IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Apple Tree Life Sciences, Inc., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered) **Re: Docket No. 205**

NOTICE OF FILING OF AMENDED REDACTED MOTION TO DISMISS

PLEASE TAKE NOTICE that, on January 23, 2026, Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (together, the "**LPs**"), filed the *[REDACTED]Amended Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd.* [Docket No. 205] (the "**Redacted Motion to Dismiss**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that after conferring with the Debtors, the LPs hereby file an amended version of the Redacted Motion to Dismiss (the "**Amended Redacted Motion to Dismiss**") attached hereto as **Exhibit 1**.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

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Dated: March 6, 2026
Wilmington, Delaware

Respectfully Submitted,

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Co-Counsel for Rigmora Biotech Investor One LP (by and through its general partner Unicorn Biotech Ventures One Ltd) and Rigmora Biotech Investor Two LP (by and through its general partner Unicorn Biotech Ventures Two Ltd)

Exhibit 1

Amended Redacted Motion to Dismiss

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: APPLE TREE LIFE SCIENCES, INC., *et al.*,[1] Debtor.	Chapter 11 Case No. 25-12177 (LSS) (Jointly Administered) **Objection Deadline: January 30, 2026** **Hearing Date: February 25, 2026 at 10:00 am (ET)**

AMENDED MOTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP FOR AN ORDER DISMISSING THE BANKRUPTCY CASES OF ATP LIFE SCIENCE VENTURES L.P. AND ATP III GP, LTD.

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the "**LPs**"), hereby move for an order dismissing the Chapter 11 cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd., as set forth in the proposed order attached as **Exhibit A**, and granting such other and further relief as may be just and proper. This Amended Motion replaces the motion previously filed at Dkt. No. 3. In support of this Amended Motion, the LPs rely on the previously filed *Declaration of Liam Faulkner in Support of Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order (I) Dismissing the Chapter 11 Cases and/or (II) Granting Relief from the Automatic Stay* (Dkt. 4) ("**Faulkner Decl.**"), and *Declaration of Mark Phillips KC in Support of Motion of Rigmora*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay (Dkt. 126) ("**Phillips Decl.**"), as well as additional testimony to be presented at the hearing on the motion.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 109, 305(a)(1) and 1112(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 1017 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 1017-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

3. Pursuant to Local Rule 9013-1(f), the LPs consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.[2]

PRELIMINARY STATEMENT

1. The bankruptcy cases of ATP Life Science Ventures, L.P. (the "**Fund**") and ATP III GP, Ltd. (the "**GP**") (together, the "**Fund-Level Debtors**"), filed on December 9, 2025, were filed in bad faith and despite the Fund-Level Debtors being in no financial distress. They were filed to stop—practically on the eve of trial—a solvent winding-up proceeding for the Fund that is pending

[2] Nothing herein shall constitute a waiver of any argument that the Cayman Islands court has exclusive or concurrent jurisdiction to adjudicate the matters in the Cayman Islands proceedings, and all rights and remedies of the LPs are expressly reserved.

before Justice Asif of the Grand Court of the Cayman Islands (the "**Cayman Court**"). That proceeding has been pending in the Cayman Islands since June 2025 and, at the time the petitions were filed, had been scheduled to go to trial on January 12, 2026. Because Cayman law requires a general partner to step aside and not "cling to office" when it has lost the trust and confidence of its limited partners, the GP had an obligation to do just that. Phillips Decl. Ex. B-39, *Re One Thousand & One Voices Africa Fund I LP*, KY 2024 GC 62, 9 May 2024 at [46]. It did not. Unwilling to step aside and unable to tolerate losing, the GP filed solvent entities for bankruptcy. The GP and the Fund had no meaningful creditors and no debts to reorganize. Yet in a bid to keep its role, and in an increasingly apparent effort to divert Fund resources into its poorest-performing portfolio companies, the GP filed these petitions and sought refuge in the automatic stay.

2. These Fund-Level Debtor cases were so palpably improper, and so obviously an attempt to avoid the imminent Cayman trial, that the LPs immediately moved for relief. On December 12, 2025, just three days after the bankruptcy petitions were filed, the LPs moved to dismiss the bankruptcy cases of the Fund-Level Debtors and Debtor Apple Tree Life Sciences, Inc. ("**ATLS**") and/or for relief from the automatic stay. The GP responded by filing bankruptcy petitions for the Fund's least successful portfolio companies and tying those cases to the Fund-Level Debtors' cases in an effort to create the appearance that it was somehow appropriate for the Fund and GP to be debtors in this Court too. Nothing could be further from the case. Whatever the state of the debtor portfolio companies, the Fund-Level Debtors are differently situated and have no basis to seek reorganization here. This Court may have an important role to play in the reorganization of the portfolio companies, but faced with a motion to dismiss, it must consider the Fund-Level Debtors' petitions on their own merits—and they have none.

3. The LPs now amend their motion to dismiss to clarify that they seek dismissal only as to the two Fund-Level Debtors[3]—the GP and the Fund—which are at issue in the pending Cayman trial and are not in financial distress. Dismissal of the Fund-Level Debtors is appropriate because (1) their petitions were filed in bad faith and not for a proper bankruptcy purpose; (2) abstention in favor of the Cayman proceeding, which is ready to go to trial, is appropriate and in the best interests of all parties in interest; and (3) the Fund, in any event, is not eligible to be a debtor under Section 109 of the Bankruptcy Code because it is not a separate "person" with independent legal capacity to own property or conduct business under its governing law.

4. The relief sought by the LPs is urgently needed and wholly appropriate. It should be promptly granted to allow the two-party dispute between the LPs and the GP over the management of the Fund to be resolved in the court that has exclusive jurisdiction over their trial-ready case and that was on the brink of resolving it when the GP derailed that schedule by filing here.

5. The Fund is a Cayman Islands Exempted Limited Partnership. The GP and the LPs first agreed to establish the Fund in 2012 to invest in venture capital projects in the biotech industry. The GP, itself a Cayman Islands entity, is the Fund's general partner. The LPs are the Fund's primary limited partners, having contributed about 98% of its over $2.4 billion in capital contributions. Under Cayman law, which constituted and governs the Fund, the Fund lacks legal personality; rather, the GP holds the property of the Fund on statutory trust for the benefit of the Fund's limited partners. Thus, because the LPs hold nearly all of the limited partnership interests in the Fund, the GP's principal role is to manage the LPs' investments as their fiduciary.

[3] On January 6, 2026, the Debtors separately moved for relief from the automatic stay to allow the Cayman proceeding to go forward and have addressed the grounds for relief from the stay in that separate motion. *See* Dkt. 125. The Debtors no longer seek dismissal as to ATLS.

6. At this point in the Fund's fourteen-year life, the GP has fully drawn its contingent subscriptions (or nearly so), and the Fund is essentially fully invested in a broad portfolio of companies, some more successful than others. Instead of managing that portfolio within the Fund's available capital and seeking to maximize return to its LPs, and otherwise act in their overall interest, the GP has purported to file the Fund for chapter 11 to seize control of Fund assets and use them to support its least successful investments. It is seeking to shop the rest to hypothetical alternative investors, which it hopes will take the substantial litigation risk—and the risk that any transaction here would be subsequently unwound in the Cayman Court—and somehow enter into a new partnership with the GP at its helm, in direct contravention of Cayman law, the LPs' rights as owners of the solvent Fund's assets, and the principles of the Bankruptcy Code. And the GP somehow expects these hypothetical future investors to trust it even though it has overreached its mandate, disregarded the limits of the LPs' contingent subscriptions, failed to appropriately manage the Fund's portfolio, and then sued the LPs in an attempt to wipe out their rights and seize their interests.

7. If the Fund-Level Debtors' cases look and sound more like a two-party litigation than a restructuring, that is because they are. In asking this Court to find that the GP has the ability to control the Fund and its investments—over the objections of the LPs who contributed 98% of its capital and to whom the GP owes fiduciary duties—the GP is simply seeking to move its ongoing dispute with the LPs into a new forum. Similar issues about the direction of the Fund, its management, and the GP's and LPs' respective obligations have been the subject of two other cases in two other jurisdictions, pending since May 2025. Litigation initiated by the GP in the Delaware Court of Chancery (the "**Court of Chancery**") sought, among other things, orders requiring the LPs to contribute hundreds of millions of dollars in additional capital to the Fund,

depriving the LPs of their consent rights under the Fund's Limited Partnership Agreement ("**LPA**") as to the use of that capital, and authorizing the GP to declare them "Defaulting Partners" and forfeit up to half of their interest in the Fund. The GP largely failed in that extraordinary endeavor. The litigation resulted in a judgment of specific performance, entered December 11, 2025, requiring the LPs to make about $97 million in additional contributions to the Fund. But the Court of Chancery otherwise rejected the GP's claims; confirmed that the LPs' total capital commitments to the Fund were capped at $2.425 billion, hundreds of millions of dollars less than the GP had asserted; and confirmed that the LPs' rights under the LPA to refuse consent to budgets remain intact. With respect to other asserted claims, the Court of Chancery deferred to the Cayman Court.

8. In the meantime, the LPs' June 2025 petition in the Cayman Court sought the just and equitable winding-up of their partnership with the GP—*i.e.*, the Fund—on the grounds that the LPs have justifiably lost confidence in the GP's management, that the Fund's "substratum" was lost (meaning that it had become impractical for the Fund to carry on in accordance with the reasonable expectations of its partners, *see* Phillips Decl. ¶ 98), and that a proper and independent investigation into the Fund's affairs by court-appointed fiduciaries was necessary.

9. On the brink of trial and facing the possibility of that independent investigation, the GP filed the Fund-Level Debtors' chapter 11 petitions. The filings came just days after the Delaware decision and just days before the Cayman pretrial conference (known as a "Pre-Trial Review" or "PTR" in Cayman terminology). The GP gave no prior notice or explanation of the filing to the LPs—even though the GP is a fiduciary with a strict duty to act at all times in the best interests of the Fund's limited partners.

10. The GP had no legitimate reason to file the petitions for the Fund-Level Debtors. The petitions serve no legitimate bankruptcy purposes. The GP and the Fund are not in financial distress and do not need restructuring in the bankruptcy sense. As the GP's counsel has admitted, "this will be a solvent estate." Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 142:2–3. Indeed, the petitions, if taken at their face value, declare that the Fund-Level Debtors and ATLS collectively have assets in the range of $1 billion to $10 billion and just twelve non-insider unsecured creditors whose claims in the aggregate total $204,066—an asset-to-liability ratio that could rise to nearly 5,000:1. Case No. 25-12178, Dkt. 1, Fund's Form 201, at 4, 9; Case No. 25-12179, Dkt. 1, GP's Form 201, at 4, 10. The GP's chief restructuring officer has testified that the Fund's audited financial statements as of December 31, 2024 show that "the fair value of the investments in total totaled $3.9 billion, almost $4 billion." Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 132:22–25.

11. The Fund-Level Debtors have over $100 million in cash. Dkt. 81, First Day Hr'g Tr., Dec. 17, 2025, at 19:9–12; Ex. R, Chancery Court Judgment, Dec. 11, 2025, ¶ 2. No creditors are at their door seeking their assets. In fact, the only party demanding assets of the Fund is the GP itself, which explicitly seeks to use these Chapter 11 cases to "replace" the LPs who contributed virtually all of that Fund's capital and "lift out" the assets that the GP holds in trust for the LPs to some other hypothetical investor who is not only willing to take the substantial litigation and unwinding risk but also to partner with a GP who is deep in litigation with its previous limited partners. Dkt. 18, First Day Decl. of Dr. Seth L. Harrison, ¶ 17; Ex. FF, Apple Tree Partners Portfolio Lift-out Opportunity Presentation, Dec. 2025. In an attempt to find some kind of unmet "obligation," the GP's counsel has adverted to the existence of share purchase agreements with some of the portfolio companies, but the GP has not asserted, much less presented evidence, that

any obligations are due under those agreements or that the Fund lacks resources to meet any such obligations. In fact, the GP's representatives have previously confirmed in sworn testimony that the Fund has the discretion, but not the obligation, to provide that funding under many of the portfolio company share purchase agreements. Ex. I, Harrison Deposition Tr., Oct. 6, 2025, at 273:2–7. And as far as the LPs are aware, to the extent any share purchase obligations are tied to defined milestones, they are not binding on the Fund as the portfolio companies have not met those milestones.

12. Finally, the fact that the GP has essentially fully drawn down the Fund's committed capital by calling all of its limited partners' contingent subscriptions under the LPA is not a signal of financial distress. The Fund was founded in 2012. The LPs' $2.425 billion in contingent subscriptions have funded investments in over a dozen companies over the course of the past nearly 14 years. It is a mature Fund, with a range of investments—some much more successful than others—and not a Fund in financial distress. Similarly, the fact that the Fund is essentially a fund of one—that is, an investment vehicle for the LPs as virtually the only investor—is part of its design, ***not*** a problem that bankruptcy is intended to resolve. The parties agreed under Cayman law that the LPs would have limited liability and would commit to invest only a specific amount (namely $2.425 billion), and the GP has now essentially fully drawn that committed capital. That is not a basis for a chapter 11 restructuring (indeed, if it were a basis for chapter 11, it would surely be a shock to any other fund or sponsor that has fully drawn its capital and is managing investments having a positive valuation).

13. Bankruptcy courts can serve a critical function for honest but unfortunate debtors including, potentially, the portfolio companies that are Debtors before this Court. But U.S. chapter 11 is not a refuge for Cayman GPs seeking to avoid the scrutiny of Cayman courts for their

handling of valuable, non-distressed investments. The law here is clear: as the Third Circuit and courts throughout the country have recognized, using a bankruptcy filing for tactical litigation advantage is not a proper use of the Bankruptcy Code, constitutes bad faith, and warrants dismissal. *See, e.g.*, *In re 15375 Mem'l Corp.*, 589 F.3d 605, 625 (3d Cir. 2009). This is true even—or perhaps especially—when the underlying litigation seeks the Debtor's dissolution. *See In re Nat'l Rifle Ass'n of Am.*, 628 B.R. 262, 278–83 (Bankr. N.D. Tex. 2021). In addition, the Third Circuit has made clear that "good faith necessarily requires some degree of financial distress on the part of a debtor." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 121 (3d Cir. 2004); *see also In re LTL Mgm't, LLC*, 64 F.4th 84, 101 (3d Cir. 2023). ("[A]bsent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose"; "[F]inancial distress is vital to good faith."). A transformation of the Fund may be appropriate, but it is not a transformation of a financially troubled entity nor a chapter 11 reorganization, and it does not belong in this Court.

14. Because this is a Cayman Fund and Cayman GP, with a pending dispute in Cayman Court, broader equitable principles weigh heavily against allowing the Fund-Level Debtors' cases to proceed. Given the six-month pendency of the Cayman winding-up proceeding, which was nearly ready for trial at the time the petitions were filed, the Court should abstain in favor of the Cayman Islands proceeding on grounds of comity, efficiency and justice. U.S. courts have repeatedly recognized the policy in favor of allowing foreign courts to conduct proceedings for their own partnerships and business entities. It is for the Cayman court, which exercises exclusive jurisdiction to wind up Cayman Exempted Limited Partnerships, to administer the exclusive process under Cayman statute and the LPA for resolving the parties' dispute over the future of the Fund, which the GP has sought to undermine by filing chapter 11 petitions for itself and the Fund.

15. In any event, the Fund is not a proper debtor under section 109 of the Bankruptcy Code. The fact that the GP holds Fund assets on statutory trust for the LPs under Cayman law means that any assets ascribed to the Fund do not constitute property of the estate of the GP, the Fund, or any other Debtor. The Fund's inability to own property, together with its lack of legal personality under governing Cayman law, means that the Fund is not a "person" at all, much less a "person" with "assets" or a "place of business" in the United States. It therefore does not meet the statutory prerequisites for filing a bankruptcy petition under Bankruptcy Code § 109(a).

16. In short, the Fund-Level Debtors' cases have none of the hallmarks of the "honest but unfortunate debtor," *e.g.*, *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 297 (Bankr. D. Del. 2011), and all of the hallmarks of the hard-fought two-party litigation in which the Fund-Level Debtors are embroiled elsewhere. They do not belong here. For all of these reasons, as further set forth below, the Fund-Level Debtors' cases should be dismissed.

FACTUAL BACKGROUND

I. The Fund.

17. The Fund, a Cayman Islands exempted limited partnership ("**ELP**"), was established on October 29, 2012, following discussions between Dr. Dmitry Rybolovlev and Dr. Seth Harrison about forming a vehicle to invest in biotechnology companies. Ex. B, Chancery Court Pre-Trial Order, Sept. 5, 2025, ¶¶ 14, 22–23. Dr. Harrison owns and controls the GP, which is a Cayman company, while the Rybolovlev family trust indirectly owns and controls the two LPs, which are managed by an entity known as Rigmora Holdings Limited. *Id.* ¶¶ 13–15. Besides the two LPs, the Fund's only other limited partners are Dr. Harrison and his family trust, who hold only small stakes in some pools of assets, as well as certain present or former employees of ATLS who have not contributed capital to the Fund and only have a contingent right to earn carried interest payments. Dkt. 18, *Declaration of Dr. Seth L. Harrison in Support of Chapter 11 Petitions and*

First Day Motions, (the "**First Day Decl. of Dr. Seth Harrison**") ¶ 25. The Fund is in effect a fund of one, as roughly 98% of the capital invested into the Fund was contributed by the two LPs. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 5.

18. The Fund currently holds approximately 15 portfolio companies, including Braeburn, Inc., a highly valuable company with a commercial product called Brixadi, which is a treatment for opioid dependence. The Fund's other portfolio companies have not met the same level of success. Despite some early success driven in large part by the Braeburn investment, over the past six years the Fund has significantly underperformed its peers, as it invested hundreds of millions of dollars of capital contributed by the LPs into early-stage companies that have failed to achieve significant development milestones. Ex. D, Chancery Court Trial Tr ("Trial Tr.") at 202:22–203:13 (Prof. Ilya Strebulaev); *id.* at 437:18–438:20 (Dr. Ilonna Rimm). After initially filing chapter 11 petitions for the Fund-Level Debtors and ATLS (a Fund subsidiary that performs certain administrative functions), the GP subsequently caused six of these non-performing portfolio companies to file chapter 11 petitions in this Court. *See* Dkt. 178, *Order (I) Directing Joint Administration of Additional Chapter 11 Cases and (II) Extending Certain Relief Granted to the Original Debtors*; Case No. 26-10048, Dkt. 1, Nereid Therapeutics Inc. Form 201.

19. The Fund's assets are managed by the GP on trust for the benefit of the Fund's limited partners, to which it owes fiduciary duties. *See generally* Phillips Decl. ¶¶ 24(b), 26–27, 57–81. The structure, management, and operation of the Fund are controlled by the terms of a Limited Partnership Agreement ("**LPA**") dated November 1, 2012, which is governed by the law of the Cayman Islands and is expressly subject to the Cayman Islands' Exempted Limited Partnership Act ("**ELP Act**"). *See* Ex. E, First Amended and Restated LPA, ¶ 18(g)(i). The LPA has been amended 22 times.

20. Under the LPA, the GP can only call capital for portfolio companies for a project and within a budget approved by the LPs, up to the LPs' Contingent Subscription amount. *Id.* ¶ 5(a)(i); Ex. F, LPA Amendment No. 3, at 2 (amending LPA ¶ 5(a)(ii)(E)). Moreover, as the Delaware Court of Chancery recently confirmed, the LPs have an absolute contractual right to approve or disapprove budgets proposed by the GP. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 73–76 ("The LPA grants Rigmora the discretion to approve budgets. . . . [N]one of the relevant tests support implying a good faith term."). This protection reflects the LPs' role as effectively the Fund's only source of capital.

II. The GP's Commencement of the Delaware Court of Chancery Action.

21. In mid-May 2025, commercial negotiations instigated by the GP over reallocating funding from early-stage to clinical-stage portfolio companies broke down when the GP withdrew its proposal after the LPs refused the GP's request for expanded control over funding decisions. Ex. H, Email Correspondence, May 11, 2025, JX-1307, at 3 ¶ 1(d) (providing for $56 million to be "allocated among [the] four [clinical] companies in the [GP's] discretion"); *id.* ¶ 3 (providing an additional $49.1 million "may be reallocated in the [GP's] discretion"); Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 32. Then on Friday, May 30, 2025, the GP issued approximately $110 million in new capital calls earmarked for specific portfolio companies pursuant to project budgets approved by the LPs and for Fund expenses (the "**May 30 Capital Calls**"). Just eight minutes later, near midnight, the GP filed suit in the Court of Chancery on a theory of anticipatory repudiatory breach of the LPA. Ex. J, Chancery Court Compl., May 30, 2025, ¶¶ 14, 103, 153, 156–63, 166–71.

22. The GP's Complaint asserted an entitlement to drastic and sweeping relief, including asserting that the LPs were "Defaulting Partners" under the LPA such that the GP could seize up to half their economic interest in the Fund, that the LPs had waived their contractual rights to

approve or disapprove investments in and budgets for portfolio companies, and that the LPs could be compelled to contribute more than $2.85 billion to the Fund—over $400 million more than the $2.425 billion stated in their Subscription Agreements. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 36–37, 44 n. 257, 46, 79. The GP later amended its pleadings to seek specific performance of over $100 million in capital calls it had issued only minutes before filing its complaint. Ex. B, Chancery Court Pre-Trial Order ¶ 74(d).

23. Concurrently, the GP moved to expedite the Court of Chancery action on the grounds that the alleged breaches put certain ***portfolio companies*** at imminent risk of bankruptcy. The Chancery Court granted this motion over the LPs' opposition. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 37. But there was no suggestion then, and there is no suggestion now, that the Fund or its GP—as opposed to some of the individual portfolio companies—faced any insolvency risk.

III. The Cayman Winding-Up Petition.

24. On June 6, 2025, the LPs filed a winding-up petition in the Cayman Court. Ex. K, Cayman Winding-Up Petition, June 6, 2025 ("Winding-Up Petition"). The petition was based on "continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP." *Id.* ¶ 3. The petition sought a compulsory winding-up under Cayman law on three grounds: (1) that the LPs had justifiably lost trust and confidence in the GP's ability to manage the Fund's assets; (2) that the "substratum" of the partnership had ceased to exist, which means that "it has become impractical, if not actually impossible," for the Fund "to carry on its investment business in accordance with the reasonable expectations of its" partners, Phillips Decl. ¶ 98; *id.* Ex. B-25, *Re Belmont Asset Based Lending Ltd* [2010] CIGC J0121-2 at [13]; and (3) that a proper and independent investigation into the Fund's affairs by court-appointed fiduciaries was necessary. Ex. K, Winding-Up Petition, ¶¶ 25–26, 66–67. On November 21, 2025, the LPs

amended the Winding-Up Petition to include substantial additional evidence supporting these three grounds for winding up the Fund. Ex. L, Cayman Amended Winding-Up Petition, June 6, 2025 ("Amended Winding-Up Petition").

25. The petition was motivated by the LPs' loss of confidence in the GP, their fiduciary. It did not—and does not—suggest that the Fund was insolvent, financially troubled, or in need of financial reorganization (and in fact, it is not). Ex. M, *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No. 4)* [2025] CIGC (FSD) 124 ("Cayman Judgment, Dec. 22, 2025"), ¶ 13; Ex. N, *Re ATP Life Sciences Ventures LP* [2025] CIGC (FSD) 106 ("Cayman Judgment, Nov. 6, 2025"), ¶¶ 44–45. The petition and trial in the Cayman Court—like the GP's last-second attempt to avoid it by filing chapter 11 in this Court—is about governance and control of highly valuable assets that the GP holds on trust for the benefit of the LPs, not financial distress.

26. After previously trying and failing to avoid facing the Cayman proceedings,[4] the GP ultimately joined the LPs in asking the Cayman Court to set a trial for January 2026. Ex. O, Cayman Hr'g Tr., Aug. 1, 2025, at 62:1–64:7. The trial was set to begin on January 12, 2026, and would have gone forward on that date but for the automatic stay triggered by the Fund-Level Debtors' chapter 11 filings. The parties have actively litigated through key phases of the Cayman proceeding, including seven hearings and the submission of thousands of pages of legal argument and witness evidence. Faulkner Decl. ¶ 60. The GP's managing partner Dr. Harrison alone has submitted eleven affidavits and a witness statement in the Cayman proceeding, totaling over 400 pages. In the process, the LPs and GP have incurred significant time and cost. *Id.* ¶ 87.

[4] For example, on June 26, 2025, the GP filed an application in the Cayman Court to stay the Cayman proceedings. After fully briefing the application and requesting a hearing, the GP withdrew its stay applications on August 1, 2025 in the middle of the requested hearing before the Cayman Court on the applications. Ex. O, Cayman Hr'g Tr., Aug. 1, 2025, at 60:6–14, 64:17–27 (statement by counsel withdrawing stay applications); Faulkner Decl. ¶ 72.

27. Contrary to the GP's unsupported assertions to this Court, Dkt. 55, Hr'g Tr., Dec. 15, 2025, at 17:10–17, an order by the Cayman Court to wind up the Fund would not imply the winding-up or fire sale of the Fund's portfolio companies. Faulkner Decl. ¶ 41; Phillips Decl. ¶ 27(k). If the Cayman Court appoints joint official liquidators ("**JOLs**") for the Fund, the JOLs will serve as fiduciaries who would owe duties to maximize the value of the Fund for the benefit of the limited partners—and who, unlike the GP, could be trusted to perform those duties faithfully, without divided loyalties and conflicts of interest. Faulkner Decl. ¶¶ 38, 42; Phillips Decl. ¶¶ 136–43. In that role, the JOLs will be charged with examining the Fund's assets, including its ownership interests in the portfolio companies, and determining how best to preserve their value within the construct of the LPA, including for example seeking funding as appropriate, continuing operations, and conducting orderly asset sales. Faulkner Decl. ¶¶ 14, 39–42; *see also* Phillips Decl. ¶¶ 131, 136–43. The LPs have proposed to the Cayman Court two experienced and respected professionals from the New York-headquartered global consulting and restructuring firm Alvarez & Marsal to serve as JOLs, Ex. L, Cayman Amended Winding-Up Petition, Nov. 21, 2025 ¶ 69—not, as the GP suggested to this Court, local Cayman Islands liquidators lacking experience with U.S. companies or familiarity with chapter 11. Dkt. 55, H'rg Tr., Dec. 15, 2025, at 29:22–30:4.

28. Moreover, winding up of the existing partnership is required by the ELP Act and the LPA as the agreed, mandatory, and exclusive consequence of an "event of withdrawal," which now has been triggered by the bankruptcy of the GP. Ex. E, First Amended and Restated LPA, ¶ 10(b)(i) (calling for winding-up upon the occurrence of an event under former section 15(5), now 36(7), of the ELP Act), *id.* ¶ 11(a) ("Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner."); *id.* ¶ 11(f) ("Upon completion of the winding up of the Partnership pursuant to this Paragraph 11, a notice of final dissolution shall be

filed with the Cayman Islands Registrar of Exempted Limited Partnerships pursuant to the ELP Law and the Partnership shall dissolve thereon.").

IV. The Delaware Court of Chancery Trial.

29. Trial in the Chancery action was held on October 16 and 17, 2025. The GP focused on compelling the LPs to contribute funds to "reconstitute" the portfolio companies for which it had called capital. The GP maintained at trial that the Fund had considerable assets and strong financial performance. Ex. D, Trial Tr. at 44:17–21 (Dr. Seth Harrison) ($300 million in sales revenue expected for Braeburn); Ex. P, Chancery Court ATP Post-Trial Br., Nov. 5, 2025, at 6 ("The Fund has distributed approximately $2.4 billion to Rigmora since inception.").

30. At closing arguments after trial on November 21, the GP urged the Court of Chancery to issue its decision by December 5, again claiming that the GP needed a quick decision so that the result could be included in the GP's pre-trial witness statements due in the Cayman Court in advance of the January 2026 Cayman Trial. Ex. Q, Chancery Post-Trial Arg. Tr., Nov. 21, 2025, at 110:11–19. The GP also argued that it needed payment by the end of 2025, because that this would allow all of the portfolio companies to continue for at least six months. Ex. D, Trial Tr. at 110:12–16; Ex. G, Chancery Court Pre-Trial Conf. Tr., Sept. 11, 2025, at 66:11–17. The Court of Chancery issued its decision on December 5, noting that it "worked hard to issue this decision promptly" at the GP's request. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 1 & n.1.

31. Apart from ordering payment of most (but not all) of the disputed capital calls, the Delaware Court of Chancery's December 5 post-trial decision rejected the GP's claims. The Court of Chancery held that the LPs retain their contractual rights to approve and disapprove budgets for funding portfolio companies, that the LPs may exercise those rights in their absolute discretion, that the LPs were correct in asserting that their capital contribution obligations were limited to the $2.425 billion Contingent Subscriptions reflected in their Subscription Agreements (and not the

more than $2.85 billion claimed by the GP), and that the GP's request for a declaration that it had not willfully breached its duties by filing the Chancery lawsuit should be deferred to the Cayman Court. *See id.* at 1. The Court of Chancery ordered the LPs to pay the remaining capital calls only because it found that the LPs' "double counted" certain past contributions (in the form of reinvestment of otherwise distributable returns) and had only previously contributed approximately $2.3 billion to the Fund—an interpretation that is contrary to the plain words of the LPA, and which the LPs intend to contest on their pending appeal to the Delaware Supreme Court. *Id.* at 55–56.[5] The Court of Chancery signed a final order and judgment implementing its decision on December 11, 2026. Ex. R, Chancery Court Judgment, Dec. 11, 2025.

32. Based on the Court of Chancery's determination that the LPs had already contributed $2.3 billion to the Fund, *id.* at 56, and following the LPs' satisfaction of the $97 million judgment on December 22, 2025, the LPs' remaining commitment to the Fund is at most $28 million even if deemed contributions are excluded as held by the Court of Chancery.[6] That remaining amount

[5] By this time, the GP was no longer pursuing its claim for anticipatory repudiation, its claim for a declaration that the LPs were "Defaulting Partners," and its claim that the GP was permitted to seize up to half of their economic interest in the Fund as a result. Ex. P, Chancery Court ATP Post-Trial Brief, Oct. 28, 2025, at 82. This apparently reflects, in part, that the Cayman Court enjoined the GP from seeking to treat the LPs as "Defaulting Partners" based on the May 30 capital calls in order to allow the LPs a reasonable opportunity to contest those capital calls. Ex. S, *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd* (No. 4) [2025] CIGC (FSD) 146, Transcript of Ex Tempore Judgment, Aug. 1, 2025 ¶¶ 4, 15. The GP is now blatantly violating the Cayman Court's injunction by inviting this Court to treat the LPs as "Defaulting Partners" despite the fact that the LPs promptly paid the May 30 capital calls after being ordered to do so by the Court of Chancery (other than one capital call that the Court of Chancery held was invalid); that the GP has not taken the steps required under the LPA's notice-and-cure provision before declaring a default, and cannot do so as the outstanding capital calls have now been fully paid; and that the GP has failed to seek to vary the Cayman Court's injunction, which expressly prevents the GP from taking such steps in any event. *E.g.*, Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 25:24–26:2; 63:12–14; *see also* Dkt. 18, First Day Decl. of Dr. Seth Harrison ¶ 17; Ex. E, First Amended and Restated LPA, ¶ 5(c).

[6] In fact, even if the deemed contributions are not counted, no contingent subscription remains because of the GP's use of $62 million received by the Fund from its portfolio companies

represents barely one percent of the LPs' overall commitment. Put simply, the GP was wrong about its assumptions that it could somehow call more capital than the Subscription Agreements provided and that it did not have to manage the Fund within its commitments, as the LPs had been warning for years.

V. The Chapter 11 Filings.

33. On December 9, 2025, without any prior notice to the LPs, the GP caused itself, the Fund, and ATLS to file voluntary Chapter 11 petitions in this Court. The GP informed the LPs at 6:27 pm that day. Just a day before, the GPs had submitted substantial evidence in the Cayman court, including a 160-page witness statement from Seth Harrison, the GP's CEO. Faulkner Decl. ¶ 85. At 12:16 p.m. ***on the very same day*** the Debtors filed these Chapter 11 cases, the GP's Cayman counsel represented to the LPs' Cayman counsel that the GP intended to fully participate in the Cayman winding-up process. *Id.* ¶ 82.

34. The GP has never contended that the Fund-Level Debtors are in any financial distress. Quite the opposite. As noted, the GP's and Fund's petitions declare that the Fund-Level Debtors and ATLS (a Fund subsidiary which performs certain administrative functions) collectively have assets in the range of $1 billion to $10 billion and debts under $500,000, identifying just twelve non-insider unsecured creditors whose claims in the aggregate total $204,066. Nor are the Fund-Level Debtors—as opposed to the portfolio companies—lacking in funds needed to pay their debts: the GP represented that it was holding approximately $17.3 million in available cash on hand as of December 17, 2025 and approximately $15.5 million as of January 20, 2026. Dkt. 81, First Day Hr'g Tr., Dec. 17, 2025, at 19:10; Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, 138:5–

Braeburn and Tendyne, which should have been distributed to the LPs; but that issue need not be resolved for purposes of this motion. Moreover, the LPs intend to challenge the exclusion of the deemed contributions on appeal to the Delaware Supreme Court.

6; *id.* at 139:9–10. This is in addition to the $97 million paid by the LPs to satisfy the Chancery judgment, which is being held in a segregated account subject to further order of this Court. Ex. R, Chancery Court Judgment, Dec. 11, 2025, ¶ 3.

35. The GP filed chapter 11 for the Fund-Level Debtors to achieve ***other*** goals, not to address financial distress at the Fund-Level Debtors (of which there is none). Among other things, the GP's counsel confirmed that, initially, the filing on behalf of the Fund-Level Debtors was intended to stop the pending Cayman proceeding: "a 'liquidation' [through the Cayman proceeding] is exactly what [the GP] and its debtor affiliates are trying to avoid by commencing chapter 11 cases." Ex. T, GP Letter to Chancery Court, Dec. 11, 2025. It was only later, ***after*** the LPs filed their initial version of this motion to dismiss, that the GP filed on behalf of certain portfolio companies. The GP's counsel also has confirmed that the dispute between the GP and the LPs over funding early-stage portfolio companies has "been really the source of the tension since May," again confirming that the filing on behalf of the Fund is really a two-party dispute between the GP and the LPs, not an effort to restructure a troubled Fund for the benefit of Fund-level creditors. Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 151:17–18. Indeed, the GP has stated that it wishes to use this chapter 11 proceeding to "replace" the LPs, although the LPs are the investors to which the GP owes a fiduciary duty. First Day Decl. of Dr. Seth Harrison¶ 17.

36. The GP's chief restructuring officer, Perry Mandarino, further confirmed that these cases have nothing to do with insolvency at the Fund level, testifying that "[t]he primary purpose of these Chapter 11 cases is to save, preserve, and maximize the value of the portfolio companies"—and ***not*** the Fund-Level Debtors, which were the first to file chapter 11 petitions. Ex. EE, Second Day Hr'g, Jan. 20, 2026, at 113:16–18. Indeed, when asked if he had analyzed whether any other investments besides the portfolio companies would be more beneficial to the

Fund, Mr. Mandarino confirmed he had not—and admitted that his approach was "[w]hat you do in a company like this is you continue the mission of the funding to get to the next stage," again demonstrating that the focus was on saving the portfolio companies rather than on protecting the interests of the Fund or its limited partners. *Id.* at 119:17–18. When asked whether, in light of the potential conflict of interest, it would be appropriate to retain a separate financial advisor for the Fund, Mr. Mandarino replied "I think that would be a waste of estate money." *Id.* at 121:24.

37. Yet, remarkably, the GP has failed to present any competent evidence that a reorganization of the overwhelmingly solvent Fund is somehow necessary in order to reorganize a handful of allegedly troubled portfolio companies. The only apparent reason for the GP to file chapter 11 petitions for itself and the Fund was to try to suppress the rights of the LPs—the very parties in whose interests the GP is obligated to manage the Fund—and to avoid scrutiny of the GP's conduct by the Cayman court.

ARGUMENT

38. As set forth below, the Fund-Level Debtors' chapter 11 cases should be dismissed (I) "for cause" because they were filed in bad faith to obtain a litigation advantage, for forum-shopping purposes, and without any financial distress on the part of the Fund-Level Debtors or other legitimate bankruptcy-related purpose; (II) on grounds of abstention in favor of the pending Cayman winding-up proceeding; and/or (III) as to the Fund, on the ground that the Fund is not eligible to be a debtor under chapter 11 of the Bankruptcy Code.

I. The Fund-Level Debtors' Cases Should Be Dismissed "For Cause" Under Section 1112 of the Bankruptcy Code Because They Were Filed in Bad Faith.

39. Section 1112(b) of the Bankruptcy Code provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court

> determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

Bankruptcy Code § 1112(b)(1). Filing in bad faith constitutes "cause" for dismissing a petition under section 1112(b) of the Bankruptcy Code. *In re 15375 Mem'l Corp.*, 589 F.3d 605, 618 (3d Cir. 2009). When a party seeks to dismiss a chapter 11 case on grounds of bad faith under section 1112(b), the "burden is on the bankruptcy petitioner to establish good faith." *Id.* (citation and quotation marks omitted). The purpose of requiring the bankruptcy petitioner to prove good faith when challenged is "to deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.* at 618 n.8 (quotation marks omitted). The determination of bad faith takes into account "the totality of facts and circumstances" and focuses "more on objective analysis of whether the debtor has sought to step outside the equitable limitations of Chapter 11 than the subjective intent of the debtor," but the debtor's subjective intent "may also play a role." *Id.* (quotation marks omitted).

40. The Fund-Level Debtors cannot meet their burden of establishing good faith here. The Third Circuit has identified two key elements of a good faith bankruptcy filing. First, the petition cannot have been filed "merely to obtain tactical litigation advantages." *See In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 120 (3d Cir. 2004). Second, the bankruptcy petition must serve a valid reorganizational purpose. *Id.* The Fund-Level Debtors cannot establish either of those elements here.

41. Generally, the court makes a determination of good faith or bad faith through the consideration of circumstantial evidence surrounding the bankruptcy filing. *See, e.g.*, *In re Y.J. Sons & Co.*, 212 B.R. 793, 801 (D.N.J. 1997). This includes the review of circumstances suggesting that the debtors are seeking to achieve objectives outside the legitimate scope of the Bankruptcy Code. *See, e.g.*, *In re SGL Carbon Corp.*, 200 F.3d 154, 165–66 (3d Cir. 1999).

Relevant factors that may be considered include, among others, "[f]ew unsecured creditors," "[p]etition filed on eve of foreclosure," "[t]wo party dispute which can be resolved in pending state court action," "[n]o pressure from non-moving creditors," "[p]repetition conduct was improper," "[d]ebtor filed solely to create automatic stay," and "[s]ubjective intent of the debtor." *In re Primestone Inv. Partners L.P.*, 272 B.R. 554, 557 (D. Del. 2002).

A. The Petitions Were Improperly Filed to Obtain a Litigation Advantage in a Two-Party Dispute Between the GP and the LPs

42. Filing a bankruptcy petition "merely to obtain tactical litigation advantages is not within the legitimate scope of the bankruptcy laws." *SGL Carbon*, 200 F.3d at 165 (quotation marks and citation omitted); *see also, e.g.*, *Integrated Telecom*, 384 F.3d at 120. Further, a bankruptcy petition that is essentially a two-party dispute does "not belong in the bankruptcy courts." *In re Mazzocone*, 183 B.R. 402, 420 (Bankr. E.D. Pa. 1995), *aff'd*, 200 B.R. 568 (E.D. Pa. 1996). The Fund-Level Debtors' filing of Chapter 11 petitions to try to derail the Cayman proceeding, particularly coupled with the two-party nature of the dispute, requires the Petitions to be dismissed as bad faith filings.

43. Here, the Fund-Level Debtors have left no doubt as to what they are trying to do. They have announced in a letter from their counsel that the whole purpose of these Chapter 11 cases is to try to stop the Cayman winding-up proceeding: "a 'liquidation' is exactly what [the GP] and its debtor affiliates are trying to avoid by commencing chapter 11 cases." Ex. T, GP Letter to Chancery Court, Dec. 11, 2025. By itself, this admission demonstrates that the Fund-Level Debtors' Chapter 11 cases were filed for tactical litigation advantage: they filed their bankruptcy cases to try to shift the litigation from the Cayman Court to this Court to delay adjudication and seek a more favorable forum. *See, e.g.*, *Primestone*, 272 B.R. at 557 ("[s]ubjective intent of the debtor," and that "[d]ebtor filed solely to create automatic stay," supports dismissal).

44. But even without that admission, the circumstances make clear precisely what the Fund-Level Debtors are up to. Where the "timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith." *In re HBA E., Inc.*, 87 B.R. 248, 259-60 (Bankr. E.D.N.Y. 1988) (impending deadline in state court litigation led the debtor to file bankruptcy, which indicated bad faith filing); *see also In re Rent-A-Wreck of Am., Inc.*, 580 B.R. 364, 387 (Bankr. D. Del. 2018) (debtor cannot "fabricate the basis of a good faith filing" through a desire to avoid the outcome of prepetition litigation).

45. Here, the import of the timing of the bankruptcy filing is unmistakable. The petitions were filed just eight days before the pre-trial review that was scheduled to take place in the Cayman winding-up proceeding. Remarkably, they were filed after the Court of Chancery *granted* the GP's claim to compel the LPs to contribute about $97 million to the Fund (out of the $110 million that the GP sought), and after the LPs reached out to the GP's counsel to discuss making that payment within ten days of the judgment. Ex. DD, Correspondence from A. Berdon, Dec. 22, 2025. Notably, the GP did not cause any of the portfolio companies—which may legitimately be distressed—to file bankruptcy petitions until many days later. Had there been a *bona fide* need to reorganize the Fund-Level Debtors, those Debtors could have and would have filed chapter 11 petitions months ago—when they were already arguing to the Court of Chancery that they needed cash urgently and before they knew that they would receive it. The fact that they waited until after the Chancery judgment demonstrates they have filed only to try to stop the Cayman proceeding and to try to get a second bite at their effort to ignore their contractual obligations under the LPA, which the Court of Chancery had rejected. Transferring ongoing litigation to what the Debtors see as a more favorable jurisdiction is an improper use of the Bankruptcy Code and, by itself,

demonstrates that the Debtors cannot meet their burden of proving good faith. *See HBA E.*, 87 B.R. at 260; *cf. Primestone*, 272 B.R. at 557 ("[p]etition filed on eve of foreclosure" may indicate bad faith); *In re Scarborough-St. James Corp.*, 535 B.R. 60, 70 (Bankr. D. Del. 2016) (lifting automatic stay where the "Debtor is not shying away from litigation; rather, Debtor seeks to litigate only issues of its choosing and in its preferred forum").

46. The fact that this is effectively the continuation, in a third forum, of an ongoing two-party dispute between the GP and the LPs further shows that these cases were filed in bad faith. The GP does not contend that any creditors were clamoring for payment from the GP or the Fund at the time of the filing. It barely identifies creditors of the Fund-Level Debtors at all. But it has been very adamant about the importance of the automatic stay, its desire to shut down any hearing before Justice Asif, and its preference to stay in Delaware, this time in Bankruptcy Court. In short, this is simply an effort at forum-shopping, in order to remove proceedings from the Cayman court and relocate them to a court that the GP regards as more favorable. But "Chapter 11 was never intended to be used as a fist in a two party bout." *In re HBA E., Inc.*, 87 B.R. at 260; *see also In re Toth*, 269 B.R. 587, 590 (Bankr. W.D. Pa. 2001).

47. Courts regularly dismiss bankruptcy petitions that seek to address two-party disputes being litigated elsewhere on the basis that "such disputes do not belong in bankruptcy court." *In re Mazzocone*, 183 B.R. at 420; *see also, e.g., In re GVS Portfolio I B, LLC*, 2021 WL 2285285, at *9 (Bankr. D. Del. June 4, 2021); *In re JER/Jameson Mezz. Borrower II, LLC*, 461 B.R. 293, 299-300 (Bankr. D. Del. 2011); *In re Scarborough-St. James Corp.*, No. 15-10625 (LSS), 2015 WL 5672628, at *2 (Bankr. D. Del. Sept. 24, 2015); *In re Shar*, 253 B.R. 621, 636 (Bankr. D.N.J. 1999). For example, in *GVS*, a borrower defaulted on its loan, and when the lender took enforcement action, the borrower filed for bankruptcy. 2021 WL 2285285, at *7–9. The court

found that the two-party nature of the dispute between the lender and borrower, in conjunction with other factors, showed that the Debtor failed to meet its burden of showing that the petition was filed in good faith for a valid bankruptcy purpose. *Id.* at *9; *see also Primestone*, 272 B.R. at 557 ("[t]wo party dispute which can be resolved in pending . . . action" can indicate bad faith). The same principle warrants dismissal here—particularly since, unlike the debtor in *GVS*, the Fund-Level Debtors are facing no difficulty paying a debt.

48. This case is also closely parallel to *In re National Rifle Association of America*, 628 B.R. 262 (Bankr. N.D. Tex. 2021), where the National Rifle Association brought a bankruptcy case to avoid defending a dissolution suit brought by the New York Attorney General. The bankruptcy court dismissed the case, noting that the "NRA is a solvent and growing organization ***using this bankruptcy as a tool to win its dissolution lawsuit***, and that is not an appropriate use of bankruptcy." *Id.* at 283 (emphasis added). Similarly here, although the Fund and the GP are clearly solvent, the GP is seeking to abuse the Bankruptcy Code to avoid having to defend a dissolution lawsuit in the Cayman Islands. For the same reasons as the court dismissed the bankruptcy petition in *National Rifle Association*, this Court should dismiss the bankruptcy petitions here.

49. This case, like *GVS* and *National Rifle Association*, is not a case where a Debtor needs bankruptcy court help to corral a mob of creditors scrambling to grab meager assets. *See, e.g.*, *Primestone*, 272 B.R. at 557 (factors demonstrating bad faith include "[f]ew unsecured creditors" and "[n]o pressure from non-moving creditors"). To the LPs' knowledge, there are ***no*** unsecured creditors of the Fund-Level Debtors who were or are at risk of having legitimate claims go unpaid. Rather, the chapter 11 petitions for the Fund-Level Debtors solely concern a dispute between the

GP, which seeks to cling to control over the Fund's assets, and the LPs.[7] That dispute belongs in the Cayman Court where it has been pending since June of 2025.[8]

B. The Fund-Level Debtors' Cases Serve No Valid Reorganizational Purpose

50. The fact that the bankruptcy petitions were filed for litigation advantage by itself demonstrates bad faith. *See, e.g.*, *SGL Carbon*, 200 F.3d at 165. But even apart from the tactical litigation purpose, the Fund-Level Debtors cannot meet their burden of showing that their cases serve a valid reorganizational purpose.

51. The Fund-Level Debtors have no basis to claim that they are themselves in need of reorganization in chapter 11. Again, they have represented that they hold nearly $4 billion dollars in assets, including tens of millions of dollars of available cash, with about $200,000 in unsecured claims. Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 132:22–25; Dkt. 81, First Day Hr'g Tr.,

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[7] There are also two limited partners associated with the GP, namely the GP's CEO Dr. Seth Harrison and his family trust, who together invested a small amount. Dkt. 18, First Day Decl. of Dr. Seth Harrison, ¶ 24. The remaining limited partners are current and former ATLS employees; none of them contributed capital and none are entitled to any distribution as their economics are limited to unearned carry. *Id.* ¶ 25.

[8] Contrary to what the GP has suggested, *In re Soundview Elite, Ltd.*, 503 B.R. 571 (S.D.N.Y. 2014), *appeal dismissed*, 512 B.R. 155, *aff'd* 597 F. App'x 663 (2d Cir. 2015), provides no reason to deny dismissal. That out-of-circuit case held that the filing of a bankruptcy petition to stop a Cayman winding-up proceeding was not, in itself, "bad faith" or "cause" for dismissal. *Id.* at 581. That statement is contrary to Third Circuit precedent holding that obtaining a more favorable forum for pending litigation is not a legitimate ground to file chapter 11, at least where the Debtor is not in financial distress at the time of filing. *See, e.g.*, *Integrated Telecom*, 384 F.3d at 120; *Scarborough-St. James*, 2015 WL 5672628, at *2. And in any event, in *Soundview*, the debtors were financially distressed at the time of the chapter 11 filing—as they were "dealing with frozen assets and impaired liquidity," *id.* at 580—which is not the case for the Fund or the GP here. Despite denying dismissal, the Court ordered the appointment of a chapter 11 trustee because of the risk of self-dealing by management, *id.* at 581–82, and it lifted the automatic stay to allow the Cayman winding-up proceeding to go forward on grounds of comity, *id.* at 583–92. *See infra* Argument Part II.A (addressing abstention on grounds of comity). Here, the LPs have separately moved for relief from the automatic stay and reserve the right to move for appointment of a trustee.

Dec. 17, 2025, at 19:9–12; Case No. 25-12178, Dkt. 1, Fund's Form 201, at 9; Case No. 25-12179, Dkt. 1, GP's Form 201, at 10. As the Third Circuit has held, "absent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose." *In re LTL Mgmt. LLC*, 64 F.4th 84, 101 (3d Cir. 2023). Moreover, "[f]inancial distress must not only be apparent, but it must be immediate enough to justify a filing." *Id.* at 102. And financial distress to the Fund-Level Debtors alone—not to their portfolio companies or other affiliates—is what matters to determine whether those entities' bankruptcy filings were justified. *Id.* at 105.

52. The GP has made clear that it wishes to continue to fund certain portfolio companies and seems to believe that it has been frustrated in doing so by the LPs' contractual right to approve budgets. *See* Ex. F, LPA Amendment No. 3, at 2 (amending LPA ¶ 5(a)(ii)) (providing that capital for portfolio companies can only be called "in accordance with a budget" approved by the LPs); Ex. P, Chancery Court ATP Post-Trial Br., at 80 (unsuccessfully arguing only equitable relief "authorizing ATP to invest in companies with budget requests foreclosed by Rigmora can salvage the Fund and the medical promise of its portfolio companies"); Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 81 (rejecting this request for relief). The GP's counsel has confirmed in this Court that "the source of the tension" leading to this case has been a dispute over funding of early-stage companies, Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 151:17–18, and the GP's chief restructuring officer has confirmed that his focus is on obtaining funding for the portfolio companies, and that he has not even analyzed whether further investment in those portfolio companies was the best way to maximize value for the Fund or its limited partners, *id.* at 113:16–20, 119:14–18, 121:16–25.

53. But the LPs are not challenging the chapter 11 filings of the financially troubled portfolio companies; rather, the problem is that the GP filed chapter 11 for itself and the Fund

though they are themselves in no financial difficulty whatsoever. In effect, the GP is trying to hold a potential funding source for the portfolio companies captive. But this is the tail wagging the dog. By the nature of a venture capital fund, it is virtually inevitable that ***some*** of the portfolio companies will fail. *See, e.g.*, Ex. D, Trial Tr. at 428:15–429:20 (Dr. Ilonna Rimm) (expert testimony describing high failure rates for biotechnology companies, including "90% failure rate" for drug clinical trials). A fund of this type invests in start-up companies in the hope that some of them will succeed while others fail. The fact that some ***portfolio companies*** may be financially troubled does not mean that the ***Fund*** or its ***GP*** are in financial distress. Rather, the need to decide whether to cut loose underperforming portfolio companies is to be expected in any managed fund that invests in a portfolio of companies, particularly when the investments are in start-ups. The GP may not like that the LPs are given a say in that process under the terms of the LPA, but that frustration with a contract it agreed to does not entitle the GP to a remedy under the Bankruptcy Code, and the failures of the least successful portfolio companies are not a reason to reorganize their financially healthy investor.

54. Nor would an inability of the Fund to raise fresh capital for one or more portfolio companies justify reorganizing the Fund-Level Debtors. The Fund raised capital, drew it down, and invested it. That the Fund has fully drawn its existing subscriptions (or nearly so) might mean that the Fund is in a new phase and can no longer pursue aspects of its business desired by the GP, but there can be no serious suggestion that the Fund or the GP is facing any financial distress whatsoever. The Court of Chancery has held that the LPs' obligations to contribute to the Fund are limited by the terms of the LPA to the $2.425 billion in Contingent Subscriptions set forth in their Subscription Agreements. Ex. C, Chancery Post-Trial Op., Dec. 5, 2025, at 47–55; *see* Ex. E, First Amended and Restated LPA, § 5(a)(i). The fact that the LPs are at least approaching (and

in the LPs' view, have exceeded) the limits of their Contingent Subscriptions reflects the design of the Fund as an investment vehicle for the LPs in which the LPs have a finite commitment. That the commitment has been exhausted does not mean the Fund is in financial trouble; rather, it is an agreed consequence of the LPA. Certainly, it cannot provide grounds for the GP, without the LPs' consent, to use the Fund's assets to create a new or transformed Fund to which the parties never agreed.

55. The Fund's assets—and available cash—as stated by the GP are multiple orders of magnitude in excess of its stated liabilities. No creditors are breathing down its neck. And there is no plausible reason to think that they ever will do so—let alone imminently, to justify seeking Chapter 11 protection now. While the GP's counsel has said that the Fund's portfolio companies could have potential claims against the Fund under share purchase agreements, Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 142:12–143:1, the GP has not said—much less presented evidence—that any such claims have been asserted, that the conditions for making such claims have been met, or that the Fund lacks resources to pay those claims if they are valid. On the contrary, the GP's counsel has affirmed that the Fund is solvent. *Id.* at 142:2–3. Indeed, in the Chancery action, the GP acknowledged that at least some of the Fund's obligations under share purchase agreements are contingent on the portfolio companies timely meeting certain milestones, Ex. D, Trial Tr. at 35:7–36:8 (Dr. Seth Harrison), and did not dispute that many of the portfolio companies—including all of the early-stage companies whose funding is in dispute—failed to achieve their milestones, *id.* at 437:21–22 (Dr. Ilonna Rimm); *id.* at 195:11–17 (Dr. Mark Robbins). Moreover, the GP's representative testified under oath in the Chancery case that for many of the portfolio companies, there was no obligation to purchase stock or otherwise provide

funding; rather, any such funding was purely discretionary. Ex. I, Harrison Deposition Tr., Oct. 6, 2025, at 273:2–7.

56. The Fund-Level Debtors' chapter 11 cases are not necessary, nor even helpful, in raising capital for the portfolio companies. To the extent that any of the portfolio companies may need breathing room from their creditors as they seek to raise funding, they can avail themselves of chapter 11 protection—as several of them have already done—but that does not require reorganizing the Fund or the GP. Rather, in disregard of its duties as a fiduciary to the LPs, the GP apparently hopes to use the Fund-Level Debtors' bankruptcy cases to renegotiate the economic terms of its agreement with the LPs, after the Court of Chancery rejected the GP's improper attempt to strip the LPs of their budget approval rights and impose obligations to contribute capital in excess of the LPs' $2.425 billion commitment.

57. Moreover, notwithstanding any reorganization in this Court, the Fund remains subject to winding-up in the Cayman Islands under Cayman law. For this reason as well, the Fund-Level Debtors' chapter 11 filings cannot serve a valid reorganization purpose. Indeed, if the Cayman court grants the winding-up petition, any transactions by the GP on behalf of the Fund, at any time after the winding-up proceeding was commenced, are automatically void under Cayman law unless validated by order of the Cayman court. Phillips Decl. ¶ 119; *id.* Ex. B-04, Cayman Companies Act, § 99. Seeking to reorganize under this cloud would, at a minimum, have a chilling effect on the ability to attract new investors, who could see their investments unwound under Cayman law shortly after the chapter 11 cases are concluded.

58. In sum, the Debtors' chapter 11 cases serve no legitimate Bankruptcy Code purpose and should be dismissed as filed in bad faith. To allow the Debtors to continue to prosecute their bankruptcy petitions would undermine the LPs' rights, frustrate the goals of the Bankruptcy Code,

and improperly reward a bad-faith filer whose rash attempt to extract negotiations through high-pressure litigation tactics has failed, appropriately leading to the winding-up of the Fund in accordance with Cayman law.

II. In Addition or in the Alternative, The Fund-Level Debtors' Cases Should Be Dismissed on Grounds of Abstention Under Section 305 of the Bankruptcy Code.

59. Independently of dismissal "for cause" under Section 1112, the Fund-Level Debtors' bankruptcy cases should be dismissed (or, alternatively, suspended) under Section 305 of the Bankruptcy Code, on grounds of abstention in favor of the pending Cayman Islands proceeding. Section 305, titled "Abstention," provides in pertinent part as follows:

> (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
>
> > (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; . . . .

Bankruptcy Code § 305(a); *see also* 28 U.S.C. § 1334(c)(1) ("[N]othing in this section prevents a . . . court in the interest of justice . . . from abstaining from hearing a particular proceeding arising under title 11.").

60. When a proceeding for liquidation of a debtor is pending in a foreign country at the time a bankruptcy case is filed, considerations of comity strongly favor abstention. *E.g.*, *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 207–08 (Bankr. D. Del. 2015) (citing authorities). In addition, apart from considerations of international comity, bankruptcy judges in this District have considered a nonexhaustive list of seven factors when evaluating a motion to abstain under Section 305:

> (1) the economy and efficiency of administration;
>
> (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;

> (3) whether federal proceedings are necessary to reach a just and equitable solution;
>
> (4) whether there is an alternative means of achieving an equitable distribution of assets;
>
> (5) whether the debtor and creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
>
> (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
>
> (7) the purpose for which bankruptcy jurisdiction has been sought.

Northshore, 537 B.R. at 203–04 (citing authorities); *see also In re Exelco N. Am., Inc.*, No. 17-12029 (KG), Hr'g Tr. at 224:1–19, 226:21–227:2 (Bankr. D. Del. Nov. 21, 2017).

61. Here, comity, as well as each of the seven other factors identified in *Northshore*, favors dismissal of the petitions.

A. Abstention Is Appropriate for Reasons of Comity.

62. While abstention is the exception rather than the rule in the absence of a foreign proceeding, "the pendency of a foreign insolvency proceeding alters the balance by introducing considerations of comity into the mix." *Northshore*, 537 B.R. at 207 (quoting *In re Compañía de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007)). For comity to apply, the foreign proceeding need not be based on actual insolvency: "American courts have consistently recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities." *Northshore*, 537 B.R. at 207–08 (quoting *Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985), and *Compañía de Alimentos Fargo*, 376 B.R. at 434).

63. This case presents a paradigmatic example of the need for comity. The Cayman courts have recognized that they have exclusive jurisdiction to consider a proceeding to wind up a

Cayman Islands ELP such as the Fund. Ex. U, *Family Mart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holdings Corporation* [2023] UKPC 33 at [80]; Phillips Decl. Ex. B-05, ELP Act § 36(3) (incorporating exclusive jurisdiction provision from Phillips Decl. Ex. B-04, Cayman Companies Act, § 92)—especially because here, the Fund-Level Debtors have no financial distress that legitimately necessitates the use of chapter 11.

64. Indeed, Justice Asif explicitly said that "I generally take the view that the conduct of the winding up of a Cayman exempted limited partnership, and by whom that winding up ought to be carried out, are more appropriately questions for the Grand Court to determine." Ex. M, Cayman Judgment, Dec. 22, 2025, ¶ 20. Having made this point, Justice Asif showed a great deal of deference to the U.S. courts. He pushed back his long-scheduled trial date so as not to force the parties to choose between complying with his order and the automatic stay, *id.* ¶ 14, and he explicitly indicated that he was mindful of and intended to respect this Court's authority over these cases. *Id.* ¶ 9–10, 19.

65. In return, Justice Asif asked only for the same courtesy and consideration. He explained that "two days should be sufficient" for him to hold his trial and expressed confidence that "with goodwill and cooperation on both sides it ought to be feasible to have" that hearing. *Id.* ¶ 16. He also shared his view that holding the hearing would benefit all parties. As he put it:

> It does seem to me that, at the very least, it would be of real utility for the Delaware judge to authorise the preparation of amended pleadings on both sides in order to re-state what are the issues that the Grand Court will need to determine in due course. It also seems to me that it would be of real utility for the Delaware judge, as soon as possible, to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made. A decision on those points is likely to be of real benefit to the parties and also to the Delaware court if the Chapter 11 proceedings are not dismissed and continue.

Id. ¶ 19. Before concluding, Justice Asif expressed concern that the GP's proposal in Delaware "for capital restructuring and the introduction of new investors" would be "outside the proper scope of the GP's powers" under the LPA and "applicable Cayman law on what a GP's obligations are in the context of a winding-up of a Cayman exempted limited partnership." *Id.* ¶ 21. Despite sharing these views, Justice Asif indicated that he would "not make an order at this stage imposing any procedural timeline for the preparation of amended pleadings" out of deference to the automatic stay. *Id.* ¶ 18.

66. Here, the Cayman winding-up proceeding is entitled to deference because it was first filed and because the Fund is organized under Cayman Islands law. There is no overriding interest that would justify departing from the usual rule of deferring to the pending Cayman proceeding on the winding up of a Cayman Exempted Limited Partnership pursuant to its governing statute, such as lack of due process or unequal treatment of creditors in the foreign court. *See Vertiv, Inc. v. Wayne Burt PTE, Ltd.*, 92 F.4th 169, 180-81 (3d Cir. 2024); Ex. V, *Re Free Rider Limited* [2010] 2 CILR 154 at [25] ("The principal purpose of the statutory scheme applicable to winding up is to protect unsecured creditors and their entitlement to eventual *pari passu* distribution in a winding up"). Indeed, the Delaware Court of Chancery has already considered and rejected an attempt by the GP to enjoin the appointment of provisional liquidators in support of the Cayman winding-up proceeding, on the ground that it was inappropriate for the Delaware court to interfere in the Cayman court's jurisdiction. Ex. W, Chancery Court Status Quo Motion Hr'g Tr., Oct. 21, 2025, at 5:3–10, 7:14–18. The Court of Chancery also declined to enter a declaratory judgment on the GP's compliance with its fiduciary duties, concluding that those questions were best left to the Cayman Court and were live issues in the ongoing winding-up proceeding. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 77–79.

67. In sum, there is no reason not to extend comity to Justice Asif. Allowing the Cayman Court to handle the winding up of the Fund is all the more important given Justice Asif's concern that the GP's restructuring proposal appears to be "outside the proper scope" of the GP's powers under the LPA and the ELP Act, Ex. M, Cayman Judgment, Dec. 22, 2025, ¶ 21, an issue with which the Cayman Court is most familiar and which it is prepared to decide promptly.

B. Abstention Is Appropriate for Reasons of Economy and Efficiency, as the Cayman Winding-Up Has Proceeded So Far That It Would Be Costly and Time Consuming to Start Afresh with the U.S. Bankruptcy Process.

68. Even apart from the interests of comity, each of the six other factors identified in *Northshore* weighs strongly in favor of dismissal.

69. As an initial matter, both the first and sixth of these factors—concerning economy, efficiency, and the stage of the foreign proceeding—strongly favor dismissal. Here, the Cayman winding-up has proceeded to the point that it would be costly and time-consuming to start afresh with the bankruptcy process in this court.

70. At the time of the Fund-Level Debtors' bankruptcy filings, the Cayman winding-up proceeding had been going on for six months on an expedited schedule and was nearing its conclusion. The GP fully participated in the proceeding (after having withdrawn an earlier motion to stay), the parties conducted extensive discovery, there was motion practice for discovery, and the merits have been fully briefed. Faulkner Decl. ¶¶ 73, 78–82, 84–87.4. A final evidentiary hearing on the merits of the winding-up of the Fund was scheduled for January 12, 2026, *see* Ex. X, *Re ATP Life Science Ventures LP*, [2025] CIGC (FSD) 106, Consent Order for Directions, Aug. 20, 2025 ¶ 14, and Justice Asif had set aside the week after the hearing to write his decision with the goal of providing his decision to the parties without delay, *see* Faulkner Decl. ¶¶ 62, 87. Justice Asif remains prepared to schedule the trial promptly should this Court dismiss these cases or lift the automatic stay. Ex. M, Cayman Judgment, Dec. 22, 2025, ¶ 14.

71. Allowing a bankruptcy case for the Fund to go forward here in the United States—when the winding-up proceeding is already ready for trial in the Cayman Islands—would be wasteful and duplicative. Allowing a bankruptcy case for the GP to go forward also makes no sense, because the GP has no apparent reason for attempting to restructure itself, other than to try to impede the Cayman proceeding for winding-up of the Fund. In any event, the GP too is a Cayman entity that can avail itself of Cayman Islands proceedings if it wishes. Moreover, as previously noted, a reorganization in this Court would not prevent the Cayman Court from subsequently winding up the Fund and potentially unwinding any transactions involving the Fund's assets since June 2025, including any transactions undertaken with this Court's approval.

C. Abstention Is Appropriate Because the Cayman Court Is a Superior Forum to Protect Contractual and Statutory Rights, Including the LPs' Right to a Dissolution of the Fund and Appointment of Independent Fiduciaries

72. The second factor identified in *Northshore*, regarding the protection of contract rights, also favors abstention. There is no question that the Cayman courts will respect the contractual rights of any creditors of the Fund, to the extent there is any issue about those rights (which there is not). Ex. V, *Re Free Rider Limited* [2010] 2 CILR 154 at [25] ("The principal purpose of the statutory scheme applicable to winding up is to protect unsecured creditors and their entitlement to eventual *pari passu* distribution in a winding up"). Moreover, the Cayman Court is best able to protect the limited partners' rights under the Fund's governing documents in the circumstances of this case. By filing its own chapter 11 petition, the GP has triggered a contractual provision for the automatic winding-up of the Fund under paragraph 10(b) of the LPA—but this is a right for which only the Cayman Court has jurisdiction to provide an adequate remedy.

73. Under paragraph 10(b) of the LPA, "[t]he Partnership ***shall be wound up and dissolved*** . . . upon any event in respect of the General Partner specified in Section 15(5) [now section 36(7)] of the ELP Law (subject to the proviso thereto)." Ex. E, First Amended and Restated

LPA, ¶ 10(b) (emphasis added).[9] The "event[s]" referenced in former section 15(5) of the ELP Act, now section 36(7), include any bankruptcy filing by the General Partner: "The general partner or its legal representative shall promptly serve notice on all limited partners informing the limited partners of . . . the commencement of liquidation, bankruptcy or dissolution proceedings . . . in relation to the sole or last remaining qualifying general partner and in this section each event is referred to as an '**event of withdrawal**'." Phillips Decl. Ex. B-05, ELP Act § 36(7); *see also id.* Ex. B-02, 2012 ELP Act ,§ 15(5) ("commencement of liquidation or bankruptcy proceedings" for the GP is the triggering event). Because of paragraph 10(b) of the LPA, the filing of the GP's bankruptcy case immediately triggers the commencement of the winding-up of the Fund by operation of the ELP Act, without the need for any further order: "The winding up of an exempted limited partnership shall be deemed to commence on the earlier to occur of any of the following . . . the occurrence of an event provided by the partnership agreement upon which the exempted limited partnership is to be wound up." Phillips Decl. Ex. B-05, ELP Act, § 36(10).[10] This is separate from the LPs' pending petition to wind up the Fund on the different ground that the LPs have justifiably lost trust and confidence in the GP or that the Fund has lost its substratum.

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[9] The LPA provides that "the ELP Law as now adopted *or as may be hereafter amended* shall govern this Agreement." Ex. E, First Amended and Restated LPA § 18(g)(i) (emphasis added). The current revision of the ELP Act was adopted in 2025. At the time of the LPA, the 2011 revision of the ELP Law, with a 2012 amendment, was in effect.

[10] Even without such a contractual provision, an event of withdrawal can trigger an automatic winding-up: "[I]f a new qualifying general partner is not elected within ninety days after the service of notice of an event of withdrawal . . . in this section referred to as '**the automatic wind up date**', the exempted limited partnership *shall be wound up* in accordance with the partnership agreement or the orders or directions the court may make or give in accordance with subsection (3)(g)." Phillips Decl. Ex. B-05, ELP Act, § 36(9). Section 15(5) of the old version of the law similarly provided that the "commencement of liquidation or bankruptcy proceedings" in relation to the general partner would trigger an "automatic dissolution date" if a new general partner was not elected by the limited partners. *Id.* Ex. B-02, 2012 ELP Act § 15(5).

74. The LPs expect that they will require the supervision of the Cayman Court to ensure an orderly completion of the winding-up and dissolution of the Fund, which the GP has now triggered by its own bankruptcy filing. The GP has not disputed that *only* the Cayman courts can conduct a proceeding under the ELP Act for a judicial winding-up and dissolution of the Fund. *See* Ex. U, *Family Mart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holdings Corporation* [2023] UKPC 33 at [80]; Phillips Decl. Ex. B-05, ELP Act, § 36(3) (incorporating exclusive jurisdiction provision from Cayman Companies Act § 92, Phillips Decl. Ex. B-04). As noted, U.S. courts also consistently recognize the importance of foreign courts' interests in being the ones to wind up their own domestic business entities. *Cunard*, 773 F.2d at 458; *Northshore*, 537 B.R. at 207; *Compañía de Alimentos Fargo*, 376 B.R. at 434 (collecting authorities). So this Court could only provide, at best, partial relief which even then would remain subject to review (and potentially rejection) by the Cayman Court.

75. In any event, if there is any dispute or uncertainty about the applicability of section 36(7) of the ELP Act and paragraph 10(b) of the LPA in these circumstances, the Cayman courts are in the best position to resolve any disputes. They are most familiar with their own complex and carefully structured laws governing ELPs, and there is no reason for the GP to burden this Court with addressing potentially difficult issues of foreign law, when a Cayman Islands forum is readily available and already has a proceeding well underway and can go to trial promptly.

D. Abstention Is Appropriate Because Reaching a Just and Equitable Solution Does Not Require U.S. Bankruptcy Cases for the Fund-Level Debtors, and Any Disputes Can Be Resolved in the Cayman Court.

76. The third, fourth and fifth factors identified in *Northshore* also favor abstention, because a case in this Court is unnecessary to reach a "just and equitable solution" or an "equitable distribution of assets," and if there were any disputes with creditors, they could be resolved out of court. The Debtors have no substantial creditors; moreover, the Debtors are not insolvent—

claiming billions of dollars in assets and about $200,000 in unsecured debt, a ratio of over 5000:1—and they are not short on cash, which alone exceeds their declared unsecured liabilities by a ratio of over 100:1. For those reasons, no chapter 11 case here is necessary to protect creditors, and in any event, the Cayman Court is fully able to protect any creditors' interests. *See supra* ¶¶ 63–66. The Cayman Court is poised to decide all the issues promptly.

77. A "just and equitable decision" is not one that favors the GP's interests at all costs; that has matters exactly backward. As discussed above, under Cayman law, all property of the Fund is held in statutory trust by the GP for the benefit of the Fund's limited partners. Phillips Decl. Ex. B-05, ELP Act § 16(1); Phillips Decl. Ex. B-44, *Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56 at [48]; Phillips Decl. Ex. B-37, *Kuwait Ports Authority v Port Link GP Ltd* [2023] (1) CILR 50 at [51]-[57]. The GP is a fiduciary; the LPs are not. Phillips Decl. Ex. B-05, ELP Act § 19.

78. Nor should the Court decide based on the interests of the Fund's non-debtor portfolio companies. The portfolio companies are neither creditors nor partners—they are assets. While the GP's counsel has asserted that the GP owes contractual obligations to some unidentified portfolio companies under funding agreements, Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 142:12–25, it has not presented evidence or even contended that any amounts are owed under those agreements or that Fund assets are insufficient to pay such obligations if they exist. If the portfolio companies are in need of funding and sufficiently viable to attract investments, they should be able to obtain funding either from the LPs—which remain willing to provide funding if they conclude there is a valid business justification to do so—or from outside investors. If the portfolio companies are unable to attract investors, they may need to be liquidated. But the LPs are not now challenging the filings of the six portfolio companies that the GP has placed in bankruptcy; rather,

the LPs are only challenging the filings on behalf of the GP and the Fund, neither of which has any difficulty in paying its debts.

79. The GP's principal role in the Fund is to act as a manager of the LPs' money. The LPs contributed over 98% of the Fund's capital, and the small amount contributed by Seth Harrison (the GP's CEO) was largely financed by the LPs as well. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 10. Correspondingly, the LPs own the overwhelming majority of the economic interest in the Fund, save for a relatively small carry that was allocated to Dr. Harrison and a few other employees to align their interests with those of the Fund. Ex. J, Chancery Court Compl., May 30, 2025 ¶ 43; Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025 at 5. No matter what the Cayman Court decides on the winding-up petition, the LPA requires the distribution of any assets to the partners in proportion to their capital contributions or carried interests, and such distributions may be made in kind. Ex. Y, LPA Amendment No. 13, at 2; Ex. Z, LPA Amendment No. 17, at 5–7; Ex. GG, LPA Amendment No. 18, at 5–7. In other words, a winding-up would not entail the liquidation of any portfolio companies, but rather the distribution of portfolio company shares to the Fund's partners in accordance with their respective rights. The LPs do not believe the GP disagrees with any of this, but if it does, it is free to make its case to the Cayman Court if this Court dismisses the Fund-Level Debtors' cases or grants relief from the automatic stay.

E. Abstention Is Appropriate Because the Fund-Level Debtors' Bankruptcy Cases Were Not Commenced for a Proper Purpose, Much Less an Important One.

80. Finally, the seventh factor identified in *Northshore*, *i.e.*, the purpose for which the bankruptcy case was commenced, also strongly favors abstention. As already discussed, no creditors are clamoring at the Fund-Level Debtors' doors, and the Fund-Level Debtors have no shortage of money to pay their identified debts. As discussed at length above, *see supra* Argument Section I, the Fund-Level Debtors' bankruptcy petitions serve no purpose but to interfere,

practically on the eve of trial, with the LPs' ability to pursue the ongoing winding-up proceeding in the Cayman Court, and to circumvent the Court of Chancery's judgment that the LPs retain the right to disapprove portfolio company budgets. The lack of any legitimate purpose for the Fund-Level Debtors' chapter 11 cases is an additional reason favoring abstention.

III. The Fund Is Not an Eligible Debtor Under the Bankruptcy Code.

81. Section 109(a) of the Bankruptcy Code provides: "Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." Bankruptcy Code § 109(a). The Fund fails this test, both because it is not a "person" and because it does not have "a domicile, a place of business, or property in the United States." *Id.*

82. A Cayman Islands ELP is a unique entity. As the UK Privy Council sitting as the highest court of the Cayman Islands has recently clarified, an ELP has no legal personality separate from its partners. *See* Phillips Decl. Ex. B-44, *Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56 at [48] (under Cayman Islands law, "an ELP is not a separate legal person and the property and rights of an ELP are held on trust 'as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement', such that limited partners have a proprietary interest in the partnership assets"); Phillips Decl. Ex. B-41, *Kuwait Ports Authority v Williams* [2024] UKPC 32 at [35] (the "important distinctions between ELPs and companies" include that an "ELP has no separate legal personality"); *see also* Ex. N, Cayman Judgment, Nov. 6, 2025, ¶¶ 32–34 ("[A]n exempted limited partnership does not have any separate legal personality from the limited partners and the general partner."); *see generally* Phillips Decl. ¶¶ 24(a), 26–27, 31–56.

83. Moreover—although the ELP Act refers to the property "of the exempted limited partnership"—it goes on to provide, in effect, that the ELP holds neither legal nor equitable title

to those assets. Rather, the general partner of an ELP holds all of the ELP assets as a trustee and manages those assets on behalf of the limited partners. *See generally* Phillips Decl. ¶¶ 24(b), 26–27, 57–81. Section 16(1) of the ELP Act provides that the assets are held on statutory trust as follows:

> ***Any rights or property of every description of the exempted limited partnership***, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership ***shall be held or deemed to be held by the general partner*** and if more than one then by the general partners jointly, ***upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement***.

Phillips Decl. Ex. B-05, ELP Act, § 16(1) (emphasis added). Recent controlling Cayman Islands case law interpreting this provision confirms that the sole beneficiary of this statutory trust is ***the limited partners collectively***. Specifically, the Court of Appeal of the Cayman Islands held in *Kuwait Ports Authority v Port Link GP Ltd* [2023] (1) CILR 50:

> ELPA s.16(1) . . . in substance . . . provides that the assets of an ELP are held by the general partner on ***a statutory trust for the limited partners***. . . . [B]ecause an ELP has no separate legal personality ***the only sensible construction of the words in ELPA section 16(1) is that the GP of an ELP holds its assets on trust for all the limited partners***.

Phillips Decl. Ex. B-37 at [54], [56] (emphasis added). Under the ELP structure, the GP owes its fiduciary duties to the limited partners alone and may not manage Fund assets in its own self-interest. Phillips Decl. ¶¶ 78, 80–81.

84. The GP cannot credibly dispute these fundamental points. The GP's Cayman law expert in the Delaware Court of Chancery testified that "an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right," and that "[an ELP's] general partner holds its rights and property . . . on trust ***for each of the partners***." Ex.

AA, Expert Report of Michael Bloch KC, Aug. 15, 2025, ¶ 30 (emphasis added) (quoting *Kuwait Ports Authority*, Phillips Decl. Ex. B-37 at [25], [54]). Furthermore, in the Cayman Court, the GP's counsel stressed that the Fund does not have separate legal personality and that the GP holds the Fund assets on trust. Ex. BB, Cayman Hr'g Tr., Oct. 31, 2025, at 4:16:39 ("[L]imited partnerships have no separate legal personality. And that's a key distinction, obviously, from corporate vehicles in relation to winding up petitions.").

85. It follows that a Cayman Islands ELP cannot be a debtor in a U.S. Bankruptcy Court. Although a "partnership" can ordinarily be a debtor because the Code defines it as a "person," *see* Bankruptcy Code § 101(41), an ELP is not a partnership in the ordinary sense of the word. As just discussed, not only does it lack independent legal personality, but all of its assets are held on trust for the benefit of the limited partners, with the general partner acting as trustee. *See supra* ¶¶ 82–83. Indeed, Justice Asif has held, as a result of this unusual status, that the Fund is not even a party to its own winding-up proceeding—rather, the GP is the sole defendant, because the Fund has no legal personality and thus no capacity to sue or be sued. Ex. N, Cayman Judgment, Nov. 6, 2025, ¶¶ 32, 34.[11] Nor was the Fund itself a party to the Delaware Chancery case: the plaintiff there was the GP in its capacity as general partner of the Fund. *See* Ex. J, Chancery Court Compl., May 30, 2025.

86. In short, the Fund is not a "person." By itself, this requires dismissal of the Fund's chapter 11 case, because only a "person" may be a debtor in bankruptcy. Bankruptcy Code § 109(a).

[11] This may be why the GP was included as a Debtor here, in order to ensure that the automatic stay was triggered, despite there being no apparent explanation for why the GP would require reorganization.

87. Moreover, even if the Fund were a "person" for purposes of the Bankruptcy Code, it could not be a debtor under section 109(a) because it has no assets or business in the United States—or anywhere at all. As discussed, all of the so-called property "of the Fund" is actually held by the GP in trust for the Fund's limited partners. *See supra* ¶¶ 82–83. It is well settled that equitable interests in assets held in trust for the benefit of third parties do not constitute "property of the estate" and are thus not part of a debtor's bankruptcy estate. *In re Columbia Gas Systems*, 997 F.2d 1039, 1055 (3d Cir. 1993); *In re SemCrude, L.P.*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) (citing *Begier v. IRS*, 496 U.S. 53, 59 (1990), and *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n. 10 (1983)); *see* Bankruptcy Code §§ 541(b)(1), (c)(2), (d). Moreover, the Fund cannot even claim a "legal" title or interest in any property, because under Cayman law, it is the GP—not the Fund—that holds assets in trust for the Fund's limited partners. Accordingly, the Fund does not have property in the United States that would make it an eligible debtor under section 109(a).

88. Likewise, any business "of the Fund" is actually managed by the GP as trustee for the benefit of the Fund's limited partners. Phillips Decl. ¶ 38. This is reflected in the fact that the Fund is not even a signatory to its own LPA. Ex. E, First Amended and Restated LPA, at 80, Ex. CC, LPA Amendment No. 22, at 6. The Fund cannot be a party, because the Fund has no legal personality and therefore cannot make contracts or hold property independently; only the GP may do so in its fiduciary capacity. *See* Phillips Decl. Ex. B-05, ELP Act, § 14(2) ("All letters, contracts, deeds, instruments or documents whatsoever shall be entered into by or on behalf of the general partner (or any agent or delegate of the general partner) on behalf of the exempted limited partnership."); *id.* § 16(1). Thus, the Fund cannot have a "place of business" in the United States under Bankruptcy Code § 109(a); only the GP can.

89. The LPs recognize that the eligibility of a Cayman Islands ELP to be a debtor in U.S. bankruptcy is a question of first impression. In the very few cases in which a Cayman Islands ELP filed a U.S. bankruptcy case—all of which predate the recent Privy Council decisions in *Aquapoint* (Phillips Decl. Ex. B-44) and *Kuwait Ports Authority v Williams* (*id.* Ex. B-41)—it appears that no party in interest raised the issue of the ELP's eligibility. But regardless of the outcome of this question, the uncertainty around the Fund's eligibility to be a Debtor furnishes an additional reason to abstain under section 305 of the Bankruptcy Code. Continuing down the path of a chapter 11 case for the Fund carries the risk that everything will be undone on appeal based on an appellate determination that the Fund is not an eligible debtor. Conversely, although the Fund lacks legal personality, the ELP Act makes clear that the Cayman Court has the authority hear a winding-up proceeding for the Fund. Phillips Decl. Ex. B-05, ELP Act § 36(3)(g). The risk of a possible do-over if this Fund-Level Debtors' cases are found to be improper will be obviated by abstaining and allowing the previously filed Cayman winding-up proceeding to take precedence.

CONCLUSION

WHEREFORE, the LPs respectfully request the Court enter an order, substantially in the form attached hereto as **Exhibit A**, dismissing the Fund-Level Debtors' bankruptcy cases, and grant such other and further relief as is just and proper.

Dated: January 23, 2026
Wilmington, Delaware

Respectfully Submitted,

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Apple Tree Life Sciences, Inc., *et al.*,[1]	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)

ORDER DISMISSING THE BANKRUPTCY CASES OF ATP LIFE SCIENCE VENTURES L.P. AND ATP III GP, LTD.

Upon the motion (the "**Motion**") of Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (the "**Movants**") for entry of an order dismissing the bankruptcy cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd.; and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.

2. Pursuant to sections 305(a) and 1112(b) of the Bankruptcy Code, the Chapter 11 cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd. are hereby dismissed with prejudice.

EXHIBIT B

EFiled: Sep 16 2025 03:38PM EDT
Transaction ID 77090203
Case No. 2025-0607-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	**REDACTED PUBLIC VERSION EFILED: September 16, 2025**
Defendants.	)	

STIPULATION AND [PROPOSED] PRE-TRIAL ORDER

Pursuant to Court of Chancery Rule 16(c), and subject to the approval of the Court, Plaintiff ATP III GP, Ltd. ("ATP" or "Plaintiff"), in its capacity as general partner of ATP Life Science Ventures, L.P. (the "Fund"), and Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Rigmora" or "Defendants"), by and through their undersigned counsel, jointly submit this Stipulation and [Proposed] Pre-Trial Order (the "Pre-Trial Order"). Plaintiff and Defendants (each a "Party," and together the "Parties") reserve the right to modify this Pre-Trial Order by agreement with approval of the Court.

I. NATURE OF THE ACTION AND PROCEDURAL HISTORY

1. This action arises from a dispute regarding the First Amended and Restated Limited Partnership Agreement of ATP Life Science Ventures dated November 1, 2012, as amended (the "LPA," Dkt. 29). *See* Complaint, Dkt. 1.

2. On May 30, ATP filed its Verified Complaint, along with a Motion to Expedite Proceedings. Dkt. 1.

3. On June 9, 2025, Defendants filed a Motion to Stay Proceedings (Dkt. 10) and a Motion to Dismiss (Dkt. 11).

4. The Parties completed briefing on ATP's Motion to Expedite on June 12, 2025, and the Court heard argument on the motion on June 13, 2025. Pl. Reply ISO Mot. to Expedite, Dkt. 28; June 13, 2025 Hr'g Tr., Dkt. 31. The Court granted expedition but stayed discovery pending a determination of the Defendants' Motion to Stay Proceedings. June 13, 2025 Hr'g Tr. at 43:8-43:22.

5. The Parties completed briefing on Defendants' Motion to Stay Proceedings on June 24, 2025, and the Court heard argument on the motion on June 27, 2025. Defs. Reply ISO Mot. To Stay, Dkt. 40; June 27, 2025 Hr'g Tr. Dkt., 45. The Court denied the motion. June 27, 2025 Hr'g Tr. at 52:5-52:18.

6. On July 7, 2025, the Court entered the Parties' Stipulation and Order Governing Case Schedule. Dkt. 54.

7. On July 7, 2025, Defendants filed their Answer. Dkt. 57.

8. The Parties conducted written and document discovery and depositions, including expert depositions.

9. A pre-trial conference is presently scheduled for September 11, 2025, at 3:15 p.m. Dkt. 54.

10. A two-day trial is currently scheduled for September 18 and 19, 2025, beginning at 9:15 a.m. ET in Wilmington, Delaware. *Id*.

11. A related dispute between the Parties is pending in the Grand Court of the Cayman Islands, pursuant to a writ filed by Defendants on June 2, 2025 and a petition filed by Defendants on June 6, 2025. JX-1416, Writ of Summons, Cause No. FSD 2025-0146; JX-1417, Winding Up Petition, Cause No. FSD 2025-0151. The Grand Court of the Cayman Islands has scheduled a trial in those proceedings starting on January 12, 2026.

II. UNDISPUTED FACTS

12. The facts set forth below have been admitted or stipulated as true and require no proof. The inclusion of any fact herein is not an admission or acknowledgment of its relevance to any issue in this action. The Parties reserve all rights with respect to any legal or factual dispute other than those specifically addressed in this Stipulation. The undisputed facts are as follows:

A. The Parties

13. Plaintiff ATP III GP, Ltd. ("ATP") is a Cayman Islands exempted company, designated as the general partner of Apple Tree Partners Life Sciences Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund").

14. The Fund invests in companies pursuing biopharmaceutical research. Ans. ¶ 29.

15. ATP is owned and controlled by Dr. Seth Harrison. Compl. ¶ 2.

16. Dr. Harrison and a trust created for Dr. Harrison's children, Les Pommes LLC, are both limited partners in the Fund. Ans. ¶ 44.

17. Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP are both limited partnerships organized under the laws of the British Virgin Islands. Ans. ¶¶ 18-19.

18. Defendants are limited partners in the Fund and the successors-in-interest to Blue Horizon Enterprise Ltd. and Ezbon International Ltd.[1] Ans. ¶ 21.

19. Rigmora Holdings Ltd. ("Rigmora Holdings") is a limited partner of each of the Defendants.

20. Defendants are ultimately owned by the family trust of Dr. Dmitry Rybolovlev (the "Trust"). Ans. ¶ 20.

[1] Any reference herein to "Defendants" includes reference to their predecessors-in-interest, if applicable.

21. Dr. Rybolovlev is a Russian-born Cypriot national who made his fortune in Russia. Ans. ¶ 96.

B. The Limited Partnership Agreement and Subsequent Amendments

22. In 2010, Dr. Rybolovlev and Dr. Harrison met and subsequently discussed forming the Fund. Ans. ¶ 26.

23. On October 29, 2012, the Parties entered into a limited partnership agreement to create the Fund as an exempted limited partnership under Cayman law, with ATP as the general partner, and Defendants as limited partners. JX-1. The Fund was originally named Apple Tree Partners IV, L.P. *See* JX-1. On November 27, 2020, the name of the Fund was changed to ATP Life Science Ventures, L.P. pursuant to Amendment No. 19 (*infra* ¶ 32).

24. On November 1, 2012, the Parties entered into the First Amended and Restated Limited Partnership Agreement (as amended, the "LPA"). JX-1.

25. The LPA is governed by Cayman Law. JX-1, Paragraph 18(g)(i).

26. On November 1, 2012, Defendants entered into Subscription Agreements with the Fund, with a total Contingent Subscription amount of [redacted]. JX-212, 213.

27. On November 1, 2012, Dr. Harrison entered into a Subscription Agreement with the Fund, with a total Contingent Subscription of [redacted]. JX-216.

28. Between 2012 and 2020, Amendment Nos. 1 through 16 to the LPA were executed.

29. On September 2, 2020, Amendment No. 17 to the LPA was executed. JX-89.

30. On September 20, 2020, Defendants and the Fund executed Amendment No. 1 to Defendants' Subscription Agreements, which increased the total amount of Defendants' Contingent Subscriptions by [redacted] to [redacted]. JX-99, 101; Ans. ¶ 36.

31. On November 5, 2020, Amendment No. 18 to the LPA was executed. JX-126.

32. On November 27, 2020, Amendment No. 19 to the LPA was executed. JX-132.

33. On December 31, 2020, Dr. Harrison transferred certain percentages of his interests in the Fund to his discretionary trust Les Pommes LLC, along with rights and obligations under the LPA and Dr. Harrison's Subscription Agreement. JX-157.

34. On June 21, 2021, Amendment No. 20 to the LPA was executed. JX-222.

35. On December 5, 2022, Amendment No. 21 to the LPA was executed. JX-480.

36. On July 10, 2024, the Defendants received transfers of the limited partner interests held by their predecessors-in-interest Blue Horizon and Ezbon along with rights and obligations under the LPA and Subscription Agreements. JX-1048.

37. On December 20, 2024, Amendment No. 22 to the LPA was executed. JX-1068.

38. Since the execution of Amendment No. 22 to the LPA, Braeburn, Plaintiff, and Rigmora Holdings have not entered into a royalty financing transaction.

39. The LPA has not been amended since Amendment No. 22.

C. The Thirteen Portfolio Companies

40. The Fund has invested in the following thirteen companies, among others: Aethon Therapeutics ("Aethon"), Apertor Pharmaceuticals ("Apertor"), Ascidian Therapeutics ("Ascidian"), Aulos Bioscience ("Aulos"), Deep Apple Therapeutics ("Deep Apple"), Evercrisp Biosciences ("Evercrisp"), Initial Therapeutics ("Initial"), Marengo Therapeutics ("Marengo"), Marlinspike Therapeutics ("Marlinspike"), Nereid Therapeutics ("Nereid"), Nine Square Therapeutics ("Nine Square"), Red Queen Therapeutics ("Red Queen"), and Replicate Biosciences ("Replicate," collectively the "Portfolio Companies"). Compl. ¶ 9.

41. In correspondence, dated May 15, 2025 and from time to time thereafter, Defendants and Plaintiff referred to Aethon Therapeutics, Apertor Pharmaceuticals, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marlinspike Therapeutics, and Red Queen Therapeutics as the seven "Early Stage Companies."

D. Fund Operations Between 2020 and 2024

42. Between 2020 and 2022, the Fund proposed initial investments in twelve of the thirteen Portfolio Companies. Ans. ¶ 64.

43. Prior to each investment, Plaintiff and Defendants had detailed discussions regarding the budget for each proposed Portfolio Company. Ans. ¶ 31.

44. Following discussions, Defendants approved initial investments in Ascidian in March 2020; Initial, Nereid, and Nine Square in May 2020; Aulos and Apertor in October 2020; Replicate in January 2021; Evercrisp in July 2021; Red Queen in September 2021; Deep Apple in November 2021; Marlinspike in December 2021; and Aethon in December 2022.

45. Plaintiff provided quarterly reports to the Defendants. Ans. ¶ 144.

46. The Fund has had multiple "exits" creating certain revenue and returns on investment. Defendants received certain distributions from the Fund relating to investments in Stoke Therapeutics, Akero Therapeutics, and Syntimmune, Inc. Ans. ¶¶ 60, 71. The Fund has distributed approximately [redacted] to the

Defendants.

47. The Fund's most valuable current asset is its investment in Braeburn Pharmaceuticals, Inc. ("Braeburn"). Braeburn is a pharmaceutical company founded in 2012 to develop and commercialize pharmaceutical products designed to address opioid use disorder. Braeburn is currently engaged in a commercial launch of the company's flagship product, Brixadi. Ans. ¶ 68.

48. Braeburn's likelihood of achieving commercial success was uncertain for many years. Ans. ¶ 69.

49. Brixadi faced regulatory delays, but ultimately received FDA Approval for marketing in the United States in June 2023. Ans. ¶¶ 73, 91.

50. In 2023, Braeburn entered into a Loan and Security Agreement with Hercules Capital. Ans. ¶ 91.

E. Braeburn Litigation

51. On September 28, 2023, Defendants requested distribution of the net assets of the Fund's investment in Braeburn pursuant to Amendment No. 20. Ans. ¶ 92.

52. Plaintiff refused Defendants' 2023 request for distribution of the net assets of the Fund's investment in Braeburn. Ans. ¶ 94.

53. On July 30, 2024, Defendants renewed their request for distribution of the net assets of the Fund's investment in Braeburn. Ans. ¶ 98.

54. On August 2, 2024, Defendants filed an originating summons in the Grand Court of the Cayman Islands (the "Braeburn Action"), seeking a ruling that Amendment No. 20 required Plaintiff to make the requested distribution. Ans. ¶ 106.

55. On December 20, 2024, the Parties settled the Braeburn Action which was contingent on the Parties executing Amendment No. 22. Ans. ¶ 100.

56. Also on December 20, 2024, the Parties entered into Amendment No. 22 to the LPA.

F. 2025

57. In January 2025, Defendants paid a [redacted] capital call for Replicate. Ans. ¶ 119. In January 2025, Defendants also paid a [redacted] capital call for Aulos, a [redacted] capital call for Deep Apple, a [redacted] capital call for Evercrisp, a [redacted] capital call Marlinspike, and a [redacted] capital call for Nine Square.

58. In February 2025, Defendants approved an [redacted] increase in the budget for Replicate contingent on certain conditions. Ans. ¶ 120.

59. In February 2025, Defendants paid a [redacted] capital call for Replicate, a [redacted] capital call for Marlinspike, and an approximately [redacted] capital call for certain expenses.

60. In March 2025, Defendants paid a [redacted] capital call for Red Queen.

61. In April 2025, Defendants paid a [redacted] capital call for Deep Apple, a [redacted] capital call for Initial, and a [redacted] capital call for Nine Square.

62. In April 2025, Dr. Harrison sent a spreadsheet to Defendants modelling reallocation of budgeted amounts from the Early Stage Companies to Aulos, Ascidian, and Marengo. Ans. ¶ 125.

63. On May 6, 2025, Plaintiff made capital calls for Apertor and Initial in the amounts of [redacted] and [redacted] respectively (the "May 6 Capital Calls"). Ans. ¶ 131. Defendants paid the May 6 Capital Calls and Plaintiff acknowledged receipt of the funds on May 22, 2025. Ans. ¶ 147.

64. On May 30, at approximately 11:36pm EDT, Plaintiff sent capital calls for ten Portfolio Companies and for certain expenses. JX-1387, 1388, 1390-1399.

65. On May 30, at approximately 11:44pm EDT, Plaintiff filed the Verified Complaint.

66. The total amount of the capital calls sent by Plaintiff on May 30, 2025 was US [redacted].

67. On June 1, 2025, Plaintiff sent Defendants an amended capital call for Replicate, lowering the amount called from US [redacted] to US [redacted].

68. Following the June 1 revision, the total amount of the capital calls initially dated as of May 30, 2025 is US [redacted].

III. ISSUES OF FACT AND LAW TO BE LITIGATED AT TRIAL

A. ATP's Issues of Fact and Law

69. On May 30, 2025, Plaintiff filed its Verified Complaint seeking, among other relief, an order of specific performance that Defendants must comply with their obligations under the LPA to provide funding to the Early-Stage Companies.

70. ATP respectfully refers the Court to its Pre-Trial Brief, to be filed in accordance with the Scheduling Order, for ATP's statement of the issues of fact it intends to establish at trial and statements of legal issues to be tried.

B. Defendants' Issues of Fact and Law

71. Defendants deny that Plaintiff is entitled to the relief sought in its Complaint, any order of specific performance, or to any relief at all.

72. Defendants respectfully refer the Court to their Pre-Trial Brief, to be filed in accordance with the Scheduling Order, for their statement of the issues of fact they intend to establish at trial and statements of legal issues to be tried.

73. Defendants respectfully reserve the right to revisit the Pre-Trial Order or to seek to modify it for good cause shown upon resolution of the outstanding disputes over Plaintiff's withholding of documents subject to Defendants' motions to compel.

IV. STATEMENT OF RELIEF SOUGHT

A. Plaintiff

74. Plaintiff requests the following relief:

a. Declaring that Defendants have:

(i) breached the LPA by refusing to consider budgets and have waived their rights to approve budgets;

(ii) breached the LPA by preemptively refusing to respond to capital calls relating to approved budgets;

(iii) breached the LPA by refusing to pay the May 30th Capital Calls;

(iv) breached their obligations under the LPA to fund and approve budgets sufficient to qualify as a Defaulting Partner; and

(v) breached their Common Law duties to exercise its discretion in approving budgets in a rational and good faith manner.

b. Declaring that Defendants waived or otherwise forfeited its voting and budget approval rights and that it "shall not have the right to vote on

or grant or withhold consent or approval with respect to any matter except as required by law" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA;

c. Ordering Defendants to specifically perform their obligations to approve budgets in good faith, if the Court does not find Defendants waived their right to consider budgets.

d. Ordering Defendants to specifically perform their obligations to fund capital calls for the Early-Stage Companies.

e. Enjoining Defendants from interfering with Plaintiff in the exercise of its discretion over the Fund, upon deeming Defendants a Defaulting Partner.

f. Declaring that ATP's filing of this action on behalf of the Fund is (i) not an act taken in bad faith; (ii) not an instance of willful fraud, willful misconduct, or gross negligence; nor (iii) an intentional and material breach of the LPA; and/or (iv) is consistent with ATP's rights and obligations as set forth in LPA ¶ 18(g)(iv).

g. Awarding Defendants to reimburse Plaintiff for its fees, costs, and expenses under the "loser pays" principles of Cayman Island laws and common law.

h. Awarding Plaintiff pre-judgment and post-judgment

interest.

i. Awarding Plaintiff such other, further, and different relief as this Court deems just and proper under the circumstances.

B. Defendants

75. Defendants deny that Plaintiff is entitled to the relief sought in its Complaint, any order of specific performance, or to any relief at all.

V. AMENDMENTS TO THE PLEADINGS

76. Plaintiff ATP respectfully moves, pursuant to Court of Chancery Rule 15(b), for leave to conform the pleadings in its Verified Complaint to the evidence by adding a claim for Breach of Contract for Defendants' failure to pay the May 30 Capital Calls as required by Paragraph 5(a) of the LPA. This additional claim is the maturation of a portion of the anticipatory breach claim forming the basis of Count II of the Verified Complaint.

77. Specifically, in its Verified Complaint, ATP asserts a claim for Anticipatory Breach of the LPA. Compl. ¶¶ 165-175. In Count II, ATP alleges, *inter alia*, that Defendants have repudiated their obligations under the LPA in their May 15 Email where they disavowed any outstanding capital commitment to the Fund, including for the Early Stage Companies that have approved budgets. Compl. ¶ 170. As such, Defendants had anticipatorily breached their obligations to respond

to capital calls. Since the filing of the Complaint, Defendants have followed through with their threats.

78. Shortly before filing the Complaint, ATP issued its May 30 Capital Calls to the Defendants. The May 30 Capital Calls called capital for Pre-clinical Companies with approved budgets, and each of the May 30 Capital Calls was within the amount of the approved budget for the subject portfolio company. In response to the May 30 Capital Calls, Defendants were required to provide the requested capital by June 13, 2025[2]. Defendants failed to do so.

79. As such, Defendants have breached their obligations under the LPA. ATP requests the Court allow it to conform its pleadings to these recent facts that will be put forward at trial as evidence of Defendants' breach.

80. The Court has "discretion to allow the pleadings to be amended to reflect any new issues not asserted in the pleadings so long as the responding party is not prejudiced by its admission." *Norberg v. Security Storage Co.*, 2000 WL 1375868, at *5 (Del. Ch. Sept. 19, 2000); *see also Bellanca Corp. v. Bellanca*, 169 A.2d 620, 622 (Del. 1961) (permitting Rule 15(b) amendment to add quasi-contractual theories of recovery in addition to breach of contract claim where evidence relevant to the claims overlapped and therefore no prejudice existed). "A

[2] With the exception of Replicate for which a revised capital call issued on May 31, 2025 and thus capital was required by June 16, 2025.

party may move to amend the pleadings to conform to the evidence and to raise an unpled issue." Ct. Ch. R. 15(b) .

81. "The party opposing the amendment has the burden of showing that the amendment would be prejudicial to that party's defense." *Taplin v. Schuitemaker*, 2019 WL 126981, at *5 (Del. Super. Jan. 7, 2019) (citation omitted).

82. Defendants cannot meet that burden because they do not suffer any prejudice. Defendants were on notice of this claim. In fact, Defendants were so aware of the possibility they could be found in breach of the LPA that they filed the Cayman's Writ Proceedings seeking to invalidate the May 30 Capital Calls *mere days after receiving them*. *Supra* ¶ 11

83. In addition, Defendants have been expressly aware of Plaintiff's view that the May 30 Capital Calls form a basis for this action since at least June 13, 2025, when Plaintiff first asserted that the May 30 Capital calls "should necessarily be determined by the court seised of these matters, the Court of Chancery in the State of Delaware, before the Grand Court [of the Cayman Islands] is asked to determine" the Winding-Up Petition. Again, in response to Defendants' asserted position in its June 24 Letter that there was not an entire overlap between the Delaware proceedings and the Cayman proceedings due to, inter alia, the lack of any express reference to the May 30 Capital Calls in the Delaware complaint, Plaintiff responded its Petition to Stay the Writ Proceeding that the relief sought in this Action "is broad enough to

determine whether [Defendants are] obliged to meet" the May 30 Capital Calls (*see* First Affidavit of Seth Harrison, JX-940), making clear that Plaintiff considered the May 30 Capital Calls to be at-issue in this action.

84. Further, both Parties had the opportunity to take discovery on this issue including asking questions about the May 30 Capital Calls during each of the Parties' 30(b)(6) witness depositions. *See* Transcript of the August 12, 2025 Deposition of Dr. Seth Harrison at 394:9-396:22 and Transcript of the August 8, 2025 Deposition of Yuri Bogdanov at 270:14-274:19.

85. As such, Defendants face no prejudice. Further, the Court should allow Plaintiff to amend its Verified Complaint and litigate both its anticipatory and actual breach claims together in order to promote judicial efficiency. *See Agilent Technologies, Inc. v. Kirkland*, 2009 WL 119865 (Del. Ch. Jan. 20 2009) (deciding a motion to amend in favor of "notions of judicial efficiency that seek to limit the number of separate occasions on which a court must consider a matter."). Given the Court's liberal standard for amending pleadings, Plaintiff respectfully requests the Court allow it to conform its pleadings to these new events that are the natural continuation of its original claims.

86. **Defendants' Position:** On June 27, 2025, this Court denied Defendants' motion to stay, leaving only 83 days before the start of trial for Defendants to take discovery and prepare for trial. Plaintiff waited 63 of those days—and after the close

of fact discovery and the exchange of expert reports—to raise a claim that it purports to have known about weeks before the denial of the motion to stay. That is exactly the type of strategy that this Court protects parties against.

87. As an initial matter, Delaware law is clear that, although Court of Chancery Rule 15(a) provides that "leave [to amend] shall be freely given when justice so requires," the Court may deny leave "if there is a showing of substantial prejudice, bad faith, dilatory motive, or repeated failures to cure by prior amendment." *OptimisCorp v. Waite*, 2015 WL 357675, at *2-3 (Del. Ch. Jan. 28, 2015); *cf. Martinez v. E.I. DuPont de Nemours & Co.*, 2012 WL 4479164, at *2 (Del. Super. Ct. Sept. 21, 2012) ("Where a movant has no valid explanation for his delay, and the facts upon which the proposed amendments are based were known long in advance of the motion, it is entirely proper for the Court, in its discretion, to deny the motion.").

88. Plaintiff cites Court of Chancery Rule 15(b), which does not apply. Rule 15(b) governs "Amendments During and After Trial," but trial does not start until September 18.

89. The proposed amendment would be futile because the capital calls were invalid from the start and exceed Defendants' obligations to provide capital.

90. But the real issue is prejudice and Plaintiff's strategic decision to withhold this new claim until the very end of the case. In a different expedited action,

then-Vice Chancellor Strine reacted adversely to a plaintiff trying to add pre-trial a new claim that the plaintiff effectively knew about from the outset, where he rejected the amendment request on (among others) the following grounds: "that you could have raised the claim, that you didn't do it until right before trial after everybody had already written their briefs and everybody had taken their discovery and everybody is focused on what they had; and that that kind of tactic produces prejudice when you're asking people to operate on a short schedule like you've asked for." *Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, C.A. No. 5465-VCS, at 31 (Del. Ch. July 6, 2010) (TRANSCRIPT); *see also id.* at 29-30 ("And I think that since the beginning of this lawsuit you've been fully aware that there would be a management slate and that it would be approved by the nominating committee, if not the full board, perhaps by both; that you had plenty of time to raise this in your briefs; that you let all the discovery go forward. . . . When you file an affidavit from all the attorneys swearing under oath that the first time that you believed there would be a management slate of Barnes & Noble, that the first time there would be a management slate, you learned that last Thursday? You all swear under oath, every member of your team. . . . And you do that, I'll grant your motion to amend . . . .").

VI. LIST OF WITNESSES

A. Plaintiff

91. Plaintiff expects to call the following witnesses live at trial:

a. Seth Harrison, M.D.

b. Joseph Yanchik

c. Spiros Liras, Ph.D.

d. Yuri Bogdanov

e. Michael Bloch, KC

f. Mark Robbins, Ph.D., J.D.

g. Mohan Rao, Ph.D.

92. Plaintiff further reserves the right to call by deposition at trial any witness to the extent permitted under applicable rules, by order of the Court, or by agreement of the Parties.

B. Defendants

93. Defendants expect to call the following witnesses live at trial:

a. Seth Harrison, M.D.

b. Dmitry Rybolovlev, M.D.

c. Yuri Bogdanov

d. Alexey Yakovlev

e. Mark Phillips KC

f. Dr. Ilonna Rimm, MD, Ph.D, CFA

g. Ilya A. Strebulaev, Ph.D

h. Paul Da Silva Jardine

i. William Engels[3]

j. Michael Ehlers[4]

94. Defendants further reserve the right to call by deposition at trial any witness to the extent permitted under applicable rules, by order of the Court, or by agreement of the Parties

C. Reservation Of Rights

95. The Parties reserve the right to (a) rely upon the testimony of any witness(es) identified by or called by any other Party; (b) call any witness(es) on any other Party's witness list; (c) call or introduce testimony from any witness(es) necessary for impeachment or rebuttal purposes, if previously deposed ; (d) to call custodians of records solely for the purpose of establishing the foundational facts necessary to admit into evidence any exhibit whose admissibility any Party challenges; (e) to call by deposition a witness listed as appearing live except to the extent such witness appears on the other Party's will call list and such testimony is not used for impeachment; and (f) object to any trial testimony offered by any witness(es) not identified in this Pre-Trial Order.

[3] Plaintiff has taken the position that Mr. Engels is not within Plaintiff's control and will not be produced at trial. Defendants' position is that they do not have sufficient information to accept Plaintiff's position. The Parties agree that Defendants will present Mr. Engels' testimony by deposition.

[4] Plaintiff has taken the position that Dr. Ehlers is not within Plaintiff's control and will not be produced at trial. Defendants disagree with that assertion. The Parties agree that Defendants will present Dr. Ehlers' testimony by deposition.

VII. WITNESS ORDER

96. Plaintiff will provide its proposed order of witnesses to Defendants by September 14, 2025 at 5:00pm. Defendants will provide their proposed order of witnesses to Plaintiff by September 15, 2025 at 5:00 p.m., reflecting the Parties' good faith belief regarding the witnesses they will call and examine at the two-day trial. The Parties will meet and confer and work in good faith to schedule those witnesses after taking into account witness availability.

97. Each Party shall promptly notify the opposing Party of any changes to their respective witness order and, in any event, by the day before the witness is set to testify.

98. The Parties may narrow their witness lists up to and including the time of trial. If a Party removes from its witness list any witness that it controls after the date of submission of this Pre-Trial Order, such Party still must make such witness available for the opposing Party to call at trial. Each Party reserves the right to call any witness solely as a rebuttal witness, if such witness was previously deposed.

99. Each Party reserves its right upon a showing of good cause to supplement its witness list up to and including the time of trial, and each Party reserves the right to object to any such attempt to supplement.

100. Each Party will make any witness that is under its control available to testify at trial on the date scheduled without the need for a subpoena.

VIII. DEPOSITION TESTIMONY

101. On or before September 17, 2025, Plaintiff shall lodge copies of all deposition transcripts for each deposition taken by any Party in this action. The lodging or any other presentation of deposition testimony with the Court is without prejudice to any Party's objection to the admissibility of such testimony.

102. Any Party may use the deposition testimony taken in this case in connection with trial, including pre-trial briefing and post-trial briefing (if any). Deposition testimony shall be admitted into evidence to the extent it is cited in the Parties' pre- and post-trial briefs or is used at trial (if any), as if it were given at trial. Subject to Court of Chancery Rule 32, the admissibility of deposition testimony cited in the Parties' briefs shall be subject to the Court's determination of any evidentiary objection made by a Party as if the deponent—were testifying—live at trial. Unless resolved at or before trial, objections to particular testimony (unless resolved at or before trial) will be addressed in the Parties' post-trial briefs.

103. For the avoidance of doubt, Defendants do not agree to any use of deposition testimony in a manner that is inconsistent with Court of Chancery Rule 32(a).

104. The Parties shall not exchange deposition designations, counter-designations, or reply designations. Each Party reserves any and all objections to the admissibility of deposition testimony. In addition, any Party shall remain free to

address the weight, if any, the Court should place on any such deposition testimony that is admitted.

105. If any Party intends to read or play deposition testimony during the trial of a witness (other than for the purpose of impeachment), such Party shall identify the testimony to be presented to opposing counsel no later than 10:00 a.m. ET on September 16, 2025. The noticed Party may cross-designate testimony and provide such cross-designations to the noticing Party by 10:00 a.m. ET on September 17, 2025. The noticing Party may then provide the noticed Party with additional designations within 8 hours, only as needed for completeness. Further designations must be limited to those needed for completeness and must be provided within two hours.

106. Deposition clips (including designations and counter-designations) for a given witness will be played sequentially as the testimony was given in the deposition.

107. A Party may use non-argumentative introductory language as transitions in advance of presenting a video deposition at trial. The Parties shall exchange such language at the time they provide the other Parties with notice of the specific videotaped designations of the testimony to be preceded by such language. The Parties shall meet and confer regarding any language any Party deems argumentative, and the Parties reserve all rights regarding any introductory language.

IX. STIPULATIONS REGARDING WITNESSES

108. Fact witnesses shall not be called more than once, except to the extent they are called in rebuttal. Any Party reserves the right to call its own witnesses for rebuttal. Each Party may use the testimony of any witness (whether on direct or cross examination) presented by the other Party in the Party's case in chief in order to avoid the necessity of calling the same witness more than once.

109. When a witness testifies, the Party controlling the witness shall present any direct examination of such witness first. Other Parties may then cross-examine without limitation to the scope of the direct examination, except that cross-examination of witnesses called in a Party's rebuttal case shall be limited to the scope of the direct examination in such rebuttal case. Re-direct examination will be limited to the scope of the cross-examination, and re-cross examination will be limited to the scope of the re-direct examination.

110. Except for purposes of impeachment or upon a showing that good cause exists to supplement the Exhibit List, the Parties' examinations of a witness shall be limited to the documents appearing on the JX List at the beginning of the examination of that witness. For avoidance of doubt, should the examination of a witness carry over to the next day, the Parties agree that they are unable to conduct an examination of the witness on exhibits added after the commencement of the

witness's examination, except for purposes of impeachment or upon a showing that good cause exists.

111. Fact witnesses will be sequestered until their testimony is complete; provided, however, such sequestration does not apply to one testifying corporate representative designated by Plaintiff and one testifying corporate representative designated by Defendants. Expert witnesses need not be sequestered during trial.

X. TRIAL AND TRIAL RECORD

112. The Parties shall submit an initial exhibit list of chronological Joint Trial Exhibits (the "Exhibit List," attached hereto as Exhibit A) to the Court on September 5, 2025, and an up-to-date list of Joint Trial Exhibits to the Court by 9:00 a.m. on September 18, 2025. Each of the Parties reserves the right to use at trial any exhibit from the Exhibit List identified by any Party. The Exhibit List will assign each exhibit a unique "JX" number. The Exhibit List will identify each exhibit by date (where available) and Bates number (where available), provide a brief description of the document, and list the occasions (if any) on which the document was marked as a deposition exhibit. All trial exhibits shall be pre-marked with a unique JX stamp on the first page (e.g. "JX-1) and pagination stamps (e.g., "JX-1.0001," "JX-1.0002," etc.) on each page of each exhibit. The party designating a document as a trial exhibit shall redact from such document individuals' social security numbers and similar personal identifying information, including from tax

returns designated as trial exhibits. Such redactions of personal data will also be consistent with the requirements of the General Data Protection Regulation ("GDPR").

113. The Parties will make a good faith effort to include all exhibits on the final Joint Exhibit List provided to the Court at the start of trial. Nevertheless, the Parties may supplement the Exhibit List through and including the close of trial, provided that the opportunity to object shall be provided to the other Party with respect to any supplemental exhibit, with each side reserving the right to object to any supplemental exhibits. The Party supplementing the Exhibit List shall simultaneously provide to the other Party copies of the exhibit(s) to be added to the Exhibit List. The Parties shall also coordinate to update the Court's exhibit list, tabbed binders, and thumb drives to reflect additions to the Exhibit List.

114. The Parties will provide certified translations of all exhibits on the exhibit list that contain foreign language communications. Each Party seeking to admit each foreign language exhibit will bear its own cost of obtaining the certified translation for that exhibit. Any objections to a certified translation must be made promptly and no later than 8:00 p.m. EDT on September 12, or within twenty-four (24) hours for any exhibit added to the Joint Exhibit List thereafter. Any dispute over a certified translation will be resolved by the Parties' jointly selected interpreter promptly.

115. The Parties reserve the right to raise evidentiary objections at trial concerning specific documents and testimony depending on the reason or basis for which the document or testimony is offered. The merits of any evidentiary objection, unless resolved at or before trial, will be addressed in the Parties' post-trial briefs, and the Court may determine after trial, in light of such briefing, that any exhibit is ultimately inadmissible. Unless an objection to a proposed trial exhibit has been noted on the Exhibit List or raised at the pre-trial conference, at trial, or in post-trial briefing, all exhibits that were used at trial or used in trial briefing shall be deemed admitted into evidence without objection. Notwithstanding the foregoing, the Parties are not prohibited from raising additional objections to specific exhibits that are first used in post-trial briefing.

116. Any document on the Exhibit List not used at trial or cited in any pre-trial or post-trial brief shall not be considered admitted in evidence or part of the record. After trial and post hearing briefing is complete, the Parties will identify all documents that were used in pre-trial briefing, at trial, or in post-trial briefing to identify the agreed-upon set of documents admitted into evidence and the complete trial record.

117. Each Party reserves the right to offer into evidence any documents not on the Exhibit List for the purposes of impeachment, subject to the Delaware Rules of Evidence. Each Party further reserves the right to introduce into evidence

documents not on the Exhibit List in rebuttal to any evidence introduced by any other Party, subject to the Delaware Rules of Evidence. Absent a showing of good cause, all exhibits must be included on the Exhibit List by the close of trial.

118. The Parties shall prepare binders containing the exhibits from the Exhibit List and provide the Court with two sets of binders, which will be delivered to the Court on or before the first day of trial. For any Excel files or other documents presented only in native format, the exhibit binder submitted to the court shall contain a slip sheet stating, "Produced in Native." Plaintiff will also provide the Court with three thumb drives containing electronic copies of the exhibits (including any documents presented only in native format) in searchable form. Plaintiff shall be responsible for arranging the printing, marking/labeling, binding, and tabbing of the Joint Exhibits provided to the Court, and shall provide Defendants opportunities to review and comment on such items prior to providing to the Court; however, the Parties shall share evenly the costs associated therewith.

119. Demonstrative exhibits need not appear on the Exhibit List. The Parties shall exchange any demonstrative exhibit(s) by 8:00 p.m. EDT the day before the trial day on which those exhibit(s) will be used. The opposing Party shall make a good faith effort to advise of any objection to the demonstrative by 11:00 p.m. EDT. and will in any event advise of any objection before trial begins the following day. If a demonstrative exhibit is prepared in response to testimony that was given for the

first time at trial, however, it shall be provided to counsel for the opposing Party at the earliest practicable time. This shall not be construed as a limitation on a Party's right to create demonstrative exhibits during the course of testimony at trial; nor shall it require the advance exchange of exhibits that are merely excerpts, enlargements, or highlights of trial exhibits. The Parties reserve the right to object to any demonstrative exhibit(s).

XI. TRIAL LOGISTICS

120. The Court has currently allotted two days for trial beginning on September 18, 2025 at 9:15 a.m. at The Leonard L. Williams Justice Center in Wilmington, Delaware.

121. The Parties have agreed to divide trial time equally, with Plaintiff having one-half and Defendants having the other half of the calculable trial time. Unless otherwise ordered by the Court, each Party will be charged with all the time its counsel spends questioning a witness, whether on direct examination, cross-examination, redirect examination, or otherwise. The time used to play video of depositions shall be charged against the designating or counter-designating Party for the time associated with such designations or counter-designations. For witnesses requiring translators, the Party taking testimony from the witness will be charged with all the time expended for translation during that testimony.

122. Unless otherwise ordered by the Court, time spent addressing in-trial motions or evidentiary issues shall be split equally between each side. Time used by the Court or by either Party addressing the Court's questions will be split equally between each side. Each Party shall have the burden of monitoring its own use of time for direct and cross-examination, and all other purposes.

123. The reports of all expert witnesses, and the deposition transcripts of such experts, shall be lodged with the Court and treated as if such reports and depositions constitute in-Court testimony. Nothing in this paragraph precludes a Party from calling one of its own experts to testify during the trial. Objections to the admissibility of expert reports and deposition testimony shall be resolved in the same manner set forth above for other deposition testimony. Without limiting the foregoing, ATP respectfully objects to, and reserves the right to challenge, the admissibility of any part of the expert report or rebuttal expert report of Mark Phillips, KC, to the extent they seek to improperly make conclusions of facts and law or opine on the hypothetical actions of a Cayman Court. Without limiting the foregoing, as set forth further herein, Defendants respectfully submit that the grounds that ATP advances to exclude certain portions of the expert report and rebuttal report of Mark Phillips, KC are meritless. To the extent the Court agrees with Plaintiff about the admissibility of those portions Phillips' reports, Defendants respectfully submit that the equivalent portions of the expert and rebuttal reports of Michael Bloch, KC must

be excluded as well because Mr. Bloch's testimony presents the same issues about which ATP complains. ATP disputes that Mr. Bloch's testimony presents the same deficiencies as Mr. Phillips'.

XII. EVIDENTIARY ISSUES REQUIRING RESOLUTION

124. Pursuant to Paragraph 11 of the Stipulation and Order Governing Case Schedule (Dkt. 54), the Parties are to address Motions *in limine* in this Order.

125. The Parties identify the following disputes which the Parties intend to address at the pre-trial conference.

A. Motion to Exclude Certain Testimony of Mark Phillips, KC

126. **Plaintiff's Position:** The Court should exclude the testimony of Mark Phillips, KC, including his expert and rebuttal reports, to the extent that Phillips: i) opines on what a Cayman Court would do; ii) seeks to provide legal conclusions on contractual interpretation; and iii) applies conclusions or assumptions. "Expert testimony is admissible only if relevant and reliable," *Scottoline v. Women First, LLC*, 2025 WL 1707364, at *4 (Del. June 18, 2025), and Mr. Phillips' testimony is neither relevant nor reliable.

127. The Court should also exclude Mr. Phillips' rebuttal report to the extent it exceeds the scope of the report to which it purports to rebut.

128. ***Mr. Phillips is Not Qualified to Predict the Actions of a Cayman Court.*** Throughout his reports, Mr. Phillips improperly states his "opinion that a Cayman

court would be likely to reach" certain conclusions. Report ¶ 18. Mr. Phillips opines on what provisions of the LPA a Cayman Court would consider, what facts the Cayman Court would assess, and how the Cayman Court would decide specific issues. *See* Report ¶¶ 18, 88, 92, 105, 108, 112-115, 117-120, 122, 129, 142, 143, 145, 150, 154, 159, 160, 164-165, 171-173; Rebuttal Report ¶¶ 17, 33, 35. This type of testimony is irrelevant and improper.

129. Despite this emphasis on predicting the decisions of the Cayman courts, Mr. Phillips is not qualified to speak on behalf of or regarding the Cayman Courts. Even assuming Mr. Phillips is qualified to opine on the principles and foundations of English law that influence Cayman law—as Plaintiff's expert is—predicting the behavior and outcomes of a particular judicial body require different sets of knowledge, and is akin to a social science determination rather than an explanation of the law. Mr. Phillips is an English lawyer whose extensive career has been in English courts. *See* Report ¶¶ 2-12. While Mr. Phillips has litigated in Cayman Courts, he is not a sitting Cayman judge weighing the evidence. His assumption of that role is improper and unhelpful.

130. ***A Hypothetical Analysis of a Cayman Court is Irrelevant.*** While the LPA is largely governed by Cayman law, it specifically provides that both Cayman and Delaware Courts are proper fora. In this Delaware forum, it is the Delaware Court's responsibility to determine how Cayman law applies to the disputed issues.

See *Kostolany v. Davis*, 1995 WL 662683, at *2 (Del. Ch. Nov. 7, 1995) ("The court's determination of foreign law is treated as a ruling on a question of law."). Delaware Courts have extensive experience applying foreign law. The Court need not consider an expert's speculation about how a Cayman Court would rule because that is not at issue in this case. *See* Del. R. Evid. 702(a) (an expert can testify only if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue).

131. ***Mr. Phillips' Opinions Concerning Cayman Courts and His Final Determinations of Law are Unreliable.*** Mr. Phillips also offers no bases for predictions of the Cayman Court; indeed, he does not cite to Cayman trial records to support his opinion. His conclusions are *ipse dixit*, as he has not explained how or why he knows "what a Cayman Court would do."

132. Rather, Mr. Phillips' opinion of what a Cayman Court would decide is an improper "backdoor way" to express his own conclusions of the law based on Defendants' view of the facts. *See In re Columbia Pipeline Grp. Merger Litig.*, 2022 WL 2902769, at *1-2 (Del. Ch. July 14, 2022) ("An expert cannot displace the court's role by offering conclusions of law or purporting to make specific factual findings."). Delaware Courts do not rely on experts' legal interpretations of parties' contractual obligations. *Mine Safety Appliances Co. v. AIU Insur. Co.*, 2015 WL 5818071, at *2 (Del. Super. Aug. 4, 2025) (citations omitted).

133. Mr. Phillips' report purports to conclude, as a definitive matter, the scope of the parties' obligations under the LPA and the permissibility of their disputed conduct. This is not his job. Delaware Courts have specifically held that the "[i]nterpretation of the Company's internal governing documents is a matter exclusively for the Court." *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 741 (Del. Ch. 2005) (finding expert reports provided little benefit where they opined on "core issues" or were based on experts' factual determinations with which the Court disagreed).

134. Without citing to any Cayman (or English) precedent, Mr. Phillips attempts to walk the Court through what a Cayman Court "might" do or, more accurately, what he would do if he were the Cayman Court.

135. Some examples are as follows:

- Without citing precedent, Mr. Phillips concludes that [redacted]. *See* Report ¶ 105. Instead of citing to any related Cayman (or English) Court precedent, Mr. Phillips simply interprets the contract for the Court based on his reading of the provision. *Id.* ([redacted]).
- Mr. Phillips further concludes that [redacted] based on his own assumptions and assessment of the "[redacted]." Report at 112-115. To that extent, without

any precedent, he postures hypothetical legal questions the Court "might" consider. *See Id.* ("[redacted]").

- Without citing any precedent, Mr. Phillips opines that, [redacted]. Report at ¶¶ 118-120. ("[redacted]").
- With regards to "[redacted]," Mr. Phillips opines—without even his own explanation or interpretation—that the [redacted] Report ¶ 122 ([redacted]").
- Mr. Phillips opines, without explanation, that [redacted] Rebuttal ¶ 33.

136. To reach his conclusions of law, Mr. Phillips also just assumes numerous disputed facts as true, including but not limited to the following:

- The Defendants' role in the limited partnership—which he defines as [redacted]. *See*

Report ¶ 88. Mr. Phillips uses this factual assumption to conclude that [redacted] *Id.*

- [redacted]. Report ¶ 113. And as such, the [redacted] *Id.* 114.
- The total capital contributed by Rigmora was over [redacted] when the May 15 Email was sent. Rebuttal ¶ 36.

137. Mr. Phillips' opinions are not based on a view of the record or even *any* documents of discovery cited besides the pertinent contracts themselves and the Complaint. So not only is the scope of the opinion a reach beyond that appropriate and relevant for a foreign law expert, but also the final conclusions are unreliable as *ipse dixit*. The Court should exclude such testimony. While the Court has broad discretion in considering evidence related to foreign law under Del. Ch. 44.1, even a foreign law expert's opinion is meant to inform and assist the Court, not to supplant the Court's role on the basis of untested and uncited facts.

138. Further, the Court should exclude Mr. Phillips' rebuttal report and testimony to the extent that it exceeds the scope of Michael Bloch, KC's report. Mr. Phillips uses his rebuttal report to elaborate on numerous opinions that he made in his own report, and are not proper to rehash or supplement in rebuttal. See Rebuttal ¶¶ 15-22.

139. **Defendants' Position:** Defendants oppose Plaintiff's motion to exclude

certain testimony from Mark Phillips KC. Plaintiff badly understates Mr. Phillips' experience; incorrectly suggests that his reports of over one hundred pages, citing dozens of authorities, fail to "cite precedent"; and seeks to improperly disqualify core testimony based on the faulty assumption that an expert in foreign law should not opine as to the content of that same foreign law as such experts (including Plaintiff's expert, Mr. Bloch) routinely do. In doing so, Plaintiff ignores Rule 44.1's broad mandate allowing judges to review "any relevant material or source" on foreign law, Ct. Ch. R. 44.1, and its motion should be rejected.

140. ***Mr. Phillips is Undisputedly Qualified to Provide Expertise on Cayman Contract Law.*** Mr. Phillips is an exceedingly experienced King's Counsel in the United Kingdom with extensive experience practicing in Cayman courts, including handling the longest trial (12 months) in the history of Cayman courts. *See* Phillips Report ¶ 5. Plaintiff's expert, Mr. Bloch, refers to him as an "eminent King's Counsel." Bloch Rebuttal ¶ 3. Plaintiff does not (and cannot) seriously attack his credentials. Like Plaintiff's expert, he is an English lawyer who has litigated in the Cayman courts, and that he is "not a sitting Cayman judge" is beside the point. Courts "should not impose overly rigorous requirements of expertise; more generalized qualifications suffice." *Allscripts Healthcare, LLC v. Andor Health, LLC*, 2022 WL 3021560, at *2 (D. Del. July 29, 2022) (citations and alterations omitted). Mr. Phillips more than clears that bar.

141. ***Mr. Phillips' Opinions Are Extensively Grounded In Precedent.*** Mr. Phillips wrote 121 pages, citing 74 relevant authorities to ground his analysis, across two expert reports. *See* Phillips Report ¶¶ 1-173; Phillips Rebuttal ¶¶ 1-41. He also reviewed all of the parties' agreements. Indeed, Plaintiff's expert "agree[d] with much of what [Mr. Phillips] says as regards exempt limited partnerships, the principles of contractual interpretation, and the implication of contractual terms." Bloch Rebuttal ¶ 3.

142. Against this backdrop, Plaintiff's suggestion that Mr. Phillips' conclusions are made "[w]ithout citing precedent" is meritless. Mr. Phillips spent dozens of pages outlining the applicable principles of interpretation under Cayman law in his opening report alone. *See, e.g.*, Phillips Report ¶¶ 19-52 (law applicable to exempted limited partnerships); ¶¶ 53-65 (principles by which contracts, including partnership agreements, are interpreted under Cayman law); ¶¶ 66-83 (duties owed by the general partner of an exempted limited partnership, and limits on duties of limited partners); ¶¶ 89-90 (the general requirements for exempted limited partnerships under Cayman law regarding capital contributions and commitments); ¶¶ 94-99 (limitations on enforcement of penalty clauses). He describes in great detail the relevant Cayman and UK statutes, Cayman and UK court decisions, and other commentaries. *See id., e.g.*, Phillips Report ¶¶ 19-99. Only then does he identify the terms at issue, and how those principles of contract and

statute might apply as a matter of Cayman law. Phillips Report ¶¶ 100-65. He of course does not restate or recite all of his prior discussion in doing so (which would stretch his reports to hundreds of pages each), but it is that authority that supports his expert opinion. That is consistent with the approach of Mr. Bloch. Bloch Dep. Tr. at 234:5-21 (describing his conclusions on the contract as a "summary" of his analysis).

143. ***The Court Has Broad Discretion to Review the Testimony of Foreign Law Experts.*** Plaintiff's motion fails to even acknowledge the particular rules that apply to foreign law experts, which recognize that the role they play and the testimony they offer differ in meaningful ways from other experts. Plaintiffs ignore those rules to rely on arguments and cases that apply to other types of expert testimony and are wholly irrelevant to that of Mr. Phillips, as an expert in foreign law.

144. The standard for foreign law experts is more generous than Plaintiff acknowledges. For foreign law experts, Delaware Rule of Evidence 702's standard is substantially broadened by Court of Chancery Rule 44.1, which allows courts to "consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43." As the Delaware Supreme Court has recently explained, Rule 44.1 gives trial judges "wide latitude in determining what evidence to consider and in what form." *Germaninvestments AG v. Allomet*

Corp., 225 A.3d 316, 333 (Del. 2020). Plaintiff's attempt to cabin the Court's discretion conflicts with the Court's mandate to "make the process of determining alien law identical with the method of ascertaining domestic law to the extent that it is possible to do so." *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co. Ltd.*, 585 U.S. 33, 42 (2018) (quoting Wright & Miller § 2444, at 338–342.).[5]

145. None of the cases that Plaintiff relies on address the role of foreign law experts, none consider the scope of Rule 44.1, and, as a result, none support their motion to exclude portions of Mr. Phillips' testimony. *See Scottoline v. Women First, LLC*, 2025 WL 1707364, at *5–6 (Del. June 18, 2025) (pediatric neurology expert opining in medical malpractice suit); *In re Columbia Pipeline Grp. Merger Litig.*, 2022 WL 2902769, at *1-2 (Del. Ch. July 14, 2022) ("expert on M&A negotiations" offering opinion in merger litigation); *Mine Safety Appliances Co. v. AIU Insur. Co.*, 2015 WL 5818071 (Del. Super. Ct. Aug. 4, 2015) (experts opining regarding insurance); *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 741 (Del. Ch. 2005) (expert opining on "core issues in this case—whether the defendants breached their fiduciary duties as they exist *under Delaware law*" (emphasis added)).[6]

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[5] Delaware courts follow the U.S. Supreme Court's interpretations of expert admissibility. *See Bowen v. E.I. DuPont de Nemours & Co.*, 906 A.2d 787, 794 (Del. 2006) (noting the Delaware Supreme Court has "expressly adopted" the "United States Supreme Court's interpretations of F.R.E. 702 in *Daubert* and *Kumho* . . . as correct interpretations of D.R.E. 702").

[6] The only case Plaintiff relies on that *does* engage with foreign law stands for the

146. Rather, Delaware precedent regarding foreign law expert testimony recognizes that the foreign law expert's role is to help the Court understand the complexities of a foreign legal scheme and provide the Court with the tools to appropriately apply the law to the case. *See Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 33 (Del. 2005) (making conclusions as to expert credibility in deciding which interpretation of Saudi law to apply to the case). Mr. Phillips was retained, like Mr. Bloch, to opine on Cayman law and appropriately did so throughout his report. That he did so by reference to Cayman courts, consistent with their practice and his own, Phillips Dep. Tr. at 34:2-35:9, is not disqualifying.

147. Plaintiff's suggestion that Mr. Phillips may try to supplant this Court's role is unfounded. As Mr. Phillips testified at his deposition, his report and contemplated testimony seek to assist this Court in its analysis of Cayman law, not supplant the role of the Court in Delaware in applying that law to the claims and facts at issue. Phillips Dep. Tr. at 100:23-101:3 ("[redacted]"); 318:16-18 ("[redacted]

unremarkable proposition that "[t]he court's determination of foreign law is treated as a ruling on a question of law." *Kostolany v. Davis*, 1995 WL 662683, at *2 (Del. Ch. Nov. 7, 1995). The Court in *Kostolany* did not exclude expert testimony on foreign law and merely utilized competing foreign law expert reports to reach a conclusion on the law.

[redacted]

[redacted].”); *see CertiSign Holding, Inc. v. Kulikovsky*, 2018 WL 2938311, at *22, n.232 (Del. Ch. June 7, 2018) (denying plaintiff’s motion *in limine* to exclude foreign law expert’s rebuttal report where the expert “was not purporting to address Delaware choice of law principles or to tell this Court how to apply them” and the court “view[ed] her opinions as addressing Brazilian law only and [] considered them solely in that context”); *Germaninvestments AG*, 225 A.3d at 336 (finding error not to have a foreign law expert identify and explain foreign law issues “*based on the facts and nuances in the case*”) (emphasis added).

148. ***Mr. Phillips’ Opinions Are Otherwise Admissible.*** Plaintiff relies on a series of mischaracterizations and irrelevant excerpts in an attempt to bolster its “conclusions” that (i) Mr. Phillips assumes Defendants’ view of disputed facts; (ii) Mr. Phillips’ reports included conclusions about how to interpret obligations of the LPA under Cayman law; (iii) Mr. Phillips relied on speculation as to what a Cayman court would likely do; and (iv) Mr. Phillips’ rebuttal was out of scope. None of its arguments warrants exclusion and on every single point, Mr. Phillips was consistent with Plaintiff’s own expert.

149. ***First***, as to Mr. Phillips’ assumption of facts, Mr. Phillips did not take a position as to the facts of this case. Mr. Phillips merely assumed certain facts were true for the sake of his analysis, as is customary in expert reports across broad subject

matter. Phillips Report ¶¶ 112-115, 118-120; *see also* Bloch Report ¶ 75; Bloch Rebuttal ¶¶ 53, 72.

150. ***Second***, as to his interpretations of the LPA under Cayman law, Mr. Phillips was applying Cayman contractual interpretation principles to inform the kinds of questions that the Cayman court might ask when reading the LPA. This common form of foreign law analysis is entirely appropriate and Mr. Phillips' objective and technically sound methodology is consistent with the approach to which Mr. Bloch adhered and testified. *See, e.g.*, Bloch Report ¶¶ 65-66; Bloch Dep. Tr. at 239:10-241:12.

151. ***Third***, as to Mr. Phillips' application of Cayman law to the contracts (wrongly labeled by Plaintiff as "speculation"), that is precisely the analysis "based upon the facts and nuances in the case" expected of a foreign law expert. *Germaninvestments*, 225 A.3d at 336. It is also exactly what Mr. Bloch testified to at his deposition. Bloch Dep. Tr. at 158:5-14; 179:24-180:8; 232:25-235:21. It is up to the Court to decide whether it agrees with each expert's analysis and to give each opinion the weight it is owed.

152. ***Finally***, Plaintiff's argument that Mr. Phillips' rebuttal exceeded the scope of Mr. Bloch's report has no merit. Mr. Phillips' rebuttal highlighted the omissions in Mr. Bloch's report to the extent it fails to address (as Mr. Bloch acknowledges) whether Defendants had an outstanding Capital Commitment and

disregards the parties' Subscription Agreements. Phillips Rebuttal ¶¶ 15-22; Bloch Report ¶ 79. It is entirely proper for a rebuttal report to point out that the other expert's analysis is incomplete.

153. In sum, Plaintiff's arguments amount to nothing more than complaining about the standard analysis from a foreign law expert, much of which precisely mirrors its own expert's analysis. *See, e.g.*, Bloch Rebuttal ¶¶ 12 (agreeing with Mr. Phillips both "[redacted]" and "[redacted]"), 18 ("[redacted]"); 38 ("[redacted]"); 70 (agreeing with Mr. Phillips "[redacted]"). Plaintiff's arguments thus cannot serve as a basis for exclusion.

154. ***An Expert's Legal Opinion Goes to Weight, Not Admissibility.*** Even if the Court were to determine that parts of Mr. Phillips' opinion were improper, the Court is well equipped to make those determinations and should not exclude the entire opinion. Instead, the Court may consider how much weight to give the expert's opinion. *See CertiSign*, 2018 WL 293831, at *22 n.232 (considering expert's analysis of foreign law and declining to grant a motion *in limine* to exclude the expert's report and testimony). This is especially true in the context of a bench trial, because the Court's "gatekeeper" obligation in analyzing the admissibility of expert testimony "predominantly operates in cases that will be tried before a jury." *In re Del. Pub. Sch. Litig.*, 239 A.3d 451, 501 (Del. Ch. 2020). Without a jury, there is little need to exclude expert testimony.

155. ***Based on Plaintiff's Own Analysis, Mr. Bloch's Testimony Should Be Excluded At Trial.*** Defendants' view is that the Court should consider both parties' Cayman law experts. Should the Court grant Plaintiff's request to exclude Mr. Phillips, however, Defendants respectfully request that Mr. Bloch also be excluded.

156. Mr. Bloch engages in exactly the type of analysis that Plaintiff complains is improper. For example,

- Mr. Bloch provided a specific interpretation of Amendment 22 that implied a duty of good faith in the budget approval provisions. Bloch

Report ¶¶ 65-71.

- Mr. Bloch provided five separate factual scenarios related to this case and drew conclusions about how the law (e.g., the application of implied terms) would apply to each scenario. Bloch Report ¶¶ 72-87.
- Mr. Bloch offers an interpretation of a May 15, 2025 email from Mr. Bogdanov as contravening the LPA, stating that it "[redacted]" Bloch Report ¶¶ 88-94 (emphasis added).

B. The Parties Dispute Whether the Court Should Exclude Testimony Regarding Settlement Communications

157. **Plaintiff's Position:** Plaintiff objects to the use of any document or communications that was used or sent for the purpose of settlement, including but not limited to all communications sent "Without Prejudice" by the Parties. Under Delaware Rule of Evidence 408, settlement communications are not admissible to "prove or disprove the validity" of a claim. Under Cayman law, marking a documents or communications as "Without Prejudice" is the equivalent of marking communications for settlement under Rule 408. As such, Plaintiff requests the Court exclude any evidence or testimony regarding settlement communications, including

those marked "Without Prejudice."

158. **Defendants' Position:** Defendants agree that *settlement* communications may only be used by the parties consistent with Delaware Rule of Evidence 408, but oppose Plaintiff's overbroad attempt to bar the admission of *all* "without prejudice" documents for *any* purpose. This issue should be addressed document by document, because (i) not every document marked "without prejudice" is a settlement communication protected by Rule 408 and (ii) Rule 408 only bars the use of protected documents to "prove or disprove the validity or amount of a disputed claim." D.R.E. 408. All of the communications Plaintiff seeks to exclude predate the complaint or any threat of litigation and were business communications, and are thus outside the scope of Rule 408's protections. Further, given the purpose-specific use prohibition in Rule 408, Plaintiff's request is premature. Finally, Plaintiff has itself attached a "without prejudice" document to its own complaint. Dkt. 1, Compl. Ex. 9; *see also Buck v. Viking Hldg. Mgt. Co. LLC*, 2024 WL 639391, at *4 n.41 (rejecting exclusion, given party's use of a Rule 408 document).

XIII. PRE-TRIAL CONFERENCE

159. A pre-trial teleconference has been scheduled for September 11, 2025, at 3:15 p.m.

XIV. POST-TRIAL BRIEFING AND ARGUMENT

160. The Parties will discuss with the Court regarding its preference for post-trial briefing at the Pre-Trial Conference.

A. Plaintiff's Position

161. Plaintiff proposes simultaneous opening brief by 11:59 p.m. on September 23, 2025 and simultaneous answering briefs by noon on September 26, 2025, with no further briefing. Plaintiff respectfully requests entry of a final order as soon as possible because the Portfolio Companies are [redacted] due to the lack of funding at issue here. Each additional day that Defendants fail to provide funding for the Portfolio Companies, including answering the May 30 Capital Calls, threatens the Portfolio Companies and [redacted] and their development of numerous cutting-edge medical technologies.

B. Defendants' Position

162. Defendants agree that the schedule for post-trial briefing can be addressed at the pre-trial conference, but dispute Plaintiff's proposed schedule. Plaintiff may file its opening post-trial brief on any schedule it prefers; Defendants will file their answering post-trial brief 14 calendar days later; and Plaintiff may file its reply post-trial brief within five calendar days. The Parties can promptly reach out to the Court to schedule post-trial argument.

163. To the extent the Court finds any facts regarding the Portfolio Companies' performance relevant to these claims, they will show on the one hand, that the Portfolio Companies' lack of success or need for funding was not due to any breach by the Defendants but rather to the Portfolio Companies' own failure to perform (as Plaintiff had admitted before filing suit) or to Plaintiff's own overreaching and mismanagement, and on the other, that a number of Portfolio Companies have been able to achieve what appear to be lucrative deals even in the few weeks since the Complaint was filed. Just last week Replicate reportedly inked a research deal with Novo Nordisk for up to $550 million in funding; *see* https://www.appletreepartners.com/news/540.

164. First, the preferred post-trial briefing in this Court proceeds sequentially, with opening, answering, and reply briefs. As Vice Chancellor Laster has explained, Plaintiff's suggested simultaneous post-trial briefing is "less helpful" to the Court: "When addressing the legal issues in the case, the parties' post-trial briefs were less helpful than they could have been. . . . The parties also engaged in simultaneous post-trial briefing, with each filing an opening post-trial brief and an answering post-trial brief. As often happens when this sequence is used, the parties did not clearly engage with each other's arguments. This decision attempts to grapple with the result." *HOMF II Inv. Corp. v. Alternberg*, 2020 WL 2529806, at *25 (Del. Ch. May 19, 2020).

165. Second, Plaintiff bears the burden in this action, and it should be required to set forth its position on the evidence after trial in an opening post-trial brief, to which Defendants have a fair chance to respond. *Cf. CompoSecure, L.L.C. v. CardUX, LLC*, 2018 WL 660178, at *22 n. 283 (Del. Ch. Feb. 1, 2018) (instructing the parties to proceed based on burden of proof "to provide a framework for post-trial briefing" and noting that "[t]his approach facilitated a seriatim briefing schedule"), *aff'd in part, rev'd in part and remanded*, 206 A.3d 807 (Del. 2018).

XV. AMENDMENT OF PRE-TRIAL ORDER

166. This Pre-Trial Order may be amended upon application to the Court by any Party for good cause shown or by agreement of the Parties with approval of the Court.

/s/ Michael A. Barlow

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Dated: September 5, 2025

SO ORDERED this ___ day of _____, 2025.

_____
The Hon. Kathaleen St. Jude McCormick

EXHIBIT C

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

POST-TRIAL MEMORANDUM OPINION

Date Submitted: December 3, 2025
Date Decided: December 5, 2025

Michael A. Barlow, Shannon M. Doughty, Morgan R. Harrison, QUINN EMANUEL URQUHART & SULLIVAN LLP, Wilmington, Delaware; Garrett B. Moritz, Roger S. Stronach, A. Gage Whirley, ROSS ARONSTAM & MORITZ LLP, Wilmington, Delaware; Andrew M. Berdon, Rachel E. Epstein, Kathryn D. Bonacorsi, Jonathan M. Acevedo, Taylor L. Jones, Jenny Braun, QUINN EMANUEL URQUHART & SULLIVAN, LLP, New York, New York; Jessica T. Reese, John F. Ferraro, QUINN EMANUEL URQUHART & SULLIVAN, LLP, Boston, Massachusetts; *Counsel for Plaintiff ATP III GP, Ltd.*

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McCORMICK, C.

The plaintiff is the general partner of a Cayman exempted limited partnership that holds a portfolio of Delaware life science companies. The plaintiff sued its limited partners to enforce capital calls, to force them to work in good faith to approve budgets for the portfolio companies, and to obtain declarations concerning the plaintiff's rights under the fund agreement. The funding freeze at issue here placed several of the portfolio companies at risk of insolvency, and so the court entered a highly expedited schedule leading to trial.

This post-trial decision orders specific performance of all but one of the capital calls and otherwise sides with the limited partners. The plaintiff's effort to force budget approvals rests on an implied contractual duty of good faith recognized under Cayman law, a duty that constrains the exercise of discretionary contractual rights when it is implied. Although Cayman law recognizes this implied duty, no court has implied the duty in the context of an exempted limited partnership. This court will not be the first. And the plaintiff's requested declarations that are ripe, which also implicate primarily Cayman law, do not relate to the capital call or budgeting issues that warranted expedition of this case. They relate mainly to issues pending parallel proceedings in a Cayman court. This court thus defers to the Cayman court on those issues.

That's a highly abbreviated summary of what follows. Given the precarious position of the affected portfolio companies, the court worked hard to issue this decision promptly.[1] Wasting no time on wordsmithing, this introduction foregoes an

[1] The plaintiff requested that the court issue this decision on or by December 5, 2025.

extensive and riveting account of the facts learned at trial—the deeply human story of a fund formed by two doctors-turned-businessmen motivated to develop drug therapies that improve human health, their many successful years of collaboration, the temporary surge in early stage biotech investment spurred by a global response to the pandemic, the geopolitical events and attendant adjustments to risk strategies that strained the parties' relationship, and the complex legal framework governing their dispute. Although the court streamlined the decision given the press of time, these details and more follow.

I. FACTUAL BACKGROUND

Trial took place on October 16 and 17, 2025. The record comprises 1,930 trial exhibits, live testimony from five fact witnesses and three expert witnesses, deposition testimony from four fact witnesses, and 57 stipulations of fact.[2] These are the facts as the court finds them after trial.

[2] This decision cites to: C.A. No. 2025-0607-KSJM docket entries (by docket "Dkt." number); trial exhibits (by "JX" number); the trial transcript, Dkts. 277–79 ("Trial Tr."); and stipulated facts set forth in the Parties' Stipulation and Pre-Trial Order, Dkt. 209 ("PTO"). The parties called the following fact witnesses: Yuri Bogdanov (Rigmora CEO), Seth Harrison (ATP Founder and Managing Partner), Spiros Liras (ATP Venture Partner), Dmitry Rybolovlev (Rigmora Founder), and Joseph Yanchik (ATP Venture Partner). The parties called the following expert witnesses: Ilonna Rimm (Rigmora Biotechnology Investing Expert), Mark Robbins (ATP Biotechnology Investing Expert), and Ilya Strebulaev (Rigmora Venture Capital Expert). The parties submitted the deposition transcripts of the live witnesses and called the following witnesses by deposition only: Michael Ehlers (ATP Chief Scientific Officer, Venture Partner, and Portfolio Company Officer & Director), William Engels (ATP CFO), Daniel Finkelman (ATP General Counsel), and Alexey Yakovlev (Rigmora CFO). Depositions transcripts are cited using the witnesses' last name and "Dep. Tr."

A. The Fund And The Limited Partnership Agreement

In 2012, Dr. Seth Harrison and Dr. Dimitry Rybolovlev formed Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund").[3]

Both Harrison and Rybolovlev were medical doctors. Harrison received his M.D. from Columbia Medical School[4] and worked as a surgeon at a New York City hospital for a year.[5] He then left the field of medicine to attend Columbia Business School.[6] After business school, in the 1990s, he joined a large venture capital firm and formed Apple Tree Partners I to hold his life-science investments.[7]

Rybolovlev received his medical degree in 1990 from Perm Medical Institute and practiced medicine for a year after.[8] He switched careers in the 1990s when the Soviet Union was privatizing.[9] Rybolovlev acquired stakes in multiple companies before consolidating his investments in the most successful, a fertilizer manufacturer named Uralkali.[10] Rybolovlev acquired voting control of Uralkali by 2000, instituted "western style" corporate governance mechanisms,[11] and took it public in 2007 on the

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[3] PTO ¶ 23.

[4] Trial Tr. at 7:22–8:1 (Harrison).

[5] *Id*. at 8:1–3 (Harrison).

[6] *Id*. at 8:2–16 (Harrison).

[7] *Id*. 8:13–21 (Harrison).

[8] *Id*. at 345:2–14 (Rybolovlev).

[9] *Id*. at 346:8–347:1 (Rybolovlev).

[10] *Id*. at 347:2–16 (Rybolovlev).

[11] *Id*. at 347:20–348:5 (Rybolovlev).

London Stock Exchange.[12] Rybolovlev sold his interests in Uralkali in 2010, personally earning around $5 billion through the transaction.[13]

Rybolovlev decided to invest the proceeds in companies addressing the "three major ways" in which, in his view, the future of "humanity will benefit the most": "health, . . . food, and entertainment."[14] He ultimately invested in a diverse array of companies intended to fulfill these goals, including a cellular-based meat producer and AS Monaco Football Club.[15] To promote human health, Rybolovlev met with fund managers in the U.S. "to find an optimal way to invest in biotech industry."[16] He ultimately determined to replicate the investment strategy that led to his success with Uralkali, creating a "family-owned pharma company" using the "apparatus" of "venture capital."[17]

In 2010, a biotech analyst at Merrill Lynch introduced Harrison to Rybolovlev.[18] Harrison liked Rybolovlev's investment strategy.[19] Harrison and Rybolovlev formed the Fund to invest in and develop biotechnology.[20]

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[12] *Id.* at 348:6–7 (Rybolovlev).

[13] *Id*. at 348:11–13 (Rybolovlev).

[14] *Id.* at 351:2–6 (Rybolovlev).

[15] *Id.* at 351:7–352:6 (Rybolovlev).

[16] *Id*. at 349:24–350:5 (Rybolovlev).

[17] *Id.* at 16:18–23 (Harrison); *id*. at 350:6–9 (Rybolovlev).

[18] *Id.* at 9:10–14 (Harrison).

[19] *Id*. at 350:14–17 (Rybolovlev).

[20] *Id*.; *id.* at 9:24–10:10 (Harrison); *id.* at 349:20–351:9 (Rybolovlev); JX-1 (LPA) at 3; JX-1574 ("Bloch Report") ¶ 15.

ATP III GP, Ltd. ("ATP") serves as the General Partner of the Fund, and Harrison is the manager of ATP.[21] The Fund's largest limited partners, contributing approximately 98% of the Fund's overall capital,[22] are Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP, both owned by Rybolovlev's family trust.[23] The Rigmora entities are successors-in-interest to the original limited partners Blue Horizon Enterprise Ltd. and Ezbon International Ltd. (together with the Rigmora entities, "Rigmora").[24]

On November 1, 2012, the parties entered into the First Amended and Restated Limited Partnership Agreement (the "LPA"), which governs the Fund's operations.[25] The LPA is governed by the law of the Cayman Islands.[26] The parties have amended the LPA twenty-two times.[27]

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[21] PTO ¶¶ 13, 15.

[22] JX-1237 at 4 (contributions through 2024); JX 1302 at 3–5 (showing Defendants' combined contributions accounted for about 98% of the Fund's ~$2.309 billion of capital contributions as of December 31, 2024); PTO ¶¶ 57, 59–61, 63 (contributions in 2025); Trial Tr. at 469:11–22, 470:12–17 (Yakovlev) (explaining how to navigate JX-1237 and calculate total contributions); *id.* at 208:10–18 (Strebulaev). Harrison and Les Pommes have contributed $54.7 million combined. JX-1400 ¶ 44; Trial Tr. 11:16–12:5 (Harrison).

[23] PTO ¶¶ 17–20; *see also* Trial Tr. at 270:12–271:3, 271:13–15 (Bogdanov).

[24] PTO ¶ 18; *see also* Trial Tr. at 11:4–7, 25:10–17 (Harrison).

[25] LPA; *see also* PTO ¶¶ 24–25.

[26] LPA ¶ 18(g).

[27] JX-1–JX-6 (LPA and LPA Ams. 1–5); JX-8–JX-17 (LPA Ams. 6–15); JX-19 (LPA Am. 16); JX-89 (LPA Am. 17); JX-126 (LPA Am. 18); JX-132 (LPA Am. 19); JX-222 (LPA Am. 20); JX-480 (LPA Am. 20); JX-1068 (LPA Am. 22).

At issue here, the LPA provides a framework for making capital calls and approving budgets.[28] Also relevant to this litigation, the LPA contains an "Exculpation Provision" that protects ATP from liability for actions taken in good faith that are not willful fraud, willful misconduct, gross negligence, or an intentional and material breach of the LPA.[29] It as well contains a "Discretionary-Action Provision" that grants ATP the discretion to take action against any limited partner who breaches the LPA.[30] The LPA's "Global Default Provision" authorizes ATP as General Partner to declare a Limited Partner who failed to honor its capital call obligations a "Defaulting Partner," and outlines a set of remedies that ATP can elect to pursue.[31] Those remedies include imposing a "Default Charge" by reducing the limited partner's preferred units.[32]

B. The Historical Budgeting Process

The LPA authorizes the General Partner to call capital for "Projects approved by" the Limited Partners "in writing" and "in accordance with a budget therefor approved" by the Limited Partners.[33] The LPA thus granted Rigmora the right to approve budgets for projects before the General Partner can call capital for those projects.

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[28] LPA ¶ 5(a); LPA Am. 3 ¶ 3.

[29] LPA ¶ 2(g).

[30] *Id.* ¶ 18(g)(iv).

[31] *Id.* 5(c).

[32] *Id.*

[33] LPA Am. 3 ¶ 5(a)(iii).

Until late 2024, the process by which the parties agreed on budgets began with informal discussions among Rigmora's Chief Investment Officer (whoever occupied that position at the time), Harrison, and Rybolovlev.[34] For each new Series A investment, Harrison and Rybolovlev met—often in person, although Harrison lives in the United States and Rybolovlev lives in Switzerland—to discuss the opportunity, its prospects for commercial and scientific success, and funding needs.[35]

Rybolovlev personally approved every new investment informally.[36] Once he did so, ATP prepared a packet of materials to secure formal approval.[37] The packet included things like a CFIUS memorandum,[38] a request for formal budget approval,[39] and an investment memorandum.[40]

ATP employees drafted the investment memoranda,[41] which served as a "roadmap from the implementation of a project all the way to the delivery of value as measured by exits."[42] The investment memoranda included the investment thesis, the investment rationale, and an assessment of the quality of the company's

[34] Trial Tr. at 14:1–24 (Harrison).

[35] *Id.* at 31:15–32:4, 33:5–10 (Harrison); *id*. at 349:9–14, 355:4–12 (Rybolovlev).

[36] *Id.*

[37] *Id.* at 32:19–33:4 (Harrison).

[38] JX-310 at 6–7.

[39] Trial Tr. at 31:15–33:4 (Harrison); *id*. at 355:9–18 (Rybolovlev).

[40] *Id.* at 32:19–33:4 (Harrison); *id.* at 245:13–17, 251:3–13 (Liras).

[41] *Id.* at 132:8–12 (Harrison).

[42] *Id*. at 241:21–24 (Liras).

founders.[43] The memoranda also contained performance milestones by which ATP could "measure progress against stated goals."[44]

As Harrison explained, milestones supplied a useful starting point in projecting a portfolio company's performance, but the initial milestones identified in the investment memoranda became less important in middle and later stages of the investment.[45] As the portfolio companies were "developing drugs from new technologies" and "working with teams of scientists of various stripes," their progress could not easily be predicted from the outset and they would often pivot if their initial strategy was not progressing well.[46]

In this litigation, Rigmora argues that the milestones served as conditions to Rigmora's obligation to fund approved budgets.[47] For this purpose, Rigmora cites to evidence reflecting the significance that ATP placed on milestones.[48] But that

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[43] *See, e.g.,* JX-150 at 8.

[44] Trial Tr. at 242:1–6 (Liras). They also included risk mitigation strategies, which could involve analyses of comparable companies to assess the novelty of the science and its potential value to patients and investors. *Id*. at 242:6–10 (Liras).

[45] Trial Tr. at 134:5–135:13 (Harrison).

[46] *Id*.

[47] JX-1579 ("Rimm Report") Figs. 5–11; *see also, e.g.*, JX-243 at 32 (Evercrisp) (dividing funding into "six milestone-driven tranches"); JX-114 at 1, 7, 32–33 (Apertor) (establishing $50m financing in "milestone-driven tranches"); JX-269 at 27 (Red Queen) (establishing tranches "based on milestones and progress").

[48] *See* Dkt. 269 ("Rigmora Post-Trial Br.") at 8, 28 (citing investment memoranda explaining the significant of milestones, JX-243 at 32, JX-309 at 4, JX-269 at 27; Ehlers's testimony that milestones were valuable for focusing the company's management and protecting investors, Trial Tr. at 403:20–404:2 (Ehlers); and Harrison's investment deck characterizing the Fund's investing practices as "[d]iscipline funding" consisting of "[m]ilestone-based tranches infused over time," JX-2280 at 6).

evidence reflects that ATP viewed milestones as important tools for managing the portfolio companies. No evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[49] Rigmora lacked the substantive expertise to set or track performance milestones.[50] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[51] The fact that certain of the Rigmora approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda.

After formal budget approval, the Fund would enter into Series A stock purchase agreements with the relevant portfolio companies.[52] ATP viewed the Series A commitments as key to recruiting top scientists and staff.[53] This is because most of the Fund's portfolio companies rely on funding from the Fund exclusively.[54]

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[49] *Id*. at 33:11–14 (Harrison).

[50] Bogdanov Dep. Tr. at 31:2–9; 45:23–46:10; 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–31.

[51] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[52] Trial Tr. at 34:19–35:2 (Harrison).

[53] JX-1174 at 2.

[54] Trial Tr. at 20:8–21:1 (Harrison).

C. Rigmora's Capital Commitments

Since the inception of the Fund, Rigmora agreed to multiple capital commitments. The LPA limits ATP's right to call capital to the maximum amount of money each limited partner, including Rigmora, committed to the Fund, which the LPA refers to as a limited partner's "Contingent Subscription."[55] Rigmora's commitments began with an initial commitment of $1.425 billion alongside the November 2012 LPA and were followed by additional commitments negotiated in connection with amendments to the LPA.

1. Rigmora Commits $1.425 Billion To Establish The Fund.

The parties agreed to capitalize the Fund with $1.5 billion initially.[56] Rigmora would supply $1.425 billion and Harrison would supply the remaining $75 million pursuant to a loan from Rigmora.[57] Rigmora made its initial capital commitments totaling $1.425 billion on November 1, 2012, under subscription agreements signed by Blue Horizon for $698.25 million and Ezbon for $726.75 million.[58] The

[55] LPA ¶ 5(a)(i).

[56] Trial Tr. at 350:18–23 (Rybolovlev).

[57] PTO ¶¶ 26–27; Trial Tr. at 23:16–25:22 (testifying that Rigmora's total subscription at the time the parties executed the LPA was $1.425 billion when combining Blue Horizon's and Ezbon's subscriptions); JX-212 at 19–23; JX-213 at 19–23; JX-216 at 19–23; Trial Tr. at 25:18–26:3 (Harrison); *id*. at 354:12–19 (Rybolovlev); *see also* JX-1, Sch. D (describing Rigmora's financing of Harrison's capital contributions).

[58] JX-212 at 19–23 (signature pages); JX-213 at 19–23 (signature pages); Trial Tr. at 25:18–22 (Harrison).

subscription agreements were "[s]ubject to the terms and conditions set forth in . . . the [LPA]."[59]

Rigmora also agreed to "make such other capital contributions and payments to the Fund as provided for in the LPA, in the manner and at the times provided in the [LPA]," and to become "bound by the terms of the [LPA]."[60] ATP's right to call capital, in addition to being limited in amount to each partner's Contingent Subscription, was restricted to contractually specified purposes.

2. The Parties Amend The LPA To Create Investment Pools.

Amendment 13 to the LPA, dated February 4, 2019, introduced a Fund structure through which commitments, assets, and contributions would be allocated and tracked across separate "pools."[61] The aim of the pool concept was to segregate money so that profits on new investments would not leak to former Fund employees.[62] As Harrison explained, "we had old teams and new teams coming in that would found [sic] new deals. So we needed to segregate their deals in a pool out of fairness."[63] Pools also allowed the parties to increase capital commitments without having to establish new entities, thus avoiding potential know-your-customer roadblocks.[64]

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[59] JX-212 ¶ 1; JX-213 ¶ 1.

[60] *Id.*

[61] JX-15 (LPA Am. 13) ¶ 17(a).

[62] Trial Tr. at 27:11–28:9 (Harrison)

[63] *Id.* at 27:13–17 (Harrison).

[64] *Id.* at 27:11–28:9 (Harrison).

Amendment 13 established two pools: Pool A, which held the existing projects, and Pool B, which held the Fund's new projects.[65] Rigmora was responsible for funding 100% of capital called for Pool B.[66] Amendment 13 stated that expenses "directly attributable" to a particular pool would be allocated exclusively to that pool with other expenses apportioned between the pools based on the relative cost basis of the remaining assets in each pool.[67] Amendment 13 identified the "Management Fee" paid to Harrison, and the "Apple Tree Life Sciences, Inc. Fee, or "ATLS Fee" for Fund expenses incurred across the portfolio companies, as expenses attributable to both pools.[68]

Amendment 13 further provided that "separate and distinct records shall be maintained for each Pool, and capital contributions . . . shall also be accounted for separately on a Pool-by-Pool basis."[69]

3. Rigmora Commits An Additional $1 Billion.

Rigmora increased its commitment to the Fund as early-stage biotech investment surged in 2020 and 2021, spurred by the global response to the Covid-19

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[65] LPA Am. 13 ¶ 17(a).

[66] *Id.*¶ 17(b).

[67] *Id.* ¶ 17(d)).

[68] JX-9 (LPA Am. 7) Schedule A ¶ 3; JX-19 (LPA Am. 13) ¶ 17(d). ATLS is a wholly owned subsidiary of the Fund that covers Fund operational expenses like facility costs, leases, rents, and employee costs. JX-9 (LPA Am. 7) Schedule A ¶ 3; Trial Tr. at 17:17–18:4 (Harrison). The parties allocated the Management Fee and ATLS Fee between the pools according to fixed percentages. LPA Am. 20 ¶ 6.

[69] LPA Am. 13 ¶ 17(a).

pandemic.[70] Amendment 17 to the Limited Partnership Agreement, dated September 9, 2020, committed Rigmora to fund an additional $1 billion to be allocated between Pool B and a new Pool C.[71] Thereafter, Pool A would consist of Rigmora's original $1.425 billion capital commitment and all economics of the Fund not expressly allocated to Pools B or C. Pools B and C would split Rigmora's new $1 billion commitment.[72]

Amendment 17 further specified that Pool B would contain: Chinook Therapeutics U.S., Inc.; Nine Square Therapeutics Corporation; and Initial Therapeutics, Inc., along with a proportionate share of the Management Fee and ATLS Fee.[73] Pool C would contain Kynos Therapeutics Ltd and any new projects after the execution of Amendment 17, along with a proportionate share of the ATLS Fee and Management Fee.[74]

Each of these pools would be funded "exclusively" by Rigmora, and "[a]ll capital invested in the Pool C Projects . . . [would] be treated as contributed to [Pool C]."[75]

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[70] Trial Tr. at 362:7–12 (Rybolovlev); *see also id.* at 402:20–22 (Ehlers); JX-1579 ¶ 19.

[71] Trial Tr. at 29:1–19 (Harrison); JX-89 (LPA Am. 17).

[72] LPA Am. 17 ¶ 20(a)

[73] *Id.*

[74] *Id.*

[75] *Id.* ¶ 20(b).

After Amendment 17, the parties executed amended subscription agreements under which Blue Horizon and Ezbon committed to contributing $490 million and $510 million, respectively, to Pools B and C.[76]

In Amendment 19, dated November 27, 2020, the parties renamed Pools A, B, and C, as Pool ATP IV, Pool ATP V-1, and Pool ATP V-2, respectively.[77] In their testimony, the witnesses further shortened the Pool names to Pool IV, Pool V-1, and Pool V-2,[78] and this decision follows suit.

D. Amendment 20 To The Limited Partnership Agreement

In 2021, while investments in early-stage biotech companies still surged, the parties decided to restructure the economic rights and obligations surrounding an existing Pool IV project called Braeburn Inc. The Fund founded Braeburn in 2012 as "a Phase 1 company."[79] By 2021, it was "market[ing] a drug for opioid addiction" and had around "$300 million in sales revenue."[80] Pool IV held Braeburn, but the company was "capital intensive."[81] So Rybolovlev agreed to fund the capital commitments to Braeburn, and ATP agreed to "change[] . . . carry economics in favor of [Rybolovlev]."[82] To facilitate this arrangement, the parties amended the LPA to

[76] Trial Tr. at 41:11–42:14 (Harrison); JX-99; JX-101.

[77] JX-132 (LPA Am. 19) ¶ 1; Trial Tr. at 28:22–24 (Harrison).

[78] *See, e.g.*, Trial Tr. at 40:19–23 (Harrison).

[79] Trial Tr. at 44:14–19 (Harrison).

[80] *Id.* at 44:13–21 (Harrison).

[81] *Id.* at 45:8–21 (Harrison).

[82] *Id*. at 45:8–24 (Harrison); LPA Am. 20 ¶ 21(b).

"segregate the investment in Braeburn."[83] Meanwhile, ATP had placed new executives in charge of existing projects.[84] This, coupled with changes at Braeburn, prompted a wholesale restructuring of Pool IV to allocate existing assets and liabilities to newly created pools and align managers' carried interests with their performance.[85]

In June 2021, the parties executed Amendment 20 to for this purpose.[86] Amendment 20 created two new pools.[87] The first, "Pool Braeburn," held Braeburn in a segregated fund for which Rigmora would be the exclusive source of capital.[88] The second, "Pool V-3," held seven companies formerly under Pool IV that "hadn't quite made it" and "would be managed by the members of our new team"[89]—Ascidian Therapeutics, Inc., Gala Therapeutics, Inc., Galary, Inc., Galvanize Therapeutics, Inc., Galaxy Medical, Inc., Intergalactic Therapeutics, Inc., and Marengo

[83] *Id.* at 44:22–45:2 (Harrison).

[84] *Id.* at 46:6–15 (Harrison).

[85] LPA Am. 20 ¶¶ 21(a), 22(a) (describing Pools V-3 and Braeburn as "consist[ing] of the assets, liabilities, income, gains, losses and expenses associated with the Partnership's investments" in the relevant portfolio companies); Trial Tr. at 44:22–45:11 (Harrison) (Pool Braeburn created to change "carry economics" for investment in Braeburn); *id.* at 39:21–41:10, 46:6–15 (Harrison) (Pool V-3 set up to segregate economics for new managers).

[86] Trial Tr. at 44:11–46:15 (Harrison).

[87] LPA Am. 20 ¶¶ 21, 22.

[88] LPA Am. 20 ¶ 21; *id.* ¶ 21(b) (stating that capital shall be called from Rigmora "exclusively" and that "[n]o other Partner shall be required to contribute capital to or in respect of Pool Braeburn").

[89] Trial Tr. at 46:6–15 (Harrison).

Therapeutics, Inc.[90] Amendment 20 also reduced Rigmora's funding commitments to Pool IV.[91]

The parties dispute whether Rigmora agreed to increase its overall capital commitments through Amendment 20. Before Amendment 20, Rigmora had committed a total of $2.425 billion: $1.425 billion to Pool IV and $1 billion to Pools V-1 and V-2.[92] Of that amount, Rigmora had contributed approximately $1.3 billion[93] to Pool IV and $58.5 million to Pools V-1 or V-2.[94] Rigmora's commitments thus left around $1.067 billion in head room in its Contingent Subscription to achieve the then contemplated projects.[95] In this litigation, Rigmora argues that $1.067 billion was

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[90] LPA Am. 20 ¶ 22(a).

[91] LPA Am. 20 ¶ 24.

[92] PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); -213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a) (committing an additional $1 billion to Pools B and C); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1 (renaming Pool A to Pool IV and Pools B and C to Pools V-1 and V-2 respectively).

[93] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840,047.14).

[94] *See id.*, Tab "Capital Calls – V-1 and V-2," Adding cells D23 and D47, the totals for Rigmora's contributions to V-1 and V-2, yields $58,486,530.

[95] As described in the legal analysis, immediately prior to Amendment 20's adoption, Rigmora committed $2.425 billion to the Fund. PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); JX-213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1. Rigmora's combined contributions to all pools immediately prior to Amendment 20's adoption was $1,358,326,577.14. JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (showing Rigmora's total contributions to Pool IV as $1,299,840,047.14); *id.*, Tab "Capital Calls – V-1 and V-2," Cells D23, D47 (showing Rigmora's total contributions to Pools V-1 and V-2 as $58,486,530). Subtracting Rigmora's capital contributions of $1,358,326,577.14 from its then current Contingent Subscription of $2.425 billion yields unfunded capital commitments of $1,066,673,422.86.

more than enough to accomplish anticipated projects. And the parties did not expressly amend the subscription agreements in connection with Amendment 20 as they had with prior LPA amendments.[96]

But Amendment 20 and communications leading up to it, all during the biotech boom, reflect that the parties anticipated unfunded commitments exceeding $1.067 billion, and total commitments from Rigmora exceeding $2.425 billion.

In May 2021, Harrison emailed a draft outline of the transaction to Rigmora's then-CEO and CIO Anna Kolonchina, who indicated Rigmora's assent to the outline a few days later.[97] The outline included a section titled "Remaining Unfunded Capital Commitments" of approximately $1.385 billion as follows: (1) $20 million for ATP IV; (2) $220 million for ATP V-1; (3) $664 million for ATP V-2; (4) $291 million for new Pool ATP V-3; and (5) $189.95 million for new Pool Braeburn.[98] Adding up Rigmora's obligation for those commitments (approximately $1.384 billion),[99] to its then-funded commitments ($1.3 billion) equals $2.684 billion.

On its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, more than those of the May 2021 outline.[100]

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[96] *See* PTO ¶¶ 26–27, 30 (listing amendments to subscription agreements).

[97] JX-195 at 1 (Kolonchina circulated a revised draft and stating it "make[s] sense to start drafting a long form" amendment).

[98] JX-195 at 4–5.

[99] Of that, Rigmora would be responsible for approximately $1.384 billion based on its agreement to fund 99.6028% of Pool IV and Pool V-3 and 100% of the remaining pools. JX-195 at 1, 4–5.

[100] LPA Am. 20.

Amendment 20 reflected anywhere from $304.6 to $309.2 million in contributions to Pool V-3[101] (more than the $291 million reflected in the outline). It also reflected a minimum of $189.9 million to Pool Braeburn plus a commitment to fund additional securities fees (thus likely more than the flat $189.9 million reflected in the outline).[102] Amendment 20 reduced the $1.425 billion commitment to Pool IV consistent with the email (subtracting approximately $92 million to even the

[101] As discussed in the legal analysis, to Pool V-3, Amendment 20 reflected a total commitment of $500 million. LPA Am. 20 ¶ 22(b). This included $189,544,660 in "deemed commitments" to the existing investments into the Pool V-3 companies and implied approximately $310.5 million in new commitments. *Id.* The new commitments expressly identify two new expenses totaling $305.8 million: $70,853,399 in previously approved, unfunded budgets and $235 million in additional commitments to those companies. *Id.* Amendment 20 further states that "Ezbon, Blue Horizon, Harrison, and Les Pommes shall contribute 50.7974%, 48.8054%, 0.1869%, and 0.2103%, respectively," to any unfunded remaining budgets. *Id.* Assuming the implied $310.5 million, then Rigmora would be required to contribute approximately $309.2 million. Assuming the expressly noted $305.8 million, then Rigmora would be required to contribute approximately $304.6 million. So Amendment 20 reflects anticipated additional capital commitments from Rigmora to Pool V-3 in a range of $304.6 million to $309.2 million.

[102] As discussed in the legal analysis, to Pool Braeburn, Amendment 20 reflected Rigmora's commitment of $189.9 million. LPA Am. 20 ¶ 21(a). Amendment 20 also committed Pool Braeburn to "any additional securities of Braeburn acquired by the Partnership after the date of Amendment 20" and fees and expenses related to Pool Braeburn. *Id.* ATP's former CFO Engels testified that the Braeburn later purchased $30.6 million in additional Series B shares for Braeburn and called approximately $9 million in expenses to Pool Braeburn. Engels Dep. Tr. at 355:3–15. The parties executed a settlement agreement in December 2024 to resolve a dispute that Rigmora initiated in Cayman. Trial Tr. at 71:5–10 (Harrison). Pursuant to that settlement, the parties waived the then-remaining $21.3 million in commitments to Pool Braeburn. Engels Dep. Tr. at 355:16–21; JX-1068 (LPA Am. 22); JX-1072.As Engels explained, these commitments "netted out to a total obligation of $208,355,000." Engels Dep. Tr. at 355:22–356:4. Even assuming that the parties did not know the precise costs of the additional securities, fees, and expenses at the time of executing Amendment 20, the Amendment anticipated $189.9 million in additonal funding to Braeburn.

commitment to the funds already contributed and adding the then-anticipated $20 million in fees)[103] but did not reduce the $1 billion commitment to Pools V-1/V-2.

And immediately following Amendment 20, ATP began calling committed capital from Rigmora and Harrison. On June 24, 2021, ATP transmitted a capital call to Rigmora for approximately $16.4 million, consisting of $2 million for Pool Braeburn, $1.6 million for Pool V-2, and $12.8 million in expenses charged to the pools, all split among Rigmora and Harrison in line with their commitment obligations to the pools.[104]

This capital call—and every call that followed—included as "Exhibit A" a tracker of the outstanding capital commitments.[105] The tracker included the amount of funds being called from each party on a pool-by-pool basis (including the breakdown of ATLS fees proportionately for each pool), and the amount of unfunded committed capital that would remain following the capital call.[106] Exhibit A to the June 2021 capital call evidenced a total remaining commitment of $1.447 billion.[107] Before this

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[103] The parties agreed to reduce Pool IV's remaining unfunded commitments from the initial $1.5 billion to approximately $20 million to be used to cover expenses, including the cost of litigating a then-ongoing portfolio company exit. JX-1061 (LPA Am. 20) ¶ 24. The actual cost of expenses related to that litigation, and what was ultimately paid into Pool IV after Amendment 20, totaled around $33.3 million. Engels Dep. Tr. at 321:20–322:22. Adding Rigmora's share of those costs to the amount Rigmora contributed to Pool IV prior to Amendment 20 equals $1,333,059,463.85. *See infra* § II.A.1.

[104] Trial Tr. at 47:10-48:3 (Harrison); JX-230 at 1–2.

[105] JX-230 at 4; Trial Tr. at 48:19–50:18 (Harrison).

[106] *Id.*

[107] JX-224 at 3.

litigation, no one at Rigmora (including then-CEO Kolonchina, who received these calls) ever objected to the accounting.[108]

E. Amendment 22 To The Limited Partnership Agreement

Biotech markets retrenched in 2022,[109] and Russia invaded the Ukraine early that year.[110] Rigmora's investment strategy and risk appetite changed after these events,[111] and the parties' relationship began to strain.[112] By 2023, Rigmora had started conditioning its capital contributions on budget reductions.[113] Braeburn had achieved commercial success.[114] The FDA approved Braeburn's drug Brixadi, transforming Braeburn into a commercial-stage company with multi-billion dollar potential.[115] In July 2021, Braeburn entered into a royalty purchase agreement with ATP which gave ATP a license to Braeburn's IP and the associated royalty

[108] Trial Tr. at 48:19–51:1 (Harrison); *id.* at 474:22–476:10 (Yakovlev) (testifying that he was "not . . . aware" of anyone at Rigmora challenging these records)

[109] *Id.* at 382:10–19 (Rybolovlev).

[110] *Id.* at 199:2–3 (Strebulaev).

[111] JX-463 at 2–3; Trial Tr. at 51:15–52:12 (Harrison). At trial, Rybolovlev denied that the invasion of Ukraine played a part in Rigmora's decision making. Trial Tr. at 352:20–353:3 (Rybolovlev).

[112] *See* Trial Tr. at 51:15–52:12 (Harrison).

[113] JX-698.

[114] PTO ¶¶ 48–50.

[115] *Id.*

payments.[116] And Rigmora demanded immediate distributions from Braeburn.[117] ATP refused the demand.[118]

Ultimately, ATP sued in the Cayman Islands to compel Braeburn distributions.[119] In that litigation, Rigmora previewed the defense it would make in this litigation. On October 10, 2024, Kolonchina filed an affidavit in the Cayman court.[120] The LPA authorizes the General Partner to request capital calls in "an amount equal to, *but not in excess of*" the "Contingent Subscriptions" as that term is defined in the LPA.[121] In an October 10, 2024 affidavit, Kolonchina stated, for the first time, that Rigmora's "combined Contingent Subscriptions are US$2.425 billion."[122] Because Rigmora had already funded $2.6 billion, in Rigmora's view, "it is therefore impossible" that Rigmora had outstanding Contingent Subscriptions.[123]

Rigmora did not stand on its newly formed legal defense in the Cayman litigation but instead agreed to meet its capital obligations.[124] The day that she filed her affidavit, Kolonchina stated in an email to ATP that Rigmora would pay a

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[116] JX-586 at 2,

[117] Trial Tr. at 67:9–68:14 (Harrison); PTO ¶¶ 51, 53.

[118] PTO ¶ 52.

[119] PTO ¶ 54; Dkt 57 ("Answer") ¶¶ 98, 100.

[120] JX-1002.

[121] LPA ¶ 5(a)(i) (emphasis added).

[122] JX-1002 ¶¶ 23–26.

[123] *Id.*

[124] JX-998 at 1.

pending capital call although it was "not obligated to do so."[125] By October 2024, Rigmora was explicitly disclaiming any obligation to respond to capital calls for budgets already approved in writing, insisting that further payments would be made only "on a voluntary basis."[126]

During this time, ATP portfolio companies were nearing the end of their Series A commitments and initial budgets, making new budgets critical.[127]

Harrison flew to Monaco and suggested to Rybolovlev that they settle the Cayman litigation.[128] This led to a "couple of days of meetings" where they "agreed to the basic outline of a settlement in order to continue to work together."[129] On December 20, 2024, the parties implemented the settlement terms through Amendment 22 to the LPA.[130]

Through Amendment 22, Rigmora agreed to "discuss" budgets for ATP portfolio companies in exchange for distributions from a newly secured Braeburn royalty valued at approximately $700 million.[131] Amendment 22 provides:

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[125] *Id.*

[126] *Id.*

[127] Trial Tr. at 72:6–73:10 (Harrison).

[128] *Id.* at 68:22–69:1 (Harrison).

[129] *Id.* at 68:24–69:4 (Harrison).

[130] *See* LPA Am. 22 ¶ 26; Trial Tr. at 275:6–21 (Bogdanov).

[131] LPA Am. 22 ¶¶21, 26. By this time, Braeburn was a successful public company and the Braeburn royalty reflected the Fund's share of the company's cash flows. Trial Tr. at 64:18–65:12 (Harrison). ATP removed the Braeburn royalty from the Fund into a separate entity, ATP LLC. *Id.* Amendment 22 allowed Rigmora to receive distributions from the Braeburn royalty. LPA Am. 22 ¶ 21.

> From and after the date of [Amendment 22], the General Partner and [Rigmora] shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Bioscience, Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized . . . .[132]

Amendment 22 noted, on its face, the projected dates by which each company would run out of cash: January 2025 for Aulos, February 2025 for Replicate, April 2025 for Nereid, May 2025 for Nine Square, and first quarter 2026 for Ascidian.[133]

At the same time, Amendments 22 created a "Royalty Financing" contingency. It stated that "[i]f any approval of a new budget is given by [Rigmora], *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by [Rigmora] on a sale or financing of its interest in ATP LLC."[134] Put differently, no budget for entities identified in Amendment 22 would be approved, and thus subject to capital calls, absent a Royalty Financing.

Harrison expected that the parties would work together to obtain the Royalty Financing.[135] These expectations were consistent with the terms of Amendment 22, which mandates that, in pursuing the financing, as well as approving budget proposals, each party would "do and perform, or cause to be done and performed, all

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[132] LPA Am. 22 ¶ 26.

[133] *Id.* ¶ 26.

[134] *Id.* ¶ 26 (emphasis added).

[135] Trial Tr. at 77:24–78:3 (Harrison).

such further acts and things . . . as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation of the transactions contemplated hereby."[136]

F. Rigmora's New Management Shifts Funding Priorities And Delays Budget Approvals.

In October 2024, Kolonchina left Rigmora,[137] and Rybolovlev promoted Yuri Bogdanov to CIO and co-CEO.[138] Rybolovlev had known Bogdanov for two decades.[139] Before Rigmora, Bogdanov had worked for Uralkali in Russia.[140] Prior to his elevation at Rigmora, Bogdanov worked as a special advisor for several years which entailed giving a "second opinion" and challenging management on investments and other matters.[141] Bogdanov was promoted due to his "general understanding" of Rigmora's operations.[142] But Rybolovlev identified drawbacks to his elevation. For one, "background i[n] auditing" made him "very, very, conservative."[143] Also, Bogdanov had no prior involvement in the Fund's company budgets nor any meaningful exposure to biotech.[144]

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[136] LPA Am. 22 ¶ Miscellaneous.

[137] Trial Tr. at 378:7–14 (Rybolovlev)

[138] *Id.* at 271:24–272:7 (Bogdanov).

[139] Trial Tr. at 273:20–274:1 (Bogdanov).

[140] *Id.*

[141] *Id.* at 272:14–20 (Bogdanov).

[142] Rybolovlev Dep. Tr. at 51:5–52:4.

[143] *Id.* at 50:17–51:3.

[144] Trial Tr. at 272:8–24, 316:24–13 (Bogdanov).

1. Bogdanov Proposes Drastically Reducing Rigmora's Investment In ATP.

Years before his elevation, Bogdanov was working as an investment analyst at Rigmora and recommended that Rigmora slash its investment in ATP.[145] By the fall of 2022, Rigmora's investment strategy and macroeconomic trends landed Rigmora in what Bogdanov described as a "liquidity crisis."[146] To address it, Bogdanov prepared an internal memorandum proposing a change in investment strategy.[147]

In the memorandum, Bogdanov observed that "two to three years ago" a crisis with similar characteristics had been "resolved by liquidating the private equity portfolio."[148] He warned that Rigmora's structure, with mainly "venture businesses (biotech [and] gaming) carries similar risks that had led to the current crisis: poorly predictable money inflows (divestments) and massive outflows (capital calls), which will grow exponentially if the divestments are delayed."[149]

Bogdanov's solution was straightforward: "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture."[150] Otherwise, Rigmora would remain trapped in "the same logic of

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[145] JX-446.

[146] *Id.*; *see also* Trial Tr. at 352:10–15 (Rybolovlev) (testifying that Rigmora did "not like to keep a lot of liquidity on hand" because "the money, whether it's cash, it has to work").

[147] JX-446; *see* Trial Tr. at 318:2–321:23 (Bogdanov).

[148] JX-446 at 1.

[149] *Id.*; Trial Tr. at 320:11–18 (Bogdanov).

[150] JX-463 at 2; Trial Tr. at 320:3–7 (Bogdanov).

shifting money from less risk (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time" to resolve periodic emergency cash shortages.[151]

According to Bogdanov, Rigmora would "most importantly" re-encounter emergency cash shortages due to "guaranteed obligations on . . . biotech venture projects."[152] "Biotech ventures" referred to the Fund.[153] And although the Fund could be "a source of capital gains," it could not "serve as a reliable source of cash for funding [Rigmora's] regular needs."[154] If Rigmora were to exit its biotech investments, it would gain a "buffer" of at least $300 million—enough to mitigate Rigmora's liquidity crisis and achieve a "stable position" long term.[155] Bogdanov concluded that the way "to start moving towards the cash buffer" was "to drastically reduce ATP payments."[156]

[151] JX-463 at 2; Trial Tr. at 320:19–24 (Bogdanov).

[152] JX-440 at 2 (emphasis added). This email was sent by Bogdanov's associate, but Bogdanov testified that he is "the author." Bogdanov Dep. Tr. 162:5–10.

[153] Trial Tr. at 320:8–10 (Bogdanov).

[154] JX-440 at 2.

[155] JX-446 at 1.

[156] JX-462 at 2 (emphasis added); Bogdanov Dep. Tr. at 174:14–21.

Bogdanov believed that Rigmora could achieve "drastic" payment reductions through "tight controls," including "clear rules for review and approval of new projects."[157] His "priority number one [was] to create the cash buffer."[158]

2. Bogdanov Delays Budget Approvals To Reduce Funding Commitments.

No one gave Bogdanov any "specific instructions" on his new priorities when he became CIO and co-CEO in late 2024.[159] All indications are that Bogdanov set his fall 2022 plans in motion and began implementing a shift toward reducing long-term investments and building a cash buffer by cutting funds to ATP.

Meanwhile, ATP was on the verge of crisis. That is what prompted Harrison to make settlement overtures to Rybolovlev, overtures that led to Amendment 22 and Rigmora's commitment to discuss new budgets. And ATP wasted little time after executing Amendment 22 before sending Rigmora proposed budgets.[160]

Bogdanov had negotiated Amendment 22 for Rigmora and remained ATP's point of contact.[161] On December 24, 2024, Harrison emailed Bogdanov budget requests for:[162] Auolos, "align[ing] with management's recommendation for the middle scenario of $28M"; Replicate, for "$11M"; and Nine Square, "with a budget

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[157] JX-462 at 2; Bogdanov Dep. Tr. at 173:16–22.

[158] JX-462 at 2.

[159] Trial Tr. at 342:20–343:3 (Bogdanov).

[160] JX-1079 at 1; Trial Tr. at 79:10–80:5 (Harrison).

[161] Trial Tr. at 271:24–272:7, 275:2–5 (Bogdanov).

[162] JX-1079 at 1.

request of $15M" (the "Budgeting Requests").[163] Harrison also explained that he had attached materials concerning budgets for: Nereid, which could merge with Marlinspike and "utilize Marlinspike's remaining budget" and therefore required no additional funds; and Ascidian, which would "require more discussion and time to understand" due to "contingent variables" expected to "emerge" in the coming year.[164]

Harrison provided a spreadsheet showing "expected tranching by quarter for 2025," plus access to data rooms with "supporting materials for the new budgets."[165] ATP had not historically provided this level of information when requesting budget approval.[166] Harrison testified at trial that ATP provided this information "to make sure [Rigmora] understood that after the settlement agreement we were being radically transparent."[167] Bogdanov forwarded Harrison's email to Rigmora's analyst, Zufar Iskhakov, exclaiming "Let's start. Merry Christmas!"[168] This seems like a positive response. Yet Bogdanov testified in deposition that he did not mean "let's start approving budgets."[169] And events that followed seem to suggest that he meant "let's start" imposing "tight controls."

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[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] Trial Tr. at 80:18–81:7 (Harrison).

[167] Trial Tr. at 128:6–9 (Harrison).

[168] JX-1079 at 1.

[169] Bogdanov Dep. Tr. at 228:13–15.

Bogdanov prioritized Replicate, which Harrison had warned would "run out of cash by the third week of January."[170] Over the holidays, Bogdanov's team prepared a "list of the follow-up diligence questions,"[171] which Bogdanov sent to Harrison.[172]

Bogdanov testified that this was appropriate. He characterized the list as "basic diligence questions on the company's past performance" and "how the company executed its original plan."[173] The questions determine the "most important indicators before [] mak[ing] any decision on the new budget."[174]

Harrison, on the other hand, viewed Bogdanov's diligence questions as bizarre.[175] As he testified, Rigmora "already knew about" Replicate and had "approved the budget[.]"[176] Replicate had pivoted "from oncology to a rabies vaccine over the course of the fund's investment."[177] As Harrison explained: "this is a company that we founded I think in 2021 and on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with [Rybolovlev]."[178]

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[170] Trial Tr. at 291:11–16 (Bogdanov).

[171] *Id.* 291:17–20 (Bogdanov).

[172] JX-1107 at 1–5.

[173] Trial Tr. at 292:1–8 (Bogdanov).

[174] *Id.* at 292:9–15 (Bogdanov).

[175] Trial Tr. at 129:3–5 (Harrison).

[176] *Id.*

[177] *Id.* at 128:19–23 (Harrison); JX-1107 at 3.

[178] Trial Tr. at 82:23–83:3 (Harrison).

Rigmora's diligence requests ignored this history. Some of the requests were open-ended, seeking, for example, narratives explaining whether Replicate had "lost its differentiation," and how its "technology evolved over the past four years compared to its main peers."[179] When confronted on cross-examination about whether he knew if his diligence questions could "be answered in a reasonable amount of time," Bogdanov admitted: "I didn't know."[180]

Rigmora ultimately approved Replicate's budget.[181] But the budgeting experience for Replicate marked a departure from the parties' historically collaborative approach over the Fund's twelve-year history and, in that way, foretold events to come.

3. To Move Forward, Harrison Proposes Reallocating Committed Funds To Clinical-Stage Companies.

Additional meetings occurred in March 2025 in Monaco to discuss the budgeting efforts contemplated by Amendment 22, including Aulos, Ascidian, and Marengo.[182] Bogdanov continued to issue requests for extensive information in connection with the budgeting process.[183] And ATP continued responding to those requests.[184] The senior management teams for those budgets under review flew

[179] *Id.* at 130:4–16 (Harrison); JX-1107 at 3.

[180] *Id.* at 328:17–329:1 (Bogdanov).

[181] *Id.* at 87:4–17 (Harrison); *id.* at 295:13–18 (Bogdanov).

[182] *Id.* at 92:15–18 (Harrison).

[183] *Id.* at 293:3–19 (Bogdanov).

[184] *Id.* at 94:5–24 (Harrison); JX-1222 at 1.

overseas, as did consultant Bill Grossman, whom ATP engaged for Bogdanov's and Rybolovlev's benefit.[185]

The Monaco meetings, however, did not result in approved budgets for Aulos, Ascidian, or Marengo.[186] Nor had Rigmora made any progress toward Royalty Financing.[187] With the understanding that the only capital the Fund would receive from Rigmora would be capital called within approved budgets, Harrison proposed as a compromise that the parties reallocate funding to "move some of the clinical projects along."[188] He proposed reallocating some of the approved budget amounts from the preclinical companies to clinical companies.[189]

Harrison put the reallocation proposal forward although he believed that the preclinical projects had value.[190] He engaged Rigmora to "attempt to minimize any need for near-term cash funding."[191] He sought to neutralize Rigmora's "incessant refrain that it faced cash flow issues and that it either could not, or would not, meet the funding needs of the Pool V-1 and V-2 portfolio companies."[192]

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[185] Trial Tr. at 95:1–18 (Harrison). Grossman assessed courses of action for Aulos. *Id.* at 95:19–96:6. Eventually, Rybolovlev deferred to Harrison's expertise before agreeing, in Harrison's words, "we should do Aulos." *Id.* at 95:24–97:15 (Harrison).

[186] *Id.* at 97:16–18 (Harrison).

[187] *Id.* at 98:1–12 (Harrison).

[188] *Id.* at 97:19–98:20 (Harrison).

[189] *Id.* at 98:21–99:2 (Harrison).

[190] *Id.* at 101:19–102:7 (Harrison).

[191] JX-1336 at 1.

[192] *Id.*

4. In Response To A Hostile Reaction From Rigmora, Harrison Withdraws The Reallocation Proposal.

Rigmora did not agree to Harrison's reallocation proposal.[193] At first, Rigmora seemed receptive to the approach. On May 9, Harrison held a Zoom call with Bogdanov, Rybolovlev, and Anna Batarina, an ATP partner.[194] At this meeting Harrison provided a brief introduction and then offered a more formal presentation.[195] In response, Bogdanov and Rybolovlev said that a presentation would be unnecessary because it is moving in the right direction, and the next step would be to speak with Rigmora's lawyers.[196]

Harrison spoke with Rigmora's lawyers on May 12, 2025.[197] Harrison characterized the call as an "ambush."[198] In his view, the lawyers distorted the purpose and meaning behind his reallocation proposal, saying to Harrison "it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation."[199] Harrison withdrew the proposal during the May 12 call.[200]

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[193] Trial Tr. at 99:3–6 (Harrison).

[194] *Id.* at 47:20–23, 99:7–15 (Harrison).

[195] *Id.*

[196] *Id.*

[197] *Id.* at 99:8–100:8 (Harrison).

[198] *Id.* at 100:18–21 (Harrison).

[199] *Id.* at 101:2–12 (Harrison).

[200] *Id.* at 305:2–20 (Bogdanov).

G. Rigmora Disclaims Any Outstanding Capital Commitments To ATP.

Rigmora ratcheted up the parties' level of conflict further on May 15, 2025, when Bogdanov emailed ATP an alarming communication (the "May 15 Email").[201]

In the email, Bogdanov declared that the Fund should cease further funding of seven preclinical companies, which he referred to as the "Early-Stage Companies," and which all had approved yet unspent budgets.[202] He claimed those companies had "no way for a path to commercial success," had "failed to meet the milestones set out in the investment memoranda on which [Rigmora's] initial funding was premised," and there was "no third party interest."[203] In describing the companies as dead-ends, the May 15 Email contorted the purpose of Harrison's reallocation proposal, misstating that Harrison "hold[s] a similar view" that "further funding of those Early-Stage Companies will waste the ATP Fund's assets."[204]

Although Rigmora had already approved budgets for the preclinical companies, Bogdanov invited a "detailed explanation" of why, despite the companies' supposed unworthiness, Rigmora should "contribute further capital" to the preclinical companies.[205] Bogdanov stated Rigmora's intent to "comply" with the LPA but

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[201] JX-1319 at 1.

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

conditioned its cooperation on whether ATP could "demonstrate that the LPA allows" ATP to call further capital.[206]

And although the parties had just spent months discussing budgets for the four clinical-stage companies, and ATP had called capital for those companies on December 24, 2024, Bogdanov conditioned any further funding for those companies on ATP's agreement to "wind down or liquidate the Early-Stage Companies."[207]

Bogdanov gave ATP an ultimatum: liquidate the preclinical companies with already approved budgets to obtain funding for companies during clinical trials. Rigmora stated that it would not even "consider" the budgets for clinical-stage companies until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and abandon existing investments through liquidation or wind down.

The May 15 Email demanded "objective information" to "facilitate the discussion" of any "new budgets"— ignoring the past five months' of data and erecting new hoops for ATP to jump through.[208]

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[206] *Id.*

[207] *Id.* Bogdanov did not address the two preclinical companies Nereid and Nine Square that had already expended their initial Series A funding. *See id.*

[208] *Id.*

In the penultimate sentence, the May 15 Email stated that Rigmora did "*not presently have any outstanding capital commitments to ATP Fund* and therefore has full discretion on whether to agree to fund any new investment proposals."[209]

H. ATP Calls Six Months Of Capital.

The May 15 Email ultimatum left ATP with very few options. ATP decided to lean on its contractual rights. On May 30 and June 1, the GP called $87.76 million in capital needed to maintain six months of research activity for ten companies—the seven preclinical companies as well as Replicate, Marengo, and Ascidian—and $19,371,099 in ATLS Fees and partnership expenses (the "Capital Calls").[210] The capital called and unfunded approved budgets are below:

[209] *Id*. (emphasis added).

[210] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* Trial Tr. at 110:8–21 (Harrison) (testifying that the figures were keyed to estimates for six months of budgets, with the goal of permitting company survival and "following forward on . . . research plans"); *id.* at 392:8–11 (Rybolovlev) (corroborating Harrison's view that six-months' worth of money permits a company's "normal functioning").

Company	Pool	Capital Called	Unfunded Approved Budget[211]
Aethon	ATP V-2	$5,000,000	$8,000,000
Apertor	ATP V-2	$7,100,000	$19,400,000
Ascidian	ATP V-3	$6,000,000	$6,000,000
Deep Apple	ATP V-2	$9,000,000	$9,000,000
Evercrisp	ATP V-2	$7,000,000	$49,000,000
Initial	ATP V-1	$7,000,000	$19,880,000
Marengo	ATP V-3	$29,960,000	$29,960,000
Marlinspike	ATP V-2	$6,300,000	$36,275,000
Red Queen	ATP V-2	$6,400,000	$23,600,000
Replicate	ATP V-2	$4,000,000	$13,000,000
TOTAL:		$87,760,000	$214,170,000

Except for Replicate, for which the GP issued a revised capital call on June 1, 2025, the Capital Calls were due on June 13.[212] The revised Replicate capital call was due June 16, 2025.[213] ATP issued Default Notices on June 17, 2025.[214] With ATLS Fees and the June 1 revision, the Capital Calls totaled $101,103,759. Rigmora has never contributed capital in response to any of the Capital Calls.[215]

I. ATP Files This Litigation.

Concurrently with sending the May 30 capital calls, ATP filed this suit.[216] The Verified Complaint (the "Complaint") asserts five Counts.

- In Count I, ATP claims that Rigmora breached the LPA and Amendments 17, 18, and 20 to the LPA, by refusing to engage in

[211] JX-1622.

[212] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

[213] JX-1415 at 1.

[214] *See, e.g.*, JX-1620.

[215] PTO ¶ 78.

[216] Dkt. 1, Verified Complaint ("Compl.") ¶¶ 23, 183–196.

substantive discussions of new budgets, imposing improper conditions to the occurrence of budget discussions, and repudiating any obligation to consider new budgets.

- In Count II, ATP claims that Rigmora breached or repudiated its obligations under the LPA to fund capital calls made consistent with the budgets it approved.
- In Count III, ATP claims that Rigmora breached its implied obligations under Cayman law to act rationally and in good faith in exercising discretionary rights (absent clear language to the contrary) by refusing to consider requests for new budgets for the Fund's clinical-stage portfolio companies.
- In Count IV, ATP seeks a declaration that the Global Default Provisions of the LPA warrant a Global Default penalty on Rigmora—not on a project-by-project or pool-by-pool basis, but across all of the Limited Partner's interests in the Fund.
- In Count V, ATP seeks a declaration that the Fund is entitled to exculpation, under Paragraph 2(g) of the LPA, for filing this action.

ATP moved to expedite proceedings due to the impending shutdown of several of the affected portfolio companies for lack of funding.[217] The court granted the motion to expedite over Rigmora's opposition and scheduled trial for September.[218]

J. Rigmora Files Competing Litigation In The Cayman Islands.

On June 2, Rigmora filed a Writ of Summons against ATP in the Grand Court of the Cayman Islands.[219] Rigmora resurrected its argument debuted in the prior Cayman litigation—that Rigmora committed $2.425 billion in Contingent Subscription, Rigmora has already made capital commitments in excess of that amount, and thus Rigmora is not required to fund any further capital calls under the

[217] Dkt. 1, Pl.'s Mot. to Expedite Proceedings ¶ 1.

[218] Dkt. 31; Dkt. 39 at 43:8–22.

[219] PTO ¶ 11.

LPA.[220] Four days later, Rigmora filed a Winding Up Petition against ATP in the same court (together with the Writ of Summons, the "Cayman Litigation").[221] Rigmora argued that it had lost trust and confidence in ATP due to ATP's "mismanagement and lack of probity[.]"[222] And Rigmora sought to accomplish through the Cayman court what Bogdanov had unilaterally demanded in the May 15 Email—a liquidation.

K. Forum Jockeying Ensues.

Through motion practice in the competing lawsuits, the parties fought bitterly over the dominance of their preferred forums. On June 9, 2025, Rigmora moved to dismiss ATP's claims and a motion to stay this proceeding pending the resolution of the Cayman Litigation. Three days later, Rigmora filed an ex parte summons in the Cayman Litigation seeking an injunction barring ATP from declaring Rigmora in default of the LPA or issuing any further capital calls.[223] ATP responded by moving to stay the Cayman Litigation.[224]

This court denied Rigmora's motion to dismiss or stay these proceedings, concluding that its motion relied on convenience defenses that it waived in the LPA, and that ATP's allegations supported a finding of irreparable harm to multiple

[220] JX-1416 ¶¶ 4–5.

[221] PTO ¶ 11.

[222] JX-1417 ¶ 4.

[223] JX-1434.

[224] JX-1446.

Delaware entities absent expedition.[225] The Cayman court entered Rigmora's requested injunction and scheduled trial for January 2026 (the "Writ Injunction").[226] And ATP withdrew its motion to stay the Cayman Litigation.[227]

The parties began a sprint to trial in both fora.[228] The parties engaged in further motion practice in these proceedings, filing a combined five motions to compel in one month.[229] This court continued the September trial to October based on Rigmora's claim that ATP's late-produced documents prejudiced its ability to prepare for trial.[230] When seeking a continuance, Rigmora stated that its trial team "may not be able to review [the documents] in time to integrate them into their preparations for the trial[,]" and that "[t]here's no question that there's been actual prejudice" to Rigmora.[231]

Rigmora used its newfound time secured by the continuance to return to the forum fight. Rigmora filed an emergency motion in the Cayman court based on the late-produced documents, seeking the appointment of provisional liquidators to take

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[225] Dkt. 56 at 51:10–52:18. The LPA contains provisions (i) selecting both Delaware and the Cayman Islands as the exclusive forums for related suits, and (ii) waiving all venue and forum non conveniens defenses as to suits filed in Delaware or the Cayman Islands.

[226] JX-1439 ¶¶ 1–2; JX-1446.

[227] JX-1533 ¶ 5.

[228] *Id.* ¶¶ 6, 16.

[229] *See* Dkts. 92, 113, 141, 143, 186.

[230] Dkt. 225.

[231] Dkt. 215 ¶ 7; Dkt. 238 at 13:3–4.

control of the Fund.[232] The Cayman court scheduled a hearing on the emergency motion for October 31.[233]

ATP responded to Rigmora's new advances in the Cayman Litigation by petitioning this court for an emergency status quo order that would prevent Rigmora from pursuing relief in the Cayman court pending resolution of this action.[234] After an initial hearing on the motion for a status quo order,[235] Rigmora agreed not to pursue a hearing on the emergency application in the Cayman court before October 31 and would provide notice to this court of any change in position.[236] The parties ultimately reached a resolution on the status quo order that involved Rigmora withdrawing its emergency application in the Cayman Litigation. [237]

The court held a two-day trial from October 16, 2025 through October 17, 2025.[238] The parties completed post-trial briefing on November 12, 2025, presented post-trial arguments on November 21, 2025, and submitted the Schedule of Evidence on December 3, 2025.[239]

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[232] Dkt. 232 (Pl.'s Mot. for Status Quo Order Br.) at 5–6.

[233] *Id.* at 3.

[234] *Id.*

[235] Dkt. 261.

[236] Dkt. 267 at 7:13–8:13.

[237] Dkt. 267 at 7:13–8:13.

[238] Dkt. 259.

[239] Dkt. 265 (ATP Post-Trial Opening Br.); Dkt. 262 (Rigmora Post-Trial Br.); Dkt. 272 ("ATP Post-Trial Reply Br."); Dkt. 282 (Schedule of Evidence).

L. The Current Status Of The Portfolio Companies

The Capital Calls and Budgeting Requests affect 13 portfolio companies—nine preclinical and four in clinical trials.[240]

The eight preclinical companies—Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Nine Square, and Red Queen—have shown merit in addressing a major unmet therapeutic need. In some instances, initial research and data provided pivot points for the preclinical companies to refocus their efforts on unexpected, more fruitful avenues. ATP personnel, including Harrison and Venture Partner Spiros Liras, Ph.D., testified to these facts, which were further expounded upon by ATP's expert, Robbins Dr. Mark Robbins, Ph.D, J.D.,[241] whose analysis of the preclinical companies, individually and in aggregate, indicated "significant

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[240] *See* JX-1390 (Aethon May 30 Capital Call); JX-1391 (Apertor May 30 Capital Call); JX-1393 (Deep Apple May 30 Capital Call); JX-1394 (Evercrisp May 30 Capital Call); JX-1395 (Initial May 30 Capital Call); JX-1397 (Marlinspike May 30 Capital Call); JX-1398 (Red Queen May 30 Capital Call); JX-1387 (Ascidian May 30 Capital Call); JX-1396 (Marengo May 30 Capital Call); JX-1415 (Replicate June Capital Call). To recap, ATP initially sent a capital call for Replicate on May 30, 2025 for $13 million (JX-1399), but it later issued a revised and superseding capital call for $4 million on June 1. JX-1415. ATP sent the Budgeting Requests for Replicate, Ascidian, Aulos, and Nine Square to Rigmora in a December 24, 2024 email. JX-1079. ATP never sent Rigmora a formal Budgeting Request to increase Marengo's budget. Marengo's management first sought additional money from the Fund in its presentation to Rybolovlev and Bogdanov in Monaco on March 12, 2025. JX-1222, at 147. They requested the Fund commit an additional $75 million to Marengo above what it had already budgeted for the company. *Id.* But Rigmora did not approve the request coming out of the Monaco meetings. Trial Tr. at 97:16-18 (Harrison). Later, on May 19, four days after Bogdanov refused to provide further funding or consider additional budgets unless certain "Early Stage Companies" were wound down, ATP asked Rigmora to discuss (in good faith) and approve a new budget for Marengo. JX-1349. ATP then estimated Marengo's additional funding needs to be $63 million. *Id.*

[241] *See, e.g.,* Trial Tr. at 74:13–20 (Harrison); *id.* at 246:23–247:16 (Liras).

scientific and clinical potential."[242] ATP offered Robbins as an expert on pharmaceutical and biotechnology industry custom and practice to evaluate the scientific and clinical potential of the treatments being developed by the Portfolio Companies.

The four companies in clinical trials—Aulos, Ascidian, Marengo, and Replicate—are similarly promising.[243] ATP has placed each under the direction of a talented group of founders and leaders, including past biotech CEOs who have sold their companies to pharma giants like Bristol Myers Squibb and Amgen for billions of dollars,[244] holders of several patents,[245] and seasoned pharma executives and scientific leaders.[246] The clinical stage companies are all currently engaged in active clinical trials[247] and have generated interest from potential third-party collaborators.[248]

The negative impacts of a funding default for early-stage life sciences companies are severe. These impacts include "[t]alent loss," "[d]elayed, abandoned,

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[242] JX-1573 (Robbins Opening) ¶¶ 23(iv), 38; Trial Tr. at 183:13–23 (Robbins).

[243] Robbins Report ¶¶ 15, 124–159,

[244] *Id.* ¶ 125.

[245] *Id.* ¶¶ 133–134.

[246] *Id.* ¶ 155.

[247] *Id.* ¶¶ 126–128; 137–142; 149–150; 157.

[248] *Id.* ¶ 131 (Aulos' developing partnerships with Pfizer, Regeneron), ¶ 143 (Replicate's partnership with leading Brazilian pharma company, and negotiations with Novo Nordisk), ¶ 152 (Marengo in partnerships with Ipsen and Gilead), ¶ 158 (Ascidian partnership with Roche, and discussions with Lilly, Regeneron, and Bayer).

disrupted R&D," [d]ifficulty in restarting halted or delayed [] trials," "[d]ifficulty attracting future investments or partners, and [n]egative market perception in general."[249] The sudden discontinuation of funding can lead creditors to trigger bankruptcy proceedings and force a sale of the companies for "a fraction of their actual value."[250]

ATP has kept the affected portfolio companies alive during this litigation by scaling down operations with the goal of preserving "critical projects" and "key employees," and trying to operate with a skeleton crew without destroying the company.[251] This has involved "mov[ing] companies [] out of facilities, heavy negotiations with landlords, sales of capital equipment, consolidations, reduction of research programs," and terminating approximately 70% of employees across all companies.[252] One company has been forced to cede platform technology back to the source institution.[253] Despite entering survival mode at great expense to the companies, ATP does not "believe [the creditors] will hold off for much longer" and that the Fund is "likely to lose the assets."[254]

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[249] JX-1572 ("Rao Report") ¶ 67; *see also* Trial Tr. at 60:19–61:10 (Harrison); *id.* at 165:5–21 (Yanchik).

[250] Robbins Report ¶ 162; *see also* Trial Tr. at 165:17–21 (Yanchik).

[251] Trial Tr. at 113:14–114:12 (Harrison); *id.* at 163:21–23 (Yanchik); *id.* at 266:3–7 (Liras).

[252] *Id.* at 113:14–20 (Harrison); *id.* at 162:23–163:6 (Yanchik).

[253] *Id.* at 113:21–114:1 (Harrison).

[254] *Id.* at 163:3–6, 165:17–21 (Yanchik).

Operationally, the companies are in a form of "stasis" and could be revived upon receipt of funding.[255] But the window for revival is closing, because "whenever you stop a research organization, it starts to deteriorate."[256]

II. LEGAL ANALYSIS

In the Pretrial Order and in post-trial briefing, the parties narrowed their disputes to four issues. First, is ATP entitled to specific performance of the Capital Calls under the LPA? Second, did Rigmora breach a duty, implied by common law, to exercise its discretion to approve budgets in good faith?[257] Third, is ATP entitled to a declaration that it did not violate the LPA by bringing this action or that Rigmora is a Defaulting Partner as defined in the LPA? Fourth, is ATP entitled to attorney's fees and expenses incurred in connection with this lawsuit? ATP bears the burden of proof on each of its claims.[258]

A. Capital Calls

The parties' dispute over the Capital Calls centers on two parts of Paragraph 5(a) of the LPA: Paragraph 5(a)(i), which allows the GP to call capital in amounts up to but not "in excess of" the Limited Partners "Contingent

[255] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[256] *Id.* at 164:18–167:2 (Yanchik).

[257] In the Pre-Trial Order, ATP sought a declaration that Rigmora waived or otherwise forfeited its voting and budget approval rights, but dropped this request after trial. *See generally* Dkt. 265 ("ATP Post-Trial Opening Br.").

[258] *See AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *49 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Subscriptions";[259] and Paragraph 5(a)(ii), which requires that any capital call be for a purpose stated in the LPA.[260] The parties' competing positions raise two sets of issues: Under Paragraph 5(a)(i), were the Capital Calls in excess of Rigmora's unfunded Contingent Subscriptions? Under Paragraph 5(a)(ii), were the Capital Calls for contractually specified purposes? If the first set of issues go ATP's way, the court must also determine whether ATP is entitled to specific performance of the Capital Calls. To obtain specific performance, ATP bears the burden of showing the existence of terms that it seeks to enforce by clear and convincing evidence.[261]

This contract analysis is governed by Cayman law, consistent with the LPA.[262] The parties dispute the LPA's meaning. Under Cayman law, a court interprets a written contract according to "the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the

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[259] LPA ¶ 5(a)(i).

[260] LPA ¶ 5(a)(ii).

[261] Which party bears the burden of proof is a procedural question governed by Delaware law, but the nature of the burden is arguably a substantive issue governed by Cayman law. *See In re IBP, Inc. S'holder Litig.*, 789 A.2d 14, 53 (Del. Ch. 2001). Yet Rigmora cited Delaware law on the nature of the burden. *See* Rigmora Post-Trial Br. at 29 (citing *Vill. Prac. Mgmt. Co. v. West*, 342 A.3d 295, 321 (Del. 2025)). And ATP did not brief it, so this decision applies Delaware law.

[262] LPA ¶ 18(g)(i) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands"); PTO ¶ 25. The elements to prove a breach are: (1) a valid contract, (2) a breach of that contract, and (3) damages arising from the breach. JX-1588 ("Phillips Report") ¶ 56 (citing *Chitty on Contracts* at [4-001] (35th ed. 2024); *accord Kuroda v. SPJS Hldgs.*, 971 A.2d 872, 883 (Del. Ch. 2009) (reciting the same elements for a claim of breach of contract under Delaware law)).

context to mean."[263] The goal is to "ascertain the objective meaning of the language which the parties have chosen to express their agreement."[264] The court employs "an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated."[265] But "[c]ommercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made."[266]

1. Paragraph 5(a)(i) – Funding Commitments

Rigmora argues that Rigmora has committed $2.45 billion on an aggregate basis as the Contingent Subscription and contributed $2.69 billion, and that the Capital Calls are thus necessarily "in excess of" the Contingent Subscription.[267] ATP argues that Rigmora made over $545.5 million in unfunded commitments to the pools and over $2.85 billion in total commitments across all pools, leaving head room for the Capital Calls. ATP also argues that Rigmora's $2.69 billion calculation double-counted pools of funds that were transferred or reallocated, such that Rigmora's

[263] Bloch Report ¶ 23 (quoting *Arnold v. Britton*, [2015] UKSC 36 at [15]).

[264] Bloch Report ¶ 23 (quoting *Wood v. Capita* [2017] UKSC 24 at [10]); Phillips Report ¶ 61 (same).

[265] Bloch Report ¶ 25 (citing *Wood*, [2017] UKSC 24 at [12]).

[266] Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]; *see also* Phillips Report ¶ 60 (also citing *Arnold*, [2015] UKSC at [15], [17]–[21]).

[267] *See* Rigmora Post-Trial Br. at 32, 38–40.

actual contribution is $2.3 billion. In all events, therefore, there is head room to meet the Capital Calls.[268]

The parties' dispute on the meaning and application of Paragraph 5(a)(i) thus raises three sub-issues: What is the Contingent Subscription amount, $2.425 billion as Rigmora contends or over $2.85 billion as ATP argues? What has Rigmora contributed to date, $2.65 billion as Rigmora contends or $2.3 billion as ATP argues? And do the Capital Calls of $101,103,759 fall within any delta between the Contingent Subscription and Rigmora's contributions?

a. Rigmora's Contingent Subscription is $2.425 billion.

The parties dispute both how to calculate the Contingent Subscription (in the aggregate by Limited Partner or pool-by-pool) and Rigmora's total commitments. The threshold issue concerning how to calculate the Contingent Subscription is largely beside the point because ATP has not proven that Rigmora committed over $2.85 billion.[269] ATP reaches the $2.85 billion by adding and deducting the amounts reflected in Amendment 20 to the $2.425 in subscription agreements.

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[268] ATP Post-Trial Opening Br. at 8–9, 54–58; ATP Post-Trial Reply Br. at 13–14.

[269] It bears noting that Amendment 13 to the LPA seems to mandate a pool-by-pool approach. Under the heading "Separate Pools," it provided that "all of the Partnership's assets and liabilities shall be divided into two separate pools" and "separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses *shall also be accounted on a Pool-by-Pool basis*." JX-15 ("LPA Am. 13") ¶ 17(a) (emphasis added). ATP satisfied its obligation to track the Contingent Subscription amount on a Pool-by-Pool basis by circulating a detailed "tracker" of funded and unfunded commitments each time it issued a capital call. *See, e.g.*, JX-230; *see also* Trial Tr. at 48:19–49:21 (Harrison).

Broken down by Pool, beginning with Pool IV, recall that the parties initially contributed $1.5 billion to Pool IV and Rigmora contributed $1.425 billion of that amount.[270] In Amendment 20, the parties agreed to reduce the Pool IV commitment to the amount already contributed, plus expenses.[271] By Amendment 20, Rigmora had contributed $1,299,840.047.14 to Pool IV.[272] The parties originally anticipated $20 million in expenses but ultimately incurred around $33,351,890.42.[273] Adding

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[270] *See* PTO ¶¶ 26–27; JX-212 at 19 (Blue Horizon $698,250,000 subscription); JX-213 at 19 (Ezbon $726,750,000); JX-216 at 18 (Harrison $75 million subscription); JX-1, Sch. D.

[271] LPA Am. 20 ¶ 24.

[272] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840.047.14).

[273] It was $33,351,890.42 and Rigmora's 99.6028% of that amount was $33,219,416.71. *See* JX-224 at 3 (capital call for $320,590 of expenses for Pool IV); JX-382, at 3 (capital call of 4,749,982.91 in expenses for Pool IV); JX-318, at 3 (capital call for $1,960,789.97 in expenses for Pool IV); JX-487 at 3 (capital call for $8,435,798.52 in expenses for Pool IV); JX-568 at 3 (capital call for $4,000,000 in expenses for Pool IV); JX-585 at 3 (capital call for $280,790.62 in expenses for Pool IV); JX-609 at 3 (capital call for $5,000,000 in expenses for Pool IV); JX-652 at 3 (capital call for $5,200,000 in expenses for Pool IV); JX-718 at 3 (capital call for $1,500,000 in expenses for Pool IV); JX-740 at 3 (capital call for $ 368,717.64 in expenses for Pool IV); JX-823 at 3 (capital call for $874,363.01 in expenses for Pool IV); JX-878 at 3 (capital call for $299,903.33 in expenses for Pool IV); JX-1185 at 3 (capital call for $24,533.02 in expenses for Pool IV). The limited partners also received two capital calls in December 2024 seeking funds relating to the ATLS Fee for the first half of 2025, partnership expenses for the second half of 2024, and the 2024 ATVM management fee. JX-1075 at 3; JX-1086 at 5. The calls sought $375,354.80 from Pool IV and about $15 million across all pools. *See id.* Rigmora initially refused to fund those calls. JX-1085. ATP later discovered that it overcharged the ATLS Fee due to an accounting error and it returned $599,225.46. JX-1172. It is unclear how that refund was allocated across the various pools, but later records indicate that the December calls were reconciled to $336,502.41 for Pool IV. *See* JX-1237, Tab "Pool V-4 Total," Cell E152.

Rigmora's share of the fee to the amount contributed by Rigmora equals $1,333,059,463.85.

Pools V-1 and V-2 are straightforward. Rigmora contributed $1,000,000,000 to Pools V-1 and V-2 in September 2020 in connection with Amendment 17.[274]

Pool V-3 requires some math. According to ATP, Rigmora contribute $310 million to Pool V-3 through Amendment 20. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that:

> ATP V-3 shall have capital commitments of $500,000,000, including without limitation (i) the $189,500,000 of capital deemed to have been contributed as provided below, (ii) the $70,853,399 of capital comprising the Prior Budgeted ATP V-3 Follow-on Investments and (iii) approximately $235,000,000 in investments anticipated to be made in new Portfolio Companies . . . .[275]

This language does not expressly reflect an additional $310 million capital commitment. To reach $310 million, ATP subtracts the "deemed" contributions of $189,544,660 from the total commitment of $500 million.[276] ATP ignores the $70,853,399 in previously approved unfunded budgets for Pool V-3 companies and $235 million, which add up to $305.9 million, not $310 million.

Last is Pool Braeburn. According to ATP, Rigmora contributed $189.9 million to Pool Braeburn through Amendment 20 and agreed to contribute capital sufficient

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[274] Trial Tr. at 29:1–19, 41:11–42:14 (Harrison); LPA Am. 17; JX-99; JX-101.

[275] LPA Am. 20 ¶ 22(b).

[276] *Id.* Here is the math: $500,000,000 – $189,544,660 = $310,455,340. Rigmora is responsible for 99.6028% of the capital contributions for Pool V-3. *See id.* So, Rigmora is responsible for $309,222,211.39 of the Pool V-3 commitments, which rounds up to $310 million.

to cover additional expenses, which Pool Braeburn ultimately incurred. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that Pool Braeburn includes "$189,900,000 in unfunded previously approved budgets," as well as "additional securities of Braeburn acquired by the Partnership after the date of Amendment 20," and management fees and expenses discussed in the Amendment.[277] ATP adjusts the $189.9 million based on later events—ATP acquired $30.6 million in additional securities and was allocated $9 million in expenses, bringing the total commitment to $229.5 million.[278] Through Amendment 22, ATP distributed to Rigmora the royalty held in Pool Braeburn and thus Rigmora "no longer had an obligation to fund the remaining amounts on the royalty purchase agreement," which was $21.3 million.[279] ATP therefore "reduced the obligation to Pool Braeburn by that amount, which netted out to a total obligation $208,355,000."[280]

In summary, in a snapshot, here is how ATP builds to the "over $2.85 billion" figure:

Pool	**Rigmora's Commitment**
Pool IV	1,333,059,463.85
Pools V-1/V-2	1,000,000,000
Pool V-3	309,222,211.39
Pool Braeburn	208,335,616.81
Total	2,850,617,292.05

[277] LPA Am. 20 ¶ 21(a).

[278] Engels Dep. Tr. at 94:3–10; JX-1565, Cell G8.

[279] Engels Dep. Tr. at 355:22–356:3, 355:16–355:21.

[280] Engels Dep. Tr. at 356:2–4; ATP Post-Trial Reply Br. at 11, although by the court's math, it nets out to $208,200.

Rigmora takes issue with ATP's interpretation of Amendment 20 as a capital commitment. Rigmora advances three main arguments to that effect: Rigmora first appeals to the commercial context. Rigmora next argues that interpreting Amendment 20 as a subscription agreement is inconsistent with ATP's contemporaneous representations.[281] Rigmora last contends that Amendment 20 does not read like a subscription agreement and is not sufficiently clear and convincing in its terms to be treated like one.[282]

Rigmora's first argument based on the commercial context of Amendment 20 is misguided. Rigmora argues that Amendment 20 "was entered into less than a year after the $1 billion increase in the LPs' Contingent Subscriptions, when the Fund had over $1 billion in uncalled Contingent Subscriptions remaining."[283] According to Rigmora, "there was no need to increase the capital commitment when Amendment 20 was executed, no reason to think the parties did so, and no reason to think they would have done so without following the same formalities used to increase the Contingent Subscriptions a few months earlier."[284]

Rigmora's commercial-context argument, however, ignores the plain text of Amendment 20. As discussed above, on its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, far more than the $2.425

[281] *Id.* at 35–36.

[282] *Id.* at 36–37.

[283] *Id.* at 37; *see* JX-1237 at 4 (schedule of capital activity).

[284] Rigmora Post-Trial Opening Br. at 37.

billion Rigmora conceded. This argument also ignores that biotech investment was booming in 2021 when the parties entered Amendment 20,[285] Rigmora had not yet entered what Bogdanov would later call a liquidity crisis,[286] Rybolovlev approved all of the budgets at issue in Amendment 20, and Rigmora was ATP's only source of capital.[287] If not Rigmora, who was expected to fund the approved budgets reflected in Amendment 20? This commercial context is *ATP's* strongest point.

Rigmora's second argument based on ATP's contemporaneous communications is neutral. Rigmora is correct that interpreting Amendment 20 as a subscription agreement runs contrary to many of ATP's contemporaneous representations.[288] Before the events that led to this litigation, ATP informed its banks, insurance companies, and portfolio-company landlords that its total committed capital was $2.5 billion, which is equal to Rigmora's $2.425 billion under their subscription agreements and Harrison and his family trust's $75 million.[289] And ATP's website for the Fund still lists its capital commitments as "$2.65 billion" as it has since 2020.[290] But other contemporaneous documents, like ATP's first post-Amendment 20

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[285] *See id.* at 7 ("[T]he biotech market peaked in 2020 and 2021, during the COVID pandemic[.]" (citing Trial Tr. at 402:20–22 (Ehlers))).

[286] *See* JX-446 at 1; Trial Tr. at 51:15–52:19 (Harrison).

[287] LPA Am. 20 ¶ 21.

[288] *See generally* Ehlers Dep. Tr. at 35:10–21.

[289] Trial Tr. at 460:12–461:3, 462:10–24, 463:13–464:16 (Engels); JX-834 (communicating to J.P. Morgan that "ATP has approximately $2.5 billion in committed capital").

[290] JX-128 (2020); JX-2128 (Sept. 8, 2025); *see also* About, Apple Tree Partners, https://www.appletreepartners.com/about (accessed Dec. 4, 2025).

capital call to the limited partners[291] and ATP's own accounting of capital contributions that it sent to Rigmora in March 2025,[292] suggests Rigmora did increase its Contingent Subscription through Amendment 20. These competing contemporaneous communications work neither for nor against either side. They suggest that ATP did not spend a lot of time worrying about the precise amount of Rigmora's total capital commitments in 2022. This is consistent with Harrison's testimony that the parties' enjoyed a collaborative relationship during that period.[293]

Rigmora's last argument based on the language of Amendment 20 is compelling. The parties did not execute any new or amended subscription

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[291] The first capital call issued shortly after the adoption of Amendment 20 shows unfunded capital commitments stood at $1,461,868,810 total across all limited partners and $1,460,556,241.39 for Rigmora alone. JX-224, at 3. This evidence supports ATP's position that Rigmora committed more capital through Amendment 20 as unfunded capital commitments immediately preceding Amendment 20 were $1.067 billion. *See supra* § I. D.

[292] *See* JX-1237; JX-1237, PX-513, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of 3,203,669,000.00). This accounting did not deduct deemed commitments from neither its contribution tabulations nor its tabulations on commitments, so they had no net effect on the limited partner's unfunded commitments. *See* JX-1237, PX-513, Tab "Pool V-3 Total," Cell B9 (including the $189,544,660 deemed contribution in Pool V-3's contributions); *id.*, Tab "Pool Braeburn Total," Cell B9 (including the $203,669,000 deemed contribution in Pool Braeburn's contribution's calculation); *id.*, Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (listing total capital commitments of $1,000,000,000 billion (Pools V-1 and V-2), $393,569,000 million (Pool Braeburn), $500,000,000 (Pool V-3), and $1,383,360,505.56 (Pool IV) for total commitments of $3,276,929,505.56 across all pools). The total commitments listed for Pools V-3 and Braeburn include the deemed commitments within Amendment 20, meaning their accounting in the capital contributions has no net effect on the amount of Rigmora's unfunded commitments. *See id.*, Tab "Amendment Summary," Cells N9, U11. Total commitments exceeding $3.2 billion indicates Amendment 20 increased Rigmora's Contingent Subscription.

[293] Trial Tr. at 51:21:52:4 (Harrison).

agreements with Amendment 20. And Amendment 20 does not expressly refer to the Contingent Subscriptions.[294] The absence of express language referencing Contingent Subscription stands in contrast to Amendments 17 and 18, which both explicitly refer to "Contingent Subscription."[295] This combination of factors is enough to suggest that the finer details of Rigmora's funding commitments were yet to be ironed out when the parties entered into Amendment 20.

Moreover, Amendment 20 does not make clear the amount of capital that Rigmora was to contribute. Amendment 20 does not expressly state that Rigmora commits to contributing its share of the $310 million to Pool V-3. Rather, ATP implies that number by deducting the "deemed contributions" from the contemplated $500 million.[296] Amendment 20 also does not state that Rigmora will contribute $208 million to Pool Braeburn. Rather, Amendment 20 states that Rigmora commits $189.9 million plus unspecified future expenses.[297]

In the end, ATP's interpretation of Amendment 20 leaves too much to interpretation. ATP must demonstrate the contractual terms that it seeks to specifically enforce by clear and convincing evidence.[298] ATP has not proven an overall Contingent Subscription amount of over $2.85 billion. Thus, regardless of

[294] LPA Am. 20.

[295] LPA Am. 17; LPA Am. 18.

[296] *See* ATP Post-Trial Opening Br. at 10, 13–14.

[297] LPA Am. 20 ¶ 21.

[298] *West*, 342 A.3d at 321.

whether calculated in the aggregate or on a pool-by-pool basis, ATP has proven that Rigmora committed no more than $2.425 billion.

b. Rigmora has contributed no more than $2.3 billion.

Ultimately, ATP need not rely on Amendment 20 to secure the relief it seeks. Rigmora claims to have contributed over $2.69 billion to date, well in excess of the $2.425 billion in undisputed commitments. But the $2.69 billion figure double counts $390 million in "deemed contributions" reallocated through Amendment 20 from Pool IV to Pool V-3 and Pool Braeburn.[299]

Double counting "deemed contributions" of Amendment 20 is inconsistent with the purpose of Amendment 20 as recounted by Rigmora. According Rigmora, the purpose of Amendment 20 was to "reallocat[e] . . . an *existing* commitment from a different pool[.]"[300] Amendment 20 was "not a new commitment."[301] Put differently, the deemed contributions were not new contributions. Moreover, counting the deemed contributions twice against Rigmora's $2.425 billion Contingent Subscription would result in Rigmora committing less than $2.425 billion to the Fund.[302] There is no evidence, either in Amendment 20 or elsewhere, that the parties intended to

[299] LPA Am. 20 ¶¶ 21(b) (stating initial deemed contributions for Pool Braeburn were $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660; *see also* Rigmora Post-Trial Answering Br. at 38 n. 277, Ex. 1 (Strebulaev) at 2.

[300] Rigmora Post-Trial Br. at 36 (emphasis added).

[301] *Id.*; *see also id.* at 6 ("Amendment 20 created two new pools . . ." and "allocated *existing assets* and liabilities to them . . . ." (emphasis added)).

[302] LPA Am. 20 ¶¶ 21(b), 22(b) (stating initial deemed contributions $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660 in deemed contributions total).

reduce the total amounts committed to the Fund through Amendment 20. As discussed above, the commercial context indicates the contrary.

Rigmora relies on a series of ATP communications documents to support its double counting theory.[303] Each of those documents were prepared for other purposes. Two of those documents show that ATP tabulated the limited partners' total capital commitments as more than $3.2 billion.[304] These are not figures that Rigmora stands behind.

Reducing Rigmora's $2.69 billion figure to eliminate double counting, Rigmora has contributed $2.3 billion to the Fund.

c. The Capital Calls do not exceed the difference between the Contingent Subscription and Rigmora's contributions.

ATP has proven that Rigmora committed $2.425 billion and contributed $2.3 billion. The difference is $125 million. Given Rigmora's overall contributions, there is sufficient room to fund the Capital Calls of totaling approximately $101.7 million.

2. Paragraph 5(a)(ii) – Funding Purposes

ATP issued the Capital Calls for ten portfolio companies: Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Red Queen, and Replicate of Pools V-1

[303] *See* Rigmora Post-Trial Br. at 39–40.

[304] JX-1237, PX-513, Tab "Amendment Summary," Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of $3,276,929,505.56), JX-2000, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (same).

and V-2, and Marengo and Ascidian of Pool V-3.[305] ATP issued these calls to provide six months of approved budget to carry forward research plans, partnership fees, and ATLS Fees.[306]

The LPA identifies partnership fees, ATLS Fees, and budgets expenses as appropriate purposes. Subsections 5(a)(ii)(A) through (C) state that "[u]nless otherwise approved by the holders of a majority of the Preferred Units in writing," the GP:

> may only call capital, as of any time, in amounts sufficient to enable the Partnership . . . to (A) pay Partnership . . . expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership . . . non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership . . . expenses and obligations incurred in the ordinary course of business, [and] (C) pay the Management Fee for the next 12-month period.[307]

Subsection 5(a)(ii)(E) authorizes the GP to call capital in amounts sufficient to "invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units."[308]

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[305] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* JX-1622.

[306] Trial Tr. at 109:1–110:24 (Harrison); *see also* LPA Am. 13 ¶ 17(d).

[307] LPA Am. 3 ¶ 5(a)(ii)

[308] *Id.* Amendment 3 originally provided for an ATC board of directors and made certain distinctions depending on whether a project was "being run through ATC" or not. *Id.* at 1–2. Amendment 14 excised ATC, and with it the ATC board of directors, from the LPA. JX-16 at 5 (LPA Am. 14).

Rigmora concedes that the stated purpose of the Capital Calls is proper under the LPA. Aside from Replicate, Rigmora does not dispute that it approved budgets for the calls at issue or that the calls were within the approved budgets. Nor does Rigmora dispute that partnership expenses and ATLS Fees are proper purposes for capital calls or that those expenses were improperly calculated.

Rigmora instead advances three arguments to avoid its payment obligation. First, Rigmora argues that ATP cannot call capital because ATP acted in bad faith.[309] Second, Rigmora argues that the approved budgets called for tranched funding conditioned on milestones set out in investment memoranda, which served as conditions to Rigmora's funding obligations, and which the projects did not achieve.[310] Third, as to Replicate, Rigmora argues that Replicate budget was subject to contingency set out in Amendment 22 that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty, which has not yet occurred.[311]

a. Bad Faith

Rigmora argues that ATP cannot call capital because it acted in bad faith when making the Capital Calls. The LPA permits the General Partner to call capital only for a purpose enumerated in Paragraph 5(a)(ii).[312] The Cayman Islands' Exempted Limited Partnership ("ELP") Act, as adopted by the LPA, requires the General

[309] Rigmora Post-Trial Br. at 44–47.

[310] *Id.* at 40–43.

[311] *Id.* at 43–44; LPA Am. 22 ¶ 26.

[312] LPA Am. 3 ¶ 5(a)(ii).

Partner to exercise its power to call capital in good faith in accordance with its fiduciary duties—which Cayman courts have held requires it to act in the interests of the Fund's limited partners.[313] Rigmora argues that, as a plaintiff seeking specific performance, ATP must prove by clear and convincing evidence that it satisfied the LPA's requirements for all calls and that they are consistent with the ATP's fiduciary duties under Cayman law.[314]

It is unclear whether Rigmora is correct in interpreting Cayman law to mean that a General Partner must prove fiduciary compliance as a condition to enforcing capital calls. Typically, a party relying on the absence of a condition to avoid a contractual obligation bears the burden of proving its absence.[315] But ATP did not challenge this legal assertion. And the accuracy of Rigmora's legal position does not alter the outcome in any event, because there is no factual basis to question ATP's good faith.

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[313] *See* JX-2019, ELP Act § 19(1) ("A general partner shall act at all times in good faith and . . . in the interests of the exempted limited partnership."); JX-1 at 2 (requiring parties to carry on the limited partnership "in accordance with the provisions of the" ELP Act); *id.* ¶ 18(g)(i) (LPA governed by ELP Act); JX-2073, *Kuwait Ports Authority v Port Link GP Ltd* [2023] 1 CILR 50 at [34(iii)]; JX-2074, *Re Aquapoint LP*, CICA (Civil) Appeal No. 0014 of 2022, [2023], at [67].

[314] Rigmora Post-Trial Opening Br. at 44–47; *see also* Bloch Report ¶ 83.

[315] *See generally S'holder Representative Servs. LLC v. Shire US Hldgs. Inc.*, 2020 WL 6018738, at *17 (Del. Ch. Oct. 12, 2020), *aff'd* 267 A.3d 370 (Del. 2021) (TABLE); *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *48–50 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Harrison testified that the Capital Calls were for the purpose of funding six months of operations.[316] ATP considered numerous scenarios, evaluating how much capital to call in order to continue funding operations.[317] Harrison ultimately based the size of the Capital Calls on the portfolio companies' research plans and the partnership's expenses.[318] He excluded his own Management Fee from the Capital Calls, so none of the money would be directed to him.[319] Harrison then realized that ATP overcalled capital for Replicate based on the approved budget and corrected that Capital Call on June 1.[320] Harrison's testimony was highly credible.

To argue bad faith, Rigmora states that ATP's "correspondence demonstrates that the capital calls were made at least in part to 'put pressure on' the [Limited Partners]."[321] Rigmora bases this assertion on a May 14, 2025 email among ATP's outside attorneys.[322] The email states: "The point of making the calls is to put pressure on [Rigmora], so let's put the pressure on [Rigmora]."[323] On its face, this statement is not alarming. Contractual rights can be a source of pressure. That does not mean exercising them is an act of bad faith. Moreover, a single line in a single email among outside counsel does not undermine the extensive evidence

[316] Trial Tr. at 110:12–16 (Harrison).

[317] *Id.* at 152:7–153:14 (Harrison).

[318] *Id.* at 110:17–24 (Harrison).

[319] *Id.* at 111:4–10 (Harrison).

[320] *Id.* at 109:24–110:5 (Harrison).

[321] *Id.* at 45.

[322] Dkt. 269 at 45 (citing JX-2155 at 2).

[323] JX-2155 at 2.

demonstrating Harrison's sincere concerns about the financial health of the portfolio companies.

Rigmora's grab-bag of other arguments similarly fail. Rigmora argues that ATP delayed capital calls to maximize its litigation position.[324] But the evidence does not point to that conclusion. ATP recognized the portfolio companies' urgent need for funding and knew that Rigmora would immediately file suit in the Cayman Islands as soon as ATP issued capital calls.[325] Rigmora describes the calls as improper because ATP did not intend to distribute all the capital called to portfolio companies as required under the LPA.[326] But ATP withheld some capital to ensure that the funds would not be subject to attachment by creditors leaving the companies without funding to pay severance to employees.[327] Rigmora emphasized in briefing how the anticipated amount of capital calls evolved leading up to this lawsuit.[328] But the evidence reflects that ATP ran scenarios and considered calling capital sufficient to fund ongoing work at the portfolio companies for periods of weeks, three months, six months, and the end of calendar year 2025-2026.[329] None of this supports a finding that ATP acted in bad faith.

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[324] Rigmora Post-Trial Opening Br. at 45.

[325] *See* JX-2138 at 1–2.

[326] Rigmora Post-Trial Opening Br. at 45; LPA Am. 3 ¶ 5(a)(ii)(E).

[327] Yanchik Dep. Tr. 218:23–219:22.

[328] Dkt. 269 at 45-47.

[329] Trial Tr. at 152:5–19 (Harrison).

b. Milestones

Rigmora argues that the milestones set out in investment memoranda served as conditions to Rigmora's obligations to fund capital calls. No evidence supports this assertion.

As discussed above,[330] no evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[331] Rigmora lacked the substantive expertise to set or track performance milestones.[332] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[333] The fact that certain of the Rigmora-approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda. And although the Series A agreements of five companies (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) originally contained milestone conditions, those conditions applied to the Fund's obligation to fund the companies, not the limited partners' obligation meet capital calls.[334]

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[330] *See supra* § I.B.

[331] *Id*. at 33:11–14 (Harrison).

[332] Bogdanov Dep. Tr. at 31:2–9, 45:23–46:10, 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–25.

[333] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[334] *See* JX-2201; Trial Tr. at 140:5–10 (Harrison); *see, e.g.*, JX-1329 at 64, 167, 441, 586.

Moreover, treating milestones in dated investment memoranda as a fixed condition to future funding misaligns the budgeting process with the commercial realities of biotech investing.[335] "[M]any very successful therapeutics have missed development milestones."[336] Apparent "misses" were often successful pivots that increased value. Deep Apple pivoted to obesity and secured a partnership worth up to $812 million with Novo Nordisk.[337] Apertor's pivot led to a "breakthrough publication" demonstrating "incredible" platform value, ultimately leading to delivering clinical candidates.[338] Information regarding portfolio companies' pivots were regularly reported to Rigmora in quarterly reports provided by ATP.[339]

Milestones were informative on many levels to Fund management. But Rigmora did not staff anyone with a scientific background. Rigmora went nearly thirteen years without requesting information about milestones.[340] Its interest in milestones surfaced as a defense strategy in this action, and an unsuccessful one. Rigmora cannot rely on the absence of milestone achievements to avoid its funding commitments.

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[335] Trial Tr. at 105:3–11 (Harrison); *see* JX-1583 ("Robbins Rebuttal") ¶ 26.

[336] Trial Tr. at 189:11–18 (Robbins).

[337] Robbins Rebuttal ¶ 27.

[338] Trial Tr. at 253:13–254:3 (Liras).

[339] *Id.* at 255:13–256:21, 257:2–259:1, 262:8–264:9 (Liras); *see, e.g.*, JX-0560.

[340] Trial Tr. at 332:1–333:2 (Bogdanov).

c. Replicate

Replicate is different. The Replicate budget was approved on February 12, 2025.[341] Replicate was one of the five companies addressed in Amendment 22. It is thus subject to the contingency set out in Amendment 22 stating that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty.[342] Neither event has occurred. So Rigmora need not meet the call.

ATP advances a factual response to this outcome, but it is somewhat convoluted. According to ATP, when the parties executed Amendment 22 in December 2024, they expected the then-current, unfunded budget amounts for each of the five projects listed in the new Paragraph 26—including Replicate—to last for a matter of weeks. In the case of Replicate, the parties anticipated that the budget would run out in February 2025. Paragraph 26 of Amendment 22 thus called for the discussion of a new budget sufficient to enable Replicate to operate for a period twelve months after that.[343] ATP portrays the financing condition as inconsistent with the dire circumstances under which the parties executed Amendment 22.[344]

But the language of Amendment 22 is plain. It conditions Royalty Financing on budget approval, providing that "[i]f any approval of a new budget is given by the Subject limited Partner, *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by the Subject Limited

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[341] JX-1192.

[342] LPA Am. 22 ¶ 26.

[343] *Id.*

[344] ATP Post-Trial Reply Br. at 27–28; *see also* ATP Post-Trial Opening Br. at 29–31

Partner on a sale or financing of its interest in ATP LLC."[345] At the time, Rigmora indicated that it would not be difficult to obtain the Royalty Financing, and ATP expected that Rigmora would "do and perform, or cause to be done and performed, all such further acts and things . . . to carry out the intent and accomplish the purposes of this Amendment . . . ," including securing Royalty Financing.[346] Whether Rigmora honored this commitment is not before the court. But there is not Royalty Financing, so the Replicate budget is not approved, and ATP may not enforce Capital Calls for Replicate.

3. Specific Performance

A grant of specific performance "is a specialized form of mandatory injunction that requires a party to fulfill its contractual obligations."[347] Specific performance is appropriate when (1) a valid contract exists, (2) the plaintiff is ready, willing, and able to perform, (3) money damages are inadequate, and (4) the balance of equities tips in the plaintiff's favor.[348] To obtain specific performance, a plaintiff must prove these conditions by clear and convincing evidence.[349]

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[345] LPA Am. 22 ¶ 26 (emphasis added).

[346] LPA Am. 22 ¶ Miscellaneous.

[347] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023); *see also supra* n.260 (explaining why this decision applies Delaware law on the request for specific performance).

[348] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010); *AbbVie Endocrine Inc. v. Takeda Pharm. Co. Ltd.*, 2021 WL 4059793, at *6 n.97 (Del. Ch. Sept. 7, 2021) ("It is elementary that the remedy of specific performance is designed to take care of situations where the assessment of money damages is impracticable[.]").

[349] *West*, 342 A.3d at 321.

As discussed above, ATP has proven by clear and convincing evidence that Rigmora must meet Capital Calls within approved portfolio company budgets and the Contingent Subscription with the exception of Replicate.[350] Rigmora must also fund calls issued for Fund expenses falling within those parameters.[351] Excluding Replicate, Rigmora's portion of those calls is $96,960,925.88. ATP also stands ready, willing, and able to perform.

Money damages are inadequate. The LPA sets out deadlines for meeting Capital Calls.[352] And timing matters. As discussed above, the negative impacts of a funding default for early-stage life sciences companies can be fatal.[353] The companies' research could ramp up again upon receipt of funding.[354] But they cannot stay in a holding pattern indefinitely.[355]

Further, a contractual provision stipulating the parties' preference of specific performance favors granting specific performance.[356] It is even more so when the agreement is between "sophisticated entities that bargained at arm's length."[357] In the LPA, sophisticated parties stipulated that damages for funding defaults "cannot

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[350] *See* JX-1 ¶ 5(a)(i).

[351] *See id*.

[352] LPA ¶ 5(a)(iii).

[353] Rao Report ¶ 67.

[354] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[355] *Id*. at 165:5–9, 166:6–167:2 (Yanchik).

[356] *See L-5 Healthcare P'rs, LLC v. Alphatec Hldgs., Inc.*, 2024 WL 3888696, at *7 (Del. Ch. Aug. 21, 2024).

[357] *See id*. (quoting *In re Cellular Tel. P'ship Litig.*, 2021 WL 4438046, at *72 (Del. Ch. Sept. 28, 2021)).

be estimated with reasonable accuracy."[358] This language supports a finding that damages would be inadequate.

Rigmora argues that ATP cannot seek specific performance of the capital calls for Ascidian, Aethon, Evercrisp, or Fund expenses because ATP has already used other Fund proceeds intended for other purposes to invest in the companies.[359] But rediverting funds to those companies was necessary to mitigate harm against them. The fact that ATP did so does not eliminate Rigmora's funding obligations.

On balance, the equities favor ATP. Rigmora has the funds available to meet the Capital Calls.[360] Moreover, the portfolio companies are developing treatments for serious medical conditions, including childhood blindness, various cancers, obesity, and neurodegenerative diseases. The public interest strongly favors preserving potentially life-saving research programs.[361]

For these reasons, ATP is entitled to specific performance of the Capital Calls excluding Replicate, or $96,960,925.88.

B. Budget Approvals

ATP claims that Rigmora breached its implied duties of good faith, honesty, and rationality when reviewing and denying the budgets circulated on December 24

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[358] JX-0001 at 25 (LPA ¶ 5(c)).

[359] Rigmora Post-Trial Br. at 47 (citing JX-2130 ¶¶ 17, 25 (listing payments for Ascidian, Aethon, Replicate, Evercrisp, and Fund expenses); PTO ¶ 64).

[360] Trial Tr. at 473:1–6 (Yakovlev).

[361] *Cf. Morabito v. Harris*, 2002 WL 550117, at *2 (Del. Ch. Mar. 26, 2002); *Bernard Pers. Consultants, Inc. v. Mazarella*, 1990 WL 124969, at *3 (Del. Ch. Aug. 28, 1990).

and for Marengo.[362] ATP does not root its claim in fiduciary obligations, nor could it. Section 19(2) of the ELP Act eliminated any fiduciary obligations, so Rigmora does not owe fiduciary obligations to the Fund.[363]

Rather, ATP's claim is based in contract law. Under English and Cayman common law, which govern this analysis,[364] a court may imply contract terms in one of two scenarios: when "the term must be necessary either to spell out what is so obvious that it goes without saying [the obviousness test] or to give business efficacy to the contract [the business-efficacy test]."[365]

ATP seeks to imply a specific set of obligations—to act honestly, rationally, and in good faith.[366] These implied duties, referred to as "*Braganza* duties" after the

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[362] ATP's claim first identified budgets for Marengo, Ascidian, and Aulos but it has since shifted to the budgets for Marengo, Aulos, Replicate, and Nine Square. *Compare* Compl. ¶ 179, *with* ATP Post-Trial Opening Br. at 66, 73.

[363] ELP Act § 19(2).

[364] LPA ¶ 18(g)(1) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands, and Cayman law governs ATP's claim of breach"); PTO ¶ 25. Cayman courts view English cases as persuasive authority when Cayman law does not provide direct guidance. Phillips Report ¶¶ 19–20. Because no Cayman court has decided this issue, this opinion relies upon English authority when available.

[365] *USDAW v. Tesco Stores*, [2024] UKSC 28 at [102], available in the record as JX-2116; *see also Marks & Spencer v. BNP Paribas*, [2015] UKSC 72 at [20], available in the record as JX-2042; *Primeo Fund (In Official Liquidation) v. Bank of Bermuda (Cayman) Ltd.*, [2017] CILR 334 at [211], available in the record as JX-2056; *Cayman Shores v. Registrar of Lands*, [2021] (2) CILR 1 at [65]–[66], available in the record as JX-2120; Bloch Report ¶ 29.

[366] Phillips Report ¶ 75.

eponymous case, apply in certain circumstances when a party exercises a unilaterally conferred discretionary power under a contract.[367]

Braganza involved an employment contract between BP Shipping Ltd. and an employee who died mysteriously on one of its ships.[368] If the employee died by suicide, then BP Shipping had the discretion under the employment contract to deny his widow a contractual death benefit.[369] The company denied the widow the death benefit, and the widow sued for breach of an implied contractual term. The Supreme Court of the United Kingdom held that a party exercising a discretionary control of another's rights has an obligation to act "rationally (as well as in good faith) and consistently with its contractual purpose"[370] when a conflict of interest arises due to that control.[371] The court emphasized that the "conflict is heightened where there is a significant imbalance of power between the contracting parties."[372] To prevent abuse of discretion, the court will ensure the power is exercised in good faith and not arbitrarily, capriciously, or perversely.[373]

According to ATP, a court should imply *Braganza* duties when three factors are present: (1) the existence of a discretionary power granted to one party; (2) that

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[367] *Braganza v. BP Shipping Ltd.*, [2015] UKSC 17, at Headnote, [18]–[19], available in the record as JX-2102.

[368] *Id.*

[369] *Id.* at Headnote, [10]–[11].

[370] *Id.* at Headnote, [30].

[371] *Id.* at Headnote, [18].

[372] *Id.*

[373] *Id.* at Headnote, [30]–[31].

power's potential to harm the other party's interests; and (3) a conflict of interest where the decision-maker could exercise the power to benefit themselves at the other party's expense.[374] It is unclear whether English or Cayman courts apply the three-factor *Braganza* test for which ATP advocates. The case law supplied by the parties does not frame *Braganza* in this manner, nor does either side's expert in Cayman law. And the parties do not join issue on the precise requirements for implying contractual terms generally or *Braganza* duties specifically.[375]

It is clear, however, that contractual context matters in the analysis of whether to imply contractual terms.[376] In an effort to shortcut the analysis, Rigmora argues that a court can never imply *Braganza* duties in this specific context—on a limited partner of a Cayman exempted limited partnership.[377]

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[374] *Id.* at [18], [30].

[375] *See generally* ATP Post-trial Opening Br. at 66-76, Rigmora Post-Trial Br. at 48–60.

[376] *Braganza*, [2015] UKSC 17, at Headnote [31] ("But whatever term may be implied will depend on the terms and the context of the particular contract involved.").

[377] Rigmora Post-Trial Br. at 50–51 (citing *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061). *Torchlight* is remarkable in a few ways. Justice Robin McMillan issued the decision *after* the parties settled the case. JX-2061.0002. He noted that "the Court was invited . . . to withdraw the Petition" in light of the settlement but had "independent discretion to decide whether to deliver its Judgment or not." *Id.* The Justice determined to deliver his Judgment in part because he believed that the two directors of the General Partner were improperly maligned by the allegations, which "the public is entitled to know." *Id.* He viewed issuing his determination a matter of "human rights as much as . . . as matter of commercial law." *Id.* He then issued a 366 page decision.

Rigmora's primary authority does not support a categorical exclusion. Rigmora relies primarily on *Torchlight Fund LP*, where a limited partner of a Cayman exempted limited partnership alleged the general partner owed *Braganza* duties when exercising a discretionary right to send a default notice to the limited partner without first consulting the limited partner.[378] In a brief discussion toward the end of a lengthy analysis, the Cayman court declined to impose *Braganza* duties.[379] The court first noted the relevance of Section 25(1) of the ELP Act, which limits court interference with remedies under partnership agreements.[380] Next, referencing Section 25(1), the court reasoned that:

> It is the view of this Court that those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be. Not only are they bound in this case by the LPA but that LPA itself is further grounded in this instance by an express statutory provision [i.e., Section 25(1) of the ELP Act]. Therefore, taking into account the terms and context of this particular contract, the Court rules that the standard of review adopted in the judicial review of administration action [i.e., the implied duty] *does not apply nor does it have any relevance*.[381]

Rigmora interprets this passage to mean that a court can never imply a contractual duty of good faith under Cayman law where an express statutory

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[378] *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061.

[379] *Id.* at [1180], [1182].

[380] *Id.* at [1188].

[381] *Id.* at [1189] (emphasis added).

provision already governs.[382] And that is a fair interpretation of *Torchlight*. But, unlike *Torchlight*, no express provision of the ELP Act governs here. Section 19(2) of the ELP Act eliminates general fiduciary obligations generally.[383] It does not eliminate implied contractual obligations. And the parties cite no statutory provision that governs a limited partner's discretion in approving budgets. *Torchlight*, thus, does not categorically prohibit this court from implying contractual duties of good faith into the LPA.

Torchlight, however, supports Rigmora's position in a more limited way. Fairly read, *Torchlight* stands for the proposition that a court will be reticent to imply *Braganza* duties in the ELP context because the power disparities that motivated *Braganza*—the power's potential to harm the other party's interest—are less present. *Braganza* involved a discretionary right wielded by a large multi-national corporation against its late employee's widow.[384] Other cases implying *Braganza* duties involve discretionary rights wielded by an insurance corporation against an insured.[385] The power disparities between the parties existed both at the time of contracting and at the time the counterparty exercised its discretionary right.[386]

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[382] Rigmora Post-Trial Br. at 51.

[383] ELP Act § 19(2).

[384] *Braganza*, [2015] UKSC 17 at [1189].

[385] *Equitas Ins. Ltd v Municipal Mut. Ins. Ltd* [2019] EWCA Civ [114]–[118], available in the record as JX-2047 (implying a term between insurers).

[386] *Braganza* does not provide clarity on the timing of when a court should assess these factors, and the parties did not specifically address this issue. Generally, "[t]he test for the implication of a *Braganza* duty is one of necessity[.]" *Horlick v Cavaco*, [2022] EWHC 2935 (KB) at [175] (citing *Equitas Ins. Ltd v. Municipal Mut. Ins. Ltd*,

The ELP context is different. As the *Torchlight* court observed: "those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be."[387] And that is factually true here—both Rigmora and ATP are highly sophisticated, and the LPA was heavily negotiated. Moreover, the parties cite to no case in which applicable authorities have implied *Braganza* duties in the ELP context. And if a court is unwilling to impose implied contractual obligations on a general partner as in *Torchlight*, then it will be an exceptional case that the court imposes implied obligations on a limited partner.

This case is not the exception. Of the three *Braganza* factors identified by ATP, only two of the three are met. The LPA grants Rigmora the discretion to approve budgets. But the presence of other factors suggests that one cannot imply *Brananza* duties due to the existence of a discretionary right alone. And Rigmora's ability to reject budgets can impede ATP's right to call capital and operate the Fund. But it would be weird to describe the parties as conflicted concerning whether to call capital. It is true that Rigmora's liquidity issues changed its investment strategy. And a need for liquidity can provide a source of conflict in certain circumstances. But at the end

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[2019] EWCA Civ 718 at [150]–[151]). The tests for necessity are the business efficacy and obviousness tests. To satisfy those tests, a court will imply a term "in the way that the parties must have intended or reasonably expected it to work." *Equitas Ins. Ltd*, [2019] EWCA at [151]. This suggests that the court analyzes the *Braganza* factors ex ante. *See also* Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]) (explaining a court should interpret a contract "as at the date that the contract was made"). But, again, it is unclear. In this analysis, it does not matter.

[387] *Id.*

of the day, Rigmora owns over 98% of the Fund. Rigmora is thus highly interested in the success of its portfolio companies. And Rybolovlev's family-pharma goal, and desire to replicate his success at Uralkali, meant that he would ultimately consolidate funds behind only some of the portfolio companies and successful therapies. Rigmora's liquidity needs might have hastened that process. This, however, does not seem to be the type of conflict motivating *Braganza* duties.

Because the circumstances do not warrant implying *Braganza* duties, the analysis could end here. But, again, the parties did not neatly join issue on the relevant legal framework, and ATP analyzes the business efficacy and obviousness tests as well the *Braganza* factors. For completeness, so too does this decision.

In *USDAW v. Tesco Stores*, Lord Leggatt expounded on the business-efficacy and obviousness tests.[388] The business-efficacy test involves two steps. The court must first identify the relevant contractual purpose.[389] The court must then ask "whether the implication of a term is necessary to give effect to that purpose and prevent it from being defeated."[390] The implied term cannot conflict with existing provisions, and it must be "strictly necessary."[391]

Under the obviousness test, a court only implies a term if it is "so obvious it goes without saying."[392] The court must assess what reasonable people in the

[388] [2024] UKSC 28 at [106].

[389] *Id.*

[390] *Id.*

[391] *Id.*

[392] *Id.* at [102].

positions of the parties at the time would have agreed.[393] Actual intent does not matter.[394] Regarding detailed commercial contracts, "[a] term should not be implied . . . merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them . . . [it] is a stringent test."[395]

Neither test is satisfied. Starting with the first step of the business-efficacy test, the LPA's purpose is facilitating investment in "in pharmaceutical medical device and other medically-related companies and business projects."[396] ATP seeks to imply a "good faith, honestly, and rationally" modifier to Rigmora's discretion to approve budgets.[397] Inserting that term, however, is not strictly necessary for effectuating the LPA's purpose because ATP and Rigmora share economic incentives to approve budgets. They relied on the existing provision for years, approving budgets without issue, and the Fund operated without incident. No implication is needed.

The obviousness test also fails. At the time of contracting, Rigmora contributed nearly all the Fund's capital. It thus makes sense that Rigmora secured the absolute discretion to reject budgets and negotiated for the ability to preserve its capital by blocking budgets. It is not so obvious or goes without saying that a reasonable

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[393] *Yoo Design Services v Iliv Realty Pte*, [2021] EWCA Civ 560 at [51], available in the record as JX-2113.

[394] *Id.*

[395] *Id.*

[396] LPA Am. 1 ¶ 1(c).

[397] ATP Post-trial Opening Br. at 66.

potential limited partner would have agreed to constrain its discretion to approve budgets.

Ultimately, none of the relevant tests support implying a good faith term. Because Rigmora had no implied duty to breach, ATP's claim fails.

C. Declaratory Relief

ATP also seeks two forms of declaratory relief: a declaration that ATP's filing of this action does not violate the Exculpation Provision and is consistent with the Discretionary-Action Provision of the LPA, and a declaration that parties have not amended the Global Default Provision.[398]

Declaratory relief "is appropriate only if there is an actual controversy between the parties."[399] The Delaware Supreme Court has articulated four prerequisites for to an "actual controversy":

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.[400]

On the fourth factor specified by the high court, "[a] ripeness determination requires a commonsense assessment of whether the interests of the party seeking immediate

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[398] PTO ¶ 74(f); Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[399] *Dana Corp. v. LTV Corp.*, 668 A.2d 752, 755 (Del. Ch. 1995).

[400] *XL Specialty Ins. Co. v. WMI Liquid. Tr.*, 93 A.3d 1208, 1217 (Del. 2014) (quoting *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479–80 (Del. 1989)).

relief outweigh the concerns of the court in postponing review until the question arises in some more concrete and final form."[401] A dispute is ripe if "litigation sooner or later appears to be unavoidable" and "the material facts are static."[402] Ultimately, Delaware's approach to declaratory relief and ripeness leaves the determination to the discretion of the court.[403] "The [c]ourt may . . . properly decline to entertain a declaratory judgment claim where another remedy is available and would be more 'effective or efficient.'"[404]

1. The Exculpation And Discretionary-Action Provisions

ATP seeks a declaratory judgment that ATP's filing of this action was in good faith, falls within the Exculpation Provision, and was authorized under the

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[401] *XL Specialty*, 93 A.3d at 1217 (citation modified); *see also Nask4Innovation Sp. Z.o.o. v. Sellers*, 2022 WL 4127621, at *4 (Del. Ch. Sept. 12, 2022) ("In determining whether a dispute is ripe, the Court must take a practical view of all relevant facts and make a common-sense determination of whether adjudicating a dispute at present is a prudent use of judicial resources.").

[402] *XL Specialty*, 93 A.3d at 1217 (quoting *Julian v. Julian*, 2009 WL 29371212, at *3 (Del. Ch. Sept. 9, 2009)) (citation modified).

