

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN

3 Cause No: 278/05  
4 127 &128/06

5  
6 BETWEEN:

7 EMBASSY INVESTMENTS LIMITED

8  
9 PLAINTIFF

10 AND:

- 11 ~~1. ASCOT CORPORATE NAME LIMITED (FOR~~  
12 ~~AND ON BEHALF OF ITSELF AND ALL~~  
13 ~~OTHER MEMBERS OF SYNDICATE 1414 AT~~  
14 ~~LLOYD'S)~~  
15 ~~2. FARADAY CAPITAL LIMITED (FOR AND ON~~  
16 ~~BEHALF OF ITSELF AND ALL OTHER~~  
17 ~~MEMBERS OF SYNDICATE 435 AT~~  
18 ~~LLOYD'S)~~  
19 ~~3. SIMON KING (FOR AND ON BEHALF OF~~  
20 ~~HIMSELF AND ALL OTHER MEMBERS OF~~  
21 ~~SYNDICATE 2010 AT LLOYD'S)~~  
22 ~~4. WÜRTEMBERGISCHE VERSICHERUNG~~  
23 ~~AG~~  
24 ~~5. ECCLESIASTICAL INSURANCE COMPANY~~  
25 ~~LIMITED~~  
26 ~~6. HOUSTON CASUALTY COMPANY~~  
27 ~~7. SIMON WHITE (FOR AND ON BEHALF OF~~  
28 ~~HIMSELF AND ALL OTHER MEMBERS OF~~  
29 ~~SYNDICATE 1200 AT LLOYD'S)~~  
30 ~~8. CHRISTINE DANDRIDGE (FOR AND ON~~  
31 ~~BEHALF OF HERSELF AND ALL OTHER~~  
32 ~~MEMBERS OF SYNDICATE 609 AT~~  
33 ~~LLOYD'S)~~  
34 ~~9. TALBOT 2002 UNDERWRITING CAPITAL~~  
35 ~~LTD (FOR AND ON BEHALF OF ITSELF AND~~  
36 ~~ALL OTHER MEMBERS OF SYNDICATE~~  
37 ~~1183 AT LLOYD'S)~~  
38 ~~10. CATLIN SYNDICATES LTD (FOR AND ON~~  
39 ~~BEHALF OF ITSELF AND ALL OTHER~~  
40 ~~MEMBERS OF SYNDICATE 2003 AT~~  
41 ~~LLOYD'S)~~  
42 ~~11. BRIT UW LTD (FOR AND ON BEHALF OF~~  
43 ~~ITSELF AND ALL OTHER MEMBERS OF~~  
44 ~~SYNDICATE 2987 AT LLOYD'S)~~  
45 ~~12. WELLINGTON UNDERWRITING AGENCY~~  
46 ~~LTD (FOR AND ON BEHALF OF ITSELF AND~~  
47 ~~ALL OTHER MEMBERS OF SYNDICATE~~  
48 ~~2020 AT LLOYD'S)~~

49  
50 DEFENDANTS  
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**CONSOLIDATED WITH**

**Cause No: 98/06**

**BETWEEN:**

**EMBASSY INVESTMENTS LIMITED**

**PLAINTIFF**

**AND:**

- 1. **SIMON WHITE (FOR AND ON BEHALF OF HIMSELF AND ALL OTHER MEMBERS OF SYNDICATE 1200 AT LLOYD’S)**
- 2. **CHRISTINE DANDRIDGE (FOR AND ON BEHALF OF HERSELF AND ALL OTHER MEMBERS OF SYNDICATE 609 AT LLOYD’S)**
- 3. **TALBOT 2002 UNDERWRITING CAPITAL LTD (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 1183 AT LLOYD’S)**
- 4. **CATLIN SYNDICATES LTD (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2003 AT LLOYD’S)**
- 5. **BRIT UW LTD (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2987 AT LLOYD’S)**
- 6. **WELLINGTON UNDERWRITING AGENCY LTD (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2020 AT LLOYD’S)**

**PLAINTIFFS**

**AND:**

- 1. **EMBASSY INVESTMENTS LIMITED**
- 2. **BEACH SUITES INVESTMENTS LIMITED**
- 3. **HYATT INTERNATIONAL CORPORATION**

**DEFENDANTS**

**APPEARANCES:**

**Mr. Jeremy Walton and Ms. Marit Hudson of Appleby for the Sixth Defendant/Applicant**

**Mr. Tim Richards of Mourant Ozannes for the Plaintiff/Respondent**

**Before:**

**Honourable Mr. Justice Charles Quin**

**Heard:**

**2<sup>nd</sup> May 2011**

**JUDGMENT**

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1. On the 3<sup>rd</sup> March 2011 the Sixth Defendant filed an Application pursuant to GCR O.19 r.7 and r.8 and under the inherent jurisdiction of the Court for an Order in the following terms:

