IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

N/A

COURT OF FIRST INSTANCE

BETWEEN

PENELOPE

Claimant/Applicant

and

PHOEBE

Defendant/Respondent

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON the Claimant's Application No. ARB-032-2026/1 dated 21 May 2026 (the "Without Notice Application")

AND UPON the Court granting, at a without notice hearing on 22 May 2026, interim injunctive relief against the Defendant and the Second Respondent (the "Second Injunction Order")

AND UPON the Claimant's Application No. ARB-032-2026/3 dated 1 June 2026 to continue the Second Injunction Order (the "Second Continuation Application")

AND UPON the Claimant's Application No. ARB-032-2026/4 dated 1 June 2026 (the "Unless Order Application")

AND UPON the Claimant's Application No. ARB-032-2026/6 dated 17 June 2026 (the "Second Unless Order Application")

AND UPON the Claimant's Statements of Costs:

(a) Dated 4 June 2026, in respect of the Claimant's costs of the Without Notice Application ("Without Notice Application Costs")

(b) Dated 4 June 2026, in respect of the Claimant's costs of the Continuation Application ("Second Continuation Application Costs")

(c) Dated 4 June 2026, in respect of the Claimant's costs of the Unless Order Application ("Unless Order Application Costs")

(d) Dated 23 June 2026 in respect of the Claimant's costs of the Second Discharge Application ("Second Discharge Application Costs")

(e) Dated 6 July 2026 in respect of the Claimant's costs of the Second Unless Order Application ("Second Unless Order Application Costs")

AND UPON the Order made herein and issued on 17 July 2026 (the "Order") by which it was ordered that the Defendant pay:

(a) The Claimant's Without Notice Application Costs to be assessed on the standard basis

(b) The Claimant's Second Continuation Application Costs to be assessed on the standard basis

(c) The Claimant's Unless Order Application Costs to be assessed on the indemnity basis

(d) The Claimant's Second Unless Order Application Costs to be assessed on the indemnity basis

(e) The Claimant's Second Discharge Application Costs to be assessed on the indemnity basis

at an immediate assessment on paper in accordance with the directions contained in Paragraph 11 of the Order

AND PURSUANT TO the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Claimant's costs are assessed as follows:

(a) The Claimant's Without Notice Application Costs are assessed on the standard basis in the sum of **USD 204,324**;

(b) The Claimant's Second Continuation Application Costs are assessed on the standard basis in the sum of **USD 68,763**;

(c) The Claimant's Unless Order Application Costs are assessed on the indemnity basis in the sum of **USD 41,550**;

(d) The Claimant's Second Unless Order Application Costs are assessed on the indemnity basis in the sum of **USD 93,075**; and

(e) The Claimant's Second Discharge Application Costs are assessed on the indemnity basis in the sum of **USD 73,024**.

2. The sums referred to in paragraph 1 hereof are to be paid to the Claimant by no later than 4pm (GST) 14 days after the date this Order is served on the Defendant.

3. Liberty to either party to apply.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 21 October 2026
At: 10am

SCHEDULE OF REASONS

Applicable Principles - Standard Basis

1. By RDC 38.17, 38.18 and 38.21, where costs are to be assessed on the standard basis the Court *". is to have regard to all the circumstances in deciding whether costs were. (a) proportionately and reasonably incurred; and (b) were proportionate and reasonable in amount."*. In applying these principles, it is appropriate that this Court have regard to the approach of the Courts of England and Wales on the comparable provisions of the Civil Procedure Rules (the "CPR") because of the high level of similarity between the rules set out in the RDC and the CPR concerning costs - see *Al Khorafi v. Bank Sarasin- Alpen (ME) Limited* [2009] DIFC CFI 026 (16 January 2017).