[403] *See Stroud v. Milliken Enters., Inc.*, 552 A.2d at 480 ("The reasons for not rendering a hypothetical opinion must be weighed against the benefits to be derived from the rendering of a declaratory judgment. This weighing process requires "the exercise of judicial discretion[.]"); *Horizon Pers. Commc'ns, Inc. v. Sprint Corp.*, 2006 WL 2337592, at *17 (Del. Ch. Aug. 4, 2006) ("The ripeness of a dispute is a matter entrusted to the discretion of the trial court." (quoting *UbiquiTel Inc. v. Sprint Corp.*, 2006 WL 44424, at *2 (Del. Ch. Jan. 4, 2006))) (citation modified).

[404] *Walton v. Walton*, 2025 WL 2555839, at *8 (Del. Ch. Sept. 2, 2025) (quoting *Reylek v. Albence*, 2023 WL 4633411, at *6 (Del. Super. July 19, 2023)); *see also Markusic v. Blum*, 2021 WL 2456637, at *4–5 (Del. Ch. June 16, 2021), *aff'd*, 284 A.3d 1017 (Del. 2022) (declining to issue declaratory judgment where concurrent litigation in another court would sufficiently address the controversy); *Burris v. Cross*, 583 A.2d 1364, 1370–76 (Del. Super. Ct. 1990) (same).

Discretionary-Action Provision.[405] ATP seeks this declaration in part because Rigmora argues in the Cayman Litigation that ATP filed this action in breach of its fiduciary duties.

Rigmora argues that ATP's claim under the Exculpatory Provision is unusual. Exculpatory provisions shield a covered person from liability for covered claims. And there is no ripe claim here, because Rigmora does not argue in this dispute that ATP breached its fiduciary duties.[406]

Rigmora has the better of the argument here; ATP's request for declaratory judgment is not suitable for resolution in this forum. Delaware law governs a gross negligence standard in the Exculpation Provision; but otherwise, Cayman law governs both the Exculpatory Provision and the Discretionary-Action Provision. Further, the underlying dispute around whether ATP's filing of this action constitutes

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[405] Compl. ¶ 196; PTO ¶ 74(f); LPA ¶ 2(g) ("To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability . . . provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner[.]"; LPA ¶ 18(g)(iv) ("In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion . . . . To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.").

[406] Rigmora Post-Trial Br. at 61–62.

a breach of its fiduciary duties is central to Rigmora's Winding Up Petition in the Cayman Litigation.[407] As a commonsense matter, this court has little reason to resolve the issue, which was not a core dispute in this litigation.[408] The factual findings in this decision speak for themselves. And Cayman court is well positioned to assess their implications under Cayman law. Commonsense dictates reserving judgment on both of ATP's requests for declaratory relief concerning the Exculpatory and Discretionary-Action Provisions.

2. Global Default Provisions

ATP seeks a declaratory judgment concerning the Global Default Provision, although the nature of the ATP's requested declaration has evolved over the course of this litigation.

In its Complaint, ATP requested a declaration that Rigmora is "in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner."[409] ATP requested similar relief in the Pre-Trial Order.[410] The Writ Injunction, however, prohibits ATP from "taking any steps against [Rigmora] to enforce any purported default provisions" related to the May 30 and June 1 capital calls.[411] At trial, therefore, ATP withdrew any request contrary to the Writ

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[407] JX-1417 ¶ 26; ATP Post-Trial Reply Br. at 44.

[408] *See id.*

[409] *Markusic*, 2021 WL 2456637, at *5.

[410] PTO ¶ 74(a)(iv) (requesting a declaration that Rigmora "breached [its] obligations under the LPA to fund and approve budgets sufficient to qualify as a Defaulting Partner").

[411] JX-1434 ¶ 1. *Compare* Compl. ¶ 183–92, *with* PTO ¶ 74(a)(iv).

Injunction.[412] In post-trial briefing, ATP seeks a far more limited declaration, asking for "an order declaring that the Global Default provision[,]" Paragraph 5(c) of the LPA, "governs defaults" and "ha[s] not been altered or amended."[413]

As currently framed, ATP's request is so narrow as to be undisputed, as Rigmora does not deny that the Global Default Provisions have never been amended.[414] Because there is not dispute between the parties on this point, there is no actual controversy. ATP's request for declaratory relief is not ripe. For that reason, it is dismissed.

D. Attorney's Fees

ATP requested attorney's fees under the "loser pays" principles of Cayman Island laws and the Common Law in the Complaint and in the Pre-Trial Order.[415] The Pre-Trial Order referred the court to ATP's pre-trial brief for a discussion of disputed issues, but ATP's pre-trial brief did not address the issue.[416] Rigmora addressed this issue directly in pre-trial briefing, arguing that the American rule under Delaware law governs the issue of attorney's fees.[417] ATP's post-trial opening brief made no mention of attorneys' fees. ATP did not address this issue until its post-trial reply brief and then did so in a cursory fashion.

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[412] ATP Pre-Trial Br. at 56 n.22.

[413] ATP Post-Trial Opening Br. at 82; Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[414] *See* Rigmora Post-Trial Br. at 60.

[415] PTO ¶ 74(g).

[416] *See generally* ATP Post-Trial Opening Br.

[417] Rigmora Post-Trial Br. at 62.

Whether a party has waived an argument by failing to raise it in briefing is a procedural matter, so Delaware law governs whether ATP's request for attorneys' fees has been waived.[418] "It is settled Delaware law that a party waives an argument by not including it in its brief."[419] "[A]n issue not raised in post-trial briefing has been waived, even if it was properly raised pre-trial."[420]

ATP's failure to meaningfully brief the issue of its entitlement to fees under Cayman law until its post-trial reply brief constituted waiver. Thus, to the extent that Cayman law supports awarding ATP its attorney's fees and expenses, which this decision does not address, the claim is denied.

III. CONCLUSION

Excluding the Capital Call for Replicate, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls. ATP is not entitled to specific performance relating to the budgeting approvals. ATP's request for a declaratory judgment concerning the Exculpatory Provision or the Discretionary-Action Provision are held in abeyance. ATP's request for a declaratory judgment concerning the Global

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[418] *See Wheeler v. Wheeler*, 636 A.2d 888, 891 (Del. 1993); *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) (Berger, J., concurring) (unanimously holding that "the motion for reargument is procedurally barred under Delaware law, because the issue raised on reargument was not fully and fairly presented in the Defendants' opening briefs"); *Chaplake Hldgs., LTD. v. Chrysler Corp.*, 766 A.2d 1, 6 (Del. 2001).

[419] *Emerald P'rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003), *aff'd*, 840 A.2d 641 (Del. 2003).

[420] *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 502 n.77 (Del. 2019); *see also In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 62 (Del. Ch. 2001).

Default Provision is dismissed. ATP is noted entitled to its attorney's fees under the Cayman law's loser-pays rule. The parties are ordered to submit a form of order or competing forms of order implementing this decision within three business days.

EXHIBIT D

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Thursday, October 16, 2025
9:15 a.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

REDACTED TRIAL TRANSCRIPT - VOLUME I

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JOHN F. FERRARO, ESQ.
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of the Massachusetts Bar
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
GARRETT B. MORITZ, ESQ.
ROGER S. STRONACH, ESQ.
A. GAGE WHIRLEY, ESQ.
Ross Aronstam & Moritz LLP
for Plaintiff

Appearances Cont'd ...

APPEARANCES CONT'D:

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DANIEL E. KAPROW, ESQ.
CHRISTINE J. CHEN, ESQ.
ZACHARY R. GREER, ESQ.
BENJAMIN O. ALLEN, ESQ.
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-and-
SHANNON ROSE SELDEN, ESQ.
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ADRIANNA FINGER, ESQ.
of the New York Bar
Debevoise & Plimpton LLP
for Defendants

ALSO PRESENT:

STEVE LAGUTIN, Russian Interpreter

- - -

THE COURT: Good morning.

ATTORNEY BARLOW: Your Honor, good morning. Mike Barlow on behalf of plaintiff, ATP III GP. I rise for a brief set of introductions. I'd like to introduce just a few people right now. We'll have a larger cast of characters throughout the day.

THE COURT: It seems like we have a large cast of characters today.

ATTORNEY BARLOW: To keep it all straight, we'll start with Mr. Andrew Berdon, Rachel Epstein. And of course the Court knows Garrett Moritz.

ATTORNEY MORITZ: Good morning, Your Honor.

ATTORNEY BARLOW: Point of order, would you like us to break at 10:45 today under the typical schedule?

THE COURT: Yes. So I owe you time over the course of the next couple of days. And I was going to propose that we go 15 minutes late today -- if our court reporters allow it -- and start 15 minutes early tomorrow. And that will give us some flexibility at the end of the day.

As you may be aware, I had a

preexisting commitment beginning at noon tomorrow, and I'll have to break at noon tomorrow. But I think we can make the time up easy enough.

ATTORNEY BARLOW: Thank you, Your Honor.

THE COURT: Thank you.

ATTORNEY ROHRBACHER: Good morning, Your Honor. Blake Rohrbacher, Richards Layton & Finger, for the Rigmora defendants. I'll start with introductions at the counsel table. Shannon Selden from Debevoise & Plimpton, Zach Saltzman, Lucy Sundelson. Back table as well, William Taft, Natascha Born, Sarah Wolf from Debevoise & Plimpton. And, Your Honor, Leslie Trzonkowski and Daniel White from my office. Our corporate designee Alexey Yakovlev is here.

And one housekeeping matter. The interpreter, Steve Lagutin, is here. We don't anticipate needing his services for the morning session, but we will need to figure out where he sits because we will need a microphone for him.

So that can be an after-lunch problem, but I wanted to raise it, and we can sort that out.

THE COURT: Thank you for raising it.

We'll figure it out between now and then.

ATTORNEY ROHRBACHER: Thank you.

THE COURT: Are there any housekeeping matters we should attend to?

ATTORNEY BERDON: Thank you, Your Honor. Andrew Berdon for ATP III GP, Limited, as general partner of ATP Life Science Ventures.

Your Honor, there's a pending motion to maintain the status quo. We served our opening brief September 19th, I believe. And the defendants served an opposition on October 3. In the interim, we've tried to reach an agreement, both as to the language of an interim order here, as well as to obviate the need for a motion for PLs in the Cayman Islands.

Yesterday afternoon, our proposal to appoint a special manager to oversee and work with ATP in the interim period was rejected. And so we would propose to put in our reply brief perhaps Sunday evening. So we'll have that fully briefed, and we can deal with any need for an argument for that next week.

THE COURT: Any objection?

ATTORNEY SELDEN: No, Your Honor. Sunday evening works for the reply for us.

THE COURT: All right. That's the plan. Thank you.

Shall we call our first witness?

ATTORNEY BERDON: Yes, Your Honor. The plaintiffs call Dr. Seth Harrison.

SETH HARRISON, having first been duly affirmed, was examined and testified as follows:

ATTORNEY BERDON: May it please the Court.

THE COURT: Yes.

DIRECT EXAMINATION

BY ATTORNEY BERDON:

Q. Good morning. Would you please introduce yourself to the Court.

A. My name is Seth Harrison. I'm managing general partner of Apple Tree Partners.

Q. And what is Apple Tree Partners?

A. Apple Tree Partners is a life sciences venture capital firm.

Q. And where is ATP based?

A. In New York, Boston, and the Bay Area.

Q. Can you briefly describe your educational background for the Court.

A. Yes. I went to Princeton, then

Columbia medical school. I did a year of surgery at the Presbyterian Hospital in New York City. And then I have an MBA from the Columbia Graduate School of Business.

Q. What was your work experience after you left medicine?

A. Business school.

Q. Your work experience after business school.

A. Yes. I started work immediately in a venture fund. I did a brief internship at Merck, learned that I preferred startups and founding companies. And I went to a larger venture fund as a venture partner, founded companies, they were successful. I became a general partner at Oak Investment Partners.

Into the late '90s I decided to do nothing but internet. I spun out my life sciences portfolio in 1999 in the first synthetic secondary with institutional backers to form Apple Tree Partners I.

Q. Who were your first institutional backers for Apple Tree Partners I?

A. Landmark Partners, Goldman Sachs,

Liechtenstein Global Trust, VenCap, an insurance company. I forget all of them.

Q. And what is your role at ATP?

A. I'm a managing partner.

Q. Did there come a time in your time at ATP where you were introduced to Dr. Dmitry Rybolovlev?

A. Yes.

Q. What were the circumstances of that?

A. It was 2010, in the late summer, and a major biotech analyst on Wall Street, I think he worked for Merrill Lynch at the time. He sent an email saying one of the oligarchs would like to learn about biotech, would you be interested?

Q. Did you and Dr. Rybolovlev reach an agreement where you would manage money for him?

A. Yes. We met first in October of that year, and then we had multiple meetings afterwards, long meetings. And, yes, we did come to such an agreement.

Q. And what was the first amount that you were asked to manage for Dr. Rybolovlev?

A. 100 million, U.S.

Q. And did that amount of capital get

increased at some point?

A. Yes. Originally he was interested in my managing a billion and a half dollars for him. I preferred to walk before we ran, and suggested the 100 million. And after about eight or nine months, we met again, and I suggested -- we agreed that we roll the 100 million into a larger facility. The 100 million was in a fund called Apple Tree III, and the larger facility became Apple Tree Partners IV, L.P.

Q. And when you increased the amount of the investment to $1.5 billion, was there a change to the agreements between yourself and Dr. Rybolovlev?

A. Yes, there was a new LPA.

ATTORNEY BERDON: Marco, can you please pull up JX 0001.

Q. If you could turn in your binder, Doctor, or you can look at the screen.

Dr. Harrison, do you recognize what's been marked as JX 1?

A. Yes. That's the ATP IV LPA, the first page.

Q. And when this document was first executed, what was the form of Dr. Rybolovlev's

representation in the L.P.?

A. Form of his ...

Q. Withdrawn.

What were the names of the investors who contributed on behalf of Dr. Rybolovlev?

A. He had two BVI investors called Ezbon and Blue Horizon.

Q. And were they limited partners?

A. Yes.

Q. Were there other limited partners of the fund?

A. Yes.

Q. Who else was a limited partner of the fund at the time of its initiation?

A. Myself.

Q. And did you contribute capital to the fund?

A. Yes.

Q. How much?

A. 54 million.

Q. And are you still a limited partner of the fund?

A. Yes.

Q. And do you still own 100 percent of

that 54 million contribution?

A. No.

Q. Who does?

A. I gifted approximately 55 percent of that to a trust for my children called Les Pommes.

Q. Who negotiated the limited partnership agreement, the LPA, on behalf of ATP?

A. Myself and Dan Finkelman, who is now or general counsel, who was at the time in the fund's practice at Proskauer.

Q. And who negotiated on behalf of Dr. Rybolovlev?

A. Dmitry himself, and his CIO at the time, named Mikhail Sazonov.

Q. Generally speaking, how does the LPA work in terms of making investments?

A. We have a concept called budgets, which I suggested. The reason I suggested it is that I understood that if I were going to give someone a billion and a half dollars, I wouldn't want to give it as an entire lump sum. I'd want some control over it. And yet, my going-in fundamental concern was to be able to remain autonomous as an entrepreneur.

So I suggested to Dmitry that we

create budgets for every project. And he could approve any budget he wanted, any project he wanted. But once a budget was approved to fund a project within that envelope of money, I would call like a GP.

Q. When you say "call like a GP," what does that mean?

A. Call capital discretionarily within a budget approved for a given project.

Q. And based on your understanding under the terms of the LPA, who controls the actual business of the fund and its investments?

A. The general partner.

ATTORNEY BERDON: Marco, can we pull up Section 2(b). Thank you.

Q. Dr. Harrison, do you recognize the portion of the LPA that's in front of you?

A. Yes.

Q. And is this the section of the LPA that you understand to vest control of the business of the fund with the GP?

A. Yes.

Q. So, Dr. Harrison, can you just explain the process by which budgets are presented and perhaps approved.

A. Yes. Typically, I and my team would develop an interest or an idea for a new project that would generally take the form of a new company eventually. We would vet it internally. After a certain point, it would come to a level where we were interested enough so that I would bring it up in a Zoom call or an in-person meeting -- which, there were many with Dmitry -- and we would discuss it briefly and give him a heads-up that in some two to three months' time, at our next meeting, we would talk about it in depth seeking his approval.

Q. We'll come back to the actual execution of particular budgets later.

But who participated in the substantive discussions with Dr. Rybolovlev about the founding of the companies that we're here to speak about today?

A. It was myself, Dmitry, his then-CIO. The CIOs changed over the years. Initially it was Mikhail Sazonov, then it was Anna Batarina, then it was Anna Kolonchina. Typically that was it. On rare occasions we would have members from the ATP management team there. But I believe it was not typically to discuss budget proposals.

Q. Does the LPA have a set of provisions that you understand control when capital can be called?

A. Yes.

Q. And do you have a general recollection of what part of the LPA governs the ability to call capital?

A. Section 5, is it?

Q. Do you know, was Section 5 amended during the course of the parties' dealings together?

A. I believe so.

Q. And would you understand -- do you recall which amendment has the changes that currently govern?

A. Is it 3?

Q. Let's take a look.

ATTORNEY BERDON: Can we pull up JX 4, please. And, Marco, can we take a look at the full first page, please.

Q. Dr. Harrison, taking a look at the first page of Amendment 3, does that refresh your recollection as to whether --

A. Yes.

Q. -- it amended Section 5?

A. Yes, it does.

ATTORNEY BERDON: And let's turn to the next page, Marco. And can we blow up -- yes.

Q. Dr. Harrison, is, to the best of your understanding, paragraph 5(a)(ii), as set forth in Amendment 3, the most recent iteration of Section 5?

A. Yes, with the exception that certain entities have -- are no longer in existence that are referred to in the paragraph.

Q. Okay. So let's just briefly talk about that.

What's the name of that entity that is out?

A. ATC, which stands for -- or stood for Apple Tree Consolidated.

Q. At the time of Amendment 3, what was the function of ATC supposed to be?

A. The function of ATC had been to be the holding company through which the fund made all project investments. Because Dmitry's original goal, and a goal that remained intact until our most recent meetings, was to build a family-owned pharma company using a venture capital frame or apparatus.

Q. So were references to ATC subsequently

removed from the contract by amendment?

A. Yes, I believe so.

Q. Was ATC ever formed?

A. No, it wasn't.

Q. Was there ever a board comprised of representatives of Rigmora and representatives of ATP that controlled the budgeting process?

A. There was a board called for, but it was never constituted and never met.

Q. And so can you explain to me how, in practice, capital got called by ATP.

A. Well, there would be an approved budget, and then we would send a capital call and the capital call would be paid. There was a certain formalization in how the capital calls were written and laid out. But that was generally how it worked.

Q. And, categorically, what types of subject matter could be the subject of a call that would require financing?

A. There would be calls for approved budgets, projects that were approved in budgets. There would be calls for management fees. And there were two management companies -- or are two management companies, Apple Tree Venture Management and Apple

Tree Life Sciences, Inc. There were calls for fund costs, all laid out in the LPA. And there were calls for incubation expenses. And there may have been one or two other categories.

Q. But those are generally set forth in Section 5, as amended?

A. Yes, they are.

Q. Were provisions built in to the LPA to deal with the situation where a limited partner defaulted on a capital call?

A. Yes.

Q. And, generally speaking, do you know where those were dealt with in the agreement?

A. I don't recall the exact paragraph, no. I'm sorry.

Q. You think it was in Section 5, though?

A. Yes.

ATTORNEY BERDON: Marco, can we pull up section -- well, JX 1 at 23, please.

Q. Dr. Harrison, I'm showing you on the screen here Section 5(c) of the LPA.

Do you recognize it?

A. I do, yes.

Q. And is this at least a portion of the

section of the LPA that deals with defaults on contributions?

A. Yes.

ATTORNEY BERDON: Marco, can we go down to (iv), please.

Q. Dr. Harrison, what are the GP's rights, to the best of your understanding, in the event of a default on a capital call by an LP?

A. Well, they are listed here. The GP might impose a default charge. The GP might help the defaulting partner in selling its interest to potentially a substitute limited partner. The GP might accept a late contribution at his discretion. And the GP has essentially the right to sue.

Q. And did you and Dr. Rybolovlev specifically discuss and negotiate the default provisions that we're talking about?

A. Yes.

Q. And, in particular, do you recall which parts of the default provisions you talked about with him?

A. The entirety of the default provision.

Q. Including the ability of the general partner to impose a default charge?

A. Yes, absolutely. I would say that would have been -- that was his focus, and we discussed that explicitly.

Q. And did you have a position that you expressed to Dr. Rybolovlev about the importance of that provision to you?

A. Yes.

Q. And why was the ability of the general partner to have certain enumerated rights in the event of a default important to you?

A. I explained to Dmitry that we were about to embark upon a fund that would be funded essentially for the most part by a single LP, single-point financing. And this introduced a structural risk that I appreciated but that, more importantly, any counterparty that the fund would ever deal with would appreciate -- every founder, every CEO, every hire at the fund, any counterparty.

And that we just couldn't do business. It would be highly unlikely that we would be able to even start business unless we had such a remedy -- which, of course, we would hope we would never use, but needed to be structurally in place. And, in fact, was typical for every venture fund that I've ever been

associated with or that I know of.

Q. Was there a limitation imposed on the size of the default charge that could be imposed?

A. Well, it has to be discretionary and it has to be proportionate to the default. But I think the limit is 50 percent.

Q. In addition to Amendment 3, has the LPA been amended by the parties?

A. Yes.

Q. Including Amendment 3, how many times?

A. 22.

Q. During the course of the negotiation and execution of those 22 amendments, were the default provisions of the agreement ever changed?

A. No.

Q. In addition to the rights enumerated in Section 5, is there another effect if a default is -- if a partner is found to be a defaulting partner under the agreement?

ATTORNEY SELDEN: Objection, Your Honor. It calls for a legal conclusion.

THE COURT: You can testify to your understanding of this agreement that you negotiated, if you have one.

THE WITNESS: Thank you.

ATTORNEY BERDON: I'll make my questions to that effect.

BY ATTORNEY BERDON:

Q. To the best of your understanding, Dr. Harrison, is there another effect if a limited partner is declared to be a defaulting partner?

A. Yes. The defaulting partner loses its votes to direct anything in the partnership per the LPA. And this was critical because the entire point of the partnership, the fund, is to fund its portfolio. And if there were a default, particularly from a single source, funding source, it would be imperative and an emergency that we find substitute capital.

So having full control to do so was what the entirety of the default provisions allowed and what we negotiated for.

Q. And is there a specific section of the agreement, to the best of your understanding, that deals with voting rights?

A. Yes, but I'm afraid I don't know the number.

Q. Let's see if we can refresh your

recollection.

ATTORNEY BERDON: Can we go to, Marco, JX 1 at 74, please.

Q. Taking a look at what's before you, Dr. Harrison, does it refresh your recollection?

A. Yes.

Q. And is this the provision that you are talking about that discusses voting rights?

A. Yes, it is.

Q. Taking a look at the last sentence -- and it's got two parts -- can you explain to the Court your understanding of what that means.

A. My understanding of what that means is that if a partner is declared a defaulting partner, they have no control over the fund.

Q. Dr. Harrison, at the time of the execution of the LPA, was there a subscription agreement also signed at that point?

A. Yes.

Q. And to the best of your recollection, what was the sum total of the subscriptions that were executed by Rigmora?

A. By -- approximately 1.425 billion.

ATTORNEY BERDON: I'd like to pull up

JX 212, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 212?

A. Yes.

Q. And what is that?

A. It's a subscription agreement.

Q. And taking a look at the execution page of that agreement, which I believe appears at 19, can you explain to the Court what we're looking at here.

A. I don't see the execution date, I'm sorry. But it's a signature page from one of the two investors that Dmitry used to fund the fund that was called Blue Horizon Enterprise, or Blue Horizon for short. And it's signed by Mikhail Sazonov, who was the CIO of Dmitry's Family Office, and witnessed by Andrey Milkov, another member of the Family Office.

Q. In the amount as indicated there, that's Blue Horizon's share of the initial investment in ATP?

A. Yes.

Q. Was there a counterpart for Ezbon?

A. Yes.

ATTORNEY BERDON: Let's just take a

look at JX 213, please.

Q. This appears to be the same subscription agreement; correct?

A. Yes.

Q. Let's take a look at the signature page, the limited partner signature page.

Does that reflect the amount of the subscription by Ezbon International?

A. Yes, it does.

Q. And your understanding is Ezbon International is affiliated with Dr. Rybolovlev's Family Office?

A. Ezbon and Blue Horizon were investors incorporated in the BVI investor entities that were funded by Scorpios Trust, as I understand it, which is a trust in Cyprus for Dmitry's daughters, as I understand it.

Q. So as between Blue Horizon and Ezbon, back at the time of the execution of this subscription agreement, what was the sum total? Was it 1 point --

A. 1.425 between Ezbon and Blue Horizon, 1.425 billion.

Q. And what was to become of the other 75 million out of the 1.5 billion that you described?

A. That was my limited partnership interest funded by a loan from Dmitry -- or Ezbon, I believe.

Q. And did your participation, limited partnership participation, ever increase to the $75 million level?

A. No. It reduced to 54 million.

Q. And that was by agreement between yourself and Dr. Rybolovlev?

A. Essentially, yes.

Q. The documents in this case, Dr. Harrison, talk about the establishment and the presence of things called "pools."

Can you explain to the Court what a "pool" is in the context of ATP.

A. A pool is a subdivision of the fund which -- of a fund, but a fund that became Apple Tree Life Sciences Ventures, Inc. -- a master fund, if you will -- that contained different groupings of investment based upon vintage, dwell time, the teams that have put them together, the high watermarks of the different aggregated companies in each pool. They were essentially accounting devices.

Q. And why were pools necessary from the

point of view of the limited partners of ATP?

ATTORNEY SELDEN: Objection. Calls for hearsay, I believe.

ATTORNEY BERDON: Okay.

Q. Did you participate in the discussions with the Family Office about the establishment of pools?

A. Yes.

Q. What did the Family Office and you -- withdrawn.

What did you believe the utility of the pool would be?

A. It was multipart. I just described the utility sort of from a technical perspective because we had old teams and a new team coming in that would found new deals. So we needed to segregate their deals in a pool out of fairness.

There was the fact that the new money for a new fund, essentially -- or a new commitment was coming from Dmitry in the amount of $1 billion on top of the billion and a half. And there were concerns from the Family Office about KYC issues and that the establishment of a new fund would be difficult.

So we all agreed that pools would be

the correct way to go, the most efficient way, the simplest way.

Q. And the first time the pools were established, was there an amendment to the LPA that was signed between the parties?

A. Yes.

Q. Do you remember which amendment that was?

A. I think it was Amendment 13.

ATTORNEY BERDON: Marco, can we pull up JX 15, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 15?

A. Amendment 13 to the LPA.

Q. And taking a look at Section (a) there, "Separate Pools," is this what you were discussing in terms of the first embodiment of pools?

A. Yes.

Q. Were those embodiments subsequently changed by amendment executed between the parties?

A. Yes.

Q. And were the names of pools changed?

A. Yes, the names of those pools were changed, and new pools were established.

Q. You made reference just a minute ago to a transition to a new $1 billion commitment and a new team, I believe. Can you tell the Court how it came about that the Family Office made a new billion-dollar commitment to the fund.

A. Yes. We had had quite some success in our investment programs. Not everything was a success, but it was a very successful run. And Dmitry was very excited to invest in more companies of a particular type. And there were also some issues with the prior team that, despite their successes, they were much more focused on investing than they were on operating.

So the idea became to hire a top team of pharmaceutical, R&D entrepreneurs who were ready to jump into venture capital, use their networks and their formidable skills and backgrounds to found deals and actually manage them themselves. So that's what we did.

Q. Very briefly, can you just tell the Court when you speak about these experienced executives, who are you talking about?

A. We hired Paul Eisenberg, who was a chief medical officer of Amgen, one of the top

regulatory professionals in the world. We hired Mike Ehlers, who was the head of R&D of Biogen and before that ran neuroscience at Pfizer. We hired Spiros Liras, who was a top medicinal chemist for 25 years at Pfizer and had been at Biogen for one year, didn't like it. We hired Paul Jardine, who is a top brain in medicinal chemistry, also at Pfizer for 25 years, I believe. And others.

Q. Did you discuss these hires with Dr. Rybolovlev?

A. Absolutely.

Q. And was the addition of this talent part of the process of deciding how the new billion-dollar commitment would be invested?

A. Yes. He followed it very closely. When we hired Mike Ehlers, he needed to be told immediately by a Signal call. It was something he was very enthusiastic about.

Q. How did you and the team vet new investments?

A. As I told you, in my experience, typically to find a good deal, you need to find somebody who has come out of a system where they're seeing everything related to that deal. So you hire a

graduate student in immunology to find a great immunology deal. And we did that, and we had a great immunology deal with an exit called Syntimmune.

In the case of hiring these pharma executives, typically they know exactly the deals they want to do, and they have great relationships in academia, but their companies squelched them. So that theory proved out. When we interviewed people, there were a ton of really interesting ideas, great network, and obviously they knew how to manage projects.

So we just followed through on that thesis. And that was the basis on hiring the team, and that was the basis on bringing in the new crop of deals.

Q. And what was the general process that you then had to get those deals to be approved and budgets for those deals to be approved with Dr. Rybolovlev?

A. Well, first, we would talk about them internally. We would have meetings where we would basically beat each other up. We would kick the deals apart, put them back together. We would decide what we liked. I would, in the end, adjudicate what was a worthwhile investment. And then I would begin to talk

about it with Dmitry. And we would agree, as I said earlier, to discuss that deal in depth at an in-person meeting in the near future. There were many in-person meetings, so that was easy enough to do.

Q. And, generally, was Dr. Rybolovlev's approval of sort of a go on a deal arrived at at one of those meetings?

A. Oh, yes, absolutely. From the very beginning he would agree to something, and it would happen. So although there was a formalization that came afterwards, I came to trust in his word, and that was how it worked.

So we would eventually present the deal -- or I would present the deal. We would talk about it at whatever length he wanted. We would talk about the amount of the initial commitment in the budget. He would nod yes, and then we would go and formalize the deal.

Q. And tell me what the formalization involved.

A. The formalization involved finishing the business plan, finishing the term sheets with the source of the starting technology or IP or founders, and then putting together an investment memorandum, a

budget, something called a CFIUS memorandum in a budget request, and then sending all to the Family Office in an email of transmittal. And that was the formal process of getting a budget approved.

Q. Now, was the amount of the initial investment agreed to before the Family Office received the investment memo?

A. Yes, in the meeting with Dmitry. It was usually on the boat or in his apartment or somewhere, and it was agreed.

Q. Were specific milestones ever the subject of negotiation between yourself and Dr. Rybolovlev?

A. Never.

Q. Did you and Dr. Rybolovlev ever talk about there being conditions to your ability to pull down tranches of funding once a budget had been approved?

A. Only in two budgets did that ever occur in the entire history of our relationship.

Q. And what were the two times that that occurred?

A. There was something called the Braeburn RPA, royalty purchase agreement, which had

specific milestones, and we all agreed to them. And the most recent and last budget approval before all this trouble, and that was for a company called Replicate. And that had one milestone that Dmitry and Yuri wanted to put in.

Q. Once the budget was approved and formalized, of what use internally at ATP were any milestones that had been discussed in the original investment memo?

A. Very little.

Q. And why is that?

A. Because managing research is an iterative process. You are conducting experiments and evaluating their results, and you are then taking the next step. And it's completely a contingent and pragmatic enterprise. And that's what a good research scientist or a good manager of research or a good VC does.

Q. Well, you talked about formalizing arrangements with the people who had the technology and founders. What type of agreements did you execute with those folks at the initiation of a new project?

A. There would be multiple agreements. But I think the most important would tend to be the

Series A, because it usually was a Series A round, a Series A stock purchase agreement.

Q. And in any cases did those Series A stock purchase agreements contain milestones related to release of tranches of funding?

A. In some cases, yes.

Q. And in those cases, what was the utility of having tranches describing the funding associated with milestones?

A. To give the funds control.

Q. What do you mean by that?

A. Well, typically a milestone is developed between a founder or investing company and a venture capitalist based upon the best foreseeable business plan or research plan at the time that that round closes. And a round will typically run for two years, let's say, or three years.

And things change. And they always change. There are so many contingencies that come up in biotech: research, clinical, toxicity, formulation, regulatory certainly, manufacturing. They always come up. And the whole point is how you deal with them.

And those tend to perturb your initial milestone set. They always do. And VCs and boards

are used to dealing with that and constantly modifying and modulating them. And very few people really adhere to a milestone set because the idea is to continue to build the company working with the teams.

So for us, knowing that, being of that world, of that practice, whenever we put in hard milestones, it was just to have a bit more control in case we should ever want to stop funding.

Q. In your experience, was a missed milestone in and of itself a reason to terminate funding under a Series A agreement?

A. No, as I said.

Q. Have you ever decided to shut down a company that was in the ATP portfolio?

A. Yes.

Q. Can you give us any examples?

A. There was a company called Adendra, there was a company called Kynos, there was a company called Rox. There was a company called Vytronus. There were multiple. It doesn't always work.

Q. How did you adjudicate whether or not to terminate funding of those companies?

A. It depended on the case. There could be a catastrophic failure in the clinic. There could

be a safety signal. There could be just a bald execution problem that you saw and you realized this project should not be continued.

I believe that was the case in Adendra, because there was supposed to be a certain kind of antibody produced and it just simply wasn't produced and we said this isn't worth it.

There could be other problems. But you reach the ability -- in a long career you reach the ability to judge when to shut something down. You're not always right, but you try to get there and you turn things off.

Q. Are there any companies in the current ATP portfolio that you believe should be shut down?

A. No.

Q. And have you participated in conversations about the current status of research going on at each of the companies in the ATP portfolio?

A. Yes.

Q. And from time to time were there disagreements among your management team about the relative benefits of going forward with one company versus another?

A. Yes, absolutely. That's a healthy management team. We are always discussing quite vigorously the pros and cons of any given deal at any time.

Q. Given the availability of funding, would you continue to pursue research for each and every one of the companies that are currently in the ATP portfolio?

A. Yes. In some cases in a more focused way, but yes.

Q. I'd like to direct your attention back to the subject of pools and the new contribution.

Was there an amendment executed between the parties that implemented that new billion-dollar commitment?

A. Yes.

ATTORNEY SELDEN: Objection. Calls for a legal conclusion.

THE COURT: You can answer the question, if you have an understanding of whether there was an agreement you executed for that purpose.

A. Amendment 17 to the LPA.

Q. Thank you.

ATTORNEY BERDON: Marco, can you bring

up JX 89, please. And, Marco, can you just show the first page. Thank you.

Q. Taking a look at what's up on your screen as JX 89, do you recognize it, sir?

A. Yes. That's Amendment 17.

Q. And it was executed in September 2020?

A. Yes.

Q. At the time of the execution of Amendment 17, what, to your understanding, was its purpose?

A. Its purpose was to establish the contribution of a new billion dollars or an additional billion dollars to ATP IV LP.

ATTORNEY BERDON: And can we do the call-out, please, Marco, on -- thank you.

Q. Dr. Harrison, do you have an understanding as to whether this Section "20. Pools A, B and C" was something that you negotiated to effectuate that change?

A. Yes.

Q. Dr. Harrison, can you explain to the Court the different categories of what was stratified in Pools C, B, and A, as they appear in interest, in sequence here?

A. Yeah. Well, we started to bring on this new team in 2018. So they were already doing deals. And so we desired to segregate the deals that they were doing in a new pool.

And it's all called differently now, so I think that was Pool C. Is that right? Right. So that was essentially for new deals formed by the new team. And that was going to be the focus of the billion dollars.

And then Pool B contained some deals that had already been done. And there was a mix between old team and new team in Pool B.

And then Pool A was essentially all the old deals in -- that took up much of the initial billion-and-a-half-dollar commitment.

Q. And were the names of those pools subsequently changed?

A. Yes.

Q. What are the pools called that have the new deals, as you referred to them?

A. It's a little complicated. The new deals are now in Pools V-1 and V-2, Roman numeral V, referring to ATP V, and Pools 1 and 2, V-1 and V-2.

Q. Is there something called Pool V-3?

A. Yes.

Q. What's in Pool V-3?

A. It's older deals that had not quite made it across the finish line that we founded with the prior team and which we felt had potential but needed work. And we thought who better to do that work but this fantastic team of pharma R&D professionals that we just brought in. So we segregated those deals in a separate pool called Pool V-3.

Q. At the time of the execution of Amendment 17, was there also an amended subscription agreement signed?

A. I believe so.

ATTORNEY BERDON: Marco, can we go to JX 99, please.

Q. Dr. Harrison, do you recognize this agreement?

A. Yes. That's the subscription agreement to which you were just referring to.

Q. Is that for both of the Rigmora LPs or just one?

A. Just one.

Q. Was there one -- so this one says

"Blue Horizon." Was there one also executed for Ezbon?

A. Yes.

ATTORNEY BERDON: Can we scroll down to the Ezbon.

Q. Take a look at JX 101.

Do you recognize that?

A. Yes.

Q. Is that the amended subscription agreement from 2020 for Ezbon?

A. Yes.

Q. Cumulatively, what was the amount of that new subscription?

A. $1 billion.

Q. After the execution of Amendment 17 and this amended subscription agreement, was there another significant contribution of capital agreed to between the parties?

ATTORNEY SELDEN: Objection. Calls for a legal conclusion.

THE COURT: Tease that out for me. How does this factual question call for a legal conclusion?

ATTORNEY SELDEN: I believe Mr. Berdon

is calling for a legal conclusion as to whether there is, in fact, another contractual agreement for capital. If it is a factual question as to Dr. Harrison's understanding, I have no objection. But to the extent Mr. Berdon is seeking a legal conclusion as to whether there is an another contract governing the commitment of capital, I object to that.

THE COURT: I'm interested in this witness as a fact witness. And it's a fair question to ask, whether he thinks he entered into an agreement.

So why don't you ask the question.

ATTORNEY SELDEN: Thank you.

BY ATTORNEY BERDON:

Q. Dr. Harrison, did you and the Rigmora entities talk about there being a substantial increase in their investment after the execution of the billion dollars?

A. Yes.

Q. And did you consider at least part of that investment to be an agreement to contribute new capital?

A. Yes, absolutely.

Q. And did you believe that you were

entering into an agreement that would be binding and increase the level of their subscription commitment in that agreement?

A. Yes.

Q. And what was that agreement called?

A. Amendment 20.

ATTORNEY BERDON: Can we please pull up JX 1061.

Q. Do you recognize what's been marked as JX 1061?

A. Yes. Amendment 20 to the LPA.

Q. When was that executed?

A. June of 2021.

Q. It says here that in numbered paragraph 21 -- it's labeled "Braeburn Inc." Can you tell the Court what Braeburn is.

A. Braeburn is a pharmaceutical company that we founded in 2012 that now -- and we founded it as a Phase 1 company and it now markets a drug for opioid addiction and should have a $300 million sales revenue year this year.

Q. And what was the purpose of creating a separate pool, Braeburn, at the time that Amendment 20 was put into place?

A. To segregate the investment in Braeburn.

Q. Did that have an effect on high-water mark?

A. Yes. Braeburn was a very capital-intensive deal and it was considered fair to move it out of the other pools and give it its own pool. We changed economics, carry economics in favor of Dmitry in exchange for the lower high-water mark, and there were certain other features of Pool Braeburn that were put into the amendment.

Q. Did Amendment 20 also discuss the contribution of new capital?

A. Yes.

ATTORNEY BERDON: Can we go to, please, Section 22, Marco.

Q. Was there an agreement in connection with the establishment of Pool Braeburn that involved the contribution of -- or the valuing of capital that had already been contributed into the fund?

A. Well, to form the pool from ATP IV, or whichever Pool Braeburn had been in at that time, that there was a contribution to the new pool, which at that time of the formation of Pool Braeburn

constituted its capital. And that was 204 million, approximately, which was the valuation of Braeburn at that time.

Q. Taking a look at page 6, additional paragraph 22.

Can you tell the Court what your understanding is of the role of ATP Pool V-3 in Amendment 20.

A. Yes. I referred to it before, the setting up of a pool, in which companies that had been founded by a prior team but hadn't quite made it, that would be managed by the members of our new team, the pharma R&D executives. And that was Pool V-3. And in this paragraph, the companies that we wanted them to work on and that we put in that pool are called out.

ATTORNEY BERDON: Can you go to page 7, Marco.

Q. Is there a discussion there of capital -- new capital commitments?

A. Yes.

Q. What was the new cash, if any, that was to be provided under paragraph 22(b) relating to Pool V-3?

A. There were already existing budgets in

the amount of 71 million, you can see it in the paragraph, for these companies. And there was an agreement for committed capital of an additional 235 million, which you can also see in the paragraph. And the companies themselves were valued at approximately 190 million. And those were contributed to the new pool from the old pool. And the total of those three numbers was 500 million, which was the capitalization of Pool V-3.

Q. After the execution of Amendment 20, did ATP start to call capital on the amounts it had agreed to in Amendments 17 and 20?

A. Yes.

ATTORNEY BERDON: Taking a look at JX 230, please.

Q. Dr. Harrison, take a look at what's been marked as JX 230. What is it?

A. It's an email transmitting a capital call.

Q. Can you just introduce the Court essentially to who Anna Batarina is.

A. Anna Batarina is a partner in the fund. She started out as a member of Dmitry's Family Office. She was the CIO, as I understand it, for one

year and then was put at ATP by Dmitry as a kind of liaison, and eventually we made her a partner and a part of the team.

Q. Did Anna Batarina have to talk to you before she was allowed to talk to Dr. Rybolovlev in the chain of command?

A. Oh, no.

Q. And why do you say that?

A. Anna had a fluid dialogue with Dmitry. They talked quite often. I mean, I don't know how often. But whenever we were together, Dmitry would call her, she would call Dmitry. It was a full communication. I actually talked with her and said I think, from a GP perspective, we should really discuss what information gets communicated because some information is just not mature. And she felt that all information needed to be communicated. So that's how it was done.

Q. Did it become the practice at ATP to keep track of the drawdowns against agreed capital contributions whenever capital was called?

A. Yes.

Q. And how was that tracked internally?

A. Oh, internally we had a CFO.

Unfortunately, he resigned due to the defaults. But Bill would track these things meticulously, his finance team would. Of course we have audited financials, we have quarterly reports. So these were, of course, tracked.

Q. And did you provide updates to Rigmora about the accounting that you had on hand?

A. Yes.

Q. And how often were those updates provided?

A. With every single capital call.

ATTORNEY BERDON: Can we please pull up page 4 of JX 230.

Q. Dr. Harrison, do you recognize this form?

A. Yes, I do.

Q. And what is it?

A. It is the exhibit that you just referred to, which gives the Family Office a then-current statement of their funded and unfunded commitments across all the pools in the fund.

Q. And it shows commitments for ATP IV; yes?

A. Yes.

Q. And can you explain to the Court, what was left in ATP IV as of June of 2021?

A. After Amendment 20, we created a Pool ATP IV, and that contained the residuals of the prior exited deals. There were milestones that would pay out and that sort of thing from companies that had been sold.

Q. And at that point, what was the intention for Pools V-1 and V-2? Were those for the new deals?

A. Yes.

Q. And you talked about Pool V-3 previously. Cumulatively, what was the capital commitment that you communicated to Rigmora in June of 2021?

A. In this capital call -- the total unfunded commitment as of this capital call after the call was about 1.5 billion.

Q. Do you know if Anna Kolonchina, the recipient of JX 230, ever got in contact with Rigmora -- withdrawn.

Do you know if Anna Kolonchina on behalf of Rigmora ever got in touch with ATP to object to the accounting that was provided here?

A. Not that I'm aware of.

Q. How many capital calls do you believe were made and paid in the three years between 2021 and 2024?

A. I think it's four years, but scores. I don't have a number.

Q. Somewhere close to a hundred?

A. I don't know. I'm sorry. I mean, we could check, certainly, but many, many, many.

Q. Any time during that period of time before October of 2024 that Rigmora indicated a disagreement with the running total that had been provided by ATP attached to one of its capital calls?

A. There was never a time.

Q. I'd like to direct your attention to the fall of 2022. Did you have conversations with Dr. Rybolovlev over the summer of 2022 about his views towards future investment and founding of new deals?

A. Yes.

Q. What were those conversations?

A. Well, they evolved. They started out with the same idea that we had had in forming the pools that would take the new capital commitment because we had this great team and they had many, many

deals in their network. And no matter how we tried to beat them back, they kept coming up. And the team had some very many great deals to do. So there was a push/pull.

Dmitry was concerned about the Ukraine, concerned about liquidity on his behalf, but he really wanted the new team to be able to be capitalized to do deals. So we went from, I think, six new deals to three new deals to eventually late in the year -- and I know I get ahead of your question -- but just to complete the idea, only one new deal, and barely that.

And during that summer, he indicated that he had wished that he had not taken on the commitment to invest in new deals. And he told me that if he could default on a pool or on pools, it would be on V-1 and V-2. And there were several other features of the landscape at that time that were quite troubling.

Q. So let's go to the first time that you recall Dr. Rybolovlev saying that he regretted the investments in pools V-1 and V-2.

Was that in a face-to-face meeting?

A. Yes.

Q. Do you recall where that meeting took place?

A. I believe it was in Monaco.

Q. Can you place it in what month?

A. June or July.

Q. Did you end up writing a memo to Anna Kolonchina giving a chronology of events?

A. Yes. That was a memo at the end of November, because much had happened from the start of that summer through near the end of that year.

Q. Would reviewing that memo perhaps refresh your recollection as to the timing of meetings?

A. It might. I remember that there were -- there was a very long set of meetings with Dmitry in his apartment in New York in October, and we met multiple times. And much of this information came out in those meetings.

ATTORNEY BERDON: Marco, can we please pull up JX 969.

Q. Dr. Harrison, do you recognize what's been marked as 969?

A. Yes.

Q. And what is it?

A. It's an email from Anna Kolonchina to me dated December 12. And then it's responding to a long email that I sent her dated November 29.

ATTORNEY BERDON: Taking a look at the top bullets on page 3, please, Marco. I'm sorry, the bottom of page 2.

Q. Taking a look at those bullets -- and you don't have to read them out loud -- I'm just going to ask whether they help refresh your recollection as to the timing and location of meetings?

A. Yes.

Q. When do you believe the Monaco meeting took place?

A. I'm sorry. Yes, the -- so the meeting where Dmitry discussed with me the idea of reducing commitments both to new deals in V-1 and V-2 and calling less capital per unit time for approved budgets in V-1 and V-2, that took place in Monaco in late September .

Q. The word "austerity" is here in quotes. What do you recall about anyone's use of the word "austerity" in those meetings?

A. I recall that Anna Kolonchina used the word first, and it was the word she used to describe

this idea of calling less capital per unit time.

Q. And at the follow-up set of meetings, do you recall Dr. Rybolovlev drawing a distinction between his view of funding pools V-1 and V-2 versus V-3?

A. Yes, those are the New York meetings in October. And he basically told me, as I interpreted it, that was contemplating a selective default on pools V-1 and V-2.

Q. And at that point were the companies in Pool V-3 companies that had products in active clinical development?

A. No.

Q. What was the basis -- did he explain to you why Pool V-3 was preferred to him over Pools V-1 and V-2?

ATTORNEY SELDEN: Objection. Calls for hearsay.

ATTORNEY BERDON: By a party opponent?

THE COURT: Overruled.

BY ATTORNEY BERDON:

Q. Did he tell you why he favored Pools V-1 and V-2 over V-3?

A. Though they were earlier deals, I

believe he understood them better. We talked about them a lot. And they were ostensibly going to reach the clinic sooner than the deals in Pools V-1 and V-2. That's actually not what occurred. But that was the perception at the time.

Q. And at the time that Dr. Rybolovlev spoke to you about his desire to focus on Pool V-3 over deals in Pools V-1 and V-2, did he talk about the possibility of a default?

A. Yes.

Q. And did he express to you his view as to the consequences of a default if he defaulted not just on deals in Pools V-1 and V-2?

A. He told me that he believed there was a pool-by-pool default, not a global default. And then at one of the meetings when I -- I said that's -- I disagree. And then he asked me to agree in a subsequent meeting.

Q. Just to be clear, Dr. Rybolovlev asked you to reach an agreement that there were provisions -- that there would be provisions for pool-by-pool default; is that right?

A. Yes.

Q. Did you agree to make that change?

A. On the spot I told him -- it was often on the spot. I told him I would consider it because I was very, very eager to cooperate and try to work with him. I respected him. He provided an enormous amount of capital and we were doing a lot of good together. But I went home and I thought about it and I realized I couldn't agree to it.

Q. Did you ever reach agreement to modify the LPA to approve a pool-by-pool default structure?

A. Absolutely not.

Q. Did you do anything in terms of the administration of the fund or the portfolio or capital calls in response to the information that you had been given about liquidity or cash flow issues with Rigmora?

A. Yes, absolutely. As I said, we were always trying to accommodate them and trying to work with them. I couldn't agree to a global default, but I could certainly agree to calling capital at a lower rate. And so we went back to the teams and the companies and said, look, can you make due with less? In this quarter, can we call this amount and not that amount? Can we reduce the scope of the projects that the companies are working on? Those sorts of things.

And I would get pushback. And it would be, wow, yeah, but you know that means we're not going to reach the clinic.

And I would say it's okay if it takes another six months or even a year. It's better to have lower capital calls. It's what Dmitry needs.

And everyone would agree, and we would slow the companies down or drop some programs and call less capital.

Q. If you made those types of changes, would that have an impact on the company's ability to reach milestones that might have been described in the original investment memoranda?

A. Yes, in theory. But as I said, those milestones in an IM are rapidly obsoleted by the developments in the companies. But to the extent that there was one that was still being worked on, yes, absolutely. Any program that was being worked on when we slowed down the capital was going to get wherever it would go slower.

Q. And did you ever discuss with Dr. Rybolovlev the effect of reduction in the amount or pace of infusions of capital on the progress of these companies?

A. Yes. We said we can do it, but it's going to slow things down. And we said okay.

Q. While you were administering this belt-tightening, were you concerned that Dr. Rybolovlev would actually default on his commitments?

A. No. I had faith in the pillar of the partnership, at least my opinion of it, which I told him at the very beginning, and I maintain, and that is that he would not default because of the global default, if necessary, as a deterrent. Also because I thought he was honorable and believed in the companies.

The problem was that I had -- once we started to slow down the flow of capital, I had many, many people coming to me, worried in the constant -- the refrain was, okay, I understand liquidity constraints and slowing things down, that's okay. But do you think that the Family Office will meet its obligations for the entire Series A? Should I worry about that?

And my answer was always no, absolutely not.

Q. Just to be clear, your answer to those

folks was that ultimately you believed that the Series A funding would be there?

A. Yes, that the approved budgets would be met and the approved budgets matched the size of the Series A financings per company.

Q. In parallel with this, were you also doing some thinking about what would happen in the event of a default?

A. Yes.

Q. What did that look like generically, without disclosing the contents of any specific conversations?

A. When your largest LP tells you he's thinking about defaulting, honestly, you pick up the phone and call your lawyers and say, what does this mean? Can we look at the LPA? I need to understand this. I've never been in this situation before. And so we did.

Q. What would the consequences be of a funding default in Pools V-1 and V-2 to the folks associated with the portfolio companies, in your estimation at that time?

A. They would lose their jobs, they would lose the value of their equity. Projects wouldn't be

funded that we committed to academic institutions. And extremely well-known scientific founders with many, many options as to where they could go, other venture funds -- and they had chosen us -- who had had long conversations with me about the existence of the global default, those commitments wouldn't be honored. Each company has employees, has contracts for various kinds of leases, funded research back to founder labs. All of it would cease, and indeed in the current default has.

Q. There's a bit of contention in this case that perhaps some of the portfolio companies were wasteful or inefficient with their spending of capital.

Are you aware of that?

A. Yes.

Q. And did you or your management team ever take a look at the relative efficiency of one of your portfolio companies versus a set of peers?

A. Yes.

Q. Do you remember which company you looked at in that case?

A. That happened to be Ascidian.

ATTORNEY BERDON: Can we take a look

at JX 874, please, Marco. Let's start at page 1.

Q. So who is Dan Rosan?

A. He's the chief financial officer and chief business officer of Ascidian.

Q. And what was being sent to you and Ms. Batarina and Mr. Ehlers here?

A. It looks like a board pack from May of 2024.

Q. Turning to page 42 of that deck.

A. It also includes the Roche deal, definitive agreement.

Q. I'm sorry. Can you just tell the Court what you mean when you say "the Roche deal."

A. Ascidian did a big corporate partnership with Roche, and I believe it had just closed at that time.

Q. What type of financial relationship was put into place between Roche and Ascidian; do you recall?

A. It's a typical BV deal where Roche committed to develop three what are called targets, starting points, in the biology that Ascidian is exploring to create drugs. Those happened to be in the neurodegenerative disease space. For those three

targets, they agreed to an upfront fee of nondilutive cash on signing of 15 million per target, so 45 million.

And then there typically are some R&D milestones, early milestones that the company covers the R&D that takes place at its labs for those targets. And then there are milestones that are paid in the course of the work on the project starting with as early as one year after the commencement of the work for research milestones all the way out to post sales, reaching a certain plateau in revenue. And there's a royalty.

Q. Taking a look at what is in front of you as page 42 of that board deck, is this the comparison of efficiency that you mentioned earlier?

A. Yes. I was actually surprised.

Q. And how do you interpret the information on this slide?

A. Well, this is a list of competitors in what's called the RNA editing space or DNA editing space. And I will not go into detail unless asked. But these are companies that were founded to do something close to what Ascidian does.

And you can see -- and it measures how

much equity funding had been required until the company got its first project into the clinic.

And you can see that while some of them have greater pipelines and one has more than one clinical project, they have massively more equity financing than Ascidian. Ascidian took $78 million to get a very important product into the clinic for Stargardt's disease, which is the most common hereditary blindness, and it has a pipeline of seven programs. Not bad on 80 million.

You see what others have done for -- I don't know. The closest is three times more or something. No, that -- the closest that got into the clinic with one product was 361 million.

Q. Thank you, Dr. Harrison.

I'd like to just turn your attention back for a minute to Braeburn.

You mentioned that Braeburn is a pharmaceutical company that has a product on the market now. Has it been valued recently?

A. Yes.

Q. And what was the equity valuation at that time?

A. $2.2 billion.

Q. And was there also a DCF valuation done at that time?

A. Yes. It was 2.9 billion.

Q. Why is there a difference between the equity value and the DCF value, to your understanding?

A. The delta is made up by a royalty that ATP owned entirely, which was valued at the time of distribution at about 700 million and has a total face value of around 900 million. And that was distributed into a pass-through entity that is owned by the two partners in Pool Braeburn, myself and Anna Batarina, and the Family Office.

Q. Putting the royalty agreement aside, was Braeburn on firm financial footing in 2021, 2022?

A. No.

Q. And did ATP enter into any financial arrangements to address that in addition to the royalty agreement?

A. No -- oh, I'm -- in 2021?

Q. No. 2022 or 2023.

A. Oh, yes, we did, yes.

Q. What arrangements did Braeburn enter into?

A. We worked with Braeburn to put in

place a launch debt with Hercules Capital.

Q. Before putting the Hercules facility in place, who was going to be responsible for paying for the launch of Braeburn?

A. It would have been paid entirely out of the royalty purchase agreement, which was from capital provided by the Family Office.

Q. And did the Family Office have financial obligations to contribute capital for the purpose of funding the Braeburn launch?

A. Yes. The RPA required a budget commitment of $200 million, which they signed.

Q. Was there a rate of return that was agreed to in return for that $220 million commitment?

A. Yes. It was a 40 percent royalty but contingent on several things. It was capped at five times whatever amount would have been invested in the RPA, the royalty purchase agreement.

Q. Did Rigmora originally support the idea of the Hercules financing?

A. Yes, they asked us to do it.

Q. And did they stay constant in that support?

A. It was a bit schizophrenic. In -- so

we set up this launch debt with two different debt providers, and there were KYC problems, and they withdrew their term sheets.

Fortunately, ATP had a relationship with Hercules through another portfolio company that was public. So we called Hercules and asked them if they would do a deal, and they did. They did a very good deal with us.

Right at that time, the Family Office called for the distribution of Braeburn under Amendment 20 of the LPA. It's a distribution provision that entitled the Family Office to call Braeburn out of Pool Braeburn but subject to several conditions. The conditions weren't met, but more importantly, Hercules put conditions on providing their launch debt, which was that Braeburn be controlled by ATP and also that the securities of Braeburn -- namely, the equity and the royalty purchase agreement, and there was also a convertible note -- be essentially subject to their lien to secure the note. So calling, distributing those securities would have resulted in obliterating that deal.

Q. So the Family Office and ATP reached agreement to move forward with the Hercules financing

and put the distribution of Pool Braeburn aside at that point?

A. Yes, essentially.

Q. Did the issue of the distribution of Pool Braeburn come up again?

A. Yes.

Q. When was that?

A. July -- late July of 2024.

Q. And did that lead to a disagreement?

A. Yes.

Q. Did that disagreement become public?

A. Yes.

Q. How?

A. They sued us in Cayman.

Q. In connection with that lawsuit, did ATP assert any counterclaims?

A. No.

Q. Did ATP run into court here in Delaware to assert claims against Rigmora after being sued in Cayman?

A. No.

Q. What happened to that disagreement and lawsuit in Cayman?

A. I flew to Monaco and I suggested to

Dmitry that the best thing would be to settle. We had a couple of days of meetings and we agreed to the basic outline of a settlement in order to continue to work together.

Q. And during the time between the commencement of that lawsuit and the ultimate agreement to settle it, what was going on in terms of funding Pools V-1 and V-2?

A. We were calling capital, and the Family Office was meeting the capital calls.

Q. Did the Family Office's position change with respect to any aspect of its obligations to meet capital calls?

A. Did their position change?

Q. Yes.

A. Yes.

Q. And what changed?

A. Bizarrely, in October of that year, we started to receive the capital calls with a disclaimer that the Family Office viewed them as voluntary.

Q. And did the Family Office at that time explain to you why they felt it was voluntary?

A. No.

Q. Not in any conversations between

yourself and the folks at Rigmora did they explain it to you?

A. There weren't open, fulsome conversations at that time because, don't forget, we were in litigation and we were trying to settle it. So the conversations were constrained to initially the legal exchanges in the suit and then the settlement discussions.

ATTORNEY BERDON: Can we pull up JX 998, please.

Q. Dr. Harrison, looking at Exhibit 998, do you recognize it?

A. Yes.

Q. And what is it?

A. It's one of those disclaimer emails.

Q. And it's from Anna Kolonchina?

A. Yes.

Q. Now, she refers to an affidavit in that email.

Do you know what she is referring to there?

A. I believe it would be an affidavit that she would have made in their Cayman lawsuit.

Q. And did this language or language

referring to it ever appear again in correspondence from Rigmora?

A. Yes. It became a feature of their correspondence related to incoming capital calls.

Q. And how did the Braeburn litigation resolve?

A. It resolved in a settlement, which took the form of Amendment 22 to the limited partnership that I believe was signed December 20, 2024.

Q. Thank you.

ATTORNEY BERDON: Your Honor, I think we're up close to the time you wanted to take a break.

THE COURT: We are. We can do that. Thank you.

Let's take 15 minutes.

(Court in recess at 10:45 a.m.)

(Resumed at 11:00 a.m.)

THE COURT: Please be seated.

ATTORNEY BERDON: May it please the Court.

BY ATTORNEY BERDON:

Q. Dr. Harrison, just before the break we had talked about the execution of Amendment 22.

During the time that the Cayman litigation was pending, were there portfolio companies at ATP that were nearing the end of their Series A commitments?

A. Yes.

Q. Were there initial budgets?

A. Yes, their budgets at that time.

Q. And were there discussions between yourself and Dr. Rybolovlev about new budgets while the litigation was ongoing?

A. Yes, they were part of the settlement discussion.

Q. And were there -- can you explain to the Court the issues that you were facing in terms of certain companies coming to the end of their financing, initial financing commitments and initial budgets?

A. Well, the issues were that the companies in question in most cases were projected to run out of cash by certain dates. In one case, there was a company, Ascidian in particular, that would get to the middle of that Stargardt disease trial and then run out of funding to conclude it in the proper way with what's called a pediatric cohort. And that required additional capitalization in the form of equity and a new budget commitment. This was not news. This was an ongoing discussion.

Q. And, as you said, those discussions became part of the settlement discussion; is that correct?

A. Yes.

Q. Did they become part of the settlement agreement?

A. Yes.

ATTORNEY BERDON: Can we please have JX 1068.

Q. Dr. Harrison, do you recognize what's been marked as Exhibit 1068?

A. Yes.

Q. What is it?

A. Amendment 22 to the LPA.

Q. Do you recall there being a specific section that was called out to discuss about budgets?

A. Yes.

Q. Off the top of your head, do you recall what that was?

A. I happen to. It's paragraph 26.

ATTORNEY BERDON: Can we go to page 4, please, Marco.

Q. So I don't want to spend too much time on this, Dr. Harrison, but can you tell me an overview of what's discussed here in terms of the cash-out dates for these various companies.

A. They're four companies with projected cash-out dates: Aulos, which is developing a cancer drug in the middle of a clinical trial; Nereid and Nine Square, which are neurodegenerative disease companies that have very promising preclinical projects; and Replicate Bioscience, which is an RNA vaccine company with several promising projects and a clinical project.

Q. And is it fair to say that paragraph 26 here actually gives estimates of their cash-out dates as of the time it was executed?

A. Yes.

Q. In your view, was it clear to the Family Office and Dr. Rybolovlev that these companies were running out of cash in the near term as of December 20 of 2024?

A. Yeah, it wasn't news. We had discussed the need for new budgets -- had been discussing the need for new budgets prior to the commencement of their suit, their lawsuit.

Q. And I note that there's a proviso here that talks about "twelve months" budgets, a period of 12 months after the remaining unfunded amounts.

What was the significance at that time of the "twelve months" language?

A. Well, when I went to Monaco and proposed to Dmitry that we settle, I told him that, look, we've come a long way, we've been working together since 2011, we've had some great successes. But we've yet to build the pharma company that you wanted to build. It turns out that in the portfolio right now, Dmitry, there are projects that, at least to my mind, represent the formative aspects of that company. And we could take those pieces and really figure out how best to organize them in such a company.

And he said that's what he wanted to do. And that was the basis of the settlement.

But I said that it will take awhile to figure that out. That's a very complicated plan. We have the team, able to do it, but it will take some time. And I proposed that we put in place holding budgets so that the companies that were running out of money could continue for a 12-month period during which time we at ATP would work diligently on creating that plan and also work collaboratively with the Family Office and Dmitry.

Q. Turning your attention to the last sentence of paragraph 26. Can you tell the Court your understanding of the meaning of that last sentence.

A. That they would reasonably consider the new budgets and work diligently, and we would work with them, to create a loan facility that would be secured by the pass-through entity that had received the Braeburn royalty purchase agreement or the Braeburn royalty.

Q. And that was targeted to raise a certain amount of money?

A. About 300 million. He said he would use that 300 million to build pharma.

Q. And what was your understanding at the time of the availability of that type of financing?

A. Very available.

Q. And why do you say that?

A. Because the original idea of doing a royalty financing based on the royalty came from us. About a year prior, understanding there were liquidity issues -- this is before the suit in Cayman -- I started to sort of approach my network, which includes financial groups that do nothing but finance royalties. You sell them a royalty that you own and they pay you back something less than the total cash flow that you project it will have.

And we had worked out a deal where this $900 million-phase royalty would generate approximately 700 million for the Family Office. And we brought it to them, and we sort of didn't hear about it for awhile. And then they came back and said, oh, we have a better deal, we're going to take it on ourselves.

And that disappeared. That was sometime in the early summer of '24. And then the lawsuit. So when we emerged from the lawsuit via the settlement agreement, I thought we were going to

collaborate on the royalty financing, but they wanted to do it themselves. And after several months they failed.

Q. Do you believe that Rigmora was reasonable in trying to pursue that equity financing on their own?

A. I can't comment on that. I think it -- they certainly didn't use a resource that was right in front of them — us. We tried, but they wouldn't accept our help.

Q. Did Rigmora hire a financial advisor to try and help them?

A. Yes.

Q. And to the best of your understanding, does that financial advisor have a presence in the market for royalty finance?

A. I don't know that they particularly do or not. I think there's somewhat of a general shop based in the UK. I know that the group that we were working with does nothing but royalty deals.

Q. Have any of the companies listed in paragraph 26 been given additional financing by Rigmora?

A. Yes.

Q. Which?
A. Replicate.
Q. At the time of the execution of Amendment 20, what was Replicate's target out-of-cash date?
A. At the time of the execution of Amendment 22?
Q. 22. Forgive me.
A. February of 2025.
Q. Do you recall the date on which Amendment 22 was executed?
A. December 20th of 2024.
Q. And did ATP submit new budget requests to the Family Office after the execution of amendment 22?
A. Yes.
Q. When?
A. December 24th.
ATTORNEY BERDON: I'd like to put up Exhibit 1079, please, Marco.
Can you scroll down do the bottom email, please.
Q. Dr. Harrison, except for the fact that this appears to have been taken from Rigmora's files,

do you recognize the email that's highlighted in front of you?

A. Yes. It's my email of transmittal contained in the email to the -- the attachments were the budget requests.

Q. And in particular, did you have materials there for Replicate?

A. Yes.

ATTORNEY BERDON: Can we go to page 3, please, Marco.

Q. Do you recognize what's on the screen now?

A. Yes.

Q. What is it?

A. It's an investment memorandum we prepared for the $11 million funding extension for Replicate.

Q. Was it typical for ATP to prepare a whole new investment memo for an $11 million budget extension?

A. No.

Q. Why did you prepare it?

A. We were coming out of a lawsuit. We wanted to be really buttoned up. We wanted to make

sure that we did absolutely everything we could to make certain that the budgets were going to be approved. And we actually thought it was unnecessary in a normal operating environment. But we weren't sure what that operating environment would be after the settlement agreement, so we had our teams prepare a lot of materials.

Q. And I'm not going to walk you through it today because it's pretty technical. But did you believe it was adequate for the purpose?

A. More than adequate.

Q. Did you hear back quickly from the Family Office in response to your request for the $11 million budget extension for Replicate?

A. Not really quickly.

Q. Well, do you recall any response?

A. Yes.

Q. And what do you recall?

A. Yuri Bogdanov, who had recently become the head of the Family Office, sent us a very curious diligence request email.

ATTORNEY BERDON: Can we pull up JX 1107, please.

Q. Dr. Harrison, do you recognize what's

been marked as JX 1107?

A. Yes, I do.

Q. And taking a look at the email, what is it?

A. That's an email from me to Yuri saying that it's essential that we fund Replicate. We agreed to fund 12 budgets to the companies that we know are running out of cash, Replicate among them. Replicate is running out of cash on schedule, which would then be two weeks from the date of the email.

ATTORNEY BERDON: Can you scroll to the top. There you go.

Q. Do you recall receiving this response from Mr. Bogdanov?

A. Yes.

Q. And did Mr. Bogdanov have an attachment to this email that posed some questions?

A. Yes.

ATTORNEY BERDON: Can we get the next page, 3, please.

Q. Dr. Harrison, what's wrong with this set of questions?

A. It's bizarre. I mean, first of all, this is a company that we founded I think in 2021 and

on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with Dmitry.

And typically when you know a deal and you're just funding specific programs that you know and you understand the technology and you understand management and everything, providing an additional relatively small amount of capital shouldn't require much diligence at all.

Questions are, of course, fair. And reasonable questions are more than fair. And we're not only prepared to answer any questions, but we had already talked about Replicate, and then in the investment memo addressed all of their issues involved in what the company was going to do at that time with that $11 million.

What we have here, if you look at the first bullet point, Yuri is asking for all the board minutes and board materials since inception. That's just not a reasonable diligence request. It has no meaning for what the company is going to do with $11 million aliquot going forward in a specific couple of projects. That's the kind of diligence request that might come in an M&A transaction at the very end

of the transaction from a corporate buyer's legal department.

Then there's other features of this. The second one is also very strange. It's asking for a bring-down of all the company's spending, essentially, since inception, categorized by certain categories. I've actually never seen this before in any diligence effort in which I've ever been involved, either as the diligence doer or the diligence receiver, ever. So entirely make-work.

And then there were questions that were kind of unsettling because they referred back to the original Replicate investment memo. But not only were we clear that investment memo milestones don't travel with a development of the company, in Replicate's particular case we had pivoted away from the original investment memo milestones via an approved budget extension that the Family Office knew about and approved.

So Yuri here is asking about this pivot as if it's news. And that pivot was from cancer vaccines to infectious disease vaccines, which we did during COVID. And he's asking to justify the pivot and what does it mean about the company in a quite

negative framing.

And it goes on in that way that made us realize that this was anything but reasonable consideration of a new budget. It was, in fact, a kind of blockade.

Q. And just so the Court understands, when you talk about a "pivot," can you briefly talk about the significance of a pivot from a technology point of view and from the perspective of a venture capital manager.

A. Well, these projects are like organisms. You're always measuring them and figuring out what they're doing and then adapting your plan to what they produce in experimental results. You're also factoring what's going on in the environment, in the world, and you're understanding what you can do with a capital that you have in your budget or your Series A round or committed capital from another source.

In the case of Replicate, the RNA technology that it has really does have the potential to create a certain kind of cancer vaccine that would be great. The problem with that is that it would take three years to read out in a clinical trial. And we

already knew that it was problematic, from that perspective, when we founded the company.

And then when we were facing syndication issues, not related to companies, and COVID happened, we were intrigued by the idea of doing a different kind of a project in infectious disease that would read out, achieve its clinical proof of concept sooner. And that turned out to be a rabies vaccine. And so -- and that required moving from a $40 million Series A budget approval to a $53 million Series A budget approval, i.e., a $13 million extension.

And we talked about that with the Family Office and sent in that budget extension request with no IM, with no fanfare at all. They approved it, and we got on to doing the business of the pivot. The rabies vaccine, by the way, succeeded very well.

Q. Did the Family Office end up approving an extension of the budget for Replicate in early 2025?

A. Yes.

Q. How much did you ask for?

A. 11 million.

Q. And how much did they end up approving?

A. 18 million in two $9 million pieces.

Q. Was there any other condition that the Family Office placed on its willingness to fund those amounts?

A. Inside the budget, no, there was -- we agreed there would be -- this was the only budget aside from the Braeburn royalty purchase agreement, $200 million commitment, where there was a milestone inserted at the request of the Family Office. And that milestone request language is actually in the LPA. They can request and we reasonably do allow, but it only happened once. It was in this budget.

And the milestone was that Replicate conclude a Latin American deal with a pharma company in Latin America for the rabies vaccine.

Q. Do you recall receiving an email from Patrik Blöchlinger regarding the Replicate budget approval?

A. Yes, it was also quite strange. We sent the -- yes.

ATTORNEY BERDON: Can we pull up JX 1192, please.

Q. Dr. Harrison, do you recognize what's been marked as JX 1192?

A. Yes.

Q. Does this refresh your recollection as to any other conditions to the payment that the Family Office made with respect to the two $9 million tranches?

A. Well, we agreed when we were sitting down in Monaco in January -- and actually brought Replicate's CEO over to present to Dmitry and Yuri -- that we would put in this $9 million milestone inside the budget. Indeed, the budget that we sent, which is attached, in which they signed only has that milestone. And there it is.

But in the email of transmittal, outside the budget, Patrik Blöchlinger, the general counsel of Rigmora, adds this condition, which was news to us. And we didn't regard it as legal because it's what they want post facto, and they signed the budget.

Q. Did the Family Office ever approve new budgets that had been requested for Ascidian?

A. No.

Q. Aulos?

A. No.
Q. Nereid?
A. No.
Q. Nine Square?
A. No.
Q. So you testified a little earlier that the capital commitment at inception for Pools V-1 and V-2 was a billion dollars.
Do you recall that?
A. A billion dollars, yes.
Q. Was there any formal delineation between Pools V-1 and V-2 financially?
A. No.
Q. Do you know whether Rigmora has made contributions to those pools?
A. Yes.
ATTORNEY BERDON: I'd like to pull up PDX 1, please.
Q. Dr. Harrison, have you reviewed the source material that was used to compile the amounts set forth here?
A. Yes.
Q. Were they voluminous?
A. Yes.

Q. Were you able to commit them to memory?

A. No.

Q. So based on what we have here in front of you, can you tell the Court what the columns for "Approved Budget" and "Amount Contributed" mean?

A. Yeah. On the far left you see the list of the portfolio companies in Pools V-1 and V-2. You see Replicate in the bottom. And then you see in the fourth column over the approved budget for each company, the total budget, if there were multiple budget approvals.

And then in the next column over you see the amount that has been paid in on each of the budgets. And then you see in the final column the amount that remains of each budget that has not been called or contributed.

Q. So as of May 30th, 2025, was there about $178 million in budgeted but as-yet-uncalled capital for Pools V-1 and V-2?

A. Yes.

ATTORNEY BERDON: Taking the -- scroll down, please.

Q. Dr. Harrison, does the chart at the

bottom of this table contain information regarding Pool V-3?

A. Yes.

Q. And for Ascidian and Marengo, can you explain to the Court what that information is.

A. It's the same sort of information. You have the companies that have approved budgets remaining in Pool V-3, that's Ascidian and Marengo; the total amount of budgets approved in the fourth column over for each company; the amount that's been paid in on each budget in the next column; and then the remaining amount to be called on each budget.

Q. And if one were to sum the amount remaining on Pool V-3 with the amount remaining in Pools V-1 and V-2, did that sum to about $218 million?

A. Yes.

Q. And are you pretty confident in that math from the position of the general partner, not to the dollar, but you're confident in that math?

A. Yes.

Q. Do you also keep track of remaining budgets across pools to govern the capital calling process?

A. Yes.

ATTORNEY BERDON: Can we go to PDX 1 at page 3, please.

Q. Dr. Harrison, can you explain to the Court what this indicates in terms of budget remaining for each of those companies.

A. This is the total of the companies in Pools V-1, V-2, and V-3 listed. And the "Budget Remaining" column contains the budgets for each company that have been approved but not yet called.

Q. So putting that all together, we have about $214 million in budget remaining?

A. Yes. You said 218 before, but I think it sums to 214.

Q. I stand corrected. Thank you.

So did you have meetings in Monaco in March of 2025 to discuss the budget approval request for Aulos, Ascidian, and Marengo?

A. Yes.

Q. And what was the nature of those meetings?

A. We had had meetings in Monaco in January discussing why the budgets weren't approved, why there was no reasonable consideration of the budgets, Yuri's odd diligence request. Basically a

relationship reset meeting.

At that meeting, we also called in Nathaniel Wang, the CEO of Replicate, to scramble from the west coast of the US to Monaco to present, which he did. That was a successful process. And we all agreed that the management from each of Ascidian, Marengo, and Aulos would come at our next face-to-face meeting, and we scheduled that for March.

Q. Were their presentation materials prepared for those meetings?

A. Yes.

Q. And was there a data room opened that Rigmora could access in advance of those meetings?

A. Yes.

Q. And what was the nature of the data room?

A. Well, a data room is something you typically open for a pharmaceutical company to do due diligence, to complete a deal on a new target or something. And it contains all the IP, all the experimental data, every conceivable corporate document that you could imagine, every technical document.

And then you can regulate who enters a

data room, and you see who enters it, and it's a standard feature of getting a deal done in our space.

ATTORNEY BERDON: And just for completion, can we pull up JX 122 -- I'm sorry, 1222.

Q. Dr. Harrison, do you recognize Joint Exhibit 1222?

A. Yes.

Q. And what was it?

A. It was sending Yuri and Dmitry's assistant -- which was our way of communicating via email to Dmitry or with Dmitry -- the materials for those March meetings in advance of the meetings themselves.

Q. And were those presentation materials, in your view, highly detailed?

A. Oh, yes.

Q. Detailed enough for a reasonable person to make some decisions?

A. Yes. I would say detailed enough for an external due diligence, certainly a company with a data room. But if it's a company you own already and you know extremely well, where you've had multiple management meetings, this wasn't the first, this was a lot.

Q. And in addition to these written materials in the data room, you testified that management actually appeared?

A. Yes. We flew them to Monaco.

Q. And did that group include just employees?

A. Well, it included the senior management from each of the companies. And at the time we were also doing a review of oncology projects in the portfolio. And to do that we hired a consultant named Bill Grossman, who had been the head of oncology at Novartis and then became the head of oncology at Gilead. I knew him. He's very smart, highly qualified.

And so he was looking at our portfolio. And we offered to bring Bill to Monaco, be it just to make sure that if Yuri and Dmitry had any questions, they could ask them.

Q. And were questions asked of Mr. Grossman?

A. Yes.

Q. And did he express --

A. Dr. Grossman.

Q. Dr. Grossman. Did he express views

that could be perceived as critical of one or more of the companies?

A. Yes.

Q. What was that?

A. He was critical of the way that Aulos management had conducted the clinical trial.

Q. And did he say that those problems were irremediable?

A. No. Dmitry fastened on it and decided we needed to fire the chief medical officer. We thought that was a bit extreme, and we wanted to focus on what the actual problem was, which we did when we got back.

Q. After focusing on that problem, did you and your senior management at ATP eventually come to a path that you thought was appropriate to move forward with the funding of Aulos?

A. Yes. It was very interesting. We actually talked with -- it's a melanoma trial for treatment of melanoma that's failed everything else. And the company is doing extremely well. And the question is making sure that the criteria for recruiting the patients is correct. It was very interesting to talk to these melanoma experts and

really tighten the criteria and work with management to make sure that those became the inclusion and exclusion criteria in their clinical trial.

Q. Did you discuss that progress with Dr. Rybolovlev?

A. I tried to.

Q. And what did he say to you about his views of your ability to manage that problem on a going-forward basis?

A. In the meeting where I tried to discuss it, it was a Zoom meeting, he brushed it off. Then in a subsequent meeting, he brought up Aulos and he said, I trust your judgment, you've made me a lot of money; I understand that you want to do Aulos and we should do Aulos.

Q. Coming out of those March meetings, were budgets approved for Aulos, Ascidian, or Marengo?

A. No.

Q. After waiting a period or working on this for a period, did you actually make a proposal to the Family Office on how the existing budgets might be reallocated?

A. Yes.

Q. What prompted that?

A. It became clear to me by April -- we had submitted these budgets in December. The Replicate budget process was the only one that had gone through, and it was not normal. And there was no budgets that were being -- there were no budgets being approved.

It was clear to me -- also that the royalty financing that they were trying to do was not going to work out. They were proposing a very different structure that would involve encumbering Braeburn, the company, in a way that would not likely be acceptable.

So I looked at that and I just said, you know, I think the only capital that we're going to have, Dmitry, is the capital in the approved budgets. Why don't we just work within that and figure out how to move some of the clinical projects along to where they need to go so we'd have the definition of whether or not these should be the starting materials for the pharma company.

Q. And under that proposal, what would you be taking away from in order to direct that capital towards the clinical companies?

A. It was a reallocation of some of the

budgets from the preclinical companies to the clinical companies.

Q. Did you end up reaching agreement with the Family Office on a reallocation proposal?

A. Ultimately no. I thought we had but we did not.

Q. And from your perspective, why not?

A. Well, this -- what happened was that we had a Zoom call with Yuri and Dmitry and Anna Batarina and myself, I think it was on May 9th at this point, where I was to present the reallocation proposal. And I sort of led off with a 10-minute introduction of what it would accomplish, and then I was prepared to share screen with a spreadsheet, showing it.

And Dmitry and Yuri said no, that won't be necessary. This is moving in the right direction. Now we meet with the lawyers.

I said, that's strange. Why would we be meeting with lawyers?

Oh, we should just meet with lawyers.

I said, but usually when we do a deal like this -- and there were many -- we form some sort of a term sheet that will then become an amendment to

the fund or a side letter or some such thing. And we didn't need outside lawyers to do that. People might have that reviewed by outside lawyers, but it wasn't a necessary process.

Oh, no, no, this is very important; we need a lawyer call.

And we scheduled it for that Tuesday the 12th. I had sent several emails to Yuri and Dmitry in the interim, saying what is this lawyer call? Shouldn't we just try to do this in a normal way?

And we actually had Dan Finkelman, our GC, create basically a term sheet that would serve as the basis for what would become that reallocation amendment, or whatever you want to call it. So we wound up having this lawyer call, and I think that was sort of the beginning of the end.

Q. What about the lawyer call, from your perspective, got in the way of completion of a reallocation deal?

A. It was an ambush, literally. We got on the Zoom in good faith. We had one of our outside counsel, just to balance the fact that they were going to have outside counsel. But we didn't think anything

-- we were more curious than anything else.

Dmitry, Yuri, Patrik Blöchlinger and Anna Batarina, myself, and Mark Gordon from Wachtell and four lawyers from Latham & Watkins -- who I had never seen before, and I don't even think we made introductions -- where they just lit into me, the lawyers from Latham, saying it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation. If they're worthless, why don't you shut them down? All of these crazy mischaracterizations.

I was shocked. Mark Gordon tried to throttle this very aggressive partner from Latham, but it was still the same thing.

And I just put up a wall. I did not say that. Those were not my words, et cetera. And it didn't go very well.

Q. So from your perspective, what was the value of the preclinical companies at that point and why were you willing to allocate budget money away from them to the clinical companies?

A. We've had a very successful translational track record, meaning we start early and

build through to clinical proof of concept. And looking at these projects that are the very projects that are created by this top-quality pharma team in the preclinical companies, they're just very strong projects, first stage. So what should happen is full budgets for the preclinical companies and full budgets for the clinical companies.

But pragmatically it was obvious that wasn't going to happen. So I did the next best thing, which is to say, look, at this stage, it would be better to advance the clinical projects, focus in on only selected preclinical projects, and bring them with a relatively small amount of money to the -- to the go/no-go decision to bring them into the clinic, which is where the real spend starts.

Q. Okay. After that lawyers call, did you end up getting some correspondence from Mr. Bogdanov?

A. Yes.

Q. And do you recall the date you received it?

A. May 15th.

ATTORNEY BERDON: Can we pull up JX 1336, please.

Q. Do you recognize --

ATTORNEY BERDON: Sorry. Can you go to the bottom email of the chain, please.

Q. Do you recognize what's been highlighted in the bottom email on the chain?

A. I recognize the email. It's an email that Yuri sent instructing us to kill the early-stage companies. And if we killed the early-stage companies, then they might consider providing budgets for the clinical companies.

Q. Well, let's just briefly take a look at the first sentence of the full text paragraph there. "The SLPs see no way for a path to commercial success for these Early-Stage Companies ...."

What was your reaction when you read that?

A. It was certainly a problematic statement, and I disagreed with it.

Q. Why did you disagree with it?

A. First of all, it was problematic because we started these companies as preclinical entities and the idea that if by "commercial success" you meant sales, it's impossible and known that they're nowhere near sales.

But commercial success for a company at this stage is a thing. It exists. You can do a corporate deal, which we have many in the portfolio. Ironically, one on this list and one that's not on this list, which have actually occurred subsequent to this email -- you can do an M&A of a company like this, and these happen. And there are many examples of early-stage companies getting bought for a fair amount of money. You can do an equity financing from the outside, which could eventually lead to a mezzanine round and an IPO for an early-stage company. And we've done those.

And in our case, if the idea is to build a pharma company with a pipeline, you could choose to fund some of these things yourself because there's value in each of these companies.

So I totally disagree.

Q. He also says that one of the reasons -- he says, "because: they have failed to meet [] milestones set out in the investment memoranda on which SLP's initial funding was premised ...."

SLP, what do you understand that to be?

A. Subject limited partner. It was a

term that Rigmora, for some reason, liked to use in legal correspondence.

Q. Did you agree that the preclinical companies' path to commercial success was hampered by their failure to meet milestones set out in an initial investment memoranda?

A. No. On the contrary. The whole point of having a team like we have is to develop the companies from the start that's represented in the investment memoranda to wherever they need to go based upon what the research programs tell them.

Q. It also says here, "there is no third party interest to invest in these Early-Stage Companies ...."

Do you agree with that?

A. No. It's not true.

Q. What type of third-party interest were you aware of at that time with respect to these companies generally?

A. There were negotiations going on with big pharma companies to do corporate deals along the lines that I've discussed, one of which has closed -- two of which have closed actually. And there has been a lot of interest from the VC market in these deals

but which has never eventuated in a financing due to the KY issues that we have faced, particularly post Ukraine.

Q. Two issues. Number one, which of the companies on this list has done a corporate deal that you're aware of?

A. Deep Apple did a corporate deal recently.

Q. And who was that with?

A. Novo.

Q. And when it was announced, was there a potential total value of that deal announced?

A. I think it was over $800 million.

Q. And going, then, to the point that you just made about KY issues. Can you be specific.

First of all, is that KYC?

A. Yes, know your client.

Q. Can you be specific about the nature of those KYC issues that have come up in discussions with potential equity investors?

A. Yes. It's plagued us and we've really tried to neutralize it in the market for years. After the Ukraine was attacked and the sanctions of Russian individuals became prevalent, we did a lot of work and

worrying with Dmitry about whether or not he would be sanctioned. He wasn't. He was correct about that. He was sanctioned by the Ukraine, but no one took that seriously. He wasn't sanctioned in the U.S. and the EU.

This didn't stop the market, namely the equity markets in the U.S., from not investing with a fund that was controlled by Dmitry's entities. And every time that we -- and we had done a lot of analysis on Dmitry. I won't go into it, but we understood that he was not going to be sanctioned.

And we would try to explain this, and the compliance departments would just shut it down. And we had term sheets that were yanked. We had financings that looked like they were about to close that were -- blew up. We had many, many discussions across the market. And it was pretty clear that we were locked in due to this problem.

Q. Another question for you -- down further in the text here it says, "The SLP's position is therefore that further funding of those Early-Stage Companies will waste the ATP Fund's assets. We understand that you hold a similar view ...."

Was that true?

A. Neither statement is true. And that was the problem in that lawyer call. They were putting words into my mouth. I didn't hold that view. I never held that view. I didn't express that view. It was their idea for me to swallow, which I wasn't having.

Q. After receiving what's been marked as -- forgive me -- JX 1336, what did you do?

A. Well, I wrote Yuri a reply saying I disagreed with everything, and here it is. And at that point, obviously, we were having serious conversations about what to do, given what was apparently a quite hostile position of the Family Office to the fund.

Q. Just for clarity's sake, you're referring to your email on JX 1336 at the top dated May 19th?

A. Well, what would you like -- I'm sorry?

Q. You talked about responding.

A. Yes, this is that email.

Q. You talked about the email that's on the top of Exhibit 1336?

A. Yes.

Q. Did you issue capital calls for funding of certain clinical and preclinical companies on May 30th, 2025?

A. Yes.

Q. Why did you issue the May 30th capital calls?

A. Fund the companies.

Q. What companies in particular?

A. I don't have the full list in my mind. But it was time to fund the portfolio.

ATTORNEY BERDON: Taking a look at JX 1622.

Forgive me for just one second.

Can we go up to JX 1622, please, and let's go to page 10.

Q. Dr. Harrison, do you recall -- taking a look at this list that starts at 5/30 with Deep Apple. Can you describe for the Court the companies that you sought capital for by calling capital on May 30th?

A. The ones that are dated May 30th. So Deep Apple, Aethon, Evercrisp, Red Queen, Apertor, Initial, and Marlinspike.

Q. And Replicate, there's one indicated

for June 1st. Was that related to the May 30th capital calls?

A. Yes. We had overcalled in error on May 30th, so we retracted that May 30th call and replaced it with a June 1st correct call.

ATTORNEY BERDON: And let's go to page 13, please.

Q. So, Dr. Harrison, does this chart represent how those capital calls compared to the remaining approved budgets as of the time?

A. Yes.

Q. How did you set the amount of capital to call for each of these companies?

A. We based it on the companies having six-month budgets from the presumptive date of the receipt of those calls.

Q. And what were you projecting could be accomplished within those six months at each of these companies? What was the goal?

A. In each case, following forward on their research plans.

Q. And on May 30th, did you also call capital for partnership expenses?

A. Yes.

Q. And did you call capital for a fee that was chargeable on a semi-yearly basis for ATLS?

A. Yes.

Q. Interesting, did you call your own management fee on May 30th?

A. No.

Q. So for any of the money that you called on May 30th, was any of that to be directed into your pocket?

A. No.

Q. At the same time as you called capital on May 30th, did you also file this lawsuit?

A. Yes.

Q. And why did you file the lawsuit?

A. After the May 15th letter from Yuri, Anna Batarina contacted me and said she had spoken with Dmitry and Yuri and she wanted to tell me something.

I said, what's that?

And she said, if you call capital, it's treason, and they will sue you.

And I said, oh. And I knew that at that point, there was no possibility of a reproachment. No possibility of any kind of

agreement.

Q. Did you believe that you had the right under the LPA to bring a lawsuit against an LP who had breached the LPA?

A. Yes, absolutely. It's in the LPA.

ATTORNEY BERDON: Can we please pull up JX 1 at 74, 75, Marco.

Q. Taking a look at what's next to (iv), here. Do you recognize this language, Dr. Harrison?

A. Yes.

Q. And what do you understand it to mean?

A. It gives me right to sue a partner who defaults.

Q. And taking a look at (iv) at the bottom, "To the fullest extent permitted by law ...." Can you just read that to the Court.

A. "To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of

the remedies permitted under this Agreement or applicable law."

Q. Did the LPs pay the capital calls that were served on May 30th?

A. No.

Q. And did ATP, to your understanding, issue notices saying that the LPs were in breach of their agreement to contribute capital in response to those calls?

A. Yes.

Q. And are you seeking a finding that the LPs are in breach of that agreement?

A. Yes.

Q. What's the current status of the preclinical companies, Dr. Harrison?

A. They are in desperate condition. We've had to do massive layoffs. We've had to move companies to -- out of facilities, heavy negotiations with landlords, sales of capital equipment, consolidations, reduction of research programs.

In one case we kept a program that bloomed from a platform technology, but we had to cede that technology back to the source institution. Very difficult relationships with founders. You know, a

mess.

Q. If funding were to be made available to you, for example, by the end of the year, would you be able to reconstruct those companies?

A. Yes. We've managed to keep alive the critical projects that we thought were valuable, even at the beginning of the reallocation proposal, in the form of key employees in most of the companies that retained the knowledge. In some cases, there's tiny amounts of research that are ongoing. And so, yes, absolutely, they can be readily reconstituted. I don't know for how long, but yes.

ATTORNEY BERDON: I pass the witness.

ATTORNEY SELDEN: Good morning, Your Honor. Shannon Selden of Debevoise & Plimpton. We have some binders for the Court and the witness. May we approach the bench and hand out those binders?

THE WITNESS: May I ask a question? Are they also going to be on the screen, or do I use the binder?

ATTORNEY SELDEN: We will show them both on the screen. But you can use the binder, if that's more convenient for you.

THE WITNESS: Thank you.

ATTORNEY SELDEN: Your Honor, am I correct in thinking that we'll take a break for lunch at 12:30?

THE COURT: Correct.

CROSS-EXAMINATION

BY ATTORNEY SELDEN:

Q. I was going to say good morning, Dr. Harrison, but I see it's afternoon.

Good afternoon, Dr. Harrison.

A. Good afternoon.

Q. Do you recall Mr. Berdon showed you a demonstrative with budgets and commitments broken down by pool?

A. Yes.

Q. Setting aside the math for a moment, that demonstrative was based on your understanding of the LPA and its references to pools, wasn't it?

A. It was based upon my understanding of the budget commitments that have been signed in, which we keep records of in that ATP.

Q. The demonstrative that you looked at with Mr. Berdon is based on your understanding of the LPA, its amendments, and the budget requests and commitments; is that correct?

A. Yes.

Q. Dr. Harrison, you understood that there was a limit to the amount of capital that had been committed to the fund; correct?

A. Yes.

Q. You understood that the fund could not invest more capital than it had committed to it; correct?

A. Correct.

Q. As of May of 2023, you knew that Dr. Rybolovlev and the Family Office intended to cap their investment in the fund at $2.5 billion; correct?

A. Dmitry had informed me that that was his wish, but that is not reflected in the agreements that had been signed.

ATTORNEY SELDEN: Could you please play clip 96 from Day 3 of Dr. Harrison's deposition at page 243, lines 11 to 15.

(A video clip was played as follows:)

Question: Does that refresh your recollection that in May of 2023 Dr. Rybolovlev and the Family Office informed you that they intended to cap the investment at $2.5 billion?

Answer: Yes.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. At that point in May of 2023, you didn't do anything to assess the amount by which the fund's commitments to invest in its portfolio companies exceeded $2.5 billion; correct?

A. I think when Dmitry informed me that he wished that it be capped at 2.5 billion as opposed to the 2.9 or so that it actually summed to, we were very interested in, as usual, creating accommodations. So we did go back and try to figure out, is there any way to shoehorn everything we're doing into something like 2 1/2 billion dollars? I think I remember that I couldn't possibly get it down to less than 2.7. We kept trying and trying. And we talked about that.

ATTORNEY SELDEN: Could you please play clip 70 from Day 3, page 244, line 22, to page 245, line 1.

(A video clip was played as follows:)

Question: Did you do anything to assess the amount by which the fund's commitments to invest in its portfolio companies exceeded $2.5 billion?

Answer: No. Not specifically, no.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. Dr. Harrison, you don't recall calculating the difference in dollars between 2.5 billion and the amount of dollars that the fund had committed to invest in its portfolio companies as of May 2023; correct?

A. The specific answer to your question is no, because I was calculating something else.

Q. And you didn't do that calculation at any other point in time; correct?

A. Could you clarify the calculation that you mean?

Q. Dr. Harrison, you do not recall calculating the difference in dollars between the $2.5 billion cap that Dr. Rybolovlev informed you of and the amount of dollars that the fund had committed to invest in its portfolio companies; correct?

A. We calculated the aggregate of commitments and approved budgets and tried to bring them within range of what Dmitry said he wanted, but we were unable to do so.

ATTORNEY SELDEN: Could you please play clip 71, which is from Day 3, page 247, line 25,

to 248, line 4.

(A video clip was played as follows:)

Question: Did you calculate the difference in dollars between $2.5 billion and the amount of dollars that the fund had committed to invest in its portfolio companies as of May of 2023?

Answer: I don't recall.

(End of video clip.)

BY ATTORNEY SELDEN:

Q. And you didn't do that calculation at any other point in time, did you, Dr. Harrison?

A. I honestly don't recall what -- doing exactly what you're asking. But I repeat that we struggled with Dmitry's request over months, over multiple discussions, to attempt to fit everything into 2 1/2 billion, and it was impossible.

Q. Dr. Harrison, I'm afraid we have limited time today, and I'm asking you yes/no questions. So I'd ask you to listen to my question and answer that question. And if you have other testimony to give, I'm sure Mr. Burden will have an opportunity to redirect. But I am sensitive to the clock.

Dr. Harrison, as of last week you

didn't know the total amount of money that the fund had contractually committed to invest in its portfolio companies; correct?

A. I don't keep that as a running sum in my head.

Q. In October 2023, ATP's general counsel, Dan Finkelman, wrote you an email discussing the fund's unfunded commitments to its portfolio companies; correct?

A. I'm sorry. When was that?

Q. October of 2023.

A. I don't know. I don't remember.

ATTORNEY BERDON: Your Honor, as Your Honor knows, there's been a roll-off production of otherwise documents that were claimed as privileged. And we would ask that they be treated as highly confidential in this proceeding because, even if used in this proceeding among the parties, they will still retain privilege in Cayman under Cayman law as long as they are not disclosed to the public.

So we would ask that the courtroom be sealed during any questioning relating to otherwise privileged information that was in the roll-off production.

ATTORNEY SELDEN: Your Honor, paragraph 25 of the pretrial order governs the use of confidential or highly confidential information in this proceeding. It requires the parties to meet and confer in advance of trial, which defendants attempted to do. We asked plaintiffs to de-designate this material by letter dated September 29, by letter dated October 8, and by chaser email dated October 12.

Plaintiffs have declined to engage with us with respect to the reduction in designation of that material, and did not raise this concern about closing the courtroom in advance.

Paragraph 25 of the pretrial order further provides that if the parties are unable to reach agreement -- which we had very much hoped to do -- the parties seeking to maintain highly confidential information throughout trial should seek an order from the Court, which plaintiffs have not done in advance of trial.

So we would ask, including for the interest of time, to be able to use this information, which we understand is subject to a privilege waiver publicly and with the witness.

ATTORNEY BERDON: Your Honor, just for

completeness of the record, we did ask for a meet-and-confer on Monday in a letter that was sent, and I don't believe that one was made available to us.

THE COURT: So I understand Mr. Berdon's request made just now to be in the motion that was contemplated in the pretrial order. Is that wrong?

ATTORNEY SELDEN: We had expected, Your Honor, that if plaintiffs were going to raise the objection and seek to close the courtroom, that they would have raised that in response to one of the three letters that we had sent them prior to October 12th, or at the very latest going into this hearing.

I think there has been a privilege waiver with respect to these documents. They have been used in depositions. They have been produced. They are among the rest of the joint exhibits on the list. And we think it's appropriate to use them in this proceeding.

I also think, given the limited time again, Your Honor, and the number of issues and, frankly, the amounts and nature of the claims at stake, it would be appropriate if we could use them with the witness and move quickly through them.

THE COURT: I don't think he's objecting to your use. I think he's objecting to using them publicly in a way that would undermine the privilege objections or privilege assertions in other proceedings.

What is your response to that?

ATTORNEY SELDEN: My response to that, Your Honor, is perhaps we could stipulate that we will use the documents in open court in this trial proceeding. And the effect of that use in this proceeding, to the extent that it has an implication on the Cayman privilege waivers or evidentiary rules in the Cayman court, I think the Cayman court can adjudicate that if and when those issues arise, and Your Honor should leave that to the Cayman judge and let the documents come in here. I think we can --

THE COURT: So I hear you saying that you want to stipulate that the Cayman court will resolve privilege issues there.

ATTORNEY SELDEN: Yes, that the Cayman court decide Cayman privilege issues.

THE COURT: You don't need to stipulate to that. The Cayman court will resolve Cayman privilege issues.

The question is whether the use of those documents here will affect their arguments as to privilege in Cayman. I hear Mr. Berdon saying it will. And his solution is that we close the courtroom when you want to use them.

What is your response to that?

ATTORNEY SELDEN: My response to that is that there has been a privilege waiver with respect to these documents and they should be used in open court like any other nonprivileged document. That they were -- many of them -- improperly designated as highly confidential in the first instance, improperly designated as privileged in the second instance. And those improper designations should not now be a bar to their use in this public proceeding.

THE COURT: Correct me, it's been awhile. I thought that the argument you made as to these documents was that your client was within the scope of privilege?

ATTORNEY SELDEN: Yes, I think there are a number of arguments that we made with respect to these documents, Your Honor. One of which is that our client is within the scope of the privilege and so they shouldn't have been designated privileged in the

first instance.

Secondly, that there were over-designations of material that was not privileged at all as to anyone.

And third, that there are documents designated "Highly Confidential" which ought not to be highly confidential.

So I think there are layers of objection to many of these documents, none of which, frankly, Your Honor, I think require sealing the courtroom. The documents that we propose to use relate to a dispute between these parties that is many years in the making. The document I am about to show Dr. Harrison, for example, is from October of 2023. I don't think that is relevant to or prejudices any ongoing business concern or the companies or the other kinds of sensitive, live, trade secret, business decision, public information.

THE COURT: That doesn't speak to whether they're privileged. So if a document -- if the reason why -- if there is an argument that the reason why your client received the document in discovery here is because your client's within the scope of privilege, that doesn't eliminate the

protections of that document to the rest of the world. Right? It means that your client can see it. But there is a risk that disclosing it in open court could undermine arguments that the privileged information your client's entitled to see is no longer confidential and, thus, no longer privileged.

So I see the concern here. I don't know whether the document you're discussing now or about to show the witness falls into that category. But if it does, I think the solution is to seal the courtroom and for you all to identify who in the courtroom is within the scope of privilege so that showing it doesn't blow privilege. So I'm not sure how we do that now. Maybe you want to talk a break and do it, or maybe you want to talk about it over the lunch break. Either way, I'm open to.

ATTORNEY SELDEN: Thank you, Your Honor.

I would suggest that, in the interest of time, we skip ahead and I'll proceed with questions that don't implicate those documents, and then we can discuss during the lunch break whether and how to seal the courtroom and who's within the scope of privilege.

Would that be acceptable, Your Honor?

THE COURT: That works, yes.

ATTORNEY SELDEN: Thank you, Your Honor.

BY ATTORNEY SELDEN:

Q. Dr. Harrison, on your direct with Mr. Berdon, you discussed Rigmora's obligation to discuss budgets in good faith following the entry of Amendment 22; correct?

A. Correct.

Q. And following Amendment 22, on Christmas Eve or December 24, 2024, you sent Dr. Rybolovlev a budget request for four companies; is that right?

A. Correct.

Q. And it's fair to say that since those companies had been founded, the fund had contributed tens of millions of dollars to them; is that right?

A. Yes.

Q. And when sending the budget request, you informed Rigmora that you had set up data rooms for them to access; is that right?

A. Yes.

Q. You expected Rigmora to review the information provided in the data rooms and ask

questions; right?

A. No.

Q. You set up data rooms containing supportive materials with the new budgets that you did not expect Rigmora to access?

A. I doubted very highly whether they would review them. We did it to make sure they understood that after the settlement agreement we were being radically transparent.

ATTORNEY SELDEN: Let's put up JX 1107, if you will.

Q. This was the response that Mr. Bogdanov sent to your December 24, 2024, budget request; correct?

A. Yes, for Replicate.

Q. Mr. Bogdanov replied on January 5th after the holidays; is that right?

A. Yes.

Q. Dr. Harrison, do you recall that you testified that Replicate had pivoted from oncology to a rabies vaccine over the course of the fund's investment in that company?

A. Yes.

Q. It's not bizarre for an investor to

have questions about that change in strategy from oncology to rabies, is it?

A. It's bizarre if the investor already knew about it and approved the budget that enabled it, in my opinion.

ATTORNEY SELDEN: If we could turn to page 3 of Exhibit 1107.

Q. That's the list of questions regarding Replicate; correct?

A. Correct.

Q. It's your position that these questions didn't constitute a bona fide diligence request; correct?

A. Correct.

Q. And it's your position that Mr. Bogdanov's questions did not have any diligence logic in assessing the merits of the companies; correct?

A. Essentially, yes.

Q. Let's look at that list of questions.

At paragraph 5 in the third sentence, Mr. Bogdanov asks, "After four years, could you please outline the main reasons for shifting RBI-4000 and RBI-5000 from oncology to infectious disease

indications?"

Do you see that?

A. Yes.

Q. In question number 6, Mr. Bogdanov asked, "In the 2021 Replicate memo, the team stated: 'The profile of Replicate's first product is highly differentiated ....'"

Then later he goes to to ask, "Currently, the company has a substantial share of indications related to infectious diseases: [] Does this suggest that the company has lost its differentiation and is now operating in a more competitive environment, as was suggested in 2021?"

In 6.3 he asks, "How has the company's technology evolved over the past four years compared to its main peers?"

Do you see those questions?

A. Yes.

ATTORNEY BERDON: Object to the form to the extent that the next question is going to be lumping, compound.

THE COURT: We'll see what the next question is. Please continue.

BY ATTORNEY SELDEN:

Q. The next question is, Dr. Harrison, in your view, these questions from Mr. Bogdanov constituted an obstructionist tactic; is that correct?

A. The totality of these diligence questions did, yes.

Q. In your view, the diligence questions were sent to prevent and avoid funding a company that the Rigmora LPs, in good faith, were obligated to consider a budget for; is that right?

A. Yes.

Q. But Rigmora, in fact, agreed to provide bridge funding for Replicate before receiving answers to any of Mr. Bogdanov's diligence questions; correct?

A. Yes, that was an emergency effort. We suggested that Replicate would go out of business while we were resolving the issue of these diligence questions. And we suggested a million-and-a-half bridge, to which the Rigmora LPs agreed.

Q. And then a month later, Rigmora approved an $18 million budget increase for Replicate; correct?

A. Correct.

Q. And the $18 million budget increase

that Rigmora approved was more than the $11 million you had initially requested on December 24th, wasn't it?

A. Technically correct.

Q. Let's talk for a moment about what information ATP provided to the Rigmora LPs in connection with their request to make an investment.

Prior to approval of a portfolio company deal by the fund, a primary deal sponsor from ATP was responsible for preparing a thorough investment memorandum; is that right?

A. Yes.

Q. Your view was that the investment memorandum should include an operating plan for the portfolio company; correct?

A. Yes.

Q. Another thing the GP provided to the Family Office was the background and precedent for their approach to any particular company; correct?

A. Yes.

Q. The investment memoranda provided for a tranche investment scheme gated by milestones; correct?

A. The investment memoranda provided for

a tranched investment scheme, and the then-current thinking on what the company would achieve over time.

Q. One of the purposes of that tranched investment scheme was to derisk ATP's investment; correct?

A. All tranched investment schemes do that, or intend to.

Q. Including the tranched investment schemes included in the investment memorandas for the portfolio companies that ATP sought funding for; correct?

A. May I answer the question in my way, or do you just want a yes or no?

Q. I'd like a yes or no.

A. Yes, correct.

Q. After the fund's initial investment, you frequently pivoted away from the plans for the portfolio companies that had been presented in their investment memoranda; correct?

A. Technically correct. It's not that we tried to pivot. It's that the companies had research programs that suggested to us that the best way to manage them was to make changes.

Q. When that happened and the company

departed from the plans presented in its investment memoranda, you didn't update the investment memoranda provided to the Family Office; correct?

A. No, we did not.

Q. In fact, you've repeatedly said that how the evolution of a project relates to its business plan or its investment memorandum is irrelevant; right?

A. I wouldn't call it irrelevant; I would call it a starting point. But where it is in the middle of its investment cycle, it can't be predicted at the time of the investment memo. It's the look at that time, the view at that time.

ATTORNEY SELDEN: Could you please play clip 106, Day 3, page 282, line 17, to 283, line 23.

(A video clip was played as follows:)

Question: You were uncomfortable going to founders and companies and reminding them that in their SPAs there were milestones that had to be achieved before funding would be released?

Answer: As I have said over many hours with you, Shannon, that is simply not how it works in this market where you're developing drugs

from new technologies working with teams of scientists of various stripes. It is simply not how it's done.

You work in a way that is enabling and that understands that research brings forward different results, and you work with them and attempt to push things forward.

And as I've said repeatedly, based upon experience, often a project can look like it's not going well, and you look at it differently and you change things and it's going well. And as I've said repeatedly, how that evolution relates to a business plan or an investment memo that occurred at the outset of that company's life is irrelevant.

(End of video clip.)

ATTORNEY SELDEN: We have stopped that testimony in the middle of Dr. Harrison's answer, but -- to avoid raising any issues with respect to confidentiality or privilege.

Your Honor, I would suggest that we break a minute or two early for lunch and take up the sealing issues after that. I think that likely the most efficient thing will be to simply seal the courtroom for the balance of Dr. Harrison's testimony after lunch. But let me consult with my team, if

that's acceptable to Your Honor.

THE COURT: Sure. We'll resume at 1:30. Thank you.

(Lunch recess taken at 12:25 p.m.)

(Resumed at 1:30 p.m.)

THE COURT: Please be seated. Thank you.

So what did you work out?

ATTORNEY SELDEN: Good afternoon, Your Honor. We have consulted with plaintiff's counsel. We are happy to seal the courtroom. I apologize for any confusion. I didn't know plaintiff's counsel had wanted to do that before this morning, but we are happy to seal the courtroom.

We have asked from our team anyone outside the privilege to leave. So they shouldn't be here, but we'll pause for a moment.

THE COURT: Yeah, so there's a lot of people in the courtroom. Is everyone in the courtroom within the scope of privilege?

ATTORNEY SELDEN: For defendants, Your Honor, I can say that we are. There are indeed a number of lawyers here, I'm afraid. But everyone here has been checked and is within the scope of privilege. And I've consulted with Mr. Berdon as to that question.

Your Honor, while plaintiff's counsel caucuses, I would just note the interpreter is here.

I believe the interpreter is authorized.

THE COURT: Yes.

THE INTERPRETER: Your Honor, I'm a certified court interpreter with the State of Delaware and I'm considered to be a court officer.

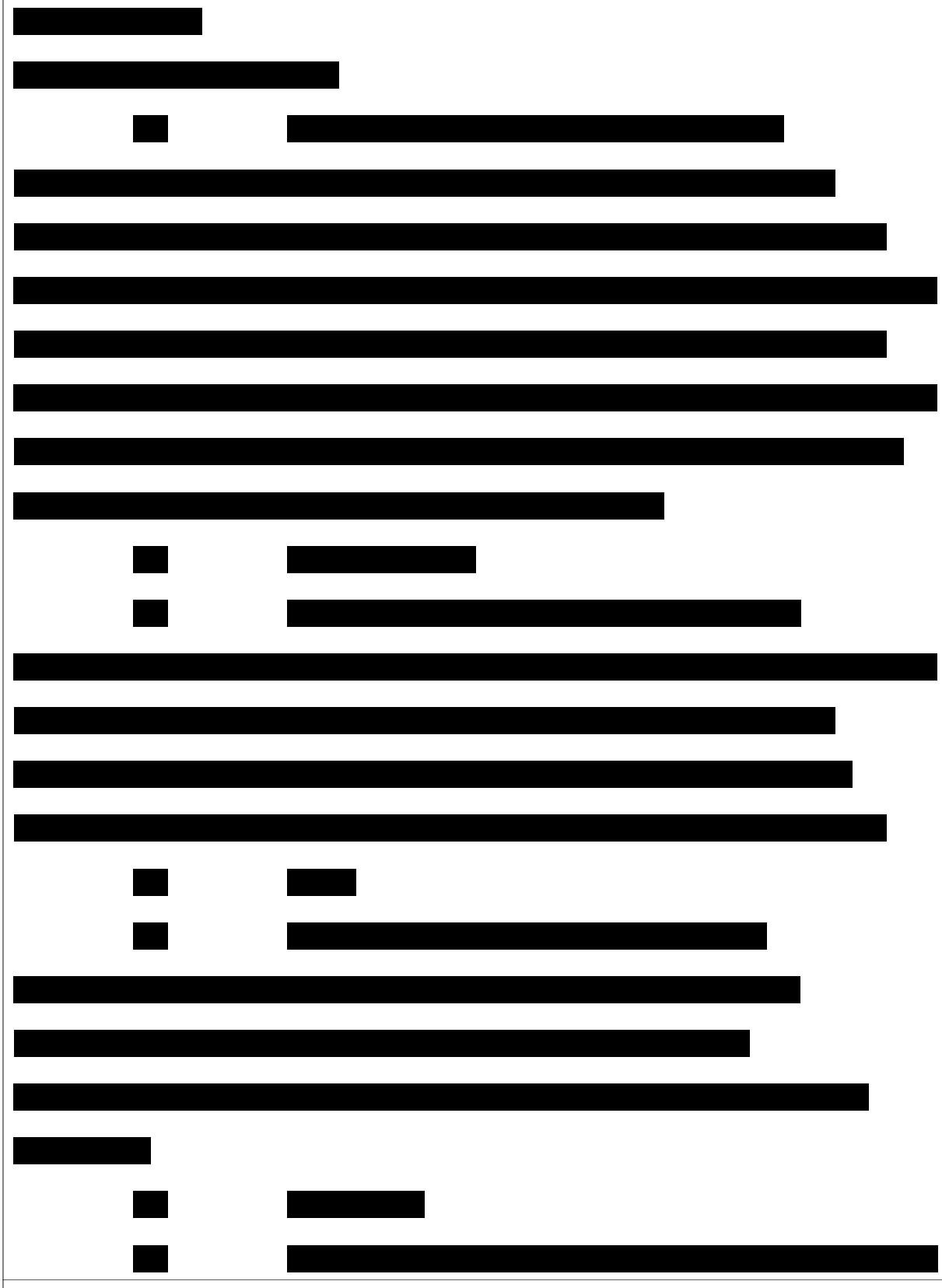
THE COURT: Yes. He's allowed.

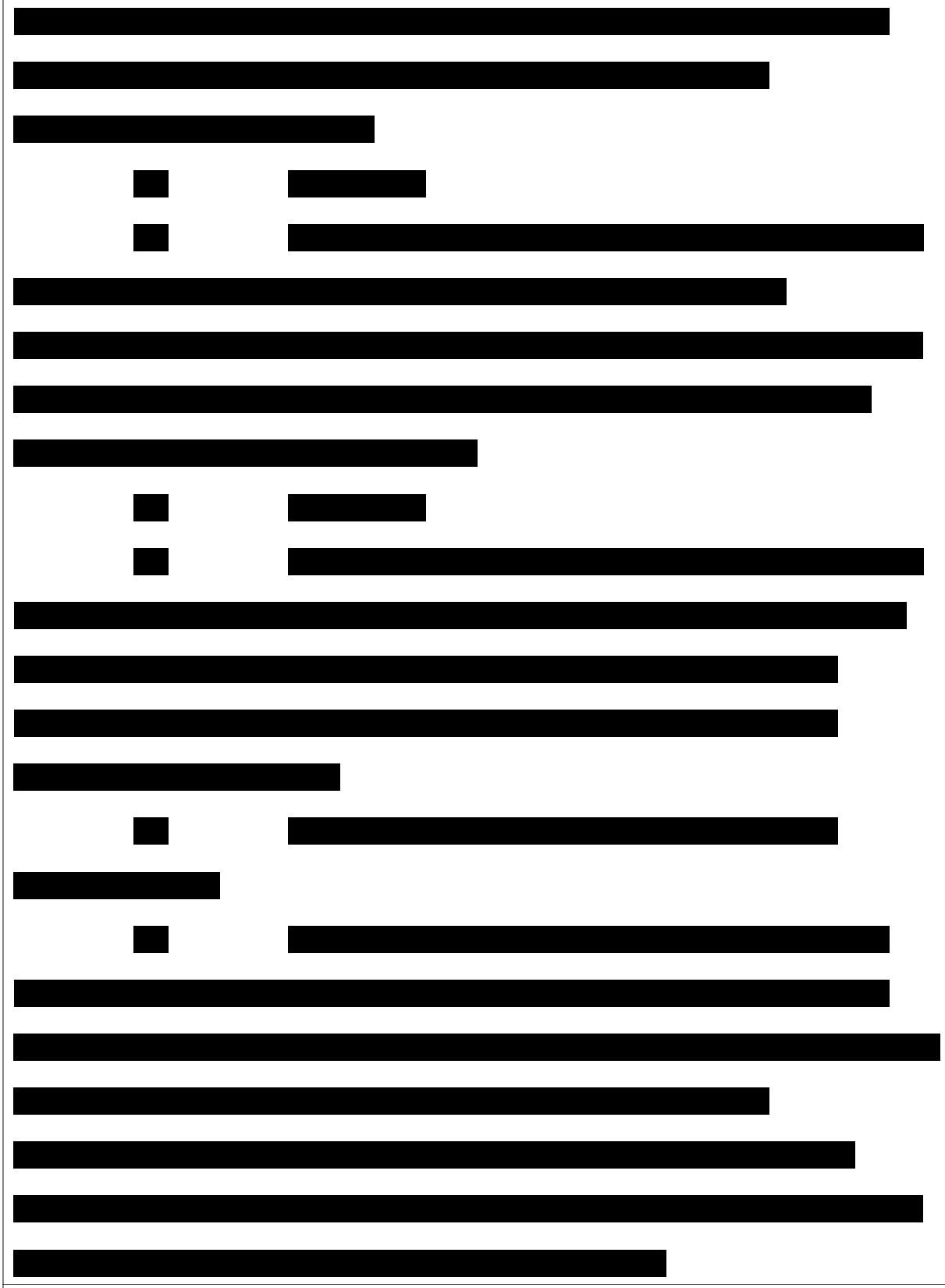
ATTORNEY SELDEN: Great. Thank you.

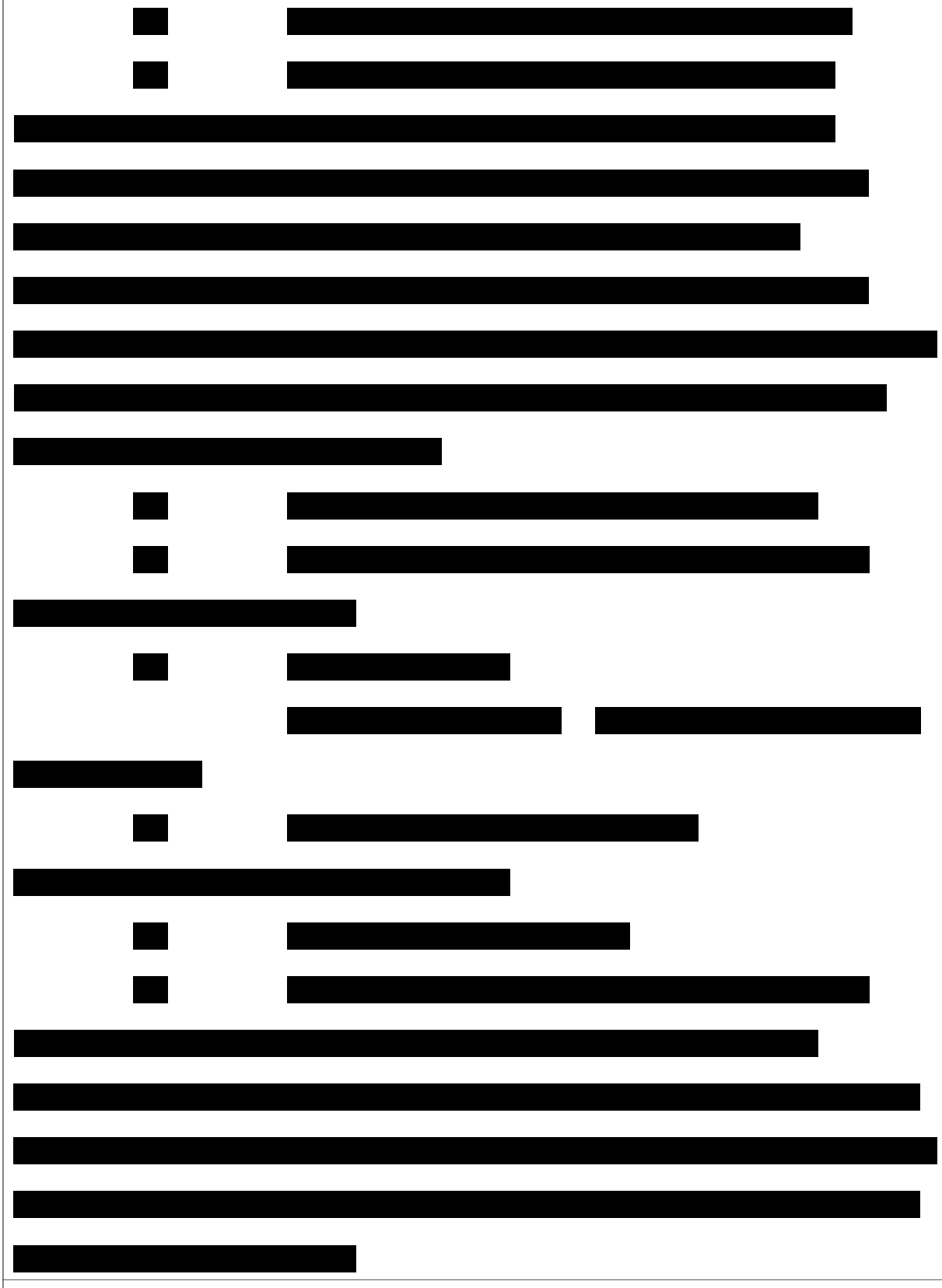
THE COURT: Shall we proceed?

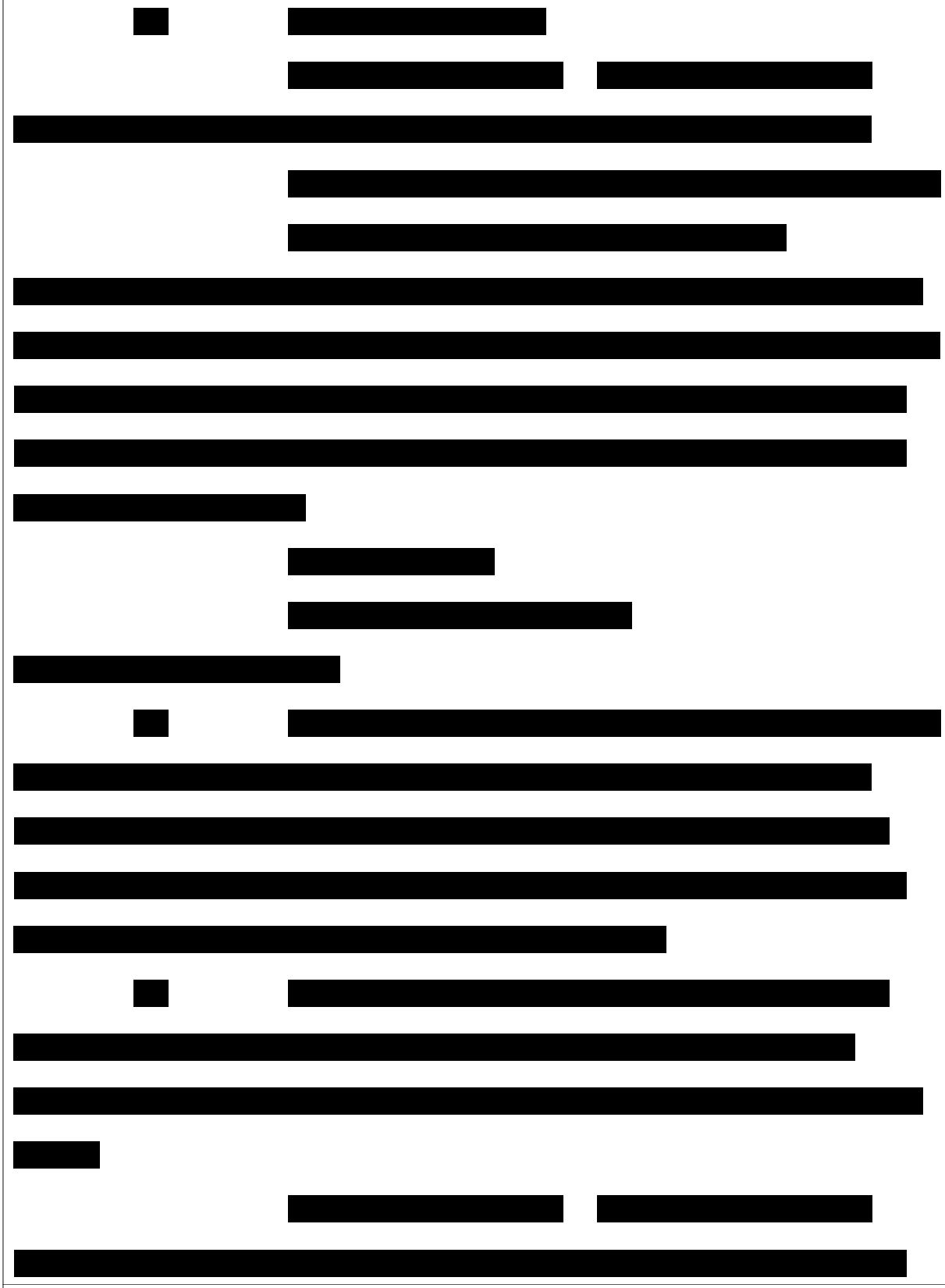
(This portion of the record was deemed confidential and the courtroom was cleared.)

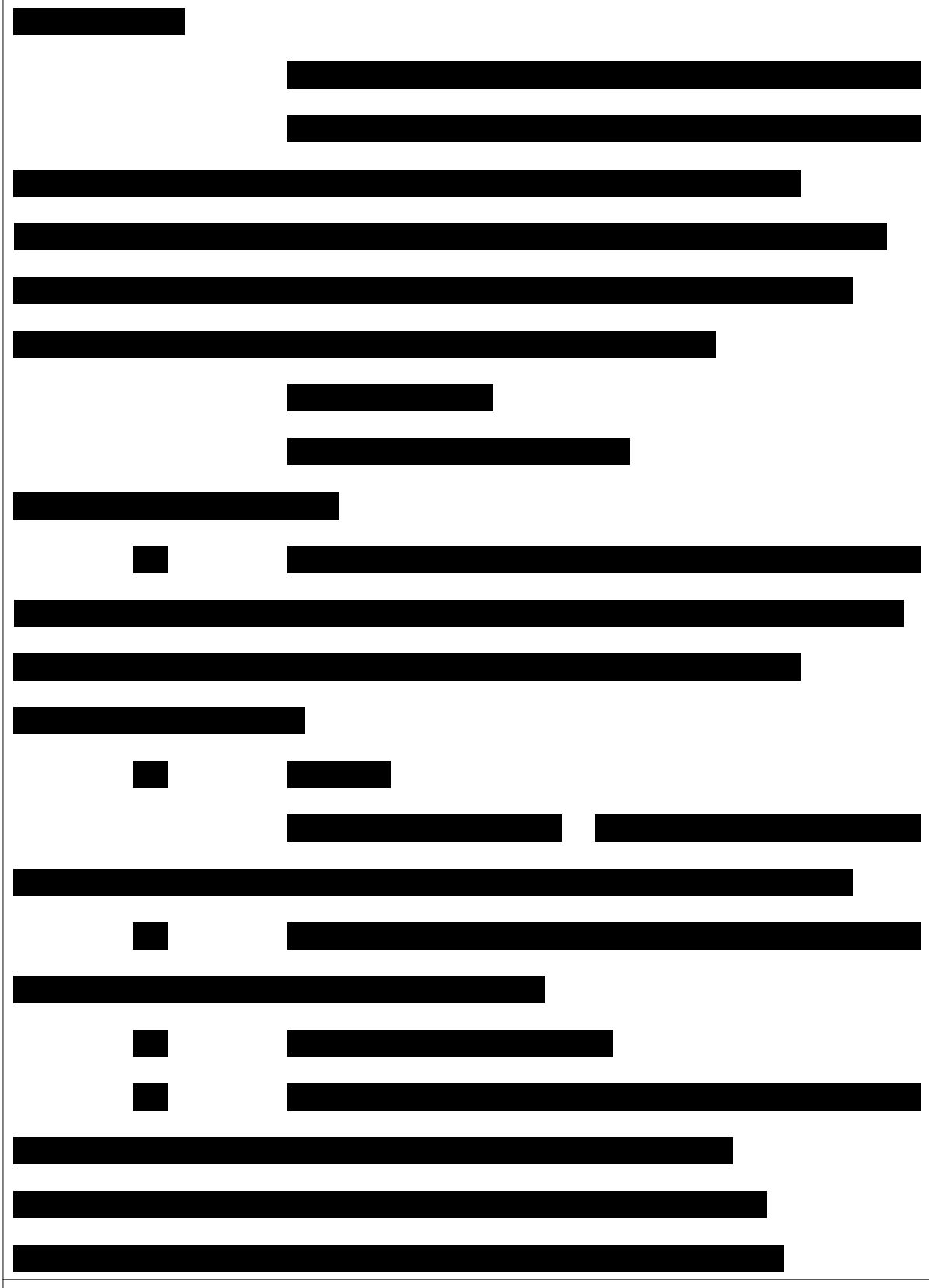
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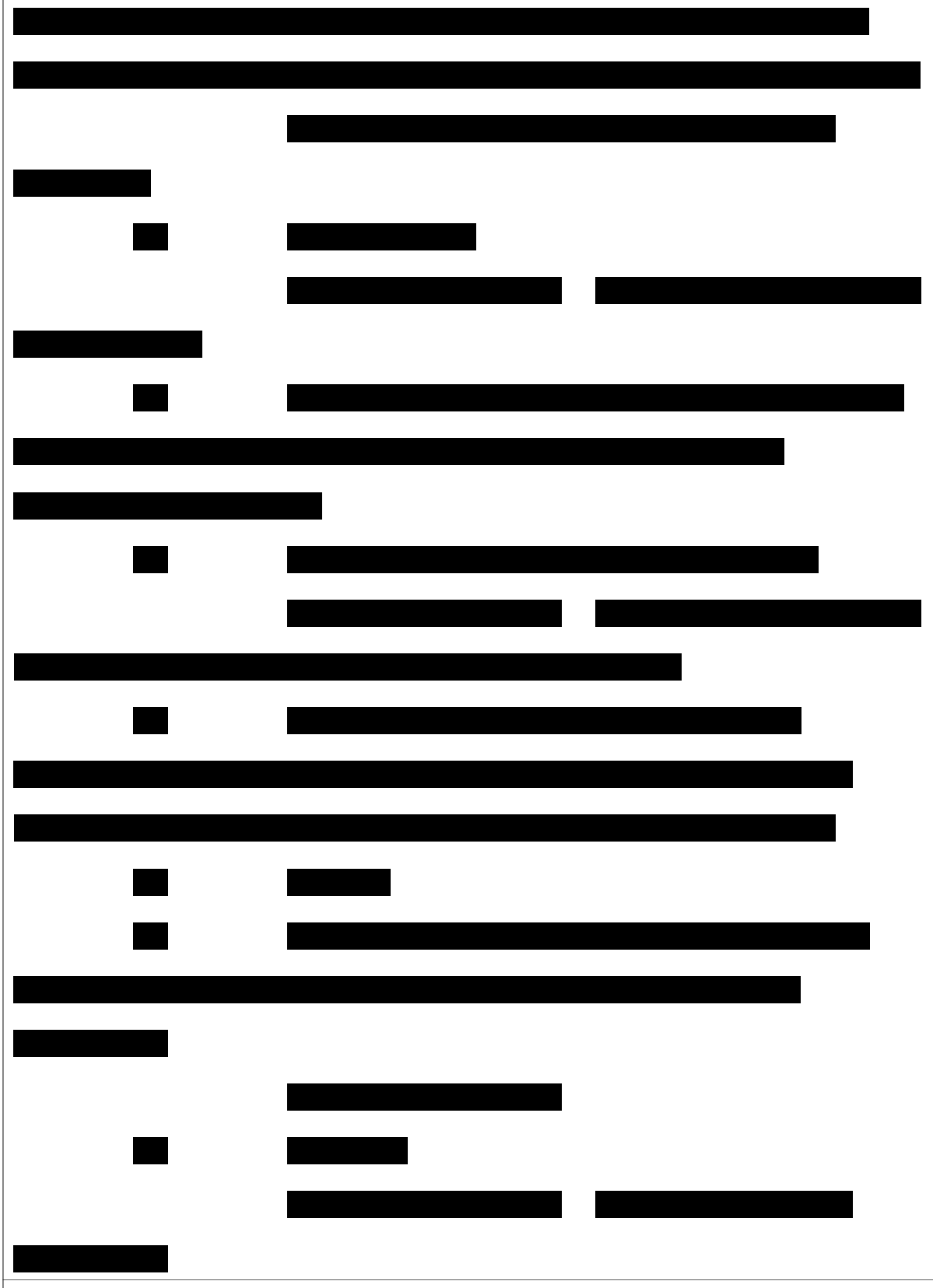


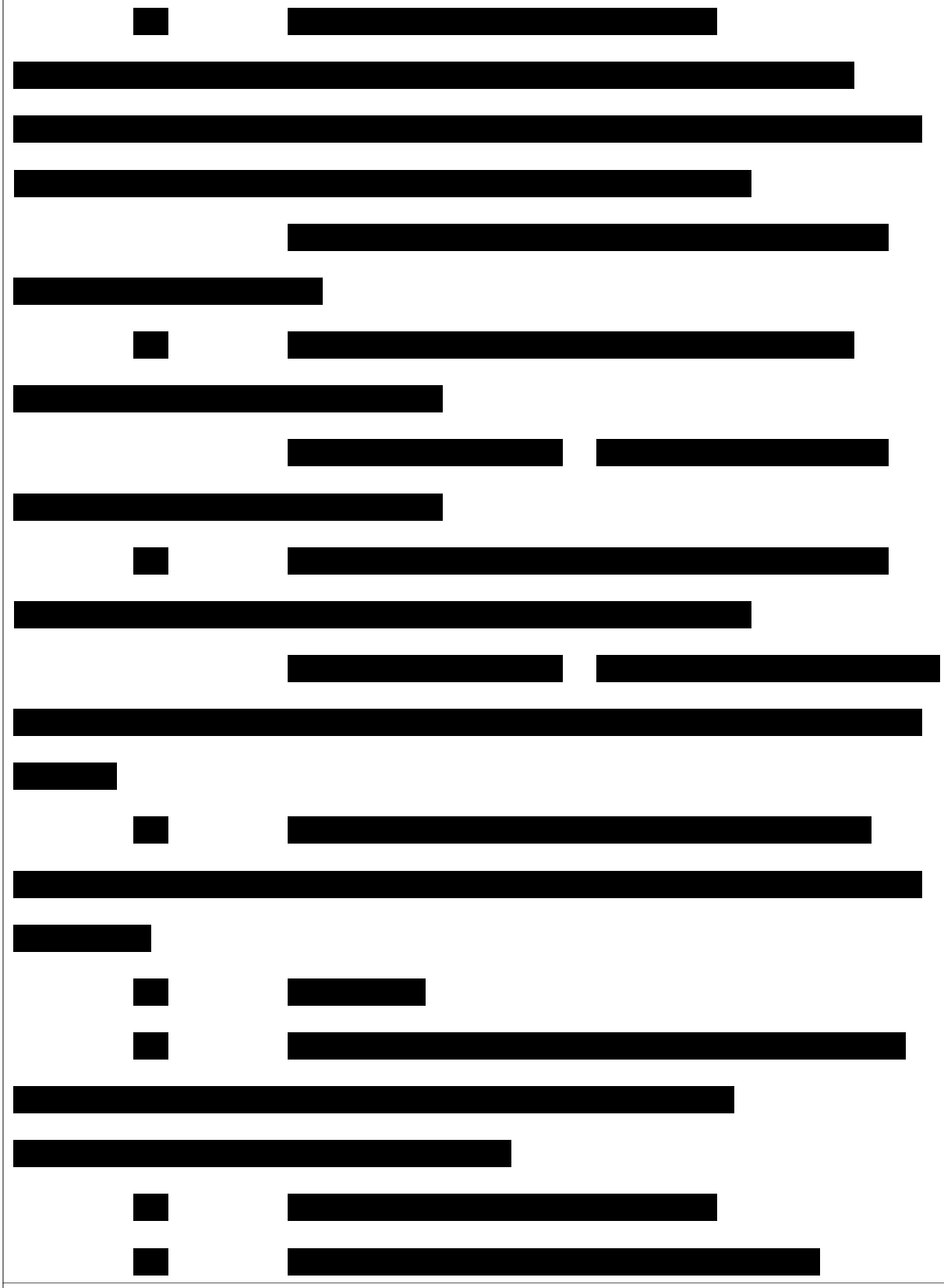


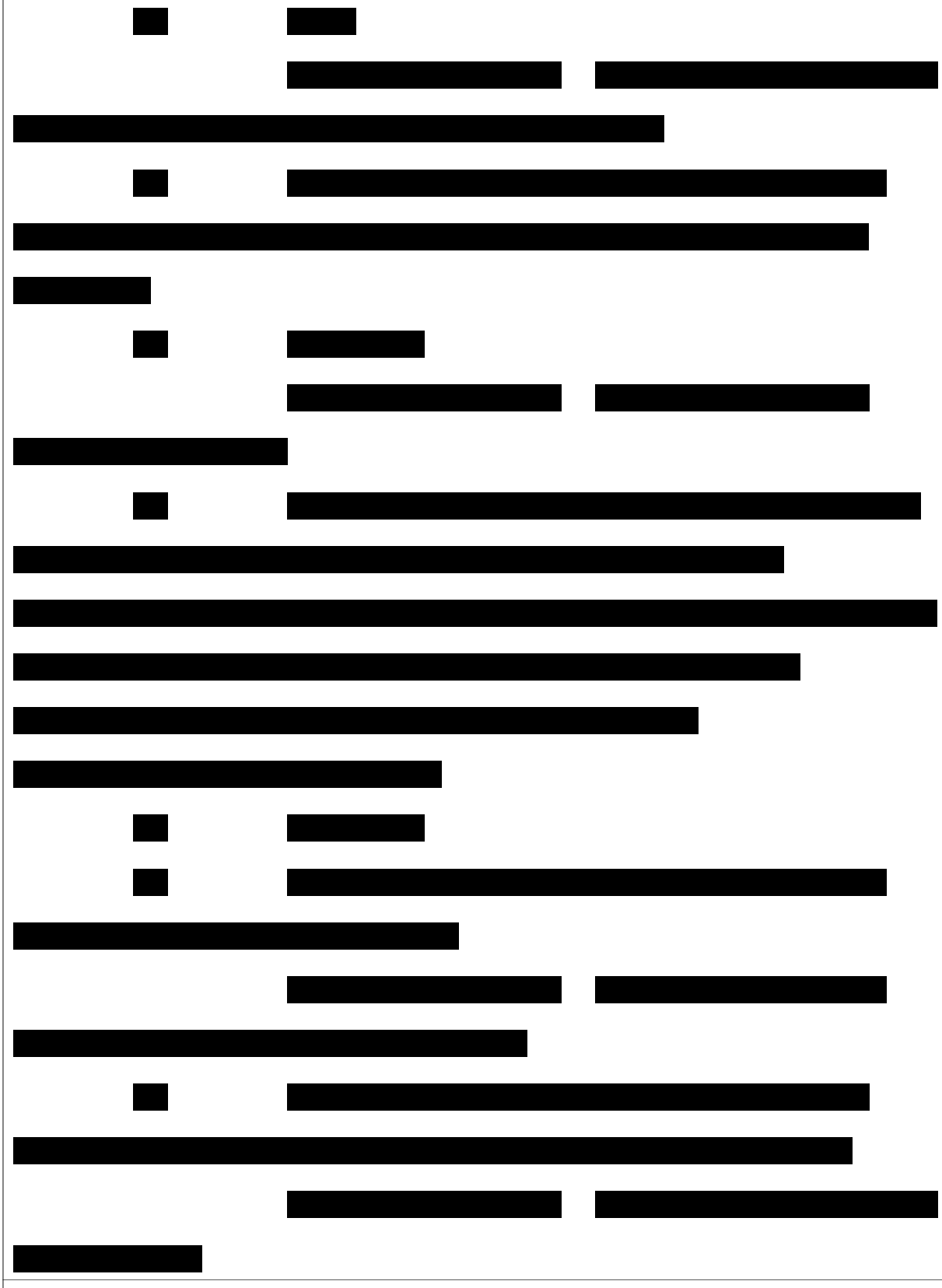


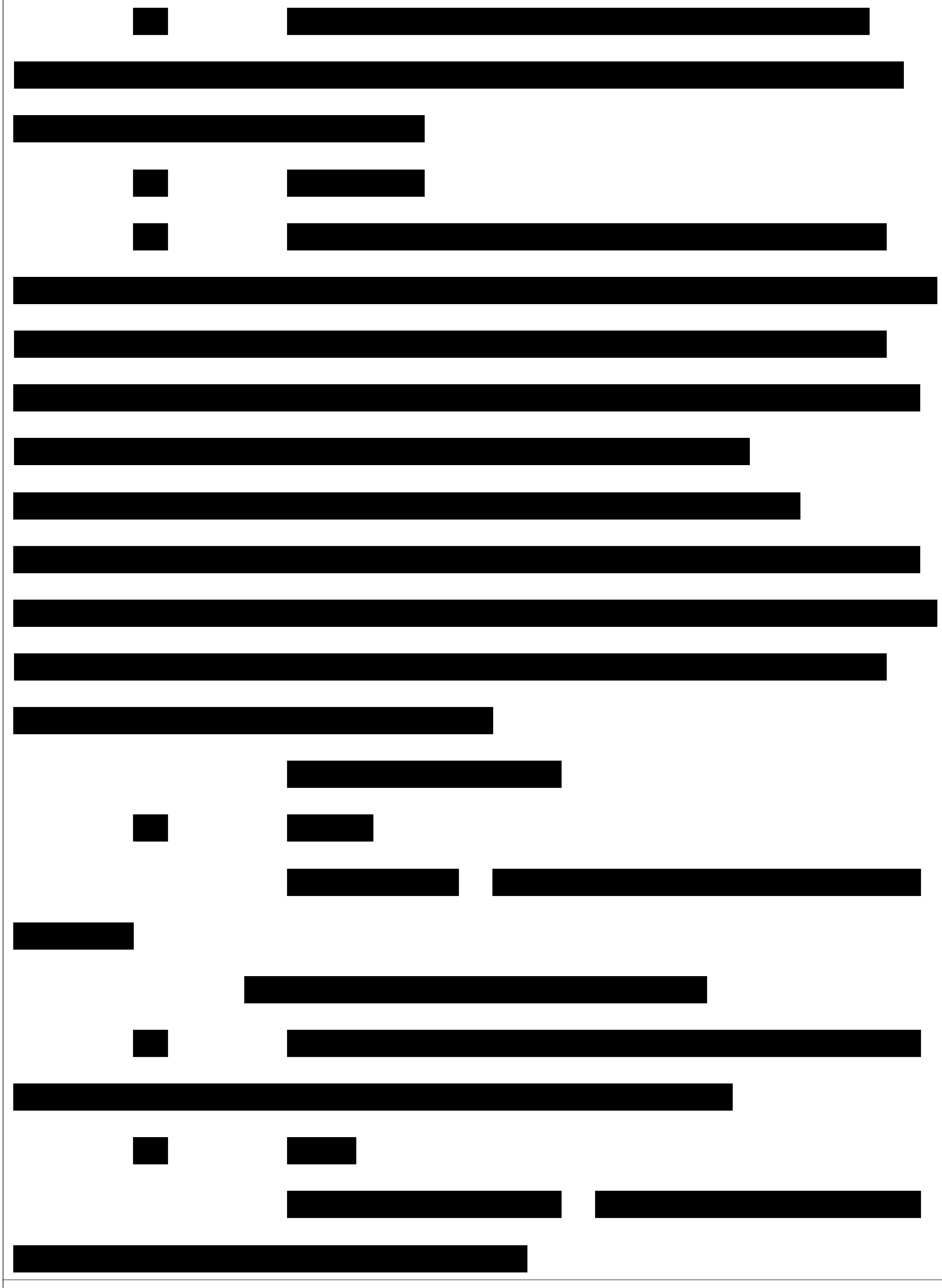


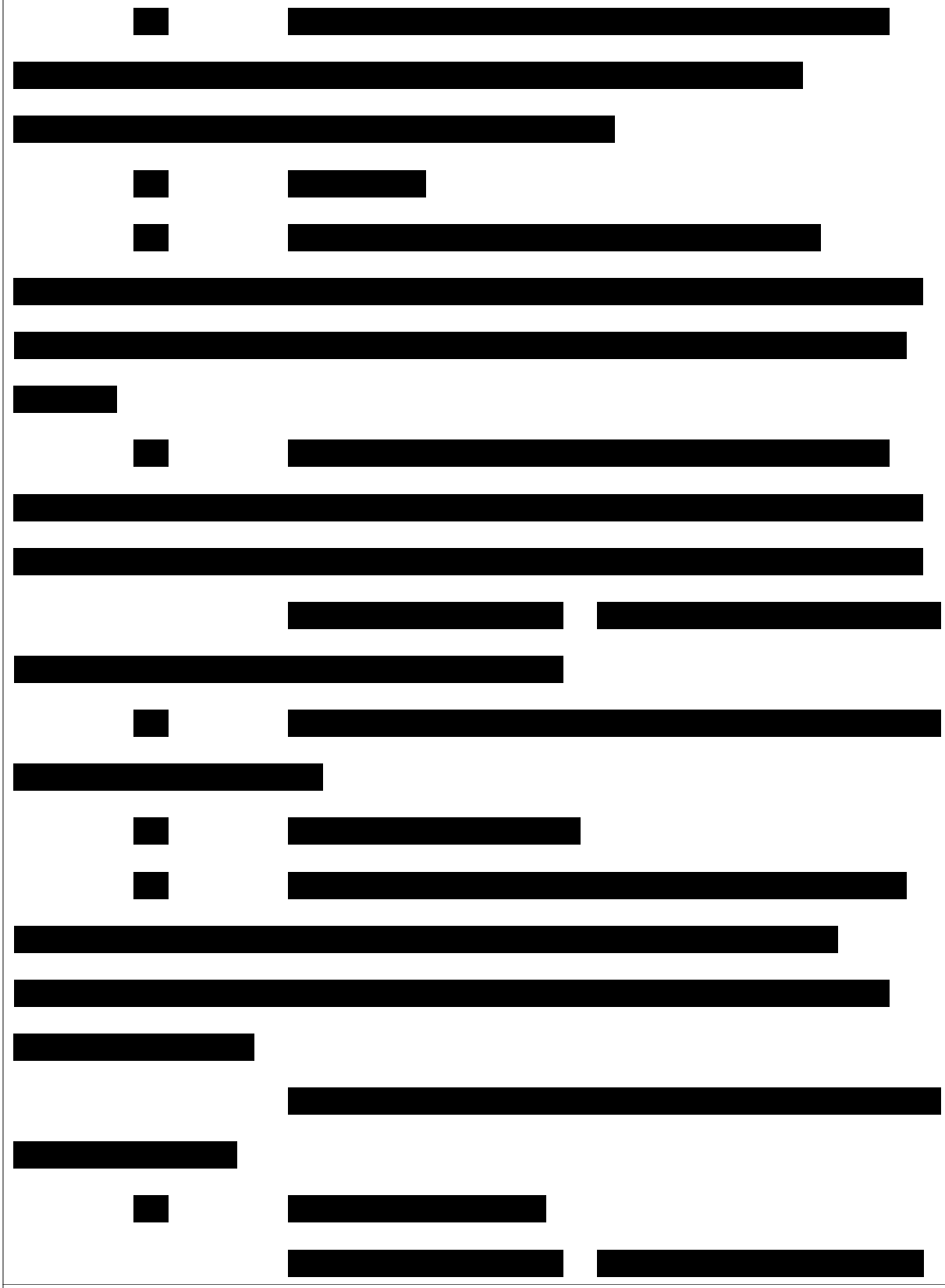


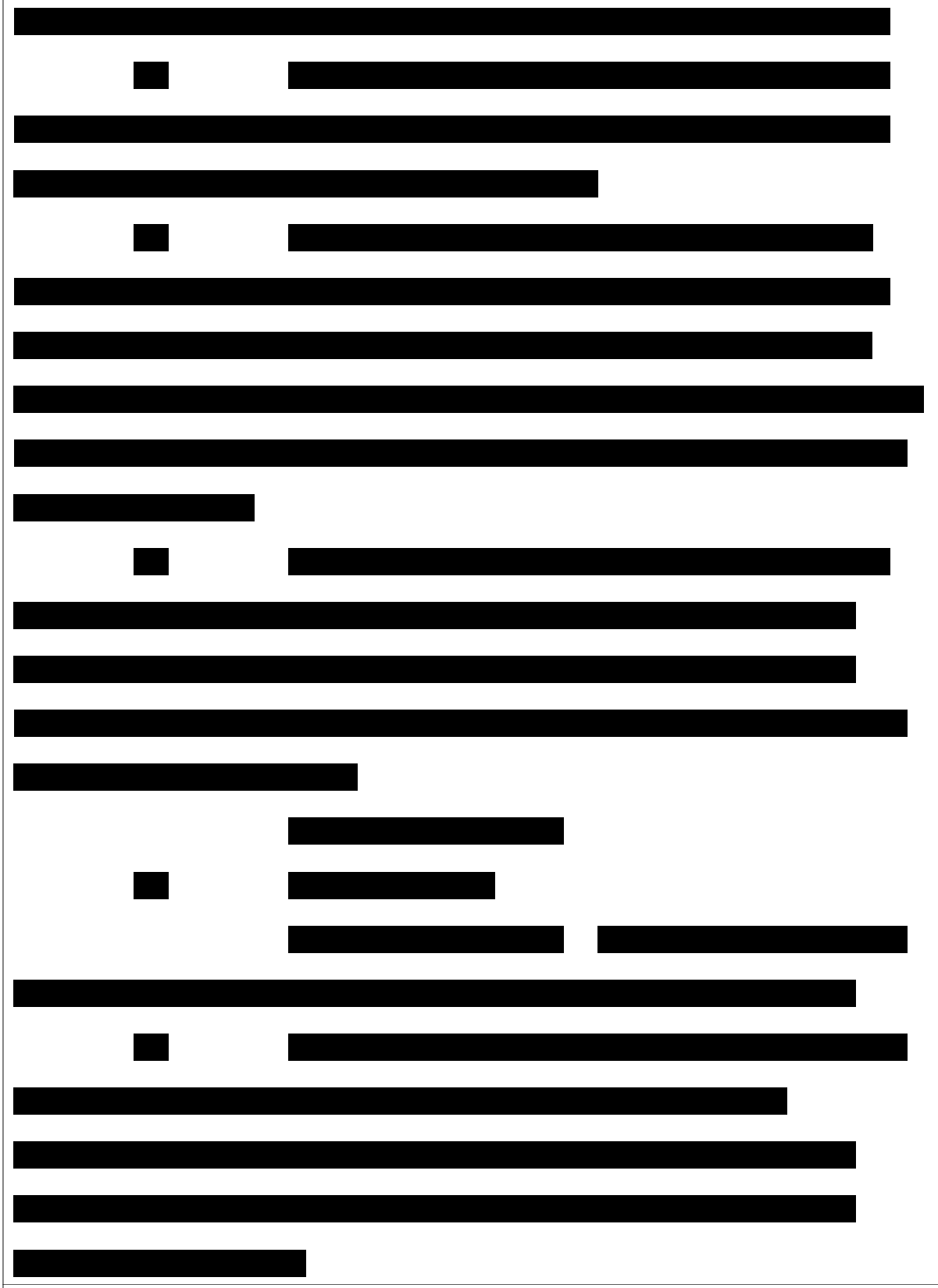


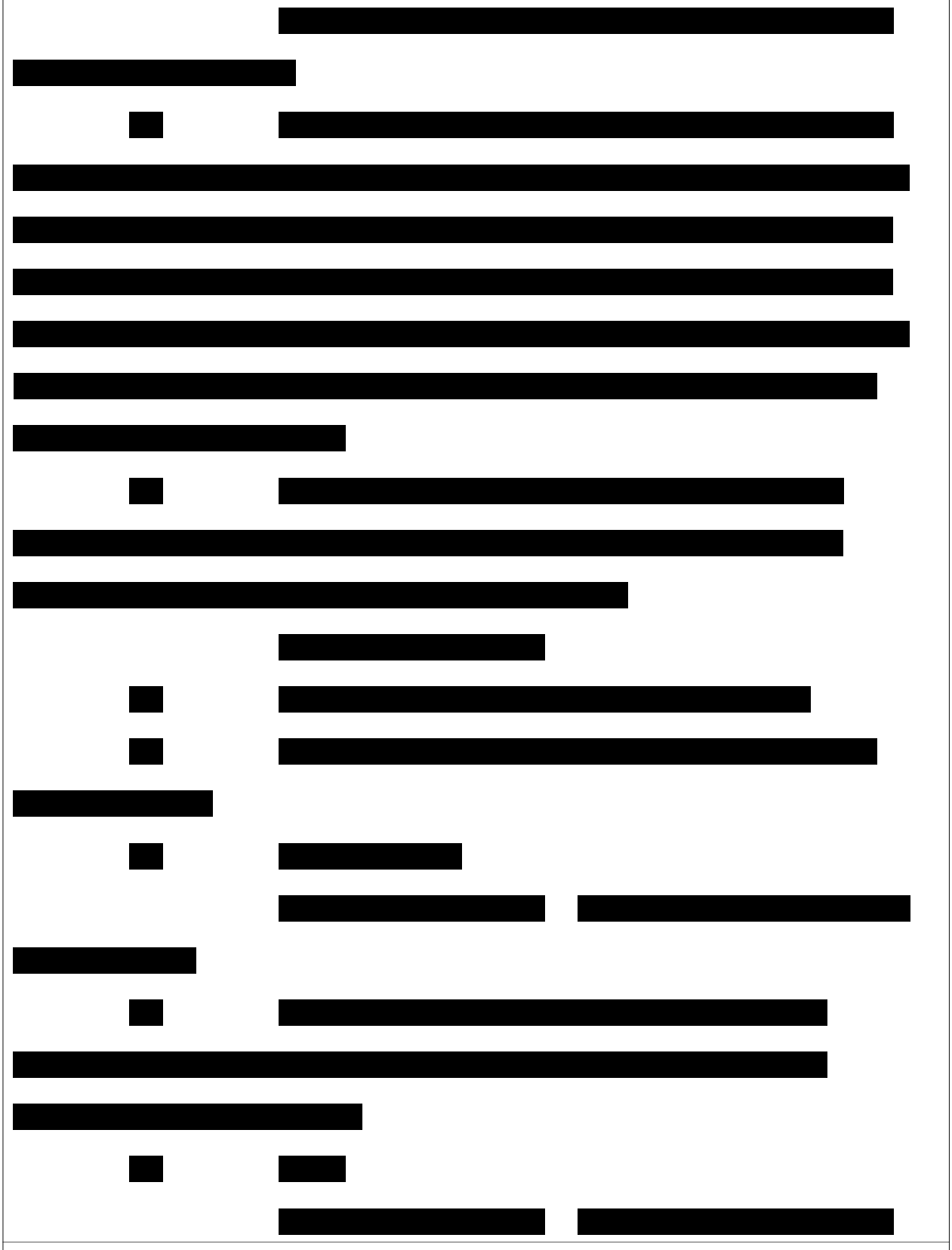


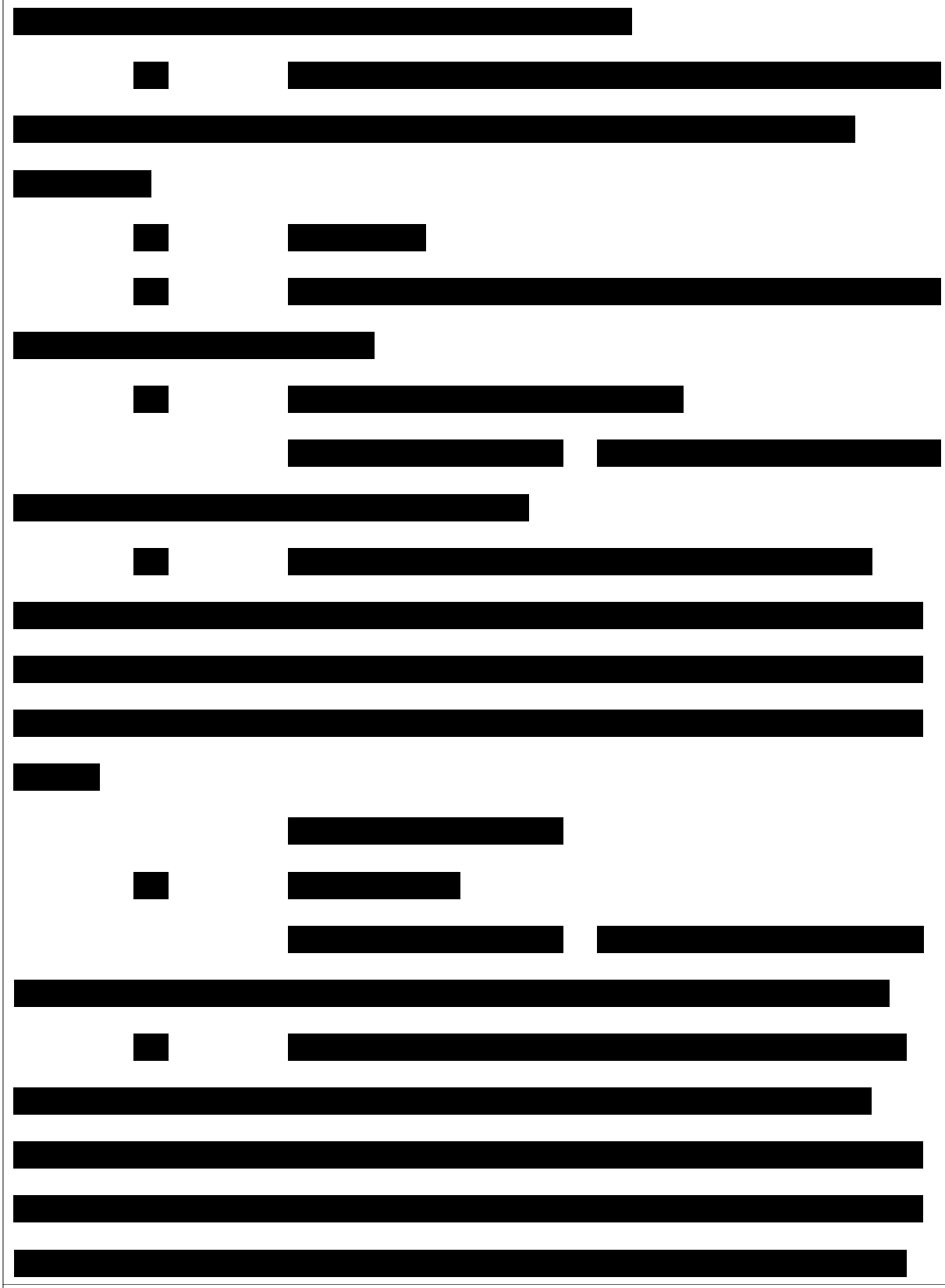


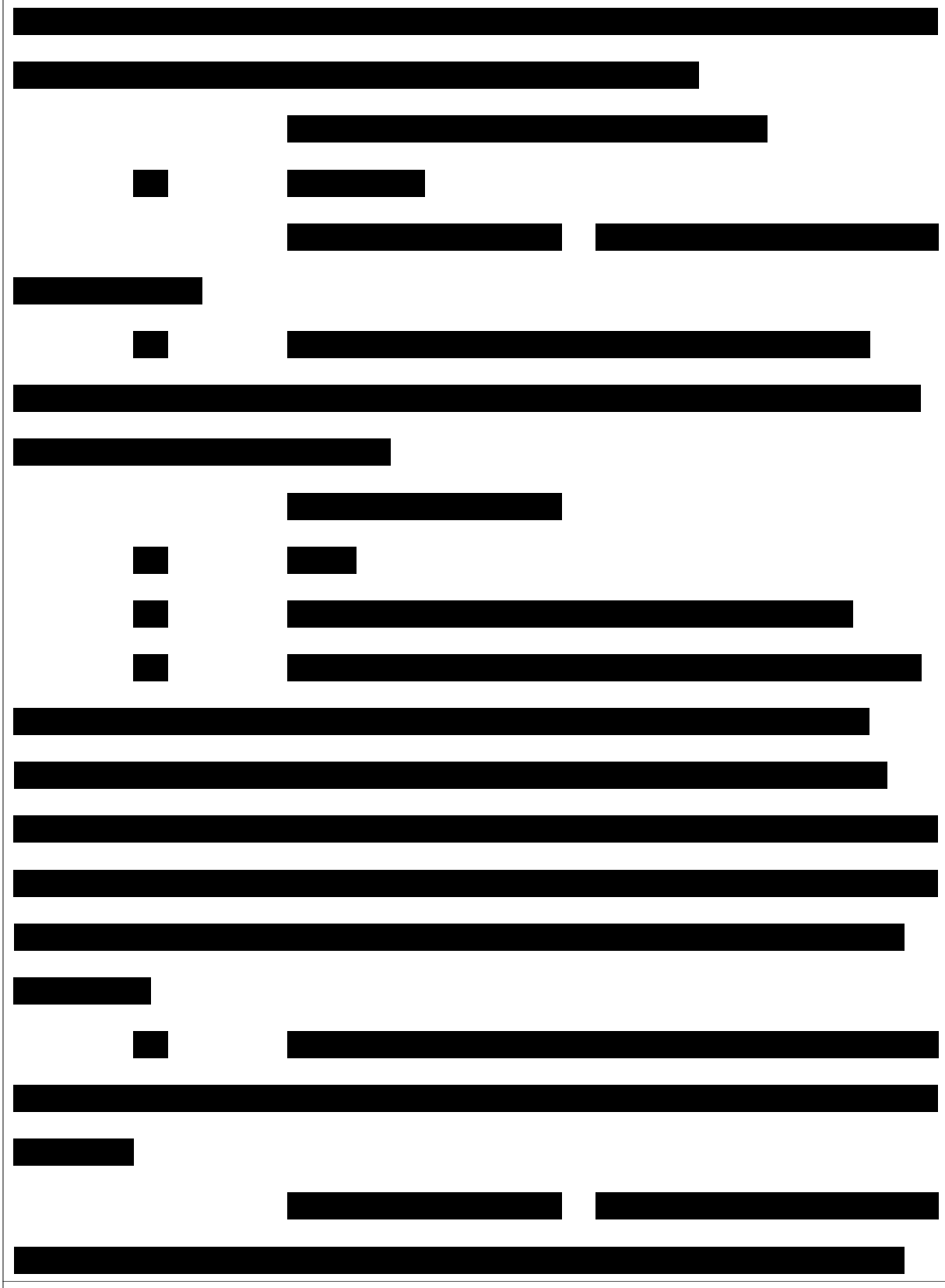




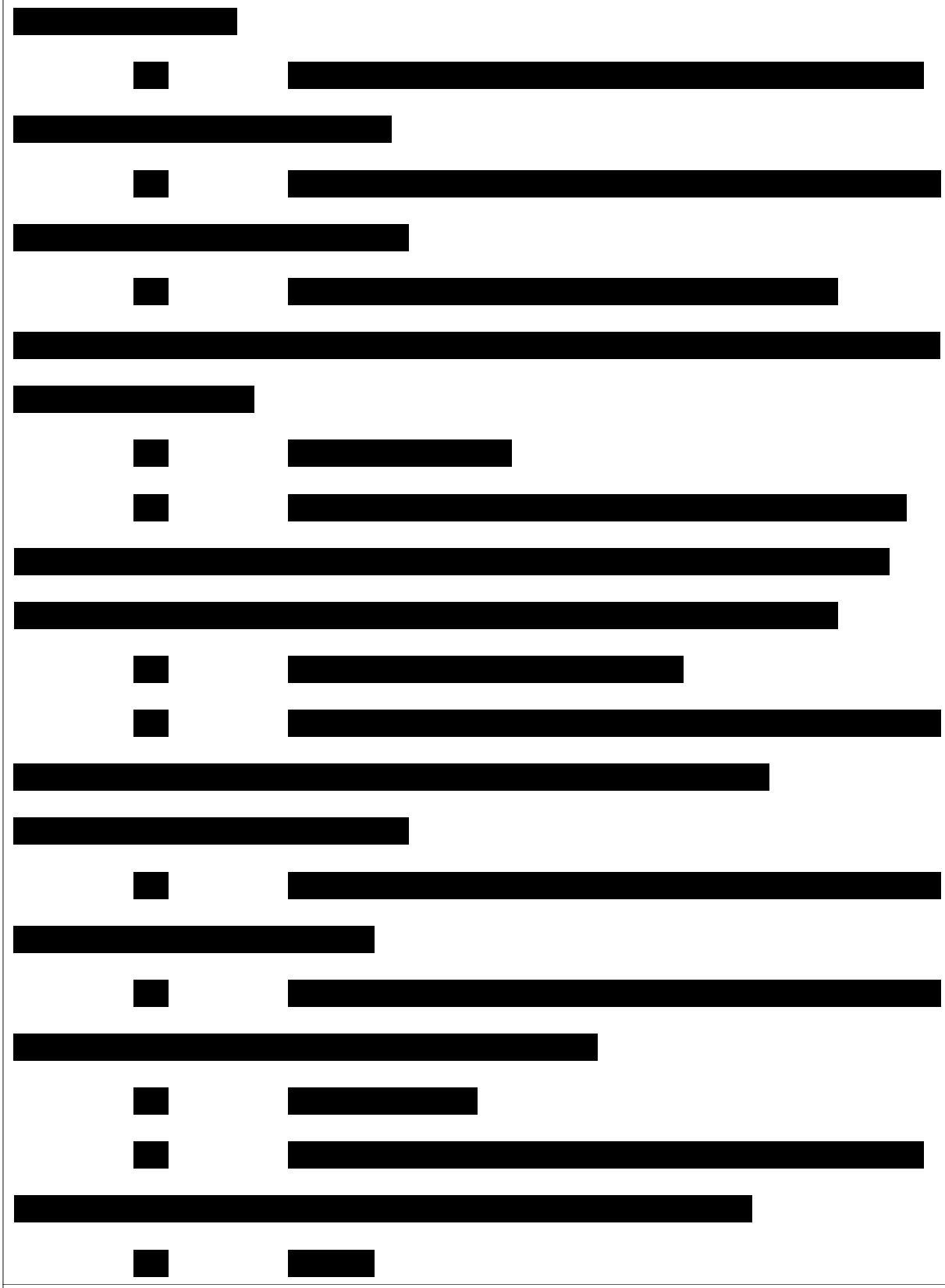


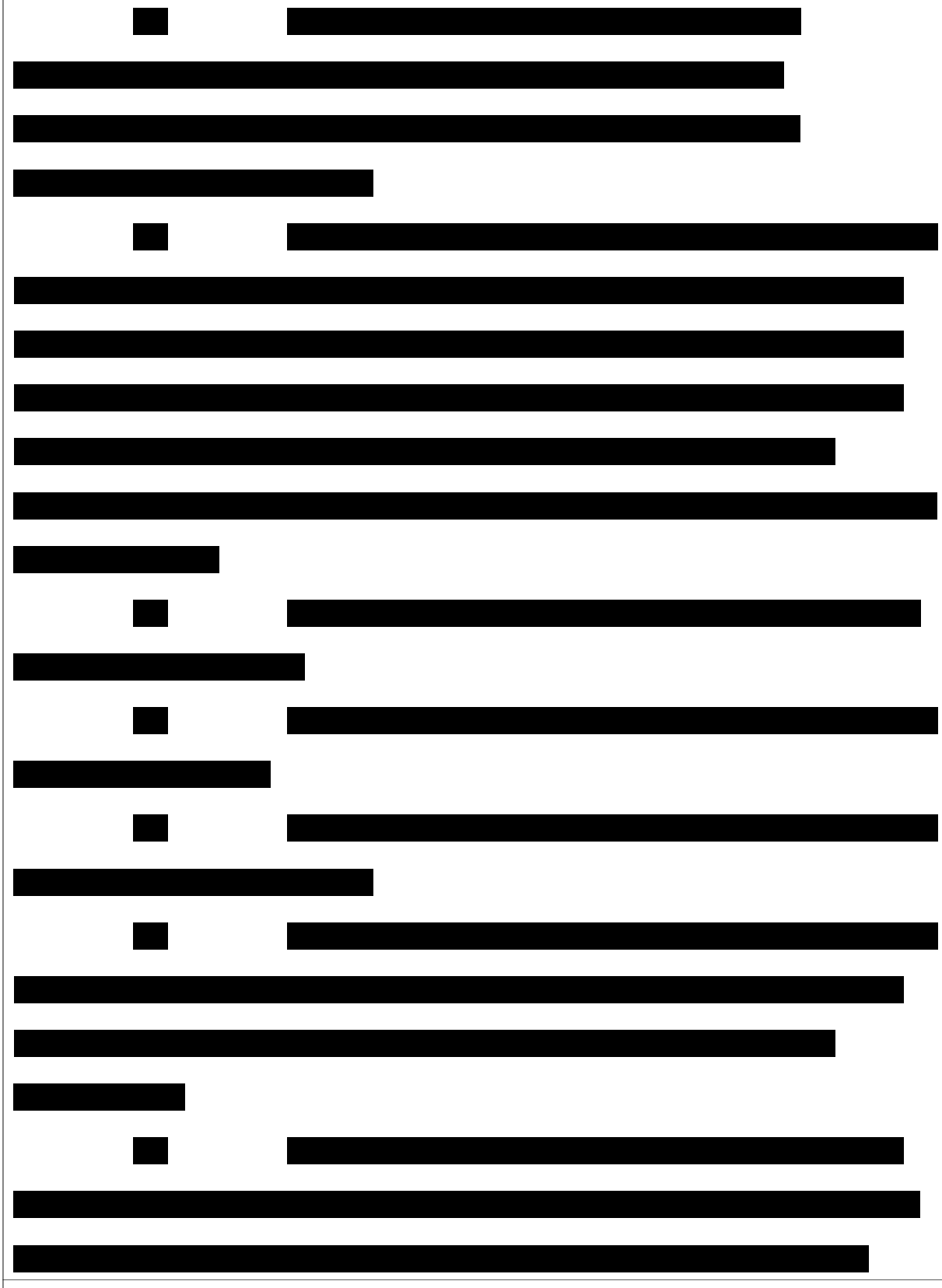






[redacted]





[redacted]

(Witness excused.)

THE COURT: Do you want to let everyone know that they can come back in.

(The courtroom was reopened to the public.)

ATTORNEY BARLOW: Your Honor, the plaintiffs call Joe Yanchik.

ATTORNEY EPSTEIN: Good afternoon, Your Honor. Rachel Epstein from Quinn Emanuel. While we wait for Mr. Yanchik, I thought maybe one issue of

housekeeping, which is we have the Cayman experts from both sides, Mr. Phillips and Mr. Bloch. We brought them here in case Your Honor has questions. But I think absent that, we'll submit them on the papers.

THE COURT: Any objection?

ATTORNEY TAFT: No objection, Your Honor.

JOSEPH YANCHIK, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY EPSTEIN:

Q. Good afternoon, Mr. Yanchik. Can you introduce yourself to the Court?

A. Joseph Yanchik, currently a venture partner at Apple Tree Partners.

THE COURT: If you could bring the microphone a little closer.

Q. Mr. Yanchik, how long have you been a venture partner at ATP?

A. I've been at ATP for 20 years now in different capacities. I started as a venture partner back in 2005. Did that for two years, and then started two companies in that role. I joined those companies full time. I was CEO of both. Eventually,

as they both grew, I opted to be full-time CEO in one of the companies, Aileron Therapeutics, and remained on the board of the first one.

Q. And what happened to Aileron?

A. Aileron we took public. We actually ended up taking both of them public. We raised close to a half a billion dollars into those two companies. Aileron went into the clinic, and then it eventually merged with another company.

Q. When did you leave Aileron?

A. I was there for 12 years, so I would have left around 2018. I reengaged with Apple Tree around 2019, end of 2019 as a consultant. And then at that point I took a full-time role back as a venture partner at the beginning of 2020, and I've been doing that since.

Q. Prior to joining ATP the first time, what was your background?

A. I started in '93 as a lawyer in Cahill Gordon in New York. I was a corporate lawyer, working primarily on typical transactions, mergers and acquisitions, high-yield debt, public offerings. I did that for four years, and then I was recruited to an outfit on Sand Hill Road in Silicon Valley, where I

worked exclusively on startup biotech companies. I spent half of my time representing the companies; half my time representing VCs.

After that, I started a dot-com. Shortly after that, I started a gene therapy company out of Stanford. That was eventually acquired by an incubator in the Bay Area.

One of the partners at that point asked me to join his company, which was an ag bio company. He asked me to help them restructure the company. They had a longstanding relationship with Monsanto that he wanted to see if we could renegotiate. So I did that. We did that successfully.

And around that time I met Seth Harrison and he made me an offer to join Apple Tree in Boston around, as I said, 2005.

Q. So overall how long have you been in the biopharmaceutical industry?

A. As a lawyer and as an operator, about 30 years.

Q. And are you the only venture partner at ATP?

A. No, I'm not. There are multiple

venture partners in the fund.

Q. Do all of the venture partners at ATP have similar backgrounds to yours?

A. No, they don't. We have a variety of backgrounds. Most of the venture partners have scientific drug development research backgrounds. I'm a little bit unique in my background with law and finance, as well as an operator. I'm one of the few who have raised capital into companies and run a public biotech company.

Q. So as a venture partner, generally what were your responsibilities at ATP?

A. Initially they were fairly typical to the venture partners. We had three to five companies at any given point in time where we might sit on the board that we were primarily responsible for. We would help them recruiting, developing their plans, as well as financing plans. And that's what I did for most of the time. Most of my time was spent on Braeburn, Marengo, Replicate. I also helped to set up Aulos, where I was on the board for a bit. I helped to set up Ascidian, where I maintained regular contacts with the management team.

So I had my three or four, but I would

also help on an as-needed and as-requested basis across the portfolio.

Q. So do you still have responsibility for those three or four?

A. I do.

Q. Do you have responsibility for any additional companies at this point?

A. I do. My job evolved fairly significantly after the first of the year. Initially I was asked to assist Rigmora, give some opinions on a royalty financing deal that they were working on, which I was happy to do.

After that, we started to work on various modeling exercises and whatnot, cross-portfolio, which is a little bit new for me. It was my understanding at the time we were creating these to present Rigmora with various investment options. We were looking at consolidations. We were looking at reprioritizing.

By the time we got to around, I would say, late April, end of May, it started to become clear that the companies were running out of money and we were approaching an insolvency period. Given my background, I started to take a more formal role in

terms of helping these companies start to navigate a process where we might be pre-bankruptcy. So I started to have a cross-portfolio role in particular with the preclinical companies.

Q. And can you describe for the Court a bit the process that you undertook in late April or early May.

A. Yes. Well, we were -- as a natural outgrowth of the modeling exercises we were doing -- as I said, once we started to become concerned that the companies were running low on cash, we started to dig in very deeply and build very precise models of what the cash was, what their liabilities were, what the management contracts were, leases, just a very detailed view, because we knew we were approaching a point in time where these companies might start to run out of money.

By the time we got to early May, some of the boards were independently starting to act because they were concerned with personal liability. So I started to, once again, be the primary go-between with creditors, the boards.

At that point we were forced to terminate approximately 70 percent of the employees

across all the companies. So I was responsible for that, including senior management that I was responsible for. And then just talking to -- as the primary vocal mouthpiece for the companies when we're dealing with creditors, landlords, prospective partners, et cetera.

Q. Since the filing of this suit at the end of May, have you continued in this process?

A. Yes. We're still in the middle of it. Most of the liabilities that the companies had at the time, back in April, are still on the books. We've asked the various creditors and landlords to hold tight if they could, explaining as transparently as we could what was going on with this process.

So, yes, we've still got quite a bit of work ahead of us to work that out.

Q. Currently, at a high level, what is the status, in your view, of these various companies?

A. They are in a form of, as I would call it, stasis.

So what we tried to do was reduce the burn rate of the companies as drastically as we could without completely destroying them.

And so the first part of the process

was who are the three or four people, in particular scientists, that we needed to try and retain.

The second was who are the creditors who are likely to give us the biggest problems.

And third, how could we secure the various IP, biologic materials and whatnot, with the goal of being able to restart them later.

So right now they are in stasis and dealing on an ad hoc basis with various creditor issues as they arise.

Q. And are you aware that in May of this year, the general partner called capital from the Rigmora entities?

A. Yes, I am.

Q. Do you have a general understanding of the quantum of those capital calls?

A. Yes, I do.

Q. In your view, if the portfolio companies were to receive that cash, how would it affect them?

A. Well, today I believe we could reconstitute them. That was how we set it up. The employees so far are hanging on. I believe that's a finite period of time that that opportunity will exist

for us. If we get the cash right now, we can pay off the debts, we could retain the employees, possibly even rehire some, and continue the research, which we've been planning in terms of how to ramp that up.

Q. And you said it's a finite period of time, in your view. Why is that?

A. Well, whenever you stop a research organization, it starts to deteriorate. So if we take more time, we will start to lose employees. They've been gracious to stay as long as they have, and we have not put any retention packages in for them, which has been amazing that they have stuck it out. But they believe in the science, I think.

Also, we are in a very competitive market. People will pass us. We work in valuable areas. We're aware of competitors. They are passing.

And then the creditors. So far they've held off. I don't believe they will hold off for much longer, and then they can force us into bankruptcy. And then we are likely to lose the assets.

Q. Switching topics a little bit, are you aware of some actions in the Cayman Islands brought by the Rigmora LPs against the GP?

A. Yes, I am.

Q. And are you aware that one of the requests that has been made is for provisional liquidators?

A. Yes, I am.

Q. Do you have a view on whether or not that will affect the companies?

A. It will affect the companies. I believe it will end the companies. You know, as the primary person who has been talking to the creditors and the employees, it's my understanding that these would be provisional liquidators. I think once you take anyone with the role that says "liquidation" on there and put them into the current situation, it will be a signal that we are done. I believe the employees will leave. I believe the creditors will move to protect their positions.

Secondly, the reason we've been able to hold it together is because Apple Tree has had success with some of these creditors, many of these employees. We've been able to build companies. So far they've been willing to take us on our word. Once we're out, they are going to assume that we lost and the build is gone. And once again, that will be a

signal, I believe. So I just -- I don't see how we survive that.

Q. So putting aside the factors that you've just mentioned, do you think that if, for example, the provisional liquidators had a scientific background, that would help mitigate some of the concerns?

ATTORNEY TAFT: Objection. Leading.

THE COURT: You can ask leading questions, but it's hard for me to assess the credibility of the witness when you do that. So try not to.

ATTORNEY EPSTEIN: Fair enough. I can withdraw it.

BY ATTORNEY EPSTEIN:

Q. Other than the concerns you've just raised, do you have any other concerns?

A. Well, it's the role that we play. We have spent, in most cases, three, four, five years growing up with these companies, watching the science, recruiting the executives, building out the financing plans. And you have to -- to do this successfully, you have to develop an independent view from the management team. And you need to partner with them in

that regard with that independent view.

I don't see how that would be replaced. I don't see how anyone would be able to come in, even with a scientific background, and replace the understanding we've developed around the teams and the technologies and the markets.

Q. Are there any other concerns regarding provisional liquidators that you believe the Court should know about?

A. No. That would state it.

ATTORNEY EPSTEIN: Pass the witness.

CROSS-EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Mr. Yanchik. Will Taft, Debevoise & Plimpton, for the defendants.

Mr. Yanchik, you are a lawyer, but you are not a Cayman law lawyer; correct?

A. That's correct.

Q. And you mentioned your work on the reallocation process in the spring of this year. The goal of that reallocation plan was to optimize the number of milestones that could be achieved across the fund; correct?

A. That's not how I would state it, no.

ATTORNEY TAFT: Can we play clip 39, Yanchik 1, 258, 18 to 22.

(A video clip was played as follows:)

Question: So you're looking for a way to optimize the number of milestones achieved across the fund; correct?

Answer: That was the goal of the reallocation plan.

(End of video clip.)

BY ATTORNEY TAFT:

Q. Do you agree that optimizing the number of milestones achieved across the fund would be a reasonable objective?

A. It was -- to be clear, it was one goal, but it was also trying to deal within certain parameters of diminishing capital.

ATTORNEY TAFT: Can we play Yanchik clip 57. That's Volume I, 258:23 to 259, line 1.

(A video clip was played as follows:)

Question: And was that a reasonable objective in your assessment?

Answer: To try to optimize the -- I think that's always a reasonable objective.

(End of video clip.)

BY ATTORNEY TAFT:

Q. Mr. Yanchik, you began thinking about a restructuring plan for certain companies in late April, early May of this year; correct?

A. I would not call it a restructuring plan. Once again, we were trying to develop multiple options that we believed Rigmora wanted to see to engage with the portfolio in a variety of ways.

So restructuring was one component. Restructuring was certainly one of the things that we were considering at the company level, at the fund level. But you continue to say "the goal," and there were multiple goals at this point in time.

Q. You mentioned that there were reductions in force --

A. That's correct.

Q. -- in May of this year; correct?

A. May, June. That's correct.

Q. And some of those happened before May 30; correct?

A. I don't recall the precise dates, but it was right around that time. It was handled on a company-by-company basis. So they did it when they thought that they were prepared.

Q. But capital wasn't called for most of these companies until May 30; correct?

A. At that point in time, that's my recollection, yes.

Q. Do you recall in connection with proposed restructuring that you were advising counsel that ATP intended to close down up to five of the portfolio companies?

A. I don't recall that. Advising that we would just shut them down outright and get rid of the assets, I do not recall that.

ATTORNEY TAFT: Can we bring up JX 2143. And if you can go to the second email on this chain on the first page.

Q. It is an email dated May 2.

Do you recognize this email?

A. I do.

Q. And here you are advising counsel that "As you can see, we are cash out in a couple weeks at some of the companies, so decisions are being finalized this weekend .... This has not been communicated to the companies or employees as of yet."

ATTORNEY TAFT: And we can go to the next paragraph, fourth paragraph.

Q. Do you see it says, "We intend to close down 4 or 5 of the remaining companies depending on final budget and other considerations"?

Do you see that?

A. I do.

Q. And do you recall that of those four or five companies, there was only one of them that ATP really wanted to salvage the IP from?

A. No, I disagree with that.

ATTORNEY TAFT: Can you look further down to the next -- the fifth paragraph. Thank you.

Q. Do you see where it says, "Of the shuttered companies, Nine Square is the one we really want to keep the assets but needs to be shuttered quickly"?

A. That one is referring to needing to move quickly on Nine Square. But I do not believe the intention ever was to get rid of all the assets. As a matter of fact, every one of my activities from February until very recently is trying to find ways to maintain all of the assets, whether or not we felt the liabilities of various companies made the corporate entity potentially problematic.

Remember, at this point we're

speculating as to how fast the creditors were going to come in and how things were going to deteriorate. But it was never our intention to get rid of all the assets.

But what I said earlier -- it would be helpful to be able to see the whole email here. What I said earlier was depending on the final budgets and what happened. So we were dealing with quite a few contingencies at that time.

ATTORNEY EPSTEIN: I'm sorry, Your Honor. Do we have paper copies for the witness?

ATTORNEY TAFT: Do we have a binder?

May I approach?

A. Can you tell me what tab, Counsel?

Q. It was JX 2143.

ATTORNEY TAFT: You can take down the slide.

A. I think what's important here is that the first sentence, it discusses how -- at this point in time there was an attachment to this email that indicated the various companies and the liabilities. At this point in time, at the beginning of May, we were speculating as to what was retrievable and what wasn't with regard to the companies. But the goal

always was to try to maintain as many assets as we could, whether or not we could develop them, depending on how much capital came in.

Q. Mr. Yanchik, changing topics, do you recall a communication with Dr. Ehlers in which you suggested that the Russia factor may be an excuse for other challenges that ATP presents?

A. I do recall that.

ATTORNEY EPSTEIN: I'm just going to object as being outside the scope.

THE COURT: You can continue. Overruled.

ATTORNEY TAFT: I have no further questions.

THE COURT: Thank you.

Anything further?

ATTORNEY EPSTEIN: Nothing further, Your Honor.

THE COURT: Thank you. You can be excused.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs call Mark Robbins. And my colleague, Ms. Jessica Reese will be handling the questioning.

THE COURT: Thank you.

MARK ROBBINS, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY REESE:

Q. Good afternoon, Dr. Robbins.

A. Good afternoon.

Q. Would you please introduce yourself to the Court.

A. I am Mark Robbins. I'm the president and chief executive officer of Kodiak Strategic Consultants.

Q. Did you prepare a slide deck to accompany your testimony this afternoon?

A. Yes, I did.

Q. Is this the presentation that you prepared?

A. Yes.

Q. Dr. Robbins, what is the business of Kodiak Strategic Solutions?

A. Kodiak Strategic Consultants.

Q. Consultants.

A. It provides clinical, regulatory, business development, consultation strategies for

pharmaceutical and biotech companies.

Q. And prior to becoming a consultant, what was your experience in the life sciences industry?

A. I have over 30 years of experience working at pharmaceutical biotech companies doing preclinical, clinical, regulatory affairs, and business development activities.

Q. What degrees do you hold?

A. I have a doctorate degree from the University of Minnesota Medical School and a law degree from St. Louis University.

Q. Dr. Robbins, do you have any experience with preclinical or early-stage life science companies in investing?

A. Yes, I do.

Q. Could you tell us about some of that experience.

A. I work with a lot of early-stage companies helping them to develop plans, strategic plans, investment portfolios, raising money, talking to different potential investors, making presentations. And I also personally evaluate startup companies and I personally invest in some early-stage

companies.

Q. In your consulting work, have you assisted companies in trying to obtain funding for preclinical research and development activities?

A. I have.

Q. Approximately how many companies have you assisted with?

A. Over a dozen.

ATTORNEY REESE: I ask the Court to qualify Dr. Robbins as an expert in biotechnology funding, research and development, and investment.

THE COURT: Any objection?

ATTORNEY TAFT: No objection.

THE COURT: Thank you.

BY ATTORNEY REESE:

Q. Dr. Robbins, what was your initial assignment in this matter?

A. My initial assignment was to assess whether Rigmora's 2025 decision to defund these preclinical studies was reasonable from an investment standpoint.

Q. Did you prepare a report on these topics?

A. Yes, I did.

Q. Is this the slide that you prepared summarizing the opinions in your opening report?

A. It is.

Q. Briefly, what did you conclude?

A. I concluded that Rigmora's decision to halt all funding of these preclinical studies was not how a reasonable investor would act trying to get a return on investment. By defunding the companies, they were essentially diminishing value.

In coming to that assessment, I used a multifactor framework to evaluate each of the companies within the portfolio, and I wrapped those up into an overall portfolio to make an assessment to make a continued investment.

Q. Did you also prepare a rebuttal report in this matter?

A. I did.

Q. And what were you asked to evaluate in your rebuttal report?

A. I was asked to look at Dr. Rimm's opinion that it was -- defunding of these seven companies because they missed the milestones from the investment memorandum was reasonable from an investment standpoint.

Q. I'm looking to Slide 7. What opinions did you form in preparing your rebuttal report?

A. I found that Dr. Rimm's focus was too narrow when she just looked at the milestones in the investment. And as Dr. Harrison testified, once you start doing research, those milestones readily change.

Investors in R&D in biotech companies understand that as you get data, milestones will shift. And they have to shift. And so I looked also at these companies to see were they really developing assets that were worthwhile and had a potential for getting returns. So those were key factors.

Q. Dr. Robbins, turning back to your opening report, how did you go about assessing the reasonableness of Rigmora's across-the-board decision to defund the portfolio companies in May 2025?

A. I looked at each of the companies individually, and then I rolled them up into the portfolio. And the way I looked at each of the companies was through a multifactor analysis that typically is used when you are looking at investing in companies and assessing companies.

Q. If we could turn to Slide 8. Is this a slide you prepared summarizing that multifactor

framework?

A. It is.

Q. What types of factors are included in this framework?

A. You evaluate the experience of the management team, the scientific research, what development progress has been made, what development progress can you expect to have, what the intellectual property protections are.

You also look to see is it breakthrough therapy that's meeting an unmet need. That's absolutely critical, that there has to be a need for product.

You look at third-party interest to see is this an area of interest to people outside of the company to understand what the landscape is.

Q. Did you design this multifactor framework yourself?

A. No. This framework is informed by my work in the industry from doing business development over 30 years, putting together presentations. Also, as an investor, these are the things I look at when I do that. This is also, from an industry standpoint, pretty much a standard when you are making

presentations to VCs. It also fits into the same realm -- an investment memorandum that ATP was putting together. And it's supported by academic and industry publications that this general framework is used.

Q. I want to talk a little bit more about some of these factors. Why is third-party interest important to assess?

A. Third-party interest helps validate the area for which you are going for. You want to see if there's an unmet need, is it realistic, and also if there is, from a third-party interest, potential business development opportunities. A lot of these early-stage companies, their goal is not to commercialize it themself, but to license them out and do core development or development with large biotech and pharmaceutical companies. So that's also important.

Q. You mentioned business development deals. For an early-stage company that's nearing or at the conclusion of its Series A funding, would an investor be looking for finalized deals exclusively?

A. The finalized deals are great, if you have them. But it takes a long time to get a business development deal. You are doing development all

along. It's prudent to have conversations early on with companies so they are aware of what you are doing, follow up as data gets generated. But actually, signed deals can take several years in process. So it's not unusual. You just want to see what's being tracked.

Q. Stepping back, does any one of the factors outlined here determine whether a company is worth investing in?

A. All these factors are critical in making that assessment. You want to make sure that there's a good management team, there is scientific validity, that it's a very strong portfolio. So you want to make all those assessments. All these factors count.

Q. And would you expect the factors to be weighted similarly for companies with assets in the same stage of development?

A. No. Each early-stage company is unique. And so sometimes certain factors will weight more than other factors.

For instance, if you have a person who is a Nobel Prize Laureate who has a great idea, that's going to be highly weighted. If you have something

that has a huge unmet need, that can be highly weighted. IP -- so you look at each individual company, early-stage company uniquely.

Q. And for this assignment, did you evaluate each individual portfolio company individually?

A. I did.

Q. Turning to Slide 9. Is this a slide that you prepared summarizing your findings?

A. Yes.

Q. Could you briefly walk through what you found.

A. So I looked at the seven companies on the slide and I found for each of the companies, that they had had significant preclinical or clinical development progress. They were all working towards getting an IND in place. They had leadership teams that were composed of world-renowned experts in the area they were working in. They all had breakthrough technologies, very novel. And they were in discussions -- some of them had partnerships with large biotech companies or they were in discussions with large pharmaceutical biotech companies.

Q. And so based on all of the materials

that you reviewed, do you believe a reasonable investor would have across the board refused further funding for the preclinical companies in May of 2025?

A. In my opinion, a reasonable investor wouldn't do that because the portfolio had a lot of potential value to it. And by halting funding and asking the companies to be wound down and liquidated, it's destroying value; whereas a reasonable investor wants to increase value and get a return on their investment. There's no basis to want to destroy value.

Q. Dr. Robbins, are you aware that Rigmora's expert, Dr. Rimm, reached a different opinion regarding the reasonableness of Rigmora's decision in May of 2025?

A. I am.

Q. And what do you understand her opinion to be?

A. I prepared a slide. I can say it. Dr. Rimm's opinion was that to -- it was reasonable to defund these companies because the milestones that were laid out in the initial memorandum four to five years before, those milestones had been missed. And therefore, because those milestones had been missed,

it was reasonable to defund all the companies.

Q. And what do you mean when you say "those milestones had been missed"?

A. The time that was in the initial investment memorandum for the milestones maybe were not achieved in that time frame. That's common in pharmaceutical development, though, because you have to follow the research and development and adjust your time limits based upon the data that's coming out.

Q. And did you consider development progress when you were evaluating the preclinical companies?

A. I absolutely did.

Q. How did your consideration of development progress differ from Dr. Rimm's consideration?

A. I took a more holistic approach. I didn't rely upon the initial investment memorandum for the timelines. I looked to see what was actually being done at the companies, what work had been completed, where they were in development at that time when they were cut off from funding. I looked at that. I looked at was unmet need still there. I looked at was the technology still promising. I also

looked at the management teams.

Q. Is this Slide 11 a slide that you prepared summarizing some of the progress you observed amongst the preclinical companies?

A. It is.

Q. Just briefly focusing, first, on development progress, could you describe what you observed about the preclinical companies.

A. All the preclinical companies had made significant development progress. Two of the companies were already in IND-enabling studies. They were getting a place to file IND in the next year or so. IND is necessary to be able to initiate clinical trial. They had gone through candidate selection of some of these companies. So they were all going through the normal development process, and they were hitting milestones.

Q. What about third-party partnerships or collaborations, what did you observe amongst the preclinical companies?

A. They all were in good negotiations for partnerships. As was testified before, Aethon had started a partnership with Revolution Medicine. That had a potential value of up to 940 million that had

already been executed.

At the time of the defunding decision, Deep Apple was in discussions with Novo Nordisk. And, actually, they executed a license agreement shortly after the defunding decision was made in June 2025. They had a value up to $812 million.

In addition to that, all the other companies were in discussions with large pharmaceutical biotech companies.

Q. Did you also evaluate the preclinical companies' leadership and management teams?

A. I did.

Q. Turning to Slide 12, does this slide summarize some of what you observed regarding the companies' leadership and management teams?

A. It is.

Q. Could you briefly describe what you observed.

A. Well, with Evercrisp, the co-founder was Dr. Jennifer Doudna. She is a Nobel Prize winner who is the preeminent scientist in gene modification. She came up with the CRISPR/Cas technology. She's won a Nobel Prize for that. So she was involved, and they have top science in that company.

I looked at Apertor. You have Dr. Jay Keasling in charge of that. He's done 12 startup companies, raised over $2 billion.

You have excellent oversight of these companies by ATP with Dr. Paul Da Silva Jardine, Dr. Spiros Liras, where they have many years of experience working at Pfizer, Biogen, large pharmaceutical companies. They know the drug development process very well, and they are overseeing these companies. So you have great management team and excellent science.

Q. Did you undertake any review of the commercial potential of the preclinical companies as part of your assignment?

A. I did not.

Q. Why not?

A. I didn't find it particularly relevant. The commercial aspects are many years out.

In R&D, in development, there's lots of pivots. And typically as an investor, you are not looking for necessarily the full valuation from a financial standpoint. You are looking at the opportunity for advancing the technology far enough to either get license deals in place, to exit by company

merger, acquisition, additional investment coming on where you can partially exit, or going public.

So there are lots of ways to have value well before you take on the commercial risk. So I didn't find the commercial assessment critical.

Q. Now, turning back to development progress, in your opinion, can a company that has missed a milestone date set early on in an investment memorandum still represent a promising scientific and clinical opportunity?

A. Absolutely. Many very successful therapeutics have missed development milestones. I can't think of anybody developing a drug, even in large companies, that meet all the timelines that -- from initiation of the project until the product is commercialized. There's research and development that starts out, and it's really hard to tie it to the time frame you have to follow the data.

Q. And what might prompt a preclinical company to pivot?

A. You want to be able to pivot -- and pivot is where you're changing the direction slightly. You want to be able to pivot because you might find the mechanism of action of the drug is better suited

for a different indication or your lead molecule isn't the best lead molecule and you have something else that would be much more substantial. So you want to pivot to that. Or you have a platform technology that is developing different drug molecules and you'll find a pivot is going to be better in order to go into a different therapeutic area.

There was discussion of that today. I believe it was Replicate, where they pivoted from an oncology vaccine and they went to a rabies vaccine and actually are on the market for that product. Those are successful pivots.

Q. And in your experience, are companies that pivot -- strike that.

How do these pivots impact the scientific and clinical potential of an asset?

A. They typically improve it. They can partially delay the timeline of that. But usually when you pivot, it increases the likelihood of success. It's no one's interest to go down a path that's not going to be successful. So to pivot to something that looks more promising increases the valuation. You want a flexible management that knows when to pivot.

Q. In your experience, how common is it for a preclinical biotech or pharmaceutical company to pivot?

A. Very common.

Q. Turning to Slide 14, and stepping back, based on your experience, do you believe it is appropriate for Dr. Rimm to assess the preclinical companies based solely on their progress as compared to timelines that were set several years ago in investment memoranda?

A. No. Those timelines and investment memoranda are optimistic of the time the investment is going to be made, realizing that once you start research and development work, those timelines are going to be modified.

Q. And are you aware of any academic literature supporting this milestone-centric approach that Dr. Rimm employs?

A. No.

Q. In your opinion, would it be reasonable for an investor in Rigmora's position to base its funding decisions in May of 2025 solely on progress as compared to investment memoranda from several years prior?

A. Absolutely not, because as a sophisticated investor in the pharmaceutical biotech arena, you know those timelines are subject to change.

ATTORNEY REESE: Thank you very much.

ATTORNEY TAFT: Your Honor, may we approach with some binders for you.

Will Taft for the defendants.

CROSS-EXAMINATION

BY ATTORNEY TAFT:

Q. Dr. Robbins, your report assesses 13 portfolio companies owned by the fund; correct?

A. That's correct.

Q. And, in your opinion, continued investment in at least part of that portfolio would have been warranted in May of 2025; correct?

A. That's correct.

Q. But a reasonable investor might decide to invest in fewer than all of those portfolio companies; correct?

A. I believe that's a correct statement. I looked at it from a portfolio view, looked at each company individually, and then wrapped up the portfolio. I didn't make a determination on individual companies.

ATTORNEY TAFT: Can we play clip 30 that is Robbins transcript 70, lines 4 to 11.

(A video clip was played as follows:)

Question: So a reasonable investor might invest in fewer than all of them; correct?

Answer: Potentially. Like I said, it's hard to pick which ones are going to be the winners and losers there. But to defund all of them I don't think is reasonable.

(End of video clip.)

BY ATTORNEY TAFT:

Q. So, Dr. Robbins, you did not conclude that all 13 portfolio companies merited continued funding; correct?

A. I didn't make that assessment.

Q. Now, you agree, and I think you just stated on direct, that a reasonable investor seeks a return on investment; correct?

A. Yes.

Q. And in performing your analysis, you mentioned under questioning that you didn't consider the portfolio's commercial potential; correct?

A. I did not do a financial analysis of it. I looked at their unmet therapeutic need they

were looking to treat. And from that perspective, I recognized there was a need for the product. But I did not do a financial assessment, that's correct.

Q. So your analysis does not consider the financial potential of any portfolio company; correct?

A. That's correct.

Q. So you didn't review the balance sheets for any portfolio company; correct?

A. No. But the balance sheets weren't particularly relevant because the balance sheets were being controlled by the fund. So balance sheets were what they were.

Q. And you didn't assess the value of any of the portfolio companies; correct?

A. That is correct.

Q. And you didn't provide any opinion as to the likelihood that any of these portfolio companies would actually develop -- succeed in developing an approved therapeutic product; correct?

A. That's correct. But for being successful, they don't have to develop an approved therapeutic. They can license out. There's always risk in pharmaceutical development.

Q. And you didn't assess the amount of

money that would be required by any portfolio company to achieve a potential exit for the investor; correct?

A. That's correct.

Q. And you expressed no opinions in your report about how much funding any of the preclinical companies merited; correct?

A. That's correct.

Q. You discussed Dr. Rimm's opinions right now and in your rebuttal report; correct?

A. Correct.

Q. You don't dispute Dr. Rimm's conclusion that by mid -- by first quarter 2025, all of the early-stage companies had missed investment memorandum milestones; correct?

A. I don't dispute that. I don't think that's a -- I think that's a flawed analysis, but I don't dispute that.

ATTORNEY TAFT: No further questions. Thank you.

THE COURT: Thank you. You can be excused.

(Witness excused.)

ATTORNEY TAFT: Your Honor, by agreement of the parties, we've agreed to take

defendants' expert, Dr. Strebulaev, out of order. I would therefore call Professor Strebulaev to the stand.

We will be distributing some binders. May I approach?

THE COURT: Yes.

ILYA STREBULAEV, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Dr. Strebulaev.

A. Good afternoon.

Q. Could you please introduce yourself to the Court.

A. My name is Ilya Strebulaev. I'm a professor at the Stanford University Graduate School of Business.

ATTORNEY TAFT: Could we please pull up Slide 1.

Q. Dr. Strebulaev, would you take a few moments to describe your background and qualifications with respect to venture capital investing.

A. Of course. First of all, my educational background, I did my BA in economics at

Moscow State University, then my MA in economics at the New Economic School, and then my M.Phil and Ph.D. in finance at the London Business School.

And upon completion of my Ph.D., I joined Stanford Graduate School of Business in 2004. And I am now there, the David S. Lobel, professor of private equity and professor of finance.

My expertise is venture capital and private equity. In terms of teaching, I teach a range of capital classes that students at Stanford take to become either venture capitalists or founders of venture capital-backed companies.

In terms of research, I founded and had our venture capital initiative that produces a lot of research.

Just an example, one of our -- my research pieces with my colleagues where we surveyed venture capitalists in the United States that represent the majority of assets under management. And I'm proud to say that academic paper has been the most cited paper in the field of venture capital research in the past five years.

ATTORNEY TAFT: Your Honor, defendants offer Dr. Strebulaev as an expert on venture capital

investing.

THE COURT: Any objection?

ATTORNEY JONES: No objection.

ATTORNEY TAFT: If we could pull up the next slide.

BY ATTORNEY TAFT:

Q. Dr. Strebulaev, could you please describe this analysis for the Court.

A. Of course. As a part of my assignment in this case, I was asked to review the capital contributions by Rigmora to the ATP fund on the cumulative basis through the end of May of 2025. And as I understand, there may be a dispute whether certain deemed capital contributions should be considered against the capital contribution -- capital commitments of Rigmora against subscription agreements.

And so what I show here is -- the black line shows the total cumulative capital contributions by Rigmora, taking into account those deemed capital contributions under dispute. And the orange one, excluding those capital contributions.

Q. And I see a vertical green line going down on the right-hand side. What does that

represent?

A. That represents the start of the Russian-Ukrainian war in February of 2022. As I understand, there are allegations in the complaint that after the start of the war, Rigmora, sorry to say, lost enthusiasm for honoring its capital commitments and tried to stop providing funds to ATP.

What I think this chart clearly shows is that the capital contributions by Rigmora continued more or less at the same pace both before and after the start of the war.

ATTORNEY TAFT: We can take that slide down.

Q. Dr. Strebulaev, as part of your work on this case, did you consider whether it was consistent with reasonable investor behavior for Rigmora to condition the discussion of additional budgets for certain companies in the portfolio on the general partner agreeing to wind down the early-stage companies?

A. Yes, I did consider this, and I concluded that it was reasonable.

To start with, let me point out that any investor doesn't have an unlimited budget, an

unlimited capital. And therefore, what a reasonable investor does is tries to -- it tries to allocate its limited capital towards the best investment opportunities that are available to that investor.

For example, one of the factors in this case is that I understand Dr. Rimm concluded that each of the early-stage companies in the matter missed milestones that were in the original investment memoranda, the Series A funding. And in my experience in the venture capital space, the milestones constitute one of the very important factors for venture capital investors because effectively they allow investors to evaluate the progress the company is making relative to the original expectations.

Q. Other than performance against milestones, what other factors does your research indicate a reasonable investor would have contemplated in considering further investment in the early-stage companies?

A. Well, of course there are many factors. But among those many factors, some of the factors would be the recent performance of the venture fund, interest or lack of interest by third-party investors. And also I think an important factor is

the potential conflict of interest that the general partner or whoever manages the venture fund may have.

Q. And as part of your opinions in this matter, did you analyze the fund's recent performance?

A. I did.

ATTORNEY TAFT: Could we pull up the third slide, please.

Q. Dr. Strebulaev, how does this slide relate to the opinions in your case?

A. Well, this is the result of my investigation that I did on the recent performance of ATP fund relative to the comparable sample of early-stage biotech funds.

So let me try to explain. First of all, I concentrate on two financial metrics that are very commonly used in the venture capital industry. The first metric up top is "Net IRR," where IRR stands for the internal rate of return. And the bottom panel shows "TVPI," which stands for the total value to paid-in investments. The fact to think about TVPI is how many dollars you get for one dollar of investment in the venture fund.

Q. Where did you get the data for ATP's net IRR and TVPI?

A. Well, first of all, the ATP data is for ATP Pools V-1, V-2, and V-3. And this is the data that ATP reports itself in its statements to the limited partner. And also what the red bar shows is this performance -- the most recent performance available to me as of December, end of December 2024. And maybe I should mention that Pools V-1, V-2, and V-3 are recent investments. Those pools started between 2019 and 2021 and really the only actively managed investments by ATP.

Now, what you see in blue is the performance of the comparable -- a comparable sample. And I show three metrics here both for net IRR and TVPI: the median performance, the average performance, and the top quartile. And let me also mention, importantly, that in the venture capital industry, investors care a lot about the top quartile because this is risky investments. And investors try to invest in the top-performing managers. That is commonly understood as to be in the top quartile of performance.

So to -- I think this chart clearly shows that ATP Pools V-1, V-2, and V-3 performed poorly. Their performance was below the median, below

the average, and I would say dramatically below the top quartile.

Q. And how would that affect a reasonable investor's assessment of the decision whether to invest additional funds in these pools?

A. Well, as I already mentioned, reasonable investors try to allocate their limited capital to the best possible opportunities. So this analysis would cause a reasonable investor to have a lot of concerns about the poor performance of the fund, and as a result of -- the reasonable investor's result of this would consider whether to continue funding any of the companies within those pools.

Q. Now, as part of your work on this case, did you also assess the third-party interest in the fund's portfolio companies, in the early-stage companies?

A. Yes, I did, specifically the equity interest by third-party investors, which, in my experience and my research, is one of the critical considerations by -- in the venture capital industry.

ATTORNEY TAFT: Can we please pull up the next slide.

Q. How does this slide relate to your

opinions?

A. This was the result of my investigation. Let me try to explain briefly. What I did is I compared seven early-stage companies and ATP Pools V-1 and V-2 -- and they are shown in the red -- with a sample of the comparable early-stage biotech companies, retraced their initial funding rounds to approximately the same size as the early-stage companies in the matter.

And what I looked at is the timing, which is how quickly that comparable companies raised subsequent funding, went public, or did what I would describe as successful M&A, which is with at least twice the amount invested. So I would describe those kind of companies in blue here as successful or potentially successful.

What the chart shows is that the median company raised its subsequent round of follow-on foreign investment within approximately 1.5 years.

If you look at the 75th percentile, it means that 75 percent of the comparable companies raised their follow-on investment at 2.18 years.

If we compare this to the early-stage

companies, none of the early-stage companies in the matter had any follow-on investment for at least 2.18 years, so well beyond the timing of typical comparable biotech companies. And the timing is, as of May 15, 2025, between 2.35 and 4.83 years plus since their initial funding without any subsequent follow-on investment.

Q. And did you also hear Dr. Robbins testify regarding third-party interest in the early-stage portfolio companies?

A. I did hear he testified about it right now.

Q. And did any of that testimony change your opinions in this case?

A. No, it did not, for a number of reasons. One reason is that he had a slide where in the last column he showed what he called third-party interest. And none of those examples that he showed were from investors.

Second is that the examples that he showed, many of those were stale. For example, the very first example he had, I believe, was a company called Evercrisp. And he said the discussion with potential pharmaceutical companies, which is not

equity interest -- in progress or in discussions he said. Well, that is information from, I believe, 2023.

In my review of the most recent reports from ATP, those discussions are not mentioned. And if we go down, there will be more examples like that.

Q. What conclusions do you draw regarding whether -- how a reasonable investor would assess the level of third-party interest in these companies?

A. Maybe I should also mention that as a part of my investigation, I also looked into whether it is common for a single -- for companies to have only single investor in a follow-on financing. And I found out that if you look at the comparable companies, it is very uncommon. It happens only in 4 percent of cases, meaning that for the overwhelming majority of successful or potentially successful comparable early-stage biotech companies who had more than one investor.

So taking this together, the conclusion I draw is that a reasonable investor would be concerned about the lack of third-party interest, investor interest, and will be concerned about the

timing of the -- so the timing by which this -- none of these companies has been able to raise any follow-on financing.

Q. Dr. Strebulaev, among the factors that you said a reasonable investor would consider -- at the beginning, you also mentioned potential conflicts of interest. Did you analyze that as part of your opinion in this case?

A. I did.

ATTORNEY TAFT: Could we pull up the next slide, please.

Q. How does this slide relate to your opinions?

A. Well, so first of all, as I understand, Dr. Harrison really controls ATP. So he's both a limited partner in ATP, in various pools of ATP fund, and he also would get carry if those pools are successful.

And, first of all, let me explain that carry is very commonly used, universally used, I would say, in the venture capital industry. And the idea behind carry is straightforward. You would like to incentivize the fund manager to find and manage companies to achieve profitable exits because what

carry is is the participation in the upside profit of the fund. So after all the initial contributed capital returned to the limited partners, carry means that if there is any profit remains, you would get a fraction of that.

Now, while carry is universal in the venture capital industry, in this specific case, there are at least two factors that would lead to the very specific conflict of interest. Let me try to explain.

So, first of all -- and I show this on the slide. And I concentrate on Pools V-1 and V-2 simply because those are the pools that contain all the early-stage companies in this proceedings.

So for those pools, first of all, Dr. Harrison's capital contribution is zero, meaning that Dr. Harrison has no financial risk with respect to those pools. So that if all of those capital is lost, Dr. Harrison will not lose anything.

Second, as you see, Dr. Harrison at the same time has 7.5 percent carry. And again, what it means is that for every hundred dollars of profit, if there's any profit, Dr. Harrison will get $7.5.

Now, the second reason why it leads in this specific case to a higher than usual, very

specific conflict of interest is because carry can lead to conflict of interest if the companies in question are not performing well.

So if the companies, let's say, have a negative net present value, which means that we should not really proceed funding them any further, but the fund manager has no financial risk and, at the same time -- just on the outlier possibility that one of these companies can be successful, the fund manager will generate potentially substantial profit.

So this asymmetry leads to potentially very large conflict of interest that would make Dr. Harrison's --

THE COURT: We're going to take our 15-minute break.

(Court in recess at 3:04 p.m.)

(Resumed at 3:18 p.m.)

THE COURT: Please be seated. We'll go until 5:00. Please begin.

ATTORNEY TAFT: Thank you, Your Honor. Again, Will Taft for defendants.

BY ATTORNEY TAFT:

Q. Dr. Strebulaev, have you reviewed the reports submitted by Dr. Rao, the plaintiff's expert in this case?

A. I did.

Q. And did you review his opinion that it would generally not be economically rational for an investor who was already in one of the early-stage biotech companies to stop providing additional funding barring circumstances like a scientific roadblock or failure of a drug candidate?

A. I did.

Q. Do you agree with that opinion?

A. I do not agree. In fact, Dr. Rao makes a basic mistake. He violates basic principles of economics. And it is such an important principle that the economists even have a name for it. It is called the "sunk-cost fallacy."

Economists generally agree that the

investment's already made in the past, and this what we call sunk costs, should not be considered when we decide on making future investment decisions.

What matters for the future investment decisions is the potential future additional cash flows that the project can generate in expectation on top of the cash flows that that project should have generated anyway if we provide additional capital.

Q. So a reasonable investor in May of 2025 would have been focused on the potential return on investment of incremental dollars that they're putting in; correct?

A. That is absolutely correct. And doing anything else would be an example of sunk-cost fallacy.

Q. Thank you.

Dr. Strebulaev, do you have an opinion as to whether Rigmora's decision to condition the discussion of additional budgets for certain portfolio companies on ATP winding down the early-stage companies was consistent with reasonable investor behavior in a venture capital context?

A. The answer is yes. And I would look at the factors that are reviewed: missed milestones,

poor performance of the fund recently, lack of third-party investor interest, substantial potential for a conflict of interest. I think take -- combine all of this together, a reasonable investor would be justified in raising very serious concerns.

And I think as a result of this, Rigmora was justified in considering whether to reallocate funds away or to stop providing additional funding to these early-stage companies.

ATTORNEY TAFT: Thank you. I turn over the witness.

ATTORNEY JONES: We have some binders. Can we approach with those?

THE COURT: Sure.

CROSS-EXAMINATION

BY ATTORNEY JONES:

Q. Good afternoon, Doctor. Taylor Jones from Quinn Emanuel for plaintiff.

How are you?

A. Good afternoon.

Q. Doctor, you don't have a medical degree; right?

A. I don't.

Q. You don't have a biomedical

engineering degree?

A. That is correct, I don't.

Q. You've not earned any degrees in the life sciences; right?

A. That is correct.

Q. And none of the courses that you've taught in venture capital investing are specific to the biopharmaceutical industry; correct?

A. If you say specifically, then yes. Of course, the venture capital class I teach cover all the venture capital investments. That would also include healthcare, life sciences, biotech, but not specifically.

Q. Understood.

Biotechnology has never been a specific research area of yours either; right?

A. That is correct. Again, if we understand the specific in the way I already described.

Q. So you're not an expert in biotechnology specifically; correct?

A. No.

ATTORNEY JONES: Let's pull up JX 1318, please. And this is in your binder behind

the tab that says JX 1318, if you'd like to turn there in the paper version, Doctor.

Q. You reviewed this email in preparing your report; correct?

A. That is correct.

Q. This is Mr. Bogdanov's May 15th, 2025, email to Dr. Harrison and others at ATP.

A. That is correct.

Q. And this email is the focus of Section V of your opening report, I believe; is that correct?

A. I don't remember the section number right now, but I believe so.

Q. You, in fact, quote from it in paragraph 57 of your report; correct?

A. Presumably so.

Q. Why don't we turn to your report. That's JX 1576. That's also behind a tab in the binder if you'd like to turn there with me. I'm specifically looking at page 24, that's where you can find paragraph 57.

You quote here from this May 15th, 2025, email, here in your report; correct?

A. That is correct.

Q. And you conclude in your report that a reasonable investor would share some of the concerns that are expressed in this email; right?

A. At least some. I'm not really sure about some or all, but yes, would share concerns, yes, that is correct.

Q. I'd like to look at the first sentence of paragraph 58. You write, "As explained in its May 15, 2025 email to ATP, Rigmora believed that the Early Stage Companies had failed to meet milestones as set forth in their investment memoranda and there was no third-party interest to invest in them."

Did I read that correctly?

A. Correct.

Q. You didn't interview anyone at Rigmora before submitting your reports; right?

A. I did not.

Q. And so the support you cite for this statement regarding what Rigmora believed is in footnote 84 of your report; right?

A. That is correct.

Q. And that cites to paragraph 134 of the complaint, and complaint Exhibit 10; right?

A. That is correct.

Q. Do you remember what paragraph 134 of the complaint is?

A. Not sitting here right now.

Q. Let's turn to tab 1400, JX 1400 in your notebook, please. Paragraph 134 starts on 62 of the complaint. Let me know when you're there.

A. Yes, I do see paragraph 134.

Q. Paragraph 134 is a long quote of the May 15th, 2025, email; right?

A. That is correct.

Q. Let's also turn to Exhibit 10 to the complaint. You'll find that at the back of this same tab. Are you there with me?

A. Yes.

Q. And that is the May 15, 2025, email itself; right?

A. That is correct.

Q. So you don't cite anything else in your report to support an assertion regarding what Rigmora believed; right?

A. That is correct.

Q. You also don't offer an opinion in this case regarding whether Rigmora or Mr. Bogdanov or anyone else at Rigmora were, in fact, reasonable in

their actions; right?

A. I do not. I was not asked to reach such an opinion, one way or the other.

Q. Let's turn back to JX 1318, the May 15th email itself, please. And are you there, Doctor?

A. Yes.

Q. I am looking at the first paragraph after the bullets, the first sentence. "The SLP see no way for a path to commercial success for these Early-Stage Companies, *inter alia*, because: they have failed to meet the milestones set out in the investment memoranda on which SLP's initial funding was premised, the remaining budgets are not sufficient to achieve them, there is no third party interest to invest in these Early-Stage Companies, and any further capital calls would not be in accordance with the milestones and business plans set out in the agreed budgets for the Early-Stage Companies (and the SLP have not consented to these budgets being changed)."

Did I read that correctly?

A. Yes, you did.

Q. And you opine in Part V of your opening report that the early-stage companies raised

issues "That Would Make a Reasonable Investor Concerned About Continuing to Fund Them." Correct?

A. That is correct. I'm not really sure what you mean by Part V. I think maybe Section V.

Q. I should have said Section V, that's right. Thank you.

Now, missed milestones, that's an issue that's mentioned in Mr. Bogdanov's May 15 email that we just read; right?

A. That is correct.

Q. You also discuss it in your opening report?

A. That is correct.

Q. And the May 15th email also states that the remaining budgets are insufficient to achieve the milestones; right?

A. That is correct.

Q. But you don't consider in your reports whether the remaining budgets were sufficient to achieve the milestones; right?

A. That is correct. I was not asked to do it.

Q. Struggling to raise funding from third parties, that issue is also mentioned in the May 15th

email?

A. That is correct.

Q. You do discuss that in your opening report; right?

A. That is correct. I also discuss it in my rebuttal report as well.

Q. Section V(A) of your opening report, that's the section that focuses on whether the preclinical companies missed milestones; correct?

A. I do discuss in my opening report. I don't remember the section number right now. Apologies.

Q. That's not a problem at all. We can turn there if you like. It's -- 1576, again, is the tab. And that section of your report starts on page 25.

So this is the section of your report where you discuss your finding that "The Early Stage Companies Missed Milestones." Right?

A. That is correct.

Q. Now, you opine here that it's "common to require that portfolio companies [hit] milestones to progress to the next round of funding." Right?

A. That is correct.

Q. But you can't give an opinion here on whether the portfolio companies at issue here were required to meet milestones in order to progress to the next round of funding; right?

A. I don't believe so. It seems a legal question to me.

Q. And you're not a lawyer; right?

A. I'm definitely not a lawyer. I'm not qualified to render any legal opinion, only an opinion as an economist.

Q. Thank you.

Paragraph 61 of your report on the next page here, you opine that "a reasonable investor would be concerned about the failure of portfolio companies to meet their predetermined milestones." Right?

A. That is correct.

Q. You didn't determine whether ATP had, in fact, missed milestones; correct?

A. Do you mean ATP or the portfolio companies of ATP, Counsel?

Q. I'll accept that correction. The portfolio companies. You didn't determine whether they had, in fact, missed milestones; right?

A. I did not. I was not asked to do it.

Q. You relied on the lawyers from Debevoise to tell you that the portfolio companies had missed milestones; isn't that right?

A. Well, what I understood is that, from counsel, is that there's another expert, Dr. Ilonna Rimm, who was asked to -- by a technology expert to opine or to investigate whether milestones were missed or were not missed. And that she reached an opinion.

Q. You also don't opine on which milestones were missed; right?

A. That is correct.

Q. And you don't opine on the reasons that preclinical companies may have missed certain milestones; is that right?

A. You mean specific companies at the issue in this matter?

Q. Correct?

A. That is correct, I do not.

Q. You would agree, wouldn't you, Doctor, that a reasonable investor would want to know why the portfolio companies missed milestones?

A. I would say that it depends. Typically, yes. But, of course, as I mentioned, there

are many factors that a reasonable investor would consider, in addition to -- sorry, in addition to missed milestones. A missed milestone definitely would raise, I think, a substantial red flag for any reasonable investor. But then there are other factors at play.

Q. Do you recall providing deposition testimony in this case on August 26, 2025?

A. I do.

Q. I'd like for you to turn to your deposition transcript, which you should have in front of you. I'm going to turn to page 101.

A. I can also look at the --

Q. That works for me. Whatever you would like to do.

A. Thank you. I will look at the screen, if that's okay.

Q. Starting on line 20.

"Question: Okay. Dr. Strebulaev, are you intending to testify that a portfolio company's meeting of milestones that were presented in an investment memo were a prerequisite to the release of funding within the Series A round?"

Mr. Taft objects to form to the extent

it calls for a legal conclusion.

"Answer: I think, Counsel, some words that you use such as 'prerequisite' seems legal to me. But I do intend to testify of course only if asked and called upon that a reasonable investor would review at all times, including in connection with a continuous funding in a Series A round, about how the -- annually the portfolio company is progressing. And that would include whether the company is able to reach its milestones, whether it missed milestones; and if it missed, why it missed milestones."

Did I read that correctly, Doctor?

A. You did.

ATTORNEY TAFT: Your Honor, the full answer was not read.

THE COURT: You can read it during redirect.

BY ATTORNEY JONES:

Q. Now, the second issue you identify in Section V of your report is that there was "no third party interest to invest" in the preclinical companies; right?

A. That is correct.

Q. In paragraph 62 of your report, you

give an opinion as to the reason the preclinical companies were unable to obtain third-party funding; isn't that right?

A. Again, Counsel, I need to see paragraph 62, but I believe that's correct.

Q. Of course. Let's go there. That is on page [sic] 62 of JX 1576. I'm going to try and join you in reading the screen here.

Are you with me there?

A. I am.

Q. In paragraph 62, you write, "If potential new investors had thought that the Early Stage Companies were viable investments, these companies would likely have been able to obtain funding from third parties. Based on my review of the evidence, this was not the case."

Did I read that correctly?

A. You did.

Q. So you're opining here that the reason third parties did not invest is because they didn't think the early-stage companies were viable investments; correct?

A. I was not asked to evaluate whether the investments were viable. But I was asked to opine

how -- in the venture capital industry, what are the indicators that the companies are potentially viable. And one important indicator is the third-party equity interest, which means that if the market, the venture capital market, considered those companies to be of interest, there would be interest from third-party equity investors that would materialize.

And upon the review of the evidence, I have not seen such materialized interest.

Q. And when you say "review of the evidence," you mean emails and deposition testimony in this case; correct?

A. Well, the entirety of the evidence I think that was given me. But that would include depositions and emails I believe, yes.

Q. Let's look at pages 26 to 27 of your opening report. I'm at paragraph 63.

So here, you write, "I have reviewed documents suggesting that ATP tried to find third-party investors and partners in the Early Stage Companies and was unable to do so. ATP's document production includes emails regarding its business development attempts with regard to the Portfolio Companies that show outreach to many pharmaceutical

companies, where the update to those attempts was mostly 'awaiting feedback.' Review of these emails indicates an unwillingness to fund the Early Stage Companies from third-parties. For example, they mention that potential investors and partners were interested in Aethon, Apertor, and Evercrisp but ultimately concluded that it was 'too early' to engage."

Did I read that correctly?

A. You did.

Q. You quote from one of these emails, right, in paragraph 63 to your report?

A. That is correct as well.

Q. And that's this block quote here that I'll read from now.

"I am a fan of the technology and appreciate its potential. The challenge we have had is finding a target that the company sees as commercially viable. As I explained in my email last September, with Sanofi signing a strategic deal for exclusive US over-the-counter rights to Tamiflu® in Flu Care, they are currently unwilling to consider another antiviral for flu. They also aren't sure about the commercial potential of an antiviral for

coronavirus, PIV3 or RSV."

Did I read that right?

A. Yes, but you said it's a quotation from the email. And I think, Counsel, you also read the last sentence, which is not a quotation, if I'm not mistaken. But it's part of my report.

Q. Well, let's go to the email and see. So this is behind JX 0811 in your binder. And I believe the email that you're quoting from is on the page ending in Bates stamp 533, about halfway down the page.

Let me know when you're there.

A. I am with you, Counsel.

Q. And that's the email that you quote in paragraph 63 of your report; is that correct?

A. Is it a question? I'm sorry, Counsel.

Q. This is the email that you quote from in paragraph 63 of your report; correct?

A. I do, with the proviso that if you look at the footnote, footnote 92 of my opening report, this is just one of the emails I quote. I also quote an internal email, and I also quote the deposition of Mr. Jardine as well.

Q. Thank you.

The first sentence of this email, on the page ending in Bates 533, says, "It is great to hear from you. I would certainly appreciate a preview of the data and you are correct our CDA is good until 2028."

You omitted that from paragraph 63 of your report; correct?

A. No. I cited the entirety of the email in -- well, I cited this as footnote 92. I said, "Emails between ATP and Red Queen, March 2024," and then I gave the Bates stamp number. I did not omit the first sentence. I just did not quote from the email --

Q. Got it.

A. -- directly.

Q. So that's exactly what I meant. You didn't quote the two sentences that I just read; right?

A. That is correct.

Q. And you indicate that omission with ellipses; right?

A. I'm sorry, Counsel. I'm not really following you.

Q. Go back to paragraph 63 of your

report.

A. I am there.

Q. You have ellipses at the beginning of this block quote; right?

A. Yes.

Q. And that indicates this omission, doesn't it?

A. Yes. I think really it is -- and apologies if I did not do it correctly, but I think this is the document. And then I say this email that I am quoting in footnote 92 starts at page 553.

Q. Understood.

A. So from this point of view, I think I -- I did not quote the sentence for the space constraints, but I did mean, I think, I believe that email, the entirety of that email.

Q. Got it. Okay. Let's go back to the email again behind Tab 811.

The last sentence here, once you get there, the last sentence here says, "I do think clinical data showing that is having a positive impact in people infected with those pathogens might be able to change opinions."

You left that out too; right?

A. Again, Counsel, I'm not really sure if I left out. Yes, I did not cite anything -- sorry. I did not cite the specific text of the email in my report. I reference to it in my footnote 92. That would include the yellow sentence that you indicated.

That also -- I also did not include the middle sentences as well that, for example, say, and I'm going to quote, "The challenge we have had is finding a target that the company sees as commercially viable." And I think what was important for me is in this email and in the previous --

Q. Let me stop you for a second. I believe you did include that in your paragraph 63; right?

A. I'm sorry?

Q. You did quote that in your paragraph 63.

We can move on, Doctor. It's not important.

You did not use ellipses to indicate that last omission; correct?

A. Sorry. Again, Counsel? I'm not really sure I follow.

Q. That's okay. We can move on.

A. I believe the way I used ellipses is to indicate where you can find that email.

Q. That's fine. Let's move on, Doctor.

Let's turn to JX 786. Here, I'm looking at the page ending in 003. And this is a document that you reviewed during your deposition; right?

A. That is correct.

Q. And I'm looking at the email in the middle of the page. It says, "Dear Seth and Anna, Given the latest news re syndications where various funds expressed sanctions concerns toward[] assets ownership structure, we have requested memorandum from Debe clarifying this matter as per US sanction laws. We have explicitly asked for a Memo that can be shared with the Fund and its advisors so that we can share it with you. Kind regards, Anna Kolonchina."

Ms. Kolonchina was an employer of Rigmora; right?

A. That is correct, I believe.

Q. Now, in reaching your conclusion in Part V(B) that third parties would have invested if they thought the preclinical companies were viable investments, you didn't consider that third parties

might be concerned about investing because of U.S. sanctions against Dmitry Rybolovlev; correct?

A. I did not, and I have not seen any evidence in the record from third-party investors that indicated that concern.

Q. You conclude in your report that the performance of the pools containing the preclinical companies was "below its peers, and substantially below top performing comparable funds." Right?

A. That is correct.

Q. The May 15 email doesn't discuss the performance of the pools containing the preclinical companies as compared to its peers; right?

A. I believe that's the case.

Q. You prepared that analysis of comparable companies solely for this litigation; correct?

A. Well, yes, I was retained as an expert witness for this litigation. That is correct.

Q. In roughly June 2025?

A. Well, while my work was done roughly in June, August -- June, July 2025, the information that I used was as of December 2024. The exact details are explained in my methodology that I used to

prepare the comparison in my report.

Q. You don't claim anywhere in your reports that Rigmora conducted this analysis before sending the May 15 email; right?

A. I do not.

Q. You also read the LPA as part of your work for this case; isn't that right?

A. I did, of course, as an economist.

Q. And there's nothing in the LPA that says capital commitments depend on whether the portfolio companies are performing in the top quartile; right?

A. I think that might call for a legal conclusion.

THE WITNESS: Your Honor, if I may, I will answer.

A. I don't remember seeing this.

Q. Two out of three of your principal conclusions involve a concept that you call a "reasonable investor." Right?

A. Two out of three? I'm not really sure what you mean by three, Counsel.

Q. You discussed the concept of a reasonable investor in your report; correct?

A. That is correct.

Q. A reasonable investor, would you agree, has access to information an investor would want to make a decision?

A. That depends.

Q. Turn back to your deposition, please. I'm on page 32, starting with line 19.

ATTORNEY JONES: Marco, do we have that?

Q. "Question: What is your definition of 'reasonable investor' as you have used it in your report that's been marked as Exhibit 1?

"Answer: A reasonable investor is an investor who is a rational economic agent and will be making decisions in light of all [] the information that an investor possesses, so information an investor would like to possess to make a decision."

So the investor has access to all the information the investor would want to make a decision; right?

A. No, that is not correct, Counsel. So what I said is that "all of the information that an investor possesses." Sometimes the investor would find it -- a reasonable investor would find it in that

investor's interest to delegate decision-making to some others.

So, therefore, to make a decision you don't need to try to get more information. But yes, if you already have this information, then you typically would utilize it.

Q. You're not aware of Rigmora retaining any biotech consultants before it sent the May 15 email; right?

A. I don't know one way or the other.

Q. Now, you have this opinion that I believe you testified about a moment ago, in Section III(D) of your report, that a GP's interest can diverge from an LP's interest in relation "to providing additional rounds of funding." Right?

A. That is correct.

Q. And that can create a conflict of interest that can also be a concern to a reasonable investor; correct?

A. That is correct.

Q. But you would agree that this risk can be mitigated; correct?

A. To some extent, yes, that risk can be mitigated. And one way to mitigate it is by the

general partner, by the fund manager, to provide a substantial capital contribution --

Q. Another way that it can --

A. -- as a limited partner.

Q. Another way that it can be mitigated is to give the LP the right to approve budgets for the portfolio companies; right?

A. So that typically is not what's done. I think this is more or less --

Q. Typically. But that's one way they can be mitigated; right?

ATTORNEY TAFT: Your Honor, if the witness can finish the question without being cut off.

THE COURT: I think the court reporter would appreciate that as well.

But I encourage you to listen to the questions as well.

THE WITNESS: Thank you.

ATTORNEY JONES: Apologies. I'll slow down.

THE WITNESS: Would you repeat the question, Counsel. I apologize.

BY ATTORNEY JONES:

Q. One of the ways that that conflict can

be mitigated is by giving the LP the right to approve budgets for portfolio companies; right?

A. So in the cases where there is one major LP, that could be one of the ways. But I would not say it's mitigated. I would say this is one of the factors that should be taken into account. This does not eliminate the potential conflict of interest, especially if some or all of the companies are underperforming.

Q. In this case, Rigmora did have the right to approve budgets for portfolio companies; right?

A. I believe that is the case.

ATTORNEY JONES: Can we just pull up Slide 5 to your demonstrative again.

I'm sorry. The very last slide is what I'm looking at. That's it. Thank you.

Q. This slide doesn't account for the fact that Rigmora has to recover the full amount of its capital contributions before Dr. Harrison receives any carry; right?

A. That is correct, which is the, as I mentioned, the idea of the carry, is that limited partners first recover the capital contributed to the

fund, and then the carry is shared, or the profits are shared, rather, between the limited partner and the fund manager; in this case, Dr. Harrison.

Q. And this slide also doesn't account for the fact that Rigmora receives over 90 percent of the profits in Pools V-1 and V-2; right?

A. I'm not really sure what you mean by that. Of course it does account because, as I understand, there's really only two beneficiaries here, which is Rigmora and Dr. Harrison. So Dr. Harrison receives 7.5 percent of carry. Rigmora does not receive carry because Rigmora is a limited partner.

So carry is received only and only by Dr. Harrison and his trusts.

Q. And you understand that Dr. Harrison does contribute capital to Pool V-3; right?

A. That is correct. I believe that he contributes around .3 percent. I may be mistaken on the number. But his carry in Pool V-3 is also larger. It's about 11.2 or 11.3 percent.

Q. Pool V-3 is not on this slide; right?

A. I did not include it on this slide because it does not include -- because none of the --

as I understand, none of the early-stage companies in the matter are included in Pool V-3.

Having said that, if you include Pool V-3 on the slide, my opinion would not change.

ATTORNEY JONES: No further questions. Thank you.

ATTORNEY TAFT: No further questions, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thanks so much.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs are going to call Spiros Liras.

SPIROS LIRAS, having first been duly affirmed, was examined and testified as follows:

ATTORNEY BONACORSI: Good afternoon, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY BONACORSI:

Q. Good afternoon, Dr. Liras. Can you please introduce yourself.

A. Yes. I'm Spiros Liras. I'm a drug discovery and development professional. I've been working in the business for about 30 years. I have a

Ph.D. in organic chemistry.

I started my career at Pfizer, where I was at for 24 years. I was vice president of research at Pfizer, leading programs in multiple disease areas spanning from neuroscience to cardiovascular-metabolic diseases and rare diseases. I was fortunate to have led teams that deliver nearly 50 compounds into clinical development.

Q. How long have you been at ATP?

A. I left Pfizer in 2018. I joined Biogen for a very brief period of time, about 15 months, where I established the external portfolio innovation unit. Reason of this was to basically promote entrepreneurship.

And while I was at Biogen, I was recruited by ATP. It was a compelling opportunity for many reasons, in part because ATP had a fantastic reputation in terms of actually going and building companies from scratch, from very nascent research, which is where I lived in for all my life, really, professionally, to a great success in terms of turnovers by exits and other measurements.

At the time that I was hired, our managing director, Seth Harrison, was building an

exceptional team of expertise with other partners. Some of them I had tremendous respect for and I always looked forward to working with.

And I think the last and most important thing is that Seth had a tremendous respect, hopefully still has, for chemists. I'm a chemist, and I really appreciated that as an added advantage.

Q. Are you a venture partner with ATP?

A. I am.

Q. And what do your responsibilities include as venture parter of ATP?

A. Predominantly to select projects, to liase with the external environment, identify compelling opportunities.

Subsequent to this, sort of like invest my time in terms of building a coherent and convincing investment thesis, which is then approved by the ATP investment team, which encompasses all venture partners. Ultimately, the decision to fund is Dr. Harrison's.

Once a company is funded, we compile a pretty thorough investment memo which kind of serves as a roadmap from the implementation of a project all the way to the delivery of value as measured by exits.

That's a pretty complicated and comprehensive document, which includes an investment thesis, the rationale, which is the foundation, the quality of our founders, several sections that relate to what we call milestones, which are forecasts and projections that measure progress against stated goals. We also have risk mitigation strategies that appear in the investment memo. We do comparables to assist how novel the science is and how potentially valuable it will be to patients and investors.

Q. And in addition to your role as a venture partner with ATP, do you have any roles within the portfolio companies?

A. Yes. I am a CEO of a company called Deep Apple Therapeutics. I was a funding CEO for a number of companies, which I thought it was an extraordinarily attractive aspect of my job at ATP because in addition to selecting and funding a project, we spent a great deal of our time building teams. And that's quite fantastic because we work with some of the smartest people on earth. Quite frankly, all of our founders at ATP have been members of national academies of medicine, science, winners of breakthrough prizes, Nobel Prizes, amongst other

things. It's an exceptional opportunity to really engage with a cohort of people that shape the science as we know it today.

Q. And was this dynamic between ATP and its portfolio companies one the factors that caused you to join ATP?

A. Yes.

Q. At a high level, how would you describe your responsibilities within the portfolio companies, to the extent you have a role?

A. Yeah, early on, it's about team building and about guiding the scientific progress of the portfolio. For a specific company we select team members, we hire people. It actually has a pretty wide breath of scope.

For example, we even explore real estate opportunities for best fit for the companies that we create. But some of them had specific needs.

Progressively, as the company advances and matures, we hire people that are more relevant to the needs at time, meaning that we will hire translational biologists when we have something to translate. We will hire chemists when we have something to produce and evaluate to work to enable

the journey of the company.

One of the things that I would like to highlight for companies of ATP, certainly the ones that I was involved in, is that they're extraordinarily efficiently managed financially. Most of them actually for the tenure of five years had less or just about 20 people, for the most part, with the exception of one.

Q. Okay. And you just mentioned investment memorandum. Did you help prepare investment memorandum for the portfolio companies you were involved in?

A. I did. I was a co-author.

Q. Could you describe, at a high level, the purpose of the investment memorandum.

A. It's basically to capture all aspects that justify the spend, from strategy all the way to operation and execution, and also a pretty diligent time-bound, obviously, effort to understand the marketplace and how this company fits and differentiates.

Q. I think you may have mentioned this earlier, do the investment memorandum contain what's known as milestones?

A. It did in the title.

Q. And what is the purpose of the milestones within the investment memorandum?

A. For us, the milestones were basically forecasts of a time and point in which we had credible data to guide three decisions: One is we continue as planned. The other was there's compelling data to pivot and change the direction of the company. And the other, obviously, always in scope was whether there was enough data to convince us to exit the investment. That's kind of the comprehensive purpose of what we called milestones.

Q. And do you understand the milestones to be a static requirement to receive additional funding for the portfolio companies?

A. No. And they shouldn't be because this is early research, and it changes quite rapidly.

Q. And were you ever told by anyone at ATP that milestones had to be hit to receive additional funding?

A. No.

ATTORNEY BORN: Objection, calls for hearsay.

THE COURT: Overruled.

BY ATTORNEY BONACORSI:

Q. Dr. Liras, when you were working at Pfizer, did they take the same approach with respect to milestones?

A. Every time. We build what we called project operating plans. I had forecasts and projections for key delivery, and we defended those either on a quarterly basis or biannually in front of senior leadership in presentation.

Q. And did you understand the milestones to be substantive decision points with respect to research and development?

A. Yes.

Q. And not related to requirements to receive funding?

A. Absolutely.

Q. And in your experience at ATP, have there been circumstances when a company pivoted from the milestones set forth in the original investment memorandum?

A. Many times. For good reason.

Q. Can you provide a few examples.

A. Sure. Apertor Pharmaceuticals is one of our companies where we originally conceived the

possibility of delivering a vaccine enhancement product. As many of us remember, that was 2021, 2022. It was the thick of the pandemic. We were encouraged by our SAB to do so. We found the clinical candidate. I met the objectives.

We went through a thorough commercial and clinical evaluation analysis and convinced ourselves that clinical development at the time of the pandemic with immunocompromised people was not going to be productive. So we pivoted from that.

We knew we had a very valuable platform in synthetic biology. And we discovered that that could be deployed against oncology targets with high medical need with not really a lot of availability of frontline cases, treatments of patients.

Q. In your opinion, is a pivot like that one that indicates positive development for the portfolio company?

A. Yes, in this particular one and in many other cases.

Q. And would you describe this flexibility with respect to milestones as a benefit of ATP's model?

A. I do, because in the way that we construct our thinking about companies, we not only spell out what aspirational may be possible, but also what may not and where the risks are. And we contemplate those risks in an effective way to actually mitigate and preserve the investment and actually enhance the value of the investment.

Q. And thinking about your experience in biotech more generally, is pivoting something that exists outside of ATP?

A. I would argue that most successful companies in the history of biotech have pivoted. I can offer one fantastic example. There's a company called Gilead in South San Francisco. Gilead is a known antiviral company these days. They started as an oligonucleotide company completely irrelevant to the current mission.

In the early '90s, as everybody recalls in San Francisco, there was different pandemic, HIV. A lot of people were losing their lives. Gilead, as a courageous company, decided to dedicate their resources to solve antivirals, and they did this multiple times. In fact, they have produced hepatitis C, small molecule treatments that are

curable. Now people no longer have to go through liver transplants. And I think this is one example where a company listened to actually what was the -- an immense and incredibly urgent social need as well as followed an opportunity for breakthrough science.

As part of the story, actually, Gilead outlicensed its oligonucleotide platform to a company called Ionis, which in itself is the most -- one of the most actually revered companies for the liver in early oligonucleotide therapeutics. So it was a win-win for everybody.

Q. Pivoting back to Apertor -- and that's one of the preclinical companies you're responsible for?

A. That's correct.

ATTORNEY BONACORSI: Can we pull up JX 095, please.

Q. Do you recognize this document as the investment memorandum for Apertor?

A. Yes. This is the investment thesis, the executive summary, which basically contemplates -- it's a summary of the rest of the investment memo presented in a more strategic fashion. It has all the key elements that we described subsequently in more

detail.

Q. Okay. And did you draft this memorandum?

A. I did.

Q. And turning to page ending 0002, do you see the subheading here "Investment Thesis"?

A. Yes.

Q. And what is the purpose of this paragraph?

A. It's to lay out actually what would be not only the first indication that will create value for patients, but also subsequently ways to build on the breakthrough science that the company delivers to expand and build and accelerate investment and success basically.

Q. And this section is informed by the scientists and chemists working at the portfolio company?

A. Yeah, this is -- and many in the ATP cohort, actually.

Q. Can we turn to page ending 0027. And is this -- this section here refers to milestones. Is that what you were mentioning earlier?

A. Yes.

Q. And these were set out before the company was ever funded?

A. These were set up before the company -- before the company was funded. In fact, that memo somewhat precedes that decision. And they are underpinned by no data, to be fair, because this is breakthrough science. So what we do there is we apply our knowledge of reasonable transitions, where we can deliver a body of data that will convince us about and support the three points that I raised earlier, which is continue, pivot, or discontinue.

Q. And do you see in front of you there's Tranches 1, 2, 3, 4, 5?

A. Yes.

Q. And could you describe Apertor's progress with respect to Tranches 1 through 3.

A. Even if you take those tranches literally -- and some of them are diagnostics. For example, just to point out your attention to Tranche 1, there's no reason to actually count how many compounds you make at a company. You don't judge a company by how many compounds they've made. Be that as it may, the company exceeded by a long shot the number of compounds that were specified.

Importance is to focus on milestones that represent hard currency, in my opinion. Those are INDs and development candidates. Especially INDs, which are regulatory documents. We submit those to the regulators.

If you actually look at Apertor's delivery when you add up that investment memo to $33 million, which is a completion of Tranche 4, we were expected to have delivered an IND and a development candidate. What we delivered -- two development candidates with an investment as of May 29th of $29 million. So, in fact, we never were actually funded to achieve the delivery of this full tranche.

Having said that, as we model it subsequently, it would have taken us $1.5 million more of an investment to get to a full delivery of this milestone, which was aligned with our forecast. But we were not given that opportunity.

Q. And in your opinion, would you say that the company overperformed vis-à-vis the funding they had received up to that point?

ATTORNEY BORN: Objection. Leading. I've been letting this go, but ...

THE COURT: The same instruction applies, Counsel. And you have been leading the witness. And that's fine, but it's hard for me to assess the credibility of the witness if you do so.

ATTORNEY BONACORSI: Understood, Your Honor.

BY ATTORNEY BONACORSI:

Q. Dr. Liras, you mentioned earlier Apertor had a period where there was a pivot?

A. Yes.

Q. Looking at these tranches, could you explain at what point the pivot occurred?

A. I would say the pivot occurred right about -- definitely by the completion of Tranche 3 and in the beginning of Tranche 4. In fact, I remember vividly that the investment that we made at the time was about $24 million, if not 25.

Seth, myself, Paul Da Silva Jardine had an exchange by email and other discussions where we actually put all options on the table, including shutting down the company. A breakthrough publication came out at this point of time that told us that the value of the synthetic biology platform was incredible. We deployed that based on that

publication. We extended a very small tranche of $2 million to explore that concept, and this is what ultimately delivered the clinical candidates.

Q. What did this pivot mean for the remaining milestones in the investment memorandum?

A. In a sense, the remaining milestones, again, in a forecasted way, in my opinion, could be achieved had we received the whole investment of the Series A.

Q. And do the investment memorandum also contain a section regarding risk?

A. It does.

Q. And can you turn to pages ending 003, 004.

Can you describe the purpose of this section.

A. Yeah. This is to identify risks based on our state of the knowledge at the moment of incorporating -- or actually at the moment of drafting the investment memo. This is entirely actually aligned with what happened. And it kind of, again, demonstrates the rigor and depth of the ATP team.

We predicted that we could identify compounds, but we predicted that there could be some

ambiguity as to whether -- which indications would make most sense, and we labeled this as a medium risk.

Once we actually decided that because of clinical complexity and commercial reasons adjunctive theory for vaccine enhancement wasn't the way that we wanted to go, we spent the time more thinking and less spending to think what would be the next potential valuable indications. And now we have a couple of indications for targeting renal cell carcinoma and non-small cell carcinoma that are basically guided by genetics, which facilitate patient selection of the clinic, which is a big ask.

Q. Were you involved in providing updates regarding portfolio company progress to ATP?

A. All the time with various means. We had -- obviously, we had board decks that were shared with ATP. We also had quarterly reports that are fact-based in terms of capturing things along progress or along opportunities to pivot. Those were supplied every quarter. And we also had, you know, direct and spontaneous dialogue within the team, as well as the justifications for calling additional tranches.

Q. Okay. Could you describe some of those dialogues.

A. The dialogue that -- the dialogue that I referred between myself and Paul Da Silva Jardine, one of my colleagues, was whether we should actually consider promoting shutting down the company. We went through a very thorough debate about this, analyzed the literature, and decided that that wasn't really a desired path. We presented the case to Seth. We agreed that we would get a small investment, it was $2 million, to actually prove the new hypothesis. And that was pretty material to the progress of the company subsequently.

Q. And do you know whether any of the updates went to Rigmora?

A. Through the quarterly reports I think they did.

Q. And did you assist with drafting or drafting portions of those quarterly reports?

A. All the time. I received direct feedback from scientists about specific scientific facts, but I authored the final version which was submitted to ATP.

Q. And do you recall receiving outreach from Rigmora about the progress of the portfolio companies?

A. Not ever.

Q. And can we turn to JX 560, please.

You see this is an email from an Anna Batarina to Anna Kolonchina and others at Rigmora, attaching the first quarter 2023 quarterly report?

A. Yes.

Q. Flipping to the next page, do you recognize this as "First Quarter 2023 Report"?

A. I do.

Q. And you testified earlier that you drafted the updates in this report for the companies that you were involved in?

A. That's correct.

Q. And can we turn to the bottom of 0011, please.

Dr. Liras, is this the update for Apertor?

A. Yes, it is.

Q. Can you summarize for the Court the purpose of this update and what you're describing here.

A. Yeah. Essentially, this follows one decision to pivot. And therein we state that we performed comprehensive analysis by basically engaging

all aspects of ATP's colleagues, including commercial assessment as well as medical assessment. And we concluded that oncology in renal cell carcinoma will be one of the most productive ways to go and also identified evergreen opportunities in research areas outside of oncology.

Q. And could you read the paragraph starting "With key data" at the bottom.

A. That's right. There we -- we typically socialize companies as they come closer to delivery of a developing candidate or an IND. And we actually anticipated -- we made a schedule basically to accelerate the research and also accelerate the presentations and the content of the presentation so we can meet and have productive interactions with business partners. That's something that we do as par for the course across all companies.

Q. And is it your understanding that Rigmora received these quarterly reports?

A. Yes.

Q. And do you recall whether after receiving this Q1 2023 quarterly report, Rigmora provided additional funding to Apertor at a point in time?

A. Yes.

Q. And pivoting subjects here a little bit, are you familiar with stock purchase agreements between the portfolio companies and ATP?

A. I am.

Q. And did you have any role in drafting those?

A. I read and signed the documents as a representative of the company.

Q. And could we pull up JX 1329, please.

And do you recognize this document, Dr. Liras?

A. Yeah. This is a Deep Apple Therapeutics SPA.

Q. What is the purpose of this document?

A. It basically -- it's a legal contract between the purchaser and the company to sell stock, and it's essentially a legal agreement to do so.

Q. Can we turn to the page 0038, please. And do you see this, Dr. Liras, here? This is section 1.3(d).

A. I do.

Q. Could you please read the first sentence of this clause.

A. "Notwithstanding the foregoing, the Purchaser shall have the option, at any time, and upon at least three [] business days' notice to [] Company, to accelerate its obligation to purchase all or a portion of the Additional Shares (at a [] share price equal to the Purchase Price), notwithstanding [the] Milestone has not occurred."

Q. And do you have an understanding as to what this sentence means?

A. It means that the buyer can choose to buy stock independent of success of said milestones.

Q. And the buyer here is who?

A. ATP.

Q. And do you recall testifying a few moments ago that Deep Apple is another company that had a pivot with respect to the milestones?

A. I did.

Q. And could you describe the pivot with Deep Apple.

A. Yes. So we built Deep Apple on the basis of a fairly broad research platform. There, we identified targets that spanned a number of disease areas from psychotherapeutics and neurogeneration to oncology, inflammation, immunology, and genetic

obesity. Those were targets that were actually included in the initial investment memo.

Shortly thereafter -- I should also mention that Deep Apple has scientific leadership that probably adds up to 100 years in experience in cardiometabolic diseases. If not that, pretty close to that.

We engaged with KOLs. Because of our genetic obesity target, we were told that this was the time to move in, all-in, in obesity. Obviously this was supported by the clinical success and commercial success of medicines like GLP-1.

So we basically substituted 80 percent of that portfolio, kept only two targets, and rebuilt a portfolio of obesity, which now is yielding several clinical candidates, one of which -- one of the programs, an early program I might say, served as a basis of a very lucrative, strategic partnership with Novo Nordisk valued at $812 million. Novo Nordisk is potentially one of the two most recognizable names in the treatment of diabetes and obesity these days.

Q. Did you keep ATP updated on the progress of potential business development deals?

A. Yes, in a very progressive manner. We

started talking about discussions under CDA in our quarterly reports. We escalated that description to include description about the progress of the CDAs.

For example, I recall that we put in that with Roche we were in a co-creation of research plan, which is a necessary next step after people like what they see under confidentiality.

Then we proceeded to build term sheets. Deep Apple was fortunate to have term sheets from four or five companies, the who's who actually, because it was a company that was highly visible by that time. We negotiated that in good faith with three potentials, and we settled with Novo Nordisk on June 11th of 2025.

Q. And were these negotiations or the status of those discussions reflected in the quarterly reports?

A. Yes. And in fact, in our board decks, we also displayed all the term sheets with all financials.

ATTORNEY BONACORSI: Could we pull up JX 824, please.

Q. And, Dr. Liras, is this an email from Anna Batarina to Anna Kolonchina attaching the 2024

first quarter quarterly report?

A. Yes.

Q. Turning to page ending 002, do you recognize this document as that quarterly report?

A. I do.

ATTORNEY BONACORSI: And could we turn to 0014, please.

Q. Does this appear to be the summary you drafted on Deep Apple?

A. That's correct.

Q. And could you read the third paragraph please?

A. "Given the intense interest in obesity, the company is in active and confidential discussions with major venture groups including Atlas Ventures, Foresite Capital, Orbimed, Vida Ventures, Alpha Wave, and Blue Owl. Similarly, the company is exploring in parallel strategic partnerships with pharma including Roche, Novo Nordisk, Lilly, Pfizer, and Merck for obesity, and AbbVie, Argenx, Blueprint, and Otsuka for MRGPRX2," which is our inflammatory candidate.

Q. Were these discussions what led to the eventual deal with Novo Nordisk?

A. They did. And like I said before, it was a very competitive process because we had parallel term sheets from Roche and Amgen.

Q. This quarterly report was provided to Rigmora?

A. Yes.

Q. And did you receive any questions from Rigmora about these discussions?

A. No.

Q. And switching gears a little bit. With respect to your management oversight of the portfolio companies, how did you build the teams of personnel that worked with you in those companies?

A. Within the portfolio specifically?

Q. Or any of the portfolio companies.

A. Yeah, any of the companies.

So in the beginning, we basically, as the company is in an embryonic state, we hire people from founders labs that bring a lot of know-how. And progressively, as we built programs that need specific resources, for example, chemistry, we hire a small chemistry team.

Deep Apple is unique because we invested a good deal of our human resource in machine

learning and computational and cyclical studies because it's really a hot topic in AI and machine learning and drug discovery. So we did that fairly early.

And then, you know, we built -- successfully we hired the head of drug discovery and a head of translational biology as the company began to get closer to clinical development.

Q. And when you were hiring for your portfolio companies, do you face competition in the hiring process from other companies in the biotech space?

A. We always do. And I think a tribute to most of our competence is that we were able to extract people from notable companies, especially in south San Francisco, which is a hotbed for biotechnology.

Q. And how has the lack of funding for the portfolio companies over the last few months impacted the ability of these companies to retain the talent?

A. It's been devastating. On June 17, I had to go to San Francisco for 31 hours to oversee the layoff of about 75 people across four companies.

Q. And if funding resumes, do you believe you'll be able to resume operations at a normal level?

A. I believe that there is a good chance because we have exceptional founders and we have outstanding science. Though the companies at this point in time are obviously operating with skeletal crew.

Having said that, one remarkable thing that is worth sharing is that our company, Nine Square, which now has three scientific employees and one operating officer, just recently secured a term sheet, nonbinding, by a major pharmaceutical company for half a billion dollars in a research collaboration.

And I think that's a tribute to the company, to the resilience of the staff, as well as the visibility and exceptional quality of the science we produced.

ATTORNEY BONACORSI: No further questions. Thank you, Dr. Liras.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY ATTORNEY BORN:

Q. Good afternoon, Your Honor. Natascha

Born for the defendants.

Good afternoon, Dr. Liras.

A. Hello.

Q. Dr. Liras, in your view, it's not unreasonable to prioritize clinical companies over preclinical companies; correct?

A. It happens quite frequently in pharma and biotech.

Q. In fact, you saw the prioritization of clinical companies over preclinical companies plenty of times when you were working at Pfizer; correct?

A. I did not see that. I saw the prioritization of clinical substrate over preclinical projects.

ATTORNEY BORN: Thank you. No further questions.

ATTORNEY BONACORSI: No further questions.

THE COURT: Thank you, Doctor. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

ATTORNEY BARLOW: Your Honor, plaintiffs call Yuri Bogdanov. Rigmora will begin on

the questioning.

ATTORNEY BORN: Where should we put the translator? Mr. Bogdanov's English is quite good, but occasionally he needs help with a particular term.

THE COURT: Are the mics at counsel table on?

THE INTERPRETER: Permission if I could sit here.

ATTORNEY BORN: You want to move my chair. Can you sit there? Does that work for people?

THE COURT: Let's swear in witness. We'll deal with the logistical issue. I think it would be better if the translator was miked, but go ahead.

STEVEN LAGUTIN, having first been duly affirmed, interpreted between Russian and English as follows:

THE COURT: Is that okay, that positioning?

THE INTERPRETER: I'd rather be here, but it's okay.

THE COURT: All right.

ATTORNEY BORN: We don't need translation for everything, just if he has a question

about a specific term, we'd like you to be on hand.

THE COURT: Why don't you state and spell your name.

THE WITNESS: Yuri Bogdanov, Y-U-R-I, B-O-G-D-A-N-O-V.

YURI BOGDANOV, having first been duly affirmed, was examined and testified as follows:

THE COURT: Give me one second here.

You can understand English fairly well?

THE WITNESS: Yes.

THE COURT: So if you need translation, you are going to ask counsel for a translation; is that correct?

THE WITNESS: That's correct.

THE COURT: Thank you.

DIRECT EXAMINATION

BY ATTORNEY BORN:

Q. Mr. Bogdanov, could you please introduce yourself for the Court.

A. Well, I'm Yuri Bogdanov.

Q. Do you hold any graduate degrees, Mr. Bogdanov?

A. Yes. I graduated from the Moscow

Finance University.

Q. And what discipline is your degree in?

A. Business and real estate valuation.

Q. When did you receive that degree?

A. In 2002.

Q. Are you currently employed?

A. Yes. I'm employed by Rigmora Holdings Limited.

Q. If I just refer to that as "Rigmora," you'll know what I mean?

A. Yes.

Q. What is Rigmora?

A. Well, Rigmora is the special advisory body for the trustees of the trust, and also the investment vehicle which holds a number of important investments.

Q. You just mentioned the trust. What do you mean by that?

A. It's the Scorpios trust created for the three generations of the Rybolovlev family.

Q. Does Rigmora invest in the biotech industry?

A. Yes.

Q. How so?

A. Well, Rigmora, through the special purpose vehicle, the BVI companies, holds the limited partners' stake in the Apple Tree Partners.

Q. If I refer to Apple Tree Partners as the fund or ATP, will you know what I mean?

A. Yes.

Q. And do you understand those limited partner entities to be the defendants in this case?

A. That's correct. I do.

Q. If I refer to those as the Rigmora LPs or just the LPs, will you know what I mean?

A. Yes.

Q. Do you know where the capital that the Rigmora LPs invest in ATP comes from?

A. It comes from the trust's assets.

Q. And did the Rybolovlev family trust have investments beyond its indirect investment in ATP through the Rigmora LPs?

A. Yeah, the trust has significant investments and assets outside of ATP that included the real estate, other businesses, hedge funds, private equity funds, liquidity positions for many of them.

Q. What is your current position at

Rigmora?

A. I'm co-CEO and chief investment officer.

Q. And how long have you held that position?

A. Since last October, since October of 2024.

Q. And did you have a role at Rigmora before you became the co-CEO and chief investment officer last October?

A. Yes. I held numerous executive positions. But last three or four years, I worked as the special advisor.

Q. And what did you understand your role to be while you held the title of special advisor?

A. Well, to advise the trustees and the management of Rigmora on various matters, including the investments, and act as kind of like the second opinion and sometimes like, if they don't like the content, to challenge the management decisions.

Q. While you held the role of special advisor, did you have any responsibility for managing the Rigmora LPs' investments in the ATP fund?

A. No.

Q. When you were promoted to co-CEO and CIO of Rigmora in October 2024, did that involve any new responsibilities?

A. Yes, obviously. And I, like, began responsible for overseeing a large portfolio of assets and investments and advising trustees on the various matters, including the ATP-related, yeah.

Q. Did you do anything to familiarize yourself with Rigmora's investments when you became CEO?

A. Yes. I reviewed a number of documents, contracts or reports, presentations, yeah, covering those topics.

Q. Did you familiarize yourself with the Rigmora LPs' investment in the ATP fund specifically?

A. Yes, I did. Like, briefly reviewed a number of documents. But, again, at that time, you may know, we had an open litigation, so that was also another focus of my work.

Q. And you mentioned the Rybolovlev family earlier. Do you know Dr. Rybolovlev personally?

A. Yes, I do. I know him for more than two decades. I worked for Uralkali, the business

which belongs to the family trust, in Russia.

Q. Have you ever spoken to Dr. Rybolovlev about the Rigmora LPs' investment in the fund?

A. Yes, I did. Many times.

Q. What impressions, if any, did you form about how Dr. Rybolovlev viewed the Rigmora LPs' investment in the ATP fund?

A. Well, he took them very seriously. And, you know, he has a medical background. He started as a doctor, and he was really very passionate about those investments. It's not just investments. It's like his attempt to do something good for the people.

Q. You mentioned earlier that there was litigation pending when you came in as CEO in October 2024; is that right?

A. That's correct.

Q. What was that litigation about?

A. It was the litigation about the limited partner's right to call the distribution of the particular asset, the Braeburn, and the GP refusal.

Q. Do you know what the outcome of that litigation was?

A. The parties agreed to settle the case.

Q. And did you play any role in the settlement process?

A. Yes. I was the lead negotiator on the Trust side.

Q. Could you outline the settlement for me at a high level?

A. Well, the parties agreed -- well, first, to set certain rules and principles on how the Braeburn will be distributed. The parties agreed to distribute in kind the royalty subsidiary, the special purpose vehicle which holds the royalty, the right to receive the royalty from the Braeburn for the very material amount. And, finally, the parties agreed to discuss certain budgets of five of the portfolio companies.

Q. And was there an amendment to the LPA in connection with the settlement discussions?

A. That's correct. The parties signed the Amendment 22 which is, like, summary of the settlement terms.

Q. Let's turn to JX 1068, which should be the first tab in your binder.

A. Yes, I'm on it.

Q. Is this Amendment 22 that you were just referencing?

A. Yes.

Q. And can you tell me the date of this amendment?

A. It's 20th of December, 2024.

Q. Let's take a look at paragraph 26, which is on page 4.

A. I'm on it.

Q. And we're going to start by looking at the first sentence.

Can you tell me your understanding of what this sentence required the parties to do with respect to budgets?

A. Well, the sentence requires the parties to discuss the new budgets for five portfolio companies in accordance with the process set in the LPA. And those companies are Ascidian, Aulos, Nereid, Nine Square, and Replicate. I used just short names of the companies.

Q. And as the lead negotiator for Amendment 22 on the Rigmora side, why were you willing to commit the Rigmora LPs to discuss budgets for these five companies?

A. Just because it's our investments and our businesses. That's what we usually did. And that's what we planned to continue, to discuss the budgets and analyze the projects and understand the businesses in our investment pool.

Q. Turning to the final sentence of this paragraph, it says that "If any approval of a new budget is given by the [SLP]," and then it refers to "such approval" of a new budget being "contingent upon at least $300 million being realized" by the Rigmora LPs "on a sale or financing of [their] interest in ATP LLC."

Do you see that?

A. That's correct. Yeah.

Q. What, if anything, was your understanding of this provision?

A. Well, the provision introduced the condition for the execution of any budget approval. And that condition was the realization of either a sale of part of the royalty agreement I referred earlier or the refinancing.

