IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL
COURT (QBD)
Neutral Citation Number: **[2021] EWHC 3551 (Comm)**

No. LM-2021-000247

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 10 December 2021

Before:

HIS HONOUR JUDGE MARK PELLING QC
(Sitting as a Judge of the High Court)

B E T W E E N :

XL CATLIN INSURANCE COMPANY UK LIMITED — Claimant

- and -

(1) LINKHAM SERVICES LIMITED
(2) DOMINIC JIRJODHAN PERSAD
(3) MICHAEL JON CRANFIELD
(4) RICHARD JOHN GILDEA
(5) INTERNATIONAL MEDICAL RESCUE LIMITED
(6) INTERNATIONAL TRAVEL AND HEALTHCARE LIMITED
(7) NEWPOINT CAPITAL LIMITED — Defendants

J U D G M E N T

(via Microsoft Teams)

A P P E A R A N C E S

MR J. ENGLAND (instructed by XL Catlin Services SE) appeared on behalf of the Claimant.

MR L. JONES (instructed via Direct Access) appeared on behalf of the Seventh Defendant.

THE FOURTH DEFENDANT appeared in Person.

THE FIRST TO THIRD DEFENDANTS did not attend and were not represented.

THE FIFTH TO SIXTH DEFENDANTS did not attend and were not represented.

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JUDGE PELLING QC:

1 This is the hearing of an application by the seventh defendant for permission to withdraw various admissions identified in the second witness statement of Mr Lawrence Jones in support of the application as being admissions made in paras.5, 6, 7, 8, 11, 12, 14, 15, 18, 19, 20, 24 and 27 of its amended defence and for permission to amend the defence so as to both withdraw the admissions and as to make various additional positive case assertions. The application is opposed by the claimant to the extent the applicant seeks permission to withdraw admissions.

2 This claim was started as long ago as 11 March 2021. It is yet to reach a case management conference although there is an outstanding application for summary judgment which is due to be heard next year. In the result, however, nine months have passed since the commencement of this claim without any realistic progress having been made.

3 It is not necessary for me to set out in extensive detail what the claim is about but it is necessary for me to summarise it so as to make the issues that arise capable of being understood. In summary, the claimant, acting on behalf of itself and other insurers, approached the first defendant to act as its broker in relation to a cover holding arrangement between the claimant and an underwriting agent called Rock Insurance Services Limited. The claimant alleges that the first defendant received various premium payments from Rock which under the terms of the agreement it had with the claimant, that it was required to hold the sums so received on trust for the claimant and was required to remit those sums to the claimant within a fixed period of receipt by it. It is alleged that the first defendant failed to pay over sums totalling slightly in excess of £808,000 in breach of contract and trust.

4 The second, third, and fourth defendants are directors of the first defendant Linkham Services Limited and are alleged to have caused or permitted payment of the claimant's monies to others, including the seventh defendant. It is alleged that the seventh defendant is liable in unconscionable receipt to account for all sums it received and it is alleged that the sums so received totalled £50,000. The claim is advanced on a proprietary basis, it being alleged that the sums so received was and is the property of the claimant held for it on trust and, therefore, that the traceable proceeds of the sums so received are held on trust for the benefit of the claimant. Alternatively, if and to the extent tracing is not possible for any reason, then a personal remedy of equitable compensation or damages is claimed against the seventh defendant quantified as being the whole of the sum the seventh defendant received together with interest at the rate and assessed on the basis that the seventh defendant is a trustee. .

5 It is now necessary to turn to the pleadings. The current iteration of the pleadings relevant for present purposes so far as the claimant is concerned is the amended particulars of claim dated 26 July 2021. The relevant paragraph for present purposes in relation to the seventh defendant is para.8 and is in these terms:

> "The seventh defendant was incorporated ... on 22 July 2011. The second, third, and fourth defendants were and/or are directors of companies within the Newpoint Capital group, including, at one time, the seventh defendant ... which operates in a similar industry sphere to the first defendant. The seventh defendant also had knowledge of the first defendant's business affairs, in particular, the premium funds held and then withheld of the claimant by the first defendant, including at the time it received the £50,000 payment particularised in para.24(c) below from the first defendant for its dealings with the first

> defendant and the second, third, and fourth defendants, and claimant, in relation to the purchase of the first defendant on 10 June 2021 by Newpoint Insurance Brokers Limited and the matters leading up to that sale in the year beforehand."

