



In The Supreme Court of Bermuda

COMMERCIAL COURT

2023: No. 261

IN THE MATTER OF WHITE ROCK INSURANCE (SAC) LIMITED (PROVISIONAL LIQUIDATORS APPOINTED) (FOR RESTRUCTURING PURPOSES ONLY)

AND IN THE MATTER OF SECTION 35 OF THE INSURANCE ACT 1978

AND IN THE MATTER OF SECTION 24 OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000

RULING ON APPLICATION FOR INDEMNITY COSTS

Date of Hearing: 26 September 2024

Date of Ruling: 26 September 2024

Appearances: Jeffrey Elkinson, Britt Smith, Conyers Dill & Pearman Limited, for the Petitioner, the Bermuda Monetary Authority
Kyle Masters, Oliver MacKay, Carey Olsen Bermuda Limited, for the Company, White Rock Insurance (SAC) Limited
Changez Khan, Marshall Diel & Myers Limited, for the Joint Provisional Liquidators, Michael Morrison and Charles Thresh of Teneo (Bermuda) Limited
Lilla Zuill, Cox Hallett Wilkinson Limited, for the Liquidating Trustee, Lawrence Hirsh

RULING of Mussenden CJ

1. This application for costs arises out of my Decision given on 3 July 2024 and the Reasons issued on 20 August 2024 in this matter.

2. Both the Bermuda Monetary Authority (“**BMA**”) and the Company seek costs on an indemnity basis against Mr. Hirsch in his capacity as Liquidating Trustee for the Liquidating Trust. The basis for the applications is that Mr. Hirsh took several adverse positions in respect of the application to dismiss the Petition.
3. I adjourned the application to dismiss for a short period when I heard full submissions on the issue.
4. In respect of costs, in essence the complaint is that Mr. Hirsh:
 - a. Submitted that the Court did not have the authority to dismiss the Petition;
 - b. Asked the Court to treat with scepticism the level of agreements reached by the Company;
 - c. Doubted that the Petition was brought in the public interest;
 - d. Made allegations of collusion between the BMA and the Company amounting to fraud;
 - e. Had no evidence to support his allegations; and
 - f. His arguments were rejected by this Court and his application was dismissed.
5. Ms. Zuill says there should be no order as to costs because Mr. Hirsh was acting in his capacity under the authority of the Delaware Court. If any costs order were made, then it should only be in respect of the BMA and not the Company which did not bring an application.
6. In my view, I am satisfied that I should grant the applications on an indemnity basis. I refer to the Rules of the Supreme Court on costs and the law on indemnity costs as set out recently by me in the case of *BS&R Group Limited v Westport Architecture et al* [2024] SC (Bda) 33 Civ (22 July 2024), where the test was whether the circumstances were out of the norm and what order of the Court would achieve a fair result.
7. I accept the submissions of Mr. Elkinson, as adopted by Mr. Masters, that the position, the approach, and the allegations by Mr. Hirsh were out of the norm in what was in effect a straightforward application to dismiss the Petition. It was significant that the Company had no objections and that no other parties objected to the application to dismiss, with the JPL taking a neutral position. It was also significant that Mr. Hirsh submissions were not supported by evidence. Further, it was clear that Mr. Hirsh’s position was that the BMA and the company were in collusion about the application. This conduct does fall out of the norm and should be met with an order for costs on the indemnity basis. In my view, this would achieve a fair result as both the BMA and the Company had to address these matters when in the normal course they would not have had to do so.
8. I disagree with Ms. Zuill that the Company should not have its costs. The Company were obliged to address the allegations, and they were also on foot for costs for the time that

the JPLs were under appointment. They had made this position clear on the first day of the hearing.

9. In respect of Ms. Zuill's position about the cooperation between jurisdictions, I give weight to the argument. However, the cooperation between jurisdictions should be based on established rules respected by the various jurisdictions and which should heed the rules about pleadings, allegations of collusion and fraud and the need for evidence to support credible submissions.
10. I grant the order for indemnity costs to the BMA and to the Company for the application to dismiss for the appearances on both days and for this costs application.

Dated 26 September 2024



**HON. MR. JUSTICE LARRY MUSSENDEN
CHIEF JUSTICE OF THE SUPREME COURT**