Neutral Citation Number: [2024] EWHC 1937 (Ch)

Case No: BL-2020-001050, BL-2023-000141

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, 7 Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29 July 2024

Before:

THE HONOURABLE MR JUSTICE RICHARD SMITH

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Between:

(1) LOUDMILA BOURLAKOVA

(2) HERMITAGE ONE LIMITED

(3) GREENBAY INVEST HOLDINGS LIMITED

(formerly known as Maravan Services Limited)

(4) VERONICA BOURLAKOVA

Claimants

- and -

(1) OLEG BOURLAKOV

(2) DANIEL TRIBALDOS

(3) LEO SERVICES HOLDING LIMITED

(4) LEO TRUST SWITZERLAND AG

(5) REUWEN SCHWARZ

(6) SEMEN ANUFRIEV

(7) NIKOLAI KAZAKOV

(8) VERA KAZAKOVA

(9) COLUMBUS HOLDING AND ENTERPRISES SA

(10) FINCO FINANCIAL INC

(11) GATIABE BUSINESS INC

(12) EDELWEISS INVESTMENTS INC

(13) IPEC INTERNATIONAL PETROLEUM CO INC

(14) HEMAREN STIFTUNG

(15) WLAMIL FOUNDATION

(16) DELOS GLOBAL SA

(17) JOVELLANOS INVESTMENTS CORP

Defendants

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Tracey Angus KC and Patrick Harty of Counsel (instructed by **Mishcon de Reya LLP**) for the **Claimants**
Alan Gourgey KC, Nicole Sandells KC and Nigel Burroughs of Counsel (instructed by **PCB Byrne LLP**) for the **7th and 8th Defendants**
Thomas Grant KC, Josh Lewison and Ryan James Turner of Counsel (instructed by **Forsters LLP**) for the representative of the estate of the **1st Defendant**

Hearing date: 16 July 2024

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APPROVED JUDGMENT

Mr Justice Richard Smith:

A. Introduction

1. The First Defendant, Mr Oleg Bourlakov, died on 21 June 2021. He was survived by his wife, Loudmila Bourlakova, and his daughters, Veronica, the Fourth Claimant, and Elena. For the reasons set out in the judgment of Mr Justice Trower dated 26 May 2022 [2022] EWHC 1269 (Ch), the English Court has determined that it has jurisdiction over the claims being litigated here by the Claimants against Mr Bourlakov and associated parties. I came to the same view with respect to certain proposed amendments to those claims advanced by the Claimants, which amendments, I approved for the reasons given in my judgment dated 8 September 2023 [2023] EWHC 2233 (Ch).

2. It is not necessary for me to set out in any detail those claims, save to note that they concern an alleged scheme by Mr Bourlakov "*of dishonest and/or improper and/or unlawful actions with the ultimate objective of maximising his own share of assets which are (or have been) assets of each of the separate members of the Bourlakov nuclear family … and minimising or even extinguishing Mrs Bourlakova's share"*, said to have been undertaken with the assistance of the other Defendants.

3. The value of the assets comprising the subject matter of these proceedings is measured in excess of a billion dollars. As well as being high value, the underlying dispute is complex, implicating multiple parties in different jurisdictions and related litigation internationally. That dispute extends to Mr Bourlakov's estate (**Estate**), including as to the validity of his Russian language will and, importantly in the present context, disputes as to the appointment in different jurisdictions of representatives of the Estate. Such representatives have been appointed in Monaco, Latvia and Russia, albeit no such appointment has been made in this jurisdiction, Mr Bourlakov apparently not holding any assets in England and Wales.

4. On 12 October 2023, I heard an application by the Claimants for an order pursuant to CPR, Part 19.12 for the appointment of a representative of the Estate. I also heard an application by the (then) Monegasque Provisional Administrator of the Estate, A&S Expertise SAS, an accountancy firm, acting by its Chairman, M. Bruno Bayemi (**A&S**), for his appointment as a representative of the Estate pursuant to CPR, Part 19.12. A&S' application was supported by the Seventh and Eighth Defendants (**Kazakovs**). It is fair to say that, in light of litigation developments in Monaco shortly before that hearing, there was some uncertainty as to whether A&S would remain Provisional Administrator. Given that uncertainty, A&S proposed the adjournment of both applications to allow the position in Monaco to become clearer.

5. Having heard from the Claimants, A&S and the Kazakovs, I declined that course (or the other potential ways forward suggested by A&S) for the reasons set out in my order (at

[11]-[21]). A&S therefore withdrew its application and, for the reasons also set out in my order (at [23]-[29], reproduced below), I approved the appointment of Mr Nicholas Jacob, a solicitor, trust and estate specialist and partner in Forsters LLP, as the representative of the Estate pursuant to CPR, Part 19.12(1):-

"23. As to that appointment, although the Kazakovs originally disputed that the court had power under CPR, Part 19.12 to appoint the Claimants' candidates, they confirmed at the hearing that they no longer maintained that stance. A&S did not dispute the court's power. Nevertheless, I still satisfied myself that the court had that power, that it was appropriate to exercise it in the circumstances here and as to the suitability of the Claimants' candidates.

24. On the first two issues, I was satisfied for the reasons explained by the Claimants (not contested at the hearing) that:-

(i) The reference to "personal representative" in CPR, Part 19.12(1) is to a personal representative appointed in England and Wales, not anywhere in the world. As such, the power is exercisable in this case in relation to the Claimants' candidates;

(ii) CPR, Part 19.12 can be appropriately exercised in complex, high value and highly contested proceedings such as these; and

(iii) CPR, Part 19.12 was a more appropriate power for exercise in this case than the issue of a grant of representation under the Non-Contentious Probate Rules.

25. As to the identity of the Representative and the suitability of the Claimants' candidates:-

(i) The role of the Representative is not to administer the Estate but to represent it in these English proceedings.

(ii) In doing so, the Representative will need to weigh impartially the interests of all persons potentially interested in the Estate, whether as creditors or beneficiaries.

(iii) The existing disputes in this case as to the identity of those entitled to benefit from, and to administer, the Estate favour the appointment of an independent professional.

(iv) The different claims in play in these proceedings, and their countervailing effects on the Estate, favour the appointment of a Representative

experienced in making independent decisions in the conduct of litigation on behalf of estates and trusts.

(v) Mr Conder and Mr Jacob have such experience, including in a multi-jurisdictional litigation context. They are independent of the parties.

(vi) The litigation advice necessary for them to perform the role of Representative in this case will be readily available to them.

(vii) Although the Claimants will indemnify the Representative for his costs, concerns about related risks to his independence can be met through an appropriate funding regime.

(viii) Although the appointment of a Representative in England would 'fragment' the Estate administration, that has already occurred, with Russian, Latvian and, for the time being at least, Monagesque representatives in place.

(ix) Such fragmentation may, in any event, be inevitable, and possibly desirable, given the different role of the Representative.