Q. When Amendment 22 was executed, were you planning on waiting to discuss any new budget proposals you received from Dr. Harrison until the

Rigmora LPs had $300 million in hand?

A. No. No.

Q. When Amendment 22 was executed, were you planning on waiting to seriously consider any budget increases until the Rigmora LPs had these $300 million in hand?

A. No. Of course not.

Q. At the time this amendment was executed, did you care whether the Rigmora LPs obtained the $300 million financing or not?

A. Of course I did. And I think we started the process even before the amendment was signed. We hired the broker, the professional investment broker, to help us with this transaction.

Q. Could you tell me a little bit more about the process that you were just referring to.

A. Well, it was, again as I said, quite a process. We engaged the Greenhill. It's a broker. It's a part of the Mizuho Group. And I think we started in November, unless I'm mistaken.

And we created a data room. We worked with the broker on the presentation of the case. And we agreed on a long list of potential bidders. We sent more than 60 -- yeah, more than 60 invitations to

bid. And we signed, I think, around 50 of nondisclosure agreements with potential creators. And, again, that was quite a process.

And then when we have short list of candidates, we started the direct discussions of the terms.

Q. And was there any interest in providing the royalty financing?

A. Yes. There was certain interest. And we received, I think, the first bids around February or March, yeah.

Q. What came of that?

A. Say again, please.

Q. What came of that? What happened next?

A. Oh, well, it took longer -- well, for many reasons. Like, in the middle of the process, partially thanks to the new administration steps, the company -- I mean the Braeburn -- started to revisit its forecast. And it was revised significantly. I think that we got some years off by almost 50 or 60 percent.

And we were in the negotiations and discussions with the bidders. But it took quite -- it

took quite some time for them just to understand what is going on with the market. And that's why the process was a little bit delayed.

Q. Have you been able to secure any royalty financing in connection with Braeburn?

A. We haven't yet done it, but we're still working.

Q. After Amendment 22 was signed -- and we can set Amendment 22 aside.

After Amendment 22 was signed, do you recall whether Dr. Harrison got in touch with you about potential budget increases for the five portfolio companies referenced in the amendment?

A. Yes. Shortly after the amendment date.

Q. Let's pull up JX 1079, please.

A. Could you please say again the last digit.

Q. 1079. Sorry. It should just be the next tab.

A. Okay.

Q. Let's start with the bottom email. Is this the email from Dr. Harrison that you were just referencing?

A. That's correct.

Q. And what's the date on this email?

A. 24th of December. It's Christmas night.

Q. Do you remember where you were when you received this email?

A. Yes. I was with my family on a holiday trip in the middle of nowhere in Argentina on the salt flats, is that the right term, yes, in the camp tent.

Q. Is Christmas an important holiday for your family?

A. Yes, of course. Like, they raise certain protests when I just work on that night. Not as important, where Russians has the Orthodox Christmas and New Year, but also important one.

Q. And so you mentioned that you worked on this night. It sounds like you did not wait until after the holidays to review the information Dr. Harrison sent?

A. No. I -- like, well, first I read those materials, and I forwarded them to my team and asked them to start work.

Q. What was the work that you and your

team did?

A. Well, we analyzed the materials, we reviewed some other documents, including the original investment memorandum -- memoranda -- and we started drafting a list of the questions, follow-up diligence questions.

Q. There's a reference in this email to D-rooms containing supporting materials. Do you know what Seth Harrison meant by "D-room"?

A. I think it refers to the virtual data room with some supporting documents.

Q. And did you and your team review the documents in the D-room?

A. I personally struggled to get in access, but I think that my team members finally got the access, or it took like few days. There were some IT issues I remember.

Q. What did Dr. Harrison propose with respect to Nereid in his December 24 email?

A. I'm just trying to find it. Okay. So on the Nereid, Dr. Harrison proposed what he called a synergistic merger with another portfolio company, Marlinspike.

Q. And did you discuss Dr. Harrison's

proposal for merging Nereid and Marlinspike with Dr. Harrison?

A. Yes, I recall we had a follow-up Zoom call, I think in early February.

Q. Do you recall what the Rigmora LPs' position was on that call?

A. Well, we, in principle, agreed with the proposal. But we understood that Dr. Harrison would require some further investigation on some tax and legal aspects of that merger.

Q. Did you hear anything further from the GP about the proposal for a Nereid-Marlinspike merger?

A. I think no, up till the very end of April, early May when he mentioned that.

Q. What did he mention?

A. He said that he stopped the merger because of certain legal issues and apparently a very expensive lease that they wanted to cancel. And apparently they were considering a different way for the bankruptcy, or Chapter 5, if I'm not mistaken.

Q. Was that the last you heard from the GP about its proposal concerning Nereid and Marlinspike merging?

A. That's correct.

Q. After Dr. Harrison's December 24 email, did you ever receive a budget request for Nereid that did not involve a proposed merger with Marlinspike?

A. No, to the best of my recollection, we didn't receive it.

Q. Looking back at Dr. Harrison's email, what did he propose with respect to Nine Square?

A. On the Nine Square, he proposed to increase the budget for another 15 million.

Q. Did you engage with the GP about discussions for a potential budget increase for Nine Square?

A. I think that we, probably in February, I don't remember the months, we agreed to discuss the Nine Square budgets once we have the royalty financing done.

Q. Did the GP ever follow-up on the potential budget increase for Nine Square after that call?

A. No.

ATTORNEY BORN: I'm just conscious that we have about five minutes left. We're about to get into a longer chunk, it might make sense to --

THE COURT: To break for the day?

ATTORNEY BORN: Yeah.

THE COURT: So we resume at 9:00 a.m. tomorrow.

And I'll have my assistant email Mr. Barlow and Mr. Rohrbacher to confirm the timing of the day so you-all know what to expect.

With that, we are adjourned. Thank you.

(Court adjourned at 4:54 p.m.)

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, October 17, 2025
9:00 a.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

TRIAL TRANSCRIPT - VOLUME II

APPEARANCES:

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Appearances Cont'd ...

APPEARANCES CONT'D:

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of the New York Bar
Debevoise & Plimpton LLP
for Defendants

ALSO PRESENT:

STEVE LAGUTIN, Russian Interpreter

- - -

THE COURT: Good morning.

ATTORNEY BORN: Good morning, Your Honor.

THE COURT: Anything else we need to attend to before we begin or resume witness examination?

ATTORNEY BORN: I don't believe so, not on our end.

ATTORNEY BERDON: Not from plaintiff, Your Honor.

THE COURT: Let's proceed.

YURI BOGDANOV, having been previously affirmed, resumed and testified as follows:

DIRECT EXAMINATION (Cont'd)

BY ATTORNEY BORN:

Q. Good morning, Mr. Bogdanov.

A. Good morning.

Q. I'd like to pick up with JX 1079, which is the second tab in your binder.

A. I'm on it.

Q. You remember yesterday we talked about the discussions concerning Nereid?

A. That's correct.

Q. And you remember yesterday we talked

about the discussions concerning Nine Square?

A. Yes.

Q. I would like to turn to the third company referenced in this email, which is Replicate. What did Dr. Harrison propose with respect to Replicate in his December 24 email?

A. He proposed to consider another budget increase for 11 million.

Q. Did he say anything else about Replicate in that email?

A. Yes. He noted that Replicate would run out of the cash by the third week of January.

Q. Did you take any action based on that part of the email?

A. Yes. We set Replicate budget as our priority and worked for the holidays.

Q. What did that work look like?

A. As I said, we analyzed the materials, we drafted the list of the follow-up diligence questions.

Q. And did you send those questions to Dr. Harrison?

A. Yes, shortly after the new year, I sent an email with those questions.

Q. Do you recall what questions you had for Dr. Harrison about Replicate?

A. Yes, I do. It's kind of like basic diligence questions on the company's past performance, on how the company executed its original plan, some questions on the progress on their clinical programs, and some questions on the economics of the partnership deals the company was considering at the time.

Q. Why were you interested in understanding how Replicate had performed in the past?

A. Well, it's one of the, like, most important indicators before you make any decision on the new budget to see how the team and the company performed against their original programs, to see whether they can deliver.

Q. Let's turn to JX 1107.

A. Could you say again the number?

Q. 1107. I think it's two tabs down.

A. Uh-huh.

Q. Is this an email from you to Dr. Harrison dated January 5?

A. That's correct.

Q. And does this attach the list of questions you were just discussing?

A. That's correct.

Q. You can set that document aside.

Did you have any meetings concerning the Replicate budget with the GP?

A. Yes. We had an in-person meeting in Monaco in mid-January.

Q. And who attended that meeting?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina. Well, actually, it was a series of meetings in a couple days. Then we were joined by the Replicate COO.

Q. Can you describe the meeting with Replicate's CEO for me?

A. Well, he presented the company's case, he explained what they were proposing to us. We asked a number of questions, partially addressing those questions I sent to Dr. Harrison earlier, and we discussed the budget needs of the company for the 2025.

Q. Was the meeting with the Replicate CEO helpful to you as you assessed Dr. Harrison's request for a budget increase?

A. Yes, it was pretty helpful. It helped us to just finally make a conclusion on that.

Q. Do you recall whether Dr. Harrison asked the Rigmora LPs to provide any capital for Replicate while you were considering the proposed budget increase?

A. Yes. Dr. Harrison proposed to consider bridge financing, and we did it in a matter of days.

Q. Do you recall whether the Rigmora LPs approved the $11 million budget for Replicate that Dr. Harrison had proposed on December 24th?

A. We approved finally an even bigger budget of 18 million, and I think we did it in the very beginning of February, right.

Q. Let's pull up JX 1193.

Is this the Rigmora LPs' email approving the budget for Replicate and the attached budget approval?

A. That's correct.

Q. Do you recall whether the Rigmora LPs placed any conditions on the approval of the budget?

A. Well, there was an existing condition introduced by them in '22, the completion of the royalty financing. And on half of the budget there was another condition added, the completion, the

closing of the Latin deal the company was considering at the moment.

Q. Do you recall whether the Rigmora LPs provided any capital pursuant to this budget after it was approved?

A. Yes. We made another capital call of $5 million.

Q. And at the time that the Rigmora LPs paid that capital call, did you have a view as to whether either of the conditions on the approval of the Replicate budget were satisfied?

A. They were not satisfied.

Q. Why did the Rigmora LPs fund the capital call for Replicate, despite your view that the conditions on the approval had not been satisfied?

A. Because it's our company, it's our investment. We did care about the company's progress. That's why we decided to pay it.

Q. Let's turn back to JX 1079, which is the second tab.

A. I'm on it.

Q. This is the December 24 email from Dr. Harrison again?

A. Wait. I opened the wrong tab. Yeah,

I'm on it.

Q. What did Dr. Harrison propose for Aulos?

A. For Aulos he proposed to support the management recommendation and approve the additional budget of 28 million.

Q. Did you have any in-person meetings with Dr. Harrison concerning a potential budget increase for Aulos?

A. Yes. I think we had the meeting in March, mid-March in Monaco.

Q. And who attended those meetings?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina, I -- and, for the first half, we also had the external consultant who made their review of the company's program. And then we were joined by the Aulos management.

Q. Did you do anything to prepare for the meeting in advance?

A. Yes. We received the materials 24 hours before the scheduled meeting. We tried to analyze them and draft a list of the questions we were going to ask.

Q. You mentioned a moment ago that an

independent consultant attended that meeting about Aulos. What did you mean by independent consultant?

A. There was like a retired executive, I believe he worked for Gilead before in one of the senior positions, and he was retained by the partnership to assess two oncology programs of the fund, namely Aulos and Marengo.

Q. What was your reaction to the independent consultant's presentation about Aulos?

A. Well, it was kind of like unpleasant news. We learned that apparently the management made kind of like a fundamental mistake in designing the clinical trials, and that mistake could cost us additional budget and potentially delays in the delivery of the clinical program.

Q. Turning back to Dr. Harrison's December 24, 2024, email, which is JX 1079.

A. It's the same tab; right? Yeah.

Q. What did Dr. Harrison propose with respect to Ascidian?

A. On Ascidian he wrote that they're still considering multiple scenarios, and it would require more discussion and time to understand what variables would emerge as reality by the mid-2025.

Q. Did Dr. Harrison propose a specific dollar amount increase in the budget for Ascidian at this time?

A. At that time, no.

Q. Did you have any meetings with Dr. Harrison to discuss a potential budget increase for Ascidian?

A. Yes. I think it was the same date in March when we met to discuss Aulos.

Q. And who was present for that meeting?

A. Dr. Harrison, Dr. Rybolovlev, Anna Batarina and I. On Ascidian we were joined by two people from the management of the company.

Q. And did you do anything to prepare for that meeting in advance?

A. The same answer. We received the materials 24 hours before the meeting, and we analyzed them and drafted a list of the questions.

Q. Do you recall whether Ascidian's management presented financial projections during the meeting?

A. Yes. They presented three scenarios, as far as I remember.

Q. Do you recall whether those

projections included the time that Ascidian anticipated receiving additional capital from the fund under the existing budget?

A. Yes. I recall that in one or two scenarios, they expected additional funding in Q4, this year; and one or two, I don't remember what was their implication, even later. So I think that they expected the remaining budget to be paid in 2026.

Q. And do you recall when you, in fact, received the next capital call for Ascidian from the GP?

A. Yes. It was -- well, it was Saturday morning, Monaco time, 31st of May. They were sent on May 30.

Q. And did that surprise you?

A. Of course.

Q. How come?

A. Just because it was different from what the company told us. It was different from what general partner told us in late April when he shared two forecasts on Ascidian and both forecasts provided for the capital call payment in 2026.

Q. Did there come a time when Dr. Harrison proposed to reallocate funding from

certain of the fund's portfolio companies to other portfolio companies?

A. Yes. I think it was late March this year, right, late March, when we had a Zoom call and he first time introduced this idea to us.

Q. What did you understand his idea to be?

A. The idea was just to move the capital from more risky companies towards more advanced clinical-stage companies of the fund.

Q. How did you react to that proposal?

A. Well, generally positively. We welcome and appreciate any ideas which would improve the risk profile of our investments and increase the return on the investments.

Q. Did you hear anything further from Dr. Harrison concerning the proposal for reallocating funding from the early-stage companies to the clinical companies?

A. Well, yes. He, in the same call, said that he would need more time to develop this proposal in greater details, and then he scheduled another call in late April to discuss the reallocation proposal.

Q. What did you understand the

reallocation proposal to be following the late April call?

A. Could you please rephrase? I don't understand the question.

Q. Yes. You said that you discussed the reallocation again in late April I think?

A. Yes. Right.

Q. What did you understand him to be proposing at that time?

A. Well, the proposal was just to move significant budget from the early-stage companies keeping probably around 40, 50 million for those companies, decreasing, effectively, almost three times the budget for the early-stage companies, and increase the budgets for clinical-stage companies.

Q. Could we pull up JX 1282.

This is an email from Dr. Harrison to you dated April 29, 2025; is that right?

A. That's correct.

Q. And did Dr. Harrison send this following the call?

A. That's correct. On the call he showed us the Excel spreadsheet, and I asked him to send the Excel after the call.

Q. You can put that document away.

By early May of this year, had you formed any conclusions about the fund's investments in early-stage portfolio companies separately from Dr. Harrison's reallocation proposals?

A. Yes, we did. We started our own analysis of the performance of the early-stage companies I think in March, and in March and April we came to certain conclusions, and obviously we realized that many of those companies failed to hit the milestones their investment memoranda provided.

Q. Do you recall how you assessed whether the early-stage companies had met their milestones?

A. Yes. We compared the investment memoranda milestones with the available information in the fund's quarterly digests or sometimes the company's websites or at the FDA database.

Q. Did you feel that you were able to accurately evaluate whether the early-stage companies had hit the milestones?

A. Yes.

So the milestones I designed, to let the investor make an informed decision -- and usually it's kind of like binary events you can easily assess.

Like not in all cases, but the majority of the cases you can do that.

Q. Can you give me an example of a milestone you thought you could assess whether it had been achieved or not.

A. Well, for instance, IND, Investigational New Drug Application. So it's either done or not.

Q. Did you do anything to evaluate whether the early-stage companies that you thought had missed their milestones had pivoted to new projects that could be a commercial success?

A. Well, apparently they pivoted to the new projects; but in order to assess that, you need to review the new investment memorandum that gives you an understanding what would be the new budget for that project and what would be the risks. Obviously we never received the new investment memorandum.

Q. Did you ever receive a formal proposal from Dr. Harrison concerning reallocation of funding from early-stage portfolio companies to clinical companies?

A. Yes. We received it in early May, I think around 10 or 11th of May.

Q. Can we turn to JX 1307.

A. I'm on it.

Q. This is an email dated May 11, 2025, from Dr. Harrison to you and others. Does this attach the proposal you just mentioned?

A. That's correct.

Q. And can you explain to me what you understood Dr. Harrison to be proposing.

A. He proposed to reduce certain budgets for the early-stage companies, dramatically reduce, and increase certain budgets for the clinical-stage companies, namely Aulos, Ascidian, Marengo, and Replicate.

Q. What was your reaction?

A. Well, in general it was in line with our expectations, but with certain changes which looked unacceptable to us.

Q. Could you tell me about the things that looked unacceptable to you?

A. Well, it provided for the, like, waiving of our rights under the LP to review, consider, and approve or not approve budgets, and it gave the full discretion to the general partner.

Q. Did you speak to Dr. Harrison about

this proposal?

A. Yes. We scheduled a call shortly after the date we received that proposal, and I invited my deal lawyers to attend the call.

Q. As far as you can recall, what did Dr. Harrison say on that call?

A. I have really bad recollection because it was very emotional and heated call. It was a short one. I think that we first started with, like, an introduction, saying that we support the idea of moving the capital from the early-stage companies to the clinical-stage companies, but we believed that it should be done in accordance with LP terms and we should consider the new budgets, we should discuss them, and that's it.

And very quickly the call became emotional, heated. The parties started to talk, like, simultaneously. I recall general counsel of ATP was yelling "dollar for dollar, dollar for dollar." And finally Dr. Harrison said, I withdraw the proposal.

Q. Did it surprise you that Dr. Harrison withdrew the proposal?

A. Yes, of course, just because I believed that both parties agreed that it would be in

the best interest of the partnership to move that capital. That came as a very unpleasant surprise.

Q. Did you take any action following that call?

A. Yes, I did. I sent an email just confirming our position on the reallocation proposal and informing the general partner that we were of the opinion that the further funding of the early-stage companies is not in the interest of the partnership.

Q. Did you ask him for any information about the early-stage companies?

A. Yes, of course. We asked him to share with us any proposals that could help to salvage value from the early-stage companies.

Q. And what did you mean by salvaging value from the early-stage companies?

A. Well, we were open to consider old proposal; for example, the proposals to secure funding through the business development deals for the partnerships with other companies or new projects or potentially sale of certain companies, mergers.

Q. Did you address the clinical companies in that email?

A. I think yes. I think I said that we

are still willing to consider the budgets for the clinical-stage companies.

Q. And do you recall when you sent that email?

A. Yes. May 15.

Q. What were you hoping to get from Dr. Harrison in response to your email?

A. Well, I expected that he would engage in discussions with us and to counter us with proposals on the, as I said, like, salvaging the values from the early-stage companies. I expected some cooperation.

Q. Did you ever get the information you were hoping to receive?

A. No.

Q. We discussed earlier today the potential budget increase for Aulos. Did you discuss with the GP the potential budget increase for Aulos after May 15, 2025?

A. Yes, we did.

Q. What do you mean?

A. We sent a list of the questions on the Aulos, and we asked general partner to provide us with, like, the answers to those questions and also

with an update on the company's progress since we met with Aulos management in early March, and it was late May.

Q. Could we take a look at JX 1360.

Is this the email with the questions you had for Dr. Harrison about the potential budget increase for Aulos?

A. That's correct.

Q. And when was that?

A. It was May 22 this year.

Q. Did you receive answers to these questions?

A. No.

Q. Turning to Ascidian, did you discuss with the GP a potential budget increase for Ascidian after May 15, 2025?

A. Yes, I did.

Q. And what do you mean by that?

A. Well, I drafted the list of the questions on the company's new budget and sent it to the general partner.

Q. Can we take a look at JX 1361, please.

A. Could you please say again the last two digits.

Q. 1361.

Are these the questions that you sent Dr. Harrison about Ascidian?

A. That's correct.

Q. And when was this?

A. The same date. May 22.

Q. Did you receive answers to these questions?

A. No.

Q. Did you ever follow up with the GP about your questions regarding Aulos and Ascidian?

A. Yes. I followed up -- sorry.

I followed up I think in a matter of a week and I sent another reminder.

Q. Can we take a look at JX 1375, please.

A. Yes.

Q. Is this the follow-up email?

A. Yes.

Q. And what's the date on this?

A. 28th of May.

Q. Have you heard back?

A. No.

Q. Mr. Bogdanov, do you recall whether the GP issued capital calls on May 30?

A. Yes.

Q. And were you surprised by those capital calls?

A. I was astonished to see this.

Q. How come?

A. Just because all the forecasts the general partner shared with us, and the most recent was dated, like, 28th of April, in two scenarios provided for the calls in the second quarter were in a range of 15 to 20 million, and we received calls for more than 100 million in one night.

Q. Before the GP issued the capital calls on May 30, are you aware of any occasion where the Rigmora LPs did not pay a capital call for an ATP portfolio company?

A. Not a single case. We always paid.

Q. Do you recall whether the Rigmora LPs paid any capital calls after May 15 and before May 30?

A. Yes. We paid two capital calls for two portfolio companies.

Q. Do you recall which companies?

A. One was Initial. I forget the name of the other one.

Q. Let's take a looking at JX 1339. It's

a couple tabs in the other direction.

A. Say again last two digits, please.

Q. 1339.

A. Yes. Initial and Apertor, right.

Q. And this is the email from Rigmora to Dr. Harrison approving the capital calls?

A. That's correct.

Q. And what's the date on this email?

A. May 20th.

ATTORNEY BORN: No further questions.

CROSS-EXAMINATION

BY ATTORNEY BERDON:

Q. Good morning. Andrew Berdon for the plaintiffs.

Good morning, Mr. Bogdanov.

A. Good morning.

Q. Mr. Bogdanov, I'd like to turn your attention first to the capital call that you just testified about. Can you pull up JX 1339, please.

Dr. Bogdanov, taking a look at the last sentence of the email, can you read it, please, out loud, on the record.

A. The last paragraph, right.

Q. Actually, I'll withdraw the question.

It says, "Funding on this basis is acceptable on the SLP as it will enable the orderly wind-down of these companies which is in everyone's interest."

Is that right?

A. That's correct.

Q. So when you told the Court that you had approved a capital call for Initial and Apertor, you didn't mention that you had only approved the money for wind-down costs, did you?

A. We approved the capital call.

Q. You didn't approve a capital call for the purpose of funding research, did you?

A. That's what my email says, right.

Q. Mr. Bogdanov, taking a look at JX 1361.

You said that you had sent a letter to Dr. Harrison offering to provide additional discussions on Ascidian. Under the word "Subject" there's two words there, "Without Prejudice." Without prejudice, why did you put that on this piece of correspondence?

A. I think we responded to the "Without Prejudice" email from the ATP employees.

Q. Did you put it on there so that ATP couldn't cite it against you in any litigation?

A. I'm not a lawyer. I was advised by my counsel.

Q. But you're using it here in this litigation to try and beat ATP's claim; correct?

A. Could you please rephrase the question. I'm not understanding.

Q. You're relying on JX 1361 in this litigation to defend against ATP's claim; right?

A. I rely on this document, right, and on the exchange.

ATTORNEY BERDON: Let's pull up JX 1360, please.

Q. In JX 1360, Mr. Bogdanov --

A. Wait. I'm not on that.

Q. JX 1360 you also have the "Without Prejudice" legend on that piece of correspondence as well?

A. That's correct.

ATTORNEY BERDON: Let's turn to Exhibit 1307.

Q. Mr. Bogdanov, I'd like to direct your attention to the page at the bottom that says 0003.

A. Yes.

Q. You testified that -- in essence, that you objected to this proposal because it would usurp the authority of the limited partner to approve budgets; is that right?

A. I'm not sure I just would put it in this way. I said that we believe that proposal was acceptable, but the proposal should follow the LP -- the existing LP terms. That's what I said.

Q. Well, you understood that there were timing issues here that made certain decisions time sensitive; correct?

A. Probably, yes.

Q. And it was pretty clear in No. 1 that the general partner at (d) told you exactly how they intended to make decisions about the allocation of money among the clinical companies.

They requested discretion, though; correct?

A. They requested discretion, of course.

Q. But they made it clear how they intended to deploy the capital; correct?

A. No, because to make it clear how the general partner intends to deploy the capital, you

should provide your limited partner with a set of the basic investment documents, including the investment memorandum, which I requested and didn't receive.

Q. But the general partner here proposed language that would say, "The General Partner currently anticipates that if Marengo Therapeutics achieves Phase 2 data for invikafusp [] that [it] is deemed by its board of directors to be suitable for [] Breakthrough Designation, most or all of such additional $56.00 million will be allocated to Marengo ...."

They're willing to say that in writing in an agreement with you; right?

A. I'm sorry. Could you please --

Q. I withdraw the question.

Taking a look at Nos. 2 and 3 below, did you ask the general partner why it was important that they retain some discretion to allocate money among the different companies in Pools V-1 and V-2?

A. We didn't have a chance to ask. The proposal was withdrawn too fast.

Q. Well, isn't it true that they had proposed grouping the projects among the companies without necessarily following the exact corporate

form? Didn't they explain that to you?

A. He mentioned on the call, I think on the April or May call, I don't remember which one it was when we discussed that, that, yes, he would probably look at the early-stage companies as kind of like portfolio of assets rather than the companies, but he didn't give, like, detailed explanation of what it may have meant.

Q. But you understood also that there was a time sensitivity to getting these decisions made because these companies faced out-of-cash dates that were all within the next three to six months; correct?

A. I'm not sure he mentioned that they would have the cash-out dates shortly, but we understood that it was in our interest to consider those decisions pretty quickly.

Q. So, Mr. Bogdanov, currently you're the senior-most person at Rigmora with responsibility overseeing Rigmora's investments at ATP?

A. That's correct.

Q. And you came into that role in October of 2024?

A. Yes.

Q. And prior to October 2024, you didn't

have any involvement whatsoever in the approval of any budget for an ATP portfolio company; correct?

A. That's correct. Probably like ten years ago, I had some involvement, but not --

Q. Not in the prior ten years?

A. No.

Q. And before you became involved in that process, an executive named Anna Kolonchina was in charge of it?

A. That's correct.

Q. Your educational background is in business valuation; correct?

A. That's correct.

Q. And you haven't taken any courses in any bioscience in your educational career; correct?

A. That's correct.

Q. And before joining Rigmora, you worked as an auditor and a consultant; correct?

A. Right.

Q. And none of your work in your audit or consulting practice involved preclinical or clinical stage development of new drugs; correct?

A. As I said, I had two clients in the biotech industry in Russia, yes, but it was more than

20 years ago, so you are right.

Q. Mr. Bogdanov, isn't it true that starting as early as 2022, Rigmora faced a liquidity crisis?

A. That's how I framed that in my correspondence, yeah.

ATTORNEY BERDON: Can we pull up JX 444, please.

I'm sorry. Let's go to 446, please.

ATTORNEY BORN: If we're turning to documents that weren't in our binder, could we get a binder, and could the witness have a binder?

THE COURT: You should have a binder on the shelf.

ATTORNEY BERDON: I apologize.

THE WITNESS: I don't have a binder.

THE COURT: The binder is coming, everyone.

BY ATTORNEY BERDON:

Q. Let's go again to 463.

A. Could you please say again the number.

Q. We're going to JX 463, please.

THE COURT: Before the binder break, you had said 446.

ATTORNEY BERDON: I understand.

THE COURT: Now we're skipping it?

ATTORNEY BERDON: I'm skipping ahead, yes, Your Honor.

THE WITNESS: 4316?

Q. 0463.

A. 04 -- yes, I'm on it.

Q. Mr. Bogdanov, looking at the first page, do you recognize this as an email that you sent?

A. Yes.

Q. And you sent it to Dmitriy Chechkin?

A. That's correct.

Q. Dmitriy Chechkin is another senior official at Rigmora; correct?

A. That's right.

Q. Let's go to the next page, please. You said, "We are in a liquidity crisis, the primary task is obviously to provide [the] funding need for the next 2-3 years." Correct?

A. That's correct.

Q. And you said that -- taking a look at No. 2, you said that there had been a previous crisis at Rigmora with similar characteristics that was resolved by liquidating the private equity portfolio;

correct?

A. That's correct.

Q. And you said in No. 3 that, "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture." Correct?

A. That's correct.

Q. And was ATP Rigmora's biotech investment at that time?

A. Not only biotech investment, but yes.

Q. And you said that the structure -- in No. 4, "the structure of our assets with predominance of venture projects (biotech [and] gaming) carries [the] same risks that had led to the current crisis: poorly predictable money inflows (divestments) and massive outflows (capital calls)."

You said that?

A. I said that.

Q. And you observed that you would "remain []in the same logic of shifting money from less risky (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time." Correct?

A. That's what I wrote.

Q. And No. 11, you said, "Hence, priority number one is to create [a] cash buffer (all free money should go there), then work on creating a 'cash cow'"; correct?

A. Right.

Q. The paragraph below that, it says, "How do we go about creating the cash buffer." You say, "The only way in this situation to start moving towards the cash buffer is to drastically reduce ATP payments." Have I read that correctly?

A. Right, through attracting the new investors into the fund.

Q. And taking a look at the "Summary" at the end, take a look at No. 4. "The first priority in this case is to put a 'plug' on expenses (no new projects, reducing investment expenses), the tasks of creating [a] cash buffer and finding new business can be solved in parallel."

That does not discuss bringing in new investors. That discusses putting a plug on expenses; am I right?

A. It referred to the plug on the new projects.

Q. Mr. Bogdanov, you mentioned that

Rigmora acts as an advisor to the trustees of the trust. Do you recall that testimony?

A. Right.

Q. And does the trust report to -- withdrawn.

Does Rigmora report to the trustees on a periodic basis?

A. Rigmora reports to the trustees of the trust, right.

Q. Let's pull up JX 0526, please.

A. Yes.

Q. Taking a look at what's been marked as Exhibit 526, what is that?

A. Let me read first.

Q. We are pressed for time, so I'm going to ask you a question and you can tell me if I'm right.

Is this an email that you sent containing trustee materials from March of 2023, Mr. Bogdanov?

A. I think that yeah, I just forwarded that email to my own address, yes. It was originally sent by Anna Kolonchina, as I see on the page.

Q. And it was sent to Elias Neocleous?

A. Elias Neocleous; right.

Q. And who is he?

A. He's the managing partner of Elias Neocleous law firm, and he's also the trustee.

Q. Taking a look at the page bearing the number 0007, do you recognize that?

A. Yes, I do recognize.

Q. And that's a cash flow statement for the Rigmora trust; correct?

A. That's correct.

Q. And if you look at the right-hand side at the bottom, "Net Cashflow[s] for the period," you will see that your 2022 plan was for $170 million deficit; correct?

A. That's correct.

Q. Your '22 actuals at that point was for $126 million deficit?

A. There was a net decrease in cash position.

Q. And your 2023 forecast was for $184 million deficit; correct?

A. That's correct.

Q. And the projected cash at the end of 2023, according to this forecast, was going to be

$38 million?

A. That's correct.

Q. Rigmora funded its investments in ATP, at least in part, through the sale of other assets; isn't that true?

A. Partially, yes.

Q. Let's turn to page 9.

Isn't it true, Mr. Bogdanov, that Rigmora was debanked by several banks in the EU in 2023?

A. Was what? Sorry. I don't know the word.

Q. Taking a look at the highlighted bullet point, isn't it true that in 2023 you reported to the trustees that several banks decided to close relationships with the group, namely Credit Suisse, UBS, and Bank of Cyprus?

A. That's correct.

Q. And that was because their compliance teams forced those changes; correct?

A. Most likely, yes.

Q. And let's take a look at JX 0681, please.

Take a look at JX 0681, Mr. Bogdanov.

Let's take a look, then, down to page 7 titled, "Cashflow 2023-Comments." Under "Financing," isn't it true that bank -- you had a credit line -- had asked that its guarantee of Swiss [francs] 120 million required additional cash collateral of $48 million at that time?

A. Could you please refer to the page.

Q. I'm on page 7 of JX 681, "Cashflow 2023-Comments," under the heading "Financing."

A. It's marked as page 8 in my binder. Okay. Sorry.

THE COURT: It shouldn't be. If you look on the screen, it's right in front of you.

THE WITNESS: It's 8 here.

Q. Isn't it true that you reported to the trustee that a bank guarantee required additional cash collateral because of the sale of two positions in stock where ATP had done exits and taken two companies public?

A. The bank guarantee required additional cash collateral, that's correct.

Q. Let's turn back to page 6, please.

And this contains similar data as the last report, but it has an updated forecast for 2023

and actuals for the first nine months of 2023; correct?

A. Apparently I'm on the wrong tab. Could you please say again the tab number.

Q. We are at Exhibit 681, and we're on page 6.

A. Thank you.

Q. Let's take a look at the "Net Cashflow for the period" --

A. Yes.

Q. -- on the right-hand side.

The plan was to be negative 185 for 2022. The nine-month actuals had already hit negative 147, and the updated forecast was for negative 202 million in negative cash flow; is that right?

A. That's correct.

Q. And instead of forecasting $38 million to be cash on hand at the end of 2023, the new forecast was down to $11 million; correct?

A. That's correct.

Q. And out of that money, it required distributions to beneficiaries of at least $10 million; correct?

A. That's correct.

Q. And it also provided for the sale of assets in order to fund Rigmora's overall expenditures; correct?

A. That's correct.

Q. Turning to page -- Exhibit 698. Isn't it true, Mr. Bogdanov, that --

A. Wait. What exhibit?

Q. 698.

Isn't it true, Mr. Bogdanov, that in March -- forgive me.

Isn't it true, Mr. Bogdanov, that in March of 2025 you had a text with Zufar Iskhakov that's set forth in Exhibit 698?

THE COURT: Do you have that exhibit?

A. It's 698. I have it in front of me.

Q. Withdrawn.

Mr. Bogdanov, in November of 2023 Rigmora entered into an agreement with ATP to reduce the amount that ATP would be able to call in capital for the year 2024; isn't that true?

A. Yes.

Q. And taking a looking at paragraph 3, it says, "As of the date set forth above, the aggregate amount of unfunded budget commitments for

the Portfolio Companies in ATP V-1 equals []63.33 million and in Pool ATP V-2 [it] equals $292[] million." It says that?

A. That's what the agreement says.

Q. Let's turn to the last page. Was it signed on behalf of Ezbon?

A. That's correct.

Q. Was it signed on behalf of Blue Horizon?

A. That's correct.

Q. Turning just quickly to Replicate. Isn't it true that you learned in late 2024 that the original budget for Replicate had been approved based on oral conversations?

A. That was my guess. I'm not sure I received a confirmation of my guess.

Q. And when you sent that list of 19 questions to Replicate, you didn't know one way or the other whether it was even possible for those questions to be answered in a reasonable amount of time; isn't that true?

A. I didn't know. I expected that all these questions can be easily answered by the company, but if they don't have the answers, well, that would

be, like, a surprise.

Q. Did you ask any biotech consulting firm for help in diligencing these new budget requests?

A. No.

Q. Does anyone at Rigmora have a background in biotech investing specifically outside of ATP?

A. We do have investment background, yes.

Q. Does anyone at Rigmora currently have a background in biotechnology science?

A. No.

Q. Has anyone at Rigmora worked specifically as an analyst in the biotechnology sector?

A. No.

Q. Turning to the subject matter of investment memoranda. I'd like to take a look at Exhibit 0267, please. 267, Mr. Bogdanov.

Do you recognize this document as a budget approval form for Red Queen?

A. Right.

Q. And it says Red Queen proposed budget, 55 million?

A. That's what this document says, right.

Q. "Intended Use of Proceeds: General working capital requirements." Correct?

A. Right.

Q. There's no discussion there of it only being made available in tranches?

A. I probably already said that we received bundle of documents. It was almost always the investment memoranda in this cover form, right.

Q. It did not include in the budget approval a list of any tranches; right?

A. Right. They're included in the investment memoranda.

Q. It wasn't included in the budget, was it?

A. No.

Q. Let's take a look at -- just for completeness, it doesn't say, "and for purposes included in the investment memoranda," does it? It didn't include that on the face of the form, did it?

A. You are right.

ATTORNEY BERDON: And let's take a look briefly at Exhibit 267. 267, please.

316, please. Apologize.

And let's go to page 3, please.

Q. So when Rigmora wanted to put more information in a budget approval, it could; correct?

A. I think this is like the additional follow-on 10 million on top of the original investment memoranda for Replicate, which was 40 or 44 million. I don't remember the exact number.

Q. Well, it says here Replicate current budget, 40, right?

A. 40, right.

Q. And it says proposed budget 53; correct?

A. Yes.

Q. This is for a $13 million increase?

A. That's correct.

Q. And it says, "Intended Use of Proceeds: Research and Development, IND and PoC."

A. That's correct. It's an additional program to be added to the investment memorandum of Replicate.

Q. Well, does it say anything about adding to the investment memorandum here?

A. No. It's just what I'm explaining.

Q. But it provides for a specific

intended use of proceeds; right?

A. Right.

Q. And PoC stands for proof of concept; correct?

A. That's correct.

Q. Are you familiar generally with the process that was used at Rigmora for reviewing capital calls before October of 2024?

A. In general, yes.

Q. Are you aware of anyone at Rigmora prior to May of 2025 checking to see the status of the program against investment memos before funding capital in response to a capital call on an approved budget?

A. We believed that that was the work which was done by the general partner.

Q. So the answer is the limited partner, Rigmora, did not do that check itself; correct?

A. Yes. We relied on the general partner.

Q. And it was not Rigmora's policy before 2025 to ask for copies of the Series A funding agreements that were executed by ATP with the portfolio companies; correct?

A. It's hard to comment for me what was my predecessors did.

Q. You worked there for ten years; correct?

A. Yes, but I was not involved in ATP matters up to October 2024.

Q. You mentioned earlier that when you received requests for new budgets and you were talking about new budgets for the early-stage companies, you went back and checked against milestones and that those companies had missed milestones.

Do you recall that testimony?

A. Yes. That was like our conclusion.

Q. Had all the companies missed milestones?

A. At the moment we didn't know for sure, but we realized that many of them missed milestones. In some instances, we missed information to assess their performance.

Q. Let's pull up JX 1285, please.

Do you recognize this as an email from your colleague, Mr. Iskhakov to yourself, Andrey Milkov, and Alexey Yakovlev?

A. Yakovlev, right.

Q. And let's take a look at the chart that appears in color.

ATTORNEY BERDON: Can we blow that up, please, Marco.

Q. Isn't it true that your colleague, Mr. Iskhakov, reported to you that Red Queen and Marlinspike had actually achieved and were in line with their investment memo milestones at that point?

A. That was his guess at the moment, right.

Q. So it was his guess?

A. Yes.

Q. So he was -- it wasn't binary whether or not looking at the investment memoranda and the quarterly reports would clearly demonstrate whether milestones had been hit?

A. Zufar is a junior analyst, and we just started that work, and it was work in progress. We, I think, made a number of iterations of that exercise later that month.

Q. Are you aware of any document that actually states that Red Queen or Marlinspike had missed milestones?

A. I'm not sure to what document you're

referring.

Q. Exactly. Are you aware of any time that you contradicted Mr. Iskhakov's conclusion with respect to Red Queen or Marlinspike and their meeting milestones?

A. Could you please rephrase. I'm not sure I really follow.

Q. Did you ever find a mistake in this chart and find out that, in fact, Red Queen and Marlinspike were behind on their milestones?

A. Sitting here, I don't remember, but I remember --

Q. That didn't happen, did it?

A. Say again.

Q. That didn't happen, did it?

A. I'm not sure. I think that we came to the conclusion that almost all of them missed milestones by the time we sent the email.

Q. You have seven companies; right?

A. Seven companies, right.

Q. At least two right here you're being told that they weren't behind on milestones; right?

A. Yes. It's like not the final document.

ATTORNEY BERDON: Let's go to 1242, please.

Q. As of April, you had Mr. Iskhakov check the amounts of remaining approved budgets for ATP; is that right?

A. That's correct.

Q. This was just a little over a month before your May 15 email; right?

A. That's correct.

Q. And you had received some new capital calls from ATP; correct?

A. That's correct.

Q. And Mr. Iskhakov says that "The new capital calls are reflected in our records. All are within [] budget." Correct?

A. That's correct.

Q. You didn't ask Mr. Iskhakov to check the progress against milestones of Nine Square or any of the other companies with capital calls to make sure that they were within the investment memoranda criteria before funding that capital call, did you?

A. Yes, I think we started that work analyzing of their performance later that month.

Q. You did it later in the month. You

didn't have it done for this capital call; right?

A. I think, yes.

Q. Let's just take a look at the chart there. Do you have any reason to believe that the figures here that were compiled by Mr. Iskhakov were incorrect at the time that you received the email on April 4?

A. I think they were correct.

Q. You had no reason to believe that Mr. Iskhakov was being sloppy or inaccurate; right?

A. No. He's pretty accurate.

Q. One of the issues that you raised in your May 15 email was that there was a lack of third-party interest in the portfolio companies; correct?

A. Yes.

Q. And one of the issues that we discussed with Dr. Harrison was third-party funding available from business development deals.

A. I referred to the equity investors.

Q. I understand. And I realize you weren't in the courtroom for Dr. Harrison's testimony.

Dr. Harrison talked to us about business development deals that provide nondilutive

funding for research and development projects.

Are you aware of those types of relationships?

A. Yes, I'm aware.

Q. And were you aware at the time that you wrote the May 15 email that there were ongoing discussions with BD partners among the portfolio companies?

A. Yes, I'm aware.

Q. And are you aware that in June, just three weeks after you sent your May 15 email saying essentially that Deep Apple was worthless, Deep Apple signed a deal with Novo Nordisk that would provide up to $812 million in funding?

A. Well, first, I never said that those companies are worthless. Second, we were aware that Deep Apple is considering the new project. That's why the general partner didn't include in his plans, on capital call plans, any capital to be called for Deep Apple in Q2. Yes, we were aware.

Q. You instructed that Deep Apple be shut down in your May 15 email?

A. That's not correct.

Q. Let's pull up the May 15 email,

please.

A. What exhibit number?

THE COURT: JX 1318.

THE WITNESS: Thank you.

Q. Let's take a look at the sentence that starts, "The SLP's position is therefore that further funding of those Early-Stage Companies will waste the ATP Fund's assets."

A. Yes, I see it.

Q. And Deep Apple was on the list of companies that you were instructing ATP to liquidate if it wanted to have further conversations about funding for clinical-stage companies; correct?

A. We invited the general partner to come with the ideas how we can salvage value from those companies, and this business development is a good illustration of that idea.

Q. You instructed the general partner to liquidate Deep Apple if it wanted to have further conversations with you about budgets for Aulos, Ascidian, and Marengo; isn't that true?

A. We instructed the general partner and we asked him to come with ideas how we can salvage value from those early-stage companies.

ATTORNEY BERDON: Let's turn to 195, please.

Q. This is an email from Anna Kolonchina to Seth Harrison in a chain that is -- let's go to the next email down, please.

It forwards a draft of Amendment 20.

A. Yes.

Q. Have you ever seen what's been marked as Exhibit 195 before?

A. I'm not sure. Like, most likely I reviewed certain documents from the past when I was not involved in the ATP matters, but I'm not sure.

Q. Let's take a look at numbered paragraph 5 on page 4, "Remaining Unfunded Capital Commitments." It says in paragraph (a) that there's an unfunded capital commitment for Pool ATP IV of 20 million; correct?

A. Yes.

Q. "Pool ATP V-1 will be deemed to have remaining unfunded capital commitments of [$220] million ...."

A. Right.

Q. Pool ATP V-2 was going to be deemed to have an unfunded capital commitment of 664 million.

ATTORNEY BORN: Objection. This predates his time, and I think he says he's not sure if he's ever seen it before.

ATTORNEY BERDON: He is the chief executive officer of the company, and I believe it is fair game to ask him because he also testified that he probably also saw it during the course of his work.

THE COURT: If you don't have an understanding of this document, then you can so testify, but you are the CEO of the company.

A. Frankly speaking, this is a draft and I don't recall reviewing the drafts. I do remember that I reviewed the final amendment which was signed, but this is the work in progress. I can hardly help you.

Q. Let's take a look at the top email on the first page. Anna Kolonchina writes back to Dr. Harrison and she said, "Please find attached marked up version with [a] couple of revisions. No substantive changes here ...."

Do you see that?

A. Yes, I see.

Q. Mr. Bogdanov, Rigmora received a number of capital calls on May 30; correct?

A. That's correct.

Q. Was each of those capital calls within the amount of the approved budget for the portfolio company on which it was called?

A. I think so.

Q. Has Rigmora paid them?

A. No.

Q. Does Rigmora have any intention to pay them absent an order of this Court?

A. Again, we disputed those calls, right.

ATTORNEY BERDON: Pass the witness, Your Honor.

THE COURT: Just a moment. I have a few questions and then you can decide what to do with him.

Remind me, you took over the responsibilities that you currently have at Rigmora in October 2024; is that correct?

THE WITNESS: That's correct.

THE COURT: What were you told when you took over those responsibilities?

THE WITNESS: I didn't have any specific instructions. Obviously I was involved in many matters. So that was kind of like a small

transaction. But my predecessor left exactly on that date when I became the new CEO, it was October 17, and there were no specific instructions.

THE COURT: There were no instructions from anyone as to how to proceed?

THE WITNESS: There were no specific instructions.

THE COURT: Go ahead.

ATTORNEY BORN: No further questions. Thank you, Your Honor.

THE COURT: Thank you.

(Witness excused.)

ATTORNEY BARLOW: Plaintiff rests subject to rebuttal.

THE COURT: Thank you.

ATTORNEY SELDEN: Good morning, Your Honor. Shannon Selden of Debevoise & Plimpton for defendants. Defendants will call Dr. Dmitry Rybolovlev.

(Steven Lagutin, Russian Interpreter, was previously placed under oath.)

COURT CLERK: Please remain standing and raise your right hand. State and spell your first and last name for the record.

THE INTERPRETER: Rybolovlev Dmitry Yevgenevch.

COURT CLERK: Can you spell it, please.

THE INTERPRETER: R-y-b-o-l-o-v-l-e-v, Dmitry, D-m-i-t-r-y, and there's a patron (indecipherable), Yevgenevch, Y-e-v-g-e-n-e-v-c-h [sic]. I might be off on that.

THE COURT: Going forward, the questions will be directed to the witness and then you translate. I want to make sure that we're hearing the words from the witness.

DMITRY YEVGENYEVICH RYBOLOVLEV, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY SELDEN:

Q. Good morning, Dr. Rybolovlev. Could you please state your name for the record.

A. Dmitry Rybolovlev.

Q. Dr. Rybolovlev, where were you born?

A. The Soviet Union, the city of Perm, P-e-r-m.

Q. Where did you grow up, Dr. Rybolovlev?

A. Same place.
Q. Did you go to university?
A. Yes. I graduated from Perm Medical Institute.
Q. When did you graduate?
A. In 1990.
Q. Did you ever work in medicine?
A. Yes. I was working as a medic, as a male nurse, taking night shifts. All in all, about five years.
Q. Did you practice in medicine after graduating?
A. Yes. I practiced one year as an intern doctor.
Q. And why did you stop working as a doctor?
A. At that time the work of a doctor in the USSR was paid, to say the least, modestly. I was making at that time about 120 rubles a month, plus ten rubles for being an excellent student. At the same time I had no apartment -- I had family, I had no apartment, I had no means to support myself. Therefore I had to change my nature of activity.
Q. And what did you do next?

A. Me and my father opened a small enterprise providing medical services to industrial enterprises, to factories. At that point in whatever was called the Soviet Union, there was a process named "perestroyka," or restructuring, that would allow private enterprise activity, which is what we took advantage of.

Q. Did there come a time when you changed jobs again?

A. Yes. The thing is, back when I was a child, I happened to read a book that was pretty popular in the Soviet Union at the time. It was a book by Theodore Dreiser, *The Financier*.

Then I took an interest in it, and then at that time the market -- the stock markets in Russia started developing, and that pushed me towards going to study and taking one of the first -- be one of the first ones to take the certificate on the operations with shares, valuable papers.

Respectively, I was the first one to open an investment company in my region. At that moment in Russia they started the process of privatizing of the state-owned companies. So therefore I happened to be one of the ones who were

most prepared in my region for that kind of market.

The process of privatizing happened to have an auction that the government was selling the enterprise through various mechanisms to various private actors. The entire population was given some voucher that they could sell or they could exchange for shares of certain enterprises. Therefore I created a special investment fund and became an active participant in this kind of activity, privatizing.

At some point we accumulated about 20 enterprises under our ownership. Eventually they went down -- the number went down to seven. And furthermore, as a result of further sales and various acquisitions, I focused on two major enterprises. As a result, I happened to obtain a control package of one of them. That was a company Uralkali.

Q. Dr. Rybolovlev, could you spell Uralkali for the court reporter.

A. U-r-a-l-k-a-l-i.

Q. Dr. Rybolovlev, at some point did you obtain a controlling block Uralkali?

A. Yes.

Q. And what did you do then?

A. The thing is, it was a pretty big

enterprise of the Soviet style that had about 15,000 people working on it. Correspondingly, there has been a big -- large work done to restructure the enterprise and conducting various reforms to make it more in line with the western-style corporate leadership.

As a result, in 2007 we introduced the company to the London Stock Exchange. It was a successful step and at that time we managed to earn our first billion. Eventually in 2010 the company was sold.

Q. And how much did you receive for your stake in Uralkali when it was sold?

A. Around 5 billion.

ATTORNEY SELDEN: Your Honor, would now be a good time for a break?

THE COURT: We can break now. I will need about 20 minutes for the morning break because I have a ton of administrative things to do every break. Why don't we break now and resume in 20 minutes.

(Court in recess at 10:30 a.m.)

(Resuming at 10:50 a.m.)

THE COURT: Please be seated. Thank you.

Just a reminder, we'll break next at noon.

ATTORNEY SELDEN: Thank you, Your Honor. Shall I proceed?

BY ATTORNEY SELDEN:

Q. Dr. Rybolovlev, did three come a time when you left Russia?

A. In 1995 I moved my family to Switzerland and became a tax-paying resident of Switzerland myself. Although there was a lot of time I was still spending in Russia because we needed this time to take care of the enterprise. And when in 2010 the company was sold, I finally left Russia for good.

Q. The company that you're referring to is Uralkali?

A. Uralkali.

Q. What did you do professionally after you sold your interest in Uralkali?

A. Yes. I happened to have a medical education and I really love medicine and I really regret that I ended it so abruptly. I started taking

interest in being in Switzerland in biotech.

After sale of the Uralkali, I conducted several meetings with various fund managers in the U.S. in order to find an optimal way to invest in biotech industry. My idea was essentially to replicate the approach that I had in Russia. The idea was to have like a rolling investment in multiple companies with subsequent focusing of one or two of them in order to eventually create a family business.

The other possible way to do it would be to heavily invest in one company, but considering biotech being a pretty risky industry, that was a pretty risky venture in itself.

As a result of these meetings, I met Seth Harrison, which essentially liked the strategy. He happened to have small foundation; and as a result of our cooperation, we created this fund.

Q. And what's the name of that fund that you created with Dr. Harrison?

A. It was the Apple Tree fund, which essentially had the same name as the fund that Mr.-- Dr. Harris [sic] had. However, this time we took the commitment to invest about 1.5 billion.

Q. Dr. Rybolovlev, do you have other

investments besides the fund?

A. Yes. I generally like investing in technology. In the future, I believe there will be three major ways -- well, three major directions that humanity will benefit the most from, which is number one, health, the food, and entertainment.

Yeah. So this is as far as we go considering this foundation regarding the health or the health protection. We also made some investments in creation of cellular-based meat. I believe this will dramatically change the approach that humanity treats the nutrition stuff, because this is going to be an artificial meat, essentially, and this is going to be having absolutely no impact on the environment. And right now, as you know, the cattle farming is one of the biggest factors that impacts the environment. So we have this company in Oxford, and it develops pretty well.

The next direction is gaming, and there we have several investments. Also, we do have some realty investments as well as other portfolio investments.

Q. And, Dr. Rybolovlev, do you also own a football team, or a soccer team as we would say here?

A. Yeah. This is a part of the same approach we took regarding the entertainment industry. Yeah. We happen to have ownership of 66 percent of the soccer club Monaco. And like I said, this is another investment in the entertainment industry, in gaming.

Q. Dr. Rybolovlev, in addition to your investments, do you also like to keep significant cash on hand?

A. We do not like to keep a lot of liquidity on hand. I believe the money, whether it's cash, it has to work. So when it comes to dealing with liquidity, such as cash, we manage it pretty scrupulously. And I believe our liquidity's fine as far as our assets goes.

Q. Does that approach make it difficult to satisfy obligations to pay in cash when they arise?

A. In all my being in the business, we had no difficulties with that.

Q. And, Dr. Rybolovlev, do you understand Dr. Harrison alleges or APT alleges that the war in Ukraine changed your approach to investments beginning in February of 2022?

A. I don't agree.

Q. What impact, if any, did the Ukraine war have on your approach to investing?

A. No impact.

Q. Have you been the subject of any U.S. or EU sanctions since the start of the Ukraine war?

A. No.

Q. Do you invest in the U.S.?

A. The main investments just happen to be here in the U.S.

Q. Dr. Rybolovlev, let's talk about your investment in the fund that's at issue here, APT. How did you structure your investment in the fund?

A. So we happened to be in the position of LP, Dr. Harrison was GP, general partner.

Q. And the LPs that invest are the Rigmora Biotech Investor One and Two?

A. Yes.

Q. Have other LPs invested in the fund, to your knowledge?

A. It has been always our position that Dr. Harris would have the similar motivation in the interests of the company as us. This is why we decided to give him a small share as LP in terms of free credit line that we provided for him to get a

share.

Q. Dr. Rybolovlev, are you familiar with the term "capital commitments"?

A. Yes.

Q. What do you understand it to mean?

A. That's the number of commitments that companies of the trust took upon themselves to the fund.

Q. Did the Rigmora LPs make a capital commitment to the fund?

A. Yes.

Q. How much did the LPs initially commit to invest in the fund, if you know?

A. About 1.5 billion.

Q. Does that include the loan you mentioned to Dr. Harrison?

A. Yes.

Q. Do you recall how much that loan was?

A. About 75 million.

Q. Dr. Rybolovlev, when the LPs committed to invest $1.5 billion in the fund, was that paid in all at once, upfront?

A. No. Within the scope of the life of the founding fund.

Q. Did there come a time when the fund began making investments?

A. Somewhere in the area of 2013.

Q. When the fund started making investments, did you play any role?

A. Yes. Normally the way it happened is Dr. Harris would come one day with a proposal, briefly describe it, and name general number required for it.

Yeah. So normally, if we like the idea as a whole, we would approve it. And, further, there was a process of formalizing it and approving it at Rigmora.

Q. What was that process, if you know?

A. Yeah. Dr. Harris would provide a package that was required to Rigmora with numerous investment documents, such as milestones, et cetera, numerous documents, and, furthermore -- eventually Rigmora would study it and make decision.

Q. Was that formal process important to you?

A. Yes, of course.

Q. Are you familiar with the term "milestones"?

INTERPRETER: I'm sorry, Ma'am?

Q. You're familiar with the term "milestones"; right?

A. Yes.

Q. What do you understand that to mean?

A. That is a very important mechanism of control of the company's development. This is so-called timeline which is agreed upon both with founders and the management about the way the company's supposed to develop.

So if milestones, for whatever reason, are not achieved so there is some issue, that basically shows that the founders and managers didn't cope with the problem. Therefore, this requires further in-depth analysis in order to understand what exactly needs to be done, whether the milestone needs to be changed or the company has to be terminated.

Q. Were milestones something you considered when reviewing the investment proposals?

A. So definitely Rigmora was adhering to this mechanism. However, my level set was always telling me that the number -- the numbers that we utilized did not always go along with the outlined budget. For example, we can spend 1 or 3 billion -- million eventually to understand that a company does

not fulfill the obligations.

The adherence to the control points, which is what it is, is one of the major obligations of general partner.

Q. Do you consider biotech to be a high-risk investment?

A. Yeah, it's a high-risk investment.

Q. Why is that?

A. There's a very little number of companies that eventually reach success.

Q. Is it fair to say that milestones are important to your investments in the fund?

A. Yes, clearly. When you are not situated inside the company, it's very important for you to understand the mechanism that works as an investor.

Q. Dr. Rybolovlev, did there come a time when the LPs increased their capital commitment to the fund, to your knowledge?

A. Yes. About -- in about the middle of 2020, we decided to increase the commitment by 1 billion.

Q. Why?

A. So Dr. Harris came up with a proposal

to continue investment, and we liked this considering the fact that biotech investments we consider strategic investments. Based on this, we gave our approval.

Q. In 2020, after the LPs agreed to increase their commitment, what was their total capital commitment to the fund, if you know?

A. About 2.5 billion.

Q. Did there come a time when the LPs made another capital commitment to the fund?

A. No.

Q. Were you involved in an amendment to the fund's LPA regarding a company called Braeburn?

A. Essentially, no. That involves a lot of technical works, which I do not get involved much into.

Q. That was Amendment 20. Do you recall being involved in Amendment 20?

A. Yes. So we often discussed this with Dr. Harris, but Dr. Harris eventually proceeded to -- was the one who directly involved in the execution of this.

As far as Braeburn, he had pretty negative view of this, and, therefore, we decided to

separate it in a separate pool. And if time comes, we could reallocate this, but then Dr. Harris would lose his carry.

Q. Did you agree to commit more capital to the fund in connection with that amendment?

A. No.

ATTORNEY EPSTEIN: Objection.

THE COURT: What is the objection? You have to stand up and say it out loud.

ATTORNEY EPSTEIN: Foundation. He said that he wasn't involved in the direct.

THE COURT: So this is not a deposition. If you want to make an objection, stand up and make it. If you want me to resolve, I'll resolve it.

What is your response to the objection on foundation?

ATTORNEY SELDEN: My response to the objection is he has described his general understanding of what Amendment 20 does. At a high level, I'm asking for his general understanding of whether he agreed to commit more capital in response to Amendment 20. I think that's a fair question under the circumstances.

THE COURT: Overruled. Thank you. You can answer the question.

A. Can you repeat the question, please.

Q. I can. And maybe I can improve it and avoid the objection.

Dr. Rybolovlev, do you have an understanding of whether the LPs agreed to commit more capital to the fund in connection with Amendment 20?

A. No.

Q. Did you, yourself intend to agree to commit more capital to the fund in connection with Amendment 20?

A. No.

Q. Is it possible the LPs committed more capital to the fund without your knowledge?

A. No.

Q. Do you know how much the LPs have actually invested in the fund to date?

A. About 2.7 billion.

Q. Why, if you know, did the LPs invest more capital in the fund than the 2.5 billion you stated they committed?

A. Well, we consider it our investment and our assets, and we are interested -- taking

interest in developing those companies. Therefore we decided to increase our assets.

Q. Was the total amount of the LPs' capital commitment important to you?

A. Of course.

Q. Why is that?

A. It's very important for everyone to understand his own obligations.

Q. Did you ever discuss the total amount of the LPs' commitments to the fund with Dr. Harrison?

A. Yes.

Q. When was that?

THE INTERPRETER: 2023?

A. 2023.

Yes, it was 2023, and we clearly communicated to Dr. Harrison that we would prefer to stay in the range of 2.5 billion, which is basically the number of the general subscription to the fund.

Q. Was that in May of 2023?

A. About that.

Q. What were those conversations like?

A. He was pretty negative about it.

Q. Was that the only time that you discussed the limit on the LPs' capital commitment to

the fund?

A. No. Also we did it in fall of 2023.

Q. What were those discussions like?

A. Well, it was kind of pretty obvious that there might be some issues with the early-stage companies.

The fact of the matter is that when the decision about investment in these companies was being made, the market happened to be in a very high position. That happened as a result of COVID. There was a big, positive reaction in terms of development of medical sciences. Also, there was a large number of unqualified investors entering the market at that time, therefore. Therefore, even in preclinical studies companies had opportunity to syndicate a number of investors.

So, with that in mind, you also have to keep in mind the fact that the reserve -- the Federal Reserve rate is extremely important factor of this. And if the rate is low, the attraction is higher. So I could say there were two major factors in this. The first was COVID and the second was low interest rate that attracted so many investors at that time in preclinical studies.

As you know, eventually the rates went up and investors started giving up on risky assets. Well, correspondingly, the index that show the level of development, the level of technology companies went down, and eventually it became obvious that for the early-stage companies, for that early-stage companies, attracting more investments was becoming more and more difficult. This is one side. And the other side, the subscription, by the end of 2023 has to come to the end, has to finish.

So we made a deal with Dr. Harrison that he would make an attempt to sell the companies with early-stage. We were prepared for big discounts. And it happened that he didn't find anyone in a year and a half. So that means the market didn't accept it.

Q. Why were you willing or ready to sell at a big discount at that point in time, in the fall of 2023, some of the companies in the fund's portfolio?

A. Yes. The early stage.

Q. My question was why.

A. It was becoming obvious that at that stage of the market it would become more and more

difficult for them to attract outside investments and, correspondingly, making investment themselves. And this is one side. And the other side is our subscription was coming to the end.

Q. When you say "subscription," are you referring to the $2.5 billion capital commitment of the LPs to the fund?

A. Yes.

Q. Do you know how much of that $2.5 billion commitment had been drawn down by the fund at that point in the fall of 2023?

A. "Draw down," what did you mean by that?

Q. Do you know how much of that $2.5 billion in capital commitment had been called and invested by the fund at that point?

A. At what date?

Q. The fall of 2023.

A. I don't exactly remember. We were very much getting close to the end of it, but at the end of 2023, the commitment was up.

Q. Did you discuss with Dr. Harrison how close the fund was to exhausting the LPs' commitments?

A. Right. This is actually one of the

reasons we needed to sell the companies.

Q. How did your discussions with Dr. Harrison go?

A. Pretty tensely. Pretty tense.

Q. I'm sorry. I'm just having a hard time hearing. Pretty tense?

A. With tension.

Q. With tension.

Dr. Rybolovlev, was it around that time that you requested a distribution of a company called Braeburn?

A. Yes.

Q. What's Braeburn?

A. This is a company that develops a product that uses -- that is used in opioid dependency, addiction.

Yes. So at the point of conception the beauty of this company was the fact that it was utilizing the pretty well-known -- pretty well-known technique of fighting addiction. However, the general way of doing it happened to be through pills. We did it through injections. That would change a lot and allow us to eventually develop the company and hopefully attract more capital and make -- of the

company that it was considered a low risk at that time. With that capital we could invest into high-risk capital companies eventually.

However, we faced very unexpectedly another risk here. There was a regulatory risk where then several years, under very different pretext, the FDA did not approve the product as per results of the trials.

There was a point when Dr. Harrison was saying that it would be more frugal to just write this investment off.

It's not only based on our will that the company not only managed to survive, but eventually got approval from FDA. Correspondingly, in 2023 we decided to reallocate it.

Q. What happened when you requested distribution of Braeburn?

A. He refused.

Q. Then what happened?

A. So, considering by then we had a number of negotiations, we decided to keep it at least at the level of some more constructive part. As a result, we just decided to keep the legal rights for reallocation but decided not to proceed with that.

Q. Did there come a time when you were involved in litigation over Braeburn?

A. Yes. About the middle of 2024 we decide -- we requested again to reallocate. He refused again. So, correspondingly, we went to court.

Q. Is Dr. Rybolovlev saying "reallocate" or "distribution" of Braeburn? I believe there's an error in the translation.

A. Redistribution.

Q. So, Dr. Rybolovlev --

THE COURT: There is an objection. Why don't you state your objection, Counsel.

ATTORNEY EPSTEIN: My objection is I don't believe that Ms. Selden speaks Russian. So I am not understanding the objection in the transcription.

THE COURT: I think she knows what her client intended to testify because she's been working with him up until today. So it's a fair question to ask if the translation was accurate, given that it's probably inconsistent with what she knew him to say. So I'll allow it to proceed. Thank you.

ATTORNEY SELDEN: I have wished many times in the past three months that I did not drop Russian after my first semester of college.

BY ATTORNEY SELDEN:

Q. So, Dr. Rybolovlev, you were involved in litigation over Braeburn in 2024. Did that incident with Braeburn affect your confidence in Dr. Harrison?

A. Of course.

Q. In 2024, during this time, is that when Anna Kolonchina left Rigmora, do you know?

THE INTERPRETER: Anna Kolonchina --

ATTORNEY SELDEN: Left Rigmora.

A. Yes.

Q. Do you know why she left?

A. Yeah, she came and said that she burned out, she's tired and she needed a break.

Q. Did you want her to leave?

A. No.

ATTORNEY SELDEN: May I just ask the translator to speak into the microphone or speak up a little bit. You're very hard to hear from here.

Q. Dr. Rybolovlev, have you had any discussions with Dr. Harrison about further investment in the fund since December of 2024?

A. Yes.

Q. When was that?

A. Yes. It was at the end of 2024, beginning of '25 when we discussed the increase of the budget regarding several companies.

Q. Has Dr. Harrison submitted any new budget requests since December 2024, do you know?

A. Yes.

Q. What was Rigmora's response to the new budget request, if you know?

A. Yeah. Well, we -- of course we discussed it. Correspondingly, we requested that leaders of several companies would visit us in Monaco. For example, there was a discussion regarding the company Replicate budget increase.

Well, correspondingly, we approved the budget and paid a fraction of it, which is about 4 or 5 millions.

Q. And you understood that Mr. Bogdanov had some questions about Replicate; is that what you said?

A. Yes. At that point Dr. Bogdanov got our attention to the fact that unexpectedly the legal expenses of the foundation grew dramatically, abruptly. Correspondingly, he said that he has his suspicions that part of this money might be used in

the litigation on the Cayman Islands, Cayman process.

So, respectively, he requested more information. And Dr. Harrison provided a very emotional response to that. That was in Monaco when we were meeting there in January.

Correspondingly, as a result of this conversation, this budget was decreased by 250,000. But we never received that information. All of that was in parallel time-wise and with discussion of the Replicate budget. So correspondingly, we had a question whether everything that we see is accurate and right. Correspondingly, Mr. Bogdanov requested more additional information about Replicate, for example, the transcripts of the CEO conferences. The transcripts of the council of directors.

ATTORNEY SELDEN: Do you mean board minutes?

THE INTERPRETER: Board of directors.

A. And prospectively, Dr. Harrison also reacted very negatively to that. So I asked him, why is that? All the more reason is whatever Mr. Bogdanov is requesting is part of our agreement. He said yes. And then I go, what is the problem, then? So for me, it really looked very weird. If you, for example,

invest 50, $100 million in the company and somebody refuses to produce you the transcripts from the board of directors meeting, that is strange.

So as you understand, after these discussions, we had a pretty good understanding that we need a more detailed investigation with this matter.

Q. Did Dr. Harrison's reaction to these information requests affect your approach to his budget proposals going forward?

A. Only from that particular point of view that we really need to provide a very more thorough analysis of things.

Q. From that point in time, did you believe you needed to ask for more information?

A. Yes.

Q. And why was that?

A. The fact of the matter is that this discussion about a simple request of producing like a pretty simple information being refused really affected the confidence.

Q. Did there come a time when you met with anyone from the portfolio company?

A. Yes, we were meeting with the CEO of

Replicate, Aulos, and Maria [sic].

Q. Marengo?

A. Marengo.

Q. What, if anything, did you learn from those meetings?

A. It depends on the company. If you look at the -- each company needs to be looked at individually. For example, in the case of Aulos, they got in the pretty complicated situation because due to the management error, the entire -- the clinical trials would have to be repeated. Although the results were seemingly fine, they, in reality, could not be used. However, we still expressed our readiness in further financing.

As far as company Marengo, everything as a whole was good.

Q. During that period of time, were you still considering budgets that Dr. Harrison brought you?

A. Yes.

Q. Why were you still considering budgets from Dr. Harrison, given what you've told us about your loss of confidence?

A. Well, this is our investment. This is

our money. And we are basically the first people interested in their good development.

Q. Was there a time when you discussed with Dr. Harrison reallocating budgets within the portfolio of companies?

A. Yes. About May, beginning of May, Dr. Harris suggested that we reallocate the assets, the funds from the early development companies to the well-developed companies. And as far as early development companies, some of them would stay while the other one may well liquidate.

Q. What did you understand the next steps to be with respect to that reallocation proposal?

A. So we approved this approach. As a matter of fact, we were pretty happy to see that finally Dr. Harris moved in this direction.

THE COURT: So need to take an hour now or an hour and a half. We'll resume at 1:30. Thank you.

(Lunch recess taken at 12:00 p.m.)

(Resumed at 1:42 p.m.)

THE COURT: Thank you. Please be seated.

Mr. Rohrbacher.

ATTORNEY ROHRBACHER: Blake Rohrbacher, Your Honor. Two brief housekeeping matters. After Dr. Rybolovlev is done, the defendants will be playing a series of clips of video designations with counterdesignations from the other side. Including those video clips, we calculate that the other side has about 47 minutes left or less. And so we hope it won't become an issue, but I just wanted to raise it in case it does.

THE COURT: All right. Look, I shouldn't do this, but if I need to watch the clips elsewhere, I can. I prefer to take in testimony all at once in court so you all are conscious of my own personal time. You've been exceptionally accommodating of me, so I'm willing to do that.

ATTORNEY ROHRBACHER: There are clips. We are hoping to play them here live as part of our case in chief. So that is -- and we've made cuts elsewhere to make sure that we have the time to do them.

THE COURT: Great. Let's hope that works.

Shall we continue?

ATTORNEY SELDEN: Thank you, Your Honor.

BY ATTORNEY SELDEN:

Q. Good afternoon, Dr. Rybolovlev.

Before lunch I had asked you about a reallocation proposal made by Dr. Harrison in May of this year.

Do you remember that?

A. Yes.

Q. You were happy with that proposal?

A. Yes.

Q. What did it propose to do?

A. It was proposed that the early-stage companies would be partly liquidated or consolidated. Correspondingly, we would need to investigate also what is the value of IP that can be actually stayed in, and most of what it is could be -- the money could be directed towards the companies with the clinical research.

Q. What does it mean to consolidate the early-stage companies, if you know?

A. I didn't understand the question.

Q. What did you understand the proposal to do with respect to consolidation of the early-stage companies?

A. So most of it I implied by decreasing of expenses for the companies of the early stage. That would essentially lead to breaching the various agreements, breaching the agreement of rent. That would essentially lead to firings or dismissal of personnel.

And among those -- the ways that were remaining in the companies, we would choose the most prospective one, the most promising one, and keep it; whereas, the money that would be -- that we would have after these changes would be directed to the bigger companies with the clinical-stage research.

Q. And why were you happy with that proposal to consolidate the early-stage companies?

A. That was the right decision, and that was something we'd been discussing for a long time before that.

Q. Did you reach an agreement on a reallocation plan with Dr. Harrison?

A. Yes. We had a video phone call during

which he was convincing us that was the right thing to do. Accordingly, I agreed, and from that point we discussed that him and Yuri Bogdanov would proceed to the technical part of it.

Q. And do you know what came of those discussions between Dr. Harrison and Mr. Bogdanov?

A. Essentially, it turns out that Dr. Harrison wanted complete control of all the sums of money, which essentially would deprive of us of any right of LP.

Whereas, the way it was perceived by Yuri Bogdanov was different. That was in line more like first you go through the liquidation of the early-stage companies, and then you proceed with budgeting of the clinical research companies.

Q. Were you ultimately able to reach agreement on a final reallocation plan with Dr. Harrison?

A. No. I believe eventually they could not come to an agreement, and there came a point where we ended up in court.

Q. Do you know why you were unable to reach agreement on the reallocation plan?

A. I gave it a lot of thought, and it

looks to me that for Dr. Harrison power and control is more important than effectiveness.

Q. Did you have confidence in Dr. Harrison at that point?

A. Clearly, the trust was undermined. However, until the very last moment, we kept trying to preserve constructive dialogue.

Q. Dr. Rybolovlev, switching gears for a moment. Was there ever a time before the complaint was filed when you decided that the LPs would not satisfy any more capital calls from the fund?

A. No.

Q. Had the LPs, to your knowledge, ever failed to pay a capital call before this litigation was initiated?

A. No.

Q. Was there ever a time when you thought that the LPs would be unable to pay a capital call when it came?

A. No.

Q. How do you think about investing in the portfolio companies now?

A. Again, I continue investing in the portfolio companies because we consider them our

companies and our investments; and, of course, we would like for them to keep developing further. But it's very important that among those companies were the companies that have clear chance to reach success.

Clearly, for us as investors, writing off some assets is a very painful process because we're talking about the money that had been invested but never get back. When we take something -- a decision like this, we take it through pain, but sometimes it has to be done so that the good money would not follow the bad ones.

Q. Dr. Rybolovlev, how do you think about investing with Dr. Harrison in the future?

A. I believe that trust in Dr. Harrison is irreparably undermined, and I don't see how he could possibly manage the money of our family trust.

ATTORNEY SELDEN: Thank you, Dr. Rybolovlev. I pass the witness.

CROSS-EXAMINATION

BY ATTORNEY EPSTEIN:

Q. Good afternoon, Dr. Rybolovlev. It's good to see you again.

A. Good afternoon.

Q. So am I correct that throughout this

entire examination that we went through this morning, your counsel did not show you a single, contemporaneous document from you backing up anything; correct?

A. There were no documents.

Q. And you don't really use email; correct?

A. No, I don't.

Q. And you primarily communicated with Mr. Bogdanov via Signal; correct?

A. Signal and WhatsApp.

Q. And you did not change your settings on Signal or WhatsApp to retain messages until about May 30 when this suit was filed; correct?

A. I didn't quite understand the question. What is retention of messages?

Q. Do you understand that Signal messages disappear after a certain amount of time?

THE INTERPRETER: Yeah. "Retention" was interpreted differently. I apologize. Backing up or saving messages basically?

ATTORNEY EPSTEIN: Is what I meant by retention, yes.

A. No, I haven't changed it.

Q. So you have not changed your settings to retain messages?

A. No.

Q. So I believe you said earlier that biotechnology investing can be risky; correct?

A. Yes.

Q. And you appreciated those risks when you decided to go into business with Dr. Harrison; right?

A. Not completely.

Q. Well, fair to say that 15 years later you now appreciate those risks even more?

A. Yes.

Q. And you would agree that biotech, and drug discovery in particular, is a capital-intensive business; right?

A. Yes and no, depending on circumstances.

Q. But in any event, one of the things that you like about biotech investing is when a drug does reach market, it does bring massive profit; right?

A. Yes, but besides that, also we use to help of people.

Q. I think you said those were one of the three things you were interested in investing in along with food and entertainment; right?

A. I believe that the more we know about the biology of the human body, it's not only going to help us, but change our civilization overall.

Q. So you understand that preclinical companies are riskier than clinical companies; right?

A. Yes.

Q. And in your view in the current market in 2025, you believe it's very, very difficult to track funding at the preclinical stage; right?

A. Somewhere in the year of 2022 I believe there is an index that could provide you a very good picture of what's actually happening. So that index will reflect that there was a peak somewhere between 2020, 2021, after which the fall started, and the fall went consistently through 2022, 2023 and '24. And it's been only one, maybe two months since we've been observing some positive changes, that is, the market started correcting itself, and we believe that this is going to help us, all of our technology companies, biotechnology companies.

ATTORNEY EPSTEIN: Could you put up 74, 9 through 11, Marco. The question too, please. It was another long answer.

Q. So you were asked, "And to the best of your recollection, did Rigmora approve, at least preliminarily, a merger of Nereid into Marlinspike?"

Do you see that?

THE INTERPRETER: Counsel, could you repeat that.

Q. "To the best of your recollection, did Rigmora approve, at least preliminarily, a merger of Nereid into Marlinspike?"

Do you see that?

I'm sorry. Maybe my question didn't get translated. My question was simply, does he see that statement.

A. That's what I was going to answer you. Overall the answer is yes, but there's some nuances.

Q. I'm going to stop you again.

THE COURT: Let's pause for a moment. You're trying to impeach the witness; is that correct? So, in trial, if you say something that's inconsistent with something you've said before, then the attorney who's asking you questions is going to show you what

you said before, and the attorney will say something like "did I ask that question and did you give that answer?" When they do that, they're not reasking the question on the page. They're just showing it to you. Your attorney will have the opportunity to say why what they showed you does or doesn't matter. Does that make sense?

THE WITNESS: Yes.

ATTORNEY SELDEN: Your Honor, might I just add one other point, which is that Dr. Rybolovlev doesn't read English.

THE COURT: I'm aware, which is why I understand it was confusing.

ATTORNEY SELDEN: Thank you so much.

THE WITNESS: There is two answers to that question. One of them is short and one of them is comprehensive. This is why when I answered I answered yes, but with nuances.

THE COURT: So you might want to impeach the witness using video clips if you have them or speaking the words into the record.

BY ATTORNEY EPSTEIN:

Q. So you recall that just now I had asked you whether or not in your view it was very,

very difficult to attract funding at the preclinical stage in 2025. You recall I just asked you that; yes?

A. What is the question exactly?

ATTORNEY EPSTEIN: Could I have it read back?

ATTORNEY SELDEN: May I suggest we take down the exhibit to lessen the confusion?

THE COURT: That's really up to the examining attorney.

ATTORNEY EPSTEIN: We can go ahead and take down the exhibit.

Would you read the question back, please.

(Record read as requested.)

A. Yes.

Q. And now if we could bring up 74, 9 through 11.

Do you recall that at your deposition you testified that "[I]n this market in 2025, it is very, very difficult to attract funding at this stage, for this stage."

A. What's the question?

THE COURT: Do you remember saying that during your deposition?

THE WITNESS: Yes.

ATTORNEY EPSTEIN: You can take that down, Marco. Thank you.

Q. That was a change from 2020 or 2021 when companies were more easily able to syndicate at the preclinical stage; correct?

A. Counsel, when you say "syndicate," what exactly do you mean?

ATTORNEY EPSTEIN: Could we bring up page 73, 11 to 25.

Q. Do you recall at your deposition testifying that you expressed a mistake that "because it was a situation in the market, that was 2020/[20]21, when biotech stock grew substantially against the background of the Covid epidemic, [] a lot of nonqualified investors moved in" --

A. Yes.

Q. -- "so suddenly the sector had much more money in [it]."

A. Yes.

Q. And "At this point [in] time, companies were able to syndicate at a preclinical stage. But this period was [very] short, but Seth and the team seemed to believe that that's how it [was]

going to be from now on."

THE COURT: He needs time to translate.

ATTORNEY EPSTEIN: Of course.

A. Yes.

Q. And so at least at the time of your deposition, it was your view that it is more difficult to syndicate preclinical companies in 2025 --

A. Yes.

Q. -- than it was in 2020 or 2021; correct?

A. It was much easier.

Q. In 2020 or 2021?

A. 21st.

Q. There's nothing that you're aware of in your agreements with Dr. Harrison that conditions funding the portfolio companies on the ability to syndicate; right?

A. I didn't understand the question.

Q. You understand that your -- Rigmora's relationship with Apple Tree Partners and the general partner are governed by contract?

THE COURT: I think the last question is do you understand that Rigmora's relationship with

Apple Tree Partners and the general partner are governed by contract?

What was the response?

THE INTERPRETER: The answer was yes.

THE COURT: Next question.

Q. Are you aware of anything in those contracts that conditions Rigmora's obligation to fund portfolio companies on the ability to syndicate those companies?

A. Limit Rigmora's capabilities to syndicate, is that the question?

Q. No. The question is, do you know of anything in the agreements that says that Rigmora does not need to fund the portfolio company if the syndication market changes?

A. I don't remember.

Q. So as you sit here today, you're not aware of anything; correct?

A. The thing is, I do not get involved in the technical part of document -- documents. The fact of the matter is I vocalize the main directions we need to go, and from that point various attorneys and other specialists get involved. I do not participate in that process.

Q. So you're not involved in the details?

A. No.

Q. And as you sit here today, you're not aware of anything in the agreement that says that Rigmora can stop funding portfolio companies if market conditions change; correct?

A. The fund would syndicate the companies, right. It's not Rigmora that syndicates the companies.

Q. Let me try this question again. Are you, Dr. Rybolovlev, as you sit here today, aware of any provision in the contracts between Rigmora and Apple Tree Partners that says that Rigmora may stop funding approved budgets for portfolio companies if the syndication market changes?

A. I don't remember anything like that.

Q. So do you recall earlier you were talking about wanting your cash to work for you?

A. Right. The money doesn't have to lie in one place; it has to work.

Q. You don't really like it when your cash is just held in an account; right?

A. I just do not like it when the money do not work.

Q. In fact, as a general approach, you did not want large balances held in the companies that you invest in; right?

A. Right. It's just money sitting there.

Q. In fact, in your view, if a company has a cash reserve for more than six months, it's just lying there while it could be doing work; right?

A. Overall, yes, but it depends on various situations.

ATTORNEY EPSTEIN: Could we have 48 -- excuse me, it's 49.

Q. Do you recall that at your deposition you were asked, "Can you tell me what you mean when you say, 'And, therefore, it wouldn't be right for us if there were significant balances in the companies, in biotech companies'?"

A. Yes.

Q. And you were asked, "What [do] you mean by that"?

Do you recall that?

A. Yes.

Q. And you answered, "Well, a company has spare cash for a quarter, had for a year, two years, three years, and accordingly, the cash reserve is for

more than six months, it's just lying there while it could be working."

Do you recall testifying to that?

A. Yes.

Q. And you believe -- withdrawn.

Dr. Harrison has told you before that, in his view, a just-in-time approach is not a path to success for biotech companies; correct?

A. Yeah. We periodically discussed this subject as to what remainder the company should have on their accounts.

Q. And you understood that Dr. Harrison's view was that a just-in-time approach to funding did not work for biotech companies?

A. The thing is that in the biotech the companies syndicated much earlier. Therefore, the model that was used in our fund when the LPs -- the only investor of the LP is LP fund.

ATTORNEY EPSTEIN: I'm going to move to strike that.

THE INTERPRETER: One second. Can I -- can he repeat the answer?

A. For a long time we have been the only investor in the fund, which is LP. And then, if

that's the case, then it works very normally. So when the company syndicates on an earlier stage, therefore it gets the money and the money is on the company's account. This is what happens.

THE COURT: I'm going to ask -- this time will count against them.

ATTORNEY EPSTEIN: Thank you.

A. So while we don't have the syndication yet, we finance it as budget organization. And I believe six months' worth of money is fine for normal functioning of the company.

For example, we did have a situation when the company needed more money to resolve the issue on the business development, for example. When we saw that there was a sufficient amount of money left on the company's account, we always would transfer sufficient amount of money to complete that task.

ATTORNEY SELDEN: Your Honor, I would just note that I believe, via the translation, it appeared that Dr. Rybolovlev is being asked for his understanding and not for a yes/no question. I understand that time will count against us, and I just want to acknowledge that but flag that translation

issue.

THE COURT: So that is five minutes against the clock on the other side.

ATTORNEY EPSTEIN: I'd like to move to strike that as nonresponsive, understanding that it was a translation error. So let's move on.

THE COURT: We have an objection.

ATTORNEY SELDEN: I'm sorry. I just wasn't sure if you were going to strike that as nonresponsive. I have not been noting translation errors as they go --

THE COURT: Yes. So the motion to strike was on the grounds that it was nonresponsive, which it was, although it was due to a translation error. So I'm striking it and I'm counting the time against you all, and we're going to move forward.

ATTORNEY SELDEN: Thank you, Your Honor. I'm trying not to raise translation issues as we go, but -- okay.

ATTORNEY EPSTEIN: I unfortunately don't speak Russian, or we'd be moving more quickly.

THE COURT: Not for me.

BY ATTORNEY EPSTEIN:

Q. So moving on, do you recall testifying

earlier at some length about the importance of milestones and investment memoranda and a formal process for budget approval?

A. Yes.

Q. But do you recall that at your deposition you testified that your normal process was for Dr. Harrison to come over and present one or two of the investments or the companies, and since it's difficult to work out the science and you trusted Dr. Harrison, you would agree with the proposal?

Do you recall that?

A. Overall, yes.

Q. And you testified just a few minutes ago that you don't get involved in the technical details; correct?

A. Yes.

Q. And you recall that you testified at your deposition that once you agreed with a proposal from Dr. Harrison, the further details of the budget and approvals by trustees was done by Anna Kolonchina.

Do you recall that?

A. Yes.

Q. And you testified at your deposition that you do not know the details of the budgeting

process; correct?

A. Yes.

Q. Do you recall testifying earlier about Rigmora's capital commitments to Apple Tree Partners being capped at $2.5 billion?

A. Yes.

Q. And do you recall testifying that, in your view, Amendment No. 20 did not change the amount of Rigmora's capital commitments to Apple Tree Partners?

A. Make changes? Could you repeat it?

Q. Rigmora's original investment to Apple Tree Partners -- how much capital -- I'll withdraw.

How much capital do you believe that Rigmora has committed to Apple Tree Partners?

A. 2.5.

Q. And are you aware that Amendment 20 was signed on June 21, 2021?

A. I don't remember.

Q. I'll represent to you that it was for purposes of this next question. Okay?

A. Sure.

Q. I should correct the record. It's dated June 21 of 2021.

So could we have JX 0230.

If you look at -- you'll recognize, if you look at the screen, the name Anna Batarina; correct?

A. Yes.

Q. And I'll go ahead and read it to you and have it translated since I know you can't read it. It was sent on June 24 of 2021, and it was sent to Anna Kolonchina.

You would agree with me that June 24 of 2021 is later than June 21, 2021; correct?

A. Probably, yes.

Q. Last we checked.

And in the email it says, "Please see attached the capital call notice for [] $2,000,000 Braeburn follow-on as well as the ATLS Fee, Incubation expenses, and the initial amounts for the IGI agreement."

Do you see that?

I understand you can't read it. So I'll represent to you again that that is -- what I've read into the record is what I see on the screen.

So am I correct that you've never seen this email before?

A. Yes.

ATTORNEY EPSTEIN: Can we go to page 4, Marco.

Q. So Dr. Rybolovlev, have you ever seen this chart before?

A. It's hard for me to look at it without external attributes like who prepared it, et cetera. When the chart has too many numbers, I really don't look at it.

Q. So you don't look at charts with too many numbers?

A. Right. I could have seen it as a part of some documents. I cannot just tell you I've seen it just looking by itself.

Q. Sitting here today, do you recall ever seeing a chart that says in Pool V-1 and V-2 as of June of 2021 --

THE INTERPRETER: From June -- I'm sorry.

Q. -- as of June 24, 2021, that there was roughly $940 million left to call for Pools V-1 and V-2? Do you recall ever seeing a chart that says that.

A. I don't remember.

Q. And do you recall ever seeing a chart that says as of June 24 of 2021, there was $310 million left to call in Pool V-3?

A. I don't remember.

Q. So then I take it you also don't remember ever seeing a chart as of June 24, 2021 that said in Pool IV, which was the original investment pool, there was $20 million left to call; correct?

A. I don't remember.

ATTORNEY EPSTEIN: Pass the witness.

ATTORNEY SELDEN: We have no redirect, Your Honor.

THE COURT: Doctor, you can step down.

(Witness excused.)

ATTORNEY BORN: Your Honor, we would call our next witness, Dr. Ehlers, by video.

Dr. Ehlers joined the fund as a venture partner and chief scientific officer in 2019. Dr. Ehlers founded or co-founded four of the fund's portfolio companies and served as board member of several others. Dr. Ehlers left the fund in November 2024, but remains the CEO of Ascidian and continues to serve as a board member of Aulos and Replicate. Dr. Ehlers has declined to testify in person today.

The video of his deposition testimony reflects plaintiff's inclusions. Defendants have designated 18 minutes of testimony, and plaintiff has designated 8 minutes.

THE COURT: Is it in sequence where it's defendants and then plaintiff, or is it all mixed in?

ATTORNEY BORN: We've prepared two versions in case this situation occurred. So we can play it with just ours.

THE COURT: I think it would be helpful to have it mixed in so I actually understand why they're cross-designating what they're cross-designating. We still are going to break in 15 minutes. So let's start it and then we'll take a break.

ATTORNEY BORN: I'm just reading the agreed language. The video contains Dr. Ehlers' testimony concerning the fund's investment in and management of certain of its portfolio companies. We agreed to do it sequentially. So that was the agreed-upon language.

We also overnight prepared a short additional clip of a minute and half of testimony by

Dr. Ehlers that rebuts Dr. Harrison's testimony about the global default charge. We can just play that at the end while we're watching his video or we can do it at the very end of trial, whatever works best for you.

THE COURT: Whatever.

ATTORNEY BORN: Okay.

MICHAEL EHLERS, was examined and testified via video as follows:

Question: So you said a little bit ago that you've now become more aware of what the potential structure and approval process would be. What's your understanding of when the Rigmora LPs are required to contribute additional capital to ATP?

Answer: And probably this is a dramatic oversimplification, it may not be completely correct, because I will freely admit to having, at best, partial information, but I'd say my understanding at this point is that there's budgets that are submitted and reviewed by the LPs. And then kind of based on those -- and for each of these deals there was kind of an initial agreed here's what the Series A financing is and that that commitment through that Series A financing was a commitment that was sort of locked -- like a boxed-in commitment to the given

deal or the given portfolio company where, within that box, tranches of capital could be released upon request based on milestones and other things, that budgets would then get reviewed.

And that over time, I think -- when I say that I became aware of it, because that was all very smooth early on, and then later as, I would say, biotech markets went to hell in a handbasket and it was pretty clear that to be able to get to syndicated financing or pharma deals or other things it was requiring later and later-stage data to the point of clinical data. And, of course, to get to clinical data requires a larger investment in that.

So while some of these deals were reaching their outer end of that initially agreed amount, then it became a different process, right. That's when I say I became more aware. Like with Intergalactic, because it was a very complicated technology, it ended up requiring more money than we'd anticipated going in and some things didn't work. We ended up being through that agreed-upon funding at a point where we had, I'd say, strong in vivo data and proof of concept, but then to get to clinical data was going to be beyond that and that required a different

set of requests. This is this kind of micro tranche sort of thing.

And something similar was kind of experienced at Ascidian where, again, there was an initial agreed-upon amount, and, for that matter, both Aulos and Replicate. In all these cases I was close to, it was a very, I'd say, straightforward process when it was within that initially agreed-upon amount. And as it got beyond that and there was a need to finance or fund further, that that became sort of a series of one-off, you know, mini budgets, mini discussions that just went through ATP.

And that's when -- that's when I say I became more clear about that being a constraint, that it was easier when it was within the initially approved amount and then beyond that everything was a discussion.

Question: When you said "the biotech markets went to hell in a handbasket," when was that?

Answer: Well, when was the -- I mean, the peak of it all -- I'd say the positive peak was, what, early '21? So I'd say we left '21 and into '22 and '23 and '24 and now '25. You know, it really started becoming more challenging. I think this got

particularly notable in '22 on into '23, and it's really continued to today. I mean, this is a well-known phenomenon at this point.

Question: And do you recall whether Ascidian needed to meet certain milestones in order to be entitled to receive the next tranche of Series A funding?

Answer: Yes, that was the general structure.

Question: So you say, "I've updated the milestones in Series A tranches for both Ascidian and Intergalactic as indicated in the attached. Seth gave excellent advice on making the tranche milestones more specifically value-creating data points."

Do you see that?

Answer: Yes.

Question: And why is it key to have the milestones be something that somebody else from the outside looking in can recognize as a value-add?

Answer: It's important for a few things. One is that a tranche financing, I think, de-risks an investment for the investor rather than putting something in as a lump sum, if you will, and that it also focuses the company, management and the

company, on the things that really matter in terms of value as defined by the investors. And I think that's super helpful because when you're running an organization, it's very easy to just sort of run things and do the standard stuff. It's very helpful to have those focused targeted goals that really kind of move the needle and that you're doing that in the most capital-efficient way possible because those dollars in need to be sort of reflected, ideally, in value that's more than the dollars that have gone in, to some extent.

And that's -- of course, value is a vague thing; right? It's kind of whatever anyone else will look at and ascribe to it, but that's the way I think about it.

Question: You mentioned that tranche financing de-risks an investment for the investor; is that right?

Answer: Yes.

Question: How so?

Answer: It provides kind of waypoints through the course of, you know, maybe a larger investment that ensures that there are key goals and key advances made before additional money goes in and

that there's visibility into that.

Question: And you -- you referred to tranche financing. What is that?

Answer: It's taking an amount, an overall amount, say, of a Series A raise and dividing it up into segments.

Question: And is part of tranche financing that each segment of funding is released only upon the achievement of a milestone?

Answer: I would say that is typical. It might not be only, but it's usually kind of guided by -- it's usually automatically triggered by that. And then usually there's some degree to which boards or investors can make judgment calls around it.

Question: And did you expect that Dmitry would be interested in understanding what the milestones -- the tranche milestones were?

Answer: Yes.

Question: Why was that your expectation?

Answer: Well, it was his money that was being invested. So I would expect that he was interested to know what the plan was for this new investment.

Question: And did you expect that he would want to evaluate the fund's investment in Ascidian by reference to those milestones?

Answer: I would imagine so, yes. You know, I think it was -- I mean, my impression from this during that time would have been that this was a required element to approve what the plan would be.

Question: Do you recall how much the Series A funding for Ascidian from ATP was?

Answer: Oh, I believe it was 50 million. It might be a little bit more than that, but I believe it was 50 million. That got expanded over time to the point where, you know, there was a Series A extension. There was a bit more where I think now 90 million overall has gone in, but the original Series A I believe was 50 million.

Q. So I think you said that it was your understanding that Ascidian needed to meet the specified milestones in order to receive the tranches of Series A funding; is that right?

Answer: What I would say is that my understanding for the reason I'm putting these together, Ascidian and beyond Ascidian, was to take whatever the Series A financing was and say we need

this tempo of financing to go in in these tranches, and those tranches will essentially buy you or allow us to fund to this particular milestone. And that that's kind of the plan and that as we go along and achieve these, of course, provide those updates and then seek release of additional tranches of funding.

And, again, I think back to why this de-risks is that, you know, if you're advancing through a company and you realize early on that your core idea is just flawed or doesn't work, then you've not put in the totality of the money to begin with. So it's figuring out step by step what aspects -- is this technology really working, how is it working, et cetera, you know, in a measured way. And that's exactly what we did at Ascidian.

Question: And you may not have had any understanding of this at all. So I'm just going to start by asking you whether you had any understanding. And I've been asking you about what Ascidian needed to do to get the funding from ATP, but did you have any understanding as to whether ATP could call more capital from the Rigmora LPs if Ascidian didn't meet the milestones?

Answer: I think my assumption was

that they could.

Question: What was that assumption based on?

Answer: No information to the contrary, I guess I would say. So, I mean, it was -- I knew that there was a certain commitment, but also I think a selling point for ATP in the model was that as sole owner and investor in a company, there was a lot of flexibility in how investing would occur and that this was a core strategic advantage of ATP relative to, I'd say, a typical syndicated investment where you've got multiple investors, all of which have to agree on things and for which there's much less flexibility in that regard.

That was probably the basis for my assumption on that because I think one of the selling points -- certainly the way I would sell to founders, like why -- why work with us as an investor as opposed to some other investors, I'd say a selling point to founders that I would provide is that, one, you know, there's kind of a full Series A commitment that would go in as opposed to like a seed and do that; and second is you don't have to corral a bunch of VCs to kind of agree and you can focus on execution only. So

those would be selling points.

Again, there are advantages and disadvantages of the kind of model. So I think, you know, based on those as being -- a little bit of the selling points of ATP is probably the origins of an assumption that there would be -- that there was flexibility in exactly how, if needed, there would be additional investment.

And to some extent that ended up being true, right, because Ascidian, at least this -- you know, we went beyond the original Series A investment, you know, as it became clear that things were working to a point, but, you know, we didn't have syndicated financing. And to be able to finance the sort of next things we would need additional capital, and that was -- that was agreed upon. So I think that ended up being basically a correct assumption, at least in this regard.

THE COURT: We'll take 15 minutes.

(Court in recess at 3:00 p.m.)

(Resuming at 3:15 p.m.)

THE COURT: Thank you. I probably don't need to say this, but please remember to tell our court staff, including our court reporters, what an awesome job they do.

Let's continue. Mr. Barlow, you have some housekeeping matters, I understand.

ATTORNEY BARLOW: Your Honor, you proposed shortly before the last break that the video might be watched later. If that is the case, we would propose that the video from Mr. Engels be watched later. If that would apply only to our video of Mr. Engels so that we could present more time in trial testimony, we'd certainly be okay with that, and we would prefer to proceed in that way and use the time for trial testimony rather than video.

THE COURT: All right. So right now we're watching Mr. Ehlers. Am I saying that right?

ATTORNEY BARLOW: We understand that that's underway.

THE COURT: Mr. Engels, how long is that deposition or that testimony?

ATTORNEY BARLOW: Our portion of it is 15 minutes.

MALE SPEAKER: 10.

THE COURT: 10. Okay. And then I understand Mr. Finkelstein was also going to be called by deposition?

ATTORNEY BARLOW: We have already withdrawn all of Mr. Finkelman's --

THE COURT: Finkelman. I'm sorry.

ATTORNEY BARLOW: -- deposition testimony for us.

THE COURT: Correct, but you all wanted to show Mr. Finkelman's?

ATTORNEY SELDEN: Yes. We have eight minutes of deposition testimony for Mr. Finkelman for which we would seal the courtroom.

THE COURT: I can watch that at my desk too, rather than seal the courtroom. It'd be a more convenient way.

So if what you need is more time in court to present live witnesses, I will grant whatever accommodation you need to make that happen. I'm also willing to watch whatever you want me to watch back at my desk, provided it's no longer than what it was just represented.

ATTORNEY BARLOW: Understood, Your

Honor.

THE COURT: So let's finish this witness and go to whatever's next.

(The video was resumed.)

Question: Does this refresh your recollection at all as to whether Ascidian achieved these initial milestones?

Answer: As I look at this, I do recognize these and I would say that we've achieved all those. I don't know if they were exactly at the time points where the milestones are indicated, but I would -- I would say that Ascidian has achieved all those milestones.

Question: And Ascidian, upon its achievement of these five milestones, received the tranches of Series A funding that were tied to these milestones?

Answer: Yes, more or less, I'd say. So we definitely received those tranches and we achieved the milestones.

Question: You referred to there being discussion as to how much runway Ascidian would have with and without the 6 million; is that right?

Answer: Yes.

Question: How much runway -- you know, as of these discussions in sometime around May of 2025, how much runway did Ascidian have without the 6 million?

Answer: Oh, maybe a yearish.

Question: And how much runway would Ascidian have with the 6 million?

Answer: It'd add- -- and, again, it's a yearish based on kind of mile- -- you know, risk-adjusted milestones. I think it's -- Dan Rosan will probably correct me. So on all these things give it a plus or minus, but we -- that would add about two quarters.

Question: Do you have an understanding of how much runway Aulos has at present?

Answer: Oh, I'm going -- the Series B was to fund inclusion of these expansion cohorts. So I think that's going to take until roughly the middle of next year. Roughly.

Question: Okay. So as of today, Aulos has significant -- sufficient cash to get through the middle of 2026?

Answer: I believe that's correct. It was really structured in a way to get through these

expansion cohorts, and I think that's how long it's going to -- that's how long it's going take. I could be off by a bit, but it's roughly that.

It might be more in the third quarter or something.

Question: Looking at the top of the next page at 11:30 p.m. you say, "Craziness. No drug in sight."

Do you see that?

Answer: Yes.

Question: Were you referring to Nereid?

Answer: No. I believe I was referring -- because I think our texts were crossing.

Question: Yeah.

Answer: And I think I was referring to this Marlinspike expansion in headcount and of funding the remaining 35 million.

Question: And so, in your view, it was crazy to fund the remaining 35 million when there was no drug in sight?

Answer: That's what I stated, yes.

Question: And so you say, "It does not seem like optimal capital allocation given where

we are at and reallocation is clearly in DR's best interest for ROI."

Does "DR" mean Dmitry Rybolovlev here?

Answer: It does.

Question: And "ROI" means return on investment?

Answer: It does.

Question: So your review was that reallocating capital away from the six early-stage companies would produce a better ROI?

Answer: I would -- I would put it that ensuring capital allocation to our late-stage programs, wherever they reside, to generate, you know, potentially transformed clinical data was -- was the prioritization. In and of itself, reallocation away, I wouldn't put it that way. I'd say from wherever you get it, we should be prioritizing those clinical programs. And if that means if it's a zero-sum gain across the portfolio, then take it from somewhere else.

Question: Was the reallocation -- this reallocation that you're proposing here in this exchange, is this something you came up with initially, or is this an idea that has roots somewhere

else before this?

Answer: You know, I mean, it seems so obvious to me that other people might have contemplated this as well. So I mean, I -- I don't know if it had origins elsewhere. To me it was -- to me it was kind of an obvious potential strategy here. So...

Question: At this point in time, in August 2024, was it your view that the fund overall would produce a higher return on investment if capital was allocated from these six early-stage companies to the four later-stage companies that we were discussing?

Answer: You know, what I say here I think is clear in that regard because I just say reallocation is clearly in DR's best interest for ROI.

And there could have been nuances about how and exactly what amount and to which programs, in a way, but broadly speaking, yeah, the imperative was to generate clinical data, in my view.

Question: Marking as Exhibit 18 an article by Dr. Michael D. Ehlers titled "Lessons from a Recovering Academic" and dated May 19, 2016.

Answer: One my favorite articles.

Question: You say "Substantial literature indicates that too many drug discovery programs fail at late stages despite the presence of evidence that could have rationally led to termination earlier. Why does this matter? As drug discovery programs advance to screening, identification of initial lead compounds clinical candidate selection and on into clinical trials, the cost soars."

Do you see that?

Answer: Yes.

Question: And then you say, "It is hard to step away from exciting science revealing new biology. So much effort, heart, soul, and money goes into making molecules that are suitable for testing in humans that it is a disappointment when, despite best efforts, the clinical hypothesis is refuted."

Do you see that?

Answer: Yes.

Question: Is this still your view?

Answer: It is.

Question: Did you know when you received this email what Jardine had discussed with Dr. Harrison?

Answer: Yes, I had a pretty good

idea.

Question: What was that idea?

Answer: It was that Paul Da Silva Jardine was concerned about Raj Chopra's management style and leadership of Marlinspike and Aethon.

Question: What specifically were his concerns insofar as he told you?

Answer: Abusive behaviors, inability to retain and attract people a bit as a consequence of that, and, to some degree, kind of a lack of strategic focus.

Question: Do you know whether Jardine took these concerns to Seth?

Answer: I believe that he did.

Question: And do you know whether Seth took any action based on that?

Answer: I -- I am not aware that there was action taken by Seth.

Question: Do you have an understanding as to why Mr. Chopra left?

Answer: Yeah. My understanding is that he got a position within a flagship portfolio company.

Question: And it was your

understanding that he was not fired by Dr. Harrison?

Answer: I've got no information that he was fired at all.

Question: Is it your view now that Dr. Chopra should have been asked to leave ATP at some point before he left earlier this year?

Answer: If it had been me, I probably would have asked him to leave before that.

Question: So, Dr. Ehlers, do you recall earlier in the deposition you were showed Exhibit 8, which is an email with an attachment of the Aulos SPA?

Answer: Yes, I have it in front of me.

Question: And I believe you were asked about several provisions in this document as it concerns milestones, and that is at -- it's after the blue sheet, Bates ending 360.

Answer: Yes.

Question: And do you --

Answer: I recall.

Question: Okay. And do you recall testifying about the board reasonably determining in good faith whether the company had a milestone and if

that would lead to the release of funds?

Answer: Yes.

Question: And is it also your understanding that the GP had discretion with regard to calling capital for the portfolio companies?

Answer: Yes.

Question: And if you go to Bates ending 361, there is a highlighted paragraph in the middle of the page.

Do you see that?

Answer: Yes, I do.

Question: And counsel skipped that paragraph when she was questioning you earlier; is that right?

Answer: We didn't discuss it, that's correct.

Question: And in your words, what does this provision provide for?

Answer: Just a minute. I'll read it.

So my understanding of this provision is that it allows the purchaser, in this case ATP, to purchase any additional shares or kind of outstanding shares at any time that they wish, provided they give appropriate notice.

Question: And is this reflective of your understanding that ATP or the GP had discretion with respect to calling capital?

Answer: Yes, as stated here. So if they -- if ATP wanted to, they could purchase additional shares and put in additional money at any time.

Okay. But assuming you weren't capital-constrained, would you be -- you would not be forced in deciding allocation between certain companies over other companies?

Answer: That's probably true.

Question: Okay. And over your time at ATP, there were obviously instances where you raised concerns with Seth; is that accurate?

Answer: Yes.

Question: Okay. And, for example, you raised concerns with Seth about Raj; is that right?

Answer: Yes.

Question: And do you -- did you feel free to voice concerns with Seth when you had them?

Answer: I did, yes.

Question: And is it fair to say that

he would listen to you sometimes with respect to your concerns, i.e., for example, removing Raj from the board?

Answer: That's accurate.

Question: And were there other times where Seth decided to go in a different direction?

Answer: Yes. Yeah.

Question: And did that sort of go hand-in-hand with Seth's discretion in running ATP?

Answer: Well, I mean, what I would say is fundamentally these were Seth's decisions on these matters, whether it was personnel or portfolio companies.

Question: Okay. And you'd agree that through Seth's decision-making over the years ATP has generated significant value through its portfolio companies?

Answer: Well, I think the financial numbers would support that.

(Video paused.)

ATTORNEY SELDEN: Good afternoon. I would like to play the next clip of the rebuttal testimony. I understand plaintiff has an objection.

ATTORNEY BARLOW: I'm sorry, Your

Honor. This is Ehlers rebuttal testimony. Go ahead. I withdraw the objection.

(Video resumed.)

Question: During your time at ATP, did you have any understanding as to whether the LPA referred to a default charge?

Answer: I would say during my time at ATP, no. Only after I left ATP and there was the announced litigation and the publicly available stuff on that did we become -- did I become aware that there was such a thing.

Question: So the default charge is not something that you discussed with Dr. Harrison during your time at ATP or before you joined ATP?

Answer: Well, definitely not before I joined ATP.

Was I ever -- I don't think that while I was at ATP I ever had a discussion on that, because I think my awareness that there was such a thing only came about when this litigation came about. And if I'm remembering correctly, I mean, I left ATP November '24, and I think this was afterward.

Question: And so to be clear, that's not something that you discussed with executives at

any of the ATP portfolio companies --

Answer: No.

Question: -- with which you were involved?

Answer: No. And I'm not -- I don't even know if any of -- if any of those folks have an awareness of it, it would have come through whatever publicly available information of the litigation.

(End of video clip.)

ATTORNEY ROHRBACHER: Counter-housekeeping, Your Honor. So we have Dr. Rimm that we will put on on direct. We understand that the plaintiff would like to play their video in your office. The Finkelman video would make sense because it would require sealing anyway. Time-wise they're about an hour and a half. They've used more than -- an hour and a half more than us, 87 minutes to be precise. So given the time left, we would still like to play our Engels clip. If they wanted Your Honor to watch that in the comfort of your office, that's fine. But we have Rimm, then we'd like to play our Engels clip, and then we have Alexey Yakovlev. And we believe we have plenty of time under what we should have available.

THE COURT: Okay. Let's proceed.

ATTORNEY TAFT: Your Honor, the defendants call Dr. Illona Rimm. And we do have witness binders. With permission, we'll approach.

ILONNA RIMM, having first been duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Good afternoon, Dr. Rimm.

A. Good afternoon.

Q. Could you please introduce yourself to the Court.

A. My name is Dr. Ilonna Rimm.

Q. Thank you.

Dr. Rimm, have you ever served before as an expert giving testimony in court?

A. I have not.

Q. Okay.

ATTORNEY TAFT: We have some slides, Mr. White, thank you. And the next slide, please.

Thank you.

Q. Dr. Rimm, could you please describe your medical and scientific training for the Court.

A. Yes. I graduated from Harvard

University with an MD and a Ph.D. in immunology. I then took care of patients for 20 years. I worked at Boston Children's Hospital, the Dana-Farber Cancer Institute, and the Brigham and Women's Hospital. In my last role I served as an attending in a stem cell transplant unit for eight years. In addition, I served as an attending physician on the pediatric oncology service.

This time was very important in my career. I took care of patients with very serious illnesses, and I came to understand that via health care innovation we, with our hands, could develop cures for these previously incurable diseases. And that was very exciting to me. I was so excited about health care innovation, I decided to make a transition in my career to learn more about how health care innovation is done.

Q. Dr. Rimm, at that point, did you begin to get involved in investing in life science industries?

A. Yes. I started at Wyeth Pharmaceuticals, where I served in global business development as the manager of genomics deals. I then moved to venture capital. I worked at Oxford

Bioscience Partners, where I was an entrepreneur-in-residence. I worked closely with all of the general partners, deciding where we should invest money and which of the portfolio companies should receive additional money and which portfolio companies should not receive additional money.

I then moved to the public equity side of health care investing and worked there for a number of years. During that time I decided I really needed to learn more about valuation, and I completed the chartered financial analyst designation.

Currently I work at Rimm Healthcare Capital Advisory, where I work with early-stage health care companies, and I work with the CEOs as they are starting to raise their seed rounds. I do that work at the Harvard Innovation Lab, which is located on the campus of the Harvard Business School.

Q. Thank you.

ATTORNEY TAFT: Your Honor, we offer Dr. Rimm as an expert on biotech investing and the evaluation of early-stage biotech companies.

THE COURT: Any objection?

ATTORNEY BERDON: No, Your Honor.

BY ATTORNEY TAFT:

Q. Dr. Rimm, could you address some of the common risks that investors in early-stage biotech companies face.

A. Yes. Investing in early-stage biotechnology is extremely risky. There is the scientific risk, the clinical risk, the regulatory risk, and the competitive risk. In addition, the process takes 10 to 15 years, which, again, increases the risk.

ATTORNEY TAFT: Mr. White, could we bring up the next slide.

Q. And, Dr. Rimm, you've prepared some slides in connection with today's testimony; correct?

A. Yes, I did.

Q. Okay. Could you please describe how this slide relates to the opinions in your report.

A. Certainly. So this slide shows the drug development process. As you can see, across the top is a timeline. And as you can see, the timeline takes a long time, from basically 10 to 15 years.

The drug development process goes through discovery, clinical, preclinical, clinical and commercialization. And as we've discussed already a bit, between discovery and preclinical is a very

important milestone called development candidate nomination where a particular single molecule is moved forward. Then that molecule is tested in animals in the preclinical setting, and then we get to the investigational new drug application which is submitted to the FDA, the IND, a very important, again, valuation inflection point. Then the drug goes to clinical trials, which can last many years and have a 90% failure rate. After that, the few remaining molecules that actually become drugs are commercialized and there can, in addition, be failure at the commercialization stage. So there's extensive failure in drop auto-molecules at every stage along the line.

Q. And how could a drug candidate fail at the clinical stage, for example?

A. So at the clinical stage drugs fail either on safety or efficacy. In this country, we want to have drugs that are both safe and efficacious. So we take a lot of failure along the way.

Q. And you focused on the DCN and the IND. Why are those particularly relevant points in the drug development process?

A. Those two points are valuation

inflection points, particularly the IND. If a molecule has passed the IND stage, it can be bought and sold quite easily. Whereas a molecule at the DCN stage at least has more value than a molecule before the DCN stage. So those are stages that are known to have valuation increments.

Q. Thank you. How long does -- sorry. How much does this process generally cost in terms of capital investment?

A. The clinical trials themselves can cost hundreds of millions of dollars. So the entire process is frequently said to cost $2 billion primarily because of all the failure along the way.

Q. And in addition to I think you mentioned regulatory risks and the risk of failure of efficacy or safety, are there other risks that investors in biotech companies need to be aware of when considering the drug development process?

A. Yes. Importantly, there are leadership and management risks. So the question is, you know, if a small group of scientists say they're going to deliver on a particular milestone, will they actually deliver on that milestone on time? And this is considered to be a very important risk.

Q. And, Dr. Rimm, how do investors mitigate the risks of investing in these early-stage biotech companies?

A. Investors mitigate this risk by investing in tranches or bits or segments. So they invest -- if someone is going to invest 50 million, they would usually invest it in bits or tranches of 10 million. We can talk through this on the next slide.

ATTORNEY TAFT: Mr. White, can we pull up the next slide. Thank you.

Q. What does this slide show?

A. So this shows that venture capital investors who are interested in return, which is a key point, use milestones to mitigate risk. And this slide shows the milestone base tranche funding for Deep Apple, according to the investment memorandum. And this is just a sample of what the notion of a tranche investing is.

So at the initial close, the management team of Deep Apple would receive the investment of $5 million in the 2021 quarter 4. Then their job is to generate a lead by the Q3 2022. Let's assume they do. And then they would receive tranche

2, which is $7 million. And they are supposed to take tranche 2 and generate a development candidate nomination, or nominee, a development candidate, and they're supposed to do that by the second quarter of 2023. If they do that successfully, then the investor invests another $12 million.

However, if they fail to do that, if they fail to nominate the development candidate or if they nominate it late, then there may be reconsideration of whether the investor would like to invest tranche 3 or whether the investor would plan to take their assets and invest them somewhere else.

Q. Okay. And how does this milestone-based tranched funding program help mitigate risk?

A. It helps mitigate risk because it addresses the issue of whether a team can actually deliver their milestones on time. And the invest- -- that's something that happens over time. So the investor has a chance to see whether the team will deliver on time.

Q. And if a team is not delivering on time, what signals would that give to an investor?

A. That would usually be seen as quite

concerning by an investor. And the investor would be in a position to make a decision about whether they want to move their assets to something else and invest their next tranche of assets into something else or whether or how it would be handled. But it is certainly a serious issue if a team does not accomplish its milestones on time.

Q. Thank you.

What if a company at some point during this drug development process decides to move away from the initially anticipated program and focus on either a different drug candidate or a different program altogether, how would that be handled in the context of a milestone-based tranched funding program?

A. The way that would usually be handled is a new discussion with new written documentation and additional investment memorandum and an additional discussion of what the new milestones and what the new assets required are, because, again, the investor wants to have a choice about whether they want to do the new approach, whether they want to commit their assets. And it's important to remember that the work that was left behind is essentially a sunk cost that the investor has. So the investor might or might not

wish to go forward with the new approach.

Q. And would it be necessary or typical for there to be a discussion of the new budget in light of the -- of a new budget in light of the changed approach?

A. Absolutely.

Q. Based on your two decades of experience in the biotech industry, how common is this milestone-based investing?

A. I found that it was extremely common. Essentially every organization that I've been involved with that is involved in investing wants to know -- invest in tranches in early stages and wants to know will a team perform according to very specific goals. Occasionally it's called something different than tranches, occasionally it's called stages or rounds, but there's always a sense that there's a measured approach. The investor wants to invest a small amount, and then see if the team performs before they invest any additional assets.

Q. Now, Dr. Rimm, you were here in the courtroom yesterday for Dr. Robbins' testimony; correct?

A. That's correct.

Q. Do you recall that Dr. Robbins testified that he was unaware of any academic literature supporting your milestone-centric analysis?

A. Yes. I heard him say that.

Q. Did that surprise you?

A. Yes. It surprised me, particularly surprised me because one of the references for his slides was a document by Roger Wyse, who was a banker at Burrill, that documents that venture capital routinely works with biotechnology companies in tranches.

ATTORNEY TAFT: Mr. White, could we please turn to Robbins Slide 8, and if we could highlight the upper left-hand corner, please, or expand it.

Q. Dr. Rimm, is this the slide that Dr. Robbins presented with this reference?

A. Yes. And that's the reference, and it refers clearly to biotech investing and tranche and venture capital investing in tranches.

ATTORNEY TAFT: Could we please pull up JX 1581, page 7.

Q. If you look -- do you recognize this article?

A. Yes. Yes.

Q. And what is it?

A. It's the article that we were just referring to.

ATTORNEY TAFT: And if you pull down to the introduction.

BY ATTORNEY TAFT:

Q. Does this article focus specifically on venture capital investing in biotechnology companies?

A. Yes, it does.

Q. Do you recall what section of this article addresses the milestone-based tranche funding?

A. Yes, it's Section 4.1.2 that's on page 1284, I believe.

ATTORNEY TAFT: I think that's a reference to 1284, so I think 10. If we could go to JX 1581.10 and pull up 4.1.2, please.

Q. Dr. Rimm, what part of this section were you thinking of?

A. So I'm going to read the very last sentence of the paragraph that starts with "Venture capitalists will mitigate their own risk by offering funding in stages, investing more money as the company

passes each technological milestone."

Q. And is that consistent with the opinion stated in your report?

A. Absolutely. And I cited other additional academic references in my report.

Q. Thank you.

Dr. Rimm, in your report do you evaluate whether the fund's early-stage companies met their specified milestones?

A. Yes, I did that.

Q. And what materials did you rely on in order to reach your opinions?

A. I reviewed the investment memoranda, and I reviewed the quarterly digests.

ATTORNEY TAFT: And if we could pull up the next slide in Dr. Rimm's -- thank you. I believe it's the next one. Thank you.

Q. Dr. Rimm, what was your conclusion after analyzing the fund's performance against their milestones?

A. My conclusion was that the early-stage portfolio companies failed to meet their milestones, which is shown on this slide. The seven early-stage companies are listed down the left side. The years

are listed across the top. And we're going to go talk about Apertor, which is the second company down.

As you can see in the first couple of years, Apertor completed their milestones on time. However, then we move to the light yellow, where we see that the milestones were completed late, including important milestones, DCN, IND. And then when we get to the right side, we are in salmon where milestones were not met.

As you can see, Apertor failed to complete a number of milestones. When we look at the graph in general, we see that all seven companies have salmon on the right side. And these are all the important milestones, the IND and DCN Phase 1 trial milestones. In addition, a number of these milestones are two or three years late, and they are -- it's not an occasional month here, month there. We are talking about years late in several of these companies. So all of these companies failed to meet their milestones.

Q. And in analyzing the early-stage companies' performance against milestones, Dr. Rimm, did you also consider how that performance related to the amount of capital that had been funded into those

companies?

A. Yes, I did.

Q. And what was your conclusion?

A. It's on it. Can we look at the next slide.

ATTORNEY TAFT: Could we pull up the next slide, please. Thank you.

A. My conclusion was ATP had called capital for tranches with unmet milestones.

So, again, the seven early-stage companies are listed down the left side of the slide. The tranches are listed across the top. Again, on the left side, the gray bars show that there's capital drawn and milestones complete.

On this slide we're going to look at Deep Apple, which is the fifth company down. As you can see, for the first 24 million that was invested in Deep Apple the milestones were complete. However, then there were 19 million was drawn and the milestones were not met. Even though the milestones had not been met, an additional $9 million was called for. As you can see, again, in all of these companies, as we look to the right, all of the companies had substantial situations where there was

capital drawn and milestones not met.

Q. Thank you.

ATTORNEY TAFT: We can take down the slides, please.

Q. Dr. Rimm, in connection with the preparation of your rebuttal report, did you review opinions offered by Dr. Rao in this case?

A. Yes.

Q. And do you recall that Dr. Rao in his first report described certain valuations of the portfolio companies that were prepared under accounting standard ASC 820?

A. Yes, I saw that he did that.

Q. And in your opinion, is the information presented in those reports useful for the purposes of an investor in a biotech company?

A. No. I find that the valuations -- valuations of early-stage biotechnology companies are complicated and not done like other types of valuations. The valuations presented by Dr. Rao are essentially valuations based on the amount of assets put into the company, which is just not informative and not helpful.

As you know, I spent time thinking

about valuations. It's difficult to evaluate valuations in very early-stage biotech companies. Any company before the DCN and the IND is very difficult.

Q. Dr. Rimm, do you have an opinion as to whether Rigmora's refusal to make further investments in companies that had missed their milestones was consistent with reasonable investor behavior?

A. Yes. I think Rigmora's approach to decline funding for these companies was very reasonable. A reasonable investor, particularly an investor who is interested in return, which is specifically a reasonable investor, would have said that these companies missed milestones and called capital. And under that circumstance, it's very reasonable to decline further funding.

ATTORNEY TAFT: Thank you. I turn the witness.

THE COURT: Thank you.

CROSS-EXAMINATION

THE COURT: Please proceed. Thank you.

BY ATTORNEY BONACORSI:

Q. Good afternoon, Dr. Rimm.

A. Good afternoon.

Q. In forming your expert opinion in this matter, you never examined how Rigmora actually used budgets and milestones in connection with making its investment decisions; correct?

A. What I did was reviewed the investment memoranda and the quarterly digests.

Q. But you didn't examine Rigmora's actual behavior through its employees and internal communications to assess how it used budgets and milestones in connection with making its investment decisions; correct?

A. Yes. I know very little about Rigmora's internal decision-making process.

Q. And instead you worked from industry knowledge; is that right?

A. I worked from industry knowledge, the investment memoranda and the documentation of the work, the scientific work that was accomplished, which was documented in the quarterly digests.

Q. You testified that you have limited knowledge related to the capital calls involved in this matter?

A. I have some knowledge related to them, but I was asked to focus, again, on the documentation

of the milestones and that was less related to the capital calls.

Q. In fact, when you wrote your report, you testified that you did not know who at Rigmora was the individual responsible for approving capital calls made by ATP?

A. Yes. And I'm not sure why I would have known that.

Q. And you don't know whether anyone at Rigmora analyzed the likelihood of any of the preclinical companies you analyzed in your report hitting future milestones prior to May 15, 2025?

A. So that sounds like it's a question about what happened within Rigmora, and I have no information about what happened within Rigmora.

Q. And to confirm, one aspect of your expert opinion here concerns the reasonableness of Rigmora's decision to no longer fund the preclinical companies?

A. Yes.

Q. Okay. And you'd agree that your opinion does not address any information about Rigmora's assets, liabilities, or liquidity as of May 2025?

A. Yes. I was asked to evaluate the milestones in the early-stage companies, which does not include the information that you just described.

Q. And it would also not include Rigmora's actual risk tolerance at any time between 2021 and 2025?

A. I did not make any inquiries or have any information about Rigmora and its risk tolerance.

Q. And in your materials cited in your opening report, which is JX 1579, and the page 0082 -- if we could pull that up, please -- and you'll see there's a section here, Dr. Rimm, "Depositions."

Do you see that?

A. I'm trying to get to the right page here. So that's in the later part. Could someone give me the page number again, please.

Q. It's 0082. It should be on the screen in front of you. Or it was.

A. Only part of it is on the screen in front of me. So yes. Go ahead.

Q. And you cite three depositions here; right?

A. Yes.

Q. And none of these depositions are from

Rigmora employees; is that right?

A. Yes, that's my understanding.

Q. And that's because you did not rely on depositions of anyone who actually works at Rigmora; correct?

A. Yes, that's my understanding.

Q. But you do cite the depositions here of certain ATP employees; correct?

A. Yes.

Q. And you reviewed those depositions; right?

A. Yes, although I reviewed them in a limited way. I reviewed them mostly related to the -- to my assignment, which was to assess the milestones. I did not review them in extreme detail.

Q. So you'd agree, then, that you cite those depositions for certain limited points; is that right?

A. Yes.

Q. But you don't rely on any of the testimony in those depositions regarding ATP's actual use of milestones, do you?

A. That's -- no, I don't rely on their comments related to use of milestones in general.

It's possible that I relied on -- that I occasionally used pieces of them, but not as a general statement.

Q. Okay. And you testified earlier that you've some experience working in venture capital?

A. Yes, I do.

Q. And I believe you testified during your deposition that you understood that from that experience limited partnership agreements are important in that context?

A. Yes, of course.

Q. And you also testified that you knew a limited partnership agreement exists between the parties here; is that right?

A. Yes. However, limited partnership agreements are complicated and different, and as part of my role I was not asked to review that.

Q. So you did not review the limited partnership agreement in this case?

A. I reviewed it in a very limited way, meaning only in relation to the role that I was assigned, which was to assess the milestones.

Q. You did not review the limited partnership agreement to determine the role of budgets in the relationship between Rigmora and ATP?

A. I did not review it for that purpose, that is correct.

Q. And you did not review the LPA to determine the role of milestones in the relationship between Rigmora and ATP, did you?

A. I did not review it with regard to that issue. Most of my information related to milestones has to do with my 20 years of experience investing in life sciences. And so in that setting milestones have a very important role. And essentially, as I say, all investors I've ever interacted with address the issues of milestones, although they are sometimes called stages or something else. So I relied on that knowledge.

Q. And to confirm something you testified earlier, then, Dr. Rimm, you didn't rely on the testimony of individuals actually within Rigmora and their use of milestones, did you?

A. No, I did not rely on that.

Q. Okay. And you did not review the LPA to determine the role of investment memoranda and the relationship between Rigmora and ATP, did you?

A. I did not do that. However, again, I was very involved in the senior leadership role of a

venture capital firm for two years. I was very familiar with investment memoranda, and investment memoranda and milestones are used similarly in most venture capital firms. So I wouldn't have thought that it was necessary to review the details in this situation because of my extensive industry experience.

Q. But you didn't review the LPA in the detail necessary to determine with specificity how the parties here chose to outline the contractual obligations to one another.

A. I did not review the LPA with that issue in mind.

Q. Okay. And you also didn't familiarize yourself with any of the portfolio company Series A stock purchase agreements, did you?

A. No. I know they exist, but I was asked specifically to work on the investment memoranda and the quarterly digest, which I think is -- again, this is an industry-wide phenomena that milestones would be in the investment memoranda, and, again, quarterly digest is an industry-wide phenomena. So I paid most attention to what I perceived as a biotech investor are the usual important documents for this situation.

Q. But you'd, of course, agree that parties can set forth whatever contractual obligations they'd like in a limited partnership agreement; right?

A. I think that I am not an authority on that question.

Q. In forming your opinion in this matter, you also didn't rely on any of the portfolio company board materials, did you?

A. Could you restate the question, please.

Q. In forming your opinion in this matter, you didn't rely on any portfolio company board presentations, did you?

A. Well, we -- close to the end I saw some of them, but I didn't rely on them. I would say that eventually some of those became available, but they were not used extensively.

Q. And you acknowledge in your opening report that VCs typically assess multiple factors in looking at investments?

A. Are you asking the question of whether they look at multiple factors, whether when they are deciding to invest; is that the question?

Q. Sure.

A. Yes. VCs look at many aspects of the scientific and clinical and other aspect of a company when they are in the process of making a decision about whether to invest.

ATTORNEY BONACORSI: And could we pull up JX 1579, please, and go to page 27, para 56. Sorry. Page 27, para 56.

Q. And, Dr. Rimm, you see here you state, "In making investment decisions, the VCs assess several key factors, including the scientific soundness of the technology, the experience and composition of the management team, the therapeutic indication and degree of unmet medical need, and the broader regulatory and competitive landscape."

Do you see that?

A. Yes, I see that statement.

Q. And despite that statement, your opinion is based entirely on the quarterly digest in the investment memorandum?

A. Absolutely, yes. I mean, what we're talking about is the original -- what that statement refers to is the initial investment decision, and beyond that, there is very detailed attention paid as to whether the company accomplishes its milestones.

And I -- therefore, that's just the way that issue is handled on the investment level.

Q. And so to confirm, you did not consider all of these factors that you list in your report in this case?

A. I would have thought it was not appropriate to consider those factors. Those factors are usually considered at the beginning. And I arrived when the companies had already been started, and I assume those factors were considered as the initial investments were made. That's usually how it's done.

Q. An investment decision can occur at multiple points within a broader investment strategy; is that right?

A. Well, that's -- what is the question here?

Q. You state in your own expert report here para 56, the first part of this says, "In making investment decisions ...."

You don't say at the outset of an investment; do you?

A. No. I don't say it there, but that's actually accurate. Okay. At the -- usually biotech

companies are started by very smart people. And when I refer to making investment decisions, I'm referring to the fact there that the initial investment decision usually includes all the factors that are listed there.

Q. Okay. And pivoting a little bit here, when forming your opinion in this matter, you did not consider the likelihood of any of the preclinical companies meeting significant milestones in the future; did you?

A. I assessed whether companies had met the milestones as of the end of the first quarter of 2025.

Q. And not beyond that; right?

A. There was no reason to go beyond that that I -- I was not asked to do that.

Q. And you don't believe that hitting milestones in the future would inform the reasonableness of Rigmora's decision not to continue funding?

A. I do not.

So when a company tells me it's going to hit a milestone in the future, what my question is is how did they do on their past milestones? So if a

company has routinely hit their milestones on time, then I'm not so worried about the future. If the company has routinely not hit its milestones on time, then I see the future -- any statement about future milestones as pure speculation.

Q. And, Dr. Rimm, you did not analyze in forming your opinion with respect to the set of preclinical companies the timing of a potential preclinical exits, such as acquisitions or potential partnerships with larger biopharma companies; did you?

A. Could you rephrase the question?

Q. In connection with forming your opinion, you did not analyze the timing of potential preclinical exits, such as acquisitions with the preclinical companies; did you?

A. No, I did not analyze that because we were looking -- I was looking specifically at meeting milestones.

I am aware, as an investor, that those types of exits can occur, but that's not the question that we were addressing here. And these companies were much -- were way before -- very, very early compared to those types of events.

Q. And in forming your opinion, you also

did not -- and this is to quote Mr. Bogdanov -- form the opinion there was no way for a path to commercial success for any of the seven early-stage companies listed in your report; is that right?

A. Could you restate it? I believe that you cited someone who I'm not sure who I know who that is.

Q. We can move on to the next question.

And, Dr. Rimm, you testified about Deep Apple a few minutes ago?

A. Yes.

Q. And you understand that there was an $812 million deal between Deep Apple and Novo Nordisk in June of this year; right?

A. Yes. And I'd like to talk about that deal because I'd like to state that calling it an $812 million deal is a substantial overstatement to what actually happened. That is the description of a deal that's all the possible money that could ever come to Deep Apple, and that almost never happens.

What actually happens is a single payment is made early on, and that's called the deal. And the deal payment in this situation was like $30 million. But at every milestone later when a

payment might be made there's a decreasing probability that that payment will be made.

So I was certainly aware of this, but, you know, large companies do huge numbers of deals like this. They frequently only pay the upfront payment, and they don't pay any later payments because they don't particularly choose to go after that target.

So I did not find -- although it's nice that such a deal happened, as I say, I think it's important to characterize the actual financial value of the deal.

Q. And just -- you didn't do any specific analysis to test the hypothesis that that deal might not have actually been worth $812 million?

A. I'm very aware of all of these deal structures. So I worked in Wyeth Global's business development for two years and worked on these structures and then spent another 20 years interacting with these deal structures with a large number is in the vernacular known as biobucks and everybody circulates the large number, but what actually happens is the very small amount of money is transferred upfront and frequently none of the later payments ever

occur.

Q. Just to close this out, though, you did not do any specific analysis with respect to the deal between Novo Nordisk and Deep Apple, did you?

A. What analysis would be done?

Q. Beyond speaking from your general industry knowledge, did you do any investigation into the deal, paperwork or otherwise?

A. Yes, I read the deal. That's where I have the money, the upfront payment. And as a result, I also know what the milestones were. Some of these milestones were this target is commercialized, some of the larger milestones. So that molecule is very far from commercialization and, as we just discussed, the probability is very low.

Q. Okay. And, Doctor, you were in court yesterday; right?

A. What is the question again?

Q. You were in court yesterday?

A. Yes, I was in court yesterday.

Q. And did you hear Dr. Liras testify here in court yesterday?

A. I did, but I was sitting in the rear. I could hear only some of what was said. So I'm not a

reliable listener or reporter on what was said.

Q. But you did testify just a few minutes ago that you heard what Dr. Robbins testified yesterday in court; right?

A. Yes. I heard that. And also I had, you know, seen his reports and things.

Q. Just a few more questions. And did you hear Dr. Liras testify about ATP's flexibility with respect to milestones?

A. You know, I really cannot respond to that question. I just don't have enough information about what I heard.

Q. Okay. And you also just probably saw the tape played by your counsel where Dr. Ehlers also testified about the flexibility of ATP's approach with respect to milestones.

Do you recall hearing that?

A. I saw that there was -- I saw the tape that was being played. I actually was not impressed that this was really about the flexibility of ATP about milestones. I was more impressed that Dr. Ehlers was commenting that milestones had to be completed in order for tranches to be invested.

Q. So you don't recall just seeing a few

minutes ago him say that ATP did have a flexible approach with respect to milestones?

A. Well, what I recall is that Dr. Ehlers reported that milestones had to be completed. The term "flexible"" probably was used, but it depends on, you know, what the adjective of the moment is. But he certainly did comment that milestones were attended to.

ATTORNEY BONACORSI: Okay. No further questions. Thank you.

REDIRECT EXAMINATION

BY ATTORNEY TAFT:

Q. Very briefly, Dr. Rimm. Counsel took you to JX 1579.30, which was page 27 of your report. You can turn to it in the paper version it might be easier for purposes of this question.

A. Page 27?

Q. Yes.

A. Almost there. Yes.

Q. So counsel showed you paragraph 56; correct?

A. Yes, that's correct.

Q. What section of your -- what is the subheading for the section of this report?

A. "The Investment Thesis."

ATTORNEY TAFT: Thank you. No further questions.

THE COURT: All right. Thank you, Dr. Rimm.

THE WITNESS: Thank you.

(Witness excused.)

ATTORNEY TAFT: Your Honor, we would call our next witness, Mr. Engels, by video.

Mr. Engels was plaintiff's chief financial officer from April 2021 until August 2025, when he left ATP. Mr. Engels has declined to testify in person today. The video of his deposition testimony reflects plaintiff's inclusions. Defendants have designated 11 minutes of testimony, and plaintiff -- and I believe that that's the entirety of the testimony that will be played in court.

The video contains Mr. Engels' testimony concerning ATP's statements to third parties concerning the amount of capital committed to the fund following Amendment 20.

WILLIAM ENGELS, was examined and testified via video as follows:

Question: When did you form an

understanding of the purpose of Amendment 20?

Answer: I mean, I think, as I said, it -- it developed over time. It's a pretty complicated amendment, restructuring the fund. And so as we understood it, the mechanics of it better and what the functions of each of the different pools and how all of the different components would work, it took a little bit of time to figure out.

I'm not sure -- it wasn't like a light bulb went off on a certain day, but eventually we got comfortable with it.

Question: If you could go to the page that is Bates stamped 114558. Mr. Ravski provides First Republic with copies of the subscription agreements.

Do you see that?

Answer: Yes.

Question: He says, Please note that these agreements total 1.5 billion of committed capital that has since grown to 2.5 billion, which you will find in the amendments to the LPA.

Do you see that?

Yes.

Question: Was that accurate statement

when Mr. Ravski made it?

Answer: No. I think at the time we were still working through the impact of Amendment 20. This was just -- just about a month after it had been signed. And I think, as we discussed, it moved a lot of things around and changed a lot of aspects of the partnership. And so we were still getting a grasp of what it all meant and how it all flowed through.

Question: Could you turn to page 263 of the '24 financials, please. And very briefly, middle of the page, the paragraph that starts, As of December 31, 2024, that reflects the five separate pools in which the fund holds assets; correct?

Answer: Correct.

Question: Okay. And in the paragraph that starts, Pool ATP IV, you still have the reference to the $1.5 billion; correct?

Answer: Yes, it does reference that.

Question: And in the paragraph that starts, Pool ATP V-2, you still have the reference to the $1 billion?

Answer: Yes.

Question: So the paragraph that starts, ATP V-3 does not indicate a dollar amount of

additional capital commitments; correct?

Answer: It does not.

Question: Okay. And the paragraph that starts, Pool Braeburn also does not indicate a dollar amount of additional capital commitments; correct?

Answer: Correct. Those have been consistent with how we've presented them in this footnote.

Question: If we could turn to the document with Bates 392150. This is a list of Apple Tree entities; correct?

Answer: Yes.

Question: And is it your understanding that these are the entities that would be named insureds under the proposed insurance policy?

Answer: Yes.

Question: And is the fund listed among these entities?

Answer: Yes.

Question: Okay. And what is the amount of committed capital that is identified as being committed to the fund in this schedule?

Answer: 2.5 billion.

Question: Okay.

Answer: So it's 18 days after Amendment 20.

Question: Okay. I'm marking as Engels Exhibit 22 -- sorry, 23? -- 23, an email from you to Ms. Afif, with the Bates ATP 104423. The subject is "Professional and Management Liability Insurance Application."

Answer: Okay.

Question: Do you believe you sent this email on or about May 18th of 2023?

Answer: Yes.

Question: I would like you to turn to page 104427. And this section of the application is asking for details about the fund that is applying for insurance; correct?

Answer: It looks like it, yeah.

Question: Okay. And if you turn the page to 104428, what is the amount of total committed capital that is identified for the fund?

Answer: On here we have -- on here, what is listed as 2.5 billion.

Question: And from time to time in your capacity as CFO are you asked to provide letters

to landlords of portfolio companies in connection with their obtaining a -- a lease?

Answer: It's pretty rare, but yes.

Question: Okay. And if you turn to the attachment, this document, ATP 112834, is this such a letter?

Answer: Yes.

Question: Okay. And that's your signature on the page?

Answer: Yes.

Question: And just looking at the first paragraph, how do you describe ATP?

Answer: Pretty generally. As a very early-stage life science venture capital fund with 2.5 billion of committed capital. Yeah, I think it's pretty generalized.

Question: Okay. This is over a year after the execution of Amendment 20; correct?

Answer: Just over a year, yeah.

(End of video clip.)

ATTORNEY DUTZ: Your Honor, Sebastian Dutz, Debevoise & Plimpton. Defendants would call Alexey Yakovlev as our next witness.

ALEXEY YAKOVLEV, having first been

duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY DUTZ:

Q. Good afternoon, Mr. Yakovlev.

Could you please state your full name for the record.

A. Good afternoon. I'm Alexey Yakovlev.

Q. Could you briefly describe your educational background.

A. I graduated from Moscow Institute of International Relationship with major in finance and accounting.

Q. Could you briefly describe your professional background.

A. I worked as an auditor with Ernst & Young, and then I worked as a financial controller and head of financial department of Uralkali. I also worked as finance vice president with National Container Company in Russia. And in 2014 I joined Rigmora Holdings as the CFO, and in 2019 I became CFO for Rigmora Holdings.

Q. Okay. Are you still CFO for Rigmora Holdings?

A. Yes, I am.

Q. And what are your main responsibilities as CFO of Rigmora Holdings?

A. As the CFO for Rigmora Holdings, I'm responsible for relationships with the banks, managing treasury payments, running payroll, preparing operational budgets for Rigmora offices. I'm also responsible for accounting and audit, for preparing financial forecasts.

Q. Are you aware of what ATP Life Science Ventures, L.P. is?

A. Yes, sure. It's a partnership we invested in biotech company in the U.S.

Q. If I refer to that as ATP or the fund, will you know what I mean?

A. Yes, sure.

Q. What are your responsibilities as CFO of Rigmora with respect to ATP?

A. Well, my main responsibility with regards to ATP is to process capital calls. That means arrange for the payments of the capital calls. I am also keeping records of all the capital calls paid and all the distributions received.

ATTORNEY DUTZ: Could you pull up JX 1237.

BY ATTORNEY DUTZ:

Q. Mr. Yakovlev, this is an email from March 2025 from William Engels. Are you familiar with this document?

A. Yes, I am.

Q. Could you please explain to the Court the context for this email.

A. So Mr. William Engels, CFO of ATP at that time, is sending me certain Excel files following my request. So these Excel files contain -- containing breakdown details for the amount of distributions, contributions, and other amounts we have seen in the capital statements and we asked to provide detailed breakdown for these amounts.

ATTORNEY DUTZ: Could you please pull up the spreadsheet marked JX 1237.004 in native.

Mr. Yakovlev, do you recognize this document?

A. Yeah. This is one of the Excel files.

Q. And what does this sheet "Pool V-4 Total" represent? Can you explain it to the Court.

A. This sheet, you can see all the capital calls on the left side and all the distributions on the right side attributed to the Pool

V-4. They are placed here in chronological order. And the last column, which is cut, you can see the portfolio company. That's it.

Q. And can this spreadsheet be used to calculate the total contributions and distributions to the pools of ATP?

A. Well, this Excel file contains different spreadsheets for each of the pools of the ATP fund.

If you sum up the column total, "Capital Calls" per each pool, you will get the total amount of capital contributed to ATP fund.

Q. And did you review this spreadsheet at the time you received it?

A. Yes. We reviewed the spreadsheet with respect to capital calls and distributions. We compared it to our records and we found no material discrepancies.

Q. Did you perform any analysis or try and reconcile the amounts of capital commitments in this document?

A. Well, we -- there is another tab called "Amendment Summary" with capital commitments. We took note of it, but capital commitment could not

be reconciled with actual financial data like capital call, the amounts paid or received. So I was focused on reconciling the amount of capital calls paid and distributions received.

Q. Do you know how much the Rigmora limited partners contributed to ATP by the end of the year 2024?

A. Yes. To the best of my memory, the amount contributed by Rigmora by the end of 2024 is around 2.65 million.

Q. And can you get to that amount of amount contributed to the fund with this document?

A. Yeah. That's absolutely possible. In this document there are tabs. Along with tabs called "Pool Total," there are tabs called pool -- number of the pool and then a label, Ezbon, Blue Horizon. Ezbon, Blue Horizon are the names of the entities that were initially invested in the fund from Rigmora side. And these tabs contain the data attributed just to these limited partners. So if you sum up the amounts on these tabs, you will get the amount invested by Rigmora's piece.

Q. Just to make sure the record is correct, I think I heard 2.65 million. What just is

the amount, performing the analysis you described, as of end of year 2024?

A. Correct. As the end of 2024, Rigmora piece invested about 2.65 billion.

Q. Are you familiar with Rigmora's payments of capital calls in the year 2025?

A. Yes, I am.

Q. How much has Rigmora paid in response to capital calls this year?

A. I believe Rigmora paid around 42 million of capital calls issued in 2025.

Q. Taking that into account, what is the total contribution that Rigmora limited partners have made to the fund as of today?

A. As of today, taking the contributions made in 2025, the total amount of capital contributed is about $2.69 billion.

Q. How much, approximately, have the Rigmora limited partners contributed to the fund since February 2022?

A. To the best of my knowledge, since February '22, it was about 700 million.

Q. I recall you mentioned earlier that managing Rigmora's relationship with the banks is one

of your responsibilities?

A. That is correct.

Q. Can you describe what banks Rigmora has worked with since February 2022?

A. Rigmora's working with many major banks. So we have a relationship with J.P. Morgan, for example, in the U.S. We have a relationship with Swiss banks like Julius Baer and Pictet, many others.

Q. Are those all current relationships?

A. Yes, these are continued relationships.

Q. As CFO of Rigmora, are you familiar with Rigmora's leverage, the amount of debt?

A. Yes, sure.

Q. What is Rigmora's current leverage, if any?

A. I would say that currently the leverage of Rigmora and affiliated group is below 5 percent.

Q. Has that number changed significantly in the years since February 2022?

A. Well, this number fluctuates from year-to-year, but historically the leverage of Rigmora group is a very low level. I don't remember it

exceeding 15 percent.

Q. Had Rigmora ever not paid a capital call for a portfolio company before May 30th of 2025?

A. To the best of my knowledge, Rigmora always paid the capital calls for portfolio companies.

Q. Are you familiar with the capital calls received by Rigmora on May 30th, 2025?

A. Yes, I am.

Q. How many portfolio companies did ATP call capital for?

A. I believe 10 portfolio companies.

Q. How many years have you been processing capital calls for ATP for?

A. At least from 2019, it was my direct responsibility to process the capital calls.

Q. In your five years of experience processing capital calls, had the general partner of ATP ever called capital for that many companies at one time?

A. No, never for that many companies at one day.

Q. Mr. Yakolev, are you aware of the financial condition of the Rigmora LPs?

A. Yes, sure.

Q. Sitting here today, as CFO of Rigmora, do the Rigmora LPs have the ability to pay the disputed capital calls?

A. Yes. Rigmora LPs and other entities of the trust have sufficiently good assets and cash to meet those capital calls.

ATTORNEY DUTZ: Thank you, Mr. Yakovlev. I pass the witness.

ATTORNEY SELDEN: Your Honor, as we are being handed prepared cross-examination binders for the witnesses, I will note that paragraph 25 of the pretrial order said that plaintiffs and defendants would split the trial time 50/50. I think defendants are currently about 50 minutes behind plaintiffs. We would like to complete our case-in-chief here in court today, if we can. We have one last witness to call that we had proposed to call by deposition. But in the interest of fairness and the pretrial order and us completing our case-in-chief, I would just note that time. I'm not objecting to cross per se, but I am concerned about the time.

THE COURT: You think it's important that you watch me watch the Finkelman video?

ATTORNEY SELDEN: I do not think it's

important that I watch you watch the video, Your Honor. I do think it's important, however, that defendants and plaintiffs have equal trial time available. We certainly gave a lot of thought yesterday to managing our cross-examination so that we would be able to complete within the time. Had I known, we might have taken more time with our cross-examinations. I do not object to this cross-examination. And I do not want you to watch video in court when you don't need to.

THE COURT: Great.

ATTORNEY SELDEN: But I do want to note that point for fairness.

THE COURT: Please proceed. No objection. Please proceed.

ATTORNEY REESE: Thank you. Jessica Reese with Quinn Emanuel.

CROSS-EXAMINATION

BY ATTORNEY REESE:

Q. Good afternoon.

A. Good afternoon.

Q. Now, you testified earlier today that your main responsibility with regard to ATP was to process capital calls; correct?

A. That's correct.

Q. And Rigmora received a capital call on June 24th, 2021, from ATP; correct?

A. Rigmora continually received capital calls from ATP, that's correct.

Q. Well, let's take a look at the June 24th, 2021, capital call, JX 0230.

Mr. Yakovlev, do you see that this is an email from Anna Batarina, and you are copied here on this email dated June 24th, 2021?

A. Yes, I see.

Q. And this capital call, it attaches a capital call; correct?

A. Correct.

Q. And could we please pull up that capital call, which is page 4.

This is, Mr. Yakovlev, Exhibit A to the capital call; correct?

A. Yeah, it's not actually the first page of the capital call, yeah, but an exhibit attached to it.

Q. And focusing your attention, do you see the line that says, "Total Pool V-3 Call"?

A. Yes, I see it now.

Q. And do you see on that row under the column "Unfunded Commitment Prior to Current Capital Call," the amount stated is $310,455,340; is that correct?

A. That's what is stated here.

Q. And to your knowledge, no one at Rigmora raised any deficiency with the amount stated here as the unfunded commitment to total Pool V-3; correct?

A. I'm not aware of that.

ATTORNEY REESE: No further questions. Thank you.

THE COURT: Thank you.

ATTORNEY DUTZ: No further questions, Your Honor.

THE COURT: All right. You may step down. Thank you.

(Witness excused.)

ATTORNEY SELDEN: Your Honor, our final remaining witness is Mr. Finkelman, who we would call by deposition and play the video. It would require us sealing the courtroom. I do not want to make you sit in the courtroom and watch that, if you would prefer not to. So I raise it because that would

be the last witness in our case-in-chief. I can describe the introduction that I would have provided to the video, but I welcome your Honor's guidance as to how you'd like us to proceed.

THE COURT: Look, make sure I have the video. Rather than have everybody leave and come in and tell everybody to go, I think it makes sense for me to take the video back and watch it in my office.

If you want to submit a letter with the instructions you would have given as a preamble to that, I'm happy to read it, and I will read it right before I watch the video, I promise. So why don't we do it that way.

ATTORNEY SELDEN: That works perfectly well. Thank you, Your Honor. I very much appreciate it.

With that, I believe defendants rest. That is our conclusion.

And I think we just have the extra housekeeping matters of those proposed trial briefing scheduling to address, Your Honor.

THE COURT: All right. Thank you.

So what's left to be accomplished, and have you conferred on it? And what do you propose we

do next?

ATTORNEY BERDON: Just for the record, we are not going to be calling any rebuttal witnesses. We just ask that Your Honor view the video counterparts that we've already identified.

THE COURT: Okay. Make sure -- it would be actually really helpful to me if whatever you have that I need to view is put on a flash drive, one flash drive between the two of you. Maybe give me three copies so everybody who needs to have it can have it and sent to my office Monday. That would be helpful.

ATTORNEY BERDON: Yes, Your Honor.

ATTORNEY BARLOW: Your Honor, I think the remaining housekeeping matter is how Your Honor preferred to resolve this issue, this case to get us to judgment, not withstanding the pending request for provisional liquidators.

My understanding of the current situation in Cayman is that while Rigmora requested in Cayman that the provisional liquidator application be heard at the end of this month, that was denied. They've been offered the opportunity to present November 3rd and November 4th.

And at that hearing where this was discussed as a scheduling matter, the Court said the following -- and I hope you don't mind me reading it, because I don't want to be accused of misquoting the Court.

THE COURT: No. It's good that you remind me what I said. So please go ahead.

ATTORNEY BARLOW: No, I'm sorry, reminding you what the Court in Cayman said, Your Honor.

THE COURT: Either way.

ATTORNEY BARLOW: The court in Cayman said depending on what the state of play in Delaware at the time is, and if it looks as if a judgment is going to be given within days, it may be that I would hold back and reserve my judgment in order to give the parties the opportunity to obtain that judgment and make any further submission.

So as we proceed towards a hearing on November 3rd and November 4th in the Cayman Islands, plaintiff would respectfully request a fairly aggressive schedule for the submission of post-trial briefings.

What we have proposed is the

submission of opening briefs on or around Wednesday of next week; that our friends would put in their answering brief Sunday; and that we would get a reply to you by Tuesday, October 28th. That's roughly five days, four days, and two days.

But obviously we're here to accommodate whatever schedule the Court would like. And so any guidance Your Honor might provide in that respect, we appreciate it.

THE COURT: Thank you.

Mr. Rohrbacher?

ATTORNEY SELDEN: I'll address the scheduling, Your Honor.

Your Honor, at this point in the Cayman proceedings, I believe that plaintiff's counsel there, Walkers, and our clients' counsel there, Campbells, are engaged in scheduling cooperatively and have worked together and that schedule is indeed proceeding in the Caymans.

As I had noted when we discussed it previously, it is a provisional hearing pending a full trial in January for a temporary relief. It is not a liquidation of the fund or its portfolio companies. It is oversight by someone independent, with the

benefit of the court and the benefit of Cayman law, such that funding contributed to the portfolio companies during the pendency of the case can stay there as a matter of Cayman law and isn't voided by statute in January.

That said, Your Honor, we again welcome the Court's guidance with respect to schedule.

I think the schedule that plaintiff has proposed is a little too tight. I would ask at least a week to oppose or to file our responding brief, which I think puts it on October 29th if they file on the 22nd. And then that, Your Honor, I will be frank with the Court and tell you that on October 29th I am in the Second Circuit almost all day and wouldn't be available.

THE COURT: You have a large team of attorneys. So I'm sure someone could be here.

ATTORNEY SELDEN: I have a terrific team and they are there. I am only raising that issue because the relevance of the Cayman proceeding on the 31st has nothing to do with the request I am making. It is purely driven by trying to juggle that schedule.

So we would ask at least a week, and I was going to ask, your Honor, that we submit our

opposing brief on October 30th. And if plaintiffs then want to reply on the 3rd, Your Honor will at least have the benefit of our two major opening briefs before the weekend and before the 3rd.

Again, whatever the Court would prefer with respect to this.

And I guess there is also the question of whether argument needs to be scheduled related to those post-trial briefs.

THE COURT: Mr. Barlow?

ATTORNEY BARLOW: I neglected to mention in my opening presentation, of course, we have a pending motion with respect to the status quo order with respect to the proceedings in Cayman which would, of course, allow the parties substantial time to present these issues because they wouldn't proceed in Cayman on those issues. I don't want to get past that.

So as we're looking for additional time. One way to resolve it might be some sort of agreement that the Cayman proceedings aren't going to proceed to judgment and there's not going to be any ruling requested in judgment until Your Honor has a chance to adjudicate the claims.

THE COURT: Thank you. So I understand what I want in an aggressive briefing schedule in light of what's happening in the Caymans, and so I'm inclined to give it to them. But if you want to confer and figure out whether there's a way to relieve that pressure through agreement or stipulation, I'm open to that.

So why don't you take a few days to confer and let me know on Monday whether you reach agreement. If not, plan to proceed at the breakneck pace that Mr. Barlow proposed.

ATTORNEY SELDEN: Your Honor, could I ask again. If we are going to proceed on a faster pace, could we have our opposition brief be due on the 28th of October rather than Sunday the 26th?

THE COURT: If you want that, then work hard to negotiate a situation that gives them a little more confidence that something in the Caymans isn't going to deprive their client of the ability to manage the funds.

ATTORNEY SELDEN: Your Honor, I don't -- for clarity of the record, I will say we have proposed a draft stipulation. I have asked for my counterparts' responses to that. We have not received

a response. We have worked hard to negotiate a standstill agreement that is typical here in Delaware that would maintain the status quo. While we have a control fight elsewhere subject to the jurisdiction of the Cayman court, I do not want you to think that we have not tried in some detail and at some length and with exchange of many drafts and many requests from me for responses that I have not received from my counterparts to enter a basic status quo order where we would get notice, for example, of the sale of a portfolio company or a sale of an interest of the funds.

I asked again Dr. Harrison at his deposition if he was engaged in that. He told me at his deposition on October 6th no, but on October 8th they produced a list of companies that he is contacting to sell assets.

This is a real concern for my clients. So I cannot agree, I'm afraid, that he continue without Court oversight in those proceedings, but I would very much like to enter a basic status quo order here in Delaware and to proceed with briefing in this very significant case where the issues before Your Honor are also warranting serious consideration and

detailed briefing on a schedule that gets those to you in an orderly way. That is all I'm asking for here.

ATTORNEY BERDON: Your Honor, I think our friends have vastly misrepresented the information that was provided on October 8th. It was a list of parties that had been contacted or had contacted us to discuss the potential for funding the portfolio in the event that there was a consensual resolution of this matter or a judgment in this matter. The representation that we disclosed a group of companies that we were discussing asset sales with has no basis in fact.

I can tell you that the reason why we have been unable to reach agreement with Rigmora with respect to a status quo order here in Delaware is because they have refused to represent in that order that they would not seek the very *ex parte* relief that we had disagreed on back on September the 19th.

In addition, they made a condition precedent to it that we surrender the financial control of the fund for all matters over $50,000 during the period in question.

And so it is not a lack of trying on ATP's part, Your Honor. And I think that the status

quo here that we're looking to maintain, we have no intention whatsoever of selling assets without giving ample notice and seeking Court approval of an asset sale. We have no interest in hiding the ball on that. But what we are looking for is the ability to litigate this matter through to judgment without PLs being appointed that would take control of the fund before this Court has the opportunity to rule or the defendants going to Cayman again seek*ing ex parte* relief to change the status quo.

So we are willing to continue talking, but the factual substrate that you just heard from the other side is something that we cannot agree with.

THE COURT: Thank you.

All right. So here's what we're going to do. I believe your reply on the status quo is coming in on Sunday night; is that correct?

ATTORNEY BARLOW: Yes, Your Honor.

THE COURT: I'm going to read it. I assume we're on the breakneck pace that Mr. Barlow proposed. That puts your opening brief next Wednesday; is that right?

ATTORNEY BARLOW: Yes, Your Honor.

THE COURT: So that's more harmful for

them in the interim than you all.

If I read the papers or determine that there are other reasons to relax the briefing schedule, I will.

Be on call on Monday. After I read the papers, I may get you on the phone for a hearing. I'd also like to know whether there have been any developments in your meetings to determine whether you can stipulate to a different schedule that's less extreme.

Look, I do my best to render these judgments quickly, but it's very, very hard for me personally to marshal this amount of evidence into a thoughtful and cogent factual set of findings on the pace that you've proposed.

What I heard Dr. Harrison say, that he felt the funds could limp along until the end of the year, in my mind, I thought that meant that I would have until through November to issue a post-trial decision that gave you all sufficient time to appeal. Now I'm hearing that events in the Caymans could eclipse my ability to do so in a meaningful way, which makes me a little concerned.

So I really hope that you all can

agree to a schedule that gives everyone time to do what they need, including me.

But is there anything else we can accomplish?

ATTORNEY BARLOW: No. We appreciate the accommodation of the Court and, as always, its staff.

THE COURT: All right. All right. Look -- you may sit down, Mr. Barlow -- we all worked very hard to get through this trial and I appreciate it. I know it hasn't been easy for anyone, not the witnesses, certainly not the attorneys, and certainly not the people who have been here assisting the attorneys. I'm grateful. Thank you.

I hope that you express the same gratitude to the court staff that you did in court earlier. Make sure to thank them on the way out. They work extremely hard to make these days happen. I wish you all safe travels. I hope you all enjoy Wilmington this evening and try to relax, if only for a few hours.

With that, we are adjourned. Thank you.

(Court adjourned at 4:54 p.m.)

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CERTIFICATE

We, DENNEL NIEZGODA, KAREN SIEDLECKI, KATHY CORTOPASSI and TINA ALFARO, Official Reporters for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 290 through 490 contain a true and correct transcription of the proceedings as stenographically reported by us at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF we have hereunto set our hands at Wilmington, this 17th day of October, 2025.

/s/ Dennel Niezgoda	/s/ Karen Siedlecki
Official Court Reporter	Official Court Reporter
/s/ Kathy Cortopassi	/s/ Tina Alfaro
Official Court Reporter	Official Court Reporter

EXHIBIT E

APPLE TREE PARTNERS IV, L.P.

(A Cayman Islands Exempted Limited Partnership)

FIRST AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF APPLE TREE PARTNERS IV, L.P. AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND, IN CERTAIN CASES, WITH THE APPROVAL OF THE GENERAL PARTNER. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

NON-U.S. RESIDENTS ONLY: NO ACTION HAS BEEN OR WILL BE TAKEN TO COMPLY WITH THE SECURITIES LAWS IN ANY JURISDICTION OUTSIDE THE UNITED STATES OF AMERICA THAT WOULD PERMIT AN OFFERING OF THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, IN ANY COUNTRY OR JURISDICTION WHERE ACTION FOR THAT PURPOSE IS REQUIRED. IT IS THE RESPONSIBILITY OF ANY PERSON WISHING TO PURCHASE THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT TO SATISFY HIMSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE THE UNITED STATES OF AMERICA IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

Joint Exhibit
JX-0001
C.A. No. 2025-0607-KSJM

APPLE TREE PARTNERS IV, L.P.
First Amended and Restated
Limited Partnership Agreement

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THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT (as amended and/or restated from time to time, the "Agreement"), dated this 1st day of November, 2012, by and among ATP III GP, Ltd., a Cayman Islands exempted company, as general partner (in its capacity as a general partner of the Partnership, the "General Partner"); Daniel P. Finkelman, as the withdrawing limited partner ("Finkelman"); and the Persons (as defined in Paragraph 18(j)) whose Subscription Agreements (as defined in Paragraph 1(e)) with the Partnership (as defined below) and the General Partner dated the date hereof for the purchase of limited partner interests in the Partnership have been accepted and who have executed (directly or by power of attorney) a counterpart to this Agreement, as limited partners (the "First Closing Limited Partners"). The First Closing Limited Partners, any additional limited partners admitted to the Partnership after the date of this Agreement, and any substituted limited partners admitted to the Partnership after the date of this Agreement, each in its capacity as a limited partner of the Partnership, are sometimes referred to herein collectively as the "Limited Partners". The General Partner and the Limited Partners are sometimes referred to herein collectively as the "Partners".

PRELIMINARY STATEMENT

The General Partner and Finkelman formed Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership (the "Partnership") by executing the Initial Exempted Limited Partnership Agreement of the Partnership, dated October 29, 2012 (the "Original Agreement"), and by registering the Partnership as an exempted limited partnership with the Registrar of Exempted Limited Partnerships under the laws of the Cayman Islands on October 29, 2012.

The First Closing Limited Partners desire to be admitted to the Partnership as limited partners.

The General Partner and the First Closing Limited Partners desire to amend the Original Agreement as hereinafter provided, and in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, agree as follows:

A. Immediately following the admission to the Partnership of the First Closing Limited Partners, Finkelman shall hereby withdraw from the Partnership as a limited partner, his contribution to the Partnership's assets (if any) as a limited partner shall be returned and he shall have no further interest in or obligation to the Partnership.

B. On the date first above written, upon execution of a counterpart to this Agreement by or on behalf of such Persons, (i) ATP III GP, Ltd. hereby continues as general partner of the Partnership and (ii) the First Closing Limited Partners are hereby admitted to the Partnership as limited partners of the Partnership.

C. The Original Agreement is hereby amended and restated in its entirety to read as follows:

The Partners agree to carry on an exempted limited partnership subject to the terms of this Agreement in accordance with the provisions of the Exempted Limited Partnership Law (2012 Revision) of the Cayman Islands (as the case may be amended from time to time, the "ELP Law").

1. Firm Name; Registered Office; Purposes; Powers; Specific Authorization; Currency.

(a) Firm Name. The name of the Partnership is Apple Tree Partners IV, L.P.

(b) Registered Office. The initial address of the Partnership's registered office in the Cayman Islands is at the offices of Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. The General Partner may change the Partnership's registered office to any other address in the Cayman Islands from time to time without the consent of any other Person. The General Partner shall provide notice of such change (and of any change in the registered office of the General Partner in the Cayman Islands) to the Limited Partners.

(c) Purposes. The sole purpose of the Partnership is to invest, through one or more entities directly or indirectly owned by the Partnership (each such entity, an "Intermediary"), in equity securities issued by Apple Tree Consolidated, SPRL, a to-be-formed Belgium private limited liability company ("ATC"), whose equity securities shall be owned, directly or indirectly through an Intermediary, by the Partnership. The sole purpose of ATC shall be to invest in pharmaceutical,

medical device and other medically-related business projects. Subject to the two preceding sentences, the Partnership and ATC shall have such other purposes that are necessary, convenient or related to the foregoing. Each Intermediary and ATC shall be wholly-owned, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(d) Powers. Subject to the terms and provisions hereof, the Partnership shall have all the powers available to it as an exempted limited partnership under the laws of the Cayman Islands.

(e) Specific Authorization. Notwithstanding any other provision of this Agreement, without the consent of any Limited Partner or other Person being required, the Partnership is hereby authorized to execute, deliver and perform, and the General Partner on behalf of the Partnership is hereby authorized to execute and deliver, (i) a subscription agreement with each Limited Partner, or the equivalent thereof in the case of a Limited Partner who will not have a Contingent Subscription (as defined in Paragraph 5(a)), for the purchase of such Limited Partner's interest in the Partnership (each, a "Subscription Agreement") and (ii) any agreement, document or other instrument contemplated thereby or related thereto, and (subject to any approvals expressly required by any such agreement, document or instrument or by this Agreement) any amendments thereto, and any such actions heretofore taken by the General Partner are hereby ratified. The General Partner is hereby authorized to enter into the agreements, documents and instruments described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Partnership.

(f) Functional Currency. The functional currency of the Partnership is the United States dollar. All capital contributions and cash distributions shall be made in United States dollars, and the Partnership's income, gains, losses and expenses will be calculated and reported in United States dollars.

2. General Partner.

(a) Name; Address. The name and address of the General Partner are set forth in the List of Partners (as defined in Paragraph 16(b)). The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the name or address of the General Partner.

(b) Control. The management, policies and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner. The General Partner and Apple Tree Venture Management, LLC (the "Management Company") shall, at all times prior to any removal of the General Partner as general partner of the Partnership pursuant to Paragraph 4(a), be owned exclusively by Dr. Seth L. Harrison ("Dr. Harrison").

(c) Management Agreement. The General Partner shall cause ATC to enter into a management agreement with the Management Company, in the form attached hereto as Schedule A (as amended from time to time, the "Management Agreement"). The Management Agreement shall not be terminated prior to the time set forth in Paragraph 5 thereof or amended, and none of its provisions shall be waived, in each case without the prior written consent of the holders of a majority of the Preferred Units (as defined in Paragraph 6(c)).

(d) Fees and Commissions. So long as the Management Agreement is in effect, any director's fees, consulting fees and other remuneration paid to the General Partner, the Management Company, Dr. Harrison, the members and employees of the Management Company or any of their respective affiliates in cash, securities or otherwise by an Intermediary, ATC or any direct or indirect subsidiary of ATC, including any Operating Company (as defined in Paragraph 2(l)) (a "Subsidiary"), shall only be received by them on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by Apple Tree Pharmaceuticals, Inc., a Delaware corporation ("ATPharma"), for services rendered to an Operating Company, rather than the gross amount thereof,

reduced by any ATPharma governance-related costs that are not borne by any such entity, shall be received by ATPharma on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board (as defined in Paragraph 2(n)); and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

(e) Salaries. Without the prior written approval of the holders of a majority of the Preferred Units, while the Management Agreement is in effect, neither the General Partner, the Management Company, Dr. Harrison nor any of their respective affiliates shall receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary and the employees of the Management Company shall not receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary, in each case other than the Management Fee, fees or other remuneration paid to ATPharma as described in Paragraph 2(d) or with the prior written approval of the holders of a majority of the Preferred Units; provided, however, that the General Partner shall be entitled to an annual fee of US $500 from the Partnership.

(f) Cayman Islands Registration Statement. The General Partner has filed a registration statement pursuant to Section 9 of the ELP Law to register the Partnership as an exempted limited partnership (the "Registration Statement") and shall file any required amendments thereto.

(g) Standard of Care. It is recognized that decisions concerning investments or potential investments involve exercise of judgment and the risk of loss. To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any such

investment or any other action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner or such affiliate.

(h) Guarantees. The Partnership shall not guarantee or agree in any other manner to become liable with respect to any indebtedness or obligation of any other Person without the prior written consent of the holders of a majority of the Preferred Units.

(i) Borrowing. The Partnership shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units.

(j) U.S. Trade or Business. The General Partner shall use its reasonable best efforts to conduct the affairs of the Partnership and its subsidiaries so that no Foreign Limited Partner realizes income that is "effectively connected with the conduct of a trade or business within the United States" within the meaning of Sections 871, 882 or 897 of the U.S. Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as the "Code"), solely by virtue of being a Limited Partner. Notwithstanding the foregoing, payments (or adjustments thereto) specifically provided for in this Agreement or the Management Agreement shall not be deemed to violate this undertaking. For purposes of this Agreement, the term "Foreign Limited Partner" shall mean any Limited Partner that (A) either (1) is a "nonresident alien" within the meaning of Section 7701(b)(1)(B) of the Code, a foreign corporation or partnership within the meaning of Section 7701(a)(5) of the Code, or a foreign trust or estate within the meaning of Section 7701(a)(31) of the Code, or (2) is treated as a partnership or flow-through entity for United States Federal income tax purposes and that has any partners, members or beneficiaries that would be a Foreign Limited Partner under clause (1) of this sentence if

they were Limited Partners and (B) has notified the General Partner of such status in the Subscription Agreement or transfer documentation pursuant to which it acquired its interest in the Partnership.

(k) Letter Agreement. Dr. Harrison shall, on the date first written above, execute and deliver to the holders of the Preferred Units a letter agreement in the form attached hereto as Schedule B (as amended from time to time, the "Letter Agreement").

(l) Co-investments. The General Partner shall not permit any Intermediary, ATC or any Subsidiary to purchase any Operating Company Securities (as defined below), debt, royalty arrangement or other economic interest issued by a prospective Operating Company in which the General Partner, the Management Company or any of their respective affiliates has a preexisting investment or is investing at the same time as ATC unless such purchase has been approved by the holders of a majority of the Preferred Units. Securities intended to achieve ATC's investment purpose are sometimes referred to herein as "Operating Company Securities". An entity in which ATC has a direct or indirect investment in Operating Company Securities is sometimes referred to herein as an "Operating Company". Except with the prior written consent of the holders of a majority of the Preferred Units, each Operating Company shall be wholly-owned, directly or indirectly, by ATC, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(m) Tax Classification. Except with the prior written consent of Ezbon International Limited ("Ezbon"), the General Partner shall (i) not cause or permit the Partnership to elect (A) to be excluded from the provisions of Subchapter K of the Code or (B) to be treated as a corporation for United States Federal income tax purposes; (ii) cause the Partnership to make any election reasonably necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for United States Federal income tax purposes; (iii) cause the Partnership to file any required tax returns in a manner consistent with its treatment as a partnership for United States Federal income tax purposes; and (iv) not take any action that would be inconsistent with the treatment of the Partnership as a

partnership for such purposes. Except with the prior written consent of the holders of a majority of the Preferred Units, the Partnership shall use its best efforts to cause ATC to be treated as a corporation for United States Federal income tax purposes.

(n) ATC Board. The board of directors of ATC (the "Board") shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in pharmaceutical, medical device and other medically-related projects and related activities (each, a "Project"), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC's management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the "Operating Agreement"); provided that no compensation shall be paid by ATC to

the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts (including, without limitation, cash and publicly-traded securities) received by ATC from Subsidiaries (including, without limitation, Operating Companies) which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received from Subsidiaries, including, without limitation, the Operating Companies). The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Intermediaries and Subsidiaries (including, without limitation, the Operating Companies) substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Intermediary or Subsidiary (including, without limitation, any Operating Company), such Intermediary or Subsidiary (including, without limitation, any Operating Company) shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Intermediary or Subsidiary (including, without limitation, any Operating Company) rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board.

3. Limited Partners.

(a) Names; Addresses; Contingent Subscriptions. The names and addresses of the Limited Partners and their respective Contingent Subscriptions (if any) and numbers and classes of Units (as defined in Paragraph 6(c)) are set forth in the List of Partners. Except as otherwise provided in this Agreement, the Contingent Subscription of Dr. Harrison (together with his permitted transferees) shall at all times prior to a Removal Event be equal to 5.26315% of the sum of the

Contingent Subscriptions of the other holders of the Preferred Units. The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the Contingent Subscription or number or class of Units of any Limited Partner, the withdrawal of any Limited Partner, the admission of any additional or substituted Limited Partner, the transfer of all or any part of the interest of any Limited Partner and any change in the name or address of any Limited Partner, provided such revision is, in each case, in accordance with the terms of this Agreement. The General Partner shall also maintain a Register of Partners, as required by the ELP Law.

(b) Limited Liability. No Limited Partner, in its capacity as such, shall be liable for the debts or obligations of the Partnership; provided that nothing in this sentence shall limit the liability of a Limited Partner (i) to make the capital contributions which it agreed to make to the Partnership pursuant to Paragraph 5, (ii) to return distributions that it is required to return to the Partnership pursuant to this Agreement or the ELP Law, or (iii) to pay any other amount that it is required to pay to the Partnership pursuant to this Agreement or its Subscription Agreement. None of the Limited Partners, in their capacity as such, shall take any part in the conduct of the business of the Partnership or have any power to sign for or to bind the Partnership.

(c) Additional Admissions. Subject to the provisions of this Agreement, including but not limited to Paragraphs 3(a) and 6(d), (e) and (f), the General Partner is authorized, but not obligated, to accept additional subscriptions from the Limited Partners, select and admit additional Limited Partners to the Partnership, and issue Incentive Common Units and Tracking Units (each as defined in Paragraph 6(c)) to the Limited Partners and additional Limited Partners. Each Limited Partner who is to make an additional subscription or receive additional Incentive Common Units or Tracking Units shall execute a Subscription Agreement (or the equivalent thereof) and each Person who is to be admitted as an additional Limited Partner shall execute a counterpart to this Agreement and, if such Person makes a subscription, a Subscription Agreement (or the equivalent thereof).

4. Removal of General Partner.

(a) Removal. Following the occurrence of a Removal Event (as defined in Paragraph 4(c)), the holders of a majority of the Preferred Units may, upon ten days' prior written notice to the General Partner, remove the General Partner as general partner of the Partnership and select a successor general partner. The successor general partner shall agree in writing to be bound by this Agreement and assume all of the obligations of the General Partner under this Agreement. The exculpation and indemnification of the General Partner pursuant to Paragraphs 2(g) and 15 shall survive for actions or omissions occurring prior to such removal (subject to the conditions described therein); the Management Agreement, the Letter Agreement and the Operating Agreement shall terminate (except that the Management Company shall continue to be entitled to receive the Management Fee for an additional 45 days and shall reimburse the Partnership to the extent (if any) that it was paid Management Fee for more than 45 days in advance); and the successor general partner shall file an amendment to the Registration Statement reflecting the change in the general partner of the Partnership.

(b) Substitution of Successor General Partner. The successor general partner shall be deemed admitted to the Partnership as general partner immediately upon the filing of the section 10 notice pursuant to the ELP Law in respect of such change of general partner.

(c) Removal Event. For purposes of this Paragraph 4, "Removal Event" means the occurrence of any of the following:

(i) The criminal conviction for a felony entered by a court of competent jurisdiction against Dr. Harrison in respect of, or in relation to, the Partnership's affairs;

(ii) Any act of willful fraud, willful misconduct or Gross Negligence by Dr. Harrison in respect of, or in relation to, the Partnership's affairs; or

(iii) Any violation by Dr. Harrison of his obligations under Section 4 of the Letter Agreement including, without limitation, upon his death or disability.

(d) Consequences of General Partner's Removal. If the General Partner is removed as general partner of the Partnership pursuant to Paragraph 4(a):

(i) The number of Founder Common Units (as defined in Paragraph 6(c)) held by Dr. Harrison (taken together with his permitted transferees) shall be reduced as follows:

(A) If such removal was the result of Dr. Harrison's death or disability, then such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 60 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 60, or

(B) In all other instances, such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 120 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 120;

Furthermore, if the General Partner is removed pursuant to Paragraph 4(a) as a result of (1) a Removal Event described in Paragraph 4(c)(i) or (2) willful and material fraud by Dr. Harrison within the context of Paragraph 4(c)(ii), as determined by a court of competent jurisdiction, then Ezbon shall have the option to purchase the remaining Founder Common Units held by Dr. Harrison (taken together with his heirs or legal representatives) at an aggregate price equal to $1. Such option may be exercised by Ezbon within 30 days following the removal date by written notice thereof by Ezbon to Dr. Harrison (or his heirs or legal representatives, as applicable), accompanied by payment in full of the purchase price therefor. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Founder Common Units to Ezbon.

(ii) At Dr. Harrison's election, his Contingent Subscription in respect of Preferred Units shall be reduced to the aggregate amount of capital contributions theretofore made by him to the Partnership in respect of such Preferred Units, in which case the number of his Preferred Units and Investment Common Units shall also be reduced by the same percentage by which Dr. Harrison's Contingent Subscription in respect of Preferred Units was reduced and future distributions in respect of Dr. Harrison's Preferred Units and Investment Common Units shall be adjusted to the extent necessary so that, as quickly as possible, aggregate distributions in respect of those Units, net of contributions, are what they would have been if Dr. Harrison had at all times held the reduced number of such Units. Such election right, and the consequences thereof, shall also apply to Dr. Harrison's heirs and legal representatives.

(iii) For the avoidance of doubt, the foregoing adjustments shall be applicable for purposes of determining Dr. Harrison's (and each of his heirs' and legal representatives') share of allocations and distributions only prospectively from the date of removal, and Dr. Harrison (and each of his heirs and legal representatives) shall not, as a result of this Paragraph 4(d), have any obligation (pursuant to Paragraph 15(e), or otherwise) to return to the Partnership or any Partner any distributions that Dr. Harrison (or such heirs and legal representatives) received prior to such date (but, for the further avoidance of doubt, this Paragraph 4(d)(iii) shall not relieve Dr. Harrison (or such heirs and legal representatives) of any obligation he (or they) would otherwise have under Paragraph 15(e) with respect to distributions made prior to the General Partner's removal).

(iv) So long as Dr. Harrison (taken together with his heirs and legal representatives) continues to own in the aggregate the greater of at least (Y) 50,000 Units (appropriately adjusted for any splits or combinations of, or dividends with respect to, Units occurring after the date of this Agreement or (Z) 20% of the Units owned by him (taken together with his heirs and legal representatives) following the Removal Event, after giving effect to all

adjustments (1) arising from such Removal Event (including, without limitation, adjustments pursuant to Paragraph 4(d)(i), (ii) and (vi)) and (2) pursuant to Paragraph 6(f)(i), neither the Partnership, any Intermediary, ATC nor any Subsidiary (including any Operating Company) shall enter into any transaction or agreement with Ezbon, Blue Horizon Enterprise Ltd. ("Blue Horizon") or any of their respective affiliates without the prior written consent of Dr. Harrison (or his heirs or legal representatives, if applicable); provided, however, that the Partnership may continue to issue additional Preferred Units and Investment Common Units to Ezbon, Blue Horizon or any of their respective affiliates, (i) at or above the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations or (ii) below the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations, provided that in the case of this clause (ii), (A) a third party investor who is not affiliated with either Ezbon or Blue Horizon and who is not a Limited Partner, but who comes within the definition of a "qualified purchaser" for purposes of the U.S. Investment Company Act of 1940, as amended, participates in such financing and purchase at least one-third of the Preferred Units and Investment Common Units sold in such financing and (B) the combined percentage ownership by Ezbon, Blue Horizon and their affiliates of Preferred Units and Investment Common Units immediately following such financing is less than their combined percentage ownership of such Units immediately prior to such financing. So long as Dr. Harrison (or his heirs or legal representatives) continues to own any Units, all such transactions or agreements with Ezbon, Blue Horizon or any of their respective affiliates shall be on "arms-length" terms or as otherwise approved by Dr. Harrison (or his heirs or legal representatives, if applicable).

(v) Dr. Harrison (or his heirs or legal representatives, if applicable) shall have a preemptive right, exercisable for a minimum period of 30 days and a maximum period of

60 days, to subscribe for his pro rata share of any additional Preferred Units and Investment Common Units offered by the Partnership (based on the percentage of the total number of outstanding Units of such class owned by Dr. Harrison (or his heirs or legal representatives)), on the most favorable terms and conditions offered to any third party (including, without limitation, Ezbon, Blue Horizon or their respective affiliates).

(vi) If the General Partner is removed pursuant to Paragraph 4(a) as a result of a Removal Event described in Paragraph 4(c)(ii) (other than for willful and material fraud as determined by a court of competent jurisdiction) or Paragraph 4(c)(iii), then Dr. Harrison (or his heirs or legal representatives) shall have the option to require Ezbon to purchase a percentage of his (or their) Preferred Units equal to the product of (A) the aggregate capital called in respect of such Preferred Units divided by the aggregate Contingent Subscriptions of his (or their) Preferred Units and (B) the quotient of (1) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by the then balance due under the Loan Arrangement divided by (2) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units. The purchase price for such Preferred Units shall be an amount equal to the sum of the capital contributions made or deemed made (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by (x) amounts then outstanding under the Loan Arrangement and (y) distributions to Dr. Harrison (or his heirs or legal representatives), in each case in respect of such Preferred Units. Such option may be exercised by Dr. Harrison (or his heirs or legal representatives) within 30 days following the removal date by written notice thereof by Dr. Harrison (or his heirs or legal representatives) to Ezbon. If Dr. Harrison (or his heirs or legal representatives) elects to exercise such option, Ezbon shall purchase such Preferred Units by payment of the purchase price therefor in four equal installments, with the first installment due within ten days following the date of

exercise and each subsequent installment due on the three-month anniversary of the due date for the prior installment; provided, however, that the entire amount shall be payable in full within ten days following the date of exercise if the aggregate purchase price does not exceed US $10 million. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Preferred Units to Ezbon. In the event of a sale of Preferred Units pursuant to this clause (vi), the provisions of Section 3 of Part A to Schedule D hereto shall no longer apply to any remaining Preferred Units owned by Dr. Harrison (or his heirs or legal representatives). In no event shall a sale of Preferred Units pursuant to this clause (vi) insulate the General Partner from any claim against it for willful misconduct or gross negligence giving rise to such removal.

5. Capital of the Partnership.

(a) Capital Contributions; General.

(i) Subject to the terms of this Agreement, each of the Partners shall contribute to the capital of the Partnership, in such installments as the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription" in the List of Partners (the "Contingent Subscription"). A Partner may not make less than the full amount of any required capital contribution.

(ii) Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, the Intermediaries and ATC, as applicable, to (A) pay Partnership and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership and Intermediary non-discretionary items (such as taxes and tax distributions by the Partnership) and satisfy other Partnership and Intermediary expenses and obligations incurred in the ordinary course of business and (C) make capital contributions (directly or indirectly through one or more Intermediaries) to ATC to allow ATC to (I) pay the

Management Fee for the next 12-month period and other ATC expenses then existing or reasonably anticipated to be incurred within the next six-month period, (II) invest in Projects approved by the Board in accordance with a Board-approved budget therefor and (III) pay ATC non-discretionary items (such as taxes) and satisfy other ATC expenses and obligations incurred in the ordinary course of business. Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (X) capital calls in respect of Partnership, Intermediary and ATC expenses and obligations incurred in the ordinary course of business for legal, audit, accounting and tax services, insurance, business development (including the identification, investigation and evaluation of prospective Projects), and other general and administrative matters (other than the Management Fee) shall be limited to the amount therefor set forth in a budget presented by the General Partner and approved by the holders of a majority of the Preferred Units in writing or the Board, whose approval shall not be unreasonably withheld or delayed, (Y) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (1) 20% of the Partnership's contributed capital or (2) $50 million, and (Z) in the case of a capital call pursuant to clause (C) of the preceding sentence that is made on a basis accelerated from that set forth in a Board-approved budget, the General Partner (1) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (2) provided the Board with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the holders of Preferred Units or the Board shall be required with respect to organizational expenses of the Partnership and its related entities.

(iii) Not less than ten business days' prior written notice shall be given to each Partner by the General Partner as to the date for each capital contribution. The amount of capital required to be contributed by each Partner on each occasion of a capital contribution shall

be computed by the General Partner so that each Partner contributes that portion of the aggregate capital contribution to be made by all Partners at such time which such Partner's Contingent Subscription bears to the total Contingent Subscriptions of all Partners, or in such other proportions as may be determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. All capital contributions shall be made in cash.

(iv) The General Partner may at any time, with the prior written consent of Ezbon, reduce on a pro rata basis or terminate, in their entirety, the outstanding commitments of the Partners to make further capital contributions to the Partnership, in which instance the obligation of the Partners to contribute additional capital to the Partnership shall be so reduced or terminated, as applicable, the number of Units held by each Partner shall be adjusted on an equitable basis and the List of Partners shall be revised to reflect such occurrence. A portion of the capital contributions to be made by Dr. Harrison shall be financed by Ezbon, and repaid to Ezbon by Dr. Harrison, as described in Schedule D attached hereto.

(b) Anti-Money Laundering. Each capital contribution made by a Limited Partner shall constitute a representation and warranty by such Limited Partner that, to such Limited Partner's knowledge:

(i) None of the cash that such Limited Partner has contributed or is contributing to the Partnership has been derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law; and

(ii) No contribution by such Limited Partner to the Partnership shall cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the Proceeds of Crime Law 2008, the Terrorism Law (2009 Revision) or the Money Laundering Regulations (2011 Revision), in each case, such statute

as amended to date and any successor statute thereto and including all regulations promulgated thereunder (the "Anti-Money Laundering Laws").

Each Limited Partner shall promptly notify the General Partner if it becomes aware that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws. Each Limited Partner shall use commercially reasonable efforts to provide promptly to the General Partner any additional information regarding such Limited Partner or its beneficial owners that the General Partner reasonably deems necessary or advisable to determine or ensure compliance with all applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges that if at any time it is discovered that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws, any of such Limited Partner's foregoing representations and warranties is incorrect, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the General Partner may undertake appropriate actions to ensure compliance with such applicable law or regulation. Actions that may be taken by the General Partner in the circumstances described in the previous sentence include, but are not limited to, the following:

(x) The General Partner, upon delivery of notice to that effect to the affected Limited Partner, may "freeze" such Limited Partner's interest in the Partnership and, in that event: (A) shall not permit the Partnership to accept any additional capital contributions from such Limited Partner so long as the interest is frozen; (B) shall not request any additional capital contributions from such Limited Partner so long as the interest is frozen; (C) shall not permit the Partnership to

allocate any items of Partnership income or gain to such Limited Partner's Capital Account with respect to any fiscal period commencing on or after the date of delivery of such notice and for so long as the interest is frozen (although the General Partner may cause the Partnership to continue to allocate items of loss or expense to such Limited Partner's Capital Account to the same extent as if, with respect to such Limited Partner and through the date of the Partnership's final liquidating distribution, such Limited Partner had timely made all required capital contributions with respect to its Contingent Subscription); and/or

(D) shall not permit the Partnership to make any distributions to such Limited Partner in respect of its frozen interest after the delivery of such notice and for so long as the interest is frozen, other than liquidating distributions pursuant to Paragraph 11 in an amount equal to the positive balance in its Capital Account, after payment to each other Partner of its final liquidating distribution in accordance with Paragraph 11 and subject in all events to compliance with applicable law.

(y) In the alternative, the General Partner may cause the Partnership to redeem such Limited Partner's interest using Partnership funds at a price equal to the lesser of (A) the aggregate amount of capital contributions theretofore made by such Limited Partner, net of amounts previously distributed to such Limited Partner, (B) the positive balance in the Capital Account of such Limited Partner, or (C) the fair market value of such interest (as determined by the General Partner); provided, however, that the General Partner shall cause the Partnership to redeem such Limited Partner's interest at such price if required by law, regulation or government order.

Each Limited Partner further understands that the Partnership or General Partner may release

confidential information about such Limited Partner and, if applicable, any of its underlying beneficial owners, to proper authorities if the General Partner, in its reasonable discretion, determines that it is required or otherwise in the best interests of the Partnership in light of the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges and agrees that the General Partner, without the consent of any Limited Partner and notwithstanding any other provision of this Agreement, may amend any provision of this Agreement in order to effectuate the intent of this Paragraph 5(b) and ensure compliance with the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities.

(c) Defaults on Contributions. If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due (or within five business days thereafter), interest will accrue on the outstanding balance of such unpaid capital contribution at a rate per annum equal to the lesser of (i) the prime rate (as published in The Wall Street Journal) plus 6% or (ii) the maximum rate permitted by law (the "Default Rate"), from and including the date the capital contribution was due until the earlier of the date of payment of such capital contribution by such Limited Partner (or a transferee) or such time, if any, as the General Partner imposes a Default Charge (as defined below).

If such Limited Partner fails to pay any such amount when due but pays such amount (together with any accrued interest thereon) prior to the time it becomes a Defaulting Partner (as defined below), the General Partner shall reflect in the records of the Partnership the amount paid by such Partner, with such amount treated as payment first of accrued interest to the extent thereof; provided, however, that no such payment of interest shall reduce the amount to be contributed to the Partnership by such Partner with respect to its Contingent Subscription.

A Limited Partner that has failed to make a payment in satisfaction of its Contingent Subscription (together with any accrued interest thereon) pursuant to this Paragraph 5 by the close of business on the date that is five business days after the relevant due date and has also failed to make such payment on or before the date that is 30 days after the General Partner has delivered, by certified or

registered mail or by nationally or internationally recognized "overnight" courier service, a notice (a "Default Notice") informing such Limited Partner of its failure to make such payment and notifying such Limited Partner that such Limited Partner will be considered a Defaulting Partner if payment is not received within such 30-day period, shall be deemed to be a "Defaulting Partner." The General Partner, in its sole discretion, may determine whether or not, or when, to deliver a Default Notice with respect to any Limited Partner that has failed to timely make a required payment pursuant to this Paragraph 5.

If a Limited Partner becomes a Defaulting Partner, the General Partner may, in its sole discretion, pursue one or more of the following alternatives:

(i) impose a Default Charge upon the Defaulting Partner;

(ii) assist the Defaulting Partner in selling its Preferred Units and Investment Common Units, with the full assumption by the buyer of the Defaulting Partner's Contingent Subscription, including any portion then due and unpaid;

(iii) accept a late contribution from the Defaulting Partner, with interest, in satisfaction of its then-outstanding obligation to contribute hereunder, if the General Partner determines in its sole discretion that such a late contribution will not jeopardize the activities and operations of the Partnership; or

(iv) pursue and enforce all of the Partnership's other rights and remedies against the Defaulting Partner under this Agreement, the relevant Subscription Agreement and Cayman Islands law, including, but not limited to, the commencement of a lawsuit to collect the unpaid capital contribution, interest and costs, and reimbursement of any other damages suffered by the Partnership (with interest on any such costs or other damages that are reimbursed).

If a Defaulting Partner's Preferred Units and Investment Common Units are sold in their entirety pursuant to (ii) above, or if the General Partner exercises its sole discretion to accept a late contribution pursuant to (iii) above, the General Partner shall not impose a Default Charge pursuant to (i) above. Otherwise, all such remedies, including the aforesaid damages provisions, shall be cumulative, and the

use by the General Partner of one or more of them against a Defaulting Partner shall not preclude the use of any other such remedy.

The Partners agree that the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy. To the maximum extent permitted by law, in connection with such failure (which remedy each Partner agrees is reasonable) and subject to the preceding paragraph of this Paragraph 5(c), the General Partner may cause such Defaulting Partner's number of Preferred Units and Investment Common Units to be reduced by up to 50% of such Defaulting Partner's corresponding number of Units of such class immediately prior to becoming a Defaulting Partner, which Units shall be allocated to the non-defaulting holders of Preferred Units in proportion to their respective number of Preferred Units (the "Default Charge"); provided, however, that if a Defaulting Partner (or any transferee(s) then holding the Defaulting Partner's interest) subsequently contributes the amount in arrears during such period, then in the sole discretion of the General Partner, the number of Preferred Units and Investment Common Units of the Partners (and the sharing of distributions among such Partners) shall be adjusted so that the Partners hold the same number of Units and receive the same of distributions as if such Defaulting Partner (together with such transferee(s), if any) had made all contributions with respect to such Defaulting Partner's interest on a timely basis.

The application of the aforesaid remedies and other damages provisions with respect to any Defaulting Partner shall not relieve such Defaulting Partner of his obligation to make (i) the capital contribution which resulted in the application of the aforesaid remedies and other damages provisions because of the failure of the Defaulting Partner to pay such capital contribution and (ii) all subsequent required capital contributions when due, or relieve such Defaulting Partner from designation as a Defaulting Partner and application of the aforesaid remedies and other damages provisions as to any such subsequent required capital contribution if he defaults with respect thereto. However, for the avoidance of doubt, the General Partner may not impose multiple Default Charges upon a Defaulting Partner with

respect to a single required capital contribution.

In connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made to the Defaulting Partner and the Partners to which the portions of the Defaulting Partner's Units are reallocated in accordance with this Paragraph 5(c) as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge. Without limiting the generality of the foregoing, the General Partner, in its sole discretion, may elect to retain any distributions that any Defaulting Partner would otherwise be entitled to receive pursuant to this Agreement (taking into account the effect of the imposition of any remedies and other damages provisions that have been applied) for use for any Partnership purpose, including for the purpose of applying such withheld amounts, first to any costs of collection incurred by the Partnership with respect to such Defaulting Partner's unpaid capital contributions and second, as payment of such Defaulting Partner's capital contributions that are due but unpaid (and interest thereon) in chronological order starting with the capital contribution that has been unpaid for the longest period. In the case of a distribution in kind, if the General Partner elects to withhold such distribution for application against such Defaulting Partner's unpaid capital contribution, the Partnership shall withhold securities otherwise distributable to the applicable Defaulting Partner and cause such securities to be sold for and on behalf of such Defaulting Partner (and such Defaulting Partner hereby irrevocably appoints the General Partner (with full power of substitution) as his agent and attorney in fact for purposes of effecting such sale) and remit the net proceeds of such sale to the Partnership for application as provided in this paragraph. Each Defaulting Partner with respect to which distributions are authorized to be withheld in accordance with this Paragraph 5(c) agrees to execute such other documents as the General Partner may reasonably request in order to effect the purposes of such withholding and the sale of any withheld securities on behalf and in the name of such Defaulting Partner. For purposes of maintaining such Defaulting Partner's Capital Account and all other purposes under this Agreement, such Defaulting Partner shall be deemed to have

received, at the time the distribution would otherwise have been made to such Defaulting Partner, any distribution that was withheld by the Partnership for application against such Defaulting Partner's unpaid capital contribution obligations and, in the case of a distribution in kind that was withheld, to have sold the withheld securities outside of the Partnership so that the Capital Accounts of, and economic arrangements among, the other Partners are not affected by the withholding of any such distribution. The value of any remaining withheld distributions that have not been applied to the Defaulting Partner's unpaid capital contribution obligations may be retained by the Partnership in cash or in kind, until the winding up of the Partnership, provided that the Partnership shall not be liable to such Defaulting Partner for any reduction in the value of any securities retained in kind and the Defaulting Partner shall not be entitled to the benefit of any appreciation in such retained securities.

6. Accounts; Units.

(a) Capital Accounts. There shall be established on the books of the Partnership a capital account ("Capital Account") for each Partner which shall consist of such Partner's initial capital contribution (if any) to the Partnership made pursuant to Paragraph 5, (i) increased by (A) any additional capital contributions by such Partner to the Partnership made pursuant to Paragraph 5 and (B) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 7, (ii) decreased by (A) any distributions to such Partner and (B) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 7, and (iii) adjusted pursuant to Paragraph 5(c).

(b) Distributions in Kind. For purposes of maintaining and determining Capital Accounts, all property distributed in kind by the Partnership to a Partner shall be charged to that Partner's Capital Account at the fair market value of such property on the date of distribution.

(c) Authorized Units. The Partnership is authorized to issue five classes of Limited Partner units (collectively, the "Units"), consisting of the following:

(i) up to 900,000 preferred units (the "Preferred Units"),

(ii) up to 900,000 investment common units (the "Investment Common Units"),

(iii) up to 225,000 founder units (the "Founder Common Units"),

(iv) up to 158,823 incentive common units (the "Incentive Common Units"), and

(v) tracking units with respect to any Project ("Tracking Units"), which shall not represent in the aggregate more than 5% of the Partnership's cumulative direct and indirect profits in such Project since its inception, and which "track" the profits (determined in accordance with GAAP, as defined in Paragraph 16(f)) of a particular Project.

(d) Purchase Price for Units. The purchase price for each Preferred Unit shall be US $1,666.66, to be contributed from time to time as described in Paragraph 5(a). The purchase price for each Investment Common Unit, Founder Common Unit, Incentive Common Unit and Tracking Unit (which may be US $0.00 in each case) shall be determined by the General Partner. Each Partner's Contingent Subscription shall be equal to the sum of the original issue purchase prices for its Units.

(e) Issuance of Units. On the date of this Agreement, (i) 436,050 Preferred Units and 436,050 Investment Common Units are being issued to Ezbon (ii) 418,950 Preferred Units and 418,950 Investment Common Units are being issued to Blue Horizon, and (iii) 45,000 Preferred Units, 45,000 Investment Common Units and 225,000 Founder Common Units are being issued to Dr. Harrison. Incentive Common Units and Tracking Units shall be issued from time to time as determined by the General Partner, in each case, subject to a vesting schedule as determined by the General Partner. Incentive Common Units shall only be issued to Persons providing bona fide services to ATPharma and Tracking Units in respect of a Project shall only be issued to Persons providing bona fide services directly related to the corresponding Project. No Incentive Common Units or Tracking

Units shall be issued to the General Partner, the Management Company, Dr. Harrison or their respective affiliates without the prior written approval of the holders of a majority of the Preferred Units. If any outstanding Preferred Units or Investment Common Units are redeemed by the Partnership or otherwise cancelled, they may only be reissued by action of the General Partner with the prior written consent of the holders of a majority of the Preferred Units.

(f) Reduction of Authorized and Issued Founder Common Units and Incentive Common Units. The number of authorized Founder Common Units and Incentive Common Units shall be automatically reduced (and each Partner's number of Founder Common Units and Incentive Common Units outstanding as of any date on which the number of authorized Founder Common Units or Incentive Common Units are reduced shall be reduced by the same percentage by which the authorized number of Units of the corresponding class were reduced as of such date), based on the amount of capital contributed to the Partnership in respect of the Preferred Units, as follows:

(i) Founder Common Units: reduced to 100,000 at such time as US $300 million has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Founder Common Units divided by the sum of the number of authorized Founder Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 20% to 10%, and

(ii) Incentive Common Units: reduced to 47,368 at such time as US $1 billion has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Incentive Common Units divided by the sum of the number of authorized Incentive Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 15% to 5%.

An example of how such authorized (and, similarly, issued and outstanding) Founder Common Units and

Incentive Common Units shall be reduced, and the manner in which distributions are apportioned pursuant to Paragraph 8(d)(ii), is attached hereto as Schedule E.

7. Allocations.

(a) Allocations Generally. Except as otherwise provided in this Agreement, the Profit or Loss (as defined in Paragraph 7(b)) for each fiscal quarter shall be allocated among the Partners in a manner that as closely as possible gives economic effect to the provisions of Paragraphs 5 and 8 and the other provisions of this Agreement, as determined in the reasonable discretion of the General Partner.

(b) Definitions. For purposes of this Agreement:

(i) "Carrying Value" shall mean, with respect to each Partnership asset, the asset's adjusted basis for United States Federal income tax purposes, adjusted to equal its fair market value, as determined by the General Partner, in accordance with the rules set forth in U.S. Treasury Regulations Section 1.704-1(b)(2)(iv)(f), except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional Partnership interest by any new or existing Partner in exchange for more than a de minimis capital contribution; (b) the date of the distribution of more than a de minimis amount of Partnership property (other than a pro rata distribution) to a Partner; or (c) such other dates as specified in U.S. Treasury Regulations under Section 704 of the Code; provided that adjustments pursuant to clauses (a), (b) or (c) above shall be made only if the General Partner determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners. The Carrying Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its fair market value. In the case of any asset that has a Carrying Value that differs from its adjusted basis, Carrying Value shall be adjusted by the amount of depreciation calculated for purposes of the definition of "Profit" or "Loss" rather than the amount of depreciation determined for United States Federal income tax purposes.

(ii) "Profit" or "Loss" for each fiscal quarter means the sum of the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for United States Federal income tax purposes, with the following adjustments: (a) all items of income, gain, loss or deduction allocated pursuant to Paragraph 7(c) shall not be taken into account in computing such taxable income or loss; (b) any income of the Partnership that is exempt from United States Federal income taxation and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (c) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value; (d) upon an adjustment to the Carrying Value of any asset (other than an adjustment in respect of depreciation), pursuant to the definition of Carrying Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (e) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset shall for purposes of determining Profit or Loss be an amount which bears the same ratio to such Carrying Value as the United States Federal income tax depreciation, amortization or other cost recovery deduction bears to such adjusted tax basis (provided, that if the United States Federal income tax depreciation, amortization or other cost recovery deduction is zero, the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deduction in calculating Profit or Loss); and (f) except for items in (a) above, any expenditures of the Partnership not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Profit or Loss pursuant to this definition shall be treated as deductible items.

(c) Regulatory Provisions. The following provisions of this Paragraph 7(c) are included in order to comply with United States Federal income tax laws and regulations. For purposes

of making allocations of Profit or Loss, if the Capital Account of any Limited Partner would be reduced below zero (or if an existing deficit in such Limited Partner's Capital Account would be increased) as a result of the allocation to it of any Loss, then such Loss shall first be allocated to such Limited Partner until such Limited Partner's Capital Account is reduced to zero; the remaining portion of such Loss shall be allocated to the remaining Partners in accordance with Paragraph 7(a) until the Capital Account of each remaining Limited Partner is reduced to zero; and any remaining portion of such Loss shall be allocated to the General Partner. In determining whether an allocation for a fiscal quarter would cause any Limited Partner's Capital Account to become negative or would add to an existing deficit in such Limited Partner's Capital Account for purposes of the preceding limitation, the following allocations and distributions shall be taken into account in determining such Limited Partner's Capital Account balance:

(i) allocations of loss and deduction that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner pursuant to Section 704(e)(2) of the Code (relating to allocations to a donee of a partnership interest), Section 706(d) of the Code (relating to allocations required in the case of a shift in a partner's interest in a partnership during a taxable year) and Treasury Regulation §1.751-1(b)(2)(ii) (relating to shifts in partners' interests in the inventory and unrealized receivables of a partnership, as those terms are defined in Section 751 of the Code, attributable to distributions from a partnership); and

(ii) distributions that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner to the extent they exceed offsetting increases to such Limited Partner's Capital Account that reasonably are expected to occur during (or prior to) the Partnership fiscal quarters in which such distributions reasonably are expected to be made.

If any Limited Partner receives an allocation or distribution described in the preceding sentence which is not reasonably expected to occur, but which causes or increases a negative balance in such Limited Partner's Capital Account, such Limited Partner shall be allocated items of Partnership

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income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. If any special allocation is made pursuant to the preceding sentence, subsequent allocations of loss, expenses or deductions shall be made to such Limited Partner so as to reverse the effect of such special allocation; provided, however, that no allocation of loss, expenses or deductions shall be made pursuant to this sentence which would cause such Limited Partner's Capital Account to become negative. The General Partner shall determine, in consultation with the Partnership's independent public accountants or auditors, whether any allocations or distributions described in this Paragraph 7(c) reasonably are expected to be made and the amount of any such allocations or distributions, and its determination shall be binding on all Partners. The provisions of this Paragraph 7(c) are intended to constitute a "qualified income offset" as defined in Treasury Regulation §1.704-1(b)(2)(ii)(d), and shall be so interpreted. All allocations with respect to any fiscal quarter pursuant to Paragraph 7(a) and any offsetting allocations pursuant to this Paragraph 7(c) shall be made on an interim basis, subject to adjustment when tax allocations are made pursuant to Paragraph 7(e) at the end of the fiscal year including such quarter.

(d) Changes in Partners' Interests. Notwithstanding the foregoing, with respect to any fiscal quarter during which any Partner's interest in the Partnership changes by reason of the admission of a Partner, the withdrawal of a Partner, non-pro rata contributions of capital to the Partnership, or any other event described in Section 706(d)(1) of the Code and any regulations issued thereunder, allocations of Profit or Loss made pursuant to this Paragraph 7 shall be adjusted appropriately to take into account the varying interests of the Partners in the Partnership during such quarter. The General Partner shall consult with the Partnership's accountants, auditors or other advisers and shall select the method of making such adjustments, which method shall be used consistently thereafter.

(e) Tax Allocations.

(i) For United States Federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocation of Profit and Loss pursuant to the other provisions of this Agreement, taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code. However, in the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.

(ii) If any Partners are treated for United States Federal income tax purposes as realizing ordinary income as the result of receiving interests in the Partnership (whether under Section 83 of the Code or under any similar provision of any law, rule or regulation) and the Partnership is entitled to any offsetting deduction (net of any income realized by the Partnership as a result of such receipt), the Partnership's net deduction will be allocated to and among the Capital Accounts of such Partners in such manner as to offset, as nearly as possible, the ordinary income realized by such Partners to the extent consistent with applicable law.

(f) Tax Withholding.

(i) If the Partnership incurs a tax withholding obligation with respect to the share of Partnership income or gains allocated or distributed to any Partner: (A) any amount that is (1) actually withheld from a distribution that otherwise would have been made to such Partner and (2) paid over to any taxing authority in satisfaction of such withholding obligation shall be treated under this Agreement for all purposes as if such amount had been distributed to such

Partner; and (B) to the extent that any amount paid over to any taxing authority by the Partnership in satisfaction of such withholding obligation exceeds the amount, if any, actually withheld from a distribution that otherwise would have been made to such Partner, such excess shall be treated as an interest-free advance to such Partner. Amounts treated as advanced to any Partner pursuant to this Paragraph 7(f) shall be repaid by such Partner to the Partnership within 30 days after the General Partner gives notice to such Partner making demand therefor, which notice shall be given promptly after such advance is made. The Partnership shall collect any unpaid amounts from any Partnership distributions to such Partner that otherwise would be made to such Partner and any unpaid amounts that exceed anticipated distributions to such Partner shall be subtracted from such Partner's Capital Account.

(ii) If the Partnership receives securities disposition proceeds or other investment returns with respect to which non-United States taxes have been withheld at the source, or the Partnership is otherwise required to pay any non-United States taxes, the aggregate amount of such taxes so withheld, paid or required to be paid shall be deemed for all purposes of this Agreement to have been received by the Partnership and then distributed by the Partnership to and among the Partners based on the amount of such withholding or other taxes attributable to each Partner, as determined by the General Partner after consulting with the Partnership's accountants, auditors or other advisers, taking into account any differences in the amount of such taxes attributable to each Partner because of such Partner's status, nationality or other characteristics. The intent of the preceding sentence is to ensure to the extent feasible that the burden of non-United States taxes withheld at the source, as required to be paid by the Partnership, are borne by those Partners to which such taxes are attributable. If the amounts deemed distributed to the Partners in accordance with such sentence do not comport with the provisions of this Agreement relating to the apportionment of distributions among the Partners,

then, notwithstanding such distribution provisions, subsequent distributions to the Partners shall be adjusted in an equitable manner by the General Partner to reflect the intent of such sentence.

(iii) Notwithstanding Paragraph 7(f)(i), such Paragraph shall not apply with respect to any withholding taxes in respect of a Net Tax Obligation of Ezbon or Blue Horizon in respect of its Preferred Units or Investment Common Units. Accordingly, the amounts distributed to the holders of Incentive Common Units and Founder Common Units shall be determined as if Net Tax Obligations were an expense of the Partnership, and the allocations, distributions, and related provisions of this Agreement shall be adjusted and applied in a manner consistent with such intention. For this purpose, a "Net Tax Obligation" with respect to the Preferred Units and Investment Common Units held by Ezbon or Blue Horizon shall mean the excess of (A) all United States Federal, state or local taxes imposed on Ezbon or Blue Horizon in respect of such Units, whether imposed by withholding or otherwise (taking into account any reduced tax rates to which Ezbon or Blue Horizon is entitled pursuant to any tax treaty, without regard to whether Ezbon or Blue Horizon avails itself of such reduced rates), over (B) the value of all refunds, tax credits and tax deductions to which Ezbon, Blue Horizon or their respective beneficial holders are entitled in respect of any amount described in clause (A) (without regard to whether Ezbon, Blue Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions). Ezbon and Blue Horizon shall each provide to the Partnership a properly completed Form W-8(BEN), and shall provide to the Partnership all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of United States Federal, state and local taxes imposed on Ezbon or Blue Horizon, as the case may be, in respect of its income from the Partnership. For the avoidance of doubt, the Net Tax Obligation of Ezbon or Blue Horizon shall not include any additional tax liability resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon, Blue

Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon, Blue Horizon or their respective affiliates (including any such activities that cause Ezbon or Blue Horizon to have a permanent establishment in the United States) apart from Ezbon's or Blue Horizon's investment in the Partnership, (y) Ezbon's or Blue Horizon's failure to comply with the requirements of the previous sentence, and (z) Ezbon or Blue Horizon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of United States Federal, state or local taxes. Ezbon or Blue Horizon, as applicable, shall, as soon as reasonably practicable, provide the Partnership with such information as is reasonably necessary for the Partnership to determine the Net Tax Obligation with respect to Ezbon or Blue Horizon.

(g) Profits Interests. Except as specifically determined by the General Partner upon prior consultation with the holders of a majority of the Preferred Units, Units issued after the date hereof ("Additional Units") are intended to be a "profits interest" for United States Federal income tax purposes. In furtherance of such intent, notwithstanding any provision in this Agreement to the contrary: (i) no items of income, gain, loss, deduction or credit shall be allocated to any Partner in respect of such Partner's Additional Units to the extent such items relate to any unrealized income, gain, loss, deduction or credit of the Partnership as of the issuance date of such Additional Units; (ii) distributions by the Partnership to any Partner in respect of such Partner's Additional Units shall be limited to the minimum extent necessary to be consistent with the treatment of such Additional Units as a "profits interest" for United States Federal income tax purposes (and if any distributions are not made to any Partner pursuant to the provisions of this clause (ii), then to the extent there is sufficient subsequent appreciation in value of the assets of the Partnership, distributions shall be adjusted so that,

to the maximum extent possible, each Partner receives, on a cumulative basis, the same amount of distributions such Partner would have received as if no distributions in respect of any Units had been limited by reason of any Units constituting profits interests); and (iii) the General Partner shall consult with the Partnership's legal and tax advisors to determine the manner in which allocations and distributions should be made by the Partnership in respect of Additional Units. Following the promulgation, if any, of final regulations and associated guidance by the United States Treasury Department and Internal Revenue Service regarding the tax consequences associated with the issuance or transfer of partnership interests in exchange for the performance of services, the Partnership is authorized and directed to elect (on behalf of the Partnership and each of its Partners) to have the liquidation value safe harbor contemplated by proposed Section 1.83-3(l) of the Treasury Regulations and by the revenue procedure contemplated by IRS Notice 2005-43 (or the corresponding provisions of any such final Treasury Regulations or associated guidance) apply irrevocably with respect to all Units transferred in connection with the performance of services. The Partnership and each Partner (including any Partner obtaining an interest in exchange for the performance of services and any person to whom an interest in the Partnership is transferred) shall comply with all requirements associated with any such election.

8. Distributions.

(a) Tax Distributions. During each fiscal year, the General Partner shall cause the Partnership to distribute in cash to each Partner an amount equal to the aggregate United States Federal and state tax liability and non-United States tax liability attributable to items of income, gain, loss or deduction allocated to such Partner by the Partnership with respect to such year ("Hypothetical Tax Liability"), as determined in accordance with this Paragraph 8(a). Hypothetical Tax Liability shall be determined as if each Partner were a natural person resident in the State of New York, as follows:

(i) The Hypothetical Tax Liability of a Partner shall be computed based upon the items of income, gain, loss, deduction or credit allocated to such Partner by the

Partnership with respect to the fiscal year, without taking into account any other items of income, gain, loss, deduction or credit, and without taking into account the standard deduction or any loss carryovers or exemptions; provided that, if the General Partner determines, after consulting with the Partnership's accountants, auditors or counsel, that the actual tax liability of a Partner resulting from participation in the Partnership is reasonably likely to exceed the Hypothetical Tax Liability as so computed as a result of (A) the phaseout of, or limitation on, the deductibility of expenses allocated to such Partner, whether under Section 67 or Section 68 of the Code or otherwise, (B) the application of the alternative minimum tax or similar taxes, or (C) for any other reason, then, at the election of the General Partner, appropriate adjustments shall be made in computing the Hypothetical Tax Liability of each Partner on an equivalent basis so as to insure that each Partner will receive distributions sufficient to satisfy the actual tax liability attributable to its participation in the Partnership;

(ii) Hypothetical Tax Liability generally shall be determined using the highest marginal rates of Federal and state tax applicable to individuals for such fiscal year; provided, however, that (A) the determination of such marginal tax rates shall take into account the character of income, gain, loss or deduction (including net capital gain or loss) that is allocated and (B) if all or any portion of the Hypothetical Tax Liability is attributable to the alternative minimum tax, such marginal tax rates shall be determined using the highest rates applicable under the alternative minimum tax; and

(iii) Hypothetical Tax Liability for a Partner holding more than one class of Units shall be determined separately for each such class of Units, and without regard to tax items allocated to such Partner in respect of the other classes of Units held by such Partner.

To assist the Partners in paying estimated tax, amounts may be distributed during a fiscal year with respect to such year by using estimates of Hypothetical Tax Liability based upon results of the Partnership's operations for the fiscal year to date; to the extent that such estimates result in distributions

pursuant to this Paragraph 8(a) in excess of the Hypothetical Tax Liability determined after the close of the fiscal year, such excess distributions shall be deemed made pursuant to the other provisions of this Paragraph 8, and subsequent distributions shall be adjusted accordingly. Amounts distributed within 90 days after the end of a fiscal year may, at the option of the General Partner, be deemed to have been made during such fiscal year rather than during the fiscal year in which the distribution is actually made, solely to the extent necessary to satisfy the requirements of this Paragraph 8(a) and solely for such purpose. Distributions previously made to a Partner pursuant to the provisions of this Paragraph 8 during a fiscal year (but not including any tax distribution with respect to a prior fiscal year) in respect of any class of Units shall reduce dollar-for-dollar the amount of any tax distribution to which a Partner is entitled with respect to such fiscal year pursuant to this Paragraph 8(a) in respect of allocations to such Partner corresponding to such class of Units. Tax distributions to any Partner in respect of a class of Units shall be treated as an advance against amounts otherwise distributable to such Partner (or its successors in interest) in respect of such class of Units pursuant to the other provisions of this Agreement.

(b) Tracking Unit Distributions. In connection with any "liquidity event" (including the receipt of interest, dividends, redemption or sale proceeds, royalties and other distributions, an initial public offering, or as otherwise determined in the reasonable discretion of the General Partner and the holders of a majority of the Preferred Units) with respect to a Project for which Tracking Units are then outstanding, the Partnership shall distribute, out of available assets, to the holders of such Tracking Units an amount (on a cumulative basis together with any prior distributions in respect of such Tracking Units) equal to 5% of the Partnership's direct and indirect profits (determined in accordance with GAAP) in such Project; provided that an amount equal to the sum of the Partnership's aggregate cost with respect to such Project and the balance of such profits has been or is simultaneously received by ATC from such Project; provided, further that, in accordance with the granting documents relating to Tracking Units with respect to a Project, the cumulative profits actually distributed to holders of Tracking Units with respect to a Project as of any time shall be less than the

5% profit amount referred to above if and to the extent that Tracking Units for such full 5% profit amount have not been granted and remain outstanding. Such distribution shall be made in cash, or in the discretion of the General Partner and with the prior written approval of the holders of a majority of the Preferred Units, in securities of ATC or other property identified by the General Partner. If Tracking Units are outstanding with respect to more than one Project that has undergone a liquidity event, distributions pursuant to this Paragraph 8(b) shall be apportioned among such holders of Tracking Units in proportion to the fair market values thereof.

(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary (including, without limitation, each Operating Company), shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary (including, without limitation, each Operating Company) to distribute promptly to

ATC any amounts (including, without limitation, cash and publicly-traded securities) which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets).

(d) Apportionment of Other Distributions. Distributions pursuant to Paragraph 8(c) shall be made as follows:

(i) First, to the holders of Preferred Units, in proportion to their respective number of such Units, until the cumulative amount distributed pursuant to this Paragraph 8(d)(i) equals the sum of (A) the aggregate amount previously contributed in respect of the Preferred Units and (B) $10,006,000.

(ii) Second, among the holders of Investment Common Units, Founder Common Units and Incentive Common Units, as follows:

(A) To the holders of Incentive Common Units, in proportion to their respective number of such Units, the Incentive Percentage of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time. The "Incentive Percentage" at any time shall mean the number of Incentive Common Units outstanding at such time divided by the sum of the number of authorized Incentive Common Units at such time and the number of authorized Investment Common Units at such time.

(B) To the holders of Investment Common Units and Founder Common Units, in proportion to their respective number of such Units, the balance of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time.

(e) Limitations on Distributions. Anything in this Agreement to the contrary notwithstanding, (i) no distribution shall be made to any Partner if and to the extent that such distribution

would not be permitted under the ELP Law or other applicable law and (ii) with respect to any distribution in respect of an interest intended to be a "profits interest", such distribution shall be limited as provided in Paragraph 7(g). For the avoidance of doubt, no Units issued to Ezbon or Blue Horizon as of the date hereof are intended to be treated as profits interests with respect to which distributions would be limited by reason of clause (ii) of the preceding sentence or Paragraph 7(g).

9. Valuation.

(a) Valuation by General Partner. Subject to Paragraph 9(d), the General Partner shall determine in good faith the fair market value of the assets owned directly and indirectly by the Partnership (including, without limitation, the assets held by ATC), in accordance with the Partnership's valuation methodology adopted by the General Partner and approved by the holders of a majority of the Preferred Units in writing. The General Partner shall submit all such valuations to the holders of a majority of the Preferred Units in writing.

(b) Fair Market Value. In general, but subject to the requirements of Paragraph 9(a), the fair market value of any security owned directly or indirectly by the Partnership which is freely tradeable shall be determined as of the close of trading on the date as of which the value is being determined by taking the last reported sale price of such security on such date on the exchange where it is primarily traded, or, if such security is not traded on an exchange, such security shall be valued at the last reported sale price on such date on the Nasdaq Stock Market, or, if such security is not reported on the Nasdaq Stock Market, such security shall be valued at the closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities. The determination of the fair market value of all other assets owned directly or indirectly by the Partnership shall be made in accordance with GAAP (as defined in Paragraph 16(e)). In making any such determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for goodwill or the name of the Partnership, the Partnership's office records, files and statistical data, or any other intangible assets of the Partnership.

(c) Freely Tradeable Securities. For purposes of this Agreement a security shall be deemed to be "freely tradeable" if (i) the Partnership's entire direct and indirect ownership of such security can be immediately sold by the Partnership to the general public and (ii) such security is either listed on a securities exchange or carried on the Nasdaq Stock Market and market quotations are readily available therefor. Notwithstanding the foregoing, in the case of a distribution of securities to the Partners, a security shall be deemed to be "freely tradeable" if the entire portion of such distribution made to the Limited Partners can be immediately sold by them and the condition provided for in clause (ii) of the preceding sentence is satisfied, assuming for purposes of this sentence that no Limited Partner is an affiliate of the issuer of such security. If only a portion of the Partnership's entire holding of such security satisfies the requirements of this Paragraph 9(c), that portion of the Partnership's entire holding of such security shall be deemed to be "freely tradeable."

(d) Disputed Valuations. If the General Partner determines a valuation for assets owned directly or indirectly by the Partnership which is objected to in writing by the holders of a majority of the Preferred Units within 15 days following the submission thereof in writing to the holders of a majority of the Preferred Units by the General Partner, and if the holders of a majority of the Preferred Units do not, within 45 days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted in writing by the General Partner, such valuation shall be determined by an independent chartered financial analyst selected by the General Partner and approved by the holders of a majority of the Preferred Units, whose determination shall be binding upon all Partners.

10. Term.

(a) Term of Partnership. The Partnership shall continue in perpetuity, unless it is sooner dissolved as provided in Paragraph 10(b) or by operation of law.

(b) Termination. The Partnership shall be wound up and dissolved (i) upon any event in respect of the General Partner specified in Section 15(5) of the ELP Law (subject to the

proviso thereto), (ii) at any time there are no limited partners of the Partnership, or (iii) upon the entry of a decree of judicial dissolution of the Partnership pursuant to the ELP Law.

11. Winding Up.

(a) General Provisions. Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner. The General Partner shall carry out the winding up of the affairs of the Partnership pursuant to this Agreement, provided that if the General Partner is no longer owned solely by Dr. Harrison, the holders of a majority of the Preferred Units shall appoint one or more liquidators to act as the liquidators in carrying out such winding up, subject to any contrary order of the court upon an application for a Partner or creditor pursuant to Section 15(4) of the ELP Law.

(b) Winding Up Distributions. The General Partner or the liquidators, as applicable, shall cause the Partnership to satisfy the Partnership's liabilities and obligations to creditors including Partners who are creditors (whether by payment or the making of reasonable provision for payment thereof). Any gain or loss incurred in connection with the winding up of the Partnership shall be allocated to and among the Partners in the manner provided in Paragraph 7 and the assets remaining after satisfaction of liabilities shall then be distributed among the Partners in cash or in kind in accordance with Paragraph 8. In performing their duties, the General Partner or the liquidators, as applicable, are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the General Partner or the liquidators, as applicable, shall determine to be in the best interest of the Partners.

(c) Expenses of Winding Up. The expenses incurred by the General Partner or the liquidators, as applicable, in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement and reasonable compensation for the services of the General Partner or the liquidators, as applicable, shall be borne by the Partnership, provided that if the General Partner is carrying out the winding up, no such

compensation shall be paid while the Management Agreement remains in effect. The General Partner or the liquidators, as applicable, shall use reasonable efforts to make final distributions following winding up of the Partnership before the later of (i) the end of the Partnership's taxable year in which the date of the completion of the winding up of the Partnership occurs, or (ii) 90 days after the date of the completion of the winding up of the Partnership; provided that at such point in time ATC has sold, distributed or otherwise disposed of all of its Operating Company Securities.

(d) Standard of Care. Neither the General Partner not any liquidator, as applicable, nor any of their respective affiliates shall incur liability to the Partnership or to any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or inaction on the part of such Person or any of its affiliates, provided that in any such case (i) such Person's or such affiliate's course of conduct was in good faith and reasonably believed by such Person or such affiliate to be in or not opposed to the best interests of the Partnership and (ii) such course of conduct did not constitute willful fraud, willful misconduct, Gross Negligence or an intentional and material breach of this Agreement on the part of such Person or affiliate.

(e) Return Obligation. Subject to the ELP Law, no Partner shall be obligated to restore to the Partnership the amount of any negative Capital Account.

(f) Dissolution. Upon completion of the winding up of the Partnership pursuant to this Paragraph 11, a notice of final dissolution shall be filed with the Cayman Islands Registrar of Exempted Limited Partnerships pursuant to the ELP Law and the Partnership shall dissolve thereon.

12. Transfer of Interests of Limited Partners.

(a) Conditions to Transfer. The prior written consent of the General Partner, in its sole and absolute discretion, shall be required for the assignment, pledge, mortgage, hypothecation, sale or other disposition or encumbrance (a "Transfer") by any Limited Partner of all or any part of its interest in the Partnership; provided, however, that such consent shall not be required for a transfer by Ezbon or Blue Horizon (or any subsequent transfer by a direct or indirect transferee of Ezbon or Blue

Horizon) of all or any part of its Limited Partner interest. The General Partner may require that any proposed Transfer be effective only as of the beginning or end of a fiscal quarter. Additionally, any Transfer shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership or of other counsel reasonably satisfactory to the Partnership (which opinion shall be obtained at the expense of the transferor) that such Transfer will not result in (A) the Partnership, the General Partner or the Management Company being required to register as an investment company under the U.S. Investment Company Act of 1940, as amended, (B) a violation by the Partnership of the ELP Law, (C) the Partnership being deemed terminated pursuant to Section 708 of the Code, or (D) the Partnership becoming subject to U.S. Federal income taxation at the entity level within the meaning of Section 7704 of the Code or otherwise being treated as a corporation for U.S. Federal income tax purposes; provided, however, that the condition of obtaining a written opinion of counsel may be waived (completely or as to particular matters) by the General Partner in its sole discretion with the prior written consent of the holders of a majority of the Preferred Units. Furthermore, any Transfer otherwise permitted hereunder shall, except in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon), be made only upon a determination by the General Partner that such Transfer will not result in a material adverse effect (including the cost of compliance) on the Partnership or any Partner as a result of the Partnership's obligations to make tax basis adjustments under Sections 734 or 743 of the Code; provided, however, that the General Partner may, in its sole discretion, waive the requirement to make such a determination. Each Limited Partner shall provide the General Partner with any information necessary to allow the Partnership to comply with its obligations to make tax basis adjustments under Section 734 or 743 of the Code. Except in accordance with the provisions of this Paragraph 12, each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership. To the fullest extent permitted by law, any attempted Transfer of a Limited Partner's interest without compliance with this Agreement shall be void. Every Transfer shall be

subject to all of the terms, conditions, restrictions and obligations of this Agreement.

(b) Substituted Limited Partners. Without the consent of the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon)), the aforesaid written opinion of counsel (unless waived by the General Partner with the prior written consent of the holders of a majority of the Preferred Units) and the aforesaid determination by the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon) or unless waived by the General Partner), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 12 shall be admitted as a substituted Limited Partner (to the extent of the interest transferred) upon the date specified therefor in a document providing for such admission, which document shall be executed by the General Partner (including, without limitation, in its capacity as attorney-in-fact for and on behalf of existing Limited Partners), the transferor of the Partnership interest transferred in accordance with the provisions of this Paragraph 12 and the transferee of such interest (and shall include the transferee's written agreement to be bound by this Agreement), and which admission shall not require the consent of any other Partner. Any transferee of a Partnership interest shall execute such other documents as the General Partner may request to effectuate such Transfer and shall, by its admission as a substituted Limited Partner, be subject to all of the terms of this Agreement and be deemed to have executed a power-of-attorney as provided in Paragraph 18(b). Each Partner, by its execution of this Agreement, agrees and consents to the admission of any substituted Limited Partner pursuant to the terms of this Paragraph 12.

(c) Disclosure of Information. No Limited Partner (other than Ezbon, Blue Horizon or a direct or indirect transferee of either Ezbon or Blue Horizon) shall disclose any Partnership Information (as defined in Paragraph 16(d)) to any prospective transferee (or otherwise violate the provisions of Paragraph 16(d)) in connection with a Transfer or proposed Transfer without the written

consent of the General Partner. The Limited Partners acknowledge that as a condition to granting such a consent, the General Partner may require that any prospective transferee execute a confidentiality agreement with the Partnership which is satisfactory to the General Partner.

(d) Transfer Expenses. The Limited Partner requesting a Transfer shall, at the request of the General Partner, reimburse the Partnership for any expenses reasonably incurred by the Partnership, the General Partner or any of their affiliates in connection with such Transfer or proposed Transfer, including any legal, accounting and other expenses related thereto ("Transfer Expenses"), whether or not such Transfer is consummated. At its election, and in any event if the requesting Limited Partner has not reimbursed the Partnership for any Transfer Expenses incurred by the Partnership in preparing for or consummating a proposed or completed Transfer within 30 days after the General Partner has given to such Limited Partner written demand for payment, the Partnership shall be entitled to reimbursement from the transferee of such interest. If neither such requesting Limited Partner nor the transferee reimburses the Partnership for such Transfer Expenses within a reasonable time, the General Partner may charge the transferee's or the transferor's Capital Account in an amount equal to the Transfer Expenses. For avoidance of doubt, such Transfer Expenses shall include, without limitation, the additional accounting, tax preparation and other administrative expenses reasonably incurred (or to be incurred) by the Partnership in the case of a Transfer that results in tax basis adjustments to be made by the Partnership under Section 743 of the Code or related provisions. Each Limited Partner also agrees to reimburse the Partnership, at the request of the General Partner, for any cost or other expense reasonably incurred by the Partnership, the General Partner or any of their respective affiliates (and if such expenses are not so reimbursed, the General Partner may charge such Limited Partner's Capital Account for such expenses) in connection with any tax basis adjustments that the Partnership is required to make under Section 743 of the Code or related provisions as a result of the transfer of interests of such Limited Partner by its beneficial owners. In the case of a Transfer (or the transfer of interests of a Limited Partner by its beneficial owners) that is

expected to result in future expenses of the type described in the two preceding sentences, the General Partner may estimate the amount of such expenses in good faith, and such estimate shall be final.

(e) No Entity Level Taxation. The General Partner (i) shall not cause or permit any offering of Partnership interests to be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), (ii) shall not cause or permit interests in the Partnership to become "traded on an established securities market," and (iii) shall withhold its consent to, and shall not "recognize", any Transfer of a "partnership interest" (or portion thereof) in the Partnership (Y) that, to the General Partner's knowledge after reasonable inquiry, would otherwise be accomplished by a trade on a "secondary market or the substantial equivalent thereof," in each case within the meaning of Section 469(k) or 7704 of the Code and any regulations promulgated thereunder that are in effect at the time of the proposed Transfer, or (Z) if and to the extent that such Transfer, if made, would cause the Partnership to fail to satisfy a "safe harbor" which it satisfied immediately prior to such Transfer, unless the General Partner determines that such Transfer would not otherwise cause the Partnership to be subject to U.S. Federal income tax at the entity level within the meaning of Section 7704 of the Code; for the purpose of the preceding clause, a "safe harbor" shall mean (1) the safe harbor for "transfers not involving trading" pursuant to Treasury Regulation §1.7704-1(e); (2) the safe harbor for "private placements" set forth in Treasury Regulation §1.7704-1(h); or (3) the "lack of actual trading" safe harbor set forth in Treasury Regulation §1.7704-1(j). The foregoing provisions of this Paragraph 12(e) shall not apply to the extent that the General Partner has determined with the consent of the holders of a majority of the Preferred Units that the Partnership shall be taxed as a corporation for U.S. Federal tax purposes.

(f) Representations and Warranties. The transferor and transferee shall provide the General Partner, in connection with any proposed Transfer, (x) with such written representations and warranties as it reasonably may request, including such representations and warranties as the General Partner may determine necessary in order to ensure that the Partnership will not be subject to U.S.

Federal income tax at the entity level within the meaning of Section 7704 of the Code and (y) with such other information as the General Partner reasonably may request, including tax basis information and the amount of gain or loss to be recognized upon such Transfer.

(g) Tag-Along Rights.

(i) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Preferred Units to any Person other than an affiliate (a "Buyer"), Dr. Harrison (taken together with his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same prices per Preferred Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the Preferred Units owned by Dr. Harrison (taken together with his heirs and legal representatives) as the Preferred Units to be sold by Ezbon or Blue Horizon represent with respect to the Preferred Units owned by Ezbon or Blue Horizon (as applicable) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If Dr. Harrison (or his heirs or legal representatives) wishes to participate in any sale under this Paragraph 12(g)(i), he (or they) shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him (or them) the opportunity to sell such Preferred Units to the Buyer, which written offer shall be made by Ezbon or Blue Horizon promptly after it decides to sell any or all of its Preferred Units to the Buyer. Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives, as applicable) shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Preferred Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to Dr. Harrison (and his heirs and legal representatives); provided, however, that any purchase of less than all of such Preferred Units by the Buyer shall be made from Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives)

pro rata based upon the relative number of Preferred Units that Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives) are otherwise entitled to sell pursuant to this Paragraph 12(g)(i). Any sale by Dr. Harrison (and his heirs and legal representatives) pursuant to this Paragraph 12(g)(i) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(i) shall survive any transfer by Ezbon or Blue Horizon of Preferred Units to an affiliate.

(ii) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Investment Common Units to a Buyer, each other Limited Partner (including, for the avoidance of doubt, Dr. Harrison and his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same price per Investment Common Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by such Limited Partner as the Investment Common Units to be sold by Ezbon or Blue Horizon represent with respect to the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by all Limited Partners (including, for the avoidance of doubt, Ezbon or Blue Horizon) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If any such other Limited Partner wishes to participate in any sale under this Paragraph 12(g)(ii), he shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him the opportunity to sell such Investment Common Units, Founder Common Units and/or Incentive Common Units to the Buyer, which written offer shall be made by Ezbon

or Blue Horizon promptly after it decides to sell any or all of its Investment Common Units to the Buyer. Ezbon or Blue Horizon and each such other Limited Partner shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Investment Common Units, Founder Common Units and/or Incentive Common Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to the other Limited Partners; provided, however, that any purchase of less than all of such Investment Common Units, Founder Common Units and/or Incentive Common Units by the Buyer shall be made from Ezbon or Blue Horizon and the other Limited Partners pro rata based upon the relative number of Investment Common Units, Founder Common Units and/or Incentive Common Units that Ezbon or Blue Horizon and each other Limited Partner are otherwise entitled to sell pursuant to this Paragraph 12(g)(ii). Any sale by each other Limited Partner pursuant to this Paragraph 12(g)(ii) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(ii) shall survive any transfer by Ezbon or Blue Horizon of Investment Common Units to an affiliate.

(h) Drag-Along Rights. Each Partner other than Ezbon and Blue Horizon (collectively, the "Holders") covenants and agrees that it shall, at the written request of Ezbon and Blue Horizon, consent to an Ezbon/Blue Horizon Sale (as defined below) and sell all of its Units pursuant to such Ezbon/Blue Horizon Sale and in accordance with this Paragraph 12(h). For purposes of this Paragraph 12(h), an "Ezbon/Blue Horizon Sale" shall mean the bona fide sale by Ezbon and Blue Horizon to an unaffiliated Person, for cash, of all of their Preferred Units and Investment Common Units (i) at an aggregate price equal to three times the price paid by Ezbon and Blue Horizon

for such Units, (ii) in a transaction which places an enterprise value on the Partnership of at least $3 billion or (iii) with the prior written consent of Dr. Harrison (or his heirs or legal representatives). Dr. Harrison (and his heirs or legal representatives, as applicable) shall sell all of his (or their) Preferred Units and Investment Common Units for the same consideration per Unit and, except as otherwise provided herein, on the same terms and conditions as Ezbon and Blue Horizon in the Ezbon/Blue Horizon Sale. Each Holder (including, without limitation, Dr. Harrison (and his heirs or legal representatives, as applicable)) shall sell, in connection with the Ezbon/Blue Horizon Sale, all other Units held by such Holder, at the then fair market value therefor established by the pricing for the Preferred Units and Investment Common Units in the Ezbon/Blue Horizon Sale, i.e., the then inherent value of the "profits interests" represented by the Founder Common Units and the Incentive Common Units after the then fair market values of the Tracking Units (if any) have been determined in the reasonable discretion of the General Partner. Notwithstanding anything herein to the contrary, in connection with an Ezbon/Blue Horizon Sale, any indemnification a Holder shall be required to provide will be made on a several, and not joint and several, basis, and pro rata to its share of the sale proceeds, no Holder shall be required to agree to any non-solicitation, non-competition or similar restrictive covenant or agreement, and no Holder's obligations for indemnification and similar obligations shall exceed the aggregate of the cash proceeds actually received by, and any amount deposited into escrow on behalf of, such Holder in connection with such Ezbon/Blue Horizon Sale. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with an Ezbon/Blue Horizon Sale other than as the General Partner deems necessary to ensure that the purchaser of the Units in respect of any such Ezbon/Blue Horizon Sale is bound with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the drag-along rights established by this Paragraph 12(h) shall survive any transfer by Ezbon or Blue Horizon of its Units to an affiliate.

(i) Further Restriction on Sales by Dr. Harrison. Dr. Harrison (and his heirs and

legal representatives) shall not sell any of his (or their) Units until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, without the prior written consent of the holders of a majority of the Preferred Units, except as otherwise expressly provided for in this Agreement and subject to the right of first negotiation provided in Paragraph 12(j) and the obligation of good faith negotiation provided in Paragraph 18(n). In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(i), the net after-tax sales proceeds to Dr. Harrison (and his heirs or legal representatives, as applicable) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto.

(j) Right of First Offer. If at any time Dr. Harrison (or his heirs or legal representatives) desires to sell all or any part of his (or their) Units to any Person (other than pursuant to Paragraphs 4(d), 12(g) or 12(h)), and is not prohibited from doing so under Paragraph 12(i), he (or they) shall submit a written offer (the "Offer") to sell such Units (the "Offered Units") to Ezbon and Blue Horizon on terms and conditions, including price, not less favorable to Ezbon and Blue Horizon than those on which Dr. Harrison (or his heirs or legal representatives) proposes to sell such Units to a third party. Each of Ezbon and Blue Horizon shall have the right to purchase its pro rata share of the Offered Units (based on their relative ownership of the type of Units to be sold), together with a right of oversubscription if either fails to exercise the Offer in full. If Ezbon or Blue Horizon desires to purchase all or any part of the Offered Units, it shall communicate in writing its election to purchase to Dr. Harrison (or his heirs or legal representatives) within 30 days of the date the Offer was made. Sales of the Offered Units shall be made at the principal office of the Partnership on the 45th day following the date the Offer was made (or if such 45th day is not a business day, then on the next succeeding business day.) If Ezbon and Blue Horizon do not purchase all of the Offered Units, the Offered Units not so purchased may be sold by Dr. Harrison (or his heirs or legal representatives) at any time within 120 days after the date the Offer was made, at not less than the price and upon other

terms and conditions, if any, not more favorable to the buyer than those specified in the Offer. In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(j), the net after-tax sales proceeds to Dr. Harrison (or his heirs or legal representatives) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Offered Units to either Ezbon and/or Blue Horizon.

13. Transfer of Interest of General Partner. The General Partner shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber all or any part of its general partner interest in the Partnership, except in connection with an Ezbon/Blue Horizon Sale. To the fullest extent permitted by law, any attempted transfer of the General Partner's interest, except in connection with an Ezbon/Blue Horizon Sale, shall be void.

14. Withdrawal. Other than in respect of the withdrawal of Finkelman as contemplated by this Agreement, no Partner shall have the right to withdraw from the Partnership.

15. Indemnification.

(a) Indemnified Parties. To the fullest extent permitted by law, the General Partner, the Management Company, ATPharma, the Tax Matters Partner (as defined in Paragraph 18(i)), each member of the Board, each liquidator for the Partnership, and each member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma or the liquidator (herein referred to collectively as "Indemnified Parties" and singly as an "Indemnified Party") shall be indemnified by the Partnership (to the extent such party has not been indemnified by any other organization) against any loss, judgment, liability, expense and/or amount paid in settlement of any claim incurred by or imposed upon him in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which he may be made a party or otherwise involved or with which he shall be threatened, by reason of his being the General Partner, the Management Company, ATPharma, the Tax

Matters Partner, a member of the Board, a liquidator for the Partnership, or a member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or any organization in which the Partnership directly or indirectly owns or owned an interest or of which the Partnership is or was a creditor, which organization he serves or has served as a managing director, director, officer, employee or agent directly or indirectly at the request of the Partnership (in any case, whether or not he continues to be the General Partner, the Management Company, ATPharma, the Tax Matters Partner, a member of the Board, a liquidator for the Partnership, or member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or of such organization at the time such action, suit or proceeding is brought or threatened, provided that with respect to any former Operating Company of which the Partnership no longer directly or indirectly owns any Operating Company Securities, such Indemnified Party shall only be entitled to indemnification and advancement of expenses pursuant to this Paragraph 15 for causes of action that arose from facts and circumstances in existence on or prior to the first annual anniversary of the date that the Partnership directly or indirectly disposed of the last of its Operating Company Securities of such Operating Company, regardless of when such action, suit or proceeding was brought or threatened), provided that the Indemnified Party acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership, except to the extent any such loss, judgment, liability, expense and/or amount paid in settlement of any claim was the result of willful fraud, willful misconduct, Gross Negligence or intentional and material breach of this Agreement on the part of the Indemnified Party or a dispute between or among the General Partner and one or more of its owners, the Management Company and one or more of its employees, ATPharma and one or more of its employees, two or more owners of the General Partner, two or more employees of the Management Company or two or more employees of ATPharma, and further provided that in the case of an owner of the General Partner or a member, partner, managing director, director, officer,

employee, agent or controlling person of the Management Company, ATPharma, a liquidator for the Partnership or such other organization, the action, suit or proceeding related directly or indirectly to the affairs of the Partnership. The General Partner is authorized to enter into such separate agreements or deed poll on behalf of the Partnership with or benefiting the Indemnified Parties on terms consistent with this Paragraph 15(a) as the General Partner in its reasonable discretion considers necessary or desirable to give full and complete effect to the indemnity provisions set forth herein. Notwithstanding anything to the contrary set forth in this Paragraph 15, holders of Tracking Units may only be indemnified by the Operating Company and/or Project with respect to which their Tracking Units relate, and not by the Partnership, ATP or any Subsidiary (including, without limitation, any Operating Company) or other Project.

(b) Indemnification Not Exclusive. The foregoing rights of indemnification shall be in addition to any rights to which an Indemnified Party may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(c) Expenses. The Partnership may pay the expenses incurred by an Indemnified Party in defending any action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by such Indemnified Party to repay such payment if he shall be determined not to be entitled to indemnification therefor as provided herein; provided that no such advance payment by the Partnership to an Indemnified Party shall be made with respect to expenses incurred as a result of any action, suit or proceeding initiated against such Indemnified Party by the holders of a majority of the Preferred Units.

(d) Ordering of Indemnification Obligations. Solely for purposes of clarification, and without expanding the scope of indemnification pursuant to this Paragraph 15, the Partners intend that, to the maximum extent permitted by law, as between (i) Operating Companies, (ii) the Partnership and (iii) the General Partner, the Management Company, ATPharma or a liquidator for the

Partnership, this Paragraph 15 shall be interpreted to reflect an ordering of liability for potentially overlapping or duplicative indemnification payments, with any applicable Operating Company having primary liability, the Partnership having only secondary liability, and (if applicable) the General Partner, the Management Company, ATPharma or a liquidator for the Partnership having only tertiary liability. The possibility that an Indemnified Party may receive indemnification payments from an Operating Company shall not restrict the Partnership from making payments under this Paragraph 15 to an Indemnified Party that is otherwise eligible for such payments, but such payments by the Partnership are not intended to relieve any Operating Company from any liability that it would otherwise have to make indemnification payments to such Indemnified Party and, if an Indemnified Party that has received indemnification payments from the Partnership actually receives duplicative indemnification payments from an Operating Company for the same claim, such Indemnified Party shall repay the Partnership to the extent of such duplicative payments. If, notwithstanding the intention of this Paragraph 15, an Operating Company's obligation to make indemnification payments to an Indemnified Party is relieved or reduced under applicable law as a result of payments made by the Partnership pursuant to this Paragraph 15, the Partnership shall have, to the maximum extent permitted by law, a right of subrogation against (or contribution from) such Operating Company for amounts paid by the Partnership to an Indemnified Party that relieved or reduced the obligation of such Operating Company to such Indemnified Party. Indemnification payments (if any) made to an Indemnified Party by the General Partner, the Management Company, ATPharma or a liquidator for the Partnership in respect of any claim for which (and to the extent) such Indemnified Party is otherwise eligible for payments from the Partnership under this Paragraph 15 shall not relieve the Partnership from its obligation to such Indemnified Party and/or the General Partner, the Management Company, ATPharma or a liquidator for the Partnership, as applicable, for such payments. As used in this Paragraph 15, "indemnification" payments made or to be made by an Operating Company shall be deemed to include (i) payments made or to be made by any successor to the indemnification

obligations of such Operating Company and (ii) equivalent payments made or to be made by or on behalf of such Operating Company (or such successor) pursuant to an insurance policy or similar arrangement.

(e) Partner Clawback. If (i) the Partnership incurs a liability or obligation under this Paragraph 15 and (ii) the Partnership does not have sufficient available cash on hand to satisfy such liability or obligation, then the General Partner, in its sole discretion, may require that each Partner make additional payments to the Partnership, upon no less than ten days' prior written notice from the General Partner, of its pro rata share (according to the amount by which such liability or obligation would have reduced the aggregate distributions received by each Partner (and its predecessors in interest) as of the time of such notice in respect of each class of Units then held by each Partner), after giving effect to any distributions returned by the Partners pursuant to this Paragraph 15(e) and any distribution of such returned amounts to the Partners, had such liability or obligation been incurred and paid by the Partnership prior to the time any distributions were made) of an amount up to the amount necessary to satisfy such liability or obligation; provided that (A) no Partner shall be required to contribute an aggregate amount pursuant to this Paragraph 15(e) that exceeds 20% of its aggregate capital contributions to the Partnership and (B) no Partner shall be required to contribute an amount that exceeds the aggregate amount of distributions made to such Partner (and such Partner's predecessors in interest) in respect of the applicable class of Units during the 24-month period preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period. A Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall survive the winding up and dissolution of the Partnership (and, to the fullest extent permitted by law, the General

Partner may require any payments made after the Partnership's dissolution to be made to the General Partner or directly to an Indemnified Party). The return obligations of the Partners pursuant to this Paragraph 15(e) shall be in addition to their capital contribution obligations with respect to their Contingent Subscriptions (if any). Amounts returned by a Partner pursuant to this Paragraph 15(e) in respect of a class of Units shall be treated as a reduction in the amount of distributions received by such Partner in respect of such class of Units, and amounts returned by such Partner pursuant to this Paragraph 15(e) shall not reduce such Partner's unfunded Contingent Subscription; provided that failure to make a required payment pursuant to this Paragraph 15(e) by any Partner may, in the General Partner's sole discretion, be treated for purposes of Paragraph 5(c) and the provisions and remedies therein as a failure by such Partner to make a required capital contribution with respect to its Contingent Subscription (if any). Amounts to be returned pursuant to this Paragraph 15(e) shall be payable in cash. For purposes of determining any applicable limit on a Partner's return obligation pursuant to this Paragraph 15(e), amounts distributed to a Partner in kind shall be valued at their fair market value on the date of distribution. The provisions of this Paragraph 15(e) shall not be construed or interpreted as inuring to the benefit of any creditor of (i) the Partnership (other than Indemnified Parties with respect to which the General Partner has elected to invoke the provisions of this paragraph), (ii) a Limited Partner, (iii) the General Partner or (iv) any Indemnified Party.

16. Fiscal Year; Records and Reports; Confidentiality; Organizational Expenses.

(a) Fiscal Year. Except as may be required by the Code, the fiscal year and the taxable year of the Partnership shall each be the calendar year.

(b) Partnership Records. At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership in accordance with the ELP Law. Such books of account, together with an executed copy of this Agreement and the Registration Statement (and any amendments thereto) and a list containing the names, addresses and Subscriptions of the Partners (the "List of Partners"), shall at all

times be maintained at a principal office of the Partnership, and shall be open to inspection by the Partners or their duly authorized representatives for purposes related to the inspecting Limited Partner's interest in the Partnership. Copies of all information and records referenced in the preceding sentence shall be provided to each holder of at least 25,000 Preferred Units promptly following its written request therefor. A copy of the List of Partners shall also be provided to each holder of at least 25,000 Preferred Units promptly after any change thereto.

(c) Audit. At any time while the Partnership continues and until its affairs have been wound up (but only during reasonable business hours), each Partner may fully examine and audit the Partnership books, records, accounts and assets, including bank balances, may make copies of such books and records (provided such Partner agrees to reimburse the Partnership or the Management Company, as applicable, for the reasonable costs incurred in making such copies), and may make, or cause to be made, any examination or audit at such Partner's expense. Notwithstanding the preceding sentence, the cost of any such audit, examination or copies made by or on behalf of the holders of a majority of the Preferred Units shall, in each case, be borne by the Partnership. Any such examination or audit may be undertaken by (i) such Limited Partner, or (ii) a designee of a Limited Partner (provided that the designee agrees in writing to the confidentiality provisions of Paragraph 16(d) or is otherwise subject (by the nature of its position, pursuant to written agreement, or otherwise) to substantially equivalent restrictions with respect to use and disclosure of Partnership Information as are set forth in Paragraph 16(d)). The Partnership shall ensure that the provisions of this Paragraph 16(c) apply with equal respect to the books and records of ATP and any Subsidiary (including, without limitation, any Operating Company).

(d) Confidentiality.

(i) A Limited Partner's rights to access or to receive any information about the Partnership, an Intermediary, ATC, the Operating Companies and their respective affairs, including, without limitation, (1) information to which a Limited Partner is provided access

pursuant to Paragraph 16(b) or (c), (2) financial statements, reports and other information provided pursuant to Paragraphs 16(e) and (f), and (3) this Agreement, any amendments hereto or any documents pursuant to which such Limited Partner acquired its interest in the Partnership and any other related agreements or materials (the "Partnership Information"), are conditioned on such Limited Partner's willingness and ability to assure that the Partnership Information will be used solely by such Limited Partner for purposes reasonably related to such Limited Partner's interest as a Limited Partner, and that such Partnership Information will not become publicly available as a result of such Limited Partner's rights to access or to receive such Partnership Information, and each Limited Partner agrees not to use Partnership Information other than for purposes of evaluating, monitoring or protecting its investment in the Partnership. For purposes of this Paragraph 16(d), Partnership Information (including information relating to an Operating Company or another Partner (or its respective partners, stockholders or members)) provided by one Partner to another shall be deemed to have been provided on behalf of the Partnership.

(ii) Each Limited Partner acknowledges the General Partner's belief that the Partnership Information includes trade secrets of the Partnership and the Operating Companies and that the release of any such Partnership Information would cause competitive harm to the Partnership, the General Partner, the Management Company, and/or the Operating Companies.

(iii) The Limited Partners acknowledge that the General Partner and the Management Company and their respective partners, members, managing directors, officers, and employees are expected to acquire confidential third-party information that, pursuant to fiduciary, contractual, legal or similar obligations, may not be disclosed to the Partnership or the Limited Partners without violating such obligations, and agree that none of such Persons shall be in breach of any duty under this Agreement or the ELP Law as a result of acquiring, holding or failing to disclose such information to the Partnership or the Limited Partners.

(iv) Each Limited Partner agrees to maintain any Partnership Information provided to it in the strictest confidence and not to disclose the Partnership Information to any Person including, without limitation, a prospective transferee of such Partner's interest in the Partnership, without the prior written consent of the General Partner. Notwithstanding the foregoing, the General Partner hereby consents to the disclosure by each Limited Partner of Partnership Information to such Limited Partner's accountants, attorneys, board members and similar advisors bound by a duty of confidentiality.

(v) With respect to any Limited Partner, the obligation to maintain any Partnership Information in confidence shall not apply to any Partnership Information: (A) that is required to be disclosed pursuant to applicable law or a securities exchange rule (but in each case only to the extent of such requirement and, to the fullest extent permitted by law, only if prompt notice is given to the Partnership so that the General Partner may seek an appropriate remedy with the reasonable cooperation of such Limited Partner; (B) that is required to be disclosed in order to protect such Limited Partner's interest in the Partnership (but only to the extent of such requirement and only after consultation with the General Partner); (C) that is publicly known or available in the absence of any improper or unlawful action on the part of such Limited Partner; (D) that is known or available to such Limited Partner other than through or on behalf of the Partnership, the General Partner or the Management Company; or (E) the disclosure of which has been consented to by the General Partner in writing.

(vi) Each Limited Partner shall promptly inform the General Partner if it becomes aware of any reason, whether under law, regulation, policy, securities exchange rule or otherwise, that it (or any of its equity holders) will, or might become compelled to, use the Partnership Information other than as contemplated by Paragraph 16(d)(i) or disclose Partnership Information in violation of the confidentiality restrictions in Paragraph 16(d)(iv) (disregarding Paragraph 16(d)(v)(A)).

(vii) Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, with the exception of the financial statements and reports to be provided to certain holders of Preferred Units and Dr. Harrison (or his heirs or legal representatives) pursuant to Paragraphs 16(e) and (f), the General Partner shall have the right not to provide any Limited Partner, for such period of time as the General Partner in good faith determines to be advisable, with any Partnership Information that such Limited Partner would otherwise be entitled to receive or to have access to pursuant to this Agreement or the ELP Law if: (A) the Partnership, the General Partner, an Intermediary, ATC, the Management Company or ATPharma is required by law or by agreement with a third party to keep such Partnership Information confidential; (B) the General Partner in good faith believes that the disclosure of such Partnership Information to such Limited Partner is not in the best interest of the Partnership or could damage the Partnership or the conduct of the affairs of the Partnership or the Operating Companies (which may include a determination by the General Partner that such Limited Partner (or any of its equity holders) is disclosing or may disclose such Partnership Information (or may be compelled to disclose such Partnership Information) or has not indicated a willingness to protect Partnership Information from being disclosed (or compelled to be disclosed) and that the potential of such disclosure by such Limited Partner (or any of its equity holders) is not in the best interest of the Partnership or could damage the Partnership, the Operating Companies or the conduct of the affairs of the Partnership or the Operating Companies) or (C) such Limited Partner has notified the General Partner of its election not to have access to, or to receive, such Partnership Information.

(viii) In addition to any other remedies available at law, the Partners agree that, to the fullest extent permitted by law, the Partnership shall be entitled to equitable relief, including, without limitation, the right to an injunction or restraining order, as a remedy for any

failure by a Limited Partner to comply with its obligations with respect to the use and disclosure of Partnership Information, as set forth in Paragraph 16(d)(i) and (iv).

(ix) Each Limited Partner agrees to cooperate with such procedures and restrictions as may be developed by the General Partner from time to time in connection with the disclosure of non-public Partnership Information, as determined by the General Partner to be reasonably necessary and advisable to maintain and promote compliance with legal and other regulatory matters applicable to the Partnership, the Limited Partners, the General Partner, an Intermediary, ATC and the Management Company, including securities laws and regulations.

(x) Each Limited Partner acknowledges and agrees that the General Partner may consider the different circumstances of Limited Partners with respect to the restrictions and obligations imposed on Limited Partners in this Paragraph 16(d) and the provision of information under this Agreement, and the General Partner in its reasonable discretion may agree to waive or modify any of such restrictions and/or obligations with respect to a Limited Partner with the consent of such Limited Partner. Each Limited Partner further acknowledges and agrees that any such agreement by the General Partner with a Limited Partner to waive or modify any of the restrictions and/or obligations imposed by this Paragraph 16(d) (or to withhold Partnership Information) shall not constitute a breach of any duty stated or implied in law or in equity to any Limited Partner, regardless of whether different agreements are reached with different Limited Partners.

(xi) Notwithstanding any other provision of this Agreement to the contrary, to comply with Treasury Regulation §1.6011-4(b)(3), each Limited Partner (and any employee, representative or other agent of such Limited Partner) may disclose to any and all Persons, without limitation of any kind, the U. S. Federal tax treatment and tax structure of the Partnership or any transactions contemplated by the Partnership, it being understood and agreed that, for this purpose (A) the name of, or any other identifying information regarding, (1) any existing or

future Partner (or any affiliate thereof), or (2) any investment or transaction entered into by the Partnership, (B) any performance information relating to the Partnership or its investments or to Operating Companies, and (C) any performance or other information relating to other investments sponsored by the General Partner, ATC or the Management Company do not constitute such tax treatment or tax structure information.

(xii) To the fullest extent permitted by law, the provisions of this Paragraph 16(d) shall survive the withdrawal of any Partner or the transfer or assignment of any Partner's interest in the Partnership and shall be enforceable against such Partner after such withdrawal, transfer or assignment.

(xiii) Notwithstanding anything to the contrary set forth in this Agreement, this Paragraph 16(d) shall not be applied to authorize any information to be withheld from, or any access to any information to be limited in respect of, Ezbon, Blue Horizon or their respective direct or indirect transferees or assignees.

(e) Annual Financial Statements. The General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 90 days after the close of each fiscal year the financial statements of the Partnership for such fiscal year. Such financial statements shall include statements of assets and liabilities, net assets represented by Partners' capital, operations, changes in net assets, cash flows and changes in such Partner's capital, shall be prepared and presented in accordance with generally accepted accounting principles in the U.S. ("GAAP"), except for such deviations as are required to implement the terms of this Agreement, and shall be audited by a firm of independent public accountants or auditors of national or international standing which has been approved by the holders of a majority of the Preferred Units. Notwithstanding anything in this Agreement to the contrary, the Partnership shall not be required to consolidate (or otherwise combine, including, without limitation, via the equity method of accounting) its financial results with those of Operating Companies whether or not U.S. generally accepted

accounting principles would require such consolidation (or other form of combination). The General Partner shall also use its best efforts to transmit to each Partner within 90 days after the close of each fiscal year a report indicating such Partner's share of all items of income, gain, loss or deduction of the Partnership for such year for U.S. Federal income tax purposes and such additional information with respect to the Partnership as he may reasonably request to enable him to complete any tax return or report he is required to file or otherwise to comply with applicable law. Without limiting the foregoing (i) the General Partner shall use reasonable efforts to determine whether any entity in which the Partnership invests (directly or indirectly) is a "passive foreign investment company" (a "PFIC") as defined in Section 1297 of the Code and will so advise the Partners and (ii) at the request of any Partner, the General Partner shall use reasonable efforts to cause each entity that the General Partner determines is a PFIC based on the advice of the Partnership's U.S. tax advisors to agree to provide on a timely basis to the Partnership or the Partners, as applicable, the financial information that is necessary to permit the Partnership or the Partners, as applicable, to make an election to treat any such PFIC as a "qualified electing fund" under Section 1295 of the Code (a "QEF Election"), and to permit the Partners to comply with their U.S. federal income tax reporting requirements relating to the PFIC. For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison within 90 days after the close of each fiscal year, (i) a list of the Partnership's direct and indirect investments, valued at fair market value as determined in accordance with Paragraph 9, as of the end of such fiscal year, and (ii) a brief narrative report as to status and operations of the Partnership. The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish annual financial statements of the type specified in this Paragraph 16(e) with respect to any Intermediary, ATC and any Subsidiary (including, without limitation, any Operating Company).

(f) Quarterly Financial Statements. Each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) shall be furnished, within 45 days after the end

of each of the first three quarters of each fiscal year of the Partnership, (i) an unaudited list of the Partnership's direct and indirect investments as of the end of such quarter, (ii) unaudited statements of assets and liabilities of the Partnership and net assets represented by Partners' capital as of the end of such quarter and (iii) unaudited statements of operations and changes in such holder or Dr. Harrison's (or his heirs' or legal representatives') capital (as the case may be) for the period from the beginning of such fiscal year through the quarter then ended. Such financial statements shall be prepared and presented in accordance with GAAP, except for such deviations as are required to implement the terms of this Agreement, the omission of certain information and footnote disclosures normally included in year-end financial statements prepared in accordance with GAAP and as otherwise provided in Paragraph 16(e). For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 45 days after the end of each quarter, (i) a list of the Partnership's direct and indirect investments, valued at fair market value in accordance with Paragraph 9, as of the end of such quarter, and (ii) a narrative report as to status and operations of the Partnership (which shall include a discussion of operations compared to each then currently applicable budget). The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish quarterly financial statements of the type specified in this Paragraph 16(f) with respect to ATC, any Intermediary and any Subsidiary (including, without limitation, any Operating Company).

(g) Monthly Telephone Updates. At the request of the holders of a majority of the Preferred Units, the General Partner will make itself available to such holders by telephone for an update as to status and operations of the Partnership.

(h) Web Site. Notwithstanding Paragraph 18(a), the General Partner shall be deemed to have satisfied its obligations to transmit or furnish financial statements and reports pursuant to this Paragraph 16 if the General Partner posts such financial statements and/or reports on a web site and gives prompt written notice to the requisite Limited Partners, pursuant to Paragraph 18(a), of the

availability of such financial statements and/or reports, the URL address of the web site and a password for access to such web site, if necessary. Any such financial statements and reports posted to a web site and not delivered in hard copy to the requisite Limited Partners shall be maintained on such web site for a reasonable period of time. Any such web site shall provide for print capability for such financial statements and reports, provided that, with respect to any Limited Partner (except any holder of at least 25,000 Preferred Units or Dr. Harrison (or his heirs or legal representatives)), the General Partner may disable the print capability (or not allow print capability) if the General Partner exercises (or would be permitted to exercise) its right pursuant to Paragraph 16(d)(vii) not to provide such Limited Partner with Partnership Information, but only to the extent provided therein.

(i) Organizational Expenses. The organizational expenses of the Partnership shall be amortized for U.S. Federal income tax purposes to the extent permitted by Section 709 of the Code. The reasonable out-of-pocket legal expenses incurred by Ezbon and Blue Horizon in connection with the organization of the Partnership shall be reimbursed to Ezbon and Blue Horizon by the Partnership and treated as an organizational expense of the Partnership.

