JUSTICE DENIED: THE WORLD OF JAMES BLAIR DOWN AND HIS VICTIMS

By Ray Schachter*

Telemarketing scams are alive and flourishing in Canada and the United States. The perpetrators prey on the elderly, the lonely, the unwary and the gullible. The victims are often reluctant and embarrassed to disclose their losses or expose their vulnerabilities. Telemarketing is an ideal format for multi-jurisdictional fraud because these frauds can be conducted from countries in which the victims are not resident, thus raising substantial obstacles to normal law enforcement.

It is just this type of activity which a Canadian, James Blair Down, is said to have conducted from the early 1980s to about 1996 from bases in Vancouver, Kelowna and Toronto targeting primarily elderly people resident in United States. Financial estimates of the magnitude of Down's activities vary, but it appears to have been in excess of $150 million.[1] Recovery action by Interclaim (see below) pursued Down and his group all over the globe and found at least $100 million in assets attributed to such activities.[2]

Down and his many companies and colleagues ("the Down Group") fought a multi-jurisdictional and well-funded legal war of attrition. The results cast serious doubt on the ability of the courts to effect redress in cases of international telemarketing scams. The purpose of this article is to examine the decisions of the British Columbia and U.S. courts leading to outcomes that were devastating to the victims of the Down Group.

THE TELEMARKETING SCHEME

In the early 1980s Down established a small group of B.C.-based mail-order businesses that exploited the popularity of Canada's then new lottery business. From 1990 onwards he operated a large mass-marketing business through a network of associated corporations and business names. The business included the sale of bogus foreign-issued government lottery tickets by mail solicitation and telemarketing. The enterprise targeted principally elderly U.S. citizens.[3]

Anita O'Riordan, who heads an anti-telemarketing fraud team at the Washington-based American Association of Retired Persons, has dealt with

* The author wishes to thank John Sandrelli, B.C. counsel for Interclaim, for assistance with this article, and Susan Daly, AHBL researcher and librarian, for her valuable and tireless help.

hundreds of elderly victims of fraudulent schemes. She describes the effect of such scams as follows:

> It makes lonely people afraid to pick up the phone. It makes them afraid to tell their children about it, in case they feel the parent was so stupid they should be committed. To me, it's just as abusive as a mugging—with the phone as a weapon.[4]

The Canadian Encyclopedia, in an online article entitled "Phone Scams–Canadian Connection", focuses on Down as follows:

> The Canadian who has been wielding the most weapons is Vancouver-based James Blair Down, 55. Born in rural Manitoba near Brandon, he was regarded as a local boy made good, with race horses and a seaside mansion in Barbados. Down ran telemarketing boiler rooms in Vancouver, Kelowna, B.C., and Toronto that sold mostly foreign lottery tickets and grossed $107 million a year. Victims thought they were purchasing, with other players, packages of tickets in the Australian, Spanish and other state lotteries. Unknown to them, Down's companies took a huge slice of the money as fees, and bought only a few tickets, sometimes giving the players phoney ticket numbers. Many victims also accused Down's companies of making unauthorized charges on their credit cards, and if they ever did win anything they were pressured to "reinvest" the funds. The entire scheme was illegal, violating U.S. anti-gambling law.[5]

ENTER INTERCLAIM

The Interclaim group of companies ("Interclaim") was formed in 1996 by Martin S. Kenney, a former member of the B.C. bar now practising in the field of fraud and asset recovery from a base in the British Virgin Islands. Using funding from private investors, Interclaim took an assignment of claims from defrauded individuals for a fraction of their face value as part of a partnership or contingency arrangement with the victims of economic crime on the basis that it would split any proceeds recovered, usually 50/50.[6] Author Nick Ryan described Interclaim going about its business as follows:

> First, Interclaim makes extensive use of "gagged" (secret) court orders, to obtain documents or enter premises, just like a law enforcement agency. Coupled with this are months of painstaking surveillance and sting (undercover) operations to monitor and build intelligence about the target. Specialist accountants are brought in to trace document trails and build a model of how a crime was committed. Then a variety of lawyers and other specialists, such as handwriting analysts and IT specialists, are drafted to help the case. The end result is startling: Interclaim tracks down the fraudster's wealth and has his or her assets frozen, right across the globe, at exactly the same time. This innovative use of civil law has been found to catch fraudsters completely off guard, sometimes even forcing them into bankruptcy.[7]

In spring of 1998, the FBI—which had been pursuing Down for years—contacted Kenney about the Down Group, and Interclaim prepared to commence action.

