Neutral Citation Number: **[2025] EWHC 3378 (Comm)**

Case No: **CL-2022-000637**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **17 December 2025**

Before:

Mr Justice Picken

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In Re:

The Russian Aircraft Litigation – Operator Policy Claims

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Tom Weitzman KC and Kate Holderness (3VB), Josephine Higgs KC, Michael Holmes KC and Douglas Grant (7KBW), Peter Stevenson (Quadrant), Alexander Milner KC (Fountain Court) (instructed by **Morgan, Lewis & Bockius UK LLP**) for the **MLB OP Claimants**
Stephen Midwinter KC and Sophie Bird (Brick Court) (instructed by **Herbert Smith Freehills Kramer LLP**) for the **AerCap Claimants**
Alistair Schaff KC and Frederick Alliott (7KBW) (instructed by **Clifford Chance LLP**) for the **CC Claimants**
Christopher Loxton (3 Hare Court) (instructed by **Fieldfisher LLP**) for the **Deep Sky Claimants**
Matthew Reeve KC and Joseph England (Quadrant) (instructed by **McGuireWoods London LLP**) for the **Genesis Claimants**
Emma Hughes (3VB) (instructed by **Wordley Partnership**) for the **Shannon Engine Support Claimants**
Timothy Killen (3VB) (instructed by **Reed Smith LLP**) for the **Keystone Claimants**
Guy Blackwood KC, Tom Bird and Robert Ward (Quadrant) (instructed by **Weightmans LLP**) for the **Weightmans All Risk Defendants**
Jeffrey Gruder KC, David Peters KC and Helen Morton (Essex Court) (instructed by **Dechert LLP**), **Daniel Schwennicke (Fountain Court)** for the **Chubb Defendants**
David Bailey KC (7KBW), **Susannah Jones and Alexandros Demetriades (Twenty Essex)** (instructed by **Kennedys Legal Solutions Pte Ltd (through their local agents, Shoosmiths LLP)**) for the **Shoosmiths Defendants (All Risks and War Risks)**

Edward Batrouney (Essex Court) (instructed by **DWF Law LLP**) for the **DWF All Risk Defendants**
Nigel Tozzi KC (4 Pump Court) and Bajul Shah (XXIV Old Buildings) (instructed by **DAC Beachcroft LLP**) for the **DACB All Risk Defendants**
John Bignall (7KBW) (instructed by **DLA Piper UK LLP**) for the **DLA Piper All Risk Defendants**
Alexander Hutton KC and Ian Chai (Hailsham Chambers) (instructed by **Holman Fenwick Willan LLP**) for the **HFW War Risk Defendants**
Sarah Cowey (7KBW (instructed by **Penningtons Manches Cooper LLP**) for the **Swiss Re Defendants**
Nik Yeo and Orestis Sherman (Fountain Court) (instructed by **Reynolds Porter Chamberlain LLP**) for the **Fidelis Defendants**
Akhil Shah KC, James Duffy KC, Max Kasriel and Lachlan Hopwood (Fountain Court) (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **CMS War Risk Defendants**

Hearing dates: **17 December 2025**

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JUDGMENT

Wednesday, 17 December 2025

MR JUSTICE PICKEN

1. This is a hearing the purpose of which is to deal with a number of cost-related issues arising out of the discontinuance by the Claimants in the substantial proceedings of claims brought against the All Risk Defendants.

2. The first of the matters that needs to be addressed concerns the consequences of those discontinuances.

3. The All Risk Defendants' position is that they should have their costs. Their primary position is that they should have their costs pursuant to CPR 38.6, which is in these terms:

   "1. Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred or on before the date on which notice of discontinuance was served on the defendant ... ."

4. The Claimants' position is that, whilst noting the rule contained in CPR38.6, nonetheless the appropriate order, they say, is that the War Risk Defendants, who continue to be within these proceedings, should be required to pay directly the All Risk Defendants' costs pursuant to what is known as a Sanderson order. In the alternative, the Claimants' position is that a Bullock order should be made, which entitles them, in effect, to look to the War Risk Defendants to meet the liability that they have to pay the Claimants' costs. In effect, the costs under a Bullock order will be paid by the Claimants to the All Risk Defendants but the Claimants are entitled to be indemnified by the War Risk Defendants.

