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Court of Appeal rules that '*after the event*' insurance is not adequate security for costs

Premier Motorauctions Limited (In Liquidation) v. Pricewaterhousecoopers LLP and Lloyds Bank PLC [2017] EWCA 1872

Article by David Bowden

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Premier Motorauctions Ltd (In Liquidation) v. Pricewaterhousecoopers LLP & Lloyds Bank PLC - [2017] EWCA 1872

Executive speed read summary

Mr Elliott was the substantial majority shareholder in Premier Motorauctions Limited. Premier had a £1.75million loan from Lloyds Bank PLC. The bank introduced Mr Elliott to Mr Warnett of Pricewaterhousecoopers LLP (PwC). PwC conducted a business review and reported back to the bank. This report was made at the start of the banking crisis in autumn 2008. Premier alleges that the bank thwarted at least 1 advantageous offer to sell its business. In December 2008, 2 partners of PwC were appointed as administrators of Premier and its main business and assets were sold by way of a pre-pack sale. Mr Elliott alleges that PwC's Mr. Warnett was introduced to Premier on false pretences and that he never had a genuine intention of performing a role of non-executive director. Premier claims that Mr. Warnett was used by the bank and PwC as part of a conspiracy to obtain an internal assessment of Premier's affairs and in the process identified a fictitious need for additional finance. Premier alleges this was then to be provided by the bank on terms that gave it effective control over Premier and the means to force Premier into administration so that the business could be sold off at an undervalue by the administrators. Premier values its claim at £54million. Premier's claim is brought by its liquidators (Menzies LLP) who appointed solicitors to act for it on a '*no win, no fee'* conditional fee agreement. '*After the event*' (ATE) insurance was arranged with at least 2 different insurers (1 of which is offshore in the tax haven of Gibraltar) who provided 5 levels of cover. Both the bank and PwC applied for security for their costs contending that ATE cover was not sufficient because the ATE policies could be avoided if Mr Elliott was not believed at trial. The ATE policies could also be avoided after disclosure unless counsel advised the prospects of success were at least 60%. Snowden J in the High Court refused to order security for costs ruling there was no reason why the existence of an ATE policy should not be taken into account. PwC and the bank appealed to the Court of Appeal. The Court of Appeal noted that '*there is little appellate authority on the topic*'. It has over-turned this ruling saying that ATE insurance is not sufficient security where a ATE policy can be avoided for non-disclosure noting that the landscape after trial could be significantly different. Lord Justice Longmore has ordered that security in the sum of £4million be provided either by a deed from the ATE insurers or a payment into court or a bank guarantee otherwise the claim will be struck out. The bank says its loss on its lending to Premier is over £5million. Permission for a final appeal to the Supreme Court of the United Kingdom was refused.

Premier Motorauctions Limited (In Liquidation) and Premier Motorauctions Leeds Limited (In Liquidation) v. Pricewaterhousecoopers LLP and Lloyds Bank PLC
[2017] EWCA 1872 *23 November 2017*
Court of Appeal, Civil Division (Longmore, Kitchin and Floyd LJJ)

What is the underlying dispute about?

Mr Keith Elliott owns 97% of Premier Motorauctions Limited (Premier) and prior to administration was the managing director of both companies. Lloyds Bank was Premier's bank. Premier had 2 main business operations - a car auction business in Leeds and an UK-wide auction business selling unique registration plates for the DVLA. Premier owned the Leeds property from where it traded and a parcel of land in Birmingham which it bought in July 2006 with a bank loan. Premier wanted to develop this land. In April 2008 a proposed sale of Premier's properties fell through and also capital repayments became due on the loan to the Bank. Mr. Elliott asked the bank for more lending. In July 2008 the bank increased the overdraft facility available from £1m to £1.5m and then to £1.75m and also agreed to postpone capital repayments required on the loan for the Birmingham site.

At the same time, the bank introduced a Mr Warnett of PwC to Mr. Elliott as a person who might be willing to act as a non-executive director of Premier. Mr. Elliott and Mr. Warnett met on 11 August 2008 to discuss this. Pricewaterhousecoopers LLP (PwC) was then engaged to conduct a review of Premier's cash-flow needs pursuant to an engagement letter dated 15 August 2008 signed by both Premier and the bank. On 21 August 2008 PwC issued a draft business review report indicating that Premier needed an immediate cash injection of £2 million. There was a meeting on 29 August 2008 which Premier, PwC and the bank attended. The bank confirmed that it would increase Premier's overdraft facility with immediate effect by £2m. Mr Elliott signed a further guarantee in relation to this £2m.