6 The amended particulars of claim go on to allege at para.24 that the £50,000 received by the seventh defendant was paid by the first to the seventh defendant on or around 14 September 2020 and that the seventh defendant is liable to account for that sum in unconscionable receipt (see para.27(a) of the amended particulars of claim). The prayer contained within the amended particulars of claim seeks declarations that the seventh defendant holds the £50,000 on trust for the claimant, or, alternatively, its traceable proceeds and, in the alternative, seeks a personal remedy of equitable compensation which is, in effect, the equitable equivalent of damages at common law being the personal remedy in each case, together with interest.

7 The defence as originally pleaded:

(a) admitted in para.24 that the £50,000 had been paid by the first defendant to the seventh defendant;

(b) at para.24 of the defence denied para.27 but did not plead any positive case in relation to the seventh defendant; and

(c) at para.30 denied the claimant was entitled to the relief sought being that I summarised early earlier but, again, did not set out any specific positive case as to why that is so in relation to the claim against the seventh defendant.

8 In its reply, the claimant pleads in relation to the denial at para.27 of the amended particulars of claim and in relation to the seventh defendant at paras.15(c) and (d) as follows:

"(c) In respect of the disclosure provided for the seventh defendant, no particulars are provided in the defence or in the witness statement of Mr Keith Beekmeyer dated 23 August 2021 exhibiting the disclosure on how this provides a defence to para.30 of the APOC. The disclosure provides no defence in circumstances where the monies received by D7 were the claimant's proprietary funds and with the knowledge and notice of the claimant's beneficial interest in those funds, and paras.20 - 27 of the APOC are repeated;

(d) Further, D7 is put to strict proof as to the contents of the loan related documentation provided and its performance of the alleged obligations stated therein noting the previous non-provision of this documentation which the claimant had been requesting since at least 4 May 2021. The discrepancies set out in para.(e) below on the date of repayment of the loan, the formatting and contents of clause 3.1 of the loan, including the reference to instalments and the '11.09.2021' date stated in the document entitled 'Ref Lincoln Services Limited loan', which even if produced on 10 September 2020 as claimed ... still bears a date after that date.

(e) Without prejudice to paragraphs (c) and (d) above, the defendants providing further particulars and/or disclosure, the claimant will say in relation to the loan documentation disclosed by D7:

(1) No or no adequate consideration or value so alleged has been given there being no detail of what D7's anticipated fees for the £50,000 were, or any service or value provided, or even that the proposed transaction recorded in the recitals to the loan took place;

(2) According to Mr Jones's email on behalf of D2 to D7, dated 7 September 2021, there had been no repayment of the loan which would have to include 1 per cent interest pursuant to cl.4.1, the first instalment of which was payable under cl.4.1 one month after the date of the loan by the end date for repayment 31 March 2021 in recital (c) of the loan, or by 11 August 2021 with reference to cl.3.1 of the loan; and

(3) As confirmed in Mr Jones's email of behalf of the seventh defendant dated 7 September 2021, there is no board resolution from the directors of D1 approving the loan, including with reference to its corporate benefit to D1 in circumstances when the transaction was stated to be for a different foreign entity to D1 and at a time when D1 and its directors claimed to have no funds to pay the claimant, including in the correspondence referred to in para.19 of the APOC and the defence as filed on 13 April 2021 and when the first defendant had a balance of £11,065.54 in its Lloyds office account after making the £50,000 payment. By comparison, D7 had, leaving aside any funds in other and/or foreign accounts nearly £100,000 in its Santander account

prior to the receipt of the £50,000 of the claimant's funds from D1."

