

IN THE HIGH COURT OF JUSTICE

CLAIM NO. HC11C00546

CHANCERY DIVISION

BETWEEN

Cathal Anthony Lyons

Claimant

And

- (1) Ernst & Young Europe LLP**
- (2) Ernst & Young (EMEIA) Services Limited**
- (3) Ernst & Young LLC**
- (4) CJSC Ernst & Young Vneshaudit**
- (5) Ernst & Young Valuation LLC**
- (6) Ernst & Young Business Advisory Services LLC**
- (7) Ernst & Young Valuation Advisors LLC**
- (8) Ernst & Young (CIS) Limited**
- (9) CIS Luxembourg SA**
- (10) Ernst & Young (CIS) BV Moscow Branch**

Defendants

WITNESS STATEMENT OF CATHAL ANTHONY LYONS

I, **CATHAL ANTHONY LYONS**, former Chief Financial Officer, residing at Golikovsky Pereulok 6, Apartment 29, 119017 Moscow, Russia, **WILL SAY AS FOLLOWS:**

1. I am an Irish ex-pat living in Moscow, and I make this statement to resist the Second Defendant's application to stay this matter until liability under an Agreement has been determined by the Russian courts. For the reasons I set out below, there will be no such determination in the Russian Courts.

2. I also make this statement in support of my application for disclosure of insurance policies and related documents from the Second and Tenth Defendants.

Preliminary Comments

3. Before descending into detail, I should point out that this dispute centres around an explicit written promise to me signed by Ernst & Young, that in light of the injuries I suffered while at Ernst & Young in the accident I describe below; that:

"So long as [I am] alive, [Ernst & Young] will take all such steps as are necessary to ensure that [I am] included as an individual into the CIGNA medical insurance coverage".

4. While it may not be appropriate in a witness statement for the Court, I should record my anger, frustration and surprise that one of the world's largest professional services firms would renege on such a clear promise made to a partner made disabled while on Ernst & Young business.
5. I have exhibited at "CAL1" a bundle of paginated documents. References to page numbers in this statement are to those documents, unless otherwise stated.

My Partnership with Ernst & Young

6. I became a partner with Ernst & Young in May 2002. I was Managing Partner of Operations and Chief Financial Officer of the Ernst & Young CIS practice,

which include the Third to Eighth Defendants and the Tenth Defendant ("the Practice"). I was a former employee of the Third to Eighth Defendants and of the Tenth Defendant (which the Second Defendant has now confirmed is a Dutch company). I was a member and director of the Ninth Defendant. For a time in 2003 to 2004 I worked for E&Y LLP based in Miami.

7. The Practice forms part of Ernst & Young's Europe, Middle East, India and Africa area practice ("EMEIA"), which is under the control of the Second Defendant, an English company, Ernst & Young (EMEIA) Services Limited ("E&Y EMEIA").

8. In his witness statement, Mr Philipp Turowski (the former COO of the Tenth Defendant) attempts to portray the E&Y CIS Practice arrangements as a simple matter of Russian employment law. That is, of course, not the case. In fact the arrangements were much more international and complicated. The re-organisation of the E&Y CIS Practices was governed by a Definitive Agreement under English law dated 10 December 2004. The arrangements (as seen on the flow chart at pages 1 to 3) involved:
 - 8.1. A capital loan from partners to a Jersey company called CIS Partners Capital Limited and then on to a Luxembourg Holding Company called CIS Luxembourg SA (the Ninth Defendant).

 - 8.2. This in turn held a Dutch Holding Company called Euripus International BV ("Euripus").

8.3. Euripus then held three Dutch companies (the relevant one for these purposes being the Tenth Defendant, Ernst & Young (CIS) BV).

8.4. Each of these companies sat above the CIS companies involved in the structure.

9. Subsequently, in 2008, I signed partnership documents in relation to becoming a member of English Limited Liability Partnership, E&Y Europe LLP (pages 38 to 45). While I had done everything I considered necessary to become a member, I do not know if the formalities were ever concluded, because, as set out below, I retired from the partnership in July 2009.

My Accident

10. On 17 June 2006, while travelling back from an Ernst & Young external (out of office) training day, I had a motorbike accident in which I was hit head-on by a car which had performed an illegal u-turn. This accident led to the partial amputation of my right foot and shoulder.

11. I do not think it necessary to go into great detail, however:

11.1. I was unable to work at all for almost three months and eventually returned in September 2006 on a very much reduced workload, say a few hours per day. I was never able to return to full-time work;

11.2. I was on very considerable amounts of medications including anticoagulants and other types of medication for about 12 months, plus pain killers for over 24 months which considerably impaired my abilities, especially as I was required to inject myself in the stomach every day. To this day sometimes I need painkillers although I do my best to avoid them;

11.3. I had to have physiotherapy on a near daily basis since July 2006 for the first few years, then reducing to three times per week, which concluded on 11 August 2011 when Ernst & Young cancelled my insurance. The round trip to physio, and the physio itself, would usually take three to four hours a day, making full time work impossible, quite apart from the pain and drugs; and,

