**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT**
**OF THE REPUBLIC OF SINGAPORE**

**[2024] SGHC(I) 18**

Originating Application No 5 of 2022

In the matter of Part 11 and Section 252 of the Insolvency, Restructuring and Dissolution Act 2018

In the matter of PT Garuda Indonesia (Persero) Tbk

Between

(1) Irfan Setiaputra
(2) Prasetio

… *Applicants*

And

(1) Greylag Goose Leasing 1410 Designated Activity Company
(2) Greylag Goose Leasing 1446 Designated Activity Company

… *Non-parties*

Originating Application No 5 of 2022 (Summons No 34 of 2023)

Between

(1) Irfan Setiaputra
(2) Prasetio

… *Applicants*

And

(1) Greylag Goose Leasing 1410 Designated Activity Company
(2) Greylag Goose Leasing 1446 Designated Activity Company

… *Non-parties*

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# JUDGMENT

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[Civil Procedure — Costs]

# *Re* PT Garuda Indonesia (Persero) Tbk and another matter

**[2024] SGHC(I) 18**

Singapore International Commercial Court — Originating Application No 5 of 2022 and Summons No 34 of 2023
Kannan Ramesh JAD, Anselmo Reyes IJ and Christopher Scott Sontchi IJ
15 March 2024

12 June 2024 Judgment reserved.

**Christopher Scott Sontchi IJ (delivering the judgment of the court):**

## Introduction

1 This judgment addresses the costs of SIC/OA 5/2022 ("OA 5"), an application by foreign representatives of PT Garuda Indonesia (Persero) Tbk ("Garuda Indonesia") for recognition and relief under the UNCITRAL Model Law on Cross Border Insolvency (30 May 1997) as set out in the Third Schedule (the "Third Schedule") of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). The application was opposed by the non-parties in these proceedings (the "Greylag Entities"). On 18 January 2024, this Court issued a judgment in *Re PT Garuda Indonesia (Persero) Tbk and another*

*matter* [2024] SGHC(I) 1 (the "*Judgment*"), allowing the application. We adopt all abbreviations and terms of reference used in the *Judgment*.

**Background**

2 The circumstances underlying OA 5 have been set out extensively in the *Judgment*. We repeat only the aspects material to the determination of costs.

3 OA 5 was initially filed in the General Division of the High Court on 22 November 2022. The case was later transferred to the Singapore International Commercial Court ("SICC") on 21 December 2022 pursuant to O 23A r 4 of the Singapore International Commercial Court Rules 2021 (the "SICC Rules").

4 It emerged that the applicants had filed Case No 22-11274 (LGB) (the "SDNY proceedings") in the US Bankruptcy Court for the Southern District of New York ("SDNY"), in which the Greylag Entities had similarly raised objections. As the objections raised in the respective proceedings were broadly similar, court-to-court-communications were initiated, and a joint case management hearing was held pursuant to court endorsed protocols based on the Judicial Insolvency Network Guidelines as adopted by each court, to explore the feasibility of holding a joint hearing of both applications. In this regard, directions were jointly given for a hearing protocol to be jointly submitted by the parties. However, on 24 May 2023, shortly before the joint hearing protocol was due to be filed, the applicants withdrew their application in the SDNY. The joint hearing therefore became moot.

5 Shortly before the hearing of OA 5, the Greylag Entities brought an application for production of documents in SIC/SUM 34/2023 ("SUM 34"). We

heard this application on the first day of the hearing of OA 5 and dismissed it. Our reasons are detailed in [36]–[44] of the *Judgment*.

6 On 18 January 2024, we issued the *Judgment*. We allowed the application and recognised Garuda Indonesia's restructuring proceedings in the Jakarta Commercial Court (referred to in the *Judgment* as the "PKPU Proceeding") as a foreign main proceeding within the meaning of Article 2(*f*) of the Third Schedule. We also granted further reliefs for (a) all legal proceedings between Garuda Indonesia and the Greylag Entities to be stayed pursuant to the mandatory stay under Article 20(1) of the Third Schedule and (b) for the restructuring plan approved by the PKPU Proceeding and homologated by the Jakarta Commercial Court to be recognised and enforced in Singapore under the *chapeau* to Article 21(1) of the Third Schedule as a foreign order (*Judgment* at [163]). This was subject to two carve-outs made in respect of related arbitration proceedings and for portions of the Greylag Entities' claims which were not admitted by Garuda Indonesia's administrators during the PKPU Proceeding (*Judgment* at [161]–[162]).

