THE HIGH COURT

COMMERCIAL

[2014 No. 10816 P]

BETWEEN:

JOSEPH SHEEHAN

PLAINTIFF

-AND-

JOHN FLYNN, BENRAY LIMITED, BRECCIA, IRISH AGRICULTURAL DEVELOPMENT COMPANY, BLACKROCK HOSPITAL LIMITED, GEORGE DUFFY, ROSALEEN DUFFY, TULLYCORBETT LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 13th April, 2018

Summary – a modular or unitary hearing?

1. This judgment relates to whether the remaining issues in a very long running dispute between the parties in this case should be heard in modules or in a unitary hearing. It is before this Court by way of motion by the third named defendant, Breccia, pursuant to Order 63A, rule 5 of the Rules of the Superior Courts seeking an order from this Court to direct that the remaining issues in the proceedings be heard by way of modular trial. Order 63A, rule 5 entitles the Court to give such directions regarding the conduct of the proceedings as appears convenient for the determination of the proceedings in a manner which is '*just, expeditious and likely to minimise the costs of those proceedings*'. The plaintiff resists Breccia's application as he wishes to have a unitary trial, while the other defendants support Breccia's application.

2. In reaching its decision on whether to have a modular or a unitary trial, this Court relies on the '*special or unusual circumstances*' of this case and in particular the fact that this long running and bitter private dispute has already expended a considerable amount of scarce court resources and is likely to have used up a full half year of court time by the time it is finished. The dispute has resulted in seven judgments of the High Court and the Court of Appeal with two further judgments of the Court of Appeal awaited and one hearing pending in the Court of Appeal, as well as the application by one of the parties for the recusal of one High Court judge.

3. This Court concludes that, *inter alia*, in light of the amount of resources (of this Court and the Court of Appeal) which have been expended to date by these parties, the public interest in seeking to use scarce court resources as efficiently as possible supports the finding that the remainder of this dispute should be dealt with in the specific modules and in the manner set out in this judgment.

The dispute in very general terms

4. The dispute between the parties concerns a shareholding in a company, Blackrock Hospital Limited ("BHL"), which owns Blackrock Hospital in Dublin. In very broad terms the main dispute appears to be between the plaintiff, Dr. Joseph Sheehan ("Dr. Sheehan"), who is a consultant surgeon who resides in America and who owns 28% of the shares and Breccia (which is controlled by a trust established by the family of Mr. Laurence Goodman, the "Goodman Family Trust") which also own 28% of the shares in BHL. However, in or around December 2014, Breccia acquired the loan from Anglo Irish Bank which had been taken out by Dr. Sheehan to acquire his 28% of the shares as well the related charge over those shares. In addition, Breccia acquired the loan and a charge over the shares taken out by another shareholder (Mr. John Flynn/Benray Limited) to acquire his/its 9% shareholding in BHL. In essence therefore Breccia claims to have an ownership interest in 2/3 of the shares in the hospital. The fourth, fifth and sixth named defendants are Dr. Duffy, his wife Mrs. Rosaleen Duffy and Tullycorbett Limited, which is controlled by Dr. Duffy. These three defendants will be referred to collectively as 'the Duffys'. The Duffys own some 20% of the shares in BHL. There is a shareholders' agreement dated 28th March, 2006, governing the shareholding in BHL (the "Shareholders' Agreement") to which, *inter alia*, Dr. Sheehan and Breccia are parties and this is the backdrop to a dispute which has four aspects.

The four aspects of the dispute to be heard

5. The remaining issues between the parties can be divided up into the following four discrete areas:

(i) Conspiracy claim

6. The first aspect of the dispute to be heard, whether in a modular or unitary trial, concerns the fact that Dr. Sheehan alleges a conspiracy on the part of all the defendants to damage his economic interests (the "Conspiracy Claim"). All parties are likely to be involved in this aspect of the case, although as noted below, BHL does not believe it is implicated in this aspect of the case. BHL has described this part of the proceedings as an '*amorphous*' claim. BHL also submitted that an '*allegation of conspiracy is as tall as it gets*' and that it is a very unusual tort and that there are considerable difficulties in proving a conspiracy. For this reason, BHL believes that this aspect of the trial could take several weeks to hear.

