

In the

ORIGINAL

Supreme Court of the United States

INSURANCE CORPORATION OF IRELAND, :

LTD., ET AL., :

Petitioners, :

v. :

COMPAGNIE DES BAUXITES DE GUINEE :

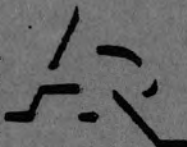
No. 81-440

Washington, D. C.

Tuesday, March 23, 1982

Pages 1 - 49

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3 INSURANCE CORPORATION OF IRELAND, :
4 LTD., ET AL., :
5 Petitioners, :
6 v. : No. 81-440
7 COMPAGNIE DES BAUXITES DE GUINEE :
8 - - - - -x
9 Washington, D. C.
10 Tuesday, March 23, 1982
11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 11:14 o'clock a.m.
14 APPEARANCES:
15 EDMUND K. TRENT, ESQ., Pittsburgh, Pa.;
16 on behalf of the Petitioners.
17 CLOYD R. MELLOTT, ESQ., Pittsburgh, Pa.;
18 on behalf of the Respondents.
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1	C O N T E N T S	
2	<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
3	EDMUND K. TRENT, ESQ.,	
4	on behalf of the Petitioners	3
5	CLOYD R. MELLOTT, ESQ.,	
6	on behalf of the Respondents	19
7	EDMUND K. TRENT, ESQ.,	
8	on behalf of the Petitioners - rebuttal	43
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Defendants to produce their insurance policies covering
2 Pennsylvania insureds, Pennsylvania risks, and emanating
3 from brokers in Pennsylvania.

4 At the hearing before the district judge on
5 the motion to dismiss and on the Defendants' objections
6 to the request for documents, the counsel for the
7 Defendant insurers, two young people from New York at
8 the time, pointed out to the court that the Defendants
9 did not have copies of their policies in their
10 possession. The contracts of insurance consisted of for
11 the most part each contract a single piece of paper
12 called a placing slip, where the terms of the risk were
13 summarized in shorthand form, abbreviated form, in
14 accordance with the practice in London.

15 And so then the district court said, well --
16 oh -- the Defendants' counsel said: These are in the
17 hands of about 150 brokers in London. According to
18 British practice, the broker is not the agent of the
19 insurance company, but the agent of the insured or the
20 prospective insured seeking insurance.

21 And so the district judge said, request them
22 from the brokers. New York counsel for the insurers
23 went to England to see what he could find out about
24 these things. In effect, he undertook to do what the
25 court had ordered him to do. And he found there that

1 there were about four million files involved in these
2 policies, because the insurers did not have indexes
3 relating to Pennsylvania. Their indexes were based on
4 large geographical areas. The continent of North
5 America was the smallest group that they had.

6 And so he came back and, within the time
7 allowed by the court as extended for 30 days, he filed
8 an affidavit offering to produce all the Defendants' own
9 records, these placing slips, at their places where they
10 were kept in England, mostly in London, and for one of
11 the Defendants in Tel Aviv, where its records were
12 kept.

13 At the hearing -- oh, the Plaintiff then filed
14 a motion to compel, and at the hearing on that motion
15 the district judge said, I'll give you another 60 days
16 to get these policies from the brokers.

17 QUESTION: Did the district court at that
18 time, Mr. Trent, say where the production should take
19 place?

20 MR. TRENT: Not expressly, no. But the
21 request for documents asked for them to be brought to
22 the office of Plaintiff's counsel in Pittsburgh, and it
23 was assumed that that's where they were to be produced.

24 QUESTION: Is that disputed at all or does
25 everybody agree?

1 MR. TRENT: I think everyone agrees on that.
2 There was no specific statement by the court that they
3 should be produced in Pittsburgh, but everyone assumed
4 it because the request for documents said to produce
5 them at the office of Plaintiff's counsel in
6 Pittsburgh.

7 QUESTION: Counsel, insofar as I was able to
8 determine reading the briefs, the Defendants at trial
9 indicated that that would basically be possible; it was
10 a question of when, not if. Is that right?

11 MR. TRENT: To produce in Pittsburgh, you
12 mean? Well, it would be possible, yes, to bring 4,000,
13 four million files to Pittsburgh. But as a practical
14 matter I would say no. I question even whether Hercules
15 could do such a thing, and we have no one of his
16 caliber on our staff. As a practical matter, it was
17 impossible. When --

18 QUESTION: And that position was articulated
19 at all times before the district court?

20 MR. TRENT: Yes. It was not --

21 QUESTION: That it was impossible physically?

22 MR. TRENT: Well, I can't say that it was
23 expressly said, but it would seem to me that it's just
24 obvious that you can't bring four million files across
25 the ocean as a practical matter. And that was the

1 position that we took.

2 Now, then the district court gave the
3 Defendants another 60 days to get the policies from the
4 brokers in London. The Defendants then sent letters to
5 roughly 150 brokers, and the brokers answered that it
6 was impossible for them to get these policies out of
7 their files or that it was impossible to do it within
8 the time limit, which was a little less than 60 days by
9 the time they got the request. So that there they were
10 taking the definite position that it was impossible
11 because their files too were not indexed according to
12 the states in the United States.

13 After that the Plaintiffs filed a motion for
14 sanctions to have the court find that the Defendants
15 were subject to jurisdiction in Pennsylvania. While
16 that motion was pending, the Defendants, based on some
17 newly discovered evidence which they had received a few
18 months before, filed an action in London for a
19 declaratory judgment that they had the right to avoid,
20 as the British term is, to rescind the contract, because
21 of the failure of the Plaintiff to disclose material
22 information at the time they asked the Defendants to
23 assume the risk.

24 The Plaintiff then filed a motion to enjoin
25 that London action, and at the hearing on the

1 preliminary injunction the district court entered a
2 sanction, finding the Defendants subject to jurisdiction
3 and entered a preliminary injunction enjoining the
4 action in London. About two months later, on the
5 Plaintiff's motion he entered orders saying that the
6 jurisdictional finding is conclusive, there shall be no
7 discovery on jurisdiction and no testimony on it at the
8 permanent injunction hearing.

9 Then on appeal to the Court of Appeals, the
10 Third Circuit, in an opinion by Judge Aldisert, reversed
11 the injunction, but affirmed on the jurisdiction.
12 Plaintiffs filed a petition for certiorari on the
13 injunction, which is still pending, and the Defendants
14 filed a cross-petition on the jurisdiction, which Your
15 Honors granted.

