

BARBADOS

Suit No: CV 1639 of 1999

IN THE HIGH COURT OF JUSTICE

CIVIL DIVISION

BETWEEN

WILLIAM EVERETT LOCKE, JR - PLAINTIFF

AND

BELLINGDON LTD - 1st DEFENDANT
EASTERN RESORTS LTD - 2nd DEFENDANT
PARADISE BEACH LTD - 3rd DEFENDANT
~~PATRICK LYNCH - 4th DEFENDANT~~
~~GORDON STEWART - 5th DEFENDANT~~
SANDALS RESORTS INT'L LTD - 6th DEFENDANT

*Before Ms. Maureen Crane-Scott, Q.C., Registrar of the Supreme Court
[In Chambers]*

*Messrs. G. Clyde Turney, Q.C. and Damian Edgehill for the Plaintiff
Messrs. Ramon Alleyne and Kevin Boyce for the 1st, 2nd, 3rd and 6th Defendants*

2006: October 4, 11, 12, 25, 26, 27;
2007: March 29, April 4, June 15, September 4;
2008: April 14.

DECISION FOLLOWING TAXATION REVIEW

Background:

1. On October 4, 2007 I commenced the hearing of party and party taxation proceedings in this action and embarked on a consideration, pursuant to **Order 62** of the Rules of the Supreme Court, 1982, of the reasonableness or otherwise of the professional charges, disbursements and other expenses claimed in the Defendants' Bill of Costs which was presented for taxation on August 25, 2006 pursuant to the final Order of **Payne J.** dated the 8th June

2001. In that Order, **Payne J.** refused the relief sought by the Plaintiff and made the following order as to costs: “...*The first and second Defendants will have costs against the Plaintiff for two Counsel to be agreed or taxed. The third and sixth Defendants will also have costs against the Plaintiff for two Counsel to be agreed or taxed.*”

2. On the first day of the hearing, the Plaintiff’s attorney-at-law objected to the Bill of Costs of August 25, 2006 on the basis that the heading of the Bill suggested that a claim was wrongfully being made for legal work performed in respect of all six Defendants. He pointed out that two of the six listed Defendants had been struck out of the action and costs had only been ordered in respect of four of them. Following legal argument, I ordered that the Bill of Costs be amended by deleting the references to the 4th and 5th Defendants from the heading of the Bill. I further ruled that the taxation should proceed on the basis that no disbursements or allowances would be allowed in respect of the 4th and 5th Defendants.
3. Following my ruling on the first preliminary objection, Counsel for the Plaintiff, Mr. Turney, Q.C. then made a second preliminary objection to the format of the Bill of Costs. He argued that as each of the four Defendants had divergent interests in the suit, the presentation of a single or composite Bill of Costs in respect of all the Defendants made it difficult to assess the work which had been performed in relation to each Defendant. He submitted that four separate Bills should have been presented to the Registrar.
4. After argument, lead Counsel for the Defendants, Mr. Alleyne undertook to present four separate Bills of Costs detailing the disbursements and professional allowances claimed in relation to each of the four Defendants. The taxation was accordingly adjourned to October 11, 2006 on the understanding that separate Bills of Costs would be presented in respect of each of the four Defendants.
5. When the taxation resumed before me on October 11, 2006, Counsel for the Defendant presented his arguments in support of the Bill of Costs which had been presented in respect of the 1st Defendant, Bellington Limited. He

pointed out that the Bill was to be taxed on the party and party basis and made submissions regarding the nature of the proceedings, its complexity, its novelty, the value of the property at stake in the suit, the length of the trial the time spent and the general conduct of the case.

