



Neutral Citation Number: [2026] EWHC 24 (TCC)

Case No: HT-2020-MAN-000023

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Manchester Civil Justice Centre
Date: 13 January 2026

Before :
HHJ Stephen Davies sitting as a High Court Judge

Between :

THOMAS BARNES & SONS PLC (IN ADMINISTRATION)

Claimant

- and-

BLACKBURN WITH DARWEN BOROUGH COUNCIL

Defendant/
Applicant

-and-

(1) MR THOMAS BARNES

(2) MRS PAMELA BARNES

(3) MR CRAIG BARNES

(as Joint Executor of the estate of Mr Brian Barnes (Deceased))

(4) MR SCOTT BARNES

(as Joint Executor of the estate of Mr Brian Barnes (Deceased))

Respondents

Martyn Griffiths (instructed by **Blake Morgan LLP, Cardiff**) for the **Applicant**
Lisa Walmisley (instructed by **Leonard Curtis Legal Limited, Manchester**) for the **First Respondent**
Alfred Weiss (instructed by **JMW Solicitors LLP, Manchester**) for the **Second – Fourth Respondents**

Hearing date: 12 December 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 13 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment**HHJ Stephen Davies:**

1. This is my judgment on the application by the Defendant, Blackburn with Darwen Borough Council (**BBC**) for a non-party costs order (**NPCO**) against the Respondents pursuant to s.51 of the *Senior Courts Act 1981*.
2. In this case the Claimant (**Barnes**), an insolvent company in administration, brought proceedings against BBC in the Manchester Technology and Construction Court in 2020, seeking substantial damages (initially pleaded at just over £3 million) following what it alleged was the wrongful termination by BBC in 2015 of a contract entered into in 2014 for the construction of a new bus station in Blackburn town centre. The case went to trial in July 2022 and, after a trial lasting 11 days, I gave judgment in October 2022 dismissing the claim. The judgment is available under neutral case citation [2022] EWHC 2598 (TCC).
3. On 1 September 2025 BBC made the instant application. It is put on the basis that the Respondents funded the case, had a direct financial interest in the case, controlled (at least to some extent) the case and were, in substance, the real parties to the litigation, so that it is just that they should be ordered to pay BBC's recoverable costs, to the extent that they have not already been satisfied by recourse to the security for costs which they have already provided.
4. I shall begin by referring to the relevant chronology, without unnecessary reference to details which are not of key importance, and then turn to the relevant legal principles before stating my decision and reasons.

The essential facts

5. Barnes was a family company which, at the time of entry into the building contract in question, was owned (through a holding company) and controlled by two brothers, Thomas Barnes, the First Respondent (**Thomas**), and Brian Barnes (**Brian**). Brian died in 2015 and is survived by his wife, the Second Respondent (**Pamela**), and their two sons, the Third and Fourth Respondents (**Craig** and **Scott**), who are the executors of his estate (and are joined as respondents solely on that basis).
6. In 1997 Barnes had given a debenture to Thomas, Pamela and Brian as security for lending provided by the family through a family bank account, colloquially known as FAMACC. In his witness statement Thomas confirms that there was an informal understanding between himself and Brian that they should both support Barnes through their own resources and that profits and losses would be divided as to 55% to and from Brian and 45% to and from him, which arrangement was reflected in the company shareholdings.
7. By the time of the termination of the contract with BBC, Barnes was already in very serious financial problems. On 13 November 2015 administrators were appointed by the debenture holders, at a time when the indebtedness owed to them by Barnes amounted to £684,714.66.
8. Thomas, who was the managing director of Barnes, was always convinced that BBC and its then advisers, Capita, were responsible for the problems which beset the contract and which led to its termination and that it was their actions which caused Barnes' insolvency (see for e.g. par. 17 of his trial witness statement). He was keen to seek a financial recovery against BBC and was able to persuade Pamela (as Brian's widow) and Craig and Scott (as his executors) to follow his lead. He instructed a solicitor of his choice, a Ms Morrison (then with a firm known as Glovers but who moved to Hill Dickinson in early 2016) to provide advice in relation to making a claim.

