REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2010-01117**

BETWEEN

CRISTAL ROBERTS

First Claimant

ISAIAH JABARI EMMANUEL ROBERTS
(BY HIS NEXT OF KIN AND NEXT FRIEND RONALD ROBERTS)

Second Claimant

AND

DR SAMANTHA BHAGAN

First Claimant

MEDCORP LIMITED

Second Claimant

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the 25th February, 2016

***Appearances*:**

Mr. L Murphy instructed by Mr. R Williams for the Claimants
Mr. J. Walker instructed by Mrs. D Thompson for the First Defendant
Mr. I Benjamin instructed by Ms Achong Low for the Second Defendant

RULING

1. On the 1st February 2016 the Claimants filed a notice of application ("the application") seeking permission to call Mr. Chris Daykin and Dr John Llewelyn as expert witnesses ("the said experts") to respond to the Defendants' amended Defences; to put into evidence their respective reports pursuant to Part 33.5 of the CPR; for the said experts based on availability and where necessary to give evidence via video link or by any other

means from the United Kingdom pursuant to Part 29.3 of the CPR; and any other further of consequential orders or directions for the cross-examination of the said experts. It was not in dispute that on the 15th December 2014 Rahim J ("the Rahim order") permitted the Claimants to call the said experts in the field of Economics and Actuarial Science.

2. The grounds in support of the application are: on the 24th July 2015 ("the judgment") the Court of Appeal permitted the Defendants to amend their Defences to assert a positive case that the Second Claimant could receive treatment and care he requires in Trinidad and Tobago and that treatment in the USA was therefore unnecessary ("the Trinidad case") ; at paragraph 76 of the judgment the Court of Appeal accepted that the granting of permission for the Defendants to amend their Defences would raise the need for evidence by the Claimants to respond to the Trinidad case; the Claimants are prejudiced by the amendments; the Claimants need to adduce new evidence to specifically rebut the Trinidad case and to permit the quantification of their case if the Defendants' Trinidad case succeeds; the Court has already accepted that Economic and Actuarial evidence are required; the Court has already seen the reports from the said experts which deal with the costs of care and the calculation of damages without meeting the Trinidad case; the Court has impliedly accepted that the **Kelsick v Kuruvilla**[1] criteria have been met by the reports from the said experts; the Claimants have already issued letters of instructions to the said experts for them to deal with the Trinidad case; the said experts are objective, impartial, independent and have the requisite qualifications and experience; their evidence on Trinidad and Tobago is highly likely to be cogent; their evidence would be useful to the Court in determining the quantum of the Claimants' claim if Trinidad is selected as the place where future treatment, care and support is to take place; if permission is refused the parties will not be on an equal footing since the Defendants will have evidence on the economic and actuarial matters concerning Trinidad and the Claimants will not; it is doubtful if the granting of permission will increase expense in any meaningful way, or be so significant to warrant the refusal where the claim is for a significant sum and it is not disproportionate to the value and importance of the claim; the measure of damages which the Claimants seek to recover is very large; the evidence

[1] Civ App P 277 of 2012

to which the said experts will address will be complex and their views will assist; the financial position of the parties are not a relevant factor; the additional reports can be drawn up in time to be the subject of a further joint meeting; the agendas for the meetings will not require amendment and the Trial date of May 2016 will not be affected.

3. In support of the application was an affidavit of Ricardo Williams filed on the 1st February 2016 ("the Williams affidavit") where he repeated the grounds of the application, he annexed the said experts' reports which have already been filed in the matter and the letters of instructions to the said experts both dated the 7th January 2016 for a supplemental report. There was also an affidavit by Ronald Roberts filed on the 2nd February 2016 which was re-filed on the 10th February 2016 ("the Ronald Roberts affidavit") where the deponent gives his historical account of the instant matter.

4. Counsel for the Claimants submitted in support of the application that its purpose was to obtain permission to adduce evidence to assist the Court with the Trinidad case; that it does not impact on the Trial date; the evidence is helpful to resolve an issue at the Trial and therefore the Court should adopt a flexible approach which is the approach taken by the Court of Appeal in **Kelsick v Kuruvilla**; and that if the said experts are not permitted to file a supplemental report concerning the Trinidad case the Claimants would not be on an equal footing with the Defendants on that issue.

