

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0178

BETWEEN

PETER PAN d.o.o.

FIRST-NAMED CLAIMANT

CROATIA OSIGURANJE d.d.

SECOND-NAMED CLAIMANT

SALIH SINIĆ

THIRD-NAMED CLAIMANT

KLAUDIO ŠĆULAC

FOURTH-NAMED CLAIMANT

NIKŠA HRŽIĆ

FIFTH-NAMED CLAIMANT

DARKO KOS

SIXTH-NAMED CLAIMANT

AND

THE REGISTRAR OF INTERNATIONAL BUSINESS COMPANIES

FIRST-NAMED RESPONDENT

AND

THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

SECOND-NAMED RESPONDENT

Appearances:

Ms. Heidi Badenock for the Applicants /Defendants.

Mrs. Zhing Horne-Edwards for the Respondents/Claimants.

2016: Feb. 17
Apr. 7

DECISION

BACKGROUND

[1] **Henry, J.:** This claim was commenced by Peter Pan d.o.o., Croatia Osigurante d.d. ('Croatia O.'), Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos¹ by way of an appeal against 'the refusal of the Registrar of International Companies ('the Registrar') to restore the name of North Adriatic Ltd. to the register of International Business Companies.' It was initiated by Fixed Date Claim Form ('FDCF') and accompanied by Affidavits of Gordon Stankovic.² The Honourable Attorney General is a defendant to the claim.

[2] The Registrar and the Honourable Attorney General³ have applied for orders:

- (1) that 'the claimant has no locus standi' to seek the relief sought in the FDCF; and
- (2) dismissing or striking out the FDCF.

Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos contend that they have *locus standi* to maintain the action and they oppose the application for the claim to be dismissed and struck out. For the reasons given in this decision, the application to strike out Croatia O.'s, Salih Sinić's, Klaudio Šćulac's, Nikš Hržić's and Darko Kos' FDCF is granted and their appeal is dismissed. Peter Pan d.o.o. has the requisite legal standing to pursue its appeal. The application to strike out its FDCF is therefore dismissed.

ISSUE

¹ Referred to collectively as 'the claimants'.

² Filed on October 30, 2015 and 12th February, 2016 respectively.

³ Referred to collectively as 'the defendants'.

[3] The issues are:

(1) Whether Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and/or Darko Kos have the requisite legal standing to appeal the decision to strike North Adriatic Ltd. off the IBC register? and

(2) Whether the FDCF filed by Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos should be struck out and dismissed?

ANALYSIS

Issue 1 – Do Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and/or Darko Kos have the requisite legal standing to appeal the decision to strike North Adriatic Ltd. off the register?

[4] Based on assertions in the FDCF and affidavit of Gordon Stankovic, Peter Pan d.o.o. is a company incorporated in Croatia. It is allegedly the owner of motor vessel “Peter Pan” (‘M.V. Peter Pan’), a fishing boat which bears the Croatian flag. Croatia O. is the reported insurer of M.V. Peter Pan. Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos are described as crew members of M.V. Peter Pan. Mr. Stankovic deposed that in 2012,⁴ M.V. Peter Pan collided with M.V. Lim which is registered to North Adriatic Ltd., and operates under the flag of Saint Vincent and the Grenadines. He averred further that North Adriatic Ltd. is incorporated in Saint Vincent and the Grenadines as an international business company (‘IBC’).

[5] Mr. Stankovic alleged that M.V. Peter Pan sustained physical damage and loss in the collision while Messieurs Sinić, Šćulac, Hržić and Kos were injured. He averred that M.V. Lim’s captain was convicted of recklessly and negligently causing the collision. Subsequently, M.V. Lim’s P & I insurers gave the claimants undertakings to pay such sums due to them by settlement agreement or by judgment of the Croatia Commercial Court. In exchange, the claimants allegedly agreed among other things, not to have M.V. Lim arrested or detained. Mr. Stankovic deposed further that Croatia O. paid

⁴ 19th February, 2012.

for part of the repairs to M.V. Peter Pan and then sued against North Adriatic Ltd. in Croatia, to recover those sums.