11.4. I have had a total of five operations/amputations with full anaesthetic since my accident. The current prognosis is that

11.4.1. I will require further amputation/reconstructive surgery to my shoulder; and

11.4.2. I am likely to require a further amputation to my foot.

Pursuing the insurers

12. As a result of that accident, in August 2006 the Tenth Defendant began to pursue various insurance policies held by Ernst & Young for Accidental Death and Dismemberment ("AD&D insurance") and Long-Term Disability ("LTD insurance"). In 2005, I (together with other partners) received a presentation on Ernst & Young, which included the promise of:

- Medical Insurance
 - Full Coverage is extended to all immediate family
 - Partner can choose national or international provider (CIGNA) -
- Life Insurance (Partner only)
 - Life - \$1,450,000 (ability to top up to \$1.5m subject to underwriting)
 - **Long term disability – 70% of annual salary – capped to \$300,000 [LTD insurance]**
 - **Accidental death and disability – 5 times annual salary – capped to \$1,250,000 [AD&D insurance]**
 - Underwriting Process
 - Beneficiary Forms" [Emphasis added]

(excerpt at pages 4 to 7).

13. Unfortunately, very shortly after my accident at the end of June 2006 Ernst & Young had changed LTD insurer. There were accordingly policies with

Colonial Medical Insurance and AGF (to end June 2006), and Generali (from 1 July 2006), which has greatly complicated matters. Almost six years later, Ernst & Young's attempts to secure my LTD insurance (US\$300,000 per annum) have still not been successful and the Second and Tenth Defendants are now refusing to let me have copies of the policies, under which I was insured. I believe that AGF and Generali are based in Guernsey, and Colonial in Bermuda, but as I say, E&Y have refused me copies of the policies and Colonial and Generali have (I believe on Ernst & Young's instructions), refused to provide me with the policies, saying I must get them from Ernst & Young. The Court will hopefully be interested to learn from the Second Defendant and E&Y (CIS) BV what motivation they could have to deny me copies of those policies.

14. On 18 August 2006, Svetlana Kondakova of E&Y (CIS) BV reported that underwriters had acknowledged my LTD insurance claim. Svetlana was responsible for partner matters for all CIS entities (pages 8 to 10).
15. On 1 November 2006 Sherwood Solutions LCC, E&Y's broker, reported on the insurance claims (pages 23 to 26).
16. By March 2007 I was becoming very frustrated at the slow progress of the Tenth Defendant making my insurance claims, particularly at this point, the AD&D insurance claim. I was also concerned that the insurance was not adequate. My email of 18 March 2007 sets out my concerns (pages 27 to 28).

17. On 13 April 2007 Colonial Medical Insurance declined the LTD insurance claim on the basis that I was still receiving my full partnership income (pages 29 to 30). I have no clear recollection of that, and I may have been heavily medicated at the time.
18. By this time I had instructed English law firm Fox Williams LLP to assist me with these matters.
19. On 21 May 2007 Fox Williams wrote to Ernst & Young reiterating my complaint about progress of the insurance, and pointing out that it was inadequate compared with the insurance previously in place (pages 31 to 32).
20. Later, I believe E&Y (CIS) BV's focus was turned upon Generali, and claims were made to them in relation to a "continuance" of the Colonial Policy.
21. On 9 April 2008 an article appeared in national newspaper Kommersant in relation to a tax case involving the CIS Practice's Cypriot company, CJSC Ernst & Young Vneshaudit (the Fourth Defendant).
22. In short, the tax authorities alleged that Ernst & Young had evaded tax of RUB 390 million (approximately £8,400,000) by channelling its audit work through the Cypriot entity. The article is at pages 33 to 35, and a rough translation at pages 36 to 37. The relevance of this will become apparent later. A further article can be found at page 46.

23. I had a further operation in January 2009 which made the mobility of my shoulder even worse and the pain considerably worse.

Negotiation of the Agreement

24. In early 2009 I, (together with my Doctors and Surgeons) concluded that I could not continue to work even part-time with Ernst & Young and that I needed to pursue my claims for the inadequacy of their AD&D insurance.
25. I again instructed Fox Williams in relation to this matter.
26. I had a preliminary discussion with Philipp Turowski in early March 2009, and a very short meeting with E&Y (CIS) BV's Managing Partner Karl Johansson on 19 March 2009. In advance of that meeting, Tom Custance of Fox Williams emailed me a half-page "Heads of Terms" of the various points he thought I should seek to agree (page 50). As the meeting was very short, and Mr Johansson wanted me to negotiate with Mr Turowski, I did not go through the Heads of Terms at that time.
27. I subsequently had two meetings with Philipp Turowski and the Tenth Defendant's General Counsel, James Mandel, in which we discussed the terms of my exit. In the first, on about 23 March 2009 Mr Turowski said he had sought authority from E&Y EMEA CFO Oliver Graff to negotiate up to US\$2.5 million for my exit, and Mr Graff was considering it.

