

**SUPERIOR COURT**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-039692-104

DATE: November 9, 2010

---

**THE HONOURABLE CHRISTIANE ALARY, J.S.C., PRESIDING**

---

**AUTORITÉ DES MARCHÉS FINANCIERS**

Applicant – IMPEADED PARTY

v.

**SERVICES EN SÉCURITÉ AQUATIQUE INC. (WATER SAFETY SERVICES INC.)**  
and  
**INTERNATIONAL WATER SAFETY FOUNDATION**

Respondents

and

**CLAUDE GILBERT**, of the firm **PRICEWATERHOUSE COOPERS LLP**, in his capacity as Receiver of Water Safety Services Inc. and International Water Safety Foundation

Receiver/PETITIONER

---

**REVISED REASONS FOR THE JUDGMENT<sup>1</sup>**  
**RENDERED ORALLY ON NOVEMBER 9, 2010**

---

## 1. BACKGROUND

[1] On October 8, 2010, Judge Louis Crête appointed a Receiver *ex parte* and *in camera* at the request of the *Autorité des marchés financiers* (the “Authority” or the “AMF”) with respect to two companies, *Services en sécurité aquatique inc.* (Water Safety Services Inc.) (“WSS”) and International Water Safety Foundation (“IWSF”) (collectively, the “Companies”).

[2] The request by the AMF was based on sections 19.1 and following of *An Act respecting the Autorité des marchés financiers*<sup>2</sup> (the “AMF Act”).

[3] On October 14, 2010, Judge William Fraiberg granted the Receiver supplemental powers, at a hearing this time held in the presence of the attorney for the Companies.

[4] On November 8, 2010, the Receiver filed his report. His conclusions are summarized as follows:

- The insurer North American Marine General Insurance Company Ltd. (“NAMGIC”) does not exist;
- IWSF is a front for selling insurance;
- IWSF UK is a front between the American members of IWSF and IWSF Panama;
- IWSF Panama is the beneficiary of significant fund transfers for which no income tax is levied in Canada;
- WSS and IWSF UK carry on insurance activities;
- Alex Bonotto (“Mr. Bonotto”) misappropriated substantial funds;
- IWSF is insolvent;
- WSS is insolvent.

[5] The Receiver notes on page 2 of his report that his findings clearly and unequivocally support the reasons put forth by the AMF in its motion for the appointment of a Receiver and show that it is necessary to immediately take the measures he recommends.

---

<sup>2</sup> R.S.Q., chapter A-33.2.

[6] The Receiver is now asking the Court to amend his powers so that he may discontinue the activities of the Companies and file assignments of property pursuant to the *Bankruptcy and Insolvency Act*.<sup>3</sup>

[7] For their part, the Companies are submitting a “Motion to dismiss and annul the orders of October 8 and 14, 2010.” It is based on articles 2, 20, 46 and 165.4 of the *Code of Civil Procedure*.

[8] According to the Companies, the initial motion of the AMF was inadmissible and gave rise to null and void orders.

[9] The Companies are therefore asking the Court to cancel the October 2010 orders, allow the Companies to continue their marine insurance activities exclusively, and declare inoperative the provisions of the *Civil Code of Québec* relating to marine insurance and section 29 of the *Regulation under the Act respecting insurance*.<sup>4</sup>

## 2. MOTION TO DISMISS

[10] In connection with the motion to dismiss, the Court must consider that the allegations in the motion to institute proceedings by the AMF can be taken as true. Only the facts should be taken as true, not the legal qualification of them made by the parties. The affidavits and exhibits submitted by the Companies in support of their motion are not to be considered.

[11] The Companies put forward the following arguments:

- The Court does not have any evidence that the activities are illegitimate. The Receiver has not contacted the Panama attorneys who, according to them, make decisions for NAMGIC.
- In the course of the business of the Companies, the services of an investigator or a claims adjuster are retained who in turn occasionally retains the services of sub-contractors. This is proof that insurance activities are in fact carried on.
- The Receiver did not conduct a detailed analysis of claims that were denied; therefore, there is no evidence that they were denied illegally.
- Lastly, the AMF does not have jurisdiction over marine insurance activities, given the unconstitutionality of:

---

<sup>3</sup> R.S.C. (1985) c. B-3.