7 After the issuance of the *Judgment*, as directed, we received the applicants' written submissions on costs and an updated costs schedule (the "applicants' costs schedule") on 1 March 2024. This was followed by the Greylag Entities' reply submissions on costs (and their respective updated costs schedule) filed on 8 March 2024, and finally responsive costs submissions from

the applicants filed on 15 March 2024. Having considered the submissions, we now set out our decision.

**The parties' positions**

8 It is common ground between the parties that the starting point is O 22 r 3(1) of the SICC Rules, which provides that "a successful party is entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness". The Greylag Entities therefore do not contest the general principle that the applicants are entitled to costs as the successful parties in OA 5. They do not also contest that such costs should be borne by them as the parties which resisted OA 5.

9 However, the Greylag Entities contend that the *quantum* of costs claimed is unreasonable and disproportionate. They further challenge that specific items of disbursements claimed by the applicants overlap and should be disallowed. Lastly, the Greylag Entities assert that the applicants should pay costs to them in respect of the carve-outs to the orders made by this Court, as well as wasted costs arising from the applicants' withdrawal from the SDNY proceedings.

10 For completeness, we note the following points which are *common* and undisputed between the parties:

(a) No Goods and Services Tax ("GST") is claimable in respect of the applicants' legal fees because GST is zero-rated on the services provided by the applicants' solicitors under s 21(3)(*k*) of the Goods and Services Tax Act 1993 (2020 Rev Ed) and s 3(1) read with para 1 of the

Second Schedule of the Goods and Services Tax (International Services) Order (2008 Rev Ed).

(b) The applicants are entitled to the following disbursements as claimed:

(i) fees for the applicants' experts in the sum of 277,500,000 Indonesian rupiah ("IDR"); and

(ii) other disbursements in the sum of S$11,293.71.

11 We turn to the specific issues in contention.

**Pre-transfer costs**

12 On costs incurred before the transfer of OA 5 from the General Division of the High Court, the applicants seek a sum of US$14,441.20, being costs incurred to review the papers in foreign proceedings involving Garuda Indonesia and Garuda France in order to anticipate objections the Greylag Entities might raise in OA 5 and conduct the necessary research on the same with particular reference to Article 6 of the Third Schedule. As we noted in the *Judgment* (at [28]–[35]), these foreign proceedings were brought in the SDNY, Australia and France. This is the sole head of pre-transfer costs sought by the applicants.

13 On the other hand, the Greylag Entities argue that they had not even raised their objections in the pre-transfer period. It was therefore not reasonable for the applicants to have incurred costs to review papers in other proceedings (which are not part of the cause in OA 5) and conduct research to anticipate issues that might be raised in these proceedings. We agree.

14 Further, we note that the applicants are officers of Garuda Indonesia and have been personally involved in at least the SDNY proceedings. Insofar as the foreign proceedings have raised issues potentially relevant to OA 5, Garuda Indonesia and indeed the applicants would already have had access to the relevant papers and/or been apprised of the relevant issues. To allow the applicants to claim costs in such circumstances would be tantamount to allowing them to recover in these proceedings costs which have been incurred and might and rightfully should be provided for in the foreign proceedings. We therefore decline to award any pre-transfer costs to the applicants.

**Post-transfer costs**

***Costs incurred up to the issuance of the Judgment***

15 In respect of costs incurred in the period between the transfer of OA 5 from the General Division of the High Court and the date of the *Judgment* (excluding work done in respect of SUM 34), the applicants seek costs in the sum of US$201,008.

16 The Greylag Entities submit that this sum is unreasonable and disproportionate, and argue that the costs should be fixed at US$50,000. The Greylag Entities' contentions are as follows:

(a) First, the applicants' solicitors had spent a disproportionate amount of time on the matter in relation to the relatively straightforward nature of the application and the narrow issues involved; the application concerned, in the main, a single objection of public policy under Article 6 of the Third Schedule and straightforward issues of Indonesian law.