9 I should add that, as I have said, the claimant has issued a summary judgment application against the seventh defendant currently listed to be heard early next year.

10 Turning now to the proposed amended defence, the seventh defendant has severed its links in pleading terms entirely with the first to sixth defendants. The defences prior to the proposed amendment had purportedly been filed on behalf of all seven defendants. Critically, the seventh defendant now seeks to deny para.24 of the amended particulars of claim and to assert a positive case, including that it agreed to pay the £50,000, and now I am told by Mr Jones in the course of the hearing today has, in fact, paid £50,000 to the first defendant's joint administrator. The basis on which this payment had been made is unclear on the draft pleadings but Mr Jones, in the course of his submissions, told me that it had been repaid in purported discharge of the loan allegedly made to the seventh defendant by the first defendant. If and to the extent that is the case, then that is not a defence to the claimant's proprietary claim since the only defence to a proprietary claim by the claimant would have been to pay the claimant itself, or to the claimant's alternative claim for equitable compensation if otherwise the requirements of a knowing receipt claim are made out by the claimant. Thus, as it seems to me at the moment, although it is to be assumed in favour of the seventh defendant that £50,000 has been passed by the seventh defendant to the joint administrators of the first defendant, that is nothing to the point.

11 The amended defence denies knowing receipt of the £50,000 notwithstanding that Mr Jones told me in the course of his oral submissions that the seventh defendant maintained no claim or interest in the £50,000 that it had been paid. An admission of the alleged knowledge of the seventh defendant of the claimant's beneficial interest in the premiums received by the first defendant is now denied whereas before it had been admitted, and para.27 is proposed

to be denied on the basis that the seventh defendant's proposed new case is that it was not a knowing receiver given its alleged lack of knowledge.

12 Turning now to the present application, the framework principles are not in dispute. Admissions made after the commencement of proceedings are governed by CPR 14.1 and CPR 14.1(5) provides that permission is required to amend or withdraw any such admission. The detailed practice relating to such an application for the amendment or withdrawal of an admission is set out in Practice Direction 14 at para.7.2, which is in these terms:

> "7.2 In deciding whether to give permission for an admission to be withdrawn, the court will have regard to all the circumstances of the case, including –
>
> (a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made;
>
> (b) the conduct of the parties, including any conduct which led the party making the admission to do so;
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> (c) the prejudice that may be caused to any person if the admission is withdrawn;
>
> (d) the prejudice that may be caused to any person if the application is refused;
>
> (e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;

(f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the admission was made; and

(g) the interests of the administration of justice."

13 The evidence in support of the application is the second witness statement of Mr Lawrence Jones, a barrister acting for the seventh defendant under the public access scheme who also appears as advocate for the seventh defendant on this application:

(a) In his statement, in summary, he states at para.11:

"Whilst I am aware under CPR 14, PD 7.2, to give the court reasons for seeking to withdraw the admissions previously made, I am unable to do so without waiving privilege."

(b) The decision to apply was taken following a review of the defence following service of the summary judgment application I referred to earlier - see para.12 where Mr Jones states:

"When reconsidering the defence following the summary judgment application, it became apparent that the defence on behalf of D7 was wrong and required immediate amendment. This is, of course, not the fault of the claimant but lies at the feet of D7 which is a matter to be visited in costs."

(c) The defence is asserted, as I have said, by Mr Jones to be wrong in its current formulation. The fault for that is accepted to be that of the seventh defendant but it is notable that the draft proposed amended defence has not been verified by a witness statement from any person employed by or who is an agent of or director of the seventh

defendant, and notably, it is not verified by a witness statement from the person who has signed a statement of truth in the draft amended pleading. No explanation has been offered as to how the admissions that are made in the original defence came to be made. As was submitted by Mr England on behalf of the claimant, and I accept, these are not admissions which could be made by way of casual error. This is a wholesale revamping of the seventh defendant's case involving the wholesale withdrawal of admissions previously made on the basis of advice available to the seventh defendant from its in-house illegal advisers and, as I have said, without any explanation being offered as to how those admissions came to be made in those unpressured circumstances.