17. Amendment. Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived (on behalf of all Partners), modified or amended only with the written consent of the General Partner, the holders of a majority of the Preferred Units and Dr. Harrison (or his heirs or legal representatives) so long as Dr. Harrison (or his heirs or legal representatives) remain as Limited Partners; provided, however, that the consent of Dr. Harrison (or his heirs or legal representatives) shall not be required to (i) authorize additional Preferred Units and Investment Common Units, (ii) modify or delete any provision of this Agreement that becomes contrary to applicable law after the date of this Agreement, provided that such modification or deletion is to the minimum extent required to comply with such law, or (iii) modify any provision of this Agreement for bona fide tax structuring reasons, provided that such modification does not have a disproportionate adverse affect on Dr. Harrison (or his heirs or legal representatives). Upon obtaining all approvals required by this Agreement (if any)

and without further action or execution by any other Person, including any Limited Partner, (i) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the General Partner, and (ii) the Limited Partners shall be deemed a party to and bound by such amendment of this Agreement. The General Partner shall promptly furnish copies of any amendments to this Agreement to all Partners.

18. General Provisions.

(a) Notices. Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and shall be deemed to have been properly given two days after delivery by courier or being sent by e-mail, addressed in each case, if to the Partnership or the General Partner, at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, e-mail: seth@appletreepartners.com, and if to any Limited Partner, at the address set forth in the List of Partners or, in each case, to such other address or addresses as the addressee may have specified by written notice as aforesaid to the other parties. Sections 8 and 19(3) of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply.

(b) Power of Attorney. To the fullest extent permitted by law, (i) each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner as his attorney-in-fact with full power, proxy and authority in his name, place and stead to make, execute, sign, acknowledge and, if necessary, file (A) any required amendment to the Registration Statement; (B) any amendment to this Agreement that does not require, under the terms of this Agreement, the approval of all the Partners, including any amendment pursuant to Paragraph 5(b); provided that Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment have signed or otherwise approved such amendment and all other required signatures and approvals have been obtained; (C) any other instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the

Partner's assignee as a Partner; and (D) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the Cayman Islands, the U.S. or any state or governmental entity in any jurisdiction in which the Partnership is conducting or intends to conduct its affairs, provided all such instruments, certificates and other documents referred to in clauses (A), (B), (C) and (D) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents executed pursuant to such power of attorney shall be sent to all Partners, except any instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the Partner's assignee as a Partner.

(i) Each of the Partners is aware that the terms of this Agreement permit certain amendments to the Registration Statement and this Agreement to be effected and certain other actions to be taken by or with respect to the Partnership, in each case with the approval or by the vote of less than all the Partners. If, as and when (A) an amendment of the Registration Statement or this Agreement is proposed or an action is proposed to be taken by or with respect to the Partnership which does not require, under the terms of this Agreement, the approval of all of the Partners, (B) Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment or action have approved such amendment or action in the manner contemplated by this Agreement, and (C) a Partner has failed or refused to approve such amendment or action (hereinafter referred to as a non-consenting Partner), each Partner agrees that (1) it is bound thereby, (2) any such amendment or action may be executed solely by the General Partner without any further action or execution by any other Person (including, without limitation, the non-consenting Partners), and (3) to the fullest extent permitted by law, the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such non-consenting Partner, and in his name, place and stead, any and all instruments

and documents which may be necessary or appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Partner is fully aware that he and each other Partner have executed this special power of attorney, and that each Partner will rely on the effectiveness of such powers with a view to the orderly administration of the Partnership's affairs.

(ii) To the fullest extent permitted by law, the foregoing grant of authority and that granted pursuant to Paragraph 5(c), (A) is each a special power of attorney coupled with an interest in favor of the General Partner, deemed to secure the proprietary interest of the General Partner and/or the performance of obligations owed to the General Partner, and as such shall be irrevocable and shall survive the death, disability or incapacity (or, in the case of a Partner that is a corporation, association, limited liability company, partnership, trust or other entity, shall survive the merger, dissolution or other termination of the existence) of the Partner and (B) shall survive the assignment by the Partner of the whole or any portion of his interest, except that in the case of an assignment of the Partner's whole interest, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect the substitution of his transferee.

(c) Additional Documents and Acts. Each Partner hereby agrees to execute and deliver all certificates, instruments or documents required by laws of the various states or other jurisdictions in which the Partnership conducts its affairs, to conform with the laws of such states or other jurisdictions governing limited partnerships.

(d) Binding on Successors. This Agreement shall be binding upon and it shall inure to the benefit of the respective heirs, successors, permitted assigns and legal representatives of the parties hereto. Without limitation as to the foregoing, the rights of Dr. Harrison specified in this Agreement and the Schedules hereto shall inure to the benefit of his heirs and legal representatives.

(e) Counterparts. This Agreement or any amendment hereto may be signed in any number of counterparts, each of which shall be an original, but all of which taken together shall con-

stitute one Agreement (or amendment, as the case may be).

(f) Voting. Any vote or other action required or permitted to be taken by this Agreement may be taken by written consent signed by not less than the requisite percentage in interest of parties required or permitted to take such vote or other action. Notwithstanding anything to the contrary set forth in this Agreement, a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as may otherwise be required by law, and any Units it may hold shall not be deemed outstanding for purposes of determining the parties required or permitted to take any vote or other action. The voting, consent, approval, appointment and other such rights granted to Ezbon and Blue Horizon pursuant to this Agreement (i) are personal to them and may not be assigned, transferred or otherwise disposed of without the consent of the General Partner, in its sole and absolute discretion, except in connection with a transfer by Ezbon and Blue Horizon of their entire interests as limited partners, and (ii) shall cease and be of no further force or effect if Ezbon or Blue Horizon becomes a Defaulting Partner, except as may otherwise be required by law or this Agreement.

(g) Applicable Law, Remedies for Breach and Jurisdiction.

(i) Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the Cayman Islands without regard to principles of conflicts of laws and, without limitation thereof, that the ELP Law as now adopted or as may be hereafter amended shall govern this Agreement.

(ii) EACH LIMITED PARTNER AND THE GENERAL PARTNER, ON BEHALF OF ITSELF AND THE PARTNERSHIP, IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST THE GENERAL PARTNER, THE MANAGEMENT COMPANY (OR THEIR RESPECTIVE

PARTNERS, MEMBERS, STOCKHOLDERS, MANAGERS, DIRECTORS, OFFICERS, CONSULTANTS OR EMPLOYEES, IN THEIR CAPACITY AS SUCH OR IN ANY RELATED CAPACITY) OR THE PARTNERSHIP, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY SCHEDULE HERETO.

(iii) Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a party may be lawfully entitled.

(iv) In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion) for the Partnership and the other Partners, and the General Partner, in its sole discretion, may take different actions with respect to multiple Limited Partners that breach the same provisions. To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.

(v) It is the intent of the parties that this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties.

(vi) To the extent not prohibited by applicable law, each Partner (A) agrees that any action, suit or other proceeding arising out of or based upon this Agreement or any Schedule hereto, the subject matter hereof or thereof or the dealings of any Partner or the Partnership in connection therewith shall be brought only in a court of applicable jurisdiction located in the Cayman Islands or a state or Federal court in the State of Delaware in the U.S., (B)

irrevocably submits to the jurisdiction of the courts of the Cayman Islands and the state and Federal courts in the State of Delaware in the U.S. and (C) waives and agrees not to assert in any such action, suit or proceeding brought in any of the above named courts, any claim that such Partner is not subject personally to the jurisdiction of such court or that such action, suit or proceeding is brought in an inconvenient forum or that the venue is improper.

(h) Securities Act Matters. Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, he must bear the economic risks of his investment for an indefinite period because the Partnership interests have not been registered under the Securities Act and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act or an exemption from such registration is available.

(i) Tax Matters Partner. The "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership shall be the General Partner (the "Tax Matters Partner"). The Tax Matters Partner shall not take any action in its capacity as such that is adverse to the holders of the Preferred Units or Investment Common Units without the prior written consent of the holders of a majority of the Units of such class.

(j) Contract Construction. Where the context of this Agreement so permits, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa, and use of the word "Person" shall be deemed to mean or include natural persons, entities, trusts, limited partnerships, exempted limited partnerships, limited liability companies, corporations, general partnerships, joint ventures, associations and governmental bodies and agencies. The invalidity or unenforceability of any one or more provisions of this Agreement shall not impair the enforceability of the other provisions. If one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, whether due to public policy, equitable considerations, because such provisions are excessively broad as to scope, activity or subject, or otherwise, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as

to be enforceable to maximum extent compatible with the applicable law as it shall then appear. References in this Agreement to sections of the Code or the ELP Law shall be deemed to refer to such sections as they may be amended after the date of this Agreement. Definitions in this Agreement apply equally to both the singular and the plural forms of the defined terms.

(k) Fiduciary Duty of Indemnified Parties. Notwithstanding anything to the contrary in this Agreement, to the extent that at law or in equity an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or any Partner, such Indemnified Party acting under this Agreement shall, to the fullest extent permitted by law, not be liable to the Partnership or any Partner for breach of fiduciary duty for its good faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities relating thereto of an Indemnified Party to the Partnership or any Partner otherwise existing at law or in equity, are agreed by each Partner to so replace such other duties and liabilities of such Indemnified Party.

(l) Entire Agreement. This Agreement, the Schedules hereto, the related Subscription Agreements and any other written agreement between the General Partner, on its own behalf or on behalf of the Partnership, and any Limited Partner, shall constitute the entire agreement and understanding among the respective parties to such agreements with respect to the subject matter hereof and thereof. The Partners acknowledge that, notwithstanding any provision of this Agreement (including Paragraph 17) or of any Subscription Agreement, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner or other Person, may enter into side letters or other writings to or with Ezbon, Blue Horizon or their respective direct or indirect transferees which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or any Subscription Agreement ("Side Letters"). The Partners agree that any rights established, or any terms of this Agreement or any Subscription Agreement altered or supplemented, in a Side Letter to or with Ezbon, Blue Horizon or their direct or indirect transferees

shall for the purposes of this Agreement or any Subscription Agreement be valid, binding and enforceable in accordance with their terms as between Ezbon, Blue Horizon or any such transferee, the General Partner and the Partnership.

(m) Partnership Counsel. The General Partner has retained Proskauer Rose LLP and Maples and Calder in connection with the formation of the Partnership and the offering of the limited partner interests and may retain Proskauer Rose LLP and Maples and Calder as legal counsel in connection with the management and operation of the Partnership, including, without limitation, making, holding and disposing of investments. Neither Proskauer Rose LLP nor Maples and Calder will represent any Limited Partner or prospective limited partner of the Partnership, unless, subject to applicable laws, the General Partner and such Limited Partner or prospective limited partner otherwise agree and such Limited Partner or prospective Limited Partner separately engages Proskauer Rose LLP or Maples and Calder, as applicable, in connection with the formation of the Partnership, the offering of limited partner interests, the management and operation of the Partnership or any dispute that may arise between any Limited Partner, on the one hand, and the General Partner and/or the Partnership on the other hand (the "Partnership Legal Matters"). Each Limited Partner, if it wishes to obtain counsel on any Partnership Legal Matter, may retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel.

(n) Good Faith Negotiation. Ezbon and Blue Horizon, on the one hand, and the General Partner and Dr. Harrison, on the other hand, each agree that if the other party desires to terminate the Partnership or such party's participation therein, it shall negotiate in good faith with respect thereto.

(o) No Duty to Account. Other than as expressly provided for, or prohibited otherwise, in this Agreement, each Partner may engage in any other business (including being a partner of other partnerships, whether general or limited) and shall not be restrained from engaging in any other activity nor forego or be required to account for any profits from any such business,

notwithstanding that such business may compete with the Partnership's business.

19. Definitions. The respective Paragraphs or other locations in which capitalized terms used in this Agreement are defined are set forth below opposite such terms:

Additional Units	7(g)
Agreement	Preamble
Anti-Money Laundering Laws	5(b)
ATC	1(c)
ATPharma	2(d)
Blue Horizon	4(d)(iv)
Board	2(n)
Buyer	12(g)(i)
Capital Account	6(b)
Carrying Value	7(b)(i)
Code	2(j)
Contingent Subscription	5(a)
Default Charge	5(c)
Default Notice	5(c)
Default Rate	5(c)
Defaulting Partner	5(c)
Dr. Harrison	2(b)
ELP Law	Preliminary Statement
Ezbon	2(m)
Ezbon/Blue Horizon Sale	12(h)
Finkelman	Preamble
First Closing Limited Partners	Preamble
Foreign Limited Partner	2(j)

Founder Common Units	6(c)
GAAP	16(e)
General Partner	Preamble
Gross Negligence	2(g)
Holders	12(h)
Hypothetical Tax Liability	8(a)
Incentive Common Units	6(c)
Incentive Percentage	8(d)(ii)(A)
Indemnified Party	15
Intermediary	1(c)
Investment Common Units	6(c)
Letter Agreement	2(k)
Limited Partner	Preamble
List of Partners	16(b)
Loss	7(b)(ii)
Management Agreement	2(c)
Management Company	2(b)
Management Fee	Management Agreement
Net Tax Obligation	7(f)(iii)
Offer	12(j)
Offered Units	12(j)
Operating Agreement	2(n)
Operating Company	2(l)
Operating Company Security	2(l)
Original Agreement	Preliminary Statement
Partner	Preamble

Partnership	Preliminary Statement
Partnership Information	16(d)(i)
Partnership Legal Matters	18(m)
Person	18(j)
PFIC	16(e)
Preferred Units	6(c)
Profit	7(b)(ii)
Project	2(n)
QEF Election	16(e)
Registration Statement	2(f)
Removal Event	4(c)
Securities Act	12(e)
Side Letters	18(l)
Subscription Agreement	1(e)
Subsidiary	2(d)
Tax Matters Partner	18(i)
Tracking Units	6(c)
Transfer	12(a)
Transfer Expenses	12(d)
Units	6(c)

[Remainder of page intentionally left blank]

CONFIDENTIAL

IN WITNESS WHEREOF, the undersigned have executed this Agreement as a deed on the day and year first above written.

GENERAL PARTNER

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

WITHDRAWING LIMITED PARTNER

Executed as a deed by:

_____
Daniel P. Finkelman

In the presence of:

_____
Witness

APPLE TREE PARTNERS IV, L.P.

Limited Partner Signature Page

IN WITNESS WHEREOF, the undersigned has executed this First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. as a deed.

Executed as a deed by:

Ezbon International Limited
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

Executed as a deed by:

Blue Horizon Enterprise Ltd.
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

SCHEDULE A

MANAGEMENT AGREEMENT

AGREEMENT dated November ___, 2012 (as amended from time to time, this "Agreement"), and effective as of November 1, 2012, between Apple Tree Venture Management, LLC, a Delaware limited liability company (the "Management Company"), and Apple Tree Consolidated, SPRL, a Belgium private limited liability company ("ATC").

In consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership, of even date herewith (as the same may be amended from time to time, the "Partnership Agreement").

2. Management Company Duties. The Management Company shall (i) identify prospective Operating Companies for ATC to invest in and (ii) provide assistance to ATC in evaluating investment opportunities in prospective and existing Operating Companies, it being the expectation that such Operating Companies will primarily consist of the ownership by ATC (either directly as a division, or indirectly through one or more entities wholly owned by ATC but disregarded for U.S. federal income tax purposes) of pharmaceutical, medical device and other medically-related operating assets. Notwithstanding the services provided by the Management Company, the Management Company shall not be authorized to manage the affairs of, act in the name of, or bind ATC.

3. Payment of Expenses. The Management Company agrees to pay (a) all compensation of Dr. Harrison and his administrative assistant in their capacities as employees of the Management Company; and (b) a pro rata share of ATC's facilities and other overhead expenses, based on the portion of such facilities used by the Management Company. ATC shall pay all other expenses properly chargeable to its affairs which are not reimbursed by Operating Companies.

4. Management Fee. ATC shall pay the Management Company a management fee (the "Management Fee") each year for the services to be provided hereunder, in the amount of US $2 million or such greater amount as may be approved by the Board; provided, however that the Management Fee for the first year shall be US $1,694,000 or such greater amount as may be approved by the Board. The Management Fee for each year shall be reduced (but not below zero) by (i) any director's fees, consulting fees or other remuneration paid to the Management Company, the members and employees of the Management Company, the General Partner, Dr.

Harrison or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise for services rendered to Operating Companies; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by any such Operating Company, shall reduce the Management Fee; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities. Any securities or other property received in kind (with the prior written consent of the holders of a majority of the Preferred Units) shall be valued at the time they are reduced to cash or cash equivalents for purposes of the foregoing reduction to the Management Fee. The Management Fee for each year shall also be reduced (but not below zero) for "deemed contributions" as provided in Part B of Schedule D of the Partnership Agreement. Payments of the Management Fee shall be made in advance at the beginning of each calendar quarter in each year in an amount determined by the Management Company but not more than 25% of the maximum aggregate amount of the Management Fee for such year. Notwithstanding the preceding sentence, the first payment shall be due upon the date of this Agreement and shall be for the pro rata amount due until the beginning of the next succeeding calendar quarter. In no event shall fees or other remuneration referred to in the second sentence of this Paragraph 4 be paid in any calendar quarter in an aggregate amount that would exceed the amount of the next succeeding quarterly installment of the Management Fee. The amount of the fees and other remuneration paid or remitted to the Management Company, the General Partner, Dr. Harrison or any of their affiliates from Operating Companies shall be computed for each year, and any net amount due ATC from the Management Company or the Management Company from ATC shall be remitted within 30 days after such computation. If in any year any reductions described above would exceed, individually or collectively, the Management Fee otherwise payable, the excess amount of such reductions shall be carried forward on a year-by-year basis.

5. Term of Agreement. This Agreement shall terminate upon the earlier of (i) the completion of liquidation of ATC and (ii) the removal of the General Partner pursuant to Paragraph 4 of the Partnership Agreement; provided, however, that the Management Fee shall continue to be paid for an additional 45 days following any such removal of the General Partner.

6. Termination and Amendment. This Agreement shall not be terminated prior to the time set forth in Paragraph 5 or amended, and none of its provisions shall be waived, in each case without the written consent of the parties hereto and the holders of a majority of the Preferred Units.

7. Independent Contractor. The relationship of the Management Company to ATC is that of an independent contractor and neither this Agreement nor the services to be rendered

hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship between the parties.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original instrument, but all of which together shall constitute a single agreement.

10. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

APPLE TREE CONSOLIDATED, SPRL

By: _____
Seth L. Harrison
Title: _____

APPLE TREE VENTURE MANAGEMENT, LLC

By: _____
Seth L. Harrison
Managing Member

Proprietary and Confidential

SCHEDULE B

LETTER AGREEMENT

Apple Tree Partners IV, L.P.
c/o Maples Corporate Services Limited
P.O. Box 309, Ugland House
Grand Cayman, KY1-1104
Cayman Islands

November 1, 2012

To the holders of Preferred Units:

Reference is made to the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. (the "Partnership"), of even date herewith (as amended from time to time, the "Partnership Agreement"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Partnership Agreement. When the context of this letter agreement so requires, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa.

In consideration of your subscription for an interest in the Partnership as a Limited Partner, the undersigned hereby represents, warrants and agrees that, so long as ATP III GP, Ltd. is the general partner of the Partnership and you are not a Defaulting Partner:

1. So long as the Management Agreement is in effect, any director's fees, consulting fees or other remuneration paid to the General Partner, the Management Company, the members and employees of the Management Company, the undersigned or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise by an Operating Company for services rendered to it shall be remitted to the Management Company; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by such Operating Company, shall be remitted to the Management Company; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

2. So long as ATC continues to make investments, all investment opportunities in privately-held companies which come to his attention (including but not limited to follow-on investment opportunities), except for such opportunities which he believes in good faith are not within the purpose of or otherwise appropriate for ATC, shall be made available to ATC. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account (other than ATC) which he controls or in which he has a beneficial interest (unless he has no control) may (a) purchase a security of an Operating Company, (b) invest in or manage a private life science venture capital fund (except for preexisting investments in and management obligations to such funds on the date hereof), or (c) invest in any opportunity which has been presented to and rejected by ATC.

3. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account which he controls or in which he has a beneficial interest (unless he has no control) may borrow money from the Partnership or ATC.

4. He shall devote substantially all of his business time to the affairs of the Partnership, ATC, the Operating Companies, Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("ATP II – Annex") until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, and thereafter he shall devote such of his business time to the affairs of the Partnership and ATC as is reasonably required to manage the affairs thereof. So long as the terms of the preceding sentence remain applicable, he shall not permit ATP I, ATP II or ATP II-Annex to invest, after the date of this letter agreement, in entities that were not portfolio companies (or their successors or affiliates) of such partnerships on such date.

5. Without the approval of the holders of a majority of the Preferred Units, he shall not voluntarily permit any other Person to control the General Partner.

The terms and provisions of this letter agreement may be waived, modified or amended only by a writing signed by the undersigned and with the written consent of the holders of a majority of the Preferred Units.

This letter agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, without regard to conflict of law principles.

Very truly yours,

Executed as a deed by:

_____
Seth L. Harrison

In the presence of:

_____
Witness

SCHEDULE C

BUDGETING PROCESS

At the beginning of each fiscal year, the Board will review and approve the overall annual budgets for the Partnership and ATC and the budget for each Project that has been approved by the Board. This approved budget will then become the basis for a quarterly rolling forecast process that will result in the quarterly financial reports referred to below. This rolling forecast process will be driven by Finance with the participation of operating management (Commercial and Research & Development). Revenue and expense budgets, and other items affecting cash flow, will be updated as part of this rolling forecast process. Management will implement a system of spending and other controls designed to ensure that Project budgets are not exceeded without further Board approval. Any new Projects that the General Partner recommends to be added to the ATC portfolio, and any discretionary extraordinary expense, will both require approval by the Board and a budget established (and approved by the Board) before spending can commence.

The General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter, on or before the tenth working day of the month following each quarter (or other period) end, in a format to be agreed upon between the General Partner and the holders of a majority of the Preferred Units. This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs, along with at least the following:

- Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter (or other period) then ended and including explanations of major variances to budget. The report will also include a reconciliation of total expenditures and cash flows from inception through the reporting date.

- Detailed budget by major Project by quarter (or other period) for the next twelve months, including operating income and expenses by major category, and other items affecting cash flow (capital expenditures, upfront / milestone payments, deposits / advances).

- Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets.

In addition to providing the quarterly (or other period) financial report, the General Partner will present in person the Partnership's financial results and budget to the holders of the Preferred Units twice per year, generally in January and July. The presentation will be made at a time and place to be decided by the holders of a majority of the Preferred Units and agreed with the General Partner. In addition to presenting the most recent quarterly (or other period) financial report, the General Partner will present additional material to provide the holders of the Preferred Units with a more complete understanding of the state of the Partnership's current operations and planned achievement of its goals. Members of the General Partner's core management team will be made available to assist in the presentation as required.

SCHEDULE D

FINANCING OF DR. HARRISON'S CAPITAL CONTRIBUTIONS

For the first $15 million of capital calls to Dr. Harrison in respect of his Preferred Units, 80% shall be funded from capital provided by Ezbon to him pursuant to an interest-free, limited-recourse loan (the "Loan Arrangement"), as described in Part A below, and 20% shall be funded by him as provided in Part B below. Any additional capital calls to Dr. Harrison in respect of his Preferred Units in excess of $15 million shall be funded from capital provided by Ezbon pursuant to the Loan Arrangement. Notwithstanding the foregoing, no additional capital shall be funded under the Loan Agreement if the General Partner has been removed pursuant to Paragraph 4(a) of the Agreement. Dr. Harrison's obligations under this Schedule D shall be binding upon his heirs and legal representatives.

Part A: Loan Arrangement.

Each portion of any capital call to Dr. Harrison to be funded through the Loan Arrangement shall be satisfied through a loan from Ezbon. Amounts shall be repaid under the Loan Arrangement as follows:

1. A pro rata portion of distributions to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions and distributions pursuant to Paragraph 4(d)(iv) of the Agreement), based on the then outstanding principal balance under the Loan Arrangement and the amount of capital for such Preferred Units funded by him in cash or by reductions in the Management Fee, shall be applied against the loans. By way of example only, if $15 million had been called from Dr. Harrison in total in respect of his Preferred Units, of which Dr. Harrison had funded $3 million as provided in Part B below and $12 million had been funded under the Loan Arrangement and remained outstanding, then 80% of amounts distributable to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions) would be applied against the loans.

2. 100% of all other distributions, other than Tax Distributions and net of any other tax liabilities arising from such distributions, to Dr. Harrison from the Partnership, shall be applied against the loans.

3. 20% of the first $20 million of "after-tax" distributions to Dr. Harrison from Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("Annex") after the date of the Agreement, and thereafter 80% of any additional "after-tax" distributions to Dr. Harrison from ATP I, ATP II and Annex after the date of the Agreement, but only to the extent necessary to cause cumulative repayments of amounts borrowed under the Loan Arrangement to equal

$12 million, shall be applied against the loans. For purposes of this Section 3, "after-tax" distributions shall mean the gross amount of any such distributions received by Dr. Harrison, reduced by his tax liability in respect thereof (or the allocations giving rise to such distributions), calculated in a manner consistent with the determination of Hypothetical Tax Liability pursuant to Paragraph 8(a) of the Agreement and after any in-kind distributions have been reduced to cash.

4. If any distribution (whether from ATP I, ATP II, Annex or the Partnership) is made to Dr. Harrison in kind rather than in cash, repayment of the Loan Arrangement shall be due after such distribution has been reduced to cash, based on the after-tax amount so realized (calculated based on the product of the taxable gain, if any, so realized and the highest applicable marginal federal and state tax rates applicable to the character of such gain). In the case of any in-kind distributions of publicly-traded securities to Dr. Harrison from ATP I, ATP II, Annex and the Partnership, Dr. Harrison shall, as soon as practicable and legally permissible, put up to 20%, 80% or 100%, as required and as applicable based on Section A.1-3 above, of the shares received from such distribution into a Rule 10b5-1 Distribution Plan (the "Plan") that is designed to effectuate in a market-reasonable legal manner the sale of such shares at a price that is at or above the distribution price of such shares. Dr. Harrison shall cause his attorneys to deliver promptly to Ezbon a copy of the relevant portions of the Plan. If there are no sales of shares pursuant to the Plan, Dr. Harrison and Ezbon shall confer reasonably about the next steps to cause such shares to be liquidated.

Any failure or refusal by Ezbon to fund the Loan Arrangement may, at the sole discretion of the General Partner, subject Ezbon to the imposition of a Default Charge under the Agreement. The failure by Dr. Harrison to satisfy a capital call in respect of his Preferred Units due to the failure by Ezbon to fund the Loan Arrangement shall not result in Dr. Harrison being deemed to be a Defaulting Partner or otherwise subject to Dr. Harrison to a Default Charge.

Part B: Deemed Contributions.

With respect to the portion of any capital call to Dr. Harrison in respect of his Preferred Units that are not funded through the Loan Arrangement, 20% shall be made in cash and the balance shall be deemed to have been contributed by Dr. Harrison. All such deemed contributions shall reduce Dr. Harrison's unfunded Subscription and shall otherwise be treated as a capital contribution, except that such amounts shall not increase Dr. Harrison's Capital Account balance. Payments of the Management Fee shall be reduced as necessary until cumulative reductions in the Management Fee equal the cumulative deemed contributions by Dr. Harrison pursuant to this Part B. Dr. Harrison shall be entitled to receive distributions in respect of his Preferred Units as if all capital calls in respect of such Preferred Units had been contributed by Dr. Harrison in cash, except such distributions shall be limited, pursuant to the principles set forth in Paragraph 7(g), to the extent necessary to ensure that Dr. Harrison's interest in the Partnership by reason of such deemed contributions is respected as a "profits

interest" for United States Federal income tax purposes. If the General Partner is removed as the general partner of the Partnership pursuant to Paragraph 4(a) of the Agreement, then to the extent the cumulative deemed contributions exceed the cumulative reductions in the Management Fee (including any such reductions occurring within 45 days after the removal date), 95% of such excess amount shall be deemed to be a loan under the Loan Arrangement.

Part C: Tax Gross Up Provisions

If any payment to Ezbon under the Loan Arrangement is subject to a U.S. federal, state or local tax (whether imposed by withholding or otherwise), the amount of such payment shall be increased by the Gross Up Amount with respect to such payment. For these purposes, the "Gross Up Amount" with respect to any payment shall equal the amount of increase necessary so that after any such deduction or withholding in respect of taxes has been made (including such deductions and withholdings applicable to additional sums payable under this paragraph), Ezbon receives an amount equal to the amount it would have received had no such deduction or withholding in respect of taxes been made. Ezbon shall each provide to Dr. Harrison (or his heirs or legal representatives) a properly completed Form W-8(BEN), and shall provide all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of U.S. federal, state and local taxes imposed on amounts due in respect of the Loan Arrangement.

Notwithstanding the foregoing, Gross Up Amounts shall not include any additional tax liability, deductions or withholdings resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon or its affiliates (including any such activities that cause Ezbon to have a permanent establishment in the United States) apart from Ezbon's investment in the Partnership and participation in the Loan Arrangement, (y) Ezbon's failure to comply with the requirements of the previous sentence, and (z) Ezbon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of U.S. federal, state or local taxes. Ezbon shall, as soon as reasonably practicable, provide Dr. Harrison with such information as is reasonably necessary for Dr. Harrison to determine the Gross Up Amount with respect to Ezbon. In addition, with respect to a tax imposed on net income, the Gross Up Amount shall only be equal to the excess (if any) of (i) the amount of such tax over (ii) the value of all refunds, tax credits and tax deductions to which Ezbon or its respective beneficial holders are entitled in respect of any amount to be repaid under the Loan Arrangement (without regard to whether Ezbon or its beneficial holders claim such refunds, tax credits or tax deductions), in each case, including such taxes on, and refunds, tax credits or tax deductions arising from, the Gross Up Amount.

Without limiting the foregoing, at Dr. Harrison's request, the parties shall use commercially reasonable efforts to structure the Loan Arrangement in a tax efficient manner, including in a manner that minimizes any Gross Up Amount due pursuant to this Part C.

SCHEDULE E

UNIT REDUCTION SCHEDULE

The table below sets forth the number of authorized Incentive Common Units and Founder Common Units at various Preferred Unit capital contribution levels. Reductions will be made on a pro rata basis for each incremental $10 million of Preferred Unit capital contributions; provided, however, that no reductions shall be made until the aggregate Preferred Unit capital contributions reach $100 million; and provided further, that no further reductions to the authorized Incentive Common Units or authorized Founder Common Units shall be made after the aggregate Preferred Unit capital contributions reach $1 billion and $300 million, respectively.

Preferred Unit Capital Contributions	Authorized Incentive Common Units	Authorized Founder Common Units
$ 100,000,000	158,823	225,000
140,000,000	146,512	197,561
180,000,000	134,483	171,429
220,000,000	122,727	146,512
260,000,000	111,236	122,727
300,000,000	100,000	100,000
440,000,000	89,011	100,000
580,000,000	78,261	100,000
720,000,000	67,742	100,000
860,000,000	57,447	100,000
1,000,000,000	47,368	100,000
1,100,000,000	47,368	100,000
1,200,000,000	47,368	100,000
1,300,000,000	47,368	100,000
1,400,000,000	47,368	100,000
1,500,000,000	47,368	100,000

Distributions pursuant to Paragraph 8(d)(ii) are apportioned among the holders of Units based, in part, on the number of authorized Incentive Common Units and Investment Common Units, which are determined in part based on the amount of capital contributions in respect of Preferred Units at the time of distribution. The following tables set forth two examples of distributions pursuant to Paragraph 8(d)(ii). The assumptions for both examples are the same, except that in example 1, 100% of the authorized number of Incentive Common Units are outstanding at all relevant times, and in example 2, 40% of the authorized number of Incentive Common Units are outstanding at all relevant times. These examples are for illustrative purposes only, and the actual apportionment of distributions as of any time will be governed by the terms of the Agreement.

Example 1: All authorized Incentive Common Units are outstanding at all relevant times:

Preferred Unit Capital	Authorized Number of Common Units			Oustanding Incentive	8(d)(ii)(A) Incentive Common	8(d)(ii)(B) Class of Commcn Units		Total Sharing of 8(d)(ii) Distributions Class of Common Units		
Contributions	Investment	Incentive	Founder	Common Units	Units	Investment	Founder	Incentive	Investment	Founder
$100,000,000	900,000	158,824	225,000	158,824	15.00%	80.00%	20.00%	15.00%	68.00%	17.00%
140,000,000	900,000	146,512	197,561	146,512	14.00%	82.00%	18.00%	14.00%	70.52%	15.48%
180,000,000	900,000	134,483	171,429	134,483	13.00%	84.00%	16.00%	13.00%	73.08%	13.92%
220,000,000	900,000	122,727	146,512	122,727	12.00%	86.00%	14.00%	12.00%	75.68%	12.32%
260,000,000	900,000	111,236	122,727	111,236	11.00%	88.00%	12.00%	11.00%	78.32%	10.68%
300,000,000	900,000	100,000	100,000	100,000	10.00%	90.00%	10.00%	10.00%	81.00%	9.00%
440,000,000	900,000	89,011	100,000	89,011	9.00%	90.00%	10.00%	9.00%	81.90%	9.10%
580,000,000	900,000	78,261	100,000	78,261	8.00%	90.00%	10.00%	8.00%	82.80%	9.20%
720,000,000	900,000	67,742	100,000	67,742	7.00%	90.00%	10.00%	7.00%	83.70%	9.30%
860,000,000	900,000	57,447	100,000	57,447	6.00%	90.00%	10.00%	6.00%	84.60%	9.40%
1,000,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,100,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,200,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,300,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,400,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%

1,500,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%

Example 2: 40% of authorized Incentive Common Units are outstanding at all relevant times.

Preferred Unit Capital	Authorized Number of Common Units			Oustanding Incentive	8(d)(ii)(A) Incentive Common	8(d)(ii)(B) Class of Common Units		Total Sharing of 8(d)(ii) Distributions Class of Common Units		
Contributions	Investment	Incentive	Founder	Common Units	Units	Investment	Founder	Incentive	Investment	Founder
$100,000,000	900,000	158,824	225,000	63,530	6.00%	80.00%	20.00%	6.00%	75.20%	18.80%
140,000,000	900,000	146,512	197,561	58,605	5.60%	82.00%	18.00%	5.60%	77.41%	16.99%
180,000,000	900,000	134,483	171,429	53,793	5.20%	84.00%	16.00%	5.20%	79.63%	15.17%
220,000,000	900,000	122,727	146,512	49,091	4.80%	86.00%	14.00%	4.80%	81.87%	13.33%
260,000,000	900,000	111,236	122,727	44,494	4.40%	88.00%	12.00%	4.40%	84.13%	11.47%
300,000,000	900,000	100,000	100,000	40,000	4.00%	90.00%	10.00%	4.00%	86.40%	9.60%
440,000,000	900,000	89,011	100,000	35,604	3.60%	90.00%	10.00%	3.60%	86.76%	9.64%
580,000,000	900,000	78,261	100,000	31,304	3.20%	90.00%	10.00%	3.20%	87.12%	9.68%
720,000,000	900,000	67,742	100,000	27,097	2.80%	90.00%	10.00%	2.80%	87.48%	9.72%
860,000,000	900,000	57,447	100,000	22,979	2.40%	90.00%	10.00%	2.40%	87.84%	9.76%
1,000,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,100,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,200,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,300,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,400,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,500,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%

EXHIBIT F

AMENDMENT NO. 3

AMENDMENT NO. 3 (this "Amendment"), dated September 1, 2014, to the First Amended and Restated Limited Partnership Agreement (the "Agreement") of Apple Tree Partners IV, L.P. (the "Partnership"). Capitalized terms used without definition herein shall have the respective meanings specified therefor in the Agreement.

For good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. Each reference in the Agreement to a "Subsidiary" of an entity shall be interpreted to mean and include each enterprise, a majority of whose voting securities, are owned directly or indirectly by such entity.

2. Paragraph 2(n) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(n) ATC Board. The board of directors of ATC (the "Board") shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in Projects (as defined below), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC's management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the "Operating Agreement"); provided that no compensation shall be paid by ATC to the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts received by ATC from its Subsidiaries which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC

Joint Exhibit
JX-0004
C.A. No. 2025-0607-KSJM

shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received by ATC from its Subsidiaries. The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Subsidiaries of ATC, substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Subsidiary of ATC, such Subsidiary shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Subsidiary rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board. As used in this Agreement, the term "Projects" means investments in pharmaceutical, medical device and other medically-related companies, projects and related activities that are made directly by the Partnership or indirectly by it through Intermediaries, as well as through ATC."

3. Paragraph 5(a)(ii) of the Agreement is hereby amended and restated in its entirety to read as follows:

"Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, ATC and the Intermediaries (including, without limitation, Subsidiaries and Operating Companies), as applicable, to (A) pay Partnership, ATC and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership, ATC and Intermediary non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership, ATC and Intermediary expenses and obligations incurred in the ordinary course of business, (C) pay the Management Fee for the next 12-month period, (D) invest in Projects approved by the Board in accordance with a Board-approved budget, in the case of Projects being run through ATC, (E) invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units, in the case of Projects not being run through ATC, (F) pay other Partnership, ATC and Intermediary operating expenses that are covered by a budget proposed by the General Partner and approved by the holders of a majority of the Preferred Units in writing in accordance with Schedule C-1, and (G) have a reserve not exceeding $15 million at any one time for investing in the Late-Stage Investment Pool (as defined in Paragraph 8(c)). Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (i) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (Y) 20% of the Partnership's contributed capital or (Z) $50 million, and (ii) in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities."

4. Paragraph 8(c) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary of ATC to distribute promptly to ATC any amounts which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets). Notwithstanding the foregoing provisions of this Paragraph 8(c), the General Partner may designate up to $50 million in the aggregate of capital contributions made by the Partners to the Partnership for investment by the Partnership in minority positions in late-stage privately held companies, initial public offerings and publicly held companies, which investments the General Partner anticipates will be liquidated within 24-months of the respective dates on which they are made (the "Late-Stage Investment Pool"). The General Partner hereby designates the $25,229,439 previously invested by the Partnership in Aurinia, Zafgen, Dermira, Cerecor, ProQR and Tokai as part of the Late-Stage Investment Pool, leaving a remaining balance of $24,770,561 for future designation. The General Partner may cause the Partnership to continue to reinvest the proceeds realized by the Partnership from Late-Stage Investment Pool liquidations in other Late-Stage Investment Pool investments, provided that any net profits realized by the Partnership on an aggregate basis from Late-Stage Investment Pool liquidations may not be reinvested. Any Late-Stage Investment Pool investments may be made by the Partnership directly or indirectly. In addition to and notwithstanding the foregoing, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, the General Partner may cause the Partnership, any Intermediary, ATC or any Subsidiary to reinvest its income or any distributions or other proceeds received by it, rather than causing such amounts to be distributed to the Partners or any higher tier entity.

In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

7070/11922-015 current/44910393v3

LIMITED PARTNERS

Executed as a deed by:

Fizbon International Limited

By: _____

Title: Director

In the presence of:

_____

Witness

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____

Title: DIRECTOR

In the presence of:

_____

Witness Andrey Miller

Executed as a deed by:

By: _____

Seth L. Harrison

In the presence of:

_____

Maja Nowak

7070/11922-015 current/44910393v3

EXHIBIT G

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as general partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Thursday, September 11, 2025
3:15 p.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

TELEPHONIC PRETRIAL CONFERENCE, ORAL ARGUMENT ON MOTIONS IN LIMINE, AND RULINGS OF THE COURT

APPEARANCES:

MICHAEL A. BARLOW, ESQ.
SHANNON DOUGHTY, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
ANDREW M. BERDON, ESQ.
RACHEL E. EPSTEIN, ESQ.
KATHRYN D. BONACORSI, ESQ.
Of the New York Bar
Quinn Emanuel Urquhart & Sullivan, LLP.
-and-
ROGER S. STRONACH, ESQ.
ALDERMAN G. WHIRLEY, ESQ.
Ross Aronstam & Moritz LLP
for Plaintiff

BLAKE K. ROHRBACHER, ESQ.
DANIEL E. KAPROW, ESQ.
CHRISTINE J. CHEN, ESQ.
Richards, Layton & Finger, PA
-and-
SHANNON ROSE SELDEN, ESQ.
NATASCHA BORN, ESQ.
of the New York Bar
Debevoise & Plimpton LLP
for Defendants

- - -

THE COURT: Good afternoon. This is Kathleen McCormick. I want to start by confirming that we have a court reporter on the line.

THE REPORTER: Tina here.

THE COURT: Let's have appearances for the record. Usually we start with plaintiffs counsel.

ATTORNEY BERDON: Your Honor, this is Andrew Berdon. I was hoping my good friend Mike Barlow would make the introductions since he's one of your neighbors, but I'm here on behalf of the plaintiff. Mr. Barlow should be on the line, together with Shannon Doughty. And here in New York I've got my partner Rachel Epstein on the line, and we also have our partner Kathryn Bonacorsi and then some of our broader team.

ATTORNEY STRONACH: Your Honor, this is Roger Stronach from Ross Aronstam & Moritz. I'm joined by Gage Whirley from my office. We are also counsel for plaintiff ATP.

ATTORNEY ROHRBACHER: Your Honor, Blake Rohrbacher, Richards Layton & Finger for the defendants. From my office we have at least Dan Kaprow and Christine Chen. From Debevoise & Plimpton Shannon Selden is on. She and I will be handling the

issues. If there are others with her from Debevoise, she can state.

ATTORNEY BARLOW: Your Honor, I'm sorry. It's Mike Barlow from Quinn Emanuel. I just got disconnected the moment you came on the phone. I apologize for that. Did my colleagues make introductions?

THE COURT: They did, Mr. Barlow. Thank you.

ATTORNEY BARLOW: I apologize for that. Myself and Shannon Doughty are here from Quinn Emanuel.

THE COURT: Thank you.

ATTORNEY SELDEN: Your Honor, it's Shannon Selden at Debevoise. I was just going to thank Blake for our introductions and add that my partner Natascha Born is here with me as well.

THE COURT: If possible, I'd like for one person on each side to answer the first set of questions. I want to note, Mr. Rohrbacher, that it was a little hard to hear you. So maybe get closer to the phone or whatever you're using.

But my first question is what is on your agenda for today? We'll start with plaintiff's

counsel.

ATTORNEY BERDON: Thank you, Your Honor.

Your Honor, we have a pending motion to amend the pleadings to conform to evidence. We also have a motion in limine with respect to some of the opinions offered by the defendants' Cayman law counsel. And we also have a motion directed at the exclusion of communications that were marked by the parties at the time as being without prejudice. We also will be addressing other matters that the parties have been discussing along the way, including issues, I believe, with respect to our roll-off production of documents that Your Honor ordered on Monday.

THE COURT: All right. Mr. Rohrbacher or defense counsel, what's on your list?

ATTORNEY ROHRBACHER: Thank you, Your Honor.

So there's also one more issue in the pre-trial order, which is, I guess, post-trial briefing. The parties had suggested we talk about it now, but we can also talk about it later.

The other issues and whether they're necessary to deal with today, our motion to compel

discovery for Mr. Ehlers was fully briefed as of September 8. Also, I am reporting the parties have jointly selected an interpreter to resolve potential disputes over the translation of exhibits and for at least one witness. So the pre-trial order mentioned that we were working on that, and I wanted to report that we had selected one. Ms. Selden will also be addressing, as we heard, issues in connection with the plaintiff's production.

THE COURT: Thank you.

So here's your combined list as I understand them and my own set of issues I'd like to discuss. We have about three standard modifications I'd like to walk through with you that are on my list, I have questions about the number of trial witnesses you've identified, and the delivery of joint trial exhibits to my chambers.

Then on your list, combined, we have disputes over post-trial briefing, timing and structure; there's the motion to amend; there's two motions in limine; there is beyond the stipulated pre-trial order a motion to compel. We also are going to discuss the roll-off of documents.

And I'm pleased that you got to the

bottom of the interpreter issue. I'll look for you all to memorialize that on the docket, but I don't think we need to discuss that today.

So with that list, let me start with my easy issues. As you all probably know, I typically make a series of standard modifications to the pre-trial order. I have three that I will be making, and I thought I'd flag them for you.

The first concerns demonstratives. Any demonstrative used at trial will need to be filed on the docket within ten days after post-trial argument by the introducing party.

The second one concerns expert reports. Consistent with Court of Chancery Rule 5(c), I'll require the filing of complete and unredacted versions of each expert report submitted in the case within ten days after trial. That is a rule. And so you all were probably prepared to do that, but I'll also enter it as a modification because it's a relatively new rule. That should remind you.

Last, I do require a schedule of evidence, again, within ten days after post-trial argument typically. This time I'll ask for it within five days given that it's an expedited case. The

schedule of evidence will need to identify exhibits used in briefing, at trial, post-trial briefs or post-trial arguments, as well as any objection to the admissibility or use of those exhibits, any deposition testimony that was cited in briefing at trial, in post-trial briefs or in post-trial arguments. And I'll ask also -- and this is new -- that the parties identify any exhibits used in open court on the schedule of evidence.

These instructions will be memorialized in the standard modification I make. I'll also state in that modification that you all should proceed with the expectation that I'll only review evidence on the schedule of evidence when rendering a post-trial decision, but I might go beyond that.

So those are the three modifications that I'll make. Again, they will be entered in the mod box of the pre-trial order. So you can review the language then.

The next relatively easy issue to address is the number of trial witnesses. I see that you all plan to call 15 in two days. I wanted to ask how you plan to do that?

ATTORNEY BARLOW: Your Honor, Mike Barlow on behalf of plaintiff.

We have indeed identified, I think, seven on our side, one of which overlaps with one of defendants' witnesses. So probably closer to six. I think the parties have enumerated their witnesses in compliance with the pre-trial order, and, as usual, we'll engage in a dialogue to try to figure out how to skinny that up as we get closer to the trial and allocate the limited time available.

To that end, we have a schedule for disclosure of witness order, and I don't think it requires disclosure of witness order until a couple of days from now. I think September 15 is our deadline to disclose -- no. September 14 is our deadline to disclose, September 15 is their deadline to disclose. If it would be helpful, we would be fine with moving that up by a day or two to sort of help trod along the dialogue about how we're going to get this done during the 12 hours of trial time available.

THE COURT: That would be helpful to me and also kind of getting a sense from you before trial as to who you intend to call and the order would be helpful. As you know, with these sorts of highly

expedited cases we try to get a running start on witness prep on our end. So that would be helpful.

All right. The last are the easy issues concerning trial exhibits. I know we're still in the midst of production of documents and this is, you know, a rapidly evolving discovery record, but I did see that you plan to deliver trial exhibits to my office no later than the day before trial. That would be great if you could at least give me a day with them. So if you could do it no later than two days -- the close of business two days before trial, that would be better. I understand that you might need to supplement depending on the status of the production, but at least then we'll have a chance to look at it in advance of your trial.

Any concerns or issues with that?

ATTORNEY BARLOW: No, Your Honor. It's Mike Barlow.

With respect to the witness issues and the disclosures, would we contemplate moving it up for both parties by a couple days? I didn't hear any objection from defendants on that, but I didn't want to just move ours up and then not move back the defendants, which would defeat the purpose of

advancing the schedule?

ATTORNEY SELDEN: Maybe I could address both of those issues together. This is Shannon Selden at Debevoise.

Your Honor, defendants have a very serious concern with respect to the productions that we have received from plaintiff and how it affects each of these deadlines and the preparation for trial, and I would like to address those. I think it affects each of the items on Your Honor's list, as well as the items on our list, which is it will be a real challenge for defendants to identify witnesses earlier or to get the joint exhibit list finalized earlier given that we have received what appears to be over 17,000 documents in the past 30 hours that are relevant to the claims and defenses in this case.

That is both more and less than the 15,500 documents on plaintiff's privilege log. It appears that plaintiff has reproduced thousands of documents that were not on the log, but have continued to withhold documents that are on the log but are within the scope of defendants' paragraph 3 of our proposed order and were ordered to be produced, including documents from the critical two weeks

leading up to the filing of the complaint.

We are doing everything we can to review those documents, but we've seen enough to know there's been actual prejudice to defendants for not having received them sooner, not just in the volume and timing, but also in the substance of those documents. We received 9,500 documents at 7:30 a.m. yesterday, September 10. We received another 7,800 documents in the middle of the night last night. We asked for but we haven't received an updated privilege log. So we are trying to reconcile kind of which of these documents we had previously and which are newly produced, but it seems the overwhelming majority are newly produced documents that defendants did not have available during the course of discovery in this case.

To put this in context, Your Honor, plaintiffs produced 17,000 documents in the past 30 hours, but they've produced 60,000 documents between July 2 and August 13, the discovery cutoff. So this is another nearly third again as much the documents we had during the course of what was already very expedited discovery.

It's a tremendous number of highly relevant documents. It's awfully late in the process

after the close of discovery and after expert discovery, after the pretrial order and the pretrial brief both went in. There's no question that there's been actual prejudice to my clients, the defendants, both from the volume and the timing, but also on the substance.

Your Honor, we are still reviewing these documents. We have seen only a sample, but I can tell from the sample that we have seen that I'm deeply troubled by the ability of defendants to continue to meet the deadlines that we had just been discussing with Your Honor, including documents that are meaningful for our defenses.

I'm happy to give the Court some concrete examples, but it's clear that where plaintiff's claims are raising questions like the state of the portfolio companies and their supposedly urgent need for relief, the basis for and the validity of capital calls for the fund, the rate at which the portfolio companies were burning through cash years before this suit and due to mismanagement by their own management and the GP and not any action by the LPs, these are all facts that plaintiffs have put in issue that are (inaudible) documents that we have received

since last night.

THE COURT: Stop talking, please. This is the judge.

So thank you. I didn't expect that level of argument at this stage. It sounds like you want to talk about scheduling issues beyond what we just discussed. So I'll put that at the end of the agenda. I understand the concerns and the arguments of prejudice you're raising. What I'd like for you to think about by the end of this hearing is what solutions you propose to those problems. So why don't we revisit it when we talk about the roll-off document productions toward the end.

ATTORNEY SELDEN: Thank you, Your Honor. I'm happy to do that. I certainly don't want to argue these issues, you know, out of order. I do just have a concern that they affect each of the deadlines, including witnesses and pretrial exhibits, and I wanted to make that concern clear at the outset. We do have some ideas which I'm happy to discuss when it's appropriate.

THE COURT: Thank you. I understand, and I hear you.

So let's go on now to the other agenda

items. All right. Let's go to post-trial briefing. Who wants to present the arguments -- or who is going to present the argument on that issue?

ATTORNEY BARLOW: Your Honor, it's Mike Barlow.

With respect to post-trial briefing issues, our interest is trying to figure out how to present post-trial briefing in a manner that is both expeditious consistent with how the parties have litigated to this point, as well as best meets the expectations for the presentation of the evidence to the Court.

I think we proposed simultaneous openings and simultaneous answerings in the hope of moving that along quickly. My friends at Rigmora proposed essentially sequential briefing and really no schedule other than they want, I believe, two weeks for their responsive brief, which I am concerned doesn't quite allow us the time that we need to get this teed up for the Court.

So we're happy to defer conversation about this, but consistent with how the parties have litigated to this date, we wanted to air for the Court our interest in getting this resolved quickly and in a

manner that's most helpful to Your Honor.

THE COURT: All right. Why do you want sequential -- or why do you want -- I thought you said you wanted simultaneous briefs, Mr. Barlow?

ATTORNEY BARLOW: We did, principally for speed reasons, Your Honor. If Your Honor would prefer sequential, that would be fine, but we would love to figure out how to get that done in a manner that, you know, gets this matter sort of briefed up fairly quickly.

You know, for example, if instead of filing our simultaneous opening briefs on the 23rd of September as we proposed, they instead -- you know, we did only our opening as the plaintiff. If we could get a commitment from Rigmora to respond promptly and as quickly so we could do something like a five calendar day, five calendar day, four calendar day kind of schedule to get this done promptly, that would be acceptable to the plaintiff.

THE COURT: Let's hear from the defense counsel on this.

ATTORNEY ROHRBACHER: Thank you, Your Honor. This is Blake Rohrbacher.

It sounds like we've gotten to

sequential briefing. So it's, I think, more about the schedule now. Frankly, the real answer is we'll do whatever schedule Your Honor thinks is appropriate. Given a number of issues, the fact that the pre-trial order draft is the first time we saw the new claims that the other side wanted to put in the additional production, you know, we heard about the dire situation.

What you didn't hear is that the fund had more than $61 million in funds as of August 1 and then transferred $20 million of that to Quinn Emanuel. We learned that in a communication in the Caymans on Monday. So we don't think that the truncation of the delivery of a very complex issue with a lot of work that is still being done makes sense to do it so quickly. So we still think that two weeks would be appropriate, but if Your Honor wants it faster, we will, of course, do it faster.

THE COURT: Thank you. All right. So this is one I think we can punt until the end of trial. So why don't you all raise it again. I will want sequential briefing, I will want the answering brief probably sooner than the two weeks, but we can fine tune the details after the evidence is presented.

Let's go now to the motion to amend.

ATTORNEY BERDON: Your Honor, Andrew Berdon for the plaintiff.

Your Honor, the legal standard here in Rule 15(d), 15(b) is one that can certainly apply here, but the case law is pretty clear that when we're looking at decisions like this, we're supposed to focus on three basic issues, notice, whether discovery was or is available, and actual prejudice.

The issue of notice here is not really in dispute. The defendants cited the service of the capital calls and the filing of their reactive lawsuit in the Cayman Islands in their opposition to our motion to expedite and in support of their motion for a stay. When asked exactly what our theories of breach are going to be in their contention Interrogatory No. 14, we served an amended response that said on -- this was served on July 22. We served an amended interrogatory that said, in relevant part, on June 13, 2025, defendants further breached Section 5(a) of the LPA when they failed to make capital contributions in response to capital calls issued on May 30, 2025 for ten portfolio companies and the second half of the ATLS fee.

So notice was absolutely given of these claims. There's no way that the service of the pre-trial order was the first time that they became aware of this. They were able to take discovery and ask questions of senior ATP people, including Seth Harrison, who is the managing director, and Joe Yanchik, who served as a Rule 30(b)(6) witness on a number of these topics. And so there was actual discovery taken, actual discovery provided to them.

The last element is prejudice. There is no allegation in their opposition position in the pre-trial order of actual prejudice. It is hypothetical at best.

And so with those three issues sort of mitigating in favor of amendment, we ask the Court to exercise its discretion and permit it.

THE COURT: Thank you.

Argument for the defendants.

ATTORNEY SELDEN: Thank you, Your Honor. It's Shannon Selden from Debevoise for defendants.

Your Honor, defendants do object to the late motion to amend the complaint to add a breach -- a claim for breach of the May 30 capital

call and believe that should be denied. If this was so obvious and so clearly a claim that plaintiff intended to bring, they should have amended to do so at the outset of discovery, making clear that their claim was for breach of nonpayment of the capital calls and not for repudiation turning on a single email, which has been their claim so far and, frankly, the reason they came into court anticipating repudiation and believing that the defendants wouldn't pay these capital calls without giving them a chance to do so, and now, having litigated on that basis over the entire summer and through all of discovery, are switching gears entirely at the end to allege this claim for breach of contract.

I think, you know, as with all the issues that we are addressing going into this trial, the prejudice from their delay, of course, is compounded by the improper withholding of relevant and responsive documents, which I think shows that this claim was brewing long before May of this year and was not a need to urgently address issues raised by the portfolio companies.

Mr. Barlow mentioned that the importance of discovery and discovery relevant to the

claim is one of the factors that Your Honor should consider in deciding whether to grant leave to amend. I think here there was perhaps some opportunity to take some discovery around it because the complaint had not been amended and because plaintiff was pressing the repudiation claim. That was the focus of discovery, and discovery was hampered by the withholding of what now appear to be 17,000 additional documents that defendants did not have the benefit of during the course of discovery.

So if plaintiff wishes to amend their claim to add breach of contract for the May 30 capital call and to take discovery on that claim, I think defendants should be permitted to do so but with more than a week to prepare their defenses in response.

THE COURT: So what more would you have taken discovery on had the claim for breach, as opposed to anticipatory repudiation, been asserted earlier?

ATTORNEY SELDEN: Your Honor, one of the premises for capital calls and the validity of capital calls is not just that there be remaining headroom on the LP's capital commitments, which there wasn't here, but also that the capital calls

themselves had been made in good faith and that they satisfy the many contractual prerequisites of the limited partnership agreement.

That's laid out in some detail in our pre-trial brief, but if plaintiff had been pressing a claim that these were valid capital calls that they had made and that the breach was nonpayment and not repudiation of capital calls that had not yet been sent, then I think there would have been more focus or an opportunity for greater focus throughout discovery on whether the GP acted in good faith in sending those capital calls, whether they were in satisfaction of each of the prerequisites of the LPA. And, frankly, Your Honor, if we had had access to the documents that I've seen just this morning, we would have had many questions for the GP and their employees about the validity of these capital calls which appear to have been engineered primarily for litigation purposes and not to serve any urgent need on behalf of the portfolio companies.

So I do think there is a two-fold prejudice here. A repudiation claim is different legally from a claim for breach of contract. The focus on repudiation and on a single email puts a

different focus on discovery. We would have had more expansive discovery of the GP's own actions with respect to these capital calls, and the fact that we did our best to do that and are now seeing much more evidence related to it just, to me, compounds the prejudice that defendants are facing with respect to this late addition.

ATTORNEY BERDON: Your Honor --

THE COURT: You don't need to respond. Thank you.

I'm prepared to rule on this. I'm going to grant the motion to amend. To me, the claim for breach of contract seems like a logical extension of the claim for anticipatory repudiation that everyone was really on notice of. I think I agree that there is real prejudice to defendants based on the timing of plaintiff's document production. I'm not sure that that prejudice is caused by allowing the motion to amend in this circumstance. We do need to deal with that and we'll talk about that at the end of this hearing, but for now the motion to amend is granted.

So the next issue is the motion in limine regarding the expert report. Who is prepared

to argue that?

ATTORNEY BONACORSI: Good afternoon, Your Honor. This is Kathryn Bonacorsi from Quinn Emanuel.

THE COURT: Please proceed. Thank you.

ATTORNEY BONACORSI: Your Honor, Mr. Phillips is Rigmora's purported Cayman law expert in this matter. It is our position that his testimony fails to meet several threshold requirements for admissibility under 702 and 44.1. At the outset, Mr. Phillips exceeds the proper role of a foreign law expert. Defendants acknowledge the correct standard in the pre-trial order at para 146. Foreign law experts should help the Court understand the complexities of a foreign legal team and provide the Court with the tools to appropriately apply the law to the case.

Mr. Phillips goes beyond that in his expert reports and at the deposition. He does not only provide the Court with the tools, but he tells the Court how to use them and specifically what conclusions to reach. He was explicit about this, Your Honor.

In his opening report at paragraph 18 he has a summary of his conclusions. He opens with, "It is my opinion that a Cayman court would be likely to reach the following conclusions," and then he goes on to list eight numbered conclusions that go to the key issues in this case, including whether obligations exist beyond the subscription agreements, whether Amendment 20 created new capital commitments, whether Rigmora had contingent capital commitments after September 2020, whether Rigmora owed an implied duty of good faith, and whether the May 15 email we've been discussing earlier constituted anticipatory repudiatory breach.

Specific citations to the report, paragraph 145 Mr. Phillips opines, "A Cayman court would be likely to conclude that after September 2020 the total contingent capital subscriptions were provided for in the SAs, and any additional Capital Contributions contained in the LPA becoming payable after that date."

In paragraph 154, "The Cayman court is likely to conclude that paragraph 21(a) identifies the assets going into Pool Braeburn rather than creating a new obligation to make additional Capital

Contributions."

At paragraph 160, "The court is likely to conclude that this first part of the US$500,000,000 cannot have given rise to an obligation on Rigmora to contribute [approximately] US$189 million."

At para 171, subpart (a) [sic], "the Cayman court is likely to conclude that Rigmora was not under an obligation to make capital contributions that exceeded US$2.425bn."

Your Honor, Mr. Phillips reinforced his position at his deposition where he testified -- and I'll give the depo citations. Your Honor, it occurred to me that we've not provided, I don't believe, the deposition transcript, but we'll follow up with that afterwards.

At page 40 Mr. Phillips testified "when I indicate what I believe a Cayman court would do is what I'm indicating is what I believe the application of those principles to the circumstances of this case would be."

On page 42, "What I have done is I have identified and applied the principles of Cayman law to the [facts and] circumstances of [this] case."

On page 107 [sic] of the transcript

regarding the applicability of the legal doctrine *Braganza* under Cayman law, which is a key issue in our complaint, Mr. Phillips testified, "I'm giving my opinion on how the principles of Cayman law will be applied in the circumstances in this case. My opinion that applying those principles, a *Braganza*-type duty will not -- cannot be implied into this case. That is my expert opinion."

Your Honor, it's our position this is not appropriate expert testimony. It's a proposed judgment proffered by Mr. Phillips. He's telling the Court how to resolve the disputed issues. Although we agree that defendants say that Your Honor has latitude to determine the issues of Cayman law, they have not cited any authority that says that a foreign law expert can open with here's how another court would, in fact, rule in this case. We believe that foreign law experts are not exempt from the ultimate issue rule, and the testimony and the citations to the report we believe precisely go to the ultimate issues of this case.

Furthermore, Your Honor, certain aspects of his testimony are unreliable. Defendants say that Mr. Phillips' opinions are extensively

grounded in precedent, but on a few key points in his report and during his deposition he had no precedent or authority for the conclusions as to what a Cayman court would do in some given circumstances.

He also throughout the deposition was asked for various citations to points of Cayman law. For example, in his deposition at page 56 [sic], when asked for a citation for the proposition that the duty of good faith is a component of the fiduciary duty under Cayman law, Mr. Phillips responded that it is "a trite law point."

Similarly, he testified when asked about the proposition that exclusion of fiduciary duties excludes good faith duties, he stated that it is absolutely obvious and he doesn't need to cite any authority for that.

Furthermore, Your Honor, I think probably the last point is there are inconsistencies and internal contradictions regarding Mr. Phillips' testimony in this matter. We believe this undermines his reliability. For example, he testified first that whether headroom existed in the fund is a fact question that must be resolved to determine if Amendment 20 created new capital commitments. That's

at 213 to 216 in the depo. He said that was a factual question.

He then testified at 292, 296 of the transcript, when looking at Amendment 20, Annex A, that headroom definitely exists for his read of the document such that you have to accept his conclusion.

Similarly, frames the May 15 email as indicative of the fact that no other capital commitments exist.

Your Honor, these are just a few of the issues we've identified with his reports and his testimony at deposition. We understand we have very limited trial time next week, and we are seeking direction from Your Honor whether you'd like us to raise objections to Mr. Phillips' testimony when he testifies, make a standing objection with you now if needed, or if you'll issue a ruling today. We are, of course, happy to proceed however Your Honor prefers.

THE COURT: Thank you. Let's hear from the defense on this point.

ATTORNEY SELDEN: Shannon Selden from Debevoise. Defendants oppose plaintiff's motion to exclude Mr. Phillips' testimony, or portions really of his testimony, as this is a limited motion in limine,

in part because it ignores Court of Chancery Rule 44.1 which affords the Court broad discretion to consider relevant material or source, including testimony whether or not submitted by a party or admissible under Rule 43. So I think the Court has particular discretion to consider the opinion of a foreign law expert.

It is clear from reading Mr. Phillips' report that he's not seeking to usurp the role of the Delaware Court, but rather to assist the Court by providing an analysis of Cayman contractual interpretations that are based upon the facts and nuances in the case, which is permitted in Chancery and is an approach which closely mirrors that of plaintiff's own expert, Michael Bloch.

The fact that Mr. Phillips uses the U.K. convention and refers to what the Cayman court would do rather than saying what Cayman law provides is not a reason on its face to exclude the substance of his testimony. I think on balance and read in their entirety, Mr. Phillips' reports are quite clear that he's providing ample Cayman authority, unpacking what Cayman law means both with respect to the Exempted Limited Partnership Act, the application of

it to limited partnerships like the fund at issue here, the *Braganza* duty and good faith duty.

Mr. Phillips' report is lengthy. He wrote over a hundred pages, something like 121 pages. He cites throughout his reports more than 70 relevant (inaudible) which ground his analysis. The fact that he may have not offered off the cuff during his deposition citation to opinions is no reason to disqualify him or to exclude his testimony. The authorities are there. They are cited extensively throughout his report. They are available to this Court. And they were available to plaintiff's expert Mr. Bloch in his own report and in his own testimony. All of that forms part of the Cayman law that the Court should have before it when it decides these issues.

There's no real dispute as to Mr. Phillips' qualifications to opine on the principles of Cayman contract law. He is, like plaintiff's expert Mr. Bloch, an English lawyer, he has extensive experience litigating in the Cayman courts, and that also is a reason to consider his testimony.

You've heard various excerpts or

characterizations of portions of Mr. Phillips' reports, but they should be read in their entirety. He assumed certain facts for purposes of his analysis, but I think that's customary in expert reports, including in the reports of foreign law experts.

Each time when he opines or uses the phrasing "what a Cayman court would do," it's clear that he is opining as to what Cayman law is with respect to the matters at issue, including contract, good faith duty questions, and ELP questions and the like under Cayman law.

I also think, Your Honor, that in assessing these questions the Court should consider the flexibility that it has in reading the reports in their entirety, hearing from Mr. Phillips, and deciding how much weight his opinions are owed. If the Court finds that the aspects of Mr. Phillips' reports which opine or purport to conclude what a Cayman court would conclude where he uses that phrasing, you know, in defendants' view that is an explanation of Cayman law, if the Court finds it unhelpful or that it has gone too far, I think the Court can grant that aspect of his report less weight and this is a weighting issue and not an exclusion

issue. It would be of benefit to the Court and to the parties to have before it the full record of Cayman law, including the detailed analysis that Mr. Phillips provides of Cayman statute and decisional authorities.

So for all those reasons, I think the motion in limine should be denied, the Court should hear from Mr. Phillips as it hears from Mr. Bloch. And if it doesn't hear from Mr. Phillips, it is, of course, defendants' position that Mr. Bloch's testimony suffers from the same deficiencies and should be similarly excluded. But, frankly, I think it would be better for Cayman law to be before the Court and for Your Honor to give it such weight as you find helpful and reach that conclusion after having the benefit of trial and post-trial briefing.

ATTORNEY BONACORSI: If I may, Your Honor, just two very quick points.

THE COURT: No, it's not necessary. Thank you.

The motion in limine is denied to a degree, and let me explain. As your Delaware attorneys have probably explained, I almost always deny these and allow the objections to speak to the weight of the evidence. You can decide whether to

raise these objections again when the evidence is (inaudible), and you can decide whether to do so on a serial basis until it annoys me and I tell you to stop or to do so as a standing objection, depending on what you think is strategically more effective.

I will say that I thought a lot of the arguments made in support of this motion were compelling, that the report does kind of skirt the line in a way that might not be helpful to me, but I also know that each side has very limited trial time. So if the defendants want to use their trial time to present a report that may not be very helpful to me, I'll allow them to do so.

Are there any questions?

ATTORNEY SELDEN: No, Your Honor. Thank you.

ATTORNEY BONACORSI: Thank you, Your Honor.

THE COURT: Thank you. Let's go to the next motion in limine.

ATTORNEY BARLOW: If you want to go ahead and address it, or I'm happy to.

ATTORNEY BERDON: The settlement communications issue, Your Honor, is that the one

you're hoping to hear about?

THE COURT: Yes. Thank you.

ATTORNEY BERDON: Your Honor, during the prelitigation exchanges between Rigmora and ATP, Rigmora began a pattern of having certain of their communications open. And then when certain subject matter could, you know, be interpreted as being -- you know, trying to work towards a compromise were discussed, they were put in a separate piece of correspondence marked "without prejudice." It was ATP's reasonable interpretation that that was done so that ATP could not use those communications against Rigmora to try and prove liability on any claim.

What we see now is Rigmora perceiving, I think, that those communications might be helpful to them in its defense of certain claims. So they have taken a shield and are now looking to use those communications as a sword.

Under Cayman and common law, "without prejudice" communications are done pursuant to a privilege, and that privilege is jointly held by both parties. And so it cannot unilaterally be waived, and it certainly cannot unilaterally be waived in a manner that is designed to convert it into evidence of

liability or evidence to appoint liability.

So, Your Honor, we seek an order in advance ruling that "without prejudice" communications, number one, cannot be entered into evidence, but number two, more broadly, cannot be used for any purpose in this litigation.

I will note that in one of the footnotes to I believe it's Mr. Strebulaev's report they do cite one of these communications, and we took exception to it at the time and have maintained that objection consistently. So there is no question here of our having waived or failed to timely assert this claim of privilege.

With that I will stand down.

THE COURT: Let's hear from the defense.

ATTORNEY SELDEN: It's Shannon Selden again from Debevoise. Your Honor, we disagree with just about everything that Mr. Barlow just said, I'm afraid.

First of all, Cayman law governs this issue. Cayman law, as Delaware, would require the Court to consider the documents document by document and not to have a blanket rule that excludes all

documents merely because they have the label "without prejudice" on them. I think those facts in the record would show that any "without prejudice" label was applied to documents not by Rigmora in the first instance, that's the first I'm hearing of that.

The first time it appears in a chain is in an email from Anna Batarina of ATP. I know that "without prejudice" appears on the ATP documents in the first instance because they're cited in their complaint, and they're attached as exhibits to their complaint. Exhibit 9 to the complaint itself is an email that includes a "without prejudice" document. There are two "without prejudice" documents cited in plaintiff's own pre-trial brief.

So plaintiffs are extensively using "without prejudice" documents to assert their very claims in this Court against my clients, the defendants, and then turning around and using that phrasing as both a sword and a shield to argue for the exclusion of emails on the same chain where they are helpful to defendants and going to some of the core facts, which is whether defendants were negotiating or discussing in good faith budgets and portfolio companies (inaudible) GP.

So with respect to these documents, Your Honor, this motion to exclude "without prejudice" documents should be denied. That is not how Cayman law views these documents, and that's not how Delaware should treat them. The documents should be considered on their face, document by document. The appendage of a label does not automatically make it a settlement communication.

I would say further to that question, Your Honor, the notion that "without prejudice" documents on their face constitutes settlement communications which should be excluded from evidence in this Court and that there were settlement communications in the sense of settlement of pending litigation is at odds with plaintiff's own claims and the facts as defendants knew them in this case. These were business discussions between the LP and the GP, who's supposed to be a fiduciary of the fund and of the LP and of its investors. And the LP was having those discussions with its GP in the expectation that they are all together in the fund working for the benefit of that fund and the GP is fulfilling its fiduciary role.

For the GP to turn around and say that

it is in a contentious position, that it is in conflict with the fund and its LP such that these communications are settlement communications about a litigation that it has never raised to the LPs and before it has sent them a complaint or a demand or a litigation threat and then used that label to exclude them as evidence from the LP's business communications is I think highly prejudicial and unfair.

It may be the case that the GP was brewing that complaint and that's certainly what this morning's document suggests, but that they knew it and we did not does not make negotiations over the business of the fund into a settlement of litigation such that those negotiations should be excluded. I think plaintiff's complaint and pre-trial brief put those negotiations squarely before this Court, and if you are to consider them, it should be on a complete record, document by document, regardless of label.

ATTORNEY BERDON: Your Honor, if I may, we don't seek --

THE COURT: No, you may not. Sorry We have limited time.

So I'll tell you how I'm going to rule on this one. The motion in limine is denied, again,

to a degree. I'm not going to categorically exclude these documents. I hear what you're saying about the submissions of the "without prejudice" label under Cayman law, but it seems like it might have been overused or not understood as a settlement communication by both sides. To the extent there were settlement communications, I really need to evaluate this argument on a document-by-document basis.

So the motion is denied without prejudice to the plaintiff's ability to raise this argument or a similar one concerning settlement communications as the communications are used or presented at trial.

Any questions?

ATTORNEY BERDON: No, Your Honor.

THE COURT: I think that brings us to the motion to compel.

ATTORNEY BERDON: I believe this is the defendants' motion, Your Honor.

ATTORNEY SELDEN: That's right. Thank you, Your Honor. It's Shannon Selden again at Debevoise.

We have moved to compel Dr. Ehlers' documents. I will be brief on that issue. Dr. Ehlers

is the CEO of Ascidian. He has an Ascidian email address, he has a phone. The collection of documents from Dr. Ehlers was incomplete, and it is defendants' view that it should very much be complete. Again, the business with the portfolio companies and their status has been squarely put at issue by plaintiff, and their contending certain facts relevant to those portfolio companies ought to be before the Court.

It is important for defendants to have access to those facts, and we have not received those from Dr. Ehlers. He is not available, as I understand it, to come to trial. So we won't be able to ask him live, but we should in the meantime at least have access to his company emails and he should go through the same phone collection that all the other witnesses -- or many of the other witnesses have gone through.

So I will keep it brief on this one, Your Honor, but we would ask that that motion be promptly granted.

THE COURT: What does plaintiff have to say? Sounds like it's not opposed.

ATTORNEY BARLOW: I'm happy to answer, Your Honor, but unfortunately I was disconnected

inadvertently during Ms. Selden's argument. So I'm going to be flying a little blind.

THE COURT: She made all the same points from the papers and did so pretty succinctly. So I think you're good to go.

ATTORNEY BARLOW: Thank you, Your Honor.

Dr. Ehlers is a former employee. He resigned back in November. He took a job as a venture partner with another venture capital firm. He holds a title of CEO of one of the portfolio companies, Ascidian, but the day-to-day management of that company is done by others. He is really there more to add value as a consultant than anything else when they call on him.

If we were to say to Mr. Ehlers if you do not appear you will be fired, we have no doubt whatsoever that he would say okay, then fire me. Mr. Ehlers has indicated to us that he believes his appearance voluntarily at a deposition was enough and that he has no interest in traveling to Delaware to testify again live in this case.

We submit that, given the number of witnesses on the defendants' witness list, this is

more performative than anything else, and it's really just an attempt to create work on our part to have to bring down and work with and prepare yet another witness. We just don't think that the need is real or that there would be any meaningful prejudice to them if his testimony was taken by deposition.

We also point out that the defendants asked for Dr. Ehlers' deposition after the last date for noticing depositions in this case. We provided it voluntarily. Even though he didn't want to show up, we convinced him to show up. This motion to compel was filed long after the dates for filing motions to compel. So, Your Honor, we have a timeliness issue here, and we have the issue that we simply do not control Dr. Ehlers in the way that it is alleged.

THE COURT: What about his documents?

ATTORNEY BARLOW: Your Honor, we have produced his entire custodial file from ATP long ago. We produced that in the first round. When we were asked initially to designate ESI custodians, he was immediately on our list. They didn't have to ask for it. So his entire custodial file was produced along with the rest of the key ATP people.

There is, again, an untimely request

to image his phone. If they had asked to image his phone back in June or July, we could have asked Dr. Ehlers to do it at that time. But they didn't, and we didn't hear about it until very recently.

THE COURT: I will hear response on this one and I'll let Ms. Selden address this, but I think what she will say is that she thought there was an agreement to image his phone and treat him like other ATP custodians --

ATTORNEY BARLOW: Your Honor, if I may. We called out the fact that there were two custodians whose phones were not readily available to us for imaging. One was Anna Batarina and the other was Dr. Ehlers. When they pressed us on Anna Batarina, we literally sent someone to Latvia to meet with Ms. Batarina at her family's home and to image her phone. With Dr. Ehlers, again, we don't have the ability to do that with Dr. Ehlers in the same way. He is not within our control.

So, you know, we gave ample notice to the other side that this was an issue, and they did not raise it until after the dates for the close of any -- under discovery issues, Your Honor. Again, there's no principled reason why there would be a

trove of communications on Dr. Ehlers' personal phone when he's mainly interacting with other senior folks at ATP, and we have imaged the phones of all of those people, including a large number of communications with Dr. Ehlers.

So, Your Honor, we don't have the power to do it. It's the case that they have had access to an overwhelming majority of this information and the request is simply untimely.

THE COURT: Forgive me here, there's a large volume of meet and confer communications that went back and forth, but where did you all specifically call out Dr. Ehlers as someone whose phone you couldn't image?

ATTORNEY BARLOW: Your Honor, I do not have that immediately at hand. I'm going to see if I can retrieve it right now, but there were -- as you know, there were extensive meet and confer discussions, and I'm quite confident that we did call out -- I'm told, Your Honor, that it was in an email exchange dated July 19. I'm not sure if that email exchange is in our opposition brief, but we can provide it.

THE COURT: So I don't know if there

are many July 19 communications. There's one in Exhibit 14. Is that the one -- and it's Exhibit 14 to the defendants' motion. Is that the one you're referring to?

ATTORNEY BARLOW: Your Honor, again, I am getting that from my team right now. I apologize for not having that at hand.

THE COURT: All right. So I think the second-to-last paragraph in that email says who you collected phone data from. Maybe I'm missing where -- maybe the implication is you didn't collect phone data from Ehlers?

ATTORNEY BARLOW: Yes. I mean, Your Honor, we had a list of the ESI custodians that we took from the ATP domain, and then we listed which custodians were not included. I'm looking at Mr. Acevedo's email from the 19th, and he says, "The following custodians who remain employed at ATP" and he lists Yanchik, Eisenberg, Jardine, Liras, et cetera. We did not list Batarina or Ehlers there. I don't think there could be any confusion about that fact. We did produce Batarina on request. And Ehlers as a former employee, we simply didn't have access.

THE COURT: I'm so sorry to do this,

but what paragraph were you reading from about the former employees?

ATTORNEY BARLOW: Sure, Your Honor.

THE COURT: I'm looking right now at Exhibit 14. I'm not sure if that's what you're looking at.

ATTORNEY BARLOW: I'm looking at an email from Mr. Acevedo dated 7/19/2025.

THE COURT: Can you find out from someone on your team.

ATTORNEY BARLOW: We're checking right now, Your Honor.

Your Honor, it is the penultimate paragraph of Exhibit 14, I am told.

THE COURT: That's what I was looking at here. Here's what the paragraph says. "I can confirm that we have collected ATP email addresses for all of our custodians, as well as the phone data and ephemeral chats, to the extent such custodians utilize ephemeral chats in connection with ATP business, for the following custodians who remain employed at ATP," and then there's a list of six, not Ehlers. "Moreover, we determined that three of our custodians maintain active Deep Apple email addresses, and in the

spirit of cooperation ..., ATP has collected those ...."

So yeah, I mean, thank you for doing that and (inaudible) that out. I can see why the implication there is that you aren't treating Ehlers as a current employee from whom you were doing the full collection that you were doing for other ATP custodians. It doesn't exactly say that, but I can see why that's an implication.

Let's hear from Ms. Selden.

ATTORNEY SELDEN: Thank you, Your Honor. I think you have put your finger on the couple of relevant places and issues here. One is that plaintiff had an obligation to collect Dr. Ehlers' phone and didn't do so. The fact that they listed in that email the folks from whom they had already collected the phone information does not alleviate any obligation that they had to collect his phone, which they did not do.

We are also asking for production of documents from his Ascidian email address, which they have not provided. We were not asking, as I think Your Honor understands, for Dr. Ehlers to be compelled to testify at trial, but we are asking for production

of these documents prior to trial and promptly.

We would also note that at his deposition Dr. Ehlers was asked whether anyone had attempted to collect his phone, and he said no, no one had asked him for it. He was also asked whether he had a work phone, and we understand that he uses the same number for his work phone and his personal phone. So there should be information available on his phone. If there is, if he does use it for work communications, we should have access to it just like every other custodian.

So I think it is clear at the end of the day plaintiff did not collect from Dr. Ehlers' phone or his Ascidian email. I think it's also clear that they should have the behavior of Ascidian and its financial status and its management are all issues that plaintiff has put into issue in this case, and whether Dr. Ehlers has an honorary title as CEO or is down in the weeds managing that company is something that surely his phone and email are the best way to address. We hope this will be a swift collection and an easy one, but we do think it should be made before trial.

THE COURT: So Mr. Berdon, back to

you. What about the Ascidian email? I didn't specifically ask about those when you were arguing. What's the status of those?

ATTORNEY BERDON: Your Honor, we have, unfortunately, separate IT setups for all of the portfolio companies. So what we have attempted to do is to provide all of the email traffic from the portfolio companies up to ATP in order to avoid, again, in a highly expedited case trying to collect from 13 additional companies. We negotiated with our friends on the other side to limit our collection, although we made an exception in the case of Deep Apple. We don't know that there's anything particular here that would be unique because, again, his whole ATP mailbox was produced.

Your Honor, you know, again, if we call Dr. Ehlers right now and tell him that -- again, we need to coerce him and say if you do not do this you will be fired, we have the belief right now that he would rather quit than do this, but we will follow the Court's order the best we can.

THE COURT: What would collecting from his Ascidian email account involve?

ATTORNEY BERDON: Your Honor, we can

reach out to the outside vendor who controls the Ascidian account, and we could do that.

THE COURT: Let me understand what it involves. I imagine, Mr. Berdon, you're not doing this collection. Maybe someone on your team could just explain the mechanics of that.

ATTORNEY BERDON: Your Honor, we would have our vendor who does all our forensic collections. We would find out who maintains the Ascidian server and work out whether there needs to be an in-person visit to collect it or whether it can be done remotely. I am not certain if Ascidian is Boston based or California based as I sit here today, but it's in one of those two locations.

THE COURT: Take a moment -- take a pause for a moment and see if there's someone on your team who has had this conversation. My guess is that there is because it was the subject of a motion to compel, and my guess is that, wisely, they have not made you do it because you've got other things to think about. Can you just take a moment and ask.

ATTORNEY BERDON: I will do that. I will follow that instruction happily, Your Honor.

THE COURT: Why don't you take two

seconds and do that and we'll just take a brief pause before we move on to the question of what I'm going to do with this motion to compel, the rolling document production, and how we're going to deal with the prejudice it's caused to the defendants.

ATTORNEY BERDON: I'm sorry, Your Honor. We do not have somebody readily available who has personal knowledge of that. Could Your Honor please repeat your last statement. I only caught the tail end of it.

THE COURT: Well, let me just tell you how I'm going to resolve the motion to compel. I think you all at least need to produce the Ascidian emails. They sound like they're on some sort of server that's probably near one Quinn office, and that the burden of producing them is significantly less than having to go to Latvia to collect something. So I think you need to at least do that.

It's unclear to me to what degree the defendants are prejudiced by the failure to collect from Mr. Ehlers' personal devices. I have to say that the back and forth on this wasn't as clear as it could be. Sometimes it's just the pace of litigation that makes that happen, and sometimes there's something

more. I don't understand how this got missed and why it wasn't raised until it was, but at a minimum, you're going to have to produce the server emails. And I'll figure out and think more about how to deal with the other issues as we go through the trial record.

ATTORNEY BERDON: Your Honor, could Ms. Bonacorsi add just a bit of factual color here?

THE COURT: Sure.

ATTORNEY BONACORSI: Thank you, Your Honor. I'll be brief.

So first, with respect to the Ascidian email, we would have to get connected with their separate IT department. They would have to export it through a vendor to our database. I believe when we previously uploaded data, it can sometimes take a day or two to even get the load going. So from a timing perspective it is questionable what we could review before trial even proceeds next week.

It bears noting, Your Honor, in addition that it's going to be duplicative. There were numerous Ascidian emails that were either to -- that were to him that were produced by other custodians that defendants were also aware of starting

with the beginning of our production in July, and they did not make the request for his Ascidian email address upon first receiving notice that he had that email address. So that's just an additional datapoint.

On the cell phone, Your Honor, they've been on notice, Like Andy said, since July. I understand you're going to continue to take it under consideration, but I will say that when they raised the question of Anna Batarina's phone in August, we flagged that July 19 email where we listed which custodians we had collected from their phones and, again, directed them to that email, and they still did not request his cell phone.

Again, they've been on notice that he texts regarding business affairs given that they had had text messages with him on them from other custodians, also starting production in late July and early August. So, again, any efforts we would take there would also be duplicative, same as with his Ascidian.

Finally, Your Honor, the collection process for a cell phone also involves engaging an outside vendor, loading data. It's a time-consuming

process. So just adding that for Your Honor's benefit.

THE COURT: Thank you. Believe it or not, I've done that before. So I get it.

Look, I know that collecting from a cell phone is hard. I don't think that the communication on July 19 was as clear as it could have been. I get there was a lot of circling back to kind of follow-on requests throughout the exchange, but the reality is that you all were on notice too that he texted folks. It sounds like you never asked to image his cell phone and maybe that was a strategic decision that you didn't want him to say no and have to deal with that, but I don't think it's a one-sided issue or as clear as it could be.

So right now, at a minimum, you all have to collect and produce the Ascidian emails. I understand that takes time. Again, I understand that because I've done it, but I think you need to try to produce them before trial. I'm sure there will be duplication, but we don't know the degree of duplication until you search for them and look at them. So that needs to happen. If it can't physically happen before trial, we'll have to deal

with how to address prejudice to defendants as a consequence, if any, depending on what the documents are.

So that's where we're going to leave the motion to compel. Let's turn now -- again, you all need to meet and confer and be transparent about the timing of this additional collection. I recognize this is a burden on everyone, but this is the nature of the game.

So let's turn now to the status of defendants' other -- plaintiff's other production. Let's start with Ms. Selden on this one.

ATTORNEY SELDEN: Thank you, Your Honor. So on plaintiff's production, we very much appreciate the Court's prompt attention to the issue and the ruling on Monday and we have been, you know, absolutely doing everything that we can to process, review, and metabolize the documents that we have received from plaintiffs, but I am sorry to report that I continue to have very serious concerns both about the scope of the production and about the production's impact on my clients and on their ability to have a fair trial and on the prejudice to them going into this trial. I know Your Honor has been

very focused on what to do about that and what that means for our trial and how to manage through this so that we can get to a resolution, but let me unpack a few things that are troubling here.

First of all is the fact that I had mentioned at the outset that we received 17,000 documents in the past 30 hours, which is a significant increase of relevant and responsive documents on top of the volumes that we had received over the course of discovery during the summer. It is clear that these are documents that are not just voluminous and late breaking, but also very substantive, and that, frankly, is what troubles me most is these are relevant to the claims and defenses in this case.

As Your Honor will have seen, you know, I do think most of this can be resolved as a matter of law, but there are certainly factual questions that plaintiffs have raised. The equitable relief that they seek and the claims that they are seeking to take to trial and the questions before Your Honor should we go to trial requires an evidentiary hearing, and these are facts that are very much at issue in the productions that we have just received.

I can say based on the very small

sample of documents that I have seen so far from this production that the documents in it go to these claims about the state of the portfolio companies, their purported claim for urgent relief, when, in fact, the documents suggest they have been having financial issues, to the extent they have them, for some time and that they are due to their own mismanagement or cash burn and not to any action by the LPs, certainly not any action by the LPs in or about May of 2025. The basis and the validity of these capital calls seems very much called into question by these documents.

If I had had these documents during the course of discovery, absolutely we would have used them in depositions of fact witnesses, of plaintiff's fact witnesses. We would have shared them with our experts who were asked to look at the financial condition of these portfolio companies. These are meaningful documents that go to issues that plaintiff has put into play, including emails that suggest that the point of making capital calls is to put pressure on LPs, emails in May of this year, May 2, saying if we issue the capital calls now we can always cancel them or return the money, the money comes into us and

not to the portfolio companies.

We've seen emails from the GP that admits that reallocating budgets is a good idea and that his failure to agree to those reallocations is something that's hurting the company, which are the very claims that the GP says were irrational when raised on the part of the LPs or were bad faith positions for the LP to take. These are positions that they are taking and they're internal documents that they did not provide to us in discovery that they argue in their pre-trial brief are positions that when taken by defendants are bad faith or irrational when their own documents show it was their own position.

Now, Your Honor, these are arguments that we've made all along to the Court that there is no need for expedition because the portfolio companies either have long struggled and are not successful or are successful and can continue on their way and that there's not an emergency and certainly not an emergency precipitated by the LPs for this Court to consider.

We have argued all along that the capital calls are not valid and we've argued all along many of these questions about cash burn and the

discussions around the budgets, but certainly the documents that we are receiving and reviewing now are very much relevant to those defenses. I think they're relevant not just to my clients, but they are an important part of any factual determination that the Court would have to make.

And so I am scrambling to do everything that we can on our end to pull together the evidence that Your Honor will need to consider to fairly evaluate the claims that plaintiffs have raised and the relief that they are seeking, which, to be clear, is extraordinary in its scope and breadth. Plaintiffs have come to court saying they need specific performance on expedited claims that would remove and strip the LPs of their right to control and decide issues that are discretionary for them in the LPA, including the ability to review and approve budgets for the portfolio companies where the LPs have contributed 99 percent of the capital of this fund, nearly $3 billion, something like $2.7 billion of the LP's money is in this fund and they have rights over it, which the GP comes to court seeking to strip and also to claim a default that would remove them of their interest in the fund and has done all of this

while withholding documents that go exactly to those very questions, whether the GPs understood themselves to be negotiating budgets in good faith, whether they were making capital calls (inaudible), whether there's a valid basis for the capital calls, whether the portfolio companies are, in fact, in distress or were simply being mismanaged or running out of cash or otherwise unable to meet their milestones.

So what we are finding in these documents is evidence that goes to these questions. We've also learned, as Mr. Rohrbacher mentioned, that $60 million has come in just in the past week, as we understand it, we've learned that, and 20 million has gone (inaudible) to Quinn Emanuel, plaintiff's counsel.

So I have, as you can tell, Your Honor, deep concerns about how to wrestle these 17,000 documents and how to distill them down to include them in a factual presentation that we are very much striving to make to Your Honor next week. So in that struggle I do have a few thoughts about what to do about that, which I'm happy to turn to or to just pause.

THE COURT: Talk to me about the

solutions you're proposing.

ATTORNEY SELDEN: Thank you, Your Honor.

Look, one solution, which I hesitate to raise but feel obligated to, frankly, given the volume of documents and apparent prejudice and actual prejudice to my clients, is the possibility of putting the trial off and looking -- I hesitated. I'm not sure if that was just somebody's phone. But I will say that is one of the possibilities, and I think we need to consider it seriously.

I also have a question as to just whether we have everything. As I've said, we received 17,000 documents. That is more documents than are on the log, but it is not the entirety of plaintiff's privilege log. And I do not have an updated privilege log that enables me to tell what it is that they have produced and what it is that they have continued to withhold.

So one practical solution or immediate next step would be to have a new privilege log, and preferably a privilege log certified by senior Delaware counsel as our recent reproduction has been, that would certify the documents that are withheld,

are properly withheld, and outside the scope of this Court's order compelling production.

THE COURT: Let me pause for a moment and just make sure I understand. I thought there was something around 15 -- I thought there was like a lower number that was disputed on the log than 17,000.

ATTORNEY SELDEN: Yes, Your Honor. There were 15,500 documents on plaintiff's privilege log. And so what appears -- how have we received 17,000? I don't know the answer to that question. I know I have received over 9,000 documents yesterday morning and another nearly 8,000 documents this morning.

It appears that they have reproduced, that is produced again, some documents that we already received, maybe many thousands of documents that we already had, and then also produced maybe thousands of documents from their privilege log. There is some technical work that we can do and are striving mightily to do to figure out what we've got, but if Your Honor is confused, I am too.

THE COURT: Let's pause there. Let's just ask them. So Mr. Berdon or someone from your team, what's going on? What have you produced? What

are you going to produce going forward? What's the timing and kind of the universe of that? And what are your reactions to the solution proposed?

ATTORNEY BERDON: Your Honor, I do want to note that the Court ordered a roll-off production by the defendants more than a week ago, their general counsel Mr. Blochlinger, and they had not substantially completed that production, you know, as of yesterday. Then we had only received 81 documents yesterday. In the last 24 hours we've received, you know, 428 that were produced at 2:00 a.m. and 215 were produced yesterday. Among them Mr. Blochlinger says -- forgive me. He writes, "We have always to look at the investments on a pool-by-pool basis and cannot just see what we invested in total per investment."

So there we have a privileged document. We have already taken Mr. Blochlinger's deposition. It was produced to us in the last 24 hours. And until an hour before this conference we had not heard from Mr. Rohrbacher with a certification by Delaware counsel.

So, Your Honor, there is some asymmetry at work here. The 17,000 number is not

nefarious, Your Honor. It really is because of related families of emails, and it's just a function of whether we de-duped at the time that we did our privilege log and our production is capturing privileged and nonprivileged documents from the same families. So this isn't a situation where there's been some kind of a spiking of this production with either documents that are irrelevant and we're adding to a review burden or that there were more documents withheld than we had calendared.

One issue, Your Honor. When Your Honor issued your opinion you noted that, "given the volume of duties withheld and the parties' mutual interest in the fund prior to May 15, 2025, I'm ordering the parties to select a special discovery magistrate." Your Honor, we believed -- and in your subsequent ruling as well we believed, I think in very good faith, that Your Honor was telling us to turn over our log of documents that were generated before May 15, and there are two weeks of documents between the time that Mr. Bogdanov's email was received on May 15, you know, dictating that the fund stop funding seven portfolio companies with headroom remaining on their approved budgets and saying that he would not

negotiate budgets for clinical-stage companies unless we acquiesced in his demand that we defund the seven. There was then a period of activity leading up to the May 30 complaint being filed and the capital calls.

If Your Honor holds that we are not entitled or eligible anymore to claim any privilege with respect to those post-May 15 communications, we will, of course, comply, but we believe that we had made a fulsome production by giving the documents up to May 15.

Your Honor, we object strenuously to any adjournment here. There is still very real prejudice in the portfolio to any substantial delay. You know, our companies that have received some additional funding, that funding is only going to last for so long. We are looking at end of 2025 still for some of these companies. You know, the clinical stage-companies the funding is very tenuous, and among the portfolio of the preclinical companies what we've done is we have put them essentially into stasis. We have maintained payroll for the folks who have the working knowledge, the trade secrets and the know-how, but we have had to put those companies into stasis and lay off a vast majority of their employees. And we

continue to be in a position where if there was proper funding available, those companies could survive.

There is value in these companies as demonstrated by the recent deal between Deep Apple and Novo Ventures, where Novo Ventures has licensed both the product and product discovery technology that's AI driven from Deep Apple. Deep Apple is one of the seven companies that Bogdanov ordered us to shutter, and then three weeks later the Novo deal came through. That's going to be very helpful to the company on an ongoing basis. But in order to have a relationship with Novo Ventures where they -- or Novo Nordisk where Novo Nordisk wants to use us as a development partner, we have to have funding. We cannot be bankrupt but for the income that's coming in from Novo Nordisk.

So it is still very, very important to us that we get expedited relief here, and any substantial delay in this case is going to put at risk the balance that we had struck between this case and the Cayman case where we had done everything that we could to time this case so that a decision could be rendered in this case. So it would be instructive to the Cayman judge, who has to decide the winding up petition, whether there was, in fact, a breach of the

LPA by Rigmora, whether we had the right to call capital, whether our capital calls were properly served, and whether -- the fact that we brought this lawsuit in and of itself was not evidence of some bad faith on our part.

The fact that we brought this lawsuit to enforce the contract is explicitly endorsed in the contract itself in Section 18(g), I believe, (iv), and we have made the argument and the contract expressly acknowledges that it would not be a breach of fiduciary duty for the GP to bring an action against the LPs to enforce the terms of this agreement.

So, Your Honor, the risk that we would have that there would be uncertainty about the outcome of this case, you know, that could cause the Cayman proceeding to move forward with that question unanswered in Delaware and run the prospect of an inconsistent answer in Cayman still exists.

And, Your Honor, also, this litigation is massively expensive, and the longer it goes on the more that's going to be spent. It is true that we were able to raise some capital in transactions. One came in fortuitously, it was a payment that was received, and pursuant to the terms of the agreement,

Section 8 of the agreement, we were able to access GP and fund expenses -- not GP, but fund expenses from money that came in from payment of that milestone. We've not taken anything strictly for the GP itself. We have covered rent, we have covered salaries for ATLS, which is a subsidiary that exists for the purpose of paying expenses. And we have suffered attrition. Our CFO -- as Your Honor saw in connection with the pre-trial order, our CFO has left to go on to get away from the conflict here. He has no interest in appearing at the trial of this case, and we asked him several times.

So with the damage to the portfolio, our limited ability to gather some resources, the massive expense of this litigation, we ask that Your Honor not upset the existing trial date and that we continue to act on an expedited basis, because any delay could actually render the decision here superfluous. The defendants are trying to use and have consistently been using the Cayman action as a way to take an end run around this Court's jurisdiction. So we ask that the Court not upset the schedule and that we continue to try this case and that the Court fashion some less disruptive remedy to

address any perceived prejudice here.

I do want to address one last thing that Ms. Selden was talking about. She was acting as if production of our privileged documents was something that we owed to the GP for the duration of this entire case, and it was not settled until our exceptions were overruled on Monday. And so the notion that we had somehow sandbagged them for the last ten weeks by withholding relevant discoverable material is just not true. We withheld relevant privileged material, and we ran into this problem of Your Honor's decision and that caused us to have to --

THE COURT: So you're saying my decision was the problem? I don't know that that argument is going to work very well with me.

ATTORNEY BERDON: No, no, no. I'm not saying -- forgive me, Your Honor. We had our -- the special magistrate's proceeding went against us, and Your Honor's review of those proceedings and the exception went against us and we have produced those documents. So they may have liked to have received those documents earlier in the case, I understand that, but we have acted very quickly to produce them and we don't believe that the moving of the trial date

would serve justice here.

Thank you, Your Honor.

THE COURT: Thank you all. So we're going to wrap this up briefly. Look, I can give you a little bit of relief, Ms. Selden, and let you go to trial for two days the week of the 22nd. It would be the 22nd and 24th of this month. If that's something you want to do, then let me know. You get to decide given that you-all are dealing with the late production of documents.

I don't think this is -- the bottom line is, in my view, these documents should have been produced earlier. So I recognize that the ruling ordering the plaintiff to produce them came down relatively recently, but the ruling was that they needed to be produced and were wrongfully withheld.

So that's the best I can do right now while balancing the alleged concerns of the company and my own schedule. So why don't you go back and talk about it with your team, let the other side know what you decide, and then contact my chambers so that we can adjust things accordingly. If you decide to take the later two dates, that will give you a little bit of flexibility leading up to those dates on the

deadlines we discussed earlier. It might also give you a chance to look at the documents that have been late produced.

I recognize that the defendants have also produced documents late in the game in response to my motion to compel. The volume is significantly lower, so I think the prejudice is lower too, but that's problematic. So hopefully this brief adjournment of the trial or delay of the trial will give everyone a little more room to breathe.

Are there any questions?

ATTORNEY SELDEN: Thank you very much, Your Honor. I appreciate it, and I will discuss that with my team and my client. I appreciate it very much. I do think the Court and the parties would benefit from having the record closed and the documents to the Court in advance of trial, and a little bit of breathing room will give us the ability to do that.

I do have one question and I do not at all mean to look a gift horse in the mouth, Your Honor, but I want to raise, and I might be mistaken, but your calendar might be empty on one of those days because it's Rosh Hashanah. If that's right, I might

ask Your Honor if the Court has another noncontiguous day available that week or the following when we might come back down and see you?

THE COURT: I'm so sorry. That's very insensitive of me. I didn't realize it was a Jewish holiday. No. The reason why my calendar is blocked off is because my dad has surgery. No, I don't have any other days that week or in the weeks after.

ATTORNEY SELDEN: That's fine. Thank you, Your Honor. I appreciate it. I'm sorry your dad is having surgery, but I appreciate that the day is blocked. If you don't mind, I'll discuss that with our clients and team and return to the Court.

THE COURT: I didn't mean to be insensitive and offer dates over a significant holiday. Just meet and confer and try to be civil about this proposal and determine whether everyone can agree on a path forward.

ATTORNEY SELDEN: Thank you, Your Honor.

ATTORNEY BERDON: Your Honor, we would like to offer an idea which would be to open trial on the 19th and pick a second day after the weekend. I am Jewish myself. I appreciate the Court's

sensitivity to it, but if necessary to get this done on the 19th and the 24th, would that be something that the Court would you be amenable to?

THE COURT: It's something I'm amenable to, and I think it would give everybody a little bit of wiggle room. Why don't you talk about it with the other side. I am sure this is something -- accommodating a significant Jewish holiday is something everyone can get behind. So why don't you talk about it and let me know what you want to do.

ATTORNEY BERDON: Thank you, Your Honor.

THE COURT: Are there any other questions?

Well, thank you. Good luck. We are adjourned.

(Court adjourned at 4:55 p.m.)

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CERTIFICATE

I, Tina M. Alfaro, Official Court Reporter for the Court of Chancery of the State of Delaware, Certified Realtime Reporter, Registered Merit Reporter, and Delaware Notary Public, do hereby certify the foregoing pages numbered 3 through 75, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 14th day of September, 2025.

/s/ Tina M. Alfaro

Tina M. Alfaro
Official Court Reporter
Certified Realtime Reporter
Registered Merit Reporter
Delaware Notary Public

EXHIBIT H

From: Seth L. Harrison [slh1@appletreepartners.com]
Sent: 11/05/2025 20:46:41
To: Yuri Bogdanov [yuri.bogdanov@rigmora.com]
CC: Anna Batarina [anna@appletreepartners.com]; Daniel Finkelman [dan@appletreepartners.com]; Patrik Blochlinger [PBlochlinger@rigmora.com]
Subject: Re: Reallocation document.
Attachments: ATP LSV - certain portfolio company budget increases and reductions.docx

Yuri,

I think it would make most sense, and is most efficient in terms of use of time and resources, if you would please give us your comments on the attached, if any, ASAP. We should be able to get this done quickly and not require a major legal call.

Kind regards,

Seth

A T P

Seth L. Harrison, MD
Managing Partner

230 Park Avenue, Suite 2800
New York, NY 10169
212.468.5802
www.appletreepartners.com

From: Yuri Bogdanov <yuri.bogdanov@rigmora.com>
Date: Sunday, May 11, 2025 at 15:42
To: Seth L. Harrison <slh1@appletreepartners.com>
Cc: Anna Batarina <anna@appletreepartners.com>, Daniel Finkelman <dan@appletreepartners.com>, Patrik Blochlinger <PBlochlinger@rigmora.com>
Subject: Re: Reallocation document.

Hi! No worries — we've already sent out the invite for tomorrow.
Please make sure to copy David Beller from Latham & Watkins
(David.Beller@lw.com) when you send the documents ahead of the call.
Best regards,
Y.
Отправлено с iPhone

11 мая 2025 г., в 20:02, Seth L. Harrison <slh1@appletreepartners.com> написал(а):

Dear Yuri,

A quite simple one or two page should suffice for reallocation. I will forward it to you once we have it drafted, hopefully later today ET. Given the lack of complexity, I am not certain we would an all-hands lawyers' call - if will also be unnecessarily expensive.

Joint Exhibit
JX-1307
C.A. No. 2025-0607-KSJM

That said, our legal team can be available at 9 am ET on Monday.

Perhaps we should push the call to later Monday ET to see if the simple approach will work for you?

Kind regards,

Seth

A T P

Seth L. Harrison, MD
Managing Partner

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New York, NY 10169
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--- Rigmora Holdings Ltd Disclaimer ---

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ATP DRAFT 5/11/25

ATP Life Science Ventures, LP.

Agreement as to Certain Portfolio Company Investment/Project Budget Increases and Corresponding Reductions

May 12, 2025

The undersigned, being the Subject Limited Partner and the General Partner of ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Partnership"), hereby agree as follows:

1. The following budget increases are hereby approved with respect to the clinical-stage companies:
   a) Aulos Bioscience - $10.00 million increase to $70.00 million.
   b) Ascidian Therapeutics - $45.00 million increase to $135.00 million.
   c) Marengo Therapeutics - $7.00 million increase to $142.30 million.
   d) An additional aggregate $56.00 million increase to Replicate Bioscience and the three other clinical-stage companies named above, which may be allocated among such four companies in the General Partner's discretion. The General Partner currently anticipates that if Marengo Therapeutics achieves Phase 2 data for invikafusp (STAR0602) that is deemed by its board of directors to be suitable for a Breakthrough Designation, most or all of such additional $56.00 million will be allocated to Marengo Therapeutics to prepare for the invikafusp pivotal trial.

2. Effective upon the funding by the Subject Limited Partner of any budget increase (in whole or part) specified in Section 1 above, the aggregate remaining unfunded budget commitments for all other Portfolio Companies in Pool ATP V-1 and Pool ATP V-2 will automatically be reduced by the amount of the increase so funded. The allocation of the reductions among such Portfolio Companies in Pool ATP V-1 and ATP V-2 will be applied in the General Partner's discretion; provided, however, that by March 31, 2026, reductions equal to the full $118.00 million of authorized increases referenced in Section 1 above will have been made.

3. The remaining uncalled budgets for the following nonclinical-stage companies — Aethon Therapeutics, Marlinspike Therapeutics, Initial Therapeutics, Nine Square Therapeutic, Nereid Therapeutics, Evercrisp Biosciences, Deep Apple Therapeutics, Apertor Pharmaceuticals, Red Queen Therapeutics, and Intergalactic Recap — which total $49.10 million, may be reallocated in the General Partner's discretion among the clinical-stage and nonclinical-stage companies.

Capitalized terms used without definition herein shall have the respective meanings specified therefor in the First Amended and Restated Limited Partnership Agreement, as amended, of the Partnership.

Executed as a deed by:

Rigmora Biotech Investor One LP

By:_____

Title:_____

ATP DRAFT 5/11/25

Executed as a deed by

Rigmora Biotech Investor Two LP

By:_____

Title:_____

Executed as a deed by

ATP III GP, Ltd.

By:_____
Seth L. Harrison, Director

ATP DRAFT 5/11/25

EXHIBIT I

Entire Exhibit Filed Under Seal

EXHIBIT J

EFiled: Jun 05 2025 05:15PM EDT
Transaction ID 76407162
Case No. 2025-0607-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as general partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	**REDACTED PUBLIC VERSION EFILED: June 6, 2025**
Defendants.	)	

VERIFIED COMPLAINT

Plaintiff ATP III GP, Ltd. ("ATP," the or the "Plaintiff"), by and through its undersigned attorneys, brings this Verified Complaint in its capacity as general partner of ATP Life Sciences Ventures, L.P. (the "Fund" or the "Partnership") against Defendants Rigmora Biotech Investor One LP ("Rigmora One") and Rigmora Biotech Investor Two LP ("Rigmora Two," and with Rigmora One, "Defendants," or the "Family Office LP"), and alleges as follows:

INTRODUCTION

1. This is an action for specific performance and equitable relief to address the Defendants' premeditated financial destruction of [redacted] Delaware portfolio companies that would otherwise be actively engaged in productive, cutting edge research and clinical development of new drug therapies. This attack is being

carried out by the Fund's own [redacted] limited partners, the Family Office LP, [redacted] Dr. Dmitry Rybolovlev, a Russian-born citizen of Cyprus. The Family Office LP has now repudiated [redacted] in funding commitments by (1) preemptively refusing to fund capital calls that the Family Office LP is contractually obligated to meet and that are essential to sustain the Fund's [redacted], and (2) arbitrarily and irrationally refusing to approve new budgets for [redacted] portfolio companies [redacted], but whose initial funding has run out. The Family Office LP's funding repudiation will have the immediate and dire effect of [redacted].

2. ATP is the General Partner of the Fund, and is led by Dr. Seth Harrison, a trained surgeon and fund manager who has launched more than thirty transformative companies working on therapies for unmet medical needs. The

parties' Limited Partnership Agreement (as amended, the "LPA"; *see* Ex. 1),[1] requires the Family Office LP to contribute capital when ATP makes a capital call for portfolio companies so long as the Family Office LP has already approved budgets for those companies. And for the first ten-plus years of the relationship between ATP and the Family Office LP, this approach worked without fail: ATP would present investment memoranda to the Family Office LP, followed by proposed budgets for approval; the Family Office LP would approve them, sometimes without comment or question, and sometimes after reasonable, commercially-focused inquiry or comment; ATP would call for capital from time to time against the approved budgets; and the Family Office LP would meet its obligations when capital was called. This course of dealing under the LPA worked so well that, in 2020 and 2021, the Family Office LP endorsed the Fund's direction and ATP's leadership by committing an additional [redacted] to support additional funding for portfolio companies and, after an extensive review and vetting process, approved budgets for those companies.

3. But the Family Office LP's enthusiasm began to wane in late 2021, and disappeared entirely following Russia's invasion of Ukraine in early 2022. Since

[1] All capitalized terms not otherwise defined herein have the same meaning as those in the LPA. The LPA and the Parties also sometimes refer to ATP as the "General Partner," and the Family Office LP as the "Subject Limited Partners" or "SLP."

then, and particularly over the last 18 months, the Family Office LP, [redacted], became desperate to avoid its capital commitments; declining to fund its commitments while simultaneously attempting to strip from the Fund of gains from other hugely successful Fund investments for [redacted] the Family Office LP. [redacted]

4. This is an emergency. **In total, [redacted] portfolio companies, each incorporated in Delaware and headquartered in the United States, face imminent collapse** [redacted] The unfunded and/or unapproved amounts are substantial and vital for continued operation. This is not a question of the portfolio companies having over-spent or not meriting future investment. For example:

a. [redacted], which is out of money in [redacted], will need [redacted] in which it has to date seen unprecedented results.

b. [redacted], is also in the midst of a [redacted] with breakthrough potential and yet will run out of money as early as [redacted] and [redacted] at latest.

c. [redacted], which has already achieved clinical proof-of-concept and is in contract negotiations to conclude two strategic alliances, will run out of money as early as [redacted] (depending on those negotiations, and in any event, by [redacted]); and

d. [redacted], which has demonstrated [redacted] a therapy with commercial potential, and which is [redacted], will also run out of money by [redacted].

5. In total, of the Family Office LP's commitments made in 2020 and 2021, approximately [redacted] remains unfunded, consisting of [redacted] of

committed but unbudgeted funds, and [redacted] under budgets approved by the Family Office LP but not yet called.

6. The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve [redacted] of the financing needed to fund their respective missions: discovering new therapeutic modalities at the frontier of medical treatment for [redacted] among many others.

7. The Family Office LP's stated goal is to drive [redacted] portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on [redacted] companies (if any) that they choose. The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments while simultaneously capturing solely for itself any future value in the portfolio companies. The Family Office LP apparently believes that by forcing the shutdown of [redacted] and putting [redacted] companies at risk by delaying budget expansion, it can absolve itself of financial commitments to certain companies while preserving its optionality in others.

8. The Family Office LP's disruption of funding has already caused layoffs and will trigger further layoffs that could affect over two hundred highly skilled scientists and support staff. If unchecked, [redacted], each of whom chose to trust the economic future of their life's work with the Fund based on their expressed confidence in ATP's and the Fund's financial reliability and expertise. It will also cause the [redacted]. Research of this kind is vital to providing innovative treatments to patients in need of life-saving and life-enhancing interventions, and the Family Office's breaches risk not just delays in breakthroughs, but the possible abandonment of promising lines of research altogether. Absent prompt affirmative relief from this Court, the Family Office LP will drive these [redacted] companies to closure.

9. The following chart provides a stark depiction of the current situation:

[redacted]

10. As the table shows, the Family Office LP has starved [redacted] portfolio companies to the point of imminent collapse, with the [redacted] to follow by [redacted], even though ATP still has the right to call capital on [redacted] in approved and budgeted amounts for those companies. [redacted] will run out of cash by [redacted] [redacted] by [redacted], and [redacted]. The [redacted] company is only sufficiently capitalized for operations until [redacted].

11. The Family Office LP is doing so irrespective of its obligations under the LPA, and without regard for the scientific merit and progress of any of the companies.

12. Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for [redacted]

[redacted] companies and negotiate new budgets for [redacted] companies. But, on May 15, 2025, the Family Office LP unequivocally repudiated its contractual obligations to fund capital calls for the [redacted] companies with remaining approved budget amounts. The Family Office LP described its contractual obligations to meet capital calls for these companies as merely "discretion[ary]," claiming that "(i) further investment is not in accordance with the LPA; and (ii) the does not presently have any outstanding capital commitments," which is contrary to the express language of the LPA.

13. The Family Office LP also refuses to approve any new budgets drawing on its prior as-yet-unbudgeted capital commitments, irrespective of the progress or merit of the individual company or its development programs and in contravention of its express contractual obligations, spuriously claiming that it has no "outstanding capital commitments to ATP Fund." Worse, in its most recent correspondence the Family Office LP conditioned any budget conversations on ATP's acquiescence in the shutdown of [redacted] companies: "***The SLP are available to initiate these discussions immediately upon your agreement to wind down or liquidate the*** [redacted] ***Companies . . . .***" The refusal to approve new budgets despite existing capital commitments is neither rational nor done in good faith, and poses an existential threat to the [redacted] companies, [redacted]. The Family Office LP is making ATP choose between [redacted] portfolio and

[redacted] companies, refusing to fund the latter unless ATP agrees to abandon the former.

14. To save the portfolio from the Family Office LP's predation, ATP now seeks to hold the Family Office LP to its obligations under the LPA by obtaining a judgment that the Family Office LP is in material breach of its funding obligations under the LPA and has violated its implied contractual duty to exercise its contractual discretion rationally and in good faith. Specifically, for the companies without approved budgets sufficient to fund continuing operations, ATP seeks declaratory relief that the Family Office LP has breached its contractual obligation to act rationally and in good faith to consider and approve reasonable budgets for continued operations; declaratory relief that the Family Office LP has waived its right to approve budgets; an order of specific performance requiring the Family Office LP to contribute capital in response to capital calls in the amounts equal to budgets submitted in January 2025 and upon which the Family Office LP has refused to even engage; and an order of specific performance directing the Family Office LP to contribute the remainder of its commitments under the LPA, and other relief specified below. For the portfolio companies that have approved but unfunded budgets, ATP seeks: declaratory relief establishing that the Family Office LP is liable for anticipatory breach of its obligation to contribute capital in response to capital calls for amounts contained in approved budgets; and an order of specific

performance requiring the Family Office LP to fund immediately its prior approved but unfunded budgets (in total [redacted]) in response to contractually required capital calls as and when they are received from ATP.

15. ATP also seeks a declaratory judgment that will afford the parties legal certainty going forward. The LPA gives ATP the right to impose a default charge against a limited partner that fails to timely make a contribution in response to a valid capital call. The charge is an amount determined by the General Partner up to 50% of the defaulting party's interest in the Fund. The Family Office LP disputes that this provision remains in effect. There is, as a result, a ripe dispute regarding both ATP's right to impose a default charge and the scope of that default charge. ATP therefore seeks a declaratory judgment that: the Family Office LP's repudiation and breach of its contractual agreement to make contributions in response to capital calls constitutes a payment default under the Agreement making them Defaulting Partners enabling and authorizing ATP to impose a Default Charge; that it may impose such a charge against the Family Office LP's overall interests in the Fund, so it can rapidly organize to fund the portfolio; and that pursuant to Section 18(f), the Family Office LP shall not have the right to vote on or grant or withhold consent or approval with respect to any matter arising under the LPA.

16. Finally, despite ATP's track record of success and value creation over the last fifteen years, the Family Office LP has now accused ATP of disloyalty and

breaching its own fiduciary duties by calling capital to fund [redacted] companies—even though ATP would have risked breach of binding Series A funding commitments to those companies had it failed to do so. ATP thus seeks a declaratory judgment that it has not breached its fiduciary duties owed to the Family Office LP by calling capital for companies with approved budgets or by bringing this action seeking to enforce the LPA.

PARTIES

17. Plaintiff ATP III GP, Ltd. is a Cayman Islands exempted company, acting on behalf of Apple Tree Partners Life Sciences Ventures, L.P., a Cayman Islands exempted limited partnership.

18. Defendant Rigmora Biotech Investor One LP is a limited partnership organized under the laws of the British Virgin Islands with its registered office in Tortola, British Virgin Islands.

19. Defendant Rigmora Biotech Investor Two LP is a limited partnership organized under the laws of the British Virgin Islands with its registered office in Tortola, British Virgin Islands.

20. [redacted].

21. Defendants, herein referred to as the Family Office LP, are limited partners and investors in the Fund. They obtained their limited partner interests in

the Fund via transfer agreements executed with former limited partners of the Fund, Blue Horizon and Ezbon. Rigmora One is the successor to all the rights and obligations of Blue Horizon under the LPA. Rigmora Two is the successor to all the rights and obligations of Ezbon under the LPA. [redacted]. From 2017 until late 2024, the Family Office LP was represented in many of its dealings with ATP by Anna Kolonchina, who was then CEO and Chief Investment Officer of Rigmora Holdings, Ltd. On information and belief, Ms. Kolonchina's former role is now held by Mr. Yuri Bogdanov.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction under 10 *Del. C.* §§ 341 and 342 because ATP seeks equitable remedies and has no adequate remedy at law.[2] Furthermore, this Court has subject matter jurisdiction over ATP's claims for declaratory relief pursuant to 10 *Del. C.* § 6501. This Court has clean-up jurisdiction over ATP's remaining claims because all of its claims arise out of the same controversy.

[2] At least some of the claims alleged herein are matters and causes that arise in equity under the law of the Cayman Islands. Paragraph 18(g)(vi) of the LPA states that the LPA and [redacted]

23. ATP seeks declaratory relief that the Family Office LP has breached its contractual obligation to act rationally and in good faith to consider and approve reasonable budgets for continued operations; declaratory relief that the Family Office LP is in default and has waived its right to approve budgets; an order of specific performance requiring the Family Office LP to contribute capital in response to capital calls in the amounts equal to budgets submitted in January 2025 and upon which the Family Office LP has refused to even engage; and an order of specific performance directing the Family Office LP to contribute the remainder of its commitments under the LPA, and other relief specified below. ATP has no adequate remedy at law to deliver the committed capital and approved budget amounts to these unique portfolio company assets.

24. This Court has personal jurisdiction over the Family Office LP and venue is proper in this Court because the Family Office LP has consented to jurisdiction and venue in this Court in Delaware. Paragraph 18(g)(vi) of the LPA provides that:

[redacted]

[redacted]

LPA ¶ 18(g)(vi), *see* Ex. 1 at 75.

FACTUAL BACKGROUND

A. ATP AND DR. RYBOLOVLEV BEGIN THEIR COLLABORATION.

1. The ATP Strategy

25. In 2010, Dr. Rybolovlev was exploring investing in early-stage companies developing new technologies and medicines in the life sciences industry. Early-stage pharmaceutical and biotechnology assets that have yet to progress to human clinical trials typically command lower prices than those that have reached clinical proof-of-concept. By investing in early drug research, Dr. Rybolovlev sought to ensure that his Family Office would maximize its share of the rewards if any of the product candidates gained clinical proof-of-concept or regulatory approval.

26. To realize this vision, Dr. Rybolovlev sought a partner with deep experience in both venture capital investment and the life sciences. It was in that context that Dr. Rybolovlev met Dr. Harrison.

27. Dr. Harrison holds both an MD and an MBA from Columbia University. When Dr. Harrison and Dr. Rybolovlev met in 2010 to begin discussing the venture that would become the Fund, Dr. Harrison had been running his own life

sciences venture capital firm for over a decade. Dr. Harrison had a track record of successful investments, and was in particular experienced in building and operating startups in the life sciences space.

28. Dr. Rybolovlev and Dr. Harrison began with [redacted] to make investments under Dr. Harrison's direction. In 2012, the project scaled up when Dr. Harrison and Dr. Rybolovlev formed the Fund and agreed that ATP would use [redacted] capital commitment from the Family Office LP to the Fund to make early-stage investments in a variety of companies. The model for the Fund that emerged, over multiple iterations, was two-part: (1) to invest in a specialty pharmaceutical company that would generate cash flow; and (2) to found Delaware start-up companies headquartered in the United States and seek to own them entirely over time, starting with intellectual property or projects at various stages in breakthrough drug discovery areas. In the second part of this model, the Fund would provide initial financing in the range of [redacted] to each portfolio company to fund the early-stage research required to develop platform technologies and to identify lead compounds or drug candidates deriving from them. Such companies would become the ATP life sciences portfolio, and many of the companies in this portfolio grew to be some of the Fund's most successful exits. After the initial round of funding, ATP and the Family Office LP would then consider and approve subsequent rounds of financing on a case-by-case basis to provide follow-on funding needed to take the

drug candidate through to a clinical or regulatory "value" inflection point that could provide the basis for a funded research collaboration with a pharmaceutical or large biotech company and/or funding for a clinical trial to demonstrate proof-of-concept of a drug. Once invested, the Fund and the portfolio company would have several options to raise the substantial capital required to fund later stages of drug development. These options included (among other things) an initial public offering of company stock, a strategic sale, or continuing to be held by the Fund, to be developed into a private pharmaceutical company, which was Dr. Rybolovlev's oft-stated goal.

29. By putting Dr. Harrison at the helm of the Fund, Dr. Rybolovlev was able to benefit from Dr. Harrison's established network and reputation for selecting advantageous deals and founding and building successful pharmaceutical companies. This allowed ATP to recruit, and in turn gave the Fund and Dr. Rybolovlev the benefit of, a highly regarded team of pharmaceutical and biotech professionals. This team, in turn, allowed ATP to establish credibility with inventors and startup founders to help build and operate their companies. These strong roots were the reason that the inventors and founders of the new technologies, who were crucial to the ATP strategy, agreed to give control of their inventions, and to make ongoing intellectual property, professional, reputational, and sweat equity

contributions, to what were ultimately offshore entities affiliated with Dr. Rybolovlev, a Russian national and citizen of Cyprus.

30. From the outset, the Family Office was adamant that each of the Fund's portfolio companies shun outside investors (often referred to as "syndication"). This allowed the Fund to retain exclusive control over the portfolio companies. [redacted]

31. The process the Fund followed was simple. ATP created the companies and supported the founders by providing them with detailed research and development plans and proposed budgets. The plans and budgets would then be submitted to the Family Office LP for detailed discussion and review between Dr. Harrison and representatives of the Family Office.

32. When the Family Office LP approved a budget, ATP did not immediately release 100% of the funds to the portfolio company. The Fund made cash available to the portfolio companies in tranches. ATP executives with substantial R&D industry experience co-founded and served in C-suite roles at each of the portfolio companies, and ATP controlled the companies' boards of directors.

33. The Fund's strategy—making investments in cutting-edge human therapeutics and treatments—meant that the timelines for achieving early clinical proof-of-concept would be long and there was a substantial risk of setbacks and temporary or total technical failure. Dr. Harrison, Dr. Rybolovlev, and the Family Office LP discussed timelines and risk of technical failure in connection with the approval of each new budget. The Family Office LP fully understood that it would need to make and hold investments for periods that could run to many years while the portfolio companies performed each step in the research and pre-clinical development of new products and technologies.

34. Executives throughout the biotech and pharmaceutical industries and at biotech venture funds are fully familiar with the risks of drug discovery and research. The art of serving on venture-backed biotech and pharmaceutical boards both public and private is to determine how best to chaperone and capitalize ongoing projects as evidence of their value accrues, often ambiguously, through ongoing research and development. It is common for high-risk projects to reach difficult decision points during development and still realize great value in the end. Biotech and pharmaceutical research and development managers, including executives at biotech venture funds, use knowledge and experience to adjudicate the results of ongoing experiments, as well as information from other related sources such as research projects in academia and in industry, to determine whether or not a project should

continue, and how to modify projects underway to optimize them given changing landscapes of information. This is hardly an exact science; in fact, some of the industry's greatest successes have come about via reversals of projects that were first deemed failures. No successful project goes according to its original plan from beginning to end. A project may miss its milestones but then hit or exceed the schedule later in the process. The risks and variabilities in this space are immense, which is one reason the returns, when success is achieved, are so high.

35. Dr. Harrison and his team all have long tenure in the industry and have navigated these processes regularly. ATP was open and transparent with Dr. Rybolovlev from the outset of their relationship and through each investment that results would be uncertain at each stage, that positive results could turn negative, and that negative results could be reversed. This transparency included meeting whenever and wherever Dr. Rybolovlev requested to walk through details of the projects under development at the Fund, as well as the integration of a representative personally appointed by Dr. Rybolovlev into the ATP team and onto multiple portfolio company boards. Dr. Rybolovlev was involved in discussions of the complexities of projects as they went along, and regularly assessed with the ATP team probabilities of success and failure.

36. Trust in Dr. Harrison and his team, which included heads of research from major biotech and pharmaceutical companies, led Dr. Rybolovlev to offer to

provide the additional [redacted] in 2020 (memorialized in Amendment No. 18), which underpins [redacted] companies that Dr. Rybolovlev now wishes to shut down owing to "missed milestones." This is a pretext to abrogate the LPA and, where convenient, take control of select assets in a manner that avoids the ATP capital tree and the Family Office LP's obligations. Dr. Rybolovlev well understands how successes and failures in drug research and development work; he is an experienced hand at this point in light of the Fund's longevity, and its direct beneficiary: every IPO and every corporate acquisition within the initial [redacted] of Fund capital resulted from a company that started with one research plan and migrated to another, over a series of successes and unforeseen failures that were managed through by the ATP team.

37. Indeed, most of the current [redacted] companies within the portfolio, including [redacted] and [redacted], resulted from turnarounds within the portfolio. These successes resulted from the ATP team constantly re-examining technical outcomes in the context of the competitive environment. The Family Office LP openly and enthusiastically embraced these turnaround opportunities; Dr. Rybolovlev was fully informed throughout these processes of change and development and was more than supportive, agreeing to provide the necessary capital. It was this enthusiasm that led to the expansion of the Family Office LP's total commitment to the Fund to include another [redacted] for these companies.

38. As discussed in greater detail below, under certain amendments to the LPA, the Fund's portfolio companies are accounted for in different "Pools," including Pool Braeburn (which exclusively holds the assets of Braeburn Inc.), Pool ATP V-3 (which holds certain of the Fund's turnaround clinical-stage assets, including [redacted] and [redacted]), Pool ATP IV (which hold ATP's residual interests in older deals that have had successful exits), and Pools ATP V-1 and V-2 (which hold ATP's interests in [redacted] companies founded since 2020, but which also include [redacted] deals, [redacted] and [redacted]).

39. Today, these turnaround companies represent [redacted] portion of the Fund's clinical portfolio and have achieved or are about to achieve clinical proof-of-concept. But rather than continuing to let these companies add value to the Fund, the Family Office LP has repudiated remaining approved budgets within Pool ATP V-3 of [redacted] The Family Office LP has conditioned further discussion of budgets for the Pool V-3 companies on ATP's "***agreement to wind down or liquidate*** [redacted] ***Companies***" and adoption of an onerous review process never before used in the course of the Parties' dealing, while expressly reserving for itself the option to fund those companies outside of ATP. *See, e.g.*, Ex. 2, Bogdanov email to Harrison ("[W]e suggest that the SLP engage in discussions with [redacted] about potentially investing in it directly, i.e. outside ATP").

2. The ATP Structure

40. The relationship between ATP, [redacted] Family Office LP, and the Fund's other limited partners is governed by the LPA, signed in 2012 and since amended twenty-two times. These amendments reflected the development and refinement of ATP's business model, and were based on oral understandings negotiated in person during meetings between Dr. Harrison, members of his team, and Dr. Rybolovlev and representatives of the Family Office LP.

41. Under Amendment No. 1 to the LPA, dated January 1, 2014, the parties memorialized their agreement that [redacted] LPA Am. 1 ¶ 1(c), *see* Ex. 1 at 98.

42. Plaintiff ATP acts as the General Partner of the Fund. The LPA provides that [redacted] and that ATP shall [redacted] LPA ¶ 2(b), *see* Ex. 1 at 6.

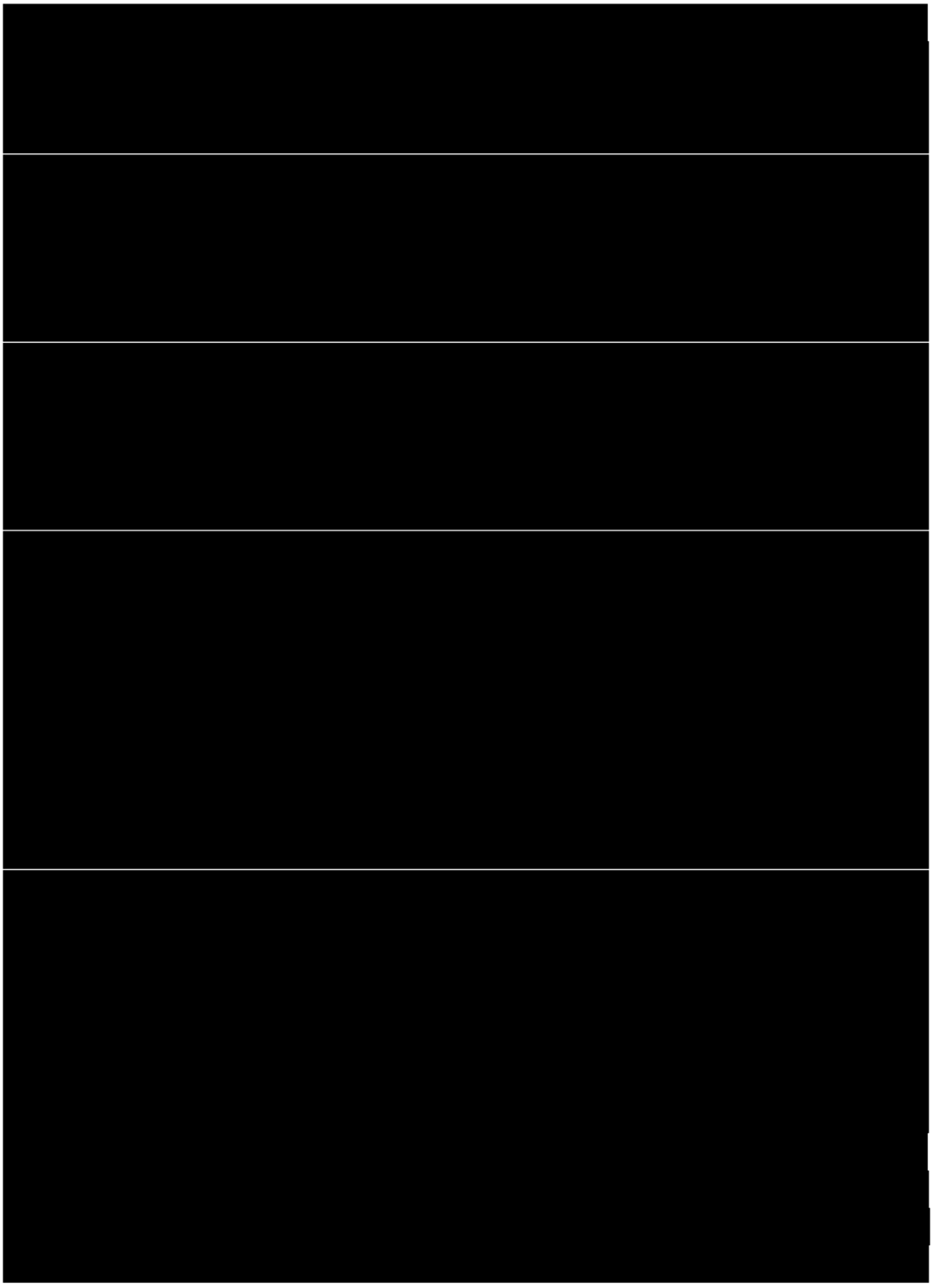
43. Two limited partner entities controlled by the Family Office have always held [redacted] of the partnership interests issued by the Fund. In addition to the Family Office LP, there are 17 other limited partners in the Fund, each of which owns a portion of equity in the Fund. The other limited partners are

individuals or are the family trusts of individuals who are current or former employees of ATP, and they hold percentage interests in the profits of the Fund.

44. Dr. Harrison is a limited partner of the Fund, and has contributed [redacted] into the Fund. A portion of Dr. Harrison's interests are now held through another limited partner, Les Pommes LLC, a trust established for the benefit of his children.

45. The continued health and growth of the Fund depends—by the Family Office LP's own design—upon the Family Office LP's timely contributions in response to capital calls made in accordance with approved budgets as well as the approval of new budgets for portfolio companies that are making good progress but have exhausted the funds from their initial budgeted investments. The LPA reserves for the Family Office LP the right to [redacted] budgets for each of the Fund's investments in [redacted] LPA Am. 2, Schedule C, *see* Ex. 1 at 107. [redacted]

46. Once a budget is approved, ATP has the right to make capital calls upon the limited partners (including the Family Office LP) to fulfill the approved budgeted amounts. Under Paragraph 5 of the LPA:



[redacted]

LPA Am. 3 ¶ 5(a)(ii), *see* Ex. 1 at 112 (emphasis added).[3]

47. Limited Partners "[redacted]" LPA ¶ 5(a)(i), *see* Ex. 1 at 18 (emphasis added).

48. Once a budget is approved by the Family Office LP as per Schedule C of the LPA (granting it the right to "[redacted]" budgets, *see* Ex. 1 at 107), ATP has the discretion to call capital under Paragraph 5(a)(ii) for projects "[redacted]." The LPA does not require capital calls to be tied to specific milestones because it would be inconsistent with how biotech and pharmaceutical research and development takes place. At the time of a capital call, and indeed over the course of dealings at the Fund, a portfolio company might be ahead of, behind, or meeting any of the milestones that were developed between

[3] Certain terms used in the LPA were deleted or rendered superfluous by later amendments. These include all references to Apple Tree Consolidated ("ATC") and the "Board", which were eliminated by Amendment No. 14. Unless specifically addressed in a written amendment, all other terms and conditions of the LPA remain in full force and effect.

ATP and the company as an initial roadmap, or that were included in the investment memorandum accompanying the initial budget request. Every biotech and pharmaceutical company attempts to put in place milestones and budgets, however they seldom if ever go exactly to plan. The text of the LPA, even after twenty-two amendments, never included satisfaction of milestones as a condition precedent for capital calls on contributions for companies with approved budgets, and calling capital for budgets was entirely left to General Partner discretion. The LPA only provides for one exception: when the General Partner requests an acceleration of capital. In this case, the LPA does require ATP to represent "[redacted]" and to provide the Family Office LP "[redacted]." LPA Am. 3 ¶ 5(a)(ii), see Ex. 1 at 112. It is worth noting that accelerated calls occurred rarely and only for projects that the General Partner determined would substantially benefit from an earlier-than-planned capital infusion. This was the case for the Fund's portfolio company [redacted] in 2021, and that company has since progressed to the clinical-stage group. However, since the Family Office LP's call for "austerity budgets" (*see* ¶ 79, *infra*), the ATP has not called for an accelerated tranche of capital.

49. Through extensive quarterly reporting procedures and discussions, during the integration of Dr. Rybolovlev's trusted representative into the Fund for eight years and her incorporation onto multiple boards, throughout dozens of meetings, often face-to-face and multi-day, involving Dr. Harrison, ATP subject matter experts, and portfolio company management, and throughout the operating history of the Fund up until May 2025, the Family Office LP *never* objected to meeting a capital call on the grounds that a portfolio company had missed a particular milestone.

50. There can be no doubt, both by contract and by an invariant course of dealing throughout a fifteen-year history, that if ATP makes a capital call to fund an approved budget, the Family Office LP is required to contribute such capital to the Fund.

51. Given the Fund would be seeking to invest in multiple early-stage companies at the beginning of a lengthy period of research and drug development, it was important for the LPA to include a mechanism through which ATP could ensure a reliable stream of funding for the portfolio companies, and ensure accountability from and to the limited partners and to the stakeholders across the entire portfolio.

52. Accordingly, the LPA contains a "global default" provision that has not changed since the agreement was executed in 2012. Under the global default provision, if a limited partner fails to make a required capital contribution in

response to a valid capital call, the LPA authorizes the General Partner to, after notice and 30 days to cure, deem such limited partner a "Defaulting Partner." The General Partner can then "[redacted]," including but not limited to the imposition of a "Default Charge" equal to up to 50% of the defaulting limited partner's interest in the Fund, with those interests then being distributed to the non-defaulting holders of interests in the Fund:

[redacted]

LPA ¶ 5(c), *see* Ex. 1 at 23.

53. Once a Default Charge has been imposed, "[redacted]

[redacted]." LPA ¶ 18(f), *see* Ex. 1 at 74.

54. The LPA requires that any changes to its provisions be subject to ATP's express written approval. LPA ¶¶ 17, 18(l), *see* Ex. 1 at 70, 77.

55. The "Global Default Charge" was an important protection for ATP, Dr. Harrison, and the startup founders who, in many cases, were entrusting ATP with their life's work. It made credible the Family Office LP's commitment to the Fund over the long term—a commitment on which it now reneges. Indeed, many of the Fund's investments wound up being predicated on Dr. Harrison's answering questions from founders, key hires, development partners, and prospective ATP team members regarding how the Fund dealt with the risk of having [redacted]. In response to such queries, Dr. Harrison described the Global Default Charge, which each stakeholder found satisfying, either by their own review or through advice of counsel. The protection of the Global Default Charge predicated their respective decisions to partner, join, and/or align with the Fund. Not just the Fund but many of the Fund's counterparties relied upon the guaranty of funding implicit in and afforded by the Global Default Charge mechanism.

56. The global default provision also allows ATP to, among other alternatives: "[redacted]

[redacted]

[redacted]

[redacted]

[redacted]" LPA § 5(c), *see* Ex. 1 at 23.

57. This default is referred to as "global" because it does not allow the Family Office LP to pick and choose which portions of the portfolio it funds *after* providing budget approvals, meaning it does not allow the Family Office LP to fund some projects and not others, or some pools and not others. The global default provision does not limit the scope of the Default Charge solely to the Defaulting Partner's interest in the specific project for which the capital was called. None of the twenty-two amendments have altered the default provision. It exists to prevent a limited partner from, at any moment, reaping the benefits of self-selected Fund assets while simultaneously ignoring obligations to meet capital calls across the rest of the portfolio.

3. The Fund Generates Excellent Returns.

58. After the Fund was set up and over the next several years, with the Family Office LP's approval, ATP made investments in numerous pharmaceutical and medical device companies. Generally, the initial investment was calibrated to allow a company to reach an intermediate milestone, such as selection of a drug

candidate, with the understanding that additional budgets would be approved for subsequent development stages.

59. The strategy wound up paying off. For example, two of the Fund's startups, Stoke Therapeutics and Akero Therapeutics, made initial public offerings in 2019. The Fund's total investments in those two companies from 2014 to 2019 was [redacted]; in 2020, those positions were distributed to the limited partners at a value of [redacted] combined—nearly [redacted] the value paid in by the Fund. The Family Office LP received [redacted] of that distribution. The Family Office LP also realized huge returns from other investments, such as the [redacted] in distributions it received from the sale of Chinook Therapeutics compared to a [redacted] capital contribution.

60. The Fund, and by extension, the Family Office LP, also realized substantial profits from strategic transactions. In 2018, the Fund sold its position in Syntimmune, Inc., built on a [redacted] investment over two rounds of funding, to Alexion Pharmaceuticals for [redacted] in up-front consideration and up to [redacted] more in milestone payments tied to the achievement of certain key clinical and regulatory events. And in 2020, the Fund realized [redacted] in profits when it sold its stake in Corvidia Therapeutics to Novo Nordisk, and stands to realize [redacted] in milestones.

61. Braeburn, the Fund's specialty pharmaceutical company, after many years of unanticipated regulatory and legal difficulties which the Fund successfully managed, launched its flagship product in late 2023 and exceeded forecasts. It is expecting revenue of [redacted] in 2025. The business, wholly owned by ATP and still private, is valued on a discounted cash flow basis at approximately [redacted]. Approximately [redacted] of this value has already been distributed in the form of a royalty contract, leaving the Fund holding approximately [redacted] of Braeburn value.

B. THE FAMILY OFFICE INCREASED ITS FUNDING COMMITMENTS SO THE PARTNERSHIP COULD PURSUE NEW INVESTMENTS.

62. In 2020, because of ATP's track record of founding companies and bringing them to successful exits, the Family Office LP sought to expand its capital commitment to ATP beyond the [redacted] amount established in 2012. Through a series of amendments culminating in Amendments Nos. 17 and 18 to the LPA, dated September 9, 2020 and November 5, 2020, respectively (*see* Ex. 1 at 198, 215), the Family Office LP agreed to commit "[redacted]" [redacted]. *See* Ex. 1 at 215. The Fund was then instructed and authorized to use this capital to establish new companies targeting the discovery of a host of new therapies to treat serious and life-threatening diseases. The parties understood that, consistent with

their course of dealing since 2012, the Family Office LP promised to review budget requests reasonably, and to judge budget requests rationally and in good faith based on technical and financial merit.

63. With this understanding, ATP founded and financed the establishment of [redacted] new companies to be held in [redacted]. A description of the focus and status of the projects currently in process at each of these companies is set forth in Exhibit 3, and incorporated here by reference.

64. The Fund made its initial investments in these companies from 2020 through 2022. During these diligence discussions, both the Family Office LP's obligation to contribute capital in response to calls consistent with approved budgets, as well as ATP's ability to enforce those provisions through application of the Global Default Charge against all of the Family Office LP holdings, were essential to convincing founders to rely on ATP for their critical Series A funding needs. S*ee* ¶ 55, *supra*.

65. After the Family Office LP's [redacted] commitment provided for in Amendment Nos. 17 and 18, Amendment No. 20 also contained a new commitment of [redacted] in new cash capital contributions from the Family Office LP, subject to budget approval, [redacted] This pool included [redacted], which the Family Office LP arbitrarily shut down in 2023, and the

breakthrough [redacted] companies [redacted] and [redacted] in the current ATP portfolio. [redacted] is a cutting-edge [redacted] company in the [redacted] for the most common [redacted], with a major strategic alliance [redacted]. [redacted] is a breakthrough [redacted] company conducting [redacted] on a potential [redacted], with two major strategic alliances [redacted]

66. The new [redacted] was to draw on "[redacted] (i) [redacted] (ii) [redacted]" LPA Am. 20 ¶ 22(b), Ex. 1 at 237.

67. The current controversy arises from Dr. Rybolovlev's express repudiation of the Family Office LP's obligation to contribute capital to Pools ATP V-1, V-2, and V-3 and the scope, force and effect of the Global Default Charge mechanism under the express terms of the LPA.

C. BRAEBURN INC.

68. The Fund's most valuable current asset is its investment in Braeburn Inc. Braeburn is a specialty pharmaceutical company founded in 2012 to develop and commercialize pharmaceutical products designed to address clinically important, unmet medical needs of patients with opioid use disorder. Braeburn is currently in the middle of a successful commercial launch of the company's flagship product, Brixadi® (buprenorphine extended-release injection for subcutaneous use).

69. But Braeburn's likelihood of achieving commercial success was uncertain for many years. Indeed, Braeburn's current success and value can be viewed as a case study in how best to persevere through setbacks. The problems at Braeburn were major: an FDA announcement that scuttled a product candidate; two unexpected FDA regulatory delays that did not originate with any act or omission by Braeburn; a licensing dispute and arbitration won in all respects by Braeburn; a manufacturing compliance delay of more than two years; and a rebellious syndicate of Series B investors who refused to let ATP finance the company. And yet, ATP, working together with the Family Office LP, persevered through each of these setbacks. These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund.

70. Before Braeburn's success, because Braeburn had a net negative value before 2021, ATP could not make distributions in the Fund from other, successful investments. In 2021, ATP and the Family Office LP agreed to two changes to the Fund to address this and other significant issues.

71. The Family Office LP and ATP executed Amendment No. 20 to the LPA on June 21, 2021, to both establish [redacted] and segregate the Fund's investment in Braeburn from the rest of the Fund's investments for the calculation of high-water marks and carried interest determination. Amendment No. 20 therefore also created "Pool Braeburn", consisting solely of "[redacted]." LPA Am. 20 § 21, *see* Ex. 1 at 236. By segregating the profits and losses of Braeburn into this new Pool, it allowed the Fund's limited partners to receive distributions from other portfolio companies, including distributions of profits from the Fund's investments in Stoke and Akero, which had reached proof-of-concept and IPO. As a result of Amendment No. 20, the Family Office LP realized [redacted] in positive returns from the Stoke and Akero distributions, while obtaining a qualified right to demand distributions of the Fund's assets in Braeburn. Amendment No. 20 did not modify the Family Office LP's other funding commitments set forth in Amendment Nos. 17 and 18, nor did it alter the global default mechanism in Paragraph 5(c) of the LPA.

72. The Family Office LP obtained a conditional right to call for the distribution of the assets in Pool Braeburn in the future.

73. When it appeared that Braeburn's flagship product, Brixadi, was approaching approval, the Fund and Braeburn sought syndication via Series B financing from outside investors. This financing was intended to bridge Braeburn to an IPO. It is typical that private equity financings come with conditions that prevent investee companies from taking on additional debt or equity without approval from the investors, and in the case of Braeburn's Series B round, these terms were as expected. However, after the Series B round was completed, Brixadi encountered more regulatory delays. ATP, together with the Family Office LP, went to work and overcame these issues, yet even once those regulatory issues were resolved, the Series B investors refused to approve any new debt or equity financing to fund Braeburn's launch of Brixadi. They wanted to sell the company for very little cash, just sufficient to cover their investment, and none of ATP's prior investments; ATP had a veto right, and exercised it.

74. ATP and the Family Office LP next entered into the only form of financing over which the Series B investors had no approval right, a royalty financing, culminating in the closing of a Royalty Purchase Agreement (the "RPA", *see* Ex. 4) with Braeburn on July 2, 2021. The RPA allowed Braeburn to raise additional capital from the Fund to finance Brixadi's launch costs. This arrangement

also permitted the Fund to eventually buy out the Series B investors, returning full control of the company to ATP.

D. THE FAMILY OFFICE LP PREPARES TO WALK AWAY FROM THE FUND AND SPURN ITS OBLIGATIONS.

75. ATP entered into Amendment Nos. 17, 18, and 20 with the full expectation that the Family Office LP would continue to meet funding requirements for the Fund's portfolio companies. These expectations reasonably derived from more than a decade of extensive discussions with Dr. Rybolovlev and representatives of the Family Office LP the specific funding commitments in these Amendments, and provisions of the LPA, including the Fund's stated purpose and the global default provision.

76. Indeed, the Family Office LP gave every indication that it was committed to continuing to pursue the Fund's investment strategy. This was how the Fund had worked in the past, before Amendment Nos. 17, 18, and 20. Starting with the LPA itself in 2012, the Family Office LP committed to invest [redacted] into the Fund, and the Family Office LP approved the initial phase budgets for the Fund's portfolio companies.

77. But just months after reaffirming its new cash commitments in Amendment No. 20 (totaling [redacted] across Amendment Nos. 17, 18, and 20), the Family Office LP's behavior started to change, and the change accelerated through the end of 2021. Since then, the Family Office LP has capriciously withheld

budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing, cut off funding for [redacted], and now has expressly refused to fund [redacted] portfolio companies and withheld reasonable budget approvals [redacted]. This behavior contravenes the plain language of the LPA and was inconsistent with the parties' course of dealings under the agreements during the prior decade..

78. [redacted] seemed to be the catalyst for the Family Office LP's hardening of its resolve to eliminate its financial commitments to the Fund. [redacted]

In that atmosphere of financial uncertainty, the Family Office LP began to pull back from its [redacted] commitment to make new contributions for the growth of the [redacted] companies, and its [redacted] commitment to certain of the Fund's [redacted] assets.

79. In September 2022, [redacted], Dr. Harrison met with Dr. Rybolovlev and the Family Office's then-chief investment officer, Anna Kolonchina, in Monaco. At this meeting, Ms. Kolonchina made clear that the Family Office LP would only be approving "austerity" budgets going forward.

80. Dr. Rybolovlev also said that he could no longer fund new investments by the Fund, and if he had the choice, he would not fund [redacted] That is, if ATP made a valid capital call under Paragraph 5(a)(ii) of the LPA, Dr. Rybolovlev would direct the Family Office LP to decline to respond to that call with a contribution, in breach of Paragraph 5(a)(i) ("[redacted].").

81. The following month, in a series of follow-up meetings in New York between October 11 and 21, 2022 that included Dr. Rybolovlev, Ms. Kolonchina explained that financing the Fund was becoming increasingly challenging; that Dr. Rybolovlev no longer wanted to fund new deals; that, if forced to choose, he would not fund the newer deals in order to prioritize older deals; and that if capital calls could not be met, the defaults would be focused on those newer investments situated [redacted]

82. Dr. Rybolovlev took the position that the LPA did not have a global default mechanism and that he was essentially free to abandon his commitments to [redacted] companies without any consequence.

83. Ms. Kolonchina reiterated this baseless position in a sworn affidavit in 2024: "[the Family Office LP] do[es] not agree (and ha[s] never agreed) that a '*global default mechanism*' exists in the LPA." Second Kolonchina Affidavit in the Cayman Action, ¶ 29, *see* Ex. 5 at 11.

84. This position is fantasy. The Global Default Charge provision has gone unmodified through twenty-two separate amendments, including the heavily-negotiated amendments, Amendment Nos. 17 and 20, that led to the establishment of the Pool system. In fact, Amendment No. 20 expressly reaffirms all of the existing obligations in the LPA and the LPA expressly requires that any alterations or amendments, like a change to the Global Default Charge Provision, could only become effective with ATP's express written consent. LPA ¶¶ 17, 18(l), *see* Ex. 1 at 70, 77. The LPA does not give the Family Office LP license to choose which of its investments might be the subject of a Global Default Charge. LPA Am. 20 § 14, *see* Ex. 1 at 248.

85. Dr. Harrison immediately rebutted the Family Office LP's fictitious position, replying on November 29, 2022, that "there was never any discussion about removing [the global default] concept from the LPA as part of the introduction of the pools structure, let alone any changes agreed to the relevant wording of the LPA. The concept of a series partnership (which is the effect of a pool-by-pool default) does not exist as a matter of Cayman Islands law." He reminded the Family Office LP that "a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages," and "[f]or these reasons, the global default mechanism has

always been a matter of fundamental importance, even after the introduction of the pools concept."

86. The situation escalated further in May 2023, when Dr. Rybolovlev and the Family Office LP announced that it intended to cap [redacted] investment in the Fund at [redacted]—a cap that was never previously disclosed and that ran counter to the strategy and planning behind [redacted] and also ran counter to the [redacted] in additional funding promised by the Family Office LP through the RPA.

87. This was shocking news to receive, not least because a [redacted] cap conflicted with the commitments the Family Office LP made in Amendment Nos. 17, 18, and 20, which had committed the Family Office LP to fund [redacted] for the older investments in Pool ATP IV, [redacted] more for the investments in Pools ATP V-1, V-2, and V-3, and [redacted] more to Braeburn under the RPA.

E. THE FAMILY OFFICE LP TAKES ACTION TO DESTROY THE PORTFOLIO.

88. Beginning in the third quarter of 2023, Dr. Rybolovlev's threats turned to active hostilities.

1. The Family Office LP Abandons A Portfolio Company.

89. In mid-2023, the Family Office LP cut off support for one of the portfolio's promising early-stage investments, [redacted]. At the time, [redacted]

[redacted]; the technological approach was breakthrough and proved, and remains, to the best of the Fund's knowledge, unique in the world: [redacted]. Between 2021 and Q2 of 2023, the Family Office LP approved and funded budgets of [redacted] for [redacted]. In Q3 of 2023, the Family Office LP suddenly decided to stop funding [redacted], without any credible explanation for this change in position—this was despite the company's successful demonstration that its [redacted]. Without funding, [redacted]—the project then being managed by a highly qualified CEO who had been [redacted]—was left with no choice but to file for bankruptcy and terminate all of its employees.

90. In the bankruptcy, the [redacted] estate sold the company's [redacted] technology for a fraction of its actual value to [redacted]. On information and belief, [redacted] is currently making commercial use of the technology it acquired from the [redacted] bankruptcy. Meanwhile, [redacted] project within ATP to discover and develop [redacted] was abandoned entirely.

2. The Family Office LP Makes Improper Demands to Take the Value of Braeburn's Success Out of the Fund.

91. In June 2023, after years of delay, the FDA finally approved Braeburn's drug, Brixadi, for marketing in the United States. At that time, Braeburn still required substantial investment in its commercial launch. In an effort to reduce the Family Office LP's exposure under the RPA and responding to the Family Office LP continually stating its cash flow limitations, and with full control of Braeburn now that the Series B shares were retired, ATP arranged for a [redacted] loan between itself, Braeburn, and [redacted]. As is market practice, [redacted] under the Loan and Security Agreement (the "LSA", see Ex. 6), executed among the parties [redacted].

92. Initially, the Family Office LP blocked the loan. Then, it asked that the lender's [redacted]. The lender refused that request. Then, just before the loan was scheduled to close, the Family Office LP demanded a distribution of the Fund's shares of Braeburn under Amendment No. 20. This distribution would have transferred [redacted] of Braeburn's voting stock from the Fund to the Family Office LP—two offshore holding companies with no experience in the development, marketing, and distribution of pharmaceutical

drugs—and out of ATP's reach should the Family Office LP default on its funding obligations.

93. As ATP explained to the Family Office LP, under the Cayman Exempted Limited Partnerships ("ELP") Law such a distribution would not have been in the best interests of the Fund:

> ATP owes fiduciary duties to the Fund, including a duty to avoid causing the Fund to become unable to meet its financial and other commitments. ATP has serious and well-founded concerns regarding [the Family Office LP's] ability and willingness to continue to comply with all of their funding obligations to the Fund following a distribution of the assets of Pool Braeburn. Accordingly, making such a distribution without first being satisfied that [the Family Office LP] can and will continue to comply with all of those obligations would expose the Fund and its portfolio companies to a substantial and unacceptable risk of insolvency and would therefore not be consistent with ATP's fiduciary duties.

See Ex. 7 at 1.

94. Although it did not concede the points in Dr. Harrison's email explicitly, the Family Office LP temporarily stood down on its 2023 request.

3. The Requested Braeburn Distribution Was Not Allowed Under the LPA.

95. Preserving the Braeburn assets remained critical to preserving the value of the Global Default Charge provision, because the Family Office LP was refusing to approve new budgets and was pressuring ATP to keep spending [redacted] to austerity levels, while ATP was simultaneously finding it impossible to

syndicate or find alternative sources of funding for [redacted]

96. [redacted] Outside investors were understandably reluctant to intertwine themselves as co-investors or buyers with either the Fund or one of its portfolio companies through a syndicated funding round or asset sale.[4]

[4] Even the Family Office LP has acknowledged the potential risks posed by [redacted]

(footnote continued)

97. Given its capital constraints at the time, the Family Office LP had changed its preference against both syndication and selling Fund assets. ATP explored potential transactions but repeatedly ran into the same [redacted] concerns. Even where ATP was able to spark the interest of a third-party investor for a syndication or sale, [redacted] again became a roadblock.

4. <u>In Response to ATP's Valid Contractual Objections to the Braeburn Distribution, the Family Office LP Attempted to Strongarm ATP.</u>

98. Ignoring ATP's efforts to ease the financial burdens on the Family Office LP while preserving the value of the startups [redacted] the Family Office LP renewed its demand for a distribution of the Pool Braeburn assets on July 30, 2024. After failing to dispute ATP's reasoned response to the first distribution request, and sitting idle for over six months, the Family Office LP demanded an immediate response to its second demand.

99. ATP responded two days later, explaining that ATP would consider the request and respond after consulting with its legal counsel, again referencing the detailed concerns that Dr. Harrison had laid out in his September 29, 2023 email. *See* Ex. 7.

[redacted]

100. The Family Office LP did not wait for ATP's response. Instead, they filed an abbreviated "originating summons" in the Grand Court of the Cayman Islands (the "Cayman Action"), seeking a ruling that Amendment No. 20 ***required*** ATP to make the distribution. The originating summons omitted the conditions to distribution contained in Amendment No. 20 and failed to provide any evidence that the common shares of Braeburn could not be released from escrow to make a distribution possible, absent pre-payment of Braeburn's current outstanding [redacted] debt to [redacted]

101. The Cayman Action represented another naked grab for control of Braeburn's equity after its long-delayed commercial launch had driven its estimated value from under [redacted] to, at that point in time in 2024, over [redacted].

102. Despite the filing of the Cayman Action, ATP continued to believe that the distribution of Pool Braeburn remained improper because it would: potentially render Braeburn insolvent due to the tax implications of the distribution; go against Braeburn's internal policies by, among other things, impeding its ability to retain key personnel; and enable the Family Office LP to default on its larger obligations to the Fund by removing the single most valuable asset that would be targeted with the Global Default Charge.

5. The Family Office LP Disclaimed its Funding Commitments.

103. The Family Office LP had already killed one portfolio company, demanded the distribution of the Fund's most valuable asset, refused outside help from third party investors, and stated repeatedly its intention to default on its commitments. It was in this context and in the middle of the Cayman lawsuit that the Family Office LP breached the LPA by disclaiming altogether its obligation to meet capital calls, even with respect to fully approved budgets. Specifically, in response to a duly-issued capital call in connection with the Fund's investment in [redacted] on October 14, 2024, Ms. Kolonchina revealed the Family Office LP's new position: "We are going to pay this capital call, but ***our position is that we are not obligated to do so***." Ex. 8. While Ms. Kolonchina suggested that the Family Office LP would "make further contributions this year that are provided for in the budget," she doubled-down on the claim that such payments would be "made on a ***voluntary*** basis and without prejudice to ***our position that we are not obligated to make these payments***." She said this despite over [redacted] in remaining approved budgeted funds for [redacted].

104. This new position runs contrary to the plain language of the LPA, which requires the Family Office LP to respond to capital calls made pursuant to approved budgets, and it further evidences a high likelihood that the Family Office LP would breach its contractual commitments to respond to capital calls under the LPA, even

with respect to approved budgets, destroying the value that ATP has built up in the Fund over many years. As modern research and drug development requires planning years in advance, including clinical trials that require years to complete, the insecurity of future funding and the threat that even already-approved financing might be withdrawn at the whim of the Family Office LP posed grave threats to the Fund and destabilized [redacted] portfolio companies.

105. This position also has no basis in the course of dealings between the parties. Taking the example of [redacted], the Family Office LP approved a [redacted] project budget for the company in 2021. Over the next four years, ATP issued nine capital calls on that budget totaling [redacted] which the Family Office LP paid without objection or reservation. At no point in the course of these nine transactions funding [redacted] did Ms. Kolonchina, or any other representative of the Family Office, suggest that the Family Office LP was providing funds in response to those capital calls "voluntarily." Discovery will demonstrate that from 2012 until 2024, the Family Office LP never once disclaimed, for any reason whatsoever, its contractual obligation to make contributions in response to capital calls drawn against approved budgets.

F. THE FAMILY OFFICE LP APPEARS TO BACK DOWN, THUS RESOLVING THE BRAEBURN DISTRIBUTION DISPUTE.

106. Perhaps out of a recognition that their distribution requests and hostage-taking tactics regarding budgets had little merit and even less chance of ultimate

success, the Family Office LP ultimately settled the Cayman Action on December 20, 2024, agreeing to Amendment No. 22 to the LPA, and to an amended agreement regarding the Fund's control of Braeburn (the "LLCA"). This series of concurrent transactions resulted in the Family Office LP obtaining distribution of the [redacted] valued at date of distribution at [redacted] ATP LLC, which meant that the [redacted] was no longer subject to the Global Default Charge. This partially achieved one of the Family Office LP's stated objectives, while on the surface appearing to provide ATP and the portfolio companies with greater security as to future funding commitments.

107. In return for this distribution and reorganization, the Family Office LP agreed in Paragraph 26 of the LPA to negotiate budgets to fund certain portfolio companies that were nearing the end of their previously-approved funds:

[redacted]

LPA Am. 22, ¶ 26, *see* Ex. 1 at 260.

108. Paragraph 26 of the LPA, which was introduced by Amendment No. 22, also states that "[redacted]" *Id.* The "[redacted]" referred to in Paragraph 26 is a "[redacted]."

109. In pursuing the financing, as well as reviewing and approving budget proposals, each party agreed to "[redacted]." LPA Am. 22, Miscellaneous Provisions, *see* Ex. 1 at 261.

110. As part of the negotiations and discussions regarding Amendment No. 22, the Family Office LP expressed a high degree of confidence it would execute [redacted]. ATP, which has experience in such transactions, offered on multiple occasions to assist the Family Office LP in securing [redacted]. The Family Office LP refused ATP's help. ATP then agreed to commence budget discussions related to Amendment No. 22 after the Family Office LP [redacted], based on its representations and in an effort to accommodate the Family Office LP.

111. Over six months since the Parties executed Amendment No. 22, the Family Office LP has still not [redacted].

G. IGNORING AMENDMENT NO. 22, THE FAMILY OFFICE LP HAS ABANDONED RATIONAL ECONOMIC DECISION-MAKING AND THREATENS TO DESTROY MORE PORTFOLIO COMPANIES.

112. Immediately after the parties agreed to amend the LPA and LLCA, on December 25, 2024, ATP sent the Family Office LP proposed budgets for [redacted], and [redacted]—the [redacted] companies referenced in Amendment No. 22 to the LPA. In 2025, ATP also requested further funding for [redacted].

113. Specifically, immediately following Amendment No. 22, ATP requested [redacted] in total: [redacted] for [redacted] for [redacted], and [redacted] for [redacted]. Dr. Harrison's email containing the budgets noted a 2025 and onward budget request for [redacted] would be forthcoming as well. He also urged the Family Office LP to promptly approve the proposals, explaining that "[redacted] will run out of cash [redacted]."

114. Despite its most recent set of commitments, and having had the proposed budgets for nearly six months, the Family Office LP has not entered into good faith discussions regarding or approved the budgets submitted on December 25, 2025, with the exception of a limited budget approval for [redacted].

115. The Family Office LP's attempts to [redacted] deal are moribund. The ATP portfolio companies are no better off than they were prior to Amendment No. 22 and the settlement of the Cayman Action.

116. As discussed above, the Family Office LP's abrogation of its funding commitments has put [redacted] ATP portfolio companies on the brink of insolvency (*see* ¶ 4, *supra*). Even though those companies have submitted reasonable budgets, the Family Office LP refuses to approve them. This starvation strategy has put at risk the sweat equity and life's work of the founders, inventors, executives, and other stakeholders, many of whom had competitive offers but apparently agreed to trust ATP's structure with their companies based on the global default provision. These companies depend on the Family Office LP's fulfillments of its commitments, which it has expressly disclaimed.

1. <u>The Family Office LP Erects New Obstacles to Funding.</u>

117. The Family Office LP has now repeatedly made clear that it will not honor the funding obligations to which it agreed in Amendment Nos. 17, 18, 20, and 22. In a further demonstration of bad faith, the Family Office LP inaugurated a new process for assessing the budget proposals that introduced needless complications into the process at the worst possible time: when [redacted] was just [redacted]. All of this recent behavior is consistent with Dr. Rybolovlev's threat to Dr. Harrison in May 2024 that the Family Office was fully

willing to "write off" its investments [redacted] and allow these portfolio companies to die.

118. On January 5, 2025, the Family Office LP imposed what appeared to be a new, highly onerous process for assessing the [redacted] budget proposal by sending Dr. Harrison a list of over 30 questions about the facts underpinning the [redacted] budget request. No such request had ever been made before, and was thus inconsistent with a long and consistent course of dealing. The imposition of such a condition made no sense whatsoever given the urgency of the situation. Nor did the request itself, asking for such things as board minutes and a new financial valuation of the company, have any diligence logic in assessing the merits of a highly technical biotech company.

119. On January 6, 2025, Dr. Harrison again reminded the Family Office LP that "[redacted] will run out of cash in [redacted]." He explained that [redacted] had [redacted] provided that the Family Office LP approved the [redacted] proposal. Then, in desperation, Dr. Harrison suggested a one-month bridge funding of [redacted] for [redacted], which the Family Office LP approved.

120. The Family Office LP ultimately (and arbitrarily given its refusal to discuss budgets for the other [redacted] companies), agreed to fund a [redacted] budget increase for [redacted] at the last possible moment, with another [redacted]

contingent on the execution of [redacted]. In a scenario where the full [redacted] is released, [redacted] will still only have funding sufficient through [redacted].

2. The Family Office LP Distorts the Purpose of Amendment No. 22.

121. Since the [redacted] process, the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy the Fund. Instead of defaulting on obligations to individual companies, the Family Office LP is attempting to avoid its funding commitments under the LPA and related amendments by refusing to discuss new budgets unless ATP agrees to shutter the [redacted] companies, eliminating [redacted] in callable capital contracts.

122. Amendment No. 22 ***required*** the Family Office LP to pursue a [redacted] in short order, before each of the portfolio companies mentioned had used up "[redacted]

[redacted]." LPA Am. 22, *see* Ex. 1 at 260.

123. [redacted], with the exception of [redacted], the [redacted] portfolio companies are in extremis. At the same time, the Family Office LP has also doubled down on its position that it is free to default on capital calls for [redacted] companies without consequence. Specifically, in an email dated January 25, 2025, Mr. Bogdanov restated the Family Office LP's view that it may default on contributions to certain Pools without triggering the default provision of Paragraph 5(c) of the LPA because it has been relieved of any obligation to meet capital calls. But nothing in Amendment No. 22, or any other amendment, gives the Family Office LP that out.

3. The Family Office Rejects a Practical Solution to Reallocate Its Prior Commitments.

124. Currently, there is about [redacted]. Of those approved amounts, [redacted] remains uncalled for the [redacted] companies and [redacted] uncalled for the [redacted] companies. The [redacted] companies hold more current value to the Fund in the near and medium term, while the [redacted] companies represent investments with meaningful scientific promise if given the opportunity to survive, containing projects that on relatively small investments can lead to clinical programs. Indeed, practically every late stage exit or product success in ATP's history, and in Dr. Harrison's history prior to founding ATP in 1999, and every

single late stage exit for the Family Office LP from ATP, resulted from an ATP-founded startup, that started at an early-stage and progressed to and through the clinic.

125. In April 2025, aware of the Family Office LP's failure to obtain a [redacted], and in an effort to prevent the [redacted] bankruptcy of [redacted] portfolio companies that are developing potential blockbuster therapies [redacted], ATP put together its reallocation plan to keep the Family Office LP's funding commitments steady at already approved budget levels. It would reallocate amounts approved for investment in [redacted] companies to the [redacted] companies. ATP determined that by allocating approximately [redacted] of the approved budgets from across the portfolio to the [redacted] companies, it could fund [redacted] and still keep the most promising opportunities within the [redacted] companies moving forward with the [redacted] remainder.

126. It was only due to Dr. Rybolovlev's starvation of the Fund's [redacted] companies that ATP was driven to propose what amounted to a triage strategy. This is not what ATP or Dr. Harrison believed was right for the Fund or the portfolio. To the contrary, ATP and Dr. Harrison continue to believe that there is great merit in the investment theses for substantially all of the [redacted]

[redacted] and that the Family Office LP would be destroying substantial value by denying adequate funding to the [redacted] companies.

127. ATP and Dr. Harrison also decided that patience in the face of intransigence was, while difficult, important to try given the stakes for the Fund, the portfolio companies and their stakeholders. Thus, rather than immediately come to blows with the Family Office LP, ATP and Dr. Harrison tried to encourage the Family Office to live up to its most basic obligations and to allow the portfolio companies to proceed, albeit in a manner that was damaged by the Family Office's failure to meet its contractual funding obligations in a timely and reliable manner.

128. To the end of limiting harm and finding a constructive way forward, therefore, ATP explained to the Family Office LP that reallocation now appeared to be the only route to avoiding bankruptcies within the [redacted] companies and [redacted] that are actively treating patients with deadly or life altering diseases. When initially discussed with the Family Office LP on May 9, 2025, the reception to the plan appeared to be positive. But just three days later, the Family Office LP rejected the reallocation plan, jeopardizing the [redacted] companies, even though it would not have cost the Family Office LP one additional dollar beyond its existing commitments.

129. ATP gave the Family Office LP every chance to resolve the situation, including alternatives that avoid having to commit to new funding in the near term,

but the Family Office LP appears to remain committed to deliberately degrading and destroying the Fund's assets, including [redacted]

H. THE FAMILY OFFICE LP REPUDIATES THE LPA.

1. The Repudiation of Funding Obligations to Early-Stage Companies with Approved Budgets and Obligations to Consider in Good Faith New Budgets for Clinical-Stage Companies.

130. As of this date, ATP's operational success has translated directly into superior financial performance as measured by standard industry metrics such as total value to paid-in capital (TVPI) and distributions to paid-in (DPI) rate. As measured in early 1Q 2025, for example, the Fund had achieved a TVPI of [redacted] and a [redacted] of DPI, the latter meaning that the Family Office LP has already received distributions of cash and assets [redacted] These metrics significantly exceeded the median TVPI [redacted] and DPI [redacted] of other large biotech venture funds, as also measured in 1Q 2025.

131. On May 5, 2025, pursuant to previously-approved budgets, and in order to maintain basic operations while the Family Office LP was purporting to consider the reallocation proposal, ATP made capital calls for early-stage companies [redacted]

[redacted] and [redacted] in the amounts of [redacted] and [redacted], respectively.

132. On May 15, 2025, Dr. Harrison once again asked Dr. Rybolovlev and Mr. Bogdanov to consider approving new budgets for [redacted] companies [redacted] and [redacted], which are [redacted], asking that "***the SLP immediately engage with us to avoid this significant loss of value***." *See* Ex. 9 (emphasis added).

133. In response to this grave situation, the Family Office LP did "immediately engage," but not to "avoid this significant loss of value." Instead, it repudiated its funding obligations to the [redacted] companies with approved budgets left for ATP to call and made clear that it had no intention to consider or approve new budgets for the [redacted] companies in good faith and that any future budget approvals would hinge on ATP's first agreeing to wind down and liquidate the [redacted] companies.

134. The Family Office LP wrote:

> "This email puts you on notice that **the [Family Office LP] are [sic] of the strong opinion that it is in the best interests of ATP Fund NOT to allocate any further funding for the following portfolio companies of the ATP Fund** [redacted]
>
> 1. [redacted]
> 2.
> 3.
> 4.
> 5.

6. [redacted]
7. [redacted]

The [Family Office LP] see[s] no way for a path to commercial success for these [redacted] Companies, *inter alia*, because: they have failed to meet the milestones set out in the investment memoranda on which [Family Office LP]'s initial funding was premised, the remaining budgets are not sufficient to achieve them, there is no third party interest to invest in these [redacted] Companies, and any further capital calls would not be in accordance with the milestones and business plans set out in the agreed budgets for the [redacted] Companies (and the [Family Office LP] ha[s] not consented to these budgets being changed). ***The [Family Office LP]'s position is therefore that further funding of those [redacted] Companies will waste the ATP Fund's assets.*** We understand that you hold a similar view, as you recently proposed that the amounts budgeted for the [redacted] Companies be reallocated to different investments (which you would not have done if you genuinely believed that continued investment in the [redacted] Companies was a good idea).

If you disagree with the above and consider that the [Family Office LP is] obligated to contribute further capital to the [redacted] Companies then please respond with a detailed explanation of your position. The [Family Office LP], of course, intend[s] to comply with the requirements of the LPA and will be cooperative if you can demonstrate that the LPA allows you to call further capital in regards to the [redacted] Companies. If you agree with our position, then please provide us with any proposals you may have for salvaging value from the [redacted] Companies to the extent possible.

Separately from the [redacted] Companies, and in line with Amendment 22, **the [Family Office LP] will consider new budgets that you wish to propose for clinical stage businesses that are commercially viable and have a greater likelihood of providing meaningful returns to the ATP Fund and its investors.** The [Family Office LP] see[s] this proposal as directionally aligned with yours of May 12, 2025, **but any new budgets must be based upon objective information — e.g. new milestones, expected return on invested capital, business theses etc. — that you must provide** (please resend if you believe you already provided the information). Your prompt

> provision of that information will facilitate the discussion of new budgets and milestones upon which it might be possible for agreement to be reached.
>
> ***The SLP are available to initiate these discussions immediately upon your agreement to wind down or liquidate the [redacted] Companies.*** We remind you, however, that the [Family Office LP] do[es] not presently have any outstanding capital commitments to ATP Fund and therefore has full discretion on whether to agree to fund any new investment proposals you come up with."

Ex. 10 (emphasis added).

135. Having previously taken the position that a Global Default Charge does not exist in the LPA, and that any default would isolate a charge to the Pool in question, the Family Office LP effectively shifted tactics with this message. Now, it sought to avoid the Global Default Charge altogether, by improperly claiming that approved budgets are invalid. The goal of this move is obvious: to eliminate triggers on the Global Default Charge.

136. With that, the Family Office LP announced that it no longer intended to be bound by its commitments under Paragraph 5(a) of the LPA and had no intention to commit required capital to the Fund, even in response to capital calls on approved budgets, including for the [redacted] companies with uncalled budgeted amounts. It also stated that there would be no further budget approvals for the [redacted] companies unless ATP agreed first to the destruction of the [redacted] companies.

137. As of the date of Mr. Bogdanov's email, the [redacted] Companies" he identified had a combined [redacted] in budgeted amounts on which ATP could make binding capital calls. The [redacted] companies had a combined [redacted] in approved and uncalled budget commitments. The Family Office LP has expressly and unequivocally repudiated its contractual obligation to contribute those amounts.

138. The Family Office LP's rationale for its anticipatory breach of the LPA makes little difference, because none of the reasons are sufficient to excuse its performance under the LPA. But it did so on bases that were factually flawed, without support in the LPA, and wholly inconsistent with the parties' prior course of dealings, demonstrating that it is doing so in bad faith.

139. The Family Office LP's assertion that met milestones are a requirement under the LPA is wholly and newly invented. *See* ¶¶ 48-49, *supra*. Until May 2025, the Family Office LP *never* objected to meeting a capital call on the grounds that a portfolio company had missed a particular milestone. And per the LPA, milestones were not integrated into budgets, and calling capital for budgets was entirely left to ATP's discretion—except under the rare circumstance when capital was requested on an accelerated basis.

140. Likewise, the Family Office LP's opinion that it sees "no way for a path to commercial success for" the Early-Stage Companies ignores the considered

scientific and business judgment of ATP's team of experienced R&D executives and technical subject matter experts, as well as the reporting of company management. [redacted] Companies are engaged in the discovery of new therapeutic modalities that are outside the scope of traditional drug therapies. The near-term goal of that research is to (a) validate a potential mechanism of action, (b) select a proposed drug candidate, (c) determine whether the proposed drug candidate can be manufactured in a controlled and reproducible manner, and (d) initiate the pre-clinical study and development of a drug candidate with the goal of filing an IND. The Family Office LP is fully aware, but chooses to ignore, that determinations concerning the potential for commercial success are data driven. Where data reveals a safety signal or other material obstacle that calls into question the longer-term viability of the project, ATP's practice is to investigate the issue and make a fact-based determination whether further investment in the program is warranted. The Family Office LP's broad brush condemnation of [redacted] Companies as a whole, without reference to any specific facts or data, ignores the facts and data that ATP has provided over the many months that it has been discussing new capital calls and budget approvals. This evidences bad faith.

141. Mr. Bogdanov's claim that funding for the [redacted] Companies is somehow inappropriate because they have "failed to meet the milestones set out in the investment memoranda on which the [Family Office LP]'s initial funding was

premised" is both a sweeping generalization and factually incorrect. For example, both [redacted] and [redacted] are on target and not behind on the plans contained in their respective investment memoranda. [redacted] is ahead of its plan. At no point during the Fund's operating history has ATP or the Family Office LP viewed adherence to the milestones proposed in the investment memoranda as being strict prerequisites to further funding. Indeed, in no case where the Fund has made a successful and highly profitable exit has the portfolio company met the initial timelines set out in its original investment memorandum. Each one experienced some form of delay and yet received follow-on funding from the Family Office LP because strict adherence to original milestone timing has never been a prerequisite to new budget approvals.

142. Mr. Bogdanov's claim that "the remaining budgets are not sufficient to achieve" the milestones set out in the investment memoranda is conclusory and could not possibly apply to [redacted] Companies equally. Here, each of [redacted] Companies have their own records of progress towards these milestones, and each should be assessed on its individual technical merit. Blanket rejection of funding for [redacted] Companies based on their likely need for additional funding to get to early clinical proof of concept is entirely arbitrary and irrational.

143. The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it, because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) *obligations for ATP to purchase additional shares at the request of the company board*. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones. For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company [redacted] on December 6, 2021 included (a) an initial [redacted] investment by ATP and (b) an obligation for ATP to purchase up to [redacted] in additional shares at the request of the [redacted] board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as [redacted] in [redacted]. To date, ATP has invested [redacted] in [redacted], which is short of ATP's total potential obligation to the company under the agreement. Should the additional funding obligations become due, then the Family Office LP's refusal to meet a [redacted] capital call would cause ATP to breach its agreement with the portfolio company.

144. The Family Office LP cannot drive ATP to breach its funding agreements with the portfolio companies based on the Family Office LP's substitution of its judgment over ATP's in connection with the management of the Fund. The LPA expressly grants ATP full discretion in that regard. LPA ¶ 2(b), *see* Ex. 1 at 6 ("[redacted]."). The parties' course of dealings is also entirely inconsistent with this construct. ATP provides detailed quarterly reports concerning the progress of each portfolio company, and the Family Office LP has never taken the position that revisions of milestones or project plans require separate budget approvals or consents. The Family Office LP cannot unilaterally impose such a requirement where ATP has acted in reliance on its contractual right to manage the portfolio.

145. The LPA on its face permits ATP to call capital with respect to projects where there is an approved budget. It also requires the Family Office LP to respond rationally and non-arbitrarily to budget proposals drawing on the funds the Family Office LP has already committed to the Fund under the LPA.

146. Mr. Bogdanov's email is a clear repudiation of the Family Office LP's obligations to respond to capital calls made pursuant to Paragraph 5(a)(ii) of the LPA.

147. Although the Family Office LP ultimately funded the capital calls for [redacted] and [redacted] issued on May 5, 2025, their contributions only provided for another [redacted] of operations, and they did so while maintaining the fiction that they were under no obligation, and indicated their expectation that the money would only be directed towards shutting these companies down.

148. The Family Office LP's May 20, 2025 letter to ATP stated:

> "We refer to the capital calls dated 6 May 2025 in relation to the two [redacted] Companies [redacted] and [redacted].
>
> As you know, these capital calls were received prior to my email to you dated 15 May 2025 in which I raised serious concerns about the continued funding of the [redacted] Companies, which have failed to meet the milestones set out in the investment memorandum on which the SLP's initial funding was premised. I don't intend to repeat the points made in that email. The concerns we have expressed are serious and your recent email has failed to address those concerns. We will respond separately in that regard.
>
> Despite the issues we have raised regarding the [redacted] Companies, the SLP are content to pay these capital calls. They do so without prejudice to their position that: (i) further investment in these companies is not in accordance with the LPA; and (ii) the SLP does not presently have any outstanding capital commitments to ATP Fund. However, given the size of the capital call, we have assumed that these calls are intended to meet immediate administrative costs and the potential wind-down costs if that becomes necessary. Funding on this basis is acceptable to the SLP as it will enable the orderly wind-down of these companies which is in everyone's interest."

Ex. 11.

2. The Family Office LP's Blanket Repudiation of All Contractual Funding Obligations to the Fund Triggers an Emergency for the Fund and its Portfolio Companies.

149. As a direct result of the Family Office LP's repudiation of its funding obligations and budget approval commitments, [redacted] and [redacted] are all facing [redacted]. [redacted], [redacted], and [redacted] will follow. [redacted] has an opportunity for [redacted] and [redacted]'s already-called capital will last until [redacted]. Without relief, however, over two hundred people will lose their jobs. The prior forced bankruptcy of [redacted] underscores that the threat of irreparable harm to the Fund and its portfolio companies is genuine and, regrettably, imminent. A chart depicting ATP's current good faith estimate of remaining approved budgets and committed amounts is reproduced below:

[redacted]

150. The Fund has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies. *See* ¶¶ 22-23, *supra*.

151. Defendants' failure to comply with the Family Office LP's obligations threatens the loss of unique assets and opportunities to develop breakthrough

medications. The opportunities to capitalize these portfolio companies are unique because each is particularly positioned to realize significant growth and the development of new, first-in-class drug therapeutics. Failure to provide budget approval and agreed support for these portfolio companies now, while each is engaged in this work, threatens the loss of their employees, their scientists, their clinicians, and potentially the loss of the drug candidate entirely. It also threatens significant loss of the goodwill gained over years by the Fund. No damages award could allow the Fund to recreate the unique opportunity the Fund has at this moment to capitalize on the opportunities that it has developed. The loss to the Fund, to the portfolio companies, and to science and medicine and people in dire need of innovative treatments, would be both substantial and unquantifiable.[5]

152. Therefore, based on the Family Office LP's (a) clear and unequivocal repudiation of its obligations to make contributions to the Fund in response to capital calls for portfolio companies with approved budgets, and (b) improper and bad faith insistence that it will not consider new budget requests for the clinical-stage companies unless ATP first abandons its obligations to the [redacted] Companies and dooms them to liquidation, ATP asks that the Court issue an order of specific performance requiring the Family Office LP to (a) engage in the budget approval

[5] Beyond any liabilities associated with forcing both ATP and the companies to potentially violate vendor, employment, and lease agreements during the wind-up and closure of these companies.

process under the terms of the LPA for the [redacted] companies based on their individual merit and (b) fund capital calls up to the total outstanding amount previously committed in approved budgets for the [redacted] Companies identified in the May 15, 2025 email of [redacted] and the [redacted] companies in the amount of [redacted].

153. ATP also asks the Court to issue declaratory relief finding that the Family Office LP (1) is in material breach of the express terms of the LPA for its failure to engage in negotiations for budget approvals for the [redacted] companies, (2) has materially and anticipatorily breached its obligations to meet valid capital calls for companies with approved budgets, and (3) has violated its implied duties under Cayman Islands Common Law.

154. ATP asks that the Court issue an order of specific performance requiring the Family Office LP to (a) engage in the budget approval process under the terms of the LPA for the [redacted] companies based on their individual merit and (b) fund capital calls up to the total outstanding amount previously committed in approved budgets for the [redacted] Companies identified in the May 15, 2025 email of [redacted] and the [redacted] companies in the amount of [redacted].

FIRST CAUSE OF ACTION
(Breach of Contract – Budget Approvals)

155. All the allegations set forth in paragraphs 1 through 154 are realleged and incorporated as if fully stated herein.

156. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways.

157. In Amendment Nos. 17, 18, and 20 of the LPA, the Family Office LP agreed to make additional capital contributions up to [redacted] to fund portfolio companies.

158. ATP and the portfolio companies relied on those promises when founding the companies, hiring highly qualified drug researchers and other subject matter experts, and entering into third party agreements for various assets and services, and believed that the Family Office LP would engage in reasonable negotiations around such budgets.

159. Instead, the Family Office LP has refused to engage in substantive discussions of new budgets, irrespective of the technical, regulatory, or commercial merits of the specific company or program and, imposed improper pre-conditions for the occurrence of budget discussions in its May 15, 2025 email. As a result, other than for [redacted], no budget approvals have occurred. The Fund's [redacted] companies will all be out of cash [redacted]. The Fund's [redacted] companies will all be out of cash and without resources to continue [redacted]. Those consequences will affect not only ATP and the other limited partners, but the employees, patients, and other stakeholders of the companies as well.

160. The Family Office LP has refused to entertain any new budgets or engage in negotiations regarding those budgets with ATP without promises that ATP "wind down or liquidate" the [redacted] Companies.

161. On May 15, 2025, the Family Office LP expressly repudiated any obligation to consider new budget proposals for the [redacted] companies, claiming that it "do[es] not presently have any outstanding capital commitments to ATP Fund and therefore has full discretion on whether to agree to fund any new investment proposals you come up with." This constitutes a repudiation of the Family Office LP's contractual obligation to consider and approve reasonable budget proposals calling on the funds committed in the LPA.

162. The Family Office LP's refusal to consider reasonable budget proposals is a material breach of the LPA, including its recent commitment under Amendment No. 22 to "[redacted]."

163. ATP requests a declaratory judgment that the Family Office LP is currently in material breach of its contractual duties under the LPA and has waived its right to approve budgets.

164. ATP also requests an order of specific performance ordering the Family Office LP to pay (i) the [redacted] in budgets proposed in January for [redacted] and [redacted] which the Family Office LP has yet to approve (*see* ¶ 112 *supra*.); and (ii) an amount to be determined at trial, up to [redacted] in remaining capital commitments, including for those companies specifically named in Amendment No. 22—[redacted], and [redacted]; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith. This includes the Family Office LP's obligations to consider such reasonable budgets individually, and based on the technical, regulatory, and commercial merits of the proposal. ATP has no adequate remedy at law for this relief.

SECOND CAUSE OF ACTION
(Anticipatory Breach of Contract – Contributions for Budgeted Companies)

165. All the allegations set forth in paragraphs 1 through 164 are realleged and incorporated as if fully stated herein.

166. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways.

167. Per Paragraph 5(a) of the LPA, the Family Office LP is obligated fund capital calls made pursuant to the budgets it approved: "[redacted]."

168. As a Limited Partner, the Family Office LP "[redacted]" LPA § 5(a)(i), *see* Ex. 1 at 18.

169. On May 15, 2025, the Family Office LP repudiated its obligations to fund (at least) capital calls made pursuant to approved budgets for [redacted], and [redacted] – in total, [redacted] in outstanding obligations. On May 20, 2025, the Family Office LP agreed only to fund two specific small capital calls for [redacted] and [redacted] to "enable to orderly wind-down of these companies," a position that does not meet the Family Office LP's obligations under the LPA.

170. By saying it "do[es] not presently have any outstanding capital commitments to ATP Fund and therefore has full discretion on whether to agree to fund any new investment proposals you come up with," the Family Office LP has

anticipatorily and materially breached its obligations to meet future capital calls that are properly issued by ATP under Paragraph 5(a)(ii) of the LPA.

171. The harm arising from these refusals to fund capital calls on approved budgets is material, a clear breach of the LPA, a payment default, and an event of Default under the LPA. It would be futile to wait for the notice period under Paragraph 5(c) to lapse before the Family Office LP is declared a Defaulting Partner.

172. The LPA's global default provision permits ATP to impose a "Default Charge" for each instance of Default equal to up to 50% of the Defaulting Partner's interest in the Fund, with those interests then being distributed to the non-defaulting holders of interests in the Fund. This mechanism, in place and unaltered since the LPA was executed in 2012, is to ensure accountability of the limited partners and prevent a limited partner from, at any moment, reaping the benefits of self-selected Fund assets while simultaneously ignoring obligations to meet capital calls across the rest of the portfolio.

173. The LPA's checks and balances, specifically the Global Default Charge, have allowed the Fund to acquire its interests in the portfolio companies, which require assurances to counterparties that the Fund's [redacted] limited partner would meet its financial commitments.

174. ATP requests a declaratory judgment that the Family Office LP has anticipatorily and materially breached its obligations to meet capital calls under the

LPA and an order of specific performance requiring the Family Office LP to fund capital calls on the [redacted] Companies identified in the May 15, 2025 email, at an amount to be determined at trial, up to [redacted] in remaining approved budgets.

175. ATP requests in the alternative a declaratory judgment that the Family Office LP has anticipatorily and materially breached its obligations to meet capital calls and is a Defaulting Partner under Paragraph 5(c) of the LPA. By reason of that payment default, ATP is authorized to impose a Global Default Charge on the Family Office LP, remove the Family Office LP's voting rights under Paragraph 18(f) of the LPA, and to seek compensatory damages.

THIRD CAUSE OF ACTION
(Obligation to Act Rationally and in Good Faith)

176. All the allegations set forth in paragraphs 1 through 175 are realleged and incorporated as if fully stated herein.

177. Cayman Islands contract law recognizes an implied rational and good faith obligation in exercising discretionary rights (absent clear language to the contrary). This duty applies even if the party granted discretion (such as a limited partner) has no other duties under the relevant agreement. No language in the LPA relieved the Family Office of its obligation to act rationally and in good faith.

178. Courts must assess (a) whether the decision maker neglected or refused to take something into account that they should have taken into account, or took into

account something that was irrelevant; and (b) whether the decision was so perverse that no reasonable person, acting reasonably, could have made it, even if the decision-making process itself was sound.

179. The Family Office LP breached this implied obligation by refusing to even consider requests for new budgets for the Fund's [redacted] portfolio companies including [redacted], and [redacted] Its action was so perverse that no reasonable person acting rationally could have made it because as a direct result of this decision the clinical development of [redacted] potential novel therapies for serious diseases were put in jeopardy for the purpose of coercing ATP to suspend funding of the [redacted] Companies. This was not in the spirit of the Family Office LP's commitments in Amendment Nos. 17, 18, and 20, as well as earlier amendments to the LPA. As a result of this course of conduct, the Fund and its [redacted] portfolio companies have been denied up to [redacted] in remaining capital commitments, and face imminent bankruptcy. The resulting harm will include [redacted]. The Family Office LP has created this situation by arbitrarily refusing to engage in the budget approval process, without regard to the merits of the individual companies.

180. An actual case or controversy exists between ATP and the Family Office LP as to whether it is implied as a matter of law and/or needed to give business efficacy to the LPA that the Family Office LP must engage in budget negotiations rationally and in good faith under the LPA.

181. As explained in paragraphs 45 through 50, *supra*, (1) the Family Office LP may not exercise its discretion over the budget and financing negotiations to the detriment of the Fund, ATP, the other limited partners, and the portfolio companies and their stakeholders; (2) the Family Office LP may not exercise its discretion over the negotiations (or lack thereof) to the detriment of the Fund, ATP, the other limited partners, and the portfolio companies and their stakeholders; and therefore (3) the Family Office LP may not continue its current course of action of applying blanket refusals to consider new budget requests irrespective of the individual merit of any particular request.

182. ATP therefore seeks equitable relief from this Court in the form of an order deeming all pending budget requests approved and requiring the Family Office LP to fund new budget requests up to the amount of the Family Office LP's remaining commitment of [redacted] towards the funding of the portfolio companies [redacted]; or, in the alternative an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith.

FOURTH CAUSE OF ACTION
(Global Default Charge)

183. All the allegations set forth in paragraphs 1 through 182 are realleged and incorporated as if fully stated herein.

184. The LPA is a valid and binding agreement between the parties, which the Family Office LP has breached in multiple ways, as set forth in the First, Second, and Third Causes of Action.

185. ATP has fully performed all of its obligations under the LPA to date and is ready, willing, and able to continue so performing until the LPA is properly terminated.

186. There is an actual and justiciable controversy between ATP and the Family Office LP regarding whether the default provisions of Paragraph 5(c) of the LPA impose a "global default" penalty on a defaulting limited partner, that is, across all of a defaulting limited partner's interests in the Fund.

187. ATP is ready, willing, and able to apply Global Default Charge procedures per Paragraph 5 of the LPA.

188. A declaratory judgment from this Court is needed finding the Family Office LP in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner;

189. ATP also seeks equitable relief in the form of an Order permitting ATP to impose a Default Charge against all of the Family Office LP's interests.

190. In the alternative, ATP requests equitable relief in the form of Entering an order permitting ATP to impose a Default Charge against all of the Family Office LP's interests, or, in the alternative, an order permitting ATP to impose a Default Charge against the Family Office LP's interests in the Pools implicated by its breaches.

191. ATP also seeks equitable relief in the form of an order finding that the Family Office LP has waived or otherwise forfeited its voting and budget approval rights and that it "[redacted]" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA.

192. ATP also seeks an order enjoining the Family Office LP from interfering with ATP in the exercise of its discretion over the Fund once the Family Office LP is deemed to be a Defaulting Partner;

FIFTH CAUSE OF ACTION
(Declaratory Relief – Proper Actions of General Partner)

193. All the allegations set forth in paragraphs 1 through 192 are realleged and incorporated as if fully stated herein.

194. Paragraph 2(g) of the LPA states that "[redacted]

[redacted]."

195. An actual case or controversy exists between ATP and the Family Office LP as to whether ATP has breached its fiduciary duties by bringing this action.

196. A declaratory judgment from this Court is needed to confirm that the Fund's filing of this action is neither (i) an act taken in bad faith; (ii) an instance of willful fraud, willful misconduct, or gross negligence; nor (iii) an intentional and material breach of this Agreement.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff ATP respectfully requests that the Court enter a judgment, on an expedited basis:

a. Finding that the Family Office LP has breached the LPA by refusing to consider and has waived its right to approve budgets;

b. Entering an order of specific performance requiring the Family Office LP to pay the [redacted] in reasonable budget requests from January 2025, and budget proposals drawing on up to [redacted] in remaining capital

commitments, including for those companies specifically named in Amendment No. 22 – [redacted], and [redacted], drawing on commitments to the Fund under the LPA; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith.

c. Finding that the Family Office LP has breached the LPA by preemptively refusing to respond to capital calls relating to approved budgets,

d. An order of specific performance requiring the Family Office LP to fund capital calls on the [redacted] Companies identified in the May 15, 2025 email, at an amount to be determined at trial, up to [redacted] in remaining approved budgets

e. Finding that the Family Office LP has breached its Common Law duties to exercise its discretion in approving budgets in a rational and good faith manner, and has waived its right to approve budgets; or, in the alternative, an order of specific performance compelling the Family Office LP to consider reasonable budgets in good faith;

f. Finding the Family Office LP in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner;

g. Entering an order permitting ATP to impose a Default Charge against all of the Family Office LP's interests, or, in the alternative, an order permitting ATP to impose a Default Charge against the Family Office LP's interests in the Pools implicated by its breaches.

h. Entering an order finding that the Family Office LP has waived or otherwise forfeited its voting and budget approval rights and that it "[redacted]" on any further matters arising under the LPA pursuant to Section 18(f) of the LPA;

i. An order enjoining the Family Office LP from interfering with ATP in the exercise of its discretion over the Fund once the Family Office LP is deemed to be a Defaulting Partner;

j. Declaring that ATP's filing of this action on behalf of the Fund is not (i) an act taken in bad faith; (ii) an instance of willful fraud, willful misconduct, or gross negligence; nor (iii) an intentional and material breach of the LPA,

k. Awarding ATP its fees, costs, and expenses under the "loser pays" principles of Cayman Island laws and the Common Law.

/s/ Michael A. Barlow

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DATED: May 30, 2025

EXHIBIT K

AND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2025 ( )

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

WINDING UP PETITION

To the Grand Court

The humble petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP ("**RBI One**")) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP ("**RBI Two**")) shows that:

A. Introduction

1. This is the petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of RBI One) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of RBI Two) (together, the "**Petitioners**"), each with its registered office at 3076 Sir Francis Drake's Highway, PO Box 3463, Road Town, Tortola, British Virgin Islands.

2. The Petitioners present this Petition against (i) ATP Life Science Ventures, L.P. (formerly named Apple Tree Partners IV, L.P.) (the "**Partnership**") and (ii) ATP III GP, Ltd. (the "**GP**") in its capacity as the general partner of the Partnership, for the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Act (2025 Revision) (the "**ELP Act**") and Section 92(e) of the Companies Act (2025 Revision) (the "**Companies Act**"), and/or in the alternative pursuant to section 35 of the Partnership Act (2025 Revision).

This **WINDING UP PETITION** was presented by Campbells LLP, Attorneys for the Petitioners, whose address for service is that of its Attorneys at Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 (ref: PDK/JFI/19135-44991).

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3. The Petition is presented because, as described in detail below, there has been continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP. The GP is a Cayman Islands exempted company with registration number 252582 and its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

4. As a result of the GP's mismanagement and lack of probity, there is a justifiable loss of trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole. In particular:

    a. The GP has issued capital call notices in violation of the LPA seeking to compel the contribution of over USD 100 million in additional capital in excess of maximum subscription commitments and in breach of the terms of the LPA.

    b. The GP has launched proceedings in Delaware seeking to compel the Petitioners to provide vast sums of further funding to the Partnership, in breach of the express provisions of the LPA (defined in paragraph 16 below) whilst simultaneously seeking to apply a penal default charge in order to confiscate 50% of the Petitioners' interest in the Partnership, in order to take control of the Partnership and billions of dollars of the Petitioners' assets.

    c. The GP has also improperly charged its expenses to the portfolio companies and failed to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

    d. The GP also has a conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as it has been acting in the interests of the portfolio companies by exposing the Partnership to open-ended, binding commitments thereto and in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA.

5. In all the circumstances, the substratum of the Partnership has also been lost, and there is a need for independent investigation into the Partnership's affairs.

B. <u>The Partnership</u>

6. The Partnership is a Cayman Islands exempted limited partnership established pursuant to the ELP Act and registered on 29 October 2012. The registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

7. The Partnership was formed following discussions between Dr Seth Harrison ("**Dr Harrison**") and Dr Dmitry Rybolovlev ("**Dr Rybolovlev**") concerning the formation of a vehicle to make investments in the life science industry using capital provided from entities owned by the Rybolovlev family trust (the "**Trust**"). Dr Rybolovlev is a highly successful businessman of Cypriot nationality and settlor of the Trust.

8. Upon the Partnership's formation, its limited partners were Blue Horizon Enterprise Ltd ("**Blue Horizon"**) Ezbon International Ltd ("**Ezbon**") and Dr Harrison. Blue Horizon and Ezbon are special purpose vehicles ultimately owned and controlled by the Trust.

9. The GP is part of a life sciences venture capital firm called Apple Tree Partners ("**ATP**"), which operates out of the United States. Dr Harrison is the founder and managing director of ATP. ATP has no meaningful business interests or capital under management other than that belonging to the Partnership. Apple Tree Life Sciences, Inc. ("**ATLS**") serves as a management company for the Partnership and an annual fee is paid to it in connection with certain Partnership expenses.

10. The Petitioners are limited partners of the Partnership. Unicorn Biotech Ventures One Limited and Unicorn Biotech Ventures Two Limited are the sole general partners of RBI One and RBI Two, respectively. The sole limited partner of both RBI One and RBI Two is Rigmora Holdings Ltd ("**Rigmora Holdings**"). Rigmora Holdings is a holding company for the Trust and also acts as an advisor to the trustees of the Trust.

11. As of June 2025, the contingent subscriptions of the Petitioners total US$2.425 billion (US$1,188,250,000.00 for RBI One and US$1,236,750,000.00 for RBI Two), and the total

capital contributions of the Petitioners are in excess of US$2.6 billion, which represents c. 99% of all capital contributions made to the Partnership.

12. The Petitioners became limited partners of the Partnership as of 30 June 2024 by respectively taking over the limited partner positions of the two former limited partners, Blue Horizon and Ezbon.

13. The Petitioners are the only limited partners of the Partnership not affiliated with the GP. The other limited partners are Dr Harrison and Les Pommes LLC ("**Les Pommes**"). Les Pommes is a discretionary family trust for Dr Harrison's daughters. Ms Anna Batarina (an employee of ATP) is a carry holder and ultimately has an economic interest in the Partnership. The GP has claimed that various other employees of ATP are also limited partners of the Partnership. However, none of those persons are parties to the LPA (as defined below) and none of those individuals have ever contributed any capital to the Partnership. The Petitioners do not accept that they are in fact legitimate limited partners.

14. The Partnership has been built almost exclusively using capital belonging to the Petitioners. As of June 2025, c. 99% of the US$2.7 billion invested into the Partnership was capital contributed by the Petitioners. The remaining US$53.8m of capital has been contributed by Dr Harrison and Les Pommes, funded substantially by way of a loan from Ezbon.[1]

15. The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related companies and business projects.

Structure of the Partnership

16. The limited partners of the Partnership, and the GP are parties to a limited partnership agreement ("**LPA**"), the initial version of which was dated 29 October 2012. The LPA was restated on 1 November 2012 and has been amended a further 22 times since then: on 1 January 2014, 15 August 2014, 1 September 2014, 1 April 2015, 11 May 2015, 31 December

[1] The capital contributed to the Partnership by Dr Harrison was mostly made up of US$52.6m in capital that he had borrowed from Ezbon of which US$24.8 was repaid in cash (out of capital distributed by the Partnership to the GP), and the remaining US$27.8m was repaid by transferring part of his limited partner interests in the Partnership to Ezbon (as recorded in Paragraph 6(c) of Amendment No. 14 of the LPA).

2015, 31 May 2017, 9 August 2017, 22 December 2017, 1 July 2018, 26 October 2018, 1 December 2018, 4 February 2019, 17 April 2019, 10 July 2019, 1 February 2020, 9 September 2020, 5 November 2020, 27 November 2020, 21 June 2021, 5 December 2022 and 20 December 2024. Each of the amendments has been undertaken by way of a separate amendment agreement (each referred to herein as "Amendment X" where X represents the number of the amendment following the execution of the 1 November 2012 restated LPA).

17. Upon incorporation, the Partnership had a conventional fund structure consisting of a single set of assets and liabilities participated in by all limited partners. However, by way of subsequent amendments starting with Amendment 13 (executed on 4 February 2019) the structure of the Partnership was changed to consist of separate investment "pools" each of which "*to the maximum extent possible*" consisted of its own set of assets and liabilities.

18. Prior to the transfer of the limited partner interests in June 2024, Blue Horizon and Ezbon together were the "Subject Limited Partner" under the LPA and the holder of the majority of "Preferred Units" in the Partnership. Following the transfer of the limited partner interests, the Petitioners became the "Subject Limited Partner" and the holder of the majority of "Preferred Units" in the Partnership for the purposes of the LPA.

19. The LPA (as amended) provides, materially:

    a. Paragraph 5(a)(i) provides that each limited partner shall contribute to the Partnership an amount equal to but not in excess of the total amount of its "Contingent Subscription" specified in the "List of Partners". The amount of each limited partner's Contingent Subscription is in turn determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**") (Clause 1(e)).

    b. Paragraph 5(a)(ii) provides that the GP may only call capital for the purposes specified therein unless otherwise approved by holders of a majority of the Preferred Units in writing. In particular, Paragraph5(a)(ii)(E) provides that the GP may only "*invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units*".

c. Paragraph 5(a)(ii) also provides, materially: *"… in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities.*"

d. Schedule C to the LPA (as amended by Amendment 2) provides, materially: "[t]*he General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter* […] *This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs along with at least the following:*

- *Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter* […] *then ended and including explanations of major variances to budget* […]
- *Detailed budget by major Project by quarter* […] *for the next twelve months* […]
- *Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow*.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets".

e. Paragraph 20 (e)(ii) provides that the GP "*shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the '<u>ATLS Fee</u>'). Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year … The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as*

required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee".

f. Amendment 9, section 11 provides: "*ATLS shall pay the following expenses of the Partnership from the ATLS Fee: (i) except as set forth in Section 12, below, all compensation and benefits for employees (except to the extent paid from the Management Fee), (ii) all facilities and related overhead expenses, including rent, utilities, charges assessed by the lessor, property and general liability insurance, and communications, including phone and internet, (iii) office supplies and equipment, information technology support and software, (iv) publications, dues and charitable contributions, (v) public relations, marketing and advertising expenses, (vi) travel and (vii) capital expenditures, including for furniture, fixtures, computers and other equipment, in each case, except as expressly provided in the following sentence*."

20. The Petitioners are the holders of a majority of the "Preferred Units". The GP is therefore required to obtain the Petitioners' approval for any budget for investments in "Projects".

21. The Petitioners' total contingent subscriptions for the purposes of Paragraph 5(a) of the LPA is US$2.425 billion (the "**Contingent Subscriptions**"). In particular:

a. Pursuant to a subscription agreement between Ezbon and the Partnership dated 1 November 2012, Ezbon agreed that the amount of its contingent subscriptions would be US$726,750,000 (the "**Ezbon Subscription Agreement**").

b. Pursuant to a subscription agreement between Blue Horizon and the Partnership dated 1 November 2012, Blue Horizon agreed that the amount of its contingent subscriptions would be US$698,250,000 (the "**Blue Horizon Subscription Agreement**").

c. On 20 September 2020:

i. Ezbon executed an amendment to the Ezbon Subscription Agreement which increased its contingent subscription by US$510,000,000 to US$1,236,750,000; and

ii. Blue Horizon executed any amendment to the Blue Horizon Subscription Agreement which increased its contingent subscription by US$490,000,000 to US$1,188,250,000,

(the "**Subscription Amendments**").

d. Other than the subscription agreements identified above (the "**Subscription Agreements**") no other subscription agreements have been entered into by Ezbon, Blue Horizon or the Petitioners.

22. The Subscription Amendments were executed in the context of an amendment to the LPA executed on or around 9 September 2020 ("**Amendment 17**").

a. Amendment 17 increased the number of "pools" from 2 to 3 (referred to in Amendment 17 as "Pool A", "Pool B" and "Pool C" by inserting paragraph 20(a) into the LPA).

b. Paragraph 20(a) of the LPA envisaged that the Subject Limited Partners would have total contingent subscriptions in excess of those committed to under the Ezbon and Blue Horizon Subscription Agreements.

c. The Subscription Amendments were entered into shortly after Amendment 17 was executed to increase the Subject Limited Partners total contingent subscriptions in the manner contemplated by Paragraph 20(a) of the LPA.

23. By or on around 14 December 2023, the entirety of the Contingent Subscriptions had been paid out pursuant to capital calls made by the GP under Paragraph 5(a)(ii) of the LPA. Since then, neither the Petitioners (nor their predecessors) have been obliged to contribute further capital to the Partnership under Paragraph 5(a) of the LPA.

24. Further capital contributions totalling US$242 million have since been made by the Petitioners (or their predecessors), without any obligation to do so. As noted above, to date the total capital contributed by the Petitioners to the Partnership is in excess of US$2.6 billion, comprising approximately 99% of all capital contributions made to the Partnership.

C. Ground 1: Justifiable and irretrievable loss of trust and confidence

25. The Petitioners have justifiably and irretrievably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

26. The GP has seriously mismanaged the Partnership, acted in a manner calculated to prejudice the Petitioners and demonstrated a lack of probity in the conduct of its affairs by:

    a. Improperly (and in breach of duty) issuing capital calls on 30 May 2025 totalling over US$100 million (the "**May 2025 Capital Calls**"). The May 2025 Capital Calls were not made for proper purposes. They were made for improper purposes of placing commercial pressure on the Petitioners: (a) in circumstances where they are not obliged to make further capital contributions; and (b) in the context of a break-down of the relationship between the Petitioners. Further, the May 2025 Capital Calls were not made bona fide in the best interests of the Partnership as a whole (principally, the Petitioners) but were instead made in the interests of the GP and / or Dr Harrison. The Petitioners have brought separate proceedings in the Grand Court of the Cayman Islands by way of writ dated 2 June 2025 to establish (amongst other things) that they are not obliged to pay the May 2025 Capital Calls.

    b. Issuing the Delaware Proceedings (defined in paragraph 39(b) below), and making numerous unfounded and untruthful allegations therein, in order to take control of the Partnership;

    c. Improperly seeking to impose a penal default charge on the Petitioners. In the Delaware Proceedings the GP alleges it is entitled to take 50% of the Petitioners' interest in the Partnership (the GP estimates the Partnership to be worth approximately US$4 billion) and to reallocate those assets to the other limited partners (i.e. to Dr Harrison and his family trust, Les Pommes). In other words, Dr Harrison, acting via the GP, has commenced proceedings in Delaware in which he

seeks to take billions of dollars of assets from the Petitioners and transfer those assets to himself (in circumstances where he has contributed minimal capital into the Partnership and where the clear wording of the LPA does not entitle him to take such action, see paragraphs 40-41 below).

d. Seeking to compel the Petitioners to make further contributions to the portfolio companies and has sought to make accelerated capital calls and unbudgeted capital calls without complying with its obligations under the LPA. By issuing the Delaware Proceedings the GP is acting in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and is clearly acting out of self-interest, and has not exercised its powers for a proper purpose.

e. Improperly charging its expenses to the portfolio companies held by the Partnership.

f. Failing to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

g. Failing to act in the best interests of the limited partners as a whole by exposing the Partnership to open-ended, binding commitments to the portfolio companies and in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA. In this regard, the GP's decision making (through Dr Harrison (as the controlling mind and will of the GP, and a director of many of the portfolio companies owned by the Partnership)) is infected by a conflict of interest.

<u>Background to loss of trust and confidence</u>

27. As set out above, the Partnership was formed following discussions between Dr Harrison and Dr Rybolovlev to make investments in the life science industry using capital provided from entities owned by the Trust. It was agreed at the outset that the limited partners would have a substantial degree of oversight as to how capital is invested, by their ability to review and elect whether to approve budgets for investments required to be presented by the GP. As also set out above, the GP is part of ATP, which has no meaningful business interests or capital

under management other than that belonging to the Partnership and which was founded and is managed by Dr Harrison.

28. From around 2021, the GP started to improperly charge the employee costs of ATP investment professionals to the Partnership's portfolio companies (see paragraphs 53 to 56 below).

29. In September 2023, following a series of disagreements between the limited partners and the GP, the Petitioners' predecessors, Ezbon and Blue Horizon, made a request to the GP pursuant to their rights under the LPA for the distribution of assets in the "Pool Braeburn" investment pool. The "Pool Braeburn" investment pool is funded solely by capital contributed by the Subject Limited Partner. Upon the formation of "Pool Braeburn" (pursuant to Amendment 20 of the LPA), the Subject Limited Partner was granted a right (under paragraph 21(d) of the LPA) to require the Partnership to distribute the assets within that pool on demand. The Subject Limited Partner subsequently demanded the distribution of assets in Pool Braeburn.

30. The GP improperly refused to comply with this request. In doing so, the GP asserted that it was entitled and bound to retain the Braeburn assets within the Partnership to ensure Ezbon and Blue Horizon would continue contributing capital to the Partnership. That was not a proper basis for the GP to refuse to comply with the distribution request. The GP also claimed that compliance with the distribution request would impact the GP's ability to obtain third party funding, which would in turn impact the financial position of the Partnership. As a consequence of the GP's threats that the financial position of the Partnership would be affected, Ezbon and Blue Horizon agreed not to pursue the distribution request.

31. In July 2024, the Petitioners made another request to the GP under the LPA for the distribution of assets in Pool Braeburn. The GP failed to comply, and the Petitioners issued proceedings in the Grand Court of the Cayman Islands seeking a declaration that the GP must distribute the Braeburn assets in accordance with the distribution request (the "**Braeburn Proceedings**").

32. In those proceedings, the GP claimed that it was unable to distribute the Braeburn assets to the Petitioners including because Braeburn Inc, one of the major assets within Pool Braeburn (and of the Partnership as a whole), had an "internal policy" prohibiting the transfer of ownership of the company from the Partnership to the Petitioners. The GP contended that the "internal policies" of Braeburn Inc included whatever the Braeburn Inc board considered was in Braeburn Inc's best interests to occur. That was not a proper basis for refusing to comply with the distribution request. The GP also contended that such a transfer would also

trigger an event of default under a loan agreement between Braeburn Inc and a third party, which would have a significant knock-on negative impact on the Partnership. At the relevant time, the Partnership was the sole shareholder and Dr Harrison was the chairman of the board of directors of Braeburn Inc. He exercised significant influence over the other directors and members of senior management. It is therefore inconceivable to think that Dr Harrison would not have been involved in implementing the aforesaid arrangements.

33. The parties entered into a settlement agreement in respect of the Braeburn Proceedings on 20 December 2024 (the "**Settlement Agreement**"), which provided, amongst other things, that the GP would use commercially reasonable efforts to remove or mitigate any contractual blocks or economic costs that may inhibit the distribution of the Braeburn assets to the Petitioners Clause 5.1 of the Settlement Agreement:

    a. required the parties to bear their own legal costs and disbursements in respect of the proceedings and the Settlement Agreement, (notwithstanding any provision of the LPA which may provide otherwise); and

    b. expressly provided that the GP would not charge the Partnership or the portfolio companies for its legal costs and disbursements incurred in relation to the proceedings and the Settlement Agreement.

34. However, the relationship between the GP and the Petitioners has since continued to deteriorate substantially to a state of complete breakdown and there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership.

35. The catalyst for this loss of trust and confidence was the GP's behaviour in regards to seven (7) early-stage portfolio companies: (1) Deep Apple Therapeutics, Inc., (2) Apertor Pharmaceuticals, Inc., (3) Evercrisp Biosciences, Inc., (4) Marlinspike Therapeutics, Inc., (5) Red Queen Therapeutics, Inc., (6) Aethon Therapeutics, Inc. and (7) Initial Therapeutics, Inc. (the "**Early-Stage Companies**").

36. Dr Harrison is a director of each of the Early-Stage Companies. The GP has insisted on continuing to invest the Partnership's capital into the Early-Stage Companies even though the Petitioners consider them to be hopeless investments. The GP has also failed to adhere to the

milestones in the agreed budgets for the Early-Stage Companies and is seeking to call capital for these companies in breach of the LPA. Further and in addition, by virtue of the relief he seeks in the Delaware Proceedings, he is seeking capital on an accelerated basis in breach of the LPA.

37. The Petitioners maintain that they are not obliged to fund the Early-Stage Companies:

    a. First, the Partnership's limited partners' capital commitments are determined by the terms of the LPA, such that they are not required to make capital commitments to the Partnership which exceed their Contingent Subscription amount as set out in the Subscription Agreements (see paragraph 21 above). The Contingent Subscription amount is set out in the applicable Subscription Agreement(s). The Petitioners' total Contingent Subscription is US$2.425 billion, and they cannot be *required* to fund above that commitment. The GP's position is that the limited partners' capital commitments to the Partnership can be and have been increased above the Contingent Subscription amount through Amendments 17, 18 and 20 to the LPA. That is wrong. None of those amendment increased the Contingent Subscription amounts.

    b. Second, and in any event, under Paragraph 5(a)(ii) of the LPA, the GP may only invest in projects approved by the Petitioners "*in accordance with a budget therefor approved*" by the Petitioners. The budgets approved by the Petitioners provide for investments to be made into the Early-Stage Companies in certain specified amounts, subject to meeting certain specified milestones. The milestones under those respective budgets have not been met and no further capital commitment has been approved, in writing, by the Petitioners. The GP is also now seeking to call capital on an accelerated basis contrary to what is provided for in the budgets. The GP is not permitted to call for further capital absent written approval by the Petitioners, which the Petitioners have not provided. The GP's position is that the Petitioners have waived or forfeited their right to approve budgets and that, in any event, the GP is entitled to continue calling for capital irrespective of whether the milestones in an agreed budget have been complied with and regardless of whether it is calling capital on an accelerated basis to the budgets. There has however been no such waiver or forfeit and there is no such entitlement on the part of the GP.

38. The ongoing disagreement between the parties regarding budgeting issues resulted in Mr Yuri Bogdanov (CIO of Rigmora Holdings) emailing the GP on 15 May 2025. In that email, the Petitioners reiterated their position that they were not obliged to fund the Early-Stage Companies. In the same email, the Petitioners asked the GP to clarify its position, stating "*if you disagree with the above and consider that [the Petitioners are] obliged to contribute further capital to the Early-Stage Companies then please respond with a detailed explanation of your position. [The Petitioners] of course intend to comply with the requirements of the LPA and will be cooperative if you can demonstrate the LPA allows you to call further capital in regards to the Early-Stage Companies*" (the "**15 May Email**"). The GP did not respond to the 15 May Email, has refused to provide the requested information on the new budgets, and has accelerated capital calls when compared to forecasts sent shortly before issuing the said capital calls.

39. Rather than seek to consensually resolve the issues concerning the Early-Stage Companies and other budget issues that were being discussed between the parties, on 30 May 2025:

    a. The GP issued the May 2025 Capital Calls purportedly requiring the limited partners to contribute US$109,960,926.00 million of capital to the Partnership by 13 June 2025 (save for a capital call made in respect of Replicate which is due on 17 June 2025); and

    b. The GP peremptorily issued a complaint against the Petitioners in the Delaware Court of Chancery seeking specific performance and equitable and declaratory relief in respect of the GP's and the limited partners' rights and obligations in respect of the Partnership (the "**Delaware Complaint**" and the "**Delaware Proceedings**"). The GP did not refer to the May 2025 Capital calls in the Delaware Proceedings.

40. In the Delaware Proceedings, the GP alleges that the 15 May Email amounts to an anticipatory breach of the LPA and/or a repudiation of "*the [Petitioners'] obligation to respond to capital calls*", the GP seeks specific performance to compel the limited partners to contribute up to US$545 million to the Partnership, whilst simultaneously contending that the GP is entitled to apply a default charge to confiscate 50% of the limited partners' interest in the Partnership, block their voting powers and remove their budget approval rights. The GP also seeks to avoid complying with the contractual default process which includes provisions enabling the Petitioners to remedy any such default (i.e. by payment) on the basis that it would be "*futile*" to do so (see paragraph 171 of the Delaware Complaint). In other words, the GP seeks an

order whereby the Petitioners must provide the Partnership with further capital of up to US$545 million (which it is alleged is the Petitioners' total unfunded capital commitment) and nevertheless maintains that it can also issue a default charge against the Petitioners and confiscate billions of dollars of the Petitioners' assets even if they provide the capital sought.

41. As set out further below, the Delaware Complaint and the May 2025 Capital Calls are evidently designed to enable the GP to compel the Petitioners to contribute vast sums of further funding to the portfolio companies whilst engineering a default in order to impose a default charge to confiscate 50% of the Petitioners' interests in the Partnership (in the approximate sum of US$2 billion), which would fall to be redistributed to the remaining limited partners (i.e., Dr Harrison and his family trust) thereby allowing Dr Harrison to take control of the Partnership, notwithstanding the fact that he has contributed less than c. 1% of the Partnership's capital. The GP's intentions are laid bare in paragraph 192 of the Delaware Complaint, which states that the GP seeks an order preventing the Petitioners from "*interfering with [the GP] in the exercise of its discretion over the Fund once [the Petitioners are] deemed to be a Defaulting Partner*".

42. No GP acting reasonably and in good faith in the interests of Partnership would have commenced these proceedings in these circumstances.

43. Moreover, there is no basis for the GP's purported position. The 15 May Email is self-evidently not an anticipatory or repudiatory breach given that it said in terms that the Petitioners will comply with the terms of the LPA if the GP explains why it is entitled to call for further capital under the LPA. For the avoidance of any doubt, the Petitioners do not accept that the LPA entitles the GP to confiscate assets as alleged. The LPA is clear that the default charge enables the GP to reduce the number of preferred units and investor common units of a defaulting partner. Apart from Pool ATP IV, assets are not distributed by reference to the number of units held by a Limited Partner and are instead distributed in accordance with the specific distribution provisions for each pool as set out in the LPA.

<u>Mismanagement / prejudicial conduct / lack of probity in the conduct of the Partnership's affairs</u>

44. The GP has mismanaged the Partnership, acted prejudicially to the interests of the limited partners and demonstrated a serious lack of probity in the conduct of the Partnership's affairs, as detailed below.

The Delaware Proceedings

45. As set out above, rather than seeking to reach a consensual solution with the Petitioners, the GP issued the Delaware Proceedings in an improper attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership.

46. In the Delaware Complaint, the GP has made a number of extremely serious allegations that the Petitioners are concertedly acting to undermine the position of the Early-Stage Companies to enable them to gain personal control over those companies, outside of the Partnership. By way of example, the Delaware Complaint states:

    a. "*…the Defendants' [have engaged in] premeditated financial destruction of* [REDACTED] *Delaware portfolio companies*" (paragraph 1);

    b. "[the Defendants have] *arbitrarily and irrationally refusing to approve new budgets for* [REDACTED] *portfolio companies* [REDACTED*], but whose initial funding has run out*" (paragraph 1);

    c. "*The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve* [REDACTED] *of the financing needed to fund their respective missions*." (paragraph 6);

    d. "*The Family Office LP's stated goal is to drive* [REDACTED] *portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on* [REDACTED] *companies (if any) that they choose…The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments…*" (paragraph 7);

    e. "*Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for* [REDACTED] *companies and negotiate new budgets for* [REDACTED] *companies.*" (paragraph 12);

f. "*These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund*." (paragraph 69);

g. "*…the Family Office LP has capriciously withheld budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing*…" (paragraph 77);

h. "*…the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy* [the Partnership]." (paragraph 121); and

i. "*The* [Partnership] *has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies*." (paragraph 150).

47. These allegations made by the GP in the Delaware Complaint are untruthful and wholly unfounded. The Petitioners have paid out the entirety of their Contingent Subscription so they are not obliged to contribute further capital. Further and in the alternative, the Petitioners, as the holders of the majority of the Preferred Units, are entitled to refuse to invest more of their capital into particular projects if the relevant budgets and associated milestones have not been adhered to. In respect of certain of the Early-Stage Companies, the May 2025 Capital Calls are not in accordance with the approved budgets. The Early-Stage Companies have to date failed to meet any, or sufficient, milestones specified in the investment memoranda attached to the approved budgets and the Petitioners have formed the view that the relevant portfolio companies are not viable investments. It would plainly be illogical and irrational for the Petitioners, as the limited partners of the Partnership with a c. 99% stake in the Partnership's assets, to deliberately seek to "starve" otherwise viable portfolio companies, which have to date been funded exclusively by their capital contributions. Insofar as new budgets are concerned, the Petitioners have sought further information from the GP in order to assess the financial performance and merits of the proposed budgets but the GP has refused to provide the information sought.

48. The Delaware Proceedings and the unfounded, incendiary and wholly inappropriate allegations made therein evidence the GP's serious lack of probity and demonstrate its improper management of the affairs of the Partnership.

49. The Delaware Proceedings have also evidently been brought for an improper purpose, to enable the GP to compel the Petitioners to contribute up to US$545 million of further funding to the Partnership in complete disregard of the provisions of the LPA, such funding being substantially in excess of the Petitioners' Contingent Subscriptions, including US$331.3 million for which the GP has not presented any budget to the Petitioners for approval (let alone obtained such approval) (see paragraph 51 below). The GP simultaneously seeks to engineer a default in order to impose a default charge on the Petitioners to confiscate 50% of their interests in the Partnership and thereby take control of the Partnership and billions of dollars of the Petitioners' assets, which would fall to be redistributed to Dr Harrison and his family. The GP also wishes to remove the Petitioners' right to approve new budgets so as to obtain control without the need for the Petitioners' approval of such budgets.

Wilful and persistent breaches of the LPA

50. In the Delaware Complaint, the GP seeks specific performance to compel the limited partners to immediately fund prior approved but unfunded budgets in response to capital calls as and when they are received (see paragraph 14 of the Delaware Complaint). This amounts to an accelerated capital call, but the GP has wholly failed to comply with the requirements in clause 5(a)(ii) of the LPA (see paragraph 19(c) above) by providing any written assurances and/or diligenced presentation that the relevant project(s) will be completed within the aggregate amount budgeted therefor, and instead seeks to compel the Petitioners to meet accelerated capital calls in the absence of these assurances, by court order.

51. The GP also seeks specific performance to compel the Petitioners to provide further funding of up to US$331.3 million (see paragraph 164 of the Delaware Complaint). No budgets have been provided by the GP or approved by the Petitioners in respect of any such funding (which the GP accepts - see paragraph 5 of the Delaware Complaint). Indeed, the GP has not provided any information to the Petitioners about the intended use of the further funding, merely asserting in the Delaware Complaint that its use is "*including for those companies specifically named in Amendment No. 22 – Ascidian, Aulos, Nine Square, Nereid and Replicate*". This falls far short of the formal budget proposals which are required to be presented to the Petitioners

for approval under the LPA, which budgets serve the further purpose of enabling the Petitioners to ensure that their capital is being applied in a proper manner.

52. However, the GP seeks to circumvent the express provisions of the LPA in the Delaware Proceedings, to compel the Petitioners to provide vast sums of further funding, without specifying what those funds are to be used for and denying the Petitioners any oversight over how their funds are applied, contending that the Petitioners have "waived" or "forfeited" their right to approve budgets. The GP's attempts to obtain funding to be applied entirely at its own discretion without any oversight by the Petitioners demonstrates a serious lack of probity and mismanagement and has caused the Petitioners to lose trust and confidence in the GP's ability to manage the Partnership.

Recharging costs to the portfolio companies

53. Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17), ATLS receives an annual fee (the "**ATLS Fee**") payable during the term of the Partnership which is funded by capital contributions of limited partners holding preferred units. The ATLS Fee is required to be applied towards certain expenses of the Partnership incurred in managing the Partnership, including compensation and benefits for employees, and facilities and related overhead expenses (Section 11 of Amendment 9). Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20), the GP is required to prepare a yearly budget for the ATLS Fee which is presented to the "Subject Limited Partner" (i.e. the Petitioners) no later than 1 December on the previous year. The Petitioners then have sole authority to either approve or reject the ATLS Fee budget. In the event a budget for the ATLS Fee is not approved in a calendar year, the approved budget for such year will be the most recently approved budget (subject to some exceptions in relation to extraordinary, non-recurring expenses).

54. However, since 2021, the GP has improperly charged the employee costs of ATP investment professionals to the Partnership's portfolio companies, which costs ought to be covered by the ATLS Fee approved by the Petitioners. In particular:

    a. The Partnership's consolidated financial statements for the years ended 2023 and 2024 show that the Partnership's expenses exceeded the capital calls paid by the limited partners. To fund the gap between Partnership's expenses and capital calls

paid (principally by the Petitioners), the GP received investment income, comprising: (i) interest income; and (ii) service revenue from affiliated entities.

b. The Petitioners understand that the revenue in (ii) above comprises support service costs illegitimately charged to portfolio companies in breach of the LPA.[2]

c. Dr Harrison confirmed by email dated 8 December 2023 that "*ATP employees [are] filling critical roles at certain Portfolio Companies*" and "*those Portfolio Companies* [are] *reimbursing ATP for a portion of the employment costs incurred for those employees*". Dr Harrison also provided the Petitioners with a report from Price Waterhouse and Cooper dated 17 March 2023 (the "**PwC Report**") which confirmed that ATLS had entered into a services arrangement with the portfolio companies for the purposes of charging the portfolio companies costs associated with the provision of management and scientific research and advisory services.[3]

d. Further, the proposed, unapproved ATLS Fee budgets prepared by the GP for 2021 through 2025 included a credit for "*Investment Professionals – Portfolio Reimbursement*".

e. In December 2023, the Petitioners raised with Dr Harrison that the proposed ATLS Fee budgets for 2024 purported to assign costs which ought properly to be covered by the ATLS Fee, in breach of the LPA. Dr Harrison responded, stating that he disagreed but provided no reasons. The budget for the 2024 ATLS Fee was not agreed.

f. The GP's charging of ATP employee costs to the Partnership's portfolio companies is a breach of Paragraph 20(e)(ii) of the LPA (as amended by Amendments 10 and 17) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17). Further or in the alternative, the GP's recharging of expenses to the Partnership's portfolio

[2] "Service revenue from affiliated entities" is described in the notes to the Partnership's consolidated financial statements as "*ATLS, ATLS (UK), and ATPR provide administrative, technical and strategic consulting services to other entities within the Partnership group and the Partnership's portfolio companies. Revenue from services provided to the entities within the consolidated group are eliminated upon consolidation. Services provided may include internal costs, such as employee expenses and certain overhead expenses, and external costs incurred from third party providers.*"

[3] For the avoidance of doubt, the PwC Report was a transfer pricing study, which estimated an arm's length range of returns applicable to the provision of certain support services by ATLS to the Partnership's portfolio companies. The PwC Report did not concern whether the assignment of such costs to the Partnership's portfolio companies was permissible under terms of the LPA.

companies is a breach of Paragraph 8 of the LPA (as amended), as it deprives the Petitioners of income they would have received via the distribution mechanisms in the LPA.

55. The Petitioners are also concerned that the GP has been inappropriately incurring travel expenses for investment professionals which appear to be exorbitant. In particular, the ATLS Fee Budgets for 2024 and 2025 respectively budget for travel for investment professionals at US$690,000 for 2024 and US$625,000 for 2025.

56. The GP's recharging of expenses to the Partnership's portfolio companies, and charging exorbitant travel expenses, demonstrates a serious lack of probity and mismanagement. The charging of expenses to the portfolio companies also gives rise to a serious conflict of interest (see further below), which has resulted in the Petitioners' loss of trust and confidence in the GP.

Failure to provide information

57. The GP has failed or refused to provide the Petitioners with information about the operation of the Partnership that would otherwise enable the Petitioners to assess the financial position of the clinical stage companies in order to determine whether new budgets ought to be approved, and to determine whether those managing the Partnership are acting in accordance with their duties. In particular:

    a. The GP refused to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Aulos Bioscience Inc. and Ascidian Therapeutics Inc.

    b. The GP refused or failed to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Replicate Bioscience, Inc. ("**Replicate**"), which is developing self-replicating RNA immunotherapies. The GP is not entitled to call for capital in respect of Replicate because it has not complied with the various conditions that must be met before capital can be called under the current budget. Paragraph 26 of the LPA (introduced by Amendment 22) provides that any budget approved by the Petitioners for Replicate after the execution of Amendment 22 will be contingent upon certain realisations being achieved (through deemed

distributions) by the Petitioners on a sale or financing of its interest in the entity formerly known as ATP Life Science Sub LLC , now known as BBN Life Science Sub LLC, (the "**Royalty Refinancing**"). Such realisations have not been realised (including through deemed distributions) by the Petitioners. Despite this, the GP now contends and seeks an order from the Delaware Court confirming that the Petitioners have waived or forfeited their right to approve budgets (see paragraphs 23, 163 and 191 of the Delaware Complaint), in a further and altogether more ambitious attempt to deny the Petitioners access to information about the financial position of the portfolio companies. Separately, the GP contends that Paragraph 26 of the LPA (as amended by Amendment 22) required the Petitioners to pursue Royalty Financing in short order (see paragraph 122 of the Delaware Complaint).

c. The GP refused or failed to provide supporting information or an explanation as to why the capital call notice issued on 7 February 2025 in respect of uncalled Partnership expenses for the second half of 2024 was reduced from the previous call (and it falls to be inferred that the reduction was because the GP's legal expenses had been improperly charged to the Partnership – see further paragraph 65 below).

d. The GP has also failed to provide any further information about legal expenses charged to the Partnership in 2024 (see further paragraph 65 below).

e. The GP has failed to respond to requests for information regarding the purportedly binding nature of obligations purportedly owed by limited partners in their personal capacity to third parties, and of obligations owed by the Partnership to the portfolio companies (see further paragraph 63 below). The GP has also failed to provide copies of documentation evidencing such obligations, including the investment management agreements entered into between the Partnership and the portfolio companies.

f. The GP has failed or refused to respond to requests for information about the basis on which it contends that the limited partners are required to continue to fund the portfolio companies, notwithstanding those companies' failure to hit milestones or adhere to business plans set out in the agreed budgets. Rather than provide this information, the GP instead seeks to rely on the Petitioners' requests as an anticipatory breach of the LPA in the Delaware Complaint (see paragraph 170 of the Delaware Complaint).

58. The Petitioners have at all material times been entitled to information which enables them to determine whether the GP is acting in accordance with its duties and obligations, including the books, records, accounts and assets of the Partnership (see Clause 16(b)-(c) of the LPA, and section 22 of the ELP Act). The Petitioners are also entitled to receive (and the GP is obliged to provide) financial reports at least every calendar quarter in respect of all entities within the Partnership structure, which must include individual project income, expenses and operating costs, and must show actual versus budgeted results for the relevant period and explain any major variances to the budget (see Schedule C to the LPA). The GP has not only denied the Petitioners their rights to this information but seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings. Even the limited information provided by the GP to the Petitioners confirms that the GP has committed serious breaches of duty which has resulted in the Petitioners' loss of trust and confidence in the GP.

<u>Conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership</u>

59. The GP has a conflict of interest and/or has breached its fiduciary duties to act in good faith in the interests of the Partnership.

Improperly issuing capital calls

60. The GP's issuance of capital calls of over US$100 million on 30 May 2025 to be paid by 13 June 2025/17 June 2025 (i.e. the May 2025 Capital Calls - which are not referenced in the Delaware Proceedings) amounts to a further breach of the GP's duty to act in good faith in the interests of the Partnership. The May 2025 Capital Calls were not issued for proper purposes or *intra vires* under the LPA, as it is evident from the timing of the capital calls, coinciding with the issue of the Delaware Complaint, that the capital calls are part of the GP's litigation strategy to apply improper pressure to the Petitioners through threats of default and/or its broader strategy to take control of the Partnership. The scale and nature of the May 2025 Capital Calls is also inconsistent with the funding scenario prepared by the GP on 30 April 2025 in which the GP proposed to cut the budgets for the Early-Stage Companies so as to commit only $1 million to one Early-Stage Company (Red Queen) as part of an orderly winding down of those companies. It can be inferred that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying significant capital given the terms of that

funding proposal. Notwithstanding, the GP has called $47.8 million in capital for Early-Stage Companies pursuant to the May 2025 Capital Calls.

Attempt to compel the limited partners to provide further funding to the portfolio companies

61. As set out above, the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership. In particular, the GP seeks in the Delaware Complaint, amongst other things, "*a declaratory judgment that [the Petitioners are] currently in material breach of [their] contractual duties under the LPA and [have] waived [their] right to approve budgets*" (paragraph 163) or alternatively, specific performance requiring the Petitioners to fund capital calls in excess of the level of their Contingent Subscription and compelling the Petitioners to consider further budgets (paragraph 164). The GP also seeks a declaratory judgment that the Petitioners are in breach of their funding and budget approval obligations, and an order that the GP is entitled to impose a default charge against the Petitioners' interests in the Partnership or the investment pools to which its purported default relates (paragraphs 188-190).

62. The Petitioners' continued funding of the portfolio companies is in the interests of the GP and its employees, and ATP (not the Partnership's). The portfolio companies are co-founded and managed by executives from the GP, including by Dr Harrison himself, (see paragraph 32 of the Delaware Complaint) who would remain employed thereby, and the GP would be able to continue charging the portfolio companies for expenses which ought to be covered by the ATLS Fee. ATP, of which Dr Harrison is founder and Managing Director, is also wholly dependent on the continued funding of the Partnership (and ATP's continued involvement therein) as ATP has no meaningful business interests or capital under management other than that belonging to the Partnership, which has been almost entirely contributed by the Petitioners. The GP has a demonstrable conflict of interest, as a result of which the Petitioners have lost trust and confidence in its ability to manage the Partnership.

Exposure of the Partnership to binding and open-ended funding commitments to loss-making portfolio companies

63. The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the Delaware Complaint says as follows:

    a. The Complaint refers at paragraph 85 to a letter sent by Dr Harrison to the Petitioners on 29 November 2022 in which he stated that: "*a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages*"; and

    b. The Complaint states at paragraph 143:

    "*The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it,* ***because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) obligations for ATP to purchase additional shares at the request of the company board. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones.*** *For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company* [REDACTED] *on December 6, 2021 included (a) an initial* [REDACTED] *investment by ATP and (b) an obligation for ATP to purchase up to* [REDACTED] *in additional shares at the request of the* [REDACTED] *board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as* [REDACTED] *in* [REDACTED]*. To date, ATP has invested* [REDACTED] *in* [REDACTED]*, which is short of ATP's total potential obligation to the company under the agreement.* ***Should the additional funding obligations become due, then the Family Office LP's refusal to meet a*** [REDACTED] ***capital call would cause ATP to breach its agreement with the portfolio company***." (emphasis added)

64. As set out above, the continued funding of the portfolio companies is in the interests of the GP (and ATP), not the Partnership and the limited partners. The GP has also failed to provide information to the Petitioners about the Partnership's purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners' requests that it do so (see paragraph 57 above). The GP's apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims and is a fetter of the Petitioners' discretion to approve budgets, and the GP's subsequent lack of probity has justifiably caused the Petitioner to lose trust and confidence in the GP.

Charging personal legal expenses to the Partnership

65. The petitioners are also concerned that the GP's personal legal expenses have been charged to the Partnership, which also comprises a breach of the Settlement Agreement. This falls to be inferred from the following matters:

a. The expense report exhibited to the GP's December 2024 capital call notice dated 12 December 2024 included a line item for "Legal Expenses for Partnership". Mr Bogdanov queried these expenses in an email to Dr Harrison dated 23 December 2024, saying "[o]*ne item, '**Legal Expenses for Partnership**,' stands out as significantly higher compared to previous years (USD 1.9 million versus USD 0.56 million in H2 2023)*".

b. On 20 December 2024, Patrik Blochlinger, the Chief Legal Officer of Rigmora Holdings, emailed Daniel Finkelman (the General Counsel of Apple Tree Partners) to request details of the legal expenses, stating that he believed the GP's legal expenses of the Braeburn Proceedings had erroneously been charged to the Partnership.

c. Mr Finkelman responded on 23 December 2024, stating that the invoices had been reviewed, and that the GP had discovered that one invoice in the amount of US$30,692.50 was inadvertently paid by the Partnership when it should have been allocated to the GP. Mr Finkelman noted that this had been corrected and a revised capital call for fund expenses was issued. Mr Finkelman noted, however, that the GP wished to discuss with the Petitioners the "*allocation*" of various expenses incurred by the GP in relation to the Braeburn Proceedings.

d. Several further requests were made for and on behalf of the Petitioners for an explanation as to the Partnership's significantly higher legal expenses in 2024, together with supporting invoices and narratives from the relevant law firms.

e. Dr Harrison confirmed on 29 December 2024 that the GP would review the relevant expenses. However, the GP has refused to provide the Petitioners with underlying invoices and narratives on grounds of privilege. The GP agreed to reduce some legal expenses. Nevertheless, the Petitioners consider the legal expenses to be excessive. It falls to be inferred that the invoices and narratives concern legal expenses incurred

by the GP in relation to the Braeburn Proceedings, which expenses cannot be charged to the Partnership. The GP's lack of probity and conflict of interest has resulted in the Petitioners' loss of trust and confidence in the GP.

f. The expense report exhibited to one of the GP's May 2025 Capital Calls indicates that "Legal Expenses for Partnership" for January – May 2025 are US$7.86 million. These legal expenses are significantly higher than in prior periods and the Petitioners infer that the GP has sought to include legal costs in connection with the Delaware Proceedings and/or any other anticipated litigation costs in connection with the dispute between the GP and the Petitioners.

D. <u>Ground 2: Loss of substratum</u>

66. Given the GP's stated intention to pursue an investment strategy which involves the continued funding of the portfolio companies against the wishes and to the detriment of the Petitioners and without complying with the express provisions of the LPA to obtain limited partners' approval for budgets for investments, and the GP's evident intention to confiscate 50% of the Petitioners' interests in the Partnership and take control thereof, the substratum of the Partnership has been lost. The Partnership is no longer being run in accordance with the reasonable expectations of the limited partners or in accordance with the LPA.

E. <u>Ground 3: Need for an independent investigation into the Partnership's affairs</u>

67. For all of the reasons set out in Ground 1, there is evidently a need for a proper, independent investigation into the Partnership's affairs.

Conclusion

68. For the reasons set out above, it is respectfully submitted that it is just and equitable that the Partnership be wound up.

Nomination of Joint Official Liquidators

69. The Petitioners nominate **Mr Alexander Lawson** and **Mr Barry Lynch** of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George

Town, Grand Cayman KY1-1104, Cayman Islands for appointment as joint official liquidators of the Partnership.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The Partnership be wound up pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act, and/or pursuant to section 35 of the Partnership Act (2025 Revision).

2. Mr Alexander Lawson and Mr Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Joint Official Liquidators of the Partnership (the "**JOLs**") with such powers as the Court deems necessary for the orderly winding up of the Partnership.

3. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP shall vest in the JOLs without the requirement for further formalities and shall be held by the JOLs in accordance with the law.

4. The JOLs' powers are exercisable to the exclusion of the GP and the GP shall forthwith have no authority or power to act in relation to the Partnership or its property or affairs other than at the direction of and/or with the written consent of the JOLs.

5. The JOLs shall have leave to apply under section 36(3)(g) of the ELP Act for further orders and directions.

6. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.

7. Such further or other relief as this Honourable Court deems fit.

Dated this 6th day of June 2025

Campbells LLP

Campbells LLP
Attorneys-at-Law for the Petitioners

NOTE: This Petition is intended to be served on the Partnership and the GP at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on at am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

EXHIBIT L

ND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 151 OF 2025 (JAJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

AMENDED WINDING UP PETITION

To the Grand Court

The humble petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP ("**RBI One**")) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP ("**RBI Two**")) shows that:

A. Introduction

1. This is the amended petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of RBI One) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of RBI Two) (together, the "**Petitioners**"), each with its registered office at 3076 Sir Francis Drake's Highway, PO Box 3463, Road Town, Tortola, British Virgin Islands.

2. The Petitioners present this Petition against (i) ATP Life Science Ventures, L.P. (formerly named Apple Tree Partners IV, L.P.) (the "**Partnership**") and (ii) ATP III GP, Ltd. (the "**GP**") in its capacity as the general partner of the Partnership, for the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Act (2025 Revision) (the "**ELP Act**") and Section 92(e) of the Companies Act (2025 Revision) (the "**Companies Act**"), and/or in the alternative pursuant to section 35 of the Partnership Act (2025 Revision).

This **WINDING UP PETITION** was presented by Campbells LLP, Attorneys for the Petitioners, whose address for service is that of its Attorneys at Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 (ref: PDK/JFI/19135-44991).

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3. The Petition is presented because, as described in detail below, there has been continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP. The GP is a Cayman Islands exempted company with registration number 252582 and its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

4. As a result of the GP's mismanagement and lack of probity, there is a justifiable loss of trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole. In particular:

   a. The GP has issued capital call notices on 30 May 2025 and 1 June 2025 (the "**Disputed Capital Calls**") in violation of the LPA seeking to compel the contribution of over USD 100 million in additional capital in excess of maximum subscription commitments ~~and~~ in breach of the terms of the LPA, and in breach of its fiduciary duties to act in the interests of the Partnership as a whole.

   b. The GP ~~has~~ launched proceedings in Delaware (the "**Delaware Proceedings**") seeking to compel the Petitioners to provide vast sums of further funding to the Partnership, in breach of the express provisions of the LPA (defined in paragraph 16 below) whilst simultaneously seeking to apply a penal default charge in order to confiscate 50% of the Petitioners' interest in the Partnership, in order to take control of the Partnership and billions of dollars of the Petitioners' assets.

   b1. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

   b2. The GP has misappropriated and dissipated Partnership assets.

   b3. The GP has made improper denials regarding the breakdown in the relationship between it and the Petitioners.

   b.4 The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list

of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

c. The GP has also improperly charged its expenses to the portfolio companies and failed to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

d. The GP also has a conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as it has been acting in the interests of the portfolio companies and / or in its own interests and / or for the improper purpose of placing pressure on the Petitioners ~~by exposing the Partnership to open-ended, binding commitments thereto and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA.

5. In all the circumstances, the substratum of the Partnership has also been lost, and there is a need for independent investigation into the Partnership's affairs.

B. The Partnership

6. The Partnership is a Cayman Islands exempted limited partnership established pursuant to the ELP Act and registered on 29 October 2012. The registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

7. The Partnership was formed following discussions between Dr Seth Harrison ("**Dr Harrison**") and Dr Dmitry Rybolovlev ("**Dr Rybolovlev**") concerning the formation of a vehicle to make investments in the life science industry using capital provided from entities owned by the Rybolovlev family trust (the "**Trust**"). Dr Rybolovlev is a highly successful businessman of Cypriot nationality and settlor of the Trust.

8. Upon the Partnership's formation, its limited partners were Blue Horizon Enterprise Ltd ("**Blue Horizon"**) Ezbon International Ltd ("**Ezbon**") and Dr Harrison. Blue Horizon and Ezbon are special purpose vehicles ultimately owned and controlled by the Trust.

9. The GP is part of a life sciences venture capital firm called Apple Tree Partners ("**ATP**"), which operates out of the United States. Dr Harrison is the founder and managing director of ATP. ATP has no meaningful business interests or capital under management other than that belonging to the Partnership. Apple Tree Life Sciences, Inc. ("**ATLS**") serves as a management company for the Partnership and an annual fee is paid to it in connection with certain Partnership expenses. ATLS is a wholly-owned subsidiary of the Partnership.

10. The Petitioners are limited partners of the Partnership. Unicorn Biotech Ventures One Limited and Unicorn Biotech Ventures Two Limited are the sole general partners of RBI One and RBI Two, respectively. The sole limited partner of both RBI One and RBI Two is Rigmora Holdings Ltd ("**Rigmora Holdings**"). Rigmora Holdings is a holding company for the Trust and also acts as an advisor to the trustees of the Trust.

11. As of June 2025, the contingent subscriptions of the Petitioners total US$2.425 billion (US$1,188,250,000.00 for RBI One and US$1,236,750,000.00 for RBI Two), and the total capital contributions of the Petitioners are in excess of US$2.6 billion, which represents c. 9~~98~~% of all capital contributions made to the Partnership.

12. The Petitioners became limited partners of the Partnership as of 30 June 2024 by respectively taking over the limited partner positions of the two former limited partners, Blue Horizon and Ezbon.

13. ~~The Petitioners are the only limited partners of the Partnership not affiliated with the GP.~~ The other limited partners are Dr Harrison and Les Pommes LLC ("**Les Pommes**") and 12 former or present employees of ATLS. Les Pommes is a discretionary family trust for Dr Harrison's daughters. ~~Ms Anna Batarina (an employee of ATP) is a carry holder and ultimately has an economic interest in the Partnership. The GP has claimed that various other employees of ATP are also limited partners of the Partnership. However, none of those persons are parties to the LPA (as defined below) and none of those individuals have ever contributed any capital to the Partnership. The Petitioners do not accept that they are in fact legitimate limited partners.~~

14. The Partnership has been built almost exclusively using capital belonging to the Petitioners. As of June 2025, c. 9~~8~~% of the US$2.7 billion invested into the Partnership was capital contributed by the Petitioners. The remaining US$53.8m of capital has been contributed by Dr Harrison and Les Pommes, funded substantially by way of a loan from Ezbon.[1] No other limited partner has contributed any capital to the Partnership.

15. The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related companies and business projects.

Structure of the Partnership

16. The limited partners of the Partnership, and the GP are parties to a limited partnership agreement ("**LPA**"), the initial version of which was dated 29 October 2012. The LPA was restated on 1 November 2012 and has been amended a further 22 times since then: on 1 January 2014, 15 August 2014, 1 September 2014, 1 April 2015, 11 May 2015, 31 December 2015, 31 May 2017, 9 August 2017, 22 December 2017, 1 July 2018, 26 October 2018, 1 December 2018, 4 February 2019, 17 April 2019, 10 July 2019, 1 February 2020, 9 September 2020, 5 November 2020, 27 November 2020, 21 June 2021, 5 December 2022 and 20 December 2024. Each of the amendments has been undertaken by way of a separate amendment agreement (each referred to herein as "Amendment X" where X represents the number of the amendment following the execution of the 1 November 2012 restated LPA).

17. Upon incorporation, the Partnership had a conventional fund structure consisting of a single set of assets and liabilities participated in by all limited partners. However, by way of subsequent amendments starting with Amendment 13 (executed on 4 February 2019) the structure of the Partnership was changed to consist of separate investment "pools" each of which "*to the maximum extent possible*" consisted of its own set of assets and liabilities.

18. Prior to the transfer of the limited partner interests in June 2024, Blue Horizon and Ezbon together were the "Subject Limited Partner" under the LPA and the holder of the majority of

[1] The capital contributed to the Partnership by Dr Harrison was mostly made up of US$52.6m in capital that he had borrowed from Ezbon of which US$24.8 was repaid in cash (out of capital distributed by the Partnership to the GP), and the remaining US$27.8m was repaid by transferring part of his limited partner interests in the Partnership to Ezbon (as recorded in Paragraph 6(c) of Amendment No. 14 of the LPA).

"Preferred Units" in the Partnership. Following the transfer of the limited partner interests, the Petitioners became the "Subject Limited Partner" and the holder of the majority of "Preferred Units" in the Partnership for the purposes of the LPA.

19. The LPA (as amended) provides, materially:

a. Paragraph 5(a)(i) provides that each limited partner shall contribute to the Partnership an amount equal to but not in excess of the total amount of its "Contingent Subscription" specified in the "List of Partners". The amount of each limited partner's Contingent Subscription is in turn determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**") (Clause 1(e)).

b. Paragraph 5(a)(ii) provides that the GP may only call capital for the purposes specified therein unless otherwise approved by holders of a majority of the Preferred Units in writing. In particular, Paragraph 5(a)(ii)(E) provides that the GP may only "*invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units*".

c. Paragraph 5(a)(ii) also provides, materially: *"… in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities.*"

d. Schedule C to the LPA (as amended by Amendment 2) provides, materially: "[t]*he General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter* […] *This financial report will cover all entities within the*

Partnership structure, and will include Project income and expenses and operating costs along with at least the following:

- *Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter* […] *then ended and including explanations of major variances to budget* […]
- *Detailed budget by major Project by quarter* […] *for the next twelve months* […]
- *Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow*.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets".

e. Paragraph 20 (e)(ii) provides that the GP "*shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the 'ATLS Fee'). Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year … The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee*".

f. Amendment 9, section 11 provides: "*ATLS shall pay the following expenses of the Partnership from the ATLS Fee: (i) except as set forth in Section 12, below, all compensation and benefits for employees (except to the extent paid from the Management Fee), (ii) all facilities and related overhead expenses, including rent, utilities, charges assessed by the lessor, property and general liability insurance, and communications, including phone and internet, (iii) office supplies and equipment, information technology support and software, (iv) publications, dues and charitable contributions, (v) public relations, marketing and advertising expenses, (vi) travel and*

(vii) capital expenditures, including for furniture, fixtures, computers and other equipment, in each case, except as expressly provided in the following sentence."

20. The Petitioners are the holders of a majority of the "Preferred Units". The GP is therefore required to obtain the Petitioners' approval for any budget for investments in "Projects".

21. The Petitioners' total contingent subscriptions for the purposes of Paragraph 5(a) of the LPA is US$2.425 billion (the "**Contingent Subscriptions**"). In particular:

    a. Pursuant to a subscription agreement between Ezbon and the Partnership dated 1 November 2012, Ezbon agreed that the amount of its contingent subscriptions would be US$726,750,000 (the "**Ezbon Subscription Agreement**").

    b. Pursuant to a subscription agreement between Blue Horizon and the Partnership dated 1 November 2012, Blue Horizon agreed that the amount of its contingent subscriptions would be US$698,250,000 (the "**Blue Horizon Subscription Agreement**").

    c. On 20 September 2020:

        i. Ezbon executed an amendment to the Ezbon Subscription Agreement which increased its contingent subscription by US$510,000,000 to US$1,236,750,000; and

        ii. Blue Horizon executed any amendment to the Blue Horizon Subscription Agreement which increased its contingent subscription by US$490,000,000 to US$1,188,250,000,

        (the "**Subscription Amendments**").

    d. Other than the subscription agreements identified above (the "**Subscription Agreements**") no other subscription agreements have been entered into by Ezbon, Blue Horizon or the Petitioners.

22. The Subscription Amendments were executed in the context of an amendment to the LPA executed on or around 9 September 2020 ("**Amendment 17**").

    a. Amendment 17 increased the number of "pools" from 2 to 3 (referred to in Amendment 17 as "Pool A", "Pool B" and "Pool C" by inserting paragraph 20(a) into the LPA).

    b. Paragraph 20(a) of the LPA envisaged that the Subject Limited Partners would have total contingent subscriptions in excess of those committed to under the Ezbon and Blue Horizon Subscription Agreements.

    c. The Subscription Amendments were entered into shortly after Amendment 17 was executed to increase the Subject Limited Partners total contingent subscriptions in the manner contemplated by Paragraph 20(a) of the LPA.

23. By or on around 14 December 2023, the entirety of the Contingent Subscriptions had been paid out pursuant to capital calls made by the GP under Paragraph 5(a)(ii) of the LPA. Since then, neither the Petitioners (nor their predecessors) have been obliged to contribute further capital to the Partnership under Paragraph 5(a) of the LPA.

24. Further capital contributions totalling US$242 million have since been made by the Petitioners (or their predecessors), without any obligation to do so. As noted above, to date the total capital contributed by the Petitioners to the Partnership is in excess of US$2.6 billion, comprising approximately 9~~98~~% of all capital contributions made to the Partnership.

C. Ground 1: Justifiable and irretrievable loss of trust and confidence

25. The Petitioners have justifiably and irretrievably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

26. The GP has seriously mismanaged the Partnership, acted in a manner calculated to prejudice the Petitioners and demonstrated a lack of probity in the conduct of its affairs by:

    a. Improperly (and in breach of duty) issuing ~~capital calls on 30 May 2025~~ the Disputed Capital Calls totalling over US$100 million ~~(the "**May 2025 Capital Calls**")~~. The ~~May 2025~~ Disputed Capital Calls were not made for proper purposes. They were made for

improper purposes of placing commercial pressure on the Petitioners: (a) in circumstances where they are not obliged to make further capital contributions; and (b) in the context of a break-down of the relationship between the Petitioners. Further, the ~~May 2025~~ Disputed Capital Calls were not made bona fide in the best interests of the Partnership as a whole (principally, the Petitioners) but were instead made in the interests of the GP and / or Dr Harrison and / or the portfolio companies. The Petitioners have brought separate proceedings in the Grand Court of the Cayman Islands by way of writ dated 2 June 2025 to establish (amongst other things) that they are not obliged to pay the ~~May 2025~~ Disputed Capital Calls (the "**Writ Proceedings**").

b. Issuing the Delaware Proceedings ~~(defined in paragraph 39(b) below)~~, and making numerous unfounded and untruthful allegations therein, in order to take control of the Partnership;

c. Improperly seeking to impose a penal default charge on the Petitioners. In the Delaware Proceedings the GP alleged~~s~~ that it was ~~it is~~ entitled to take 50% of the Petitioners' interest in the Partnership (the GP estimates the Partnership to be worth approximately US$4 billion) and to reallocate those assets to the other ~~limited partners~~ holders of "preferred units" (i.e. to Dr Harrison and his family trust, Les Pommes). In other words, Dr Harrison, acting via the GP, ~~has~~ commenced proceedings in Delaware in which he sought ~~seeks~~ to take billions of dollars of assets from the Petitioners and transfer those assets to himself (in circumstances where he has contributed minimal capital into the Partnership and where the clear wording of the LPA does not entitle him to take such action, see paragraphs 40-41 below).

d. Seeking to compel the Petitioners to make further contributions to the portfolio companies and has sought to make accelerated capital calls and unbudgeted capital calls without complying with its obligations under the LPA. By issuing the Delaware Proceedings the GP is acting in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and is clearly acting out of self-interest, and has not exercised its powers for a proper purpose.

d1. Knowingly misleading the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

d2. Misappropriating and dissipating Partnership assets.

d3. Making improper denials regarding the breakdown in the relationship between it and the Petitioners.

d4. Failing to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

e. Improperly charging its expenses to the portfolio companies held by the Partnership.

f. Failing to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

g. Failing to act in the best interests of the limited partners as a ~~whole by exposing the Partnership to open-ended, binding commitments to the portfolio companies and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA. In this regard, the GP's decision making (through Dr Harrison (as the controlling mind and will of the GP, and a director of many of the portfolio companies owned by the Partnership)) is infected by a conflict of interest.

Background to loss of trust and confidence

27. As set out above, the Partnership was formed following discussions between Dr Harrison and Dr Rybolovlev to make investments in the life science industry using capital provided from entities owned by the Trust. It was agreed at the outset that the limited partners would have a substantial degree of oversight as to how capital is invested, by their ability to review and elect whether to approve budgets for investments required to be presented by the GP. As also set out above, the GP is part of ATP, which has no meaningful business interests or capital

under management other than that belonging to the Partnership and which was founded and is managed by Dr Harrison.

28. From around 2021, the GP started to improperly charge the employee costs of ATP investment professionals to the Partnership's portfolio companies (see paragraphs 53 to 56 below).

29. In September 2023, following a series of disagreements between the limited partners and the GP, the Petitioners' predecessors, Ezbon and Blue Horizon, made a request to the GP pursuant to their rights under the LPA for the distribution of assets in the "Pool Braeburn" investment pool. The "Pool Braeburn" investment pool is funded solely by capital contributed by the Subject Limited Partner. Upon the formation of "Pool Braeburn" (pursuant to Amendment 20 of the LPA), the Subject Limited Partner was granted a right (under paragraph 21(d) of the LPA) to require the Partnership to distribute the assets within that pool on demand. The Subject Limited Partner subsequently demanded the distribution of assets in Pool Braeburn.

30. The GP improperly refused to comply with this request. In doing so, the GP asserted that it was entitled and bound to retain the Braeburn assets within the Partnership to ensure Ezbon and Blue Horizon would continue contributing capital to the Partnership. That was not a proper basis for the GP to refuse to comply with the distribution request. The GP also claimed that compliance with the distribution request would impact the GP's ability to obtain third party funding, which would in turn impact the financial position of the Partnership. As a consequence of the GP's threats that the financial position of the Partnership would be affected, Ezbon and Blue Horizon agreed not to pursue the distribution request.

31. In July 2024, the Petitioners made another request to the GP under the LPA for the distribution of assets in Pool Braeburn. The GP failed to comply, and the Petitioners issued proceedings in the Grand Court of the Cayman Islands seeking a declaration that the GP must distribute the Braeburn assets in accordance with the distribution request (the "**Braeburn Proceedings**").

32. In those proceedings, the GP claimed that it was unable to distribute the Braeburn assets to the Petitioners including because Braeburn Inc, one of the major assets within Pool Braeburn (and of the Partnership as a whole), had an "internal policy" prohibiting the transfer of ownership of the company from the Partnership to the Petitioners. The GP contended that the "internal policies" of Braeburn Inc included whatever the Braeburn Inc board considered was in Braeburn Inc's best interests to occur. That was not a proper basis for refusing to comply with the distribution request. The GP also contended that such a transfer would also

trigger an event of default under a loan agreement between Braeburn Inc and a third party, which would have a significant knock-on negative impact on the Partnership. At the relevant time, the Partnership was the sole shareholder and Dr Harrison was the chairman of the board of directors of Braeburn Inc. He exercised significant influence over the other directors and members of senior management. It is therefore inconceivable to think that Dr Harrison would not have been involved in implementing the aforesaid arrangements.

33. The parties entered into a settlement agreement in respect of the Braeburn Proceedings on 20 December 2024 (the "**Settlement Agreement**"), which provided, amongst other things, that the GP would use commercially reasonable efforts to remove or mitigate any contractual blocks or economic costs that may inhibit the distribution of the Braeburn assets to the Petitioners. Clause 5.1 of the Settlement Agreement:

    a. required the parties to bear their own legal costs and disbursements in respect of the proceedings and the Settlement Agreement, (notwithstanding any provision of the LPA which may provide otherwise); and

    b. expressly provided that the GP would not charge the Partnership or the portfolio companies for its legal costs and disbursements incurred in relation to the proceedings and the Settlement Agreement.

34. However, the relationship between the GP and the Petitioners has since continued to deteriorate substantially to a state of complete breakdown and there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership.

35. The catalyst for this loss of trust and confidence was the GP's behaviour in regards to seven (7) early-stage portfolio companies: (1) Deep Apple Therapeutics, Inc~~,~~ ("**Deep Apple**"), (2) Apertor Pharmaceuticals, Inc., (3) Evercrisp Biosciences, Inc., (4) Marlinspike Therapeutics, Inc~~,~~ ("**Marlinspike**"), (5) Red Queen Therapeutics, Inc., (6) Aethon Therapeutics, Inc. and (7) Initial Therapeutics, Inc. ("**Initial**") (the "**Early-Stage Companies**").