5. The All Risk Defendants' position, in essence, is straightforward. They say that they should have their costs from whomsoever, although their primary position is that, as I have indicated, the provisions of CPR 38.6 should apply.

6. It will be apparent from this brief introduction that the true debate between the parties on this issue has been a debate between the Claimants, on the one hand, and the War Risk Defendants, on the other, and that the All Risk Defendants have, for the reason indicated, been essentially observers on the issue.

7. Submissions have been directed to me over the course of the last day or so as to whether it is possible for the Court to depart from CPR 38.6. In this regard, I have been taken to a number of authorities.

8. It is not possible, given the need to give this ruling in relatively brief terms, to traverse the full range of authorities to which I have been taken. However, one of the most prominent is ***Brookes v HSBC Bank plc*** [2012] 3 Costs LO285, [2011] EWCA Civ 354, a decision of the Court of Appeal, and specifically the judgment of Moore-Bick LJ at [6], where he referred to certain relevant authorities and the principles as identified by the judge below, namely HHJ Waksman QC (as he then was) and set out a reformulated version of those principles in the following way:

"1. When a claimant discontinues the proceedings there is a presumption by reason of CPR38.6 that the defendant should recover his costs. The burden is on the claimant to show a good reason for departing from that position.

2. The fact that the claimant would or might well have succeed at trial is not itself a sufficient reason for doing so.

3. However, if it is plain that the claim would have failed, that is an additional factor in favour of applying the presumption.

4. The mere fact that the claimant's decision to discontinue may have been motivated by practical, pragmatic or financial reasons, as opposed to a lack of confidence in the merits of the case, will not suffice to displace the presumption.

5. If the claimant is to succeed in displacing the presumption, he will usually need to show a change of circumstances to which he has not himself contributed.

6. However, no change in circumstances is likely to suffice unless it has been brought about by some form of unreasonable conduct on the part of the defendant, which in all the circumstances provides a good reason for departing from the rule."

Moore-Bick LJ went on to state at [10] as follows:

"It is clear therefore from the terms of the rule itself and from the authorities that a claimant who seeks to persuade the court to depart from the normal position must provide cogent reasons for doing so and is unlikely to satisfy that requirement, save in unusual circumstances. The reason was well expressed by Proudman J in ***Maini v Maini****:*

'A claimant who commences proceedings takes upon himself the risk of the litigation. If he succeeds, he can expect to recover his costs but if he fails or abandons the claim at whatever stage in the process, it is normally unjust to make the defendant bear the costs of proceedings which were forced upon him and which the claimant is unable or unwilling to carry through to judgment.'

That principle also underlines the decision of this court in ***Messih v McMillan Williams****. There may be cases in which it can be said the defendant has brought the litigation on himself, but even that is unlikely to justify a departure from the rule if the claimant discontinues in circumstances which amount to a failure of the claim."*

9. The approach there set out by Moore-Bick LJ is not, as Mr Schaff KC urged upon me, to be regarded in any statute-like way. Rather, the principles are principles which should be taken to inform the approach to CPR 38.6 but not to dictate. Specifically, Mr Schaff submitted that the reference to conduct need not be taken as exclusively involving unreasonable or bad conduct but is an indication that it is appropriate in particular cases to have regard to the wider conduct of the parties generally.

10. I accept that submission, whilst nonetheless noting that the examples given in ***Brookes*** are illustrations of the need for there to be a cogent reason for departing from the default position contained in CPR 38.6.

11. Mr Schaff's submission was underpinned by his invitation to the Court to approach the case by reference to the wider provisions contained in CPR 44.2. His submission was that it would be inappropriate for the Court to regard itself as hidebound by CPR 38.6. Again, that is a submission which I accept. It is, pertinently, the approach described also in ***BAE Systems Pension Funds Trustees Limited v Bowmer and Kirkland*** [2018] EWHC 1222 TCC, in which Jefford J rejected a submission made by the respondent to an application for a Sanderson order that, in essence, was to the effect that CPR 38.6 cannot be departed from. She put the matter this way at [27]:

"Turning then to the application itself, as I have said the nature of the application is that I should make an order that displaces the presumption of a normal order under Part 38.6 that the claimant should pay the costs of the defendant against whom they have discontinued."