(d) What it is proposed should be pleaded constitutes a complete defence, so Mr Jones maintains, to the claims that have now been made. I accept that if one simply looks at the words of the draft proposed pleading and accept them at face value, that would be so. However, I emphasise, as I have already said, that no evidence of any sort has been adduced on this application which goes to the substance or merits of what is being asserted, which in consequence is simple assertion.

14 Finally, the application is made, so Mr Jones says, at an early stage and the balance of prejudice therefore favours permission being granted since if refused, it would deprive the seventh defendant of its defence. However, any prejudice caused to the claimant can be compensated, firstly by a costs order on this application and by interest if, ultimately, the defence fails.

15 As Mr England submits, and again as I accept, that does not answer, for example, the costs that have been thrown away in relation to the summary judgment application but implicit in Mr Jones's submission is an acknowledgement that if permission were to be given, then, on any view, the seventh defendant would have to pay the costs of this application and the costs to date of the summary judgment application, and probably have to do so on an indemnity

basis since it is plainly outside the norm to be expected in the conduct of commercial litigation that full admissions should be made in a pleading which are then withdrawn in the face of a summary judgment application without any explanation being offered as to how they came to be made in the first place.

16 Against that background, the claimant submits that the application ought to be dismissed not least because, as I have said, there is no explanation offered as to how the admissions came to be made, a matter of particular importance since these are not casual or clerical errors for example where the word "not" was admitted before the word "admitted" or something of that kind.

17 In that regard, my attention has been drawn by Mr England to a number of authorities which addressed the impact of a failure to give an adequate or any explanation in the context of an application such as this. Mr Jones has not sought to suggest that these authorities or Mr England's summary of them in his written submissions is incorrect. Therefore, I can safely proceed on the basis of what is summarised by Mr England as being the effect of these authorities.

18 The lead one for these purposes is *Bayerische Landesbank Anstalt Des Offentlichen Rechts v Constantin Medien AG* [2017] EWHC 131 (Comm) where Popplewell J (as he then was) made the following very clear points in relation to applications of this sort. First, he made clear that if a party wishes to withdraw an admission, it is:

> "...incumbent on the party to explain why he no longer contends that which has been admitted is true..."

That led Popplewell J in the case before him to conclude that since the applicant had not produced any such evidence, that was a factor which was relevant at para.7.2(a) within the practice direction, namely the grounds on which the applicant seeks to withdraw the

admission, since without any such evidence, it is impossible to work out properly the grounds on which the application is being made.

19 Popplewell J added in [65] that the failure to give an explanation is relevant too to para.7.2(d) - that is the prejudice that may be caused to any person if the application is refused because without an explanation as to how the admissions came to be made in the first place, there is no evidence to suggest that they were wrongly made or untrue and therefore, there is no evidence that enables the court to conclude that prejudice has been suffered.

20 The further authority relied upon by Mr English was *American Reliable Insurance Company & Ors v Willis Ltd* [2008] EWHC 2677 (Comm). Paragraphs [17] and [18] are the material paragraphs for present purposes. In those paragraphs, Steel J emphasised that in that case:

> "...What is entirely absent ... is any real explanation of the reasons why and justification for the application..."

That is entirely the position in this case. Steel J then went on to say in [18]:

> "...Where a party makes an application of this kind in circumstances where highly important and, it must be accepted, prejudicial admissions are made, the court is entitled, it seems to me, to receive a fairly full and frank explanation of how things have gone wrong, or at least appear to have gone wrong, namely to identify the basis upon which the background to the admission is to be withdrawn, the reasons for it, how it came about that the admission was made in the first place, and so on."

He added in relation to prejudice at [26]:

> "...So far as the prejudice that would be caused if the application to withdraw the admissions is refused, it is of some importance that there is no new evidence that the defendants wish to adduce whatsoever. Furthermore, they make actually no positive challenge to any of the points which had earlier been admitted. One has to raise an eyebrow as to whether, in those circumstances, the refusal to allow them to withdraw the admissions is going to cause any prejudice or, put another way, whether the prospects of success in challenging the findings that they were originally disposed to admit are anything other than remote."