DOWN'S PLEA AND CONVICTION

Investigations of the activities of Down by American and Canadian civil and criminal authorities began with an Alberta Securities Commission investigation in 1989.[8] In early 1992 the U.S. Attorney's Office, the U.S. Postal Service and the U.S. Customs in Seattle started a joint investigation into the Down Group. Between 1992 and 1996 there were at least 22 different U.S. Postal Service enforcement proceedings. Final cease and desist orders barring schemes for the distribution of money or property by lottery were issued in each case.

In June 1997 a complaint was filed by the U.S. Attorney's Office in Seattle which sought forfeiture of approximately $12 million in several brokerage accounts in Bellevue, Washington, said to have been beneficially owned by Blair Down.[9] In October 1997 a 145-count federal grand jury indictment was returned accusing Down and others of conspiring to operate an illegal network of lottery businesses.

On August 19, 1998, Down entered into a plea agreement by which he admitted that he established, operated, controlled and directed the entities forming part of his organization. He also admitted that he employed and compensated others as part of his overall command of that organization in order to commit a criminal conspiracy to violate American anti-gambling law. He agreed to forfeit funds seized by investigators from the Bellevue brokerage houses and to pay $12 million as partial restitution to a number of known victims of his operations. The deal also involved a six-month jail term for Down.[10]

INTERCLAIM'S BANKRUPTCY PETITION

Interclaim attempted to petition the Down Group into bankruptcy in B.C., to have a receiver/trustee appointed, to seize assets around the world and ultimately to have the net proceeds after litigation expenses distributed to the multitude of Down's victims. Interclaim's standing to do so was based on the assignments of debts and claims it had taken from creditors and victims of the Down Group. In the case of the victims, Interclaim paid a "down payment" and the victims assigned their rights to Interclaim in return for an agreement to split the net proceeds, if any, 50/50.

On December 22, 1998 (four months after Down's plea bargain in the U.S.), Interclaim had Arthur Anderson appointed interim receiver of the Down Group on an *ex parte* application under the *Bankruptcy and Insolvency Act* ("BIA"). Brenner J. (as he then was) also made a number of ancillary orders freezing Down Group assets around the world. The orders were served on Down and the Down Group on January 29, 1999.[11] This initiated a series of highly contentious motions to set aside the orders.[12] All motions were heard by Brenner J.

THE SUPREME COURT DECISIONS

On August 4, 1999, Brenner J. set the orders aside leaving the victims without any practical means to obtain compensation (the "*Re Down* Decision").[13] His Lordship summarized the arguments of Interclaim and the Down Group but made no finding as to which version of the facts he accepted.

The arguments of Interclaim and Down, as described in the judgment, are strikingly different:

> It is Interclaim's view that despite the efforts of law enforcement authorities to bring him to justice, Down has to date been relatively successful in maintaining his illegal enterprise and in keeping the accrued profits therefrom. Interclaim believes that the amount misappropriated by the debtors' enterprise exceeds $200 million. The $12 million restitution agreed to by Down therefore represents but a fraction of what Interclaim characterizes as his indebtedness to creditors. If Interclaim's view of this case is correct, Down, by means of the plea agreement, will have succeeded in insulating most of the fruits of his enterprise from recovery by authorities or his creditors. Notwithstanding the surrender of the $12 million, he continues to be the beneficial owner of considerable wealth. When he pled guilty pursuant to the terms of the plea agreement Down knew that he would leave prison a very wealthy man following his 6-month period of incarceration.[14]

The Down Group's arguments were summarized as follows:

> (i) Interclaim failed to make full and frank disclosure at the time of the *ex parte* applications and its reliance on inadmissible evidence.
>
> (ii) The agreements offend the champerty and maintenance law and represent an improper use of bankruptcy proceedings.
>
> (iii) Interclaim has failed to establish a strong *prima facie* case of bankruptcy which must be shown before an interim receiver will be appointed.

There is no reference in the decision to any evidence, but the Down Group apparently succeeded in casting a negative light on Interclaim's methods of pursuing an equitable remedy. The court held that Interclaim's arrangement with the victims offended the rules against champerty and maintenance[15] and on that basis set aside the appointment of the receiver and all the receivership orders.