(ii) Repayment claim

7. Breccia is counterclaiming from Dr. Sheehan for some €22 million it alleges it is owed under the loan agreements and related guarantee which it acquired in or around December 2014 (the "Repayment Claim"). It seems that Dr. Sheehan and Breccia are the only parties implicated in this aspect of the case. It appears to be common case amongst Dr. Sheehan and Breccia that the question of whether Breccia is owed money will depend on the success of the Conspiracy Claim and so the Repayment Claim and the Conspiracy Claim should be heard together. While not making a definitive judgment on the point, it seems that there would be no reason for the Duffys or BHL to attend this part of the case.

(iii) Change of control claim

8. The third aspect to the dispute is that Dr. Sheehan is claiming that there was a change in control in the ownership in Breccia in 2009 and under the terms of the Shareholders' Agreement governing the ownership of the hospital, any such change of control triggered an obligation upon Breccia to offer its shares around to all the shareholders, which it failed to do. If this claim is correct, Dr. Sheehan submits that it would mean that this Court would be concerned not only with the claim that Breccia is entitled to recover payment from Dr. Sheehan on his loan – the Repayment Claim - and possibly that Breccia is entitled to a *transfer from Dr. Sheehan* of his shares (if Dr. Sheehan failed to repay his loan), but also that this Court would be concerned with a claim that Dr. Sheehan was entitled to a *transfer from Breccia* of its shares, and further that this would mean that Breccia was not entitled to acquire Dr. Sheehan's shares in the first place (the "Change of Control Claim"). It seems that Dr. Sheehan and Breccia are the only parties

implicated in this aspect of the case and again, while not making a definitive judgment on the point, it seems that there would be no reason for the Duffys or BHL to attend this part of the case.

(iv) Dividend claim
9. The fourth aspect of the dispute is the claim by Dr. Sheehan that BHL was not entitled, as a matter of law, to refuse to pay Dr. Sheehan a dividend of some €4.1 million in respect of his shares in BHL (the "Dividend Claim"). This aspect of the dispute involves Breccia, Dr. Sheehan and BHL and it seems clear that there would be no reason for the Duffys to attend this part of the case. However, in addition to this net legal issue, it is alleged by Dr. Sheehan that the refusal to pay the dividend was part of the overall conspiracy between the defendants to harm Dr. Sheehan's economic interests and, as previously noted, the allegation of conspiracy is made against all the defendants and thus concerns all of them.

The parties' stated wishes regarding the format of the trial
10. Breccia wishes to have the trial dealt with in two modules. In the first module it wants the Conspiracy Claim and the Dividend Claim dealt with together. Then it wants the second module to deal with the Change of Control Claim and the Repayment Claim. Breccia submits that as it has an ownership interest in 2/3 of BHL, it has an interest in the matter not being dealt with as an unitary trial, since it claims that BHL (in which it has an economic interest as a 2/3 'shareholder') would incur more costs in a unitary trial than if it was dealt with in modules, since BHL would be required to attend the whole trial if it was a unitary trial. In essence therefore, if one was to notionally pierce the corporate veil of BHL in the manner of Breccia's submission, but if one took it a step further and looked not just behind BHL but also behind Breccia, the argument being made here is that the Goodman Family Trust controls Blackrock Hospital and so its views on the most cost efficient manner to run the trial, from the hospital's perspective, should be taken into account by this Court in deciding whether to have a modular or unitary trial. While this argument is not without merit, there are other factors to be taken into account in the Court's decision.

11. BHL supports the Breccia approach but on the basis that it believes that the only matter of concern to it is the question of to whom it should pay the dividend of €4.1 million as it wishes to do this as soon as possible. It is broadly accepted by all the parties that BHL has no involvement in the Change of Control Claim or the Repayment Claim. In addition, BHL cannot see how it would have any involvement in the Conspiracy Claim, since it is the 'target company' and the conspiracy is alleged to arise out of the financing of the purchase of shares in that company and in particular the acquisition of the loan to finance the purchase of shares in that company and the related security. However, it is named in the Statement of Claim as a party to the alleged conspiracy and so, at this stage of the proceedings, it is still a defendant to the Conspiracy Claim.

12. Although the Duffys support Breccia's application for a modular trial, they propose that in the first module proposed by Breccia it is the Conspiracy Claim which should proceed first as they have no involvement in the Dividend Claim. Since they also have no involvement in the 'Change of Control Claim' and the 'Repayment Claim', taking this approach would, they believe, finish their involvement in the entire proceedings after the first part of the first module proposed by Breccia (the Conspiracy Claim).