6. Mr. Alleyne drew my attention to a Billing Summary which had been prepared by his law firm, Clarke Gittens & Farmer and which had been included in a bundle of material compiled on behalf of the Defendants for purposes of the taxation. According to Mr. Alleyne, the Billing Summary viewed as a whole, was relevant in order to show the Registrar what work was involved in defending a case of this type. He drew attention to his initials "ROA " which appeared on the Billing Summary and to the hours which appeared in the column of recorded time to give an indication of the professional time which had been spent in preparing for the case.
7. On the third day of the hearing, counsel for the Plaintiff, Mr. Turney, Q.C. objected to the use of the Billing Summary and submitted that it would not have probative value unless it was certified or sworn. Counsel for the Defendant, Mr. Alleyne then undertook to file an affidavit which would formally put the Billing Summary in evidence.
8. Counsel for the 1st Defendant then gave additional examples of the conduct of the action. He illustrated how repeated amendments to the Plaintiff's pleadings had resulted in each Defendant having to re-evaluate their respective positions and take appropriate steps to answer new points raised by the Plaintiff in the amended pleadings.
9. During the course of the review by Counsel for the 1st Defendant of the disbursements claimed, counsel for the Plaintiff, intervened to request that supporting vouchers be produced to justify the photocopying charges which had been claimed for.
10. On the fourth day of the hearing, Mr. Alleyne drew my attention to two affidavits which had been filed by himself and by Mr. Brian Clarke for the purpose of providing the evidence to support the time Billing Summaries and the photocopying charges.

11. Following Mr. Alleyne's submissions, Counsel for the Plaintiff, Mr. Turney, Q.C. then made submissions in relation to the 1st Defendant's Bill of Costs. He outlined the inter-connections between the four Defendant companies and the actions by the various players which had given rise to the proceedings. He submitted that there was nothing novel about the action which he characterized as a simple case of breach of contract between the Plaintiff and the 1st Defendant.
12. Mr. Turney pointed out that while no contract had been concluded between the Plaintiff and the three other Defendants, the joinder of the other Defendants was essential to the action due to their corporate relationships with the 1st Defendant.
13. He reiterated that in the overall scheme of things, the other Defendants were relatively minor players who, of necessity, had to be joined in the action to ensure that any order which was obtained against the 1st Defendant could be enforced.
14. Counsel for the Plaintiff went to great lengths to downplay the role of the 2nd, 3rd and 6th defendants in the suit. He submitted that although costs had been ordered in favour of all four Defendants, the entire case was between the Plaintiff and the 1st Defendant. He questioned the necessity for the 2nd, 3rd and 6th Defendants to be represented in the manner that they were (by two Counsel including Queen's Counsel) and argued that the fees claimed for representation of these three Defendants might not be reasonable in view of the minor role which they had played in the proceedings.
15. He submitted that ultimately it would be for the Registrar as taxing master to look at the circumstances of the case and to determine the roles played and the community of interests between the various Defendants. He submitted that the interests of the other Defendants had to be viewed as fractional of any costs allowed as against the 1st Defendant.
16. Junior Counsel for the Plaintiff, Mr. Damian Edghill then made submissions in relation to what he termed as points of principle on costs. He urged that the Bills be taxed on the indemnity basis and that in particular, I ensure that costs

be allowed only if the costs were necessary for defending the rights of the party whose costs were being taxed.

17. He objected to the increase in the total quantum of costs claimed which had occurred when the Defendants had re-presented four separate Bills of costs in respect of each of the four Defendants. Counsel for the Plaintiff submitted that the four Bills could not be taxed beyond the gross amount claimed in the earlier composite Bill which was before the Registrar when the taxation first commenced on October 4th.
18. Mr. Edghill also submitted that the 2001 Court of Appeal judgment of Justice of Appeal the Honourable Mr. Justice Colin A. Williams in relation to security for costs should be used as a guide to what would be a reasonable award of costs for the four Defendants up to the stage of the appeal. He argued that while the Court of Appeal was not at that stage purporting to tax the skeleton Bill of Costs which had been presented for purposes of the application for security of costs, Mr. Justice Colin Williams' order of security for costs of \$1.3 million (discounting a payment of \$190,000) provided a clear guideline as to reasonableness of the amounts claimed in the four Bills under consideration.
19. On the fifth day of the hearing, Mr. Turney, Q.C. turned his attention to the time Billing Summary "ROA1" attached to the affidavit of Ramon Orlando Alleyne filed in the taxation proceedings on October 23, 2006. He submitted that insofar as the Billing Summary also contained items of work performed by Mr. Brian Clarke it was inadmissible and could only lead to confusion. He also submitted that since the Billing Summary did not particularize the time spent in relation to each of the Four Defendants and in particular, the 1st Defendant whose Bill was under review, it could not be used as evidence of time spent in relation to the 1st Defendant.
20. Mr. Turney then requested particulars of the professional work performed by the 1st Defendant's attorney-at-law at each and every meeting listed in the Billing summary. At this juncture, Mr. Alleyne intervened to clarify that the Billing Summary "ROA 1" was a computer generated document which did