She, then, said this at [28]:

"Mr Lamont recognises that there is no authority on which on discontinuance a costs order has been made against another defendant to the proceedings, but he argues, rightly in my view, that I have a wide jurisdiction in respect of costs under Part 44 and that it would be open to me to make such an order if I were minded to do so ... ."

She went on to recorded the submission made by the responding party as follows at [29]:

"Ms Sinclair QC, on behalf of Bowmer and Kirkland, argues firstly that the application is fundamentally misconceived. She says that because in effect it asks for a Sanderson order. That is an order that an unsuccessful defendant pays the costs of a successful defendant directly. That sort of application arises at the conclusion of a trial where there is potentially a successful and an unsuccessful defendant. In this case, there is a quasi-successful defendant, Geofirma, who have been let out of this action, but there is no unsuccessful defendant. She says therefore that it is simply not open to me to make an order under Part 38.6 that she should pay the costs of another defendant."

Jefford J said this, then, at [30]:

"I am not persuaded, as I have already indicated, that that is right and that there are no circumstances in which a court could order a defendant to pay the costs of another defendant against whom proceedings have been discontinued. I say that given the wide jurisdiction of the court and the possibility of envisaging unusual circumstances, for example where a claimant had been possibly misled by one defendant into suing another, where such an order might then be appropriate, but that is not this case. In the absence of any authority in which such an order has been made to me seems to be an indication at least of how unusual such a case would be."

12. I agree with Mr Schaff when he observed by reference to this authority, and some others, that, in the circumstances, CPR 44 (the 'wide jurisdiction' as Jefford J described it) is applicable in this case notwithstanding the applicability also of CPR 38.6.

13. The question, however, boils down to this: whether, allowing for the fact that CPR 44.2 is applicable, just as CPR 38.6 is also applicable, this is an appropriate case for the making of either a Sanderson or a Bullock type order.

14. This, it is acknowledged by all counsel, is ultimately a matter for the exercise of the Court's discretion.

15. That said, it is a discretion which falls to be exercised in circumstances where the authorities speak as one on a fundamental point: as Jefford J herself appears to have recognised, a Bullock or Sanderson order is typically made where there is a successful defendant and an unsuccessful defendant, the order being made against the unsuccessful defendant and requiring the unsuccessful defendant to pay the costs of the successful defendant.

16. In the present case, it is undoubtedly the position that the All Risk Defendants are successful, in circumstances where the claims against them have now been discontinued by the Claimants. However, as matters presently stand, the War Risk Defendants have neither been succeeded against nor have they themselves succeeded.

17. That question - of success or otherwise - will only be known after the trial and, indeed, after the judgment produced in the wake of the trial. As matters currently stand, whether the Claimants will succeed against the War Risk Defendants is, in short, an unknown.

18. In that respect the fact that the concession that has been made by the War Risk Defendants, namely as to the existence of a War Risk peril, and its consequent leading to the discontinuance of the claims against the All Risk Defendants, takes matters nowhere.

19. Mr Schaff submits that, on the contrary, the Court should have regard to the fact that, in view of Butcher J's judgment in the LP claims (specifically the findings concerning the existence of a War Risk peril) and, then, the consequential concessions made by the War Risk Defendants, the War Risk Defendants should be regarded as now having been unsuccessful.

20. That to a degree is true inasmuch as there was a dispute between the All Risks market and the War Risks market, and in that dispute the War Risks market has failed, but the fact is that, within the context of these proceedings, whether the claims brought by the Claimants will succeed against the War Risk Defendants is not yet a matter that has been resolved - and it will not be resolved until judgment has been given in the forthcoming trial. When exercising the discretion that all parties accept I have, this is a significant and relevant starting point.

21. Furthermore, I have been referred to further two authorities which seem to me to have significance in this respect, the first of those authorities being ***Beoco Limited v Alfa Laval Co Limited*** [1995] QB 137. In that case, Stuart-Smith LJ had the following to say at pages 156 to 157:

"Secondly, I must deal with the plaintiff's cross-appeal on costs. The judge ordered the plaintiff to pay the second defendant's costs. That was obviously right and Mr Knight does not challenge it. But the judge rejected Mr Knight's submission that the first

defendant should be ordered to reimburse the plaintiff in respect of the second defendant's costs. The basis of Mr Knight's argument before the judge and before this court was that the plaintiff only joined the second defendant as a defendant because the first defendant blamed the second defendant in its amended defence; therefore it was reasonable for the plaintiff to add it as a defendant. There should, he submitted, be a Sanderson or Bullock order ... The judge refused to make such an order. He said the onus was upon the plaintiff to assess the whole merits of the case before joining the second defendant. The fallacy of Mr Knight's argument is this: while an unsuccessful defendant, A, will normally be held liable to pay the costs of a successful defendant, B, whether directly or indirectly, whom he had blamed, that does not apply where the plaintiff fails against both. In such circumstances, A is not ordered to pay the costs of B even though he may have blamed him. It is, as the judge said, for the plaintiff to decide whether he is going to succeed against either."

It seems to me that those observations are directly applicable in the present case.

22. So, too, is ***McGlinn v Wharton Contractors Limited*** [2007] EWHC 698 TCC. In that case, HHJ Coulson QC (as he then was) dealt with the issue starting at [12] and, then, going on at [18], saying the following at [19]:

"Different considerations will usually apply if the claimant was unsuccessful against both Defendants. In ***Beoco*** *... a case decided before the CPR, the plaintiff's originally pleaded claim against both Defendants failed. However, the plaintiff succeeded against D1 on a new case that the judge had allowed by way of amendment on the first day of the trial. He ordered the plaintiff to pay D2's costs and refused to make a Bullock/Sanderson order. D1 unsuccessfully appealed the judge's order which allowed the later amendment. The [plaintiff's] cross-appeal [on the refusal to make a Bullock/Sanderson order] was rejected in robust terms..."*

HHJ Coulson QC, then, set out the passage from Stuart-Smith LJ's judgment that I have myself referred to, before going on at [20] to say this:

"On behalf of Mr McGlinn, Messrs Williamson and Selby argued that the ***Beoco*** *case no longer represents the right approach in law and that the CPR allowed the court to take a much more flexible approach to the making of a Bullock/Sanderson order. Although Messrs Bartlett and Hamilton agreed with the general proposition that the CPR allowed the court greater flexibility in making costs orders, they submitted that it was wrong in principle to make a Bullock order in circumstances where both Defendants had been successful in defeating the claimant's claims. It was therefore their submission that the* ***Beoco*** *case still represented the law."*

HHJ Coulson QC, then. said this at [21]:

"As a statement of general principle, I accept the submissions made by Messrs Bartlett and Hamilton. It seems to me that complicated only be in truly exceptional circumstances that a claimant, who has lost against both Defendants, might recover the costs of pursuing one defendant against the other defendant. In my judgment, if the claimant has been unsuccessful against both Defendants, the justification for a Bullock/Sanderson order simply does not arise. Thus I consider that this principle,

*succinctly explained by Stuart-Smith LJ in the **Beoco** case, remains good law notwithstanding the greater flexibility of the CPR."*

23. In the present case, were the position to be arrived at after the trial in these proceedings that the Claimants failed against the War Risk Defendants, then, the position would be precisely the same as described by HHJ Coulson QC in ***McGlinn***, namely both Defendants would have been successful and, more particularly, the Claimants would have been unsuccessful.

24. In those circumstances I consider it inappropriate, indeed, potentially grossly unjust, to make a determination now that deprives the Court later from proceeding, with full knowledge, to make a determination as to the ultimate costs outcome of the proceedings.

25. This is a powerful factor, in my assessment, when considering the matter of discretion, which weighs against the Claimants on their application for a Sanderson or Bullock order. It is only at the conclusion of the proceedings, not only that it will be known whether the claim against the War Risk Defendants has been successful, but that it will also be known, in the round, what factors appropriately fall into the costs determination.

26. This applies generally, but it applies even more so as regards a Bullock or Sanderson type order for the reasons which I have outlined and as reflected in the authorities to which I have referred.

27. There is, in these proceedings, resistance by the War Risk Defendants in relation to the case based on the cut-through clause. If that resistance were to prevail and the Claimants, therefore, were to fail in respect of the cut-through clause reliance that they have, then, the War Risk Defendants would be found not liable. In those circumstances, it is difficult to see, whilst not wishing, of course, to prejudge this issue, given that in all likelihood I will be the trial judge, why it would be irrelevant, then, to consider the liability for the All Risk Defendants' costs in the light of that success by the War Risk Defendants.

28. The position is not as straightforward as Mr Schaff, in particular, submitted as to ask why it is that the All Risk Defendants were involved as Defendants and why it is that they have now come out as Defendants. The position, if the War Risk Defendants are successful at trial, will be a rather wider question, which would involve asking why the proceedings were brought at all, whether against the All Risk Defendants or the War Risk Defendants.

29. When I say that, I do not, of course, mean to suggest that there is anything inappropriate in the bringing of the proceedings, but merely to reflect the fact that, if the War Risks Defendants are successful at trial, then, they will have established that they are not liable and will be able to say that the proceedings should not have been brought - not as, I say, from a propriety perspective but from a viability perspective or a success or otherwise perspective.

30. In those circumstances, as a matter of discretion, it seems to me inappropriate now, as it were, to dive in on something of a snapshot and make the type of order that the Claimants seek. Far more fair would be to defer that decision and allow the decision to

be made in the full knowledge, not only of the success or otherwise of the claims, but in full knowledge of any other matter that might appropriately go into the costs mix.

31. I, then, return to CPR 38.6, again in the context of exercising the discretion that needs to be exercised, not only for CPR 38.6 purposes but also for the wider purposes contained in CPR 44, and I have regard to the guidance set out by Moore-Bick LJ in ***Brookes***.

32. This is not a case where, even allowing for Mr Schaff's submission that I need to be careful not to view that guidance in a statute-type way, the conduct of the War Risks Defendants is such as to justify a departure from the default presumption contained in CPR 38.6. I say this by applying the guidance set out in ***Brookes*** and in other cases in an analogous way since, of course, those cases are concerned, and only concerned, with cases as between a claimant and the defendant against whom the claims have been discontinued.

33. Even viewing things in that wider way, I struggle to see where the conduct here could be said to arise as to justify a departure from the CPR 38.6 presumption.

34. Of course, in passing I should say that that is all the more the case as regards the All Risk Defendants, whose conduct has not been the subject of any adverse observation.

35. For all those reasons, and emphasising again that what I am doing here is seeking to exercise a discretion, I am unpersuaded that it is appropriate either to make a Sanderson order or a Bullock order. The right order should be the default presumption contained in CPR 38.6, which sees the Claimants pay the costs of the discontinued claims against the All Risk Defendants, albeit on the express basis (which should be set out in the order that comes to be drawn up following this hearing) that the matter can be revisited, in the sense that a costs-sharing order, probably in the format of a Bullock order, can be sought after the trial has taken place.

36. There is one last matter in the context of discretion, which is this. As emerged during the course of the parties' respective submissions, what this debate is really about is as to who should write the cheque for the payments on account that the All Risk Defendants are seeking also at this hearing. This is a matter to which I will come in terms of how much should be paid by way of payments on account. However, the maximum sought is in the region of £20 million, and the All Risk Defendants seek 60% of that, whereas what is being said against that is that there should be a rather lesser amount ordered. Whatever I decide on that, the maximum is likely to be in the region of £15 million, and it may well be, subject to later discussion, that it will be considerably below this.

37. In circumstances where the Claimants and, indeed, the War Risk Defendants are commercial entities and there is no suggestion at all of stifling of claims or of an inability to meet a payment on account liability of the sort that I have mentioned, what essentially the debate for the last day and a half has entailed is a debate concerning cash flow. Given the relatively modest -- I stress relatively in this context -- sums of money concerned, I see no injustice in requiring the Claimants to make those payments on

account, albeit with the ability later, as I have indicated, to come back and require the War Risk Defendants to indemnify them through a Bullock type order.

38. The submission against this is essentially that it is the War Risks Defendants' doing that the All Risk Defendants have been involved in these proceedings at all. That is not a submission, however, which for reasons I have sought to outline, I accept.

39. The amount of money that is here concerned is relatively modest and, as I have indicated, essentially the debate has been as to cash flow. There is no difficulty with the Claimants having to make such payments and, therefore, again, exercising my discretion, I see no difficulty in making the order that I have indicated.

DRAFT JUDGMENT 2

40. MR JUSTICE PICKEN: I now have to deal with a question of timing of the detailed assessment. I will deal with this very quickly indeed.

41. I do not mean this at all critically, but a technical point was taken by Mr Gruder KC as to the application of CPR 38.6(2)(b) as opposed to CPR 47.7.

42. The technical point arises in this way

43. CPR 38.6(2)(b) provides as follows:

> *"If proceedings are only partly discontinued ... (b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings."*

44. Mr Gruder's submission was that, in circumstances, where, as here, the discontinuances ha the effect of the All Risk Defendants dropping out altogether, this is not to be regarded as a partly discontinued type of case but as a wholly discontinued type of case and, on that basis, the relevant provision is CPR47.7, which provides that assessment proceedings should commence 3 months after the date of it service of the notice of discontinuance.

45. I note Mr Gruder's argument. However, I decline to decide whether it is right because what is accepted is that I can vary either the approach put forward in CPR 38.6(2)(b) or, indeed, that contained in CPR 47.7.

46. In deciding to vary it, of course, I note Mr Gruder's argument, but even assuming that he is right and, therefore, the relevant provision is CPR 47.7 as opposed to CPR 38.6(2)(b), nonetheless in these proceedings I consider it appropriate to vary the relevant timescale.

47. I am persuaded by Mr Tozzi and, indeed, Mr Gruder's and Mr Blackwood's submissions on behalf of the All Risk Defendants, that it would be appropriate that the detailed assessment proceedings start before judgment is handed down in the trial due to commence next year.

48. The reason why I am persuaded by this is that there is force, as I see it, in the observation that, first, it would be as well in the All Risk Defendants' perspective if the assessment proceedings were started sooner rather than later and, secondly, it would make sense for all parties (that means the Claimants and the War Risk Defendants also) to see the scale of the costs in advance of the consequentials hearing following the judgment that I will hand down after the trial.

49. Thirdly, it does seem to me to make little sense and, indeed, to produce potential unfairness so far as the All Risk Defendants are concerned, to have a position where detailed assessment proceedings only even start after the consequentials hearing. However, we are in the area here of balancing rival considerations of practicality, and it does seem to me that to require now the detailed assessment proceedings to start without delay, particularly, in fact, when some of the All Risk Defendants themselves need, they say, until the end of April to prepare the relevant bill of costs, would be to require the remaining parties to the litigation (that is, the Claimants and the War Risk Defendants) to be doing rather too much, even allowing for the fact that, of course, there are specialist costs lawyers involved in detailed assessment proceedings who are not involved in the substantive proceedings.

50. The compromise, the least unsatisfactory (as apparently Henshaw J described it in a different context) approach, is this: to allow the detailed assessment proceedings to commence on 1 September next year, assuming that that is not a weekend, so as to mean that the three-month period for filing of the bill of costs by the All Risk Defendants expires before the end of the year (that is, next year), so as to mean that that bill of costs is available to the other parties by the time of the hand-down of judgment.

51. It would be a matter for the costs judge in the costs proceedings, then, to set a timetable for the responses by the War Risk Defendants and the Claimants to that bill of costs, insofar as further time is required, and I would envisage that more time would indeed be provided to take account of the consideration I have myself identified just now.

52. This leaves two further matters. One is the position of one set of Claimants represented by Mr Weitzman, as to whom concerns have been expressed by Mr Blackwood as to their financial wherewithal and, therefore, the ability ultimately for Mr Blackwood's clients ever to be paid the costs. In the light of what Mr Weitzman has had to say by way of response to that, namely that the liquidators of that company have provided certain assurances which I need not outline, I am satisfied that this is a concern that need not factor into my decision.

53. This leaves the question of interest. The default position is that Judgments Act interest will run from the date of discontinuance unless the Court decides otherwise. In this respect, I am informed that, in respect of the detailed assessment proceedings concerning the jurisdictional challenges in front of Henshaw J, there was a variation to that position, which involved Henshaw J ordering that interest should run (presumably from the date of the orders made by him) on those applications at the rate of 1% above base rate and then a month after delivery of the bill of costs at the Judgments Act rate.

54. As I understand it, also, Butcher J, in the consequentials hearing after his LP judgment, decided that Judgments Act interest should only run 3 months after delivery of the relevant bill of costs and in the meantime, as I understand it, 1% above base rate.

55. In the circumstances, it seems to me that there is something to be said for adopting a similar approach.

56. I canvassed, during the course of argument, the possibility that Judgments Act interest rate should run from, say, the end of April next year, which is the date by which all All Risk Defendants envisage being able to be ready to serve their bill of costs. That was something that was attractive to me, but I am persuaded by the submissions made by the Claimants, particularly Mr Weitzman and Mr Killen, that that does not have a great deal of sense to it given that the rationale of Mr Justice Henshaw's decision and Mr Justice Butcher's decision was to have Judgments Act interest running from a period after which the bill of costs can have been studied and a view taken as to what to do in relation to it.

57. In those circumstances, following the approach of Henshaw J, I am going to order that interest should be at 1% above base rate until delivery of bill of costs, but I am persuaded that it should be 1 month after delivery of the bill of costs, rather than 3 months, not least because it may well be that, in the meantime, the All Risk Defendants will have had engagement with the other parties, with draft bills and the like, so as to mean that those other parties will largely know what is coming.

58. So to be clear, 1% above base rate until 1 month after delivery of the bill of costs, at which it will then be at Judgments Act rate.

DRAFT JUDGMENT 3

59. MR JUSTICE PICKEN: This is now the very end of a very heavy two-day hearing. The matter I have just been hearing argument on for the last - best part of two hours - relates to the various All Risk Defendants' applications for payments on account pursuant to CPR44.2(8).

60. That, as is well-known, provides as follows:

> *"Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs unless there is good reason not to do so."*

61. The approach to adopt in relation to this is, as Christopher Clarke LJ described it in ***Excalibur Ventures v Texas Keystone*** [2015] EWHC 566 (Comm) at [24], *"necessarily somewhat rough and ready"*. That is inevitably the case because there has been no detailed assessment at this stage and, therefore, the Court is necessarily concerned with looking at estimates. A broad-brush, again to quote Christopher Clarke LJ, approach is, therefore, required.

62. As I put it in ***Verlox International v Antoshin*** [2022] EWHC 3182 (Comm) at [29], it is necessary to adopt an approach which entails:

"deciding what level of interim payment to order is to order an amount that is a reasonable sum on account of costs, namely a reasonable sum, being an estimate of the likely level of recovery subject to an appropriate margin to allow for error."

In stating that, I was myself following certain observations made by Leggatt J (as he then was) in ***Dana Gas v Dana Gas Sukuk*** [2018] EWHC 3342 (Comm) at [6].

63. It is with that broad-brush and necessarily somewhat rough and ready approach, but nonetheless allowing a margin for error, that I now approach the assessment.

64. In doing so, I make it clear that I have taken account of everything that has been written by way of submission and, indeed, where relevant, in witness statements and in the necessarily detailed, although I appreciate somewhat abbreviated, oral submissions that I have heard today.

65. The essential approach of the All Risk Defendants - and I am not going to set out, because I simply do not have time, the particular amounts sought by each of those All Risk Defendants - is to invite the Court to order payments on account in the amount of 60% of the various claims identified.

66. The approach of the Claimants, who are the paying party in the light of my earlier ruling, is variously to say that no payment on account should be made because there is an unsatisfactory approach adopted by certain of the All Risk Defendants in putting forward the figures that they do; alternatively, in several cases, to invite the Court to award merely 30% of the amount sought; and in one further case, namely that of AerCap, to invite the Court to award no more than 50% of what is sought.

67. I have reached the clear conclusion, as a matter of discretion, but taking into account everything that has been said, that the appropriate order is, indeed, 50%.

68. I make no bones about the fact that this is broad-brush, as I repeat for the third time, but it has to be broad-brush, and standing back and looking at the overall level of costs sought, whilst large, this is all relative in the light of these vast proceedings and the costs that I know have been incurred, both in these proceedings and in the related proceedings before Butcher J and, indeed, in relation to the jurisdiction challenge before Henshaw J.

69. Overall, I consider that the justice of the case is met by permitting the All Risk Defendants to have 50% of the amount sought and, in doing so, I am fully conscious of criticisms, detailed in many cases, that are made of the respective approaches, but the Court is in no position to form any proper view about those criticisms; they will ultimately have to come out in the detailed assessment wash, but the Court cannot grapple with them now.

70. There is no reason to suppose, even allowing for admitted errors or admitted changes required to the methodologies used, that the amounts claimed, which, as I said, in their individual parts are not as vast as they might have been, entail errors which would justify my either deciding now to make no order for payment on account, which would be unfair and not in accordance with the principle behind the provisions allowing for payments on account, or to reduce the amounts sought as swingeingly as I have been invited to do.

71. So, it is 50%.