Neutral Citation Number: [2020] EWHC 3349 (Comm)

Case No: CL-2019-000674

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2020

Before :

THE HONOURABLE MR JUSTICE BUTCHER

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Between :

ArcelorMittal USA LLC	**Claimant**
- and –	
(1) MR RAVI RUIA **(2) MR PRASHANT RUIA** **(3) MR SUSHIL BAID** **(4) MR ANDREW WRIGHT** **(5) MR JOSEPH SEIFERT** **(6) MR UDAY KUMAR GUJADHUR** **(7) MR NIGEL BELL** **(8) ESSAR GLOBAL FUND LIMITED** **(9) ESSAR CAPITAL LIMITED** **(10) ESSAR CAPITAL SERVICES (UK) LIMITED**	**Defendants**

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Tony Peto QC, Harish Salve QC & Peter Head (instructed by **Mischon de Reya LLP**) for the **Claimant**
Paul McGrath QC and Freddie Popplewell (instructed by **Lewis Silkin**) for the **1st, 2nd, 3rd and 6th Defendant**
Mark Beeley (instructed by **Orrick, Herrington & Sutcliffe (UK) LLP**) for the **Fourth Defendant**
Ben Valentin QC (instructed by **Lipman Karas LLP**) for the **Fifth Defendant**

Nienke van den Berg (instructed by **Penningtons Manches Cooper LLP**) for the **Seventh Defendant**
Paul Stanley QC and David Peters (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **8th, 9th and 10th Defendant**

Hearing date: 19 November 2020

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Approved Judgment

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THE HONOURABLE MR JUSTICE BUTCHER

The Honourable Mr Justice Butcher :

1. This is an application by the Claimant ('AMUSA') for permission to amend its Particulars of Claim. In circumstances to which I will refer, AMUSA seeks to substitute its draft Amended Particulars of Claim ('APOC') for its original Particulars of Claim. The Defendants, other than the Fifth Defendant ('Mr Seifert') have consented to the APOC, save for certain categories of amendment which I will consider below. Mr Seifert does not consent to any of the amendments on the basis that he contends that there is no properly pleaded case which stands a realistic prospect of success that he was a party to the alleged conspiracy.

Background

2. There is already a significant background to this dispute. I intend to summarise it as briefly as possible, bearing in mind that there are various aspects of it which are in contention between the parties, and that there have already been a number of judgments which consider parts of it.

3. AMUSA is a Delaware company and is part of the ArcelorMittal Group, a major steel and mining business. The 8th – 10th Defendants (collectively 'the Corporate Defendants') are companies in the Essar Group. The Essar Group is a conglomerate ultimately owned by the Ruia family. The 1st Defendant founded the Essar Group with his brother, Shashi, who is the father of the 2nd Defendant. The 8th Defendant ('EGFL') is the holding company of the Essar Group.

4. The dispute arises out of an arbitral award obtained by AMUSA against Essar Steel Limited ('ESL'), a company incorporated in Mauritius, for some US$1.5 billion. ESL is a wholly owned subsidiary of EGFL and was formerly an intermediate holding company of the Essar Group's steel business, holding interests in Essar Steel Minnesota LLC ('ESML') and Essar Steel India Limited ('ESIL'), amongst others. The arbitration against ESL arose out of a contract dated 17 December 2012 between AMUSA and ESML, which owned a mine in Minnesota called the Nashwauk Project, for the supply of iron ore pellets (the Pellet Sale Agreement or 'PSA'). That contract was amended to add ESL as an additional party, but it appears that there may be an issue as to when that occurred, the Corporate Defendants contend that it was in January 2014.

5. AMUSA contended that ESML had defaulted on its obligations under the PSA. In May 2016 it terminated the amended PSA and in August 2016 commenced an ICC arbitration. By that time ESML was in Chapter 11 bankruptcy and the arbitration was begun against ESL only.

6. The arbitral tribunal issued its award on 19 December 2017. It has not been paid. AMUSA commenced enforcement proceedings in various jurisdictions. In support of those efforts, AMUSA obtained a Worldwide Freezing Order against ESL and Search Orders against the 2nd and 10th Defendants. An attempt to discharge these orders failed in front of Jacobs J, who gave judgment on 25 March 2019. On 26 March 2019 ESL was placed into administration in Mauritius.

