In the Supreme Court of Bermuda

IN THE MATTER OF A TAXATION OF COSTS
IN THE COURT OF APPEAL FOR BERMUDA (CIVIL DIVISION)

2020: No. 8

BETWEEN:

ST. JOHN'S TRUST COMPANY LIMITED

Appellant

and

(1) MEDLANDS LIMITED
(2) THE ATTORNEY GENERAL
(3) ROBERT THERON BROCKMAN
(4) BERMUDA TRUST COMPANY LIMITED
(5) HSBC PRIVATE BANK (C.I.) LIMITED
(6) MARTIN LANG
(7) GROSVENOR TRUST COMPANY LIMITED
(8) EVATT ANTHONY TAMINE
(9) DOROTHY KAY BROCKMAN

Respondents

RULING

Appearances:

Paying Party
Paul Harshaw, Canterbury Law Limited, 8th Respondent
Warren Bank, Harneys, Appellant

Entitled Parties
Ben Adamson, Conyers, 1st Respondent
Charlotte Donnelly, Carey Olsen, 4th and 7th Respondents
Sam Riihiluoma, Appleby, 5th Respondent
Laura Williamson, Kennedys, 6th and 9th Respondents

Date of Hearing: **4 September 2024**
Date Draft Ruling Circulated: **16 September 2025**
Date of Ruling: **30 September 2025**

Taxation of Bill of Costs; Costs Awarded on Indemnity Basis; Reasonableness and Proportionality; Cost of Overseas Counsel

RULING of Cratonia Thompson, Acting Registrar

INTRODUCTORY

1. This is a contested taxation of Bills of Costs (**Bills**) filed on behalf of the 1st, 4th, 5th, 6th, 7th and 9th Respondents (together the **Entitled Parties**) in January 2024 pursuant to a Ruling of the Court of Appeal on the issue of costs dated 2 November 2022 (the **Costs Ruling**). Counsel for the 8th Respondent (**Mr Harshaw**) filed and served his objections to the various Bills on 26 June 2024 (the **Objections**).

2. The Costs Ruling followed the Court of Appeal's dismissal of an appeal by the Appellant and 8th Respondent (the **Appeal**). The Court of Appeal's reasons for dismissing the Appeal were set out in its Judgment dated 22 December 2021.

3. Counsel for the 9th Respondent (**Ms Williamson**) provided in her written submissions filed in support of these Taxation proceedings a helpful synopsis of the Costs Ruling, which I have adopted for the purpose of setting out the background to these Taxation proceedings.

4. In the Costs Ruling, the Court of Appeal made the following determinations and orders:

    (1) Awarded indemnity costs on a joint and several basis against the Appellant and the 8th Respondent.

    (2) Refused any argument of the Appellant and the 8th Respondent to divide the proceedings into 'phases' with different consequences for them in respect of costs in different phases of the appeal.

    (3) Concluded that the Appellant and the 8th Respondent were to be treated in the same way for the purposes of costs as their role in the proceedings as a whole was "*indistinguishable*".

(4) Classified the Entitled Parties as **Successful Parties** and the **Other Successful Parties**. The Successful Parties were identified as the 1st, 6th and 9th Respondents, and the Other Successful Parties were identified as the 4th, 5th and 7th Respondents.

(5) Made it clear that if the costs were to be taxed, that "*duplication*", especially on the part of the Other Successful Parties (who had a minor role in the Appeal), was to be avoided.

SUMMARY OF THE ENTITLED PARTIES' BILLS

5. The Bills submitted on behalf of the Entitled Parties claim costs as follows:

Entitled Party	Total Profit Costs of Local Counsel ($)
1st Respondent	498,667.25
4th Respondent	23,486.25
5th Respondent	74,286.10
6th Respondent	612,529.71
7th Respondent	24,150.50
9th Respondent	1,175,495.45

6. The Successful Parties were each represented by leading counsel at the Appeal. The Other Successful Parties were represented at the Appeal by local counsel.

7. On 28 June 2024, the 4th and 7th Respondents each filed Amended Bills of Costs (**Amended Bills**), together with an application seeking leave to rely on the Amended Bills (the **Leave Application**). The Leave Application was listed for hearing alongside these Taxation proceedings.

8. The 8th Respondent did not oppose the Leave Application, however Mr Harshaw filed his objections to the additional costs claimed by the 4th and 7th Respondents in their Amended Bills on 5 July 2024 (**Further Objections**). Leave to rely on the Amended Bills having been granted, the costs appearing in the table shown at paragraph 5 above are the costs set out in the 4th and 7th Respondents' Amended Bills.

THE LAW

9. It is accepted that the Costs Ruling awarded costs to the Entitled Parties on an indemnity basis. The applicable law as it relates to taxation proceedings is set out in Order 62 of the Rules of the Supreme Court 1985 (the **RSC**). Order 62, rule 12 (2) of the RSC provides the following as it relates to proceedings taxed on an indemnity basis:

Order 62/12 Basis of taxation

12 (2) On a taxation on the indemnity basis all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

10. In exercising my discretion under Order 62, rule 12 (2), I must have regard to all relevant circumstances, and in particular to the following factors set out in Part II, Division I to Order 62 of the RSC (the **Order 62 Factors**):

    (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
    (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the attorney;
    (c) the number and importance of the documents (however brief) prepared or perused;
    (d) the place and circumstances in which the business involved is transacted;
    (e) the importance of the cause or matter to the client;
    (f) where money or property is involved, its amount or value;
    (g) any other fees and allowances payable to the attorney in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

11. When considering the costs to be awarded on taxation, there is a two-stage approach. First, a review of the costs globally; and secondly a review of the costs on an item-by-item basis.

12. The law as it relates to taxation proceedings is not in dispute. I am satisfied that the principles set out above govern the present proceedings.