28. At both the meeting on 23 March 2009, and a subsequent meeting later in March, or in early April 2009, I had Fox William's Heads of Terms with me in the meetings, and effectively used it as a "crib sheet".
29. I cannot recall in which of the two meetings it was, however, I vividly recall that I went through each of the nine points of Fox Williams' Heads of Terms point by point, in one of the two meetings. Some points were agreed (which I would tick) and the others put back for further negotiation or discussion. The Court will see at point 9 of those Heads of Terms:

"Subject to English law and exclusive jurisdiction of the English courts".

In one meeting Mr Turowski was sitting just to my left and could easily see the Heads of Terms and in the other, they were actually on his desk and he could see them.

30. I did not retain a copy of the original Heads of Terms, as we ended up with a signed deal which I expected Ernst & Young to honour.
31. In one of the meetings either on about 23 March or late March/early April 2009, my request for English law and jurisdiction was verbally agreed by Philipp Turowski for Ernst & Young in front of me and James Mandel without hesitation. As three ex-pats, we all knew the notoriety of Russian Courts, and the reputation of Russian judges for taking bribes. None of us would want to contract personally under Russian law, if it could be avoided.

32. In fact, I also explicitly recall that Mr Turowski commented:

32.1. that it was funny that an Irishman wanted an agreement under English law (given the long history of troubles between the two nations); and,

32.2. that he understood me wanting English courts, as Mr Johansson was untrustworthy.

33. English law and exclusive jurisdiction continued to be the basis of our understanding going forward until the "final" Key Terms document was signed. If we were contracting under Russian law, we would have produced a bi-lingual contract in Russian and English. As CFO of E&Y CIS BV for nine years, I have seen, prepared and signed many agreements under Russian law, and they always have English/Russian translations, generally side-by-side, and a clause saying that in the event of conflict, the Russian language prevails. We did not do this because we had agreed it was to be governed by English law.

34. On 5 April 2009 Mr Turowski prepared a one page "Letter of Intent" (page 83), which he had signed.

35. Later on 8 April 2009 I forwarded to Mr Turowski an email to me from Fox Williams, with their comments on the proposed deal (page 63) . Mr Turowski responded with some annoyance at their legalistic approach (page 67), but noted:

"I also completely understand that you are talking to legal counsel".

36. As such, the negotiation in English consisted of an Irishman (me), a German (Mr Turowski), an American (Mr Mandel) and an English lawyer (Mr Custance). Mr Turowski was fully aware that I was taking English legal advice. That would hardly have made sense if, as he wrongly contends, we were operating under the understanding my exit from partnership was to be governed by Russian law. (I have Russian lawyers from asserting claims in relation to AD&D insurance.)

37. The email strings at pages 51 to 84 show the progress of the negotiations:

37.1. On 13 April 2009 I emailed Mr Turowski's Letter of Intent to James Mandel(pages 76 and 82 to 83).

37.2. From this James Mandel produced a longer "Letter of Intent" which he emailed to me on 14 April 2009 (pages 84 to 88). He had separated out:

37.2.1. the standard Russian employment contract (to govern my consultancy going forwards) from;

37.2.2. the other issues which were relevant to EMEIA, which were to be governed by English law (pages 85 to 88).

- 37.3. There were various tweaks to that term sheet between 14 and 16 April 2009 (pages 93 to 97 and 103 to 117) but in broad terms that was to become the Agreement signed by us.
- 37.4. James Mandel and Fox Williams arranged to speak at 5pm Moscow time on 16 April 2009, and just before that call, Fox Williams emailed a revised draft (at pages 101 to 102), and just after, some further changes (pages 103 to 109). Again, it would simply make no sense for Ernst & Young's lawyer to be debating drafting points with Fox Williams, if we were operating under Russian law.
- 37.5. This was then emailed by Mr Mandel to Mr Turowski, me and Fox Williams at 17:53 on 16 April 2009 (pages 110 to 117).
- 37.6. I believe I met with Mr Turowski on 17 April 2009, and I believe the Agreement was signed at that meeting or possibly on 18 April 2009.
- 37.7. At 10am on 18 April 2009 Mr Turowski emailed me asking for one of the signed versions back (page 123). As such, the Agreement was signed in mid-April 2009, not in June as Mr Turowski claims in his statement.
38. As noted, we were all operating under the understanding that the "exit" issues, including the return of my share in the Luxemburg entity, and my

health insurance (which I believe is administered in Great Britain) were under English law and jurisdiction.

39. Mr Turowski says at paragraph 25 of his witness statement that he believes this was the final binding Agreement. It was intended to be binding, however, the fact that the Agreement states it is the "key terms" and concludes:

"the Parties agree that they are obligated to execute and deliver an Agreement incorporating, and consistent with, the terms set forth above"

put beyond doubt that this is untrue, and make clear a "long form" agreement was intended. That was to contain an English Law and jurisdiction clause.

40. The continuation of my CIGNA health insurance was a critical matter for me: I was ultimately to end up without the "buying power" of one of the largest professional services firms on Earth, and I was a multiple amputee which meant that obtaining comparable insurance cover was going to be breathtakingly expensive, if at all possible. (That fear proved to be well-founded. As the Court will see below, based upon a quote from a CIGNA subsidiary, I calculate that replacement (but not identical) insurance to age 85 will cost in the vicinity of £1.5 to £2.5 million.)

