

Litigation Funders Liable for Indemnity Costs

Excalibur Ventures LLC v Texas Keystone Inc
[2014] EWHC 3436 (Comm)

Third party funders were found to be liable to pay indemnity costs ordered against the party funded by them.

Excalibur had brought proceedings for £1.6 billion against Texas Keystone in respect of the exploitation of certain Iraqi oilfields. Following a five month trial, the case was dismissed in December 2013 by Mr Justice Clarke, who found that the claimant's case was speculative and wholly without merit. The judge also found that the claimant's main witnesses had lied in evidence and had sought to mislead the court from the outset. In his judgment the judge awarded the defendants their costs on an indemnity basis.

Perhaps unsurprisingly, there then developed a separate dispute with the claimant's third party funders as to whether they should be liable to the defendants for the costs on an indemnity basis or simply on the standard basis. The funders had already contributed substantial sums along the way in respect of paying interim costs awards and also in funding an order for security for costs. Nonetheless, there remained a £4.8 million shortfall in the defendant's final costs bill.

The issue of the funders' liability came back before the court and was settled last week by Mr Justice Clarke. The funders argued that, as they had not taken a 'hands-on' role in the litigation and had not been responsible for any of the issues raised by the judge in his costs order that led to his awarding costs on any indemnity basis, they should not be required to pay the indemnity part of the defendants' costs.

The judge disagreed and ordered the third party funders to pay the defendants' costs on an indemnity basis. He stated that his aim was not to punish the funders but, rather, to ensure that the defendants were fully compensated for their costs. He stated further that the shortfall was not disproportionate either to the sums already paid by the funders nor in relation to the profit that they had anticipated had the claimant's case been successful.

It seems likely that funders of litigation will need to ensure that they maintain a much better grip on the progress and the merits of the case that they are funding. Simply sitting in the background and taking no active interest in the litigation will leave the funder open to a substantial costs order such as that made in this case.

If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – office@amblaw.co.uk or 020 3651 5646.



AMB Law

46 New Broad Street
London
EC2M 1JH

17 Deben Mill Bus Pk,
Old Maltings Approach,
Woodbridge
IP12 1BL

T: +44 (0)20 3651 5646
F: +44 (0)20 3651 5554
office@amblaw.co.uk

Alistair Bacon *Principal*

T : 020 3651 5647
M: 07881 554062
E: abacon@amblaw.co.uk

Hollie Stringer *Solicitor*

T : 020 3651 5704
M: 07789 964330
hstringer@amblaw.co.uk

Stephen Carter *Consultant*

T : 020 7329 4242
scarter@amblaw.co.uk

The contents of this *Bulletin* are believed to be correct as at the date of publication. This information is provided for information only and is not intended to constitute legal advice. No liability can be accepted by AMB Law for any errors contained herein.