

Judgment 11/2009

Ladbroke PLC v Galaxy International Ltd – Royal Court (Civil Action File 1078) – 10 November 2008 and 24 November 2008

- (i) **Taxation – Royal Court (Costs and Fees) (Guernsey) Law, 1969 – Royal Court Costs and Fees Rules, 2000 – costs of lawyers from outside the jurisdiction – whether recoverable and if so at what rate – distinction between external lawyers (i) called as witnesses of foreign law and (ii) assisting in the conduct of Guernsey proceedings – discretionary power of the Royal Court under s.1 (1) of the 1969 Law – public interest in maintaining sufficient expertise among Guernsey Advocates rather than sub-contracting – costs of external lawyers may however be allowed in appropriate and exceptional cases – only rarely should those fees be taxed at levels above those for Guernsey Advocates – position in Jersey – costs taxed at £62,373.25, after reductions of £48,521.10**
- (ii) **Award of costs of the taxation – Royal Court Civil Rules, 2007 (Rule 62) – factors which may be taken into account when considering the issue of costs – starting point that a successful receiving party is entitled to recover its costs of the taxation itself – held that the conduct of Ladbroke in relation to taxation of costs had been unreasonable – Galaxy ordered to pay £1,250, being a small proportion only of the costs incurred by Ladbroke in the taxation**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1078

The 10th day of November 2008, before Richard Charles Southwell Esquire, QC Lieutenant Bailiff, sitting alone

**LADBROKES PLC
(formerly Hilton Group PLC)**

Plaintiff

and

GALAXY INTERNATIONAL LIMITED

Respondent

Whereas on 10th July 2007 the Lieutenant Bailiff ordered that Galaxy International Limited pay the costs of these proceedings of Ladbroke PLC and reserved the taxation of the said costs to himself and

Whereas on 15th October 2008 the Lieutenant Bailiff heard submissions regarding the said taxation from Advocates J M Wessels and P Richardson counsel for the Plaintiff and Respondent respectively the Lieutenant Bailiff this day handed down judgment in the terms attached hereto and taxed the costs of Ladbrokes PLC at **£62,373.25**.

S M D ROSS
H M Deputy Greffier

**Approved Judgment
10 November 2008**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

BETWEEN:

**LADBROKES PLC
(formerly Hilton Group PLC)**

Plaintiff

and

GALAXY INTERNATIONAL LIMITED

Respondent

Date of hearing: 15th October 2008

Judgment of Lieutenant Bailiff Richard Southwell QC

1. On 10 July 2007 I ordered that Galaxy International Limited (“Galaxy”) pay the costs of these proceedings of Ladbrokes PLC (“Ladbrokes”) on the recoverable basis, to be taxed if not agreed. I indicated that, if a taxation of those costs were to be requested, I would as the presiding judge appoint myself (pursuant to Rule 6(1)(a) of the Royal Court (Costs and Fees) Rules 2000 – “the Costs Rules”) to conduct the taxation, subject to the approval of the Bailiff. On 6 May 2008 Advocate Paul Richardson of Atkinson Ferbrache Richardson on behalf of Galaxy requested a taxation of Ladbrokes’ costs, and with the approval of the Bailiff I appointed myself to conduct the entirety of the taxation.

2. Ladbrokes’ Bill of Costs was prepared by Advocate Jeremy Wessels of Ozannes on behalf of Ladbrokes. The total costs are put at £110,894.35, which fall into two categories:

- (1) fees and disbursements of Ozannes, totalling £58,735.35;
- (2) fees and disbursements of Halliwells, totalling £52,259.00.

Halliwells is a firm of English solicitors acting on behalf of Ladbrokes in connection with the Guernsey proceedings.

3. So nearly half of all the fees and disbursements claimed as costs in these proceedings are of lawyers from outside this jurisdiction (“external lawyers”). This raises a question of some importance as to whether the costs of external lawyers are recoverable, and if they are, in what circumstances and to what extent. Costs relating to an external lawyer were allowed in *Virani v Guernsey International Trustees Ltd* (2004, unreported) but the matter was not fully argued and the fees of the external lawyer were treated as a disbursement of the litigant in person.

4. The points raised on the bill of costs by Mr Richardson for Galaxy are these:

First, it is submitted that Ladbrokes are not entitled under Guernsey law to recover any part of the fees and disbursements of Halliwells, who are not Guernsey advocates, and the fees and disbursements of external lawyers do not come within the provisions of the Costs Rules, save in exceptional cases, and this is not an exceptional case.

Secondly, it is submitted that, even if a party to Guernsey proceedings can in law (otherwise than in exceptional cases) recover costs in respect of fees and disbursements of lawyers practising in other jurisdictions, there cannot be recovered more than the equivalent rates recoverable in respect of Guernsey Advocates and their employees.

Thirdly, it is submitted that in a number of specific respects the fees and disbursements of Ozannes and Halliwells claimed by Ladbrokes as recoverable costs are unreasonable in amount, unreasonably incurred, and/or with significant duplication of the work done by the two firms.

5. The proceedings concerned a contractual debt owed by Galaxy to Ladbrokes under a contract dated 21 February 2001 between those parties, with contractual interest. The contract provided for the debt of US\$2.5 million to be paid on or before 3 February 2003, the debt being intended to be guaranteed by a confirmed irrevocable letter of credit issued by an American bank. Such a letter of credit was purportedly issued. Neither Galaxy nor the bank paid in February 2003. Ladbrokes sued the bank in the USA and failed, because the purported letter of credit was shown to have been issued without the bank’s authority. Ladbrokes’ English solicitors Halliwells were much involved

in the proceedings in the USA. Having failed to recover from the guarantor, Ladbrokes then sought to recover the debt plus interest from Galaxy in Guernsey. A brief history of the Guernsey proceedings is set out in the next paragraph. Their main feature was the presentation by Advocate Richardson, with his accustomed skill, of a number of defences to the summary process launched by Ladbrokes, represented with equal skill by Advocate Wessels. None of those defences had any likelihood of succeeding, though they were properly and fairly advanced on behalf of Galaxy. But each had to be fully responded to in detail by Ladbrokes. The costs of the Guernsey proceedings were naturally enlarged by the skill with which the defences were presented and Galaxy's submissions were formulated.