On 5 September 2008 PwC issued the bank with an engagement letter proposing to provide services to the bank in relation to a proposed sale of Premier. On 11 September 2008 the bank issued a facility letter to Premier in relation to the increased overdraft. It contained a condition that Premier should

engage in a sales process in conjunction with PwC to be completed by 31 December 2008. On receipt of independent legal advice Premier refused to sign either the PwC or the bank facility letters.

From September to December 2008 PwC continued to carry out review work for the bank. Various proposals and offers were made and considered for investment in Premier or for sale of some or all of its assets. This was at the time of the banking crash. Premier alleges that the bank thwarted at least one advantageous offer. No deal came to fruition. On 22 December 2008, 2 partners of PwC were appointed as administrators of Premier and its main business and assets were sold by way of a pre-pack sale.

Premier acting by its joint liquidators (Mr. Khalastchi and Mr Atkins of Menzies LLP) claims that Mr. Warnett was introduced to Premier on false pretences and that he had no genuine intention of performing a role of non-executive director. Premier claim that Mr. Warnett was used by the bank and PwC as part of a conspiracy to obtain an internal assessment of Premier's affairs in the process identifying a fictitious need for additional finance. This was then to be provided by the bank on terms that gave it effective control over Premier and the means to force Premier into administration so that their its business and assets could be sold off at an undervalue by the administrators for the benefit of the bank. Premier alleges that PwC and the bank breached various duties to them and conspired to cause them loss by unlawful means. Premier values its claim at £54million.

How is this case funded?
Premier's liquidators appointed the solicitor's firm Hausfeld & Co LLP to act for them. They signed a conditional fee agreement with Hausfield so that a claim could be brought. Hausfield arranged for 'after the event' (ATE) policies to be taken out to cover the costs of both PwC and the bank in the event that its claim failed. PwC then applied for security for costs under Civil Procedure Rules 1998 part 25.12. PwC in response to a letter before claim indicated that it would be seeking security for costs. After service of the claim, Premier notified PwC that ATE policies had been issued by various insurance companies providing different layers of cover.

PwC submitted that there was reason to believe that Premier would be unable to pay its costs if ordered to do so because Premier was insolvent and in compulsory liquidation without any substantial assets. PwC submitted that the ATE policies did not guarantee payment of their costs since there were significant risks attached to them where:

- the ATE policies might be avoided, rescinded or cancelled in the event that the accountants won, and
- 2 of the ATE insurers were based in Gibraltar and could not be accepted as credit-worthy.

What are the critical terms of the ATE policies?
There were 5 ATE policies take out each providing different layers of cover with QBE Insurance (Europe) Limited and Elite Insurance Co Limited. The 3 highest layers of ATE cover had this policy endorsement:

> *'It shall be a condition precedent to the Insurer's liability to make payments under the policy that within 30 days of completion of the substantive part of the disclosure exercise, the Insured will obtain an opinion from Counsel on the merits of the Dispute. In the event that Counsel does not opine that the prospect of the Dispute resulting in a Successful Outcome are [sic] at least 60%, the Insurer may at its sole discretion terminate this policy. Should the Insurer terminate the policy in accordance with this provision the Insurer shall have no liability to make any payment under the policy whatsoever.'*

QBE provided the primary layer and the following are the critical terms from its policy (but this is industry standard and similar wording is in the other ATE policies):

> *'2. **Exclusions***
> *2.1 The Insurer shall not, unless otherwise stated in this Policy, pay any claim under the Policy directly caused or attributable to*
> *2.1.1 The Insured's failure to co-operate with or to follow the advice of the Representative;*
> *…….*
> *2.1.17 any fraudulent, false or misleading representation by the Insured or the Representative.*
>
> *3. **Conditions Precedent and Warranties***
> *3.1 The following are conditions precedent to the Insurer's liability under this Policy:*
> *3.1.1 The Proposal was made following reasonable and diligent investigation of the facts, information and evidence relevant to the Representative's assessment of the*

> *Insured's prospects of success in the Dispute and the Insured has included in the Proposal all matters relevant to the provision of cover under this Policy.*
> *3.2 The Insured warrants that the Insured will make available to the Representative all information, documents and evidence which may be relevant to the Representative's appraisal and conduct of the Dispute.*
> *3.3 If the Insured breaches the warranty set out in clause 3.2 at any time the Insurer will be relieved of all obligation to provide any indemnity under this Policy from the date of such breach*.'

