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Debbie Burke ~ Editor

LOOKING at my calendar, I am amazed to see that we are almost a quarter of the way through 2008 and I am equally amazed at how many new cases there are in this edition of **Costs Recovery News**.

The Court of Appeal judgment in the Crane case is of interest to all, but particularly to costs draftsmen. In addition to confirming definitively that success fees can be recovered on the time spent by costs draftsmen in preparing the bill of costs, there is also some useful support for claimant solicitors in relation to the recovery of success fees as well as some interesting signposts for what I think will be the next raft of changes for civil litigators.

The Gloucestershire County Council case is potentially significant. At the moment, most interest is focusing on the compliance aspect of the case but I think that the judgment will herald a much wider take up of collective conditional fee agreements by commercial litigators - they can have a "discounted" rate (the rate they are currently paid by their clients) which is payable if the case is lost, with a premium rate and a success fee in the event of a win - this seems to go directly against the longstanding downward pressure on hourly rates caused by "market forces". In addition, if as the Crane judgment emphasises,

success fees are to reward the Claimant's solicitors for losses on cases which they do not win, but in this scenario there is no loss because the "discounted" rate is paid in cases which are lost. Why should the paying party have to pay more on the cases where there is a win? Where is the risk to the Claimant's solicitors in these circumstances?

Here at Deborah Burke Costing Limited, we are delighted to welcome Sharene Hourd back to our team and we are currently also recruiting for a "Costs Manager" to promote our continuing expansion and development.

Subscribers to **Costs Recovery News** will be receiving our free two weekly costs update. If any readers would like to take advantage of this service, please visit our website www.dbcosting.co.uk to subscribe. Over the next few months, our website is going to be updated and improved to provide you all with more information on costs and the costing service we provide. If you have any suggestions on items you would like to see on our website, please let our office manager, Karen Holdsworth, have your views. As always, your input is invaluable.



Cases in Brief...

The appropriate rate for Court of Protection work

MASTER Haworth gave some general comments with regard to the nature of Court of Protection work and the rates appropriate to same.

The matter was originally heard by a Costs Officer. For "general management" work, the Costs Officer had allowed hourly rates which were approximately 90% of the summary guideline rates.

The Defendants argued that the nature of receivership work justified lower than guideline rates being awarded because the work was less urgent, there was greater autonomy and a steady stream of work was usually received.

The Costs Master rejected the Defendants' submissions. "He found that the very nature of the work can be stressful, relentless and that crises are common place". However, the Costs Master indicated that once the Receiver had provided overall guidance as to the issues to be dealt with, the majority of the day to day general management work could be mundane and it was appropriate for this work to be passed to lower grades of fee earners.

In this case, the Costs Master allowed the relevant guideline rates for the fee earner for the area where the work was done.

Ref: *In the matter of Smith (& Others) [2007] EWHC 90088 (Costs)*



Recent Cases...

Crane v Canons Leisure Centre

THE Court of Appeal judgment in this case was delivered just before Christmas. Lord Justice May delivered the lead judgment, Lady Justice Hallett delivered a concurring judgment but stated that it was not an “entirely happy result” and Lord Justice Maurice Kay delivered a dissenting judgment.

The unequivocal decision of Lord Justice May is that the work done preparing the bill of costs for Mr Crane, was “solicitors’ work” for which the Claimant’s solicitors were entitled to make a direct charge. A success fee on the bill preparation time is, therefore, recoverable (paragraph 15).

Some other interesting points also emerged:-

■ All of you who are familiar with the standard basis of assessment - any doubt is resolved in the paying party’s favour - beware. When the issue before a court is one of “construction”, the basis of assessment will not necessarily assist the paying party (paragraph 13). This is particularly interesting because the Claimant’s solicitors claimed the costs draftsman’s charges in both the initial schedule and subsequent bill of costs as a disbursement. It was “not until late in the day” that the argument was put forward that the work done should form part of the profit costs.

■ Cost drafting work is “solicitors’ work” and a characteristic of such work is that the solicitor remains responsible to the client for its proper conduct (paragraph 14). This contrasts interestingly with the decision in the case of Woollard v Fowler (SCCO Ref: 050071) which we reported in the June 2007 edition of **Costs Recovery News**. The Woollard case dealt with the nature of work done by medical agencies in obtaining medical and other reports.

