SUPREME COURT OF QUEENSLAND

CITATION:	*PBR Properties Pty Ltd v Chubb Insurance Australia Limited (No 2)* [2026] QSC 187
PARTIES:	**PBR PROPERTIES PTY LTD** ABN 35 161 404 119 (third applicant) **v** **CHUBB INSURANCE AUSTRALIA LIMITED** ACN 001 642 020 (respondent)
FILE NO:	BS10850 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	13 August 2026
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers
JUDGE:	Sullivan J
ORDER:	**1. The third applicant to pay the respondent's costs of the claim assessed on the standard basis.** **2. The respondent pay the third applicant's costs of the counterclaim on the standard basis, except for costs incurred in respect of the issues of whether Mr Richardson intentionally caused the fire and whether that intentional causing of the fire disentitled the third applicant to the proceeds of the relevant insurance policy.**
CATCHWORDS:	PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — COSTS — OFFERS OF COMPROMISE, PAYMENTS INTO COURT AND SETTLEMENTS — INFORMAL OFFERS AND CALDERBANK LETTERS — GENERALLY — where the respondent filed a defence and counterclaim — where the respondent made a *Calderbank* offer to settle "this matter" for $250,000 — where the offer was for an "rolled up" lump sum to settle both the claim and counterclaim — where the offer did not make clear how the $250,000 would be proportioned with respect to the defence and claim — where the respondent did not clearly disclose the basis upon which the offer was calculated — where the third applicant rejected the *Calderbank* offer — where the respondent constructively abandoned the counterclaim on the first day of trial but

successfully defended the third applicant's claim — whether "this matter" referred to both the claim and the counterclaim — whether the offer was more favourable than the result achieved by the third applicant

Uniform Civil Procedure Rules 1999 (Qld), r 681

Calderbank v Calderbank [1975] 3 All ER 333
Cape Byron Power 1 Pty Ltd v Downer Energy Systems Pty Ltd [2023] QSC 109
Eatock v Bolt (No 2) (2011) 284 ALR 114
Gladstone Area Water Board v AJ Lucas Operations Pty Ltd [2015] QSC 52
S.H.A. Premier Constructions Pty Ltd v Niclin Constructions Pty Ltd (No 2) [2020] QSC 323
W Jeffreys Holdings Pty Ltd v Appleyard and Associates (1990) 10 BCL 298

COUNSEL: S McCarthy for the third applicant
S Couper KC, with J Simpkins, for the respondent

SOLICITORS: Allens for the third applicant
HWL Ebsworth for the respondent

[1] In *PBR Properties Pty Ltd v Chubb Insurance Australia Limited* [2026] QSC 47, the respondent successfully defended the third applicant's claim which, in effect, sought the payment out of the proceeds of an insurance policy in consequence of a fire at a large residential property. At the commencement of the trial of the claim, the respondent constructively abandoned a counterclaim which it had brought. The counterclaim had sought to recover the investigatory costs associated with the alleged arson event relied upon by the respondent to deny the third applicant the proceeds of the insurance policy. The counterclaim shared many common aspects with the defence of the claim, but it also raised separate issues.

[2] On 5 June 2020, the respondent had sent to the third applicant a *Calderbank* offer[1] which was not accepted by the third applicant. It had offered to settle "this matter" for $250,000.

[3] The *Calderbank* offer is relied upon by the respondent to justify an order different to the usual order that costs should follow the event on a standard basis.

[4] The respondent sought costs orders in the following terms:

(a) the third applicant pay the respondent's costs, calculated on the standard basis, up to and including 5 June 2020; and

(b) the third applicant pay the respondent's costs, calculated on the indemnity basis, after 5 June 2020.

[5] The third applicant sought costs orders in the following terms:

1 *Calderbank v Calderbank* [1975] 3 All ER 333.

(a) the third applicant pay the respondent's costs of the claim on the standard basis; and

(b) the respondent pay the third applicant's costs of the counterclaim on the standard basis.

[6] A claim and counterclaim may be treated as separate "events" for the purposes of r 681(1) of the *Uniform Civil Procedure Rules 1999* (Qld).[2]

[7] In the circumstances of this case, the counterclaim, in part, raised separate issues to the main claim, namely:

(a) the legal recoverability of investigatory costs said to be incurred by the respondent investigating a claim under a relevant policy where a finding of arson had been established; and

(b) the consequential incurring and quantum of such costs.