What application was made before Mr Justice Snowden?
PwC made an application before Mr Justice Snowden in the Chancery Division of the High Court for security for costs contending that the ATE policies should be disregarded for this purpose.

What ruling did Snowden J make?
On 24 October 2016, Snowden J handed down his reserved judgment in which he refused PwC's application for security for costs - **[2016] EWHC 2610 (Ch).**

Snowden J ruled that the early cases on the effect of a claimant taking out an ATE insurance policy to cover costs had focused on the question whether an ATE policy was a suitable alternative form of security to cash or a bank guarantee on the assumption that the court had already decided that security for costs should be provided. As a matter of logic and having regard to prior cases the starting point of any analysis was to ask the threshold jurisdictional question posed by CPR part 25.13 namely whether there was reason to believe that the claimants would be unable to pay their costs if ordered to do so. In answering that question, the court should have regard to the assets which the claimant company would have available to meet an adverse costs order. The fact that a company was in liquidation or administration did not necessarily mean that it would have insufficient assets to meet an adverse costs order. Even insolvent companies could have substantial assets, and an adverse costs order made against the company in litigation would rank for payment in the insolvency ahead of the claims of other creditors. There was no reason why the existence of an ATE policy should not be taken into account.

In respect of the credit-worthiness of the Gibraltarian insurers, the 1st one had an established track record and there was no particular reason to believe that it would not pay if called upon to do so under the policies that it had issued. That was not the case in relation to the 2nd insurer - there was little evidence about its history or current operations, and the lack of any recent financial information raised doubts as to its financial standing and ability to pay under the policy that it had issued. If that insurer stood alone, the rule 25.13 threshold would have been crossed. However, that insurer had provided only 1 layer of ATE insurance, which would not be reached until well after disclosure and possibly much later. Accordingly, and consistently with the practice of the court to order the provision of security for costs in stages as a case progressed, it was not appropriate to order the provision of security for costs in place of the 2nd insurer's layer.

What were the grounds of appeal?
There were these 4 grounds of appeal from the accountants:

- The judge was wrong to conclude there was no jurisdiction to order security for costs where ATE insurance was in place,
- The judge was wrong to conclude that ATE insurance offered sufficient protection for costs,
- The court should exercise its discretion to order security, and
- Security should be ordered in the sum of £3.92million for PwC's costs and £3.69million for the bank's costs.

Was there a Respondent's Notice?
Yes. Premier issued a Respondent's Notice seeking to uphold the ruling of Snowden J below on the additional ground that even if there was jurisdiction to make a security for costs order, the considerations identified by the Snowden J would make it wrong for the Court of Appeal to order security as a matter of discretion.

What do the rules provide on security for costs?
Part II of CPR part 25 deals with security for costs. It states:

> ***'25.12 Security for costs***
> *(1) A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.*
> *(2) An application for security for costs must be supported by written evidence.*
> *(3) Where the court makes an order for security for costs, it will –*

(a) determine the amount of security; and
(b) direct –
(i) the manner in which; and
(ii) the time within which
the security must be given.

25.13 Conditions to be satisfied
(1) The court may make an order for security for costs under rule 25.12 if –
(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
(b)
(i) one or more of the conditions in paragraph (2) applies, or
(ii) an enactment permits the court to require security for costs.
(2) The conditions are –
(a) the claimant is –
(i) resident out of the jurisdiction; but
(ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention, a State bound by the 2005 Hague Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982 7;
…
(c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
(d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
(e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
(f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
(g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.'

What authorities are referred to in the judgement?

These 8 authorities listed chronologically are referred to in the judgment of Lord Justice Longmore:

Northampton Coal Iron & Waggon Company v. Midland Waggon Company **(1878) 7 ChD 500** (Court of Appeal – Lord Jessel MR, James and Thseiger LJJ)
This was a case in which bribery was alleged so that a company would enter into contracts at inflated prices. The claimant company was in liquidation. Nearly 1 year after the claim was served, the claimant applied to amend with the amendments raising a fresh case needing a lot more additional evidence. As a new case which would cause a great increase of expense had been raised by the amendment, security for costs ought to be given.

Nasser v. United Bank of Kuwait (Security for Costs) **[2001] EWCA Civ 556** (Court of Appeal – Simon Brown and Mance LJJ)
An order for the defendant's costs of the appeal was in principle justified by the claimant's residence in the United States where the claimant's assets, if any, were likely to be and steps for enforcement of the order were likely to be taken. A figure of £5,000 represented a fair assessment of the security for costs to be ordered.