7. On 30 December 2019 AMUSA commenced the present proceedings. In its original Particulars of Claim it alleged that the Defendants had conspired on a date or dates between January 2012 and the date of those original Particulars of Claim to cause loss

to AMUSA and had used unlawful means in furtherance of that conspiracy. It alleged ten instances of concerted action taken pursuant to that conspiracy. These included: (1) a series of transactions undertaken in 2012 and 2013 by which ESL had transferred a shareholding in ESIL, which was at the time worth about US$1.5 billion, to another company in the group at an undervalue, by means of the transfer of ESL's shares in ESIL to another group company in return for the issuance of promissory notes ('the Promissory Notes') in amounts equal to the value of the relevant shares and then ESL assigning the Promissory Notes to EGFL in consideration of a 'future capital reduction'; (2) the procurement, in or around November 2014, of Essar Steel Algoma Inc (an indirect Canadian subsidiary of EGFL) ('Algoma'), to enter into certain transactions which stripped Algoma of its assets in order to insulate those assets from the claims of ESL's creditors; (3) entry into the amended PSA, by means of fraudulent misrepresentations by ESL as to its intention to perform; (4) a transaction in about September 2015 in which ESL transferred away a shareholding in a company called Essar Steel UAE Ltd ('Essar UAE') worth approximately US$200 million, for no or no adequate consideration; (5) a restatement of ESL's accounts in September 2016, whereby there was an improper change to the accounting treatment of the Promissory Notes from showing an inter-company receivable to being treated as a negative entry against ESL's capital; (6) failure by ESL to take steps to recover the intercompany receivable; and (7) procuring ESL in 2016 to enter into a Subordination Deed with the Essar Group's principal lender.

8. In support of that claim, AMUSA sought a Worldwide Freezing Order against the 1st and 2nd Defendants and EGFL. That application was dismissed by Henshaw J, his judgment being dated 30 March 2020. He found that AMUSA did not have a good arguable case, could not show a solid risk of dissipation, and considered that it would not be just and convenient to grant a Worldwide Freezing Order. Amongst the reasons why Henshaw J considered that the allegations in relation to the divestment of the shares in ESIL did not meet the standard of a good arguable case was that the chronology of the allegation was flawed, in that the restructuring of the Essar Group's steel portfolio had been proposed in 2011, before the PSA was executed. Similarly in relation to the Algoma allegations, Henshaw J considered that there were difficulties with the chronology, in that the timing of the Algoma events in 2014 made it hard to detect any plausible link with the PSA or any wish to dissipate assets of ESL some 18 months before the termination of the PSA.

9. In consequence of this, AMUSA has reformulated its case in the APOC. The conspiracy is now alleged to have occurred over the period 29 September 2015 to 29 September 2016. The actions taken in pursuance of the conspiracy are alleged to have been threefold: (1) that the Defendants caused or procured ESL and its directors wrongfully to refrain from taking any steps to recover an intercompany debt of US$1.5 billion which EGFL owed to ESL as a result of the 2012/13 transactions to which I have referred; (2) that the Defendants caused or procured ESL to waive that intercompany debt (the 'Waiver'), the restatement of ESL's accounts in September 2016 evidencing the Waiver; and (3) that the Defendants caused or procured ESL to part with its shareholding in Essar UAE on terms which resulted in ESL receiving no or no adequate consideration (the 'UAE Disbursements').

The Amendments Objected to

10. With the exception of Mr Seifert, the Defendants have, as I say, consented to the amendments in the APOC, with three categories of exception. Those categories are:

    (1) Certain allegations relating to Algoma: paragraphs 50.3(f) and 50.6 of the draft APOC;

    (2) Certain allegations in relation to the transfer of ESL's shareholding in ESIL in 2012/13: paragraph 50.7(d) of the draft APOC;

    (3) Certain allegations where it is said that there is a lack of clarity as to whether AMUSA is challenging the authenticity of documents: paragraphs 30, 31, 35 and 42 of the draft APOC.

The Principles Applicable

11. I will consider each of these in turn. Before doing so, however, it is convenient to set out the broad principles on which the court should act in deciding whether to permit amendments in a case such as this.

    (1) Pleadings should in general plead only material facts, namely those necessary for the purpose of formulating a cause of action or defence, and should not contain background facts or evidence: Tchenguiz v Grant Thornton [2015] EWHC 405 (Comm).

    (2) An application will fail if the proposed claim does not have a real, as opposed to a fanciful, prospect of success. The court may accordingly reject an amendment which seeks to raise a version of the facts which is inherently implausible, self-contradictory or not supported by contemporaneous documentation (see White Book 2020, 17.3.6). Equally the court may reject an amendment which is unsupported by any evidence or is purely speculative: Clarke v Marlborough Fine Art (London) Ltd [2002] 1 WLR 1731.

