23 We come next to the submission that the conviction should have been quashed on the basis that there was no evidence to support the conclusion that the respondent was conducting an undertaking within the meaning of that term in reg. 7(1)(b) of the Management of Health and Safety at Work Regulations. That was the second question posed in the case. Mr. Triay submitted that the undertaking was not that of the respondent; at best it was that of the owner of Montagu Crescent. We reject that submission. The respondent was the person who undertook to provide the safety equipment around Montagu Crescent. The respondent was the undertaking that carried out the erection of the fence and subsequently the scaffolding.

24 We allow the appeal and restore the conviction.

Appeal allowed.

[2010–12 Gib LR 160]

TOOMEY, LUCAS AND SPARK v. LOUIS CRUISES LIMITED AND FOUR OTHERS

SUPREME COURT (Prescott, J.): April 7th, 2011

Civil Procedure—service of process—extension of time—second extensions—no second extension of time to obtain address for service of claim form if claimant not proactive in finding addresses, e.g. continuing to request addresses from known defendant and not searching Companies Register—unco-operative defendants no excuse for inactivity

The claimants sought damages in contract and tort in respect of the first claimant's injury on holiday aboard a cruise ship.

The claimants had bought a cruise holiday aboard the *Aquamarine* from the second defendant travel agents, during which the first claimant sustained a leg injury in June 2005. A representative for the first defendant represented that he was responsible for dealing with insurance and claims in respect of the accident. In August 2007, solicitors for the first defendant raised a jurisdictional challenge to the claim under the Athens Convention 1974. Having been led to believe that the first defendant was, therefore, responsible for the injury, the claimants issued their claim form against it in May 2008. However, when a photocopy of the claim form was served on its solicitors, the solicitors informed the claimants that they were not instructed to accept service and that the first defendant did not own, manage, or operate the ship. The claim form was amended to include four

other defendant companies, including the ship's commercial manager, owner and operator and the claimants repeatedly, but without success, requested their addresses from the first defendant's solicitors, who refused to co-operate. The defendants were, in fact, inter-related companies that were attempting to avoid liability, for which the first defendant's solicitors were eventually instructed. The claimants already knew the addresses of the fourth and fifth defendants from July 2008 but did not search the Companies Register for the other defendants' addresses until January 2009.

Between October 2008 and April 2009, the claimants applied for and obtained four extensions of time for service under the CPR, r.7.6(2). The first and second applications, in 2008, had been to obtain proper addresses for service and counsel's opinion on the jurisdictional challenge to the claim. Counsel's opinion had first been sought in November 2008, without success. Two further extensions were granted because of the difficulties in serving out of the jurisdiction under the Service Regulation (EC) No. 1348/2000EU. Much of the first extension of time was spent trying to obtain after-the-event insurance rather than obtaining proper addresses for service and no further requests for that information were made to the first defendant's solicitors.

The first, third, fourth and fifth defendants, within 14 days of filing their acknowledgement of service, pursuant to the CPR, r.11, challenged the court's jurisdiction to hear the claim, seeking rulings that (a) the court set aside the claim form and discharge all orders pertaining to it, on the ground that the second and subsequent extensions of time for service ought not to have been granted; (b) the court had no jurisdiction to hear the claim because it had not been brought under the Athens Convention 1974; and (c) the claim form should be set aside on the ground that service had been irregular.

The defendants submitted that the court had no jurisdiction to hear the case because (a) they had had no legal obligation to give addresses to the claimants for service, who already knew the addresses of the fourth and fifth defendants and had failed to search the Companies Register for those of the other defendants; (b) the claimants had known about the potential jurisdictional challenge to the claim in August 2007 and should immediately have sought counsel's opinion rather than waiting until November 2008; (c) the claimants had failed to demonstrate a good reason for the second extension of time and where proceedings were commenced towards the end of the limitation period and a second extension of time was sought, the balance of justice shifted in favour of defendants, so that a further extension became harder for the claimant to justify; and (d) the claim had been brought outside the two-year limitation period specified in the Athens Convention 1974, and service had been irregular.

The claimants submitted in reply that (a) the second extension had been justified by the defendants' delay and dilatory conduct in failing to provide addresses for service; (b) counsel's opinion on the jurisdiction point was necessary and the delay in first requesting it had not been unreasonable;

(c) a good reason for a second extension of time under the CPR, r.7.6(2) was not required, only a reason that enabled the court to act justly, and that the proceedings were commenced towards the end of the limitation period, or that a second extension of time was being considered, should not shift the balance of justice in favour of the defendant; and (d) the Athens Convention 1974 did not apply and service had not been irregular.