SUBMISSIONS OF THE ENTITLED PARTIES

13. In the various written submissions filed on behalf of the Entitled Parties in support of their Bills, Counsel made reference to the applicable law, and in particular the Registrar's duty to take into consideration all relevant circumstances as well as the Order 62 Factors.

14. As to the relevant circumstances, the Entitled Parties highlighted that the Appeal concerned a dispute over who should act as trustee of the Brockman Trust (the **Trust**), a highly

valuable trust. It was submitted that in assessing the costs incurred by the Entitled Parties at the Appeal, I should take into account that:

(1) The objective in the Appeal was to seize control of the Trust; and
(2) The motivations behind the attempted seizure of the Trust have been ruled by the Court of Appeal to have been improper.

15. With reference to the Order 62 Factors, it was further highlighted by Counsel for the 1st Respondent (**Mr Adamson**) as follows:

(1) The Appeal was both a complex and novel case, in which there were 5 leading counsel.
(2) The case required experienced litigators and specialist leading counsel, with the Appeal hearing lasting three days, with eight represented parties.
(3) The evidence filed in the Appeal was extensive, spanning over 5000 pages.
(4) The business concerned a Bermuda trust, however allegations related to alleged criminal activity in the USA.
(5) The value of the claim was in the billions.

16. In addition to raising the points set out above, Mr Adamson highlighted that Medlands Limited (1st Respondent) had a fiduciary duty, as trustee, to safeguard the assets of the Trust, which were under attack.

17. It was further highlighted on behalf of the 6th and 9th Respondents that: (i) as the Protector of the Trust, Mr Lang (6th Respondent) had obligations to the Trust and its beneficiaries and could not treat the Appeal lightly; and (ii) that the importance of the cause to Mrs Brockman (9th Respondent) cannot be overstated. The written submissions filed by Ms Williamson for the 9th Respondent provide as follows:

> "*The problems caused by [the Appellant] and [the 8th Respondent] were significantly impeding the proper administration of the Trust and draining liquidity from the Trust, while its significant charitable purposes were being frustrated and its charitable pledges were (or were at risk of) going unfulfilled. The conclusion of the appeal and the appointment of [the 4th Respondent] effectively brought an end to several years of hard-fought litigation in Bermuda and brought certainty to the administration of a hugely valuable trust for the future*."[1]
>
> [Emphasis added]

[1] Paragraph 14.4 of the 9th Respondent's Skeleton Argument filed 8 July 2024

18. Bearing in mind the above, each of the Entitled Parties have argued that the costs incurred in pursuit of the Appeal were both reasonable and necessary.

OBJECTIONS AND RELEVANT FINDINGS

Global Assessment

Submissions

19. Irrespective of the circumstances set out above and the Entitled Parties' view that the costs incurred were both reasonable and necessary, it is the 8th Respondent's case that on a global assessment the costs claimed by the Entitled Parties are unreasonable. Mr Harshaw submitted the following in his written submissions:

> *"[11] Even where costs are awarded on the indemnity basis, reasonableness remains the touchstone. That is clear from the terms of RSC Order 62, rule 12(2) (all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, emphasis added) and from the Rulings of the Supreme Court in Golar LNG Ltd. v World Nordic SE [2012] Bda LR 2, Capital Partners Securities v Sturgeon Central Asia Balance Fund [2017] SC (Bda) 32 Com. and the authorities cited therein, summarised in St. Johns Trust Co. (PVT) Ltd. v Watlington et al [2023] SC (Bda) 62 Civ. at paragraphs 8 through 11.*
>
> *[12] As Kawaley CJ (as he then was) observed in Lightbourne v Thomas [2016] Bda LR 91:*
>
> > *'the practical result must be that a Bermudian taxation is governed by a construct of reasonableness incorporating requirements of proportionality which broadly correspond to the proportionality requirements more explicitly expressed in CPR 44.2(2) and 44.4.'"*[2]

20. It was further argued by Mr Harshaw as follows:

> *"[18] The reasonableness of costs claimed by the receiving parties is clearly an issue that the Court of Appeal had in mind in making the Ruling on costs that it did. At paragraph 58 of the Ruling on costs Sir Anthony Smellie wrote the following:*
>
> > *'upon taxation, if the matter reaches that stage, it would, of course be nonetheless appropriate for the taxing officer to examine the extent and reasonableness of the costs, especially as to whether there may have been avoidable duplication, and particularly as to those incurred by other successful parties who essentially took part simply as observers to the proceedings.'*

[2] Paragraph 11-12 of the 8th Respondent's Skeleton Argument filed 27 June 2024

[19] Whilst that qualification exists in all civil litigation in which there are multiple defendants or respondents, that is an especially poignant caution in this case.

[20] The reason for the caution expressed by Sir Anthony Smellie ought to be obvious. All of the receiving parties are acting on behalf of the A. Eugene Brockman Charitable Trust (or claimed to be doing so) and all of the receiving parties are indemnified by the A. Eugene Brockman Charitable Trust.

…

[24] In circumstances where all of the receiving parties are indemnified from the same source and all are arguing for the same relief, it is quite unreasonable for more than one party to raise the same points to be submitted over and over again."[3]

Findings

21. On a global assessment, I would accept that the costs claimed by the Entitled Parties appear disproportionate, and that the costs should be taxed down accordingly. Notably, the total costs claimed by each Entitled Party differs, with the 9th Respondent claiming significantly higher costs than the remaining respondents. I have also noted that the costs claimed by the 9th Respondent were largely incurred by their overseas counsel.

22. While I am mindful that the 9th Respondent took a primary role in the proceedings, I agree that a claim for costs in excess of $1.7 million dollars cannot be considered reasonable in the circumstances, and the 9th Respondent's costs shall be taxed down accordingly. As to the remaining Respondents, I am also satisfied that their costs should be taxed down, but under other heads of objection as will appear later in this Ruling.