16 QUESTION: Mr. Trent, before you get into your
17 argument could I ask just perhaps kind of a stupid
18 question? What is the position of these British
19 insurance companies as to where they should properly be
20 sued?

21 MR. TRENT: Where they should be sued? In
22 London. The custom over there is that if --

23 QUESTION: That if an American company enters
24 into an insurance -- gets insurance from an English
25 company, they're expected to sue in London?

1 MR. TRENT: Yes, because the way that the
2 insurance is placed, it's the broker in London who makes
3 the contract with the insurer there.

4 QUESTION: And they wouldn't even have been
5 subject to suit in West Africa, either?

6 MR. TRENT: No, unless it's stated on the
7 placing slip, it's assumed that it will be in London.
8 Now, in the present case the insurers, the underwriters
9 who accepted the contract for the insurers thought that
10 this was a Guinean company in Africa. They had no
11 knowledge at all that the Plaintiff was a Delaware
12 corporation. Its name being in French and French being
13 the language in the Republic of Guinea, they thought it
14 was a Guinean risk.

15 As a matter of fact, the testimony was they
16 thought they were reinsuring a Guinean company, because
17 many of the countries there have preference for their
18 own insurance companies and the London companies then
19 reinsure them.

20 The Court of Appeals in -- well, I should say
21 that the question is then whether the sanction was
22 proper. The Court of Appeals held that it -- no. And
23 we say that depends on two things, whether a court can
24 make a sanction, make an order requiring discovery and
25 impose a sanction for not obeying before the court has

1 found the Defendants subject to personal jurisdiction;
2 and second, that the order in this case, the sanction
3 order, is valid only if the discovery order is valid,
4 and a discovery order requiring us to bring four million
5 files from London to Pittsburgh is a complete abuse of
6 discretion, it's impossible.

7 The Defendants could not comply with it and
8 therefore they didn't willfully disobey it. It was just
9 impossible to obey. And there's not a shred of evidence
10 in the record that the young New York lawyers who were
11 handling the matter were contumacious in any way. They
12 were trying to do what the court wanted them to do, and
13 when they --

14 QUESTION: Mr. Trent, that's I think the third
15 time you've used the phrase "young New York lawyers." I
16 take it you wish in some way to disassociate yourself
17 from --

18 MR. TRENT: Well, I beg Your Honor's pardon.
19 I was in effect excusing them because of their lack of
20 experience. They are very nice people.

21 QUESTION: Excusing them for what?

22 MR. TRENT: For not immediately saying, we
23 will produce these things in London. They first -- they
24 tried to get --

25 QUESTION: But they did have authority to

1 represent your clients at the time?

2 MR. TRENT: Oh, absolutely. They were in
3 charge of the case.

4 QUESTION: And we must presume they are duly
5 admitted and competent lawyers, even though they're
6 young.

7 MR. TRENT: That's right, Your Honor. Now --

8 QUESTION: Counsel, was the court's order to
9 produce only the files on policies issued by these
10 companies to people in Pennsylvania, or was the order to
11 produce all four million files?

12 MR. TRENT: The order was to produce the
13 Pennsylvania policies, but in order to do that the
14 brokers in London and the Defendants in London would
15 have had to go through four million files to see which
16 ones related to Pennsylvania.

17 Now, in the course of one of the hearings,
18 arguments in court, the lawyer from New York said:
19 Well, suppose we admit that we're doing one percent, we
20 get one percent of our income from Pennsylvania. Will
21 that satisfy? And Mr. Mellott for the Plaintiffs said:
22 No, I will not take your word for that. I want to see
23 all the records to make sure that you're showing them
24 all to us.

25 So we would have had to bring four million

1 files over, even if we had been able to sort out just
2 the Pennsylvania ones, because Mr. Mellott was not
3 willing to accept the representation --

4 QUESTION: But that was not the court's order,
5 in any event?

6 MR. TRENT: No, the court's order was just the
7 Pennsylvania files, that's right.

8 QUESTION: How much easier would it have been
9 to get into these records in London once they're
10 identified?

11 MR. TRENT: Oh, they're there. They're all
12 available. It would be just a matter for the
13 Plaintiffs' counsel to go and look at them and see. He
14 would have to dig it out, and the cases say that the
15 party seeking discovery has to bear the burden of
16 whatever work it is to find what he wants.

17 QUESTION: Mr. Trent, if I find myself unable
18 to excuse what these lawyers did because they're young
19 lawyers from New York, do you lose?

20 MR. TRENT: If you do not excuse them?

21 QUESTION: If I find that I just can't excuse
22 them --

23 MR. TRENT: Cannot excuse them --

24 QUESTION: -- because they're young and
25 inexperienced --

1 MR. TRENT: Well, I don't think that would --

2 QUESTION: -- do you lose?

3 MR. TRENT: No, I wouldn't think I would lose
4 on that.

5 QUESTION: All right. Well, you act like it.

6 MR. TRENT: Well, I beg your pardon. I was
7 trying to in effect explain what took place.

8 QUESTION: I took it that your reference to
9 these young men was to indicate that there was no
10 deliberate, there was no contumacious conduct on their
11 part.

12 MR. TRENT: Right, right, exactly, Your
13 Honor. That's true and that's correct, and I don't
14 think the other side contends that there was. Their
15 principal basis is that we just did not produce the
16 records in Pittsburgh.

17 Now, on the Court of Appeals Judge Aldisert --
18 there's a split of authority in the circuits. The
19 latest case before this one was the case in the Fifth
20 Circuit, Familia de Boom v. Arosa Mercantil in the
21 Southern District of Texas, where the district court had
22 dismissed an action because the plaintiff did not comply
23 with -- answer interrogatories. And the Fifth Circuit
24 reversed that and said you cannot make an order
25 requiring them to answer interrogatories until you first

1 have jurisdiction over them.

2 The second ground for the Court of Appeals
3 ruling here was that -- Judge Aldisert admitted that the
4 general rule is that where the documents are voluminous
5 the party seeking -- wanting to look at them must go
6 where they are. But he said that's a matter of
7 discretion for the district court and we cannot find
8 that -- we can't say we disagree with it.

9 Now, we say that that is completely wrong,
10 that it was an abuse of discretion to require us to
11 bring four million files over to America, and we've
12 cited cases in the brief that support that.

13 QUESTION: Would it not have been compliance
14 with the order for your people in London to search
15 through the files and found those that showed American
16 business and just brought those?

