

Made on behalf of: Phillip Evans
(Applicant/Proposed Class Representative)
Name of witness: Anthony John Maton
Number of statements: 6
Exhibits: AJM20 – AJM27
Date: 5 July 2021

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) NATWEST GROUP PLC
- (15) UBS AG

Proposed Defendants

SIXTH WITNESS STATEMENT OF ANTHONY JOHN MATON

I, **ANTHONY JOHN MATON**, of Hausfeld & Co. LLP, 12 Gough Square, London, EC4A 3DW, **WILL SAY AS FOLLOWS:**

Introduction

1. I am a solicitor of the Senior Courts of England and Wales and Managing Partner of Hausfeld & Co. LLP in London ("**Hausfeld**"). I have previously provided five witness statements in support of Phillip Evans' application before the Tribunal for a Collective Proceedings Order ("**CPO**") (the "**Evans Application**"). Together with David Lawne, I am the partner at Hausfeld with conduct of the Evans Application. I am duly authorised by Mr Evans to make this witness statement on his behalf.

2. Unless otherwise stated (in which case I give the source of information upon which I rely), 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 and matters referred to in this statement are not within my own knowledge, they are based on instructions, documents and information supplied to me in my capacity as a solicitor instructed by Mr Evans and are true to the best of my knowledge and belief. I adopt the defined terms used in my previous witness statements.
3. The purpose of this statement is to update the Tribunal on changes to Mr Evans' funding arrangements.
4. There are now produced and shown to me **exhibits AJM20 – AJM27** which I refer to below and which I exhibit to this statement.

A. Updates to Mr Evans' ATE insurance policies

5. At paragraph 52 of my fifth witness statement dated 11 June 2021, I responded to arguments raised by the O'Higgins PCR about the robustness of Mr Evans' insurance policies. I explained that Mr Evans' position is that his policies provide adequate security for the Proposed Defendants and that it would be unnecessary and wasteful of costs to acquire anti-avoidance endorsements in the absence of any complaints about their adequacy. I also said that, without prejudice to that position, Mr Evans was considering with his insurers whether any further anti-avoidance provisions might be added to his policies.
6. Mr Evans' position remains that his policies provide sufficient protection to the Proposed Defendants, which is supported by the fact that the Proposed Defendants have not challenged them. However, out of an abundance of caution, Mr Evans has agreed with his insurers to add endorsements to his insurance policies that give him the ability to incept anti-avoidance cover in case the Tribunal considers them to be required. Copies of the signed endorsements are exhibited at **AJM20-AJM23**.

B. Amendments to Mr Evans' Litigation Funding Agreement ("LFA")

7. At paragraph 51 of my fifth witness statement, I explained that Mr Evans was in the process of executing an amended LFA following agreement with the funder to remove a provision in clause 5.8 which provided that any additional funding obtained from another funder should not be less advantageous to Mr Evans than the terms of the existing LFA. The updated LFA has now been executed and a copy is exhibited at **AJM24**.

8. In addition to the above amendment, Mr Evans has also agreed with the funder to extend the scope of the funder's indemnity for any pre-CPO adverse costs to cover any costs that Mr Evans might be liable to pay to the O'Higgins PCR in the event that Mr Evans' application is not successful. These changes are reflected in the amendments made at clauses 8.5 to 8.7 and 25.1 of the LFA. For the avoidance of doubt, these amendments should not be taken as an acceptance or admission by either Mr Evans or the funder that any such costs liability might arise.

C. Amendments to the Costs Budget

9. Mr Evans explained in his second witness statement dated 23 April 2021 (at paragraph 87) that the funder had agreed to provide Additional Action Costs of £949,063 to cover additional pre-CPO disbursements, including the additional ATE insurance with IGI and HDI (which I describe in my third witness statement dated 20 October 2020). As a result, the funder's total pre-CPO commitment was increased from £4,294,366 to £5,243,430 and its overall commitment under the Costs Budget to £19,603,152. This increase to the Costs Limit and the Costs Budget was agreed by way of a side letter to the LFA dated 22 April 2021 which varied the terms of the LFA, replacing the previous version of the Costs Budget contained in Schedule 3 to the LFA with a revised Costs Budget. A copy of this letter is exhibited at **AJM25**.
10. The funder has subsequently agreed a further increase to its funding commitment of £2,884,000. This is the amount that Mr Evans would be required to pay if he were to incept the AAEs to his ATE insurance policies. It is therefore included in the budget as a contingency, in the event that Mr Evans take this step. However, as Mr Chopin explains in his fifth witness statement, there is some flexibility as to how this might be deployed.
11. Further, the funder has agreed to re-allocate £500,000 from the Costs Budget contingency to the pre-CPO budget to cover additional work that Mr Evans and his legal and expert teams have undertaken in light of: (i) the significant volume of new expert and witness evidence filed by the O'Higgins PCR on 23 April 2021 and 11 June 2021; (ii) the new arguments raised by the Proposed Defendants in the Joint CPO Rejoinder served on 4 June 2021 regarding compound interest and defunct companies; and (iii) additional work arising from the hearing on 21 June 2021.
12. Accordingly, the Funder's total pre-CPO funding commitment has been increased from £5,243,430 to £5,743,430 and its overall commitment under the Costs Budget has increased to

£22,487,152. An updated version of the Costs Budget is included at Schedule 3 to the amended LFA which is exhibited at **AJM24**.¹

D. Hausfeld’s pre-CPO fees

13. At paragraph 73 of his second witness statement dated 23 April 2021, Mr Evans confirmed that in light of increases to the pre-CPO costs, Hausfeld agreed to defer seeking payment of its discounted fees from the funder until after certification. As indicated in Mr Evans’ neutral statement on funding dated 29 June 2021, I confirm that Hausfeld has agreed not to seek payment of its pre-CPO discounted fees from the funder above the amount of £661,966 plus VAT. These will be sought from the Proposed Defendants insofar as they are ordered to pay them and otherwise as part of the costs payable out of undistributed damages.

E. Payment of costs out of undistributed damages

14. In my fourth witness statement dated 23 April 2021, I exhibited at AJM16 an analysis of the potential amounts that might be sought by Mr Evans out of undistributed damages in respect of his costs, under various scenarios considering potential aggregate damages awards following judgment or settlement.² I exhibit at **AJM26** an updated version of that analysis to take account of the latest updates to Mr Evans’ funding arrangements, together with other minor adjustments that are explained in the document.
15. Our intention with AJM16 was to provide the Tribunal with a general illustrative analysis of the potential treatment of undistributed damages in the case, rather than provide a basis for comparison between the PCRs in the carriage dispute. However, in Ms Hollway’s fifth witness statement dated 11 June 2021, she reproduced the analysis in AJM16 for the O’Higgins PCR under the same scenarios and explained that this would allow the Tribunal to make a “*like-for-like*” comparison.³ In fact, AJM16 would not be an appropriate basis for comparison because it includes ATE insurance costs that are not included in Mr Evans’ funding package.⁴ Accordingly,

¹ When the Costs Budget was originally prepared, Mr Evans did not disclose details of his solicitor and counsel CFAs and therefore the overall funding commitment per phase of the case was included but the breakdowns for solicitors and counsel fees set out the base fees rather than the non-contingent amounts of such fees. However, Mr Evans has subsequently disclosed details of all CFAs and the updated Costs Budget now includes a breakdown of the funded amounts of such fees per phase.

² I described this analysis at paragraphs 39-45 of my fourth witness statement.

³ Paragraph 32 of Ms Hollway’s fifth witness statement.

⁴ AJM16 includes a (pessimistic) assumption that additional ATE insurance is acquired following certification. However, Mr Evans’ position is that his current ATE insurance package is sufficient. The Proposed Defendants have not challenged the level of his ATE insurance. If required, Mr Evans will consider acquiring additional insurance at a later stage in the proceedings to the extent that it is necessary.

AJM26 is based on Mr Evans' current funding and insurance arrangements to enable a comparison to be undertaken between the two PCRs.

F. Price of funding

16. In the analysis exhibited to Ms Hollway's fifth witness statement at BAH29 and BAH30, she introduced a comparison of the 'cost of funding per £1 funded' to the PCRs, stating that it would "give the Tribunal a clear view of the 'real' cost of funding".⁵
17. Under this approach, the funder's fee is divided by its outlay under a range of outcomes for each PCR. If this is intended to compare the two funders' pricing, I do not believe this is a helpful approach because it does not control for the fact that Mr Evans and the O'Higgins PCR have different budgets. Both funders are entitled to be repaid their outlay as part of their fees payable upon success and so the outlay is part of the funding costs. Comparing the funding cost per £1 funded to different budgets would therefore suggest that the larger budget is 'cheaper', even though the absolute cost of funding is much greater.⁶
18. However, if the budgets are equalised then this methodology becomes more useful. I have therefore had prepared by Hausfeld a comparison of Bench Walk and Therium's fee structure based on an assumption that in each case the funder's outlay is £25 million and recovered costs of £20 million (i.e. roughly midpoints between the two budgets).⁷ This analysis has been checked by Adrian Chopin at Bench Walk. It has been applied to various rates of aggregate damages recovery (which, as with the earlier analysis, is based on Mr Evans' preliminary damages estimate) to identify the differences in the funders' pricing.⁸ The analysis is included at **AJM27**. It demonstrates that:
 - a. if the rate of recovery falls within a band between 100% and 34.8% of aggregate damages, Bench Walk's fees are cheaper on a 'cost per £1 of funding' basis;
 - b. Therium's fees are cheaper between a band of 34.7% and 9.2%; and
 - c. Bench Walk's fees are cheaper if the recovery is 9.1% or lower.

⁵ Paragraph 33 of Ms Hollway's fourth witness statement dated 23 April 2021.

⁶ For example, under the first scenario (100% recovery of damages on judgment), BAH29 and BAH30 represent the cost of funding for Mr Evans as more expensive than the O'Higgins PCR (£14.07 compared with £12.38), even though Therium's fee is £71,521,739 greater than Bench Walk's fee.

⁷ The amount of recovered costs is not relevant to calculating Bench Walk's fee, but Therium's fee is derived from recovered costs as well as damages.

⁸ Non-funding costs (i.e. lawyer fees and ATE premiums) have been excluded from these scenarios as they are not relevant to this exercise.

19. The analysis has then been applied to settlement scenarios, in which the estimated funder outlay and recovered costs amounts are halved.⁹ This shows that:
- a. Therium's fees are cheaper if the damages recovery is between 4.6%-26.9% of the assumed level of aggregate damages; and
 - b. in all other outcomes, Bench Walk's fees are cheaper.
20. Accordingly, whilst each funder's fee is cheaper in certain outcomes, in the majority of outcomes between 0-100% Bench Walk's fees are cheaper.

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: **5 July 2021**

⁹ As with the corresponding figures for a judgment outcome, these figures are illustrative only and the judgment figures been halved for simplicity.