- i. That interlocutory judgment on the Sixth Defendant's Counterclaim be entered against the Plaintiff in default of defence to Counterclaim, with damages to be assessed and costs (including the costs of such assessment) to be taxed on an indemnity basis.*
- ii. That damages be assessed before a Judge of the Grand Court, the appointment for such assessment to be made upon the application of the Sixth Defendant to the Clerk of the Court within fourteen (14) days of the date Judgment is entered in accordance with paragraph i., above, (or within such other period as the Court deems appropriate).*
- iii. That at least seven (7) days before the date of such appointment the Sixth Defendant shall serve notice of the same on the Plaintiff.*
- iv. That there should be such further directions in relation to the assessment of damages as the Court deems appropriate.*
- v. That a permanent and final injunction be granted against the Plaintiff forthwith in the following terms – "a permanent injunction is hereby granted to restrain the Plaintiff (Embassy Investments Limited) whether by its directors, officers, servants, agents or otherwise, from howsoever purposing the words complained of by the Sixth Defendant (Houston Casualty Company) in its Counterclaim or any similar words defamatory of the Sixth Defendant.*

- 1           2.       The Sixth Defendant’s application is supported by two affidavits of Mr. Clive  
2           Jackson (“Mr. Jackson”) dated the 4<sup>th</sup> March 2011 and the 15<sup>th</sup> April 2011,  
3           (although I have also read the Fourth Affidavit of Mr. Jackson dated the 17<sup>th</sup>  
4           March 2011) together with affidavits of Mr. Eckerd McField (“Mr.  
5           McField”), dated the 19<sup>th</sup> January 2011 and the 18<sup>th</sup> April 2011.
- 6           3.       On the 28<sup>th</sup> April 2011 Mourant Ozannes filed a Notice of Change of  
7           Attorneys at Law pursuant to GCR O.67 r.1 to appear on behalf of the  
8           Plaintiff.
- 9           4.       The Sixth Defendant’s Counterclaim against the Plaintiff was filed on the 17<sup>th</sup>  
10          December 2010 and claimed for (1) General damages for libel, (2) Exemplary  
11          damages for libel, (3) An injunction to restrain the Plaintiff, whether by its  
12          directors, officers, servants, agents or otherwise, from howsoever publishing  
13          the said or any similar words defamatory of the Sixth Defendant as the  
14          Plaintiff, (4) Costs on an indemnity basis.
- 15          5.       Counsel for the Plaintiff, Mr. Richards, submits that a Defence to the Sixth  
16          Defendant’s Counterclaim was served in draft on the Sixth Defendant’s  
17          attorneys on the 28<sup>th</sup> April 2011, but not filed. Mr. Richards submits that it is  
18          a good Defence, and that he and leading counsel for the Sixth Defendant who  
19          settled the Counterclaim prepared it as quickly as they could and in little more  
20          than a month from receiving the Plaintiff’s instructions in the middle of  
21          March 2011. Mr. Richards maintained that the Defence served on Appleby  
22          was prepared and settled as quickly as it could be in all the circumstances.

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1           10.    On the 5<sup>th</sup> July 2010 the London arbitrator agreed between the parties, Mr.  
2                   Steven Males Q.C., stated at paragraph 15 of his Judgment:

3                                 *“In his words the “major ultimate beneficial owner” of Embassy, and*  
4                                 *also its Senior Vice President is Mr. Asif Bhatia. Mr. Bhatia is also an*  
5                                 *employer of Embassy. The company’s decision making is carried out by*  
6                                 *a board of directors of which he is not a member. In practice, however,*  
7                                 *the directors act upon Mr. Bhatia’s recommendations, at least until there*  
8                                 *is a very strong reason not to do so. So far as the events of this*  
9                                 *arbitration are concerned, the decisions made by the directors and the*  
10                                 *correspondence which they sent were, in every case, made or sent with*  
11                                 *the approval or upon the recommendation of Mr. Bhatia.”*

12

13           11.    There is no evidence before this Court that Mr. Bhatia is no longer the “*major*  
14                   *ultimate beneficial owner*” of the Plaintiff.

15           12.    The Court’s attention is drawn to a series of emails from Mr. Bhatia in which  
16                   he is purporting to represent the Plaintiff to very senior members of the  
17                   Government of the Cayman Islands and other public figures, between 2006  
18                   and 2010, which are exhibited to Mr. Jackson’s Third Affidavit.

