Neutral Citation No: [2025] NIMaster 11	Ref: [2025] NIMaster 11
Judgment: approved by the Court for handing down (subject to editorial corrections)	**ICOSNo: 23/065343/06** **Delivered: 26/06/25**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

KING'S BENCH DIVISION

_____

Between:

IMELDA MCLAUGHLIN

Plaintiff

and

ITALIAN COFFEE HOLDINGS LIMITED T/A CAFFE NERO

and

First Defendant

ONE TO ONE SIGNS SOLUTIONS LIMITED (IN LIQUIDATION)

and

Second Defendant

RADIANT BLINDS LIMITED

and

Third Defendant

AEGEAS INSURANCE LIMITED AS INSURERS OF ONE TO ONE SIGNS LIMITED (IN LIQUIDATION)

and

Fourth Defendant

SPICER INSULATIONS LIMITED

and

Fifth Defendant

JESS BLINDS AND SHUTTERS LIMITED

Sixth Defendant

_____

Mr O'Donaghue KC instructed by Tughans on behalf of the plaintiff.
Mr McCollum KC instructed by Horwich Farrelly on behalf of the first defendant.
Mr Dunlop KC instructed by Clyde and Co. on behalf of the third defendant.
Mr Spence instructed by DWF (NI) LLP on behalf of the fifth defendant.
Mr Ringland KC instructed by DAC Beachcroft on behalf of the sixth defendant.

MASTER HARVEY

Introduction

[1] This is an application under Order 29 rule 12 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules") in which the plaintiff seeks an interim payment of £580,502.52 in respect of adaptations to the plaintiff's new property, the cost of care up to the date of trial, the cost of a rental property in the interim plus legal outlay. This figure takes account of a deduction in respect of the balance monies left from previous interim payments.

[2] This is the second application for an interim payment, the previous summons was determined by me on 22 May 2024 when I directed the first and third defendants pay the sum of £443,750.00 and £543,750.00 respectively, such figures taking into account a previous payment by the first defendant of £100,000 which was not the subject of an application to court. If successful, this application will bring the total amount of interim payments to £1,668,002.52. Since the date of my previous decision, there have been three new defendants joined to the action.

[3] At the hearing on 24 June 2025, four of the six named defendants were represented, and the court was provided with an electronic bundle of documentation and several replying affidavits late in the day. Given the urgency of the application, I proceeded to hear submissions from the parties and at the end of the hearing indicated I would consider all the additional material and issue a decision promptly. I am grateful to all counsel for their helpfully focused submissions.

Adjournment application

[4] The sixth defendant applied to adjourn the hearing until September 2025 on the basis they were joined relatively recently to the proceedings, they need further time to investigate the claim and require a report from an engineering expert. Having heard from the parties on this issue, I consider the requirement for a further interim payment in respect of building costs is urgent and I refused the adjournment for the following reasons. The plaintiff remains in rental accommodation which does not meet her complex requirements in the longer term. Any delay to the adaptations to her prospective property will increase if there is further delay and she is continuing to incur rental charges. While not averred in the grounding affidavit to the application, the plaintiff's senior counsel indicated that adjoining neighbours to the new property have expressed dissatisfaction with the condition of the property and that the work

has not been carried out. This is an interlocutory application not a trial. While the sixth defendant's application may have greater force if it was to adjourn the substantive trial, it carries little weight in the context of an urgent interim payment application in a catastrophic injury case.

[5] A further issue arose in relation to whether the care aspect of the interim payment sought could be dealt with on another occasion as the need for payment of the "pre-tender costs estimate" building costs is more pressing. The care costs are over £220,000 while the building costs are over £560,000. The plaintiff retains balance monies from the previous interim payment which will cover the cost of care for a period. I consider it is a more efficient use of court time to deal with all issues now and this will reduce costs. The care aspect of the application is clearly not as urgent, but I consider in the overall context of this application, the court should deal with the entire sum claimed in one hearing.