    (3) The court must have regard to the overriding objective of dealing with the case justly and at proportionate cost (see White Book 2020, 17.3.5).

    (4) Allegations of fraud or misconduct must be clearly and distinctly pleaded and properly particularized.

12. I accept the Defendants' submission that given the background to this application, the fact that the case now sought to be raised represents a significant recasting of the case which was found not to meet the standard of good arguability by Henshaw J, and the nature of the allegations, this is a case where it is particularly necessary to scrutinize whether the amendments proposed conform to those principles.

The Disputed Algoma Amendments

13. The first category of amendments which is objected to by the Defendants other than Mr Seifert are those related to Algoma, contained in paragraphs 50.3(f) and 50.6 of the draft. Paragraph 50.3(f) is one of a number of matters pleaded in support of an

allegation that the knowledge and intentions of the 1st and 2nd Defendants are to be attributed to all companies in the Essar Group, or at least to the Corporate Defendants, where they were 'directing minds and had control of those companies'. In sub-paragraph (f) it is proposed to be pleaded that the 1st Defendant exercised a high degree of control over transactions relating to Algoma, which in 2013 was in financial trouble; and that as a result of such financial trouble the 1st and 2nd Defendants and EGFL 'combined to oppress Algoma's stakeholders by the conduct (including conduct in bad faith) found by the Ontario High Court and upheld by the Ontario Court of Appeal: *Ernst & Young Inc. v Essar Global Fund Ltd et al.* 2017 ONCA 1014'. The proposed amendment to paragraph 50.6 pleads that it is to be inferred that the 2nd Defendant, EGFL and the 9th Defendant ('ECL') exercised control even over the affairs of indirect subsidiaries of EGFL 'from the transactions involving Algoma, as reported in the judgment of the High Court of Ontario'.

14. In support of the application to amend, and in answer to a contention by the Defendants that, if these paragraphs were allowed in there would need to be a 'trial within a trial' as to what happened in relation to Algoma, it has been said on AMUSA's behalf, in the Fifth Witness Statement of Kasra Nouroozi Shambayati, ('Noruoozi 5'), that an attempt to go behind the findings of the Ontario court would be resisted by AMUSA as an abuse of process and a collateral attack on the findings of the Canadian courts (paragraph 12).

15. On behalf of the Defendants it was said that the amendments in question did not allege material facts. It was also vigorously denied that the findings of the Canadian courts had or could have any special status in these proceedings, and that there could be any question of an abuse of process of the sort suggested by Nouroozi 5.

16. In my judgment the Defendants' arguments as to why there could be no relevant issue estoppel or preclusive effect of the judgments of the Canadian courts were correct. These include that the 1st and 2nd Defendants were not parties to or privy to those proceedings; that the issue of control of Algoma was irrelevant to the determination of the claim under s. 241 of the Canada Business Corporations Act and that any discussion of that issue amounted to *obiter dicta*; and that no issues of attribution of knowledge or intention to harm had arisen for decision.

17. More generally, I consider it apparent from the reference in the proposed paragraph 50.3(f) to 'oppression of Algoma's stakeholders', and 'including conduct in bad faith', that the proposed plea is likely both to involve an investigation of matters which arose in the Canadian proceedings but which are not of any direct relevance or materiality here (oppression of stakeholders) and are vague and insufficiently defined (conduct in bad faith).

18. In his submissions Mr Peto QC emphasized that the only matter which it was intended that the plea should go to was the issue of control. He also said that AMUSA was prepared, if the court considered it appropriate, to omit references to the Canadian proceedings or judgments. Mr McGrath QC for the 1st to 3rd and 6th Defendants made it clear, however, that he objected to any attempt by AMUSA, on this application, to rely on specific facts relating to Algoma said to establish the relevant control. He argued that that was not the basis on which the application had been made, and any newly formulated plea would have to be considered on its merits.

19. I do not intend to allow these amendments as currently formulated. I consider that pleas which are based upon any contention that the Canadian judgments have a relevant binding effect or might give rise to an abuse of process have no real prospect of success. On that basis, I consider that the references to the Canadian court proceedings are immaterial averments. I do not rule out the possibility that AMUSA may be able to identify certain specific facts relating to Algoma – whether its knowledge of them derives from the Canadian proceedings or otherwise – which are capable of being pleaded as giving rise to an inference of relevant control. I consider that if such further amendments were brought forward, the court would need to be satisfied that they were sufficiently precise as to what conduct of which Defendant was being relied upon, and why it gave rise to any relevant inference. As it is, this category of proposed amendments is refused.