not relate to any one Defendant. He stressed that the Billing Summary had been adduced to give the Registrar an indication of the time spent working on the matter as a whole between the year 1999 when instructions were first received and continuing up to the present time.

21. Counsel for the Plaintiff, Mr. Turney, Q.C. then sought permission to cross-examine Mr. Alleyne relative to his affidavit and the Billing Summary. This application was refused on the basis that since Mr. Turney had indicated that he was not questioning the veracity of Mr. Alleyne's affidavit, it would serve no useful purpose. Additionally, it would ultimately be for the Registrar to determine what weight would be put on the matters outlined in Mr. Alleyne's affidavit and how useful the Billing Summary would be to me in assessing time spent and the costs to be awarded.
22. On the sixth and final day of the taxation hearing, Mr. Alleyne made submissions in support of the disbursements and professional allowances claimed for in the Bill of Costs presented in respect of the 2nd, 3rd and 6th Defendants. He adopted all general legal submissions previously raised in relation to the 1st Defendant's Bill of Costs. He also submitted that each of the four Defendants was a limited liability company and as such were separate and distinct entities with their own officers and by-laws. As such, the individual Defendants could not be viewed as a single group defendant when dealing with the allegations which were made in this case.
23. He submitted that a review of the proceedings would show that this was a case in which the Plaintiff was constantly changing and amending its case as the case proceeded. Accordingly, he argued, the work performed on behalf of each of the four Defendants had to be viewed against that reality.
24. In his response, Mr. Turney indicated that his earlier submissions would also apply to the consideration of the 2nd, 3rd and 6th Defendants' Bills of Costs. He again stressed that in the High Court proceedings there was in substance one common defence and that whatever the allegations against the "other players", the crux of the case was the basic contract between the Plaintiff and the 1st Defendant.

25. As I commenced consideration of the reasonableness of the amounts claimed in the four Bills of Costs presented for taxation on behalf of the 1st, 2nd, 3rd and 6th Defendants, I was mindful of the fact that I had before me for my consideration the following documents produced by Counsel for the Defendants, namely-
- (i) A “composite Bill of Costs” in respect of all four Defendants filed on August 25, 2006 claiming VAT, Professional Fees and Disbursements totaling \$1,699,500.00;
 - (ii) Bill of Costs filed on October 6, 2006 claiming VAT, Professional fees and disbursements in respect of the 1st Defendant totaling \$474,750.00;
 - (iii) Bill of Costs filed on October 6, 2006 claiming VAT, Professional fees and disbursements in respect of the 2nd Defendant totaling \$474,750.00;
 - (iv) Bill of Costs filed on October 6, 2006 claiming VAT, Professional fees and disbursements in respect of the 3rd Defendant totaling \$399,750.00;
 - (v) Bill of Costs filed on October 6, 2006 claiming VAT, Professional fees and disbursements in respect of the 6th Defendant totaling \$399,750.00;
 - (vi) Affidavit of Ramon Orlando Alleyne together with exhibits “ROA1” and “ROA2”;
 - (vii) Affidavit of Brian Henderson Clarke together with exhibits “BHC1” and “BHC2”;
26. I immediately observed that the aggregate total of the four Bills of Costs was \$1,749,000.00 and reflected an increase of \$49,500.00 over the total professional fees and allowances of \$1,699,500.00 originally claimed in the “composite Bill of Costs” filed on August 25, 2006. This increase was strenuously objected to by Counsel for the Plaintiff, Mr. Turney, Q.C. during the course of his submissions. Indeed, he urged the Registrar to have regard to this anomaly when assessing the reasonableness of the amounts claimed.