36. Dr Harrison is a director of each of the Early-Stage Companies. The GP has insisted on continuing to invest the Partnership's capital into the Early-Stage Companies even though the Petitioners consider them to be hopeless investments. The GP has also failed to adhere to the

milestones in the agreed budgets for the Early-Stage Companies and is seeking to call capital for these companies in breach of the LPA. Further and in addition, by virtue of the relief he seeks in the Delaware Proceedings, he is seeking capital on an accelerated basis in breach of the LPA.

37. The Petitioners maintain that they are not obliged to fund the Early-Stage Companies:

    a. First, the Partnership's limited partners' capital commitments are determined by the terms of the LPA, such that they are not required to make capital commitments to the Partnership which exceed their Contingent Subscription amount as set out in the Subscription Agreements (see paragraph 21 above). The Contingent Subscription amount is set out in the applicable Subscription Agreement(s). The Petitioners' total Contingent Subscription is US$2.425 billion, and they cannot be *required* to fund above that commitment. The GP's position is that the limited partners' capital commitments to the Partnership can be and have been increased above the Contingent Subscription amount through Amendments 17, 18 and 20 to the LPA. That is wrong. None of those amendment increased the Contingent Subscription amounts.

    b. Second, and in any event, under Paragraph 5(a)(ii) of the LPA, the GP may only invest in projects approved by the Petitioners "*in accordance with a budget therefor approved*" by the Petitioners. The budgets approved by the Petitioners provide for investments to be made into the Early-Stage Companies in certain specified amounts, subject to meeting certain specified milestones. The milestones under those respective budgets have not been met and no further capital commitment has been approved, in writing, by the Petitioners. The GP is also now seeking to call capital on an accelerated basis contrary to what is provided for in the budgets. The GP is not permitted to call for further capital absent written approval by the Petitioners, which the Petitioners have not provided. The GP's position is that the Petitioners have waived or forfeited their right to approve budgets and that, in any event, the GP is entitled to continue calling for capital irrespective of whether the milestones in an agreed budget have been complied with and regardless of whether it is calling capital on an accelerated basis to the budgets. There has however been no such waiver or forfeit and there is no such entitlement on the part of the GP.

38. The ongoing disagreement between the parties regarding budgeting issues resulted in Mr Yuri Bogdanov (CIO of Rigmora Holdings) emailing the GP on 15 May 2025. In that email, the Petitioners reiterated their position that they were not obliged to fund the Early-Stage Companies and that it was not in the best interests of the Partnership for further funding to be allocated to the Early-Stage Companies. In the same email, the Petitioners asked the GP to clarify its position, stating "*if you disagree with the above and consider that [the Petitioners are] obliged to contribute further capital to the Early-Stage Companies then please respond with a detailed explanation of your position. [The Petitioners] of course intend to comply with the requirements of the LPA and will be cooperative if you can demonstrate the LPA allows you to call further capital in regards to the Early-Stage Companies*" (the "**15 May Email**"). The GP did not respond to the 15 May Email, has refused to provide the requested information on the new budgets, and has accelerated capital calls when compared to forecasts sent shortly before issuing the said capital calls.

39. Rather than seek to consensually resolve the issues concerning the Early-Stage Companies and other budget issues that were being discussed between the parties, on 30 May 2025:

    a. The GP issued the ~~May 2025~~ Disputed Capital Calls purportedly requiring the limited partners to contribute US$109,960,926.00 million of capital to the Partnership by 13 June 2025 (save for a capital call made in respect of Replicate which is due on 17 June 2025); and

    b. The GP peremptorily issued a complaint against the Petitioners in the Delaware Court of Chancery seeking specific performance and equitable and declaratory relief in respect of the GP's and the limited partners' rights and obligations in respect of the Partnership (the "**Delaware Complaint**" and the "**Delaware Proceedings**"). The GP did not refer to the ~~May 2025~~ Disputed Capital Calls in the Delaware Proceedings.

40. In the Delaware Proceedings, the GP alleges that the 15 May Email amounts to an anticipatory breach of the LPA and/or a repudiation of "*the [Petitioners'] obligation to respond to capital calls*", the GP ~~seeks~~ had also sought specific performance to compel the limited partners to contribute up to US$545 million to the Partnership, whilst simultaneously contending that by reason of the 15 May Email the GP was entitled to apply a default charge to confiscate 50% of the limited partners' interest in the Partnership (the **"Default Charge"**), block their voting powers and remove their budget approval rights. The GP had also sought ~~seeks~~ to avoid

complying with the contractual default process which includes provisions enabling the Petitioners to remedy any such default (i.e. by payment) on the basis that it would be "*futile*" to do so (see paragraph 171 of the Delaware Complaint). In other words, the GP ~~seeks~~ had sought an order whereby the Petitioners must provide the Partnership with further capital of up to US$545 million (which it is alleged is the Petitioners' total unfunded capital commitment) ~~and nevertheless maintains~~ whilst maintaining that it can also issue a default charge against the Petitioners and confiscate billions of dollars of the Petitioners' assets even if they provide the capital sought.

41. As set out further below the Delaware Complaint and the ~~May 2025~~ Disputed Capital Calls ~~are~~ had evidently been designed to enable the GP to compel the Petitioners to contribute vast sums of further funding to the portfolio companies whilst engineering a default in order to impose a default charge to confiscate 50% of the Petitioners' interests in the Partnership (in the approximate sum of US$2 billion), which would fall to be redistributed to the ~~remaining limited partners~~ other holders of "preferred units" (i.e., Dr Harrison and his family trust) thereby allowing Dr Harrison to take control of the Partnership, notwithstanding the fact that he has contributed less than c. ~~12~~% of the Partnership's capital. The GP's intentions were laid bare in paragraph 192 of the Delaware Complaint, which states that the GP seeks an order preventing the Petitioners from "*interfering with [the GP] in the exercise of its discretion over the Fund once [the Petitioners are] deemed to be a Defaulting Partner*".

42. No GP acting reasonably and in good faith in the interests of Partnership would have commenced these proceedings in these circumstances.

43. Moreover, there was no proper basis for the GP's purported position. The 15 May Email is self-evidently not an anticipatory or repudiatory breach given that it said in terms that the Petitioners will comply with the terms of the LPA if the GP explains why it is entitled to call for further capital under the LPA. ~~For the avoidance of any doubt, the Petitioners do not accept that~~ In addition, the LPA does not entitle~~s~~ the GP to confiscate assets as alleged. The LPA is clear that the default charge enables the GP to reduce the number of preferred units and investor common units of a defaulting partner. Apart from Pool ATP IV, assets are not distributed by reference to the number of units held by a Limited Partner and are instead distributed in accordance with the specific distribution provisions for each pool as set out in the LPA.

43A The issuing of the Delaware Proceedings and the Disputed Capital Calls were the culmination of a long-term and highly choreographed strategy designed to place illegitimate pressure on the Petitioners to contribute further capital to the Partnership and to manufacture a situation where the GP could default the Petitioners (the "**Default Strategy**"). The existence of the Default Strategy falls to be inferred from the following matters:

a. The fact that the GP had instructed its US attorneys, Quinn Emanuel Urquhart & Sullivan ("**Quinn Emanuel**") to start work on a complaint against the Petitioners in Delaware by August 2024 (at the latest), many months before the 15 May Email had been sent.

b. The timing and size of the Disputed Capital Calls, which were not issued for proper purposes or *intra vires* under the LPA but were deliberately inflated and made for the improper purposes alleged at paragraphs [44A]-[44D] below.

c. The fact that in the Delaware Proceedings, the GP had improperly claimed to be entitled immediately to impose a Default Charge on the Petitioners without any need to serve a Default Notice on the Petitioners as required by paragraph 5(a) (see paragraph [40] above).

d. The fact that in the Delaware Proceedings, the GP had wrongly claimed that by imposing a Default Charge on the Petitioners it was entitled to strip the Petitioners of 50% of their economic interests in the Partnership and reallocate those interests to other partners (i.e. primarily to Dr Harrison and his family trust (see paragraph [43] above).

e. The fact that on 29 April 2025, the GP provided a funding plan to the Petitioners in which the GP proposed to reallocate funding away from the Early-Stage Companies (the "**April Funding Plan**"), only to withdraw that proposal when the Petitioners indicated that they were agreeable to it. In particular:

    i. At a meeting on 9 May 2025 attended by principals of the GP and the Petitioners, and during a call attended by principals and lawyers of the GP and the Petitioners on 13 May 2025, the Petitioners indicated that they were agreeable to the proposed reallocation of budgets, consistent with their

position that no further capital should be provided to the Early-Stage Companies as their future prospects were weak.

ii. However, during the call on 13 May 2025 Dr Harrison withdrew the reallocation proposal (despite considering it to be in the best interests of the Partnership).

iii. It is to be inferred from the forgoing that the GP made the reallocation proposal in the expectation that the Petitioners would not agree to it, and use their refusal as a basis for commencing proceedings against them in Delaware.

f. The fact that, since at the commencement of the Delaware Proceedings at the latest (and the Petitioners infer from before that date), the GP has (without notice to the Petitioners) approached at least 26 potential investors with a view to selling Partnership assets (portfolio companies) to them and / or transferring some or all of those assets (portfolio companies) to a new fund or funds managed by the GP. As recently as 4 October 2025, the GP (without notice to the Petitioners) sent a "Portfolio Lift-out Opportunity" presentation to at least 9 such entities (the "**October Presentation**"), offering an opportunity to "*take over a restructured, mature, stage-diversified portfolio biotech portfolio*".

43B. It is further inferred from the forgoing that the 15 May Email was used by the GP in bad faith as a pretext for implementing the Default Strategy.

43C. On 5 September 2025, shortly before the trial of the Delaware Proceedings was due to commence, the GP amended the relief sought in those proceedings. Following those amendments, the GP:

g. Abandoned its claim to be entitled to relief based solely on the 15 May Email.

h. Abandoned its claim for specific performance requiring the Petitioners s to contribute US$588.5m to the Partnership.

i. Abandoned its claim seeking an order permitting it to impose a Default Charge against all of the Petitioners' interests in the Partnership.

j. Sought a declaration that the Petitioners had breached the LPA by refusing to pay the Disputed Capital Calls.

k. Sought a declaration that the Petitioners had breached their obligations under the LPA to fund and approve budgets sufficient to qualify as a "Defaulting Partner".

l. Sought specific performance of the Petitioners alleged obligations to fund capital calls for the Early-Stage companies.

(the "**Amended Relief**")

43D. The Petitioners will rely on the fact that the GP had sought, and then abandoned, the extreme and unjustified relief originally pleaded in the Delaware Proceedings as demonstrating that the GP had improperly, and in breach of its fiduciary obligations, commenced the Delaware Proceedings to exert illegitimate pressure on them.

43E. Further, in seeking the Amended Relief in the Delaware Proceedings, the GP has acted in breach of the terms of an injunction issued by the Grand Court on 20 June 2025 and continued at a return date hearing on 1 August 2025 (the "**Writ Injunction**"). In those circumstances, any judgment obtained in favour of the GP in the Delaware Proceedings is not entitled to recognition in the Cayman Islands as being contrary to public policy. In particular:

a. By seeking a declaration that by reason of non-payment of the Disputed Capital Calls the Petitioners have breached their obligations under the LPA "*sufficient to qualify as a defaulting partner*" the GP is in breach of paragraph 1(a) of the Writ Injunction, which restrains it from "*taking any steps to designate, deem or treat [the Petitioners] as a "Defaulting Partner"…arising out of or in relation to the…non-payment of the [Disputed Capital Calls]".*

b. By seeking an order for specific performance of the alleged obligation to fund the Disputed Capital Calls, the GP is in breach of paragraphs 1(a) and / or (b) of the Writ Injunction. In particular, under paragraph 5(c)(iv) of the LPA the GP is only permitted to commence a lawsuit to collect an unpaid capital contribution upon a limited partner becoming a "Defaulting Partner". In commencing proceedings in Delaware seeking specific performance of the Petitioners' alleged obligation to fund the Disputed Capital

Calls, the GP is therefore either: (a) treating or taking steps to treat the Petitioners as a Defaulting Partner in relation to the non-payment of the Disputed Capital Calls or (b) acting in breach of paragraph 5(c)(iv) of the LPA.

c. By seeking an order which deems the Petitioners to have waived their rights to approve budgets, the GP is in breach of paragraph 1(a) of the Writ Injunction in that it is taking a step to designate, deem or treat the Petitioners as a Defaulting Partner by claiming that they have lost their rights to approve budgets under paragraph 18(f) of the LPA on the basis that they have not satisfied the Disputed Capital Calls.

Mismanagement / prejudicial conduct / lack of probity in the conduct of the Partnership's affairs

44. The GP has mismanaged the Partnership, acted prejudicially to the interests of the limited partners and demonstrated a serious lack of probity in the conduct of the Partnership's affairs, as detailed below.

Improper issuing of the Disputed Capital Calls

44A. In determining whether, and in what amount, to exercise its powers to call capital under the LPA, the GP is required to (a) act in good faith and in the interests of the Partnership; and (b) exercise its powers for proper purposes.

44B. In circumstances where the Petitioners have contributed approximately 98% of the capital invested into the Partnership and are the principal economic owners of the Partnership, the GP is required to have regard to the interests of the Petitioners when discharging its duty to act in good faith to act in the interests of the Partnership.

44C. The Disputed Capital Calls were made by the GP in breach of its fiduciary duties to (a) act in good faith and in the interests of the Partnership and (b) exercise its powers for proper purposes. In particular:

a. The Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made by the GP principally in the interests of Dr Harrison and / or Les Pommes for the improper purposes of enabling the GP to impose a Default Charge on the Petitioners which, on the GP's case, would enable it to redistribute 50% of the their

economic interests in the Partnership to the other holders of "preferred units" (principally, Mr Harrison and Les Pommes).

b. Further or in the alternative, the Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made for the improper purpose of placing commercial pressure on the Petitioners to contribute further capital to the Partnership in the context of an ongoing dispute with the GP over the extent of their obligation to do so.

c. Further or in the alternative, the Disputed Capital Calls in respect of the Portfolio Companies were not made for the proper purposes of meeting any genuine or immediate funding need on the part of the Portfolio Companies in the amounts sought under the Disputed Capital Calls.

d. Further or in the alternative, the GP did not genuinely believe that it was in the best interests of the Partnership to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

44D. The breaches pleaded in paragraph [44C] above are evident from the following matters:

a. The fact that the GP is conflicted in its decision making in relation to the funding of the Portfolio Companies and the issuing of the Disputed Capital Calls by reason of: (a) the enormous economic benefits which Dr Harrison claims to be entitled to by imposing a Default Charge on the Petitioners; (b) Dr Harrison being the sole director of the GP and a director of each of the Portfolio Companies; and (c) Dr Harrison having carried interest entitlements in the investment pools containing the Early Stage Companies in circumstances where Dr Harrison has not contributed any capital to those pools.

b. The fact that the Disputed Capital Calls were all made on the same day and were issued by the GP without the GP first responding to the Petitioners' request, made in the 15 May Email, for the GP to provide an explanation of the basis on which the GP considered that they were obliged to contribute further capital to the Early-Stage Companies.

c. The size of the Disputed Capital Calls (in excess of US$101m), being far in excess of the amounts that the GP represented would be required:

   i. In the April Funding Plan provided to the Petitioners by the GP on 29 April 2025. The April Funding Plan stated that US$16.7m of funding was required in respect of the portfolio companies in Q2 2025.

   ii. In a spreadsheet which Dr Harrison (on behalf of the GP) circulated to Daniel Finkelman, Joseph Yanchik, and William Engels on 15 May 2025 (the "**15 May Spreadsheet**"). The 15 May Spreadsheet indicated that capital calls totalling US$19.5m would be made in respect of the portfolio companies.

   iii. In the October Presentation, which represented that a sum of US$50m would be sufficient to meet the funding needs of five Early-Stage Companies (Nereid Therapeutics Incorporated ("**Nereid**"), Marlinspike, Initial, Apertor Pharmaceuticals ("**Apertor**") and Nine Square Incorporated ("**Nine Square**") over a period of 36 months.

d. The fact that the Disputed Capital Calls were made in the context of a break-down of the relationship between the Petitioners and the GP and an ongoing dispute between the Petitioners and the GP over the extent of their Contingent Subscriptions into the Partnership.

e. The fact that the Disputed Capital Calls were the culmination of a long-term and highly choreographed Default Strategy against the Petitioners.

f. The fact that the Disputed Capital Calls were made by the GP minutes before the commencement of the Delaware Proceedings.

g. The fact that the Disputed Capital Calls included a capital call of US$7.5m in respect of Apertor in circumstances where:

   i. At the time of the capital call, Dr Harrison knew that that the Partnership was holding a capital contribution of US$1.6m made by the Petitioners in respect of Apertor on 21 May 2025.

ii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in emails dated 1 May 2025, 27 May 2025 and 30 May 2025 that Apertor was going to be wound up.

iii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in an email dated 30 May 2025 that US$850,000 was required to wind up Apertor.

iv. Apertor has in fact received the funds that were required to complete an orderly shutdown.

v. In the premises, when making the Disputed Capital Call in respect of Apertor, the GP knew that Apertor did not have any genuine commercial need for US$7.5m.

h. The fact that the Disputed Capital Calls included a capital call of US$9m in respect of Deep Apple in circumstances where:

i. At the time of that capital call, Dr Harrison had been informed by Dr Liras in an email dated 20 May 2025 that: a deal for third party funding was imminent; once that funding was received, Deep Apple had no need for additional funds and Deep Apple had sufficient funding to see it through to August 2025.

ii. Deep Apple announced a concluded funding deal with a third party called Novo Nordisk on 11 June 2025 pursuant to which it was eligible to receive up to US$812 million in payments, including an upfront payment of US$32.5 million.

iii. The GP has not withdrawn the Disputed Capital Call in respect of Deep Apple.

iv. In the premises, it is to be inferred that the GP's decision to make the Disputed Capital Call in respect of Deep Apple was not based on a genuine or good faith assessment of the funding requirements of Deep Apple.

i. The fact that the Disputed Capital Calls included US$47.8m in respect of the Early-Stage companies in circumstances where:

i. On 4 April 2025, Dr Harrison sent an email to Ms Anna Batarina (an employee of ATP at that time) stating that the reallocation of capital away from the Early-Stage Companies "*is the right business decision for the portfolio in ANY financing context*".

ii. The GP had proposed to reallocate capital away from the Early-Stage Companies in the April Funding Plan.

iii. In the premises, it is to be inferred the GP did not genuinely believe that it was in the best interests of the Partnership to continue to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

The Delaware Proceedings

45. As set out above, rather than seeking to reach a consensual solution with the Petitioners, the GP issued the Delaware Proceedings in an improper attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership.

46. In the Delaware Complaint, the GP has made a number of extremely serious allegations that the Petitioners are concertedly acting to undermine the position of the ~~Early-Stage Companies~~ portfolio companies to enable them to gain personal control over those companies (or some of them), outside of the Partnership. By way of example, the Delaware Complaint states:

a. "*…the Defendants' [have engaged in] premeditated financial destruction of* [REDACTED] *Delaware portfolio companies*" (paragraph 1);

b. "[the Defendants have] *arbitrarily and irrationally refusing to approve new budgets for* [REDACTED] *portfolio companies* [REDACTED]*, but whose initial funding has run out*" (paragraph 1);

c. "*The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve* [REDACTED] *of the financing needed to fund their respective missions*." (paragraph 6);

d. "*The Family Office LP's stated goal is to drive* [REDACTED] *portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on* [REDACTED] *companies (if any) that they choose…The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments…*" (paragraph 7);

e. "*Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for* [REDACTED] *companies and negotiate new budgets for* [REDACTED] *companies.*" (paragraph 12);

f. "*These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund*." (paragraph 69);

g. "*…the Family Office LP has capriciously withheld budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing*…" (paragraph 77);

h. "*…the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy* [the Partnership]." (paragraph 121); and

i. "*The* [Partnership] *has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies*." (paragraph 150).

47. These allegations made by the GP in the Delaware Complaint are untruthful and wholly unfounded. The Petitioners have paid out the entirety of their Contingent Subscription so they are not obliged to contribute further capital. Further and in the alternative, the Petitioners, as the holders of the majority of the Preferred Units, are entitled to refuse to invest more of their capital into particular projects if the relevant budgets and associated milestones have not

been adhered to. In respect of certain of the Early-Stage Companies, the ~~May 2025~~ Disputed Capital Calls are not in accordance with the approved budgets. The Early-Stage Companies have to date failed to meet any, or sufficient, milestones specified in the investment memoranda attached to the approved budgets and the Petitioners have formed the view that the relevant portfolio companies are not viable investments. It would plainly be illogical and irrational for the Petitioners, as the limited partners of the Partnership with a c. 9~~8~~% stake in the Partnership's assets, to deliberately seek to "starve" otherwise viable portfolio companies, which have to date been funded exclusively by their capital contributions. Insofar as new budgets are concerned, the Petitioners have sought further information from the GP in order to assess the financial performance and merits of the proposed budgets but the GP has refused to provide the information sought.

48. The GP's pursuit of the Default Strategy and / or the Delaware Proceedings and the unfounded, incendiary and wholly inappropriate allegations made therein evidence the GP's serious lack of probity and demonstrate its improper management of the affairs of the Partnership. Those matters give rise to a justifiable loss of trust and confidence in the management of the GP by the Petitioners.

49. The Delaware Proceedings had ~~have~~ also evidently been brought for an improper purpose (including as part of the Default Strategy), to enable the GP to compel the Petitioners to contribute up to US$545 million of further funding to the Partnership in complete disregard of the provisions of the LPA, such funding being substantially in excess of the Petitioners' Contingent Subscriptions, including US$331.3 million for which the GP has not presented any budget to the Petitioners for approval (let alone obtained such approval) (~~see paragraph 51 below~~). The GP had also simultaneously ~~seeks~~ sought to engineer a default in order to impose a default charge on the Petitioners to confiscate 50% of their interests in the Partnership and thereby take control of the Partnership and billions of dollars of the Petitioners' assets, which would fall to be redistributed to Dr Harrison and his family. The GP also wishes to remove the Petitioners' right to approve new budgets so as to obtain control without the need for the Petitioners' approval of such budgets.

49A As pleaded in paragraph 43C above, the GP amended the relief sought in the Delaware Proceedings shortly before the trial of those proceedings was due to commence. However, the Petitioners will say that:

a. the relief originally pleaded in the Delaware Proceedings was wholly unjustified;

b. the relief originally pleaded in the Delaware Proceedings was included for improper purposes of exerting economic pressure on the Petitioners; and

c. the fact that it had been sought by the GP evidences the GP's serious lack of probity, its improper management of the affairs of the Partnership and gives rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

49B Further, the GP's conduct in the Delaware Proceedings has given rise to a justifiable loss of trust and confidence. In particular:

d. On 17 September 2025, the Petitioners issued a summons for the appointment of joint provisional liquidators over the Partnership (the "**JPL Summons**").

e. On 19 September 2025, the GP filed an emergency motion in Delaware seeking an anti-suit injunction preventing the Petitioners from pursuing the JPL Summons pending the outcome of the Delaware Proceedings (the "**Anti-Suit Injunction Motion**").

f. The Anti-Suit Injunction Motion was brought and pursued by the GP in breach of paragraph 18(g)(vi) of the LPA and / or in a manner that was vexatious and oppressive to the Petitioners and / or an unconscionable interference with the Cayman's Court's exclusive winding up jurisdiction. In support of these allegations, the Petitioners rely on the facts and maters set out at sub paragraphs (g)-(k) below.

g. Pursuant to paragraph 18(g)(vi) of the LPA, the GP contractually agreed to submit to the jurisdiction of the Cayman Court in respect of (among other matters) the JPL Summons. In breach of that contractual agreement, the GP sought by its Anti-Suit Motion to prevent the Petitioners from pursuing the JPLS summons. As a result of that breach and the other vexatious, oppressive and unconscionable conduct particularised at sub-paragraphs (h)-(k) below, it was not possible to move the JPL Summons at the hearing fixed for that purpose by the Cayman Court.

h. The GP moved the Anti-Suit Injunction Motion at a hearing before the Delaware Court on 19 September 2025 (the "**September Hearing**") at which it misrepresented to the

Delaware Court the effect of the PL Summons, and the Petitioners; conduct in connection with it, giving rise to a justifiable lack of trust and confidence. In particular:

i. The GP represented in a brief presented to the Delaware Court that in a letter sent to Walkers by Campbells on the 17 September 2025, the Petitioners had stated that "*unless ATP agrees by 10 am on September 19, to certain undertakings, it will seek emergency and expedited ex parte appointment of PLs from the Cayman Court*". Campbells' letter said no such thing. Instead, it requested for the GP to give certain undertakings pending an *inter partes* hearing of the PL Summons (which the letter proposed should occur on 31 October 2025), failing which the Petitioners "*will be forced to seek urgent relief without further notice to protect our clients' position until the PL Application is resolved*".

ii. The GP represented in a brief presented to the Delaware Court that the PL Summons was a "*frontal attack on this [Delaware] Court's jurisdiction and an attempt to circumvent this Court's orders expediting this action and denying Rigmora's Motion to Stay in favour of the later filed Cayman Proceedings that Rigmora previously lost*". That was untrue. The appointment of JPLs would not have interfered with the Delaware's Court's jurisdiction in any way.

iii. The GP represented in a brief presented to the Delaware Court that a PL under Cayman law is similar to a bankruptcy trustee under U.S. law "*Except here, the trustee would be hand-selected by Rigmora, which has a demonstrated purpose of starving the portfolio Companies*". That submission was false, in particular because it failed to acknowledge that a provisional liquidator is an officer of the Cayman Court, obliged to act independently in the best interests of the Partnership.,

iv. The GP represented in a brief presented to the Delaware Court that "*Rigmora appears to view a trial in Delaware as an unacceptable risk, and is attempting to mitigate that risk by displacing ATP as the Fund's general partner before trial as soon as possible*". That was false. The PL Summons: did not seek any orders removing ATP as the Fund's general partner and sought to appoint

provisional liquidators with a limited mandate which *did not include* taking over the conduct of the Delaware Proceedings.

v. The GP represented during submissions at the September Hearing that the JPL Summons would "*deprive this Court of the opportunity to fully adjudicate and remediate the breaches of contract that we have been litigating in this court since May*". That was untrue. The appointment of PLs would not have deprived the Delaware Court with the opportunity to fully adjudicate the issues before it.

vi. The GP represented during submissions at the September Hearing that if provisional liquidators were appointed in circumstances where the Delaware Court order the Rigmora LPs to fund US$215m of approved budgets, the PLs "*could send [the $215m] right back to Rigmora, instead of where it is supposed to go, which is in furtherance of the Fund's objectives*". That submission misrepresented the independence of provisional liquidators, and their obligation to act in the interests of the Partnership.

i. At a hearing in the Cayman Islands on 3 October 2025, the Cayman Court directed that the PL Summons be heard on 3-4 November 2025. On 13 October 2025 the GP signed a consent order agreeing that the PL Summons should be listed for a hearing on 3-4 November 2025.

j. Three days later (on 16 and 17 October 2025) the GP informed the Delaware Court of its intention to further pursue the Anti-Suit Injunction (which had been adjourned at the September Hearing) which it did by reply brief dated 19 October 2025. As an alternative, the GP suggested at the end of the trial of the Delaware Proceedings that the Delaware Court produce a judgment on the Delaware Proceedings in advance of 3–4 November 2025, or shortly thereafter, despite the Delaware Judge's indication of the difficulties she would have in producing a coherent judgment within that compressed period.

k. In the circumstances, faced with the risk of the Anti-Suit Injunction sought by the GP or the issuance as its request of a judgment on the Delaware Proceedings on a timescale so compressed as to prejudice the Delaware Court in fairly disposing of those proceedings and/or the Petitioners' in having fair opportunity to present its

case in those proceedings, the Petitioners had no realistic option but to seek to leave withdraw the JPL Summons.

Wilful and persistent breaches of the LPA

~~50. In the Delaware Complaint, the GP seeks specific performance to compel the limited partners to immediately fund prior approved but unfunded budgets in response to capital calls as and when they are received (see paragraph 14 of the Delaware Complaint). This amounts to an accelerated capital call, but the GP has wholly failed to comply with the requirements in clause 5(a)(ii) of the LPA (see paragraph 19(c) above) by providing any written assurances and/or diligenced presentation that the relevant project(s) will be completed within the aggregate amount budgeted therefor, and instead seeks to compel the Petitioners to meet accelerated capital calls in the absence of these assurances, by court order.~~

~~51. The GP also seeks specific performance to compel the Petitioners to provide further funding of up to US$331.3 million (see paragraph 164 of the Delaware Complaint). No budgets have been provided by the GP or approved by the Petitioners in respect of any such funding (which the GP accepts - see paragraph 5 of the Delaware Complaint). Indeed, the GP has not provided any information to the Petitioners about the intended use of the further funding, merely asserting in the Delaware Complaint that its use is "*including for those companies specifically named in Amendment No. 22 – Ascidian, Aulos, Nine Square, Nereid and Replicate*". This falls far short of the formal budget proposals which are required to be presented to the Petitioners for approval under the LPA, which budgets serve the further purpose of enabling the Petitioners to ensure that their capital is being applied in a proper manner.~~

52. In the Delaware Proceedings, the GP has sought ~~seeks~~ to circumvent the express provisions of the LPA in the Delaware Proceedings, to compel the Petitioners to provide vast sums of further funding, without specifying what those funds are to be used for and denying the Petitioners any oversight over how their funds are applied, contending that the Petitioners have "waived" or "forfeited" their right to approve budgets. The GP's attempts to obtain funding to be applied entirely at its own discretion without any oversight by the Petitioners demonstrates a serious lack of probity and mismanagement and has caused the Petitioners to lose trust and confidence in the GP's ability to manage the Partnership.

The GP has knowingly misled the Petitioners into contributing capital to the Partnership

52A. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

52B. The GP issued a capital call notice dated 15 January 2025 of US$1.6m in respect of Marlinspike (the "**Marlinspike January Call**"). By making the Marlinspike January Call, the GP represented that that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52C. The Petitioners paid the Marlinspike January Call by agreeing that the US$1.6m could be reallocated to Marlinspike from funds the Petitioners paid in respect of a 16 January 2025 capital call for Nine Square. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike January Call other than for the purposes of meeting Marlinspike's funding requirements.

52D. On 3 February 2025, the GP issued a capital call notice of US$400,000 in respect of Marlinspike (the "**Marlinspike February Call**", together with the Marlinspike January Call the "**Marlinspike Calls**"). By making the Marlinspike February Call, the GP represented that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52E. On 13 February 2025 the Petitioners arranged for payment of the Marlinspike February Call, which the GP had received by the next day. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike February Call other than for the purposes of meeting Marlinspike's funding requirements.

52F. In fact, contrary to the representations made by the GP and unknown to the Petitioners and in breach of the LPA, the GP did not intend to use and did not use the proceeds from the Marlinspike Calls to meet Marlinspike's funding requirements.

52G. Instead, the GP procured that the proceeds from the Marlinspike Calls were transferred to another portfolio company Nereid. In particular:

a. On 27 March 2025, Mr Finkelman on behalf of the GP sent an email to Willam Engels (CFO at ATP) and Jonathan Ravski (Accounting Manager at ATP) instructing them to wire US$1m of the proceeds from the Marlinspike Calls to Marlinspike "*but let them know that it is going right out the door to Nereid*".

b. On 27 March 2025, Mr Ravski emailed the accounting department at Marlinspike explaining that "*We have wired $1m under the Series A Agreement. Please note that these funds are to be used as a loan to Nereid as per discussions that took place*".

c. On 27 March 2025, the operator of Marlinspike's accounting mailbox responded saying "*this is the first we're hearing of this*".

d. On 28 March 2025, Marlinspike transferred US$1m as a loan to Nereid ("**Nereid Loan**").

52H. As at the date of the Marlinspike Calls and Nereid Loan, no approved budget was in place in respect of Nereid. In those circumstances, the GP was not permitted to call capital for Nereid from the Petitioners under paragraph 5(a)(ii) of the LPA. Paragraph 19(b) above is repeated.

52I. In the premises:

a. The representations referred to at paragraphs 52B and 52D above were knowingly false, in that the GP did not intend to use the proceeds from the Marlinspike Calls to meet the funding requirements of Marlinspike. Instead, the GP intended to use the proceeds (or a substantial portion thereof) to meet the funding requirements of Nereid (thereby circumventing the LPA's requirement that capital can only be called for a portfolio company in accordance with an approved budget).

b. The Petitioners were misled into contributing capital to the Partnership by the knowingly false representations of the GP.

c. Further, the GP breached the terms of the LPA by procuring for the proceeds of the Marlinspike Calls to be used other than for the purposes of meeting Marlinspike's funding requirements.

d. The GP's conduct has given rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

Misappropriations / dissipations of assets

52J. Between 31 July 2025 and 8 August 2025 the Partnership received three payments totalling US$62,776,352.48 (the "**Q3 2025 Receipts**"). In particular:

a. A payment of US$20,035,952.54 on 31 July 2025.

b. A payment of US$41,736,871.3 on 1 August 2025.

c. A payment of US$13,528.64 on 8 August 2025.

52K. Between 4 August 2025 and 27 August 2025, the GP caused US$39,306,044 of the Q3 2025 Receipts to be paid away from the Partnership (the "**Q3 2025 Payments**"). In particular:

a. On 4 August 2025, US$20 million was transferred to the client account of the GP's US attorneys at Quinn Emanuel.

b. On 4 August 2025, US$8,906,044 was paid directly to ATLS in respect of alleged management fees.

c. Between 11 August 2025 and 27 August 2025 US$10.4m was paid to (or on account of) various portfolio companies.

52L. The GP did not disclose the existence of the Q3 2025 Receipts or the Q3 2025 Payments to the Petitioners. The Petitioners only became aware of their existence in September 2025 in correspondence prompted by answers given during the deposition of the GP's witnesses in the Delaware Proceedings.

52M. The Q3 2025 Receipts included a sum of US$41,736,871.3 received from Braeburn on 1 August 2025 (the "**Braeburn Prepayment**"). The circumstances in which the Braeburn Prepayment came to be received by the Partnership evidences the GP's serious lack of probity and gives

rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. The Braeburn Prepayment represented an early repayment of sums owed to the Partnership under certain convertible loan notes issued by Braeburn between October 2020 and August 2023 (the "**Braeburn Notes**").

b. The Braeburn Notes were not due to be repaid until March 2029 and earned the Partnership interest at 8% per annum.

c. Despite this, the GP approached Braeburn on dates unknown to offer a 10% discount on the principal owed under the Braeburn Notes in return for early repayment.

d. The Braeburn Prepayment was not in the best interests of the Partnership since it has resulted in the Partnership forgoing both capital and interest on the Braeburn Notes.

e. In procuring the Partnership to offer and accept the Braeburn Prepayment, the GP acted in breach of its fiduciary duties to act *bona fides* in the best interests of Partnership. It is to be inferred (including from the Q3 2025 Payments) that the Braeburn Prepayment was improperly procured by the GP at least in part for the purposes of funding its illegitimate litigation campaign against the Petitioners.

52N. Further, in making the Q3 2025 Payments, the GP has demonstrated a serious lack of probity and has improperly managed the affairs of the Partnership so as to give rise to a justifiable loss and confidence in the GP's management of the Partnership. In particular:

a. The Braeburn Notes were assets held in Pool Braeburn (being "debt securities" of Braeburn owned by the Partnership within the meaning of paragraph 21(a) of the LPA). As such, the GP was required to distribute the proceeds of the Braeburn Prepayment to the Petitioners in accordance with Paragraph 21(d) of the LPA. The Braeburn Prepayment was not available to be applied by the GP for any other purpose. Despite this, the GP improperly and in breach of the LPA funded the Q3 2025 Payments from the proceeds of the Braeburn Prepayment.

b. The GP's entitlement to deal with the remainder of the Q3 2025 Receipts is governed by paragraph 8(c) of the LPA (as amended pursuant to Amended 4 dated 1 April 2015). Paragraph 8(c) of the LPA provides that:

"The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership and Intermediary expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with Budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior consent of the holders of a majority of the Preferred Units."

c. Under paragraph 8(c) of the LPA, the GP was only permitted to apply the Q3 2025 Receipts towards investments in projects in a manner "*consistent with the applicable budgets"* or with the prior consent of the Petitioners as the holders of a majority of the Preferred Units.

d. In breach of the LPA, the GP used the Q3 2025 Receipts to make payments to portfolio companies where no approved budget exists and without the prior consent of the Petitioners. Those payments were improper, ought not to have been made and have dissipated the Partnership's assets. In particular:

i. On 11 August 2025, the GP transferred US$2 million from the Q3 2025 Receipts to the portfolio company Aethon Therapeutics ("**Aethon**"). The approved budget in place in respect of Aethon incorporates funding milestones that have not been met. As such, the payment to Aethon was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Aethon is conditional upon funding milestones being

met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Aethon pending the resolution of that dispute.

ii. On 14 August 2025, the GP transferred US$150,000 from the Q3 2025 Receipts to the portfolio company Nine Square and US$250,000 from the Q3 2025 Receipts to the portfolio company Nereid. There were no approved budgets in respect of Nine Square or Nereid and the Petitioners did not consent to those payments.

iii. On 21 August 2025, the GP transferred US$1.5 million from the Q3 2025 Receipts to the portfolio company Replicate Biosciences ("**Replicate**"). Under paragraph 26 of the LPA, the Petitioners' approval of a budget in respect of Replicate was expressly contingent upon "*at least $300 million being realised (including through deemed distributions) by [the Petitioners] on a sale or financing of its interest in ATP LLC*" (the "**Realisation Condition**"). The Realisation Condition has not been met. Accordingly, the payment to Replicate was not "in accordance with" an applicable budget within the meaning of paragraph 8(c) of the LPA, and the Petitioners did not consent to that payment.

iv. On 22 August 2025, the GP transferred US$100,000 from the Q3 2025 Receipts to the law firm Wilson Sonsini Goodrich & Rosati ("**Wilson Sonsini**") on account of Marlinspike, in discharge of legal fees owed by Marlinspike. The approved budget in place in respect of Marlinspike incorporates funding milestones that have not been met. As such, the payment to Marlinspike was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Marlinspike is conditional upon funding milestones being met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Marlinspike pending the resolution of that dispute.

e. The GP has also acted with a serious lack of probity in continuing to seek to compel the Petitioners to pay the full amount of the Disputed Capital Calls following payment of the Q3 2025 Receipts to the portfolio companies (including, in addition to those

identified above, a payment of US$6m from the Q3 2025 Receipts to Ascidian on 11 August 2025 (being the full amount of the Disputed Capital Call in respect of Ascidian).

f. On 4 August 2025, the GP transferred US$20 million from the Partnership's bank accounts to Quinn Emanuel's client account in the US as a "reserve" to be available to discharge legal fees owed to Quinn Emanuel and Walkers. In causing that payment to be made, the GP has acted with a serious lack of probity in that: (a) legal costs incurred by the GP in connection with the proceedings in Delaware and the Cayman Islands are not properly incurred on behalf of the Partnership; (b) alternatively, the sum of $20 million is not a reasonable amount to incur on behalf of the Partnership in connection with the ongoing disputes; and (c) in any event, the GP ought to have retained that sum in the Partnership's own bank accounts and there was no proper justification for the GP to have caused it to be transferred away from the Partnership pending the outcome of the Petition.

52O. Further, the GP's failure to disclose the existence of the Q3 2025 Receipts and failure to seek validation orders under s.99 of the ELP Act evidences the GP's serious lack of probity and gives rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. At the hearing of the return date for the Writ Injunction on 1 August 2025, the GP sought to vary the Writ Injunction in reliance upon the Third Affirmation of Dr Harrison dated 21 July 2025 ("**Harrison 3**").

b. In Harrison 3:

i. Dr Harrison asserted (at [125]) that: "*the Injunction Order would instead bring an immediate and ongoing halt to the Partnership's funding of the portfolio companies for the entire period the injunction Order remains in place*".

ii. Dr Harisson asserted, in support of the GP's application for fortification of the Petitioners' undertaking in damages, that "*Ascidian is presently being starved of the requisite funding to achieve [its] goals as a result of the Family Office's refusal to meet capital calls (including the 30 May Capital Calls) and approve budgets*".

c. By the time of the return date in respect of the Writ Injunction on 1 August 2025:

i. the GP and Dr Harrison knew that the Partnership had just received (or was about to receive) circ.US$62m;

ii. the GP and Dr Harrison intended to use those recently received (or imminently to be received) funds for the purposes of providing funding to the portfolio companies; and

iii. without prejudice to the generality of (ii) above, the GP and Dr Harrison intended to pay US$6m of those funds to Ascidian (being the full amount of the Disputed Capital Call in respect of that company).

d. By reason of the matters referred to in paragraph [52O(c)] above, the evidence referred to in paragraph [52O(b)] above was inaccurate and misleading to the knowledge of the GP and Dr Harrison.

e. In the premises, the GP demonstrated a serious lack of probity, giving rise to a justifiable loss of trust and confidence, by: (a) failing to correct the inaccurate and misleading evidence placed before the Court on 1 August 2025 and (b) continuing to rely on that evidence to seek a variation of the Writ Injunction on 1 August 2025.

Improper denials

52P. The GP has denied that the relationship between the GP and the Petitioners has deteriorated substantially and denied that there has been a breakdown of trust and confidence between it and the Petitioners, including:

a. At paragraph 47 of its Defence to the Petition.

b. At paragraph 75(e) of its Defence to the Petition.

c. At [18(c)(xi)] of a skeleton argument filed on behalf of the GP for the hearing of the return date of the Writ Injunction, which claimed that: "*The Family Office commenced the present hostilities on 15 May 2025 by repudiating its funding commitments to the Partnership*".

d. At the hearing of the return date of the Writ Injunction on 1 August 2025, when the GP's leading counsel submitted to the Court that: (i) in May 2025 the GP was "*in good faith, still operating under the assumption that the relationship was working well*" and (ii) that any breakdown in the relationship between the parties "*stems from my learned friend's clients' actions in May this year when it decided unilaterally not to pay the capital calls or approve budgets*".

52Q. Those denials and statements were untrue and improperly made. The GP has been exploring ways to commence litigation against the Petitioners and manufacture a situation where it can default the Petitioners for many months. Paragraph 43A above is repeated. In those circumstances:

a. The GP has been aware of a serious deterioration in the relationship between it and the Petitioners for months before May 2025. The GP did not and does not honestly believe otherwise.

b. In May 2025, the GP was not operating under the assumption that the relationship between it and the Petitioners was working well. The GP did not and does not honestly believe otherwise.

c. The GP knew that the breakdown in the relationship between the parties did not stem from the Petitioners' failure to pay the Disputed Capital Calls. The GP did not and does not honestly believe otherwise.

52R. The GP's improper denials of the existence and extent of deterioration of the relationship between it and the Petitioners, evidence the GP's serious lack of probity, demonstrate its improper management of the affairs of the Partnership and has given rise to a justifiable loss of trust and confidence in its ability to manage the Partnership.

Failure to maintain records in the manner of a reasonably competent general partner

52S. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a list of partners and register of partners, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. Under paragraph 16(b) of the LPA, the GP is required "*at all times*" to maintain a list containing the names, addresses and subscriptions of the limited partners of the Partnership (the "**List of Partners**").

b. Under section 29(1) of the ELP Act, the GP is required to maintain "*a register of limited partners which shall contain the name and address of each partner of the exempted limited partnership, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner*" (the "**Register of Partners**"). Under section 29(6) of the ELP Act it is a criminal offence for a general partner to fail to comply with its obligation to maintain a Register of Partners.

c. In breach of paragraph 16(b), the GP has failed to maintain a List of Partners.

d. In breach of section 29(1) of the ELP Act, the GP has failed to maintain a Register of Partners.

52T. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a consistent position as regards the extent of the Petitioners' Contingent Subscriptions, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. A reasonably competent general partner is required to maintain accurate internal records of the extent of each limited partner's Contingent Subscriptions and undrawn Contingent Subscriptions.

b. Following the agreement of Amendment 20 in June 2021, the GP has presented 10 different figures to explain the extent of the Petitioners' Contingent Subscriptions in respect of the Partnership, ranging from US$2.5bn to US$2.946bn. It is to be inferred that the GP has failed to maintain any, or any accurate or satisfactory, records of the Petitioners' Contingent Subscriptions in respect of the Partnership.

c. Since May 2025 the GP has presented 13 different explanations of the size of the Petitioners' undrawn Contingent Subscriptions ranging from US$494,119,277 to US$590,736,444. It is to be inferred that the GP has failed to maintain any, or any accurate

or satisfactory, records of the Petitioners' undrawn Contingent Subscriptions in respect of the Partnership.

Recharging costs to the portfolio companies

53. Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17), ATLS receives an annual fee (the "**ATLS Fee**") payable during the term of the Partnership which is funded by capital contributions of limited partners holding preferred units. The ATLS Fee is required to be applied towards certain expenses of the Partnership incurred in managing the Partnership, including compensation and benefits for employees, and facilities and related overhead expenses (Section 11 of Amendment 9). Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20), the GP is required to prepare a yearly budget for the ATLS Fee which is presented to the "Subject Limited Partner" (i.e. the Petitioners) no later than 1 December on the previous year. The Petitioners then have sole authority to either approve or reject the ATLS Fee budget. In the event a budget for the ATLS Fee is not approved in a calendar year, the approved budget for such year will be the most recently approved budget (subject to some exceptions in relation to extraordinary, non-recurring expenses).

54. However, since 2021, the GP has improperly charged the employee costs of ATP investment professionals to the Partnership's portfolio companies, which costs ought to be covered by the ATLS Fee approved by the Petitioners. In particular:

    a. The Partnership's consolidated financial statements for the years ended 2023 and 2024 show that the Partnership's expenses exceeded the capital calls paid by the limited partners. To fund the gap between Partnership's expenses and capital calls paid (principally by the Petitioners), the GP received investment income, comprising: (i) interest income; and (ii) service revenue from affiliated entities.

    b. The Petitioners understand that the revenue in (ii) above comprises support service costs illegitimately charged to portfolio companies in breach of the LPA.[2]

[2] "Service revenue from affiliated entities" is described in the notes to the Partnership's consolidated financial statements as "*ATLS, ATLS (UK), and ATPR provide administrative, technical and strategic consulting services to other entities within the Partnership group and the Partnership's portfolio companies. Revenue from services provided to the entities within the consolidated group are eliminated upon consolidation. Services*

c. Dr Harrison confirmed by email dated 8 December 2023 that "*ATP employees [are] filling critical roles at certain Portfolio Companies*" and "*those Portfolio Companies* [are] *reimbursing ATP for a portion of the employment costs incurred for those employees*". Dr Harrison also provided the Petitioners with a report from Price Waterhouse and Cooper dated 17 March 2023 (the "**PwC Report**") which confirmed that ATLS had entered into a services arrangement with the portfolio companies for the purposes of charging the portfolio companies costs associated with the provision of management and scientific research and advisory services.[3]

d. Further, the proposed, unapproved ATLS Fee budgets prepared by the GP for 2021 through 2025 included a credit for "*Investment Professionals – Portfolio Reimbursement*".

e. In December 2023, the Petitioners raised with Dr Harrison that the proposed ATLS Fee budgets for 2024 purported to assign costs which ought properly to be covered by the ATLS Fee, in breach of the LPA. Dr Harrison responded, stating that he disagreed but provided no reasons. The budget for the 2024 ATLS Fee was not agreed.

f. The GP's charging of ATP employee costs to the Partnership's portfolio companies is a breach of Paragraph 20(e)(ii) of the LPA (as amended by Amendments 10 and 17) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17). Further or in the alternative, the GP's recharging of expenses to the Partnership's portfolio companies is a breach of Paragraph 8 of the LPA (as amended), as it deprives the Petitioners of income they would have received via the distribution mechanisms in the LPA.

55. The Petitioners are also concerned that the GP has been inappropriately incurring travel expenses for investment professionals which appear to be exorbitant. In particular, the ATLS Fee Budgets for 2024 and 2025 respectively budget for travel for investment professionals at US$690,000 for 2024 and US$625,000 for 2025.

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provided may include internal costs, such as employee expenses and certain overhead expenses, and external costs incurred from third party providers."

[3] For the avoidance of doubt, the PwC Report was a transfer pricing study, which estimated an arm's length range of returns applicable to the provision of certain support services by ATLS to the Partnership's portfolio companies. The PwC Report did not concern whether the assignment of such costs to the Partnership's portfolio companies was permissible under terms of the LPA.

56. The GP's recharging of expenses to the Partnership's portfolio companies, and charging exorbitant travel expenses, demonstrates a serious lack of probity and mismanagement. The charging of expenses to the portfolio companies also gives rise to a serious conflict of interest (see further below), which has resulted in the Petitioners' loss of trust and confidence in the GP.

Failure to provide information

57. The GP has failed or refused to provide the Petitioners with information about the operation of the Partnership that would otherwise enable the Petitioners to assess the financial position of the clinical stage companies in order to determine whether new budgets ought to be approved, and to determine whether those managing the Partnership are acting in accordance with their duties. In particular:

    a. The GP refused to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Aulos Bioscience Inc. and Ascidian Therapeutics Inc.

    b. The GP refused or failed to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Replicate, which is developing self-replicating RNA immunotherapies. The GP is not entitled to call for capital in respect of Replicate because it has not complied with the various conditions that must be met before capital can be called under the current budget. Paragraph 26 of the LPA (introduced by Amendment 22) provides that any budget approved by the Petitioners for Replicate after the execution of Amendment 22 will be contingent upon certain realisations being achieved (through deemed distributions) by the Petitioners on a sale or financing of its interest in the entity formerly known as ATP Life Science Sub LLC , now known as BBN Life Science Sub LLC, (the "**Royalty Refinancing**"). Such realisations have not been realised (including through deemed distributions) by the Petitioners. Despite this, the GP now contends and seeks an order from the Delaware Court confirming that the Petitioners have waived or forfeited their right to approve budgets (see paragraphs 23, 163 and 191 of the Delaware Complaint), in a further and altogether more ambitious attempt to deny the Petitioners access to information about the financial position of the portfolio companies. Separately, the GP contends

that Paragraph 26 of the LPA (as amended by Amendment 22) required the Petitioners to pursue Royalty Financing in short order (see paragraph 122 of the Delaware Complaint).

c. The GP refused or failed to provide supporting information or an explanation as to why the capital call notice issued on 7 February 2025 in respect of uncalled Partnership expenses for the second half of 2024 was reduced from the previous call (and it falls to be inferred that the reduction was because the GP's legal expenses had been improperly charged to the Partnership – see further paragraph 65 below).

d. The GP has also failed to provide any further information about legal expenses charged to the Partnership in 2024 (see further paragraph 65 below).

e. The GP has failed to respond to requests for information regarding the purportedly binding nature of obligations purportedly owed by limited partners in their personal capacity to third parties, and of obligations owed by the Partnership to the portfolio companies (see further paragraph 63 below). The GP has also failed to provide copies of documentation evidencing such obligations, including the investment management agreements entered into between the Partnership and the portfolio companies.

f. The GP has failed or refused to respond to requests for information about the basis on which it contends that the limited partners are required to continue to fund the portfolio companies, notwithstanding those companies' failure to hit milestones or adhere to business plans set out in the agreed budgets. Rather than provide this information, the GP instead seeks to rely on the Petitioners' requests as an anticipatory breach of the LPA in the Delaware Complaint (see paragraph 170 of the Delaware Complaint).

58. The Petitioners have at all material times been entitled to information which enables them to determine whether the GP is acting in accordance with its duties and obligations, including the books, records, accounts and assets of the Partnership (see Clause 16(b)-(c) of the LPA, and section 22 of the ELP Act). The Petitioners are also entitled to receive (and the GP is obliged to provide) financial reports at least every calendar quarter in respect of all entities within the Partnership structure, which must include individual project income, expenses and operating costs, and must show actual versus budgeted results for the relevant period and

explain any major variances to the budget (see Schedule C to the LPA). The GP has not only denied the Petitioners their rights to this information but seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings. Even the limited information provided by the GP to the Petitioners confirms that the GP has committed serious breaches of duty which has resulted in the Petitioners' loss of trust and confidence in the GP.

Conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership

59. The GP has a conflict of interest and/or has breached its fiduciary duties to act in good faith in the interests of the Partnership.

~~*Improperly issuing capital calls*~~

~~*60.* The GP's issuance of capital calls of over US$100 million on 30 May 2025 to be paid by 13 June 2025/17 June 2025 (i.e. the May 2025 Capital Calls - which are not referenced in the Delaware Proceedings) amounts to a further breach of the GP's duty to act in good faith in the interests of the Partnership. The May 2025 Capital Calls were not issued for proper purposes or *intra vires* under the LPA, as it is evident from the timing of the capital calls, coinciding with the issue of the Delaware Complaint, that the capital calls are part of the GP's litigation strategy to apply improper pressure to the Petitioners through threats of default and/or its broader strategy to take control of the Partnership. The scale and nature of the May 2025 Capital Calls is also inconsistent with the funding scenario prepared by the GP on 30 April 2025 in which the GP proposed to cut the budgets for the Early-Stage Companies so as to commit only $1 million to one Early-Stage Company (Red Queen) as part of an orderly winding down of those companies. It can be inferred that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying significant capital given the terms of that funding proposal. Notwithstanding, the GP has called $47.8 million in capital for Early-Stage Companies pursuant to the May 2025 Capital Calls.~~

~~*Attempt to compel the limited partners to provide further funding to the portfolio companies*~~

~~61. As set out above, the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio~~

~~companies and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership. In particular, the GP seeks in the Delaware Complaint, amongst other things, "*a declaratory judgment that [the Petitioners are] currently in material breach of [their] contractual duties under the LPA and [have] waived [their] right to approve budgets*" (paragraph 163) or alternatively, specific performance requiring the Petitioners to fund capital calls in excess of the level of their Contingent Subscription and compelling the Petitioners to consider further budgets (paragraph 164). The GP also seeks a declaratory judgment that the Petitioners are in breach of their funding and budget approval obligations, and an order that the GP is entitled to impose a default charge against the Petitioners' interests in the Partnership or the investment pools to which its purported default relates (paragraphs 188-190).~~

62. The Petitioners' continued funding of ~~portfolio companies~~ the Early Stage Companies is in the interests of those companies, the GP and its employees, and ATP (not in the interests of the Partnership~~'s~~). The portfolio companies are co-founded and managed by executives from the GP, including by Dr Harrison himself, (see paragraph 32 of the Delaware Complaint) who would remain employed thereby, and the GP would be able to continue charging the portfolio companies for expenses which ought to be covered by the ATLS Fee. ATP, of which Dr Harrison is founder and Managing Director, is also wholly dependent on the continued funding of the Partnership (and ATP's continued involvement therein) as ATP has no meaningful business interests or capital under management other than that belonging to the Partnership, which has been almost entirely contributed by the Petitioners. Further, Dr Harrison is a director of each of the portfolio companies and owes fiduciary duties to them. It is in the interests of the portfolio companies (many of which are said, by the GP, to be in a state of financial distress) to obtain as much funding from the Partnership as possible but it is not necessarily in the interests of the Partnership to continue to provide such funding. The GP has a demonstrable conflict of interest, as a result of which the Petitioners have lost trust and confidence in its ability to manage the Partnership.

62A. Further, the GP has: (a) denied that it is subject to any conflict of interest (including at [76] of its Defence to the Petition); (b) failed to take any steps to manage that conflict, including when considering whether and in what amount to call capital from the Petitioners in May 2025; and (b) refused to accept the Petitioners' proposal on 3 July 2025 for the appointment of an independent conflict director. Those denials and failures have given rise to a further justifiable loss of trust and confidence in the GP's ability to manage the Partnership.

Exposure of the Partnership to binding and open-ended funding commitments to loss-making portfolio companies

63. The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the Delaware Complaint says as follows:

a. The Complaint refers at paragraph 85 to a letter sent by Dr Harrison to the Petitioners on 29 November 2022 in which he stated that: *"a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages"*; and

b. The Complaint states at paragraph 143:

"The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it, ***because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) obligations for ATP to purchase additional shares at the request of the company board. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones.*** *For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company* [REDACTED] *on December 6, 2021 included (a) an initial* [REDACTED] *investment by ATP and (b) an obligation for ATP to purchase up to* [REDACTED] *in additional shares at the request of the* [REDACTED] *board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as* [REDACTED] *in* [REDACTED]*. To date, ATP has invested* [REDACTED] *in* [REDACTED]*, which is short of ATP's total potential obligation to the company under the agreement.* ***Should the additional funding obligations become due, then the Family Office LP's refusal to meet a*** [REDACTED] ***capital call would cause ATP to breach its agreement with the portfolio company.***" (emphasis added)

64. As set out above, the continued funding of the portfolio companies is in the interests of the portfolio companies, the GP (and ATP), not the Partnership and the limited partners. The GP has also failed to provide information to the Petitioners about the Partnership's purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners' requests that it do so (see paragraph 57 above). The GP's apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims and is a fetter of the Petitioners' discretion to approve budgets, and the GP's

~~subsequent lack of probity has justifiably caused the Petitioner to lose trust and confidence in the GP.~~

Charging personal legal expenses to the Partnership

65. The ~~petitioners are also concerned that the~~ GP's personal legal expenses have been improperly charged to the Partnership and ATLS (as a wholly-owned subsidiary of the Partnership), ~~which also comprises a~~ in breach of the Settlement Agreement and LPA. This falls to be inferred from the following matters:

    a. The expense report exhibited to the GP's December 2024 capital call notice dated 12 December 2024 included a line item for "Legal Expenses for Partnership". Mr Bogdanov queried these expenses in an email to Dr Harrison dated 23 December 2024, saying "[o]*ne item, '**Legal Expenses for Partnership**,' stands out as significantly higher compared to previous years (USD 1.9 million versus USD 0.56 million in H2 2023)*".

    b. On 20 December 2024, Patrik Blochlinger, the Chief Legal Officer of Rigmora Holdings, emailed Daniel Finkelman (the General Counsel of Apple Tree Partners) to request details of the legal expenses, stating that he believed the GP's legal expenses of the Braeburn Proceedings had erroneously been charged to the Partnership.

    c. Mr Finkelman responded on 23 December 2024, stating that the invoices had been reviewed, and that the GP had discovered that one invoice in the amount of US$30,692.50 was inadvertently paid by the Partnership when it should have been allocated to the GP. Mr Finkelman noted that this had been corrected and a revised capital call for fund expenses was issued. Mr Finkelman noted, however, that the GP wished to discuss with the Petitioners the "*allocation*" of various expenses incurred by the GP in relation to the Braeburn Proceedings.

    d. Several further requests were made for and on behalf of the Petitioners for an explanation as to the Partnership's significantly higher legal expenses in 2024, together with supporting invoices and narratives from the relevant law firms.

e. Dr Harrison confirmed on 29 December 2024 that the GP would review the relevant expenses. However, the GP has refused to provide the Petitioners with underlying invoices and narratives on grounds of privilege. The GP agreed to reduce some legal expenses. Nevertheless, the Petitioners consider the legal expenses to be excessive. It falls to be inferred that the invoices and narratives concern legal expenses incurred by the GP in relation to the Braeburn Proceedings, which expenses cannot be charged to the Partnership. The GP's lack of probity and conflict of interest has resulted in the Petitioners' loss of trust and confidence in the GP.

f. The expense report exhibited to one of the GP's ~~May 2025~~ Disputed Capital Calls indicates that "Legal Expenses for Partnership" for January – May 2025 are US$7.86 million. These legal expenses are significantly higher than in prior periods and the Petitioners infer that the GP has sought to include legal costs in connection with the Delaware Proceedings and/or any other anticipated litigation costs in connection with the dispute between the GP and the Petitioners.

65A. Further, the GP caused legal invoices for Quinn Emanuel, Wachtell, Lipton, Rosen & Katz ("**WLRK**"), Walkers, Maples Group and Ms Sue Prevezer KC relating to the Braeburn Proceedings to be paid in breach of: (i) clause 5.1 of the Settlement Agreement, which required the GP to pay its legal costs in relation to the Braeburn Proceedings and the Settlement Agreement using its own money and not to use money belonging to the Partnership (including money held by subsidiaries of the Partnership); and/or (ii) Paragraph 20(e)(ii) of the LPA, which only permits ATLS to spend money in accordance with approved or deemed approved budgets for the ATLS Fee:

Quinn Emanuel

a. Legal invoices totalling c. $800,000 were issued by Quinn Emanuel between September 2024 and April 2025 in respect of a matter called "*Delaware Factual Investigation and Potential Claims*". The Partnership's general ledgers for 2024 and 2025 reveal these invoices were paid out of the Partnership's assets. The (unredacted) narratives for these invoices further reveal that time was spent on work in connection with the Braeburn Proceedings.

b. A further four invoices totalling c. $472,000 were issued by Quinn Emanuel between September to December 2024 in connection with a matter called "*Cayman Litigation*". The invoices contained the following description: "*For professional services through* [date] *in connection with assisting Cayman counsel in the defense of an action brought by the Limited Partners of ATPLSV seeking a court order requiring the distribution of the assets of Braeburn*" (i.e. the Braeburn Proceedings). The 2024 general ledger for ATLS reveal that all four invoices were paid for by ATLS.

WLRK

c. Six invoices were issued by WLRK between December 2024 – May 2025. Five of these invoices (totalling $1.356m) were charged to the Partnership, whilst one invoice (totalling $400,000) was charged to ATLS. Fee narratives have not been disclosed for WLRK's work during the aforementioned period, but as WLRK was heavily involved in negotiating the Settlement Agreement in late 2024 it is inferred that this work was in connection with the Braeburn Proceedings and the Settlement Agreement.

Walkers

d. In November and December 2024, Walkers issued two invoices for work performed in respect of a matter called *"Advice Regarding Potential Claims by ATP Against Rigmora".* The November 2024 invoice (totalling $28,929.24) was paid by the Partnership, whilst the December 2024 invoice (totalling $34,612.68) was paid by ATLS.

e. Between November 2024 to January 2025, Walkers issued three invoices (totalling $750,121.25) in connection with a matter called "*Claim by Rigmora Funds Against ATP*". It falls to be inferred that this matter related to Walkers' representation of the GP in the Braeburn Proceedings. The (unredacted) narratives for these invoices reveal that time was spent on tasks related to the Braeburn Proceedings and the Settlement Agreement. All three invoices were paid by ATLS.

Maples

f. In September and October 2024, Maples (the GP's former Cayman attorneys in the Braeburn Proceedings) issued two invoices in connection with a matter titled "*Dispute with Unicorn Biotech Ventures One Ltd and Dispute with Unicorn Biotech Ventures Two Ltd*". The invoices were paid by ATLS and totalled $426,169.96.

Sue Prevezer KC

g. In October 2024, Sue Prevezer KC issued one invoice (totalling £54,611) for work performed in September 2024. The fee narratives are redacted for privilege, but the invoice was issued in connection with work on "*ATP III GP LTD*" and was paid by ATLS.

h. In November 2024, Sue Prevezer KC issued three invoices (totaling £205,812.18) in connection with work on *"FSD 236 OF 2024: UNICORN V ATP CAYMAN PROCEEDINGS"* (i.e. the Braeburn Proceedings). These invoices were paid by ATLS.

D. Ground 2: Loss of substratum

66. Given the GP's stated intention to pursue an investment strategy which involves the continued funding of the portfolio companies against the wishes and to the detriment of the Petitioners and without complying with the express provisions of the LPA to obtain limited partners' approval for budgets for investments, and the GP's evident intention to confiscate 50% of the Petitioners' interests in the Partnership and take control thereof, the substratum of the Partnership has been lost. The Partnership is no longer being run in accordance with the reasonable expectations of the limited partners or in accordance with the LPA.

E. Ground 3: Need for an independent investigation into the Partnership's affairs

67. For all of the reasons set out in Ground 1, there is evidently a need for a proper, independent investigation into the Partnership's affairs.

Conclusion

68. For the reasons set out above, it is respectfully submitted that it is just and equitable that the Partnership be wound up.

Nomination of Joint Official Liquidators

69. The Petitioners nominate **Mr Alexander Lawson** and **Mr Barry Lynch** of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands for appointment as joint official liquidators of the Partnership.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

1. The Partnership be wound up pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act, and/or pursuant to section 35 of the Partnership Act (2025 Revision).

2. Mr Alexander Lawson and Mr Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Joint Official Liquidators of the Partnership (the "**JOLs**") with such powers as the Court deems necessary for the orderly winding up of the Partnership.

3. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP shall vest in the JOLs without the requirement for further formalities and shall be held by the JOLs in accordance with the law.

4. The JOLs' powers are exercisable to the exclusion of the GP and the GP shall forthwith have no authority or power to act in relation to the Partnership or its property or affairs other than at the direction of and/or with the written consent of the JOLs.

5. The JOLs shall have leave to apply under section 36(3)(g) of the ELP Act for further orders and directions.

6. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.

7. Such further or other relief as this Honourable Court deems fit.

Dated this 6th day of June 2025

Amended 20 November 2025

Campbells LLP

_____

Campbells LLP
Attorneys-at-Law for the Petitioners

NOTE: This Amended Petition is intended to be served on the Partnership and the GP at Walkers (Cayman) LLP, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands. ~~Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1 1104, Cayman Islands.~~

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 12 January 2026 at 10.00 am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

EXHIBIT M

Neutral Citation Number: [2025] CIGC (FSD) 124

Cause No: FSD 2025-0146 (JAJ)
and Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR ONE LP)

(2) UNICORN BIOTECH VENTURES TWO LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR TWO LP)

Plaintiffs

-and-

ATP III GP, LTD
(in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer and Ms Yuan Wen of Campbells LLP for the Plaintiffs / Petitioners** **Mr Andrew Ayres KC of counsel instructed by Ms Shelley White, Ms Laure Astrid Wigglesworth and Ms Rebecca Mosely of Walkers (Cayman) LLP for the Defendant / Respondent**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**17 December 2025**
Ex tempore judgment delivered:	**17 December 2025**
Finalised judgment approved:	**22 December 2025**

Civil procedure—vacation of trial—effect of defendant filing for Chapter 11 bankruptcy protection in the United States on conduct of proceedings before the Grand Court—case management considerations

- -

JUDGMENT

- -

1. This writ action and winding up petition are listed before me today for a combined pre-trial review in advance of a trial in both matters due to commence on 12 January 2026. This hearing has been fixed in the calendar since October 2025 and was intended to be used to address any last-minute issues concerning preparation for the trial.

2. As in previous hearings before me, the limited partners who are the Plaintiffs / Petitioners have been represented by Mr Andrew Scott KC, supported by Mr Liam Faulkner, Mr Hugo Farmer and Ms Yuan Wen of Campbells LLP, and the Defendant / Respondent general partner has been represented by Mr Andrew Ayres KC, supported by Ms Shelley White, Ms Laure Astrid Wigglesworth and Ms Rebecca Mosely from Walkers (Cayman) LLP. I will refer to the parties respectively as the LPs and the GP.

3. In the last two weeks there have been two substantial developments, the first of which will have a significant effect on the intended progress of the trial; the second of which has largely derailed it. The first is that on 5 December 2025, just over 10 business days ago, Chancellor McCormick in Delaware gave judgment in the parallel proceedings between the parties dealing with certain issues about the GP's entitlement to make capital calls from the LPs, rejecting parts of the GP's case. This is likely to have consequences for the conduct of the winding up petition before the Grand Court, in particular Mr Scott argues that it will significantly simplify the question whether a winding up order should be made. If the trial before the Grand Court were to proceed, there would also be arguments about the extent to which any findings by Chancellor McCormick might be binding on the parties in respect of their disputes before the Grand Court. However, the parties have always known that that would be the case.

4. Secondly, and more significantly, on 9 December 2025, the GP and certain other linked entities sought Chapter 11 bankruptcy protection in the United States including, as part of that protection, a worldwide automatic stay of proceedings in any other jurisdiction.

5. The GP's intention to seek Chapter 11 protection was not foreshadowed in any way either to the LPs or to the Grand Court. Indeed on 8 and 9 December 2025, at the same time that the GP and Quinn Emanuel, its lead attorneys in the US proceedings, must have been preparing the GP's Chapter 11 filings (including a lengthy declaration of Dr Seth Harrison, the controller of the GP), Walkers were dealing with the Grand Court and the Court of Appeal in relation to the GP's intended expedited appeal against an Order I had made on 1 December 2025 concerning a privilege issue regarding discovery. In their dealings with Campbells, the Grand Court and the Court of Appeal on 8 and 9 December 2025, Walkers expressly represented that the GP did not intend the appeal to disrupt the trial fixed for 12 January 2026. There is no suggestion that Walkers were aware of the GP's intended Chapter 11 filing in the United States, which would be wholly contradictory to the representations made by them.

6. Thus, it is now clear that, for the second time within less than 3 weeks, the GP and Quinn Emanuel have not informed Walkers of important matters relevant to the proper conduct of the Cayman proceedings, with the result that the position has been actively misrepresented to the Court. This is extremely unsatisfactory and is to be deprecated.

7. Of a piece with this, it is also extremely regrettable that a partner in Quinn Emanuel considered it appropriate to write directly to an associate at Campbells on 11 December 2025 threatening all kinds of personal consequences as a result of Campbells' indication to the Grand Court on 10 December 2025 that they considered that the PTR should proceed, contrary to Walkers' request to vacate it, so that the Court could be properly informed of developments in Delaware and consider what consequences they had for the matters before the Grand Court. Quinn Emanuel asserted in the letter that the communication to the Grand Court was itself a violation of the automatic stay under Chapter 11. This is in marked contrast to the submissions on behalf of the GP at an oral hearing before the Delaware bankruptcy judge on 15 December 2025, where the transcript of the hearing that is before me records that an attorney from Quinn Emanuel orally submitted in relation to the PTR today:

> *"[…] on the specific issue of the Wednesday hearing. It is a pretrial conference. There is no dispute that the lawyers in the Cayman Islands should apprise the Court as to the goings on here. That is not -- I don't think there is any dispute that that can and should happen. In fact, we did inform the Court of the filing of the case and the judge did indicate that he wants to have counsel there to, at least, give him an update as to what is going on here. That makes all the sense in the world."*

Bullying correspondence of the kind exemplified by Quinn Emanuel's letter dated 11 December 2025, whilst it might be acceptable in the United States (although I doubt that), is completely unacceptable in the Cayman Islands. I do not want to see similar conduct in any matters that come before me by any American law firms involved in the background, still less by any local attorneys.

8. The PTR hearing before me today has focused on the consequences of the GP's filing of the Chapter 11 proceedings in the United States and the impact of the automatic stay under American law on what is happening and due to happen before the Grand Court.

9. It seems to me that the first point is the obvious one that the trial cannot proceed on 12 January 2026 and must be vacated. That is for two reasons. First, because neither of the parties are able to take steps to prepare for that trial whilst the Chapter 11 proceedings are live. Whilst the Chapter 11 stay is not directly enforceable in the Cayman Islands and no application has been made to recognise the Chapter 11 proceedings here, the GP and all the partnership assets are based in the United States. Thus, even if either of the parties were to take steps to try to progress the matters before the Grand Court, there would probably be arguments in Delaware that they are in contempt, with potentially severe consequences for them and for all of the partnership's assets. So, I do not criticise either party for taking the view that the January trial cannot realistically proceed.

10. I note that the LPs are seeking or intend to seek in Delaware, first, to dismiss the Chapter 11 proceedings as an abuse, and secondly, an order waiving or disapplying the automatic stay so that a slimmed down trial, taking into account Chancellor McCormick's recent judgment, can proceed before the Grand Court later in January 2026. Those motions in Delaware have not yet been briefed or determined and it appears unlikely that they will be determined until sometime during January 2026 at the earliest, which is also inconsistent with the ability to proceed with the intended trial on 12 January 2026.

11. The second reason why it seems to me that the trial cannot and should not proceed on 12 January 2026 is that the LPs' position is that the effect of the GP's Chapter 11 filing is that the partnership is now in voluntary liquidation under Cayman law. So, a number of the issues that were going to be fought out in the 12 January trial are likely no longer to be live issues and will probably not need to be determined by the Court. I therefore have no hesitation concluding that the trial fixed to commence on 12 January 2026 should be vacated.

12. The second question is whether the Court should fix a date in January or February 2026 for hearing a streamlined version of the substantive winding up petition presented by the LPs, which is the LPs' position, or whether, as the GP argues, the Court should simply await developments in Delaware and essentially take no further steps to move the Cayman disputes forward until clarity is obtained on the position in the United States.

13. I do not find the GP's position to be a particularly attractive one. The parties have throughout sought to advance the resolution of the disputes between them both in Delaware and in the Grand Court on an expedited basis. My own view is that an orderly separation of the GP from the LPs needs to occur sooner rather than later to avoid the continuation of these obviously corrosive disputes between the parties on each side. It does not seem to me to be productive or a beneficial use of the parties' time and resources for this dispute to drag on for any longer than absolutely necessary. The only people who are profiting from this dispute at the moment are the lawyers on each side.

14. I therefore conclude that I should fix a date for the trial of what the LPs have called the "paragraph 10(b) issues" for the week commencing 2 February 2026. If, for any reason, events in Delaware do not progress on a schedule that allows the parties to prepare for and conduct that hearing, then the parties can apply to me in mid to late January with a view to adjourning the trial and moving it perhaps into March 2026. But it seems to me that it is far better that I allocate that time and give the parties a date to be working towards now so that my calendar does not fill up in the intervening period. If I did not do so, and the parties were to come back to me in mid to late January 2026 following a decision by the Delaware judge on either the dismissal of the Chapter 11 proceedings or a carve out for the Grand Court proceedings from the automatic stay, the likelihood is that the earliest date that I could then give them would not be until the middle to the end of March, and perhaps even into April 2026.

15. I am inclined to accept Mr Scott's submission that Chancellor McCormick's findings and the fact of the Chapter 11 filing in the United States, and their consequences under the limited partnership agreement and Cayman Islands law, have the result that it ought not to be necessary any longer to get into the question whether the LPs have lost trust and confidence in the GP's ability to manage the partnership. It seems to me that Mr Scott is right to say that the issue for the Court, or at least a preliminary issue for the Court, is the question whether there has been a loss of substratum, which on its own would justify the making of a winding-up order without the necessity to get into the questions of loss and of trust and confidence.

16. It seems to me that two days should be sufficient for the Court to determine the paragraph 10(b) issues, which are largely matters of law and construction of the limited partnership agreement. To the extent that there is likely to be any need to consider questions of fact, they are likely to be relatively circumscribed in their scope. I note in passing, and with some admiration, that Chancellor McCormick was able to hear the Delaware trial in two days. I appreciate that there are significant differences in the procedural approach of the US courts to the conduct of trials compared to the approach of the Grand Court, but I think that with goodwill and cooperation on both sides it ought to be feasible to have a hearing of the more limited nature proposed by the LPs within a two-day time estimate.

17. I agree with Mr Ayres on behalf of the GP that it will be necessary for the LPs to make amendments to their winding up petition so that it is clear precisely what their case is, both for the GP and also for the Court when it comes to deal with the hearing of the petition. It also seems to me that Mr Scott is correct that the appropriate procedural way to characterise the hearing in February 2026 is that it will be a trial of preliminary issues, so that if, for any reason, I determine that the partnership's substratum has not been lost, then the LPs have the ability to come back and to argue the loss of trust and confidence points at a later stage, if there is any real appetite on either side for the matter to proceed beyond February 2026.

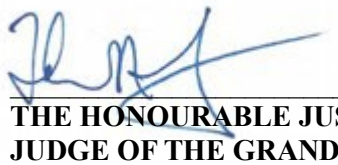
18. However, having said that, I will not make an order at this stage imposing any procedural timeline for the preparation of amended pleadings because I am conscious that there may well be arguments that the parties are unable to take any such substantive steps whilst the stay under Chapter 11 applies to them.

19. I understand that the matter is before the Delaware judge this afternoon. It does seem to me that, at the very least, it would be of real utility for the Delaware judge to authorise the preparation of amended pleadings on both sides in order to re-state what are the issues that the Grand Court will need to determine in due course. It also seems to me that it would be of real utility for the Delaware judge, as soon as possible, to determine that the limited issues that the LPs wish to put before the Grand Court for determination should be excluded from the scope of the automatic stay so that a determination on those issues can be made. A decision on those points is likely to be of real benefit to the parties and also to the Delaware court if the Chapter 11 proceedings are not dismissed and continue.

20. For what it is worth, I will conclude by saying that I generally take the view that the conduct of the winding up of a Cayman exempted limited partnership, and by whom that winding up ought to be carried out, are more appropriately questions for the Grand Court to determine supported by Chapter 15 recognition in due course, rather than by Chapter 11 proceedings. It is for the Delaware judge to take whatever view of that indication that she wishes to take.

21. It also occurs to me, without the benefit of full argument, but as a preliminary view, that the proposal for capital restructuring and the introduction of new investors, which is adverted to by Dr Harrison in his declaration in support of the Chapter 11 proceedings, appears at first blush to be outside the proper scope of the GP's powers based on the limited partnership agreement which is binding upon the GP, and also having regard to applicable Cayman law on what a GP's obligations are in the context of a winding-up of a Cayman exempted limited partnership.

Dated 17 December 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

EXHIBIT N

Neutral Citation Number: [2025] CIGC (FSD) 106

Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen and Mr Jordie Fienberg of Campbells LLP for the Petitioner** **Mr Andrew Ayres KC of counsel instructed by Ms Shelley White and Ms Rebecca Moseley of Walkers for ATP III GP, Ltd**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**31 October 2025**
Ex tempore judgment delivered:	**2 November 2025**
Finalised judgment approved:	**6 November 2025**

Exempted limited partnership—winding up on just and equitable basis—application of CWR O.3, r.12(1)(a) or (b) to winding up of exempted limited partnership—whether court can order petition to proceed against partnership or against general partner, with partnership as subject matter

- -

JUDGMENT

- -

1. This is my judgment on a novel point that has arisen in the course of a directions hearing in connection with this just and equitable winding up petition, which concerns an exempted limited partnership formed under the Exempted Limited Partnership Act.

2. The essential background is that the exempted limited partnership in this case operates in the life sciences or biotech space. The Petitioners are limited partners in the partnership and have contributed around 98% of the capital of the partnership. Dr Seth Harrison, a successful life sciences entrepreneur, has driven the research and development of the products and the portfolio companies developing them. He has contributed approximately 2% of the partnership's capital. There are a number of other limited partners who are said to have acquired minor partnership interests in the exempted limited partnership, apparently as employee incentives.

3. The general partner of the partnership, ATP III GP, Ltd, is a limited company owned and controlled or directed by Dr Harrison.

4. In recent months, the relationship between the individuals behind the Petitioners and Dr Harrison has broken down. I do not need to go into the reasons for that for the purposes of this judgment, but they have given rise to three sets of proceedings between the parties in which their disputes are being decided:

   4.1 a contractual dispute being tried in Delaware;

   4.2 a writ action commenced in the Cayman Islands, and seeking declaratory relief regarding the validity, or otherwise, of certain steps taken by the general partner in relation to capital calls; and

   4.3 these winding up proceedings.

5. In the winding up proceedings, the Petitioners seek the winding up of the partnership on the just and equitable basis. They assert that they have lost all confidence in Dr Harrison and the general partner. This is said to be due to:

   5.1 alleged mismanagement, prejudicial conduct, and a lack of probity in the conduct of the partnership's affairs.

   5.2 alleged conflicts of interest affecting the general partner through Dr Harrison's interest in it, and breach of fiduciary duty by the general partner;

   5.3 a loss of substratum in that the general partner is set on continuing to fund non-performing portfolio companies, contrary to the limited partners' legitimate expectation for the operation of the partnership; and

   5.4 a need for an investigation of the partnership's affairs.

6. Dr Harrison, and through him the general partner, strenuously disputes the Petitioners' claims and is determined to contest the allegations that have been made against them.

7. Due to the potential effect of the dispute on the ongoing operation and management of the portfolio companies, this winding up petition and the writ action have both been advanced on a compressed timetable and are due to be tried together in early January 2026, having been filed in early June 2025.

8. The issue that has arisen in the course of the summons for directions concerns how the petition is to be contested. The Petitioners seek an order under CWR O.3, r.12, as modified by section 36(3) of the Exempted Limited Partnership Act, that the petition be treated as an inter partes proceeding between the Petitioners and the general partner. The Petitioners say that that reflects the substance of the dispute.

9. The general partner resists such an order and contends that the petition should continue between the Petitioners and the exempted limited partnership. The importance of this point is the cost consequences that follow under CWR O.24, r.8. Section 36(3) of the Exempted Limited Partnership Act provides that:

> *"(3) Except to the extent that the provisions are not consistent with this Act, and in the event of any inconsistencies, this Act shall prevail, and subject to any express provisions of this Act to the contrary, the provisions of Part V of the Companies Act (2021 Revision) and the Companies Winding Up Rules, 2018 shall apply to the winding up of an exempted limited partnership and for this purpose —*
>
> *(a) references in Part V to a company shall include references to an exempted limited partnership;*
>
> *(b) the limited partners shall be treated as if they were shareholders of a company and references to contributories in Part V shall be construed accordingly, except that the application of the provisions shall not cause a limited partner to be subject to any greater liability than that limited partner would otherwise bear under this Act, but for the application of this paragraph;*
>
> *(c) references in Part V to a director or officer of a company shall include references to the general partner of an exempted limited partnership;"*

10. Part 3 of CWR O.3 concerns petitions presented by contributories, which, by virtue of section 36(3) of the Exempted Limited Partnership Act, is the analogue for the current situation.

11. CWR O.3, r.12 requires that at the hearing of the summons for directions, the court shall give directions as appropriate in respect of certain specified matters, including:

> *"(a) whether or not the company is properly able to participate in the proceeding or should be treated merely as the subject-matter of the proceeding;*
>
> *(b) whether the proceeding should be treated as a proceeding against the company or as an inter partes proceeding between one or more members of the company as petitioners and the other member or members of the company as respondents;"*

12. CWR O.24, r.8(2) states:

> *"(2) In the case of a contributory's winding up petition under Order 3, Part III, the general rules are that —*
>
> *(a) if the Court has directed that the company itself is properly able to participate in the proceeding, the general rule is that the costs of a successful petitioner be paid out of the assets of the company; or*
>
> *(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

13. I interpose here that there is an obvious error in CWR O.24, r.8(2)(b). The wording *"between one or more members of the other members or members of the company as respondents"* makes no grammatical sense. By comparison with CWR O.3, r.12(b) it appears that two errors have crept into the drafting of CWR O.24, r.8(2)(b). The first is that the words *"company as petitioners and the"*

has been omitted after *"between one or more members of the"*. Secondly, an *"s"* has been wrongly added to *"member"* on the second occasion that it is used in subparagraph (b). In my judgment, I should treat CWR O.24, r.8(2)(b), as if it read:

> *"(b) if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the* [company as petitioners and the] *other member*[**s**] *or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."*

Counsel agreed in the course of argument with this proposition and construction of CWR O.24 r.8(2)(b).

14. To resume my summary of the Rules, CWR O.24, r.8(2) thus determines the prima facie allocation of the costs of defending the petition, as between the petitioner on one side and the company or members of the company other than the petitioner, as appropriate, on the other.

15. The Petitioners in this case argue that this provision also applies to a winding up of an exempted limited partnership. Applying section 36(3)(a) and (b) of the Exempted Limited Partnership Act, they say that *"members of the company"* in the Companies Winding Up Rules becomes *"members of the exempted limited partnership"* and the members of an exempted limited partnership are the limited partners and the general partners together. Thus, the Petitioners say, there is a direct read over without any need to strain the statutory language. The court should therefore make an order on the summons for directions determining that the petition should proceed as a claim between the Petitioners and the general partner, with the exempted limited partnership as the subject matter of the petition.

16. The Petitioners support that approach to the construction of the Companies Winding Up Rules by arguing that the purpose of CWR O.24, r.8(2) is to apply the legal costs principle, namely that a company's money should not be spent on disputes between shareholders.

17. The Petitioners say that that principle applies wherever the real contest is between parties other than the company itself, for example between its members. The Petitioners say that the reason why that principle is engaged in the context of just and equitable winding up proceedings is because, as stated by Segal J in Re Uphold Limited (unreported, 16/02/23), just and equitable proceedings are:

> *"42. […] grounded on a dispute between the shareholder petitioner and those in control of the company where those in control have behaved in a way that is fundamentally inconsistent […]*

> *with the basis on which the shareholder subscribed for or purchased his / her shares so as to justify the termination of the corporate relationship. It is usually the case that those accused of misconduct should pay for the costs of defending the petition"*

18. The Petitioners argue it would be contrary to the legal costs principle for the general partner to use assets of the partnership, which are held overwhelmingly for the benefit of the Petitioners, to defend the petition by which the Petitioners seek to impugn the general partner's own conduct and other fiduciary failings. The Petitioners say this would effectively have the result that the Petitioners would end up funding both the pursuit of the claim and also its defence.

19. The general partner disputes the Petitioners' stance, based on the wording of section 36(3) of the Exempted Limited Partnership Act. The general partner submits that the Petitioners' approach is not permitted by section 36(3) of the Exempted Limited Partnership Act, so that I do not have jurisdiction to make the order sought by the Petitioners. The general partner's argument is as follows.

    19.1 The general partner says that by virtue of section 36(3)(a) and (b), *"company"* is to be read as *"exempted limited partnership"* and *"contributories"*, in other words, shareholders or members, is to be read as *"limited partners"*.

    19.2 The general partner argues that the reference in section 36(3)(c) to the general partner being assimilated to the position of a director of the company means that the general partner is <u>not</u> to be treated as a *"member"* for the purpose of CWR O.3, r.12, and CWR O.24, r.8.

    19.3 The general partner says in paragraph 16 of its skeleton argument:

> *"16. The choices under (a) and (b) are interdependent, and there are only two options: either (i) the Partnership is properly able to participate, and the proceeding should be treated as being against the Partnership; or (ii) the proceedings is an inter partes proceedings between different limited partners, and the Partnership is merely the subject-matter."*

    19.4 The general partner adds that the fact that there is a binary choice is clear from the structure of CWR O.24, r.8 which mirrors and follows the structure of CWR O.3, r.12.

    19.5 Therefore, the general partner argues, the only question that the court needs to ask is whether the proceedings should be treated as being between different limited partners, or as between limited partners and the exempted limited partnership itself.

20. The general partner submits that the Petitioner's construction requires that the meaning of *"members of the company"* in the Company Winding Up Rules sometimes means limited partners and sometimes means all of the partners in the exempted limited partnership, which the general partner submits indicates that the Petitioners' construction must be wrong.

21. The general partner says that Segal J's comments in *Re Uphold* are simply not relevant, as that case concerned the situation of a company, not an exempted limited partnership.

22. In response to the Petitioner's reliance on the legal costs principle, the general partner argues that there is no room for an argument based on principle where the Exempted Limited Partnership Act expressly requires the court to read the Companies Winding Up Rules in a particular way.

23. Relying on a dictum of Segal J in *Re China Shanshui Cement Group Limited* [2021] 1 CILR 253 at paragraph 39, the general partner submits that:

> *"39. A critical question is whether the company can show that it has a real interest independent of its shareholders in defending the petition (does the company have a separate interest to protect?). As Foster, J. said in* Freerider *(ibid., at para. 45), the court must decide whether the company has any independent interest in the dispute."*

In this case, I have to read *"company"* as *"limited partnership"*.

24. Finally, the general partner argues that even if the court has discretion to make an order under CWR O.3, r.12, the court should not exercise that discretion on the facts of this case. The general partner says that the exempted limited partnership has an independent interest in defending itself and continuing to exist because it has assets built up over many years that generate financial benefits for its limited partners, including 14 limited partners other than the Petitioners. Although that must be the case for many partnerships where disputes arise.

25. I agree with the Petitioners that the legal costs principle is an important one. As explained by Harman J in *Re A Company, ex parte Johnson* [1991] BCC 234, which was a case concerning an unfair prejudice petition under section 459 of the English Companies Act of 1985:

> *"The train of authority being well established, it seems to me quite clear that, if it is shown that directors of a company have been causing the company's money to be spent on financing the resistance either to a "pure" section 459 petition or, according to Plowman J in* Re A &BC Chewing Gum *and myself in* Re Hydrosan*, in financing the company's resistance to a member's winding-up petition based on the just and equitable ground, the court should prevent such*

> *expenditure. Such expenditure is a misfeasance, there is no excuse for it in law and it is not a question of an arguable case being raised showing that it might be right to permit misfeasances. Misfeasances are not matters that are permitted by the courts and there is no question of an arguable case at all."*

26. The Petitioners referred me to *Re Cybernaut Growth Fund LP* (unreported, 11/09/13), where the question of making an order under CWR O.3, r.12, and O.24, r.8 in respect of the winding up of an exempted limited partnership was dealt with by consent. Both parties before me accepted that, whilst it thus provides an example of a case where an order was made, the ability of the court to do so was not in issue and was not considered by either of the judges before whom the matter was listed. In my view, it therefore does not advance the argument.

27. In *Re Freerider Ltd* [2009] CILR 604, Foster J at paragraph 42 rejected the submission that what is now CWR O.3, r.12, was *ultra vires* the Insolvency Rules Committee because it was a legislative change or addition to the provisions of Part V of the Companies Act. He concluded that CWR O.3 r.12 is procedural in nature, giving effect to the legal costs principle, which he considered to be well established in law. In particular, he said, at paragraph 20:

> *"20. It is in this overall context that it seems to me the IRC are empowered by s.155(1)(a) of the Companies Law to make rules, in particular to enable the court giving directions to determine in its discretion in the particular circumstances which parties should most appropriately participate in winding-up proceedings brought under the Companies Law. In my view in the light of this, the relevant provisions of O.3, r.11(2)(a) and (b)* [now O.3, r.12(2)(a) and (b)] *are essentially procedural in nature and are directly related also to the provisions which the IRC is empowered to make and has properly made in relation to the costs of petitions. I do not think there can be any doubt that the IRC is empowered to make such costs rules.*
>
> *21. I also consider that it is probable that the members of the IRC were aware, or were made aware, of the English authorities in which the courts there have either restrained a company from active participation or refused a company permission to participate actively in a winding-up petition on the just and equitable basis and/or a petition under s.459 of the Companies Act 1985 and/or to do so at the expense of the company, when the reality is that the proceedings are in essence a dispute between shareholders and not a dispute with the company itself. […] Wickens, V.C. said* [in *Pickering v. Stephenson*] *(L.R. 14 Eq. at 340):*
>
> > *'It seems to me that where a quasi partnership of this sort is divided into a majority and minority who differ on a question of internal administration, and litigation results from the difference, it is contrary to the spirit of the partnership to pay the expense of the litigation out of the general fund; and that this is independent of the question whether the majority is overwhelming or a bare majority.'"*

28. At paragraph 32, Foster J commented that the provisions of CWR O.3 r.12 are a mechanism to enable the court to determine at an early stage whether the legal costs principle is engaged. He said:

> *"32. I would comment in passing that the provisions of O.3, r.11(2)(a) and (b) of the Companies Winding Up Rules may perhaps be seen as a sort of mechanism of the kind referred to by Lindsay, J. in that they will enable determination by the court at any early stage in the proceedings by way of directions of whether or not it is procedurally appropriate and desirable, in the particular circumstances, for the company concerned to participate in the petition proceedings or whether it should be treated simply as the subject-matter."*

29. The Petitioners submit at paragraph 48 of their skeleton argument:

> *"48. In the context of petitions for the just and equitable winding up of an ELP it is often the case that: (i) the dispute is grounded on the general partner's conduct of the partnership's affairs and (ii) the general partner (and the general partner alone) has the ability to access and deploy partnership assets towards funding a defence of the petition. There is no reason for the Legal Costs Principle not to apply in that context to prevent a general partner from deploying partnership assets (i.e. trust assets) towards defending allegations of misconduct against it."*

30. In my view, that understates the position. Given the statutory roles of the general partner and the limited partners, as provided for by the Exempted Limited Partnership Act, namely that the limited partners have no role in the management of the exempt limited partnership and do not owe any duties to the partnership or to the other limited partners; whereas the general partner is responsible for the management of the exempted limited partnership and does owe fiduciary and other duties to the limited partners, it is hard to see how a just and equitable petition would ever involve parties other than one or more limited partners on one side and the general partner, and possibly an intermeddling limited partner, on the other.

31. This points against the general partner's submission that the proper construction of CWR O.3 r.12 is that it is directed at limited partner on limited partner disputes. This is because it is extremely difficult to contemplate circumstances giving rise to a just and equitable petition in which the dispute would arise between the limited partners and would arise in such a way that it does not involve the general partner, given that no duties owed are owed by limited partners to each other and limited partners have no roles in management, and that the general partner is the entity that owes duties to each limited partner and is responsible for management of the partnership.

32. In addition, I consider there is a conceptual flaw in the argument that the petition should proceed as a dispute between limited partners and the exempted limited partnership. This is because an exempted limited partnership does not have any separate legal personality from the limited partners and the general partner. Neither side appears fully to have grappled with the consequences of this in the arguments that they have advanced before me.

33. By referring to the exempted limited partnership throughout as being the appropriate respondent to the petition, in the absence of separate legal personality, the effect of the general partner's position is that the Petitioners should both pursue the petition and at the same time be respondents to the petition. That is neither legally nor procedurally possible. It would necessarily involve obvious and irreconcilable conflicts of interest for the Petitioners. It also flies in the face of section 33(1) of the Exempted Limited Partnership Act, which provides that:

> *"(1) Subject to subsection (3), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and a limited partner shall not be a party to or named in the proceedings."*

Subsection (3) deals with the situation where a general partner has failed to bring proceedings against a third party and a limited partner in those circumstances wishes to pursue that claim on behalf of the exempted limited partnership. So that subsection is irrelevant for the purpose of the debate before me.

34. If, as I consider must be correct, the exempted limited partnership cannot itself be a respondent to a just and equitable petition brought by a limited partner, and that only the general partner and any intermeddling limited partners can be the respondents, then it also follows that CWR O.24 r.8(a) cannot be operative as against an exempted limited partnership because the court will not and cannot direct that the exempted limited partnership itself can participate in the proceeding. This is because the exempted limited partnership does not have separate legal personality and the petitioning limited partner cannot also be a respondent. Thus, the respondents to a just and equitable petition can only be the general partner and any limited partners who have intermeddled or who wish to take an active role in defending the petition.

35. In principle, therefore, whilst I accept that there is substantial force in the Petitioners' argument that the legal costs principle should apply equally to just and equitable petitions in the context of the winding up of an exempted limited partnership, just as it applies to companies, I find it impossible to apply the manifestation of it in the CWR, given the legal nature of an exempted limited partnership and the consequences of that nature on the operation of the CWR as regards exempted limited partnerships.

36. In my judgment, this is a situation covered by the opening words of section 36(3) of the Exempted Limited Partnership Act, namely, *"except to the extent that the provisions are not consistent with*

this Act and in the event of any inconsistencies, this Act shall prevail." The Exempted Limited Partnership Act, which creates the legal structure of an exempted limited partnership, has created an animal that does not fit within the application of the relevant rules of the CWR. The provisions of CWR O.3, r.12, and O.24, r.8, in my judgment, are therefore inconsistent with the Exempted Limited Partnership Act, and the Exempted Limited Partnership Act must prevail.

37. I therefore accept that the Court cannot make an order under CWR O.3, r.12(a) or (b) in this case, although not for the reasons advanced by the general partner.

38. It also follows from my conclusion that the joint position of counsel in *Re Cybernaut Growth Fund LP* that the court can apply CWR O.3, r.12 in the context of an exempted limited partnership was incorrect, and that *Re Cybernaut Growth Fund LP* should not be treated as authority for that proposition.

39. As required by section 33(1) of the Exempted Limited Partnership Act, the petition must continue as between the Petitioners and the general partner.

40. Mr Ayres submitted that it is important not to confuse the question of the prima facie liability for costs, which in my judgment will always be with the general partner, and the general partner's right to indemnity under the limited partnership agreement governing the partnership for the costs it has incurred. I agree with Mr Ayres on this point. There is clearly going to be a dispute in this case whether the general partner is entitled to indemnity from the exempted limited partnership's assets for the costs of defending the just and equitable petition and also the Delaware and Cayman writ proceedings.

41. I do not intend to prejudge the outcome of that debate, which will turn upon the wording of the limited partnership agreement. However, it does seem fairly plain that the real disputes are between the two Petitioners on one side and the general partner on the other. This does not appear to be a case where the exempted limited partnership has its own position to put forward, even if that were legally and procedurally possible, which I do not consider it is for the reasons I have already set out.

42. If any of the other limited partners wish to participate in the proceedings, that is a matter for them. Their position as limited partners can be put forward by them as respondents if they have a different interest to advance although, given the procedural position of these proceedings and the approaching trial, any limited partners who wish to do so should make an application to be joined urgently.

43. Finally, I record that Mr Ayres was at pains to say that the general partner does not accept the Petitioners' criticisms, either of the general partner or of Dr Harrison, and that I should avoid forming a view that there is a "good" side and a "bad" side of the court. Mr Ayres said that the general partner and Dr Harrison are very keen to vindicate the position of the general partner.

44. I acknowledge that that is Dr Harrison's and the general partners' position. However, it seems to me that there is a real danger that the general partner is failing to heed the words of Kawaley J in *One Thousand and One Voices Africa Fund I LP* [2024] 1 CILR 371 at paragraphs 30 to 34. The learned judge said:

> *"30. […] The petitioner's case, in a nutshell, amounts to this. It would be inconsistent with elementary principles of winding-up law for the court not to replace the general partner when it has unarguably lost the trust and confidence of 97% of the economic stakeholders of the ELP, no matter what the reasons may be. There is no need for the court to consider the merits of the original complaints laid against the GP. That position appears to be an unassailable one.*
>
> *31. Section 36(13) of the Act confers an unfettered discretion on the court. […] The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition to the petition is maintained) appears to demonstrate the need for a fresh appointment.*
>
> *32. Unfortunately, the opposition to the present petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best, or the desire to forestall independent investigation into suspect dealings at worst.*
>
> *33. In the instant case it is admittedly extremely plausible that the GP's Mr. Jordaan has specialist knowledge of and unique contacts with the businesses the ELP has invested in. The appointment of independent liquidators would not necessarily preclude his expertise being deployed if this was demonstrably in the best interest of the investors as a whole."*

45. It is difficult not to observe the strong similarity between that case and this one on the material that I have seen so far but, as I have indicated, these are all matters that Dr Harrison, through the general

partner, wishes to contest. No doubt at the trial I will hear argument and evidence on both sides of the court in relation to the allegations that are made against Dr Harrison and the general partner by the Petitioners and the counter-allegations that are made by Dr Harrison and the general partner against the Petitioners, and I will make a final decision on the basis of the evidence and argument that I hear on that occasion. However, in doing so, both parties are likely to continue to incur very substantial costs that will have to be paid by the various parties, depending on the costs orders that are made.

46. As to the costs of arguing this issue before me, Mr Ayres contended that the general partner was the winner, albeit for different reasons than he had argued, and should have its costs. Mr Farmer addressed me on costs for the Petitioners and argued that costs should be reserved, which would be the usual outcome on a summons for directions.

47. I have concluded that the general partner has effectively been the winner on this particular issue; the Petitioners raised the specific issue of making an order under CWR O.3, r.12 and have not obtained what they were seeking, and it is right that general partner should have its costs of arguing this point on the summons for directions, to be taxed on the standard basis if not agreed. I do not consider it is appropriate to reserve the costs to the hearing of the petition.

Dated 2 November 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

EXHIBIT O

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 146 of 2025 (JAJ)

B E T W E E N :

(1) Unicorn Biotech Ventures One Ltd
(in its capacity as General Partner of Rigmora Biotech Investor One LP)
(2) Unicorn Biotech Ventures Two Ltd
(in its capacity as General Partner of Rigmora Biotech Investor Two LP)

Plaintiffs

- and -

ATP III GP, Ltd
(in its capacity as General Partner of ATP Life Science Ventures, L.P.)

Defendant

CAUSE NO. FSD 151 of 2025 (JAJ)

In the Matter of the Exempted Limited Partnership Act (2025 Revision), the Companies Act (2025 Revision) and the Partnership Act (2025 Revision)
And In the Matter of ATP Life Science Ventures, L.P.

MR A SCOTT KC (instructed by Campbells LLP) appeared on behalf of the Plaintiffs.

MS S PREVEZER KC (instructed by Walkers (Cayman) LLP) appeared on behalf of the Defendant.

TRANSCRIPT OF HEARING ON 1 AUGUST 2025

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Friday, 1 August 2025

(10.00 a.m.)

JUSTICE ASIF: Yes. Good morning, Mr Scott, Ms Prevezer.

MR SCOTT: Good morning, My Lord.

MS PREVEZER: Subject to Your Lordship, it's agreed that I will go first this morning in relation to the matters that you've got before you.

JUSTICE ASIF: All right. Just before we get started----

MS PREVEZER: Yes.

JUSTICE ASIF: -- I do want to say I'm pretty unhappy with the way this has now come before me on a number of different bases. First of all, I'm really unhappy about the length of pre-reading time which I was asked to devote to this matter. There was no disclosure that you were going to be asking me to spend two days pre-reading when this matter was proposed for listing today. If I'd known that, I would not have listed it for hearing today. I would have listed it for hearing next week because my diary this week was full of other matters.

I'm pretty disappointed because at the time that both sets of attorneys addressed the court and requested listing, they must have known, because skeleton arguments must have been in the course of being prepared, of the kind of time that they were going to ask the court to devote to pre-read. Now, as I indicated on 22 July, in fact, I only had half a day to pre-read. Luckily, for the parties, I was able to claw back half a day because another case went short, but that is really unfair on other users of the court who are waiting for me to give judgments in matters going back now to November that I can't deal with because I'm having to drop everything and spend time on this case.

It's also pretty inadequate because I have to say it took me a whole day just to read the skeleton arguments and a selection of the documents referred to. So even the two days that was estimated is really inadequate. I'm also really unhappy with the content of skeleton arguments. First of all, as both of you know, skeleton arguments should not be a speaking note. Both of these read as if that's what they are. They're not skeletons. Mr Scott, your skeleton is 57 pages. Ms Prevezer, yours is 70 pages. That is not a skeleton.

Secondly, skeleton arguments should identify concisely – and both of you know this from the Commercial Court Guide in England – the nature of the case, background facts only

insofar as they are relevant, propositions of law relied on, with references only to the necessary authorities and the submissions to be made. Now, in England, there's a 25 page limits for an application that's listed for more than half a day, and that is the sort of target length for a skeleton argument we should be aiming for here, not 70 pages.

Thirdly, I have to say, Ms Prevezer, I did not find the GP's skeleton argument remotely helpful in understanding what it is that the GP is asking me to decide. There's no route to decision or a decision tree or anything like that that makes it clear to me what it is that I have to analyse and decide in reaching a conclusion on the points that you must give me to consider. Also on that, I'm also not helped by the fact that neither of the parties have really, despite the court asking on two or three occasions, separated out the two actions, the writ action and the petition, because the issues on the two different actions are not exactly the same. There's some overlap, but there are areas that are different. At this stage, I still don't really have a handle on quite how those differences impact the decisions that I have to make.

Finally, I am concerned how we're going to get through all of the matters which are listed for hearing today. We have a day. There is a lot to get through and neither of you seem to have factored in any time for me to think about what it is that I'm going to decide, and to express the decision even if I can't give detailed judgment, which is highly unlikely given the complexity of what's being put before me. Now, I appreciate there's some time pressure because of what's going on in Delaware, but I do want to say I am particularly unhappy with the way this case is now entered in front of me on the first day of vacation.

MS PREVEZER: My Lord, (inaudible) and we are where we are, and I can only apologise for our part for any and all of the things and matters of which you complain. The purpose for the length for the skeleton argument was to give Your Lordship the full narrative so Your Lordship would not need to spend time in the undergrowth of the documents because Your Lordship is not dealing with the merits of the underlying dispute today.

Your Lordship is dealing with case management procedural matters, which boil down to not very much, with respect. They boil down to two proposed amendments to the order that Your Lordship made on 20 June. They boil down to whether there should be a stay of both the writ and the petition here until after Delaware has been determined at first instance, and revert then back to Your Lordship for review as to the steps to be taken. We say there should be no directions given until then, and it's seven and a half weeks' or eight weeks'

time, and that's what you're being asked to do. Then, if you are not with us on that, there's a dispute about the directions that need to be given up to trial. So that's what this boils down to.

I'm sorry if Your Lordship didn't find my skeleton helpful; it was intended to be helpful. It set out our position. I recognise that Your Lordship has had put before him a huge amount of underlying evidence, which actually go to the merits which Your Lordship, as I said, deemed----

JUSTICE ASIF: Which is totally irrelevant----

MS PREVEZER: -- totally irrelevant, and I wasn't going to take Your Lordship to you----

JUSTICE ASIF: -- and, Ms Prevezer, which did not, in my view, really need to be referenced in skeletons because it is irrelevant.

MS PREVEZER: Well, My Lord, what Your Lordship will obviously have appreciated, there is a lot of upset and anger between the parties in the way that the----

JUSTICE ASIF: There always is in these things.

MS PREVEZER: -- merit has been-- always is, but Your Lordship will appreciate my clients have not had an opportunity to have their narrative before Your Lordship. Your Lordship had my learned friend----

JUSTICE ASIF: And, Ms Prevezer, your function is to say to your client, "I appreciate that you're unhappy that the court has not heard your narrative, but this is not the occasion."

MS PREVEZER: My Lord, without, you know, disclosing the conversations I've had with my client, of course I have made that clear, but the merit that you-- there are a number of factual points that I need to take Your Lordship to and I will do that very speedily this morning. I will try not to repeat the matters in our skeleton, but as I say to Your Lordship, the procedural issues before Your Lordship are really quite short. There's, as I said, two amendments that we propose, and I can give you the reasons why we propose them, to the order Your Lordship made on the 20th, and then there's this question of stay or not stay of the two Cayman proceedings until Delaware is determined.

On that, the hearing is going ahead, despite my learned friend's clients' efforts to forestall it, in Delaware on the 17-18 September. It's been expedited specifically by the chancellor in Delaware. It's anticipated a judgment be given, because it's been expedited because it's urgent, in two or three weeks thereafter. So by the beginning of October, there'll be a decision in Delaware, and what we have been proposing is that this matter then comes back

so this court can review where we are, what's left. If we're right and Delaware is upheld, we say the writ summons will just go away. The injunctions fall away. There may be bits of the petition that are still outstanding, and that will need to be reviewed but, on any view, there's going to be wholesale revisions of pleadings, maybe different disclosure, etc., following on from Delaware.

Delaware is going to be a game changer. If we lose in Delaware, then the capital calls, the subject matter of the writ, will fall away because they'll be found to have been wrongly issued, I say-- or not justified because my learned friend is right; his clients have subscribed the whole of their capital commitment. There's no more capital to be called, end of, so that will fall away, much of the petition will fall away because it's based on the calling of those capital calls, and then there'll be an issue as to what happens then going forward on the petition. So Delaware, we say, is a game changer, hence the application for the stays.

The stay's delay, in bringing that before Your Lordship, has been much about availability and timing. We were told, I think, by the court's office that Your Lordship had a day to pre-read. As Your Lordship will see in my skeleton, we thought a day was sufficient, hence the length of the skeleton to allow Your Lordship to have all you needed to know in the skeleton. But again, I apologise if it wasn't what Your Lordship wanted or appreciated, and it took Your Lordship some time to read the skeletons. But that's where we are today, and I would hope we'd be able to do this in the time available, but I can only apologise from our part. None of this was with any malevolence or malice.

JUSTICE ASIF: No, I'm sure it wasn't. I'm absolutely sure it wasn't. Anyway, well, Ms Prevezer, I've thrown my toys out of the pram. Let's get on with it.

MS PREVEZER: My Lord, may I start then?

JUSTICE ASIF: Yes.

MS PREVEZER: Your Lordship knows there are five things before you this morning: the return date of the injunction, our summons is for stays of both the writ and the petition, and then there's the directions, and my learned friend's been very gracious to allow me to go first. That is really because your order on the 20th provides that it was to carry on unless there was a----

JUSTICE ASIF: So can I just be clear? So the order that we're going to deal with these is the return date on the injunction first?

MS PREVEZER: Absolutely, absolutely.

MR SCOTT: Then the two stays, then the directions.

MS PREVEZER: Yes, yes. Well, My Lord, and what I propose and I said to Mr Scott is that I was going to do the background narrative, and if Your Lordship will forgive me, I do need to make some headline points and my clients will expect that to be heard. It's important that Your Lordship has it because it is relevant to the way the injunction is framed and how it was obtained, and I'm going to do this by reference to Mr Scott's skeleton. So if Your Lordship has that to hand, I think that's probably the easiest way to do it.

JUSTICE ASIF: I do.

MS PREVEZER: If Your Lordship turns to paragraph 5, there's an introductory section where he deals with the injunctions on paragraphs 4 to 11, and he describes the essence of the dispute in the second sentence as being whether the GP can lawfully call capital under the LPA beyond the amounts that the family office agreed to subscribe. With respect, that is not the dispute. That assumes too much. The dispute is about the amount that the family office has contractually agreed to subscribe under the LPA, and whether the family office was entitled to refuse to pay the capital calls, the subject matter of the Delaware complaint and the writ summons issued this year.

The family office contends, and quite rightly say that they have paid all that is contractually obliged to be paid. We say no, that's in Dr Harrison's evidence and our skeleton at paragraph 25. We say there's about 600 million of capital to be contributed yet by the family office, but that is not for Your Lordship today. It will be determined at the hearing in Delaware; preparation for that hearing is well-advanced. They're doing discovery, depositions, witness evidence, etc. As Your Lordship knows, my learned friend sought to prevent that hearing happening, and you've seen the transcript of the application by my learned friends to stay the matter in Delaware. I don't know if Your Lordship had a chance to look at the transcript?

JUSTICE ASIF: I did actually read that transcript.

MS PREVEZER: Thank you. Well, Your Lordship will recall, critically for today's purpose in relation to the stay, my learned friend's clients submitted there that the very same issues, or substantially the same issues, would be dealt with there as here and they submitted in support of their stay that running two cases in parallel was precisely the type of wasteful duplication and race to judgment that was deprecated on the authorities on which they relied.

Your Lordship will see at paragraph 5 also that they talk about appropriation of the family office's interest for the benefit of my clients, and I do need to deal with that because that is, with respect, a very misleading characterisation of what happens when the global default mechanism is instrumented. Now, paragraph 5C of the LPA, which is the global default mechanism, is at A/0426. I don't need Your Lordship to turn it up at the moment. Your Lordship was shown it on 20 June. The default charge there is just one of the remedies available to the GP in the event of an LP default. Its operation is set out, for Your Lordship's note, at 0426-0428 in the bundle. It's explained by Dr Harrison at paragraph 54 in his third witness statement, and that Your Lordship will find at A bundle, 0238.

But to use the word "appropriation" is misleading. There is no appropriation if it's intended to apply that the assets are unlawfully taken away and there is nothing opportunistic about it, notwithstanding what is said in my learned friend's skeleton or by Mr Bogdanov's evidence. In the event of a default and an LP being deemed a defaulting partner, there's no designation by my client, as was told to Your Lordship last time. The GP may cause the LP's number of preferred units and investment common units to be reduced by up to 50 per cent of its corresponding number of units and then they are allocated to non-defaulting holders of the preferred units in proportion to their respective number of units.

Now, Dr Harrison's evidence, I don't know whether Your Lordship had time to read his third witness statement?

JUSTICE ASIF: No.

MS PREVEZER: Right. Well, what he explains there is that this contractual global default mechanism, as it's referred to, has been contained in the LPA since its inception, and it has remained unchanged through 22 versions of the LPA negotiated by the parties and their lawyers, its importance has always been very clear and it hasn't been challenged until this dispute. So, whilst Mr Bogdanov now says he doesn't accept the construction we say applies, Your Lordship will remember the very significant weight that was placed on it as being draconian before Your Lordship on 20 June.

But the intent and purpose of that mechanism is simply to allow the partnership to remove an LP that is not complying with its obligations under the LPA after giving them a default notice and time to pay and to enable the use of funds and to obtain new capital, and it exposes the LP to a default charge and not simply a default charge, the whole of its interests

and not simply to the project that the LP wishes to abandon. Here, it appears that the family office doesn't want to support new companies, the new portfolio companies, or early stage portfolio companies, I think that's what you referred to. But what it enables the GP to do is to use the values in the partnership to generate liquidity to support the partnership going forward, whilst it takes steps to remove the defaulting LP, and that is what the parties contracted for at the outset, nothing draconian. That is what they contracted for.

Now, it is absolutely undeniable that the family office has contributed a very large percentage of the capital to the partnership. The correct percentage is 97 per cent, not 99 per cent. However, Your Lordship will have appreciated contribution of capital is not ownership. The fund is governed by the LPA, and in its submissions on 20 June and today the family office has singularly ignored the interests of the other LPs, that's Dr Harrison, Les Pommes and 14 other LPs and their carried interest which runs to tens of billions.

The family office has had the LP register of interest for a long time. The status of these 14 other LPs has never been challenged until this dispute, and I can tell Your Lordship on instructions that the signed counterparts for these LPs have now been disclosed in Delaware. So we hope that will put an end to this arid and unfounded dispute about these other 14 LPs. There are 17 LPs in all, including the plaintiffs and Dr Harrison and Les Pommes. Dr Harrison has contributed 54.7 million-odd in capital, which is not an insubstantial amount for any individual, and these 14 employees have contributed their time and expertise, and as we state in our skeleton, what Your Lordship was not told on 20 June was that the family office has received back 2.1 billion of the 2.3 billion capital it has already contributed as a result of the very successful running of this partnership by the GP and the other LPs.

It's right that the injunction has been in place for more than a month, and that really has been as a result of scheduling and availability issues than anything else. As I said, we are and have been prepared to accept some limited restraints on the exercise of powers and duties under the LPA pending the termination in Delaware. But we do not accept, for reasons I'm going to come on to very quickly, that the present injunction is properly holding the ring, a term which is very often used.

Just reminding Your Lordship very quickly of the chronology that brings us here. The Delaware complaint was 30 May. It covers the very same issues as the writ summons, and

that's been expressly admitted by the family office in the Delaware court. Quinn Emanuel, the GP's lawyers, sought to serve Latham -- not serve, provide the complaint documents to Latham after the complaint was issued. They refused to accept them. They said they weren't the litigation counsel. But it is absolutely clear, and it's never been contested, that when my learned friend's clients filed their writ summons, they were aware of the contents of the complaint, and whilst we do not seek a stay today on forum non grounds under the clause [13/18] that if it's not a breach, certainly it's against the spirit of that clause, we seek a stay today on case management grounds.

It is not, we say, a principally Cayman dispute. Your Lordship may or may not have appreciated but the LPA, whilst it's governed by Cayman law, it invokes Delaware law with regard to the standard of conduct required from the GP, which is in issue in the proceedings.

JUSTICE ASIF: Well, I saw that in your skeleton. Can you show me how that arises in the LPA?

MS PREVEZER: Yes, I can. Yes, the Delaware law definition is a gross negligence and it's at bundle A2/21/0403, let me find that. 0403. That's the exhibit of the LPA, Your Lordship has that and in the first clause at paragraph 2G.

JUSTICE ASIF: 0403?

MS PREVEZER: So 0403 is where it starts. It's tab 21 in my bundle. It's the first tab in volume 2.

JUSTICE ASIF: Yes.

MS PREVEZER: And the definition of gross negligence. The standard of care, Your Lordship will see, on page – if you're using the numbering at the top – at 0410.

JUSTICE ASIF: Right.

MS PREVEZER: And then gross negligence is used in various places. It's used in the removal of the GP at 0416.

JUSTICE ASIF: Let me just look at the top (inaudible) first so that (inaudible).

MS PREVEZER: Your Lordship sees on page 8, 0411 refers to the laws of the state of Delaware, top of 0411.

JUSTICE ASIF: That's where I was just looking.

MS PREVEZER: Yes. That's the reference to the laws. It appears in the GP removal event, which is at 0416 at (ii) if you go down towards the end, gross negligence appears there. It appears again in relation to the standard of care in the course of a winding up on 0449.

JUSTICE ASIF: Excuse me one moment.

MS PREVEZER: Apologies, yes?

JUSTICE ASIF: Where is gross negligence defined?
MS PREVEZER: (Inaudible).
MR SCOTT: I think it's paragraph 2(g).
UNKNOWN SPEAKER: 2(g).
MS PREVEZER: 2(g). Yes, that's it.
JUSTICE ASIF: Oh, I see.
MS PREVEZER: Yes.
JUSTICE ASIF: Sorry, it follows on from the bit I was just----
MS PREVEZER: Sorry, I was (inaudible).
JUSTICE ASIF: That's okay.
MS PREVEZER: And that----
JUSTICE ASIF: So that bleeds into 416?
MS PREVEZER: That bleeds into 4-- it gets 416, it also bleeds into 449 which relates to the standard of care in the process of winding up, and it also bleeds into the-- a carve out from the indemnification at 0459.
JUSTICE ASIF: Sorry, 459? 459?
MS PREVEZER: 0459, it's a carve out where there's been gross negligence on the indemnification, but it's the standard of care point that invokes Delaware law, which is important for present purposes. But as Your Lordship will recall, the portfolio companies of the partnership are Delaware companies. Critically, as Your Lordship was told on the last occasion, and shown I think, the parties expressly agreed the dispute sum of the LPA could be determined either in this court or in Delaware, and Your Lordship sees that-- I'm sorry, you've just put your bundle away, but it's in 0479-- is the forum submission to jurisdiction clause that's been referred to in the skeleton at tab 18G, apologies.
JUSTICE ASIF: That's all right. Sorry, give me that page reference again?
MS PREVEZER: It starts at 0477, "Applicable law remedies for breach of injunction."
JUSTICE ASIF: Yes.
MS PREVEZER: And at the bottom, if you go over the page to (vi).
JUSTICE ASIF: Yes.
MS PREVEZER: Your Lordship will see-- Your Lordship I think was shown it last time, allowing it to be here at the top of 0479. So the parties expressly agreed it could go to Delaware. As we've made clear in our skeleton, there is-- sorry, do tell me if I'm going too fast.
JUSTICE ASIF: No, it's fine.

MS PREVEZER: As we make clear in our skeleton, there is simply nothing in the point that the capital calls, the subject matter of the writ summons, are not expressly mentioned in the complaint for its relief. We've given you a section in our skeleton where the overlap is made clear, but the Delaware complaint – it's in Your Lordship's bundle – is an action for specific performance and equitable relief to address what the GP contends to be the family office's breach of its obligations to make contributions to the partnership under the LPA, by first of all refusing to fund the capital calls, the subject matter of the writ summons. Secondly, by arbitrarily and irrationally refusing to approve new budgets for the more mature portfolio companies.

As I said, we've set out in our skeleton, and I do apologise for its length, at paragraph 41 to 49, the overlap between the relief sought in the Delaware complaint and the written summons and the petition. So the partnership's right to call capital and the family office's peremptory claim that it's not required because it's already subscribed enough are the threshold issues in Delaware. The question of the purpose of the capital calls is parasitic on those issues, and the Delaware court will determine in September, or early October latest, the right of the GP to make the capital calls and whether my learned friend's clients breached their obligations under the LPA by refusing to pay them. If answered in my client's favour, there will be no sensible argument that the capital calls were issued for an improper purpose or in breach of fiduciary duty. So the 18 and 19 September hearing will determine the capital calls, the subject matter of the writ summons.

Now, just going back very quickly to the chronology that are relevant to the injunction. The family office issued its writ on Monday, 2 June, Your Lordship will know, in full knowledge of the complaint, and then it issued a petition on 6 June. It then issued an injunction summons on 12 June, which was the day before the scheduled expedition application in Delaware. One assumes that was because they wanted to tell the Delaware court they had done that. Obviously, the Delaware complaint was expedited, nonetheless. It was opposed by my learned friend's clients. The court rejected that.

The injunction summons was then amended on the 18th to correct certain errors that my solicitors pointed out to Campbells. What the family office then did was they issued a motion to stay the Delaware complaint on 17 June. On the same day, we offered an undertaking not to take any steps to enforce the default notices in relation to the very capital

calls before this court, pending the earlier determination of the Delaware complaint or the writ summons, but that wasn't accepted by my learned friend's clients, and we have since offered a similar undertaking to cover any future capital calls in the event that Your Lordship is prepared to exceed with our proposed amendment to the injunction.

So then what happens is that the injunction came before Your Lordship on 20 June, contending it was urgent when it wasn't, and it clearly wasn't for the reasons explained at paragraph 32 of our skeleton and, indeed, Your Lordship rightly made the point on 20 June that nothing could happen in relation to the default notices until 17 July, 30 days after they had been issued. The answer given to Your Lordship on urgency, namely that they were operating under a very strict timeline, with respect, simply wasn't right. From 20 June to 17 July, we could have had an *inter partes* hearing on the injunction, and Your Lordship can see the transcript for Your Lordship's hearing is at A/0393.

What Your Lordship also was not told on 20 June was that the family office could have cross-motioned in the complaint in Delaware for an injunction in the terms of the injunction sought from this court or for declaratory relief in relation to the capital calls, and that injunction application or cross-motion could have, arguably, been heard on 13 June in Delaware at the expedition hearing, but it wasn't.

Your Lordship was also not reminded of-- although Your Lordship is well familiar of the matter, is that under section 99 of the Companies Act, now the petition has been issued, there is this issue of validation of actions taken by the GP going forward. So my learned friends had protection already in place by reason of them simply filing the petition on 6 June and, as Your Lordship knows, their stay application in Delaware was refused on 27 June.

Just picking up very quickly, then, some of the found facts in my learned friend's skeleton relevant to the injunction and they're covered in his skeleton between B and C, so that's-- It doesn't have page numbers on. It's paragraph 18 onward. As I said to Your Lordship, I'm very conscious that a very large amount of evidence was put before you and for what are clearly procedural issues, but I just need to pick up a very few number of points on my learned friend's skeleton. Paragraph 19, I know it sounds silly, but this is a critical point. Dr Rybolovlev is, in fact, Russian and this is relevant because his Russian identity has made

it impossible for the GP to raise outside capital, and it has left the partnership behoven to the----

JUSTICE ASIF: Well, Ms Prevezer, where's the evidence of that?

MS PREVEZER: I think it's in Dr Harrison's evidence, in his third witness statement.

JUSTICE ASIF: Can I see that, please?

MS PREVEZER: Can I carry on and I'll get that for you, because I don't want to waste time? But what is important is the global default mechanism is there precisely because the partnership is behoven to capital contributed by the family office, and third parties dealing with the partnership need to know, when dealing with a partnership, that funding will not be imperilled by the family office deciding unilaterally that there are certain portfolio companies they don't want to fund.

JUSTICE ASIF: Well, wait a minute. How are third parties going to have to sight of the conflict?

MS PREVEZER: Well, they will be told. I mean, all the portfolio companies-- and when I'm talking about portfolio companies, who are third party entities dealing with the fund.

JUSTICE ASIF: Sorry, I thought you meant external third parties dealing with portfolio companies.

MS PREVEZER: No, just the portfolio companies are external.

JUSTICE ASIF: Right.

MS PREVEZER: My Lord, going on in my learned friend's skeleton. You've read the chancellor's judgment in Delaware. At paragraph 25 of my learned friend's skeleton, I hope I've dealt with that point and that will now disappear now the signed counterparts have been provided in Delaware. Just to be clear, there is no breach of section 22. There hasn't been, and until this month no such breach has ever been asserted. The fact that the 14 LPs who are employees have not contributed capital, with respect, is nothing to the point.

In relation to paragraph 26 of my learned friend's skeleton, if Your Lordship's got that up, it's simply incorrect that the family office has invested 2.6 billion, being 99 per cent of the fund. They've invested 2.3 billion and have received back already 2.1 billion. They've invested this money in a fund and specifically in the people who are turning the capital into companies and money, which is a very valuable investment.

With regard to the position on approval of budgets, budgets approval is bilateral. The family office has the right to approve budgets and then the GP is entitled to make capital calls in relation to those budgets and all the capital calls in issue before Your Lordship, and indeed

any future capital calls we'll be making before Delaware is completed, will be in relation to approved budgets or for certain expenses where no approval is necessary. So the simple point is that if the partnership had been intended, as it's termed by my learned friend, as an "investment vehicle for the family office," it wouldn't have been structured as an ELP.

Paragraph 27 onwards, my learned friend's put in evidence about the alleged breakdown in the relationship, and they say it's been happening for the last 24 months or so. There's simply no evidence of that. This alleged breakdown – and we don't accept that characterisation, obviously – stems from my learned friend's clients' actions in May this year when it decided unilaterally not to pay the capital calls or approve budget.

It's telling that no petition has been filed by the family office at any point in those 24 months, not until 6 June this year, which was wholly reactive to the Delaware complaint. If this relationship had been breaking down at any point after the Braeburn settlement or before that, they could have filed a petition. They didn't do so. The pool Braeburn dispute which is referred to, and I'm not going to bother Your Lordship with the underlying merits of that, was a claim in relation to a particular pool, the Braeburn pool. The family office wanted money paid out. It was settled by agreement. There is a settlement which led to Amendment 22 of the LPA. End of. The court shouldn't look behind it, there's no coercion, there's no signalling that that was a breakdown of the alleged relationship. Indeed, quite the contrary; Amendment 22 is reflective of the fact that the parties wanted to keep working together and have worked together since December of last year.

Paragraphs 28 to 30 of my learned friend's skeleton mischaracterise how the present dispute, with respect, has come about. You've read Dr Harrison's third affidavit, or you've got Dr Harrison's third affidavit, which sets out our position. But what has happened since May is my learned friend's clients have refused to consider new budgets, which they are obliged to do contractually under the LPA; they've sought to insert new budget processes that are onerous, unprecedented in the 13 year relationship; they have, contrary to the words of the LPA, sought to input milestones that are in information memorandums to say they're contractually binding; they sought to challenge expenses and in May, when the GP was, in good faith, still operating under the assumption that relationship was working well, they proposed a reallocation of capital and sent the email of 15 May, which I don't think Your Lordship was shown at the hearing on 20 June. But if in fact, as I said, the relationship was

irretrievably broken down for 12, 24 months, there was no evidence of it at all and that whole narrative, we say, is a false narrative and it's one that does not support a petition to wind up the partnership, but that's for another day.

Just to be clear, one little point that my clients have asked that in relation to paragraph 33, the GP did in fact multiple times attempt to attempt to communicate with Dr Rybolovlev after the May 15th email. There are numerous without prejudice emails, which I'm not obviously going to take Your Lordship to.

So Your Lordship has-- there are three sets of proceedings ongoing, and as regards the Delaware proceedings in paragraph 35 to 42 of my learned friend's skeleton, there is nothing tactical or extraordinary by the issue of the complaint. The family office simply doesn't like it. Your Lordship cannot today and should not form a view on its merits. The family office's refusal to fund is causing very significant destruction to the partnership. How the GP sees it, in a nutshell, and it's set out in Dr Harrison's witness statement, is that the family office now wants to decide what to invest in or not, to destroy the partnership as it presently functions and to benefit unilaterally from the selected value that the GP has created because it's trying to write off early development portfolios and it's trying to seek to remove call obligations on which they otherwise have defaulted. So they're really trying to seek to renegotiate all aspects of the economics control and of the partnership and it is not their investment vehicle. It's not theirs to do that.

So the capital call proceedings which are before Your Lordship, like I said, they're three sets of proceedings. They, as we say, deal with exactly the same subject matter as Delaware. We've filed a defence in short order in terms of the timeline that was set. We have since, on Monday, filed a more expansive amended defence. So that's----

JUSTICE ASIF: Is that in the bundles?

MS PREVEZER: I would hope so. I think it is. I'd certainly put-- it is tab 3 and I've slipped it in behind the one that was already there, and it should have been added to Your Lordship's bundle.

JUSTICE ASIF: Oh yes, I've got it. Thank you.

MS PREVEZER: (After a pause) My Lord, Your Lordship asked for the evidence in relation to the Russian effect.

JUSTICE ASIF: Yes.

MS PREVEZER: And what it is, it's evidence that was filed in relation to the Braeburn dispute but my learned friends have exhibited and rely on it. It's volume 2, tab 21. I don't need Your Lordship to look at it now.

JUSTICE ASIF: No, but I want to.

MS PREVEZER: So I'll give Your Lordship the reference. Volume 2, tab 21. So it's A/0666, and it's paragraphs 43 to 44. It's 683, apologies.

MR SCOTT: (Inaudible).

MS PREVEZER: Okay, it starts at 40 and runs on.

MR SCOTT: Starts at 43.

MS PREVEZER: Oh, it starts at 43, I'm sorry. (Pause for reading) Thank you. Apologies I didn't have that to hand. So, My Lord, I was just dealing with the three sets of proceedings very quickly, which are all part of the background. I've said Your Lordship should have the amended defence.

JUSTICE ASIF: Yes, I've found that.

MS PREVEZER: We obviously don't accept my learned friend's submission that our position as regard the contingent subscriptions has been inconsistent, and we haven't obviously had an opportunity, because we haven't got a right, to respond to Mr Bogdanov's fourth affirmation which was recently served. But the position is, we say, there is headroom to the total committed capital of about 600 million, and if we are right, and given that the GP is not close to exceeding that headroom by the 30 May capital calls, a subject matter here and in Delaware, then any alleged inconsistencies do not impact the fundamental question as to the validity of those capital calls, so the court doesn't need to get involved in some sort of forensic accounting exercise now.

There is some veiled suggestion in my learned friend's skeleton that the Delaware court is not equipped to deal with the present dispute because it's Cayman law on Cayman matters. The court should absolutely have nothing of this. The Delaware court-- the parties agreed the Delaware court could hear a dispute, the Delaware court will be assisted by expert evidence as so required on Cayman law. It's perfectly capable of construing with due fidelity the provisions of the LPA, and it's a somewhat scandalous suggestion, with respect, being made here.

I'm going to deal with the substantive bits on the injunction in a minute, so just finishing off the proceedings in line with Mr Scott's skeleton. Paragraphs 58 to 60 refer to the petition,

and I've given Your Lordship our comments in relation to this alleged breakdown, and as we say in our skeleton, there are no conflicts dependant on the GP's decision making. The fact that the GP is a director of some of the portfolio companies, it's there to look after the partnership's interest and that's standard. At Delaware, the GP has acted in accordance with the LPA. As I said, my learned friend's clients simply do not like the fact we are litigating in Delaware.

Now, finally, turning to the substance of the injunction. Our primary position is that the injunction as presently ordered, as we set out in our skeleton, goes well beyond holding the ring, so termed, and the proposed amendments – and there are two which we are saying are required – they are required to correct that position. Contrary to paragraphs 8 to 10 of my learned friend's introduction, those amendments do not undermine, let alone severely undermine, the purpose and utility of the injunction. They are required to properly hold the ring between the parties, and there is no question about the court being unable to do full justice at trial in the event that these two small amendments are made. I'm going to deal with those amendments, and I will deal with them in the reverse order they appear in the order because my learned friend takes the second amendment first, and I will do that to keep consistent with his skeleton.

So deleting future capital calls, that's what I want to deal with. Your Lordship has our skeleton on this point. In short, what we say is deleting the capital calls injunction going forward – so between now and Delaware, we should be allowed to issue capital calls and default notices if my learned friend's clients decide not to pay against them – is essential from our perspective, and I'll explain why, and causes no prejudice whatsoever to my learned friend. But what it does allow is the GP to retain its existing contractual right and ability to continue acting under the LPA as agreed in the ordinary course, making capital calls as and when required in the best interest of the partnership; and as I said earlier, all the future capital calls that may be made are against already agreed budgets, so there can be no issue with regards the budget approval.

JUSTICE ASIF: I'm not sure Mr Scott accepts that. That's one of the difficulties, isn't it?

MS PREVEZER: Well, I think he accepts-- I think they're not accepting future approvals. I think he doesn't say that the future calls will be against approved budgets because the capital calls in May didn't exhaust the approved budgets. I don't know that there's anything between us on that. Maybe my learned friend can tell me.

MR SCOTT: So, the capital calls that have been made we certainly do dispute on the grounds that they do not accord with the budget. That's one of the pleaded bases----

JUSTICE ASIF: That's one of your bases for----

MR SCOTT: -- for relief here. Of course, those were capital calls made on the basis that they would cover the funding position up to, I think, November this year, so it is somewhat surprising to hear suggested that yet further capital calls are needed between now and the Delaware proceedings in eight weeks' time. I'll address Your Lordship when I get on my feet, but it's fundamentally wrong to say we don't dispute the point of budgeting. It's a critical part of the pleaded issue.

MS PREVEZER: It's not critical to my argument, but we had understood that there had been approval of budgets. The capital calls in May only used up a percentage of those approved budgets, and the future capital calls that may be made-- and the reason why they may be made, may need to be made, is because of the very serious consequences and damage that has been caused and the additional costs that have arisen----

JUSTICE ASIF: Your client essentially wants to start the clock running so that it's not two or three weeks behind, essentially, in its ability to enforce.

MS PREVEZER: Well, Your Lordship is absolutely right. There is no conceivable prejudice to my learned friend. They are pieces of paper, ultimately. There will be capital calls; they won't pay them; they've made it very clear they won't pay them. The default notices will be pieces of paper which we have said we will not take any steps to action. But Your Lordship is absolutely right. If the Delaware complaint is determined in our favour, we will want to rely on capital calls properly made to obtain money very quickly, because time is really of the essence. It's absolutely critical that money is obtained into the partnership, and there is real prejudice if, as a result of this injunction and not being able to issue any further capital calls that are necessary – and we do say it may be necessary to make future capital calls precisely because of the damage that's being done by my learned friend's action – we should not have to start afresh, as Your Lordship rightly says, and start time running again for us to issue a capital call, wait for another 30 days thereafter before we can do anything.

That is that in a nutshell, and we say holding the ring does not and cannot entail stripping the GP of its contractual rights and powers on behalf of the partnership to continue running the partnership described by the LPA, and those rights and powers existed prior to the issue of the writ and the injunction. My learned friend is trying to----

JUSTICE ASIF: Ms Prevezer, can I just cut across you for a moment?

MS PREVEZER: Yes, of course.
JUSTICE ASIF: When the injunction application was before me in June, one of the reasons that I was not content with the undertakings that were being offered on behalf of your client was it seemed to me they didn't deal with the effect of the default notices, in particular the result that the family office of note would lose any voting rights. Now, when you said to me a moment ago that your clients have offered that the issue of any default notices, etc., would not-- they would not treat those as having effect, does that extend to the question of voting rights as well?
MS PREVEZER: Yes, yes.
JUSTICE ASIF: Right, okay.
MS PREVEZER: Yes. I mean, the concern we have is the one Your Lordship absolutely correctly----
JUSTICE ASIF: It's certainly a timing issue.
MS PREVEZER: Absolutely. But it's a real issue. It's a real issue because time is of the essence here in circumstances where we are being denuded of cash in order to run these partnerships, where----
JUSTICE ASIF: There is an overlapping issue, which is everyone is saying that portfolio companies or the investments-- The fund basically is pretty illiquid. There's no ready market for selling interests in portfolio companies, etc. You showed me evidence about the Russian effect on the ability to raise funds outside the family office. So where is this money going to come from, or are you simply saying you want to run the clock against the family office as quickly as possible?
MS PREVEZER: Well, absolutely. I mean, you know, if we're right, if Delaware is upheld in eight weeks' time and the family office is deemed a defaulting partner and the global mechanism works as it's required to do under the LPA, they will then lose their voting rights. We will be able to-- The GP is quite entitled under that mechanism----
JUSTICE ASIF: How is that actually going to generate any cash----
MS PREVEZER: Well, because then we then get new LPs involved. Because the Russian element will have been effectively removed, we can raise cash----
JUSTICE ASIF: It won't, because you'll only be able to remove part of it.
MS PREVEZER: But it will remove a significant part of it, and we will be able to raise cash and liquidity against the finance.

JUSTICE ASIF: But the investors are saying, "Oh, we don't like this because it's got a Russian connection with the possibility of sanctions." Their view is not going to change because the Russian element has gone from 96 per cent down to 50 per cent.

MS PREVEZER: But what it will do is enable the GP and the other LPs to make decisions as to what assets it can sell to raise liquidity. But it is about running the clock, and it is all hinged on what is going to happen in Delaware; and as I said, if we lose in Delaware, the capital calls action here isn't necessary; the whole mainstay of the petition will still be; the petitioner will have to come and review what's going on there. But if we win in Delaware and the capital calls are determined to have been properly made and there is a liability to pay. That really is a game changer in terms of what's left over here.

JUSTICE ASIF: Well, assuming there's no appeal and no stay pending.

MS PREVEZER: Well, I can tell you in terms of the timeline on that, the position is the hearing is 18 and 19 September. It's been expedited. It's reasonable to assume a decision will be expedited, and it's been expedited because of the urgency. I don't think there's any disagreement that-- or maybe my learned friend will say there is. We've been advised by American lawyers that the decision would be expected by the end of September, beginning of October at the latest from the first instance. If there's an opinion given by Bayard from my learned friend's clients in relation to the speed of an appeal, if-- Two things, and this goes to the second amendment I'm proposing with the Delaware-- the injunction should go into Delaware, is they would be entitled to apply in the Delaware court for an injunction for a stay pending appeal. Our advice is that on an expedited basis, that appeal could be dealt with by the end of this year.

Mr Bayard says that appeals longer than four months are not uncommon but doesn't comment to say that an appeal determination within four months by the Supreme Court couldn't happen. It will be expedited because it has been expedited for good reason by the chancellor. So that is the position, but what we're asking from Your Lordship today is not a stay up until the end of an appeal but that we come back to Your Lordship on a case management conference after Delaware has been decided so that the court can review it for both the writ action and the petition as to what is left in light of the decision in Delaware; and as I said, if we're right in Delaware, the capital calls writ summons should disappear.

Now, as regards the injunction, and this is a separate matter, Your Lordship will appreciate the injunction order is a separate freestanding order. It was granted in aid of the writ

summons, not the petition, to tide the event over for the determination of the capital calls issue. If that's determined in Delaware, the injunction should fall away. If my learned friend wants relief, they can go to Delaware or they can come back here, but it should not be on us to run back to this court to say, "Can you now lift that injunction?" which was giving them very specific protection in relation to the particular capital calls, which, if we're right in Delaware, will have been decided in our favour.

Now, Your Lordship is right that they're not-- Going back to the future calls, there's nothing unjust or prejudicial. They're not going to pay; they've made it very clear they're not going to pay. There's no consequence of us being allowed to do what we were contractually entitled to do under the LPA, and if they want to contest the capital calls as they're issued between now and Delaware----

JUSTICE ASIF: Ms Prevezer, can I summarise it this way?

MS PREVEZER: Yes, of course.

JUSTICE ASIF: You say if you're right and the Delaware judge agrees with you, then you should have been entitled to make these capital calls, and the ones that you have made in the interim should be effective so that you don't lose the time that you would be in touch with them. If Delaware goes against you then these are all invalid, and so they have no effect.

MS PREVEZER: That's right. That's absolutely right. In relation to future capital calls, my learned friend is right that when we raise the 30 May capital calls, it was our anticipation that that would give us sufficient liquidity for the next six months. But what has been going on, and Dr Harrison's evidence goes to this, as a result of their failure to pay has been very significant difficulties and problems and damage to the partnership, which has raised considerable cash flow problems, and that has exacerbated the need for further capital over and above the capital calls that have already been made. Now, they can contest those. They have every right to contest those going forward if they choose to, and they can contest them as we're making them. As we've said, we're not going to take any steps to enforce them by taking away their voting rights or anything of that nature, pending Delaware.

That's the proper holding the ring, as we say. That is the proper status quo that Your Lordship's order should address. In particular, dealing with my learned friend's submissions on this, if Your Lordship is amenable to our proposed amendment-- It's not a big amendment, and as I said, no prejudice to my learned friends, it will not cause any inconvenience or result in further applications to this court for interim relief for the simple

reason that no action is going to be taken on any of those default notices until Delaware is determined. The suggestion in my learned friend's skeleton that the issue of any further capital calls on the family office is going to put pressure on them to contribute beyond which they consider to be their contractual obligation, with respect is entirely risible.

One only has to have regard to the family office's conduct of the present proceedings, here and in Delaware, to understand that in the current situation, the GP is David and the family office is Goliath. It's that way round. As regards altering the present status quo, I've just addressed Your Lordship. The present status quo is allowing the GP to exercise their rights. Without the proposed amendments we say the status quo is irreversibly altered in terms of the timeline in which it was identified. Then I say that my learned friend's point in his skeleton, that somehow one is fixed with a-- defines the status quo at a time before the writ was issued and therefore there had been no default notices, and therefore we can't issue default notices, is wrong. The status quo before the writ or the injunction on it is that we have these contractual rights, which we now want to exercise.

So that is that and, as I've said, in the event the Delaware complaint is upheld, the conclusion of that will be my learned friend's clients will be found to have acted in repudiatory breach-- not repudiatory; I think that's the wrong word-- in breach of their funding obligations pursuant to the LPA by failing to agree research and development plans and budgets and failing to pay those 30 May capital calls. I say the consequence of that ruling is this injunction should be set aside; a default is under the LPA, has occurred and can be actioned; we will need to go out and get funds, and there's extreme urgency; and Your Lordship was told on the last occasion on the 20th about discussions about interim funding. They have gone nowhere and, with respect, all of those interim funding discussions were heavily conditioned and subject to the family office's veto as to how those monies were to be spent.

So they were completely unacceptable, and Your Lordship should just know that there are no funding negotiations going on. Our evidence in Dr Harrison's evidence before Your Lordship is that the portfolio companies face imminent collapse. Some of them have already been forced to wind down their efforts. The same is true of the management companies that manage the partnerships and the portfolio, and so it's having a very significant financial impact, and so we should be able to rely on capital coming in timeously

and in accordance with the LPA. So, as Your Lordship rightly pointed out, if we are required to wait until the final termination of the Delaware complaint before issuing future capital calls, time will be running against us.

At the moment, as the present injunction is framed, it says that we're not allowed to issue any future capital calls unless agreed in writing by the family office. That's tantamount to a blanket injunction, with respect, because it's quite clear they won't agree to anything. Just very quickly picking up the points my learned friend makes at paragraph 63 of his skeleton, if Your Lordship's got that. On the first point, we accept there's a dispute on the amount, but if we're right, then the family office hasn't contributed to the extent required, then we're right in identifying that capital call injunction and further calls will cause further financial difficulties. Time is----

JUSTICE ASIF: I'm sorry, Ms Prevezer. Can you just say that again?

MS PREVEZER: Apologies. If we're right and the family office has not contributed at the extent required under the LPA, then we are right in identifying that this injunction and further calls will be the cause and will have been the cause of further financial difficulties. If the complaint is upheld in Delaware, we need to be able to move swiftly to enforce the default mechanism, as time is of the essence. That's on his first point. On his second point, we're not prejudging the resolution of the dispute. As I said, if the complaint is not upheld in Delaware and the family office has in fact satisfied its total commitments, those further capital calls, as Your Lordship says, will fall away. But as I said, the present injunction is not holding them.

On the third point, the undertaking deals with that. On the fourth to the sixth points, as I've said, the interim funding discussions have come to naught, but we don't accept that's because of Dr Harrison's actions. The court can look at all the correspondence if Your Lordship wishes to. It really goes nowhere. The family office is, with respect, being disingenuous here, and the court shouldn't presume, despite what Your Lordship was told on the 20th, that any funding is going to be agreed. In terms of the conflict director, which is referenced at paragraph 63(e) of my learned friend's skeleton, what in fact is set out there in 63(e) is only a partial narrative of the proposal. What that doesn't reference, which was part of their proposal on the 3 July letter, which is in Your Lordship's bundle-- But again, time; I don't think you need to look at it. It's in B/16, tab 16, at 1530 to 1549.

What was proposed, ultimately, was that any use of funds would ultimately be subject to my learned friend's clients' veto. What they've missed out is that the funding would then be agreed with these clients. What this offer of a conflict director was really about, we say, in its true context is about the family office seeking to obtain prematurely the relief it seeks in its petition and utilise a conflict director as a tool in the litigation, and we responded substantively on that. My solicitors', Walkers, letter on that Your Lordship will find at B/1547. That's where the letter is, and it's from 1548 to 1549. Your Lordship is not really concerned today with the conflict director, but it's there if you need to look at it.

Finally, on the seventh point, this liberty to apply point, the liberty to apply in the order puts the onus on the wrong party, with respect. It shouldn't be incumbent on the GP to have to apply back to the court in circumstances where the proper status quo should allow for the issuance of these future capital calls, if they're so required, particularly where we are not seeking to enforce on them, and that offer to not take any steps to enforce means that there is no conceivable prejudice. The reasons given, with respect, at paragraph 64 of my learned's skeleton, they are not good reasons, and they are not good reasons, given there at (a) and (b), for these reasons: the injunction is freestanding, it was granted against the alleged threat against the use of the default mechanism with regard to the capital calls, so in support of the writ summons.

As I've said, and I'm sorry if *ad nauseam* I'm going to drive you crazy, but if we win in Delaware, the capital calls will be found to be valid and the injunction should fall away, and there's no warrant for its continuation beyond that. If they want to seek a further injunction, they can do it in Delaware, they can come back here, but Your Lordship's injunction should not continue.

JUSTICE ASIF: It will really depend on what the judge in Delaware finds.

MS PREVEZER: Absolutely and, My Lord, we have offered in correspondence an alternative, which is if Your Lordship is worried about lifting the injunction or having it fall away on the determination in Delaware-- I mean, either way, if the Delaware complaint goes against me, they don't need an injunction because the capital calls will be invalid. If the Delaware complaint is with me, they don't need the injunction because they shouldn't be entitled to it. But we have offered a proposal that we come back immediately after the first instance to have a CMC, and if Your Lordship is nervous about the injunction disappearing immediately, and that's the second proposal that we're going to go on to in a minute, we can

review it at that second CMC, and we were proposing putting a date already in the court listing, working out as best we can when that decision is likely to be handed down.

But just to note, the injunction wasn't brought, as far as I can see from what was said to Your Lordship, in support of the petition. The petition didn't feature in what Your Lordship discerned on 20 June. The transcript's in the bundle. I'm looking at 64(b) in my learned friend's skeleton, the other alleged effects of them being defaulting partners, their loss of their voting rights. As I said, we won't take steps in relation to that, pending the decision in Delaware; but as I've said, the consequences of Delaware will be determined one way or another. So that deals with our first proposed amendment to the injunction order.

The second proposed amendment is to paragraph 1 of the injunction order, and we say similarly that proposed amendment was neither unjust, inconvenient, unfairly prejudicial or indeed prejudicial, or liable to impair the court's ability to do justice between the parties at trial. Because the key point on this amendment is, as I've said, that the Delaware determination is highly likely to be a gamechanger in relation to the landscape of the disputes here, and Your Lordship knows, as I said, what happens in either scenario. I mean, even as regards the petition, with respect, the primary facts allegations in that petition on which it is based will fall away if we're right on the capital calls, and I've said we proposed a CMC after the determination of the Delaware complaint.

But we do say that the order should be amended now. It is a freestanding and separate order which Your Lordship made on 20 June to hold the ring, pending determination of the issues which were in dispute before Your Lordship, the capital calls, and so it should rightly end with the determination in Delaware one way or another; and as I said, if they want to seek a further injunction or stay in Delaware, they could do that. That's the obvious place. The Bayard opinion, I have found in my reference. It's at B/1559. I don't know if Your Lordship very quickly wants to have a look at that. It's at 1559, and if Your Lordship has a look at that, it's addressed to Campbells. It's 15 July, 1559.

Your Lordship will see that what he talks about in terms of our page 1560 (inaudible) citing a decision of the Court of Chancery:

> "One appealing from an adverse decision is entitled to a stay of proceedings if the appeal is taken in good faith and presents some question of possible merit."

Oh, I'm sorry, Your Lordship's not with me. Sorry.

JUSTICE ASIF: I'm still getting there. Right, there at last.

MS PREVEZER: So, it's page 1559. At the top of 1560, there's a reference to an authority that says if you're appealing from an adverse decision, a stay is ordinarily granted if it's in good faith. Going over, in terms of timing it's at 1562. Paragraph 3 on 1562 says you can expedite the schedule. The Supreme Court can do so, and we would certainly, if asked for an expedition, if we are winning and my learned friend seeks to appeal because the hearing itself was expedited for the reasons I've made clear; and what he says is at the bottom:

> "While they can also be shorter, expedited appeals of longer than four months are not uncommon."

It then lists a whole raft of cases, but what he doesn't deal with is the point that you can have an expedited appeal determined in a period shorter than four months. It doesn't express a view, just says it's not uncommon, which Your Lordship may not find particularly helpful, but that is the evidence. What we're being told on instructions by the US lawyers is that it is possible for an expedited appeal to be determined by the Supreme Court and the American courts (inaudible) very quickly, by the end of 2025.

Just going back to my learned friend's skeleton, paragraph 68, and just quickly running through the points there made. Point 1-- I dealt with this point. Point 1, we say is a thoroughly bad point. The capital calls will be determined in Delaware. Point 2, the fact that enforcement is not restricted is nothing to the point. If the Delaware complaint is upheld and the capital calls are required to be paid, the injunction should go. Point 3, it's not really understood. The injunction in short was to prevent us relying on the capital calls, and the injunction at 1(b) prevents us from taking any steps to issue a default notice. Point 4, the injunction was sought in support of the writ summons, not the petition, and that's clear from Mr Bogdanov's first witness statement at A/0130, paragraph 60.

We accept that the injunction was not stated to be sought in aid of Delaware, although, as I've said, they could have sought a similar injunction there, but they didn't do so. But the

effect of the injunction that has been made is the same as if the court was exercising ancillary jurisdiction, because Delaware is going to be heard on 18 or 19 September, and the injunction has prevented anything happening pending that event. Your Lordship has our alternative proposal for a CMC, and at paragraph 69, I think what the family office is saying is if we win in Delaware, the injunction should be continued because of the date of the injunction application. We hadn't issued default notices. I've dealt with that point.

So that takes me on to fortification. Your Lordship has our skeleton. It's page 8 of the skeleton. I'm sorry about the numbering. I didn't realise it went on and on. It's paragraph 18(xi) onwards. I don't think there's anything between us on the law. It's at paragraphs 59 to 62 of our skeleton. My learned friend will tell me if he says otherwise.

JUSTICE ASIF: Sorry, which page in your skeleton?

MS PREVEZER: It's page 18 onwards. It would probably be easiest to find it on the page numbers.

JUSTICE ASIF: Oh yes, I've got it now.

MS PREVEZER: Yes. We obviously reject the contention in their skeleton at paragraph 73 that we haven't demonstrated a good arguable case for fortification. I think their primary case, as I understand it, appears to be that the injunction doesn't cause loss to the partnership because all it is doing is stopping a default charge and an attempt by us to monetise the redistributed assets in the event it's enforced. But Dr Harrison's third witness statement makes very clear that there has been and are very severe financial consequences as a result of their failure to pay in May. So I've said his evidence is the ten portfolio companies have already become or are heading towards insolvency, and Your Lordship will appreciate companies can be insolvent on a cashflow basis but still have valuable assets. What the critical point is – and my clients, who are probably listening, will tell me I'm not explaining this properly – that these early-stage companies get to a pivotal point through clinical trials when then they become really viable in terms of financing and raising money, and stopping them at this stage is very damaging indeed.

JUSTICE ASIF: As I understood it, I think the family office's point is more directed at the difference between current day valuation of these early stage companies and the valuation Dr Harrison puts on them, in that he seems be trying to value them on the assumption they have reached that inflection point already, and he seems to be valuing them on the basis of the potential value that they could have in the future rather than the current value they have now, and their current values now are very substantially lower than potential future values.

MS PREVEZER: My Lord, Your Lordship is right in that regard on the argument that is made, and we accept that the evidence that we have put forward-- And that's why we're not seeking fortification of hundreds and hundreds of millions. We are seeking fortification only of 25 per cent of the value of those portfolio companies as valued in December of last year, the valuations of which are in the bundle. So we recognise that it is the stopping of the development of these companies at this stage which is prejudicially affecting their ability then to become very valuable commodities, very valuable assets.

JUSTICE ASIF: And what about the family office's argument that, well, you're already sitting on 96 per cent. We have the ability to enforce against the 96 per cent interest the family office has in the fund, so why do you need separate fortification?

MS PREVEZER: Well, two things on that. The very serious consequences of my learned friend's clients' actions is obviously affecting their own interests in the fund itself, and we say they should not be able to use assets in the partnership, which they committed to the partnership, for the purposes of fortification. In relation----

JUSTICE ASIF: Why not?

MS PREVEZER: Because of the uncertainty and the damage that they're causing the partnership at this very time.

JUSTICE ASIF: I don't see the link between uncertainty about the extent of damage and the ability to enforce-- to obtain compensation for damage that's been suffered from the value of the family office's interest in the fund. I'm not sure where the link is.

MS PREVEZER: Well, My Lord, the assets in the funds are caught up in the partnership and governed by the LPA----

JUSTICE ASIF: There's no suggestion that, because of the family office's actions, the fund is suddenly going to have no value at all.

MS PREVEZER: No. No. Your Lordship----

JUSTICE ASIF: It's still going to have a substantial residual, even if it's impaired, and in those circumstances I'm not sure that I'm following why, in that situation with impaired value, the value of the family office's interest in the fund is going to be so low that your client would not be able to get adequate compensation for the diminution in the overall value of the fund.

MS PREVEZER: And, Your Lordship, we recognise that point.

JUSTICE ASIF: Right. So why do you need separate protection?

MS PREVEZER: Well, My Lord, we do say that it's not appropriate for the family office to rely on assets within and which are committed within the partnership, because having to realise against those assets in the partnership in order to get compensation for the damage that has

occurred will not simply affect the family office, but it affects all the other LPs who have interest in those assets. To sort of be forced to realise those assets in order to realise proper compensation caused by the family office will potentially damage the interests of the other LPs. There are 15 other LPs than just these two plaintiffs, and by accelerating or having to monetise assets in the partnership in order to get that compensation can potentially damage the interests of the others in assets in the partnership.

JUSTICE ASIF: But why is money's worth, rather than money, not good enough compensation for the GP? If there is consequential damage to value of the overall fund, why is compensation to the GP, or to the partnership overall, I guess, who is the entity entitled to the compensation, why does that compensation have to be in money rather than money's worth? I suppose what's driving that question is why is it inadequate simply to say, "Well, on the basis that the value of the fund has been reduced by 250 million, the other limited partners should acquire essentially 250 million worth of the family office's interest in the fund so that in the future they are entitled to realise in due course at their convenience"?

MS PREVEZER: And I think the complication is, you know----

JUSTICE ASIF: I've not expressed it very clearly, but----

MS PREVEZER: No, no, My Lord, you did express it very clearly, and I absolutely understand. I'm not quite sure that I know the answer to Your Lordship's question, but I think one answer may be that the sorting out of that and the valuing of the various assets to take values rather than the money is problematic. But I think that's the best I can do, and we do say that looking at the family office's assets and the position of the family office, these two plaintiffs, they are BVI companies. Their financial position is unclear, certainly in terms of enforcement against them.

JUSTICE ASIF: Well, they own 96 per cent of the interest in the fund, so that enforcement is pretty straightforward.

MS PREVEZER: Well, if only. But we also say-- I think we say in terms of current assets as opposed to non-current assets, the sum that they have got of current assets, i.e. available within 12 months, is very small relative to the whole. I think Dr Harrison deals with that. But I hear Your Lordship. If Your Lordship feels that the access to the money or money's worth of their contribution in the fund is sufficient fortification, I'm not sure I'm going to be able to move Your Lordship.

JUSTICE ASIF: Fine.

MS PREVEZER: Going on, then-- Well actually, I think that's it on our position in relation to the two amendments. Can I just check behind me that I haven't missed any points?

JUSTICE ASIF: Yes.
MS PREVEZER: Thank you.
JUSTICE ASIF: Just to be clear, we're dealing with this first and then coming on to----
MS PREVEZER: We thought it was sensible. I'm very happy to deal with the stay, but it seemed more sensible just to get the injunctions done.
JUSTICE ASIF: No, that's fine. That's fine. I just wanted to make sure (inaudible). Yes.
MR SCOTT: My Lord. As you Lordship will have seen, we say with respect you were entirely right to impose the injunction in the terms in which you did at the 20 June hearing.
MS PREVEZER: My Lord (inaudible). I've just been handed up-- I just want to make clear, so that my learned friend knows the target he's got to hit, in relation to the voting rights, Your Lordship asked me-- Your Lordship said the concern about the voting rights being taken away. The end result is the same, but I should make clear, and I absolutely should have made this clear: once deemed to be a defaulting partner – not delegated, deemed – the loss of the voting rights is automatic with the deeming. What we're saying is we are not going to take any steps in relation to that deeming if the default notice is (inaudible). We're not going to take any steps to act contrary to them having lost those voting rights. So the net effect is the same. We are not going to do anything to damage their position until Delaware is determined.
JUSTICE ASIF: But on your position they've automatically lost their voting rights, and so if there are any decisions on which they would be entitled to vote, they can't do that.
MS PREVEZER: Yes, and in the event that Delaware is upheld, that will be found to have been correct.
JUSTICE ASIF: What sort of decisions would they now be entitled to vote on?
MS PREVEZER: Well, budgets. I mean, you can have a look on the-- I can go to the LPA if Your Lordship wants to have a look at it.
MR SCOTT: In case it assists, I was planning to take Your Lordship through this. It's helpful to have the indication that that's the target.
JUSTICE ASIF: All right. Mr Scott, just before you carry on, Ms Prevezer----
MS PREVEZER: My Lord, I'm sorry, I'm just getting instructions as to whether I have (inaudible). Apologies. May I interject if I get instructions?
JUSTICE ASIF: Yes. Well, I was actually going to ask you a question. Even if the clients' strict contractual rights are as you've described and the effect of the LPA is that the loss of voting rights is automatic, your clients would still have the option of voluntarily recognising any exercise of a voting right that would arise and might be necessary before the Delaware court

makes its determination. Is that something that your clients would be willing to volunteer, essentially?

MS PREVEZER: Well, My Lord----

JUSTICE ASIF: I appreciate you'll need to take instructions on that.

MS PREVEZER: -- let me take instructions. They're on the Zoom and they're hearing this, so I'll get instructions (inaudible).

JUSTICE ASIF: Right, thank you. Yes, Mr Scott.

MR SCOTT: My Lord, I don't ask Your Lordship to turn it up, but Your Lordship's reasoning for making the injunction is on the transcript. Your Lordship has that at A1/20/399. Your Lordship was satisfied on that occasion that there were serious issues to be tried, Your Lordship was satisfied that damages were not an adequate remedy for us, and Your Lordship was satisfied that the balance of convenience favoured an injunction in the terms in which Your Lordship made it. Now, I am mindful, acutely mindful, of the very substantial volume of material before Your Lordship and I'm sorry that our skeleton failed to meet the court's expectations, but it is important that Your Lordship is clear at the outset what is not in dispute. The parties agree that the underlying dispute raises serious issues to be tried. Where and how they are resolved in their case management, there are disagreements about that – we'll come on to that – but there is no dispute that there is a serious dispute that needs to be trialled, and my learned friend rightly and realistically accepted that, as Your Lordship will have seen from paragraphs 3 and 18(a)(ii) of their skeleton.

So, while Dr Harrison raised in his evidence various points about an alleged lack of justification for seeking the injunction *ex parte*, alleged lack of urgency, alleged failures of full and frank disclosure, alleged lack of substance or merit to our case – and some of that, though with not much enthusiasm, was pressed in my learned friend's presentation of the narrative – the critical point for Your Lordship's purposes is that none of it is being put forward as a basis for discharging or varying the injunction. So, I'm not going to take up Your Lordship's time answering the various mischaracterisations and points for which there is simply no evidence that you see in the general partner's skeleton and in my learned friend's submissions insofar as it goes to the underlying merits.

JUSTICE ASIF: Well, Mr Scott, Mr Faulkner probably briefed you that I gave him quite a hard time about whether it was appropriate to apply the *ex parte*-- I think it was *ex parte* (inaudible)----

MR SCOTT: Indeed.

JUSTICE ASIF: -- at the time because I was concerned about whether it properly ought to have been a full *inter partes* hearing.

MR SCOTT: Indeed. I've seen the transcript, I've seen the exchanges – Mr Faulkner evidently persuaded Your Lordship it was appropriate to proceed in that way----

JUSTICE ASIF: Yes.

MR SCOTT: -- and it seems to me, with respect, that Your Lordship was entirely right to proceed in that way, given the limited nature of the undertakings that were being offered then by the general partner, which are the same undertakings which are being offered now. The critical deficiency – and I'll come on to this – is the refusal of any undertaking not to treat us as a defaulting partner pending resolution of the disputes as to whether the general partner has any contractual entitlement so to treat us, but whether so to treat us would be consistent with its fiduciary duties, and that is critical because it is the treating us as a defaulting partner, which results from the expiry of the 30-day cure period under the default notice, that leads to a raft of serious and irreversible consequences under the contract, one of which is the stripping of our voting and approval rights when it comes to the use of capital for the purpose of this partnership. That's in paragraph 5(c) of the LPA, and I'll be coming on to that.

Now, I had understood the first time round in my learned friend's submissions to Your Lordship this morning that things may have moved on, but it appeared from the submissions second time round that they have not. My Lord, what I am going to do is to deal with the opposition to the injunction on the basis of the undertaking that Dr Harrison has said he is prepared to offer Your Lordship. Can I just remind Your Lordship what that is? It's at A1 at tab 15 at page 261, and that undertaking that my learned friend relied on in the skeleton at footnote 24, if we can perhaps start off there. My learned friend helpfully has indicated that she now has instructions.

MS PREVEZER: My Lord, I may be able to cut this short because I have instructions along the lines Your Lordship requested. My clients agree not to strip them of the voting rights for the (inaudible).

MR SCOTT: (After a pause) My Lord, I will deal with that. That, of course, improves things so far as concerns the undertaking. What it does not do is to achieve full justice and convenience in the way that Your Lordship's order does, not least because, as I understand the proposal, it would still leave the general partner in the position to issue default notices to allow the time to run down so that it is in a position to push the button immediately upon

those irreversible contractual consequences, without us having had the opportunity to provide the capital if it turns out we are contractually obliged to do so, and that really is the point on pressure that we made in the evidence and the skeleton. If Your Lordship takes the capital calls, if there is any prospect of us being defaulted on the basis of those capital calls so that we lose our voting rights and the default charge becomes applicable, we will have no option but to pay them and what we are seeking to avoid is a situation in which we have to pay them now under protest, because of that pressure, to a general partner who has not offered an undertaking to repay the capital, could not realistically offer an undertaking to repay it and has no assets independently that would fortify that undertaking in any event. Really, that is the essential reason why we sought an injunction to hold the ring from Your Lordship and it's the reason why Lordship was prepared to grant the injunction.

Now, subject to Your Lordship, what I was proposing to do was develop my oral submissions in five parts, and I'm going to take a slightly different approach from my learned friend because what I want to do in the first part is to show Your Lordship some of the key contractual provisions and also the pleadings, because a good deal was said to Your Lordship about what the Delaware complaint is, and what the writ petition is, and we don't accept that characterisation at all. So, to give Your Lordship a single example at the outset, what Your Lordship was not told in the submissions in relation to the Delaware complaint is that the relief sought is predicated on an allegation of repudiatory breach founded upon the 15 May email. That is the ball game in Delaware. It is a case about whether or not, by sending the 15 May email, we have repudiated our obligations under the LPA.

JUSTICE ASIF: Your case is, "clearly not because the 15 May email says we will comply with whatever obligations you have under the LPA."

MR SCOTT: Indeed, My Lord, and it's the sort of point that, if we were in Your Lordship's court, perhaps it might be capable of summary determination, but we're not. We're in Delaware; we'll deal with it there. But the point I'm making for the present purposes is not to seek to persuade Your Lordship we are right on it. It's just so Your Lordship understands what the key dispute is there. It's a dispute about alleged repudiation, and Your Lordship sees that fact, that there's no mention in the pleaded case in Delaware of the capital calls that were served on the same day or, I think, around the same day or a few days later which are the subject of the writ petition in Your Lordship's court. Your Lordship was also not told about the suite of remedies that are being sought from the Delaware court by which the general partner seeks to combine both an order for alleged specific performance by way of payment

of $585 million per category and, at one and the same time, seeks an order permitting the general partner to apply a default charge by which to reduce our interest. What Your Lordship was also not told in the submissions on there being complete overlap between Delaware and the writ proceedings was that one of the bases upon which we seek relief in Your Lordship's court is the contention that the making of these capital calls and the service of the default notice a few days after they were informed of the injunction application, we say that's all in breach of fiduciary duty. That's a matter that is going to be adjudicated in Your Lordship's court and is not going to be adjudicated on in Delaware, or at least if it is there's no trace of it in the pleaded case.

My Lord, that's the first topic I'm going to address, the contract and the pleading. I will then address why the injunction that Your Lordship made remains just and convenient, and then I'll address the proposed variations from the general partner. I was going to address Your Lordship on the question of fortification and I'm very happy to do so if there are some additional points that we can assist Your Lordship on, but Your Lordship has the fundamental answer to the application, which is that in circumstances where we have partnership interests in this jurisdiction worth some $3.8 billion, there is simply no good, arguable case for fortification. Even if all the other points that we make against the application for fortification were to be assumed against me, there is still the unanswerable point that with assets in the jurisdiction on that scale there is simply no basis to require further fortification. Indeed, the fact that the general partner has seen fit to seek it, a general partner who has the considerable benefit of King's Counsel attorneys in Cayman-- who will no doubt have informed the general partner of the importance of the $3.8 billion worth of assets in the jurisdiction. The fact that the general partner has nonetheless pressed an application requiring us to bring almost $100 million more cash into jurisdiction, we do say that tells Your Lordship all Your Lordship needs to know about the extent to which he is treating seriously his fiduciary obligations.

Now, My Lord, if we can start on the terms of the LPA, we addressed Your Lordship on the material provisions at the 20 June hearing. For Your Lordship's note, that is on the transcript from that occasion at A1, tab 20, 369 to 375. My learned friend helpfully indicated in her skeleton – that's at paragraph 29 – that the general partner does not take issue with our summary of the provisions on that occasion. My Lord, three features of the contractual provisions on calling capital frame the landscape on the checks and balances that

were agreed to govern this critically important method. The first is that the limited partners are only obliged to contribute up to the amount of their contingent subscriptions, so there is no unlimited funding obligation. It is instead contractually capped at the amount of the agreed contingent subscriptions. That's clause 5(a) and we'll come to that in a moment. The second check and balance is that within that contractually capped amount, the general partner's right to call capital is subject to further specific, contractually agreed purposes as regards use of capital and, also, to our various approval rights as majority holders of the preferred units. That's clause 5(a)(ii) and we'll come to that as well. The third is that there is a specific contractual regime for dealing with a partner that defaults on an obligation to meet a properly made capital call, and that is a regime which is itself subject to various contractual safeguards, as well as those which result from the fiduciary nature of the general partner's role, and that is clause 5(c). If I could just make good on those submissions, if Your Lordship will turn up the LPA – it's A2, tab 21, page 404, and we're here, My Lord, in the first amended and restated version, but for the purpose of the submissions I'm going to make, none of the subsequent amendments make any difference. If Your Lordship will please turn to 421, we have clause 5 dealing with ethical partnership. Can I ask Your Lordship----

JUSTICE ASIF: Just give me one moment. 421, did you say?

MR SCOTT: Yes, 0421.

JUSTICE ASIF: Yes, got it.

MR SCOTT: If I can ask Your Lordship, please, to read the provision against (i) in 5(a). This is the first check and balance to which I referred a moment ago.

JUSTICE ASIF: (Pause for reading) Yes.

MR SCOTT: Now, as Your Lordship knows, we say that the contractual language there, the "contingent subscription", we say that is properly referable only to the amounts that each partner agreed to subscribe by its subscription agreements with the general partner, and in our case we agreed by those means to contribute contingent subscription up to $2.425 billion. For Your Lordship's note, our pleaded case on that aspect is our statement of claim in the capital call proceedings at paragraphs 32 to 34, 40----

JUSTICE ASIF: Sorry, Mr Scott, just give me a moment. I'm just----

MR SCOTT: I'm so sorry, (inaudible).

JUSTICE ASIF: That's all right. I was just thinking through what you said and I just want to clear it now. So, your agreed subscription is 2.5 billion, you said?

MR SCOTT: 2.425.

JUSTICE ASIF: 2.425.

MR SCOTT: Then that's set out in the pleaded case at 32 to 34 ad 42 to 51. I don't ask Your Lordship to turn it up, but that's A1, tab 2 from page 20. What Your Lordship will also see from the pleaded case is that at paragraph 52 we plead that, as at 30 May this year, when the first of the capital calls was made, we had contributed more than that amount, US$2.69 billion. The upshot of those pleaded allegations, if they are correct, is that we have no obligation and the general partner has no entitlement to call further capital. Now, can I just show Your Lordship the general partner's recently amended defence on this point, served on Monday this week? We have that at A1, tab 3, if Your Lordship can just turn that up alongside and keep the LPA open. So, if Your Lordship will go, please, to A1, tab 3----

JUSTICE ASIF: Yes.

MR SCOTT: -- and if we turn ahead to page 74, can I ask Your Lordship to read against letters (a) and (b)?

JUSTICE ASIF: This is-- At 74, I've got (h), (i) and (j). Oh, do you mean 14(a) and (b)?

MR SCOTT: Yes, I mean 14(a), over the page, to 14(b).

JUSTICE ASIF: Right, yes.

MR SCOTT: It's all in red text because this only came in by way of amendment on Monday.

JUSTICE ASIF: (Pause for reading) Okay, I've read that. So, somewhere there's a calculation error or an accounting error in terms of what your commitments are and what it is that you've made.

MR SCOTT: My Lord, not quite.

JUSTICE ASIF: There's certainly some dispute, some difference between the two of you, both in terms (inaudible)----

MR SCOTT: There is.

JUSTICE ASIF: -- you're obliged and (inaudible).

MR SCOTT: So, there are two disputes. There is a dispute about what we are contractually committed to provide, and I'll say a little more about that in a moment. There is also a dispute about what we have, in fact, provided, and that dispute arises because of how the general partner has decided in the context of this litigation to treat deemed contributions of assets. So, I don't understand there to be any dispute about the cash contributions, but I do understand there to be disputes about how deemed contributions are to be dealt with, but that is a dispute that will need to be resolved in Your Lordship's court in due course. It's not something that matters much for present purposes.

On the general partner's case as to what we are contractually obliged to do, Your Lordship sees that the thrust of this case is that we are contractually bound, the general partner says, to contribute an amount approaching $500 million more than was provided for under the subscription agreements, and Your Lordship sees from the amended defence that the pleaded foundation for that approaching $500 million additional commitment is not clause 5(a)(i) of the LPA and the contingent subscription to which it refers. Rather, the pleaded foundation is a series of later amendments. Now, My Lord, five brief observations here. The first is that none of these later amendments, 17, 18 or 20, none include language that purports expressly to amend the provision that Your Lordship has seen under clause 5(a)(i), so the general partner's case must be that the amendments alter the contingent subscription under that clause by necessary implication. My Lord, the second observation we make is that the general partner's case on necessary implication, will fall to be assessed, as with all matters under this contract, as a matter of the law of these islands. It will be assessed, as usual, having careful regard to the contractual language and the contractual context. As Your Lordship will appreciate, we're dealing here with a Cayman ELP to which billions of dollars are to be contributed. Is it realistic to suppose that these sophisticated and professionally represented parties intended to deal with both fundamental matters by way of necessary implication? My Lord, the third observation we make here is that in the case of the first of these later amendments that are relied upon-- that's Amendment 17. In the case of Amendment 17, it was in fact accompanied by an amended subscription agreement, and that amended subscription agreement increased expressly the amount of the contingent subscription by $1 billion. For Your Lordship's note, you have the amended subscription agreements that went with Amendment 17 at A1/21/1201 and 1203, and we say what the court will see from those----

JUSTICE ASIF: Can I hear those page references again?

MR SCOTT: Yes, it's 1201 and 1203. We say they show very clearly that when the parties wanted to increase the contingent subscription, they did so by exactly the means you'd expect. What is more – and this is the fourth observation – the parties did that in relation to Amendment 17 with the benefit of advice from Cayman Island lawyers that that was the right way to go about it, by amending the subscription agreement and not simply by amendment to the LPA. That was the legal advice that Maples gave to the partnership and upon the basis of which the amended subscription agreements were entered into. Your Lordship has that advice at A2, tab 21, 1271 to 1272. So, against that background, we do say it would be surprising if, having recognised, on advice, the need to amend the

subscription agreements, in the context of Amendment 20, the parties intended that as a matter of necessary implication to alter the contingent subscription.

Now, My Lord, fifth, on Amendment 20, Your Lordship has that at A2, tab 21, 636. Given the time, I'm not going to ask Your Lordship to turn it up at this stage, but we do say, upon reading the language of Amendment 20, it is impossible to see how, as a matter of necessary implication, that is said to alter the provision on contingent subscription. Indeed, it makes no reference to contingent subscription whatsoever. Now, My Lord, standing back, obviously you cannot decide today whether we or the general partner are correct on this issue, but what you can see is that the first fundamental issue in the case is this issue of Cayman Islands contract law as applied to a Cayman ELP that will require very careful consideration of the documents and their wording as set in its commercial contract, and if we're right upon it, then the general partner's attempts to call capital have no contractual basis or validity, independently of the various further objections to which we will come. That's the first basis we advance in the capital call proceedings for relief. If I can just give Your Lordship the references, it's the statement of claim, paragraph 138 and paragraph 1 of the prayer at pages 49 and 65 to 66 of the bundle.

My Lord, the second check and balance I mentioned is approval rights and other restrictions in relation to budgeting. That's the provision under clause 5(a)(ii) of the LPA. What Your Lordship will see from there is that the general partner is confined not just in the amount of contingent subscriptions, but also the purposes for which capital could be called and the need for it to be agreed to by us as holders of the preferred units. Now, My Lord, to see this provision, we need to go to Amendment 3 because Amendment 3 introduced what is, as I understand it, the current version of this provision. That's at page 516 in the bundle Your Lordship has open.

JUSTICE ASIF: Yes.

MR SCOTT: If I can just ask Your Lordship to read 5(a)(ii) as introduced by paragraph 3 of the amendment and, in doing so, can I ask Your Lordship to note the various points at which the general partner's ability to call capital is constrained by the need for approval?

JUSTICE ASIF: (Pause for reading) What is the board for the purposes of this?

MR SCOTT: I don't know the answer to that question, My Lord. As I understand it, there is not one. (After a pause) Mr Faulkner has helpfully drawn to my attention that there is a contractual definition of "the board" on the preceding page.

JUSTICE ASIF: Okay.

MR SCOTT: It's at 2(n).

JUSTICE ASIF: Thank you. (Pause for reading) It sounds as if this board has never been constituted.

MR SCOTT: My understanding is that it may have been historically, but it was subsequently dispersed. I'm not sure anything turns on that for today's purposes.

JUSTICE ASIF: Okay, that's fine. Thank you.

MR SCOTT: (After a pause) I'm even more helpfully assisted, I think, this time by Mr Farmer, for Your Lordship's note, that the board removal took place under Amendment 14, paragraph 10, and I see echoes to my left, so there seems to be a point upon which at least we are agreed. Now, My Lord, you may recall that, having referred Your Lordship to this provision on the prior occasion, Mr Faulkner said to Your Lordship:

> "The GP is the sole fiduciary and agent of the partnership. The Rigmora LPs [of course, us] have contributed 99 per cent of the capital. There are checks and balances in play, which means that the consent or approval of the Rigmora LPs are required before budgets can be approved and capital calls can be made."

That's at A1/20/374, and that's in one of the passages that my learned friend helpfully indicated her agreement to. A further aspect of our case in the capital call proceedings is that this check and balance has not been observed either and we seek declarations that the disputed capital calls were not made in accordance with approved budgets in at least the case of five projects, and we've detailed the reasons why over multiple pages in the pleading, and we reserve our position, in other words, pending disclosure. If I can just give Your Lordship the pleading reference, it's the statement of claim, 139 to 175, and the relief sought is at paragraph 2 of the prayer – that's pages 49 to 58 and 66 to 67 – and they are not matters addressed in the pleaded case in Delaware, as I'll show Your Lordship in due course. The case we put in Delaware is that there was no need to seek and obtain approval on the basis that, having repudiated, so it is alleged, our rights have been waived or otherwise have gone. I'm going to come, My Lord, to the default provisions under clause 5(c) in a moment, but, as Your Lordship knows, one of the consequences of a party's being deemed a defaulting partner is the loss of voting and approval rights, including as regards capital calls. That is a consequence of clause 18(f) of the LPA, and perhaps I can just remind Your Lordship what that says. It's at page 477 in the bundle Your Lordship has open.

JUSTICE ASIF: Mm-hmm.

MR SCOTT: So, the relevant sentence is the second one. Perhaps Your Lordship would just be good enough to read that.

JUSTICE ASIF: (Pause for reading) Okay.

MR SCOTT: An essential part of the protection that we sought and have obtained by Your Lordship's injunction is the protection against being treated by the general partner as a defaulting partner, one of the consequences of which would be the loss of voting rights, in circumstances where there is a fundamental dispute as to whether we are in default or not. Whereas Your Lordship's injunction protects us against that happening, so it prevents all the potentially irreversible consequences that may follow if it did happen, the general partner's more limited undertaking does not provide the same protection. The undertaking that Dr Harrison had offered and that was being put forward until about 40 minutes ago would have left it open to the general partner to treat us as defaulting partners and thereby strip us of our voting rights.

JUSTICE ASIF: Actually, having looked at (f), it's not just the voting rights. It's also the approval rights which are important.

MR SCOTT: It is, and Your Lordship is quite right to pick me up on the lazy wording. It is indeed both. My Lord, can I turn next to the provisions on default? This is clause 5(c) and we can pick that up at page 426 – perhaps Your Lordship would go there.

JUSTICE ASIF: Yes.

MR SCOTT: My Lord, five points I'd invite you to note on these provisions. The first is that the default provisions under clause 5(c) are concerned only – and I emphasise that word "only" – with cases in which a capital call in respect of contingent subscription has been properly made under clause 5 and it has not been paid, and Your Lordship sees that very clearly in the opening words of the third paragraph which introduce the default provisions. Perhaps I could just ask Your Lordship to read that third paragraph. It's the one that begins, "A limited partner that has failed to make a payment in satisfaction of its contingent subscription," if Your Lordship would just read that to the end of the paragraph. (Pause for reading) So, the contractual regime that Your Lordship sees here is not for breaches of contract generally. It is not the sort of event of default or material breach provision that one sometimes sees. It is a specific contractual regime to deal only with cases of non-payment in respect of properly made capital calls. Now, we say there has been no non-payment in respect of a properly made capital call because the capital calls were not proper. That's the subject of the capital calls proceedings. That is not the subject of the Delaware proceedings

because the Delaware proceedings is not a proceeding brought on the basis of particular capital calls having been made and not honoured; it's a case brought on alleged repudiation, which is said to bring with it the various consequences to which we will come.

Now, My Lord, the second point to note here is that even if a limited partner has failed to meet a capital call that was properly made, that does not mean that the default provisions automatically apply. Rather, the general partner has to invoke them by serving a default notice. There is then a 30-day cure period, effectively, following which the relevant partner may be designated a defaulting partner. The final sentence in the paragraph that Your Lordship has just read underscores the point that this is all within the discretion of the general partner, and we suggest that the discretion whether or not or when to deliver a default notice must, as a matter of proper interpretation, carry with it a discretion to withdraw a default notice once issued. That interpretation, we say, is reinforced when Your Lordship recalls that this is a discretion conferred for the benefit of the general partner in his capacity as agent for the partnership, i.e. as fiduciary for it, and there is no sensible reason, we respectfully suggest, to construe these provisions such that a default notice is some sort of fire-and-forget missile over which the general partner has no control once it is issued. My Lord, just to illustrate the point with a simple example, take a case in which a default notice is issued and the relevant partner says, "I'm going to pay this. I just can't do it within the 30 days. I'm going to do it on the 31st day." All other things being equal, what the fiduciary office of the general partner would require it to do is to revoke the notice and issue a new one and allow payment to take place within the provisions that are set out.

My Lord, the third point we make here – and this is, again, a point that Mr Faulkner emphasised to Your Lordship – is the fiduciary nature of these contractual discretions, and there can't be any serious dispute that these are fiduciary powers and there can't be any serious dispute that that carries with it the foundational duties of loyalty and their usual instance to exercise the powers in good faith and solely for the purpose for which they were granted. Now, My Lord, that is another basis upon which we challenge the disputed capital calls and the default notice that it was purportedly issued on the basis of. My Lord, if I can just briefly show Your Lordship the pleaded case on that? Can we turn up A1, tab 2, please, at page 63? Can I ask Your Lordship, please, to read paragraphs 189 to 191?

JUSTICE ASIF: (Pause for reading) Yes.

MR SCOTT: My Lord, if we establish that case at trial on the breach of fiduciary duty, that will provide another basis for the declarations that we seek in Your Lordship's court. This is another part of the dispute that sits squarely before Your Lordship's court and is not before the Delaware courts at all, or at least if it is, that is difficult to discern from the pleaded case. That's ultimately all Your Lordship has to go on, the scope of what is in issue in Delaware. Your Lordship has no expert evidence about that you just have the complaints to go on. My Lord fourthly on the default provisions is that if the general partner has properly called capital and if the general partner has properly served a default notice and it is not cured within the 30 days, then and only then is the respondent, limited partner, deemed a defaulting partner, and that has a number of consequences which follow under the contract. Now, I've addressed Your Lordship already on one of these; that's the loss of voting rights and approval rights under clause 18(f). What I want to turn to now are the remedies that are available to the general partner as a means by which to deal with the defaulting partner, and these are set out in the fourth paragraph of clause 5(c). Your Lordship sees that it opens with these words:

> "If a limited partner becomes a defaulting partner, the general partner may, in its sole discretion, pursue one or more of the following alternatives."

So, again, it's a discretion and, as such, it's held in a fiduciary capacity and is subject to the usual restrictions. My Lord, there are also contractual restrictions on the discretion to keep in mind here. The first of these is that the first of the four alternatives introduced, the imposition of a default charge. That cannot be exercised in combination with the acceptance of the capital by way of late payment. Your Lordship sees that at the foot of the page:

> "If the defaulting partner's preferred units and common investment units are sold in their entirety, pursuant to clause 2, [then this,] or if the general partner exercises its sole discretion to accept a late contribution, pursuant to 3 above, the general partner shall not [shall not] impose a default charge pursuant to 1 above."

As we will see in a moment, that is exactly what the general partner is seeking to do through the suite of relief prayed for in Delaware. It is seeking both an order for specific performance, as it is described, pursuant to which we would be required to pay $585 million in capital, and at the same time, an order permitting the general partner to impose a default

charge. This contract simply does not allow that. My Lord, the fifth point and the final point on these default provisions concerns the scope of the default charge. If Your Lordship will just turn over, please, to page 25, can I ask Your Lordship to read the second paragraph on the page? It says, "The partners agree that damage is suffered [etc.]…"

JUSTICE ASIF: Sorry, page 25 in this document?

MR SCOTT: It's 25 of the document or 428 of the bundle.

JUSTICE ASIF: That's 23, I think, in the document.

MR SCOTT: It's 23 in the document----

JUSTICE ASIF: 23 in LPA, 25 in the exhibit.

MR SCOTT: Yes, (inaudible).

JUSTICE ASIF: Yes, I've got it. Sorry, second paragraph saying, "Partners agree that damages"----

MR SCOTT: Yes, "that damages"-- and I'd ask Your Lordship to note as you read through, what is the subject matter of the default charge? The answer is the units identified. The preferred units and the common units.

JUSTICE ASIF: (After a pause) Yes.

MR SCOTT: So, obviously here there is no mention anywhere of this being a global default charge. On the contrary, it's a default charge defined expressly by reference to particular classes of unit. Now, in this fund, as you Lordship will have seen, there are various pools. In the case of just one pool – that's ATP IV – are assets held and distributed by reference to units. So it is that pool and that pool alone which is the proper subject matter of a default charge. In the case of the other pools, they are the subject of different provisions under the LPA which do not refer at all to a default charge. You can see that from the plain language of the contract. So My Lord, with those points in mind on the checks and balances, can we turn up, please, the Delaware complaint? Your Lordship has that at A4/28/250.

JUSTICE ASIF: Yes. Is that just one of the (inaudible)? (Inaudible). (After a pause) The reason I'm sort of trying to see is effectively looking at this question about timing, where (inaudible) effectively it's 35 days, and after 35 days then potentially the (inaudible) comes down.

MR SCOTT: One of the protections that Your Lordship's order confers upon us is that we will get that 35-day period once the dispute about contractual entitlement to invoke the provisions has been resolved, and what the general partner is seeking to achieve is to deprive us of that protection and thereby bring about a situation in which the general partner can pressure us by saying, "If we are right in the dispute, we the general partner, then the clock will have

expired. You will have lost your voting rights, and we will be entitled to oppose a default charge." That's, with respect, entirely correctly what Your Lordship's injunction prevents.

JUSTICE ASIF: Okay, so A4/28/250?

MR SCOTT: Yes, My Lord. This is the Delaware complaint. If I can ask Your Lordship, please, to turn to 2508. There isn't time, I'm afraid, to take Your Lordship through all of this, but I hope I can give you the gist of it from the----

JUSTICE ASIF: Can I just check – I did see this one (inaudible) bundle, the Delaware complaint has got a confidentiality marking on it in quite stringent terms. Now, no one has said to me anything about that confidentiality marking having been superseded.

MR SCOTT: Indeed----

JUSTICE ASIF: It's in the footer on every page of the complaint.

MR SCOTT: Indeed. My Lord, as I understand it, the Delaware complaint has been put in exhibit by both parties for the hearing today. I don't understand there to be any objection to my left to (inaudible)----

JUSTICE ASIF: Maybe you will both have to face the wrath of the Delaware judge for having breached the confidentiality order.

MR SCOTT: Well, I----

JUSTICE ASIF: Unless it's within Rule 5.1, or this----

MR SCOTT: I hope the position in Delaware will not be that by showing a fellow judge the allegations being made in Delaware, I'm breaching the confidentiality order, but maybe I need to not go on holiday today.

JUSTICE ASIF: (Inaudible). Well, except having been exhibited here and relied on, they are now in the public domain. I mean, that is something that maybe someone just needs to give some thought to.

MR SCOTT: That's noted, My Lord, and hopefully someone that is not me will do that exercise.

MS PREVEZER: There is a redacted version. I mean, I know they're in the core bundle, so Your Lordship has them, so it's probably too late and the horse has bolted, but there is a redacted version in the bundle which-- I don't know whether my learned friend can make his points off, if----

JUSTICE ASIF: Well, no. I mean, unless the entire document's redacted, I don't think the confidentiality is going to be complied with.

MR SCOTT: The entire document is not redacted.

JUSTICE ASIF: Anyway, sorry for-- No, I'm not sorry for throwing a spanner in the works, because I think it is important, but it's nothing we need to spend more time on today.

MR SCOTT: My Lord, if I can----
JUSTICE ASIF: Yes.
MR SCOTT: -- move past the spanner for present purposes, and perhaps we can think about what we might need to do to deal with it.
MS PREVEZER: I've been told that we only refer in ours to the redacted one which is in the public domain, and not the non-redacted one.
MR SCOTT: There may be more gold stars for Ms Prevezer and her client than for us.
MS PREVEZER: I'll be able to go to Delaware.
MR SCOTT: My Lord, the relief.
JUSTICE ASIF: Yes?
MR SCOTT: In looking through this, I would invite Your Lordship to keep in mind the three contractual checks and balances to which I drew Your Lordship's attention. Now, it's obviously going to be a matter for the judge in Delaware to decide whether it is appropriate to grant this relief, and to the extent that that is in her court of question of Cayman law, she's going to be briefly assisted, as I understand it, by Cayman law experts, and she will make findings accordingly as to law which is to her foreign.
JUSTICE ASIF: They will be findings of fact, won't they?
MR SCOTT: Indeed, findings of fact. Now, My Lord, I say briefly assisted because, as Your Lordship knows, it's a two-day trial in Delaware. There are going to be fact witnesses, there are going to be other experts, there will need to be submissions on issues which are not straightforward, and Cayman law is going to be slotted in within all of that.
JUSTICE ASIF: On the other hand, Mr Scott, as you know, the American practice is to do very much more on papers and much less orally.
MR SCOTT: Indeed.
JUSTICE ASIF: But I appreciate it's still a lot to cover.
MR SCOTT: My Lord, the only point I want to make for present purposes is, if Your Lordship just looks through the relief that is being sought here, it is in various ways fundamentally at variance with the express terms of the LPA. Now, that is relevant to the wider disputes, and in particular the loss of trust and confidence that we say we justifiably have in this general partner, but it's a further illustration of the importance of holding the ring on the contractual checks and balances, as Your Lordship's order does, to prevent our being treated as defaulting partners pending resolution of this aspect of the dispute. So, My Lord, if we start first with the prayers at B and D. These amount to specific performance as it is described to

pay sums totalling $588.5 million. Perhaps I can ask Your Lordship to read the prayers at B and D.

JUSTICE ASIF: Yes, I've read those.

MR SCOTT: Orders in those terms would not specifically perform the LPA, at least not in the sense that that remedy is understood in this jurisdiction, because there is no obligation, as matters stand, to pay those amounts. Those amounts would have to be properly called under clause 5, and they have not been. What the general partner is seeking to do is to replace the regime of having to call capital and replace it with a new court-imposed obligation to pay it all in one go and to contribute more than half a billion dollars, and to do so without any approval rights on our part as to how it is to be spent. Now, Your Lordship sees in the prayers at A and E it is said that we have waived those approval rights. Can I ask Your Lordship just to read A and E, please?

JUSTICE ASIF: Yes, I've read those.

MR SCOTT: My Lord, we cannot discern from the Delaware complaint any pleaded case as to the basis for the alleged waiver as a matter of the LPA's governing Cayman Islands law, still less for a waiver in writing, as the LPA itself requires under clause 17. I don't want to go back, but that's at page 473, and in the usual way for contracts of this kind, it has a no informal waiver provision. Yet the Delaware court is being told that we have waived these most important of rights without any pleaded cases to hand. Well, no, that's an overstatement, just to say, "without any pleaded case". As I understand it, the pleaded case is that this is all the result of the repudiation. Result of the repudiation.

JUSTICE ASIF: Yes.

MR SCOTT: If Your Lordship will look, then, at F on page 250.9, can I ask Your Lordship to read that, please? It's at the bottom of the page.

JUSTICE ASIF: (After a pause) Yes?

MR SCOTT: (Inaudible) judgment that we are in breach of funding and budget approval obligations sufficient to qualify as a defaulting partner. Now, Your Lordship has seen the provision under clause 5(c), whereby a limited partner can become a defaulting partner. It's a regime which only applies in the case of unmet capital calls. The alleged breach of budget approval obligations, that does not engage the default regime at all, and the alleged breach of funding obligations, that could only fall within the default regime if specific capital calls had been made and not complied with, if a default notice had been served, and if it had not been complied with within the 30-day cure period. My Lord, the general partner did not seek to do any of that before bringing the Delaware complaint, and that is because the Delaware

complaint is instead brought on a very different basis: the contention that we have repudiated the contract by virtue of what we said in the 15 May email. Now, the Delaware court, as I have said, will obviously need to form a view as to whether that email was indeed repudiatory as a matter of Delaware law. My Lord, even if----

JUSTICE ASIF: Hang on. Why as a matter of Delaware law?

MR SCOTT: Sorry, as a matter of Cayman law. You're quite right, My Lord. I'm so sorry. As a matter of Cayman law. She will need to resolve as a matter of Cayman law whether or not it is repudiatory. My Lord, even if the court in Delaware concludes that it is repudiatory, it is impossible to see how that could lead to the conclusion that the default regime under clause 5(c) applies. Indeed, it is also impossible to see how the general partner could simultaneously rely on an alleged repudiation of the LPA while seeking its specific performance and while relying on its default provisions. The general partner is thereby affirming the contract, not accepting any alleged repudiation.

It is likewise very difficult to see, at least as a matter of Cayman law, how the court could accept the general partner's pleaded case that it would be, and I quote, "futile to serve default notices", and that there is no need to do so before treating us as defaulting partners. Just to accept that would be to fundamentally rewrite the default provisions that Your Lordship has seen. If I can just show Your Lordship the pleaded case on futility; it's really quite important when it comes to the injunctions Your Lordship is being asked to vary. Can we turn back, please, to page 2502? With the greatest respect, this paragraph appears to have been written either by someone who has not read the contract, or by someone----

JUSTICE ASIF: Sorry, which paragraph?

MR SCOTT: It was paragraph 171.

JUSTICE ASIF: 171, yes. Thank you.

MR SCOTT: It's got reference to----

JUSTICE ASIF: I was just distracted by paragraph 177, which doesn't strike me as being an accurate reflection of the case.

MR SCOTT: It has struck us much the same, My Lord. On 171, the allegation is that the harm arising from our 15 May email, which you see at 169, is said to be a material, clear breach of the LPA, a payment default, and an event of default under the LPA. None of those is a contractual concept that this contract recognises. It then says it would be futile to wait for the notice period under paragraph 5(c) to lapse before the family office LP is declared as a defaulting partner. We would ask Your Lordship to put that pleaded case in Delaware,

which is foundational to the relief sought, against the attempt to persuade Your Lordship to discharge that part of the order which prevents them from serving default notices. How can that at one and the same time be futile, as the Delaware court is being told, and essential, as my learned friend submitted to you this morning? Either one or other of the judges concerned is not being told the full story.

My Lord, if we can go back, please, to the prayer, 2510, the general partner seeks here another order declaring that we have waived or forfeited voting rights, but this time on the basis that we are the defaulting partner for the purpose of 18(m). That's a case that was pursued despite no default notice having been served. Likewise, Your Lordship sees at the prayer at (i) on the same page, an order is sought enjoining the family office from interfering with the ATP in the exercise of its discretion over the fund once the family office LP is deemed to be a defaulting partner. What that apparently seems to do is to go beyond even clause 18(f) and treat us as some sort of outlaw, unable to interfere at all with how the general partner, our fiduciary agent, is operating a fund the vast majority of which is ours.

My Lord, if I can just deal at this point with the issue about the additional limited partners: I'm heartened to hear that the documents we have been seeking now for some time are to be found in the disclosure in Delaware. That is good news (inaudible), but even if we were to take account of these limited partner interests that they carry, it reduces our economic interest in the fund I think to the lower end of 90 per cent, rather than the higher end. It makes no material difference to who are the real----

JUSTICE ASIF: I think Ms Prevezer was saying 96 per cent, rather than 99 per cent.

MS PREVEZER: 97 per cent, I said, yes.

JUSTICE ASIF: 2 per cent?

MR SCOTT: Indeed. The reality, as all concerned know or ought to know, is that this is very substantially our fund, and yet the general partner is seeking in Delaware an order that will exclude us from any ability to interfere with its management. My Lord, the final example of variance between the LPA and the relief sought – and in some ways, we say, the most egregious of all – is the relief that is sought in relation to the default charge in combination with the orders for specific performance. Your Lordship sees that at page 25110, top of the page, and the primary case is an order permitting imposition of the default charge against all of the family office's interests. We respectfully say it would be in clear breach of the express terms of clause 5(c) to attempt to combine these remedies. Indeed, to do so, to have

even attempted it, is fundamentally contrary to the general partner's fiduciary duties. This is an attempt to both obtain capital from us and at the same time dilute our interests.

My Lord, that is among the reasons why, independently of the outcome in Delaware, trust and confidence in the general partner has justifiably broken down. That's why it's quite wrong to submit, as my learned friend does at a number of points in her skeleton and again this morning, that if the Delaware court grants the relief that her client is seeking, the writ will fall away here and the backbone of the petition to wind up will be removed, as it was put in her skeleton.

JUSTICE ASIF: I mean, the problem is it all rather assumes that the outcome in Delaware is binary, which it may well not be.

MR SCOTT: That's a point I'm going to come on to in the context of the case management stays. There is a simplistic assumption, with respect, that underlies the general partner's position to Your Lordship, which is that we can know with certainty when the Delaware judgment is going to come, we know with certainty when an appeal will come, and we can assume it will be binary one way or the other. Your Lordship is asked to case manage the proceedings before you on the basis of those assumptions, but they are, with respect, all false. We don't know any of those things: we don't know how long it's going to take the Delaware judge to write her judgment; we don't know how long an appeal will take; and we don't know what the judgment is going to say.

JUSTICE ASIF: My job would be so much easier if we could know in advance.

MR SCOTT: My Lord, can I turn, then, to the two respects in which Your Lordship is being asked to change the injunction?

JUSTICE ASIF: All right. Mr Scott, we've got 20 minutes until the short adjournment.

MR SCOTT: I think I will be done by then.

JUSTICE ASIF: That's fine. Just a quick note that-- Let me just say this: although I was complaining bitterly about the time estimate, that is not to say that if people need time to make their submissions properly, we shouldn't take it. If we have to, in fact I have availability on Monday and Tuesday next week, and so if we need to go over, then we need to go over.

MR SCOTT: Well, we will attempt----

JUSTICE ASIF: I see Ms Prevezer shaking her head, indicating she can't, but it seems to me that because of the time constraints related to Delaware, I need to make a decision upon the various issues that are in front of me as soon as possible. Ms Prevezer, it may just be that

you'll need to send a substitute or make some alternative arrangements if we don't finish today. Yes?

MR SCOTT: My Lord, can I start with what the parties have referred to as the default injunction? That's the provision under paragraph 1 of Your Lordship's order. I think we have each done what the other did in seeking to follow the order from the other's skeleton, but I think it's the right way to proceed, not least in the light of the apparent movement on their undertaking in the course of the morning.

JUSTICE ASIF: I notice your second heading, "The injunction remains just and convenient", and then "Proposed variations" as Heading 3. Have we skipped over 2, or is that already covered by what you were just saying?

MR SCOTT: The large point there, My Lord, is nothing has changed since you were persuaded the first time round. Mr Faulkner explained to you concerns we had about losing the checks and balances under the LPA. I've shown Your Lordship what the checks and balances are. Your Lordship, I hope, has our submission as to why this injunction is necessary, just, and convenient: to hold the ring so they are preserved. My Lord, if I can just make one brief coda to those points before turning to the variations. It's to invite Your Lordship to keep in mind the disparity on both sides in terms of reversibility. So, on our side, we are offering, a cross undertaking in damages which is fortified by assets in the jurisdiction worth $3.8 billion. In the context of the fortification application from the general partner, you've been told that potential losses of hundreds of millions could occur. Even if they do, they will amply be covered by the assets that we have in the jurisdiction and our cross undertaking.

By contrast, there is no offer on the other side of an undertaking to return capital to us if we pay it under protest and it turns out that we have no contractual obligation to do so. The general partner is an entity which has no assets, as we understand it, that would be able to fortify such an undertaking, even if it were given. So when Your Lordship comes to the balance of convenience, we would ask Your Lordship to keep firmly in mind the disparity in protection that exists by reason of those features. Because whereas it will be possible, if it proves necessary, through the cross undertaking in damages to address the alleged consequences Dr Harrison has identified, if they do emerge, it will never be possible to have the general partner return capital to us, because the whole thrust of the case has been this----

JUSTICE ASIF: Well, not without winding up the entire fund.

MR SCOTT: The whole case that is being put to Your Lordship by the general partner is, there are urgent funding needs, we need the capital so it can be spent on Dr Harrison's companies. Of

course, there's no undertaking from those companies either to return the capital, because presumably they want it for their own activities. My Lord, can I deal then with the third topic, variation on the default injunction? Perhaps can we start here at A1/15/261?

JUSTICE ASIF: A1?

MR SCOTT: Tab 15. We're in Dr Harrison's third affidavit, which sets out the undertaking.

JUSTICE ASIF: Give me that page again.

MR SCOTT: 261.

JUSTICE ASIF: 261, thank you. 261.

MR SCOTT: Can I ask Your Lordship just to read what his Lordship was being asked to accept in lieu of paragraph 1 of the injunction? (After a pause) That lesser undertaking was inadequate to meet the justice of the case in two respects. The first is the scope of what it covers so far as concerns invoking the default provisions, because all it covered was the imposition of the default charge. Everything else it left open to the general partner: issuing default notices; treating us as defaulting partners; on that basis, stripping away our voting and approval rights. There was some indication this morning, as I began, that the general partner now is willing to offer more, is willing to offer not to strip away our voting and approval rights. I'm in the more invidious position that I don't have the text.

JUSTICE ASIF: I was going to say, to be fair to Ms Prevezer, she said her instructions were that the GP agrees not to strip the voting rights. I think at that stage I hadn't raised the question of approval rights.

MS PREVEZER: I can clarify that, (inaudible). If you're looking for the wording, it's at A/04/77. It's the voting as set out there in the LPA (inaudible). I hope that helps my learned friend.

MR SCOTT: What would really help is, in words that we can all look at, an amended form of undertaking. That's not a criticism of my friend; she can only do her best with the instructions she has.

JUSTICE ASIF: I appreciate it's (inaudible) suggestions around (inaudible) intended to be helpful but are not necessarily.

MR SCOTT: Wording aside, and without at all meaning to seem ungracious, dealing with the voting and approval rights is only one thing. There is still the fundamental problem – unaddressed – of the opportunity to cure the default notice once served. Your Lordship's order protects us against being put in the invidious position in which a default notice is served, the clock starts running, and we have to choose either obey, as I have said, with the money going once it's paid over, or to put all of our eggs in the basket of being right on the question of whether there is an entitlement to call capital. Your Lordship's order, with

respect, quite properly protects us against that risk, against the risk of effectively being held hostage by the general partner. There is no offer from my learned friend to address that protection because the general partner doesn't wish to provide it. Your Lordship will draw his own conclusions as to why.

My Lord, if I can just briefly address at this point the suggestion that the general partner needs to be able to set the clock running because it needs to be able to move quickly. We respectfully suggest that Your Lordship should ask the question, move quickly and do what? What is it that the general partner wishes to be able to do that would enable capital sooner to come into this partnership? Despite all the reams of evidence that Your Lordship has, you have no suggestion from Dr Harrison that there are sources of capital, specific sources of capital, that would be available to him right now or in the coming months if the injunction were discharged. There's simply no evidence to that effect. There's no suggestion that if you were only able to default charge us, funding would be able to be obtained.

In the absence of that evidence, Your Lordship does need to ask with real care, what is the point that is sought to be achieved by the general partner running down the clock? The only answer we have been able to ascertain is that it will enable the general partner, if the general partner wins in Delaware, to apply the default charge and thereby reduce our interest, the practical consequence of which is to increase Dr Harrison's interest and that of his associates, the other LPs. My Lord, that's the first respect in which we say the proposed undertaking falls short.

The second is its temporal scope. Your Lordship's order is expressed to apply "until further order". That has the distinct advantage of leaving this court's hands untied in the event that developments later arise that make it just and convenient to revisit the order, and that includes developments by way of decisions in Delaware insofar as they have impact here. Your Lordship has made an order in a time-honoured form that will allow the court properly to examine such developments if and as and when they occur.

What the general partner invites Your Lordship to do is instead accept an undertaking that automatically terminates upon a judgment being given at first instance either here or in Delaware, irrespective of what that judgment says, irrespective of whether appeals are pursued against it, irrespective of what the timing is on those appeals, irrespective of what

the factual position is on the ground as to what the fund's financial condition is at that stage, and what justice and convenience would serve. We do say that would be, with respect, an entirely foolish and unjust order for Your Lordship to make. By far the better course is to leave the order in place until further order, so that if and when developments do occur, they can be considered in concrete terms – for example, with the benefit of an actual judgment from Delaware – rather than in the abstract and hypothetical way that the general partner seeks to.

My Lord, can I deal next and briefly with capital calls? We've explained in some detail in writing the various reasons why it would not be just and convenient to discharge the capital calls injunction. Your Lordship will have read our written submissions, so I'm not going to repeat them orally, but we do here invite Your Lordship to stand back and ask, what would be the point of serving capital calls between now and the resolution of the dispute? It seems to us, with respect, the only purpose of serving them could be to pressure us into paying prior to resolution of the dispute, because it cannot be suggested that serving capital calls will achieve any benefit in resolving the funding difficulties of the partnership.

As Your Lordship will have seen from the skeleton, there have been attempts between the parties to agree an interim funding arrangement. That has not resulted in agreement. Your Lordship may have seen the correspondence, may have formed his own view as to whether one side is more to blame than the other. In some ways, that doesn't really matter for present purposes. It is an avenue that is always open to the parties, to seek to consensually resolve an interim funding. What will not assist that process is to enable the general partner effectively to put pressure upon us with capital call notices backed up by default notices, time under which will run down, so that we end up in a situation which is irreversible in the event that the court concludes at trial that we are right. My Lord, it was said in my learned friend's skeleton----

JUSTICE ASIF: Well, except, Mr Scott, if you are right, then all of these calls will fall away, won't they?

MR SCOTT: Yes, but that will not assist with the loss of voting rights, and that's the problem. Now, the problem would go away if there was some mechanism by which the general partner could undertake to repay capital paid under protest. Of course, that would cut across the whole basis upon which their position stands. My Lord, fortification: five points here, and I'm going to take them fairly briefly because the short answer to it all is our assets in the

jurisdiction. My learned friend is entirely right that we agree on the principles, and I anticipate those principles will be familiar to Your Lordship.

We do say, though, that it is essential to ask the question of whether the alleged losses would result from the injunction or from something else. If Your Lordship looks at the evidence and the submissions made in the skeleton, it is not the injunction that is said to cause the alleged losses, it is the dispute between the parties about the extent of our funding obligations, a dispute which of course predates the injunction. That is a complete answer to the application for fortification.

My Lord, the second point is that, insofar as the injunction has any material effect on the general partner's ability to obtain funds for the portfolio companies, it could only be on the basis that it prevents the imposition of a default charge and thereby monetisation of our defaulted stake, but that could only be coherent if Your Lordship had some evidence that there were funding sources out there which, if the general partner could default us, that would enable him to access. Your Lordship has no such evidence.

My Lord, third, these fundamental causation problems aside, the evidence on the likely extent of the loss is inadequate. My Lord, we gave various illustrations why at paragraph 74(d) of our skeleton. Just to give another example, whereas we were told by Dr Harrison in his evidence that the companies are worth US$374 million, we were told by my learned friend in her skeleton that the companies are either insolvent or imminently will be, and we find those two things difficult to reconcile. Again, this is not a criticism, and it may simply reflect the uncertainties that Dr Harrison and his team see on this. Your Lordship also sees that uncertainty in the proposal for fortification not in respect of a specific loss, but a percentage of the supposed value of these companies. That is, with respect, a far cry from what the authorities require in terms of a good arguable case. My Lord----

JUSTICE ASIF: Sorry, Mr Scott, just repeat that. I don't----

MR SCOTT: The good arguable case test that you see in *Energy Venture Partners Limited v Malabu Oil and Gas Limited* [2014] EWCA Civ 1295 from the Court of Appeal requires the court intelligently to estimate the extent of loss. The court has to be in a position to make an intelligent estimate of it so that it can calibrate what fortification is needed. Your Lordship simply has not been provided with the evidence that would enable such an intelligent estimate. That's the submission. My Lord, 4, even if there were otherwise a good arguable

case, it founders in the context of this fund once it is recalled that we're talking here about alleged loss to a fund which is very substantially ours, somewhere in the 90 per cents. It is impossible to see how it could be just and convenient to require us to provide fortification in respect of alleged losses to a partnership which, if they ever occurred, would be losses that ultimately fall, for the most part, on us.

Your Lordship will have seen, although reliance is placed on the interests of the other LPs (inaudible), there is no attempt to confine the fortification application to the alleged value of those interests. No attempt, not least, because any such attempt would not come close to justifying fortification in sums approaching $100 million. My Lord, finally, and in some ways the shortcut through all of this, our very valuable assets in the jurisdiction. My Lord, if I can just show you the evidence on this, you had it in unsworn form, I think, on the 20 June hearing. It has since been sworn. It's Mr Bogdanov's second affirmation, A1/11/54, please.

JUSTICE ASIF: Did you say page 54?

MR SCOTT: I did, but it was a bad reference – it's 154. Grateful to My Lord. Your Lordship there has the evidence about the value of the Rigmora LP's stake: just over $3.8 billion. They are assets in the Cayman Islands. There would be no difficulty enforcing against them if the need arose, not least in circumstances where the general partner is of course trustee of the assets for the partnership. My learned friend says in her skeleton that this point is no answer, because if the injunction causes a loss to the partnership, that loss cannot be made up by other partnership assets. That's the point she makes at paragraph 18.20. With respect, that misses the point. The point is, if an award of damages is made against us, is there any material risk that it could not be satisfied out of assets in the jurisdiction? And there is no such risk once it is recognised that our assets – not partnership assets, our assets, our interest in the partnership – is worth $3.8 billion. Unless I can assist Your Lordship further, those are our submissions. I think we now move on to the case management.

JUSTICE ASIF: Well, it's one o'clock now. Can I just ask, what do you want? Do you want me to at least give you a decision on the injunction and then go on to deal with the stay and directions? Or do you want to continue with your submissions and then for me to, if I can, give you a decision on as many issues as we're able to at the end of the day?

MS PREVEZER: I think the latter makes sense.

JUSTICE ASIF: All right. Five past two, then. Thank you.

(Adjourned for a short time)

MS PREVEZER: My Lord, first of all, we're very grateful for the extra time. Can I----

JUSTICE ASIF: (Inaudible) you've done me out of handing down (inaudible).

MS PREVEZER: Oh no, the point of that was I was going to respond very briefly on the injunction----

JUSTICE ASIF: Right. Okay.

MS PREVEZER: -- before Your Lordship delivers it-- a judgment on that, but we have managed to reach accommodation on the balance of what was before Your Lordship.

JUSTICE ASIF: Okay. Fine.

MS PREVEZER: So, do you want me to reply on the injunction?

JUSTICE ASIF: Yes, I think you should.

MS PREVEZER: Albeit you've reached a judgment.

JUSTICE ASIF: You certainly should, because I might make some changes.

MS PREVEZER: Hope rest eternal. The short points I want to make on the injunction are these. As Your Lordship knows, the parties agreed to have the dispute determined in Delaware, and they agree that the issues arising out of the LPA could be determined by the Delaware court. Whilst my learned friend, Mr Scott, did a very eloquent job of identifying arguments that might be raised in Delaware based on Cayman law and the LPA, which, of course, we don't accept, and so I'm not going to respond to that, the Delaware complaint (inaudible) court will decide that complaint, and the relief sought, and I just want to turn Your Lordship to the Delaware complaint if I can, please, just to see what it is that is being sought by way of relief there and what it will cover. I think if you can start on the introductory paragraph and I'm going to just very quickly skip through some paragraphs that I----

JUSTICE ASIF: Sorry, just give me a page reference and the bundle.

MS PREVEZER: Well, first of all, it's A2425 is the one I'm working off and that's the unexecuted version. It's behind tab 28 in volume 4 of bundle-- it's the content of the exhibit----

JUSTICE ASIF: 2428.

MS PREVEZER: Yes. 2425 is where it starts. Apologies. (After a pause) (Inaudible).

JUSTICE ASIF: Yes.

MS PREVEZER: Your Lordship will see the introduction at paragraph 1. Your Lordship will quickly cast your eye over that, please.

JUSTICE ASIF: Mm-hmm.

MS PREVEZER: And over the page it goes. Your Lordship will then turn on to paragraphs 9 and 10, which is the effect, the consequences, of the injunction-- of the actions that are being caused on the portfolio companies as stated in that complaint.

JUSTICE ASIF: Yes.

MS PREVEZER: Paragraph 15 on page 12. Outline----

JUSTICE ASIF: Sorry. If there's anything particular you want me to take from the table, I can find----

MS PREVEZER: No, I will come at-- yes, it's just the relief at the end, but just wanted to show the way it's formulated.

JUSTICE ASIF: Right.

MS PREVEZER: At 15, "Seeks declarative judgment," "The LPA gives the right to play the full charge." Then paragraph 124, which Your Lordship will find on page 59 or----

JUSTICE ASIF: Sorry, Ms Prevezer, just going back to 15.

MS PREVEZER: Yes.

JUSTICE ASIF: It seems to me the operative part is actually not the bit that says, "The LPA gives ATP the right to impose a default charge," but actually what it is that is being asked for, which is in the middle of the paragraph: "ATP, therefore, seeks declarative judgment of the family officers"----

MS PREVEZER: Yes.

JUSTICE ASIF: -- "a payment default."

MS PREVEZER: Making them defaulting partners, and then labelling them "pose a default charge," but I'll show you the relief at the end.

JUSTICE ASIF: Right. Okay.

MS PREVEZER: But it is clearly set out. I just wanted to show the build up to it. Paragraph 124, Your Lordship will see the point I was making about approved amount on budget and what have remained uncalled, paragraph 124, which is page 2482. (After a pause) Then going on to 152, paragraph 152:

> "The setting out of the clear and unequivocal repudiation obligations. Improper and bad faith resistance to considering new budgets etc. They request the order of specific performance and to fund capital calls as identified in the offer."

Then moving forward, My Lord, to the relief sought. The causes of-- well, let me show you the causes of action.

JUSTICE ASIF: That's the specific performance to engage in the budget approval process under the terms of the LPA. That's going to be an almost impossible award to police, is it not?

MS PREVEZER: Well, maybe. This is for the Delaware court, My Lord. It's not for Your Lordship.

JUSTICE ASIF: No, I appreciate that. I'm just wondering how the Delaware judge is going to close this.

MS PREVEZER: Then you've got the causes of action which begin at 2497. Breach of contract, that's the first one. Second one is at 2500, (inaudible) breach of contract. Then at the third cause of action, the 2503, and this is the point that my learned friend says that's not quite Cayman law, that's for the Delaware court to decide.

MR SCOTT: I think just so the transcript has it, it was Your Lordship who said that.

MS PREVEZER: Okay, I'm sorry.

JUSTICE ASIF: Yes. I was about to say, and clearly I'm not making agreement, it just-- it caught my attention to be a slightly novel concept.

MS PREVEZER: Well, it may well be that this is the way the Americans phrase the position. There will be expert law on Cayman law given to the Delaware court.

JUSTICE ASIF: Now, I'm conscious, certainly under New York law, which I'm fairly familiar with, there is a concept of the de facto good faith. It hasn't really made it across the water.

MS PREVEZER: Fourth cause of action is at 2506, the global default charge, and the fifth cause of action is declaratory relief, proper actions of the general partner, which is very important, and you see all of those reflected in the request for relief from 2508, and Your Lordship will see a panoply of requests, declarations, orders sought. Specifically, over the page at 2510, a declaration that, by the filing of this action of the complaint itself is not act in bad faith, wilful fraud, intentional material breach of the LPA, and that is important in terms of with regards to the conduct and the filing of this action, because one of the complaints in the petition is that the very filing of the action was precisely that improper. My learned friend will say that doesn't cover breach of fiduciary duty but we say it's wide enough to deal with all of that and the Delaware Court will decide that.

Now, again, it's not for Your Lordship to go into the merits, but as regards to status quo, the position still stands as I submit it to you. If we're right in Delaware, that there has been a waiver, by dint of the breach, of their voting rights, and they have to pay capital calls, which will include the capital calls in the writ summons here, then there will be prejudice suffered

by us as a result of this injunction continuing if we are not able to issue further capital calls to get the clock running, in relation to those, in the meantime, we say.

Now, and we say there is no conceivable-- and if we issue further capital calls, there's nothing to stop them contesting them. There's nothing to stop them paying them, but I think it is, with respect, disingenuous for my learned friend to say they may feel under pressure to pay anything. They don't feel under pressure at all. They have made no payments. They're not offering to pay. The office interim funding has been very small amounts, all contingent and all conditional, but if the clock doesn't keep running, we are prejudiced, and given that we are prepared to undertake not to take any action in relation to any default charge in relation to the default notices that might be issued, including not enforcing any of the-- dealing with the voting rights under 18F of the LPA-- If Your Lordship wants to open that up, Your Lordship will find it at A0477 is where the voting right provision is.

So, we are not taking those away or doing it-- take those voting rights away, pending determination of Delaware, or the consent rights. I mean, the full-- everything that is-- we're not going to impose anything else. I think, that's the best way of-- in terms of wording, we're happy to just adopt that wording there and lift it.

JUSTICE ASIF: The difficulty, Ms Prevezer, is this, isn't it? The relevant clock is 35 days. So, suppose you issue your capital call tomorrow, even on the basis of all of the undertakings, 35 days is going to run out before you get your judgment in Delaware, and so judgment Delaware comes down, optimistically, on 19 September, 35 days already run out. So, on 20 September, your client is then able, immediately, to say, you, family office, are in default because 30 days have run out and we are immediately entitled to treat you as a defaulting partner even though, over that 35 days, or over the period up until 20 September, there has been an unresolved question about whether your clients are entitled to make capital calls or not.

MS PREVEZER: But if the question is resolved in our favour by the Delaware court which concludes that they have waived voting rights, then we are entitled to do precisely that, if we're right in Delaware, and therefore we don't, and shouldn't have to, wait another period within which to exercise those rights.

JUSTICE ASIF: How do you then respond to the position put by Mr Scott on behalf of the family office? Really, that puts them in an impossible position because they either have to pay with no possibility of getting the money back if (inaudible), or effectively they lose their----

MS PREVEZER: Well, they can apply for a stay in Delaware of the enforcement and then they can pay at that point, if they feel imperilled in relation to their voting rights.

JUSTICE ASIF: If they could do that, then why do you need the clock running now anyway?

MS PREVEZER: Because the onus shouldn't be on us. That puts the obligation rightfully on them to deal with this. If we are right, and we win in Delaware, they will have been found to have lost those voting rights, and we ought to be entitled to act accordingly. If they seek a stay of that decision, and they decide to pay money into a court account or whatever, whichever way they seek to do it, that will be up to them, but this is a state which holds the ring pending Delaware. We're right in Delaware, it goes, and the consequences are what the Delaware court calls the consequences, and the relief is very clear on that.

Now, I'm not prejudging which way the Delaware court is going to go on any of this, but that is the consequence, and we are being prejudiced by not being able to issue in the ordinary course, as we need to do, in between now and Delaware, further capital calls. Standing here, I don't have instructions as to what those capital calls will amount to, when they're going to be issued, but at the moment the order reads as a blanket injunction, preventing us from exercising rights that we've got under the LPA because it's without the consent, in writing, of the LP, the family office. They're never going to consent. That's a very broad order indeed, and it's not holding the ring.

(After a pause) So, we say amending paragraph 2 should be, at the order of stance, should be allowed. There's no prejudice to them at all and they've made it abundantly clear in their skeleton, and elsewhere, that they are not intending to pay, and they haven't paid the capital calls in May so we haven't had the money that's been necessary to fund these companies, and time really will be of the essence. If we get to Delaware and we win, we will need to move very fast in order to do anything in relation to getting money, and in particular, one of the capital calls, I don't know if Your Lordship has appreciated this on the papers, relates to the ATLS fee for, which is the money for management fees.

JUSTICE ASIF: I saw that.

MS PREVEZER: There is absolutely no defence to that, and they haven't paid it, but that's a separate point. So, we are being prejudiced at every day that goes on at the moment. So, that's all I wanted to say in relation to the two paragraphs. If Your Lordship is against me in relation to the injunction ceasing on the Delaware judgment being given, notwithstanding they can seek a further injunction in Delaware or stay in Delaware, which will give them the

protection they need, then if Your Lordship is going to be-- at the very least it should come back to-- the injunction should only extend to the CMC, which I'm happy to tell Your Lordships we've got an agreement on subject to availability of the court. So, that's what I was going to say in the injunction, and I can then tell you what's happening on the others.

JUSTICE ASIF: Okay.

MS PREVEZER: In relation to the other matters, there are the two stay summons and the two directions summons, and it's been agreed, subject to what I'm going to tell you and subject to Your Lordship, that those four summons should be withdrawn and costs reserved in relation to them, and the basis on that, the agreements being reached by the parties, is that we will file a defence to the petition by 20 August, and we can draw up an order for Your Lordship that the discovery in Delaware stands as the discovery in Cayman, I think that gets moving on 13 August, that any additional discovery requests, all requests have to be made by 3 September and delivered by 24 September, that there should be a CMC after the Delaware judgment is delivered.

JUSTICE ASIF: So, sorry, just give me the date for delivery of----

MS PREVEZER: 24th to be delivered, by 3 September for the request to be made.

JUSTICE ASIF: Yes. Thank you.

MS PREVEZER: And that satisfies both parties. There's very limited amount of work that's going to be done in Cayman. That's really been the concern. There should be a CMC after Delaware, which should be settled in the third week of October, subject to your availability, My Lord, because we weren't anticipating this would come back to Your Lordship.

JUSTICE ASIF: It will, because it's FSD, say it's assigned to me so----

MS PREVEZER: And I can promise Your Lordship, certainly on my part, better skeletons and sufficient reading time in preparation for Your Lordship.

JUSTICE ASIF: Third week in September is----

MS PREVEZER: Third week of October.

JUSTICE ASIF: Sorry, third week in October is actually not ideal. I've got a four-day trial that week, but the Friday of the week before, the 17th, would work.

MS PREVEZER: Yes. I mean, if the judgment in Delaware, for some reason, and we think it unlikely, hasn't been delivered, we may have to revisit that, but I think we want to date in the diary. When this court----

JUSTICE ASIF: Can I just say, if it's the 17th, I've got things in my calendar 13th, 14th, 15th, so would really only have the 16th for reading.

MS PREVEZER: Well, obviously it would be very important Your Lordship has had time to review the Delaware judgment, and I have no idea what the landscape is going to look like then, but we do think it will change the landscape one way or another, and on that, then, CMC, we will deal with all else. What's----

JUSTICE ASIF: Can I just say-- sorry, MS PREVEZER.

MS PREVEZER: No, no, no. Please go ahead, My Lord.

JUSTICE ASIF: I know it's not ideal because everyone wants to resolve this quickly as possible, but if the combination of the 16th and 17th doesn't work, then currently the whole of the week of the 24th to 27th is clear.

MS PREVEZER: If Your Lordship-- I don't know, I mean we don't have a problem with coming back at that later-- if that gives greater certainty to Your Lordship in terms of time for reading, I don't know whether----

MR SCOTT: I can't do the 17th, I'm afraid. I can do the dates Your Lordship indicated, the subsequent ones of the 24th----

MS PREVEZER: Maybe we should do that anyway.

JUSTICE ASIF: Right.

MS PREVEZER: And that will give Your Lordship time to read. There'll be greater certainty that Delaware judgment will be delivered by then.

JUSTICE ASIF: All right. I'm keen to do what I can to facilitate getting as much of a timely conclusion as possible----

MS PREVEZER: It's the 24th.

JUSTICE ASIF: --so long as everyone is content for the week of the 27th, then that's fine.

MS PREVEZER: So, the 22nd, did you say?

JUSTICE ASIF: 27th.

MR SCOTT: 27th.

MS PREVEZER: All right.

JUSTICE ASIF: Of October.

MS PREVEZER: I have no idea of my diary, but I will-- and at that CMC, we will deal with the correct party to the petition. You know, Your Lordship, there was an issue before Your Lordship today, and we are reserving that over to deal with at the CMC, which makes sense because it depends on what's still standing or not. We would like, and have agreed, that a trial date be put in the court's diary, your diary.

JUSTICE ASIF: I'm very keen on doing that as quickly as possible so everyone knows the target we're aiming for.

MS PREVEZER: And the target we're aiming to, we say, is mid-January. I think my learned friend's still pushing for the end of December. What we have anticipated is three reading days and five days to do the writ and the petition together, realistically. Now, if we win in Delaware, and if the capital call is (inaudible)----

JUSTICE ASIF: (Inaudible).

MS PREVEZER: --you won't need five days, and you won't need three days of reading, and who knows what will be left in the petition, but that is, and we say, realistically, because if we're talking about a CMC on 27 October, if we're going ahead, there are witness statements, any expert evidence in terms of GPs duties or whatever that needs to be done, realistically, skeletons, we are looking at January because of the vacation as well.

JUSTICE ASIF: Well, just on that, I wouldn't suggest 27th itself as the CMC, or I won't have any reading time. So, it'd be ideal to put it slightly later in the week.

MS PREVEZER: Yes.

JUSTICE ASIF: The Tuesday or Wednesday, or even Thursday, depending on how much material there is.

MS PREVEZER: Can I just get my phone out and look at my diary to see if I can help Your Lordship?

JUSTICE ASIF: Of course. I'm very happy for the two of you to discuss it amongst yourselves afterwards.

MS PREVEZER: Yes.

MR SCOTT: I wonder what might help in particular, if we could have Your Lordship's dates that are available in October around those two weeks and then perhaps my learned friend and I can agree.

JUSTICE ASIF: Right. You can have the 2nd----

MS PREVEZER: Of what?

JUSTICE ASIF: Of October, the 16th or 17th, or the whole of the week of the 27th, so that's 27th to the 31st.

MS PREVEZER: I mean, I think the worry we have, and as we said about the third week in October we agreed between ourselves, the 2nd may be perilously close to a Delaware judgment coming out, and I don't think we should discount that. The 16th and 17th you were concerned about not having----

JUSTICE ASIF: The Delaware judge (inaudible).

MS PREVEZER: I think Your Lordship was concerned about the 16th and 17th, I mean 27 October seems to be----

JUSTICE ASIF: Mr Scott's unable to do the 17th, I believe.
MS PREVEZER: He can't do the 17th, so 27 October.
JUSTICE ASIF: And as I said, you've got the whole of that week, so depending on how long you think I'll need----
MS PREVEZER: And that looks all right in my diary too. (After a pause) So, and then fixing a trial date working from then. We say we're in the middle of January, subject to Your Lordship's diary again. My learned friend I know was keen to get that ----
JUSTICE ASIF: Just on that for a moment. Presumably there'll be some witness statements. Are we going to need experts on Delaware law?
MS PREVEZER: Well, we might do. I mean, I think the question is, what's left outstanding? And once we've got the Delaware judgment, if everything is out there, then I think we might do. If it isn't----
JUSTICE ASIF: If it isn't, the points on Delaware are likely to be very, very discrete, if there are any at all.
MS PREVEZER: Well, yes, but I think Your Lordship was going to need assistance, aren't you? You may not, but I think we should have an option, but we will need witness statements, possible expert evidence, but I can't identify that on the face of anything now.
JUSTICE ASIF: No. That's fine.
MS PREVEZER: And then we----
JUSTICE ASIF: Mid-January will probably be sensible.
MS PREVEZER: Yes, and Your Lordship's diary in mid-January----
JUSTICE ASIF: That is clear, so you've got the whole of January.
MS PREVEZER: Right.
JUSTICE ASIF: Luckily. Luckily, I think.
MR SCOTT: I don't know if it would-- I mean, just dealing very briefly with the expert's issues. We can obviously return to that at the CMC, but the position in fact, as things stand, is there is no pleaded issue of Delaware law.
JUSTICE ASIF: The only reason I mentioned it is whether gross negligence is going to be an issue.
MR SCOTT: No, it's not at the moment. It's not-- I mean, obviously, my friend can amend and----
MS PREVEZER: Yes.
MR SCOTT: -- we can consider then, but as things stand. My Lord, in January, as I understand it, if we aimed for mid-January, that would leave open the possibility for Your Lordship to do pre-reading in the first week of term and then we would have the trial in the second week of term, which I think----

MS PREVEZER: Sorry, is that 12 January second week?
JUSTICE ASIF: That would work.
MR SCOTT: Yes.
JUSTICE ASIF: (Inaudible).
MR SCOTT: So, there will be pre-reading in the week of the 5th, and then the trial itself in the week of the 12th.
JUSTICE ASIF: I can do that.
MS PREVEZER: Yes. My Lord----
JUSTICE ASIF: Can you make sure that's recorded in the order, because we need to let the registry know so that the time is booked out.
MR SCOTT: Yes.
MS PREVEZER: Yes. Of course. So, I think that is all that we need to bother Your Lordship with today, subject to Your Lordship's order in relation to the Injunction 2 amendments and the cost consequence on that.
JUSTICE ASIF: Right. Just give me two minutes because I will just think through a couple of points that you've made in reply.
MR SCOTT: My Lord, just before you rise to do that just one slight correction on the agreement my learning friend relayed to you. We did not agree to withdraw the directions summons.
MS PREVEZER: Oh, I thought----
MR SCOTT: Obviously, Your Lordship is making directions. The agreement was that the stay summons would be----
MS PREVEZER: I'm sorry. I thought that the-- because we were replacing it with an agreed order in terms of direction----
JUSTICE ASIF: I think Mr Scott's right for me to (inaudible) summons.
MR SCOTT: I'm not sure we can withdraw a directions summons.
MS PREVEZER: That's fine. It's just that there is no disagreement between us.
JUSTICE ASIF: That's fine. That's fine, I still need a summons to make an order.

(Ruling given - See separate transcript)

JUSTICE ASIF: So, Ms Prevezer, sorry, I'm against you on all three.
MS PREVEZER: I've never had a judge apologise. There is a question of costs, and I think you should hear from Mr Scott first then I'll respond.
JUSTICE ASIF: Thank you.

MR SCOTT: My Lord, there is the question of costs today. We would seek an order that the general partner pay the costs of the return date and to be assessed on the standard basis, if not agreed.

JUSTICE ASIF: Actually, that does remind me that there was an issue, I think it's in this case, about, and I think it's in the context of the petition, whether the general partner, is that all going to be dealt with?

MS PREVEZER: There's going to be at the CMC. (Inaudible).

JUSTICE ASIF: I was just going to ask-- I see what you mean. It's status rather than identity, but that's fine. Thank you.

MR SCOTT: So, that point is to be resolved at the CMC. My Lord, I'd also seek liberty to apply at the CMC for an interim payment if that hasn't been agreed. I don't have any cost information before the court today, so I can't seek one today, but we would seek that liberty and one hopes----

JUSTICE ASIF: So long as you call it a payment on account rather than an interim payment.

MR SCOTT: I will fix-- I'll wash my mouth out, My Lord. (Inaudible). That's what we seek (inaudible).

JUSTICE ASIF: Well, the only thing I would say is this, if you're going to make an application for a payment on account, then obviously you'll need to put together figures and give the defendant a proper opportunity to respond. I wouldn't want to be turning up at the CMC with people being bounced into having to deal with quantum (inaudible) at such short notice.

MR SCOTT: No, indeed, and it would be very much in our interest to have that tailored sufficiently in advance, and that's what we will seek to do.

MS PREVEZER: My Lord, we would resist any cost order against the GP on behalf of the partnership, which is the party before Your Lordship today. This injunction was there to hold the ring, and it was in support of the capital calls, the writ summons. In the event of Delaware, in our favour, it may or may not be, but in the event it is and we're back before the CMC and the summons goes away, this injunction ought never to be granted and, therefore, there will be cost consequences flowing from that. We are here on the return date because there were issues arising when the face of the injunction was granted. Your Lordship has found against me, but again, if I'm right and this ought never to be granted because we win in Delaware, if, then the costs will flow from that event. So, we say the cost should be reserved over to the CMC and we can debate this then.

MR SCOTT: My Lord, very briefly. The usual principle, of course, is costs follow the event, and the event has been the best part of the day's work of argument, as to whether the injunction

made back in June should be continued on the same terms as Your Lordship made, or very substantially reduced, and we are the successful party on it. With respect, my learned friend's submission confuses the question of the costs of the injunction, which, of course, will be matters to be dealt with at the end, and the costs of the return date, which was a discrete event required by the respondents to the injunction in an attempt to reduce its scope, which has failed, the just order is we should have our costs of that misadventure.

JUSTICE ASIF: I'm going to reserve the cost to the CMC, but mainly because I am unclear about who is the proper party that should be paying. It seems to me that the question of costs-- sorry, what I mean is whether they should be borne by the GP alone, whether there should be partnership expenses, which is the issue in the petition that is going to be determined. It seems to be, I think I want to get to the bottom of that before I make any order.

MR SCOTT: Very well, My Lord.

JUSTICE ASIF: I think, maybe, at the CMC you'll tell me I'm wrong, that it's very straightforward (inaudible)----

MR SCOTT: I think, from our perspective, we had rather assumed that if Your Lordship made a cost order against the general partner, the general partner would not dream of using partnership assets to discharge it because they would be substantially our assets, it would be difficult----

MS PREVEZER: There's an issue of the validation in (inaudible). My Lord, this is all circular because they've issued a petition and there's a section 99 issue about validation. So, reserving them to the CMC makes perfect sense.

JUSTICE ASIF: I think that's better. We should have a bit more clarity.

MR SCOTT: I didn't resist Your Lordship's decision at all. Your Lordship's decision (inaudible).

JUSTICE ASIF: Okay. If you can just make sure that, between you, you draft an order reflecting on that for the CMC, that would be very helpful.

MS PREVEZER: And we won't be seeing you on Monday. Thank you, My Lord.

JUSTICE ASIF: All right. Thank you both very much.

_____

EXHIBIT P

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	**REDACTED PUBLIC VERSION** **EFILED: November 5, 2025**
Defendants.	)	

PLAINTIFF ATP III GP, LTD.'S POST-TRIAL BRIEF

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PRELIMINARY STATEMENT

The evidence adduced at trial paints a clear picture. ATP and Rigmora entered into a heavily-negotiated limited partnership agreement in 2012 and amended that agreement twenty-two times. In 2020 and 2021, seeing a surge in early-stage biotech investment spurred by the global response to the Covid-19 epidemic, Rigmora increased its capital commitments to the Fund by about $1.4 billion and approved budgets for Series A funding of nine new biotech startups and follow-on funding for several existing portfolio companies. Dmitry Rybolovlev personally approved each of these investments.

That surge was ephemeral. The biotech markets retrenched in 2022 and have yet to fully recover. Simultaneously, the Rybolovlev family trust was being managed inefficiently, cash was short, and the trust often sold low-risk assets to fund its high-risk biotech investments. Then a financial advisor, Yuri Bogdanov described the problem in a detailed memorandum and concluded that the only way for the trust to regain financial footing was to "drastically" reduce its commitments to ATP. When circumstances saw him elevated to CEO status in 2024, Bogdanov resolved to cease new commitments to the portfolio and take steps to avoid its existing commitments to its riskiest preclinical assets. Rigmora used a combination of coercion and deception to achieve these goals without incurring the consequences of a contractual default. Ultimately, however, Rigmora breached both its obligation

to contribute capital in response to ATP's fully-authorized May 30 and June 1 capital calls and its obligation to consider in good faith new budgets for portfolio companies whose existing funding had been fully expended. But a limited partner does not gain license to walk away from a partnership agreement simply because its investment preferences have changed or markets have dropped.

In its defense, Rigmora offers distorted readings of the LPA that disregard the facts as they were available to the parties at the time of execution and as the parties reasonably should have understood them—supplanting Cayman law's objective standard of contract interpretation with a subjective, post hoc reading. Rigmora claims that it has not increased its commitments since it executed Amendment 17 to the LPA in 2020 (stopping at $2.5 billion), and that Amendment 20 merely reorganizes pre-existing commitments. This view is both counterfactual and contrary to the plain text of Amendment 20. The pool structure, the pools' accounting, and the parties' communications at the time of the negotiation and drafting of Amendment 20 all work to confirm that Rigmora was committing new money. This is further evidenced by Rigmora's failure to dispute capital call documents that tallied updated commitment amounts in the wake of Amendment 20. Additionally, contrary to Rigmora's argument, no amendment to the Subscription Agreements was required; indeed, the Subscription Agreements themselves expressly contemplate additional commitments via amendment to the LPA.

The evidence shows that Rigmora's commitments exceed [redacted]; its contributions total approximately $2.3 billion; and, it has not exhausted its commitments. Hence, contributions of capital in response to ATP capital calls against approved budgets are not "voluntary." Rigmora may not impose extracontractual conditions on its contribution of capital, and none of the reasons in Rigmora's May 15 Email justify its refusal to contribute capital.

The evidence shows that Rigmora has manufactured reasons to delay new budget approvals. In the months following the execution of Amendment 22, Rigmora hid behind the pretext of "due diligence" to avoid new budget approvals. In reality, it is clear that no one at Rigmora was even equipped to properly engage in Rigmora's new diligence process, and there is no evidence that any degree of disclosure by ATP would have satisfied Rigmora's demands.

At trial, ATP's Dr. Harrison testified that Bogdanov's May 15 Email stripped away any remaining hope that Dr. Harrison had for legitimate engagement and cooperation. Bogdanov's declaration that Rigmora would not even discuss new budgets for the clinical-stage companies until ATP agreed to liquidate or wind down the seven preclinical companies was the equivalent of extortion. This ultimatum revealed that Rigmora was intent on denying new budgets for illegitimate reasons (*i.e.*, to evade existing funding obligations), never mind ATP's months of work to satisfy Rigmora's information demands.

By May 15, 2025, there was no doubt that Rigmora had been abusing the budget approval process and that its actions violated the contractual duties of good faith, honesty, and rationality that, under Cayman law, impliedly constrain its discretion. Its rejection of all further funding obligations to the preclinical companies and refusal to approve budgets for Aulos, Ascidian, Marengo, and Nine Square constituted breaches of both express and implied duties under the LPA. Faced with near-term "cash-out" dates for all of these companies, ATP was left no choice but to exercise its express authority as GP to protect Fund value. It issued capital calls necessary for continued operations, and then it filed litigation to enforce the Fund's rights. Faced with Rigmora's breaches and the imminent collapse of portfolio companies, ATP not only had the right but the obligation to seek judicial intervention. Rigmora materially breached the LPA when it failed to meet those calls for approved budgets.

Moreover, Rigmora's attack on ATP's standing contravenes the LPA, which expressly authorizes the General Partner to bring actions to enforce the Fund's rights. Protecting the Fund from destruction by a rogue limited partner falls squarely within ATP's authority and fiduciary duties.

The Court should order specific performance to prevent the destruction of the Fund's portfolio companies and the loss of potentially life-saving therapies.

Rigmora remains bound by the agreements it signed, and this Court should hold Rigmora to them.

BACKGROUND

I. Apple Tree Partners Is Established to Promote Scientific Advancement and Generate Long-Term Profit

In 2010, Dr. Seth Harrison, who trained as a surgeon before embarking on a 35-year career as a venture capitalist in the biotechnology field, met Dr. Dmitry Rybolovlev, a Russian-born Cypriot national.[1] They formed Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund" or "Partnership").[2] The Fund's purpose is investing in and developing biotechnology.[3] On November 1, 2012, the parties entered into the First Amended and Restated Limited Partnership Agreement (the "LPA"), which governs the Fund's operations.[4] The LPA establishes the Fund's core mission: "to invest … in pharmaceutical, medical device and other medically related companies and business projects."[5]

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[1] Tr. (Harrison) 7:22-–9:20; Tr. (Rybolovlev) 349:20–350:23.

[2] PTO ¶ 23.

[3] *Id*.; Tr. (Harrison) 9:24–10:10; Tr. (Rybolovlev) 349:20–351:9; JX-0001 at 3; JX-1574 ¶ 15.

[4] JX-0001; *see also* PTO ¶¶ 24–25.

[5] JX-0002 at 1 (LPA Am. 1 ¶ 1(c)).

ATP III GP, Ltd. ("ATP") serves as the General Partner of the Fund, and Harrison is the manager of ATP.[6] The largest limited partners are Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP, both ultimately owned by Rybolovlev's family trust.[7] The Rigmora entities are successors-in-interest to the original Limited Partners Blue Horizon Enterprise Ltd. and Ezbon International Ltd. (together with both Rigmora entities, "Rigmora").[8]

Prior to Rigmora's breaches at-issue here, the Fund's total value was approximately $6.48 billion.[9] The Fund has distributed approximately $2.4 billion to Rigmora since inception.[10] These substantial returns reflect the significant value created by Harrison's management and demonstrate effectiveness in identifying and nurturing promising biopharmaceutical companies.

II. Rigmora Commits More than [redacted] to the Fund

Over the course of the Fund, Rigmora has agreed to capital commitments totaling [redacted]. These commitments arose through a lengthy negotiation history, beginning with an initial commitment of $1.425 billion alongside the November 2012 LPA and followed by additional commitment amounts carefully

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6 PTO ¶¶ 13, 15.

7 PTO ¶¶ 17–20; *see also* Tr. (Bogdanov) 270:12–271:3, 271:13–15.

8 PTO ¶ 18; *see also* Tr. (Harrison) 11:4–7, 25:10–17.

9 JX-1293 at 24.

10 PTO ¶ 46.

negotiated in connection with amendments to the LPA. These commitments were not aggregated for the use of all portfolio companies but were instead expressly allocated to specific pools, including as most relevant here, Pools ATP V-1, V-2, and V-3. Rigmora agreed that funds were not to be shared across pools.

A. Rigmora's Initial $1.425 Billion Commitment Establishes The Fund (2012)

On November 1, 2012, Rigmora made its initial capital commitment of $1.425 billion, pursuant to Subscription Agreements ("SAs") signed by Blue Horizon for [redacted] and Ezbon for [redacted].[11] The capital contributions set forth in the SAs were specifically made "[s]ubject to the terms and conditions set forth in … the Partnership Agreement," as well as the respective SA.[12] Rigmora also agreed to "make such other capital contributions and payments to the Partnership as provided for in the Partnership Agreement, in the manner and at the times provided in the Partnership Agreement," and to become "bound by the terms of the Partnership Agreement."[13]

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[11] JX-0212 at 19–22 (Blue Horizon SA signature pages); JX-213 at 19–22 (Ezbon SA signature pages); Tr. (Harrison) 25:18–22.

[12] JX-0212 at 3 (Blue Horizon SA ¶ 1); JX-0212 at 3 (Ezbon SA ¶ 1).

[13] JX-0212 at 3 (Blue Horizon SA ¶ 1); JX-0212 at 3 (Ezbon SA ¶ 1).

B. Amendment 13 Creates Investment Pools With Separate Accounting And Commitments (2019)

LPA Amendment 13, dated February 4, 2019, introduced a "pool" structure through which commitments, assets, and contributions would be allocated and tracked across distinct, separate "pools."[14] The aim of the pool concept was to segregate money so that profits on new investments would not leak to former Fund employees.[15] Pools also allowed the parties to increase capital commitments without having to establish new entities, thus avoiding potential know-your-customer ("KYC") roadblocks relating to Rybolovlev.[16]

The initial pool structure established through Amendment 13 involved just two pools: Pool A, which held the existing economics, and Pool B, which held the Fund's new projects.[17] Rigmora was exclusively responsible for funding all capital called in respect to Pool B.[18] Amendment 13 specified that expenses would be allocated exclusively by pool insofar as they were "directly attributable" to a

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[14] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[15] Tr. (Harrison) 27:11–28:9; Finkelman Dep. 38:7–41:18.

[16] Tr. (Harrison) 27:11–28:9.

[17] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[18] JX-0015 at 1 (LPA Am. 13 ¶ 17(b)).

particular pool, while expenses that were attributable to both pools were apportioned between them based on the relative cost basis of the remaining assets in each pool.[19]

Amendment 13 identified the Management Fee and the Apple Tree Life Sciences, Inc. ("ATLS")[20] Fee as two examples of expenses that were attributable to both pools.[21]

To facilitate the distinct treatment of the pools, Amendment 13 provided that "separate and distinct records shall be maintained for each Pool, and capital contributions … shall also be accounted for separately on a Pool-by-Pool basis."[22] The parties maintained this emphasis on segregating the treatment of pools, including a version of this "Pool-by-Pool" language in each amendment that modified the pool structure.

C. In Amendment 17 Rigmora Commits Additional $1 Billion (2020)

Amendment 17, dated September 9, 2020, committed Rigmora to fund an additional $1 billion to be allocated between Pool B and a new Pool C.[23]

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[19] *Id.* at 2 (LPA Am. 13 ¶ 17(d)).

[20] JX-0009 at 3 (LPA Am. 7, Schedule A ¶ 3).

[21] JX-0015 at 2 (LPA Am. 13 ¶ 17(d)). ATLS is a wholly-owned subsidiary of the Partnership designed to cover Partnership operational expenses like facility costs, leases, rents, and employee costs. JX-0009 at 3 (LPA Am. 7, Schedule A ¶ 3); Tr. (Harrison) 17:17–18:4. The ATLS Fee and the Management Fee were allocated between the pools according to fixed percentages. JX-0222 at 9–10 (LPA Am. 20 ¶ 6).

[22] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[23] Tr. (Harrison) 29:1-19; JX-0089 at 1 (LPA Am. 17).

Thereafter, Pool A would consist of Rigmora's original $1.425 billion capital commitment and all economics of the Fund not expressly allocated to Pools B or C, while Pools B and C would split Rigmora's new $1 billion commitment.[24] Amendment 17 further specified that Pool B would contain Chinook Therapeutics U.S., Inc.; Nine Square Therapeutics Corporation; and Initial Therapeutics, Inc., along with a proportionate share of the Management Fee and ATLS Fee.[25] Pool C would contain Kynos Therapeutics Ltd and any new projects after the execution of Amendment 17, along with a proportionate share of the ATLS Fees.[26] Each of these pools would be funded "exclusively" by Rigmora, and "[a]ll capital invested in the Pool C Projects … [would] be treated as contributed to Pool C."[27] Following execution of Amendment 17, the parties executed amended subscription agreements pursuant to which Blue Horizon and Ezbon committed to contributing [redacted] and [redacted], respectively, to Pools B and C.[28]

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[24] JX-0089 at 1–2 (LPA Am. 17 ¶ 4 (new Paragraph 20(a))).

[25] *Id*.

[26] *Id.*

[27] *Id.* at 2 (LPA Am. 17 ¶ 4 (new Paragraph 20(b))).

[28] Tr. (Harrison) 41:11–42:14; JX-0099; JX-0101.

Shortly thereafter, in Amendment 19, dated November 27, 2020, the parties renamed Pools A, B, and C, as Pool ATP IV, Pool ATP V-1, and Pool ATP V-2, respectively.[29]

D. In Amendment 20 Rigmora Commits An Additional $310 Million (2021)

The following year, the parties executed Amendment 20, providing for an additional significant increase in the capital commitments from Rigmora and Harrison.[30]

To set the amendment's financial terms, the parties exchanged an outline confirming their understanding of the commitments that generally would remain or materialize in each pool. In a May 2021 email, Harrison sent a draft outline to Rigmora's then-CEO and CIO Anna Kolonchina. Kolonchina returned a revised draft to Harrison on May 26, 2021, noting that, with the business terms ready, it "make[s] sense to start drafting a long form" amendment.[31]

The outline included a section titled "Remaining Unfunded Capital Commitments," which estimated that each pool would have roughly the following unfunded commitments following execution of Amendment 20: (1) [redacted] for

[29] JX-0132 at 1 (LPA Am. 19 ¶ 1); Tr. (Harrison) 28:22–24.

[30] Tr. (Harrison) 42:15–44:6; JX-1061 at 3.

[31] JX-0195 at 1.

ATP IV; (2) [redacted] for ATP V-1; (3) [redacted] for ATP V-2; (4) [redacted] for a new pool ATP V-3; and (5) [redacted] for a new Pool Braeburn.[32] At the time, there was approximately [redacted] in remaining capital commitments for Pool IV that the parties had agreed to sunset, and Pools V-3 and Pool Braeburn were to be created with independent commitments under Amendment 20.[33] Consistent with this plan, the parties executed Amendment 20 on June 21, 2021, memorializing their agreement to modify the investment in Pool IV to reduce the remaining commitment to expenses related to that pool and to new pools Pool ATP V-3 and Pool Braeburn, with additional new money commitments.

Amendment 20 had several features which, taken together, unambiguously documented the parties' agreement to increase the overall commitments to the Fund.

First, Amendment 20 established Pool Braeburn to hold the assets and commitments to a single portfolio company, Braeburn. For Pool Braeburn, Rigmora principally committed [redacted] in previously budgeted and approved but not yet funded amounts.[34]

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[32] JX-0195 at 4–5.

[33] JX-220 at 28 (showing $1.35 billion contributed prior to Amendment 20); JX-1061 (LPA Am. 20 ¶¶1–2 (new Paragraphs 21–22))

[34] JX-1061 at 3–5 (LPA Am. 20 ¶ 1 (new Paragraph 21)); Tr. (Harrison) 44:14–46:3; Engels Dep. 92:30–95:3.

Second, Amendment 20 established Pool V-3 to hold the assets and commitments for certain existing portfolio companies being operated under new management that the parties believed warranted additional commitments: Ascidian Therapeutics, Inc. ("Ascidian"), Gala Therapeutics Inc. ("Gala"), Galary, Inc. ("Galary"), Galvanize Therapeutics ("Galvanize"), Galaxy Medical, Inc. ("Galaxy"), Intergalactic Therapeutics, Inc. ("Intergalactic"), and Marengo Therapeutics, Inc. ("Marengo"), and their successors.[35] The total new commitment into Pool V-3 memorialized in Amendment 20 consisted of approximately $310.5 million. That $310.5 million in unfunded commitments derived from the parties' agreement to have a total commitment of [redacted] to Pool V-3, reduced by the existing investments into the companies compromising Pool V-3 as of the date of execution of Amendment 20, [redacted].[36] The remaining commitment would consist of [redacted] in previously approved, unfunded budgets for the Pool V-3 companies and approximately [redacted] in additional commitments to those companies.[37] As to Pool V-3, the parties agreed that "Ezbon, Blue Horizon,

[35] JX-1061 at 6–9 (LPA Am. 20 ¶ 2 (new Paragraph 22)).

[36] *Id.*

[37] Tr. (Harrison) 46:5–47:9.

Harrison, and Les Pommes shall contribute [redacted], respectively," to any unfunded remaining budgets.[38]

Finally, for Pool IV, the parties agreed to reduce the remaining unfunded commitments from the initial $1.5 billion to approximately [redacted] to be used to cover expenses, including litigation expenses related to the cost of a then-ongoing portfolio company exit.[39] The actual cost of expenses related to that litigation, and what was ultimately paid into Pool IV after Amendment 20, totaled [redacted].[40]

Immediately following Amendment 20, ATP began calling committed capital from Rigmora and Harrison. On June 24, 2021, ATP transmitted a capital call to Rigmora for approximately [redacted], consisting of [redacted] for Pool Braeburn, [redacted] for Pool V-2, and [redacted] in expenses charged to the pools, all split among Rigmora and Harrison in line with their commitment obligations to the pools.[41]

This call included an exhibit tracker of the outstanding capital commitments before and after: a practice that ATP included in each capital call following Amendment 20 through present day. These exhibits included the amount of funds

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[38] JX-1061 at 6–9 (LPA Am. 20 ¶ 2 (new Paragraph 22)).

[39] JX-1061 at 10 (LPA Am. 20 ¶ 4 (new Paragraph 24)).

[40] Engels Dep. 321:20–322:22.

[41] Tr. (Harrison) 47:10-48:3; JX-0230 at 1–2.

being called from each party on a pool-by-pool basis (including the breakdown of ATLS fees proportionately for each pool), and the amount of unfunded committed capital that would remain following the capital call.[42]

Exhibit A to the June 2021 capital call evidenced a total remaining commitment of [redacted], a sizable increase from the approximately $1 billion in outstanding commitments across the initial $2.5 billion committed to the initial fund and Pools V-1 and V-2, commensurate with the parties' agreement in Amendment 20 to increase the overall commitments to the fund.

ATP provided this record to Rigmora with "every single capital call," and no one at Rigmora (including then-CEO Kolonchina, who received these calls), ever objected to the accounting.[43] Rigmora's CFO Alexey Yakovlev testified to being responsible for processing capital calls, and he admitted to "not [being] aware" of anyone at Rigmora challenging these records.[44]

III. The LPA Defines the Rights, Duties, and Procedures for Capital Calls, Budget Approvals, and Defaults

A. Call, Budget, and Contribution Framework

Paragraph 5(a)(ii), as amended, authorizes the GP to call capital under seven circumstances, including funding partnership expenses, management fees, reserves,

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[42] JX-0230 at 4; Tr. (Harrison) 48:19–50:18.

[43] Tr. (Harrison) 48:19–51:1.

[44] Tr. (Yakovlev) 474:22–476:10.

and investments in "Projects."[45] As relevant here, subsections 5(a)(ii)(A) through (C) provide, "Unless otherwise approved by the holders of a majority of the Preferred Units in writing," the GP:

> may only call capital, as of any time, in amounts sufficient to enable the Partnership … to (A) pay Partnership … expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership … non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership … expenses and obligations incurred in the ordinary course of business, [and] (C) pay the Management Fee for the next 12-month period.[46]

Subsection 5(a)(ii)(E) authorizes the GP to call capital in amounts sufficient to "invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units."[47] Rigmora (which holds the majority of Preferred Units) thus has the right to approve budgets for Projects before capital can be called.

The ATLS Fee is also subject to a budget approval process. Rigmora must either approve the ATLS budget proposed annually by the GP or provide reasons for

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[45] *See* JX-4 at 2 (LPA Am. 3). "Projects" are defined as "investments in pharmaceutical, medical device and other medically-related companies, projects and related activities that are made directly by the Partnership or indirectly by it through Intermediaries."

[46] *Id.*

[47] *Id.* Amendment 3 originally provided for an ATC board of directors and made certain distinctions depending on whether a project was "being run through ATC" or not. *Id.* at 1–2. Amendment 14 excised ATC, and with it the ATC board of directors, from the LPA. JX-16 at 5 (LPA Am. 14).

not approving it within ten days.[48] If Rigmora does neither, the ATLS budget is deemed approved in an amount equal to the previous year's ATLS budget minus any extraordinary, non-recurring expenses that may have been included therein.[49] The amount of the separate Management Fee was set at [redacted] by Amendment 14.[50] Rigmora agreed to contribute capital to pay the ATLS Fee semi-annually in advance and the Management Fee annually in advance.[51]

Rigmora is obligated to contribute capital duly called. Paragraph 5(a)(i) requires LPs to contribute capital when requested by the GP in accordance with the LPA.[52] Capital is due when set by the call, with "not less than ten business days' prior written notice." LPA ¶ 5(a)(iii).[53]

B. The Global Default Protects The Fund's Integrity

Because, by design, Rigmora is the chief funding source for the Fund, and the Fund is, in turn, often the only source of funding for its portfolio companies, the consequences to those companies of Rigmora breaching its obligations to contribute

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48 JX-22 at 9–10 (LPA Am. 20 ¶ 6).

49 *Id.*

50 JX-0016 at 1 (LPA Am. 14 ¶ 1).

51 JX-0222 at 9–10 (LPA Am. 20 ¶ 6).

52 JX-1 at 18 (LPA ¶ 5(a)(i)).

53 *Id.* at 19–20.

capital are existential.[54] A funding default could trigger talent loss, delayed or abandoned R&D, difficulties restarting halted or delayed trials, difficulty attracting future investments or partners, and negative perception of the company and the Fund.[55] To ensure funding, the LPA provides for a range of potential consequences if an LP fails to meet a capital call, including imposing a Default Charge of up to 50% of the LP's interest for each default.[56] Such remedies are typical in almost all venture capital fund agreements, but, as Harrison testified, they are especially important for this venture, given that it relies on essentially single-source funding.[57] Harrison discussed the import of such a provision with Rybolovlev when establishing the Fund, noting that "[i]t would be highly unlikely that [they] would be able to even start business unless [they] had such a remedy" in the LPA.[58]

Specifically, five days after a missed capital call, the GP may issue a Default Notice (as defined in the LPA) informing the LP of its failure to pay and notifying it that it will be considered a "Defaulting Partner" if payment is not received within

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[54] *E.g.*, Tr. (Harrison) 20:8–21:1, 60:19–61:10.

[55] JX-1572 (Rao Opening) ¶ 67.

[56] JX-0001 at 23–27; *see also* Tr. (Harrison) 19:6–14, 21:2–6, 22:5–18.

[57] Tr. (Harrison) 20:8–21:1; *see also* Finkelman Dep. 61:13–64:17 (global default mechanism is typical, and Harrison had insisted upon it when parties first executed LPA).

[58] Tr. (Harrison) 20:8–21:1; *see also* Finkelman Dep. 61:13–64:17 ("The concept of a default charge was the single most contentious point in the negotiation …of the [LPA]. … [I]t looked at times as if … the parties were going to go their separate ways without reaching an agreement because of their disagreement on that.").

thirty days.[59] Once an LP becomes a Defaulting Partner, the GP may pursue one of multiple remedies in its sole discretion, including a Default Charge in an amount up to "50% of such Defaulting Partner's corresponding number of Units … immediately prior to becoming a Defaulting Partner."[60]

Further, "[i]n connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made … as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge."[61]

In addition to imposing a Default Charge, the GP may pursue the Fund's other rights and remedies against the Defaulting Partner under the LPA, the SAs, and governing law, including bringing a lawsuit to collect the unpaid capital contribution, together with interest, costs, and damages.[62]

The Defaulting Partner also remains obligated to pay both the unpaid capital call that led to the Default Charge and subsequent capital calls when due.[63]

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[59] JX-0001 at 23–27 (LPA ¶ 5(c)).

[60] *Id.* at 25.

[61] JX-0001 at 25 (LPA) ¶ 5(c).

[62] *Id.* at 24, ¶ 5(c)(iv); *see also* Finkelman Dep. 68:11–71:10 (testifying that Cayman law does not recognize the concept of a "series" partnership).

[63] *Id*. at 25.

Finally, the LPA provides that a Defaulting Partner loses "voting, consent, approval … and other such rights."[64]

The parties' various amendments to the LPA did not alter these default provisions.[65] Likewise, when ATP and Rigmora contemplated executing a Second Amended and Restated LPA to streamline the incorporation of amendments up through that point, Rigmora's attempt to weaken the default provision was a primary reason a second restated LPA was never executed.[66]

IV. For Years, the Partners Cooperated on Budget Approvals

Until late 2024, the process by which Rigmora exercised its budget approval rights typically began with informal discussions among Rigmora's chief investment officer (which role has been transferred over time), Harrison, and Rybolovlev.[67] For each new Series A investment, Harrison and Rybolovlev met—often in person—to discuss the opportunity, its prospects for commercial and scientific success, and

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[64] *Id*. at 74, ¶ 18(f).

[65] Tr. (Harrison) 57:8–10; Blöchlinger Dep 109:16–120:14 (Rigmora's GC acknowledging that none of the LPA amendments apply to default provisions); Finkelman Dep. 65:24–66:13 ("none of the amendments touched paragraph 5-C of the [LPA]").

[66] Finkelman Dep. 61:13–64:17 (Rigmora and ATP "disagreed substantively" on modification of global default provision); Blöchlinger Dep. 126:3–7, 129:18–130:8 (Rigmora's GC acknowledges that draft of Second Amended and Restated LPA did not include a pool-by-pool default mechanism); JX-0325 at 18 (Rigmora attempts to remove global default charge from draft amended LPA).

