IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 54 OF 2009

BETWEEN **AHMAD HAMAD ALGOSAIBI AND BROTHERS COMPANY ("AHAB")**

PLAINTIFF

AND **SAAD INVESTMENTS COMPANY LIMITED**

MAAN AL-SANEA AND OTHERS

DEFENDANTS

IN CHAMBERS
THE 7TH AND 8TH JULY, 2015; THE 25TH AND 27TH AUGUST, 2015 AND THE 10TH DAY OF NOVEMBER, 2015
BEFORE THE HON. ANTHONY SMELLIE Q.C., CHIEF JUSTICE

APPEARANCES: **Mr. Peter Hayden of Mourant Ozannes for AHAB; with him Mr. Charles Moore and Mr. Christopher Levers (appearing on 7th -8th July 2015); Mr. David Quest Q.C., and Mr. Peter Hayden appearing on 25th and 27th August 2015;**

Mr. Michael Crystal Q.C., instructed by Ms. Shelley White and Ms. Colette Wilkins of Walkers for the Grant Thornton liquidators of the Saad Group of Companies ("the GT Liquidators or "GT Defendants");

Mr. Marcus Smith, Q.C. instructed by William Helfrecht of HSM Chambers for the AWALCO Group Liquidators (the "AWALCO Liquidators", the "AWALCo Defendants or the AWALCos");

Mr. Marc Kish of Harneys for the SIFCO 5 Liquidators (appearing on 7th -8th July 2015); Mr. Thomas Lowe Q.C. and Mr. Marc Kish appearing on 25th and 27th August 2015.

Applications for security for costs – whether court has power to substitute bank guarantee for cash security already paid – material and significant change of circumstances under which court may revisit orders for periods already covered – basis on which security should be ordered in large and complex case raising allegations of fraud.

REASONS FOR JUDGMENTS

1. The Court is now presented with various applications by the Defendants for further security for costs. They come against the background of this very complex matter which has been before the Courts since July 2009 and which is set to be tried over six months commencing in July 2016. The amounts claimed and counter-claimed at more than USD9 billion, are immense.

2. The intervening six and a half years, since July 2009, have seen many involved applications, some final, some interlocutory and a number of which have gone on appeal, including all the way to the Privy Council.

3. This course has brought the case now to the late discovery stages leading to the close of pleadings by early 2016 – all intended to set the stage for the trial to commence as scheduled.

4. The discovery process has itself however, already spawned extensive litigation over several days and threatens to consume several more days of court time.

5. The process required a hearing over a number of days in October 2013 for settling of security for costs in which the sheer size and scope of the discovery exercise was of central concern. This resulted in a judgment of 15th November 2013 ("the Security Judgment"), in which an award for security for the costs of the GT and the AWALCO Defendants was made in the amount of USD8 million.

6. This was ordered in addition to the amount of USD5 million already by then provided by AHAB by agreement; AHAB having accepted that, as a foreign plaintiff having no assets within the jurisdiction against which costs could be secured, those Defendants (and SIFCO 5 as another party to the USD5 million facility) were entitled to security.

7. Not being satisfied with the provision thus enlarged to USD13 million, the Defendants renewed their application for further security. Their right to do so if and when circumstances changed, was recognized at the time of the Security Judgment[1].

8. The issue of security for costs thus came to be renewed before the Court on 7th and 8th July at a hearing in which there were cross-applications.

9. First, there was AHAB's summons seeking an order which would allow it to substitute a bank guarantee for the cash component of security already provided held by Mourant Ozannes as its local lawyers. That cash component was in the principal amount of USD8 million and represented security of USD4.9 million for the costs of the GT Defendants and USD3.1 million for the AWALCos' costs.

10. Second, by their summons, the GT Defendants applied for further security for costs said to be related to the coding of documents disclosed by AHAB as a major step in AHAB's discovery obligations. This obligation followed on the directions order made on 24th April 2015, by which AHAB was directed to hand over to the Defendants wholesale and without vetting for relevance, the entirety of its database of documents held in relation to its Money Exchange business ("the Directions Order"). The amount sought by the GT Defendants in this regard was USD4.3 million.

11. Third, by their summons, the AWALCos also sought further security for the period up to the close of pleadings, in the amount of USD8.56 million. In support of this application, the AWALCos produced a Costs Schedule (reflecting some of their costs incurred to date ("historic costs") and a Spreadsheet of other historic and future costs under the sub-headings "Discovery", Amended Pleadings", "Interlocutory Hearings" and "Litigation Conferences/Correspondence/Attendance on other parties".

[1] See paragraphs 108-109.

12. In common to both of the GT Defendants' and the AWALCos' applications, the single most important component was that relating to AHAB's discovery and the work said to be required for the coding, listing and inspection of the vast numbers of documents disclosed.

13. At the 7th and 8th July hearing, while the AWALCos' application and the evidence in support were put before the Court, it was not pressed. Instead the AWALCos, for reasons then explained by Mr. Smith Q.C., deferred to the GT Defendants' pressing of their application, choosing instead to press theirs at a later date. In essence, Mr. Smith Q.C. explained that as the GT Defendants would be taking the lead on the common exercise of coding the documents to be provided by AHAB, that issue should be dealt with first.

Disposition

14. The next day, on 9th July 2015, the following decisions were communicated to the parties by email from my Personal Assistant respectively in relation to AHAB's application and the GT Defendants' application:

> *"To save time and costs, there is no need to attend Court today. For reasons to be given:*
>
> *1. The Chief Justice refuses AHAB's application for substitution of the cash security by a bank guarantee.*
>
> *2. The Grant Thornton Liquidators application for further security for costs (relating to the coding of documents) is granted in the amount of $2.5 million to be secured by AHAB providing cash, to be held in escrow by Mourant or by way of a bank guarantee in terms acceptable to the Court."*

15. I now provide the reasons for these decisions as promised.

AHAB's application to substitute a bank guarantee for cash already held in escrow

16. AHAB's application was made against the background of an admitted state of financial difficulties.[2]

17. But, while refusing to condescend upon a detailed explanation of its needs, Mr. Hayden simply explained that AHAB intended to put the cash to better use. As he submitted, the "*USD8 million has sat in the accounts for over a year, earning minimal interest (approximately USD11,045 to date). AHAB continues to trade and has a number of trading subsidiaries. For the benefit of AHAB's trading business interests and its cash flow, AHAB wishes to change the form of security which it provided in March 2014 from cash deposits to a guarantee provided by RBC Royal Bank (Cayman) Limited ["RBC"].*"

18. As Mr. Hayden also submitted, the Order of 21 February 2014 (that which derived from the Security Judgment) allowed AHAB to provide security for costs either "*by way of cash deposit to be...held in escrow in a bank account... within the jurisdiction, or to be secured by a guarantee issued by a Class A bank within the jurisdiction*".