[8] The third applicant contended that the dismissal of the counterclaim should be treated as a separate event.

[9] The respondent contended that the counterclaim was not a "separable" issue as the respondent led no evidence and sought no relief at trial.

Legal principles

[10] Ordinarily, costs follow the event in a proceeding with costs awarded on a standard basis.

[11] This ordinary position may be deviated from for a variety of reasons. One such reason is where a *Calderbank* offer has been made, the offer has exceeded the result obtained by the offeree, and it was unreasonable for the offeree to have rejected the offer. In *S.H.A. Premier Constructions Pty Ltd v Niclin Constructions Pty Ltd (No 2)* [2020] QSC 323 at [12]-[14], Bond J (as his Honour then was) summarised some of the more important considerations as to when a *Calderbank* offer may operate to alter the standard costs order. They were as follows:

> "[12] …one feature which may justify a departure from the usual rule is the rejection of a Calderbank offer to compromise. However, it is wrong to think that an offeree's rejection of a Calderbank offer gives rise to a presumption that the offeree should pay the offeror's costs on an indemnity basis if the offeree obtains a less favourable result than contained in the offer. Rather, the correct approach is to consider whether the rejection of the Calderbank offer, in all the circumstances, justifies a departure from the usual rule.
>
> [13] …the balance between the competing policy considerations of, on the one hand, appropriately encouraging settlement and, on the other, not discouraging potential litigants from bringing their disputes to the courts, is found by applying a test of "reasonableness". The policy rationale for requiring the offeree

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2 *Gladstone Area Water Board v AJ Lucas Operations Pty Ltd* [2015] QSC 52 at [9]-[12].

> to indemnify the offeror for costs incurred after the offeree's unreasonable rejection of an offer is that, from the time of the unreasonable rejection, notionally the real cause and occasion of the litigation is the unreasonable attitude adopted by the offeree.
>
> [14] …deciding the critical question of whether the offeree's rejection of the offer is unreasonable in all the circumstances will always involve matters of judgment and impression. However, the discretion as to costs must be exercised judicially and is subject to review in accordance with the principles set out in *House v The King* (1936) 55 CLR 499 at 505. Without being exhaustive concerning the considerations which should be taken into account, a court should ordinarily have regard to at least the following matters:
>
> (a) the stage of the proceeding at which the offer was received;
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> (b) the time allowed to the offeree to consider the offer;
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> (c) the extent of the compromise offered;
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> (d) the offeree's prospects of success, assessed as at the date of the offer;
>
> (e) the clarity with which the terms of the offer were expressed; and
>
> (f) whether the offer foreshadowed an application for indemnity costs in the event of the offeree rejecting it." (Footnotes omitted)

[12] To these considerations I would add the following further ones, again without seeking to be exhaustive.

[13] First, it is generally not unreasonable for a party to reject a materially unclear offer.[3]

[14] Secondly, difficulties for an offeree in understanding the likely recoverable costs of an offeror at the time of the offer may be a relevant factor in assessing the reasonableness of rejecting the offer, particularly where those costs form an important metric to be applied against the offered amount.[4]

[15] Thirdly, the point in time as to when:

(a) a determination as to whether the offer was more favourable to the offeree than the result achieved by the offeree; and

(b) the issues of the reasonableness of the rejection of the offer is to be tested,

is at the date of the offer. This is particularly relevant to a comparison between the actual recoverable costs incurred to that date on the one hand, and the settlement sum contained in the *Calderbank* offer on the other hand.

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3 *Eatock v Bolt (No 2)* (2011) 284 ALR 114, per Bromberg J at [47].

4 *Cape Byron Power 1 Pty Ltd v Downer Energy Systems Pty Ltd* [2023] QSC 109 per Applegarth J, at [48].

Was the offer more favourable than the result achieved by the third applicant?

[16] This question posed in the heading is essentially an entry point criteria for a *Calderbank* offer to operate to alter the usual costs order. If the court cannot make a finding which would allow for an affirmative answer then there is no need to proceed to the question of whether it was otherwise unreasonable for the offeree to have refused the offer.

[17] The onus in establishing this criteria lies with the respondent.