6. The steps in the Guernsey proceedings were, in summary, these:

(1) By a statutory demand of 13 December 2006 made by Mr Wessels on Ladbrokes' behalf there was demanded payment by Galaxy of the contractual debt of US\$2.5 million and contractual interest accruing daily at the rate of US\$616.44, and amounting as of 30 November 2006 to US\$850,685.

(2) On 10 January 2007 Galaxy applied to the Royal Court (in reliance on evidence contained in an affidavit of Mr Evans) for orders setting aside the statutory demand and staying or dismissing any application by Ladbrokes to wind up Galaxy compulsorily, if any were made.

(3) On 12 January 2007 there was a hearing for directions before Deputy Bailiff Richard Collas, and directions were given for the procedural steps in relation to Galaxy's application.

(4) Ladbrokes submitted a skeleton argument of 26 pages (in response to Galaxy's) and three affidavits of Messrs Taker, Way and Bailey. Galaxy submitted a second affidavit of Mr Evans in reply.

(5) Galaxy's application came before Deputy Bailiff Collas on 7 February 2007, the central issue being whether the matters raised by Galaxy constituted a bona fide dispute between the parties on substantial grounds. Deputy Bailiff Collas held that those matters did not constitute a bona fide dispute, and he dismissed Galaxy's application with costs.

(6) On 9 February 2007 Ladbrokes applied to the Royal Court for an order winding Galaxy up compulsorily. This application came before Deputy Bailiff Collas for directions on 23 February 2007. Mr Richardson submitted that several issues would arise (including whether Galaxy was solvent, and whether the Court had a discretion not to order winding up despite Galaxy's inability to pay the debt owed to Ladbrokes, and if so, how that discretion would be exercised) and accordingly there should be a lengthy adjournment to enable Galaxy to file evidence including an accountant's valuation of Galaxy. The Court ordered Galaxy to file a pleaded defence by 9 March 2007.

(7) On 6 March 2007 Galaxy applied for leave to appeal against the rejection of its application to strike out the statutory demand, and this was refused by the Deputy Bailiff at a hearing on 9 March 2007 as having no realistic prospect of success.

(8) On the same day (9 March 2007) Galaxy served its defence and a skeleton argument, directed to Ladbrokes' winding up application. In both Galaxy was alleged to be solvent, and it raised arguments as to the agreement of 21 February 2001 already rejected by the Deputy Bailiff in relation to the statutory demand (see (5) above).

(9) On 12 and 13 March 2007 affidavits of Mr Devlin, Ms Parrack and Mr Le Tissier, and also unsworn affidavits of Messrs McCain and Woods (subsequently sworn) were served by Mr Richardson for Galaxy. The matter came before the Deputy Bailiff for directions on 16 March 2007, but was stood over to 30 March 2007.

(10) On 10 April 2007 Galaxy launched an action in the English High Court, seeking to run several of its defences already pursued in Guernsey as the basis for declarations as to its alleged contractual non-liability. Though the particulars of claim were signed by English Queen's Counsel, such action in England was misconceived and without merit. The costs of that action fall to be dealt with in England, and not in this taxation in Guernsey.

(11) It was at that stage that as Lieutenant Bailiff I took the place of the Deputy Bailiff as the presiding judge dealing with these proceedings in Guernsey. A number of further documents, including a third affidavit of Mr Evans and written submissions by both parties, were served before a hearing before me on 10 and 11 May 2007. By my judgment and order of 15 May 2007, I refused the stay of the winding up petition sought by Mr Richardson, and

also rejected his submission that the hearing of the petition should involve oral evidence (in addition to the affidavits already served). I directed that the petition be heard on 10-12 July 2007, with directions also as to steps to be taken before then.

(12) Written submissions of both parties were served, and a fourth affidavit of Mr Evans on behalf of Galaxy.

(13) The matter was settled at the eleventh hour on the basis of Galaxy agreeing to pay what was due to Ladbrokes, and this Court was only required to make an order as to the costs as already mentioned.

Fees and disbursements of external lawyers

7. This taxation of costs raises squarely for decision the question set out in paragraph 3 above in relation to costs incurred in using external lawyers as well as Guernsey Advocates for the conduct of Guernsey proceedings, not least because nearly half of all the costs claimed by Ladbrokes consist of the fees and disbursements (including an English barrister's fees) of the English solicitors, Halliwells.

8. I should here make it clear that in this judgment I am casting no doubt as to the appropriateness of recovery as legal costs of the fees and disbursements of external lawyers who are called as witnesses of foreign law, and who are dealt with in Rule 2 of the Costs Rules. This judgment is concerned with costs arising from the use of external lawyers to assist in the conduct of Guernsey proceedings.

9. The threshold question raised by Mr Richardson is whether such costs relating to the use of external lawyers in Guernsey proceedings are recoverable at all.

10. The Royal Court (Costs and Fees) (Guernsey) Law 1969 ("the 1969 Law") provides in Section 1(1) that

"The costs of and incidental to all proceedings in the Royal Court shall be in the discretion of the Royal Court and the Royal Court shall have power to determine by whom and to what extent the costs are to be paid."

In Section 1(3) the Royal Court is given power, by rules under that sub-section, from time to time to make provision for (inter alia)

“(b) the fees and expenses recoverable by a party in respect of any proceedings in the Royal Court where costs are awarded to that party under subsection (1) of this section”.

11. In the Costs Rules, which were made under that provision, Rule 2 deals with Advocates’ fees. Paragraph (1) of rule 2 provides:

“(1) In civil proceedings, the maximum Advocates’ fees recoverable shall be (subject to the following provisions of this rule and of Part II of these Rules and to any direction of the Court as to the extent to which costs are to be paid) the costs of and incidental to the proceedings which have been incurred by the party to whom costs have been awarded and which are reasonable in amount and reasonably incurred.”

Rule 2 next provides for a maximum rate of recoverable Advocates’ fees, and for its adjustment to take account of inflation. It is common ground that in 2007 the maximum rate was £194 per hour.

Paragraph (5) of Rule 2 provides as follows in respect of costs to be taxed on the recoverable basis:

“(5) Any doubts which a person appointed under Rule 6 to conduct a taxation may have as to whether costs are reasonable in amount or reasonably incurred shall, except in relation to costs awarded on a full or partial indemnity basis, be resolved in favour of the paying party.”