19. Having opted to pay in the cash deposit to be held in escrow by Mourant Ozannes with their bankers Butterfield Bank (Cayman), AHAB argued that it should nonetheless be allowed to substitute with the RBC guarantee.

20. At first, the Defendants took differing positions in response to AHAB's application.

21. The GT Defendants contended, through Mr. Crystal Q.C., that AHAB cannot alter the form of security provided by substituting a bank guarantee because once it is paid in, the Defendants obtained a security interest in the cash. This is an interest which

[2] Per Mr. Quest Q.C. as recorded, for instance, at para. 24 of the Judgment.

provides a real advantage over the guarantee which is heavily conditioned and one of which the Court has no power to deprive the Defendants, said Mr. Crystal QC.

22. Alternatively, even if the power exists, in the exercise of its discretion the Court should refuse AHAB's application for the same reasons.

23. For their part, the AWALCos through Mr. Smith Q.C., at first accepted that "*in principle, there is no issue with a guarantee being provided in accordance with the terms of the existing order*". However, by the time of the hearing it was said that given the identifiable concerns over the terms of the RBC guarantee, AHAB's application should be refused. I will come below to examine those concerns.

24. In summary, I concluded that although it might, as a matter of the case law, be said that the Defendants acquired a security interest in the cash deposit, the inherent discretionary power remained in the Court in the absence of an express power in GCR O. 23[3], but by analogy with that given by GCR O.22 rule 4[4], to allow the payment out by way of substitution of the bank guarantee. However for reasons explained below, it was inappropriate to allow the repayment of the cash deposit to AHAB in the then prevailing circumstances.

The case law

25. The case law has developed in settled terms to show that the payment in of monies or provision of security in other forms, will give rise to a security interest in favour of the party for whose benefit the security was provided. This is illustrated in relation to the payment in of monies (i) in satisfaction of orders giving leave to defend

[3] That which sets out the rules and procedures for the setting of Security for Costs, more fully discussed in the Security Judgment.
[4] Which deals with payments out of sums paid into court on satisfaction of a claim.

conditional upon the provision of security[5]; (ii) in satisfaction of a plaintiff's claim[6]; and (iii) by order of the Court to satisfy any later judgment for financial relief in divorce proceedings[7].

26. A brief discussion of the cases cited will suffice to illustrate the principles.

27. In *In re Ford* (above), Ford was sued in August 1899 for a significant sum of money and the plaintiff Messrs. Jay, applied for summary judgment. Ford was given leave to defend on condition that he pay into court the sum of the claim within three days. The money was duly paid into court to abide the outcome.

28. Only some four months later, in January 1900, Ford filed his own petition in bankruptcy on which a receiving order was made and adjudication of bankruptcy followed. Ford's trustee-in-bankruptcy then claimed that the sum paid into court in the action *Jay v Ford* was part of his bankrupt's estate and so should be paid out to him to be distributed pari passu to the estate's creditors.

29. Jay successfully resisted that claim. It was held (per Wright J) that monies paid into court under the Rules of the Court for leave to defend, must be treated as monies paid in to abide the event, and is a security to the plaintiff for the sum for which he may obtain judgment at trial. Further, that notwithstanding the intervening bankruptcy of the defendant before the trial of the action, the money must remain in court until "*the event*" is decided by the trial of the action, if it must indeed be tried, or by adjudication upon proof by the plaintiffs in *Ford's*.

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[5] See, for instance, *In RE Ford Ex Parte Trustee [1900] 2 Q.B. 211 and Cleaver and Bodden v Delta American RE Ins. Co.* 2001 CILR 34

[6] *W.A. Sherratt Ltd v John Bromley (Church Stretton) Ltd.* [1985] QB 1038.

[7] *RE Mordant; Mordant v Halls* [1997] 2 F.C.R. 378.

30. As Wright J. explained in his brief but nonetheless persuasive and now venerable judgment:

"...it is settled that where money is ordered to be paid into court to abide the event, it must be treated as a security that the plaintiff shall not lose the benefit of the decision of the Court in his favour. The very object of such an order is that the plaintiff shall be in as good a position, so far as the money paid in extends, against contingencies such as bankruptcy as if he had got an immediate judgment...."

31. That dictum later received the approval of the Court of Appeal in *W. A. Sherratt Ltd.* (above). In that case, the plaintiffs claimed a sum of money from the defendants alleged to be due to them under a contract for the sale of business assets and applied for summary judgment. In response, the defendants served a defence and counterclaimed for a sum which exceeded the plaintiffs' claim and paid into court a sum of £13,000 which they stated in the notice of payment in, was in satisfaction of the plaintiffs' claim after taking into account their counterclaim. The plaintiffs did not accept the money and the action proceeded but before its conclusion, the defendants went into liquidation and applied for payment out of the money. They asserted their obligation to preserve assets to meet all creditor claims on the pari passu basis and to ensure that the plaintiffs were not placed in the position of a secured creditor in the liquidation.

32. The Court of Appeal held that where a defendant made a voluntary payment into court under R.S.C. Order 22 [the equivalent to GCR Order 22], the plaintiff, albeit he had not accepted the money, was nevertheless a secured creditor to the extent of the

payment in. Secondly, the defendant's liquidation was not, by itself, a material consideration which could properly be regarded as justifying the court's exercise of discretion to order repayment.

33. In *Re Mordant* (above) Sir Donald Nicholls V.C. came to a similar conclusion in favour of the plaintiff wife in respect of monies the husband had been ordered by the Court to pay into court to abide the outcome of their matrimonial proceedings and notwithstanding that in the interim, the husband had been declared bankrupt on the petition of his building society creditor.