Held, setting aside the claim form for want of jurisdiction:

(1) The second extension of time had not been justified by the need to obtain a proper address for service. Despite the unco-operative behaviour of the defendants, it remained incumbent upon the claimants to search proactively for the proper addresses for service. They had made no further requests for the defendants' addresses, who in turn had no legal obligation to provide them to the claimants. The claimants could have found the addresses sooner by searching the Companies Register and the addresses of the fourth and fifth defendants were already known to them in July 2008. Moreover, a large portion of the first time extension had, in fact, been used by the claimants to try and obtain after-the-event insurance, rather than in obtaining addresses for service. Had the second application for an extension of time been fully argued at the time it was granted, it would have been refused (paras. 39–43).

(2) Further, the second extension had not been justified by the need to obtain counsel's opinion. The claimants' solicitors had been aware of the potential jurisdictional challenge to their claim from August 2007 and could immediately have sought counsel's opinion, rather than waiting until November 2008. Accordingly, the second extension of time, from December 2008, had not been justified by the need to obtain counsel's opinion, which should have been requested sooner (paras. 43–44).

(3) The approach of the court to applications for extensions of time for service under the CPR, r.7.6(2) should be to consider, pursuant to the overriding objective, what was necessary to deal justly with the case. Although a claimant was no longer required to give a good reason for an extension of time, he was required to provide reasons that enabled the court to act justly. If, as in the present case, proceedings were commenced towards the end of the limitation period, it would then become more imperative that the claimant progress speedily with service. In the case of second applications for an extension of time, the balance of justice would shift in favour of defendants, so that granting a further extension of time would be harder for the claimant to justify (paras. 43–48).

(4) As the second extension of time for service ought not have been granted, the court had no jurisdiction to hear the claim and it was unnecessary to deal with the further applications for a declaration that the court had no jurisdiction to hear the claim because it had not been brought under the Athens Convention 1974 or that the claim form should be set aside on the ground that service had been irregular. However, if the two-year limitation period for actions under the Athens Convention were

applicable, it would reinforce the setting aside of the claim form (paras. 49–51).

Cases cited:
(1) *Hashtroodi* v. *Hancock*, [2004] 1 W.L.R. 3206; [2004] 3 All E.R. 530; [2004] EWCA Civ 652, followed.
(2) *Vinos* v. *Marks & Spencer plc*, [2001] 3 All E.R. 784; [2001] C.P. Rep. 12, *dicta* of May, L.J. followed.

Legislation construed:
Civil Procedure Rules (S.I. 1998/3132), r.7.6(2):
"The general rule is that an application to extend the time for compliance with rule 7.5 must be made—
(a) within the period specified by rule 7.5; or
(b) where an order has been made under this rule, within the period for service specified by that order."
r.11:"(1) A defendant who wishes to—
(a) dispute the court's jurisdiction to try the claim; or
(b) argue that the court should not exercise its jurisdiction
may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have . . .
(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—
(a) setting aside the claim form;
(b) setting aside service of the claim form;
(c) discharging any order made before the claim was commenced or before the claim form was served . . ."

O. Smith for the claimants;
S.P. Triay for the first, third, fourth and fifth defendants;
The second defendant did not appear and was not represented.

1 **PRESCOTT, J.:**

General background

The first claimant is a 92-year-old pensioner. The second claimant is the daughter of the first claimant. The third claimant is a close friend of the first claimant. All three claimants are resident in Gibraltar. Some time in June 2005 in Gibraltar, the claimants bought a seven-day cruise holiday aboard the vessel *Aquamarine* ("the ship") from the second defendants, a travel agent operating in Gibraltar. In return for a payment of £600 each, they received a receipt, an entry pass to the ship and a cruise brochure detailing, *inter alia*, the terms and conditions.

2 The first defendant is a company incorporated in Cyprus, and does not own, operate or manage the ship. The second defendant is unrepresented in these proceedings. The third defendant is a company incorporated in the Marshall Islands with offices in Greece and is the commercial manager of the ship. The fourth defendant is a company incorporated in Cyprus and is the owner of the ship. The fifth defendant is a company incorporated in Cyprus, trading by the name of Louis Cruise Lines, and is the manager and operator of the ship.

3 On July 18th, 2005, the first claimant suffered an injury to her leg whilst on board ship, as a result of which she required medical treatment of a type not available on board and all three claimants disembarked in Mallorca, so that the first claimant could be hospitalized. On May 8th, 2008, all three claimants issued a claim form, initially against the first defendant as sole defendant, claiming damages for loss of enjoyment arising from breach of contract and in addition the first claimant claimed damages for loss suffered as a result of personal injury sustained on board ship. On July 28th, 2008, the claim form was amended to include all the defendants.

