2014 Folio 68
[2015] EWHC 720 (Admlty)

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

ADMIRALTY COURT

BEFORE ADMIRALTY

REGISTRAR JERVIS KAY QC

B E T W E E N:

CDE S.A.

Claimant

- and -

SURE WIND MARINE LTD

Defendant

"SB Seaguard" c/w "Odyssée" – 17th April 2011

Hearings on the 15th July 2014 and the 20th January 2015

Appearances – For the Claimant - Richard Sarll instructed by Weightmans LLP

For the Defendant - Chirag Karia QC instructed by Holman Fenwick Willan LLP.

JUDGMENT

Introduction

1. The Claimant has applied for an extension of time for the commencement of Admiralty proceedings pursuant to s.190(5) of the Merchant Shipping Act 1995 (the "MSA 1995") with respect to the incident when the Defendant's vessel, the "SB Seaguard", collided with the Claimant's catamaran yacht, "Odyssée" in Ramsgate Harbour on 17th April 2011.

2. The relevant events were: (a) the Collision occurred on the 17th April 2011; (b) the 2 year time limit provided for by s.190 of the MSA 1995, expired on the 17th

April 2013; (c) the Defendant stated that it would rely on the time bar on the 21st October 2013; (d) the Claimant issued the Claim Form as an "other Admiralty claim" (this is the non in rem procedure referred to as an "in personam" claim in the Senior Courts Act 1981 and for convenience referred to as such hereafter) on the 23rd of December 2013; (e) the Claimant made an application for an extension of the time limit under s.190(5) on the 20th January 2014.

3. The Claimant's interests were represented by an insurance claims handler, Mr. Yves De Ruyter, throughout the relevant period. He provided a witness statement dated 16th January 2014 which contains the following information:

    a. He is an experienced claims handler who has spent his "*entire career in the insurance industry*" and is the managing director of a company that manages claims on behalf of ESA Euroship Allianz ("ESA"), the insurers of the "Odyssée".

    b. He negotiated with Shipowners P&I Club with which the "SB Seaguard" was entered but these negotiations "never produced any result".

    c. In October 2013 arrangements had been made to allow a settlement agreement to be reached when Mr. McCooke, of the Shipowners' P&I Club, sent an E-mail indicating that the Defendant's insurers intended to rely upon the time bar.

    d. He was shocked because he had been in regular discussions since March 2012 and he had been given no reason for thinking that this defence would be relied upon. The reasons why he was shocked appear to be:

        i. Nothing was said by the Shipowners' P&I Club to indicate that they intended to rely upon the limitation defence, but

        ii. they continued the negotiations beyond the expiry of the limitation period,

        iii. that he himself and the Claimant were unaware of the existence of the limitation period,

        iv. that Mr. McCooke sought to dissuade the Claimant from engaging lawyers.

    e. In the circumstances he appears to consider that he was lulled into a sense of false security.

    f. However he does not set out any basis for concluding that the Shipowners P&I Club indicated that it would waive or extend the effect of the limitation period.

4. Mr. De Ruyter also gave oral evidence. In my view the material parts were:

    a. The time bar defence was asserted on the 21st October 2013 but the application to extend time was not taken until 20th January 2014 because: the matter had to be referred to the German insurers who told him to obtain

advice from Dutch lawyers for which purpose he travelled to Holland. Thereafter the Dutch lawyers had to consider the file and they then contacted Hill Dickinson who made contact with the Defendant's P&I Club and the application was made when the Club refused to concede the time bar point. He thought that Hill Dickinson were contacted sometime between October and December 2013.

b. Although he had been involved as a claims handler in the insurance industry for almost 40 years this had only included yacht claims since 2009. The policies with which he was familiar in his non marine work were governed by Belgian Law where a 10 year time limit applied.

c. He was dissuaded from instructing lawyers by the Defendant. There was no issue of liability. He trusted the Defendant. The Club said that it would not accept the costs of instructing the solicitors.

d. There is no document in which the Defendants or their P&I Club admit liability.

e. He was not aware of the 2 year time bar but if he had been "*We would have done everything possible to preserve the right – we would have instructed lawyers. I was not aware of any time bar existing; in Belgian Law it's 10 year. Neither ESA/Allianz nor their legal assistance insurer, nobody mentioned that there could be an English law time bar.*"

The case for the Claimant

5. Mr. Sarll, for the Claimant, has submitted that:

a. In *The Al Tabith* [1995] 2 Lloyd's Rep 336 (CA), the decision was based upon the old RSC Rule O.6, r.8 but that rule has been replaced by CPR Part 7.6. (In that case the Court of Appeal held, with respect to applications under s.8 of the Maritime Convention Act 1911 for an extension of time to commence proceedings, that a two stage test applied whereby the applicant first had to satisfy the court that there was a good reason why the claim had not been commenced within the time limit and, if there was a good reason, secondly that it would be proper for the court to exercise its discretion. This decision is at the centre of the present debate and is considered in greater detail below).

b. In *Hashtroodi v Hancock* [2004] 1 WLR 3206, *Collier v. Williams* [2006] 1 WLR 1945 and *Hoddinott v. Persimmon Homes (Wessex) Ltd* [2008] 1WLR 806 it has been held that the previous threshold of "good reasons" applicable under RSC O.6, r.8 does not apply with respect to CPR Part 7.6 but, instead, the court's discretion must be exercised in accordance with the overriding objective set out in CPR Parts 1.1 and 1.2.

c. The reasoning for accepting the two stage test given by Teare J in *The Pearl of Jebel Ali* is confusing and that the approach of David Steel J in *The Baltic Carrier* should be preferred.

d. The test applicable to CPR 7.6 is wholly different from that applicable to RSC O.6.r.8 so that it is not necessary to show a "good reason" for ordering an extension of time but, pursuant to CPR Part 7.6, the court is simply required to "act justly" in accordance with the overriding objective.

e. Therefore the proper test applicable to s.190 MSA 1995 is not a two stage test but a one stage test which would allow the Court an unfettered discretion to extend time guided by the overriding objective but subject to provisions of CPR Part 7.6(3).

f. Upon the premise that the single discretion approach is correct the following points should be taken into account when considering the discretion:

    i. The "*Odysee*" was seriously damaged in circumstances where there could be, and has been, no substantive defence to liability by the Defendant's servants;

    ii. An in personam Admiralty action was issued on the 23rd December 2013.