41. Accordingly, the Agreement provides that:

"So long as Mr. Lyons is alive, the Practice will take all such steps as are necessary to ensure that Mr Lyons is included as an individual into the CIGNA medical insurance coverage that is now currently available"

to partners. Procedures will be put in place to ensure that the person responsible for Partner medical insurance is aware of this arrangement and confirmation of Mr. Lyons' coverage will be sent to him every year or upon his request. No change in insurance carrier for Partner medical insurance will be made unless it accepts Mr. Lyons and agrees to the same or better coverage now in effect. Mr. Lyons, at his own expense, will be permitted to include his wife and children under the coverage"

As noted, I am very surprised that Ernst & Young would endeavour to get out of such a clear commitment.

42. The Agreement also provided for me to be employed by a Practice entity as a part time consultant with effect from 1 July 2009, and states that:

"the term of employment will be indefinite and may not be terminated except by agreement with Mr Lyons or as specified in his employment agreement".

43. Pursuant to clause B1, I continued to be employed by the Tenth Defendant and entered into a service agreement dated 1 July 2009 with the Third Defendant.

Suspicious Payment

44. I referred earlier to a tax case against E&Y:

44.1. In December 2007 the Russian MVD (effectively the Tax Police) requested an interview with Hans Horn CIS CMP. In short, the Tax Police alleged that E&Y had engaged in an illegal tax avoidance scheme. The case continued for a number of years.

- 44.2. In April 2008 the MVD sued E&Y for RUB 390 million (approximately £8,400,000).
- 44.3. On 2 July 2009 the Tenth Defendant apparently engaged a law firm "Liniya Prava" purportedly to give tax structuring advice. This retainer did not comply with internal E&Y processes, and was not part of any budget I had seen or approved. It is also curious that a "big four" accounting firm with leading internal tax expertise would seek external advice on tax structuring from a non-specialist firm.
45. In September 2009 David O'Rourke the Deputy Chief Financial Officer of E&Y CIS and others within Finance Group drew to my attention a suspicious payment of the Rouble equivalent of €120,000 to Liniya Prava which had been authorised by Ernst & Young's CIS Managing Partner Karl Johansson. There were a number of aspects to this which we considered to be suspicious, including:
- 45.1. Its very large amount: As CFO, E&Y CIS has never had a single legal invoice as large as this amount and it was not budgeted. I was responsible for the budget so I would know about any large amounts. As a "big four" accounting firm, budgets are strictly controlled and there is no way that an unbudgeted figure of that magnitude would not draw attention;

- 45.2. E&Y prides itself on having the best tax partners and department in the CIS and they never outsource tax advisory work. For E&Y to do so effectively admits their own tax department is not good enough. They would never do this;
- 45.3. The failure of the retainer of 2 July 2009 to comply with E&Y outsourcing and conflict procedures;
- 45.4. The Tax partner, Alexandra Lobova (responsible for the tax litigation) is the person that requested and signed-off on the payment. Ms Lobova is a Client line partner normally and should not be making such requests. As an internal cost (not rechargeable to a client), in Mr Mandel's department, he (together with other management) would be required to review and approve the expenditure in advance. In fact, this sum is so large it would have ended up in front of the CIS board and probably EMEIA itself;
- 45.5. The speed at which the payment was made; and,
- 45.6. The fact that Ernst & Young was a defendant in the litigation against the Russian tax authorities (referred to above) at the time.

46. The short point was that the payment appeared to be likely to be a bribe to be paid to a Russian Judge to get an outcome in Ernst & Young's favour in the tax litigation or something similar.
47. The payment was investigated by James Mandel, General Counsel of the Tenth Defendant in October or November 2009.
48. Mr Mandel subsequently reported his findings to Mr Herve Labaude, General Counsel of the Second Defendant, Ernst & Young (EMEIA) Services Limited, based in London. Mr Labaude will still have a copy of the report. I believe it was sent to all E&Y Global executive by James Mandel.
49. The report concluded that this was a suspicious payment, and that Karl Johansson and Alexandra Lobo's explanations had been insufficient. Pausing there, I hope the Court will understand my great concern at Ernst & Young's attempts to have my case tried in Russia (see paragraph 8 of Mr Statsenko's witness statement). At this point, Mr Labaude took over conduct of the investigation. At no point did Mr Labaude interview me or ask me anything about the matter.
50. I subsequently learnt from Mr Mandel that the investigation conducted by Mr Labaude in January 2010 was very quickly concluded on the basis of an assurance given by Mr Johansson. I considered this to be effectively a "whitewash".