■ The classification of the work done in preparing a bill of costs does not depend on whether the Claimant’s solicitor did the work himself or whether it was delegated to another solicitor or delegated to a costs draftsman who was not a solicitor (paragraph 15).

■ If solicitors properly delegate their own work, they remain entitled to charge for that work “on their own account” and the amount paid to the subcontractor is not necessarily the same amount that is claimed from the paying party (paragraph 14). The same paragraph highlights that the success fee allowed on the draftsman’s work in the case in question would go to the Claimant’s solicitors and not the costs draftsman.

■ The success fee in a conditional fee agreement is designed to cover the cost of other cases which the solicitor loses where he or she gets paid nothing, not the profit on the case in question which has been won (paragraph 20). Although this point was much heralded when additional liabilities first became recoverable from paying parties, so many times at assessment, the success fee has been judged solely against the case in question, with no regard for the bigger picture.

■ The Respondent’s notice in the appeal proceedings argued in the alternative that a success fee of 45% for conducting the costs assessment was unreasonable - the only risk in the assessment process was that a costs offer by the Defendant would not be beaten on assessment. Lord Justice May reminds us in paragraph 18 that the Halloran v Delaney decision centered on the assessment of the risk of not winning the litigation, not on whether there should be a separate success fee for assessment proceedings. Paragraph 21 of the judgment in this case confirms that the success fee should extend to the costs

proceedings at the same rate (provided that this has been agreed with the client).

■ The Court of Appeal is saying, yet again, how “unsavoury” this type of costs satellite litigation is (paragraph 1) and Lord Justice May refers in paragraph 15 to “poor Mr Crane [who] had no interest in this costs squabble”.

■ In his dissenting judgment, Lord Justice Kay expressed his concern that the creation of conditional fee agreements had resulted in a situation in which the unsuccessful defendant or his insurers became liable for the subsidy paid to the successful claimant’s lawyer to compensate him for his otherwise unpaid work on unsuccessful cases (paragraph 24). Lord Justice Kay highlighted that not all defendants are insured, so that it is particularly important for the courts to ensure that success fees do not operate unjustly on the ultimate paying party.

■ Lord Justice Kay concludes by saying that the time may now be approaching when the working of the conditional fee agreement system is “ripe for an in-depth review” to measure to what extent the system is enhancing or impeding access to justice and at what financial cost.

Lord Justice Kay’s dissenting judgment and Lord Justice May’s comment that the small claims track limit should be substantially increased (paragraph 1) echo two of the recommendations of the Civil Justice Council’s report “Improved Access to Justice”. It will surely not be very long before we hear calls again for the small claims limit to be increased and for other funding options to be investigated. As always, we live in interesting times....



Recent Cases...

Issues based costs orders

THE Claimant made an application for a departure from the general rule in CPR 44.3(2) that costs follow the event and sought an issues based costs order.

The Claimant had brought a claim for negligence against the Defendants, arising out of pension mis-selling, and although the Defendants had been found negligent and in breach of their statutory duty, the Claimant's claim was held to be statute-barred and was, therefore, dismissed.

The Claimant argued that notwithstanding the fact that his claim was dismissed, he had succeeded on the majority of the issues dealt with and should have an issues based costs order in his favour.

CPR 44.3(4) provides that "In deciding what order if any to make about costs the court must have regard to all the

circumstances, including [inter alia] (a) the conduct of all the parties; (b) whether a party has succeeded on part of his case, even if he has not been wholly successful.

Mr Justice Beatson was in no doubt that the Defendant was the successful party in this instance and that "the starting point is the general rule that the unsuccessful party, here the claimant, is ordered to pay the successful party, here the defendant" [paragraph 11].

The Claimant raised the issue of the Defendants' conduct in not admitting to a breach of duty and their "unreasonable attitude in challenging the whole claim and in relation to settlement" [paragraph 12].

Mr Justice Beatson gave judgment that "as far as conduct is concerned, the conduct of the claimant has to be taken into

account as well as the defendant's conduct. I was critical of the claimant's conduct" [paragraph 13].

With regard to CPR 44.3(4)(b) the Court had rejected three of the fundamental issues relating to the Claimant's primary claim. After further consideration of CPR 44.3(4)(c) Mr Justice Beatson indicated that "I do not consider the present case is a suitable one for a split or issues-based costs order. ... however, I have concluded that in the circumstances of this case a reduction should be made from the costs to be awarded to the defendant" [paragraph 19], hence the order that the Claimant pay 75% of the Defendants' costs.

