Neutral Citation Number: [2020] EWHC 3034 (QB)

Case No: QB-2019-004649

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/11/2020

Before:

MR JUSTICE JAY

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Between:

(1) NAPAG TRADING LIMITED
(2) FRANCESCO MAZZAGATTI
(3) NAPAG ITALIA SRL **Claimants**

- and -

(1) GEDI GRUPPO EDITORIALE S.p.A
(2) SOCIETÀ EDITORIALE IL FATTO S.p.A **Defendants**

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William McCormick QC (instructed by **Carter-Ruck**) for the **Claimants**
Aidan Eardley (instructed by **Archerfield Partners LLP**) for the **First Defendant**
Greg Callus (instructed by **Reynolds Porter Chamberlain LLP**) for the **Second Defendant**

Hearing dates: 21st and 22nd October 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Friday 13th November 2020 at 10am.

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MR JUSTICE JAY

MR JUSTICE JAY:

A. Introduction

1. These are applications by the Defendants under CPR Part 11 putting in issue the jurisdiction of the court to determine all or part of the claims brought by the Claimants against them. There is also an application to amend the Particulars of Claim which, albeit post-dating the Defendants' applications, it is convenient to deal with at the same time rather than sequentially. Although the Defendants have brought these applications, it is common ground that – save in relation to one issue – it is for the Claimants to establish that the court does have jurisdiction.

2. Napag Trading Limited ("the First Claimant") is an English-domiciled company. Napag Italia Srl ("the Third Claimant") is an Italian-domiciled subsidiary of the First Claimant. Sgr Francesco Mazzagatti ("the Second Claimant"), an Italian national with his main residence in Dubai, is the CEO and sole director of, and 95% shareholder in, the First Claimant. The First Claimant trades, and the Third Claimant has traded, in petroleum-based products.

3. Gedi Gruppo Editoriale S.p.A. ("the First Defendant") is the publisher amongst other things of *L'Espresso* which is a weekly Italian-language political and cultural magazine available both in print and online in this jurisdiction. Società Editoriale Il Fatto S.p.A. ("the Second Defendant") is the publisher of *Il Fatto Quotidiano* (*"Il Fatto"*), a daily Italian-language newspaper published in England and Wales only on the internet.

4. The allegations over which the Claimants sue relate to stories by both Defendants about an investigation brought by the public prosecutor in Milan into corrupt payments made or intended to be made to a man convicted of bribing judges in Italy, and the trading of oil in breach of international sanctions (or at the very least the US embargo) against Iran. The Claimants allege that these stories impute that Napag (by which they mean both companies and the Second Defendant as their *alter ego*) was involved. The subject-matter is somewhat convoluted if not at times confusing, and at this stage I am attempting only the most abbreviated summary.

5. The two articles by the First Defendant were published on 11th and 25th October 2019. The four articles by the Second Defendant were published on 1st and 9th November 2019 and on 23rd and 24th January 2020. On 25th May 2019 the Second Defendant had published an article which in my opinion was more defamatory than its later stories: this is the subject of a separate claim which, aside from similar questions of jurisdiction, faces a possible limitation difficulty. There are other articles published by separate entities which the Defendants point out are also defamatory of the Claimants or some of them, but I will ignore these for present purposes.

6. The parties' Application Notices raise the following principal issues:

   (1) whether each of the Claimants can show to the necessary standard all of the elements of a claim for libel under the law of England and Wales.

   (2) whether the First Claimant's "centre of interests" is England and Wales.

(3) whether the proceedings should be dismissed or stayed on the ground of *forum non conveniens*.

(4) whether the Claimants should have permission to amend their Particulars of Claim.

7. The third and fourth issues have fallen away. Only the Second Defendant saw fit to raise a *forum non conveniens* challenge in advance of 1st January 2021 and the relevant EU regulation no longer applying. I would have been very reluctant to rule on this sort of application on an anticipatory basis. Adopting the steer of Mr William McCormick QC for the Claimants, which Mr Greg Callus for the Second Defendant did not seriously oppose, I refuse this application without prejudice to the Second Defendant's ability to restore it at an appropriate time should the need arise. As for the fourth issue, apart from tidying up the numbering of the Claimants, the substantive purpose of the amendments is: (1) to make it clear that the Third Claimant ceased trading in May 2019, (2) to reorganise the claim for special damage in connection with the costs of a public relations consultant, (3) to clarify the position as regards the suspension of a credit facility, and (4) to delimit the claims for injunctive relief. Point (1), which emerged only in the Second Claimant's witness statement dated 8th September 2020 and was not originally pleaded, is now relied on by the Defendants as demonstrating that the Third Claimant cannot have suffered serious harm in consequence of allegedly defamatory pieces which were not published until the autumn of last year. Point (2) has fallen away inasmuch as this head of special damage is no longer pursued. However, the Defendants say that it leaves something of an afterglow. Point (3) is of minor import and is not separately opposed; point (4) likewise.

8. This leaves the first and second issues which are of some legal and factual complexity. My task has been facilitated by the quality of the submissions of all three Counsel (I have not yet mentioned Mr Aidan Eardley for the First Defendant whose submissions in reply were particularly impressive) and all the work done by their instructing solicitors in preparing the case.

B. The Claimants

9. The Second Claimant is an entrepreneur, born in Calabria in 1986 and now living in Dubai. He founded the Third Claimant in 2012. Initially, it traded in oil and petroleum products from offices in Rome. The Third Claimant dealt in particular with the Italian oil company Eni S.p.A. ("Eni"), headquartered in Rome and in part state-owned, and Eni Trading & Shipping S.p.A. ("Ets") which is based in Rome and has a branch in London.

10. On 19th April 2018 the Second Claimant incorporated the First Claimant. His evidence is that London was a better base from which to conduct and grow his business because he was encountering resistance from some banks and financial institutions who were diffident about working with an Italian company. More specifically, the strategy was to hive off the Third Claimant's oil and gas business into the First Claimant, and the former would devote itself to trading in petrochemicals. Additionally, the idea was to invest in an "upstream" development in the UK Continental shelf, and the first discussions about this were in November 2018.

11. The First Claimant then became the holding company of the Napag Group which in the spring of 2018 included a different company based in the UK, Napag UK Ltd (incorporated on 18th December 2017), a company registered in Dubai, and two other companies. Napag UK Ltd was struck off the register on the Second Claimant's application in September 2018, being no doubt surplus to requirements.

12. The Second Claimant is the CEO and sole director of the First Claimant. As I have said, he is the beneficial owner of 95% of its shares; his wife, who is Bahraini, owns the balance.

13. The Third Claimant ceased trading in oil and gas in August 2018 and ceased trading altogether at the end of May 2019. It is asserted that this was due to the publication of the Second Defendant's article on 25th May 2019, and that "from about that point until about early October 2019 it attempted to enter into further trades but it did not succeed in doing so" (see para 2 of the draft Amended Particulars of Claim).

14. The Second Defendant, with reference to the quality of the Second Claimant's emails, seeks to make something of the fact that his English is poor. To the extent that anything turns on this, I accept the Second Claimant's evidence (applying the appropriate standard of proof which I explain below) that his oral English is "completely fluent". It is true that fluency in a foreign language means different things to different people and covers numerous gradations of proficiency but the Second Claimant, who is obviously a successful entrepreneur and a man of some ability, speaks English well enough to communicate in it with his wife and close friends and to conduct 80% of his business. His witness statement may have a patina of sophistication that goes beyond his unaided level of written English, but I reject the thinly veiled suggestion that his solicitors have written it for him.

C. The Draft Amended Particulars of Claim

15. A number of meanings, both natural and ordinary as well as inferential, are pleaded in relation to the six articles which are the subject-matter of this litigation. It is unnecessary to dwell on the Claimants' case about these because, *pace* a number of Mr Callus' detailed submissions on the topic, I do not propose to resolve these applications as if this were the hearing of a preliminary issue on meaning. To the extent relevant, I will be addressing the text of the articles in sections H and I below. However, a number of specific matters should be addressed at this stage.

16. In relation to the *L'Espresso* articles, it is pleaded that their natural/ordinary and/or inferential meaning is that the Second Claimant "had caused or allowed [both corporate Claimants] to act or be used" for corrupt or illegal purposes. In relation to the *Il Fatto* articles, this is pleaded as an innuendo meaning, on the basis that "a substantial number of readers knew that [the Second Claimant] was the owner and CEO of [both corporate Claimants]" and was controlling them.

17. In relation to all the articles, para 4 of the pleading is relevant:

> "Given his position in both [corporate Claimants], if [the Second Claimant's] reputation for honesty and integrity is damaged this inevitably impacts upon the reputations of [the corporate Claimants]. And by reason of that same position, an

> allegation that [either corporate Claimant] has conducted itself in a corrupt or disreputable way will inevitably damage [the Second Claimant's] personal reputation."

The Defendants take issue with the breadth of this averment and I will be returning to it.

18. The serious harm caused or likely to be caused by the publication of the articles derives from: (1) the gravity of the allegations, (2) the extent of the readership within the jurisdiction, (3) the ability of non-Italian readers to use automated translation software available online (I paraphrase), and (4) the importance of financial probity in a world which is highly regulated.

19. As a result of the publication of the articles it is said that specifically: (1) public relations consultants were first engaged in July 2019 and significant costs were incurred, (2) on or about 12th December 2019 Litasco SA exercised a contractual option it had with the First Claimant to decline to make any further sales, (3) subsequently, the First Claimant has lost the opportunity to make profits from further deals with Litasco SA, (4) on or about 12th November 2019 ING suspended the line of credit previously available to the First Claimant, rendering normal trade impossible, and (5) there has been further unidentifiable albeit substantial financial impact. In relation to the corporate Claimants, it is also contended (as it must for these claims to be sustainable) that the publication of the articles caused or is likely to cause serious financial loss.

20. As for the relief sought, for present purposes it is necessary to draw attention to the claims for damages and injunctive relief. All the claims for damages are limited to online publication. The First Claimant seeks: (1) damages for libel in respect of the publication of the articles anywhere in the world, and (2) a worldwide injunction against repetition. The Second Claimant seeks: (1) damages for libel in respect of (online) publication in England and Wales, (2) an injunction restraining repetition in England and Wales save via the internet. The Third Claimant seeks the same relief as the Second Claimant, and (3) an order under s.13 of the Defamation Act 2013 requiring the articles to be removed from the First Defendant's website.

D. The Evidence

21. The First Defendant relies on the witness statements of Kevin Bays (dated 26th May and 20th October 2020). The Second Defendant relies on the witness statements of Rupert Cowper-Coles (dated 26th May, 19th October and 20th October 2020). The Claimants rely on the Second Claimant's witness statement (dated 8th September 2020) and the witness statement of Warren Knipe dated 20th October 2020.

22. I have considered this evidence with care. Not all of it is relevant and the most salient features of the evidence will be examined in sections L-O below.

E. General Law of Jurisdiction

23. There is a broad measure of agreement between the parties regarding the ambit of the jurisdictional portal conferred by way of special jurisdiction under article 7(2) of the Recast Brussels Regulation ("RBR"). Further, it would be supererogatory to duplicate

the valuable summary of the law provided by Nicol J in *Saïd v Groupe L'Express* [2019] EMLR 9, paras 9-31.

24. It is convenient to examine the claims of the Second and Third Claimants first. They are limiting their claims to publication in England and Wales on the basis that this is the place where the "harmful event" they are relying on occurred. The parties agree that such damages cannot include a claim for harm to reputation suffered outside this jurisdiction (see *Shevill v Presse Alliance SA* [1995] 2 AC 18, paras 31-33).

25. The First Claimant seeks "global" damages and injunctive relief to like broad effect in line with the doctrine of ubiquitous publication explained by the CJEU in *eDate Advertising GmbH v X, and others* [2012] QB 654. This case extended the application of article 7(2) of the RBR to meet modern conditions provided that the claim is brought in the Member State where the natural or legal person has their "centre of interests".

26. Two matters immediately arise. First, in the event that the First Claimant cannot demonstrate to the requisite standard that its "centre of interests" lies in England and Wales, its claim is necessarily confined to damages (if any) sustained in this jurisdiction. There would also be no possibility of any claim for injunctive relief in respect of publication on the internet. Secondly, and Mr McCormick has accepted this, even if the First Claimant's "centre of interests" were held to be in England and Wales for present purposes, it would not automatically follow that its claims could be sustained. As a prior condition it would have to be established that there has been publication in England and Wales and that the First Claimant has suffered "serious harm" (including "serious financial loss") here, both being matters of domestic law: see the decision of the CJEU in *Marinari v Lloyds Bank Plc* [1996] QB 217.

27. There are differences between the parties as to the approach I should adopt in applying the concept of "centre of interests" to this application.

28. *eDate* was a case involving natural and not legal persons. The general principles are to be found in paras 49 and 50 of the judgment of the CJEU:

> "49. The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.
>
> 50. The jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction (see Case C-144/10 BVG [2011] ECR I-3961, paragraph 33) also with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. The view must therefore be taken that the centre-of-interests criterion allows

> both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see Case C-533/07 *Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraph 22 and the case-law cited)."

29. What I take from these paragraphs is as follows. First, other things being equal, and certainly in the absence of evidence to the contrary, a natural person's "centre of interests" will match his or her habitual residence. Whether or not this may accurately be described as an evidential presumption does not I think matter (in my view, no legal presumption is generated); in any case, the CJEU – subject to my second point – is not purporting to assist national courts as to the rules of law that should govern the exercise of ascertainment. Secondly, general considerations of predictability and the need for clarity militate in favour of straightforward and readily accessible criteria rather than any microscopic examination of the detail.

30. In *Bolagsupplysningen OU v Svensk Handel AB* [2018] QB 963, the CJEU made it clear that the concept of "centre of interests", being the Member State in which the online publication at issue caused the most damage, applies as much in an internet case to the personality rights of legal as it does to natural persons. Paras 41 and 42 of the judgment of the Grand Chamber of the CJEU are obviously germane:

> "41. As regards a legal person pursuing an economic activity the centre of interests of such a person must reflect the place where its commercial reputation is most firmly established and must, therefore, be determined by reference to the place where it carries out the main part of its economic activities. While the centre of interests of a legal person may coincide with the place of its registered office when it carries out all or the main part of its activities in the member state in which that office is situated and the reputation that it enjoys there is consequently greater than in any other member state, the location of that office is, not, however, in itself, a conclusive criterion for the purposes of such an analysis.
>
> 42. Thus, when the relevant legal person carries out the main part of its activities in a member state other than the one in which its registered office is located it is necessary to assume that the commercial reputation of that legal person, which is liable to be affected by the publication at issue, is greater in that member state than in any other and that, consequently, any injury to that reputation would be felt most keenly there. To that extent, the courts of that member state are best placed to assess the existence and the potential scope of that alleged injury, particularly given that, in the present instance, the cause of the injury is the publication of information and comments that are allegedly incorrect or defamatory on a professional site managed in the member state in which the relevant legal person carries out the main part of its activities and that are, bearing in mind the language in which they are written, intended, for the

> most part, to be understood by people living in that member state."

31. I do not read these paragraphs as altering in any way the general principle set out in *eDate*. The concepts of habitual residence and registered office are to all intents and purposes interchangeable. It is unnecessary for me to consider the possibility that a legal person, as opposed to a natural person, could have *no* "centre of interests".

32. Para 43 of the judgment of the CJEU has given rise to some debate:

> "43. It is also appropriate to point out that, in circumstances where it is not clear from the evidence that the court must consider at the stage when it assesses whether it has jurisdiction that the economic activity of the relevant legal person is carried out mainly in a certain member state, so that the centre of interests of the legal person which is claiming to be the victim of an infringement of its personality rights cannot be identified, that person cannot benefit from the right to sue the alleged perpetrator of the infringement pursuant to article 7(2) of Regulation No 1215/2012 for the entirety of the compensation on the basis of the place where the damage occurred."

33. This paragraph is not as clear as it might have been and something may be lost in translation (it is not clear whether the language of the case was English). Messrs Eardley and Callus submitted that the effect of this passage is to intensify the standard of proof to the extent that the First Claimant must satisfy me that it is *clear* that its "centre of interests" is England and Wales. It is further submitted that para 43 is *per curiam* (at least according to the headnote in the Official Law Report) and therefore part of the *ratio* of the decision. I cannot accept these submissions. Para 43 is not part of the *ratio* of the CJEU's judgment, not least because it does not directly address the questions the court had to answer and in view of the opening wording ("it is also appropriate to point out …"). In his masterly opinion Advocate-General Bobek, who I am sure was writing in English, did not touch on the issue of the standard of proof. That omission is hardly surprising, because this is a matter of national law and may depend on *when* the issue is being decided. In the context of this jurisdictional challenge, the court is making an interim finding, in effect answering the question: have the Claimants proved enough to pass through the door? In the context of the final hearing, should it take place, "centre of interests" would have to be determined definitively, applying well-established standards of proof. All that the CJEU was saying was that in the event that the national court concluded that it could not identify the "centre of interests" because the evidence was unclear, article 7(2) of the RBR could not avail the claimant. The CJEU was not saying that in a case where the legal person's registered office was in country X but it was being contended that its "centre of interests" was not that country, it was incumbent on that legal person to show by clear evidence that its "centre of interests" was in fact in country X.

34. The underlying purpose or principle is to ensure that a company is able to avail itself of the special jurisdiction conferred by article 7(2) if its commercial reputation, and the harm it suffers, is greater in the Member State of suit than in any other. It is right in such circumstances that the claim for vindication on this most expansive basis should proceed in that Member State. However, the application of the special

jurisdiction in these circumstances is the consequence of the legal person's "centre of interests" being in that Member State, and in order to ascertain where it is: (1) the rules of evidence applicable to jurisdictional challenges apply, and (2) the real question is always: is the Member State of suit the place where the legal person carries out the main part of its activities? In the context of the First Claimant, this means its economic activities.

F. Matters of English Law

35. In the light of the parties' submissions, a number of domestic law questions require resolution. These will be determined according to my understanding of the common law of England and Wales and the provisions of the Defamation Act 2013.

36. The first question is the standard of proof I should be applying to the resolution of this jurisdictional challenge. I have already pointed out that the Claimants do not require from me affirmative findings of fact, proved to the probabilistic standard, in order to win.

37. The relevant principles are located in *Four Seasons Hotel v Brownlie* [2018] 1 WLR 192, *Goldman Sachs International v Novo Banco SA* [2018] 1 WLR 3863 and *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019] 1 WLR 3514. I note in passing what Nicol J said about this issue at paras 43-44 of his judgment in *Euroeco Fuels (Poland) Ltd v Szczecin & Swinoujscie Seaports Authority SA* [2018] EMLR 21, but his reference to "a much better argument on the material available" has been superseded.

38. It is incumbent on these Claimants to establish a "good arguable case". That applies across the board notwithstanding that the Second Defendant raises points on publication and that there has been no real or substantial tort committed within the jurisdiction. Mr McCormick submitted that the burden of proof in connection with these two matters is on the Second Defendant, but I am content to adopt the analysis of Nicol J in *Saïd*, at para 67, to the effect that it remains on the Claimants and does not shift. I share Nicol J's doubts as to whether what might be called quasi-*Jameel* arguments are apt to be raised under the umbrella of a challenge to jurisdiction.

39. *Goldman Sachs*, as explained by the Court of Appeal in *Kaefer*, expounds a single test – that of "good arguable case" – possessing three limbs. This is Lord Sumption's test (he was writing for the whole Supreme Court) in *Goldman*, at para 9:

> "(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it."