34. The Learned Vice Chancellor declared (having considered inter alia, the earlier dicta from *In Re Ford* and *W.A. Sherratt* (both above):

> *"...where a sum was paid into court by a defendant, either voluntarily under RSC Ord 22 or involuntarily under RSC Ord 14, the plaintiff was treated as a secured creditor in the bankruptcy to the extent of the money paid in. Further, an order made under s 37(2)(a) of the Matrimonial Causes Act 1973 had the effect of making property security for the claim in the same way as a sum paid into court under RSC Ord 14 or Ord 22. In the present case, when the Judge ordered that the husband should pay to his solicitors the £275,000 held in the bank in Ireland, this was to afford the wife protection in respect of her claim similar to the protection she would have enjoyed had he ordered payment into court. The £109,000 also paid to the husband's solicitors to be held to the order of the court stood on the same footing. Consequently, by the time of the bankruptcy petition on 11 November 1992 these two sums of money were beyond the reach of the husband and he was unable to dispose of them. That money did not form part of the husband's estate and the trustee in bankruptcy was not entitled to it."*

35. In affirmation of the principles earlier pronounced in *In Re Ford* and *W.A. Sherratt* (both above); the Privy Council came to a similar conclusion in *Cleaver and Bodden (as Liquidators) v Delta Re* (above). There it was held, inter alia, that these

authorities establish that, prima facie, a creditor (such as *Delta Re* who had obtained before the liquidation of its debtor Transnational Re, a form of security conditional upon establishing the validity of its claim), is entitled to retain the benefit of that security, notwithstanding the intervening liquidation.

36. There can, in my view, in principle be no difference with a payment of security for costs. And this is whether it is paid into court or paid into escrow with the lawyers of the paying party to be held as officers of the court, pending the outcome of the action.

37. As explained in the Security Judgment (at paragraph 16) and it is trite principle: *"security for costs is justified so that in the event a defendant succeeds, there will be assets of the unsuccessful plaintiff against which the costs of defending can be recovered"*.

38. The successful defendant thus becomes as entitled to recover its costs as against the security provided as a successful judgment creditor would become as against a sum paid in to abide the outcome of an action.

39. Neither is the fact that the award of costs will be a matter for the discretion of the court of any real moment for present purposes. The guiding principle is that costs will follow the event and so it must be assumed for present purposes, that a successful defendant will be entitled to recover its costs. It is that assumption which justified an order for payment in of security for costs in the same way it would be assumed that a successful judgment creditor would be entitled to recover the fruits of his judgment secured by a payment into court.

40. For those reasons, I concluded that AHAB had no entitlement to substitute the RBC guarantee for the cash paid in. The Defendants had prima facie established that they

had obtained "*a form of security conditional on establishing their claim*" to costs and were "*entitled to retain the benefit of that security, notwithstanding any change of circumstances*" of the plaintiff in the meantime (per the Privy Council in *Delta Re* (above).

41. The question then became whether I should have exercised the discretion preserved by analogy with O.22 r.4, to allow AHAB to substitute by means of the RBC guarantee, in light of the fact that the order had originally called for one form or the other of security.

42. I acknowledge that the discretion to order payment out could be exercised in special circumstances; such as where an alternative and adequate form of security is offered and where the retention of the cash security would prove to be unnecessarily disadvantageous to the plaintiff.

43. In this regard, I note that Mr. Hayden had properly brought to my attention the dictum of Parker LJ delivered on behalf of the Court of Appeal in *Rosengrens Ltd. v Safe Deposit Ltd.*, Practice Note [1984] WLR 1334, 1337C:

> *"So long as the opposite party can be adequately protected, it is right and proper that the security should be given in a way which is least disadvantageous to the party giving the security."*

44. I concluded, however, that I should not order repayment to AHAB for the following further reasons.

45. While I accept that RBC is doubtless to be regarded as a very reputable "Class A" bank[8] licensed to carry on business in the Cayman Islands (the class of bank required by the Order), the terms of the proposed guarantee were most important. But those

[8] The classification used in the Order was intended by me to refer to banks licensed by the Cayman Islands Monetary Authority to carry on general high street banking business within the Islands and without intending a separate requirement of rating by an outside rating agency.

proved themselves to be the subject of significant debate, such that the Defendants had what I regarded as reasonable concerns.

46. I mention but some of these to illustrate.

47. First, the initial term proposed by AHAB for the RBC guarantee was three years from February 2015 but the Defendants were concerned that with the trial yet to come and appeals likely to follow all the way to the Privy Council, that would be far too short a period.

48. Moreover, issues of costs would only be susceptible of resolution after the conclusion of all appeals, adding perhaps significantly to the protraction of the period to be covered by the guarantee.

49. Following further negotiations with RBC (and AHAB's intermediary bank, EFG Bank (Cayman)), AHAB proposed to increase the period to 5 years (that is: February 2020) but even that period could prove too short to allow for a complete resolution of all costs issues, in a case as complex and protracted as this.

50. Secondly, there were other reasonable concerns of the Defendants as to the complexity and uncertainty of the terms of the proposed RBC guarantee.

51. One such was the provision that it would "expire forthwith" upon receipt by RBC of a certified copy of a replacement letter of guarantee presented on behalf of AHAB in "substantially the same terms" as the proposed RBC guarantee.

52. Thus, at least prima facie, AHAB would be entitled, unilaterally, to replace the proposed guarantee without reference to the Defendants. The Defendants would then have no say as to the identity of the new guarantor bank or the terms of the proposed new guarantee in those circumstances. As presented, it was also unclear in this regard

what was intended by the phrase "*substantially in the same terms*" and the use of this phrase, it was reasonable to anticipate, could lead to future disputes between the parties as to whether any new guarantee was the equivalent of the proposed RBC guarantee.

53. Another concern over its provisions related to the definition of the "Effective Date" – a critical definition because it could only have been upon the occurrence of the "Effective Date" that the proposed RBC guarantee would become effective. The term was defined as follows (emphasis added):

> "*...the date on which all sums standing to the credit of account No. 8400322810021 at Butterfield Bank held in the name of Mourant Ozannes are paid out of that account to AHAB.*"

54. Thus, if part only of those funds were paid out to AHAB from that account (and some funds left in the account, however minimal) no "Effective Date" would have occurred for the purposes of the guarantee and the Defendants could have lost their security for costs.

55. Although, as Mr. Hayden submitted, these concerns were matters which could have been resolved through further negotiations with RBC and by co-operation between the parties, the fact of the matter was that they had not been resolved by the time of the arguments before me.

56. Nor, moreover, did I consider it appropriate to direct the Defendants to engage with AHAB to resolve them.

57. The Defendants had good reason for wanting to retain their cash security. Not only was AHAB admittedly in financial difficulties, AHAB's explanation for wishing to

enhance the cash flow of its businesses was not compelling when one considered that any new guarantee would certainly also be required by the intermediary if not the issuing bank, to be backed by cash or other form of liquidity.

58. These misgivings were only compounded in this case by AHAB's past conduct in failing to pay in the security until it was compelled to do so by an "unless order" made on 11th March 2014[9], in enforcement of the Order for security made on 21 February 2014.

