

Made on behalf of: Applicant/Proposed Class Representative
Name of witness: Adrian Mark Chopin
Number of statement: 1
Date: 10 June 2020

IN THE COMPETITION APPEAL TRIBUNAL

Case Number: 1336/7/7/19

BETWEEN:

PHILLIP EVANS

Applicant/Proposed Class Representative

and

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS PLC
- (4) BARCLAYS EXECUTION SERVICES LIMITED
- (5) CITIBANK, N.A.
- (6) CITIGROUP INC.
- (7) MUFG BANK, LTD
- (8) MITSUBISHI UFJ FINANCIAL GROUP, INC.
- (9) J.P. MORGAN EUROPE LIMITED
- (10) J.P. MORGAN LIMITED
- (11) JPMORGAN CHASE BANK, N.A.
- (12) JPMORGAN CHASE & CO
- (13) NATWEST MARKETS PLC
- (14) THE ROYAL BANK OF SCOTLAND GROUP PLC
- (15) UBS AG

Proposed Defendants

FIRST WITNESS STATEMENT OF ADRIAN MARK CHOPIN

I, **ADRIAN MARK CHOPIN**, of Bench Walk Advisors LLC, 5 Cheapside, London EC2V 6AA, **WILL SAY AS FOLLOWS:**

Introduction

1. I am qualified as a solicitor and am a Managing Director of Bench Walk Advisors LLC (**Bench Walk**), a litigation funding business. As explained further below, Bench Walk is the asset manager of various funds including Bench Walk Capital LLC. Bench Walk Capital, in turn, is 100% owner of Donnybrook Guernsey Limited (the **Funder**), which has entered into a litigation

funding agreement (the **LFA**)¹ with Mr Evans in relation to these proceedings. I am authorised to make this statement on behalf of the Funder.

2. I make this witness statement in support of Mr Evans's application for a collective proceedings order (**CPO**). It addresses the following matters:
 - a. my professional experience;
 - b. information about Bench Walk Advisors;
 - c. the funding structure that Bench Walk Advisors is using for these proceedings; and
 - d. certain matters that have been raised in correspondence by the legal representatives of the Proposed Defendants.
3. I confirm that, unless otherwise stated, the contents of this witness statement are within my own knowledge and are true to the best of my knowledge, information and belief. Where the facts are not within my own knowledge, I have indicated my sources of information or belief.

A. My professional experience

4. I have worked in law and financial services for almost 20 years. I was admitted as a solicitor in 2004, was an approved person by the FCA for 10 years and was regulated by FINRA, the US financial regulator, for two years, including as a registered principal. I have been a member of the Chartered Institute of Investment Securities for over 10 years.
5. I trained at Allen & Overy and, on qualification, I worked for 2 years as an associate in the Derivatives and Structured Finance group of that firm. I left Allen & Overy to become an investment banker on the hybrid derivatives desk at Citigroup from 2006 to 2007 and then I moved to Deutsche Bank in May 2007. I stayed at Deutsche Bank until late 2015 and rose to become the head of its North American Debt and Equity Solutions desk.
6. In 2015 I left Deutsche Bank to join Orchard Global Asset Management, a global alternative asset manager. I was based in London and was responsible for building a new business line in litigation and law firm investments. In the two years from my launch of that business to my departure to launch Bench Walk, I made more than USD 100 million of litigation funding investments across more than 70 commercial cases.

¹ The LFA was originally executed on 5 December 2019. In response to questions raised by the Proposed Defendants in correspondence in May and June 2020, the Funder and Mr Evans have agreed to make certain amendments to the LFA, which will be formally incorporated into an updated version.

7. I joined Bench Walk in late 2017 to open the London office and help launch the business globally. I am a Managing Director with responsibility, among other things, for the London office but also have joint oversight with Stuart Grant of the global business.
8. I have been ranked in Band 1 by Chambers & Partners in its 2020 guide to litigation funding and was also ranked in Band 1 in 2019 and 2018, which was the inaugural year for Chambers & Partners' coverage of litigation funding.² I have been named in Lawdragon³ for 2020 as one of the 100 Leaders in Litigation Finance and was also named in the equivalent list for 2019 and 2018. I am one of only two individuals globally to appear on both these rankings for all three years. I regularly speak about litigation funding in legal and investment conferences in North America and Europe and have written a number of articles on the technical aspects of litigation funding. I have developed a model for analysing the risk of litigation funding investments and for comparing the pricing of different funders' offerings, which I have explained in a series of articles for Thomson Reuters⁴.

B. Bench Walk Advisors

9. Bench Walk is a global litigation funding business with offices in New York, Delaware and London. It was founded by Stuart Grant and Jay Eisenhofer, co-founders of Grant & Eisenhofer P.A., a highly regarded US law firm. Stuart and Jay have substantial experience in class actions and shareholder litigation and are ranked as leading litigators in numerous legal directories.⁵ Stuart is a full-time employee of Bench Walk and no longer works at Grant & Eisenhofer. Jay has no day-to-day involvement in Bench Walk but sits on our investment committee.
10. Bench Walk has funded litigation and arbitration in the USA, the UK, continental Europe and Australia. In a little over two years we have invested almost USD \$250 million across more than 100 underlying commercial cases. Bench Walk's capital is sourced from its founders and from various third-party investors.