Background

[6] I do not propose to rehearse the background to this claim, which was set out in my previous judgment. In short, the action arises from an incident at the first defendant's premises on 5 April 2023 when the plaintiff allegedly suffered catastrophic injuries, loss and damage when a sign and canopy allegedly fell and struck her.

The defendants to the claim

[7] In brief terms, the first defendant is the occupier of the premises in which the alleged incident occurred. The second defendant designed and installed the sign. The third defendant was responsible for the supply of the exterior awning which was installed on the premises. The fourth defendant is the insurer of the second defendant. The fifth defendant was tasked by the second defendant to supply and fit the metal sign. The sixth defendant was engaged by the third defendant to fit the awning.

[8] As stated, the fourth defendant is the insurer of the second defendant which is a company in liquidation. The draft proposed amended of statement of claim dated 18 June 2025, which has been produced at the hearing of the plaintiff's application, states the "plaintiff does not seek any judgment or remedy against the second named defendant." Moreover, the plaintiff is now seeking to discontinue the claim against the fourth defendant insurer, with no order as to costs.

Legal principles

[9] The relevant legal principles are well established and uncontroversial. The power is contained in Order 29 rules 12, 13 and 19 of the Rules. In the previous judgment of this court I made reference to the authorities such as *Eeles v Cobham Hire Services Ltd* [2010] 1 WLR 409 setting out the applicable principles for such applications, and the case of *AL (by her Mother and Litigation Friend, S) v A, T,*

Collingwood Insurance Company Ltd [2021] EWHC 1761 (QB) regarding the extent to which this might inhibit the trial judge's approach to a periodical payment order ("PPO").

The submissions from the parties

[10] The basis for the plaintiff's application is well set out in the papers. At hearing, the first and third defendants assert that if the court grants the plaintiff's application, the apportionment as between defendants should be calculated giving credit to these defendants for already having made interim payments. The apportionment in their view would therefore be the amount sought in this application plus the sums already paid and that combined figure would then be divided equally with all four defendants contributing in equal amounts. The second and fourth defendant would not be involved in such a split. It was submitted on behalf of the sixth defendant that they did not have input in relation to the previous interim payments and could agree only to an equal four way split of the interim payments from this point on, but not for previous payments made.

[11] The fifth defendant argues it should not contribute at all. Counsel submitted that in line with *HMRC v GKN* [2012] EWCA Civ, I should put myself in the hypothetical position of being the trial judge and determine, based on the material before me whether the plaintiff would obtain judgment for a substantial amount of money from this defendant. Counsel asserts, on the basis of the materials available to me, including expert reports, a replying affidavit from the solicitor and an affidavit from their client that there is insufficient evidence to establish the plaintiff would obtain judgment against this defendant. They claim this is a similar situation to the position of the second defendant in the initial application in May 2024, who were not directed to contribute for the reasons set out in that judgment. Further the fifth defendant points to the lack of affidavits or evidence advanced on behalf of the other defendants as part of this application.

Consideration

[13] I consider the distinction between the fifth defendant here and the position of the second defendant in May 2024 is that it was in my view clearly established the second defendant was not insured due to a refusal to indemnify under the policy. The second defendant was also not a party to the application as the plaintiff did not seek relief against them and at that stage I considered there was insufficient evidence to determine the second defendant would be held liable for the claim. In this application, by contrast, the fifth defendant is insured and is a party to the application and there is an addendum report from Mr Cosgrove of 18 June 2025 in which he commented on the "responsibilities and positions of the various parties" and at paragraph 6 sets out the position in relation to this defendant and the extent of its potential liability.

[14] There is also now a proposed draft amended statement of claim which seeks to particularise the allegations against each defendant, including the fifth defendant. The

fifth defendant disputes what they assert are bald assertions in the statement of claim as far as their client is concerned and call into question the observations of Mr Cosgrove in his updated report. The fifth defendant made a number of submissions which I will not rehearse in their entirety but they included referring me to the report of Professor McQuillan who states there were missed opportunities after the aluminium sign was fixed when any deterioration in the structural background could have been identified. The fifth defendant asserts it had no responsibility for or involvement in the awning, its fixing or the structural background. It points to the responsibility of the first defendant to inspect, maintain, repair and replace the sign, awning and structural background and that the first and third defendants were responsible for removing and fixing the awning. Further, counsel for the fifth defendant contends the available evidence points to the degradation behind the sign causing the accident and not the light sign erected by their client.

[15] The fallback position for the fifth defendant if I am against them in their core submission that they should pay nothing, is they should not be subject to an equalisation payment, namely a 25% contribution to the entirety of the interim payments to date, as it is not just to do so. As with the sixth defendant, they were joined subsequent to the initial interim payment and not involved in the application in May 2024 as they were not a defendant at that stage and similarly were not party to discussions leading to a without prejudice payment of £100,000 from the first defendant.

[16] On balance, I consider the plaintiff will proceed to obtain judgment for substantial damages in this case. The provisions of Order 29 rule 13(1)(d) make clear that where there are two or more defendants and the interim payment order is sought against any one or more of them and at trial the plaintiff would obtain judgment for substantial damages against at least one of the defendants, but the Court cannot determine which, the court may order any one or more of the respondents to make an interim payment. This payment should be of such amount as the court thinks just. I am not in a position to make findings of fact and the conflicting evidence available does not assist me in identifying whether the plaintiff will ultimately succeed against one, some or all of the defendants. I consider the just way to deal with this case is to put the defendants on an equal footing, and this can be done by totalling all the interim payments and directing that each defendant contributes equally. The court has power to do so as it can vary previous interim payment orders pursuant to Order 29 rule 19 at any stage of the proceedings and make such order with respect to the interim payment as may be just.

[17] As with the first application, I consider there is a real, immediate and reasonably necessary need for an interim payment now. It represents a reasonable proportion of the damages that are likely to be recovered by the plaintiff and does not represent an overpayment in all the circumstances given the very serious, life changing injuries and the associated special damages claim which could be in the order of several million pounds. I have considered the impact of this payment on the

potential for a PPO and consider it is highly likely the trial judge would capitalise other heads of future loss to make up any shortfall.

[18] Based on the material available to me and having regard to the overriding objective pursuant to Order 1 rule 1A, I therefore consider that to do justice between the parties, it is appropriate to make an order against all four defendants with equal contributions from each. After liability has been determined at trial, appropriate adjustments can be made depending on which party or parties are held liable, to include interest on the amounts paid and appropriate costs orders. As a result, I do not consider there to be substantive prejudice to these insured defendants such as to prevent making this order.

Conclusion

[19] For the reasons set out above, I grant the plaintiff's application against the first, third, fifth and sixth defendants. I set out below a draft calculation of the amount to be paid by each defendant. The total amount of interim payments amount to £1,668,002.52 which is to be split equally between four defendants in the sum of £417,000.63 with appropriate reimbursement for payments already made, such sums to be paid within 21 days of the 30 June 2025, time to run during the long vacation.

i. The first defendant shall receive £126,749.37 from the fifth and sixth defendants split equally (£63,374.69 from each).
ii. The third defendant shall receive £126,749.37 from the fifth and sixth defendants split equally (£63,374.69 from each)
iii. The fifth defendant shall pay £63,374.69 to the first defendant and the same amount to the third defendant, as well as £290,251.26 to the plaintiff
iv. The sixth defendant shall pay £63,374.69 to the first defendant and the same amount to the third defendant, as well as £290,251.26 to the plaintiff

I direct that if any party wishes to raise issues with the above calculation, that they do so on or before 30 June 2025, failing which the order will become final on that date.

[20] Costs of the application shall be awarded to the plaintiff, such costs to be taxed in default of agreement. I certify for counsel on behalf of all parties in respect of the hearing.