59. In finally making the payment in under those straightened circumstances, AHAB proffered the explanation for its delay that it had depended upon an unnamed third party to provide the USD8 million and although it had been provided, the money was required to be held by the third party's lawyers in London. That explanation was of course not accepted and so the money was deposited into Mourant Ozannes account with the Bank of Butterfield within the jurisdiction.

60. How then the same funds are now to be available to enhance the cash flow of AHAB's business, has not been explained. Indeed, when invited by the Defendants and the Court to explain, it was Mr. Hayden's response on behalf of AHAB that AHAB was not obliged to explain, so long as the proposed RBC guarantee was an "adequate" alternative.

61. This response although perhaps strictly speaking correct, redounded nonetheless only to complicate things and did nothing to assuage the proper concerns of the Defendants or the Court about the proposed RBC guarantee as explained above.

[9] For reasons explained in a brief ruling of that date.

The GT Defendants' application for further security for costs in the amount of USD4.3 million

62. In brief, I concluded that the amount to be awarded under this head should be roughly one-half of that sought. My reasons should be expressed in brief practical terms. The exercise of assessment of quantum for these purposes must of necessity be by application of the "broad brush" approach. The exercise is not like that involved at the later stages of taxation of costs where, in a complex case like this, a line by line or item by item assessment may be required.

63. At this stage, I can be guided only by the broad overview of the case afforded me by having been the dedicated judge virtually since inception and this must be the approach taken notwithstanding that the Defendants have presented extensive affidavit evidence to explain the extent of the discovery exercise upon which they have embarked, as well as the future work to be undertaken up to the close of pleadings. Or, in the case of the GT Defendants, up to the first day of the trial.

64. I was mindful of the basis laid down in the Security Judgment that in assessing security for costs, the Court was not looking to provide "*perfect*" or "*complete*" security, but only "security of a sufficiency in all the circumstances of the case to be just[10]."

65. In effectively reducing this aspect of the claim by one-half, I was most concerned about the overly expansive approach that the GT Defendants were willing to take in the discovery exercise. In particular, I accepted the following concerns as articulated

[10] The Security Judgment, at paragraph 106.

by Mr. Hayden on behalf of AHAB, relying on the 15th Affidavit of Andrew John Ford[11].

66. In order to calculate their estimate of the costs of discovery, the GT Defendants appear to have assumed that the AHAB electronic database directed to be disclosed to them, would involve approximately 5 million documents, all of which had to be coded to become searchable for the purposes of discovery.

67. I became satisfied, as explained by Mr. Ford at paragraph 22-34 of his 15th Affidavit, that the electronic database comprised roughly 2.5 million documents, some 146,000 of which were already comprised in various types of electronic files containing sufficient meta-data and which eliminated the need for further coding. Some 300,000 duplicated documents were also amongst the Electronic Database and were to be removed by AHAB before disclosure by application of de-duplication software.

68. These factors meant that the Electronic Database requiring coding and searching would be more in the order of 2.3 million instead of the 5 million documents assumed by the Defendants.

69. The confusion over numbers appears also to have arisen from the belief that AHAB would be disclosing a further 2.5 million hard copy documents and that these would virtually all require scanning into electronic form and coding.

70. As Mr. Ford explains[12], only some of the estimated 2.5 million hard-copy documents (detailed in his 15th Affidavit and in AHAB's Hard-Copy File Lists) are being scanned by AHAB for disclosure to the Defendants in addition to the documents comprising the Electronic Database.

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[11] A senior solicitor and lead member of AHAB's worldwide litigation team.
[12] At paragraph 32

71. These misconceptions are of course influential in the GT Defendants' estimated costs for coding for two major reasons.

72. First, the GT Defendants propose to code all of the documents disclosed by AHAB, including "the very large amount of irrelevant material[13]" disclosed by AHAB.

73. AHAB is reasonably concerned that this approach will be too elaborate and expensive. AHAB argues that it is not necessary to code all of the documents in order for them to be of practical use and in order for relevant documents to be identified using key word searches. Mr. Ford asserts that to the extent that there remain documents which are not already searchable in that way, for example, because they contain foreign language or are handwritten, these have been coded as such by AHAB. There should therefore be no need for any further coding of those documents and certainly not of the entire database to be disclosed by AHAB.

74. The costs of coding vary widely depending also upon the number of fields or key word terms to be deployed.

75. For the purposes of reviewing the AHAB discovery, the GT Defendants assert that it will be necessary for them to engage a third party provider[14] to code approximately 5 million documents with as many as 8 objective fields; viz: Title, Date, To (whom), From (whom), Manuscript, Document Language, Technical Issues and Multiple Documents.

76. AHAB properly complains that it is not clear why the GT Defendants wish to take this approach when, by contrast, with respect to their own disclosure obligations, they

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[13] Per Mr. Hugh Dickson, one of the GT Liquidators, at paragraph 11 of his 4th Affidavit.
[14] Pangea 3

(according to Mr. Akers[15]), started with a pool of 1.7 million discoverable documents and "after completing key word searches and other preliminary reviews" reduced that pool to approximately 340,000 documents, which then fell to be coded.

77. Further, by way of contrast, the AWALCos' application (deferred as explained above) was based on their estimate that it will be necessary for them to engage a different third party provider[16] to code approximately 1.5 million documents for the purposes of their disclosure obligations but with only 4 of the same objective fields, viz: Document Description [that is: Title], Date, Manuscript, Foreign Language.

78. These very different approaches have far-reaching knock-on effects in terms of price.

79. According to Mr. Carton-Kelly[17], FTI Ringtail will apply objective coding for the price of 6p (approximately 9.6¢) per coding field. However, the cost quoted to the GT Defendants is more than double that, at 20¢ per field (per Hugh Mr. Dickson in his 4th Affidavit at paragraphs 39-40). The difference in price alone would therefore double the estimated costs for this part of the coding exercise.

80. These were but some of the main concerns influencing my "broad-brush" approach to the estimate of the amount to be ordered for security for costs for the coding exercise to be undertaken by the GT Defendants.

81. Other concerns raised by AHAB, such as the perceived lack of co-operation of the Defendants resulting in duplication of costs in their approach to the discovery exercise related to the AHAB database and hard-copy documents, were not dismissed by me. But based on the factors already identified, I was satisfied that there was

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[15] The other GT Liquidator , at paragraph 17 of his 14th Affidavit
[16] FT1 Ringtail
[17] One of the AWALCos' liquidators, in his 12th Affidavit.

ample justification for the reduction of roughly one-half of the amount sought. Hence the amount of $2.5 million allowed.

82. I note for the record that a letter of bank guarantee for this amount was presented by AHAB and approved by me with the consent of the GT Defendants on 14 August 2015.