2. In relation to proportionality, in *Kazakhstan Kagazyp plc v Baglan Abdullayevich Zhunus* [2015] EWHC 404 (Comm) at [13]. Leggatt J (as he then was) emphasised that what a party might subjectively consider reasonable to pay to advance its own interests in litigation is not the relevant test. The relevant test when assessing recoverable costs between the parties is an objective one and is the lowest sum that the receiving party could reasonably have been expected to spend in order to have its case conducted and presented proficiently. As Leggatt J added:

> ". The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been 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 proceeding 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. There are also good policy reasons for drawing this distinction, which include discouraging waste and seeking to deter the escalation of costs for the overall benefit for *litigants*."

This statement was approved by the Court of Appeal of England and Wales in *Kington SARL v Thames Water Utilities Holdings Ltd* [2025] EWCA Civ 1003 and *Saipem SPA and Others v Petrofac Ltd and Another* [2025] EWCA Civ 1106; [2025] Costs LR 1481 and by the Court of Appeal of the DIFC Courts in *The Industrial Group Limited v. Hamid* [2022] DIFC CA 005/006 (30 October 2023). It is therefore a principle that should be applied in all standard assessments in this jurisdiction.

Applicable Principles - Indemnity Basis

3. Where costs are to be assessed on the standard basis proportionality has no role to play and costs are recoverable for all work reasonably carried out in a no more than reasonable amount - see RDC 38.17(2) and 38.21(2). Any doubt the court may have as to whether costs were reasonably incurred or were reasonable in amount is to be resolved in favour of the receiving party - see RDC 38.19.

General principles Applicable to Both Bases

4. One aspect of ensuring that no more than a sum that is reasonable (and on a standard basis of assessment) proportionate in amount is assessed, is to have regard to the guideline rates fixed so far as this Court is concerned by *Registrar's Direction No. 1 of 2023 - Indicative Hourly Legal Charges* ("RD1"). It establishes the following benchmark rates:

Level of Legal Experience	Average Hourly Rate (AED)	Average Hourly Rate (USD)
Paralegals	1450	415
Trainees/lawyers up to 5 years	2391	651
Lawyers 6-10 years	2972	809
10+ years	3298	898
Partners	3746	1020

Whilst RD1 is not a provision that fixes rates but provides a starting point when assessing reasonableness and proportionality, a departure from the guideline rates will be appropriate only where a clear and compelling case founded on reasonableness and proportionality has been objectively established. *"It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate."* - see *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466 per Males LJ at [4] to [6].

5. The partner rate charged by the Claimant's solicitors (USD 1,250) is in excess of the guideline rate. This will be relevant to those costs to be assessed on the standard basis (where proportionality is relevant) but in my judgment not where costs are to be assessed on the indemnity basis, because the rates charged are reasonable even if it can be argued they were not proportionate applying the principles set out above.

6. Although it was submitted the RD1 rates are out of date, I disagree. The rates the Claimant's solicitors seek recovery of for Trainees/lawyers up

to 5 years and Lawyers 6- 10 years are below the equivalent guideline rates. No evidence as to the effect of inflation and other economic factors on solicitor's fees in Dubai has been adduced, much less evidence that such events have caused the rates for partners to increase but not those applicable to other lawyers.

7. I do not accept that it is arguable (as the Claimant argues) that because the total amount incurred by the Claimant in respect of each relevant application is lower than the amount that would have been incurred had all fee earners been charged at the applicable guideline rates. It therefore follows that I should assess the costs claimed as asked. The Claimant is able to make this submission only because the fee earners other than the partner have been charged out at a sum that is less than the relevant guideline rate. Such a suggestion is wrong in principle because it is contrary to the indemnity principle which caps what is recoverable by way of costs at the sum actually paid or payable by the receiving party.