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9. In July 2016 Mr Dean Watson, who has provided a witness statement for the Respondents, replaced one of the existing administrators and instructed a local consultancy to assist in claiming monies believed to be due to Barnes, including monies claimed to be due from BBC. This is relevant because as early as December 2016 Blake Morgan solicitors, who had already been instructed to act for BBC, wrote to that consultancy seeking security for costs in relation to any such claim and asking them to “consider and confirm who will be funding any such claim against our client in the context of the Third Party Cost orders and the case of Deutsche Bank [2014]”. This, although not as clearly worded as it might have been, was clearly intended as a reference to the possibility that a NCPO might be sought against the funders of any claim, as would have been known to anyone with legal knowledge or access to legal advice.
10. Although there is no positive evidence whether this was passed on to the administrators and thence to the Respondents and their solicitor, it would be surprising if it had not been, especially since: (a) it was followed up by a further similar letter to the administrators themselves in May 2017; (b) both letters were referred to and attached to the evidence in support of this application, making it clear that they were to be relied upon, but have not been addressed by the Respondents in their evidence in response.
11. Mr Watson says in his witness statement that: (a) “Hill Dickinson, who had previously advised the Company on the claim against the Council prior to my appointment, were instructed to assist [the administrators]”; (b) “I was advised by both solicitors and counsel instructed by me that the claim against the Council had good prospects of success”; (c) “there were insufficient funds to enable the cost of the litigation to be funded by the Company in administration”; (d) “No written funding agreement was entered into. I relied upon the assurances made by Thomas Barnes that he informed me were being made by him on behalf of himself and his late brother’s estate and wife, that funding would be provided as and when required. This was essentially the payment to the Company – in administration, to discharge Hill Dickinson’s fees”; (e) “Thomas Barnes had a considerable amount of involvement in the litigation by liaising with me and Hill Dickinson from time to time, providing information. Mr Barnes had the knowledge of the contract and the details involved in the dispute. Clearly as a stranger to the history of the contract I required significant assistance from Mr Barnes ...”
12. In his witness statement Thomas confirms that Mr Watson’s statement is true and accurate. He: (a) disputes that he “controlled the litigation”; and states that (b) “as a former director of the Company in administration I understood that I was under an obligation to provide assistance to the Administrators in the conduct of the administration”; (c) “the Joint Administrators made their own decision to pursue the claim, and it was always their decision and not mine” and it was them who “made the decisions on the steps to be taken in the litigation and not me”; (d) “I did not instruct Hill Dickinson and was not involved in providing instructions to them on any matters”.
13. I am not impressed with the lack of detail in the evidence provided by Mr Watson or Thomas. Whilst it is true that the onus of proof is upon BBC as applicant, and whilst it is also true that the Respondents are not under any obligation to waive privilege, nonetheless in my judgment much of what is said by them or on their behalf is bare assertion, with very little detail and no supporting documentation. As I observed in the course of submissions, there is no information as to whether or not, for example, Thomas was involved in strategy meetings with Mr Watson and the legal and expert team. There is an acceptance that Thomas was present at the pre-action meeting, although he gives an explanation for this (he says he believed that it was solely in his capacity as having made a previous FOI request against BBC) which in my view is completely implausible in the absence of hard contemporaneous documentary or other reliable

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evidence. There is also a further acceptance that Scott was in attendance during a remote mediation “but played no active part” which begs – but does not answer - the question as to why and in what capacity he had been invited to attend in the first place given that his only connection to this litigation was as joint executor of Brian, who by then was long deceased, but whose estate was involved in some essentially informal funding of the litigation at the behest of his uncle Thomas.