(b) Second, the applicants should not be allowed to claim costs for keeping up to date on developments in the foreign proceedings because

the Court had not required in-depth or detailed updates beyond those relating to the SDNY proceedings.

(c) Third, the applicants did not have to prepare for the hearing of OA 5 from scratch because they were already involved in arbitration proceedings with the Greylag Entities and would have been familiar with the factual circumstances and documents.

(d) Fourth, the Greylag Entities argue that the quantum of costs claimed far exceeds the amounts awarded in past SICC cases. The costs awards in these cases were as follows:

(i) In *CJM and others v CJT* [2021] 5 SLR 222, the court awarded S$70,000 in costs.

(ii) In *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2022] 4 SLR 158, the court awarded S$120,000 in costs.

(iii) In *BXS v BXT* [2019] 5 SLR 48, the court awarded S$40,000 in costs.

(iv) In *CYW v CYX* [2024] 3 SLR 125 ("*CYW*"), the court awarded S$169,195.40 in costs.

17 The applicants contend that the Greylag Entities' objections are without merit. Their responses, among others, are as follows:

(a) First, the Greylag Entities have downplayed the complexity of the issues in OA 5.

(b) Second, it was necessary to keep the Court informed of material developments in the foreign proceedings as the Greylag Entities

themselves had put the status of those foreign proceedings into issue in arguing at the hearing that OA 5 had been brought prematurely in view of developments in proceedings before the Indonesian courts.

(c) Third, the arbitration proceedings referred to concerned fundamentally distinct issues from OA 5.

(d) Fourth, most of the past SICC cases cited by the Greylag Entities were of negligible precedential value as they pre-dated the Court of Appeal's decision in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 ("*Senda*"), which significantly reformed the principles relating to the assessment of costs in SICC cases. Further, the costs award of S$169,195.40 made in *CYW*, which post-dated the decision in *Senda*, was made notwithstanding the proceedings also concerned relatively narrow issues and involved a hearing of just three hours (compared to 1.5 days in the present case).

18 In determining the reasonableness of the quantum claimed by the applicants, it is necessary to have regard to the principles set out by the Court of Appeal in *Senda*. In essence, the successful party must show that the costs it has incurred are reasonable by adducing evidence which would typically include (a) a breakdown of the claimed costs in terms of the number of hours claimed, (b) information identifying by whom those hours were incurred, their levels of seniority and corresponding hourly rates, and (c) some explanation as to the types of work those hours were incurred for (*Senda* at [73]). Once the successful party has adduced the requisite level of information, the evidential burden shifts to the unsuccessful party to adduce evidence to show that the claimed costs are not reasonable (*Senda* at [75]). It is insufficient for the

unsuccessful party to simply make unsubstantiated contentions that the claimed costs are disproportionate, exorbitant, or unreasonable (*Senda* at [76]).

19 In this case, we are satisfied that the applicants have provided sufficient information in their updated costs schedule; the Greylag Entities do not appear to contend otherwise. It is thus for the Greylag Entities to show why the claimed costs are not reasonable. Having considered the Greylag Entities' objections as summarised above (see [1716]), we are not satisfied that there is any substance to them.

20 First, while the issues in this case may have been narrow, we disagree with the Greylag Entities' contention that they were in any way straightforward It is apparent from the issues discussed in the *Judgment* that they are not.

21 Second, in relation to the Greylag Entities' objections on the basis of the related arbitration proceedings and the need to keep up to date with developments in the foreign proceedings, we agree with the applicants' arguments and find that these objections are without merit.

22 Third, we do not find any assistance in the costs awards in prior SICC cases raised by the Greylag Entities. It is pertinent in this regard to note the principles laid down by the Court of Appeal in *Senda* at [79]:

> We accept that previous costs awards made by the SICC may be relevant in the assessment of 'reasonable costs' under O 110 r 46 [of the Rules of Court (2014 Rev Ed)] in a case sharing common features with those cases in which those awards were made (see [*CBX and another v CBZ and others* [2022] 1 SLR 88] ([13] *supra*) at [42]). … The exercise of determining 'reasonable costs' in such a case remains a subjective one because the starting point for the trial court is the level of incurred costs in the context of that specific case. However, to the extent that the case at hand shares common features with other cases, the costs awards made in those other cases might possibly inform the court of what is an appropriate level of costs to be incurred

> for the matter in question. Any reliance placed on previous costs awards is not to determine the level of costs that should be awarded, but rather to provide a check as to whether the costs claimed by the successful party are reasonable or not.