8. I accept that in most cases, the hours expended by a claimant or applicant are likely to be higher than those of a defendant or respondent and are in this case for the reasons that the claimant identifies in Paragraph 6 of the Reply submissions - that is that the Claimant has to bear the costs of *". (i) preparing the without notice application and hearing (which the Defendant did not attend); (ii) preparing all hearing bundles (running to over 4,400 pages in total); (iii) preparing four affidavits with over 1,500 pages of exhibits5; (iv) preparing first drafts of all orders and application notices; and (v) complying with the duty of full and frank disclosure."*

9. There are two further general points to which I must refer before turning to each costs claim.

10. Firstly, I should make clear I do not accept that there is any help to be obtained from a submission that the proportion of costs awarded to costs claimed in the DIFC Courts is typically higher than in England and Wales. The general principles are those I have set out earlier. No assistance is to be obtained from seeking to identify a conventional reduction from previously decided cases. There will be cases where the sum recoverable even on the standard basis is 100% or close to 100% of the sum claimed and in other cases it will be appropriate when applying the relevant principles to arrive at a figure of significantly lower than the 75% figure the Claimant asserted was to be derived from previously decided cases. The point is that the application to a particular case of the general principles I have referred to is entirely fact specific and furthermore involves an exercise of discretion applying those principles. Suggesting that there is a conventional recovery rate circumvents the application of those principles and for that reason is unarguable in law because it suggests that a fact specific analysis can be avoided by simply applying a percentage recovery rate to whatever has been claimed. Not merely is such an approach misconceived in law but would encourage costs inflation and so would be contrary to the Overriding Objective.

11. Secondly, I should draw attention to a repeated submission made throughout the Claimant's costs submissions that in deciding what is reasonable I should have regard to what would have been claimed by the Defendant had he been the receiving as opposed to the paying party, for the purpose of testing whether the sums claimed by the claimant are reasonable (in relation to the indemnity assessments) or reasonable and proportionate (in relation to the standard basis assessments). In my judgment that submission must be rejected because it is wrong in principle for a judge to conclude that, because the paying party's costs are much the same as those of the receiving party, the latter's costs can be assumed to be costs that it is reasonable (or reasonable and proportionate) for the paying party to pay. The judge's task is to focus on the heads of costs that judge is being asked to assess and to his or her best judgment of the proportion it was reasonable to require the paying party to pay - see *Machinery Developments Ltd v St Merryn Meat Ltd* [2005] EWCA Civ 29 and *Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See* [2022] EWCA Civ 1061 *per* Males LJ at [8].

The Second Discharge Application

12. The sum claimed is USD 99,419. These costs are to be assessed on the indemnity basis. The Defendant maintains these costs should be assessed at USD 50,000.

13. Proportionality has no role to play in the assessment of these costs and any doubts must be resolved in favour of the Claimant as the receiving party. The lack of particularity as to the sums claimed makes an assessment difficult particularly when the sum claimed is broken down only as to attendances on others and work done on documents. The principle that doubts should be resolved in favour of the receiving party is not an opportunity for the receiving party to state its costs in so generalised a manner that resolving such doubts becomes impossible. In such circumstances, a court will have to approach the assessment on an even more broad brush and broad axe basis than would otherwise be the case on an immediate assessment.

14. I accept the submission made by the Claimant that it was the Defendant who issued the application and that it was withdrawn only once the evidence in answer had been filed. I also accept in relation to the work done on documents that the Claimant was required to do substantial work in answer to the application because it was not withdrawn until 12 June and by the time the application was withdrawn substantially all of the costs had been incurred. As the Claimant submits, *". Withdrawal did not retrospectively erase the work which the Defendant had already required the Claimant to undertake"*. That said, I consider the amount of partner time for attendance on others to be in excess of what is reasonable.

15. Given the work done on documents by fee earners 2 and 3, the hours worked on documents by Mr Devenish are in excess of what is reasonable. The primary function of a partner in litigation of this sort is to supervise the junior fee earners that are mainly carrying out the work.

16. Adjusting for these factors involves a broad brush and broad axe approach. I am satisfied that overall reducing Mr Devenish's recoverable hours from 19 to 12 hours will cater for this appropriately. I consider that no adjustment is required for Mr Devenish's hourly rate because this assessment is on the indemnity basis. In the result I assess the costs for the Second Discharge Application by reducing by 7 hours Mr Devenish's recoverable time spread across the attendances and work on documents phases.