Ref: Mr Clifford Shore -and- (1) Sedgwick Financial Services Limited (2) Barclays Financial Planning Limited [2007] EWHC 3054 (QB)

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Recent Cases...

The bill, the whole bill and nothing but the bill . . .

PERMISSION to appeal was given in these detailed assessment proceedings on a preliminary issue concerning the commencement of detailed assessment.

Within the substantive proceedings, which involved litigation arising out of an assured tenancy, the Appellants had been represented by different firms of solicitors at different times during the course of the proceedings, although they were both represented by SWL when the case had concluded.

In June 2005, SWL submitted two Notices of Commencement, accompanied by two bills of costs to the Respondent's Solicitors, one in respect of the possession appeal and the other in respect of the injunction appeal. The narrative part of the bills set out the whole history of the matter and the

relevant certificates had been signed by SWL. Negotiations were entered into between SWL and the Respondent's solicitors and agreement was reached in relation to the costs claimed.

Subsequently a further Notice of Commencement and bill of costs was submitted on behalf of the Appellants in the sum of £53,127.48 by other solicitors (RJH) who had also acted for the Appellants during the course of the proceedings. This bill was described as relating to the possession appeal. It appeared that the two sets of solicitors had agreed that they would prepare separate bills of costs but that the Respondent's solicitors had not been told about this agreement.

The Respondent's solicitors referred to the previous agreement and indicated in

their Points of Dispute that they proposed to seek an order striking out the Notice of Commencement on the grounds that it was an abuse of process.

In the course of the detailed assessment, Master Haworth had held that "there is one, and only one, detailed assessment of all the costs in relation to a particular claim, for a very good reason, namely that the paying party should know the full extent of his liability in relation to costs" [paragraph 24]. He had dismissed RJH's request for assessment of their bill.

RJH appealed and submitted that "whilst the rules envisage that only one notice of bill will be served, **there is no rule or practice direction that stipulates that that must be so** [our emphasis]" [paragraph 29]. The Appellants argued that a receiving party was not debarred from making an additional claim for omitted costs because Section 40.10 of the Costs Practice Direction allows for variation of a bill of costs without permission, even after a date has been given for detailed assessment.

Mr Justice Christopher Clarke held that "The rules clearly provide that detailed assessment proceedings are commenced by the receiving party serving both a notice of commencement and the (not a) bill of costs. ... If the receiving party is entitled to recover his costs of instructing more than one solicitor the practice direction requires him to include the costs of each solicitor separately in the bill" [paragraph 33].

The appeal was accordingly dismissed.

Ref: (1) Carl Harris (2) Susan Collete Hartless and Moat Housing Group - South Limited [2007] EWHC 3092 (QB)



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Recent Cases...

Disapplying the Limitation Act 1980

ON 30th January 2008, the House of Lords handed down judgment in six cases, which raised the question of whether civil claims for damages for sexual assaults and abuse which occurred years before the commencement of proceedings were barred by the Limitation Act 1980. The case of Hoare had attracted particular media attention because the Defendant had been convicted in 1989 of an attempted rape, involving a serious and traumatic sexual assault and was

sentenced to life imprisonment. In 2004, while still serving his sentence, the Defendant won £7,000,000.00 on the National Lottery. His victim, the Claimant, had sought a claim for damages, but the claim had been struck out under Section 2 of the 1980 Act. The Court of Appeal upheld the decision.

The question of limitation has been considered by the courts on many occasions and has always been

contentious. Section 2 of the Limitation Act 1980 contains the general rule that the period of limitation for an action in tort is six years from the date on which the cause of the action arose. Sections 11 to 14 create a different regime for actions for “damages for negligence, nuisance or breach of duty”. In such cases the limitation period is three years from the date when the cause of action arose or the “date of knowledge” as defined in Section 14, whichever is the later.

Conditional fee disagreements

“YET again, this court is concerned with an issue arising from the conditional fee agreement legislation” so Lord Justice Dyson commences the judgment in this case.

The background to the case was that the Claimant had commenced proceedings against the Defendants in relation to an undertaking given as part of an agreement for the purchase of land.

The Claimant had entered into a CFA with its solicitors, which the Defendants contended did not comply with Section 58 of the Courts and Legal Services Act 1990.

The CFA defined:-

“basic charges” as a rate of £145.00 per hour.