19           13.    Indeed, although the Plaintiff’s attorneys’ letter dated the 24<sup>th</sup> March 2011  
20                   states that Mr. Bhatia is not authorised to speak on behalf of Embassy, in  
21                   December 2010 the Sixth Defendant’s attorneys received copies of Mr.  
22                   Bhatia’s emails from a corporate director of the Plaintiff which the Sixth  
23                   Defendant submits contained defamatory statements to public figures and to  
24                   the Cayman media.

25           14.    What causes this Court some concern is that Mr. Bhatia appears to admit that  
26                   the publication of these allegedly defamatory statements in the Cayman media  
27                   is part of a deliberate attempt to force the Sixth Defendant to settle the  
28                   Plaintiff’s claims. Indeed, in his email dated 2<sup>nd</sup> August 2010, Mr. Bhatia

1 states: “*Hopefully the increasing public pressure on [the Defendant] [which is*  
2 *looking increasingly exposed] will result in them settling very soon due to the*  
3 *clear benefits of the greater openness and transparency which has resulted*  
4 *from a somewhat free and open press in Cayman...*”

5 15. This Court finds some force in the Sixth Defendant’s counsel’s submission  
6 that the Plaintiff has continued to attack the Sixth Defendant in  
7 correspondence to public figures in the United Kingdom, the Cayman Islands  
8 and the European Union rather than prosecute its claim against the Sixth  
9 Defendant in these proceedings. Indeed, as late as the 13<sup>th</sup> April 2011 Mr.  
10 Bhatia wrote emails to the European Commissioner and senior government  
11 figures in the United Kingdom which supports the submission from counsel  
12 for the Sixth Defendant that the “*Plaintiff has continued and has ramped up*  
13 *its defamatory communications to third parties*”. Indeed the Sixth Defendant,  
14 through its counsel, complains of the Plaintiff carrying out a “*campaign of*  
15 *vilification of the Sixth Defendant*” through its scandalous allegations  
16 contained in voluminous emails to the media and to third parties, whilst at the  
17 same time taking no steps to prosecute its claim in these proceedings.

18 16. Accordingly, the Sixth Defendant’s counsel submits that this “*scandalous and*  
19 *contumelious conduct by the Plaintiff is an abuse of the process of this Court*”  
20 causing the Sixth Defendant to issue an application for the Plaintiff’s claim to  
21 be struck out.

22 17. Having reviewed the content of the emails there is a clear indication that Mr.  
23 Bhatia is purporting to speak for the Plaintiff and his aim is to damage the

1 Sixth Defendant in the eyes of important government figures in the United  
2 Kingdom, the Cayman Islands and Europe.

3 18. Mr. Bhatia may no longer be an employee, but there is no suggestion that he  
4 was not speaking for the Plaintiff until receipt of the letter from the Plaintiff's  
5 Cayman attorneys of the 24<sup>th</sup> March 2011, some three months after the Sixth  
6 Defendant's Counterclaim was filed in this Court. Furthermore, there is no  
7 evidence before this Court that the recipients of Mr. Bhatia's emails  
8 understand that Mr. Bhatia does not speak for the Plaintiff. In fact, if  
9 anything, the contrary would appear to be the case.

10 ***Relevant Chronology***

11 19. On the 27<sup>th</sup> July 2010 the Sixth Defendant served a Notice of Intention to  
12 Proceed on the Plaintiff. From a review of the evidence before this Court the  
13 Plaintiff did not respond to this step taken by the Sixth Defendant.

14 20. On the 26<sup>th</sup> September 2010 the Sixth Defendant issued and filed its  
15 Summons for leave to re-re-amend its Defence by introducing the  
16 Counterclaim with a return date of 14<sup>th</sup> December 2010.

17 21. On the 13<sup>th</sup> October 2010 the attorneys for the Sixth Defendant wrote to the  
18 Plaintiff and served a sealed copy of its Summons dated the 29<sup>th</sup> September  
19 2010 to re-re-amend its Defence by introducing the Counterclaim and the  
20 second affidavit of Mr. Jackson. To give the Plaintiff an opportunity to  
21 consider whether it wished to consent to the Application, the Sixth  
22 Defendant's attorneys, Appleby, confirmed that they would not seek a hearing  
23 date earlier than the 27<sup>th</sup> October 2010, being fourteen (14) days from service

1 of its letter, with the Summons on the Plaintiff. The Plaintiff did not respond  
2 to Appleby's letter or to the service of the Sixth Defendant's Summons.  
3 Accordingly, the return date of the 14<sup>th</sup> December 2010 stood.