(x) There are benefits to the Representative being based within the jurisdiction and being an officer of the court.

26. Many points were advanced in the evidence and written submissions as to the pros and cons of A&S' appointment. However, as was recognised in oral submission, these points, and any comparative exercise, were of less, if any, relevance given the withdrawal of A&S' application.

27. Although A&S addressed some of these points, its position was essentially neutral in light of such withdrawal.

28. Although continuing to express their support for A&S, the Kazakovs recognised the reality that A&S was no longer maintaining its application before me.

29. In all the circumstances, I approved the appointment of Mr Jacob as Representative, the proposed indemnity arrangements with him being closest to finalisation."

6. Following Mr Jacob's appointment, a further hearing was held on 26 October 2023 to address consequential matters when I made the following further orders in relation to Mr Jacob's authority:-

"1. For the avoidance of doubt, Mr Jacob as representative of the Deceased's estate in these proceedings shall be entitled to instruct such legal and professional advisors in respect of his role (including but not limited to the instruction of Forsters LLP) as he considers necessary or appropriate.

2. Mr Jacob shall be entitled to copies of any material which the Deceased was or would have been entitled to call for in his own right including any such material that is, was or would have been subject to legal professional privilege for the benefit of the Deceased including but not limited to the file or files held by Jones Day in respect of its instruction by the Deceased in his own right in these proceedings.

3. Mr Jacob is authorised to discharge any costs requested by a party providing material pursuant to paragraph 2 above to the extent that he considers such costs to be reasonable.

4. Mr Jacob be given permission to apply for further directions including in respect of paragraphs 2 and 3 above and in relation to funding pursuant to the Deed of Indemnity between Mr Jacob and the Indemnifying Parties."

7. Having performed the role of CPR, Part 19.12 representative of the Estate in these proceedings for some four months and, having since his appointment corresponded in relation to the scope of his role, principally with the Claimants and the Kazakovs, Mr Jacob applied on 28 February 2024 for certain related directions or guidance. That application came before me on 16 July 2024.

B. CPR, Part 19.12

8. Although there was (and remains) no issue as to the power of the Court to appoint Mr Jacob under CPR, Part 19.12(1), it is helpful to set out here the provision in full and the historical background to that Rule since it will inform the discussion later of the guidance now sought and the respective arguments advanced before me on his application for directions:-

"**Death**

(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order:-

(a) the claim to proceed in the absence of a person representing the estate of the deceased; or

(b) a person to be appointed to represent the estate of the deceased.

(2) Where a defendant against whom a claim could have been brought has died and:-

(a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;

(b) a grant of probate or administration has not been made:-

(i) the claim must be brought against "the estate of" the deceased; and

(ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.

(3) A claim shall be treated as having been brought against "the estate of" the deceased in accordance with paragraph (2)(b)(i) where:-

(a) the claim is brought against the "personal representatives" of the deceased but a grant of probate or administration has not been made; or

(b) the person against whom the claim was brought was dead when the claim was started.

(4) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.

(5) Where an order has been made under paragraphs (1) or (2)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased."

9. On its terms, CPR, Part 19.12(1) is plainly concerned with the appointment of representatives in the context of claims in this jurisdiction already on foot when the relevant interested person died. For a claim to *proceed* or for someone to have *had* an interest in it, it must have been ongoing when the person interested in it died (see *Millburn-Snell v Evans* [2012] 1 WLR 41 per Rimer LJ at [22]). As Mr Jacob noted in his skeleton argument, the law relating to CPR, 19.12(1) appointments is limited. The related notes to the White Book explain that "[t]he general rule of joinder (r.19.2) applies where a party to proceedings has died and a formal grant of representation (whether probate or letters of administration) is taken out in respect of his estate. …. Rule 19.12(1) applies where a party to proceedings (whether claimant or defendant) has died and that person has no personal representative. …. These orders have the effect of making the deceased's estate bound by any rulings which the court may make in the proceedings (r.19.12(5))." I agree with this summary save to note that the Rule's ambit is

broader than (deceased) *parties* to a claim but extends to (deceased) *persons* with an interest in such a claim (see too *Millburn-Snell* at [28]).

10. As to the reasons for the current Rule, I was taken in submission to some of the history, including the previously expressed dissatisfaction with the historical Chancery practice of administration *ad litem* explained in 1852 in the following terms in the First Report of the Chancery Commissioners (Ch. Com. 1) (at [17]-[18]):-

> "The embarrassment thus occasioned to a plaintiff does not stop here. If any person so interested should be dead, and no one has thought it worth while to prove his will or take out administration to his estate, the plaintiff is himself obliged to take proceedings in the Ecclesiastical Court for the purpose of compelling some person to administer, or in default, to obtain letters of administration to a nominee limited to the purposes of suit; and such nominee administrator who serves no useful purpose whatsoever, is made a formal party to the suit in Chancery, is served with process, puts in an answer, and appears by counsel. We recommend that in no such case shall it be necessary to take out administration, but that the Court shall be authorized either to proceed in the absence of any person representing the estate of the deceased, or to appoint some person to represent such estate, for the purposes of the suit, on giving such notice, if any, as the Court shall think fit."

11. Section 44 of the Court of Chancery Act 1852 gave effect to this recommendation in the following terms:-

> "If in any Suit or other Proceeding before the Court it shall appear to the Court that any deceased Person who was interested in the Matters in question has no legal personal Representative, it shall be lawful for the Court either to proceed in the Absence of any Person representing the Estate of such deceased Person, or to appoint some Person to represent such Estate for all the Purposes of the Suit or other Proceeding, on such Notice to such Person or Persons, if any, as the Court shall think fit, either, specially or generally by public Advertisements; and the Order so made by the said Court, and any Orders consequent thereon, shall bind the Estate of such deceased Person in the same Manner in every respect as if there had been a duly constituted legal personal Representative of such deceased Person, and such legal personal Representative had been a Party to the Suit or Proceeding, and had duly appeared and submitted his Rights and Interests to the Protection of the Court."

12. This was subsequently reflected in the Rules of the Supreme Court (**RSC**), culminating in Order 15(1) of the 1965 Rules in the following terms:-

> "Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or

> may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings."

13. At the end of the last century, the RSC were, of course, replaced by the Civil Procedure Rules, the corresponding provision originally found in CPR, Part 19.8(1), more recently CPR, Part 19.12. As to the latter, Williams, Mortimer & Sunnucks on Executors, Administrators and Probate (22nd Ed.) note (at [15-45]) that:-

> "Limited grants, known as grants of administration ad litem, are made constituting a person to be a party to proceedings and limited to this purpose. They have been rendered unnecessary in the case of claims against estates by the court's power under CPR 19.8 to appoint a representative of an estate, but are still necessary where the estate is the claimant."

14. For the sake of clarity, the second sentence above presumably concerns claims not yet issued (as those are addressed by CPR, Part 19.12(2)) since a (deceased) claimant will clearly have "had an interest" (within the meaning of CPR, Part 19.12(1)) in a claim brought by him prior to his death.