51. In May 2010 I met with Maz Krupski from Ernst & Young's Global Head of Tax and Statutory based in London. I expressed to him my concerns about the conduct of the investigation, stating that I wanted this matter dealt with under the protection for whistleblowers that is supposed to be provided for in Ernst & Young's anti-bribery policy.
52. I subsequently contacted James Mandel to see if he would be willing to discuss the payment with Mr Krupski. Mr Mandel was initially concerned as he thought Mr Labaude had shut the investigation down, but I assured him Mr Krupski would protect him, as he had promised. I understand that James Mandel and Mr Krupski spoke on the subject. In June 2010 I understand that Mr Krupski and Mr Mandel spoke again and Mr Mandel recommended that he (Mr Krupski) speak with Mr Labaude.
53. Mr Mandel reported to me that he had then had a very angry reaction from Mr Labaude over the telephone, and that having been asked the question directly, he had to tell Mr Labaude that it was my conversation with Mr Krupski in May 2010 that had led to this matter being revived again.
54. It is for those reasons that I believe Mr Labaude has great personal animosity towards me. Mr Labaude does not deal with any of these matters in his witness statement.
55. In September 2010, I asked Svetlana Kondakova to send me the Generali forms to make a claim on the LTD insurance. In November 2010, Mr Alexey Statsenko, the new General Counsel of the Tenth Defendant took over the

conduct of the Generali claim (pages 139B to 139C). Ernst & Young had been actively leading the claim on the LTD insurance, albeit too slowly for me.

Breach of the Agreement

56. On 4 January 2011, Philipp Turowski telephoned me. The gist of our conversation was:

56.1. Mr Turowski informed me that he had been instructed to call me by Herve Labaude of the Second Defendant.

56.2. Mr Turowski enquired whether I was prepared to renegotiate the Agreement and, in particular, the CIGNA medical insurance provision.

56.3. I reminded Mr Turowski that the medical insurance provision was vital for me, and asked why there was any question of renegotiation, when "*we have a deal*".

56.4. Mr Turowski's reply was to the effect: "*I know we have a deal and we [Ernst & Young] knew the importance of the insurance part*". He informed me that the Agreement and, in particular, the medical insurance provision, had been approved by:

56.4.1. Karl Johansson (Managing Partner of the CIS sub-area within EMEIA);

56.4.2. Oliver Graff (Chief Financial Officer of EMEIA), based in Frankfurt;

56.4.3. Christoph Gross (now retired) (Chief Operating Officer of EMEIA), based in Frankfurt; and,

56.5. Mr Turowski said he did not know why Mr Labaude wanted to renegotiate the insurance provision in the Agreement.

57. I note that nowhere in his witness statement does Mr Turowski deny paragraph 12 of my Particulars of Claim regarding Mr Labaude's involvement.

58. Around 21 February 2011 Hervé Labaude of the Second Defendant telephoned me. The gist of our call was:

58.1. Mr Labaude informed me that as a result of an internal review, it had been decided that I would no longer be included in the CIGNA scheme.

58.2. Mr Labaude made clear to me during this conversation that he was fully aware of the terms of the Agreement but that, regardless of this, I would no longer be included in the CIGNA scheme.

- 58.3. He told me that there was an issue with regard to the number of hours I was working – he said that to be covered by CIGNA, I had to work at least 30 hours per week.
- 58.4. Mr Labaude confirmed that he had discussed my Agreement with Mr Statsenko, the General Counsel and Philipp Turowski.
- 58.5. Mr Labaude questioned the validity of the Agreement under Russian law. (I did not debate this with him, as a result of legal advice).
- 58.6. He said that E&Y had every right to question the validity of around \$650,000 in expenses paid and to ask for this sum back. He referred to paragraph C4 of the Agreement which he said entitles E&Y to reclaim up to \$750,000. I explained that this was only if I recovered under AD&D insurance (which I had not); He disagreed and said it applied globally. I understood this as a clear threat, said with menace in his voice.
- 58.7. He repeated that the current Agreement was badly drafted and this made things difficult for both me and E&Y. He wanted to know how much payment I had received so far as he did not want to ask the CFO.
- 58.8. When I told Mr Labaude that I would need to discuss all of this with my lawyer (at the time, Fox Williams) Mr Labaude told me

61.1. The matters relating to my employment and insurance had been taken "out of his hands" a couple of months ago and they were being dealt with by Mr Herve Labaude, General Counsel of E&Y (EMEIA) Services Limited in London.

61.2. Mr Labaude had told them to "stay out of it".

61.3. "Herve is running it".

61.4. I should speak with Mr Labaude.

62. At paragraph 14 of my Particulars of Claim, I noted that the Practice's new General Counsel, Alexey Statsenko had told me that Mr Labaude was directing this process, and that the Agreement was in London.

63. At paragraph 7 of his statement, Mr Statsenko denies saying these things.

64. I have sent out below the full detail of the call and meeting with Mr Statsenko.

65. In a telephone call on 25 April 2011 I was told by, Alexey Statsenko:

65.1. That I needed to come in to collect my termination notices.

65.2. That he was unable to discuss matters other than my termination.

65.3. That I should contact Mr Labaude in relation to the CIGNA insurance.

66. I repeatedly said (perhaps three times) that Mr Labaude was instructing him to terminate my Agreement, and he never denied that. Accordingly I had a meeting on 28 April 2011 with Mr Statsenko and a lady called (I believe) Olyna Pavlyk and another lady, at E&Y's Moscow office in which I was told by Mr Statsenko that:

66.1. Ernst & Young did not intend to fulfil the Agreement that it insure me until I die;

66.2. He was not aware of any Agreement between me and "some other people";

66.3. I should speak with Mr Labaude, (which he repeated, perhaps half a dozen times). This was because he (Mr Statsenko) was not in a position to discuss my Agreement;

66.4. The Agreement was not on the HR file in Moscow. I said if the Agreement was sitting in London, then James Mandel and Svetlana Kondakova had a copy. He again said I must speak with Mr Labaude.

66.5. Such an Agreement was probably beyond my employment relationship.

that if he received any communication from my lawyer that he would immediately terminate:

58.8.1. all employment contracts with me;

58.8.2. the consulting agreement; and

58.8.3. the Agreement.

58.9. During the call, Mr Labaude said he would get the insurer used by ex-E&Y employees to contact me with a quote. This turned out to be called Medicare International (owned by CIGNA – the original provider.)

59. On 1 March 2011 (following Mr Labaude's call), I received an email from Medicare International regarding an "Individual CIGNA Continuation Plan", (pages 140 to 143). The quote stated my individual coverage would start at £11,023.00 per annum (page 141 and 143). The Annual Premium rates (at page 143) show this would increase to £42,082.00 per annum by the time I reach 65.

60. During this time, Fox Williams were trying to speak with Mr Labaude.

61. In about the second week of April 2011 I was told by Mr Karl Johansson, in a telephone call that:

67. After I told him that Mr Labaude had told my lawyer that he was giving instructions to Mr Statsenko to terminate me, he said "yes, you should talk to Herve".
68. Mr Statsenko does not set out his recollection of what was said, and I believe his denial of my statement is untruthful. If Mr Statsenko disagrees, he should set out in full his recollection of the call and meeting rather than giving a bare denial.
69. Accordingly, I am under no doubt whatsoever that Herve Labaude of the Second Defendant in London is the driving force behind the breach of my Agreement. Each time I have spoken to anyone at Ernst & Young (other than Mr Labaude) they have told me to speak to Mr Labaude. I expect that there must be numerous emails between Mr Labaude, Mr Statsenko, Mr Johansson and Mr Turowski on this subject, but no doubt they will not be produced for the hearing of this application.
70. In the meeting on 28 April 2011 I received notifications from the Tenth Defendant dated 26 April 2011 giving notice:
- 70.1. that the employment agreement was to be terminated with effect from 11 August 2011; and,
- 70.2. that due to the termination of his employment, my membership (and that of my family) of the CIGNA insurance scheme was to be terminated with effect from 11 August 2011.

71. At the same time, I received a separate notification from the Third Defendant dated 27 April 2011 giving notice of termination of the service agreement dated 1 July 2009 with effect from 16 May 2011.

72. These events have caused very considerable anxiety, stress and consequent illness to me and my wife. My wife got a form of pre-cancer (we are told by a doctor & surgeon) called HPV16 and had to have an operation. I got stomach ulcers, driven by acids coming all the way up my stomach. I required long treatment for three months and still have problems now. All of this is due to the stress caused by Mr Labaude.

LTD Insurance

73. I have also been endeavouring to obtain my entitlements under Ernst & Young's LTD insurance policies with Colonial Medical Insurance, AGF and Generali. As noted, the Tenth Defendant's attempts to get my insurance paid have been ongoing for over five years now, and have still not been successful.

74. In November 2010 Alexey Statsenko was working on my LTD claim with Generali.

75. In May 2011 I was also chasing up Generali about my LTD insurance claim. In an email on 31 May 2011 Generali confirmed that it had been dealing with Svetlana Kondakova. When I contacted her, on 1 June 2011 she told me to contact Mr Statsenko (pages 141).

76. On 2 June 2011 I emailed Mr Statsenko (page 145) stating:

"Dear Alexey, if I understood correctly the replies that Generali that were sent to Svetlana were sent to you. You were instructed by Herve to send these communications to Herve Labaud?"

All my disability dealings are no longer with Generali nor you in Moscow but I am to deal with Herve in London? In fact any matter to do with both disability and continued CIGNA Insurance?"

77. On 8 June 2011 Mr Statsenko replied, and again, his response (at page 145) did not in any way deny the contents of my email as regards Mr Labaude, but simply said effectively that I am now "on my own" pursuing this claim:

"with reference to your memo below and our previous communications, we understand that you at your own judgment has decided to file a claim for disability with the insurer under the policy you were covered by when you were an EY partner.

As you are no longer a partner with Ernst & Young CIS and, therefore, not covered by the disability policy from June 2010, this claim is obviously your private matter, and we are not in a position to act as an intermediate between you and the insurer. In that regard, you are currently requested to communicate on this subject directly with Generali who will be responding to you directly".

78. I served these proceedings in England by letter dated 14 June 2011, because that was the jurisdiction of the Agreement (pages 148A to 148B).

79. Despite the explicit indication Generali would deal with me directly, on 23 June 2011, Generali emailed stating:

"Unfortunately I have been otherwise advised and will not be able to deal with you directly". (Page 146).

No doubt Ernst & Young will confirm who, on their behalf, gave Generali that instruction.

