

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2018/0062

BETWEEN:

**(1) HQ AVIATION LTD
(2) GREAT LAKES REINSURANCE (UK) SE**

Claimants

and

SUN VESSEL GLOBAL LTD

Defendant

THE M/Y BACARELLA

Appearances:

Mr. Matthew Reeve and Mr. Joseph England, with them Ms. Sarah Thompson of Harneys for the Claimants

Mr. Timothy Marland, with him Mr. Jerry Samuel and Ms. Allana-J Joseph of Conyers for the Defendant

2021 October 13
2022 January 20

JUDGMENT

[1] **JACK, J [Ag.]**: On 29th April 2021 I delivered an oral judgment following a six day trial of this matter. The written judgment¹ was approved on 17th May 2021. I found the defendant liable for the accident which resulted in the constructive total loss of the helicopter in question. I dismissed the defence of contributory negligence. I

¹ [2021] ECSCJ No 554.

held that the defendant was entitled to limit its liability under section 391 of the **BVI Merchant Shipping Act 2001**,² which gives domestic effect to the **Convention on the Limitation of Liability for Maritime Claims 1976**.³ Under the **Convention** the sum payable is 1.51 million Special Drawing Rights, which translates to US\$2,168,340.79.

- [2] There are three issues for determination by me:
- (a) What rate of interest is payable on the US\$2,168,340.79;
 - (b) Whether the defendant should pay all or only some of the costs of the claimant, either generally or in the light of an offer dated 8th June 2018; and
 - (c) What costs are in fact recoverable.

Interest

- [3] It is common ground that interest is payable from 10th May 2017, the date of the accident, to 29th April 2021, when I delivered the substantive judgment. The claimants also claim pre-judgment interest up to 12th May 2021, when the order giving effect to the 29th April judgment was made. The parties dispute the basis on which interest can be awarded. (The significance of the offer of 8th June 2018 I consider separately below.) The defendant's position is that interest is payable under Article 11(1) of the **Convention**. From this, it follows, Mr. Marland submits, that the **Merchant Shipping (Adoption of United Kingdom Enactments) Order 2005**⁴ gives effect in this jurisdiction to the United Kingdom **Merchant Shipping (Liability of Ship Owners and Others) (New Rate of Interest) Order 2004**.⁵

- [4] Before considering the main argument against the applicability of these legislative provisions, I should deal with a subsidiary issue. There are some indications that the adoption of the UK 2004 Order was an error on the part of the draftsman. Firstly, the UK Order provides that the rate of interest should be one per cent over the Bank

² No 13 of 2001 of the Laws of the Territory of the Virgin Islands.

³ Treaty Series No. 13 (1990) Cm. 955.

⁴ Virgin Islands Statutory Instrument 2005 No 30, made under the Merchant Shipping Act 2001 (No 13 of 2001).

⁵ United Kingdom SI 2004 No 931.

of England base rate. Fixing a rate of interest based on sterling is not obviously appropriate in a dollarized economy such as that of this Territory. Secondly, the UK Order appears in Part 4 of the Schedule to the BVI Order, which is entitled “Dangerous Goods”. Mr. Marland submits that the rate fixed by the United States Federal Reserve Bank, which was 0.07 per cent per annum should be substituted. I reject this subsidiary argument. There are no principles of statutory construction which would permit me to disregard the rate fixed by the UK Order. The Bank of England base rate has for the entire period under review been 0.1 per cent per annum. The rate payable under the BVI legislation would therefore be 1.1 per cent per annum.

- [5] Mr. Reeve submits that the whole of the interest argument based on Article 11(1) is misconceived. Article 11(1) provides:

“Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.”

- [6] Effect is given to Article 11 by section 404 of the **Merchant Shipping Act 2001**,⁶ which so far as material provides:

“(1) Any person alleged to be liable and seeking to limit his liability under this Part may constitute a fund by depositing with the Court an amount at least equivalent to the limit provided for in section 396 or section 401 as appropriate, or by producing a guarantee acceptable by the Court, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund, and the fund so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

...

⁶ No 13 of 2001, Laws of the Virgin Islands.