The Disputed Amendment relating to 'Anti Creditor Animus'

20. The second category is the proposed amendment in paragraph 50.7(d). This refers back to the 'steps taken in 2013' pleaded in paragraphs 32 to 37 of the draft. Those include the restructuring plan in relation to the Essar Group's steel portfolio under which there was to be the transfer of ESL's shares in ESIL to another company in return for the issue of the Promissory Notes to ESL which were to be assigned to EGFL by way of dividend / capital reduction; the transfer of the ESIL shares and the issue of the Promissory Notes; and the alleged departure from the restructuring plan by a substitution as the consideration for the assignment of the Promissory Notes of an immediate dividend or capital reduction by a future buyback of shares; and the alleged existence of an obligation that EGFL should be liable to pay ESL on demand the face value of the Promissory Notes at least until the buyback of shares occurred. Paragraph 50.7(d) then continues that it is to be inferred that those steps:

> '… were taken with the object and/or had the effect of enabling ESL as the need arose in due course unjustifiably to dissipate its assets to frustrate or impede enforcement of claims by its creditors (including claims arising out of the Nashwauk Project) and were not carried out in furtherance of the aims described in the documents setting out the Restructuring Plan. AMUSA will rely upon the fact of that general anti-creditor animus and those general anti-creditor actions in support of their contention that the Defendants formed a similar animus specifically against AMUSA in 2015-2016 pursuant to the Conspiracy.'

It is then pleaded that this inference is to be drawn from a number of matters.

21. The Defendants object to this proposed amendment. They emphasise that AMUSA's recast case involves a conspiracy only in September 2015 – September 2016. What happened in 2013 was therefore not part of the now alleged conspiracy; and the matters pleaded were not aimed against AMUSA. Accordingly, the Defendants contended that these pleas are at best of similar fact evidence; and that it is highly unlikely that the court will be assisted by looking at whether there was a 'general anti-creditor animus' in relation to the events of 2013, when it will conduct a detailed examination of whether there was a conspiracy in 2015 to 2016. Mr Stanley QC

fairly said that he could not say that it was entirely incapable of being probative, but he said it was really highly unlikely to help in this case.

22. In my judgment these proposed amendments should be allowed. I say that because the transactions of 2013 are in any event going to be the subject of intense scrutiny, in particular as to what their true nature and legal effects were. In terms of the APOC, there is no dispute that paragraphs 32 to 37 will be part of the case. AMUSA wishes to rely on those transactions as indicating a preparedness unfairly to prejudice creditors. I agree with Mr Peto that if it wishes to make that case, it should give proper notice of it in its pleadings, because it is an allegation of a type of misconduct or at least of a culpable state of mind. I do not consider that these pleas are likely to give rise to any very extensive new areas of disclosure or witness evidence, and of course those are matters which will be kept under review as part of case management. It may be that Mr Stanley will be proved right as to the value of any inference which could be drawn from an animus in 2013 – even if established – in relation to what happened in 2015/16, but I do not consider that the possibility that it may help is sufficiently low that the plea should be disallowed.

Disputed Amendments: Paragraphs 30, 31, 35, 42

23. The third category of amendments to which the Defendants have objected relates to certain paragraphs where they say that it is unclear as to the nature of the case which AMUSA is making. The objection is to:

    (1) In paragraphs 30 and 31 of the APOC, where there is a description of the transfers of ESL's shares in ESIL, there is a reference to what 'apparently' occurred. This raised a concern on the part of the Defendants that AMUSA was insinuating that the contemporaneous documents did not constitute a true record of what in fact occurred.

    (2) In paragraphs 35 and 42, there is an allegation that the assignment of the first of the Promissory Notes was made 'with a significant alteration, i.e. for full consideration'; and in paragraph 42, a plea of an 'actual transaction' which appears to be different from that indicated by the express terms of the assignments.

24. As to the first, AMUSA made it clear that the word 'apparently' was intended only to indicate that the relevant facts were outside its knowledge; and was prepared to substitute for it the phrase 'It appears that'. I understood the Defendants not to object to that alternative wording.