14. Given that Thomas and his fellow family members: (i) had a substantial interest in the litigation (addressed below); (ii) were funding the litigation (as Mr Watson admits above); (iii) were prepared to provide substantial security for costs to ensure that the litigation continued (addressed below); and given that Thomas (a) held strong views about the way in which BBC and Capita had conducted themselves and their responsibility for the contract being terminated and Barnes’ failure¹; (b) had introduced Ms Morrison to the administrators, who then instructed her and the firm she had gone to work for²; (c) included in his witness statement copious and critical comment on BBC’s disclosure and statements of his opinion as to their conduct; (vii) attended every single day of the trial, in the course of which he undertook active investigations, I find it impossible to accept that his role was solely that of a former director providing assistance, simply because he was obliged to in that capacity, to the company administrators.
15. Instead, whilst I am prepared to accept that Mr Watson did not abdicate the control of the litigation to him, because it is obvious that the administrators also had an interest in and a responsibility for the claim and there is no evidence that they did abdicate it to Thomas, I have no doubt that it was a case where they both exercised a significant element of control in real terms over the litigation. Put bluntly, since the litigation could not have continued but for the willingness of Thomas to provide significant input in relation to the substance of the claim, both as to liability and quantum, and also but for the Respondents’ willingness to finance the legal and expert fees and disbursements, and to provide security for BBC’s costs, it would have been extremely surprising if there had not been this dual control.
16. I accept however that – apart from Scott’s attendance at the mediation – there is no evidence or basis for inferring that the other Respondents were also directly involved in the control of the litigation. In his witness statement Craig stated that Thomas kept them “appraised of matters on a very ad hoc and cursory basis”, which is not surprising since they had no involvement in the contract with BBC and there is no hard evidence that they had any real involvement with Mr Watson or Hill Dickinson. They all however instructed the family solicitors to provide advice in relation to BBC’s request for security for costs.
17. Although Mr Griffiths submits that since they “authorised [Thomas] to advance their joint interests in the litigation on their behalf ... they should be held to have jointly controlled the litigation”, that does not seem to me to be a realistic way of determining the question of control in the context of an application for a NPCO, where one is focussing on the reality of their actual involvement rather than nice questions of authorisation or delegation.

¹ I commented on this and on his own commentary on BBC’s disclosure in my substantive judgment at pars. 16, 20, 21.

² The documents in the application bundle show that she was still corresponding in 2020 and the evidence confirms that she attended the pre-action meeting with Thomas and referred to him as her client.