As already indicated, I am the “person appointed under Rule 6” for this taxation.

12. These appear to be the only statutory provisions relevant when considering whether the fees of external lawyers (other than witnesses) can be recovered.

13. It is clear that Rule 2 does not cover all the costs which are ordinarily recoverable. Rule 2 deals only with “Advocates’ fees”, and does not deal with costs incurred by the use of those not yet qualified as Advocates, and employed by firms of Advocates. Some of those employees are lawyers qualified in other jurisdictions. It is common ground between Mr Richardson and Mr Wessels that such costs are recoverable at rates up to the maximums which are accepted as standard by the Royal Court at the relevant time.

14. In my judgment paragraphs (1) to (3) of Rule 2 are concerned with establishing a maximum rate of recovery in respect of Advocates' fees, and plainly do not exclude a reasonable recovery in respect of other costs, including both fees in respect of non-Advocates and disbursements. Section 1(1) of the 1969 Law gives the Royal Court a wide discretion in relation to costs, and that discretion is limited by Rule 2 only as to the maximum recoverable rates of Advocates' fees, and as to the resolution of doubts as to reasonableness under paragraph (5) of Rule 2.

15. It follows, in my judgment, that the Royal Court does have a discretionary power by virtue of Section 1(1) of the 1969 Law to permit the recovery of fees and disbursements of external lawyers, in circumstances in which such fees and disbursements have been reasonably incurred and are reasonable in amount.

16. So I turn next to consider the principles which are to be applied when considering whether fees and disbursements of external lawyers are to be held to be recoverable.

17. The starting point must be with the public interest of Guernsey. In considering the public interest I have been assisted by and am grateful for the submissions of Mr Richardson and Mr Wessels, and also brief written submissions of the Batonnier, Advocate N J M Tostevin, on behalf of the Guernsey Bar Council.

18. The Guernsey public interest lies, in my judgment, in the existence of a well qualified, trained and experienced body of Advocates, capable themselves of handling the great majority of legal proceedings, both civil and criminal, effectively, efficiently, in a reasonable time and at a reasonable cost. The existence of such a body of Advocates is essential to all who live in Guernsey, or engage in business and other activities in Guernsey, or use Guernsey for the purposes of trusts, investments, insurances and the like. Such persons are entitled to expect that when legal assistance is needed such Advocates will be available in Guernsey to give this assistance. They are also entitled to expect that, if they are ordered to pay costs incurred in proceedings in Guernsey, such cost will not be unduly or unreasonably increased by costs relating to the use of external lawyers as well as Guernsey Advocates and their employees.

19. In the majority of cases, both civil and criminal, the use of external lawyers will be unnecessary, and should not be allowed on taxation. The public interest lies, as indicated above, in

developing, training and maintaining sufficient expertise among Guernsey Advocates to deal with the majority of cases. This is a point of no little importance. In a small jurisdiction such as Guernsey it would be easy for it to become customary to sub-contract the preparation of cases to external lawyers whether in England or elsewhere. If that were to happen it would weaken the Guernsey profession and damage the public interest which I have defined. The actual advocacy in the Courts of Guernsey could not be sub-contracted, since only Guernsey Advocates have the rights of audience in the Guernsey Courts. In my judgment it is vital that rights of audience remain only with Guernsey Advocates. To extend rights of audience to external lawyers would be likely greatly to weaken the Guernsey profession, causing considerable damage to the public interest.

20. In my judgment, therefore, the public interest of Guernsey requires that in the majority of cases only the fees and disbursements of Guernsey Advocates' firms should be allowed.

21. But that is not to say that in appropriate and exceptional cases (which will be relatively few) the fees and disbursements of external lawyers should not be allowed on taxation. I will try to give some examples of what are likely to be such appropriate and exceptional cases:

(1) In a small jurisdiction like Guernsey it is possible that in some highly specialist fields of law, which arise rarely for decision by the Guernsey Courts, Guernsey Advocates will not have the full range of specialist expertise. In such cases it might be entirely appropriate that specialist advice is obtained from external lawyers with the necessary full specialist expertise.

(2) In civil cases litigants from outside Guernsey may have existing long-standing ties with external lawyers, and use of such external lawyers in connection with proceedings in the Guernsey Courts may to some extent be reasonable so as to ensure that the existing knowledge held by the external lawyers of the client litigants and of the facts which underly the disputes are made available to the Guernsey Advocates conducting the cases for those litigants. I emphasise the words "to some extent" above, because in the great majority of cases there can be no justification for duplication of costs by the use of both Guernsey Advocates and external lawyers in all or most of the stages of Guernsey proceedings.

(3) Guernsey proceedings not infrequently involve consideration of principles of English law (or the laws of other jurisdictions in the Commonwealth, or, for example, France). In such proceedings it may be reasonable for help to be sought from external lawyers in

establishing what are the relevant principles of English or other laws, and for allowance to be made on taxation for the costs of such assistance. Decisions such as *Morton v Paint* (1996) 21 GLJ 36 CA indicate that resort to the laws of England and Wales and other jurisdictions may be a necessary part of decision-making in the Guernsey Courts, and in my view it would be wrong to refuse allowance for costs reasonably incurred in legal research by external lawyers, in so far as that research could not readily be carried out by the Guernsey Advocates' firm. I enter this caveat because the use of internet resources relating to the main common law jurisdictions (including BAILLI, WORLDLII and AUSTLII as well as LexisNexis and other commercial sites) has made the task of researching the statutes, case-law and jurisprudence of such jurisdictions much easier for Guernsey Advocates and their employed lawyers.

(4) Often the cheapest and speediest way of reaching the heart of a problem involving complex facts and law is by taking the advice of the best lawyer or lawyers available. Sometimes, for example, it is entirely appropriate for Guernsey Advocates to place the problem before a specialist Queen's Counsel or barrister in England (which the Advocates can do directly) to obtain advice on the appropriate solution to the problem. In referring to barristers, I do not exclude the possibility of the specialist expertise being that of an English solicitor, though that may prove to be less common.

(5) In cases involving a large number of documents Guernsey Advocates may have to obtain help from large firms in England (or perhaps elsewhere) in the management of the document base, where such management is beyond, or would place an undue burden on, the resources of the Guernsey firm.