[18] I consider the respondent has not discharged its onus to show that the offer was more favourable to the third applicant than the result obtained by the third applicant. My reasoning is as follows.

[19] The fire event had occurred in December 2016 and there had been much investigation about the circumstances of that event prior to the filing of the statement of claim.

[20] The main claim was commenced by originating application filed on 5 October 2018, with the third applicant filing a statement of claim on 1 November 2018. The defence and counterclaim were filed on 17 May 2019. The *Calderbank* offer was made on 5 June 2020 and allowed 21 days for its acceptance.

[21] Accordingly, at the time of the offer, the proceeding had been on foot for some time since its institution and for some time since the statement of claim, and the defence and counterclaim had been filed, in contrast to when the offer was made.

[22] The offer itself was for a lump sum of $250,000.

[23] It had been submitted by the third applicant that it was uncertain as to whether the offer operated to compromise both the claim and counterclaim, as opposed to just the claim. That submission ought to be rejected. I accept the submissions of the respondent that it was clear from the terms of the *Calderbank* offer itself that it was intended to compromise both the claim and the counterclaim. In this respect I note the following:

- In a heading to the *Calderbank* offer, the word "Proceedings" was defined to be "Supreme Court Proceeding No. BS10850 of 2018". That description was capable of referring to both the claim and counterclaim which each existed under that one court number.
- At the start of the offer, the introductory line of text to a series of numbered paragraphs stated, "We refer to your client's claim in the above Proceedings, and our client's Counterclaim". That introductory sentence makes clear that the subsequent numbered paragraphs were discussing both the claim and counterclaim.
- Paragraph [10] specifically referenced the counterclaim.
- Paragraph [11] then provided:

> "11. In order to avoid significant further costs being incurred, our client offers to resolve this matter on the basis that your client pay our client's costs in the compromised amount of **$250,000.00**." (original emphasis)

[24] In light of the introductory words which referred both to the claim and counterclaim and paragraph [10] which referred specifically to the "Counterclaim", it is clear that the offer in paragraph [11] was an offer to resolve both the claim and the counterclaim for the amount of $250,000. The words "this matter" in paragraph [11] necessarily referred to both the claim and counterclaim.

[25] However, what this means is that the offer was a "rolled up" offer made to resolve both the claim and counterclaim, including the costs incurred in respect of each.

[26] Such a rolled-up offer presents immediate difficulties where there have been differing results for an offeror on a claim and counterclaim. A claim and counterclaim are themselves separate proceedings and ordinarily will be treated as separate events from a costs' perspective. I do not accept the respondent's submission that the counterclaim should not be treated as a "separable" issue merely because no evidence was led at trial and no relief was sought at trial in respect of it. At the relevant time, being the date of the offer, the counterclaim existed and was being prosecuted. At that point in time, it should be treated as a separate event for costs purposes.

[27] I turn then to the evidence. On 13 December 2019, a security for costs application had been brought by the respondent against the third applicant. The respondent's affidavit material for the security for costs application was in evidence in the form of an exhibited affidavit of Mr Stevens, the solicitor for the respondent. That affidavit identified that the respondent's then gross costs in the proceeding were $136,029.50 for legal fees and $135,162.90 in disbursements. In the affidavit, Mr Stevens applied a 30 per cent discount to the legal fees, but no discount to disbursements, so as to approximate what he said would have been the recoverable costs on a standard basis. This resulted in a figure of $230,383.40 for costs said to have been incurred by the respondent to 13 December 2019, which were said to be recoverable on a standard basis.

[28] The *Calderbank* offer referred to Mr Stevens' affidavit from the security for costs application, but only the gross figures of $136,029.50 and $135,162.90 were specifically referred to. The offer did not set out any quantum for the additional fees and disbursements said to have been incurred since the security for costs application. All the offer said was "Additional fees and disbursements have been incurred in the 6 months or so since 13 December 2019…". The submission of the respondent was that the recoverable costs of the respondent incurred up to 5 June 2020, on the standard basis, would have exceeded the offer.

[29] In support of this submission, Mr Stevens swore an affidavit for this costs determination which identified that up until 5 June 2020, $179,130.49 had been billed for gross disbursements, and $201,274.50 had been billed for gross legal fees. The affidavit in this costs determination and the initial submissions of the respondent only referred to the gross fees and disbursements for the purpose of saying the offer was more favourable than the result.

