

SUPREME COURT OF APPEAL

OF SOUTH AFRICA

MEDIA STATEMENT – BARLOWORLD CAPITAL (PTY) LTD v

RS NAPIER NO

FROM: The Registrar, Supreme Court of Appeal

Date: 30 March 2006

Status: Immediate

What does it mean for an insurer in the short term insurance industry to note a third party's interest? When Barloworld sold CAR Transport a mechanical excavator on instalments it required the buyer to insure the excavator and have Barloworld's interest 'noted on the policy'. CAR took out insurance with Lloyds of London but did not tell them of the seller's interest. Later, before CAR had fully paid for the excavator, it was irreparably damaged. When Lloyds accepted liability under the policy and was about to pay the insurance proceeds to CAR, the seller asked the assessor that Lloyds had appointed to assess the excavator's value, to see that Lloyds 'noted' its interest. Barloworld expected this would be enough to ensure it got paid the balance of the purchase amount by Lloyds before CAR was paid. Lloyds became aware of the seller's interest but did not agree to 'note it on the policy'. The policy had some time before been cancelled. Lloyds proceeded, at CAR's attorney's insistence, to pay CAR the proceeds. Barloworld then sued Lloyds in the

High Court at Johannesburg, claiming that Lloyds had agreed to note the interest thereby obliging it, by way of contract, to pay Barloworld first. In the alternative, Barloworld said it was a trade usage in the short term insurance industry that if an insurer becomes aware of a third party's interest in the insured goods, it is obliged to pay the third party what the insured still owes on the instalment sale and if the insurer breaches that obligation it must pay damages.

The High Court said, firstly, Lloyds had not contractually agreed to note the interest and, secondly, that according to trade usage an insurer would pay the third party first if the insured consented. The Court said there was no trade usage proved which obliged the insurer to pay the third party when the insured objected, when there was no noting on the policy and when there was no contractual link between the insurer and the third party.

Barloworld appealed to the Supreme Court of Appeal. The SCA agreed with the High Court and dismissed the appeal.