The present application

4 By this application the first, third, fourth and fifth defendants ("the defendants") seek an order pursuant to the Civil Procedure Rules, r.11 for a declaration that—

> "(a) the court should set aside the claim form and discharge all orders made before the claim form was issued or served on the grounds that the extensions of time for serving the claim form granted by the court ought not to have been granted;
>
> (b) the court has no jurisdiction in respect of the first claimant's claim because it has not been brought in accordance with the provisions of the Athens Convention relating to the carriage of passengers and their luggage by sea; and
>
> (c) the court should set aside the claim form and discharge all orders made before the claim form was issued or served on the ground that service of the claim form has been irregular and hence invalid."

The issues

Extension of the claim form

5 The first issue which calls for determination is whether the extensions to the claim form were properly granted. The claim form was first issued on May 8th, 2008. Thereafter, pursuant to the CPR, r.7.5(1), there was a period of four months allowed for service if it were to be within the

jurisdiction, or six months if it were to be out of the jurisdiction (the CPR, r.7.5(2)). On May 19th, 2008, the claimants served Triay & Triay as solicitors for the then sole defendant, Louis Cruises, with a photocopy of the issued claim form. On the premise that service was to be out of the jurisdiction, the claimants had until November 8th, 2008 to effect good service.

Extension No. 1

6 By application on October 23rd, 2008, pursuant to the CPR, r.7.6(2), the claimants sought and were granted an extension of the period of time for service of the claim form to January 7th, 2009. The application was made on the papers without notice and within the initial period of six months allowed for service. The reasons relied upon for seeking this application were two-fold:

(a) the difficulty in establishing the correct address for service outside the jurisdiction; and

(b) the necessity of obtaining an opinion from counsel.

Extension No. 2

7 By application on December 23rd, 2008, pursuant to the CPR, r.7.6(2), the claimants sought and were granted a further extension of the period of time for service of the claim form to March 7th, 2009. The application was made on the papers without notice, and within the initial extension period granted by the court upon the application of October 23rd. The reasons relied upon for this second application were identical to the first.

Extension No. 3

8 By application on February 27th, 2009, pursuant to the CPR, r.7.6(2), the claimants sought and were granted a further extension of the period of time for service of the claim form to April 7th, 2009. The application was made on the papers without notice and within the second extension period granted by the court upon the application of December 23rd, 2008. The reasons relied upon for this third application were that more time for service was required because the claimants needed to rely on the designated agencies under Service Regulation (EC) No. 1348/2000 for service and this could take up to one month.

9 In addition, pursuant to the CPR, r.6.15, the claimants applied for an order that the claim form and particulars of claim for the first, third, fourth and fifth defendants be served at the office address of the first defendant.

Extension No. 4

10 By application on March 31st, 2009, pursuant to the CPR, r.7.6(2), the claimants sought, and on April 3rd, 2009 were granted, a further extension of the period of time for service of the claim form to May 7th, 2009. The application was made on the papers without notice and within the third extension period granted by the court upon the application of February 27th, 2009. The reason relied upon in support of this fourth application was that the claimants had used their best endeavours to serve in accordance with Service Regulation (EC) No. 1348/2000 by the appropriate transmitting agencies in Cyprus and Greece, but that those agencies had apparently failed to carry out their duty to effect service.

11 In addition, pursuant to the CPR, r.6.15, the claimants applied for an order that the claim form and particulars of claim for the first, third, fourth and fifth defendants be served at the office address of the first defendant by registered post.

12 The defendants accept that all applications for extensions of time for service were properly made under the CPR, r.7.6(2), given that they were made within the legitimate periods of time allowed for service.

13 The defendants advance the proposition that the new Civil Procedure Rules are intended to ensure strict adherence to the rules on time limits in civil litigation. Essentially they say there has to be a very good reason, absent in the present case, to depart from the rules and grant an extension of time, more so when the extensions granted have been fourfold (see *Hashtroodi* v. *Hancock* (1) ([2004] 1 W.L.R. 3206, at para. 20, *per* Dyson, L.J.)):

> "If the reason why the claimant has not served the claim form within the specified period is that he (or his legal representative) simply overlooked the matter, that will be strong reason for the court refusing to grant an extension of time for service. One of the important aims of the Woolf reforms was to introduce more discipline into the conduct of civil litigation. One of the ways of achieving this is to insist that time limits be adhered to unless there is good reason for a departure. In the *Biguzzi* case [1999] 1 W.L.R. 1926 Lord Woolf, M.R. said at p.1933: 'If the court were to ignore delays which occur then undoubtedly there will be a return to the previous culture of regarding time limits as being unimportant.'"

14 I am in no doubt that it is incumbent upon the court to give due weight to the importance of adherence to time limits imposed by the CPR. If time limits and the failure to observe them were dealt with casually by the courts, a vital part of the Woolf reforms would be passed over.

15 The claimants argue that their reasons for requesting extensions of time for service are so sound as to make them legitimate and necessary. In

order to determine whether this is so, it is helpful to set out a chronology of events leading up to and surrounding the issue and service of the claim form.