The Defendants' further applications for security for costs taken on 25th and 27th August 2015

83. By these applications the Defendants seek further and additional security for costs in relation to the proceedings.

84. In the case of the GT Defendants, the amount sought to cover up to the close of pleadings and beyond that to the first day of trial, is USD20.4 million.

85. This is broken down into two parts:

(i) USD5,986,431 in respect of costs incurred by the GT Defendants from 1st August 2013 to 30th June 2015 which are not covered by the earlier Orders for security for costs (referred to by Mr. Crystal Q.C. as the "*Top Up Security*");

(ii) USD14,473,388 in respect of the period from 1 July 2015 down to the first day of trial on 18th July 2015 (the *"Future Security"*). The GT Defendants intend to apply yet again for security for the period of the trial itself.

86. For their part, the AWALCo Defendants seek further security to cover the period up to the close of pleadings in the amount of USD8,556,015. They intend to bring further separate applications to cover the period up to trial and the period of the trial itself.

87. And for its part, SIFCO 5 seeks an order for further security for costs in the amount of USD5,742,314. This would be to cover historic costs which SIFCO 5 says have exceeded the amount of USD2,000,000 already provided and future estimated costs to cover the discovery process and the further work up to and including the close of pleadings. They also foreshadow a further application to cover the remainder of the proceedings.

88. So in total these are further applications for security amounting to some USD34.5 million on top of USD15.5 million already provided by the plaintiff AHAB – an overall total of USD50 million to take the proceedings only up to the close of pleadings (or up to the first day of trial in the case of the GT Defendants).

89. I will come below to explain each set of Defendants' claims but will first outline what they say is the legal justification for these further applications now.

90. It is common ground between AHAB and the Defendants that where security for costs has already been ordered by the Court, a defendant who applies to increase the amount of security for the costs of that same stage of the proceedings needs to establish a material change of circumstances from those which pertained or were envisaged when the matter was before the court making the order.

91. This is a principle which has been recognized and approved by the English Court of Appeal in *Republic of Kazakhstan v Istil Group Inc.* [2005] EWCA Civ. 1468.

92. And this is indeed the position of the Defendants insofar as they seek further security in respect of the period "*up to the final close of pleadings*", as that was the period in respect of which security for costs was previously awarded in the Security Judgment.

93. The applications for security to cover future periods not yet covered by an award will, of course, depend on the merits to be canvassed now.

94. Whether in relation to periods for which security already was ordered or for future periods not yet covered, the objective must remain to award "*security of such sufficiency as in all the circumstances of the case to be just*[18]".

95. Mr. Crystal Q.C. nevertheless brought my attention to the helpful dicta of Popplewell J. delivered in *Stokors SA v IG Market Ltd* [2012] EWHC 1684 ("*Stokors*") as guidance for the approach to the assessment of security for costs in a case where defendants rely upon material and significant change of circumstances to justify an increase.

96. In *Stokors* (a case, like the present, heavily burdened with allegations of fraud), Popplewell J was concerned with an application for security for costs by a defendant to dishonest assistance and knowing receipt claims. At a previous hearing, Steel J had ordered the claimants to provide security for costs in the sum of £320,000 to cover the period up to the completion of disclosure. At that hearing, £280,000 was put forward by the defendant as the estimated cost of the disclosure exercise, which had not yet commenced.

97. The disclosure exercise proved to be considerably more extensive and complex than had been contemplated. Accordingly, the defendant sought, amongst other things, further security for the additional costs incurred in connection with that disclosure exercise, in the sum of about £725,000. Popplewell J held that the increased costs associated with the disclosure exercise amounted to a "*material and significant*

[18] The Security Judgment, at paragraph 106.

change of circumstances" such as to justify the award of the additional security sought.

98. At paragraphs 5 to 9 of *Stokors*, Popplewell J highlighted the following, helpful, principles as to the determination of the appropriate amount of security:

> "5. *Firstly, that under CPR 25.13(1)(a), the court's discretion to award security is a discretion to award it an amount which it considers just, having regard to all the circumstances of the case. The appropriate amount will generally be the sum which the court considers the applicant would be likely to recover in a detailed assessment if awarded its costs on a standard basis following the trial (see, for example, Procon (Great Britain) Limited v Provincial Building Company Limited & Anor [1984] 1WLR 557).*
>
> 6. *Secondly, on such an application what the defendant will recover on an assessment are such costs as are reasonably and proportionately incurred, and reasonable and proportionate in amount, having regard in particular to the factors which are set out in CPR 44.5(3). I observe that in relation to a number of those factors, the particular circumstances of this case would point to costs being recoverable on a more generous scale or in a more generous amount than in other cases. In particular, the factors include: (b) the amount or value of any money or property involved: the amount at issue in this case is very substantial, now something not far short of €100 million; and (c) the importance of the matter to all the parties: it is apparent from what I have seen that the parties to this case treat the dispute as a matter of high importance involving, as it does, not only large sums of money but also serious allegations of dishonesty against individuals, which are having a significant effect on their personal and professional lives* [such as including in this case, delaying the distribution of assets from the three liquidation estates and, from the AHAB partners' point of view – the risk of bankruptcy].
>
> 7. *I also bear in mind that although the exercise required looks forward to what will happen at a detailed assessment of costs, it is not the task of the court when hearing an application for*

security to undertake a similar exercise, to seek to carry out a detailed assessment. It is necessary to approach the evidence about the amount of costs which have and will be incurred, and their reasonableness or otherwise, on a robust basis and applying a broad-brush.

8. *The next matter of principle which I bear in mind is that where the court is asked to choose between rival contentions which it cannot and should not seek to decide definitively on disputed evidence, it is right to have in mind the nature and degree of prejudice which might fall on each party if the figure turns out to be on the one hand too high, or on the other hand too low. If a defendant is under-secured, the likelihood is that that defendant will be prejudiced by the amount of the shortfall in security because that is the amount of costs which it is unlikely to be able to recover. If on the other hand the defendant is provided with excessive security so that it is over-secured, the excessive security will ultimately be returned to the claimant. In those circumstances, the prejudice to the claimant in providing excessive security is not the whole amount of the excess but only potentially the cost to the claimant of providing that excess, to the extent that such cost proves to be irrecoverable.*

9. *Assuming it to be irrecoverable, which I do not decide, the financial impact of getting it wrong in the defendant's favour is therefore usually less, indeed usually much less, compared with the financial impact of getting it wrong in the claimant's favour. That factor, which is sometimes referred to as the balance of prejudice, is usually the reason for resolving any doubts in favour of a defendant rather than a claimant. ...".*

99. As in the present case, the "*balance of prejudice*" (referred to above in paragraphs 8 and 9 of *Stokors*) lies heavily in favour of the GT Defendants, submits Mr. Crystal Q.C. If the GT Defendants are over-secured the excessive security will ultimately be returned to AHAB. There is no evidence that that will cause any prejudice to AHAB. By contrast, the GT Defendants are likely to have very significant difficulties

enforcing any order for costs made against AHAB, described by Mr. Crystal as an "insolvent foreign plaintiff", and will therefore suffer significant prejudice to the extent that they are under-secured.