(3) The Minister may determine the rate of interest to be applied for the purposes of subsection (1)."

- [7] Mr. Reeve makes a preliminary point that the 2005 Order was made by the Governor rather than a minister. Any issues as to the validity of the 2005 Order are, however, resolved by the **Validation (Merchant Shipping (Adoption of United Kingdom Enactments) Order 2005) Act 2017**.⁷ In my judgment the 2005 Order is rendered legally valid.
- [8] His main point, however, is that section 404 only applies where the defendant sets up a limitation fund. In the current case, that did not happen. Instead, the claim (on which the claimant succeeded) was a claim for damages, albeit capped at the limitation sum of 1.51 million Special Drawing Rights. Where a limitation fund is created, then the parties need to know what interest rate is applicable, so that the right amount can be paid into the fund. There is no scope in this scenario for the rate of interest to be determined by a court, because the fund will usually be set up before any litigation has eventuated; hence the need for a statutory rate of interest. By contrast, where a damages claim is made, pre-judgment interest can be assessed by the Court on the usual principles.
- [9] I agree. A damages claim raises different issues to the creation of a limitation fund. Section 404 does not expressly apply to a damages claim and there is no need in my judgment to imply such an extension to the statutory interest provisions. Looking at the appropriate rate of interest, I agree that five per cent per annum is appropriate for a US dollar-based liability owed to a small or medium sized enterprise like the claimant.

The offer of 8th June 2018

⁷ No 6 of 2017, Laws of the Virgin Islands.

[10] The claimants' offer of 8th June 2018 was to settle the claim at the US dollar equivalent of 1.51 million Special Drawing Rights with interest at five per cent per annum. It follows that the claimant has equalled its offer.

[11] CPR 35.15(2) provides:

“(2) If a claimant makes an offer to settle and in —

(a) the case of an offer to settle a claim for damages — the court awards an amount which is equal to or more than the amount of the offer;

(b) any other case — the court considers that the defendant acted unreasonably in not accepting the claimant's offer;

the court may, in exercising its discretion as to interest take into account the rates set out in the following table:

Net amount of damages	Rate of interest
not exceeding EC\$ 100,000	15% per annum
for the next EC\$150,000	12% per annum
for the next EC\$500,000	10% per annum
in excess of EC\$ 800,000	8% per annum

where 'net' means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

(Example

One year since the offer. Damages — EC\$400,000;

The court might award —

15% on the first \$100,000 for one year (\$15,000);

plus 12% interest on the next \$150,000 for one year (\$18,000);

plus 10% interest on the remaining \$150,000 for one year (\$15,000);

a total of EC\$48,000 interest on damages.)

(3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account the —

(a) conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated;

(b) information available to the offeror and the offeree at the time that the offer was made;

(c) stage in the proceedings at which the offer was made; and

(d) terms of any offer.

(5) This rule applies to offers to settle at any time, including before proceedings were started.”

[12] There is an issue as to whether CPR 35.15(2)(a) or (b) applies. In my judgment, the offer was to settle a damages claim, so as to fall within CPR 35.15(2)(a), but if I am wrong about that then, in the light of the facts found by me on liability and quantum, the defendant acted unreasonably in not accepting the offer, so that CPR 35.15(2)(b) would apply. None of the special matters listed in CPR 35.15(4) apply.

[13] In my judgment, considering all the factors in the round, it is appropriate to order that interest be paid in accordance with the table in CPR 35.15(2). The table is an appropriate starting point and there is no proper basis for departing from it, either in favour of the claimant or in favour of the defendant. As a check, rather than as a freestanding consideration, I note that the result of giving interest under CPR 35.15(2) is likely to be less generous overall than the result under the English CPR, where rule 36.17(4) gives interest at 10 per cent plus indemnity costs (which are not available under the EC CPR).