40. It is unnecessary for me to attempt a summary of Green LJ's detailed explanation of Lord Sumption. It is necessary to make the following brief points in response to the parties' submissions. First, "plausible evidential basis" means more than "arguable" and less than "probable". It is a relative assessment of the position, on the basis of evidence which is perforce untested, comparing and evaluating the evidence adduced in writing by the Claimants and that adduced in riposte by the Defendants. The task of the court is to say where the better argument on the material available is to be found, not "much better argument". If a plausible evidential basis does not exist, the inquiry ends there. Secondly, in performing this exercise it may be possible for the court reliably to take a view, i.e. come to an interim conclusion, on the material available; and, if so, the court should do so. Thirdly, in the event that no such assessment can be made, because to make it would be unreliable (having regard to the nature and quality of the available evidence), the court will find that there is a good arguable case provided that it considers that there is a plausible albeit contested basis for that case. At this third stage the "better argument" on the material available test continues to apply.

41. The second issue concerns "serious harm" within s.1 of the Defamation Act 2013. It is common ground that this has intensified the common law and requires proof of harm which is actually or likely to be serious rather than proof of substantial harm and a tendency to cause it. "Serious harm" may be established by inference from such matters as the extent of the publication, the gravity of the allegation, and whether the statement was read by people who knew the claimant or will come to know him in the future.

42. These basic principles are well-established following the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612. This was an authority on s.1(1) and not on s.1(2) of the 2013 Act, which provides:

> "For the purposes of this section, harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body serious financial loss."

43. In my view, all that sub-s.(2) does is to state that in the case of an entity trading for profit (e.g. these corporate Claimants) there is no "serious harm" unless the publication at issue has caused or is likely to cause "serious financial loss": in other words, the "serious harm" threshold is intensified. Contrary to something I said during the hearing, a plea of special damage is not a necessary component of "serious harm" for the purposes of this sub-section: see the *Euroeco* case, at para 71.

44. There is a paucity of authority on "serious financial loss". I have considered the decisions of Warby J in *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB) (at para 39), *Undre v London Borough of Harrow* [2017] EMLR 3 (at para 49) and *Gubarev and another v Orbis Business Intelligence Ltd and another* [2020] EWHC 2912 (QB) (at paras 37-45). I do not think that this phrase requires any specific gloss, but (1) what is required is proof of "serious financial loss" that is consequent on serious reputational harm, (2) there may be room for inference rather than strict proof, particularly in circumstances where the allegations are highly defamatory and publication is widespread, and (3) what Warby J's decisions demonstrate is the need to conduct a careful examination of the evidence to

disentangle the knotty causation issues that are often capable of arising and to ascertain whether the financial loss that can be shown to have been ensued is serious.

45. There are two subsidiary issues that I need to address. The first is that the "serious harm" threshold must be satisfied in respect of each statement complained of; it is not possible to satisfy it by aggregating the injury to reputation caused by two or more less harmful imputations: see *Sube v News Group Newspapers Ltd* [2018] 1 WLR 5767. Secondly, whereas an individual is presumed to have a reputation that is capable of being damaged, a corporation is not. Such an entity must prove that it had a trading reputation in the jurisdiction at the time of publication: see *Atlantis World Group of Cos NV v Gruppo Editoriale L'Espresso S.p.A.* [2009] EMLR 15, at paras 42(1) and 49-50.

46. The third issue of law concerns the matter of reference. As has been pointed out, the Claimants allege that: (1) the articles in *L'Espresso* refer expressly to the Second Claimant, (2) the innuendo meaning of the *Il Fatto* articles is that they refer to the Second Claimant because people know that he is the driving force behind the companies, and (3) in any event, references to the companies are (in the circumstances of this case) necessarily to be taken as references to the individual, and *vice-versa* (see para 4 of the draft Amended Particulars of Claim, §17 above).

47. I have no difficulty with item (1). In my judgment, item (3) goes too far and seeks to circumvent the well-established principle that there must be an objective basis for the contention that the reasonable reader would understand the reference to an unnamed person as a reference to the claimant. The mere fact that an officer of a company has been defamed does not mean (without more) that the company has been defamed (see *Undre*, at paras 21-23), and in my judgment the same principle applies on the converse hypothesis. If item (3) were correct, the Second Claimant would not need his case on innuendo meaning.

48. Item (2) requires some prefatory observations. The bare fact that something is on the internet does not mean that it has been published in England and Wales. Mr Callus accepted that a claimant must prove that there is at least one reader who received and understood the information. I will put to one side for the moment the issue of publication in a foreign language. The point for these present purposes is that, to the extent that innuendo meaning is invoked, the Second Claimant must establish to the requisite standard that there was at least one reader who had the extrinsic knowledge to know that a reference to the company or companies must include a reference to him because he was in effect its or their *alter ego*.

49. There is the further consideration that a claimant who can establish a case on reference may nevertheless fail at the "serious harm" threshold if, on the evidence, very few readers were likely to understand the statement to be about him personally: see *Gatley on Libel and Slander,12th edn.*, para 7.3A.

50. Item (2) is particularly important in relation to the case against the Second Defendant. As I will in due course be explaining, the *Il Fatto* articles do not refer to the First Claimant. The Third Claimant is in difficulty, to put it mildly, because it has now accepted that it ceased trading in late May 2019 and in my view cannot rely in these proceedings on the Second Defendant's alleged defamation of it on 25th May 2019. As for the Second Claimant, he is only mentioned in the second *Il Fatto* article. Unless

there is a good arguable case on innuendo meaning, all the remaining claims against the Second Defendant will fail to surmount the jurisdictional bar.

51. The fourth issue of law is the extent to which the principle in *Dingle v Associated Newspapers Ltd* [1964] AC 371 obviates any enquiry into the causation of the Claimants' various losses. This is a point which arose in oral argument and was not addressed in any detail in the skeleton arguments. It attracted a wave of further authority and helpful submissions from all Counsel, Mr Eardley in particular.

52. This issue arises because the Defendants say that the claims for special damage in particular all arise out of events which pre-date the first publication in this case, which was in October 2019. So, as a matter of causation it is contended that the Claimants cannot have suffered "serious harm", or (in the case of the corporate Claimants) "serious financial loss" which equates to "serious harm". For the purposes of this argument on causation, it in fact matters not whether the harm complained of was or may have been caused by a separate defamatory article, namely that published by the Second Defendant on 25th May 2019 or, possibly, different articles altogether. What matters is that it *cannot* have been caused by anything done by the Defendants.

53. The cases I was referred to include *Lachaux* (at first instance ([2016] QB 402) and in the Supreme Court), *Economou v de Freitas* (at first instance ([2017] EMLR 3) and in the Court of Appeal ([2019] EMLR 7)) and *Harrison v Pearce* [1858] 1 F&F 567.

54. This is not the occasion to attempt an exhaustive review of the authorities and synopsis of the relevant principles. I consider that I may be briefer.

55. *Dingle* expresses the principle that a defendant cannot rely in mitigation of damages on the fact that similar defamatory statements have been published about the same claimant by others. The case was concerned with what may be described (but I hope the term is not misunderstood) as "general damage to reputation" in connection with a number of publications of substantially the same libel at more or less the same time. The legal policy behind the principle is that if a claimant had to identify which particular publication was causative or apportion the harm as between various publications each with an apparently similar causative impact he could not possibly do so.

56. However, that does not mean, as Sharp LJ explained (see para 41) in *Economou*, citing with approval paras 46-50 of the judgment of Dingemans J in *Sobrinho v Impress Publishing SA* [2016] EMLR 12, that difficult points of causation cannot arise under s.1 of the Defamation Act 2013. *Dingle* was understood to be a decision about mitigation of loss rather than causation, and I have already identified the factual structure of the case that was under consideration by the House of Lords, viz. various similar publications at more or less the same time.

57. These causation problems may arise where there are limitation or jurisdictional issues. In my judgment, in line with principle and authority, they may also arise where a claimant seeks to ascribe a specific consequence to a particular publication, or where an examination of the claim for special damage demonstrates that the harm in question could not have been caused by the publication at issue. Thus, if a claimant says that X happened because of publication Y, or if it is clear to the court that the

reason X happened was because of publication Y, it is no use the claimant suing publisher Z in respect of that consequence.

58. An examination of the draft Amended Particulars of Claim reveals that the Claimants are seeking to attribute certain specific consequences to these six articles taken as a whole, each consequence sounding in financial loss which is then recruited as evidence of "serious harm" – both for the purposes of s.1(1) and (2). The Claimants had no option but to embark on this sort of exercise, but the consequence must be that each of them has to establish a good arguable case that these consequences did flow from the articles that have been sued on. Further, the Claimants could not succeed against the Second Defendant, as opposed to the First Defendant, if it were clear that their loss was suffered in late October 2019, for example. I do not read para 24 of Lord Sumption's judgment in *Lachaux* as requiring any more benevolent an approach.

59. Apart from the question of specific consequences, the Second Claimant also argues that he has suffered "serious harm" to his reputation in this jurisdiction on account of these six articles without (in this context at least) seeking to ascribe a specific financial or other consequence to these publications. The First Claimant does the same, although has to contend that it has suffered "serious financial loss" in what may be described as being in the nature of general damages.

60. In relation to these claims, which are inherently amorphous as well as being harder to prove, I consider that a more nuanced approach is required. The 25th May article covers the same ground as some of the articles that have been sued on. Given the temporal distance between the end of May and the beginning of October, there must be at least an argument that the principle in *Dingle* may be distinguished; but there are strong arguments the other way and I do not propose to decide these applications on this basis. It will be more profitable to examine on the available evidence whether these more amorphous claims surmount the threshold of "serious harm", applying the appropriate standard of proof, in the light of all relevant considerations: including the fact that both the First and Second Claimants need to demonstrate that they have suffered "serious harm" in England and Wales as a consequence of internet publication in this jurisdiction rather than anywhere else (see *Gubarev*, at para 43). Questions of causation are involved, but the court's inquiry must be multi-faceted and all-embracing.

61. Finally, there is what may be described as a miscellany of smaller points. As I have said, "serious harm" can be a matter of inference although the strength of that inference may well depend on the seriousness of the allegations and the extent of the publication. Secondly, the court is enjoined to address quality not quantity; this is not a "numbers game". Thirdly, I do not ignore Bingham LJ's dictum in *Slipper v BBC* [1991] 1 QB 283 about the potential vices of percolation, hidden springs and the grapevine effect.