21 These points are significant because in this case, as I have said, no explanation has been offered by Mr Jones in the evidence in support of the application beyond an assertion that the admissions that had previously been made were wrong and to refer to the fact that if any further details were to be provided then that would involve waiving privilege.

22 As the authorities make clear. there can be no question of attempting to go behind an assertion of privilege or drawing inferences from an assertion of privilege. A party is fully entitled to assert privilege where that privilege exists without any attempt being made to draw adverse inferences from such an assertion. However, whether to assert privilege is the choice for the party applying to make. If that deprives that party of the ability to offer an explanation as to how the allegedly erroneous admission came to be made that is a matter for that party.

23 The case law makes clear that one of the most powerful factors that is going to be relevant in an application of this sort is whether an explanation is offered as to how the various full admissions that had previously been made were erroneously made. It is a matter for the claimant whether the claimant chooses to offer that explanation but if no explanation is

offered, then that has an impact the factors identified in para.7.2 of Practice Direction 14, in particular, which are concerned with the grounds on which the applicant seeks to withdraw the admission. It impacts too on issues concerning the conduct of the parties because there is no evidence as to what led the party making the admissions which are now said to be erroneous wrong and wrong to be made in the first place, and it is material too to an assessment of the prejudice that may be caused to any person if the application is refused, since without such an explanation it is impossible to ascertain or measure the prejudice that, in truth, will be suffered by the party applying since there is no evidence on which a court can properly conclude that the admissions that were made were erroneously made.

24 In those circumstances, it is now necessary that I look at each of the grounds identified or each of grounds or circumstances identified in para.7.2 in order to balance one against the other in order to decide whether, in all the circumstances, and taking all of the relevant considerations together, this application ought to succeed.

25 Turning first to para.(a), there is no evidence, as I have said, of any new evidence having come to light which justifies the withdrawal of the admissions sought, nor is there any explanation as to how the admissions that were made came to be made, nor is there any explanation as to why it is that the admissions that were made, apparently on the advice of the seventh defendant's in-house general counsel, were erroneous.

26 Secondly, and turning to ground (b), the conduct of the parties, including any conduct which led the party making the admission to do so, there is no evidence available as to what caused the seventh defendant to make the admissions which it now seeks to withdraw. In those circumstances, it is not possible to come to a conclusion that there is any evidence of any weight which is available beyond the full and frank admission contained in Mr Jones's evidence that the responsibility for the admissions lies fair and square with the seventh defendant. As was submitted by Mr England in the course of his submissions, it cannot

sensibly be said in those circumstances that the admissions that were made were the result of legal error or anything of that sort. The admission, full and frank in para.12 of Mr Jones's second statement, is that the error is not the fault of the claimant but lies exclusively at the feet of the seventh defendant. In the circumstances, if the effect of that is to be avoided, then evidence explaining how the original and apparently erroneous admissions came to be made was required but there is none.

27 Turning to paragraph (c), the prejudice that may be caused any person if the admission is withdrawn, I am not satisfied that it is simply the case that prejudice can be met by an order as to costs being made in favour of the claimant against the seventh defendant. There are a number of reasons why that is so, each of which was adumbrated by Mr England in the course of his submissions and are summarised, at least in part, in his written submissions. It is not necessary that I go through them in any detail. The point he made, and the point I accept, is that if in every case the answer was always going to be that the prejudice that will be suffered by a party in the position of the claimant if an admission was withdrawn was that it would be met by an order for costs and a requirement to pay interest, then there would be, in effect, no need for the court to carry out a balancing exercise in order to decide whether or not permission should be granted because, in reality, aside perhaps from a very late attempt to withdraw an admission, any prejudice suffered by the other party would always be neutralised by an agreement to pay any costs thrown away.