In (1) to (5) above I have simply tried to give examples of cases in which it may be reasonable and justifiable for costs incurred in the use of external lawyers to be allowed on taxation in Guernsey proceedings. These examples are not, and are not intended to be, exhaustive.

22. In cases in which it is justifiable and reasonable to allow costs of external lawyers on taxation, the question will arise (as it does in this case) whether the fees of external lawyers should be allowed at or near the rates charged by the external lawyers, or limited to the maximum or other rates appropriate for Guernsey Advocates and their employees. In my judgment those who tax costs in Guernsey proceedings should be careful not to allow fees of external lawyers at rates

higher than those permitted for Guernsey Advocates and their employees, except in the relatively rare cases where this can clearly be seen to be reasonable. Litigants in Guernsey are in the great majority of cases entitled to anticipate that, if they lose and are ordered to pay costs on the recoverable basis, they will not have to pay costs relating to the use of external lawyers well in excess of those appropriate for Guernsey Advocates and their employees. This is a point of some significance in the present case, and I will return to it below.

23. I hope that this section of my judgment will provide some help, both to Advocates when advising clients to what extent the clients should use external lawyers, and to the Judges with the task of taxing legal costs.

The position in Jersey

24. Both Advocates referred to the position in Jersey, and for completeness I briefly refer to it:

(1) Before a recent rule change it seems to have been reasonably clearly established that a litigant in Jersey could not claim in respect of fees and disbursements of external lawyers.

(2) There seems to have been some pressure from the Jersey legal profession to allow this; and in a case concerning security for costs before the Judicial Greffier *Lindgren (trading as Naval Production) v Jetcat Ltd* 1985-86 JLR 66 Advocate Mourant was recorded as submitting

“that a very dangerous situation would arise if litigants before the Courts in Jersey were not permitted to recover the costs of “back-up” services of English lawyers – he suggested that it was now common for local lawyers to “sub-contract” work out to English lawyers.”

As already indicated it is my judgment that such sub-contracting to English lawyers, other than in exceptional cases such as those I have mentioned, would be against the public interest in Guernsey.

(3) In the Jersey Royal Court Rules 2004 it is now provided in Rule 12/7 as follows:

“12/7 Lawyers outside the jurisdiction

The cost of advice obtained from or work done by lawyers outside the jurisdiction shall be allowable on taxation to the extent that-

- (a) *where that advice or work done could, in the context of those proceedings, reasonably have been obtained from or done by a Jersey lawyer, the costs allowable on taxation shall be no greater than those allowable on taxation in respect of a Jersey lawyer's fees; and*
- (b) *where that advice or work done could not, in the context of those proceedings, reasonably have been obtained from or done by a Jersey lawyer, the costs allowable on taxation shall be no greater than those which are reasonable in all the circumstances of the case."*

If it were to be proposed to introduce a specific Rule in Guernsey, I would recommend that it should not be copied from this Jersey precedent. To take just one example, this Rule would enable a Jersey Advocate to sub-contract the whole of the preparation of a case to solicitors in the English provinces and to recover the entire cost of doing so, provided that the solicitors charged no more than would be recoverable in Jersey in respect of a Jersey lawyer carrying out the same work. That would in my judgment be contrary to the public interest of Guernsey.

(4) In the Jersey case of *In re Internine Trust: Alhamrani v Russa Management Ltd & ors* 2006 JLR 176 at paras.26 et seq the Bailiff Sir Philip Bailhache considered the question – “*when it is appropriate for trustees, no doubt advised by their Jersey lawyers, to seek such advice and assistance from outside the Island*”, in particular from English solicitors and specialist Chancery counsel. He referred to Rule 12/7 in passing, and then set out the circumstances when trustees would be justified in obtaining such assistance from external lawyers. Mr Wessels cited *In re Internine Trust* in support of his submissions as to the use of external lawyers and recovery of their fees as legal costs in Guernsey legal proceedings. As the Bailiff made clear in his judgment, he was dealing with the expenditure of trust moneys by trustees in obtaining assistance from external lawyers, which is a different issue. It seems to me that the public interest of Guernsey lies in the development of trust expertise among Guernsey Advocates, and of the resources and experience needed to conduct trust litigation, even if complex.

Taxation in this case

25. Since nearly half of the claimed costs relate to the English solicitors Halliwells and their disbursements to an English barrister, the issues raised by Mr Richardson as to the use of these external lawyers are significant. His primary submission is that no costs related to Halliwells should be allowed on this taxation. If, however, any such costs are to be allowed, he submits that they should be limited to the fees allowable for Guernsey Advocates and their employees. He also submits that in relation to particular aspects of the work done for Ladbrokes, there was duplication with the work of Mr Wessels and Ozannes and/or the time claimed for is unreasonable having regard to the issues in the case.

26. My broad overview of this case is that some of Halliwells' fees should reasonably be allowed on taxation. Halliwells were much involved in the situation arising when Ladbrokes in 2003 did not receive payment of the contractual debt from either the bank or Galaxy, and in the control of the litigation against the bank in the USA. It was essential, at any rate in the earlier part of the Guernsey proceedings against Galaxy, that the knowledge, experience and judgment of Halliwells should be made available to Mr Wessels and Ozannes, thereby reducing the time needed to get them fully informed as to the background, and the facts relevant to the Guernsey proceedings. A decision had to be made whether to proceed summarily by a statutory demand followed, on non-payment, by a petition to wind Galaxy up compulsorily, or to proceed by an ordinary action for recovery of the debt. Having decided (in my judgment, correctly) to proceed summarily, some guidance from Halliwells (and especially a senior partner Mr David Grant with expertise in liquidations) was needed to ensure that as Mr Richardson on Galaxy's behalf raised a number of defences to stave off the establishment of liability and the liquidation of Galaxy, the appropriate responses were made on Ladbrokes' behalf.

27. But as a matter of overview I have reached these further conclusions:

- (1) It is certainly not justifiable or reasonable to expect Galaxy to pay so large a proportion of allowable costs as nearly a half in respect of costs and disbursements of English lawyers, in a case of only moderate complexity.
- (2) In my judgment this is not a case in which Ladbrokes is to be allowed to recover, in respect of Halliwells, more than the equivalent fees which can be recovered in respect

of Mr Wessels and Ozannes. The extent of Halliwells’ specialist assistance and the knowledge of the facts which they could impart were not in my view of sufficient significance to make it reasonable to allow their full fees.