17 MR. TRENT: Yes, but that would have been a
18 Herculean task, because they had no indexes. They would
19 have had to examine --

20 QUESTION: Well, you said a moment ago that if
21 Plaintiff's counsel went over the files would be
22 available to them. But it would also be a Herculean
23 task for the Plaintiff's counsel.

24 MR. TRENT: Yes, that's right. And because
25 the Plaintiff is seeking the information, the Plaintiff

1 must bear the burden of that.

2 QUESTION: And there is no way in which these
3 companies can find any shortcuts to know how much
4 business they've done in Pennsylvania, I guess?

5 MR. TRENT: Well, two of them by -- or some of
6 them, by taking files for a limited period, part of the
7 period -- the period they asked for was about six
8 years. They took part of a year or a year or something,
9 and then they made estimates, and they all said, well,
10 we don't do more than one percent. That was --

11 QUESTION: How would they even know about the
12 one percent? That's what puzzles me.

13 MR. TRENT: Well, I think that was just the
14 general feeling of the underwriters.

15 QUESTION: I mean, I'd assume there'd be some
16 executives who would remember some policies that came
17 from --

18 MR. TRENT: Oh, I think they could have
19 remembered some particular ones, but that wouldn't
20 satisfy the Plaintiff. And by taking --

21 QUESTION: There was no attempt to sort of
22 say, well, maybe we -- if we give you everything we can
23 find in the first few days of search or something.
24 Sometimes these things can be worked out.

25 MR. TRENT: Yes. Well, that was where they

1 got their one percent, by looking at a short period.

2 QUESTION: Yes.

3 MR. TRENT: But there was never any proposal
4 by the Plaintiffs to accept something like that. They
5 wanted the whole thing and they wanted to look at every
6 paper in the file to make sure we weren't withholding
7 some.

8 So as I see it, the way these things ought to
9 be handled is if there's no jurisdiction -- until
10 jurisdiction is found, there's no power in the court to
11 enter any sort of order against a defendant. But the
12 plaintiff is not without a remedy there. That was one
13 of the things Judge Aldisert said, that it was necessary
14 to do this, otherwise how can the Plaintiff prove his
15 case of jurisdiction.

16 All they had to do was to initiate discovery
17 against us as non-parties. The British statute permits
18 that. We would have had to produce our documents
19 pursuant to subpoena in London, and then they could have
20 looked at them.

21 Now, as a practical matter we weren't going to
22 insist on that. We said, sure, come over, we'll let you
23 see them. And if they then wanted to look at the
24 brokers' records also, they could have subpoenaed them.
25 But I think the brokers would have let them come and

1 look at them. They -- except for, one of the brokers
2 said these things are confidential. The others did not
3 object to producing them as such. They objected because
4 it was just such a terrible job to do.

5 QUESTION: Well, it's your position, then,
6 that the extreme nature of the discovery required by the
7 district court, as you regard it, really doesn't have
8 any bearing on this case, because I take it you would
9 have objected on your jurisdictional argument to even
10 requiring one witness who resided in Pittsburgh to be
11 deposed on the jurisdictional issue.

12 MR. TRENT: Yes, yes. Well, we had the right
13 to do that. I can't say that I would have objected if
14 they wanted to take one.

15 Now, I have said in one part of my argument
16 that these files in the -- policies on the brokers'
17 possession were not subject to our control. As a
18 practical matter they were not, because the brokers
19 would not produce them, although I think we had a legal
20 right to get them from the broker. After all, when the
21 insurance company writes insurance and signs a policy
22 and the broker keeps it, the insurance company has a
23 right to get that.

24 But the general rule in the law is that if a
25 party which has control of another's documents, a

1 non-party to the action has control of the documents of
2 a party and the party says, please give them to me, and
3 the person with custody says, no, I won't, then it's up
4 to the other party to the case who wants them to go
5 after that party who has the custody. And I cited some
6 cases on that. Because they wouldn't produce them for
7 us.

8 So -- I started to say that the best way to
9 resolve this would be if there is a -- jurisdiction is
10 contested and then the party asserting jurisdiction
11 would file affidavits and the other one would file
12 affidavits. And if they're conflicting, then you cannot
13 -- you could dismiss the motion to dismiss. You could
14 deny the motion to dismiss, but you couldn't grant it on
15 conflicting affidavits. You would have to hold a
16 hearing, and that I think should have been done.

17 Judge Simmons in the district court should
18 have held a hearing and tried to resolve, to see whether
19 there would be evidence to support a finding of
20 jurisdiction, and then he could order discovery to get
21 more evidence. But he didn't do that. At the same time
22 as he made his injunction order, he entered a sanction
23 and we had no opportunity, then, to try to comply with
24 the sanction.

25 I would like to reserve the remainder of my

1 time for rebuttal.

2 CHIEF JUSTICE BURGER: Very well.

3 Mr. Mellott?

4 ORAL ARGUMENT OF CLOYD R. MELLOTT, ESQ.

5 ON BEHALF OF RESPONDENTS

6 MR. MELLOTT: Mr. Chief Justice and if it
7 please the Court:

8 It is the position of the Cross-Respondent
9 that when a party to a litigation in a federal court
10 comes into the court and asks for a binding
11 determination of no jurisdiction -- and incidentally, it
12 was not a motion to dismiss under 12(b) that was filed
13 here. It was a motion for summary judgment that was
14 filed 18 months after the action was commenced. Motion
15 for summary judgment was filed asking the court to
16 determine -- make a binding determination that there was
17 no personal jurisdiction over 17 of the excess
18 insurers.

19 Now, not only did the excess insurers come
20 into court and ask for that action by the court; the
21 excess insurers took advantage of the discovery rules
22 themselves. They served us with a request for
23 production of documents. They served us --

24 QUESTION: How many documents?

25 MR. MELLOTT: Well, they asked us to produce

1 policies which they had issued to CBG or to Halco or to
2 another affiliated company, and to produce policies
3 which had been referred to in an affidavit of Marsh &
4 McLennan, policies which Marsh & McLennan, a broker in
5 Pittsburgh, had written for either Halco, CBG -- and
6 when I say CBG I mean the Cross-Respondent here -- or
7 Alcoa, in which Marsh & McLennan state in the affidavit
8 during a period, I believe, from 1971 until 1975, when
9 the lawsuit was filed, they had written numerous
10 policies for each of the excess insurers here involved,
11 and they list them by number -- it appears in the
12 appendix, Your Honors -- setting forth the number of
13 contacts that they'd had in Pennsylvania.