[6] In similar fashion, Mr. Sinić and his crew members Mr. Šćulac, Mr. Hržić and Mr. Kos brought suit against North Adriatic Ltd. in the Croatian courts for damages resulting from the collision. Mr. Stankovic explained that at some point, M.V. Lim was sold. North Adriatic Ltd. at its agent's request, and on the ground that it had neither assets nor liabilities, has since been struck off the IBC register. Mr. Stankovic deposed that it is impossible for the claimants to secure a settlement agreement with North Adriatic Ltd. or proceed with their claims against it, since it no longer exists.

[7] Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and/or Darko Kos purportedly had their attorney write to the Registrar requesting that North Adriatic Ltd. be restored to the register pursuant to section 174 (1) of the International and Business Companies (Amendment and Consolidation) Act ('the Act').⁵ Mr. Stankovic deposed that the Registrar refused to do so, and responded that:

(1) section 175 (2) of the Act 'appears to only allow the company, director, member, liquidator or receiver' of the IBC to make such a request; and

(2) section 174 (2) allows a creditor to appeal to the court from the Registrar's refusal to restore an IBC to the register.

The claimants have lodged their appeal against the Registrar's refusal to restore North Adriatic Ltd. to the register, under section 174 (2) of the Act.

[8] The Registrar's and the Honourable Attorney General's application is supported by affidavits⁶ of Ms. Karen Jackson, Manager, International Financial Services. She acknowledged that the North Adriatic Ltd. was struck off the IBC register and notice to this effect published in the Gazette. She deposed that through their attorney, Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić

⁵ Cap. 149 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁶ Filed on November 27, 2015.

and/or Darko Kos applied by letter dated 30th July, 2015 to have it restored, but failed to use Form 23 as prescribed in the IBC Regulations. Ms. Jackson contends that such an application cannot be made by their lawyer on their behalf. She indicated further that the claimants do not fall within the category of persons who may apply to the Registrar under section 175 (2) (a) of the Act, for an IBC to be restored to the register. She concludes that therefore they do not have the necessary legal standing to bring the instant appeal. It is worth noting that the claimants seek restoration under section 174 (2) and not section 175 (2) of the Act.

[9] In response to Ms. Jackson's affidavits, Ms. Elaine Simon Latham,⁷ filed an affidavit. She explained that a letter dated 30th July, 2015 accompanied by a completed Form 23 was delivered to the Financial Services Authority ('FSA') offices seeking restoration of North Adriatic Ltd. to the register. She alleged that the only other enclosure was a cheque for the prescribed fee. Ms. Simon exhibited a copy of the referenced Form 23 and cheque.⁸ She deposed that a response⁹ was received from Ms. Geshell Peters in which the application was refused. Ms. Geshell Peters is the deputy registrar.

[10] The exhibited Form 23 appears to have been completed electronically. It bears the name of Zhinga Horne Edwards as applicant for and on behalf of Vukic Law Firm of Croatia for Peter Pan d.o.o. It names North Adriatic Ltd. as the subject company and indicates that the 'Applicant acts on behalf of plaintiffs in a law suit against the Company in the Croatian Courts.' It also states- 'The plaintiffs are victims of a collision involving the motor vessel "Lim" registered under the Saint Vincent and the Grenadines flag in the name of the Company.' It expressly requested that the 'registration be restored under section 174 (1).' The cover letter (exhibit 'N') did not identify 'the plaintiffs' by name.

[11] The Registrar and the Honourable Attorney General submit that Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hrzić and/or Darko Kos have no legal standing to appeal because:

⁷ Self-described legal assistant in Mrs. Zhinga Horne-Edwards' chambers.

⁸ Exhibit 'ESL1'.

⁹ By letter dated 31st July, 2015, exhibited as 'N' to affidavit of Gordon Stankovic filed on 30th October, 2015.

