIII under the Black Rock Agreement to be held on trust for GDAF.

53.5. Failed, adequately or at all, to draw up an agreement which protected GDAF from the risk of future litigation when seeking to enforce its rights under the agreement, or the risk of having to incur costs and expenses in seeking to enforce its rights as aforesaid.

53.6. Failed, adequately or at all, to draw GDAF's attention to the deficiencies in the Black Rock Agreement.



- 53.7. Failed to provide any, or any adequate, advice to GDAF about the best structure for the Proposed Investment and/or about the best terms on which to invest.
- 53.8. Failed to ensure that GDAF beneficially owned, or was entitled to and/or could recover, sums received or held by Simba VIII.
- 53.9. Failed to act with the skill and care of reasonably competent solicitors who held themselves out as specialists in providing advice in relation to, and drafting commercial agreements in respect of, investments in litigation and/or in investments generally.

CAUSATION, LOSS AND DAMAGE

54. As a result of the aforementioned breach(es) of contract and/or negligence, GDAF has suffered loss and damage.

- 54.1. If the Defendant had conducted adequate due diligence, and/or taken reasonable steps to confirm the existence of a funding agreement between Black Rock and Mr Makate, it would have discovered that no such agreement existed; and/or had the Defendant properly reviewed the arrangements in place between GDAF and Simba VIII it would have discovered that GDAF was not in fact the beneficial owner of any sums held by Simba VIII or received by Simba VIII.
- 54.2. Had GDAF been advised of the absence of any such agreement and/or the risk of the absence of any such agreement and/or the lack of beneficial ownership of Simba VII, it would never have entered into the Black Rock Agreement (through Simba VIII as its agent) or advanced £250,000 to the Defendant pursuant to the Black Rock Agreement.
- 54.3. Further or alternatively, if the Defendant had complied with its duties as set out herein, GDAF would have made an investment in the Vodacom Litigation by a mechanism that was effective. As to this, GDAF would have been able to invest on attractive terms as follows:
- 54.3.i. Mr Makate was in need of £250,000 in order to proceed with the Vodacom Litigation;



54.3.ii. Mr Makate was contactable by GDAF through his lawyers;

54.3.iii. Mr Makate was demonstrably willing to agree to cede a proportion of the proceeds of the Vodacom Litigation in return for funding;

54.3.iv. GDAF, as an experienced investor in such litigation, had the resources to negotiate and arrange such an alternative investment.

55. GDAF has therefore lost the £250,000 advanced in relation to the Proposed Investment and/or a real and substantial chance of receiving at least 5% of the proceeds of the Vodacom Litigation. Based on estimated litigation proceeds of Rand 6.7 billion (circa 15% of the estimated Rand 45.5 billion generated for Vodacom by the "Please Call Me" system), this would be an entitlement of around £18 million.

56. Alternatively, the proceeds of the Vodacom Litigation were expected (by Mr Eddlestone, in his ongoing case monitoring role) to be no less than circa Rand 200 million, 5% of which would amount to more than £500,000.

57. GDAF has incurred and will continue to incur costs and expenses in attempting to pursue the sureties/guarantors (including in a reasonable attempt to mitigate its losses), which would not be necessary but for the negligence and/or breach of contract by the Defendant, and GDAF claims damages in respect of such sums, and/or an indemnity in respect of any future steps taken in reasonable attempts to mitigate its loss.

ACCOUNT

58. The Defendant is required to account for the £250,000 advanced on 18 July 2013, by and on behalf of GDAF, as set out above.

59. If and insofar as the Defendant has retained any of the £250,000 advanced, whether in its client account or otherwise, the same must be returned to GDAF as beneficial owner of any such funds. In this regard, it is noted that on 24 May 2016, Ms Lubbe informed Mr Chris Buchan that Stemela & Lubbe "*did not receive payment from solicitors Hamilton, Downing Quinn*".



INTEREST

60. Further, the Claimants claim interest on the sums found by the Court to be due to the Claimants pursuant to 35A of the Senior Courts Act 1981 at such a rate and for such a period as the Court thinks fit.

GEORGE SPALTON

AND THE CLAIMANTS CLAIM

- (1) Damages as aforesaid;
- (2) An Indemnity as aforesaid;
- (3) An Account as aforesaid;
- (4) Such further or other relief as the Court thinks fit;
- (5) Interest;
- (6) Costs.

Statement of Truth

I believe that the facts stated in these Particulars of Claim are true and I am duly authorised to sign it on behalf of the Claimants.

Name: NICHOLAS JOHN HUTTON

Position: DIRECTOR SOAC 1

Date: 29 Jan 2018



Claim No

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY
COURTS OF ENGLAND AND
WALES

BUSINESS LIST (ChD)

BETWEEN

(1) GLOBAL DISTRESSED ALPHA
FUND III LIMITED PARTNERSHIP

(2) GLOBAL DISTRESSED ALPHA
CAPITAL I LIMITED

(3) GLOBAL DISTRESSED ALPHA
FUND MANAGEMENT LIMITED

Claimants

- and -

HAMILTON DOWNING QUINN
LLP

Defendant

PARTICULARS OF CLAIM

Baker & McKenzie LLP
100 New Bridge Street
London
EC4V 6JA
DX: 233 Chancery Lane
Tel: 020 7919 1000
Ref: LONKAS/ASXP