4 22. On the 14<sup>th</sup> December 2010, the day of the hearing of the Sixth Defendant's  
5 Summons, Ms. Letitia Herviou ("Ms. Herviou"), a director of Basel CDS  
6 Limited, which is the corporate director of the Plaintiff, wrote to the Sixth  
7 Defendant's attorneys stating, *inter alia*, that the Plaintiff had expected the  
8 Sixth Defendant to withdraw its application.

9 23. Mr. Richards has informed the Court that Ms. Herviou is still a director of  
10 Basel CDS Limited. Accordingly, it is clear that Ms. Herviou, and therefore  
11 the Plaintiff, were fully aware of the Sixth Defendant's application to  
12 introduce the Counterclaim.

13 24. On the 14<sup>th</sup> December 2010 counsel for the Sixth Defendant appeared before  
14 the learned Chief Justice, but there was no appearance on behalf of the  
15 Plaintiff. At this hearing the Sixth Defendant was given leave by the learned  
16 Chief Justice to re-re-amend its Defence to introduce a Counterclaim pursuant  
17 to GCR O.18 r.9 and GCR O.20 r.5.

18 25. On the 20<sup>th</sup> December 2010 the Plaintiff was served with a sealed copy of the  
19 Sixth Defendant's re-re-amended Defence and Counterclaim dated the 17<sup>th</sup>  
20 December 2010 and a sealed copy of the Order of the learned Chief Justice  
21 dated the 14<sup>th</sup> December 2010. The Plaintiff did not respond to this Order.

22 26. Under the Grand Court Rules a Defendant who gives notice of intention to  
23 defend an action must, unless the Court gives leave to the contrary, serve a

1 Defence on the Plaintiff before the expiration of fourteen (14) days after  
2 acknowledging service of the Writ or after the Statement of Claim is served  
3 on him, whichever is later. Accordingly, under the Grand Court Rules the  
4 Plaintiff was required to file its Defence to the Sixth Defendant's  
5 Counterclaim on or before the 4<sup>th</sup> January 2011.

6 27. The Plaintiff did not file any Notice of Intention to Defend, nor did it file any  
7 defence up to the 3<sup>rd</sup> March 2011 when the Sixth Defendant issued its  
8 Summons. Indeed, as of the 2<sup>nd</sup> May 2011 no Defence or any Notice of  
9 Intention to Defend had been filed by the Plaintiff.

10 28. The Sixth Defendant confirms at paragraph 21 of Mr. Jackson's Third  
11 Affidavit that the Defendant had failed to respond to:

12 *“(1) Service of the Defendant's Notice of Intention to proceed; (2)*  
13 *Service of the Sixth Defendant's Summons to Summons to re-re-amend*  
14 *the defence by introducing the Counterclaim; and (3) Service of the re-*  
15 *re-amended Defence and Counterclaim.”*

16 29. Mr. Jackson avers in his Third Affidavit that the Plaintiff had taken no step in  
17 these proceedings since February 2008. Furthermore, Mr. Jackson avers at  
18 paragraph 21 of his Third Affidavit that the Plaintiff's failure clearly indicates  
19 that the Plaintiff had chosen not to take any action in relation to the  
20 Defendant's Counterclaim and chose not to serve a Defence to the  
21 Counterclaim.

1       30.    On the 24<sup>th</sup> March 2011 the Sixth Defendant served the Plaintiff with a sealed  
2           copy of its Summons dated the 14<sup>th</sup> March 2011 together with the Third and  
3           Fourth Affidavits of Clive Jackson, referred to above.

4       31.    Counsel for the Plaintiff has informed the Court that the Plaintiff instructed  
5           his firm of attorneys in relation to the costs of the London arbitration  
6           sometime in late January or early February 2011. However, counsel for the  
7           Plaintiff informed the Court that his firm was only instructed in relation to the  
8           Cayman litigation in March 2011. The Court notes that in the letter dated the  
9           24<sup>th</sup> March 2011 from Mourant Ozannes to Appleby the Plaintiff confirmed  
10          that “*Mr. Bhatia is not authorised to speak on behalf of the Plaintiff, and the*  
11          *opinions he expressed in his email of the 8<sup>th</sup> March 2011 are his personal*  
12          *opinions*”.