> One of the prerequisites for champerty and maintenance is that there be interference without justification. The doctrine is grounded in public policy and is designed to avoid the "wanton and officious intermeddling in the disputes of others without justification or excuse".[16]

Although said to be grounded on public policy, the judgment contains scant analysis of the policy grounding champerty and maintenance. It fails to address the public interest exceptions to champerty and maintenance or their application to Interclaim or the defence of "sufficient justification", apart from the following brief mention in passing:

> But when McLachlin J.A. [in *Fredrikson*[17]] said that the categories of exception were not closed did she mean that only the categories of pre-existing interest were not closed or did she mean that the categories of exception to the rules against champerty and maintenance were not closed?[18]

The court had the opportunity to modernize the exceptions to this antiquated regime in light of access to justice considerations but failed to seize it, even while acknowledging that the victims may have no effective remedy without Interclaim's assistance:

> [Interclaim] asserts that this model represents the only practical means for the victims of the Down enterprise to obtain compensation beyond that available to them from the restitution fund. *Accordingly the higher courts may well wish to consider whether it is appropriate to create a new "no pre-existing interest" exception to the common law rules against champerty and maintenance.*[19] [emphasis added]
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> ...
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> When considering whether strangers with no pre-existing interest should be allowed into litigation, particularly in the insolvency area, *the higher court might want to consider the relatively recent emergence of "vulture investors" in Canada*. Long active in the U.S., these are investors that purchase at a discount the trade debt of insolvent companies either before or during bankruptcy proceedings. They then become active participants in the insolvency process with a view to realising a profit on the debt they have acquired.[20] [emphasis added]

In the writer's view, it is the responsibility of the court to create new exceptions to the rule having regard to the fact that the rule is obstructive of access to justice and, in circumstances such as those in *Re Down*, prevents innocent victims having any practical redress against a widespread fraud. The fact that third-party litigation-funders may profit by assisting victims of fraud should not constitute a bar.[21] A good opportunity with good facts to make good law was missed.

Lord Denning had a different approach in his famous dissenting opinion in *Candler v. Crane, Christmas & Co.*:[22]

> This argument about the novelty of the action does not appeal to me in the least. It has been put forward in all the great cases which have been milestones of progress in our law, and it has always, or nearly always, been rejected. If you read the great cases of *Ashby v. White*, *Pasley v. Freeman* and *Donoghue v. Stevenson* you will find that in each of them the judges were divided in opinion. On the one side there were the timorous souls who were fearful of allowing a new cause of action. On the other side there were the bold spirits who were ready to allow it if justice so required. It was fortunate for the common law that the progressive view prevailed. Whenever this argument of novelty is put forward I call to mind the emphatic answer given by Pratt C.J., nearly two hundred years ago in *Chapman v. Pickersgill* when he said: "I wish never to hear this objection again..."
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> The same answer was given by Lord Macmillan in *Donoghue v. Stevenson* ([1932] AC 562) when he said: "The criterion of judgment must adjust and adapt itself

> to the changing circumstances of life. The categories of negligence are never closed".
>
> I beg leave to quote those cases and those passages against those who would emphasize the paramount importance of certainty at the expense of justice. It needs only a little imagination to see how much the common law would have suffered if those decisions had gone the other way.

The *Re Down* decision undoubtedly had an effect on the overall quest for justice for the victims of Down's scheme. As the contentious litigation ground on, Interclaim's resources dwindled.

THE BRITISH COLUMBIA APPEAL COURT DECISION (THE "INTERCLAIM APPEAL")

Not surprisingly, Interclaim appealed. The Court of Appeal decision was given by Southin J.A.[23] It was equally unsatisfactory for the Down victims. The business of the Down Group was described as follows:

> The respondents, Down, Street and Barnes, carried on in the United States an elaborate scheme for the re-selling to American residents of tickets on various lotteries operated by non-American governments. At one time, to operate a lottery or to sell lottery tickets, or to do both, was thought to be, in and of itself, a form of roguery. If one looks at the scheme of the respondents from that perspective, they are rogues. But so many governments in the world, including those of some American states, now run lotteries and sell tickets to them—indeed, the Government of British Columbia has actively promoted its lottery with a seductive advertising slogan, "You never know"—it may be the respondents are simply a private enterprise version of an officially sanctioned activity—the modern day equivalent of the rum runner and bootlegger.[24]

This characterization of the business of the Down Group is at best a gratuitous critique of lotteries and at worst a comment on a contentious political issue. Whatever one may think about government lotteries, the Down Group's telemarketing blitz on elderly and vulnerable Americans is hardly comparable to the conduct of the B.C. Lottery Commission.

