



CT - 1996 / 001 – Doc # 45

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



**INTERIM CONFIDENTIALITY (PROTECTIVE) ORDER**

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**Date of Hearing by Conference Call:**

May 16, 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  
James H. Goulden

**Seaspan International Ltd.**  
**Genstar Capital Corporation**

Robyn M. Bell

**TD Capital Group Ltd.**

Bradley P. Martin  
Lillian Y. Pan

**Fletcher Challenge Limited**

Jessica A. Kimmel

**COMPETITION TRIBUNAL**  
**INTERIM CONFIDENTIALITY (PROTECTIVE) ORDER**

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*The Director of Investigation and Research*

v.

*Dennis Washington et al.*

FURTHER TO the motion by the respondents Dennis Washington, K & K Enterprises, C.H. Cates and Sons Ltd. and Norsk Pacific Steamship Company, Limited for an interim confidentiality (protective) order;

WHEREAS the parties have served and filed affidavits of documents which contain numerous claims of confidentiality but have not yet exchanged the documents listed in the affidavits and are not now in a position to deal with the various confidentiality claims;

AND WHEREAS the parties would otherwise, in accordance with section 16 of the *Competition Tribunal Rules*, be required to allow inspection and copying of all documents by all other parties;

AND WHEREAS it is desirable, to the extent possible without compromising the claims of confidentiality, to allow the parties' experts to continue preparation for the hearing of the application;

UPON HEARING the submissions of counsel;

THE TRIBUNAL ORDERS THAT:

1. Pending the Tribunal dealing with the question of confidentiality, no document listed in an affidavit of documents filed by a party in these proceedings shall be disclosed except in accordance with this order.
  
- 2.(1) Each party shall provide a copy of all the non-privileged documents listed in its affidavit of documents ("protected documents") to counsel for each other party requesting a copy.
  
- (2) Counsel for a party may disclose the protected documents to independent experts retained by the parties or their counsel who meet the requirements set out in paragraph 3 of this order and to the Director and to the members of the Director's staff and of counsel's firm directly involved in this application.
  
3. 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 substantially in the form used in previous Tribunal confidentiality orders or as otherwise agreed by counsel.

4. If a party receives written notice from a person who has signed a confidentiality agreement pursuant to this order that the person is required by law to disclose a protected document, the party shall give prompt written notice to the party listing the document in its affidavit of documents so that the party may seek a protective order or other appropriate remedy.

5. For greater certainty, all persons, including the Director and his staff, who obtain access to protected documents and information in the course of discovery in this application are subject to an implied undertaking to use the protected documents and information for the purposes of the application only.

6.(1) Subject to subparagraph (2), no copies of any protected document shall be made without the consent of the party listing the document in its affidavit of documents.

(2) Counsel for a party may, and the Director and his staff may, make such copies as they require in connection with these proceedings. Counsel for a party may make one copy of a protected document available to each independent expert retained by or on behalf of that party who meets the requirements of paragraph 3.

7. To the extent that it is within counsel's control, counsel shall take reasonable steps to ensure that duplication of protected documents and distribution of and access to copies of protected documents occur only in accordance with this order.

8. Upon completion or final disposition of these proceedings and any appeals, all protected documents and any copies of protected documents disclosed in accordance with this order, with the exception of protected documents in the possession of the Director and his staff, shall be returned to the party that listed the documents in its affidavit unless the documents have become public or the party that listed the documents states, in writing, that they may be disposed of in some other manner. The protected documents and any copies in the possession of the Director and his staff shall be dealt with as directed by the Tribunal.

9. This order is subject to further direction of the Tribunal.

DATED at Ottawa, this 16<sup>th</sup> day of May, 1996.

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

(s) Marshall Rothstein  
Marshall Rothstein