Al-Koronky v. Time-Life Entertainment Group **[2006] EWCA Civ 1123** (Court of Appeal – *Sedley, Keene and Longmore LJJ)*
The High Court had not breached any principle of international comity in holding that an order for security against a person residing in Sudan was appropriate. A claimant who has satisfactory ATE insurance may be able to resist an order to put up security for the defendant's costs on the ground that his ATE cover gives the defendant sufficient protection. The ATE policy is voidable if their eventual liability for costs is consequent upon the claimants not having told the truth. One wonders what use ATE is. If the claimants win, they will have no call on their ATE. If they lose, it is overwhelmingly likely that it will be on grounds which render their ATE cover ineffective.

Jirehouse Capital v. Beller **[2008] EWCA Civ 908** (Court of Appeal – Mummery, Arden and Moore-Bick LJJ)
There was nothing in the rules to suggest that any immunity against an order for security for costs was intended to extend to individuals who chose to trade through a corporate vehicle. There was no justification for reading down the clear words of CPR part 25.13(2)(c). Although the judge had applied a test of '*significant danger'* that the company would be unable to pay costs ordered against it and had wrongly held that the established test was one of balance of probabilities, it was much safer to apply the words of the rule

since there might be contexts in which a test of significant danger produced a different result from '*reason to believe'*.

Persimmon Homes Ltd v. Great Lakes Reinsurance (UK) PLC **[2010] EWHC 1705 (Comm)** (High Court, QBD, Commercial Court – David Steel J)
A successful defendant was unable to recover its costs from the claimant's ATE insurers. The ATE insurer avoided the ATE insurance policy for material non-disclosure in regard to the father's bankruptcy and the presentation of the risk without reference to the untruthful statements of the father and son and their fabrication of evidence. The insurer asserted that there had been material misrepresentation in regard to the father's relationship to the claimant company and the fact that company had been incorporated because the father was a bankrupt but nonetheless thereafter acted as a shadow director.

Geophysical Service Centre Co v. Dowell Schlumberger (ME) Inc **[2013] EWHC 147 (TCC)** (High Court, QBQ, Technology & Construction Court – Stuart Smith J)
The burden was on a defendant to show that there was reason to believe that a claimant would be unable to pay the costs. Unless the threshold conditions in CPR part.25.13 were satisfied, the jurisdiction to make an order for security for costs did not arise. If the jurisdiction arose, the court had discretion as to whether to order security. The ATE market was considerably more mature than at the date of the judgment in *Nasser.* The claimant's insurer was a reputable insurer in the market and the funding of litigation by ATE policies had for many years been a central feature of the ability of parties to gain access to justice. In the absence of evidence to the contrary, the court's starting position should be that a properly drafted ATE policy provided by a substantial and reputable insurer was a reliable source of litigation funding. The question was not whether the assurance provided by an ATE policy was better security than cash, but whether there was reason to believe that the claimant would be unable to pay the defendant's costs despite the existence of the ATE policy. Depending on the terms of the policy, an ATE policy could suffice so that the court was not satisfied that there was reason to believe that the claimant would be unable to pay the defendant's costs. Subject to the existence of the ATE policy, there would be reason to believe that the claimant would not be able to discharge an order for payment of the defendant's costs. It was therefore necessary to form a view on the meaning of the ATE policy, how readily it might be legitimately avoided, and the likelihood of circumstances arising which would enable the policy to be legitimately avoided. However, there was no material that raised anything more than a theoretical chance that insurers might seek to avoid the policy if the court found in the defendant's favour on the representations. It was not the defendant's case that the claim was fraudulent or a sham. If the insurer cancelled the policy it would remain liable to indemnify against defendant's costs which had been incurred before the date of cancellation. There was evidence of a clear and long-standing relationship between the claimant's solicitors and the ATE insurers which made it commercially much less likely that the insurers would seek to avoid on spurious or tenuous grounds thereby jeopardising the relationship which had been built up over the years.