25. As to the second, AMUSA clarified that what was being referred to was what was referred to in paragraph 33 of the draft APOC, namely that instead of an assignment in return for a reduction in capital there was an assignment in return for an obligation in debt. Mr Peto offered to clarify the position by adding the words 'as referred to in the last sentence of paragraph 32 above' after 'for full consideration' in paragraph 35 and after 'an amount receivable' in paragraph 42. I consider that that does resolve the difficulty as to lack of clarity as to the case which the Defendants have to meet. Accordingly, with those additions, I intend to allow these amendments.

Mr Seifert

26. Mr Seifert, as I have said, objects to all the amendments. It has been made clear in correspondence that, if the APOC, which allege that Mr Seifert was a party to the 2015/16 conspiracy, are not permitted no other case is made against Mr Seifert, and on that basis it is submitted on his behalf that the case against him would fall to be dismissed. Because of that, Mr Seifert has not issued an application to strike out the existing POC.

27. Mr Seifert's case is that none of the amendments proposed is capable of supporting a claim against him of unlawful means conspiracy. Mr Valentin QC on his behalf emphasised the following points:

    (1) The burden is on AMUSA to show that there is a case against Mr Seifert which stands a realistic prospect of success.

    (2) It is particularly important in this case that the question of whether this standard has been passed should be scrutinized at this stage because Mr Seifert is a professional person of previously unblemished reputation.

    (3) Specifically in relation to a case of conspiracy to injure by unlawful means, while dishonesty is not a necessary element of the tort, some reasonable basis needs to be pleaded to support an allegation that an individual was involved in the conspiracy, and where the conspiracy is said to have involved deception then all the strictures that apply to pleading fraud are directly engaged: ED and F Man Sugar Ltd v T and L Sugars Ltd [2016] EWHC 272 (Comm) at [33] per Leggatt J. That an individual was a director of a company at the time it entered into an impugned transaction and had had previous dealings with the claimant was there held to be a wholly inadequate basis on which to plead an allegation of involvement in a conspiracy to defraud (para. [35]).

    (4) The only allegations against Mr Seifert in the APOC are: (i) in paragraphs 48 and 49 but they are entirely general and provide no basis for an assertion that Mr Seifert was a party to a conspiracy; (ii) in paragraph 50.2(f) that Mr Seifert was Chief Investment Officer of ECL between January 2014 and March 2016, was a financial consultant of EGFL between April and June 2016, and was a 'trusted advisor to the Ruia family'; (iii) in paragraph 57.3, that it is reasonable to infer that Mr Seifert 'will have advised on' ESL's failure to call in the US$1.5 billion, the Waiver and the UAE Disbursements from the facts that advising on such transactions fell within the scope of Mr Seifert's senior roles in the Essar Group, that the Ontario court found that he had a 'leading' role in relation to the impugned Algoma transactions, that Mr Seifert's evidence is that employees of ECL would advise EGFL and that he was 'a key communicator with Ravi and Prashant' (i.e. the 1st and 2nd Defendants); and (iv) that (iii) supports the inference that Mr Seifert 'procured, knew of or acquiesced in' the unlawful means, viz the breaches by ESL's directors of their fiduciary duties and certain breaches by ESL of the Mauritius Companies Act.

    (5) There is no allegation that Mr Seifert exercised control over any of the Corporate Defendants. There is no allegation that Mr Seifert advised the directors of ESL to

proceed with the various transactions which are impugned, and he was not himself a director.

(6) There is no dispute about the positions which Mr Seifert formally held. He ceased to be employed by the Essar Group on 31 March 2016. He was a part time consultant to EGFL until 30 June. By the time that ESL's accounts were restated in September 2016, he had ceased to work for the Essar Group even on a consultancy basis. He has put in evidence in his First Witness Statement that his work while at the Essar Group did not encompass the impugned transactions, and transactions of that type were not within his areas of expertise or within his purview. His role at Essar had, consistently with his prior investment banking experience at JP Morgan, been concentrated on disputes, fundraising, mergers, disposals and acquisitions, especially in dealing with advisors and providers of capital based in Western Europe and North America. AMUSA had not put forward any evidence, documentary or otherwise, to contradict anything Mr Seifert had said about these matters.

(7) Insofar as there was reliance on the Algoma transactions which had been the subject of consideration by the Ontario court, they were some 18 months before the now alleged conspiracy. Any reliance on the findings of bad faith by Newbould J was undermined by the fact that there had been no pleaded issue as to bad faith; and the Canadian court had not heard evidence on the point. An involvement in relation to Algoma, and in particular an effort to generate capital for it, did fall within Mr Seifert's purview at Essar. That gives rise to no inference that he was involved in the transactions now alleged to be part of the conspiracy.