Item-by-Item Assessment

23. Mr Harshaw also raised detailed objections on an item-by-item basis to each Entitled Parties' Bill under various heads. Those heads of objections are set out below:

    (1) More than one counsel
    (2) Multiple sets of lawyers
    (3) Reading-in
    (4) Duplication of work
    (5) Excessive time recorded
    (6) Conflated time entries

[3] Paragraphs 18-20 and 24 of the 8th Respondent's Skeleton Argument filed 27 June 2024

(7) Vague narratives
(8) Time spent on matters unconnected with the appeal
(9) Administrative matters
(10) Legal research

24. Each objection is addressed in turn below.

Objection 1: More than One Counsel

Submissions

25. In support of this head of objection, Mr Harshaw referred to Order 62, Part II, Division I, rule 2 of the RSC, which provides as follows:

> ***Fees to counsel***
>
> *2 (1) No fee to overseas counsel who has been specially admitted as an attorney shall be allowed unless –*
> *(a) before taxation its amount has been agreed by the attorney instructing overseas counsel; and*
> *(b) before taxation a fee note signed by overseas counsel or his clerk is produced.*
>
> *(2) No costs shall be allowed in respect of more than one counsel appearing before the court unless the judge or registrar hearing the matter has certified the attendance as being proper in the circumstances of the case*."
>
> [Emphasis added]

26. It was submitted that the provisions set out above clearly indicate that in order for a receiving party to recover the costs of overseas counsel, the receiving party must first produce a fee note. In addition, no costs shall be allowed in respect of more than one counsel appearing before the court, unless a Judge or the Registrar has certified the attendance of more than one counsel as proper.

27. Taking the above into account, Mr Harshaw argued that the Entitled Parties have either (i) sought to recover the costs of leading counsel when no fee note has been produced; and/or (ii) have sought to recover the costs of more than one counsel appearing at the Appeal in the absence of a certificate certifying the attendance as proper. In the circumstances, Mr Harshaw submitted that these costs should be disallowed.

28. Mr Harshaw's objections to the appearance of more than one counsel at the Appeal was raised with the Court of Appeal prior to the Taxation hearing. Mr Harshaw invited the Court

to reject the Entitled Parties' request for certification of more than one counsel at the Appeal. The Court provided its determination on 15 July 2024 as follows:

> "*The Court has considered the Appellant's request in correspondence for the refusal of certificates for two counsel and the responses of counsel for the respondents, to this request.*
>
> *The Court is satisfied that apart from Mrs. Brockman [9th Respondent], those respondents who instructed leading counsel for the appeal did not need to do so. They could instead have just as effectively, supported Mrs. Brockman's response.*
>
> *The fact that the submissions of the respondents were largely over-lapping, strongly supports this assessment.*
>
> *Accordingly, the Court certifies the need for two counsel in the case of Mrs. Brockman but refuses such certification in the cases of the other respondents*."

29. As set out above, only the 9th Respondent was granted a certificate for more than one counsels' attendance at the Appeal hearing. Although a fee note had not been produced when the 9th Respondent's Bill was filed, a fee note was subsequently produced in advance of the Taxation hearing. Therefore it was submitted by the 9th Respondent that this "*technical point*" should no longer be pursued.

Findings

30. I am satisfied that the 9th Respondent is entitled to recover the costs incurred for their leading counsel's attendance at the Appeal hearing, along with the attendance of local counsel. The remaining Respondents shall be entitled to recover the costs of one (1) counsel's attendance at the Appeal as follows:

    (1) Those parties that engaged leading counsel at the Appeal hearing (1st and 6th Respondents), will be permitted to recover the costs of their leading counsel's attendance, and the costs incurred by local counsel shall be disallowed.

    (2) Those parties represented by local counsel at the Appeal hearing (4th, 5th and 7th Respondents) shall be entitled to recover the costs of attendance of one (1) local counsel. Costs incurred for the attendance of any additional local counsel shall be disallowed.

Objection 2: Multiple sets of lawyers

Submissions

31. Separate to the objection above, Mr Harshaw also highlighted that the Entitled Parties have engaged multiple sets of lawyers. Referring to the case of *Re Extraordinary Mayoral Election, Grant v Medeiros* [2008] Bda LR 28 (***Re Extraordinary***), Mr Harshaw argued that the Entitled Parties should not be entitled to recover the costs incurred for what amounts to "*a small army of lawyers*".

32. Ground CJ (as he then was) commented as follows at paragraph 16 of *Re Extraordinary*:

> *"While the third respondent may have had good reasons of her own for talking to two sets of lawyers, the losing party should not be obliged to pay for that, even on a taxation on an indemnity basis. One set of these costs, should, therefore, be disallowed."*

33. Mr Harshaw also referred to the case of *Kazakhstan Kagazy plc v Zhunus* [2015] EWHC 404 (Comm) (***Kazakhstan***), which was cited with approval in *St. Johns Trust Co. (PVT) Ltd. v Watlington et al* [2023] SC (Bda) 62 Civ. (***St Johns***). Legatt J (as Lord Legatt then was) observed in *Kazakhstan* as follows*:*

> *"In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone is not the amount of costs which it was in the party's best interests to incur, but the lowest amount which it could reasonably have expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceedings or otherwise causing costs to be incurred, and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests."*[4]

34. It was highlighted by Mr Harshaw that the Court in *St. John's* emphasized the following words from the passage above:

> *"**The touchstone is not the amount of costs which it was in the party's best interests to incur, but the lowest amount which it could reasonably have expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's***

[4] Paragraph 13 of *Kazakhstan Kagazy plc v Zhunus* [2015] EWHC 404 (Comm)

own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceedings or otherwise causing costs to be incurred, and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests*."*[5]

[Emphasis added]

35. It is the 8th Respondent's case that in accordance with the above, those Entitled Parties who have claimed costs for multiple sets of attorneys are entitled to recover only one set of costs. Unsurprisingly, the Entitled Parties disagree. As the position differs for each party, I have set out the relevant Entitled Parties' submissions on this head of objection in turn.