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18. In terms of the financial interest that the Respondents had in the litigation, it is helpful to consider the position both at the initial stages, from when the administrators were appointed down to the issue of proceedings, as well as at the later stages in the run-up to the trial.
19. As regards the initial stages, the essential position as it appeared from the administrators' proposals was that: (i) the indebtedness due to the Respondents in their capacity as debenture holders amounted, as stated, to £684,714.66; (ii) there were no other relevant secured creditors; (iii) the preferential creditors were estimated at £31,665.70 for employees; (iv) there were insufficient funds available at that point to pay even the preferential claims; (v) claims had been received from unsecured creditors totalling £1,102,883, whereas Barnes had recorded unsecured trade creditors and sub-contractors with balances totalling £2,983,121. It was in these circumstances that the administrators did not consider it reasonably practicable to achieve either of the objectives specified in sub-paragraphs 3(1)(a) and 3(1)(b) of Schedule B1 to the Insolvency Act 1986 and, consequently, considered that the most appropriate objective to pursue was realising property in order to make a distribution to one or more secured or preferential creditors, and that pursuing this objective should not unnecessarily harm the interests of the creditors of the Company as a whole.
20. At that time, Barnes' claim had been valued by Thomas, with the assistance of the former commercial director Mr Cunningham, as around £3 million. That was not, however, an independent valuation and nor had it been subject to any scrutiny by an independent surveyor. Nonetheless, I accept that it would have been reasonable for the administrators and the Respondents to consider at that stage that if the claim succeeded, and if Barnes obtained a recovery which, after payment of the administrators' fees and expenses, was substantially above £700,000, then there would have been a substantial surplus available for distribution to unsecured creditors. However, it must have been obvious to any lawyer that the prospects of succeeding on liability could not be said to be more than around evens and, in the absence of a professional valuation of the quantum claim, the true value of the claim even if Barnes succeeded on liability was also essentially unknown. There was no admission by BBC of any part of the claim, whether in open correspondence or in terms of any significant without prejudice offer.
21. Nonetheless, it is not surprising that Mr Watson was entitled to consider that the administrators were justified in bringing proceedings on behalf of Barnes. This was essentially risk free litigation for the administrators, because the costs were being funded by the respondents, with the potential benefit of a return to the respondents if all went well and at least a prospect of some return to the unsecured creditors if things went very well.
22. However, by the time of the progress report in May 2022, two months before trial, the position on liability was still wholly unknown and, in relation to quantum, worse. That is because: (a) it was apparent that BBC remained determined to contest the matter down to trial and there was no apparent prospect of a reasonable settlement being achieved; (b) the parties were very far apart both on the underlying facts and also in relation to the issue of delay, by reference to the witness statements and to the reports each had obtained from a delay expert; (c) Barnes' quantity surveyor had undertaken a revaluation of the quantum of the claim and concluded that the maximum value of the claim on full liability was only around £1.789 million (compared with BBC's quantity surveyor's maximum valuation of around £604,000).
23. Whilst it cannot be said – contrary to a suggestion in BBC's evidence – that the Respondents had any obvious reason to believe that Barnes' quantity surveyor's valuation was exaggerated, what is apparent from the May 2022 progress report is that the prospects of the unsecured

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creditors recovering a significant amount had not improved and, if anything, worsened. This is notwithstanding that payments of around £328,000 had already been made to the Respondents from realisations, thus leaving only around £357,000 due to them. That is primarily because of the reduction in the value of the claim (especially if the risk that the court might prefer BBC's valuation materialised³), but also because the benefit of the reduction in the Respondents' prior claim was largely balanced by the facts that: (1) by this stage the administrators were due around £200,000 for their time costs; (2) legal costs and disbursements of around £743,000 had been incurred and there was no guarantee that all of this would be recovered on any detailed assessment.

24. In the meantime, BBC had intimated and made an application for security for costs, which had been compromised by the Respondents paying around £138,000 into court and then providing charges over various properties valued at around £445,000 (offered in January 2022 and provided after some delay thereafter).
25. The correspondence which has been included in the bundle indicates that the total security provided of around £583,000 is to be compared with BBC's incurred and approved budgeted costs of around £995,000. It appears that BBC had sought £650,000 in total by way of security, around 65% of its costs. Why that is the case is not apparent and has not been explored by either side, although there is a suggestion from the correspondence that it may have been at least in part because Hill Dickinson was making the point that a proportion of the costs related to BBC's counterclaim which were not properly to be the subject of any security.
26. Although the Respondents observe that at this stage – indeed at no stage until after the case had concluded – no further warning been given by BBC that if the claim failed they would seek a NPCO against the Respondents, the significance of that as a point in their favour must be weighed in the context of the earlier correspondence and their failure to address it in their evidence.
27. That concludes my review of the relevant evidence and I now turn to refer to the relevant legal principles.

The relevant legal principles.

28. These are well-settled and not seriously disputed save in their application. They are conveniently summarised in the notes to CPR 46.2 in Volume 1 of Butterworth's Civil Procedure 2025 (**the White Book**).
29. In *Deutsche Bank v Sebastian Holdings* [2016] EWCA Civ 23 the Court of Appeal stated that "the only immutable principle is that the discretion must be exercised justly".
30. The leading authority is the decision of the Privy Council in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (Costs)* [2004] UKPC 39; [2004] 1 W.L.R. 2807. The principles derive from that case are summarised in the White Book as follows:
 - i) Although costs orders against non-parties are "exceptional", exceptional means only that the case is outside the ordinary run of cases which parties pursue or defend for their own benefit and at their own expense. The ultimate question in any such exceptional

³ In the event, for reasons I explained in my substantive judgment, I did not find it necessary or appropriate to make findings on quantum.