Sarpd Oil International Ltd v. Addax Energy SA **[2016] EWCA Civ 120** (Court of Appeal – Longmore & Sales LJJ and Baker J)
There had been a deliberate refusal to give the court any financial information. There was therefore reason to believe that the claimant would be unable to pay the defendant's costs if ordered to do so. The condition contained in CPR part 25.13(2)(c) was satisfied. In relation to Part 20 costs, in a case where it is likely that a defendant will have to pay a third party's costs if the claim fails, the defendant ought to be able to obtain an order for security for those costs as well as his own as against the claimant. The judge had been correct to take the defendant's approved costs budget as the appropriate point from which to work out the amount of the defendant's own costs which should be provided by way of security.

Holyoake v. Candy **[2017] 3 WLR 1131** (Court of Appeal – Gloster and Rupert Jackson LJJ)
The correct test for determining whether the fortification provided by an ATE insurance policy complied with the requirement that it be '*in a form reasonably satisfactory to'* the defendants was an objective one. Whether a reasonable person in the position of the defendants could properly form the view that the proposed fortification was satisfactory. This would not be the case if the defendants might reasonably apprehend that there was a risk that the ATE insurer might seek to avoid the policy. There was a real prospect of the ATE insurer properly arguing that as a matter of construction of the ATE policy it would be under no liability in the case of fraud by the claimants. There was a rule of public policy which would entitle the ATE insurer to avoid the policy on the grounds of the claimants' fraud regardless of the policy terms. The ATE policy was not in a form reasonably satisfactory to the defendants and did not comply with the claimants' obligation to provide fortification of their cross-undertaking to pay damages and costs.

What did the Court of Appeal rule on jurisdiction to make a security for costs order?
Lord Justice Longmore in giving the unanimous ruling of the Court of Appeal started by lamenting that it was 'unfortunate that the court's jurisdiction to order security for costs should depend on a detailed analysis of a claimant's ATE insurance policies into which the defendants have had no input and which they have no direct right to enforce'. Longmore LJ was concerned too that a security for costs applications became '*blown up'* into a '*large interlocutory hearing involving great expenditure of both*

money and time'. However Longmore said that an analysis of the wording of the ATE policies was *'inevitable'* noting that there was '*little appellate authority on the topic but such as there is does support the proposition that an appropriately framed ATE insurance policy can in theory be an answer to an application for security*'.

It started promisingly for Premier with Longmore LJ conceding that the prior authorities did indeed '*give credence to'* Premier's submission that '*ATE insurance can, in principle, be taken into account at any rate if it gives the defendant sufficient protection'*. Longmore LJ rejected the submissions of both PwC and the bank that ATE was '*not to be considered at all'* and rejecting the bank's submission that ATE was a '*contingent asset'* ruling that this submission went '*too far'*. Longmore LJ said that it was '*necessary to consider whether the particular ATE insurance in this case does give the defendants sufficient protection'*.

What did the Court of Appeal rule on whether ATE gave sufficient protection for costs?
Longmore LJ started his analysis on this by noting that '*Mr Elliott's evidence will be central to the resolution of the key question in this case namely whether PwC and the Bank conspired together unlawfully to depress the Companies' assets and then acquire them at an undervalue'*. Longmore LJ disagreed with Snowden J who said he had '*real doubts that the disputed evidence of Mr Elliott will be as central to the case as the defendants suggest*' with Longmore ruling that '*unless Mr Elliott is believed, they will not get to first base*'. If Mr Elliott was not believed Longmore LJ observed that Premier '*will lose and be liable for the costs of PwC and the Bank*'. Longmore LJ was scathing of the remarks of Snowden J who said it '*was something of a leap'* to conclude that disbelief of Mr Elliott '*would provide grounds*' for the ATE insurers to avoid the policies.

Developing this, Longmore LJ ruled that he could not agree with Snowden J saying that it did '*not follow that insurers would avoid but the difficulty is that neither the defendants nor the court has any information with which to judge the likelihood of such avoidance*'. Longmore noted that ATE insurers did seek to wriggle out of payment noting that this was what happened in *Great Lakes Reinsurance*. Further Longmore presciently observed that the '*landscape after trial may be very different from the landscape as it appears to be at present and it is unsatisfactory to have to speculate'*.

Longmore LJ disagreed with Snowden J who had placed great store on the fact that the ATE proposals were made by the joint liquidators who are '*independent professional insolvency office-holders'* and who *'investigated the claims with the assistance of experienced solicitors and counsel providing a high level of objective professional scrutiny'*. Whilst Longmore said this was true he ruled that '*the best professional advice cannot cater for cases of non-disclosure of matters which the professionals do not know'.*

Longmore adopted what was said in *Nasser* ruling that it followed that '*there is reason to believe that the companies will be unable to pay the defendants' costs if ordered to do so and that the jurisdictional requirement'* was satisfied. On access to justice, Longmore LJ said he took issue with the suggestion that this had '*quite the relevance which Stuart-Smith J thought it had'* in *Geophysical* because consideration of access to justice '*is more normally relevant to the possibility that an order for security might stifle a claim*' but Longmore was clear that this was '*not a point that arises in this case'*.

