In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

5 March 2017

CASE NO: 01/2016

HAMMAD SHAWABKEH

Claimant

v

DAMAN HEALTH INSURANCE QATAR LLC

Defendant

COSTS ASSESSMENT

Before:

Mr Christopher Grout, Registrar

JUDGMENT

Introduction

1. On the 20 November 2016 the First Instance Circuit of the Court (Justices Robertson, Hamilton and Arestis) delivered judgment in *Case No 1 of 2016; Hammad Shawabkeh v Daman Health Insurance Qatar LLC*. It is unnecessary to recite the facts of the case in any great detail; they are apparent from the judgment of the Court. Suffice it to say, the Court dismissed the Claimant's claim and ordered him to pay the Defendant's "reasonable costs" in the case which, if not agreed between the parties, were to be assessed by the Registrar. In a judgment dated the 15 February 2017, the Appellate Division of the Court (Lord Phillips of Worth Matravers, President, Justices Rajah and Kirkham) dismissed the Claimant's application for permission to appeal.

2. On the 3 January 2017 the Defendant (through its legal representatives) emailed the Registry stating "it is now more likely than not" that a costs assessment will be required. The Defendant asked for a timetable for costs submissions to be set down. The following day I communicated with both parties by email setting down a timetable for the filing and service of costs submissions. On the 11 January 2017 the Defendant emailed the Registry asking for the timetable to be suspended as the parties were still in negotiations. The same day I emailed the parties notifying them that I had suspended the timetable until such a time as the parties confirmed in due course whether an assessment would indeed be required.

3. By an email dated the 23 January 2017, the Defendant notified the Registry that the parties had, thus far, been unable to reach an agreement as to the issue of costs. The Defendant asked for the timetable to be reinstated. The same day I notified both parties, by email, that the timetable for the filing and service of costs submissions had been reinstated. The timetable is annexed to this judgment.

4. In accordance with the aforementioned timetable, the Defendant filed and served its Schedule of Costs (and related submissions) on the 2 February 2017. The Claimant, having been granted an extension of time in which to do so, filed and served his response on the 16 February 2017. The Defendant filed and served a Reply on the 23

February 2017 which, in addition to dealing with points raised by the Claimant, also answered specific queries raised by me. The Claimant filed and served a Response to the Reply on the 28 February 2017.

5. I have, in my capacity as Registrar, been involved with the case since its inception. In addition to having read and considered the parties submissions on costs, I have read all the papers in the case and was present throughout the course of the trial. I am, therefore, acutely aware of the issues raised by the parties, how the case was conducted and how various matters have been resolved both prior to and following the trial.

The Need for a Hearing

6. From the outset, both parties expressed differing views as to whether or not this assessment should be undertaken on the basis of written submissions alone or whether a hearing would be required. I advised that I would return to the issue once all the submissions had been filed. In its latest Reply, the Defendant maintains that a hearing to determine the matter would be "disproportionate" and that the "quite lengthy submissions" filed to date form a sufficient basis upon which to undertake the assessment. Further, the Defendant makes the point that a hearing would incur additional legal costs that it has very little prospect of recovering from the Claimant.

7. The Claimant, in his Response, requests a hearing. He says that, as he is unrepresented, "the only way to express himself is through direct communication in a hearing." He argues that the Defendant's "manipulation and cost exaggeration needs to be scrutinised in a hearing." Further, the Claimant submits that the Defendant should be called to explain its "vague and contradicting rates and charges" and that the written submissions provide an insufficient basis to do this. Finally, he adds that no cost would be incurred by him if he were required to attend a hearing.

8. I have considered this issue carefully, particularly in light of the Claimant's expressed concerns. However, I have concluded that it is unnecessary to hold a hearing in order to determine this matter. The written submissions are, for the most part, clear and I am able to discern both parties' positions as to the various issues involved. A hearing

would only escalate the already substantial amount of costs which are being claimed and in the circumstances of this particular case (as to which, see below) I do not consider it to be in the interests of justice to allow that to happen. Accordingly, I have conducted this assessment on the basis of written submissions alone.