13. Dr. Sheehan claims that the reason why Breccia wants to put off the hearing of the Change of Control Claim to the end of the proceedings is because of its potential to harm Breccia's defence to these proceedings and harm its Repayment Claim. For his part, Dr. Sheehan wants the trial to be dealt with as a unitary trial and he has proposed that within that unitary trial, the Change of Control Claim should be heard first, followed by the Dividend Claim, followed by the Conspiracy Claim. As previously noted, it seems to be common ground between Dr. Sheehan and Breccia that the Repayment Claim should be dealt with as part of the Conspiracy Claim.

Special circumstances as a factor in deciding the modular/unitary issue
14. It is relevant to note that part of the proceedings have already been heard in modular form, since the issue of the amount of redemption money that was payable on Dr. Sheehan's loan has already been dealt with by Haughton J. in his judgment (*Sheehan v. Breccia & Ors* [2016] IEHC 67).

15. It is also relevant to note that this Court was advised that at several directions hearings, Haughton J. suggested to the parties that they consider the possibility of the remaining issues in the proceedings being dealt with by way of a modular trial.

16. However, this Court also notes that in the leading case on the issue of whether one should have a modular trial or a unitary trial, namely *Cork Plastics v. Ineos Compounds* [2008] IEHC 93, Clarke J., as he then was, referred to the fact that the default position is that there should be a unitary trial but that there are various factors which are relevant to the assessment of whether there should be a departure from the default position. Of particular significance for the current case is his conclusion at para 3.14 that:

> "There may well, of course, be a whole range of other special or unusual circumstances that may arise on the facts of any individual case and may need to be given all due weight."

This is a case where there are two special and unusual circumstances that impact upon this Court's decision as to the format of the remainder of the proceedings. The first such circumstance is the fact that there has been an extensive use of scarce court resources to date by these parties in the litigation of their dispute.

A. Extensive use of scarce court resources by the parties to date
17. This case commenced in the Commercial Court in December 2014 and the proceedings are now in their fourth year. This is an exceptionally long time for this dispute to be still active in the Commercial Court, since the Commercial Court has at its raison d'être the speedy resolution of commercial disputes, as most recently evidenced by the *EU Commission Country Specific Report on Ireland - Judicial Appointments (2018)* which at page 46 notes that the average time period between the entry of the proceedings to the Commercial Court and the commencement of the trial is 21 weeks.

18. It is also relevant to note that there are related proceedings dealing with the other shares in BHL, to which reference has already been made, i.e. the shareholding of John Flynn/Benray Limited - *Flynn and Benray Limited v. Breccia*. This Court has been provided by Breccia with a binder with a summary of the proceedings to date. Even a cursory glance of the contents gives a flavour of the extent of the litigation in this case over the ownership of BHL/Blackrock Hospital:

1. Flynn no. 1 proceedings

2. Flynn no. 1 appeal

3. Flynn redemption proceedings

4. Flynn redemption appeal

5. Flynn change of control proceedings

6. Sheehan substantive proceedings

7. Sheehan special summons

8. Sheehan redemption model

9. Sheehan redemption appeal

10. Sheehan injunction application

11. Sheehan injunction appeal

12. Blackrock Hospital special summons.

19. In total it appears that there have already been six decisions of the High Court (all handed down) and three decisions of the Court of Appeal (one handed down, two awaited) and one further hearing in the Court of Appeal awaited (giving a total of 10 court decisions, six High Court decisions and four Court Appeal decisions all related to this shareholder dispute).

20. The dispute about the shares in Blackrock Hospital has involved about 8 weeks of hearing time to date and based on the submissions to this Court regarding the remainder of the case, it seems that, whether it is a modular or unitary trial, it could involve another 6 more weeks of hearing time. When one adds in the court time involved in court applications not requiring judgments (in the past and in the future) and costs hearings, one is effectively dealing with a private dispute that will have occupied the High Court/Court of Appeal for almost a full half year of court time by the time it is expected to be finished.

21. While this Court has regard to the right of access to the courts it must also be cognisant to the fact that if even a relatively small number of other litigants used court resources to resolve their private disputes to this extent, the legal system would grind to a halt. Such a scenario would have a serious negative impact on all court users. Just because, in this case, the litigants can afford to finance expensive High Court litigation and/or the dispute concerns a lot of money is not, in this Court's view, sufficient reason for endless court time to be devoted to this private dispute.

22. As well as the expenditure of enormous amounts of private money in private legal costs, more significant is the fact that huge amounts of court resources have been used over what is essentially a private dispute between individuals and their corporate vehicles who, unlike most citizens of the State, appear to be able to afford to use the resources of the Commercial Court now going into the fourth year to resolve their private dispute.