The Methodology:

27. In arriving at my decision on the above mentioned four awards, I kept firmly in mind the factors which I am mandated to take into account when taxing costs on the party and party basis pursuant to **O. 62 r. 7** of the Rules of the Supreme Court.
28. I also adopted the approach and methodology recommended by the Honourable Chief Justice in the 2006 High Court Decision of *Lauer v. Magson*. Accordingly, each item of work claimed for in each Bill was examined in detail and assessed by me *“from the standpoint of a sensible attorney-at-law considering what would have been reasonable in the interests of the client”*.
29. In accordance with **O. 62 r. 7**, each item of work claimed as a professional allowance was assessed initially to determine whether it was necessary and reasonably required to defend the interests of each defendant. Each document claimed for in each of the four Bills was painstakingly scrutinized by me to enable me to gain some idea as to what would have been a reasonable amount of time within which such work may have been performed.
30. Although the Billing Summary could not assist in determining how much time was spent performing work for each Defendant, it did provide some indication as to the legal work which was performed for all four Defendants. In cases where documents mentioned in the Billing Summary were not located in the High Court file, no award could be made for such item [e.g. see Item 4]. In other cases where it was clear that the work must have been performed because the results of such work were clear from the Court file, it was possible (using my experience as a sensible attorney-at-law) to estimate what work would have been undertaken and to assess what would have been reasonable remuneration for such work, [e.g. Items 6 and 7.]
31. Where certain items claimed for were not susceptible to assessment on the basis of time, [e.g. Items 21 and 22] based on the guidance of Simmons C.J. in *Lauer’s Case*, I opted to deal with these items as imponderables for which an appropriate percentage uplift or mark-up could be applied.

32. As time charges had been claimed for eleven Court attendances on the trial of the action, [e.g. Item 24] the item was disallowed in the computation of the “A” figure, but allowed instead as Refreshers for Senior and Junior Counsel.
33. Each item of work claimed for in the four Bills under the heading “Professional Allowances” was carefully assessed in the manner described above and a reasonable fee allowed in respect thereof. The fees awarded in respect of each item of work claimed for in the Bill were then added in order to arrive at what is described in Lauer’s case as the “A” figure based on time.
34. Having made an assessment (as best I could) of the “A” figure in each case based on time, I then (following the approach in Lauer’s case) applied what I consider an appropriate percentage uplift or mark-up to the “A” figure to take account of the imponderables such as novelty, complexity, unrecorded time and the due care and attention which the attorney-at-law would have had to dedicate to a case of this kind, involving property (the Paradise Beach hotel) the money value of which exceeded US\$20 million. The figure which was arrived at after application of the percentage uplift, was then added to the “A” figure. The sum of the two figures enabled me to arrive at what I considered to be a reasonable brief fee for Senior Counsel in each case, from which a brief fee of (2/3^{rds}) was then awarded for Junior Counsel in each case.

The Initial Awards:

35. I gave my initial decision in respect of the Bills of Costs for the 1st and 2nd Defendants on March 29, 2007 and made the following awards:

Summary of award on initial taxation

(1st Defendant’s Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing
I	<u>Professional Allowances</u>		
	<u>Brief Fees:</u>		
	Senior Counsel: R. Mahfood, Q.C -	\$300,000.00	\$154,800.00
	Junior Counsel: R. Alleyne -	\$150,000.00	\$103,200.00

	<u>Refreshers:</u> Senior Counsel: R. Mahfood, Q.C. Junior Counsel: R. Alleyne -	\$16,500.00 \$ 8,250.00	\$ 16,500.00 <u>\$ 8,250.00</u>
	Total allowances -	\$	\$ 282,750.00
II	VAT (15%)	\$	\$42,412.50
III	<u>Disbursements</u>		\$4,598.00
	Total Bill	\$474,750.00	\$329,760.50