100. As in *Stokors* the facts of the present case, says Mr. Crystal Q.C., also point to costs being recoverable (in the event that the GT Defendants were to win at trial) on a more generous scale or in a more generous amount than in other cases. In particular, the relevant factors include: (a) the very substantial amounts money / property involved in the present case: and (b) the importance of the matter to all the parties: see *Stokors* at paragraph 6.

101. I accept that those are all pertinent factors for consideration in this case. However, in any case, so must any concern about stifling a plaintiff's good arguable claim. While on this occasion AHAB has not repeated this concern, Mr. Quest was strident in asserting it at the hearing that led to the Security Judgment. And I note that these latter applications have been argued by counsel for the Defendants on the basis that AHAB is "quasi-bankrupt".

GT Defendants' Top up Security

102. The GT Defendants claim to have calculated the total recoverable costs they have incurred for the period 1 August 2013 to 30th June 2015 (the "Relevant Period"). In turn, this allows the GT Defendants to state with accuracy the amount by which they say they are under-secured (by reference to the amount of security for costs previously ordered).

103. In summary, the total recoverable costs said to be incurred by the GT Defendants during the Relevant Period are as follows:[19]

Cost	Amount
Walkers' fees during the Relevant Period ($) at 70%	4,668,082
Disbursements during the Relevant Period ($) at 100%	3,936,467
Counsels' fees during the Relevant Period ($) at 70%	1,381,883
TOTAL ($)	**9,986,432**

104. Accordingly, $9,986,432 less $4 million is the amount by which the GT Defendants claim to be under-secured in respect of the Relevant Period (in relation to costs that were intended to be covered by the Security Judgment). The GT Defendants therefore seek Top Up Security in the sum of $5,986,432.

105. There are several explanations given for the need for this amount of Top Up Security most of which I accept as set out in Mr. Crystal's written submissions.

106. However, there is one argument, the first of those briefly set out below, which I am unable to accept for these purposes as it begs the question whether the costs involved were reasonably incurred.

107. The first aspect is as Mr. Crystal complains (at paragraph 18 of his written submissions), that almost every aspect of the case has been slower and more expensive than was anticipated. This he says, has included in particular:

[19] Mr. Akers' 17th Affidavit, paragraph 20.

(i) Lengthy disputes regarding directions to trial, agreement of directions orders and variations of directions orders;

(ii) Considerably more disagreement regarding the content and timing of the provision of AHAB's discovery than was considered likely in October 2013; and

(iii) AHAB's failure to keep the trial timetable (including the delay in the provision by AHAB of its discovery. Delay in proceedings such as these inevitably leads to an increase in costs.

108. It will be seen immediately how one-sided and disputatious these complaints are even while they seek to justify much of the costs described in the foregoing table, $5,986,432 of which is now sought as Top Up Security.

109. I am unable to agree. While the objective is to set security for such costs as might reasonably be awarded upon taxation following "*a detailed assessment of costs on a standard basis following the trial*" (per Popplewell J. in *Stokors* above), in this litigation the generation of delay and expense has not been a one-sided matter. Rather, any dancing around the issues in this case has been very much a tango of all the parties.

110. And so, from my knowledge of this case, the recovery of expenses for the Relevant Period will not be a one-sided matter and the provisions of security for it should therefore not be approved on that basis. I am, moreover, obliged not to appear to be encouraging too hard-lined an approach to the conduct of this litigation. No party should be encouraged to think that it will recover its costs if it is successful, irrespective of how unreasonably it might have conducted its side of the proceedings

along the way. Reasonableness in all things is a discipline that the court must insist upon.

111. For such reasons, the provision I allow for security for those costs said to have been the result of delay, is almost exactly one-half of the amount sought or USD3 million.

112. The other factors cited by Mr. Crystal in support of the Top Up Security I have accepted in justification also of the other half in the amount of USD3 million. In particular, I accept that the estimate given by the GT Defendants at the October 2013[20] hearing for their costs of discovery was too low.

113. This is now confirmed by the actual costs experienced during the Relevant Period. USD3,776,142 was the estimate but the actual expenditure has come to USD6,585,681. It is that difference of approximately USD2.8 million that is meant to be covered by the Top Up Security of USD3 million, with the further USD200,000 I regard as being attributable to other shortfalls for the Relevant Period.

GT Defendants' application for Future Security

114. Under this head the GT Defendants seek USD14,473,388 in respect of the period for 1st July 2015 down to the first day of trial (viz: 18 July 2016). This is broken down in a table as follows under eight (8) heads:

[20] That which led to the Security Judgment.

Phase of work	Future Security sought ($)
The GT Defendants' Discovery	1,178,694
Other Parties' Discovery	5,282,607
Amendment of Pleadings	89,154
Factual Witnesses	457,109
Expert Advisors	3,710,858
Interlocutory Hearings	1,129,306
Trial Preparation	1,815,660
Miscellaneous Work and Other Disbursements	810,000
TOTAL	**14,473,388**

115. I accept all but one head; viz: "*Other Parties' Discovery*" for which $5,282,607 is sought by way of security, said by the GT Defendants to have increased from their earlier estimate of USD2,908,000.

116. The reason for this increase, Mr. Crystal Q.C. explains, arises directly as the result of the manner in which AHAB is now providing its discovery In particular[21]:

1) At the October 2013 Hearing, the GT Defendants had anticipated receiving about 600,000 relevant documents from AHAB. But as a consequence of the Directions Order as explained above, the total volume of AHAB's discovery will amount to approximately 2.3 million documents (largely un-reviewed for relevance).

