

**IN THE COUNTY COURT AT NOTTINGHAM**  
**SITTING AT THE COUNTY COURT AT DERBY**

**Claim No. B11YP672**

**B E T W E E N :**

**CRAIG PHILIP KEELING**

**Claimant**

**and**

**AARON KEELING**

**1<sup>st</sup> Defendant**

**and**

**TRADEWISE INSURANCE COMPANY LIMITED**

**2<sup>nd</sup> Defendant**

**Claim No. B05YP963**

**B E T W E E N :**

**CARLO AMENDOLA**

**Claimant**

**and**

**AARON KEELING**

**1<sup>st</sup> Defendant**

**and**

**TRADEWISE INSURANCE COMPANY LIMITED**

**Before :HHJ COE QC**

**JUDGMENT - following written submissions on costs**

**HHJ Coe QC :**

1. I handed down judgment in this case on 4 July 2018 and invited written submissions on costs. I have now received written submissions on behalf of Craig Keeling, Carlo Amendola, Southern Rock Insurance Company Ltd ("Southern Rock") and Tradewise Insurance Company Ltd ("Tradewise").
2. Following the hearing on 6 June 2018 I dismissed both claimants' applications to add defendants (Robert Boddy by Craig Keeling and Robert Boddy and Southern Rock by Carlo Amendola) pursuant to CPR 19.5 after the end of the limitation period.
3. Tradewise are the second defendants in both claims brought against Aaron Keeling. I found in my judgement that Craig Keeling and Carlo Amendola would not have sought to join in any other defendant had they not been required to do so by Tradewise pursuant to clause 14 of the Uninsured Drivers Agreement 1999. The claimants specifically indicated that they would not have sought to do so but for Tradewise's insistence. It was Tradewise's choice to pursue joinder despite the availability of contribution proceedings (which may by now have been commenced). I found that Tradewise were the driving force behind the applications and they took a significant part in the hearing.
4. I was told at the hearing that Tradewise have given a full indemnity as to costs in respect of both claimants' applications. In their costs submissions, Southern Rock confirmed that they funded Robert Boddy's legal costs and his representation at the hearing in front of me.
5. Southern Rock seek an order that Tradewise should pay its costs or alternatively that Mr

Amendola should pay its costs on the basis that he has the benefit of an indemnity from Tradewise. It is submitted that the second option should also include disapplication of the QOCS provisions. It is not clear from the argument that Southern Rock's costs will include the funding of Robert Boddy's legal costs. All they say is that it has been confirmed by Mr Boddy solicitors that he will not be making an independent application to recover any costs incurred in addressing the application.

6. Tradewise oppose the applications that they should be directly liable to pay Southern Rock's (or Mr Boddy's) costs of and occasioned by the applications, but instead submit that there should be orders for costs against the claimants on the basis that it is unnecessary to order Tradewise to pay the costs directly where they have offered to indemnify the claimants. They also set out their potential outstanding arguments against Craig Keeling in respect of alleged failure to comply with his duty under clause 14. Further they submit that Southern Rock's costs of dealing with Mr Amendola's application "will be minimal". Their argument is that clause 14 "should not be disturbed or violated" by direct orders for costs against interested insurers and in favour of parties required to be sued pursuant to clause 14.
7. Tradewise argue that Robert Boddy had no need to be represented, let alone separately, and there should be no order as to his costs.
8. On behalf of Craig Keeling it is submitted that he cannot be required to pay Southern Rock's costs because he only applied to join in Mr Boddy and Mr Boddy has the benefit of an indemnity from Southern Rock. The submission is that Tradewise should pay the claimant's costs. It is further submitted that Tradewise have yet to formulate their clause 14 allegations and in any event any clause 14 argument has no relevance to the incidence of costs for the applications with which I am concerned. They express concern about Tradewise's stance giving rise to a suspicion that Tradewise may not honour the indemnity offered.
9. Mr Amendola's straightforward position is that Tradewise should meet the costs of the claimants and the respondents given the applications were made at their compulsion. In any event the clause 14 argument does not apply to Mr Amendola as set out in the Tradewise's submissions. It was Tradewise that required Mr Amendola to make an application to join in both Mr Boddy and Southern Rock.

10. Pursuant to CPR 44.2 (2)(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but the court may make a different order (44.2(2) (b)). I remind myself of course that the court has a discretion as to costs in any event. By reference to paragraph 44.2.10.1 in the White Book I am reminded that the overall concern of the court must be to make an order which justice requires, and the general rule accrues to the benefit of the successful party. The court must take into account all the circumstances of the case when it exercises its discretion as to costs. Every case will depend on its own facts; consequently, although points of principle may be derived from decided cases, generally close analysis of the facts of those cases will not be enlightening. I should attach proper weight to the fact that a party has been successful.
11. In the circumstances, exercising my discretion, I order that Tradewise pay Southern Rock's costs directly including if claimed, Southern Rock's costs incurred in respect of Mr Boddy's involvement and representation. The claimants would not have bought these applications had they not been made to do so by Tradewise. Tradewise required the applications in respect of both Mr Boddy and Southern Rock. The direct payment obviates the need for further costs being incurred in respect of enforcing the indemnity. Mr Boddy's position, in particular in relation to limitation, had to be considered separately and there was a conflict of interest or at least a potential conflict of interest between Mr Boddy and Southern Rock, hence his need for separate representation. This is the simplest route which reflects the justice of the case.
12. In so far as Tradewise intend to pursue their arguments that Mr Keeling has not properly complied with clause 14: firstly, that does not apply to Mr Amendola; and secondly it is a separate issue from these applications and has not been adjudicated upon. The costs issues in these applications should not await the outcome of any such as yet inchoate argument.
13. Although not specifically referred to in Tradewise's submissions, the applications were brought by the claimants on the basis that they would be indemnified by Tradewise and in the circumstances Tradewise is ordered to pay the claimants' costs.