Summary of award on initial taxation
(2nd Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing
I	<u>Professional Allowances</u> <u>Brief Fees:</u> Senior Counsel: R. Mahfood, Q.C. Junior Counsel: R. Alleyne - <u>Refreshers:</u> Senior Counsel: R. Mahfood, Q.C. Junior Counsel: R. Alleyne - Total allowances -	 \$300,000.00 \$150,000.00 \$16,500.00 \$ 8,250.00 \$	 \$154,800.00 \$103,200.00 \$ 16,500.00 <u>\$ 8,250.00</u> \$ 282,750.00
II	VAT (15%)	\$	\$42,412.50
III	<u>Disbursements</u>		\$4,598.00
	Total Bill	\$474,750.00	\$329,760.50

36. At the request of Counsel for the Defendant, Mr. Alleyne and after hearing the submissions of Counsel for the Plaintiff in relation to section 35(3) of the *Supreme Court Act, Cap. 117*, I also ordered interest on the foregoing awards at the rate of 8% per annum from March 29, 2007 until payment.
37. I subsequently gave my decision in respect of the Bills of Costs for the 3rd and 6th Defendants on April 12, 2007 and made the following awards:

Summary of award on initial taxation
(3rd Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing
I	<u>Professional Allowances</u>		
	<u>Brief Fees:</u>		
	Senior Counsel: Sir. Henry Forde QC	\$ 250,000.00	\$ 88,039.80
	Junior Counsel: B. Clarke -	\$ 125,000	\$ 58,693.20
	-		
	<u>Refreshers:</u>		
	Senior Counsel: Sir. Henry Forde QC	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: B. Clarke -	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 171,483.00
II	VAT (15%)	\$	\$ 25,722.45
III	<u>Disbursements</u>		\$ 3,974.00
	Total Bill	\$399,750.00	\$ 201,179.45

Summary of award on initial taxation
(6th Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing
I	<u>Professional Allowances</u>		
	<u>Brief Fees:</u>		
	Senior Counsel: Sir. Henry Forde QC	\$250,000.00	\$ 77,239.80
	Junior Counsel: B. Clarke -	\$125,000.00	\$ 51,493.20
	<u>Refreshers:</u>		
	Senior Counsel: Sir. Henry Forde QC	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: B. Clarke -	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 153,483.00
II	VAT (15%)	\$	\$ 23,022.45
III	<u>Disbursements</u>		\$ 3,656.00
	Total Bill	\$399,750.00	\$ 180,161.45

38. Interest was also awarded in respect of the costs as ascertained by me in respect of the Bills for the 3rd and 6th Defendants at the rate of 8% per annum commencing from April 12, 2007 until payment.

The Taxation Review:

39. On April 25th, 2007, the Plaintiff filed a Request for Review of the Registrar's decision on the initial taxation in respect of all four Bills.

40. The grounds of objection as set out in the Plaintiff's Request for Review of Taxation of the First and Second Defendant's Bill of Costs were that:

- i) That the Registrar failed to take account or satisfactory account of the fact that all the Defendants were represented by the same firm, Messrs. Clarke, Gittens & Farmer, which would have meant that there would have been a duplication and overlap of the work done on behalf of each of the Defendants;
- ii) The Registrar failed to take account or satisfactory account of the fact that there was a commonality of interests as between the Defendants, which would have gone to reduce the work required to be done on behalf of each of them since there would have been an overlap and duplication of the work required to be done.
- iii) That the Registrar's assessment of an uplift of 80% from the assessed brief fee for Senior and Junior Counsel is excessive in the circumstances taking into account, inter alia, that the case did not involve the adjudication of novel or complex issues.
- iv) That the Registrar's allowance for Senior Counsel is excessive and contrary to law, precedent and practice in Barbados. This allowance as assessed was not provided for in the First and Second Defendants' Bill of Costs, nor was it

requested at any time on behalf of the First and Second Defendants.