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case is whether in all the circumstances it is just to make the order. Inevitably this will be fact specific to some extent.

- ii) Generally the discretion will not be exercised against pure funders, that is, those with no personal interest in the litigation, who do not stand to benefit from it, are not funding it as a matter of business, and in no way seek to control its course. The public interest in the funded party getting access to justice will generally outweigh the recovery of costs by the successful unfunded party.
- iii) If however the non-party not only funds but controls or benefits from the proceedings, justice will ordinarily require that they will pay the successful party's costs if the funded party fails. The non-party is not so much facilitating access to justice as themselves gaining access to justice for their own purposes and are themselves a real party to the litigation.
- iv) The most difficult cases are those in which a non-party funds a receiver, a liquidator or a financially insecure company with a view to advancing the funder's own financial interests. Generally a non-party funding proceedings by an insolvent company solely or substantially for their own financial benefit should be liable for the costs in the event of failure. But non-party costs orders will not invariably be made in such cases, particularly where the funder is a director or liquidator acting in the interests of the company rather than their own.
- v) A non-party should not ordinarily be liable for costs which would in any event have been incurred without the non-party's involvement in the proceedings, although the position may be different where a number of non-parties have acted in concert.

31. The editors also refer, as did Mr Griffiths, to the more recent decision of the Court of Appeal in *Goknur Gida Maddaleri Enerji Imalet Ithalat Ihracat Ticaret ve Sanati AS v Aytacli* [2021] EWCA Civ 1037, where the principles were summarised by Coulson LJ at [40] as follows:

- a) "An order against a non-party is exceptional and it will only be made if it is just to do so in all the circumstances of the case ...
- b) The touchstone is whether, despite not being a party to the litigation, the director can fairly be described as 'the real party to the litigation' ...
- c) In the case of an insolvent company involved in litigation which has resulted in a costs liability that the company cannot pay, a director of that company may be made the subject of such an order. Although such instances will necessarily be rare ..., [s.51](#) orders may be made to avoid the injustice of an individual director hiding behind a corporate identity, so as to engage in risk-free litigation for his own purposes Such an order does not impinge on the principle of limited liability ...
- d) In order to assess whether the director was the real party to the litigation, the court may look to see if the director controlled or funded the company's pursuit or defence of the litigation. But what will probably matter most in such a situation is whether it can be said that the individual director was seeking to benefit personally from the litigation. If the proceedings were pursued for the benefit of the company, then usually the company is the real party But if the company's stance was dictated by the real or perceived benefit to the individual director (whether financial, reputational or otherwise), then it might be said that the director, not the company, was the 'real party', and could justly be made the subject of a [s.51](#) order ...

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- e) In this way, matters such as the control and/or funding of the litigation, and particularly the alleged personal benefit to the director of so doing, are helpful indicia as to whether or not a [s.51](#) order would be just. But they remain merely elements of the guidance given by the authorities, not a checklist that needs to be completed in every case ...
- f) If the litigation was pursued or maintained for the benefit of the company, then common sense dictates that a party seeking a non-party costs order against the director will need to show some other reason why it is just to make such an order. That will commonly be some form of impropriety or bad faith on the part of the director in connection with the litigation ...
- g) Such impropriety or bad faith will need to be of a serious nature ... and ... would ordinarily have to be causatively linked to the applicant unnecessarily incurring costs in the litigation.”

