

Society of Lloyd's v Jaffray
QUEEN'S BENCH DIVISION (COMMERCIAL COURT)
(Transcript)
HEARING-DATES: 26 JANUARY 2000
26 JANUARY 2000

COUNSEL:
None stated at source

PANEL: COLMAN J

JUDGMENTBY-1: COLMAN J

JUDGMENT-1:

COLMAN J: 1. The general purpose of this order is that each party who participates as a claimant or counterclaimant on the Register but who is not a member of UNO or a former member of UNO should make an equitable contribution to the costs of pursuing the claims and counterclaims incurred and to be incurred by UNO and that such contribution should be made available to pay for UNO's legal representatives as early as practicable without,

- (i) causing undue financial hardship to any participant
- (ii) preventing those wishing to participate from so doing with the benefit of independent legal advice.

2. In order to calculate the contribution of a participant the following information is to be ascertained.

- (i) The total number of claimants/counterclaimants who are members of UNO on 21 February 2000.
- (ii) The total number of members of UNO on 21 February 2000 who are or are to be in receipt of legal aid for these proceedings.
- (iii) The total number of nonmembers of UNO on 21 February 2000 who have not formerly been members of UNO who have given notice of participation in the claims/counterclaims against Lloyd's and asked to be included on the Register.
- (iv) The disposable income and the disposable capital of each participant under (iii) and of his/her partner as defined in the Rules of the Legal Aid Board, save that the value of the home and of a reasonable motor car shall be excluded from the calculation together with an additional sum of £8,000.
- (v) The amounts in (iv) will be ascertained on the basis of an affidavit of means to be sworn and provided to the court and copied to MFB by those already on the Register forthwith and by those not yet on the Register no later than 23 February 2000, provided always that any participant who does not contend that he does not have sufficient resources to pay the amount of £17,000 need not provide any such affidavit. MFB shall not disclose the affidavit or its contents to anyone without the permission of the court.
- (vi) The maximum contribution to costs to be paid by each of the participants on the Register prior to determination of the claims/counterclaims and quantification of damages or settlement, whichever is earlier, shall not exceed whichever is the less of the amount calculated in (iv) or £17,000.
- (vii) The contribution (x) of each participant to costs which shall be payable prior to determination of the claim/counterclaim and quantification of damages or settlement payment shall be calculated as follows:

B

$X = A \times \text{-----} \text{ divide by } B$

B + C + D

Where A is the total UNO costs, B is the total number of non-UNO members on the Register on 21 February 2000 excluding former members of UNO, C is the total number of UNO members not in receipt of legal aid, and D is the total number of former UNO members on the Register on 21 February 2000.

(viii) Total UNO costs shall be the sum of (i) the costs and disbursements incurred by UNO of Michael Freeman's firm and MFB in respect of the preparation of the claim/counterclaim in these proceedings and all such costs directly incurred by UNO which would ordinarily have been solicitors' disbursements had they not been directly incurred by UNO and (ii) those costs and disbursements estimated by MFB to be likely to be incurred by it up to judgment. They shall not include any other costs.

(ix) The costs figures in (viii) shall be certified by Michael Freeman in respect of his firms' costs and by MFB in respect of its costs and UNO's costs not later than 7 February 2000. Such certification shall be notified forthwith by MFB to the participants on the Register and who register up to 21 February 2000.

3. (a) Each participant on the Register shall pay his/her cost contribution as so calculated into court into an account created for the purposes of these proceedings. Such payment shall be made within 14 days of notification of the amount due being given by the court. Any participant who wishes to withdraw from participation following such notification must do so within 14 days of notification by giving notice to MFB and Freshfields. para 12(b) of the Order of Mr Justice Cresswell of 14 January 2000 shall be varied accordingly.

(b) Any participant who does not give notification of withdrawal from the Register but who fails to pay his/her costs contribution by the expiration of such period of 14 days shall automatically cease to be a registered participant unless the court otherwise orders.

(c) Any person who ceases to be a participant under sub-para (a) or (b) of this para shall have no liability for Lloyd's costs or the UNO costs. However:

such Names will be bound by all express and implied obligations and undertakings of confidentiality in relation to documents appearing in the trial bundles, namely:

(i) the obligation not to use documents disclosed by any other party for any purpose other than for the purposes of the proceedings in accordance with CPR Rule 31.22;

(ii) the undertaking recorded in para (ii) of the order of Mr Justice Colman of 30 June 1998;

(iii) the protective order concerning attorney's reports and other confidential documents made by Mr Justice Cresswell on 12 May 1999;

(iv) the undertakings recorded in paras 5(b) and 6 of the order of Mr Justice Cresswell of 4 November 1999 and incorporated into para 2 of his order of 10 December 1999 concerning further documents to be produced by Equitas Reinsurance Limited;

(v) the protective order made on the application of London Market Claims Services Limited and Equitas Reinsurance Limited made by Mr Justice Cresswell on 10 December 1999 concerning the use of privileged and/or confidential materials at the trial.

4. In the event that a participant's claim or counterclaim succeeds, and he/she recovers damages, or is settled for a payment to him/her, he/she shall pay by way of contribution to the UNO costs the amount calculated in 2(vii) not subject to the maximum calculated in 2(vi) but less any contribution already paid before determination of the amount of damages or conclusion of the settlement and in no case shall the further amount to be paid exceed the amount of damages or settlement payment recovered by that participant. Damages and settlement amounts recovered by each participant shall be paid into court and the contribution to costs of each participant shall be paid out of the amount in court as certified by the court.

5. In the event that a participant recovers no damages by determination or settlement, the total contribution to UNO costs shall not exceed that in 2(vi). The court shall notify that participant of the amount if any of the total contribution not yet paid and that participant shall pay that amount in full to MFB within 14 days of such notification.

6. Upon final determination of liability or upon settlement the final amount of UNO costs will be determined by agreement or assessment and the contribution to costs of each participant shall be recalculated on the basis of that final amount in accordance with para 2(vii). Final payment of contribution will be adjusted by reference to the amount so calculated.

7. The amount, if any, of damages or settlement amount remaining in court after payment of the participant's total contribution to costs shall be released to him upon order of the court.

8. Master Miller or another master of the Queen's Bench Division shall be appointed to conduct an enquiry in respect of and to take an account of UNO costs and the costs contributions of participants both before and after any determination of damages or settlement, in particular the amounts and calculations in (2), (3), (4), (5), (6) and (7) and shall make all necessary orders for payments into and out of court and all other necessary directions in accordance with this order. The taking of an account by a master of UNO costs shall not involve the assessment (taxation) of those costs.

9. In the event of any issue or question arising as to the implementation of this order it is to be referred by the parties and in the first instance to the Master who may determine it himself or refer it to a judge of the Commercial Court other than Mr Justice Cresswell.

10. Nothing in this order shall exclude the right of any of the participants on the Register to apply for an assessment of UNO costs by a costs judge, but all payments of contribution required by this order to be made prior to the determination or settlement of the claim/counterclaim must be made at the time provided in this order.

11. In this Order references to the determination of the participant's claim/counterclaim are to the determination of the issue of liability of Lloyd's to that participant and of the amount of any damages that may be due to the participant and references to settlement of claim/counterclaim include the settlement of the amount of damages following a determination of liability by the court.

12. Except as specified in this Order all previous orders in these proceedings shall remain in force.

DISPOSITION:

Judgment accordingly.

SOLICITORS:

None stated at source