41. The grounds of objection as set out in the Plaintiff's Request for Review of Taxation of the Third and Sixth Defendant's Bill of Costs were that:
- i) That the Registrar failed to take account or satisfactory account of the fact that all the Defendants were represented by the same firm, Messrs. Clarke, Gittens & Farmer, which would have meant that there would have been a duplication and overlap of the work done on behalf of each of the Defendants;
 - ii) The Registrar failed to take account or satisfactory account of the fact that there was a commonality of interests as between the Defendants, which would have gone to reduce the work required to be done on behalf of each of them since there would have been an overlap and duplication of the work required to be done.
 - iii) More particularly, the Registrar failed to take account...of the fact that the subject matter of the dispute in this action was as between the Plaintiff and the First Defendant. Consequently, the Third and Sixth Defendants were secondary parties in this action and this would have gone to reduce the amount of work which would have been required to be done on behalf of each of them.
 - iv) That the Registrar's assessment of an uplift of 80% from the assessed brief fee for Senior and Junior Counsel is excessive in the circumstances taking into account, inter alia, that the case did not involve the adjudication of novel or complex issues.
 - v) That the Registrar's allowance for Senior Counsel is excessive and contrary to law, precedent and practice in

Barbados. This allowance as assessed was not provided for in the Third and Sixth Defendants' Bill of Costs, nor was it requested at any time on behalf of the Third and Sixth Defendants.

42. Hearing of the taxation review took place on June 15 and September 4, 2007. At the outset Counsel for the Plaintiff stated that the points he intended to raise on the review were the same as had been raised before me at the initial taxation hearing. Referring to the grounds for objection, he submitted that there had been inevitable overlap of services across all four Bills. According to him, work which had been performed for one Defendant would have benefitted one or other of the other Defendants. He pointed out that Clarke, Gittens & Farmer was one law firm and had performed the necessary legal work for all four Defendants. According to Mr. Turney there had been a sharing of time together with a commonality of interests among all the Defendants due to the corporate relationship of the Defendants. These facts, he argued, made it inevitable that there would be overlap and duplication which the Registrar had failed to take into account.
43. Turning to the uplift of 80% applied by the Registrar, Mr. Turney submitted that the uplift applied by the Registrar was too high given what he termed as the relative simplicity of the matter. In his view, an uplift of 50% or at least 40% would have been more reasonable. Finally, Mr. Turney contended that the award of 2/3rds of the Brief Fee for Senior Counsel was erroneous and against long established practice in Barbados where Junior Counsel was awarded 50% of the Brief fee awarded to Senior Counsel.
44. Junior Counsel for the Defendants, Mr. Kevin Boyce, referred to the Response to the Objection to Taxation which had been filed in answer to the Plaintiff's Objections to the initial award of taxation of each Bill. He supported the Registrar's award on the initial taxation which award, he pointed out was entirely within the Registrar's discretion.

45. After considering the arguments raised at the review hearing and taking all relevant matters into consideration, my award of costs following the review hearing is as follows:

Summary of Award following Review Hearing:
(1st Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing	Amount allowed following review hearing
I	<u>Professional Allowances</u>			
	<u>Brief Fees:</u>			
	Senior Counsel: R. Mahfood, Q.C.	\$300,000.00	\$154,800.00	\$154,800.00
	Junior Counsel: R. Alleyne -	\$150,000.00	\$103,200.00	\$ 77,400.00
	<u>Refreshers:</u>			
	Senior Counsel: R. Mahfood, Q.C.	\$16,500.00	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: R. Alleyne -	\$ 8,250.00	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 282,750.00	\$ 256,950.00
II	VAT (15%)	\$	\$42,412.50	\$38,543.00
III	<u>Disbursements</u>		\$4,598.00	\$ 4,187.00
	Total Bill	\$474,750.00	\$329,760.50	\$299,680.00

Summary of Award following Review Hearing:
(2nd Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing	Amount allowed following review hearing
I	<u>Professional Allowances</u>			
	<u>Brief Fees:</u>			
	Senior Counsel: R. Mahfood, Q.C.	\$300,000.00	\$154,800.00	\$154,800.00
	Junior Counsel: R. Alleyne	\$150,000.00	\$103,200.00	\$ 77,400.00
	<u>Refreshers:</u>			
	Senior Counsel: R. Mahfood, Q.C.	\$16,500.00	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: R. Alleyne -	\$ 8,250.00	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 282,750.00	\$ 256,950.00
II	VAT (15%)	\$	\$42,412.50	\$38,543.00
III	<u>Disbursements</u>		\$4,598.00	\$ 4,187.00
	Total Bill	\$474,750.00	\$329,760.50	\$299,680.00