1st Respondent: Two sets of solicitors

36. The 1st Respondent has claimed costs incurred by MacFarlanes (a UK based firm) totaling £187,618, as well as costs incurred by Conyers Dill & Pearman (**Conyers**) totaling $140,113.50. For completeness, it is noted a further £99,225 is claimed in respect of leading counsel (Robert Ham KC) fees.

37. The 8th Respondent objects to the costs incurred by MacFarlanes on the basis that MacFarlanes are London solicitors, based in and operating from England. It was submitted by Mr Harshaw on the 8th Respondent's behalf that the Appeal had no legal or factual connection with England. Therefore, the costs incurred by MacFarlanes cannot be justified and should be disallowed in their entirety.

38. It is the 1st Respondent's case that the engagement of MacFarlanes was both reasonable and necessary. At the Appeal, the Appellant and 8th Respondent argued that Conyers were '*compromised*' and should not have been representing the 1st Respondent at all[6]. In the circumstances, Mr Adamson argued that Conyers had no choice but to instruct new or additional attorneys to work alongside them, and that I should tax the costs incurred in the usual way.

6th Respondent: Three Specialist Counsel and Local Attorneys

39. The 6th Respondent has claimed costs for 3 specialist counsel at Serle Court (a UK based Barristers Chambers) totaling $349,371.83, as well as costs incurred by local counsel at Kennedys totaling $255,198. The 8th Respondent objects to the costs incurred by counsel at Serle Court on the basis that the 6th Respondent has offered no explanation as to why the

[5] Paragraph 7 of *St. Johns Trust Co. (PVT) Ltd. v Watlington et al* [2023] SC (Bda) 62 Civ.
[6] Paragraph 61 of the Appellant's Skeleton Argument in the Appeal

advice of 3 specialist counsel was needed to pursue the Appeal. It was highlighted that these costs are claimed in addition to the costs claimed by local counsel (Kennedys), which are attributable to 3 partner level attorneys. Mr Harshaw argued that one set of these costs should be disallowed in their entirety.

40. In response, Ms Williamson noted that many of the parties to these proceedings had onshore law firms in addition to their local counsel, including the 8th Respondent who instructed Mischon De Reya. As to engagement of counsel at Serle Court, it was highlighted that the 6th Respondent instructed two leading counsel (Richard Wilson KC and John Machell KC) and junior counsel, Daniel Fritz. Although two leading counsel were instructed, it was highlighted that their time did not overlap as John Machell KC took over from Richard Wilson KC.

9th Respondent: Multiple and Un-necessary Counsel

41. The 9th Respondent has claimed costs for overseas counsel at Latham & Watkins LLP (a firm based in the United States) (**L&W**), two leading counsel (Elspeth Talbot-Rice KC and Francis Tregear KC) from XXIV Old Buildings, and counsel at Hurrion & Associates (**Hurrion**).

42. Mr Harshaw argued that the 9th Respondent's engagement of L&W cannot be justified given that there were no matters of American law in issue on the Appeal. It was submitted that the engagement of L&W was neither necessary nor reasonable, and that these costs should be disallowed in their entirety.

43. The 9th Respondent does not accept that there were no matters of American law in issue at the Appeal. On the contrary, it was submitted that L&W were instructed to deal with the US aspects of the disputes concerning the Trust (which the 9th Respondent argues were many) and to identify a suitable new trustee for the Trust. Given the identification of a suitable new trustee effectively resolved the Appeal, it is the 9th Respondent's case that L&W's work was plainly relevant to the Appeal, and that rather than disallowing the costs incurred entirely, I should tax L&W's fees in the usual way.

44. In support of their individual submissions set out above, the Entitled Parties referred to the Ruling in *St. Johns*. It was argued that in cases of this nature (i.e. high-value and complex), it is perfectly reasonable to engage overseas counsel and that overseas counsel would be supported by a junior. It was then submitted that the approach taken by Registrar Wheatley (**Wheatley R**) in *St. Johns* was sensible, and should be replicated in these proceedings. Wheatley R determined as follows at paragraph 28 of *St. Johns*:

> *"[28] Taking into consideration the above as well as reviewing the time entries of Mishcon, it appears that Mishcon did a large portion of the drafting and preparation for this matter and as such it would be difficult to disallow the entirety of the costs claimed in relation to their fees. Generally, I take no issue with Cabarita employing overseas Counsel in this matter which has become a more frequent occurrence over the last decade. Therefore, in these circumstances, I do not accept that all of Mishcon's fees should be disallowed in their entirety. Having said this, I do accept that Mishcon's fees should be taxed down, but should be done so in considering other grounds of objections which will be addressed below.*
>
> [Emphasis added]

Findings

45. Notably, the parties in *St. Johns* are the same parties in the present proceedings. That being the case, it was argued by the 1st Respondent that it would be "*unfortunate, and confusing to say the least, if the Registrar adopted different approaches to costs rulings in the same litigation*"[7]. I agree, and accept this submission. It is undeniable that the use of overseas counsel in cases such as the present has become commonplace, with overseas counsel often carrying out a large portion of the drafting and preparation. I am therefore satisfied that it is reasonable for local counsel to instruct overseas counsel, particularly in high-value complex matters such as the present.