28 The reality is that already expensive and complex litigation will be made more complex, it will take longer, and all in circumstances where there is no explanation offered as to how the allegedly erroneous admissions came to be made, no evidence that demonstrates the admissions were erroneously made and no evidence of any new evidence coming to light which even arguably makes erroneous the admissions made previously and on legal advice.

29 Subparagraph (d) requires me to have regard to the prejudice that may be caused to any person if the application is refused. Mr Jones says not unnaturally that the consequence of the application failing is that the seventh defendant will not be able to advance the defence that is identified in the draft pleading in which the admissions that are made in relation to the proprietary claim for knowing receipt will be heard. That, of itself, as it seems to me, is not an answer in the absence of any evidence which demonstrates that the defence is realistically arguable other than at the level of looking at the words on the defence of assuming that the seventh the defendant would make good what it has alleged, and in circumstances where, as I have said, there is no explanation that has been offered as to how the admissions came to be made in the first place, as well as there being no evidence of what is now sought to advance by way of amendment is maintainable at an evidential level. Thus it is that discerning what prejudice will be suffered, in reality, by this defendant if this application fails is an impossible one as a matter of the seventh defendant's choice in the evidence it has chosen to adduce in support of this application.

30 I accept that this application has been made at a relatively early stage in the litigation but, notably, it has been made in consequence of and ahead of an application for summary judgment. I accept, however, that the primary focus of para.(e) within para.7.2 of the practice direction is on applications made very close to trial and therefore, I conclude that, primarily, subpara.(e) is immaterial one way or the other to the determination of this application other than to accept that it is made at a relatively early stage in the process, as I acknowledged earlier in this judgment.

31 Subparagraph (f) is concerned with the prospects of success if the admission is withdrawn of the claim or the part of the claim in relation to which the admission is made. So far as that is concerned, plainly if the admissions that have been made are not withdrawn, the claim

that the claimant wishes to advance against the seventh defendant will be stronger than would otherwise be the case.

32 Finally, (g) requires me to have regard to the interests of the administration of justice. This engages a number of different considerations, including the impact of making the order sought on other users, on the availability of resources provided by the court's service, and is to be weighed in the balance against the intrinsic merits of the proposed amendment. Where there is no explanation offered along the lines I have indicated, where there is no evidence of the voracity of the assertions made on the basis of the withdrawal of the admissions previously made, it is impossible to come to a conclusion as to the justification of permitting additional resources to be deployed in resolving this claim because there is no means by which the court can assess the merits of what is proposed.

33 So I take a step back from all of this and I look at the issue in the round. All of the points that are identified in para.7.2, having regard to the evidence that has been adduced by the seventh defendant, point fair and square to refusing this application for the reasons as I have identified. In addition, the position adopted by Mr Jones at the start of this application not heralded in the skeleton argument nor in the evidence filed in support of the application, namely that the seventh defendant claimed no interest in the £50,000, if taken at face value is contrary to the amendments which are the withdrawal of the admissions that have been made.

34 In the result therefore, looked at in the round I am satisfied this application should fail for each of the reasons identified

L A T E R

35 The issue I now have to determine is a short one concerning the assessment of costs. The application I dismissed a moment ago means that the claimant has been successful, the

seventh defendant has not, and therefore it is rightly conceded by Mr Jones that the seventh defendant must pay the costs of and occasioned by the application.

36 Further, Mr Jones has conceded the application made by Mr England that the costs should be assessed on the indemnity basis. The submission which Mr Jones has made, however, is that the sums claimed are, as he put it in his submissions, extortionate and, therefore, the assessment of those costs should go off to a detailed assessment.

37 There are two points which arise in relation to that. The first is that as Mr England rightly submits, the policy of the courts is now very clearly to provide that the parties that lose interlocutory applications should pay on a pay as you go basis, which involves the summary assessment of all costs that arise on applications of that sort. The rules particularly encourage the summary assessment of costs in applications which have lasted less than a day, and this one has lasted half a day, and the sums which are claimed are well below any sum which would be regarded in the Commercial Court or London Circuit Commercial Court as above the level that it would be appropriate to summarily assess costs.