Longmore LJ said he was '*not particularly impressed by the fact'* that Premier had '*declined to procure a Deed of Indemnity'* for the costs of PwC and the Bank. Longmore thought that such a Deed would '*mean that insurers were giving up their right to avoid*'. Longmore LJ also noted that such a Deed was mentioned in the ATE policy conditions which showed that '*insurers do sometimes issue such a document'*. Longmore also noted that another constitution of the Court of Appeal in *Holyoak* had considered that '*even an ATE insurance policy which provided for avoidance only in cases of fraud was not suitable to stand as fortification for a cross-undertaking in damages'*.

Concluding on this issue, Longmore ruled that for the '*reasons given, however, I would hold that, on the facts of this case, there is jurisdiction to make an order for security for costs'.*

What did the Court of Appeal rule on whether it should exercise its discretion to make an order?
Longmore LJ started by saying he agreed with PwC and the bank's counsel that the Court of Appeal should '*exercise its own discretion'* on setting the amount and terms of security rather than remitting this back to Snowden J. Longmore said these 3 hurdles had to be jumped through, namely establishing that:

- Premier is insolvent,
- there is jurisdiction to order security for costs, and
- ordering security will not stifle the claim.

When this had been done Longmore ruled that it was '*normally appropriate to order security'* and went on to rule that he saw '*no reason not to do so in this case'*.

Longmore LJ said he would follow the lead from the Court of Appeal's approach in *Midland Waggon* noting that the bank had '*already lost about £5 million by way of irrecoverable loan'* from Premier which he said would '*remain irrecoverable even if the bank wins its case'*. Finally Longmore ruled that '*unless security is ordered'* there would '*no level playing field'* as the Premier had '*no reason to suppose that they will be unable to recover costs if they win'*.

What did the Court of Appeal rule the amount of security for costs should be?
Before Snowden J, PwC sought security to £3.92million which was 80% of their estimate of costs to trial. The bank sought 80% of £3.69million. Longmore LJ rightly castigated these costs estimates as 'very high figures even taking into account the sums said to be at stake in the action'. Longmore LJ also lambasted the suggestion made by both PwC and the bank that it was 'inevitable that, if they win, they will recover indemnity costs' saying that he saw 'no reason to assume' that. Longmore said he considered that 'justice will be done at this stage by ordering security to be provided for each of the defendant's costs in the sum of £2,000,000 making £4,000,000 in all'.

As to the precise mechanics, Longmore LJ ordered that:

- Premier shall by 5pm on 1 December 2017 provide PwC and the bank with their proposed security arrangements which shall be in the form of either:
  - payment into court,
  - a deed of indemnity from Premier's lead UK ATE insurer, or
  - a bank guarantee from a UK clearing bank
- PwC and the bank shall notify Premier by 5pm on 6 December 2017 of any objections to the form or terms and the parties shall thereafter use their best endeavours to resolve any such objections, and
- Security shall in any event be put in place by 4pm on 15th January 2018.

Both PwC's and the bank's costs in the Court of Appeal and before Snowden J of the security for costs application are to go to a detailed assessment but Longmore LJ ordered Premier to make a payment on account to PwC of £44k and to the bank of £45k by 8 December 2017.

What will happen next with this case?
The case is listed for trial for a date fixed in April 2018. However unless security is provided then (unless the Supreme Court takes the case and grants a stay pending a final appeal) the case will be struck out without the need for further application or order.

Will there be a final appeal to the Supreme Court?
Premier made an application for a final appeal. At the handing down hearing, the application was refused by Longmore J who also refused to order a stay of the security for costs order pending an application to the Supreme Court itself for a final appeal. It is likely that the Supreme Court will be asked to grant permission. The Court of Appeal recognized that '*there is little appellate authority on the topic'*. It will be tempting for the Supreme Court to take this case so it can decide (but on broader grounds) whether it prefers the approach of Snowden J or the contradictory one of the Court of Appeal. As there are wider issues of access to justice, it may be that the Supreme Court will look to chart a 3rd way through this.

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