



Neutral citation [2025] CAT 24

Case No: 1339/7/7/20

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

17 April 2025

Before:

HODGE MALEK KC  
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

**MARK MCLAREN CLASS REPRESENTATIVE LIMITED**

Joint Applicant / Class Representative

- (1) MOL (EUROPE) AFRICA LTD  
(2) MITSUI O.S.K. LINES LTD  
(3) NISSAN MOTOR CAR CARRIER CO. LTD  
(4) ~~KAWASAKI KISEN KAISHA LTD~~  
(5) NIPPON YUSEN KABUSHIKI KAISHA  
(6) ~~WALLENIUS WILHELMSSEN OCEAN AS~~  
(7) ~~EUKOR CAR CARRIERS INC~~  
(8) ~~WALLENIUS LOGISTICS AB~~  
(9) ~~WILHELMSSEN SHIPS HOLDING MALTA LIMITED~~  
(10) ~~WALLENIUS LINES AB~~  
(11) ~~WALLENIUS WILHELMSSEN ASA~~  
(12) ~~COMPANIA SUD AMERICANA DE VAPORES S.A.~~

- and -

- (1) WOODSFORD GROUP LIMITED  
(2) LITICA LTD

**(3) LAKEHOUSE RISK SERVICES LIMITED**

Joint Applicants / Interested Parties

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**RULING (COLLECTIVE SETTLEMENT APPROVAL ORDER COSTS  
APPLICATION)**

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## **A. INTRODUCTION**

1. This is an application by the Class Representative (“CR”) for permission to use part of the sums paid under settlements with the Sixth to Eleventh Defendants (“WWL/EUKOR”) and the Fourth Defendant, Kawasaki Kisen Kaisha Ltd (“K’ Line”) to cover a portion of the costs of making the collective settlement agreement applications (“CSA Applications”) and preparing for and attending the settlement hearing held on 5 December 2024. The CSA Applications were approved by collective settlement approval orders made on 6 December 2024 (“CSAOs”), and the Tribunal handed down its judgment on the CSA Applications on 15 January 2025 ([2025] CAT 4 – the “Judgment”).
2. In support of this application (the “CSAO Costs Application”), the CR submitted a costs schedule setting out its costs of making the CSA Applications, and its costs and the costs of the Interested Parties in preparing for and attending the settlement hearing. The total costs claimed were £398,071.06 (including VAT).
3. The CR submitted that the Tribunal should determine the appropriate overall amount of costs for the two CSA Applications, then attribute this amount on a pro rata basis in proportion to the total settlement sums paid under each settlement agreement, being £24,500,000 for WWL/EUKOR and £12,750,000 for “K” Line (66% from WWL/EUKOR and 34% from “K” Line).

## **B. SETTLING DEFENDANT SUBMISSIONS**

4. Each of WWL/EUKOR and “K” Line (together, the “Settling Defendants”) objected to the quantum of costs claimed by the CR in its costs schedule.
5. The Settling Defendants submitted that they have standing in the CSAO Costs Application due to clauses in their respective settlement agreements which provide for part of the damages sums paid by the Settling Defendants to be retained by them (the “Deferred Damages Sum”), to be called upon only if there is a shortfall as between the sums recovered by the CR to meet its costs, fees

and disbursements, and the sums required to compensate represented persons or to meet the CR's costs of the proceedings. The Settling Defendants therefore submitted that the greater the portion of the "costs, fees and disbursements" sums ("CFD Sums") paid by them under their respective settlement agreements that is used now to pay the CR's costs of the CSA Applications, the greater the likelihood of the CR having to call on the Deferred Damages Sum in future.

6. I accept that the Settling Defendants have standing to make submissions on the CSAO Costs Application based on their interest in the Deferred Damages Sum.
7. WWL/EUKOR, "K" Line agreeing, objected to specific heads of costs set out in the CR's costs schedule. Overall, the Settling Defendants submitted that the total costs claimed by the CR were disproportionate and unreasonable given the CSA Applications: (a) were substantively very similar; (b) were made jointly with the Settling Defendants, with the work to prepare them being shared; (c) only required a one-day hearing; (d) drew heavily on a similar collective settlement approval application that the CR had made earlier within these proceedings; and (e) save in one minor respect, were unopposed.
8. "K" Line further submitted that over-recovery of costs by the CR and the Interested Parties at this stage would potentially operate to class members' detriment, since those sums would no longer be available for the Tribunal to order be used to meet any shortfall in the sums claimed by class members at the distribution stage.

**C. THE APPROPRIATE AMOUNT OF COSTS**

9. In making an order in relation to the payment of costs under Rule 104 of the Competition Appeal Tribunal Rules 2015, the Tribunal may take account of whether costs were proportionately and reasonably incurred, and whether costs are proportionate and reasonable in amount. The CSAO Costs Application does not concern *inter partes* costs, but rather the costs incurred by the CR in respect of its own lawyers and disbursements.

10. I consider the test to be applied here is what is proportionate and reasonable. The Tribunal has a role in scrutinising the appropriate level of costs, bearing in mind that these are collective proceedings brought for the benefit of the class and that the costs are therefore being incurred on its behalf.
11. The CSAO Applications were novel and complex, noting the proximity to trial of the wider proceedings and considerations regarding non-settling defendants. I note the approach articulated in *Walter Hugh Merricks CBE v Mastercard Incorporated and others* [2022] CAT 27 at paragraphs [21] to [23], namely that a clear and compelling justification must be provided if a rate in excess of the guideline rate is to be charged. However, that was in the context of assessing costs on an *inter partes* basis. In the present case I am prepared to approve rates of £725 for partners, £450 for senior associates, £325 for associates and £250 for paralegals. I consider more of the work carried out by Partner/s in preparing the CSAO Applications could have been done at the Senior Associate or Associate level. Applying these factors would have resulted in a not insignificant reduction in the amounts payable compared with the sums claimed. It is not necessary for me to precisely quantify the amount of the reduction, because I will concentrate on what is in my view the reasonable and proportionate sum bearing in mind my experience of dealing with applications before the Tribunal and their cost, the amounts claimed, the work done and the level of importance and complexity involved.
12. As regards the counsel's fees, they are all reasonable and proportionate. There was a sensible allocation of work between the counsel team for the CR. I gave leave for the Interested Parties to make submissions at the settlement hearing, which representation and participation was critical to the settlement approval process given the need to clarify the position of the Interested Parties with regard to potential claims against certain damages sums. Without the important contribution to the settlement process by Robert Marven KC on behalf of the Interested Parties, the settlements would not have been approved, and it is appropriate for those fees to come out of the CFD Sums.
13. The other disbursements claimed by the CR are reasonable and proportionate, which includes the expert report, printing and courier services.

14. Looking at things in the round, the proportionate amounts to come out of the CFD Sums is £290,000 for the CR's costs of the CSA Applications and settlement hearing (for solicitors, counsel and disbursements) plus £28,770 for the Interested Parties' counsel fees, all inclusive of VAT. This amount is to be attributed on a pro rata basis in proportion to the total settlement sums paid under each settlement agreement.
  
15. The Class Representative shall have liberty to apply for further payment out of the balance to cover costs either at the time of considering any further recoveries or in circumstances where the funds are needed to meet costs at the end of the proceedings.

Hodge Malek K.C.  
Chair

Charles Dhanowa C.B.E., K.C. (*Hon*)  
Registrar

Date: 17 April 2025