14 When we tried to obtain additional information
15 concerning policies written for other companies, we of
16 course were unable to get them from Marsh & McLennan.

17 QUESTION: Mr. Mellott, it was never clear to
18 me reading the briefs whether it was your position in
19 the lawsuit that your clients had jurisdiction because
20 of the Pennsylvania contacts related to these particular
21 policies alone, or whether it was your position that
22 there was jurisdiction because the original Defendants
23 had done so much business in Pennsylvania that there was
24 general jurisdiction.

25 MR. MELLOTT: Justice -- excuse me. I didn't

1 mean to interrupt.

2 It was our position that we had jurisdiction
3 on several grounds, and Judge Simmons so found in his
4 preliminary findings and in the findings on the
5 permanent injunction. We contended, first of all, that
6 there was sufficient contacts in this particular
7 transaction.

8 I find myself disagreeing completely with the
9 statement of facts which Mr. Trent has stated to this
10 Court and I think the record will support --

11 QUESTION: Well, if you were willing to rest
12 on that you wouldn't need all these four million files.

13 MR. MELLOTT: Your Honor, we also contended
14 that they had conducted sufficient other business in
15 Pennsylvania so as to meet the tests under International
16 Shoe and other cases which this Court has decided. And
17 we contended that they had adopted the primary policy.

18 You see, we have a policy covering the first
19 \$10 million of loss with INA insurance company in
20 Philadelphia, in Pennsylvania. The excess insurers do
21 not deny that they adopted the terms of the primary
22 policy. But they would have us sue INA in Pennsylvania
23 and them, at least some of them, in London and one of
24 them in Brussels.

25 We submit that when they adopted the terms of

1 the primary policy they were subject to suit where the
2 primary insurer was subject to suit. We also contend
3 that there was an implied term in the policy that they
4 would consent to suit in Pennsylvania. Other policies
5 -- and they're listed in the record -- other policies
6 had been issued to my client previously in which most of
7 the excess insurers were involved, in which there was a
8 consent to suit clause, anywhere.

9 QUESTION: If there is an implied term in the
10 policy, why is there any need for an express consent to
11 suit clause?

12 MR. MELLOTT: Well, Your Honor, obviously I
13 was trying to prove jurisdiction on one of several
14 grounds, and the Defendants were contending that they
15 didn't do enough business here -- or in Pennsylvania --
16 to be subject to suit there. And it seemed to me that
17 when they're coming into court and asking the court to
18 make a binding determination of no jurisdiction on the
19 ground that they don't have sufficient contacts in
20 Pennsylvania to satisfy the tests under International
21 Shoe, that by doing so they've at least agreed to
22 produce or consented to the jurisdiction of the court to
23 produce those facts which are relevant to that
24 determination.

25 Otherwise it seems to me, Your Honors, it's a

1 complete abuse of our judicial process. Furthermore,
2 there is evidence in the record, contrary to what Mr.
3 Trent says, that the excess insurers knew that INA was
4 the company that had written the primary insurance, that
5 they knew of the contact with Pennsylvania. We have
6 affidavits from the brokers, we have testimony on
7 depositions.

8 The excess layer was \$10 million. 40 percent
9 of that was reinsured with INA Reinsurance in Brussels.
10 The same London broker who the excess insurers would
11 have this Court believe for all purposes is the agent of
12 my client, at the same time they were negotiating the
13 excess layer of coverage, they were also negotiating the
14 reinsurance, not for my clients but for the excess
15 insurers, with INA Reinsurance in Brussels. That
16 company took 40 percent of this excess layer of \$10
17 million.

18 That company is an affiliated company with the
19 primary carrier. That company had full information in
20 its files, furnished by the broker, concerning CBG, its
21 U.S. connection, the fact it was a Delaware corporation,
22 who its owners were, completely consistent with the
23 affidavit of the London brokers as to what they had in
24 their files and what was available for the excess
25 insurers to see.

1 Now, if they gave it to the reinsurance
2 company, I submit there is reason to believe it was also
3 given to all of the excess insurers.

4 There are a lot of other misstatements of fact
5 which appear in the brief and which were repeated here
6 again today. Now, the only way that I can explain it is
7 that Mr. Trent came into this case some time after the
8 sanctions were entered. I've been in the case from the
9 beginning.

10 There was never a question at any time in any
11 of the proceedings as to whether the documents had to be
12 produced in Pittsburgh or in London. There was never an
13 objection made by the excess insurers on that basis. I
14 never refused to go to London to look at documents. The
15 court never really ordered them to produce them in
16 Pittsburgh.

17 As a matter of fact, as Mr. Trent should know,
18 I went to London and to Europe, to Brussels, both before
19 and after this offer that was made four months after
20 they were ordered to produce the documents, to look at
21 documents when the documents were produced.

22 What did happen here? A motion -- after they
23 filed the motion for summary judgment claiming no in
24 personam jurisdiction because, they said, they didn't
25 have sufficient contact -- the fact is they had

1 initially filed affidavits in connection with the motion
2 for summary judgment in which all 17 denied any business
3 in Pennsylvania. But after we filed counter-affidavits
4 establishing business to the extent that we were able to
5 prove it, they filed new affidavits, in 13 of which
6 these excess insurers acknowledge under oath that they
7 are engaged in writing insurance and covering risks on a
8 worldwide basis.

9 They don't exclude Pennsylvania. Pennsylvania
10 is a rather commercial state, with a lot of industries
11 that are engaged in business worldwide. In some of
12 these affidavits we find representations that they
13 conducted -- that they had reviewed some of their files
14 and that they had determined that certain percentages,
15 either one percent more or less, had been determined to
16 be derived from Pennsylvania.

17 Now, that's not just in a representation of
18 counsel, as I understood Mr. Trent to indicate to the
19 Court previously. It is in signed, sworn affidavits of
20 the excess insurers.

21 Justice Stevens, I believe asked the question
22 about, how did they know. Well, presumably, at least
23 the representation made to the court was that the files
24 had been reviewed to support the affidavit, not that
25 they had some general understanding out of the air.

1 Now, it may be, and I submit should be, that
2 one percent of their premium income, which in all
3 probability runs into the millions of dollars, is enough
4 contact with Pennsylvania to meet the test of
5 International Shoe. And when they -- when we were in
6 court and they asked whether that wasn't adequate,
7 whether I wasn't satisfied with that, I said that if you
8 are still contending that that extent of business does
9 not meet the regularity test then I want you to produce
10 the documents, as you were originally ordered to do.