<sup>4</sup> R.S.Q., chapter A-32.

- (1) the provisions of the *Civil Code of Québec* in matters of marine insurance;
- (2) section 29 of the *Regulation under the Act respecting insurance*.

## 2.1 THE CONSTITUTIONAL DEBATE

[12] The Companies want to turn the case into a constitutional debate about marine insurance.

[13] The parties agreed not to enter into the merits of the constitutional debate but instead to ask the Court to determine, preliminarily, whether it is appropriate to enter into this debate in connection with this matter.

[14] There is consistent jurisprudence to the effect that:

- (1) The Court should not decide on the constitutionality of a statute unless it is necessary to do so to dispose of the case;
- (2) It should not decide on abstract issues if it is not necessary to do so to settle the dispute;
- (3) This type of decision should not be made in the absence of a factual context.

[15] The Court points out, firstly, that laws are deemed to be valid.

[16] In the matter submitted to the Court, no one is questioning the content of an insurance contract. The provisions of the *Civil Code of Québec*, and in particular articles 2505 and following, will therefore not be argued.

[17] With respect to the jurisdiction of the AMF, the attorney for the AMF points out that *An Act respecting insurance*<sup>5</sup> and *An Act respecting the distribution of financial products and services*<sup>6</sup> are laws intended to protect the public. They therefore must be given a broad and liberal interpretation.

[18] Regardless of the outcome of the marine insurance issue, the AMF has jurisdiction over non-marine insurance, in particular in respect of ATVs and snowmobiles.

[19] Under the circumstances, it had jurisdiction to request and be granted the appointment of a Receiver pursuant to section 19.1 of the AMF Act.

---

<sup>5</sup> *Supra*, footnote 4.

<sup>6</sup> R.S.Q., chapter D-9.2.

[20] The Receiver exercises, pursuant to the Court orders, all the powers of the shareholders, partners, directors, officers, etc. In this capacity, the Receiver is now making the Court aware of a situation where he finds that the Companies are engaged in unlawful activities and are insolvent.

[21] The claims initially made by the Companies when the AMF filed its motion to institute proceedings were that it did not carry on insurance activities in Québec. Now however it is being claimed in the motion to dismiss that the Companies carry on insurance activities, and in particular marine insurance, and that the AMF does not have jurisdiction over it.

[22] This reversal seems to be designed only to prevent the Court from deciding on the merits of the case. However, this is about public protection.

[23] The Court adds that, although the Companies issue and manage insurance policies, the evidence shows that these are spurious insurance activities. In fact, everything is based on the issuance of a master policy by NAMGIC.

[24] Whether the insurance is marine or non-marine, the existence of this company has not been proven.

[25] Under the circumstances, the Court holds that it does not have to decide on the constitutional issue in order to decide this case.

## **2.2 THE OTHER ARGUMENTS**

[26] With respect to the other arguments of the Companies to the effect that the activities are legitimate, they should be considered in view of the facts raised in the motion to institute proceedings, which must be taken as proven.

[27] Two Superior Court decisions held that they were sufficient.

[28] The Court adds that *a posteriori*, these facts are confirmed by the Receiver's report which the Court must now examine.

## **3. RECEIVER'S MOTION**

[29] The Receiver's report indicates that NAMGIC only has an address in Panama, but that it does not legally exist. Mr. Bonotto does not know the company's address and only has contact with its Panamanian attorneys.

[30] WSS is a company incorporated in Québec. Although its activities are described in CIDREQ as being administrative services, bookkeeping, management and marketing, it in fact acts as an insurer, contrary to the claims made by Mr. Bonotto.

[31] IWSF is a company from the United Kingdom, all the activities of which are in Montréal. It allegedly holds a master insurance policy from NAMGIC, whereas that company does not exist.

[32] The organization of the Companies is such that the members of IWSF, namely, its “insureds,” are all in the United States. When they have a claim, they must make it in Québec, as they have no recourse in the United States. They are subject to binding arbitration before IABI, a legal person incorporated in the Jersey Islands.

