Neutral Citation Number: [2024] EWHC 1283 (Comm)

Case No: CL-2023-000829

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**KING'S BENCH DIVISION**
**COMMERCIAL COURT**

7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: Friday, 17th May 2024

**Before**:

**MR JUSTICE FOXTON**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

**(1) SY RORO 1 PTE LIMITED**
**(2) SY RORO 2 PTE LIMITED** **Claimants**

**- and -**

**(1) ONORATO ARMATORI SRL**
**(2) F.LLI ONORATO ARMATORI SRL**
**(3) MOBY SPA**
**(4) COMPAGNIA ITALIANA DI NAVIGAZIONE SPA** **Defendants**

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**MR J LEABEATER KC** and **MR E JONES** (instructed by **Stephenson Harwood LLP**) appeared for the **Claimants**
**MR M COLLETT KC** (instructed by **Hill Dickinson LLP**) appeared for the **Defendants**

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# APPROVED JUDGMENT

*If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.*



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**MR JUSTICE FOXTON:**

1. This is the claimants' application against the first to fourth defendants for various heads of injunctive relief and ancillary orders.

2. The background to the dispute is complicated and becoming lengthier by the moment but I am able to take a brief summary from the judgment of Sir William Blair given in a trial in this litigation which took place on an expedited basis earlier this year.

3. In short, each of the claimants is the owner of a ro-ro ferry. Those ro-ro ferries were bareboat chartered to the second defendant under a head bareboat charter, then sub-bareboat chartered to the third defendant, and then sub-sub-bareboat chartered by the third defendant to the fourth defendant. There are two multiparty agreements ("MPAs") between each Claimant and the defendants, including the first defendant, which is a significant shareholder or a controlling party of the other defendants, and which has provided guarantees in respect of their liabilities. The various bareboat charters contain LMAA arbitration clauses. The MPAs and the guarantees contain English jurisdiction clauses.

4. An arbitral tribunal appointed under the head bareboat charter has held in following an expedited arbitral process that a termination event took place under the head bareboat charter and made orders requiring the second defendant to redeliver the vessels to the claimants. The tribunal then made a second award further fixing the mechanics of that re-delivery process in greater detail. There was a challenge under s.67 and s.68 of the Arbitration Act 1986 and, indeed, under the inherent jurisdiction of the court, to that second award which I summarily dismissed on paper earlier that week but there is an opportunity to seek an oral hearing in respect of that challenge.

5. The claimants also say that they had exercised rights under the MPAs requiring the charterers to terminate the sub-bareboat charters and the sub-charterers to terminate the sub-sub-bareboat charters and to seek redelivery.

6. Disputes under the MPAs were the subject of an expedited trial before Sir William Blair, to which I referred to earlier on, which is reported at [2024] EWHC 611 (Comm). In a judgment produced at great speed, Sir William essentially upheld the head owners' claims, holding that the sub and sub-sub-bareboat charters had been terminated at the same time as the head bareboat charter, or, if not, the relevant owner was required to terminate them. I should record the court's thanks to Sir William for making himself available to deal with the expedited hearing that Cockerill J had ordered and producing a comprehensive judgment within such a short period.

7. In addition to that, there has been an application by the claimants and their parent company for injunctive relief against the second to fourth defendants and a company called SAS, which is a shareholder in the sub-charters, to restrain what is alleged to be a misuse of confidential information. There is also an application by the claimants to seek anti-suit relief to prevent proceedings cg which had been brought by SAS against the claimants and others in Italy from continuing. Jurisdictional challenges have been brought to those applications and I have had to make various directions for the determination of those applications, all of which are pending.

8. The claimants have sought to arrest one of the vessels, the MARIA GRAZIA ONORATO ("the MGO") in France. The sub-sub-charterers have applied to release the vessel from arrest raising various objections to the arrest and also seeking release of the vessel under Art.5 of the 1952 Arrest Convention. I understand that release application has failed for the moment. I was told during the hearing today that what has been described as the fourth arrest application for the MGO has been upheld by the French court.

9. Against all that background, on 3 May a report appeared in Ferry Shipping News (which is not a publication, I must confess, I am wholly familiar with but I suspect appeals to an audience whose demographic can be ascertained from the title) in which the charterers referred to the fact of the arrest of the MGO and said that legal actions will be launched against CM, which is the group , of which the claimants form part, in Italy and abroad, seeking refunds for any damages incurred. Similar language appeared in a publication called Shipping Italy (about which I would make the same comments) in which the defendants, or those apparently speaking for the group of which they form part, said that the company would protect itself in all appropriate forums in Italy and abroad.

10. Against that background, the claimants wrote to the first to fourth defendants referring to the press articles and seeking undertakings that the defendants would not commence proceedings in jurisdictions otherwise and in accordance with the forum selection clauses in the bareboat charter and in the MPA. No such confirmation was provided and whilst various points have been made entirely legitimately about what conclusions I can properly draw from the press articles, no information has been given to the court as to the intentions of the defendants in relation to the future commencement of proceedings.

11. Against that background, the first orders that the claimants seek are anti-suit injunctions under the LMAA clause in the head bareboat charter so far as the second defendant is concerned and otherwise by reference to the English jurisdiction clause in the MPAs. Mr Collett KC for the defendants has taken two objections. First, he has taken the point that the claim form, which was issued in the MPA action heard by Sir William Blair, is not seeking relief in that action in relation to the head bareboat charter at all and that any anti-suit relief by reference to the arbitration clause in the head bareboat charterparty could not properly be said to be ancillary to the relief that is sought in the claim form by which the MPA action was commenced.

12. In relation to that particular issue, which Mr Collett KC recognises is a technical argument but is non-the worse for that, I have decided that the pragmatic way to deal with that is that the claim form can be amended (and the particulars of claim) so as to advance a case which would permit an application for an anti-suit injunction in respect of the head bareboat charter to be sought under s.37(1) of the Senior Courts Act 1981, pursuant to the correct statutory basis for anti-suit injunctions as identified by the Supreme Court in the *AES* Ust-*Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35. Mr Leabeater KC has confirmed that such an undertaking can be given. There can be no issue as to the court's jurisdiction: there is a choice of English law in the SPA, anti-suit relates to a London arbitration agreement (which itself would be governed by English law) the MPA provides for a mechanism for service here.

13. However, in so far as any order for permission to serve out were to be required and/or insisted on, it is overwhelmingly the case that England and Wales is the proper forum. Plainly, there is an unanswerable case that there is a binding arbitration agreement, Mr Collett KC having, on behalf of the second defendant, already successfully invoked that arbitration agreement before me in the first stage of his litigation, and England and Wales is overwhelmingly the appropriate forum against the background of the hearings before me and Sir William Blair, and given the English law and London arbitration provisions. So, to the extent that there are any further technical objections following the undertaking given, I hope it will be perceived that they will receive short shrift and that we have reached a stage where the principal objection having been addressed, I am expecting a more cooperative attitude going forward.

14. The second principal objection is, it is said, that the English jurisdiction clause in the MPAs is not an exclusive clause. That clause provides as follows:

> "For the exclusive benefit of the owner, the parties to this deed irrevocably agree that the courts of England are to have jurisdiction to settle any disputes:
>
> (a) arising from or in connection with this deed; or
>
> (b) relating to any non-contractual obligations arising from or in connection with this deed and that any proceedings may be brought in those courts."

15. That clause follows a choice of English law for both contractual and noncontractual obligations and is followed by a provision by which all of the parties nominate agents for the service of proceedings before the English court within this jurisdiction.

16. For a number of reasons, I am satisfied to the requisite high degree of probability that the clause is an exclusive jurisdiction clause in favour of the English court, albeit one which is asymmetric whereby the claimants could sue elsewhere should they wish.

17. First, Mr Collett KC accepted, and rightly so, that the court approaches a clause of that kind with a working presumption, albeit one capable of being displaced, that the choice of English jurisdiction is an exclusive one.

18. Second it has been held that in considering whether a choice of English jurisdiction not expressed to be either exclusive or non-exclusive in terms is exclusive, a powerful factor is the presence of an English choice of law clause because the choice of English law in conjunction with a reference to English jurisdiction strongly favours construing that jurisdiction clause as exclusive (see *Global Maritime Investments Cyprus Limited v OW Supply & Trading AS (under Konkurs)* [2015] EWHC 2690 (Comm) at [50]; *Generali Italia SpA & Ors v Pelagic Fisheries Corporation & Anor (Rev 1)* [2020] 1 WLR 4211, approved by the Court of Appeal in *AIG Europe SA and others v John Wood Group PLC & Anor* [2022] EWCA Civ 781 at [59]-[62]).

19. Third, the force to be derived from the choice of English law is, in my view, even more powerful in this case because of the extent to which the wording of the jurisdiction clause tracks the choice of law clause with its reference to claims arising

from, or out of, or in connection with the deed and non-contractual obligations arising from or in connection with the deed.

20. In addition, in my view, the suggestion that the clause is non-exclusive and therefore is intended to give, the claimants the exclusive ability to invoke the non-exclusive jurisdiction of the English court makes no sense. The MPA is governed by English law. No service out would be required because of the service of suit provision with the appointment of agents within the jurisdiction. Clearly, therefore, for all parties the English courts have jurisdiction. It makes no sense to have a clause purporting to make provision exclusively for the benefit of the owners of something which the MPA makes available to all. On the other hand, making a jurisdiction clause which is exclusive it terms one that operates only for the exclusive benefit of the claimants makes perfect sense because it creates a provision commonly found in contracts, particularly those which have a financial background or nature, namely an asymmetric jurisdiction clause which is exclusive so far as one party is concerned but not for the other.

21. There are some further points I should address which Mr Collett KC made which, in my view, do not alter the position.

22. First, he says how can the clause in the MPA be an exclusive jurisdiction clause when the bareboat charterparties have London arbitration clauses? Taken to its logical extreme, that point goes rather too far because if the LMAA clauses apply, they will to some extent preclude the operation of cl.20.2 whether it is an exclusive or non-exclusive choice of English jurisdiction. The reality is that when you have a suite of agreements of this nature, entered into as part of a single transaction, with different agreements having different forum selection clauses, the court will read them so that they can coexist. This process can involve giving even ostensibly wide words like "arising out of" or "in connection with" a narrower interpretation that they would have in a standalone agreement. However, that challenge arises whatever the nature of cl.20.2 and is not a pointer to the fact that it is a non-exclusive clause.

23. Mr Collett KC relied upon the decision of Walker J in *Perella Weinberg Partners v Codere* [2016] EWHC 1182 (Comm) but, as Mr Collett KC realistically accepted, that case is of limited benefit. The clause in that case provided that one party would have the benefit of an agreement that the courts of England "have non-exclusive jurisdiction to settle any dispute". Now plainly, because the word "non-exclusive" is used, that could never be anything other than a non-exclusive jurisdiction clause. The absence of that word here is significant.

24. Finally, I do not accept the word "may" in the clause can do the heavy lifting that Mr Collett KC requires it to do. It reflects the fact that in combination with the opening words of cl.20.2, the clause does not bind the claimants, the owners, as to where they can bring proceedings but there are contexts to numerous dimensions in which the word "may" in some form of forum selection clause, has been held to impose and create an exclusive forum, be that arbitration or court.

25. So, I am satisfied to the high degree of probability that cl.20.2 is an exclusive jurisdiction clause.

26. I am also satisfied that there is a real risk of proceedings being commenced otherwise than in accordance with the arbitration clause in the head BBCP and the exclusive jurisdiction clause in the MPA such that it is appropriate for the court to grant *quia timet* relief. The wording in the press articles seems to me naturally to extend beyond an attempt to challenge the legitimacy of the French arrest, not least in its express reference to Italy. Had there been any doubt, the defendants have had ample opportunity to confirm that they have no such intention and offer appropriate undertakings not to do so. Their failure to do so, or, indeed, offer any evidence as to what their intentions are speak volumes. I would note there have already been one set of Italian proceedings commenced by SAS and that factor, taken with the press articles and the absence of any explanation, more than establishes the necessary basis for *quia timet* relief.

27. So, I am satisfied, as it were, that stage one of the *Angelic Grace* test is met in relation to paras.1.1 and 1.2 of the draft order. I am not aware of any material that would make it inappropriate for the court to grant an anti-suit injunction at stage two of the *Angelic Grace* analysis, it being for Mr Collett KC to persuade me that there is. I am also satisfied it would be just and equitable to grant the injunction and, accordingly, I do so.

28. That brings me to paras.1.3 and 1.4 of the draft order which seek to restrain the Second to Fourth Defendants from making any application or submission to any court or tribunal which would, if accepted, be inconsistent with the claimants' immediate right to possession of the vessels, or which would permit those defendants, or any party to whom they chartered or purported to charter the vessels, to maintain, retain, or regain possession of the vessels. In the case of the second to fourth defendants, the order sought would prevent them from contesting or disputing the arrest order made by the French court in relation to the MGO or otherwise seeking to have the MGO arrest order set aside. It is fair to say it is the relief which has been sought by the fourth defendant in relation to the French arrest which appears to be the immediate source of this application.

29. Both parties have referred me to a section dealing with injunctions seeking to limit the respondent's actions in proceedings before foreign courts in Mr Raphael KC's book, *The Anti-Suit Injunction* (2nd ed), paras.4.66-4.70):

> "4.66 An injunction may also be granted if the foreign proceedings are an illegitimate interference with the processes, jurisdiction, or judgments of the English court, or if an injunction is necessary for the protection of the processes, jurisdiction, and judgments of the English court, provided, of course, that it is in the interests of justice to do so. If an anti-suit injunction is justified on the basis it is not necessary independently to show vexation or oppression, and although vexation and oppression will often overlap in practice with illegitimate interference, they are not the same conceptually.
>
> 4.67 Further, when an injunction of this kind is being considered, it is not generally necessary separately to demonstrate that England is the natural forum. The logical basis of the

> injunction is that the English court's jurisdiction needs to be protected, and if that is necessary then an injunction is legitimate whether or not the English court is the natural forum for the underlying litigation. The English court is the only appropriate court to assess the question of whether its processes need protection, and clearly has a 'sufficient interest' in doing so. This point is blurred over (*obiter*) in some of the summaries of the law that have been given, but if one goes back to bedrock, the distinction is clearly visible in Lord Goff's analysis in *Aérospatiale*.
>
> 4.68 Reasoning akin to this head of jurisdiction has sometimes been phrased in terms of whether the foreign proceedings were an 'abuse of process' of the English court. But language of this kind may cause confusion if all that is happening is litigation abroad, and so there is no actual abuse of the English court's own process. In *Wilson v Emmott* the Court of Appeal therefore discouraged this phrasing as a way of framing the issues generally in play. However, there may be situations where the inter-relation between foreign and English litigation creates an abuse of the process of the English courts.
>
> 4.69 Illegitimate interference with the processes and jurisdiction of the English court can include seeking to relitigate the merits abroad where a matter has been decided in England, or where it could and should have been decided in the English litigation, or an illegitimate collateral attack on the effectiveness of the judgment of the English court. It can also include foreign proceedings which harmfully distort the normal evidence-gathering procedures of an English trial. Foreign anti-suit injunctions to restrain proceedings in England, if contrary to comity, can also amount to illegitimate interference.
>
> Injunctions to protect the jurisdiction of the English court have been granted to restrain creditors from interfering with the forum's insolvency jurisdiction, and its policy of orderly and fair distribution among creditors, by bringing proceedings abroad with the aim of upsetting such distribution.
>
> 4.70 This type of justification for an anti-suit injunction also enables the grant of injunctions to restrain illegitimate interference with an English arbitration, or to prevent an illegitimate collateral attack on, or vexatious re-litigation of, an English arbitration award."

30. Mr Raphael KC says in a footnote:

> "...it is important to bear in mind that it is presumptively legitimate to resist enforcement of English judgments abroad, under the foreign

> legal system's own rules as to enforcement of judgments, in the normal way..."

31. That footnote refers to *Masri v Consolidated Contractors (No. 3)* [2009] QB 503 at [93]. That case was dealing with an attempt to obtain an injunction to prevent the enforcement of a foreign court's own judgment in that country which I accept presents a perhaps stronger case still than an attempt to prevent enforcement of an English judgment abroad. The Court of Appeal approved a passage from the judgment of Aikens J in *Mamidoil-Jetoil Greek Petroleum Company SA & Anor v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep. 1 at [201]-[208] in which he refused to grant an injunction which would have prevented the defendants from relying on a foreign judgment they had obtained as a reason for not complying with an English judgment. Aikens J relied in turn, on the decision in *ED & F Man (Sugar) Ltd v Yani Haryanto (No. 2)* [1991] 1 Lloyd's Rep.161 and 429. In that case in the Court of Appeal, Mann LJ, at p.440, approved the observations of Steyn J at first instance that it must be up to the courts of the place of enforcement whether to recognise an English judgment. At first instance, Steyn J regarded it as significant that *ED & F Man* had commenced one of the sets of Indonesian proceedings which had ended up in the judgment which is sought to prevent Mr Haryanto from relying on and which had involved an attempt by Mr Haryanto to relitigate some of the issues decided by the English court in an earlier action.

32. In this case, the arrest has been brought not by way of an enforcement measure in itself, or at least that would not appear to be the purpose of it, but for security of a maritime claim for the purpose of Art.1 of the 1952 Arrest Convention. It appears that the defendants, or some of them, wish to take the point that the right of arrest has not been appropriately invoked. Various issues have been raised as to why it is said that the arrest of the MGO was not an appropriate measure under French proceedings.

33. On the basis of the brief summary I have seen, I am not persuaded to the requisite standard that those can be said to involve re-litigation as such on issues decided by the English court or the LMAA arbitration, albeit I accept that if the arrest order is set aside or release of the vessel is obtained, and then having achieved that outcome, the orders of the English court (including any order made unders.42 of the Arbitration Act 1996 in respect of the awards in the head bareboat charter arbitration) were not complied with, the use of the vessel and the trading of the vessel would involve breach of those orders.

34. I am not satisfied that the draft orders sought offer any clear delineation between steps that can be legitimately taken to challenge the French arrest order on its own terms or by reference to the procedure relied upon to obtain it, and those which it is said would not constitute permissible grounds for seeking to resist enforcement. Whilst Mr Leabeater KC may be right that none of the points taken to challenge the French arrest have any merit, that is a matter, presumptively at least, for the French court whose arrest and enforcement jurisdiction the claimants have invoked and not for me.

35. Looking at the relief that was sought from the French court by the defendants, what effectively the claimants appear to argue is that it would be legitimate for the defendants to seek to challenge the arrest order but not to reverse the status quo of seizure of the vessel which the arrest order brought into being. It appears to me that

that would, in substance, amount to an order that would prevent the defendant from being able to invoke the procedures French law provides for resisting an arrest or challenging the enforcement of foreign judgments. The claimants, of course, already have orders of this court which the defendants are obliged to comply with requiring redelivery.

36. Against that background, I am not persuaded it would be appropriate to make the orders sought at paragraphs 1.3 and 1.4 of the draft. There is a real risk in the proposed orders, as drafted, that they would go too far and prevent the defendants from invoking legitimate objections to arrest or enforcement. They would in any event, to my mind, involve serious issues of comity given that the matter is before the French court. If the claimants are right that there are no legitimate grounds to resist enforcement or resist arrest, then they will ultimately prevail. As I have indicated, I am not persuaded that the English court should grant an injunction that would, as it were, tie the hands of the defendants in dealing with the proceedings that the claimants have initiated or at least that the terms of the draft order put before me provide a satisfactory basis for doing so. So, the orders sought at paragraphs 1.3 and 1.4 of the draft are refused.

37. I will now hear from the parties on any consequential matters that arise from those rulings.

(See separate transcript for proceedings after judgment)

38. There is an application for orders for alternative service on various the various directors identified in the penal notice to the anti-suit injunction which I have just confirmed that I am granting. The purpose of the application is to seek an alternative to the requirement of personal service which is ordinarily necessary before breach of an injunction can be sanctioned by committal under CPR 81.42(c), the default position being that an application for committal for breach of an injunction can only be brought following personal service of the order breached (see *Business Mortgage Finance 4 PLC & Ors v Hussain* [2022] EWCA Civ 1264 at [78]). However, it is well established that the court can prospectively permit alternative service of the injunction order and dispense with the requirement of personal service.

39. Ordinarily, that requires good reason. I have been asked and I am willing to proceed today on the basis that where the service in question is in a country which is a Hague Service Convention signatory, something higher than that - the language has been debated in many of the cases but it is sometimes said exceptional reasons are required to justify an order for alternative service in that context. I am also asked to make an order that the requirement for personal service be dispensed with if and to the extent that service by the alternative means proposed (by email with copy to Hill Dickinson LLP) is effective.

40. I am satisfied it is appropriate to make those orders. It will be apparent from the summary I gave at the start of my *ex-tempore* ruling on the substantive application that this is a hard-fought dispute which has generated and is continuing to generate ongoing litigation. On the face of things, an order of the LMAA tribunal which has been made has not been complied with, notwithstanding evidence given to that tribunal by a senior individual associated with the defendants that it would be

complied with. Again, on the face of things, the order of this court made by Sir William Blair has not been complied with. There has been what I have regarded as a hopeless challenge to one of the arbitral awards.

41. In those circumstances, it is important in this fast-developing situation for service of these orders to be made in a manner that will ensure effective service immediately. That reflects the general approach of this court in an injunction context as set out in cases such as *M v N* [2021] EWHC 360 (Comm) and numerous other cases. It also reflects, to my mind, the importance that those who might be amenable to the court's jurisdiction if the order is not complied with understand the significance and importance the English court attaches to the order and the urgency of the requirement for compliance. There is real uncertainty as to how long it would take for personal service to be effected. There is a paragraph in the first witness statement of Mr Gibbons (para.97) suggesting that at least in relation to a director of the third defendant and someone who appears to be the legal advisor to the board of directors (Mr Beniamino Carnevale) that attempts at personal service are likely to run into difficulty. However, in any event, they will take some time, and, in my view, it is important that the directors are immediately formally served in a way that complies with this court's requirements and are then able to take the necessary steps then to comply with the order.

42. I am also satisfied on the basis of para.99 of that witness statement that the method of service proposed (to email addresses which are all in use for the relevant directors with the further back up of service to Hill Dickinson LLP who act for the defendants) will be sufficient to bring the order and its terms to the attention of the directors and, in the circumstances, I am also willing to make the order that provided service is effected by email, the requirement for personal service can be dispensed with.

(See separate transcript for proceedings after judgment)

43. I have got to deal with the issue of costs as a matter of principle first.

44. I am satisfied the appropriate order to make is to award the claimants 80 per cent of their costs on an indemnity basis. By way of explanation, it is the case that the applications for the draft orders at 1.3 and 1.4 have not succeeded. One is therefore in a situation in which a claimant has come along to court seeking relief, has not got all of it, but the defendants have resisted all the relief sought. It is well established on the authorities that there is, as it were, a "winner's premium" in those circumstances, and the court should not approach the issue of costs on the basis that each side has had an equal amount of success. Further. the court was always going to want to be appraised of the background to this matter for the purposes of reaching its decision on the anti-suit application, including the French arrest proceedings. The suggestion that simply adducing a copy of the agreements and a couple of press releases would have done the job is wholly unrealistic.

45. So far as the basis of costs is concerned, it is right to say that this was a *quia timet* application but with rather more grounds for the *timet* than in many and it would have been very easy for the defendants to nip this in the bud by offering a frank explanation of their intentions. They did not do that and the two points that were run were to my mind, in one case, lacking in commercial merit and the other lacking in legal merit,

and form part of what appears to be an ongoing attempt to make recovery of these vessels prolonged and challenging. However, equally, I accept that there needs to be some reflection of the fact that the 1.3 and 1.4 applications did not succeed. Mr Collett KC's arguments on those issues were right as a matter of principle. I therefore award the Claimants 80 per cent of their costs on an indemnity basis to reflect those competing considerations.

46. So far as the assessment of costs is concerned, given that there has been an application brought on with some urgency and, indeed, I was the judge who took the view that it was urgent enough to list today, one has to make some allowance for the "all hands to the pump" factor which can lead to more individuals being involved than would otherwise be the case. I do think that it was possible at the hearing to reduce the number of personnel attending and I accept that there is a risk, even on an indemnity basis, of some duplication elsewhere.

47. So far as counsel's fees are concerned, Mr Collett KC may wish to take these up at Twenty Essex, but they do not look out of line with the fees that I would expect for an application of this kind.

48. If I was assessing costs on a 100 per cent basis, I would reduce the costs, given that they are on an indemnity basis, to £60,000. 80 percent of those amounts to £48,000, to be paid in fourteen days.

49. Given that I have actually not even reached a final decision on the construction of clause 202. point but just held the high probability of success test was made out, I am not persuaded the point is seriously arguable so as to merit permission to appeal but, of course, it will be open to the defendants to seek permission from the Court of Appeal.

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**(This Judgment has been approved by the Judge.)**

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