32. Both Mrs Walmisley and Mr Weiss referred me to earlier authority (*Metalloy Supplies v M.A. (UK) Ltd* [1996] 1 W.L.R. 1613 (Court of Appeal) and *Eastglen Ltd v Grafton* (1996) BCC 900 (Ch. D. - Lindsay J)) in which the courts had stressed the public interest in creditors being permitted to fund claims brought by the duly appointed officeholders of insolvent companies. However, as Mr Griffiths observed, this public interest had already been acknowledged and taken into account by the Privy Council in *Dymocks* when setting out the principles cited above.
33. It is clear that the case of persons such as the Respondents here, who were previously involved in the insolvent company as directors and/or shareholders but also as secured creditors, is one of the most difficult to decide in practice, because they will often, as here: (a) be funding the litigation, in circumstances where neither the officeholders nor anyone else have the resources to do so; (b) have a real personal financial interest in the proceedings, albeit that depending on the circumstances there will probably also be a benefit to preferential creditors and, possibly, to unsecured creditors as well, although the officeholders may also be depending on a recovery from which to obtain payment of their time costs and expenses; (c) have a considerable amount of control over the proceedings, given their position as funders, even though the officeholders will not, acting professionally, delegate their ultimate control over the proceedings to them; and (d) have intimate involvement in and knowledge of the underlying issues, so that without their close involvement in and assistance with the substantive proceedings they could not be carried on to a successful conclusion.
34. Mr Griffiths properly drew my attention to the further observation of Coulson LJ in *Goknur* at par. 59 where, considering the submission that the company and the director were both the real parties to the litigation, he stated: “in my view, the concept of there being two “real parties”, one the company and the other the relevant director or shareholder, introduces a level of complication and granularity which finds no reflection in any of the authorities. It would be well-nigh impossible to apply the concept in practice because, necessarily, a benefit to any small company is also a benefit to the director of and/or shareholder in that company. I also consider that such a concept may distract the court, when faced with an application under section 51, from looking at the matter in the round and deciding whether the director or shareholder in question can properly be termed ‘the real party’”.
35. Mr Griffiths submitted that it is apparent from the discussion in *Dymocks* at par. 25(3) through to par. 29 that there can be more than one “real party” to the litigation. He notes that at par. 25(3), referring to Commonwealth authority, the Privy Council stated: “Nor, indeed, is it

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necessary that the non-party be “the only real party” to the litigation ... provided that he is a “real party in ... very important and critical respects”.

36. With respect, it seems to me that the points which Coulson LJ was making were that: first (a) in the vast majority of cases there will only be one person who is the real party to the litigation in very important and critical respects, so that it is normally unnecessary for the court to conduct a complicated and granular analysis of the issue; and second (b) in the context of the typical small company case such the Court of Appeal was there considering, which did not involve an insolvent company acting through an officeholder, it would be unworkable to apply this two-party concept in practice, since any direct benefit to the company would almost inevitably confer an indirect benefit to the controlling director and/or shareholder of the company. In short, the court ought to adopt a practical approach to the identification of the real party to the litigation.
37. I need only note that the authorities establish that both the presence or absence of any applications for or the provision of security for costs, and any warnings at an appropriate time that the applicant would seek a NPCO against the respondent are both relevant factors but neither are determinative: see *Dolphin Quays Developments Ltd v Mills* [2008] 1 WLR 1829 and *Deutsche Bank AG v Sebastian Holdings Inc and another* [2016] EWCA Civ 23.

