

JERSEY / JUDGMENT

In the matter of the representation of Leo Trustees AG (formerly known as Leo Trustees LLC) and in the matter of the representation of the Protector and in the matter of the Capri Family Trust

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Costs [2026]JRC099 Royal Court (Samedi) 16 April 2026 Before : R. J. MacRae, Esq., Bailiff IN THE MATTER OF THE REPRESENTATION OF LEO TRUSTEES AG (FORMERLY KNOWN AS LEO TRUSTEES LLC) AND IN THE MATTER OF THE REPRESENTATION OF THE PROTECTOR AND IN THE MATTER OF THE CAPRI FAMILY TRUST AND IN THE MATTER OF ARTICLE 51 OF THE TRUSTS (JERSEY) LAW 1984 (AS AMENDED) Advocate E. B. Davies for The Protector and BN Finanz AG (“Professional Adviser”). Advocate C. Macleod for Solaro AG (“Solaro”)

judgment

the bailiff: 1. On 7 January 2026, the Court, inter alia, ordered that Leo Trustees’ claim against Solaro for indemnification in respect of fees, costs and expenses brought by way of a summons dated 15 December 2022 and its Amended Particulars of Claim dated 8 August 2023 shall be struck out, that Leo Trustees’ Answer to Solaro’s Counterclaim dated 8 December 2023 shall be struck out and that in default of an Answer, judgment on Solaro’s Counterclaim be entered in favour of Solaro. 2. Various consequential orders were made in relation to the assessment of Solaro’s Counterclaim which are not relevant for the purpose of this judgment. 3. The Court also ordered that: (i) the costs of and incidental to the proceedings (save for any previous costs orders made by the Court), and subject to the separate provision in respect of the costs of the summons, dated 5 November 2025, incurred by Solaro, the Protector, the Professional Advisor and C shall be paid by Leo Trustees on the standard basis, to be taxed if not agreed; (ii) parties wishing to seek interim payments in respect of the costs ordered at (i) above, must do so within twenty-eight days on the usual Factor A / Factor B basis as provided for in Practice Direction RC24/03, with Leo Trustees having twenty-eight days thereafter to make observations in writing after which the Judge shall determine this issue on the papers, unless Leo Trustees requests a hearing; (iii) the costs of and incidental to the summons, dated 5 November 2025, including costs incurred from 31 October 2025 onwards by Solaro, the Protector, the Professional Advisor and C shall be paid by Leo Trustees on the indemnity basis to be taxed if not agreed; and (iv) parties wishing to seek interim payment on account of the costs ordered at (iii) above, must do so within twenty-eight days, particularised in the appropriate form, with Leo Trustees having twenty-eight days thereafter to make any observations in writing after which the Judge shall determine the issue on the papers, unless Leo Trustees requests a hearing. 4. Within the timeline prescribed by the Court, on 4

February 2026 the relevant parties Solaro, represented by Walkers, the Professional Adviser, and the Protector, both represented by Carey Olsen and as defined in previous proceedings made applications for interim payments on account which were served via Mourant who formerly acted for Leo Trustees in these proceedings and remain the advocates of record. 5. Leo Trustees had until 4 March 2026 to make any observations. They failed to do so and accordingly I was invited by subsequent correspondence to determine this matter on the papers. 6. Mourant was invited to arrange for onward transmission to Leo Trustees the correspondence to the Court, including the Skeleton Argument with written submissions filed by and on behalf of Solaro, the Professional Adviser and the Protector. 7. The Royal Court's jurisdiction to order interim payments on account of costs before formal assessment / taxation is well-established. This applies to proceedings commenced by way of representation as well as proceedings begun by way of order of justice as the Court determined in Representation of Shinan Securities Co Limited

[2023] JRC 050. 8. The principle underlying the making of such orders (see *Crociani v Crociani*

[2014] JCA 095) is that a party with a benefit of a costs order should not be kept out of its money simply because the precise total owing to it is not yet ascertained and is subject to taxation. As Beloff JA said in *Crociani*: "16. In my view the achievement of justice, to which all exercises of discretion under procedural rules aspire, would usually require that a party, who is, pursuant to a court order, entitled to its costs, should be paid on account a percentage of the amount he is likely to recover on taxation calculated on a conservative basis to avoid any real risk of over payment.

17. This conclusion is consistent with and supported by the jurisprudence in England and Wales at a time before the CPR contained its present presumption.
18. In *Mars UK Limited v Teknowledge Limited (Costs)* [1999] 2 Costs LR 44 ("Mars") - the first relevant decision - Jacob J identified the principle in this way [at pp. 3-4]:- "I now turn to the second issue, whether or not there should be an order for interim payment. The first thing to do is to consider what the general rule should be, interim payment or not. There is no guidance given in the rules other than that the Court may order a payment on account. There is no guidance in the Practice Direction. So I approach the matter as a question of principle. Where a party has won and has got an order for costs, the only reason that he does not get the money straightaway is because of the need for a detailed assessment. Nobody knows how much it should be. If the detailed assessment were carried out instantly, he would get the order instantly. So the successful party is entitled to the money. In principle, he ought to get it as soon as possible. It does not seem to me to be a good reason for keeping him out of some of his costs that you need time to work out the total amount. A payment of some lesser amount which he will almost certainly collect is a closer approximation to justice. So I hold that where a party is successful, the Court should, on a rough and ready basis, also normally order an amount to be paid on account; the amount being a lesser sum than the likely full amount." 9. It has become common to make such orders and usually, if not routinely, such orders are made when they are sought. As Commissioner Birt said in *Monteagle International Limited v Grocery Market Research*

Limited [2023] JRC 037 at paragraph 19: “Ultimately, it is a matter of discretion according to the circumstances of a particular case and in my judgment, there is no good reason not to make the usual order in this case.”