17. I consider that given both the attendances and work on documents by Mr Norris that the sums claimed for junior associate time is significantly in excess of what is reasonable. I reduce that to 13 hours in aggregate for attendances and 16 hours in aggregate for work on documents. I consider counsel's fee reasonable in the circumstances.

18. The effect of these adjustments is that that the sum recoverable will be USD 73,024.

Without Notice Application

19. The sum claimed is USD 266,999. These costs are to be assessed on the standard basis.

20. On that basis, applying the principles identified at the start of this judgment and applying the principle that doubts are to be resolved in favour of the paying party when assessments on the standard basis are being carried out, I consider that the lower of the guideline rate or the rate actually charged and claimed should be used to calculate recoverable costs in order to give effect to the proportionality principle. In practice the sums recoverable in respect of Mr Devenish will have to be recalculated applying the guideline rate of USD 1,020 rather than the claimed rate of USD 1,250 - a difference of USD 230.

21. In relation to attendances on others, in order to achieve proportionality, I consider that the hours recoverable by Mr Devenish should be reduced to 6 hours, those of Mr Norris to 12 hours and the junior associates to an aggregate 14 hours. Given the very high number of hours for work on documents, it is difficult to see how the high volume of attendances on others can be proportionate. This is all the more the case given what else was going on between the parties at the time and the history leading to the application, most, if not all, of what was or ought to have been well known to the Claimant's advisors.

22. In relation to work on documents, I accept that Mr Norris's hours whilst high are likely to have been both reasonable and proportionate for the reasons that the Claimant identifies. The material generated by this effort was substantial - a 38-page affidavit exhibiting 1,487 pages, a 3,111-page hearing bundle and a substantial composite draft order. I do not consider the skeleton is as important for present purpose - that is (or should be) counsel generated work product that would have to be reviewed by the solicitors but of necessity would take up less time than the other elements to which I have referred. I also accept that Mr Devenish's time is both reasonable and proportionate given the tasks being undertaken. The supervisory function would have involved reviewing all of the materials identified by the Claimant and it is unreal to suppose that could have been carried out in less than 8 hours. Given the hours expended by Mr Norris, I do not see what additional work Yan Shen Tan and Jacky Khoueiry had to carry out beyond preparing the bundles. That was an extensive task but not one that could proportionately take a combined 46 hours and 42 minutes. I reduce that to a combined total of 30 hours in order to achieve proportionality.

23. Counsel's fees are excessive. A remote hearing of under two hours does not merit on proportionality grounds the attendance of both leading and junior counsel. I accept that Mr Pott KC's fees for the hearing are at the upper end of what is reasonable and proportionate for a commercial silk of significant experience. I round this to USD 99,723.

24. No attempt has been made to break down counsel's fees between advisory and drafting work (where in principle junior involvement is likely to be proportionate by reducing leading counsel's fees) and the hearing. I suspect that much of the work on the skeleton will have been done by junior counsel. I allow £10,000 (which I round to USD 13,300) for junior counsel on that basis. Other than junior counsel's fees, all other disbursements are reasonable and proportionate.

25. I consider the attendance of 4 fee earners at the hearing to be obviously in excess of what is proportionate and I permit the recovery of fees for that exercise by Mr Devenish and one junior associate. I am only prepared to permit recovery of the costs of two fee earners attending because of the high value of the claim, the relative complexity of the subject matter of the application and the written material relevant to it. Normally only one fee earner (and usually a junior one at that) will be permitted for costs assessment purposes where the assessment is being carried out on the standard basis.

26. I calculate the effect of these changes is that a total sum of USD 204,324 is recoverable, including all disbursements as asked and converting the transcription fee to USD 1,190 and the translation fee to USD 1,335.

Second Continuation Application

27. The sum claimed is USD 103,698. These costs are to be assessed on the standard basis.

28. The Defendant did not indicate that continuation was unopposed until 4:15pm on 3 June 2026. The Claimant submits and I accept that by that time, substantially all costs had been incurred.