The Principles to be Applied

9. The Court's Regulations and Procedural Rules do not provide a great deal of guidance when it comes to the issue of how costs are to be assessed. Instead, Article 33.1 gives the Court a very wide discretion as to the types of order it can make. In this case, the Court has ordered that the "reasonable costs" incurred by the Defendant- as the successful party- are recoverable from the Claimant.

10. How is the issue of reasonableness to be approached? In my judgment, in order to be recoverable costs must be both reasonably incurred and reasonable in amount. If they are not then they are unlikely to be recoverable.

11. I have identified the following (non-exhaustive) list of factors which will ordinarily fall to be considered when assessing whether or not costs have been reasonably incurred by a party and, if they have, whether they are also reasonable in amount:

    (a) Proportionality;
    (b) The conduct of the parties (both before and during the proceedings);
    (c) Efforts made to try and resolve the dispute without recourse to litigation (for example through Alternative Dispute Resolution);
    (d) Whether any reasonable settlement offers were made and rejected; and
    (e) The extent to which the party seeking to recover costs has been successful.

12. When considering the proportionality factor, the following (again non-exhaustive) factors are likely to fall to be considered:

    (a) In monetary or property claims, the amount or value involved;
    (b) The importance of the matter(s) raised to the parties;
    (c) The complexity of the matter(s);

(d) The difficulty or novelty of any particular point(s) raised;

(e) The time spent on the case;

(f) The manner in which work on the case was undertaken; and

(g) The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.

The Submissions of the Parties

13. The Defendant, in its written submissions, argues that its costs have been reasonably incurred and that the Claimant should bear all of them.

14. The Defendant seeks an order for costs of QAR 720,162.87. At paragraph 6 of its submissions, the Defendant breaks that total down in the following way:

Description	**Costs Claimed (QAR)**
Invoiced Fees	500,077.10
Disbursements	205,085.77
Estimated costs for preparation of Costs Submissions	15,000.00
Total	**720,162.87**

15. The Invoiced Fees are those of the Defendant's solicitors- Pinsent Masons LLP. They are accompanied by a schedule which breaks down the billed time spent on the case in the format of date, name of fee earner, description of fee earner, hourly rate, time spent, value of time spent (i.e. the hourly rate x time spent) and a short narrative. The Defendant submits that the solicitors adopted "a reasonable and proportionate" approach to the amount of time that was invoiced to the Defendant. The Defendant observes that the invoiced fees represent a "write down" of 27% of the actual fees incurred by the solicitors. In other words, the solicitors gave the Defendant a discount on their ordinary rates.

16. The disbursements comprise counsel's fees, the expert's fees as well as a multitude of other expenses- air fares, hotel accommodation, subsistence, taxis, teleconferencing, courier services, other travelling expenses, visas and photocopying charges.

17. The Defendant also claims QAR 15,000 which is its estimate for the preparation of its costs submissions.

18. In addition, the Defendant makes a number of submissions in relation to the Claimant's conduct. In particular, it submits that the Claimant (a) was aware that he might be held liable for the Defendant's costs in the event that his claim was unsuccessful, (b) "aggressively and recklessly" pursued the claim without any regard to his prospects of success or his ability to pay the Defendant's costs, (c) elected not to pursue his claim under the "Independent Adjudicator process" offered by the Customer Dispute Resolution Scheme ("CDRS") and (d) rejected the Defendant's "reasonable offer to settle" prior to the hearing.

19. The Claimant's response is uncompromising. He disputes every single item claimed by the Defendant. He classifies everything as unreasonable and/or disproportionate. At paragraph 7 of his written submissions he says-

> *"The Claimant's position is that the Defendant unreasonably incurred these costs and therefore the Defendant should bear all of the costs for these proceedings."*

20. As to the Invoiced Fees of Pinsent Masons LLP (described by the Claimant as "ridiculously unreasonable"), the Claimant misquotes the Defendant's submissions in two material respects. First, he quotes the Defendant as having said "The Pinsent Masons LLP legal team work was administrative in nature." That is not what the Defendant said at all. Pinsent Masons LLP is a law firm comprised mostly of fully qualified lawyers. What the Defendant said, at paragraph 7.1 of its written submissions, was that "where work was administrative in nature it was undertaken by trainees and/or paralegal support." The simple point being that fully qualified lawyers were not undertaking (and therefore not invoicing for) administrative work; such work was undertaken by junior level staff and invoiced for accordingly. The second misunderstanding is that the Claimant quotes the figure of QAR 681,950 but this is not what the Defendant is seeking to recover. That figure represents the value of the

time Pinsent Masons LLP spent on the case before applying the discount referred to above. The figure which represents the Invoiced Fees is QAR 500,077.10.

