



Neutral Citation Number: [2019] EWHC 959 (Ch)

Case No: HC-2016-000513

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY DIVISION**  
**COMPETITION LIST**

The Rolls Building  
7 Rolls Building  
Fetter Lane  
London, EC4A 1NL

Dated 19<sup>th</sup> February 2019

**Before:**

**THE HONOURABLE MR JUSTICE MARCUS SMITH**

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**Between:**

<b>AGENTS' MUTUAL LIMITED</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>GASCOIGNE HALMAN LIMITED</b>	
<b>T/A GASCOIGNE HALMAN</b>	<b><u>Defendant</u></b>

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**MR. ALAN MACLEAN QC and MS. JESSICA BOYD** (instructed by **Eversheds Sutherlands International LLP**) for the **Claimant**  
**MR. DAVID EDWARDS QC and MR. STEPHEN DU** (instructed by **Holman Fenwick Willan LLP**) for the **Defendant**

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**Approved Judgment**

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**MR. JUSTICE MARCUS SMITH:**

1. At this Case Management Conference following the decision of the Court of Appeal in this case ([2019] EWCA Civ 24), I have before me various applications. The first is an application for a second interim payment on account of costs, over and above the interim payment on account of costs that I ordered to be paid at the conclusion of the competition issues hearing in this matter.
2. I made this order, sitting as a Chairman of the Competition Appeal Tribunal, on 12 July 2017. More specifically, the order provided that:
  - i) The Defendant should pay the Claimant's costs of and occasioned by the competition issues, such costs to be dealt with by detailed assessment of a Costs Officer if not agreed; and
  - ii) The Defendant should make an interim payment of costs to the Claimant in the amount of £1.243 million within 14 days.
3. The detailed assessment of the Claimant's costs is about to begin. Given that the order that I made in relation to the competition issues was appealed to the Court of Appeal, I can understand why that decision to commence detailed assessment was not commenced earlier. Had the Court of Appeal reversed the decision of the Competition Appeal Tribunal in relation to the competition issues, the incidence of costs might well have changed.
4. Now, in light of the time that has passed since my costs order, I am invited to make a further order that the Defendant should a further interim payment on account of the Claimant's costs.
5. I accept that I have jurisdiction to make such an order, and the question is whether I should exercise my discretion to make it. In all the circumstances, it seems to me that I should not make such an order. I heard argument in July 2017 in relation to the question of costs, in particular in relation to the question of an interim payment. I made a reasoned decision, which is set out in a ruling dated 12 July 2017. My reasoning on this point is at [21]. I cannot see that there has been any material change of circumstance that would justify my revisiting of the order that I made on that occasion.
6. It is said on behalf of the Claimant that there has been, between the date of my order and today, a non-payment of costs by the Defendant. That is true: but the defendant was perfectly entitled, having made the interim payment that I ordered, to await the outcome of the detailed assessment. I entirely accept that the purpose of an interim costs order is to ensure that the successful party, entitled to costs, kept out of its money for as short a period as possible. But the fact is, when making an order for interim payment on account of costs, one must ensure that a safe minimum is ordered, that will not exceed the final amount of costs ordered. I reached the conclusion as to what a safe minimum was back in July last year and, as I say, there has been no change in circumstance to justify any revisiting of my considered judgment.

7. I therefore decline to make a further order for an interim payment on account of costs.

This transcript has been approved by Mr. Justice Marcus Smith

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