Summary of Award following Review Hearing:
(3rd Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing	Amount allowed following review hearing
I	<u>Professional Allowances</u>			
	<u>Brief Fees:</u>			
	Senior Counsel: Sir. Henry Forde QC	\$ 250,000.00	\$ 88,039.80	\$ 88,039.80
	Junior Counsel: B. Clarke	\$ 125,000	\$ 58,693.20	\$ 44,020.00
	<u>Refreshers:</u>			
	Senior Counsel: Sir. Henry Forde QC	\$ 16,500.00	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: B. Clarke -	\$ 8,250.00	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 171,483.00	\$156,810.00
II	VAT (15%)	\$	\$ 25,722.45	\$ 23,522.00
III	<u>Disbursements</u>		\$ 3,974.00	\$ 3,887.00
	Total Bill	\$399,750.00	\$ 201,179.45	\$ 184,219.00

Summary of Award following Review Hearing:
(6th Defendant's Bill of Costs)

Item No:	Item	Amount claimed at taxation hearing	Amount allowed at taxation hearing	Amount allowed following review hearing
I	<u>Professional Allowances</u>			
	<u>Brief Fees:</u>			
	Senior Counsel: Sir. Henry Forde QC	\$250,000.00	\$ 77,239.80	\$ 77,239.80
	Junior Counsel: B. Clarke -	\$125,000.00	\$ 51,493.20	\$ 38,620.00
	<u>Refreshers:</u>			
	Senior Counsel: -	\$ 16,500.00	\$ 16,500.00	\$ 16,500.00
	Junior Counsel: -	\$ 8,250.00	\$ 8,250.00	\$ 8,250.00
	Total allowances -	\$	\$ 153,483.00	\$ 140,610.00
II	VAT (15%)	\$	\$ 23,022.45	\$ 21,092.00
III	<u>Disbursements</u>		\$ 3,656.00	\$ 3,581.00
	Total Bill	\$399,750.00	\$ 180,161.45	\$ 165,283.00

46. I found the overlap and duplication objections raised by Mr. Turney to be without merit as I was satisfied that the possibility of duplication and overlap had been adequately taken into account in the initial award. This is reflected in the time charges claimed and Brief fees which were awarded in respect of the First and Second Defendants *vis-à-vis* those in respect of the Third and Sixth Defendants. Additionally, apart from the First and Second Defendants, whose awards were identical, different awards were made in respect of the Third and Sixth Defendants reflecting the work done individually for each of the defendants.
47. With respect to Mr. Turney's objection to the 80% uplift applied to the time charges on each Bill, I also found this objection to be without merit since I remain satisfied the 80% uplift applied was appropriate given that this was not a simple, 'run-of-the-mill' case of breach of contract. Furthermore, (as was

clearly stated by Simmons, C.J. in the Court of Appeal judgment on the appeal) this was a case in which, 'interesting and important aspects of the law of contract arose for consideration'. The case also required considerable industry, skill and erudition on the part of Counsel on both sides and this fact was expressly recognized by the Court of Appeal in its decision. The 80% uplift was not unreasonable in this case given the above.

48. I found Mr. Turney's objection regarding the 2/3rds Brief fee awarded to Junior Counsel to be valid. Accordingly, as the above Summaries will show, following my review of the initial taxation awards, the Brief fee for Junior Counsel shown in each of the four Bills of Costs was reduced to reflect an award to Junior Counsel of a fee representing 50% of that allowed for Senior Counsel instead of the 2/3^{rds} fee as originally allowed.
49. The Disbursements were also consequentially revised to reflect the reduced Stamp Duty payable on each Bill consequent on the reduction of the Brief fee for Junior Counsel.
50. The foregoing are the reasons for my award of costs to the four Defendants in the High Court proceedings following the review.

Registrar of the Supreme Court
April 14, 2008