Neutral Citation Number: [2023] EWHC 2002 (Comm)

Case No: CL-2021-000052

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Date: 01/08/2023

Between :

MR JUSTICE FOXTON

- -

Between :

ROLLS-ROYCE HOLDINGS PLC	**Claimant**
- and -	
GOODRICH CORPORATION	**Defendant**
- and -	
ROLLS-ROYCE PLC **ROLLS-ROYCE TOTAL CARE SERVICES LIMITED** **ROLLS-ROYCE CORPORATION** **ROLLS-ROYCE DEFENSE SERVICES INC** **ROLLS-ROYCE DEUTSCHLAND LTD & CO KG** **ROLLS-ROYCE BRASIL LIMITADA** **ROLLS-ROYCE CANADA LIMITED** **ROLLS-ROYCE CONTROLS AND DATA SERVICES LTD** **(formerly Rolls-Royce Goodrich Engine Control Systems Limited)**	**Third to Tenth Parties**

David Caplan and **Michael Kotrly** (instructed by **Slaughter and May**) for **the Claimant** and **the Third to Tenth Parties**
Simon Croall KC and **Stewart Chirnside** (instructed by **Bristows LLP**) for **the Defendant**

Hearing date: 26 July 2023
Draft Judgment to the Parties: 27 July 2023

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FOXTON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Tuesday 01 August 2023 at 10:30AM.

The Honourable Mr Justice Foxton:

1. There are issues between the parties as to whether, and if so for what period, Goodrich is entitled to pre-judgment interest on the sum of $112,285,440 awarded to it by the judgment reported at [2023] EWHC 1637 (Comm) (**the Judgment**):

    i) The RR Entities argue that there is a contractual provision addressing the entitlement to interest for sums unpaid under the ECSURS which Goodrich has not invoked and whose terms Goodrich has not satisfied, which precludes Goodrich from recovering interest under s.35A of the Senior Courts Act 1981.

    ii) If statutory interest is to be awarded, the RR Entities argue that as a matter of discretion, the court should refuse to award Goodrich interest, or only award it reduced interest, for the period from 1 January 2018 to 28 February 2023.

THE BACKGROUND

2. In the original Part 20 Claim, Goodrich sought an account of all amounts due in respect of Initial Provisioning, damages for breach of the Exclusivity Obligation, and statutory interest. The claim for an account was later deleted. In February 2023, a claim for damages for breach of clause 11 was introduced by amendment (the amendment having been trailed in December 2022). In circumstances which I describe in the Judgment at [219]-[227], a claim for debt was introduced towards the end of the trial. No claim for contractual interest was advanced.

3. In the Defence to the Part 20 Claim, the RR Entities noted the claim for statutory interest, but denied it "for all the reasons given above". No reference was made to any contractual interest provision.

4. After the Judgment was handed down, on 12 July 2023 Goodrich wrote to the RR Entities setting out the amount which they contended that they were entitled to by way of statutory interest, and enclosing calculations supporting a claim for interest in the sum of $23,240,028 to 3 July 2023, and increasing at the rate of $25,580 per day. Interest was claimed at US Prime, on the basis of my judgment in *Lonestar Communications Corp LLC v Kaye* [2023] EWHC 732 (Comm), [17].

5. On 18 July, the RR Entities replied by pointing to clause 44 of the ECSURS (the first occasion, so far as I can discern, on which reference was made to this clause in the litigation), which addressed the position "if R-R does not make payment in accordance with this Agreement". I set out the terms of clause 44 below. The RR Entities argued that clause 44 precluded the claim for statutory interest. If statutory interest was to be awarded, the RR Entities argued that the rate for the first three months should be Bank of England Base Rate plus 2%, but they accepted that US Prime was otherwise the appropriate rate. In response, Goodrich adhered to its claim to statutory interest.

THE CLAUSE 44 ARGUMENT

The construction of clause 44.

