

Made on behalf of: Phillip Evans
(Applicant/Proposed Class Representative)
Name of witness: Anthony John Maton
Number of statements: 3
Exhibits: AJM9 – AJM13
Date: 20 October 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

THIRD 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 two witness statements, dated 10 December 2019 ("**Maton 1**") and 17 April 2020 ("**Maton 2**"), in support of Phillip Evans' application before the Competition Appeal Tribunal (the "**Tribunal**") for a Collective Proceedings Order ("**CPO**") to pursue collective proceedings on behalf of two classes of persons who entered into certain types of foreign exchange transactions in the European Economic Area

between 18 December 2007 and 31 January 2013 (the “**Evans Application**”). Together with David Lawne, I am the partner at Hausfeld with oversight of the Evans Application.

2. This is my third witness statement in these proceedings. The purpose of this statement is to update the Tribunal on changes to Mr Evans’ funding and insurance arrangements that were made following Maton 2. In this statement, I adopt the defined terms used in Maton 1 and Maton 2.
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.
4. There are now produced and shown to me **exhibits AJM9 – AJM13** which I refer to below and which I exhibit to this statement.

A. Amendments to the Litigation Funding Agreement and additional Funder information

5. The Tribunal provisionally listed a preliminary issues hearing for July 2020 in which the Proposed Defendants to the Evans Application and to the CPO application made by Michael O’Higgins FX Class Representative Limited (the “**O’Higgins Application**”)¹ were to raise any issues relating to the funding and/or insurance arrangements of the Evans Application and/or the O’Higgins Application.
6. In advance of the July hearing, the Proposed Defendants wrote to Hausfeld on 7 May 2020 raising certain issues and requesting further information regarding particular aspects of Mr Evans’ funding and insurance arrangements. A copy of this letter is exhibited at **AJM9 [1–8]**. The parties to the Evans Application subsequently engaged in further correspondence (exhibited at **AJM9 [9-41 and 49–99]**), in which Mr Evans addressed the issues raised by the Proposed Defendants by: (i) amending certain provisions in his litigation funding agreement (the “**LFA**”) and; (ii) providing further information and commitments in respect of any liability Mr Evans may incur to the Proposed Defendants to the Evans Application in respect of adverse costs prior to any CPO being granted, and in relation to continuity of funding under the LFA, which I summarise below. Accordingly, following this exchange of correspondence, the Proposed Defendants confirmed to the Tribunal that there were no preliminary issues that they

¹ Case 1329/7/7/19: *Michael O’Higgins FX Class Representative Limited v Barclays Bank PLC & Others*.

wished to raise in respect of Mr Evans' funding and insurance arrangements and, subsequently, the Tribunal confirmed that the July hearing was vacated (exhibited at **AJM9 [100-104]**).²

Amendments to the LFA

7. As identified in Hausfeld's letter to the Tribunal dated 17 July 2020 (exhibited at **AJM9 [105-106]**), Mr Evans and his litigation funder, Donnybrook Guernsey Limited (the "**Funder**"), have agreed to provide security in respect of the Proposed Defendants' costs incurred prior to any CPO being granted in the Evans Application by way of arranging for the sum of £3 million to be paid into Hausfeld's client account (the "**Pre-CPO Security Sum**"). The Pre-CPO Security Sum will be held for the purpose of meeting any adverse costs that Mr Evans is ordered to pay, and which are incurred up to and including the determination of the Evans Application. The arrangements relating to the Pre-CPO Security Sum are further explained in a letter from Hausfeld to the Proposed Defendants dated 10 June 2020 (exhibited at **AJM9 [53-87]**) and have also been reflected in amendments made to the LFA, specifically at clauses 8.5 – 8.13, 9.3, 25.1 and Schedule 5. An amended copy of the LFA, dated 8 July 2020, is exhibited at **AJM10** (the "**Amended LFA**"). The Amended LFA also incorporates certain further amendments which I explain further at paragraph 9 below.
8. As part of these arrangements, Hausfeld has provided an undertaking to the Tribunal that: (1) it will treat the Pre-CPO Security Sum only in accordance with the terms of the LFA; and (2) if the LFA is terminated before the Evans Application is determined (and before any costs issues arising therefrom have been resolved) it will give written notice to the Tribunal and the Proposed Defendants of such termination within three business days. Hausfeld's undertakings were provided to the Tribunal by way of a letter dated 17 July 2020, exhibited at **AJM9 [105-108]**.
9. In addition to the LFA amendments addressing the Pre-CPO Security Sum arrangements, Mr Evans and the Funder have, in response to certain points made by the Proposed Defendants, amended certain terms of the LFA relating to the Funder's rights of termination and assignment. The background to these amendments is explained in Hausfeld's letter to the Proposed Defendants dated 28 May 2020 (exhibited at **AJM9 [9-41]**) and are reflected in the Amended LFA, exhibited at **AJM10**, and specifically in clauses 22, 23, 25.1 and 27.1.