11 And they said, what difference -- the lawyer
12 said, what difference does it make whether it's one or
13 two percent? Well, I offered to withdraw the request
14 for production of documents if they would acknowledge
15 that the one or two percent of their business was
16 sufficient to meet the tests of the Pennsylvania long
17 arm statute and the requirement of International Shoe.

18 They were not willing to do that. They still
19 contended that the contacts were not adequate. Now,
20 they were originally ordered to produce, on July 27th,
21 1978.

22 Mr. Trent would have you believe, and in fact
23 says so in his brief and in his reply brief and
24 intimated it again today, that the lawyers from New
25 York, who are experienced insurance lawyers in the

1 international insurance field, immediately went to
2 London to contact the brokers. In fact, that's what he
3 says in his brief. There's no citation to the record
4 for that.

5 QUESTION: Counsel, do you agree with Mr.
6 Trent that the order to produce did contemplate
7 production in Pittsburgh?

8 MR. MELLOTT: No, Your Honor, I do not.

9 QUESTION: Where do you think it contemplated
10 production?

11 MR. MELLOTT: Your Honor, I think that matter
12 was never settled. They never objected. At any time
13 there was any discussion about this matter on the
14 record, Your Honor, they never objected that it was the
15 burden to bring it to Pittsburgh. That's not in their
16 objections.

17 The burdensomeness that they objected to was
18 the collection of the documents. The only objections in
19 the record to this production, contrary to what Mr.
20 Trent has indicated in his brief and again today, are
21 objections as to relevancy -- I think it's clearly
22 relevant -- and objections as to burdensomeness from the
23 standpoint of having to contact the brokers to get the
24 documents.

25 QUESTION: Well, but if as you say there

1 really was no place for production specified, then they
2 would have had no occasion to get into the question of
3 whether it was too burdensome to bring it, once it had
4 been assembled, from London to Pittsburgh.

5 MR. MELLOTT: Well, Your Honor, in the order
6 which the judge entered there was no provision for the
7 place of production. And we had gone to London
8 previously to look at documents. We were perfectly
9 willing to go again, and I'm sure the lawyers so
10 understood.

11 That to me is a red herring that's come into
12 the case after the sanctions were entered. It's not
13 something that was involved at all. We went to London
14 and looked at their documents. We went to Brussels and
15 looked at documents. We did it both before and
16 afterwards.

17 Now, the problem is, at the July 27th, '78,
18 hearing the counsel from New York told the court that
19 they'd have to contact brokers, there were 150 brokers
20 involved. In fact, they had filed an affidavit earlier
21 that day in which they said there'd be 150 brokers
22 involved and it would require contacts.

23 The judge suggested that a letter be written
24 to the brokers, a form letter. This is in July. And
25 there was no objection at that time that they were

1 outside of the control of the excess insurers. When was
2 the letter finally written to the brokers? Six months
3 later, in January 1979.

4 Even though at the July hearing their counsel
5 is saying, the documents you want are in the hands of
6 the brokers, they're not saying, however, that they're
7 outside their control -- and if I understood Mr. Trent
8 today, he's now not suggesting that either, because I
9 think clearly they are not outside the control of the
10 excess insurers -- instead of immediately going to
11 London, as Mr. Trent indicates in his brief, and in his
12 reply brief, and again today, they admitted five months
13 later at the December hearing that they hadn't contacted
14 even one broker, five months after they had been ordered
15 to do it.

16 As a matter of fact, they had only contacted
17 15 of their 21 clients. They hadn't even contacted all
18 of them. And that's conclusively established by the
19 affidavit that they filed in November, and by the --

20 QUESTION: Mr. Mellott --

21 QUESTION: Where is that affidavit?

22 MR. MELLOTT: It's in the record, Your Honor.

23 QUESTION: Well, we don't need to take your
24 time hunting it up.

25 MR. MELLOTT: The affidavit is at 98a and

1 99a.

2 QUESTION: Of?

3 MR. MELLOTT: Of the appendix, volume one.

4 QUESTION: What volume, what volume?

5 MR. MELLOTT: Volume one, Your Honor.

6 QUESTION: Okay.

7 MR. MELLOTT: Now, the admission as to the
8 fact that they hadn't contacted any brokers as late as
9 five months after they were originally ordered to
10 produce the documents and the judge had originally
11 suggested that they do it appears in the transcript of
12 the December 27, 19 -- or December 21, 1978, hearing,
13 which also appears in the joint appendix, volume one.
14 It starts on page 105a.

15 At none of the -- well, first of all, the
16 judge gave them all the time they wanted in --

17 QUESTION: Counsel, you went to London and
18 looked at the documents?

19 MR. MELLOTT: Not these documents, Your Honor;
20 other documents. Not these documents. They did produce
21 some other documents, Your Honor, but not these.

22 QUESTION: Did you make any attempt to review
23 these documents for business in Pennsylvania?

24 MR. MELLOTT: Your Honor, prior to the time
25 that the sanction was entered, except for the offer to

1 produce four million files -- and while it's been
2 characterized in the brief and here today as being a
3 list of the North American files, it was never so
4 identified to us, nor was it so identified in any of the
5 papers or in any of the discussions.

6 All it was was an indication to us that they
7 would open the files of 15 of the excess insurers.
8 That's where the four million files were supposed to be
9 located. At the same time they're telling us that the
10 files are in the hands -- the documents that they were
11 ordered to produce are in the hands of the brokers. So
12 these four million files may or may not contain what
13 they were ordered to produce.

14 QUESTION: Well, time is getting away and I
15 have two questions --

16 MR. MELLOTT: All right.

17 QUESTION: -- I'd really like to hear you
18 address. And one is the question of whether it was an
19 abuse of discretion for the court to order the
20 production of four million files. And secondly, if not
21 and if the court could properly impose sanctions in this
22 discovery effort, was it an abuse of the court's
23 discretion to prevent any further litigation of that
24 problem at the trial on the merits, the jurisdictional
25 question?

1 MR. MELLOTT: Your Honor, in the first place,
2 Judge Simmons did not order the production of these four
3 million files. He ordered -- and he changed our request
4 after the counsel for the excess insurers had presented
5 arguments. All they were ordered to do was to give us
6 names of the policies, the policy numbers and the
7 general outline of those policies which had a
8 Pennsylvania contact, either by being written for a
9 Pennsylvania insured, being written through a
10 Pennsylvania broker, or covering a risk in
11 Pennsylvania.