46. Bearing this mind, rather than disallowing the costs incurred for overseas counsel, or additional fee earners in their entirety, I am satisfied that the costs should be assessed, bearing in mind all relevant circumstances, and the Order 62 Factors. Where the costs are determined to be reasonable, those costs should be allowed. Likewise, any costs deemed unreasonable should be disallowed.

47. I also accept that in assessing the reasonableness of any costs incurred for multiple attorneys, it is likely those costs will be subject to deduction, but under other heads of objections (i.e. duplication). In *St. Johns*, Wheatley R reduced the costs incurred by Mishcon by 50%. In the present proceedings, I am satisfied that the costs claimed by the 1st, 6th and 9th Respondents in respect of their overseas lawyers should be taxed down in the same manner.

Objection 3: Reading-in

Submissions

[7] Paragraph 7.4 of the 1st Respondent's Skeleton Argument filed 3 July 2024

48. The 8th Respondent raised this objection in relation to the costs claimed by the 1st, 6th and 9th Respondents. As to the costs claimed by the 1st Respondent, Mr Harshaw highlighted that approximately 30 hours (or the equivalent of £15,800 in fees) has been claimed for reading-in by lawyers at MacFarlanes. It was submitted that no explanation has been given on the necessity for MacFarlanes to be engaged in the Appeal, and in turn the reasonableness of the costs incurred for reading-in. In the circumstances, Mr Harshaw submitted that the costs should be disallowed.

49. The 1st Respondent's explanation on the engagement of MacFarlanes is set out in paragraph 36 above. On the specific issue of reading-in, it was reiterated that the solicitors at MacFarlanes were instructed following the allegation by the Appellant and 8th Respondent that Conyers should not represent the 1st Respondent, and therefore would need time to read-in. On this basis, the 1st Respondent argues that the costs should be allowed. I agree, however the costs claimed must be reasonable, and 30 hours for reading-in is, in my view, excessive. These costs shall be reduced to a total of 10 hours.

50. As to the costs claimed by the 6th Respondent, Mr Harshaw highlighted that costs have been claimed for reading-in by the same attorneys who were a party to the proceedings in the Supreme Court giving rise to the Appeal. It was argued that there should be no reason for the attorneys to be reading-in, and that those costs should be disallowed as a result. I agree, and all costs claimed by the 6th Respondent for reading-in shall be disallowed.

51. As it concerns the 9th Respondent, this objection is expressly limited to reading-in before the request for an enlargement of time was granted, which is said to have been on 24 September 2020. Ms Williamson argued that this objection is hopeless given that the first time entry claimed in the 9th Respondent's Bill is from after 24 September 2020. In fact, the first item on the 9th Respondent's is dated 9 November 2020, therefore I would agree that the 8th Respondent has not made out its case in this regard.

Objection 4: Duplication of Work

Submissions

52. Mr Harshaw argued that all duplication of work claimed in any of the Entitled Parties' Bills should be disallowed. In response, the respective Entitled Parties argued that a 'team-approach' is now an accepted and inevitable part of modern litigation. This is particularly the case in complex, high-value disputes such as the case at hand. It was also highlighted that where attorneys have adopted a team approach, it does not necessarily result in duplication.

53. Bearing in mind the Costs Ruling, as well as the Court of Appeal's comments on the certification of two counsel at the Appeal hearing, I am mindful that duplication of work is to be avoided. This is especially the case on the part of the Other Successful Parties, who had a minor role in the Appeal.

54. To illustrate the duplication of work that the Court of Appeal cautioned about, Mr Harshaw referred to instances where members of the 9th Respondent's legal team were communicating with Kiernan Bell, a director of Medlands Limited. It is argued that this is plainly duplicative as Medlands Limited were represented by Conyers on the Appeal. It is further argued that the same principle applies to communication by the 9th Respondent's legal team with other respondents and parties.

Findings

55. I am satisfied that adopting a team approach is now an accepted and inevitable part of modern litigation, particularly in high-value, complex litigation. I am also satisfied that this approach does not automatically result in duplication of work. To ensure that there has been no duplication of work, a careful review of each narrative is required. Where it has been determined that work has been duplicated, I am of the view that those costs should be disallowed accordingly.

56. I am also of the view that where there are multiple parties to an action that are represented by separate counsel there is an inherent risk that work will be duplicated. This is particularly the case where parties are pursuing the same cause of action or defence, as was the case in the present proceedings. I am satisfied that the paying party should not be obligated to bear the brunt of these duplicated costs, even on taxations on an indemnity basis. Notably, the Court of Appeal has cautioned against this in the present proceedings, and I am satisfied that where this has occurred the duplicated work must be disallowed accordingly.

57. Having reviewed each Bill, I am satisfied that work has been duplicated in one or more of the following instances: (i) where work carried out by leading counsel has been duplicated by local counsel, or vice versa; (ii) where two or more attorneys at the same firm have carried out the same work; or (iii) where work has been duplicated by counsel representing separate parties in the manner cautioned against by the Court of Appeal.

58. Rather than disallow the costs incurred by the Entitled Parties that fall under this head of objection on an item-by-item basis, I have taken the practical approach adopted by Wheatley R in ***St. Johns*** and have applied a global reduction to the costs claimed for overseas counsel (where applicable) and local counsel.

Objection 5: Excessive Time Recorded

Submissions

59. Further, or in the alternative to other grounds of objection, Mr Harshaw argued that an excessive amount of time has been claimed by the Entitled Parties in relation to attendances, telephone calls, e-mail messages, and reviewing documents.