“discounted charges” if the client “loses” at a rate of £95.00 per hour

“success fee” as “a percentage of basic charges ... [added] to the basic charges” if the client won and which was set at 100%.

The Defendants argued that on a proper interpretation of the 1990 Act,

the success fee should be applied to the “costs at risk” which were in this case £50.00 per hour [i.e. the difference between the basic charge of £145.00 per hour and the discounted charge of £95.00 per hour] whilst using the definition in the CFA, the success fee would be £145.00 [i.e. 100% of basic charges]. This the Defendants maintained amounted to a success fee of 290% of the “costs at risk”.

The Court of Appeal held that “it is clear that lawfulness of the percentage increase is measured not by reference to the costs at risk, but by reference to the fees that would have been payable if the CFA were not a CFA” [paragraph 27], which in this case was £145.00 per hour and therefore the CFA was not in breach of Section 58(4)(c).

In an alternative argument the Defendants had argued that if there had not been a CFA, a lower hourly rate of £114.00 would have been the basic hourly rate. This argument was also rejected as “misconceived”. [paragraph 32]

Ref: Gloucestershire County Council -v- Evans & Others [2007] EWCA Civ 21

In the case of Stubbings v Webb [1993] AC 498 the House of Lords had decided that Section 11 did not apply to a case of deliberate assault (including acts of indecent assault) because an action for an intentional trespass to the person was not an action for “negligence, nuisance or breach of duty” within the meaning of Section 11(1).

In the case of Hoare and the other five cases, the lower courts had been bound by the Stubbings decision and found that the claims in the six substantive cases were statute-barred.

In the House of Lords, the Claimants submitted that Stubbings had been wrongly decided.

After detailed consideration, Lord Hoffman in the lead judgment agreed that Stubbings had been wrongly decided, saying that although this was “not in itself a ground for departing from [the judgment]” [paragraph 20], he considered that in these six cases “it would be right to depart from Stubbings” [paragraph 25].

The six cases were then considered individually and directions given with regard to the future progress of same.

Ref: A (Appellant) -v- Hoare (Respondent) House of Lords [2008] UKHL 6



Cases in Brief...

When the award of costs is patently obvious

PRIOR to the introduction of the CPR, the court had exercised a general control on costs in patent actions by a process of certification. This prevented costs being allowed unless the court had first certified that the issues which the costs related to had been proven or were reasonable and proper. Following the introduction of the CPR, the requirement for certification was abolished.

This case related to a patent dispute which was resolved mainly in favour of Monsanto Technology. Although a substantial amount of costs were at stake, both parties argued for “an order expressed as a percentage or in absolute terms, rather than submit themselves to a detailed assessment” [paragraph 4].

Lord Justice Pumfrey indicated that this meant that “when the court sets out to fix percentages ... highly detailed considerations are not appropriate”. [paragraph 4].

The court's task was to identify the overall winner and then to answer two questions in relation to any costs in respect of issues which the overall winner had lost:-

- Should he recover his costs
- Should he pay the other side

Lord Justice Pumfrey indicated that “as one moves away from the general rule that the unsuccessful party will be ordered to pay the costs of the successful party, an increasingly strong justification is required [for depriving the winning party of his costs] [paragraph 8].

A very complicated award of costs was ultimately made which gave the Claimant approximately 64.7% of its full claim for costs.

Ref: *Monsanto Technology -v- Cargill* [2007] EWHC 3113 (Pat)

Beware the effect of exaggerated claims

THIS case concerns the approach which the court should take to an award of costs in a case “ ... in which the successful Claimant is said to have exaggerated her claim and, for that reason and others, the length and complexity of the trial has become disproportionate to the value of the claim and the importance of the issues raised”. [paragraph 38]

The case was a minor traffic accident. The insurers admitted liability and within 8 days of the accident had offered to settle the three claims for total damages of £1,800.00. The offer was made prior to the receipt of medical reports and the Defendant did not say how long the offer would remain open for acceptance. The offer was not accepted and the three Claimants issued proceedings in early 2004.

The claims were consolidated and allocated to the multitrack. The defence served, whilst admitting liability, pleaded that the Claimants had suffered no or little damage and that the claims for damages were fabricated or dishonestly exaggerated. The Defendant also indicated that if the Claimants did recover damages of less than £1,000.00 it would argue that the claims should have been proceeded in the small claims track and any costs awarded should be limited accordingly. In addition, the Defendant indicated that it would argue that the Claimants should pay the Defendant's costs occasioned by the matter being litigated in a costs-bearing track.