(1) there is no record or evidence that they submitted an application for the company to be restored to the register;

(2) An appeal under section 174 (2) of the Act is conditional on a refusal by the Registrar to restore an IBC to the register. Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and/or Darko Kos did not make an application to restore North Adriatic Ltd., therefore the Registrar has refused no such request;

(3) only those categories of persons listed in section 175 (2) (a) of the Act, (namely the company or a director, member, liquidator or receiver of the company) may apply to have a company restored to the register; and no application by any such person has been made; and

(4) Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos are not creditors of North Adriatic Ltd.

[12] The contentions by the registrar and the Honourable Attorney General contradict Mr. Stankovic's allegations in some respects. While there is common ground that a letter dated 30th July, 2015 addressed to Registrar of the FSA, was received by Geshell Peters, the parties do not agree whether it had enclosures. Ms. Jackson denied that a Form 23 was submitted. She concluded that the letter did not constitute an application in keeping with the Act and regulations. If no application was made by Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos as she alleged, that is the end of the matter and the court must find that none of the claimants have legal standing to pursue their appeal. An examination of the documentation relied on by the parties is necessary.

[13] Endorsed on the lower left of the July 30th letter is the word 'enclosures' which usually signifies that other documents are enclosed. Ms. Jackson does not indicate whether this is so nor does she refute Ms. Simon's claim that it did. Ms. Simon's affidavit referencing and attaching the alleged enclosures, was filed 5 days before the hearing of the application. Neither the Registrar nor the Honourable Attorney General provided additional material or affidavits contesting those assertions. I accept Ms. Simon's uncontroverted version of what was included in the letter and I find that Form 23 was

submitted. I am bolstered in this conclusion having regard to the contents of Ms. Peters' letter in response,¹⁰ in which she stated:

'Dear Mrs. Horne-Edwards:

Re: Restoration of North Adriatic Ltd. (16756 IBC 2008) to the Register

I write further to your letter and accompanying documents relative to the captioned matter, dated July 30th, 2015.

... in light of the foregoing, it is with regret that I must advise you that the Financial Services Authority is unable to restore North Adriatic Ltd., as requested. ...'

[14] However, that is not the end of the matter. Who applied for restoration? Only one of the claimants, Peter Pan d.o.o., is named in the exhibited Form 23. No mention is made of Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hrzić or Darko Kos. The Form 23 was not signed by Peter Pan d.o.o. or any of its directors or officers. The signatory, Zhing Horne-Edwards, signified that she was acting on behalf of plaintiffs in a law suit. At the signature clause, Peter Pan d.o.o. was specifically named as a client of Vukic Law Firm and of Zhing Horne Edwards. Further, Zhing Horne Edwards purported to act for Vukic Law Firm.

[15] It is trite law that a person may appoint another to act on his behalf. Such appointment is effective whether made orally or in writing. The person appointed is authorized to act on the appointer's behalf unless there are legal restrictions. A legal practitioner who is retained to so act has similar authority to represent his client to the extent agreed between them. On the face of the document, the applicant Zhing Horne Edwards acted as agent for Vukic Law firm and Peter Pan d.o.o. when she submitted the Form 23. There is nothing in the Act or regulations which stipulates that an applicant cannot make an application for restoration through an agent or lawyer. In the premises, I accept that Mrs Horne-Edwards made the application as lawyer for Peter Pan d.o.o. and it was not her personal application. I therefore find that Peter Pan d.o.o. made an application for restoration of North Adriatic

¹⁰ Dated 31st July, 2015 and exhibited as 'K.J.1'.

Ltd. to the register, which was refused by Ms. Geshell Peters. There is no evidence that Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hrzić and/or Darko Kos made an application for such restoration and I find that they did not.

Claimants' Legal Standing to appeal

- [16] The registrar and deputy registrar are appointed by the International Financial Services Authority¹¹ ('the Authority') and are its employees. The registrar has primary responsibility for administration of the Act. As deputy registrar, Ms. Peters is authorized to exercise any of the registrar's powers, duties or functions.¹⁰ The Authority is established by law¹² and is given primary responsibility for the efficient and responsible administration and supervision of International Legislation, including the Act.¹¹
- [17] The Act empowers the registrar to strike an IBC off the register, if its registered agent signifies the company's desire to be struck off.¹³ It appears that North Adriatic Ltd. applied to be struck off in this way. The Act also permits a wide cross section of persons to apply to the Registrar to have a company restored or appeal from the registrar's decision to strike a company off the register. Such an application can be made under section 173 (1) which states:-

'173 (1) Any person who is aggrieved by the striking off of an international business company from the Register under section 172 may, within ninety days of the date of the notice published in the *Gazette*, appeal to a Judge in Chambers.'

Under this section, any person who claims to have been wronged by the striking off of an IBC, may appeal the registrar's decision. It does not limit the categories of persons who may appeal. It follows that Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hrzić and/or Darko Kos may invoke this provision by way of appeal. In their FDCF and affidavit in support they all expressly rely on

¹¹ In accordance with section 182 of the Act.

¹² Section 3 of the Saint Vincent and the Grenadines International Financial Services Authority Act, Cap. 108.

¹³ See section 172(1) (d) of the Act which provides:

'172 (1) If an international business company-
(d) authorises in writing that its registered agent procures its striking off,
the Registrar may strike the company off the register.'

section 174(2) as the basis for their appeal. No reference is made to section 173(1). Accordingly, Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos cannot avail themselves of the wide remit of section 173 (1).

[18] Their appeals were made under section 174 (2). For context, it is necessary to set out subsection (1) also. Section 174 (1) and (2) provides:-

‘174 (1) Where the name of an international business company has been struck off the Register, the Registrar may, upon considering all the relevant facts, and upon receipt of an application in the prescribed form and payment of the prescribed fee, and any outstanding fees, restore the international business company to the Register, and issue a certificate of restoration in the prescribed form.

(2) The company or creditor, member or liquidator of the company may, within ninety days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

[19] Sub-section (1) summarizes the procedure which governs restoration of a company by the registrar. It contemplates that the registrar will consider any application she receives for restoration and will either grant or refuse the application. It does not expressly state the categories of persons who may apply. However, sub-section (2) identifies the persons who may appeal from the Registrar’s decision to refuse restoration under subsection (1). They are the company, its creditor, member or liquidator. By necessary implication, these are the very persons who may apply for restoration under sub-section (1). It therefore follows that Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić or Darko Kos may apply under section 174 (1) for North Adriatic Ltd. to be restored to the register if they qualify as creditor, member or liquidator. If they made such application and were denied, they are entitled to appeal under section 174 (2) of the Act. Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos made no such application. Therefore, they may not activate the appeals process provided in subsection (2).

- [20] Peter Pan d.o.o having made such an application through its legal practitioner, it may appeal the registrar's refusal, if as it claims it is a creditor of North Adriatic Ltd. The Act does not contain a definition of 'creditor'. It is defined¹⁴ as 'a person or company to whom money is owing.' On the available materials, it appears that Peter Pan d.o.o. may be entitled to recover damages from North Adriatic Ltd. for loss incurred in the collision which were not covered by its insurer. Proof of such loss is yet to be ascertained. The court notes that Peter Pan d.o.o. relies in part on an undertaking received from North Adriatic Ltd. The existence of that undertaking suggests that North Adriatic Ltd. perhaps acknowledged the viability of Peter Pan d.o.o.'s claim. This reality cannot be ignored.
- [21] The court is unable without more to accept or reject Peter Pan d.o.o.'s assertion that North Adriatic Ltd. is indebted to it. However, in view of the circumstances described in Mr. Stankovic's affidavit, it appears very likely that this is possible and I so infer. As creditor, Peter Pan d.o.o. would be entitled to maintain the instant appeal under section 174 (2) of the Act. The court remains mindful that MV Lim's captain was convicted in relation to the collision. Accordingly, liability for resulting damages in the civil jurisdiction is moot and attracts an order for payment of damages to the injured party/parties. In all the circumstances, it seems very likely that Peter Pan d.o.o. is North Adriatic Ltd.'s creditor and it would be just for the court to permit the former to appeal. I find therefore that Peter Pan d.o.o. has the necessary legal standing to pursue this appeal.
- [22] The registrar and the Honourable Attorney contend that section 175 (2) is the applicable provision under which an appeal can be brought when an international business company is struck off the Register. Section 175 (2) of the Act allows a company, its director, member, liquidator or receiver to apply for its restoration to the register. It reads:-
- '175 (2) ..., the company or a director, member, liquidator or receiver of the company may-
- (a) make application for restoration of the name of the company to the Register;
 - (b) continue to defend proceedings that were commenced against the company prior

¹⁴ In Concise Oxford English Dictionary 11th Edition, (Oxford University Press) 2006.

- to the date of striking off; and
- (c) continue to carry on proceedings that were instituted on behalf of the company prior to the striking off.'

Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos do not claim to fit into the stated categories of appellants. Furthermore, their appeal is not made under that provision. It is therefore not applicable.

Issue 2 – Should the FDCF by Peter Pan d.o.o., Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos be struck out or dismissed?

[23] The court has the authority to strike out a FDCF or part of it, if it appears to be an abuse of the process of the court or if it is likely to obstruct the just disposal of the proceedings.¹⁵ However, this discretion is exercised sparingly and '*only in the most clear and obvious cases ...*'¹⁶ In exercising its discretion, the court must consider the overriding objective to deal with cases justly.¹⁷ It must also examine the FDCF and affidavits in support to assess whether they contain any bases for bringing the claim. If they do, the FDCF will not be struck out. At this stage, the court is not interested in ascertaining if the claimant can prove his case.¹⁸

[24] Applying these principles to the instant case, I have no hesitation in finding that the appeal brought by Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić and Darko Kos under section 174(2) has no legal basis as they did not lodge an application to have North Adriatic Ltd. restored nor have they

¹⁵ See CPR 26.3(1)(c).

¹⁶ Julian Prevost v Rayburn Blackmore et al, Commonwealth of Dominica High Court Claim DOMHCV2005/0177 at para. 6 (Rawlins, J.).

¹⁷ See CPR 1.2 which states:

"1.2 The court must seek to give effect to the overriding objective when it-

- (a) exercises any discretion given to it by the Rules; or
- (b) interprets any rule."

¹⁸ Wenlock v Maloney [1965] 2 All E.R. 871, (CA).

appealed under section 173. It is accordingly ordered that those portions of the FDCF which capture their respective claims are hereby struck out. Their FDCF is dismissed for failing to disclose a cause of action. I make no order as to costs against them.

[25] Accordingly,

(1) the FDCF is amended:-

(a) by removing references to Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos and Second-, Third-, Fourth-, Fifth and Sixth- Named claimants from the heading;

(b) by deleting:

(i) line 2 of paragraph 1;

(ii) in line 3 of paragraph 1, the words 'Sixth-named Claimants, crew members of the Peter Pan.'

(2) Mr. Stankovich's affidavit filed on 30/10/2015 is amended:-

(a) by removing references to Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos and Second-, Third-, Fourth-, Fifth and Sixth- Named claimants from the heading;

(b) by deleting:

(i) in paragraph 1, line 2, the words 'Croatia Osiguranje d.d., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos (together the "**Claimants**)";

(ii) in paragraph 4, line 3, the words 'The Second-named claimant is the insurer of the Peter Pan.';

(iii) in paragraph 9, line 2, the words 'The Third, Fourth-, Fifth and Sixth- Named claimants also sustained personal injuries as a result of the collision.'

(iv) paragraph 13;

(v) in paragraph 14, the first sentence; and the words ' and to the Third-, Fourth-, Fifth and Sixth- Named claimants' in the second sentence;

(vi) the second sentence in paragraph 16;

(vii) paragraph 18;

(viii) in paragraph 19, lines 1 and 2, the words 'and the Third-, Fourth-, Fifth and Sixth- Named claimants'

- (ix) in paragraph 23, line 2 the words ‘... and the Claimants...’
 - (x) in paragraph 28, lines 1 and 2, the words ‘... the Third- Fourth-, Fifth and Sixth-Named Claimants’;
 - (xi) ‘s’ from the word ‘claimants’ wherever it appears;
 - (xii) the words ‘First-named’ wherever they appear; and
- (3) Mr. Stankovich’s affidavit filed on 12/02/2016 is amended by deleting:-
- (a) in paragraph 1, line 1 the words ‘... Croatia Osiguranje d.d., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos (together the “**Claimants**”); and
 - (b) in paragraph 4, line 3, the words ‘... and to the Third- Claimants’;

[26] In his supplemental affidavit, Mr. Stankovic averred that Croatian law prevents a claimant from proceeding with a claim against a non-existent party. He has provided copies of the relevant law with English translation. He deposed that Peter Pan d.o.o. is unable to continue its claim against North Adriatic Ltd. in Croatia while North Adriatic Ltd. is struck off the register. Having regard to all of the assertions made by Mr. Stankovich as recounted and examined above, I am satisfied that Peter Pan d.o.o. has demonstrated that it has a cause of action against the Registrar and the Honourable Attorney General for restoration of the company to the register. The factual background provided advances a reasonable basis on which to prosecute its appeal. I dismiss the application for Peter Pan d.o.o.’s FDCF to be struck out and I make no order as to costs.

[27] Having regard to the subject matter of this case, it seems appropriate to expedite the case and give directions to facilitate a speedy resolution. I shall do so shortly.

ORDER

[28] It is declared and ordered:

- (1) Peter Pan d.o.o. has the necessary legal standing to pursue the appeal.
- (2) Croatia O. has no legal standing to pursue the appeal and its FDCF is struck out and dismissed.
- (3) Salih Sinić has no legal standing to pursue the appeal and his FDCF is struck out and dismissed.

- (4) Klaudio Šćulac has no legal standing to pursue the appeal and his FDCF is struck out and dismissed.
- (5) Nikš Hržić has no legal standing to pursue the appeal and his FDCF is struck out and dismissed.
- (6) Darko Kos has no legal standing to pursue the appeal and his FDCF is struck out and dismissed.
- (7) The FDCF is amended by:-
 - (a) by removing references to Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos and Second-, Third-, Fourth-, Fifth and Sixth- Named claimants from the heading;
 - (b) by deleting:
 - (i) line 2 of paragraph 1;
 - (ii) in line 3 of paragraph 1, the words 'Sixth-named Claimants, crew members of the Peter Pan.'
- (8) Mr. Stankovich's affidavit filed on 30/10/2015 is amended:-
 - (a) by removing references to Croatia O., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos and Second-, Third-, Fourth-, Fifth and Sixth- Named claimants from the heading;
 - (b) by deleting:
 - (i) in paragraph 1, line 2, the words 'Croatia Osiguranje d.d., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos (together the "**Claimants**)";
 - (ii) in paragraph 4, line 3, the words 'The Second-named claimant is the insurer of the Peter Pan.';
 - (iii) in paragraph 9, line 2, the words 'The Third, Fourth-, Fifth and Sixth- Named claimants also sustained personal injuries as a result of the collision.'
 - (iv) paragraph 13;
 - (v) in paragraph 14, the first sentence; and the words ' and to the Third-, Fourth-, Fifth and Sixth- Named claimants' in the second sentence;
 - (vi) the second sentence in paragraph 16;
 - (vii) paragraph 18;
 - (viii) in paragraph 19, lines 1 and 2, the words 'and the Third-, Fourth-, Fifth and Sixth- Named claimants'
 - (ix) in paragraph 23, line 2 the words '... and the Claimants...'

- (x) in paragraph 28, lines 1 and 2, the words '... the Third- Fourth-, Fifth and Sixth-Named Claimants';
 - (xi) 's' from the word 'claimants' wherever it appears;
 - (xii) the words 'First-named' wherever they appear;
- (9) Mr. Stankovich's affidavit filed on 12/02/2016 is amended by deleting:-
- (i) in paragraph 1, line 1 the words '... Croatia Osiguranje d.d., Salih Sinić, Klaudio Šćulac, Nikš Hržić, Darko Kos (together the **"Claimants"**); and
 - (ii) in paragraph 4, line 3, the words '... and to the Third- Claimants';
- (10) No order as to costs.

[29] I wish to thank counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE