

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

TRANS NORTH TURBO AIR LIMITED

PLAINTIFF

AND:

NORTH 60 PETRO LTD.

DEFENDANTS

DARRYL G. PANKRATZ

Appearing for the Plaintiff

BRUCE CHURCHILL-SMITH

Appearing for the Defendants

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

(Costs - Expert Report)

[1] VEALE J. (Oral): Well, with respect to the account submitted by Kroll Lindquist, the question to be determined is whether the account is a reasonable amount.

[2] I am unable to make any determination based on the report that was submitted by Clark Services, simply because there is no evidence presented by which I can determine whether or not the preparation of the Kroll Lindquist report

was, somehow, vastly out of whack in terms of time and expense.

[3] In my view, the difference between the two reports is that the Kroll Lindquist report was what I would call a ground-up report; as opposed to the Clark report being one of review of the Kroll Lindquist report.

[4] However, I am concerned about certain discrepancies in the Kroll Lindquist account:

- (1) specifically the lack of activity description in the accounts, which total approximately \$20,000; and
- (2) the issue of Mr. Wurtz's attendance at trial resulting in a claim of \$2,370.

Which I understand is the total claim, Mr. Churchill-Smith?

[5] MR. CHURCHILL-SMITH: Plus the disbursements for --

[6] THE COURT: Plus disbursements?

[7] MR. CHURCHILL-SMITH: -- of approximately \$1,500.

[8] THE COURT: Okay. So we are talking about a claim of \$5,800?

[9] MR. CHURHILL-SMITH: That is correct.

[10] THE COURT: So a total claim of \$5,800.

- (3) I have some concerns about Mr. Mathew's claim for \$7,990, although I recognize that Mr. Mathew had to crunch the numbers

based on the evidence received from Mr. Bethel.

[11] At the end of the day, I can appreciate that some of these entries simply may have been time-keeping errors of the individuals involved; I do not know. It leaves me in some difficulty in considering them to be reasonable and passing them on to the unsuccessful party in the litigation.

[12] I am therefore simply going to take a ball-park amount of money in the amount of \$15,000 and disallow the Kroll Lindquist claim in that amount.

[13] With respect to the issue of out-of-town counsel, do I have it correctly that I have heard submissions on all aspects of Rule 57(4), in other words, the necessarily and properly incurred and the reasonableness? I am raising that for your benefit, Mr. Churchill-Smith, because the issue is raised in terms of the principle of out-of-town counsel, and you indicated that it was \$125,000 at stake. Was that all in, that was an all-in argument?

[14] MR. PANKRATZ: I don't know where my friend comes up with that calculation.

[15] MR. CHURCHILL-SMITH: That was a ball-park figure, My Lord.

[16] THE COURT: Right, but what I am asking you, though, is the --

[17] MR. CHURCHILL-SMITH: We haven't begun to look at the recentness, because we are waiting for the determination --

[18] THE COURT: Is that where you are at? I do not want to catch anyone by surprise.

[19] MR. CHURCHILL-SMITH: Well, that is where we are at.

[20] THE COURT: So, in other words, if I decided that out-of-town counsel was appropriate, you are still in the position where you want to look at reasonableness of individual counsel?

[21] MR. CHURCHILL-SMITH: Yes, at that point.

[22] THE COURT: Thank you. I will give you my decision, now, on the out-of-town counsel issue.

VEALE J.