G. A List of the Issues for my Determination

62. In the light of the parties' submissions, the issues I must determine (applying the standard of proof I have set out) may be listed as follows:

(1) How serious are the imputations contained in each article and to whom do they refer? It is convenient to address this issue by taking the First Defendant's articles first and then the Second Defendant's.

(2) Has there been publication of the Second Defendant's articles in England and Wales?

(3) Has the Third Claimant suffered, or is it likely to suffer, "serious harm" in England and Wales?

(4) Has the First Claimant suffered, or is it likely to suffer, "serious harm" in England and Wales?

(5) Has the Second Claimant suffered, or is he likely to suffer, "serious harm" in England and Wales?

(6) Is the "centre of interests" of the First Claimant in England and Wales?

H. The First Defendant's Articles

63. The First Defendant published the first *L'Espresso* article on 11th October 2019. The parties are not in agreement as to the accuracy of the translation that has been made available and I would need no persuading that it may not read as smoothly as the original Italian. At the centre of this story lies Pietro Amara, a Sicilian lawyer working for Eni from offices in Rome. In 2018 he was arrested for criminal conspiracy aimed at bribing judges and court officials. At approximately the same time, the article alleges that Ets paid at least €25m to the Third Claimant which then moved the money to Dubai. It is also alleged that Amara managed the Third Claimant as if he owned it. The purpose of the bribe paid by Ets to Amara via the Third Claimant was to procure Amara's silence in relation to Eni's involvement in the corruption of a Sicilian prosecutor hired to put a halt to an investigation by the Milan Public Prosecutor's office into other bribes.

64. I cannot read this piece as suggesting that the Third Claimant was merely an innocent conduit for the Amara bribe. For example, the author has taken time to set out the history of the Napag companies including the role of the Second Claimant as their prime mover and the First Claimant is described in terms as the parent company. Further, it is said that:

> "Last July, after a long silence, Napag 'categorically denies that the lawyer Amara has any direct or indirect involvement in the companies of the group'. And, about the 25m of the oil deal, declared that the supply was cancelled due to 'external causes', specifying that it had already 'returned the entire amount to Eni, which has obtained a profit margin."

65. In addition:

> "In recent weeks the investigators have apparently discovered very suspicious transfers, for 'several million euros': money paid by the Napag group, according to the reconstruction of the

> prosecution, to companies related to the lawyer Amara. If the link were confirmed, the circle of investigation would be closed: Eni of London [i.e. Ets] pays Napag which turns the money (by oblique paths) to Amara."

This last imputation is tempered by its characterisation as "an investigative hypothesis" (i.e. Chase level 2 or 3). It is unnecessary for me to decide, not least because I received no submissions about it other than from Mr Callus, whether the core bribery imputation is at Chase level 1, 2 or 3.

66. In my judgment, the Claimants have a good arguable case that the "Napag group" is or at least includes a reference to the First Claimant as its parent, although it is possible that it also includes the Third Claimant. It is true that the first *L'Espresso* article alleges in terms that the "London office" was involved in a separate conspiracy centred on a vessel called "White Moon" and that prosecutors were astonished that this entity "is the same company of the alleged Eni-Amara bribes". This article had already made it clear that the company involved in these bribes was in fact the Third Claimant, described as "Napag Italia" and not as the "Napag group". If the focus is solely on which company paid the money, "London office" does not mean the First Claimant, but in my view the reasonable reader would look at the commercial realities and would understand that the focus is intended to be broader. The First Claimant was/is based at the same "London office" as the Third Claimant. The reasonable reader would likely conclude that the First Claimant was operating behind the scenes in relation to this transaction as the head of the "Napag group". It follows that the "Napag group" cannot be regarded as synonymous with the Third Claimant (expressly described as "Napag Italia") and must be or include a reference to the First Claimant, which is specifically identified elsewhere in the piece.

67. The second *L'Espresso* article was published on 25th October. It addressed in some considerable detail the relationship between Amara and the Second Claimant, and the circumstances surrounding the €25m bribe. Given the apparent warmth and symbiotic nature of their relationship, any suggestion that the article was contending that the Second Claimant was duped by Amara or was his cat's paw is difficult to sustain. Without descending into the detail of the text, this article makes clear that the Second Claimant is said to be part of the overall conspiracy. In particular:

> "The court case did not stop Napag. The board of directors continued to achieve excellent results, closing the year with revenues of 106m. In the same months, three prosecutor's offices … began to investigate the company. On 27th April 2018 Napag signed the first deal seen as criminal by the Milan prosecutors, who are now investigating for corruption Amara, Mazzagatti … and others.
>
> …
>
> And then the plan was scuppered. The Eni company in London made the payment to Napag, which immediately collected the 25 million … According to the Milan Public Prosecutors, Amara is Napag's hidden partner and Eni's money was allegedly to buy the silence of the lawyer, who was arrested for

> other serious cases of corruption, and who was beginning to confess in prison."

68. Read in isolation, the second *L'Espresso* article does not specify whether the contract executed on 27th April was in the name of the First Claimant or the Third Claimant, but the overall context of this article, consistent with its predecessor, indicates that money passed through the books of the Third Claimant. In my view, this matters little because the second article *L'Espresso* also clearly mentions the First Claimant and asserts in terms that the Second Claimant, as the force behind this holding company, is under investigation for corruption.

69. In my judgment, these *L'Espresso* articles are seriously defamatory of all three Claimants (albeit more so of the Second Claimant and the Third Claimant), or – at the very least – they have a good arguable case to that effect. Mr Eardley does not invite me to decide whether the Claimants' case on reference, in particular reference to the Second Claimant, is correct but on my understanding of his argument he does invite me to assess its strength. In my view, the Second Claimant's case on reference is probably correct, although the hypothetic reasonable reader would have to be attentive. From the perspective of the First Defendant, the real issues raised by their application concern "serious harm" and "centre of interests".

I. The Second Defendant's Articles

70. The first *Il Fatto* article was published on 1st November 2019. This piece is relatively brief and touches on the "White Moon" conspiracy as well as the €25m payment by Ets to Napag in May 2018. Again, the parties advanced submissions as to whether "Napag" was a reference to the First Claimant and/or the Third Claimant, but in my view it is clear that the first *Il Fatto* article is directed to the allegedly nefarious activities of the Third Claimant as being the company supplying Eni and allegedly controlled by Amara. It could not seriously be contended that the Sicilian lawyer based in Rome was somehow controlling the First Claimant. This piece does mention in passing "the Napag group" (it is always possible that the author had read the *L'Espresso* articles and adopted this terminology), but in my judgment that cannot – at least without more - be read as a reference to the First Claimant. This entity, whether or not it is to be understood as being a legal person, is not defined, no context is provided, and the First Claimant is not expressly mentioned (c.f. §66 above and the *L'Espresso* article). I did not understand Mr McCormick to submit that the innuendo meaning of "the Napag group" amounts to or includes a reference to the First Claimant; in this regard, he relied solely on the plea in para 4 of the draft Amended Particulars of Claim. Even if I have misunderstood his case, it would make no difference to the outcome.

71. The second *Il Fatto* article was published on 9th November 2019. The focus of this article, which is also quite brief, is the purchase by Ets of three consignments of virgin naphtha in 2018. It is alleged that the source of these consignments was or may have been Iran, and that "the Napag company, owned by entrepreneur Francesco Mazzagatti but based in the Rome office of the lawyer Amara" sold them on to Ets. In my judgment, it is quite clear from the context that "the Napag company" being referred to here is the Third Claimant and not the First Claimant. I cannot accept that the unspecific reference to the "Napag businesses of Amara and [the Second

Claimant]" could be understood as relating in some way to the First Claimant, despite the use of the plural. The locus of the "businesses" is Italy and not London.

72. The second *Il Fatto* article also states:

> "However, the start of Amara and Napag's business with Ets happened much earlier. The lawyer sent Eni his first email on the subject three years earlier …
>
> …
>
> Already in October 2017, Des Dorides proposed to Eni a financing plan whereby Ets, with its pre-payments, acted as an investment bank for the Napag businesses of Amara and Mazzagatti.
>
> There is a lot of Iran in the Napag story. [by way of paraphrase, the oil was Iranian] That's why Napag's business with Ets was always settled in euros and not dollars [to avoid the US embargo]
>
> After the storm, Eni tried to run for cover, removing what it believes is the group that "had infiltrated the company like a cancer". Des Dorides was fired on 28 May 2019 … Amara was reported to the Milan Public Prosecutor's office on 15th July. The managers of Ets have all been changed, and it will no longer act as a broker, but only purchase products for Eni."

73. Mr McCormick submitted that this article contains imputations defamatory of the Second Claimant. Mr Callus forcefully submitted that the article is neutral as to the Second Claimant's state of mind, intentions and possible culpability. He reminded me of the principles conveniently brought together in *Stocker v Stocker* [2020] AC 612, in particular that "it is not enough to say that by some person or another the words *might* be understood in a defamatory sense" (para 35).

74. If Mr Callus' submission were right, the Second Claimant would be the one person mentioned in the second *Il Fatto* article who was not up to his or its eyeballs in this "ugly story". I think – at least for present purposes - that the reasonable reader, who is not unduly suspicious or avid for scandal, would understand the article as meaning that the Second Claimant, in cahoots with Amara since 2015, was involved in these frauds.

75. The Third *Il Fatto* article was published on 23rd January 2020. It travels over now well-tilled ground, particularly in relation to the €25m received by Amara as the price for his silence. According to this piece:

> "The money was received, in particular, according to the investigation, by the company Napag, which can be traced back to Amara."

For the reasons already given, this can only be a reference to the Third Claimant.

76. The Fourth *Il Fatto* article was published on 24th January 2020. It is unnecessary to examine this in any detail; it makes the same allegation about the Amara payment as the third Il *Fatto* article, and implicates only the Third Claimant.