The champerty and maintenance issue was held by Southin J.A. to be a red herring that did not properly arise at the current stage of proceedings. It was held to be necessary that the claims first be established as a "debt" (liquidated claim) within the meaning of the BIA and that a debt had never been established. Accordingly, the appeal was allowed and the case remitted to the trial court for determination whether the claims of the victims were liquidated or unliquidated.

Consequent upon this decision, the receiving order and ancillary relief orders were vacated and the assets seized under those orders were released. Ultimately, costs were awarded against Interclaim and this, too, was further litigated at length.[25]

INTERCLAIM'S BACKUP PLAN: THE CLASS ACTION

While *Re Down* was moving through the B.C. courts, Martin Kenney and his advisers began to explore alternative ways of achieving recovery. With over 4,000 victims in the United States, Interclaim considered a class action against the Down Group. Kenney contacted the law firm of Ness Motley, which had made its reputation in the class action field on asbestos Dalkon shield cases.[26] Interclaim retained Ness Motley "as its counsel, in both its capacity as (a) owner of certain trade indebtedness owed by [the Down Group] and (b) as a representative of nominated victims of [the Down Group]...in respect of pursuit of recovery of loss and damages...by reason of the operation of the [Down Group]".[27] The class action was brought in Madison County, Illinois, a forum well-known for class actions.[28]

NESS MOTLEY WITHDRAWS[29]

Interclaim made an arrangement whereby Ness Motley would receive 25 per cent of the net compensation received by Interclaim from the British Columbia bankruptcy estate after payment to the victims. Ness Motley was also to receive in addition whatever was awarded in the U.S. class action proceedings. After consulting an ethics expert regarding the proposed arrangement, Ness Motley proposed, and Interclaim agreed, that before any compensation was paid to Interclaim for services it rendered on behalf of the class, "the U.S. class shall, at its own cost, retain special independent outside counsel to represent the U.S. class of Down victims for the express purpose of evaluating the reasonableness of Interclaim's compensation".

It is ironic that Ness Motley was concerned about the ethics of the victims' arrangement with Interclaim, given its later dealings with Interclaim. Several months after filing the class action, Ness Motley told Interclaim that it had, without notice to or consent from Interclaim, initiated settlement talks with the Down Group and that the Down Group was insisting that Interclaim be excluded from receiving any of the settlement funds. At that time Ness Motley did not disclose to Interclaim that it intended to agree to Interclaim's exclusion from the settlement agreement in order to facilitate the resolution of all the victims' claims.

Interclaim viewed itself as the only remaining obstacle to a low and ill-conceived settlement proposal with the victims. Down had been fighting a legal war with Interclaim ever since Interclaim commenced bankruptcy proceedings in the British Columbia courts. Down's pre-condition to settlement would effectively oust Interclaim as a participant in the class action and would deprive Interclaim and those victims who had assigned their actions to Interclaim from the recovery to which they were entitled. There was, however, a serious legal and ethical issue involved.

While Ness Motley was negotiating a settlement with the Down Group behind closed doors, it apparently continued to receive confidential information from Interclaim regarding the location and movement of the Down Group's assets. Eventually, Ness Motley informed Interclaim of the terms of the proposed settlement with the Down Group (providing for a fund of $10 million to pay for claims which class members were able to substantiate through documentation, and for Ness Motley's $2 million in fees, but no payment to Interclaim). Under the proposed deal, Ness Motley's attorneys' fees were to be based on the total value of the fund rather than the amount actually paid to class members (money not paid out to claimants was to revert to the Down Group). Interclaim objected to the proposed settlement, primarily because the high level of proof required from class claimants would ensure that few claimants would ever qualify for payment, thus resulting in a substantial reversion of funds to the Down Group.

A few weeks after informing Interclaim of the Down Group's settlement offer, Ness Motley told Interclaim that it was withdrawing from its attorney-client relationship with Interclaim. Ness Motley first asserted that the proposed settlement, which excluded Interclaim from any settlement discussions and from any recovery, created a conflict of interest between Interclaim and the class and, therefore, Ness Motley could not continue to represent Interclaim. Ness Motley then contended that, due to the conflict between Interclaim and the class, it was obligated to continue to represent and protect the class members' interests, even at Interclaim's expense.