Events leading up to the issue of the claim form

16 The accident occurred on July 18th, 2005. On July 25th, 2005, whilst the first claimant was in hospital in Mallorca, the second claimant boarded the ship when it docked in Mallorca. She was taken to the second officer's lounge where she had a telephone conference with a Mr. Pambos Skapolis, who assured her that she would be looked after and all necessary arrangements made through their representative in Mallorca. By letter of July 14th, 2008 to Triay Stagnetto Neish, Mr. Skapolis describes himself as the "Insurances and Claims Manager of Louis Cruise Lines." His precise role remains unclear but, whatever it was, from the documentary evidence he certainly represented himself to be the person who assumed responsibility and control of the situation; it is not surprising, therefore, that as a consequence the claimants should have relied upon that representation.

17 On September 22nd, 2005, Mr. Smith for the claimants telephoned Mr. Skapolis and identified himself as the claimants' legal representative, asking for a contact telephone number and fax, which were duly provided.

18 On October 18th, 2005, Mr. Smith wrote to Mr. Skapolis setting out brief details of the claim against them as well as quantum. At this stage the only defendant identified was Louis Cruises.

19 On October 31st, 2005, Triay & Triay telephoned TSN, with the assurance that they would shortly provide a response to the letter of October 18th, 2005, to Mr. Skapolis. However, in view of the fact that no reply was forthcoming, TSN wrote to Triay & Triay on three further occasions chasing a reply, namely on November 30th, 2005, on January 5th, 2006, and on February 3rd, 2006. This last letter prompted what I would term a holding reply from Triay & Triay on February 17th, 2006 that: "We confirm we shall be reverting shortly on behalf of our clients."

20 Ten days later, Triay & Triay had still not replied and TSN wrote again, for a fourth time, on March 27th, 2006, seeking the promised and by now elusory reply. Curiously in the chronology exhibited at SPT1, attached to the witness statement of Simon Peter Triay of June 11th, 2009, there is no reference to the four chaser letters sent by TSN. In any event, it appears that TSN's indication under cover of their letter of March 27th, 2006 that failure to reply would leave them "no choice but to proceed with the prosecution of this claim," had the desired effect and Triay & Triay responded the next day, on March 28th. They asked to be provided with detailed information as regards quantum, namely:

"(a) copies of the invoices in respect of the hospital charges in Clinica Juaneda;

(b) copies of invoices in respect of food, *etc*. in Mallorca.

(c) copies of invoices in respect of the nursing and physiotherapy from August 1st, 2005 to September 14th, 2005;

(d) copies of any ongoing physiotherapy;

(e) copies of invoices in respect of petrol and tolls in respect of attendance for physiotherapy;

(f) particulars of the new disability clothing and copy of invoices for any additional clothing which has been purchased;

(g) your assessment of damage in respect of pain and suffering and loss of amenity;

(h) your assessment of contingent expenses and full particulars thereof including any supporting evidence;

(i) full particulars of future medical care and supporting evidence in support thereof."

21 Although this request was made subject to the proviso that it was "without prejudice to any of our client's rights or submission to the jurisdiction of Gibraltar," the fact that quantum was addressed seemingly before liability, could have quite reasonably given the claimants the impression that a practical and commercial approach was being adopted. Certainly I agree with Mr. Smith's skeleton argument that "the claimants first wrote to the defendant in October 2005. Thereafter, Triay & Triay dealt with the claim in a manner which suggested that they acted for the correct legal entity or entities."

22 On May 15th, 2007, the claimants sent a detailed reply to Triay & Triay. I take the defendants' point that the fact that the claimants took 14 months to reply appears dilatory. However, when it is considered that the defendants themselves took 5 months to reply to the claimant's letter of October 18th, 2005 and that reply consisted merely of a request for further information, then it does not seem so unreasonable that the claimants (the principal one of whom is 92 years old) should take 14 months to prepare a fully-particularized assessment of quantum running into 14 pages. It is noteworthy that the defendants only exhibited the first 2 of those 14 pages in their bundle of documents.

23 That the defendants should take issue with the delay is all the more surprising given the fact that despite two chasers from the claimants, they did not reply to the letter of May 15th, 2007 until three months later, on August 9th, 2007. In the first of these chaser letters sent by the claimants, that of July 13th, 2007, the claimants advised that their letter of May 15th,

2007 should be regarded as their letter before action. I do not comment on that at this juncture save to say that the letter went unanswered. In the second chaser letter of August 2nd, 2007, the claimants indicated that they would issue and serve proceedings, unless the defendants responded within 14 days. A response came on August 9th, 2007, challenging the jurisdiction of the Gibraltar courts on the basis that, pursuant to cl. 14 of the Conditions and Regulations for Carriage of Passengers and their Luggage, any action against the carrier, its employees, or the vessel was to be brought in the High Court of England and Wales unless there was agreement in writing to the contrary.