[67] Tr. (Harrison) 14:14–21.

funding needs.[68] Once Rybolovlev informally approved the investment, ATP would prepare an investment memorandum, CFIUS memorandum,[69] and a request for formal budget approval.[70]

After formal budget approval, the Fund would enter into Series A stock purchase agreements ("SPAs") with the relevant portfolio companies.[71] In many cases, the deployment of capital to the portfolio companies was tied to milestone-based tranches, but the Fund retained discretion to disburse capital regardless of milestone progress, as is typical for SPAs in the venture industry.[72] Indeed, the Fund retained the right to invest the entirety of the Series A capital commitment at any time, in whole or in part.[73]

Most of the Fund's portfolio companies exclusively rely on funding from the Fund to meet their operating needs, and thus the Series A commitments were key to recruiting top scientists and staff.[74] This arrangement stemmed from Rybolovlev's

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[68] Tr. (Harrison) 31:15–32:4, 33:5–10; Tr. (Rybolovlev) 355:4–12.

[69] Each budget request was accompanied by an analysis of the need for a CFIUS review; counsel typically concluded that because these were greenfield businesses they were outside the purview of CFIUS. *See* JX-310 at 6–7.

[70] Tr. (Harrison) at 31:15–33:4; Tr. (Rybolovlev) 355:9–18.

[71] Tr. (Harrison) at 34:19–35:2

[72] *See, e.g.*, JX-248 at 11–13, § 1.2(a)–(i); *see also* Tr. (Harrison) at 35:3–36:8.

[73] JX-123 at 6, § 1.2(f).

[74] JX-1174 at 2.

insistence on the Fund's ownership and control, but, eventually, the Fund was unable to syndicate its deals owing to KYC issues arising from post-Ukraine perceptions of Russian nationals.[75]

V. Bogdanov Champions Strategic Shift From Biotech Ventures

In fall of 2022, Bogdanov, who was then an analyst working on financial risk management, observed that Rigmora lacked cash-generating assets and had little cash on the balance sheet.[76] Though not in charge, Bogdanov formulated his vision for Rigmora in a series of internal memoranda characterizing Rigmora's finances as a "situation of a liquidity crisis" with a "lack of cash flow stability" that could only be remedied with a change in investment strategy.[77] In his memoranda, Bogdanov observed that "two or three years earlier" a crisis with similar characteristics had been "resolved by liquidating the private equity portfolio."[78] He warned that Rigmora's structure, with "predominance of venture projects (biotech [and] gaming) carries same risks that had led to the current crisis: poorly predictable [] money inflows (divestments) [and] massive outflows (capital calls), which will grow exponentially if the divestments are delayed."[79]

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[75] Tr. (Harrison) 12:17–13:8;105:17–107:18.

[76] JX-440 at 2.

[77] *Id.*; *see* Tr. (Bogdanov) 318:2–321:23.

[78] JX-446 at 1.

[79] *Id.*; Tr. (Bogdanov) 320:11–18.

Bogdanov's solution was singular: "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture."[80] Otherwise, Rigmora would remain trapped in "the same logic of shifting money from less risk (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time" to resolve periodic emergency cash shortages.[81] Bogdanov confirmed at trial, as other notes in the memoranda corroborate, that "biotech ventures" referred to the Fund.[82]

According to Bogdanov, Rigmora would "most importantly," re-encounter emergency cash shortages due to "***guaranteed obligations*** on … biotech venture projects."[83] Although the Fund could be "a source of capital gains," it could not "serve as a reliable source of cash for funding [Rigmora's] regular needs."[84] But if Rigmora were to exit its biotech investments, it would gain a "buffer" of $300–400 million—enough to mitigate the current liquidity crisis and achieve a "stable

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[80] JX-463 at 2; Tr. (Bogdanov) 320:3–7.

[81] JX-463 at 2; Tr. (Bogdanov) 320:19–24.

[82] Tr. (Bogdanov) 320:8–10.

[83] JX-440 at 2 (emphasis added). This email was sent by Bogdanov's associate, but Bogdanov testified that he is "the author." Bogdanov Dep. 162:5–10.

[84] JX-440 at 2.

position" longer-term.[85] Thus, the way "to start moving towards the cash buffer" was ***"to drastically reduce ATP payments."***[86]

Bogdanov believed that Rigmora could achieve "drastic" payment reductions through "tight controls," including "clear rules for review and approval of new projects."[87] His prescription was stark and his goal unambiguous: "[N]o funding sources – no new projects."[88] The "priority" was to "put a 'plug' on expenses" rather than find new investors.[89]

In December 2024, when Kolonchina made the "unexpected decision" to depart Rigmora, Bogdanov became CIO and co-CEO.[90] Bogdanov had no prior involvement in the Fund's company budgets, nor any meaningful recent exposure to biotech.[91] Indeed, Rybolovlev observed that Bogdanov had "certain occupational deformities" because his "background is auditing and his perspective hasn't changed," making him "very, very, conservative."[92] Nonetheless, though Rybolovlev admitted that he does not "know any auditor who would be successful

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[85] JX-446 at 1.

[86] JX 462 at 2 (emphasis added); Bogdanov Dep. 174:14–21.

[87] JX-462 at 2; Bogdanov Dep. 173:16–22.

[88] JX-462 at 2.

[89] Tr. (Bogdanov) 321:14–18.

[90] Rybolovlev Dep. 51:19–52:8; Tr. (Bogdanov) 271:24–272:7.

[91] Tr. (Bogdanov) 272:8–24; 317:11–13.

[92] Rybolovlev Dep. 50:17–51:3.

in running a business," Bogdanov was elevated because he had "a general understanding of what's going on."[93] But, as Bogdanov told the Court, he received no "specific instructions" from anyone at Rigmora, including Kolonchina, concerning how to proceed as Rigmora's top executive.[94] Bogdanov quickly began to implement a shift towards his planned thesis of reducing long-term investments and building a cash buffer.

Bogdanov's planned shift was not communicated directly to Harrison or ATP. However, starting in late September 2022, Rigmora (through Rybolovlev and Kolonchina) did plead for an "austerity budget" for the Fund, on the basis of liquidity concerns following Russia's invasion of Ukraine.[95] As Harrison documented in a memorandum to Kolonchina, Rybolovlev expressed to Harrison that he was regretting current commitments and concerned about cashflow.[96] In response, ATP worked to accommodate Rigmora's professed liquidity concerns by "calling capital at a lower rate" and asking the portfolio companies to "make do with less," "slow the companies down or drop some programs."[97]

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[93] *Id.* at 51:5–52:4.

[94] Tr. (Bogdanov) 342:20–343:3.

[95] JX-473 at 2. Tr. (Harrison) 52:1–12; 54:20–55:1; *see* Tr. (Bogdanov) 318:2–6 (acknowledging liquidity crisis in 2022).

[96] JX-473 at 2; Tr. (Harrison) 52:1–19.

[97] Tr. (Harrison) 57:19–58:9.

ATP did not, however, simply forgive Rigmora's "guaranteed obligations."

VI. Amendment 22 Requires Rigmora to Consider New Budgets Following Braeburn Settlement

A. Braeburn Dispute and Resolution

In 2023, the FDA approved Braeburn's drug Brixadi, transforming Braeburn into a commercial-stage company with multi-billion dollar potential.[98] Rigmora demanded immediate distribution of Braeburn's shares.[99] ATP refused the demand on fiduciary and other grounds, citing concerns about the Fund's solvency and Rigmora's potential default on commitments to fund Pool V-1 and V-2.[100]

By late 2023, Rigmora conditioned its agreement to meet key funding obligations on ATP's agreement to cap the Fund's capital calls and shift approved budgeted amounts away from preclinical startups in Pools ATP V-1 and V-2 in favor of older, clinical-stage companies.[101]

In July 2024, Rigmora renewed its demand for immediate distribution of the assets in Pool Braeburn (then independently valued at up to [redacted]).[102] When ATP requested time to consider the implications of such a distribution on the Fund,

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98 PTO ¶ 49.

99 PTO ¶ 51.

100 PTO ¶ 52.

101 *See* JX-698 at 4–5.

102 Tr. (Harrison) 67:9–68:14; JX PTO ¶ 53.

Rigmora immediately commenced legal proceedings in the Cayman Islands to compel the distribution.[103]

In this 2024 Cayman lawsuit (the "Cayman Action"), Rigmora debuted its prime defense here: exhaustion of capital commitments. On October 10, 2024, Kolonchina filed an affidavit in the Cayman court stating, for the first time, that Rigmora's "combined Contingent Subscriptions are [redacted]," and because Rigmora had already funded $2.6 billion to date, "it is therefore impossible" that Rigmora had outstanding contingent subscriptions.[104] Kolonchina further attested that there was no "global default mechanism" in the LPA.[105] That same day, Kolonchina stated in an email to ATP that Rigmora would pay a pending capital call despite that it was "not obligated to do so."[106] By October 2024, Rigmora was explicitly disclaiming any obligation to respond to capital calls for budgets already expressly approved in writing, insisting any payments would be made only "on a voluntary basis."[107]

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103 PTO ¶ 54; Ans. ¶ 98, 100.

104 JX-1002 ¶¶ 23–26.

105 JX-1002 ¶ 27–29.

106 JX-998 at 1.

107 *Id*.

Rather than assert counterclaims or run to Delaware court, Harrison flew to Monaco and suggested to Rybolovlev that they settle, leading to a "couple of days of meetings" where they "agreed to the basic outline of a settlement in order to continue to work together."[108]

ATP and Rigmora settled the Cayman Action on December 20, 2024, agreeing to Amendment 22 and an amended agreement regarding Pool Braeburn.[109] Rigmora obtained distribution of the Braeburn royalty, valued on date of distribution at [redacted]. The transaction transferred the Braeburn royalty from Pool Braeburn to a special-purpose entity known as ATC LLP, and thus the royalty was no longer subject to the Global Default Charge.

During the Cayman Action, certain portfolio companies were nearing the end of their Series A commitments and initial budgets, making new budgets a critical part of settlement discussions.[110] Ascidian, in particular, would reach the middle of its Stargardt disease trial and run out of funding to conclude it properly with a pediatric cohort.[111]

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[108] Tr. (Harrison) 68:24–69:4.

[109] *See* JX-1068 at 4 (LPA Am. 22 ¶ 26); Tr. (Bogdanov) 275:6-21.

[110] Tr. (Harrison) 72:6–19.

[111] *Id.* 72:20–73:10.

B. Amendment 22

Amendment 22 to the LPA was executed concurrently with the settlement.[112] Bogdanov, who took over Kolonchina's position as Co-CEO in October 2024, was a primary negotiator for Amendment 22.[113]

A key concern in settlement was continued funding for specific companies. In return for the transfer of the Braeburn royalty, Rigmora agreed in Amendment 22:

> From and after the date of [Amendment 22], the General Partner and [Rigmora] shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Bioscience, Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized …[114]

Paragraph 26 lists projected cash-out dates for each company: [redacted] When asked if it was "clear to the Family Office and Dr. Rybolovlev that these companies were running out of cash in the near term" Harrison testified that "it wasn't news" to Rigmora.[115] Moving

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[112] JX-1068 (LPA Am 22); Tr. (Harrison) 79:10–12.

[113] Tr. (Bogdanov) 271:24–272:7; *id.* 275:2–5.

[114] JX-1068 at 4 (LPA Am. 22 ¶ 26).

[115] Tr. (Harrison) 75:1–8.

forward, as Rybolovlev knew, Harrison planned to consider reorganizing the companies; in the meantime, Amendment 22 would allow "holding budgets" so the companies could continue operating for a 12-month period.[116]

Paragraph 26 also created a contingency, applicable once Rigmora approves a budget. "If any approval of a new budget is given by" Rigmora, "such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by [Rigmora] on a sale or financing of its interest in ATP LLC," referred to as a "Royalty Financing."[117] The Royalty Financing term was not at odds with the expectation that the companies needed new budgets relatively soon; Harrison expected the partners would "collaborate" on pursuing the Royalty Financing, which Rigmora indicated would not be difficult to obtain.[118]

These expectations were consistent with the terms of Amendment 22, which mandates that in pursuing the financing, as well as approving budget proposals, each party would "do and perform, or cause to be done and performed, all such further acts and things … as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation

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[116] Tr. (Harrison) 76:3–11.

[117] JX-1068 at 3 (LPA Am. 22 ¶ 21(f)); *id.* at 4 (LPA Am. 22 ¶ 26).

[118] Tr. (Harrison) 77:24–78:3.

of the transactions contemplated hereby."[119] Despite this obligation and the initial anticipation that Royalty Financing would be promptly achieved, Rigmora has not closed a financing agreement ten months later.[120]

VII. Bogdanov Ascends to Power and a Pattern of Obstruction Persists

ATP, unaware of Rigmora's goal of "no funding … no new projects" and concerned about funding for companies running out of cash, wasted little time after executing Amendment 22 before sending Rigmora proposed budgets.[121] On December 24, 2024, Harrison sent an email containing budget requests for[122]:

- **Auolos**, [redacted]";
- **Replicate**, for "$11M"; and
- **Nine Square**, "[redacted]."

Harrison also explained that he was attaching materials concerning budgets for:

- **Nereid**, [redacted]
- **Ascidian**, [redacted]

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119 JX-1068 at 5 (LPA Am. 22 ¶ Miscellaneous).

120 *See* PTO ¶ 38.

121 *See* JX-463 at 2; JX-1079 at 1; Tr. (Harrison) 79:10–80:5.

122 JX-1079.

Harrison provided a spreadsheet showing "[redacted]," plus access to data rooms with "supporting materials for the new budgets."[123] These measures went above and beyond past expectations; Harrison testified that he "doubted very highly whether [Rigmora] would review" the data, but "[w]e did it to make sure [Rigmora] understood that after the settlement agreement we were being radically transparent."[124]

Bogdanov forwarded Harrison's email to Rigmora's analyst, Zufar Iskhakov, exclaiming "Let's start. Merry Christmas!"[125] Bogdanov admitted in deposition that he did not mean "let's start approving budgets."[126] Now Rigmora's CIO and Co-CEO,[127] he was ready to execute his vision for Rigmora's balance sheet; he meant "let's start" imposing "tight controls."

A. Obstructionist Diligence Begins Immediately

Tight controls were first applied to Replicate. Bogdanov testified that upon receiving Harrison's December 24 email warning that Replicate would "run out of cash by the third week of January," Rigmora "set Replicate budget as our priority

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123 JX-1079 at 1.

124 Tr. (Harrison) 128:6–9.

125 JX-1079 at 1.

126 Bogdanov Dep. 228:13–15.

127 *Id.* 27:4–5.

and worked for the holidays."[128] But this "work" consisted of generating what Bogdanov described as "the list of the full-out diligence questions."[129]

On January 5, 2025, Bogdanov sent Harrison a list of 19 diligence questions for Replicate.[130] The list was "bizarre," in Harrison's words, since "this is a company that we founded I think in 2021 and on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with Dmitry."[131] Harrison noted that "typically when you know a deal and you're just funding specific programs that you know and you understand the technology and you understand management and everything, providing an additional relatively small amount of capital shouldn't require much diligence at all."[132]

Thus, Rigmora's 19 diligence requests disregarded known, long-discussed background concerning Replicate's pivot "from oncology to a rabies vaccine over the course of the fund's investment."[133] The requests were also open-ended, seeking, for example, narratives explaining whether Replicate had "lost its differentiation,"

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128 Tr. (Bogdanov) 291:11–16.

129 *Id.* 291:17–20.

130 JX-1107 at 3–6.

131 Tr. (Harrison) 82:22–83:3.

132 Tr. (Harrison) 83:4–9.

133 *Id.* 128:12–18; JX-1107. Bogdanov asked: "After four years, could you please outline the main reasons for shifting RBI-4000 and RBI-5000 from oncology to infectious disease indications?" Tr. (Harrison) 128:19–129:24.

and how its "technology evolved over the past four years compared to its main peers."[134] The requests were patently difficult to fulfill. When confronted on cross-examination about whether he even knew if his diligence questions could "be answered in a reasonable amount of time," Bogdanov admitted: "I didn't know."[135]

The pattern of interrogation was, as Harrison testified, "bizarre if the investor already knew about it and approved the budget that enabled it."[136]

Momentum only picked up with a series of meetings in Monaco in January among Rybolovlev, Bogdanov, Harrison, and Batarina, during which Bogdanov continued to issue requests for extensive, irrelevant information.[137] Although Rigmora eventually approved budgets for Replicate[138]—unlike the other companies listed in Harrison's December 24th communication—the diligence process for Replicate marked a departure from the historically collaborative approach over the Partnership's twelve-year history. Bogdanov introduced barriers where none had existed before.

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134 Tr. (Harrison) 130:4–16.

135 Tr. (Bogdanov) 328:17–329:1.

136 Tr. (Harrison) 129:3-5.

137 Tr. (Bogdanov) 293:3–11.

138 Rigmora initially approved Replicate budgets conditioned on, in addition to the Royalty Financing, a pharmaceutical deal with a third-party. *See* Tr. (Harrison) 87:4–17. It later contributed funds notwithstanding those conditions—part of the pick-and-choose, on-and-off approach to funding. *See* Tr. (Bogdanov) 295:13–18.

B. Other Budget Delays Persist Through March

That newfound friction was intentional—an end in itself. Bogdanov specifically instructed Iskhakov (who had no science training) to generate diligence requests that would be onerous and time-consuming to fulfill.[139] Additional meetings occurred in March 2025 in Monaco to discuss the budget approval requests for Aulos, Ascidian, and Marengo.[140] As part of these meetings, ATP provided Bogdanov and Rybolovlev extensive presentation materials and data rooms.[141] The senior management teams for those companies flew overseas, as did consultant Bill Grossman, whom ATP engaged for Bogdanov's and Rybolovlev's benefit.[142] Grossman assessed courses of action for Aulos, but, eventually, at a subsequent meeting, Rybolovlev deferred to Harrison's expertise before agreeing, in Harrison's words, "we should do Aulos."[143]

In the end, however, the Monaco meetings only gave the illusion of progress toward funding. They did not result in approved budgets for Aulos, Ascidian, or Marengo.[144]

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[139] *See* JX-1287 at 1 (instruction to revise questions to be "open-ended"); *see also, e.g.*, JX-1107 at 1; JX-1112 at 1.

[140] Tr. (Harrison) 92:15–18.

[141] *Id*. 94:5–24; JX-1222 at 1.

[142] Tr. (Harrison) 95:1–18.

[143] *Id*. at 95:24–97:15.

[144] Tr. (Harrison) 97:16–18.

Rigmora's "diligence" requests gave Rigmora time to delay approving new budgets.[145] Rigmora concedes it lacked expertise to have evaluated the responses in any meaningful way, without subject matter experts on staff or retained consultants to assist.[146] The Bogdanov-led process was not only a departure from the Fund's prior budget practices, but also far outside the norm for follow-on investments by an investor with intimate knowledge of the companies. Harrison reflected at trial that "the totality of these diligence questions" was obstructionist.[147]

VIII. Rigmora Weaponizes the GP's Good-Faith Efforts to Accommodate Rigmora's Purported Concerns

The stalling both on budgets and a Royalty Financing deal prompted Harrison to realize, in April 2025, that Rigmora was unwilling to approve any additional budget requests.[148] In light of this, with the understanding that the only capital the Partnership would receive from Rigmora would be capital called within approved budgets, Harrison tried to propose a way to "work within" Rigmora's imposed constraints to "figure out how to move some of the clinical projects along."[149] The

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145 [redacted]. JX-1119 at 4; Bogdanov Dep. 213:16–220:25.

146 *See, e.g.*, Bogdanov Dep. 31:2–9; 45:23–46:10; 46:11–15; Blöchlinger Dep. 37:17–25; Yakovlev Dep. 30:23–25.

147 Tr. (Harrison) 131:1–10.

148 *Id*. 97:19–98:20.

149 *Id*.

reallocation proposal consisted of moving some of the approved budget amounts from the preclinical companies to clinical companies.[150]

Ultimately, the parties did not agree on the reallocation proposal.[151] Harrison testified that on or around May 9, he had a Zoom call with Bogdanov, Rybolovlev, and Batarina.[152] At this meeting Harrison provided a brief introduction and then offered a more formal presentation.[153] In response, Bogdanov and Rybolovlev said that such a presentation would be unnecessary as "[t]his is moving in the right direction" and the next step would be to meet with lawyers.[154]

The "lawyer call" followed on May 12, 2025, and Harrison characterized it as an "ambush."[155] Rigmora's attorneys distorted the purpose and meaning behind the reallocation proposal, saying to Harrison "it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation."[156] On the contrary, as Harrison later clarified on May 19, 2025: "[redacted]

150 *Id*. 98:21–99:2.

151 *Id*. 99:3–6.

152 *Id*. 99:7–15.

153 *Id*.

154 *Id*.

155 *Id*. 100:18–21.

156 *Id*. 101:2–12.

[redacted]," and the reallocation proposal was only "[redacted]."[157]

In any event, Harrison withdrew the proposal on the May 12 call.[158] Nevertheless, on May 15, Rigmora again exploited Harrison's good-faith compromise by using it to justify imposing new, severe conditions on any further funding.

IX. Rigmora's May 15 Email Makes Its Exit Scheme Explicit

Facing urgent budget requests, Bogdanov responded to ATP in a May 15, 2025 email that contained numerous concerning components (the "May 15 Email").[159]

First, Bogdanov declared that the Fund should cease further funding of seven preclinical companies, which he referred to as the "Early-Stage Companies," and which all had approved yet unspent budgets.[160] He claimed those companies had "no way for a path to commercial success," had "failed to meet the milestones set out in

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157 JX-1336 at 1.

158 *See* Tr. (Bogdanov) 305:18–20.

159 JX-1319 at 1.

160 *Id*.

the investment memoranda on which [Rigmora's] initial funding was premised," and there was "no third party interest."[161] In casting the companies as dead-ends, the May 15 Email continued to make use of Harrison's reallocation proposal, misstating that Harrison "hold[s] a similar view" that "further funding of those Early-Stage Companies will waste the ATP Fund's assets."[162]

Second, though Rigmora had already approved those budgets, Bogdanov flipped the burden on ATP. He invited a "detailed explanation" of why, despite the companies' supposed unworthiness, Rigmora should "contribute further capital" to the preclinical companies.[163] Bogdanov stated Rigmora's intent to "comply" with the LPA but conditioned its cooperation on whether ATP could "demonstrate that the LPA allows" ATP to call further capital.[164]

Third, Bogdanov expressly conditioned any further funding of the four *clinical stage companies* on ATP's agreement to "wind down or liquidate the Early-Stage Companies."[165] After months of work to justify budget requests for the clinical companies whose requests ATP issued on December 24, 2024, Rigmora confirmed

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161 *Id*.

162 JX-1336 at 1–2.

163 JX-1319.

164 *Id.*

165 Bogdanov did not address the two preclinical companies Nereid and Nine Square that had already expended their initial Series A funding. *See id.*

that it would not even "consider" those budgets until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and abandon existing investments through liquidation or wind down.

Fourth, the May 15 Email demanded "objective information" to "facilitate the discussion" of any "new budgets"—suggesting that Bogdanov had not digested the past five months' data.[166]

Finally, the May 15 Email buried its lede. In the penultimate sentence, Bogdanov stated that, as a threshold matter, Rigmora rejected any further funding obligations because it does "not presently have any outstanding capital commitments to ATP Fund and therefore has full discretion whether to agree to fund any new investment proposals."[167]

After five months of performative diligence requests and delay tactics that created *the appearance* of legitimate inquiry and the *illusion* of progress, the May 15 Email finally revealed what Bogdanov's "tight controls" were intended to achieve: an exit from biotech venture investing. The ultimatum—liquidate the preclinical companies *with already approved budgets* or receive no funding for companies *in the midst of clinical trials*—was not a negotiation but the execution of the strategy

166 *Id.*

167 *Id*.

Bogdanov had mapped out in 2022, when he declared that Rigmora needed to "drastically reduce ATP payments" and put a "plug on expenses."[168]

X. ATP Calls Six Months Of Capital; Rigmora Fails to Fund

On May 30, the GP called [redacted] in capital for the preclinical companies as well as Replicate, Marengo, and Ascidian and [redacted] in ATLS Fees and partnership expenses.[169] ATP determined to call the capital necessary to fund the ATLS Fee, certain existing Fund expenses, and capital needed to maintain research activity at each of the below preclinical companies with remaining approved (but unfunded) budgets:

Company	Pool	Capital Called	Unfunded Approved Budget[170]
Aethon	ATP V-2	[redacted]	[redacted]
Apertor	ATP V-2	[redacted]	[redacted]
Ascidian	ATP V-3	[redacted]	[redacted]
Deep Apple	ATP V-2	[redacted]	[redacted]
Evercrisp	ATP V-2	[redacted]	[redacted]
Initial	ATP V-1	[redacted]	[redacted]
Marengo	ATP V-3	[redacted]	[redacted]
Marlinspike	ATP V-2	[redacted]	[redacted]
Red Queen	ATP V-2	[redacted]	[redacted]
Replicate	ATP V-2	[redacted]	[redacted]
TOTAL:		[redacted]	[redacted]

[168] JX-463 at 2–3.

[169] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

[170] JX-1622.

ATP worked to calculate the amounts in the foregoing May 30 capital calls, plus a call for [redacted] in ATLS Fees and already-incurred partnership expenses (together with a revised June 1 capital call for Replicate, the "May 30 Calls"). As Harrison testified, the figures were keyed to estimates for six months of budgets, with the goal of permitting company survival and "following forward on … research plans."[171] At trial, Rybolovlev corroborated this view that six-months' worth of money permits a company's "normal functioning."[172]

With the exception of Replicate, for which the GP issued a revised capital call on June 1, 2025, the May 30 Calls were due on June 13, under paragraph 5(a) of the LPA.[173] The revised Replicate capital call was due June 16, 2025.[174] Rigmora has never contributed capital in response to any of the May 30 Calls.[175]

ATP issued Default Notices on June 17, 2025,[176] but an *ex parte* order in the later-filed Cayman Islands litigation enjoins the GP from "taking any [further] steps to designate, deem or treat the Plaintiffs as a 'Defaulting Partner' … or enforce any

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171 Tr. (Harrison) 110:8–21.

172 Tr. (Rybolovlev) 392:8–11.

173 *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

174 JX-1415 at 1.

175 PTO ¶ 78.

176 *See, e.g.*, JX-1620.

purported 'Default Notice' or 'Default Charge' against the Plaintiffs; … arising out of or in relation to the Plaintiffs' non-payment of the capital calls issued by the Defendant on 30 May 2025 and 1 June 2025 respectively" (the "Cayman Order").

XI. The Fund's Investments Achieve Significant Scientific Progress

The Fund currently has fifteen portfolio companies. Each company is co-founded or co-led by at least one ATP Venture Partner, who help with growth and development to realize each company's unique value proposition and investment thesis.[177] The Venture Partners help the portfolio companies with all aspects of growth and development, both scientific and non-scientific.

Expert analysis from Mark Robbins, Ph.D, J.D., validates the scientific merit undergirding each portfolio company and the portfolio at-large. Robbins' analysis relied on, *inter alia*, the composition of each company's management team, development progress that has been made and is expected to be made, the presence of IP protections, the ability of a company's therapeutic to meet an unmet need, and third-party interest in the companies.[178]

[177] *See, e.g.,* Tr. (Liras) 242:11–243:3; 160:11-18.

[178] Tr. (Robbins) 180:3–16; JX-1573 (Robbins Opening) ¶ 34.

A. Seven Preclinical Companies Show Promise

The seven preclinical companies[179]—Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, and Red Queen—each have shown technical merit in addressing a major unmet therapeutic need. In some instances, initial research and data provided pivot points for the preclinical companies to refocus their efforts on unexpected, more fruitful avenues. ATP personnel, including Harrison and Venture Partner Spiros Liras, PhD, testified at length to these facts, which were further expounded upon by Robbins,[180] whose analysis of the preclinical companies, individually and in aggregate, indicated "significant scientific and clinical potential."[181]

Robbins sets out a laundry list of scientific luminaries and experienced biotech executives involved in each preclinical company's founding.[182] All seven companies have made noteworthy development progress,[183] and each has significant development progress on the horizon.[184] All have generated third-party interest,

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[179] PTO ¶ 41. In Defendants' correspondence to ATP dated May 15, 2025, and from time to time thereafter, these companies have also been referred to as "Early Stage Companies." *Id.*

[180] *See, e.g.,* Tr. (Harrison) 74:13–20; Tr. (Liras) 246:23–247:16.

[181] JX-1573 (Robbins Opening)¶¶ 23(iv), 38; Tr. (Robbins) 183:13–23.

[182] JX-1573 (Robbins Opening) ¶¶ 70, 49, 80, 89, 97; Tr. (Robbins) 187:19–188:11.

[183] JX-1573 (Robbins Opening) ¶¶ 55, 74, 76(ii), 84, 91, 102, 110, 117; Tr. (Robbins) 186:9–17 ("All the preclinical companies had made significant development progress.").

[184] *Id.* ¶¶ 53, 74, 76(ii), 84, 94, 102, 110, 119.

including from pharma giants like Eli Lilly, Novartis, Novo Nordisk, Pfizer, Merck, and AstraZeneca.[185]

For example, Aethon is an immuno-oncology company with a focus on developing synthetic antibodies that target cancer cells.[186] Its founders include fellows in prominent scientific organizations and past biotech founders.[187] Aethon has entered into a multi-year collaboration agreement with Revolution Medicines, under which Aethon is entitled to approximately [redacted] in research funding from Revolution and option-based future payments that could potentially total up to $940 million, plus royalties.[188] As of February 2025, Aethon was on track to announce development candidates in late 2025 or early 2026.[189]

Deep Apple, on the other hand, illustrates the value derived from a company shifting its therapeutic focus when enabled by data. Deep Apple's technology allows for the relatively rapid technology-assisted review of how billions of different

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[185] *Id.* ¶¶ 56 (Evercrisp discussions with Lilly and Novartis), 75 (Aethon collaboration with Revolution Medicines), 94 (Initial discussions with Merck, J&J, and Ono), 104 (interest in Red Queen from "several investors" and grant from U.S. federal government), 111 (Marlinspike discussions with AstraZeneca, Roche/Genentech, Lilly), 121 (Deep Apple discussions with 30 potential investor partners and 15 pharma partners).

[186] *Id.* ¶¶ 69, 71.

[187] *Id.* ¶ 70.

[188] *Id.* ¶ 75; Tr. (Robbins) 186:21–187:1.

[189] JX-1573 (Robbins Opening) ¶ 74; JX-1210 at 3.

chemical compounds may attach to certain proteins within the body.[190] Deep Apple's research could apply across a wide range of therapeutic needs, making the potential for commercialization profound.[191]

As Liras testified at trial, following initial research and discussion with scientific project leads, Deep Apple narrowed its focus "to move in, all-in, in obesity" in light of increased commercial activity and demand in this space.[192] Deep Apple " is now yielding several clinical candidates."[193] One such clinical candidate was the basis for Deep Apple's partnership with Novo Nordisk, for which Deep Apple received an upfront payment of approximately [redacted], with the potential to earn up to $812 million in total.[194]

Value propositions for the remaining preclinical portfolio companies include[195]:

- **Apertor**, focused on developing molecules that disrupt disease-causing protein interactions[196];

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190 *See* Tr. (Liras) 260:20–261:2; JX- 0289 at 1–2; JX-1573 (Robbins Opening) ¶ 115.

191 Tr. (Liras) 260:20–261:2; JX- 0289 at 1–2.

192 Tr. (Liras) 261:3–21.

193 *Id.*

194 Tr. (Liras) 261:3–21; JX-1427; JX-1428.

195 In addition, ATP has two other preclinical companies in its portfolio, Nereid and Nine Square.

196 JX-1573 (Robbins Opening) ¶ 79.

- **Evercrisp**, a genetic medicine delivery platform founded by Nobel Laureate Dr. Jennifer Doudna[197];
- **Initial**, developing molecules that can disrupt the creation of disease-causing proteins at the cellular level[198];
- **Marlinspike**, fighting cancers by regulating how cells process genetic mutations that can cause cancer[199]; and
- **Red Queen**, developing rapid response antiviral medicines to protect against rapidly-evolving influenzas, coronaviruses, and other pathogens.[200]

B. Clinical-Stage Companies Continue to Advance

ATP has four additional companies in its portfolio that are currently at the clinical trial stage:

- **Aulos**, an immuno-oncology company developing an antibody that focuses the immune system's ability to attack cancer cells[201];
- **Ascidian**, an RNA-editing company with a focus on Stargardt disease, a major cause for macular degeneration and blindness in children[202];
- **Marengo**, an immuno-oncology company developing antibodies harnessing the immune system's ability to fight cancer[203]; and

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197 *Id.* ¶ 49.

198 *Id.* ¶ 88.

199 *Id.* ¶ 108.

200 *Id.* ¶ 96.

201 *Id.* ¶¶ 124, 126.

202 *Id.* ¶ 154.

203 *Id.* ¶ 147.

- **Replicate**, developing self-replicating RNA medicines to create protein factories inside the body that become the source of therapeutics.[204]

Robbins's analytical framework applies equally to the Fund's clinical-stage companies.[205] Each of the four clinical-stage companies has a "who's-who" lineup of founders and leaders, including past biotech CEOs who have sold their companies to pharma giants like Bristol Myers Squibb and Amgen for billions of dollars,[206] inventors on dozens of patents,[207] and seasoned pharma executives and scientific leaders.[208] The clinical stage companies are all currently engaged in active clinical trials[209] and have generated interest from potential third-party collaborators.[210]

Replicate is another testament to the value of shifting research focus. Replicate's RNA technology was originally focused mostly on creating cancer vaccines; this focus was pronounced Replicate's original investment memorandum.[211] As Harrison testified, however, the company realized the

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[204] *Id.* ¶¶ 133, 136.

[205] *Id.* ¶¶ 33–34.

[206] *Id.* ¶ 125.

[207] *Id.* ¶ 133–134.

[208] *Id.* ¶ 155.

[209] *Id.* ¶¶ 126–128; 137–142; 149–150; 157.

[210] *Id.* ¶¶ 131 (Aulos' developing partnerships with Pfizer, Regeneron); 143 (Replicate's partnership with leading Brazilian pharma company, and negotiations with Novo Nordisk); 152 (Marengo in partnerships with Ipsen and Gilead); 158 (Ascidian partnership with Roche, and discussions with Lilly, Regeneron, and Bayer).

[211] JX-0150 at 9.

applicability of this technology to the delivery of a rabies vaccine.[212] In light of this, Replicate is in late partnership discussions with Brazilian pharma giant Instituto Butantan, which will enable Replicate to push its rabies vaccine toward commercialization globally.[213]

XII. The Portfolio Companies Face Immediate Harm, Threatening Years Of Scientific Progress And Life-Saving Therapies

Rigmora's actions have put the companies at risk of significant, imminent harm. The negative impacts of a funding default for early-stage life sciences companies are numerous, including, but not limited to, loss of talented personnel, delayed or abandoned R&D, difficulties restarting halted or delayed trials, difficulty attracting future investments or partners, and negative market perception in general.[214] Further, abruptly discontinuing or withholding funding for preclinical companies can trigger bankruptcy proceedings, leading to distressed sales of the key assets for "a fraction of their actual value."[215]

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[212] Tr. (Harrison) 85:20–86:18.

[213] *Id.*; JX-1573 (Robbins Opening) ¶ 143.

[214] JX-1572 (Rao Opening) ¶ 67; *see also* Tr. (Harrison) 60:19–10; Tr. (Yanchik) 165:5–21; JX-1174 at 2 (without "financing rounds to achieve value-creating milestones plus margins of at least six months … biotech investors do not invest, and typically top founders and high-quality managers will not participate.").

[215] JX-1573 (Robbins Opening) ¶ 162.

Already, the preclinical companies are in "desperate condition" due to Rigmora's refusal to meet its funding obligations.[216] ATP has kept them alive during this litigation by paring back operations with the goal of preserving "critical projects" and "key employees [who] retained the knowledge."[217] This has required ATP to move certain companies out of their facilities, sell capital equipment, reduce research programs, and terminate approximately 70% of employees portfolio-wide.[218] Even with such protective measures, one company has already been forced to cede valuable technology back to the source institution.[219]

The companies are currently in a form of "stasis" such that their research could ramp up again upon receipt of funding.[220] However, as Yanchik testified, "that opportunity will exist" only for "a finite period of time."[221] That is because, in Yanchik's words, "whenever you stop a research organization, it starts to deteriorate."[222] The companies face an imminent risk of losing key employees and

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[216] Tr. (Harrison) 113:14–16; *see also* Tr. (Liras) 265:18–22 (recent lack of funding is "devastating").

[217] Tr. (Harrison) 114:2–12; Tr. (Yanchik) 163:17-164:10.

[218] Tr. (Harrison) 113:14–114:1; Tr. (Yanchik) 162:23–163:6; *see also* Tr. (Liras) 266:1–7 ("[T]he companies at this point in time are … operating with skeletal crew").

[219] Tr. (Harrison) 113:14–114:1.

[220] Tr. (Yanchik) 163:17–165:4; *see also* Tr. (Harrison) 114:2–12.

[221] Tr. (Yanchik) 164:18–165:4; *see also* Tr. (Harrison) 114:2–12.

[222] Tr. (Yanchik) 165:5–9; *see also id.* 166:6–167:2.

competitive advantages if additional funding is not received soon, diminishing or even destroying the value of years of research.[223] Worse yet, the companies could be forced into bankruptcy by their creditors.[224] Yanchik, who has been the primary representative for the companies in communications with the creditors,[225] testified at trial that he does not "believe [the creditors] will hold off for much longer … and then [ATP is] likely to lose the assets" entirely.[226]

The current and anticipated harm as a result of the funding shortfall is precisely why the partners agreed, when they entered the LPA, that "the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy."[227]

ARGUMENT

I. Rigmora Breached the LPA

A. Legal Standards

The LPA states that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands, and thus this Court should apply Cayman law

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223 *Id.* 165:5–16.

224 *Id.* 165:17–21.

225 *Id.* 163:3–6.

226 Tr. (Yanchik) 165:17–21.

227 JX-0001 (LPA) ¶ 5(c).

in determining breach. LPA ¶ 18(g)(1).[228] The elements to prove a breach are: (1) a valid contract, (2) a breach of that contract, and (3) damages arising from the breach.[229]

Under Cayman law, a court interprets a written contract according to "the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the context to mean.'"[230] The aim is to ascertain the "objective meaning" of the contract based on not just the language of a particular clause but on the "contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching [a] view as to that objective meaning."[231]

Contract interpretation is a "unitary exercise involv[ing] an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated," and a close textual

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[228] PTO ¶ 25.

[229] JX-1588 (Phillips Opening) ¶ 56. The same elements apply under Delaware law, *e.g.*, *Kuroda v. SPJS Hldgs.*, 971 A.2d 872, 883 (Del. Ch. 2009), and there is therefore no conflict as to the basic elements of the claim.

[230] JX-1574 (Bloch Opening) ¶ 23(1). *See also* JX-2032 at 18, *Investors Compensation Scheme*, at 913 ("[T]he meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.").

[231] *Id.* ¶ 23(2).

reading is balanced against "the factual background and the implications of rival constructions" to arrive at the objective meaning of the contract.[232]

Partnership agreements, like other contracts, are to be construed with "regard … to the factual matrix in which it was executed."[233] When the language of an agreement is unclear, a court applying Cayman law "may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type."[234] *However*, "[t]here is no need to find any ambiguity in the contract before the principle" of the factual matrix "can be brought into play."[235]

The scope of the factual matrix is expansive; as Lord Hoffmann stated in *Investors Compensation Scheme*, it includes anything that would have affected the way in which the language would have been understood by a reasonable man.[236] This includes not only factual matters but also, as Justice Leggatt explained in *Yam Seng*, "shared values and norms of behaviour" whether general, specific to the

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[232] *Id.* ¶ 25.

[233] JX-1588 (Phillips Opening) ¶ 58 (quoting JX-2080, *Lindley & Banks on Partnership* ("*Lindley*")).

[234] JX-1574 (Bloch Opening) ¶ 25; *accord* JX-1588 (Phillips Opening) ¶ 61.

[235] JX-1588 (Phillips Opening) ¶ 58 (quoting *Lindley*).

[236] *Invs. Comp. Scheme Ltd v. West Bromwich Bldg. Soc.* [1997] UKHL 28, 912–913 ("Subject to the requirement that it should have been reasonably available to the parties" and the exception of "declarations of subjective intent", "it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.").

industry, or, as critical here, "arising from features of the particular contractual relationship."[237] As Leggatt observes, "[m]any such norms are naturally taken for granted by the parties when making any contract without being spelt out in the document recording their agreement," necessitating a broader view of the context of contracting when interpreting the language of the contract.[238]

B. Rigmora Has Outstanding Funding Commitments

A valid contract exists (the LPA) and Rigmora remains bound by its funding commitments. Rigmora currently has over [redacted] in outstanding funding commitments to the Fund, consisting of approximately [redacted] in unfunded, approved budgets,[239] and approximately [redacted] in committed capital toward unapproved budgets. Of those remaining commitments, approximately [redacted] of the unfunded, approved budgets were allocated to Deep Apple, Initial, Aethon, Replicate, Evercrisp, Red Queen, Apertor, and Marlinspike in Pools V-1 and V-2,[240] and approximately [redacted] of the unfunded, approved budgets were allocated to Marengo and Ascidian of Pool V-3.[241] And yet on the basis of no support other than Bogdanov's desire to focus Rigmora's investments on other "cash

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237 *Yam Seng Pte v. Int'l Trade Corp*, [2013] EWHC 11 (QB) [134].

238 *Id.*

239 *See* JX-1622 at 10, 13.

240 JX-1622 at 10.

241 JX-1622 at 13.

cow" projects and away from biotech, Rigmora takes the position that it has exceeded the capital commitments it agreed to fund, and on those grounds, it refuses to meet capital calls or to engage in good faith on reasonable budget approvals. Rigmora's position is contradicted by the overwhelming evidence reflecting not only the parties' longstanding intention regarding Rigmora's remaining capital commitments but also—consistent with Cayman law—the objectively reasonable interpretation of intent according to the facts as known to the parties at the time of execution.

Following success flowing from the parties' investments through the initial $1.5 billion in commitments to the Fund, Rigmora twice agreed, through Amendments 17 and 20, to increase its overall capital commitments to ATP through express commitments to Pools V-1, V-2, V-3, and Braeburn.

First, pursuant to Amendment 17, Rigmora agreed to commit $1 billion in new money to be split between the two pools that would later be renamed Pool V-1 and Pool V-2.[242] Rigmora agreed to be solely responsible for this new capital commitment. Amendment 17 unambiguously provided that Rigmora would commit to Pool V-2 "such amount … as is equal to $1 billion minus the aggregate amount

[242] *Id.* (setting forth that commitments to Pool C would consist of "such amounts of Contingent Subscriptions by the Subject Limited Partner as is equal to $1 billion minus the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to Pool B").

of capital contributions made from time to time by [Rigmora] to" Pool V-1. In other words, the $1 billion commitment would be split exclusively between Pool V-1 and Pool V-2. Blue Horizon and Ezbon executed subscription agreements shortly thereafter committing to contribute [redacted] and [redacted], respectively, to Pools V-1 and V-2.[243]

Second, pursuant to Amendment 20, Rigmora and Harrison agreed to an overall increase in their respective commitments to the Fund. This increase flowed from a complex, carefully negotiated process that consisted of: (i) writing down the approximately [redacted] in remaining commitments to Pool IV, save for an estimated [redacted] in fees and expenses (ultimately [redacted]) associated with litigation concerning portfolio company Syntimmune; (ii) establishing a new Pool V-3, with approximately $310.5 million in commitments following execution of the amendment; (iii) establishing a new Pool Braeburn, with [redacted] in commitments following execution of the amendment; and (iv) leaving undisturbed the remaining uncalled commitments to Pools V-1 and V-2 from the $1 billion subscription agreements that accompanied Amendment 17.[244] Rigmora and Harrison agreed to Pool V-3 commitments.

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[243] Tr. (Harrison) 41:15–42:154; JX-0099; JX-0101.

[244] JX-1061 at 3–11.

Every capital call after Amendment 20 included an "Exhibit A" with a detailed chart laying out, on a pool-by-pool basis, the uncalled committed capital prior call, the amount of capital called from each applicable pool relevant to that call, and the amount of uncalled committed capital that would remain in each pool after the call, consistent with the figures set forth above. The chart was first transmitted to Rigmora three days after Amendment 20 in a June 24, 2021 capital call. That call reflected $1.462 billion in unfunded commitments prior to the call, consisting of (i) an estimated $20 million to Pool IV for fees and expenses; (ii) [redacted] to Pools V-1 and V-2; $310.5 million to Pool V-3; and [redacted] to pool Braeburn. Rigmora's CFO, Yakovlev, testified at trial that he was unaware of Rigmora ever challenging these figures. Harrison also was unaware of Rigmora ever challenging this commitment calculation prior to Kolonchina suddenly asserting in October 2024 that Rigmora was no longer obligated to meet capital calls.

Over the following four years, ATP would call capital from time to time, and Rigmora would meet those capital calls consistent with its obligation under Paragraph 5(a) of the LPA. Each time Rigmora met a capital call, it did so recognizing that Rigmora had hundreds of millions of dollars in outstanding commitments to Pools V-1 and V-2, Pool V-3, and Pool Braeburn.

Finally, Rigmora's internal records confirm that they also recognized over $500 million in remaining commitments. On January 20, 2025, Bogdanov discussed

with Ishakov what the financial condition of Rigmora's investments in ATP would look like if Rigmora "stop[ped] additional investments and worked with the current budgets" in ATP.[245] The analyst sent Bogdanov an internal Rigmora record indicating that Rigmora would have over [redacted] in "residual commitments" across Pools V-1, V-2, and V-3.[246] Only five days earlier, Rigmora General Counsel Patrik Blöchlinger revised this same tracker and provided comments that Ishakov implemented into the version he sent to Bogdanov.[247]

C. Rigmora Breached Its Express Duty To Meet Capital Calls For Companies With Approved Budgets

The trial record establishes that Rigmora breached its obligation to meet capital calls for companies with approved budgets. On May 30 and June 1, 2025, ATP issued capital calls for ten portfolio companies against their existing, approved budgets: Deep Apple, Aethon, Replicate, Evercrisp, Red Queen, Apertor, Initial, and Marlinspike of Pools V-1 and V-2, and Marengo and Ascidian of Pool V-3.[248] These approved budgets were well within the remaining commitments for each pool. And yet Rigmora has refused to meet these calls. Rigmora's unjustified refusal constitutes material breach.

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[245] JX-1142 at 1.

[246] JX-1142 at 1.

[247] JX-1635 at 1.

[248] JX-1622 at 1, 13.

1. Rigmora Breached Paragraph 5(a) With Respect To The Pool V-1 And V-2 Preclinical Companies

Paragraph 5(a) of the LPA allows the GP to call capital in amounts equal to the LP's Contingent Subscription, ¶ 5(a)(i), in amounts sufficient to enable the Fund to invest in projects with approved budgets, ¶ 5(a)(ii)(E), and in amounts sufficient to cover Partnership expenses, ¶ 5(a)(ii)(A)–(B), and an approved ATLS Fee, ¶ 20(e). The LPA is clear that "[a] Partner may not make less than the full amount of any required capital contribution." ¶ 5(a)(i). Discretion to issue these capital calls rests with the GP.

In breach of Paragraph 5, Rigmora failed to meet eight capital calls ATP issued on May 30 and June 1, 2025 for portfolio companies in Pools V-1 and V-2 with existing, approved budgets. The facts are simple:

The GP validly called capital. On May 30 and June 1, ATP called $51.8 million in capital portfolio companies in Pools V-1 and V-2.[249] These calls were well within the approximately [redacted] in budgeted, uncalled capital commitments for Pools V-1 and V-2 as of May 30.[250]

[249] *See* JX-1622 at 10.

[250] Tr. (Harrison) 90:13–21.

The capital came due. With the exception of Replicate, which was due June 16 following a revised capital call on June 1, the May 30 Calls were due on June 13.[251]

Rigmora did not pay when due. It is undisputed that Rigmora did not answer the May 30 Calls by June 13 or 16, and it has not since.[252]

Harrison testified at trial that ATP issued these calls to provide six months' of budget to carry forward research plans.[253] Following Rigmora's failure to meet these capital calls, ATP issued notices of default to Rigmora, notifying the Limited Partner that its failure to contribute capital violated the LPA.[254] Notwithstanding receipt of these calls and default notices, Rigmora has yet to contribute the capital.

2. Rigmora Breached Paragraph 5(a) With Respect To The Pool V-3 Preclinical Companies

For the same reasons that Rigmora's failure to meet calls for Pools V-1 and V-2 constituted a breach, Rigmora's failure to meet capital calls for companies in Pool V-3—Marengo and Ascidian—constitute a breach of Paragraph 5(a) of the LPA. On May 30 the GP called [redacted] in capital for portfolio companies in

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[251] *Id.*; *see also* JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1397 at 1; JX-1398 at 1.

[252] PTO ¶ 78; Tr. (Harrison) 113:3–5.

[253] Tr. (Harrison) 109:1–110:24.

[254] *Id.* 113:6–13; JX-1610 at 1; JX-1611 at 1; JX-1613 at 1; JX-1614 at 1; JX-1615 at 1; JX-1617 at 1; JX-1619 at 1; JX-1620 at 1.

Pool V-2.[255] These May 30 Calls were due on June 13.[256] Harrison testified at trial that ATP issued these calls to provide six months of budget to carry forward research plans for each of these portfolio companies.[257] These calls were within the approximately [redacted] in budgeted, uncalled capital commitments for Pool V-3, and the applicable approved budgets for each of these portfolio companies, as of May 30.[258]

3. Rigmora Breached Paragraph 5(a) And 20(e) With Respect To The ATLS Fee And Partnership Expenses

Rigmora's failure to pay the ATLS Fee and Partnership Expenses also breached the LPA. As to the ATLS Fee, the GP called [redacted], half of the annual amount that Rigmora agreed to pay in Amendment 20 and refused thereafter to increase.[259] The LPA requires Rigmora to "make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance."[260] As to Partnership expenses, Paragraph 5(a)(ii)(A) and (B) require Rigmora to pay capital calls for existing Partnership expenses as well as those expected to be incurred over the next

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255 *See* JX-1392 at 1; JX-1396 at 1.

256 *Id.*

257 Tr. (Harrison) 109:1–110:24.

258 *Id.* 89:6–90:21; JX-1622 at 13.

259 JX-0222 at 10 (LPA Am. 20 ¶ 6).

260 *Id.*

six months.[261] Rigmora has no consent rights with respect to Partnership expenses.[262] The May 30 Call for expenses for the prior six-month period from December 2024 to May 2025 thus fell squarely within Paragraph 5(a)(ii), and Rigmora was required to meet it.

It is undisputed that Rigmora failed to answer the May 30 Calls when due, and has not done so since.[263] ATP then notified Rigmora that its failure to contribute capital consistent with its obligation to do so under the LPA violated Paragraph 5(c).[264]

4. Rigmora's Milestone Defense Is Anti-Contractual And Factually Wrong

Rigmora seeks to escape its funding obligations by pointing to purported missed "milestones" set in outdated investment memoranda.[265] This defense fails as a matter of law and fact.

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[261] JX-00004 at 2 (LPA Am. 3).

[262] JX-0011 at 10 (LPA Am. 9) ("For the avoidance of doubt, the Partnership's budget delivered to the Subject Limited Partner shall be provided for informational purposes only and the Subject Limited Partner shall have no consent rights in relation to such budget.").

[263] PTO ¶ 78; Tr. (Harrison) 113:3–5.

[264] Tr. (Harrison) 113:6–13; JX-1612 at 1; JX-1616 at 1.

[265] Rigmora Br. Dkt. 203 at 42 ("Any capital calls for those companies would therefore be invalid under paragraph 5(a)(ii)(E) of the LPA, which provides that a capital call may not be made except 'in accordance with' a portfolio company budget.").

First, milestones are not contractually required. The LPA contains no milestone conditions either as a precondition for budget approvals, a second-look contingency before funding approved budgets, or a condition to calling capital. To the extent that the parties agreed to impose milestones—as they did with the Replicate budget approval—they did so expressly, not through some implied incorporation of investment memoranda.[266] And although five companies' (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) Series A agreements originally contained milestone conditions, such conditions applied to *the Fund's* obligation to fund the companies, not the LP's obligation to review budgets in good faith or meet capital calls.[267] Only the LPA—not any company purchase agreement or memoranda—determines Rigmora's rights and obligations with respect to budgets and capital calls for the already-approved budgets. Even so, the Series A agreements provide discretion to fund the companies, notwithstanding milestones.[268]

Second**,** the milestones in dated investment memoranda misalign with the commercial realities of biotech investing.[269] As Robbins explained, "[m]any very

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[266] *See* Tr. (Harrison) 33:23–34:5.

[267] *See* JX-2201; Tr. (Harrison) 140:5–10; *see, e.g.*, JX-1329 at 64, 167, 441, 586.

[268] *See e.g.*, JX-1329 at 71.

[269] *See* Tr. (Harrison) 105:3–11; JX-1583 (Robbins Rebuttal) ¶ 26. For example, Liras testified that milestones "shouldn't be" static requirements "because … early research … changes quite rapidly." Tr. (Liras) 245:4–17.

successful therapeutics have missed development milestones."[270] Apparent "misses" were actually successful pivots that increased value. Deep Apple pivoted to obesity and secured a partnership worth up to $812 million with Novo Nordisk.[271] Apertor's pivot led to a "breakthrough publication" demonstrating "incredible" platform value and delivering clinical candidates.[272] Information regarding portfolio companies' pivots were regularly reported to Rigmora in quarterly reports provided by ATP.[273]

And even if, arguendo, milestones were informative, Bogdanov's team—lacking scientific expertise—could not meaningfully assess whether milestones were missed or what any miss indicated about the companies' prospects. Rigmora did not staff anyone with a scientific background like that of Dr. Rimm, for example—whose post-hoc analysis of the missed milestones bore no connection in reality to the analysis that Rigmora actually conducted.[274]

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[270] Tr. (Robbins) 189:11–18.

[271] Harrison Dep. 330:16–331:11; JX-1583 (Robbins Rebuttal) ¶ 26.

[272] Tr. (Liras) 253:13–254:3.

[273] *Id.* 255:13–256:21; *see, e.g.*, *id.* 257:2–259:1, 260:18–264:9; JX-0560 at 11; JX-0824 at 2.

[274] *See* Tr. (Rimm) 443:9–20.

Third, Rigmora went nearly thirteen years without requesting information about information about milestones.[275] It was only when Rigmora needed a pretext to renege on obligations and a litigation strategy to defend its conduct that Rigmora's interest in milestones suddenly piqued.

Fourth**,** Rigmora's assertions that the preclinical companies all were missing milestones is counterfactual. Bogdanov's own analyst reported that Red Queen and Marlinspike had "actually achieved and were in line with their investment memo milestones."[276] When confronted with this evidence, Bogdanov could only characterize it as his analyst's "guess."[277] Indeed, Bogdanov admitted he "didn't know for sure" whether all companies had missed milestones and that Rigmora "missed information to assess their performance" for some companies.[278]

Rigmora cannot retroactively invalidate its obligation to fund budgets it already approved through selective milestone analysis. Tellingly, before May 2025, Rigmora never checked milestone status before funding capital calls on approved

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[275] Tr. (Bogdanov) 332:1–333:2.

[276] *See* JX-1285; Tr. (Bogdanov) 334:6–20.

[277] Tr. (Bogdanov) 334:9–10.

[278] *Id.* 333:14–18.

budgets.[279] This thirteen-year practice confirms the parties' shared understanding that investment memoranda milestones were not budget funding conditions.

D. Rigmora Breached Its Implied Duties To Consider Budgets In Good Faith, Honestly, And Rationally

Rigmora breached implied duties in its abuse of power when reviewing and denying the December 24 and Marengo budget requests.

1. Implied Duties Constrain Rigmora's Discretion to Deny Budgets

English and Cayman common law recognize that terms may be implied in a contract when "the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract."[280]

Following those principles, courts have recognized implied duties of good faith, rationality, and honesty.[281] In *Braganza v. BP Shipping Ltd*, the UK Supreme Court held that "where contractual terms gave one party to a contract the power to exercise a discretion or form an opinion as to relevant facts … the court would seek to ensure that the power was not abused by implying a term in appropriate cases."[282]

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[279] *Id.* 332:10–333:5.

[280] *USDAW v. Tesco Stores,* [2024] UKSC 28 at [102]; *see also Marks & Spencer v. BNP Paribas* [2015] UKSC 72 at [21]; *Primeo Fund (In Official Liquidation) v. Bank of Bermuda (Cayman) Ltd.*, [2017] (2) CILR 334 at [440]; *Cayman Shores v. Registrar of Lands*, [2021] (2) CILR 1 at [38].

[281] *See* JX-1574 (Bloch Opening) ¶¶ 49-51, 55 (collecting cases).

[282] [2015] UKSC 17, at Headnote, [18]-[19]; *see also id.* at [28]-[33] (discussing approach to implying terms).

The *Braganza* court identified key factors supporting implied constraints: (1) the existence of a discretionary power granted to one party; (2) that power's potential to adversely affect the other party's interests; and (3) a conflict of interest where the decision-maker could exercise the power to benefit themselves at the other party's expense.[283] When these factors align, courts will imply duties of good faith, honesty, and rationality to ensure the power is not exercised arbitrarily, capriciously, or perversely.[284]

Here, the LPA grants Rigmora budget approval authority—a power that directly affects the Fund's ability to function. In the circumstances of the budget approval process, the contracting parties' interests conflict.

(a) Constraints On Discretion To Deny Budgets Are "Necessary" For Business Efficacy

The LPA would not "work" as the parties intended without *some* fetters on Rigmora's discretionary decisions to approve or deny budgets.[285] Otherwise, Rigmora could unilaterally determine that the Fund would not invest in

[283] *Id.* at [18], [30].

[284] *Id.* at [30]–[31].

[285] JX-1574 (Bloch Opening) ¶ 40 ("whether to imply a term may depend on 'whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work'") (quoting *Tesco*, at [105]).

biopharmaceutical companies; the GP could not manage the business decisions; the GP could not call capital; Rigmora could evade both contribution and default.

The structure, objects, and context of the LPA necessitate an implication of *Braganza* duties with respect to budgets. ***First***, the LPA should be understood to center on the sole purpose of the Fund: "to invest … in pharmaceutical medical device and other medically-related companies and business projects."[286] ***Second***, the LPA provides that "[t]he management, policies, and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner," LPA ¶ 2(b), which accords with the Cayman Exempt Limited Partnership Act ("ELPA").[287] ***Third***, through budgets, the LPA recognizes that Rigmora's capital contributions are essential to the Fund's business purpose. Budgets inform the scope of the investment Projects: the LPA establishes budgets as the gateway to initial investments and capital deployment by limiting the GP's right to call capital for Projects solely to those Projects that have approved budgets.[288] Accordingly, the LPA has long afforded Rigmora the right to approve budgets.[289] In Amendment 22, specifically, with the status of existing investments on the line, the parties agreed to

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286 JX-2 (LPA Am. 1) ¶ 1(c).

287 JX-1574 (Bloch Opening) ¶ 60.

288 JX-4 (LPA Am. 3) ¶ 5(a)(ii).

289 *Id.*; Background Part III.

"discuss" necessary funding and still follow the process set forth in Paragraph 5(a)(ii) or Schedule C.[290]

Without budget approvals, the Fund cannot maintain operations of existing portfolio companies or pursue new investment opportunities.[291] As ATP's expert Michael Bloch KC explains: "Were an unfettered right to decline to approve budgets to exist, the basic scheme of the LPA Am22 would lack coherence."[292]

The necessity for implied constraints is particularly acute given Amendment 22's "factual matrix." The parties executed Amendment 22 to settle litigation and enable continued operations. Paragraph 26 specifically requires the parties to "discuss new budgets" for named companies facing cash depletion "in accordance with the process set forth in this Agreement." This provision would be meaningless if Rigmora could refuse all budgets regardless of merit.

Further, if Rigmora could refuse to approve *any* budgets, it could circumvent its capital obligations and the default provisions to enforce those obligations, rendering the GP's management and the Fund's purpose nugatory. "Fetters" therefore must be implied.

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290 JX-1068 at 4 (LPA Am. 22).

291 *See* Plaintiff's Pre-Trial Brief at 1.

292 JX-1574 (Bloch Opening) ¶ 73.

(b) Implied Duties Are "Obvious" From The Contract's Structure

The express text of the LPA neither specifies nor precludes constraints on discretion. Perhaps unsurprisingly, no provision in the LPA expressly authorizes Rigmora to deny a budget arbitrarily, capriciously, or for ulterior motives that defeat the contract's purpose and spirit.

Though the parties did not expressly limit Rigmora's discretion, this Court can find that "notional reasonable people in the position of the parties at the time at which they were contracting" intended constraints or would have had they specifically considered them.[293] Commercial parties understand that long-term investment relationships require reasonable constraints on discretionary powers, and no commercial party would place their entire business purpose at the mercy of dishonest, arbitrary or irrational decision-making.[294] The Fund would become what Lord Neuberger called a "commercial nonsense" in *Arnold v Britton*—a structure where one party could unilaterally prevent the contract from achieving its fundamental purpose.[295] This alternative reveals the obviousness of the implied

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[293] *Marks & Spencer v. BNP Paribas*, [2015] UKSC 72 at [21] (quoted in JX-1574 (Bloch Opening) ¶ 37).

[294] *See Cayman Shores v. Registrar of Lands,* [2021 (2) CILR 1 at 88].

[295] *Arnold v. Britton*, [2015] UKSC 36 at [115] ("[W]here an ordinary reading of the contractual words produces commercial nonsense, the court will do its utmost to find a way to substitute a more likely alternative, using whichever interpretative technique is most appropriate to the particular task.").

constraints; truly unfettered discretions in a long-term investment structure would be so commercially unreasonable that no rational party would agree to it.

(c) Exclusion Of Fiduciary Duties Has No Effect On Contractual Duties

Rigmora's foreign law expert Mark Phillips KC incorrectly argues that the LPA does not require that Rigmora act in good faith, honestly, and rationally because Rigmora is a limited partner that owes no fiduciary duties.[296] This position misunderstands both the statute and nature of the implied obligations.

***First*,** Section 19(2) provides that limited partners owe no "fiduciary duty" to the partnership or other partners. This statutory provision addresses the special obligations of loyalty and care that arise from fiduciary relationships; it does *not* purport to eliminate ordinary contractual duties that arise from an agreement itself.

Second, the duty to exercise contractual discretion honestly and rationally is not a fiduciary duty but a contractual one, arising from principles of contract interpretation rather than status-based obligations. As multiple authorities confirm, these contractual duties exist independently of fiduciary obligations. A party can owe contractual duties of good faith without owing fiduciary duties. *Braganza* itself involved employment contracts where no fiduciary relationship existed, yet the court implied constraints on discretionary powers.

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[296] *See, e.g.*, JX-1588(Phillips Opening) ¶¶ 44, 72-75.

Third, courts interpret statutes harmoniously with common law principles unless there is clear legislative intent to override them.[297] Nothing in the ELPA suggests the Cayman legislature intended to eliminate centuries-old principles of contract interpretation.

Finally, the result of Rigmora's argument is absurd: limited partners in Cayman ELPs would enjoy unlimited discretion in all contractual powers, able to exercise them dishonestly, irrationally, or in bad faith without recourse.[298]

2. Bogdanov's May 15 Email Was The Smoking Gun That Revealed Rigmora's Pattern Of Bad Faith, Dishonesty, Irrationality

The standard for rationality derives from administrative law's *Wednesbury* principles, requiring that the decision-maker: (1) consider relevant matters and exclude irrelevant ones from consideration; and (2) reach a decision that is not so unreasonable that no reasonable person acting reasonably could have reached it.[299]

The May 15 Email and the preceding conduct meet both prongs. ***First***, Rigmora considered irrelevant factors (backward-looking milestones that were never contractual requirements) while ignoring relevant ones (the companies' scientific progress, third-party interest, and forward-looking potential). Rigmora's

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[297] *See id.* ¶ 34 (quoting *Re Padma Fund LP* [2021 (2) CILR 556])

[298] *See* Phillips Dep. 92:7 – 97:19.

[299] *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223.

admitted lack of scientific expertise to evaluate the companies certainly does not counter the apparent irrationality of the decision-making process. ***Second***, the decision to declare all seven scientifically diverse companies as having "no way for a path to commercial success" was so perverse that no reasonable person could have reached it.

Rigmora's breach of the duty of rationality and good faith includes its bad-faith treatment of the December 24 budget requests. Harrison submitted budget requests on December 24, 2024, for two clinical-stage companies facing near-term cash depletion—Aulos [redacted] Replicate ($11 million)—and the preclinical company Nine Square [redacted].[300] He also initiated the process for Ascidian, which would require discussion due to contingent variables. Despite Amendment 22's explicit requirement to "discuss" new budgets for these named companies "sufficient to enable them to operate for a period of twelve months," over months Rigmora subjected these requests to the same obstructionist treatment on bald display in the May 15 Email. **Aulos**, with lead assets in Phase 2 trials and developing partnerships with Pfizer and Regeneron, was denied funding despite Rybolovlev's own expression of "readiness in further financing."[301] **Ascidian,**

[300] Tr. (Harrison) 79:19–80:5; JX-1079.

[301] Tr. (Rybolovlev) 372:13–14.

developing treatment for childhood blindness with ongoing Phase 1/2 trials and a Roche partnership, faced an arbitrary yoking to liquidation of preclinicals. **Nine Square**, though lacking any remaining budget and therefore not on the May 15 liquidation list, was among the preclinicals sweepingly condemned as having "no way for a path to commercial success," but later secured a [redacted] term sheet from a major pharmaceutical company while operating with just three scientists.[302]

Rigmora violated *Braganza* duties with respect to the budget for **Marengo**, a clinical-stage immuno-oncology company with active partnerships with Ipsen and Gilead. Marengo's CEO presented directly to Rybolovlev and Bogdanov in March 2025, and Rybolovlev responded positively to the company's progress.[303] Yet Rigmora refused to approve any budget. Instead, in the May 15 Email, Bogdanov made approval for Marengo and other clinical companies contingent on ATP's agreement to "wind down or liquidate the Early-Stage Companies." This yoking of unrelated companies was irrational: Marengo's clinical progress and commercial prospects have no logical connection to the status of preclinical companies in different therapeutic areas. The only connection is the plan to "drastically" reduce payments to the Fund.

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[302] Tr. (Liras) 266:8–14.

[303] Tr. (Rybolovlev) 372:15-16.

3. Bogdanov's "Occupational Deformities" Undermine Any Claim to Rational Decision-Making

That irrational process was driven by Bogdanov, whose judgment was questionable even within Rigmora. When asked at his deposition whether he trusted Bogdanov, Rybolovlev equivocated, stating "That's a very wide question."[304] When pressed about whether Bogdanov was truthful in his dealings, Rybolovlev deflected, characterizing Bogdanov as having "occupational deformities" from his auditing background and describing him as having an extremely "conservative outlook."[305] Rybolovlev acknowledged "a cosmic, astronomical difference" between an auditor's risk tolerance and an entrepreneur's.[306] When asked directly whether there should be any difference when it comes to telling the truth, Rybolovlev responded: "As he sees it. As one of my friends said: Truth has many faces."[307]

Cayman law and the evidence support the conclusions that (1) implied duties constrain the budget approval discretion, and (2) Rigmora violated its implied duties to exercise its budget approval powers honestly, rationally, and in good faith. As Lady Hale explained in *Braganza*, this standard ensures that discretionary powers

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304 Rybolovlev Dep. 50:10–12.

305 *Id.* 50:16–25.

306 *Id.* 51:12–14.

307 *Id.* 51:15–18.

are exercised "in accordance with the purpose for which they were conferred."[308] The fate of these companies reflects not only flawed logic but also the dysfunction of allowing an untrusted auditor with "occupational deformities" and no biotech expertise to dictate investment decisions worth hundreds of millions of dollars with billions in potential.

The December 24 and Marengo budget requests should be deemed approved based on Rigmora's breach of its implied duties.

II. The Court Should Order Rigmora To Specifically Perform Its Capital Call And Approval Obligations

ATP seeks the equitable remedy of specific performance of Rigmora's obligations to fund capital calls for approved budgets and to consider the remaining December 2024 budget requests in good faith or deem them approved. This equitable relief is necessary to prevent the destruction of valuable scientific enterprises and potential life-saving therapies.

A. Specific Performance Is The Appropriate Remedy For Capital Calls

Specific performance is appropriate when (1) a valid contract exists, (2) the plaintiff is ready, willing, and able to perform, (3) money damages are inadequate,

[308] [2015] UKSC 17 at [31].

and (4) the balance of equities tips in the plaintiff's favor.[309] Those conditions are satisfied here.

Rigmora remains bound by outstanding capital commitments, and the May 30 Calls were validly called, triggering Rigmora's duty to perform. A valid contract—and a present contractual duty—exists. ATP is ready, willing, and able to manage the Fund's deployment of the due capital and oversee the Projects.

As discussed in Background Part XII, *supra*, the Fund has been harmed because the preclinical companies' development efforts have ground to a halt. Companies that had meaningful value before May 15, 2025, have lost a material portion of that value as a result of Rigmora's breach. They continue to lose value daily in amounts that are difficult to quantify.

The parties agree that money damages are inadequate. The LPA stipulates that damages for funding defaults "cannot be estimated with reasonable accuracy."[310] This acknowledgment reflects the unique nature of early-stage biotech ventures, where funding interruptions cause cascading and unquantifiable harm: loss of key scientific personnel, abandonment of ongoing trials, deterioration of research programs, forfeiture of intellectual property, and destruction of commercial

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[309] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023).

[310] JX-0001 at 25 (LPA ¶ 5(c)).

relationships. The portfolio companies have already suffered—terminating 70% of employees, abandoning facilities, and in one case, ceding valuable technology back to its source institution.

Moreover, the portfolio companies are developing treatments for serious medical conditions, including childhood blindness, various cancers, obesity, neurodegenerative diseases. The public interest strongly favors preserving potentially life-saving research programs.

The Court should order Rigmora to perform by funding the May 30 Calls totaling [redacted],[311] which represent six months of operating capital for companies with approved budgets plus Partnership expenses and the ATLS Fee. This relief is narrowly tailored, commercially reasonable, and necessary to prevent irreparable harm.[312]

B. Specific Performance Is The Appropriate Remedy For the Obligation to Consider Budgets

ATP's First Cause of Action is to compel performance with Rigmora's obligation to consider new portfolio company budgets, including specific performance "compelling [Rigmora] to consider reasonable budgets in good

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311 PTO ¶ 68.

312 *See W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2009 WL 458779, at *5 (Del. Ch. Feb. 23, 2009) ("A party may urge performance of the contract judicially by suing for specific performance[.]").

faith."[313] This is a well-established equitable remedy—Delaware courts routinely order specific performance of obligations to negotiate or consider matters in good faith.[314] Such relief is particularly appropriate where, as here, one party has demonstrated bad faith through obstructionist tactics to avoid its obligations.[315]

ATP also has asked the Court to fashion a more flexible, tailored remedy that would deem Rigmora to have waived its right to approve budgets and permit ATP to call capital for clinical-stage portfolio companies, subject to the [redacted] contingency set forth in Amendment 22.[316]

"Equitable remedies ... are distinguished by their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use."[317] ATP asks the Court to "employ judicial principles and tools creatively so as

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[313] Compl. ¶ 164.

[314] *See BAE Sys. Info. & Elec. Sys. Integration v. Lockheed Martin Corp.*, 2009 WL 264088, at *5, 7 (Del. Ch. Feb. 3, 2009) (declining to dismiss claims that an agreement "require[d] the parties to 'meet together as necessary to coordinate their pursuit activities'"); *Great-West Invs. L.P. v. Thomas H. Lee P'rs L.P.*, 2011 WL 284992, at *9–10 (Del. Ch. Jan. 14, 2011) (denying dismissal of a claim for specific performance of a contract requirement to negotiate in good faith).

[315] *26 Cap.*, 309 A.3d at 473 ("When determining whether to award equitable relief, the court always considers the balance of the equities. That is true for specific performance as well.").

[316] Compl. ¶¶ 163–64.

[317] *In re Oxbow Carbon LLC Unitholder Litig.*, 2018 WL 3655257, at *3 (Del. Ch. Aug. 1, 2018), *vacated on other grounds*, 202 A.3d 482 (Del. 2019).

to effect justice."[318] This Court can provide "a more certain, prompt, complete, and efficient remedy than is available at law" because only specific performance or an equitable order authorizing ATP to invest in companies with budget requests foreclosed by Rigmora can salvage the Fund and the medical promise of its portfolio companies.[319]

Rigmora failed to engage in discussions in good faith, honestly, or rationally for Aulos, Ascidian, Nine Square, and Marengo. The December 24 budgets should be deemed approved and eligible for capital calls under Paragraph 5(a)(2). The Royalty Financing, though it may preclude a call once "approval … is given," does not preclude this relief.[320]

C. Rigmora's Defenses Fail

Rigmora cannot invoke the doctrine of unclean hands. ATP's—and the Fund's—conduct throughout has been transparent and accommodating: ATP provided extensive data rooms, arranged management presentations, proposed compromise reallocations, and attempted to work within Rigmora's stated constraints. That ATP ultimately sought judicial intervention when faced with

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[318] *Id.*

[319] *United BioSource LLC v. Bracket Hldg. Corp.*, 2017 WL 2256618, at *4 (Del. Ch. May 23, 2017).

[320] *See* JX-1068 at 4 (LPA Am. 22 ¶ 26) (introducing contingency once "any approval of a new budget is given by" Rigmora).

Rigmora's categorical refusal to fund does not constitute inequitable conduct; it represents the proper exercise of the GP's duty to protect the Fund.

III. The Global Default Provision Remains Intact And Applicable To Failures To Contribute Capital

Rigmora is incorrect that imposition of a Default Charge would be limited only to its interests in pools that retain Preferred Units and Investment Common Units.[321] At the time the Global Default Provision was written, all of the Fund's investments were tracked in terms of Preferred Units (reflecting capital contributed) and Investment Common Units (reflecting profit participation). There were no investments that were *not* based on the concept of units. Even Rigmora's own expert recognizes that "a subsequent change in the factual matrix which was not anticipated by the parties and was, on a true analysis, 'unthinkable' at the time they concluded their contract, can be taken into account and may justify construing that contract so as to accord with their original (assumed) intentions rather than conferring a wholly unjustified and fortuitous benefit on one of them."[322] Given that the Global Default Provision as originally written unequivocally applied to a Default relating to any investment, and there is no reason to think that the parties intended to change that

[321] *See* Blöchlinger Dep. 104:24–105:1.

[322] JX-1588 at 29 (Phillips Opening ¶ 58).

scope, the Global Default provision applies to all investments and pools, whether they involved units or not.

In compliance with the Cayman Order, with respect to the Global Default, ATP seeks only an order declaring that the Global Default provision governs defaults under the LPA.

IV. ATP Complied With the LPA By Bringing This Action

ATP's Count V requests that the Court declare that it did not violate the LPA in bringing this action.[323] ATP has not violated the LPA in bringing this action because (i) the LPA authorizes ATP to act within its discretion when a limited partner breaches, and (ii) ATP did not violate its duty of care.

A. ATP Is Authorized To Bring This Action

The LPA specifically requires that ATP, ***in its sole discretion***, take action in the face of a breaching limited partner.

Specifically, ATP has an obligation to obtain a "favorable result" for the Fund and other LPs when another LP breaches the LPA.[324] As discussed, Rigmora breached its obligations when it made clear it did not intend to meet its funding commitments and refused to approve new budgets.[325] ATP had an obligation to the

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[323] Dkt. 1.

[324] JX-0001 at 75 (LPA ¶ 18(g)(iv)); Tr. (Harrison) 112:2–113:2.

[325] Tr. (Harrison) 131:1–10.

Fund and other LPs to act, and the LPA gives ATP broad discretion to do so. Further, the LPA bars Rigmora from claiming that ATP violated its fiduciary duties for bringing such an action.[326]

Based on the LPA's plain language, ATP was within its rights as the GP to file this action in an attempt to obtain a favorable result for the Fund in response to Rigmora's breach, and it is Rigmora that breached its obligations by filing the Winding Up Petition. ATP requests a declaration that under Cayman law it complied with the LPA, including Paragraph 18(g)(iv), by bringing this action.

B. ATP Did Not Violate Its Fiduciary Duties in Bringing this Action

Even if the Court does not find that Rigmora breached the LPA, ATP still did not violate the LPA in bringing this action. Paragraph 2(g) of the LPA provides the standard of care for the general partner:

> To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any … action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence ***as determined under the laws of the State of Delaware*** without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an

[326] *Id.*

> intentional and material breach of this Agreement on the part of the General Partner or such affiliate.[327]

Under Delaware law, a determination of whether the general partner is acting in good faith is based on whether the general partner reasonably believed that their actions were in the best interest of the partnership.[328] "The general partner of a limited partnership owes fiduciary duties that run to the limited partnership for the benefit of the partners as a whole," so, generally, it need not believe that its actions serve the best interests of a specific limited partner—only the partnership.[329] Here, ATP "believe[d] that [it] had the right under the LPA to bring a lawsuit against an LP who had breached the LPA," and that there was "no possibility of a r[ap]pro[]ch[e]ment" or "of any kind of agreement" by the Rigmora LPs to live up to their capital commitments.[330] Accordingly, ATP filed this action in the face of significant loss for the Fund.[331] ATP is seeking to enforce the Fund's contractual rights and Rigmora's obligations to provide funding and approve budgets.

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[327] JX-0001 at 7 (LPA ¶ 2(g)) (emphasis added).

[328] *Brinkerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 253-54 (Del. 2017); *see Allen v. El Paso Pipeline GP Co., LLC*, 113 A.3d 167, 178 (Del. Ch. 2014), *aff'd*, 2015 WL 803053 (Del. Feb. 26, 2015) (TABLE).

[329] *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Andurill III, L.P.*, 342 A.3d 1166, 1194–95 (Del. Ch. 2025).

[330] Tr. (Harrison) 112:2–5, 111:11–112:1.

[331] *Id.* 113:14–114:12.

In protecting the Fund's portfolio companies, ATP has not violated the standard of care through willful fraud, misconduct or gross negligence; Rigmora makes no allegations otherwise.[332] Rigmora asserts only that ATP had unclean hands because ATP refused "to provide information on the portfolio companies."[333] This is untrue, and even if it were true does not amount to willful misconduct or gross negligence.[334] Moreover, ATP routinely informed Rigmora of the portfolio companies' performance.[335]

Measured by standards of Delaware law, ATP is not in breach of its fiduciary obligations, nor has ATP violated the LPA in bringing this Action.

C. The Matter Is Ripe For Declaratory Judgment

Where a "dispute is live … not hypothetical; and no additional facts will develop to advance the dispute for better presentation to the Court," it "is ripe for judicial determination."[336] Here, the parties dispute whether ATP was authorized to bring this specific case, and no additional facts are needed to make that determination. Rigmora's posited authority is inapposite. *Schick Inc. v.*

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[332] Dkt. 57 at 96–99.

[333] *Id.* at 97.

[334] *See Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 844 (Del. Ch. 2022) ("gross negligence has its own special meaning that is akin to recklessness").

[335] *See, e.g.,* JX-1293 at 22, JX-1214 at 3, JX-1212 at 21.

[336] *Murfey v. WHC Ventures, LLC*, 2022 WL 214741, at *1 (Del. Ch. Jan. 25, 2022).

Amalgamated Clothing & Textile Workers Union involved declaratory judgment claims premised on "a premature ruling on … a derivative action that has not yet been filed."[337] Not so here. As Rigmora itself admits, ATP seeks a declaratory judgment that "the LPA's Exculpation Clause [a]pplies to the GP's [f]iling of *This Action*."[338]

CONCLUSION

ATP respectfully requests that the Court grant the relief requested in Plaintiff's Proposed Final Judgment.

[337] 533 A.2d 1235, 1237 (Del. Ch. 1987).

[338] Rigmora Pre-Trial Br. (Dkt. 203) at 55 (emphasis added).

/s/ Michael A. Barlow

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Dated: October 28, 2025

Attorneys for Plaintiff ATP III GP, Ltd.

17,886 / 18,000 WORDS

EXHIBIT Q

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

- - -

Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, November 21, 2025
1:29 p.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

- - -

POST-TRIAL ORAL ARGUMENT

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THE COURT: Welcome back, everyone.

ATTORNEY ROHRBACHER: Good afternoon, Your Honor. Blake Rohrbacher, Richards, Layton & Finger, for the defendants. We discussed dispensing with full introductions, since the Court is by now familiar with both sides. But I will introduce Shannon Selden from Debevoise, who will be making our presentation.

THE COURT: Thank you.

ATTORNEY BARLOW: Your Honor, Michael Barlow, Quinn Emanuel, here on behalf of plaintiff, ATP III GP. Mr. Andrew Berdon will be handling our argument today.

THE COURT: Thank you. Let's begin.

ATTORNEY BERDON: Good afternoon, Your Honor. May it please the Court.

Your Honor, we're here to discuss a relatively straightforward contract dispute that has morphed into something that reads as something that it's probably not.

Your Honor, this is a case where we've asked for specific performance of a contractual obligation to contribute capital in response to capital calls that are within the capital commitments

that the parties have agreed to. And there's a great deal of discussion about uncertainties about capital commitments. But what's very clear is that of the capital that was called, it was all cabined amongst ATP Pool -- I call it V-1 and V-2, and ATP Pool V-3.

And the agreement is very clear that after the adoption of Amendment 13, all accounting for capital commitments is to be done on a pool-by-pool basis. And we refer you to JX 15 on the first page. "Separate Pools." And we know there was a change in the names of pools and the number of pools over time, before we had Pools A and B and C, and they were ultimately changed over. Pools B and C became Pools V-1 and V-2. Pool A was turned into what's called Pool IV. And those are the antecedent investments that are not at issue here.

It's not contested that there was a capital commitment of about 1.425 billion in what became Pool IV, the early commitments, and that was done in 2012.

There's also no disagreement that there was an enhanced capital commitment of $1 billion at the time of the adoption of Amendment 17. And there was a subscription agreement executed in

connection with the initial in 2012. There was an amended subscription agreement at the time of Pool 17 -- I'm sorry, of Amendment 17. But from the adoption of Amendment 13 on, all of the capital contributions were to be tracked on a pool-by-pool basis.

And if you look at our Slide No. 5, there's an email from Patrik Blöchlinger to his colleagues at Rigmora -- it's JX 1639 -- where he says, "We have always to look at the investments at a pool by pool basis and cannot just see what we invested in total per investment."

So as we look at the capital calls that are at issue in this case, you will see that they are weighted towards Pools V-1 and V-2. There are two capital calls for Pool V-3, Ascidian and Marengo.

But we will see that as far as accounting for capital commitments, capital contributions, and budgets, within Pool V-1 and V-2, there is no doubt that there was a billion dollars committed, that there's remaining uncontributed capital commitments of about $565 million, which -- forgive me, Your Honor.

Marco, can we go to Slide 18, please.

So we have commitments in Pools V-1 and V-2 remaining, but as yet uncalled, the 456.8 million. Pool V-3, committed but remaining uncalled, about 91.

And when we look at the budgets that already have been approved, we have $178 million in budgeted but as yet uncalled capital in Pools V-1 and V-2, and we have $36 million in unbudgeted -- in budgeted but uncalled capital in Pool V-3.

So we have a total of committed but as yet unfunded of $545 million, total between Pool V-1, V-2, and V-3.

Even if you were to find that there is an ambiguity as to the commitments of V-3 -- and we'll talk about that in a minute -- we still have a billion-dollar commitment in Pools V-1 and V-2, contributions of 543 million, and remaining committed capital of 456.8 million against which there is 178 million in approved budgets. There is no meaningful dispute about that. And that would cover the capital calls that were issued as to the Pool V-1 and V-2 companies. And we'll go into that in more detail in a minute.

So, Your Honor, let's take a look at

the questions that are relevant to Pool V-3 and the addition of capital commitments in Amendment 20.

Can we take a look at Slide No. 8, please.

So, Your Honor, under Cayman law, there's a distinction drawn between parol evidence and evidence that's sufficient to show the -- information that was readily available and understandable to the parties at the time of contracting. And so it's perfectly appropriate for us to take a look at the outline at JX 195 that was exchanged between Rigmora and ATP in the lead-up to negotiations that culminated in the Amendment 20.

And a couple things here that remain true, even if some of the numbers have changed.

The first thing is that each pool is having a numerical value associated with it solely for the purpose of funding the companies that are in that pool. That's extremely important.

We look here at (b), and it speaks to the availability of unfunded capital of 220 million for Pool ATP V-1 for "its existing portfolio companies" and future.

Same thing for Pool V-2, is "its

existing portfolio companies" in Pool V-2.

And then they have a discussion of what is to be expected for Pool V-3 and Pool Braeburn.

The clear understanding is that there's a billion dollars that has been committed to Pools V-1 and V-2, and Pool V-3 is being created for the first time. And there are components to it, but it's very clear that there is going to be a specified amount of capital that's going to be attributed to Pool V-3 for the companies that are in Pool V-3.

That money's got to come from somewhere. And we know from the amendments that created Pools V-1 and V-2, Amendment 17, that that billion-dollar commitment for Pools V-1 and V-2 cannot be spent on any other pool without a written agreement between the parties modifying the language of Pool 17, just as it wouldn't have been possible to create a new Pool V-3 and move capital from Pool IV into creating a new Pool V-3 without a writing. And that's what Amendment 20 was. Amendment 20 provided a writing that allowed for the contribution of companies and value of about 189 million in deemed contributions from Pool IV into Pool III. And that has fair market value studies associated with it. And so the

companies that were moved from Pool IV into Pool III were valued, and that value was subtracted from the $500 million total capital commitment that Rigmora made in connection with the creations.

And as you see here, "Capital Commitments and Contributions," in JX 1061, it says that "ATP V-3 shall have capital commitments of $500,000,000, including without limitation [] 189.5 [] of capital deemed to have been contributed as provided below ...." And you subtract 189.5 from 500 million, you have 310.5.

Then there was a shift of previously approved budgets of about $71 million. And then there's another pool of cash that was estimated here to be approximately 235 million. And the reason it was estimated is because there were certain expenses, particularly outstanding expenses and adjustments, essentially, that made the exact amount of that capital commitment subject to some adjustment.

But what we have is the parties subsequently reaching agreement as to the amount of committed but as yet unfunded capital commitments and outstanding capital commitments by pool.

So let's go to Slide 9. So, Your

Honor, this is contributed capital. I'll note that on the copy that was distributed to the Court and to our friends from Debevoise, the line that says Annex to Amendment 20 shows 1.41 billion in contributed capital that's on your screen, that reads differently on the copy that was distributed to you.

The copy that was distributed to you says 1.462 billion in outstanding commitments. That -- I apologize. That was misapplied, that heading. It should read, Annex to Amendment 20 shows $1.41 billion in contributed capital.

And if we look to see what that is comprised of, it's 1.35 billion in Pool ATP IV, plus about 28 million in capital contributions for Pool ATP V-1 and about 30.6, 30.7 billion that had already been contributed in ATP Pool V-2.

So if we start from the $2.5 billion of committed capital from Amendment 17, the related amended subscription agreement, and the original Pool IV, we have $2.5 billion, give or -- $2.45 billion, minus $1.41 billion in capital that had already been contributed as of the date of Amendment 20. And that leaves about $1.1 billion in remaining committed capital.

So we have 1.41 billion that had already been contributed out of the $2.5 billion commitment, leaving 1.09 billion.

So on a forward-looking basis, what did the parties agree to, at the time of Amendment 20, were the amounts of remaining capital commitments?

And Exhibit A to Amendment 20 is very clear. And it says the total for Pool IV was going to be $20 million. And that was going to be for expenses associated with Pool IV. And then there was an associated write-down of some other value that had been in Pool IV. But it was understood and agreed between the parties that there would be $20 million that remained committed to Pool IV but as yet unfunded.

For Pools V-1 and V-2, it was agreed between the parties at the time of Amendment 20 there was $941.5 million in capital that had been unfunded but committed prior to the capital calls that were made in connection with Amendment 20.

And then for Pool V-3, it was expressly understood and agreed between the parties that the total Pool V-3 commitment that was unfunded as of the time of Amendment 20 was $310.5 million.

So arguments about total contributions versus, you know, total committed capital gross, without regard to the attribution to specific pools, are just not relevant. We have to always be governed on a pool-by-pool basis. And that's confirmed out of Rigmora's own general counsel's mouth, and it's confirmed by the schedules that were attached to Amendment 20, which increased Rigmora's capital commitment to Pool V-3, overall $500 million commitment; contributed capital from Pool IV, 189; transfer of existing budgets, about 70. And then what they agreed to here was they had $310.4 million available to be called from Pool V-3.

So whether or not there's a 2.7 or a 2.3 gross commitment or gross contribution, it just doesn't matter. Whether ATP describes itself as being a $2.5 billion fund when it's filling out some paperwork or talking about itself in public really doesn't matter. What matters is what have the parties agreed on a pool-by-pool basis that the commitments have been, and what does the documentation show was remaining in committed but as yet unfunded capital as of May 30. What were the approved budgets as of May 30.

And all of those facts line up to say that there was a valid commitment on the part of Rigmora to contribute capital pursuant to approved budgets up to an additional $1.462 billion on top of the already contributed capital -- can we get that back -- of 1.41 billion.

So if we look at Slide 9, already contributed 1.41. We look at Slide 10, committed but as yet unfunded, 1.46. So -- and that's before capital called in connection with Amendment 20. If you look at the information to the right, it then has the capital calls that were made in connection with Amendment 20 that takes the remaining budget down to 1.447 billion over and above any prior commitments.

And, Your Honor, if you listen to Rigmora's defense on this, they say that the 280 -- I'm sorry, the 235 million discussed in the capital commitments portion of Exhibit 1061 with respect to Pool V-3 is aspirational. But in terms of capital commitments, Your Honor, a reasonable person looking at the Pool V-3 capital commitment language here that calls for 235 million in investments anticipated to be made in new portfolio companies, and you look at the exhibit that specifies exactly how much capital each

of the LPs was going to be responsible for, you have Ezbon and Blue Horizon and Dr. Harrison and Les Pommes. That says there's $310.455 million over and above anything else that's committed as of Amendment 20.

And there is no reason to believe that there are any limitations on that 310 due to indefiniteness, any lack of clarity. This is perfectly clear that there's -- there's going to be companies that are shifted into Pool V-3.

And as we know, those companies included Galvanize and the companies that went into making up Galvanize. It included Intergalactic. It included Marengo, which at one time was called Elstar. It included Ascidian. Where were those companies going to get money to operate if not from a capital commitment?

And for what purpose would these capital commitments be called out if not to create new committed capital requirements? There's no plausible explanation other than to say that Amendment 20 increased Rigmora's capital commitments by at least $310 million, which included the $70 million in budgeted amounts that that obligation traveled with

Pool V-3.

Your Honor, there's an issue about double-counting in the capital contributions. Dr. Strebulaev, in his report, concedes at page 24 of JX 1576 that if you take away the double-counting, then Rigmora's contributions as of the execution of Amendment 20 equaled no more than $2.3 billion.

That leaves headroom under the $2.5 billion committed through the first -- the original LPA, plus Amendment 17, that still leaves headroom under the 2.5 billion. But again, there's no question that Amendment 20 created a new capital commitment that Rigmora's responsible for.

So, Your Honor, the basic contractual obligation here arises under paragraph 5 of the LPA as amended, of course. And there is very clear, as amended in Amendment 3, paragraph 5(a)(ii), allows ATP to call capital to pay partnership expenses, to pay nondiscretionary items, and ordinary course of business items, and then to fund projects that are described in subpart (E), which is to "invest in Projects approved by the holders of a majority of the Preferred Units ... in accordance with a budget therefor approved by such holders ...."

And so we have projects, we have partnership expenses, we have ATLS fees. And as long as there's an existing capital commitment, as long as there's an approved budget for the projects, we have a right to call capital. And that's a -- it's a basic contractual framework. And we think there's clear and convincing evidence that we have approved budgets sufficient to support the capital calls that were served on May 30 and that there is capital commitments remaining sufficient to cover those approved budgeted amounts.

We are not alleging, Your Honor, that the approval of a budget increases a capital commitment per se. What we are saying is that the capital commitments exist and the approved budgets count against them.

So, again, we saw this slide a little earlier. Remaining capital commitment to Pools V-1 and V-2 is 456, almost $457 million. The approved budgets within that amount is 178.1. And then for Pool V-3, we have approved budgets that have not yet been called of 36 million out of a total remaining commitment of 91.5 million. None of those are implicated by any uncertainty or ambiguity about Pool

Braeburn. None of those are implicated by any question of gross accounting independent of pool.

And here, Your Honor, is the breakdown on Slide 19 by company of the approved budget and the amount remaining for each of those budgets. And these are all the companies for which the May 30 capital calls were made. Again, remaining budget of 214.

And here's Rigmora's internal accounting of its remaining commitments, its remaining budgeted commitments. And Mr. Iskhakov reports to Yuri Bogdanov -- and this is on January 20 of 2025 -- that the residual budget is 214 million and that they had residual capital commitments over $572 million.

Irrespective of any quibbling that Rigmora has about ATP's internal recordkeeping, this is definitive, contemporaneous proof of what it is that Rigmora expected it was liable for, what it had committed to in terms of approved budgets. And that number was $214 million.

And, Your Honor, here on Slide 21, we have a composition of the amounts of called capital against the approved budgets. And the evidence is that each of the May 30 capital calls was within approved budgets. Took some of them down to zero,

Your Honor, but none of them overcalled capital for more than an approved budget, and each of them was appropriately sized.

And again, the other side is going to make a lot of the fact that there were discussions of ATP calling smaller amounts in the weeks and months running up to May 30. And there's evidence that there were small, single-digit million-dollar numbers that amounted to about $20 million that was sort of to perpetuate the drip funding idea.

There was an intermediate set of numbers that would have been good for about three months. I think that totals something in the neighborhood of about $60 million.

And then there was a number that was appropriate to fund the companies for about six months. And that's the amount that Dr. Harrison, within his discretion as ATP's general partner, chose to call. And that six-month number is perfectly in line with what Dr. Rybolovlev testified was -- about his expectation of how much capital one of these portfolio companies should reasonably have on hand. And that testimony is from Dr. Rybolovlev's testimony at 392, lines 8 through 11. And that was the trial

testimony.

There's no evidence of a breach of fiduciary duty by Dr. Harrison in sizing those capital calls. There's no question but that he is the GP, had the right to call capital.

Rigmora makes much of the fact that there was an email fired off by one of ATP's outside transactional lawyers going between meetings who said that, you know, the purpose of capital calls is to pressure Rigmora. We submit, Your Honor, that, number one, that wasn't written by ATP; it was written by one of its lawyers. But it wasn't a representation being made outside. It was a discussion between a lawyer and the client. And there's no indication that that was in the mind of Dr. Harrison at the time that the outside lawyer wrote that.

But even if it was, if the idea here was to come to a consensual understanding between Rigmora and ATP about the path forward that they were going to take together, if the idea was to come to an understanding as to how much capital could be called for the preclinical companies, what the new budgets were going to be for the clinical-stage companies, the idea of using capital calls as a way to spark those

conversations doesn't indicate a breach of fiduciary duty.

Again, it's not a statement by Dr. Harrison; it's a statement by an outside lawyer. Dr. Harrison did not write back agreeing. And so we don't believe that the outside lawyer's comment should have any impact whatsoever on consideration of the general partner's motivation.

So, Your Honor, I'd like to just spend a few minutes talking about some of the defenses that Rigmora has erected here. You know, one of them -- and we spent a long time talking about them at trial -- were this milestone argument. And, Your Honor, I think it's very clear that there's no provision in the LPA that says that Rigmora's only required to respond to capital calls if those capital calls are in line with milestones contained in investment memos. That -- they are looking to impute that language into the LPA, but it just doesn't exist.

And, Your Honor, there's ample evidence that when the parties wanted to adopt a milestone, they knew exactly how to do it. Because they did that in connection with the budget extension for Replicate.

So the milestone, the idea that there was a gating function at Rigmora that they could elect out of their funding obligations by referring back to an investment memo and objecting to a capital call, is 100 percent litigation-inspired, after-the-fact rationalization. That was never part of the course of dealings between the parties. It's not consistent with the express language of the agreement. And when you look at the four corners of the agreement, it's very clear that the agreement envisioned a world in which budgets contain milestones.

There are provisions in the agreement, some of them canceled by subsequent amendment, but there are provisions in the agreement that say that where there are milestones in a budget and you want to call capital faster than was approved in the budget, you've got to come up with a rationale for doing so. But what that says is that you have to have included the milestone in the budget. It doesn't say that those would be imputed into a budget that had been approved with no reference to milestones.

There's no evidence of the parties agreeing to that. Dr. Harrison was asked whether he and Dr. Rybolovlev had ever talked about adopting

milestones as tranching requirements in approved budgets. He said, "Never." Until Replicate -- and I think Dr. Harrison had one other budget in mind. That isn't made clear in the record. But it certainly was not a widespread situation. It was one or two budgets in the history, the 12-year history of the relationship.

Spiros Liras, who is responsible for actually running several of these companies and is responsible for calling capital to fund these companies on an ongoing basis, was asked whether there was ever any discussion of there being a tranching requirement or a milestone requirement between ATP and Rigmora. And he had never heard that.

And, of course, we have the testimony from Dr. Rao, who did not testify at trial but who spoke to the flexibility of companies when dealing with milestones and the need to be able to pivot and the fact that timelines set at the initiation of a project are very variable. But again, if the parties had elected to adopt milestones in their budgets, they were free to do so.

Another big problem for Rigmora is the fact that they didn't have anybody who was technically

proficient enough to even monitor the technical progress of these cases.

Bogdanov testified that they didn't employ anybody who had the necessary background. Mr. Yakovlev, who is the chief financial officer, was asked if he had even reviewed investment memoranda in connection with his work -- and his work included the release of funds pursuant to capital calls -- and he said he had never done so.

Your Honor, the reason why somebody breaches a contract is, it's often of marginal importance. But here, where there's a good-faith requirement, where we're asking for equitable relief, and where we're being told that we've asked for equitable relief despite our having unclean hands, I want to look at some of the evidence of what was going on behind the scenes at Rigmora when we were talking about new budgets and meeting capital calls.

A very telling admission when we were talking to Mr. Bogdanov at his deposition. He wrote the email on Christmas Eve, "Let's start.

"Merry Christmas!"

And this was in response to ATP's request for approval of four new budgets, four

companies that were in clinical trials. And I asked Mr. Bogdanov, I said, well, "when you said 'Let's start,' did you mean let's start approving budgets?"

And his answer was a candid no. "No, I didn't."

Mr. Bogdanov, as we will see, was much more interested in erecting barriers to the approval of new budgets than he was in approving them, even though these are companies that had been founded specifically pursuant to agreement between Dr. Rybolovlev and Mr. Harrison, Dr. Harrison, that at the time of the approval of the original budgets for the Pool V-1 and V-2 companies, there was a meeting of the minds, yes, we are going to fund these companies. Yes, they are going to have initial capital commitments, initial budget approvals of 40 or $50 million. And yes, you are to go forward and do your research and come up with drug candidates and put those candidates into the clinic. You're going to be hiring people. You're going to be entering into research agreements with universities. You're going to be entering into agreements with clinical investigators. All of that is part and parcel of the instructions that were given.

And here, when it's time to extend those budgets to carry on the very work that is necessary in order to follow through with all of those commitments, instead of having somebody who is focused on moving projects forward, we have somebody who's focused on erecting barriers, with no regard whatsoever to the actual functioning operation of those companies or even ATP.

We see that after receiving an initial draft of a diligence request -- and this is in JX 1287 -- Mr. Bogdanov did not comment on the technical contents of the diligence request.

He didn't say, well, I'm more interested in how this incremental money -- which in the case of Replicate was an $11 million extension on a company that had started out with a $40 million budget and had had a $13 million extension of that budget in connection with a pivot from oncology to metabolic disease. He didn't ask questions of Mr. Iskhakov that were substantive. His instruction was to ask open-ended questions rather than turning statements into questions. He gave no consideration whatsoever to the questions.

And the requests were bizarrely broad,

including, if you see the middle bullet here, there was a -- you know, a question about the oncology portfolio and asking for an update as to why the oncology portfolio was essentially still viable or explain to us why you shifted away.

And again, this is a decision to pivot that had been vetted, approved, and funded in connection with the $13 million budget extension. And the incremental $11 million should have been, "Tell us about the metabolic program. Tell us about what is going on that could be helpful or" -- in this case, I'm sorry, it's infectious disease. And then asking, you know, a question about broad platform technology, "How has the company's technology evolved over the past four years compared to its main peers?"

Mr. Bogdanov didn't have the ability, and no one at Rigmora had the ability, to process that information, even if it had been provided.

And remember, this was a request for a budget extension for a company that was facing a cash-out date in a matter of weeks. There was an agreement to provide a million or 2 in bridge financing. But the $11 million that was originally being requested was urgently needed. And when I asked

Mr. Bogdanov did he know one way or another whether the questions he was asking were even appropriate to be answered in the amount of time that was relevant to funding Replicate, he said he didn't know.

Your Honor, that brings us to the question of, well, Rigmora had committed $2.3 billion to this portfolio and had committed a billion dollars of future contributions. Why on earth would they be looking to destroy value? And the answer becomes very, very clear. The answer becomes clear, and it's driven by two factors.

Number one was it was Mr. Bogdanov's prime strategic directive to reduce Rigmora's obligations to ATP because, as someone who was associated with accounting and risk management at Rigmora, he was alarmed by what he called a liquidity crisis at Rigmora. And he identified the way forward -- the way forward, the only way in this situation to start moving forward towards a cash buffer is to drastically reduce payments to ATP.

So here's the new CEO of Rigmora, who's made this observation in late 2022. He takes over as CEO in October of 2024. Their cash situation hadn't changed. If you see in the trial testimony

that we have of Dr. -- of Mr. Bogdanov about the financial reporting back to the trustee, there is no difference, material difference, in the amount of cash on hand. In fact, the amount of cash on hand had gone down.

And so there's no argument that these observations had become stale between 2022 and 2024.

There's also no argument that Mr. Bogdanov's views had changed between 2022 and 2024. And as Your Honor asked Mr. Bogdanov at trial, what were your instructions? Did you get instructions on what to do? He said no. He said he hadn't received instructions.

Well, be that as it may, I was talking at a deposition to Dr. Rybolovlev, and I said, in your experience, have you found Mr. Bogdanov to be truthful? And Dr. Rybolovlev gave me an answer that -- the word "remarkable," it just doesn't do it service. And even if you were to say that there is a translation issue, what he said is that "Bogdanov's background is auditing and his perspective hasn't changed ..." since he became CEO.

THE COURT: In context, I always thought that -- I think he meant occupational hazard.

ATTORNEY BERDON: And which is why I'm not arguing the choice of word.

But what he is saying is that Bogdanov was ill-suited for the position of CEO of anything. And that's actually in the Q & A that follows in the Rybolovlev deposition transcript.

And that there was a disconnect, because there was a world of difference between the proclivity -- the necessary business knowledge and attitude of an entrepreneur or someone who is looking to grow businesses, versus an accountant; and that Mr. Bogdanov had essentially been elevated because he was there when Anna Kolonchina left.

But, Your Honor, what we also have, and what we saw at trial, is that Dr. Rybolovlev, his views towards investing in early-stage biotech changed. And when he made the initial new billion-dollar commitment in Amendment 17, when he made the additional $300 million commitment in Amendment 20, by his own admission at his deposition, he made those decisions in an environment where companies could achieve exits at the preclinical phase. There was a boom in biotech at the time that he made those commitments. And that by 2022, 2023,

the biotech markets had changed radically. They essentially had gone into a downturn. That downturn may actually be ameliorated today partially. There's more deal volume. But they are consistently at a level where products are in the clinic.

And so he found himself committed to the development of both preclinical and clinical companies when the market had moved against him, and he no longer believed in the investment thesis.

So the desire on his part to essentially trade out of these positions, he asked Dr. Harrison to try and syndicate and to try and sell the companies. Dr. Harrison testified that he was -- ran into big problems and was unable to do so, in part because of KYC issues that actually killed deals.

And it's -- it's not for lack of trying that ATP tried to bring in syndication partners. And the deals were attractive from a technical and business point of view, but they just couldn't get through the compliance side.

And so without the ability to bring in new investors, without the ability to get some liquidity out of those positions, it appears that ATP decided -- forgive me. It appears that Rigmora

decided to take unilateral action to address what it considered to be an imbalance of risk in its portfolio.

So, Your Honor, one thing that we should talk about in terms of the availability of specific performance is the question of money damages. And why should specific performance be granted here instead of money damages. And specific performance is appropriate here, Your Honor, because if one were to say -- a standard expectation damages award here would be, well, what's the difference in the portfolio, in the fund, between a properly funded company and an improperly -- and an unfunded company. And one would be asking to value early, early-stage investments.

And obviously, there are ways to do it. But the parties themselves understood that specific performance would be appropriate here because of the difficulty in estimating the value of early-stage companies and the somewhat conjectural nature of early-stage valuations.

And so there is an explicit agreement here that "The Partners agree that [] damages suffered ... as [a] result of any failure by a Limited Partner to [make a timely] capital contribution ... cannot be

estimated with reasonable accuracy."

And so it provided for imposition of a default charge, among other things. But that agreement also speaks to the difficulty and inappropriateness of the use of money damages as a remedy. And so it provided for mechanisms by which the general partner could get relief inside the fund. But it also speaks to whether, outside of the fund, damages would be appropriate here instead of specific performance. And we think that this agreement is an admission by Rigmora that damages here would be extremely difficult to calculate. And the lack of readily quantifiable damages makes equitable relief appropriate, instead of damages.

It's certainly a similar standard for the availability of injunctive relief generally, which is, you know, you have to establish the unavailability or inappropriateness of money damages to properly compensate the person/plaintiff moving for entry of a preliminary permanent injunction. Much the same standard. And we believe that there's a binding admission here that it's appropriate.

Your Honor, we then get to a balance of equities. The key here, Your Honor, is that we

have ten Delaware companies whose existence is now right on the margin. And we have Mr. Yanchik testifying that we are still at the point where relief could help. These companies are not beyond saving.

They have fired all of the people who were performing research on their programs, save just the ones who possessed the know-how and the trade secrets and the -- the fundamental scientific understanding that would be necessary to carry those programs forward.

And so from a balance of the equities point of view, we have unfunded companies that can be saved through the infusion of funds pursuant to the capital calls, versus a defaulting partner on the other side, whose -- who has assets that can be accessed in order to pay their debts.

At his deposition, Mr. Bogdanov testified that the named defendants in these cases had at least $40 million on their balance sheets.

Dr. Rybolovlev said that their debt ratio was kept very, very low; that they really didn't have much, if any, debt on their balance sheet. And there are hundreds of millions, if not billions of dollars in assets on their balance sheet, as reflected

in their financial reporting back to the trustee, that can be accessed.

And so, Your Honor, the tipping of the balance here between, you know, nine companies, seven -- seven of the preclinical companies that we are under orders to liquidate, those seven companies standing alone that can be rescued, versus a well-capitalized Rigmora, that balance tips in favor of the -- of the party requesting relief.

Your Honor, Rigmora also argues on specific performance that the specific performance that we're asking for is now inflated because we have obtained money from inside the fund to fund some of these companies in the interim. The sum total of those are about $18.6 million that have been invested in alignment with approved budgets, and some for essentially restructuring costs to avoid -- avoid problems with creditors that then couldn't be fixed.

We would not seek double collection here. We say that the solution to that problem is set off, but not an order of the Court deeming that all of the capital calls be deemed to have been satisfied because we had access to $18.6 million out of the $100 million called.

Rigmora also says that we are asking for the Court to provide specific performance as to as-yet unspecified future capital calls. We do not. We are only seeking specific performance today of the May 30 capital calls, plus the relief we're requesting on the request for new budgets for Aulos, a city in Marengo, and Replicate.

So, Your Honor, again, $104 million just in Pools V-1, V-2, and V-3 on the May 30 capital calls.

We have -- we have done our job. We have done exactly what we have promised to do. Rigmora has already received more than $2.4 billion in distributions from ATP. That is very important. This is not a situation where Rigmora has been pouring money into a hole.

If we take a look at the top quote there, that's actually Dr. Rybolovlev's trial testimony where he talks about why he went sour, essentially, on the market.

So, Your Honor, let's talk now for a minute about the budget requests and the *Braganza* doctrine.

Essentially, the question here is

whether you can imply a contractual term into the LPA. It's not whether there's a fiduciary obligation on the part of the LPs. The question is whether, as a matter of contract law, you can find that Rigmora's discretion in approving budget is, in the words of one of the experts, "fettered." Or whether they have unfettered discretion to act in bad faith.

And here is the *Tesco Stores* case, where it -- it speaks to the ability of a court to impute a term where it's necessary "to give business efficacy to the contract."

And to consider budgets in good faith is necessary to give efficacy to this agreement, because we can only call capital pursuant to approved budgets. The agreement contemplates that we will be investing Rigmora money. The agreement contemplates that we will be getting budgets approved from time to time. The contract necessarily, in order to function on a going-forward basis, has to require Rigmora to approach those discussions honestly and in good faith.

So what we have, Your Honor, is -- this is the run-up to the May 15 email. The May 15 email is obviously the precipitating event where we say that the imposition of a condition on the

discussion of new budgets -- and that condition being the agreement to liquidate or wind down seven preclinical companies -- was a breach of this implied duty to negotiate in good faith. And so the May 15 email is the precipitating bad faith, dishonest act.

But, Your Honor, what we see here is the chronology that took us on a five-month journey of diligence request after diligence request, meetings between Rigmora and management that led nowhere, and ultimately led to the May 15 email imposing that condition.

And can we go to the May 15 email? And it's obviously been featured in all of our briefing.

But, Your Honor, we have the assertion of pretextual reasons to abandon the preclinical companies, saying that future investments would "waste the ATP fund's assets." We have unrebutted testimony from Spiros Liras that these companies have scientific value.

Can we go to the next.

And again, here is -- here is the precipitating event where we are told that there will be no new budget conversations for the four clinical

companies unless we agree to wind down the preclinical companies. That is a violation of an implied duty to act in good faith. It's a violation of an implied duty to treat us honestly and rationally.

The other side, quite remarkably, says that they have the right to act in bad faith. And that is not hyperbole.

Let's go to Slide 45, please, Marco. It's actually a heading in their brief. 45, please, Marco. There we go. It's a heading in their brief. Now, that may be something that sounds okay in Cayman, where they're saying that it's perfectly okay for them to treat the GP of the fund rough.

It's not okay to say that here in Delaware. It's not okay to say that when you have seven preclinical companies and four clinical-stage companies who are dependent on Rigmora for its funding by design, okay. That dependence was by design because they wanted to be sole shareholders of these companies unless and until they decided to syndicate. And they are now saying that they were under no obligation to act in good faith.

When you talk about balance of equities, Your Honor, that is -- again, I think it's a

definitive admission.

So, Your Honor, we have asked the Court to craft an equitable remedy here, where the Christmas budget request, the December 24 budget request be deemed to have been approved. Replicate had an approved budget extension, so we're asking for Aulos, Ascidian, and Marengo, those budgets to be deemed approved. And the amounts of those are all set out in correspondence on the 24th of December at JX 1079.

And in the alternative, we have a request that at least Rigmora be required to adjudge those budget requests on their merits. Without regard to what happens to the preclinical companies, those budget requests should be adjudicated, essentially, based on the individual merits of those programs.

And it's extremely difficult, I know, to envision a world in which there's a remedy for their having violated an order like that, which is why, Your Honor, the more pragmatic remedy here would be to find that they actually have an obligation to fund those budgets.

And, Your Honor, there's another issue that has sort of plagued this case, and that is the

cases that Rigmora filed in Cayman after we brought this action.

And, you know, the progression here is, again, I think important when judging balance of equities. As Your Honor recalls, Your Honor found that Rigmora objected, essentially, to proceeding in this court despite its clear waiver of its right to object to appear in Delaware Chancery Court, because the LPA had a waiver of jurisdictional objections for both Delaware and Cayman. But they came here arguing that the case belonged in Cayman, in opposition to our motion to expedite.

While they were opposing our motion to expedite here, they were moving for the equivalent of an expedited proceeding in Cayman. And again, we have the issue with the requested adjournment of the trial date, where they came to you and asked for an adjournment of the trial date because of the prejudice associated with the late production of documents, while at the same time, the very next day, they filed their request for the appointment of provisional liquidators in Cayman that cited extensively from the very documents that they said they didn't have enough time to review.

And most recently what they have said to you is "we are not trying to put the Cayman case ahead of the Delaware case."

Well, I don't know if they're dancing on semantics, but what they are now saying in Cayman is that "it would be contrary to public policy [for the Cayman [] Court] to recognize any judgment" that you were to grant. And the reason for that, they're saying, is because they got this *ex parte* injunction down in Cayman saying that we couldn't do anything to have them deemed to be a defaulting partner or to take away their voting rights under Section 18 of the agreement or to call more capital. And they say the relief that we requested in our pretrial order came -- crossed the line and was actually in contempt of that order.

And so now they are saying that the remedy for that should be the entire nullification of the results of this case, despite the time, effort, and expense that the parties have incurred and the great deal of attention that the Court has given to this matter on an expedited basis.

I just don't know -- I won't characterize it, but it is what it is. This is how

they are litigating this case. And we do not believe that it is favorable in terms of the equities.

Your Honor, briefly, our briefs discuss the question of the construction of the provision of the agreement that allow the general partner to impose a default charge. The other side has taken the position that despite all language to the contrary, that should be read to be on a pool-by-pool basis. And so a breach in one pool could only be remedied by a default charge imposed as to the assets of that pool.

Of course, that's one thing that the amendments never said was going to happen, was an amendment of the default charge or the default provisions to be on a pool-by-pool basis. None of the amendments say that, and our position, Your Honor, is in the absence of an explicit, express modification, that continues to be in effect as drafted.

Your Honor, there are exculpatory provisions in the LPA that specifically allow the general partner to bring this action in connection with an LP's breach of this agreement.

The other side tries to argue that this dispute is not ripe. Well, in their Cayman

winding-up proceeding, they are saying that this action was brought both in bad faith and in a way that caused them to lose their trust and confidence in the general partner.

But what they're trying to do is sidestep an explicit, agreed-upon provision of the LPA that gives the GP the right to bring this action in response to a funding breach. And it says here specifically, "To the full[] extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such ...."

Your Honor, here's from Spiros Liras, talking about exactly why this case was brought. He said the effect has "been devastating." He had to go, over the course of 31 hours, oversee 75 layoffs. And those were just for the companies that he was supervising.

And, Your Honor, here under Exhibit-- Exhibit -- under Section 18(g), "Standard of Care,"

here, too, it says that the general partner, unless they are acting in bad faith or conducting willful fraud, there's no reason to have them be deemed, you know, in breach of this agreement, and that there's no basis to impose liability on the GP for any of Rigmora's perceived losses here.

So, Your Honor, we believe that these matters are ripe. There's an active dispute. They are saying in Cayman that we are in violation of our fiduciary duties simply by bringing this case. We don't believe that the *Schick* case is applicable, because there is an actual dispute here and it's not an advisory opinion in any respect.

Your Honor, then there's just a question of attorneys' fees. Rigmora contends that we have not properly pleaded a right to attorneys' fees. This would be a form of essentially use of Cayman and English common law, where the loser pays.

And the -- the claim that if it's not perfected as of today because of the uncertainty of the ultimate amount of attorneys' fees that will be incurred, we certainly haven't waived. There's no voluntary waiver of any rights here to attorneys' fees that are otherwise allowed.

And I'll reserve the rest of my time for rebuttal, Your Honor, unless you have any questions.

THE COURT: I don't have any questions. Thank you.

So I propose we take our break now.

Mr. Barlow, go ahead.

ATTORNEY BARLOW: No, Your Honor. I didn't have anything.

THE COURT: Okay. So I propose we take a ten-minute break now and go into the other argument.

(Recess taken, 2:47 to 3:00 p.m.)

THE COURT: Thank you. Please be seated.

Are there any extra copies of the presentations? Could you please pass them to a few folks in the back.

ATTORNEY SELDEN: For sure.

THE COURT: I sprung a court appearance on my clerks on casual Friday so ...

ATTORNEY SELDEN: Happy to pass them around, Your Honor.

THE COURT: All right.

ATTORNEY SELDEN: Good afternoon, Your Honor, Shannon Selden of Debevoise & Plimpton for the Rigmora defendants.

Your Honor, this is a case for breach of a Cayman limited partnership agreement. And the questions before Your Honor all turn on the terms of that LPA and on plaintiff's allegation that the Rigmora defendants breached it or, in the case of exculpation, that its own potential breach should be preemptively excused.

As you've heard over the course of trial, this fund was started in 2012 when Dr. Dmitry Rybolovlev agreed to invest $100 million in a fund to be managed by Dr. Seth Harrison that was intended to invest in biotech companies.

Dr. Rybolovlev is a sophisticated investor. And you've heard how he grew up in the Soviet Union in Perm, worked his way through medical school, spent a year working after graduation as a doctor for 130 Rubles a month supporting his wife and child. And then, with the onset of Perestroika, made his fortune by first acquiring interests in a broad portfolio of 20 Soviet companies, coming to concentrate them in seven, and then in two, coming to

control and run Uralkali, which he transformed from a Soviet company to a success on the London Stock Exchange in 2010. It's a remarkable story, and it made Dr. Rybolovlev a wealthy man.

And that's when he returned to healthcare, this time as an investor, with a goal of investing across a broad portfolio of early-stage biotech companies. Biotech is a high-risk investment, as you've heard from fact witnesses and experts alike. And most companies don't make it.

Dr. Rybolovlev thought that the best approach was to make small early investments across a broad portfolio, identify the best performers, and focus on developing those into more fully mature enterprises. He shared that vision with Dr. Harrison, and they agreed to start the investment fund under the name Apple Tree Partners. And that's the fund at issue in this case.

As you've heard, the overwhelming majority, 98 percent, of the capital net fund comes from Rigmora, the limited partners that are owned by Dr. Rybolovlev's family trust. An entity controlled by Seth Harrison, ATP GP, is the general partner of the fund and is charged with managing it for the

benefit of its investors, the Rigmora LPs.

As you've also heard, and as comes up again and again in this case, the fund is governed by a limited partnership agreement, or LPA. And that LPA is, in turn, governed by Cayman law, including the Cayman Exempted Limited Partnership Act, or ELP. And the hallmark of a Cayman Islands exempted limited partnership is limited liability for the limited partners.

Under Cayman law and the LPA, the general partner of an ELP is a fiduciary with an obligation to act in the interests of the investors, who are the LPs. And the LPs, on the other hand, subscribe to provide specified amounts of capital. They're not fiduciaries, and they don't owe obligations to the fund. That is not nefarious, and it's not bad faith. That is the way ELPs are structured in the Cayman Islands. It's effectively a trust managed by the GP for the benefit of the LPs who are its investors. And those investors have no obligation to provide capital in response to calls in excess of their commitments.

The GP calls capital from the LPs, but it only has limited rights to call that capital. And

those rights are spelled out in the LPA. And you did not see Mr. Berdon mention once this afternoon paragraph 5(a) of the LPA, which is the contractual provision that is the source of his client's claims in this court, the claim that it called capital validly that the LPs had an obligation to respond to. To be a valid capital call, creating a corresponding obligation on the part of the LPs to fund, the capital call must satisfy the contractual criteria spelled out in the LPA.

Your Honor, the Rigmora LPs' arguments here are not pretextual, they're textual. They're rooted in the text of the LPA, which is what governs these parties' relationship.

Most fundamentally, the GP cannot call capital in excess of the LPs' subscriptions. But there are other requirements too. This LPA has a provision that's particularly relevant, and somewhat unusual, and that's the provision that gives the LPs the rights to approve budgets for the companies in which the fund invests.

It's not a provision you might see in a multi-LP fund, where there are many limited partners and where the GP might be expected to have that

oversight and discretion. But here, where 98 percent of the capital is committed by two LPs, both owned by a family trust, those LPs, per the contract, have approval and oversight rights that other LPs might not.

That doesn't change the limited nature of their liability to the fund, but it does give them a right to approve budgets. That's a right to approve, but not an obligation to approve. It's their money that's coming in, and they have some say over how it is going to be invested.

The terms of the LPA that govern these two things, capital calls and budget approval, are at the very core of the contract claims before this Court. And what I'd like to do today is to take those claims in turn and just show Your Honor why plaintiff's claims fail across the board, as we've argued in our pretrial and post-trial brief, for the reasons addressed there in detail.

I'd like to pause briefly on the legal standard, because the threshold here is high. And it's the bar against which everything that follows must be measured.

And I'll turn to the GP's claim that

the LPs are obligated to invest further capital in the fund pursuant to the GP's May 30 capital calls, and that they breached that obligation.

After that, I'll address the GP's claim that despite months of detailed negotiations and back and forth over companies and budgets, the LPs somehow breached a contractual obligation to discuss budgets and should be ordered to specifically perform that obligation, or that the Court should just disregard that process and order the budgets approved over their objection.

I'll briefly address the GP's other requests for relief here.

You've heard many times the GP insist that the portfolio companies need money -- and I will touch briefly on that -- and the GP's claim that they're being starved and will fail if not funded. But the dispositive question for this Court isn't whether additional funding might be desired by the companies, but whether the LPs have a contractual obligation to provide it to the fund. Because the answer to that question is no, the claims fail. And they fail for straightforward legal reasons.

They're not entitled to specific

performance of the May 30th, or any other, capital call, because the GP cannot, as a matter of contract, call capital in excess of the LPs' contingent subscription. And the GP cannot prove with clear and convincing evidence and the clarity of obligation that Cayman law requires that the LPs' contingent subscription exceeds their $2.69 billion in contributions to date.

They're not entitled to specific performance of any obligation to approve budgets, because no such obligation exists in the LPA. Approval is a right that they hold, not an obligation that they owe.

And the GP is not entitled to specific performance of any obligation to discuss budgets in good faith because that's not a claim or cause of action that Cayman law recognizes in this context as to exempted limited partners. And if it exists, it was satisfied. And if it wasn't, it's not susceptible of specific performance. And there's no way around that, legally or factually.

As Your Honor is aware, the breach of contract claims here are governed under Cayman law. And that requires the existence of a valid contract

and certainty of terms. That Cayman law contract must be read, when it's a limited partnership agreement of an exempted limited partner, must be read against the ELP Act, which has some terms that make it a little bit different from a typical contract. So you look not just at the four corners of the agreement, but also at that background ELP statute that governs those terms.

Certainty of terms here is important, and I would suggest to Your Honor that nothing you've seen from Mr. Berdon today provides certainty of terms as to a contingent subscription on the part of the LPs higher than the $2.425 billion that I will show you in a moment.

Under Cayman law, negotiating history and subsequent conduct aren't relevant. You look at the document, at the LPA, at its terms. And to the extent you look at anything outside of that contract, it's only that background knowledge which would have been reasonably available to the parties in the situation in which they were at the time of the contract, not the negotiating history and not the subsequent conduct, and certainly not emails sent among parties or internally four or five or ten years

later.

As you've heard from Mr. Berdon, the GP here is looking for specific performance. And specific performance requires clear and convincing evidence. And on that standard, the GP's capital call claims fail.

I'd like to pause for a moment, Your Honor, on these, the May 30 capital calls that are at the very core of this dispute. And here, the plaintiff's story just doesn't add up. And this is one of the many places in the GP's case in which the story just doesn't add up.

These calls were sent just minutes before the GP filed suit. The GP called approximately $88 million in capital for an unprecedented ten companies at once. It had never before called that much for that many companies at a single time. It also called capital for partnership expenses and fees, which brought the total capital call to over $100 million.

The GP tells you that these companies were starved, that it is somehow the Rigmora LP's fault that they were lacking in money. But what you can see here is a couple of things — that is, these

companies are all of a similar vintage. They had initial investments between May 2020 and December 2022, starting at the beginning of the COVID pandemic and continuing through the peak of the biotech investing market. So these aren't new companies. These companies had been around for awhile. They'd been around for a few years. They were started all at once, and there are quite a number of them.

This is the portfolio of companies that I talked about a minute ago and where the fund took or was meant to take a portfolio approach to high-risk investments, entering into Series A financing arrangements to invest incrementally over time in a number of companies that had promising research projects with commercial potential and see how they developed.

And those Series A financing agreements and the investment memoranda by which they were entered provided for kind of milestones or increments across time that would give some measure of how the companies performed and some indication of whether they were entitled to or should receive the next tranche of funding.

These were not lump-sum investments, and they were never intended to be lump-sum investments. They were aspirational budgets submitted by companies or by the fund to be tranched and financed over time.

When the fund took a portfolio approach, it recognized that there would be some winners and some losers among the portfolio. Dr. Harrison agreed with that in his deposition when I asked him that, saying that there are likely to be winners and losers. And Dr. Rybolovlev testified to that here at trial; that is, it's not expected in a high-risk biotech market, or with ten biotech portfolio companies, that all of them will succeed.

The parties knew that the odds are that most early-stage biotech companies won't make it and understood, importantly, that the expectation is that those that don't make it get wound down.

So if you invest in ten companies in the space of two years, the expectation is not that you have ten successful companies three or four or five years later. Some might succeed, but many won't. And that's the expectation going in.

Here, the GP made investments at the

peak, but it didn't manage the portfolio. Even though its GC, Mr. Finkelman, who didn't come to trial, and Dr. Rybolovlev, both urged Dr. Harrison to do that and to manage these companies to their milestones and wind down or to stop funding those that weren't performing as hoped.

But the GP didn't do that. Instead, it just kept calling more money for investment, continuing to treat these more as open-ended commitments to be funded as needed and in perpetuity, rather than an investment in a portfolio of companies tied to performance, made with the knowledge and in the expectation that only a few will succeed and make it all the way through.

So when the GP purported to call capital for these ten companies on May 30, it did so after many years and hundreds of millions of dollars of investments by the fund. You can see here the total amount, $433 million, invested in these ten companies as of May 30 when these capital calls were made.

These companies had had both time and money to try to achieve their goals. But they were not all performing.

So not all of these calls of amounts requested on May 30 were valid. All of them were above the LPs' contingent subscriptions. And for that reason alone, they're not valid on the part of the GP, and there is no corresponding obligation on the part of the LPs to pay them. They're not in accordance with budgets, and they weren't made consistent with the GP's fiduciary duty to the LPs.

This, Your Honor, is a flow chart of how one might think about the LPA's requirements for calling capital, which are straightforward.

I had mentioned that the GP bears the burden of showing that each and every one of its capital calls is valid under the LPA, creating an obligation to fund on the part of the LPs.

And in order to do that, the capital calls must meet the criteria set out in the contract. This is a claim for breach of contract. This is what the contract says. They must be within the contingent subscription. They must be in accordance with an approved budget. And they must be consistent with the GP's fiduciary duties.

The GP cannot meet that threshold for any of the calls that it has presented to the Court

today, and it certainly cannot do it with the clear and convincing evidence that specific performance requires. And I'm going to start and focus what I think is a central and in some ways the simplest question in this case, and a dispositive one, which is, whether the capital calls are within the LPs' contingent subscription to the fund. Because if the capital calls are not within the contingent subscription, the analysis ends there. That is dispositive of that claim and of the case, because there's no need to go through the rest of the analysis.

We've argued that extensively in our briefs, but I think it's important to spend some time here, because I really want to root our response to this in the text of the LPA, which is what governs this claim for breach of contract.

You've heard an awful lot today about pools, about Amendment 20, about negotiating history. We've seen tracking spreadsheets. But these are contract claims. And they arise under the terms of the LPA. And it's the LPA that defines what the GP can call and what the LPs are required to contribute.

And we start with 5(a)(i) of the LPA,

which requires calls by the general partner to be "not in excess of, the total amount [of] ..." any limited partner's contingent subscriptions.

And you will see, Your Honor, that what LPA paragraph 5(a)(i) actually says is that "the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription," in the List of Partners ...."

One thing you haven't seen from the GP today, or at any other point in this case, is a list of partners that the GP is required to maintain under the LPA and under the Cayman ELP Act. And that list of partners is required to be maintained by the GP, and it is required to provide next to each partner's name its contingent subscription to the fund. That is where you look to see how much that LP has committed to the fund.

In the absence of such a list, however, Your Honor, I am going to focus on the contingent subscriptions.

Here, while it's true that a partner may not make less than the full amount of any required

capital contribution, it is also true that the GP cannot request an amount in excess of the total amount of the LPs' contingent subscription. That is all that the GP can call, is the contingent subscriptions.

So I think the question is, what is a contingent subscription, and do these calls exceed it?

Paragraph 1(e) of the LPA provides that the GP will deliver to each incoming LP a subscription agreement that establishes the amount of the LP's contingent subscription. And paragraph 3(c) of the LPA, which is here on the screen, provides that at any time an LP "is to make an additional subscription," they shall "execute a Subscription Agreement (or the equivalent thereof) ...."

And again, Your Honor, I'm focused on paragraph 3(c) here, because this is the only way that the LPA provides for the parties to memorialize or amend or increase the subscription by an LP to the fund. It's not possible under the contract to increase an LP's subscription without executing an additional subscription agreement or the equivalent thereof. That's what the text says. It's clear, it is unambiguous, and that's what it requires.

The GP focuses on a general ability to

amend, that an amendment be in writing, agreed to by the parties. But 3(c) is a specific provision that governs exactly this circumstance when you want to increase the subscription. And increasing the subscription is important, because that's all the GP can call. So if you want to increase the amount of callable capital, you have to execute an additional subscription agreement or its equivalent.

And that one parenthetical, Your Honor, is carrying almost the whole weight of the GP's case. The GP insists that various amendments and budgets and exhibits are somehow the equivalent of a new subscription agreement and serve to increase the amount of callable capital or of the LP's contingent subscription, the 2.425 billion in total subscription and amendment subscription agreements.

And they rely entirely on pools and on the negotiating history and on spreadsheets to show you that. But that's wrong. The subscription agreements are detailed documents that are different in kind from those amendments. And they provide absolutely clarity as to the amount of the LP's contingent subscription.

They provide the kind of clarity as to

the sum certain, the amount, of the contingent subscription on the part of each limited partner in the fund that you could write next to their name on the list of partners that the GP is required to maintain under the LPA and under Cayman law. They each set out a specific dollar amount tied to that defined term. And there's a separate subscription agreement and a specified amount for each LP.

Dr. Harrison understood that this was important. I mean, I asked him about it at his deposition. This is what he said. He recognized it's important to have clarity, and that he understood that the term "contingent subscription" defines the size of the overall fund or of the investable capital at any given time.

There's no doubt about the importance of the contingent subscriptions in the LPA. And they're clear. They don't look anything like Amendment 20 or Amendment 13 or 17 or 18 or a spreadsheet or an annex. They look like a subscription agreement of a limited partner to a fund, subscribing to contribute a specified amount of capital, amenable to being recorded and drawn down.

It's 35 pages long. This is the one

for Blue Horizon, which is a predecessor to one of the two LPs that are the parties to this case. It clearly identifies what that entity is -- Blue Horizon -- and the amount of capital that that limited partner has committed to the fund as its contingent subscription.

There's no doubt that the amount of Blue Horizon's subscription is $698,250,000. It's spelled out right here.

Ezbon, the other entity and the predecessor entity of the other defendant here, had its own agreement with its own specified amount.

So the subscription agreements have the kind of clarity that paragraph 5 of the LPA requires and that you could put in a list of partners had you maintained them. And the GC of the GP, Mr. Finkelman, has admitted that in maintaining the list of partners, he never put down a capital commitment amount, so there is no such list that I can show you with these numbers.

But if you were to create a list, you could. And this is what it might look like. Here is the date of the subscription agreements, the entities, and the amount that they owe and the total amount of contingent subscriptions to the fund.

It's clear who committed capital. It's clear how much they committed — it's $1.425 billion, split precisely between the two LPs.

Sometimes the LPs' original subscription is referred to as $1.5 billion to take into account the $75 million loan to Dr. Harrison. But this is their own commitment to the fund. And that clarity here is what the LPA requires. And it's essential, not just for the contractual obligation to exist, but because of the consequences that flow from it in a Cayman ELP and in this particular LPA, in particular. That is, the LPA requires capital calls to be paid within ten days. It imposes serious consequences if those payments are missed. You've heard from the GP often about the default provisions and the consequences that flow to LPs if they do not make their capital payments within the ten days of the call.

When an LP commits to satisfy a capital call that quickly in the face of those consequences, it needs to know with certainty and clarity what that commitment is.

Even today, you haven't seen at any point so far this afternoon a clear statement by

Mr. Berdon as to what the sum total of the subscriptions of the two LPs are, or broken down as to which LP would owe how much at the end of the day. But that clarity is essential, and it's a premise of the LPA, and it's a premise of the consequences that follow from missing a capital call.

Amendment 17 and 18, which you've heard about because they deal with pools, don't constitute an additional subscription consistent with paragraph 3(c) of the LPA. When the parties entered these agreements, they didn't just rely on Amendment 17 and 18 to be the equivalent, but they amended the subscription agreements too.

So here, again, is an amended subscription agreement -- this one for Blue Horizon -- stating clearly here is the amount of the contingent subscription and that it is "hereby increased by $490,000,000 (the 'Increase')."

Similarly, Ezbon entered its own separate amended subscription agreement that clearly stated here's the amount of its contingent subscription and that it's "hereby increased by $510,000,000 (the 'Increase')."

There is no doubt that these

amendments to the subscription agreements state with clarity exactly who has committed how much and by how much their continued subscription has increased.

Again, you can add them to the list and see where you stand.

The parties agree, and the GP doesn't dispute, that the LPs never entered into any further amendments to the subscription agreements. There are no further amendments after this.

And at the time that the GP and the LPs entered into these amended subscription agreements, that's when the GP updated the markets with a press release announcing that the fund had a billion dollars in new capital commitments. And you can see that at JX 128.

It didn't update the list of partners because it didn't have one. But it did otherwise update its messaging to reflect its understanding that as of this point, there's 2.425 billion in commitments by these entities, the LPs, making it a $2.5 billion fund overall, counting Dr. Harrison's loan and credit commitment.

So it's a sum certain that the GP can draw on over time. As calls are made and capital is

contributed to satisfy them, the amount available to call is reduced. Nothing the GP has shown you today is the equivalent of these subscription agreements.

It's shown you Amendment 13. That's where Mr. Berdon started out. And he says that that is a place where suddenly the commitment shifted to pools. But you don't see anything in Amendment 13 that even mentions commitments or subscriptions or contingent subscriptions. It refers to contributions, distributions, and income, not commitments. And it doesn't have anything like the language that you saw in the subscription agreements or their amendments, identifying by LP a specified amount of increase in their subscription. You don't see that in Amendment 20, or 17, or 18, or anywhere other than the subscription agreements and the amendments to the subscription agreements.

Here, you can see the next dispositive fact in this case. That is, one fact is that there are four subscription agreements, the two original ones from 2012 and the two amendments from 2020, establishing the LPs' collective subscription at $2.425 billion.

And here, you can see how much the LPs

contributed to the fund over time. You can see that increase from July 2012, when the fund was started. And as it approaches the $1.425 billion limit of their original contingent subscription late in the summer of 2020, you can see that the cap rises when the parties amended the contingent subscriptions to take it up by a billion dollars to $2.425 billion.

And then the GP continues to call capital, and the LPs continue to contribute it, steadily over time, notwithstanding Mr. Bogdanov's memo about liquidity, notwithstanding the Ukraine war.

And through years, the GP -- the LPs continued to contribute capital in response to calls, until, at the end of 2023, they crossed the green line. That is, the contributions exceed the total amount of the LPs' contingent subscriptions.

And because this has happened, any further capital call is the call in excess of the LPs' contingent subscriptions. And it cannot give rise to a valid obligation to contribute more capital. The LPs can and did contribute capital in excess of their commitment. Again, they've invested 98 percent of the capital of this fund. This is fundamentally their investment.

And you have heard from them that they're committed to understanding it and to making additional investments as appropriate. But they cannot be compelled to do so under paragraph 5(a)(i) of the LPA, which only permits the GP to call capital up to the amount of the contingent subscriptions and no more. The GP cannot force contributions above that threshold, and that is what it is trying to do in this court. That's why those capital calls are invalid, is because the LPs have exceeded their contingent subscriptions.

This is no surprise to anyone. You have heard again and again, Your Honor, that the LPs are somehow starving the companies of capital. But they have contributed not just $2.69 billion to the fund, but 433 million to the companies for which capital was called on May 30. And they have been clear throughout about the limit of their commitment to the fund and have asked Dr. Harrison and the GP to manage to that commitment like a responsible GP.

You heard that from Dr. Rybolovlev. And Dr. Harrison admitted that he understood that as far back as in May of 2023, that the investment was capped at $2.5 billion.

And you'll recall that I asked him at trial and he testified, and he testified in his deposition, that he didn't do anything to manage to that cap.

And so we are not here today with companies in need of funding because they were starved by the LPs. We don't -- we are here today because there was a known cap, it was drawn down, and the GP didn't manage to it and now is in a fix trying to force the LPs to contribute more.

Your Honor, we've heard an awful lot today and generally about how other amendments besides the subscription agreements could have somehow increased the LPs' commitment to the fund, in particular, Amendment 20. And I want to spend a little bit of time talking about why Amendment 20 didn't increase the contingent subscriptions.

I think the overarching questions here, is Amendment 20 clear? Does it have the clarity that Cayman law requires? Does it have the clear and convincing evidence of a sum certain that the LPs are required to contribute, that specific performance requires, in a world in which the burden is on the plaintiff to show that. Is it clearly the equivalent

of a subscription agreement? And I would suggest that it is not.

We haven't put all of Amendment 20 on this slide, but here is one of the paragraphs with respect to ATP V-3 that the GP focuses on, which begins with the statement that "ATP V-3 shall have capital commitments of $500,000,000 ...." But, of course, the GP isn't telling you that this is a capital commitment of $500 million. It's telling you that you have to subtract from that $500 million certain amounts, and add other amounts, and look at the 70 million of budgets and otherwise do quite a bit of math in the breaking down of this paragraph and other paragraphs in Amendment 20 in order to come up with what the supposed additional commitment is here.

But I would suggest to Your Honor that this is not the equivalent of a subscription agreement. You saw in the subscription agreements a minute ago a specific amount for each of the separate LPs and a clear statement that it's increasing their contingent subscription. You don't have here a sum certain. There's no specific amount. There's no statement that this is an increase in contingent subscriptions. And it's not tied LP by LP.

Even the GP's Cayman law expert agrees. Mr. Bloch testified that Amendment 20 doesn't appear to have that clear statement that would be required to find that it increases the amount that the LPs have to contribute.

Amendment 20 didn't increase the subscriptions. But what it did do is kind of restructure the pools. And I think plaintiffs place an enormous amount of emphasis, as you've seen today, on this pool concept, claiming that the LPs' contingent subscriptions or commitments must be viewed on a pool-by-pool basis and must be greater than their subscription agreements to the extent that the pool accounting exceeds that amount. It's a very convoluted way to think about capital commitments.

As to Pool IV, it requires assuming that the LPs' contingent subscription of $1.425 billion was somehow reduced to 1.33 billion because the parties agreed to a reduction of 150 million that hadn't been paid, and then factoring in the 20 million in fees — a set of assumptions and math.

As to Pool V-1 and V-2, it purports to leave the $1 billion commitment untouched.

And as to Pool V-3, it argues that 309.3 million is the commitment by taking the 500 million referred to in that paragraph, subtracting 189.5 million that had been deemed to be contributed, counting as new commitments over 70 million that had already been budgeted, and then factoring in approximately 235 million in investments anticipated to be made in new portfolio companies, and then multiplying that by various percentages.

That is in no way the equivalent of a subscription agreement. It lacks the clarity that the subscription agreements have and Cayman contract law requires, and it doesn't make any sense.

If you take the 70.8 million of capital budgeted for follow-on investments in that paragraph, just as an example, keep in mind that at the time that Amendment 20 was entered, the LPs had just committed another billion dollars in capital to the fund. And of their total commitments, over a billion dollars remained to be drawn.

It makes no sense that the parties would have used Amendment 20 in this circuitous and indirect way to increase the LPs' capital commitments to correspond to existing previously approved budgets

that were well within the fund's current subscriptions, much less to do it without saying so, without saying that it's an increase in the subscriptions, or without breaking it down by LPs and who has to pay.

It doesn't make sense to think that, with over a billion dollars available to invest, the parties needed to increase capital commitments by another approximately $235 million for new, unspecified portfolio companies, or, again, that they did it in a circuitous way and without saying so expressly and without actually amending the subscription agreements.

The same is true with the Pool Braeburn analysis. None of this is the equivalent of a subscription agreement.

Even in their post-trial brief, the GP can't pinpoint what the increase in the subscription is, and instead gives you a long paragraph breaking down various amounts, none of which sums up to a new, clear commitment to increase subscriptions or breaks it down by LPs.

Amendment 20 is an increase in capital commitments. It doesn't say that it is. It doesn't

specify an amount. And it doesn't need to because so much remained available at the time. And Rigmora never thought it did.

What it does do is continue to tinker with the fund's internal mechanisms for tracking investments, largely in order to deal with management and team economics, in particular with carry. Amendment 20 talks about plans for commitments and budgets and contributions that the fund already has, and it continues to move them around for the sake of internal accounting and management carry.

You see that's how Dr. Harrison described it, as essentially accounting devices, accounting for companies and investments that the fund already had.

And you can see here, in a chart from Dr. Strebulaev's report, how the pools evolved over time. And in some ways, Your Honor, I think this is a much more interesting and telling report than the various Excel spreadsheets. Because what this shows you is how, over time, and with the pools and with the amendments, essentially, the GP and the fund were moving companies from one place to another, corresponding to how they were thinking about

management team carry and distributions to group the economics for internal accounting purposes.

But none of this internal accounting and rearrangement does anything externally to the arm's length relationship between the LPs and the fund as to how much they would commit.

I mentioned, Your Honor, that there was no need to increase this contingent subscription at the time of Amendment 20. And the parties knew that at the time. As of the time Amendment 20 was entered, they had just increased the contingent subscriptions by the collective billion dollars that we saw in September 2020.

What appears to have happened is that the GP backed into its understanding of Amendment 20 as they ran out of money as it came up against that threshold where it had drawn down the committed capital and was looking for ways to find arguments to say that the LPs owed more.

That's how the GP's CFO described it in his deposition. Again, he didn't come to testify at trial, but in his deposition he said this understanding of Amendment 20 "developed over time." And it's clear that the understanding of Amendment 20

as somehow increasing capital commitments or subscriptions wasn't a contemporaneous understanding based on that amendment itself or its text, but something that developed over time. And the time that had passed between Amendment 20 and now is the same time in which the GP fully had drawn down its commitments, was unable to secure financing from third parties, and needed to find a way to somehow get more money.

I think you've also seen that the GP anchors its argument not in the text of Amendment 20 or not in the text of paragraph 5, but instead on the negotiating history and subsequent conduct, which is contrary to Cayman law. Cayman law tells you don't draw inferences about what the contract means from the negotiations that led up to it. And there's an entire agreement provision in the LPA which also suggests that you should look at the LPA and its text but not at the negotiating history and term sheets that were exchanged in advance.

I'd also note, Your Honor, that one of the things Mr. Berdon pointed to as indicative of the meaning of Amendment 20 was on Slide 10, and Exhibit A, repeatedly referring to it as an exhibit to

Amendment 20, when it wasn't. It was an attachment to an email and an attachment to a capital call, but not part of the LPA. And so that, again, is not part of the contract whose terms the Court must construe in order to ascertain whether there is an existing obligation on the part of the LPs to contribute more money.

I think it's telling, Your Honor, that the GP has struggled so extensively to clarify its position on the total amount of commitments to the fund. It hasn't done that consistently in this case, in the Cayman case, and it hasn't done that consistently as it has faced other third parties.

I've mentioned, and I won't belabor it, but I will mention it one last time, that the GP didn't keep a list of partners, and their contingent subscriptions, where it had in one clear place a stated, known amount of investable capital subscribed to the fund.

And instead, it has presented different numbers at different times to different third parties that are really all over the map. And they're all over the map if you map them, which we've done here. This is just dots reflecting the same

things that I showed you in the previous chart. But the GP has a shifting theory of contingent subscriptions. It does not identify consistently a sum certain as the LPs' subscriptions to the fund, but, rather, kind of ranges all over the place, where these are big numbers, but they're big numbers with real differences. There are hundreds of millions of dollars in difference as to what the GP thinks the contingent subscriptions or investable capital of the fund are.

And I think, again, in a world in which the LPA requires the GP to know that number and write it down, and the ELP Act requires the GP to know that number and write it down, and where that's a number and amount of subscription that the LPs have to have on hand to be called on ten days' notice, the GP shouldn't get credit for numbers that move.

And this is again indicative that it is backing into an Amendment 20 or pool theory in order to somehow create more headroom to justify in hindsight capital calls that were invalid at the time they were made. In fact, ten days before trial, the GP still wasn't sure what Amendment 20 did or what precisely the LPs' commitments were.

And you see again, there's more than $100 million difference in what Dr. Harrison told me ten days before trial and the position that they're advocating to the Court today, that it's something like $2.85 billion. That's a number that the GP is supposed to know and keep track of and can call on ten days' notice, but ten days before coming to this Court Dr. Harrison still didn't know what it was.

And I pause on that, Your Honor, also, again, because, under Cayman law, a contractual obligation requires clarity of terms. And specific performance requires clear and convincing evidence. And the burden is on the GP to show you that, to show with clarity of terms what the LPs' subscription is, and to show you clearly and convincingly if they want to obtain specific performance.

And if the GP can't specify a number and cannot specify a contractual source for that, and cannot specify the particular contractual source that this contract requires, which is the equivalent of a subscription agreement in paragraph 3(c), they are not entitled to the relief that they seek on these capital calls. The capital calls are not valid.

And the capital calls aren't valid

because there's no contingent subscription remaining. And this is fairly straightforward, Your Honor. Unlike the GP's CFO, the LPs' CFO did show up at trial and he did testify. And he showed you that as of today, taking the contributions in total, the amount of capital contributed to the fund is $2.69 billion. There's no dispute that's greater than $2.425 billion.

The only question around that $2.69 billion is whether the LPs' $390 million in "deemed contributions" count as capital contributions.

But, Your Honor, they should. "Deemed" means deemed. It's -- I wanted to cite Black's Law Dictionary, but I'm told this is the authoritative British dictionary on English law. But they are the same. And "deem" means deem. And when we deem something, we should treat it as what it is.

For its own purposes, the GP treated deemed contributions as contributions. Dr. Harrison's $54 million of contributions includes cash, it includes some distributions from the fund and contributed back, credit against his management fee, and some portion of the value of his carry.

That -- what I asked Dr. Harrison here is exactly what the LPs did. That is, they had

distributions from the fund that they contributed back. And instead of round-tripping it and taking the cash all the way out and putting it all the way back in, the distributions were deemed contributed.

And you heard Mr. Berdon tell you that the GP has $2.4 billion in distributions to the LPs from the fund. That 2.4 billion includes the 390 million that we contributed back in. So it counts as a distribution for purposes of calculating the distributions coming out, but it was just recontributed back in. And that's why it counts towards the $2.69 billion in contributions. There's no question and no real dispute here that distributions of value returned on the capital above the investment, which could have come out in cash and are counted for the purposes of distribution, when they are reinvested, are just the same as new cash money coming in. It is in fact new cash money. It's just a reinvestment.

So, Your Honor, I know this has been a fast-moving and complex case and there are many pieces. But, really, for the capital calls, it should end here. This claim fails because they are not within the contingent subscription. The contingent

subscription is $2.425 billion. The LPs have exceeded that. There's no basis under paragraph 5 for the GP to request in excess of the total amount of the contingent subscriptions. That's what they've done. And because they've done it, the calls are improper.

Of course, capital calls also have to be in accordance with an approved budget. And that, again, is in paragraph 5(a)(ii) of the LPA.

When the GP submitted budgets for approval, it didn't just submit one line and a number. It submitted an investment memorandum, a CFIUS memo, the actual budget approval authorizing the budget, and a capital call for the corresponding investment.

This is what one of the emails looks like. Both Dr. Harrison and Dr. Rybolovlev understood that the investment memorandum describing what the investment was for and budgeting the amount for that investment out over time in tranches tied to milestones was part of the budget package that the LPs were presented with and that they were asked to approve.

The investment memoranda provided a detailed overview of the project for which the budget was submitted. They included all kinds of details

about it, including the investment thesis, risks, the R&D plan, an overview of the company.

And they included the milestone-based tranche funding. And this is an example, again, for Evercrisp. I think these tranches are important, Your Honor, because you've heard so much about budgets from the GP. But you've also heard from both parties and all the experts that early-stage biotech investing is risky. And it's risky because lots of companies don't make it out of the first tranche. They don't make it past the first milestone or the second or third.

There are points, and you can see here, "self-delivery properties demonstrated in vitro," "self-delivery properties demonstrated in vivo." There are things that the therapy needs to accomplish in order for it to be effective and in order for it to unlock the next tranche of funding.

It doesn't make sense to get $20 million for an IND if you haven't completed all the steps that lead you to the point where you would have an IND to submit.

So tranche-based funding, as you've heard from Dr. Rimm and Dr. Strebulaev, is important in biotech investing. It was also important to these

particular parties and the investing that they did, and it maps out what these companies are trying to achieve over time.

And you see that, again, in the investment memorandum for Marlinspike and Apertor. These are examples.

And then when a budget was approved, there's a one-page approval form here which simplifies it down. And that really -- this is what the GP is relying on when they're telling you that they're approved budgets. They're looking at that total number and disregarding the tranche-based financing and the milestones to which those tranches are tied.

But I will put it to Your Honor that that doesn't make sense in the context of these kinds of investments, where it isn't -- where there are gates, they're basically hurdles. I mean, we call them milestones -- you can call them something else -- but it is a threshold that you need to pass through and accomplish in order to move on to the next step. If a drug isn't effective at the first step, you don't test it at the next step. If it's not effective in mice, don't test it in humans.

So each of these tranche-based

financings is designed to allow the budget to progress over time. And again, remember what I said at the beginning and what you heard from Dr. Rybolovlev and from multiple witnesses in this case, which is early-stage biotech investing is high risk. Lots of companies are not going to clear all of these hurdles. These hurdles are hard, some of them, and they won't clear all of them.

And so there's no expectation at the end of the day that the full budget will be drawn for every one of the ten portfolio companies. That's not consistent with the investment thesis or the market expectations in this area.

And again, the fund invested heavily in these companies, in these early-stage companies over time. From the point of initial investment until May 30, when the calls were made, you can see tens of millions of dollars here for each of them. It's not that they were starved and unable to achieve their goals for lack of funds. They had funding.

But again, the expectation is sometimes, you know, for many biotech investments, the thesis won't play out. And, in fact, it didn't. Despite all of those investments over time, for the

early-stage companies, they all missed milestones. And you heard that from Dr. Rimm in testimony here. And this, again, is a chart. It's a little bit of a complicated chart, but it shows you effectively with the dots what the milestones were. And with the red, that they were missed. And they're missed across the board for all of the companies, and many of them were completed late.

But if you just look, for example, at Aethon, Aethon's budget was meant to progress a cancer treatment all the way from initial drug discovery through candidate nomination, preclinical studies, and an investigatory new drug filing with the FDA, which, if approved, would have permitted Aethon to start clinical testing. It made some progress, but it wasn't able to complete the development candidate nomination, or DCN, milestone by the third quarter of 2024. And as Dr. Rimm testified, the DCN is a critical go/no-go decision point in drug development.

So if you haven't isolated a molecule as the development candidate that the company is going to focus on, there's a big hole in the company's plans. It can't progress to preclinical testing, like for dosing or toxicity. And without the preclinical

testing, it could never file an IND application.

It doesn't make sense to fund a budget for an IND application that you cannot make because you have not identified a candidate molecule that meets the criteria and can be tested. And that's what the back end of budgets are intended to cover.

Nonetheless, Aethon's May 30 capital call for $5 million drew from its final tranche, which was only supposed to be unlocked upon the filing of the IND application with the FDA.

Again, that's a clear milestone. It's one that it missed. And it's one, also, that investors can assess. You don't need to be a biochemist to know whether an IND application can be filed with the FDA. That's something the GP or the company can report. And that's why calls for companies that miss milestones aren't within the budget.

It wasn't just Aethon. The fund had invested heavily in each of these companies at the core of this dispute for over a long period of time. And despite that, all of them missed these milestones.

Initial had sought to develop a cancer treatment. It was supposed to nominate a DCN in Q2

2024, but it never did, and the GP nonetheless called $20 million for it.

Apertor was focused on age-related diseases and had multiple programs. It identified a DCN, but it failed to progress the drug to the very first regulatory approval step.

Evercrisp was focused on genome editing. It was supposed to have filed its IND application by Q2 2024, but it still hasn't done so.

Red Queen said it would achieve a DCN for its RSV program by April 2022, but it's failed to nominate a drug candidate.

Deep Apple sought to incorporate AI into drug discovery. It was supposed to file the first of its two IND applications in Q1 2024. It still hasn't done so. But the GP called $28 million of capital for it. These are all in the Rimm report at JX 1579.

But, Your Honor, this is why the capital calls are not within the approved budgets and why they're not made in good faith. The LPs aren't starving successful companies of money that they need in order to achieve their goals. These companies have been funded. They were funded on a tranche-based

system. They were supposed to meet milestones to unlock the next tranche, and they haven't done so.

The GP tells you, and Dr. Harrison has told you, that the milestones are obsolete and irrelevant and that the companies often pivot away. But many other witnesses, including witnesses at ATP, told you that milestones matter.

You saw that from Mr. Finkelman, the GP's general counsel, in the deposition testimony that Your Honor watched outside of the courtroom when it was sealed, which I will not put up on the screen, but where Mr. Finkelman himself recognized the importance of milestones as a gating mechanism for fund financing for those companies.

The GP's own chief scientific officer, Dr. Ehlers, acknowledged that milestones were important.

Mr. Bogdanov agreed that milestones are important.

It's not surprising that the fact witnesses agree -- the experts agree as well -- that industry-leading biotech and venture capital experts explained at trial that milestones are industry-standard mechanisms for investors to manage

their risk. And that's important in biotech investing, which is risky.

Dr. Harrison disagrees for purposes of this litigation. This is what he said at trial, that they're obsoleted or that they're irrelevant. But when Dr. Harrison goes out to market, including in the week before trial, in this deck, produced after his last and third deposition day, what he's telling investors now is that "Milestone-based tranches of capital infused over time ..." are how ATP manages its investment. This is what he's saying contemporaneously and outside of this courtroom.

So for those reasons, Your Honor, the capital calls for those early-stage companies are not within approved budgets because the approved budgets contemplated those tranches of financing being tied to milestones that they haven't met.

And for Replicate, there is a separate reason that the capital call fails, because of this $300 million financing contingency.

So even if Your Honor were to find somehow that there is some headroom, notwithstanding the clear subscription agreements, the capital call claim would still fail because these are not in

accordance with approved budgets.

They fail a third hurdle as well, Your Honor -- and I will pause just briefly on that -- which is under LPA 5(a)(ii), capital calls also must be consistent with the GP's fiduciary duty. The GP is a fiduciary of the LPs. The ELP is essentially a trust, as a matter of Cayman law, and it's synonymous with the limited partners, and the GP owes them a duty. It must call capital for proper purposes. If it doesn't, the capital calls are invalid under Cayman law and under the LPA.

Here is the ELP Act explaining the obligations of the GP to "act at all times in good faith and ..., in the interests of the exempted limited partnership ...."

And, Your Honor, I would just pause for a moment on Section 19 of the ELP Act, which I think is an important level set in this case, because the GP speaks frequently about the state of the companies and what's owed to the companies and how they need more money. And that may be how Dr. Harrison thinks about it or should think about it when he has his director hat on as a director of a portfolio company. But when the GP is acting as the

general partner of an exempted limited partnership, its duty is to the LPs. It is a fiduciary of the LPs, and it is to act in their interests, and not in the interests of the portfolio companies, when it is putting its GP hat on.

And it's undisputed that capital calls have to be consistent with the GP's fiduciary duties. That's what the GP's own Cayman law expert says.

One reason -- I had paused so long on this chart, Your Honor, I will skip past it again, except to say even if you were to find that the milestones are not part of the approved budgets, I would say that it is not consistent with the GP's fiduciary duty and not a proper purpose to call budgets to fund companies for milestones that they have not met for new phases of life that they cannot progress to because they haven't accomplished what they needed to get there. So even if you buy the GP's theory on budgets, you still should find these capital calls invalid because it's not a proper purpose.

I would also suggest, Your Honor, that it's not a proper purpose because it quadrupled in the course of two weeks for no good business reason, and largely as an effort to put pressure on the GPs.

And for the clinical-stage companies, I think that problem is really stark. That is, the GP called these capital, even though Ascidian's management didn't project needing additional capital. The GP hadn't anticipated calling it for Marengo, and the Replicate board didn't know anything about it.

Dr. Ehlers is the CEO of Ascidian, and he thought Ascidian was fine for a year.

The GP called $30 million for Marengo on May 30, even though on February 3, on April 29, on May 14, and on May 15 -- two weeks before its own forecast projected calling zero for Marengo -- all of a sudden on May 30 it called $30 million for Marengo. That's not a proper purpose, and it's not consistent with the GP's fiduciary duty to the LPs.

The Replicate chair, again, Dr. Ehlers, testified that he wasn't aware of the $13 million capital call made for Replicate on May 30.

So, Your Honor, under the LPA, capital calls have to be within the contingent subscription. They must accord with the approved budget. And they have to be consistent with the GP's fiduciary duties and for a proper purpose. These capital calls are none of those things.

They fail across the board. So we would ask Your Honor to reject the GP's request for specific performance of the capital calls for those reasons. They have no subscriptions left to call against. They're not in accordance with budgets. They're not consistent with fiduciary duties.

And to the extent they're requesting relief as to future capital calls, that's unworkable, because any future capital call must also meet these criteria, and it's impossible to predict now whether a future call will meet these criteria. But I can predict one thing was certain, which is that it can't meet the subscription agreement because it would already be in excess of it.

I'll turn, Your Honor, to the GP's claim that the LPs need to discuss and approve budgets.

And on that, again, it's rooted in the LPA in paragraph 5(a)(ii), which says that budgets are to be approved by the LPs.

And Amendment 22 requires discussion of certain particular budgets conditioned on the approval of royalty financing. And the LPs did discuss, consider, and approve budgets in good faith.

You've heard a little bit from the GP and from us in our briefs about the proposal that the GP sent for five companies specified in Amendment 22 on Christmas Eve of last year: Aulos, Replicate, Nereid, Nine Square, and Ascidian.

And you heard from Mr. Bogdanov at trial, who walked through each of these five companies. And you've heard, really, that there are reasons that the budgets for these companies didn't progress. That is, for Nereid, the GP proposed a merger but dropped the idea and didn't pursue any further discussions.

For Nine Square, the parties agreed to postpone the Nine Square budget approval until later.

For Replicate, the LPs discussed and approved a budget. You've heard extensively from Dr. Harrison and his counsel that Mr. Bogdanov asked questions about Replicate. Of course he did. Replicate had consumed tens of millions of dollars over several years and switched directions. They were asking for tens of millions more.

He asked questions and then discussed them and then approved an $18 million budget increase, $7 million more than the initial request.

I do not think that Your Honor can find that the LPs failed to discuss budgets in good faith with the GP or to approve budgets when, in fact, they did so by asking questions, learning more about the companies, and agreeing to approve not just the requested budget, but a greater budget than had originally been requested. That is, the gathering of information and better understanding of the company led to a greater investment in the end.

Dr. Harrison takes these questions offensively as "a kind of blockade" or an "obstructionist tactic," but it is not at all unreasonable. It is not bad faith to have questions about how the GP is making investments and how companies are progressing when, again, $433 million had been invested in the ten companies called on May 30.

Tens of millions of dollars had been invested in the companies discussed pursuant to Amendment 20. It's reasonable to have questions about how that money is being used, particularly, as I just described, when those companies are not always effectively achieving their milestones.

The LPs discussed Aulos and Ascidian.

They did so in good faith. They did so over the course of December 2024, March, May.

And against the background of all of this, the GP tells you that Mr. Bogdanov's email from May 15 is somehow indicative that the LPs weren't discussing budgets. But, Your Honor, it was the cumulation -- or not even the cumulation. It continued after that. It fit into a long chronology of budget discussions and back-and-forth between the GP and the LP over these budgets and these companies.

And I would just note, Your Honor, that it's part of good-faith discussions about reallocation, where Dr. Ehlers, in August of 2024, proposed to Dr. Harrison a reallocation of budgets and assets within the companies. Dr. Harrison proposed it to the LPs, texted about it internally. And those discussions continued.

And you see some of that back-and-forth here.

Again, this is the GP's recommendation in April, that they collapse certain of the early-stage companies and reallocate their capital. And the spreadsheet that Dr. Harrison sent on April 29 includes these reallocated scenarios.

He sent a term sheet on May 11. In that term sheet, he asked for control over portfolio company budgets, which would be a departure from the LPA.

And after that, it's true, Mr. Bogdanov sent a May 15 email and expressed that the LPs don't see a path to commercial success for the early-stage companies, but understood the GP held a similar view and wanted to continue to discuss that reallocation proposal with it.

Again, Your Honor, I would put it to you that this is not a breach, it's not a repudiation, and it's not a bad-faith discussion of budgets.

And again, hard to say that it's bad faith or a breach of a duty to discuss budgets or reallocation when the GP itself is taking essentially the same proposal out to the market now in October 2025.

I'd also suggest, Your Honor, that the May 15 email doesn't reflect a purported liquidity crisis. It was years after the 2022 email from Mr. Bogdanov that the GP is relying on. And not just years, but hundreds of millions of dollars later.

Also hard to believe that the May 15

email reflects a liquidity crisis when Mr. Berdon himself is telling you that they believe that the LPs have assets available.

So, Your Honor, I think the GP's request for relief on the budget claims should fail. They've more than -- the LPs have more than satisfied any obligation to discuss and consider budgets. The GP hasn't put on any evidence that a rational good-faith investor would, in fact, approve these budgets. And the GP's request that the LPs should be deemed to have waived approval rights basically rewrites the LPA for no good reason.

Your Honor, as to the default charge, I understood the request for that relief to be withdrawn. That is the one thing that has come up in the Cayman proceeding. Essentially, the Cayman proceeding has a status quo order. That's the injunction that Mr. Berdon referred to that prevents the GP from imposing a global default or a default against the LPs.

Your Honor, if the GP continues to pursue the default claim in violation of the Cayman order, the LPs will raise that in the Cayman court. That is the provision of the amended pleadings that

Mr. Berdon quoted to you. But that amended pleading was done on consent. The GP's counsel is aware of it. It had an opportunity to object to the LPs' pleading and didn't. And so that's going to go forward in the Cayman court.

I don't think there's any reason to draw adverse inferences against the LPs here because they obtained essentially an injunction against the default from the Cayman court, which thought it appropriate to grant it and will address it in January.

The GP is here as a plaintiff, as a representative of the fund, but seeking to exculpate itself. We think it should be denied for that reason and for the reasons stated in our briefs.

And, Your Honor, I will wrap up by saying a few things. One is, I think at the end of the day, as you've heard me say, this is a simple case. It's a contract claim, governed by contract. The contract provides that the GP can only call the contingent subscriptions of the LP, and it's clear what those are.

And the capital calls fail for all the other reasons in the LPA as well. There's ample

evidence that the LPs discussed the budgets and did so in good faith; that they in fact approved them. And for the ones that weren't approved, that there were good reasons.

And I would end by noting that the GP here carries the burden of showing clarity of the terms of the contract, clear and convincing evidence of its right to specific performance. And you haven't seen them show you anything that looks like the equivalent of a subscription agreement. You haven't seen them show you any deal that fell through for financing these companies because of rushing concerns or know-your-client concerns. You haven't seen them show you any evidence of calls being consistent with budgets.

There's lots of missing evidence from the GP here, and very clear contractual provisions that show what the GP -- what the LPs committed to fund; and, again, evidence showing that they funded it and contributed it in full.

So for those reasons, Your Honor, and those stated in our briefs, we would ask you to reject the GP's claims.

THE COURT: Thank you.

ATTORNEY BERDON: Andrew Berdon for ATP.

Thank you.

A couple things that Ms. Selden said that I think I'd like to comment on.

First, she made the assertion that Exhibit A is not actually part of Amendment 20, that it's a piece of correspondence between the parties that's extracontractual.

And I would just direct the Court to paragraph 13 of Amendment 20. And it says, "Schedules. The Schedules supporting certain of the calculations contained in this Amendment and set forth in Annex A hereto are hereby incorporated by reference into this Agreement as if set forth herein at length."

So the idea that this was -- Exhibit A was post-contractual interaction between the parties that can't be taken into consideration in contract construction is plain wrong. It was incorporated by reference.

So let's take a quick look at Exhibit A again. And so, Marco, can we please go to Exhibit-- I'm sorry, page 10 of our deck.

And what we've heard from Rigmora is

that Amendment 20 is some kind of a mess, where you can't look for the amount of capital committed by individual partners.

But if you look here, on page 10, please, of our deck, you have the name of each limited partner and the amount of their subscription; and in particular for Pool V-3, because there really is no question about the amount of capital that's been committed in Pools V-1 and V-2.

And again, Ms. Selden said that the amendment is lacking any of the specificity that one would look for, including, you know, breakdowns of exactly who was required to contribute what.

Marco, can we go to page ending in 6789. Amendment 20. I'm sorry, 6789 Bates number.

Okay. So let's take a look at paragraph 22(b). And that's on the fifth page of the exhibit. Paragraph 22 is "Pool ATP V-3." There we go.

And so let's take a look at (b), which is the next page. And let's zoom in, please, so we can take a look at the section that says exactly who is responsible for contributing what to Pool V-3. There are the names of each of the limited partners,

the specific amount of their capital commitment. It's directly contrary to what you've just been hearing.

The only thing that's missing there, effectively, is the address. This serves all the purposes of a capital commitment. It was negotiated to be one.

Your Honor, we've also heard about the portfolio concept; that the idea between the parties was that there would be judgment exercised about whether or not to continue to fund companies that weren't doing well. Well, under the LPA, the management authority is vested in the general partner. Once a budget is approved, the LPA does not impute any further milestone-based controls on the LPs. Once the budget is approved, it's up to the GP to run the business of the fund.

And you heard from Dr. Liras that these companies were making progress. And so the idea that there was a -- a gate and that there were specific determinations made by Rigmora that there were problems in the portfolio, well, none of that analysis was available or had been done by anyone with any skill before May 15.

Everything that you heard from Rigmora

about the status of the companies -- whether some were doing well or not, the specifics of what they had achieved -- is after-the-fact, litigation-inspired rationalization. You see no contemporaneous business communications within Rigmora breaking down the detail and whether these companies were actually worth further investment.

You had Mr. Iskhakov go through and check off to see if, using just the investment memos and just the quarterly reports, whether there had been some missed milestones. And he reported back to Mr. Bogdanov that in some cases there were and in some cases there weren't. And Mr. Bogdanov on the stand had to admit that he really didn't know which ones had missed and which ones had made it by May 15.

So Dr. Rimm's conclusions, quite frankly, are irrelevant to the question of whether, on May 15, their instruction to shut down the seven companies was backed up by a fair and rational assessment.

And, again, subsequent events show that Deep Apple, far from being worthless, now has a Big Pharma collaboration agreement. Other companies in the portfolio continue to move forward and make

real scientific progress.

And so the idea that this was a cleansing of the portfolio driven by the LPs pursuant to a contractual right and the natural order of things is all invented for the purpose of this litigation.

Your Honor, again, Rigmora elides just completely the plain math of commitments to V-1, V-2, commitment to V-3, how does the headroom stack up. They say there's $2.6 million in contributed capital. If you take away the double-count, it's 2.3. And if you take away the double-count, there is still headroom between that 2.3 and the 2.45 that they agree they committed to, in any event.

There's about 110 to $120 million in headroom; enough to cover each and every capital call, even if you subscribe to the idea that there's only $2.45 billion in overall commitment, once you take away the double-counting that we point out in our brief.

Just very briefly, Your Honor, on the idea that the word or the equivalent thereof cannot include a document as detailed as Amendment 20. Their expert witness admitted that you can have an alternative to a full subscription agreement.

Let's get the slides up. Beautiful.

Here we have Mr. Phillips' question, and I'm asking -- roll back, please. I'm asking the question -- forgive me.

"Question: So strictly speaking, Paragraph 3(c), as written here, provides that a subscription agreement is not necessary to create an additional subscription of capital?

"Answer: Not necessary, I agree."

And so it really comes down to the question of whether there's any gap between the specificity contained in Amendment 20 and the list. The only thing that's missing is addresses. And so we would submit that Amendment 20 is binding for $310 million of additional capital commitment on top of the $2.45 billion, and that the cumulative amount of contributed capital to date was $2.3 billion, because the backing out of the double-count.

So, Your Honor, what we really have here, Your Honor, is a lot of *post hoc* rationalization, a breakdown that we believe is driven by the limited partners' strategic decision to get out of the market for early-stage biotech investing and that the capital calls that were served were within

the capital commitment, within budget, served in good faith, for a proper purpose, and that specific performance is entirely justified and the balance of equities falls clearly in our favor.

And that will be the end of my presentation, Your Honor.

THE COURT: Thank you.

One question. I asked this at the end of trial, but what is the timing? By when do you need a decision?

ATTORNEY BERDON: Your Honor, witness statements, in essence -- you know, in essence, the affirmative case has to be put in in Cayman by December the 5th. We would appreciate our not having an unknown outcome here at the time our witness statements go in. Because we want to be able to inform the Court in Cayman as to what's going on. And so in order for us to do that within the time allotted would be December 5.

THE COURT: You can't supplement your witness statements in Cayman?

ATTORNEY BERDON: Your Honor, I am not sure about the ability. It would require, I'm sure, leave of court. I do not know if leave of court is as

freely granted in the lead-up to trial. Trial here starts, I believe, January the 12th.

THE COURT: Because getting you a decision by December 5 gives me, really, seven business days to write the decision. That's not a lot.

I have a couple people; you have armies. And I know you know how hard it was to marshal this record.

So I'll do my best, but I can't make any promises.

ATTORNEY BERDON: Your Honor, that's all we can ask. And we appreciate the time and the effort that the Court and its staff have put in to supporting this matter. And with that, I'll bid you good afternoon.

THE COURT: Thank you.

Any corrections to the timing?

ATTORNEY SELDEN: No, Your Honor. I was just going to say my UK partners are here and inform me that witness statements can be supplemented and are due late in December. So I do think that there is more time.

Nor do I know that a decision of this

court would need to be included in a witness statement, as opposed to coming from counsel.

THE COURT: Is it your position that they can't consider my decision? I can't give that a lot of weight.

ATTORNEY SELDEN: We happen to have the benefit of Cayman counsel, so I would just share that there is an opportunity to supplement late in the month.

THE COURT: All right. Thank you.

ATTORNEY SELDEN: To the extent helpful.

THE COURT: Thank you for your presentations. Safe travels. We are adjourned.

(Court adjourned at 4:32 p.m.)

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CERTIFICATE

We, JULIANNE LABADIA and DEBRA A. DONNELLY, Official Reporters for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 112 contain a true and correct transcription of the proceedings as stenographically reported by us at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF we have hereunto set our hands at Wilmington, this 21st day of November, 2025.

/s/ Julianne LaBadia
Official Court Reporter

/s/ Debra A. Donnelly
Official Court Reporter

EXHIBIT R

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	)	
Defendants.	)	

[PROPOSED] PARTIAL FINAL JUDGMENT AND ORDER PURSUANT TO RULE 54(b)

WHEREAS, the Court conducted a two-day trial on October 16 and 17, 2025;

WHEREAS, the Court issued its Post-Trial Memorandum Opinion (the "Opinion") on December 5, 2025;

WHEREAS, the Court did not resolve one of the pending claims; and

WHEREAS, the parties have agreed on a proposed form of order implementing the Opinion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. With respect to the Second Cause of Action of the Verified Complaint, as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76) ("Count II") judgment is hereby entered in favor of Plaintiff

ATP III GP Ltd. in its capacity as General Partner of ATP Life Science Ventures, L.P. ("ATP") and against Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Defendants").

2. In respect of the judgement entered in Count II, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls (as defined in the Opinion) issued on May 30, 2025 for Aethon Therapeutics, Apertor Pharmaceuticals, Ascidian Therapeutics, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marengo Therapeutics, Marlinspike Therapeutics, Red Queen Therapeutics, and ATLS fees and partnership expenses in the amount of $96,960,925.88.

3. Defendants, jointly and severally, shall make such payments to ATP Life Science Ventures, L.P. in satisfaction of the Capital Calls by paying $96,960,925.88 to a segregated account within 10 days of the entry of this Partial Final Judgment and Order. Such funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware. The parties shall work in good faith to establish such segregated account.

4. Judgment is hereby entered in favor of Defendants and against Plaintiff ATP on the following counts: the First Cause of Action (Breach of Contract – Budget Approvals), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), and the Fourth Cause of Action (Global Default Charge).

5. The Court reserves decision on the Fifth Cause of Action (Declaratory Relief – Proper Actions of General Partner).

6. ATP's request for attorney's fees in connection with the above-captioned action is denied.

7. All other requests for relief are denied.

8. Court of Chancery Rule 54(b) provides this Court with discretion to enter a partial final judgment if: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal.

9. The Post-Trial Opinion satisfies the requirements of Court of Chancery Rule 54(b).

10. This case involves multiple claims against multiple parties, and the Opinion resolved all of the claims except for one, on which the Court reserved judgment.

11. The unresolved claim involves issues being resolved in a pending litigation in the Cayman Islands and is "not a core dispute in this litigation." Accordingly, there is no just reason for delaying the finality of this Partial Final Judgment and Order pending appeal.

12. Pursuant to Court of Chancery Rule 54(b), the Court expressly directs (i) that this Partial Final Judgment and Order be entered as a final order and judgment

with respect to all proceedings to date regarding the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies) (as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76)), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), the Fourth Cause of Action (Global Default Charge), and (ii) that this Partial Final Judgment and Order be immediately appealable.

Chancellor Kathaleen St. Jude McCormick

This document constitutes a ruling of the court and should be treated as such.

Court:	DE Court of Chancery Civil Action
Judge:	Kathaleen St Jude McCormick
File & Serve Transaction ID:	77974253
Current Date:	Dec 11, 2025
Case Number:	2025-0607-KSJM
Case Name:	CONF REQ - ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al.
Court Authorizer:	Kathaleen St Jude McCormick

/s/ Judge Kathaleen St Jude McCormick

EXHIBIT S

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 146 OF 2025 (JAJ)

(1) Unicorn Biotech Ventures One Ltd
(in its capacity as General Partner of Rigmora Biotech Investor One LP)
(2) Unicorn Biotech Ventures Two Ltd
(in its capacity as General Partner of Rigmora Biotech Investor Two LP)

Plaintiffs

- and -

ATP III GP, Ltd
(in its capacity as General Partner of ATP Life Science Ventures, L.P.)

Defendant

CAUSE NO. FSD 151 of 2025 (JAJ)

In the Matter of the Exempted Limited Partnership Act (2025 Revision), the Companies Act (2025 Revision) and the Partnership Act (2025 Revision)
And In the Matter of ATP Life Science Ventures, L.P.

Before: The Hon. Justice Jalil Asif KC

Appearances: Andrew Scott KC (instructed by Campbells LLP) on behalf of the Plaintiffs.

Sue Prevezer KC (instructed by Walkers (Cayman) LLP) on behalf of the Defendant.

Heard: 1 August 2025

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TRANSCRIPT OF EX TEMPORE JUDGMENT ON 1 AUGUST 2025

Friday, 1 August 2025

JUSTICE ASIF:

1. On 20 June 2025, I granted an injunction on the plaintiffs' ex parte on notice application filed on 12 June against ATP III GP, Ltd as a respondent to that application.

2. The background is a dispute between the main investor in a fund and Dr Harrison, an entrepreneur responsible for developing portfolio companies, all of whom are involved in the development of medical drugs of one kind or another. The fund is structured as a Cayman exempted limited partnership with a single general partner entity which is the defendant to the Cayman writ proceedings. I mentioned a moment ago ATP III GP, Ltd and that general partner entity is controlled by Dr Harrison.

3. The plaintiff investors, are two limited partnerships themselves, and a vehicle for a Cypriot national who is of Russian origin and says that it has contributed all of the capital which it is required to contribute. The general partner disagrees and has made a number of capital calls, mainly on 30 May this year. In default of payment of the capital called the general partner has power to serve default notices and to designate the investors as a defaulting partner with potentially dire consequences for the investors. Against that background, the investors, therefore, sought the interim injunction from me, which I granted on 20 June.

4. The terms of the injunction are as follows:

> "That, until further order, the Defendant as sole general partner of ATP Life Science Ventures L.P. is restrained from:
>
> A) taking any steps to designate, deem, or treat the Plaintiffs as a "Defaulting Partner" and

> B) taking any steps to issue or enforce any purported "Default Notice" or "Default Charge" against the plaintiffs, pursuant to the First Amended and Restated Limited Partnership Agreement dated 1 November 2012 (as amended), arising out of or in relation to the Plaintiff's non-payment of the capital calls issued by the Defendant on 30 May and 1 June 2025, respectively."

5. At paragraph 2 the injunction order then provides:

> "Until further order, the Defendant shall not issue any further capital calls to either of the Plaintiffs unless expressly agreed after the date of this Order in writing by that Plaintiff."

Then there are other provisions dealing with the service of the order, etc.

6. The return date on that injunction is the first of five matters that are before me today. Although, happily, I can record that the other four substantive aspects, namely two summons to stay the two Cayman proceedings and two directions summonses have now been agreed between the parties. I also record, by way of relevant background context, that there are ongoing parallel proceedings in Delaware between the parties commenced by ATP III GP, Ltd, I believe, on 30 May 2025, and in the Delaware proceedings, the Chancellor has made an order for the trial to be expedited and to be heard on 18 and 19 September 2025.

7. The respondent ATP III GP makes a number of complaints about the grant of the injunction but does not seek today to set aside or discharge it. What the respondent does do, however, is to apply to vary the injunction in two prime respects, which Ms Prevezer KC, who has appeared on behalf of the respondent, says is to make those terms more suitable to hold the ring between parties.

8. The first of those variations is that the general partner should be permitted to make further capital calls and the second is that the injunction should be framed so that, rather

than continuing, in effect, until further order, it automatically lapses on delivery of a substantive judgement, either in Delaware or in the Cayman Islands, as a result of the trial of the writ action, whichever of those occurs first.

9. Thirdly, in addition to those variations, the general partner seeks fortification of the plaintiffs' undertaking in damages attached to the injunction. So, I will deal with those three aspects in series. First of all, the question of further capital calls. In the course of debate during oral argument, it became clear that what is really driving this is that the general partner wants to start the clock running under the contractual mechanism so that once it obtains a judgment in Delaware in its favour, it can immediately move towards treating the plaintiffs as defaulting partners with all the consequences attendant on that status. The clock in question is 35 days, which is made up of five days from the date of the capital call until payment is due, then a further 30 day grace period during which, if payment has not been made promptly within five days, the investor has the ability to make, essentially, a late payment without necessarily triggering the ability for the general partner to treat it as a defaulting partner.

10. In support of its application to vary the injunction, Ms Prevezer indicates that the general partner will undertake, in the meantime, to take no action in respect of any further capital calls that are made. For example, in relation to the plaintiffs' potential loss of voting or approval rights, and therefore, it seems to be the motivation on the general partner's part is clearly one purely of the timing of the consequences of non-compliance with the capital calls. In other words, the general partner will immediately, on day one after the Delaware judgment has been delivered, be able to treat the plaintiffs as defaulting partners.

11. The plaintiffs, represented by Mr Andrew Scott KC, respond that that puts them in an impossible position. If the Delaware judgment goes in the general partner's favour, then the plaintiffs say it is simply not practical for the plaintiffs to fund the calls that have been made as soon as the judgment is delivered, and it seems to me that is probably right, bearing in mind the likely size of the calls that are going to be made.

12. The plaintiffs say that the general partner is, therefore, essentially able immediately to treat them as being in default with very serious consequences. The alternative, the plaintiffs say, is that they would have to pay the calls under protest with no realistic chance of any money being repaid if the plaintiffs were to win in Delaware.

13. Mr Scott points out that there is no undertaking from the general partner to make any such repayment. The general partner has no assets, and the purpose of the capital calls is to meet ongoing expenses so there is likely to be no prospect that there would be any funds left to repay the plaintiffs if they are successful in their position, whether in Delaware or the Cayman Islands.

14. In response to that, Ms Prevezer says, "Well, the plaintiffs can apply in Delaware for a stay if the judgment goes against them, in order, essentially, to give them a breathing space to fund any further capital calls." I am not sure that that is necessarily correct, given what is likely to be an issue in Delaware. In any event, it seems to me that is a rather uncertain approach to the plaintiffs' position.

15. On balance, it seems to me, I agree with the plaintiffs' position that the requested variation does not more accurately hold the ring. The right to issue capital calls is at the very heart of the current dispute. Varying the injunction to allow the general partner to

do so, it seems to me is not holding the ring, but is presupposing the general partner is likely to succeed on its current case, and I am concerned that what is driving is an intention to give the general partner a strategic advantage or the ability to apply economic pressure to the plaintiffs in an inappropriate manner, and it will be able to designate the plaintiffs as defaulting partners, immediately following the Delaware judgment without the plaintiffs having a proper opportunity to pay within the originally intended time given by the limited partnership agreement, unless they are successful in persuading the Delaware judge to grant them a stay.

16. The alternative for the plaintiffs of paying under protest, in my view, is not a real alternative given that there is no evidence of any realistic likelihood of an ability on the defendant's part to make a repayment if the plaintiffs are a successful party. So, for those very short reasons, I am against the defendant on its first request of variation to the injunction order.

17. The second area of variation is, as I indicated, to vary the order so that it no longer remains in place until further order but automatically terminates or falls away upon delivery of the earlier of judgment in Delaware or in the Cayman writ action. As the Cayman writ action has just been fixed for hearing in the middle of January, the reality is, therefore, that the Cayman injunction would determine, on judgment being given in Delaware, as the stronger likelihood, given how long the Delaware judge will take to deliver judgment.

18. Again, I am not with the defendant on this. It seems to me the difficulty with the general partner's proposal is that it assumes that the outcome in Delaware is binary. In my view, it is impossible to know in advance what will be the content of the Delaware

judgment, what issues it will decide, in what way and what impact the judgment in Delaware will have on the issues in the Cayman writ action, and indeed, in the winding up petition.

19. It seems to me the plaintiffs are right that it is for the Cayman court to retain control over the position of the injunction and whether and when it is discharged or varied in light of whatever decision is made in Delaware, and so for that reason, I also reject the defendant's request to vary the terms of the injunction to that extent.

20. So far as fortification is concerned, the general partner seeks fortification of approximately $100 million to reflect potential damage to the portfolio companies, which it says is ongoing and occurring as a result of the lack of immediate funding available to them.

21. The difficulties with that position arc seems to me, as I raised in the course of argument, first of all, there is a significant question mark over what loss the portfolio companies are suffering. The estimates made by Dr Harrison would appear to be significantly overinflated, or based on potential future values that the early-stage development companies or clinical stage companies may have in the future rather than the current-day values of portfolio companies, and so I am not confident that the figure of $100 million sought is a realistic reflection of the values of those companies.

22. Secondly, it seems to me Mr Scott is right to question the causation of any losses. It seems to me, there is some force in this submission that the impact on the portfolio companies is not from the fact that there is an injunction in place, but from the

underlying dispute between parties over whether or not the plaintiffs are obliged to provide further capital funding or not.

23. Thirdly, it seems to me this really is a very significant aspect. If there is any cost, then it is easily enforceable against the plaintiffs' interests in the fund, which are worth over US$3.8 billion, and which are within the jurisdiction of the Cayman Islands court. So, for that reason, I also refuse the defendant's request for fortification.

EXHIBIT T

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December 11, 2025

VIA EILE & HAND DELIVERY

The Honorable Kathaleen St. J. McCormick
Court of Chancery
Leonard L. Williams Justice Center
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: *ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al.*,
Del. Ch., C.A. No. 2025-0607-KSJM

Dear Chancellor McCormick:

Last evening we submitted, on behalf of Plaintiff ATP III GP, Ltd., a form of order implementing Your Honor's Post-Trial Memorandum Opinion. Dkt. 290. Defendants did the same. Dkt. 289. Prior to the filing, we exchanged proposed forms of order and, other than one issue, were largely in agreement.

The one issue does not arise from any disagreement about this Court's ruling, but about language sought by Defendants to avoid paying the judgment in a manner that will benefit its ultimate beneficiaries -- the portfolio companies for whom capital was called and ATP. Defendants ask this Court to direct payment owed to Plaintiff to an escrow account, which is relief Defendants never sought despite the fact that

they have long known of the precarious financial position created by their failure to fund their obligations. To avoid unnecessary dispute, Plaintiff is agreeable to have the funds be held in a segregated account in Plaintiff's name. Both sides agree that the funds are subject to the oversight and supervision of United States Bankruptcy Court for the District of Delaware.

The distinction between an escrow account and a segregated account may be subtle, but it is important. After receiving and assessing the Court's post-trial opinion—which achieved this action's central goal of providing the portfolio companies runway to survive for the coming months—Plaintiff and two affiliates commenced voluntary chapter 11 reorganization cases to put the Fund and its portfolio companies in a position where they can reorganize and put resources to work continuing to fulfill their mission to research and develop new life-saving therapies and generate value for its investors. The estate in the recently filed cases "is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). All of the rights associated with this Court's rulings, including the specific performance remedy, constitute "property of the estate."

Moreover, upon the commencement of the cases, the automatic stay in 11 U.S.C. § 362(a) went into effect. While this Chancery action is not stayed because it is not an action against a debtor but an action by a debtor, Defendants' efforts to interfere with the Plaintiff's rights to receive the money owed would violate the automatic stay; no doubt this is why they acknowledge the Bankruptcy Court – and only the Bankruptcy Court – is the right court to decide what happens next.

To be clear, Plaintiff does not believe that it has to agree to the segregation of the funds at all because Defendants are not secured creditors of the Plaintiff; Plaintiff merely offered it as an accommodation to ensure that funds to which Plaintiff is entitled can be quickly put into the bankruptcy estate (unless, of course, Defendants intend to ignore this Court's judgment).

Despite forms of order that are largely in agreement except for this important distinction, Defendants devote six pages to complaining about the commencement of the chapter 11 cases. This inappropriate (and legally wrong) diatribe is irrelevant to what the Court should order, which is to order Defendants to pay what they owe to Plaintiff. Defendants appear to know that this digression is irrelevant. In addition to acknowledging that the Bankruptcy Court is the court with jurisdiction to determine what happens to the funds once received, Defendants expressly state that

if they want to seek to dismiss the chapter 11 cases, they will need to take their complaints to the Bankruptcy Court first. Plaintiff will not burden this Court with responses to most of these attacks, and welcomes the opportunity to demonstrate to the Bankruptcy Court that Plaintiff acted appropriately in managing the affairs of the Partnership and that Defendants wrongly withheld critical funds to companies devoted to developing ground-breaking and lifesaving therapies. Having won from this Court a nearly nine-figure judgment against its pre-bankruptcy funding source and armed with findings that firmly support that it is worthwhile to attempt to save these companies, Plaintiff and its affiliates are seeking the protection of chapter 11 and intend to seek to reorganize in a manner that maximizes value for all stakeholders. If Defendants disagree, they are free to make that case in the Bankruptcy Court.

Plaintiff is compelled to respond to one misleading statement made by Defendants relating to the testimony of Mr. Yanchik. Mr. Yanchik's testimony referred to a "liquidation." That is not what the Chapter 11 filing is; it is a reorganization. Defendants know well that a "liquidation" is exactly what Plaintiff and its debtor affiliates are trying to avoid by commencing chapter 11 cases. Mr. Yanchik's testimony is fully consistent with ATP's chapter 11 filing. If, as

Defendants' letter suggests, a "liquidation" damages Defendants' investment, they may want to ask themselves why they are pursuing a liquidation in the Cayman Islands. In any event, that is not an issue this Court needs to resolve, but will be before the Bankruptcy Court.

Plaintiff requests that this Court enter its proposed form of order, which is consistent with the United States Bankruptcy Code, even with our accommodation of holding the funds in a segregated account subject to the Bankruptcy Court's supervision.

Should Your Honor have any questions, counsel are available at the Court's convenience.

Respectfully,

/s/ Michael A. Barlow

Michael A. Barlow (#3928)
Words: 888 / 1,000

SMD/sls
cc: Register in Chancery (Via File & Serve*Xpress*)
Blake Rohrbacher, Esquire (Via File & Serve*Xpress*)
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EXHIBIT U

[2023] UKPC 33
Privy Council Appeal No 0055 of 2020

JUDGMENT

FamilyMart China Holding Co Ltd (Respondent) *v* Ting Chuan (Cayman Islands) Holding Corporation (Appellant)

On appeal from the Court of Appeal of the Cayman Islands

before

Lord Reed
Lord Hodge
Lord Lloyd-Jones
Lord Briggs
Lord Kitchin

JUDGMENT GIVEN ON
20 September 2023

Heard on 15 and 16 November 2022

Appellant
Charles Kimmins KC
Mac Imrie KC
Paul Smith
Ryan Hallett
Mark Tushingham

(Instructed by Charles Russell Speechlys LLP (London), Maples and Calder (Cayman) LLP and Sidley Austin (Hong Kong))

Respondent
Tom Lowe KC
Hilary Stonefrost
Gemma Lardner
Corey Byrne
(Instructed by Sharpe Pritchard LLP and Ogier (Cayman) LLP)

LORD HODGE:

1. This appeal raises the question whether an agreement to settle disputes arising out of a shareholders' agreement by arbitration may prevent a party to that agreement from pursuing a petition to wind up the company whose management is the focus of those disputes. The other side of the coin is whether an application to the Grand Court to wind up that company on the just and equitable ground makes all matters which are the subject matter of those court proceedings non-arbitrable, thereby rendering inoperative the agreement to resolve such disputes by arbitration.

2. Ting Chuan (Cayman Islands) Holding Corporation ("Ting Chuan") and FamilyMart China Holding Co Ltd ("FMCH") are the shareholders of China CVS (Cayman Islands) Holding Corp ("the Company") which is the company that is subject to the winding up proceedings. Ting Chuan owns 59.65% and FMCH 40.35% of the issued shares in the Company.

3. The relationship between Ting Chuan and FMCH so far as is relevant is governed by a shareholders' agreement dated 11 May 2011 ("the SHA"), pursuant to which four of the Company's seven directors are nominated by Ting Chuan (referred to as "the majority directors") and three are nominated by FMCH (referred to as "the minority directors"). FMCH alleges that there was an understanding between it and Ting Chuan as to how the Company would operate its business.

4. The Company through nine subsidiaries operates a very substantial convenience store business in the People's Republic of China ("PRC") under the brand name "FamilyMart". As at 31 December 2021 the business had an annual turnover in excess of US $1.32 billion. The Company was licensed to operate through its subsidiaries the FamilyMart brand in the PRC in return for a royalty of 1 per cent on all revenues. The Company is solvent and operates as a going concern. As explained below, nobody intends to wind up the business, but establishing the grounds for winding up the Company on the just and equitable ground is a necessary step in the company law of the Cayman Islands in order to obtain a court order for the buy-out of the shareholding in the Company of the majority shareholder (here, Ting Chuan).

1. Factual background

5. FMCH is a Japanese company whose owners are two enterprises, Taiwan FamilyMart Co Ltd and FamilyMart Co Ltd (referred to as "the FM parties"), one of which has had considerable success in the convenience store business in Japan and elsewhere in Asia for over 40 years under the brand name "FamilyMart". The owner of Ting Chuan is Ting Hsin (Cayman Islands) Holding Corporation ("Ting Hsin") which was until 2006 the majority shareholder of the Company. Ting Chuan and Ting Hsin are

part of a group of companies founded by the Wei family which includes entities related to or associated with Ting Chuan or Ting Hsin (referred to as "the Ting Hsin Group").

6. Members of the Ting Hsin Group have experience in the food industry but lacked expertise in the convenience store business. To make up for that lack of expertise they required the assistance of staff provided by the FM parties to act as departmental heads with a view to transferring those responsibilities to Ting Hsin's own staff at a later date. FMCH believes that the Ting Hsin Group is owned and controlled by the majority directors who are members of the Wei family, and their family members.

7. FMCH presented a petition to wind up the Company to the Grand Court on 12 October 2018. In that petition FMCH alleges that the Company was incorporated as a joint venture vehicle to develop and conduct a convenience store business in the PRC. The Ting Hsin Group sought by the joint venture to combine the FamilyMart brand and the expertise of the FM parties with the infrastructure which the Ting Hsin Group had established in the PRC. Relations between Ting Chuan and FMCH became strained because FMCH believed and believes that since about 2012 the majority directors of the Company have diverted profits of the Company to members of the Ting Hsin Group which are suppliers of the Company, being food factories and the suppliers of logistics and information processing services to the Company, and have prevented the minority directors from gaining access to information relating to the Company's business, including the identity of those related party suppliers. FMCH asserts that, by so acting, Ting Chuan acted in breach of an understanding that the contracting of such services would be transparent and disclosed by the Ting Hsin Group to the FM parties and would be on a footing that the terms were fair and reasonable.

8. In its petition FMCH alleges that Ting Chuan and/or Ting Hsin have caused, permitted and/or procured the majority directors to act in breach of their duties to the Company. FMCH alleges (i) that it has lost trust and confidence in the conduct and management of the Company's affairs as a result of that lack of probity and (ii) that its relationship with Ting Chuan has irretrievably broken down. FMCH avers that it is just and equitable that the Company be wound up. In the alternative, and this is the real aim of its application, FMCH seeks an order from the Grand Court that Ting Chuan be required to sell its majority stake in the Company to FMCH at a value to be determined by the Court, if not agreed.

9. Ting Chuan, relying on the arbitration agreement in the SHA, applied to strike out the winding up petition or, alternatively, for an order dismissing or staying the petition under section 4 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) ("FAAEA") or under the inherent jurisdiction of the court until the disputes which underlay the petition had been arbitrated. By the Citation of Acts of Parliament Act 2020 legislation which previously was referred to as a "Law" is now referred to as an "Act". The Board adopts that nomenclature in this judgment.

10. The Grand Court (Kawaley J) in an order dated 25 February 2019 granted Ting Chuan's application to stay the winding up proceedings for arbitration under section 4 of the FAAEA. By order dated 14 July 2020, Kawaley J, in an exercise of his powers under the Companies Winding up Rules O.3 r 12(1)(a), (b) and (d), allowed the Company to defend the proceedings if so advised, and ordered that the petition be treated as an inter partes proceeding and that the advertisement of the petition be dispensed with.

11. As discussed more fully below, the Court of Appeal by order dated 27 July 2020 set aside Kawaley J's order of 25 February 2019 and refused to grant a stay of the winding up petition. Ting Chuan has obtained the permission of the Board to appeal against that decision.

2. The arbitration agreement

12. Section 20.3(a) of the SHA provides that it is governed by the laws of the Cayman Islands. The SHA contains the arbitration agreement (section 20.3(b)) which, so far as relevant, provides:

> "Any and all disputes in connection with or arising out of this Agreement shall, insofar as is possible, first be settled amicably by the Parties hereto. … If the Parties cannot come to an amicable settlement within twenty (20) days of the onset of any dispute, *any and all disputes in connection with or arising out of this Agreement [shall be] submitted for arbitration* in accordance with and finally settled under the Rules of Arbitration of the International Chamber of commerce [sic] in effect at the time of the arbitration, except as may be modified herein or by mutual agreement of the Parties. The arbitration shall be confidential and conducted in the Chinese language. The Parties agree that the arbitration shall take place in Beijing, PRC. The award of the arbitration tribunal shall be final and binding upon the disputing Parties, and the prevailing Party may apply to a court of competent jurisdiction for enforcement of such award. …" (Emphasis added)

13. FMCH initially argued that the dispute between it and Ting Chuan did not fall within the scope of the arbitration agreement, but it abandoned that contention in the course of the hearing before the Court of Appeal. It is now a matter of agreement that the dispute falls within the scope of the arbitration agreement. The central dispute between the parties is now whether FMCH's petition in the Grand Court for the winding

up of the Company has made the matters raised in that petition not susceptible to arbitration.

3. The relevant statutory provisions

14. The Companies Act (2022 Revision) provides in section 90 that a company may be wound up compulsorily by order of the Court. Section 92 provides that a company may be wound up by the Court on various grounds including if "(e) *the Court is of opinion* that it is just and equitable that the company should be wound up" (Emphasis added).

15. Section 95, which sets out the powers of the court, provides in subsection (2):

> "The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company."

Subsection (3) provides for several remedies, including the remedy which FMCH is seeking by its presentation of the winding up petition. It provides so far as relevant:

> "If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely – …
>
> (d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly."

This provision was introduced into the Companies Act by the Companies (Amendment) Act 2007. As is well known, the Cayman Islands has not provided in its company law for a self-standing petition (separate from a winding up petition) by a member of a company for a remedy where the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of members. Such a remedy was introduced into United Kingdom company law by section 75 of the Companies Act 1980 and is now contained in sections 994-996 of the Companies Act 2006.

16. The Cayman Islands has separate legislation governing foreign arbitrations and domestic arbitrations. The FAAEA addresses foreign arbitrations and gives effect to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("the New York Convention"). Section 4 of the FAAEA, which gives effect to article II of the New York Convention, provides:

> "If any party to an arbitration agreement … commences any legal proceedings in any court against any other party to the agreement … in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is … inoperative …, shall make an order staying the proceedings."

Domestic arbitration agreements in the Cayman Islands are governed by the Arbitration Act 2012, which is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006) and the English Arbitration Act 1996.

4. The judgments of the courts below

17. Kawaley J in his judgment of 25 February 2019 observed (para 17) that the petition had been drafted in a "somewhat obtuse way" to sidestep the argument that the complaints arose in relation to the SHA and were caught by the very broad arbitration agreement. He held (para 61) that it was "clear beyond sensible argument" that the allegations in the petition related to the subject matter of the SHA. He rejected FMCH's submission that the underlying disputes were not arbitrable because only the court can grant a winding up order, holding that there was a fundamental difference between the resolution of the underlying disputes and the grant by the court of statutory relief (para 66). He attached no significance to the fact that neither the Company nor the majority directors were parties to the SHA because the genuine dispute was between the minority shareholder and the majority shareholder (para 67). He granted a mandatory stay of the winding up petition under section 4 of the FAAEA.

18. The Court of Appeal (Rix, Martin and Moses JJA), in a judgment dated 23 April 2020, overturned Kawaley J's decision, holding that the court had exclusive jurisdiction to determine whether a company should be wound up on the just and equitable ground and that, as a result, the underlying disputes were not susceptible to arbitration, notwithstanding that they fell within the scope of the arbitration agreement contained in the SHA. In so deciding, the Court of Appeal discussed as a key authority the judgments of Patten, Longmore and Rix LJJ in the Court of Appeal of England and Wales in

Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855; [2012] Ch 333 ("*Fulham*"), in which the court granted a stay of an unfair prejudice petition under section 994 of the Companies Act 2006 to enable the parties to resolve their underlying dispute by arbitration. The Cayman Islands Court of Appeal, in the leading judgment by Moses JA, also considered other cases, including the judgment of Harris J in the Hong Kong High Court in *Quiksilver Greater China Ltd v Quiksilver Glorious Sun JV Ltd* [2014] 4 HKLRD 759 ("*Quiksilver*"), in which the judge stayed a petition seeking a winding up on the just and equitable ground to enable the substantive dispute between the parties, which was within the scope of an arbitration agreement, to be determined by arbitration; and a judgment of the Federal Court of Australia in *WDR Delaware Corporation v Hydrox Holdings Pty Ltd* [2016] FCA 1164 ("*WDR Delaware*"), which followed the *Quiksilver* judgment by granting a stay for arbitration of a petition on the grounds of oppressive or unfairly prejudicial behaviour in which a winding up order was only one of several available remedies. The rationale of those cases was that an essentially private dispute between shareholders, in which discrete issues could be identified, should be resolved, in accordance with the parties' agreement, by arbitration.

19. Moses JA distinguished those cases, holding that under section 92 of the Companies Act the court's consideration of whether it is just and equitable that a company should be wound up is a threshold question and not a question of relief. Section 92 was the sole gateway to obtaining alternative relief under section 95(3): *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2019] CILR 481 ("*Tianrui*"). *Tianrui* did not involve a conflict between an arbitration agreement and a petition to wind up a company but its reasoning was central to the Court of Appeal's reasoning. *Fulham* was to be distinguished on the basis that in that case there was no need to prove conduct that would justify winding up the company. By contrast in the context of an application to wind up a company on the just and equitable ground, Moses JA summarised the question in these terms (para 98):

> "In cases where there is an arbitration agreement the scope of which embraces disputes of fact which are also raised in the petition, the question of a stay to arbitration turns on whether it is possible to submit such disputes to arbitration without trespassing upon the exclusive jurisdiction of the court to make a winding up order."

He stated that in *Fulham* and the cases which had followed it, the courts had identified discrete, substantive issues which did not invoke the exclusive jurisdiction of the court. But where a petitioner was invoking a statutory right to bring the petition and the underlying issues were central and inextricably connected to the question whether the company should be wound up on the just and equitable ground, it was difficult to identify discrete issues outside the exclusive jurisdiction of the court.

20. Moses JA held that in determining the threshold question the court did not have to determine only questions of primary fact but had to evaluate all the circumstances of the case. The court had to decide whether the conduct of the majority directors and the breakdown of the relationship between the shareholders justified the winding up of the Company. If matters were hived off to arbitration, there would be a risk of inconsistent decisions where there was first a decision by an arbitrator and then a further decision by the court which took into account the arbitrator's award where some of the parties to the petition would not be bound by the arbitrator's award. This outcome could be avoided only if the parties had agreed not to present a winding up petition. No such agreement was expressly stated in the SHA and none could be implied. As a result, section 95(2) of the Companies Act did not apply.

21. Moses JA held that because neither the majority directors nor the Company were parties to the SHA and thereby to the arbitration agreement, it was not permissible to apply the mandatory provisions of section 4 of the FAAEA to the petition in its entirety and because the allegations against Ting Chuan could not be separated from the threshold issue, section 4 could not operate pro tanto. The arbitration agreement was therefore inoperative. Finally, there was no basis for the court to grant a discretionary stay in the exercise of its powers of case management.

5. The parties' positions in this appeal

22. Ting Chuan submits that the Court of Appeal erred in refusing to grant a stay of the winding up petition to allow disputes under the SHA to be determined by arbitration. Ting Chuan asserts that (i) it and FMCH are parties to an arbitration agreement, (ii) FMCH has commenced legal proceedings against it, (iii) those legal proceedings are in respect of matters agreed to be referred to arbitration, and (iv) therefore it is entitled to a mandatory stay unless the Board is satisfied that the relevant matters are non-arbitrable.

23. Ting Chuan identifies the matters which it argues are arbitrable and entitle it to a mandatory stay under the FAAEA. It argues that the petition for winding up contains five matters, the first four of which should be determined by arbitration. The five matters are:

> (1) Whether FMCH has lost trust and confidence in Ting Chuan and in the conduct and management of the Company's affairs. Ting Chuan particularises this matter into three sub-headings: (i) whether the majority directors owe various duties to the Company, (ii) whether the majority directors have breached those duties or engaged in misconduct, and (iii) whether Ting Chuan caused, permitted or procured the majority directors to act in breach of their duties or to engage in the alleged misconduct.

(2) Whether the fundamental relationship between FMCH and Ting Chuan has irretrievably broken down. In particular: (i) whether an understanding was reached between the shareholders by 2003 and, if so, what were the terms of that understanding, (ii) was the understanding superseded at any point in time after 2003, for example by reason of the conclusion of the SHA, and (iii) whether Ting Chuan acted contrary to that understanding after 2012.

(3) Whether it is just and equitable that the Company should be wound up.

(4) Whether FMCH should be granted the alternative relief, which it prefers, under section 95(3)(d) of the Companies Act, namely an order requiring Ting Chuan to sell its shares in the Company to FMCH, and, if so, what is the value of those shares.

(5) Whether, if such alternative relief is not appropriate, an order winding up the Company should be made and whether the persons identified by FMCH should be appointed as joint official liquidators.

In the alternative, Ting Chuan argues that the first two matters listed above are arbitrable, that there should be a mandatory stay of the winding up petition pro tanto under the FAAEA, and that the Board should grant a discretionary stay of matters (3) to (5) above.

24. FMCH invites the Board to uphold the judgment of the Court of Appeal. It characterises the principal question raised in the appeal as being whether and, if so, in what respect and to what extent a petition to wind up a Cayman Islands registered company on the just and equitable ground is arbitrable. It argues that the legislation does not allow a private arbitral tribunal to make the critical threshold decision that it is just and equitable that a company should be wound up. It advances two principal reasons for that view. First, it submits that the proceedings are inherently unsuited to arbitration, and, secondly, it argues that the legislature has recognised that there is a public interest in the judicial determination of winding up petitions in open court, which excludes the use of private arbitration to any extent in the process. It points out that a court in deciding whether it is just and equitable that a company be wound up has regard to all the facts as they exist at the date of the hearing and exercises its discretion at that date. The proceedings must be conducted expeditiously because section 99 of the Companies Act may render void dispositions of property and other transactions made after the presentation of the petition. By contrast, the reference to arbitration of matters encompassed by the winding up application might require multiple and successive arbitrations which would not bind all of the parties to the winding up petition. This cannot have been what a rational businessperson would have contemplated. The winding up petition has been stayed since 2018 while the parties, on Ting Chuan's

insistence, engaged in a very expensive arbitration before the ICC International Court of Arbitration which lasted three and a half years dealing with claims which Ting Chuan advanced, unsuccessfully, against FMCH.

6. The structure of The Board's analysis

25. In addressing those submissions, the Board first considers by way of background the uncontested view that, as a general rule, the law of the Cayman Islands, like English law and the laws of many other jurisdictions, respects the right of parties to agree to have their disputes determined by a private arbitral tribunal. Secondly, the Board addresses the interpretation of section 4 of the FAAEA, and in particular the meaning of (i) "legal proceedings", (ii) "matters", and (iii) "the arbitration agreement is … inoperative". The Board, thirdly, considers whether the petition for winding up on the just and equitable ground is an unum quid, excluding any possibility of arbitration, or whether there should be a partial stay under the FAAEA so that matters within the scope of the arbitration agreement can and should be hived off for arbitration. Fourthly, the Board considers the application for a discretionary stay of the winding up petition; and, finally, the Board briefly addresses a submission relating to section 95(2) of the Companies Act.

7. Background: the approach to arbitration agreements

26. It is common ground in this case that the disputes between Ting Chuan and FMCH, which are articulated in the winding up petition, fall within the scope of the arbitration agreement. No question therefore arises as to the interpretation of the arbitration agreement itself. Case law in England and Wales, and the Cayman Islands, which adopts a liberal interpretation of an arbitration agreement, is not directly in issue. Nonetheless, such case law on interpretation is indicative of the respect which the courts of many jurisdictions give to the autonomy of parties to choose how they wish their disputes to be resolved. In *Enka Insaat ve Sanayi AS v OOO "Insurance Co Chubb"* [2020] UKSC 38; [2020] 1 WLR 4117, ("*Enka Insaat*") Lord Hamblen and Lord Leggatt, giving the leading judgment of the court, stated (para 107):

> "In *Fiona Trust & Holding Corpn v Privalov* [[2007] UKHL 40;] [2007] Bus LR 1719, the House of Lords affirmed the principle that 'the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal' (see para 13, per Lord Hoffmann).

> Contrary to a submission made on behalf of Chubb Russia, this is not a parochial approach but one which, as the House of Lords noted in the *Fiona Trust* case, has been recognised by (amongst other foreign courts) the German Federal Supreme Court (Bundesgerichtshof), the Federal Court of Australia and the United States Supreme Court and, as stated by Lord Hope at para 31, 'is now firmly embedded as part of the law of international commerce'. In his monumental work on *International Commercial Arbitration,* 2nd ed (2014), p 1403 Gary Born summarises the position as follows:
>
> 'In a substantial majority of all jurisdictions, national law provides that international arbitration agreements should be interpreted in light of a "pro-arbitration" presumption. Derived from the policies of leading international arbitration conventions and national arbitration legislation, and from the parties' likely objectives, this type of presumption provides that a valid arbitration clause should generally be interpreted expansively and, in cases of doubt, extended to encompass disputed claims. That is particularly true where an arbitration clause encompasses some of the parties' disputes and the question is whether it also applies to related disputes, so that all such controversies can be resolved in a single proceeding (rather than in multiple proceedings in different forums).'"

The Court of Appeal of the Cayman Islands has adopted a similarly expansive approach to the interpretation of arbitration agreements in order to give effect to the reasonable commercial expectations of the parties: *McAlpine Ltd v Butterfield Bank (Cayman) Ltd* (Appeal No 30 of 2019) (unreported) 21 November 2019 at paras 30-31.

27. The legislature of the Cayman Islands in enacting statutory rules for its domestic arbitration in the Arbitration Act 2012 stated the principles on which the Act was founded and by which its provisions should be construed: section 3(3). Those principles are:

> "(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial arbitral tribunal without undue delay or undue expense;
>
> (b) *the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest*; and

> (c) in matters governed by this Law the court should not intervene except as provided in this Law." (Emphasis added)

Those principles are articulated in substantially the same terms in section 1 of the Arbitration Act 1996 in England and Wales and in section 1 of the Arbitration (Scotland) Act 2010. The respect which they show to the autonomy of the parties is not a new phenomenon. In England and Wales, the courts until the later nineteenth century often took the view that a contract to oust the jurisdiction of the courts was against public policy and would not enforce such a contract. This approach was altered by legislation in the Common Law Procedure Act 1854, section 11 and in section 4 of the Arbitration Act 1889. Such a judicial approach to arbitration agreements did not exist in Scotland as the House of Lords explained in *A Sanderson & Son v Armour & Co Ltd* 1922 SC (HL) 117, in which Lord Dunedin expressed the matter pithily (p126): "[i]f the parties have contracted to arbitrate, to arbitration they must go." More recently, similar statements have been made about English law: in *Nori Holding Ltd v PJSC Bank Otkritie Financial Corp* [2018] EWHC 1343 (Comm); [2019] Bus LR 146, at para 66, Males J stated: "[w]here parties agree to arbitrate, it is the policy of the law that they should be held to their bargain." See also Mustill & Boyd, *Commercial Arbitration,* 2nd ed, Companion Vol (2001) p 75.

28. Ting Chuan prays in aid section 26 of the Arbitration Act 2012 which provides:

> "(1) Any dispute that parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law of the Islands, such a dispute is not capable of determination by arbitration.
>
> (2) The fact that any other law confers jurisdiction in respect of any matter on the court but does not refer to the determination of that matter by arbitration, does not mean that a dispute about that matter is incapable of determination by arbitration."

In the Board's view FMCH is correct in its submission that the 2012 Act, which is concerned only with arbitrations where the seat of the arbitration is in the Islands (section 3(1)), is not of itself a valid tool for interpreting the FAAEA, which was enacted at an earlier date and is concerned only with arbitrations with a foreign seat. Nonetheless, the section is consistent with a position in relation to international arbitration which has extensive support internationally. See for example, in England and Wales, *Wealands v CLC Contractors Ltd* [2000] 1 All ER (Comm) 30 ("*Wealands*"), Mance LJ paras 17, 18 and 21; *Bridgehouse (Bradford No 2) Ltd v BAE Systems plc*

[2020] EWCA Civ 759; [2020] Bus LR 2025, Newey LJ paras 56-57; and *Fulham*, Patten LJ paras 27-33; in Singapore, *Tomolugen Holdings Ltd v Silica Investors Ltd* [2015] SGCA 57; [2016] 1 SLR 373 ("*Tomolugen*"), Sundaresh Menon CJ paras 75-76; in Australia, *ACD Tridon Inc v Tridon Australia Pty Ltd* [2002] NSWSC 896 ("*Tridon*"), Austin J paras 192-194, *WDR Delaware* Foster J para 147; in Hong Kong *Quiksilver*, Harris J para 14. The Board observes a similar approach in the jurisprudence of the Supreme Court of the United States: see, for example, *Green Tree Financial Corp-Alabama v Randolph* (2000) 531 US 79, Rehnquist CJ at p 90. It is important in cases which arise out of domestic legislative provisions implementing the New York Convention to have regard to jurisprudence in other contracting states to promote legal certainty in the jurisprudence relating to international arbitration.

29. The Board therefore accepts Ting Chuan's submission that effect should be given to the arbitration agreement unless the agreement is contrary to the public policy of the Islands or there is a rule of law or statutory provision which renders the matters within the scope of the arbitration agreement incapable of resolution by arbitration.

8. The interpretation of section 4 of the FAAEA

30. Section 4 of the FAAEA (para 16 above) implements article II(3) of the New York Convention which provides:

> "The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

31. Many countries which are contracting states to the New York Convention have implemented provisions like section 4 of the FAAEA in accordance with their obligations under the New York Convention. In *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] UKPC 21 ("*Gol Linhas*") the Board, in a judgment delivered by Lord Hamblen and Lord Leggatt, addressed the correct approach to the interpretation of the FAAEA. In para 21 of its judgment the Board referred to the judgment of the UK Supreme Court in *Enka Insaat* at para 126 in which it observed that more than 160 states had signed the New York Convention and stated:

> "The essential aim of the Convention was to establish a single uniform set of international legal standards for the recognition and enforcement of arbitration agreements and awards. Its

> success is reflected in the fact that … the New York Convention has been implemented through national legislation in virtually all contracting states." (Citations omitted)

The Board went on to observe (para 74) that the meaning of a Cayman Islands statute is a question to be decided by applying the law of the Cayman Islands but that the international origin of the provision necessitated a particular approach to its interpretation. The Board stated (para 75):

> "As with any statute which incorporates into domestic law the text of an international treaty, the interpretation and application of the statutory language must take account of its origin in an international instrument intended to have an international currency. That entails that, as Lord Macmillan put it in *Stag Line Ltd v Foscolo, Mango & Co Ltd* [1932] AC 328, 350, in the interests of uniformity the words should not be given a local interpretation controlled by what he called 'domestic precedents of antecedent date', but rather should be construed 'on broad principles of general acceptation'; see also *James Buchanan & Co Ltd v Babco Forwarding & Shipping (UK) Ltd* [1978] AC 141, 152 (Lord Wilberforce); *Fothergill v Monarch Airlines Ltd* [1981] AC 251, 281-282 (Lord Diplock). This principle is just as relevant in determining the scope of application of rules incorporating an international convention as it is in interpreting their linguistic meaning."

It is appropriate therefore to consider the jurisprudence of several countries as guides to the interpretation of section 4 of the FAAEA in so far as they have statutory provisions which are worded in a similar way to the Cayman Islands provision.

32. The Board has set out the relevant text of section 4 of the FAAEA in paragraph 16 above. Several questions of interpretation arise. They are (i) the meaning of "legal proceedings" commenced by a party to an arbitration agreement, (ii) the meaning of any "matter" which the parties have agreed to refer to arbitration, (iii) whether a stay of legal proceedings can be a partial stay, and (iv) the meaning of "inoperative" in the phrase "the court, unless satisfied that the arbitration agreement is ... inoperative… shall make an order staying the proceedings".

(a) The meaning of "legal proceedings"

33. It was not contentious and the Board sees no reason to question that "legal proceedings" in section 4 of the FAAEA can include a petition to wind up a company of which the parties to an arbitration agreement are members. In *Fulham* (para 33) the Court of Appeal of England and Wales treated as legal proceedings under section 9(1) of the Arbitration Act 1996 a petition under section 994 of the Companies Act 2006 alleging that a company's affairs had been conducted in a manner which was unfair to the petitioner as one of its members. In *Quiksilver*, Harris J in the Court of First Instance in Hong Kong dealt with a petition for the winding up of a solvent company on the just and equitable ground. The relevant provision of the Arbitration Ordinance (differing from those of the Cayman Islands and England and Wales) spoke of "a court before which an action is brought" having the power to refer the parties to the petition to an arbitration. He observed that winding up proceedings were not an action and distinguished the case of *Fulham* on that ground; but, as the parties did not dispute that the court had a discretionary power to stay the petition, the difference in wording between the Hong Kong provisions and the English provisions did not have a material impact on the matter which he had to decide (paras 20-21).

(b) The meaning and ascertainment of "matter"

34. There is now considerable jurisprudence in several countries which casts light on the meaning of a "matter" in domestic legislation implementing the New York Convention.

35. In *Fulham* Patten LJ, giving the leading judgment of the Court of Appeal of England and Wales, treated as "matters" falling within the arbitration clause of the rules of the Football Association Premier League Ltd ("the FAPL") the allegation that there had been unfair prejudice to Fulham Football Club (1987) Ltd ("the Club") in the conduct of the affairs of the FAPL and the remedies, which the Club sought, of an order restraining the chairman of the FAPL from participating in future player transfer negotiations and an order that he cease to be chairman of the FAPL. In para 33 Patten LJ observed that it was common ground that an arbitrator could make the orders which the Club sought. In substance, the subject matter of the Club's petition under section 994 of the Companies Act 2006 was treated as a matter to be referred to arbitration and the section 994 petition was stayed. The principal question which was in dispute in that case was whether the matters were arbitrable; a similar question arises in this appeal which the Board addresses below.

36. In *Lombard North Central plc v GATX Corporation* [2012] EWHC 1067 (Comm); [2013] Bus LR 68 ("*Lombard North Central*") Andrew Smith J in the High Court of England and Wales addressed an application under section 9 of the Arbitration Act 1996 for a stay of legal proceedings for arbitration. The arbitration agreement was contained in an agreement for the financing of train vehicles which provided for the establishment of a joint venture by the claimants and another company. The arbitration

agreement covered disputes which arose relating to the joint venture. The claimants sought declaratory relief in the High Court concerning the meaning of a clause in the agreement which provided for the establishment of the joint venture. The defendants applied for a stay of those proceedings. The case involved a dispute as to the scope of the arbitration agreement, a subject with which the Board is not concerned in this appeal, and the meaning of section 9 of the 1996 Act. In his judgment Andrew Smith J focussed on the words "in respect of" a matter rather than the word "matter" in section 9. What he said is nonetheless important with regard to the meaning of "matter" as his statements on the subject in paras 13-17 of his judgment have been relied on in the English cases which the Board discusses below.

37. In his discussion in those paragraphs Andrew Smith J, first, recognised that section 9 empowers the court to grant a stay of part of legal proceedings, where those proceedings were in respect of a referred matter and other matters. He held that the express words of section 9(1) permitted such a stay as they referred to a stay of the proceedings "so far as they concern that matter". Secondly, he stated that the court determines whether the proceedings relate to a referred matter by having regard to the nature of the claim or claims rather than relying only on the formulations in the claim form and any pleadings. In so doing, the court should consider what questions will foreseeably arise for determination in the proceedings, and whether they include, or would foreseeably include, referred matters. Such foreseeable questions would, in the Board's view, include matters raised in defences yet to be pleaded. Thirdly, he held that a party to an arbitration agreement is entitled to a stay unless he could have no real or proper purpose for seeking the stay. Fourthly, the risk of proceedings both before the courts and an arbitral tribunal is inherent in an arbitration agreement which refers only certain disputes to arbitration. Referring to the speech of Lord Mustill in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334, at 353, he stated that that is the price of respecting the parties' agreement and the risk that they are to be taken to have chosen to take. Fifthly, he stated that a defendant would not necessarily be entitled to stay the legal proceedings where the referred matter was peripheral to the proceedings as a whole. The proceedings could be partly stayed to allow the referred matter to be determined by arbitration while the proceedings could otherwise proceed.

38. In *Quiksilver* the Court of First Instance in Hong Kong addressed an application to stay or dismiss petitions by a shareholder to wind up two solvent joint venture companies on the just and equitable ground. The shareholders of the companies had entered into a detailed joint venture agreement which contained an arbitration clause and a buy-sell procedure as a means of resolving disputes by enabling one party to buy out the shares of the other. After difficulties had arisen in the buy-sell procedure, Quiksilver Greater China Ltd presented the winding up petitions. The other shareholder, Glorious Sun Overseas Co Ltd, invoked the arbitration agreement and sought a stay of the winding up petitions pending the outcome of the arbitration. Before the judge, the principal disputes between the parties were whether the winding up petitions amounted to class actions and whether a shareholder had an inalienable right of access to the court to seek the winding up of a company rather than any question of statutory interpretation

as to what would amount to a "matter" to be sent to arbitration. Because, as mentioned above, the Hong Kong legislation referred to an "action" rather than "legal proceedings" the Hong Kong equivalent to section 4 of the FAAEA was not in play and the judge was addressing a discretionary stay rather than a mandatory stay under the Hong Kong legislation. Harris J recognised, and it was common ground between the parties, that an arbitrator could not make a winding up order which affected third parties but he held that the precise relief sought in the winding up petitions was not critical. He stated (para 22) that the correct approach is "to identify the substance of the dispute between the parties and ask whether or not that dispute is covered by the arbitration agreement." Harris J analysed the substantive dispute between the parties to be the basis on which the joint venture was to end, being either a buy-out by Glorious Sun or a winding up at the instance of Quiksilver. That commercial dispute was arbitrable and, if Quiksilver were to prevail in the arbitration, the stay of the winding up petitions could be lifted and the court would not need to re-hear the substantive arguments, which would have been determined in the arbitration.

39. In *Tomolugen* the Court of Appeal of Singapore addressed an application under section 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") by Lionsgate Holdings Pte Ltd ("Lionsgate") for a mandatory stay for arbitration of court proceedings raised by a minority shareholder, Silica Investors Ltd ("Silica"), under section 216 of the Companies Act (Cap 50, 2006 Rev Ed) for relief for oppressive or unfairly prejudicial conduct. The defendants in the court proceedings were the company, the shareholders of the company, including Lionsgate, and the directors and former directors of the company and related companies. Lionsgate, which was the wholly owned subsidiary of Tomolugen Holdings Ltd, the majority shareholder in the company, had sold shares in the company to Silica in a share sale agreement which contained an arbitration clause. Lionsgate argued that part of the dispute in the court action fell within the arbitration clause of the share sale agreement and to that extent the legal proceedings should be the subject of a mandatory stay. It, and the other defendants, sought a discretionary case management stay of the remainder of the legal proceedings, pending the outcome of the arbitration. Much of the judgment of the Court of Appeal, delivered by Sundaresh Menon CJ, concerned the question of arbitrability, which the Board considers below in this appeal. But the judgment also contained an important discussion of the concept of a "matter".

40. The Court of Appeal (paras 15-19) analysed the allegations made in the section 216 application under four broad categories (1) the share issuance allegation, (2) the management participation allegation, (3) the guarantees allegation, and (4) the asset exploitation allegation.

41. It will assist the understanding of the judgment if the Board quotes the relevant provision (section 6) of the IAA which provides:

> "(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to *stay the proceedings so far as the proceedings relate to that matter.*
>
> (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings *so far as the proceedings relate to the matter*, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed." (Emphasis added)

42. Between paras 108 and 122 of the court's judgment Sundaresh Menon CJ addressed the question whether a "matter" should be interpreted broadly by identifying the essential dispute or the main issue, as Silica urged, or more granularly, as Lionsgate submitted. He stated (para 108) that establishing whether the dispute pertained to a matter that is subject to the arbitration agreement involves two stages:

> "(a) the court must first determine what the matter or matters are in the court proceedings; and
>
> (b) it must then ascertain whether the matter(s) fall within the scope of the arbitration clause on its true construction."

At the first stage, the court proceedings which are sought to be stayed may involve more than a single matter. In addressing the differing submissions of the parties, Sundaresh Menon CJ stated (para 113) that the starting point of the analysis was the language of section 6 of the IAA. Section 6 of the IAA mandates a stay only "so far as" the court proceedings relate to the matter or matters which are the subject of the arbitration agreement. This, he stated, militates against taking "an excessively broad view of what constitutes a 'matter' or treating it as a synonym for the court proceedings as a whole". He continued (para 113):

> "In our judgment, when the court considers whether any 'matter' is covered by an arbitration clause, it should undertake a practical and common-sense enquiry in relation to

> any reasonably substantial issue that is not merely peripherally or tangentially connected to the dispute in the court proceedings. The court should not characterise the matter(s) in either an overly broad or an unduly narrow and pedantic manner. In *most* cases, the matter would encompass the claims made in the proceedings. But, that is not an absolute or inflexible rule." (Emphasis in the original)

43. In support of this view Sundaresh Menon CJ then addressed jurisprudence from Australia (*Tridon*), the British Virgin Islands (*Ennio Zanotti v Interlog Finance Corp* Claim No BVIHCV 2009/0394 (8 February 2010)) and England (*Lombard North Central*) before concluding at para 122:

> "We therefore consider that a 'matter', for the purposes of s 6 of the IAA, should not be construed in either an overly broad or an unduly narrow way. On the specific facts of this case, each of the four categories of allegations made in the Suit raises substantial issues that are neither peripheral nor tangential to Silica Investors' claim for relief under s 216 of the Companies Act. We accordingly find that each category is a separate 'matter' for the purposes of Lionsgate's stay application under s 6 of the IAA."

44. Thereafter, the court analysed the arbitration clause to determine which of the categories of allegation (para 40 above) fell within the scope of the arbitration agreement. It was not in dispute that the third and fourth categories did not, and the court therefore focused on the first two categories. In each category the court examined the substance of the controversy and concluded that the share issuance allegation was not within the scope of the arbitration agreement but that the management participation allegation was.

45. In *WDR Delaware* Foster J in the Federal Court of Australia addressed an application for a stay under section 7(2) of the International Arbitration Act 1974 and article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration which has the force of law in Australia. Hydrox Ltd was a joint venture company. The legal proceedings in question were for (i) a declaration that the affairs of Hydrox Ltd had been conducted in a manner oppressive to, unfairly prejudicial to or unfairly discriminatory against WDR, and (ii) an order for the winding up of Hydrox Ltd. It was common ground that the disputes between the shareholders were within the scope of the arbitration clause in the joint venture agreement. The principal dispute before Foster J was whether some or all of the claims in the court proceedings were arbitrable and, if so, whether the whole or only part of the court proceedings should be stayed.

46. The relevant statutory provisions were as follows. Section 7(2) of the International Arbitration Act 1974 provided:

> "Subject to this Part, where:
>
> (a) proceedings instituted by a party to an arbitration agreement to which this section applies against another party to the agreement are pending in a court; and
>
> (b) the proceedings involve the *determination of a matter that*, in pursuance of the agreement, *is capable of settlement by arbitration*;
>
> on the application of a party to the agreement, the court shall, by order, upon such conditions (if any) as it thinks fit, stay the proceedings *or so much of the proceedings as involves the determination of that matter*, as the case may be, and refer the parties to arbitration in respect of that matter." (Emphasis added)

Article 8(1) of the Model Law provides:

> "A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

47. Foster J set out his analysis of how the court identifies the matters which are the subject of the legal proceedings between paras 102 and 123 of his judgment. In summary, he reasoned: (i) that the nature and extent of the matters are ordinarily to be ascertained from the pleadings and from the underlying subject matter upon which the pleadings, including any defence, are based; the task is to ascertain the substantive questions in dispute, (ii) multiple matters may exist within the one court proceeding; (iii) a matter is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitral proceedings, (iv) a matter may or may not comprise the whole subject matter of any given proceeding, and (v) the court must first identify the matter or matters to be determined in the court proceeding before asking whether those matters fall within the scope of the arbitration agreement, and, if so, whether they are arbitrable.

48. In support of his third proposition, that a matter is something more than a mere issue or question which might fall for determination in proceedings, Foster J cited the judgment of the High Court of Australia in *Tanning Research Laboratories Inc v O'Brien* (1990) 169 CLR 332 ("*Tanning")*. That case was concerned principally with section 7(2) and (4) of the Arbitration (Foreign Awards and Agreements) Act 1974 (renamed in 1989 the International Arbitration Act 1974, as considered in *WDR Delaware*) and the question whether a liquidator was a person "claiming through" the company in liquidation, which was a party to an arbitration agreement, and therefore entitled to a stay of legal proceedings for arbitration. The High Court held that the liquidator, who had rejected a creditor's proof of debt for goods allegedly sold under a licence agreement which contained an arbitration clause, was a person claiming through the company under section 7(4) and was entitled to a stay under section 7(2). Deane and Gaudron JJ in a joint dissenting judgment discussed the meaning of the word "matter" in section 7(2) at pp 351-352. They observed that "matter" was not defined in the 1974 Act but that, in any context, it was "a word of wide import" and stated:

> "In the context of s. 7(2), the expression 'matter … capable of settlement by arbitration' may, but does not necessarily, mean the whole matter in controversy in the court proceedings. So too, it may, but does not necessarily encompass all the claims within the scope of the controversy in the court proceedings. Even so, the expression 'matter … capable of settlement by arbitration' indicates something more than a mere issue which might fall for decision in the court proceedings or might fall for decision in arbitral proceedings if they were instituted. … It requires that there be some subject matter, some right or liability in controversy which, if not co-extensive with the subject matter in controversy in the court proceedings, is at least susceptible of settlement as a discrete controversy."

Deane and Gaudron JJ went on (p 353) to reject the argument that section 7(2) did not apply to proof of debt proceedings, stating that the operation of the section is not confined to proceedings in which the parties seek the same relief as might be sought in arbitration proceedings.

49. In *Sodzawiczny v Ruhan* [2018] EWHC 1908 (Comm); [2018] Bus LR 2419 ("*Sodzawiczny*") Popplewell J in the High Court of England and Wales addressed an application for a stay of legal proceedings under section 9 of the Arbitration Act 1996 which refers to proceedings having been brought "in respect of a matter which … is to be referred to arbitration." The basis on which the defendants sought a stay of proceedings was that their defence to legal proceedings against them fell within the scope of the parties' arbitration agreement. The claimant opposed the stay, arguing that section 9 was not engaged if the claim itself did not fall within the arbitration agreement.

50. Popplewell J recorded that it was common ground that section 9 of the 1996 Act allowed a stay for arbitration of one or more matters within the legal proceedings while leaving other matters to be pursued in court. It was also common ground that there were two stages in the court's inquiry under section 9: first the court must determine what the matter or matters are in respect of which the court proceedings have been brought; and, secondly, the court must then determine in respect of each such matter whether it falls within the scope of the arbitration agreement (paras 35-36).

51. The material difference between the parties was as to the meaning of "matter". The claimant's counsel submitted that "matter" in section 9 was to be equated with a claim or cause of action and the fact that a defence is raised which falls within an arbitration agreement does not engage section 9. The defendants' counsel argued that "matter" meant an issue and that the court had to search for issues which were the subject matter of the arbitration agreement. Popplewell J referred to various authorities, including *Lombard North Central* and *Tomolugen*. He observed that the thing which parties referred to arbitration was a dispute or difference, words which were in this context synonymous. A dispute could be constituted in general terms, or it might be well defined before legal proceedings were commenced. A cause of action might involve several issues and sub-issues, some of which might be arbitrable and some not, and a commercial action often might involve several causes of action. Defences to a claim might involve a completely different set of facts and legal principles from those involved in the claim itself.

52. Popplewell J rejected the claimant's argument that section 9 was not concerned with a defence but only with a claim. He set out in para 43 what he considered to be the principled approach to what constitutes a "matter". He stated:

> "The court should treat as a 'matter' in respect of which the proceedings are brought any issue which is capable of constituting a dispute or difference which may fall within the scope of an arbitration agreement."

53. He continued his analysis in that paragraph by stating, secondly, that where the issues had not been fully identified in the legal proceedings by the time the court addressed the application for a stay, the court should seek to identify the issues which it was reasonably foreseeable might arise. He stated, thirdly, that the court should stay the proceedings to the extent of any issue which falls within the scope of an arbitration agreement. The search, he said, "is not for the main issue or issues, or what are the most substantial issues, but for any and all issues which may be the subject matter of an arbitration agreement". This applied to any dispute with which the court proceedings were, or would foreseeably be, concerned. Fourthly, section 9 was concerned with substance and not form, and the court should look at the nature and substance of the claim and the issues to which it gave rise and not simply the formulation in the

pleadings. The same approach should be adopted to identified or foreseeable defences. In para 44 of his judgment Popplewell J recognised that this approach could lead to a fragmentation of proceedings but opined that this was the result of the sanctity of the parties' arbitration contract and the requirement in section 9 that the court uphold the parties' bargain. The risk of fragmentation could be reduced either by an expansive construction of the arbitration agreement or by the court's use of its case management powers to stay proceedings in so far as they fall outside the scope of the arbitration agreement.

54. In *Republic of Mozambique (acting through its Attorney General) v Credit Suisse International* [2021] EWCA Civ 329; [2022] 1 All ER Comm 235 ("*Mozambique*") the Court of Appeal of England and Wales addressed the meaning of "matter" in section 9 of the 1996 Act. Carr LJ, in a judgment with which Singh and Henderson LJJ agreed, stated:

> "63. A 'matter' is not the same as a cause of action; it includes any issue capable of constituting a dispute under the relevant arbitration agreement. And a mandatory stay under s. 9(4) can be applied pro tanto (as reflected in the words 'so far as they concern that matter' in s. 9(1)).
>
> 64. There are two stages of inquiry for a court (although there may be overlapping considerations): first, to identify the 'matters' in respect of which the proceedings are brought; secondly, to assess whether those matters are 'matters' which the parties have agreed are 'to be referred to arbitration'. That is to be resolved by reference to the scope of the relevant arbitration agreement properly construed in context...."

55. Carr LJ then stated that the relevant principles were summarised in the judgment of Popplewell J in paras 43 and 44 of his judgment in *Sodzawiczny* and quoted in full those paragraphs, which the Board has summarised in paras 52 and 53 above. She stated (para 66) that the position identified by Popplewell J was consistent with and followed the earlier decision of the Singapore Court of Appeal in *Tomolugen* which the Board has discussed in paras 39-44 above. Carr LJ summarised the position under the title "Discussion and analysis" at paras 70-72 of her judgment stating:

> "70. It is trite law that an arbitration agreement is a contractual agreement to which statute dictates that mandatory effect must be given in so far as it applies: *Sodzawiczny* at para 44. The application of s. 9 can give rise to particular

> difficulties both as a matter of analysis and procedure, but the sanctity of the parties' agreement takes priority.
>
> 71. Thus, whether or not there is futility in practical terms of any stay is immaterial. Equally, the fact that there may be (on the facts of this case particularly acute) unwelcome case management complications if all or parts of claims are stayed is irrelevant. These are complexities which flow from s. 9 and ones which will often arise in multi-party, multi-issue litigation such as this.
>
> 72. I also accept that there is a two-stage test (although the considerations that arise may overlap and it may be convenient to consider the questions together): first to identify the matter and secondly to decide if that matter is one that the parties have agreed can only be arbitrated. Further, the court looks to substance and not form, adopting a practical and common-sense approach. It should guard against placing undue weight on what may be nuanced emphases or artificial characterisations adopted for tactical or other purposes. This is of course not to say that the parties' pleaded position is to be ignored, but rather to emphasise that the search is for the reality of the dispute."

56. The Supreme Court of the United Kingdom has reviewed the decision of the Court of Appeal in *Mozambique* in a judgment handed down on the same day as this judgment is promulgated. The approach of that court to the question of what is a "matter" and how the court ascertains what is a "matter" is consistent with the approach which the Board adopts on this appeal in the following paragraphs.

57. From this brief review of international authorities the Board considers that there is now a general consensus among leading arbitration jurisdictions in the common law world that the domestic courts of countries that are signatories of the New York Convention respect and give priority to the autonomy of the parties to arbitration agreements. The statutory provisions of those countries provide for a mandatory stay of legal proceedings at the request of a party to an arbitration agreement when a matter in those proceedings is referrable to arbitration. There is also a broad consensus on how to approach the determination of matters which must be referred to arbitration.

58. The court in considering such an application adopts a two-stage process. First, the court must determine what the matters are which the parties have raised or foreseeably will raise in the court proceedings, and, secondly, the court must determine

in relation to each such matter whether it falls within the scope of the arbitration agreement. (See *Tomolugen*, para 42 above; *WDR Delaware*, para 47 above and *Sodzawiczny*, para 50 above).

59. The court must ascertain the substance of the dispute or disputes between the parties. This involves looking at the claimant's pleadings but not being overly respectful to the formulations in those pleadings which may be aimed at avoiding a reference to arbitration. It involves also a consideration of the defences, if any, which may be skeletal as the defendant seeks a reference to arbitration, and the court should also take into account all reasonably foreseeable defences to the claim or part of the claim. (See *Lombard North Central*, para 37 above; *Quiksilver*, para 38 above, *Tomolugen*, para 42 above, *WDR Delaware*, para 47 above; and *Sodzawiczny*, para 53 above).

60. Secondly, while article II(3) of the New York Convention, which requires that the court refer a matter to arbitration, is silent as to the stay of the court proceedings, legislation implementing this provision of the New York Convention has generally made express provision for a stay pro tanto. Examples include section 9 of the Arbitration Act 1996 in England and Wales, section 10 of the Arbitration (Scotland) Act 2010 in Scotland, section 7 of the International Arbitration Act 1974 in Australia, and section 6 of the IAA in Singapore. In the Cayman Islands section 4 of the FAAEA speaks of "staying the proceedings" and makes no reference to the possibility of a stay pro tanto. Nonetheless, the context is a domestic statute implementing an international convention, in which broad and generally accepted principles should be adopted in interpreting such a statute: see *Gol Linhas* which the Board discussed in para 31 above. In *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed. 2020) the authors state at section 9.3: "Unless the contrary intention appears, the legislature is presumed to intend an enactment to be read in light of the principle that the greater includes the less." This principle is derived from Roman law ("non debet cui plus licet, quod minus est non licere": Corpus Juris Civilis, Digest 17.21 (Ulpian)). In the Board's view in this context the greater includes the lesser. Counsel did not argue otherwise in this appeal. Accordingly, the Board considers that section 4 of the FAAEA allows a pro tanto stay of legal proceedings.

61. Thirdly, in the Board's view, a "matter" is a substantial issue that is legally relevant to a claim or a defence, or foreseeable defence, in the legal proceedings, and is susceptible to be determined by an arbitrator as a discrete dispute. If the "matter" is not an essential element of the claim or of a relevant defence, it is not a matter in respect of which the legal proceedings are brought. The Board agrees with the statement of Sundaresh Menon CJ in para 113 of *Tomolugen* that a "matter" requiring a stay does not extend to an issue that is peripheral or tangential to the subject matter of the legal proceedings. The Board agrees with Foster J's third proposition in *WDR Delaware* that a "matter" is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitral proceedings.

62. A focus on the substantial nature and relevance of a referred matter to the legal proceedings is consistent with international jurisprudence, including *Lombard North Central*, *Quiksilver*, and *Tomolugen*. It is also consistent with the Australian jurisprudence in *Tanning* and *WDR Delaware*. In those cases, the judicial formulation was influenced by the statutory wording of section 7(2) of the International Arbitration Act 1974 which refers to a matter "capable of settlement by arbitration". But there is no material difference between that formulation and the other judicial formulae as a stay of legal proceedings should be granted only in respect of a dispute which falls within an arbitration agreement and is capable of settlement by arbitration.

63. The judgment of Popplewell J in *Sodzawiczny* is in part consistent with this approach but the passages in his summary of the law in para 43 of his judgment which suggest that a "matter" is any issue which is capable of constituting a dispute or difference within the scope of an arbitration agreement cannot be accepted without qualification in the light of the wider case law discussed above. Popplewell J referred to *Lombard North Central* and *Tomolugen* as the background to his analysis. Those judgments contain further qualifications which are not expressly articulated in his summary, although he may have taken them as read. In para 43 he spoke of a "matter" as "any issue which is capable of constituting a dispute or difference" within the scope of the arbitration agreement and as covering "all issues which may be the subject of the arbitration agreement". These formulae expressly draw on the judgment of Andrew Smith J in *Lombard North Central.* But no mention is made of Andrew Smith J's concern about the abusive application for a stay which the Board discusses in para 64 below nor of his recognition that peripheral matters may not merit a stay of the legal proceedings. The emphasis in *Tomolugen* on the evaluation of the matter as being of reasonable substance and not peripheral to the legal proceedings is not reflected in the relevant paragraph of the *Sodzawiczny* judgment.

64. No judicial formula encapsulating the meaning of "matter" should be treated as if it were a statutory text. A court facing an application for a stay under section 4 of the FAAEA should approach the question in a practical and common-sense way. The court must respect the agreement of the parties to arbitrate their disputes. An agreement to arbitrate a dispute is an agreement not to resolve that dispute in court proceedings. Thus, any substantial matter in the legal proceedings, which is relevant to the claim or foreseeable defence, and which is within the scope of the arbitration agreement, will give rise to a mandatory stay of the legal proceedings pro tanto on the application of one of the parties. There is considerable authority to support the view that the procedural complexity caused by a reference to arbitration does not of itself render a matter non-arbitrable: see, for example, *Wealands*, Mance LJ para 26, *Fulham*, Patten LJ para 25, *Tomolugen*, Sundaresh Menon CJ para 105. That does not mean that procedural complexity is irrelevant in all circumstances because the court, when addressing an application to stay legal proceedings to enable the determination of a dispute by arbitration, should be careful to prevent an abuse of process. The Board agrees with Andrew Smith J in *Lombard North Central* (para 37 above) that the court could refuse an otherwise mandatory stay if the applicant has no real or proper purpose for seeking

the stay. That could include not only an application for a stay in relation to issues that were peripheral to the legal proceedings but also an application that amounted to an abuse of process. In this regard the Board respectfully disagrees with the statement of the Court of Appeal in England and Wales in para 71 of the judgment in *Mozambique* (para 55 above) that the practical futility of a stay will in all circumstances be irrelevant. There may be circumstances in which a party seeks a stay for an improper purpose and it would be contrary to justice if the court could not act to prevent an abuse of process. For example, if matters (1) and (2) were referred to arbitration and an arbitral tribunal were to determine those matters in FMCH's favour and FMCH acted promptly to remove a stay on the legal proceedings before the Grand Court, the court would be entitled to look with some care at any application for a stay for a further arbitration.

65. Fourthly, the exercise involving a judicial evaluation of the substance and relevance of the "matter" entails a matter of judgment and the application of common sense. It is not a mechanistic exercise. It is not sufficient merely to identify that an issue is capable of constituting a dispute or difference within the scope of an arbitration agreement without carrying out an evaluation of whether the issue is reasonably substantial and whether it is relevant to the outcome of the legal proceedings of which a party seeks a stay. In so far as the summary of the law in para 43 of *Sodzawiczny* suggests otherwise, it is in error.

66. The approach to the word "matter" in section 4 of the FAAEA set out in paras 59-65 above may involve the fragmentation of the parties' disputes with some matters being determined by an arbitral panel and other matters being resolved by the court. Such fragmentation may on occasion be inconvenient to one or more of the parties to the court proceedings. Rational businesspeople may as a general rule prefer that their disputes are determined in the same forum: see Lord Hoffmann in *Fiona Trust & Holding Corpn v Privalov* [2007] UKHL 40; [2007] Bus LR 1719 ("*Fiona Trust*"), paras 5-8. An arbitration agreement may be interpreted generously to achieve that end if the court can ascertain that as the parties' commercial purpose and the wording of the agreement can bear that meaning. But, where, on a proper interpretation of the arbitration agreement, the parties have contracted to refer to arbitration disputes which do not extend to all the matters raised in the legal proceedings, giving effect to the parties' contract will involve fragmentation of the disputes. The disadvantages caused by such fragmentation can be mitigated by effective case management by both the court and the arbitral panel.

67. In the light of the case law discussed above, the Board considers that the obiter comments of Carswell LCJ in the Northern Ireland Court of Appeal in *In re Wine Inns Ltd* [2000] NIJB 343, 358-359, should not be followed. He stated that the just and equitable winding up petition or the application for relief against the conduct of the management of a company in an unfairly prejudicial manner in that case, which related to allegations of the breakdown of trust and confidence in a quasi-partnership, each

raised an indivisible issue and not a series of discrete disputes or matters. That is not consistent with the case law which the Board has discussed above.

68. As discussed below, the meaning of "matter" is relevant to the question of whether an arbitration agreement is operative. The Board now turns to that question.

(c) The meaning of "the arbitration agreement is … inoperative"

69. As set out in para 30 above, article II(3) of the New York Convention, which is enacted in domestic law by section 4 of the FAAEA, provides exceptions to the obligation of a court of a contracting state to refer a matter to arbitration if the arbitration agreement is "null and void, inoperative or incapable of being performed." Section 4 uses the same words in defining the exceptions. In this case, the questions whether the subject matter of the dispute between the parties is indivisible or whether the remedies sought are arbitrable would not, in the Board's view, fall within the exception that the agreement was null and void or the exception that that agreement was incapable of being performed. The Board is concerned with the exception that the agreement is inoperative. The essence of the dispute between the parties on this appeal turns on this question. It is whether the arbitration agreement is inoperative or, in other words, the matters at issue between the parties are incapable of being settled by arbitration or the remedies sought are unavailable to an arbitral tribunal.

70. On the authorities there are two broad circumstances in which an arbitration agreement may be inoperative. The first is where certain types of dispute are excluded by statute or public policy from determination by an arbitral tribunal. The second is where the award of certain remedies is beyond the jurisdiction which the parties can confer through their agreement on an arbitral tribunal. The Board refers to the first type as "subject matter non-arbitrability" and to the second as "remedial non-arbitrability".

71. Subject matter non-arbitrability can arise where the state intervenes by statute to preserve a right of access to the courts. Examples of such in English law in the field of employment and discrimination can be found in section 203 of the Employment Rights Act 1996 and section 144(1) of the Equality Act 2010, which, subject to specified exceptions, prevent parties by agreement from contracting out of an employee's right to have access to an employment tribunal, or in the latter Act the courts. Subject matter non-arbitrability may also arise as a result of public policy considerations. In the Singaporean case of *Larsen Oil and Gas Pte Ltd v Petropod Ltd* [2011] 3 SLR 414, ("*Larsen*") V K Rajah JA, delivering the judgment of the Singapore Court of Appeal, at para 44 recognised two grounds for excluding from arbitration a dispute which fell within the scope of an arbitration agreement. The first was where the legislature had precluded the use of arbitration to determine the particular type of dispute and the second was where "there is an inherent conflict between arbitration and the public

policy considerations involved in that particular type of dispute". *Larsen* was concerned with claims by the liquidator of an insolvent company for the avoidance of unfair preferences and payments made with an intention to defraud a creditor which arose only on the onset of insolvency and could be pursued by the liquidator of the insolvent company for the benefit of the company's creditors. The court refused the application by Larsen, the recipient of the alleged preference, to stay the legal proceedings for arbitration of the dispute on grounds of public policy, namely that it would affect the substantive rights of the company's creditors and undermine the policy aims of the insolvency regime.

72. The underlying concept of subject-matter non-arbitrability is that there are certain matters which in the public interest should be reserved to the courts or other public tribunals for determination. But there is no agreement internationally as to the kinds of subject matter or dispute which fall within subject matter non-arbitrability. In the 2001 Companion Volume to their book on Commercial Arbitration Lord Mustill and Stewart Boyd stated (p 71):

> "Since different states have their own traditions and precepts, differing radically from state to state, on matters of politics, economics, morality and the like, it is not surprising that equally radical divergences can be found when each state identifies the matters which are regarded as too important to be left to private dispute resolution."

73. A similar statement can be found in Born, *International Commercial Arbitration*, 3rd ed (2021) Vol I, p 1029, para 6.01 in which the author states:

> "Although the better view is that the [New York] Convention imposes international limits on Contracting States' applications of the nonarbitrability doctrine… the types of claims that are nonarbitrable differ from nation to nation. Among other things, typical examples of nonarbitrable subjects in different jurisdictions include selected categories of disputes involving criminal matters; domestic relations and succession; bankruptcy; trade sanctions; certain competition claims; consumer claims; labor or employment grievances; and certain intellectual property matters. Over the past several decades, the scope of the non-arbitrability doctrine has materially diminished in most developed jurisdictions.
>
> As these examples suggest, the types of disputes which are nonarbitrable nonetheless almost always arise from a common

> set of considerations. The nonarbitrability doctrine rests on the notion that some matters so pervasively involve either 'public' rights and concerns, or interests of third parties, that agreements to resolve such disputes by 'private' arbitration should not be given effect." (Footnotes omitted)

74. It would be wrong, however, to overstate the differences of approach in the commercial sphere between jurisdictions which share the same common law heritage. In the Board's view, the jurisprudence of the courts of other common law jurisdictions in this sphere can provide the generally accepted principles for the commercial law of the Cayman Islands. It is also relevant to bear in mind, when considering these commentaries, the relatively granular meaning of "matter" in the FAAEA, which the Board discussed in paras 61-63 above, when addressing the question whether a matter is excluded from arbitral determination by subject matter non-arbitrability.

75. The second circumstance in which an arbitration agreement may be inoperative, ie where there is remedial non-arbitrability, is concerned with the circumstance in which the parties have the power to refer matters to arbitration but cannot confer on the arbitral tribunal the power to give certain remedies. In the common law world there appears to be a general consensus that an arbitration agreement cannot confer on an arbitral tribunal the power to make an order to wind up a registered company on the application of a creditor where the company is insolvent and there is strong authority in support of such an exclusion when the application is by a contributory where the company is solvent. This is because the power to wind up a company lies within the exclusive jurisdiction of the courts, which alone have the discretion as to whether to make such an order. See in English law, *Fulham* at paras 76 and 83, in Hong Kong, *Quiksilver* para 14, in Singapore, *Tomolugen* para 83 (in relation to a creditor's application), in Australia, *WDR Delaware* para 26. In *Quiksilver* and *WDR Delaware* the inability of an arbitral tribunal to make a winding up order was common ground; it is also common ground between the parties on this appeal.

76. There is a general consensus that an arbitral tribunal has the power to grant inter partes remedies, such as ordering a share buy-out in proceedings for relief for unfairly prejudicial conduct in the management of a company under section 994 of the Companies Act 2006 in the United Kingdom and similar legislation in other jurisdictions. See *Fulham*, Patten LJ at paras 77-78, Longmore LJ at paras 96 and 99; *Tomolugen*, Sundaresh Menon CJ at paras 88-89 and 103; *WDR Delaware*, Foster J at para 147 quoting para 194 of *Tridon.* Although the court is given the power by statute to make such orders, an arbitral tribunal may also grant such a remedy because third parties, who are not involved in the dispute, do not have a legal interest in the dispute and there is no public element in a dispute of that nature.

77. Similarly, in an application to wind up a company on the just and equitable ground there may be matters in dispute between the parties, such as allegations of breaches of a shareholders' agreement, which can be referred to an arbitral tribunal for a determination, which is binding on the parties, notwithstanding that only a court can make a winding up order: *Fulham*, Patten LJ at para 76; *Quiksilver*, Harris J at paras 14, 21-22; *Tomolugen*, Sundaresh Menon CJ at paras 96-103; *WDR Delaware*, Foster J at paras 161-164. The researches by the appellants' counsel demonstrate that a similar approach can be found in case law in Quebec, Canada (*Capital JPEG Inc v Corporation Zone B4 Ltd* [2019] QCCS 2986) in relation to mediation, Cyprus *(In re Kissonerga Development Co Ltd* (Application no 7/20) (unreported) 9 July 2020 which was an interim decision, Jersey (*Consolidated Resources Armenia v Global Gold Consolidated Resources Ltd* [2015] JCA 061 ("*Consolidated Resources*"), and Zambia (*Vedanta Resources Holdings Ltd v ZCCM Investment Holdings plc* [2020] ZMCA 104). See also in Hong Kong *China Europe International Business School v Chengwei Evergreen Capital LP* [2021] HKCFI 3513 ("*China Europe*"). Counsel did not address these cases in any detail, but they are consistent with the main cases which the Board has discussed above and support a conclusion that there is substantial agreement among common law jurisdictions as to the correct approach.

78. In *WDR Delaware* Foster J summarised his conclusion on this matter at para 164:

> "With the exception of that part of the present proceeding which involves the Court forming an opinion as to whether the plaintiffs are entitled to a winding up order, the questions of fact and law which mark out the substantive controversy between the parties in this proceeding are all matters which are capable of resolution by arbitration. Any award or awards which determine those matters will be taken into account when the Court comes to consider whether a winding up order should be made. If, at the end of the arbitral process, the award or awards do not address satisfactorily or comprehensively all of the grounds relied upon by the plaintiffs in support of their claims for relief made in the present proceeding, then it will be open to them to supplement or explain the terms of the relevant award or awards by evidence. The process by which that would be done is the everyday process of applying the law of evidence."

The Board agrees as a general rule with this approach to discrete matters which involve inter partes disputes in the context of a winding up application. Matters, such as whether one party has breached its obligations under a shareholders' agreement or whether equitable rights arising out of the relationship between the parties have been flouted, are arbitrable in the context of an application to wind up a company on the just and

equitable ground and the arbitration agreement is not inoperative because the arbitral tribunal cannot make a winding up order.

9. The application of the FAAEA to the facts of this case

79. The first matter which the Board must address is the interpretation of the Companies Act. As stated in para 14 above, section 92 of that Act sets out the grounds on which the court may wind up a company including the ground which is relevant in this appeal, ie that the court is of the opinion that it is just and equitable that the company should be wound up. Section 95 of that Act sets out the powers of the court, which include the power to make a winding up order or on a contributory's petition on the just and equitable ground, an alternative order providing, among other things, for the purchase of the shares of any members of the company by other members of the company.

80. The Board agrees with Moses JA that the court's consideration under section 92 of the Act whether it is just and equitable that the company should be wound up is a threshold question which is to be answered before a petitioner can get access to any of the remedies available under section 95. That is clear from a straightforward reading of the wording of the Act. The Board also accepts, as Moses JA held, that the court has exclusive jurisdiction to make a winding up order. A winding up order is an order in rem which only a court can make. It is beyond the jurisdiction of an arbitral tribunal as parties cannot confer such a power on an arbitral tribunal by private agreement. An arbitral agreement that purported to confer such a power would be inoperative to that extent.

81. Further, in deciding whether to make a winding up order on the just and equitable ground, the court conducts a wide-ranging enquiry into and evaluation of the facts. The court takes the decision whether it is just and equitable to wind up a company with regard to all the relevant circumstances at the date of the hearing: *Lau v Chu* [2020] UKPC 24; [2020] 1 WLR 4656 ("*Lau v Chu*"), para 43 per Lord Briggs, giving the judgment of the Board. A decision by an arbitral tribunal on whether it was just and equitable to wind up the company by reference to the circumstances which existed on an earlier date could not determine the issue which the court has to consider. Such a decision would be an ineffective legal judgment. The Board therefore respectfully disagrees with the obiter suggestion by Patten LJ in *Fulham* at para 83 (and its endorsement by Sundaresh Menon CJ in *Tomolugen* at para 100) that an arbitrator could make a ruling on whether it would be appropriate for a complainant to initiate winding up proceedings or be limited to some lesser remedy. A ruling by an arbitral tribunal that it was of the view that it was just and equitable that a company be wound up would be ineffective; it could not bind the parties in a hearing before the court and, given the interests of third parties in a possible winding up of the company, it could not bind the court. In deciding on the appropriate remedy under section 95 the court takes into

account the interests of third parties, including the company's directors and employees, and businesses which have dealings with the company, who will be affected if a winding up order is made. See, by way of analogy, *Fulham* para 46; *In re Neath Rugby Ltd* [2009] EWCA Civ 291, [2010] BCC 597, para 84; and *In re Asia Television Ltd* [2015] 1 HKLRD 607, paras 55-58.

82. The parties were therefore correct in their agreement that an arbitral tribunal does not have the power to decide the fifth matter listed in para 23 above, ie whether a winding up order should be made and whether the persons identified by FMCH should be appointed joint liquidators of the Company. Further, for the reasons set out above, the Board agrees with Mr Thomas Lowe, counsel for FMCH, that an arbitral tribunal does not have power to make a ruling on matters (3) and (4), ie whether it is just and equitable that the company should be wound up or whether the remedy of a share buy-out should be granted under section 95 of the Companies Act.

83. That leaves the first and second matters set out in para 23 above. The first is whether FMCH has lost trust and confidence in Ting Chuan and in the conduct and management of the Company's affairs. FMCH allege that Ting Chuan caused, permitted or procured the majority directors, whom it appointed, to act in breach of their duties to the Company and to engage in misconduct in the management of the Company's affairs. The second is whether the fundamental relationship between FMCH and Ting Chuan has irretrievably broken down as a result of Ting Chuan's having acted contrary to the understanding between the parties as to how the business of the Company would be operated. Those two matters raise questions of mixed fact and law.

84. Moses JA further reasoned that, as the majority directors and the Company were not parties to the SHA and to the arbitration agreement which it contained, and as the allegations made against Ting Chuan could not be separated from the threshold issue of whether the court was of the opinion that it was just and equitable that the Company be wound up, the arbitration agreement was inoperative. His conclusion has been summarised in a first instance decision of the High Court of England and Wales in these terms:

> "Where … a necessary precursor to any form of relief is a decision by the court that it would be just and equitable to wind up the company, then bifurcation will not be possible."

See *Riverrock Securities Ltd v International Bank of St Petersburg* [2020] EWHC 2483 (Comm); [2021] 2 All ER (Comm) 1121, para 68 per Foxton J. See also *NDK Ltd v HUO Holding Ltd* [2022] EWHC 1682 (Comm); [2022] Bus LR 761, para 64 in which Foxton J recorded the proposition from *Riverrock* as common ground between the

parties. The issue before the Board in relation to matters (1) and (2) is whether that statement is correct.

85. Mr Lowe advanced several submissions as to why the Court of Appeal had decided this case correctly. On the question of statutory interpretation, he argued that the Companies Act made it clear that no private arbitral tribunal could make the critical decision whether it is just and equitable to wind up the Company. The Board agrees for the reasons discussed above but that argument goes only to matters (3) and (4).

86. Mr Lowe can derive no support from the judgment of the Court of Appeal of England and Wales in *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2014] EWCA Civ 1575; [2015] Ch 589 ("*Salford Estates*"). That case concerned a winding up petition on the ground that the company was unable to pay its debts under section 122(1)(f) of the Insolvency Act 1986. The petitioner cited several debts in its petition as evidence of the company's inability to pay its debts, only some of which arose out of the transaction to which the arbitration agreement applied. Sir Terence Etherton C opined that in those circumstances there was no basis for a mandatory stay of the winding up proceedings under section 9 of the Arbitration Act 1996 (para 34). He then expressed the view (para 35) that it seemed "highly improbable" that Parliament intended section 9 of the 1996 Act to confer on a debtor the right to a non-discretionary order "striking at the heart of the jurisdiction and discretionary power of the court to wind up companies in the public interest where companies are not able to pay their debts". In the Board's view, whether or not this view is correct, it has no bearing on a petition in which a member of a company seeks a winding up order on the just and equitable ground.