² The Proposed Defendants have reserved their position in relation to the adequacy of Mr Evans' Pre-CPO security sum. That sum is explained in paragraphs 7 – 9 herein.

10. As I have indicated, these measures were considered satisfactory to the Proposed Defendants, and hence the July hearing did not proceed.

Additional information about the Funder

11. As explained in Mr Evans' first witness statement dated 10 December 2019 ("**Evans 1**"), the Funder is a wholly owned subsidiary of Bench Walk Capital LLC ("**Bench Walk Capital**") which is affiliated with Bench Walk Advisors LLC ("**Bench Walk Advisors**"), a commercial litigation funder.
12. In response to the Proposed Defendants' requests for additional information about the Funder, Mr Evans arranged for two witness statements (dated 10 and 23 June 2020) to be given by Adrian Chopin, a Managing Director of Bench Walk Advisors, on behalf of the Funder. In these statements Mr Chopin provides information about the experience and expertise of Bench Walk Advisors together with details of the funding structure for these proceedings.
13. In his second witness statement dated 23 June 2020 ("**Chopin 2**"), Mr Chopin also exhibited a draft guarantee between Bench Walk Capital and Mr Evans in which Bench Walk Capital guarantees the Funder's commitments under the LFA. That guarantee was executed on 17 July 2020 and a copy of the final version was provided to the Proposed Defendants under cover of a letter of the same date. The letter and the guarantee are exhibited at **AJM9 [109-114]**.
14. Mr Chopin also confirmed in Chopin 2 that the Funder would arrange for an appropriate third-party to provide confirmation of the Funder's ability to meet its commitments under the LFA. This confirmation was provided to Hausfeld by way of a letter from Aztec Group, a fund management and corporate services firm, and it was subsequently provided to the Proposed Defendants under cover of a letter dated 31 July 2020. The letter, and a copy of the confirmation, are exhibited at **AJM9 [115-117]**).

B. Additional ATE insurance

15. In Maton 2, I explained that Mr Evans had acquired an excess layer of ATE insurance with PartnerRe Ireland DAC ("**PartnerRe**"), taking the total level of ATE insurance for adverse costs incurred after any CPO is made in Mr Evans' favour to £14 million.
16. Mr Evans has now acquired a further £9 million of ATE insurance as follows:
 - a. a second excess layer in the sum of £4 million with HDI Global Specialty SE ("**HDI**") dated 17 September 2020 (the "**HDI Policy**") (exhibited at **AJM11**); and