29. The attendances of 4 fee earners at the hearing are each claimed for in addition to counsel. I consider that in excess of what is reasonable and proportionate and as before I allow for the attendance of Mr Devenish and a junior associate. I am not persuaded that £40,000 for leading counsel is reasonable and proportionate even allowing for the work that would have to have been done prior to the Defendant's concession. I cap that at £30,000, which I round that down USD 39,600 in order to give effect to the requirement to resolve any doubts in favour of the paying party. I consider that junior counsel's fees should be capped at the reasonable cost of his advice and drafting work which in the absence of any helpful narrative, I consider should be capped at £5,000, which converts in round terms to USD 6,648. The attendance of junior counsel at a hearing of this sort is in excess of what is proportionate.

30. Given these costs are to be assessed on the standard basis, I consider that solicitor time costs should recovered only on the lower of either the guideline rate or the rate actually charged for the reasons previously given. I consider that the work done on documents is reasonable and proportionate in relation to Mr Devenish and Mr Norris but the junior associate time is in excess of what is reasonable and proportionate, and I allow that at 12 hours in aggregate. I consider the attendances on others (which is not further defined) is in excess of what is reasonable and proportionate. I consider that 3 hours is recoverable for Mr Devenish, 4 hours 30 minutes for Mr Norris and 5 hours in the aggregate for the junior associates.

31. I calculate this sum at USD 68,763 inclusive of the filing fee of USD 300.

Claimant's Unless Order Application

32. The Claimant seeks recovery of the sum of USD 66,942.50. These costs have been directed to be assessed on the indemnity basis. The Defendant submits that these costs should be assessed in the sum of USD 30,000.

33. I accept the Claimant's submission that this raised legally distinct issues from those that arose in relation to the other applications to be heard at the same time. I also accept that since this is an assessment on the indemnity basis Mr Devenish's actual as opposed to the guideline rate is reasonable and should be used for calculating the recovery for his time expended. I consider the solicitors' time expended on attendances on others (which is otherwise undefined) is in excess of what is reasonable given the nature of the application. I allow 3 hours for the two junior associates between them, 3 hours 18 minutes for Mr Norris and 1 hour for Mr Devenish.

34. In relation to work on documents, I consider that Mr Devenish's fees are in excess of what is proportionate and cap what is recoverable to 4 hours given the largely supervisory nature of the work being carried out. I allow Mr Norris's fees as asked. I allow the junior associate time at 6 hours in the aggregate.

35. No attempt has been made to break down counsel's fees between work on documents and advisory work on the one hand and the brief fees on the other. Adopting the approach that I have adopted throughout, I assess Mr Trotter's fees at £3,500 for documentary work alone. I round this to USD 4,600. Given the brief fee that I have allowed for Mr Potts in relation to the other application listed that day I consider that anything in excess of £10,000 would be in excess of what is reasonable. I round this to USD 13,300.

36. I calculate the effect of these adjustments to be that the aggregate sum recoverable is USD 41,550 inclusive of the issue fee of USD 300.

Claimant's Second Unless Order Application

37. The Claimant seeks recovery of the sum of USD 96,306 and an additional USD 18,525 for post hearing work. The initial costs claimed have been directed to be assessed on the indemnity basis and the Claimant asks that the additional costs be assessed on the same basis. The Defendant submits that these costs should be assessed in the sum of USD 40,000.

38. The initial claim includes in excess of 24 hours attendances on others, in excess of 35 hours work on documents, the attendances of 4 fee earners at the hearing and counsel's fees of £30,000 (USD 40,000) for Mr Potts KC. The additional USD 18,525 incurred by the Claimant comprises Jones Day's preparation for and attendance at the 29 June judgment hand-down, the drafting of the draft Order to reflect the 29 June oral judgment, and the subsequent correspondence with the Defendant's counsel to negotiate the form of Order.