The final hearing lasted for four days and the Judge rejected the charge of fraud in respect of each of the Claimants. He awarded £400.00, £600.00 and £1,000.00 damages to the three Claimants.

The Defendant argued that either the Claimants should have to pay the

Defendant's costs or that there should be no order as to costs because the Claimants had collectively recovered only £2,000.00 which was little more than the pre-issue offer of £1,800.00 and that any costs awarded to the Claimants would be limited to those recoverable on the small claims track.

The Judge, noting that he had a wide discretion under CPR 44.3 decided that the Defendant should pay 60% of the Claimants' costs.

On appeal, Lady Justice Smith found that “the [Defendant's] insurers elected to defend these claims on the basis that they were dishonest and that no injury had been caused. They chose to stand or fall on that contention and they fell” [paragraph 85]. She considered that the Judge on assessment had erred in principle and that the Defendant should pay all of the Claimants' costs.

However, Lord Justice Waller felt that whilst the Defendant's insurers should have to pay a substantial portion of the Claimants' costs, there should also be a considerable reduction because although technically the Claimants were the winners, they only recovered sums at the small claims level, and in addition “the Claimants [bore] some responsibility for the fact that the claims were ultimately tried in the way they were. The pleaded claims may not be dishonest ... [but] the claims as originally made were on any view exaggerated and opportunistic, something that the courts should on any view discourage” [paragraph 36].

The third judgment given by Lord Justice Lloyd concurred with Lady Justice Smith and the appeal was therefore allowed.

Ref: *Hall & Ors -and- Stone* [2007] EWCA Civ 1354



Cases in Brief...

To make or not to make a costs order ... that is the question

PREMISES run by the Respondent had been valued by the Applicant and entered on the rating list at £140,000.00. On appeal, the Lands Tribunal had decided that the correct figure was nil.

The Applicant lodged an appeal, but a number of delays then occurred. It took the Applicant eight months to obtain Counsel's advice and there were further delays with regard to disclosure and for the parties' valuers to meet, etc. As a result, it was not until twenty months after the Applicant's appeal had been lodged that a stay was granted by consent and another five months later when the parties agreed the value at £5,000.00.

The Applicant sought costs, but Judge Gilbert QC considered that it was wholly inappropriate to make an award of costs.

Not only had the valuation been agreed at £5,000.00 when the Applicant had originally sought £140,000.00, but agreement had only been possible after the Applicant had obtained Counsel's advice and proper valuation evidence, both of which should have been done before the original hearing of the Valuation Tribunal.

Ref: Keith Halliday (Valuation Officer) -v- Waltham Abbey Gunpowder Mills Charitable Foundation Ltd (2007) Lands Tribunal 18/12/2007 (RA/45/2005)

A recommendation is not a requirement

THE Second Claimant made a claim against the Defendant following the death of her husband. A CFA was entered into on 24th January 2005 which provided for a success fee of 100%. The Defendant was represented by the Medical Defence Union. A letter of claim and a Notice of Funding were sent to the Defendant on 8th September 2005. The claim form was issued on 31st January 2006 and served on 1st March 2006.

Detailed assessment proceedings began and the Defendant argued that the success fee was only recoverable from the date when the funding information was served in September 2005 and not from 24th January 2005 when the CFA was entered into.

It was common ground that the Clinical Negligence Protocol applied and that it does not require a Notice of Funding to be given pre-issue. The Practice Direction on Protocols [PDP] 4A recommends that a party who has entered into a funding agreement should inform other potential parties that he has done so before the issue of proceedings, but it is a recommendation and not a requirement.

The success fee was allowed from the date when the CFA was signed in January 2005.

Ref: (1) Sam Cullen (2) Janice Cullen and Dr Anil Chopra [2007] EWHC 90093 (Costs)

A fixed success fee really is fixed

A decision that the fixed 12.5% success fee was recoverable in a low value road traffic accident case funded by a trade union CFA which settled pre-issue was appealed. The District Judge had stated that "This case falls squarely within the confines of CPR 45.11. I do not see any scope for a Claimant arguing for a success fee that exceeds 12.5% or a paying party arguing for a success fee that is less."