6. Clause 44 provides:

> "Interest on Late Payment
>
> If R-R does not make payment in accordance with this Agreement, GR shall be entitled to recover (in addition to the principal sum owed) a sum from R-R equal to the interest which it pays or loses as the case may be in consequence of such late payment upon provision of evidence of such payment/loss. The amount recoverable for the first three months following such late payment shall not in any event exceed a sum equivalent to interest at 2.0% above the Bank of England's Base Rate on the overdue payment for the period between the dates on which such payment was due and not made. For these purposes, the Bank of England's Base Rate shall be that applicable at the date the overdue payment was due. The Parties acknowledge and agree that such payments are sufficient to compensate GR for any such late payment".

7. I am satisfied that the effect of clause 44 is as follows:

   i) The clause is intended to address the position when payments are not made by the RR Entities "in accordance" with the ECSURS.

   ii) The clause provides for recovery by Goodrich of interest in that scenario (rather than any other form of loss which might flow from late payment), but limits that recovery to (a) the cost of any interest Goodrich pays on borrowing which would have been avoided if the payment had been made (e.g. on an overdraft or debt facility), or (b) any interest it would have received (e.g. by placing funds on deposit) had the payment been made.

   iii) The clause applies to all amounts which were not paid "in accordance" with the ECSURS, however small. The parties must have intended that the process of quantifying Goodrich's interest entitlement would be an essentially summary and straightforward one, effectively involving little more than proof of the interest rate it paid under any bank facility or interest it received on any bank deposit. The parties are likely to have appreciated that a large US company like Goodrich might have a number of funding and deposit arrangements in place at any one time. The clause is not clear as to whether Goodrich has a choice between claiming *damnum emergens* or *lucrum cessans,* and it is not necessary to determine whether that is the case. However, given the likely complexities of working out when one type of claim would apply to the exclusion of the other, and the words "GR shall be entitled", I incline to the view that the clause does give Goodrich such a choice.

   iv) The recovery of either interest paid or interest foregone is conditional upon Goodrich providing the RR Entities with evidence of that loss, albeit, consistent with the businesslike construction which I am satisfied that the clause requires (see (iii)), the evidence required to establish such a claim will be limited in nature, of the kind the court often sees filed at consequential hearings in support of statutory interest claims.

   v) For the first three months during which the payment is overdue, there is a cap on the amount recoverable of the Bank of England Base Rate at the date the debt became payable plus 2%. That is, however, a cap for recovery of proved loss, not an independent measure of recovery – hence the words "shall not in any event exceed." After the three-month period, there is no such cap.

vi) The clause provides an agreed mechanism of redress for the consequences of late payment, hence the final sentence. The clear effect of that wording – acknowledging the "sufficiency" of the clause 44 redress – is that the parties intended clause 44 to preclude any other form of redress for the consequences of late payment.

The applicable law and legal principles

8. Section 35A of the Senior Courts Act 1981 provides as follows:

> "35A.— Power of High Court to award interest on debts and damages.
>
> (1) Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and— (a) in the case of any sum paid before judgment, the date of the payment; and (b) in the case of the sum for which judgment is given, the date of the judgment …
>
> (3) Subject to rules of court, where— (a) there are proceedings (whenever instituted) before the High Court for the recovery of a debt; and (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings), the defendant shall be liable to pay the plaintiff simple interest at such rate as the court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.
>
> (4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs."

9. The effect of s.35A(4) is to prevent interest being awarded under s.35A when it is already "running" for some other reason on the debt. That could be because a contractual rate of interest is running or because it is a statutory debt on which interest runs. Section 35A(4) avoids interest being recovered twice on the same debt.

10. The relationship between claims to interest under statute and any contractual rate of interest which the parties have agreed should be payable in certain circumstances has been the subject of two decisions of this court:

i) In *Standard Chartered Bank v Ceylon Petroleum Corp* [2011] EWHC 2094 (Comm), Hamblen J considered a case in which an ISDA Master Agreement provided for interest to run after judgment at a certain rate, and the issue arose of whether the judgment creditor could obtain interest pursuant to statute at a higher rate. In the course of that judgment, Hamblen J referred to s.35A(4) and stated at [10]:

> "This means that, where the contract itself fixes interest, the court can only enforce that provision: its statutory power does not override the contractual provision so that it cannot fix a different rate".