12 Now, that's what they were ordered to do. I
13 submit, Your Honor, that when they made this offer, four
14 months after they had been originally ordered to
15 produce, it was not an offer that complied with what
16 they'd been ordered to do. I mean, on the one hand
17 they're telling us they don't have the files, they're
18 with the brokers -- although they never said that they
19 were outside their control -- I mean, that they didn't
20 have the documents.

21 On the other hand, after coming to the court
22 at the end of the 90 days, asking for an extension of
23 time and representing to the court that in all
24 probability we can comply with the court's order within
25 30 days, and the court granted an extension of an

1 additional 30 days, all we get is a two-page affidavit,
2 the end of November, four months later, which simply
3 says 15 of the companies will open their files.

4 Now, those are not the documents the court
5 ordered produced. There was not even any representation
6 that those included the documents which were produced.
7 In fact, if you believe them when they say that the
8 documents that we were requesting were in the possession
9 of the brokers, those files didn't even include any of
10 them.

11 QUESTION: If we assume for a moment that the
12 court had the power to enter some sanction and to compel
13 discovery for the purpose of reviewing its own in
14 personam jurisdiction, do you think the court also
15 properly precluded any further consideration of that
16 issue at trial?

17 MR. MELLOTT: Well, I think the court did,
18 Your Honor, and I think by virtue of the holding of this
19 Court in the National Hockey League case that's
20 required. If sanctions are going to mean anything and
21 have any deterring effect, you can't say that once the
22 sanction has been entered it can be removed by
23 compliance later. All that'll do is bring about a
24 complete abuse of the discovery process.

25 QUESTION: That doesn't necessarily follow, it

1 seems to me. Maybe this particular sanction was not the
2 correct one. Maybe there should have been a monetary
3 sanction based on all of your time and energy and
4 interest and all the rest, and delay. Wouldn't that
5 serve a deterrent purpose?

6 MR. MELLOTT: Your Honor, I submit that it was
7 not -- and I'm not even sure that it's the case today.
8 The Defendants haven't even today, so far as I know,
9 offered to produce the documents which they were ordered
10 to produce. Now, Mr. Trent after he got into the case
11 made a new offer, and it's not clear from the offer
12 whether he's talking about producing the documents
13 including those from the brokers or whether he's talking
14 about the same four million files.

15 But in any event, Your Honor, I don't agree
16 with what Mr. Trent said about my view as to whether the
17 lawyers acted in good faith or not. I do not believe
18 they acted in good faith. I think they did not act in
19 good faith, as the Third Circuit found. And I think a
20 review of the record will make it very clear here they
21 did not act in good faith.

22 And the judge gave them nine months to comply
23 --

24 QUESTION: It seems to me that all of that
25 goes to the question of what would be an appropriate

1 sanction. Maybe you're dead right that you were really
2 given a terrible run-around here and entitled to a very
3 severe sanction. The legal question, though: Is it
4 correct for the sanction to be a finding of jurisdiction
5 when in fact there may be no jurisdiction?

6 MR. MELLOTT: Well, if Your Honor please, I
7 think if you look at the evidence that's in the record
8 -- and I submit that there is adequate evidence in the
9 record for the court to find jurisdiction even now on
10 the face --

11 QUESTION: Well then, really, you've spent an
12 awful lot of time on an unnecessary project.

13 MR. MELLOTT: Well, that may be, except that
14 there's a lot of money involved in this case, Your
15 Honor, and -- the suit was filed in December '75. Here
16 we are in March of 1982. And most of the reason why
17 this case isn't to trial --

18 CHIEF JUSTICE BURGER: We'll resume there at
19 1:00 o'clock.

20 MR. MELLOTT: Thank you, Your Honor.

21 (Whereupon, at 12:00 noon, the hearing in the
22 above-entitled matter was recessed, to reconvene at 1:00
23 p.m. the same day.)

24

25

1 AFTERNOON SESSION

2 (1:00 p.m.)

3 CHIEF JUSTICE BURGER: You may resume, counsel.

4 ORAL ARGUMENT OF CLOYD R. MELLOTT, ESQ.

5 ON BEHALF OF RESPONDENTS -- RESUMED

6 MR. MELLOTT: Mr. Chief Justice and may it
7 please the Court:

8 I would like to continue with my response to
9 Justice Stevens' question. There are three points that
10 I would like to make in response to your question as to
11 whether a money sanction wouldn't have been better.
12 Maybe I haven't phrased it exactly as you did, Your
13 Honor. In the money sanction, as I understand it, you
14 were suggesting that they pick up the expenses that were
15 involved from the delay.

16 I submit, Your Honor, that that type of a
17 sanction would have no deterrent effect on the type of
18 misconduct that was engaged in here, particularly in a
19 time of high inflation, which we had during the period
20 of dilatory tactics.

21 QUESTION: You mean deterring other people or
22 being effective in this case?

23 MR. MELLOTT: Deterring other people, Your
24 Honor.

25 QUESTION: Well, what do you care about that?

1 You just want --

2 MR. MELLOTT: Well, what I'm suggesting --

3 QUESTION: -- to deter somebody in this case,
4 don't you?

5 MR. MELLOTT: Well, yes, Your Honor, I'm
6 really primarily concerned in this case. But I'm
7 suggesting that the sanction that was imposed here is
8 fully in accordance with the provision of Rule
9 37(b)(2)(A), which presumes under that rule that the
10 facts which would be established if the discovery were
11 complied with are deemed to be established. And that's
12 exactly what Judge Simmons did, and he did it only after
13 he had warned them, five months after he had originally
14 ordered the production, he warned them that if the
15 production wasn't made in another 60 days the sanction
16 of the type he's mentioned would be entered.

17 He gave them actually 120 days, so that they
18 had a total of nine months to comply. And they didn't
19 comply.

20 Furthermore, I submit that sanction is in
21 accordance with the rules and -- the rule, Rule 37, and
22 with the decisions of this Court in the National Hockey
23 League case, in which the sanction of dismissal was
24 used, which is even more severe than the sanction here
25 involved. At least they still have an opportunity to

1 defend on the merits.

2 Furthermore, I think it's in accordance with
3 the holding of this Court in the Hammond Packing case,
4 in which a sanction of a dismissal --

5 QUESTION: I'm not so much concerned about the
6 severity of the sanction as the question of the theory
7 by which, if there in fact is no jurisdiction how does
8 the court have power to impose it?