23 Thus, previous costs awards are relevant only where the cases in respect of which they are made share common features with the present case. Even then, they do not shackle the court, but merely provide a check as to the reasonableness of the costs claimed in the present case. However, there are simply *no prior cases* which share common features with the case at hand – OA 5 is the first SICC case involving the recognition of foreign insolvency proceedings under the Third Schedule. Therefore, we do not find the costs awards in previous SICC cases to be relevant.

24 Putting aside these objections, the Greylag Entities have provided no basis for their alternative proposal of US$50,000 in costs. In the absence of any substantiation, we find their proposal to be unhelpful. We add that the US$25,506.50 which the Greylag Entities have claimed against the applicants solely for work done in respect of the contemplated joint hearing between the SICC and SDNY throws into context the reasonableness of their proposed sum of US$50,000 for all of the applicants' post-transfer costs up to the date of the *Judgment*.

25 In the circumstances, we find that the Greylag Entities have not discharged their burden of demonstrating that the costs claimed by the applicants are disproportionate or unreasonable, and award the applicants costs as claimed of US$201,008 for this phase of the proceedings.

***Costs of SUM 34***

26 In respect of SUM 34, which was the Greylag Entities' belated and ultimately unsuccessful application for production of documents, the applicants seek costs of US$13,174.10.

27 The Greylag Entities contest that this amount is disproportionate and unreasonable. They argue that SUM 34 was a straightforward application which involved well-established legal principles. They additionally raise the fact that the Court had dismissed the applicants' argument that SUM 34 was brought as an abuse of process. The Greylag Entities argue that only US$5,000 should be awarded in this regard.

28 We do not find the claimed amount of US$13,174.10 to be unreasonable or disproportionate as contended by the Greylag Entities, taking into account in particular the late stage at which SUM 34 was brought and the extent and scope of the discovery that was sought. We award costs of US$13,174.10 as claimed.

***Post-Judgment costs***

29 In respect of costs incurred after the issuance of the *Judgment*, the applicants claim US$3,182.40, attributable to reviewing the *Judgment*, preparing the draft order of court for OA 5 and SUM 34, and "considering the implications of [the *Judgment*] on various ongoing proceedings involving Garuda Indonesia and its subsidiaries, and the [Greylag Entities]".

30 The Greylag Entities argue that the latter claim (in quotation marks) has no basis whatsoever and should be disallowed, and that the claimed costs should correspondingly be reduced by one-third. We agree.

31 The applicants are entitled only to costs incurred for the purpose of OA 5, and that does not include costs incurred to consider the implications of the *Judgment* on other proceedings. We therefore agree with the Greylag Entities' alternative proposal, and award the applicants the sum of US$2,121.60 for costs of this phase of the proceedings.

***Costs incurred for the preparation of the costs submissions***

32 In respect of the costs incurred for the preparation of the costs submissions, the applicants claim a sum of US$47,365, for costs incurred up to 13 March 2024 (*ie*, two days before the filing of the last set of costs submissions by the applicants). They argue that this sum is justified as the present case involved the novel and complex exercise of assessing costs in the SICC for an *ex parte* application involving substantial objections.

33 The Greylag Entities, on the other hand, argue that the claimed costs are disproportionate and unreasonable. While there are no prior reported judgments regarding the costs of an application similar to the present, the default position and general principles governing costs under O 22 of the SICC Rules are clear and well-established. The Greylag Entities therefore propose an alternative sum of US$2,500.