    iii. It was late and the Claimant has requested a discretionary extension of time under s.190(5) of the MSA 1995 which provides "*Any court having jurisdiction in such proceedings may, in accordance with the rules of court, extend the period allowed for bringing proceedings to such an extent and on such terms as it thinks fit".*

    iv. The reasons for extending time are: (i) that Mr. McCooke, at the Club, gave Mr. Yves De Ruyter no reason for thinking that the time bar defence might be raised; (ii) that the Shipowners P&I Club indicated that the claim would be settled once repairs had been completed; (iii) that Mr. McCooke actively dissuaded Mr. De Ruyter from instructing lawyers; (iv) that Mr. De Ruyter was himself unaware that a time bar might apply; (v) in reliance on the foregoing he did not instruct lawyers or ensure that proceedings were commenced.

    v. There were three occasions when Mr. McCooke had dissuaded Mr. De Ruyter from appointing solicitors and in an e-mail dated the 5th October 2012 Mr. McCooke wrote: "*I do not believe that there is anything to be gained by appointing a solicitor to 'attack the owner of the SB Seaguard', and would hope that we can continue our dealings on this unfortunate incident in good faith, as has been and remains our intention from the outset".*

vi. With respect to the ongoing negotiations between Mr. De Ruyter and Mr. McCooke, the claims handler of the P&I Club representing the owners of the "*SB Seaguard*" during which the latter had said nothing which would give Mr. De Ruyter "*any reason for thinking that a timebar defence might be raised*" but, on the contrary, had given the impression "*that the claim would be settled after the repair work had been completed, once a "final statement" with supporting invoices had been submitted*" and that "*Moreover, Mr. McCooke had actively dissuaded* [Mr. De Ruyter] *from instructing any lawyers, and* [Mr. De Ruyter] *did not know that any such time bar might apply* and that "*In reliance on those matters, I did not think to engage any lawyers or ensure that proceedings were commenced.* [Mr. De Ruyter] *did not see any cause for doing so. It could well be said that* [Mr. De Ruyter] *was lulled into a false sense of security*".

vii. With respect to the oral evidence of Mr De Ruyter and the witness statement of Mr Glynn-Williams the following points are relevant:

1. As a result of the cross-examination of Mr De Ruyter, notwithstanding his previous experience in claims handling, it is now clear that he genuinely did not know that there was any applicable time-bar;

2. Mr De Ruyter's explanation in cross-examination as to why the matter was not put into the hands of English solicitors (and why, therefore, proceedings were not commenced) was consistent with his witness statement. As he explained, *"They dissuaded me [from appointing solicitors], there was no issue with liability ... I trusted them"*.

3. In addition, Mr De Ruyter gave evidence as to why it took some time, on his 'side of the fence', for the application to be made in that he had to refer the matter to the German insurers, they told him to seek advice from Dutch lawyers and the Dutch lawyer had to look into the file before they contacted Hill Dickinson.

4. Finally, Mr Glynn-Williams has explained in his witness statement why it took some further time, from the point of view of the solicitors, for the application to be made. Amongst other things, Mr Glynn-Williams has explained how it was necessary to liaise with the Dutch lawyers, and with Mr De Ruyter in respect of the preparation of the application and witness statement. There was a large amount of documentation, as well as some language difficulties. The Christmas vacation also intervened.

viii. It is submitted that, in all the circumstances, the application was made reasonably promptly and should be allowed.

g. However even if the *The Al Tabith* test is applied the circumstances support a conclusion that the application for an extension should be allowed because the parties were not "merely negotiating" and because the second stage "balance of hardships" is overwhelmingly in favour of the Claimant's situation.

h. In any event the decision of *MIOM 1 Ltd v. Sea Echo ENE (No. 2)* supports the case that the time bar point was raised too late and cannot be relied upon.

The case for the Defendant

6. Mr. Chirag Karia QC, for the Defendant, has submitted:

a. That the Court should apply the 2 part test as laid down by the Court of Appeal in *The Al Tabith* [1995] 2 Lloyd's Rep 336 (C.A.).

b. The first stage is for the Claimant to demonstrate that there is a *good reason* for not issuing the claim within the two year time limit in respect of which the Claimant should provide an explanation for its failure to issue the Claim Form during the period since the collision and should provide "*special circumstances which create a real reason why the statutory limitation should not take effect*" – *The Pearl of Jebel Ali* [2009] 2 Lloyd's Rep 484 at 492 *per* Teare J. and *MIOM 1 v Sea Echo ENE* [2012] 1 Lloyd's Rep 140 at 147.

c. Only if the Court is satisfied that there is a justifiable reason for the delay should it then exercise its discretion to determine whether, in all the circumstances, it would be appropriate to grant an extension as set out in *The Al Tabith.*

d. The wording of section 190(5) of the MSA has re-enacted section 8 of the Maritime Conventions Act 1911 (THE "MCA 1911").

e. That where the construction of a statutory provision has been authoritatively established and Parliament re-enacts the provision in materially identical language, then the re-enacted provision falls to be construed in the same way, see *London Corpn v, Cusack-Smith* [1955] AC 337, 361 (HL). Therefore *The Al Tabith* is as binding on the effect of section 190(5) of the MSA as it was on section 8 of the *Maritime Conventions Act 1911*.

f. The two part test has been applied in a number of cases since the Merchant Shipping Act was made law. Thus, Teare J applied the 2-part test in *The Pearl of Jebel Ali* [2009] 2 Lloyd's Rep. 484, 491 at [35]; *MIOM 1 v. Sea Echo ENE* [2012] 1 Lloyd's Rep. 140, 147 at [54] and *The Theresa Libra/Pamela* [2013] 2 Lloyd's Rep. 596, 601 at [31]. *The Al Tabith* was not cited in David Steel's judgment in *The Baltic Carrier* [2001] 1 Lloyd's Rep. 689 and consequently, in all the post-CPR

authorities on section 190(5) where *The Al Tabith* has been cited, the Court has applied the 2-part test. (*The Hai Hing* [2000] 1 Lloyd's Rep. 300 did not concern section 190(5) of the MSA.)