5. Both Defendants opposed the application on similar grounds. The First Defendant did not file any affidavit in opposition. However, Counsel for the First Defendant argued that the application was not made under Part 33.5 CPR but it is either an application for an extension of time if not an application for relief from sanction. He also submitted that the Claimants have not explained the long delay in filing the application since they were aware since October 2014 when the Defendants filed their amended Defences that they asserted the Trinidad case and in the Claimants' Reply filed on the 21st October 2014 they maintained their position that it is reasonable for the Court to assess the Second Claimant's care and medical treatment in the USA and not Trinidad and Tobago. He also stated that the Claimants did not indicate when the new evidence would be available.

6. The Second Defendant filed two affidavits of Alyssa Achong Low in opposition to the application. The first affidavit was filed on the 2nd February 2016 ("the First Achong Low affidavit") and the second was filed on the 4th February 2016 ("the Second Achong Low affidavit'). In the First Achong Low affidavit she stated that the Claimants had the opportunity to instruct the said experts to consider Trinidad and Tobago economic factors and the calculation of a multiplier based on Trinidad and Tobago data and they chose not to do so. In early July 2013 they instructed their expert Dr Llewellyn to consider both Trinidad and Tobago and USA but they later changed their instructions to Dr Llewellyn that same month to confine his findings and conclusions of his report to the USA. The First Achong Low affidavit also asserted that Mr. Daykin's report stated that he was instructed to only consider that the Second Claimant would be living in the USA; and despite the Court ordering a stay on any further updated reports without its permission, the Claimants' Instructing Attorney at law, without seeking the Court's permission, issued instructions to the said experts.

7. In the Second Achong Low affidavit she stated that the Second Defendant did not accept the historical account of the matter in the Ronald Roberts affidavit; that the Claimants' case and factual claim was that the proper care and treatment for cerebral palsy was either limited or non-existent in Trinidad; the Claimants have not identified the parts of the Amended Defence which raises new issues warranting further evidence to address any alleged "new case"; the Claimants ought to have known that any assertion of fact in their case must be proven by evidence; there was no evidence in the Ronald Roberts affidavit for the delay or other explanation for seeking new and undisclosed evidence a mere three months before the Trial and after having sight of the Defendants' evidence for 1 ½ years; the Second Defendant has always been willing and able to participate in mediation of the matter; and the Second Defendant rejects as untrue any assertion by the Ronald Roberts affidavit of improper conduct, misleading and false expert reports or Court manipulation on its part.

8. To support its position, Counsel for the Second Defendant relied on the First Achong Low affidavit and the Second Achong Low affidavit. He also submitted that contrary to the Claimants' position, based on the pleadings filed in this matter the Claimants knew

from early October 2014, when the First and Second Defendants filed their respective Amended Defences, that they were asserting the Trinidad case.

9. Counsel for the Second Defendant added that the Claimants pleaded in their Amended Reply filed at the end of October 2014 that they intended to rely on the evidence which was already filed in 2014; yet the Claimants have failed to give the Court any explanation why in January 2016, three weeks before the application was filed, they were issuing instructions to the said experts to change their position. He continued that in 2013 the Claimants instructed the said experts to consider the Second Claimant receiving his care and medical needs only in the USA, and they have not provided an explanation to the Court for the change in their strategy. Counsel also argued that the Defendants would be prejudiced if the application is granted since the Claimants waited to make the application after the extensive applications to resolve the disputed agenda items for the Economists and Actuaries, after the joint meeting of the experts in the field of Economics and Actuarial Science and after the without prejudice and candid discussions amongst the experts in the field of Economics and Actuarial Science. He further contended that the Claimants also failed to provide any evidence that the said experts are in a position to provide cogent evidence that has been requested of them since there was nothing in the application which suggested that they are familiar with the Caribbean position. His position was that the approach adopted by the Claimants in the application undermined the philosophy of the CPR.

10. The issue to be determined is whether the Claimants should now be given an opportunity for the said experts to place before the Court Economic and Actuarial information concerning Trinidad and Tobago given the history of the proceedings.

11. I do not share the First Defendant's view that the application may be one for relief from sanction since there was no expressed sanction stated in the order of Rahim J of the 15th December 2014. In my view the application is for an extension of time to file a report with the new evidence by the said experts.