21. As a comparison, the Claimant draws attention to the bill generated by his legal advisors of QAR 10,000.

22. As to the instruction of Counsel, the Claimant says that the involvement of Counsel was "not needed" and that the costs incurred by him were "unreasonable and unacceptable." The Claimant avers that the legal team based in Qatar (i.e. Pinsent Masons LLP) would have been sufficient.

23. As to the expert witness, the Claimant states that the instruction of an expert was unnecessary and that the judgment of the Court supports this conclusion. He maintains- as he did at trial- that the expert's speciality was not related to the case, that the expert was simply a "gun for hire" and that the expert "violated his work ethics by testifying in a case he had little knowledge of."

24. The Claimant agrees that he did contact the CDRS in an effort to resolve the dispute amicably but that the Defendant rejected his claim. He did not pursue the matter with the Independent Adjudicator because (a) he hoped the Defendant might agree to settle the matter, given more time and (b) the cap imposed on any award the Independent Adjudicator might make was less than what he was claiming. Furthermore, the Claimant was also concerned that he would not be able to pursue the matter before the Court if he elected to go before the Independent Adjudicator.

25. The Claimant alleges that it was the Defendant who unreasonably refused to settle the claim by not making any offer towards paying the sums he claimed.

Consideration and Conclusions

The CDRS

26. The Defendant, in its written submissions, criticises the Claimant for pursuing litigation when there was an alternative remedy available, namely pursuing a claim through the CDRS which, the Defendant avers, "is a simple and quick alternative to

going to court and the service is free to use." As I identified at paragraph 11(c) above, efforts made to try and resolve the dispute without recourse to litigation is likely to be a relevant consideration when assessing the reasonableness or otherwise of costs.

27. There are, however, a number of problems with the Defendant's criticism of the Claimant in this regard. First, as the Defendant accepts, the Claimant did contact the CDRS in or around December 2015. As part of the CDRS process, the Defendant was requested to consider the Claimant's case internally. It did so and rejected his claim. The CDRS then seemingly advised the Claimant that he could either (a) refer the matter to the Independent Adjudicator or (b) pursue the matter before the Court. The Claimant initially agreed to refer the matter to the Independent Adjudicator but then changed his mind and commenced proceedings before the Court. He was entitled to adopt that course. An additional problem, again accepted by the Defendant, is that the CDRS has a cap on the amount that it can award. The cap is QAR 400,000 which is significantly less than what the Claimant was claiming, namely QAR 617,400.95.

28. Accordingly, the Claimant did engage with the CDRS process but the Defendant rejected his claim. Whilst he could have pursued the matter further, i.e. through the Independent Adjudicator, even if he had been successful he would still have been unable to recover the full value of his claim because it was not within the Independent Adjudicator's power to award it to him. Therefore, in the circumstances, I do not consider that the Claimant's approach in this regard was unreasonable and I do not hold his failure to refer the matter to the Independent Adjudicator against him.

Settlement

29. As I identified at paragraph 11(d) above, the question of whether any reasonable offer(s) to settle were made (and rejected) is likely to be a relevant consideration when undertaking a costs assessment. The Defendant did make an offer to settle the case in a "without prejudice save as to costs" letter to the Claimant dated the 18 October 2016, i.e. a couple of weeks before the trial was due to commence. It is worthy of note that that letter was sent the same day the Court rejected an application by the Defendant to strike out the Claimant's case on the basis that the claim could not succeed given the available evidence.

30. The letter made clear that the Defendant's costs, at that stage, were QAR 486,515.92 and that it anticipated further costs of QAR 170,000 (excluding disbursements) if the matter proceeded to trial. In short, the Defendant offered not to pursue the Claimant for any of its legal costs if the Claimant agreed to withdraw his claim.

31. The Claimant rejected this offer in a "without prejudice save as to costs" letter dated the 20 October 2016. The response need not be recited in full. Suffice it to say, the Claimant took the view that he had a strong case and good prospects of success at trial. He had suffered not only financially but also emotionally as a result of all that had happened. The only basis upon which the Claimant was prepared to withdraw his claim was if the Defendant agreed to pay the amount claimed. The Defendant refused.

32. It is apparent from the 20 October 2016 letter that the Claimant had little, if any, appreciation or regard to the enormity of the costs he faced if he was unsuccessful. His response, in essence, was that he had nothing left to lose or that could be taken from him and so the threat of costs if unsuccessful was in no way viewed as a deterrent. I can fully understand why the Defendant may consider that approach to be irresponsible. However, that was not the only basis for the Claimant's continuation of his case. He was, for the most part, without legal representation. I have no doubt that he genuinely believed in the merits of his claim which was, in my judgment, neither vexatious nor totally without merit. On the contrary, as noted above, the Court had, the same day the offer to settle was made, rejected an application that the Claimant's case be struck out. In the Claimant's mind (even if mistakenly) this likely only reinforced his view that he had a good case. Moreover, the Defendant's offer to settle was not one which sought to meet any part of the Claimant's case. It was simply an offer not to pursue him for costs if he withdrew his claim. Had the offer to settle been constructed differently (for example, an offer to settle on the basis that the Defendant would pay what it would have had to pay if the treatment had been undertaken in a country that was within the territorial scope of the insurance policy) and rejected by the Claimant, the position might be very different. As it is, I am not satisfied that the Claimant's refusal of the offer to settle is, in this case, something which ought to be held against him.

Invoiced Fees- Pinsent Masons LLP

33. The Invoiced Fees of Pinsent Masons LLP came to QAR 500.077.10. As noted at paragraph 15 above, a schedule was submitted in support of that claim. Whilst I have read the schedule in full, I do not propose to recount every line of it; that would neither be productive nor sensible. Rather, the better approach is to simply look at the figure in the round and ask whether it is reasonable in light of the factors identified at paragraphs 11 and 12 above.

34. According to the schedule, eleven members of the Pinsent Masons LLP team undertook work on the case. The team comprised one Legal Director, one Senior Lawyer, two Partners, two Associates, three Trainees and two Paralegals. Between them, they spent 389.1 hours on the case. It is fair to say that the vast majority of those hours were shared between the Legal Director (114.9 hours) and one of the Associates (207.9 hours).

35. There are two matters which cause me immediate concern- one relates to the number of hours spent preparing and reviewing the trial bundle, the other involves the number of lawyers who attended the hearing.

36. As to the first, the Defendant acknowledges in its written submissions that it is ordinarily the Claimant in legal proceedings who will bear responsibility for preparation of the trial bundles. In the present case, the Defendant "offered" to do so. The Claimant, in his response, argues that the costs incurred by the Defendant in this regard are "unreasonable" and states, as he does in other language throughout his submissions, that the Defendant "recklessly caused these hearings to proceed."

37. As to the latter point, the Claimant is simply wrong about this and his repetition of the point throughout his submissions has not assisted his case. Whilst the Defendant could have chosen to adopt a different course, it was fully entitled to defend itself against the Claimant's claim. The Defendant won its case and an attempt by the Claimant to challenge this on appeal has failed.

38. However, the Claimant's argument as to reasonableness has, in my view, considerable merit. When one adds up the number of hours which relate in some way to the trial

bundles, the total is 42.1. That equates, after discount, to QAR 36,657 of the Invoiced Fees which seems to me to be excessive. Moreover, had the Defendant intimated at the time it volunteered to prepare the bundles that this would be the associated cost, doubtless the Claimant would have refused and would have prepared them himself.

39. As to the number of lawyers who attended the hearing, in addition to Counsel (as to which, see below), Pinsent Masons LLP sent their Legal Director (at an invoiced cost of QAR 36,742) and an Associate (at an invoiced cost of QAR 21,499). QAR 58,241 of the Invoiced Fees therefore relates to attendance at the hearing. Whilst the Defendant is of course entitled to instruct as many lawyers as it wants, this cannot be at the expense of the Claimant. Counsel was instructed to represent the Defendant at the hearing. It was a straightforward case and one which Counsel was perfectly able to deal with without the assistance of two other lawyers. It was not, in my view, reasonable to incur these additional costs.

40. The Claimant's comparison as to what his legal team incurred is unhelpful. This is because, so far as I can ascertain, his legal team undertook little to no meaningful work on the case. They certainly did not represent him at the hearing and but for perhaps two or three emails with the Registry, all other correspondence came from the Claimant directly.

41. As the vast majority of costs claimed relate to the Invoiced Fees, it is appropriate, at this stage, to make one additional observation. The Defendant won the case, but it was not successful on every issue. Had the issues in dispute simply been narrowed to the interpretation of the policy, considerable time would have doubtless been saved both at trial and in preparation thereof.

42. As it was, two issues of fact were heavily in play. One related to whether or not the Claimant and his wife travelled to the United States of America with prior knowledge of the medical condition. The Defendant suggested that they did; the Claimant denied this. The other related to whether, assuming the insurance policy did cover the treatment in question, there had been timeous notification of the claim by the Claimant to the Defendant. Both of these issues were resolved in favour of the Claimant (see paragraphs 34-43 and 60-70 of the Court's judgment). Some allowance

should be made for this when assessing how much of the Invoiced Fees claimed by the Defendant are recoverable.

43. The Invoiced Fees of QAR 500,077.10 are, in my judgment, unreasonable. Making appropriate allowances for all the matters I have identified above, a reduction of 55% seems to me to be just and reasonable in all the circumstances. Accordingly, the recoverable amount from the Claimant, insofar as the Invoiced Fees are concerned, is QAR 225,034.70.

Counsel's Fees

44. In addition to instructing Pinsent Masons LLP to handle the case on its behalf, the Defendant also secured the assistance of Counsel, Mr Sanjay Patel, to prepare the pleadings and represent the Defendant at the hearing. Mr Patel is based at 4 Pump Court in London. Excluding ancillary expenses (which I return to below) Mr Patel's fees came to £19,412 which, applying the various exchange rates used by the Defendant (which differs between 1 GBP = QAR 4.49 to 1 GBP = QAR 5.37 depending upon the dates of the respective invoices) amounts to QAR 88,849.03. The amount, therefore, is not insubstantial.

45. The first question to ask is whether or not it was reasonable to instruct Counsel in addition to the team at Pinsent Masons LLP. The Defendant does not engage with this issue in its submissions; it appears to assume that the case self-evidently warranted it. The Claimant on the other hand argued that the instruction of Counsel was "not needed" and that the costs incurred by him were "unreasonable and unacceptable." As to the itemised breakdown of Counsel's fees, the Claimant simply states that "These invoices are from a law firm in England advising a law firm in Qatar. The Qatari law firm shouldn't have requested these services" and "Reading a couple of pages requires a couple of minutes."

46. The latter point is, with all due respect to the Claimant, somewhat flippant. The Claimant is well aware that the case generated more than simply "a couple of pages" by way of documents. The trial bundle comprised two lever arch files. Moreover, Counsel's role is not limited to simply reading the papers. He has to consider them,

draft a response where required, provide advice, attend conferences, undertake research, prepare the case for trial and then advocate at the hearing.

47. However, it should not always be assumed that the instruction of Counsel (and the costs incurred as a result) will be viewed as reasonable. Some cases will simply not justify such a course. In *Case No 2 of 2016; Khalid Abusleibah v Qatar Financial Centre Authority* the First Instance Circuit of the Court (Justices Dohmann QC, Al Sayed and Kirkham) limited the amount of costs recoverable by the Authority for three reasons, one of which at paragraph 15(a) of the judgment provides as follows-

> *"Whereas a party is entitled to be represented by advocates of its choice, including Counsel based abroad, in a straightforward matter such as the present this should not be at the expense of the unsuccessful individual."*

48. Each case needs, of course, to be judged on its own facts. The case cited above raised neither significant disputes of fact nor complicated issues of law. No witnesses were examined or subjected to cross examination. No expert evidence was relied upon. There was only a short hearing at which oral submissions were made. The simple point the Court was making in its observation above is that where a party adopts 'a sledgehammer to crack a nut' approach to litigation, it cannot hope to recover those costs from the losing side. That decision is consistent with both the Overriding Objective of the Court (as per Article 4 of the Court's Regulations and Procedural Rules) and my observations at paragraphs 11 and 12 above.

49. In the present case, different considerations apply. First and foremost, this case necessitated a trial. There were critical disputes both of law and (albeit to a lesser extent) fact. A number of witnesses were called. Both parties relied upon expert evidence although, in the end, only the Defendant's expert attended the hearing. Nevertheless, there were a significant number of features which, in my judgment, justified instructing Counsel who, as a specialist advocate, was best placed to conduct the trial. The Court was undoubtedly assisted as a result. Accordingly, I take the view that it was reasonable, on the facts of this case, for the Defendant to seek the assistance of Counsel in addition to Pinsent Masons LLP.

50. Whether his attendant fees are reasonable is a different matter. Counsel's "brief fee" of £7,584.00 comprised "preparing for and attending day 1 of hearing." Attending days 2 and 3 of the hearing attracted a fee of £1,580.00 per day. In addition, Counsel claimed further fees of £1,200.00, £973.00, £1,140.00, £1,010.00, £2,844.00 and £1,501.00 for matters relating to things such as considering the papers, drafting the defence, reviewing witness statements and the expert's report, telephone conferences and so on.

51. It seems to me that, ordinarily, the agreed brief fee should cover all the work done by way of preparation for representation at the trial, as well as attendance on the first day of the trial. In the present case, that is indeed what the brief fee purports to do. It is then acceptable to charge what is sometimes referred to as a 'refresher' for each subsequent day Counsel is required to attend the trial. What does not seem to me to be reasonable is to agree a brief fee but then charge separately for the types of things listed above. Those matters are part and parcel of the proper representation of the client and should not attract distinct fees. There may well be cases where, owing to unforeseen circumstances, Counsel is justified in claiming additional fees to those which form the basis of the brief fee but this is not such a case.

52. At the end of the day, it is a matter for Counsel and his client what arrangements they come to as to how Counsel is to be remunerated. However, where such costs are being claimed from the unsuccessful party, as here, the test to be applied is one of reasonableness. Although I am of the view that this case justified the instruction of Counsel, the case was not a difficult one. The brief fee is a reasonable one so long as it included all of the preparatory work undertaken and not only certain parts of it. The daily refreshers are also reasonable. Accordingly, I adjudge the amount of £10,744.00 (QAR 48,240.56) to be recoverable on the basis that it represents a proportionate amount taking into account the complexity of the case, the time spent on it and the work undertaken. The additional fees, totalling £8,668.00 (QAR 40,608.47), are not recoverable from the Claimant as I consider the work undertaken in relation to them to be adequately covered by the brief fee.

Expert's fees

53. In its written submissions the Defendant asserts that "this case required the Defendant to seek testimony from an expert in breast cancer." Whether that is entirely apropos is open to question. As the Court observed at paragraph 48 of its judgment-

> *"The principal issue for decision in this case is whether the medical treatment which [Ms S] received in Texas in July 2015 and in the following months, or any part of that treatment, arose by reason of an "Emergency" as defined in the Policy. That is ultimately a matter of interpretation by the Court of that term as so defined and the application of it to the facts as agreed or as otherwise established on the evidence. What medical dictionaries or medical men may say about the general meaning of a medical "emergency" may be instructive or helpful in the exercise of interpretation of the Policy terms but cannot of themselves be definitive."*

54. The issue that had to be determined was, therefore, a legal one, not a medical one. Nevertheless, it cannot be overlooked that the Court was assisted by the expert's evidence and was clearly impressed by what he had to say- see, for example, the observations of the Court at paragraph 47 of its judgment. Furthermore, at the time of the expert's instruction, the Defendant had been served with a number of witness statements and materials from medical experts based in Qatar and in the United States of America. It needed to be able to properly respond to them. Accordingly, whilst it may not have been necessary (in the sense that the Court may well have come to the conclusion it did absent any expert evidence) it was, for the reasons I have given, reasonable to incur the cost of instructing a suitably qualified expert in order to meet the Claimant's case. The Claimant's continued attack on the impartiality, integrity and qualifications of the expert in this case is without any credible foundation, particularly in light of the judgment of the Court and that of the Appellate Division when refusing permission to appeal.