24 On September 19th, 2007, the claimants wrote to the defendants' solicitors with their representations on jurisdiction. It is not in dispute that on or about October 31st, 2007, the defendants' solicitors informed the claimants' solicitors over the telephone that they were not instructed to reply on the issue of quantum detailed under cover of the letter of May 15th, 2007. There was no further communication from the claimants until December 3rd, 2007, requesting a copy of the Conditions and Regulations for the Carriage of Passengers and their Luggage. Despite the claimants' assertion that those terms and conditions were first requested in their letter to Triay & Triay of August 19th, 2007, I can find no reference in that letter to such a request, which first appears to have been made (in writing at least) on December 3rd, 2007. The following day, on December 4th, the defendants' solicitors sent to the claimant solicitors copies of the terms and conditions requested. Five months later on May 8th, 2008, the claim form was issued, against Louis Cruises Ltd. as sole defendant.

Events post-issue of the claim form

25 A photocopy of the claim form was served on Triay & Triay as solicitors for the then sole defendant on May 19th, 2008. On May 20th, it was returned to the claimants on the basis that Triay & Triay were not instructed to accept service. Then, by letter of May 23rd, 2008, Triay & Triay confirmed that they would seek instructions on accepting service, albeit without surrendering to the jurisdiction of Gibraltar. On June 4th, 2008, Triay & Triay confirmed they were not instructed to accept service. In his witness statement of January 12th, 2010, Mr. Smith states:

> "It is worthwhile noting that Triay & Triay did not raise any similar objection when they were served with our letter of May 15th, 2007, or when they were notified on July 13th, 2007 that they should regard it as our client's letter before action, or indeed in any other correspondence with us. One would have thought that if Triay & Triay were not in fact instructed to accept service of claim documents that the issue of whether or not they were so instructed would have arisen on July 13th, 2007 when we effectively served them with the letter before action."

26 Whilst I am not persuaded that the letter of July 13th, 2007 could retrospectively convert the letter of May 15th, 2007 into a letter before action, I do have some sympathy with Mr. Smith's submission. From receipt of the first communication from TSN, Triay & Triay dealt with the claim in a way which suggested they were acting under instructions from Louis Cruises, although it is noteworthy that Triay & Triay were served with a photocopy of the claim form and not the original, which suggests that the claimants knew or suspected that Triay & Triay was not or might not be the appropriate recipient for service. I therefore treat with some caution the claimants' contention that they were not aware until June 4th, 2008 that service out of the jurisdiction was required. Aside from failing to serve Triay & Triay with the original claim form, on the face of it, given that the defendant was a corporate entity resident outside the jurisdiction, it is not unreasonable to suppose that service out of the jurisdiction would have been in the claimants' minds from the inception. That said, the failure of Triay & Triay to accept service in May 2008, having dealt with the claim from as far back as October 2005, is surprising, and whilst not a criticism of Triay & Triay, who were bound to act upon instructions received, it marked the start of an arduous process for the claimants in attempting to identify the correct defendants. By letter of June 23rd, 2008, Triay & Triay confirmed that they were not instructed by Louis Cruises Ltd. and that the owners were a company called Bregenz Shipping Ltd. From this letter it is also apparent that there was a mistake with the nomenclature in the claim form in that the defendant should have read Louis Hellenic Cruises and not Louis Cruises. Consequently the claimants added all those corporate entities which could be legitimate defendants to the claim form and an amended version to reflect this was filed on July 28th, 2008.

27 It is evident from the correspondence that, between May 2008 and February 2009, the claimants repeatedly requested that the defendants instruct solicitors to accept service and/or identify the appropriate legal entity or entities to be sued as defendants.

28 The defendants did not do so. Whilst it is entirely a matter for them whether they instruct solicitors, and failure to do so is beyond reproach, that is not so with their failure to identify appropriate defendants. Silence on this issue inevitably obstructs, or at the very best delays, the legal process and could be perceived to be an attempt to use corporate muscle to take advantage of a claimant in a far less favourable financial situation. Seven days after the accident, on July 25th, 2005, Mr. Skapolis represented himself to the claimants as the person who had taken responsibility on behalf of the cruise ship following the injury suffered. He described himself as the Insurance and Claims Manager for Louis Cruise Lines. Three years on, by letter of July 14th, 2008, he told the claimants:

> "We write to acknowledge receipt of your fax dated July 4th, 2008 which is addressed to Louis Cruise Lines. Please note that this company neither owns nor operates nor manages the '*Aquamarine*' cruise vessel. This company should not, therefore, be named as a defendant to the proceedings."