[14] There is a question as to whether interest should run to 29th April 2021 or to 12th May 2021, when I made the order quantifying the damages recoverable. In my judgment, the 12th May date is correct. No one has asked for the order to take effect from a different date under CPR 42.8: see **Involnert Management Inc v Aprilgrange Ltd**⁸ and **Novoship (UK) Ltd v Mikhaylyuk**.⁹

[15] Accordingly, interest is payable at 5 per cent per annum from 10th May 2017 to 8th June 2018 and at the rates set out in CPR 35.15(2) from 9th June 2018 to 12th May 2021. I will invite the parties to calculate the interest.

⁸ [2015] EWHC 2834 (Comm), [2015] 5 Costs LR 813.

⁹ [2013] EWHC 98 (Comm), appeal dismissed (but without this point being argued) [2014] EWCA Civ 908, [2015] 1 QB 499.

Liability for costs in principle

[16] I turn now to consider what order for costs I should make. The defendant accepts that there must be some costs order in favour of the claimant, but Mr. Marland submits that there should be a substantial reduction, he suggests by a third, to reflect the reduced recovery effected by the claimant. In this regard, he points out that the claim (pursued to the bitter end) was for £2,092,369 sterling, whereas the figure awarded is about US\$1 million less.

[17] CPR 64.6 provides:

“(1) Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.

(3) This rule gives the court power in particular to order a person to pay —
(a) costs from or up to a certain date only;
(b) costs relating only to a certain distinct part of the proceedings;
or
(c) only a specified proportion of another person’s costs.

(4) The court may not make an order under paragraph 3(a) or 3(b) unless it is satisfied that an order under paragraph 3(c) would not be more practicable.

(5) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(6) In particular it must have regard to —
(a) the conduct of the parties both before and during the proceedings;
(b) the manner in which a party has pursued —
(i) a particular allegation;
(ii) a particular issue; or
(iii) the case;
(c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;
(d) whether it was reasonable for a party to —
(i) pursue a particular allegation; and/or

- (ii) raise a particular issue; and
- (e) whether the claimant gave reasonable notice of intention to issue a claim.”

[18] I am entitled to consider the rejection of the 8th June 2018 offer as part of the defendant’s conduct. Even if I am wrong in my conclusion that interest should run at five per cent, the fact is that at an early state of the litigation, the claimant was prepared to settle for the limitation figure. The costs incurred in relation to the limitation issue at this early stage were small. Although the claimant lost on limitation, it was not unreasonable to pursue the point at trial. Taking the offer into account, in my judgment the claimant is entitled to an unreduced costs order in its favour.

[19] Even disregarding the offer, the position is that the time spent at trial on the limitation issue was fairly limited. I do not consider that the overall length of the trial would have been reduced if the claimant had abandoned the point. The point was properly arguable and it was not unreasonable to pursue it. In these circumstances I would still have given the claimant its costs without reduction. The defendant made an offer to settle, but at a sum substantially below the limitation figure. It could have protected itself by making a better offer.

Quantum of costs

[20] I turn then to the quantum of costs. There are three issues of principle. First, are costs incurred pre-action recoverable in respect of non-BVI admitted practitioners? Second, are Mr. Reeve’s fees for settling the statement of claim recoverable where the pleading pre-dates his call to the BVI bar? Third, are the fees of Dr. Trevor Fox, an aviation law specialist admitted as a solicitor in England, but not in this Territory, recoverable?

Pre-action costs

[21] Dealing with the first point, CPR 64.3 provides:

“The court’s powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.”

[22] In my judgment pre-action costs are “related to” the proceedings and thus in principle recoverable. This does not, however, fully answer the first issue. In the current case, the insurers of the helicopter and the Bacarella were both English. Both instructed English solicitors, Dr. Fox on the claimants’ behalfs, Clyde & Co and subsequently Preston Turnbull on the defendant’s behalf. Initially it was anticipated that the issues would be litigated in England. It was only when Clyde & Co performed a *volte face* and insisted that proceedings needed to be litigated in this Territory that BVI practitioners were instructed. Until that time, there can be no question of the English solicitors acting as anything other than as English legal practitioners.