39. Turning first to the initial costs claim, I do not consider that the facts and matters identified in Paragraphs 56-58 of the Claimant's initial costs submissions assist because they are facts and matters that have been taken into account when directing the costs to be assessed on the indemnity as opposed to the standard basis. That entitles the Claimant to recover all its reasonable costs of the application and there is no proper basis on which a sum in excess of what is reasonable in amount for work that it was reasonable to carry out can be recovered. That said, I accept that substantial additional costs would have been incurred as a result of those facts and matters that could have been avoided and I also accept that the application involved preparation of an additional witness statement deposed to by Mr Devenish and a further responsive skeleton submission.

40. For the reasons set out earlier, I consider that the attendance of more than two fee earners at a hearing being conducted by leading counsel is in excess of what is reasonable. Given that this assessment is being conducted on the indemnity basis rather than the standard basis I am persuaded that the cost of attendance by both Mr Devenish and Mr Norris should be permitted. The attendances at the hearing by the other fee earners is disallowed as in excess of what is reasonable. I consider leading counsel's fees to be reasonable in amount and the engagement of leading counsel also to be reasonable for all the reasons identified above including the value of the claim and it's complexity. I consider the fee charged by Mr Potts to be reasonable not least because it would have included the costs of preparing the skeleton argument. I reject the criticism that the fee included a claim for Mr Potts' attendance at the hand down of the judgments. He did not appear and fees have not been claimed on the basis that he did.

41. So far as attendances on others is concerned, again it has not been broken down so attempting to work out who was attended on and for what purpose is impossible. However, on this occasion, Mr Devenish claims over 5 hours whereas Mr Norris claims only 1.3 hours. I would have considered this at least potentially disproportionate had that been relevant, but it is not because this assessment is on the indemnity basis. Whilst I have a doubt as to whether all the hours claimed by Mr Devenish are reasonable that doubt is to be resolved in favour of the receiving party (this being an assessment on the indemnity basis) and there is no doubt that most of the time claimed by Mr Devenish is on any view recoverable on the basis that it is reasonable. I allow Mr Norris's time as reasonable. What I do not accept is that in excess of 9 hours is recoverable by each junior associate applying the reasonableness test. I allow 9 hours in aggregate for junior associate time.

42. In relation to work done on documents, I accept Mr Devenish's time as reasonable given that he was the deponent and given his supervisory responsibilities. Although there is an argument that more of the work should have been undertaken by Mr Norris, that is outweighed by the fact that the deponent was Mr Devenish, that he had supervisory responsibilities for the application as a whole and by the fact that this assessment is on the indemnity rather than the standard basis. I allow Mr Norris's time as reasonable. I consider that the junior associate time is in excess of what is reasonable. I reduce what is recoverable to 13 hours in the aggregate for junior associate time.

43. In relation to the costs of attending the hand down hearing and dealing with consequential matters, I consider the sum claimed to be in excess of what is reasonable. Whilst I accept those costs must be assessed on the indemnity basis; the sums claimed are in excess of what is reasonable. Doing the best I can with the limited information provided I consider that a reasonable sum for that activity is USD13,000.

44. I calculate that the effect of these adjustments on the initial sum claimed is that USD 80,075 is recoverable and that a total of USD 93,075 is recoverable in relation to this phase inclusive of the post application work.

Time For Payment

45. In my judgment running the time for payment from the date of the order rather than the date of its service on the party with an obligation to pay is capable of being unfair and arbitrary in its effect and should generally not be insisted on despite the terms of RDC 38.40. That said, there is no evidence of financial hardship of any sort and in those circumstances, I consider that on the information currently available payment by no later than 14 days after the date of service of this order on the paying party will give effect to the Overriding Objective. I have however included liberty to apply within the order so that the Defendant can apply if so advised for an extension to the period in which payment is to be made. Any such

application would however require detailed evidence that addressed with particularity why it is that additional time is required to pay.

46. I have calculated the sums payable, which in some cases has involved converting other currencies to US Dollars. Given the significant number of recalculations that have been necessary I also give parties liberty to apply to correct any obvious mathematical or currency conversation errors. However, if that is to be done it must be done by no later than 4pm (GST) 7 days after service of the party applying for correction.