g. In *The Al Tabith* the following were held not to be *good reasons* for failing to issue the claim form:

   i. Carelessness;

   ii. That the Defendant does not have a good defence unless there has been a formal admission of liability;

   iii. That negotiations are continuing unless it is shown that the Claimant was actively misled;

   iv. That the Defendant was unaware that the time was about expire but went on negotiating.

h. The Claimant has failed to satisfy the stage 1 requirement of "good reason" because none of the reasons relied on by the Claimant provides, either individually or cumulatively, good reason for the Claimant's failure to issue a claim form within the 2-year limitation period or for the court now to grant an extension to that period. In this respect:

   i. The cause of the Claimant's failure to issue its Claim Form within the 2-year limitation period was Mr De Ruyter's oversight, and it is trite law that oversight or mistake by the claimant does not constitute "*good reason*". In his statement, Mr De Ruyter states that he "*did not know that any such timebar might apply*". Such an oversight or mistake does not constitute "*good reason*". See, *The Al Tabith* at 339, col. 2 & 342 (per Hirst LJ); 343 (per Rose and Russell LJJ).

   ii. Mr De Ruyter's attempt to blame Mr McCooke for not warning him of the upcoming expiry of the limitation period is misconceived because a party in a dispute owes no duty to advise his opponent on how best to prosecute the claim against it.

   iii. Mere silence or acquiescence by the defendant in the claimant's delay does not constitute "good reason". There will be "good reason" only "*if by words or conduct a defendant has led the plaintiff to believe that the defendant consents to an extension of validity of the writ, or will do so, that may well be a ground for inferring an agreement to that effect*": *The Mouna* [1991] 2 Lloyd's Rep. 221, 229, col. 2 (CA); *The Al Tabith* at 343, col. 1, para (5). Mr McCooke did not himself realise that the limitation period had expired until some time later. There was no such implied agreement in the present case as the Claimant has rightly conceded.

iv. The fact that negotiations were ongoing has "*never constituted good reason*": *The Al Tabith* at 342, col. 2 (per Hirst LJ); 343, col.1 (per Rose LJ); *The Mouna* at 229, col. 2.

v. The fact that the Defendant's position was that it would consider the claim does not provide "good reason" absent a formal admission: *The Al Tabith* at 342. Further, the Defendant could hardly have relied on the limitation defence before the expiry of the limitation period because it did not have that defence until such expiry.

vi. The Defendant's Club neither prevented the Claimant from instructing lawyers nor dissuaded it from retaining lawyers to protect its position generally. In fact, from 16th September 2011 to 11th January 2012, the Claimant had retained and was being advised by a Belgian law firm, Herbrant & Partners Advocaten (demonstrated by Herbrant & Partners' letters of 19th October 2011 and 18th January 2012 and fee note). Mr De Ruyter's statement is inaccurate in suggesting that the Claimant did not retain, or have the ability to consult, lawyers. The occasions on which the Club expressed *its opinion* as to the necessity for involving lawyers (i) took place a long time before the expiry of the time bar, and (ii) related to specific issues. The Club did not dissuade the Claimant from appointing solicitors to advise generally on its claim. The Club was merely trying to prevent unnecessary costs in relation to issues that could be worked out between itself and Mr. De Ruyter. In particular:

    1. The Club's 22nd March 2012 email simply stated that the Club saw no reason in having a lawyer present at a meeting dealing with technical matters. That was the Club's *bona fide* (and indeed reasonable) view and has nothing to do with the Claimant allowing the claim to become time barred. The Club itself did not send a lawyer to that meeting.

    2. The Club's email of the 7th September 2012 was related to the Claimant's threat to instruct solicitors to recover interest from the Defendant unless the Club paid repair invoices prior to repairs being carried out, which would have been a clearly unjustified move.

    3. The Club's message of 5th October 2012 referred specifically to "*appointing a solicitor to 'attack the owner of the SB Seaguard'*", which is different from protecting time. Further, this last message was sent *more than 6 months* before the expiry of the time bar. The Claimant had plenty of time thereafter to consult lawyers regarding the expiry of the limitation period and to issue its Claim Form.

4. The fact that the Defendant's Club itself also did not immediately appreciate that the limitation period had expired and therefore sent their surveyor to the 23rd May 2013 meeting is "*entirely irrelevant*": *The Al Tabith* at 343, col.1, para(3). The limitation period had already expired and it was for the Claimant to keep an eye on the passage of time to ensure that its claim did not become time barred.

5. The Defendant's want of any realistic defence is "*in the absence of an admission of liability, an obvious reason for starting proceedings within the prescribed period rather than a good reason for not doing so*": *The Al Tabith* at 342, col. 2, para (1).

i. With respect to stage 2 the Claimant delayed even after the Defendant first raised its limitation defence on 21st October 2013. The claimant in *The Al Tabith* filed its writ on the same day that the limitation defence was taken but the Claimant in the present case delayed filing its Claim Form for a further 2 months and 3 days and did not file the present application for a full 3 months.

j. The Court should dismiss the Claimant's application for an extension of over 8 months to the statutory limitation period applicable to collision claims as laid down in section 190(3) of the Merchant Shipping Act 1995 with costs.

k. Even if CPR 7.6 were held to be applicable by analogy and to have the effect of overruling *The Al Tabith*, the correct analogy would be with CPR 7.6(3), not CPR 7.6(2). This is because, by failing to issue its claim form within the 2-year limitation period laid down by statute (section 190(3)), the Claimant's position is analogous to that of a claimant who, having filed *within* the limitation period, then fails to serve within the period of the claim form's validity.

l. In order to secure an extension under CPR 7.6(3), the Claimant would have to prove that it (i) "*took all reasonable steps to*" serve the Defendant within the section 190(3) 2-year limitation period and (ii) acted promptly in making its application. It cannot satisfy either limb of that test because:

    i. It took *no steps* to issue a claim form within the 2-year limitation period; and

    ii. It delayed over *9 months* after the expiry of the limitation period, and *3 months* after the Defendant asserted its section 190(3) defence, before issuing its application.

m. The Court has no jurisdiction to make an order under CPR 7.6(3) unless both its requirements are first satisfied: *Vinos v. Marks & Spencer plc* [2001] 3 All ER 784 (CA). Indeed, that the *Mitchell* approach also applies to applications for extension under CPR 7.6 is clear from *Mitchell v. News Group Newspapers* [2014] 795, 806, paras 42 – 43 (CA) itself.

n. Even if the Court were to hold that, contrary to *The Al Tabith*, a single-stage test is to be applied, the Claimant has failed to satisfy that test for the reasons set out above.