[23] In my judgment CPR 64.3 is essentially backward looking. The question for the Court is whether the costs of instructing English solicitors to advise on where to sue for the loss of the helicopter can with hindsight be considered to have been “related to” to the BVI proceedings. In my judgment, on the facts of this case they can be. Determination of the jurisdiction in which to sue is a key pre-action step and is intimately bound up with the proceedings which are ultimately brought. Accordingly, the legal fees of the English lawyers up to Clyde & Co’s change of position are recoverable.

Counsel’s work prior to call to the BVI bar

[24] As to the second point, Mr. Reeve put his case for recoverability on the judgment of Leon J in **Inna Gudavadze and others v Carlina Overseas Corporation and others**.¹⁰ The costs in question in that case arose out an order of the Court made in 2012. The issues thus pre-dated the **Legal Practitioners Act 2015**.¹¹ Leon J

¹⁰ [2016] ECSCJ No 262 at [67] to [79].

¹¹ No 13 of 2015, Laws of the Virgin Islands.

held that where counsel was admitted shortly before the first substantive hearing a matter, any work done by counsel prior to admission was recoverable.

[25] Section 18(3) of the 2015 Act so far as material provides:

“No fee in respect of anything done by a person whose name is not registered on the Roll... is recoverable in any action, suit or matter by any person.”

[26] In my judgment this provision reverses the effect of **Gudavdze**. Mr. Reeve's work in settling the statement of claim is not recoverable.

English solicitor's work after proceedings were issued in the BVI

[27] I turn then to the third question, the recoverability of Dr. Fox's fees after the decision to litigate the case in the BVI. The starting point is the Court of Appeal decision in **Dimitry Vladimirovich Garkusha v Ashot Yegiazaryan and others**,¹² where the Moscow office of Berwin Leighton Paisner, an English firm of solicitors, assisted the BVI firm of legal practitioners in obtaining instructions from the Russian client. Webster JA held:

“72. ...There is nothing in the Act that amounts to an express abrogation of the right of a litigant to recover the fees of overseas lawyers as a disbursement of the local practitioner. However, the Act has provisions that show a clear intention to regulate the persons who can practise BVI law in the BVI and overseas, and charge fees for such practice. The analysis above shows that overseas lawyers assisting in a BVI matter are performing the functions of a legal practitioner and therefore are practising BVI law for the purposes of the Act. The Act, and in particular section 18, make the practice unlawful.

73. In the circumstances I find that the Act, by necessary implication, intended to do away with the practice of litigants being able to recover the fees of overseas lawyers in costs recovery proceedings. The right could not survive the passing of sections 2 and 18 which have the effect of making the practice of BVI law by overseas lawyers without being on the Roll unlawful, and still allow the recovery of the fees of those lawyers in assessment proceedings in the BVI. The two things cannot stand together.

¹² [2016] ECSCJ No 104.

74. The situation in the BVI is different from what obtained in the **McCullie v Butler** case.¹³ In that case the fees of the Scottish solicitors were allowed because the court found that they were simply the agents of the local solicitors and their fees were a disbursement of the local solicitors. There was no suggestion that what the Scottish solicitors did was contrary to English law or that any fees paid to them would be in breach of an English statute. It was an agency relationship and nothing more. In our case the statute has created an illegality in the work done by Berwin Leighton Paisner in advising and assisting Mr. Garkusha and his local lawyers. By creating the illegality the lawmakers must be presumed to have intended to abrogate the practice of recovering the fees of overseas lawyers for such work as a disbursement. They are no longer merely agents of the local practitioner, they are persons practising BVI law without being registered as legal practitioners on the Roll.

75. Based on the foregoing analysis I would disallow the fees of Berwin Leighton Paisner.”

[28] Now, the Court of Appeal in **Garkusha** were not told that section 2(2) of the 2015 Act, which (in conjunction with section 18) had the effect of rendering the practice of BVI law outside the jurisdiction a criminal offence, had never been brought into force. In the subsequent case of **John Shrimpton and another v Dominic Scriven and others**,¹⁴ the Court of Appeal held this made no difference and **Gargusha** was binding authority on the (ir)recoverability of foreign lawyers’ fees.