28. The relevant fee rates per hour are as follows:

Ozannes		Halliwells		Guernsey taxed rates In 2007	
Wessels Advocate	£340	Grant Partner	£350	Advocate	£194
Roland Advocate	£340	Bourne Solicitor	£250	Associate	£130
Jones Associate	£260	Abrahams Solicitor	£210	Trainee	£ 67
Trainee	£160	Trainees	£110	Paralegal	£ 50
Secretary	£ 90	Paralegal	£100	Secretary	£ 38
		Addy Barrister	£200		

29. To the extent that I allow the hours charged by Mr Wessels and Ozannes, I will allow the standard taxation rates in the right hand column. To the extent that I allow the hours charged by Halliwells, I will similarly allow the analogous rates in the right hand column.

30. Taking account only of this point leads to a reduction in Ladbrokes’ bill of costs of £20,666.50 arrived at in this way:

Halliwells	Hours billed	At rate claimed	At rate allowed	Reduction
Grant	82.1	£28,735.00	£15,927.40	£12,807.60
Bourne	43	£10,750.00	£ 5,590.00	£ 5,160.00
Abrahams	6.6	£ 1,386.00	£ 476.00	£ 910.00
Trainee	27.3	£ 3,003.00	£ 1,829.10	£ 1,173.90
Paralegal	12.3	£ 1,230.00	£ 615.00	£ 615.00
			Total Reduction in Bill	£20,666.50

31. I turn now to the specific points raised by Mr Richardson in relation to particular work carried out in the conduct of proceedings on Ladbrokes’ behalf.

32. **Skeleton Argument of January 2007** What is claimed in respect of this work (substituting recoverable hourly rates for Halliwells) is:

Ozannes		
Wessels	1.1 hours x £194	£ 213.40
Jones	31.5 hours x £130	£4,095.00
Halliwells		
Grant	2.2 hours x £194	£ 426.80
Bourne	1.0 hours x £130	£ 130.00
	Total	£4,865.20

Mr Richardson submitted that the time claimed was excessive, and that only £1,500 should be allowed. Mr Wessels’ submission was that the skeleton argument was an important one in response to Galaxy’s application to set aside the statutory demand. Given my knowledge of the proceedings and of the issues raised, I accept in broad terms what Mr Wessels submitted. Given that the time spent by Mr Jones was just short of 4 days of 8 hours each, I consider that a small reduction from 31.5 hours to 25 hours is all that is appropriate, and I allow the time spent by Halliwells at the equivalent Guernsey rates. So I allow £4,020.20, arrived at as follows:

Ozannes		
Wessels	1.1 hrs x £194 per hour	£ 213.40
Jones	25.0 hrs x £130 per hour	£3,250.00
Halliwells		
Grant	2.2 hrs x £194 per hour	£ 426.80
Bourne	1.0 hr x £130 per hour	£ 130.00
		£4,020.20

Thus the further reduction in the bill for this item is **£845.00**.

33. **Affidavit of Mr Taker** In relation to Mr Jones’ time 24.20 hours are claimed in respect of the three affidavits of Messrs Taker, Way and Bailey. I adopt for convenience the division of Mr Jones’ time into three in considering the time allocated to each of the three affidavits. What is claimed in respect of Mr Taker’s affidavit (similarly adjusting Halliwell’s rates) is:

Ozannes		
Jones	8.06 hrs x £130 per hour	£1,047.80
Halliwells		
Grant	10.20 hr x £194 per hour	£1,978.80
Bourne	0.30 hr x £130 per hour	£ 39.00
Trainee	1.70 hr x £ 67 per hour	£ 113.90
		£3,179.50

Mr Taker was the senior person in Ladbrokes, and Mr Grant presumably had a closer relationship with Mr Taker than the other persons in Halliwells. Mr Richardson submits that this item should be reduced to £1,000. I do not agree. In my view the hours claimed are reasonable, and I make no further deduction in respect of this item.

34. **Affidavit of Mr Way** What is claimed for this item (having adjusted Halliwell's rates) is:

Ozannes		
Jones	8.06 hrs x £130 per hour	£1,047.80
Halliwells		
Grant	2 hrs x £194 per hour	£ 388.00
Bourne	0.30 hr x £130 per hour	£ 39.00
Trainee	1.70 hr x £ 67 per hour	£ 113.90
		£1,588.70

Mr Richardson submits that the 12.06 hours in total spent on this affidavit were excessive and should be reduced to 2 or 3 hours only, and he submits that the reduction on this item should be £1,000. I do not agree. The hours worked were in my judgment reasonable, and I make no further reduction for this item.

35. **Affidavit of Mr Bailey** What is claimed (making the same adjustment in Halliwell's rates) is:

Ozannes		
Jones	8.06 hrs x £130 per hour	£1,047.80
Halliwells		
Grant	4 hrs x £194 per hour	£ 776.00
Bourne	0.50 hr x £130 per hour	£ 65.00
Trainee	1.90 hr x £ 67 per hour	£ 127.30
		£2,016.10

Mr Richardson submits that the 14.46 hours in total spent on this affidavit were excessive and should be reduced with a total reduction of £1,000. In my judgment the hours worked were reasonable, and I make no further reduction for this item.

36. **Halliwells’ research into English case law** What is claimed for this item (after adjusting the hourly rates) is:

Halliwells		
Grant	6.8 hrs x £194 per hour	£1,319.20
Bourne	7.2 hrs x £130 per hour	£ 936.00
Abraham	6.6 hrs x £130 per hour	£ 858.00
Paralegal	1.9 hrs x £ 67 per hour	£ 127.30
		£3,240.50

Mr Richardson submits that no specialist research by English solicitors was required, and that, since Ozannes carried out a significant amount of such research themselves, the work was anyway duplicated. Accordingly he submits nothing should be allowed for this item. In my judgment the primary task of undertaking this research was for Ozannes. I have reviewed the 45 authorities cited by the two parties: most were not referred to in Court, and many were of doubtful relevance. If such research needed to be carried out in England, I consider that anyway it could have been carried out more cheaply and more speedily by the English barrister, Miss Catherine Addy, whose fee per hour was £200, and therefore less than those of Mr Grant (£350), Miss Bourne (£250) and Mr Abrahams (£210). In my view the appropriate amount to be allowed is £1,000, and the reduction in this item should be £2,240.50.