29 That it should have taken Mr. Skapolis three years to begin to define the role of Louis Cruise Lines is dilatory and evasive. He did not suggest which company should be named as defendant and went on to say:

> "We note that you seek to bring a claim against the owners Bregenz Shipping Co. Ltd. and the technical managers Louis Ship Management Ltd. The owners are not in Cyprus and therefore service will need to take place at the registered office."

30 He did not give details of the registered office, which it might be supposed could have been easily done, at least in the case of Louis Cruise Lines, given that the letter headed paper of Louis Cruise Lines bears a footnote caption: "Louis Cruise Lines is a trading name of Louis Ship Management Ltd."

31 Having considered the evidence before me, there appears to be merit in Mr. Smith's submission that the defendants are all interrelated companies forming part of the same group of companies. This is further borne out by the fact that Triay & Triay are in fact now instructed by the first, third, fourth and fifth defendants. Further, given that to date none of them has identified itself as the correct defendant, there appears to be further merit in the submission that the defendants were attempting to hide behind each other in an attempt to avoid identification as defendants. Mr. Smith argues this results in a lack of compliance with their obligations under the CPR, in furthering the overriding objective.

32 It is clear that the burden of giving effect to the overriding objective lies with the court. No such direct duty is imposed on the parties, but they are duty bound to help the court further the overriding objective, and the behaviour of the defendants does nothing to assist the furtherance of the objective. That said, the vital consideration is whether such behaviour has prevented the claimants from progressing their claim, with the result that their applications for extensions of time within which to serve the claim form are necessary or, at the very least, justifiable.

33 I remind myself that the first time period for service out of the jurisdiction was due to expire on November 8th, 2008. On July 4th, 2008, TSN put Louis Cruises on notice that—

> "in the circumstances, we are proceeding to serve you directly with the claim form and particulars of claim in this matter. Full service will be effected at your registered office within 21 days of this letter

> . . . If you do not respond within 14 days we will be forced to incur substantial costs in serving you."

34 Louis Cruises responded to the effect that Louis Cruise Lines were not the correct defendants, that the owners, Bregenz Shipping Co. Ltd., would need to be served at their registered office and that in any event the claim was time barred.

35 It is therefore apparent from July 2008 that (a) Louis Cruises were claiming they were not the correct defendants; and (b) an indication was given that the owner would need to be served at its registered office. It was open to TSN to accept or reject the position as at (a) above and clear from (b) that they were on notice that service (on the owner at least) would have to be effected at the registered office. Additionally, it would appear that the claimants were aware of the registered address of the owners, the fourth defendant, and that of the fifth defendant, which appears to have been correctly stated by them in the claim form which they successfully sought to amend on July 28th, 2008, notwithstanding that they did not proceed to service, but instead wrote a six-page letter dated July 28th, 2008 to Louis Cruises dealing with the chronology of events, service, jurisdiction, limitation and costs, and stating therein that they "would therefore suggest that you identify the correct defendant, failing which we will have no choice but to include all those parties currently named as defendants and serve them."

36 Although the claimants did not effect service as indicated or at all, and despite the fact that at this point in time they still had three full months in which to effect service, the foregoing analysis of their attempts to obtain from the defendants an address for service adds considerable credence to their argument that they encountered protracted difficulties in identifying the correct defendants and obtaining the correct address for service.

37 Mr. Triay, relying on *Hashtroodi* v. *Hancock* (1), argues that if there is a very good reason for the failure to serve the claim form within the time specified then it is appropriate that an extension be granted. However, it is clear from the CPR, r.7.6(2) that the court can allow an application to extend time without the necessity of first being satisfied that the claimant has taken all reasonable steps to comply with his obligations for effecting service pursuant to the CPR, r.7.5, unlike the CPR, r.7.6(3) where an extension can only be granted if the court is satisfied of three grounds detailed at sub-paras. (a), (b) and (c). Dyson, L.J. distinguished the CPR, r.7.6(2) and (3) thus ([2004] 1 W.L.R. 3206, at paras. 17–18):

> "The contrast between rule 7.6(2) and rule 7.6(3) is striking. Rule 7.6(3) empowers the court to grant an extension of time to a claimant who applies after the end of the specified period only if the conditions stated in paragraph (a) or (b) and (c) are satisfied. The

> reference to conditions in rule 7.6(3), and the absence of any such reference in rule 7.6(2) must have been deliberate . . . it cannot have been intended that rule 7.6(2) should be construed as being subject to a condition that a 'good reason' must be shown for failure to serve within the specified period, or indeed subject to any implied condition.
>
> In the absence of any such condition, therefore, the power must be exercised in accordance with the overriding objective: see CPR r.1.2(b). What does that mean in practice? We have no doubt that it will always be *relevant* for the court to determine and evaluate the reason why the claimant did not serve the claim form within the specified period. This has nothing to do with the fact that under the former procedural code, the threshold requirement was that the plaintiff should show good reason. It is because the overriding objective is that of enabling the court to deal with cases 'justly,' and it is not possible to deal with an application for an extension of time under CPR r.7.6(2) justly without knowing why the claimant has failed to serve the claim form within the specified period. As a matter of common sense, the court will always want to know why the claim form was not served within the specified period."