80. Following contact from Medicare (referred to above), I applied to Medicare for coverage. On 20 July 2011 a revised quote was sent by email (pages 149A to 151):

80.1. This shows that it is not similar coverage, and that my whole family must be included to obtain coverage.

80.2. The revised Annual Premium rates are at page 151. It was always known by Ernst & Young (and is recorded in negotiations for the Agreement) that I intended to relocate to Miami (which is "Area Three"). My starting Premium (as a 45 year old) would therefore be £13,330 per annum raising to £44,606 by 65.

80.3. For the purpose of showing how much E&Y's breach of the Agreement costs me, I prepared the spreadsheet at pages 152 to 154, showing the annual premiums for me, assuming I live to 85 (my father is alive (and well) at 88 and my mother is also alive at 82 and for each of my family members (as I am required to include them on the policy). This shows that

80.3.1. my premiums alone would be £1,498,088;

80.3.2. those for my wife would be £890,517; and,

80.3.3. for my children, to age 19, a total of £117,539.

80.4. Accordingly, Ernst & Young's breach of the Agreement will cost me in the vicinity of £2.5 million. There will additionally be costs for prosthetics of about £186,000.

81. To my alarm, I received an email on 10 August 2011 (page 156) from Medicare saying they could not cover me as my CIGNA Policy was still active.

82. I tried to get clarification from Ernst & Young, without response and after a week of trying to get a response, I sent an email to Mr Labaude stating :

"Dear Herve,

I have tried to get an answer from your subordinates in EY but they have not even responded to my urgent request. Well, I am trying to understand if my CIGNA has been terminated or not. Your lawyers have told my lawyer that our insurance has been terminated. But EY is refusing to notify CIGNA that I have been terminated, so my family and I are currently uninsured. As you know we are totally dependent on EY notifying CIGNA and Medicare. This is the first time I ever remember not having health insurance, certainly in over 20 years. I am terrified for my family and myself.

It is obvious EY is again trying to scare me into giving into to accept some small amount so EY will not have to fulfil its legal obligation to me. This is not the first time you and EY have used this bullying tactic. It is truly staggering that EY treats any of its people like this, certainly not in line with your values that EY is supposed to follow. To add I am disabled and require constant medical treatment, something I cannot do now, so I am in constant pain now and my injuries deteriorate. Something EY knows and is using to attempt to beat me into submission.

My eldest daughter is based in US and the rest of my family is based here in Russia, therefore insurance is mandatory for us. So please cease and desist with this abhorable actions and approach, they are inhumane. Can you please confirm to me that my family and I are still insured by CIGNA or notify Medicare immediately that you have terminated my insurance? We need our insurance.

I hold EY totally responsible if anything should happen to my family."

83. His response was to insist that I deal with his lawyers (page 155).
84. After 5 years, on 31 August 2011, Generali stated my LTD insurance claim was not eligible. They claim this is because my accident was before their coverage (see pages 158 to 161) but I believe it contained a continuance. As I understand, the policies need to be read in conjunction with E&Y's application.
85. Repeated requests to Generali to provide me with the policy were denied, and are now being ignored (page 168). Both Ernst & Young and Generali are effectively stonewalling me, by refusing to provide a copy of the insurance policies to me.
86. On 24 February 2012 SGH Martineau wrote to the Second and Tenth Defendants on my behalf requesting the policies (pages 169 to 170). There has been no response to that request by the Tenth Defendant.
87. On 24 February 2012 Colonial emailed to say they would not reopen my file in relation to LTD Insurance (page 171 to 172). They have also refused me a copy of the policy (page 173) saying I have to get it from Ernst & Young.
88. On 29 February 2012, BLP, on behalf of the Second Defendant refused to provide me with the LTD insurance policies (page 177). My lawyers responded saying that no doubt they would explain the motivation of the Second Defendant refusing to give copies in the hearing of this application (page 178). The Tenth Defendant obviously has copies of all of the relevant

policies. The Second Defendant I believe has copies of the insurance in their possession, as Mr Labaude would be covered by the same policies.

This Application

89. On 12 August 2011, Fox Williams wrote to the Second Defendant's lawyers, BLP, asking if the Tenth Defendant was a different entity from that incorporated in Amsterdam. BLP responded:

"We see no basis for our clients providing a response to your final question."

as if the matter of my promised health insurance was some sort of game.

90. In the absence of an answer, Fox Williams continued to look into service in Russia. The Court gave permission to serve the Tenth Defendant in Russia on 2 September 2011.
91. I understand the Second Defendant's application was filed in September 2011 and should have been served around then, however, I did not receive a copy from Fox Williams until January 2012.
92. In late October and early November 2011 Fox Williams was told by the Foreign Process Office that service in Russia could take one to two years (see pages 163 to 167).