10. Calculation of the appropriate payment to be made by the paying party is “a rough and ready exercise” – see paragraph 23 of the judgment of the Court of Appeal in *Crociani*. However, the Court of Appeal went on to say at the end of paragraph 27 of its judgment, “The question is always whether the Court seized of such an application for payment of an interim costs order is adequately informed so as to be able to make an assessment of a reasonable sum”.
11. The summary of the costs incurred to be prepared by the party seeking payment (see the postscript of the Royal Court judgment in *Crociani v Crociani* [2013] JRC 250 at paragraph 25 onwards) should be in proper form, comprising at the very least the identity of the fee earners employed by the relevant Jersey firm, applying the prevailing Factor A rates and a Factor B uplift which is usually in the region of 50% (subject to the receiving party being able to argue for a different uplift) with all claims being subject to the indemnity principle.
12. It is clear the receiving party is not obliged to provide a formal bill of costs such as that which would be required for taxation. Further, it is not necessary for a party to demonstrate any financial “need” in order for it to obtain an interim payment on account of costs.
13. The costs of English counsel are to be treated as a disbursement and on taxation the Court is likely to be principally concerned with the reasonableness of the fees incurred and will not usually approach such items on a Factor A / Factor B basis.
14. The percentage of the receiving party’s costs ordered to be paid on an interim basis depends upon the facts of any particular case.
15. In *Francis v Jersey Financial Service Commission* [2018] JRC 064A, Commissioner Sir Michael Birt was faced with a case where no information complying with the requirements in *Crociani* had been supplied on behalf of the Commission. He observed at paragraph 21: “No information was given as to the basis upon which these fees were calculated.” The Commission had not, *inter alia*, prepared its costs claim on a Factor A and Factor B basis. The Court said at paragraph 28 that there were three options open to it, namely to refuse to make an interim order because of absence of the necessary material; to direct the Commission to produce the necessary material and then hold a further hearing, or to ‘make a very conservative order which would probably be much lower than that which might have been ordered if [the case had been adjourned for a proper summary to be provided]. The Commissioner elected to follow this final course which he regarded as fair and proportionate. The Court proceeded on a ‘conservative basis’ and assessed the interim payment accordingly.
16. In *Financial Technology Ventures v ETFs Capital Limited and Tuckwell* [2021] JRC 118, the Court ordered an interim payment in the sum of £1.182 million. The Court had determined that the plaintiffs, after a lengthy trial, should recover 50% of their costs and accordingly

ordered that the relevant defendant (Mr Tuckwell) pay 25% (i.e. one half of certain of the costs which may be sought by the three plaintiffs) within two months of the judgment. The order extended only to the costs of the plaintiff's Jersey lawyers, English counsel, and the certain costs of and incidental to the trial including various ancillary costs, but did not extend to the costs of the three law firms from outside the island engaged by the plaintiffs, the costs of which ran into several millions of pounds and to which the paying party objected to in their entirety. The Court said at paragraph 60: "In any event, these are matters for taxation, but bearing in mind the Court's obligation is to be cautious... I have decided to proceed on the footing that Mr Tuckwell may well, as will be his right, object to the costs of the entirety of the sums billed by the said firms. In any event, the bills were not subject to the factor A / factor B analysis that is required by authority."

17. I have considered Solaro's Schedule of Costs and the Schedule of Costs provided in respect of the Professional Adviser and the Protector.
18. In the case of the standard costs orders made in this case, the Applicants seek interim payments in 50% of the costs claims on the standard basis, i.e., with a starting point of the Factor A rate plus a 50% Factor B uplift applied to the number of hours worked. The Applicants have confirmed that they have excluded from their Schedules of Costs any costs incurred pursuant to the costs order contained at paragraph 8 of the Act of Court dated 21 March 2025 and their Schedules of Costs are calculated (in respect of the costs they are seeking on the standard basis) to exclude any costs of and incidental to the summons dated 5 November 2025. In the circumstances I agree that these costs should be subject to an order that there be an interim payment in the terms sought.
19. As to the costs subject of orders that they be assessed on the indemnity basis, different principles apply. In *Marange Investments (Proprietary) Ltd-v-La Generale des Carrieres et des Mines SARL* [2013] JRC 119A, Commissioner Clyde-Smith noted that it was unusual for the costs on the indemnity basis to be taxed down by more than 10%. Generally, that is correct and, in any event, I accede to the submission made that an order for a payment on account of 70% of those costs is appropriate in the circumstances.
20. Accordingly, I order that Leo Trustees pay to the relevant parties the following sums within 21 days of today: (i) In favour of Solaro: costs in respect of the proceedings (which are to be assessed on the standard basis): £217,492 and costs in respect of the summons (which are to be assessed on the indemnity basis): £79,153. (ii) In favour of the Professional Adviser and the Protector: costs in respect of the proceedings (which are to be assessed on the standard basis): £460,543 and costs in respect of the summons (which are to be assessed on the indemnity basis): £22,362. Authorities Practice Direction RC24/03. Representation of Shinan Securities Co Limited [2023] JRC 050. *Crociani v Crociani* [2014] JCA 095. *Monteagle International Limited v Grocery Market Research Limited* [2023] JRC 037. *Crociani v Crociani* [2013] JRC 250. *Francis v Jersey Financial Service Commission* [2018] JRC 064A. *Financial Technology Ventures v ETFS Capital Limited and Tuckwell* [2021] JRC 118. *Marange Investments (Proprietary) Ltd-v-La Generale des Carrieres et des Mines SARL*

[2013] JRC 119A

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