23. It certainly raises the issue of whether as a general principle some limit should be put on the amount of a public resource (i.e. court time) which parties are allowed for the resolution of their disputes (to the cost of other citizens), even if those parties can afford to pay their respective lawyers for the privilege. However, putting a limit on the amount of court time which parties have is not a matter that concerns this Court at this time, as this Court is concerned only with the format of the hearing for the remainder of these proceedings.

24. While restricting court time is not a matter for this Court, what is a matter for this Court is how best to use court time in managing the remainder of this trial. In this regard, it is clear that the use of court resources to resolve a private dispute is not just a matter of private interest to be resolved between the parties, but it is also a matter of public interest. This is clear from the judgment of MacMenamim J. in the Supreme Court case of *Tracey v. Burton* [2016] IESC 16. At para 45 he noted that court time is a '*scarce public resource*' which should not be '*unnecessarily wasted*' and he added that:

> "Court time is not solely the concern of litigants, or their legal representatives. There is a strong public interest aspect to these issues."

25. This comment was made in the context of lay litigants, many of whom cannot afford legal representation as there have been some instances, *albeit* relatively rare, of lay litigants without resources abusing court time. Undoubtedly, this is because a lay litigant without resources may not be deterred from endlessly pursuing litigation for the simple reason that there is no real cost to him in endlessly pursuing litigation regardless of its merits, since he is not paying his own lawyers (since he does not have any) and the threat of a costs order against him to pay the other side's lawyer is not a deterrent since he has no resources.

26. It is for this reason that the courts have been alive to the waste of court resources in such situations and in rare instances it has been necessary to impose Isaac Wunder orders on lay litigants to curb the waste of court resources, which resources are funded by taxpayers' money, as happened for example in *McMahon v. Bank of Scotland* [2017] IEHC 438 and *Sfar v. Minister for Agriculture* [2016] IEHC 348 and *Sfar v Minister for Agriculture (No. 2)* [2017] IEHC 368.

27. However, this Court must also be alive to the possibility of court resources being wasted by wealthy litigants. This is because, just as a costs order against a lay litigant without resources is not a deterrent against endless litigation, it is also the case that a costs order may not be a deterrent against endless litigation by wealthy litigants, for the simple reason that a costs order may be insignificant relative to their personal wealth or indeed the value of the assets in dispute.

28. This Court does not believe that, just because one or all of the parties to a dispute can afford the costs of litigation (namely the cost of paying their own lawyers and the lawyers for the other parties, if they lose), this Court should stand idly by while weeks and weeks of court resources (at considerable cost to the taxpayer) are used by well off litigants, while at the same time there are waiting lists in other areas because of the shortage of judges.

29. In this regard, Humphreys J. (writing extra-judicially in *Studies*, Spring 2018, Vol. 107 No. 425 "*Enhancing our Justice System*") has pointed out that Ireland is at the bottom of the European league table when it comes to the number of judges *per capita*:

> "One has to respectfully ask is Ireland living up to the requirement of having enough judges to allow all hearings to take place within a reasonable time? Unfortunately I have to suggest not. There are at present 163 judges to cover a population of 4.8 million people, or only 34 judges per million people. That puts Ireland firmly in the bottom layer of the international league table and rock bottom of the European league table. We do somewhat better than Ethiopia or Zimbabwe and marginally better than Saudi Arabia. But we are massively behind the developed world."

30. This shortage of judges means that the courts need to ensure that just as lay litigants who cannot afford legal representation are not allowed abuse court resources in their endless pursuit of private grievances, so too well off litigants should not be exempt from the principle that court resources should not be endlessly used in the pursuit of private grievances.

31. This leads to this Court to its first conclusion, namely that, because so much court resources (both High Court and Court of Appeal) have been expended to date in this private dispute between the parties, a factor in this Court's decision, regarding the format of the remainder of these proceedings, is how best to use taxpayers' funds which finance scarce court resources.

B. Request for recusal of judge previously hearing the case
32. A second factor in determining whether to have a modular trail in this case, and something which could be described, in the words of Clarke J. as a '*special or unusual circumstance*', is the fact that there was a successful request for the recusal of the judge previously hearing the dispute. It arose after Haughton J. had delivered his sixth judgment in the dispute. He was asked to recuse himself by Breccia, which he duly did. It is not surprising that Haughton J. did recuse himself, for the simple reason that when there is even a slight suggestion that a judge should not hear a particular case, it is often the case that he or she will, out of excess of caution, decide to recuse himself or herself from the case.