He held that the provision in question did not override the creditor's right to post-judgment interest.

ii) In *Starbev GP Limited v Interbrew Central European Holdings BV* [2014] EWHC 2863 (Comm), a claim was brought under a Contingent Value Right or CVR. At trial, both parties sought declarations as to their rights, one party saying that nothing was due and the other that further sums were due, the amount of which was dependent on the court's findings. No money claim was pleaded. After the main judgment, the parties were able to agree the amount due. ICEH sought permission to claim interest pursuant to contract and/or statute after trial.

iii) Blair J noted at [45] and [46] that there is no requirement to plead a claim to statutory interest, but that there is such a requirement to claim contractual interest. At [46] he stated:

> "However, a contractual claim for interest must be pleaded. Where a contract provides for the payment of interest, the agreed terms will normally displace the court's discretionary power to award interest under section 35A of the Senior Courts Act 1981. This is because the court respects what the parties have agreed as to interest rather than substituting its own discretion. This is recognised in part by s.35A(4), which provides that, "Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs". This means that, where the contract itself fixes interest, the court can only enforce that provision: its statutory power does not override the contractual provision, so that it cannot fix a different interest rate (*Standard Chartered Bank v Ceylon Petroleum Corporation* [2011] EWHC 2094 (Comm) at [10], Hamblen J). What applies to interest rates also applies where the parties have agreed as to the circumstances in which interest is payable. Where the parties have agreed that interest is to be payable in particular circumstances, or not payable in particular circumstances, the court will give effect to the parties' agreement. (Different considerations may apply post-judgment.)"

11. The words "recognised in part" reflect the fact that a contractual interest rate is not only capable of removing the power to award statutory interest because it engages section 35A(4), but will itself condition the exercise of the statutory discretion. If, for example, the parties had agreed in their contract that no interest was to be awarded on damages, or that interest on damages would run at the rate of 2%, that would tell very strongly against any attempt to obtain statutory interest under s.35A, or to do so at a more favourable rate, even though s.35A(4) would not be engaged.

12. If s.35A(4) is engaged, the statutory discretion to award interest does not arise. Where it is not engaged, but the parties have entered into a contract addressing the circumstances in which interest is to be recoverable, it is possible to approach the issue on the basis that a contractual agreement that interest is payable when certain conditions are met amounts to an agreement that no interest is otherwise payable (cf *Barton v Morris* [2023] UKSC 3), which agreement the court should enforce by refusing to award statutory interest where the relevant conditions are not met. An alternative, and in my assessment the better, analysis is that the issue is to not be approached on the basis that the court must enforce the parties' contractual promise, but on the basis that the parties' agreement is a powerful factor when determining whether the court should exercise its procedural discretion and on what basis. The procedural power to award interest under s.35A is

not dependent on the existence of a substantive right to interest under the law governing the relevant obligation (*Maher v Groupama Est* [2009] EWCA Civ 1191). Further, when discretionary determinations are required in a procedural context, the parties' contractual arrangements are generally treated as a factor of great weight, rather than determinative (e.g., agreements not to argue that a particular forum is not *conveniens*: *Bank of New York Mellon v GV Films* [2009] EWHC 2338 (Comm)).

The parties' positions in summary

13. Against that background, the RR Entities argue that no award of interest should be made on the following basis:

    i) The right to interest under clause 44 is dependent on proof of one of the two kinds of loss, which has not been proved, and in any event, a claim for contractual interest has not been pleaded, as it would have to be.

    ii) The contractual provision precludes the application of s.35A by virtue of s.35A(4), alternatively conditions the application of that section, so that interest should not be awarded where it would not be recoverable as a matter of contract.

14. In response, Goodrich submits as follows:

    i) Clause 44 is not concerned with interest "per se", being in effect an indemnity in respect of any losses that Goodrich can prove, and for that reason does not overlap with s.35A.

    ii) Section 35A(4) and clause 44 only apply to interest on a debt, and have no application to interest on damages, and Goodrich has obtained an award of damages as well as debt,

    iii) Section 35A(4) only applies where contractual interest on the debt is already running, and no interest is running under clause 44.

    iv) The RR Entities caused Goodrich's inability to satisfy the requirements of clause 44.