60. In response, the 1st, 6th and 9th Respondents argued that the costs claimed in their respective Bills are not excessive when compared to the costs incurred by the 8th Respondent's company (**Cabarita**) in separate proceedings. Notably, Cabarita was the receiving party in *St. John's*, where Wheatley R was tasked with taxing the costs incurred by Cabarita on an indemnity basis. The proceedings involved a three-day set-aside hearing involving multiple silks, and Cabarita sought to recover costs of $1.25 million. The costs incurred by the 1st, 6th and 9th Respondents do not exceed the $1.25 million sought by Cabarita. Therefore, it was submitted that the costs claimed are not excessive.

Findings

61. I have accepted that on a global assessment the costs claimed by the Entitled Parties, particularly the 9th Respondent, appear disproportionate. That said, it is my view that these excessive costs fall under other heads of objection, such as duplication, and I am satisfied that the costs should be taxed down accordingly using the practical approach adopted by Wheatley R in *St. Johns*.

Objection 6: Conflated Time Entries

Submissions

62. It is the 8th Respondent's case that many time entries conflate different tasks so that it would be mere speculation to seek to separate what might be legitimate and what ought to be disallowed. Mr Harshaw argued that such conflated time entries make it impossible to determine whether the time claimed for all items in the time entry are reasonable in amount and reasonably incurred.

63. In response, it was submitted by the Entitled Parties that in litigation of this sort it is reasonable to have time entries that cover multiple tasks, and that this is generally more efficient and cost-effective, as otherwise time is wasted billing items individually.

Findings

64. Generally, rather than disallowing conflated (or combined) time entries in their entirety, I am of the view that such items are to be assessed by the Registrar and taxed accordingly. Given the submissions of the Entitled Parties in this regard, I am satisfied that rather than disallowing the costs that fall under this head of objection on an item-by-item basis in their entirety, the items should be assessed and taxed accordingly.

Objection 7: Vague Narratives

Submissions

65. Under this head, Mr Harshaw argued that the narratives in certain Entitled Parties' Bills are deficient, and the corresponding costs claimed ought to be disallowed or heavily discounted as a result. Mr Harshaw submitted as follows:

> "*Narratives on Bills of Costs must be sufficiently particularized in order for the paying party and the Registrar to identify the work performed in order to judge the propriety, reasonableness and necessity of the work performed*."

66. It is further argued that the narratives in the Entitled Parties' Bills do not provide sufficient detail to allow the 8th Respondent or the Registrar to:

(1) Identify with any certainty the subject matter of any –

(a) work performed,
(b) recorded attendances,
(c) e-mail messages, or
(d) review of documents,

in order to know whether claimed profit costs relate to these proceedings; and

(2) Determine whether the time spent was reasonable and / or necessary.

67. In response, the written submissions filed on behalf of the 4th and 7th Respondents provided as follows:

> "*It is denied that further information ought to be provided in the narratives as to do so risks waiving professional legal privilege in relation to [s]ome of the entries*

and for the other entries the context in which the emails are being sent and received is clearly in connection with the upcoming Appeal hearing and the immediate aftermath. The [costs] have patently been reasonably incurred."[8]

68. The written submissions filed on behalf of the remaining Entitled Parties similarly argued that the narratives provided in their respective Bills are sufficient to enable the 8th Respondent and the Court to ascertain what is being claimed and that consequently this objection is baseless.

Findings

69. It is to be noted that this head of objection was raised in *St. John's* and it was determined by Wheatley R that any narrative that is vague should be disallowed. I agree with this approach, however having reviewed each Bill, I consider the narratives provided to be reasonably sufficient. Therefore, rather than disallow the costs identified as falling under this head of objection in their entirety, the costs shall be taxed in the usual way as appears later in this Ruling.

Objection 8: Time Spent on Matters Unrelated to Appeal

Submissions

70. It is the 8th Respondent's case that time spent on matters unconnected with the Appeal, or on the Supreme Court proceedings giving rise to the Appeal, ought not to be allowed. As the position differs for each party, I have set out the relevant Entitled Parties' submissions on this head of objection in turn.

1st Respondent

71. Mr Harshaw argued that the costs incurred by the 1st Respondent relating to Zobec Management are matters relating to the management of a company, not the Appeal and should be disallowed. It was argued in response, that Zobec provided administrative services to the Trust. Further, given that one of the issues was whether administration of the Trust should pass from the 1st Respondent to a new trustee, discussions with Zobec were necessary and related to the appeal, particularly as the Court of Appeal expected submissions on this point.

5th Respondent

[8] Paragraph 19(b) of the 4th and 7th Respondent's Skeleton Argument filed 8 July 2024

72. Mr Harshaw argued that any costs claimed in the 5th Respondent's Bill relating to Wakefield Quin should be disallowed, on the basis that Wakefield Quin did not represent any party to the Appeal. At the taxation proceedings, it was conceded that these costs are not within the scope of the Appeal and are no longer being pursued.

6th Respondent

73. This objection was raised in relation to items 436, 437 and 438 of the 6th Respondent's Bill. The 6th Respondent conceded that these costs are not recoverable and these costs are no longer being sought.

9th Respondent

74. This objection was considered as a preliminary issue in relation to costs claimed by the 9th Respondent in Supreme Court proceedings No. 476 of 2020 (the **476 Proceedings**), following a request made by letter to the Court by Hurrion & Associates. Clarification was sought on whether costs incurred in the 476 Proceedings were included in the Costs Ruling. In response, the Court of Appeal stated as follows:

> *"The Court has considered the representations made in Hurrion's letter dated 30 May 2024 as well as the representations made in correspondence by other parties attached to that letter. It has reconsidered the relevant judgments and orders including the 2 February 2021 Order, the 22 December 2021 Judgment and [the Costs Ruling]*.
>
> *Having done so, the Court of Appeal states that it did not intend to include, and did not include, in its order for costs on Appeal 2020: No. 8, Mrs Brockman's costs of and incidental to the new proceedings brought by Mrs Brockman in the Supreme Court in Case No. 476 of 2020. No submissions were made by or on behalf of Mrs Brockman to that effect on the appeal… If Mrs Brockman wishes to obtain an order in respect of her costs of the 476 Proceedings, she will need to do so in those proceedings.*
>
> *Accordingly, the application in Hurrion's letter dated 30 May 2024 for clarification is dismissed."*

75. Given the Court of Appeals determination as set out above, the 9th Respondent conceded that the costs associated with items 24, 38, 68, 92–96, 99, 100 and 221 of her Bill are not recoverable, and these costs are no longer being pursued.