77. I conclude that there is a good arguable case that the *Il Fatto* articles are seriously defamatory of the Second and Third Claimants (the former only in relation to the second article), but that the First Claimant has failed to satisfy me that it has a good arguable case that it has been referred to.

J. Publication in England and Wales: the First Defendant

78. Mr Eardley accepted that his client's articles were published in England and Wales, but he submitted that I should take into account the nature, quality and quantity of those publications for the purposes of ascertaining the presence or otherwise of "serious harm".

79. The evidence is that *L'Espresso* is available to subscribers only for thirty days after publication online and is then generally available. Its online articles had 486 and 189 readers in the UK respectively. Discounting for Scotland and Northern Ireland reduces these figures somewhat.

80. No issue has been raised as to the identity of the subscribers or the average length of time each reader was online when reading each article. I think that I can take judicial notice of the fact that there is a vibrant Italian community here in London and that some individuals work in the financial sector. The number of readers who might be interested in a somewhat *recherché* story about corruption in the oil and gas sector can only be a matter of speculation.

81. I have not been told how many subscribers there are in Italy. According to Mr Bays' evidence, *L'Espresso* was founded in 1955 and it describes itself as "a benchmark for wide and relevant sectors of the public opinion in Italy".

K. Publication in England and Wales: the Second Defendant

82. Mr Callus sought to persuade me that his client's articles were not published in England and Wales at all.

83. The evidence is that *Il Fatto Quotidiano* is only available in the UK online by way of a subscription, although some articles (but not the first two articles in issue) are available outside the paywall. There are only 55 subscribers in England and Wales. An analysis of the first article has been undertaken by the Second Defendant and this shows that it was read 4,391 times by 3,476 unique visitors globally. As for *Inglesi*, which for these purposes only includes those in the Principality, there were 91 readers, 91 unique visitors and 46 *accessi*, or "hits". For global readers the average time spent on the webpage was 3 minutes 51 second; for *Inglesi* it was only 17 seconds. There was a "spike" in readership at the time of publication (obviously), but nothing much thereafter.

84. The analysis of the second article is broadly comparable although there was a second "spike" which occurred when these proceedings were issued. The probabilities are that members of the Claimants' legal team went online at that point.

85. The inferences to be drawn from the analyses that have been undertaken are not altogether clear and at any trial further explanation would no doubt be given. Because the third and fourth articles are not behind a paywall, no similar analysis has been performed, although what is known is that the third article was accessed 2,935 times globally. This is a slightly lower figure than the first and second articles. In my view, it may reasonably be inferred that approximately the same number of *Inglesi* accessed, or "visualised", the third and fourth articles as the first and second. I have made a limited allowance for non-subscribers.

86. It is also of some relevance that the Second Defendant's total UK readership was/is only about 1% of the total worldwide.

87. Mr Callus asks me to infer that although only Italian speakers would be subscribers it cannot be assumed that every visitor from England and Wales to an Italian-language webpage (i.e. including non-subscribers) speaks fluent Italian. I consider that it can be assumed that only those sufficiently proficient in the Italian language to understand what they were reading without much difficulty would be taking the time and trouble to read these particular articles, if not the website as a whole. With respect to the Second Defendant, I do not think it plausible that, save wholly exceptionally, non-Italian speakers would be on their website using Google translate.

88. Mr Cowper-Coles informs me that academic research has demonstrated that the average Italian reading speed for native speakers is 249 words per minute. He postulates that "of the 46 times the article was accessed, the vast majority of the readers were clicking on the page but not reading the article". In my view, that is putting it too high. Some may have been accessing the page and then quickly moving on; others may have been skim-reading; others may have read the first article in full. I would agree that those who read this article in full could probably be counted on the fingers of one hand. I also think that the skim-readers would have had difficulty working out what was being alleged about the Claimants.

89. Mr Cowper-Coles' analysis of reading speeds invites me to go further and conclude that the elapse of 17 seconds would only take one through 70 words or thereabouts, which is *before* there is any mention of the Claimants. He has conducted a similar piece of arithmetic for the second article with a similar conclusion. Mr Callus' submission is that the overwhelming majority if not all of the 46 unique visitors did not read anything about the Claimants.

90. In my judgment, that is a rather ambitious submission and I must reject it. The answer to it is that 17 seconds is only an average and I have sub-divided the 46 into non-readers, skim-readers and full readers. In any case, this sort of analysis works less well for the third and fourth articles where it has not been undertaken.

91. Mr McCormick, for his part, seeks to persuade me that a combination of the grapevine effect (in particular, copying and pasting from text into emails) and the use of freely available translation software means that the true figure is or at least may be significantly higher than 46 readers. In my view, this is an exercise in speculation, and there is no evidence to support it.

92. On balance, it would be safe to conclude at this stage at least, continuing to apply the good arguable case test, that only a limited number of visitors to the Second

Defendant's website (probably just the handful I have previously mentioned) did read the articles to the extent that they will have seen and understood the references to Napag.

93. But this conclusion is insufficient for all the Claimant's purposes, for this reason. In relation to the first, third and fourth articles the case against the Second Defendant depends on the plea of innuendo meaning. Could it be said that any of this handful of readers would or might have known that the Second Claimant was the "face" of Napag in its various emanations? In my judgment, the Second Defendant has the better argument on this particular issue. Although a reader who has prior knowledge of Napag would know about the Second Claimant's role even in the absence of express mention of him, it is difficult to imagine that there could be more than a sliver of the global readership who would have heard of Napag in the first place.

94. Mr McCormick invites me to draw an inference adverse to the Second Defendant on the ground that it has failed to disclose a list of subscribers, even to the Claimants' lawyers, and that it is not beyond the bounds of possibility that those in the oil industry working in this jurisdiction with an Italian background, or a news-gathering organisation, would be on such a list. He relied on the principle expounded by Lord Lowry in *IRC v Coombs* [1991] 2 AC 283, at page 300F-H:

> "Another fact is the sparseness of the evidence adduced by the revenue. In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party, may be either reduced or nullified."

95. Mr Callus' answer to this submission was that the provision of a list of subscribers would place his clients in breach of data protection legislation, and to that extent he is right. The Second Defendants were not asked in terms to confirm, without giving names, that there were no oil companies or news-gathering organisations on the list. In my view, the Second Defendant's position has been credibly explained. I am not persuaded that it would be right to draw an adverse inference against it.

96. My conclusion on the issue of publication is as follows. The Claimants have a good arguable case that there was limited publication of these four articles in England and Wales although the number of visitors to the Second Defendant's website who actually read as far as they would need to have done to receive mention of the Claimants was probably confined to a handful. The case on innuendo meaning in relation to the Second Claimant (see the first, third and fourth articles) has not been made out to the requisite standard. The case on publication against the Second Claimant is therefore limited to the second article.

97. Although the Claimants have got the better of the argument on the issue of publication – to the modest extent that I have set out – the fact remains that it was very limited, both in absolute and relative terms. This is highly relevant to the issue of "serious harm".

L. "Serious Harm": the Third Claimant

98. Mr McCormick submitted that the Third Claimant built up a trading reputation in England and Wales which is worthy of protection, despite its Italian base. He submitted that all of the articles at issue were seriously defamatory of the Third Claimant, that the numbers of readers here "are modest but not minimal", that this is not a "numbers game", and that the raw data that have been provided by the Defendants is not qualitative.

99. I have already addressed aspects of Mr McCormick's argument under section K above. I will now focus on the Third Claimant's trading reputation in England and Wales and on whether it has a good arguable case of having suffered or being likely to suffer harm and financial loss in this jurisdiction.

100. The assessment of whether the Third Claimant has or will probably suffer "serious harm", which in this regard requires "serious financial loss", is a composite one which takes into account the various factors I have identified: that is to say, the gravity of the meanings of the publications; their extent; the persons to whom the publications were made or likely to be made; and the evidence as to actual consequences.

101. According to the witness statement of the Second Claimant:

> "46. [The First Claimant] was a very successful company from the outset. … [The First Claimant's] economic activity was entirely separate to that of [the Third Claimant], as they traded different products. At the end of 2018, after only six months of trading, it had approximately €131m in turnover (separate to – and more than – that of [the Third Claimant] which accrued approximately €108m in the same period (see pages 25 of … **where the UK revenue is [the First Claimant's] and the rest of Europe's is [the Third Claimant's].** It is certainly not the case, as it is suggested, that [the First Claimant's economic activity is largely made up by [the Third Claimant's] economic activity or vice versa. Each of the companies was trading on a significant scale. [The First Claimant's] base was London and although [the Third Claimant's] base was Italy, it was well known in London through the meetings I conducted at London IP week in 2017 and 2018 …" [my emphasis]

This evidence shows that after the incorporation of the First Claimant the Third Claimant's business in this country shifted to Italy.

102. And at para 53 of his witness statement:

> 53. I should also say that before Napag [i.e. the First Claimant] was incorporated, I also used to attend IP week on behalf of

> [the Third Claimant] before we incorporated Napag (which then become the company through which we traded oil products). Before that I concluded many trades on behalf of [the Third Claimant]. Since at least 2015 [the Third Claimant] has been dealing with a range of trading companies in the UK, including Trafigura, Blue Oil Energy and the ENI Trading Office in London. [The Third Claimant] was also dealing with companies based in Scotland such as Versalis and Expeditor. Its reputation in energy trading circles was therefore well established before [the First Claimant] was even registered."

This evidence reinforces the proposition that after April 2018 the Third Claimant, having had a presence here, was preparing to leave the scene; and as we know did so by August 2018.

103. The position is that the Third Claimant ceased trading in oil and gas in August 2018, carried on trading in petrochemicals in Italy for a period thereafter, and ceased trading altogether in late May 2019. The evidence that the Third Claimant was trying to re-establish itself in London, as opposed to Italy, between May and October 2019 is extremely thin: see para 58 of the Second Claimant's witness statement, which amounts to no more than an assertion. By far the better view on the evidence is that the Third Claimant was trading in petrochemicals in Italy after August 2018, and that Napag's London operation was centred on the First Claimant. The inference must be that any damage to the Third Claimant's reputation was wreaked by publication of these articles in Italy.