(8) Mr Seifert had no motive to be involved in a conspiracy against AMUSA. From well before 29 September 2015 he had resolved to leave the Essar Group; he had never been a shareholder in the Essar Group; and was leaving Essar to co-found his own fintech company the success of which was predicated on his reputation and his credibility with large investment banks and law firms.

28. For AMUSA Mr Peto stressed in particular four matters:

(1) That Mr Seifert had been Chief Investment Officer of ECL in 2015 and until March 2016, and had remained as a consultant until June 2016. ECL had been described by Mr Seifert himself as the 'exclusive investment advisor' to EGFL; and in EGFL's accounts for the period ended 30 September 2015 ECL's role was stated as being to recommend 'all investment and divestment decisions' to EGFL. Mr Seifert had himself said that EGFL was 'purely the owner of assets'. It was accordingly 'unlikely that decisions relevant to the conspiracy were not taken at [ECL] level, including by, or involving, or known of by, its then Chief Investment Officer'.

(2) That Mr Seifert had been the board sponsor at ECL for the proposal on 29 October 2013 to assign the Second Promissory Note to EGFL.

(3) Although Mr Seifert had left the Essar Group on 30 June 2016, he had had a motive to remain on good terms with the Ruias.

(4) The court should take into account not only the evidence actually placed before it, but also the evidence that can reasonably be expected to be available at trial. That was the test in relation to summary judgment and should be the case in relation to an application to amend, given that the merits test was the same for both.

29. In my judgment, the APOC does not plead an adequate factual basis for a case that Mr Seifert was party to the conspiracy alleged. Further, and to put the matter another way, I do not consider that a case that he is liable in conspiracy based only on the matters pleaded is one which stands a realistic prospect of success.

30. In this regard, the starting point is that: (i) no particulars are given as to when, with whom, or the means by which Mr Seifert entered the conspiracy; (ii) there are no particulars of any action which it is said that Mr Seifert took which was unlawful, nor is there an allegation that he was in a position in which he was able to procure anyone else to act unlawfully; (iii) the only pleading as to the actions which Mr Seifert took is that it is 'reasonable to infer that Mr Seifert will have advised' on the failure to call in the US$1.5 billion, the Waiver and the UAE Disbursements, without any allegations as to what advice Mr Seifert might have given; and (iv) there is no particularization as to how Mr Seifert could have procured ESL or its board to act unlawfully, or how, even if he knew of or acquiesced in the conspiracy that rendered him an active participant therein.

31. As to the specific matters which are relied upon in relation to Mr Seifert, AMUSA places considerable weight on Mr Seifert's role and responsibilities in the Essar Group, and in particular his role at ECL. However, the fact that Mr Seifert held the roles pleaded does not of itself give rise to the inference that he advised on the transactions which are said to form part of the conspiracy or procured, knew of or acquiesced in the unlawful means alleged. Moreover, Mr Seifert has put in evidence denying any role in relation to those transactions, and, while that cannot itself be taken as conclusive, AMUSA has adduced no documentary or other evidence to contradict what Mr Seifert has said.

32. As to the allegation involving Algoma, I do not accept that the pleaded reference to Mr Seifert's involvement in the recapitalization of that company in 2014 gives rise, in itself, to an inference that Mr Seifert advised on the transactions alleged to form part of the conspiracy now alleged.

33. The position is similarly in relation to the reference to Mr Seifert having been the board sponsor of the assignment of the Second Promissory Note. The assignment of the Second Promissory Note is no longer relied upon as part of a conspiracy against AMUSA. I do not consider that Mr Seifert's having been the board sponsor in relation to this matter in 2013, of itself gives rise to the inference that Mr Seifert advised on a different transaction in late 2015 or 2016 or that he procured, knew of or acquiesced in any unlawful means in relation thereto.

34. I am mindful of Mr Peto's exhortation that I should consider what evidence might reasonably be expected to be available at trial, and form some judgment about that. It is in this context that Mr Seifert has an apparently strong point that, given that he was planning to leave Essar and then left Essar during the period of the alleged

conspiracy, he had no motive to involve himself in any action against AMUSA. That militates against the view that more evidence of involvement in the conspiracy is reasonably to be expected at trial.

35. For these reasons I am not satisfied that there is a properly pleaded case against Mr Seifert, or that it has been demonstrated that the case which is sought to be made against him stands a real prospect of success. In those circumstances, I refuse the application to make the amendments insofar as they relate to him.

36. I trust that an order can be agreed reflecting these conclusions.