- b. a third excess layer in the sum of £5 million with International General Insurance Co. (UK) Limited (“**IGI**”) dated 22 September 2020 (the “**IGI Policy**”) (exhibited at **AJM12**).
17. As a result, the priorities deed, which was exhibited to Maton 2 at Exhibit AJM7, has been amended to reflect these new ATE policies. An updated version of the priorities deed dated 19 October 2020 between Mr Evans, the Funder, the ATE insurers and Mr Evans’ lawyers is exhibited at **AJM13**.
18. Accordingly, the total level of ATE insurance for adverse costs incurred after any CPO is made in Mr Evans’ favour is now £23 million. While the Proposed Defendants have not yet provided any information in respect of their estimated costs to trial if the Evans Application is granted, I nevertheless consider that £23 million should be more than sufficient adverse costs cover for the proceedings following certification, or at the very least for a significant part of them. As I noted at paragraph 23 of Maton 2, Mr Evans will keep the level of ATE insurance cover under review and, if necessary, will acquire additional ATE insurance to ensure that there remains adequate provision for the Proposed Defendants’ recoverable costs after any CPO is made in Mr Evans’ favour.

C. Removal of funding documents from confidentiality ring

19. In Hausfeld’s letter to the Tribunal dated 2 June 2020 (exhibited at **AJM9 [42-48]**), we explained that Mr Evans had removed his funding and insurance documents from the Joint Confidentiality Ring (as defined in the Tribunal’s Directions Order dated 18 March 2020). Mr Evans took this step in particular so that information regarding his funding and insurance arrangements could be made available to members of the proposed classes on request.³
20. Accordingly, I confirm that, consistent with the above, the documents exhibited to this witness statement do not contain Outer Confidentiality Ring Information⁴. I also confirm that the only redactions applied to those documents are in respect of Mr Evans’ personal address, save in respect of the updated version of the priorities deed (exhibited at **AJM13**) where redactions have been applied in respect of the personal addresses of certain persons witnessing the deed.
21. I am aware that, given that Mr Evans’ funding and insurance arrangements have evolved during the course of the Evans Application, the documents relevant to those arrangements are located

³ The website established for the Evans Application, www.fxclaimuk.com, provides information regarding Mr Evans’ funding and insurance arrangements and states that copies of Mr Evans’ funding and insurance documents are available on request.

⁴ As defined in the Tribunal’s Joint Confidentiality Ring Order dated 18 March 2020.

in exhibits to different witness statements. In order to assist the Tribunal in navigating those documents, I have set out below a list of the relevant documents, and where they can be found:

- a. The original, unamended, LFA dated 5 December 2019 is exhibited to Maton 2 as Exhibit AJM6;
- b. The Amended LFA dated 8 July 2020 is exhibited at **AJM10**;
- c. The letter from Bench Walk Capital to the Funder and Hausfeld dated 5 December 2019 confirming that Bench Walk Capital will provide the Funder with sufficient funds to allow the Funder to comply with its obligations under the LFA is exhibited to Chopin 2 at Exhibit AMC1. The content of that letter is further explained at paragraph 11 to Mr Chopin's first witness statement dated 10 June 2020;
- d. The deed of guarantee between Bench Walk Capital and Mr Evans dated 17 July 2020, referred to in paragraph 13 above, is exhibited at **AJM9 [111-114]**;
- e. The letter from Aztec Group to Hausfeld dated 31 July 2020 which, as noted in paragraph 14 above, confirms the Funder's ability to meet its obligations under the LFA is exhibited at **AJM9 [116-117]**;
- f. Mr Evans' ATE policies⁵ are located as follows:
 - i. The primary insurance policy with Harbour Underwriting Limited, formerly Quantum Legal Costs Cover Limited (QLCC) as agent for Hamilton Insurance DAC dated 9 December 2020, is exhibited to Maton 2 as Exhibit AJM7;
 - ii. The first excess layer insurance policy with PartnerRe dated 26 March 2020 is exhibited to Maton 2 as Exhibit AJM8;
 - iii. The second excess layer insurance policy with HDI dated 17 September 2020 is exhibited at **AJM11**;
 - iv. The third excess layer insurance policy with IGI dated 22 September 2020 is exhibited at **AJM12**; and
- g. An updated version of the priorities deed dated 19 October 2020 between Mr Evans, the Funder, the ATE insurers and Mr Evans' lawyers is exhibited at **AJM13**.

⁵ For ease of review, the HDI and IGI policies are exhibited without their appendices, which comprise the earlier policies.

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: 20 October 2020