# The Educator

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## Security for costs

Students of the AIIC's Liability Insurance course will recall discussing security for costs. In this issue of the Educator, and in light of the recent case law, we revisit this topic.

### General Principles

The general rule about costs is that they follow the event and the losing party is usually ordered to pay the costs of the successful party. The court may order the claimant to put up security for the defendant's costs if the court is satisfied, on an application for security for costs, that there is a significant risk of the defendant suffering an injustice by having to pay to defend the proceedings, with no real prospect of being able to recover his costs if he is eventually successful.

The object of an order for security for costs is to provide a successful defendant with a relatively simple way of obtaining payment of any costs that the court may order an unsuccessful claimant to pay.

### Practical Application

Let us look at the recent Saint Lucia Court of Appeal case of ***Dr. Martin Didier et al v Royal Caribbean Cruises Ltd.*** (2018), released September 2018. In this case, Royal Caribbean Cruises Limited "Royal Caribbean", a company registered in Liberia with its registered office in Monrovia, and which had ships that visited Saint Lucia regularly, brought a claim against three doctors - Dr. Martin Didier, Dr. Kannan Mathiprakasam and Dr. Guruswamy Ramachandrappa, at the Tapion Hospital in Castries, Saint Lucia, for damages arising out of medical care received by an employee of Royal Caribbean. The claim was for damages of $22,811,960.94 and costs.

The doctors applied to the court for security for costs of the proceedings on the grounds that Royal Caribbean is an external company that is ordinarily resident outside the jurisdiction and does not have assets in the jurisdiction. They feared that in practice it would be impossible to enforce a Saint Lucian costs order in Liberia and that they would be put through significant expense in trying to do so.

The master found, inter alia, that it was a notorious fact that Royal Caribbean had ships that visited Saint Lucia regularly and that there would be no difficulty enforcing a costs order against Royal Caribbean's ships. Further, there was no evidence by the doctors that Royal Caribbean would be unable to honour a costs order, or would fail or refuse to satisfy such an order. The master dismissed the application and ordered the doctors to pay the costs of the application.
The doctors appealed. The Court of Appeal disagreed with the Master and ordered Royal Caribbean to pay security for the doctors' costs and the costs of the application in the court

below and of the appeal, both to be paid by the respondent within 28 days of the date of the order.

### When security for costs will be ordered?

Generally, the Civil Procedure Rules 2000 (CPR) provides that if the court is satisfied that there is a significant risk of a defendant suffering an injustice by having to pay to defend proceedings, with no real prospect of being able to recover costs if successful, the court may, if it is just to do so, order a claimant to put up security for the defendant's costs.

One of the matters that a court can consider on an application for security for costs is whether the claimant is willing to honour an order for costs if he is unsuccessful in the proceedings. If there is evidence that he is unlikely to honour the costs order, even if he has assets, the court will be more inclined to make an order.

If the claimant is not resident in the jurisdiction, the defendant may be faced with difficulties in enforcing any costs award that the court may make. Invariably, the court will go on to consider the overarching condition of whether it is just to make the order, having regard to all the circumstances of the case.

A typical example of when the court will order a claimant who is ordinarily resident outside the jurisdiction to put up security, is when he does not have assets in the jurisdiction. The combination of residence abroad and no assets within the jurisdiction increases the risk that a costs order may be difficult to enforce, or be unenforceable, and the court will be more inclined to make an order in these circumstances.

In ***Dr. Martin Didier et al*** the Court of Appeal noted that the court will not order security for costs solely because the claimant is ordinarily resident outside the jurisdiction. However, a non-resident claimant with no assets in the jurisdiction will, in all likelihood, be required to put up security for the defendant's costs. In light of the circumstances, where Royal Caribbean has no assets in the jurisdiction and there are potential difficulties and expenses associated with enforcing a costs order against Royal Caribbean, it would be just to order that Royal Caribbean provide security for the costs of the doctors.

### In what amount?

In the Eastern Caribbean, the amount of security should be based on prescribed costs, being the applicable cost regime to the claim in accordance with the CPR.

The doctors relied on, and the Court of Appeal followed the judgment of Gonsalves JA in ***Ultramarine (Antigua) Ltd v Sunsail (Antigua) Ltd*** (2017) where the learned judge made the point that the amount of security should be based on the costs regime applicable to the claim.

The costs regime that is applicable to the doctors' claim is prescribed costs based on the value of the claim, which in this case is set out in the amended statement of claim as $22,811,960.94. Applying the formula for calculating prescribed costs in Appendix B of CPR part 65, yields $240,294.72. There are no exceptional circumstances in this case that would cause me to award a higher or lower amount.

The court ordered Royal Caribbean Cruises Ltd., to provide security for the appellants; costs of the proceedings in the court below by paying the sum of $240,292.72 by no later than 17th October 2018 and that the claim is stayed pending the payment of costs in accordance with this order.

## Strange but true

An experienced Police Officer, for almost 30 years, who had appeared as a witness more than 30 times, and who was the driver of a friend's car when he hit two cyclist, and left the scene of the accident and went home despite observing both Claimants in the drain and the severe facial injuries to one of the claimants, and who did not wait to ensure an ambulance came for the Claimants and did not report the accident immediately, said that he did not know that it was an offence for him to be driving the vehicle without insurance.

Source: the Trinidad and Tobago High Court case of ***Darren Roome, v Joseph Coraspe and Motor One Insurance Company Limited*** and ***Mathew Tambie, v Joseph Corapse and Motor One Insurance Company Limited*** [2018] (Delivered on: 23rd May, 2018)

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