15. There was much focus at the hearing on the pre-condition to the operation of Rule 19.12(1), namely the absence of a personal representative (and related grant of administration), the routes by which such a personal representative could (or could not) have been appointed in this case, the powers and duties engaged upon such appointment and the related supervisory powers of the Court. Given that the role of trustees and executors is well understood under English law, that focus was, perhaps, unsurprising. In part, it was also set up in contradistinction to the appointment of a representative under CPR, Part 19.12, the Kazakovs pointing out that there was no inherent jurisdiction to make an appointment of that nature, the role being a creature of statute, there being no elaboration in the Rule itself as to the powers exercisable by such a representative and the law providing little related guidance. By contrast, there is a regime in place, not only imputing to administrators the same rights and liabilities as executors, but also enabling the Court to support, supervise and provide protection for them in the exercise of their powers. This includes the Court's ability in certain circumstances to give them directions, to sanction or 'bless' steps to be taken by them and to relieve them from personal liability. Notwithstanding that sophisticated regime, it is quite clear that neither the Claimants nor the Kazakovs are willing to fund Mr Jacob in the role of Estate administrator even if Mr Jacob were to consent to such an appointment.

16. Although reference to the well-established position of trustees and executors was useful, as noted, the rationale of the Rule in its original statutory incarnation was to avoid the need for a formal grant of administration and joinder of any administrator to the

proceedings. Indeed, as Robert Walker LJ noted in *Berti* v *Steele Raymond (A Firm)* [2001] EWCA Civ 2079 (at [5]), CPR, Part 19.8(1) (now 19.12(1)) "…gives the court quite wide powers to dispense with the need for a formal grant of probate or letters of administration after the death of a party ... ." Moreover, CPR, Part 19.12 clearly does have quite some history of its own. As Rimer LJ noted in *Millburn-Snell* (at [27]) of the original statutory incarnation of the Rule as had been discussed in *Lean* v *Alston* [1947] KB 467:-

> "… Scott LJ pointed out that the rule was but one application of an inherent power of the court exercised by the Court of Chancery and expressed in section 44 of the Chancery Procedure Act 1852 (15 & 16 Vict c 86), by which, as he said at p 471, the Court of Chancery and its successor, the Chancery Division, always had the power to appoint a person to represent any particular interest in any proceeding where it thought right to make that appointment."

17. Nor does the latest incarnation operate in a vacuum, CPR, Part 19.12 sitting alongside other Rules concerning further circumstances in which the Court can appoint a representative without the need for the person represented to become a party. As the notes to Section II of Part 19 (concerned with "Representative Parties") explain (at [19.8.0]):-

> "The rules in Pt 19 Section II make provision for claims to be brought by or against one or more persons as representatives of others in the claim. They recognise that it is not always practically convenient to join all interested persons as parties. …. The rules in this section recognise there are a wide variety of situations in which the appointment of a representative party are likely to further the overriding objective."

18. So, in addition to the circumstances envisaged by CPR, Part 19.12, Part 19 also permits an appointment of a representative for another in proceedings where (i) they have the same interest in a claim (CPR, Part 19.8) (ii) the latter is unborn, unfound or not easily ascertainable (CPR, Part 19.9) and (iii) the former is a trustee, executor or administrator acting in that capacity, the joinder of the beneficiaries to the relevant proceedings not being required (CPR, Part 19.10). At the hearing before me, there was little, if any, reference to these other provisions. However, their different contexts notwithstanding, they offer useful insight for present purposes. For example, *Lloyd* v *Google LLC* [2022] AC 1217 indicates that the power in (the then) CPR, Part 19.6 (now 19.8), itself has considerable history, perhaps best encapsulated (at [38]) in the following terms:-

> "In *Duke of Bedford* v *Ellis* [1901] AC 1, 8, Lord Macnaghten summarised the practice of the Court of Chancery in this way: "The old rule in the Court of Chancery was very simple and perfectly well understood. Under the old practice the Court required the presence of all parties interested in the matter in suit, in order that a final end might be made of the controversy. But when the parties were so numerous that you never could 'come at justice', to use an expression in one of the older cases, if

> everybody interested was made a party, the rule was not allowed to stand in the way. It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent."

19. Related considerations inform the equivalent modern rule (CPR, Part 19.8), the Supreme Court stating in *Lloyd* (at [71]) that:-

> "The phrase "the same interest", as it is used in the representative rule, needs to be interpreted purposively in light of the overriding objective of the civil procedure rules and the rationale for the representative procedure. The premise for a representative action is that claims are capable of being brought by (or against) a number of people which raise a common issue (or issues): hence the potential and motivation for a judgment which binds them all. The purpose of requiring the representative to have "the same interest" in the claim as the persons represented is to ensure that the representative can be relied on to conduct the litigation in a way which will effectively promote and protect the interests of all the members of the represented class. That plainly is not possible where there is a conflict of interest between class members, in that an argument which would advance the cause of some would prejudice the position of others. *Markt* and *Emerald Supplies* are both examples of cases where it was found that the proposed representative action, as formulated, could not be maintained for this reason."

20. Likewise, there was considerable emphasis before me in the CPR, Part 19.12 context on the need for a representative appointed thereunder to act in the best interests of the estate in the conduct of the proceedings. That consideration too is reflected in some of the cases involving the exercise of that power. So, for example, one of the specific factors weighing in favour of its exercise by Bryan J in *Gattaz Properties Limited and another* v *Versant Developments and Homes Limited and nine others* [2021] EWHC 3657 (Comm) (at [153(iii)]) was "that the rights and obligations of the estate are likely to be affected by this litigation and serious allegations are made against Mr Mikhailenko which it would be appropriate for the representative to have the opportunity to defend in whatever are considered to be the best interests of the estate".

21. As *Lloyd* continued (at [75]), the need for the exercise of any power under the CPR to give effect to the overriding objective (CPR, Part 1.2(a)) informs the analysis:-

> "Where the same interest requirement is satisfied, the court has a discretion whether to allow a claim to proceed as a representative action. As with any power given to it by the Civil Procedure Rules, the court must in exercising its discretion seek to give effect to the overriding objective of dealing with cases justly and at proportionate cost: see CPR rule 1.2(a). Many of the considerations specifically included in that objective (see CPR rule 1.1(2)) - such as ensuring that the parties are on an equal

footing, saving expense, dealing with the case in ways which are proportionate to the amount of money involved, ensuring that the case is dealt with expeditiously and fairly, and allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases - are likely to militate in favour of allowing a claim, where practicable, to be continued as a representative action rather than leaving members of the class to pursue claims individually."

22. As reflected in the reasons for my 12 October 2023 order, it was by reference to a number of the above considerations, as they are engaged in this case, that I considered it appropriate to exercise my power in favour of the appointment of Mr Jacob pursuant to CPR, Part 19.12. It is with those considerations well in mind that Mr Jacob's application for directions also falls to be considered.

C. Mr Jacob's directions application

23. Mr Jacob's application notice dated 28 February 2024 sought orders that:-

"1. The Representative's duties are correctly set out at paragraphs 7 to 12 of Forsters' letter dated 15 December 2023.

2. The Representative shall not be under any duty to consult with, or to take into account any of the wishes or views expressed to the First Defendant by, any person actually or potentially interested in, or involved with the administration of, the Estate located anywhere in the world, including but not limited to:

   a. any of the parties to the Main Claim or the Protective Claim;

   b. Sofia Shvetsova;

   c. Evgeny Yulyevich Ginzburg;

   d. KESK Stiftung, a non-registered foundation in Liechtenstein (Register No. FL-002.653.671-5); and

   e. any person appointed as, or otherwise acting in the capacity of, a personal representative of any part of the Estate in any part of the world.

3. In the alternative to paragraph 2, directions as to those persons with whom the Representative shall be under a duty to consult, or to take into account their wishes or views expressed to the Representative.

4. The Representative may, but shall not be required to, apply for further directions or orders from the Court in advance of taking any step or course of action on behalf of the Estate in the Main Claim and/ or the Protective Claim, including to

seek approval from the Court for a decision which the Representative has taken in respect of such a step or course of action, provided that:

a. Any application shall be made to and heard by a Judge other than the Judge docketed to the Main Claim and/ or the Protective Claim.

b. The respondents to any application shall include (i) in the case of the Main Claim, the First Claimant and the Seventh and Eighth Defendants and (ii) in the case of the Protective Claim, the First and Fourth Claimants and the Sixth and Seventh Defendants and, in both cases, such other persons as the Representative considers appropriate having regard to the nature of the direction or order sought.

c. The evidence in support of any application (including any exhibits) shall not be served on any of the respondents to any application to the extent that it contains any material subject to legal professional privilege, alternatively shall not be served without appropriate redactions made to protect such material.

5. Paragraph 2 of the Orders dated 26 October 2023 in the Main Claim and the Protective Claim shall be limited to any material located within, or held by third parties located within, the jurisdiction of England and Wales, provided that such order shall be without prejudice to the Representative's right to seek further directions in the future to enable him to take steps to obtain material located outside the jurisdiction of England and Wales.

6. In the alternative to paragraph 5, directions as to the mechanism by which the Representative is entitled to seek material located outside, or held by third parties located outside, the jurisdiction of England and Wales.

7. The Representative is not entitled and has no power to make (and therefore has no duty to consider making) a counterclaim or other additional claim pursuant to CPR Part 20.

8. The Representative is entitled to settle or compromise the Main Claim or the Protective Claim on behalf of the Estate, provided that he obtains the approval of the Court to such settlement or compromise.

9. The Representative is not personally liable in respect of any orders for costs made against the Estate.

10. The Representative shall not be personally liable for any loss or damage to the Estate arising as a result of his conduct of these proceedings save where the same

shall proved to have been caused by acts done or omissions made fraudulently, dishonestly, or in bad faith.

11. Any further or other directions or orders as the Court shall think fit."

24. Mr Jacob also sought an extension of time for service of the defence on behalf of the Estate, albeit that aspect was not argued before me as it had since been agreed with the Claimants. I have now approved a consent order to that end.

25. By way of general observation at the outset, although I provided in my 26 October 2023 order for Mr Jacob to apply for further directions, it struck me that some of those now sought were canvassed in somewhat general terms. I have considered all the directions sought but, given their framing, it has not been possible and/ or desirable on some matters to provide more definitive guidance than that indicated below. I should also add that, by the time the application came before me, the differences between the parties on a number of the points had narrowed. Finally, it is appropriate to mention that Mr Jacob gave notice of his application to all the parties to these proceedings, to the Latvian and Russian trustees of the Estate and to potential beneficiaries of the Estate. A&S were also notified, albeit it seems that they had been removed as representatives, only then to have been very recently re-appointed. I understand that only the Russian trustee has responded, intimating its assumption that Mr Jacob will be obliged "to inform them when he makes procedural decisions within the actions and to take into account the opinion of the LLC Gryphon in the conduct of its affairs."

26. I now turn to the specific directions sought.

D. Mr Jacob's duties

27. As to Mr Jacob's duties, it is important to keep well in mind the purpose of his appointment. He is not the personal representative of the Estate. Indeed, his appointment was made because no such person was in place. Rather, Mr Jacob was appointed under CPR, Part 19.12(1) to represent the Estate for the purpose of the proceedings within which the appointment is made. That appointment does not confer more general rights or obligations on him in relation to the Estate. As to what his responsibilities do entail, I agree that the analogy with a litigation friend is helpful and that the observations in *OH* v *Craven* [2017] 4 WLR 25 (at [14]) are insightful in this context, reflecting as they do some of the considerations already indicated above in the Part 19 context:-

> "I should here briefly note the role of a litigation friend in these circumstances. The issue was considered by Brightman J in *In re Whittall* [1973] 1 WLR 1027. The context was an application under the Variation of Trusts Act 1958 in which the guardian ad litem had simply acquiesced, and the judge said the guardian: "should not be encouraged to regard himself as a mere cypher, lending his name to the application for formal purposes but devoid of all responsibilities". Brightman J had earlier (at pp

> 1030–1031) described those responsibilities in the following terms. That a guardian is required to take all measures he or she sees fit for the benefit of the infant defendant, supplementing the want of capacity and judgment of the minor, his or her function being to guard or safeguard the interests of the minor who becomes his ward or protégé for the purposes of the litigation. The discharge of that duty involves the assumption by the guardian of the obligation to acquaint him or herself of the nature of the action and, under proper legal advice, to take all due steps to further the interests of the minor."

28. Similarly, Mr Jacob's role in this case is to familiarise himself with the claims and, with the benefit of the legal advice received from his legal team, to take steps to represent the best interests of the Estate as a whole for the purpose of these proceedings. The Kazakovs appeared initially to take exception to the suggestion that Mr Jacob would need "to weigh impartially the interests of all persons potentially interested in the Estate, whether as creditors or beneficiaries" (as was reflected in paragraph 25(ii) of the reasons for my order dated 12 October 2023), albeit such difference as there was ended up being one of emphasis. This merely reflects the reality that there are multiple and competing claims against the Estate, whether as potential beneficiary and/ or creditor, and that it does not fall to Mr Jacob to determine which of those claims might, in fact, be good. The corollary is that Mr Jacob should act impartially as between those claiming to be interested as such, considering their interests collectively, not individually. That does not mean that Mr Jacob is required to act neutrally between the parties. To the contrary, the promotion of the interests of the Estate as a whole in the conduct on its behalf of these proceedings will, in all likelihood, set up positions adverse to one or more of those claiming to be interested in it.

29. I should also add that this does not mean that the Estate should adopt speculative positions in the litigation. Objective assessment of potential lines of defence, including their evidential basis, may well lead to litigation positions properly being taken with less ambitious or fruitful outcomes but with prospects reasonably considered to be better.

30. I did not understand any of the foregoing to be contentious as between those who appeared before me at the hearing. However, as the Kazakovs indicated, what then follows from these propositions might be. As to this, several different points emerged in the course of correspondence between the parties and the witness evidence on this application, as to which there appeared to be a narrowing of positions prior to the hearing, with a small number of points upon which Mr Jacob continued to seek clarification, namely whether he:-

    (a) must "take account of the wider interests of the Estate where necessary and appropriate". Although that formulation was advanced in the Kazakovs' evidence and repeated in the Kazakovs' skeleton, Ms Sandells did not advance matters in those terms in oral submission. Again, I did not understand the Kazakovs' position to differ from that indicated above;

(b) has a duty to preserve (or recover) the value and/ or assets of the Estate. I did not understand the Kazakovs to say that Mr Jacob has a duty to recover assets. I agree that this would be incorrect. Rather, I understood them to say that he cannot sensibly undertake his role unless he is made subject to such a duty. I address this further below in the context of Mr Jacob's ability (or otherwise) to counterclaim or settle on behalf of the Estate; and

(c) must consider the views held by Mr Bourlakov when he was alive (which Mr Jacob does not accept) as distinct from those matters which might properly constitute evidence or information provided in these proceedings (which Mr Jacob does). Although the Kazakovs did suggest in the evidence that both were required, they accepted at the hearing that Mr Jacob did not have to 'mimic' what Mr Bourlakov would have done. Moreover, their real concern at the hearing appeared to be ensuring that Mr Jacob has access to such material containing Mr Bourlakov's views as might have a bearing on the evidence or litigation or settlement strategy that might properly be deployed in these proceedings. The parties all appear to recognise that views previously expressed by Mr Bourlakov on some matters *might* inform Mr Jacob's task in hand. They also all appear to understand that it is desirable, so far as this can reasonably be achieved, for Mr Jacob to have access to materials which might assist him in the proceedings. In my view, making suggestions in the abstract as to the side of the 'utility' line on which Mr Bourlakov's unknown historical views of a particular hue might fall, let alone what steps might be taken within the constraints inherent in representing the estate of a deceased person to obtain potentially relevant materials, would be a precarious exercise. It is also unlikely to be meaningful. I therefore need say no more about it.

E. Consultation

31. Mr Jacob also sought guidance on whether, in performing his role, he was obliged to consult certain persons. By the time of the hearing at least, it was common ground that Mr Jacob owed no duty to consult particular potential beneficiaries or creditors for much the same reasons as those expressed above with respect to the scope of his general duty to act in the best interests of the Estate as a whole for the purpose of the proceedings. I share that common view. The Claimants had also earlier suggested that Mr Jacob should give consideration to whether to consult one or more of the persons known to claim an interest in the Estate. I agree with Mr Jacob that this made little sense, at least if formulated in terms of a duty. Nor, indeed, did the Claimants press the point in submission.

32. In their evidence, the Kazakovs suggested that Mr Jacob was under a positive duty to consult or take account of the views of those representatives appointed in other jurisdictions who have a broad control of the assets of the Estate. It seems that, as proposed, such a duty would extend to at least the Latvian trustees and, with its very

recent re-appointment in Monaco, A&S. At the hearing, the Kazakovs indicated that, if Mr Jacob were a trustee or properly appointed personal representative of the Estate, they would accept that there was no such duty. In this case, however, Mr Jacob may need to take decisions such as whether to settle the claim against the Estate, those decisions affecting the assets of the Estate not vested in him, including possible choses in action benefitting the Estate which he may seek to deploy by way of set-off and/ or counterclaim. If Mr Jacob does not consult with A&S, there is no accountability for his actions.

33. I found this argument unpersuasive for a number of reasons. First, as was common ground, a foreign grant of representation is not (without more) recognised as having any force in England and Wales (*Jennison* v *Jennison* [2022] EWCA 1682 Civ (at [50])). As such, there seems no proper basis for recognising a duty to consult with a foreign administrator either; second, at a more practical level, there are at least three overseas administrators, in Russia, Latvia and Monaco, the last two at least seemingly appointed in respect of the Estate's assets worldwide. As such, there may well be a conflict between their views with no obvious way for Mr Jacob to reconcile them. Consultation may therefore confound rather than bring clarity; third, in my view, the Kazakovs' approach (not limited to this issue) understates Mr Jacob's standing. He has been appointed by the Court as the most suitable candidate as representative for the reasons given in my order of 12 October 2023. He is accountable, both as Court appointee and officer of the Court.

34. It was also suggested by the Kazakovs that Mr Jacob should consult with relevant entities such as Foundations, claimed by some to be holding assets belonging to the Estate and, therefore, potentially affected by his decisions. Like Mr Jacob, I found this proposition puzzling. It is clear that there are rival claims to assets held by third parties but such matters are not for Mr Jacob to resolve. What light such consultation might shed on the performance of Mr Jacob's role is, therefore, unclear and insufficient to warrant the imposition of a related duty even if its nature and scope were certain.

35. The Kazakovs' stronger point is that there may be other persons or entities that hold evidence or information which might assist Mr Jacob in the performance of his role. However, Mr Jacob already recognises the need to inform himself about the claims and will, in all likelihood, already have given consideration to potential available sources of such information and will continue to keep the position under review. Accordingly, to the extent that Mr Jacob considers it appropriate, he can, of course, consult such persons as he see fits for the performance of his role (including any of those mentioned above). However, I see no basis for saying that he should be subject to a related obligation, let alone, again, one so uncertain in scope.

F. Further directions

36. The parties were agreed that Mr Jacob should have the ability to apply to the Court for further directions, and appeared to acknowledge that there may be matters which should

be kept confidential from the docketed judge. I agree. However, the Claimants expressed the view that such directions should only be sought where the relevant step proposed to be taken by Mr Jacob was sufficiently significant to make such an application reasonable and proportionate. The Kazakovs contended that there was no obvious jurisdiction for Mr Jacob to seek such further directions, CPR, Part 19.12 being silent on the point.

37. As to the latter point, it is quite clear that CPR, Part 19.12 must be read in conjunction with the other provisions of the CPR, including the overriding objective under CPR, Part 1, the Court's general powers of case management under CPR, Part 3 and the general rules about applications under CPR, Part 23. The High Court also has the inherent power to control its own processes and procedures. There is no lacuna as suggested by the Kazakovs.

38. I should add that the Claimants also argued that it would be open to Mr Jacob to apply for directions under CPR, Part 64, albeit the Kazakovs said that this route would not be open to them. It is not necessary for me to resolve that debate. Even if the Kazakovs are right, the fact that there is a bespoke procedure for claims relating to the administration of estates and trusts, does not indicate that the Court is unable or ill-equipped to entertain applications for guidance from representatives appointed pursuant to other specific powers under the CPR.

39. In my view, the idea that a CPR, Part 19.12 representative could not seek appropriate guidance or directions would be a surprising one. Indeed, the hearing before me was convened for that very purpose and there was no suggestion that this was ineffective. Although I endorse the Claimants' suggestion of moderation in advancing any related application, there is no need for me to circumscribe the circumstances in which such applications should be made. Despite my earlier observations concerning some of the rather general points debated before me, I am satisfied that Mr Jacob understands when such an application should properly be made. I consider the other arrangements proposed in the draft order for notice, listing and evidence to be appropriate.

G. Power to demand documents

40. There was more limited discussion before me about Mr Jacob's power under paragraph 2 of my order of 26 October 2023 to obtain copies of materials that Mr Bourlakov would have been entitled to call for in his own right, a question having arisen as to whether this was limited in territorial scope such that Mr Jacob could not take steps to call for such documents from abroad. The Claimants were initially concerned that Mr Jacob might be seeking to limit the reach of that order in that manner. However, he has since confirmed that he is not. Indeed, all parties before me were agreed that Mr Jacob should have the power to take appropriate steps to compel the production of such documents from abroad where these were not voluntarily provided. Mr Jacob identified such potential steps as applying where appropriate (i) for his appointment to be recognised in the foreign

jurisdiction where the relevant document-holder is present and seeking assistance from the Court there (ii) under CPR, Part 34.13 for a letter of request to be issued to the Court of the relevant foreign State in which the documents are held and/ or (iii) to this Court for appropriate orders where the document-holder is a party to these proceedings.

41. When I made my order on 26 October 2023, it was not my intention that it should be limited to documents within this jurisdiction nor, indeed, do I read it as saying as such. However, given the international nature of these proceedings concerning claims in multiple jurisdictions, and the need for clarity in dealings with any foreign Court, I am satisfied that it should be made explicit in my order that Mr Jacob has the power to take such steps as may be available to him to call for such documents as may be held by foreign document-holders as Mr Bourlakov was or would have been entitled to call for in his own right, including privileged material.

H. Counterclaims

42. The parties appear to be agreed that Mr Jacob does not have the power under CPR, Part 19.12(1) to bring a counterclaim on behalf of the Estate. That position appears to be based on there being no counterclaim on foot at the time of Mr Jacob's appointment. As already noted, it is clear from authorities such as *Millburn-Snell* that Part 19.12(1) is concerned with enabling the forward prosecution of a claim extant at the time of the death of a person interested in it. The Kazakovs say that the corollary is that the Estate would not be able to defend itself properly in circumstances in which Mr Jacob might, for example, discover a counterclaim which the Estate could not then bring.

43. Although I agree that considerations of fairness and more practical issues such as constraints on the ability to compromise might arise in those circumstances, those circumstances do not arise here. The jurisdictional threshold for the engagement of CPR, Part 19.12(1) requires (i) an existing validly instituted claim and (ii) the relevant deceased person to have had an interest in that claim. Both are satisfied here, Mr Bourlakov having had a clear interest (as defendant) in the proceedings already commenced against him by the Claimants prior to his death. That being the case, and Mr Jacob since having been appointed to represent the Estate, the claim will now progress in accordance with the provisions of the CPR, with such further directions from the Court as may be required for that purpose.

44. Relevant CPR provisions include the Estate's ability to (i) file a defence (CPR, Part 9.2(b)) (ii) rely in its defence on the contention that it is entitled to money from the Claimants and set off against the claim (whether or not also an additional claim) (CPR, Part 16.6) and (iii) make a counterclaim against the Claimants by filing particulars of counterclaim which, if filed with the defence, would not require the Court's permission (CPR, Part 20.4). The position is no more complex than that. Indeed, in my view, it would be very odd if, for example, the Estate could admit or deny (as appropriate) in its defence the asserted claim to ownership of a contested asset or the existence of an alleged

partnership with the Seventh Defendant, Mr Kazakov, and seek to prove that position at trial, but could not counterclaim against the Claimants for a declaration in terms of that position.

45. Accordingly, I am satisfied that Mr Jacob does have the power to make a counterclaim (or, indeed, other additional claim) pursuant to CPR, Part 20.

I. Settlement

46. The question of the ability (or otherwise) of Mr Jacob to settle or compromise a claim on behalf of the Estate is, in my view, straightforward as well. The Kazakovs say that there is nothing in CPR, Part 19.12 which gives a representative power to compromise proceedings and therefore no jurisdictional basis for him to take that step. Although the Kazakovs are correct that nothing is stated in terms in CPR, Part 19.12 as to the power to compromise, I am satisfied that Mr Jacob has that power, it being inherent in his appointment as representative of the Estate that he is able to take such steps for the purpose of these proceedings.

47. In this context, CPR, Part 19.9, concerning representation of interested persons who are unborn, cannot be found or cannot easily be ascertained, provides some useful insight. Part 19.9(6) explains the Court's ability to approve a settlement where it is for the benefit of all the represented persons. Implicit from the Court's power to approve a settlement is the power of the appointed representative to enter into a settlement of the claim. There is no reason why a representative appointed under CPR, Part 19.12 should not be able to settle as well, that power being part and parcel of the conduct of proceedings generally, the representative being appointed for the purposes thereof.

48. Accordingly, I am satisfied that the power to represent the (now deceased) interested person for the purpose of the proceedings carries with it the power to settle. CPR, Part 19.12 does not require the Court to approve a settlement. However, Mr Jacob has indicated that he would wish to seek such approval in the event of such a compromise. I accept that this would be an appropriate course.

J. Costs

49. Mr Jacob also sought the Court's clarification that it is the Estate, not Mr Jacob personally, that is responsible for costs orders made during the course of the proceedings. The Claimants and the Kazakovs did not demur from this once it was properly understood that Mr Jacob was saying that, since he was not a party to the proceedings, he would not be the proper respondent to any costs order made under CPR, Part 44. As Mr Jacob accepted, that does not mean, however, that he is not amenable to section 51 of the Senior Courts Act 1981 and the Cout's related power under CPR, Part 46.2 to make a costs order against non-parties. With that clarification, I agree that this reflects the correct position.

K. Exoneration

50. At the hearing before me on 12 October 2023, a draft directions order was proposed, including an order exonerating Mr Jacob from liability as representative, save for loss or damage caused by acts or omissions that were fraudulent, dishonest or in bad faith. At that hearing, A&S argued that such an order was not appropriate. Having heard only limited argument, I expressed my then provisional view that, if Mr Jacob was unable to obtain insurance for liability arising from his appointment as representative in these proceedings, I was minded to accede to the exoneration order sought. In the event, consideration of consequential matters went off for a fortnight when I made the order I did on 26 October 2023. However, at that further hearing, the exoneration question was not raised. It is not necessary for me to set out the detail but it appears that there was some confusion in the meantime as between Mr Jacob and the Claimants' solicitors which meant that the point was not pressed further before me at the time even though, as I am satisfied he did, Mr Jacob still wished for an order in those terms to be sought. Mr Jacob was not represented at either hearing.

51. In any event, some four months into his role, Mr Jacob has made his application for directions, including renewing the request for an exoneration order. As to this, although Mr Jacob's approach at the hearing before me was fair and impartial, repeatedly emphasising his desire to avoid controversy or criticism, he also stressed the various statements by the Kazakovs as to Mr Jacob's potential liability if he took a 'wrong turn'. Although it is not necessary to recite every example, PCB Byrne LLP's letter of 29 January 2024, the fifteenth witness statement of Ms Seborg dated 31 May 2024 and the Kazakovs' skeleton argument are indeed replete with references to the risks to Mr Jacob if he does or does not take certain steps in relation to almost all aspects of the directions discussed before me, including the risk of intermeddling, and potential liabilities for breach of duty, many of those observations accompanied by a reservation of the Kazakovs' rights and indication of potential recourse against Mr Jacob. By way of example, the Kazakovs conveyed the following in the letter of 29 January 2024 in the context of consultation:-

> "*Mr Jacob will be required to properly and carefully investigate the merits of whatever course of action he decides to take in this litigation. This will include, where appropriate, consulting with our clients as co-defendants with information, documents and evidence relevant to the proceedings, on a common interest privilege basis. If Mr Jacob fails to discuss any such steps with our clients before taking them, and as a consequence damage is caused to the Estate, then this may constitute a breach of duty answerable in damages. The Kazakovs' reserve the right to seek appropriate recourse against Mr Jacob in such circumstances.*
> ……
>
> *The extent to which Mr Jacob seeks input, or consults with, others whilst acting as representative of the Estate is a matter for him and his advisors. However, the Kazakovs do not consider that Mr Jacob should or needs to consult with persons*

potentially interested in the Estate simply because they have (or claim) such potential interest.

……

It is plain that the various parties to this litigation, potential beneficiaries of the Estate and others will all have their own private agendas, and some may well prevail upon Mr Jacob to act in their own interests at the expense of the Estate.

……

If Mr Jacob does decide that it is necessary to consult with others, then the weight to which he places upon the instructions given or wishes expressed by those with whom he is consulting will have to be very carefully considered. In the context of this case, even the perception that he has preferred the interests of one consultee to another risks exposing him to criticism and potential litigation."

52. I note these matters not to single out or criticise the Kazakovs. I should also say that Ms Sandells eschewed any notion that these were 'threats' and explained that these were said in response to Mr Jacob's solicitation of her clients' views. Indeed, it is also quite apparent from the letter from the Claimants' solicitors dated 12 January 2024 that their clients too held their own strong views as to any suggested consultation duty. However, those strong views not only reflect significant distrust on both sides, they also reveal that, although we are still (perhaps surprisingly given its age) in the foothills of this litigation, Mr Jacob is clearly on notice that he may be exposed to significant liabilities and litigation activity against him personally.

53. Coupled with that, the evidence and submissions also reveal the Kazakovs' clear dissatisfaction with what they consider to be the limitations of the CPR, Part 19.12 procedure and their preferred course of a grant under Rule 30 of the Non-Contentious Probate Rules. In that regard, despite A&S' own abortive application for appointment pursuant to CPR, Part 19.12 last year, it seems from the oral submissions that the Kazakovs now have in mind the appointment of A&S in this jurisdiction under some form of grant, reflecting their reservation at the 12 October 2023 hearing of their position with respect to any future role by A&S here.

54. These matters play out against the background of international litigation activity between the parties in multiple jurisdictions, with seemingly no stone left unturned on either side, or legal expense spared in its pursuit. As noted, that encompasses not just the substantive dispute but related disputes about Mr Bourlakov's will, the administration of the Estate and the identity of the relevant administrators appointed in those jurisdictions. As I myself found not long after becoming the docketed judge, this litigation is extraordinary, not merely in terms of the value of the assets being argued over, but also the intensity of that litigation activity and the parties' efforts on all sides to secure litigation advantage. In short, everything it seems is fair game. This is the context before Mr Jacob has taken any steps of greater potential moment in the litigation proceedings before this Court, for

example, in terms of the Estate's position in its defence. It is therefore unsurprising that, at the latest hearing, Mr Jacob's counsel made clear that, if such exoneration was not given, Mr Jacob would feel compelled to relinquish his role. I accept that this was not a *fait accompli* but rather a reflection of the reality of his position.

55. It is against that background too that I now re-visit the question of prospective exoneration of Mr Jacob. As to my power to make such an order, this was not disputed when the matter was originally raised on 12 October 2023. A&S' objection then was that a solicitor and officer of the Court in Mr Jacob's position should not be under any lesser obligation in carrying out his duties than any other solicitor retained by the Estate. The Kazakovs did not comment then on this aspect. The Claimants' position then was that, without the exoneration provision, it would not be possible to find a professional representative willing to undertake the role, the Kazakovs had not objected to it and such a provision is ordinarily included in modern wills and trusts.

56. Although the Claimants remain neutral on the question of exoneration, the Kazakovs now argue that such an order should not be made. First, they say that CPR, Part 19.12 contains no reference to limiting the liability of a representative. Although again correct, the exoneration issue is concerned with the exercise by the Court of its power to appoint under CPR, Part 19.12. Inherent in that power is the Court's ability to determine the terms of that appointment. I see no reason, in principle, why the Court could not prospectively exonerate the representative on the terms sought by Mr Jacob. The more compelling question is whether that would be appropriate here.

57. Given the highly unusual circumstances of this case, in particular the significant litigation risks in play, I am satisfied that exoneration should be provided in the form of order sought by Mr Jacob. With the value of the assets in issue, the rival claims thereto and the multi-jurisdictional aspects, Mr Jacob's potential exposure is a matter of significant concern, heightened in this case by the litigation propensities of the interested parties and the likelihood of Mr Jacob too becoming a litigation target if one or more of those parties apprehend some tactical benefit in pursuing proceedings against him.

58. In this case, the Estate does not apparently include assets within this jurisdiction from which Mr Jacob could be indemnified. There is a deed of indemnity in place between the Bourlakovas and Mr Jacob, including in respect of Mr Jacob's liability for his actions as representative. However, this is not secured and may well be difficult to enforce. Mr Jacob does benefit from his firm's professional indemnity insurance policy. The policy limits have not been disclosed but, given the size of his firm and the requirements of the Solicitors' Regulation Authority with respect to minimum coverage levels, I am satisfied that these are indeed likely to be a 'drop in the ocean' compared to the size of liabilities potentially in play. Finally, based on the evidence as to his firm's efforts to investigate the possibility of further coverage, and the uncertainties surrounding the potential liabilities, I am also satisfied that the prospect of securing additional insurance, if not illusory, is highly unlikely, at least on terms reasonably capable of acceptance by an

insured in Mr Jacob's position. In this regard, it is notable that the Kazakovs have even suggested that the failure to obtain sufficient insurance coverage might itself be a breach of Mr Jacob's duty.

59. The risk for Mr Jacob with such exposure would not only sound in potential liability and costs. Were he to become embroiled in litigation, and even assuming he even felt able to remain in his role, defending any such litigation may well cause his independence to be questioned to such an extent as to make it impossible for him to continue to serve as Estate representative. That would mean not only the Estate not being properly represented in these proceedings or, possibly, at all, it would mean significant uncertainty as to the future conduct of these proceedings as a whole. In my view, the Claimants' prognostication at the hearing before me on 12 October 2023 has been properly tested and borne out.

60. I recognise, of course, that Mr Jacob owes duties as representative to act in the best interests of the Estate for the purposes of these proceedings. Acceding to his request might, therefore, mean no recourse for the Estate if he falls short of those duties (other than by way of dishonesty). That said, given the insurance position already described and the fact that Mr Jacob is an individual, such recourse would likely be limited in any event, at least compared to the potential liabilities he might face. Balanced against the benefit to the Estate of having continued independent representation in litigation as intense as this, the suggested disadvantage of potential lack of recourse against Mr Jacob is not so compelling. Indeed, it is also significant in this context that Mr Jacob is a solicitor and officer of the Court and that he is accountable to the Court as such. He is also present within the jurisdiction.

61. In my view, it is also relevant for present purposes that, were trustees or executors to be appointed to perform a similar function to Mr Jacob, it is common for the appointing instrument to exonerate them in advance in the same way. Even if no such exoneration clause is included in the relevant trust instrument, the Court has the power under section 61 of the Trustee Act 1925 to relieve trustees from liability. It is also common practice for solicitors' firms instructed to conduct and manage litigation to seek to limit their liability by contract. In this case, of course, Mr Bourlakov is in no position to consent to such exoneration but I am satisfied that all relevant parties are on notice of the issue (as they were back in October 2023), that it has been properly ventilated before me and that its renewed advancement by Mr Jacob does not, as the Kazakovs suggested, give rise to a conflict on his part.

62. Weighing all these considerations, including those indicated at the beginning of this judgment, not least the overriding objective and the need for the case to be dealt with justly and at proportionate cost, I am firmly of the view that I should make the order for prospective exoneration. For the avoidance of doubt, this will have effect from the date of Mr Jacob's appointment. I have considered whether the exceptions to the draft order should be expressed in more expansive terms (for example to encompass negligence or to

operate only beyond the policy limits of Mr Jacob's firm). However, I have reached the view that this would not be appropriate.

L. Conclusion

63. The above provides such guidance in relation to Mr Jacob's application as I presently consider appropriate. The parties are requested to seek to agree a draft minute of order addressing all consequential matters arising upon this judgment. In terms of substantive matters, the parties are at liberty to address me further about it but it presently seems that specific orders are only likely to be useful in relation to those matters reflected in paragraphs 4-10 of Mr Jacob's proposed draft order. In the event that any matters cannot be agreed by the end of this term, the parties should notify my clerk by then of that fact and identify the areas of disagreement. I shall then make further directions for how any outstanding matters should be resolved. My present view is that these should be dealt with in writing.

M. Postscript

64. This judgment was circulated in draft to the parties on the morning of 25 July 2024, with a request that a note of any obvious errors or corrections be provided by noon on 26 July 2024. I am grateful to the parties for their co-operation in providing a composite list.

65. At 4.54pm on 26 July 2024, my clerk also received a letter from the Claimants' solicitors, stating in relation to Section H (above) concerning Mr Jacob's power to make a counterclaim that:-

> "*As recorded in the draft judgment it was common ground between the parties that Mr Jacob did not have such a power. As a result, submissions were not made on either the existence of such a power, the consequences of his having such a power or as to what further directions might be required if he did have such a power (including, for example, a direction catering for the fact that, as matters stand, Mr Jacob does not have funding to pursue a counterclaim or other type of additional claim under the indemnity provided to him by the Claimants).*
>
> *In those circumstances, the Claimants request an opportunity for the parties to consider and address these matters before the Court hands down Judgment on the availability of a counterclaim.*
>
> *The Claimants recognise that it is desirable for the Judgment on the remaining issues to be handed down promptly and, mindful of the proximity to the end of term, would respectfully invite the Court to either:*
>
> 1. *Hand down Judgment without the Section H so as to allow the parties an opportunity to make submissions on those issues and any consequential matters arising from them; or*

2. *Make clear in the approved judgment that the availability of a Counterclaim was not addressed by the parties in submissions and that the parties have permission to make further submissions on this issue, and consequential matters arising from it, before the issue is finally determined*."

66. My clerk also received late on Friday evening a letter from Mr Jacob's solicitors in which they expressed their client's neutrality on the provision of further submissions on this issue but his concern about the Claimants' position on the funding of his representation of the Estate. My clerk also received an e-mail from the Kazakovs' solicitors, objecting to the Claimants' suggestion that the draft judgment should be re-visited.

67. I have considered the Claimants' request. Although, as noted (at [42] above), it was common ground between the parties that Mr Jacob did not have power to advance a counterclaim, it is not correct to say that submissions were not made on the existence of such power. The issue was squarely before the Court in those terms in Mr Jacob's application notice and proposed draft order. Mr Jacob and the Kazakovs addressed it, albeit briefly, in their skeleton arguments (at [58(1)] and [47] respectively). My understanding of their arguments is summarised in the judgment (at [42] above). In their skeleton argument (at [33]), the Claimants merely noted the parties' common position and their non-objection to Mr Jacob's related proposed direction. In oral submissions, the parties did not specifically address the issue beyond noting their common ground and, in the case of Mr Jacob, referring to his skeleton argument on the point and the suggested "*uncurable lack of jurisdiction*" to bring a counterclaim.

68. The parties were, of course, aware that the Court might not share their view. If they had wished to say more about it, it was open to any of them to have done so during the hearing before me. Having considered the issue further after the hearing, I came to the view that there was, in fact, no jurisdictional impediment for the reasons given (at [43] above). I did not go on to consider the consequences that might follow for this case or possible further directions that might be required, those issues, by contrast, not having been ventilated. If required, the Court's further assistance can be sought on them. There is, however, no basis for taking the exceptional course of the suggested excision of, or qualification to, Section H of the judgment.

69. I therefore decline the Claimants' request. If any party considers that I am wrong about Mr Jacob's power to make a counterclaim, it is, of course, open to them to seek permission to appeal. In the meantime, the Claimants and Mr Jacob are encouraged to resolve their funding differences in short order. If, however, the Court's assistance is required on that aspect, this too can be sought, again in short order.