9 MR. MELLOTT: Well, Your Honor, on that point,
10 I submit that when a party comes into court and asks the
11 court to make a binding determination that there is no
12 personal jurisdiction over him, and when that party
13 engages in discovery against another party already in
14 the case --

15 QUESTION: All these arguments are arguments
16 that you didn't really need the discovery that gave rise
17 to the particular order before us, because those are
18 independent grounds for jurisdiction.

19 MR. MELLOTT: What I'm saying, Your Honor, is
20 that when they come into court and ask for a binding
21 determination of the court, as the Fourth Circuit held
22 in the Lekkas case which we've cited in our brief, they
23 are deemed to submit to the jurisdiction of the court,
24 at least to the point of providing relevant evidence on
25 the issue that they've asked the court to decide.

1 It seems to me it would be a complete misuse
2 of our judicial process --

3 QUESTION: Would you mean the court has
4 jurisdiction has to determine its jurisdiction, and that
5 there were efforts, you say, that frustrated the
6 determination of jurisdiction and therefore this drastic
7 step is taken?

8 MR. MELLOTT: That's correct, Your Honor. I
9 mean, it would be a real misuse of process to say on the
10 one hand, as this Court has said, that there is
11 jurisdiction to determine jurisdiction, and that a party
12 can come in and invoke that jurisdiction and yet say:
13 but I'm not going to produce the evidence that's
14 relevant to that determination; you have to decide it on
15 what evidence is in the record; I'm not going to produce
16 the evidence that's in my possession.

17 Now, that's what the excess insurers ask this
18 Court to hold. I submit that that would be clearly
19 improper. I also would argue that this is a question --
20 the test here is, did Judge Simmons abuse his discretion
21 in applying this sanction?

22 He warned them that it would be applied. They
23 elected not to comply. And as I said this morning, I do
24 not believe that their offer, their belated offer to
25 open files of 15 excess insurers, was a compliance with

1 the order to produce certain specific documents which
2 they say are in the hands of the brokers, so they
3 couldn't have been in the files that they were offering
4 to produce in any event.

5 QUESTION: Does the record show what interest
6 will be payable on the claims when, as and if they're
7 allowed?

8 MR. MELLOTT: No, they do not, Your Honor.
9 But we have made a claim and we've amended the complaint
10 to ask for an inflation factor, and the court has
11 permitted that amendment. Now, whether we'll be able to
12 sustain it ultimately or not I don't know.

13 QUESTION: Permitted the amendment?

14 MR. MELLOTT: The court permitted the
15 amendment only, Your Honor.

16 Your Honor, I believe some of you asked me
17 questions this morning about, why did you go ahead with
18 the discovery if you felt so confident there was
19 jurisdiction. Well, if this Court holds from the
20 contacts, as I believe it could on the basis of
21 International Shoe, that there's no need for this
22 discovery, that there is sufficient evidence of contacts
23 in the record, as I believe there is, then of course I
24 don't need the sanction, because there's no appeal from
25 this decision.

1 But I felt that I had to assert jurisdiction
2 on every ground available to me, and that's what I tried
3 to do, as long as they were trying to contend that there
4 wasn't sufficient jurisdiction.

5 QUESTION: Does the order that was entered
6 here foreclose any further investigation of
7 jurisdiction?

8 MR. MELLOTT: Yes, it does,, Your Honor,
9 primarily based on the reasoning of this Court in the
10 National Hockey League case.

11 QUESTION: Was that specifically done under
12 the rule?

13 MR. MELLOTT: That was done subsequently by an
14 order of court, Your Honor, that in view of the fact
15 that one of the grounds for jurisdiction was that he had
16 imposed a sanction under Rule 37(b)(2)(A) and based on
17 the National Hockey League case, that that issue should
18 not be further litigated.

19 QUESTION: And so the question of jurisdiction
20 supposedly is no longer open in this case, is that it?

21 MR. MELLOTT: That's right, Your Honor, on the
22 basis of the reasoning of this Court in the National
23 Hockey League case that if you permit them to avoid the
24 sanction after it's been imposed by then complying with
25 the court order, all you'd get would be dilatory

1 tactics.

2 QUESTION: You are not now complying with a
3 court order, proving that there isn't jurisdiction.
4 That isn't the same as complying with the order.

5 MR. MELLOTT: The court actually, in the
6 preliminary injunction order and in the permanent
7 injunction order, found jurisdiction on several
8 grounds.

9 QUESTION: Yes?

10 MR. MELLOTT: Including the sanction. And the
11 court has held that, in view of the entry of the
12 sanction, that the issue of in personam jurisdiction is
13 no longer open for litigation, that it's finally binding
14 on the parties in this case.

15 Now, the Court of Appeals, I believe
16 incorrectly, dismissed as to three of the Defendants,
17 and that's part of what is included in our petition for
18 cert to this Court, which the Court presently has under
19 consideration, because we believe there is adequate
20 evidence of contacts in the record. There is also
21 evidence that they did not comply with the order,
22 either. And our petition for cert also includes the
23 injunction, a point which they --

24 Thank you very much, Your Honors.

25 CHIEF JUSTICE BURGER: Mr. Trent?

1 REBUTTAL ARGUMENT OF EDMUND K. TRENT, ESQ.

2 ON BEHALF OF PETITIONERS

3 MR. TRENT: Mr. Chief Justice, may it please
4 the Court:

5 One thing Mr. Mellott has just mentioned now
6 and he mentioned as well before lunch, he said that we
7 had asked for a binding determination of jurisdiction,
8 not merely a motion to dismiss. Now, he is incorrect in
9 that. On page 38a of the prayer of the affidavit which
10 was filed by the New York lawyers under their New York
11 practice, where they make an affidavit and contain the
12 motion in it --

13 QUESTION: That's 38a of what?

14 MR. TRENT: Of the joint appendix.

15 QUESTION: Volume one?

16 MR. TRENT: Yes.

17 "Wherefore, it is respectfully urged that the
18 motion for summary judgment dismissing the complaint
19 against the moving Defendants on the grounds of lack of
20 in personam jurisdiction and forum non conveniens, be,
21 in all respects, granted."

22 So all he was doing was moving to dismiss for
23 lack of jurisdiction. He did not invoke the
24 jurisdiction of the court by saying it had no
25 jurisdiction. I think that's just a complete

1 contradiction to say that.