87. Mr Lowe also advanced an argument that the Cayman Islands was unique among Commonwealth countries in not introducing either a remedy for oppression, such as the former section 210 of the Companies Act 1948 in the United Kingdom, or a remedy for unfairly prejudicial conduct in the management of the company, such as that which has been available in the United Kingdom since 1980 and is now contained in sections 994-996 of the Companies Act 2006, which was separate from an application to wind up the company. He inferred from the legislature's decision not to introduce such remedies as separate proceedings from a winding up petition that the legislature had evinced an intention that disputes between shareholders concerning the conduct of the management of Cayman Islands companies were to be conducted in open court in the public interest. He pointed out that the Cayman Islands is a very significant jurisdiction for the incorporation of companies which operate in other jurisdictions or internationally and that there was a public interest in maintaining the confidence of incorporators in the competence of the Cayman Islands courts in resolving shareholder disputes. He submitted that, while the Cayman Islands had ambitions to host international arbitrations, it was not a significant centre for such proceedings in contrast to its role as one of the largest offshore incorporation centres. The problems with this argument are, first, that neither party produced or suggested that there were any pre-legislative materials which explained why the Cayman Islands legislature had not

introduced free-standing remedies for oppression and unfair prejudice. The submission therefore is simply speculation. Secondly, in any event, on the basis that matters (3)-(5) are to be determined exclusively by the courts, there will be court proceedings in public in which the critical decisions are made and the factual basis on which those decisions are made will be manifest. The Board is not persuaded that there is a public interest in making the Cayman Islands an outlier in relation to the treatment of international arbitration.

88. FMCH further submitted that winding up was intended to be a quick and efficient process. The presentation of a winding up petition offered protections to the petitioner as section 99 of the Companies Act serves to maintain the status quo by nullifying retrospectively on the making of a winding up order any disposition of the company's property or transfer of shares or alteration in the status of its members after the commencement of the winding up, unless the court orders otherwise. The Court of Appeal of the Cayman Islands clarified the purpose of this provision in *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2020] CILR 417. A prolonged process involving an arbitration in relation to matters (1) and (2) followed by a court process to determine matters (3)-(5) would not achieve the speedy resolution of the disputes and would leave hanging over the Company the possibility of the retrospective nullification of transactions under section 99. Mr Lowe pointed out that the parties had already been involved in a lengthy arbitration at the instance of Ting Chuan which had been very expensive and had taken over three and a half years to complete.

89. This is an argument relating to public policy. Mr Lowe further submitted that the complexity and delay involved in a bifurcation of the proceedings between an arbitral tribunal and the court would frustrate the expectations of reasonable businesspeople. In the Board's view the reference to such expectations is a relevant consideration principally in the interpretation of an arbitration agreement, viz Lord Hoffmann in *Fiona Trust*, rather than a distinct ground of public policy. In any event, there is no necessity that an arbitration of matters (1) and (2) would involve undue delay if the arbitral tribunal exercises robust case management in fulfilment of their task in reaching a speedy resolution of an arbitrated dispute. The Board is not persuaded that the determination of matters (1) and (2) by an arbitral tribunal is excluded on grounds of public policy because of the risk of some delay. In invoking the jurisdiction of the Court on the just and equitable ground FMCH is seeking a statutory remedy of an equitable nature: *In re Westbourne Galleries Ltd; Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, 379 per Lord Wilberforce; *Lau v Chu*, para 64 per Lord Briggs. The clean hands doctrine applies. Further, in the Board's view, in the exercise of this equitable jurisdiction the court must have regard to a party's contractual obligations, which may include an agreement to refer to arbitration disputes which fall within the scope of the relevant arbitration agreement.

90. There is no substance in the submission that a sword of Damocles is hanging over the Company through the operation of the avoidance provisions of section 99 of the Companies Act. As Mr Charles Kimmins KC pointed out on behalf of Ting Chuan, Kawaley J issued a consent order on 16 November 2018 which prevents payments made for the purpose of paying debts and expenses of the Company in the ordinary course of its business after the date of presentation of the winding up petition from being avoided under section 99 of the Companies Act.

91. The Board is not persuaded that an agreement to refer to arbitration disputes arising out of the SHA amounts to a contractual prohibition on initiating a petition to wind up a company. The Board discusses this matter below when it considers section 95(2) of the Companies Act. The submission that an arbitration would deny a party the protections of section 99 of the Companies Act is misconceived both because the arbitration agreement does not prevent the presentation of a winding up petition and because the parties have chosen to limit the application of section 99 in this case.

92. A further submission by FMCH in support of the argument that the just and equitable jurisdiction was indivisible was that the court alone could decide the facts in conducting the broad enquiry which was required when deciding whether it was just and equitable that a company should be wound up. Mr Lowe went so far as to suggest that the court needed to hear and test all the evidence. When questioned by the court he conceded, correctly, that there was nothing to stop the parties presenting the court with a statement of agreed facts. In the Board's view, such a statement could include, in principle, that FMCH had lost trust and confidence in Ting Chuan and that the fundamental relationship between those parties had broken down. A party could admit such facts, if it wished. As the court in exercising its jurisdiction under section 92 of the Companies Act would be bound by such an agreed statement or admission as between the parties, there is no reason in principle why the court should not be bound in a question between Ting Chuan and FMCH by the determination of an arbitral tribunal, which would set out its reasoning and its findings of fact.

93. The Board recalls that Kawaley J in his order of 14 July 2020 ordered that the petition be treated as an inter partes proceeding between those parties. See para 10 above. A finding by the arbitral tribunal on matters (1) and (2) would be binding on the parties under article 35(6) of the ICC Rules of Arbitration which provides:

> "Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made."

There is therefore no danger of duplication of effort or inconsistent findings in relation to matters (1) and (2).

94. Finally, FMCH submits that section 4 of the FAAEA requires a stay only in respect of a matter which is capable of settlement by arbitration. It submits that a matter must be a determination of a right or liability and not merely a declaration. It prays in aid a statement by Deane and Gaudron JJ in their joint judgment in the High Court of Australia in *Tanning* at 351 in which they interpreted the meaning of "matter" in the Australian legislation, which includes the words "capable of settlement by arbitration" in this way:

> "It requires that there be some subject matter, some right or liability in controversy which, if not co-extensive with the subject matter in controversy in the court proceedings, is at least susceptible of settlement as a discrete controversy."

FMCH referred also to a more recent joint judgment of Kiefel CJ and Gageler, Nettle and Gordon JJ in the High Court of Australia in *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514, para 68 in which, paraphrasing the judgment of Deane and Gaudron JJ in *Tanning*, they stated that it was sufficient that the defence puts in issue "among other things, some right or liability which is susceptible of settlement under the arbitration agreement as a discrete controversy". But the Board notes that the meaning of the judgment in *Tanning* was not a matter of controversy in that appeal.

95. The Board does not accept this submission, which is that an arbitrable matter must be a dispute which leads to the determination by an arbitral tribunal of a right or a liability, if by that FMCH means that the arbitral panel must have the jurisdiction to make an award such as an order for payment to enforce the right or require a party to fulfil its obligation. The Board does not interpret the judgment of Deane and Gaudron JJ as excluding the possibility of the determination of a dispute or controversy by means of a declaration, where the dispute is a matter of substance. See paras 59-62 above.

96. Matters (1) and (2) are controversies relating to legal or equitable rights which are of substance. They are matters which lie at the heart of the legal proceedings in the Cayman Islands for an order under section 95 of the Companies Act. A declaration, for example, that Ting Chuan had breached FMCH's equitable rights and that their relationship had irretrievably broken down would be highly relevant to FMCH's application for a just and equitable winding up of the Company or in the alternative a share buy-out. They are also matters which the parties accept fall within the scope of the arbitration agreement.

97. For the reasons set out above, the Board concludes that matters (1) and (2) which it has set out in para 23 above are "matters" in terms of section 4 of the FAAEA for which a stay pro tanto of the winding up proceedings is mandated.

10. The application for a case management stay of the winding up proceedings

98. Ting Chuan seeks a discretionary stay of the winding up proceedings so far as they are formally directed against parties other than itself. Kawaley J in para 75 of his judgment opined that section 95(1)(d) of the Companies Act, which provides that the court may make "any other order that it thinks fit" gave him the power to do so. The Court of Appeal between paras 138 and 141 of Moses JA's judgment discussed the court's power to grant a discretionary case management stay but considered that there was no room to exercise such discretion as the petition to wind up the Company on the just and equitable ground involves an indivisible factual evaluation.

99. As the winding up process is intended to be conducted with expedition, the court will, as a general rule, rarely wish to grant a stay of such proceedings. But a stay for arbitration is a special case. Where the shareholders of a company are engaged in an inter partes dispute which is within the scope of a binding arbitration agreement and an essential precursor to the determination of a winding up petition on the just and equitable ground, there are strong grounds for granting such a stay. In *Salford Estates* the Court of Appeal of England and Wales held that the court's discretionary power under section 122(1) of the Insolvency Act 1986 ("A company *may* be wound up by the court if …") had to be exercised consistently with the parties' agreement as to the proper forum for resolving their disputes and in accordance with the legislative policy of the Arbitration Act 1996. The case concerned a disputed debt alleged to arise under a lease and the lessor presented a petition seeking the winding up of the tenant. Sir Terence Etherton MR, giving the judgment of the court, stated (para 39) that section 122(1) of the Insolvency Act 1986 conferred on the court a discretionary power to wind up a company. He said that it was "entirely appropriate" that the court should, "save in wholly exceptional circumstances", grant a discretionary stay as that was consistent with the pro-arbitration policy of the 1996 Act.

100. The statutory provisions under which the Cayman Islands courts are operating in this case are contained in the FAAEA. The FAAEA does not contain provisions stating the well-known principles that parties are free to agree how their disputes are resolved subject only to such safeguards as are necessary in the public interest, and restricting the intervention of the court, such as are found in section 1 of the 1996 Act, on which the Court of Appeal of England and Wales relied in *Salford Estates*, and in section 3(3) of the Arbitration Act 2012 in the Cayman Islands, which relates to domestic arbitrations. Nonetheless, such principles are wholly consistent with the wide international consensus in favour of a pro-arbitration policy in relation to international arbitrations governed by the New York Convention, which provides in article II(1):

> "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration."

101. Thus, in *Tomolugen* the Court of Appeal in Singapore in an unfair prejudice petition granted a mandatory stay under section 6 of the IAA of one of the matters which fell within the scope of the arbitration agreement and granted a discretionary case management stay of the other matters which did not: see Sundaresh Menon CJ at paras 187-190. In *WDR Delaware*, a case involving a winding up petition arising out of allegations of oppressive conduct, Foster J granted a stay of the whole of the winding up petition although only certain matters were arbitrable. Similarly, in *Consolidated Resources* the Court of Appeal in Jersey granted a mandatory stay of the matters within the scope of the arbitration agreement and, using the court's inherent jurisdiction, a discretionary stay of the remaining claims in the proceedings for unfair prejudice and winding up (para 159). In *China Europe*, Linda Chan J in the Court of First Instance in Hong Kong granted a discretionary stay for arbitration of a winding up petition on the just and equitable ground, where the disputes between the shareholders which grounded the petition fell within the scope of an arbitration agreement. It will be recalled that in Hong Kong section 20 of the Arbitration Ordinance, which provided for a mandatory stay, referred to an "action" and did not extend to a winding up petition; *Quiksilver* para 20.

102. The Board is inclined to think, in agreement with Kawaley J and Sir Terence Etherton MR, that in the Cayman Islands as in England and Wales there is a statutory basis for the grant of a stay of a winding up petition. The Board therefore does not need to determine whether and to what extent a discretion exists under the court's case management powers apart from statute. In *In re Nanfong International Investments Ltd* [2018] CILR 321 ("*Nanfong*") the Cayman Islands Court of Appeal adopted a restrictive approach to the grant of a discretionary stay, applying the principles set out by Lord Bingham of Cornhill CJ in *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173 ("*Reichhold*"). Moses JA adopted the same approach in this case, holding at para 138 that a stay will be granted only in rare and compelling circumstances. The Board observes that in *Reichhold* and *Nanfong* the basis on which a stay was sought did not involve an assertion that all or some of the matters in the legal proceedings fell within the scope of a binding arbitration agreement. While it is not necessary for the Board to decide this matter, it questions the proposition that a discretionary case management stay of winding up proceedings on the just and equitable ground where a substantial part of the dispute between the parties or some of the parties to the petition falls within the scope of a binding arbitration agreement should be granted only in rare and compelling circumstances. Such a conclusion appears to be inconsistent with the support which the courts give to arbitration and the trend of case law internationally.

103. The determination of matters (1) and (2) will be an essential precursor to the court's formation of its opinion whether it is just and equitable to wind up the Company, which in turn is the threshold for giving a remedy under section 95 of the Companies Act (ie matters (3)-(5)). The Board is satisfied that it is appropriate to grant such a stay.

11. Section 95(2) of the Companies Act

104. It will be recalled that section 95(2) states that the court shall dismiss or adjourn a hearing of a winding up petition if the petitioner is contractually bound not to present a petition against the company. In this case there is no contract binding FMCH not to present a winding up petition. The arbitration agreement in the SHA requires certain matters to be determined by arbitration but is silent as to the presentation of a winding up petition against the Company. The Board is satisfied that the contractual obligation on the parties to determine those matters by arbitration entails an obligation not to have those matters determined by a court. That obligation is enforced by the court's grant of a stay of the winding up petition pro tanto. It does not amount to a contractual prohibition against the initiation of winding up proceedings. Section 95(2) is therefore not relevant to the dispute between the parties and the Board will say no more about it.

12. Conclusion

105. Matters (1) and (2) are substantive disputes between FMCH and Ting Chuan which provide the factual basis for the winding up petition on the just and equitable ground. Those matters fall within the scope of the parties' arbitration agreement and must be determined by an arbitral tribunal unless the parties waive their right to arbitration. There must therefore be a mandatory stay of the winding up petition in relation to matters (1) and (2) under section 4 of the FAAEA and a discretionary stay in relation to matters (3)-(5). In relation to the Company, which is the other party to the winding up petition, the Board is satisfied that there should be a stay of the winding up petition. The determination of matters (1) and (2) is the precursor to the determination of the petition which Kawaley J in his order dated 14 July 2020 has ordered be treated as an inter partes proceeding between FMCH and Ting Chuan.

106. The Board will humbly advise His Majesty that this appeal should be allowed.

EXHIBIT V

[2010 (2) CILR 154]

IN THE MATTER OF FREERIDER LIMITED

Grand Court, Financial Services Division

(Foster, J.)

16 September 2010

Companies—compulsory winding up—dispositions and transfers during winding up—validation by court—grant of security over all company's assets may be within "ordinary course of company's business" for purpose of consent validation order but depends on context—relevant considerations include but not limited to (a) circumstances of case; (b) how objective observer would regard; and (c) prior practices, focusing on businesses in ordinary operation and not abnormal financial difficulties—not to qualify if for purpose of funding one shareholder's litigation against another or merely because non-fraudulent and within company's objects

Companies—compulsory winding up—dispositions and transfers during winding up—validation by court—grant of security over all company's assets usually to be prospectively validated by court, though may retrospectively validate—relevant considerations include but not limited to whether (a) within directors' powers; (b) directors believed it necessary; (c) in good faith; (d) backed by good reasons; and (e) irregularities in company's affairs—court to avoid prejudice to unsecured creditors

The company was in official liquidation in the Grand Court.

The company was a part of a corporate structure for the exploitation of an invention of Mr. Heinen, and was a quasi-partnership between himself and Mr. Le Comte with each of them holding 50% of the voting shares. Its principal assets were intellectual property rights in the invention. Mr. Le Comte was of the view that the company's assets were highly valuable, and had good commercial prospects. They entered into a shareholder agreement, one of the terms of which was that "All votes [are] to be carried in favour of, and/or all actions to be taken and documents and instruments [are] to be executed in accordance with, the recommendation with regard thereto made by Mr. Le Comte in his sole discretion." Over time, the relationship between the two broke down, and the company experienced significant financial difficulties. Legal proceedings between them were commenced in New York and the Netherlands, and, in March 2009, Mr. Heinen applied to the Grand Court to wind up the company. Subsequently, in June 2009, Mr. Le Comte proposed that the company obtain a validation order to enable it to carry on its general business, notwithstanding the existence of the winding-up petition. Mr. Heinen

formally consented to the validation order, the terms of which permitted "payments and other dispositions of property made by the company in the ordinary course of its business for proper value," and requested details of the transactions that Mr. Le Comte sought to validate. No such details were ever provided. In August and December 2009, Mr. Le Comte, purporting to act on behalf of the company, entered into two promissory notes with 733 Properties, a company which was part of the Durst Organization in New York. One of the heads of the Durst Organization was Mr. Durst, a personal friend of Mr. Le Comte's. In entering into the notes, both 733 Properties and the Durst Organization relied on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge. The notes, which were in substantially identical terms, each provided (a) for a credit line of up to US$1m., to be repaid with interest, to be made available to the company; (b) for the grant by the company of security over all of its assets; and (c) that the institution against the company of any liquidation proceeding, which remained undismissed for 90 days, would amount to default, rendering the note immediately due and payable and allowing 733 Properties to exercise its rights pursuant to the security. Correspondence between Mr. Durst and Mr. Le Comte indicated that they had previously discussed the proposal to grant the security, with the aim of preventing Mr. Heinen from gaining control over the company's assets, and that the proposal and subsequent grant had been concealed from Mr. Heinen. Nonetheless, Mr. Le Comte and his wife provided to the Durst Organization personal guarantees of the company's obligations under the notes. Mr. Le Comte and Mr. Heinen both agreed that the company was solvent on a balance sheet test at this time, although the reason Mr. Le Comte gave for entering into the notes was that the company was unable to pay its debts as they fell due.

The Grand Court (Foster, Ag. J.) directed (in proceedings reported at *2009 CILR 604*) that, since the winding-up petition was in reality a dispute between Mr. Le Comte and Mr. Heinen, the petition be heard *inter partes* between them, with the company not able to participate. In May 2010, the Grand Court (Foster, J.) ordered the winding up of the company on the just and equitable ground (in proceedings reported at *2010 (1) CILR 486*), finding that Mr. Le Comte had been guilty of a lack of probity in his management of the company's affairs. This had the effect, pursuant to s.99 of the Companies Law (2010 Revision), that any disposition of the company's property made after the presentation of the winding-up petition in March 2009 would be void unless validated by the court. Liquidators were appointed in respect of the company. The company's bank statements showed that a significant amount of the sums drawn down under the notes were used by Mr. Le Comte to settle the accounts of the attorneys acting on his instructions in the winding-up proceedings. Shortly thereafter, 733 Properties gave notice that the winding-up order constituted a default, that all sums and obligations to it had become due, and that it intended to exercise its rights pursuant to the security. 733 Properties subsequently assigned its rights to its subsidiary, the GCF Group.

The liquidators applied for a declaration that the purported grant of the security over all the company's assets was void under s.99 of the Companies Law (2010 Revision). They submitted that the grant of the security was not within the terms of the validation order, since it (a) had been for the inappropriate purpose of funding Mr. Le Comte's litigation against Mr. Heinen; (b) was not part of the ordinary operation of the business, but rather a response to abnormal financial difficulties, with major consequences; (c) was not analogous to the loans that the company had previously taken from Mr. Le Comte himself or the proposed third-party financing he had discussed with Mr. Heinen; (d) was concealed from Mr. Heinen, when, under the terms of the shareholders' agreement between himself and Mr. Le Comte, he should have been consulted and the matter put to a vote; (e) was disproportionate to the amount of borrowing enabled by the notes, given Mr. Le Comte's high valuation of the company; (f) inappropriately provided for an immediate default upon the execution of the notes; (g) had the collateral purpose of giving the Durst Organization a priority claim over the assets and thereby preventing Mr. Heinen from gaining control; and (h) was therefore not in the ordinary course of the company's business. They further submitted that it should not now be retrospectively validated, since (i) granting the security was not in the interests of the company, nor could a reasonable and honest director have believed it to be; (j) there had been irregularities in the company's affairs in that Mr. Le Comte was guilty of a lack of probity; (k) retrospective validation at this time would frustrate the official liquidators' taking control of the assets; and (l) declaring the grant of the security void would not be unfair to 733 Properties or the Durst Organization, since it was their decision to rely on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge.

The GCF Group submitted in reply that the grant of the security was within the terms of the validation order and should not be declared void under s.99 of the Companies Law, since (a) the company's articles of association provided that the company's objects were unrestricted; (b) the company had relied on loans from Mr. Le Comte in the past; (c) Mr. Heinen and Mr. Le Comte had previously discussed proposals to obtain third party financing; (d) meeting the costs of the ongoing litigation through borrowing money had become an existing practice of the company; (e) by virtue of the shareholders' agreement between them, Mr. Le Comte was not required to inform Mr. Heinen of the proposed grant; (f) the existence of the winding-up petition, of which the Durst Group was already aware, was not intended to qualify as a default; (g) the fact that Mr. Le Comte and his wife had provided personal guarantees of the company's obligations under the notes was inconsistent with the inference of a collateral purpose; and consequently (h) the grant of the security was in "the ordinary course of the company's business." In the alternative, GCF applied for an order retrospectively validating the grant of the security, submitting that (i) the court had an unfettered jurisdiction to validate dispositions, including retrospectively; (j) the company was

solvent at the relevant time, and therefore the validation of the grant of the security should not be seen as prejudicial to unsecured creditors; and (k) declaring the grant of the security void would be unfair to 733 Properties and the Durst Organization.

The court considered (a) the test for whether a company's actions came within "the ordinary course of business"; and (b) when it would exercise its discretion to validate a disposition of a company's property so that the disposition would not be void under s.99 of the Companies Law.

Held, declaring the purported grant of the security void:

(1) The court would declare the grant of the security to be void under s.99 of the Companies Law (2010 Revision). Since it was established law that a grant of security over a company's assets was a disposition of its property, in order to determine whether it was within the terms of the validation order the question was whether it was made in "the ordinary course of the company's business." In answering this, the relevant considerations included the circumstances in which the grant occurred, whether an objective observer would consider it as having occurred in the ordinary course of business, and the prior practices of the company. The focus needed to be on the ordinary operational activities of businesses, and not responses to abnormal financial difficulties. However, not all these factors would be applicable in every case, no single factor would be conclusive, and the list was not exclusive. A disposition could be in the ordinary course of business despite being unprecedented, and conversely, a disposition would not automatically qualify simply because it was non-fraudulent and within the objects of the company's articles of association. A grant of security over all of a company's assets during winding up could fall within the ordinary course of a company's business, but the court needed to consider all the circumstances. Moreover, the grant of such security should usually be the subject of a prospective validation application to the court, in order that all the potential consequences could be properly analyzed (paras. 13–17).

(2) The grant of the security was outside the ordinary course of the company's business in a number of ways. First, the purpose of obtaining money in return for security was to finance Mr. Le Comte's litigation against Mr. Heinen, of which the company was merely the subject-matter, and it would not be in the ordinary course of any company's business to borrow money to fund litigation by one shareholder against another. Secondly, it was a response to abnormal financial difficulties, and not within the ordinary operational activities of the company. Neither the loans the company had previously taken from Mr. Le Comte himself nor the proposed third-party financing he had discussed with Mr. Heinen before their relationship broke down were analogous to granting security over all the company's assets, which was a highly unusual step with major consequences. Thirdly, Mr. Le Comte had deliberately concealed from Mr. Heinen the grant of the security, when the shareholders' agreement required Mr. Le Comte to consult with Mr. Heinen, and arguably to put the

matter to a vote. Fourthly, the extent of the security was disproportionate to the amount of borrowing enabled by the notes, given Mr. Le Comte's much higher valuation of the company. It was also surprising that—on a usual construction without reference to the parties' intentions, as required by Cayman law—the notes provided for an immediate default upon their execution. Fifthly, there was clear evidence that Mr. Le Comte's grant of the security had the collateral purpose of giving the Durst Organization a priority claim, thereby preventing Mr. Heinen from gaining control of the assets. In the circumstances, the grant of the security was clearly not in the ordinary course of the company's business and therefore fell outside the terms of the consent validation order (para. 31; paras. 42–49).

(3) Moreover, the court would not retrospectively validate the grant of security over all of the company's assets. The grant of such security should usually be the subject of a prospective validation application to the court, in order that all the potential consequences could be properly analyzed. Nonetheless, the court had an unfettered discretion whether to validate any particular disposition, including doing so retrospectively, so that it would not be void under s.99 of the Companies Law. In determining whether to exercise this discretion, the relevant considerations would be: whether the disposition was within the directors' powers; whether the directors believed it to be necessary or in the interests of the company; whether it was made in good faith; whether there were good reasons for it; and whether there had been irregularities in the affairs of the company. Not all of these factors would always be applicable, nor was it an exclusive list—every case would turn on its own circumstances. The court's principal concern would be to avoid prejudice to the body of unsecured creditors as a whole. If the company were solvent, the usual assumption would be that the disposition would not be prejudicial to the creditors as it should not affect their repayment, although even this would not be conclusive if, as here, the winding-up petition were based on grounds other than insolvency (para. 25; paras. 51–59).

(4) In these circumstances, it was unclear whether the company was solvent at the time of the grant of the security. It appeared that, although it was solvent on a balance sheet test, it was not solvent in that it was unable to pay its debts as they fell due. However, even if it were solvent when the grant of the security was proposed, the court would not have validated the grant of the security at that time. As the court had already concluded, the grant was not in the ordinary course of the company's business, and there was no evidence suggesting that the reasons for granting it were in the interests of the company or could have been held by a reasonable and honest director. Rather, it appeared to be purely in Mr. Le Comte's personal interests. Irregularities in the affairs of the company had also been shown, in that Mr. Le Comte had been guilty of a lack of probity and had granted the security to achieve a collateral purpose. Even if the court would have validated it at the time of its proposal, it would not now do so retrospectively, since, the company having entered official liquidation,

validation of the grant of the security would frustrate the official liquidators' taking control of the assets. Nor would this be unfair to 733 Properties or the Durst Organization, since it was their decision to rely on Mr. Le Comte's attorneys' opinion, some of the assumptions underlying which Mr. Durst knew to be under challenge. The grant of the security would therefore not be validated retrospectively, and would be void under s.99 of the Companies Law (paras. 61–67).

Cases cited:

(1) *Ashborder BV v. Green Gas Power Ltd.*, [2005] 1 BCLC 623; [2005] BCC 634; [2004] EWHC 1517 (Ch), applied.

(2) *Burton & Deakin Ltd., In re*, [1977] 1 W.L.R. 390; [1977] 1 All E.R. 631, referred to.

(3) *Countrywide Banking Corp. Ltd. v. Dean*, [1998] A.C. 338; [1998] 2 W.L.R. 441; [1998] 3 LRC 107; [1998] 1 BCLC 306; [1998] BCC 105, applied.

(4) *Crossmore Elec. & Civil Engr. Ltd., In re* (1988), 5 BCC 37; [1989] BCLC 137, referred to.

(5) *Cybervest Fund, In re*, 2006 CILR 80, *dicta* of Smellie, C.J. applied.

(6) *Denney v. John Hudson & Co. Ltd.*, [1992] BCLC 901; [1992] BCC 503, referred to.

(7) *Fairway Graphics Ltd., Re*, [1991] BCLC 468, referred to.

(8) *Fortuna Dev. Corp., In re*, 2004–05 CILR 533, *dicta* of Henderson, J. applied.

(9) *Gray's Inn Constr. Co. Ltd., In re*, [1980] 1 W.L.R. 711; [1980] 1 All E.R. 814, *dictum* of Buckley, L.J. applied.

(10) *Mal Bower's Macquarie Elec. Centre Pty. Ltd., Re*, [1974] 1 N.S.W.L.R. 254, referred to.

(11) *Scotiabank (C.I.) Ltd. v. Treasure Island Resort (Cayman) Ltd.*, 2004–05 CILR 423, referred to.

(12) *Steane's (Bournemouth) Ltd., Re*, [1950] 1 All E.R. 21, applied.

(13) *Tellsa Furniture Pty. Ltd., Re* (1985), 81 FLR 185; 9 ACLR 869, applied.

Legislation construed:

Companies Law (2010 Revision), s.99: The relevant terms of this section are set out at para. 4.

s.100(2): The relevant terms of this sub-section are set out at para. 4.

s.142(1): The relevant terms of this sub-section are set out at para. 37.

A.A. Galatopoulos and *Ms. R.A. Collins* for the liquidators;

J.G. Manning and *A.J. Walters* for the GCF Group;

G. Halkerston and *Ms. K. Brown* for Mr. Heinen;

A. Turner and *Ms. R. Lawrence* for Mr. Le Comte.

1. **FOSTER, J.:** This is the ruling on the application of the joint official liquidators ("the JOLs") of Freerider Ltd. ("the company," and in official

liquidation) by summons dated August 30th, 2010 seeking a declaration that the security over all the assets of the company purportedly granted under two convertible revolving secured promissory notes and security agreements, respectively dated August 17th, 2009 ("the first note") and December 3rd, 2009 ("the second note," and together, "the notes") in favour of 733 Properties Inc. and subsequently assigned to its subsidiary, GCF Group LLC, is not within the terms of a validation order made by consent on June 29th, 2009 ("the consent validation order"), not having been granted in the ordinary course of the company's business for proper value, and is therefore void under s.99 of the Companies Law (2010 Revision) ("the Law"). The ruling also relates to the summons of GCF, also dated August 30th, 2010, seeking an order that, if the court finds that the security is not within the terms of the consent validation order, the grant of the security should now be retrospectively validated and accordingly not be void pursuant to s.99 of the Law.

General background

2. The company was ordered to be wound up on just and equitable grounds on May 13th, 2010 on the petition of Mr. Heinen, who is one of the two voting shareholders, which was vigorously opposed by the only other voting shareholder, Mr. Le Comte. Mr. Le Comte subsequently appealed to the Court of Appeal against the winding-up order, but his appeal was refused on August 24th, 2010. In a previous ruling dated November 11th, 2009, the court had directed pursuant to O.3, r.11(2) of the Companies Winding Up Rules 2008 that the company itself should not be able to participate in the winding-up proceedings, as it was merely the subject-matter of the proceedings, which should be treated as *inter partes* proceedings between Mr. Heinen and Mr. Le Comte.

3. The background to the dispute between Mr. Heinen and Mr. Le Comte concerning the company is fully set out in the reasons for the winding-up order dated May 13th, 2010, and I do not consider it necessary to rehearse that background.

The consent validation order

4. Section 99 of the Law provides:

"When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void."

Section 100(2) of the Law provides:

"In any other circumstance not specified in subsection (1) [none of which are applicable here], the winding up of a company by the

Court is deemed to commence at the time of the presentation of the petition for winding up."

Both s.99 and s.100(2) are intended to protect the unsecured creditors of the company once winding-up proceedings have commenced. The companies law in the United Kingdom, Australia, Canada and most other Commonwealth common law jurisdictions has been to the same effect since the 19th century.

5. On June 22nd, 2009, the attorneys then representing the company on Mr. Le Comte's instructions, Turner & Roulstone, wrote to Mr. Heinen's attorneys, Appleby, proposing that the parties should agree to a validation order to enable the company to carry on its general business notwithstanding the presentation of the winding-up petition, thus avoiding the consequences of s.99 of the Law. Turner & Roulstone requested an urgent response. The following day, June 23rd, 2009, Appleby responded stating that they were taking instructions in relation to the proposed validation order and in the meantime requested details of the transactions which it was sought to validate. By reply email on June 24th, Turner & Roulstone responded, again requesting that Mr. Heinen's attorneys revert to them on the proposed orders without delay. Their email then said:

"*The company needs to have the ability to conduct its general business* and this type of order is given as of right where a just and equitable petition has been issued. There is no obligation on the company to provide specific details of the transactions which it wishes to conduct." [Emphasis supplied.]

6. By reply letter dated June 29th, 2009, Appleby confirmed that their client, Mr. Heinen, was prepared to agree to the terms of the "draft consent order validating payments and other dispositions of property made by the company in the ordinary course of its business for proper value pending the determination of the petition." Appleby went on to contend that their client was entitled to details of all such transactions and requested confirmation by return that such details would be provided. It seems that no response to that request was ever received.

7. The consent validation order, being a consent order, was dealt with administratively and signed by the clerk of court. There was no hearing by or involvement of the court. The consent validation order provided as follows:

"It is hereby ordered by consent that, notwithstanding the presentation of the petition against Freerider Ltd. ("the company"):

(1) payments made into or out of the bank accounts of the company in the ordinary course of business of the company; and

(2) dispositions of the property of the company made in the ordinary course of its business for proper value;

between the date of presentation of the petition and the date of judgment on the petition or further order in the meantime shall not be void by virtue of the provisions of s.99 of the Companies (Amendment) Law 2007 [now s.99 of the Law] in the event of an order for the winding up of the company being made on the said petition."

It is para. 2 of the consent validation order which is now in issue.

Procedure

8. I should note that Mr. Heinen had previously issued a summons, dated June 16th, 2010, subsequently amended on July 15th, 2010, by which he himself sought a declaration that the notes and the security were both void pursuant to s.99 of the Law. This summons as amended therefore predated the JOLs' summons, which is the subject of this ruling. Both counsel for GCF and counsel for Mr. Le Comte raised an issue as to Mr. Heinen's *locus* to make such an application, contending that the JOLs were the only appropriate parties to seek a declaration under s.99 of the Law. As the JOLs have since done that (albeit that their application relates only to the grant of the security and not to the promissory notes as such), I declined to hear Mr. Heinen's amended summons or the related arguments on the question of Mr. Heinen's *locus* in the course of hearing the JOLs' summons. However, I indicated that I would deal with any issues arising out of Mr. Heinen's amended summons, if necessary, at some future date. Nonetheless, since Mr. Heinen and Mr. Le Comte are both contributories and were respectively the petitioner and the respondent in the winding-up proceedings, I did agree to hear and did hear submissions on behalf of Mr. Heinen in support of the JOLs' summons and in opposition to GCF's summons and submission on behalf of Mr. Le Comte in opposition to the JOLs' summons and in support of GCF's summons.

9. I should also note that counsel for Mr. Heinen indicated that he wished to argue that the grant of the security was not anyway a disposition of the property of the company because, he contended, Mr. Le Comte had no authority to enter into the notes and to grant the security on behalf of the company. Since, at a previous directions hearing on August 27th, 2010, I had already directed that the sole issue for determination at the hearing before me in the event that the JOLs issued a summons would be whether the grant of the security was made in the ordinary course of the company's business in terms of the consent validation order, I declined to allow Mr. Heinen's counsel to make his proposed argument at the hearing of the JOLs' summons. However, I accepted that Mr. Heinen's counsel was entitled to consider his position in light of this ruling and, if he considered

it necessary and appropriate, to make an application in that regard at some future date.

The disposition in issue

10. The affidavit evidence establishes that Mr. Le Comte, purporting to act on behalf of the company, as the borrower and 733 Properties as the lender entered into the first note on August 17th, 2009, approximately two months after the date of the consent validation order. 733 Properties is a company which is part of the Durst Organization of New York, which carries on business principally as an owner, builder and manager of commercial and residential real estate in New York. The Durst Organization is headed by Mr. Jonathan Durst and a cousin of his. Mr. Durst's wife is a close personal friend of Mr. Le Comte's wife. According to Mr. Durst's affidavit, he has been a friend of Mr. Le Comte and his family for almost 20 years, principally through the friendship of their respective wives and children. Mr. Le Comte's evidence confirms this.

11. The first note relates to a sum of up to US$1m. together with interest. The second note relates to a further sum of up to US$1m. together with interest. The notes are otherwise in substantially identical terms and by cl. 3 in each case provide for the grant by the company of security (referred to in the notes as "collateral") over all of the company's assets, wherever located, including all intellectual property rights and any claims against third parties. The notes also provide (cl. 2) *inter alia* that the institution against the company of any liquidation proceeding which remains undismissed for 90 days is an event of default as a result of which the note in each case becomes automatically and immediately due and payable and 733 Properties has the right to exercise its rights under the note with regard *inter alia* to the security.

12. On May 21st, 2010 (just over a week after the winding-up order of May 13th, 2010 was made), 733 Properties gave formal notice that the winding-up order constituted a default under the notes and that all sums and obligations under the notes were then due and payable and that 733 Properties intended to exercise its rights and remedies under the notes, including all its rights to proceed against the "collateral" (*i.e.* the security). Since then, there has been an ongoing disagreement between 733 Properties (and its subsequent assignee, GCF) and the JOLs and Mr. Heinen over the right of the JOLs or 733 Properties, now GCF, to possession and control of the assets of the company, including the right to control the litigation instigated by Mr. Le Comte in the name of the company in New York and the Netherlands. Subsequently, as I understand it, by consent of the parties, including the JOLs, the legal proceedings in New York were stayed by the court until November 30th, 2010 to enable determination of the validity of the purported grant of the security by the company, which is, of course, a matter of Cayman law, by this court.

The relevant law on the ordinary course of business

13. Section 99 of the Law applies when there is a disposition of a company's property after the commencement of a winding up and the court has not made an order that the disposition concerned is not thereby void. It was accepted by all parties that the expression "disposition of property" in this context encompasses encumbrances granted over a company's property, such as the security in this case. That is clearly established by authority and not in doubt. Furthermore, as the petition for winding up the company was presented (*i.e.* filed with the court and initiated) on March 6th, 2009 and a winding-up order has since been made, the winding up of the company is deemed, pursuant to s.100(2) of the Law, to have commenced on March 6th, 2009. Accordingly, the security was clearly granted after the commencement of the winding up. There is again no doubt about that and there was no dispute in that regard either between the parties.

14. The court has not made any order specifically validating the granting of the security. The only validation order made is the consent validation order which validates dispositions made by the company "in the ordinary course of its business for proper value." The phrase "in the ordinary course of business" has been considered by various Commonwealth courts on a number of occasions and in a number of contexts, the circumstances of all of which are inevitably different. However, the opinion of the Privy Council in *Countrywide Banking Corp. Ltd.* v. *Dean* (3), which is of course binding on this court, is in my opinion the appropriate authority for determination of the meaning of that expression in Cayman law. The Privy Council made reference to several decisions in other courts, but ultimately declined to adopt any particular formulation of the phrase. It said ([1998] A.C. at 349):

"There are difficulties in drawing upon formulations in different words of statutory tests and treating them as applicable in all circumstances. Such difficulties are increased where those formulations originate in different legal or factual contexts. This is particularly so where the test is essentially one of fact in any event. For these reasons, as presently informed by the argument in this case, their Lordships do not adopt any particular formulation. Nor is it necessary for this case to make any comprehensive statement, suitable for all cases, of the criteria for determining when a transaction is to be held to have taken place in the ordinary course of business for the purpose of [the English legislation under consideration].

. . .

Plainly the transaction must be examined in the actual setting in which it took place. That defines the circumstances in which it is to

be determined whether it was in the ordinary course of business. The determination then is to be made objectively by reference to the standard of what amounts to the ordinary course of business. As was said by Fisher, J. in the *Modern Terrazzo Ltd.* case, 10 October 1997, the transaction must be such that it would be viewed by an objective observer as having taken place in the ordinary course of business. While there is to be reference to business practices in the commercial world in general, the focus must still be the ordinary operational activities of businesses as going concerns, not responses to abnormal financial difficulties. Their Lordships respectfully agree with the judge's conclusion by reference to the policy of the section:

'Whether a payment should be regarded as commercially routine at a day to day trading and operating level will turn at least in part upon a comparison with the practices of the commercial community in general. But equally, the way in which the particular company has acted in the past, and its dealings with the particular creditor, would seem pertinent. That the payment was simply a repetition of past patterns of behaviour would make it more difficult to argue that it represented special assistance to an insider or the result of special enforcement measures or a situation in which the subject creditor ought to have investigated before extending credit. So at a policy level there is something to be said for the view that relevant considerations should extend to the prior practices of the particular company.'"

15. It was submitted on behalf of the JOLs, in my opinion correctly, that the opinion of the Privy Council makes it clear that there are no comprehensive criteria for what constitutes "in the ordinary course of business." It is essentially a matter of fact in the light of the particular circumstances in each case. Nonetheless, certain key points were made clear, namely:

(a) the transaction must be examined in the circumstances in which it occurred;

(b) the transaction must be such that an objective observer would view it as having taken place in the ordinary course of business;

(c) the focus of the enquiry must be on the ordinary operational activities of businesses, not responses to abnormal financial difficulties; and

(d) prior practices of the company will be a relevant consideration.

16. Of course, the Privy Council made it clear that none of these points is necessarily applicable in every case, they are not conclusive and are not intended to be comprehensive or exclusive. They are simply guidelines.

There was no substantial disagreement between the parties about this analysis, although their respective interpretation of the circumstances of the granting of the security differed considerably, and consequently their proposed application of these guidelines to such circumstances also differed.

17. I also found assistance from the judgment in the English case of *Ashborder BV* v. *Green Gas Power Ltd.* (1), which was a case involving interpretation of the phrase "in the ordinary course of business" in the context of a floating charge over assets of a company which had borrowed funds from lenders in the Enron group. The judge (Etherton, J., now a judge of the English Court of Appeal), in concluding that certain agreements fell outside the scope of the ordinary course of the business of the company concerned, held that the words of the phrase were ordinary words of the English language which had to be given the meaning which ordinary business people would be expected to give them against the factual and commercial background in which the agreements concerned were made. He said that a transaction could be in the ordinary course of business even if it were exceptional or unprecedented, but that a transaction was not to be regarded as in the ordinary course of a company's business merely because it was not fraudulent and was within the company's objects in its memorandum of association. He said that meaning must be given to the word "ordinary" in the phrase. He then held that, in the circumstances of that case, the transactions were not in the ordinary course of the company's business by reason *inter alia* of the non-disclosure to all the directors of the material terms of the agreements and because of his concerns about concealment of the transactions. He also relied on the fact that the company was in abnormal financial difficulty at the time and the agreements were entered into as an exceptional abnormal response to that. These factors were, in the view of the judge, sufficiently unusual features to take the transactions out of the scope of the company's ordinary course of business.

The circumstances of the grant of the security

18. There was no contemporaneous documentary evidence before me to indicate when discussions between Mr. Le Comte and Mr. Durst concerning the proposed first note started. The first available email communication is dated April 6th, 2009. It is from Mr. Le Comte to Mr. Durst under the heading "Freerider—Durst Convertible Secured Promissory Note" and, among other matters (as to which I shall comment further below), attached a proposed agreement. In the email, Mr. Le Comte said he had "tried to capture the spirit of our conversations in order to protect your interests as best I could." Clearly therefore, there had been previous conversations between Mr. Le Comte and Mr. Durst about the proposed loan, as to which there was no evidence before me. Clearly, Mr. Le Comte

was also endeavouring to protect the interests of the Dursts. There then followed a series of email exchanges between Mr. Le Comte and Mr. Durst, which culminated with the execution of the first note dated August 17th, 2009.

19. It is clear from this correspondence that the proposed and subsequent grant of the security was intentionally concealed by Mr. Le Comte from his co-director and contributory, Mr. Heinen, and that Mr. Durst was expressly told that this would be the case. In fact Mr. Heinen was not made aware of the existence of either of the notes and the grant of the security until after 733 Properties told the JOLs of them subsequent to the winding-up order. Mr. Le Comte sought to justify this to Mr. Durst at the time, and again in his affidavit evidence produced at the hearing before me, on the basis that his purported grant of the security on behalf of the company fell within his exclusive domain and overriding authority pursuant to the first shareholder agreement dated July 19th, 2003 between him and Mr. Heinen ("the shareholder agreement"). I should add that it was also argued before me that Mr. Heinen would anyway have had a conflict of interest with regard to the grant of the security since the borrowing secured thereby was, it was contended, to be used to meet the company's past and ongoing legal costs of the various litigation against him. Mr. Le Comte's position was that significant sums were and would in future be owed to attorneys in New York, the Netherlands and the Cayman Islands by, on his case, the company, which the company urgently needed and would in future need to settle in order to progress the litigation, and that Mr. Heinen, as the principal opposing party in such litigation, would have had a conflict of interest in being involved in the decision as to whether the company should grant the security in respect of borrowing from the Dursts for such purposes.

20. It appears from the email correspondence between Mr. Le Comte and Mr. Durst that Mr. Le Comte's request was that the company should be given access to a credit line for sums up to US$1m. pursuant to each note, and this appears to be what in practice occurred. GCF claims that Mr. Le Comte, purportedly on behalf of the company, drew down a total principal sum of US$1,550,000 under the notes and that, as at May 31st, 2010, interest amounting to US$38,836.77 had accrued on that sum.

21. Mr. Le Comte provided no evidence as to how the various sums drawn down under the notes were in fact used. His affidavit evidence was that they were used to settle outstanding debts of the company due principally to the attorneys acting in the litigation in New York, the Netherlands and in this country, and to fund the ongoing costs of such litigation. However, no evidence to support that general assertion was produced. Evidence from certain of the company's bank statements showed that a significant portion of the sums drawn down was used by Mr.

Le Comte to settle the accounts of the Cayman attorneys, Turner & Roulstone, acting on his instructions in the winding-up proceedings.

Analysis and comment

22. It seems to me that, in order to determine whether the grant of the security was in the ordinary course of the company's business, I must first consider what the business of the company was. As explained in the reasons for the winding-up order dated May 13th, 2010, the company was established to enable payments generated by the commercial exploitation of the intellectual property in TheWheel and associated technology to be made to an entity in a tax-free jurisdiction and also so that the intellectual property rights concerned could be held outside the Dutch company, e-Traction Europe BV, which actually carries out the physical work on and development of TheWheel and associated technology (see *2010 (1) CILR 486, at paras. 14* and *69*). Accordingly, the company's business essentially consists of the holding and control of the intellectual property rights in TheWheel and other related technology.

23. It was submitted on behalf of GCF that the company's memorandum of association provides that the company's objects are unrestricted and that, accordingly, the grant of the security was within the company's objects. I was also referred to art. 95 of the company's articles of association, which provides that—

"the directors may exercise all the powers of the company to borrow money or to mortgage or charge its undertaking, property and uncalled capital or any part thereof, to issue debentures, debenture stock and other securities whenever money is borrowed or as security for any debt, liability or obligations of the company or of any third party."

It was contended that, accordingly, the provision of the security pursuant to the notes was within the company's objects and within the powers of its directors.

24. It was further submitted that, since the company has been reliant from time to time in the past on loans from Mr. Le Comte to meet its day to day operating expenses, borrowing money was within the ordinary course of the company's business. It was said that the grant of security as a condition of borrowing is clearly a usual practice of the business community in general.

25. It is, of course, the grant of the security over all of the company's assets and rights which is in issue, not the borrowing of money. The grant of such security obviously impacts adversely upon the position of unsecured creditors and is clearly an important and significant transaction. The principal purpose of the statutory scheme applicable to winding up is

to protect unsecured creditors and their entitlement to eventual *pari passu* distribution in a winding up and to enable the winding up of the company in an orderly manner by officers of the court. This is the principal reason why, in my opinion, a proposal by the directors of a company to grant security over all of its assets and rights after winding-up proceedings have been initiated would and should normally be the subject of a prospective validation application to the court so that the benefit to the company, which the directors contend derives from such secured borrowing, may be properly and fully analyzed and fairly balanced against the rights and interests of unsecured creditors in advance of any such security being granted. No doubt the court, in doing so, would have regard to the views of unsecured creditors, but an overall approach, having regard to all the circumstances, will be taken.

26. In fact, the company has never previously granted security of any kind in respect of its borrowings, which have always been from Mr. Le Comte as a shareholder and investor in the company. Both he and Mr. Heinen are on record as having said on several occasions that they consider the intellectual property rights currently held by the company to be of very substantial value having regard to the considerable financial potential from exploitation of TheWheel and associated technology. Those rights are also the company's only asset of any significance. Mr. Le Comte also estimated the realizations from the litigation, particularly in New York, if successful, would be very significant. In such circumstances, to grant security over all of the company's assets and rights, including all of the intellectual property rights it holds, was, as I have said, clearly a very significant and important step, particularly having regard to the fact that such security was granted pursuant to the first note in respect of a loan of up to US$1m., a relatively small amount in proportion to Mr. Le Comte's own opinion of the very high value of the company's assets and rights.

27. It was also contended on behalf of Mr. Le Comte that, since the company has been carrying on litigation over the past three years (albeit procured by him), meeting the costs of such litigation through borrowing has been a prior practice and become part of the ordinary course of the company's business. I shall comment on that suggestion later in this ruling.

28. As I have already mentioned, in deliberately not informing his co-director, Mr. Heinen, of the proposed grant of the security, Mr. Le Comte relied on the provisions of the shareholder agreement and in particular s.1, as he did in his unsuccessful opposition to the winding up of the company. In the present context, Mr. Le Comte contends that the effect of the shareholder agreement is that he has the sole right to determine all management issues of the company of a non-technical nature and that accordingly it was solely up to him whether or not the company should enter into the notes and grant the security. In his view, Mr. Heinen was not

entitled to any say in the matter. However, in my opinion, apart from the fact that, as Mr. Le Comte was well aware at the time, it is anyway contended by Mr. Heinen that the shareholder agreement is not valid, that is not quite what the shareholder agreement provides. Section 1(2) provides, with regard to business and other non-technical issues:

"All votes [are] to be carried in favour of, and/or all actions to be taken and documents and instruments [are] to be executed in accordance with, the recommendation with regard thereto made by Mr. Le Comte in his sole discretion."

29. This clearly, at the least, requires there to be a recommendation with regard to the proposed action by Mr. Le Comte provided to Mr. Heinen, and, arguably, also a vote. The section does not, in my view, simply entitle Mr. Le Comte to ignore Mr. Heinen entirely and to make decisions and take actions unilaterally in respect of the company without at least informing his co-director (described in the shareholders agreement, as he and Mr. Le Comte both are, as a "manager" of the business). Mr. Le Comte, of course, alleges that he had removed Mr. Heinen as a director of the company. However, he was well aware that that was strongly disputed and that Mr. Heinen had refused to resign. Mr. Le Comte was aware of all this when he claimed to Mr. Durst that he had the sole right to procure the company to grant the security and that he did not intend to inform Mr. Heinen of what he proposed. Nor do I consider that the fact that he considered Mr. Heinen would have had a conflict of interest meant that he was not required to inform Mr. Heinen of his proposed action on behalf of the company.

30. A further point which was the subject of argument before me related to the provisions regarding default in the notes. It was submitted by counsel for the JOLs and counsel for Mr. Heinen that the wording of cl. 2(a)(iii) of each of the notes meant that, upon execution, the notes would become automatically and immediately due and payable because liquidation proceedings against the company had at the date of execution been commenced and remained undismissed for 90 days. This would have brought about an immediate acceleration of liability under the notes and the obligation of the company to pay an increased interest rate and legal and other expenses. There was affidavit evidence from the New York attorney representing the Durst Group in which he commented on that submission. He stated that the language in cl. 2(a)(iii) of each note is merely *pro forma*, that it was not contemplated that the existence of the winding-up petition, of which he and the company's New York attorneys were well aware, would qualify as a default and that he did not believe the company would have executed the notes if it had believed there was already an existing default.

31. The notes are, of course, governed by New York law, although the

law in this country is that foreign law is presumed to be the same as Cayman law in the absence of expert evidence of the relevant foreign law. No such expert evidence on the law of New York relating to the construction and interpretation of legal documents such as the notes was made available to me. Under Cayman law, it is well established that such documents are to be construed and interpreted solely upon the basis of their wording and that evidence of preliminary negotiations, of the subjective intentions of the parties and those connected to them and of subsequent actions is not relevant or admissible as an aid to their construction. There is no evidence before me as to whether or not that also represents the law of New York, but, on a construction of cl. 2(a)(iii) in accordance with Cayman law, the submissions on behalf of the JOLs and Mr. Heinen in this regard are, in my opinion, clearly correct. It seems to me, to put it at its lowest, that the construction and effect of documentation which the directors of a company subject to winding-up proceedings propose to enter into, allegedly in the best interests of the company, such as the notes and the associated security, should and would properly be the subject of scrutiny by the court in considering whether or not a disposition pursuant to such documentation should be validated.

32. I have already made passing reference to some of the email communications between Mr. Le Comte and Mr. Durst but in my view they warrant further analysis and comment. I should say that the general tone of this series of emails is informal and friendly and makes it clear that there is considerable family friendship between Mr. Le Comte and his family on the one hand and Mr. Durst and his family on the other. There do appear to me to be gaps in the correspondences produced to me. As I have said, it is also clear from the correspondence that there were meetings and discussions between Mr. Le Comte and Mr. Durst, the content of which were either not recorded or such records were not produced and which was not disclosed nor explained in the affidavit evidence.

33. The first email produced, dated April 6th, 2009, from Mr. Le Comte to Mr. Durst, to which I have already referred in part, commences as follows:

“All went according to plan in Luxembourg, though not without noteworthy incidents. [Mr. Heinen] has been set up for the next round without knowing and/or realizing it.

The ‘pearls of wisdom’ have meanwhile materialized. Please find attached a proposed agreement . . .”

I consider it reasonable to assume that Mr. Durst understood what Mr. Le Comte was talking about. There is no evidence or suggestion otherwise.

34. In a subsequent email, dated May 29th, 2009, Mr. Le Comte informed Mr. Durst that it was—

"imperative that a parallel research and development production facility be created in the United States. A successful participation in this project would represent an enormous economic opportunity for the combined companies.

[Mr. Le Comte then referred to a pilot program for a people-mover system at Frankfurt Airport.]

Let's talk about this at your leisure. Incidentally, I did speak with your friend Tedd and gave him my best advice based on my assessment of the financial feasibility of his project . . ."

Again, it is not entirely clear what Mr. Le Comte is referring to by "the combined companies," but Mr. Durst must have known.

35. The reference to Mr. Durst's friend Tedd is to a contact he had provided to Mr. Le Comte who was interested in the possibility of using the technology associated with TheWheel. Mr. Heinen emphatically denied in his affidavit evidence that he had ever agreed that there should be a research and development facility in the US and he gave various credible reasons why he would never have agreed to that. It was submitted that this email was indicative of Mr. Le Comte's alleged plan to take over the intellectual property rights in TheWheel and associated technology entirely. It also seems that he may have been discussing doing so jointly with the Dursts.

36. On June 5th, 2009, Mr. Le Comte emailed Mr. Marx at the Durst Organization, with a copy to Mr. Durst, attaching a copy of the original draft agreement. He said:

"I have since come to the conclusion that a specific lien on the intellectual property and/or certain rights thereto should be added to ensure the ability to have a priority claim in recovering the debt, which should also serve in signalling to the 'opposition' that the actions being contemplated by them at this time are unlikely to allow them to gain control over the principal company assets (e-Traction Europe BV and the intellectual property) . . ."

A subsequent email from Mr. Le Comte to Mr. Durst, dated June 15th, 2009, makes it clear that there was also a conversation between them the same day as Mr. Le Comte's June 5th email.

37. Section 142(1) of the Companies Law (2009 Revision) (now s.142(1) of the 2010 Revision) provides:

"Notwithstanding that a winding up order has been made, a creditor who has security over the whole or part of the assets of a company is

entitled to enforce his security without the leave of the Court and without reference to the liquidator."

The evidence shows that Mr. Le Comte, Mr. Durst and their respective New York lawyers were well aware of this provision.

38. In my view, the inference from the email correspondence between Mr. Le Comte and Mr. Durst to which I have referred above, taken with Mr. Le Comte's deliberate action in not informing Mr. Heinen of his proposal to grant the security and the other circumstances at the time, is that Mr. Le Comte's intention, at least in part, was that the priority claim effected by the grant of the security to his friends the Dursts' company would prevent Mr. Heinen, through an official liquidator appointed on a winding up pursuant to Mr. Heinen's petition, from taking control of the assets of the company, particularly the intellectual property rights.

39. It was argued on behalf of GCF that the fact that Mr. Le Comte provided the Dursts with joint personal guarantees by himself and his wife of the company's obligations under the notes is inconsistent with this inference. Having regard to the particular circumstances of this matter, I do not agree. As I have already said, Mr. Le Comte was clearly of the firm view that the assets of the company "make it a very valuable company" with "enormous commercial prospects and valuable assets," and is on record as emphasizing that view on several occasions, including to Mr. Durst (see for example the email dated July 20th, 2009). He said that it was "simply inconceivable that in three years, when the loan comes due, [the company] would be worth less than the maximum amount of the credit line." If, as Mr. Le Comte believed, it was inconceivable that the company would be unable to repay the sums drawn down under the notes, the risk to him in providing the unsecured joint guarantees was negligible. In my judgment, the provision of the joint guarantees does not detract from the inference from the email correspondence, and from the other circumstances which I have already mentioned, that Mr. Le Comte's offer to add the security to the proposed borrowing arrangements was intended, at least in part, to prevent a liquidator appointed by this court from taking possession and control of the company's assets. He wished to ensure that, in the event of a winding up, the company's assets would be under the possession and control of his friends the Dursts.

40. Mr. Le Comte's deliberate concealment of the proposed and actual grant of the security is, in my opinion, entirely consistent with this analysis. Although by the time of the consent validation order on June 29th, 2009, discussions and negotiations between Mr. Le Comte and Mr. Durst with regard to the proposed borrowing and the grant of the security were well underway, no mention of the proposed transaction, and particularly the grant of the security, was made by Mr. Le Comte's Cayman attorneys, Turner & Roulstone, in their correspondence proposing the

consent validation order to Mr. Heinen's Cayman attorneys, Appleby. The explanation of the proposed validation order in Turner & Roulstone's email dated June 24th, 2009 that "the company needs to have the ability to conduct its general business" was, in the circumstances, disingenuous to say the least. Despite requests from Appleby for details of the transactions in question, no such information was provided, and no indication of the proposed grant of the security was given. I am also concerned that no mention of the grant of the security was made to the court at any time prior to or during the hearing of the winding-up petition in April 2010. Given the extent and effect of the purported grant of the security, it was clearly likely to be a significant factor in the court's consideration of whether a winding-up order should be made and official liquidators appointed to take possession and control of the company's assets. In my opinion the existence of the security should have been disclosed.

Conclusions on the "ordinary course of business" issue

41. Etherton, J. pointed out in *Ashborder BV* v. *Green Gas Power Ltd.* (1) that there may be circumstances in which the grant of security over all the assets of a company may be held to fall within the scope of the ordinary course of that company's business. Equally, however, even if *prima facie* such a grant may be considered to fall within the scope of that phrase, there may nonetheless be such unusual features surrounding such a disposition that it will nonetheless fall outside the scope of the ordinary course of the company's business.

42. In the present case I do not consider the grant of the security, which extended to all of the assets of the company, which Mr. Le Comte himself expressly considered to be of enormous commercial value, to have been in the ordinary course of the company's business at all. I have already explained the nature of the company's business. In my opinion, the fact that Mr. Le Comte has procured the company to engage in litigation with his co-director and contributory in New York, the Netherlands and Luxembourg over the past three years or so in no sense means that litigation is a business of the company. Certainly, the litigation in this court leading up to the winding-up order was not properly litigation by the company anyway: it was litigation between Mr. Le Comte and Mr. Heinen personally. It was essentially and obviously a dispute between Mr. Le Comte and Mr. Heinen, as quasi-partners in the business, the subject of which was the company. Furthermore, it was very clearly not the ordinary business of the company, or of any company, to borrow money to fund litigation by one shareholder against another. Even the litigation in New York and the Netherlands, in which Mr. Le Comte has procured the company to engage, is principally litigation against an equal shareholder/contributory of the company. In my opinion that does not fall within the realm of what an objective observer would consider to be within the

ordinary course of the company's business. Borrowing for that purpose, and the grant of security over the assets of the company to enable such borrowing, is no different.

43. The transaction between Mr. Le Comte and the Dursts was, on Mr. Le Comte's own case, a response to abnormal financial difficulties and not within the ordinary operational activities of the company. It was in no sense a routine or typical transaction for the company. I am not persuaded by the argument that the prior practices of the company in taking loans from Mr. Le Comte, a shareholder and investor in the company, were in any sense akin to the dispositions involving the grant of the security. Even if it is correct that in the past, before the deadlock between them arose, Mr. Le Comte and Mr. Heinen together made attempts to obtain third-party financing for the company and that such financing would probably have involved the company being required to give security for such financing, there is no evidence at all with regard to the type or extent of any borrowing or of any security which may have been discussed. Furthermore, there is no obvious evidence that at that time any such borrowing was proposed to be used for the purposes of litigation by the company, still less litigation between the two principals of the company, and clearly that was not the case. In my opinion the only prior practice of the company in this respect has been the unsecured funding of the company from time to time by Mr. Le Comte as a shareholder and investor. That is entirely different from the grant of security over all the assets of the company in support of limited borrowing from friends of Mr. Le Comte. It is not something the company ordinarily would do. It was clearly a highly significant and unusual step for the company, and one with major potential consequences. I am of the opinion that, quite apart from the unusual features surrounding the transaction, the grant of the security pursuant to the first note, repeated pursuant to the second note, was clearly not within the ordinary course of the company's business.

44. I am also of the opinion that the unusual circumstances surrounding the purported grant of the security by the company through Mr. Le Comte take the grant out of the scope of the ordinary course of the company's business in any event. Not only were the proposals and discussions concerning the grant of the security made without the knowledge of the only other director at a time when all involved with the transaction knew that the winding-up petition had been initiated, but there was also a deliberate decision to conceal the proposal. Furthermore, Mr. Durst had been expressly told that there was another director who had refused to resign and that he was not to be informed about the proposed notes. The actual grant of the security was also subsequently and deliberately concealed from Mr. Heinen, not only in his capacity as a director of the company but also as a contributory and as the petitioner for the winding

up, until after the winding-up order had been made. It was also concealed from this court.

45. I have already commented on the surprising terms of the notes, which on a usual construction meant that there was an immediate default as soon as they were executed. In the circumstances, such a provision was not clearly in the best interests of the company, notwithstanding that in the event and with hindsight notice of default was not given until after the winding-up order was made.

46. A further significant feature of the security which I consider takes it outside the scope of the ordinary business of the company is its extent, which seems to me disproportionate to the amount of borrowing, which, pursuant to the first note, was up to US$1m. There does not appear to have been any discussion about the appropriate security or its nature or extent, simply the offer of security over all the company's assets by Mr. Le Comte. This in itself seems surprising and unusual to me.

47. In my opinion, it is also relevant that the whole transaction involving the grant of the security was with longstanding friends of Mr. Le Comte and his wife. Even if the affidavit evidence of Mr. Durst that the Dursts "would certainly not have made the loans to Freerider without having the security which it obtained under the notes" is accepted, he does say that he does "not recall specifically when or how the question of security was raised in our discussions." The fact of the matter is that it was Mr. Le Comte who voluntarily proposed that the security should be added to the proposed agreement with the Dursts to ensure they had a priority claim in order that, from Mr. Le Comte's perspective, the winding-up proceedings would not allow "the opposition" to gain control over the principal assets of the company.

48. Quite apart from the ostensible purpose of the borrowing in respect of which the security was purportedly granted by the company and the misuse by Mr. Le Comte, again purportedly on behalf of the company, of at least a portion of that borrowing for his own purposes (and this court has already ordered Mr. Le Comte to refund to the company those monies which he procured the company to pay to his Cayman attorneys for representing his interests in his dispute with Mr. Heinen about the winding up of the company on the grounds that such use was misfeasance by Mr. Le Comte as a director), there is, as I have already explained, clear evidence that there was a collateral purpose in Mr. Le Comte offering and purportedly granting the security on behalf of the company. In my opinion, that is a sufficiently unusual feature of this transaction of itself which takes the grant of the security out of the ordinary course of the company's business. However, there are anyway the other unusual features which I have discussed which also render the circumstances surrounding

grant of the security sufficiently extraordinary as to mean that it was clearly not in the ordinary course of the company's business.

49. In my judgment, when all the circumstances surrounding the purported grant of the security are considered, it cannot reasonably be said that it was in the ordinary course of the company's business. Accordingly, I make the declaration which the JOLs seek: that the grant of the security is not within the terms of the consent validation order dated June 29th, 2009.

Retrospective validation

50. In light of my conclusion that the grant of the security was not made in the ordinary course of the company's business, it is void pursuant to s.99 of the Law "unless the Court otherwise orders." In that case, GCF, by its summons dated August 30th, 2010, now seeks an order by way of retrospective validation of the grant of the security.

The relevant law on validation

51. Neither s.99 of the Law nor any other statutory provisions prescribe the circumstances in which the court may validate any particular disposition so that it is not void under the section. The court has an unfettered discretion whether to validate any disposition in its particular circumstances. The equivalent position in England was stated in *Re Steane's (Bournemouth) Ltd.* (12) ([1950] 1 All E.R. at 25):

"The legislature, by omitting to indicate any particular principles which should govern the exercise of the discretion vested in the court, must be deemed to have left it entirely at large, and controlled only by the general principles which apply to every kind of judicial discretion."

52. That was confirmed in the English Court of Appeal by Buckley, L.J. in *In re Gray's Inn Constr. Co. Ltd.* (9), who added ([1980] 1 W.L.R. at 717): ". . . [T]he discretion must, in my opinion, be exercised in the context of the liquidation provisions of the [UK companies legislation, which is generally equivalent to the Law]." Accordingly, the statutory scheme on winding up pursuant to the Law is clearly relevant. I have already summarized the purpose of s.99, which is part of that scheme, earlier in this ruling, as being to preserve the assets of a company in winding up for the protection of its creditors (see confirmation of this by Smellie, C.J. in *Scotiabank (C.I.) Ltd. v. Treasure Island Resort (Cayman) Ltd. (11) (2004–05 CILR 423, at para. 11*)).

53. Guidance on the matters to be taken into account by the court in considering validation was addressed by Henderson, J. in *In re Fortuna Dev. Corp. (8)*, as approved by Smellie, C.J. in *In re Cybervest Fund (5)*.

In the *Cybervest* case, Smellie, C.J. agreed with and adopted a summary of the guidelines set out in the *Fortuna* case, which in turn derived from statements of "broad guidelines" in an English case, *In re Burton & Deakin Ltd.* (2). In the *Fortuna* case, it was said (*2004–05 CILR 533, at para. 5*):

"Thus, there are four elements which must be established before an applicant is entitled to a validation order. First, the proposed disposition must appear to be within the powers of the directors . . . Secondly, the evidence must show that the directors believe the disposition is necessary or expedient in the interests of the company . . . Thirdly, it must appear that in reaching the decision the directors have acted in good faith. The burden of establishing bad faith is on the party opposing the application. Fourthly, the reasons for the disposition must be shown to be ones which an intelligent and honest director could reasonably hold."

54. Smellie, C.J. went on in the *Cybervest* case to add (*2006 CILR 80, at para. 29*):

"There is another consideration to add to this list, in light of the concerns raised in this matter, although arguably it is subsumed within the third and fourth elements. This would be whether irregularities in the conduct of the affairs of the company can be shown, even if the company is clearly solvent, as is alleged here."

55. Of course these guidelines are neither exclusive nor necessarily applicable to every case in which the court may or may not validate a disposition of a company's property when the company is subject to winding-up proceedings. Every case will turn on its own particular circumstances.

56. It also appears that different considerations may apply depending on whether the company concerned is solvent or insolvent. Solvency in this context has been said to mean that the court is satisfied by credible evidence that the company is able to pay its debts as they fall due (see *Re Fairway Graphics Ltd.* (7) ([1991] BCLC at 468–469)). As I will explain later, it does not appear to me that the company was solvent in that sense at the relevant time.

57. The usual assumption in a case where the company is solvent is that the particular disposition would not be prejudicial to the creditors as it should not affect their debts being repaid (see *Fortuna (8)*). However, even if a company is solvent, that is not necessarily conclusive where the winding-up petition is based on grounds other than insolvency, such as the just and equitable ground (see *Cybervest (5)*), as in the present case.

58. If it cannot be established that the company concerned is solvent, then the principal concern of the court in considering an application for a

validation order will be to seek to avoid prejudice to the interests of unsecured creditors of the company (see *Denney* v. *John Hudson & Co. Ltd.* (6)). Occasionally, in appropriate circumstances, the court has sanctioned the grant of a charge over a company's property as security for a loan to enable the company to continue its business as a going concern so that it can be can be sold as such, but in exercising its broad discretion the court must determine the question having regard to all the circumstances in each case. In the present case, I have, of course, already determined that the grant of security was not in the ordinary course of the company's business. It is, however, also clear that payments by a company (and by extension, security granted in respect of borrowing to fund such payments) in respect of disputes which are essentially between shareholders of the company would not be validated (see *In re Crossmore Elec. & Civil Engr. Ltd.* (4)).

59. It was submitted on behalf of GCF that it would be unfair to it (and the Dursts) if the grant of the security were not now validated. However, the purpose of s.99 of the Law is to minimize hardship to the general body of creditors as a whole: prejudice suffered by one particular creditor—in this case GCF/the Dursts—if the disposition is not validated is to be given relatively little weight (see *Re Tellsa Furniture Pty Ltd.* (13)). Of course, the nature and extent of any hardship suffered by the recipient of the disposition in issue will depend entirely on the facts and circumstances surrounding the disposition. As was said in the same case (*ibid.*), quoting from *Re Mal Bower's Macquarie Elec. Centre Pty. Ltd.* (10) (1 N.S.W.L.R. at 258)—

"the legislative intention, as disclosed by the terms of [the equivalent of s.99 of the Law] is such as to require an investigation of what happened to the property, that is to say, what was the disposition, and then to enable the liquidator to recover it upon the basis that the disposition was void. It is recovery from the disponee that forms the basic legislative purpose of [the equivalent section]."

Analysis and comment on the retrospective validation application

60. It is clear that the onus is on GCF to establish that a retrospective validation order should now be made in all the circumstances. The first note, pursuant to which the security was purportedly granted (it was in practical terms re-affirmed pursuant to the second note) was signed as of August 17th, 2009, a year before GCF made its application for validation thereof.

61. It is unclear whether the company was solvent at the relevant time, which in my view is at the time of the purported grant of the security pursuant to the first note. As I have already mentioned, both Mr. Le Comte and Mr. Heinen are firmly of the view that the company was and is solvent

on a balance sheet test. However, the very reason why, according to Mr. Le Comte, he procured the company to borrow from the Dursts was because the company was unable to pay its debts as they fell due. The JOLs have certified that the company is of doubtful solvency but that seems to be because they have had little or no access to the company's records and have accordingly been unable to reach a conclusion either way. The position appears to be that, at the time of the grant of security, the company may have been solvent on a balance sheet test but insolvent in being unable to pay its debts as they fell due.

62. However, assuming, in GCF's and Mr. Le Comte's favour for the sake of argument, that the company was solvent at the relevant time, then the test approved by Smellie, C.J. in *Cybervest (5)* should be applied to the circumstances surrounding the grant of the security, which I have already outlined in determining that the grant of the security was not within the ordinary course of the company's business. I do not think it necessary for me to repeat my summary of and comment on those circumstances.

63. There was no "body of evidence" presented to me to satisfy me that the reasons for the grant of the security were ones that an honest and intelligent director could reasonably have held. Indeed, apart from Mr. Le Comte's general comments in his affidavit evidence that the purpose of the borrowing, which was secured by the purported grant of the security, was largely to pay the legal costs of the litigation in New York, the Netherlands and this country, there was, as I have already mentioned, no detailed information provided by him as to precisely how the funds borrowed from the Dursts' company had been utilized, nor was there any evidence to justify the submission on his behalf that such borrowing was in the best interests of the company. For example, there was no expert opinion evidence as to the merits of the litigation in New York from the company's perspective in order to justify further expenditure on the litigation at that time, namely when the company was the subject of winding-up proceedings. The evidence, and the inference I have drawn from it, is that the money borrowed from 733 Properties/the Dursts was used not only to settle outstanding invoices but also in order to enable the litigation to progress. There was no explanation, still less professional opinion, as to why, for example, the legal proceedings in New York, and perhaps in the Netherlands, could not have been stayed on the company's application pending the determination of the winding-up proceedings, rather than the company spending more money on the litigation in such circumstances. There was no evidence, other than the bare assertions of Mr. Le Comte, that continuing to spend money on the litigation was in the best interests of the company at that time, rather than it being in his personal interests. The evidence, in my opinion, very much supported the latter interpretation.

64. I should also mention the consideration specifically referred to in

Cybervest, namely whether irregularities in the conduct of the affairs of the company can be shown. The court has already concluded that the members of the company have justifiably lost confidence in Mr. Le Comte based on a lack of probity in his conduct of the affairs of the business, including the company (see *2010 (1) CILR 486, at para. 72*) and I have already explained why I infer a collateral purpose on the part of Mr. Le Comte in offering and then purporting to grant the security to his friends' company. No authority has been submitted to me to the effect that the court has ever made a validation order, still less a retrospective one, in such circumstances.

65. It seems to me, having regard to the circumstances surrounding the grant of the security, most improbable that it would have been validated at or about the time of its proposed grant a year ago. Even if I am wrong about that, it does not follow that the grant of the security should now be validated retrospectively. The circumstances are now clearly different in that a winding-up order has since been made and the JOLs, who are officers of this court subject to this court's supervision, have been appointed to fulfil their statutory duties under the Law. The uncertainty with regard to the outcome of the winding-up proceedings which may have existed at the time when the security was purportedly granted now no longer exists. The grant of the security, which at the time may have possibly frustrated any official liquidators who might have been appointed in taking possession and control of the company's assets, now would definitely have that effect.

66. As far as 733 Properties and the Dursts are concerned, it was their decision to rely on an opinion by Mr. Le Comte's own attorneys, Turner & Roulstone, several of whose important assumptions were under challenge by Mr. Heinen, of which, at least in some respects, Mr. Durst was aware. For example, Turner & Roulstone did not point out the risks involved in not informing Mr. Heinen of the proposed transaction in light of the fact that Mr. Heinen had refused to resign as a director of the company. They did not point out the risk of the grant of the security, once it became known, being challenged and the risk of it being held by a court that it had not been granted in the ordinary course of the business of the company. They did not point out the risk involved in relying on the shareholder agreement which was under challenge and anyway open to other possible interpretation, or indeed the risks generally arising from the fact that Mr. Le Comte was involved in hostile litigation with Mr. Heinen in several jurisdictions which he was not inevitably bound to win in all respects. Furthermore, as I have already said, it seems to me reasonable to infer that Mr. Durst understood that Mr. Le Comte had offered the security at least in part for tactical collateral reasons of his own relating to his dispute with Mr. Heinen and also related to his suggestions concerning his future control and development of the company's intellectual property rights,

involving a proposal for a research and development facility in the US, perhaps even as a possible venture with the Dursts.

Conclusion on the retrospective validation application

67. Having regard to all the circumstances surrounding the grant of the security and in light of my analysis and comments above, in the exercise of my discretion I refuse the application of GCF for retrospective validation. I am satisfied that the grant of the security would probably not have been validated prospectively if an application for validation had been made prior to its grant, as in my opinion it should have been, and I do not consider that it should now be validated retrospectively. Indeed it seems to me that there are good additional reasons, as I have outlined above, why that should not be done. I therefore refuse the application by GCF by their summons dated August 30th, 2010 and declare the grant of the security to be void under s.99 of the Law. In the circumstances I will reserve the question of costs for further submissions from counsel in due course.

Declaration accordingly.

Maples & Calder for the liquidators; *Campbells* for the GCF Group; *Appleby* for Mr. Heinen; *Turner & Roulstone* for Mr. Le Comte.

EXHIBIT W

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P.,	:	
Plaintiff,	:	
v	:	C. A. No. 2025-0607-KSJM
RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,	:	
Defendants.	:	

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Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Tuesday, October 21, 2025
4:00 p.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

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TELEPHONIC BENCH RULING ON PLAINTIFF'S EMERGENCY MOTION FOR STATUS QUO ORDER

APPEARANCES:

ROGER S. STRONACH, ESQ.
A. GAGE WHIRLEY, ESQ.
Ross Aronstam & Moritz LLP
-and-
ANDREW M. BERDON, ESQ.
RACHEL E. EPSTEIN, ESQ.
KATHRYN D. BONACORSI, ESQ.
JONATHAN M. ACEVEDO, ESQ.
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-and-
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-and-
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Debevoise & Plimpton LLP
for Defendants

- - -

THE COURT: Good afternoon. Do we have a court reporter on the line?

THE COURT REPORTER: Yes, Your Honor. It's Karen.

THE COURT: Hi, Karen.

This is Kathaleen McCormick for the Court. Can I have appearances for the record, please?

ATTORNEY WHIRLEY: Your Honor, this is Gage Whirley of Ross Aronstam on behalf of plaintiff ATP. I'm joined by Roger Stronach, also of Ross Aronstam. And also on the line are Andrew Berdon, Kathryn Bonacorsi, Rachel Epstein, and other members of the broader Quinn Emanuel team.

Mr. Berdon will be taking the lead for ATP today.

ATTORNEY ROHRBACHER: Your Honor, for defendants, Blake Rohrbacher, Richards, Layton & Finger. From my firm, Daniel Kaprow and Benjamin Allen. From Debovoise & Plimpton, we should have Shannon Selden, who will be handling the presentation for our side. And if she has others to introduce from Debevoise, she can do so.

THE COURT: Thank you.

Look, I'm not actually going to

entertain presentations today. I've brought you-all on the line for two reasons. First of all, I wanted to see where we were in terms of negotiating a post-trial briefing schedule. I received word from my assistant right before this call, however, that you-all have reached agreement on that schedule and are now just looking for a hearing date for post-trial argument.

I'm moving things around in my calendar to give you those dates, so feel free to call Ms. Rizzo after this teleconference to secure some. And I'll look for you to file a stipulation on the docket reflecting all of the post-trial events.

The second reason I called you on the line is to give you a ruling on the pending motion for a *status quo* order.

I read all the papers, including the motion to file a sur-reply, which attached the sur-reply. And I'm denying the motion for a *status quo* order. Let me give you a little bit of color as to why.

I am extremely skeptical of Rigmora's strategy. I have read the motion papers seeking emergency relief in the Caymans, and they seem to rest

on scant premises. I'm extremely skeptical of the factual basis for the motion.

But to enjoin a sister court from hearing Rigmora's motion to appoint provisional liquidators would be an extreme remedy. I have no doubt that the Court in the Caymans can sort through the wheat from the chaff, figure out what is there and what is not, and reach a resolution on its own, taking into account the seeming strategy behind the filing.

So the motion is denied.

I will work hard to get you a ruling as fast as I can. I'm only human, and it was difficult. And your briefs will help. So if you could look at how I format post-trial decisions and follow that format in your briefs, that would be great. I'll be more likely to cut and paste from them as I work through legal riders and the like.

And if you need more space in your briefing to conform to my style of citation, I'll grant it. You don't need to condense spaces or eliminate things in the citations just to make that work. That's the form over substance.

So think about it and let me know what you need.

Are there any questions?

ATTORNEY BERDON: Your Honor, for the plaintiff, this is Andrew Berdon. We find ourselves in an interesting situation, Your Honor, because the sur-reply that the defendants sought permission to file contained an offer that they would withdraw their motion for PLs in the Cayman Islands by agreement with us. And that was essentially unconditional as a way to avoid the need for a ruling on our motion.

THE COURT: So that would make me feel a lot better as I stare down kind of -- the reason why I was going to strive to get you a decision in November is because I thought that's what the Cayman court would expect from our court.

So the agreement to withdraw that motion would have beneficial effects in multiple ways. It might even give you an ability to relax the schedule you've already agreed on slightly. So there are still benefits to that.

And I recognize, Mr. Berdon, that this is not what you expected. It's just the reality is it's an extreme form of relief that's sought.

So --

ATTORNEY BERDON: Well, I guess my

request, Your Honor, would be that you stay your denial of our motion in favor of --

THE COURT: I've already denied it. But, look, if they're people of their word, then they'll do the right thing here and adhere to the offer they've made.

ATTORNEY BERDON: I would just ask that perhaps you could ask Rigmora whether they're willing to confirm that they're people of their word and willing to abide by their offer on the record here today.

THE COURT: Ms. Selden?

ATTORNEY SELDEN: Thank you, Your Honor. Yes. I was hoping you would ask that question and give me an opportunity to confirm that we did make that offer to withdraw in hopes that it would give Your Honor some comfort and some time around the schedule. And that offer stands.

I understand Cayman counsel has been working on a consent order that will withdraw the PL summons, and that there is just one issue to be resolved, which is the question as to when the JP's request for costs will be heard. I think that is a housekeeping issue to be addressed by the Cayman court

and will be raised there. And we are just hammering out the form of consent order to withdraw the PL summons.

We hope that we will be able in the meantime to work out some sort of a *status quo* order or undertaking. That has proven a challenge. But, again, we did not make our offer to withdraw contingent on that, despite our clients' concerns about the dissipation of assets.

So that offer stands. We are working on the withdrawal. It will go in as soon as the form of consent order is resolved among Cayman counsel, which I understand they're working on today.

THE COURT: Excellent. Sounds like there is peace in the land for now.

Anything further?

ATTORNEY BERDON: Not from plaintiffs, Your Honor.

ATTORNEY SELDEN: Not for me.

THE COURT: All right. Great.

Thank you, and I will look for that stipulation. Please contact Ms. Rizzo for a post-trial argument date. Thank you.

(Proceedings concluded at 4:07 p.m.)

CERTIFICATE

I, KAREN L. SIEDLECKI, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, and Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 8 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 4 through 5, which were revised by the Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington this 27th day of October, 2025.

/s/Karen L. Siedlecki

Karen L. Siedlecki
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter

EXHIBIT X

CAUSE NO. FSD 151 of 2025 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

BEFORE THE HONOURABLE JUSTICE JALIL ASIF KC
IN CHAMBERS

1 AUGUST 2025

CONSENT ORDER FOR DIRECTIONS

UPON the summons for directions filed on 15 July 2025 by the Petitioners

AND UPON hearing Leading Counsel for the Petitioners and Leading Counsel for ATP III GP, Ltd (as general partner of ATP Life Science Ventures, L.P.)

AND UPON the parties indicating by their attorneys their consent to the Court making an Order in the following terms

IT IS HEREBY ORDERED BY CONSENT that:

ADR

1. At all stages, the Petitioners and ATP Life Science Ventures, L.P. must actively consider settling this litigation by any means of alternative dispute resolution (including mediation); any party not engaging in any such means proposed by another must serve a witness statement giving their reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

Pleadings

2. By 4:00 pm on 20 August 2025, ATP Life Science Ventures, L.P. shall file and serve shall its Defence to the petition, if so advised.

This **ORDER** was filed by Campbells LLP whose address for service is 4th Floor, Willow House, Cricket Square, George Town, Grand Cayman KY1-1103, Cayman Islands (Ref: LMF/PDK/HF/19135-45092).
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3. By 4:00 pm on 3 September 2025, the Petitioners shall file and serve any Replies to Defence to the petition, if so advised.

Discovery

4. Nothing in this Order shall vary or modify any existing rights of the parties to demand, receive or inspect documents.

5. The parties shall give discovery in accordance with GCR O.24, rr. 1, 2, 5, 9, and 10 as modified by this Order.

6. The following documents from the proceedings with case no. 2025-0607-KSJM before the Court of Chancery in the State of Delaware ("the Delaware Proceedings") shall be deemed to have been disclosed in this petition, shall be admissible and may be relied upon at trial:

   a) all documentary discovery given by the Petitioners and ATP Life Science Ventures, L.P.;

   b) deposition testimony, exhibits and transcripts;

   c) responses to written discovery requests;

   d) responses to interrogatories; and

   e) responses to requests for admissions.

7. By 4:00 pm on 5 September 2025, the parties may request discovery and/or inspection of any additional categories of discoverable documents that have not been disclosed in the Delaware Proceedings. For the avoidance of doubt, these requests may include requests for discovery and inspection of documents that were withheld in the Delaware Proceedings for reasons that would not justify their withholding from discovery and inspection in the Cayman Islands.

8. By 4:00 pm on 26 September 2025, the parties shall exchange Lists of Documents and shall make their documents available for inspection contemporaneously in accordance with the terms of a discovery protocol to be agreed by the parties.

9. Documents disclosed in FSD 146 of 2025 (JAJ) shall be deemed also to have been disclosed and to be admissible in this petition.

10. By 4:00 pm on 3 November 2025 any party requiring inspection of a document in its original form shall give notice to the disclosing party and the disclosing party shall make such document available for inspection at the offices of its Cayman Islands' attorneys (or such other agreed place) within 21 days of such notice (or at such later time as is agreed).

11. Subject to GCR O.24, r.22 and to paragraph 10 of this Order, all documents disclosed or deemed to be disclosed in this petitioner shall be subject to the implied undertaking of confidentiality.

Case Management Conference and Trial

12. There shall be a case management conference at 10:00 am on 31 October 2025, with a time estimate of 1 day and 1 day for pre-reading, to consider the timetable and other provisions for, amongst other things:

   a) any directions pursuant to CWR Order 3, rule 12(1)(a) to (c)

This **ORDER** was filed by Campbells LLP whose address for service is 4th Floor, Willow House, Cricket Square, George Town, Grand Cayman KY1-1103, Cayman Islands (Ref: LMF/PDK/HF/19135-45092).
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b) witness statements

c) pre-trial review

d) arrangements for trial.

13. By 4:00 pm on 24 October 2025, the parties shall agree the content of the hearing bundles and shall file and exchange skeleton arguments in relation to all applications and issues to be addressed at the CMC.

14. The trial is fixed to commence at 10.00 am on 12 January 2026, with a time estimate of 5 days and 4 days for pre-reading (commencing on 6 January 2025).

Costs

15. Costs in the cause.

Dated 1 August 2025
Filed 20 August 2025

_____
THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT

This **ORDER** was filed by Campbells LLP whose address for service is 4th Floor, Willow House, Cricket Square, George Town, Grand Cayman KY1-1103, Cayman Islands (Ref: LMF/PDK/HF/19135-45092).
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EXHIBIT Y

APPLE TREE PARTNERS IV, L.P. - AMENDMENT NO. 13

AMENDMENT NO. 13 (this "Amendment"), dated February 4, 2019, to the First Amended and Restated Limited Partnership Agreement, as amended (the "Agreement"), of Apple Tree Partners IV, L.P. (the "Partnership"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Whereas, pursuant to Paragraph 5(a) of the Agreement, the General Partner may only call capital to invest in new Projects ("New Projects") with the approval of the holders of a majority of the Preferred Units (the "Preferred Majority"); and

Whereas, the Preferred Majority is only willing to approve investments in New Projects under the terms and provisions set forth in this Amendment; and

Whereas, the Preferred Majority is only willing to permit the Partnership to make investments in one or more New Projects (i) pursuant to the economic terms set forth in this Amendment and (ii) if any carried interest with respect to the New Projects is specially allocated to a select group of Limited Partners as set forth in this Amendment;

Now, therefore, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

(a) Separate Pools. Except as otherwise expressly provided in this Amendment, and to the maximum extent possible, all of the Partnership's assets and liabilities shall be divided into two separate pools. One Pool ("Pool B") shall consist of the assets, liabilities, income, gains, losses and expenses associated with the New Projects (including certain other expenses as set forth in subparagraph (d)) and the other Pool ("Pool A") shall consist of all other assets, liabilities income, gains, losses and expenses of the Partnership. Except as otherwise expressly provided in this Amendment, the intent of the Partners in executing this Amendment is that the assets, liabilities, income, gains, losses and expenses associated with Pool B shall affect only Pool B and the Limited Partners participating therein, and not the Partnership generally, Pool A or the Limited Partners participating in Pool A, and vice versa. Accordingly, separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses shall also be accounted for separately on a Pool-by-Pool basis.

(b) Capital Contributions. All capital invested in the New Projects or attributable to expenses or liabilities of the New Projects (or liabilities or expenses otherwise apportioned to Pool B pursuant to subparagraph (d)) shall be called from and contributed by Ezbon and Blue Horizon exclusively and shall be treated as contributed to Pool B. No other Partner shall be required to contribute any capital with respect to the New Projects or Pool B generally.

(c) Profits and Losses. Except as set forth in subparagraph (g), the profits and losses of each

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Pool shall also be calculated on a separate basis. The profits and losses with respect to Pool A shall be allocated exclusively to the Limited Partners participating in Pool A and the profits and losses with respect to Pool B shall be allocated exclusively to the Limited Partners participating in Pool B.

(d) Expenses and Liabilities. Any expenses directly attributable to a particular Pool shall be apportioned to such Pool. Any expenses that are attributable to both Pools shall be apportioned between them in accordance with the relative cost basis of each Pool's remaining assets at the time such apportionment is made. By way of example only, (i) all of the Partnership's legal and accounting expenses attributable to the preparation and negotiation of this Amendment shall be borne solely by Pool B and (ii) from and after the date of this Amendment, the Management Fee and the ATLS Fee shall be allocated between Pool A and Pool B in accordance with the relative cost basis of each Pool's remaining assets at the time such allocation is made.

(e) Distributions Generally. Except as set forth in subparagraph (g), distributions with respect to each Pool shall be calculated and made separately and solely from assets of the applicable Pool.

(f) Pool B Distributions. Subject to subparagraph (g), distributions in respect of Pool B, other than Tax Distributions, shall be made as follows: (i) first, to the Limited Partners, in proportion to their respective capital contributions to Pool B, until they have received aggregate distributions pursuant to this subparagraph (f)(i) equal to their aggregate capital contributions to Pool B; and (ii) thereafter, (A) 85% to the Limited Partners in proportion to their respective capital contributions to Pool B, and (B) 15% to the Limited Partners participating in the carried interest attributable to Pool B in proportion to their respective Pool B Carried Interest Percentages (as defined below); provided, however, that if the General Partner has granted in the aggregate less than a 15% interest to the Limited Partners participating in the Pool B carried interest, then they shall be distributed such lesser percentage pursuant to clause (B) and the balance shall be distributed in accordance with clause (A).

(g) Distribution Override. Notwithstanding any provision of this Amendment or the Agreement to the contrary, except for Tax Distributions, no amounts otherwise distributable in respect of Founder Common Units, Incentive Common Units or Pool B Carried Interest Percentages (collectively, "Carried Interest Distributions") to holders of such Units who participate, directly or indirectly, in both Pool A and Pool B ("Pool A and B Carried Interest Participants") shall be made until the holders of Preferred Units have first been returned all of their capital contributions with respect to both Pool A ***and*** Pool B in the aggregate. In order to protect against an over-distribution to the holders of Preferred Units, once the holders of Preferred Units have received distributions from a Pool in an amount equal to their aggregate capital contributions to such Pool, then any Carried Interest Distributions with respect to such Pool

otherwise distributable to Pool A and B Carried Interest Participants shall be held in the Partnership and distributed to the Pool A and B Carried Interest Participants only if and when the holders of Preferred Units have received from the Partnership (whether from Pool A and/or Pool B) an amount equal to their aggregate capital contributions to the Partnership (with respect to both Pool A ***and*** Pool B). For the avoidance of doubt, if the holders of Preferred Units do not receive aggregate distributions at least equal to their aggregate capital contributions to both Pool A ***and*** Pool B, then any Carried Interest Distributions retained by the Partnership pursuant to this subparagraph (g) shall be distributed upon the liquidation of the Partnership to the holders of Preferred Units until they have received aggregate distributions at least equal to their aggregate capital contributions to both Pool A ***and*** Pool B, and any remaining Carried Interest Distributions retained by the Partnership would then be distributed to the Pool A and B Carried Interest Participants, on a pro-rata basis. In no event shall the aggregate Pool B Carried Interest Percentages be increased without the prior consent of the Preferred Majority, in its sole discretion.

(h) Pool B Carried Interest and Vesting. The Limited Partners participating in the carried interest attributable to Pool B and their respective initial Pool B carried interest percentages ("Pool B Carried Interest Percentages") shall be as set forth in a schedule maintained by the General Partner and provided from time to time by the General Partner to Ezbon, Blue Horizon and Dr. Harrison. Such schedule shall provide that the aggregate Pool B Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be 5%. Each other Limited Partner participating in the Pool B Carried Interest Percentages shall be granted such Pool B Carried Interest Percentage as may be determined from time to time by the General Partner, with the prior consent of the Preferred Majority; provided that the aggregate Pool B Carried Interest Percentages do not exceed 15% at any time. Each Limited Partner participating in the Pool B carried interest shall vest therein to the extent of 20.00% on December 31, 2019, and an additional 1.67% on the last day of each month thereafter until a maximum of 100.00% of such Limited Partner's Pool B Carried Interest Percentage has vested, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool B Carried Interest Percentage, and, in the case of any Person who was not a Limited Partner prior to the date of this Amendment, also making such Person a Limited Partner of the Partnership. For the avoidance of doubt, the "vesting" provision described in this subparagraph (h) shall be construed as a "divesting" provision, and so long as a Limited Partner with a Pool B Carried Interest Percentage continues to provide services to the Partnership, such Limited Partner shall be entitled to full allocations and distributions with respect to its Pool B Carried Interest Percentage.

(i) Transfer of Investments in New Projects. If a successor to the Partnership ("ATP V") is formed and closed with (i) capital commitments from Ezbon, Blue Horizon or their respective affiliates or designees of at least $300 million on or before December 31, 2019, (ii) Dr. Harrison and Anna Batarina as principal managers, (iii) such other Persons who are

mutually acceptable to Ezbon, Blue Horizon and Dr. Harrison having carried interest therein, and (iv) no investors who are unaffiliated with any of the foregoing, then promptly following such closing, the Partnership shall transfer the investments in the New Projects to ATP V in a tax-free manner for U.S. federal income tax purposes.

(j) Miscellaneous. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(k) Effectiveness of Agreement. In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

In the presence of:

_____
Witness

LIMITED PARTNERS:

Executed as a deed by:

Ezbon International Limited

By: Andriana Kouppay
Title: On behalf of M&C Ltd Director

In the presence of:

Witness

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: [illegible]
Title: on behalf of MCRS and Director

In the presence of:

Witness

Executed as a deed by:

Seth L. Harrison

In the presence of:

Lauren Farrell
Witness

Executed as a deed by:

LES POMMES LLC

By:
Title: Manager

In the presence of:

Lauren Farrell
Witness

EXHIBIT Z

EXECUTION VERSION

APPLE TREE PARTNERS IV, L.P. - AMENDMENT NO. 17

AMENDMENT NO. 17 (this "**Amendment**"), dated [Sept 9], 2020, to the First Amended and Restated Limited Partnership Agreement, as amended from time to time (the "**Agreement**"), of Apple Tree Partners IV, L.P. (the "**Partnership**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Whereas, the parties hereto desire to amend the Agreement as set forth herein.

Now, therefore, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. **Amendment No. 9**. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13 and Exhibit A of Amendment No. 9 to the Agreement are hereby deleted from the Agreement in their entirety and shall be of no further force or effect.

2. **Amendment No. 10**. Section 1 of Amendment No. 10 to the Agreement is hereby deleted from the Agreement in its entirety and shall be of no further force or effect.

3. **Amendment No. 13**. Amendment No. 13 to the Agreement is hereby deleted from the Agreement in its entirety and shall be of no further force or effect.

4. **Pools A, B and C**. Paragraph 20 is hereby added to the Agreement to read in its entirety as follows:

"20. Pools A, B and C

(a) Separate Pools. Except as otherwise expressly provided in this Paragraph 20 and to the maximum extent possible, all of the Partnership's assets and liabilities shall be divided into three separate pools ("Pools"). One Pool ("Pool C") shall consist of the assets, liabilities, income, gains, losses and expenses associated with Kynos Therapeutics Ltd and any Projects or Portfolio Companies arising on or after the date of Amendment No. 17 to the Agreement ("Pool C Projects"), including (i) certain expenses as set forth in Paragraph 20(d) and (ii) such amount of Contingent Subscriptions by the Subject Limited Partner as is equal to $1 billion minus the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to a second Pool ("Pool B"), including, for the avoidance of doubt, any capital contributions made by the Subject Limited Partner in respect of Pool B and its Projects and Portfolio Companies on or prior to the date of Amendment No. 17 to the Agreement. Pool B shall consist of the assets, liabilities, income, gains, losses and expenses associated with the following Projects and Portfolio Companies: Chinook Therapeutics U.S., Inc., Nine Square Therapeutics Corporation and Initial Therapeutics, Inc. ("Pool B Projects"), including (i) certain

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expenses as set forth in Paragraph 20(d) and (ii) such amount of Contingent Subscriptions by the Subject Limited Partner as is equal to the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to Pool B. The third Pool ("Pool A") shall consist of $1.5 billion in aggregate Contingent Subscriptions by the Subject Limited Partner, Dr. Harrison and Les Pommes and all other assets, liabilities income, gains, losses and expenses of the Partnership. No investments in new Projects or new Portfolio Companies shall be made out of Pool A or Pool B after the date of Amendment No. 17 to the Agreement. For the avoidance of doubt, follow-on investments with respect to any Project or Portfolio Company shall continue to be made in the same Pool in which the initial investment in such Project or Portfolio Company was made. Except as otherwise expressly provided in this Paragraph 20, the intent of the Partners is that the assets, liabilities, income, gains, losses and expenses associated with any particular Pool shall affect only that Pool and the Limited Partners participating therein, and not the Partnership generally, the other Pools or the Limited Partners participating in such other Pools. Accordingly, separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses shall also be accounted for separately on a Pool-by-Pool basis.

(b) Capital Contributions. All capital invested in the Pool C Projects or attributable to expenses or liabilities of the Pool C Projects (or liabilities or expenses otherwise apportioned to Pool C pursuant to Paragraph 20(d)) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Pool C. All capital invested in the Pool B Projects or attributable to expenses or liabilities of the Pool B Projects (or liabilities or expenses otherwise apportioned to Pool B pursuant to Paragraph 20(d)) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Pool B. No other Partner shall be required to contribute any capital with respect to the Pool C Projects or Pool C generally or to the Pool B Projects or Pool B generally. On and after February 1, 2020, capital contributions to the Partnership in respect of Pool A shall be made in the following percentages: (i) Ezbon - 50.7974%; (ii) Blue Horizon - 48.8054%; (iii) Dr. Harrison - 0.2383% and (iv) Les Pommes - 0.1589%. At any time, Dr. Harrison and/or Les Pommes may elect to purchase up to 2.5% in the aggregate of the Subject Limited Partner's interests in Pools B and C at a price equal to the fair market value of such percentage interests purchased, determined as of the date of purchase. For this purpose, fair market value shall be as set forth in the Partnership's financial statements for the calendar quarter immediately preceding the purchase (which financial statements shall be reviewed by the Partnership's auditors), as appropriately adjusted for any capital contributions, distributions and major events (e.g., positive or negative clinical study results, merger proposals, IPOs) occurring with respect to such Pools and their Portfolio Companies after the date of such financial statements. Upon such election, and for so long as Dr. Harrison and/or Les Pommes holds such portions of such interests, Dr. Harrison and/or Les Pommes, as the case may be, shall contribute capital in respect of Pools B and C in an amount equal to the purchased interest percentage of any Pool B capital call or Pool C capital call, as the case may be, made on or after the date of such election.

(c) Profits and Losses. The profits and losses of each Pool shall also be calculated on a separate basis. The profits and losses with respect to Pool A shall be allocated exclusively

to the Limited Partners participating in Pool A, the profits and losses with respect to Pool B shall be allocated exclusively to the Limited Partners participating in Pool B, and the profits and losses with respect to Pool C shall be allocated exclusively to the Limited Partners participating in Pool C. For U.S. federal income tax purposes, all expenses attributable to Pool B or C shall be allocated solely to the Subject Limited Partner, with a priority allocation of subsequent net income or gains, if any, to the Subject Limited Partner in a corresponding amount.

(d) Expenses and Liabilities; ATLS Fee.

(i) Expenses and Liabilities. Any expenses directly attributable to a particular Pool shall be apportioned to such Pool. Any expenses that are attributable to all three Pools shall be apportioned among them in accordance with the relative cost basis of each Pool's remaining assets at the time such apportionment is made. By way of example only, (i) all of the Partnership's legal and accounting expenses attributable to the preparation and negotiation of amendments to this Agreement, to the extent pertaining to the creation of Pool C, shall be borne solely by Pool C and (ii) the Management Fee and the ATLS Fee shall be allocated among Pools A, B and C in accordance with the relative cost basis of each Pool's remaining assets at the time such allocation is made.

(ii) ATLS Fee. The General Partner shall prepare, for each fiscal year of the Partnership in advance of such fiscal year, a budget for the annual fee to be paid by the Partnership to ATLS (the "ATLS Fee"). Such budget shall be presented to the Subject Limited Partner for approval, and the Subject Limited Partner shall, within ten (10) business days of the budget being provided by the General Partner, either approve the budget or inform the General Partner that the Subject Limited Partner declines to provide such approval along with the reasons therefor. If the Subject Limited Partner fails to so respond within such ten (10) business day period, the budget shall be deemed to have been approved. If the Subject Limited Partner so informs the General Partner that it declines to approve the proposed budget, the Subject Limited Partner and the General Partner shall discuss in good faith any objections presented by the Subject Limited Partner to the initial proposed budget, and thereafter the General Partner shall have an opportunity to prepare a revised budget, which shall again be submitted for approval as set forth above. If a budget is not approved for a fiscal year, then the approved budget for such fiscal year shall be deemed to be the most recently approved budget for a prior fiscal year. In no event, however, shall the ATLS Fee be less than $8,500,000, except to the extent otherwise agreed by the General Partner. The Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of

the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee.

(e) Distributions Generally. Distributions with respect to each Pool shall be calculated and made separately and solely from assets of the applicable Pool.

(f) Pool Distributions.

(i) For the avoidance of doubt, (A) Paragraph 8(a) of the Agreement is the one captioned "Tax Distributions", (B) the provisions of Paragraph 8(b) of the Agreement, which was captioned "Tracking Unit Distributions", have been deleted from the Agreement and, accordingly, Paragraph 8(b) of the Agreement is now captioned "Reserved", (C) Paragraph 8(c) of the Agreement is the one captioned "Timing of Other Distributions", (D) Paragraph 8(d) of the Agreement is the one captioned "Apportionment of Other Distributions", (E) Paragraph 8(e) of the Agreement is the one captioned "Limitations on Distributions", and (F) Paragraph 8(f) of the Agreement is the one captioned "Distributions with Respect to Designated Profits", and any incorrect references to such paragraphs preceding the date of Amendment No. 17 to the Agreement are hereby deemed corrected to reflect the foregoing.

(ii) Distributions in respect of Pool B, other than Tax Distributions, shall be made as follows: (i) first, to the Limited Partners, in proportion to their respective capital contributions to Pool B, until they have received aggregate distributions pursuant to this sub-paragraph (i) equal to their aggregate capital contributions to Pool B; and (ii) thereafter, (A) 87.50% to the Limited Partners in proportion to their respective capital contributions to Pool B and (B) 12.50% to the Limited Partners participating in the carried interest attributable to Pool B in proportion to their respective Pool B Carried Interest Percentages (as defined below); provided, however, that if the General Partner has granted in the aggregate less than a 12.50% interest to the Limited Partners participating in the Pool B carried interest, then they shall be distributed such lesser percentage pursuant to clause (B) and the balance shall be distributed in accordance with clause (A). Distributions in respect of Pool C, other than Tax Distributions, shall be made as follows: (iii) first, to the Limited Partners, in proportion to their respective capital contributions to Pool C, until they have received aggregate distributions pursuant to this sub-paragraph (iii) equal to their aggregate capital contributions to Pool C; and (iv) thereafter, (C) 87.50% to the Limited Partners in proportion to their respective capital contributions to Pool C and (D) 12.50% to the Limited Partners participating in the carried interest attributable to Pool C in proportion to their respective Pool C Carried Interest Percentages (as

defined below); provided, however, that if the General Partner has granted in the aggregate less than a 12.50% interest to the Limited Partners participating in the Pool C carried interest, then they shall be distributed such lesser percentage pursuant to clause D and the balance shall be distributed in accordance with clause (C). For the avoidance of doubt, (W) Paragraph 8(d) of the Agreement captioned "Apportionment of Other Distributions" shall not be applicable to Pool B or Pool C, (X) Paragraph 8(f) of the Agreement captioned "Distributions with Respect to Designated Profits" shall be interpreted and applied on a Pool-by-Pool basis, (Y) in the General Partner's sole discretion, Limited Partners with Pool B Carried Interest Percentages or Pool C Carried Interest Percentages may waive carried interest attributable to Pool B or Pool C, as the case may be, in a manner consistent with the principles set forth in Paragraph 8(f) of the Agreement, and (Z) distributions in respect of Pool A shall be unaffected by Amendment No. 17 to the Agreement.

(g) Distribution Override. Notwithstanding any provision of this Amendment or the Agreement to the contrary, except for Tax Distributions, no amounts otherwise distributable in respect of Pool B Carried Interest Percentages or Pool C Carried Interest Percentages to Limited Partners holding a Pool B Carried Interest Percentage ***and /or*** a Pool C Carried Interest Percentage shall be made until the Subject Limited Partner has first been returned all of its capital contributions with respect to both Pool B ***and*** Pool C in the aggregate. In order to protect against an over-distribution to the Subject Limited Partner, once the Subject Limited Partner has received distributions from Pool B or Pool C in an amount equal to its aggregate capital contributions to such Pool, then any carried interest distributions with respect to such Pool otherwise distributable to Pool B carried interest participants or Pool C carried interest participants, as the case may be, shall be held in the Partnership and distributed to the Pool B carried interest participants or Pool C carried interest participants, as the case may be, only if and when the Subject Limited Partner has received from the Partnership (whether from Pool B and/or Pool C) an amount equal to its aggregate capital contributions with respect to both Pool B ***and*** Pool C. For the avoidance of doubt, if the Subject Limited Partner does not receive aggregate distributions at least equal to its aggregate capital contributions to both Pool B ***and*** Pool C, then any carried interest distributions retained by the Partnership pursuant to this Paragraph 20(g) shall be distributed upon the liquidation of the Partnership to the Subject Limited Partner until it has received aggregate distributions at least equal to its aggregate capital contributions to both Pool B ***and*** Pool C, and any remaining carried interest distributions retained by the Partnership would then be distributed to the Pool B and C carried interest participants, on a pro-rata basis.

(h) Pool Carried Interest and Vesting. The Limited Partners participating in the carried interest attributable to Pool B and their respective initial Pool B carried interest percentages ("Pool B Carried Interest Percentages") shall be as set forth in a schedule maintained by the General Partner and provided from time to time by the General Partner to the Subject Limited Partner and Dr. Harrison. Such schedule shall provide that the initial

aggregate Pool B Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be 7.50% (provided, however, that the Pool B Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates is subject to a potential partial reduction (but in no event below 5.00%) following the Partnership's final liquidation, as set forth in Schedule F hereto), that the initial Pool B Carried Interest Percentage for Anna Batarina shall be 2.00%, for Sally Jacob shall be 0.10%, and for Marie-Therese Afif shall be 0.05%. Each other Limited Partner participating in the Pool B carried interest shall be granted such Pool B Carried Interest Percentage as may be determined from time to time by the General Partner in its sole discretion; provided, however, that the aggregate Pool B Carried Interest Percentages do not exceed 12.50% at any time (subject to the aforesaid potential partial reduction). Dr. Harrison, Les Pommes and their respective affiliates and Ms. Batarina shall vest in their respective Pool B Carried Interest Percentages monthly on a straight-line basis commencing as of February 6, 2019, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool B Carried Interest Percentage. Any other Limited Partner receiving a Pool B Carried Interest Percentage shall vest therein monthly on a straight-line basis over the lesser of 120 months and the number of full calendar months remaining in the Initial Term and extensions which are at the option of the General Partner, commencing from the date such Limited Partner began providing services to the Partnership, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool B Carried Interest Percentage. The Limited Partners participating in the carried interest attributable to Pool C and their respective initial Pool C carried interest percentages ("Pool C Carried Interest Percentages") shall be as set forth in a schedule maintained by the General Partner and provided from time to time by the General Partner to the Subject Limited Partner and Dr. Harrison. Such schedule shall provide that the initial aggregate Pool C Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be 7.50% (provided, however, that the Pool C Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates is subject to a potential partial reduction (but in no event below 5.00%) following the Partnership's final liquidation, as set forth in Schedule F hereto), that the initial Pool C Carried Interest Percentage for Anna Batarina shall be 2.00%, for Sally Jacob shall be 0.10%, and for Marie-Therese Afif shall be 0.05%. Each other Limited Partner participating in the Pool C carried interest shall be granted such Pool C Carried Interest Percentage as may be determined from time to time by the Pool C Committee (as defined below) in its sole discretion; provided, however, that the aggregate Pool C Carried Interest Percentages do not exceed 12.50% at any time (subject to the aforesaid potential partial reduction). Dr. Harrison, Les Pommes and their respective affiliates and Ms. Batarina shall vest in their respective Pool C Carried Interest Percentages monthly on a straight-line basis commencing as of February 6, 2019, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool C Carried Interest Percentage. Any other Limited Partner receiving a Pool C Carried Interest Percentage shall vest therein monthly on a straight-line basis over the lesser of 120 months and the number of full calendar months remaining in the Initial Term and extensions which are at the option of the General Partner, commencing from the date such

Limited Partner began providing services to the Partnership, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool C Carried Interest Percentage. For the avoidance of doubt, the "vesting" provisions described in this Paragraph 20(h) shall be construed as "divesting" provisions, and so long as a Limited Partner with a Pool B Carried Interest Percentage or Pool C Carried Interest Percentage continues to provide services to the Partnership, such Limited Partner shall be entitled to full allocations and distributions with respect to its Pool B Carried Interest Percentage or Pool C Carried Interest Percentage, as the case may be. For the avoidance of doubt, vesting in respect of Pool A carried interest shall be unaffected by Amendment No. 17 to the Agreement.

(i) Management.

(i) Pools A and B. So long as ATP III GP, Ltd. continues as the General Partner, the management of Pools A and B, including, without limitation, any investment decisions, capital calls and budget approval requests with respect to Pool A or Pool B, shall be the sole responsibility of the General Partner, subject to any consent or other approval rights of the holders of the Preferred Units, as provided for in this Agreement.

(ii) Pool C. So long as ATP III GP, Ltd. continues as the General Partner, the management of Pool C, including, without limitation, any investment decisions, capital calls and budget approval requests with respect to Pool C, shall be delegated by the General Partner to, and shall be the sole responsibility of, a committee established with respect to Pool C (the "Pool C Committee"), subject to any consent or other approval rights of the holders of the Preferred Units, as provided for in this Agreement. The Pool C Committee shall consist of Dr. Harrison (so long as he is providing services to the Partnership) and, initially, Ms. Batarina. All decisions of the Pool C Committee shall be made by unanimous consent of the members of the Pool C Committee. So long as Dr. Harrison is providing services to the Partnership, he may remove Ms. Batarina (or any of her successors) as a member of the Pool C Committee and may replace her (or any of her successors) on the Pool C Committee with such United States person who is nominated by him, subject to the reasonable acceptance of the Subject Limited Partner."

5. Term. Paragraph 10(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(a) Term of Partnership. Subject to Paragraph 10(b) or operation of law, the term of the Partnership and Pools B and C shall end on February 6, 2029 (the "Initial Term"); provided, however, that the Initial Term may be extended by the General Partner for up to two one-year periods. Subject to Paragraph 10(b) or operation of law, the term of Pool A shall end on December 31, 2022; provided, however, that such term may be extended by the General Partner for up to two one-year periods."

6. **Time Requirement; Successor Funds**. Notwithstanding anything to the contrary in the Agreement or the Letter Agreement, so long as ATP III GP, Ltd. continues as the General Partner, Dr. Harrison (a) shall devote such amount of his business time to the affairs of the Partnership as is reasonably required to direct its activities and (b) shall not, without the consent of the Subject Limited Partner, organize and manage one or more additional investment funds, if (i) the Management Company is receiving the Management Fee, (ii) Dr. Harrison is a general partner or managing member of each other investment entity formed by or with the Subject Limited Partner with an investment focus in life sciences, except for those referenced in clause (A) or (B) below, (iii) Pool C is actively making investments in new Portfolio Companies, and (iv) the Subject Limited Partner or its affiliates have not invested in another life sciences business or investment fund that is competitive with any entities managed or co-managed by Dr. Harrison, except for those referenced in clause (A) or (B) below. For the avoidance of doubt, nothing herein is intended to limit or restrict in any way (A) passive financial investments by the Subject Limited Partner or its affiliates in other life sciences businesses or investment funds that have distinctively shorter liquidity profiles (i.e., monthly or quarterly liquidity) than the Partnership or (B) investments by the Subject Limited Partner or its affiliates in other life sciences businesses having their principal place of business in China or other life sciences investment funds having their principal investment focus on China. If Dr. Harrison organizes and manages any additional investment fund (other than the prospective investment fund discussed by the Subject Limited Partner and Dr. Harrison which they have referred to as the ATP Parallel Fund) which requires the consent of the Subject Limited Partner pursuant to clause (b) above, then the Subject Limited Partner shall have a right of first refusal to make an investment in such additional investment fund in an aggregate amount not to exceed 20% of the aggregate capital commitments to such fund.

7. **Partner Clawback**. The first sentence of Paragraph 15(e) of the Agreement is hereby amended and restated in its entirety to read as follows:

"If (i) the Partnership incurs a liability or obligation under this Paragraph 15 in respect of any Pool and (ii) the Partnership does not have sufficient available cash on hand to satisfy such liability or obligation, then the General Partner, in its sole discretion, may require that each Partner participating in such Pool make additional payments to the Partnership, upon no less than ten days' prior written notice from the General Partner, of its pro rata share (according to the amount by which such liability or obligation would have reduced the aggregate distributions received by each Partner (and its predecessors in interest) in respect of such Pool as of the time of such notice), after giving effect to any distributions returned by the Partners pursuant to this Paragraph 15(e) and any distribution of such returned amounts to such Partners, had such liability or obligation been incurred and paid by the Partnership prior to the time any distributions were made) of an amount up to the amount necessary to satisfy such liability or obligation; provided that (A) no Partner shall be required to contribute as to any Pool an aggregate amount pursuant to this Paragraph 15(e) that exceeds 20% of its aggregate capital

contributions to such Pool, and (B) no Partner shall be required to contribute as to any Pool an amount that exceeds the aggregate amount of distributions made in respect of such Pool to such Partner (and such Partner's predecessors in interest) during the 24-month period preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period; provided further that, for the avoidance of doubt, a Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall be determined on an Pool-by-Pool basis."

8. **Miscellaneous**. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

9. **Effectiveness**. In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Seth L. Harrison, Director

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)

LIMITED PARTNERS:

Executed as a deed by:

Ezbon International Limited

By: _____

Title: Director, on behalf of Ezbon International Limited

In the presence of:

_____

Witness

Maria Phylactou

Name of Witness (please print)

Executed as a deed by:

Blue Horizon Enterprises Ltd.

By: _____

Title: Director on behalf of Blue Horizon Enterprises Ltd

In the presence of:

_____

Witness

Anna Maria Paylou

Name of Witness (please print)

Executed as a deed by:

_____

Seth L. Harrison

In the presence of:

_____

Witness

_____

Name of Witness (please print)

LIMITED PARTNERS:

Executed as a deed by:

Ezbon International Limited

By: _____
Title: _____

In the presence of:

_____
Witness

_____
Name of Witness (please print)

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____
Title: _____

In the presence of:

_____
Witness

_____
Name of Witness (please print)

Executed as a deed by:

_____
Seth L. Harrison

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)

Executed as a deed by:

LES POMMES LLC

By: _____
Seth L. Harrison, Manager

In the presence of:

_____
Witness

Margaret M.Bigelow
Name of Witness (please print)

Executed as a deed by:

_____
Anna Batarina

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)

Schedule F

Dr. Harrison potential carry reduction upon completion of liquidation of Pool C

1. Upon completion of liquidation of Pool C, the parties will determine, by following the steps outlined below, whether there needs to be a retroactive reduction to Dr. Harrison's carry.

2. First, determine for each portfolio company in which there has been a realized gain for Pool C, the percentage ownership for each of (a) Pool C, (b) its portfolio company employees and (c) Pool C's VPs/EIRs. If a Pool C VP/EIR also served as a portfolio company employee at some point, that portion of his percentage ownership which is attributable to his equity that vested while he was a portfolio company employee gets counted in bucket (b) rather than bucket (c).

3. If (b) + (c) exceeds 15%, then subtract the portion of (c) needed to get to exactly 15% (which we believe is the average employee percentage ownership of a venture-backed company), but never more than all of (c), to come up with the "overage" percentage. Next, convert the overage percentage to its equivalent dollar amount in terms of the total gain on the company. For example, if the total gain on the company is $40M and the overage percentage is 2%, then the equivalent dollar amount is $800K. Total the equivalent dollar amounts for all portfolio companies falling into this item 3.

4. If (b) + (c) is less than 15%, then the percentage by which it is less than 15% is the "underage" percentage. Next, convert the underage percentage to its equivalent dollar amount in terms of the total gain on the company. Total the equivalent dollar amounts for all portfolio companies falling into this item 4.

5. Subtract the total dollar amount of item 4 from the total dollar amount of item 3. If the net amount is positive, then Dr. Harrison has a contingent payment obligation to the Subject Limited Partner.

6. In the discussions between the Subject Limited Partner and Dr. Harrison leading up to the Pool C summary of terms, Dr. Harrison agreed to decrease the total carried interest in Pool C from 15% to 12.5%, resulting in a benefit to the Subject Limited Partner of 2.5%. At the same time, the Subject Limited Partner agreed to an increase in Dr. Harrison's carried interest from 5% to 7.5%, resulting in a benefit to Dr. Harrison of 2.5%. Accordingly, the "cost" of any negative adjustment should be shared equally by the Subject Limited Partner and Dr. Harrison.

7. If the amount in item 5 is positive, compute Dr. Harrison's actual overall carried interest percentage in Pool C. If it is greater than 5%, then Dr. Harrison has an actual payment

obligation to the Subject Limited Partner. In that case, first compute 50% of the positive amount so each of the Subject Limited Partner and Dr. Harrison share equally in the adjustment. Then, reduce Dr. Harrison's 50% share by his hypothetical tax liability on that amount (because Dr. Harrison would have already paid taxes on the positive amount). The net amount is Dr. Harrison s after-tax calculated payment obligation to the Subject Limited Partner, which then becomes due, provided that the amount payable can never reduce Dr. Harrison's carry percentage to less than 5%.

8. The above mechanism needs to be adjusted, however, in two situations. First, if a portfolio company employee or a Pool C EIR/VP invested on a similar basis to Pool C in a portfolio company in which Pool C realized a gain, that investment piece is excluded from this calculation. An example is Michael Davidson's $111,458 investment in the Corvidia convertible note financing, which was made on the same basis on which the Partnership invested.

9. The second adjustment is necessary only in those instances where a portfolio company has investors in addition to Pool C, e.g., in a syndicated deal. Excluding, for the moment, an IPO, the adjustment for a syndicated deal in which the Partnership has realized a gain would need to take into account Pool C's percentage ownership relative to the total ownership percentage of all investors. For example, if Pool C held 65% of the equity, other investors held 17%, and the employees and Pool C VP/EIRs held the remaining 18%, then the overage percentage would be 3%. But that would need to be pro-rated for Pool C's share of the total investor ownership in the company. In this example, Pool C's investor share is 65% divided by 82% (65% + 17%), or roughly 79%. So the 3% overage would be adjusted for Pool C's 79% investor ownership, yielding a net overage of 2.37%.

10. The same approach as in item 9 would need to be followed in the case of an IPO. But because it is impossible to track the company's metrics after an IPO, the parties would need to assume for the purposes of this calculation that the IPO constituted a deemed liquidation. For example, the company might go public at $25 per share and there might be an overage of 1.5% at that time. The parties would then assume that the company was liquidated immediately prior to the IPO at the IPO price. If the deemed liquidation at $25 per share resulted in a deemed total gain of $50M for the company, and Pool C owned 55% of the total investor shares at that time, then the overage would be $50M X 55% X 1.5%, or $412,500.

11. Notwithstanding the foregoing, if and to the extent that the total carried interest in Pool C, prior to any reduction to Dr. Harrison's 7.5% interest, is less than 12.5%, then the maximum 2.5% reduction to Dr. Harrison's 7.5% interest will be reduced by the amount the total carried interest in Pool C is less than 12.5%. For the avoidance of doubt and by way of example only, (a) if the total carried interest in Pool C prior to any reduction to Dr. Harrison's interest is 10.0%, then there will not be any reduction to Dr. Harrison's interest, and (b) if the total carried interest in Pool C prior to any reduction to Dr.

Harrison's interest is 11.25%, then the maximum reduction to Dr. Harrison's 7.5% interest will be 1.25%.

12. Notwithstanding the foregoing, appropriate adjustments will be made to eliminate from the calculations that portion of the percentage ownership by a portfolio company's employees that is founders' stock or shares issued to founders to protect them against dilution in respect of their founders' stock.

Example - Dr. Harrison's carry adjustment upon completion of Pool C liquidation

1. Factual Assumptions

   a) $1B contributed capital, 100% contributed by the Subject Limited Partner. (Note that $1B is used solely for simplicity here and that less than $1B will actually be contributed to Pool C because the $1B maximum amount will be reduced by the amount of the capital contributions made to Pool B.)
   b) $1.5B aggregate distributions.
   c) Dr. Harrison received 7.5% of $500M gain, or $37.5M.
   d) Dr. Harrison maximum pre-tax contingent repayment obligation is 2.5% of $500M, or $12.5M.
   e) Assumed Dr. Harrison effective rate of 30%. Therefore, Dr. Harrison maximum post-tax contingent repayment obligation is 70% of $12.5M, or $8.75M.
   f) Ten portfolio companies, six of which were profitable.
   g) Total carried interest in Pool C is 12.5% prior to any reduction pursuant to this Schedule F.
   h) No founders' stock issued with respect to any of the ten portfolio companies.

2. Analysis as to Profitable Portfolio Companies

   a) Company #1.
   Profit = $200M.
   Wholly-owned by Pool C, except for employee/VP/EIR pool ("VP/EIR Pool") of 17%.
   Pool C ownership = 83%.
   VP/EIR participation of 4%.
   Overage = 2%. $200M X 2% = $4M.

   b) Company #2.
   Profit = $75M.
   Wholly-owned by Pool C, except for VP/EIR Pool of 16%. Pool C ownership = 84%.
   VP/EIR participation of 0%.
   Overage = 0%. $75M X 0% = $0.

   c) Company #3.

Profit = $350M.
Owned 50% by Pool C, 33% by other investors, 17% by VP/EIR Pool.
VP/EIR participation of 3%.
Overage = 2%. Pool C overage percentage = 50%/83% = 60%. 60% X 2% = 1.2%.
$350M X 1.2% = $4.2M.

d) Company #4.
Profit = $90M.
Owned 57% by Pool C, 34% by other investors, 9% by VP/EIR Pool.
VP/EIR participation of 2%.
Underage = -6%. Pool C underage percentage = 57%/91% = 63%. 63% X -6% = -3.8%. $90M X -3.8% = -$3.4M.

e) Company #5.
Profit = $100M. This is an assumed amount based on Pool C percentage ownership at time of IPO, i.e. (IPO price per share X # of Pool C shares) minus Pool C cost.
Owned 55% by Pool C, 38% by other investors, 7% by VP/EIR Pool.
VP/EIR participation of 5%.
Underage = -8%. Pool C underage percentage = 55%/93% = 59%. 59% X -8% = -4.7%. $100M X -4.7% = -$4.7M.

f) Company #6.
Profit = $300M. This is an assumed amount based on Pool C percentage ownership at time of IPO, i.e. (IPO price per share X # of Pool C shares) minus Pool C cost.
Owned 60% by Pool C, 23% by other investors, 17% by VP/EIR Pool.
VP/EIR participation of 1%.
Overage = 1%. Pool C overage percentage = 60%/83% = 72%. 72% X 1% = 0.7%.
$300M X 0.7%% = $2.1M.

3. Calculation of Net Overage

$4M + $0 + $4.2M - $3.4M - $4.7M + $2.1M = $2.2M.

4. Calculation of Dr. Harrison's 50% Share of Net Overage

$2.2M X 50% = $1.1M.

5. Calculation of Dr. Harrison's Net Post-Tax Share of Overage

$1.1M X 70% = $0.77M.

6. Calculation of Dr. Harrison's Maximum Post-Tax Repayment Obligation

$0.77M is less than $8.75M. Therefore, Dr. Harrison's repayment obligation is $0.77M.

Dr. Harrison potential carry reduction upon completion of liquidation of Pool B

Any carry reduction for Dr. Harrison with respect to his interest in Pool B will be determined in a manner consistent with the principles set forth above for determining a carry reduction with respect to his interest in Pool C.

Apple Tree Partners V Analysis

Factual Assumptions:	
SLH Carried Interest	7.50%
Total Pool B Carried Interest	12.50%
Prelab contingent repayment	2.50%
SLH Effective Tax Rate	10%
SLH Share Net Overage	50%
Benchmark employee pool	15%
Contributed Capital	1,000,000,000.00
Aggregate Distributions	1,500,000,000.00
Gain	500,000,000.00
SLH Carry	37,500,000.00
Pre-tax contingent repayment	12,500,000.00
SLH post-tax contingent repayment	8,750,000.00
Net Overage	2,271,941.79
SLH Share of Net Overage	1,135,970.90
Post-Tax Share of Overage	795,179.63
Maximum Post-Tax Repayment Obligation	795,179.63

	Analysis as to Profitable Portfolio Companies					
	Company 1	Company 2	Company 3	Company 4	Company 5 IPO	Company 6 IPO
Profit	100,000,000	75,000,000	250,000,000	90,000,000	100,000,000	100,000,000
Ownership %						
a ATP V	83%	84%	50%	57%	55%	60%
b Employee	13%	16%	14%	7%	2%	16%
c VP/EIR Participation	4%	0%	3%	2%	5%	1%
Other Investors	0%	0%	33%	34%	38%	23%
	100%	100%	100%	100%	100%	100%
b + c exceed 15%	TRUE	TRUE	TRUE	FALSE	FALSE	TRUE
Overage/Underage Percentage	2.00%	0.00%	2.00%	-6.00%	-8.00%	1.00%
Net Overage	4,600,000.00		4,216,867.47	(9,182,417.58)	(4,731,162.80)	7,168,474.70

EXHIBIT AA

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ATP III GP, LTD., in its capacity as general partner of ATP Life Science Ventures, L.P., Plaintiff, v. RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, Defendants.	Case No. 2025-0607-KSJM

AN EXPERT OPINION OF

MICHAEL BLOCH KC

ON CAYMAN ISLANDS LAW

Confidential

A. PRELIMINARIES

1. I am a barrister and King's Counsel practising in the courts of England and Wales and other British Commonwealth jurisdictions, including the courts of the Cayman Islands, where, in accordance with the rules, onshore counsel are called on a case-by-case basis where appropriate. I was called to the bar of England and Wales in 1979 and appointed to Silk in 1998. A copy of my curriculum vitae as it appears on my chambers' website is attached as Appendix A hereto.

2. I am not an academic, and I have no legal publications to disclose. I have provided expert evidence on legal issues in other proceedings. I have not been required to attend court in any of those proceedings, and I do not believe that any of the opinions which I have provided in those proceedings would be material to the

Joint Exhibit
JX-1574
C.A. No. 2025-0607-KSJM

evidence I am giving in these proceedings. I do not recall having provided an expert opinion over the last 5 years.

3. I have been asked by the attorneys for the plaintiff in these proceedings, ATP III GP, Ltd., in its capacity as general partner of ATP Life Science Ventures, L.P. ("**the General Partner**"), to describe the substantive laws of the Cayman Islands to which I shall refer, and to give my opinion on the issues which I shall address. As I understand it, I may also be asked to consider and respond to an opinion or opinions to be given by an expert or experts retained by the defendants in these proceedings, Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP ("**Rigmora**").

4. My remuneration under my retainer in connection with these proceedings is based on a rate of GBP1,250 per hour which is unexceptional for me, and I am being reimbursed for reasonable travel and out-of-pocket expenses. I do not believe that the views I express here have been influenced by the remuneration I have received or am to receive for providing it, and I have endeavoured to present my views fairly and accurately. My compensation in connection with this matter is not dependent on my opinions, and it is not contingent on the outcome of this matter.

5. I have no affiliation with the parties or their legal advisors apart from my retainer for the provision of my evidence in these proceedings. I affirm that this report and the opinions expressed in it are my own opinions, and not those of any organization or group with which I am or have been affiliated, or any other third party.

6. This report and the opinions expressed in it are based on my familiarity with the law to which I refer, to the reading I describe of the documents to which I refer, to my understanding, as I describe it, of the context in which the contractual documents to which I refer were concluded and my analysis of the same. I qualify the opinions I express in this report where I consider that my understanding of the

facts and matters relevant to the issues to which it relates makes it appropriate for me to do so.

7. I have been provided with a copy of a document which I understand to be the First Amended and Restated Partnership Agreement of ATP Life Science Ventures, L.P. (formerly known as Apple Tree Partners IV, L.P.) and twenty-two written amendments executed by the parties between November 2012 and December 2024.[1] As I understand it, there is no dispute between the parties to these proceedings as to the validity or coming into effect of this agreement as amended by them. I shall refer to this amended agreement in its various emanations as "**the LPA"**, to specific amendments as "**Amendment 1**" etc., and to the First Amended and Restated Partnership Agreement as amended by, for example, Amendment 22, as "**the LPA Am22**".

8. A complete list of the materials I relied upon in forming the opinions contained in this report is attached as Appendix B.

Road Map

9. I have structured this report as follows.

A. PRELIMINARIES 1
Road Map 3
B. SUMMARY 4
C. FACTUAL BACKGROUND 5
D. THE LAW OF THE CAYMAN ISLANDS 5
General Principles of Interpretation 6
Express Terms 6
Implied Terms 9
Terms and Principles Creating and Controlling Rights of Determination and Their Exercise 18
Consequences 23

[1] The First Amended and Restated Limited Partnership Agreement of ATP Life Science Ventures, L.P., dated as of November 1, 2012, has been produced in this litigation at ATP_00202247. Bates numbers for the LPA are available in Appendix B.

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Scenario 4....36
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F. THE MEANING AND EFFECT OF THE BOGDANOV EMAIL....38
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B. SUMMARY

10. The fact that the LPA has been amended twenty-two times, that later amendments refer to earlier ones and that there is no restatement of the LPA from LPA Am1 onwards makes it harder to follow than it might be, and the fact that each of the amendments made to it will have been made in a context which might affect its meaning makes it harder to understand than it might be. Nonetheless, I believe that the nature and objects of the partnership to which it relates ("**the Partnership**"), and the roles which it envisages for, grants to and requires of the partners to that Partnership, in particular, under LPA Am22, and in relation to budget approvals, are clear, at least, on the face of the LPA.

11. In my opinion, in the absence of strong contextual indications to the contrary of which I am unaware, the budget approval processes set out in Paragraphs 5 and 26 of the LPA Am22 require Rigmora to engage with those processes and to do so in an honest and rational manner.

12. In my opinion, in the absence of some dealings between the parties of which I am unaware or of an underlying commercial justification which I am not in a position to assess, the Bogdanov Email (defined herein) may constitute or demonstrate a failure on the part of Rigmora to engage with the budget approval processes and to do so in an honest and rational manner.

13. Further, if Rigmora have failed to engage with the budget approval processes or to do so in an honest and rational manner, the General Partner may, in my opinion, be entitled to treat any requirement for their approval of the budgets as satisfied and any right they may have had to refuse such approval as waived.

C. FACTUAL BACKGROUND

14. My understanding of the circumstances in which the LPA and its various amendments were entered into, and of the facts relating to the dispute between the parties as to the performance of the LPA is derived from the documents listed at Appendix B. It is apparent to me that there are matters of fact of potential relevance to the issues on which I am being asked to express my opinion which are in dispute in these proceedings, and I shall endeavour to make it clear where the outcome of any such dispute might affect my opinion.

15. The Partnership is an exempted limited partnership under the Exempted Limited Partnership Act (2025 Revision) ("**the Exempted Limited Partnership Act**") organised pursuant to the LPA, with the General Partner as its general partner, and with 18 limited partners.

16. There is a dispute between the General Partner and two of the limited partners, Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP.

D. THE LAW OF THE CAYMAN ISLANDS

17. The LPA is governed by the law of the Cayman Islands. LPA ¶ 18(g).

18. The Cayman Islands are a British overseas protectorate with its own legislature, courts and binding case law. The final court of appeal from the Grand Court of the Cayman Islands and the Cayman Islands Court of Appeal is to His Majesty's Privy Council; the panels of the Privy Council are largely drawn from the judges of the Supreme Court of England and Wales; and, when it comes to matters of common

law and equity, if and insofar as they are unaffected by statutes or regulations or local policies which are specific to the Cayman Islands, the members of the Privy Council may be expected to adjudge the law as they would when sitting in the Supreme Court of England and Wales.

General Principles of Interpretation

19. The LPA is an agreement of the partners which provides for the establishment of, and regulates the affairs of, a Cayman Islands exempted limited partnership, the conduct of its business and the rights and obligations of the partners amongst themselves.

20. The LPA is governing in relation to such matters subject only to any relevant mandatory provisions of the Exempted Limited Partnership Act, and, whilst the content and purposes of the Exempted Limited Partnership Act may inform the interpretation of the LPA, I do not believe that there are any relevant mandatory provisions of the Exempted Limited Partnership Act which resolve the issues on which I have been asked to opine. As I see it, these are, at least, primarily matters of Cayman Islands contract law.

Express Terms

21. The general principles of interpretation of contracts such as the LPA are set out and explained in the decisions of the Supreme Court of England and Wales in *Arnold v Brittan* [2015] UKSC 36 and *Wood v Capita* [2017] UKSC 24.

22. These Supreme Court decisions have been referred to and followed in Cayman cases such as *Re Tyr Capital Partners SPC* Unreported, FSD 370 of 2023, 21 June 2024, Doyle J.

23. The fundamental principle which emerges from these cases is as follows.

(1) "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the context to mean" ...": Lord Neuberger (with whom Lord Sumption and Lord Hughes agree) in *Arnold v Britton* at [15].

(2) "The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.": Lord Hodge (with whom Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption agree) in *Wood v Capita* at [10].

24. Three of the seven factors which Lord Neuberger emphasises in *Arnold v Britton* in the context of that case at [17] – [19] may warrant emphasis here.

"17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it.

However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made."

25. The way in which issues of interpretation are to be approached is elaborated further by Lord Hodge in *Wood v Capita* at [12] & [13]:

"12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated: Arnold para 77 citing In re Sigma Finance Corpn [2010] 1 All ER 571, para 10 per Lord Mance. To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.

13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. ..."

26. There are some rules of interpretation under English law which may not be followed in other common law jurisdictions such as the rule excluding evidence of pre-contractual negotiations discussed by Lord Hoffmann in *Chartbrook v Persimmon* [2009] UKHL 38 at [41] - [46]. However, I anticipate that the fundamental principle articulated by Lord Neuberger and Lord Hodge, and the general considerations which inform its application, will be matters with which any common law jurist would be familiar.

27. There is a temptation to seize on the emphasis in the latest case as indicating a departure from what has been said before. However, as Lord Hodge noted in *Wood v Capita* at [15]: "The recent history of the common law of contractual interpretation is one of continuity rather than change".

28. In this case, changes of circumstances have, no doubt, been reflected in the amendments made to the agreement. *In Stena Line Ltd v MNRPF Trustees Ltd* [2011] EWCA Civ 543, at [30] citing *British Airways Pension Trustee Ltd v. British Airways plc* [2002] EWCA Civ 672, Arnold LJ (with whom Toulson and Rimer LJJ agree) observes:

> "[t]he general principle is that each new provision should be considered against the circumstances prevailing at the date when it was adopted rather than as at the date of the original trust deed: see per Millett J in Re Courage Group's Pension Schemes, above, at 505–506. Likewise, the meaning of a clause in the scheme must be ascertained by examining the deed as it stood at the time the clause was first introduced."

Implied Terms

29. English and Cayman law recognise two types of implied term, as explained by Lady Hale in *Societe Generale v Geys* [2012] UKSC 63 at [55] & [56]:

> "First, there are those terms which are implied into a particular contract because, on its proper construction, the parties must have intended to include them: see *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10... Second, there are those terms which are implied into a class of contractual relationship, such

as that between landlord and tenant or between employer and employee, where the parties may have left a good deal unsaid, but the courts have implied the term as a necessary incident of the relationship concerned, unless the parties have expressly excluded it…"

30. I am unaware of any case in which terms have been implied into an exempted limited partnership agreement as a matter of law (otherwise than as provided by statute). However, exempted limited partnerships and the exempted limited partnership agreements which constitute such partnerships will be characterised by certain key features as noted, for example, in the decision of the Cayman Islands Court of Appeal in *Kuwait Port Authority v Williams* 2023 1 CILR 50 at [22] – [26]:

"22. The judge dealt with direct claims by a limited partner at [60]-[65]. Before doing so, at [46]- [59] he helpfully considered and analysed the characteristics of an ELP, how it differs from an ordinary partnership and a company, and the statutory regime established by the ELPA.

23. He stated at [46]-[47] that the rights and obligations of the limited partners and the general partner (or partners) inter se are regulated by the ELPA, the express provisions of which are to prevail where they are inconsistent with the rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision). He also referred at [46] to the provision in section 3 of the ELPA that absent such inconsistency those rules "shall apply to an exempted limited partnership".

(a) Characteristics of an ELP that differ from those of an ordinary partnership:

24. At [46]-[53] the judge identified the following characteristics of ELPs which he considered to be important points of distinction from an ordinary partnership, and which create different rights and obligations between the partners to those in an ordinary partnership:

> (1) By section 4(2) and 20 of the ELPA, the limited partners in an ELP have limited liability whereas the general partner is liable for all debts and obligations of the ELP: [48].
>
> (2) By section 14 of the ELPA limited partners have no active involvement in the business in their capacity as limited partners. The business is carried out by the general partner who enters into all contracts by or on behalf of the ELP: [49] and [52].

(3) Section 19(1) of the ELPA imposes an express duty of good faith on the general partner of an ELP requiring the general partner to act in the interests of the ELP: [50].

(4) Whereas in an ordinary partnership, mutual and reciprocal rights and obligations are owed to each other by partners, section 19(2) of the ELPA provides that, unless the partnership agreement provides to the contrary, a limited partner owes no fiduciary duty either to the ELP or to other partners: [51].

(b) Characteristics of an ELP that differ from those of a company:

25. At [54]-[55] the judge stated that the fundamental legal distinction is that an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right. He stated that the consequence of the ELP not having a separate legal personality is that its general partner holds its rights and property, including choses in action, on trust for each of the partners. Because a limited partnership has no legal personality, the partnership as a whole is not able to enforce the general partner's obligations as trustee.

26. The judge then identified other characteristics of ELPs which he considered to be important points of distinction from those of companies:

(1) the general partner of an ELP owes its duties to all of the individual limited partners whereas the board of directors of a company only owe duties to the company (as the legal entity) and not to its shareholders: [56]-[57].

(2) because in the case of a company directors' duties are owed to the company, any breach by them is generally only actionable by or on behalf of the company and not by shareholders, although there are important exceptions where the wrongdoer directors are in control of the company: [57]-[59].

(3) by section 33(1) of the ELPA, the general partner in an ELP is the only entity who can institute proceedings on behalf of the partnership, whereas in the case of a company there are exceptions to the rule in Foss v Harbottle (1843) 2 Hare 461 where the wrongful directors are in control of the company. The judge stated that "if the limited partners have claims against the GP it is in practice unworkable for it to bring proceedings against itself for breach of duty. If the GP is the arbiter of whether to bring claims against itself that clearly gives rise to a conflict of interest": [60]."

31. Upon appeal to the Privy Council in *Kuwait Port Authority v Williams* [2024] UKPC 32, the Privy Council identified similar distinctions between exempted limited partnerships and companies, as follows at [35]:

"(1) An ELP has no separate legal personality.

(2) A company's articles of association constitute a contract between the company and its members, but no contractual relationship exists between an ELP and its constituent partners. The rights and obligations of the partners in an ELP are governed by a contract between the partners and a statutory trust.

(3) The directors of a company owe fiduciary duties to the company alone and not to the company's shareholders, whilst the general partner of an ELP owes fiduciary duties to all the ELP's limited partners.

(4) The directors of a company are treated as trustees in respect of the company's assets which are under their control, holding them for the company rather than for its shareholders. In contrast, the general partner of an ELP holds the ELP's assets on trust for all the limited partners.

(5) When a wrong is done to a company, it is the company, not its shareholders, that suffers loss. When a wrong is done to an ELP, its constituent partners suffer loss directly: the ELP itself does not suffer any loss that is separate or distinct from the partners' loss.

(6) A majority of shareholders in a company generally have a range of rights and powers, including the power to remove or replace directors and to pass a special resolution requiring a company to bring legal proceedings. A majority of limited partners in an ELP do not have an equivalent power; faced with a general partner who refuses to bring proceedings on behalf of an ELP without cause, their only recourse is to bring a derivative claim.

(7) The fraud on the minority exception concerns control over the bringing of proceedings by the majority shareholders. No such issue arises as between limited partners. As this case illustrates, the majority of limited partners may be seeking to bring the derivative claim."

32. Similar features were also noted in the judgment of Field JA (with whom Birt & Goldring JJA agree) in *Aquapoint v Xiaohu Fan* (unreported 4 October 2024, *CICA) (Civil) Appeal No. 0014 of 2022* at [62]:

"[the appellant exempted limited partnership] is very different from a conventional partnership under the Partnership Act for the reasons identified by Mr Smith. Nonetheless, under the law of the Cayman Islands it is a partnership, albeit an exempted limited partnership, and a partner therein has a statutory right

under section 36 (3) (g) to petition for its winding up on the ground that it is just and equitable to do so."

33. Accordingly, whilst there may be no terms to be read into the LPA as a matter of law in the sense explained by Lady Hale in *Societe Generale v Geys*, the nature of the LPA in the context of the Exempted Limited Partnership Act and the remedies which the law provides in connection with the regulation of partnerships may be relevant to the implication of terms into the LPA on a factual or *ad hoc* basis.[2]

34. The general principles governing the implication of *ad hoc* contractual terms are set out and explained in the decisions of the Supreme Court of England and Wales in *Marks & Spencer v BNP Paribas* [2015] UKSC 72 and *Tesco Stores v USDAW* [2024] UKSC 28.

35. The decision in Mark*s & Spencer v BNP Paribas* has been referred to and followed in Cayman Islands cases such as *Primeo Fund (In Official Liquidation) v Bank of Bermuda (Cayman) Limited* [2017 (2) CILR 334]; and *Cayman Shores v Registrar of Lands* [2021 (2) CILR 1], [2023 (1) CILR 252].

36. The fundamental principle is that "*to be implied, the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract*": Lord Leggatt in *Tesco Stores v USDAW* at [102].

37. The fundamental principle is elaborated and explained in the judgment of Lord Neuberger (with whom Lord Sumption and Lodge Hodge agree) in *Marks & Spencer v BNP Paribas* at [21] – [29]:

"21. In my judgment, the judicial observations so far considered represent a clear, consistent and principled approach. It could be dangerous to reformulate the principles, but I would add six comments on the summary given by Lord Simon in

[2] For the purposes of *Barton v Morris* [2023] UKSC 3 at [134] and [135] in the dissenting judgement of Lord Leggatt the distinction made by Lady Hale in *Societe Generale v Geys* is treated as being the same as distinction between 'default rules' and 'gap fillers' which I understand is sometimes made in the states of the United States and which Lord Steyn adopts in *Equitable Life v Hyman* [2002] 1 AC 408 at 458-459. Whether the two distinctions are the same for all purposes may be another matter.

BP Refinery as extended by Sir Thomas Bingham in Philips and exemplified in The APJ Priti. First, in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, Lord Steyn rightly observed that the implication of a term was "not critically dependent on proof of an actual intention of the parties" when negotiating the contract. If one approaches the question by reference to what the parties would have agreed, one is not strictly concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in the position of the parties at the time at which they were contracting. Secondly, a term should not be implied into a detailed commercial contract merely because it appears fair or merely because one considers that the parties would have agreed it if it had been suggested to them. Those are necessary but not sufficient grounds for including a term. However, and thirdly, it is questionable whether Lord Simon's first requirement, reasonableness and equitableness, will usually, if ever, add anything: if a term satisfies the other requirements, it is hard to think that it would not be reasonable and equitable. Fourthly, as Lord Hoffmann I think suggested in Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988, para 27, although Lord Simon's requirements are otherwise cumulative, I would accept that business necessity and obviousness, his second and third requirements, can be alternatives in the sense that only one of them needs to be satisfied, although I suspect that in practice it would be a rare case where only one of those two requirements would be satisfied. Fifthly, if one approaches the issue by reference to the officious bystander, it is "vital to formulate the question to be posed by [him] with the utmost care", to quote from Lewison, The Interpretation of Contracts 5th ed (2011), para 6.09. Sixthly, necessity for business efficacy involves a value judgment. It is rightly common ground on this appeal that the test is not one of "absolute necessity", not least because the necessity is judged by reference to business efficacy. It may well be that a more helpful way of putting Lord Simon's second requirement is, as suggested by Lord Sumption in argument, that a term can only be implied if, without the term, the contract would lack commercial or practical coherence.

...

27. Of course, it is fair to say that the factors to be taken into account on an issue of construction, namely the words used in the contract, the surrounding circumstances known to both parties at the time of the contract, commercial common sense, and the reasonable reader or reasonable parties, are also taken into account on an issue of implication. However, that does not mean that the exercise of implication should be properly classified as part of the exercise of interpretation, let alone that it should be carried out at the same time as interpretation. When one is implying a term or a phrase, one is not construing words, as the words to be implied are ex hypothesi not there to be construed; and to speak of construing the contract as a whole, including the implied terms, is not helpful, not least because it begs the question as to what construction actually means in this context.

28. In most, possibly all, disputes about whether a term should be implied into a contract, it is only after the process of construing the express words is complete that the issue of an implied term falls to be considered. Until one has decided what the parties have expressly agreed, it is difficult to see how one can set about deciding whether a term should be implied and if so what term. This appeal is just such a case. Further, given that it is a cardinal rule that no term can be implied into a contract if it contradicts an express term, it would seem logically to follow that, until the express terms of a contract have been construed, it is, at least normally, not sensibly possible to decide whether a further term should be implied. Having said that, I accept Lord Carnwath's point in para 71 to the extent that in some cases it could conceivably be appropriate to reconsider the interpretation of the express terms of a contract once one has decided whether to imply a term, but, even if that is right, it does not alter the fact that the express terms of a contract must be interpreted before one can consider any question of implication.

..."

38. The fundamental principle governing the implication of a term is also explained in the judgment of Lord Leggatt in *Tesco v USDAW* at [102] – [106]:

"102. The main rule governing the implication of a term is that, to be implied, the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract. The first of these tests is sometimes called the "officious bystander test", referring to a personification of it described by MacKinnon LJ in Shirlaw v Southern Foundries (1926) Ltd [1939] 2 KB 206, 227. He imagined an "officious bystander" present while the parties were making their agreement who suggests that they should include a term as an express provision. The test for implication is met if the parties "would testily suppress [the bystander] with a common 'Oh, of course!'." As was rightly pointed out in Belize Telecom, para 25, this thought experiment, colourful as it is, is unhelpful because it invites speculation about how the actual parties to the contract might have responded rather than adopting the objective approach which the law requires. The law is not concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in their position at the time of contracting: see eg Marks and Spencer, para 21. This may account for why judges sometimes imagine the officious bystander answering the relevant question rather than posing it to the parties (as the original version of the test envisages): see eg Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56; [2012] SLT 205, para 33, where Lord Clarke of Stone-cum-Ebony (with whom Baroness Hale of Richmond, Lord Mance and Lord Kerr of Tonaghmore agreed) said:

> "If the officious bystander had been asked whether such a term should be implied, he or she would have said 'of course'."

103. A broader criticism is that a test of obviousness is purely impressionistic and unreasoned. Perhaps this contributes to the enduring attraction of the officious bystander, who may be felt to give a semblance of objectivity to what is really no more than the judge's own hunch. It may also explain why judges seldom rely on the test of obviousness alone. Although a separate test, it is generally applied in combination with the second, "business efficacy" test. In Marks and Spencer, para 21, Lord Neuberger suggested that in practice it would be a rare case where only one of those two requirements would be satisfied.

104. The business efficacy test has its origin in Bowen LJ's classic statement in The Moorcock (1889) 14 PD 64, 68, that "if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have." Bowen LJ further explained that "what the law desires to effect by the implication is … to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of [the] perils or chances [of the transaction]."

105. In Marks and Spencer, para 21, Lord Neuberger aired a suggestion made by Lord Sumption in argument in that case that another way of putting the business efficacy test might be to say that "a term can only be implied if, without the term, the contract would lack commercial or practical coherence." While that would no doubt be a sufficient reason to imply a term, it seems to me to invite consideration of the wrong question. The question is not whether the contract would work at all without the implied term, but whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work. I agree with Sir Kim Lewison that that is the idea that Lord Steyn was expressing in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, when he described the implication of a term as "essential to give effect to the reasonable expectations of the parties": see Lewison, The Interpretation of Contracts, 8th ed (2024), para 6.85; Equitas Insurance Ltd v Municipal Mutual Insurance Ltd [2019] EWCA Civ 718; [2020] QB 418, para 150. It also accords with the original statement of the test in The Moorcock. as seeking to give to the transaction "such efficacy as both parties must have intended that at all events it should have." I agree too with the Supreme Court of New Zealand that formulating the test in terms of commercial or practical coherence risks distracting from the purpose of implication, which is to give effect to the parties' bargain as objectively assessed. It is the parties' bargain, not some broader concept of business coherence, that is the focus of implication: see Bathurst Resources Ltd v L & M Coal Holdings Ltd [2021] NZSC 85; [2021] 1 NZLR 696, para 110.

106. Properly understood, Bowen LJ's famous statement of the law describes a more analytical approach. The first step is to identify, from one or more express terms of the contract construed in their factual setting, a relevant contractual purpose. The question then is whether the implication of a term is necessary to

give effect to that purpose and prevent it from being defeated. Any term implied must be both strictly necessary and no wider than is necessary give the contract such efficacy. It must also, of course, be consistent with the express terms of the contract."

39. The relevant principles are drawn together by Lady Justice Carr DBE in *Yoo Design Services v Iliv Realty Pte* [2021] EWCA Civ 560 at [51]:

> 51. In summary, the relevant principles can be drawn together as follows:
>
> i) A term will not be implied unless, on an objective assessment of the terms of the contract, it is necessary to give business efficacy to the contract and/or on the basis of the obviousness test;
> ii) The business efficacy and the obviousness tests are alternative tests. However, it will be a rare (or unusual) case where one, but not the other, is satisfied;
> iii) The business efficacy test will only be satisfied if, without the term, the contract would lack commercial or practical coherence. Its application involves a value judgment;
> iv) The obviousness test will only be met when the implied term is so obvious that it goes without saying. It needs to be obvious not only that a term is to be implied, but precisely what that term (which must be capable of clear expression) is. It is vital to formulate the question to be posed by the officious bystander with the utmost care;
> v) A term will not be implied if it is inconsistent with an express term of the contract;
> vi) The implication of a term is not critically dependent on proof of an actual intention of the parties. If one is approaching the question by reference to what the parties would have agreed, one is not strictly concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in the position of the parties at the time;
> vii) The question is to be assessed at the time that the contract was made: it is wrong to approach the question with the benefit of hindsight in the light of the particular issue that has in fact arisen. Nor is it enough to show that, had the parties foreseen the eventuality which in fact occurred, they would have wished to make provision for it, unless it can also be shown either that there was only one contractual solution or that one of several possible solutions would without doubt have been preferred;
> viii) The equity of a suggested implied term is an essential but not sufficient pre-condition for inclusion. A term should not be implied into a detailed commercial contract merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them. The test is one of necessity, not reasonableness. That is a stringent test."

40. An *ad hoc* term is not to be implied simply because it is reasonable. At the same time, as Lord Leggatt observed in *Tesco v USDAW* at [105] (in a passage discussing Lord Steyn's statement in *Equitable Life Assurance v Hyman* [2002] 12 AC 408 at 459 that the term should be "*essential to give effect to the reasonable expectations of the parties) whether to imply a term may depend on "whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work*"."

Terms and Principles Creating and Controlling Rights of Determination and Their Exercise

41. The LPA contains an array of express provisions affording to or imposing on one or more of the parties a right or obligation to determine something for the purposes of the LPA and, in some cases, these provisions spell out how far the party or party concerned is fettered in their exercise or performance of that right or obligation.

42. Examples of such provisions which include express fetters are: LPA ¶ 9(a) (requiring the General Partner to value assets "in good faith"); and Amendment 3 ¶ 5(a)(ii) (conditioning acceleration of budgets on the General Partner's representation "that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor.").

43. The LPA is a lengthy and detailed document. However, this does not prevent the court from reading implied terms into it.

44. The fact that the draftsman has included fetters in some provisions but not others in the LPA does not mean that the parties intended the exercise of the other rights and obligations to be unfettered. This is a matter for the interpretation of the agreement as a whole informed by the fetters which have, and have not, been read into or applied to the performance of instruments with similar features in other cases.

45. There are many implied terms and principles which have been held to serve and prayed in aid to curb the scope for abuse in the performance of contractual obligations and the exercise of contractual rights.

46. First, there is the general principle that a party should not be allowed to benefit from its own wrong. This is referred to in the context of the consequences of termination in a passage from the speech of Lord Diplock in *Cheall v A.P.E.X* [1983] 2 A.C. 180, at [188-189]:

> "My Lords, the New Zealand Shipping case [1919] A.C. 1, from which, it is contended, the supposed rule of law can be extracted, was an appeal upon a case stated by an umpire in an arbitration of a phrase in a shipbuilding contract: " thereupon this contract shall become void," where the events to the occurrence of which " thereupon " referred were of different kinds; some of them could only be brought about by some breach of the contract by the shipbuilder, others could happen without any breach of contract by either party. The umpire had found as a fact that the event relied upon by the shipbuilders as bringing the clause into operation so as to render the contract void happened without any breach of the shipbuilding contract by either party, and the actual decision of this House, was that the shipbuilder was entitled to treat the contract as void. In the course of the speeches, which are not entirely consistent with one another, reference was made by all their Lordships to the well known rule of construction that, except in the unlikely case that the contract contains clear express provisions to the contrary, it is to be presumed that it was not the intention of the parties that either party should be entitled to rely upon his own breaches of his primary obligations as bringing the contract to an end, i.e. as terminating any further primary obligations on his part then remaining unperformed. This rule of construction, which is paralleled by the rule of law that a contracting party cannot rely upon an event brought about by his own breach of contract as having terminated a contract by frustration, is often expressed in broad language as: "A man cannot be permitted to take advantage of his own wrong." But this may be misleading if it is adopted without defining the breach of duty to which the pejorative word " wrong " is intended to refer and the person to whom the duty is owed.
>
> The breach of duty which it is suggested disentitled A.P.E.X. in the instant case to rely upon rule 14 as against Cheall was its duty under the Bridlington principles not to poach members from A.CT.S.S. This duty, though moral only and not legally enforceable, it owed to A.CT.S.S. and T.G.W.U. and, may be, other trade unions that are members of the T.U.C.; but plainly it cannot have owed such duty to individual members" of trade unions, since only trade unions were parties to the agreement embodied in the Bridlington principles.

> Since rule 14 can only come into effect when there has been a breach by A.P.E.X. of the duty owed by it to another trade union under the Bridlington principles, it is hopeless to argue that A.P.E.X. is debarred from relying on the rule to terminate the membership of a poached member, merely because it acted in breach of the Bridlington principles in poaching him. So counsel for Cheall felt constrained to introduce the concept of a distinction to be drawn between a "conscious and deliberate" breach of the Bridlington principles and a breach that was merely inadvertent. The former it was argued disentitled A.P.E.X., as a matter of law, ever to rely upon rule 14 to terminate the membership of the person in respect of whom the conscious and deliberate breach was committed, while an inadvertent breach did entitle it to do so.
>
> My Lords, I know of no principle of law which justifies this distinction. The New Zealand Shipping case [1919] A.C. 1, the only authority relied upon for it, contains no hint that any such distinction between deliberate and inadvertent breaches of duty is to be drawn in applying the rule that was the subject of discussion in that case. To attract the principle, whether it be one of construction or one of law, that a party to a contract is not permitted to take advantage of his own breach of duty, the duty must be one that is owed to the other party under that contract; breach of a duty whether contractual or non-contractual owed to a stranger to the contract does not suffice. I have no hesitation in rejecting the argument based upon the supposed rule of law."

47. Second, there is the prevention principle pursuant to which a term may be implied that a party should do nothing to prevent the circumstances for the performance of its obligations under the contract arising. *In Duval v 11-13 Randolph Crescent* [2020] UKSC 18 at [48] Lord Kitchin (with whom Lady Hale, Lord Carnwath, Lady Black and Lord Sales agree) refers to it being “well established that a party who undertakes a contingent or conditional obligation may, depending upon the circumstances, be under a further obligation not to prevent the contingency from occurring; or from putting it out of his power to discharge the obligation if and when the contingency arises.”

48. Third, there is the cooperation principle pursuant to which a term may be implied that a party will cooperate in bringing about the circumstances in which the contract may call for performance. In *Compagnie Noga d’Importation et d’Exportation SA v Abacha (No 3)* [2002] CLC 207 at [103] – [107] Rix LJ refers to the duty of cooperation as found by Devlin J (as he then was) in *Mona Oil*

Equipment and Supply Company Ltd v Rhodesia Railways Ltd (1949) 83 L1 L Rep 178 and to the classic case of *Mackay v Dick (1881) 6 App Cas 251*.

49. Fourth, there may be an implied term to exercise a power or right in a way which is consistent with the purpose for which it is conferred. In *British Telecommunications v Telefonica 02 UK* [2014] UKSC 42 at [37] Lord Sumption (with whom Lord Neuberger, Lord Mance, Lord Toulson and Lord Hodge agree) states: "it is well established that in the absence of very clear language to the contrary, a contractual discretion must be exercised in good faith and not arbitrarily or capriciously... This will normally mean that it must be exercised consistently with its contractual purpose ...".

50. Fifth, in some circumstances, as Rix LJ (with whom Laws & Lloyd agree) held in *Socimer International Bank v Standard Bank* [2008] EWCA Civ 116 at [60] – [66] "a decision maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality".

51. Sixth, there may be an implied duty of good faith. In *Sheikh Al Nehayan v Kent* [2018] EWHC 333 Leggatt LJ (as he then was) sitting at first instance identifies the characteristic relational nature of those contracts in which it may be appropriate to imply a general duty of good faith going beyond that discussed in the *Compass* and *Product Star* cases. Full reviews of the relevant jurisprudence are to be found in the judgment of Fancourt J in *UTB v Sheffield* [2019] EWHC 2322 (Ch) at [196] – [205] and Fraser J in *Bates v Post Office (No.3)* [2019] EWHC 606 at [702] – [710].

52. Seventh, there may be implied fiduciary duties. I note that section 19(2) of the Exempted Limited Partnership Act provides as follows.

"Subject to any express provisions of the partnership agreement to the contrary, a limited partner of an exempted limited partnership in that capacity does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in

performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner."

53. I am unaware of any case which explores the limits of the class of duties encompassed by the reference to fiduciary duties in section 19(2) of the Exempted Limited Partnership Act. In my view, it is arguable whether or to what extent it may encompass a duty of good faith in the sense that may arise in relational contracts such as those discussed in *Sheikh Al Nehayan v Kent*. However, I do not read section 19(2) of the Exempted Limited Partnership Act as precluding the implication of a term which serves to fetter the exercise of a right or the performance of an obligation honestly, rationally or for the purpose for which the contract provides for it.

53. As a matter of principle, even if one is satisfied that there is some such fetter, it is necessary to consider how it operates in the context of the agreement at issue, and, in practice, there may be no magic to the taxonomy which I have adopted here. In many of the cases in this area of the law more than one rationale may be given for implying the same term.

54. In considering the content of the term to be implied in any particular case, it will be necessary to consider, for example, how far it is consistent with the agreement as a whole for the party to or on whom the right or obligation is conferred to have regard to its own interests, circumstances, whims or animus. In some cases, as the Privy Council held in the decision given by Lord Millett in *Reda v Flagg* [2002] UKPC 38 at [45] and [52], the express terms leave no room for any such implied term.

Braganza

55. The judgment of Lady Hale (with whom Lord Kerr agrees) in *Braganza v BP Shipping* [2015] UKSC 17 [17] – [31] has given its name to a class of implied terms which fetter the exercise of a right or power in circumstances where a conflict of interest

may arise, and, in particular, require the right or power to be exercised rationally in the sense explained in the obiter dicta of Lord Sumption in *Hayes v Willoughby* [2013] UKSC 17 at [14]:

> "I do not doubt that in the context of section 1(3)(a) purpose is a subjective state of mind. But in my opinion, the necessary control mechanism is to be found in the concept of rationality, which Eady J touched on in Howlett v Holding [2006] EWHC 41 (QB) and Moses LJ seems to have been reaching for in his judgment in the present case. Rationality is a familiar concept in public law. It has also in recent years played an increasingly significant role in the law relating to contractual discretions, where the law's object is also to limit the decision-maker to some relevant contractual purpose: see Ludgate Insurance Co Ltd v Citibank NA [1998] Lloyds Rep IR 221, para 35 and Socimer International Bank Ltd v Standard Bank Ltd [2008] Bus LR1304 , para 66. Rationality is not the same as reasonableness. Reasonableness is an external, objective standard applied to the outcome of a person's thoughts or intentions. The question is whether a notional hypothetically reasonable person in his position would have engaged in the relevant conduct for the purpose of preventing or detecting crime. A test of rationality, by comparison, applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse. For the avoidance of doubt, I should make it clear that, since we are concerned with the alleged harasser's state of mind, I am not talking about the broader categories of Wednesbury unreasonableness, a legal construct referring to a decision lying beyond the furthest reaches of objective reasonableness."

56. The underlying principles are not new. However, *Braganza* is recognised as the leading case, for example, in the judgement of Males and Leggatt LJJ (with both of whom Patten LJ agrees) in *Equitas Insurance v Municipal Mutual Insurance* [2019] EWCA Civ 718 at [106] – [113] and [148] – [154].

Consequences

57. It is, perhaps, unsurprising that the law has found ways of defeating the antics of those who would breach a contract in order to evade performance of their primary obligations under it.

58. The law on consequences of breach in such cases has been recently reviewed by Popplewell LJ in *King Crude Carriers v Ridgebury* [2024] EWCA Civ 719. The key paragraphs are as follows:-

(1) As regards the wrongful prevention of the fulfilment of a condition precedent depriving a party of the right to rely upon it at [48]:

> "48. In the Court of Appeal in *Panamena* ((1943) 76 Lloyd's Rep 113) Goddard LJ had articulated the principle in the following terms at p. 127:
>
> "It is and must be conceded that if a party desires to rely on the non-performance of a condition precedent, he must do nothing to prevent the condition from being performed, and if there is anything that must be done by him to render possible the performance of the condition, a failure by him to do what is required disentitles him from insisting on performance of the condition.""

(2) As regards a condition precedent being treated as fulfilled where its fulfilment has been prevented by breach of an implied term at [52]:

> "52. In Mona v Rhodesia Railways, Devlin J identified the two propositions for which Mackay v Dick was authority at pp. 186-7. The first was the implied term of cooperation identified by Lord Blackburn, breach of which gives rise to a claim for damages. The second was that of Lord Watson:
>
> "The second proposition, based on the opinion of Lord Watson, advances a stage further and gives the plaintiff in appropriate cases an additional form of relief. If the breach of the implied term prevents the plaintiff from performing a condition binding upon him, he is to be taken as having fulfilled that condition: and if the condition is one on which his right to payment depends, he may therefore sue for payment instead of damages. That these propositions are distinct is shown by the fact that Lord Blackburn's reasoning does not involve the second at all. His construction of the contract does not require it. He says at p. 264 "...". On this view, there was no question of the defender preventing the pursuers from claiming payment; he prevented himself from escaping from the liability to pay. ..... Lord Watson, Mackay v Dick, sup.at p. 270, proceeded on a different construction of the contract and so invoked the principle I have stated. He rested it upon well-established doctrine (see also the authorities cited by McCardie, J., in Colley v Overseas Exporters, sup., at p. 308) and not upon any implication in the contract.""

(3) As regards the similar effect of a breach of the implied duty of cooperation at [61]:

> "*61. In* Geys v Société Générale [2013] AC 523 at [131] *, Lord Sumption JSC referred to*
>
> > *"the doctrine of deemed performance endorsed by the House of Lords in* Mackay v Dick (1881) 6 App Cas 251 *, according to which a party who is prevented by the non-cooperation of the counterparty from satisfying a condition precedent to his right to receive remuneration may be deemed to have earned it notwithstanding the condition"*."

(4) By way of conclusion at [78] – [85], with reference to the recognition of the principle in the opinion of the Privy Council given by Sir Harry Gibbs in *Newmont Property Ltd v Laverton Nickel NL* (1982) 44 ALR 588 at 606:

> " 78. Unlike the Judge, and contrary to Mr Eaton's submissions, I consider that the Mackay v Dick principle, as so formulated, involves no inconsistency with established tenets of contract law, but on the contrary, gives effect to them.
>
> 79. It is first helpful to seek to identify a juridical basis for the principle. It arises from the concept that a person should not be permitted to take advantage of their own wrong, but that is a statement of policy, or as the Judge described it, a 'maxim', rather than a juridical basis for the rule. It is not a freestanding principle of universal application even in contract law. It may be very profitable for a party to break its contract without inflicting an equivalent loss on a defendant, but generally speaking in such cases the law does permit it to take advantage of its own wrong and to keep the profit: damages are generally compensatory and, save in limited circumstances, do not involve disgorgement of profits.
>
> 80. The authorities use a series of different epithets to describe how the principle takes effect. In some cases the language is that of deemed fulfilment of the condition: Lord Watson in Mackay v Dick (the condition is "held as accomplished"); Ashurst J in Hotham ("equal to performance"); Parker LJ in The Aello ("condition deemed to have been fulfilled"); Lord Sumption in Geys ("deemed performance"). In others it is that the condition is dispensed with: Lord Thankerton in Panamena ("absolved from the necessity of obtaining the surveyor's certificate"); Goddard LJ in Panamena ("disentitles him from insisting on performance of the condition"). In others it is the language of estoppel or quasi estoppel or waiver: Lord Donaldson MR in Cory v LRB ("quasi estoppel"); Devlin J in Tiberghien ("not permitted to assert" non fulfilment of the condition and

"in effect waiver"); Millett LJ in Little v Courage ("precluded from claiming that the condition has not been fulfilled"). These, however, are merely descriptors of the effect of the principle, not by way of identification of a legal doctrine whose ingredients must be fulfilled and are then applied. None of the authorities, with their various descriptions of the effect of the principle, seeks expressly to identify its legal basis.

81. In my view, the legal basis of the rule is that it represents the presumed contractual intention of the parties. That is a principled basis for it, because in order for it to apply there must be (1) an agreement capable of giving rise to a debt rather than damages; (2) an agreement that the debt will accrue and/or be payable subject to fulfilment of a condition precedent; and (crucially) (3) an agreement that the obligor will not do the thing which prevents the condition precedent being fulfilled so as to prevent the debt accruing and/or becoming payable, whether that agreement takes the form of the implied term of cooperation identified by Lord Blackburn in Mackay v Dick , or an express term, as in this case. Unless (3) exists, the principle has no application, as Cheall confirms. The natural presumption arising out of that combination of ingredients is that the parties intend that in those circumstances the obligee will have the benefit of the debt for which it has bargained. The presumption is not, as Mr Eaton would have it, merely that the breach of element (3) should give rise to a claim in damages, because that ignores the bargain that in certain circumstances the obligee should have the benefit of a right in debt, which is recognised by elements (1) and (2). Put another way, the agreement that the obligor will not engage in the conduct which prevents the debt accruing and/or becoming payable implicitly carries with it an agreement that the consequence should be that the debt accrues and is payable.

82. That contractual intention is the juridical basis for the principle was recognised in Newmont Property Ltd v Laverton Nickel NL (1982) 44 ALR 588, a decision of the Privy Council on an Australian appeal about an agreement between provisional liquidators of mining companies which was conditional on approval by the court. It was held that the principle in Mackay v Dick had no application in such circumstances, because the condition was not one for the benefit of the parties only, but by way of statutory supervision whose main purpose was the protection of the contributors and creditors against the background of insolvency; and not one which the provisional liquidators could fulfil or the fulfilment of which they could procure. The Opinion of the Board, comprising Lords Diplock, Keith and Roskill, Sir John Megaw and Sir Harry Gibbs was given by Sir Harry Gibbs who said at p. 606:

"In argument counsel for the appellant cited cases such as Mackay v Dick (1881) 6 App Cas 251 in support of the submission that where one party makes it impossible for a condition of the contract to be fulfilled, the condition is to be taken as satisfied. That is true in some cases, but not in

> all; whether performance of a condition precedent is excused where a party has prevented its performance must depend upon the nature of the condition and circumstances of the case. In some cases the nature and purposes of the condition will themselves be sufficient to indicate that the parties must have intended that the obligations which are expressed to be dependent on the fulfilment of the condition will come into existence only if the condition is fulfilled, and that it will not be enough that performance of the condition has been prevented by the wrongful act of one of the parties."
>
> 83. For these reasons I am unable to accept Mr Eaton's argument that the principle interferes with freedom of contract. It is a principle which gives effect to contractual intention, not one which frustrates it. If a contrary intention is sufficiently clearly expressed or can be implied from the circumstances of the case, the principle will not apply.
>
> 84. This accords with the approach to the maxim that a party should not be entitled to take advantage of their own wrong in the contractual field more generally. As I have explained, it has regularly been applied as a matter of construction since at least the early 18th century, but it has always been treated as a principle of construction, not of law, and as subject to a sufficiently clearly expressed contrary intention: see, for example, Cheall at pp.188H-189A, Alghussein Establishment v Eton College [1988] 1 WLR 587 at p. 595G; and BDW Trading ltd v JM Rowe (Investments) Ltd [2011] EWCA Civ 548 at [31] .
>
> 85. I would therefore formulate the principle as being that an obligor is not permitted to rely upon the non-fulfilment of a condition precedent to its debt obligation where it has caused such non-fulfilment by its own breach of contract, at least where such condition is not the performance of a principal obligation by the obligee, nor one which it is necessary for the obligee to plead and prove as an ingredient of its cause of action, and save insofar as a contrary intention is sufficiently clearly expressed, or is implicit because the nature of the condition or the circumstances of the case make it inappropriate."

59. Put simply, in an appropriate case, the court may find that the objective intention of the parties is that, where a precondition is not satisfied as a result of a breach of the contract by the party which would rely upon it, the benefit of the precondition may be deemed to have been waived or lost, and the innocent party may proceed as if the precondition had been satisfied.

E. THE LPA

60. An essential characteristic of an exempted limited partnership as the Exempted Limited Partnership Act envisages such partnerships is that the conduct of the business of the partnership is vested in the general partner and the limited partners have neither control over, nor liability for, what is done in the partnership's name.

61. In the ordinary way, the limited partnership agreement which constitutes an exempted limited partnership will specify, *inter alia*, the objects of the partnership, the capital which the limited partners are committed to provide, and the circumstances in which the general partner may call upon the limited partners to provide it.

62. The LPA has all these features.

(1) The object of the Partnership is "to invest, directly or indirectly through one or more entities directly or indirectly owned in whole or in part by the Partnership (each such entity, an 'Intermediary'), in pharmaceutical medical device and other medically related companies and business projects." LPA Am1 ¶1(c) (restating Paragraph 1(c) of the LPA).

(2) The duties and powers of the General Partner cover "The management, policies, and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner." LPA ¶ 2(b).

(3) The LPA authorizes the General Partner to call capital for Projects within an approved Project budget. LPA Am3 ¶5(a)(ii).[3]

[3] LPA Am3 ¶ 5(a)(ii) ("the "General Partner may only call capital … to … (D) invest in Projects approved … in accordance with a Board-approved budget," and "(E) invest in Projects approved by holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders."). *See also* LPA Am2 Sched. C; LPA Am13; LPA Am20 ¶ 21(e); LPA Am20 ¶ 22(e).

(4) The LPA also affords the Limited Partners or the Subject Limited Partners, who hold the majority of the Preferred Units in the Partnership, certain voting and approval rights, including a right to approve budgets for Partnership Projects.[4]

63. Provided that a budget has been approved, consistent with the power and authority granted to the General Partner to manage the conduct of the business, LPA ¶ 2(b), the General Partner then has the discretion to call capital within that budget. LPA ¶ 5(a)(i) (authorizing the General Partner to call capital in amounts equal to or in instalments of the Contingent Subscription); LPA Am3 ¶ 5(a)(ii) (authorizing the General Partner to call capital to cover an approved budget). Paragraph 5 requires the Limited Partner to make a capital contribution after the General Partner has exercised its discretionary right to call the capital within an approval Project budget. *See* LPA ¶ 5(a)(i); LPA Am3 ¶ 5(a)(ii). The General Partner may call a default "If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due." LPA ¶ 5(c).

64. The purpose of the Partnership as stated in the LPA is to invest in medical science projects of a kind which may, as I understand it, take many years to reach a point at which they will either attract third party investors or be cash-positive and, hence, self-sustaining. However, for the purposes of my opinion the details of this do not matter.

Amendment 22

65. Amendment 22 Paragraph 26 deals with the budgets for the certain clinical-stage portfolio companies, including Ascidian, Aulos, and Replicate and certain early-stage companies, including Nereid and Nine Square. The amendment establishes

[4] Amendment 2 Schedule C outlines the "project budget process." Schedule C refers to "ATC" and the "Board" of ATC. The "Board" refers to the board of directors of ATC. LPA ¶ 2(n). However, Amendment 14 Section 10 to the LPA provides that "All references in the Agreement to 'ATC' and 'Apple Tree Consolidated, SPRL,' … are … deleted from the Agreement." And, as I understand it, it is common ground that the right to approve budgets now resides with the Subject Limited Partners, that is, Rigmora. See also LPA Am3 ¶ 5(a)(ii); LPA Am13 Introduction; LPA Am2 Sched. C; LPA Am20 ¶ 20(e); LPA Am22 ¶ 26.

budget contingencies for these five portfolio companies, providing twelve-month operating budgets with specific timelines through 2025-2026. It also makes the implementation of any budget approval contingent upon the Subject Limited Partner realizing at least $300 million from an ATP LLC sale or financing. The pertinent terms amend Paragraph 26 of the LPA to provide as follows:

> "26. Budgets for Certain Other Portfolio Companies. From and after the date of this Amendment, the General Partner and the Subject Limited Partner shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Therapeutics Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized, i.e., January 2025, in the case of Aulos Bioscience, Inc.; February 2025, in the case of Replicate Bioscience, Inc.; April 2025, in the case of Nereid Therapeutics Incorporated; May 2025, in the case of Nine Square Therapeutics Corporation and the first quarter of 2026, in the case of Ascidian Therapeutics, Inc. (provided that the General Partner and the Subject Limited Partner shall discuss, in the near term, a new budget to fund a major clinical trial of Ascidian Therapeutics, Inc.). If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC."

66. I note the following textual indications as to the meaning and effect of Paragraph 26.

(1) The words "shall discuss" as used in the phrase "the Subject Limited Partner shall discuss new budgets for the Partnership" are apt to denote a discussion in which both parties are obliged to engage.

(2) The words "in accordance with the process set forth in this Agreement" stipulate how the discussion in which the parties are to engage is to be conducted by them.

(3) The words "to allow it to" as used in the phrase "to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Therapeutics Incorporated,

Nine Square Therapeutics Corporation and Replicate Bioscience, Inc." are apt to denote a purpose.

(4) The words "sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized …" are apt to describe facts and matters which are to be taken into account in considering whether or not budgets reflect the specified purpose.

(5) The words "(provided that the General Partner and the Subject Limited Partner shall discuss, in the near term, a new budget to fund a major clinical trial of Ascidian Therapeutics, Inc.)" are apt to indicate that a further discussion in relation to the budget for "a major clinical trial of Ascidian Therapeutics, Inc." must also take place.

(6) The words "If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC" are apt to indicate what facts or matters unrelated to the specified purpose of a new Ascidian clinical trial budget may be taken into account and in what way.

(7) The words "such approval shall be contingent upon" are apt to indicate that the collateral consideration which Paragraph 26 goes on to specify is not to be taken into account as part of the new budget approval process but rather as a condition to putting any such approved new budget into effect.

(8) The fact that Paragraph 26 provides for the fund-raising issue and only the fund-raising issue to operate as a contingency is apt to indicate that no other collateral issue should affect the approval of new budgets.

67. In my view, at least, on a textual analysis of LPA Am22, in order for the LPA Am22 to work as the parties objectively intended it to work, it would appear to be necessary that the Subject Limited Partners engage in good faith discussions regarding the approval of budget proposals for the companies referred to there.

The Meaning and Effect of LPA Am22

68. As I understand it, the issues in these proceedings relate to matters occurring since the partners entered into LPA Am22, and, consequently, that what matters for the purposes of these proceedings is the meaning and effect of LPA Am22.

69. What is critical, as I see it, is that, if the budget approval provisions in the LPA Am22 were to be interpreted as affording the Subject Limited Partners an unfettered right to decline to approve budgets, the Subject Limited Partners would have a power over the conduct of the Partnership which would be at odds with the right and responsibility to control the conduct of the Partnership afforded to the General Partner.

70. Moreover, if the budget approval provisions in the LPA Am22 were to be interpreted as affording the Subject Limited Partners a right which they had no obligation to exercise, or were free to exercise for any reason whatsoever, any contingent capital commitment would be meaningless.

71. The LPA provides that "[a] Partner may not make less than the full amount of any required capital contribution." LPA ¶ 5(a)(i), and, if a Partner fails to make less than the full amount of any required capital contribution, it will be at risk that the General Partner make exercise the powers granted to it to treat the Partner as a Defaulting Partner. None of these provisions would have any force if the Limited Partners have an absolute right under LPA Am22 to refuse to approve budgets and, thereby, avoid the circumstances in which they might apply from arising.

Scenarios

72. As I understand it, the factual scenarios which may arise in these proceedings include the following:

(1) First, Rigmora may be found to have failed to engage in one or more of the budget approval processes for which LPA Am22 provides;

(2) Second, Rigmora may be found to have failed to approve one or more budgets otherwise than as a result of a rational and genuine assessment of the best interests of the Partnership in the entities to which the budgets relate;

(3) Third, Rigmora may be found to have made their approval of one or budgets for particular portfolio entities conditional on the General Partner doing something else in relation to the Partnership which the LPA did not oblige him to do and which he genuinely considered contrary to the interests of the Partnership;

(4) Fourth, Rigmora may be found to have failed to meet a capital call in respect of an amount covered by a budget or budgets which were approved by them;

(5) Fifth, Rigmora may have represented to the General Partner that they would do one or more of these things.

Scenarios 1 - 3

73. Were an unfettered right to decline to approve budgets to exist, the basic scheme of the LPA Am22 would lack coherence, and, accordingly, in my view, in the absence of clear language to the contrary, it is necessary to read into the approval provisions in the LPA Am22 an obligation on the Subject Limited Partners to engage with the process and exercise their power of approval properly.

74. I have used the term “properly” as a place holder. The extent of the fetter on the manner in which the Subject Limited Partners exercise their approval powers in

relation to particular budgets may be affected by the circumstances in which the amendments to the LPA under which those budgets have been presented to the Subject Limited Partners and their powers of approval arise.

75. As I understand it, the vast majority of the capital contributed to the Partnership has been contributed, and always was going to be contributed, directly or indirectly, by the ultimate beneficial owner or owners of the Subject Limited Partners and, as I understand it, the Subject Limited Partners may contend that this 'reality' should inform the meaning and effect to given to the LPA, and, in particular, the need to imply any constraints on the manner in which the Subject Limited Partners may exercise and discharge their rights and obligations under the LPA.

76. I do not find this argument compelling. The fact that any rights afforded to the holders of the majority of the Preferred Units or the Subject Limited Partners would be so readily exercisable by them might be thought to render it all the more important that they should be precluded from exercising them in a way which would undermine the operation of the Partnership or the ability of the general partner to manage the Partnership effectively.

77. It is true that the ownership of the vast majority of the units in a Partnership may inform the exercised of the court's discretion on a petition to wind up a partnership. However, this is only on the assumption that such limited partners have established an appropriate ground on which the court may do so. The fact that the majority owner of an exempted limited partnership would prefer the general partner to do its bidding, rather than manage the partnership on the terms agreed by all the partners, is not to be treated as giving rise to a breakdown in trust and confidence however unused the majority owner might be to anyone disregarding its wishes.

78. What is clear, in my opinion, is, as a matter of principle:

(1) First, that the constraint on the exercise of the budget-approval powers of the Subject Limited Partners to be read into the LPA Am22 should have the essential characteristics of such constraints recognised in such authorities as *Braganza*, *Socimer* and *British Telecommunications*;

(2) Second, that, as a failure to engage in the approval process could be self-serving and, on its face, prevent the satisfaction of a pre-condition to the General Partner's right to make a capital call on the Subject Limited Partners, a breach by the Subject Limited Partners of their obligation to engage and engage properly in the budget approval procedures would engage the principles recognised in the authorities cited in *King Crude Carriers v Ridgebury* in relation to a part's reliance on its own wrong, the prevention principle and the cooperation principle; and

(3) Third, that, if the Subject Limited Partners either have failed to engage with the approval process in breach of an express or implied obligation to do so, or have failed to engage in the process in the manner required of them, the Subject Limited Partners may be taken to have lost or waived their power to approve the budgets in issue with the consequences recognised in *King Crude Carriers v Ridgebury* and the cases cited there.

79. As I understand it, there is a dispute between the parties as to the amount, if any, of the Subject Limited Partners' outstanding capital commitment. I have not been asked to consider this, and I have not formed an opinion on it. If and insofar as I discuss the circumstances in which the General Partner may be entitled to make a capital call, it is, of course, subject to there being a commitment on which to make it.

80. In my view scenarios 1 – 3 would all be caught by the kind of implied term or terms which I have been addressing.

Scenario 4

81. Scenario 4 is one in which Rigmora have approved one or more budgets and, as I understand it, there is no further condition precedent to the making of a capital call for the General Partner to satisfy. In Scenario 4 it is Rigmora which may seek to have a constraint read into the LPA to fetter the power of the General Partner.

82. On its face, the fourth of these scenarios would involve a breach of the LPA unless it is also found that the merits of making a call to cover the approved budgets had so materially changed that the General Partner could not honestly or rationally rely upon it or that, in making the call the General Partner was abusing his power.[5]

83. The General Partner owes fiduciary duties to the Partnership; it is not obliged to make a capital call simply because budgets have been approved in respect of them; its power to make a call is to be exercised rationally and in good faith; and it is incumbent on the General Partner to ensure that it does not exercise it in furtherance of interests of its own which conflict with those the Partnership.

84. However, the framework of the Partnership proceeds on the basis that the General Partner should be able to exercise his powers without regard to any interests of its own which conflict with those the Partnership, and, accordingly, the mere fact that the exercise of a power may affect conflicting interests cannot begin to impugn that exercise.

[5] Or, of course, that Rigmora had fully discharged it capital commitment.

Scenario 5

85. Scenario 5 relates to what, as I understand it, is referred to in the Complaint as an "anticipatory breach". The term 'anticipatory breach" is used in the contract law of England and Wales and of the Cayman Islands to refer to a representation of an intention not to perform an obligation in the future, and, in the ordinary way, an anticipatory breach which goes to the fundamentals of the bargain between the parties will afford the innocent party the option to rescind the contract and seek repudiatory damages.

86. An anticipatory breach in the sense in which it gives rise to a right to rescind the contract need not be a breach in itself. However, there is no reason why, in an appropriate case, the court should not imply a term that a party will not commit an anticipatory breach if, for example, the innocent party will be obliged to make alternative arrangements once it has been put on notice of an anticipatory breach and, consequently, suffer damages even if the wrongdoer ultimately performs the obligation which it has represented it will not perform.

87. Moreover, if and insofar as the anticipatory breach evinces an intention on the part of one party to a contract not to engage in a process with the other party to the contract, the other party may be excused from attempting to engage any further itself, as long as it remains ready and able to do so if the party which has evinced an intention not to engage were to change its mind.

F. THE MEANING AND EFFECT OF THE BOGDANOV EMAIL

88. My attention has been drawn to an email from Yuri F. Bogdanov, who I understand to be the co-CEO of the entity which controls Rigmora, to Seth Harrison, who I understand to be the managing director of the General Partner dated May 15, 2025 ("**the Bogdanov Email**"). *See* Compl. Ex. 10.

89. As I understand it, the Bogdanov Email is relied upon by the General Partner as constituting and evidencing a failure to engage or engage properly in the approval process for either the seven "early-stage companies", or the "clinical stage companies" referred to there.

90. In my view, if the Subject Limited Partners remained under a contingent obligation to commit further capital to the Partnership, the Bogdanov Email may be read as disclosing (1) an intention on the part of Rigmora not to engage with the approval process or meet capital calls in accordance with their obligations under the LPA, and (2) a disregard for any *Braganza* type restraints that might be found to fetter the exercise of their rights and the performance of their obligations in connection with the budget approval process.

91. In my opinion, this is the "natural and ordinary" way in which to read the Bogdanov Email. However, the Bogdanov Email should be read with an understanding of any circumstances known to both parties which may have informed or given rise to it, and, as I may lack such an understanding, I cannot say whether such considerations would tend to confirm or point away from the natural and ordinary reading.

92. As I understand it, the Bogdanov Email refers to two groups of portfolio entities, that is, the early-stage companies in respect of which there were approved budgets and the clinical stage companies in respect of which the General Partner was seeking to obtain the approval of Rigmora in accordance with the LPA.

93. It is unclear to me if Rigmora claim an unfettered right to grant or withhold the approval of budgets as they think fit and if they consider it properly open to them to use the actual or threatened withholding of approval of budgets as a means of wresting the effective management of the Partnership from the General Partner, or if Rigmora contend that the position presented in the Bogdanov Email is consistent with any *King Crude* and/or *Braganza* type obligations on them.

94. I am unable to express a firm view on this, as it is always possible that either the commercial circumstances or prospects of the portfolio entities or the Partnership as a whole, or the context in which the Bogdanov Email was sent, or some other factors which will emerge in the course of the trial will cast a different light on this. However, on the face of it, the Bogdanov Email appears to me to disclose a refusal to engage or to engage in a genuine way with the approval of budgets for the clinical stage companies, and that the demand that the General Partner should not invest further in the early-stage companies, notwithstanding the approval of their budgets, evidences an attempt to exert a control over the effective management of the Partnership which is at odds with the way in which the LPA and, in particular, LPA Am22 is meant to work.

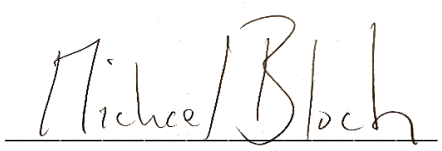
G. CONCLUSION

95. Having regard to the general law which I have addressed in this report, having regard to my reading of LPA Am22 as I have explained it in this report, and in the absence of contextual considerations to the contrary of which I am unaware, I would conclude that the role which LPA Am22 affords to the Subject Limited Partners is, as a matter of necessity, fettered in its exercise and performance in accordance with and for the reasons given in the Braganza case and the cases cited there.

96. Whether the same can be said in relation to the LPA prior to Amendment 22 is another matter. Initially, the Board of ATC could grant the Partnership the approvals it required to make capital calls. Subsequently, the operation of the

Partnership depended on the engagement of the Subject Limited Partners, that is Rigmora.

97. If Rigmora have failed to engage with the budget approval processes under LPA Am22 or failed to do so in an honest and rational manner, whether pursuant to the Bogdanov Email or otherwise, the General Partner may, in my opinion, be entitled to treat any requirement for Rigmora's approval of the budgets referred to in Paragraph 26 of the LPA Am22 as satisfied and any right which Rigmora may have had to refuse such approval as lost.



Michael Bloch KC

August 15, 2025

Appendix A
Curriculum vitae

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Michael Bloch KC



"Michael is an extremely experienced and tactical silk. You don't want him ever to be against you."

— CHAMBERS AND PARTNERS, 2025

Year of call: **1979**
Appointed to silk: **1998**
Degree: **MA (CANTAB), MPhil UEA**

Michael Bloch KC is a trial and appellate advocate who has advised and appeared in a wide range of high value and high profile domestic and international disputes; he is accomplished and at ease whether analysing esoteric points of law or cross-examining on dense or technically complex factual issues; and, whilst he is sensitive to what the court is thinking, he is also forceful and, where appropriate, fearless.

Michael is a registered Advocate before DIFC Courts (Dubai International Financial Centre) and called to the Bar in the BVI.

Michael is recognised as a leading silk in the latest editions of both the leading legal directories, Chambers and Partners and Legal 500, for his expertise in intellectual property, commercial litigation and international arbitration. He was also highlighted as a Recommended Individual in JUVE Patent Rankings 2021, 2022 and 2023.

- "Michael is an extremely experienced and tactical silk. You don't want him ever to be against you." - Chambers UK, 2025
- "Michael has a phenomenal intellect and a rigorous advocacy style. He is also phenomenally bright, he will test arguments until they are robust, and he carries the room easily when speaking." - Legal 500, 2025

Previous comments include:

- "One of the top advocates at the Bar. His grasp of both strategy and practicalities is superb, and his mind is razor sharp."- Chambers UK, 2024
- "A superb advocate. Able to grasp the most complex fact patterns and distil them into simple arguments. A true silver-tongued speaker, who is able to command the bench and be robust when needed." - Legal 500, 2024
- "We have been blown away by Michael's advocacy skills and his ability to react with alacrity despite only having been instructed a short time before a hearing."- Chambers UK, 2023

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- "From an advocacy point of view, he is excellent – a more mellifluous and silver-tongued counsel solicitors cannot think of, and he is not afraid to take on the judge if required."- Legal 500, 2023
- "An absolutely outstanding commercial lawyer, who is very user-friendly and a really, really good trial advocate. He is an amazing cross-examiner."- Chambers UK, 2022

In the field of commercial litigation, Michael is advising and representing several high net worth individuals in relation to offshore disputes, including Abdulhameed Dhia Jafar in proceedings in the Cayman Islands relating to the collapse of the Abraaj investment platform, he is advising several private equity funds in connection with claims relating to distressed debt against the Republic of Mozambique and the sale of debt by Credit Suisse, he has advised and represented Koza in a dispute with the Erdogan regime and he has acted for and is advising a global petrochemical refinery enterprise in connection with a series of ongoing disputes, as well as a private equity enterprise in connection it its control of a Scandinavian gold mine.

Michael's recent telecoms experience includes advising and representing ZTE in the Conversant case at first instance, in the Court of Appeal and the Supreme Court; he has advised and represented Lenovo, ZyXel and Xiami in connection with anti-suit and jurisdiction disputes, he is advising and representing Apple in its dispute with Unwired Planet and Pan Optis, and he is also acting for several other SEP owners and cellular telecommunication providers in relation to anti-suit, jurisisdictional and FRAND issues.

Michael's specialist Intellectual Property work includes advising and representing two automobile manufacturers in connection with an ongoing registered design right cases concerning new and vintage vehicle designs (which may be seen as building on his work in relation to the Land Rover Defender); he is advising and representing garment manufacturers in the Oh Polly copyright dispute; he is acting for multi-national entertainment and media conglomerate in connection with a copyright and trade mark dispute (which may be seen as building on his work in relation to the StarWars case); he has advised and represented American Eagle in a global licensing and trade mark dispute with Lyle & Scott; and he has advised and represented a multinational US based technology enterprise in pursuing breach of confidence claims against ex-employees involved in the development of satellite communication systems, as well as a host of FRAND cases in which Michael has dealt with both IP and commercial aspects in dispute.

Michael is also advising and representing several major undertakings in the pharmaceutical space on licensing and other IP related commercial issues.

EXPERIENCE

Commercial

Michael is versed in the law and practice of commercial disputes generally. He has advised and appeared in many proceedings concerning pre-emptive, interim and ancillary relief, as well as jurisdictional, justiciability and forum challenges in addition to trials in the Commercial Court and Chancery Division and Antigua, BVI, Cayman Islands and appeals to the Court of Appeal, the Supreme Court and the Cayman Court of Appeals in relation to banking, company law, confidence, contract, fiduciary duty, oil and gas, partnership, proprietary, restitutionary, tort and trust claims.

"Michael is fiercely smart and great at strategy."

— CHAMBERS AND PARTNERS, 2025

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The company law matters on which Michael has been recently and is currently working include disputes as regards the validity and interpretation of UK company articles, shareholder disputes relating to the control, dilution and management of UK and off-shore companies and the contested position of the directors of and professional advisers to UK and non-UK companies in the context of international undertakings and multi-jurisdictional disputes.

Michael is at home in the courts and before arbitrable panels in jurisdictions and territories throughout the Caribbean where he has/is currently working on a wide range of corporate and commercial disputes relating to financial services, private equity and other businesses; he also has hands-on experience of acting in proceedings in Canada, Hong-Kong, Russia and the United States; and is familiar with the procedural rules, as well as the substantive law, of the jurisdictions in which he practices, having advised and appeared in high value cases at all stages of the litigation from anti-suits, anti-anti-suits and jurisdiction challenges to final trials, appellate proceedings and settlement processes.

Michael is advising and representing several high net worth individuals in relation to offshore disputes, including Abdulhameed Dhia Jafar in proceedings in the Cayman Islands relating to the collapse of the Abraaj investment platform, he is advising several private equity funds in connection with claims relating to distressed debt against the Republic of Mozambique and the sale of debt by Credit Suisse, he has advised and represented Koza in a dispute with the Erdogan regime and he has acted for and is advising a global petrochemical refinery enterprise in connection with a series of ongoing disputes, as well as a private equity enterprise in connection it its control of a Scandinavian gold mine.

Cases

IPCom GmbH v Lenovo Technology UK Ltd

Chancery Division, 2019

Resisting an application for an anti-anti suit injunction in the English court following an application for an anti-suit injunction in the United States court in relation to a worldwide technology patent dispute.

Interdigital Technology Corporation v Lenovo Group Ltd

[2021] EWHC 3401 (Pat); [2021] EWHC 3192 (Pat); [2021] EWHC 89 (Pat); [2020] EWHC 1318 (Pat)

Acting for Lenovo in FRAND jurisdictional and anti-suit proceedings.

Philips v Xiaomi Technologies

Chancery Division, 2021

Jurisdiction challenge in relation to a claim for global FRAND damages for alleged breaches of patents.

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Jafar v Abraaj Holding & Ors

[2022] (Grand Court of the Cayman Islands, Financial Services Division; FSD 203 of 2020)

This claim arises out of the notorious and widely-publicised collapse of the Abraaj Group, believed to be the largest ever collapse of a private equity platform (valued at over $13.6 billion) as a result of years' worth of alleged financial mismanagement and fraud, whilst the Group purported to act as a world leader in ethical, impact investing. Acted for Mr Jafar, the Founder of Crescent Petroleum, who brings claims in deceit against certain Abraaj Group entities in respect of loans of over US$300 million procured in a belated attempt to rescue the business.

Teva Pharma v Eli Lilly

Contractual construction and patent dispute.

Pan Optis & Ors v Apple

Patents Court, ongoing

Instructed by Apple in its FRAND dispute with Pan Optis.

Brunswick Gold v Otso Gold

Acting for a private equity enterprise in connection to its control of a Scandinavian gold mine.

Republic of Mozambique fraud dispute

Commercial Court, ongoing

Substantial fraud proceedings involving allegations of fraudulent wrongdoing against former officials of the Republic of Mozambique. Acting for two secondary market purchasers in multiple claims against Credit Suisse International and the Republic of Mozambique arising out of the US$2 billion so called "tuna bonds" scandal.

Conversant Wireless Licensing v Huawei

A jurisdiction dispute over the forum for the determination of FRAND licences. Acted for ZTE at first instance, in the Court of Appeal and in the Supreme Court.

Iokovleva v Zakharov & Another

A case concerning the enforcement of a foreign judgment agaisnt assets in the possession of a non party.

Eaton Partners v Esso Cayman Partners

An LCIA arbitration arising out of the breakdown in the relationship between a Cayman based carried interest partner for certain special opportunity funds and a U.S. based placement agency.

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Antiguan Power Company v the Attorney General & others

A case in the High Court of Antigua and Barbuda relating to the repudiation of a power purchase agreement by the public utilities authority.

Midtown v EGFL

A case concerning the enforcement of a foreign judgment and the operation of CPR 71, 83 & 85, the Tribunals, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013.

Payment Platform

A case concerning an unlawful means conspiracy to manipulate the share price of a payment platform.

Process Components v Kason Kek-Gardner

A case in the Court of Appeal concerning the termination of a joint venture.

Takahata Precision v Sentec

A case concerning the development and cross-licensing of intellectual property.

Cattles v PwC

An auditor's negligence case in the Commercial Court concerning the collapse of a sub-prime lender.

Burlington Resources (Irish Sea) v Hydrocarbon Resources

A Commercial Court case concerning the termination of a suit of agreements relating to the supply of gas infrastructure and processing services.

Crown Bidco v Vertu

A commercial court case concerning breach of warranty claims under an SPA relating to a global handset business.

Nedgroup v Renova

A derivative action in the Grand Court of the Cayman Islands concerning the alleged diversion of a partnership opportunity in breach of fiduciary duty.

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Cavendish v Madkessi
[2013] EWHC 421 (Comm)

A commercial court case concerning the sale and purchase of an international advertising business, the enforceability of the restrictive covenants imposed on the sellers and the application of the penalties doctrine to adjustments to the Consideration and Call and Put Options.

Cavendish v Madkessi
[2012] EWHC 4305 (Comm)

An application for leave to apply to commit a party for contempt of court in connection with the signing of a Statement of Truth.

HTC v Nokia
Ch D (Patents Ct) 12/09/2013

An application in the Chancery Division concerning the recognition of the terms of the protective orders granted by US courts in relation to evidence obtained for use in English proceedings.

Renova v Gilbertson
Grand Court, Cayman Islands 21/08/2012

A Cayman Islands case concerning alleged breaches of fiduciary duties allegedly owed to a company within a structure created to operate a hedge fund or joint venture in connection with the intended acquisition of metals and mining assets and the actual acquisition from Unilever of world-wide rights in FABERGE. The decision of the Appeals Court in Cayman is pending.

Coward v Phaestos Ltd and Ors
[2013] EWHC 1292 (Ch)

A case in the Chancery Division concerning the ownership of the rights in quantitative trading software used by a hedge fund operated through a series of partnerships and international corporate structures.

Coward v MFB
A case in the BVI concerning the impression of trusts on distributed profits of a family business and the status of a “Letter of Wishes”.

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Civil Fraud, Asset Recovery & Injunctive Relief

Michael has advised and appeared in a series of cases in which it was necessary to master, debate and cross-examine on substantial quantities of accounting, corporate and transactional documentation, as well as expert testimony relating to BVI, Cayman, Cypriot, French, German, Greek, Russian, US and other systems of foreign law. He is widely recognized as a formidable and effective cross-examiner, as well as for his deep interest and understanding of the proprietary and trust aspects of fraud disputes.

Cases

Private equity dispute

ICC Arbitration

A private equity dispute worth $1billion involving telecommunication assets in the United States. Related proceedings in Hong Kong and the Cayman Islands seeking worldwide injunctive and Norwich Pharmacal relief.

Jafar v Abraaj Holding & Ors

[2022] (Grand Court of the Cayman Islands, Financial Services Division; FSD 203 of 2020)

This claim arises out of the notorious and widely-publicised collapse of the Abraaj Group, believed to be the largest ever collapse of a private equity platform (valued at over $13.6 billion) as a result of years' worth of alleged financial mismanagement and fraud, whilst the Group purported to act as a world leader in ethical, impact investing. Acted for Mr Jafar, the Founder of Crescent Petroleum, who brings claims in deceit against certain Abraaj Group entities in respect of loans of over US$300 million procured in a belated attempt to rescue the business.

Republic of Mozambique fraud dispute

Commercial Court, ongoing

Substantial fraud proceedings involving allegations of fraudulent wrongdoing against former officials of the Republic of Mozambique. Acting for two secondary market purchasers in multiple claims against Credit Suisse International and the Republic of Mozambique arising out of the US$2 billion so called "tuna bonds" scandal.

Niru Battery v CAI

[2002] EWHC 1425 (Comm)

A case at first instance and on appeal to the Court of Appeal concerning a letter of credit fraud raising issues of contribution, recoupment and subrogation.

The Jyske Bank case

A case concerning a rogue bank manager making fraudulent investments in Spanish property.

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Bankers Trust v City of Moscow
A case concerning the diversion of a syndicated loan.

ICB v Akingbola
A fraud case in the commercial court raising Nigerian law issues and Carl Zeiss issues.

Kaiser v Silverbrook
A commercial court case concerning an anti-suit injunction and other related relief founded on alleged breaches of a joint venture agreement between a US foundation and an Australian inventor.

Protank Orinoco
A commercial court case concerning the falsification of survey records in connection with the sale of an oil tanker.

Arbitration

Michael has appeared and acted in several substantial UNCITRAL, ICC, LCIA, ad hoc and other arbitrations over the last couple of years seated in the Isle of Man, London, Paris, Russia and the US.

"Lateral thinking, very bright, great with clients, good fun."
— LEGAL 500, 2023

Cases

Private equity dispute
ICC Arbitration

A private equity dispute worth $1billion involving telecommunication assets in the United States. Related proceedings in Hong Kong and the Cayman Islands seeking worldwide injunctive and Norwich Pharmacal relief.

Axis Bank v Republic of the Maldives
Axis Bank v Republic of the Maldives.

InterDigital v Intel
An UNCITRAL arbitration for one of the world's largest computer and telecommunication CHIP and software businesses in relation to the cross licences granted in connection with a joint venture.

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GSK v Novartis
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

GMR v Republic of the Maldives
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

GMR v Republic of the Maldives
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

Eaton Partners v Esso Cayman Partners
An LCIA arbitration arising out of the breakdown in the relationship between a Cayman based carried interest partner for certain special opportunity funds and a U.S. based placement agency.

GMIAL v MACL
An UNCITRAL arbitration raising issues concerning the operation of the doctrine of abuse of process in arbitration proceedings.

Concession Agreement Arbitration
An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement relating to development and operation of the main international airport of the state at issue.

Cross Border Energy
An UNCITRAL arbitration relating to cross border energy supplies.

Payment of Agency Fees
An LCIA arbitration relating to the payment of placement agency fees.

Preclusive Defences
An UNCITRAL raising issues as to the availability in arbitration of preclusive defences.

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Loan Repayment
An arbitration under the Singapore Arbitration Act concerning the liability of a sovereign state and state owned company to repay loans under a quasi guarantee.

Border & Customs Control System
An ICSID arbitration relating to a border and customs control system.

Cross Licence
An UNCITRAL arbitration for one of the world's largest computer and telecommunication CHIP and software businesses in relation to the cross licences granted in connection with a joint venture.

Development, Manufacture and Supply of Vaccines
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

Breach of Lock Out Provisions
An ICC arbitration for a major Asian supplier of electric power in relation to the breach of the lock out provisions in an agreement concerning the acquisition of an interest in a power station from one the world's largest engineering groups.

Leveraged Acquisition
An LCIA arbitration brought under the SPA for the leveraged acquisition of a Greek chemicals conglomerate.

Co-operation and Distribution Agreement
An LCIA arbitration brought under a co-operation and distribution agreement raising intellectual property rights in a pharmaceutical MAB platform.

Intellectual Property

Michael has advised and appeared in a host of substantial breach of confidence, copyright, design right, IP licensing, passing off, patent and trademark cases in the Chancery Division, the Court of Appeal, the Supreme Court and the CJEU.

The independent legal directories credit Michael as one of a handful of leading silks in this field, noting his expertise in copyright and trade mark cases, as well as IP-related commercial contracts disputes.

"Michael's legal abilities are beyond question and he is a very effective advocate."

— CHAMBERS AND PARTNERS, 2025

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Cases

Philips v Xiaomi Technologies
Chancery Division, 2021

Jurisdiction challenge in relation to a claim for global FRAND damages for alleged breaches of patents.

Original Beauty v G4K
Advising and representing garment manufacturers in the Oh Polly copyright dispute.

Ineos v Jaguar Land Rover
Advising and representing two automobile manufacturers in connection with an ongoing registered design right dispute concerning new and vintage vehicle designs.

Interdigital Technology Corporation v Lenovo Group Ltd
[2021] EWHC 3401 (Pat); [2021] EWHC 3192 (Pat); [2021] EWHC 89 (Pat); [2020] EWHC 1318 (Pat)

Acting for Lenovo in FRAND jurisdictional and anti-suit proceedings.

IPCom GmbH v Lenovo Technology UK Ltd
Chancery Division, 2019

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Teva Pharma v Eli Lilly
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GSK v Novartis
An ICC arbitration for one of the world's largest pharmaceutical groups in relation to the rights arising in connection with the development, manufacture and supply of vaccines.

UPL v ACA
A case concerning trade mark infringement in connection with the licensing and marketing of pesticides.

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Lush v Amazon

A trade mark infringement case relating to the use of Google AdWords and the results of organic searches on the Amazon.co.uk website. The case was settled in the course of the Court of Appeal hearing.

GMR v Republic of the Maldives

An arbitration under the Singapore Arbitration Act concerning the termination of a concession agreement governing the development and operation of the Maldives principal international airport.

Warner-Lambert v Generics UK

An appeal case relating to whether the pursuit of a proposed patent amendment would be an abuse of process.

Merck Sharp & Dohne Ltd & Another v ONO Pharmaceutical Co Ltd & Others

A case concerning, amongst other things, the determination of royalties in respect of the use in or in relation to the U.K. of a patented invention practised directly or indirectly by joint venture partners globally.

Saatchi v Saatchi Online

A Chancery case concerning rights in the Saatchi name.

GNIC v NBTY-EU

A Chancery case concerning the alleged breach of a trademark licence and the infringement of the licensed marks by allegedly unlicensed use.

Jack Wills v House of Fraser

A passing off and trade mark infringement case relating to a logo or sign appearing on articles of clothing.

Nestle v Cadbury

[2013] EWCA Civ 1174

A Court of Appeal case concerned with the registration of colour marks and, in particular, a shade of the colour purple.

Sky & Microsoft

[2013] EWHC 1826 (Ch)

A trademark infringement case concern with the use of the name “SKYDRIVE” on the Microsoft Windows Platform.

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Generics & Actavis v Warner-Lambert

A patent case at first instance and on appeal to the Court of Appeal concerning post trial amendments and abuse of process.

Generics (UK) v Yeda

[2012] EWCA Civ 726

A Court of Appeal case concerning the duties of in-house patent attorneys to former and current employers and the potential conflicts of interest that may arise.

Powerchord v Peeks

A case concerning the application of trade mark law and the law of passing off to start ups in the music and social media spheres.

The Racing Partnership v SIS & Others

A case concerning database right, confidence and conspiracy in relation to betting data.

Ineos v Jaguar

A trade mark case concerning the registration of vehicle shapes.

Generics v Actavis

[2015] EWHC 3370 (Pat)

A Court of Appeal case concerning, among other things, the legal principles applicable to the test of abuse of process in relation to post trial applications to amend patent claims.

Gloucester Place Music LTD v Simon Le Bon & 11 ORS (Duran v Duran)

[2016] EWHC 3091 (Ch)

A case concerning the interplay between English and foreign law in the assignment of musical copyrights governed by English law.

GSK v Wyeth

A case concerning, among other things, the principles applicable to the taking of an account of profits and assessing user based damages.

Societe Des Produits Nestle SA v Cadbury UK LTD (2017)

[2017] EWCA Civ 358

A trade mark case in the Court of Appeal concerning the registration of the KITKAT shape.

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Media & Entertainment

Michael has advised and appeared in many media and entertainment cases calling for both commercial and IP experience and expertise. He has also advised and/or appeared in defamation and confidence cases for most of the major media groups, including the BBC, The Times, The Guardian, Time Out and The Express, as well as for many politicians, journalists and celebrities. Cases include Lion Laboratories v Evans [1985] QB 526 and Hyde Park Residence v Yelland [2001] Ch. 143

ACHIEVEMENTS

Selected earlier reported cases

Commercial

- Lehman Brothers US bankruptcy
- Yukos v Rosneft [2010] EWHC 784 (Comm), [2011] 1 All ER (Comm) 172
- easyGroup v easyJet [2009] EWHC 895 (Pat)
- I-CD Publishing v Popkov / The Odnoklassniki case (2009)
- GSK v Abbott
- Welcome Break Group Acquisition
- Celltech v Medimmune
- Virgin Atlantic Airways v British Airways
- Co-Operative Wholesale Society v Green
- Advising one of the principal utility providers in the UK in relation to contractual disputes relating to the provision of an integrated IT system.
- Acting on behalf of Deutsche Bank in Commercial Court proceedings against the Norwegian export guarantee department in relation to a dispute relating to ISDA form derivatives.
- A dispute concerned with the winding-up of an offshore hedge fund.
- Bayer Cropscience v DEFRA and Friends of the Earth
- Bugging Cases
- A series of disputes raising acquiescence, estoppel, laches and waiver issues in connection with agreements governing commercial partnerships and joint ventures.

Civil Fraud, Asset Recovery & Injunctive Relief

- Niru Battery v CAI [2002] EWHC 1425 (Comm)
- The Jyske Bank case
- The Canada Trust case
- Bankers Trust v The City Of Moscow

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Arbitration

- An arbitration arising out of a military procurement partnership dispute.
- An arbitration concerning the introduction of new technologies in the coatings and cosmetics industries.
- An arbitration between one of the former CIS countries and a U.S. power supplier in respect of the use of the national grid to export power to other countries.
- Bankers Trust v City of Moscow
- Pilkington v PPG Industries

Intellectual Property

- Numatic v Qualtex [2010] EWHC 1237 (Ch)
- Specsavers v ASDA [2010] EWHC 2035 (Ch)
- BUD and Budweiser cases [2002] EWCA Civ 1534
- Lucasfilm Ltd v Ainsworth, The Star Wars case [2011] UKSC 39, [2012] 1 A.C. 208
- Inter Digital Technology Corp v Nokia
- United Biscuits v ASDA [1997] RPC 513
- Chocosuisse v Cadbury [1999] ETMR 1020
- Aspinal v Kiki James
- Philip Morris v BAT
- The European v The Economist [1998] ETMR 307
- Royal Mail
- Mars v Nestle [2005] 3 CMLR 12

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Appendix B

Materials Relied Upon

Case law from England and other common law jurisdictions

1. *Mackay v Dick* (1881) 6 App Cas 251
2. *Mona Oil Equipment and Supply Company Ltd v Rhodesia Railways Ltd (1949) 83 L1 L Rep*
3. *Newmont Property Ltd v Laverton Nickel NL* (1982) 44 ALR 588
4. *Cheall v A.P.E.X* [1983] 2 A.C. 180
5. *Abu Dhabi National Tanker Co v Product Star Shipping Ltd* [1993] 1 Lloyd's LR 397
6. *Compagnie Noga d'Importation et d'Exportation SA v Abacha (No 3)* [2002] CLC 207
7. *Stena Line Ltd v MNRPF Trustees Ltd* [2011] EWCA Civ 543; [2011] Pens. L.R. 223
8. *Reda v Flagg* [2002] UKPC 38
9. *Equitable Life v Hyman* [2002] 1 AC 408
10. *Socimer International Bank v Standard Bank* [2008] EWCA Civ 116; [2008] Bus LR 1304
11. *Chartbrook v Persimmon* [2009] UKHL 38; [2009] 1 AC 1101
12. *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935
13. *Braganza v BP Shipping* [2015] UKSC 17; [2015] 1 WLR 1661
14. *Societe Generale v Geys* [2012] UKSC 63; [2013] 1 AC 523
15. *British Telecommunications v Telefonica 02 UK* [2014] UKSC 42; [2014] 4 All ER 907
16. *Arnold v Brittan* [2015] UKSC 36; [2015] AC 1619
17. *Marks & Spencer v BNP Paribas* [2015] UKSC 72; [2016] AC 742
18. *Wood v Capita* [2017] UKSC 24; [2017] AC 1173
19. *Sheikh Al Nehayan v Kent* [2018] EWHC 333; [2018] 1 CLC 216
20. *Equitas Insurance v Municipal Mutual Insurance* [2019] EWCA Civ 718; [2020] QB 418
21. *UTB v Sheffield* [2019] EWHC 2322
22. *Bates v Post Office (No.3)* [2019] EWHC 606

23. *Duval v 11-13 Randolph Crescent* [2020] UKSC 18; [2020] AC 845
24. *Yoo Design Services v Iliv Realty Pte* [2021] EWCA Civ 560
25. *Barton v Morris* [2023] UKSC 3; [2023] AC 684
26. *King Crude Carriers v Ridgebury* [2024] EWCA Civ 719; [2025] KB 311
27. *Tesco Stores v USDAW* [2024] UKSC 28; [2025] 2 All ER 565

Cayman Islands case law

1. *Primeo Fund (In Official Liquidation) v Bank of Bermuda (Cayman) Limited* (2017 (2) CILR 334)
2. *Cayman Shores v Registrar of Lands* (2021 (2) CILR 1)
3. *Kuwait Port Authority v Williams* (2023 1 CILR 50)
4. *Cayman Shores v Registrar of Lands* (2023 (1) CILR 252)
5. *Kuwait Port Authority v Williams* [2024] UKPC 32
6. *Re Tyr Capital Partners SPC* (unreported, 21 June 2024, Doyle J)
7. *Aquapoint v Xiaohu Fan* (unreported, 4 October 2024, CICA)

Cayman Islands legislation

1. Exempted Limited Partnership Act (2025 Revision)

Bates-stamped documents

1. First Amended and Restated Limited Partnership Agreement (Nov. 1, 2012), ATP_00202247
2. Amendment No. 1 to the First Amended and Restated Limited Partnership Agreement (Jan. 1, 2014), ATP_00202344
3. Amendment No. 2 to the First Amended and Restated Limited Partnership Agreement (Aug. 15, 2014), ATP_00202349
4. Amendment No. 3 to the First Amended and Restated Limited Partnership Agreement (Sept. 1, 2014), ATP_00202357

5. Amendment No. 4 to the First Amended and Restated Limited Partnership Agreement (Apr. 1, 2015), ATP_00202362
6. Amendment No. 5 to the First Amended and Restated Limited Partnership Agreement (May 11, 2015), ATP_00202365
7. Amendment No. 6 to the First Amended and Restated Limited Partnership Agreement (Dec. 31, 2015), ATP_00202375
8. Amendment No. 7 to the First Amended and Restated Limited Partnership Agreement (May 31, 2017), ATP_00202378
9. Amendment No. 8 to the First Amended and Restated Limited Partnership Agreement (Aug. 9, 2017), ATP_00202383
10. Amendment No. 9 to the First Amended and Restated Limited Partnership Agreement (Dec. 22, 2017), ATP_00202388
11. Amendment No. 10 to the First Amended and Restated Limited Partnership Agreement (Jul. 1, 2018), ATP_00202407
12. Amendment No. 11 to the First Amended and Restated Limited Partnership Agreement (Oct. 26, 2018), ATP_00202412
13. Amendment No. 12 to the First Amended and Restated Limited Partnership Agreement (Dec. 1, 2018), ATP_00202416
14. Amendment No. 13 to the First Amended and Restated Limited Partnership Agreement (Feb. 4, 2019), ATP_00202424
15. Amendment No. 14 to the First Amended and Restated Limited Partnership Agreement (Apr. 17, 2019), ATP_00202429
16. Amendment No. 15 to the First Amended and Restated Limited Partnership Agreement (Jul. 10, 2019), ATP_00202437
17. Amendment No. 16 to the First Amended and Restated Limited Partnership Agreement (Feb. 1, 2020), ATP_00202440
18. Amendment No. 17 to the First Amended and Restated Limited Partnership Agreement (Sept. 9, 2020), ATP_00202444

19. Amendment No. 18 to the First Amended and Restated Limited Partnership Agreement (Nov. 5, 2020), ATP_00202461
20. Amendment No. 19 to the First Amended and Restated Limited Partnership Agreement (Nov. 27, 2020), ATP_00202477
21. Amendment No. 20 to the First Amended and Restated Limited Partnership Agreement (Jun. 21, 2021), ATP_00024441
22. Amendment No. 21 to the First Amended and Restated Limited Partnership Agreement (Dec. 05, 2022), ATP_00202482
23. Amendment No. 22 to the First Amended and Restated Limited Partnership Agreement (Dec. 20, 2024), ATP_00202487
24. Email from Yuri Bogdanov to Seth Harrison et al., May 15, 2025 - RIGMORA00023359 (reproduced as Exhibit 10 to the Complaint)

Pleading

1. Verified Complaint, *ATP III GP, LTD., in its capacity as general partner of ATP Life Sciences Ventures, L.P., v. Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP*, Case No. 2025-0607-KSJM, May 30, 2025

EXHIBIT BB

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NAME

Neutral Citation Number: [2025] CIGC (FSD) 106
Cause No: FSD 2025-0151 (JAJ)
IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION),
THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)
AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.

DATE

November 12, 2025

DURATION

5h 55m 38s

5 SPEAKERS

Marshall
The Honourable Justice Jalil Asif KC
Mr Andrew Scott KC of counsel, instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen, and Mr Jordie Fienberg of Campbells LLP for the Petitioner
Mr Andrew Ayres KC of counsel, instructed by Ms Shelley White and Ms Rebecca Moseley of Walkers for ATP III GP, Ltd
Ms Shelley White, Partner, of Walkers (Cayman) LLP for ATP III GP, Ltd

Start of Transcript

Marshall: [00:10:09] God save the King. FSD 146 of 2025 and the matter of Unicorn Biotech Ventures One versus ATP GT.

Justice Jalil Asif KC (Judge): [00:10:20] Yes. Good morning, Mr. Scott, Mr. Ayres.

Andrew Scott KC: [00:10:23] Hello. Good morning. I appear for the plaintiffs and petitioners, Rigmora LP and my learned friend, Mr. Ayres KC, Ms. White, for the defendant. Your Lordship also knows this is the CMC ahead of the trial of these related proceedings in January, in terms of matters that require decisions from your Lordship today, and that's what I want to focus on. There are three. There is first,

Justice Jalil Asif KC (Judge): [00:10:51] Mr. Scott, just before you get going.

Andrew Scott KC: [00:10:54] Yes.

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Justice Jalil Asif KC (Judge): [00:10:55] It occurred to me, um, in relation to the trial in January, I think we are going to lose at least half a day because, um, I think the 13th of January is going to be the official opening of the legal year at which, um, there is a ceremony that is going to take place, which I'm going to have to attend. And so at the very earliest, I will be able to get back into court, probably at 2:00 o'clock, um, uh, but even that is not guaranteed now. It may be, but in light of that, the parties just want to think whether, uh, we try and find an extra day either at the end of the week before or the beginning of the week after, um, or whether, uh, depending on how things develop. Both sides think that you can shoehorn the, um, material that needs to be covered into essentially four, perhaps four and a half days rather than five.

Andrew Scott KC: [00:11:55] Thank you. Can I ask this, um, so that I can?

Justice Jalil Asif KC (Judge): [00:11:58] And I'm sorry, Mr. Scott, to cut across you, but I'm also conscious that the, that if the amendments are allowed, then four and a half days may not be sufficient. So it may be advisable anyway to extend the time estimate.

Andrew Scott KC: [00:12:13] Even though any extension was necessary into the following week. Is that something your Lordship's diary could accommodate?

Justice Jalil Asif KC (Judge): [00:12:19] Yes, because at the moment I've set aside that week for writing the judgment.

Andrew Scott KC: [00:12:26] Well, we would of course not wish to encroach too much upon that, my Lord. Can I return to that point?

Justice Jalil Asif KC (Judge): [00:12:29] Yes, yes of course. I just flagged it now so that everyone has a chance to think about it during the course of the day. Um, I'm not expecting anyone to respond to that, to that new information, immediately.

Andrew Scott KC: [00:12:42] Okay. Um, the three matters that require decision today, my Lord. First, there is the question of whether your Lordship should give directions to the January trial today. Uh, we say, your Lordship should. The GP says your Lordship

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should not and should instead direct a two-day CMC at some later stage. And I will endeavour to persuade your Lordship. There is no justification for that. My Lord, second, there is the question of what direction should be given to deal with the amendment summons that we will need to issue, and with the mediation summons that the GP has recently issued. Uh, now we are keen to have those matters dealt with as expeditiously and fairly as possible, and I will explore with Your Lordship, later on, if I may, how that may best be achieved. Particularly mindful of what Your Lordship's diary looks like in the coming weeks. Third, there is the question left over from the 1st August hearing as to who the proper party proper respondent to the petition is. We ask Your Lordship to direct that the GP is the proper respondent, because the substance of this dispute is between Rigmore LPs and the GP. The partnership is its subject matter, but it has no separate interest. We say the GP objects to that direction primarily on the basis, as you will have seen from the skeleton, of a suggestion that your Lordship has no jurisdiction to make that direction, and I will seek to persuade your Lordship that that is wrong. Um, My Lord, before I turn to the first issue, um, trial direction.

Justice Jalil Asif KC (Judge): [00:14:32] I'm so sorry, Mr. Scott. I got distracted for a moment. Just tell me. Give me the second... Shirley

Andrew Scott KC: [00:14:37] The second issue is directions on the amendments and the mediations.

Justice Jalil Asif KC (Judge): [00:14:49] Thank you.

Andrew Scott KC: [00:14:50] Before I turn to trial directions, a very brief word, if I may, on the background. Uh, we have set out in our skeleton the recent developments in Delaware.

Justice Jalil Asif KC (Judge): [00:14:59] And I've read all of that, and I've read the transcripts that you've asked me to.

Andrew Scott KC: [00:15:02] I'm very grateful, my Lord. I wasn't proposing to say any more on that already today. But there is one matter I do want to update your Lordship on. It's the question of undertakings, because there has been some further correspondence

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on that yesterday that I want to show you. Um, now, the context here is your Lordship knows, is the petition in this case was issued on the 6th of June, so almost five months ago now. Issued on the basis that the relationship between the parties has broken down, and that we, as contributors of around 98% of the partnership capital, no longer trust the GP properly to manage it in line with its fiduciary and other duties. My Lord, if I could just ask you to take up the Joint Authorities Bundle, 13.

Justice Jalil Asif KC (Judge): [00:15:53] Mr. Scott, I should say I saw there were some emails coming yesterday with, I think, 1 or 2 additional affidavits. I've not looked at those yet, so you will need to take me through that.

Andrew Scott KC: [00:16:04] As I understand it, they are not substantive efforts. They merely exist as correspondence. And I will be taking your Lordship.

Unknown: [00:16:10] Your Lordship wants a hard copy of those now.

Justice Jalil Asif KC (Judge): [00:16:12] That would be helpful. Thank you very much.

Justice Jalil Asif KC (Judge): [00:16:31] And I should say the other thing I should say at the outset, just so everyone is aware of what I have read and what I haven't read, I have consciously taken the decision not to read Mr. Harrison's affidavit in support of the mediation summons, because I wasn't satisfied that it's appropriate for me to see matters that ought perhaps to be reserved until after trial on the merits. And so as soon as I saw he was seeking to put that material into evidence, I stopped reading.

Andrew Scott KC: [00:17:06] I'm grateful, my Lord. I will have a few brief words to say about mediation summons and how we ought to deal with it, but perhaps I can come on to that as we move through directions. If your Lordship has Tab 13 open.

Justice Jalil Asif KC (Judge): [00:17:21] I don't yet, but I will. Yes.

Andrew Scott KC: [00:17:25] Yes.

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Justice Jalil Asif KC (Judge): [00:17:34] I was complaining the other day that he's always pink. You know, today he can be blue. Except I can't find my orange tabs, so I'm afraid you're going to be out.

Andrew Scott KC: [00:17:49] Entirely. What colour, please?

Justice Jalil Asif KC (Judge): [00:17:55] Thank you. Yes.

Andrew Scott KC: [00:17:59] Your Lordship should have opened one of the decisions in 1001 policy litigation that was a voluntary winding up where the limited partners petitioned to have the GP replaced with alternative liquidators on the basis that they had lost trust and confidence in it. And the ruling was primarily concerned with a jurisdictional issue as to whether the court had the power to appoint.

Justice Jalil Asif KC (Judge): [00:18:22] I just had to give a judgment which very much addressed that jurisdictional question that Justice Kawaley decided in this case.

Andrew Scott KC: [00:18:32] Well, perhaps happily, for my purposes, I don't need to trouble your Lordship with that issue. What I want to show you, Lordship, is it's really a more fundamental point about this court's expectations of how GPs ought to behave when their conduct is impugned. And if your Lordship, please, will turn to page three, three, three, three, six of the report. Your Lordship, see at the foot of that page, paragraph 39, Justice Kawaley begins to express his provisional view on the merits of the petition.

Justice Jalil Asif KC (Judge): [00:19:11] I do.

Andrew Scott KC: [00:19:12] And of course, that was a petition much like ours, in which the petitioners held the overwhelming majority of the economic interest. I think it was 97% in that case. In fact, if I can ask, your Lordship, to just read 29 over the page down to 34, and particularly emphasise, whether in pink or otherwise. Paragraph 32.

Justice Jalil Asif KC (Judge): [00:21:36] Thank you.

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Andrew Scott KC: [00:21:37] Grateful, my Lord. Returning to the present case, there can be no doubt that the GP, and Dr. Harrison, who owns and controls it, no doubt that he has, in fact, lost the confidence of the investors, which is to say, as we who have entrusted more than $2.6 billion to the GP and him to manage. And there can likewise be no doubt that we have lost that trust and confidence. In the context of the serious allegations that are made in the petition about the GP's misconduct at Dr. Harrison's instigation. It is striking that the GP has avowedly not followed Justice Kawaley's guidance. It has not stepped aside so that its management may be exposed to independent scrutiny and its probity thereby demonstrated. The GP is instead determined to cling on, and not only that, the GP is using partnership monies, in eye-watering eight-figure sums, as we shall see, to wage a litigation campaign against us. Now, we'll come on to that, but that is part of the context for the direction we seek under the Companies Winding Up Rules. The legal cost principle that underlies it. Although the GP is also using partnership monies without any sanction or supervision from this Court. It has never sought a validation order from Your Lordship. And despite our repeated attempts to obtain them, the GP is not presently constrained by any undertakings to this Court regarding the use of partnership assets pending resolution of the petition. My Lord, whether that is part of the context in which we issued the PL Summons to justly hold the ring and protect against the risk, the partnership assets are dissipated come January. My learned friends say in their skeleton, paragraph four, that the PL summons was misguided and unjustified. I'm not going to take up Your Lordship's time.

Justice Jalil Asif KC (Judge): [00:23:43] But I saw the parties have agreed that the costs of that should be dealt with following the trial, so it doesn't seem to me that I need to hear about.

Andrew Scott KC: [00:23:50] c

Justice Jalil Asif KC (Judge): [00:25:37] It depends a bit on whether full value is received...unless if full value is received, then there's no distinction. It's just a conversion into money.

Andrew Scott KC: [00:25:49] Yes, but all we're seeking here is, your Lordship sees this notification. Um, if your Lordship then reads down to paragraph 2.2, um, this is a request

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for an undertaking that the GP give seven days' notice of, or else seek a validation order from your Lordship, permitting the dealings that are identified in the subparagraphs and over the page. I can perhaps just ask your Lordship to look over those. We do respectfully suggest that that is a modest task in the context of this dispute. It is more modest still, because, as your Lordship sees from paragraph 3 of the letter that we've carved-out, from the protection sought, payments by the GP of certain fees that ultimately go to Dr. Harrison's benefit. Likewise a carve out for the litigation that he is causing the GP to pursue. And, we asked for a response to this letter by 5 p.m. on Monday this week. And that was against the backdrop of the issue, having been debated since the 19th of September at the anti-suit motion. Um, it was also in circumstances where the GP's lawyers had told the Delaware court that the GP had, and I'm quoting now from the transcript, no intention whatsoever of selling assets without giving ample notice and seeking court approval of an asset sale. If I can just show your Lordship that it's Tab 50 in the same bundle. This is the trial transcript in Delaware for the final day or the second day on the 17th of October. And it's page 1361.

Justice Jalil Asif KC (Judge): [00:28:06] I'm very grateful that I was only given the relevant extracts rather than the entirety. Yes, 1361.

Andrew Scott KC: [00:28:16] And if your Lordship sees on line 12, um, Attorney Selden, she's a Debevoise & Plimpton acting for us. She's pleading with the Delaware judge for just a bit more time to put in the post-trial brief. She wants two more days, and your Lordship will see the Delaware judge's response from lines 16 to 20. Perhaps I just ask you, Lordship, to read that. Then goes on to explain over the page the repeated efforts to agree on such a stipulation with the GP. And she gives us an example of the concerns that have arisen here. Sale of a portfolio company or sale of an interest in the funds. And your Lordship sees, she refers at line 13 to what happened in the deposition. Um, she said, I asked again, Dr. Harrison at his deposition, if he was engaged in that. He told me at his deposition on October 6th, no, but on October 8th, they produced a list of companies that he is contacting to sell assets. And she goes on to explain why that is a real concern.

Justice Jalil Asif KC (Judge): [00:29:42] I think that the GP's attorneys responded to that, that it was a list of companies that had been in touch, rather than Mr. Harrison actively seeking.

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Andrew Scott KC: [00:29:53] And I was about to.

Justice Jalil Asif KC (Judge): [00:29:54] I can't resolve who's correct on that.

Andrew Scott KC: [00:29:57] No, I'm not at all asking your Lordship to make any decision on that issue today. The passage I do want to show your Lordship is over the page, it's a page 1363 at the foot of page line 23. Attorney Burden, Quinn Emanuel, from the GP, says this. It's not for lack of trying on the ATP's part, Your Honour. And I think that the status quo here that we're looking at, we have no intention whatsoever of selling assets without giving ample notice and seeking court approval of an asset sale. We have no interest in hiding the ball on that.

Justice Jalil Asif KC (Judge): [00:30:34] So you're saying, why can't you give the undertakings as you asked for?

Andrew Scott KC: [00:30:37] Indeed. And just to complete this picture, if we can go to the response we received from Walker's yesterday. That will be, um, I would think.

Justice Jalil Asif KC (Judge): [00:30:51] That in the new...

Andrew Scott KC: [00:30:53] There were two letters yesterday. We'll need to look at both of them. The one I'm concerned with begins at page seven of the exhibit. Now, much of this letter is taken up.

Justice Jalil Asif KC (Judge): [00:31:13] Can I... Let me just ask a question, and I don't know the answer to this. My experience when I was litigating in England is that people simply agree that there should be a section of the bundle that includes inter partes correspondence, which avoids the need for anyone having to swear affidavits. It doesn't seem to happen in Cayman. I don't understand why, because it seems it must be much quicker and more efficient just to be able to put documents into a correspondence tab in the bundle, if it is simply inter partes correspondence.

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Andrew Scott KC: [00:31:49] With respect, I wholeheartedly agree. I suspect all the people in this room would be in your Lordship's debt if you were to issue a direction pursuant to which the parties could proceed in that way.

Justice Jalil Asif KC (Judge): [00:32:01] Everyone is very happy to pass on to their colleagues on islands. From my point of view, I don't see the need to exhibit correspondence, and it can go in the bundle if it is truly inter partes' correspondence. It can just go into a tab in the bundle as inter partes correspondence, and it can be updated as needed before each hearing.

Andrew Scott KC: [00:32:22] My lord, I don't think there's anyone in this room who's going to be the difficulty with that. The real difficulty is your brother and sister judges.

Justice Jalil Asif KC (Judge): [00:32:31] Well, I suspect you'd find most of the FSD judges would be quite happy with that idea. But maybe it's something to raise at the next FSD Users Committee. Right?

Andrew Scott KC: [00:32:42] I'm returning to this letter, which is undoubtedly in evidence. Much of it is taken up with seeking to criticise us for the PL Summons, and I'm not going to respond to that today. What I want to focus on is the undertakings offered at the end of the letter. And if your Lordship will go, please, to page 11 in the exhibit, internal page five. This sets out what is proposed. Can I ask your Lordship to read it? It's at paragraph eight and continues over the page in italics, six onwards. I'm asked to invite your Lordship to read from six onwards, so perhaps your Lordship will do that. Three observations on this, if I may. The first is that your Lordship sees from paragraph 2.1 in the undertaking, the DPP is prepared to notify us only in respect of disposals of securities held by the partnership in the portfolio companies. So the GP is not undertaking to give any advance notice of disposals by the partnership companies themselves. And if it is right to say, as Mr. Burden said to the Delaware trial judge, that the GP has no intention whatsoever of selling assets without giving ample notice or seeking court approval, why is there no undertaking on offer to that effect? And we are concerned that the explanation is that, contrary to Mr. Burden's representation, the GP does want to hide the ball on disposals by portfolio companies of their assets, does not want to give us prior notice, and does not want to seek court approval. Although the second problem, your Lordship

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sees this from paragraph 2.2.1, in the undertaking, the GP only wants to give us notice or seek validation orders for funding portfolio companies of half $1 million or more. So, below about half a million threshold, there's carte blanche to fund portfolio companies without any prior notice at all, or even seeking your Lordship's approval. The third problem is this, the GP wants a carve-out without any financial limit at all. In the cases of those portfolio companies where there is remaining unused budget that had previously been agreed higher level. But with respect, that ignores our position in the dispute that there are contractual restrictions on the LPA and the LPA on using partnership funds for these portfolio companies replicate, for example, a case where even agreed budgets cannot be drawn upon unless certain conditions precedent have been met, and they never worked. It also ignores our position.

Justice Jalil Asif KC (Judge): [00:37:48] Just went out for a minute.

Andrew Scott KC: [00:38:03] It also ignores our position in the dispute that there are fiduciary restrictions in any event, upon using the funds, particularly in a context where a petition has been filed by substantially the whole owners of the economic interest in the partnership. And standing back, we are not seeking to prevent the GP from using partnership assets to fund the portfolio companies. We're not seeking to prevent the GP from disposing of assets at the level of the portfolio companies. We just want advance notice or a validation order where the sums at stake are $250,000 or more. And frankly, it is troubling that our fiduciary will not offer them. Now, obviously, I'm not asking your Lordship to make any order today. And unless the GP is prepared to confirm that it is contemp for your Lordship to determine the issue. And we're not going to be on, um, on the wrong end of an anti-suit injunction where it attempted. And all I can do is give your Lordship an update on the position. And your Lordship now has the current lay of the land. And it's a critical part of the context for why we attach such importance to keeping the January trial date. Perhaps I can turn to that next. On the question of where the directions for trial ought to be given today, we say the answer is quite simple. Your Lordship has directed that a trial will take place in January, and the Lordship has directed that this CMC will give directions for that purpose. Your Lordship gave those directions with the parties' agreement in the consent orders dated the 1st August, and we respectfully submit that your Lordship should do as we all agreed and as was ordered,

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and give directions today that will take us to the January trial. I can ask your Lordship to take up volume one of the Hearing Bundle.

Justice Jalil Asif KC (Judge): [00:40:17] I'm just going to put...his affidavit, and anyone brought an additional tab, did they?

Andrew Scott KC: [00:40:30] We did not. My learned friends may have brought some...

Justice Jalil Asif KC (Judge): [00:40:37] I was always told that the solicitors should be

Andrew Scott KC: [00:40:38] Make sure they bring extra tabs because these documents, they get stuck.

Justice Jalil Asif KC (Judge): [00:40:51] Yes, Mr. Scott. I'm sorry, where, where am I going to?

Andrew Scott KC: [00:40:54] Tab four, please...has here the 1st August consent order in the petition proceedings. Now, there is a materially identical one for the other proceeding in tab three. Um, but perhaps if I can just show, your Lordship, the provisions on the petition proceeding, if we can start, please, with paragraph one. There's a provision here for ADR. Now, I don't want to get too far into this today, but that direction was included at your Lordship's suggestion.

Justice Jalil Asif KC (Judge): [00:41:37] Yes, the standard provision I like to put in.

Andrew Scott KC: [00:41:39] And, my lord, we have actively considered settlement by ADR, and insofar as we have not been willing to engage with proposals from the other side, we say that is for good reason, and we will set those reasons out in a witness statement that will be filed, but not shown to your Lordship until we get to costs. And I just made that point at the outset of these directions, because it's really a critical part of the context in which the GP's mediation summonses fall to be assessed. It's a context in which your Lordship has already made provision with the parties' agreement for how ADR is to be dealt with in the present case.

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Justice Jalil Asif KC (Judge): [00:42:19] I'm sure Mr. Ernst will explain to me in due course what jurisdiction I have to force parties into mediation if they're not agreeable to it.

Andrew Scott KC: [00:42:28] Well, we look forward to hearing that explanation because we have been unable to find any such jurisdictional basis. My Lord, can I say this as well, on the mediation side? Even if there were jurisdiction to do it. It seems to us, with respect, it would be impossible for the court, fairly and justly, to do so, unless it had visibility of what has passed between the parties in their settlement negotiations. And that, of course, is privileged. We have invited the GP to waive privilege for the purpose of its mediation summonses, so that your Lordship can see what has passed between the parties, and that will, we say, enable your Lordship to form a view as to whether any mediation is realistically likely to result in a settlement in this case, the GP has so far refused to waive privilege. And that, it seems to us, is another fundamental reason why this mediation summons is misconceived. But that is all for another day. My Lord, returning to the directions order, if I can ask Your Lordship, please look next on page eight at the provisions for discovery. And if I can ask your Lordship, please, to read paragraph six.

Justice Jalil Asif KC (Judge): [00:43:52] Yes. Remember that provision.

Andrew Scott KC: [00:44:03] Your Lordship sees that a fundamental aspect of this process is that discovery in Delaware would automatically stand in the Cayman proceedings. That's how Mr. Vita explained the provision to your Lordship. Um, when we went through these directions, and it reflected the agreement we had reached, and it set out very clearly in paragraph six that for the documents identified at categories A to E from the Delaware proceedings, they shall be, and I quote, "deemed to have been disclosed in this petition shall be admissible and may be relied upon at trial. And the purpose of that provision, and a critically important one, when your Lordship is directing a trial on January 26th, was to ensure that the Delaware documents automatically came in, without the need for a separate discovery process in this jurisdiction. That will be an important part of the context in which your Lordship needs to consider the GP's privilege summons next month. A summons, the objective of which is to prevent your Lordship from seeing documents that have been disclosed in Delaware and which, pursuant to Your Lordship's order, are deemed disclosed here, are admissible here, and may be

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relied upon at the trial here. And we will say that it is utterly hopeless. The privilege summons and the contentions that underlie it. But again, that is for another day. What your Lordship sees in the balance of the discovery provisions in this directions order is a topping-up process, with further requests to be made and answered an inspection given to these proceedings by the end of September. My Lord, that date slipped somewhat with the Delaware trial. But the top-up discovery was given yesterday, and the parties exchanged lists of documents and made them available for inspection under the agreed discovery proposal. So the discovery that your Lordship ordered has now been given. If your Lordship then looks ahead to paragraph 12, your Lordship sees that this CMC was directed and the matters to be dealt with were identified at A through to D. Please turn to tab 12 here in the bundle. This is a mockup of the directions in the petition that Campbell's had circulated on October 23rd with our proposed amendments. There is a material identical draft for the writ proceedings at tab 11 of the bundle, and the blue text marks the amendments that Campbell's had proposed against the draft that Walkers had provided, I think on the 17th. Your Lordship can skip over the provisions at 1 to 4 dealing with amendments, and they have not been agreed upon, and they fall away. Given that the GP will not consent to the amendments, I will come back to that. The rest of it is either agreed or incapable of being seriously disputed. Your Lordship sees the provision in paragraph five on discovery. What this is seeking to do is to amend the existing directions under the 1st August order to align the position with what has, in fact, happened. So I can just give you Lordship a moment to look at that.

Justice Jalil Asif KC (Judge): [00:48:04] So 5A and B are essentially just extending the dates that are in the 1st of October list, right? Okay. My preference is that where an order is granted an extension of time to existing dates is actually to say that the original date is varied rather than simply imposing a new one. But I mean, that's just.

Andrew Scott KC: [00:48:29] Oh, we are very happy. Of course.

Justice Jalil Asif KC (Judge): [00:48:31] It just makes it clearer what's actually happened.

Andrew Scott KC: [00:48:38] So that's the direction we ask you to make today on discovery. There is then a series of directions on evidence of fact from paragraph 6 and

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paragraph 12. Although if I just draw specific attention to two points here, the first is the dates of witness statements, 5th December for first round statements, 15th December for any witness statements in reply. That strikes a balance between affording the parties time to prepare their witness statements and the witness statements not coming in too close to the trial so that they can be properly accommodated at the trial. We respectfully suggest that that is an appropriate provision to invite your Lordship to direct it. The other provision I need to draw your Lordship's attention to is paragraph 12. I can just invite you to read the second sentence in blue that we have added.

Justice Jalil Asif KC (Judge): [00:49:42] Yes, I saw that already.

Andrew Scott KC: [00:49:44] Now, we certainly intend to produce our witnesses for cross-examination. If the GP does not, no doubt my learned friends will tell your Lordship when Mr. Ayres gets on his feet. But it is appropriate to provision now for what will happen if a witness of fact does not attend the trial. The rest of the provisions from 13 down to 19 deal with the PTR and other matters in the run-up to trial. There is a very small dispute in relation to the listing of the PTR. We had proposed recommencing the 15th December 25. The GP, I think, wants two specific dates, either 17th or 18th, very much in the court's hands.

Justice Jalil Asif KC (Judge): [00:50:38] I can say now that 17th and 18th are not going to be feasible, because, actually, no, sorry, the 17th would be feasible. And in fact, that's the only day that week I can do because I have a two-day summons on Monday and Tuesday.

Andrew Scott KC: [00:51:00] I'm told by Mr Faulkner that he is seeing you on Monday, so maybe you'll see a good deal of each other. So have I correctly understood that of the days of that week, only the 17th?

Justice Jalil Asif KC (Judge): [00:51:14] Only the 17th. I'm on an airplane on the evening of the 17th. And as a result, I'll be out of action on the 18th, and the 19th is the first day of vacation.

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Andrew Scott KC: [00:51:25] Why not celebrate those matters with a half-day PTR? If you will allow me to to to regroup with my team on whether the 17th works, and I will indicate it if it does.

Justice Jalil Asif KC (Judge): [00:51:35] I mean, if not, I could actually do it. I don't have a problem with doing a hearing remotely. So it's either the 17th or the 19th.

Andrew Scott KC: [00:51:49] Perhaps I can come back to that. So ultimately, that's all we're asking your Lordship to do today in the petition with equivalent directions in the writ proceedings, but with respect to what your Lordship should not do is entertain the attempt by the GP in its skeleton argument to have these matters deferred to another occasion. My Lord, can I make three overarching submissions on that? The first is, as your Lordship has seen, there is already in place an order of this court and indeed a consent order requiring a trial in January, requiring directions for it to be given today. There is no application from the GP to vacate that trial. There is no application for it to adjourn this CMC. With respect, that provides a short and complete answer to the informal attempt made in the skeleton to avoid directions from being given today. My Lord, the second point is that we are concerned that the GP is seeking to disrupt these Cayman proceedings, and I hope in the light of your Lordship's pre-reading, you will understand why those concerns have arisen. There are concerns which are reinforced by the position that the GP took at the hearing before your Lordship at the start of this month. The October mentioned hearing, on that occasion, in its skeleton argument, the GP's position was that this CMC should await the judgment in Delaware. Your Lordships note that paragraphs 4.1, 10.3 and section D4, tab 23 of the bundle, pages 507, 511, 513 to 14. And your Lordship rejected that position at the October hearing. Your Lordship said on page nine of the transcript, line ten, I quote the "CMC should, it seems to me, go ahead, come what may, on 31st October, as per the consent order, tab 24, page 525, your Lordship said on page 11, line 12, as far as the CMC is concerned, your Lordship would be fixing a timetable, saying these are the dates on which certain steps have to be taken in order to achieve the January trial date, page 527 of the bundle. Consistent with that, your Lordship did not adjourn the CMC or otherwise vary provisions of the consent orders that we have seen. The third point is this, to pump things off to a two day CMC to be listed who knows when, as the CMC, as the GP suggests, would be, with respect, the antithesis of what the overriding objective requires of the parties and of the court, which is to deal

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with every cause or matter in a just, expeditious and economical way. That means ensuring that the normal advancement of the proceedings is facilitated rather than delayed. It means saving expense, allocating to the case an appropriate share of the court's resources while taking account of the needs of others, and all of those considerations point inexorably to giving directions to trial today that will enable the case to advance towards the January trial in the normal way, and it will avoid the risk of delay, additional cost, and additional court results that would result from putting things off to a two day CMC. My Lord, it is convenient at this point to examine the reason given by the GP for seeking to defer directions to trial. It is the fact that on the 23rd of October, we provided in draft proposed amendments to our petition and statement of case. We summarise those amendments in our skeleton at section C, that your Lordship will have read that, your Lordship will, I hope, understand why we don't accept the GP's characterization of them as late draft amendments, as it is put in paragraph 1 of the GP skeleton, and the timing of them ultimately is not a matter for today. It's a matter for determination on the summons, for leave to amend. I'll just make three short points here about the context. The first is an invitation to be realistic about this. We are on a tight timetable to trial. It's about five months between the August consent order and the January trial, discovery concluded yesterday. The idea that these are late amendments is, with respect, not realistic. And that is moreover so, this is the second point, where the GP itself wishes to amend and is proposing to do so at an even later stage when the Delaware judgment emerges. Now, we don't know with any certainty when that will be, but what is certain is that it won't be before the 21st of November, because that is when the parties are scheduled to deliver their oral closing submissions. So what the GP appears to be contemplating is proposing amendments to its case in late December, or more likely, December at the earliest. And it is therefore, with some irony, that GP seems to criticise us for proposing amendments in October. Third, in assessing the GP's complaint about these so-called late amendments, and we do submit to your Lordship that the matters addressed in the amendments are not new matters. My Lord, we prepared a table which summarises where the amendments originate from. Perhaps, I can hand it copy to the Lordship. This paper is intended to be helpful both to your Lordship and to the GP, because it identifies where in the prior correspondence, or in the existing pleadings, or in the prior evidence in this case, the matters addressed in the amendments have already been raised. Now, the GP has not consented to the proposed amendments and has said that it cannot agree to the bulk of them. It was put in paragraph 1 of my

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learned friend's skeleton. So we will need to obtain the Lordship's leave to amend in the usual way, and so we will promptly issue a summons for that purpose, and we hope to do so at the start of next week. I will address your Lordship in due course, if I may, when it might be possible to bring that summons on for hearing. But the point I'm addressing now is directions to trial. Possibility that pleadings might be amended always exists. It's not a reason to defer giving directions to trial. And if the GP wants to argue on the amendment sentence that the proposed amendments come too late to be accommodated within the time left to the January trial, that's an argument it can make on that occasion.

Andrew Scott KC: [00:59:36] We will say, don't think this will come as any surprise that any such argument would be utterly hopeless, given the nature of the amendments, given the point in the time in which, in this expedited proceeding at which we're in. Likewise, if the GP wants to say that the proposed amendments are bound to fail, that's an argument that it can make at the hearing of the summons for leave to amend. Again, we don't accept that for a moment, but it's for another day. To be constructive and to progress matters, we had identified, we'd asked the GP to identify which of the amendments it consented to, and which of them it opposed, so that the consented to ones could be pleaded back to now, and with the balance debated at a summons for leave at a later stage. The GP has objected to that which it sees that from paragraph 2. It's an objection repeated in correspondence from Walker's yesterday, to which we will come. GP says it doesn't want multiple rounds of pleading amendments. We are very much in the court's hands as to how many rounds of pleading amendments there ought to be.

Justice Jalil Asif KC (Judge): [01:00:46] You still need to know what's consented to... You know the scope of the argument on amendments.

Andrew Scott KC: [01:00:53] We were told in the GP skeleton that we would be given an answer to that question before today's hearing. We were told in the letter from Walker's yesterday that they hope to provide that update. It hasn't come. So I come before your Lordship in a remarkable position where all of these amendments appear to be in dispute. Even the first one on your Lordships' table, which simply pleads a position that the GP itself has taken as to who the other LPs in the fund are.

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- **Andrew Ayres KC :** [01:01:23] Although that's not quite right. The position Walkers has set out in correspondence is that, certainly, there will be some amendments that we consent to.

Andrew Scott KC: [01:01:32] With respect, it is quite right, because the point I was addressing your Lordship is whether we would receive an update in time for today's hearing. Walker said they endeavoured to do so, and they have not been put in a position by their client to achieve them. I'll come to the Walker's letter, so your Lordship will have the opportunity to take it in. My Lord, another objection that is raised by the GP is a suggestion that the proposed amendments would give rise to discovery requests. That's paragraph 2 of my learned friend's skeleton. For our part, we struggle to see why that would be so. The amendments arise from discovery that has already been given in Delaware for the GP's conduct of the litigation. And for our part, we don't intend to make any additional discovery requests in relation to our amendments. The GP would not, I think, have any additional discovery requests to make of us, given the nature of the allegations concerning the GP's conduct. And even if there were further discovery requests to emerge, they would of course need to be accommodated within the trial timetable in the usual way. How can I deal finally with the Walker's letter from yesterday? First of the two letters.

- **Andrew Ayres KC :** [01:03:17] Perhaps I shouldn't have put it in. Yes.

Andrew Scott KC: [01:03:37] Paragraphs 1 to 3 of the letter are another complaint about our approach. We're said to have created a procedural quagmire with the proposed amendments. The inescapable result is said to derail, disrupt and delay the proceedings. Said that we're trying to bully the GP into having everything our way, notwithstanding the enormous prejudice it will create, not just for the GP, but also for the interested parties. Now, my Lord, this is all high octane stuff, and perhaps the Walkers or Quinn Emanuel lawyer who took the pen enjoyed writing this sort of thing. Your Lordship will no doubt have his own view as to how far it furthers the overriding objective. But we don't for a moment accept any of these criticisms, but I'm not going to take up your Lordships' time with this, they don't go anywhere, in terms of the question for today, which is where the directions for trial should be given. If your Lordship will turn the page at paragraph 4 and following deal with the proposed amendments 4 and 5 are a complaint about timing.

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Complaint is that although we indicated in block 1 on the 17th of September that we wish to make amendments. We didn't provide them until the 23rd October, and that is mischaracterized as having sat on the foreshadowed amendments. And with respect, that ignores entirely the fact that in the intervening period, we were getting the case ready for trial in Delaware and dealing with the various roadblocks that the GP had thrown in the way of the PL samples, the anti-privilege claims. So ultimately, the complaints on timing don't go anywhere in terms of the directions that need to be made today. As I said, if the GP wants to rely upon them as an objection to leave to amend being granted, it could do so in due course. Paragraph 6 is the point I've already touched upon, about Walker's endeavouring to indicate which amendments were opposed. I ask Your Lordship to read paragraph 6, and 7 that says any other amendments not expressly agreed to would need to be the subject of a contested amendment application. We, of course, accept that. And over the page, they say this "your client should not be allowed to bypass the usual application and evidence process because they do not wish to acknowledge how their actions impact the trial date". We're not trying to bypass anything. Given the GP's position, there will have to be a contested application for leave. We will issue the summons promptly next week, and I will explore with your Lordship when it might be possible to bring that on. But with respect, none of that bears on the question for today, Directions for trial. And we deal with that in paragraph 8. Can I ask your Lordship to read paragraph 8, please? And I'll make some submissions on that.

Justice Jalil Asif KC (Judge): [01:07:49] Can you just remind me what is the recognition issue?

Andrew Scott KC: [01:07:53] The recognition issue is our contention...

Justice Jalil Asif KC (Judge): [01:07:58] Because they're in breach of the injunction, they can't rely on the Delaware judgment...one second

Andrew Scott KC: [01:08:15] My Lord, the criticisms here are entirely unfair, because the matters that it is suggested we should have provisioned for in the timetable are either outside our control or are entirely hypothetical at this stage. If we take the first item that is relied upon, the GP's ADR application, the Mediation Summons, we don't want it to disrupt the January trial, so we specifically sought, in correspondence, but have yet to

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receive from the GP an assurance that it would not rely upon the ADR application in an attempt to derail the January trial. So, as I say, we have not received that assurance, which is another problem with the application.

Justice Jalil Asif KC (Judge): [01:09:07] So, in other words, all the above, except one.

Andrew Scott KC: [01:09:12] Yes. Obviously, the GP's ADR application will need to be listed, but we're in your Lordship's hands as to when that might come. We can't provision for it in the timetable. Likewise, the second item relied upon by Walkers. The amendments that the GP says that it wishes to make following the hand-down of the Delaware judgment. That's an entirely hypothetical matter at this stage. We don't have a Delaware judgment, much less one in the GP's favour. We can't and don't have any proposed amendments from the GP on the basis of the Delaware judgment. With respect to how can we be criticized for not provisioning in the timetable for these entirely hypothetical matters? The third item is the recognition issue and the suggestion from Walkers, and I quote "they say it plainly cannot wait until trial", with respect, why on earth not? That's the ordinary point at which to determine the merits of issues in the case. And one of the issues in this case is whether the GP breached its Lordship's injunction by its conduct in Delaware, and if it did, the consequence that results as a matter of Cayman public policy. Now, if the GP wants to have a preliminary issue on that question, it needs to apply to have one directed, and the court can weigh the pros and cons of what that would involve, the potential disruption of appeals on the issue, and whether it would be a treacherous shortcut as preliminary issues so often are. But no application for a preliminary issue has been made. And that is despite the fact that the GP has known of our position on the recognition issue since Campbell wrote about it in September. Can I show your Lordship that letter, please? Tab 62, in the second volume, appears.

Justice Jalil Asif KC (Judge): [01:11:21] 67 or 62.

Andrew Scott KC: [01:11:22] 62. If your Lordship keeps the Walker's letter open because we'll need to go back to it. Perhaps I can just ask your Lordship to read from paragraph 2 at 1781 down to paragraph 11. We have a response from Walkers to these allegations in the next tab. Tab 63. Your Lordship sees from the letter that the allegations are denied. The denial is set out in paragraph 2 of the letter over several pages and concludes that

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paragraph 7 with an offer of undertakings. Of course, I'm not asking you to resolve this issue today. The only point I make is that it's an issue that has evolved since the 10th of September. So the GP has had ample opportunity in which to apply to your Lordship to have a preliminary issue directed, if it wishes to do that. It has not done so. But if we can go back, please, to the Walker's letter.

Justice Jalil Asif KC (Judge): [01:14:47] Yes.

Andrew Scott KC: [01:14:48] The fourth item that we are criticised for, not provision for in the timetable, is the privilege summons. Now the privilege summons are listed for hearing already at the end of November. I think the 28th. If they fail, there will certainly be more documentary evidence available to your Lordship at the trial. And that has no impact on the timetable to trial. As the skeleton noted, the possibility that further amendments may be required from us if the privilege summonses are dismissed. What I emphasise the word make, as matters presently stand, we don't propose any further amendments, and it seems unlikely that we will need to do so to address the material alleged to be privileged, it will certainly come into evidence in support of the allegations made. It does not seem likely to necessitate further amendments. But even if we do propose further amendments in reliance upon this material, we'll put them forward in the usual way. And if they are consented, they will go in. And if they are contested, the court will need to decide whether they can be accommodated within the time available to trial. These sorts of hypothetical matters again are no reason to withhold directions for trial today. The fifth item that Walkers mentioned here, your Lordship sees... Are, and I quote, "rounds of further discovery that will need to take place between the amended pleadings and the service of evidence consequent upon all of these items, with the exception of item one". I think that's the point. Mr.. Mr.. Ayres wanted to draw to my attention. I confess, I simply don't understand this point about further rounds of pleadings.

Andrew Scott KC: [01:16:51] Why would the hypothetical amendments in respect of a hypothetical Delaware judgment in the GP's favor necessitate further discovery? Why would the recognition issue do so? Why would the resolution of the privilege summons do so? None of these matters is likely to have any impact whatsoever on discovery. But even if they did, somehow generate additional discovery requests, it would need to be considered when those requests were made, whether they were justifiable and could be

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accommodated, bearing in mind the remaining time to trial. And with respect, we do say that what this paragraph is, is an attempt to manufacture problems that simply don't exist, and an attempt to do so to obscure the fact that the GP comes before your Lordship entirely unwilling to assist in laying down directions for the trial in general. So, continuing through the letter, paragraph 9 says that the upshot of the problems that the GP identifies is they say that pleadings will not be closed before the deadline for the witness evidence. With respect, that's entirely wrong. Pleadings have already closed. They closed on the 3rd of December, 3rd of September, when we served our reply. What we are talking about here is potential amendments, the ones that we have proposed in draft are hypothetical ones that the GP says it wants to make if it wins in Delaware, and whether those amendments can be accommodated. That will, of course, be informed by the trial timetable, but it is not a reason to defer imposing a timetable. If you, Lord, will look next, please, at paragraph.

Andrew Scott KC: [01:18:45] Paragraph 10 is the point about whether the parties always contemplated that amendments would be needed. Walker's position is that, I'm so sorry. The GP position amendments were always contemplated, but only after the judgment was handed down in Delaware. Now that may be the GP's position. It's not our position. It's not a position we have ever agreed to. Like any party making allegations such as the ones we make in this case, discovery is critical. We agreed on a process whereby the primary discovery would come from Delaware, and when it did, we reviewed it and proposed amendments accordingly. Paragraph 11 is the objection I've already addressed about multiple rounds of amendments. Said to be absurd that we are suggesting there should be four rounds. We're not suggesting that. All we're suggesting is that we be permitted to amend our case in ways that we have proposed to the GP. It does seem to us that it would be sensible for the GP to plead back to such of the amendments as it is prepared to consent to. But in some ways, that's a moot point because, as matters stand, we don't have their consent at all to any of them. As I say, we're very much in your Lordship's hands as to how many rounds of pleadings there ought to be on this. It does seem to us that the appropriate way to deal with it is simply to take what is on the table now. On the table now there are proposed amendments. GP should indicate which ones are consented to and which ones are objected to. And then we debate before your lordship whether the objected-to ones can come in. Paragraph 13 deals with the recognition issue. Perhaps I can ask Your lordship just to read paragraph 13. It appears

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that the GP plans to ask you, lordship, to determine on a summary basis. Question of Cayman public policy arising out of the alleged breach of the injunction, and to do that with a trial just a few months away. That does seem an ambitious stance to take on an application for leave to amend, but there it is. Obviously, we say the amendment is perfectly arguable indeed, and it is right. Your lordship will form a view when deciding whether to grant leave. Well, the balance of the letter deals with other topics, and I just want, very briefly, glance through those, 14 is a request for additional disclosure. I was about to make that point, but I'm very grateful to [01:22:48] Mr Ayres again. [01:22:49]

Justice Jalil Asif KC (Judge): [01:22:49] I already understood that paragraph.