34 We find the sum of US$47,365 claimed by the applicants to be disproportionate. In our assessment, the costs issues arising in this case are not complex, even if they may involve a factual scenario which has not arisen in prior SICC judgments. Indeed, as noted above, the approach is settled by *Senda*. Further, we note that this sum was put forward by the applicants in their responsive costs submissions. These submissions were filed *after* the applicants' updated costs schedule, which reported a lower sum of

US$26,703.20, updated to 23 February 2024. No further breakdown or explanation was provided for the higher sum of US$47,365. In such circumstances, the applicants have not adduced sufficient evidence to show this sum to be reasonable, *per* the principles laid down in *Senda* (see [18]). As for the applicants' initial sum of US$26,703 (for which a breakdown has been provided), we are also of the view that it is disproportionate.

35 We therefore find it appropriate to fix a more reasonable quantum for the costs of preparing the costs submissions. We have taken reference from the breakdown of the sum of US$26,703.20 in the applicants' costs schedule, which is set out in the following terms: 8.1 hours of work done by a partner billing at a rate of US$605 per hour, and a total of 82.9 hours of work done by three associates billing at US$263 per hour. In our view, it is more reasonable to award costs on the basis of one partner and one associate working on the costs submissions. Accordingly, we have reduced the number of hours of work done by associates to 27.6 hours (the average of the 82.9 hours spent by the three associates on the costs submissions). On this basis, we arrive at a more reasonable and proportionate sum of approximately US$12,200, and we accordingly award this sum.

***Whether the applicants should be ordered to pay costs to the Greylag Entities***

36 The Greylag Entities further argue that the applicants should pay US$36,312 in costs to them, comprising:

(a) US$10,805.50 in respect of the carve-outs made in OA 5; and

(b) US$25,506.50 in respect of the fees incurred for the contemplated joint hearing of OA 5 and the SDNY proceedings.

37 The Greylag Entities claim the former on the basis that they had succeeded in obtaining the carve-outs, and that the applicants had essentially wasted time by failing to take a clear position on the same. The latter is claimed on the basis of wasted costs brought about by the applicants' withdrawal from the SDNY proceedings on 24 May 2023. The argument essentially is that costs incurred for the joint case management hearing were wasted on account of the applicants' subsequent decision to withdraw the SDNY proceedings.

38 The applicants contend that in seeking costs in their favour, the Greylag Entities are essentially arguing for an issue-based approach to costs; such an approach is inappropriate in the present case. The applicants also argue, among others, that there was no lack of clarity in their position with respect to the carve-outs. As for their withdrawal from the SDNY proceedings, the applicants argue that the contemplated joint hearing was necessitated by the similar objections raised by the Greylag Entities before both courts, and that the Greylag Entities cannot escape from the consequences of their objections by leveraging off Garuda Indonesia's exercise of its prerogative to withdraw from the SDNY proceedings.

39 We address each claim in turn.

*The carve-outs*

40 The key issue in respect of the Greylag Entities' claim for costs in respect of the carve-outs is whether an issue-based approach to costs should be adopted. The principles in *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 ("*Comfort Management*") are relevant to answer this question. In particular, an order for a successful party to pay costs to the unsuccessful party (referred to in *Comfort Management* as a "Type II

order") is only justified if (a) the successful party fails to establish a discrete claim or issue which he raised in the litigation; (b) the successful party thereby unnecessarily or unreasonably protracted or added to the costs or complexity of the litigation; and (c) the successful party raised the claim or issue improperly or unreasonably (*Comfort Management* at [85(e)]).

41 We are not satisfied that the three conditions set out above have been met. It cannot be said that the applicants had unreasonably protracted the proceedings in making their arguments in respect of the carve-outs, nor can it be said that they had raised those arguments improperly or unreasonably. This was a legitimate part of the discussion to assist the Court in working out the terms of the orders made in OA 5. Thus, we do not find it appropriate to make a Type II order against the applicants here.

*The applicants' withdrawal from the SDNY proceedings*

42 The Greylag Entities' second claim for costs consequential on the applicants' withdrawal from the SDNY proceedings is without merit. We make several points in this respect.

43 First, the costs of US$25,506.50 claimed by the Greylag Entities in part includes costs incurred in respect of *the SDNY proceedings* which ought to be pursued and provided for in those proceedings. It is not proper for the Greylag Entities to pursue those costs in these proceedings.

