

Nigel Tozzi KC & Matthew Lavy successful in Motortrak Ltd v FCA Australia Pty Ltd

Nigel Tozzi KC and Matthew Lavy represented the successful Defendants in *Motortrak Ltd v FCA Australia Pty Ltd* [2018] EWHC 990 (Comm). Motortrak had claimed over £1.75m in respect of outstanding invoices and damages of over £15.6m in respect of alleged loss of profits following the early termination of a software services agreement.

The Judge found that Motortrak had bribed FCA's former managing director and that this had caused FCA to contract with Motortrak at a higher price than it otherwise would have done. FCA had lost its right to rescind as it had subsequently affirmed the agreement after finding out about the bribes, but Motortrak's claims nevertheless failed: The sums claimed under the invoices were not recoverable in debt as Motortrak's solicitors had accepted FCA's early termination as a repudiatory breach of the agreement the day before the invoiced amounts would have fallen due; and the claim for loss of profits was barred by a contractual exclusion clause. FCA's counterclaim for damages, based on the difference between what it had paid for the services and the sums which the Judge found that it would have paid but for the bribes, was successful. The value of that counterclaim remains subject to final determination, but it said by FCA to be in excess of Aus \$9 million plus interest.