2) As a result of the manner and timing of AHAB's discovery, the GT Defendants are unable to conduct an initial review of AHAB's documents solely through the use of outsourced reviewers (as was anticipated would be the case at the October Hearing 2013). Instead, AHAB's documents will be

[21] As taken from Mr. Akers' 17th Affidavit, paragraph 63.

reviewed by the GT Defendants (as necessary) at the first level by attorneys, paralegals and specialist reviewers with knowledge and experience of the proceedings.[22] As one would expect, these reviewers are more expensive (between $102-$320/hour) than outsourced reviewers.[23]

3) Additional costs have been and it is anticipated will continue to be incurred rectifying significant technical issues with AHAB's discovery (including, for example, corresponding with AHAB's attorneys regarding the presence of viruses in the "e-disclosure" files provided by AHAB and AHAB's failure to provide "BATES" numbers in respect of a significant portion of its documents).

4) Additional hosting costs will be incurred as a result of the significant increase in the quantity of documents to be provided by AHAB.

5) Additional attorney costs will be incurred in developing searches and other techniques to identify potentially relevant documents (because of the volume of potentially irrelevant documents being provided by AHAB).

6) Additional manual review costs will be incurred due to the number of documents provided by AHAB in scanned hard copy format that are not responsive to optical character recognition ("**OCR**").

7) Additional translation costs will be incurred due to the fact that many of AHAB's foreign language documents are not accompanied by adequate (or indeed any) translations.

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[22] Akers 17, paragraph 61.
[23] Akers 17, paragraph 62.

8) There have also been unexpected costs incurred in respect of protracted negotiations with certain respondent banks in the United States regarding documents obtained by AHAB pursuant to an application in the US under section 1782 of the United States Code. Those costs continue to be incurred.

117. Each of those concerns (apart perhaps for the 8th to do with the US proceedings) reveals a very separate and individualized partisan approach to AHAB's discovery. Indeed, as I am told by all the Defendants, this has turned out to be the approach each has taken and will take towards the selection of relevance, review and deployment of the discovery given by AHAB. The only area in which co-operation is to be expected between them is in relation to the coding of the documents on which they have agreed that the GT Defendants should take the lead and so provide the coded database at a cost to be shared but which they would then separately use for their individualized approach to the discovery exercise.

118. The justification they say, of course, is that each Defendant has its unique case to present and its unique litigation strategy to be developed and deployed in its defence (and in the case of the GT Defendants, their counterclaim). They say that it is therefore unreasonable and unrealistic for AHAB (and for this matter the Court) to expect them to co-operate upon anything like a common approach to the discovery exercise.

119. I disagree in relation particularly to the aspect of the exercise which will involve the expensive process of reviewing the AHAB discovery for relevance.

120. I can think of no good reason why the Defendants could not have or may not in future collaborate on the appointment of a single team of reviewers for this exercise.

Instead, they propose to engage separate teams and this is something about which AHAB properly complains.

121. Nor was it what was envisaged when the Defendants undertook in April 2015 to co-operate in reviewing the AHAB discovery and when, on that basis, I directed AHAB to deliver over its entire discovery database for the Money Exchange to the Defendants, unreviewed for relevance.

122. For these purposes, "*relevance*" is the key. A joint review exercise would in no way impede the Defendants' individuated use or strategic deployment of the material for the purposes of their defence (or, in the case of the GT Defendants, their counter-claim).

123. And while the Defendants' desire to take the most comprehensive and elaborate approach is understandable in this high-stakes, high profile case that does not entitle them to be secured in all the costs of so doing. As was remarked at the hearing, the Defendants are not entitled "*to get to their destination in a Rolls Royce if a Volkswagen would get them there just as reliably, if not as comfortably*".

124. This is an apt analogy to be applied to the documents review exercise. All that is involved is the inspection of the documents to decide on relevance to the respective cases. Once selected on that basis, the documents can and will no doubt be subjected to the more expensive exercise of analysis and deployment by the most senior members of the respective litigation teams. The less sensitive exercise of review for relevance should be done as efficiently and cost-effectively as possible and that too is a discipline that the Court has a duty to insist upon.

125. I must also make certain observations here about the GT Defendants' argument that their counter-claim has no effect on their estimate of costs for this discovery exercise. Mr. Crystal says this is because they have managed to keep the exercises entirely separate but I am not persuaded. In this case the issues are far too complex and inter-related for such a clean clinical approach to be taken and it seems to me most probable, having regard to the issued pleaded in the counter-claim, that material from his exercise, if not already, then in short order, will be found to be of relevance to the prosecution of the counter-claim. It was, however, accepted by Mr. Crystal that security for costs should not cover the GT Defendants' costs of their counter-claim.

126. For these reasons, the allowance for security for costs for the discovery exercise will be significantly reduced from that claimed. The allowance for this discovery exercise will be USD3 million.

127. Thus, the GT Defendants' estimates for historic (Top-Up Security) and future costs are reduced by two amounts of roughly USD3 million each, reducing their overall estimate of USD20.5 million to USD14.5 million (in round figures). That is the amount of security for costs allowed and ordered to be provided by AHAB on this application.

The AWALCo application

128. The AWALCo Liquidators give a detailed breakdown in a Costs Schedule and Spreadsheet under a number of heads to explain the amount of USD8,556,215 now requested.

129. The Costs Schedule reflects the costs said to have been incurred by the AWALCos up to the date of this application. The Spreadsheet focuses on the future costs they expect to incur up to the close of pleadings.

130. These do not include security for costs for the preparation of witness statements, expert reports and preparation for trial (said by Mr. Smith Q.C. to be the subject of a future Tranche 2 application) or costs for the trial itself (Tranche 3).

131. The sub-heads of costs covered by the Spreadsheet relate to Discovery; Amended Pleadings; Interlocutory Hearings; and Litigation Conferences/Correspondence /Attendance on other parties.

132. As with the GT Defendants' estimates, the concern here focuses upon the AWALCos estimate for the costs associated with the "Review of other Parties Discovery" – item 6 of their Spreadsheet.

133. This is set at US2,333,122 "Total Costs incurred and estimated future costs at 70% of 100% of disbursement – 70% being the amount of disbursements which would be expected to be recoverable on the ordinary taxation basis, 100% being recoverable only on taxation on the full indemnity basis. This amount of USD2,333,122 is then reduced in the next column of the Spreadsheet to USD1,761,519 to reflect the amount of "Further Security Required" (that is: beyond that already provided).

134. This then is the amount – USD1,761,519 – which is sought by way of security for costs related mainly to the discovery exercise to be undertaken by the AWALCos in relation to the AHAB discovery material.

135. It is for the same reasons, expressed in relation to the GT Defendants' estimate under this heading, that I disagree.

136. I consider that a fair and reasonable estimate is USD1 million and the security amount sought should therefore be reduced by USD761,519.

137. I also have concerns about the AWALCos historic costs of litigation like those expressed above apropos that aspect to the GT Defendants' historic costs. The costs of delay in these proceedings can, with reasonable assurance, be no less attributable to the postures taken by the AWALCos than to those assumed by any other party.

