

Court Analyzes Criteria for Indemnity Costs

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The Isle of Man High Court has a wide discretion, which must be exercised judicially, in relation to the awarding of costs and the nature of any such award, within the context of interlocutory or concluded substantive proceedings. In the recent matter of *The Petition of Vrinera Marine Company Limited* Deemster Doyle gave further guidance as to the circumstances in which this discretion may be exercised.

The deemster made it clear that the court should not attempt to define, and thereby constrict, the exact circumstances within which costs on an indemnity basis may be ordered.

The court considered an application for indemnity costs against an unsuccessful party who had sought Mareva and related discovery-type relief, within the context of ongoing and significant proceedings both in the Isle of Man and elsewhere.

In determining the appropriate test, the court had regard to the local statutory and court rule provisions, together with the guidance offered by the 1999 edition of the English Supreme Court Practice (White Book) in respect of the old English Order 62/3/7.

The court analyzed a number of relevant decisions in which:

- ~ conduct had been described as "quite dishonest" or "utterly unreasonable";
- ~ there was "misconduct", "deliberate dishonesty" or a "breach of the rules of court for the purposes of gaining an unfair advantage"; or
- ~ a party brought an unsuccessful case which was "most unlikely to succeed", was "particularly oppressive to the other side" or amounted to "gross misconduct".

In noting that previous examples were no more than that, and that each case turned on its own merits, the court reiterated the starting point that costs should be assessed on a standard basis, unless it appears to the court to be appropriate to order that costs be assessed on an indemnity basis.

The court noted that where parties mislead the court, and in appropriate circumstances, the Isle of Man High Court will not hesitate to exercise its discretion and make indemnity costs orders.

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