13       32.    There followed an exchange of correspondence between Appleby and  
14          Mourant Ozannes. I note from Mourant Ozannes’ letter and email of the 1<sup>st</sup>  
15          April 2011, and Mourant Ozannes’ letter to Appleby of the 18<sup>th</sup> April 2011,  
16          that the firm purported to be acting for the Plaintiff but did not file any Notice  
17          of Change of Attorneys, nor did Mourant Ozannes indicate what, if any,  
18          position the Plaintiff was taking in relation to the Sixth Defendant’s  
19          Counterclaim or the Sixth Defendant’s Summons for interlocutory judgment,  
20          which is before the Court.

21       33.    It was not until the 28<sup>th</sup> April 2011 that Mourant Ozanne filed the Notice of  
22          Change of Attorney and wrote to the Sixth Defendant’s attorneys with a re-  
23          amended Reply and Defence to Counterclaim.

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1 *Conclusion*

2 34. This Court finds that the Plaintiff has breached the Rules of the Grand Court  
3 in not filing a Notice of Intention to Defend or a Defence within the time  
4 allowed for by the Grand Court Rules.

5 35. Furthermore, knowing that the Defence is out of time, the Plaintiff has not  
6 asked the Sixth Defendant for any extension of time or filed a Summons  
7 seeking the leave of the Court to file and serve its Defence to the  
8 Counterclaim out of time. The Court notes that almost four months have  
9 elapsed since the Defence was due to be filed. The Plaintiff has ignored the  
10 deadlines imposed by the Grand Court Rules for filing its Defence to the Sixth  
11 Defendant's Counterclaim.

12 36. The Court can take judicial notice of the fact that the Plaintiff has at its  
13 disposal professional servants and agents, highly experienced in business,  
14 such as Ms. Herviou. Furthermore, Mourant Ozannes will now be the third  
15 firm of Cayman attorneys acting in this matter, so the Plaintiff is well aware  
16 of the capacity for Cayman attorneys to act and comply with the Rules of the  
17 Grand Court of the Cayman Islands.

18 37. There has been no indication that a Defence would be filed. There has been no  
19 indication that leading counsel in England had been retained to prepare and  
20 settle the draft Defence, which was submitted to the Plaintiff's attorneys on  
21 the 28<sup>th</sup> April 2011. In fact, there has been what the Sixth Defendant's  
22 counsel described as a "*striking absence of any explanation*" either before  
23 Mourant Ozannes were retained or since.

1       38. For the aforesaid reasons I find that the Plaintiff is in breach of the Rules of  
2       the Grand Court and allowed the breach to continue for weeks and months.  
3       Consequently, I find that the Sixth Defendant is entitled to the relief it seeks  
4       in its Summons dated the 3<sup>rd</sup> March 2011.

5       39. Accordingly, I make an order in the following terms:

6                   i. That interlocutory judgment on the Sixth Defendant's  
7                   Counterclaim be entered against the Plaintiff in default of  
8                   Defence to Counterclaim, with damages to be assessed and costs  
9                   (including the costs of such assessment) to be taxed on an  
10                  indemnity basis.

11                  ii. That a permanent or final injunction is granted against the  
12                  Plaintiff forthwith in the following terms:

13                           a. A permanent injunction is hereby granted to  
14                           restrain the Plaintiff (Embassy Investments  
15                           Limited), whether by its directors, officers,  
16                           servants, agents or otherwise, from howsoever  
17                           publishing the words complained of by the Sixth  
18                           Defendant (Houston Casualty Company) in its  
19                           Counterclaim, or any similar words defamatory  
20                           of the Sixth Defendant.

21                  iii. That damages be assessed before a Judge of the Grand Court, the  
22                  appointment for such assessment to be made upon the  
23                  application of the Sixth Defendant to the Clerk of the Court

1                   within fourteen (14) days of the date Judgment is entered in  
2                   accordance with paragraph i., above.

3                   iv. That at least seven (7) days before the date of such appointment,  
4                   the Sixth Defendant shall serve notice of the same on the  
5                   Plaintiff.

6                   v. That the Sixth Defendant serve affidavit evidence to be relied on  
7                   at the assessment of damages hearing within twenty-eight (28)  
8                   days of the date Judgment is entered in accordance with  
9                   paragraph i. above.

10                  vi. That the Plaintiff do serve any evidence in reply within twenty-  
11                  eight (28) days thereafter.

12                  vii. That the Sixth Defendant serve any evidence in response within  
13                  fourteen (14) days thereafter.

14                  viii. That the parties exchange Skeleton Arguments seven (7) days  
15                  prior to the assessment of damages hearing.

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17   **Dated this the 3<sup>rd</sup> day of May 2011**

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23   **The Honourable Mr. Justice Charles Quin**  
24   **Judge of the Grand Court**