[29] What, though, constitutes “acting as a legal practitioner”? In **Gany Holdings (PTC) SA and another v Zorin Sachak Khan and others**,¹⁵ the Court of Appeal considered the recoverability of the fees of an English costs draftsman who had prepared a BVI bill of costs for taxation in this jurisdiction. It held:

“[67] Despite the lack of detailed statutory guidance, it is clear... that... the question of whether a person is acting as a legal practitioner is a question of fact. Such a determination is to be made upon a close examination of the facts of each case.”

¹³ [1962] 2 QB 309 (Diplock J).

¹⁴ [2017] ECSCJ No 15.

¹⁵ [2020] ECSCJ No 105, (2020) 96 WIR 378.

The Court noted that the costs draftsman was having to interpret BVI costs law and practice and concluded that he was therefore “engaged in a substantive legal capacity in the production of the schedule of costs.”

[30] In the most recent case in the Court of Appeal, **Yao Juan v Kwok Kin Kwok**,¹⁶ the Court held that a foreign lawyer employed by a BVI firm was equally acting as a BVI practitioner. What mattered was the function performed by the foreign lawyer, not the capacity in which he or she acted. At para [55] Ellis JA held:

“A critical component of the **Shrimpton** decision was the Court’s approach to the interpretation of the expression ‘acting as a legal practitioner’ in the context of section 18(3) of the LPA. The panel of judges which heard **Shrimpton** concurred that it was bound by the earlier decision in **Garkusha** which took a wide approach defining the terms as including *any conduct* which was — ‘broadly deemed to be assisting with the conduct of a BVI matter’.” (Emphasis in the original)

[31] Mr. Reeve submits at para 41(2) of his skeleton:

“There is a fine but fundamental difference between a foreign lawyer ‘assisting with the advice and conduct of a BVI matter’ (**Garkusha** at [49] and [72], **Gany** at [67]) on the one hand, and a foreign lawyer giving advice on his own home law, or... from [a] particular specialism amounting to an expertise, to BVI lawyers, leaving them the responsibility to advise on BVI law and to conduct the BVI litigation on the other hand. The former may be ‘acting as [BVI] legal practitioner’ (and the Berwin Leighton Paisner fees were disallowed on that basis in **Garkusha**). The latter cannot possibly be. The latter applies to Dr. Fox. He was giving English law advice in England as a specialist English lawyer. That cannot be converted to ‘acting as a [BVI] lawyer’, merely because the advice is useful to the BVI lawyers conducting the litigation.”

[32] I discussed a similar issue in **Re the Fees of an English Barrister**.¹⁷ In that case, leading counsel and junior counsel had produced a joint opinion on issues both of

¹⁶ [2021] ECSCJ No 577.

¹⁷ [2021] ECSCJ No 785.

BVI law and of English law. The English silk was admitted in this jurisdiction; his junior was not. I held:

“[14] ...that it does not necessarily follow that junior counsel assisting a leader with an opinion which touches on foreign law is also advising on that foreign law, but this is fact-specific. If an opinion is dealing with English and Russian law, for example, and the leader is dual qualified but the junior is not, then it will generally be obvious that it is the leader who contributes the advice on Russian law.

[15] The current case is, however, quite different. The common law in this Territory is the law of England.¹⁸ Statutory sources of law are different, but statutes in this Territory are interpreted in the same way as UK statutes. BVI law is thus readily accessible to English lawyers and *vice versa*. As I said in **Reniston Ltd v Nedlands Overseas Inc (No 2)**:¹⁹

‘[7] As to the need for the expert report [on English law], Barrow JA held in **Alfa Telecom Turkey Ltd v Cukurova Finance International Ltd**²⁰ that ‘courts in this jurisdiction normally determine for themselves, in normal domestic law litigation, the content and meaning of English law without any thought of receiving expert evidence...’ This is because all judges of the Eastern Caribbean Supreme Court are trained in English law and all states and territories within the jurisdiction (with the limited exception of St Lucia) have imported English common law and often much English statute law...

[8] English law is technically foreign law, so if it is relied upon as being different to BVI law, it must be pleaded. However, as an evidential matter, this Court can take judicial knowledge of it, just as in the nineteenth century the English Court would take cognisance of Irish law: **Reynolds v Fenton**.²¹ (See also **Celltech Chiroscience Ltd v Medimmune Inc**,²² where Jacob J decided points of American patent law on the basis of counsel’s submissions “just as if [he] were a US district judge”.)’