44 Second, having allowed the applicants' post-transfer costs, which includes costs in relation to the joint case management hearings for the purpose of the contemplated joint hearing, it must follow that the Greylag Entities' claim must fail.

45 Third, the Greylag Entities had not objected to the contemplated joint hearing. That being the case, it is not for them now to complain that the steps taken in contemplation of the joint hearing were unreasonable or unnecessary. Indeed, the Greylag Entities' claim can only succeed if a Type II order is made as regards the costs incurred in relation to the contemplated joint hearing. However, in view of their engagement in the discussions concerning the contemplated joint hearing, there is no basis for that order to be made.

46 We conclude on this point by making an observation. The parties have proceeded on the basis that costs in relation to the joint case management hearing were in the cause notwithstanding that an order to this effect was not made by the Court. Notably, neither party sought an order for costs including one for costs in the cause at the joint case management conference or at the hearing on 24 May 2023. We leave open for determination in the appropriate case whether the parties' assumption is correct. There is no need for us to go further in this respect as the point is moot in the present case in view of our conclusions above.

47 We therefore decline to order costs in favour of the Greylag Entities against the applicants. For completeness, we do not find that any of the grounds raised by the Greylag Entities justify a reduction in the costs to be awarded to the applicants (*ie*, a "Type I order" as described in *Comfort Management*).

***Conclusion on costs of OA 5 and SUM 34***

48 Drawing the various threads together, the applicants are entitled to (a) US$201,008 for costs incurred up to the date of the *Judgment*; (b) US$13,174.10 for costs of SUM 34; (c) US$2,121.60 for costs incurred after the issuance of the *Judgment*; and (d) US$12,200 for costs incurred for the preparation of the

costs submissions. This amounts to an aggregate sum of US$228,503.70 of costs payable by the Greylag Entities to the applicants.

**Disbursements**

49 Lastly, we turn to the issue of disbursements. As we noted at [10] above, the Greylag Entities do not contest the sums claimed by the applicants in respect of experts' fees and of the applicants' other disbursements. The only item in issue is that of the applicants' experts' disbursements. These disbursements were set out in the applicants' costs schedule as follows:

(a) IDR 1,500,000 for notarisation of documents;

(b) IDR 14,590,600 for airplane tickets for the experts to fly to Singapore for the hearing of OA 5;

(c) IDR 3,005,164 for meals and accommodations for the experts in Singapore;

(d) S$784.08 under the label "Hotel"; and

(e) IDR 22,541,157 under the label "Per diem".

50 The Greylag Entities argue that items (c) to (e) as listed above should not be allowed as they appear to overlap, and the amount claimed under "Per diem" is fairly large.

51 The applicants have, however, clarified in their responsive costs submissions that there was a mistaken reference in their costs schedule to item (c) as "meals and accommodation", and that what was intended was "meals

and transportation". The applicants have provided further details for each category in the following terms:

(a) IDR 3,005,164 for meals and transportation for the experts in Singapore;

(b) S$784.08 for three nights' hotel stay for the experts; and

(c) IDR 22,541,157 for four days' per diem allowance to the experts to cover incidentals.

Notably, the Greylag Entities have not sought leave to respond.

52 On the basis of the explanations furnished by the applicants, we are satisfied that there is no overlap in the disputed items. The disbursements of the applicants' experts are allowed as claimed.

**Conclusion**

53 In light of our reasons as elaborated above, we therefore order the Greylag Entities to pay the following amounts to the applicants:

(a) US$228,503.70 for costs of OA 5 and SUM 34;

(b) IDR 277,500,000 for the applicants' experts' fees;

(c) S$784.08 and IDR 41,636,921 for the applicants' experts' disbursements; and

(d) S$11,293.71 for the applicants' other disbursements.

Kannan Ramesh
Judge of the Appellate Division

Anselmo Reyes
International Judge

Christopher Scott Sontchi
International Judge

Emmanuel Duncan Chua, Lee Yu Lun, Darrell, Irvin Ho Jia Xian and Mock Yuan Bing (Wong & Leow LLC) for the first and second applicants;
Muralli Raja Rajaram, Valerie Ang, Jerrie Tan, Eva Teh Jing Hui and Felicia Tee (K&L Gates Straits Law LLC) for the first and second non-parties.