55. The expert the Defendant chose- Professor Jonathan Waxman- is described by the Defendant in its submissions as "a highly reputable and sought after cancer specialist based at Imperial College, London." His attendant fee is said to be "commensurate" with his "level of experience and expertise."

56. Excluding ancillary expenses (which I deal with below), Professor Waxman's fees total £13,065 (QAR 60,898.38 using the various exchange rates provided by the Defendant which, again, differ depending upon the date of the invoices). That figure is broken down as follows- £2,100 for the compilation of the report plus an associated secretarial fee of £65.00 (QAR 11,385.13 in total), £10,000 (QAR 45,425) for attendance at the trial / time spent travelling to and from Doha (which is itemised as being 4 days at £2,500 (QAR 11,356.25) per day) and £900 (QAR 4,088.25) for work carried out in relation to correspondence and a conference call.

57. At paragraph 12(g) above I observed that one of the factors to be considered when undertaking a costs assessment is the appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology. This is undoubtedly a case where Professor Waxman should not have been put to the inconvenience and expense of travelling to Qatar. As the Defendant observes at paragraph 9 of its Reply-

> *"...if he had not been travelling to and from Doha to attend the hearing, or indeed if he had not been in attendance at the hearing, Professor Waxman could have been otherwise engaged in other fee generating matters."*

Although his evidence was disputed by the Claimant, he could have given his evidence via video-link. The parties were well aware that the Court had such facilities available, not least because they were referred to explicitly in email correspondence from me to them on the 8 September 2016, my Directions to the parties dated the 29 September 2016 and the Court's Directions dated the 4 October 2016. Had Professor Waxman not had to travel to Qatar, his attendance fee would have been limited to £2,500 (QAR 11,356.25) for the one day he would have been required to give his evidence.

58. Accordingly, as I have concluded that Professor Waxman should not have been required to travel to Qatar when there was a more efficient and cost-effective alternative available (namely use of the video-link), the three additional days claimed as part of his attendance fee are not, in my judgment, reasonably incurred and so are not recoverable from the Claimant. His remaining fees- totalling £5,565 (QAR 26,829.63) – were reasonably incurred and seem to me to be reasonable in amount given the nature, scope and detail of his filed report, the fact that he was required to give evidence at trial and the additional correspondence that required his attention.

Disbursements

59. The total amount claimed in disbursements (excluding the fees of Counsel and the expert) is QAR 44,940.54. I will deal with these as concisely as possible.

Air Fares

60. I have already determined that it was not reasonable to request Professor Waxman to travel to Qatar to give evidence when there were other more cost effective means to facilitate this. Accordingly, the claim for QAR 19,393.58 in respect of his return air fare from London to Doha is rejected.

61. Having concluded that it was reasonable for the Defendant to instruct Counsel, the issue of Counsel's air fare falls to be determined. The Claimant should pay a contribution towards this. However, Counsel flew (presumably from London to Doha) at a cost of £3,852.00 (QAR 17,295.48) which represents the cost of a return business class fare. Whilst there are many advantages to travelling business class, I do not see why the Claimant should have to pay for this. A reasonable contribution would be to meet the cost of a return economy class fare which I adjudge to be QAR 3,800.

62. In addition, the Defendant required an Associate from the Dubai based office of Pinsent Masons LLP to attend the trial (in addition to both the Legal Director of the QFC branch of Pinsent Masons LLP and Counsel). I have already concluded that it was not reasonable to have incurred this cost. Accordingly, the claim for QAR 686 in respect of the Associate's return air fare from Dubai to Doha is rejected.

Hotel Accommodation

63. For the reasons I have already given, it was not reasonable to have required Professor Waxman to travel to Doha and so the claim for the associated accommodation costs of QAR 1,550 is rejected.

64. Similarly, the claim for QAR 4,232.94 in respect of the hotel accommodation for the Associate from Pinsent Masons LLP (Dubai) is rejected.

65. The claim for QAR 3,875 in respect of the hotel accommodation for Counsel is allowed. I have already found that it was reasonable to instruct Counsel. This claim represents a 5 night stay at a medium priced hotel in Doha. I consider this to be a justified expense which is reasonable in amount and so it is rightly recoverable from the Claimant.

Subsistence

66. The claim for subsistence amounts to QAR 3,946 and will be heavily impacted by the attendance of the expert and other lawyers whom I have already determined it was unreasonable to have required to attend Doha and/or the hearing. Recognising that it would be reasonable to incur some subsistence costs for those whose attendance was reasonable, the Claimant is liable to pay a contribution in the sum of QAR 1,000.

Taxis

67. The amount claimed- QAR 1,431.59- represents various instances of document delivery and taking people (who in my judgment should not have been required to travel to Qatar) to and from the airport. In the circumstances, the Claimant is liable to pay a contribution in the sum of QAR 644.

Teleconferencing

68. Teleconferencing as between Pinsent Masons LLP and the Defendant is claimed in the sum of QAR 1,546.44. The Claimant is liable to pay a contribution in the sum of QAR 695 which I consider to be reasonable in the circumstance of this case.

Courier

69. The claim for QAR 57.46 for couriering documents to Counsel is reasonable and therefore recoverable from the Claimant.

Travelling Expenses

70. Additional traveling expenses totalling QAR 202.80 relating to Professor Waxman and the Associate are not recoverable from the Claimant for reasons I have already given.

Visas

71. Visa costs of QAR 202.41 relating to Professor Waxman and the Associate are not recoverable from the Claimant for reasons I have already given.

Copying charges

72. Copying charges amount to QAR 918.66. The Claimant is liable to pay a contribution in the sum of QAR 413 which I consider to be reasonable in the circumstance of this case.

Estimated Costs

73. QAR 15,000 is claimed in respect of estimated costs for the preparation of the Defendant's costs submissions. Taking into account the extent to which I have limited the amount of costs recoverable from the Claimant in this case, the most appropriate outcome is for each party to bear its own costs in respect of submissions relating to the issue of costs. Accordingly, no part of the QAR 15,000 claimed is recoverable from the Claimant.

Final Conclusion

74. For the reasons given above, the Defendant's submissions as to its reasonable costs are successful but only to the extent of QAR 310,589.35.

75. Accordingly, the Claimant shall pay to the Defendant the sum of QAR 310,589.35.

By the Court,

Mr Christopher Grout

Registrar

Representation:

The costs assessment was undertaken on the papers (i.e. without the need for an oral hearing), submissions having been filed by the Claimant (acting in person) and Pinsent Masons LLP on behalf of the Defendant.

Annex

1. By no later than **4pm** on **Thursday 2nd February 2017**, the Defendant is to file and serve a Schedule of Costs for assessment. That Schedule should provide more detailed information than the one served on the Claimant (and copied to the Registry) dated 15 December 2016. In particular, it should:

   (a) Provide a short narrative for the hours undertaken by each fee earner; and
   (b) Provide an itemised break-down (and, where necessary, an explanation) of the disbursements claimed. In particular, a detailed explanation of the work undertaken and the rates charged by both Counsel and the Expert will be necessary. Further, all forms of travel and accommodation expenses claimed should be clearly explained.

2. By no later than **4pm** on **Thursday 9th February 2017**, the Claimant is to file and serve a Response to the detailed Schedule of Costs. That response should:

   (a) Identify which costs on the Schedule are considered reasonable (and are therefore not disputed); and
   (b) Identify points of dispute in respect of those costs on the Schedule which are considered unreasonable. Points of dispute should be concise and to the point. They should, first, identify any general points or matters of principle which require a decision before the items contained within the Schedule are scrutinised. They should then address the individual items on the Schedule, stating concisely the nature and grounds of dispute. Where individual items are disputed, the Claimant should identify what sum, if any, he considers to be reasonable in respect of each disputed amount claimed.

3. By no later than **4pm** on **Thursday 16th February 2017**, the Defendant is to file and serve, should it so wish, a Reply. Any Reply should be limited to:

   (a) Addressing any general points or matters of principle raised by the Claimant; and
   (b) Addressing any matters of dispute raised as to the individual items contained within the Schedule. Where the Defendant is prepared to make concessions in relation to any points of dispute, it should expressly state so.

4. Following receipt of the Response (and any Reply), the Parties are then at liberty to make any further submissions as to whether the assessment is made with or without a hearing in Court by no later than **4pm** on **Thursday 23rd February 2017**.