[30] Gross fees and disbursements are not the correct point of comparison for the purpose of answering the relevant question posed in the heading above. This seems to have been recognised by the respondent in its reply submissions at paragraph [6].

[31] In the reply submissions, reference was made to the recoverable costs on a standard basis. In the reply submissions, the respondent applied a discount of 30 per cent to

those gross legal fees, so as to result in a figure of $140,892.15 for legal fees said to be recoverable on a standard basis up to 5 June 2020. No discount to the disbursements was made by the respondent.

[32] Accordingly, the reply submissions contended that the recoverable amount for legal fees and disbursements on a standard basis was approximately $320,022.64 at the time the offer was made.

[33] This was the foundation for the respondent submitting that the $250,000 offer was more favourable for the third applicant than the ultimate result which the third applicant would have achieved as at 5 June 2020.

[34] There are a number of problems with this argument.

[35] I am not satisfied that a discount of 30 per cent on incurred legal fees and no discount on disbursements would represent the respondent's recoverable costs on a standard basis.

[36] The affidavit material does not allow any granular examination of the tasks undertaken and the nature of the disbursements incurred, together with the costs attributable to such individual tasks and disbursements. Mr Stevens' affidavit, at the security for costs application, simply said that he allowed a discount of 30 per cent for the legal fees up to 13 December 2019. Later in the affidavit, Mr Stevens referred to his experience as a solicitor in conducting files and the work required to prepare a matter for trial when providing estimates as to future costs. This evidence does not, in my view, justify a finding that only a 30 per cent discount on legal fees equates to what would be the likely recoverable costs on a standard basis.

[37] A more realistic amount of recoverable costs on a standard basis would have included a 10 per cent discount on disbursements and a 40 per cent discount on fees. Whilst this may be seen as a conservative approach, such an approach, in my view, is justified given the paucity of evidential information of the underlying tasks and disbursements (and the break up of their costs), and what I regard as too miserly a discount on legal fees and the unsubstantiated proposition that all disbursements are recoverable on an indemnity basis. As in a security costs application, the court has to make a value judgment using a broadbrush approach.

[38] The approach I have adopted is, in my view, appropriate on the state of the evidence. It perhaps reflects the observation of Cole J in *W Jeffreys Holdings Pty Ltd v Appleyard and Associates* (1990) 10 BCL 298 at 303, which Applegarth J referred to with approval in *Cape Byron Power 1 Pty Ltd & Ors v Downer Energy Systems Pty Limited & Ors* [2023] QSC 109 at [36] as follows:

> "Great difficulty is encountered if offers are framed in Calderbank letters on an inclusive of costs basis. It leads to ex post facto and unsubstantiated estimates of what costs may have been at a given date."

[39] The approach which I have adopted has the effect of increasing the delta between the 13 December 2019 alleged recoverable costs and the $250,000 offer amount by approximately $27,000. The effect of this was that the alleged recoverable costs of

the respondent as at 13 December 2019 was more likely an approximate sum of $203,264.31, assuming all of the costs were associated solely with the claim.

[40] A similar approach to the alleged costs of the respondent on a standard basis as at 5 June 2020 would result in an approximate figure of $281,982.14, rather than the $320,022.64 contended for. This has the effect of decreasing the delta between the offer and the likely recoverable costs. Again, this figure assumes that all those costs are incurred solely in respect of issues raised in the claim.

[41] The assumption I have referred to is an important one, and it is one that has not been established by the respondent on the evidence.

[42] It needs to be recognised that the counterclaim was constructively abandoned by the respondent on the first day of trial. In assessing whether the offer was more favourable than the result achieved by the third applicant, the relevant point in time for that comparison is the date of the delivery of the offer, taking into account that the third applicant had been unsuccessful on the claim but successful on the counterclaim. The parties' costs positions as they then notionally existed at 5 June 2020 for each of the claim and counterclaim are relevant to this question. This is particularly so where the *Calderbank* offer is one which has been "rolled up" so as to seek to settle both the claim and counterclaim and the costs incurred for each of them. For the purposes of this comparison, it is appropriate at the date of the offer to treat the differing results on each of the claim and counterclaim as separate costs events.

[43] Despite the existence of some common issues in the counterclaim, as previously identified, there were also certain unique issues present only in the counterclaim. The third applicant ought to be treated as having succeeded on those unique issues due to the respondent's constructive abandonment of the counterclaim.

[44] There is no analysis by the respondent, either in its affidavit material or submissions, of those separate costs events at the point in time of the making of the offer. Without that evidentiary analysis, it is not possible on the affidavit material to find that the *Calderbank* offer provided the third applicant with a better result. The Court simply does not know what portion of the identified costs were incurred by the respondent at the relevant time in respect of the unique issues in the counterclaim which the third applicant has succeeded on. For example, had an accountant been engaged to produce a report on the quantum asserted in the counterclaim? Had counsel given advice on the respondent's legal recoverability of the claimed amounts in the counterclaim or the evidence necessary to prove them? Had the solicitors for the respondent undertaken billable work in respect of identifying and collating such evidence, or researching the legal right for recovery of such investigatory costs? What, if any, costs had been incurred in pursuit of such tasks? None of this was dealt with in the offer or in the evidence led in this costs determination. It would be impermissible speculation to simply attribute a nominal amount to such potential costs.

[45] Whilst Mr Stevens' affidavit deposed to the parties' expert evidence not having been filed and the proceeding not having received a trial date by 5 June 2020, that evidence does not demonstrate that the above categories of work had not been incurred in respect of the unique issues present in the counterclaim.

[46] In the above circumstances, I am not satisfied that it has been shown by the respondent that the evidence supports a finding that the rolled-up offer was an offer which

represented, at the time it was made, a more favourable outcome than the third applicant would have achieved at that time, having regard to both the third applicant's loss on the claim and the third applicant's success on the counterclaim.

[47] The respondent bore the onus of establishing this particular criteria. It did not do so. Where the respondent has failed to discharge its onus on this critical criteria, the *Calderbank* offer will not have an effect on the costs order to be made.

[48] Even if I were incorrect in identifying the above question as anterior to the question of whether, in all the circumstances, it was reasonable for the third applicant to have rejected the offer, it would not have altered my ultimate conclusion. The failure of the respondent to demonstrate by the evidence that the offer would have produced a more favourable outcome for the third applicant than the result the third applicant had achieved would have been a sufficient circumstance by itself to have justified a conclusion that it was not unreasonable for the third applicant to have refused the offer in all the circumstances. It would have been the most important and dominating factor for the determination of the conclusion. Such a conclusion would be further fortified by the fact that the only information as to the respondent's incurred costs which the third applicant had at the time of the offer was the costs identified as incurred to 19 December 2019. The costs for the next six months to 5 June 2020 were not identified. Further, none of this information sought to address how much of the incurred costs were attributable only to the claim.

[49] It is no answer to this deficient information position to say that the third applicant could have asked for further information. That submission by the respondent should be rejected. The respondent drafted the offer and controlled the information it chose to disclose.

[50] Accordingly, I would have found, if it had been necessary, that these factors alone would have made the third applicant's rejection of the offer reasonable in all the circumstances.

[51] Accordingly, the *Calderbank* offer in this case does not provide a basis to treat the claim and counterclaim as a single event, or to justify an order different to the ordinary order.

[52] Where the *Calderbank* offer is not relevant to the exercise of its discretion to award costs, the Court must still formulate the appropriate order for costs.

Appropriate costs order

[53] In this case, it is appropriate for the third applicant to pay the respondent's costs of the claim assessed on the standard basis.

[54] In respect of the counterclaim, I am satisfied that on a broad level it should be treated as a separate event, however I do so with one qualification.

[55] This qualification derives from the fact that the counterclaim does mirror, in part, certain allegations in the defence to the claim, namely that Mr Richardson intentionally lit the fire, and that the policy of insurance did not therefore answer for the fire event. Those particular issues are not issues about which the third applicant ought to have its costs. They are issues which were raised directly in the defence to

the main claim and were issues upon which the third applicant has not succeeded. It is appropriate to word the costs order for the counterclaim so as to exclude those issues.

[56] With that qualification in mind, the order on the counterclaim should be that the respondent pay the third applicant's costs of the counterclaim on the standard basis, except for costs incurred in respect of the issues of whether Mr Richardson intentionally caused the fire and whether that intentional causing of the fire disentitled the third applicant to the proceeds of the relevant insurance policy.