93. In January 2012, following a review of the Second Defendant's application for the stay we saw that they now admitted that the Tenth Defendant was in fact incorporated in Amsterdam, the Netherlands, (despite the Second Defendant having previously refused to answer this question when asked by Fox Williams, as noted above.)
94. My new solicitors, SGH Martineau LLP, accordingly obtained an Order amending the Claim Form to show the Tenth Defendant's address in Amsterdam and I understand that service of the Tenth Defendant in Amsterdam was effected on 6 March 2012 (see pages 181 to 183).
95. I am advised that under the Brussels Regulation, I have a right (and indeed an obligation) to sue a company domiciled in England (such as the Second Defendant) in England, and that I can join other parties (whether in the EU or elsewhere) if the claims are closely connected. This includes the Netherlands domiciled Tenth Defendant. In relation to the Ninth Defendant, I am advised by SGH Martineau it appears to be in liquidation.
96. Even if (which is not the case) English law and jurisdiction were not agreed, of the three witness statements served by the Second Defendant, one witness is in England, one in Germany, and only one in Russia. The underlying Agreement is with Mr Labaude in England. James Mandel is in New York, and Tom Custance of Fox Williams is in England. I have set out below where I believe the relevant parties, possible witnesses and documents to be:

Number	Witness or Document	Location
1.	Herve Labaude	London
2.	The Agreement of April 2009	London
3.	Maz Krupski	London
4.	Second Defendant	London
5.	Medicare/CIGNA	London
6.	Fox Williams	London
7.	CIGNA	Scotland
8.	Philipp Turowski	Germany
9.	Tenth Defendant	Amsterdam
10.	Generali	Guernsey
11.	James Mandel	New York
12.	Cathal Lyons	Moscow
13.	Alexey Statsenko	Moscow
14.	Svetlana Kondakova	Moscow
15.	Karl Johansson	Moscow

97. From both my understanding of the reputation of Russian courts and my personal experience detailed above, I would not (and did not) agree to Russian law and Russian courts' involvement unless that was a requirement. (I understood from James Mandel the employment agreement was required to be under Russian law).

Conclusion

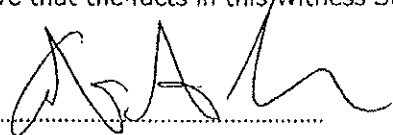
98. For the reasons above, this is a contract claim against a Dutch company on an Agreement governed by English law and jurisdiction, and a claim against an English company for interfering in my rights under that Agreement. There will not be, and was never intended to be, any proceedings in Russia.
99. I also believe that the Second Defendant has interfered in my claims under my LTD insurance, however I am hamstrung by the Second and Tenth Defendants' refusal to provide me with their applications for insurance, and the policies themselves. Without these, I cannot get advice on whether I have rights against the insurers (or where I might bring such claims). I also need to obtain the communications and claims between the Tenth Defendant and the insurers and any communications to and from the Second Defendant to either the insurers or the Tenth Defendant. I need these in order to consider whether I should amend my Particulars of Claim to include claims for interference with my rights, or whether these need to be asserted elsewhere. I accordingly respectfully request the Court give an order for disclosure of the insurance documents, the applications, and communications regarding my insurance claims, and that Second and Tenth Defendants pay my costs of seeking disclosure.
100. I believe that the only reason that the Second Defendant has brought this application is to unnecessarily run up costs to try to "starve" me out of bringing my claims to justice. In doing so, I believe each of the Second Defendant's witnesses has misled the Court. I would ask that the Court

dismiss this application, and order that the Second Defendant pay my costs,
and my Insurance premiums, on an indemnity basis.

Statement of Truth

I believe that the facts in this Witness Statement are true.

Signed.....

A handwritten signature in black ink, appearing to read 'C.A. Lyons', written over a dotted line.

Cathal Anthony Lyons

Dated 16 March 2012

IN THE HIGH COURT OF JUSTICE

CLAIM NO. HC11C00546

CHANCERY DIVISION
BETWEEN

Cathal Anthony Lyons

Claimant

and

- (1) Ernst & Young Europe LLP**
- (2) Ernst & Young (EMEIA) Services Limited**
- (3) Ernst & Young LLC**
- (4) CJSC Ernst & Young Vneshaudit**
- (5) Ernst & Young Valuation LLC**
- (6) Ernst & Young Business Advisory Services LLC**
- (7) Ernst & Young Valuation Advisors LLC**
- (8) Ernst & Young (CIS) Limited**
- (9) CIS Luxembourg SA**
- (10) Ernst & Young (CIS) BV Moscow Branch**

Defendants

**EXHIBIT "CAL1" TO
WITNESS STATEMENT
OF CATHAL ANTHONY LYONS**

CLAIM NO. HC11C00546

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BETWEEN

Cathal Anthony Lyons

Claimant

and

(1) Ernst & Young Europe LLP

(2) Ernst & Young (EMEIA)

Services Limited

(3) Ernst & Young LLC

(4) CJSC Ernst & Young Vneshaudit

(5) Ernst & Young Valuation LLC

(6) Ernst & Young Business

Advisory Services LLC

(7) Ernst & Young Valuation

Advisors LLC

(8) Ernst & Young (CIS) Limited

(9) CIS Luxembourg SA

(10) Ernst & Young (CIS) BV

Moscow Branch

Defendants

WITNESS STATEMENT
OF CATHAL ANTHONY LYONS

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