[33] This arbitration bureau is related to the Companies in Mr. Bonotto’s group. The certified arbitrators include the partners of Mr. Bernier, the group’s attorney.

[34] When the “insureds” take legal proceedings in Québec, the Companies argue that IWSF does not have a place of business in Québec (whereas that is not true), that the master insurance policy was issued by NAMGIC (whereas it does not exist) and that it and WSS do not have a legal relationship with the insured.

[35] Ultimately, the “insureds” have no valid recourse.

[36] Generally, the Court retains from the Receiver’s report that:

- (1) The master policy, which is attributed to NAMGIC, was amended in Québec by Mr. Côté, an employee of WSS, with the assistance of Mr. Bernier, the attorney for the Companies;
- (2) The website of IWSF UK falsely indicates that it has 60,000 members, whereas it in fact has approximately 15,000;
- (3) To date, cease and desist orders have been issued in 11 U.S. states;
- (4) Mr. Bonotto has not co-operated with the Receiver, and in particular with respect to the repatriation of the funds ordered by the Court;
- (5) Although Mr. Bonotto knows the so-called Panamanian officers, his statements are not credible given the fund transfers he himself makes to Panama and the bank accounts over which he has signing authority, according to the documents found on the Companies’ premises.

[37] According to the analysis conducted by the Receiver, an amount of over one million dollars was used to pay Mr. Bonotto’s personal expenses during 2009 and 2010.

[38] All this leads the Court to conclude that the 1,814 holders of insurance certificates issued in the United States do not have insurance and that the so-called coverage that is offered to them is completely random and at the sole discretion of the Companies.

[39] According to the Receiver's report, both Companies are insolvent. With respect to IWSF, its contingent liabilities far exceed its assets. It will eventually have to face claims, such as the known judgments rendered against it, which total over eight million US dollars, claims from insureds for losses and/or reimbursement of premiums and tax assessments of several million US dollars.

[40] WSS is insolvent, as it currently has no source of income. The realizable value of its assets is insufficient to meet its obligations toward its creditors and employees. Its only client is IWSF and it is insolvent.

[41] Therefore, there is cause to allow the Receiver's motion.

**FOR THESE REASONS, THE COURT:**

[42] **ALLOWS** the motion of petitioner Claude Gilbert of the firm Pricewaterhouse Coopers, in his capacity as Receiver of Respondents Water Safety Services Inc. (WSS) and International Water Safety Foundation (IWSF), IWSS (*sic*) and IWSF being collectively referred to as the "Companies";

[43] **AUTHORIZES** the Receiver to discontinue the activities of the Companies forthwith;

[44] **AUTHORIZES** the Receiver to file, on behalf of the Companies, an assignment of property in accordance with the *Bankruptcy and Insolvency Act* not later than ten (10) days following this judgment;

[45] **AUTHORIZES** Pricewaterhouse Coopers Inc. (Claude Gilbert, appointed Receiver) (the "Trustee") to act as trustee in bankruptcy of the Companies;

[46] **ORDERS** the Receiver to file a motion to approve his fees and disbursements within ten (10) days of this judgment;

[47] **MAINTAINS** the conclusions of the judgment rendered by this Court on October 14, 2010 until the filing of the assignments of property on behalf of the Companies;

[48] **ORDERS** the provisional execution, notwithstanding appeal;

[49] **THE WHOLE** with costs.

(signed)  
\_\_\_\_\_  
CHRISTIANE ALARY, J.S.C.

M<sup>e</sup> Marie Pettigrew  
Autorité des marchés financiers

Counsel for the Applicant – Impleaded Party

M<sup>e</sup> Jean-Pierre Sheppard and M<sup>e</sup> Jean-François Bilodeau  
Robinson, Sheppard, Shapiro  
Counsel for the Respondents

M<sup>e</sup> Mason Poplaw and M<sup>e</sup> Miguel Bourbonnais  
McCarthy, Tétrault  
Counsel for the Receiver/Applicant

M<sup>e</sup> Pierre Arguin and M<sup>e</sup> Marie-Claude Falardeau  
Direction générale des affaires juridiques et législatives  
Counsel for the Attorney General of Québec

Hearing dates: November 8 and 9, 2010