² www.chambers.com/lawyer/adrian-chopin-litigation-support-58:25791616

³ Lawdragon Inc. is a US-based media company that produces guides to the leading lawyers and legal consultants in the US: www.lawdragon.com/2019/03/28/100-leading-legal-consultants-and-strategists-for-2019/; www.lawdragon.com/2018/07/02/100-leading-legal-consultants-strategists-2018/.

⁴ See "Funders Keepers: Is Litigation Funding Too Expensive" and "Funding Nemo: Do Funders Fund Too Few Cases" available at <http://disputeresolutionblog.practicallaw.com/funders-keepers-is-litigation-funding-too-expensive-part-1/> and <http://disputeresolutionblog.practicallaw.com/funding-nemo-do-funders-fund-too-few-cases/> respectively.

⁵ For example, Legal 500 states that Grant & Eisenhofer "has a stellar reputation in class action, opt-out and individual securities fraud cases, and its track record includes some of the largest securities class action recoveries in US history, as well as major successes in international cases" (<https://www.legal500.com/c/united-states/dispute-resolution/securities-litigation-plaintiff/>). Mr Grant has been recognised as one of the Top 500 leading lawyers in America by Lawdragon and in 2019 was inducted into its Hall of Fame.

C. Funding structure for these proceedings

11. The Funder, Donnybrook Guernsey Limited, is incorporated in Guernsey. It was established for the sole purpose of providing funding for these proposed collective proceedings and is wholly owned by Bench Walk Capital LLC, which is incorporated in Delaware. Bench Walk Capital has given a written confirmation to the Funder that Bench Walk Capital will provide the funds required for the Funder to comply with its obligations under the LFA.
12. Bench Walk Capital is one of various funds managed by Bench Walk. It is structured such that its investors commit a certain amount of capital to the fund on signing, which is then drawn down by Bench Walk Capital when required to fund its individual investments (including these proceedings). This is a common structure in finance and is widely used, in particular, in litigation funding and private equity investments.
13. Bench Walk Capital's investors, other than the founders, invest via a "feeder fund", which is a single fund that aggregates a number of commitments from different investors. All of the investors in that feeder fund are professionally-managed funds and have confirmed to me that they have more than sufficient capital or committed capital to be able to meet their obligations to Bench Walk Capital. I am confident that each of them will meet its funding obligations when any capital is required under the LFA. Accordingly, I am confident of the Funder's ability to fund Mr Evans's claim.
14. I am also currently arranging for Bench Walk Capital to execute a guarantee to Mr. Evans of Donnybrook's funding obligations such that Mr. Evans will have direct recourse to Bench Walk Capital for any funding amounts due under the LFA. In that guarantee, Bench Walk Capital will also agree to ensure that it maintains access to undrawn commitments from its investors of a sum matching at least the remaining funding commitment in the LFA. When that guarantee is executed the Funder will also agree that it may be disclosed to the Tribunal and the Proposed Defendants.
15. I am familiar with the collective proceedings regime in the Competition Appeal Tribunal (the **Tribunal**). I am regularly presented with claims to be issued in the Tribunal for which funding is sought.
16. At paragraphs 75-76 of Mr Evans' first witness statement dated 10 December 2019, he describes the LFA and explains why he believes that it is an appropriate means to finance the proceedings. I agree with his assessment.

17. I draw the Tribunal's attention to the following aspects of his funding arrangements:
- a. The Funder has agreed to indemnify Mr Evans in respect of any adverse costs that he becomes liable to pay up to and including final determination of his CPO application (Clause 8.5 of the LFA). The Funder has also agreed that the sum of £3 million shall be held in Hausfeld's client account for the exclusive purpose of giving security for and payment of any such costs.
 - b. In respect of his exposure to pay adverse costs that are incurred after a CPO is made in his favour, Mr Evans has acquired ATE insurance with Hamilton Insurance DAC and PartnerRe Ireland Insurance DAC, with a total limit of indemnity of up to £14 million.
 - c. A detailed costs budget has been drawn up based on Mr Evans's and his advisors' estimate of the total costs of the proceedings. In line with that budget, the Funder has committed total funding of £18,654,088 including total pre-CPO funding commitment of £4,294,366. The LFA also provides for Mr Evans to make requests for additional funding, should the budget be revised.
 - d. I recognise that it is important that Mr Evans's funding arrangements not interfere with his ability to act in the best interests of the proposed classes. Accordingly, the LFA makes clear that Mr Evans's duties to the Tribunal and the proposed classes take priority over his obligations to the Funder (Clause 3.1 of the LFA).
 - e. It is important that the proposed class members be given the materials to understand Mr Evans's funding arrangements and so the Funder has agreed with Mr Evans that copies of his funding documents may be provided to class members via the claim website.
 - f. I also understand the need for litigation funders to be accountable, particularly in collective actions, where class members often have no direct control over the management and funding of the claim. The Association of Litigation Funders (**ALF**) is a trade association that aims to deliver self-regulation of the litigation funding sector in England and Wales and certain other jurisdictions. ALF sometimes engages in political and lobbying activities. Bench Walk is not a member of ALF, as we prefer to retain our independence in particular on some of those political positions. However, ALF publishes a Code of Conduct (the **ALF Code**) that covers matters such as capital adequacy, termination, settlement and control over the proceedings. I think the ALF Code is a very

helpful guide to industry best practice. The Funder has confirmed at Clause 4.1.4 of the LFA that it will comply with the terms of the ALF Code.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth:

Signed:

Date: 10 June 2020