The argument that clause 44 is not concerned with interest

15. Goodrich argues that clause 44 is not concerned with interest "per se", but is, in effect an indemnity in respect of any losses that Goodrich can prove. However, it is clear from the last line of clause 44 that the clause is the agreed mechanism for compensating Goodrich for the consequences of late payments, that the only means of compensation is the payment of interest, and that is only recoverable if Goodrich proves interest paid or interest foregone. On any view, that is a clause whose subject-matter is the recoverability of interest on late payments. If it was open to Goodrich to recover interest without proving loss in the form of interest paid or foregone, or to recover at a higher rate for the first three months than clause 44 provides for, that would render optional a regime which is clearly intended to impose limits on Goodrich's redress for the consequences of late payment.

The argument that Goodrich has been awarded damages

16. Goodrich's clause 11.1 claim was initially only pleaded as a damages claim, and in that formulation met the response from the RR Entities (which I rejected, but on which I have given permission to appeal) that, if the correct counterfactual was adopted for the damages calculation, there was minimal loss. I raised the issue of whether the claim was properly analysed as one in debt (such that no issue of counterfactual analysis would arise), and Goodrich applied for and was given permission to amend to advance such a claim.

17. When advanced as a damages claim, Goodrich's clause 11.1 claim was for loss caused by the failure to pay the amounts which were due (indeed that was the principal reason why I was satisfied it was appropriate to permit the late amendment to advance the debt claim): paragraph 41D of the Particulars of Claim. Paragraph 11 of the Case Memorandum, summarising the claim, provided:

> "The Defendant also claims, in the alternative, that in breach of clause 11.1 of the ECSURS the RR Entities acquired Applicable Engine Control System Units for use in the PAS at a much lower cost than that to which they were entitled. The Defendant alleges that, had the RR Entities complied with clause 11.1 of the ECSURS, the RR Entities would have acquired the same number of Applicable Engine Control System Units but would have paid World List Price and/or IPC x Mark Up for all or some of them and claims the difference in price as damages. This is denied by the RR Entities."

18. Paragraph 148 of Goodrich's opening explained the clause 11.1 damages issue as follows:

> "This issue can be dealt with briefly. Goodrich's case is that the RR Entities should pay damages reflecting the difference between the amount paid for the Units used in the PAS (i.e. IPC) and the amount which should have been paid, which will depend on the Court's findings in relation to what the correct price was."

19. That was also the case in Goodrich's written closing, as the references to which Mr Caplan took me amply demonstrated.

20. Turning to the Judgment:

    i) I found the RR Entities liable in debt: [243], [246] and (in particular) [281].

    ii) In circumstances in which the existence of a debt claim was disputed (and remains in dispute, in the appeal for which I indicated I was minded to give permission when circulating the draft judgment), I addressed Goodrich's claim for damages as well as the debt claim.

    iii) At [212]-[216], I analysed Goodrich's clause 11 damages pleading, and found that it included a claim for damages for failure to pay the correct price. However, a damages claim of that kind can be pleaded in respect of any debt claim. I am not persuaded that it is possible to escape the constraints of a contractual clause defining the scope of the right to recover interest on a debt by pleading the claim either on its own or in the alternative as a claim for damages for loss caused by the breach of contract in failing to pay the debt. In any event, I am satisfied that such a claim falls within clause 44, the essential basis of the claim being that the RR Entities did not "make payment in accordance with this

Agreement." Mr Croall KC accepted that it would not be realistic to treat the debt claim and the claim for damages for failure to pay the amount due differently for the purposes of determining whether interest should be awarded.

iv) I also considered Goodrich's claim for damages for the RR Entities' failure to specify the correct price in their orders, noting that had that obligation been performed, the invoices would have been issued at the right price: [255]. That was relevant because the RR Entities had argued that the issuing of the invoices at the right price was necessary for the amounts due to become payable. That part of the judgment, therefore, involved a finding that there would have been a damages claim in the amount of the debt if, contrary to my findings, no debt claim had arisen. However, I made clear that the effect of my finding that there was a debt claim was that this part of the case did not arise: [275].

v) In any event, as I have indicated, Goodrich's clause 11.1 damages claim was put forward throughout on the basis that the loss caused was the fact that the correct amounts payable had not been paid. It was as near a debt claim as makes no difference.

21. In these circumstances, I reject Goodrich's suggestion that clause 44 does not apply to the recovery it has made by reason of the RR Entities' failure to "make payment in accordance with this Agreement", or that s.35A(4) does not apply to such a claim, if the requirement of interest "running" is otherwise met. In any event, Goodrich's claim has, in all its manifestations, been premised on the RR Entities not paying what was payable or should have been paid under the ECSURs. The parties have reached an agreement as to when and (for part of the period) in what amount interest should be paid, and I am satisfied that, in keeping with the decisions referred to at [11] and [12] above, it would be inappropriate to award statutory interest where the contractual conditions for the payment of interest have not been shown to be satisfied.

The argument that s.35A(4) is not engaged because interest was not running under clause 44.

22. For the reasons I have set out above, the principle reflected in the decisions in *Standard Chartered* and *Starbev GP* is not dependent on the application of s.35A(4). Rather that provision reflects a more general principle, that if the parties have reached a contractual agreement as to when interest should be paid, the court will not award interest on some different basis under s.35A (absent, at least, some compelling public policy consideration).

23. I do not, in any event, accept the argument that interest is not running on a debt for s.35A(4) purposes, merely because some procedural condition to the right to payment of such interest has not been fulfilled. Any alternative construction would allow a party to circumvent s.35A(4) by not complying with the relevant procedural requirement. It is clear that if Goodrich has had to pay or has foregone interest as result of the RR Entities' failure to pay, interest under clause 44 runs from the date when payment was due, not from the date of submission of the relevant evidence (even though that interest will not be payable until the evidence of loss has been provided). In those circumstances, interest is "running".

24. I accept that if Goodrich has not suffered the relevant loss (i.e. it has not paid interest it would otherwise have paid or foregone interest it would otherwise have received), interest will not be running under clause 44. However, in those circumstances the parties have agreed that no interest is to be payable.

The RR Entities caused Goodrich's failure to comply with clause 44

25. This submission was raised orally, but without supporting evidence. In these circumstances, the point is not open to Goodrich. In any event, it is a wholly improbable suggestion, given the relatively light evidential burden which Goodrich faced: see [7(iii)].

Conclusion

26. In circumstances in which there has been no attempt to assert or prove an interest claim permitted by clause 44, I have concluded that no award of interest should be made under s.35A. I have not reached this conclusion with any degree of enthusiasm, and do not find it particularly satisfying. However, I have not found any of the suggested means of avoiding that conclusion satisfactory. As I confirmed at the hearing, I will give Goodrich permission to appeal on this point.

THE POSITION IF I HAD MADE AN AWARD OF STATUTORY INTEREST

27. As I have indicated, only two challenges were raised by the RR Entities to Goodrich's interest calculation, which I otherwise approve:

    i) The suggestion that I should disallow (or reduce) interest for the period between January 2018 and February 2023, when the clause 11.1 claim formally came into Goodrich's Particulars of Claim.

    ii) The suggestion that the interest rate for the first three months following each invoice should be limited to that specified in clause 44, namely Bank of England Base Rate plus 2%.

28. So far as the first of these points is concerned, both parties referred me to the guidance given by Jackson J in *Claymore Services Ltd v Nautilus Properties Ltd* [2007] EWHC 805 (TCC), [55]:

    > "(1) Where a claimant has delayed unreasonably in commencing or prosecuting proceedings, the court may exercise its discretion either to disallow interest for a period or to reduce the rate of interest.
    >
    > (2) In exercising that discretion, the court must take a realistic view of delay. In the case of business disputes, litigation is for all parties an unwelcome distraction from their proper business. It is not reasonable to expect any party to take every litigious step at the first possible moment, or to concentrate on litigation to the exclusion of all else. Delay should only be characterised as unreasonable for present purposes when, after making due allowance for the circumstances, it can be seen that the claimant has neglected or declined to pursue his claim for a significant period.
    >
    > (3) When determining what disallowance or reduction of interest should be made to mark a period of unreasonable delay, the court should bear in mind that the defendant has had the use of the money during that period of delay."

29. I was also referred to the following passage in Colman J's judgment in *Derby Resources AG v Blue Corinth Marine Co Ltd (The Athenian Harmony) (No. 2*) [1998] 2 Lloyd's Law Reports 425, 427:

> "If interest is withheld the defendant receives a windfall. He has free use of funds which, if he had performed his obligation to pay, would not have been in his hands, since the English Courts have no jurisdiction to order compound interest, the defendant will enjoy the further benefit of relatively inexpensive use of funds, even if finally ordered to pay interest for the entire period from the cause of action arising until Judgment. Whereas, in a case such as *Birkett v Hayes* … where the claim cannot be quantified for a long period after the cause of action has arisen, and the proceedings commenced, it is not difficult to see unfairness to the defendant in requiring interest to be paid on the whole of the sum not then quantifiable, it is much harder to detect any unfairness to a defendant left with substantial funds in his hands, and knowing perfectly well the amount of the claim during the whole of the material time, from the initial presentation of the claim. If there is no material previous to the defendant by reason of the delay, it is difficult to see why the interests of justice should normally require that when he knows that amount claimed, he should have an even larger benefit bestowed on him than he would derive from his unjustifiably refusing to pay the claim. Having regard however to the way in which Lord Justice Lawton (with whose judgment Lord Justice Eveleigh agreed, as did implicitly Lord Denning M.R.) expressed the principle, it would appear that justification for depriving the successful plaintiff of interest must be that he has caused his loss of use of the money by his own fault rather than that it would be unfair or unjust to the defendant that he should have to pay interest during the delay.
>
> This countervailing consideration would be consistent with the compensatory function of the interest jurisdiction.
>
> In cases where the delay and the degree of fault are so substantial that the predominant cause of the plaintiff being out of his money can be seen to be his own failure to prosecute the claim, rather than the defendant's maintenance of his defence, it is not difficult to see the policy should be that a successful plaintiff should not be compensated for loss of use of the money. However, in order for it to be said that the plaintiff's fault has displaced the defendant's fault as the predominant cause of the plaintiff being kept out of his money, the delay in question would have to be very substantial and not merely relatively short periods of weeks or months, during which, in commercial litigation, lulls in activity inevitably occur and the plaintiff's fault would have to be very substantial as where an action has inexcusably been allowed to go to sleep for years."

30. In this case, I am satisfied that no reduction in interest is appropriate:

i) The causal test referred to by Colman J is not satisfied. The clause 11.1 claim has not been determined any later than it would have been had it been included in Goodrich's Particulars of Claim from the outset, nor would the RR Entities have paid the claim or made a Part 36 offer had it been introduced earlier. I was not persuaded by the suggestion that Goodrich should have commenced the Part 20 Claim earlier than it did. It had limited visibility as to the scale and commercial significance of the PAS, and it would have been no small matter for Goodrich to commence proceedings against such a significant commercial partner, before Rolls-Royce had commenced its own proceedings against Goodrich.

ii) While Goodrich ought to have alighted upon the significance of the clause 11.1 claim earlier than it did, that claim arose from the same commercial complaint as the exclusivity claim which it was advancing (the RR Entities' decision to operate the PAS without regard

to Goodrich's rights under the ECSURS), and the issue of whether PAS-supplies fell within the scope of "Initial Provisioning" was an issue in Goodrich's pleaded claim from the outset.

iii) Goodrich could not have quantified its clause 11.1 claim earlier than it did, because it was dependent on disclosure from the RR Entities and expert evidence to do so. Disclosure was provided and expert evidence prepared and served in accordance with a timetable agreed by the parties and approved by the court.

31. I accept the RR Entities' second argument, however. Clause 44 of the ECSURS contemplated, in effect, a three-month grace period with "capped" interest before unlimited interest became payable. I am satisfied that any s.35A interest award should reflect that agreement.

POST-JUDGMENT INTEREST

32. It was common ground that clause 44 does not apply to post-judgment interest, there being no language here which would prevent the contractual right to interest merging in the judgment. I also accept that a contractual right to interest will not generally be read as depriving the judgment creditor of its right to statutory interest under the Judgments Act 1838: *Standard Chartered*, [12].

33. Accordingly, I am satisfied that I should award judgment interest. As this is a US$ amount, I will exercise my power under s.44A of the Administration of Justice Act 1970 to fix the post-judgment interest rate. Following the now default position on US$ in the Commercial Court, I fix that rate as US Prime.