138. I can therefore, with no greater sense of assurance, make full provisions for those costs in favour of the AWALCos than I could for the GT Defendants.

139. Here the AWALCos seek security in the amount of approximately USD3.66 million (if my understanding of the Costs Schedule is correct).

140. Here too, I regard a reduction by about one-half to be reasonable and the amount allowed is therefore USD1.8 million (in round figures).

141. The total amount I allow for the AWALCos application here is therefore USD6 million (in round figures, that is: USD8.55 million less USD0.76 million less USD1.8 million) and AHAB is ordered to provide that amount also by way of security for costs.

142. This judgment, having been provided in draft to the parties, AHAB reiterated the objection earlier taken in arguments, that a significant amount of the AWALCOs' claim for historic costs and estimate for future costs up to the close of pleadings, would include fees for foreign lawyers. These would be English solicitors who have been and will continue to be engaged by the AWALCOs to assist with the discovery process in augmentation of the services which can be provided by their local lawyers at HSM Chambers.

143. As the fees of lawyers not admitted to practice in the Cayman Islands are irrecoverable by way of an order for costs, AHAB argues that no provision by way of security can properly be made for such costs.

144. While I accept that in principle this is correct, (and so acknowledged by Mr. Smith QC, on behalf of the AWALCOs), that is not the end of the matter.

145. What is proposed is that the foreign lawyers will be able to work on the basis of limited admissions to the bar to be granted on applications to this Court. If those applications are granted, then their reasonable fees will be recoverable at least on the standard basis, if the AWALCOs ultimately succeed at trial. If the applications are not granted or not granted in the numbers sought by the AWALCOs, an appropriate adjustment can be made to the provision of security for Tranche 2 or 3.

146. It is on this basis that the award of security now provided for the AWALCOs proceeds.

SIFCO 5's application for further security for costs

147. By this application, SIFCO 5 sought an order that further security for costs be provided by AHAB in the sum of USD7,724,314. This figure would have been in addition to existing security for costs now held by SIFCO 5 in the form of a guarantee for USD2,000,000, which amount the SIFCO 5 liquidators say has been exhausted. The further security sought is in respect of historic costs and future estimated costs which include discovery and would take SIFCO 5 up to and including the close of pleadings.

148. However, it was later explained by Mr. James Plowright in his first affidavit, (speaking on behalf of Mr. Nicolas Mathews, his boss and one of the SIFCO 5 liquidators), that this amount was overstated and should instead be USD2,915,386.

149. As Mr. Plowright explains, it has come to the SIFCO 5 liquidator's attention that the Schedule submitted in support of the application for USD7,724,314 ("the Schedule" exhibited to Mr. Mathews' 13th Affidavit) contains a number of items which should not yet be included. Among these are "Trial Preparation", Witness Statements" and "costs of the Pre-Trial Review", which will more properly fall to be considered as part of an application for security at a later stage of the proceedings; that is: the period between the close of pleadings and the start of the trial. Exclusion of such costs from the amounts included in the schedule results in a reduction of USD2,444,225 in the amount of security now sought by SIFCO 5.

150. Mr Plowright goes on to explain that it has also come to the SIFCO 5 liquidators' attention that the historic costs set out at page 7-15 of the Schedule and included in the aggregates calculated in the Schedule, include costs associated with SIFCO 5's strike out application against AHAB's case (which had been granted) and AHAB's subsequent successful appeal.

151. From an analysis of those historic costs, an amount of USD107,805 (being 70% of the costs actually incurred in the sum of USD154,005) plus leading counsel's fees in the amount of USD74,900 (70% of USD107,000) should be excluded from the sum of security now sought in respect of historic costs.

152. Accordingly taking into account those amendments to the Schedule and the existing guarantee for the amount of USD2,000,000, SIFCO 5 seeks an additional order for

security to the close of pleadings in the amount of USD3,097,386 (viz: USD7,724,314 – USD2,000,000 guaranteed – USD2,244,225 – USD107,803 – USD74,900).

153. Finally, as regards a further sum of USD200,000 in respect of coding costs, Mr. Lowe QC explains that this is relinquished because the GT Liquidators will be incurring and recovering the costs of coding by Pangea3. Any contribution by SIFCO 5 to those costs will be a matter to be resolved later.

154. Thus, by my calculations, SIFCO 5's total claim for security for costs amounts to USD2,897,386; (VIZ:USD3,097,386- USD200,000.)

155. Given the history of SIFCO 5's more marginal involvement in the fraud alleged by AHAB in this litigation, I do not find this approach or this amount to be unreasonable. While the SIFCO 5 "best estimates" will doubtless have contained a generous safety buffer, I do not consider that it reveals an overly contentious or disproportionate approach, either to their discovery exercise or otherwise to the preparation of their case. In fairness to AHAB at this stage, I consider however, that a discount of 20 percent – the same applied in the Security Judgment[24] to amounts then claimed by the Defendants – would be reasonable to take account of that buffer.

156. In particular, and in juxtaposition to the approach to be taken by the other Liquidators, I also note that in his written submissions on behalf of SIFCO 5, Mr. Lowe Q.C. (at paragraph 26) disavows the page-by page review of the AHAB database that the other Defendants seem prepared to embark upon (and that which AHAB had itself proposed as justification for a 1-year delay in the trial preparation process but rejected by the Court). Instead, SIFCO 5 is said to have *"adopted key*

[24] At paragraphs 99 and 109.

word searches to identify and batch documents into pools which are responsive to key phrases, organizations, names and themes. The rationale for this is to cast aside at an early stage those documents which are considered irrelevant to SIFCO 5's case. SIFCO 5 is not, as AHAB suggests, "undertaking a laborious, systematic and often needless page-by-page review of documents that are very often irrelevant".

157. I grant SIFCO 5's application for security in the amount of USD2.3 million (in round figures when USD2,897,386 is reduced by 20%) and direct AHAB to provide that amount by way of additional security.

158. In summary, in addition to the security for costs ordered in the amount of USD15.5 million as at the conclusion of the July 2015 hearing, I now order that AHAB provides further security in the amounts: USD14.5 million for the GT Defendants; USD6 million for the AWALCos and USD2.3 million for SIFCO 5 (a total of USD22.8 million). This then brings the amount of security for costs to be provided by AHAB for the Defendants to cover up to and including the close of pleadings (and in the case of the GT Defendants up to the first day of the trial) to USD38.3 million.

Hon. Anthony Smellie
Chief Justice

November 10, 2015