Consideration

The issues posed by the parties' arguments.

7. It seems to me that an appropriate approach to the issues raised is as follows:

   a. What test is to be applied when considering an application to extend time for the commencement of proceedings under s.190 of the Merchant Shipping Act 1995? Is it a two stage test, as held in *The Al Tabith* and which was accepted in *The Pearl of Jebel Ali* and other more recent cases or a single stage test based solely upon the overriding objective and the requirement to do justice? Is it still necessary to show a *good reason* for allowing the application or has that requirement disappeared with the alteration of the rules from RSC 0.6,r.8 to the provisions of CPR Part 7.6?

   b. Assuming that the test requires that the applicant shows a good reason, was there a good reason for the claim form not having been issued within the limitation period set out in s.190 of the Merchant Shipping Act?

   c. Assuming that the Claimant' single stage approach is correct, are the circumstances in this case such that it would be proper to allow an extension of time?

***The relevant statutory provisions*:**

8. *The present provisions under the Merchant Shipping Act 1995*

   a. Section 190(1) of the Merchant Shipping Act 1995 provides: "*This section applies to any proceedings to enforce any claim or lien against a ship or her owners- (a) in respect of damage or loss by the fault of that ship to another ship . . .*"

   b. Section 190(3) of the Merchant Shipping Act 1995 provides: *"No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel . . . unless proceedings therein are commenced within two years from the date when the damage or loss was caused."*

   c. Section 190(5) of the MSA 1995 provides: "*Any Court having jurisdiction in such proceedings may, in accordance with the rules of court, extend the period allowed for bringing proceedings to such an extent and on such conditions as it thinks fit"*

9. *The previous provisions under the Maritime Convention Act 1911*

> Section 8 provided: "*No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel . . . . unless proceedings were commenced within two years from the date when the damage or loss was caused or the services were rendered . . .*
>
> *Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity."* (emphasis added).

The rules of court.

10. CPR Part 7.6 provides:

> *(1) The claimant may apply for an order extending the period for compliance with rule 7.5.*
>
> *(2) The general rule is that an application to extend time for compliance with rule 7.5 must be made –*
>
> *(a) Within the time 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.*
>
> *(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by any order made under this rule, the court may make such an order only if –*
>
> *(a) The court has failed to serve the claim form; or*
>
> *(b) The claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and*
>
> *(c) In either case, the claimant has acted promptly in making the application."*

11. CPR Part 7.6 replaced RSC O.6 r.8. which provided:

> *(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period not exceeding 12 months at any time, beginning with the day next following that on which it would otherwise expire as may be specified in the order, if*

an application for extension is made to the Court before that or such later day (if any) as the Court may allow.

Consideration of the authorities relevant to the test to be applied.

12. It is apparent that the statutory provisions contained in the MSA 1995 are a reiteration of the provisions of s.8 of the Maritime Conventions Act 1911 (MCA 1911) and, in fact, no specific provision within the rules has ever been made with express reference to either s.8 of the 1911 Act or to s.190 of the 1995 Act. That aspect is not in dispute but Mr. Sarll argues that the application of s.8 of the 1911 Act was considered as being applied by reference to the rule contained in RSC O.6,r.8 and that, since there has been a radical change in the rules brought about by CPR Part 7.6 combined with implementation of the overriding objective pursuant to CPR Part 1, the application of s.190 must be applied so as to accord with the new CPR. Therefore it is no longer appropriate to approach the question of extension in the manner previously adopted and the only question for the court is whether it is just that an extension should be allowed.

13. In arguing for this approach it is apparent that he is seeking to persuade the court that it is unnecessary for the court to consider whether there is a real or good reason for the failure to issue the claim timeously before it considers the overall justice of allowing an extension of time. He is thus seeking to avoid the effect of the so-called two stage process arising from the decision in *The Al Tabith.*

14. In my view Mr. Sarll's approach cannot be accepted for a number of reasons. In considering this aspect it is, I think, helpful to consider the approach taken by the courts before and including the decision in *The Al-Tabith* and then to consider whether there are good grounds for concluding that the approach has been altered by the introduction of the CPR as Mr. Sarll contends.

15. Historically the Admiralty Court recognised that although no rules were made with respect to the power of extending time to commence proceedings under s.8 of the MCA 1911 it was to be exercised upon discretionary principles but only where there were special circumstances creating a real reason for doing so. In *The Llandovery Castle* [1920] P 119 salvage services were performed on the 7th December 1916, the casualty was subsequently lost to enemy action in July 1918, a claim was intimated on 23rd November 1918, was repudiated on 18th January 1919, an *in rem* action was commenced by writ on 2nd April 1919, the solicitors accepted service and entered an appearance on 14th April 1919. Hill J. held that by entering an appearance the Defendant was thereafter to be treated as a defendant in a claim *in personam* and this was irrelevant to whether the Defendant could rely upon the limitation under s.8 of the MCA. On the question of whether the claimant was entitled to an extension of time for commencing proceedings Hill J. held that the relevant power was discretionary upon which he said: " . . . *the section fixes a period of two years, and the discretion can only be used in favour of a plaintiff if there are special circumstances which create a real reason why the statutory limitation should not take effect.*"

16. Hill J.'s approach was followed in *The Hesselmoor and the Sergeant* [1951] 1 L.L.R. 146 in which Willmer J., also where a claim for salvage was commenced more than 2 years after the services were rendered, held that the claim had been allowed to go to sleep, that he could find no reason why he should exercise his discretion in allowing the application to start proceedings out of time, that allowing the matter to proceed would cause actual prejudice to the Defendants, in losing the right to rely upon the time bar, and that it was contrary to the policy of the Admiralty Court to allow proceedings to be conducted tardily.

17. It is noteworthy that whilst the judges in the above cases did not identify any rule of court which was considered relevant to the exercise of their discretion, nonetheless the language indicates the use of a two stage approach, in the sense that the court only appears to have been ready to consider using its discretion to extend time in cases where a good reason was shown for doing so. However it is not clear whether that was regarded as a rigid rule or whether the court simply considered that the need for a good reason was an integral or overriding feature of the discretionary process of considering whether an extension should be allowed.