38 In the present case the reason for failure to serve has been identified and explained, and it is the high onus placed upon the court to deal with cases justly in pursuance of the overriding objective which persuades me not to interfere with the decision to grant the first extension of time. Whilst requiring time to obtain an opinion from counsel may not of itself merit the grant of an extension, when coupled with difficulties in identifying the defendants and obtaining addresses for service from uncooperative defendants, it does.

39 The time for service having been extended to January 7th, 2009, I now turn to consider the second application for extension. I remind myself that from July 2008 (the date the claimants had knowledge that they would need to serve all defendants) to the new time for service (January 7th, 2009) amounted to a period of six months and the reasons given for the second application were identical to the first: (a) difficulty in obtaining addresses for service; and (b) the necessity of obtaining counsel's advice.

40 In relation to (a), no details have been provided as to what difficulties were encountered other than those already relied on for the purposes of the first application, that of the defendants' unwillingness to reveal addresses. From the witness statement of Mr. Smith and the correspondence bundle, it is clear that in the period from the first application to the second (October 23rd, 2008 to December 23rd, 2008), no requests were directed at the defendants or potential defendants for addresses. Indeed there is only one letter, and that is directed to Mr. Skapolis on October

30th, 2008 putting him on notice of the two-month extension. There is nothing to suggest that in this period (or indeed from May 2008) the claimants made any attempt to ascertain the registered address of the companies through a search of public documents, company registries and the like, so that whilst it is apparent that the claimants encountered difficulties in relation to service they did not explore all the avenues, and possibly the most obvious avenue open to them to attempt to obtain an address for service. It being quite obvious that the defendants were being unco-operative in this respect, it was incumbent upon the claimants to be proactive in their attempt to identify the registered addresses. Despite there being justification in the criticism levied against the defendants that they were being unco-operative, there is no legal obligation which requires them to provide a claimant with an address for service and given the fact that all defendants are corporate entities, a search of the relevant registry of companies was the obvious first step, not forgetting that the address for the fourth and fifth defendants was known to the claimants in July 2008. Rather than search for registered addresses (which action appears not to have been embarked upon until January 2009) the claimants seemed instead to focus a large proportion of their time on attempting to secure after-the-event insurance.

41 According to Mr. Smith's witness statement of June 17th, 2010, their first attempts in this respect began on or around June 4th, 2008:

> "On June 4th, 2008, Triay & Triay confirmed that they had not been instructed to accept proceedings. In the circumstances the claimants instructed me to proceed to serve proceedings directly upon the defendants.
>
> The prospect of serving outside the jurisdiction raised the prospect that the claimants would face very substantial expense as a result. It was also clear that the defendants were intending to contest jurisdiction and that the claimants would have to incur very substantial expense if they wanted to pursue the claim by way of substantial preliminary applications, translation of documents, possible payments of process servers and so forth. The claimants themselves, and I on their behalf, began to investigate what after-the-event insurance policies might be available to them to protect the claimants against adverse costs orders should any be made."

42 Although that may give the initial impression that the letter of June 4th, 2008 introduced the news that jurisdiction would be challenged, the claimants were in fact made aware of jurisdiction as an issue by letter of August 9th, 2007, so that they could have begun attempting to secure counsel's opinion for after-the-event insurance over a year earlier. Certainly evident from TSN's letter to Triay & Triay of September 19th, 2007

is that at that date the claimants had already turned their minds to jurisdiction:

> "As to jurisdiction we note your comments but do not agree. No doubt you are familiar with EU Regulation 44/2001, in particular s.4, 'Jurisdiction Over Consumer Contracts,' and you have advised your client of the Regulation's effect on cl. 14 of the purported conditions and regulations to which you refer."

43 Also apparent from Mr. Smith's witness statement of June 17th, 2010, is that in the run up to the first application for an extension, considerable effort was spent on attempting to secure after-the-event insurance as well as addresses. But it is the period of October 23rd, 2008 to December 23rd, 2008, *i.e.* the run up to the second application, which I need to consider now in order to determine whether the second grant was justified. During this period (apart from the one letter of October 30th, 2008 to Mr. Skapolis) the focus appears to have been centred on obtaining an opinion from counsel:

> "Before making the application for an extension of time I made enquiries *via* a colleague in chambers as to the suitability of Keiron Beale of Matrix Chambers. During the first two weeks of November 2008, I corresponded with the clerk of Matrix Chambers, Sean Collum, as to the possibility of counsel undertaking an opinion. The Matrix clerk eventually replied after some delay on November 19th, 2008 confirming that whereas Keiron was not able to undertake the work, Professor Aileen McColgan would be able to complete an advice within the claimant's budget by mid-December 2008.
>
> On December 16th, 2008, I was contacted by the clerk at Matrix Chambers who informed me that having reviewed the papers counsel felt she was not able to provide the advice and that they were unable to offer any alternative counsel to undertake the advice. I took instructions on the matter. *I had no choice but to make a further application for an extension of time to the Supreme Court on December 23rd, 2008*."