NESS MOTLEY SETTLES CLASS ACTION

The class action settlement described above was ultimately approved by the Madison County court. Given the amount and structure of the settlement, it is probable the victims got very little compensation. If the estimate of $200 million misappropriated is anywhere near accurate, Down would have spent $12 million in forfeiture initially and at the very most another $12 million in the class action, plus his legal costs less costs recovered in the B.C. courts. The rest of the money he kept.

INTERCLAIM SUES NESS MOTLEY

Interclaim was not prepared to accept this kind of treatment from Ness Motley. Having advised Ness Motley at the outset that it viewed the settlement as a breach of fiduciary duty, Interclaim sued Ness Motley and wisely chose a jury trial. Again drawing from John Stadler's article on the Down affair:

> [The] jury in the United States District Court for the Northern District of Illinois rendered a verdict for $36 million ($8.3 million in compensatory damages and $27.7 million in punitive damages) against the law firm of Ness, Motley,

Loadholt, Richardson & Poole. The Ness Motley firm, which has earned hundreds of millions of dollars in fees over the past two decades from representing plaintiffs in asbestos, tobacco and lead paint personal injury litigation, was found to have violated its fiduciary duty by (1) unilaterally withdrawing from representing one client while continuing to represent the class members who were also its clients, and then (2) settling the class action lawsuit without the one client's authorization and on terms detrimental to that client (the proposed settlement provided for no payment to the client and effectively little for the class members, but specified payment of $2 million in attorneys' fees for Ness Motley).[30]

CONCLUSION

Justice has eluded the victims of Blair Down in the B.C. courts and elsewhere. The initial action was funded by Interclaim through a group of investors. That fund was exhausted during the extensive no-holds-barred litigation pursued by Down using assets of the victims as a war chest. At the B.C. Supreme Court level the justice system failed to stem the abuse, and this failure was compounded by the Court of Appeal. Courts that fail to do justice in circumstances of admitted criminal fraud bring the legal system into disrepute.

The litigation in the United States that followed also failed the victims. Here a class action was settled for a pittance with the approval of the court, largely through the mishandling of the litigation by Ness Motley. Again, one can only imagine the views of the legal system held by the victims who were deprived of any remedy. Only the second group of investors who funded the litigation against Ness Motley received some return, but this was likely of little consolation for the majority of the victims of Blair Down.

The story appears to end with the Ness Motley decision. Downs was never tried or convicted of any criminal activity in Canada. Telemarketing fraud remains big business internationally and, with the precedents established in the *Re Down* litigation in B.C., will be "business as usual" on this side of the border.

ENDNOTES

1. Lester Brickman, "Anatomy of a Madison County (Illinois) Class Action: A Study in Pathology" Civil Justice Report No 6, August 2002, p 2, online: Manhattan Institute for Policy Research, <http://www.manhattan-institute.org/html/cjr_6.htm> [Brickman].
2. The figures and the movement of funds is described in a variety of sources; $200 million comes from an article written by John S. Stadler, "Court Ruling Sets Precedent in Fight Against Lawsuit Abuse" 13 Legal Opinion Letter No 17 (August 2003), online: Washington Legal Foundation, <http://www.wlf.org/upload/080803LOLStadler.pdf> [Stadler].
3. In *The Canadian Encyclopedia*, online: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=M1ARTM0011782> is an article on telemarketing fraud, a portion of which is entitled "Two Days in a Boiler Room". In this article, *Maclean's* correspondent Shanda Deziel describes spending two days at a Toronto telemarketing operation that fraudulently promised credit cards to

Americans with bad credit ratings—for a "processing fee" of $159 (U.S.). The description provides an insight into Telemarketing and in the earlier portions of this same article is a description of the Down operation.

4. *The Canadian Encyclopedia*, online: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=M1ARTM0011782#ArticleContents>.
5. *Ibid*.
6. Online: <http://www.nickryan.net/articles/fraud.html>—Nick Ryan, from article commissioned for the *New York Times Magazine* in 2000.
7. A more colourful description of Interclaim is given by Southin J. in *Interclaim Holdings Limited v Down*, 2001 BCCA 65 at para 7, as follows: Interclaim is a company incorporated abroad whose professed purpose is to go about the world pursuing miscreants who have apparently got away, by fraud or other dubious activities, with a lot of money belonging to many victims. Interclaim gets in touch with the victims and buys up their claims, promising some portion of the recovery, if any, to them. It then, by rapid deployment of a battery of lawyers who know how to site, aim and fire whatever legal artillery is available in a particular jurisdiction in which the miscreant has assets, tries to stop the miscreant from moving those assets to a jurisdiction which, at least in the view of the miscreant, is less warlike. If Interclaim succeeds, and if the claims of the victims are established and money is recovered, Interclaim, under its agreements with the victims, gets its reward.
8. The scope of this article does not include Canadian *Criminal Code* provisions dealing with telemarketing fraud or Canadian criminal enforcement. Down apparently was never convicted in Canada for his activities.
9. *USA v All Funds et al*, Civil Action No 11 C97-0931R; see *Re Down*, 1999 CanLII 5521 (BC SC) at paras 11–18.
10. The agreed facts are set out in *Re Down*, 1999 CanLII 5521 (BC SC) at para 18; see also note 4 *supra*; and the *Chicago Tribune* online: <http://www.chicagotribune.com/news/local/chi-0403080155mar08,0,7681183.story?page=4>.
11. *Interclaim Holdings Limited v Down*, 2003 BCCA 201, para 12. Ian Donaldson, Q.C., stated in his affidavit: "On 29 January 1999 I first became aware of the bankruptcy action when I received word that a search and seizure was being carried out upon Mr. Down's residence, where his spouse was then residing because he had surrendered himself into custody the day before. I attended at that search...Because I was the person in Vancouver most familiar with the issues which underlay Interclaim's petition, both factually and legally concerning pre-existing United States proceedings brought against Mr. Down, I was the person who reviewed pleadings, instructed counsel at Fasken Martineau DuMoulin (as it now is)...[and] I have been engaged by Mr. Down on his behalf since 1995 ... During the same time I have dealt with extradition proceedings commenced by the United States of America in the fall of 1997, and I attended him in custody in Manitoba following his arrest ... ultimately that extradition application was resolved by a plea agreement which led to the sentence which he commenced serving in January 1999."
12. According to John Sandrelli, counsel for Interclaim, this litigation was fought bitterly with many motions prior to the final hearing; a full account of this is well beyond the scope of this article.
13. *Re Down*, 1999 CanLII 5521 (BC SC); 66 BCLR (3d) 392.
14. *Ibid* at para 14.
15. Brenner J., at para 40, adopted the following definitions in *Black's Law Dictionary*: "*Maintenance*: An officious intermeddling in a law suit by a non-party by maintaining, supporting or assisting either party, with money or otherwise, to prosecute or defend the litigation." "*Champerty*: A bargain between a stranger and a party to a law suit by which the stranger pursues the party's claim in consideration of receiving part of any judgment proceeds; it is one type of maintenance, the more general term which refers to the maintaining, supporting or promoting another person's litigation."
16. *Ibid* at para 40.

17. *Fredrickson v ICBC*, 1986 CanLII 1066 (BC CA).
18. *Ibid* at para 59.
19. *Ibid* at para 88.
20. *Ibid* at para 96.
21. There are many articles by academics in Commonwealth countries that deal with champerty and maintenance and efforts to deal with the problems arising therefrom.
22. [1951] 2 KB 164.
23. *Interclaim Holdings Limited v Down*, 2001 BCCA 65.
24. *Ibid* at para 8.
25. A costs award of $1,875,319.10 was reduced to $732,748.74 on appeal. See *Interclaim Holdings Ltd v Down*, 2003 BCCA 201.
26. See *Interclaim Holdings Ltd v Down*, 2003 BCCA 266 at paras 11 to 13. A profile of Ness Motley appears online at <http://www.september11classaction.com/NessMotley.pdf>, but it makes no mention of the Down class action or subsequent suit brought against Ness Motley by Interclaim.
27. *Supra* note 2.
28. For comments on the class action, Madison County and the actions of Ness Motley, see Brickman, *supra* note 1.
29. In view of the mass of material on *Interclaim v Ness Motley*, I have drawn on the description of events set out by John Stadler in his article, *supra* note 2.
30. Stadler, *supra* note 2 at 1.