



CT - 1996 / 001 – Doc # 54

IN THE MATTER of an application by the Director of Investigation and Research for orders pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of the merger whereby Dennis Washington and K & K Enterprises acquired a significant interest in, and propose to acquire control of, Seaspan International Ltd.;

AND IN THE MATTER of the merger whereby Dennis Washington acquired Norsk Pacific Steamship Company, Limited.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Dennis Washington
K & K Enterprises
Seaspan International Ltd.
Genstar Capital Corporation
TD Capital Group Ltd.
Coal Island Ltd.
314873 B.C. Ltd.
C.H. Cates and Sons Ltd.
Management Shareholders
Preference Shareholders
Norsk Pacific Steamship Company, Limited
Fletcher Challenge Limited

Respondents



ORDER AMENDING INTERIM CONFIDENTIALITY (PROTECTIVE) ORDER

Date of Conference Call:

May 21, 1996

Members:

Rothstein J. (presiding)
Dr. Frank Roseman

Counsel for the Applicant:

Director of Investigation and Research

Michael L. Phelan
Martha A. Healey

Counsel for the Respondents:

Dennis Washington
K & K Enterprises
C.H. Cates and Sons Ltd.
Norsk Pacific Steamship Company, Limited

Douglas G. Morrison

Seaspan International Ltd.
Genstar Capital Corporation

Robyn M. Bell

TD Capital Group Ltd.

Bradley P. Martin
Linda Abrams

Fletcher Challenge Limited

Jessica A. Kimmel

COMPETITION TRIBUNAL

ORDER AMENDING INTERIM CONFIDENTIALITY (PROTECTIVE) ORDER

The Director of Investigation and Research

v.

Dennis Washington et al.

FURTHER TO the Interim Confidentiality (Protective) Order dated May 16, 1996;

UPON HEARING the further submissions of counsel;

THE TRIBUNAL ORDERS THAT:

1. Paragraph 3 of the Interim Confidentiality (Protective) Order dated May 16, 1996 shall be revoked and replaced by the following:

For purposes of this order, an independent expert is one who

(a) has no existing financial or employment relationship with one or more of the parties; and

(b) has signed a confidentiality agreement in the form attached to this order as Schedule A.

Each confidentiality agreement referred to in subparagraph (b) shall be filed promptly with the Registrar of the Tribunal who shall retain all such agreements in confidence until completion or final disposition of this proceeding and any related appeals, at which time the agreements may be disclosed to the parties upon request.

2. The Interim Confidentiality (Protective) Order shall be further amended by adding as Schedule A to that order the form of confidentiality agreement annexed to this amending order.

3. Paragraph 9 of the Interim Confidentiality (Protective) Order shall be renumbered paragraph 10 and the following provision inserted as paragraph 9 of that order:

Notwithstanding paragraph 13 of the Consent Interim Order dated April 19, 1996, Norsk Pacific Steamship Company, Limited ("Norsk") and C.H. Cates and Sons Ltd. ("Cates") may divulge Confidential Information, as defined in the Consent Interim Order, to, and discuss such Confidential Information with, independent experts who meet the requirements of paragraph 3 of this order and who are retained by or on behalf of Dennis Washington, K & K Enterprises, Cates and Norsk. Such independent experts shall not discuss with Norsk or Cates Confidential Information obtained from any other party, pending further order of the Tribunal, nor shall such independent experts disclose any Confidential Information obtained from Norsk or Cates to anyone not permitted by the Consent Interim Order or the confidentiality agreement attached to this order as Schedule A.

DATED at Ottawa, this 22nd day of May, 1996.

SIGNED on behalf of the Tribunal by the presiding judicial member.

Marshall Rothstein (s) Marshall Rothstein

any other owner of the information or documentation may have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of the Director, Dennis Washington, K & K Enterprises, Seaspan International Ltd., Genstar Capital Corporation, TD Capital Group Ltd., Coal Island Ltd., 314873 B.C. Ltd., C.H. Cates and Sons Ltd., Management Shareholders, Preference Shareholders, Norsk Pacific Steamship Company, Limited, and Fletcher Challenge Limited, or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

In the event that I am required by law to disclose any of the information or documentation which is subject to this agreement, I will provide (insert name of retaining or employing party) with prompt written notice so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the information or documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the information or documentation.

I will promptly, upon the request of the party which provided the information or listed the documents in its affidavit of documents, advise where such material is kept by me. At the conclusion of my involvement in these proceedings or upon completion or final disposition of these proceedings and any appeals, I will act in accordance with paragraph 8 of Schedule "1" attached hereto. I will destroy all other documents received or prepared by me relating to the material except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature, which do not replicate any confidential information.

I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Competition Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____, 1996.

(Print Name)

(Signature)

(Witness)