The Defendant argued that the District Judge was wrong to find that he had no discretion about the allowance of the 12.5% fixed success fee. HHJ Grenfell, sitting with Regional Costs Judge, District Judge Spencer and a Lay Assessor dismissed the appeal. CPR 45.11(1) states that a Claimant **may** recover a success fee.

The Defendant argued that this wording implied a discretion to the Court but HHJ Grenfell disagreed "I am satisfied that ... once a success fee is claimed there is no discretion in the Court other than to allow 12.5%". [paragraph 58]

Ref: Rachael Catherine Peel and Stuart Beasley [2007] EWHC 90094 (Costs)



Cases in Brief...

The ties that bind

IF an adjudicator or tribunal makes a decision on jurisdiction, can the Defendant challenge the original decision as to jurisdiction in subsequent enforcement proceedings?

HH Judge Coulson Q.C. considered that the court should examine whether or not, when the jurisdiction point was raised before the adjudicator, the parties agreed to be bound by his decision? If a party indicated that, whilst it was content for the adjudicator to express his view, the party did not agree to be bound by same, then the decision was not binding.

In the present case this did not appear to be so and the original decision could not, therefore, be challenged.

Ref: *Harris Calnan Construction Co Ltd v Ridgewood (Kensington) Ltd* (2007)
[2007] EWHC 2738 (TCC)



Watch this Space

Legal Aid Reforms

FOLLOWING the Court of Appeal decision in December concerning the legality of the Unified Contract introduced by the LSC pursuant to the Carter reforms, it is understood that further litigation is set to be issued. So, as always, it's a case of watch this space ...

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Useful Information...

Wasting court time . . .

IN a long running dispute concerning the export of cars to Malaysia, four separate judgments had been given. An application was made to set aside three of the judgments on the grounds that further evidence had come to light. A five day hearing was fixed for 29th October 2007 and witnesses were ordered to attend.

It subsequently became apparent that one of the Defendant's witnesses would be unable to attend the hearing because of ill-health, but it was only at 6.15 pm on 25th October 2007 that the Claimant's solicitors were informed.

The Defendant told the Court that a request for an adjournment would be made on 29th October 2007 and that if the adjournment was not granted, the application to set aside judgment would be abandoned.

When Counsel for the Defendant attended at court he was only instructed concerning the adjournment and not with regard to the matter generally.

The Court found that five days had been wasted by the Defendant and a further five days would have to be allotted if the adjournment was granted. The Defendant had failed to lodge and serve its skeleton argument as previously ordered by the Court and had stood down Counsel and witnesses before the application for adjournment had been determined.

The Court dismissed the application for an adjournment, reinforcing the fact that it is the duty of the parties in an action to inform the Court as soon as it becomes apparent that there is a real prospect that a hearing might not be able to proceed.

Ref: *Nigel Peter Albon (T/a NA Carriage Co) -v- Naza Motor Trading SDN BHD* [2007] EWHC 2613 (Ch)



Recent Cases...

A fishy tale?

THE litigation concerned the purchase of a large printing press by the Claimant from the First Defendant with finance from the Second Defendant. The Claimant maintained that the press was defective and that as a result it had suffered extensive loss.

In January 2005, there was a detailed mediation in an attempt to resolve the issues, but the mediation failed to resolve the dispute and in July 2005, the Claimant company was placed in administration and in July 2006, it went into liquidation.

The Defendants sought security for costs against the Claimant pursuant to CPR 25 and Section 726(1) of the Companies Act 1985. The First Defendant sought security for the total costs, whilst the Second Defendant did not seek any pre-action costs, but limited its claim for security to costs incurred since the start of the proceedings.

The Claimant agreed that it was appropriate for it to provide such security, but a dispute arose as to the amount of the security to be provided and an issue was also raised as to the extent, if at all, a party seeking security for costs could include the costs of a pre-action mediation.

The Honourable Mr Justice Coulson disallowed the First Defendant's claim for security in relation to the pre-action costs, chiefly because a large proportion of those costs related to the mediation and he did not consider that the costs of a separate pre-action mediation could ordinarily be described as "Costs of and incidental to the proceedings". [paragraph 16]

The Claimant was directed to provide suitable security for costs to both Defendants.

Ref: *Lobster Group Ltd v (1) Heidelberg Graphic Equipment Ltd (2) Close Asset Finance Ltd* (2008) [2008] EWHC 413 (TCC)