18. Consideration of RSC O.6,r.8 does not appear to have arisen in cases applying to an extension of time in which to issue the writ during the period prior to Brandon J becoming the Admiralty Judge. However in *The Owenbawn* [1973] 1 Lloyd's Rep. 56 the application of RSC O.6,r.8 was considered but that was in the context of whether it would be proper to renew an already issued claim which had not been served in time. Brandon J observed that very similar considerations applied to whether there was an application to renew a writ or for an extension of time under s.8 of the MCA 1911. However it does not appear that he went so far as to hold that O.6, r.8 actually had any higher application than by way of analogy or that the provisions of s.8 of the MCA 1911 could only be applied in accordance with O.6,r.8 of the RSC. Furthermore in *The Myrto No.3* [1987] 1 AC 597, which was a case concerning the extension of a writ which had been issued in time and therefore required the application of RSC O.6,r.8, Lord Brandon took the view that the rule should be interpreted as requiring a good reason to allow an extension. That does not appear to be a finding that the test in RSC O.6,r.8 should be applied to applications under s.8 of the 1911 Act *per se* but rather that the approach of the Court in the earlier cases involving applications under s.8 of the 1911 Act, requiring a good reason, should be applied to the operation of RSC O.6, r.8. In my view this is a significant distinction because it relates directly to whether s.8 applications for an extension of time to commence a claim were or were not subject to the provisions of the RSC O.6,r.8.

19. In my view later cases support this conclusion. In *The GAZ Fountain* [1987] 2 Lloyd's Rep 151 there was a collision in which the claimant obtained extensions of time but only until June 1986. In January 1987 the claimant issued a writ. The defendant contended that the extension had not been renewed and that the claim was time barred. The claimant applied for an extension of time under s.8 of the MCA 1911 to allow the claim to be maintained. Sheen J. held that there was no excuse for the delay in issuing the writ and that time should not be extended unless the claimant could show special circumstances. RSC O.6, r.8 did not form part of the consideration or judgment. In *The Zirje* [1989] 1 Lloyd's Rep 493 Sheen J. allowed an application to extend the writ in a case where the issuance of

the writ was only 3 days out of time and the defendants had agreed not to contest liability. He held that an extension should only be allowed where there appeared to be exceptional or special circumstances. Although the judge held that the test to be applied was the same as for an extension of a writ under RSC O.6,r.8 that does not derogate from the view I have expressed above with respect to the effect of O.6,r.8. In *The Seaspeed America* [1990] 1 Lloyd's Rep 150 RSC O.6,r.8 did not form part of the consideration or judgment. In that case there had been an admission of liability but, during the course of negotiations, the plaintiffs overlooked the passage of time. Sheen J. held the court had a discretion to extend time where there was a good reason to do so and that, in the circumstances of the case, it would be an injustice if the action was not allowed to proceed. He said that he could not see any difference between a 'real reason', the test applied in *The Llandovery Castle*, and a 'good reason'.

20. The last case before the introduction of the CPR was *The Al Tabith and Alunfushi* in 1995. In that case, following a collision, the defendants' vessel, *The Alunfushi*, was arrested at Chittagong. Her P&I Club, the West of England, provided a letter of guarantee to allow her release. There were negotiations during which those representing the *Al Tabith*, Steamship Mutual, sought an admission of liability from *Alunfushi* interests during which extensions of time were granted up to the 20th February 1993. The relevant person at the Steamship Mutual mistakenly noted the agreed extension as being until the 20th March 1993. On the 9th March 1993 West of England sent a telex to Steamship Mutual stating that unless Steamship Mutual, for the plaintiffs, had taken steps to protect their interest the claim became time barred on the 20th February 1993. The plaintiffs then issued a writ on the 9th March 1993 and applied for an order that the period for issuing the writ should be extended to allow the claim to proceed. At first instance Sheen J. held: (i) the plaintiffs must either issue a writ or obtain a firm undertaking that the time for issue would be extended; (ii) there was no conduct by the defendants which caused Steamship Mutual not to issue a writ nor which contributed to the mistake made on the part of that company; (iii) there had been no admission of liability and although the circumstances of the collision probably spoke for themselves the fact that the parties were negotiating would not, by itself, make a good reason for extending the time period of limitation; (iv) it was for the plaintiffs to show that there was a good reason to extend the time and that a mistake on their part did not constitute a good reason; and (v) that the fact that the Defendants had suffered no prejudice was not a good reason for extending time. At page 340 Hirst L.J. observed that it was not disputed that the "good reason test" applies under s.8 of the Maritime Convention Act "*as is regularly applied when deciding whether or not to extend the validity of a writ under O.6, r8* [of the RSC]". At pages 342 – 343 the Court of Appeal laid down a two part test as to whether the Court should exercise its discretion to extend time. The first stage was to enquire whether the Claimant had "*demonstrated a good reason for the extension*". The second stage is, if the Claimant has satisfied the first, to enquire whether it would be proper to exercise its discretion in the circumstances of the case. It is to be noted that although the *The Al Tabith* was concerned with the provisions of s.8 of the MCA 1911 which was the predecessor of the s.190 of the MSA 1995 the relevant wording was very similar, both sections provide that the Court: "*may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit.*" Upon the above basis Hirst

L.J. considered that Sheen J's approach with respect to requiring a good reason could not be faulted.

21. For the reasons set out it is quite clear that the Court of Appeal considered that a two stage test applied to applications made under s.8 of the MCA 1911. However since then there have been two changes. Firstly s.8 of the 1911 Act has been replaced by s.190 of the Merchant Shipping Act 1995 and secondly the RSC have been replaced by the CPR. The Act of 1995 still requires that a claim be commenced within two years of the relevant incident causing damage and that the court, in the words of s.190(5) of the 1995 Act, "*may, in accordance with the rules of court, extend the period allowed for bringing proceedings to such an extent and on such conditions as it thinks fit*." These words are almost identical to those contained in the Act of 1911 and are sufficiently similar to refute any suggestion that the later Act has imposed a change of the statutory regime relevant to the limitation of maritime claims including those relevant to collision.

22. The next question is whether the introduction of the CPR has altered the test to be applied. The Claimant has submitted that it has because CPR Part 7.6 has replaced RSC O.6,r.8, the true interpretation of which formed the basis for the decision in *The Al Tabith*, and that there is a body of authority which has decided that the good reason threshold applicable to RSC O.6,r.8 does not apply to CPR Part 7.6. In this respect Mr. Sarll has cited *Hashtroodi v. Hancock* [2004] 1WLR 3206, *Collier v. Williams* [2006] 1WLR 1945 and *Hoddinott v. Persimmon Homes (Wessex) Ltd* [2008] 1 WLR 806. He has submitted that instead CPR 7.6 must be exercised in accordance with the overriding objective to be found in CPR Part 1.1 and 1.2. Mr. Sarll also relied upon the decision of David Steel J. in *The Baltic Carrier and The Flinterdam* [2001] I Lloyd's Rep 689 and has submitted that the other recent decisions taken with respect to s.190 of the MSA 1995 namely *The Pearl of Jebel Ali and The Pride of Al Salam 95* [2009] 2 Lloyd's Rep. 484 (Teare J), *MIOM 1 v. Sea Echo ENE* (No. 2) [2012] 1 Lloyd's Rep. 140, (Teare J.), *Theresa Libra v MSC Pamela* [2013] 2 Lloyd's Rep 596 (Teare J.) and the *Stolt Kestrel v Niyazi S* [2014] EWHC 1731 (Hamblen J) should not be followed insofar as they have applied the two stage test referred to in *The Al Tabith* because, notwithstanding the decision of David Steel J. in *The Baltic Carrier and The Flinterdam*, it was common ground that *The Al Tabith* test should apply. In effect Mr. Sarll is saying that any decision on s.190 which has applied a two stage test has been wrongly decided because the true effect of the CPR on s.190 has not been fully considered.

23. In *The Baltic Carrier and The Flinterdam* [2001] I Lloyd's Rep 689 the claimant sought damages for personal injury arising out of a collision in the Kiel Canal on the 16th March 1998 and issued proceedings against both the owners of the *Baltic Carrier* and *The Flinterdam* on the 8th June 1999 ("the first action"). *The Baltic Carrier* entered Fowey and was served and arrested. *The Flinterdam* did not enter the Medway as expected at that time but was in Fowey on the 19th August 1999. However Clyde & Co., the claimant's solicitors, did not consider that there was sufficient time to serve that vessel and she subsequently sailed. The 2 year time limit expired on the 16th March 2000 but unfortunately Clyde & Co. did not

appreciate that a 2 year time limit applied but mistakenly thought that there was a 3 year period by reason of s.11 of the Limitation Act. On the 7th June 2000 the 12 months permitted for service of the first claim expired, no application having been made for an extension. A second action was commenced against the owners of *The Flinterdam* on the 27th June 2000 ("the second action"). On the 14th July 2000 an order was made renewing the claim form in the first action as against *The Flinterdam.* The owners of *The Flinterdam* then applied for that order to be set aside on the basis that there had been an opportunity to serve the first claim form when the vessel was in Fowey as required by CPR Part 7.6. The claimant applied for an order that the time for serving the second action, which had expired on the 16th March 2000, should be extended under s.190 of the Merchant Shipping Act 1995. David Steel J. considered that the issue was whether there had been a reasonable opportunity to serve the claim form and, upon considering the decision of Rix J. in *The Hi Hing* [2000] 1 Lloyd's Rep 300, he concluded that there was an unfettered discretion to extend time subject to the express limitations set out in CPR Part 7.6 not only where, as in the case in question, the application is made after the expiry of the time limit but also after the expiration of such proceedings as were brought within the time limit. Upon an analysis of the duties of a solicitor in tracking a vessel he concluded that although *The Flinterdam* did visit Fowey in August 1999 the claimant had taken all reasonable steps to serve the claim form during the period of its validity and that the application was made with reasonable promptness. It is to be noted that the decision in *The Al Tabith* was not referred to in the judgment.

24. I was unable to accept Mr. Sarll's reasoning or his reliance upon the decision in *The Flinterdam.* Although David Steel J. held that he had an unfettered decision with respect to the application of CPR Part 7.6, that was a case in which the application was made under CPR Part 7.6 because the claimant was seeking to have the claim form renewed under that provision. However, as subsequently observed by Teare J. in *The Pearl of Jebel Ali and The Pride of Al Salam 95*, CPR Part 7.6 does not apply to the situation where permission is sought to commence proceedings after the time limit for doing so has expired. That was equally true of RSC O.6,r.8 and although there are references to the test relating to the application of s.8 of the MCA 1911 being the same as that applied to RSC O.6, r.8, that can only have been by way of analogy because the strict wording of the order could not apply to an application for an extension of time to issue under s.8 of the 1911 Act any more than either it or CPR Part 7.6 could apply to an application under s.190 of the 1995 Act. In my view the weakness which lies at the heart of Mr. Sarll's reasoning was his submission that "*the true interpretation* [of RSC O.6] *formed the basis for the decision in The Al Tabith.*" I do not agree. It was not the interpretation of RSC O.6,r.8 which formed the basis for the decision in *The Al Tabith* decision but the careful analysis of the decision of Sheen J. which had, in turn, been based upon the earlier cases. The reality is that O.6,r,8 was not central but only incidental to the operation of s.8 of the MCA 1911.

25. The result is that although CPR 7.6 was held to have heralded a change in the consideration of the type of application to which it applied it did not, of itself,

reverse the historical approach of the Court to applications under s.8 of the MCA 1911 or s.190 of the MSA 1995 or make the approach obsolete. This view is supported by the assumption in a number of cases that the two stage test should still apply with respect to applications to extend the limitation period applicable in such Admiralty actions. Further in *The Pearl of Jebel Ali* [2009] 2 Lloyd's Rep. 484 Teare J. observed:

> "*In form the discretion conferred by s.190 of the Merchant Shipping Act 1995 is, like its predecessor, an unfettered discretion. However, the discretion under section 8 of the 1911 Act was always exercised in a principled manner by requiring there to be "special circumstances which create a real reason why the statutory limit should not take effect", see The William Gray and The Llandovery Castle (1920) 2 Ll L Rep 273. In the Hesselmoor and The Sergeant [1951] 1 Lloyd's Rep 150 Willmer J. reviewed the authorities and summarised their effect as being that there must be "some good and substantial reason for the exercise of the Court's discretion in favour of allowing the action to proceed". In the Seaspeed America [1990] 1 Lloyd's Rep 150 Sheen J. saw no difference between a "a real reason (as in The Llandovery Castle) and a "good reason". I consider that the discretion conferred by section 190 of the Merchant Shipping Act 1995 should be exercised in the same principled manner because, if time is extended, the statutory limitation will not take effect. There must therefore be good reason for extending time. What is a good reason cannot be defined. Whether there is or is not a good reason must depend upon all the circumstances of the case; see The Myrto (No.3) [1987] AC at page 622 per Lord Brandon.*
>
> *The present case is not one in which a claim form was issued in time but not served in time. Rather, it is one in which a claim form was not issued within time by one ship and an extension of time is sought pursuant to section 190 of the Merchant Shipping Act 1995 to permit a counterclaim to be made in the claim issued within time by the other ship. In such a case the first of the two express limitations in CPR 7.6 (that all reasonable steps to serve the claim form have been taken) can have no application because a claim form was not issued within time (see para 29 of David Steel J's judgment in The Baltic Carrier). The second express limitation (that the applicant has acted promptly in making the application) can apply and in any event would be a consideration to bear in mind when exercising the discretion conferred by section 190 of the Merchant Shipping Act 1995."*

26. Mr. Sarll has submitted that Teare J's statement of the law is confusing and that the simple approach taken by David Steel J should be preferred. In my view far from being confusing Teare J's approach clearly recognises that the nature of the application before David Steel J., to extend time where a claim form was issued in time (which is one to which CPR 7.6 applies), and an application in which the claim form was not issued in time (as in *The Pearl of Jebel Ali* and also in the present case) are different. The last sentence of the part cited indicates that if there is a good reason nonetheless the court will still need to exercise its general

discretion and that the type of considerations raised in the second express limitation of CPR 7.6, namely whether an application has been made timeously, will need to be considered. In my view the same approach should be applied to the present case.

27. Mr. Chirag Karia Q.C. took a somewhat different approach to the problem in arguing that *The Al Tabith* is as equally binding upon the construction of s.190 of the MSA 1995 as it was on s.8 of the MCA 1911 and that where Parliament re-enacts a provision, as it has in this instance, then it is to be construed in the same way following Lord Reid in *London Corporation v Cusack Smith* [1955] A.C. 337, 361 (HL) where he said: "*Where Parliament has continued to use words of which the meaning has been settled by decisions of the court it is to be presumed that Parliament intends the words to continue to have that meaning*". In my view this approach adds support to the purposive approach expressed by Teare J. in *The Pearl of Jebel Ali* and is a strong ground for considering his approach, in maintaining the traditional test, is well founded. I also agree with Mr Karia's observation that in *The Al Tabith* the Court of Appeal ruled on the construction of s.8 of the Maritime Convention Act of 1911 not on the construction of O.6.r, 8 of the RSC. This in a very succinct way mirrors my own analysis of the development of the two stage test.

28. However there is one aspect of Mr. Karia's submissions which gives rise to further consideration. He submitted that "*The proper construction of a statutory provision such as section 8 of the 1911 Act – as re-enacted in section 190(5) – cannot change with passing revisions to the rules of the court.*" In the present case, it needs to be borne in mind that in both the 1911 Act and in the 1995 Act the power to extend the period allowed for bringing proceedings is to be exercised "*in accordance with the rules of court*" and although I think Mr. Karia's argument is sound as a general proposition of principle I have reservations where the statute specifically required that the power is to be subject to any rules of court which are to be considered applicable to it. It follows that if rules are made they can also be altered and that Parliament had that in mind when enacting the provision. I have already observed that O.6,r.8 was not a rule which directly impinged upon the operation of s.8 of the MCA 1911 and, in my view, CPR 7.6 does not do so either. However it can, I think be argued that although no rules have ever been made which apply specifically to the operation of s.8 of the MCA 1911 there can be little doubt that the 'overriding objective' introduced by the Part 1 of the CPR is intended to apply to all aspects of litigation and it follows that a court making a decision with respect to application of s.190 of the MSA 1995 will be expected to adhere to the requirement to deal with cases justly. However the requirement to deal with cases justly is not a new one. It was inherent in 1911 just as it is now even though in 1911 it was not stated in the rules of court.

29. The question to my mind is whether the introduction of the overriding objective should make an actual difference to the approach previously adopted by the courts

with respect to s.8 of the MCA 1911 Act or s.190 of the MSA 1995. In my view it should not because there is no basis for considering that the "good reason" approach adopted in and before *The Al Tabith* operated so that cases were dealt with unjustly or in such a way as to be incompatible with CPR Part 1, had it then existed. Even before the introduction of the CPR the judges sought to come to conclusions in accordance with their judicial oath and it would be invidious to suggest that the eminent judges who decided the pre-CPR cases referred to above were not aware of the obligation to achieve a just result. I also consider that if it had been intended to bring about a change in the court procedure it would have been possible to provide a new rule dealing specifically with the application of s.190 of the 1995 Act. The fact that no such rule has been made indicates that it was not thought necessary and/or that the approach used in s8 of the 1911 Act and s.190 of the 1995 Act type applications was acceptable. Furthermore the passage quoted from Teare J's judgment in *The Pearl of Jebel Ali* demonstrates that he had the introduction of the CPR well in mind when he concluded that the same approach, as adopted with respect to s.8 of the 1911 Act, should continue to be applied to s.190 of the MSA 1995.

30. For the reasons set out above I have concluded that I should apply the same test as was approved in *The Al Tabith* and subsequently followed in *The Pearl of Jebel Ali*. It follows that it is necessary to consider whether there was a good reason for the failure to commence the proceedings in time.

Whether there was a good reason

31. Since the "good reason" test is to be applied those cases which have given indications as to what may or may not amount to a good reason are still valid and, at least, persuasive. These include:

    a. *The Mouna* [1991] 2 Lloyd's Rep 221, a claim for cargo damage, in which the plaintiffs failed to serve the writ before it expired during which time negotiations had continued. The Court of Appeal (Glidewell L.J and Bracewell J) held that the mere fact of negotiations was not, of itself, a good reason for extending the time for the service of the writ and although conduct by one party might lead to the view that an agreement to extend the time for the service of the writ might be inferred in the absence of such agreement something less was not sufficient.

    b. In *The Al Tabith* the Court of Appeal also held that the following matters cannot constitute "*good reason*" for an extension: (a) Carelessness or mistake by the claimant or those acting for it; (b) That the claimant has an "open and shut" case and the defendant has no defence, *unless* the defendant has formally admitted liability; (c) That negotiations are ongoing; (d) that the defendant was equally oblivious of the expiry of the limitation period and carried on negotiating. Furthermore it was decided that in the absence of a clear agreement to extend time proof would be needed that the defendant had "*actively misled*" the claimant. Anything less will not operate as a good reason.