38 In those circumstances, that is to say where this is an interlocutory application that has lasted less than one day and where the sums claimed are comfortably less than £100,000, it seems to me entirely right that there should be a summary assessment of those costs and I so direct.

L A T E R

39 The issue I now have to determine is the summary assessment of the costs payable by the seventh defendant to the claimant. I have already directed and it has been conceded by the seventh defendant these costs must be assessed on the indemnity basis. That has two consequences. First, the proportionality test, which would otherwise apply when costs are being assessed on the standard basis summarily, has no role to play. The only question

which I have to ask myself is whether the work for which payment is claimed has been reasonably carried out, and, secondly, whether the sum claimed for that work is reasonable in amount. The second point that arises from this being an assessment on an indemnity basis is that all issues of doubt are to be resolved in favour of the receiving party and against the paying party, and, thus, where issues arise on the margin, they are to be resolved in favour of the claimant and against the defendant in the circumstances of this case.

40 So far as the hourly rates are concerned for the timed costs for the solicitors, those are being charged to the penny at the current London 2 rates and I am satisfied that is an appropriate rate to charge in the circumstances. The focus of Mr Jones's submission was that the telephone hours, in particular, were excessive and I think possibly also the work done on documents was excessive.

41 Dealing first with the hours that have been claimed in the main body of the schedule, those involving attendances on the claimant, given that the work done by the solicitors was done in-house, is very small and I allow those as asked.

42 In relation to attendance on opponents, the 13.5 hours of correspondence, that is work that has been done and there is no suggestion, as far as I can see, on the part of Mr Jones that that is not appropriate work to be done, particularly since it would involve engaging between the claimant and the seventh defendant.

43 The next issues which arises concerns attendance on others. That consists of some 21 hours for letters and some 25 hours for telephone attendances. The submission which was made by Mr Jones was that if and to the extent this was attendances on counsel, it was in excess of what was reasonable. Mr England has submitted that that is not so because it was necessary for him to liaise with his solicitors by telephone, because of the current environment, and meeting in formal conferences is not either practical or easily arranged. So far as that is concerned, whilst I accept that point in principle, I have to remind myself that this

application was a relatively straightforward one going over well travelled ground in relation to principles which are well established in the authorities. I am satisfied that 25 hours of attendances by phone is in excess of what is reasonable in the circumstances and I reduce that to 15.

44 So far as attendance at the hearing is concerned at 1.5 hours, my concern about that is that there should not be a need for two solicitors to be present at the hearing of an application of this sort. Therefore, I disallow the C fee earner for attendance at the hearing.

45 So far as counsel's fees are concerned, those were not challenged and I accept those as appropriate in the circumstances.

46 I accept the submission made by Mr England on behalf of his client concerning the payment of VAT.

47 I turn then to the work done on documents. I accept that items 1 and 2 are appropriate in the circumstances. I accept item 3 as being reasonable in the circumstances. Item 4 is acceptable as well but line 5, preparation of AH2 and exhibit thereto, 19 hours, is in excess of what is reasonable in the circumstances. That is getting on for in excess of two days of time by the grade A fee earner and is in excess of what is reasonable. I allow that at ten hours.

48 So far as preparation of the claimant's bundle is concerned at 8 hours plus 1 hour, that too is in excess of what is reasonable. This is a relatively straightforward application. It ought not to have taken that long to prepare a bundle, including an index, and I reduce that to 5 hours. So far as review of the claimant's skeleton argument is concerned, 4 hours is excessive. I reduce that to 2.

49 Review of the applicant's skeleton for 3 hours is excessive. I reduce that to 1.5. Review of authorities are concerned, I am content to allow that as asked. Preparation of the the

summary costs assessment scheduler at 4 hours is excessive as well and I allow that at 1.5 hours.

50 With those adjustments, I assess the costs as asked.

CERTIFICATE

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