33. However, what is unusual about this recusal is that it did not relate to an alleged financial interest or personal connection with the parties, which is often the basis for recusal. Rather this recusal was sought because of the conduct of the trial by the judge. It arose out of Haughton J.'s refusal of Breccia's application to lift an injunction preventing it from enforcing Dr. Sheehan's loan. In the course of this judgment, Haughton J. expressed views on the behaviour of one party (Breccia) (he said it lacked candour), and for four reasons set out in his judgment, he concluded that the real purpose of Breccia's application to lift the injunction, which he refused, was not the redemption of Dr. Sheehan's loan, but the acquisition by Breccia of Dr. Sheehan's shares in BHL. On this basis Breccia alleged that Haughton J. had prejudged the outcome of the substantive proceedings.

34. It is irrelevant to this Court's decision, whether Haughton J. was correct or not to recuse himself. As far as this Court is concerned, in its decision whether to have a modular trial or a unitary trial, it is simply relevant to note that in this dispute between the parties, which appears to have a significant way to go yet, one judge was asked to recuse himself because of his conduct of the trial. It seems to this Court that since a request for a judge to recuse himself because of his conduct of the proceedings has happened once in this long running and bitter dispute, this Court cannot rule out the possibility of it occurring a second time (and this Court wishes to emphasis that it is not suggesting that only Breccia might make such an application in the future.)

Decision - modular trial is best response to the circumstances of this dispute
35. Having considered these two special or unusual circumstances, and in particular the public interest in seeking to use scarce court resources as efficiently as possible in light of the amount of resources (of this Court and the Court of Appeal) which have been expended to date by these parties, this Court concludes that the remainder of this hearing should be dealt with in modules as follows:

Module 1 – Dividend Claim i.e. the net legal issue of whether dividends could be legally paid to Dr. Sheehan

Module 2 – the Change of Control Claim

Module 3 – the Conspiracy Claim (to include the conspiracy over the dividends) and the Repayment Claim

Module 1 – the Dividend Claim
36. The advantage of this matter going first is that the legal issues in relation to the dividends (as distinct from the conspiracy issues relating to the dividends) could, in the view of Breccia's counsel be dealt with in only a '*few days*' of court resources. BHL was also of the view that, if it was clear to whom it was legally entitled to pay the dividends, it would pay those dividends and its involvement in the proceedings should then cease, *albeit* that this might not in fact happen as BHL remains one of the parties alleged by Dr. Sheehan to be party to the conspiracy.

Module 2 – the Change of Control Claim
37. The advantage of this matter going second is that from a court resources perspective, it is the most net issue and it is the issue that requires the least witnesses and the least parties, according to Dr. Sheehan's counsel. If this is the case, it should not take up too much court time.

38. Modules 1 and 2 should be heard together, unless due to the unavailability of expert witnesses for the Change of Control Claim (since it seems some of these will have to come from at least one foreign jurisdiction) it is not possible to find a suitable date for some time, in which case module 1 should be heard as a stand alone matter first.

Module 3 – the Conspiracy Claim and the Repayment Claim
39. Module 3 would only be heard after judgment has been delivered in modules 1 and 2 and would deal with the Conspiracy Claim generally and insofar as it relates to the payment of the dividend. The Repayment Claim should be heard as part of this module, since the issue of whether Dr. Sheehan owes Breccia money under the loan is logically connected with whether Breccia owes Dr. Sheehan damages in respect of an alleged conspiracy. All of the parties seem to be of the view that this module will take some weeks.

Effect of appeals of Module 1 and Module 2 on timing of Module 3
40. Of the six High Court judgments delivered to date in the dispute over BHL, four have been appealed by Breccia. It follows that there is a high probability that the judgment to be delivered in Module 1 & Module 2 will be appealed and this Court wishes to emphasis that it is not suggesting that only Breccia might appeal its decision. If this occurs, it will be necessary at that stage for this Court to decide whether Module 3 should proceed before or after the outcome of any such appeal. In this regard, clearly the attitude of the parties will be relevant to any decision to stay Module 3, pending the outcome of an appeal of Modules 1 & 2. However, as noted in this judgment, the use of what MacMenamin J. has described as the '*scarce public resource'* of court time is not just a matter for the parties. Accordingly, in the event of there being an appeal this Court will have regard in reaching its decision as to whether to stay the hearing of Module 3 to what is the most appropriate use of court resources, at that stage of the proceedings.