2 Now, one thing I think has not been clearly
3 brought out here is to just what was being asked for in
4 these records. First, the request for documents asked
5 for the policies, and then the court said at the hearing
6 on that, we'll get up this list in a general way. And
7 Mr. Mellott then said, I want to see the policies. And
8 then counsel for the Defendants said that the brokers
9 had the policies, and so mister -- Judge Simmons said,
10 well, write to the brokers.

11 So we understood that we were to get the
12 policies. Then after New York counsel had gone to
13 England to investigate the situation -- and Mr.
14 Mellott's correct, he didn't talk to the brokers, he
15 talked to 15 of his clients, but they knew about the
16 brokers and so forth -- he came back and he made this
17 affidavit -- and there's not anything dilatory; he did
18 it within the time -- that it would involve four million
19 files.

20 Now, he was talking then about the insurers'
21 own files, but they would show the same thing as the
22 brokers' files. That is, the contract is the placing
23 slip and the insurance company keeps that. The broker,
24 as agent for the insured, then prepares a policy, gives
25 it to the insured to sign and then takes it back and

1 keeps a copy of it. So the same information would be in
2 the brokers' files as would be in the insurers' files.

3 So New York counsel, Mr. Bruckmann, thought,
4 well, let us offer our own files and we will make those
5 available. They would show the same thing as the
6 brokers' files.

7 Now, Mr. Mellott says that we never did offer
8 to produce the documents anywhere. But after I got into
9 the case, which was after the sanctions had been
10 entered, I thought, well, let's see if we can get the --
11 offer to produce them now and satisfy the court and be
12 done with it. And so I expressly offered to produce all
13 these files in London.

14 And Mr. Mellott said, no, we're not interested
15 in the files relating to jurisdiction now, and he
16 prepared this order and he submitted it and the judge
17 said he was going to sign it, barring us from ever
18 contesting jurisdiction again. And I said, on the
19 strength of that I offer to produce all these records in
20 London on July 2nd, 1979. That's right in the record.

21 So Mr. Mellott is incorrect to say we never
22 did offer to produce the files.

23 QUESTION: You didn't offer to produce them
24 until the sanction had been entered.

25 MR. TRENT: No -- well, that was my offer.

1 But Mr. Bruckmann before the sanction had been entered,
2 he offered to produce them in London, and I just
3 repeated that offer in the hope that it would be
4 accepted and we would get the thing done. Because we
5 were perfectly willing to produce our files, and they
6 could look through them and rummage through them all
7 they want.

8 QUESTION: Mr. Trent, did your offer pertain
9 to your files or the brokers' files?

10 MR. TRENT: Our files.

11 QUESTION: Where did I get the notion that the
12 information was only obtainable from the brokers'
13 files? What was all this fussing around about the
14 brokers' files?

15 MR. TRENT: Well, that was because Mr.
16 Mellott's request for documents asked for policies, and
17 we did not have any policies in our files. We had only
18 the placing slips, which were the contracts.

19 QUESTION: I thought I also got the impression
20 that your files wouldn't disclose whether it was
21 Pennsylvania business or --

22 MR. TRENT: Well, the indexes -- the placing
23 slips themselves would, if you looked at each one. But
24 the indexes did not say which ones were from
25 Pennsylvania, and the same was true of the brokers.

1 They did not have the indexes, either.

2 QUESTION: Because I'm puzzled about why you
3 sort of shuttled them off to the brokers. It probably
4 would have been much more efficient in the first place
5 to stay with your files, wouldn't it?

6 MR. TRENT: Well, I think it would have been.
7 But that was Judge Simmons' idea, because they wanted --
8 they had asked expressly for the policies and only the
9 brokers had the policies.

10 QUESTION: And you didn't -- your predecessor
11 representing your client didn't happen to say, well,
12 really a quicker way to get it would be to look at our
13 own files instead of going through the policies?

14 MR. TRENT: No. No, that was not said. That
15 could have been said. I don't know whether the realized
16 that or what at the time.

17 QUESTION: Would you think on your theory of
18 the case or of the rule the district court would have
19 been justified in saying, I'm going to impose -- I'm
20 going to find that there is jurisdiction unless you
21 sustain the burden of proof that there isn't?

22 MR. TRENT: No.

23 QUESTION: And that you will have to get your
24 own documents and come in here with proof?

25 MR. TRENT: No, that was wrong. I think Judge

1 Simmons in effect did say that. But that is not
2 correct. The burden is on the Plaintiff to show
3 jurisdiction.

4 QUESTION: When did the judge say that?

5 MR. TRENT: I beg your pardon?

6 QUESTION: When did the judge say that?

7 MR. TRENT: He said that --

8 QUESTION: Before he imposed the sanction?

9 MR. TRENT: Yes.

10 QUESTION: So he said to you: Look, I'm going
11 to find that there's jurisdiction unless you come in and
12 prove --

13 MR. TRENT: Yes, yes, precisely.

14 QUESTION: Now, that is -- and you think that
15 was unjustified?

16 MR. TRENT: Yes, that was erroneous, because
17 all we have --

18 QUESTION: Let's assume for the moment that
19 you agree that there had been a refusal to discover. I
20 know you say there wasn't.

21 MR. TRENT: Yes.

22 QUESTION: But assume there was.

23 MR. TRENT: All right.

24 QUESTION: And you agree that a sanction, some
25 kind of an effective sanction, was justified. You say

1 that sanction would be bad, to put the burden of proof
2 on --

3 MR. TRENT: Yes, yes.

4 QUESTION: Even though you had refused
5 discovery?

6 MR. TRENT: Yes.

7 QUESTION: And even though the rule says that
8 you may, as a sanction you may deem the facts sought to
9 have been established?

10 MR. TRENT: Yes, because we say that doesn't
11 apply where it's a question of jurisdiction. And the
12 Familia de Boom case held exactly that, that even though
13 the burden was on the plaintiff to produce the -- to
14 prove jurisdiction, if the plaintiff couldn't get it it
15 was too bad, but he should make other efforts.

16 Now, we say, as I said before, that the
17 Plaintiff was not hamstrung here. All he had to do was
18 go to London and look at our records.

19 CHIEF JUSTICE BURGER: Thank you, gentlemen.
20 The case is submitted.

21 (Whereupon, at 1:15 p.m., the above-entitled
22 matter was submitted.)

23 * * *

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:
Insurance Corporation of Ireland, Ltd., Et Al., Petitioners,
v. Compagnie Des Bauzites De Guinee -- No. 81-440

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Suzanne Young

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