



Bulletin 149

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## BE WARY OF THE “WITHOUT PREJUDICE” LABEL

In a recent case called *Oceanbulk Shipping & Trading SA v TMT [2009] EWHC* the issue was whether the Respondent could rely upon and adduce evidence of the “without prejudice” negotiations between the parties before they concluded a settlement agreement. The Respondent alleged that the exchanges were relevant, among other matters, to the proper interpretation of the settlement agreement. The Claimant asserted that the evidence was not admissible because the exchanges were “without prejudice”.

The Judge held that evidence of the without prejudice exchanges was admissible to the extent that this evidence would have been admissible had the exchanges not been labelled as being without prejudice. The Judge could see no cogent, public policy or other reason as to why on the one hand evidence of without prejudice exchanges should be admissible to identify the terms of the settlement agreed but should be inadmissible for determining the meaning of those terms.

This is an important decision as it extends the exceptions to the without prejudice rule to cover not only the situation where there is a dispute as to whether in fact a settlement agreement was concluded but also the situation where there is a dispute as to the meaning of the terms in the settlement agreement.

### ➤ Practical Tips

Although settlement negotiations should always be conducted on a without prejudice basis remember that it is always open to a court or tribunal to require production of without prejudice correspondence for the purposes of interpreting the terms of the agreement in question.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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#### LIVERPOOL

Horton House, Exchange Flags, Liverpool L2 3YL  
0151 600 3000

#### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

#### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921

email: [law@brabnerscs.com](mailto:law@brabnerscs.com) [www.brabnerschaffestreet.com](http://www.brabnerschaffestreet.com)