104. These conclusions leave the Third Claimant with nowhere to go in relation to "serious harm" in England and Wales. Even if I were to accept that the Third Claimant did have a trading reputation in this jurisdiction at the time these articles were published, this Claimant falls a long way short of establishing to the requisite standard that it has suffered "serious harm" to its reputation in England and Wales, let alone "serious financial loss" which thus far I have not considered. I move on to address it out of an abundance of caution and because there are elements of the claim which also relate to the First Claimant.

105. Paragraph 20 of the draft Amended Particulars of Claim does not in all relevant respects clearly differentiate between the losses suffered by the First Claimant on the one hand and the Third Claimant on the other. I will examine each of the heads pleaded in turn.

106. It was originally pleaded that public relations consultants (unnamed) were retained by the First Claimant after the publication of the *L'Espresso* articles and by the Third Claimant after the publication of the first and second *Il Fatto* articles. It was said that the First Claimant paid £388,000 and the Third Claimant about £30,000. The amendment for which my permission was being sought at the time the hearing commenced revised the chronology by averring that the consultants were instructed by both Claimants in July 2019 (i.e. before the publication of these articles), that their retainer was renewed in November, and that the companies' aggregate liabilities are £418,000: of this amount, £30,000 was paid by the First Claimant and the balance is reflected in a debt owed to the Second Claimant.

107. This draft already gives rise to difficulty before any of the supporting evidence is considered. Not merely is it unclear why the original Particulars of Claim was pleaded in the terms it was, it transpires that there are no documents evidencing the retainer of these PR consultants. Very late in the day, the Claimants served copies of invoices of a company apparently registered in Mauritius, some of which are said to be erroneous. These invoices do not on their face entirely relate to PR services. Other issues arise. Then, even later in the day, it has been said that the PR company was in fact based in the Seychelles and that it used a Mauritian management company for invoicing purposes.

108. These invoices have attracted a barrage of evidence and submissions from the Second Defendant. It is said that they are "not-very-good forgeries", and that the evolution of this aspect of the pleading "would put a cuttlefish to shame".

109. It is entirely unnecessary for me to embark on other than a relatively brief analysis of the position, as I have done. Whereas the Claimants clearly do not accept that these invoices are forgeries, and they have invited the Second Defendant to withdraw the allegation (it was never made by the First Defendant), it is conceded by Mr McCormick that these invoices cannot realistically be deployed in support of the claim for PR costs that has been pleaded, whether originally or by proposed amendment. However, it is also Mr McCormick's submission that the corporate Claimants are entitled to argue that they have sustained PR costs even if they are not these particular PR costs.

110. In my judgment, the claim for PR costs, now advanced only on some sort of nebulous and generic basis, is unsustainable. There is no evidence on which the Claimants continue to rely to support it.

111. I said earlier that this corner of the case has left somewhat of an afterglow. By that I mean the following. As I said during the hearing before Mr McCormick made his concession, it would be quite wrong to make a finding tantamount to fraud within the constraints of this procedure. However, and out of fairness to the Second Defendant which has been asked to withdraw a very serious allegation, I must say that they have no reason to withdraw it. On a preliminary basis only, my assessment is that aspects of the PR claim and the documents supporting it are surprising. This does not bear directly on other elements of these claims, but the afterglow is this: I have considered it right in all the circumstances to examine some of the Claimants' other claims and assertions with particular scrutiny, without at any stage enhancing the standard of proof.

112. The Third Claimant's next, and final, head of "serious financial loss" is based on: (1) the withdrawal of the ING line of credit, (2) the decision of potential counterparties not to trade, and (3) its inability to resume trading.

113. Given that the Third Claimant ceased trading altogether in May 2019, items (1) and (2) above are unsustainable on its part; I will return to this pleading in the context of the First Claimant's claim. There is no convincing evidence that the Third Claimant was seeking to resume trading in England and Wales, and even if it could be said that the Third Claimant had aspirations in this regard in Italy, the only reasonable inference could be that their thwarting was the result of reputational damage caused by publication in Italy.

114. My overall conclusion is that the Third Claimant has a very weak case against both Defendants, and that jurisdiction should therefore be refused. The main reason why the Third Claimant has been brought into this litigation at all is that, as between the three Claimants, it was the primary focus of the allegedly defamatory stories.

M. Serious Harm: the First Claimant

115. It is obvious that the First Claimant has a more persuasive argument than the Third Claimant, not least because it has a good arguable case of a subsisting trading reputation in England and Wales. Whether it has a good arguable case that it has or will probably suffer "serious harm", including "serious financial loss", requires the sort of composite analysis I have already carried out in relation to the Third Claimant: see §100 above.

116. Some of the submissions advanced by the parties overlapped with the issue of "centre of interests". Conceptually, these are discrete: proof of the one does not prove the other, and absence of proof of one does not fail to prove the other. However, there is a contingent connection between the two. The greater the extent of a company's presence and economic activity in this jurisdiction, the more likely that it may be that it will be able to prove "serious harm". If a company's interests are centred here, the primary seat of its reputation is here. This is neither necessary nor sufficient to prove "serious harm", but it is capable of being of some relevance. On the other hand, even if the principal seat of the First Claimant's reputation were outside England and Wales, from which it would follow that it suffered its primary reputational damage elsewhere, it would not follow that it could not have suffered "serious harm" here.

117. There is also a clear overlap, although far from being a complete congruence, between the First Claimant's and the Second Claimant's cases on "serious harm". For reasons of coherence and convenience, evidence and argument also relevant to the Second Claimant's case will be covered in this section of my judgment.

118. Mr McCormick submitted that the First Claimant's evidence, adduced on its behalf by the Second Claimant, clearly vouches the proposition that it has an established trading reputation in this jurisdiction. It had sound commercial reasons for setting up in London. It has a small but clear footprint in London and the majority of the First Claimant's contracts are generated during International Petroleum Week which is held in London over a three-day period in late February or early March. This offers important marketing opportunities for oil traders around the world. In February 2019 the Second Claimant represented the First Claimant, and not the Third Claimant, at this gathering.

119. Mr McCormick submitted that I should take into account the seriousness of the allegations and focus more on quality than quantity. The extent of publication in England and Wales may be limited, but the raw data require further explication and analysis, and the impact of publication could well have been important. Mr McCormick invited me to accept the Second Claimant's evidence as to "serious financial loss", it being both detailed and precise. He observed that the absence of corroboration is not equivalent to the absence of evidence.

120. Although it is not proof of "serious financial loss", Mr McCormick relied on email correspondence from EY's and KPMG's UK offices which indicates that both firms

were no longer willing to provide professional services to the Napag group in connection with the transaction I discuss in more detail at §§138-9 below. He submitted that this disinclination must have been generated by something published and read in England and Wales. In my judgment, that may be so, but attribution and causation are unclear. These emails were sent in the early summer of 2020 and are not specific.

121. It is convenient to take the submissions of Messrs Eardley and Callus together, although there were differences between them. Mr Eardley, but not I think Mr Callus, conceded that that the First Claimant has a trading reputation here. He drew attention to the following features of the evidence. Mr Eardley submitted that the First Claimant effectively took over the Third Claimant's Italian business here. The principal reason for setting up a company registered in England and Wales was to realise freer credit opportunities. It is said that the Second Claimant's evidence (para 31 of his witness statement) that he wanted to invest in "upstream" development in the UK is not plausible. The First Claimant's only physical presence in this jurisdiction is an office at 111 Buckingham Palace Road with a room to accommodate one person, rented from a company which provides short-term office space. There is no mention of the First Claimant at the entrance to the building. The First Claimant has one part-time employee – an accountant - in this country. PAYE is paid in his regard, and the First Claimant has UK bank accounts. It pays or is liable for Corporation tax and VAT. Mr Eardley further points out that the Second Claimant "almost exclusively" carries out the First Claimant's business. He has been in the UK for only about 7 days a month on average (the evidence about this is disputed, but that dispute will remain unresolved for these purposes), and the majority of the First Claimant's business is therefore carried out from abroad, using phone and email. There is one website for the Napag group and it provides no phone number for the London office. The First Claimant's six other employees are all based in Italy and use Italian mobile phones and email addresses.

122. Mr Eardley also sought to make something of the fact that the petroleum products in which the First Claimant trades are sourced largely from the Middle East, that its business is financed by credit lines from banks based in Switzerland and Belgium, and that its counterparties are all international oil and gas companies headquartered outside London albeit some having London offices. In my judgment, the first and second of these points are without merit. The source of the oil and of the company's financing cannot be relevant to the issue of where the First Claimant's "serious harm" may have been sustained. On the Defendants' case, the First Claimant's "centre of interests" is probably in Italy, but the oil the subject of these trades is not Italian. The third point carries more weight and will be considered further below.

123. In my opinion, the First Claimant's reasons for registering in England and Wales are of minor relevance to the issue of "serious harm". Although I am quite satisfied that the First Claimant does have a trading reputation in this jurisdiction, it is necessary to examine its quality and extent.

124. According to paras 49 and 50 of the Second Claimant's witness statement:

> "49. I would say that approximately 70% of [the First Claimant's] annual trades are concluded by me in person during [IP week], which is self-evidently far more than "a small

> fraction" as Mr Cowper-Coles suggests. The rest of the year, the majority of my dealings with the companies listed in our Company accounts (including Litasco, who as a result of the articles failed to renew their contract term with Napag), ***are through individuals stationed at their London offices (either when I am in London or if I contact them from abroad)***.
>
> 50. IP week is a conference which takes place over three days in February, which offers networking opportunities with oil and gas industry leaders from around the globe. In essence, during IP week, all the key players in the oil and gas industry meet. I spend the week arranging meetings to try to set up potential trades. The rest of the year is then spent executing those trades (in addition to any others that are concluded outside of IP week)." [emphasis supplied]

It seems to me that the clause I have highlighted is particularly important.