76. In addition, Mr Harshaw raised an objection to the inclusion of costs related to the 9th Respondent's application to be joined in these proceedings (the **Joinder Application**). Reference was made to the Order of 18 January 2021 in this regard, which states that "*there*

be no order as to costs". The 9th Respondent conceded to this objection and items 255, 257 and 258 of the 9th Respondent's Bill are no longer being sought.

77. As to the remaining costs identified by the 8th Respondent as being unconnected to the Appeal, the 9th Respondent did not accept that those costs are not recoverable and invited the Court to assess those costs in the usual way.

Findings

78. Costs claimed for matters unconnected to the Appeal are not recoverable. I am satisfied that the 5th, 6th and 9th Respondents have identified those costs claimed in their respective Bills that are not recoverable, and those costs shall be disallowed accordingly. As to the remaining costs identified by the 8th Respondent as falling within this category, those costs shall be assessed in the usual way.

Objection 9: Administrative Matters

Submissions

79. Mr Harshaw argued that work involving photocopying or uploading documents, the preparation of bundles, and like administrative tasks are not recoverable, even on the indemnity basis, as they are included in a firm's overhead charges. It is submitted that all costs of this nature claimed by any of the Entitled Parties should be disallowed.

80. Following the decision of Ground CJ in *Golar LNG Ltd. v World Nordic SE* [2012] Bda LR 2 (***Golar***), it is an established practice in taxation proceedings that photocopying and printing are not allowable costs and are not pursued by the Entitled Parties. As to the preparation of bundles, the 1st and 6th Respondents both argued that the costs incurred are allowable, owing to the size of the physical bundles.

Findings

81. The recoverability of costs for the preparation of bundles was considered in *St. Johns*[9]. In line with the decision of Wheatley R in that Ruling, I have disallowed any costs claimed by the Entitled Parties associated with the preparation of bundles. By way of an example, this includes items 30, 57, 128, 132, 134, 137, 138, 140, 143, 145 and 151 of the 6th Respondent's Bill.

[9] Paragraph 75 of *St. Johns Trust Co. (PVT) Ltd. v Watlington et al* [2023] SC (Bda) 62 Civ.

82. For completeness, it is noted that the following items of the 6th Respondent's Bill are conceded as falling within the category of administrative tasks, and those items have been disallowed accordingly – items 17, 62, 67, 71, 81-82, 131, 139, 147, 149-150, 153 and 155.

Objection 10: Legal Research

83. This objection was raised in relation to the 9th Respondent's Bill of Costs. Referring to the case of *Golar* in support, the 8th Respondent argued that legal research is not normally an allowable cost on taxation, even on an indemnity basis. Ground CJ stated the following at paragraphs 13 and 14 of *Golar*:

> *"[13] As to the law, it is not usual to allow legal research, at least on routine issues:*
>
> *'Time spent considering the law and procedure is usually non-chargeable and the higher the expense rate, the more law and procedure the fee earner is expected to know…"*
>
> *"[14] I do accept that this case had some novel elements – the statutory provisions seem to be unique to Bermuda, and the Applicant raised a series of potentially difficult issues which had to be dealt with. Nonetheless, legal research as an element of charge should be constrained, particularly for high fee earners who are entitled to charge a high fee precisely because they are experienced and presumed to know the law*."
>
> [Emphasis added]

84. On this basis, Mr Harshaw argued that any costs charged by the 9th Respondent for legal research should be disallowed. At the taxation hearing, Ms Williamson confirmed that the 9th Respondent is no longer pursuing recovery of the costs claimed for research, save in relation to item 438 of their Bill where the research was specifically requested by leading Counsel, Francis Tregear KC. It was submitted that the research requested was out of the ordinary, and therefore recoverable.

85. Bearing in mind the established practice as set out above in *Golar*, and also the decision of Wheatley R in the *St. Johns*, I too am of the view that all costs claimed for research by the 9th Respondent should be disallowed. This would include the costs conceded by the 9th Respondent, and also item 438, which records the costs claimed in relation to research requested by Francis Tregear KC. I do not accept that this item is recoverable, as Francis Tregear KC is considered a specialist in his field, is presumed to know the law, and is entitled to charge a higher fee as a result.

SUMMARY OF FINDINGS

Global Assessment

86. I have considered the costs claimed by the Entitled Parties both globally, and on an item-by-item basis. I am satisfied that when considered in the round the costs claimed by the Entitled Parties, particularly the 9th Respondent, are disproportionate and should be taxed accordingly. I have applied a global reduction to each Entitled Parties' Bills as appears later in this Ruling.

Item-by-Item Assessment

87. I have set out earlier in this Ruling my findings as it relates to the individual objections raised by the 8th Respondent to the Bills. For completeness, those findings are summarized below.

Objection 1: More than One Counsel

88. The 9th Respondent is entitled to recover the costs incurred for their leading counsel's attendance at the Appeal hearing, along with the attendance of one (1) local counsel. The remaining Respondents (1st, 4th, 5th, 6th and 7th Respondents) shall be entitled to recover the costs of one (1) local counsel's attendance at the Appeal.