Timing for the hearing of Module 1 and Module 2
41. Similarly, as regards the timing of the hearing of Modules 1 and Module 2, it seems clear that it would not be appropriate to fix a hearing date for those modules until the outcome of an appeal, if any, of this decision.

Reasons for this type of modular approach

42. In this Court's view, hearing this dispute in the foregoing modules has the advantage that, if this dispute follows the experience to date of continuing to be a long drawn-out and bitter dispute (i.e. an aggregate of nine hearings in the High Court and Court of Appeal, with one pending before the Court of Appeal, and the recusal of one judge) it should be easier for a different judge to hear subsequent parts of this dispute, if that becomes necessary.

43. A second advantage of this approach is from a court resources perspective. Since this Court is stepping in to take over this case from Haughton J., this Court can deal first with two very net issues of whether the dividends can be paid to Dr. Sheehan as a matter of law and whether there has been a change of ownership in Breccia, without this Court requiring a great degree of familiarity with the overall dispute. Yet, no doubt at the end of those two modules this Court should be reasonably familiar with the history and issues between the parties in advance of the very substantive and '*amorphous*' Conspiracy Claim against all the defendants, such that Module 3, which will deal with this aspect of the hearing, should be able to proceed relatively quickly.

44. A third advantage is that by leaving the Conspiracy Claim and the Repayment Claim until last, there is the prospect that, depending on the decision reached in Modules 1 (Dividend Claim) and Module 2 (Change of Control Claim), the whole dynamic of the dispute could change. For example, the dynamic might change if BHL was held to be legally obliged, or held not to be legally obliged, to pay, Dr. Sheehan €4.1 million in Module 1 (Dividend Claim). Equally the dynamic might change if Breccia was held to be legally obliged, or was held not to be legally obliged, to sell its shares to the other shareholders in Module 2 (Change of Control Claim). Although it may be unlikely in view of the history between the parties to date, the decisions in Modules 1 (Dividend Claim) and Module 2 (Change of Control Claim) *could* for this reason lead to a settlement, which would obviate the need for further court resources being expended on the most detailed aspect of the dispute, i.e. the alleged conspiracy, which is likely to take several weeks. In this Court's view, in light of the substantial amount of taxpayers' money already expended to date on this private dispute, even this *possibility* of a saving of further court resources is reason alone for this modular format to be adopted.

45. A fourth and final advantage of this approach is that by dividing the hearing into modules of two very net issues at the start, it seems (although this Court is not making a determination on this issue) that the Duffys need not attend Module 1 (Dividend Claim) and Module 2 (Change of Control Claim) and they need only attend Module 3 (Conspiracy Claim). As for BHL, it will not need to attend Module 2 (Change of Control Claim), but will need to attend Module 1 (Dividend Claim), since it is anxious to get a direction from the Court regarding the legality of the decision not to pay the dividend. It seems that BHL may have some involvement in Module 3 (Conspiracy Claim). This modular approach therefore should lead to some costs savings for the Duffys and BHL, which might not arise to the same extent if there was a unitary hearing.

Mediation

46. This Court is aware, from the reporting of the directions hearing in this case before McGovern J., that the parties have already engaged, *albeit* unsuccessfully, in mediation. Since this Court assumes that this took place at an early stage in these proceedings, it would seem likely that since that unsuccessful mediation there have been numerous court hearings and there have been seven judgments of the High Court and Court of Appeal, with two of the Court of Appeal judgments awaited and one further hearing before the Court of Appeal pending, and no doubt millions of euro spent on legal fees in this dispute. Undoubtedly the lawyers for all parties made strenuous efforts to persuade the parties to settle the dispute, as evidenced perhaps by that failed mediation.

47. However, just because the proceedings are in full flow should not prevent another attempt at settlement or mediation, particularly where, as in this case, unlike in most litigation where there is only one judgment, there will have been 10 judgments on aspects of the dispute. Such independent judicial assessments of the dispute might facilitate a settlement now, that might not have been possible earlier. For this reason, this Court would urge the parties and in particular their lawyers, who have an overriding duty to the Court under their Code of Conduct to '*ensure in the public interest that the proper and efficient administration of justice is achieved*', to give the most serious consideration to an attempt to resolve this dispute by mediation, before more court resources are expended on this dispute. For this reason the lawyers should ensure that this judgment is brought to the attention of the principals in the parties to this dispute, since for this dispute to be resolved, it will require probably all of the principals to back down from their current positions.