44 The italicized section belies the suggestion that the principal motivation behind the second application for extension was the claimants' unsuccessful attempts to obtain addresses. More probable a motivation for the request for extension was the absence of counsel's advice and the claimants' reluctance at that stage to proceed without it. I cannot sanction that as a justifiable reason for the grant of a second extension, particularly when the claimants were alive to jurisdiction as an issue in dispute back in August 2007 and particularly when, at this time, appropriate efforts to obtain addresses were not being vigorously pursued.

45 The forgiving nature of the CPR, r.7.6(2) cannot have been intended to allow repeated extensions to give counsel time to pursue matters which could have been addressed earlier, and whilst r.7.6(2) is not subject to a condition that good reason be shown, there must I think be a reason put before the court which will justify the need for an extension. In the absence of such a reason, applicants would be entitled to, and expect to get, any and every extension requested under r.7.6(2) and that would make a complete mockery of the time limits imposed by the CPR and indeed would make them redundant. As put by Dyson L.J. in *Hashtroodi* v. *Hancock* (1) ([2004] 1 W.L.R. 3206, at para. 18):

> "It will always be *relevant* for the court to determine and evaluate the reason why the claimant did not serve the claim form within the specified period. This has nothing to do with the fact that under the former procedural code, the threshold requirement was that the plaintiff should show good reason. It is because the overriding objective is that of enabling the court to deal with cases 'justly,' and it is not possible to deal with an application for an extension of time under CPR r.7.6(2) justly without knowing why the claimant has failed to serve the claim form within the specified period."

46 To quote May, L.J. in *Vinos* v. *Marks & Spencer plc* (2) ([2001] 3 All E.R. 784, at para. 20):

> "If you then look up from the wording of the rules and at a broader horizon, one of the main aims of the CPR and their overriding objective is that civil litigation should be undertaken and pursued with proper expedition . . . It is unsatisfactory with a personal injury claim to allow almost three years to elapse and to start proceedings at the very last moment. If you do, it is in my judgment generally in accordance with the overriding objective that you should be required to progress the proceedings speedily and within the time limits. Four months is in most cases more than adequate for serving a claim form. There is nothing unjust in a system which says that, if you leave issuing proceedings to the last moment and then do not comply with this particular time requirement and do not satisfy the conditions in r.7.6(3), your claim is lost and a new claim will be statute-barred. You have had three years and four months to get things in order."

47 At the stage of the second application, consideration, *inter alia*, of the overriding objective shifts in favour of the defendants. It is true that the comments above relate specifically to r.7.6(3), but in my view they are equally applicable to the present case. The claimants issued proceedings two months short of three years from when the injury occurred. Thereafter, in addition to the six-month period allowed for service under the rules, they sought and were granted a further two months. Then came the second request.

48 For these reasons, the grant of a second extension cannot be justified and in all probability would not have been granted had the matter been fully argued before the court.

49 Mr. Triay further relies upon the applicability of the Athens Convention, 1974, and in particular art. 16, which provides that any action for damages arising out of death of or personal injury to a passenger or for loss of or damage to luggage shall be time-barred after two years. He argues that the case against allowing the extensions is strengthened if the period of limitation had expired by the time that the proceedings were issued and when the application was made, so that by seeking to extend the claim form after expiry of the limitation period the claimants are effectively asking the court to disturb a defendant who is entitled to assume that his rights can no longer be disturbed. Certainly if the claimant were found to have made the application for extension outside the relevant limitation period then it would be an even more arduous task to justify the grant of such a request. However, for the purposes of considering the validity of the claim form, I have approached the matter on the basis that the relevant limitation periods are those set out in the Contract and Torts Act 1960, thus starting from the premise that the claim form was issued in time (both in respect of the personal injury claim and the contractual claim) and, notwithstanding, have found that there was no justification for the grant of the second application for extension. In the event that the Athens Convention were found to have applicability, my finding would be reinforced.

50 Having found that there were no grounds for the grant of the second extension, the remaining two applications (for the extensions, the applicability of the Athens Convention and the validity of service) have become redundant.

51 I discharge the three orders made by the court after the order reflecting the successful application of October 23rd, 2008, I declare that the court has no jurisdiction to try this claim and I set aside the claim form.

Orders accordingly.