37. **Skeleton arguments (except the one referred to in paragraph 31 above), research and preparation reading for hearings by Ozannes and Halliwells)** What is claimed (making similar adjustment to Halliwells’ fee rates) is:

Ozannes			
Wessels	43.4 hours	x £194 per hour	£ 8,419.60
Jones	104.0 hours	x £130 per hour	£13,520.00
	147.4 hours		£21,939.60
Halliwells			
Grant	20.4 hours	x £194 per hour	£ 3,957.60
Bourne	17.3 hours	x £130 per hour	£ 2,249.00
Abrahams	6.6 hours	x £130 per hour	£ 858.00
Paralegal	1.9 hours	x £ 67 per hour	£ 127.30
	46.20 hours		£ 7,191.90
		Total	£29,131.50

Mr Richardson submits that the total claimed of £29,131.50 is unreasonable. He calculates the total time spent in Court at about 12 hours. In total 6 skeleton arguments were served on behalf of Ladbrokes and they were relatively short. He submits that the total should reasonably be £10,000 under this heading.

38. Taking a working day of 8 hours, Messrs Wessels and Jones are claimed to have spent nearly 18½ days under this heading, and Halliwells nearly 6 days, a total of over 24 days work. I am well aware from my own experience that an advocate requires long preparation time, even for relatively short and only moderately difficult hearings. But it seems to me that the time claimed for Messrs Wessels and Jones of nearly 18½ days of 8 hours is excessive, and I propose to make some reduction in this regard. In relation to Halliwells, I agree with Mr Richardson (despite the cogent arguments to the contrary by Mr Wessels) that there is clearly some duplication, and in any event I consider that to a large extent the claim for this further work by Halliwells is for work which, having regard to the principles set out in paragraphs 16-21, Galaxy cannot justifiably or reasonably be asked to pay. What I allow as reasonably recoverable is:

Ozannes		
Wessels	43.4 hrs x £194 per hour	£8,419.60
Jones	61.6 hrs x £130 per hour	£8,008.00
		£16,427.60
Halliwells		
Grant	10 hrs x £194 per hour	£1,940.00
Bourne/Abrahams	12 hrs x £130 per hour	£1,560.00
		£3,500.00
	Total	£19,927.60

So the reduction under this heading is £9,203.90.

39. **Second Affidavit of Mr Way** This affidavit was prepared for potential use at the hearing before me on 10/11 May 2007. In the event a tactical decision was made on behalf of Ladbrokes not to serve the affidavit and rely on it, because to do so would have led to an adjournment of the hearing, to give Galaxy an opportunity to respond. Mr Wessels argued cogently that, though the affidavit was not used and was not seen by Galaxy’s legal team or the court, it was reasonable to undertake the work and reasonable that Galaxy should be required to pay appropriately in that regard. Though there are occasions in which it is reasonable to allow on taxation for abortive work, I accept Mr Richardson’s submissions that Galaxy should not be required to pay for this work. The claim (adjusted as usual in respect of Halliwells) is:

Ozannes		
Jones	1.5 hrs x £130 per hour	£ 195.00
Halliwells		
Grant	16.5 hrs x £194 per hour	£3,201.00
Bourne	16.5 hrs x £130. per hour	£ 676.00
Miss Addy	7.5 hrs x £200 per hour	£1,500.00
	Total	£5,572.00

I reduce the bill accordingly by £5,572.00 in respect of this item.

40. **Attendance on client and advisers** What is claimed under this heading (with adjusted Halliwells rates) is:

Ozannes			
Wessels	44.4 hrs	x £194 per hour	£ 8,613.60
Jones	27.4 hrs	x £130 per hour	£ 3,562.00
	71.8 hrs		£12,175.60
Halliwells			
Grant	7.9 hrs	x £194 per hour	£ 1,532.60
Bourne	4.8 hrs	x £130 per hour	£ 624.00
Paralegal	0.3 hrs	x £ 67 per hour	£ 20.10
	13.0 hrs		£ 2,176.70
		Total	£14,352.30

Mr Richardson submitted that there was duplication within this item, including a number of conference calls involving the clients, Ozannes and Halliwells, and he proposed that a total of about £5,500 should be allowed. Mr Wessels submitted that these were reasonable amounts having regard to the history of the proceedings and the need to keep both the client and Halliwells informed and consulted. My conclusion is that there is some element of unreasonableness (a total equivalent to 9 days of 8 hours by Messrs Wessels and Jones) and some duplication. In my judgment £10,000 in total should be allowed under this heading, and this means a reduction of £4,352.30.

41. **Attendance on Counsel by Halliwells** There is claimed under this head (after rate adjustment):

Grant	8.5 hrs x £194 per hour	£1,649.00
Bourne	1.5 hrs x £130 per hour	£ 195.00
		£1,844.00

Mr Richardson submitted that this item should be reduced by £300. It is possible that I would have decided to make a larger reduction, but I certainly consider that a reduction of at least £300 is appropriate.

42. **Fees of Miss Addy, English barrister** After allowing for the reduction of £1,500 already made in paragraph 38 above, what is claimed under this item is £5,080 in respect of 25.4 hours work at £200 per hour. Mr Richardson submitted that Miss Addy’s role was a limited one, and duplicated to an extent the work of Halliwells. He asked for a reduction of £3,580. It is possible that I would have decided to make a larger reduction, given that in my judgment there was obvious duplication with the work of Halliwells (in respect of work which it would probably have been cheaper and quicker for Miss Addy to undertake, but which Halliwells did and have charged for). I consider that a reduction of at least £3,580 is appropriate.

43. **Ozanne’s photocopying and research fees** What is claimed in respect of these disbursements is

Photocopying, faxes and sundries	£5,305.45
Research Library Fees	£680.10
	£5,985.55

Mr Wessels explained that the photocopying was at a rate of 20p a page, and that the research fees related to searches on the Lexis Nexis system. Mr Richardson submitted that the number of pages photocopied appeared to be in the region of 24,000 pages, which he said was a clearly excessive claim, having regard to the volume of documents relevant to the Guernsey proceedings, and he submitted that no more than £3,000 should be allowed. I accept Mr Wessels' explanations of these figures, including the explanation of how so large a number of copies had to be made, and I make no reduction in this item.

44. **Preparation of the Bill of Costs** The amount claimed (with the usual adjustment) are:

Ozannes			
Wessels	0.8 hrs	x £194 per hour	£ 155.20
Jones	7.3 hrs	x £130 per hour	£ 949.00
Secretary	6.3 hrs	x £ 38 per hour	£ 239.40
	14.4 hrs		£1,343.60
Halliwells			
Grant	5.2 hrs	x £194 per hour	£1,008.80
Bourne	1.3 hrs	x £130 per hour	£ 169.00
Trainee	18.5 hrs	x £ 67 per hour	£1,239.50
	25.0 hrs		£2,417.30
		Total	£3,760.90

Mr Richardson submitted that nearly 40 hours for producing the bill of costs was unreasonable and argued that the total should be reduced to £2,000. Mr Wessels pointed to the large number of separate items in the Bill of Costs as justifying the total. But he accepted that in his case his secretary had done the bulk of the work, thereby much reducing the cost of itemising that part of the bill relating to Ozannes. I agree with Mr Richardson that the time spent by Halliwells under this heading was clearly excessive and unreasonable. I allow all the charges by Ozannes, and accept Mr Richardson's total figure of £2,000 as covering this item. So the reduction I make is £1,760.90.

45. **Summary of Reductions in Ladbrokes' Bill of Costs** Having regard to all the considerations set out above, the reductions which I make are these (the references are to the paragraphs of this judgment):

Paragraph 30	£20,666.50
Paragraph 32	£ 845.00
Paragraph 36	£ 2,240.50
Paragraph 38	£ 9,203.90
Paragraph 39	£ 5,572.00
Paragraph 40	£ 4,352.30
Paragraph 41	£ 300.00
Paragraph 42	£ 3,580.00
Paragraph 44	£ 1,760.90
Total of reductions	£48,521.10

This amount claimed in the Bill of Costs by Ladbrokes is £110,894.35. Accordingly after deducting the reductions totalling £48,521.10, I will tax the costs of Ladbrokes at **£62,373.25**.

46. This draft judgment will be handed down by the Greffe to the parties in the week commencing 20 October 2008. The judgment must be treated as a confidential draft until after the matter is heard again on 10 or 11 November 2008. Brief written submissions from each party as to the order to be made by the Royal Court and as to the costs of the taxation are to be submitted in hard copy and by email to the Greffe and to the other party by 4pm on Thursday, 6 November 2008.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1078

The 24th day of November 2008, before Richard Charles Southwell Esquire, QC Lieutenant Bailiff, sitting alone

**LADBROKES PLC
(formerly Hilton Group PLC)**

Plaintiff

and

GALAXY INTERNATIONAL LIMITED

Respondent

Whereas on 10th November the Lieutenant Bailiff handed down judgment on the taxation of costs in the above matter and whereas on that day the Lieutenant Bailiff heard submissions as to the costs of the said taxation from Advocates J M Wessels and S R Geal counsel for the Plaintiff and Respondent respectively the Lieutenant Bailiff this day handed down judgment in the terms attached hereto and ORDERED that in respect of the said costs incurred by Ladbrokes PLC, Galaxy International Limited is to pay to Ladbrokes PLC the sum of **£1,250**.

**S M D ROSS
H M Deputy Greffier**

**Approved Judgment
24 November 2008**

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

BETWEEN:

**LADBROKES PLC
(formerly Hilton Group PLC)**

Plaintiff

and

GALAXY INTERNATIONAL LIMITED

Respondent

Judgment of Lieutenant Bailiff Richard Southwell QC

Hearing date: 10th November 2008

Judgment handed down: 24th November 2008

Advocate for the Plaintiff: P Richardson
Advocate for the Respondent: J M Wessels

1. On 10th November 2008 my judgment on the taxation of the costs of Ladbrokes was handed down. I refer to that judgment without repeating any part of it. Now I have to decide what Order to make in respect of the costs of the taxation.
2. The total costs claimed by Ladbrokes were £110,894.35. I taxed the amount recoverable by Ladbrokes at £62,373.25. The reductions totalled £48,521.10, or 43.75% of the amount claimed.
3. The starting point in considering the costs of a taxation is that the receiving party, if successful in recovering costs on the taxation, is entitled to receive also its costs of the taxation itself. That is simply the application of the general principle that costs follow the event.

4. But that approach may have to be re-considered where there is a payment into Court, or an offer to settle, falling within Rule 62 of the Royal Court Civil Rules 2007, or where there is a significant reduction in the amount claimed, or where the conduct of one party or both parties is such as to make a different approach necessary.
5. In the present case, the substantive matters in dispute between the parties were disposed of by agreement in July 2007 and I then ordered that Galaxy pay the costs of Ladbrokes on the recoverable basis. Thereafter, the timetable of events was as follows:
 - (1) On 8th April 2008, Advocate Paul Richardson on behalf of Galaxy wrote a “without prejudice save as to costs” letter asking for a response to a previous without prejudice letter of 23rd July 2007 concerning the costs.
 - (2) On the same day (8th April 2008), Advocate Jeremy Wessels wrote an open letter enclosing Ladbrokes’ bill of costs.
 - (3) On 9th April 2008, Mr Wessels replied (without prejudice) to the letter in (1) above, simply rejecting Mr Richardson’s offer. I will later deal with the failure by Ladbrokes to engage in any discussions with Galaxy concerning the costs: here I merely note that such a rejection, without any attempt to negotiate, was plainly unreasonable.
 - (4) On 16th April 2008, Mr Wessels wrote an open letter asking whether Galaxy accepted that costs in relation to English solicitors and a barrister were recoverable in principle, and if not, proposing that this be decided as a preliminary issue. I note here that if this had been submitted to me, I would have rejected any such preliminary issue as being inappropriate.
 - (5) On 2nd May 2008, Mr Richardson wrote a without prejudice letter, stating that Galaxy did not accept that costs relating to English lawyers were recoverable, making some comments on the bill of costs, proposing a without prejudice meeting with a view to an amicable resolution of the costs issues, and recording that Galaxy had applied to the Royal Court for costs to be taxed.

- (6) On 14th May 2008, Mr Wessels wrote an open letter complaining that Ladbrokes had received no answer to his letter in (4) above (despite having received the letter in (5) above) and proposing the same preliminary issue.
- (7) On the same day (14th May 2008), Mr Wessels wrote a without prejudice letter, not accepting the invitation to a meeting and stating that if Galaxy did not offer more than the without prejudice offer already made by Galaxy (£35,000), Ladbrokes were content that the matter should proceed to taxation.
- (8) On 5th June 2008, Mr Richardson wrote a without prejudice letter rejecting the proposed preliminary issue.
- (9) On the same day (5th June 2008), Mr Richardson wrote a second without prejudice letter offering £50,000.
- (10) On 10th June 2008, Mr Wessels wrote a without prejudice letter rejecting this higher offer.
- (11) On 30th June 2008, Galaxy paid £50,000 into Court pursuant to Rule 62.
- (12) On the taxation of Ladbrokes' costs, I ordered that these be reduced to £62,373.25, as set out above.

6. Rule 62(11) provides:

“(11) In any proceedings in which a payment into Court or offer to settle has been made, the court shall take the fact, date and acceptance or non-acceptance of such payment into Court or offer to settle into account when considering the question of costs”.

7. Mr Wessels' submissions on Ladbrokes' behalf can be summarised in this way:

- (1) The starting point is that Ladbrokes as the receiving party, successful in the proceedings, is entitled to its costs of the taxation, and the burden is on Galaxy as the paying party, unsuccessful in the

proceedings, to show why Ladbrokes should not recover its costs of the taxation.

- (2) Galaxy failed on its contention that none of the English solicitors and counsel's costs should be recovered, and only succeeded, overall, in reducing the English lawyers' fees to the equivalent taxed level for Guernsey advocates and employees.
- (3) Though Galaxy succeeded in reducing a number of specific items, for the most part the Court allowed substantial sums in respect of such items (save for one item).
- (4) The total recovered of £62,373.25 was substantially in excess of the amount of £50,000 offered and paid into Court, and Ladbrokes' refusal to accept the offer and payment into Court was a reasonable refusal, or at all events not so unreasonable that Ladbrokes should be penalised on costs.
- (5) Accordingly, the basic principle, that the successful party should recover its costs of the taxation, should be applied.

8. At the costs hearing, Advocate Simon Geal appeared on behalf of Galaxy. Mr Geal's submissions can be summarised as follows:-

- (1) Under Rule 62(11), the Court has a wide discretion in relation to costs.
- (2) Under English procedural law, it is now incumbent on the parties to litigation to negotiate in relation to costs, especially when an offer for settlement of costs is made. The failure to negotiate and to respond to an offer by making a counter offer may be reflected by the Court in an order for costs adverse to the party failing to make any counter-offer. See, for example, *Gojkovic v Gojkovic* [1992] Fam. 40 CA and *Butcher v Wolfe* [1999] 1 FLR 334 CA, in which the obligation to negotiate in respect of costs was recognised as one significant element to be taken into account in deciding which party should bear the costs.

- (3) A similar approach should be adopted by the Courts of Guernsey.
- (4) Galaxy was keen to settle, and made its two offers of £35,000 and £50,000 and its offers to meet for the purpose of negotiation in order to settle the matter and to avoid the further costs of a hearing. The responses by Ladbrokes were unconstructive: Ladbrokes made no attempt to compromise, rejected the offer of negotiations and rejected both the offers of £35,000 and £50,000 without making any counter-offer or agreeing to talk. Ladbrokes' conduct in this respect was unreasonable.
- (5) Thus exceptional circumstances exist in this case justifying a departure from the general rule that if a party fails to achieve a costs taxation at less than the amount offered or paid into Court, it is to be ordered to pay the successful party's costs.
- (6) Accordingly, either no order as to costs should be made, or alternatively Ladbrokes should be awarded no more than 25% of the costs.
9. In my judgment the time when the Courts of Guernsey would simply look at whether the sum recovered (by way of costs or damages or otherwise) was more than, the same as or less than an amount offered in settlement or paid into Court, and then award costs on that ground alone, has passed. It is incumbent on the Court to take a broader view, bringing into account relevant conduct of the parties as well.
10. This is in line with the principle laid down by the Court of Appeal in *Pirito v Curtis* (10th April 2003, unreported), in the judgment which I delivered, in paragraph 11, in these words:

“The objective of all involved in civil proceedings (parties, lawyers, court staff and Courts) must be to progress to a final determination of the dispute in accordance with agreed or ordered timetables, at a reasonable level of cost, and within a reasonably short time”.

What is required of the parties to civil proceedings and their Advocates is that they conduct the proceedings in a reasonable manner. This is of particular importance in relation to costs, because unreasonable conduct of civil proceedings inevitably leads to the incurring of unnecessary costs.

11. Ladbrokes' conduct in the particular dispute about the taxation of costs which I am considering was, in my judgment, clearly unreasonable. Each of Galaxy's offers was rejected by Ladbrokes summarily, and without any attempt at negotiation whatever. Galaxy's invitations to Ladbrokes to engage in without prejudice negotiations were either ignored or summarily rejected by Ladbrokes. This was unreasonable and unacceptable conduct which probably, in my estimation, led to the need for the taxation hearing, since I consider that if, even at the eleventh hour, Ladbrokes had agreed to negotiate, a settlement would probably have been achieved.

12. Accordingly, I have to weigh in the balance in exercising my discretion these major factors:

- (1) Ladbrokes' conduct outlined above;
- (2) The fact that Galaxy offered and paid into Court £50,000, but Ladbrokes recovered £62,373.25;
- (3) The size of the reduction in Ladbrokes' recoverable costs.

13. My initial reaction was that Ladbrokes' conduct had been so unreasonable that it would be wrong to award them any of their costs of the taxation proceedings, and that accordingly the right conclusion would be to make no Order as to costs. But in the end, after long deliberation, I have come to the conclusion that in view of the disparity between Galaxy's £50,000 and the sum of £62,373.25 awarded, it is appropriate to order payment of a small proportion of Ladbrokes' costs. Mr Geal told me that on a recoverable basis Galaxy's costs were between £6,000 and £7,000. I have not been told what Ladbrokes' costs were on that basis, but I assume that they were similar in amount. In the light of Ladbrokes' conduct, I order that in respect of Ladbrokes' costs, Galaxy is to pay £1,250.

14. Finally, I wish to express my indebtedness to Advocates Geal and Wessels for their careful and succinct submissions.