Analysis and conclusions

38. It is helpful to remind myself what, ultimately, lies at the heart of the question I have to decide. In short: (a) Barnes brought a very substantial and complex claim against BBC, which BBC successfully defended at great expense all the way down to and at trial; (b) in so doing, BBC incurred costs of – at least – the amount of the incurred and approved budgeted costs of around £995,000; (c) BBC has so far received payment of no more than the £583,000 which it obtained by way of security, thus leaving a shortfall of at least around £412,000 by reference to its budgeted costs; (d) the claim could not have been taken to trial without the financial support of the Respondents; (e) the Respondents have already invested and lost very substantial sums, i.e. the amount they have had to pay to fund the legal costs and disbursements (including expert evidence) of pursuing the claim and the amount already paid out by way of security; (f) initially they funded the proceedings because they hoped to obtain £684,714.66; (g) by the time of trial that had reduced to around £357,000, but they were still prepared to fund the claim on that reduced recovery basis at a lengthy and expensive trial.
39. Fundamentally, the question is whether or not in such circumstances they should now have to pay the remainder of BBC’s reasonable legal costs of successfully defending the claim, or whether the BBC (or, more accurately, the council tax payers of BBC) should have to do so.
40. As I have already found, and as is conceded, the Respondents all funded the claim and all stood to benefit personally⁴ from the success of the claim. They were not the only prospective beneficiaries but – apart from the modest amount due to the preferential creditors – they were the only ones who were guaranteed to recover a substantial amount unless the claim succeeded in all respects in relation to liability and very substantially in relation to quantum.
41. I am satisfied that Thomas exercised a real degree of control over the proceedings from start to finish, albeit that the administrators also exercised a real degree of control as was appropriate to their position as officeholders. The other Respondents in effect left it to Thomas, the

⁴ To be clear, BBC accept that the potential benefit to and also the potential liability of Craig and Scott is limited to the benefit to and liability of Brian’s estate.

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administrators and the lawyers to resolve, but were prepared to back up Thomas' determination to pursue the claim by providing funding for the claim.

42. In my judgment they were all, therefore, as it was put in Dymocks, the funders of the litigation and persons who were substantially to benefit from them. In Thomas' case he was also someone who substantially controlled the proceedings. Here, therefore, they are in my judgment properly to be treated as the real parties to the proceedings in very important and critical respects. On the face of it, therefore, it is just that they, rather than BBC as the successful defending party, should have to pay the costs of the successful defendant.
43. This is not a case where there were no warnings at all. Even if they were not in fact drawn to the attention of the Respondents there is no compelling reason to believe that they would have resulted in the Respondents deciding not to fund the litigation, given that the prospect of having to provide substantial security for costs and fund Barnes' own very substantial costs did not dissuade them. It is a case where security for costs was sought and substantial security was provided on the basis of heavy negotiation and a pragmatic approach being taken by both sides, so that the application never went to a contested hearing.
44. This is not a case where the public interest strongly suggests a NPCO should not be made, in particular this is not a case where the order is being sought against an officeholder or a director with no, or only a modest, personal interest in the success of the litigation and little or no real control over the claim. I do not accept a submission that any creditor who is minded to fund a claim in similar circumstances would be dissuaded by the knowledge that, in addition to having to fund the costs of the claim and provide security, they would also be at risk of having to make up the shortfall between the amount provided by way of security and the other party's reasonable costs of its successful defence of the proceedings. In short, I do not accept that making a NPCO in these circumstances would have a chilling effect on the ability of officeholders in similar situations being able to fund justified claims against third party debtors of the company in question.
45. In all of the circumstances in my judgment it is just that there should be a NPCO made against the Respondents in appropriate terms in relation to the outstanding balance of any costs found due to BBC on detailed assessment, if not agreed. There is no basis which has been contended for or which is otherwise justified on the evidence before me for making the amount of Thomas' liability more extensive than that of the other Respondents in relation to the amount of their liability to BBC, which must therefore be declared to be a joint and several liability, although the order should make it plain that Craig and Scott's liability is only in their capacity as executors of their late father's estate and thus can only attach to that estate. I have not been asked to make any order for contribution as between the individual Respondents and, thus, do not do so.
46. I will also hear representations about costs and, as appropriate, summarily assess the costs of the application in accordance with any order I may make.
47. Finally, I am grateful to the solicitors who co-operated in producing a helpful application bundle and to counsel who each provided very detailed and helpful submissions.