Objection 2: Multiple Sets of lawyers

89. I am satisfied that it is reasonable to engage overseas lawyers, particularly in high-value, complex litigation such as the present. That said, the costs incurred must be reasonable and necessary. I have reviewed the costs claimed by the 1st, 6th and 9th Respondents, who all engaged overseas lawyers. In line with the approach adopted by Wheatley R in *St. Johns*, I accept that the costs claimed for overseas lawyers should be taxed down in the same manner under other heads of objection, namely duplication of work.

Objection 3: Reading-in

90. The costs claimed for reading-in shall be taxed as follows:

    (1) The costs claimed by the 1st Respondent shall be reduced to 10 hours total.

    (2) The costs claimed by the 6th Respondent shall be disallowed.

Objection 4: Duplication of Work

91. While I am satisfied that adopting a team approach is now an accepted approach in modern litigation, I am also satisfied that where it has been determined that work has been duplicated those costs must be disallowed. Having reviewed each Bill, I am satisfied that work has been duplicated, particularly where the parties have engaged overseas counsel. Rather than disallow the costs incurred by the Entitled Parties that fall under this head of objection on an item-by-item basis, I have taken the practical approach adopted by Wheatley R in *St. Johns*, and have applied a global reduction to the costs claimed as appears later in this Ruling.

Objection 5: Excessive Time Recorded

92. When considered in the round, I am satisfied that the total costs claimed by the Entitled Parties are disproportionate, and that the costs should be taxed down accordingly. Using the practical approach adopted by Wheatley R in *St. Johns*, I have applied a global reduction to the costs claimed by each Entitled Party to ensure the costs recovered are reasonable as a whole.

Objection 6: Conflated Time Entries

93. I am satisfied that the items identified as falling within this category of objection should be assessed in the usual way, and taxed down accordingly. I have taken these items into account when applying the global reductions to each Bill.

Objection 7: Vague Narratives

94. I consider the narratives provided in each Bill to be reasonably sufficient. I am satisfied that the costs claimed should be assessed in the usual way, and taxed down accordingly. I have taken these items into account when applying the global reductions to each Bill.

Objection 8: Time Spent on Matters Unconnected to the Appeal

95. I am satisfied that the costs conceded by the 5th, 6th and 9th Respondents as irrecoverable on the basis that those costs are unconnected to the Appeal are not recoverable, and those costs shall be disallowed accordingly. As to the remaining costs identified by the 8th Respondent as falling within this category, I am satisfied that those costs should be assessed in the usual way, and taxed down accordingly. I have taken these items into account when applying the global reductions to each Bill.

Objection 9: Administrative Matters

96. In line with the decision of Wheatley R in the *St. Johns*, all costs claimed by the Entitled Parties related to photocopying and printing, as well as the preparation of bundles have been disallowed.

Objection 10: Legal Research

97. In line with the established practice set out in the case of *Golar*, all costs claimed by the 9th Respondent for legal research have been disallowed.

DECISION ON TAXATION

98. I have set out above my findings following a global assessment of the costs claimed by the Entitled Parties, as well as my findings regarding the individual objections raised by the 8th Respondent. In setting out those findings, I have identified specific entries in the Bills that I have allowed or disallowed. As to the remaining items set out in the Bills, I have considered those costs having regard to all relevant circumstances, including the Order 62 Factors. I am satisfied that a global reduction should be applied to those remaining costs as set out below.

	Global Reduction	
Entitled Parties	*Local Counsel*	*Overseas Counsel*
1st Respondent	15%	50%
4th Respondent	15%	-
6th Respondent	15%	50%
5th Respondent	15%	-
7th Respondent	15%	-
9th Respondent	15%	50%

99. In applying these reductions, I have also taken into consideration each Entitled Parties' role in the Appeal (i.e. whether the party entitled is a Successful Party or Other Successful Party), the Court of Appeal's caution that duplication is to be avoided, and that the costs are to be assessed on an indemnity basis.

Costs of Taxation

100. I have considered the costs to be allowed having had regard to Part II Division II Item 5 to Order 62 of the RSC, which allows for costs in respect of taxation. This may include the preparation of the bill of costs, as well as preparing for and attending the taxation. Whilst

each Entitled Party attended the Taxation hearing and are seeking their costs in this regard, only the 4th, 7th and 9th Respondents have claimed costs for the preparation of the Bill.

101. Notably, the costs claimed by the 4th and 7th Respondents for preparing the Bill are nominal, and I have allowed those costs accordingly. The costs claimed by the 9th Respondent for preparing the Bill, which in my view includes drafting the Bill, reviewing invoices in preparation for the Bill, work in relation to the "*taxation application*", emails, internal meetings and discussions prior to the filing of the Bill, are entirely disproportionate. In line with the decision of Wheatley R in *St. Johns*, I have allowed 7 hours of Sarah-Jane Hurrion's time and all other costs claimed by the 9th Respondent for preparation of the Bill shall be disallowed.

102. As to the costs incurred for preparing for and attending the taxation hearing, which would include the drafting of any submissions, each Entitled Party shall be entitled to recover 5 hours of the attorneys' time who appeared on their behalf.

103. If any party wishes to raise an objection on the costs allowed on this Taxation, the party objecting must file their objections within 14 days of this Ruling, following which a determination will be made on the papers.

Disbursements

104. Where costs have been claimed for fees due to the Registry, i.e. revenue stamps, the Entitled Party shall recoup those costs. Any costs claimed for courier charges, research materials or transcripts are disallowed.

CONCLUSION

105. Counsel for the Entitled Parties are invited to submit a Revised Bill of Costs on behalf of their client(s) taking into effect this Ruling, and to agree a form of order for my consideration.

DATED this **30th** day of **September 2025**

THE SEAL OF THE SUPREME COURT OF BERMUDA
SIGNED

CRATONIA THOMPSON, ACTING REGISTRAR