125. Para 51 of the Second Claimant's witness statement deals with International Petroleum Week, 2019. His statement is silent about 2020. Assuming it took place in the light of Covid-19 (in my view he should have said one way or the other, and late February/early March 2020 was before the implementation of any restrictions), it would have been interesting to know how well, or badly, he says he got on. An examination of the Second Claimant's flight records shows that he was in England between 19th February and 12th March 2020.

126. The Claimants have disclosed a limited number of contracts. Their interpretation did not receive much burden of submission. The contracts I have seen are between Litasco SA and the First Claimant. Some appear to be one-off deals; others are for a fixed period of time during which specific trades would be agreed. It is not altogether clear, but my understanding is that the documents confirming the purchase contracts were sent from Litasco SA's Contract Desk. Although we can see English names as the points of contact, the email address is given as contract@litasco.ch. I doubt whether these purchase contracts were emailed to the First Claimant's London office; its contracts manager is based in Italy. Furthermore, the limited email traffic that has been made available does not show that the First and/or Second Claimant's contact with relevant counterparties was with their London offices.

127. At para 57 the Second Claimant states the following:

> "Many of my business associates live and work in London, and I am well known amongst London's commodity traders as the person who has control over [the First and Third Claimants] and who negotiates and executes deals on their behalves. It is deeply upsetting to me that these people that I know, and whose opinions matter to me enormously, and also people that I do not know but whose opinions may influence how they deal with me, [the First Claimant and the Third Claimant] **may have read** the articles and believed the allegations to be true." [emphasis supplied]

This paragraph is as much relevant to the First Claimant as it is to the Second Claimant. Insofar as it relates to the Third Claimant, and uses the present tense, it needs to be read in conjunction with the Second Claimant's admission that it ceased trading in May 2019. I have highlighted the clause "may have read" because, even on the assumption that this evidence may be taken at face value, what the Second Claimant does not say is that he is *aware* that at least one of these commodity traders based in London and with whom he presumably has had dealings since the autumn of 2019 in fact read one or more of these articles. The Table of Business Associates at exhibit RCC3 calls into question the Second Claimant's assertion that he has a significant number of business associates who live and work in London. It would have been helpful had the Second Claimant been more specific about this.

128. It is not clear what the Second Claimant means by "approximately 70% of [the First Claimant's] annual trades are concluded by me in person during [IP week]". The Second Defendant has conducted an analysis of the limited material that the First Claimant has made available and, if the date of conclusion of the contract is taken to mean the date the purchase contract was sent out by the relevant counterparty, then it is difficult to correlate any of these deals with IP week or, indeed, with the Second Claimant's presence in the UK. I suspect, although I cannot be sure, that what the Second Claimant *means* is that about 70% of the First Claimant's business can be traced back to discussions he had with actual or potential counterparties during IP week; but that is not what he actually says.

129. Paragraphs 49, 50 and 57 of the Second Claimant's witness statement are an important plank of his, and the First Claimant's, case on "serious harm". Mr McCormick submitted that for present purposes I must accept these paragraphs as being both plausible and uncontradicted. He observed that there is no basis for holding that they are implausible, and the absence of documentary corroboration can hardly be treated as fatal. However, in my judgment it would be wrong to say that the Defendants (in particular the Second Defendant) have not contested this. My reading of the witness statements of Mr Cowper-Coles, including his "Inconsistency Tables" exhibited to his second statement, is that the credibility of the Second Claimant has been placed in issue across the board, and that it is not accepted that he has any significant dealings with these multinational oil companies through their London offices.

130. In my judgment, the available evidence is not sufficiently reliable to enable me to form a view about these paragraphs. Limb (ii) of *Goldman Sachs* does not apply; the present case travels onto the territory of limb (iii). Ultimately, I conclude that both side's arguments are somewhat finely balanced.

131. I have said that my concerns about the PR costs should cause me to examine the Second Claimant's assertions with particular scrutiny and, I might add, on occasion a degree of scepticism. Applying that approach, I cannot say that my scepticism about these paragraphs has been wholly assuaged. In particular, the contention that the majority of the First Claimant's business is conducted through the London offices of multinational oil companies is not easy to accept. However, there is no room for some sort of *via media* here, and after careful reflection I cannot hold that the Second Claimant is lying, as opposed to exaggerating. My conclusion is that the First Claimant and the Second Claimant have the better of the argument that: (1) the Second Claimant has business and social contacts in London (paras 49 and 57), and

(2) International Petroleum Week represents an important opportunity for laying the ground for the First Claimant's oil and gas deals over the forthcoming year. For the reasons I have already given, I go no further.

132. I now turn to consider the balance of the evidence in relation to the issue of "serious financial loss".

133. Both Mr Eardley and Mr Callus examined the First Claimant's case on "serious financial loss" (para 20 of the draft Amended Particulars of Claim) in some detail. The claim in respect of PR costs has already been addressed. As for the loss of profits that would have been made from the contract with Litasco SA in December 2019 (said to be £96,860) and from further sales in 2020 (said to be £969,390), my attention was drawn to the screenshot of an internal email from Litasco's compliance team in Geneva, probably dated 28th October 2019 (and therefore before the *Il Fatto* articles sued on), which summarises the various allegations made "in the Italian press". It is possible that the compliance team was referring to the *L'Espresso* articles published that month but the timing of its "recommendation to avoid this business" is unclear. On the other hand, Litasco's email dated 12th November 2019 refers to "informations [sic] regarding your company circulated in the press earlier this year", which more clearly refers by implication to the pre-October 2019 publications. In his skeleton argument Mr Callus hinted that this email may be suspect. If one focuses on page 875 of the bundle and not on page 896, any suspicions are allayed.

134. The email from ENOC dated 4th June 2020 is something of a curiosity inasmuch as Mr Callus has sought to link it to Litasco. The Second Claimant has not sought to make that link (see para 59 of his witness statement). In my view, the email is vague as to the sequence of events:

> "… we saw some very negative reports in the UK and other international press about your company, which was also highlighted by our London office …"

but it lends some weak support to the First Claimant's case.

135. This evidence taken together is inconclusive and not particularly compelling. I take into account the difficulties of obtaining evidence on an attributable basis but the material that is available is equivocal. Moreover, I accept Mr Eardley's powerful submission that it is not plausible that Litasco's compliance team working in Geneva would have been reading any of these online articles in England or Wales. I would add that, to the extent that the negative press may have been "highlighted" by the London office, presumably having percolated through various channels, this is not likely to have played a significant role. The identical submission has equal force in relation to the suspension of credit by ING. An email from its Swiss branch dated 12th December 2019 does refer to "the mention of your company and various allegations made in the various Italian newspapers (*Il Fatto/L'Espresso*) cause some concerns internally". The obvious inference is that these concerns were generated by online views in Switzerland, or possibly Belgium.

136. The final head of "serious financial loss" is that publication of these articles in England and Wales has made business for the First Claimant more difficult generally or is likely to do so. This claim is somewhat vague, as the Defendants' point out, but

in my view the First Claimant is entitled to say with some force at least that the seriously defamatory nature of these publications has shackled his business and stifled opportunities in an as yet unquantified fashion. Claims of this sort are inherently vague.

137. However, the Second Claimant has not even begun to quantify or explain the nature of the First Claimant's financial losses. The evidence does not travel beyond the realm of conjecture. To the extent that the Second Claimant does condescend to particulars, para 62 of his witness statement is relevant.

138. In that paragraph of his witness statement the Second Claimant says that one of the steps he took to mitigate the harm was to set up Viaro Energy Ltd in February 2020 in order to conduct some of the First and Third Claimant's business. The reference to the Third Claimant is surprising in this context. Even if the Third Claimant was hoping for a renaissance, it was in the field of petrochemicals. In August 2020 Viaro acquired RockRose Energy, an upstream oil and gas producer, for £247m. The Second Claimant states that his legal and financial teams were worried that a recurrence of the false allegations could have caused the deal to fail, either for regulatory reasons or investors getting cold feet. A PR firm, VIGO, was hired to manage the communications process. Questions had to be fielded from Reuters and the FT but they "decided not to proceed with significant pieces, for now". In the end, the deal went through.

139. It would have been helpful had the Second Claimant's exhibit contained some supporting evidence such as the VIGO invoices (c.f. the PR invoices that have been provided and are no longer relied on) and the questions from the financial press. CPR Part 34.14 requests were made but no documentation was provided in response. That aside, the main difficulty here is that the deal went through notwithstanding, from which Mr Eardley seeks to draw three possible inferences. In my judgment, though, these possible inferences need pruning. The *L'Espresso* articles taken together are seriously defamatory of the Second Claimant, at least some of those with an interest in the RockRose Energy deal must have been aware that the Second Claimant was behind Viaro, but it is strange to say the least that the deal passed through relevant scrutiny from regulators and investors on the footing that they *were* aware of these allegations. The better inference, and here I am agreeing with one of Mr Eardley's points, is that they were not aware.

140. The Defendants' further objection to this claim for unspecific "serious financial loss", and in my judgment one that is more forceful than the First Claimant's contrary arguments, is that it is not plausible that any serious damage to the First Claimant's reputation in the eyes of his potential counterparties was caused by anything that was published in England and Wales. The London offices of multinational oil companies would not have been reading this online material in Italian in this jurisdiction.

141. My overall conclusion is that the First Claimant has failed to establish a good arguable case on "serious harm". It is already clear why I have reached that conclusion, but by way of summary:

(1) The First Claimant has an established trading reputation in England and Wales and, through the Second Claimant, business and social contacts here.

(2) The *L'Espresso* articles are seriously defamatory of the First Claimant. However, publication in England and Wales was quite limited.

(3) The *Il Fatto* articles do not refer to the First Claimant and publication in England and Wales was in any event minimal. This conclusion (or, more precisely, the conclusion that the First Claimant has not established a good arguable case on these matters) is sufficient, without more, to defeat the First Claimant's case against the Second Defendant on "serious harm".

(4) The evidence relating to "serious financial loss" is not convincing. Some of it has had to be withdrawn. Other elements (e.g. the Litasco deals) are weak on the issue of causation. More importantly, the First Claimant has failed to demonstrate to the requisite standard that it has suffered "serious financial loss" as a result of publication in England and Wales.

(5) The First Claimant's argument that it has or probably will suffer "serious financial loss" which cannot be quantified is also unconvincing, in particular for the reason that this loss cannot be conjoined evidentially with publication in England and Wales.

(6) Even though the First Claimant's "centre of interests" is in this jurisdiction (see section O below), that does not tilt the balance sufficiently the other way.

N. "Serious Harm": the Second Claimant

142. Mr McCormick submitted that the Second Claimant is the "face" of the First Claimant, that his reputation here is linked to the First Claimant (and, I would add, as it was previously to the Third Claimant), and that his evidence speaks to important interactions with counterparties in this jurisdiction. The increase in the First Claimant's turnover since its incorporation in 2018 is attributable to the actions of the Second Claimant on behalf of the First Claimant in England and Wales. The Second Claimant spends approximately 25% of his time here, he has both professional and social acquaintances here, and his wife and family spend up to three months a year here.

143. Messrs Eardley and Callus submitted that the Second Claimant's presence in England and Wales is an insignificant factor when weighed against the consideration that he runs an international group of companies trading internationally, and that he is an Italian resident in Dubai. In any case, I should treat his evidence with caution. The Second Claimant does not state that any of his business contacts in this jurisdiction understands Italian, and he does not identify any personal relationships that have been damaged. His witness statement does not go so far as to identify any individual here who has read one or more of the damaging publications in this jurisdiction and has commented to him about it.

144. I have already summarised the key evidence bearing on this issue under section M above.

145. I agree with Mr McCormick that the Second Claimant's evidence establishes to the requisite standard that he has *a* reputation in England and Wales although in my view the main seats of his reputation are in Italy and Dubai. I have already found that both

Defendants' articles are seriously defamatory of the Second Claimant. My conclusions about extent of publication, and the geographical locale of the readership, apply as much to the Second Claimant as they did to the First Claimant.

146. An examination of the evidence enables me to arrive at a firmer conclusion in relation to the Second Defendant than the First. The Second Claimant does feature in one of the Second Defendant's articles but not in any of the others (see section I above). Publication of *Il Fatto* in England and Wales was minimal. Even making some allowance for Bingham LJ's "percolation", the strong inference must be that any damage to the Second Claimant's reputation was caused by publication of *Il Fatto* outside England and Wales. The evidence supporting the proposition that the Second Claimant has suffered "serious harm" here as a result of publication here is not compelling. I conclude that a good arguable case has not been demonstrated.

147. The Second Claimant has a better case against the First Defendant as Mr Eardley frankly accepted in oral argument. The Second Claimant receives greater prominence in *L'Espresso* (I am continuing to ignore the *Il Fatto* May 2019 article) and publication in England and Wales was more extensive. None the less, the very limited evidence we have as to impact does not in fact differentiate between the Defendants, and – as has already been observed – the evidence supporting the case that the Second Claimant has suffered "serious harm" here as a result of publication here is not compelling.

148. In my judgment, the submissions summarised under §143 above have force. In connection with the Second Claimant's evidence overall, I must bear in mind that much of it would be contested, not least on credibility grounds, at trial. I have addressed the extent to which paras 49-50 of his witness statement are capable of availing him (for these purposes, this evidence applies as much to the Second Claimant as it did to the First), and I have also analysed para 57 (see §127 above). It is pertinent, in my opinion, that the Second Claimant cannot say that any specific business contact here has read any of these defamatory pieces and now thinks worse of him, although the difficulties of obtaining evidence of this sort are understood.

149. Not by a wide margin, I conclude that the Second Claimant has failed to establish a "good arguable case" against the First Defendant.

O. The First Claimant's "Centre of Interests"

150. The First Claimant having failed on the issue of "serious harm", the issue of "centre of interests" does not strictly speaking arise. However, I received voluminous submissions on this topic, and its resolution has had some relevance to the issue of "serious harm".

151. I have already covered much of the evidence relevant to this issue. I do not propose to mention everything, but I should refer expressly to the following.

152. Mr Eardley drew my attention to the First Claimant's Report and Financial Statements for the period ended 31st December 2018. The Second Claimant's report is dated 16th October 2019. The following is material:

> "Turnover increased by 48.9% due to the incorporation of the UK entity and resulting trading and new bank lines agreed with IMG Geneva and BCP Geneva. Napag is currently registered with most of the Company Majors of Oil and Gas including VITOL, LITASCO, ENOC, OMAN TRADING, ZARUBEZHNEFT, GALP, TRAFIGURA and many other traders that allow us to trade with these companies and hold several contracts for the supply or purchase of petroleum products with many of these companies.
>
> …
>
> The company invested in 2018 in the development of the procedures and processes to ensure they were compliant with all international regulations, this was done through investment in IT software … in order to have a centralised control and monitoring system for the groups operations.
>
> …
>
> Given the low trading margin in Europe and specifically in the Mediterranean Sea, the strategic plan will focus on new markets, mainly the Caspian Sea and the Middle East."

153. Mr Eardley submitted that the oil companies specifically mentioned are multinational companies whose centres of interests are not England and Wales. That may well be right but it takes his argument no step further. Even if the First Claimant were dealing with the headquarters or non-UK offices of these companies (and I am not losing sight of its case that this is not the position), that in itself would not be inconsistent with its "centre of interests" being here. The report is silent as to which office, i.e. in London or otherwise, the First Claimant deals with. Mr Eardley further submitted that the Second Claimant's report made no mention of upstream development opportunities, and that is a fair point.

154. The Defendants' joint headline submission is that the First Defendant's "centre of interests" is clearly in Italy, or perhaps Dubai. Regardless of to which entity the purchase contracts are sent, and of where the turnover is formally generated, the relevant economic activity is conducted wherever the Second Claimant happens to be, and the business having been generated by him is managed and executed by a team of six working in Italy. Finally, it was submitted that an examination of the historical position is important. Before April 2018 the Third Claimant was carrying out exactly the same business in exactly the same way with the Second Claimant coming to London for IP week and at other times. If the Second Claimant's evidence is to be believed, it is then to be inferred that when the Third Claimant was carrying out this business a significant portion of it, maybe even 70%, was generated during IP week. Nothing has really changed; this business's centre of gravity remains where it always has been. The Third Claimant's "centre of interests" was never in England and Wales, and that now applies to the First Claimant. Furthermore, the Second Claimant's report makes it clear that the reason for the increase in turnover was not the acquisition of different business but the First Claimant's enhanced credit facilities which enabled it better to exploit existing business opportunities.

155. Mr McCormick submitted that all the available evidence shows that there is nothing to displace the working hypothesis that the First Claimant's economic activity is centred in this jurisdiction. The First Claimant had sound commercial reasons for establishing itself here in 2018. The First Claimant's business is distinct from the Third Claimant's. It is not the size of the First Claimant's footprint that matters; rather, it is the size relative to everywhere else.

156. On my understanding of his oral argument, Mr McCormick invited me not to focus simply on the making and execution of the contracts. An assessment of whether the First Claimant's economic activity is conducted brings in the negotiation of the contracts, the obtaining of lines of credit, marketing and meeting people, and a host of other ancillary matters. I am content to adopt this approach, although doing so rather cuts both ways. It avails Mr McCormick to the extent that although I am not satisfied that 70% of the First Claimant's contracts were formally concluded during International Petroleum Week (in the sense that legally binding agreements were made), I am satisfied that important deals were discussed and the ground was laid for them. It does not avail him to the extent that much of the First Claimant's business was carried out by the Second Claimant when he was outside this jurisdiction, and that all of the administrative, support and ancillary work was carried out by those working in the Italian office.

157. The arguments on both sides are finely balanced. The Second Claimant's evidence poses as many questions as it answers, and much of what he says is in dispute.

158. What is clear is that a broad approach is required. The focus cannot be simply on where the turnover is technically generated, as Mr McCormick accepted. In my judgment, the real reason for the First Claimant registering here was not to change the nature of Napag's UK operation in any way but to secure better lines of credit from the same non-UK domiciled entities Napag had always looked to. Moreover, although my preliminary view as expressed during the hearing was unfavourable, I see some force in the submission effectively advanced by Mr Eardley that the historical position is important.

159. The First Claimant does not have to satisfy me that its "centre of interests" is probably in England and Wales. If the correct analysis of *Bolagsupplysningen*, paras 41 and 42, were that there is a legal presumption that a company's "centre of interests" is co-located with where it is registered, I would hold that the Defendants have failed to rebut that presumption. But that is not the correct analysis. If the correct analysis of para 43 of *Bolagsupplysningen* were that the evidence must be clearly in the First Claimant's favour, I would hold that Mr McCormick fails to persuade me that it is. But that is not the correct analysis either.

160. The real question is whether the First Claimant has a "good arguable case" on this issue, which involves assessing whether it has the better of the argument on it. At the end of the day, three matters have tilted the balance in the First Claimant's favour. First, the First Claimant was registered here for a sound commercial reason which had nothing to do with this litigation. Secondly, I proceed for present purposes on the footing that paras 49-50 of the Second Claimant's witness statement cannot be regarded as untrue (see §131 above). Thirdly, even though the Third Claimant's business was transferred to the First Claimant in 2018 and the Third Claimant's "centre of interests" has never been in England and Wales, the First Claimant is a

different legal person with different rights, privileges and obligations. Thus, the historical analysis is not determinative.

161. Not by a wide margin, I conclude that the First Claimant has the better of the argument that its "centre of interests" is in England and Wales.

P. Disposal

162. Both Defendants have succeeded on the issue of "serious harm" but have failed on the subordinate issue regarding the First Claimant's "centre of interests".

163. Both Defendants' applications under CPR Part 11 are granted. There must be a declaration that the Court has no jurisdiction to try any of the claims against the Defendants and an order setting aside the Claim Form.

164. I will leave it to Counsel to agree the terms of a draft order and, if possible, all consequential matters.