32. In my view the Claimant has failed to demonstrate that there was a "good reason" for failing to commence proceedings in time:

    a. Mr. De Ruyter was unaware of the two year limitation period applicable to collision cases. This arose, I think, because he appears to have been comparatively inexperienced in shipping matters. He asserted that there would be at least a 10 year limitation applicable in Belgium which, to my mind, demonstrated his lack of maritime experience as it was the Brussels Convention of 1910 which brought s.8 of the MCA 1911 into existence and, not surprisingly, Belgium was a signatory to that Convention.

    b. He also candidly stated that if he had been aware that there was a two year limitation period he would have ensured that proceedings were commenced in good time. As a matter of simple logic it must follow that his lack of knowledge was the main if not the sole reason for the failure to commence proceedings. In my view lack of the requisite knowledge of the law whether by a lawyer of a lay person cannot amount to a good reason.

    c. Furthermore Mr. De Ruyter could, and, in my opinion, should have taken legal advice at an earlier stage. If he had done he would have been advised of the two year time limit unless his lawyers were negligent. In my view it follows that Mr. De Ruyter was at fault in failing to take advice at a sensible stage and this also contributed to the failure to commence proceedings in good time.

    d. The fact that negotiations were continuing is irrelevant unless the conduct of the defendant was such as to amount to an actual agreement that time would be extended or that the Defendant would not take the time bar point. It is quite clear that no such agreement could have been made for the simple reason that Mr. De Ruyter was himself unaware that there was a time bar.

    e. There is no duty upon a defendant to warn or remind a claimant that time for commencing proceedings is running out or that, if it does, the defendant intends to rely upon it, see *The Mouna* at p. 229.

    f. Insofar as Mr. De Ruyter sought to suggest that he was lulled into a false sense of security by those acting for the defendant, in particular Mr. McCooke, that suggestion is fallacious as it cannot be said that he was lulled into a false state of security about a situation of which he was totally unaware. There is no suggestion that Mr. McCooke's conduct led Mr. De Ruyter to believe that time would be extended or that no limitation point would be taken. He could not possibly have been influenced into any such belief because that would have required a knowledge of the existence of the time bar which he simply did not have.

33. For the reasons set out above I consider that it is incumbent upon the Claimant to establish a "good reason" and that it has failed to do so.

Discretion

34. As the Claimant has failed to satisfy the "good reason" rule it is not necessary to consider whether the court should exercise its general discretion to allow the application. However, in my view, it is notable that there was a very significant delay between the 21st October 2013 when the Defendant raised the limitation defence and the 22nd January 2014 when the Claimant filed its application under s.190(5) of the MSA 1995. As recent decisions in cases such as *Mitchell v News Group Newspapers Ltd* [2014] 1 WLR 795 and *Denton v. TH White Ltd* [2014] EWCA Civ 906 indicate, under the CPR, the courts are conscious of the need for expedition and will generally not tolerate a failure to act promptly unless that failure is trivial.

35. Moreover by analogy CPR Part 7.6(3)(c) and CPR Part 13.3(2) provide that applications to extend time relevant to CPR Part 7.5 and applications to set aside a default judgment must be made promptly. With respect to the latter it is interesting to note the relevant commentary in the White Book and the cases cited. In *Regency Rolls v. Murat Cornwall* [2000] EWCA Civ. 379 Simon Brown LJ held that 30 days was too long a delay before making the application on the basis that the application could and, reasonably should have been issued well before it was. In *Hart Investments v. Fuller* [2006] EWHC 2857 it was held that a delay of 59 days was "*very much at the outer limit of what could possibly be acceptable*". In *Khan v Edgbaston Holdings* [2007] EWHC 2444(QB) HHJ Coulson Q.C., sitting as a deputy High Court Judge, held that an applicant has not acted promptly if he has not acted "*with all reasonable celerity in the circumstances*". In *Standard Bank v. Agrinvest International Inc* [2009] EWHC 1692 (Comm) Field J. held that promptness is a very important factor for the consideration of the court because there is a strong public interest in the finality of litigation.

36. In my view the delay before issuing the application for an extension of 3 months is outside what can be regarded as generally acceptable unless there are strong grounds for excusing the delay. Having considered the witness statement of Mr. Glynn-Williams dated the 15th September 2014 I agree with Mr. Karia's submission that it demonstrates that the Claimant failed to act promptly and did not demonstrate the degree of urgency required. I was particularly struck by the following: (i) there is no satisfactory explanation as to why Mr. De Ruyter's principals thought it was necessary to instruct Dutch lawyers with respect to a collision which occurred in English waters, (ii) there is no satisfactory explanation as to why it took so long to instruct English lawyers to advise and act, (iii) it took over two months before the Claim form was issued and (iv) there is no satisfactory explanation as to why the application notice was not issued until a month later.

37. Had it been necessary to proceed to the second stage of the test set out in *The Al Tabith* I would, in any event, have concluded that it would not be just to allow the Defendant's application. Thus if I had held that Mr.Sarll's approach to the nature of the test to be applied was correct, namely that the Court should exercise a wide discretion to act fairly unhindered by the two stage test provided for in *The Al Tabith*, I do not think that it can be seriously argued that the Court should entirely disregard the evidence as to why the Claimant failed to commence proceedings in time. In my view that would be a relevant part of the background necessary for the consideration of the discretion proposed by Mr. Sarll. Had that been the correct

test then, for the reasons I have already given the lack of a satisfactory reason for the failure combined with the Claimant's failure to issue the necessary application promptly would have caused me to come to the same conclusion, namely that the application should be dismissed.

Conclusion

38. For the reasons set out above, the Claimant's application for an extension of over 8 months to the statutory limitation period applicable to collision claims as laid down in section 190(3) of the Merchant Shipping Act 1995 is dismissed.

Dated this 14th day of April 2015