[16] [Counsel for the receiving party] submits... that it is ‘overwhelmingly more likely’ that Mr. Smith QC did the BVI bits of the Opinion whilst Mr.

¹⁸ Common Law (Declaration of Application) Act 1705, Act of the General Assembly of the Leeward Islands, applicable in this Territory: see *VTB Bank (Public Joint Stock Company) v Micros Group Ltd* [2020] ECSCJ No 193 at footnote 30.

¹⁹ [2020] ECSCJ No 260 (appeal allowed on other grounds [2021] ECSCJ No 459).

²⁰ [2008] ECSCJ No 39 at [3].

²¹ (1846) 3 CB 187 at p 191 *per* Moule J. And see Phipson on Evidence (19th Ed, 2017) at para 3-07, although the footnote appears to be an error.

²² [2002] EWHC 2167 (Patents) at para [8].

Mustafa assisted with the English law parts. I disagree. There is nothing in the Opinion which suggests any such division of labour. On the contrary, all the opinions offered in the Opinion are expressed to be joint opinions. Given the very close similarities between English and BVI law, no presumption can be made that the unadmitted junior did no work on the BVI legal aspects of the case. If an assumption were to be made, it would be that junior counsel was fully engaged with all aspects of the case. He was in my judgment likely to be assisting his leader generally: see Webster JA (Ag)'s formulation in **Garkusha**.²³

- [33] Here, I agree that, if Dr. Fox were an expert on Norwegian aviation law (as the law of the place of the accident), then it would be possible to draw a clear distinction between the work of the BVI practitioners and his work. However, Dr. Fox is a specialist in English aviation law. There is no relevant difference between English aviation law and BVI aviation law. Insofar as there is a difference in maritime limitation law, the BVI law is readily accessible to an English lawyer. Ellis JA emphasised that “*any conduct...* broadly deemed to be assisting with the conduct of BVI matter” fell within the prohibition on the recovery of the foreign lawyer’s fees.
- [34] There are some matters which Dr. Fox did which cannot sensibly be described as “practising law”, but these are fairly limited. Insofar as he made rooms available for witnesses, that, it seems to me, is unrelated to the practise of law. A hotelier who made a conference room available for witnesses to give evidence by Zoom would not be practising law. Nor would a taxi-driver who drove an advocate to Court.
- [35] However, the overwhelming majority of the work done by Dr. Fox, in my judgment, is assisting in his capacity as a lawyer with the BVI proceedings. For example, identifying expert witnesses is a quintessential task of a practising lawyer.
- [36] Mr. Reeve made various submissions on public policy, largely echoing Leon J’s observations in **Gudavdze**. These views, however, have not been accepted by the Court of Appeal. There was in any event a simple remedy: Dr. Fox could have been admitted to the Roll. I am told that an attempt was made to have him admitted.

²³ At [49], quoted in the extract from Yao v Kwok above.

However, it appears that the application was for him to be admitted as a barrister of the Eastern Caribbean Supreme Court in this Territory, rather than as a solicitor. Since Dr. Fox's training was as an articled clerk, he was unable to show he had done pupillage and was thus ineligible for admission as a barrister. No application was made for his admission as a solicitor of this Court, apparently due to uncertainties regarding his rights of audience in England. An English solicitor is entitled to appear before the UK Upper Tribunal, which is a superior court of record.²⁴ It is unclear whether that entitlement qualifies as a sufficient right of audience to give an English solicitor the right as a BVI-admitted solicitor to appear before this Court when it sits in open court. Whatever the reason, Dr. Fox was not admitted to the Roll and accordingly in my judgment the prohibition on recovery of his fees bites.

²⁴ See the Tribunals, Courts and Enforcement Act 2007 (2007 c 15) section 3(5).

[37] If agreement cannot be reached on the items which in the light of this judgment are recoverable in respect of Dr. Fox's work, I will determine these on paper.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar