Neutral Citation Number: [2016] EWHC 1085 (Comm)

Case No: 2012 FOLIO 198

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 10/05/2016

Before:

THE HONOURABLE MR JUSTICE FLAUX

Between:

(1) SUEZ FORTUNE INVESTMENTS LTD	**Claimants**
(2) PIRAEUS BANK AE	
- and -	
(1) TALBOT UNDERWRITING LTD	**Defendants**
(2) HISCOX DEDICATED CORPORATE MEMBER LTD	
(3) QBE CORPORATE LTD	
(4) CHAUCER CORPORATE CAPITAL (NO 2.) LTD	
(5) MARKEL CAPITAL LTD	
(6) CATLIN SYNDICATE LTD	
(7) APRIL GRANGE LTD	
(8) BRIT UW LTD	
(9) NOVAE CORPORATE UNDERWRITING LTD	
(10) GAI INDEMNITY LTD	

- -

Ms Claire Blanchard QC & Mr Tim Jenns (instructed by **Hill Dickinson**) for the **First Claimant**
Mr Jonathan Gaisman QC, Mr Stephen Kenny QC and Ms Nichola Warrender (instructed by **Norton Rose Fulbright**) for the **Defendants**

Hearing dates: Monday 11th April, Tuesday 12th April and Friday 15th April 2016

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

The Hon. Mr Justice Flaux :

Introduction

1. Paragraph 1 of my Order of 12 January 2016 obliged the first claimants ("the owners") to deliver up a complete and unredacted copy of the Worldwide Green Tankers Ltd ("WWGT") electronic archive to their London Solicitors Hill Dickinson or to the second claimants' London Solicitors, Clyde & Co, within 7 days, failing which their claim would be struck out. The owners failed to comply with that obligation and the claim was struck out. Just before the expiry of the seven day period, on 19 January 2016, the owners issued an application notice seeking: (i) an extension of time for compliance with paragraph 1 of that Order; and (ii) pursuant to CPR 3.9 relief from the sanction imposed by paragraph 1 of that Order for failure to deliver up the WWGT electronic archive to Hill Dickinson or Clyde & Co. Although that application notice was not accompanied by witness evidence in support, by my ruling on 26 January 2016, I held that to the extent that it notified an application for an extension of time, that application was made in time, and was therefore subject to the general provisions of CPR 3.1 rather than the stricter relief from sanctions regime of CPR 3.9. I granted what was in effect a final extension of time until 4.30 pm on 2 February 2016 for the service of any evidence in support of that application notice.

2. That application was heard by me on 11, 12 and 15 April 2016. Immediately prior to the hearing, on 8 April 2016, the owners amended their application notice so as to seek an extension of time to a date to be determined by the Court and also to include an application pursuant to CPR 3.1(7), for a variation of the Order of 12 January 2016 to substitute for the obligation to deliver up the electronic archive an obligation on the owners to use their best endeavours to obtain the electronic archive and hand it over to Hill Dickinson or Clyde & Co. This is the judgment in relation to the applications made by the owners.

Background

3. The owners' motor tanker BRILLANTE VIRTUOSO ("the vessel") suffered an explosion in the vicinity of her engine room whilst waiting off Aden on 5 July 2011. The owners' case is that the vessel was boarded by pirates who, when the vessel's engine, which had stopped, could not be restarted, detonated an explosive device in the purifier room. Following salvage efforts, the vessel was eventually sold for scrap. The owners made a claim against the defendant war risk underwriters ("the insurers") on the basis that the vessel was a constructive total loss. That claim was resisted and, on 8 February 2012, proceedings in the Commercial Court were commenced by the owners and the second claimants, the bank who were the mortgagees of the vessel.

4. Somewhat unusually, the parties agreed that the issue of quantum of the claim should be tried before liability and, accordingly, on 8 November 2013, I made an Order for a split trial, with the issues of quantum (and specifically whether the vessel was a

constructive total loss) to be tried first. That trial took place before me over eleven days in November and December 2014 and, by my judgment dated 15 January 2015, I held that the vessel was a constructive total loss. That left for determination at a subsequent trial issues of liability. At that stage, insurers' primary defence was that the claimants were not entitled to cover under the policy because, by delaying transit through the Gulf of Aden and/or calling at a port or place within the Gulf, the owners were in breach of the Talbot Gulf of Aden warranty which provided: "*When transiting, vessels/craft shall not call at any port or place or delay their passage in the transfer of cargo, stores, personnel or the like*" and/or the owners were in breach of warranty by failing to apply Best Management Practices to Deter Piracy. The insurers also put the claimants to proof of the occurrence of an insured peril.

5. Some seven weeks after that judgment was handed down, on 6 March 2015, the insurers' solicitors, Norton Rose Fulbright, served on the claimants' respective solicitors, Hill Dickinson and Clyde & Co, a draft Re-Amended Defence and Counterclaim alleging that the vessel had been lost as a result of wilful misconduct on the part of the owners. The owners were invited to consent to that amendment but did not do so and, following a contested hearing on 1 May 2015, I gave permission to the insurers to make that amendment. At the same hearing on 1 May 2015, I made a Consent Order for disclosure in relation to Stage 2 of the case (i.e. issues of liability) which included an Order for *Peruvian Guano* disclosure and for specific disclosure of certain categories of documents, including documents held by or previously held by WWGT, the managers of the vessel and by Mr Marios Iliopoulos (the ultimate beneficial owner of the vessel and of other vessels managed by WWGT and the person who, according to an Affidavit he had sworn on 24 October 2014 in the context of Stage 1 of the proceedings, held shares in WWGT). That part of the Order covered a number of other individuals known to be WWGT personnel and included documents held within 14 specified WWGT email accounts. Those individuals included both Mr Iliopoulos and Mr Sayed Agha. The Order clearly extended beyond documents in relation to the vessel itself. To the extent that relevant documentation was in electronic form, inspection was to be given by production in native format. As has emerged since that Order was made, the documents formerly held in electronic form on WWGT's computer systems were transferred onto a USB flashdrive (to which I will refer as "the WWGT archive") when WWGT ceased trading at the end of 2014. It was to that WWGT archive that paragraph 1 of my Order of 12 January 2016 related.

6. Disclosure Lists were originally ordered to be served on 31 July 2015, but by mid-July 2015, no additional documents had yet been provided by the owners to Hill Dickinson for the purposes of giving disclosure for Stage 2. The owners made an application for an extension of time and on 23 July 2015 I extended the 31 July deadline (save for disclosure of documents already held by the solicitors) to 14 August 2015. There was a failure by the owners to comply with the 1 May 2015 Order by that extended deadline, specifically as regards the WWGT archive. On 14 September 2015, Hill Dickinson issued an application for a further extension of time, initially until 23 September 2015, although this was soon accepted as unrealistic.

7. The matter came before me for hearing on 28 September 2015. Such was the position in relation to the owners' failure to comply with their disclosure obligations that the trial date for the Stage 2 trial which had been fixed for April 2016 was adjourned by

consent following the issue by the insurers of an application notice seeking such an adjournment. In the evidence filed by Hill Dickinson for that hearing it emerged that four days after the deadline of 14 August 2015, in circumstances which, as I held in my ruling on 28 September 2015 were wholly unexplained, the owners literally dumped on their own solicitors documentation comprising the equivalent of 280 lever arch files derived from the WWGT archive. However, as the evidence in the 11th witness statement of Mr Rhys Clift (the partner at Hill Dickinson in charge of the case on behalf of the owners) signed on 18 September 2015 revealed, the disclosure from the WWGT archive given to Hill Dickinson was limited to documents *"in respect of the vessel covering the period from 1st October 2010 until 15th March 2012"*. This limitation to the vessel and to a particular period of time was not justified by the Order of 1 May 2015. Accordingly, at the hearing on 28 September 2015, I made a further Order that by 30 October 2015:

> *"The claimants are to disclose all further documents within the custody or possession of Suez Fortune and/or Worldwide Green Tankers and/or Mr Marios Iliopoulos which fall within standard disclosure, as ordered in paragraph 7 of the Directions Order and/or are responsive to the First and/or Second Disclosure Orders and/or paragraphs 2 and/or 3 above…"*

8. In correspondence following that hearing, it emerged that the owners had not provided Hill Dickinson with a complete copy of the WWGT archive, so that Hill Dickinson could comply with their own obligations as solicitors to the Court to satisfy themselves that full and proper disclosure had been given. Indeed at that stage, the owners had carried out their own sift of the archive using only two search terms unilaterally chosen by them, *"Brillante"* and *"@piraeusbank"* and only documentation responsive to those searches had been provided to Hill Dickinson.

9. On 30 October 2015, the deadline for disclosure of the remaining WWGT documents pursuant to my Order of 28 September 2015, Hill Dickinson wrote a letter to Norton Rose Fulbright in which not only did they admit that the owners' disclosure was incomplete, but they quite properly informed Norton Rose Fulbright that the owners were not prepared to release the WWGT archive to their own solicitors Hill Dickinson. They stated:

> *"We have discussed with our clients the release to Hill Dickinson of a hard disk on which the entire WWGT archive is stored, covering the period of 1st January 2008 until 31st December 2014 being the date on which WWGT ceased to operate. It will not be possible for owners to release to this firm such a disk. There is on the WWGT archive documentation in respect of another matter where this firm acts for certain interests which are opposed to the interests of owners and managers of another vessel on the WWGT disk. There would be an obvious conflict of interest in this firm having access to such documentation.*

> *Our clients have, however, agreed to effect key word searches against the WWGT email archive to include the terms BV, B.V, Brillante, Brilante, Suez Fortune, Iliopoulos, Solal, Bravo Tankers, Hydrasec, Alpha Marine, Yemen, Aden, Anyland, Sirah, Status, Poseidon, LISCR, US Navy, Clydes, Gonzaga, Tabares, Artezuela and Marquez. Indeed our clients have agreed to effect such key word searches against the names of all crewmembers on board at the date of the casualty."* [Since there were 26 crewmembers, these 19 additional key word terms meant that there were 45 in all agreed in that letter, as referred to in later correspondence from Hill Dickinson.]

10. In a twentieth witness statement produced on 14 April 2016, the day before the last day of the present hearing, Mr Clift said this: *"My firm had of course advised that we would need to have access to all of Owners' electronic documents to satisfy ourselves regarding Owners' disclosure obligations. However, it is the case that it was not until 15 October 2015 that my firm specifically asked to be physically provided with a full image of the WWGT email account from 2008 to present."* Whilst the second sentence focuses on a specific request for physical handover, the first sentence makes it clear that, as one would expect from an experienced and responsible litigation solicitor such as Mr Clift, he had advised his clients some time ago that Hill Dickinson would need to have access to all the electronic documents (which the owners must therefore have appreciated would include the documentation on the WWGT computer systems subsequently transferred to the WWGT archive) in order to satisfy themselves that the owners had complied and were complying with their disclosure obligations.

11. That advice from Hill Dickinson which, as I find, had been given in the litigation generally, long before the draft amendment to plead wilful misconduct was made on 6 March 2015 and which, as I also find, was almost certainly repeated at the time that those allegations of wilful misconduct were first made, was entirely in accordance with their obligations as solicitors, set out in the following passage from *Matthews & Malek On Disclosure* approved by the Court of Appeal in *Hedrich v Standard Bank London Ltd* [2008] EWCA Civ 905:

> "14.07 The solicitor has an overall responsibility of careful investigation and supervision in the disclosure process and he cannot simply leave this task to his client [*Myers v Elman* [1940] A.C. 282, at 322, 325, 338]. The best way for the solicitor to fulfil his own duty and to ensure that his client's duty is fulfilled too is to take possession of all the original documents as early as possible. The client should not be allowed to decide relevance – or even potential relevance – for himself, so either the client must send all the files to the solicitor or the solicitor must visit the client to review the files or take the relevant documents into his possession. It is then for the solicitor to decide which documents are relevant and discloseable…"

12. On 18 November 2015, Norton Rose Fulbright wrote a detailed letter to Hill Dickinson on the subject of disclosure. In relation to the WWGT archive they said: *"We do not understand why this full archive cannot be reviewed for disclosable material by Hill Dickinson in London following the establishment of an 'ethical wall' or, alternatively, why it cannot be reviewed by the Second Claimant's solicitors? Kindly take instructions on this."* Norton Rose Fulbright asked Hill Dickinson for a written response to that question before there was any discussion about how further searches for WWGT documentation should be carried out.

13. After further correspondence, on 7 December 2015, Norton Rose Fulbright issued an application in which, amongst other things, they sought an Unless Order striking out the owners' claim if the owners failed to remedy their breaches of their disclosure obligations by 31 December 2015. That application was supported by the eleventh witness statement of Mr Christopher Zavos, the partner at Norton Rose Fulbright in charge of the case on behalf of the insurers, from which it was clear that, amongst other complaints, the insurers were complaining about the absence of full disclosure of the electronic documents of WWGT and from office and personal computers. That application was fixed for hearing on 18 December 2015.

14. A detailed response to Norton Rose Fulbright's letter of 18 November 2015 was sent by Hill Dickinson on 14 December 2015, just four days before that hearing. That letter set out the owners' reasons for their refusal to allow either Hill Dickinson or the bank's solicitors, Clyde & Co, to review the WWGT archive:

> *"… There are various reasons why Owners are unwilling to relinquish the flash-drive or even a facsimile to Hill Dickinson or even to Clyde & Co. Foremost amongst these is the fact the flash-drive contains information concerning a matter in which my firm acts against another of Mr Iliopoulos' businesses in wholly unrelated proceedings in Greece. Other reasons include the fact that the flash-drive contains information in respect of which (without waiving privilege) Greek lawyers have advised the First Claimant that they owe a duty of confidentiality to third parties (for instance, telephone records, bank account numbers etc); that it contains information concerning personal issues of Mr Iliopoulos including his health; and that it contains information relating to ongoing unrelated claims, including proceedings in the European Court of Human Rights against the State of Ukraine in relation to the sequestration of a ship and an action against the State of Cuba in respect of another ship. Therefore, although you have suggested that conflicts of interest in my firm could be overcome by the erection of an 'ethical wall' or else by the Bank's solicitors carrying out the review of documentation, neither suggestion satisfies the concerns of the First Claimant or Mr Iliopoulos personally."*

15. On 15 December 2015, the owners issued an application seeking an extension of time until 29 February 2016 for the giving of disclosure of various categories of outstanding documentation, including the WWGT archive. It was said that the reasons for this application would be given in the twelfth witness statement of Mr Clift which

would follow. That witness statement was served at 15.58 London time on 17 December 2015, in other words the afternoon before the hearing. In the statement, a number of matters emerged for the first time, in particular that it was through the WWGT email system that a large amount of the owners' and Mr Iliopoulos' business, including his personal affairs, was conducted and that the documents from the WWGT email system had been downloaded to a hard disk which was the only remaining record of documentation received and generated by WWGT on their IT facilities. In relation to the location of the WWGT archive, Mr Clift said at paragraphs 33 and 34:

> *"The flash drive was initially kept at the First Claimant's offices at 2, Gounari Street, Athens. However, once allegations of wilful misconduct were made, Mr Sayed Agha, a former representative of WWGT, asked for the flash-drive to be delivered to a Greek attorney, Mr Grigorakis, for safekeeping. On 11 May 2015, following the making of the first disclosure order on 1 May, Mr Bezas agreed with Mr Said Agha for the return of the flash-drive from the custody of Mr Grigorakis.*
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> *The flash-drive has since been interrogated through the use of search terms. The flash-drive is in the form of a USB-2 1TB. It has been interrogated by an IT technician, Mr Georgiou."*

16. Mr Clift then gave details of what documents had been disclosed pursuant to that interrogation. At paragraph 38, he said: *"Searching is currently being undertaken but is proving very slow"* and provided a detailed explanation as to why that was, evidently on the basis of instructions and information from Mr Georgiou and/or the owners, since he had not had access to the archive himself. He then referred at paragraph 40 to the proposal made in his firm's letter of 30 October 2015 to interrogate the WWGT archive with the use of 45 search terms, though he said that the owners wished those searches to be confined to the vessel (a restriction which was not justified by the Disclosure Orders made by the Court). He continued, again no doubt on the basis of instructions from the owners: *"Unfortunately, the difficulties in using such a large number of search terms only came to light once the searches were commenced. The First Claimant is content to complete searches with all 45 search terms (in respect of the Vessel) but it will take time…On the basis that the First Claimant will complete its searches by using all 45 suggested search terms, the resultant documentation will not be capable of review and disclosure before 31 December 2015. Instead it could be produced by the end of February 2016."*

17. What Mr Clift did not say in that witness statement, for the simple reason that his clients had not told him and he did not know it, was that the WWGT archive had allegedly been handed back to Mr Grigorakis on 17 August 2015 (three days after the time for compliance with the 1 May 2015 disclosure Order as extended by the Order of 23 July 2015), then allegedly retrieved by the owners from Mr Grigorakis on 29 October 2015 (the day before the time for compliance as further extended by the Order of 28 September 2015), then allegedly handed back to Mr Grigorakis by the owners on the very day that Mr Clift signed that witness statement, 17 December 2015. It had been allegedly handed back notwithstanding that, on the basis of what Mr Clift said in that statement on instructions, the process of interrogating the archive in relation to the 45 search terms (let alone a full and complete analysis of the archive

such as the *Peruvian Guano* Order applicable to it required) was far from complete and notwithstanding that, as the owners knew, there was to be a hearing before the Court the very next day at which the insurers were seeking an Unless Order in relation to the owners' breaches of their disclosure obligations, including in relation to the WWGT archive. Whilst it is true that the owners did not know until the insurers served their skeleton argument on the afternoon of 17 December 2015 that the insurers would be seeking a specific order for delivery up of the WWGT archive to Hill Dickinson, they must have appreciated, in the light of the advice they had received from Hill Dickinson that this was likely. In any event, even if they did not, the handing back of the archive (if it took place at all) was wholly inexcusable.

18. This alleged toing and froing with the WWGT archive was, as I have said, unknown to Mr Clift at the time of the 18 December 2015 hearing and thus not disclosed to the insurers or the Court. The significance of the archive having been given to Mr Grigorakis in March 2015 allegedly for safe keeping did not occur to either the insurers or the Court. As I said in paragraph 19 of my judgment on 12 January 2016, what was focused on by Mr Jonathan Gaisman QC for the insurers and by the Court was that:

> "…this was effectively an admission that the disclosure exercise was being conducted by the claimants themselves and not by Hill Dickinson, and that therefore this was not only an unsatisfactory situation, but one which meant that Hill Dickinson were not in a position to comply with their own obligations to the court in relation to disclosure of satisfying themselves through their own examination of the relevant documents that their clients were disclosing all relevant documents. The importance of that obligation on the solicitors cannot be overemphasised in this case where there are serious allegations of wilful misconduct, and effectively scuttling of the vessel."

19. At the hearing on 18 December 2015 I expressed my considerable concern that, in consequence of the fact that Hill Dickinson had not been provided with access to the raw data, whether in the form of hard copy documentation or electronic data, unfiltered by the owners, there was a fundamental problem with the owners' disclosure to date which required rectification sooner rather than later. I also said that I did not accept Mr Iliopoulos' explanation for his reluctance to hand over the archive to Hill Dickinson. Although I was not prepared to make an Unless Order I made what was expressed to be a Final Order in relation to the WWGT archive, that the owners must by 4 January 2016 deliver up a complete and unredacted copy of the archive, containing documents in their native format, to their solicitors, Hill Dickinson, alternatively to the bank's solicitors, Clyde & Co.

20. The insurers served a further amendment to their Defence on 22 December 2015 (although a draft had been sent to the owners on 10 December 2015) alleging that the owners had conspired with the charterers of the vessel to instruct the Master to issue bills of lading describing the cargo as fuel oil but then to issue replacement bills describing the cargo as "bitumen mixture" so as to deceive the Chinese authorities into charging only the lower import duty on bitumen mixture. This is said to have been a breach of the warranty implied into the war risks policy under section 41 of the

Marine Insurance Act 1906 that the adventure would be carried out in a lawful manner. The pleaded particulars of the conspiracy implicate Mr Agha.

21. The owners did not comply with the Final Order. On the last day for compliance, 4 January 2016, at 4.20 pm Mr Clift emailed Mr Zavos stating: *"The plan is for the writer to attend in Greece this week regarding the WWGT download. Unfortunately it has not been possible to travel to Greece before now."* Mr Zavos responded later that afternoon asking a number of questions: *"(i) have your clients complied with paragraph 1 of the order or not? (ii) if not, are your clients seeking more time to comply with paragraph 1? (iii), if so, on what possible grounds, (given that all that is required is handing over the flash drive or a complete copy)?"* The following day, 5 January 2016, Mr Zavos asked for an immediate advice from Hill Dickinson pursuant to an undertaking given by Mr MacDonald Eggers QC on behalf of the owners to the Court at the hearing on 18 December 2015, as to whether or not a complete and unredacted copy of the archive had or had not been delivered to Hill Dickinson or Clyde & Co by 4 January 2016 in accordance with the order. Mr Clift responded later that day, saying: *"We do not yet have the external USB hard drive for WWGT. We are seeking urgent instructions from our clients. It seems that the writer may have to go to Greece to seek to resolve this. On behalf of our clients, therefore, we would be grateful if underwriters would refrain from applying for an unless order whilst the matter is resolved."*

22. Understandably the insurers were not prepared to wait any longer and on 7 January 2016, the insurers applied for an Unless Order for delivery up of the WWGT archive, supported by the thirteenth witness statement of Mr Zavos. The Court directed that that application should be heard on 12 January 2016. On the morning of the day before, 11 January 2016, the owners served Mr Iliopoulos' second witness statement and Mr Clift's thirteenth witness statement, which purported to explain why the WWGT archive had not been produced. What emerged from Mr Iliopoulos' statement were a number of matters not previously disclosed:

    (1) It was said by Mr Iliopoulos that WWGT, which had ceased operating on 31 December 2014, was a company in which he was previously a shareholder and over which he had control. It was said that Mr Sayed Agha (the chartering manager of WWGT since 2007) was now the holder of all the shares, which were bearer shares, as well as having been the sole director of WWGT since August 2012 and its legal representative under Greek Law 89/67.

    (2) Mr Iliopoulos revealed for the first time that Mr Grigorakis was Mr Agha's Greek lawyer. He gave a detailed explanation as to why, on 9 March 2015, the WWGT archive had been put into the custody of Mr Grigorakis, allegedly for safekeeping. His explanation in his witness statement was:

> *"Mr Clift also explained* [in paragraph 33 of his twelfth witness statement dated 17 December 2015] *that the WWGT archive was initially kept at the First Claimant's offices at 2, Gounari Street, Piraeus. However, once the allegations of wilful misconduct were made, Mr Agha asked for the archive to be delivered to his Greek attorney, Mr Grigorakis, for safe-keeping. Given the situation, Mr Agha's view was that this archive ought to be retained by a lawyer.*

> *I considered this an appropriate and responsible course of action. Given the new baseless allegations, I was concerned about any other unfounded accusations being made in connection with it being in my possession. It was also a crucially important repository of evidence which deserved to be kept properly."*

(3) Mr Iliopoulos referred to the alleged toing and froing of the WWGT archive to which I have already referred at [17] above, culminating in the alleged return of the archive to Mr Grigorakis on 17 December 2015, the day before the hearing of the insurers' application for unless orders in relation to the owners' breaches of their disclosure obligations. None of this had been previously disclosed by the owners, even to their own solicitors. Mr Iliopoulos exhibited a whole series of "receipts" signed by Mr Grigorakis and/or Mr Bezas of the owners ostensibly recording the handing over and handing back of the archive on each such occasion.

(4) Mr Iliopoulos stated that Mr Clift had informed him of the Final Order on the evening of 18 December 2015 and that, whilst he had been reluctant to disclose the documentation previously, he understood that the Court Order needed to be followed. He said that, on 24 December 2015, he requested a meeting with Mr Clift, his Greek lawyer, Mr Tsafos and Mr Agha, to be held on Monday, 4 January 2016. The new situation had to be explained to Mr Agha and according to Mr Iliopoulos' witness statement it was better for this to be done in person, as it was the best way of ensuring that the archive could be obtained straightaway without further discussion. Mr Iliopoulos said he was eager for Mr Clift to be there so that Mr Agha could hear from him personally, including as to the seriousness of the situation, but Mr Clift could not attend because he was ill.

(5) The meeting proceeded without him and according to Mr Iliopoulos it was only at that meeting on 4 January 2016 that Mr Agha stated for the first time that he would not allow Mr Grigorakis to provide the WWGT archive to the owners. Mr Iliopoulos set out the reasons which Mr Agha gave for this refusal at paragraph 27 of his witness statement: (i) that he could not provide anything until he had advice from his Greek lawyer as to his position, including under Law 89/67; (ii) that there was a criminal case against Mr Agha in Greece as the legal representative of the company in respect of the death of a crewmember on board another vessel in Nigeria in 2013 which was due to be heard in Greece in a few weeks' time on 26 January 2016; (iii) the fact that there were now allegations of dishonesty being made by insurers against him personally in relation to the switching of the bills of lading. Mr Iliopoulos said that Mr Bezas had told Mr Agha the gist of those allegations before the hearing on 18 December 2015, but they showed him the actual pleaded amendments at the meeting. Mr Agha asked why such allegations needed to be made against him and refused to release the archive in case he faced other accusations for which there was no justification.

(6) Mr Iliopoulos said that he had suggested that Mr Agha should sleep on the matter and they should resume their discussions the following day, 5 January 2016. However, at the meeting the following day his attitude had hardened. It was clear

that he had held discussions with his lawyer, Mr Grigorakis, and he said his final position was that he would not give back the WWGT archive.

23. On 7 January 2016, Mr Bezas and Mr Tsafos (the owners' Greek lawyer) met Mr Clift in London. As Mr Clift confirms in his thirteenth witness statement, he then travelled to Greece on 8 January 2016. Mr Agha declined to attend a meeting with Mr Clift in Athens, saying he was in Dubai. Mr Iliopoulos reports on a conversation which Mr Tsafos had with Mr Grigorakis on the telephone on 8 January 2016, during the course of which Mr Grigorakis repeated the points made by Mr Agha on 4 January 2016 and also complained that the orders made by this Court in respect of disclosure were *"not…in line with Greek legislation"*, alleging multiple violations of Greek law, which he did not identify. By an email produced to the Court at the hearing on 12 January 2016, confirmed in his later, fourteenth witness statement signed on 24 January 2016, Mr Clift describes a meeting he had in Greece on the afternoon of 11 January 2016 with Mr Grigorakis, which was also attended by Mr Richard Sarll, junior counsel for the owners, Mr Iliopoulos, Mr Bezas and Mr Tsafos. He says that Mr Grigorakis, speaking in Greek, translated by Mr Clift's Greek Hill Dickinson partner Ms Maria Moisidou, said that his client, Mr Agha refused to hand over the WWGT archive.

24. As stated above, the insurers' application for an Unless Order for the delivery up of the WWGT archive to Hill Dickinson was heard by me on 12 January 2016. I made an Order that unless the archive was delivered up within 7 days, the claim would be struck out. In the judgment I gave at the end of that hearing, I expressed disbelief or considerable scepticism about a number of aspects of the account given in Mr Iliopoulos' second witness statement and the reasons for Mr Agha's alleged refusal to hand over the archive. In particular: (i) I noted that nowhere in his Affidavit sworn on 24 October 2014, pursuant to my Order of 10 October 2014 that Mr Iliopoulos should swear an Affidavit in relation to the completeness of the disclosure given at Stage One of documents in his control and the control of WWGT, did Mr Iliopoulos suggest that Mr Agha had become the sole director of WWGT more than two years previously or that he had handed over his bearer shares to Mr Agha; (ii) I described as extraordinary the fact that the owners had allegedly handed back the archive on 17 December 2015 without taking a copy or handing over a copy to Hill Dickinson, notwithstanding that, as Mr Gaisman QC put it on that occasion, Mr Clift would not have issued the owners' application for an extension of time on 15 December 2015 if the owners were not staring down the barrel of a gun of unless orders as sought by the insurers' applications issued on 7 December 2015. I found at [34] that the decision to hand the archive back to Mr Grigorakis had been a deliberate decision taken by the owners so that if they found themselves in difficulty, they had only themselves to blame; (iii) I said that I found it surprising that Mr Iliopoulos left it six days after learning of the Final Order before even requesting a meeting and I did not accept Mr Iliopoulos' explanation as to why a meeting with Mr Agha was necessary.

25. In relation to the reasons being ostensibly given by Mr Agha for not disclosing the WWGT archive, I held as follows at [38] to [41] of my judgment:

> "38……The reasons that were apparently given by Mr Agha for refusing to do so [hand over a copy of the WWGT Archive] are set out by Mr Iliopoulos in paragraph 27 of his witness

> statement: first of all, that he had to have advice from a Greek lawyer as to what his position was, including under the Greek law 89/67, which apparently imposes responsibilities on the legal representatives of a company, but that explanation is completely nonsensical since the obligations under 89/67 do not include any obligations in relation of disclosure of documentation to a third party; and in any event, Mr Agha had apparently handed over, or his lawyer had handed over, the archive on a number of previous occasions without apparently needing to take specific advice about that.
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> 39. The second reason, or the second ground for the alleged reluctance was apparently there is a criminal case against Mr Agha, as the legal representative of the company, in relation to the death of a crew member in Nigeria in 2013, and that criminal case is due to be heard in Piraeus on 26 January 2016, so in two weeks' time. Again, that case must have been already ongoing at the time, at least, of the requests for the disclosure of the archive in October, at the end of October last year when it was handed over without any apparent concern about ongoing criminal proceedings.
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> 40. The third reason apparently given by Mr Agha is that he is in some way incensed by the allegations about false bills of lading, which is a further amendment to the pleadings which was made by the owners on the last occasion, but it seems to me that that cannot be a good reason at all for not being prepared to disclose the documentation.
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> 41. Following that meeting, on 7 January 2015 Mr Bezas and Mr Tsafos came to London and met Mr Clift, and an e-mail was then sent to Mr Grigorakis, but he was apparently away, and did not respond to that until 8 January when he said that he was in a position to set up a meeting that afternoon. There was then a meeting that afternoon at which Mr Grigorakis, according to Mr Iliopoulos, continued to refuse to hand over the archive and complained about the orders made in respect of disclosure by the court not being specific and not in line with Greek legislation, and also complained that there had been multiple violations of Greek law, which he did not identify. All of that seems to me to ignore the fact that the effect of the orders made by the court is that these documents are documents within the control of the owners. So it is not a question of third party disclosure at all, which seems to me to be what Mr Grigorakis is addressing."

26. Mr Gaisman QC's primary submission at that hearing was that the Court did not need to go as far as concluding that the story of the toing and froing with the archive was a fabrication, because, even taking Mr Iliopoulos' evidence at face value, the owners had unnecessarily, deliberately and knowingly put the WWGT archive out of their

legal control three times in the last year, which would in itself justify an unless order. I accepted that submission at [50] to [54] of my judgment:

> "50. I have already indicated during the course of this judgment that I regard this to-ing and fro-ing, with obtaining the archive and then handing it back without taking a copy of it which, even if one takes Mr Iliopoulos' statement at face value is, to say the least, a curious action, as the owners certainly unnecessarily putting the archive out of their legal control.
>
> 51. As to whether it was deliberate and knowingly done, it seems to me that, as Mr Gaisman QC submits, the owners must have known that this would be the effect of the steps which, on Mr Iliopoulos' evidence, are the steps which have apparently been taken. It is not suggested anywhere in his evidence by Mr Iliopoulos that he was ignorant of the legal effects of what he was doing. On his own case, what he appears to have done is firstly voluntarily hand over his own shares to Mr Agha; secondly, to make Mr Agha the sole director of the company, and; thirdly, against that background and in those circumstances, to hand over the only copy of the archive to Mr Agha. In those circumstances, even if one took that material at face value, it seems to me Mr Iliopoulos must have known that at least one possible consequence of what he did was that it would not be possible to obtain the archive back from Mr Agha if Mr Agha declined to hand it back.
>
> 52. It follows from that, in my judgment, that Mr Gaisman QC's first submission is made out; that the owners have unnecessarily and deliberately put the archive out of their legal control, most recently on 17 December 2015, in the face of a hearing the following day at which the owners must have appreciated it was highly likely the court would order them to disclose the archive. No legitimate reason is advanced by the owners for handing back the archive the day before the hearing and I can only interpret this as having been done deliberately, with a view to seeking to contend exactly as the owners have sought to contend at this hearing; that in some way this material is now out of their control.
>
> 53. In my judgment it is not necessary for the purposes of determining this application to decide whether or not Mr Iliopoulos' version of events is true or not. It is sufficient for present purposes to say that it is a wholly inadequate explanation, or a wholly inadequate attempt to demonstrate that the documents are now outside the control of the owners, in circumstances where (i) there is simply no evidence as to why Mr Iliopoulos has handed over the shares to Mr Agha; (ii) the document alleged to demonstrate that he is the sole director does nothing of the sort but simply says that the sole director, whoever that was, appointed him the legal representative; and

> (iii) the explanation provided by Mr Iliopoulos for thinking that it was appropriate for Mr Agha to give the documents to his lawyer for safekeeping is, frankly, an unbelievable explanation for what has occurred.
>
> 54. I am quite satisfied that these owners have taken steps to try and make it as difficult as possible for this particular aspect of their own disclosure obligations to be complied with. This is not something that has happened accidentally but has happened quite deliberately and, in those circumstances, as Mr Gaisman QC submits quite correctly, the owners are in continuing and contumelious breach of court orders and default of their disclosure obligations."

27. By the Order I made on 12 January 2016, I refused the owners permission to appeal to the Court of Appeal. An application for permission has now been lodged with the Court of Appeal in which, so I am informed, the owners are critical of the fact that I disbelieved Mr Iliopoulos' evidence without having seen him give oral evidence. Leaving to one side whether that submission has any merit, the position now is that I have seen Mr Iliopoulos give evidence in cross-examination for two days. Far from leading me to accept his version of events (which, as set out in more detail later in this judgment, has changed somewhat and been elaborated since his second witness statement), my assessment of him (which again I set out in more detail below) was that he was not a credible witness. As explained later in this judgment, I have concluded that the whole story of handing over the archive to Mr Grigorakis on behalf of Mr Agha and of the toing and froing with it thereafter is a fabrication invented by Mr Iliopoulos and the owners to provide an excuse for not disclosing the archive, which they remain opposed to disclosing. However, even if I had not disbelieved that story, the further witness statement and oral evidence of Mr Iliopoulos have simply served to confirm the correctness of the conclusion I reached on 12 January 2016 that the owners had unnecessarily, deliberately and knowingly put the WWGT archive outside their legal control and it is that, rather than any alleged reluctance on the part of Mr Agha to hand over the archive which is the effective reason for the owners' inability to comply with the Unless Order.

Developments since the 12 January hearing

Mr Iliopoulos' health

28. The owners' present applications for an extension of time and for relief against sanctions were, as I held in my ruling on 26 January 2016, made just in time on 19 January 2016. At both the hearings on 12 and 26 January 2016, I expressed the tentative view that it would be appropriate for Mr Iliopoulos to be tendered for cross-examination on the hearing of the applications. The application notice issued on 19 January 2016 included an application for permission for his evidence to be taken by video link. The order made on 26 January 2016 gave the owners until 16.30 hours on 2 February 2016 to file any further evidence in support of their applications but stated that no further extension of time would be granted. On 2 February 2016, the owners served a third witness statement of Mr Iliopoulos, a third witness statement of Mr Bezas and a fifteenth witness statement of Mr Clift. In breach of the Order made on

26 January 2016, a yet further sixteenth witness statement of Mr Clift was served on 8 February 2016.

29. The third witness statement of Mr Iliopoulos not only deals with the dealings with Mr Agha since the hearing on 12 January 2016 but seeks to address and answer several of the criticisms I made in my judgment of 12 January 2016 in relation to the owners' case. I will deal with the detail of that statement and the third statement of Mr Bezas supporting it in the section of the judgment below, where I set out my findings on the evidence. Mr Clift's fifteenth witness statement exhibits a report from Mr Paris Karamitsios, a Greek lawyer instructed by the owners to provide an opinion on various issues of Greek law.

30. The hearing of the applications was originally fixed for 8 March but was moved to 14 and 15 March 2016 to accommodate the fact that two days' hearing were required. In his third witness statement served on 2 February 2016, Mr Iliopoulos stated: *"I am not presently able to travel to London for various reasons, principal amongst which is medical advice that I should not do so."* The statement did not vouchsafe what the other reasons were but by the end of the present hearing, it had been confirmed by Mr Clift in his twentieth witness statement that one of the other reasons was concern that, if Mr Iliopoulos came to London he would be arrested by City of London Police in relation to investigations into whether there has been an insurance fraud. He was indeed arrested by City of London Police for conspiracy to commit fraud, as he left the Rolls Building on the evening of 12 April 2016 after he had given evidence, and questioned for some hours before being released on bail. In evaluating Mr Iliopoulos' evidence I have completely ignored those subsequent events.

31. Exhibited to his third witness statement were three medical reports/records, indicating that Mr Iliopoulos had been examined on 16 and 19 January 2016 and found to be suffering from convulsive vertigo, nystagmus and tinnitus, for which he was prescribed medication. He had been hospitalised in an Otorhinolaryngology clinic on 26/27 January 2016, and apparently advised against travelling on 28 January 2016. However, the owners did not pursue their application for him to give evidence by video link at that stage. Despite correspondence between the solicitors towards the end of February, the position was no clearer. On 1 March 2016 Hill Dickinson wrote that they were instructed that his medical condition had not changed and that he could only give live evidence from Athens. On 2 March 2016, I determined that, on the basis of the material then before the Court I was not prepared to accede to the application for Mr Iliopoulos to give evidence by video link.

32. However, the question remained unresolved whether he would be tendered for cross-examination in London and, accordingly, on 2 March 2016, the insurers applied for an Order under CPR 32.7 that they should have permission to cross-examine him at the hearing and that if he did not attend, his evidence should not be used unless the Court gave permission. That application was fixed for hearing at 2 pm on 4 March 2016. The day before the hearing, the owners served a statement from Mr Primikiris exhibiting further medical evidence in relation to Mr Iliopoulos' inability to travel to London for the hearing on medical grounds. At the hearing on 4 March 2016, I expressed considerable scepticism about that medical evidence and determined that I was not prepared to permit Mr Iliopoulos to give evidence by video link, unless he submitted to an independent medical examination. In view of the time needed to conduct and evaluate any such examination, I adjourned the hearing of the owners'

applications from 14/15 March to 11/12 April 2016 and ordered that unless an independent medical examination took place between 29 March and 1 April 2016 to determine whether and when he would be fit to travel to London and his medical records were made available to the independent expert in advance of the examination, the owners' application for him to give evidence by video link would be dismissed. The insurers' application under CPR 32.7 was adjourned until 4 April 2016 to enable that independent medical report to be obtained.

33. At a subsequent hearing on 21 March 2016, Miss Claire Blanchard QC for the owners informed the Court that whilst she did not have an up to the minute bulletin on the state of Mr Iliopoulos' health, it was his settled intention to come to London to give evidence, assuming his health permitted. He was said to have read and taken on board my comments at an earlier hearing about witnesses giving evidence by video link not doing themselves justice. The parties being unable to agree on a medical expert to conduct the forthcoming independent examination, I chose Dr Gavalas and made an Order accordingly.

34. The draft instructions to Dr Gavalas produced by Norton Rose Fulbright had not been agreed by Hill Dickinson on behalf of the owners by close of business on 29 March 2016 and, accordingly, Norton Rose Fulbright wrote the following day saying that unless it was confirmed by 11.00 that day that Mr Iliopoulos would attend the hearing in person or the draft instructions were agreed, they would write to Dr Gavalas in the terms of the draft instructions and inform the Court accordingly. There being no response by 11.00, Dr Gavalas was instructed by Norton Rose Fulbright in the terms of the draft instructions. At 11.17 Hill Dickinson emailed saying they did not have instructions to renew the application for Mr Iliopoulos to give evidence by video link, and that in the circumstances he would not be attending the examination by Dr Gavalas the following day.

35. In fact, in cross-examination Mr Iliopoulos disclosed that on 18 March 2016 he had told Mr Clift that his health had stabilised and that he was determined to come to London to give evidence. This was confirmed by Mr Clift in his twentieth witness statement served on 14 April 2016 after Mr Iliopoulos had been cross-examined.

The criminal complaint

36. Immediately prior to the hearing on the afternoon of 4 March 2016 at about 12.20 pm that day, the owners served a seventeenth witness statement from Mr Clift which exhibited a substantial criminal complaint submitted by Mr Grigorakis to the Public Prosecutor in Athens on 23 February 2016 alleging that he had been the victim of illegal acts committed by representatives of Norton Rose Fulbright in Greece or by investigators instructed on behalf of the insurers. The complaint quotes extensively from some 45 emails (some of them of some length with attachments) passing between Norton Rose Fulbright and Captain Lallis, the senior partner in the firm of Lallis Voutsinos Anagnostopoulos ("LVA"), a Piraeus firm of lawyers and marine consultants instructed by Norton Rose Fulbright in Greece. It will be necessary to consider this complaint in more detail later in the judgment, but for the present I simply note two remarkable features. First, according to Mr Grigorakis, copies of the emails in question were left in a white A4 envelope which he found in the entrance to his building at about 18.00 hours on Friday, 19 February 2016. Since these consisted of confidential, sensitive and in all probability privileged communications between

Norton Rose Fulbright and the investigators, it is clear (and must have been clear to Mr Grigorakis) that they had been stolen by someone, probably by illegally hacking into the email account of Captain Lallis.

37. Second, the emails were in English, whereas the complaint was in Greek. If Mr Grigorakis is to be believed, between their discovery allegedly on the Friday evening and the service of the criminal complaint on the Public Prosecutor the following Tuesday, emails quoted across 67 pages of the original complaint in Greek were translated by someone from English into Greek. Mr Grigorakis himself has imperfect English, so that it is unlikely in the extreme that he undertook those translations, let alone was able to achieve them in such a short time frame. Equally, there is no indication in the body of the complaint that the emails had been translated by a certified translator (as required by Greek criminal procedure for the complaint to be valid) and the fact that Norton Rose Fulbright have identified inaccuracies in the translations suggests that they were not translated by a certified translator. It would seem likely that, since the latest email quoted in the complaint is dated 15 February 2016 and the complaint itself is a complex document which does not seem to have been prepared in a rush over a weekend, whoever it was who obtained the emails illicitly and prepared the translations and the complaint had a longer period of time to do so than from 19 to 23 February 2016 as suggested by Mr Grigorakis.

38. In the light of the contents of the Grigorakis complaint, Mr Clift's seventeenth witness statement foreshadowed an application for disclosure *"of all documents relevant to the issues that arise on* [Owners' Applications] *and on* [the insurers' application of 2 March 2016 to cross-examine Mr Iliopoulos]*"*. It also reserved the position as to whether to seek an order for cross-examination of Mr Zavos and/or his associate Alice Southall. In their emailed letter of the same date, received a few minutes before the witness statement, Hill Dickinson purported to "*return*" the stolen emails and attachments on which the complaint had been based (but in reality only provided electronic copies of them). They also sought disclosure of them and of all relevant documents on a *Peruvian Guano* basis.

39. After the hearing on 4 March 2016, Hill Dickinson sought a response to that letter and on 11 March 2016, Norton Rose Fulbright made it clear that no disclosure would be given and invited Hill Dickinson to make the application they had threatened. When no application was forthcoming, Norton Rose Fulbright were concerned about the case management implications for the forthcoming hearing on 11/12 April 2016 and wrote to the Court. A flurry of correspondence ensued and I directed that a hearing should take place at 11 am on 21 March 2016 at which I wished to be addressed on the issues (i) when the owners' application for disclosure was to be issued and heard and (ii) the impact of any such application on the forthcoming hearing.

40. At that hearing, I pressed Miss Blanchard QC, now appearing for the owners, as to the relevance of the documents to which any disclosure application would relate to the issues arising on the owners' applications. I expressed considerable doubts as to the merits of any disclosure application and ordered the owners to file and serve any specific disclosure application together with all supporting evidence by no later than 16.00 on 23 March 2016. At 16.01 on that day, just after the deadline expired, Hill Dickinson wrote to advise that the owners would not now be issuing any specific disclosure application. Although the matter was not argued out because the application was not pursued, my strong provisional view is that any such application

for disclosure of documents from Norton Rose Fulbright's files or other sources concerning investigations in Greece would have been hopeless for the reasons set out in Schedule 1 to the insurers' skeleton argument for the present hearing.

41. On 31 March 2016, the owners served an eighteenth witness statement of Mr Clift which exhibited two legal reports, one from Ilias Anagnostopoulos, a Greek criminal lawyer. As Mr Gaisman QC submitted in his skeleton argument, this demonstrated that the owners remain fixated with the allegedly criminal conduct of the insurers' agents during the course of investigations in Greece, notwithstanding that this is all irrelevant to the issues the Court has to decide on these applications. As he said, the report of Mr Anagnostopoulos illustrates *"the fevered and aerated state into which owners' case has fallen"*, citing a passage where he was suggesting that the investigators might be part of a criminal gang and that Mr Zavos might have been involved as an accessory to money laundering, fixing upon what he described as a *"non-transparent fee scheme"*.

42. In fact, Mr Zavos' fifteenth witness statement dated 6 April 2016 contains a detailed and measured response to the wild allegations being made by the owners about the Grigorakis complaint. He explains that he does not believe that Captain Lallis, LVA (or anyone instructed by them), or Norton Rose Fulbright in Greece had directed or pursued a course of criminal conduct, but that the theft or surreptitious copying of the confidential emails was undoubtedly a criminal act. Having taken Greek criminal law advice, he believes that the complaint will be dismissed on that ground alone, which was confirmed by the second report of Mr Androulakis, the Greek criminal lawyer instructed by the insurers.

43. Mr Zavos explains that the secrecy of his arrangements with Captain Lallis was to protect the latter's personal safety and that of his family and colleagues in the light of his concerns and past experience, when he had acted for cargo interests in the case of *The Geraki* a vessel in which Mr Iliopoulos had an interest (and the case where Hill Dickinson also acted for interests opposed to the owners). In April 2013, Captain Lallis was assaulted in broad daylight in Piraeus and badly hurt, so he was insistent that any assistance he gave to Norton Rose Fulbright should remain entirely confidential. However, contrary to what the owners suggest, Mr Zavos' arrangements with Captain Lallis were not kept secret from his clients, but the two leading underwriters were informed, as is clear from one of the emails quoted in the Grigorakis complaint. With the agreement of the leading underwriters, the following market was not informed, for the perfectly valid reason that three of the relevant syndicates were also on the mortgagees interest insurance whose underwriters are subrogated to the bank's claim in these proceedings and who appear to be funding the owners' claim.

44. Mr Zavos also explains that he believes that the making of the Grigorakis complaint with extensive quotation from the stolen emails (which it appears are also attached to the complaint, although the owners have not disclosed the attachment) has the ulterior purpose of making the content of the emails available for use by the owners and Mr Iliopoulos in subsequent civil proceedings in Greece against the insurers and their representatives alleging defamation or some other tort, as occurred in the case of *The Alexandros T*, a case with which Mr Zavos is personally familiar. That concern proved prescient given that, at the point towards the end of his cross-examination when Mr Iliopoulos became particularly aggressive, he made express reference to *The*

> *Alexandros T* and then issued what was clearly a threat to insurers and their lawyers to sue them in Greece. Quite apart from the fact that it was disgraceful to issue that threat whilst giving evidence, as I pointed out to Mr Iliopoulos at the time, his motive had been exposed. I will return to the relevance and significance of the Grigorakis complaint later in the judgment.

The legal framework for the applications

45. The application for an extension of time was made in time as I held on 26 January 2016. There is nothing between the parties as to the correct legal test in relation to in time applications for extension of time. The Court may grant "reasonable extensions of time, which neither imperil hearing dates nor otherwise disrupt the proceedings" (per Jackson LJ in *Hallam Estates v Baker* [2014] EWCA Civ 661 at [31]). However, although as Mr Gaisman QC accepts that legal test is the one which would be applied in the ordinary case, he submits that the present case is very far from being such a case. Any extension of time here would be futile, because, on the owners' own evidence, they have handed over the WWGT archive to Mr Grigorakis and according to Mr Bezas' fourth witness statement, there is now little prospect of ever persuading Mr Agha to hand over the archive voluntarily. The owners' case, which I explore in more detail in my findings of fact below, is that Mr Agha now owns WWGT and thus owns the archive. The owners' Greek and Marshall Islands' lawyers hold out no substantial hope of the owners ever succeeding in legal proceedings to recover the archive. Accordingly, Mr Gaisman QC submits that there is nothing to extend the owners' time for compliance for, as illustrated by the inclusion of the essentially meaningless and arbitrary date of 15 April 2016 in the application notice issued on 19 January 2016.

46. Of course, if I decided that the story of handing over the archive to Mr Grigorakis and the reluctance of Mr Agha to release it was a fabrication, an elaborate charade on the part of the owners to provide themselves with an excuse for not disclosing the archive, then there would be no principled basis for granting them any indulgence at all, whether by way of an extension of time or otherwise. Mr Gaisman QC submits that in that eventuality (which is in fact what I have concluded, as set out below) the Unless Order of 12 January 2016 should stand and the claim should be struck out.

47. So far as the application for relief against sanctions is concerned, CPR Rule 3.9 provides:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders."

48. As Miss Blanchard QC accepts, in any case where relief against sanctions is sought, the starting point must be that the sanction was properly imposed. That was made clear by Lord Dyson MR in his judgment in *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537; [2014] 1 WLR 795 at [45]:

> "On an application for relief from a sanction, … the starting point should be that the sanction has been properly imposed and complies with the overriding objective… it is not open to [the applicant] to complain that the order should not have been made, whether on the grounds that it did not comply with the overriding objective or for any other reason…"

49. In *Denton v White* [2014] EWCA Civ 906; [2014] 1 WLR 3296 the Court of Appeal set out at [24] a three-stage test for determining whether relief from the sanction should be granted:

> "The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]"

50. As Mr Gaisman QC correctly submits, the necessary underlying assumption in *Denton v White* is that relief may be granted if either (i) the relevant default has been cured (in other words, the rule, practice direction or Order has been complied with or is about to be complied with) or (ii) that compliance can somehow be dispensed with, perhaps on terms, without doing injustice between the parties. The first situation is not the case here, since on the owners' own case they cannot comply with the Order of 12 January 2016 by handing over the WWGT archive to Hill Dickinson or Clyde & Co (or, on the insurers' case, will not comply with the Order). The second situation cannot apply here either: the Court imposed the sanction of an Unless Order which was tailor-made for the situation which the owners have to accept was properly imposed and there is simply no basis whatsoever for dispensing with compliance with the Order.

51. It is unlikely ever to be the case in relation to the imposition of an Unless Order which has not been complied with, that compliance can be dispensed with, on any terms. As Jackson LJ said in *Oak Cash & Carry Limited v British Gas Trading Limited* [2016] EWCA Civ 153 at [38]-[41]:

> "38. An 'unless order', however, does not stand on its own. The court usually only makes an unless order against a party which is already in breach. The unless order gives that party additional time for compliance with the original obligation and specifies an automatic sanction in default of compliance. It is not possible to look at an unless order in isolation. A party who

> fails to comply with an unless order is normally in breach of an original order or rule as well as the unless order.
>
> 39. In order to assess the seriousness and significance of the breach of an unless order, it is necessary also to look at the underlying breach. The court must look at what X failed to do in the first place, when assessing X's failure to take advantage of the second chance which he was given.
>
> …
>
> 41. The very fact that X has failed to comply with an unless order (as opposed to an 'ordinary' order) is undoubtedly a pointer towards seriousness and significance. This is for two reasons. **First, X is in breach of two successive obligations to do the same thing. Secondly, the court has underlined the importance of doing that thing by specifying an automatic sanction in default (in this case the Draconian sanction of strike out)**." (emphasis added)

52. The present case is an *a fortiori* one. The Court imposed a tailor-made Unless Order, following on from a similarly tailor-made Final Order, designed to meet the circumstances of the particular case. That Unless Order was imposed because the Court considered that the justice of the case between the parties, in particular the need for full and proper disclosure to the *Peruvian Guano* standard by the owners where there were allegations of fraud against them, required such an Order to be made and complied with. In her submissions, Miss Blanchard QC sought to suggest that, because, when I made the Unless Order it was in the expectation that it would be complied with, somehow I would have made a different Order if I had known then what I know now, namely that, on the owners' case as it now stands, they cannot comply with an Order for disclosure of the WWGT archive. That is a complete misunderstanding of the position: I concluded that, even taking their case at face value, the owners had unnecessarily, deliberately and knowingly put the archive beyond their legal control. The fact that they now say that they cannot get it back merely demonstrates how serious a breach of their disclosure obligations there was when they put it beyond their legal control and therefore how appropriate the imposition of an Unless Order was and is.

53. In her oral submissions, Ms Blanchard QC submitted that the critical question for the Court on the present applications was whether the owners had put the WWGT archive beyond their practical control. Even if they had put it beyond their legal control, it was always within their practical control so far as the owners knew, because it was not until 4 January 2016 that, unexpectedly, Mr Agha refused to hand over the archive. Previously he had done so without demur. I am far from convinced that Ms Blanchard QC is right as a matter of legal analysis, since even if the owners had practical control, the fact that they had deliberately given up legal control meant that there was always a risk that, if Mr Agha refused to hand over the archive, they would be powerless to recover it by legal process. However, the point about practical control fails on the facts for reasons elaborated below in my detailed findings of fact. On the owners' own case, Mr Iliopoulos gave the archive to someone who he knew (i) had an option to acquire ownership of WWGT and its documents; and (ii) was reluctant to

hand the archive over to any third party, including Hill Dickinson. In a very real sense, on the owners' own case, they put the archive beyond their practical control, certainly by handing it back on 17 December 2015. Of course, that is all on the assumption that the owners' case is true. If I disbelieve their story, this distinction between legal and practical control is of no relevance: the owners have both legal and practical control of the archive but are simply refusing to hand it over to Hill Dickinson or Clyde & Co, in deliberate breach of Court Orders.

54. As Mr Gaisman QC submitted, relief against sanctions is a complete non-starter in the present case. On a proper analysis, what the owners are really seeking is a variation of the Order made on 12 January 2016 to substitute for the absolute obligation to disclose the WWGT archive a lesser, best endeavours obligation, in other words an application under CPR 3.1(7), as the owners belatedly recognised by the amendment of their application notice shortly before the hearing.

55. The rule at CPR 3.1(7) is in unrestricted terms: "A power of the court under these Rules to make an order includes a power to vary or revoke an order" but the authorities, and specifically the decision of the Court of Appeal in *Tibbles v SIG Plc* [2012] EWCA Civ 518; [2012] 1 WLR 2591, establish that the discretion to vary or revoke an Order once made and sealed can, save in cases which are out of the ordinary, only be exercised in certain circumstances.

56. The applicable principles were stated by Rix LJ in that case in these terms at [39]:

> "In my judgment, this jurisprudence permits the following conclusions to be drawn:
>
> (i) Despite occasional references to a possible distinction between jurisdiction and discretion in the operation of CPR 3.1(7), there is in all probability no line to be drawn between the two. The rule is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. Whether that curtailment goes even further in the case of a final order does not arise in this appeal.
>
> (ii) The cases all warn against an attempt at an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise. Subject to that, however, the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated.
>
> (iii) It would be dangerous to treat the statement of these primary circumstances, originating with Patten J and approved

> in this court, as though it were a statute. That is not how jurisprudence operates, especially where there is a warning against the attempt at exhaustive definition.
>
> (iv) Thus there is room for debate in any particular case as to whether and to what extent, in the context of principle (b) in (ii) above, misstatement may include omission as well as positive misstatement, or concern argument as distinct from facts. In my judgment, this debate is likely ultimately to be a matter for the exercise of discretion in the circumstances of each case.
>
> (v) Similarly, questions may arise as to whether the misstatement (or omission) is conscious or unconscious; and whether the facts (or arguments) were known or unknown, knowable or unknowable. These, as it seems to me, are also factors going to discretion: but where the facts or arguments are known or ought to have been known as at the time of the original order, it is unlikely that the order can be revisited, and that must be still more strongly the case where the decision not to mention them is conscious or deliberate.
>
> (vi) *Edwards v. Golding* [2007] EWCA Civ 416 is an example of the operation of the rule in a rather different circumstance, namely that of a manifest mistake on the part of the judge in the formulation of his order. It was plain in that case from the master's judgment itself that he was seeking a disposition which would preserve the limitation point for future debate, but he did not realise that the form which his order took would not permit the realisation of his adjudicated and manifest intention.
>
> (vii) The cases considered above suggest that the successful invocation of the rule is rare. Exceptional is a dangerous and sometimes misleading word: however, such is the interest of justice in the finality of a court's orders that it ought normally to take something out of the ordinary to lead to variation or revocation of an order, especially in the absence of a change of circumstances in an interlocutory situation."

57. Miss Blanchard QC put the owners' case, that the Unless Order could be varied pursuant to these principles, primarily on the ground that, since the Unless Order was made on 12 January 2016, there has been a material change of circumstances, specifically that it is now clear that the owners cannot require Mr Agha to hand over the WWGT archive and that his obduracy was caused or contributed to by the conduct of the insurers revealed in the Grigorakis criminal complaint, so that the owners' inability to obtain the archive is in some way the fault of the insurers. For the reasons set out in detail hereafter, I have concluded that there has been no material change of circumstances since the Unless Order was made which could conceivably justify a variation or revocation of that order.

58. Miss Blanchard QC also relied upon the other situation identified by Rix LJ as one where the discretion to vary or revoke an Order could be appropriately exercised,

namely where the facts on which the original decision was made were misstated. She submitted that it was entirely open to the Court to consider afresh the question whether the archive had been put deliberately beyond the owners' control on the material now before the Court. In my judgment, that submission betrays a misapprehension as to the circumstances in which the relevant discretion can be exercised. It is not simply open to a party, after an Order has been made and sealed to come before the Court with further evidence and invite the Court to reconsider its decision. The situation to which the Court of Appeal in *Tibbles* was referring was where the Court has been misled, innocently or otherwise, as to the correct factual position. As Patten J (as he then was) identified in *Lloyd's Investment (Scandinavia) Ltd v Ager-Hanssen* [2003] EWHC 1740 (Ch) at [7] an example of that situation would be where there was material non-disclosure on an application for an injunction. The party cannot simply come before the Court with new evidence and invite the Court to revisit an Order.

59. There is no question of the Court having been misled at the hearing on 12 January 2016 or of the facts upon the basis of which the Unless Order was granted having been misstated. As I found, the owners had unnecessarily, deliberately and knowingly put the WWGT archive outside their control and, as set out in detail below, that remains the position. In other words the new or additional facts on which the owners now rely do not demonstrate that the Unless Order was made on the basis of a misapprehension. In all the circumstances, there is no basis for the variation or revocation of that Order.

Mr Iliopoulos as a witness

60. As already indicated, in the event the application for Mr Iliopoulos to give evidence by video link was not pursued and he attended the hearing to be cross-examined. Before setting out my detailed findings on the basis of the evidence now before the Court, I should set out my general assessment of him as a witness. Although by his own admission in his witness statements he is proficient in English (which he clearly understands and speaks, as was evident from various occasions in cross-examination when he gave answers in English without waiting for the question to be translated) he chose to give evidence in Greek through an interpreter. This was his prerogative and although it slowed down the evidence (in the end he was cross-examined by Mr Gaisman QC for the full two days this hearing was originally estimated to require) I would not hold it against him. As I said at [65] of my recent judgment in *Republic of Djibouti v Boreh* [2016] EWHC 405 (Comm):

> "…even someone who is apparently fluent in a foreign language may misinterpret the nuances of questions in that language and, if they wish to do so, should be entitled to give their evidence in their mother tongue."

61. What this did mean however was that there was no question of Mr Iliopoulos misunderstanding the questions being put to him, since they were all translated into Greek. Notwithstanding that, he purported on a number of occasions during cross-examination not to understand the question being asked. I formed the very firm view that this was a ruse on his part to avoid answering questions which he fully understood, but did not like. A particularly egregious example is when Mr Gaisman QC (and the Court) asked him how the handing of the WWGT archive to the owners

for onward transmission to Hill Dickinson could have any impact on the criminal complaint against Mr Agha in relation to the death of the crew member on another vessel. To avoid admitting that there was no conceivable connection between the two, he simply pretended not to understand the question:

> *"Q. could you answer this question, please, and just listen to it: how could handing the archive to owners for onward transmission to Hill Dickinson have any impact whatever on the criminal complaint against Mr Agha in relation to the crew member's death?*
>
> ……..
>
> *MR JUSTICE FLAUX: What you are being asked is how could handing the archive by the owners to their own solicitors in London have any impact on the criminal claim against Mr Agha made in relation to the death of the crew member? Nothing to do with Grigorakis or the Grigorakis complaint. What is the answer?*
>
> *A. I still don't understand the question, if you can just simplify it for me.*
>
> *MR GAISMAN: I think you do understand it. I will go on."*

62. I had the opportunity to see and hear Mr Iliopoulos giving evidence over two days and thus to assess his demeanour in the witness box. Making every allowance for cultural differences and for the fact that Mr Iliopoulos was clearly angry about the position he found himself in (although I consider his apparent anger about the allegations of wilful misconduct being made against him and the owners was feigned) he was an extremely unsatisfactory witness. He was evasive and non-responsive and, on occasions, aggressive and threatening. Overall, I formed a very clear view that in large measure he was not telling the truth. In particular, having considered and re-read the evidence carefully, I have concluded that the whole story about the handing of the WWGT archive to Mr Grigorakis, its retrieval and subsequent return to Mr Grigorakis and the reluctance of Mr Agha to permit it to be handed over to Hill Dickinson, is just that, a fabricated story designed to provide the owners with an excuse for not handing over the archive to Hill Dickinson, which is the one thing Mr Iliopoulos is not willing to do, with or without a Court Order.

Detailed findings of fact

The history of disclosure by the Owners

63. Much of the history of disclosure by the owners in this case prior to the making of the Final Order on 18 December 2015 for the delivery up of the WWGT archive to Hill Dickinson, was set out by me in my judgment on 12 January 2016 or is set out in the Background section above and I do not propose to repeat all of that. However, a few points require emphasis.

64. First, the Order made by Males J on 15 August 2014 stated in terms that documents, including electronic documents within the control of Mr Iliopoulos and/or WWGT are within the control of the owners. Although Mr Iliopoulos and WWGT were given liberty to apply for an Order that such documents were not within the control of the owners, no such application was ever made. If, as Mr Iliopoulos now contends for the first time in his third witness statement, in August 2012 he had made an agreement with Mr Agha which gave Mr Agha the option to take over ownership of WWGT in the event that it closed its Greek operation, it is extraordinary that this point was not raised with the Court or with Hill Dickinson at this stage in late 2014 when WWGT was winding up its Greek operations.

65. Second, pursuant to my Order of 10 October 2014 that Mr Iliopoulos should swear an Affidavit in relation to the completeness of the disclosure of documents given by him and WWGT, he swore an Affidavit on 24 October 2014 in which he stated that he had shares in the owners and in WWGT and that his correspondence and documents and those of WWGT were held in an electronic archive at the offices of WWGT and the owners at 2, Dimitriou Gounari Street, 18531 Piraeus. Again, if what the owners now ask the Court to believe is true, it is extraordinary that in that Affidavit he does not mention: (i) that Mr Agha had apparently become the sole director of WWGT over two years previously in August 2012, (ii) that he had handed over his bearer shares to Mr Agha without any receipt or other document recording that this was, as he now contends, for safekeeping or (iii) that he had apparently granted Mr Agha an option to acquire ownership of WWGT if the Greek operations ceased. At the time the Affidavit was sworn, the final winding up of the Greek operations was just over two months away and Mr Iliopoulos must have known this was imminent.

66. Third, whilst in Mr Clift's twentieth witness statement served on 14 April 2016 after Mr Iliopoulos had given evidence, Mr Clift says that it was not until 15 October 2015 that Hill Dickinson made a specific request for physical access to the WWGT archive, he confirms that Hill Dickinson had advised the owners: *"that we would need to have access to all of Owners' electronic documents to satisfy ourselves regarding Owners' disclosure obligations".* He does not say exactly when that advice was given, but he does not contradict the insurers' case that that advice must have been given prior to March 2015, when the insurers first raised the allegation of wilful misconduct and, as Mr Gaisman QC submitted, if Mr Clift had been in a position to contradict that part of the insurers' case he would surely have done so. In any event, I find that Hill Dickinson had advised the owners that they would have to have access to all the electronic documents before March 2015. That advice was probably first given either (i) before the hearing on 15 August 2014, when Mr Clift says in his fifth witness statement dated 22 September 2014 that he advised the owners that Hill Dickinson would need to review all of the documents in the flashdrive of the owners' Gmail account, or (ii) at around the time when Mr Bezas signed a Disclosure Statement dated 7 October 2014 which referred to Mr Iliopoulos' and WWGT's documents being held on an electronic archive at the premises at 2 Dimitriou Gounari Street, but at all events the advice was given before the insurers made their amendment on 6 March 2015. Furthermore, that important advice was almost certainly repeated on a number of occasions, including at the time that the wilful misconduct allegations were made.

67. In cross-examination, at a time before Mr Clift's twentieth witness statement had confirmed that the owners had been given that advice, Mr Iliopoulos was reluctant to agree that such advice had been given and was evasive. Indeed this was one of the occasions when he purported not to understand the question:

> *"Q…The point I'm trying to make is that what Mr Clift is explaining that he advised is that his firm would need to review all the documents in the flash drive; do you see?*
>
> *A. And what is the question?*
>
> *Q. What I am suggesting is that that shows that you and owners knew very well that Hill Dickinson required to have access to your electronic documents so that they could work out what needed to be disclosed. That's right, isn't it?*
>
> *A. And -- I do not understand your question.*
>
> *Q. You and owners knew from an early stage in the litigation that Hill Dickinson required to have access to all the documents on an electronic flash drive so that they could work out what needed to be disclosed for themselves; that's right, isn't it?*
>
> *A. Whatever they requested, they had it. I do not have anything to do with the computers -- Mr Clift knows that I do not use computers, but whatever they asked for, they got it.*
>
> *Q. That's not true, because they asked for, as the evidence shows quite clearly, the Worldwide flash drive, and you refused to them have it; that's right, isn't it?*
>
> *A. Can you please show me where you see this, because I don't have any knowledge of IT, or any flash drives or hard drives or anything."*

68. I will return to the owners' reluctance to provide the WWGT archive to Hill Dickinson later in the judgment, but simply note that despite this reluctance to answer a straightforward question, it is now clear from Mr Clift's twentieth witness statement that Hill Dickinson had advised the owners before March 2015 that they would require access to all the owners' electronic documents. As an experienced and astute businessman with some experience of litigation before the English courts, Mr Iliopoulos must have known that this would include the WWGT archive, which he himself describes in his second witness statement as: *"a crucially important repository of evidence which deserved to be kept properly"*.

The owners' attitude to compliance with their disclosure obligations

69. In my judgment, it is important to consider the owners' case, as developed at the hearing on 12 January 2016 and subsequently, against the background of what Mr Iliopoulos' oral evidence revealed (to an extent unwittingly) about the owners'

attitude to the advice they were given by Hill Dickinson and to compliance with their disclosure obligations. I agree with Mr Gaisman QC that Mr Iliopoulos' evidence was particularly illuminating in that regard.

70. What emerged is that the owners were quite prepared in a cynical manner to disregard the advice their own solicitors, Hill Dickinson, gave them, although Mr Iliopoulos asserted that they would follow Court Orders:

> *"Q. If they tell you that you have to do something in order to comply with your duty in English litigation, you would do it, wouldn't you?*
>
> *A. Yes. Reasonably, yes, yeah.*
>
> *Q. Unless somebody else had given you different advice. If Hill Dickinson said 'You must take this step, it is your duty as an English Court litigant to do so', you would do it I presume?*
> *A. No, because initially from Hill Dickinson, they said that the VDR should be given – the VDR should be given.*
> *…*
> *And we said no, because we said that we would not give it unless there is a court order. The same thing happened with my passport. Without a court order, we wouldn't give it. And the same thing happened with the archive. If there was no court order, we wouldn't give it. And this was the argument within our comments for not giving those things. But it's a separate thing being asked by a firm like Norton Rose for certain things, and it's a separate thing having a court order requesting those things. If there is a court order, we always comply with it, and there's absolutely no dispute about this. Therefore it's a different thing having a request and a different thing having a court order.*
>
> *Q. I'm not talking about a request, I am talking about advice from your solicitor that this is something that you must do, and that advice might well say "You have to do this irrespective of whether it is a court order". If you received that advice, you would say "No, I will not do it until there is a court order"? Have I correctly understood your evidence?*
>
> *A. Our solicitor's advice is respected, but in some cases might not be correct. We follow the court orders."*

71. However, the owners cannot point to a single example of the advice Hill Dickinson gave them about their disclosure obligations being incorrect, nor did the owners need a Court order to confirm what their duties of disclosure were, as advised by Hill Dickinson. As Mr Iliopoulos went on to accept in the evidence he gave immediately after the passage I have just quoted, the owners knew, from the advice they had received from Hill Dickinson (which clearly pre-dated the making of the allegation of

wilful misconduct) that they had a duty to preserve documents, including those that damaged their case, and not to put them somewhere where they had no legal right to get them back. That was so irrespective of whether there was a Court Order.

72. Furthermore, I simply do not accept Mr Iliopoulos' evidence that the owners followed Court Orders. The true position is that they took their own course in complying with the Disclosure Order of 1 May 2015 to the extent it suited them, but disregarded the rest. That Order required the owners to give *Peruvian Guano* disclosure of a substantial number of different categories of documents, including electronic documents, clearly not limited to documents in relation to the vessel, for example financial documents relating to other vessels in which Mr Iliopoulos and/or WWGT had an interest including the *Elli* and the *Aetos* in Appendix 1 paragraph 9 of the Order and all documents relevant to the case of wilful misconduct other than those in Appendix 1 (paragraph 3 of the Order) not limited in time or limited to the vessel or to certain keyword searches. The question of using limited keyword searches in relation to electronic documents was not raised with the Court at the hearing on 1 May 2015. If it had been, then careful consideration would have needed to be given to whether that limitation was appropriate, given that disclosure was to be given to the *Peruvian Guano* standard. Even if I had concluded that some limitation by reference to keyword searches was appropriate, I would have been at pains to ensure that they were sufficient in number to ensure that a wide disclosure Order, not limited to the vessel and in many respects not limited in point of time, was complied with.

73. What in fact happened is that, initially at least, the owners unilaterally limited their searches of the WWGT archive to just two keywords *"Brillante"* and *"@piraeusbank"*, which would not have caught anything like all the documents they were required to disclose by the Order. For example it would not have caught all the financial documents or documents relevant to the case of wilful misconduct to which I referred in the previous paragraph. In cross-examination, Mr Iliopoulos asserted that until August/September 2015 Owners did not refuse anything, saying *"we were given specific key words and we disclosed any – and we gave all the information that was requested of us up to that point."* To the extent that this was a suggestion that limiting the search to two keywords was Hill Dickinson's idea, this was simply untrue. Mr Clift was well aware of the width of the 1 May 2015 Order and that it was not limited by reference to keywords and no doubt explained the width of the Order when, as he said in his tenth witness statement of 20 July 2015 seeking an extension of time for compliance with the Order: *"Before and after the Consent Order was agreed, I spoke to [the owners] at length about all its various requirements."* It is inconceivable that an experienced and responsible litigation solicitor like Mr Clift would have countenanced limiting the search of the WWGT archive to the two keywords the owners chose. On the contrary, he would have had in mind that, as he had already advised the owners (and in all probability advised the owners again in the context of the lengthy discussions about the 1 May 2015 Order), his firm would need to have access to all the electronic databases (including the WWGT archive) to satisfy themselves that the owners had complied with their disclosure obligations.

74. The fact that Hill Dickinson did not advise Norton Rose Fulbright at any stage prior to the service of the Disclosure Statement dated 2 October 2015 signed by Mr Bezas, that the search of the WWGT archive was being limited to those two keywords suggests very strongly that Hill Dickinson had not known about this either and

certainly had not suggested it. When Norton Rose Fulbright wrote promptly on 8 October 2015, expressing astonishment that these limitations had only just been revealed, Hill Dickinson did not suggest in response that they had advised that these limitations were necessary or appropriate, but simply said they were taking instructions. Thereafter, on 30 October 2015, Hill Dickinson wrote, saying the owners had agreed to effect keyword searches against the WWGT archive in relation to 19 additional keywords plus the names of the crewmembers. These are the 45 search terms mentioned in Mr Clift's twelfth witness statement on 17 December 2015. As Mr Gaisman QC submits, the agreement reflected in the letter of 30 October 2015 was no doubt procured after some terse discussions between the owners and their solicitors.

75. One thing that the owners clearly did not tell Mr Clift is that, on 17 August 2015 they had handed back the archive to Mr Grigorakis and did not retrieve it until 29 October 2015, one day before the expiry of the extension of time until 30 October 2015 for compliance with their disclosure obligations granted to the owners by my Order of 28 September 2015. If the owners really had handed the archive back and only retrieved it a day before compliance with the Order was due, that was a cynical disregard of Court Orders, since they could never have completed the searches necessary to comply with the Order in a day. The failure to tell their solicitors what they were doing, if that was what they were doing, is inexcusable. The owners would have known that Mr Clift would have been dismayed to learn that the only copy of the WWGT archive had been given to the lawyer of someone who was not a party to the proceedings and therefore not bound by any Orders of the Court. Of course, the most likely explanation for why the owners did not tell Mr Clift anything about the toing and froing with the archive is that none of it was happening, because it is all an invention of the owners (a matter with which I deal in more detail below). However, if that is right and the owners had the archive throughout, but failed to interrogate it in respect of more than the two search terms they had arbitrarily chosen, then they were equally in cynical disregard of the Orders of 1 May and 28 September 2015.

76. Even after Hill Dickinson had stated in their letter of 30 October 2015 that the owners had agreed to searches against the 45 search terms, the owners were not prepared to abide by that agreement. In his twelfth witness statement Mr Clift explains that the owners wanted to limit the search under the 45 search terms to the vessel, a limitation which, as I have said, was not justified by the terms of the Orders of 1 May 2015 and 28 September 2015. Nor was it justified by the agreement ostensibly recorded in the letter of 30 October 2015 where it was not suggested that the search would be limited to the vessel.

77. Another respect in which the owners were simply prepared to disregard Orders of the Court concerns Mr Iliopoulos' personal documents which, according to his Affidavit of 24 October 2014, were on the WWGT archive. The Order made by Males J made it clear that his personal documents were to be treated as the owners' documents, from which it necessarily follows that the disclosure required by the Order of 1 May 2015 encompassed his personal documents, as he was no doubt advised by Hill Dickinson. However, it emerged at the hearing on 28 September 2015 that these documents had still not been disclosed. Notwithstanding that, as I observed on that occasion: *"it is blindingly obvious that Mr Iliopoulos personal documents have to be disclosed"* and notwithstanding that my Order of 28 September 2015 required disclosure of Mr Iliopoulos' diaries, business telephone bills and records and personal telephone bills

and records, all for the period from 1 June 2011 to 15 March 2012, none of these or his other personal documents have been disclosed.

78. What is quite clear from all this is that the owners were intent on limiting access to the WWGT archive on terms which suited them and were not (and are not) prepared to provide that archive to their own solicitors, in order for those solicitors to satisfy themselves that the owners have complied with their disclosure obligations, notwithstanding the advice they have clearly received throughout from Hill Dickinson and notwithstanding the specific requests from 15 October 2015 onwards, that the owners hand over the archive to Hill Dickinson, amounting, as Mr Iliopoulos accepted, to insistence. As I have already said, I do not accept Mr Iliopoulos' evidence that the owners comply with Court Orders, nor his assertion that in some way, the making of the specific Final Order on 18 December 2015 made all the difference and converted an obdurate refusal to hand over the archive into a willingness to do so, which was then thwarted by Mr Agha and Mr Grigorakis. In my judgment the owners remain unwilling to hand over the WWGT archive to Hill Dickinson so that Hill Dickinson can search it to ensure that all relevant documents are disclosed. For the reasons developed in more detail below, I have concluded that the whole story of the handing over of the archive to Mr Grigorakis and the toing and froing thereafter and of the refusal of Mr Agha and Mr Grigorakis to deliver the archive back to the owners is a fabrication, a charade, as Mr Gaisman QC described it, designed to provide the owners with an excuse for not being able to comply with their disclosure obligations in relation to the archive.

The sole directorship and handing over the bearer shares

79. At this point it is worth reiterating what I said at [53] of my judgment of 12 January 2016 about the implausibility and inadequacy of the explanation then being put forward by the owners for their contention that the WWGT archive was outside their control:

> "53. In my judgment it is not necessary for the purposes of determining this application to decide whether or not Mr Iliopoulos' version of events is true or not. It is sufficient for present purposes to say that it is a wholly inadequate explanation, or a wholly inadequate attempt to demonstrate that the documents are now outside the control of the owners, in circumstances where (i) there is simply no evidence as to why Mr Iliopoulos has handed over the shares to Mr Agha; (ii) the document alleged to demonstrate that he is the sole director does nothing of the sort but simply says that the sole director, whoever that was, appointed him the legal representative; and (iii) the explanation provided by Mr Iliopoulos for thinking that it was appropriate for Mr Agha to give the documents to his lawyer for safekeeping is, frankly, an unbelievable explanation for what has occurred."

80. Whilst it is correct that the owners have now produced the documentation which was lacking at the time of the hearing on 12 January 2016, which purports to demonstrate that Mr Agha did become the sole director of WWGT and its legal representative under Law 89/67 in August 2012, addressing my point (ii), having considered the

additional material now put forward by the owners, the case remains as implausible as it then appeared.

81. So far as points (i) and (ii) are concerned, the production of the documentation does not explain how, if Mr Agha was both the sole director and the holder of the bearer shares from August 2012, as recently as 17 December 2015, Mr Clift's twelfth witness statement, obviously produced on instructions from the owners and, in all probability from Mr Iliopoulos himself, given that various aspects of it were discussed between them that day, merely described Mr Agha variously as *"the former representative"* and a *"former employee"* of WWGT.

82. Furthermore, the documentation now produced does not explain how Mr Iliopoulos came to omit mentioning that Mr Agha was the sole director of WWGT in his Affidavit, let alone that, at the time the Affidavit was sworn, he had handed his shares (in fact bearer shares and all the shares in WWGT) to Mr Agha without requiring any documentation to be signed evidencing that this was just for safekeeping and that he, Mr Iliopoulos, remained the owner of the shares. It was said by Mr Iliopoulos that it was the practice of his family, dating back to the 1960s to provide the bearer shares to the sole director and legal representative as part of the "kit" or "black box" for the company in question, in other words all the corporate documentation which a legal representative would require to deal with matters within his remit such as tax affairs, wages and social security. I simply do not accept that evidence, particularly since, as a matter of Greek and Marshall Islands law, the holding or possession of bearer shares constitutes ownership.

83. The insurers' Greek law expert Mr Markianos, whose evidence on this point I accept, says this in his report:

> *"11. I would add that, in my experience, the share certificates are always kept separately from the other corporate documents and records of the company (e.g. the articles of association and the resolutions of the company). These records may well be held by a director, or a lawyer representing the company. But the share certificates would not, in my experience, be part of those records.*
>
> *12. I therefore totally disagree with Mr Karamitsios* [the owners' Greek law expert] *that it is common or normal for the bearer shares in a company to be held by a director of the company who is not the beneficial owner (as he suggests at the first paragraph on p.4 of his letter of 2 February).*
>
> *13. In particular I find it very hard to believe that Mr Iliopoulos would, in 2012, have handed the bearer share certificates in WWGT for safe keeping to an employee who he had only known for five years, without obtaining a receipt or other signed acknowledgement that the transfer was simply custodial."*

84. In his reply letter, Mr Karamitsios accepts that for a director to hold another party's bearer shares in the company would not be the norm. In fact, as Mr Markianos says, it

would be *"exceptionally unusual"* and it is inconceivable that an astute and experienced businessman like Mr Iliopoulos (who admitted in cross-examination that he knew that with bearer shares, the shares belonged to the bearer of the shares) would have handed his bearer shares to Mr Agha in 2012 as part of the corporate "kit" for safekeeping. If he was going to hand over the shares to anyone for safekeeping it would have been to his lawyer or his bank and then only with documentary proof that they were his shares and that the lawyer or bank was only holding them for safekeeping. When he was asked about this in cross-examination, Mr Iliopoulos had no explanation, simply repeating that he had only given them to Mr Agha for safekeeping, that he had not given him the shares.

85. At that point in his evidence, Mr Iliopoulos maintained that he was still entitled to the shares as beneficial owner:

> *"A. I have the control of Worldwide because I'm mentioned as the beneficial owner in many bank documents and I have the ---- I controlled the accounts, and I'm mentioned in many company documents.*
>
> *Q. Well, I haven't seen a number of these documents. I don't think I've seen any of them. But the point I'm making is that you do understand, the person who is in control of a company, unless and until he's removed, is the director, yes?*
>
> *A…….the beneficiary of the company, and that was myself.*
>
> *Q. Assuming you could prove it?*
>
> *A. Since my name was mentioned in so many documents, it's common sense that I was that person, and I never handed over those shares, because I was the legal owner of these shares."*

86. However, as Mr Gaisman QC points out, that assertion involved contradicting his evidence in his witness statement that Mr Agha had *"full executive power"*. Confronted with that contradiction, Mr Iliopoulos initially disputed that he had used the word *"executive"* but, once he appreciated that he had done so, he sought to dilute that full executive power by reference to what he saw as his own overarching authority, although he accepted that Mr Agha had legal control of WWGT, subject to what he suggested was his own power to replace him:

> *"A. I believe that the word "executive" here means, you know, who he is the highest in power, and this is myself, because it's myself who is mentioned in all the documents. It was me who could make any decision I wanted at the time and I have the – and this is certain, this is absolute.*
>
> *Q…I'm suggesting to you it is obvious that Mr Agha was in legal control of Worldwide.*
>
> *A. Yes, but I had the power to do whatever I liked, even to replace him.*

> *Q. Well, we might debate that, but I'm not going to take up time with you now……"*

87. In my judgment, Mr Iliopoulos has placed himself on the horns of a dilemma. Realising that his claim that he handed legal control of WWGT to Mr Agha and handed over his bearer shares to Mr Agha is patently absurd and makes no commercial sense, he is now trying to row back from that position and assert that he has retained ultimate control as beneficial owner. However, he cannot have it both ways, since, if that is right, he could simply order Mr Agha to hand over the archive (always assuming he or Mr Grigorakis has it) and if he refuses, replace him as sole director with someone malleable.

88. Furthermore, the suggestion by Mr Iliopoulos that he has retained beneficial ownership and thus ultimate control of WWGT is not only inconsistent with his evidence that Mr Agha had *"full executive power"* but is also contradicted by what is said in the Grigorakis complaint which is that:

> *"The above mentioned two companies* [WWGT and Aegean Jet Co, owner of the *Aetos*] *belong to the same group of companies, where Mr Marios Iliopoulos had a commercial interest. In relation, however, to the above mentioned first company* [WWGT], *which was represented by my principal* [Mr Agha] *Mr Iliopoulos maintained an interest until the time where all of its shares were transferred to my principal's ownership following an agreement between them."*

89. As Mr Gaisman QC put to Mr Iliopoulos in cross-examination, that suggests that Mr Grigorakis' understanding is that the shares were transferred to Mr Agha's ownership in 2012, although Mr Iliopoulos denied that and said it was incorrect. In fact, although the complaint is ostensibly being made by Mr Grigorakis, for reasons elaborated below, in all probability it was produced at the behest of the owners. What this all demonstrates is that, as Mr Gaisman QC submitted (in relation to another aspect of the owners' overall story): *"As so often happens when people invent untrue stories, they trip themselves up."* As the insurers and the Court have probed and questioned the owners' account, so the owners have had to come up with further explanations which turn out to be inconsistent with what they have said elsewhere. Returning to point (i) in [53] of my judgment of 12 January 2016, whilst there is now some evidence as to why Mr Iliopoulos allegedly handed over his shares to Mr Agha, that evidence is inconsistent and incredible. In my judgment, the whole story about having handed the bearer shares to Mr Agha and relinquished control, legal or otherwise, of WWGT to Mr Agha is incredible, an invention by the owners designed to provide an explanation for their alleged inability to comply with their obligation to hand over the WWGT archive to Hill Dickinson or Clyde & Co, as required by the Order of the Court. The true position is that the owners and Mr Iliopoulos could hand over the WWGT archive to Hill Dickinson or Clyde & Co, but that is something they have always been unwilling to do.

The alleged option agreement

90. A good example of the point I made in the previous paragraph about the owners having to provide further explanations which prove to be inconsistent with what they

have said elsewhere, is the alleged option agreement. Remarkably, given what Mr Iliopoulos now says, this was first mentioned in his third witness statement served on 2 February 2016. Mr Iliopoulos now says at [14] of that statement that, in the summer of 2012, Mr Agha who had only been providing chartering assistance on a part-time basis since January that year, said that he knew Mr Iliopoulos wanted to close down WWGT and had a proposal for him.

91. This is then elaborated at [15]:

> *"In addition, however, Mr Agha requested that if ever WWGT ceased operating in Greece, he would be entitled to take it over. The reasons why he proposed this were as follows. He could see that I was veering towards the cessation of WWGT's operations and did not want his hard work to be in vain, in case I subsequently decided to close it down anyway. Also, if he was to spend time and effort building up WWGT as a manager of third party vessels, he wanted to have the advantage of its brand recognition, in case I no longer needed it as a tool. I agreed to Mr Agha's request. Our agreement was made orally, but it was witnessed by Mr Bezas and Ms Katarina Tsafou, who were in attendance."*

92. Mr Iliopoulos continues at [22] that: *"When WWGT ceased trading on 31 December 2014, Mr Agha did not say to me that it was now he who had ownership of WWGT. On the contrary, he did not say anything of the sort."* At [24] he says that it was only on the second day of their meetings at the beginning of January 2016, 5 January 2016, that Mr Agha raised that he now owned WWGT by virtue of the agreement in the summer of 2012. Mr Iliopoulos says at [23] that this option agreement was not in his mind, either when Mr Agha asked for the archive to be handed to Mr Grigorakis when the allegations of wilful misconduct were made (i.e. on 9 March 2015) or on the subsequent occasions when the archive was handed back to Mr Grigorakis on 11 May 2015 and 17 December 2015, or at any time in between. Mr Iliopoulos says it was far from his mind.

93. At [30] he describes how the point was raised on 5 January 2016:

> *"Mr Agha reiterated that he was not willing to hand over the archive; indeed, he considered himself incapable of handing it over, given that it would be put into the hands of solicitors, yet contained information confidential to third parties. But anyway, he said, he did not have to hand over the archive as the company now belonged to him because of our previous agreement in the summer of 2012. This left me speechless. I remembered the agreement, but had not understood it to apply."*

94. In cross-examination, Mr Iliopoulos agreed that this was a bombshell in terms of its seriousness and also came as a total surprise and, as he had said, rendered him speechless. On that basis, it is inconceivable that he would not have had this serious, new and unexpected development at the forefront of his mind when he signed his second witness statement on 10 January 2016. Any suggestion that the omission from

that statement of any mention of the option agreement is attributable to the statement having been prepared in a rush is hopeless. The owners had a number of days to prepare their evidence for the 12 January 2016 hearing and the statement certainly does not read as if it was prepared in a rush. However, even if it was, if Mr Agha had really raised the option agreement on 5 January 2016, Mr Iliopoulos would have been bound to mention that Mr Agha had said that he now owned WWGT because of the option having been exercised, not least because the whole purpose of his second statement was to seek to demonstrate that the WWGT archive was in Mr Agha's control and he would not give it back to the owners.

95. Appreciating the force of this point in cross-examination, Mr Iliopoulos sought to claim that reliance by Mr Agha on the option agreement at the meeting on 5 January 2016 was mentioned in his second witness statement, saying that the bombshell was explained in [9] and [30] of the witness statement. This attempt by Mr Iliopoulos to dig himself out of a hole was completely hopeless. In [9] Mr Iliopoulos is simply making the point generally that it is Mr Agha who now, according to Mr Iliopoulos, is the holder of the bearer shares in WWGT of which he was previously shareholder and had control. That does not refer to any option agreement made in 2012, let alone to the exercise of the option. [30] describes the meeting on 5 January 2016 and how Mr Agha's position had hardened after discussions with Mr Grigorakis and his final position was that he would not give back the WWGT archive. It makes no mention of Mr Agha having referred to the option agreement or said that he now owned the company because of it.

96. According to what Mr Iliopoulos now says in [24] of his third statement, he believes that Mr Agha had not had the option agreement in his mind at the time of the first meeting on 4 January 2016 and was only prompted to raise it the following day after discussions with his lawyer, Mr Grigorakis, overnight. That is an explicit recognition that, if Mr Agha had referred to having exercised the option at the meeting on 5 January 2016, he would be bound to have discussed it previously with Mr Grigorakis. On that basis, it is inconceivable that Mr Grigorakis would not have mentioned the exercise of the option as one of the reasons for declining to hand over the archive in the hour and a half telephone conversation he allegedly had with Mr Tsafos, the owners' Greek lawyer, on 8 January 2016 or for that matter at his subsequent meeting with Mr Clift on 11 January 2016.

97. When Mr Iliopoulos was asked in cross-examination why the option agreement had not been mentioned by Mr Grigorakis, he initially did not answer the question and appeared to be suggesting that Mr Grigorakis had not mentioned it because he had not been present when the option agreement was made in 2012, which made no sense, given that Mr Iliopoulos was contending that it was Mr Grigorakis who put Mr Agha up to mentioning it at the meeting on 5 January 2016. As Mr Gaisman QC submitted, when I repeated the question about why Mr Grigorakis would not have mentioned the option agreement in his conversation with Mr Tsafos if it had been raised on 5 January 2016, Mr Iliopoulos sought to dilute his evidence in his second statement about Mr Tsafos having provided an account of his conversation with Mr Grigorakis, suggesting that he had only had a summary from Mr Tsafos of what was discussed and asking rhetorically why Mr Grigorakis would have "admitted that". The answer to the rhetorical question is pretty obvious: if Mr Agha had mentioned the option agreement at the meeting on 5 January 2016, he must have discussed it with his

lawyer, who would have been bound to raise it in his discussion with Mr Tsafos on 8 January 2016 and his meeting with Mr Clift on 11 January 2016, since it would provide an obvious justification for the refusal to hand over the archive.

98. When pressed as to why there had been no mention of the option agreement or the exercise of the option at the hearing on 12 January 2016, Mr Iliopoulos even appeared to be blaming Hill Dickinson, on the basis that he had told them that if they had wanted any further details or evidence, they should ask for it and they had not done so. The true and fair analysis is that Hill Dickinson had never been told about the option agreement and did not know about it, so they could hardly ask for evidence about it.

99. The whole case about this alleged oral option agreement, which is not recorded anywhere in writing, is thoroughly implausible. Mr Iliopoulos admitted that Mr Agha was competent, sensible, experienced and business-like. In my judgment, it is simply incredible that a businessman with those qualities, who was only being employed by WWGT on a part-time basis, would not have required a contract of this nature, particularly one with potentially important financial implications for him, to be reduced to writing. When Mr Iliopoulos was asked about this, he said:

> *"A. There are no written records. This is the general spirit in shipping. Often things are done on this basis and there are important things that happen on based on verbal agreements and verbal arrangements. This is perfectly normal.*
>
> *Q. Why would Mr Agha be happy with an oral agreement? This was an important development as far as he was concerned. He was getting an option, he was getting the promise of performance bonuses, the opportunity to take over.*
>
> *A. Because Mr Agha knew from all these years like most --- you know, the whole of Piraeus and most shipowners know that my word is my contract."*

100. Miss Blanchard QC relied upon this piece of evidence in response to questions from the Court in closing submissions as to how it could be that a shipowner as experienced and wily as Mr Iliopoulos could have entered an agreement to hand over ownership of the management company to an employee without there being a single record of that agreement in writing, submitting that whilst English commercial lawyers tend to focus on the documents, that is not necessarily how shipowners operate. However, in view of the overall unfavourable impression I formed about Mr Iliopoulos' integrity and veracity as a witness, this evidence has a somewhat hollow ring. Furthermore, my own experience, both at the Commercial Bar and as a Commercial Court judge, is that it is most unusual for an agreement as ostensibly significant as this not to be committed by a shipowner to writing. It is possible that it could be entirely oral, but most improbable.

101. The owners' difficulties with this case do not end there. As Mr Gaisman QC submits, on Mr Iliopoulos' evidence it remains unclear precisely what the terms of the alleged option agreement were, as regards matters such as the amount of compensation Mr Agha was to receive and his performance bonuses. If there had been any option

agreement such potentially important matters, let alone the precise circumstances in which the exercise of an option would be triggered, would not have been left open to subsequent debate, but would have been set out clearly in writing.

102. Later in cross-examination, evidently in an effort to explain that he had not mentioned the option agreement at any earlier stage of the proceedings because he had never thought it would be exercised, Mr Iliopoulos simply invented a new condition for the exercise of the option, that Mr Agha had in some way to *"deserve"* to exercise the option:

> *"....And the things that were included in our agreement in 2012, like to bring more ships, these had not materialised, he hadn't actually done these things. I was entirely certain this would never be the case.*
>
> *Q. But the option you had conferred on him was a simple agreement, as you describe it. If and when Worldwide Greece closes down, you may take it over, and it had closed down.*
>
> *A ... How could you get the company's goodwill without actually having fulfilled these? He didn't deserve this in any case.*
>
> *Q. ... there was a further condition to the exercise of the option, namely that Mr Agha fulfilled certain criteria or targets. The first time I have ever heard that suggestion, Mr Iliopoulos, is now.*
>
> *A.....just, we didn't talk about that option as an isolated thing, there was just an overall discussion about certain things that needed to take place, and this was just a cherry on the cake, if you like, that he would actually take over the company, but he didn't deserve this."*

103. That evidence is inconsistent with the ostensible commercial rationale for the option agreement given in his third witness statement, that Mr Agha was interested in building up management of third party vessels in which Mr Iliopoulos was not interested and would exercise the option in order to avoid that work being in vain. If that was the rationale, Mr Iliopoulos had no interest in whether Mr Agha was performing that third party business well, let alone in making it a condition of the exercise of the option that he should be. That evidence also gives rise to the obvious question, if Mr Agha did not *"deserve"* to exercise the option, why has Mr Iliopoulos not challenged his entitlement to rely upon it? Perhaps appreciating that potential difficulty, Mr Iliopoulos appeared to be trying to row back from the condition shortly after that evidence, when he said:

> *"A. I didn't talk about a condition, all I said is that it was an overall discussion and at the end of the discussion, he made a comment that 'if we continue as we have talked about, my plan is to do this, would you have a problem with it?' It was an overall discussion and I said no."*

That simply succeeded in demonstrating how inconsistent and incoherent the evidence is about the alleged oral option agreement.

104. Furthermore, WWGT had provided a corporate guarantee of the borrowings of vessels within the Iliopoulos group, guaranteeing a loan facility from the bank of US$70 million. It is unlikely that a sensible, competent and experienced businessman like Mr Agha would have wanted to expose himself to WWGT's liabilities, least of all on the basis of oral discussions. Mr Iliopoulos' attempt to downplay the risk to Mr Agha from the corporate guarantee simply demonstrated the uncertainty surrounding the whole issue which reinforced that unlikelihood:

> *"Q. So anybody taking on Worldwide would have that liability to cope with, wouldn't they?*
>
> *A. That's not the case because the bank would be after me. Worldwide was just one of the corporate guarantors, they had nothing to fear……*
>
> *Q. But if Worldwide made profits, then those profits were exposed to the guarantee being called on, weren't they?*
>
> *A. … the profits go to the managing company. The profits go to the owner companies and not to the management company.*
>
> *Q. Mr Agha was supposed to want to take over this management company precisely to make money out of it wasn't he? That was the whole idea."*

105. In my judgment, the alleged option agreement never existed and is an invention of Mr Iliopoulos. He invented it because he appreciated that an explanation needed to be provided for the transactions he contends took place with Mr Agha in relation to the directorship and shareholding in 2012. Contrary to his assertion in cross-examination that he had not read my judgment of 12 January 2016, but only had certain passages highlighted to him by Mr Clift, I suspect that he read it all very carefully and understood the significance of the point I made at [51] about there being no evidence explaining why Mr Iliopoulos handed over the shares. That was a point to which I returned at the hearing on 26 January 2016 when I said: *"in effect Mr Iliopoulos brought all this upon himself by transferring his directorship and his shareholding in circumstances which remain completely unexplained and for which there doesn't seem to be any legitimate commercial reason".* Mr Iliopoulos appeared to accept that this point had been highlighted to him by Mr Clift. He realised that he needed to come up with a legitimate commercial reason for the transactions in 2012 and the option agreement was what he invented. Of course, it would also help bolster the owners' case (which has assumed centre stage in the present applications) that they could not compel Mr Agha to hand over the WWGT archive. It is striking that it is not until a week after the 26 January 2016 hearing that, in his third witness statement, produced on 2 February 2016, Mr Iliopoulos first mentioned the option agreement and Mr Agha's reliance on it on 5 January 2016, notwithstanding that it had rendered him speechless at the time.

106. It is true that Mr Bezas' third witness statement also dated 2 February 2016 purports to confirm that he was present both in the summer of 2012 when the oral option agreement was made between Mr Iliopoulos and Mr Agha and at the meeting on 5 January 2016 when Mr Agha referred to the option agreement made in the summer of 2012. However, Mr Bezas was not tendered for cross-examination. Had he been he would no doubt have been asked about at least two curious aspects of his own evidence: (i) specifically in relation to the meeting of 5 January 2016, he says that he was very surprised to hear Mr Agha refer to the agreement, which makes his own failure to mention the fact that Mr Agha was relying on the option agreement as a reason for not disclosing the archive, when he met Mr Clift on 7 January 2016 and told Hill Dickinson for the first time about Mr Agha's refusal to hand over the archive, wholly inexplicable, not least because on this hypothesis, he overlooked a surprising development that had occurred only two days previously; (ii) the circumstances in which he allegedly handed back the archive to Mr Grigorakis on 17 December 2015 due to some miscommunication with Mr Iliopoulos, notwithstanding that, according to Mr Clift's twelfth witness statement produced the very same day on instructions (no doubt from, amongst others, Mr Bezas himself), the searches on the archive which the owners had agreed to undertake were ongoing and would not be completed for some weeks. Mr Bezas' untested witness statements on those matters lack credibility. The fact that he purports to confirm Mr Iliopoulos' evidence about the option agreement does not make the owners' evidence about the agreement any more credible. As I have said, I consider it to be a complete invention.

The alleged handover of the archive in March 2015

107. The owners were aware of the insurers' suspicions about the claim before the allegations of wilful misconduct were made on Friday 6 March 2015. Some hint of those suspicions appears from [20] to [23] of my judgment following the Stage 1 trial: [2015] EWHC 42 (Comm), but in any event, Mr Iliopoulos accepted in cross-examination that the owners were aware of insurers' suspicions before the plea of wilful misconduct was advanced. Once it was advanced, the owners reacted quickly. Mr Iliopoulos admitted that he read the new case *"carefully and immediately"* and that he took advice from Hill Dickinson and *"immediately discussed"* it. He also admitted that, although he disputed that the allegations were correct and was shocked by them, he realised that disclosure would now be broadened to include financial documents not just those confined to the vessel. On the basis of that admission and the general presumption that competent and diligent solicitors such as Hill Dickinson will have given the right advice at the appropriate time, I find that, in all probability, in those discussions immediately after Mr Iliopoulos became aware of the allegations of wilful misconduct (and, in any event, before the archive was allegedly handed over to Mr Grigorakis on 9 March 2015), Hill Dickinson repeated the advice that they would need to have access to all the electronic documents (which Mr Iliopoulos knew included the WWGT archive) in order to satisfy themselves that the owners had complied with their disclosure obligations.

108. In relation to what ought to have been done by the owners with the WWGT archive which was being held at the owners' premises at 2 Dimitriou Gounari Street when they received the allegations of wilful misconduct, Mr Iliopoulos went on to make two critical concessions:

> *"Q. What you should have said to yourself, do you agree, as soon as you read these allegations was: owners need to be sure that the archive remains fully under its control so that owners can comply with their duties of disclosure as advised by Hill Dickinson; do you agree?*
>
> *A. Yes.*
>
> *Q. If you were going to put the Worldwide archive somewhere different from owners' own office, you had to put it somewhere you could get it back immediately and if necessary by law?*
>
> *A. Yes, I agree."*

109. That evidence is ultimately fatal to the owners' attempts to justify what they in fact did, which is to hand over the archive to Mr Grigorakis three days later on Monday 9 March 2015. The explanation for that hand over is essentially unchanged from the position as it was at the 12 January 2016 hearing which I rejected at point (iii) in [53] of my judgment as *"frankly…unbelievable."* Nothing in Mr Iliopoulos' oral evidence leads me to revise that assessment; if anything, after that evidence, the story appears even more incredible and the owners' conduct (if that had been what they did) all the more inexcusable.

110. Mr Iliopoulos maintained that, at the time that he agreed the handover proposed by Mr Agha and handed over the archive to Mr Agha's lawyer, the option agreement was not present in his mind. Given that, as at 9 March 2015, the conditions for the exercise of the alleged option (namely the closing down of WWGT's operations in Greece on 31 December 2014) had occurred only just over two months previously, this lapse of memory was thoroughly unconvincing.

111. Mr Iliopoulos also maintained that it was Mr Agha who came up with the idea of the handover. He said that the idea of handing the archive to Mr Grigorakis for *"safekeeping"* did not occur to him until Mr Agha, who was in Dubai, just happened to raise the suggestion in a conversation which they had over the telephone shortly after the amendment was notified to the owners. He refused to accept that this was an unlikely coincidence: He answered the question: *"That seems a very unlikely coincidence does it not Mr Iliopoulos?"* in English *"No"* and later said: *"... you can see that 6 March is a Friday, and the first working day is the Monday, when I came to that decision, and therefore it just happens that those two coincided, that we were just of the same view on this."* As Mr Gaisman QC submits, the coincidence is unbelievable, as is the owners' whole story about the handing over of the archive.

112. The version of the story set out in the Grigorakis complaint is a completely different one:

> *"Moreover, in the context of my co-operation with Mr SAYED AGHA, the latter entrusted me, after the revocation of the licence of establishment in Greece of his company WORLDWIDE GREEN TANKERS LTD and the shutting down of its offices and the termination of its activities, with the safe keeping of its electronic archive, (which was in a condensed*

> *form "hard drive"), since he would, from then on, reside permanently in Dubai of UAE…"*

However, that cannot be a truthful explanation for the handing over of the archive in March 2015, because Mr Agha had moved to Dubai in December 2014. Asked why Mr Grigorakis had got this wrong, Mr Iliopoulos just said: *"I am not the right person to respond to this question."*

113. Moreover, Mr Iliopoulos could not provide any coherent explanation why Mr Agha, who was in Dubai (and who would not have been aware of the insurers' proposed amendment to plead wilful misconduct unless Mr Iliopoulos told him), would have made the request for the archive to be handed over to his lawyer for safekeeping. After some fencing, Mr Iliopoulos initially proffered this explanation:

> *"Clearly he must have thought that this was information -- these archives should be with the person that was representing him while he was in Dubai, because he was the sole director and the legal representative of the company. It was also the right place for this archive to be, according to what he was saying and what I was saying. If Mr Agha had other things in his mind too, then I'm not -- any further things in his mind, then I'm not in a position to know that."*

114. That was simply not a good explanation, not least because when Mr Agha went to Dubai in December 2014, he ceased to be the legal representative of WWGT under Law 89/67 (which requires the legal representative to be a resident of Greece) and, in any event, the company was now defunct. Pressed in cross-examination as to what interest Mr Agha had in those circumstances in having custody of the WWGT archive, Mr Iliopoulos initially claimed he had already answered that question, then reiterated that Mr Agha *"remained the sole director and legal representative with all the responsibilities that that entailed",* adding: *"There might be other reasons which I wouldn't know".* He was unwilling or unable to explain why, on this hypothesis, Mr Agha would not think that the archive was safe where it was: *"This is a question for Mr Agha".* He then declined to provide any further explanation. This evidence was thoroughly evasive and unconvincing.

115. Mr Iliopoulos' evidence as to his own reasons for handing over the WWGT archive to Mr Grigorakis was no better. He initially said:

> *"I believe that I explained that I wanted this to be away from me and I didn't want this to be with one of my lawyers. Mr Grigorakis was known to my family, he was a family friend, he's well-respected in Greece, and I had no reason to do anything different to what Mr Agha had requested."*

116. However, that was simply not an explanation for why he gave the archive to someone else's lawyer rather than his own lawyer or a lawyer acting for WWGT, which he claimed still to control *"at the highest level of power".* When that was put to him, his evidence was bizarre:

> *"Q. The point I'm making is this, Mr Iliopoulos: even if you controlled Worldwide, you didn't control Mr Agha, did you?*
>
> *A. That's not the case, because often when Mr Agha had different opinions, if I respected them and if they were valid, I would take them into account. If not, then I would just impose my own decisions.*
>
> *Q. I don't think that's an answer to my question either. You didn't control Mr Agha, did you?*
>
> *A. I told you I had the highest power in the company and I was in control of everything.*
>
> *Q. Mr Grigorakis may have been a family friend, but he was acting for Mr Agha in this transaction, wasn't he?*
>
> *A. Yes, and he was the right person to have this archive, according to what I've explained to you.*
>
> *Q. Why? It had been sitting, you would say, quite safely in owners' offices. Why was there any need to give it to…Mr Agha's lawyer Mr Grigorakis?*
>
> *A. I explained that this was a request made by Mr Agha, which he made for his own reasons, and for my own reasons, my own personal reasons, I agreed, and this is why I made the decision."*

117. The absurdity and inadequacy of Mr Iliopoulos' explanation for why either he or Mr Agha would have wanted the archive to be held by Mr Grigorakis for safekeeping simply serves to demonstrate that this whole story of the hand over is a nonsensical invention. However, even if it were not, Mr Iliopoulos' explanation of his conduct in his oral evidence did nothing to alter the conclusion I reached on 12 January 2016, that the owners had unnecessarily, deliberately and knowingly put the archive out of their legal control. On the contrary, his oral evidence simply confirmed that that conclusion was correct. The *"personal reasons"* to which he had alluded were that he was concerned about accusations of tampering with the archive being made by the insurers, but he would not explain why he had not taken advice from his own solicitors, Hill Dickinson, as to how to deal with the risk of such an accusation. Of course, had he shared those concerns with Hill Dickinson at the time, they would no doubt have advised that, at the very least, he provide them with a full copy of the WWGT archive, so that the insurers would have no grounds for suggesting that there had been any tampering. However, the truth is that Mr Iliopoulos had no intention of ever letting the archive get into the hands of Hill Dickinson. He was also asked why he did not put the archive in a bank or a safe deposit, to which he gave the extraordinary answer: *"I believed at the time that giving it to his lawyer was like putting it in the safe, and even better."*

118. Of course, what has become clear, since Mr Iliopoulos gave evidence, is that Hill Dickinson had already advised, before this alleged handover, that they would need to

have access to all electronic documents to satisfy themselves that the owners had complied with their disclosure obligations. Mr Iliopoulos accepted in cross-examination that, if he was going to hand the WWGT archive to a third party, he had to be sure (i) that he could get it back on demand and (ii) that he could do so with unrestricted power to do whatever was necessary to comply with the owners' disclosure obligations. However, on Mr Iliopoulos' own evidence about the handing over of the archive to Mr Grigorakis, he could not be sure of either of those matters; quite the contrary. There are two striking aspects of the evidence in this context.

119. First, he accepted, after some prevarication, that he had not sought an assurance from Mr Agha in March 2015 that he would impose no conditions upon the return of the archive, nor had Mr Agha given such an assurance. In fact, according to the version of events set out in the Grigorakis complaint, Mr Agha gave Mr Grigorakis a *"special instruction"* at the time that the archive was handed over that it was to be delivered to the owners: *"for the sole purpose of processing the documents which related to the [vessel] in the period where the company of my principal was in charge of its commercial activities*". When Mr Iliopoulos was asked about the fact that, on this version of events, Mr Agha had placed a limitation on the access the owners could have to the archive, he initially purported not to understand the question. After I had explained it to him, he said he understood, but when Mr Gaisman QC put the point again, he still did not answer the question:

> *"MR GAISMAN: So if Mr Agha it was who asked for the archive to be handed over, there is no reason why he would not have explained to you, or to owners, the terms upon which he would hand it back, is there?*
>
> *A. But you explained that, up to August, all the searches were about Brillante.*
>
> *Q. That's not an answer to the question."*

120. Whilst, as Mr Gaisman QC said, he had not answered the question, what he did say was revealing because it appeared to be a reference to the limitations the owners imposed on the searches of the archive in August 2015, which, by a strange coincidence just happen to be the same restrictions as Mr Grigorakis says in the complaint were imposed by Mr Agha on access to the archive. This seems to me to be supportive of the insurers' case that the complaint is not in truth independent of the owners and that there has been collusion between Mr Agha and Mr Grigorakis on the one hand and Mr Iliopoulos and the owners on the other.

121. Second, in [63] of his third witness statement, Mr Iliopoulos had referred, in the context of the request following the making of the Final Order for a meeting with Mr Agha on 4 January 2016 to previous discussions with Mr Agha:

> *"... I knew that Mr Agha was, like I, reluctant for the archive to be passed to third parties, **including the First Claimant's solicitors**: we had discussed the matter and he was of the same opinion as I that only documentation relating to the Brillante*

> *Virtuoso, and none other should be downloaded from the archive" (emphasis added)*

In cross-examination Mr Iliopoulos accepted that he knew that Mr Agha was only willing for the archive to be used on certain conditions and said that up until the making of the Final Order on 18 December 2015, they were agreed that the archive contained material that *"went against Greek law"* and should not be disclosed *"because there were third party obligations"*.

122. When asked when those previous discussions took place, Mr Iliopoulos sought to claim that they were certainly after May 2015. However, he could not explain why, according to the Grigorakis complaint, Mr Grigorakis had received a similarly limited instruction when the archive was given to him in March 2015. Mr Iliopoulos denied that he had known in March 2015 that, on this basis, Mr Agha was only willing to hand the archive back on conditions. However, if there were any truth in this whole story at all, that denial is inherently implausible, since there would seem to be no logical reason why Mr Agha would have mentioned this *"special instruction"* to Mr Grigorakis, but not to Mr Iliopoulos. Furthermore, given that, by this stage in March 2015, Hill Dickinson had clearly advised that they would need access to all the electronic documents in order to satisfy themselves that the owners had complied with their disclosure obligations, and that the context of the alleged hand over according to Mr Iliopoulos was that it was for safe keeping and to avoid accusations of tampering, it is improbable that, if this discussion took place at all, Mr Iliopoulos and Mr Agha did not discuss the role of Hill Dickinson. How else can Mr Agha in Dubai have told Mr Iliopoulos that he was reluctant for the archive to be passed to third parties such as the owners' solicitors?

123. I agree with Mr Gaisman QC that, if there is any truth in this story at all, Mr Iliopoulos knew about Mr Agha's reluctance to pass the archive to third parties, including Hill Dickinson, before the archive was handed over in March 2015. It must follow that, on the owners' own case that this archive was handed over to Mr Grigorakis, at the time that they did so, Mr Iliopoulos knew that Mr Agha was unwilling for it to be handed to Hill Dickinson. In addition, although Mr Iliopoulos asserted that once there was a Court Order, he would comply with it, Mr Agha was not bound by any Court Order and the owners can have had no confidence, if he had the reluctance to hand the archive over to third parties of which Mr Iliopoulos speaks, that a Court Order to which he was not subject would remove that reluctance.

124. One of the matters which troubled me at the hearing on 12 January 2016 was the inexplicable failure on the part of the owners to take a copy of the WWGT archive at the time of the alleged handover to Mr Grigorakis. In his oral evidence, Mr Iliopoulos sought to hide behind his self-avowed computer illiteracy and technical ignorance, but that was just evasive and, as Mr Gaisman QC put it, a *"red herring"*. As I said during the course of his evidence about this:

> *"Speaking for myself, it seems folly in the extreme not to have made another copy, so that if there were a fire or a theft at Mr Grigorakis' office, you could at least say "Never mind, we've got a copy ourselves". You don't need to be computer literate or a computer specialist to take that fundamental sensible step."*

125. In his third witness statement, Mr Iliopoulos sought to put forward an explanation for not having kept a copy of the WWGT archive that: *"It is a principle of mine that there should only be one version of any item whose genuineness might be called into question."* However, in cross-examination, this was exposed as a piece of dishonest nonsense. The only previous occasion which Mr Iliopoulos was able to identify when this principle had been applied was in relation to the download of data from the vessel's voyage data recorder ("VDR"), but in fact, in addition to the solid state device removed from the vessel and retained, two copies of the relevant data were made in Dubai. It follows that there was no such principle.

126. Ultimately, in so far as Mr Iliopoulos had any explanation at all for failing to take a copy of the archive, it was his much-repeated mantra about not wanting to have anything close at hand lest accusations of tampering were made. However, on analysis that is an explanation that makes no sense at all. The archive consists of 700,000 items of correspondence and, even on the basis of the limited disclosure which the owners were evidently prepared to give (as evidenced by the search by reference to two keywords), there would have to be an extensive search of the archive by the owners. No technology is infallible and, in the circumstances, the failure to take the most rudimentary precaution of taking a copy of the archive before handing it over to Mr Grigorakis is inexplicable. It is all more inexplicable if, as Mr Iliopoulos asserts, the archive contains his personal documents and correspondence, including records in relation to his health. If he does indeed suffer from the health problems which he claims, surely he would want to have easy access to those records, so handing over the only copy to someone else's lawyer, even someone who was a close family friend like Mr Grigorakis, makes no sense at all.

127. If the concerns about accusations of tampering were genuine (as opposed to being what I suspect is a knee-jerk reaction by Mr Iliopoulos to the insurers' concern, expressed at the hearing on 18 December 2015, that unless only a short time was allowed for compliance with the Unless Order, there was a real risk of tampering with the archive), then the easy solution was to take a copy of the archive and, rather than leaving it in the owners' offices, give it to the bank for safe keeping or, better still, to the owners' solicitors, Hill Dickinson. Of course, as I have said, the one thing Mr Iliopoulos did not want to do was provide the whole archive to Hill Dickinson.

128. As Mr Gaisman QC submits, Mr Iliopoulos' attempt in cross-examination to make a virtue of the fact that the owners had eventually disclosed the VDR and some documents from the WWGT archive was indicative of a troubled conscience. Furthermore, his suggestion that, until the insurers raised the allegations of wilful misconduct, the owners were only under an obligation to preserve documents relevant to the original defence of breach of warranty and could even have destroyed the other documents without being criticised for doing so, was a thoroughly bad point which did him no credit, not least because: (i) the existence of the WWGT archive had been disclosed in the Stage 1 Disclosure Statement filed by the owners on 7 October 2014 and (ii) Hill Dickinson were aware of its existence, even if they had not been given access to it, and would not have been prepared to see it destroyed.

129. Notwithstanding that this was such a bad point, Mr Iliopoulos persisted in it, thereby demonstrating exactly how cynical the owners' attitude is to their disclosure obligations. Eventually, I expressed incredulity that he was maintaining this position:

> *"A. Yes, but in the context of Stage 2, my obligation was to keep any information on Brilliante and BMP.*
>
> *MR JUSTICE FLAUX: You can't possibly be telling me -- perhaps you are, Mr Iliopoulos -- that you didn't regard yourself as under an obligation to ensure that archive or that computer record, whatever it was, was preserved for the purposes of Stage 2.*
>
> *A. Yes, I agree with this. That's exactly what I'm saying; that I could have kept only the information that related to Stage 2.*
>
> *MR JUSTICE FLAUX: No, with respect, that's not what I'm suggesting to you at all."*

130. In fact, as I have held, I do not accept any of the owners' evidence about the WWGT archive having been handed over to Mr Grigorakis for safe keeping on 9 March 2015 (or indeed at any other time, for reasons set out below). This was and is an invention which the owners concocted in an attempt to provide themselves with an excuse for not delivering the WWGT archive up to Hill Dickinson, when Hill Dickinson were pressing for them to do so and the owners knew that it was likely that the Court would make an Order to that effect. If the archive was with Mr Agha's lawyer, but the owners were able to say that they had never anticipated that they would not be able to get it back, then, provided the Court accepted the explanation, the owners had the perfect excuse for not handing the archive over to Hill Dickinson: unfortunately, they could say, it was with Mr Grigorakis. The problem the owners faced subsequently was that, in my 12 January 2016 judgment, I held that, even taking the owners' evidence at face value, that did not help the owners, who unnecessarily, deliberately and knowingly put the archive beyond their control. That conclusion has simply been reinforced by the additional material now available and, specifically, Mr Iliopoulos' oral evidence.

The second alleged handover in August 2015

131. The owners' case is that, after the Consent Order of 1 May 2015, they retrieved the WWGT archive from Mr Grigorakis on 11 May 2015, but then handed it back to him on 17 August 2015. That was three days after the time for compliance with the 1 May Order (as extended on 23 July 2015) expired, when on any view the owners had not complied with their disclosure obligations and had not sought a further extension of time to do so. The handing back of the archive in those circumstances (if it took place at all) was extraordinary and inexcusable.

132. As I have already held, I disbelieve the owners' evidence about handing the archive to Mr Grigorakis on 9 March 2015 and, on the same basis, I disbelieve their evidence about the toing and froing with the archive both in May and August 2015 and subsequently in October and December 2015. This is all part of the invention, designed to seek to disguise the owners' unwillingness to disclose the archive as an inability to do so, because of the alleged sudden and unexpected obduracy on the part of Mr Agha on and after 4 January 2016, in circumstances where, on the owners' story, he had previously been willing to provide them with the archive. If the contumelious breach of the Court Orders of 1 May 2015, 18 December 2015 and 12

January 2016 were not so serious, this case of handing over and handing back of the archive, always at critical moments in terms of compliance with Court Orders and, in the case of the alleged handing back on 17 December 2015, at a time when the owners must have known the Court was likely to make an Order the following day, verges on the farcical.

133. However, even if I had accepted the owners' case that the archive was obtained again on 11 May 2015 and handed back on 17 August 2015, that does not help the owners to refute the conclusion that they brought all this on themselves and did, unnecessarily, deliberately and knowingly, put the archive beyond their control, essentially for two related reasons.

134. First, even if I accepted that the discussion Mr Iliopoulos asserts in [63] of his witness statement that he had with Mr Agha, which revealed the latter's reluctance to disclose the archive to third parties, including Hill Dickinson, took place in or after May 2015, it must have taken place by the time of the second alleged handover in August 2015 and Mr Iliopoulos did not suggest otherwise. In those circumstances, given that expressed reluctance, Mr Iliopoulos must have known that, if the archive was handed back, there was a serious risk that Mr Agha would refuse to return the archive, so that the owners would not be able to comply with their disclosure obligations, in relation to which the owners had clearly received full and correct advice from Hill Dickinson long before this stage of the proceedings. In those circumstances, the owners should not have handed back the WWGT archive to Mr Agha or his lawyer or, at the very least, should not have done so without taking and retaining a complete copy of the archive.

135. Mr Iliopoulos would not accept this inevitable conclusion in cross-examination, but tried to maintain that he and Mr Agha had agreed that there would be no restrictions on access to the archive in the event that there was a Court Order requiring such access:

> *"Q. So by the time the archive was handed back to Mr Grigorakis by owners in, I think, August 2015, you knew perfectly well that you were handing it back to somebody who was only willing to give it you back on conditions.*
>
> *A. I explained that there were no restrictions or limitations, it was something that we agreed together, and there would be absolutely no limitations if there was a court order".*

136. However, not only is there no evidence of any discussion with Mr Agha of the effect of any Court Order, which as I have said would not be binding on Mr Agha anyway, but there was already a Court Order for full and proper disclosure made on 1 May 2015, compliance with which obviously required Hill Dickinson to have access to all the documents (including the WWGT archive) to satisfy themselves that the owners had complied with their disclosure obligations. That is the law and, long before August 2015, the owners had been given advice to that effect by Hill Dickinson.

137. The second reason why the owners' case that they handed back the archive to Mr Grigorakis on 17 August 2015 does not assist them, is closely related to the first. It is that, even on this case, the owners did not inform Hill Dickinson about this toing and

froing with the archive. The obvious reason for that failure is that none of this toing and froing in fact occurred, but it is an invention of the owners. However, even if it did occur, the failure to inform Hill Dickinson about it is inexcusable. They had clearly advised long before this stage that they would have to have access to all the electronic documents and, clearly, if they had been informed about the toing and froing with Mr Grigorakis, they would have advised that this should cease and that the owners must retain the archive. I return to this issue of concealing matters from Hill Dickinson at [143] to [147] below. The fact that, even on their own case about the toing and froing, the owners cannot say that they kept Hill Dickinson informed about it, simply serves to demonstrate that they were unnecessarily, deliberately and knowingly putting the archive out of their control by handing it back to Mr Grigorakis.

138. In his evidence on the present applications, Mr Iliopoulos sought to make much of an assertion that disclosure beyond that relating to the vessel herself would conflict with Greek law. This point was not raised at all when Hill Dickinson first intimated a problem with the handing over to them of the archive in their letter of 30 October 2015 and was only one of a number of concerns raised in their letter of 14 December 2015, although it has now become a central plank in the owners' attempt to justify their refusal to hand over the archive. However, it is a bad point for a number of reasons. First, the concern appears to relate to obligations of confidentiality owed to third parties, but the only third parties identified by Mr Iliopoulos are minority shareholders in shipowning companies where he is the ultimate beneficial owner or majority shareholder and there is simply no evidence as to how disclosure of the archive would breach any duty of confidentiality to those third parties, let alone any evidence that the owners had received any Greek law advice to that effect.

139. Second, it is difficult to see how this confidentiality point could justify withholding the entire archive from the owners' own solicitors Hill Dickinson. Third, even if there was a concern about such disclosure, the owners would have been and would be fully protected against any criticism by third parties by an Order by this Court for disclosure of the archive to Hill Dickinson in the first instance, then (so far as relevant disclosable documents are concerned) to the insurers and their legal advisers. The owners could and should have solved any concerns about duties of confidentiality owed to third parties by making their own application to this Court for an Order that they were obliged to hand over the archive, irrespective of any confidentiality issues. The Court would have made such an Order and, if there were any genuine confidentiality concerns, which I very much doubt, they could have been addressed by appropriate undertakings from the insurers and their legal advisers.

140. The true position is, as Mr Gaisman QC says, that this point about obligations of confidentiality owed to third parties is a fig leaf, a bad excuse for the owners' non-compliance with their clear obligations of full and proper *Peruvian Guano* disclosure under the Orders of 1 May 2015 and 28 September 2015.

The further alleged handing back of the archive on 17 December 2015

141. The owners' case is that the WWGT archive was retrieved for a second time from Mr Grigorakis on 29 October 2015. That was one day before the expiry of the extension of time for completion of disclosure until 30 October 2015, granted by my Order of 28 September 2015. No explanation has been proffered as to why the archive was

only retrieved at the eleventh hour, other than Mr Bezas' statement in his third witness statement dated 2 February 2016 that, by 29 October 2015, Mr Iliopoulos had accepted that more searches would need to be carried out and asked him to retrieve the archive. By that stage, whatever conversation Mr Iliopoulos had with Mr Clift about the need for further searches which led to Hill Dickinson's letter of 30 October 2015, had taken place. However, it is clear that the owners were still determined to control the extent of disclosure from the archive themselves and, in particular, to limit disclosure to documents relating to the vessel, despite the terms of the Court Orders.

142. It is now known from Mr Clift's twentieth witness statement that it was on 15 October 2015 that he made a specific request for the physical delivery up to Hill Dickinson of the WWGT archive. This was refused, evidently on the ground that the archive contained information about the *Geraki* case, in which Hill Dickinson were acting for an opposing party to the owners, as reported in Hill Dickinson's letter of 30 October 2015. That was always a bad reason. As Norton Rose Fulbright pointed out in their response on 18 November 2015, it should have been possible to establish an "ethical wall" within Hill Dickinson or the archive could have been reviewed by Clyde & Co, the bank's solicitors.

143. Throughout that autumn of last year, Hill Dickinson continued to press the owners to hand over the archive, insisting that they do so, as Mr Iliopoulos accepted in cross-examination. He also accepted that, the more Hill Dickinson pressed, the more unwelcome their advice became. Relations between the owners and Hill Dickinson became strained and in those circumstances various matters were concealed from them, specifically the toing and froing with the archive and that Mr Grigorakis was Mr Agha's lawyer. Although Mr Iliopoulos sought to deny any such concealment, his evidence was wholly unconvincing. I have set out at [15] above what Mr Clift says in his twelfth witness statement dated 17 December 2015 by way of explanation about the archive having been delivered to Mr Grigorakis for safe keeping then retrieved by Mr Bezas on 11 May 2015.

144. From the fact that this explanation was first provided in his twelfth witness statement, it seems likely that this was something Mr Clift had only recently learnt, since he would otherwise surely have disclosed it in earlier evidence or correspondence. However, what is clear from this is that the owners had not told Mr Clift that they had given the archive back to Mr Grigorakis for the period from 17 August to 29 October 2015 nor that Mr Grigorakis was Mr Agha's lawyer. Mr Clift goes on to say at [65] that Mr Agha, whom he describes as *"a former employee of WWGT"*, *"further confirmed that he does not have any electronic records or hard copy documents responsive to the disclosure orders."* If Mr Clift had known about the toing and froing with the archive and that, because Mr Grigorakis was Mr Agha's lawyer, Mr Agha in fact had had custody of the archive for a substantial period of time, he would have been bound to disclose those matters in his witness statement and would not have expressed [65] in those terms which, as Mr Gaisman QC submitted, created a wholly misleading impression given what the owners now say had been going on (albeit unwittingly on Mr Clift's part since he did not know the full story).

145. In cross-examination, Mr Iliopoulos sought to deal with this point about not having informed Mr Clift about the toing and froing or about Mr Agha having had custody of the archive by asserting that the owners had informed Ms Maria Moisidou of Hill Dickinson's Greek office of the matters some weeks earlier:

> *"Q. You didn't tell Mr Clift about the repeated handing back and handing over of the archive after the original giving of it to Mr Grigorakis, did you?*
>
> *A. This is not correct. We informed Hill Dickinson.*
>
> *Q. You didn't tell Mr Clift that Mr Grigorakis was Mr Agha's lawyer when he signed his witness statement on 17 December 2015, a very important 30-page witness statement.*
>
> *A. Unfortunately for Mr Clift, we had informed weeks before Ms Maria Moisidou from Hill Dickinson. If Mr Clift wasn't made aware of that then that's his problem."*

146. Mr Iliopoulos then sought to blame Ms Moisidou for not passing the information on to Mr Clift:

> *"Q. So it's not the fact that you failed to tell him the true position, it's that Ms Moisidou failed to pass on what she was told by owners in Greece to Mr Clift in London; is that right?*
>
> *A. Possibly."*

147. In my judgment, that is all false evidence. It is inconceivable that, if the owners had informed Ms Moisidou of those matters, she would not have passed on the information to Mr Clift about the location and custody of the WWGT archive, given that Hill Dickinson were seeking access to it. It is striking that, in his twentieth witness statement, Mr Clift does not deal with this aspect of Mr Iliopoulos' evidence or suggest that it was true that Ms Moisidou had been informed. However, although the evidence was false, it provided an illuminating insight into Mr Iliopoulos' contemptuous attitude towards the owners' own solicitors.

148. Although, according to Mr Bezas, the owners retrieved the archive from Mr Grigorakis on 29 October 2015 and therefore were in possession of it for most of the period of time when Hill Dickinson were seeking access to it between 15 October and 17 December 2015, it is quite clear that Mr Iliopoulos had no intention of handing it over to Hill Dickinson. Indeed, in his third witness statement, he says: *"I was unwilling for them to have it".* In early December 2015, there was correspondence between the solicitors in which Hill Dickinson said that their understanding was that work was in hand at the owners to carry out word searches against the archive, but Norton Rose Fulbright were chasing for a response to the question posed in their letter of 18 November 2015 as to why the archive could not be reviewed by Hill Dickinson or Clyde & Co.

149. On 7 December 2015, the insurers issued their application for an Unless Order striking out the claim if the owners failed to remedy their breaches of the Disclosure Orders of 1 May 2015 and 28 September 2015 by 31 December 2015. That application was fixed for hearing on 18 December 2015. On 14 December 2015, only a few days before the hearing, Hill Dickinson served a substantive response to Norton Rose Fulbright's letter of 18 November 2015. In relation to the owners' refusal to

allow Hill Dickinson or Clyde & Co to review the WWGT archive, the letter set out the reasons:

> *"14 ... There are various reasons why Owners are unwilling to relinquish the flash-drive or even a facsimile to Hill Dickinson or even to Clyde & Co. Foremost amongst these is the fact the flash-drive contains information concerning a matter in which my firm acts against another of Mr Iliopoulos' businesses in wholly unrelated proceedings in Greece. Other reasons include the fact that the flash-drive contains information in respect of which (without waiving privilege) Greek lawyers have advised the First Claimant that they owe a duty of confidentiality to third parties (for instance, telephone records, bank account numbers etc); that it contains information concerning personal issues of Mr Iliopoulos including his health; and that it contains information relating to ongoing unrelated claims, including proceedings in the European Court of Human Rights against the State of Ukraine in relation to the sequestration of a ship and an action against the State of Cuba in respect of another ship. Therefore, although you have suggested that conflicts of interest in my firm could be overcome by the erection of an 'ethical wall' or else by the Bank's solicitors carrying out the review of documentation, neither suggestion satisfies the concerns of the First Claimant or Mr Iliopoulos personally."*

150. However, I consider that the owners knew, by this stage in mid-December 2015, that the next step was likely to be an Order from the Court that the owners should hand the archive over to Hill Dickinson. I simply do not accept Mr Iliopoulos' evidence that he thought the Court would not make an Order, whilst he accepted that it was a possibility. Given that Hill Dickinson were insisting on having unrestricted access to the archive and Norton Rose Fulbright were pressing for this to happen, the owners clearly knew that it was extremely likely that, at the hearing on 18 December 2015, the Court would make an Order for the archive to be handed over to Hill Dickinson. Against that background, the handing back of the archive to Mr Grigorakis on 17 December 2015, the day before the hearing, if that is what occurred, was inexcusable.

151. Mr Iliopoulos also gave evidence to the effect that the owners would have welcomed an Order because it would protect them from any liability to third parties under Greek law for disclosing confidential material:

> *"We were not worried about having -- we didn't have any concerns about having a court order, it would actually protect us, so we would moved forward in the way that we did if there hadn't been a court order, and we would have taken all necessary actions had there been a court order."*

I reject that evidence as completely untrue. The owners clearly objected to the making of an Order and the suggestion that they would have welcomed an Order is preposterous. As I pointed out when Mr Iliopoulos gave this evidence and as I noted at [139] above, the owners had never come to Court to seek such a protective Order.

152. One of the matters which the owners knew they had to deal with in the light of my judgment of 12 January 2016, was to provide some explanation as to why the WWGT archive was handed back to Mr Grigorakis on 17 December 2015, the day before the hearing of the application for an Unless Order. The explanation which Mr Iliopoulos and Mr Bezas came up with in their respective third witness statements was that, in effect, there had been a miscommunication between them and Mr Bezas had handed the archive back in the morning, believing that the searches had been completed, not knowing that at the same time Mr Iliopoulos was agreeing with Mr Clift that further searches on the archive would be carried out.

153. This was always an implausible story. Mr Bezas and Mr Iliopoulos work in the same office building, only two floors apart, and Mr Iliopoulos as the ultimate beneficial owner of the relevant companies, including WWGT, is obviously in overall charge. It is unlikely in the extreme that Mr Bezas would have taken the important step of handing the archive back without consulting Mr Iliopoulos first. In cross-examination, Mr Gaisman QC put to Mr Iliopoulos that the owners had handed the archive back at a time when they knew that the searches had not been completed. Mr Iliopoulos maintained that it had only been handed back when the searches had been completed, but that evidence was simply untrue.

154. Both in his third witness statement and in cross-examination, Mr Iliopoulos sought to maintain that further searches of the archive in relation to the 45 search terms had only been agreed between himself and Mr Clift on the afternoon of 17 December 2015, after Mr Bezas had handed the archive back in the morning. The fundamental problem with that evidence is that it is inconsistent both with (i) the letter from Hill Dickinson of 30 October 2015 where Mr Clift had agreed on behalf of the owners to conduct further searches by reference to the 45 additional search terms and (ii) with Mr Clift's twelfth witness statement.

155. That was produced at 15.58 on 17 December 2015 in support of the application for an extension of time for completion of disclosure to 29 February 2016 which the owners had issued on 15 December 2016. As already set out at [16] above, in [38] to [41] of that statement Mr Clift went into some detail about the ongoing searches of the archive in relation to the 45 search terms, as agreed in Hill Dickinson's letter of 30 October 2015, which were being carried out but which were taking longer than had been anticipated. That information can only have come through instructions from the owners, since Mr Clift was in London and the owners (and the archive) were in Greece. Some of those instructions must have come from Mr Iliopoulos that day, since, whilst his evidence that the agreement to the 45 search terms was only made on 17 December 2015 was untrue, it does appear that during discussions with Mr Clift that day, Mr Iliopoulos was seeking to impose a limitation on what had been agreed on 30 October 2015 to documents in respect of the vessel. In all probability, the instructions on which the information was based also came from Mr Bezas, since it was he rather than Mr Iliopoulos who had responsibility for supervising the searches.

156. When confronted in cross-examination with the fact that the evidence he was now giving was inconsistent with Mr Clift's twelfth witness statement, Mr Iliopoulos was particularly unimpressive. On occasion he resorted to the ruse of purporting not to understand the questions, then in a desperate attempt to dig himself out of the hole in which he found himself, produced a whole series of dishonest answers. First, he

sought to suggest that the 45 search terms agreed on 17 December 2015 were a different 45 to the ones agreed on 30 October 2015:

> *"Because on 17 December we are talking about searches in relation to the vessel. So all previous 45 searches did not include this. Therefore, you are talking about different things. So the 45 searches in October and November are different to the 45 searches we are talking about here."*

However, that was obviously nonsensical, since as Mr Gaisman QC pointed out, a narrower search using one of the search terms "in relation to the vessel" would have produced a sub-set of the documents produced by the wider search. In any event, Mr Clift's witness statement was clearly talking about the ongoing process of searching in relation to the 45 terms agreed in the letter of 30 October 2015, not to some new process of searching by reference to new search terms.

157. Then Mr Iliopoulos sought to suggest that the searches agreed in the letter of 30 October 2015 were themselves limited to "in respect of the vessel", but that explanation was inconsistent with the terms of the letter itself. Finally, he sought to suggest that Mr Clift's twelfth witness statement was in error because, unbeknownst to Mr Clift, the searches had in fact been completed, which was why the archive had been returned. However, as I pointed out, there had been no correction to Mr Clift's witness statement, a point which is now reinforced by the production of his twentieth witness statement which does not seek to correct any such "error" either.

158. The truth is that what Mr Clift said in his twelfth witness statement on instructions was the position at the time: the searches against the 45 search terms agreed on 30 October 2015 had not been completed and were not expected to be completed for some weeks. If, as the owners assert, they did hand the archive back to Mr Grigorakis on the morning of 17 December 2015, not only did they conceal this from Hill Dickinson at the time, but they did so knowing that it was highly likely that, at the hearing the following day, the Court would make an Order for the archive to be delivered up to Hill Dickinson, as Hill Dickinson advised would happen in an email to the owners on the evening of 17 December 2015 and as the Court duly did order the next day. Accordingly, if any of this did happen, the owners unnecessarily, deliberately and knowingly put the WWGT beyond their legal control, in breach of the existing Court Orders and of their disclosure obligations. That deliberate and contumelious breach cannot now be excused by the ostensible refusal of Mr Agha and Mr Grigorakis to hand it back, which would simply be the fulfilment of what the owners were seeking to achieve by handing it back to them (if that is what occurred).

159. In fact, however, as I have already said, I do not believe this whole story of the toing and froing with the archive and the all too convenient handing of it back to Mr Grigorakis on 17 December 2015. It is striking that not only were Hill Dickinson not told that this had occurred, but neither was the Court told at the hearing on 18 December 2015 that the archive was in fact now with Mr Agha's lawyer again, a remarkable omission if any of this were true. The first that Hill Dickinson knew about the archive allegedly having gone back to Mr Grigorakis and about Mr Agha being reluctant to release it was when Mr Clift met Mr Bezas and Mr Tsafos on 7 January 2016 and the first the Court knew was when I read the papers and skeleton arguments for the hearing on 12 January 2016.

160. One of the many aspects of Mr Iliopoulos' evidence which I found completely unconvincing was his insistence that, whilst, before there was a Court Order, he was not prepared to hand over the archive to Hill Dickinson, once there was a Court Order, the owners would have complied with it if they had been able to. In my judgment, the truth is that Mr Iliopoulos was always unwilling to hand over the archive, irrespective of whether there was a Court Order. Before 18 December 2015, the owners were already in breach of their disclosure obligations, which required them to provide Hill Dickinson with access to all their electronic and hard copy documents, so that Hill Dickinson could satisfy themselves that the disclosure obligations had been complied with. Mr Iliopoulos had received clear advice from Hill Dickinson to that effect. So far as the Order made by the Court on 18 December 2015 is concerned, the owners had shown scant respect for the previous Disclosure Orders of 1 May 2015 and 28 September 2015, as I set out above. In my judgment, the owners never intended to hand over the WWGT archive to Hill Dickinson, even if the Court ordered them to do so.

Events between the hearing on 18 December 2015 and 12 January 2016

161. At the time of the 18 December 2015 hearing, the Court was unaware of the alleged toing and froing with the WWGT archive, let alone that it had allegedly been returned to Mr Grigorakis the previous day. The allegation that in March 2015 the archive had been given to Mr Grigorakis for safe keeping raised no alarm bells either with the insurers or the Court, at least in part because, on the basis of the information provided in Mr Clift's twelfth witness statement, the archive had been returned to the owners on 11 May 2015 and, so far as the Court and the insurers were aware, remained with the owners on 18 December 2015.

162. As I held above, even after the Final Order was made, Mr Iliopoulos was determined not to deliver the archive up to Hill Dickinson. In order to disguise that unwillingness as inability and to seek to excuse that inability, the owners had to deploy the next stage of the story. This was the subsequent toing and froing with the archive after March 2015, to create the impression that, until the request made after the Order of 18 December 2015, they had always had no difficulty in getting the archive back, but then, to their astonishment and consternation on 4 January 2016, Mr Agha refused to hand the archive back. At the time of the hearing on 12 January 2016, I was sceptical about this story, but having had the opportunity to assess Mr Iliopoulos when he gave evidence, I was even more sceptical. Mr Iliopoulos did not strike me as a man who would brook obstruction of any kind from his employees and the reality is that Mr Agha, who had been the chartering manager for the vessels of which Mr Iliopoulos was the beneficial owner, was at least *de facto* his employee. As I said during the course of argument, I am firmly of the view that if Mr Iliopoulos told Mr Agha to do something, he would do it, which is why the whole story of Mr Agha's unexpected reluctance to hand back the archive is so profoundly unconvincing. It is a charade, maintained through collusion between Mr Iliopoulos, Mr Agha and Mr Grigorakis.

163. At the hearing on 12 January 2016 and in my judgment, I expressed surprise and scepticism about a number of aspects of the owners' case as to what had happened since the 18 December 2015 Final Order. In those circumstances, following the Unless Order on 12 January 2016, the owners evidently considered that there was a number of gaps in the story they needed to fill. For example, I expressed surprise that Mr Bezas, according to Mr Iliopoulos' second witness statement had not contacted Mr

Agha until 24 December 2015, six days after the Final Order was made. To meet that point, in their respective third witness statements, Mr Bezas and Mr Iliopoulos now retreat from that position and assert that Mr Agha was contacted on 21 or 22 December 2015 and a meeting was arranged for 4 January 2016. Mr Bezas still maintains that Mr Agha was not told the reason for the meeting.

164. When it was put to Mr Iliopoulos in cross-examination that it was odd that no reason was given to Mr Agha for the requested meeting, he denied this: *"because we were certain that the disk would be given on 4 January… 100 per cent certain"*. He was then asked why it had been necessary to invite Mr Clift to the meeting on 4 January 2016 in those circumstances, for which his explanation was: *"if any further legal explanations needed to be given and for Mr Clift to show that this was a final court order and explain the urgency of the situation"*. Mr Iliopoulos was asked, why, given his 100% confidence, Mr Agha was not told in advance what Owners wanted, to which he gave a curious and unconvincing answer that: *"[w]e owed him some respect and we needed to be respectful to him."* As I said at the time, even if the owners wanted to show Mr Agha respect, it is difficult to see why it was disrespectful to tell him in advance the purpose of the meeting. Indeed, quite the contrary, it would surely have been disrespectful not to tell him. Mr Iliopoulos' explanation was that he wanted to avoid Mr Agha getting lawyers involved, which was of course inconsistent with 100% confidence of success in obtaining the archive.

165. Furthermore, given Mr Iliopoulos' evidence that, up to this point, his relationship with Mr Agha had been harmonious and getting the archive back from Mr Grigorakis was as easy as getting it out of a bank vault, the apparent need for a meeting was curious. In his oral evidence Mr Iliopoulos sought to suggest this was all part of showing Mr Agha respect:

> *"A. As I explained, I believed that we owed some respect to Mr Agha with a face-to-face conversation, because we believed with a face-to-face conversation we would actually get the disk back, there would be some respect through a face-to-face -- it would show a respect to him by having a face-to-face conversation, and the disk had never been a problem before."*

166. As Mr Gaisman QC submitted, the delicacy with which Mr Agha evidently had to be treated is very odd and is inconsistent both with the previous harmonious relationship and the 100% confidence that the archive would be handed over. In those circumstances, why did Mr Iliopoulos not simply pick up the telephone to Mr Agha or write him a letter? Surely a meeting was unnecessary. Mr Iliopoulos had sought to deal with why he had not telephoned in his third witness statement where he said: *"he might have gone cold and it might have taken time"*. Mr Iliopoulos attempted to explain this in terms of some negative impact on their wider relationship: but it clearly meant that a telephone approach might have prejudiced the recovery of the archive, which is inconsistent with both the 100% confidence in getting the archive back and with his evidence that he believed himself still to be the beneficial owner of WWGT: *"I had the ultimate power to instruct him to give this archive, and there was absolutely no doubt that he would give it back"*.

167. Curiously, it was not only Mr Agha who was not informed about the purpose of the meeting fixed for 4 January 2016, the last day for compliance with the Final Order;

neither was Mr Clift. On 24 December 2015 he was simply sent an email summoning him to a meeting in Greece on 4 January 2016, without being told the purpose of the meeting. Of course, at this stage Mr Clift still did not know that the owners' case was that they had handed the archive back to Mr Grigorakis. He thought the owners still had the archive and the searches against the 45 search terms were ongoing.

168. In my judgment, if the owners had genuinely given the archive to Mr Agha's lawyer and genuinely wanted to retrieve it so as to hand it over to Hill Dickinson, they would have contacted both Mr Agha and Mr Grigorakis immediately after the hearing on 18 December 2015, explained over the telephone that the Court had made a Final Order and asked for the return of the archive. The curious evidence about showing Mr Agha respect seemed to me to be inconsistent with Mr Iliopoulos' personality as it emerged in the witness box. I consider that, if Mr Iliopoulos had wanted something from Mr Agha who was an employee, or ex-employee, he would have simply demanded it over the telephone or in a letter and expected to get it, without all the pussy-footing around about having a meeting in order to show him respect. What is more, as I said above, Mr Agha would have done what he was told and handed over the archive immediately.

Comment [FMJ1]:

169. The whole case about the need for a meeting to show Mr Agha respect was part of the charade, setting the scene for what was going to happen next which was that, much to Mr Iliopoulos' ostensible astonishment, at the meeting on 4 January 2016, Mr Agha was going to unexpectedly refuse to hand over the archive for a number of reasons. Of course, the owners had expected Mr Clift to be at the meeting, not as Mr Iliopoulos said, to provide any legal explanation which might be required, but to witness Mr Agha's apparent refusal to hand over the archive. This plan back-fired on the owners somewhat, because Mr Clift was ill and could not attend the meeting in Greece on 4 January 2016. In those circumstances, instead what had ostensibly happened on 4 January 2016 and the owners' surprise and consternation about it was reported to Mr Clift at the meeting in London on 7 January 2016 and so the later meeting with Mr Agha on 19 January 2016 was arranged for Mr Clift to witness at first hand Mr Agha's obduracy in refusing to hand over the archive.

The reasons for the refusal to hand over the archive

170. I have already set out at [25] above the paragraphs from my judgment of 12 January 2016 ([38] to [40]) in which I concluded that the reasons given by Mr Agha for his ostensible refusal to hand over the archive were bad reasons. Having considered the further materials produced by the owners since that hearing and Mr Iliopoulos' oral evidence on this aspect of the case, there is no reason to alter those conclusions. On the contrary, I am more convinced than ever that those reasons were all thoroughly spurious.

171. The first reported reason was that he had to satisfy himself as to the requirements of Greek Law 89/67, but this was a hopeless point. Given the requirement under that Law that the legal representative of the overseas company be resident in Greece, Mr Agha could not have been the legal representative of WWGT in January 2016 since he was not resident in Greece and had ceased to be eligible for that role when he moved to Dubai in December 2014. Somewhat surprisingly, Mr Iliopoulos said that this was the first he had heard of this requirement of the Law, but when pressed became evasive about his knowledge of this residence requirement. However, Mr

Iliopoulos accepted that Mr Agha could not be the legal representative of WWGT, once the company's Greek office closed down, which also occurred in December 2014. This was tantamount to an admission that the need to comply with his obligations as legal representative under Law 89/67 cannot have been a good reason for Mr Agha refusing to hand over the archive.

172. In fact of course, this reason was an invention of Mr Iliopoulos and, as Mr Gaisman QC submitted, at this point in his evidence, sensing that the point was slipping through his fingers, Mr Iliopoulos began to shift away from it:

> *"Mr Agha had various issues that concerned him in relation to Greek law. It is not fixed on Law 89, because there are other complications related to other laws. So Mr Agha's concerns on any legal matters were not strictly related only to Law 89 in relation to things that happened previously."*

173. Quite apart from those points about Mr Agha having ceased to be the legal representative of WWGT, Law 89/67 is totally irrelevant, being concerned with responsibility for social insurance, tax, foreign currency and wages, and having nothing to do with disclosure of the documents of the company in litigation. Even if Mr Agha had genuinely wished to take legal advice from Mr Grigorakis about whether the Law applied, the latter as a Greek lawyer could not possibly have advised that the Law had any relevance to the handing over of the WWGT archive. In cross-examination, Mr Iliopoulos essentially refused to engage with this point. Ultimately, faced with the multitude of reasons why the Law was of no relevance, Mr Iliopoulos essentially abandoned reliance on the point: *"I might be referring to the wrong law in paragraph 10 of my statement. It might be a different law"*.

174. Law 89/67 was always irrelevant to the question whether the archive should be delivered up to the owners' own lawyers, Hill Dickinson. It was not in truth a point which was raised by Mr Agha or Mr Grigorakis, but was an invention of the owners, which was a demonstrably bad point. In this context, it is striking that Ms Blanchard QC did not feel able to advance any oral submissions on this point.

175. The second reason reportedly given by Mr Agha for refusing to hand over the archive was the death of the crew member on the *Aetos* in Nigeria in 2013 in respect of which Mr Agha is facing criminal proceedings, which were due to be heard on 26 January 2016, but have been adjourned until later in the year. In the light of the evidence now available, this reason is even less convincing than it appeared at the hearing on 12 January 2016. Mr Grigorakis is Mr Agha's criminal lawyer in relation to those criminal proceedings and yet he does not mention them at all in the Grigorakis complaint as a reason why Mr Agha has instructed him not to release the archive, a surprising omission if this really was a reason emanating from Mr Agha. However, when Mr Iliopoulos was cross-examined about this, he refused to answer the question but launched into what was clearly a pre-prepared response in relation to the Grigorakis complaint, to the effect that he had been advised not to answer any questions about the Grigorakis complaint because it was *sub judice*. He repeated this response whenever he was asked questions about the complaint, which was a remarkable stance to adopt given that it is the owners who have sought to introduce

the complaint into the present applications and who have placed so much emphasis on it in their submissions.

176. However, this response that he had been advised not to answer questions about the complaint was evasive and missed the point that he was not being asked, at least at this stage, who was responsible for preparing and commencing the Grigorakis complaint but why it omitted any reference to the death of the crew member as one of the reasons given in the complaint for Mr Agha's refusal to hand over the archive. However, he still refused to answer the question, even when the Court intervened:

> *"A. I'm sorry, Mr Gaisman, but we are playing with words again. I didn't say I have anything to do with initiating this complaint.*
>
> *Q. I understand that.*
>
> *A. All I said, and I said that yesterday, that I'm not going to comment on the complaint which is not mine. This is not my role to comment on that complaint.*
>
> *…*
> *A. This is exactly what I was referring to as a 'technical offsiding' you've been doing until today, about health and my passport because you don't have a case.*
>
> *MR JUSTICE FLAUX: Mr Iliopoulos, I said to you earlier on that I'm not the slightest bit interested in hearing you repeating insults to Mr Gaisman or insults to the underwriters. You have come to give evidence. You are being asked about one of the reasons that was given by Mr Agha for not handing over this archive and Mr Gaisman has asked you a very specific question which is whether you have an explanation as to why it is that that reason is not given by Mr Grigorakis in the complaint which he filed; are you prepared to answer that question or not?*
>
> *...*
>
> *MR JUSTICE FLAUX: No….Focus on the question you are being asked.*
>
> *A. As I said I have no involvement."*

177. To say that that evidence was unimpressive would be an understatement. The criminal proceedings in relation to the crew death was also omitted as a reason for Mr Agha's refusal to hand over the archive in Mr Clift's seventeenth witness statement which exhibited the Grigorakis complaint. All Mr Iliopoulos would vouchsafe when asked about that omission was: *"Why it is not mentioned here, do not ask me".* The truth is that if Mr Agha was genuinely withholding the archive and this was one of his reasons for doing so, its omission from his own lawyer's complaint is inexplicable, but Mr Iliopoulos was simply not prepared to admit that.

178. Mr Iliopoulos was similarly evasive when asked about the fact that there was no possible connection between the criminal proceedings in respect of the crew member and Mr Agha's alleged withholding of the archive. To avoid answering the question, he initially returned to the theme he was anxious to promote that the Grigorakis complaint had caused Mr Agha to become even more reluctant to disclose the archive (which was irrelevant to the question he was being asked), then engaged again in the ruse of purporting not to understand it, even when I reformulated it in the simplest possible terms:

> *"Q. could you answer this question, please, and just listen to it: how could handing the archive to owners for onward transmission to Hill Dickinson have any impact whatever on the criminal complaint against Mr Agha in relation to the crew member's death?*
>
> A. *This complaint destroyed Mr Agha's willingness …in order to start talking again about the archive. In other words, he just went back to the beginning, to the starting point. If you go back and refer to the email that you showed me yesterday which I composed on -- it was in March, it was my email that was sent in March, I don't remember the exact date, which I'm calling him to come and --*
>
> *MR JUSTICE FLAUX: You are not answering the question, Mr Iliopoulos. You are answering a different question, which is one you keep on wanting to refer to. But you are not answering the question you are being asked.*
>
> *A. (In English). Sorry.*
>
> *MR JUSTICE FLAUX: What you are being asked is how could handing the archive by the owners to their own solicitors in London have any impact on the criminal claim against Mr Agha made in relation to the death of the crew member? Nothing to do with Grigorakis or the Grigorakis complaint. What is the answer?*
>
> *A. I still don't understand the question, if you can just simplify it for me.*
>
> *MR GAISMAN: I think you do understand it. I will go on."*

179. Although it is now said by the owners that it was only on 8 January 2016 just after the meeting between the owners and Mr Agha, that Mr Agha was served with the criminal complaint, given that the hearing was only two and a half weeks away, he obviously must have known for some time that he was going to be summoned and yet, as I held in my 12 January 2016 judgment at [39], the existence of these criminal proceedings had not, on the owners' case, made him reluctant to return the archive on 29 October 2015. Furthermore, by 4 January 2016, both the owners and Mr Agha must have known that these criminal proceedings posed no real danger for Mr Agha. The crew member's family had already settled their civil claim against the owners of

the AETOS, said both that they did not wish the criminal proceedings to continue and agreed that the crew member's death had not been caused by Mr Agha. They had foregone their right to attend the criminal proceedings.

180. The unchallenged evidence of Mr Androulakis, the insurers' Greek criminal law expert, is that it is highly likely that the charges against Mr Agha will be dismissed, but that, in the unlikely event he were convicted, any sentence of imprisonment would almost certainly be suspended or converted into a small fine. It seems improbable that Mr Agha or the owners were receiving any different advice from their respective Greek lawyers (given that Mr Androulakis' evidence has not been challenged) in January 2016.

181. In any event, whatever the status of the criminal proceedings, the idea that Mr Agha somehow blamed the owners or Mr Iliopoulos for the criminal proceedings and was taking it out on the owners by refusing to hand over the archive thereby imperilling the owners' substantial claim in the present proceedings is frankly farcical. If, as Mr Iliopoulos accepted, Mr Agha was the sole director of WWGT and had full executive authority for managing the *Aetos*, he must have accepted responsibility for these sort of claims which accompanied the role. It would be illogical to blame the owners for the claim. Mr Iliopoulos was asked repeatedly in cross-examination why Mr Agha would have blamed the owners for the criminal proceedings. Once again his evidence was evasive. Initially he did not answer the question, then he resorted again to purporting not to understand the question, then he retreated to saying that what Mr Agha had said on 5 January 2016 (a reference to his reliance on the option agreement which was not what Mr Iliopoulos was being asked about) was ridiculous.

182. This passage of his evidence merits a full citation as a good example of exactly how unsatisfactory a witness Mr Iliopoulos was:

> *"Q…why would Mr Agha have thought that you were to blame for the fact that he was being held responsible as manager for the death of the crew member?*
>
> *A. You will see that very often in Greece they don't look to see who the legal representative is, they just want to see who the actual owner is of the beneficiary. Therefore, the prosecutor would -- could either prosecute myself, the captain, Mr Agha, or all of us. So therefore I am not in a position to know why the prosecutor went for Mr Agha.*
>
> *Q. That is not the question I asked you. The question I asked you is this: Mr Agha is the only director of the managers at the relevant time and he has full executive authority for managing the vessel, right?*
>
> *A. (In English). Yes.*
>
> *Q. Why would he take it out on you? Why would he want to damage you for the fact that he was being held responsible as the manager that he was?*

A. I do not understand your question.

Q. Well, I have asked it twice. I'm going to go on.

A. It is confusing.

Q. Sorry?

A. It is confusing.

MR JUSTICE FLAUX: It is a fairly straightforward question, with respect, Mr Iliopoulos. Do you want it translated again?

THE INTERPRETER: Can you repeat the question?

MR GAISMAN: If Mr Agha was the manager with full executive authority for managing the vessel…why was he going to damage you, by withholding the archive, given he was the responsible person as the manager of the vessel?

A. As I explained before, please do not put myself in Mr Agha's mind. I said myself earlier that what Mr Agha said on 5 January is unconvincing and ridiculous.

Q. You said yesterday that Mr Agha was sensible and business like; do you remember? Page 23 of the transcript, do you remember that or not?

A. Yes, this is why I trusted him.

Q. Yes. So it would be entirely irrational for Mr Agha to risk legal action by you for the loss of the present claim, and it wouldn't help him at all with the death of the crew member?

A. I'm not in a position to know what else is going through Mr Agha's mind, because I'm not Mr Agha. This is what I'm saying is what Mr Agha has presented, which is unconvincing. And therefore we agree that he is unconvincing in what he says."

183. In that last answer, Mr Iliopoulos let his guard slip, since it effectively amounts to an admission that the reasons being put forward for not disclosing the archive, ostensibly coming from Mr Agha, were unconvincing. However, whether he was admitting that or not, the whole suggestion that Mr Agha was putting forward the existence of the criminal proceedings against him as a reason not to disclose the WWGT archive to the owners, thereby putting them at risk of having their substantial claim struck out, is indeed nonsensical. If any of this were true, Mr Iliopoulos would not have accepted this for a minute, but would have pointed out in forceful terms to Mr Agha that this was a bad reason for refusing to hand over the archive and would have demanded its immediate handing over, with which Mr Agha would have complied. This was in truth another invention of the owners in their attempt to justify their refusal to hand over the archive by blaming Mr Agha and it was always a bad reason.

184. The third reason reportedly put forward by Mr Agha at the meeting on 4 January 2016 for his refusal to hand over the archive, is that the insurers had amended their pleadings to allege fraud in relation to the agreement to switch the bills of lading in which Mr Agha was implicated. As with the other reasons, the evidence as it now stands makes this reason even more improbable than it appeared at the 12 January 2016 hearing. In his third witness statement, Mr Iliopoulos says that he has learnt from Mr Bezas that he first informed Mr Agha about these allegations in a telephone call some time before the hearing on 18 December 2015. Mr Agha laughed and said it was all nonsense. Mr Iliopoulos confirmed that evidence in cross-examination, including that (i) that was Mr Agha's reaction even though he was made aware that the owners were being accused of fraud; and (ii) that, whether the allegations were true or not, since Mr Agha was the chartering manager, he would have known what his own role was. Notwithstanding that evidence, Mr Iliopoulos claimed that, once Mr Agha had actually read the allegations, he was *"terrified, he was in panic."* However, this apparent *volte-face* by Mr Agha makes no sense at all.

185. Ms Blanchard QC submitted that his reading of the pleading would have alerted Mr Agha to the fact that the documents relied upon by the insurers in their pleading derived from the limited disclosure already given by the owners from the archive, which might explain his change of attitude. However, I found this attempted explanation for Mr Agha's alleged stance unconvincing. Quite apart from the fact that Mr Agha has not vouchsafed a statement saying any of this, so that it is all supposition on the owners' part, in a very real sense, since the insurers' case about the bills of lading fraud is fully pleaded, it is difficult to see what other material might still be undisclosed which would suddenly have caused this obstructive attitude on the part of Mr Agha.

186. Furthermore, even Mr Iliopoulos did not suggest that reading the pleading turned Mr Agha from having laughed at the allegations to having become enraged by them, or panic-stricken:

> *"Q. So you agree that as a matter --- looking at the bills of lading point on its own, there was no reason whatever why he should be enraged or panic stricken or terrified?*
>
> *A. I cannot comment"*

187. I had a distinct sense that Mr Iliopoulos could feel the point collapsing around him and so it proved, when shortly after that piece of evidence, he conceded that it would make absolutely no sense for Mr Agha to punish the owners by withholding the archive as this would only reward the insurers who had made the allegation about the bills of lading fraud:

> *"MR JUSTICE FLAUX: Right. So going back to the question, are you able to help me as to why on earth Mr Agha would want to punish the owners and reward the underwriters who had made this, you tell me, infuriating allegation against him. It makes absolutely no sense whatsoever. Why would he do it?*
>
> *A. I entirely agree that he had absolutely no reason to punish us."*

188. As with the criminal proceedings in relation to the crew member, the whole idea that Mr Agha blamed the owners and wanted to punish them by withholding the archive is and always was nonsensical. The inevitable conclusion I have reached, particularly now that I have seen Mr Iliopoulos giving evidence, is that neither Mr Agha's refusal to hand over the archive nor his ostensible reasons for that refusal are genuine, but are all part of the charade concocted by the owners.

189. I was unimpressed by those reasons which were put forward at the hearing on 12 January 2016 and so stated in my judgment. As I held at [105] above, Mr Iliopoulos, contrary to his repeated denials in evidence, did read that judgment very carefully as opposed to just having extracts read to him by Mr Clift. Furthermore, the owners' Greek lawyer Mr Tsafos was at that hearing and almost certainly gave Mr Iliopoulos a full report of the hearing. As Mr Clift says in his fourteenth witness statement, he expected Mr Tsafos to convey the meaning and seriousness of the Order to the owners and Mr Iliopoulos straightaway.

190. In those circumstances, the owners knew that they had to come up with a further reason or reasons for Mr Agha's refusal to hand over the archive. Two further reasons are now advanced. First, there is his alleged reliance on the option agreement at the meeting on 5 January 2016. I have already made detailed findings at [90] to [106] above as to why I consider this is another piece of pure invention by the owners and I do not propose to repeat those findings here. It is worth noting though, that by the end of his evidence, Mr Iliopoulos himself accepted that what he alleges Mr Agha was saying on 5 January 2016 was *"unconvincing and ridiculous"* (see the passage from his evidence which I set out at [182] above). In my judgment, the true dynamic of the relationship between Mr Iliopoulos and Mr Agha, of beneficial owner and chartering manager/employee is such that Mr Agha is not and never has been any sort of owner of WWGT and would never have dared refuse to hand over the archive if he or Mr Grigorakis have ever had it, which I doubt, in the face of the demands from Mr Iliopoulos. The only reason why he is ostensibly refusing to do so is because he has been put up to it by the owners.

191. The second reason now advanced by the owners is also indicative of collusion between Mr Agha, Mr Grigorakis and the owners. This is the story that by 17 February 2016 Mr Agha had had a change of attitude and seemed prepared to cooperate, but any hopes of such cooperation were dashed when Mr Agha became aware of the conduct of the insurers' agents as set out in the Grigorakis complaint and the emails quoted extensively in it. It is to that reason that I now turn.

The alleged change of attitude and the Grigorakis complaint

192. As Mr Gaisman QC rightly submits, the story of the change of attitude and the hardening of implacability after receipt of the Grigorakis complaint needs to be viewed against the background of what the Court had been told about Mr Agha's stance before that evidence was served.

193. According to Mr Clift's fourteenth witness statement served on 24 January 2016, at a meeting at Hill Dickinson's offices in Greece which he and Ms Moisidou attended with Mr Iliopoulos and Mr Bezas he was advised that it was possible, but not certain, that Mr Agha might hand over the hard drive to be held by a Greek notary. Mr Clift advised that this would not satisfy the terms of the Unless Order. In any event, such

hope as this gave proved misplaced, because at two meetings at a hotel in Dubai on 19 January 2016 between Mr Agha and Mr Clift and Mr Bezas, notwithstanding that Mr Clift told Mr Agha that it was imperative that the hard drive be handed over to Hill Dickinson's Greek office or Clyde & Co's Greek office that day, Mr Agha refused to agree. At the second meeting he even refused to do so in return for the €1 million security which Mr Iliopoulos had authorised Mr Clift to offer. Mr Clift says that Mr Agha seemed particularly concerned about the criminal proceedings against him in Greece.

194. Thus, the picture which was painted was of implacable refusal to hand over the archive, even against the offer of substantial security and even though the owners' own London solicitor had explained to Mr Agha the dire consequences for the owners' claim if the archive was not handed over. The point was made on behalf of the owners that Mr Clift is an experienced litigation solicitor who is unlikely to have been taken in by Mr Agha's obduracy at those meetings if it was not genuine. I have given due consideration to that point, but ultimately it has not convinced me that Mr Agha's obduracy was genuine. I have no doubt that Mr Clift believed that this refusal on Mr Agha's part was genuine, but in my judgment, for all the reasons set out above, it was not. This was effectively the charade acted out for Mr Clift's benefit that would have been acted out if he had been able to go to the meeting on 4 January 2016. It is striking that, in their opening skeleton argument for the present hearing, the owners placed considerable reliance on Mr Clift's fourteenth witness statement, where the intransigence of Mr Grigorakis at the meeting on 11 January 2016 and of Mr Agha himself at the meetings on 19 January 2016 is particularly emphasised.

195. The respective third witness statements of Mr Iliopoulos and Mr Bezas served on 2 February 2016 both confirmed the refusal of Mr Agha to hand over the archive following the meeting in Dubai. According to Mr Bezas' third statement, he had called Mr Agha on a couple of occasions between 19 January and 2 February 2016 on each of which he had *"repeated his stance"*. That statement did not give any details of these calls and did not mention any discussion Mr Bezas had had with Mr Grigorakis during that period.

196. The owners had served an extra-judicial protest on Mr Agha dated 15 January 2016 and discussions had broken down to such an extent that on 1 February 2016, he served a response to the protest dated 29 January 2016. This reiterated his reasons for refusing to hand over the archive, including that he was now the sole shareholder in WWGT as a result of the option agreement and confirmed his refusal to hand it over. No further evidence was served between 2 February 2016 and 4 March 2016 and, although there was a substantial amount of correspondence between the solicitors during that period, there is no hint by Hill Dickinson that Mr Agha might have changed his stance.

197. It was not until just before lunchtime on 4 March 2016 with a hearing due to start at 2 pm, that the owners served Mr Clift's seventeenth witness statement exhibiting the Grigorakis criminal complaint, notwithstanding that the owners had been sent the complaint by Mr Grigorakis under cover of an email at 5.33 pm Athens time on 23 February 2016, ten days earlier. In the email, Mr Grigorakis goes out of his way to emphasise that he was sending the complaint to Mr Agha: *"Finally I wish to notify you and stress that my principal, Mr SAYED AGHA has received knowledge of the above."* The obvious answer to the question why it was necessary to stress that the

complaint had been sent to Mr Agha, is that this was Mr Grigorakis "tipping the wink" to the owners, so that they could exploit the allegations made in the complaint against the insurers' agents as a new reason for Mr Agha to withhold the archive.

198. This was of course exactly what happened. Exhibited to Mr Clift's seventeenth witness statement is a text message from Mr Agha to Mr Bezas dated 29 February 2016. This merits quoting in full:

> *"Elia, I had considered commencing a constructive discussion further to your proposal to find a solution on the matter of the hard-drive today however this possibility has been slaughtered by the events of the past week. For there to be such hatred for the insurers to undertake such offences which are criminal, your opponents are looking to destroy you with whatever means, even illegally and ruthlessly without any hesitation, so you can understand I don't want to be a party to this I have other priorities in my life. There is no respect and limits, and also of course no ethical walls, as your lawyer has guaranteed otherwise how is it possible for there to be ethical walls when at the same time there are serious criminal offences as I was advised from my lawyer. Your assumption are yours and your problems with your opponent are also yours. Definitely I will look to obtain further legal advice regarding whatever legal actions against the responsible parties and I wish you good luck. Regards. Sayed"*

199. Thus emerges for the first time the latest twist in the story, an apparent willingness on Mr Agha's part to engage in constructive discussions with the owners about handing over the hard drive, which has been thwarted by the insurers' agents' activities which so incense Mr Agha that he wants nothing to do with it, the implication being that he has returned to the position, as a result of the Grigorakis complaint, of being unwilling to disclose the archive. The timing of the text is telling: it arrived just at the time when Mr Clift was in the owners' office in Greece with Mr Bezas and Mr Iliopoulos. In cross-examination, Mr Iliopoulos was keen to emphasise that he remembered the text and that it arrived when Mr Clift was in Greece but declined to comment on whether this was a coincidence:

> *"I do remember that, because Mr Clift -- when this message was received by Mr Bezas, I was in the same office with Mr Bezas and Mr Clift, in the same office, that minute, when that message arrived. We had already been in a meeting with Mr Clift for a few hours…and that is when this message arrived.*
>
> *Q. That was just a coincidence, was it, that Mr Clift was there, when the message arrived?*
>
> *A. How would I know whether this is a coincidence or not? I told you why I remember it well."*

200. The timing of the text was not a coincidence. It was carefully stage managed. As Mr Gaisman QC submitted the language of the text message clearly reflects the interests

and attitude of the owners. The striking reference to "ethical walls" is of course to what Norton Rose Fulbright had queried in their letter of 18 November 2015 about Hill Dickinson setting up an ethical wall to address not some concern of Mr Agha's, but Mr Iliopoulos' concern that Hill Dickinson were acting on the other side in another case. It is also significant that the text refers to the insurers showing no *"respect"* which of course was what Mr Iliopoulos maintained he was anxious to show Mr Agha. I have formed the firm view that this text was almost certainly drafted by the owners, but even if it was not and it amounts to Mr Agha's own language, it was clearly sent at the owners' behest and is part of the charade. Mr Agha has not produced a witness statement to deal with his involvement.

201. No further evidence was served by the owners for nearly a month until Mr Bezas' fourth witness statement served on 1 April 2016. This latest twist in the story is now elaborated in that statement. Mr Bezas says he spoke to Mr Grigorakis on 10 February 2016 to see if he could reason with him. He says: *"Although no concrete results arose from this discussion, Mr Grigorakis appeared keen to engage and showed a certain level of sympathy towards [the owners]."* On 15 February 2016, he spoke again to Mr Grigorakis, who said he would not discuss the subject further, suggesting that Mr Bezas contact Mr Agha directly. This is all clearly laying the groundwork for what he then alleges occurred, which is a conversation with Mr Agha on 17 February 2016. Mr Bezas says:

> *"I convinced Mr Agha that a dialogue in respect of the [WWGT] archive should be re-opened. It seemed to me that Mr Agha had had a change of attitude since we last spoke, possibly simply due to the passage of time. I reiterated [the owners'] offer to provide security in the sum of Euros 1 million. I managed to persuade Mr Agha to agree to a meeting in Dubai the following week on the understanding that any cooperation would be subject to the provision of security by [the owners] and to the good faith of all parties concerned."*

202. Mr Bezas then goes on to describe how this promising development was frustrated by the Grigorakis complaint with its allegations in relation to the conduct of the insurers' agents in Greece and refers to a conversation with Mr Agha on 24 February 2016, by which time they both had the complaint, in which Mr Agha said the state of affairs was extremely serious and his main concern was that those who had obtained information by illegal means might do anything to achieve their objective. Mr Bezas then describes receiving the text message from Mr Agha, making it clear that because of the latest developments he did not wish to cooperate. Thereafter, Mr Agha had not responded to Mr Iliopoulos' attempts to contact him by email.

203. Thus, this fourth witness statement seeks to bolster the owners' story that just when Mr Agha was wavering and about to cooperate, the content of the Grigorakis complaint has hardened his attitude back into one of implacable refusal to disclose the archive. Of course, if this story were true, it would have two main advantages from the owners' perspective: it would provide a ground for his refusal which the Court had not previously rejected and it would be a ground which the owners could contend was the insurers' fault. However, I am very firmly of the view that the story put forward in Mr Bezas' fourth witness statement and in the Agha text message is not true; it is another invention of the owners.

204. Indeed, it is striking that in their opening skeleton argument for the hearing of this application, the owners did not reflect Mr Bezas' alleged optimism before the Grigorakis complaint that Mr Agha had had a change of attitude. On the contrary, it is said: *"Owners' efforts to persuade Agha (which already had poor prospects of success) have now been stymied, apparently irrevocably, by the actions of the [insurers'] agents in Greece".* As Mr Gaisman QC submitted, this may be as consequence of recognition that the story in Mr Bezas' fourth witness statement is too good to be true (which it is) and unwillingness to forego the benefits of the previous obduracy of Mr Agha, as recorded for example in Mr Clift's fourteenth witness statement, upon which, as I have said, the owners' skeleton places considerable emphasis and reliance. However, the problem for the owners is that, if that recorded obduracy had been genuine, it is difficult to see what had happened between 19 January 2016 and 16 February 2016 which might have caused Mr Agha to change his mind or even begin to change his mind, and there is no evidence from Mr Agha that he had changed or was going to change his mind. I found what Mr Gaisman QC characterised as Mr Agha's *"emotional roller-coasting"* as described in Mr Bezas' fourth witness statement completely incredible.

205. Indeed, Mr Iliopoulos himself seemed in his evidence to be back-tracking from the story set out in Mr Bezas' fourth witness statement. He was asked whether his evidence was to the same effect as Mr Bezas', that despite his initial stubbornness, Mr Agha had had a change of attitude. He gave a long discursive answer referring to events from 5 January 2016 onwards before saying:

> *"A month later on 17 February, Mr Bezas managed to open the dialogue again with Mr Agha. What Mr Agha is saying here is not that he is going to give the disk. This is a dialogue starting here in good faith in order to find a solution. He didn't say that he was going to give the disk immediately, therefore the dialogue that had been – that stopped for a month, it was re-opened."*

206. However, as I pointed out, the only solution that would have helped the owners was the delivery up of the archive, as required by the Unless Order. Nonetheless, Mr Iliopoulos continued with this gloss about opening a dialogue before agreeing that the thrust of his evidence was, like Mr Bezas', that Mr Agha had had a change of attitude:

> *"And therefore the dialogue that we re-opened with Mr Agha was just to test, to see whether Mr Agha would be convinced in selling the disk for a large amount of money. There was absolutely nothing certain, we wanted to test other things, we just wanted to test what other possibilities we had.*
>
> *Q. Yes. Change of attitude is the word in Mr Bezas' witness statement that was in the question I asked you a long time ago, but you haven't answered it.*
>
> *A. I agree."*

As I have already said, I found the evidence of Mr Bezas about the change of attitude incredible and it was not made any more credible by its adoption by Mr Iliopoulos.

207. As already set out at [38] to [40] above, although the threatened application for disclosure of all Norton Rose Fulbright's privileged and confidential correspondence with insurers and investigators was not pursued by the owners, they remain fixated with what the Grigorakis complaint alleges is criminal conduct of the insurers' agents. As Mr Gaisman QC correctly submits, the owners' skeleton argument for the present applications shows an almost grotesque pre-occupation with this part of the case. The correct analysis is that the Grigorakis complaint would only be relevant to the present applications if the Court accepted as genuine: (i) the refusal by Mr Agha to disclose the archive in January 2016; (ii) the alleged "change of attitude" on or about 17 February 2016; and (iii) the alleged reaction to the complaint that Mr Agha returned to a position of intransigence.

208. For the reasons already indicated above, I do not accept that any of these positions is genuine. So far as concerns the third position, which raises in particular Mr Agha's ostensible reaction to the Grigorakis complaint as set out in his text to Mr Bezas, I have already held that that text was either drafted for him by the owners or was, in any event, representative of the owners' interests. In other words, in my judgment, it did not represent any genuine reaction to the Grigorakis complaint on the part of Mr Agha. Like his previous alleged reluctance to disclose the archive and his alleged change of attitude, this supposed return to intransigence was all staged, all part of the overall charade.

209. The beauty of the owners' case that, once he became aware of the allegations in the Grigorakis complaint, Mr Agha became intransigent once again, is that it enabled the owners to blame the insurers for their inability to deliver up the archive. However, leaving aside the fact that I simply do not believe the owners' case that the archive has been handed to a third party who is unwilling to hand it back, I have formed the very firm view that, even if I accepted at face value the owners' case that, by 17 February 2016, Mr Agha was wavering, the assertion that he then went back to asserting an unwillingness to disclose the archive when he saw and read the Grigorakis complaint is to say the least surprising: the complaint and the emails quoted contain limited information about Mr Agha, such as the companies with which he was involved, the criminal proceedings against him and whether he was in Greece in early January 2016. In those circumstances, it is difficult to see what it was in the Grigorakis complaint that could have caused Mr Agha to have the alleged return to intransigence. Furthermore, if any of Mr Agha's ostensible anger about the insurers' behaviour (whether over the allegations in relation to the bills of lading fraud or the conduct of the investigators revealed in the Grigorakis complaint) were genuine, one would expect his reaction not to have been to return to obdurate refusal to hand over the archive, but to have been to wish to join forces with Mr Iliopoulos in defeating the insurers and, therefore, be more willing to hand over the archive, not less willing. In my judgment, the reality is that this outrage and intransigence was all staged.

210. Given the fact that it was the owners who had raised the Grigorakis complaint in the context of the present applications and who focused on the complaint to such an extent in their skeleton, I agree with Mr Gaisman QC that it is extraordinary that Mr Iliopoulos refused to answer questions about the Grigorakis complaint. As noted above, he had already indicated his refusal to answer questions about the complaint during questions about Mr Agha's unwillingness to disclose the archive, but his

obstructive attitude became all too clear the moment he was asked directly in cross-examination about the Grigorakis complaint:

> *"Q. You see, if you look at the complaint, page 133.*
>
> *A. I will not.*
>
> *Q. You absolutely refuse to look at it?*
>
> *A. I have absolutely nothing to comment on that complaint. If the judge wants me to have a look at it and comment then I will do it.*
>
> *Q. Mr Iliopoulos, this complaint has been introduced into these proceedings. Let's assume it is an entirely independent complaint by Mr Grigorakis. It has been deployed in these proceedings as an exhibit to Mr Clift's 17th witness statement, and you knew that was happening before it happened, didn't you?*
>
> *A. And I said that I will not comment on it unless the judge wants me to."*

211. Mr Iliopoulos maintained this extraordinarily obstructive attitude even in relation to straightforward questions about the Grigorakis complaint which could not possibly involve any prejudice to the owners' position:

> *"A. Before we begin, I just said that for – on legal matters I will not respond. Any other question, you can put to me but…*
>
> *MR GAISMAN: I wasn't asking you any legal questions. I was asking you about how it was that these emails had been translated with such extraordinary speed and you refused to answer; did you understand that to be a legal question?*
>
> *A. This is not – this exact thing is not a legal matter, but it is part of the Greek legal proceedings, but I did respond on how one can actually have these emails translated so quickly and how much that would cost. On anything else I do not know. So do not ask me things on things I might not know.*
>
> …
>
> *"Q… Now, I have never seen – nobody on our side has ever seen the attachments to this complaint. But there is no sign that there is an officially certified translation that I have ever seen?*
>
> *A. I still do not understand why you are asking me.*
>
> *Q. It is highly suspicious, do you agree, that Mr Grigorakis claims to have found this package late on, I think, a Friday*

> *evening and yet managed with very imperfect English, and no assistance that I can see, to have turned all this material into what the claimants say is accurate English-sorry accurate Greek.*
>
> *A. You are asking me whether this is suspicious?*
>
> *Q. Yes.*
>
> *A. Is this my role to answer whether this is suspicious or not? You should be asking Mr Grigorakis.*
>
> *Q. Now, let me ask you a question which does concern you. The material which Mr Grigorakis has come into possession of was obviously intended to be private, wasn't it?*
>
> *A. Do not ask me. Ask Mr Grigorakis."*

212. As Mr Gaisman QC submitted, the unwillingness of Mr Iliopoulos to answer any questions about the complaint was particularly apparent whenever he perceived that it was being suggested that he had read the emails underlying the Grigorakis complaint:

> *"A. Believe it or not, and I would like to emphasise that I understand that I'm under oath and I would like to (in English). And please don't smile Mr Gaisman (Interpreted). I have not read those emails until today, because I was very upset. I only know the summaries of those emails. Believe it or not, this is a fact and not just because I'm sworn…*
>
> *....*
>
> *A. I told you, I have not read them.*
>
> *…*
>
> *A. As I said previously there are certain points that have been summarised to me and nothing more than that.*
>
> *…*
>
> *A. I have not. – I have not had ----I have never seen these emails. I have just given an oral explanation and description of those emails."*

213. This unwillingness to engage and attempt to distance himself from the emails quoted at length in the complaint when he and the owners had been so anxious that the Court should consider the Grigorakis complaint at the hearing of the present applications is quite remarkable. It indicates a belated realisation on the part of Mr Iliopoulos that the complaint was going to prove damaging rather than helpful to the owners, as Mr Gaisman QC put it, an "own goal" for the owners. Quite apart from the evasive nature of his evidence about the complaint, there are a number of other pieces of evidence

which point strongly to the complaint being the product of collusion between the owners, Mr Grigorakis and Mr Agha.

214. To begin with the emails quoted at length in the Grigorakis complaint must have been obtained by illegal means, probably by someone hacking into Captain Lallis' computer systems. Mr Iliopoulos was curiously reluctant to admit that they had been stolen, preferring a theory that an investigator who was disgruntled because he was unpaid had left them outside Mr Grigorakis' premises. Quite apart from the fact that this is inherently unlikely, it is of course wholly inconsistent with the owners' somewhat overwrought Greek law evidence that the insurers' agents had been paid and thus could be charged with money laundering.

215. In cross-examination, Mr Iliopoulos made a telling admission that the person who had stolen the emails, if they were stolen, is likely to have been someone interested in their content. Given that the subject-matter of the investigation by the investigators instructed by Norton Rose Fulbright on behalf of the insurers was the conduct of the owners and Mr Iliopoulos, and Mr Grigorakis only had any peripheral relevance or involvement in that investigation, the overwhelming likelihood is that it was the owners who were behind the illegal acquisition of the emails. It is difficult to see who else would have had an interest in hacking into Captain Lallis' emails. The only other person to whom the copies of the emails was delivered, other than Mr Grigorakis was Mr Nicholas Shepherd of Ince & Co, the solicitor who acted for the owners in the Commercial Court litigation in relation to the *Elli* (and who coincidentally acted for the owners of the *Alexandros T*). I return to the significance of that below.

216. Then there is the obvious question why, on the owners' case, whoever stole them left them in an envelope outside Mr Grigorakis' premises in Athens. Whoever did so had to have known which his premises were, since he is not listed in the directory of lawyers as having an address in Athens. Mr Iliopoulos declined to answer the question whether Mr Grigorakis would have stolen the emails himself. However, he saw no reason to disbelieve Mr Grigorakis' explanation for how he acquired the emails, describing him as a *"religious man who studied theology"*. As Mr Gaisman QC pointed out, those studies did not cause Mr Grigorakis to hand back the emails to their rightful owners. The unchallenged evidence of the insurers' Greek law expert Dr Androulakis is that, in failing to return the emails, Mr Grigorakis has committed a criminal offence and has acted contrary to professional standards. Whilst it does not excuse such conduct, I can at least see why, if the content of the emails affected him personally or disclosed criminal conduct directed against him personally, Mr Grigorakis might become so incensed that he would decline to hand them back and launch the criminal complaint.

217. Mr Iliopoulos admitted that it would be reasonable to expect the Grigorakis complaint to be primarily concerned with criminal activity directed against Mr Grigorakis, but the difficulty for the owners' case is that it is not. Mr Grigorakis seeks to make much of the fact that he says he and his family have been under surveillance, but as I understand it, that is not illegal in Greece. As for the stolen emails, only a handful of them even mention Mr Grigorakis. On any fair reading of the Grigorakis complaint, it is primarily concerned with alleged criminal conduct in the investigation into the affairs of the owners and Mr Iliopoulos. This suggests very strongly that it is in truth the owners' document and that Mr Grigorakis is acting at the owners' behest.

218. In that context, it is striking that it is the owners' case in relation to the WWGT archive that Mr Grigorakis on behalf of Mr Agha has been refusing to deliver it up, so that relations between the owners and Mr Grigorakis up until February 2016 were, as Mr Iliopoulos admitted *"strained"*. However, despite that apparently strained relationship, Mr Grigorakis sent the owners a copy of the complaint on the same day as he filed it. Mr Iliopoulos' explanation for this was: *"he probably wanted to show us, that, he wanted us to know that he had made that complaint, which contained things about us as well"*. It is difficult to see why he would be so obliging if relations were strained. The reality is that the ostensibly strained relationship is all part of the charade: Mr Grigorakis is, as Mr Iliopoulos admitted, a close family friend and he is pursuing the complaint in order to assist the owners.

219. Furthermore, as I said in [36] above, the owners' case that the envelope of copies of twenty four emails (in English) was discovered by Mr Grigorakis outside his premises at 6pm on a Friday night and yet he was able to produce a complex and detailed criminal complaint with extensive quotation from the emails, translated into Greek (notwithstanding that he is not apparently proficient in English) by the following Tuesday, was always implausible. It would have taken longer than a weekend to translate the emails and prepare the complaint and I suspect the truth is that it had been in the course of preparation the previous week. During his evidence, Mr Iliopoulos clearly appreciated this point and was very anxious to dispute the insurers' case that the emails with substantial attachments could not have been translated into accurate Greek within less than 4 days including a weekend. Such was his unwillingness to accept the implausibility of the Grigorakis complaint, with many pages of quotation from emails in English translated into Greek, having been produced in such a short time frame, that he was even prepared to dispute with me the likely translation costs.

220. As noted above, one of the remarkable aspects of the illegal acquisition of the emails is that, apart from Mr Grigorakis, the only other person to whom they were sent was Mr Nicholas Shepherd of Ince & Co, who had acted for the owners in the *Elli* litigation and who just happened to have also been the solicitor for the owners of the *Alexandros T*. Unlike Mr Grigorakis, Mr Shepherd quite properly returned the copies, realising no doubt that they could only have been improperly obtained. However, the question remains how, whoever obtained them, they knew to send them to Mr Shepherd, unless whoever obtained them was acting for the owners and thus knew about the *Elli* and/or about Mr Shepherd's involvement with the case of the *Alexandros T*. The reality is that it is obvious that the emails were sent to Mr Shepherd by someone acting for the owners, with a view to building up a case in Greece against the insurers and their representatives alleging defamation or some other tort as in the *Alexandros T.*

221. That this was the owners' strategy became very apparent towards the end of the cross-examination of Mr Iliopoulos on the second day. This began to emerge in what Mr Gaisman QC correctly characterised as *"a most bizarre and apparently self-destructive answer"* from Mr Iliopoulos, when he was being cross-examined, as to why the emails had been sent to Mr Grigorakis and Mr Shepherd:

> "*Q. That is just a coincidence, is it, that the thief, or whoever it was who acquired these emails, sent one copy to Mr Grigorakis and one copy to Mr Shepherd, who happened to be your*

solicitor in a controversial claim involving the London market, called the Elli; is that right?

A. I understand what you are trying to achieve. But you are hiding from the court that within the text there is also reference to Alexandros…

Q. Alexandros T.

A. Alexandros T. And this is information you are hiding from the court, because it is just not to your benefit…Why, why – I was told that there are also references to Alexandros T, so why are you not mentioning this, which is also very famous in Greece."

222. The strategy emerged even more clearly when Mr Gaisman QC pressed Mr Iliopoulos on the fact that it was the owners who had the motive for hacking into the emails. Mr Iliopoulos clearly lost his temper and effectively threatened the insurers and their legal representatives from the witness box in a disgraceful manner, thereby exposing, as I pointed out to him, what his real motive now is: to build up a case against the insurers and their representatives in Greece. With this intemperate and menacing evidence, Mr Iliopoulos lost any remaining shred of credibility:

"Q. Let me be quite clear, Mr Iliopoulos: the entity that had the most pressing interest into hacking into and exposing the activities of underwriters' agents were owners and you; do you agree?

A. I will not play Mr Gaisman's game, because every point that he loses triggers a new point. I will not play this game.

Q. Well I'm putting to you that it was owners and you who sponsored the illegal acquisition of these emails, Mr Iliopoulos; would you like to comment or not? Because that is my case.

A. The only thing I would like to comment on is what you say, which is in record, then –

Q. What I say which is……?

A. Which is being recorded, if there is any responsibility for any of the assumptions in the allegations against me, you will be – you will be held responsible for those.

Q. Yes, I am well aware that you are threatening Mr Iliopoulos. We are well aware that you have threatened – so far you have threatened Mr Zavos.

MR JUSTICE FLAUX: You will not use this court to threaten counsel or English lawyers. You will behave yourself.

> *A. I'm talking about --- I'm referring to English law, not Greek law.*
>
> *MR JUSTICE FLAUX: You have just, Mr Iliopoulos, exposed your motive very clearly. Could you translate that please.*
>
> *A. All I'm saying is that if what you are saying is allowed by English law then that is perfectly okay. If it is not, then you will be held responsible for this.*
>
> *MR JUSTICE FLAUX: That is a threat of proceedings elsewhere, which is fully understood, as is your reference to the Alexandros T. That is why I said your motive has been exposed very clearly."*

Conclusion on the findings of fact

223. For all the reasons set out in detail above, I have reached the firm conclusion that the owners' whole case about handing the archive to Mr Grigorakis for safe-keeping on 9 March 2015, the subsequent toing and froing with the archive, culminating in the alleged miscommunication between Mr Iliopoulos and Mr Bezas which led to its handing back the day before the Final Order, the refusal of Mr Grigorakis and Mr Agha to agree to hand it back and the change of attitude by Mr Agha which was thwarted by the insurers' representatives' conduct set out in the Grigorakis complaint, is a complete invention. It is a case which has evolved, with further explanations and excuses for non-compliance with the Unless Order, but in all its versions, it remains incredible.

224. In her closing submissions, Miss Blanchard QC sought to dissuade the Court from reaching that conclusion by submitting that a conclusion that what lay behind all of this was complete unwillingness on the part of the owners to hand over the unredacted WWGT archive to Hill Dickinson would involve the owners in a very high risk strategy, on the basis that if the Court did not accept the owners' explanations and excuses, the claim would remain struck out. Surely, she submitted, faced with that unpalatable result, the owners would comply with the Unless Order if they could and disclose the archive rather than have a potentially good claim for over U.S. $100 million (inclusive of interest) struck out. Miss Blanchard QC submitted that this all pointed to the owners' case that they could not disclose the archive because Mr Grigorakis and Mr Agha refused to hand it over being true.

225. These points obviously need to be considered carefully and I have done so, but they do not begin to convince me that there is any truth in the owners' story. The starting point is that the owners, and Mr Iliopoulos in particular, remain unwilling to disclose the WWGT archive to their own solicitors Hill Dickinson, irrespective of the fact that there are now Court Orders for such disclosure. As I have held, I was unconvinced by Mr Iliopoulos' attempt to persuade me that he had had some Damascene conversion as regards disclosure of the archive, once the Final Order was made. As to why the owners are so reluctant to disclose the totality of what is on the archive, the Court cannot make any assumptions in favour of the owners. It may well be that there is material on the archive that would be extremely damaging to the owners' case. After all, it is as Mr Iliopoulos himself described it: *"a crucially important repository of*

evidence". The knowledge that there was or might be such damaging material would provide a powerful motive for an unwillingness to disclose the archive.

226. As to why the owners would invent the story about handing over the archive and the subsequent toing and froing, it may well be that the owners thought that the Court would accept the owners' case about handing it over to Mr Grigorakis for safe-keeping. The impression given to the Court by the owners at the hearing on 18 December 2015 was that the archive had been handed back to the owners in May 2015, and there was no suggestion in the evidence put before the Court at that hearing that the owners had not retained the archive thereafter. Indeed, quite the contrary: the whole point of Mr Clift's twelfth witness statement signed the previous day was to ask for more time to complete ongoing searches on the archive, none of which would have made any sense if the archive had been handed back to Mr Grigorakis. If the story about the toing and froing with the archive and, specifically, its handing back to Mr Grigorakis on 17 December 2015 were true, the owners' failure to disclose that position to the Court at the hearing on 18 December 2015 and to correct the thoroughly misleading impression created, albeit unwittingly, by their own solicitor, is inexplicable and inexcusable.

227. The story about the toing and froing with the archive and the refusal of Mr Agha to hand it back did not emerge until the evidence filed on behalf of the owners for the hearing on 12 January 2016. By this stage, the owners were in a cleft stick. Either they had to admit the true position, which was that they had the archive and were refusing to hand it over, in which case the Court would have been bound to make an Unless Order and they would have no excuse for not complying with the Order, in which case they had a stark choice: comply with the Order or be struck out. Or, if the owners could come up with a reason why they no longer had the archive because they had handed it back for safe keeping, believing they could always get it back, but to their surprise and consternation they could not, that might just convince the Court not to make an Unless Order. Equally, that story might just give the owners "wriggle room" as regards the future: if the Court did not accept the reasons given on 12 January 2016, perhaps other reasons might be found in the future which the Court did accept.

228. In my judgment, that is what the owners hoped to achieve by the evidence about the apparent change of mind by Mr Agha, reversed by his receipt of the Grigorakis complaint, a reason for his refusal to disclose the archive which the owners could conveniently blame on the insurers. The problem for the owners is that, as the story has developed and been elaborated, different aspects of it are inconsistent with other aspects or just thoroughly implausible. To take just two examples to demonstrate the point. First the evidence about Mr Bezas handing back the archive on 17 December 2015, believing the searches had been completed, was wholly inconsistent with Mr Clift's evidence that the searches were ongoing. It was also implausible because Mr Bezas would never have acted without consulting Mr Iliopoulos. Second, the evidence about the stolen emails being left outside Mr Grigorakis' premises on a Friday evening and then a fully reasoned criminal complaint with translated emails springing forth only a few days later after a weekend was implausible and overlooked that the only party with any interest in obtaining and exploiting the emails was the owners themselves.

229. Once the owners had committed themselves to the story they put forward at the hearing on 12 January 2016, they had to stick to that story and elaborate it in ways which might just satisfy the Court that the Unless Order should be alleviated in some way: after all, that is precisely what the owners seek by the present applications. They could hardly come clean at this hearing and admit that their story was a fabrication. In those circumstances, even if they disclosed the archive at this late stage the Court would be unlikely to grant relief against sanctions, where they had deliberately misled the Court.

230. In effect, Miss Blanchard QC's submission was that, if the owners were going to invent a story, they would have made up a better and more consistent one than this one, but in a sense, the logical consequence of that submission is that, the more implausible the story, the more likely it is to be true, which obviously cannot be right. The much more likely explanation is that the original story of the hand over, the toing and froing and the refusal to hand the archive back was a fabrication, so that its subsequent elaboration led to inconsistencies. As Mr Gaisman QC put it in the point I have already quoted at [89] above: *"As so often happens when people invent untrue stories, they trip themselves up."*

231. As for the owners' motive in maintaining a story which the Court found to be implausible on 12 January 2016 and which I have now found to be incredible, there remains an unwillingness to disclose the archive to Hill Dickinson. As Mr Gaisman QC submitted (in a possible explanation he attributed to Mr Kenny QC) it may be that, even though the owners knew their claim would, in all probability, remain struck out, they may have thought this would provide them with an *"elegant exit"* from the litigation, without serious adverse findings against them which might lead to criminal proceedings. Although Mr Iliopoulos' arrest as he left Court on 12 April 2016 may mean that hope has been dashed, it does not mean that that was not what the owners were seeking to achieve. However, whatever the motive for the owners maintaining this story, it does not improve with the elaboration and, as I have said, having seen and heard Mr Iliopoulos give evidence over two days, I am quite sure that it is a complete invention. It follows that the owners are in deliberate and contumelious breach of the Orders of the Court, most recently the Unless Order.

232. Even if, contrary to that conclusion, I were prepared to take the owners' story at face value, they still unnecessarily, knowingly and deliberately put the archive outside their legal control, not just for the reasons I gave in my judgment of 12 January 2016, but for two additional reasons which have emerged from the evidence now before the Court: First, on Mr Iliopoulos' own evidence, three days after the allegation of wilful misconduct was made, he gave the archive to the lawyer for a man (Mr Agha) to whom he had given his bearer shares, with whom he had an option agreement to acquire WWGT and who shared his own reluctance to hand over the archive to third parties, including Hill Dickinson. He did so, knowing that Hill Dickinson had advised him (probably most recently at that very time when the allegation of wilful misconduct was made) that they would require access to all the electronic documents (which he knew included the WWGT archive) in order to satisfy themselves that the owners had complied with their disclosure obligations.

233. Second, the owners handed the archive back to Mr Grigorakis on 17 December 2015, at a time when the searches of the archive were not finished and knowing that there

was a hearing the following day, at which it was highly likely the Court would make an Order for the archive to be delivered up to Hill Dickinson.

Application of legal principles on these findings of fact

234. In the light of my findings of fact, I can deal with the application of the legal principles relatively shortly. So far as the application for an extension of time is concerned, if, as I have held, the owners' story about their inability to hand over the archive is a fabrication, not only have they deliberately misled the Court, but they are deliberately refusing to hand over the archive, in contumelious breach of the Unless Order. In those circumstances, there is no basis whatsoever for granting them the indulgence of any further time. Even if I accepted the owners' case at face value, on that case, Mr Agha's refusal to disclose the archive is obdurate and there is no realistic prospect of any court process, either in Greece or the Marshall Islands, to compel him to disclose it succeeding. In those circumstances, as I said at [45]-[46] above, any further extension of time is futile, there is nothing to grant it for and I decline to grant any extension.

235. On the basis of my primary findings of fact, that the owners' story is a fabrication, that they have deliberately misled the Court and that they are deliberately refusing to hand over the archive, they are in contumelious breach of the Unless Order. For the reasons already set out at [51] to [54] above, there can be no question of any relief against sanctions in circumstances where that breach has not been remedied. The position would be no different, even if I accepted the owners' case at face value: they have still unnecessarily, deliberately and knowingly put the WWGT archive outside their legal control, for which breach the sanction was the Unless Order. As I have already held, it is unlikely that the Court would ever grant relief against the sanction of an Unless Order, but if there were such a rare case, it is not this one.

236. There is no question of the Court simply determining now what Order the justice of the case requires, as Miss Blanchard QC sought to submit. To the extent that the application made is one for relief against sanctions, that submission essentially drives a coach and horses through the regime of strict compliance required by CPR 3.9 as interpreted in *Mitchell*, albeit tempered by *Denton v White*. The Court still has to engage in the three stage analysis set out in the latter case. In the present case, any attempt to seek relief against sanctions is doomed to fail. At the first stage, the breach by the owners was so serious and significant that the Court imposed an Unless Order which has still not been complied with. At the second stage, the breach occurred because, as I found, even taking the owners' case at face value, the owners had unnecessarily, deliberately and knowingly put the WWGT archive beyond their legal control, so the default was deliberate. In fact, for the reasons set out in my detailed findings of fact above, on the material now before the Court, the owners' position is worse and the seriousness of their breach is greater than it appeared on 12 January 2016. At the third stage, that of considering justice between the parties, Ms Blanchard QC's submission that justice somehow required that, because the owners face the difficulties which they allege, their obligation to disclose the archive should be diluted to an obligation to use their best endeavours to disclose it, was hopeless. Even on their own case, the owners are the authors of their own misfortune and justice between the parties, the efficient conduct of the litigation and the need for Unless Orders to be complied with, all point inexorably to the sanction remaining in place.

237. Furthermore, this case comes nowhere near the limited circumstances in which, pursuant to the principles stated in *Tibbles,* the Court will vary or revoke an Order under CPR 3.1(7). There has been no material change of circumstances since the Unless Order was made on 12 January 2016 which would justify the variation or revocation of the Unless Order. On the contrary, in so far as anything has changed as a consequence of the evidence now available, specifically Mr Iliopoulos' oral evidence, it has only served to demonstrate that the Unless Order was appropriate and just.

238. This is not a case in which the other situation in which, as *Tibbles* recognises, an Order could be varied or revoked, could have any application. As I said in [59] above, there is no question of the Court having been misled at the hearing on 12 January 2016 or of the facts upon the basis of which the Unless Order was granted having been misstated. Even on the owners' own case, as I held, they unnecessarily, deliberately and knowingly put the archive outside their legal control. On the insurers' case which I have accepted, their conduct was even more deliberate. The new or additional facts on which the owners now rely do not demonstrate that the Unless Order was made on the basis of a misapprehension.

239. As part of her submission that the question for the Court was simply what was the right Order to make in order to deal with the case justly, Ms Blanchard QC made the bold submission that the Court should somehow conclude that the case could be tried justly even without the archive, because the claim by the second claimant, the bank, would be proceeding to trial in any event. In my judgment, that submission is unmeritorious. Leaving to one side the fact that the insurers have indicated an intention to apply to strike out the bank's claim on various grounds, including that its claim is tainted by the owners' failure to comply with their disclosure obligations (as to which I say nothing further, as I heard no submissions from the bank at the present hearing other than a point made by Mr Jackson of Clyde & Co which I accept, that nothing that has been said by the Court has any bearing on the conduct of the bank) I consider that a claimant in contumelious breach of Court Orders whose claim has been struck out cannot be heard to say that it should be allowed to continue its claim merely because another claimant is doing so. In any event, I am firmly of the view that there could not be a fair trial as between the owners and the insurers unless there was full and proper compliance by the owners with their disclosure obligations, including handing over the archive.

Conclusion

240. In all the circumstances, the owners' applications are dismissed and the claim remains struck out.