12. In **Roland James v The Attorney General of Trinidad and Tobago**[2] the Court of Mendonca JA described the approach the Court should take in determining an application for an extension of time as:

> "22. It is relevant to note that the list in 1.1 (2) is not intended to be exhaustive and in each case where the Court is asked to exercise its discretion having regard to the overriding objective, it must take into account all relevant circumstances. This begs the question, what other circumstances may be relevant. In my judgment on an application for an extension of time, the factors outlined in rule 26.7(1), (3) and (4) would generally be of relevance to the application and should be considered. So that the promptness of the application is to be considered, so to whether or not the failure to comply was intentional, whether there is a good explanation for the breach and whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions. The Court must also have regard to the factors at rule 26.7 (4) in considering whether to grant the application or not.
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> 23. In an application for relief from sanctions there is of course a threshold that an applicant must satisfy. The applicant must satisfy the criteria set out at rule 26.7(3) before the Court may grant relief. In an application for an extension of time it will not be inappropriate to insist that the applicant satisfy that threshold as the treatment of an application for an extension of time would not be substantially different from an application for relief from sanction. Therefore on an application for extension of time the failure to show, for example, a good explanation for the breach does not mean that the application must fail. The Court must consider all the relevant factors. The weight to be attached to each factor is a matter for the Court in all circumstances of the case.

[2] Civ Appeal No 44 of 2014

24. Apart from the factors already discussed the Court should take into account the prejudice to both sides in granting or refusing the application. However, the absence of prejudice to the claimant is not to be taken as a sufficient reason to grant the application as it is incumbent to consider all the relevant factors. Inherent in dealing with cases justly are considerations of prejudice to the parties in the grant or refusal of the application. The Court must take into account the respective disadvantages to both sides in granting or refusing their application. I think the focus should be on the prejudice caused by the failure to serve the defence on time."

13. The overriding objective of the CPR provides:

"**The overriding objective**

1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes –

(a) ensuring, so far as is practicable, that the parties are on an equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to –

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases"

14. In my view the relevant factors to be considered in determining the application are the prejudice to the parties; the promptness of the application; the explanation for the filing of the application; the impact on expenses in the matter; keeping the parties on an equal footing and the cogency of the new evidence.

15. Having considered the aforesaid factors I have decided to dismiss the application for the following reasons.

16. Firstly, it would be very prejudicial to the Defendants for the Court to permit the application. If the application is not granted the prejudice to the Claimants is that they would not have the said experts address the Trinidad case at the Trial. If the application is alloweded the advantage which the Claimants would have over the Defendants is that the said experts would be permitted to answer matters raised in the Defendants' Economic and Actuarial Sciences experts' reports and address matters which arose from the frank, without prejudice discussions at the joint meetings of the experts in the fields of Economics and Actuarial Sciences.

17. The application was filed after the said experts have already seen the reports by the Defendants' Economic and Actuarial Sciences experts since 2014; after a joint meeting of the experts in the field of Economic and Actuarial Sciences which included the said experts on the 7th December 2015; after the determination on an application to resolve disputed agenda items for the experts in the fields of Economics and Actuarial Sciences on the 26th January 2016 and after the preparation of a draft joint statement from the experts in the field of Economics and Actuarial Sciences. Therefore based on the recent events leading up to the application it readily apparent that the greater prejudice is to the Defendants.

18. There was no evidence from the Claimants that they did not have the opportunity before the filing of the application to present evidence on the Trinidad case. Indeed the history of the matter and the evidence demonstrate that the Claimants had the opportunity since October 2012 to place evidence on the Trinidad case before the Court. By the Claimants'

re-amended Statement of Case which was filed on the 16th March 2012 the Claimants' case was that it is reasonable for the Court to assess the Second Claimant's past and future loss as if he is residing in the USA and obtaining medical and other care there.

19. On the 5th July 2013 the Claimants' initial instructions to Dr Llwellyn were:

> "Whilst it is intended and expected that Isaiah's family's future lies in permanent residence in the USA, we anticipate that the Defendants may seek to argue that the assessment of future costs should be based upon the future economy of Trinidad and Tobago. Accordingly we will require you to look at both jurisdictions in providing the raw data for Mr Daykin."

20. By this letter two things are clear namely, the Claimants knew that they were pursuing damages to be assessed in the USA and that they were well aware that the Defendants may pursue the Trinidad case. Therefore in preparing to meet the anticipated Defendants case they instructed Dr Llewellyn to prepare for both scenarios. However, the Claimants chose to change their instructions to Dr Llewellyn a mere 4 days later on the 9th July 2013 to confine his findings or conclusions in his report to the jurisdiction of the United States. According to the email dated 9th July 2013 from Mr Ricardo Williams, Instructing Attorney at law for the Claimants to Dr Llewellyn:

> "With respect to your earlier instructions dated 5th July 2013, I have been instructed by lead counsel to further instruct you to confine your findings or conclusions of your report to the jurisdiction of the United States."

21. Based on the aforesaid emails, the Claimants were well aware since 2013 that they may have to meet the Trinidad case and for a reason best known to lead Counsel for the Claimants they *chose* to disregard such a position and instead issue different instructions to Dr Llewellyn to confine his report to the USA. Mr Daykin's report was dated the 10th September 2013 and Dr Llewellyn's report was dated October 2013.

22. On the 30th September 2014 Rahim J ("the Rahim J order') granted the Defendants permission to plead the Trinidad case. The First Defendant filed her Amended Defence on the 7th October 2014 and the Second Defendant filed its Amended Defence on the 6th October 2014. If the Claimants had any doubt in July 2013 that the Defendants were going to pursue the Trinidad case then by at least early October 2014, about 15 months before the application was filed, they were well aware that they had to adduce Economic and Actuarial evidence to meet the Trinidad case. However in their Amended Reply to the First and Second Defendants' Defence which was filed on the 21st October 2014 the Claimant specifically pleaded at paragraphs 5 and 7:

> **"Medical Condition**
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> 5. The Second Named Claimant repeats and relies upon the matters, reports and assessments stated in and/or referred and annexed to the Particulars of Injury of the Second Claimant in the Re-Amended Statement of Case and further relies upon the matters stated in the reports obtained since March 2012, namely the expert reports of Chris Daykin, Dr. John Llewelyn, Maggie Sargent, Shelene Giles, Dr. Robert Shavelle, Dr. Charles Essex, Dr. Richard Miles, Dr. Tim Theologis, Dr. Mark Paterson (deceased), Kay Coombs, Rachel Moors, Susan Filson, Nick Holland Smith, Dr. Irene Broadley-Westurduin, Tom Wethers, Ulric Warner and Gene Farmer are hereto annexed in a bundle and marked "A1-A17" and disputes the findings and conclusions reported by Dr. Neil Thomas, Mr. David Toby and Isolde Ali Ghent as averred and relied upon by the First Named Defendant at paragraphs 6 8 and 9 of the Re-Amended Defence of the First Named Defendant….
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> **General Observations**
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> 7. In response to paragraph 7 of the Re-Amended Defence of the First Named Defendant, it is denied that the Second Named Claimant's care and/or needs can be reasonably provided for in Trinidad and Tobago as averred in paragraphs g-m therein. In support, the Second Named Defendant repeats and relies upon the matters stated in the report of Dr. Rajendra Parag dated 2nd June

2011 attached as annex 14A of the Re-Amended Statement of Case, in addition to such served lay witness evidence by Ronald Roberts, Cristal Roberts, Crystal Jones, Ron Simon, Christopher Pilgrim, David Berahzer, Sherry Lalla, Maria Berahzer, Dr. Rajindra Parag, Ann Marie MacIntosh, Phillip Metivier, Michael Tilleman, Rosene Johnson, Lauren Rebel, Judith Dr. Zarborszkine Kiss and such further medical expert evidence, as mentioned in paragraph 5, as the Claimants will seek as necessary to meet the matters raised within the aforesaid paragraph 7 of the Re-Amended Defence of the First Named Defendant. It is further stated that the Second Named Claimant's proper care and/or need can only reasonably provided for in the United States of America where the Second Named Claimant currently takes and has taken all his medical treatment and for which the Second Named Claimant's family intends to continue to reside."

23. Based on the Claimants' Amended Reply it was clear that they continued to assert that the Second Claimant's care and treatment cannot be reasonably be provided in Trinidad and Tobago and instead only in the USA. To support this position, they were informing the Defendants and the Court that they would be relying on the reports of the said experts dated September 2013 and October 2013 respectively for the Actuarial and Economic positions respectively. This position was borne out by paragraph 9 of the Ronald Roberts affidavit where he stated:

> "At all times our case was always for treatment in the United States as evidenced in the Parag reports and many others since proper care for Cerebral Palsy in Trinidad is limited."

24. By the judgment, the Court of Appeal permitted the Defendants to plead the Trinidad case. Therefore even if the Claimants were aware of the Defendants' Trinidad case since October 2012 but they were pinning their hopes on the reversal of the Rahim order by the Court of Appeal, surely they were well aware by the judgment that they had to answer the Trinidad case. Therefore they had yet another opportunity to seek to adduce the new evidence but they chose to do nothing for 5 months after the judgment. Therefore when I

consider the prejudice to the Claimants, their opportunity to place such evidence before the Court since 2012 must be taken into account.

25. Based on the opportunities that Claimants had to instruct the said experts since October 2014 for evidence on the Trinidad case it is my view that the prejudice to the Defendants in permitting the new evidence would significantly outweigh the prejudice to the Claimants who did not make use of their opportunities.

26. Secondly, if the Claimants are placed on an unequal footing it is by their own actions. he Claimants' pleadings, their correspondence to Dr Llewellyn and Mr Ronald Roberts evidence that the Claimants' case and strategy from the 16th March 2012 was that it is reasonable for the Court to assess damages for the Second Claimant's care and treatment in the USA and not Trinidad and Tobago. Therefore it is disingenuous for the Claimants to now argue that if the Court does not grant the application it would place the Claimants on an unequal footing with the Defendants since the Claimants' position has always been that they were not addressing the Trinidad case.

27. Thirdly, there is no explanation for the new evidence. The Claimants' position has always been that damages for the Second Claimant should not be assessed as the Trinidad case. Yet they failed to place any evidence in the Williams affidavit and the Ronald Roberts affidavit to explain their reason for their shift in position. In my view an explanation of this sort is particularly important given that the application was filed after the experts' reports were filed and the joint meetings of the experts in Economics and Actuarial Science had taken place.

28. Fourthly, the new evidence will not save expense. The Claimants have stated that the new evidence from the said experts would save expense however they have failed to put forward any evidence of the estimated costs of such additional work. In such circumstances I cannot conclude that additional work from the said experts would save expense. On the contrary it is only reasonable for me to conclude that any additional work would increase expense in a matter where there have been considerable fees for the experts in the matter. Further, I do not accept the Claimants' broad and general statement

that any increase in costs would be disproportionate to the claim of US $35,000,000.00 since it has always been the Defendants' argument that the sum claim has been grossly excessive and it has not been disputed that the case is important to all the parties.

29. Fifthly, it would likely delay the Trial. There was no evidence from the Claimants as to when the new evidence would be filed by the said experts. The Trial is scheduled for May 2016. It is not in dispute that there is a substantial volume of documents to be perused by the Court and Counsel for the parties in preparation for the Trial. There are at least 29 witness statements filed and several expert witnesses on 12 areas of expertise namely: economics and actuarial science, life care planning, life expectancy, orthopaedics, educational psychology, physiotherapy, psychiatry, occupational therapy, speech and language therapy, assistive technology, architecture and construction, housing /accommodation. Joint reports have been filed in educational psychology, physiotherapy, psychiatry, occupational therapy and speech and language therapy. Altogether there are 54 witnesses to be cross-examined, 23 lay witnesses and 31 experts. This is a matter which has already used considerable resources of the Court in preparation for trial on liability which culminated with a consent order on the 21st January 2013. Subsequently, the Court has spent 2 ½ years case managing the matter in preparation for the Trial of the Assessment of Damages. There have been several contentious application which include an application for the Amendment of the Defences which was appealed to the Court of Appeal, the appointment of experts, interim payment applications, applications to strike out the amended Reply, an application for certain experts to participate in experts meetings, two applications to substitute experts, applications for payment out, an application for specific disclosure and an application to adduce further factual evidence. The Court also had to rule on dispute agenda items for the experts.

30. In the absence of any evidence of when the new evidence would be ready it is reasonable to assume that any further report at this late stage in preparation for the Trial would delay the Trial which is scheduled to start 3 months from the date of the filing of the application.

31. Sixthly, there was no evidence that the said experts are competent to give the evidence that is proposed. Although the Claimants argued that the new evidence which the said experts would provide is highly likely to be cogent and useful in determining the quantum of the Claimants' claim if Trinidad is selected as the place where future treatment, care and support is to take place, they did not place one iota of evidence to support their submission. While there was already evidence before the Court on the said experts' experience and qualifications when they were appointed experts by the order of Rahim on the 15th December 2014, the Court has not been provided with any evidence of their knowledge, experience or familiarity with matters of Economics or Actuarial Science in the Caribbean or Trinidad and Tobago. Therefore without such evidence the Court cannot assume that any proposed evidence from the said experts would meet the test of cogency and usefulness.

32. Lastly, the Claimants failed to comply with the Court's order dated the 2nd October 2015 ("the October order"). In the October order, after granting the Claimant permission to substitute Dr Charles Essex for Dr Richard Miles as the Life Expectancy expert for the Second Claimant, the Court granted a stay on any further updated reports unless the Court's permission is first obtained. The intention in making this limb of the October order was to manage the already substantial costs which were spent by the parties on expert reports in the matter. Yet in a deliberate flouting of the October order, Instructing Attorney at law for the Claimant wrote to the said experts on the 7th January 2016 requesting them to prepare a supplemental report to address the Trinidad case before seeking the Court's permission or direction and Counsel only saw it fit to mention the intention by the Claimants to file the application at the end of January 2016 some 3 weeks after the letters of instructions were sent to the said experts.

33. The second limb of the application is for the said experts, based on availability and where necessary to give evidence via video link or by any other means from the United Kingdom pursuant to Part 29.3 of the CPR. In my oral ruling for the October order I refused the Claimants' request for experts to give evidence via electronic means and I stated that I am prepared to consider this issue at a later stage *once appropriate*

satisfactory arrangements are made. Therefore the Claimants were well aware of my position and my reasons for adopting such a position.

34. In considering this limb of the application I took into account the factors set out in the overriding objective of the CPR. The Claimants are aware that this is an expensive case. They are seeking to recover US $35,000,000.00 and they have retained and paid at experts in 15 areas of expertise who reside either in various parts of the USA and the UK. The Claimants are therefore aware that it would be costly to have experts in at least 15 areas of expertise give evidence. As stated previously the 15 areas of expertise are highly technical matters which the Court would require the assistance of the experts and Counsel. I also stated in October 2015 that my preference was to deal with each area of expertise one at a time, where each party would have his/ its expert present in Court when the other expert(s) is/are being cross-examined to assist the respective Counsel in understanding the nature of the questions and the answers given. In my view this would be of significant value to the Court's appreciation of each party's case. In some areas of expertise eg, life care planning, economics, actuary, all the experts are not residing in this jurisdiction and there was no evidence where both or all the experts in a particular area of expertise can be connected with the Court to assist the Court. At this stage I have no evidence that the technical resources of the Court can accommodate having more than one witness connected via video link and with respective Counsel to assist the Court. In my view such arrangement for the different areas of expertise is critical in order for the Court to do justice to this case.

35. There was also a notable absence of any evidence of the proposed arrangements for the Court to consider meeting the views previously expressed by the Court. In particular there was no evidence of where the said experts would be giving evidence from, what facility is proposed to be used, who would be present, how the said experts would be sworn, if there all the experts in one area of expertise are abroad how they will electronically connect with the Court to meet the arrangement expressed to the parties as previously stated. I accept that to bring all the experts from abroad to this jurisdiction would have serious costs implications but as I said earlier, this is an expensive case where

the sum of damages the Claimants are attempting to prove is US $ 35,000,000.00 and therefore the value of having the experts present to undergo very lengthy cross–examination in some case estimated to be approximately 3-8 hours far outweighs the costs of bringing the experts and the resources of the parties. In the circumstances, I refuse the Claimants' request for the said experts to give evidence via electronic means and I am prepared to reconsider it with once the aforesaid arrangements can be made to the satisfaction of the Court

Order

36. The Economics and Actuarial Application is dismissed and the Claimants are to pay the Defendants' costs to be assessed. I will hear the parties on costs.

Margaret Y Mohammed

Judge