Andrew Scott KC: [01:22:53] I'd rather thought allowing your lordship to read it would be more helpful than me paraphrasing it, but then paragraph 15, my Lord, deals with the correspondence about ADR. We're told that our client will respond to your letter dated 28th October, concerning ADR as soon as possible, once it has had the opportunity to consider the contents of that letter. Now, that's the letter in which we saw assurances that they would not rely on mediation summons to torpedo the January trials, that they would waive privilege rather than communications. They are pretty straightforward requests. It is surprising that we don't have an answer to them. My lord, we then have, um, a series of paragraphs on timetable. I can just ask your lordship to read what is said at 16 down to 19.

Justice Jalil Asif KC (Judge): [01:24:00] Okay.

Andrew Scott KC: [01:24:41] I'm sorry it's taken so long to go through the letter. It was a long one. I thought it right that your lordship should see it because it appears to be the case that is being put forward against directions to trial being granted today. With respect, we invite your lordship not to be dissuaded from that course. That is the right thing to do is to give the directions that are needed for to trial and in the form we propose. Can I turn then to directions for the amendment and mediation side? It seems to us that the mediation summons is not going to take more than half a day. The amendments ought not to take more than half a day, provided that the parties focus on the applicable test, because, of course, an amendment summons is not a dress rehearsal for the argument at trial. It's an argument about whether leave should be granted. And if your lordship were

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willing and able to indicate when there might be, if any, half-day slots over the next month or so, perhaps the parties could then take that away and come back with some proposals on directions this afternoon. Because until we know whether your lordship can accommodate hearings on those sentences it's it's really impossible to suggest what the directions will be.

Justice Jalil Asif KC (Judge): [01:26:21] Right, I could offer you the afternoon of the 14th. I could offer you an hour and a half on the 17th, in the afternoon. I could offer you the morning of the 18th, but I must be finished by midday because I've got an appointment. Possibly the 26th of November, but it's not ideal because I have something the following day and then the privilege summons on the 28th. Although, having said that, um, what I could possibly do is, the afternoon of the 27th, and then we could run that in onto the 28th to deal with everything on the 27th and 28th. That would be a possibility.

Andrew Scott KC: [01:27:33] Okay. Perhaps I...Then after that,

Justice Jalil Asif KC (Judge): [01:27:38] It's really too late to do anything useful. Even as late as the 28th is probably going to be, um, may may be too late in terms of holding a trial date.

Andrew Scott KC: [01:27:52] Can I explore that with my team? Yes. I mean, from our perspective, it seems to us that neither of these summons ought to have their listing dictated by the availability of leading counsel. I mean, each side has retained entirely competent local attorneys that I'm sure would be more than capable of dealing with these matters. So.

Justice Jalil Asif KC (Judge): [01:28:17] Well, certainly... certainly for the mediation summons, I think that's right on the amendment summons, um, it might be that, the parties would prefer leading counsel to attend, and if it's only half a day, then I don't have a difficulty with remote attendance. I sort of draw the line at half a day because after that it becomes too disruptive. It seems to me that the... Well, the earlier both sentences are determined, the better in terms of everyone knowing where they stand.

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Andrew Ayres KC : [01:28:54] And of course, there's no connection between the two of them. No, I'm not suggesting.

Justice Jalil Asif KC (Judge): [01:28:59] They don't have to be heard together. So, yeah!

Andrew Ayres KC : [01:29:05] That's very helpful. Perhaps I can come back with some more concrete proposals, which I've had the opportunity to speak to myself and indeed to my learned friend who's had the same opportunity.

Andrew Scott KC: [01:29:17] My Lord, can I turn then to the question of directions under rule 12, order 3 of the Companies' Winding Up Rules with proper respondentissy.

Justice Jalil Asif KC (Judge): [01:29:26] Yes.

Andrew Scott KC: [01:29:29] My Lord, I want to address three topics here. The first is the underlying concern which motivates the direction, which is that our fiduciary is using our assets to pursue litigation with us. Face of things, a striking proposition. Second, I'll address why we say the court has jurisdiction to make the direction we seek. We respectfully suggest that the GP's submission that the court has no jurisdiction is plainly contrary to the legislation. It is contrary to the legal principle that underlies it, and it is contrary to at least one decision of this court, in which a direction in the form that we are seeking was made. It would also, with respect, yield absurd consequences whereby the court is powerless to treat a petition in a way that reflects its substance.

Justice Jalil Asif KC (Judge): [01:30:35] Can I flag two things that I was looking at this? The first is, in Order 24, Rule 8, it looks to me like there's quite a significant typo or error in the drafting. If one looks at Order 24, Rule 8 (2) B, it means that if the court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company's respondents, which just makes absolutely no grammatical sense. It looks to me as if what has happened is that there's an attempt to track the wording of Order 3, Rule 12 and 12 B, and so, it's not 12 or 12 B, and the words, one or more members of the company as petitioners and have been omitted and that an s has been added on the end of members, so it should say, and

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the other member or members of the company. I raise that first, because when I come to Rule on this, it seems to me, unless anyone says that interpretation that I shouldn't treat that as Order 24, Rule 8 says, um, then I ought to hear argument on the proper interpretation of that provision. But it seems to me it's an obvious error looking at Order 3, Rule 12 B, and unless anyone wants to argue against it, I'm going to say that's how Order 24, 8, 2B should be interpreted.

Andrew Scott KC: [01:32:32] I'm grateful, my Lord, and that takes off one of the points I was going to address. We read the provision the same way.

Justice Jalil Asif KC (Judge): [01:32:39] The second thing that occurs to me, um, and I would like to hear, particularly from Mr. Ayres on this in due course, um, is that, uh, even if he's right, about 36.3, in the Exempted Limited Partnership Act and, uh, how that how that applies to the, Companies Winding Up Rules, 33, sorry. 36.3G in the Exempted Limited Partnership Act says on application by a partner, the creditor or liquidator, the court may make orders and give directions for the winding up and dissolution in exempted limited partnership, as may be just and equitable. So it seems to me that gives me a very wide discretion to do whatever I want, as long as it's just equitable in the context of winding up of an LP. So even if he's right on, uh, the statutory construction of, um. Section 33.3C and D, then I have a residual power under G to deal with it.

Andrew Scott KC: [01:33:55] We respectfully agree, my Lord. I'll focus on the argument as it is put by the GP in relation to 36.3. But there are, in any event, additional sources of power. What we see in G is identical.

Justice Jalil Asif KC (Judge): [01:34:16] Okay.

Andrew Scott KC: [01:34:19] So that's the second topic I'm going to address. And then the third is why it is appropriate to make the direction that we seek. And I can take that very shortly indeed because it doesn't appear there are a few points I need to pick up from the GP skeleton. It doesn't appear to be any serious attempt to dispute, because it cannot be disputed that the substance of this case is a dispute between the Rigmora LPs and the GP. As I say, I'll come to that.

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Andrew Scott KC: [01:34:52] My Lord, if I can begin with the concern that underlies the requested direction. I've already addressed your Lordship at the outset, and the fact that the GP is continuing to use partnership assets without sanction from the court or supervision or any undertakings. Um, the scale upon which our fiduciary is spending, what is beneficially ours to litigate against us is, with respect, extraordinary. And it's illustrated by the $20 million of partnership monies that the GP paid over to Quinn Emanuel just a few weeks after the hearing before your Lordship in August, to be used to pay their fees and Walker's fees in the litigation. Even more extraordinary that those funds were generated by realising the partnership assets at an undervalue. If I can ask you, please to go to Tab 17 of the bundle. This is Mr Blair's affirmation, served with PL Summons. If I can ask, your Lordship, please to go to page 186. Your Lordship will appreciate the redactions in this document to abide by the outcome of the privilege summons. Can I ask Your Lordship, please, to read? I'm so sorry. The wrong page reference here, 187. Can I ask your Lordship, please, to read paragraph 43, first of all? Your Lordship will note that these payments, some $61 million, enter on the 31st July and the 1st August alone. You will recall there was no mention of the whatsoever at the first August hearing before your Lordship. The matter is extraordinary. It is extraordinary because the GP's evidence on that occasion, through Dr Harrison, as the injunction your Lordship had made would, and I quote now, "his evidence on this occasion would bring an immediate and ongoing halt to the partnership's funding of the portfolio companies for the entire period the injunction order remains in place. Important to note that Harrison three in the written proceedings. Paragraph 125, tab 15, page 118. That evidence was relied upon by the GP's legal team at the 1st August hearing. Um, and I don't think Miss White was there on that occasion, um, Mr Ayres wasn't, because it was Mr Visa [as heard]. Um, but they did not tell your Lordship that 61 million had recently come into their client's hands. About 60% of the amount of the disputed capital calls themselves. And that can only be because Dr Harrison chose not to tell his team about it, because had they known about it, they would have been surely bound to tell your Lordship, to correct the misleading picture that his evidence would otherwise create. Your Lordship will return, please, to Mr Blotlinger's [as heard] affirmation. Can I ask you, please, to read 44 and 45?

Justice Jalil Asif KC (Judge): [01:41:00] Where do you want me to stop? At 45?

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Andrew Scott KC: [01:41:02] Yes, at 45.

Justice Jalil Asif KC (Judge): [01:41:02] Yes, okay.

Andrew Scott KC: [01:41:03] And one of the concerns that Mr Blotlinger [as heard] is articulating here is that this partnership asset was realized on a discounted basis, apparently to generate cash for use in the litigation, among other things. Can I ask your Lordship, please, to look at paragraph 47? Can I ask your Lordship, please, to read 47.1 over the page? 47.6?

Justice Jalil Asif KC (Judge): [01:42:01] Sorry, did you say 47.1 and 47.2?

Andrew Scott KC: [01:42:06] 47.1 down to 47.5 inclusive. I'm not asking the court to rule on any of this today. There would have been matters for consideration on the PL summons had we been able to pursue it. They will be matters for determination at the trial. For today's purposes, I refer to them only to illustrate the context in which our concern has arisen as to how the GP is funding this litigation at our expense, and what the direction that we seek will afford is the opportunity for the court to assert some oversight and to indicate its views as to the proper characterization of the dispute that will, in turn, bear upon the propriety or otherwise of the GP using partnership assets component. My learned friends say in their skeleton paragraphs 7, sorry, 5, 7 and 10. They say we are acting tactically to preempt the question of who would pay the costs of defending the petition should it succeed. That is wrong for three reasons. The first is that it overlooks the important oversight function that is served by the court, giving direction as to the proper parties to a petition, which is something the rules require the court to do in every case. So the Lordship sees from rule 12, Order 3. Second, my learned friends overlook the fact that we are not asking the court to make an order at this stage as to the incidence of costs. We're just asking the court to make directions that reflect the substance of the dispute, as the rules require. And it is with respect, nothing to the point for today's purposes, what costs orders are ultimately made at the end of the proceedings, and it is likewise nothing to the point where the non party costs orders could be sought and made against the GP under Order 24, rule 8(4), equally is nothing to the point whether there is a high hurdle non party cost order. They are all matters down the track. Your Lordship is concerned today with the prior question, and really a more fundamental question as to

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what the substance of the dispute is and who are the proper parties to it, as a result. The argument about pre-emptive costs orders is the same argument that this court rejected in the Freerider case. I show your Lordship, it's Tab 7 in the Joint Authority Bundle. That was a petition to wind up a company on just and equitable grounds. The Lordship see the context from the Headnote. Lordship sees over the page what Justice Foster held. Just give you Lordship a moment to read that.

Justice Jalil Asif KC (Judge): [01:47:13] Yes.

Andrew Scott KC: [01:47:14] Okay. So, if we take two things of importance from this decision. The first is that the rules which your Lordship is applying here. Rules of the companies winding up. They are founded upon the established principle that company money should not be used for a dispute between shareholders. Justice Foster held that the rules are a procedural tool by which to give effect to this fundamental and substantive principle of the law. The same principle applies to LPs, and as I will develop, the Lordship has the same procedural tools to ensure that the petition proceeds in line with its substance as a petition between the members of the partnership between whom the dispute has arisen. The Rigmora LPs, on the one hand, the GP on the other. The second thing we take from the Freerider decision is the rejection of the argument that only friends make about preempting decisions as to costs. I can just show your Lordship some of the key passages. Let me start, please, paragraph 17 on page 78. This records the submission made that there was no power to treat a company as the mere subject matter of the petition, rather than a party to it. A similar argument to the one the GP urges, when Lordship Justice Foster rejected that submission and he did so, said on the basis that the rules of procedural provisions are designed to give effect to the legal-cost principle. Dealt with that issue, having set out the legislative context at paragraph 20. Can I ask Your Lordship,

Justice Jalil Asif KC (Judge): [01:49:46] Yes.

Andrew Scott KC: [01:49:46] The judge then deals with the legal costs principal at 21. Can I ask you, Lordship, to read that, please?

Justice Jalil Asif KC (Judge): [01:50:44] Yes

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Andrew Scott KC: [01:50:44] And on 22 and several pages, there is a detailed consideration of the English cases.

Andrew Scott KC: [01:50:54] If your Lordship will jump please to page 88.

Justice Jalil Asif KC (Judge): [01:51:00] Yes,

Andrew Scott KC: [01:51:01] The records at 36, the submission that those English cases were distinguishable, on the basis that they were unfair prejudice cases, and he rejected that. Can I ask you, Lordship, please, to read 36? Sorry, 37 and 38 of the page to give the judge's reasons for rejecting that submission. Will then read 40 and 41. They record and reject the submission about preemptive costs.

Justice Jalil Asif KC (Judge): [01:53:44] Yes

Andrew Scott KC: [01:53:44] And finally, at 42 and 43, Justice Foster draws the threads together and explains that it fell to him to characterize the substance of the dispute and give directions accordingly. Finally, can I ask your Lordship should read those passages, please? We respectfully submit that exactly the same approach applies to the context of LPs. Your Lordship has the same broad procedural power to give effect to the same legal costs principle. That brings me to the second topic I wanted to address, which is your Lordship's jurisdiction. Can I ask you, please, to turn to Tab 3? Start, if we may, with the LP act and then turn to the winding-up rules. And our submission to your Lordship is that it is plain from the statutory language that there is jurisdiction under these provisions to grant the directions we seek. Go to page 54 in the bundle, which has 363. It provides that the provisions of Part Five of the Companies Act on winding up. The associated winding-up rules legislation shall apply to the winding up of an ELP. So your Lordship has on the face of the statute its purpose. Its purpose is to extend to LP the statutory winding up regime that exists for companies.

Andrew Scott KC: [01:57:12] I thought it was necessary for the legislature to do that because otherwise there would be no statutory winding-up regime at all for ELPs. The legislative technique adopted is not to reinvent the wheel simply to apply the regime that

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already exists and has long existed for companies. To achieve that purpose, section 36 (3) identifies um through sections A to C, how it is to be done. And the evident intention behind that is to modify the company winding-up provisions so that they make sense in an ELP context. You can just look through subsections A to C in turn. A provides that references in Part 5 to a company shall include references to an ELP. The consequence of that is that wherever you see the word company in Part Five or in the rules, it includes references to an ELP. Subsection B adopts a different technique. It does two things. It says, as your Lordship sees, that the limited partners shall be treated as if they were shareholders of a company. And then this, references to Contributories in Part Five shall be construed accordingly. So the legislation is telling you not, um, wherever you see the word shareholder in Part Five of the rules, that means limited partners. It's telling you what the word contributories means. It's not saying that shareholders in the Companies Act or the CWR means limited partners. Much less is it saying anything at all about members of the companies. And, with respect to my learned friends, the argument that they make at paragraph 13 of their skeleton is just wrong.

Justice Jalil Asif KC (Judge): [01:59:34] So, what's the difference between a contributory shareholder or a member?

Andrew Scott KC: [01:59:45] The difference for these purposes is that, what the legislature is seeking to do by subsection B is to identify that, yes, the LP will be treated as a contributory for the purpose of petitioning, but it will not be treated that way for the purpose of contributions in a manner which is inconsistent with the provision that is made on that issue in the end.

Justice Jalil Asif KC (Judge): [02:00:20] Subsection 3B says "shall be treated as if they were shareholders, and references to contributories shall be construed accordingly". Tends to suggest that the legislature assumed that shareholders mean contributories. Indeed, the terms are interchangeable. That was what my question was directed at. Whether you're saying there is a difference between shareholders, contributories and members or whether the terms are interchangeable.

Andrew Scott KC: [02:00:54] Indeed, and it may be that the terms are interchangeable. It would depend on the particular context in the Act in which they are. The point I'm

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making, for your Lordship's purposes, is that really what drives this provision is the word contributory. And what the legislature is seeking to do is to equate LPs with contributories for the purpose of petitions. And then, your Lordship sees, um, if I can put it this way, the sense behind that when we look at the provisions in Part 5 on who may petition, because the provisions of Part 5 distinguish between contributories' petitions, on the one hand, and creditors' petitions and then also directors' petitions. And that brings us on to subsection C, because what subsection C provides is that references to a director or officer of the company in Part 5 include references to a general partner. Now, that has various consequences because of the various references to 'director' and 'officer' in Part Five. One of those consequences I've just mentioned the possibility of a director's petition. There are various others: liability for the company's statement of affairs. With respect, it has no bearing on the question for your Lordship as to whether there is power to direct that a petition proceed on an inter partes basis between a limited partner and the general partner. That question, that party's question, the answer to that is provided by rule 12, read through the lens, as my learned friend said briefly in section 36(3). If your Lordship will go next to the rules, they're in the previous tab, tab 2. If your Lordship will go, please, to page 42.

Justice Jalil Asif KC (Judge): [02:02:50] I'm sorry, Mr Scott, just before I do that, I just need to deal with something. Do you mind if can we just rise for five minutes? (Court adjourned for a short break.)

Marshall: [02:13:01] (Court resumed) God save the King!

Justice Jalil Asif KC (Judge): [02:13:06] Thank you... Administrative issue.

Andrew Scott KC: [02:13:09] Just before we go to companies' winding-up rules, can I just invite your Lordship's attention to the definition of contributory in the Companies Act? Behind tab one, which has the definition of section 89.

Justice Jalil Asif KC (Judge): [02:13:33] So in 89.

Andrew Scott KC: [02:13:35] Yes, Sir.

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Justice Jalil Asif KC (Judge): [02:13:57] Is there anyone other than a fully paid-up shareholder or partially paid-up shareholder who might qualify as contributory, or is it going to depend on the nature of the company in question?

Andrew Scott KC: [02:14:12] It depends. So I don't think we have Section 49 in the company, but there's a long list of people that fall within the definition of contributory on that basis. And it seems to us that what the legislature is seeking to achieve in the provision we saw in the ELP Act is to treat a limited partner as a contributory within the category of shareholder and without prejudice to the extent of its liability, which is dealt with by the ELP Act, rather than the different provisions we see from various companies in the company act. It seems to us that this is the scheme that the legislature is seeking to achieve. Can we go next to the rules?

Justice Jalil Asif KC (Judge): [02:15:03] Yes.

Andrew Scott KC: [02:15:14] Those at Tab 2. If we can begin, please, with rule 12 (1)A, with the modifications that come from the ELP Act. The effect is that the matters in respect of which the court shall give such directions as it thinks appropriate include, if you will just read (a) with me, whether or not, as it says "the company" that becomes whether or not the LP is properly able to participate in the proceedings, or should be treated merely as the subject-matter of the proceedings. Pausing there, rule 12 (1)A, as modified, is a very broad one. It also posits an inquiry that is interrelated with the exercise under rule 12 (1)B. And, indeed, that's a point that my learned friends rightly make at paragraph 16 of their skeleton. They say these two inquiries under A and B are interdependent. We respectfully agree about that. But it follows that, if the court concludes, when applying A, that the case is one in which the partnership is merely the subject-matter of the proceeding rather than a participant itself, the court must be able to give directions to reflect that. And the obvious direction to give is that the preceding be treated as an inter partes proceeding between the members of the partnership who are in dispute with one another. And that is exactly what is provided for in B. Again, if we can do the same exercise of substituting the words in the way that section 36 requires, where it says "whether the proceedings should be treated as a proceeding against a company", that becomes ELP, and where it says "between one or more members of the company", that becomes "one or more members of the ELP". So the question of statutory construction, your Lordship, ultimately is a very

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simple one: who are the members of an ELP? That can only mean its partners, and that must mean both its limited partners and its general partners, too. We respectfully submit that that is the only available meaning of the words in this statutory context.

Justice Jalil Asif KC (Judge): [02:18:00] Isn't there a more fundamental problem, which is that ELP doesn't have a separate legal personality? It's simply shorthand for all of the various partners within the ELP. And I don't think, legally or procedurally, you can have a limited partner who is the petitioner or plaintiff pursuing a claim against itself as part of the ELP as respondent, stroke, defendant. So it seems to me, however you look at it, it has to be construed as a claim by one limited partner against either the GP and all other limited partners. There isn't any other whatever, whatever all three rules say. It just doesn't make sense in a circumstance, in a situation where you're not dealing with an entity that has a separate legal personality.

Andrew Scott KC: [02:19:01] We don't disagree at all. It may be that part of an answer to it is supplied by section 33 (1) of the Partnership Act. I think we have that. Perhaps we can...your Lordship is familiar with the provision for bringing of proceedings.

Justice Jalil Asif KC (Judge): [02:19:31] Just give me one second. I've got, um, I've got the ELP here. Let me just remind myself, you say 33.

Andrew Scott KC: [02:19:39] Yeah.

Justice Jalil Asif KC (Judge): [02:19:49] Yes. Funnily enough, I gave judgment on this as well. All to do with whether a claim by a limited partner against the GP is to be considered a derivative claim or not, which it isn't, in my view. The Court of Appeal will no doubt tell me I'm wrong...

Andrew Scott KC: [02:20:17] Essentially, your Lordship is right that the nature of an ELP, the fact that there is no separate legal personality, means that it has to be possible to direct a petition between the limited partners and the general public.

Justice Jalil Asif KC (Judge): [02:20:37] It seems to me it's the only way you can do it, because under the ELP, limited partners shouldn't be playing any management role at

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all. And so if there is an internal dispute, it is always going to be one between a limited partner on one hand and a general partner on the other, or perhaps a limited partner that is acting in breach of its obligation not to be involved in the management. And there really isn't any alternative.

Andrew Scott KC: [02:21:04] Respectfully agree. Your Lordship, if we will please take up my learner friend's skeleton for today. We will go to paragraph 15.

Justice Jalil Asif KC (Judge): [02:21:24] Yes.

Andrew Scott KC: [02:21:26] Your Lordship sees there the contrary obstruction that is urged upon you. What it involves is reading the words members of the company as limited partners. With respect, there is no textual basis for that, whether in the ELPA rules or otherwise.

Justice Jalil Asif KC (Judge): [02:22:18] I think what the GP is saying is that having regard to 36 (3)B. Where it says limited is to be construed as including general partner, that effectively excludes the general partner from being treated as a member within the meaning of the CWR, so that you have to read members within a B as meaning limited partners only. That's my understanding.

Andrew Scott KC: [02:23:05] Our response is with respect, that is a misreading of section 36 (3)C. Section 36(3)C provides that references to a director include a general partner. And if your Lordship were having to construe a provision in the rule referred to directors, that might be of some relevance, but your Lordship is not construing the phrase members of a company that becomes members of a partnership. The question, then, is who are the members of the partnership? It could only be the limited partners in the general partners. The argument I've been making so far is based entirely on the statutory language. And if your Lordship accepts our submission, that it is clear that the GP's construction is not an available meaning of the words, then that really ought to dispose of the issue on jurisdiction. But we go further, because, as your Lordship has seen from the Freerider case, these are procedural provisions that are designed to empower the court to give effect to the substantive principle of law on a matter of fundamental importance, the legal principle. So even if your Lordship were to accept that the GP's construction is an

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available one, it's not the right one, where the underlying principle is borne in mind. Whereas our construction results in the court having the procedural power to give effect to the legal cost principle, the GP's construction robs the court of procedural matters, or at least would do so unless the Lordship were to conclude that they, in any event, form part of the general procedural power under the law at the outset of the submissions. Ultimately, one way or another, there must be provision procedurally to give effect to the legal cost principle in this context. Standing back, we invite your Lordship to note this. The GP's construction results in an outcome whereby, however much the substance of the petition is a dispute between the GP and the limited partner, and however flagrant the misuse of partnership monies to defend it, the court is powerless to give directions as to the proper parties to the dispute. With respect, it is impossible to see why the legislature would have wished to tie the court's hands in that way. My friends cannot point to a single authority in which the rules have been construed to have such an absurd effect. I recognise that I equally cannot point to any authority in which the issue has received detailed consideration by the Cayman courts in the ELP context, but I can at least point to the Cybernaut case. The Cybernaut case is one in which a direction in the form that we seek was made by Justice Foster by consent. And as your Lordship will see, Justice Foster is a judge familiar with the issues that arise in this context concerning the legal problems. And obviously, if the judge had no jurisdiction to make the order, the fact that the parties consented to it would be neither here nor there. And what is more, Justice Jones later relied upon the direction having been made when it came to awarding costs. Likewise, had he or the parties to that case thought there was an issue of jurisdiction, it would have been raised. If I can ask your Lordship, please to go to Tab 8. If I can just ask your Lordship to read what the judge said on costs at paragraph 31 on page 112.

Justice Jalil Asif KC (Judge): [02:27:26] This is in Justice Jones.

Andrew Scott KC: [02:27:29] Yes, your Lordship.

Justice Jalil Asif KC (Judge): [02:27:29] I'm sorry. Give me that paragraph again.

Andrew Scott KC: [02:27:29] It's 31

Justice Jalil Asif KC (Judge): [02:27:33] Thank you.

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Andrew Scott KC: [02:29:00] This exceeds the legal cost principle and denies the judge's reasoning on that aspect. It would have applied even to deprive the right of indemnity which was being relied upon. Now, there's only so much I readily accept. There's only so much one can take from a judgment where the court did not squarely address the question of jurisdiction and confroncy, your Lordship. It would be surprising with respect if Justice Jones, Justice Foster, and all the counsel involved in arguing cases had missed that the court has no jurisdiction to do this. I address what my

Justice Jalil Asif KC (Judge): [02:29:47] I appreciate that, but at the same time, they all seem to have thought that partnership was a separate legal person.

Andrew Scott KC: [02:29:59] And as I say, one can only take this so far. What one could certainly see is that there is no authority in my learned friends' favour on this. There is a decision which is inconsistent with his submission. To accept that submission would require the court to say that this decision. Can I briefly address what my friend said and the legal cost principle in their skeleton, if you will go back to that?

Justice Jalil Asif KC (Judge): [02:30:26] Yes.

Andrew Scott KC: [02:30:28] There we go to 28(1), the submission I quote. There is no room for an argument from principle where the ELP Act expressly requires the court to read the CWA in the prescribed way. And your Lordship has my submission that the ELP Act does not expressly require or require in any way the reading of the GP urges upon your Lordship. As far as concerns the suggestion that there is no room for an argument from principle. In this context, we respectfully disagree. Indeed, to disregard the principle would be to disregard the purpose of what the rules are designed to achieve, as Justice Foster held, namely, procedural provisions to give effect to legal costs. I would finally turn to my third topic discretion. I can take this very briefly, because it is harder to imagine a clearer case than this one of a dispute that is in substance between the limited partners and the GP. Specifically, the limited partners who contributed 98% of the capital have lost trust and confidence in the GP's willingness and ability to manage it. Your Lordship will have seen from our skeleton, paragraphs 51 and 52, the applicable principles for characterising disputes.

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Justice Jalil Asif KC (Judge): [02:32:22] Can I just, sorry, just to take you back for a moment, Mr Scott. Is it agreed that your clients contributed 98% of the capital? The reason I'm asking this is that I remember at an earlier stage, there was a dispute whether their interest, which I appreciate is different from the capital that they've contributed, was 99% or 94%. I think it was being said because of the LP interests that had arisen as time went on. Their interest in the fund was 94%.

Andrew Scott KC: [02:32:55] Yes. Can I take instructions on that point? Because I don't know where that currently sits in in the Delaware proceedings. Lordship is certainly right. That was an issue raised by the GP in the August hearing. Yes. Um, but whether it is 94% or 98%.

Justice Jalil Asif KC (Judge): [02:33:14] I want to get it right.

Andrew Scott KC: [02:33:15] I entirely understand that, and perhaps Your Lordship will give me a moment when I sit down, I can I can give a more helpful response. As I say, Your Lordship will have seen in our skeleton the principles on characterising the substance of a dispute for the purposes of the winding up rule. I won't repeat that. I won't repeat the points we've made in writing at paragraph 52 as to why the substance of this dispute is, as we say it is. You would have read that. If I can just deal briefly with the points made the other way, such as they are in my friend's skeleton. If your Lordship will go to 29, please.

Justice Jalil Asif KC (Judge): [02:34:05] Yes.

Andrew Scott KC: [02:34:08] The point that's made there is that partnership is said to have assets built up over the years that generate financial benefits for its limited partners, including 14 limited partners other than the Rigmora LPs. Dr Harrison or his family trusts. Now those assets, of course, are very substantially our assets acquired with our capital. But I will then decide if the other limited partners wish to defend the petition on account of their interest in continuing to take money out of the partnership. The appropriate course is for them to seek to join the proceedings and make those arguments using their own funds, at their own risk, as the costs, and none has done so. What is not appropriate is

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for the GP, in effect, to side with those other limited partners to use partnership assets to further their position in the dispute at the expense of the Regmore LP. Then also, where it is Doctor Harrison who would be procuring the GP to side with LPs, which includes himself and his family trust in relation to a dispute between him and the LPs. Unless I can assist you, Lordship, further, that is what we say on the proper parties' direction and that brings me to the end of the submissions on the three issues identified.

Justice Jalil Asif KC (Judge): [02:35:41] All right. Thank you very much, Mr Scott. Mr Ayres.

Andrew Ayres KC : [02:35:48] I'm not going to address you at the same length as my learned friend, because a lot of what submissions he made orally and in writing simply go to other matters that we're going to hear in due course. So, for example, the skeleton argument. There's a long explanation, which my learned friend hasn't dealt with already, about why the provisional liquidation application was withdrawn. It's... To say, my Lord, for that and for all these other, uh, peripheral matters, that we don't accept that explanation, and you'll hear an argument about that in due course. Uh, or not, uh, in relation to the question of costs of the application. You've also heard from my learned friend a great deal of criticism of the GP and, implicitly, also of Dr Harrison. My lord, we don't accept any of that either. These are hardly matters which are matters for trial. And you shouldn't undertake the exercise of giving any directions that you do today or making any order, under the Companies' Winding-Up Rules, Order 3 (12), assuming that there's a good side to this coin, and there's a bad side to this coin. That's absolutely not the right approach. And we are, um, going to embrace, defending all these allegations at trial. So, turning to the question of CMC style questions as to what you do with respect to directions, my learned friend submitted to you that we have suggested that there be some two-day CMC in due course. Well, we haven't suggested that, and we also haven't said in any terms that you shouldn't give directions.

Justice Jalil Asif KC (Judge): [02:37:36] So sorry, to the final sentence of your skeleton, in which you say partnership suggests that a further two days be listed as soon as possible, and then your signature appears underneath.

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Andrew Ayres KC : [02:37:47] Yes. My Lord, he's construing that in terms of direction. The reality is that for the purposes of dealing with all these other applications but we haven't suggested that you should not give any specific directions today. The only question that we ask your Lordship to address yourself to is the question of a fair process with respect to all the matters that have occurred over the last few weeks. So, my lord, it wasn't the GP's fault, the Partnership's fault that Rigmora LPs sought to deploy privileged material in this court when they shouldn't do so, which has caused the privileged summons. It is not, uh, the GP or the partnership's fault that, um, the rigmarole LPs sought to amend. We say very, very late in the day, and it is not the GP and the partnership's fault that the Rigmora LPs are declining without qualification to engage in mediation, which we suggest would be highly fruitful for the purposes of settling this dispute. So there are all these applications. They're not applications which, um, are ultimately caused by by my clients, but they are things which need to be dealt with fairly for the purposes of the trial. So under no circumstances am I coming to your Lordship, saying you should necessarily adjourn the 12th of January trial. And I've heard what your Lordship said, but it is a matter that your Lordship should take into account when considering whether or not we can

Andrew Ayres KC : [02:39:50] Get all this done fairly, to give one example in relation to the question of if we have a hearing, for example, on the 27th and 28th of November, for the purposes of considering, for example, the amendments, the privilege summons, and the ADR summons. Well, let's say your Lordship grants some amendments, then, under the current scheme that's put forward by my learned friend in his draft directions, we have witness statements, which is the first set of witness statements before the reply witness statements on the 5th of December. My Lord, if one might say, well, we can extend that time a little bit, but Lord, there's going to be, in reality, very little time to have this all dealt with between the end of November.

Justice Jalil Asif KC (Judge): [02:40:40] Isn't the answer that, as Mr. Scott argued, that when the application's in front of me as a matter of fairness, which you say the court should take into account, If it's not fair to allow the amendments, to allow the discovery at that stage, or simply decide it's not fair and and the trial goes ahead on the basis of the existing pleaded case, for example.

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Andrew Ayres KC : [02:41:04] Yes, but I mean, obviously, Mr Scott isn't coming to you today, conceding that point. He's recognising that that's a point.

Justice Jalil Asif KC (Judge): [02:41:10] He's saying it's a point to be argued when the applications are made. Is that the right approach?

Andrew Ayres KC : [02:41:15] Yes, but that puts into context what you're actually going to do in relation to this CMC, whether in fact you are actually going to order directions, for example, set out in my learned friend's draft order because, um.

Justice Jalil Asif KC (Judge): [02:41:31] Until the summonses are heard and indeed issued to the extent they haven't been issued, isn't it my job just to make directions on the shape of the case as it currently stands?

Andrew Ayres KC : [02:41:45] That's that's right. But, your Lordship shouldn't ignore the fact that there are all these things that are going to be determined.

Justice Jalil Asif KC (Judge): [02:41:52] How do I take this into account?

Andrew Ayres KC : [02:41:54] Your Lordship's heard from me that there will undoubtedly be some amendments that are consented to, and that comes to, you know, how one actually deals with this because.

Justice Jalil Asif KC (Judge): [02:42:04] If they consented to it, they're not going to have an impact. So any stuff that's in that's contested, that's going to have an impact, and that's where I don't see how..., how I'm meant to take that into account in making directions now.

Andrew Ayres KC : [02:42:18] Well, all I'm asking your Lordship to do is to recognize the fact that my learned friend was putting forward at least a possibility that there might be four rounds of amendments with respect to with responsive pleadings, because one has to remember, first of all, he was asking for effectively consented amendments, which obviously we haven't yet addressed, um, be subject to responsive pleadings immediately. Um, then, of course, there's the contested amendments, and that would require further

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responsive amendments, and then with respect to the privilege summons, my learned friend has said to your Lordship at the moment that there's no intention by the Rigmora LPs that they would have met, but he's not committing to that. And we suspect that if the privilege summons is dismissed, that he won't stick to that submission, and that will make for further amendments with respect to that, and, my Lord, we of course, then have the amendments that we were going to contemplate all along, which is the amendments to add in if appropriate the impact of the Delaware judgment. So that's, that's potentially four different sets of amendments with different responsive pleadings, all to be done, uh, over the next six weeks. And that that is something that you, you can't ignore in terms of the particular shape of this case. It wouldn't be right for you simply to say, well, I'm just going to give directions on the basis of the claim now.

Justice Jalil Asif KC (Judge): [02:43:44] Everyone has been working since August towards a January trial. As Mr Scott said, it's a consent order. There's no application to break the trial or to, or to fix a new date. So it seems to me I have to work on the basis that the trial is going to happen, and I need to give directions to make sure, based on the shape of the case as it stands today, to make sure that the trial happens. If there are future summonses, then at that stage, those summonses come before me, and I will have to decide. Do I allow the relief that is sought? Bearing in mind the knock-on effect on the trial, um, and bearing in mind whether there are accommodations that can be made to the timetable at that stage. Once I know what is, what is actually an issue that allows the trial to go ahead, and if the adjustments, the timetable imperils the trial, and the likelihood is, as you've indicated a moment ago, it's not fair. And they shouldn't be allowed. Isn't that the short answer?

Andrew Ayres KC : [02:44:50] Yes. Well, I mean, that may well be an answer, but, my Lord, it's obviously a particular outcome from amending an application. If you say that effectively that they're all too late or too prejudicial or will prejudice the timetable. And your Lordship hasn't made that decision yet, and the reality is, all I can do is put down a marker for later on in terms of where we are in November or December.

Justice Jalil Asif KC (Judge): [02:45:19] Well, if you make an application to adjourn the trial, etc., and or when the summonses come in front of me, I'll deal with any adjustments of the timetabling that need to be made at that stage.

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Andrew Ayres KC : [02:45:35] So, my Lor,d in terms of the amendments, my learned friend, he didn't take you to the actual terms of the draft amended pleadings. They did, I think, hand up to you a table, uh, suggesting that, uh, certain periods of time from which the amendments had come. I don't know whether your Lordship has had a look through.

Justice Jalil Asif KC (Judge): [02:45:56] Yes, I read them all last night.

Andrew Ayres KC : [02:45:57] The draft amendments. Well, that's very helpful. I mean in terms of, um, the difficulties that we have, uh, with, with these draft amendments, is.

Justice Jalil Asif KC (Judge): [02:46:10] There's no application today. Why do I need to spend time on the amendments?

Andrew Ayres KC : [02:46:15] My Lord, you don't and indeed, you'll be dealing with that in due course, but for example, just just so in terms of one submission, my learned friend really made about discovery, and obviously in terms of discovery, that has two aspects to it. It's not simply just requests from documentation from one side to the other, but there's also the question of if a new issue is raised. Um, you might have to conduct searches yourselves, and that may be an issue, but.

Justice Jalil Asif KC (Judge): [02:46:44] I'm not unsympathetic in relation to discovery. When I looked at the draft amendments yesterday, it seemed to me there were certain of them that seemed pretty uncontentious and straightforward. Some of them, I could see, were likely to be contentious, but unlikely to give rise to additional discovery. And there are a few that, it seemed to me, might possibly give rise to additional discovery. But that's something we really need to explore. And the applications made, it seems to me.

Andrew Ayres KC : [02:47:11] Yes, and again, I suppose I should put down a marker. I mean, in terms of the draft order that's set out, I know your Lordship isn't going to give any permission for amendments today, but, for example, in the draft order, 14 days is suggested for our response time. The amendments are significant and substantial. We may well need longer than 14 days for purposes of dealing with all the amendments. So, all I ask your Lordship to do is to keep in mind, in relation to, um, the directions, um, is to

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try and keep the number of rounds of amendments and responsive pleadings to an absolute minimum. I mean, our suggestion would be effectively that there should really be one round of amended pleading. So, leaving aside the question of the court giving permission or consent being given, um, in terms of actually trying to make the January trial viable, it would be best if all the parties simply didn't have any.

Justice Jalil Asif KC (Judge): [02:48:17] Mr, if that's your approach, then we're not going to have amendments until December sometime, because you're not going to get the Delaware judgment until probably the early part of December, which, um, and so if if there's going to be no amendments until December, that really is completely jeopardizing the trial.

Andrew Ayres KC : [02:48:40] That's different from obviously, your Lordship may well be, um, deciding on contested amendments at the end of November, and that's a different thing. So we know what your Lordship has given permission for. It's a question of the practicalities of how many pleadings are produced.

Justice Jalil Asif KC (Judge): [02:48:55] That's right. That's my question. That's my question, Mr Ayres. Your side's position is that you want to amend once you've got the Delaware judgment, that is not going to happen until early December at best. And so if there is going to be only one round of amendments on both sides, that's not going to happen until the middle of December at best. How on earth are we going to hold a January trial date if the amendments don't take place until the middle of December?

Andrew Ayres KC : [02:49:24] Well, my Lord, that really just raises the problem of the fairness of this whole procedure and and how much time we've

Andrew Ayres KC : [02:49:31] really got before the January trial. Your Lordship will remember I wasn't here on the 1st of August, but I know this is this is disputed by the other side, but the parties knew the issues that they were dealing with, and there was a contemplation. We say it's a shared contemplation, but certainly it's a contemplation on our part that there would be one round of amendments or one set of amendments to deal effectively with the, um, the impact of the Delaware trial. Now, obviously, we now have a different landscape completely, because your Lordship has got a whole lot of

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amendments. But we also have the argument, so-called recognition issue, to the effect that, um, your Lordship shouldn't be looking at the Delaware judgment at all. And so, my Lord, we have a completely different landscape changed by the Rigmora LPs, um, and certainly as far as my client is concerned, it shouldn't be criticized, um, or penalized because, um, there was going to be one round of amendments because there were. So, my Lord. Um, I mean, the additional point to that, just to think things through, and I know your Lordship is trying your Lordship's patience to some degree with respect to considering what is going to happen. But I just ask your Lordship to think this this through. Let's imagine your Lordship gives complete, um, uh, consent or leave to amend on, say, the 28th of November. And then we've got to have amended defences and amended, uh, replies and all the other responsive pleadings, really, before the trial. And my Lord, it's difficult to see how that's actually going to operate. And the evidence, and then of course, as you've seen.

Justice Jalil Asif KC (Judge): [02:51:19] That would be a powerful reason why I should refuse any leave to amend, isn't it?

Andrew Ayres KC : [02:51:24] Well, I'll take that. My Lord, with respect to the question of giving directions, if you are going to give directions, um, if one looks at page 20 of the bundle, the first order that my learned friends are ordered to understand it.

Justice Jalil Asif KC (Judge): [02:51:45] Sorry. Just give me a moment to get the right bundle. Page 25, which is in the winding up. I think 20 might be in the writ action.

Andrew Ayres KC : [02:52:08] Yes.

Justice Jalil Asif KC (Judge): [02:52:08] Yeah. Okay. Which one draws me to look at the writ?

Andrew Ayres KC : [02:52:11] Well, let's look at the writ action one. So, as far as paragraph one is concerned, that is agreed between the parties pleading amendments. We will pass over that. I should just say, in relation to paragraph five, again, it's not a matter for now, but we wouldn't have accepted an order in those terms because, of course, the person who's undertaking the amendments should, unless there are very

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special circumstances, pay the costs of the amendments in the event. But that's that's a matter for later. Moving over discovery. Um, your Lordships got, uh, the question of evidence of fact and the, the question that my learned friend raised on paragraph 12, which is this question of if witnesses of fact do not attend a trial in person, we would object to that extra wording in relation to that simply on the basis that if evidence is, uh, filed in time, and, um, a witness does not attend, then your Lordship can effectively treat that as hearsay evidence and it goes to weight. So it's not a question of effectively dismissing their witness statement in its entirety.

Justice Jalil Asif KC (Judge): [02:53:31] I did...It did occur to me that this direction, proposed direction didn't deal with evidence effectively.

Andrew Ayres KC : [02:53:40] Yes. So, my Lord.

Justice Jalil Asif KC (Judge): [02:53:47] under the rules I think you're meant to serve the notice at the same time, the witness statement is, um, is filed. If you want to rely on it, just say.

Andrew Ayres KC : [02:54:01] So, that obviously needs to be. Yes. So there needs to be some addition, for example, in paragraph 11 of the the draft order that you're you're looking at.

Justice Jalil Asif KC (Judge): [02:54:13] Paragraph seven does say witnesses of fact and hearsay.

Andrew Ayres KC : [02:54:16] Yes.

Justice Jalil Asif KC (Judge): [02:54:17] When required should be filed in exchange. Yes. So I think it is, it is covered in seven.

Andrew Ayres KC : [02:54:23] Yes, but your Lordship's got my submission in relation to paragraph 12. Those points transpose their way through to the... And, my Lord, as far as the PTR is concerned, um, we suggest that simply be left out of account at the moment

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because or certainly, it will not be firmly fixed, because we simply just don't know what's going to happen at the end of next month or subsequent.

Justice Jalil Asif KC (Judge): [02:55:01] I'm saying, sorry, just say that again, please.

Andrew Ayres KC : [02:55:03] So that... This is page 27, paragraph 13, uh, and the listing of the PTR, the fixing of the PTR.

Justice Jalil Asif KC (Judge): [02:55:16] Unless it's fixed...Unless it's fixed for the 17th or the 19th, it's not going to happen.

Andrew Ayres KC : [02:55:23] Yes. So certainly as far as the 19th, uh, I haven't discussed it with my learned friend, but we are available on the 19th if your Lordship fixes that particular date.

Justice Jalil Asif KC (Judge): [02:55:33] Um, what about 17th? Because I would slightly prefer to do it before I go, if possible.

Andrew Ayres KC : [02:55:38] Um, well, I heard what my learned friend said about the council's availability. As far as I am concerned, yes, I can, I can do the 17th.

Justice Jalil Asif KC (Judge): [02:55:49] Uh, well, I'm not going to make a decision before lunch anyway in order to give everyone an opportunity to consult diaries, check, um, check what they're doing, etc., but I would, if it's possible to do it on the 17th. I would slightly prefer it just because I will still be visiting.

Andrew Ayres KC : [02:56:10] So, my Lord, in terms of, uh, the other things which are before the court not listed for today, um, as far as the...

Justice Jalil Asif KC (Judge): [02:56:19] I'm sorry, Mr Ayres, before you move on. So apart from the deletion in each paragraph 12 of the extra wording and the deletion of the directions for the amendments, which Mr Scott's not ready to to move. Can I take it, then, you're happy with the rest of the terms of the two draft directions?

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Andrew Ayres KC : [02:56:42] Happy? In the context of all the remarks I made earlier on? Yes...so there were they're not happy. It's the answer.

Justice Jalil Asif KC (Judge): [02:56:49] Not happy, but...

Andrew Ayres KC : [02:56:51] On the assumption your Lordship's going to do this, which I think your Lordship's indicated that you are. Um, that's the position we take.

Justice Jalil Asif KC (Judge): [02:56:57] Right.

Andrew Ayres KC : [02:56:58] But, my Lord, obviously, there is also the question of directions and the evidence timetable for certainly the ADR summons. And I think it should be absolutely clear to Rigmora LPs that we're not seeking in any way to derail the trial with respect to the ADR summons. And the reason for that is because the relief that we're seeking in the summons itself is for an order that mediation take place before the 12th of December. So we weren't seeking in any shape or form to, uh, say we can't have a... We should have ADR, um, and therefore we shouldn't have that heard until after the 12th of January. So the short point in relation to ADR is that we think that a formal mediation would be appropriate for this case. This is absolutely, seemingly hard-fought. Hard fought, certainly on the Rigmora side, litigation and in two jurisdictions. And I know your Lordship has said at the beginning of this hearing that you haven't read or you hadn't looked at Dr Harrison's affidavit in relation to the ADR and and the explanation I think you gave for why was potentially because it might include material that you shouldn't read or that that's a well-founded worry in relation to that, because all the evidence that, uh, Dr Harrison's putting forward and all the material that's in his exhibit is, are open communications, and that's the basis upon which we want.

Justice Jalil Asif KC (Judge): [02:58:44] I wasn't entirely sure. It looked as if he was putting forward material...

Andrew Ayres KC : [02:58:50] This isn't entirely normal, because I'm not saying there couldn't be a situation, for example, in England and Wales where the court might look at without prejudice material for the purposes of considering this question. But the normal situation looking at this question would be, um, to effectively examine all the open

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communications and look at the basic broad reasons and specific reasons as to why the court should grant ADR.

Justice Jalil Asif KC (Judge): [02:59:18] If both sides consider that what Dr Harrison deals with in his open correspondence, then I'm perfectly happy to look at it. But I wasn't without having canvassed that in court. I wasn't happy just to read through it. But, but there is a more fundamental question, which is what is my jurisdiction to force people into intermediation?

Andrew Ayres KC : [02:59:40] Well, the good news is you do have jurisdiction to do so. I can't, like so many things in this particular case or this jurisdiction, I can't point to a case in which your Lordship, or which any other judge has made such an order. And it may well be one of the first orders made in the Cayman Islands for compulsory. And I'll tell you what the jurisdiction is, but obviously, your Lordship will be aware that in England and Wales.

Justice Jalil Asif KC (Judge): [03:00:06] Now, for positions moved on.

Andrew Ayres KC : [03:00:07] Positions moved on. And um, and the the argument in relation to jurisdiction will be based on the overriding objective, rule 4.2 D, the GCR Order 25, rule 3, Roman I.

Justice Jalil Asif KC (Judge): [03:00:31] Rule 3?

Andrew Ayres KC : [03:00:32] Yeah. Yeah, and the inherent jurisdiction of the court.

Justice Jalil Asif KC (Judge): [03:00:38] Okay.

Andrew Ayres KC : [03:00:39] So, I mean. Hopefully it will come as...As a pleasant surprise that the court has this jurisdiction. Certainly, if an order has never been made before to this effect, this court certainly should have this jurisdiction to compel people to engage in ADR, which obviously is something that, before 2023, in England and Wales, there was, um, some reticence and reluctance to. My Lord, the overriding objective and the uh, including for the purpose.

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Justice Jalil Asif KC (Judge): [03:01:12] Was it not achieved in England by a rule change? Can't remember.

Andrew Ayres KC : [03:01:16] Not as far as I'm aware, not a specific rule change to direct it. But obviously, uh, I mean, models, insofar as there are differences,

Justice Jalil Asif KC (Judge): [03:01:27] I think it's going back to, isn't?...

Andrew Ayres KC : [03:01:29] And also in the original case, and then, um,

Justice Jalil Asif KC (Judge): [03:01:32] Geoffrey Vos, in a subsequent case,

Andrew Ayres KC : [03:01:34] Churchill and Merthyr Tydfil.

Justice Jalil Asif KC (Judge): [03:01:35] That's the one. Churchill and Merthyr Tydfil said, actually, it is compatible with the right to access to justice to require a party to go through a mediation process.

Andrew Ayres KC : [03:01:47] Yeah.

Justice Jalil Asif KC (Judge): [03:01:47] Yes.

Andrew Ayres KC : [03:01:48] So our hope is, with respect to the mediation summons, obviously my learned friend is not going to agree with what I'm going to say now, and therefore, I'd like to ask you to give directions in relation to that and how it's to be dealt with efficiently with all the rest of it. But our hope, obviously, is that, notwithstanding the reservations as to jurisdiction as to as to reasons that Rigmora LPs actually agree to engage in this process because we can we can fight it out, and doubtless we will during December and then in January. But it's much better for the parties to try and actually reach an accommodation with each other.

Justice Jalil Asif KC (Judge): [03:02:26] So someone about a year ago was going to raise halls in Merthyr Tydfil, in relation to costs and then wasn't prepared, willing to argue

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it properly in front of me and tried to get it in through the back door. I wouldn't let them because it wasn't being properly argued, because, um, if that's the basis on which you're saying that there is jurisdiction power, I think it is an interesting question that needs to be properly prepared and argued. Yes.

Andrew Ayres KC : [03:02:58] Well, that comes back to I mean, myself personally. I haven't told my learned friend this, but I am available on the 27th of November and I know your Lordship's only said you had half a day then in respect to that, but if there's any chance we could have the full day on the 27th, Your Lordship may or may not be able to procure that, but if we could have two days, um, to deal with privileged summons, any contested amendments.

Justice Jalil Asif KC (Judge): [03:03:25] I've got a hearing already and something else on the morning of the 27th. Which is why I wasn't able to to say that, um, but I but I have I got my my list of outstanding judgments is growing all the time, I have theoretically, I could do the afternoons 26th, 27th, and then we'd be into the privileged summons on the 28th. It's it's really not ideal because it's chock-a-block. But if it's essential that.

Andrew Ayres KC : [03:03:58] I mean, my Lord, I heard what your Lordship said about wanting to have it properly argued in a sense, if the ADR summons has legs, then really it should be decided sooner rather than later. We, for example, would be possibly amenable to your Lordship deciding it on paper, but I know that's exactly what your Lordship said you didn't really want.

Justice Jalil Asif KC (Judge): [03:04:24] Difficult until you know what the arguments are, but it's it doesn't strike me as being because it would be relatively completely new law in case it would need to be properly argued and willing and able to make a decision on it.

Andrew Ayres KC : [03:04:51] So in terms of other days that you might have available, um, uh, I mean, the truth is, you know, well, I mean, perhaps it's too late in December.

Shelley White, Partner, Walkers: [03:05:05] It's November, sorry

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Andrew Ayres KC : [03:05:05] Lordship had other dates in November that you might be willing to hear an argument about on that. I mean, what I, what I would say is, um, I... In terms of time estimates, I'm not currently minded to agree that contested amendments, if it's a fully effective hearing is going to be half a day. But in terms of the ADR summons, that is something which, um, with efficient skeletons and efficient submissions that we probably could do in half a day. I can't do the 17th, but your Lordship said you had some time on the 18th.

Justice Jalil Asif KC (Judge): [03:05:53] Well, I've got. I've got until about 12 o'clock on the 18th, and that's really it. So that's not going to give you enough time on the 17th. The only the only thing I have is a directions hearing at 2 o'clock, so the 17th is otherwise available.

Andrew Ayres KC : [03:06:18] Yes, well, I can't do that today, but that may not matter, somebody else might do it, but, um. But my Lord anyway, so just in terms of this, I don't want the ADR summons to get lost in everything else. And I would ask your Lordship to give some sort of directions for that.

Justice Jalil Asif KC (Judge): [03:06:37] I think it's difficult for me to give directions now until I know what dates are feasible for each side. What I would what I would suggest is this both sides recognize, I think, that any, any amendment summonses on either side and the ADR summons need to be heard as soon as possible if the trial date is not going to be disrupted. What I would suggest is that both sides try to identify dates when their summonses could be heard, agree on a timetable leading up to those summonses, and if you can't agree on both sides' positions to me and I will deal with it on paper.

Andrew Ayres KC : [03:07:23] Very well, my Lord.

Justice Jalil Asif KC (Judge): [03:07:25] I'm sorry that I just don't have your availability, but I think we're probably two judges short of what we really need to cover the work that's coming in at the moment.

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Andrew Ayres KC : [03:07:37] Yes, totally understood. So I see that's 1:00. I wanted to, I may have some more things to talk about in relation to directions, but I obviously got to address the question of the party representation.

Justice Jalil Asif KC (Judge): [03:07:49] Yes. That's fine. Uh, Stephen.

Stephen: [03:07:54] What's that? Five past two

Unknown: [03:08:16] I [03:08:16] personally... (Court adjournment) [03:08:17]

Speaker3: [04:13:46] (random conversation between the parties)

Marshall: [04:14:20] All stand. God save the king.

Justice Jalil Asif KC (Judge): [04:14:33] Yes.

Speaker3: [04:14:34] Before I move on to question

Andrew Ayres KC : [04:14:36] I move on to the question of representation and directions, just to come back to you on dates. Certainly, from the partnership side, uh, we can confirm that, uh, the 17th of December for PR, if that's acceptable to Rigmora LPs and to your lordship, then that is a date we'd like to have reserved. And then, as far as dealing with all these other matters concerned, your lordship made clear you had some time on the 27th and some time on the 26th, and I don't know whether.

Justice Jalil Asif KC (Judge): [04:15:08] I've got, I've got also I've got time earlier. And as I said, it seems to me that all parties ought to be trying to work, if possible, to get the outstanding decisions decided as soon as possible.

Andrew Ayres KC : [04:15:23] So, subject to hearing what my learned friend may have to say about this so we already have, um, the 28th, if your Lordship could reserve the half days or the or or the near half days that you have on the 26th and 27th, that might give us close to two days worth of court time, which, um, if used efficiently and with no prolix submissions, we might be able to get through everything.

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Justice Jalil Asif KC (Judge): [04:16:37] That's in my calendar.

Andrew Ayres KC : [04:16:39] So, my Lord, I will now move on to making submissions in relation to this question that my learned friend dealt with at the back end of his submissions, which is what, if any, direction should your Lordship make today? And, my Lord, I'll come to it in a moment, but there are actually, leaving aside the two choices that you're being asked to prima facie by both parties. There are, in fact two, two different choices. There's a there's actually a choice of making a direction and not making a direction. And I'm going to explain where that comes from in a moment. But if I can take your Lordship back to the order that my learned friend, um, quite properly took you to at the beginning, which is the order made in the petition on the 1st of August, and that is in Tab 4, which gives rise to what we're debating today. And it also looks at the bottom of page 8, you'll see that there is the directions in relation to this case management conference. Uh, and it deals there with any directions pursuant to CWR Order 3, rule 12 (1)A to C. And, my Lord, I don't want the C to get missed out because, um, it hasn't had a great deal of emphasis in this area. And if your Lordship turns up, um, order 3, rule 12. And that is C says service of the petition upon persons other than the company as may be appropriate, having regard to directions given under paragraphs a, B of this rule. So with that introduction, um, there are four preliminary points that I want your Lordship to take into account in relation to, um, considering this question of the application of these rules to limited partnerships three of, three of those points relate to, um, limited partnerships themselves. But the fourth relates to what the purpose of these directions really are, so the first point is a point that's already been mentioned in the argument, which is important, which is that limited partnerships have no separate legal personality. And that's a key distinction, obviously, from corporate vehicles in relation to winding up petitions. And to some degree, the questions arising in relation to this application address the significance, if there is any, of that distinction and how this applies. So that's point number one. Point number two is that every limited partnership has to have a general partner. Um, like to some degree, a board of directors for a company. Um, but it has to have that general partner.

Justice Jalil Asif KC (Judge): [04:19:27] At least one.

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Andrew Ayres KC : [04:19:28] At least one. Yes, and my Lord, perhaps again, trying to sort of analogize with a corporate situation, um, as well as, um, to a greater or lesser extent, managing the business and affairs of the partnership itself. One of the key things about the general partner is that its role includes holding the assets for the partnership legally, on behalf of the limited partnership as a whole. And perhaps this intersects with the section 33 thing, is that if and no criticism of the Rigmora LP as to what they've done in this regard, but if you're going to sue both in writ proceedings and also in a, in a petition, a limited partnership, you have to do so via the GP, you sue the GP. And again, Rigmora LP have correctly described um in the title of both proceedings. Uh, uh, the GP then, in its capacity as general partner of ATP Life Sciences, Life Science Ventures LP. So this is all important context. The third point, my Lord, I'm going to ask your Lordship to take judicial notice of, which is that in the structure of Cayman Limited Partnerships, um, it's seldom, if ever, the case that the GP has assets of its own. Um, more often than not, it's simply just an SPV, which is simply operating specifically and created specifically to operate as a general partner.

Justice Jalil Asif KC (Judge): [04:21:06] And, is that right, because most partners get paid for, uh, providing that service. So they are a means of extracting, extracting value from the fund in favour of whoever is in control of the GP.

Justice Jalil Asif KC (Judge): [04:21:22] Well, I mean, undoubtedly there may well be revenue earned, but in terms of whether that revenue is held in a general partner, that's, that's another matter entirely. They're not, they're not asset-holding vehicles for their own purposes. That's really what I'm asking your Lordship to accept.

Justice Jalil Asif KC (Judge): [04:21:40] I'm not sure that I can think of cases where the GP, I think I think I can recall cases where the GP has had an interest in the fund as well, but I'm not sure about that but I'm not sure it can take judicial notice, it never has interest in the fund.

Andrew Ayres KC : [04:21:59] No, that's not my submission. It was seldom, if ever. But, I'm sure Your Lordship can take judicial notice of the fact that.

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Justice Jalil Asif KC (Judge): [04:22:12] I mean, certainly under the act, the intention is that the limited partners provide the capital and have no role in the management of the GP. Um, generally is the party that is responsible for the management acts as a trustee on behalf of the ELPs. So. Mr Ayres, if that helps you, I'm certainly happy to take judicial notice of that. That's the scheme of the ALPA.

Andrew Ayres KC : [04:22:35] Yes. Yes. Well, I wouldn't quibble with any of that. Um, so that's all I want to say about preliminary points in relation to limited partnerships. But in terms of, um, the, the provisions of CWR Order 3, rule 12 in their corporate context, um, what is their purpose? And my lord, in my submission, their purpose is to put in place, guide rails for the proper onward conduct of the petition, uh, also in the corporate context, to test whether the company has a genuine interest in the litigation or whether it's a bystander in a dispute between others.

Justice Jalil Asif KC (Judge): [04:23:22] Sorry, just again, whether the company has

Andrew Ayres KC : [04:23:25] A genuine interest in the litigation or whether it's a bystander in a dispute between others.

Justice Jalil Asif KC (Judge): [04:23:32] Thank you.

Andrew Ayres KC : [04:23:33] And also, to deal with who the proper parties to the petition should be. And so, obviously, at the centre of the debate for you is the question of costs. And the Rigmora LPs are very clear about this, that they're focusing on, um.

Justice Jalil Asif KC (Judge): [04:23:54] Cost consequences.

Andrew Ayres KC : [04:23:56] On order 24, rule 8, um, which of course just gives rise to whatever its terms to general rules. But the, the point, uh, my lord, to emphasize in relation to this is that when you're considering these sorts of directions, at least in the corporate context, you're not simply just considering the cost consequences. And what my learned friend calls the, the legal costs principle. You're considering all sorts of things effectively for the proper and efficient forward management of the petition. And if you accept that those points, then the question arises, which will come on in a moment as to how that

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applies in the limited partnership context. In light of the other preliminary points that I've raised to your Lordship. So, my Lord, I want to turn first of all to jurisdiction, and then I'm also going to deal, if your Lordship was pleased to know, um, your subparagraph G point. And then after that, on the assumption your Lordship accepts, uh, submissions to the effect that you do have jurisdiction, I'm going to address you on effectively the discretion.

Justice Jalil Asif KC (Judge): [04:25:11] Why shouldn't I accept it?

Andrew Ayres KC : [04:25:13] Well, what? Yes, yes. But what are the factors that you at least you need to take into account when you're looking at this particular situation? So turning to the question of jurisdiction, if we can look, um, at the Exempted Limited Partnerships Act, my learned friend very properly took you to and look at paragraph 36. And the first few phrases of Section 36, subsection 3, are important and are due to more weight than my learned friend might have put on them. Um, because they make clear, um, that the primary position and the prevailing, uh, sets of rules are to be found in the ELP Act, not in the Companies Act or the companies' winding up rules because it says, except to the extent that the provisions are not consistent with this act and in the event of any inconsistencies, this act shall prevail and subject to any express provisions of this act to the contrary. And then it goes on, uh, with various provisions that shall apply to the winding up of Exempted Limited Partnerships. But exempted limited partnerships. So you've seen our skeleton argument, and you've seen the emphasis that we place on subparagraph C with respect to, um, uh, the provision there that says that references to a director or officer of a company shall include references to the general partner of an exempted limited partnership. So as far as the analysis of, uh, replacing the words, your Lordship has seen what we've done in our skeleton, there's a very clear tripartite distinction between the company, um, between the limited partners and between, um, uh, the company limited partnership. The limited partners should be treated as if they were shareholders of the company. And then my learned friend, uh, went on to make submissions, to the effect, as if I understood it correctly, that the important part of subparagraph B was the manner in which, um, contributories are to be treated or limited partners are to be treated in the context of contributories, namely contributories um, contribute up to the limit of their contribution. And it's made clear in respect of that that it says, except that the application of the provisions will not cause a limited partner to be subject to any greater liability than that limited partner would otherwise bear under this

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act. But for the application of this paragraph. And one can completely understand that because the principle of limited liability of limited partners, subject to them losing that limited liability under the act, is an important principle. But the important words for the purposes of this argument are in subparagraph B, that the limited partners shall be treated as if they were shareholders of a company. My Lord, we say that's for all relevant purposes under the CWR and the other provisions. So there's a clear tripartite analysis. Limited partners are to be treated as if they were shareholders, the company is to be treated, limited partner is to be treated as the company, and the directors and officers are to be treated as though they were a GP. So, my Lord, just dealing with the question.

Justice Jalil Asif KC (Judge): [04:29:00] Mr Ayres, is it, is it exclusive? I know you said your skeleton it is, um, in your skeleton, you say, just give me a minute to get it right. Paragraph 13, you say: "company becomes a partnership, shareholders become limited partners, the director becomes a general partner", but it's actually the other way around, isn't it? Partnership is treated as if it is, it is a company under CWR, limited partners are treated as if they are shareholders, but it doesn't necessarily follow that it is only limited partners who are to be treated as shareholders. Isn't that the issue? And in 3C, um, where it says shall include references to the general partner of an exempted limited partnership. Is it right that it that it's exclusionary and that there is no circumstances in which a general partner can be treated as equally being a member of the company?

Andrew Ayres KC : [04:30:05] Well, the answer to that is that if there is this uncertainty, if I can put it like that, then that's not made clear in these provisions. And as a matter of the common sense of this language, it's clear that those definitions are to transpose over in all respects. So you simply can't read into that. The fact that it's not exclusionary, it's, it's intended effectively to deal with all of these things. Um, and in all instances in which they are, they are used. Otherwise, there would be endless uncertainty in argument about the circumstances in which these transpositions are not meant to work. So, my Lord, when, when you come back to the company winding up rules, order 3, rule 12, we say that certainly when you come to B, um, you're, you're looking at the language on the basis that you're asking the question as to whether the proceedings should be treated as a proceeding against the partnership, or as an inter-party proceeding between one or more limited partners as petitioners. The other limited partner or limited partners as respondents. So, as a matter of the language, and I'll come to why this makes sense in a

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moment. Um, you have only got two choices there, and I can see your lordship saying, well, um, it's always, uh, interesting when counsel come before you saying you don't have jurisdiction to do something. And there is obviously a desire on the part of the court, not necessarily today, generally to potentially fill the gaps of jurisdiction in circumstances where it feels it's necessary. But, my lord, you simply aren't in that territory because we say the language is clear, but I'm going to persuade your lordship, in addition to that, as to why all of this makes sense. So, there's simply no mention of the GP and no possible mention of GP, so you have, you have those two choices there, none of which involve an analysis of the position of the GP.

Justice Jalil Asif KC (Judge): [04:32:38] Sorry, where is there no mention?

Andrew Ayres KC : [04:32:40] Well, if you if you're, if you're transposing the language into rule 12, subrule 1, paragraph B, um, there's, there's, there's, there's no transposition of the language of general partner.

Justice Jalil Asif KC (Judge): [04:33:02] What circumstances would there ever be their petition where only the limited partners were the active parties, bearing in mind that none of them have any, and particularly in the context of adjustment, winding up, where none of the limited partners ever have any role in the management of the ELP.

Andrew Ayres KC : [04:33:25] But none of the limited partners ever had a role in the management. That would be all that in every case.

Justice Jalil Asif KC (Judge): [04:33:31] Exactly. So if the, if the limited partners have no role in management, what circumstances is there ever going to be a petition which involves a dispute between the limited partners only? How is that ever going to be a situation where there is a dispute of that kind?

Andrew Ayres KC : [04:33:55] My Lord, in terms of whether specific allegations are made against the limited partners, there won't be, but there might well be a dispute. And indeed, my learned friend raised this possibility in terms of whether the limited partners come in, um, to say, well, there hasn't been a breach of the limited partnership agreement or, um, or that sort of thing, or to, for example, to say that.

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Justice Jalil Asif KC (Judge): [04:34:15] But if they're going to come in, they're only going to come in because the claim has been started against someone else. So I still don't see how 12 (1)B is on your analysis is ever going to be effective, because you're never going to have a case only involving the limited partners having a fight between themselves.

Andrew Ayres KC : [04:34:33] And that may be the clue, my Lord, as to why, effectively, that B is completely irrelevant to the LP situation. And I'm going to explain why.

Justice Jalil Asif KC (Judge): [04:34:42] Okay.

Andrew Ayres KC : [04:34:44] My Lord, before I do that, um, in terms of, uh, this question of my learned friend obviously puts a lot of emphasis on the word members. For the purposes of, uh, looking at B and that effectively you can you can, members is a different word from the word that's used, uh, for example, in section 36 and that you can, uh, treat members in those circumstances as any type of partner, whether general or limited, of the of the um, limited partnership. Well, that, that is really hopelessly semantic in our submission because there's no difference in this context, uh, between shareholders, uh, and members and contributaries for the purposes of, of this analysis. So, my Lord, just into, just to deal with a couple of other points. The first one is that in the preamble to.

Justice Jalil Asif KC (Judge): [04:35:57] I'm so sorry, Mr Ayres, I'm conscious I'm cutting across you when you're trying to develop your submissions, but I'm just thinking through what you said a moment ago about in the ELP context 12 (1)B, actually just having no application at all. But if that's right, then doesn't that cut against 12 (1)A also having any real meaning in an ELP context? Because, as I think you were saying, um, both sides are saying 12 (1)A and B are interdependent and 12 (1)A, whether or not the company is properly able to participate in the proceeding, or should be treated merely as a subject matter of the proceeding. Well, that's not going to be meaningful. Meaningful if 12 (1)B doesn't operate or cannot operate.

Andrew Ayres KC : [04:36:48] And A isn't meaning, it doesn't really have any meaning at all anyway, because A is directed to a situation where the company has got a separate

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legal personality, and so one has to decide in that situation, where you have a, a winding up petition, whether the company is going to, uh, participate. To what extent? Whether it's going to be the full respondent or whether it's going to be respondent only as to discovery. Um, well, the difference, the difference here is that.

Justice Jalil Asif KC (Judge): [04:37:17] So effectively, sorry, so effectively, you're saying is what you're saying, that all three rule 12 just doesn't apply at all in the context. Okay.

Andrew Ayres KC : [04:37:28] And, my Lord, the reason I come back to this point about whether you make a direction at all, um, and if your lordship looks at the preamble to rule 12 one, it says, upon hearing the summons for directions, the court shall give such directions as it thinks appropriate. Now, my learned friend obviously drew your attention to the word shall, which is a mandatory word. I accept that.

Justice Jalil Asif KC (Judge): [04:37:50] That's appropriate.

Andrew Ayres KC : [04:37:52] ...not to make any, any directions at all. Um, and so, my Lord, that's why I say that in reality your, your, um, your options are to, uh, to, uh, make, make an, uh, direction or to not make any direction. So doing nothing is a choice that is available to you. Now, in absolute fairness, I need to take your lordship to the FSD guide, which doesn't support what I'm what I've just said.

Justice Jalil Asif KC (Judge): [04:38:23] Okay.

Andrew Ayres KC : [04:38:24] Can I take your Lordship to that? That's in tab four, tab four, looking at page number 58, you'll see that it's a page from the FSD guide headed Contributories' Petition. Your Lordship got that?

Justice Jalil Asif KC (Judge): [04:38:45] Yes.

Andrew Ayres KC : [04:38:45] And we're well known to you. Uh, now.

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Andrew Ayres KC : [04:38:49] I haven't looked at the FSD guide for quite a long time, actually.

Andrew Ayres KC : [04:38:52] Well...

Justice Jalil Asif KC (Judge): [04:38:53] It's in desperate need of rewriting and updating.

Andrew Ayres KC : [04:38:56] Well, in C 6.2, it says characterization of the proceeding and obviously, um, what, what one is dealing with here, it is not addressing itself at all to the ELP situation, addressing itself to the corporate one. But what it says, it says must always.

Justice Jalil Asif KC (Judge): [04:39:13] I'm not even sure this version of the, i'm not even sure the LP Act was in force at the time, 2015, when the FSD guide was written. I can't remember.

Andrew Ayres KC : [04:39:26] I don't know the answer to that question, but I can try and find out, but, my Lord, I'm drawing this to your attention because there are some more stringent words here, which it says in second sentence of C 6.2, it says the judge must always determine whether the proceeding should be treated as, and then it goes on. And then the final sentence is the way in which the proceeding is characterized determines the manner of its future conduct, which is a point that I made in support of what I was saying earlier on. But, my Lord, I wouldn't have any, I wouldn't have any quibble with this in the corporate context, and I wouldn't have any submissions to, uh, dissuade you from the words... must always, but this simply isn't just applicable in our situation. Well, if, if you are, um, concerned that you might be running against the FSD guide, then the reality is it's just a guide.

Justice Jalil Asif KC (Judge): [04:40:21] I was going to say it's a guide.

Andrew Ayres KC : [04:40:23] It's a guide. And you should you should be only directed by the correct decision. So, my Lord, the other point I wanted to make before I came on to hopefully trying to address some of what your Lordship has mentioned earlier on, which

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is, um, the point that my learned friend happily grabbed on to, which is the subparagraph b, g point in relation to the, uh, section 36 of the ELP Act.

Justice Jalil Asif KC (Judge): [04:40:57] Yes

Andrew Ayres KC : [04:40:57] Which is Lordship's point, and your Lordships look to that because you raised it with counsel, and it says, uh, on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership, as may be just and equitable. Well, there are two problems with why, um, with using that for the purposes of making the sort of directions that you're invited to make in relation to this particular hearing. And the first is that, um, this is, this question of characterization is already dealt with under the CWR Order 3, Rule 12. So, um, the specific ousts the general in my submission, and this is not intended as effectively as a way of getting around that or filling any lacuna. And the fact, the fact that, um, CWR order 3 rule 12 does not deal with the general partner, um, is simply part of the provisions that we have to deal with under those, under those rules. It's a gap that simply can't be plugged by this sort of provision. Well, that's the first point.

Justice Jalil Asif KC (Judge): [04:42:18] Does that depend on me concluding that the omission is intentional rather than an oversight?

Andrew Ayres KC : [04:42:28] Well, neither of those questions I would submit are irrelevant, whether intentional or oversight. The question is whether or not the language, whether construed plainly or stretched, is capable of giving your Lordship jurisdiction. It shouldn't be a question as to whether or not.

Justice Jalil Asif KC (Judge): [04:42:51] But if, if, if, if the language of the statute or the rules is unclear, and I'm not clear myself as to how I should construe it. I think I need to look at the legislative purpose, and if I decide that it was intentional, um, then I go then I accept your argument. If I consider that it's an oversight, but it can't be fixed by, um, interpretation of, uh, either 36 (3)A and B or CWR, Order 3, rule 12. Then, in those circumstances, would I not be entitled to say, well, um, I can get there by paragraph G.

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Andrew Ayres KC : [04:43:39] My submission would be none in those circumstances, because...

Justice Jalil Asif KC (Judge): [04:43:42] Right

Andrew Ayres KC : [04:43:43] In terms of this question of intentional or oversight, I submit that you're not going to be able to answer that question at all. And the reason you're not going to be able to answer it is because, um, for good or ill, the legislative scheme here is slightly clunky, if I can use a perhaps a rude word, but where effect you know you are to some degree left to analyze how how, um, Part Five on the CWR are to, apply to ELPs.

Justice Jalil Asif KC (Judge): [04:44:16] Not necessarily...?

Andrew Ayres KC : [04:44:18] Not necessarily happy happy bedfellows. And my lord, maybe this is possibly going to be the first case or not, but, um, there may well be situations in my submission. This is one of them where the corporate provisions in relation to party representation costs orders just simply don't apply to ELPs. Um, so that's that's the first point, which is specific as the general, and you can't run to the general, um, just to fill a hole, um, that is, uh, on things or an omission that is there in the statutory provisions. But there's a second point there, which is that the suggestion that this can be used for these sorts of directions at all is wrong because, um, this, uh, paragraph G is directed to a different activity. And, my Lord, that different activity is the making of orders and giving directions for the winding up and dissolution of exempt limited partnerships. It's not, it's intended for effectively, um, what one might describe as the relief that one might give at the merits hearing. It's not intended for what are effectively procedural orders that are made during the progress of, of the petition. Now, my Lord, you'll forgive me because I don't have any authority to support that submission, as you have just raised it today. Um, And if I find if I look for some, I may not be able to find some. But, my Lord, I make that submission off the back of the plain wording of the section, which is it's for the winding up and dissolution of an exempted limited partnership. It's it doesn't express itself to be any wider to include the conduct of the proceedings.

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Andrew Ayres KC : [04:46:14] So, my Lord, in terms of why, um, my submission works, um, I really make two points, which is that. If you are seeking to bring a petition against first point, if you're seeking to bring a petition against a limited partnership, you always have to sue the GP and, um, for that structural reason, the GP, the GP is, is, is effectively um, standing in the shoes of the partnership and it is the way of bringing the entire partnership before the court. And that's exactly what's happened in these proceedings, because the GP has been sued (in its capacity as general partner of ATP Life Science Ventures LP), so what has happened? And this is totally understandable and no criticism of, uh, of a Rigmora LP for doing this because they had to do this, is that what they have done is brought the whole partnership before the court by suing in that manner. And the difference, my Lord, between the limited partnership situation and the corporate situation is that in the corporate situation, the court is considering whether or not the company, a separate legal personality, has any independent interest in the dispute, and it sometimes might and it sometimes might not. In my submission, because of the way in which, um, one has to sue, uh, exempted limited partnerships, the whole partnership will always have an interest in the dispute, an independent interest in dispute, because it will always effectively be before the court because of the way in which it has to be sued, because of the way, in fact, that there's no separate legal personality. So. Well, that is.

Justice Jalil Asif KC (Judge): [04:48:31] That doesn't really work where the complaint is about the conduct of the GP itself rather than, rather than, um, the claim against the ELP. I think you do, I think it is necessary to separate out complaints against the GP, which may be brought by the LPs, and complaints against the LPs itself, which are likely to be brought by external parties.

Andrew Ayres KC : [04:48:56] My Lord, there's no there's no clear distinction in relation to those particular types of things when you're dealing with, generally speaking, the run of the mill, just actual winding up petitions in relation to limited partnerships, because yes, of course there might be complaints about the GP, but there also might be some complaints about what's happened with respect to other LPs. So, for example, one LP might complain that another LP has got an excessive distribution, but the core thing about it is that, um, it's effectively seeking to wind up the whole partnership. And that's, that's the point, because it's effectively a different question from, uh, because there's no way that the partnership can get away from having an interest in that particular dispute in a

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way that, in the corporate context, it can do. You can have a just and equitable winding up in a corporate context where effectively the company is a bystander. It is, it is an argument between, uh, between members. You simply just can't have that. My Lord, the second, the second point relates to the specific position of a GP. Now, obviously, and the Rigmora LPs make, make no, um, uh, you know, they don't hide any of this that we're looking to try and, uh, get, get to the provisions of Order 24, rule 8. Perhaps we can just have a look at that. So. So I'm sorry, I haven't I haven't given the headline of what the second point is yet, but just if you just bear with me for a moment. So in the corporate context, you've got Order 24, rule 8, which, which makes the point that in paragraph 1, the general rule is that costs incurred by a person who successfully prevents creditors' winding up petition will be paid out of the assets of the company on the indemnity basis. And then two, in the case of a contributory winding-up petition.

Justice Jalil Asif KC (Judge): [04:51:09] I'm so sorry, are you in

Andrew Ayres KC : [04:51:10] Order 24, rule 8, which is, which is in tab 2, page number 46.

Justice Jalil Asif KC (Judge): [04:51:16] Yeah.

Andrew Ayres KC : [04:51:19] And then we have these contributory winding up rules, and obviously, they're general rules, so in a sense, they're prima facie, they can be displaced at trial. And the, the first of all, A says if the court has directed that the company itself is properly able to participate in the proceeding. The general rule is that the costs of a successful petitioner be paid out of the company. And, my Lord, I'll just pause there, attempt not to distract us, but the slightly odd thing about that is that it doesn't track the wording of, um, subparagraph A in order 3, rule 12 one, which also talks about being treated as merely the subject matter of the proceeding. I don't have any specific submissions about that, but it is noteworthy that that that isn't dealt with in when we go back to rule 8 subrule two, subparagraph A, and then we've got um, B, which is if the court has directed the winding up petition be treated as inter partes proceeding between one or more members, and then there's the glitch, your lordship, by the way, I should say that I think it's common ground, I think there is a glitch exactly as your lordship has said, it just you can't make sense of it otherwise. Um, and then it says the general rule is that

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none of the costs should be paid out of the assets of the company, and the successful parties should pay the costs of the successful, uh, the unsuccessful parties should pay the costs of the successful party. Such costs are to be taxed on a standard basis. So, my Lord, this, this this further submission as to why this doesn't work for limited partnerships relates to the fact that, um, GP subject to having remuneration or having an interest in the fund or whatever, they generally speaking, don't have assets of their own. And, your Lordship heard my submissions about that before. And the difficulty is that if how how is a GP who is, um, made the respondent to a winding up petition, um, is going to defend that petition in a situation where it is assumed that, um, the proceedings against him are going to be inter partes, to use the phraseology that we're dealing with here. And he's going to at least be subject to the general rule that, um, no cost should come out of the partnership and that if the company, or sorry, if the limited partnership is wound up, he, the GP, is going to be paying the costs. My Lord, what I submit in relation to this is that this is quite close to a situation where, uh, if not a rogue's charter, then one's going to have quite a big breakdown in the way in which GPS operate, because you could simply have a situation where, um, someone has a has an adjustment for winding up petition against the partnership. The GP is the only party that is made a respondent, as in this particular case, and the GP, for the sake of my example, doesn't have any funds of its own. Um, it knows from a decision that Your Lordship is being invited to make today that, um, you know, if it defends the petition, there is a high likelihood, if not a certainty, that it was it is going to be paying, um, the costs out of its own pocket. The GP simply wouldn't have any basis for resisting the petition. It would roll over immediately. My Lord, that is that is a powerful reason as to why this set of provisions simply just doesn't work when it comes to trying to graft them onto the partnerships. My Lord, can I now just take you to some of the, um, the law in relation to this? I'm going to cover some of the same ground that my learned friend did. And, um, my learned friend referred to, uh, the Freerider case, and there's, there's nothing in Freerider that obviously I do or can disagree with. And I obviously don't disagree with what my learned friend calls the legal cost principle as far as, um, companies are concerned. But Freerider was was company case and it simply, uh, for all the reasons I've given um doesn't have any application to, um, limited partnerships. But the high point, although my learned friend was, was professionally diffident about it, um, is the Cybernaut case, which perhaps we can have a look at that again. Um, that was a matter, actually, of really two consent orders and then an issue that wasn't determined. Um, your lordships already had a look at that. That's in, uh, tab 8 of

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the bundle. And my learned friend took you to paragraph 31, which you've read. Um, but, but in a nutshell, you are getting really no assistance from this whatsoever, because as I say, there are really two there are two consent orders here. One is a consent order made prior to the trial by Justice Foster, which is the consent order with respect to the directions, um, uh, the partnership shall not participate in the proceedings on the petition shall be treated as inter partes proceeding between the petitioners as petitioners and the GP and Oriental as respondents, and was just important to know that we don't know the basis upon which this consent was given. But it is instructive to note that there does seem to have been another party oriented, um, for the purposes of understanding why, uh, that concession may well have been made. So that's the first consent order, and then the second consent order, in effect, or a concession made later in paragraph 31, is that in effect, the respondents accept that they'll, um, be entitled to, um, uh, they'll be obliged to pay the costs. And then there's a, there's a third point which is raised and then, um, not, not dealt with, which is the separate question of whether or not, uh, the GP is entitled to indemnity in respect of, uh, from the assets of the partnership. And, um, although the court says this is at line 17 on the next page, in this case, the effect of the consent orders, the partnership did not participate in the proceeding, the GP was acting in its own personal right, and the effects of rule 8 (2)B is that it must bear the risk and cost per person. And then, however, I'm persuaded by Mr Hacker not to make any final determination at this point on the basis that it's academic, um, because the GP has not, in fact, made any claim for an indemnity. Should the GP change its mind and make a claim in liquidation, this point can be more fully addressed and decided by means of the sanction application. And that's important because, um, it is, it is very important in distinguishing, in dealing with all of these arguments, to distinguish between any actual or prima facie right of costs between the parties, and the separate question of whether or not there's a right of indemnity. And my Lord, my submission is that the question of whether or not the GP is entitled to use the partnership assets is entirely determined by the Limited Partnership Act agreement of any particular limited partnership, and that that is the touchstone of whether or not it's proper and appropriate for the GP to expend funds.

Andrew Ayres KC : [04:59:51] And my learned friend took you to some of his complaints, and he talked about what he described as very large sums of money being used for various things, including for legal expenses. And my Lord, my client's position is that's all entirely proper and authorized by the limited partnership agreement. And Lord, this, this

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is an important point because in the corporate context, there doesn't normally tend to be anything in the article dealing with this particular provision or possibility. And what happens in the corporate context is that if you have what is, in effect, a dispute being undertaken between members. But for example, the members in control of the majority members are using the company's money for the purposes of fighting that dispute. That is improper. And that's, that's what my learned friend is focusing on in relation to this question of the legal cost principle. But that's, that's a principle effectively, um, of general application with respect to companies. But it simply doesn't apply in the limited partnership situation, because the only question is whether or not it's proper for the GP to use, um, partnership assets for any particular expenses pursuant to the limited partnership agreement. So those are my submissions in relation to, um, jurisdiction.

Justice Jalil Asif KC (Judge): [05:01:26] So, can I just let me just see if I've understood your position correctly? Um, because under section 33 (3) of the ELP Act, uh, the GP is the only party that should be sued. So any cost issues are always going to be determined between whoever is the petitioner and the GP within the proceedings. And as a result of that, there's no effectively there's no need to make the order that Mr Scott asks for, because any cost order is, is going to at least nominally be made against the GP and then the important question is whether the GP has a right of indemnity under the ELPA.

Andrew Ayres KC : [05:02:16] Yes. Okay.

Andrew Ayres KC : [05:02:18] And these questions of the general rule set out in the CWR.

Justice Jalil Asif KC (Judge): [05:02:25] It just doesn't arise in.

Andrew Ayres KC : [05:02:27] They deal with the corporate situation where, um, where there isn't a effectively necessarily contractual right of indemnity or anything for a particular member, there would never be a situation where a member, uh, well, it would be very unusual for a member to have effectively some sort of right of indemnity or to use the company's assets for the purposes of litigation to which it was parted. So...

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Justice Jalil Asif KC (Judge): [05:02:52] So sorry. Mr ayres, I know I keep interrupting you, but do you say then that it's a there's a similarity with the trustee position because a GP is treated as a trustee and in trust litigation, um, the trustee of the trust would be entitled to defend proceedings and seek an indemnity from the trust, um, from in relation to costs incurred in defending the trust?

Andrew Ayres KC : [05:03:22] Yes, to a large degree, but one has to be careful. I'm not going to unqualifiedly accept that it, that it is completely analogous, because trustees are in a slightly different position, because they have different rights of access to the court, for example, with respect to getting directions. And, you know, they can be encouraged to seek, for example, advance approval of various things. The other, the other thing as well, which is that this perhaps comes to a point my learned friend is making, is focusing on this question of the GP being a fiduciary. Now, obviously, I accept that, that the GP has certain fiduciary functions, but in terms of the GP's actual duties under section 19 of the ELP, their duties of good faith to the whole part. And so, um, I mean, in that sense, one has to be a little bit careful about.

Justice Jalil Asif KC (Judge): [05:04:08] No, I think there I think Lord Hamblen set the road in William and tready ports, set the road to each individual partner, limited partner. I don't see how they can be owed to the general body of partners. It's got to be owed to each individual and separately.

Andrew Ayres KC : [05:04:30] The proper construction of section 19 is that is, that the duties are owed to individually. So, my lord, um, you know exactly where I'm coming from, which is there's absolutely no need to make to make this provision, which follows through into a effectively, a sort of quasi-preemptive or general application cost order. And, and, also one has to be very careful indeed in, in, um, in, uh, Cybernaut. The judge was persuaded not to do it. The judge had to be very careful as to ensuring that you are not trampling on, on the GP's right of right of indemnity, Because, I mean, my lord, I, my learned friend very fairly took you to this provision, but it's it's accepted in all the debate that's been going on in respect of undertakings, which my learned friend addressed you on this morning. Rigmora LPs, they, they accept in their open correspondence that the GP should be entitled to use partnership assets for the purposes of this litigation. Does your lordship remember having a look at that?

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Justice Jalil Asif KC (Judge): [05:05:42] Yes, I do.

Andrew Ayres KC : [05:05:43] So the references, the letter of the 25th of October, page 1930, paragraph 3, and obviously that that's in a sense not relevant to the question of law.

Justice Jalil Asif KC (Judge): [05:05:56] So did you say 1930 page?

Andrew Ayres KC : [05:05:59] 1930, yes. So, my Lord, I just want to make a few points about, um, if I, if you're against me on the question of jurisdiction. Um, as to why you shouldn't make any order at all and to some degree, there are some points that I've already covered, but, um. The first point is, and perhaps has to look at this clearly, is that the only complaints and allegations in this claim are made against the GP and Doctor Harrison. None of the other LPs, none of them are parties to the litigation. And we come back to subparagraph C. It hasn't been suggested by the Rigmora LP that any other LPs should, um, uh, should be made parties to to the petition. And that may be Rigmora LPs, say, because they don't have any complaints against them. There are any complaints against the GP, but, my Lord, the proper construction of of the proceedings in those circumstances is that, um, we have an LP making a complaint against the partnership itself. And, my Lord, in terms of the allegations, uh, in relation to the three core matters in the petition, which are loss of trust and confidence, loss of substratum, need for an investigation. So in terms of the loss of trust and confidence, there are at least two elements to that, obviously, maybe more if amendments are granted. But you have a dispute about the question of whether capital calls were properly made. And you also have, um, the question of the commencement and pursuit of the Delaware proceedings. Now, those two issues there, obviously, there may be complaints against the GP, but they are partnership issues. Whether or not it is correct that the Rigmora LPs have failed to answer capital calls. That is a partnership issue. Um, and it's in the interests of interest of the partnership as a whole that that be determined. At the same point goes for the Delaware proceedings. The Delaware proceedings have been brought for the purposes of answering a number of questions, including whether or not, um, the capital calls have, have not been answered. And again, it's in the interests of the partnership that that question is answered. And then in terms of loss of substratum need for investigation, I

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mean, those are plainly in my submission partnership matters. Um, and they're relied upon for the purposes of the winding-up petition. So that's, that's all support for the suggestion that what you have before you is a dispute between a limited partner and the partnership as a whole. So that's the first point, my Lord. The second is on the discretionary point. The second point is is a repeat of my chilling-effect, uh, or rogue's-charter point, which is that one have to be very cautious about making this sort of order because effectively you're just pulling the legs out from under the GP completely in relation to this, in circumstances where the GP wants an opportunity to defend the trial, to show that it's a good GP and also to, to make, um, costs arguments to you at the end of the trial on a level playing field.

Andrew Ayres KC : [05:09:31] The third point is really just to repeat my submissions in relation to the suggestion that there really isn't a good analogy between the corporate context and, um, the limited partnership context. That's because, as I've submitted to you already, the core question here is whether or not the GP can spend the partnership's money on defending the petition, um, by reference to the limited partnership agreement. And that question is not before the court. It's not it's not suggested by Rigmora LPs to be before the court. The fourth point is that the Rigmora LPs come to you, and they say that they're bearing all the costs of these proceedings, uh, because they rely on their extremely large economic interests in the fund. And they say that effectively that makes, uh, it it sort of just that you should, um, ensure that, uh, at the very least, that they're not being, uh, paid with their own money in respect of the costs of litigation.

Andrew Ayres KC : [05:10:38] My Lord, there are two problems with that, or one problem specifically, which is that if my learned friend described the assets of the partnership as our money, now, I'm not getting away from anything in this case, but that's a wrong characterization of the assets of the partnership. The assets of the partnership belong to the partnership. They don't belong to the Rigmora LPs. I know that in sort of layman's terms that one might think that they they do, but they don't. Um, and the crucial thing that my learned friend is missing from his analysis is that, yes, he may be entitled to whatever it is, 94, 97% of the economic interest in the partnership. Uh, but he's not entitled to the entirety of that capital without taking into account the proper application of expenses incurred by the GP in fulfilling its functions and duties. And if the GP is entitled to expend that money, um, then that's simply nothing that the Rigmora LPs can say, uh, in relation

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to that being their money. It's not. It's part of the contractual and statutory arrangements that they've entered into in this fairly unusual limited partnership.

Justice Jalil Asif KC (Judge): [05:11:58] There's another point. This, um, although it doesn't necessarily go to the exercise of discretion, but it goes to the points of principle, which is whatever I decide needs to work, not just in a situation where the LP that's raising the complaint, owns 98% but also where LP owns 5 or 10% and it's got to be it's got to be workable across all the possible ranges of situations.

Andrew Ayres KC : [05:12:26] That that perhaps comes back to some degree, I don't blame Rigmora LPs for putting their position like this, but basically they say it's all our money. It's being managed by by a rogue individual, um, who we don't like and in whom we've lost trust and confidence. But, you know, they are effectively treating this, um, as though it's a real trust in which they are the sole beneficiary and that that is not the arrangement that they entered into, entered into this, uh, limited partnership pursuant to the limited partnership agreement. Um, can't, um, uh, ignore that when making submissions now about the position. So yes, your Lordship shouldn't just be steamrolled into thinking, well, this is effectively a trust. I'm just going to do, uh, whatever the Rigmora LPs say, and I'm also going to, um, recognise the fact that, um, the trustee in inverted comments hasn't sought, um, any court indemnity or anything like that. That's all irrelevant. My Lord, my final point, I actually only got five, is, um, the Rigmora LPs they made points on, my learned friend made points this morning about the loss of trust and confidence and the suggestion that, uh, the manager, sort of under a cloud, if that's where they want to, should simply step aside. And, my Lord, that's all to be decided. The question of who's right and who's wrong in this hard-fought battle is for your Lordship in January. And the reality is the fact that trust and confidence lost, that's not a subjective matter. Um, the question is the proceedings will consider whether the allegation of loss and trust and confidence is properly and fairly made out. My client, the GP, on behalf of the partnership, is not a recalcitrant manager, but is simply seeking to uphold the terms of the LPA and undertake its functions for the benefit of all LPs, not just Rigmora, even though Rigmora is a massive part of that. So in terms of the rights and wrongs of this, it would be completely wrong to make any direction which prima facie makes a, uh, decides that cost question now. So, with two possibilities that I invite you to, um, to make, uh, um, if you have jurisdiction. The first one is a direction of the petitioners, a proceeding brought

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against the partnership because that's in reality what it is. And the second possibility is to make no direction at all.

Shelley White, Partner, Walkers: [05:15:08] (Ms. White, in a low voice, confers with KC)... The ELP was enforced on the 2nd of July.

Andrew Ayres KC : [05:15:12] So Miss White tells me the ELP Act was in force on the 2nd of July, 2014, having passed on the 11th of April 2014.

Shelley White, Partner, Walkers: [05:15:24] previous to the FSD

Andrew Ayres KC : [05:15:26] So before before the FSD guide came into.

Shelley White, Partner, Walkers: [05:15:29] Our pleadings, that's the percentage. So it's around.

Andrew Ayres KC : [05:15:32] So just just in terms of the specific percentages in our pleadings, we accept that Rigmora has 97.9%.

Justice Jalil Asif KC (Judge): [05:15:40] Thank you.

Andrew Ayres KC : [05:15:42] And I think I think it's said on, on, on the other side that it's 98% so it's pretty close. My Lord, can I just have 10 seconds?

Justice Jalil Asif KC (Judge): [05:15:49] Of course.

Andrew Ayres KC : [05:15:54] Those are my submissions.

Justice Jalil Asif KC (Judge): [05:15:55] Thank you very much, Mr Ayres. Yes. Mr. Scott.

Andrew Scott KC: [05:15:59] Would it be convenient to your Lordship to take things in reverse order? Deal with the party's issue now?

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Justice Jalil Asif KC (Judge): [05:16:05] Take take take take it.

Andrew Scott KC: [05:16:08] That's what I would do. My Lord, can I begin on the parties' issue? Um, just to ensure everyone understands very clearly what our position is on legal spend. Can we go, please, to page 1930 in the bundle? It's the correspondence of...

Justice Jalil Asif KC (Judge): [05:16:25] 1 or 2.

Andrew Scott KC: [05:16:27] Bundle two, the letter from Campbell's that we looked at this morning, seeking undertakings. There's, of course, a fundamental distinction between the undertakings. One is seeking to hold the ring and the party's position in the dispute. And your Lordship sees the distinction very clearly in paragraph 3, final sentence. So, having carved out those payments from the undertakings. Campbell's writes for the avoidance of debt, however, this is without prejudice to the Rigmora LP's position that any such payments are unlawful and invalid, and the Rigmora LP's rights in regards to such payments are reserved. So it is quite right to say we have not sought undertakings in relation to those matters. He is quite wrong, insofar as he was intending to suggest that we accept that the use of partnership moneys for those purposes is proper. On the contrary, we say it is entirely improper, unlawful and uninvent. So I just wanted to correct any misapprehension on his, or more importantly, his client's fault on that issue. And, on the discretionary factors, my learned friend, um, put to your Lordship. He said that capital calls are a partnership issue. Whether or not he's correct about that, the petition is not simply or indeed not for the most part about the disputed capital calls. It is a petition which, as your Lordship will have seen from reviewing the amendments, puts in place a variety of allegations about the GPS wrongdoing. And the fact that there are no allegations about the other LPs, it's a point in my favour, because it reinforces that the substance of the dispute is a dispute between Rigmora LPs, on the one hand and the GP on the other. Well, the factor that was put to you at a number of stages in the argument about a rogue's charter. As I understand it, that was predicated on the assertion that GPs seldom have assets with which to defend themselves. Any Lordship observed with respect entirely rightly that that was not a matter of which judicial notice could be taken. It's not even a matter of which. Any evidence of the GP's position in the present case is before your Lordship. So it is not being suggested, at least not in any evidence, before you that this particular GP, having profited so handsomely from this partnership over the years, is not

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in a position to defend itself. So, with respect, your Lordship is in no position either to take judicial notice about the matter as a generality, or indeed to make any finding to that effect in the present case.

Justice Jalil Asif KC (Judge): [05:19:57] I notice when we were looking at the sideboard, the GP apparently had funded its own defence.

Andrew Scott KC: [05:20:05] I'm not in a position to give evidence from the bar. The variety of arrangements, except to say one sees a variety of arrangements.

Justice Jalil Asif KC (Judge): [05:20:15] Cybernaute, Justice Jones recorded that the GP didn't wasn't going to require indemnity from the fund.

Andrew Scott KC: [05:20:27] The next discretionary factor that your Lordship was to say, there is no good analogy with the position of companies. And, my Lord, I accept, of course, that there is no complete analogy with companies. But where the analogy breaks down, and again, this is a point in my favor, is a point your Lordship raised with me this morning, that partnerships have no separate legal personality. So yes, we all talk about the partnership, but what we mean are each and every one of the partners. And that brings me on to the next discretionary factor, which is the submission from my learned friend that this is not a real trust and this is not really our money. And with respect, if that is really the way his client is approaching this, and that is yet another reason why trust and confidence has justifiably broken down. Because the true position, of course, is that there is no partnership in the sense of a legal person for which the GP holds these assets as fiduciary. The GP holds the assets as a fiduciary for the partners. We are the partners as to approaching 98% of the economic interest in the partnership. We are the beneficiaries of trust. Of course, one has to take account of the LPA. I'll come to that in a moment. But in terms of where the beneficial interest in these assets lies, it is in us. And if that is a matter of dispute on the other side, that is, as I say, an objectively justifiable basis for trust and confidence to break down quite apart from all the other. On the question.

Justice Jalil Asif KC (Judge): [05:22:29] Of, I think, Mr Scott, to be fair to Mr Ayres, what he was saying is, um, that the the LPs have to take into account the costs incurred.

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These costs and expenses incurred by the GP in administering the fund on behalf of the LPs.

Andrew Scott KC: [05:22:46] Of course, and if that, if that is the limit at the point, I don't dispute it for the moment, and I will deal with how this partnership agreement deals with partnership expenses in a moment. Um, but it doesn't detract at all from the issue that really matters, which is that this is beneficially only. Held on the submission about why the GP won't set aside. It was sent to your Lordship that you will decide at the trial the rights and wrongs of this. But of course, Justice Kawaley was not dealing with the position at trial, as your Lordship saw from the passage I took it. Justice Kawaley was dealing with what should happen when the petition is brought. GP should stand aside so that the probity of its conduct can be established by independent scrutiny, and that is what has not happened here. Any Lordship has had no justification for it because there is none. My Lord, can I deal with the LPA? My learned friend said to you that this was the touchstone for expenditure. If you please take up Tab 61 in the second bundle. And, your Lordship, may recall from the August hearing that the way this LPA works is that there was an initial LPA and a number of variations, none of which has been turned into a single restated document, which is a feature of this case that we are all going to learn to love at trial. I have no doubt.

Justice Jalil Asif KC (Judge): [05:24:35] If I've got a vague memory of someone did attempt to put one together at the start of the August hearing.

Andrew Scott KC: [05:24:41] My side has has attempted that, but the document, as far as I'm aware, has not been agreed. It may be if agreement on that at least could be achieved. Which made some progress. My Lord, can I do with the expenses points under the LPA? And your Lordship needs to go to, um, I think it's amendment 9 to find the county relevant provision that starts on page 1661, and if your Lordship will turn forward to page 1671. It begins in 1670. Does your Lordship have the provision for the allocation of expenses?

Justice Jalil Asif KC (Judge): [05:25:31] Yes, I do.

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Andrew Scott KC: [05:25:33] And, it provides, ATLS shall provide the following expenses of the partnership.

Justice Jalil Asif KC (Judge): [05:25:42] Just before. Just before we get into that, I notice at the top of the page 10A, an ATLS has been paid 8.5 million per annum.

Andrew Scott KC: [05:25:53] Yes, I'm told that figure is is now around 18 million.

Justice Jalil Asif KC (Judge): [05:25:59] So, which puts into context submissions, it doesn't have any assets.

Andrew Scott KC: [05:26:05] My Lord, on the allocation of expenses you see you see the initial provision there about payments of the following expenses of the partnership. Invite your Lordship to underline those words, expenses of the partnership. And then your Lordship sees it continues over the page that says the partnership shall be responsible for all other reasonable expenses of the partnership. Which partnership expenses shall be funded by capital contributions made by the holders of preferred units in accordance with this agreement? If your Lordship moves through to Little Seven, one such partnership expense is professional fees, including legal expenses for the partnership. And the short point in relation to all of this is, this captures partnership. What it does not capture is a dispute, the substance of which is a dispute between partners. So what this clause poses is the same question of characterization that arises under rule 12. Because if your Lordship concludes, as we invite you to do, that the substance of this dispute is a dispute between the GP and the Rigmora LPs, and any expenses incurred in relation to that dispute are not expenses of the partnership. So with respect, we do say the LPA does not take the GP anywhere different on this issue and characterization under rule 12 does. Well, can I deal very briefly with Cybernaut and Freerider?

Justice Jalil Asif KC (Judge): [05:28:10] Yes.

Andrew Scott KC: [05:28:12] I hope I didn't overstate the extent to which your Lordship would be assisted by Cybernaut. I recognise, of course, that it's a content case without much discussion. Um, nonetheless, it is a case in which an order in terms of time seeking thinking, and I can't put any Freerider suggestions of assistance to you in this case. But

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unless your Lordship is persuaded to accept the submission that the legal costs principle has no application in relation to ELPs, and Free Rider is going to assist your Lordship in construing rules, these rules as procedural provisions by which to give effect to that legal consequence. And your Lordship has my submission from this morning that the legal cost principle applies just as much to ELPs as it does to companies, and indeed as it does to any fiduciary relationship.

Justice Jalil Asif KC (Judge): [05:29:28] This looks to me like a point where there's bound to be some very helpful mid to late 19th-century authority on partnerships that needs to be turned up. Uh.

Andrew Scott KC: [05:29:43] Your Lordship may well be right. Um, it seems to us the correct analysis, as a matter of principle, is one begins with the trustee relationship. And if your Lordship asks the question, take a case in which the beneficiaries sued the trustee for breach of fiduciary duty with the trustee without the court's sanction, be able to use the trust fund to defend those allegations. They needn't take a case in which two groups of beneficiaries were in dispute. Would the trustee be entitled to side with one of those groups and use the trust fund for that purpose? All the legal cost principle does, in the company context, is to replicate those obvious fiduciary conclusions. In the company context, it is exactly the same principle, in our effectual submission, in all fiduciary relationships. And the context is just an example of that. With the various points that were made on jurisdiction. And I can take these, I hope, fairly swiftly, because ultimately this turns on the question of what the words members of the partnership mean in the context of rule 12. And my learned friend is ultimately driven to interpret those words in such a way that neither rule 12 (1) A nor 12 (1) B have any application in the ELP context. And with respect, that is not a construction that the court should accept. There is no sufficient textual basis in the statute to think that's what Parliament intended to achieve here. Moreover, so where the effect of doing so would be to disapply the legal cost principles within this context. A series of points was put to you. At the outset, my friend's submissions on these preliminary points were to put them. The ELPs do not have, the ELPs don't have separate personality; every LP must have a GP. Those points are true, but there are other points in my favor or points that don't take the issue in the current, so unless I can assist your Lordship further on the parties, we say Lordship plainly does have

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jurisdiction, and it would be appropriate to exercise jurisdiction and to do so now, so in our favour. Now, can I then turn to the issues between us, such as they are on directions?

Justice Jalil Asif KC (Judge): [05:32:55] Can I just ask? Looking at my calendar, I still have, uh, Monday and Tuesday next week set aside for this case. Um, I can't remember because I've lost track. Is that still going ahead?

Andrew Scott KC: [05:33:08] No. My Lord, Monday and Tuesday had been allocated for the purpose of the PL, and then it went when we felt compelled to withdraw.

Justice Jalil Asif KC (Judge): [05:33:18] Okay. That's very helpful. Two things that arise from that. First of all, I need... administration has to take it out of the list on Monday. Um, but I'm just thinking, I'm not sure I'm going to be able to give a judgment this afternoon. It does give me the opportunity to give judgment on Monday. All right. Thank you. That's helpful.

Andrew Scott KC: [05:33:47] My Lord, directions...

Justice Jalil Asif KC (Judge): [05:33:48] Yes.

Andrew Scott KC: [05:33:52] I understand that the only point between us from the order for directions down to trial is the provision we invite your Lordship to make about what would happen in the case a witness doesn't attend to give evidence at the trial. And we respectfully submit that the appropriate direction is indeed the one that we have proposed at paragraph 12. My Lord, the starting point under the GCR, this is rule one of order 38, is there any fact required to be proved at trial by a witness of fact should be so proved by oral evidence at a public hearing, as the staff. There are, of course, exceptions to that under Order 38, but there are exceptions that operate through the process of giving hearsay notices in line with the act, since the Lordship has seen the directions make provision for that. So if either of the parties wants to put in a statement by way of hearsay notice, they, of course, can do so. What they cannot do is put in a witness statement and then not tender the witness for cross-examination at trial, and nonetheless still seek to rely upon the witness statement. All that would be open to them in that situation would be to seek the court's permission to extend the time for putting in a hearsay notice, to do it

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that way, so that that is the appropriate procedure here. My Lord, so far as concerns the company winding up, you have an entirely general power under rule 12 to make such directions as you think appropriate, and if your Lordship agrees with us that it is appropriate that witnesses who put in statements turn up to give their evidence already, your Lordship should respectfully submit, make a direction for what happens if they choose not to turn up. That's the only point on directions down to trial to send the question of Directions for the amendments and the mediation summons. My Lord, in terms of availability, our team would be available on all of the dates that Your Lordship has indicated. It seems to us that there is a question to be grappled with as to which ought to be dealt with first. The amendment summons or the mediation summons, and there is a time pressure in relation to the amendment summons that does not apply in relation to the mediation summons. And if your Lordship were able to accommodate the amendment summons on the earlier dates in November, we would be grateful to take that accommodation, because it's in everyone's interest to know where we stand on the pleadings in this case, so that we can get the process leading back up and running. So we would respectfully invite the court to list that summons against an undertaking for me to issue it early next week, either on the 14th or on the 17th, or on the 18th. And then a mediation summons that would come on in the dates your Lordship indicated before the privilege summons at the end of November. In terms of how much time we need for the amendment summons, it is difficult to say in circumstances where I still don't know which of the amendments are being proposed, but it does, with respect, seem to us that if we are in a situation in which the GP is suggesting that a day of argument will be required to decide whether leave to amend should be given in the context of a trial that's only due to last five days, that tends to indicate that there's plenty to be argued about here. We should just let the amendments come in and deal with the matter at trial. Well, as far as concerns the time estimate for the mediation summons is, it was issued with an estimate of one hour. Your Lordship was told the jurisdictional basis for it by my learned friend. Um, three bases were identified. One of them is the GCR order 25, rule 3. Of course, that has no application at all in relation to the petition and so far as concerns the writ proceeding. Order 25, rule 3 is concerned with the court's power, either when hearing summonses for directions or when giving directions, the court's own motion. Neither of those things is what the mediation summons is. And indeed, as I said earlier, this is a case in which the court has already given directions in relation to mediation in the form of your Lordships' provisions in the consent orders.

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Andrew Scott KC: [05:39:38] Your Lordship was also told that the overriding objective will provide a jurisdictional basis for ordering us to mediate. We respectfully disagree. The overriding objective doesn't confer on the court such a power. Um, there is a reference to the Churchill case in England, but in the Churchill case, the source of the power was the pre-action protocol. The pre-action protocol in England includes provisions about what it may do in circumstances where parties have not considered mediation, and so on, in line with the court's expectations. There is no equivalent protocol in this jurisdiction, or indeed any basis in law from which to contend that there is such power. And what that leaves my learned friend with is the inherent jurisdiction. It's not going to take us long to argue about whether the inherent jurisdiction enables the court to order parties to mediate, who do not wish to do so. My Lord, jurisdiction aside, the real argument before your Lordship is that going to be discretion and whether, in the context of this case, as long into it as we are, where one side is saying they see no realistic prospect of a successful mediation given the GP stance in the discussion so far, does the court realistically feel able to gain say that without seeing the second communications, which the court won't see because the GP won't be privileged? Well, it seems to us that it can be debated well within the context of half a day, if your Lordship considers it would be prudent to make more time available. It would be sensible and possible to do that in the days running up to the correct estimates. And in case it assists in your Lordships' decision as to which of the two summons ought to come on first. For our part, we will not be taking a point on the delay in relation to the mediation summons in terms of the delay between now and the 26th, 27th, 28th. So I may well be saying it was too late now, what I will not be saying is that the passage of time between now and hearing is a material consideration. Whereas I understood from my friend when he was addressing you on the amendment that they would indeed be submitting the passage of time as a material consideration. If that is right, it's another factor in favour of dealing with amendments first. Can I finally say this on undertakings? Your Lordship heard what I had to say on undertakings. My learned friend didn't respond to it. There is no update beyond what we see in correspondence. We will continue to try and achieve something on that front, and we will update the court on it in due course. My Lord, unless I can assist you further, I've finished my submissions.

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Justice Jalil Asif KC (Judge): [05:43:05] Thank you very much, Mr Scott. Um, just give me two minutes to look something up. Right. I'll deal with them, I'll deal with the question of directions now, so at least.

Andrew Ayres KC : [05:47:08] Before you do. I know I don't have a right to rejoinder, but there's one additional point I wanted to make just to make sure you weren't unwittingly misled and I know you wouldn't be, um, wittingly misled but my learned friend took you to the expenses provision of the partnership agreement, and it's an important provision and I know it's not before you today for decision, but he didn't actually take you to the relevant part of the provision, which entitles the GP to spend the partnership assets on legal expenses, and that was Roman 17 that on page 167.

Justice Jalil Asif KC (Judge): [05:47:43] I should also say that I noticed, having made the point about the, uh, the fee being 8.5 million. I noticed in the opening words that it said a whole lot of expenses are paid out of that fee.

Andrew Ayres KC : [05:47:58] Well, I mean, if you read those two provisions together.

Justice Jalil Asif KC (Judge): [05:48:01] Just give me the page again.

Andrew Ayres KC : [05:48:02] Well, it's, it's sorry I gave you the wrong page number. It's, um, it's 1671, 1670 was the first page my learned friend took you to. And the fee, the fee there. That's that's that's not a fee without payment of expenses. And then in terms of expenses, um, anyway, I won't I won't trespass because I don't have a right. I just wanted to point out 17, which says all expenses, including travel and travel-related expenses relating to any actual or threatened litigation or proceeding involving the partnership.

Andrew Scott KC: [05:48:36] Your Lordship appreciates that we say all these items have to be read subject to the opening words. Partnership should be responsible for all other reasonable expenses of the partnership.

Justice Jalil Asif KC (Judge): [05:48:57] Yeah.

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Justice Jalil Asif KC (Judge): [05:48:59] Okay. Thank you both very much. Um, so I'm just going to deal with, uh, directions at this stage to just put my thoughts together on the point about the status of the parties. Um, so I will... Looking at the draft order for directions in the writ action. Um, so I will make the directions of the sort... As regards 12, um, I will include the, the wording that's proposed by Mr Scott, but on the basis that it is understood that, um, that does not preclude, uh, either party if the witness is genuinely unable to attend for making an application to reduce their evidence as hearsay. If the, uh, circumstances justifying that, uh, are demonstrated and, um, the time taken for this application may have to be truncated, depending on when it becomes apparent the witness is not able to attend. Uh, but it seems to me it is worth including paragraph 12 just to bring home to all witnesses concerned and to the parties that they are expected to be here if they want, uh, any weight to be given to their evidence at all. Um, so similarly, in the draft consent order, in the petition, uh, I will delete 1 to 4, and subject to the what I said about the, I slightly preferred format of paragraph five, I'll extend the time for disclosure discovery. Um, and it seems to be, uh, forwarded to the other uh. Oh, Mr Scott, are you available on the 17th for the PTR?

Andrew Scott KC: [05:51:05] Oh, I'm so sorry. Yes, my Lordship.

Justice Jalil Asif KC (Judge): [05:51:07] Yes. All right, so, um, you can update both draft orders, say, PTR on the 17th of December at 10 a.m.. Um, as regards timetabling for the mediation summons and the amendment summons, uh, it seems to me I think Mr Scott's right. The most urgent matter to deal with is the question of amendment. Um, and so if the parties can work towards a hearing of that summons on either the 14th, 17th or 18th of November, uh, then they should do so. And if there's any, as I said earlier, if there's any difficulty with agreeing on a suitable timetable that leads up to a hearing on one of those dates, then contact me and I will resolve it from my, from my part. If it helps the parties, I probably don't. Well, I don't arrive back in the country until the evening of the 13th. Um, I will be picking up emails. Um, but I don't need the bundles really until the day before, whatever is the date of the hearing, um, so.

Andrew Ayres KC : [05:52:19] I'm sorry to interrupt you. You said 14th, 17th and 18th. I had personally been working on the basis that it was the 26th, 27th. 28th. Um, but have I misunderstood?

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Justice Jalil Asif KC (Judge): [05:52:32] Well, I think Mr Ayres what, what we were saying was, I'm available on the 14th, 17th and 18th. Um, and also on the 26th, 28th. Uh, and Mr Scott was saying is that the amendment summons ought to be dealt with in the earlier batch of dates, and the mediation summons ought to be dealt with in the second batch of dates. I appreciate Mr Ayres, you may have some difficulty on the 17th.

Andrew Ayres KC : [05:52:57] Yes, and really on the 14th as well. I mean, I might be able to do the 18th. Yeah. I mean, obviously, there's a lot to do in relation to these three summonses in advance. I mean, it may, if I can urge you, it may just be better just to plump for doing it all together on those three days with the compartmentalised times, because we need to get all the evidence in and have a reply and do everything.

Justice Jalil Asif KC (Judge): [05:53:25] Well, we could do that, Mr Ayres, but it's rather going to undermine your complaints about delay and timing if we do that. Yes.

Andrew Scott KC: [05:53:32] If Mr Ayres will undertake today that he is not going to take a point on the passage of time between when we provided the undertaking to draft and the hearing. I'm very happy to have them heard on the schedule. That's convenient to him. But if he's not going to give that undertaking, his Lordshipship has my submission. And it's reflected in your Lordship's ruling that the amendment summons should come first.

Andrew Ayres KC : [05:54:00] I'm not going to give that undertaking, obviously, because I don't have instructions to do so, but, my Lordship, we have to take take what we what we can, particularly in relation to, to this issue. But, um.

Justice Jalil Asif KC (Judge): [05:54:11] My view is that the parties are the ones who are driving an early trial of this matter on both sides, for reasons that I don't criticize, both sides wanted this matter dealt with quickly, and I'm afraid they need to get their fingers out and make sure that happens.

Andrew Ayres KC : [05:54:31] Well, I've heard what you have to say.

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Justice Jalil Asif KC (Judge): [05:54:34] All right. Um, I will deal with the question of CWR, Order 3, rule 8 and 24, whichever it is, I've forgotten already.

Andrew Ayres KC : [05:54:50] 24 (8).

Justice Jalil Asif KC (Judge): [05:54:52] Thank you. Thank you very much. Uh, on Monday morning. Thank you for setting up some work over the weekend.

Andrew Ayres KC : [05:55:03] What time... on Monday?

Justice Jalil Asif KC (Judge): [05:55:05] Um, yes. That's it, 10:00 o'clock. If there's any any reason that I'm not ready, I'll send a message to you.

Andrew Scott KC: [05:55:10] Also on our side, it wouldn't be me on Monday. I think it may, it may be someone else from Campbell. I'm very sorry.

Justice Jalil Asif KC (Judge): [05:55:18] Yeah. That's fine. Mr Scott, you're excused.

Marshall: [05:55:21] [Hearing adjourned]

EXHIBIT CC

EXECUTION VERSION

ATP LIFE SCIENCE VENTURES, L.P. - AMENDMENT NO. 22

AMENDMENT NO. 22 (this "Amendment"), dated December 20, 2024, to the First Amended and Restated Limited Partnership Agreement, as amended from time to time (the "Agreement"), of ATP Life Science Ventures, L.P. (the "Partnership"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

It is hereby acknowledged that, (i) on the date of this Amendment, the Partnership has distributed from Pool Braeburn all of its interest in ATP Life Science Sub LLC, a Delaware limited liability company ("ATP LLC"), to Rigmora Biotech Investor One LP ("Rigmora One"), Rigmora Biotech Investor Two LP ("Rigmora Two"), Dr. Harrison and Ms. Batarina pursuant to a certain Amended and Restated Limited Liability Company Agreement of ATP LLC of even date herewith, (ii) accordingly, ATP LLC is no longer an asset of Pool Braeburn or the Partnership, (iii) such distribution was not deemed to be a return of capital to Rigmora One and Rigmora Two, (iv) on the date of this Amendment, Rigmora One, Rigmora Two, Dr. Harrison and Ms. Batarina have entered into a certain Put Option Agreement whereby Rigmora One and Rigmora Two have granted certain put rights to Dr. Harrison and Ms. Batarina with respect to their respective interests in ATP LLC, (v) on the date of this Amendment, Rigmora One, Rigmora Two, Dr. Harrison and Ms. Batarina have entered into a certain Second Put Option Agreement (the "Second Put Option Agreement") whereby Rimora One and Rigmora Two have granted certain put rights to Dr. Harrison and Ms. Batarina with respect to their respective interests in the securities of Braeburn, (vi) on the date of this Amendment, Rigmora One, Rigmora Two and the General Partner have entered into a certain Settlement Agreement and (vii) Rigmora One and Rigmora Two now constitute the Subject Limited Partner.

Whereas, the parties hereto desire to amend the Agreement as set forth herein.

Now, therefore, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. **Paragraph 21 of Agreement**.

   The following provisions of Paragraph 21 of the Agreement are hereby amended and restated in their entirety to read as follows:

   "(d) Distributions. Except as otherwise expressly provided in this Paragraph 21, distributions in respect of Pool Braeburn, other than Tax Distributions, shall be made as follows: (i) first, to the Subject Limited Partner until it has received aggregate distributions pursuant to this clause (i) equal to its aggregate capital contributions (including its deemed capital contribution of $203,669,000) to Pool Braeburn; and (ii) thereafter, 92.5% to the Subject Limited Partner, 4.5% to Dr. Harrison, and 3.0% to Ms. Batarina.

   (1) Notwithstanding anything in this Agreement, the Subject Limited Partner shall have the right, exercisable at any time from and after January 1, 2027, by the delivery of written notice to the General Partner (the "SLP Notice"), to require the General Partner to cause the Partnership to distribute all of the net assets of Pool Braeburn in accordance with clause (ii) of the first sentence of this Paragraph 21(d), i.e., in "carry mode"; provided, however, that the General Partner shall not be obligated to cause any such distribution if and to the extent that such distribution would not be permitted under the ELP Law or other applicable law or contractual obligation

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legally binding on the Partnership or the General Partner on behalf of the Partnership. The Subject Limited Partner shall also deliver a copy of the SLP Notice to Dr. Harrison and Ms. Batarina concurrently with its delivery of the SLP Notice to the General Partner.

(2) At any time or times after the Subject Limited Partner has received aggregate distributions pursuant to clause (i) of the first sentence of this Paragraph 21(d) equal to its aggregate capital contributions (including its deemed capital contribution of $203,669,000) to Pool Braeburn, Dr. Harrison shall have the right, exercisable by the delivery of written notice to the General Partner (a "Special LP Notice"), to require the General Partner to cause the Partnership to distribute all of the net assets of Pool Braeburn in accordance with clause (ii) of the first sentence of this Paragraph 21(d), i.e., in "carry mode"; provided, however, that the General Partner shall not be obligated to cause any such distribution if and to the extent that such distribution would not be permitted under the ELP Law or other applicable law or contractual obligation legally binding on the Partnership or the General Partner on behalf of the Partnership. Dr. Harrison shall also deliver a copy of the Special LP Notice to the Subject Limited Partner and Ms. Batarina concurrently with his delivery of the Special LP Notice to the General Partner. For the avoidance of doubt, Dr. Harrison may deliver a Special LP Notice without regard to any duties he may owe to the Partnership in his capacity as a director of the General Partner.

If, following the delivery of the SLP Notice by the Subject Limited Partner or the Special LP Notice by Dr. Harrison, no put right is exercised by either Dr. Harrison or Ms. Batarina pursuant to the Second Put Option Agreement within 15 days after receipt by each of them of the SLP Notice or the delivery of the Special LP Notice by Dr. Harrison, as the case may be, the distribution of the Pool Braeburn net assets shall occur as soon as practicable thereafter but not later than one month after the date the SLP Notice or Special LP Notice is delivered, as applicable.

If any put right is exercised by either Dr. Harrison or Ms. Batarina pursuant to the Second Put Option Agreement within 15 days after receipt by each of them of the SLP Notice or the delivery of the Special LP Notice by Dr. Harrison, as the case may be, the distribution of the Pool Braeburn net assets shall be conditioned upon, and shall occur concurrently with, the cash settlement of such put(s) in accordance with the terms of the Second Put Option Agreement (it being understood that, for the avoidance of doubt, the General Partner shall not be liable for any failure to effect the distribution of the Pool Braeburn net assets if the cash settlement of such put(s) shall not have occurred, or is not occurring concurrently, with such distribution, in accordance with the terms of the Second Put Option Agreement).

The following additional provisions are hereby added to Paragraph 21 of the Agreement, to read in their entirety as follows:

"(f) Cooperation Related to Distribution. The General Partner shall use commercially reasonable efforts to remove any contractual blocks and to remove or mitigate any economic costs to any distribution contemplated by Paragraph 21(d), including (i) to use any authority it has (including over its representatives or agents) with respect to Braeburn (A) to give effect to the obligations in this Paragraph 21(f); and (B) to cause the Braeburn board of directors to promptly adopt an express written policy that it will use commercially reasonable efforts to cooperate with any SLP Notice or Special LP

Notice and it is not opposed to ownership of Braeburn being transferred in accordance with any SLP Notice or Special LP Notice and (ii) to cause Braeburn to seek to (A) amend the terms of the Loan and Security Agreement, dated September 29, 2023 (the "LSA"), among Braeburn, Hercules Capital, Inc. ("Hercules"), and the other persons party thereto, to remove any change of control, pledge of shares in Braeburn or other limitations thereunder that are applicable to any such distribution and (B) remove any subordination of the Amended and Restated Royalty Purchase Agreement, dated September 29, 2023, as amended, between Braeburn Sub LLC and ATP LLC, to the loan made by Hercules to Braeburn pursuant to the LSA (the "Hercules Loan") as soon as practicable.

The General Partner represents and warrants that the specific contractual blocks referred to in this Paragraph 21(f) and Annex A to this Amendment are the only ones as at the date of the execution of this Amendment that would prohibit or materially delay any distribution contemplated by Paragraph 21(d). The General Partner agrees that the General Partner and the Partnership will not, at any time on or after the date of the execution of this Amendment, enter into any new contractual arrangements that would prohibit or materially delay any distribution contemplated by Paragraph 21(d) without the prior written consent of the Subject Limited Partner. Further, the General Partner agrees to use commercially reasonable efforts (including over its representatives or agents) with respect to Braeburn to procure that Braeburn not enter into any new contractual arrangements that would prohibit or materially delay any distribution contemplated by Paragraph 21(d). The General Partner shall notify the Subject Limited Partner promptly if it becomes aware of any new contractual arrangement after the date of the execution of this Amendment that would prohibit or materially delay any distribution contemplated by Paragraph 21(d).

If the agreements relating to the Hercules Loan, including the LSA, are not amended to remove such change in control, subordination provisions or other limitations to a distribution, as applicable, by January 21, 2025, the General Partner shall thereafter use commercially reasonable efforts, and shall cause its representatives and agents to use commercially reasonable efforts, to cause Braeburn to repay the Hercules Loan as soon as practicable and no later than as contemplated in the budget provided by the General Partner to the Subject Limited Partner on July 13, 2024 (the "Budget") (after taking into account expenditures contemplated by the Budget); and, if the Hercules Loan remains outstanding on December 31, 2026 and the Subject Limited Partner offers to provide alternative financing to replace the Hercules Loan on substantially similar terms to the then current terms of the Hercules Loan, to repay the Hercules Loan with such alternative financing.

Further, the General Partner shall use commercially reasonable efforts, and shall cause its representatives and agents to use commercially reasonable efforts, to cause Braeburn to cooperate reasonably with the Subject Limited Partner in connection with any Royalty Financing (as defined in that certain Amended and Restated Limited Liability Company Agreement of BBN Life Science Sub LLC (formerly known as ATP Life Science Sub LLC), dated as of December 20, 2024, by and among BBN Life Science Sub LLC, the Partnership, the Subject Limited Partner, Seth L. Harrison and Anna A. Batarina)."

2. **Additional Paragraphs of Agreement**. New Paragraphs 26, 27 and 28 are hereby added to the Agreement, to read in their entirety as follows:

"26. Budgets for Certain Other Portfolio Companies. From and after the date of this Amendment, the General Partner and the Subject Limited Partner shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Therapeutics Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized, i.e., January 2025, in the case of Aulos Bioscience, Inc.; February 2025, in the case of Replicate Bioscience, Inc.; April 2025, in the case of Nereid Therapeutics Incorporated; May 2025, in the case of Nine Square Therapeutics Corporation and the first quarter of 2026, in the case of Ascidian Therapuetics, Inc. (provided that the General Partner and the Subject Limited Partner shall discuss, in the near term, a new budget to fund a major clinical trial of Ascidian Therapeutics, Inc.). If any approval of a new budget is given by the Subject Limited Partner, such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by the Subject Limited Partner on a sale or financing of its interest in ATP LLC.

27. Braeburn Dividend and M&A Policies. So long as the General Partner controls Braeburn, the General Partner shall use reasonable best efforts to cause Braeburn (a) to adopt and comply with a dividend policy requiring all free cash of Braeburn to be paid out to its shareholders after (i) making or providing for payments to management under (x) a new market-appropriate long-term incentive plan for a private high growth pharmaceuticals company to be adopted by Braeburn after December 20, 2024 (the "New LTIP") and (y) so long as it is in effect, Braeburn's 2015 Equity Incentive Plan, (ii) taking into account expenditures contemplated by the Budget and any other budgets approved by the board of directors of Braeburn, (iii) making any payments required to be made under the Amended and Restated Royalty Purchase Agreement by and between Braeburn MSL, LLC and BBN Life Science Sub LLC, dated as of September 29, 2023, or any other contract that Braeburn or any of its subsidiaries are party to as of December 20, 2024 and (iv) maintaining a commercially reasonable level of cash reserves, including to use any authority the General Partner has (including over its representatives or agents) with respect to Braeburn to give effect to the foregoing obligation, and (b) not (i) to engage in any financing of the assets or business of Braeburn that are material to its overall business operations; provided that this clause (i) shall not restrict or prohibit an extension to the Hercules LSA as long as such extension includes (A) terms that, taken as a whole, are more commercially favorable than the current terms and conditions of the Hercules LSA and (B) the modified LSA no longer contains any change of control provision or other fee or cost that would be payable upon the distribution of Braeburn to the Subject Limited Partner; (ii) to enter into any material licensing or royalty agreements with respect to new products; or (iii) to acquire any businesses or similar assets (other than inventory) from a third party (including, without limitation, portfolio companies of the Partnership) pursuant to a merger, consolidation, stock purchase or asset purchase, in each case, without the consent of the Subject Limited Partner, including to use any authority the General Partner has (including over its representatives or agents) with respect to Braeburn to give effect to the foregoing obligation. The General Partner agrees that (A) the New LTIP shall not provide for any compensation to be paid to the General Partner, its affiliates (including any Person that controls, is controlled by or is under common control of the General Partner) or any of their respective partners, members,

employees or agents or representatives and (B) a distribution of the net assets of Pool Braeburn in accordance with Paragraph 21(d) shall not in and of itself be deemed a change of control, or otherwise result in accelerated vesting or similar acceleration, under the New LTIP.

28. Tax Optimization. From and after the date of this Amendment, the General Partner, the Subject Limited Partner, Dr. Harrison and Ms. Batarina agree to discuss in good faith certain initiatives with respect to the Partnership, including to enable the Partners to optimize from a tax perspective their investments in and distributions from the Partnership, including, by way of example only, (i) estate planning type transfers, (ii) implementing consulting agreements with Braeburn instead of employment agreements with the Partnership or its affiliates; (iii) a potential distribution by the Partnership to Dr. Harrison, Les Pommes and Ms. Batarina of their interests in the assets of the Partnership in carry mode, by way of an escrow arrangement preserving the economics they would have received if they continued to hold their interests in such assets through the Partnership, and (iv) the potential use of tax distributions by the Partnership; provided that no such action adversely affects the interests of the Subject Limited Partner. For the avoidance of doubt, any delays or reductions to the amount of cash or in-kind assets otherwise distributable to the Subject Limited Partner pursuant to this Agreement but for the provisions of this Paragraph 28 shall be deemed to cause an adverse effect to the interests of the Subject Limited Partner."

3. **Pool Committee**. The parties hereto agree that, as of the date of this Amendment, Anna A. Batarina shall be reappointed to to the Pool Committee, such that, as of the date of this Amendment, the Pool Committee shall consist of Dr. Harrison and Ms. Batarina.

Miscellaneous. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Each party hereto shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation of the transactions contemplated hereby.

[*Remainder of Page Intentionally Left Blank.*]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:
Executed as a deed by:
ATP III GP, Ltd.

By: _____
Seth L. Harrison, Director

In the presence of:

_____
Witness

_____Margaret M. Bigelow_____
__ Name of Witness (please print)

[*Signature Page to Amendment No. 22*]

LIMITED PARTNERS:

Executed as a deed by:
Rigmora Biotech Investor One LP

By: Maria Phylactou

Title: on behalf of M.C.R.S. Limited

In the presence of:

Witness

Erma Altiviadou
Name of Witness (please print)

Executed as a deed by:
Rigmora Biotech Investor Two LP

By: ALEXIA GEORGIOU

Title: on behalf of M.C.R.S. Limited

In the presence of:

Witness

Evanthia Apeitou
Name of Witness (please print)

[*Signature Page to Amendment No. 22*]

Executed as a deed by:

Seth L. Harrison

In the presence of:

Witness

Margaret M Bigelow
Name of Witness (please print)

Executed as a deed by:
LES POMMES LLC

By:
Seth L. Harrison, Manager

In the presence of:

Witness

Margaret M. Bigelow
Name of Witness (please print)

Executed as a deed by:

Anna Batarina

In the presence of:

Witness

Margaret M. Bigelow
Name of Witness (please print)

[*Signature Page to Amendment No. 22*]

ANNEX A

Requirements under (i) the Investors' Rights Agreement dated as of January 10, 2018, among Braeburn, the Partnership and various other parties and (ii) various promissory notes issued by Braeburn to the Partnership, as well as the various Note Purchase Agreements between Braeburn and the Partnership providing for the issuance of such promissory rights, each of which documents has previously been provided to the Subject Limited Partner, to: (a) provide advance written notices to Braeburn, (b) provide written opinions of counsel to Braeburn, (c) agree to customary investment representations and (d) represent that the transferees are not subject to the "bad actor" disqualification provisions for Rule 506 of Regulation D under the Securities Act of 1933, as amended.

EXHIBIT DD

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Monday, December 22, 2025 1:21 PM
To: Born, Natascha; Kaprow, Daniel E.; Michael Barlow; Shannon Doughty; Morgan Harrison; Garrett Moritz; Roger Stronach; Gage Whirley; Rachel Epstein; Kathryn Bonacorsi; Jessica Reese; Jenny Braun; Taylor Jones; Hannah Dawson; John Ferraro; Jonathan M. Acevedo; Eric Winston
Cc: Rohrbacher, Blake; Greer, Zachary R.; Allen, Benjamin O.; Selden, Shannon R.; Taft, William; Saltzman, Zachary H.; Wolf, Sarah; Micarelli, Carl; Dutz, Sebastian; Van Duyn, Andrew; QE- ATP-Restructuring; L. Katherine Good; Patty Tomasco
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

EXTERNAL

Funds received at Bank of California.

Best,

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)
1.914.441.9470 (mobile)

From: Born, Natascha <nborn@debevoise.com>
Sent: Monday, December 22, 2025 2:16:56 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; Selden, Shannon R. <srselden@debevoise.com>; Taft, William <whtaft@debevoise.com>; Saltzman, Zachary H. <saltzmzh@debevoise.com>; Wolf, Sarah <swolf@debevoise.com>; Micarelli, Carl <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; Van Duyn, Andrew <amvanduyn@debevoise.com>; QE- ATP-Restructuring <qe-atp-restructuring@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from nborn@debevoise.com]

Andrew and Katie,

Attached are Julius Baer's confirmations that the funds have been transferred. Please let us know as soon as ATP receives the payment.

Best,

Natascha

Natascha Born | Partner | Debevoise & Plimpton LLP | nborn@debevoise.com | +1 212 909 6821 | 66 Hudson Boulevard, New York, NY 10001 | www.debevoise.com

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The latest version of our Privacy Policy, which includes information about how we collect, use and protect personal data, is at www.debevoise.com.

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Thursday, December 18, 2025 4:51 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; Selden, Shannon R. <srselden@debevoise.com>; Taft, William <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; Saltzman, Zachary H. <saltzmzh@debevoise.com>; Wolf, Sarah <swolf@debevoise.com>; Micarelli, Carl <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; Van Duyn, Andrew <amvanduyn@debevoise.com>; QE- ATP-Restructuring <qe-atp-restructuring@quinnemanuel.com>; L. Katherine Good <kgood@potteranderson.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

EXTERNAL

Daniel:

We disagree with your characterization. It was your clients' attempt to drive merits issues into the approval of a cash management order that created this delay. There was no need to build a restriction regarding the segregated account into the cash management order. The bank just asked to see an order entered. You objected to the entry of a plain-vanilla order.

Please include Katie Good at Potter Anderson, Eric Winston and Patty Tomasco of our restructuring group in our correspondence moving forward.
Katie should be your point of contact moving forward on the cash management order. We are sympathetic to the timing issue and are working to get this resolved.

Best,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Thursday, December 18, 2025 3:49 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; oger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

As you know, the Partial Final Judgment contemplates payment "to a segregated account within 10 days of the entry of this Partial Final Judgment and Order," that "[s]uch funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware," and that "[t]he parties shall work in good faith to establish such segregated account."

Given the entry of this order on December 11, 2025, and assuming there is a segregated account identified to us sufficiently in advance, payment is to be made on or before December 26, 2025. *See* Ct. Ch. R. 6 ("When the period is stated in days or a longer unit of time: (A) Exclude the day of the event that triggers the period. (B) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.").

As you can see below, I reached out twice already (on Monday and Tuesday) for information regarding the segregated account so that Rigmora could make the payment. You have yet to identify the account and the 26th is quickly approaching. Considering the size of the payment, that it is cross-border, and that it will involve a new bank account, bank personnel on both sides will need time to process, and we have holidays coming up that

will leave them short-staffed. Given that you have yet to identify the account, can we agree that once you identify the account, Rigmora will pay the amount within five business days?

We are at a loss for ATP's delays. ATP's proposed cash management order did not even expressly address this necessary segregated account. Given the Court's instructions yesterday, we believe this process can move forward if you provide a discrete form of order for a segregated debtor account. We would be able to promptly consent to such a non-controversial order. That should allow the payment to be made so the parties can address the broader issues.

Please let us know if we can expect a discrete and narrow proposed cash management order so that we can get the payment made. Please also let me know if you agree that payment can be made on or before five business days after you identify the account for Rigmora.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Tuesday, December 16, 2025 3:36 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew'

<amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

I am informed that the account will be opened as soon as the Bankruptcy Court in the Chapter 11 case enters a cash management order.

Kind regards,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Tuesday, December 16, 2025 2:37 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Following up on the below.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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From: Kaprow, Daniel E.
Sent: Monday, December 15, 2025 2:34 PM
To: 'Andrew Berdon' <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Andrew,

Will you please identify the segregated bank account to receive the funds covered by Chancellor McCormick's order, and provide wire instructions?

Best,
Dan

From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 10:59 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William'

<whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Have a good evening.

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)
1.914.441.9470 (mobile)

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Wednesday, December 10, 2025 10:57:34 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Yes, that's correct.

Best,
Dan

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
Sent: Wednesday, December 10, 2025 10:38 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
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Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

Are we filing separately?

Best,

Andrew

Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP
295 Fifth Avenue
New York, NY 10016
1.212.849.7107 (o)

1.914.441.9470 (mobile)

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Wednesday, December 10, 2025 7:26:02 PM
To: Andrew Berdon <andrewberdon@quinnemanuel.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
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Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

We do not consent. Attached is a markup of the draft you provided in clean and redline. Absent your agreement to this form, we are fine with your proposal to submit the competing drafts to the Court separately.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
Kaprow@rlf.com

920 N. King Street | Wilmington, DE 19801
O: 302-651-7636 | **M:** 240-485-6366 | **F:** 302-651-7701
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Sent: Wednesday, December 10, 2025 4:48 PM
To: Kaprow, Daniel E. <Kaprow@rlf.com>; Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>; Eric Winston <ericwinston@quinnemanuel.com>
Cc: Rohrbacher, Blake <Rohrbacher@RLF.com>; Greer, Zachary R. <greer@rlf.com>; Allen, Benjamin O. <BAllen@rlf.com>; 'Selden, Shannon R.' <srselden@debevoise.com>; 'Taft, William' <whtaft@debevoise.com>; Born, Natascha <nborn@debevoise.com>; 'Saltzman, Zachary H.' <saltzmzh@debevoise.com>; 'Wolf, Sarah' <swolf@debevoise.com>; 'Micarelli, Carl' <cmicarelli@debevoise.com>; Dutz, Sebastian <spdutz@debevoise.com>; 'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: Re: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Daniel:

Does Rigmora consent to entry of an order in the form attached to my email yesterday afternoon? If not, does Rigmora wish to submit a joint letter to the Court attaching the parties' respective drafts? If not, we will send our draft to the Court separately.

Thanks very much.

Andrew

Andrew Berdon
Partner
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From: Andrew Berdon <andrewberdon@quinnemanuel.com>
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'Van Duyn, Andrew' <amvanduyn@debevoise.com>
Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

Enclosed please find our proposed edits to the form of order together with a clean copy.

As you likely know, earlier today the Plaintiff, along with ATP Life Science Ventures, L.P. and a third entity, each commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. The automatic stay provided for in 11 U.S.C. § 362(a) went into effect and applies to the commencement or continuation of any proceedings against each debtor and exercises of control over property of each debtor, among other actions, anywhere in the world. However, since this Delaware Chancery Court action was commenced by a debtor, we do not believe the automatic stay applies to its continued prosecution.

Kind regards,

Andrew

Andrew Berdon
Andrew Berdon
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Andrew,

Thanks, when do you intend to provide your comments? The proposed order is due to the court tomorrow and we have yet to receive anything from you.

Best,
Dan

RICHARDS LAYTON & FINGER

Daniel E. Kaprow
Richards, Layton & Finger, P.A.
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Subject: RE: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

*** EXTERNAL EMAIL ***

Dan:

Received, and thank you. We are discussing with our clients and will have comments. This proposed order is not agreed as to form.

Best,

Andrew

From: Kaprow, Daniel E. <Kaprow@rlf.com>
Sent: Monday, December 8, 2025 4:25 PM
To: Michael Barlow <michaelbarlow@quinnemanuel.com>; Shannon Doughty <shannondoughty@quinnemanuel.com>; Morgan Harrison <morganharrison@quinnemanuel.com>; Garrett Moritz <gmoritz@ramllp.com>; Roger Stronach <rstronach@ramllp.com>; Gage Whirley <gwhirley@ramllp.com>; Andrew Berdon <andrewberdon@quinnemanuel.com>; Rachel Epstein <rachelepstein@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Jessica Reese <jessicareese@quinnemanuel.com>; Jenny Braun <jennybraun@quinnemanuel.com>; Taylor Jones <taylorjones@quinnemanuel.com>; Hannah Dawson <hannahdawson@quinnemanuel.com>; John Ferraro <johnferraro@quinnemanuel.com>; Jonathan M. Acevedo <jonathanacevedo@quinnemanuel.com>
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Subject: ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al., Case: 2025-0607-KSJM

[EXTERNAL EMAIL from kaprow@rlf.com]

Counsel,

Attached please see a proposed form of order implementing the Court's post-trial decision. Please let us know if this proposed order is agreed as to form.

Best,
Dan

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EXHIBIT EE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	.	(Jointly Administered)
	.	
	.	Courtroom No. 2
	.	824 Market Street
Debtors.	.	Wilmington, Delaware 19801
	.	
	.	Tuesday, January 20, 2026
. . . . .	.	2:35 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors and Debtors in Possession: L. Katherine Good, Esquire
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(APPEARANCES CONTINUED)

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APPEARANCES (CONTINUED):

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For Rigmora Biotech Investor Two LP by its General Partner Unicorn Biotech Ventures Two Ltd:
M. Natasha Labovitz, Esquire
William H. Taft, V, Esquire
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[Docket No. 123 - filed January 6, 2026]

Court's Ruling:

Agenda Item 11: Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to File Under Seal Exhibit B Attached to the Limited Objection
[Docket No. 156 - filed January 15, 2026]

Court's Ruling:

(Proceedings commenced at 2:35 p.m.)

THE COURT: Please be seated.

Ms. Good.

MS. GOOD: Good afternoon, Your Honor. Katie Good of Potter, Anderson & Corroon on behalf of Apple Tree Life Sciences, Incorporated and its affiliated debtors.

We're here today for an omnibus hearing in these cases.

I note, prior to this hearing, Your Honor had entered orders on Items 1 through 5 and 8 through 10, which really just -- or I think I may have had that numbering off -- yeah, which really leaves us with three items going forward today:

Our motion to enforce the automatic stay;

Our funding motion;

And Rigmora's motion to seal their limited objection.

We thought it made sense to start with the funding motion, since that is more critical relief. And I think, in the context of that, the sealing request can be addressed. I understand the U.S. Trustee has some comments or an objection to that.

THE COURT: Okay.

MS. GOOD: So, if that's acceptable to Your Honor, I would turn the podium over to Ms. Tomasco, and we can

proceed with the funding motion.

THE COURT: Yes. Excuse me.

MS. TOMASCO: Your Honor, we have a PowerPoint presentation. I don't know if you want to hear from Rigmora yet. And there's a -- and we're not going to put it up on the screen because it -- you know, some of this is commercial. I didn't want to like look at who's on the Zoom. So if I could hand it up to the Court?

THE COURT: You can.

MS. TOMASCO: Thank you.

(Participants confer)

MS. TOMASCO: Thank you.

THE COURT: Thank you.

(Participants confer)

THE COURT: Here's another one. I just need one.

MS. TOMASCO: Sorry, Your Honor. Thank you. Fortunately, I brought enough for the whole class.

Your Honor, Patty Tomasco, proposed counsel on behalf of the debtors.

I'm not going to go through a lengthy presentation, I think the papers have covered everything. Mostly, the PowerPoint presentation is meant to orient the Court to the structure of the debtors, the history, and the argument.

If you'd like, we can get started. But

essentially, some of this is repetitive of what we put on the first-day presentation, the format --

THE COURT: Am I --

MS. TOMASCO: -- and everything --

THE COURT: -- going to get evidence?

MS. TOMASCO: Oh, yes. And if you would like to start with evidence, we can do that, too.

THE COURT: That's where I'd like to start.

MS. TOMASCO: Okay. Your Honor, I'll turn the podium over to Mr. Andrew Berdon, who's going to put on the first witness.

THE COURT: Okay. Thank you.

MS. TOMASCO: Oh, if I could, Your Honor, maybe we could go through some exhibits and see if those can be admitted.

THE COURT: Excuse me.

(Participants confer)

THE COURT: I had a list and now I've lost it.

MS. TOMASCO: We can have another...

(Pause in proceedings)

MS. TOMASCO: May I approach, Your Honor?

THE COURT: You may. Thank you.

MS. TOMASCO: Your Honor, I believe that some of these are going to be repetitive. They are largely derived from the pleadings that were filed with those exhibits.

But I would propose that Exhibits 1 --

THE COURT: That's Chancellor McCormick's opinion?

MS. TOMASCO: -- 1 through 9 be admitted.

Exhibit -- and for purposes of the funding motion, Exhibit 50.

THE COURT: 50? Okay.

MS. TOMASCO: In addition, we have the pre-petition secured promissory notes at Exhibits 38 through 43, and the stock purchase agreements at 77 through 85.

And if there is any doubt, we want the LPA and all of its amendments. I believe that it's on the exhibit list several times.

I don't believe there should be any objections to those, those are all operative documents.

THE COURT: Okay. I am going to want to know what's important in each of those documents and why they're coming in.

And let me ask this: Is there no a conformed copy of the limited partnership agreement as it stands today with its amendments?

MR. BERDON: Your Honor, Anthony Berdon for the debtors. And the answer to that is no, the agreement is essentially interpreted and enforced as the amended and restated agreement plus its 22 amendments.

THE COURT: Well, somebody might consider doing

that and having and having an agreed document that is current, and where we don't have to go and try to look at each amendment and figure out what goes -- I started crossing things out, but it -- I'm surprised that no other judge has asked for this. So, if the parties can take some time at some point to do that, one would think that could be agreed to.

MS. TOMASCO: Noted, Your Honor.

THE COURT: Okay.

MS. TOMASCO: So we propose to admit those exhibits at the outset, subject to the testimony that will refer to them.

THE COURT: Is there any objection? Ms. McCollum.

MS. MCCOLLUM: Good afternoon, Your Honor. Hannah McCollum for the U.S. Trustee.

I don't have an objection, but I do note that the exhibit list noted that some of these exhibits were sealed. And so, to the extent that the exhibits are marked "sealed" on the exhibit list -- and here, I would say that the --

THE COURT: Oh --

MS. MCCOLLUM: -- Debtors' Exhibits 5, 6, and 7 -- which I don't think anybody intends to be sealed, but I -- if they are to be sealed, I object to that, I believe.

And then Rigmora has filed its objection, a couple of things in it are sealed, and then it has designed two

exhibits as to be sealed. And I object to the sealing of those exhibits. I don't know whether anybody is going to refer to them or attempt to admit them or discuss them, so I am reserving my objection to that time. But I wanted to let Your Honor -- I wanted to flag the issue for Your Honor.

THE COURT: Okay

MS. MCCOLLUM: Thank you.

THE COURT: Thank you.

Let's start with 5, 6, and 7. Why are they sealed?

MS. TOMASCO: 5, 6, and 7. The LPA does not need to be sealed.

MR. TAFT: We agree, Your Honor.

Will Taft for the Rigmora LPs.

THE COURT: Thank you.

Okay. So -- and as well as the amendments, the two amendments.

MS. TOMASCO: As well as the amendments.

THE COURT: Okay. Thank you.

MS. TOMASCO: I would say that the Series A preferred stock purchase agreements, those are going to have very precise milestones that are going to be confidential and proprietary. And while we could redact them, I would propose, for purposes of this hearing, that we just simply keep them sealed. And to the extent that those details of

the underlying science could provide a competitive advantage to a competitor.

THE COURT: Thank you.

I think it's a question of just how do we work around that.

MS. TOMASCO: Your Honor, I believe that we can submit exhibits under seal, and that happens all the time.

The testimony about those exhibits will not concern, at least as far as I know, at least not on direct, the actual scientific milestones that contain the confidential and proprietary data.

What I would suggest is, to the extent that there is any testimony elicited on the portions that would be sensitive to the debtors' ongoing competitive advantage, that we address it if it comes up.

THE COURT: Ms. McCollum.

MS. MCCOLLUM: Your Honor, if they're not going to talk about the terms that are proposed to be sealed, then I don't think that we need to seal them.

THE COURT: Well, they should be redacted then.

MS. MCCOLLUM: Correct.

THE COURT: Yeah.

MS. TOMASCO: I think those particular -- very precisely, those particular things that are confidential commercial information -- which I haven't seen, by the way,

should be redacted.

And if the witness -- what I have seen in the past is the witness discusses whatever in the agreement is not the confidential part of the agreement, and the rest of it is unsealed.

THE COURT: Thank you.

Ms. Labovitz.

MS. LABOVITZ: Your Honor, Natasha Labovitz for the LPs.

We actually haven't really seen these exhibits either, we were not given an opportunity to go through the exhibit list with the debtors before it was filed, so we're not sure what they're planning to refer to or how they're planning to use these documents today, so it's a little hard for us to --

THE COURT: Okay.

MS. LABOVITZ: -- respond.

THE COURT: So let's see how it plays out. Let's see how it -- let's see how it plays out. I don't hear, really, any objection to the limited partnership agreement, I can't imagine, or any of the amendments.

The stock purchase agreements is maybe where I hear they don't have -- don't know what they're being used for.

I'll reserve. You can move them into evidence

with the witnesses. We'll see how it plays out.

MS. TOMASCO: Thank you, Your Honor.

I'm going to turn the podium over to Mr. Berdon, who is going to call our first witness.

(Pause in proceedings)

MR. BERDON: Good afternoon, Your Honor. Andrew Berdon for the debtors.

The debtors call Dr. Seth Harrison to the stand.

THE COURT: Mr. Harrison, please take the stand.

THE ECRO: Please raise your right hand.

Please state your full name and spell your last name for the court record, please.

THE WITNESS: Seth Harrison, H-a-r-r-i-s-o-n.

SETH L. HARRISON, WITNESS FOR THE DEBTORS, AFFIRMED

THE ECRO: You may be seated.

Your Honor.

THE COURT: Thank you.

Mr. Berdon.

MR. BERDON: If I may begin?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. BERDON:

Q Dr. Harrison, good afternoon.

Can you please briefly describe your educational background?

A Yeah. I have an undergraduate degree from Princeton, an M.D. from Columbia, and M.B.A. from Columbia, some surgery training beyond that at Columbia Presbyterian.
Q And are you currently engaged in venture capital activities?
A I am.
Q And how many years of experience do you have in the venture capital area?
A I believe 36. I started in 1991.
Q And have your venture capital activities focused on any particular industry?
A Life sciences.
Q And are you familiar with the Debtor ATP Life Science Ventures, L.P.?
A Yes.
Q And what is it?
A ATPLSV is a venture fund that invests in life sciences companies.
Q And do you have a role at ATPLSV?
A I do.
Q And what is that?
A Managing general partner.
Q Are you familiar with the Debtor ATP III GP, Limited?
A I am.
Q And what is that?

A That is the general partner of ATPLSV.
Q And do you have a role at ATP III GP, Limited?
A I am the director of the general partner.
Q And do you also own the general partner?
A Yes.
Q Are you familiar with Debtor Apple Tree Life Sciences, Inc.?
A Yes.
Q And what is that entity?
A One of two management companies that oversees the investments in the fund.
Q And does ATP -- I'm sorry.
Do you colloquially call that "ATLS" in your business?
A ATLS, yes.
Q Okay. Does ATLS have any employees?
A Yes.
Q And can you -- generally speaking, what are the roles that ATLS plays in the administration of the fund?
A ATLS employs everybody at the fund who is responsible for founding, managing, overseeing the portfolio companies. ATLS holds all the leases that might be involved in running the fund, any contracts, obligations, benefit plans. It's essentially the operating entity.
Q Okay. You mentioned that there are two managing entities. After ATLS, what's the other one?

A Apple Tree Venture Management, LLC.
Q And what is the role of Apple Tree Venture Management, LLC?
A ATVM, that is my management company, and it -- through it, I manage the funds.
Q And is it the vehicle through which you are paid?
A Yes, I am.
Q Do you receive any remuneration from ATLS?
A I receive a de minimis salary that is designed to enable me to have healthcare benefits. Because of the way healthcare benefits work, you need to have a large enough payroll, so ATLS has that payroll.
Q Are you familiar with the debtors' day-to-day operations?
A Yes.
Q And are you familiar with the debtors' business and financial affairs, generally?
A Yes.
Q And are you generally familiar with the debtors' books and records?
A Yes.
Q You mentioned earlier that the debtor is engaged -- debtors are generally engaged in investments in life science companies. Are those investments in the form of portfolio companies?

A Yes.
Q And how many portfolio companies are being managed today by the GP?
A Fifteen.
MS. LABOVITZ: (Not identified) Objection to form. Objection, lack of foundation.
THE COURT: Overruled.
BY MR. BERDON:
Q And is it fair to say that A-T-S --
A ATLS?
Q -- ATLS -- A-T -- I'm sorry -- Apple Tree Life Science Ventures, L.P. is the owner of those portfolio companies' capital, stock, as it pertains to ATP's ownership?
A Yes.
Q Okay. And for some of those portfolio companies, are there owners of shares outside of the ATP fund family?
A Well, shares in a company tend to be divided up into types. So, if ATP is the sole investor, then ATP would be, typically, the sole preferred stock owner, but founders and management and sometimes other entities have common stock.
Q And in general terms, what are the businesses of these portfolio companies?
A So, for the most part, they're biotech companies. There's a pharmaceutical company and there is one MedTech company.

Q And by "MedTech," you mean what?
A Medical device that has a therapeutic effect.
Q Okay. And in your mind, is there a difference between a biotechnology company and a pharmaceutical company?
A Yes. In the common parlance, a biotechnology company uses a piece of biology inside the body to eventually develop a therapeutic, which may be a therapeutic that is similar to that, which would have been originally developed by a pharmaceutical company. A pharmaceutical company comes out of the organic chemicals industry, which is much older than the biotech industry. They come together, usually, at later stages in commercialization.
Q Okay. Do you know how many of the portfolio companies are currently debtors in this case?
A Seven.
MR. BERDON: Okay. Your Honor, I don't know how familiar you are with the FDA clinical development process. I'm going to ask the witness some questions and, if it's stuff that's well tread with you, I'll move on very quickly.
THE COURT: Thank you.
BY MR. BERDON:
Q Dr. Harrison, when it comes to the development of therapeutics designed for human use, does the FDA require clinical study of a drug before it can be introduced into commerce?

A Yes.
Q And are they generally divided into different stages?
A Yes.
Q And can you explain to the Court how those stages are designated; are they numbered?
A Phase 1, Phase 2, Phase 3, simply put.
Q Okay. And what's the purpose of a Phase 1 clinical trial, generally?
A Typically, it's to determine whether a drug is safe in humans, although there's add-ons called a "Phase 1b," for example, where you can determine proof of the drug's mechanisms and also early efficacy.
Q And generally speaking, what is done in a Phase 2 clinical trial?
A A Phase 2 clinical trial, you're seeking out the specific populations for whom a drug may work. You're determining the correct dose in those people, those populations. And you're basically sizing and determining the structure of what will be your Phase 3 trial, which will be done for approval of the product.
Q And is the Phase 3 trial sometimes called the "pivotal trial"?
A Yes.
Q Okay. So what has to be done before you can start Phase 1 testing?

A Well, you have to go through a lot of what are called "preclinical" tests and experiments and specific pieces of work related to a project that are dictated by the FDA.

Q And generally speaking, when you are doing the preclinical work, is some of that done basically in test tubes, in vitro?

A Yes. The -- that tends to be an earlier piece of work, where you discover how a drug is working, what we say, "mechanistically," which receptors it might touch in the body or which biomolecules or things like that. And once you've determined that you have that sort of proof in vitro, then you move to in vivo systems and different animal models.

But ultimately, in order to do a clinical trial, you need to do very specific regulatory toxicology studies in specific species of animals for specific durations and do specific tests on those animals, et cetera.

Q Now once you've performed that work, is there a specific filing that goes to the FDA before a Phase 1 clinical trial can begin?

A Yes.

Q And what's that filing called?

A An "IND," investigational new drug application.

Q Thank you.

Among the portfolio here, are there some that are in active clinical development of therapeutics?

A Yes.
Q And which one are they -- which ones are those?
A Which ones.
Q Pardon me.
A Replicate, Aulos, Ascidian, and Marengo.
Q And we're here today asking the Court to approve some funding for which one of those four?
A I believe today is Aulos.
Q Okay. Are there companies in the portfolio that are in the preclinical stage of development?
A Yes.
Q And of those 15 portfolio companies that you mentioned, how many are preclinical?
A I believe the number is nine.
Q And are all the preclinical companies that filed for chapter -- withdrawn.

All the portfolio companies that have filed for Chapter 11 so far, are they in the preclinical phase?
A Yes.
Q Okay. Now does the partnership have an interest in any commercial stage companies?
A Yes, two.
Q And "commercial stage companies" are those that actually have a marketed product. Is that right?
A Yes.

Q And what are the two commercial stage companies in the portfolio?
A One is called Braeburn and the other is called Galvanize.
Q And briefly, what is the -- is Braeburn's business?
A Braeburn markets a drug that is used to combat opioid addiction.
And Galvanize markets a medical device that is used to treat cancer.
Q And does ATP have valuations done of Braeburn from time to time?
A Yes.
Q And do you have a recollection of the most recent valuation of Braeburn?
A I do.
Q What's that?
A All in, it's approximately 2.9 billion, although some 750 million of that, valued on the date of distribution, was distributed.
Q Dr. Harrison, why did the debtor portfolio companies here file for Chapter 11 protection?
A Because they did not have the resources to carry out their -- their research plans, essentially.
Q And was there a particular event that interrupted their access to resources?

A Yes, Rigmora defaulted on the limited partnership agreement and repudiated their obligations under it.

Q And what did the general partner and the fund do in response to that event?

A We filed a suit in Chancery Court.

Q And after litigating that suit through, was there an opinion rendered?

A Yes.

MR. BERDON: Okay. And as Your Honor noted earlier, the Court's opinion does appear on the exhibit list. I'm not going to walk the witness through it, but that's Exhibit 1.

BY MR. BERDON:

Q Dr. Harrison, prior to the default, did the partnership and the GP keep track of the financial performance of the fund, in comparison with some of the other participants in the industry?

A Yes.

Q And would it help your testimony if I were to provide you with a chart that I believe appeared earlier in one of the first-day submissions, in a PowerPoint presentation?

A Sure.

May I ask, can you hear me if I don't lean forward? Is -- if I just sit back, can you hear me okay?

THE COURT: I can.

THE WITNESS: Yeah? Okay.

(Participants confer)

MS. LABOVITZ: (Not identified) Your Honor, while we wait to find the right spot for the next question, we are resisting objecting to all of this. It's very unclear to me why the questions being asked right now are relevant to the funding motion, and we're just not sure where we're going here.

We've been asking for information about the funding motion and what is supposed to be funded for quite some time, we look forward to hearing it. But it seems to me that doing it in this format and in this way is a bit counterproductive. And if Dr. Harrison would like to explain to us what the funding is for, we'd love to do that perhaps back at Richards Layton's offices. I'm just not sure what we're doing here right now.

UNIDENTIFIED SPEAKER: Your Honor, I --

MR. BERDON: Your Honor, I can't respond to that in any way, other than to say we're here to put on evidence of the -- why are we here and --

THE COURT: Well, why are we here is not necessarily for today.

MR. BERDON: And --

THE COURT: That's for another day.

MR. BERDON: And then what are we asking to be

able to spend and for what use will it be made.

THE COURT: Okay. So I'll consider this background for that, but --

MR. BERDON: That's exactly what it is.

THE COURT: But let's get to that.

MR. BERDON: Understood, Your Honor. Then I will not go to this exhibit.

(Participants confer)

MR. BERDON: Okay. May I approach the witness, Your Honor?

THE COURT: You may. Is that this PowerPoint?

MR. BERDON: It is.

I'm just going to ask the witness to look at the slides titled "Debtors Overview."

BY MR. BERDON:

Q Dr. Harrison, can you turn to Page 7?

A I'm there, yeah.

Q Okay. I'm just going to use this for a little -- just so we have an order to talk about things. But I'd like to start our conversation with Aulos.

Are you familiar with the amount being sought to fund Aulos in the funding motion?

A Yes.

Q And how much is that?

A It's shifted. It -- I understand what Aulos needs as

an -- as an enterprise --

Q Is it --

A -- to achieve its next valuation step, which is approximate 7 million.

Q Okay.

A But I haven't exactly tracked what goes into these different segments.

Q Understood.

So if you would please turn to page 16 of the presentation and the slides that followed, and I would direct your attention to numbered page 20.

Are you with me on page 20?

A I am.

Q Does it refresh your recollection as to the amount that is being sought --

A Yes.

Q -- as a requested final amount here?

A Yes.

Q And how much is that?

A $3.7 million.

Q Okay. Can you explain to the Court the reason why we -- the Debtors are seeking $3.7 million to fund Aulos in the near term?

A Well, Aulos is in the middle of the phase, four Phase 2 oncology clinical trials to malignant melanoma and to non-

small cell lung cancer both, in patients who are otherwise untreatable using standard of care and the company has approximately three weeks of cash left.

Q And just so the Court understands, in order to conduct these four Phase 2 clinical trials, what expenses are associated with maintaining those trials?

A Well, apart from the basic payroll at the company, which is very efficient -- there are only seven people there -- most of the work at a company like this would be outsourced to a contract research organization set up to perform the clinical trial.

Q And contract research organizations are typically referred to as "CROs"?

A Yes.

Q And is Aulos going to be required to make payments to its CRO over the next five to six weeks?

A Yeah, typically, the contracts for CRO have progress payments and I believe that Aulos has a $2.5 million progress payment due by the end of January.

Q In addition to payments to the contract research organizations, are there amounts that get paid for laboratory work?

A Yes.

Q And how is laboratory work relevant to the clinical trials?

A Well, these days, clinical trials involve making sure that a drug works in the way that it's supposed to work biologically, and that means that you know from all the work you've done preclinically, what the mechanism of action is of the drug. And there's a lot of fairly complicated and technical tests that you do of samples of the patients in a clinical trial: blood samples, tissue samples, various types that are sent to specialized labs and those are typically specialized tests that may often have been developed specifically for the company's drug, and those need to be carried out as a part of the clinical trial, as part -- in order to have a valid result for the FDA.

Q And is part of running the clinical trial, is there a requirement to actually supply an active drug --

A Yes.

Q -- for use in the trial?

A Yes, the company must ensure drug supply for the clinical trial; in fact, it's part of the Institutional Review Board's requirements for each university medical center where the clinical trial may be undertaken, that there's an assurance of blood supply -- of drug supply for the patients.

Q Does Aulos currently have on hand enough drug to finish its current clinical trials?

A I am not certain of that, but I know that they will

need to continue to fund the manufacture and supply organization to continue to make drug supply.

Q Taking a look at the column under "Reason," are the investigator interactions and Aulos' presence at clinical trial sites things that are necessary to fund in order for a clinical trial to be maintained?

A In my experience, crucial. You can't just outsource to a contract research organization; you have to have your own people on-site developing relationships with principal investigators and actually being, at times, involved in patient selection, answering any questions about nuances is of a drug administration. If you don't do that, things can go awry very quickly.

Q Dr. Harrison, if you read Rigmora's papers, you know, none of this is so sensitive that it couldn't wait a couple of months.

What's your reaction to that?

A It's nonsense.

Q Is there any fat in this funding request, anything that is going for things that are not necessary to keep the clinical trial program up and running?

A These portfolio companies have been starved for approximately one year, so there's absolutely no fat. The funding request is, after an intensive period by a professional team, of triage and only the essential assets

are being funded in the absolute, bare-minimum amounts.

Q If one was to try to run Aulos in the ordinary course as a generally typical biotech company at clinical stage, would it have a different amount of cash needs than $3.7 million for the next several weeks?

A Well, first of all, I've never seen a company at this stage in its life cycle as a biotech company, have no balance sheet. It -- and would never have embarked upon a clinical trial of this nature without a balance sheet.

Typically, companies monitor and evaluate the data stream that's coming from the clinical trials or from their work, in general, and they adjust their research plans and program expenditures based upon those results. Aulos, actually, has been unable to do that. The best it can do is hope to continue its clinical trials. I believe it's trimmed them from the number of patients originally sought after to an absolute minimum number, based upon the lack of funding.

So what Aulos could do and what Aulos is doing; there's quite a distance.

Q And without going into too much detail, you mentioned that this is -- these are trials in melanoma and lung cancer.

Just as a category, what type of drug is Aulos developing?

A It's a kind of a drug that's called an immuno-oncology drug and, specifically, a cytokine agent. And what it does

is it harnesses part of the immune system that can be used by the body to fight cancers and it aims it, essentially, at those cancers better and intensifies its action better without having very many side effects.

Q If you were to be running this company in the ordinary course, would you be asking for more than $3.7 million right now?

A Absolutely.

Q What will happen if Aulos does not receive the funding that you've asked for in this interim order?

A Well, Aulos will go out of business. The critical trial, if I were continued, it would only be some patients who might be succeeding on the trial. I believe the numbers are 30 to 40 percent at the moment, which is a very good number for those indications.

They might continue on sort of a momentum and compassionate-use basis. The minute the drug supply is up, they'll go off; there'll be no new patients recruited; there'll be no monitoring of those patients, so the data will kind of go sideways, which is absolutely critical for any kind of FDA file. That'll be ruined. There'll be no -- we talked about all the testing that needs to go on in the background; that's not going to happen. It would be unmanaged; it would sort of go off the road.

Q And what would happen to the patients who are currently

enrolled in that trial?

A As I said, some of them might be lucky, who have access to drug supply and a compassionate care team might stay on for some period of time, but, ultimately, they would fall off. And that's problematic because I don't know if you people quite realize what happens in the drug industry is something called an "extension arm" of the clinical trial that's working and it's your obligation as a company to continue to supply drug to investigators who request it for patients who are staying on drug where their disease is controlled. So, sometimes, a clinical trial may end and patients in the extension arm might be on for years surviving, doing well, and that certainly would not happen.

Q So Dr. Harrison --

A And -- sorry -- there are already patients on the extension arm here from the Phase 1 trial that Aulos did.

Q Dr. Harrison, in terms of the characteristics and admission criteria for a patient to be in one of Aulos' clinical trials, are they a particularly robust population?

A Well, no. Aulos, specifically, is recruiting patients who have failed all other agents known in the Pharmacopeia that could potentially treat them. They've tried them; they failed.

In fact, before we embarked on this clinical trial, we mandated that Aulos holds an advisory board of the leading

melanoma scientists in the country to ensure that the clinical trial would only recruit patients who stringently failed prior, any possible medicine that could help them.

Because we wanted -- because we knew under the default that we had so little money that every patient had to count, we couldn't have anyone look at the data and say, Oh, this could have been a patient where the momentum of their prior therapy is somehow is latent response, so we eliminated that by having patients have absolute failure on any -- on whatever they could have been on and that was legislated in to the clinical trial plan.

Q Dr. Harrison, how much money has been invested into Aulos to date?

A I think the total number is about $69 and a half million.

Q And who provided those funds?

A ATP provided 60. The CEO of Aulos provided 7 and a half and the regional source of the preclinical compound that we took forward, which is an Israeli company that designs antibodies *in silico* named "Biologic" provided 2 and a half, and then there was an individual on the board who used to be the chief medical officer of Pfizer Oncology, who invested a hundred thousand dollars.

Q We've heard about budgets with a capital B, in this case, in the context of the limited partnership agreement.

At this time, does Aulos have any remaining, approved budget that Rigmora has approved?

A It does not.

Q Have you asked Rigmora to approve budgets for Aulos?

A Yes.

Q And what, generally, has been Rigmora's response?

A Initially, the response was "no." Then, they said, after many, many discussions where the response was "no" or things were put off, they indicated that they would only consider funding Aulos, for example, if we were to shut down the preclinical portfolio.

Q So, was that an issue that was litigated down in the Chancery Court?

A Yes.

Q Is it usual for a company's CEO to contribute or invest their own money in an early-stage biotechnology company like this?

A It's quite unusual under these circumstances. Sometimes it happens where a CEO will ask to co-invest, but usually it's under a million dollars and it's something that's allowed. But at this scale of investing and there's no doubt that biotechnology is a capital-intensive endeavor, typically, it's institutional investors and I've never seen it before where a CEO steps in to the breach where an institutional investor defaults.

Q Do you know how long that's -- the last of that $69 million is likely to last for Aulos?
A Early February, I believe.
Q So the cashout date for Aulos --
A Less than a month.
Q -- with those contributions is still in February of 2026?
A Yeah, the guy's put together that $9 and a half million, I think it was June or July and they're running a Phase 2 clinical trial or trials, so that ten million bucks lasted as long as it has; it's incredibly efficient.
Q And I'm going to wrap up Aulos, but if Aulos were to be able to proceed, essentially, as close to ordinary course as it can, what are the events that you are using as your thoughts about business planning and generation of value over the next 12 months?
A The company would complete the enrollment of its Phase 2 clinical trials and all of the associated testing. The company would analyze the data, measuring response rates, adverse events, and most importantly, durability of response. That's why you have to let these things run for a long time, particularly in immuno-oncology, because the durability is very important. The data would be presented at major oncology conferences, which tend to occur in May and June. There would be something called an "end of Phase 2" meeting

with the FDA, which will probably occur midyear and that would set the company up for an approval path through a Phase 3 clinical trial.

And based upon meetings with the FDA, that could go in several different directions; most aggressively, if we were super optimistic, you would get an accelerated approval path with a very limited, phase, what's called a "Phase 2(b)," you know, a very small trial, and get an approval in '27. I'd say the most pessimistic, but still assuming that the data are good, is the FDA would require a full Phase 3 trial and then you'd get an approval in late '28.

Q Would delay of funding for two more months, in your view, jeopardize that progress?

A Well, as I testified before, the clinical trial would most likely cease or it would be disrupted in a manner to potentially ruin the data or not enable the accrual of the requisite number of patients or not conduct timely testing on patient samples or not oversee the trial in the correct way. I mean, the company is running out of money now.

Q Understood.

MR. BERDON: Your Honor, I'm going to move on to the preclinical companies now.

BY MR. BERDON:

Q Dr. Harrison, if you'd, just for the purpose of guiding us, we're going to take a look at page 7 of the PowerPoint in

front of you, and we're going to just discuss these, essentially, alphabetically.

Can you please explain to the Court what Aethon does.

A Aethon is a company that is creating what are called "companion medicines" for precision oncology drugs.

Q And what's the current status of the work going on at Aethon in terms of -- and I'll frame it -- their progress to the point where funding stopped or was drastically reduced?

A Well, Aethon, fortunately, has a strategic partner named "Revolution Medicines," which is a biotech company, which we call "RevMed" for short. And the RevMed deal has provided, I believe some 20 million in free cash to the company to work on RevMed programs. Those programs are to create companion antibodies for RevMed's own precision medicines in a -- that target a very important cancer-causing protein called "RAS."

That program has gone very well, moving from discovery research to development candidate, which is the stage just before you begin those standardized, sort of regulatory steps and procedures to prepare for an IND. RevMed is funding the company in a manner to create a small profit and, also, our team in running RevMed under these scarce-funded circumstances, have managed to eke out a margin of the team's time, as well. In those interstices, we've actually managed to work on some internal programs, wholly-owned project, in

addition to RevMed's.

So, I think the company has done very well on incredibly small funding and they have a pretty exciting program, where the problem in medicine today is that these precision oncology drugs, because they're so precise, they actually teach the cancer how to mutate around them. And so, the companion medicine that we design with them, holds the precision drug's effect for much longer. So it's a very sought-after model and that was the reason we founded the company.

Q Well, the argument, I'm sure it's going to be made, that the outside money is keeping Aethon alive.

Why not just keep going on that basis? What's the reason why you need Aethon to have funding, independent of this strategic partner?

A Well, we founded Aethon, I believe it's a five-year-old company, or close to it. The total investment that we've made during that time is $19 million. Where it's gotten to in that $19 million is very, very far. It could never have gotten there without RevMed's funding.

The base of the company is something that has to be maintained in order for a strategic partner like RevMed, or any of our other deals where there's a strategic partner, for them to want to continue to invest. It's not -- RevMed, alone, doesn't sustain the company; in fact, if we didn't

fund at all, there's a possibility and a likelihood that RevMed would not continue to fund and that would be -- it's kind of a chain reaction.

Q To put it another way, does the strategic partner view itself as being responsible for keeping its contract is partner solvent?

A Absolutely not.

A strategic partner is funding its own programs on the company's platform.

Q I'd like to direct your attention to the chart on page 18. My copy of page 18 doesn't have a number on it, but I'm looking to make sure it's adjacent to 19. And that's a slide that's titled company break -- "Funding Motion: Company Breakdown --

A Uh-huh.

Q -- Aethon (nondebtor)."

How much is -- how much are the Debtors seeking in funding on this motion for Aethon?

A Approximately $2.2 million.

Q So, as you're sitting, looking at this, our friends from Rigmora say no reasonable person would invest money and additional work for preclinical activities at this point and that somehow your judgment has been clouded.

What's your response to that?

A The mission of the fund is to develop early-stage

companies into preclinical companies, into clinical companies, and hopefully, ultimately, into healthy companies that have their own pipelines and revenue lines. And this has been what we've done historically. I'd like to think we did pretty well. And you can't do that without investing in what you're calling "preclinical companies."

Q Have you taken a look at the role of Aethon in the portfolio and made a decision one way or the other -- withdrawn.

What was the basis of your decision that Aethon should continue to be funded?

A Well, number one, just speaking pragmatically, continuing to fund yields the high likelihood of those compounds in the RevMed program being declared development candidates -- we're very close; we actually know what they are -- at which point RevMed would pay a $12 million milestone, which, in this context, is a good funding amount.

The second reason is that right now, basically, Aethon has become RevMed's CRO for companion drugs for its programs. That's fine as it goes, but it's not really a good investment proposition to invest capital in a single-digital royalty return when you can invest capital and own the entire drug. Aethon has its own programs, which it spent a lot of time researching and analyzing and comparing with competitors and also being, in some sense, schooled by all of its work by

RevMed on the RAS program in some cancer targets that are incredibly important. And those internal programs very much deserve funding as part of a portfolio of biotech companies that all move forward with judicious funding, and then some of them pop across different value stages or value thresholds. And you can't determine which in advance, but some will, and Aethon is one that is certainly worthy of that between the RevMed leverage and these internal programs, which definitely deserve funding.

Q Let's change our discussion over to Apertor. What's Apertor's current area of research?

A Apertor is developing a small-molecule drug that we believe will have a lot of value in non-small cell lung cancer.

Q And taking a look at Slide 16, can you tell the Court how much is being sought to fund Apertor in this motion.

A I'm sorry, 16?

Q Page 16.

A About one million dollars.

Q And does Apertor outsource its research and development work?

A Yes.

Q And is outsourcing a standard practice in the industry?

A Yes, there are contract research organizations that operate preclinically. There are contract research

organizations that operate clinically.

So a company like Apertor right now is contracting with preclinical CROs.

Q And in the ordinary course of business, would Apertor be paying its CROs to advance its research activities?

A Yeah, the way it works in this sort of company is that the internal programs or the internal infrastructure tends to be built around the competitive and proprietary advantage that you want or that you start with or develop it. So, in Apertor's case, there's a specific set of technologies that is funded internally.

But when it comes to the stage where Apertor is with this particular molecule, which is called "4E-BP1," those -- so that molecule is at the point of going into these tests that I referred to before, that the agency requires to put into your IND package that relate to toxicity of the molecule in different animal species for stipulate durations. And those are always outsourced, because you wouldn't build that infrastructure in-house.

So, the value stage here is very clear: you pay the contract to do those regulatory tox-type studies and then you work with the CRO to set up the studies and do them, and then you hopefully get the data and you, if it's good, you put it into your IND package.

Q And if I refer to those network as IND-enabling

studies; is that accurate?

A Yes.

Q Okay.

A I mean, there are a few more beyond that, but yes, those are part of the deal.

Q And is the market that that potential drug candidate would be aimed at, one that has a substantial number of patients?

A Yeah, I think it's the largest lung cancer or the largest cancer market.

Q The single-largest cancer market?

A Yes, I believe it's the largest cause of cancer death and the largest cancer market.

Q And, again, here, if you just keep things going where they are right now for two more months, is there a significant downside from the Apertor perspective?

A Apertor is a company that we were forced to drip-feed. We had a number of companies that we were literally meeting payroll bi-weekly, sending the money every two weeks to do just the basics.

I believe Apertor has four employees, or is it two, you know, some small number of employees and they need that money in order to continue. But at some point, if you have a program that is ready for IND, where all of the early-stage work shows you that it's actually knocking down the most

severe, the most aggressive animal models of a given disease in a way that people don't normally see with reasonable safety profile, to not take that forward, I mean, it does stall the capital gain. It does run the patent clock after the IP has been filed, which shortens the NPD of the project.

But at some point, it starts to become unethical to not drive a program like that forward, because you would get it into the clinic fast. If it's going to work, it's going to help people. People will see that, like the agency, and it will go quickly to approval. This is particularly what happens with these diseases.

So, by just sitting here, we're not engaging in that. And the way that we've proposed to engage is incredibly efficiently. The idea that you're funding cap -- you know, a million dollars to Apertor, or a company like Apertor, to do that kind of work, it's -- you know, "efficient," wouldn't begin to describe it. It's not normal.

So, it's -- sorry if I've gone on, but...

Q So, in the exercise of your business judgment, is there a sound, scientific rationale for moving forward with Apertor's work and funding it at the level that's requested?

A Yes, there's a reason; it's called the "clinical go/no-go decision."

Q Well, let's let the Court understand that.

Are you at clinical go/no-go right now?

A No, we need to do some more tests to get to that point and then you sit there and look at the totality of the data and you say, Okay, should we file an IND and do a Phase 1 trial or should we not? Because that's a step that'll cost five to $10 million and you're sort of in for a penny and for a pound. And that's what every company does.

Q Okay. Taking a look at Slide 16, again, Apertor does have approved budget, doesn't it?

A Indeed.

Q And it has over $19 million in approved budget, right?

A Yes.

Q And you're asking for a million dollars in funding in this motion?

A Yes.

Q Let's talk about Initial.

A Sure.

Q Initial is another debtor, correct?

A Yes.

Q Okay. What is the business of Initial -- withdrawn.

What is Initial researching?

A Well, Initial was one of the companies that was severely affected by the default, so we triaged. It was a platform company that did a certain thing and was working on several projects. And we, recognizing that there was not going to be any funding, we triaged the projects and chose

one to work on.

Q And so you're not proposing to go back to what Initial was working on in total, before, let's say, May of 2025?

A Correct, we're not.

Q Okay. You're going on for a single program?

A Yes.

Q Okay. Just for context, can you explain to the Court what you mean by a "platform company."

A Often, frequently, we're setting companies up as technology platforms that have the ability to break into biological or disease mechanisms in ways that are very much needed in the field and where we believe that particular approach can make some headway and progress, and also, where we have intellectual property advantage. And we spend a lot of time working with academic founders and people in the industry to determine what those angles are in technologies and then once that approach is settled on for a given company, we engage in discussions with founders, who, more often than not, tend to be academics, and with their institutions, such as universities, we create licensing deals between those institutions and the NewCo and then begin to set up the industrial version of whatever the technology advances were that they have in their lab, because if it works in an academic lab -- and we have to go through a lot of validation and due diligence to make sure -- scaling it up

to an industrial level is a different endeavor.

So we do that and we build that platform. Not in every company; there's some companies that begin with different premises. But when you're doing an early-stage biotech company that's going to be a platform company, the idea is you build a platform in-house and then you develop projects on top of it, drug projects, and that's what each of these companies has done. That's where Apertor's project came from. That's where Initial's project came from.

Q And so in your judgment, it makes sense for Initial to at least work on one project on a going-forward basis?

A No, not necessarily.

I think that when we triaged the portfolio, we looked across the portfolio and found the projects that we really thought were worthy, and this particular one at Initial is a quite-worthy project for stage and the investment required.

It wasn't that, oh, we need to find a project at Initial; on the contrary, it was: This is a great project.

Q Yeah, I think you misunderstood my question.

A Sorry.

Q But in the exercise of your business judgment, you believe that pursuing at least this one project at Initial is in the best interests to fund?

A Absolutely.

Q If the same constraints were not imposed, would you be

pursuing more than one project at Initial?
A Yes, we cut projects off that were -- should have been pursued. I mean, I don't think we have time to go into it now, but, you know, it was a shame.
Q I'd like to turn our discussion, now, to Evercrisp.
Is Evercrisp a debtor in this case?
A Yes.
Q Okay. I'd like to direct your attention to that same slide that wasn't numbered; it was on page 18, the same page with Aethon, and ask you to tell the Court how much funding the partnership is asking for, for this interim funding of Evercrisp?
A About $1.4 million.
Q Okay. Who are the founders of Evercrisp?
A We co-founded Evercrisp with Jennifer Doudna, who is the Nobel laureate for the discovery of gene editing, and a scientist named Tanja Kortemme at the University of California at San Francisco, who is an expert in using machine learning to design specific kinds of biological molecules.
Q And do you know -- tell the Court where Evercrisp is located?
A Northern California or the Bay Area. The Bay Area.
Q And approximately how many employees does Evercrisp have now?

A Seven.

Q Seven.

Let's talk, generally, about, in addition to -- withdrawn.

In addition to outsourced R&D, what are the other categories of spending that are included in these interim budget requests?

A In addition to employees?

Q Well, no.

Let's talk about employees.

A Well, employees, payroll, contract research. As we've discussed, typically, there are contracts for different kinds of manufacturing agreements, because when you're trialing a drug, even in animals, you need to have it made in a consistent and reliable way, and you're setting up, hopefully, for the same drug in patients.

Leases on facilities. Quite often, these companies, they don't actually own their expensive research equipment; although, in some cases, they do, if it's going to be helping them with a competitive advantage if they should have it in-house, but there are companies that own the equipment and lease the equipment to biotech companies. So there'd be those kinds of leases -- benefits.

Q Understood.

And are these the same -- withdrawn.

Are there also fees that are sometimes used for preserving intellectual property?

A Oh, yes. I'm sorry.

There are professional fees; I mean, we have IP lawyers who we work with very closely and they work with our portfolio companies to comb the researchers' notebooks and file patents and create intellectual property strategies, including withholding filing patents to save time on the patent clock.

Q And are these four or five areas of funding essentially the same for each of the companies that preclinically -- that the preclinical companies that we are here asking for funding?

A For these purposes, yes.

Q So, essentially, outside R&D spend, outside manufacturing, leases and rent, salaries, intellectual property, generically, are those pretty much the same across the board?

A Yes.

Q Okay. I'd like to change our discussion now to Marlinspike. If you could just turn to page 17.

Can you tell us the subject of Marlinspike's research?

A It's an anticancer agent called "SF3B1."

Q And what types of indications are we looking at here; again, broadly.

A Quite a few, because the biological target is a critical engager with a major cancer-causing protein, or oncoprotein, called "CMIC." So that underpins colon cancer, lung cancer, breast cancer, many cancers.

Q Understood.

So taking a look at Slide 17, how much is the fund, or the partnership looking for interim funding for Marlinspike?

A $700,000.

Q And in your estimation, is Marlinspike's work -- withdrawn.

In your estimation, is Marlinspike's research the funding in the amount of $700,000 --

A Yes.

Q -- over the next several months?

A Yes.

Q And do you have an understanding as to what the downside, if any, would be for delaying any funding to Marlinspike for the next two months?

A It's the same; you're running the patent clock unnecessarily. You're not embarking on a program that has a very interesting mechanistic and biological effect that's been commented on by potential corporate partners. So you're foregoing or delaying that possibility.

It's the fund's business to look at results like this and to fund them carefully to the next stage. It's a very

exciting project that could move fast with these small amounts of funding, achieving early, preclinical milestones.

For example, this compound should be at a development candidate in the next six to nine months. And from there, with a relatively small amount of funding from that point, be driven to a clinical go/no-go decision.

Q And does Marlinspike even have unfunded approved budget from pre-default days?

A It does, yeah.

Q And how much are you looking for, $700,000?

A Yes.

Q And an approved budget of $6.3 million; is that right?

A Yes.

Q Okay. Let's talk about Red Queen.

Is Red Queen a debtor in these cases?

A Yes.

Q And what's the work that Red Queen is involved with?

A Red Queen is developing a suite of antiviral drugs that can be used by immunocompromised patients and patients at risk for different kinds of viruses with a one-time use with a nasal sprayer or inhaler, which has no side effects, because the drug doesn't enter the system and which completely neutralizes the virus. And it becomes more powerful in its neutralization the more resistant the virus becomes, by the nature of the mechanism.

Q So, Rigmora has said that this is an anti-COVID program and they call into question the need to recommence funding of an anti-COVID program; is that right?

A We chose to do a clinical proof of concept.

So it's a little bit of a misnomer that Red Queen is a preclinical company. Red Queen actually conducted a clinical trial in SARS-CoV-2 or COVID.

But we chose to not continue after the pandemic was controlled for two reasons. One, because we were interested in syndicating the company and COVID went from super popular to not popular. But we actually saw a pretty massive market here, because the antiviral drugs have huge side effects; they create liver damage. Many people can't take them. And the COVID vaccines, they only work if you have an immune system to mount an immune response.

And quite a few people who are susceptible to these sorts of viruses -- not just COVID, but COVID in this case -- are immunocompromised, like the elderly, people in the hospital, people with cancer, children -- not in the case of COVID, but in the case of some of the other drugs -- children. And when you actually stack up the total markets of immunocompromised and patients who would be susceptible, they're kind of major markets.

When we said to Rigmora, Look, let's put another -- let's do a clinical trial focused on those patients, based

upon these results and develop the other projects that the COVID proof of concept essentially proved for RSV, for other viruses, for influenza, pan-influenza. They wouldn't hear about it. They're like, No, this is a COVID company. This is no good and it was just not true, but that was not -- at the time that we were trying to work with them and, although we had budget and we could have called the capital, we chose not to.

Q So there's $6.4 million in approved budget remaining for Red Queen?

A Yes.

Q And how much are you asking for in this funding motion?

A $900,000.

And that, by the way, doesn't work on COVID. There are two other projects that are -- one is for what's called a "triple-respiratory medicine." So, patients who are at risk for viral diseases can use this and that's one project, and another is for a PanFlu drug in the same format.

Q Let's talk about Nereid.

A Sure.

Q Is -- does Nereid have any remaining budget under the regime of the LPA?

A No, it does not.

Q How much are you asking for, for funding for Nereid?

A About $1.6 million.

Q And is Nereid a debtor in these cases?
A Yes.
Q Where did the technology from Nereid come from?
A It came from the labs of Dr. Cliff Brangwynne of Princeton University.
Q And do you have any personal connection with Dr. Brangwynne before Apple Tree made its investments?
A No.
Q Okay. The fact that --
A I'm proud that it came from Princeton --
Q -- your *alma mater* --
A -- yes.
Q I'm sorry, we can't talk over each other.
What was that?
A I'm sorry.
I'm proud that it came from Princeton, but we have no other connection prior to our investment.
Q Understood.
Is there a board of directors at Nereid?
A Yes --
Q And --
A -- there's a board of directors of every company, but yes, there's one of Nereid.
Q And are there outside directors on the board of Nereid, who are not affiliated with ATP?

A Yes.
Q Can you name one or two of them so the Court understands?
A Yeah, one is Bob Hugin. Bob is the former chairman and longtime CEO of a company called "Celgene." That was a major biotechnology company. He's extremely well-known in the industry. Celgene was sold to Bristol-Myers Squibb, ultimately, for $74 billion.
Q And --
A And the second is Laura Forese. Laura Forese is an orthopedic surgeon who wound up going into hospital administration and became the number two at Presbyterian Medical Center.
Q And what types of research has Nereid been performing?
A Well, Nereid has a very successful platform. It's something called "condensates." Condensates are the way the cell manages how certain molecules go from liquid to gel and that regulate cell processes, so when they get out of whack, that could lead to cancer, that could lead to neurodegenerative diseases, for example.

And Nereid, not only has created a successful platform that does that on an industrial scale; it also has three molecules at different stages: two in cancer and one in neurodegenerative disease, namely, ALS, the Lou Gehrig disease or Stephen Hawkings disease that came off of the

platform.

Q And you're asking for how much funding for Nereid?

A $1.6 million to drive all three programs. One of them is quite late in the game. It's an anticancer drug and it's heading for clinical go/no-go. Another is an anticancer agent that, it's actually the first time that we're aware of that anyone has actually knocked down the CMIC oncoprotein entirely with a single agent that's nontoxic in animals and also flatten the tumors. So it's a very exciting project. That's at a development candidate and needs to be driven forward.

And then there's the ALS project that is earlier-stage, but we'd like to drive it to development candidate, because we think that the biological target, which is well-known in the neurodegenerative disease research world and in pharma companies, with the right development candidate, it will have an extreme interest.

Q And did you give a lot of thought as to whether or not to continue work at Nereid before asking for this funding?

A Yes, very much a thought.

Q And have you talked to any of the -- withdrawn.

Have you spoken to anyone at Nereid about the funding situation?

A Yes.

Q Who have you spoken with?

A Bob Hugin, Laura Forese, the founder, Cliff Brangwynne, for example.
Q And to the best of your understanding, are you on the board at Nereid?
A I'm on the board, yes.
Q To the best of your understanding, does the Board of Nereid support going forward with the work that would be funded with this million and a half dollars?
A Yes.
Q I'd like to direct your attention to the company called "Nine Square." It's on page 19, as well.
Is Nine Square a debtor in these cases?
A Yes.
Q And do you know how much cash Nine Square has on hand right now?
A Close to zero, I'd imagine.
Q Do you know how much cash Nereid has on hand right now?
A About the same.
Q They're both down to --
A Close to zero, yes.
Q -- or close to zero?
A We were drip-feeding those companies. Nine Square had a grant from the Michael J. Fox Foundation for its Parkinson's disease program, but it had run through that grant.

Q And how much are you asking for, for Nine Square?
A $1.4 million.
Q And based on -- withdrawn.
Are you on the board at Nine Square?
A Yes.
Q The research that you're doing now, what's the platform?
A It's a little complicated.
Q Okay. I don't want to go, take too much time, so --
A So the platform has --
Q -- you don't have go into the tech.
A The platform has to do with -- it's been learned that many of these neurodegenerative diseases like Alzheimer's, ALS, Parkinson's, others, different forms of dementia are actually caused by neurons not properly removing and processing cellular debris and there are cascades of proteins that are responsible for doing that.
And so, we were approached by someone named Matt Jacobson. Matt Jacobson was the chair of the foremost medicinal chemistry faculty in the world at UCSF, and Matt is a very well-known serial founder of successful biotech companies and known to us through our venture partners, and I knew his mentor, I backed his mentor.
Matt had a very specific insight into neurodegenerative disease and he came to us because he understood how we had a

venture partner team and would fund companies. And he revealed to us that he had Parkinson's disease and that he wanted us to pursue a very specific approach that he had studied. And we did due diligence and we understood that he -- we believed him and, in fact, all the work that we did at Nine Square proved him right and led to our prosecution of two targets. One is called "TRPML1" and the other is called "Parkin"; both in that sort of cascade of enzymes that process cellular debris.

And we got very far in those programs to development candidate and they are very worthy of funding. Interestingly, after the default, there had been a fair amount of strategic partner interest, anyway, across the portfolio, but in Nine Square, in particular. And we, into the summer last year, we received a term sheet from a major pharma company for TRPML1 that would have completely bankrolled the company. But when they understood the precarity of the company's situation, they backed out.

Q So, in your view, is the technology at Nine Square, technology that justifies further investment?

A The programs definitely justify further investment.

MR. BERDON: Can we get an exhibit binder passed up to the witness, please?

(Pause)

BY MR. BERDON:

Q Okay. I don't want you digging quite yet.

UNIDENTIFIED MALE SPEAKER: And can we have a set for the bench, please, and for the (indiscernible) friends.

MR. BERDON: I'm not going to go through all of these documents, but they just are all living in here.

UNIDENTIFIED MALE SPEAKER: What is --

MR. BERDON: I'm sorry?

UNIDENTIFIED MALE SPEAKER: What exhibit is this? Has this been filed?

UNIDENTIFIED FEMALE SPEAKER: These are exhibits. What exhibits binder?

UNIDENTIFIED FEMALE SPEAKER: What is it?

MR. BERDON: It is -- I am going to be talking to the witness about some documents that are in these binders.

I am not suggesting that they are admitted into evidence unless I get it admitted.

(Pause)

BY MR. BERDON:

Q So --

MS. LABOVITZ: Your Honor, I'm going to express my confusion, again.

We've been, now, listening to Dr. Harrison testify for an hour and a half, giving fundamental information we've been asking for, for six weeks. We are -- if we have to spend time in this courtroom listening to all of this, we

can. We genuinely think that a better use of everyone's time would be to actually have conversations about the budgets that need to be funded or not and do that in the way that happens in a normal Chapter 11 case.

This isn't supposed to be a litigation where there are binders like that of surprise exhibits that may or may not ever be moved into evidence. And so, I'm just confused about why we're doing this.

MR. BERDON: Again, my learned friend's confusion is really beside the point. They have objected to the payment of the management fee and I want to address that with the witness, making reference to the relevant amendments to the LPA that have already been moved into evidence.

The fact that these binders also contain some other documents; I'm not going to elicit testimony as to anything that hasn't been admitted into evidence, without moving it into evidence.

The idea that we are, in some way, bound to follow Rigmora's desired agenda today is news to me. I am just trying to get testimony that would support this Court granting the relief that we've requested. And if I've gone on too long, I apologize, but there are a lot of Debtors here and each one is researching a different, very complicated thing.

THE COURT: Okay. I'm going to permit the debtor

to put on its case. If Rigmora had wanted to take depositions, they could have taken depositions and had discovery and there would be no surprises. I guess they didn't do that.

MS. LABOVITZ: To be clear, Your Honor, we did take a deposition.

THE COURT: Oh.

MS. LABOVITZ: We'll get into that when we cross Mr. Mandarino.

THE COURT: Okay. Then, you're in a position to cross.

Do I think it would be better if parties agreed on the budgets; of course, I think it would be better. And it might have been a better use of everybody's time.

I'm not sure why -- taking Ms. Labovitz' statements as true, when I have no reason to believe not, and I happen to know her, so I trust her to be candid with the Court -- I don't know why those conversations didn't happen.

But we are where we are. We'll get to where we get to today. We're at 4:10. So we'll get to where we get to today. I don't know if we'll finish or not. So, we'll see.

But we're going to go ahead and the evidence will come in as it comes in. If you need documents, that's fine.

MR. BERDON: I'm going to try and move on quickly,

Your Honor.

THE COURT: Okay.

MS. LABOVITZ: Thank you, Your Honor.

BY MR. BERDON:

Q Dr. Harrison, a little earlier, we talked about ATVN. Do you recall that?

A Yes.

Q And does ATVN have an economic role in the interactions between the fund, the GP, and yourself?

A The ATVN receives my management fee.

Q And do you own ATVN?

A My brother owns .5 percent and I own the rest.

Q Okay. Dr. Harrison, in the funding motion, we have asked on your behalf that $750,000 be funded, representing a quarter of your -- of the ATVN fee. And the other side has objected; arguing that it is subject to setoff.

Are you aware of that?

A Yes.

Q Okay. Are you familiar with the circumstances that gave rise to a potential claim of setoff?

A Yes.

Q Okay. Can you explain to the Court what those circumstances are.

A Yes, when we negotiated the fee, it was agreed that any compensation I would receive from the portfolio companies

would be offset. In the case of, like, if there were equity compensation, such as stock options for a public company, then that offset would occur after those -- after cash was received from your exercise.

So there was a portfolio company called "Akero Therapeutics" that we founded and eventually went public and Akero was sold for $5 billion, I think, in late '25 -- last year, I think the transaction closed in December. And that -- the options that I had received after Akero went public, while it was still an ATP portfolio company, those options, when they were exercised cashlessly through the acquisition, grossed me $1.6 million.

Q Okay. Let's unpack that a little bit.

To the best of your understanding, when did Akero go public?

A 2019.

Q And to the best of your understanding, when was the Akero equity distributed out of the fund?

A June of '21.

Q Okay. So after June of '21, was Akero a portfolio company of ATP?

A No.

Q Do you have records of the dates of the stock option grants that you received?

A Yes.

Q And are they maintained by any third-party institution?
A Multiple third-party institutions.
Q Do you have -- is there an account at E*TRADE?
A Akero used E*TRADE to track options.

MR. BERDON: Your Honor, I'd like to move into evidence, a copy of a document that is titled "Client Statement" for the period July 1 through September 30th, 2025, from E*TRADE -- from Morgan Stanley.

I'm going to offer my friends a copy and I would ask the Court's permission to approach.

THE COURT: You may.

(Pause)

THE COURT: Thank you.

BY MR. BERDON:
Q Dr. Harrison, can you take a look at the exhibit in front of you and tell me what it is.

Do you recognize that document?
A Yes.
Q What is it?
A This is the statement of the E*TRADE account that was set up by Akero, on my behalf, in which they deposited the stock options that I received as a board member of Akero, before it was acquired -- after it was public and before it was acquired.
Q Can you join me by flipping to page 5 of 8.

And taking a look at the bottom of the document, it says, "Stock plan details."

A Yes.

Q To the best of your understanding, does that accurately reflect the dates and amounts of stock option grants that you received from Akero?

A Yes, it should.

MR. BERDON: Your Honor, I'd move into evidence, as Exhibit 86, the document that's in front of the witness for identification right now.

THE COURT: Is there an objection?

MS. LABOVITZ: No, Your Honor.

THE COURT: It's admitted.

(Debtors' Exhibit 86 received into evidence)

BY MR. BERDON:

Q Dr. Harrison, so just for some housekeeping, the top-three grants were issued, were granted before Akero was distributed, correct?

A Yes.

Q And by 2022, Akero was no longer a portfolio company of ATP; is that correct?

A Yes, I served at that point, as an independent director.

Q And upon the exercise of your options, was a Form 4 filed with the SEC?

A Yes.

MR. BERDON: I'd like to put in front of the witness for identification, a copy of the Form 4 from December 2025.

May I approach?

THE COURT: You may.

MR. BERDON: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. BERDON:

Q Dr. Harrison, I'd like you to keep handy, the E*TRADE statement, because I think it's going to be helpful.

Taking a look at the document that's in front of you, the Form 4 for identification, you'll see that there's a grant in the amount of 26,000 shares with a price of nineteen ninety-seven.

Can you look at the back of the Form 4.

A Yeah.

Q I'm sorry, I didn't mean to do that.

(Pause)

Dr. Harrison, is the stock option row at 1997, does that correspond to a disposition of 26,000 shares?

A Yes.

Q Okay. And 1997 was the Stripe price of a grant on 11/8/19 according to your E-Trade?

A Yes.

Q To the best of your understanding, does the Form 4 that is in front of you accurately represent the dates on which your stock options were exercised in connection with the Akero acquisition by Novo?

A Yes.

Q And it was signed by an attorney on your behalf?

A Yeah, Jonathan Young was general counsel of Akero.

MR. BERDON: Your Honor, I move into evidence Form 4 as Exhibit Number 87.

THE COURT: Any objection?

UNIDENTIFIED SPEAKER: No objection.

THE COURT: Its admitted.

(Debtors' Exhibit 87 received into evidence)

MR. BERDON: Thank you, Your Honor.

BY MR. BERDON:

Q So, Dr. Harrison, do you contest that your 2026 compensation, through ATVM, should be offset by the amount realized in the stock option game?

A No.

Q Now, the other side has argued that your, in some way, responsible for paying this amount before you could be paid any part of the ATVM annual fee. I want to just quickly walk through the documentation so that the Court has in front of it the right documents and so that argument can be had in a logical way.

Okay. Can you join me at Exhibit Number 67, Dr. Harrison?

A I'm there.

Q Do you recognize Exhibit Number 67? It will be Tab Number 67 in one of those two binders.

Dr. Harrison, is it fair to say that the LPA, as the Judge observed, is somewhat cumbersome?

A It became so, yes.

Q Take a look at Exhibit 67. What is it?

A Its amendment number eight to the LPA.

Q And does amendment number eight speak to the payment of the ATVM fee?

A Yes, at that time.

Q And taking a look at the third page of Exhibit 67, actually the fourth page, do you recognize that as an amendment to the management agreement --

A Yes.

Q -- between ATVM and the partnership debtor.

A Yes.

Q Okay. And does that speak to the payment of the management fee at least as to August of 2017?

A Yes.

Q Okay, bear with me. Please turn to Exhibit 53.

MR. BERDON: Your Honor, I would move into evidence amendment eight to the LPA that appears at

Exhibit 57 of our binder.

THE COURT: Any objection?

UNIDENTIFIED MALE SPEAKER: No, Your Honor. I think this was covered at the start.

UNIDENTIFIED FEMALE SPEAKER: No, Your Honor.

THE COURT: It's admitted.

(Debtors' Exhibit 57 received into evidence)

THE COURT: Okay. Where are we going now, 53?

MR. BERDON: 53, yeah. I am going to cut this very short, Your Honor.

BY MR. BERDON:

Q Dr. Harrison, taking a look at 53, are you there with me?

A Yes.

Q Okay. That is titled "Amendment 14."

A Yes.

Q That sets the management fee at $3 million, correct?

A Yes.

Q The last one that we're going to is going to be Exhibit Number 7. Dr. Harrison, do you recognize Exhibit Number 7?

A Yes.

Q And what is it?

A Its amendment number 18 to the limited partnership agreement.

MR. BERDON: Your Honor, I would move into

evidence the document that bears the legend JX-0126. I move that in as Exhibit 88.

THE COURT: Any objections?

UNIDENTIFIED SPEAKER: No, Your Honor.

THE COURT: Its admitted.

(Debtors' Exhibit 88 received into evidence)

BY MR. BERDON:

Q Can you turn, please, to the page that has the Number JX-0126.0005. And I would like to direct you to -- so, its (e), expenses and liabilities, and then (ii), towards the bottom where it reads:

"The limited partner shall make capital contributions to the partnership to fund the ATLS fee semi-annually in advance and the management fee annually in advance in each case as required by the general partner."

So, in practice, has the ATVM fee of $3 million been paid annually in advance?

A Yes.

Q And typically when is capital called to pay that?

A The last two weeks of December usually.

Q And has ATVM then paid that money -- withdrawn.

Has the partnership then paid that money to ATVM in the $3 million lumpsum?

A Yes.

Q And has that payment been reflected on the financial

statements of the fund?
A Yes.
Q And has there ever been a practice where the payment was paid in four equal installments over the year?
A Never.
Q And in connection with the audit, have your auditors ever commented on the payment of the fee?
A Never.
Q Well, I would like to --
A Oh, I'm sorry, that they never commented -- that anything was (indiscernible).
Q Okay. I am going to ask to show you a copy of a document that we are going to identify as --
MR. BERDON: Your Honor, I apologize, if I may approach.
THE COURT: You may.
MR. BERDON: It's going to be Exhibit 89, if admitted.
THE COURT: Thank you.
BY MR. BERDON:
Q Dr. Harrison, if you would just turn with me to page 20 -- well, withdrawn.
Dr. Harrison, take a look at the document that is in front of you. Do you recognize it?
A Yes.

Q What is it?
A It's a set of audited financials for the fund.
Q And is this part of the funds books and records that are maintained in the ordinary course of business?
A Yes.
MR. BERDON: Your Honor, I would like to offer this as Exhibit Number 89.
THE COURT: Objections?
UNIDENTIFIED SPEAKER: No, Your Honor.
THE COURT: Its admitted.
(Debtors' Exhibit 89 received into evidence)
BY MR. BERDON:
Q Taking a look at page 20, note 7, management fee.
A Yes, I see it.
Q Does that refresh your recollection as to whether any comment was made by your outside auditors with respect to the payment of the management fee annually and in advance?
A Yes, it does.
Q When did you start receiving the fee of $3 million annually in advance?
A I think it was 2019.
Q And in the intervening years, have your payments been, to the best of your understanding, reflected on the financial statements?
A Yes.

Q Have those financial statements been provided to Rigmora?
A Yes.
Q And has anyone for Rigmora ever commented on your being paid $3 million annually in advance as opposed to on a quarterly schedule?
A Never.
Q So, in the ordinary course of business, prepetition, would you have expected to be paid your $3 million fee in response to a capital call in December or January of 2026?
A In the ordinary course of business we would have called capital in late December but it received that capital that would have contained my ATVM fee and I would have received it the first week of January.
Q And as we sit here today, you agree that the $1.6 million received from the Akero stock option distribution can be offset against that $3 million fee for 2026?
A Absolutely.
Q And that would be remaining $1.4 million that you would expect to be due and payable today?
A Yes.
Q And you have offered to accept what amount in connection with this motion?
A $750,000.
Q And when would you propose that the remaining $650,000

be paid?

A April 1st, I believe.

Q So, essentially, at the beginning of the second calendar quarter in 2026?

A Yes.

MR. BERDON: I have nothing further at this time, Your Honor.

THE COURT: Thank you. Let's take a five-minute break.

Dr. Harrison, please do not speak to anybody about your testimony.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Recess taken at 4:31 p.m.)

(Proceedings resumed at 4:40 p.m.)

THE COURTROOM DEPUTY: Please rise.

THE COURT: Please be seated.

Ms. Selden.

MS. SELDEN: Thank you, Your Honor. Good afternoon. Shannon Selden of Debevoise & Plimpton for the Rigmora LP's.

CROSS-EXAMINATION

BY MS. SELDEN:

Q Good afternoon, Dr. Harrison. It's good to see you again.

Dr. Harrison, you ended your testimony speaking about a company known as Akero, correct?

A Yes.

Q What was the net amount in dollars that you received from the exercise from your Akero stock options?

A Which ones, the ones pertaining to those that I received while I was the ATP director was $1.6 million.

Q Any Akero stock options as to which you have testified here today, can you quantify for us the amount that you received?

A I think I just did.

Q I'm sorry, could you say it again a little bit louder?

A I'm sorry, $1.6 million approximately.

Q Did you bring your exercise of the Akero stock options to the attention of Perry Mandarino, the CRO, at any point prior to the Rigmora LP's objection to the funding motion?

A I don't recall doing so, no.

Q Did you inform Mr. Mandarino of the net amount you received for the exercise of your Akero stock options at any point prior to the Rigmora LP's objection?

A I don't recall doing so, no.

Q Dr. Harrison, you began your testimony today speaking about -- or early in your testimony today you spoke about a company known as Aulos, correct?

A Aulos, yes.

Q The GP didn't call any capital for Aulos in May of 2025, correct?
A Correct.
Q Dr. Harrison, do you still have in front of you the demonstrative exhibit that debtors presented earlier today as the presentation for the January 20th, 2026 hearing?
A Yes, I do.
Q And if you turn to page 20 of that demonstrative there is a row there for non-debtor Aulos, correct?
A Correct.
Q And in the righthand column, on page 20 of the demonstrative, it describes the reason that debtors believe further funding in Aulos is warranted at this time. Is that correct?
A Correct.
Q Did you discuss this reason with the LP's or their representatives at any point after the Chapter 11 cases were commenced?
A No.
Q Are you willing to do so now?
A Not without counsel.
Q Have you provided the Rigmora LP's with the current program proposal, if any, for Aulos?
A I have not provided the Rigmora LP's with anything directly since litigation commenced.

Q Have you provided the Rigmora LP's with any program proposal for investment in Aulos since Chancellor McCormick issued her decision on December 5th, 2025?

A I had no contact with the Rigmora LP's directly since Chancellor McCormick issued her opinion.

Q Have you asked management of Aulos to prepare any form of written proposal related to the funding sought for Aulos in these cases?

A We have had extensive conversations with management and have received various materials, including written proposals both to us and to Aulos's board.

Q You haven't provided any of those written proposals to the Rigmora LP's, correct?

A To repeat, I have had no interaction with the Rigmora LP's directly since litigation commenced.

Q And to your knowledge, no representative of the debtors has provided the management proposals for Aulos to the Rigmora LP's since the commencement of these cases, correct?

A I don't know.

Q Are you willing to provide management's proposal for further funding for Aulos to the Rigmora LP's now?

A Anything related to the Rigmora LP's would need to be channeled through counsel.

Q Through counsel are you willing to provide any management proposal for further funding in Aulos to the

Rigmora LP's now?

MR. BERDON: Your Honor, I would object on the grounds of work product as to what the witness would or would not communicate to his counsel.

MS. SELDEN: I don't think that is work product and I'm only asking whether debtors are willing to provide to party in interest, Rigmora LP's, any management proposal supporting the request for further funding.

THE COURT: Overruled. You can answer.

THE WITNESS: I'm sorry, would you like me to answer that?

THE COURT: Yes, you can answer.

THE WITNESS: I would seek advice of counsel as to whether or not that made sense under the context of the process.

BY MS. SELDEN:

Q Do you know that the Rigmora LP's have said that they are willing to consensually fund Aulos?

A No, I don't believe that the Rigmora LP's would consensually fund anything.

Q No one told you that?

A My understanding of the word "consensual" is that the deal that one has will be followed and there won't be an extraction of value for extortion in exchange, as it were, and I do not believe that the Rigmora LP's would fund without

extracting something.

Q So no one has told you that the Rigmora LP's would be willing to consent to fund Aulos?

A When you say "willing to consent to fund Aulos" you mean we would make a capital call and they would fund Aulos?

Q Dr. Harrison, has -- are you aware that the Rigmora LP's have communicated that they would be willing to agree to funding for Aulos and to discuss that fund with debtors representatives. Are you aware of that?

A During what time period would this --

Q Since the commencement of these Chapter 11 cases.

A No, I am not specifically aware of that proposal.

I'm sorry, may I just ask for clarification?

Q Dr. Harrison, on page 20 of the demonstrative that refers to Aulos non-debtor and the reasoning for funding there are no exhibits or documents cited on that page or elsewhere corresponding to Aulos, correct?

A I don't believe there are any exhibits referring to Aulos in the presentation.

Q Are there exhibits or underlying documents that relate to the reasons presented here on page 20 with respect to Aulos?

A No.

Q Dr. Harrison, could you please turn back in the January 20th demonstrative provided by debtors counsel to page 16.

A Yes.
Q In the first row there is a reference there to the debtor portfolio company, Apertor. Do you see that?
A I do.
Q And in the column on the right, page 16 of the demonstrative, describes, at a high level, the purpose of further funding in Apertor, correct?
A Yes.
Q The demonstrative doesn't cite any management proposal to conduct this research, correct?
A Correct.
Q It does not cite any documents at all, correct?
A Correct.
Q Do documents from management supporting the reasoning set forth here on page 16 with respect to Apertor exist?
A Of course.
Q Would you be willing to provide them to the Rigmora LP's?
A Under the advice of counsel.
Q You haven't discussed this proposal for Apertor with the Rigmora LP's or their representatives at any point since filing the first of these Chapter 11 cases, correct?
A Correct.
Q And you didn't discuss this proposal for further funding of Apertor with the Rigmora LP's at any point after

the Chancery Court's December 5th decision and prior to first filing the Chapter 11 cases, correct?

A Correct.

Q Are you willing to discuss any proposal for funding for Apertor with the Rigmora LP's now?

A Under the advice of counsel.

Q You haven't provided any research program proposal for Apertor to the Rigmora LP's since filing the first of these Chapter 11 cases, correct?

A Correct.

Q Does the research program proposal for Apertor exist?

A Yes.

Q Would you be willing to provide it to the Rigmora LP's now?

A I'm sorry, didn't you just ask that question?

Q I'm asking specifically, Dr. Harrison, whether you are willing to provide the research program proposal for Apertor to the Rigmora LP's now?

A I believe I specifically answered under the advice of counsel.

Q Would you be willing to provide it or you don't know?

A Under the advice of counsel.

Q So, you are unable to give me an answer sitting here today as to whether you, the GP of ATP Life Sciences, the fund, would provide to the fund's LP's a copy of the research

program proposal for Apertor, the fund's portfolio company. Is that correct?

MR. BERDON: Objection to the form of the question. It implies that there is a single proposal and that's certainly not in the record.

MS. SELDEN: I think that is what Dr. Harrison just testified to. He answered "yes."

THE WITNESS: I'm sorry, I was answering your question. There were multiple --

THE COURT: I'm going to overrule that objection. You can respond.

THE WITNESS: To what question exactly.

THE COURT: You want to repeat it? I don't have a read back.

MS. SELDEN: I was going to say, I will endeavor to ask it again.

BY MS. SELDEN:

Q Dr. Harrison, are you testifying here today that as the managing director of the general partner of ATP Life Sciences limited partnership you will not provide to the Rigmora LP's a copy of the research program proposal for Apertor, one of the portfolio companies, in which ATP Life Sciences invests?

A No, I didn't testify that.

Q So, are you willing to provide the research program proposal for Apertor to the Rigmora LP's?

A Under the advice of counsel. Any communication that I have with Rigmora LP's will only take place with a lawyer present.

Q Are you testifying, Dr. Harrison, that you are willing to have your counsel provide the copy of the research program proposal for Apertor to the Rigmora LP's?

A I don't know. I have not spoken with them yet about this question.

Q You are unable to answer that question without consulting counsel. Is that your testimony?

A Yes.

Q Dr. Harrison, have you asked management of Apertor to prepare any form of written proposal related to the funding sought for Apertor in these cases?

A As with every portfolio company, I have had multiple conversations with management given the Rigmora defaults and the lack of funding environment. I have had multiple forms of -- multiple sets of materials that have been exchanged in developing the most efficient path through in triage. So, yes, of course.

Q You have received from management for Apertor written materials related to the funding that debtors seek for Apertor in these cases?

A Yes.

Q You haven't provided that to the Rigmora LP's, correct?

A I have had no communication of any kind with the Rigmora LP's since May 30th that has not been in a legal context written or oral. So, I have not provided them with any material directly since May 30th.

Q Are you aware, Dr. Harrison, of whether your counsel or counsel for any of the debtors in these cases, including Apertor's counsel, have provided any written materials from management for Apertor in support of the funding that they seek for Apertor in these cases to the Rigmora LP's?

A I am not aware of a specific document flow in this case.

Q Would you be willing to provide any written proposal or materials received from Apertor management in support of their request in these cases to the Rigmora LP's?

A My answer hasn't changed.

Q Dr. Harrison, the next portfolio company in the demonstrative is Initial. Do you see that below Apertor?

A Yes.

Q And Initial, similarly, has a reason for the funding sought in the righthand column. Do you see that?

A Yes.

Q That doesn't cite any documents at all, correct?

A Correct.

Q You haven't discussed this proposal for Initial with the Rigmora LP's or their representatives at any point since

filing the first of these Chapter 11 cases, correct?
A Correct.
Q Are you willing to do that now?
A Same exact pattern of answers as for Apertor.
Q And you haven't provided any research program proposal for Initial to the Rigmora LP's since filing the first of these Chapter 11 cases, correct?
A Correct.
Q Does a research program proposal for Initial exist?
A Yes and multiple documents relating to what you are calling the "research program proposal."
Q Are you willing to provide those documents to the Rigmora LP's now?
A Under the advice of counsel.
Q Did you ask management of Initial to prepare any form of written proposal related to the funding sought for Initial in these cases?
A As a matter of course, yes.
Q Did management of Initial, in fact, prepare any such written materials?
A Yes, there have been a lot of exchange of information related to each portfolio company in trying to manage through the absence of funding that should have been there.
Q And you don't know one way or another whether those materials have been provided to the Rigmora LP's, correct?

A Correct.

Q Are you willing to provide any such materials for Initial to the Rigmora LP's now?

A Under the advice of counsel.

Q Dr. Harrison, I am conscious --

MS. SELDEN: Your Honor, of the fact that it is approaching 5 o'clock and there are one, two, three, four, five, six more portfolio companies identified in debtors demonstratives for which you seek funding. I have the same questions as to each of these portfolio companies but for the sake of everyone I am happy to try to cut through that.

BY MS. SELDEN:

Q Is there any one of the remaining portfolio companies in debtors demonstrative that is seeking funding here as to which you have had discussions with the Rigmora LP's since the filing of these Chapter 11 cases?

A No.

Q Have you asked the management of each of the debtor portfolio companies to prepare any form of written proposal related to the funding sought for that company in these cases?

A In each case there has been a stream of communications related to the funding of each portfolio company, the result of which is here.

Q Have you had separate communications with the

management of each portfolio company that is seeking funding in these cases with respect to that portfolio company's funding?

A Yes.

Q And the management of each portfolio company has prepared or provided written materials related to its request for funding. Is that right?

A Yes, in various forms.

Q And each portfolio company has some form of research program proposal supporting the reasoning outlined in debtors demonstrative. Is that correct?

A Of course.

Q And you haven't provided that research program proposal for any of these debtor portfolio companies to the Rigmora LP's since the commencement of these Chapter 11 cases, correct?

A Correct.

Q And you haven't provided any of the materials or written proposals received from any of the debtor portfolio companies or non-debtor portfolio companies to the Rigmora LP's since the commencement of these Chapter 11 cases, correct?

A Correct.

Q Are you willing to provide the research program proposals and any and all written materials received from any

and all portfolio companies seeking funding in these cases to the Rigmora LP's now?

A Under the advice of counsel.

Q Dr. Harrison, I always have more questions for you but I will not ask them at this time. That is all I have for today.

THE COURT: Thank you.

Ms. McCollum, no questions?

(No verbal response)

THE COURT: Redirect.

MR. BERDON: Very short.

REDIRECT EXAMINATION

BY MR. BERDON:

Q Dr. Harrison, in connection with any communication with Rigmora about the potential funding of Aulos, what conditions has Rigmora expressed to you that they would require before even discussing that kind of funding?

MS. SELDEN: Objection, foundation and hearsay.

UNIDENTIFIED SPEAKER: And Rule 408.

THE COURT: Sustained in that what time period are you talking about because you have had no communications since May of --

BY MR. BERDON:

Q Dr. Harrison, on May 15th did you receive an email from Yuri Bogdanov?

MS. SELDEN: Objection, relevance.

THE COURT: I will hear the answer to that question. Did you?

THE WITNESS: Yes.

BY MR. BERDON:

Q And in that email did Mr. Bogdanov express to you any conditions that would have to serve as a predicate before discussing new budgets for the four clinical stage companies?

MS. SELDEN: Objection, hearsay.

THE COURT: You want to tell me who the doctor is and --

MR. BERDON: Yeah. It's not doctor, it's Mr. Bogdanov.

THE COURT: I'm sorry.

MR. BERDON: He is the chief executive officer of Rigmora. So, that would be --

THE COURT: He speaks for them?

MR. BERDON: He's an admission of a party opponent and he is the CEO.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. BERDON:

Q And what condition did Mr. Bogdanov state on May 15th?

A That we were --

MS. SELDEN: May 15th of 2025?

MR. BORDEN: Yes. May 15th of 2025. Please don't interrupt.

BY MR. BERDON:

Q What did he express as a condition to his willingness to discuss the funding of Aulos?

A That we write-off the preclinical portfolio.

Q And when you say, "write-off the preclinical portfolio," what does that mean?

A Not fund the companies, which had budgets, except as dead the companies that did not have budgets such as Nine Square and Nereid, and sell them for scrap of whatever. Then, and only then, might it be possible to discuss funding of any clinical company because they all had different budget needs; most critically at that time, Aulos. Of course, that lead to litigation and management came forward, remarkably at Aulos, and building the breach for the past six, seven months.

Q To the best of your understanding, has Rigmora ever agreed to discuss funding of Aulos that was not attached to the condition that the preclinical companies be wound down?

A No.

MR. BERDON: No further questions.

THE COURT: Dr. Harrison, you may be excused.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Witness excused)

MS. TOMASCO: Your Honor, the debtors call Mr. Perry Mandarino to the stand.

THE COURTROOM DEPUTY: Please state your full name and spell your last name for the Court record, please.

MR. MANDARINO: Perry Mandarino, M-a-n-d-a-r-i-n-o.

PERRY M. MANDARINO, DEBTORS' WITNESS, SWORN

THE COURTROOM DEPUTY: You may be seated.

Your Honor?

DIRECT EXAMINATION

BY MS. TOMASCO:

Q Mr. Mandarino, we're going to be really fast. Is that okay?

A Yes.

Q All right. State what your profession is and your relationship to the debtors?

A Sure. I am the head of restructuring at B. Riley Securities and B. Riley Restructuring Services. I am the chief restructuring officer of the debtors.

Q In your career, how many debtors have you advised in Chapter 11 cases?

A Probably more than 4 or 500.

Q 4 or 500?

A Yes.

Q That's more than me, Mr. Mandarino.

When were you appointed CRO of the debtors, approximately?

A Upon the filing of the Chapter 11's.

Q All right. I want you to turn in your exhibit book to Exhibit 50.

A I'm sorry, 50?

Q While you're looking for that exhibit, in connection with the wage motion do you understand that the U.S. Trustee has asked us to confirm some facts for the U.S. Trustees benefit?

A Yes.

Q If I read this to you can you tell me if you disagree. All bonuses to be paid to non-insiders under the wage motion that the Court has approved are either contained in an employment agreement or consistent with historical policy of the debtors. Is that true?

A Yes.

Q These non-insider bonuses represent a percentage of each employee's salary ranging from 5 to 25 percent. Is that true?

A Correct.

Q And they are consistent with industry practice?

A Correct.

Q All right, let's move on.

Looking at the budget, Exhibit 50 -- (off record

conversation).

All right. So, with respect to Exhibit 50, can you identify this document?

A Yes. This is the 26-week cash flow projection for the debtors and some non-debtors as well.

Q Okay. Now, this was filed on December 16th, 2026. Is that the approximate date of completing this budget?

A January 16th.

Q I'm sorry, January 16th.

A Yes.

Q And what was your involvement in the preparation of this budget?

A Oversaw the preparation of it.

MS. TOMASCO: Your Honor, I move to admit Exhibit 50 into evidence.

THE COURT: Any objections?

UNIDENTIFIED SPEAKER: We note that this is actually just a partial printout of Excel that is underlying Exhibit 50 and I would just ask if counsel is seeking to admit the full Excel or just the print of pages here.

MS. TOMASCO: Your Honor, I can't admit an exhibit that is not in my book. I am moving to admit this exhibit. If he wants to use a different exhibit, he's free to do so.

THE COURT: Okay, just this printed page.

UNIDENTIFIED SPEAKER: I have no objection to

these printed pages being admitted.

THE COURT: Thank you.

Any objections?

UNIDENTIFIED SPEAKER: No.

THE COURT: Its admitted.

(Debtors' Exhibit 50 received into evidence)

BY MS. TOMASCO:

Q In connection with preparation of this budget, with whom did you meet and consult?

A Many people at the debtor, and it was my team and I. We met with the debtors accounting and finance staff. We met with Dr. Harrison, with Joseph Bienchek (phonetic), and along with that several of the managers of the portfolio companies of the debtors and non-debtors.

Q Now, if you wouldn't mind just very briefly turning to page 16 of the PowerPoint presentation in front of you.

A Okay.

Q Does that chart represent, in column 1, it comes from page 36 of the Chancery Court opinion, do you see that?

A Page 16 of Exhibit 50?

Q Of the PowerPoint. I'm sorry.

A Oh, the PowerPoint. I'm sorry.

Q Its our cheat sheet for the day.

A Yes.

Q Now, let's just take -- we're going to take one debtor

and then we're going to apply the same principles to the rest of the columns. Is that okay for speed?

A Yes.

Q All right. Now, of the $19 million that was under the column of unfunded amounts, right, do you see that?

A Yes.

Q That is $19,400,000. How much is being approved today for the debtors to spend in accordance with that -- with a budget that is attached as Exhibit 50?

A Up to $979,780.

Q Is that a small fraction of the approved funding for Apertor?

A It is.

Q Let's talk about Initial, that funding amount, unused funding amount, is $7 million. Do you see that?

A Yes.

Q And the amount that we're seeking to use today, do you see that?

A Yes.

Q How much is that?

A Just under a million dollars.

Q Is that true of all of Initial, Red Queen, Evercrisp?

A Yes.

Q Now let's look at Aethon, Nereid -- I apologize, not Nereid. Let's look at -- and that is also true of Aethon, it

has an approved funding amount of $8 million and its using $2 million under this budget, correct?

A Yes.

Q Now, we have a couple of budgets -- debtors who are not under the auspices of a prior funding amount under the LP agreement, correct?

A Yes.

Q And those are Nereid, Nine Square, and Aulos.

A Yes.

Q Now, what are those amounts that are being asked to be funded today?

A For Nereid it's about $1.6 million, for Nine Square it's about $1.4 million, and for Aulos its $3.7 million.

Q Okay. Turning back to Exhibit 50, this budget is for a total of two 13-consecutive periods. Is that correct?

A Plus a 10-day step period.

Q Now, under the funding motion that we're here on today, the debtors are seeking to use approximately 13.9 percent --

A Million.

Q -- $13.9 million of that total amount, is that correct?

A Yes.

Q All right. How long will that $13.9 million last?

A We are seeking this final amount through February 13th.

Q Okay. After that, will the debtors have to seek alternative -- additional funding.

A Yes.
Q And what are the available sources to the debtors of that additional funding?
A Generally two. The first is the approximate $97 million, which was -- which is in a separate account, which was contributed by (indiscernible) result of the Chancery Court hearing or the Chancery Court order. The second is we can, and are exploring, third party debtor-in-possession financing.
Q Now, one of the complaints that we have heard from Rigmora is the form of this funding. The funding under the funding motion is being done pursuant to secured promissory notes, is that correct?
A That is.
Q All right. Now, have you also been responsible for seeking potential alternative debtor-in-possession financing?
A Yes.
Q And have you received any term sheets?
A We have.
Q Approximately how many?
A Five.
Q Now, compared to the 8 percent interest with no fees and a 13 percent default rate contemplated in the funding motion, how do those DIP offers currently compare?
A Well, I would couch it that, because we're still

negotiating, but generally a third-party DIP would be more expensive generally and it's a third-party DIP so any interest would go to a third party as opposed to the current funding it's going to the fund.

So, I think it's important to know, and I tried to make the point maybe not so great yesterday at my deposition, that there is not a lot of difference between note and funding under the Series A preferred.

In fact, the fund protects the limited partners because the fund is now a creditor and structurally senior to other potential creditors at the portfolio company level.

Q Is the debtors business -- and when we talk about the partnership debtor, what is the debtors business generally?

A The partnership is to make investments and make capital contributions to portfolio companies for the advancements of certain medicines and sciences as described by Dr. Harrison.

Q Is the funding contemplated in the funding motion in the ordinary course of the debtors business for the partnership debtor to provide and the portfolio debtors to receive -- and she's going to say it's a legal question.

UNIDENTIFIED SPEAKER: I was going to say objection only to the extent that its asking for a legal conclusion as opposed to Perry's -- Mr. Mandarino's colloquial understanding.

//

BY MS. TOMASCO:

Q It is to your colloquial understanding. I wouldn't have chosen that word because it's hard to say, but to your lay person's understanding, having been doing chief restructuring officer and financial advisory work in the restructuring space for 38 years, is it to your understanding in the ordinary course of the debtors business to provide funding to the portfolio companies and for the portfolio companies to receive said funding?

A That is the exact mandate of their business.

Q Is this type of relationship between the debtors typical of venture capital firms generally?

A In my experience, yes.

Q Now, with respect to the form of the funding in promissory notes, had the debtors loaned money, the partnership debtor, to the portfolio debtors in the form of secured notes prior to the filing of the petition herein?

A No, they did not.

Q Are you -- can you turn to Exhibits 38 through 43 in the exhibit books.

A Okay.

Q In general, are Exhibits 38 to 43 the secured promissory notes that were provided by the partnership debtor to the portfolio debtors after Rigmora refused to provided funding pursuant to the LPA?

A Yes, they are.
Q All right. What was the date of those notes?
A June 11th of -- oh, June 11th of 2025. I'm sorry, so they were before the Chapter 11.
MS. TOMASCO: Your Honor, I move to admit Exhibits 38 through 43.
THE COURT: Any objections?
UNIDENTIFIED FEMALE SPEAKER: No.
UNIDENTIFIED MALE SPEAKER: No, Your Honor.
THE COURT: Its admitted -- they are admitted.
(Debtors' Exhibits 38 through 43 received into evidence)
BY MS. TOMASCO:
Q Mr. Mandarino, in your role as CRO, have you become familiar with the general corporate structure of the debtors?
A Yes.
Q Now, with respect to each of the portfolio debtors, do they incur, in their businesses in reliance on the funding commitments, vendor debt?
A Yes.
Q And do you understand how much vendor debt exists across the portfolio companies?
A The debtor portfolio companies around $22 million.
Q And does -- do each of the portfolio companies, and the management debtors as well, do they all have executory

contracts with vendors and employees?

A They do.

Q Now, if funding doesn't occur pursuant to this funding motion, will that cause some of those amounts to not get paid?

A So, if there is no funding available to the portfolio companies then the portfolio companies can't make payroll, they can't pay their leases, they can't pay, you know, any amounts under contracts. It would result in the, again from a business not a legal conclusion, expansion of liabilities at the portfolio companies.

Q Now, when I use the words "structurally superior" do you know what I mean?

A Yes.

Q What does that mean?

A That the -- I guess the opposite of what I said before, structurally subordinate. That the group that has the structure superiority would get paid first out of any waterfall if there is any funds to pay.

Q Now, we talked about employee and vendor contracts, including what we have called CRO agreements, not chief restructuring officer but clinical research organization, those longer-term contracts would have to be rejected if they couldn't -- if the companies had to shut down, is that correct?

A That is right.
Q Now, is the same true of IP expenses like licensing fees and things that are necessary to keep the debtors intellectual property portfolio intact?
A Yes. Pursuant to the contracts if there were contracts, those contracts presumably couldn't be sold. They would be rejected.
Q Now, these portfolio companies, do they enter into these contracts with no visible means of paying them back or do they have written agreements with the limited partnership to fund their ongoing expenses?
A If there was -- they have the agreements, the Series A. You know, originally the Series A funding agreement before the promissory note agreements. So, there was a path to funding in their normal course of business because that is what they do.
Q All right. If you wouldn't mind turning to Exhibits 77 to 85.
A 77?
Q Uh-huh.
A Okay.
Q Do you recognize those agreements?
A I do.
Q What are they?
A These are the Series A preferred stock purchase

agreements for the portfolio companies.

MS. TOMASCO: Your Honor, I move to admit Exhibits 77 to 85.

THE COURT: Any objections?

UNIDENTIFIED SPEAKER: No objection, Your Honor.

THE COURT: They're admitted.

(Debtors' Exhibits 77 through 85 received into evidence)

BY MS. TOMASCO:

Q Now, I think you have heard Ms. Selden lament that the individual portfolio company research plans and programs were not provided to Rigmora. Do you recall when the funding motion was first filed?

A December 23rd, I believe.

Q Correct. Now, you also understand that your deposition was noticed and your deposition occurred yesterday, is that correct?

A Well, it occurred yesterday. It was noticed, I think, over the weekend or Friday. I am not sure when.

Q And you attended your deposition, correct?

A I did.

Q And you answered the questions that they had for you?

A I did.

Q Now, since your appointment, has Rigmora ever reached out to you and suggested that they would support funding all

of the portfolio companies?

A No.

Q And why would that, as the chief restructuring officer, be a problem?

A I'm sorry, why would it be a problem?

Q To not fund all of the portfolio companies as proposed in the funding motion.

A It would -- you know, as Dr. Harrison described, it would choke the portfolio companies and potentially lead them to a liquidation. Again, as I said, without funding you can't pay your bills, you can't pay your employees, it goes poof. It would be problematic without funding for the portfolio companies to continue their mission.

You know, I think to sort of take this in context a little bit, you know, there are many companies that come in this Court and others, they're supposed to make money and they're not making money, they're not making enough or they're over-levered, that is not the case here. The mission, the charter, you know, small (indiscernible) of this company is to provide funding to developmental stage companies, preclinical -- what I will call "preclinical" and then to clinical companies to advance a therapy, to advance a drug, to advance in the case of, you know, medical device and they're not supposed to make money. There is no -- it's not like you put in a dollar today and the company, in six months

from now, is going to be worth $3. Potentially it could.

It's -- that -- these companies aren't intended to make money. They are not intended to have cash flow. So, you know, what we're doing, in the funding motion, is to continue what the debtors business is. It's kind of that simple.

Q Now, Mr. Mandarino, is the funding motion designed to support maximization of the estates value?

A It is.

Q And how is that?

A By continuing programs that are under development.

Q Would a potential investor want for the portfolio companies to be shut down and incur outside liabilities for rejection of those contracts or would the potential investor want the portfolio companies to remain intact?

A I mean, any potential investor -- again, in a venture portfolio you -- I mean, in my view, you look at it as a portfolio. There are some companies that will do really well and there are some companies that will do really well and there may be some that don't, and there may be some that do okay but it's a portfolio.

So, having the scope of, you know, a number of different companies, yes, is absolutely important to any outside investor, to any outside DIP lender who would look at this as collateral, you know, to any third party. And they, of course, do their own diligence but that would be important

to them.

MS. TOMASCO: I have a question but I didn't rehearse it so I'm going to skip it, Your Honor. No further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. TAFT:

Q Good evening, Mr. Mandarino. Will Taft from Debevoise & Plimpton for the Rigmora LP's.

A Good evening.

Q You are the CRO for the partnership debtor, correct?

A Correct.

Q So, that is the fund, correct?

A Correct.

Q You are also the CRO for the general partner, correct?

A Yes.

Q And the CRO for the management company, correct?

A Yes.

Q And you are CRO for seven different portfolio companies, correct?

A The debtor portfolio companies, yes.

Q None of those portfolio companies is wholly owned by the fund, correct?

A I would need to see a chart. I thought they owned all the Series A preferred stock. Maybe there is an exception but

I thought that they were mostly owned by -- you know, under -- there is an exhibit in here that describes their exact ownership, I believe.

Q Could we pull up Exhibit 3, which is Dr. Seth Harrison's first day declaration. This is page 3, Exhibit A -- sorry, Exhibit 3. It is just to refresh your recollection.

A Again, I don't recall the exact ownership percentages.

Q If we could go to Exhibit 3 of this declaration. Thank you.

A Exhibit 3 in my book is a master services agreement.

Q I'm sorry. I will be showing it on the screen. If you need more hard copies that is fine but just to refresh your recollection.

Could we go to Exhibit A of this declaration. Thank you.

Mr. Mandarino, on the left side of this do you see the ownership percentages of the fund in each of these portfolio companies?

A I'm not sure if this reflects the Series A preferred or if this is the fully diluted.

Q Does it indicate -- did -- is that indicated on this chart?

A It is not. Are you making that representation that this is fully diluted or Series A?

Q Are you -- it's not indicated here, so I won't make the representation.

Are you aware that there are other individuals who hold either stock options or equity interest in each of the portfolio companies?

A I am.

Q Okay. You have testified that in your understanding your duties require you to act in the best interests of all of the estates and not just the partnership debtor. Is that correct?

A That is right.

Q Do you have the handout that was given?

A Yes.

Q Could you turn to page 15 of that? This is the debtors demonstrative. The first bullet on page 15 reads:

"The primary purpose of these Chapter 11 cases is to save, preserve, and maximize the value of the portfolio companies."

Do you agree with that statement?

A I do.

Q Okay. Your proposed budget seeks to maximize the collective value of all of the bankruptcy estates, correct?

A I don't understand that question.

Q You prepared the budget that was introduced earlier, correct?

A Right.
Q And was the goal of that budget to maximize the collective value of all of the bankruptcy estates?
A It was -- I'm sorry, I'm not being -- its meant to -- our mission is consistent, portfolio companies in bankruptcy estates. Right now, the portfolio companies are the ones -- sorry, the debtors are the ones most at risk. Debtor portfolio companies have other -- you know, there is a couple -- there is two clinical companies, they don't need the support of the fund anymore. So, it's consistent with this.
Q Did -- your budget was not designed solely to maximize the value of the partnerships bankruptcy estate to the extent such an estate exists, correct?
A I don't know how to answer that question.
Q Okay. Could we pull up the transcript from yesterday's deposition at page 56? Thank you.
I asked you about the budget and I said:
"So that budget was not designed solely to maximize the value of the partnership's bankruptcy estate, correct?"
You answered:
"That is right."
A Right.
Q Do you recall that testimony?
A Yeah, but I don't think that -- did you just ask me

that exact question because it didn't sound like this reading it.

Q I asked:

"The budget that you prepared was not designed to maximize the value of the partnership's bankruptcy estate, correct?

UNIDENTIFIED SPEAKER: Objection, Your Honor. He misread it. He left out the word "solely" and I think that is a key word in that question.

THE WITNESS: It is.

BY MR. TAFT:

Q It was not designed solely to maximize the value of the partnership's bankruptcy estate, correct?

A Right. I don't think you asked that before. So, if you add "solely" to your question before then I would answer that is right.

Q You are recommending that the partnership debtor loan approximately $13.9 million to nine different portfolio companies, correct?

A Yes.

Q And you are recommending loaning just over $1.4 million of that to Nine Square, correct?

A As an example, the amount is consistent with what is in here of Nine Square's $1.4 million, then yes.

Q And you are recommending --

A I'm looking at page -- excuse me, I'm looking at -- yes, page 19, $1.4 million. That is correct.
Q And you are recommending that the partnership loan, approximately $1.5 million, to Nereid, correct?
A I think I rounded it up to $1.6 million. That is right.
Q Okay. And you are aware that Nereid does not have a budget approved in accordance with the LPA, correct?
A I am aware of that.
Q And you are aware that Nine Square also does not have a budget approved in accordance with the LPA, correct?
A I am aware of that.
Q Okay. You have not analyzed the likelihood that any of the loans to any of the portfolio companies will be repaid, correct?
A What I've analyzed, and I think it's what I said yesterday, and what I've said a few minutes ago, and what I will say again, is that the -- the short answer is, no, you know, that is not how you look at it, can it be repaid under -- you know, in the next 26 weeks. It is I analyzed that it's the right thing to do for the portfolio to maximize values to continue the funding.
Q Have you analyzed how long it might take to repay these loans?
A I have not.

Q Okay. Have you analyzed the risk of any of these portfolio companies defaulting on the loans?

A Well, the terms of the loan are -- I mean, they are generally a friendly loan to the -- it was done for the structural, you know, seniority as we have discussed on my direct. So, that wasn't -- it's not a concern. What happens in these companies is that when the funding is made -- well, when I say it's not a concern, I was being glib. I shouldn't have said if that directly. It is less of a concern.

What happens is the way to preserve -- what is most important, as I have said yesterday and today and probably in our calls today, is that these companies continue to receive funding to continue their mandates. That is the assessment that was made. If that happens and it works then everything else falls into place.

Q So, in your view and in your judgment as CRO for the partnership, is it more important to make the loan then that the loan get repaid?

A The loan is a bit of form over substance. Again, I'm not treading on legal, right. I don't want someone to come and say, well, this really isn't a loan, its equity, right. The loan is intended -- it was a mechanism developed, through counsel, in order to not only protect the partnership, Mr. Taft, but to protect the portfolio companies. It is to benefit the partnership but to benefit the portfolio

companies because it allows them to continue their mission and their mandate and to not incur liabilities.

Q Would you agree that the terms of the proposed loans are exceedingly favorable to the portfolio companies?

A I haven't thought about that.

Q Can we pull-up, Mr. White, the funding motion at 18? Page 18, please.

At the bottom of the funding motion it says --

A What paragraph?

Q Paragraph 30, Docket Number 89. It says:

"The terms are exceedingly favorable to the portfolio companies."

Do you agree with that statement?

A Again, I -- is this the motion?

Q It is.

A Yes. Again, you know, its favorable -- well, I guess exceedingly is they're favorable. You know, exceedingly favorable is in the motion, I guess. I would view them and your question before was exceedingly favorable. I mean, as I said before, they're on good terms. It's a little bit of form over substance. So, yes. What benefits the portfolio companies benefits the partnership.

Q So, some of these portfolio companies have no cash flow generating operations at all. I think you said that earlier, correct?

A As they were intended to do, as they were intended when this fund was set up, as is the normal course of business, yes.

Q And as I think you also testified, you haven't done any analysis of the likelihood of these loans being repaid?

UNIDENTIFIED SPEAKER: Objection, Your Honor. Asked and answered.

MR. TAFT: I will withdraw it.

BY MR. TAFT:

Q Have you analyzed whether alternative uses of their capital, rather than loaning it to these portfolio companies, might provide a higher risk adjusted return?

A No.

Q And have you analyzed the anticipated return to the fund of making these loans?

A Mr. Taft, that is not what you do in a company like this, okay. What you do in a company like this is you continue the mission of the funding to get to the next stage, as Dr. Harrison. It is not, as I said before on my direct, okay, you put in a dollar today and it's going to be worth $3 tomorrow. That is not how you do it. I believe your client, who is a pretty sophisticated doctor himself, understands that as well.

Q Okay, so --

A Excuse me, please let me finish. So, when you look at

this -- to answer the premise of your question is something I cannot answer. That is not the mission of this fund or of any venture fund.

Q So, the venture -- the mission of no venture fund is to obtain a return on their investments?

A That is not what I said and I believe you know that.

Q Well, you haven't analyzed whether these -- these are investments, correct?

A They are.

Q And you haven't analyzed whether by making these investments the fund can anticipate any return, correct?

A No, because what -- but it is -- and I'm sorry, I don't mean to get frustrated. What I'm saying is that, in a venture portfolio the funding, it is not -- you know, it is not building a new plant for an automaker that, you know, in two years the plant will be running, you'll be able to produce a million cars out of the plant and here's the ROI on it, that's not the same measures that you take. The measures you take is that you go through the pre-clinical trials and the clinical trials to get to commercialization and somewhere along the line, at different points along the line, you decide that it's a go or no-go.

And so, you know, you can't see, gee, we're going to create this great Parkinson's remedy and say, gee, it's going to be worth $2 billion on day one, you know, it's not -- it's

not the way that it's looked at, it's looked at, you know, over stages. So, I -- and that's how I would respond accurately and truthfully to your question.

Q And you were also responding accurately and truthfully yesterday in your deposition when I asked you whether you had performed any analysis of the potential return on investment for the proposed funding and you said, I have not, correct?

A And I think that's entirely consistent with what I just said. I was helping you a little bit more to understand.

Q Thank you. In connection with the proposed loans, you're advising the fund, correct? You're exercising judgment on behalf of the partnership?

A I'm exercising judgment on both -- on the partnership fund and the portfolio companies, which is entirely consistent and benefits both.

Q Okay. And have you taken any steps to consider bringing in a different professional solely to represent the interests of either the portfolio companies or the funds in connection with the proposed loans?

A What type of professional?

Q Somebody just like you, but who's solely interested in whether or not their actions are increasing the value of the partnership debtor bankruptcy estate?

A I think that would be a waste of estate money, which you claim is your money or your client's money. So, I think

that would not be a good use of funds.
Q Okay. And that's the judgment you've made in your role as CRO for the GP, the partnership fund, the management company, and all seven debtor portfolio companies?
A Well, I haven't -- I actually, until you just mentioned it, haven't thought about it. So, I would have to really confer with counsel and with the management of the company to come up with that right answer, but sitting here, you know, in real time, to me it would seem like it's a waste of dough to do that.
Q Okay. So just to level set, at least with respect to these proposed loans, you are representing the interests of both the lender and the borrower, correct?
A I think that calls for a legal conclusion. I mean, lender and borrower, it's -- I mean, they're related companies. These aren't two independent parties where to me things like conflict exist, which this Court sees all the time, right? These are two -- they're related parties. I mean, it benefits both, it continues -- and let's not lose sight of the fact of what's the most important thing, and that is to continue the funding of the company to continue their missions because that's how value gets realized.
Q You accept that the Rigmora LPs feel that the most important thing is to maximize the value of the -- specifically of the partnership debtor estate, correct?

A I would have to breach 408 discussions to answer that. If I'm allowed to, that would be great.
Q Okay. You are --
A May I?
Q Let me just, in the interest of time, keep moving.
You're assessing -- you assessed the appropriate interest rate to charge on these intercompany loans, correct?
A It was existing and it was fine.
Q So, you took the eight percent with a five percent default surcharge that was in the prepetition intercompany loans, is that where you got the rate?
A That's right, which, you know, in comparison to my knowledge of market is a favorable loan to the portfolio company and, you know, it -- yes.
Q Favorable to the portfolio company; is that favorable to the fund?
A Yes.
Q Okay. You've said third parties have begun discussions at least about offering DIP funding for portfolio companies, correct?
A Well, for the whole -- for all the debtors, yes.
Q For all the debtors or have you had discussions with any individual -- about funding for any individual portfolio company?
A I have not because, as I said before, investors look at

this as a portfolio, not just as one company.
Q Okay. So that would be DIP funding at the fund level?
A We haven't gotten into the whole structure of -- and, again, I'm a little hesitant to give those details only because it's a competitive process still with multiple lenders, there's different structures that have been presented.
Q Have you provided any of those details to the Rigmora LPs?
A We have not.
Q Would you be willing to provide those details to the Rigmora LPs?
A I would need to speak to counsel about that.
Q Okay. So you used the prepetition loans as the basis for the -- all the terms are from the prepetition loans and you're just transporting those over to the post-petition loans, correct?
A Okay.
Q Is that --
A Yes --
Q -- is that an accurate statement --
A -- sorry, yes.
Q -- of what you're proposing?
A Yes.
Q Okay. The new loans would be junior to the prepetition

secured notes, correct?
A I believe that's correct.
Q Okay. That means they have a greater credit risk than those prepetition notes, correct?
A And a higher credit risk than a Series A contribution -- a better risk than the Series A contribution.
Q But you recommended using the same interest rates for the junior -- proposed junior post-petition loans, correct?
A Right.
Q Did you do any analysis as to whether or not that made economic sense from the perspective of the partnership debtor?
A Again, it's -- I viewed it in the sense of it's better than putting in equity and, you know, with the ownership structure it's related. It is -- again, not to, you know, compromise any legal position, I'm not saying it is equity, but it's better than putting in equity and it, you know, gets -- again, keeping in mind the big picture, right, where the real value comes from and how the loans get repaid is the continuation of the company's business and the mission of the portfolio companies.
Q And yet you have not evaluated the likelihood of any of these loans being repaid, correct?
MS. TOMASCO: Objection; asked and answered for the fourth time.

MR. TAFT: He's proffering the --

THE COURT: Overruled. You can answer.

THE WITNESS: I'm sorry, what was the question again?

BY MR. TAFT:

Q The question was, you're saying over time with the possible repayment of the loans, I'm just saying you haven't analyzed whether or not any of these loans are likely to be repaid, correct?

A Again, I think it was asked and answered, and I think what I said at the beginning is that the best way, the most probable way that any investment in the portfolio companies would get repaid is there's a continuation of the mission of the portfolio companies and continued research, so the drug or therapy could get developed.

Q And I'm asking you, have you actually assessed the probability of those repayments happening with respect to the proposed funding?

A What do you mean by assessed?

Q Have you done any economic analysis as to the likelihood that any dollar that you propose putting into a portfolio company now will actually be repaid to the fund?

A If the -- well, if the therapy or drug is successful, it will be repaid; if it's not, it won't be repaid; that's the assessment, but that's -- that's the mission of the fund,

that's the normal-course business, that's what a venture fund is.

Q I'm asking you, have you --

A You're not buying -- excuse me -- you're not buying stocks on the market and assessing, well, gee, will stock XYZ, you know, go up or down, that's not what this is. This is -- this is the -- this is a venture fund and how a venture fund operates.

Q If I understand your testimony it is that, if the borrower portfolio companies get some money, enough money down the road, they will be -- that money will be used to repay these loans, is that your testimony?

A I don't know if that's what I said.

Q Okay. Have you assessed how much more money any portfolio company borrower might need in order to achieve commercial success?

A Well, there's the -- you know, for the companies that have the capital B budget under the LPA, there's the -- you know, there's amounts that have been funded, you know, the unfunded amounts which are on these same charts, and so there's one -- there's at least one data point as to what else they'll need.

Q Have you assessed that that amount of unfunded budget will be sufficient for -- take anyone, take Marlinspike -- I don't care, take Marlinspike -- it has an unfunded budget,

correct?

A Marlinspike does.

Q Have you done an assessment as to whether the amount of the unfunded budget in Marlinspike will be sufficient for Marlinspike to reach a commercially viable state?

A I didn't need to do that for this funding motion.

Q To get your answer, you did not do that analysis, correct?

A I didn't -- it wasn't a consideration for this funding motion.

Q Okay. And just to circle back to the original question, have you analyzed how much money any of these portfolio companies would need in order to get to a position where they might be able to have enough cash flow to repay these loans?

A The same answer as I just gave.

Q So the answer is, no, you have not done that analysis?

A It's the same answer that I just gave. It's more than just one no, it's -- I described it in much more detail.

Q Have you determined that all of the portfolio companies are equally creditworthy?

A I have not.

Q Okay, but you're proposing to use the same loan terms for all of the loans, correct?

A All of -- all of -- again, my answer goes back to what

I've said at least three times during this cross already. The first is the loan structure is a little bit of form over substance, it is a mechanism that provides funding for the portfolio companies to continue their mission and, given the ownership structure, it was my determination, the company's determination that this was the best path to do it in.

Q Did you consider not loaning any money to these portfolio companies?

A Not loaning any --

Q Not funding any of the portfolio companies.

A No, that would be an -- that would be, I think, a ridiculous thing to do, not fund them.

Q Is that because you've done an analysis of these portfolio companies and determined that they have value?

A It is because of what I've testified already.

Q In fact you have not done an analysis of any of the portfolio companies to determine that they have value today, correct?

A Their value is in their research and their research is continuing. So that is one definition of value that they do have value, yes.

Q I'm going to appeal to your hard heart as a chief restructuring officer and ask whether or not you have done an analysis of whether any of the portfolio companies that you are proposing lending money to have economic value today?

A Well, I think people think I'm a teddy bear, Mr. Taft, so I don't know if I have a hard heart, but I will tell you that the value is in continuing the programs and, to me, that's a definition of value.

Q Just one or two more questions. You testified that there were prepetition loans that provided emergency DRIP (ph) funding for the -- or, sorry, this would be in your declaration -- do you recall describing the prepetition loans as emergency DRIP funding?

A I take your word for it if that's what it says, I don't have it memorized.

Q Are you aware of any instance prior to June of 2025 where the fund invested in a portfolio company by way of a loan as opposed to a purchase of shares?

A I am unaware.

Q Okay. Are you aware of any instance in which the fund invested in any way into a portfolio company that had filed for bankruptcy?

A I believe in its history, I'm not sure if it was -- if it was the fund or another, but I know Dr. Harrison has had some experience in an investment made through bankruptcy, I'm not sure if that was with the fund or not.

MR. TAFT: Thank you. No further questions at this time.

THE COURT: Thank you. Any redirect?

REDIRECT EXAMINATION

BY MS. TOMASCO:

Q Mr. Mandarino, can you find the exhibit that is the audited financial somewhere on the witness stand?

A Which exhibit? There's only --

Q It's a loose exhibit --

A Oh --

Q -- it should still be up there.

A -- sorry. Yes, I have it.

Q I believe it's 99, it's been marked as 99.

A Yes, I have it.

Q Okay. Would you mind turning to the page that is marked -- well, I'm going to say it's -- after the Grant Thornton page and the signature, it is going to be the fourth page.

A So it's titled the ATP Life Sciences Ventures, L.P. and subsidiaries' consolidated statement of assets, liabilities, and partners' capital as of December 31st, 2024?

Q Yes.

A I have it.

Q That page that says, "Consolidated schedules of investments continued," do you see that?

A Yes, I think it's number 4 on the bottom.

Q Okay. Now, are you pretty familiar with audited financials, Mr. Mandarino?

A I am.
Q All right. Now, each one of these portfolio companies has been assessed at fair value, do you see that?
A I do.
Q Okay. Now, with respect to those numbers, it's not zero, is it?
A It is not.
Q Okay. And this is as of December 31 of 2024, do you see that?
A That's right.
Q Okay. Now, so these companies inherently have value based on the audited financials of the partnership, is that correct?
A Yes.

MR. TAFT: Objection, leading.

THE COURT: Why don't you ask him what it means?

MS. TOMASCO: Your Honor -- okay.

BY MS. TOMASCO:
Q Mr. Mandarino, what does this column mean on these audited financials with respect to the fair value of the portfolio companies?
A Sure, that under, you know, GAAP rules and ASC, which is the Accounting Standard rules, that the auditors made a determination that the fair value of the investments in total totaled 3.9 billion, almost $4 billion.

Q Okay. Now, that includes some pretty hefty numbers for each of the debtor portfolio companies here, do you see that?
A I do.
Q And of course there are very, very commercial portfolio companies as well?
A That's right.
Q All right. Now, with respect to the idea that this management team has a pretty good track record, would you agree with that?
A I would.
Q Okay. And why?
A Given the returns that they've returned to their investors, I believe that of the -- rough numbers, 2.3, $2.4 billion that Rigmora has invested over the years, they've been actually paid back something like 2.1 billion of it, and there's still the value that they own of the companies that are still there.
Q All right. For example, what is the fair market value of Braeburn, give or take?
A I mean, according to Dr. Harrison's testimony earlier, I think he said $2.9 billion.
Q All right, so there's plenty of value here. And also, with respect to this management team, can you turn to slide 10 in the PowerPoint presentation?
(Pause)

A Okay.
Q Are you familiar with that?
A I am.
Q And what is it?
A It's a chart that compares the IRR of the -- of a bunch of different funds similar or used as a comparison to Apple Tree and then Apple Tree, and Apple Tree's internal rate of return of pure-play biotech funds which is exceeding in a billion of assets is 23.22 percent and, you know, which compares to -- you know, favorably with its peer group, there was only two -- there was only one that has a higher IRR and that is a Bain Capital Life Sciences fund, and Bain has, you know, tens of billions of dollars of capital at their disposal.

So it is a -- you know, the median of all the comps is 8.8 percent and ATP Life Sciences is 23.22 percent. So, you know, presumably that's why they have one investor that did put in the $2.3 billion.

Q What is your lay definition of business judgment, Mr. Mandarino?
A It's complicated, but business judgment is what a company, debtor -- you know, to do the right thing, what is the best thing to do for its enterprise, for its stakeholders, its shareholders, its creditors, you know, its equity, what -- it is based on its experience and knowledge,

you know, what it -- how it makes its decisions.

Q And is it your business judgment that funding these portfolio companies using secured loans is the best use of funds for the partnership debtor?

A Yes.

MS. TOMASCO: No further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. TAFT:

Q Mr. Mandarino, do you know -- you weren't prepared -- you weren't involved in the preparation of these audited financial statements for the fund, correct?

A I was not.

Q Okay. Do you know if the fair values listed here primarily reflect the amounts invested in each portfolio company?

A My understanding of fair value calculations for an audit is it is done under the ASC standards, which is, you know, what is the value of that investment, and there's many criteria of that. So it's not solely how much money has been put in.

Q But that is a factor, correct?

A Presumably, what the cost -- well, I don't know. With that, that's just a cost basis, there could be what the cost basis is of what -- how much money has been put in as compared to the value of it could be different, you know, it

could be higher or lower theoretically. I mean, the -- but, again, it is -- you know, I take comfort that Grant Thornton is a top-notch accounting firm and that these numbers and values are to the best of their professional judgment as of December 31st, 2024.

Q But you don't know what factors they actually considered in reaching these valuation determinations, correct?

A Sure, the factors under the ASC rules.

Q Okay. And is it your testimony that the value that you would achieve in a -- if somebody were to sell this company, the fund were to sell any of these debtor portfolio companies, is it your position that the expected sale price would have some relationship to the GAAP fair value reported in these audited financial statements?

A No.

Q Okay. Do you know if the fair value of some of these companies is less than the cost that -- the amounts that were invested in them?

A Some could be less, some -- I don't know, some could be less --

Q Okay.

A -- some could be more. This was as of a certain date, this was as of December 31st of 2024, some of these companies -- you know, Aulos, Replicate, for example, you

know, galvanize Braeburn, the -- you know, the commercial ones, maybe they're worth more based on their financial perform -- you know, for the commercial ones from their portfolio, and some could be less due to the choking off of funding by the limited partners, you know, since May of 2015.

Q And you don't know because you have not performed an analysis of the value of any of the portfolio companies, correct?

A I have not done a valuation, that's right.

Q Okay. And just very briefly on this return analysis, you weren't involved in generating any of this analysis of the history of success, correct?

A I was not.

Q Okay. And you don't know whether any of the numbers presented here are accurate, correct?

A You know what, when I first saw this originally, when I first met the company I was given something like this, and I asked one of my guys to fact check one of them because I was just interested, right? And, you know, he -- it was -- he wasn't -- we weren't sure if it was the same fund because some of this information is proprietary, but the Bain Capital Life Sciences fund's return was pretty consistent with some, you know, research that we did independently. Again, that was just a fact check that we did, you know, as a comparison.

Q And other than that --

A That was it.

Q Thank you.

MR. TAFT: No further questions.

THE COURT: Thank you. Mr. Mandarino, do you know where the $15 million in cash that the debtor has on hand comes from?

THE WITNESS: It was funds that they had from -- it's their existing cash on hand, so it was funds that -- I mean, I believe most of it came from, you know, prior capital calls, but I don't know if there was other sources of income in that.

THE COURT: And do you happen to know -- I don't know if my notes are right or not -- Akero Therapeutics sold for $5 billion in late 2025, do you know if that's right?

THE WITNESS: I do, it sold -- so what happened, Akero -- I think it's A-i-k-e-t-o -- wait, hold on, I have it right here. It is, I'm sorry, A-k-e-r-o, Akero. Yes, so Akero was a portfolio company which was sold I think -- of ATP sold in 2021, and then it was then sold again. It wasn't sold by the venture fund, it was sold by the party they sold it to, and it sold at $54 a share. Yeah, I think it was like either right under or right below five billion, but that value didn't come to us or the LP.

THE COURT: Okay. Thank you.

THE WITNESS: That would be a different story if

it was.

THE COURT: Okay. Thank you.

Does that prompt any questions from anybody?

MS. TOMASCO: Oh, no, we're -- we would like for Mr. Mandarino to leave the stand. I don't think there's anything else to ask.

THE COURT: Mr. Taft?

MR. TAFT: I'm sorry, it did prompt an offer, which is if Your Honor is interested in a submission as to the source of the $15.5 million, we would certainly participate in that.

THE COURT: Thank you. Thank you --

THE WITNESS: Thank you, Your Honor.

THE COURT: -- you may step down.

(Witness excused)

MS. TOMASCO: Your Honor, we have -- obviously, we have the stay enforcement motion is --

THE COURT: Well, let's -- I want to clean this up. Does the debtor have any more witnesses?

MS. TOMASCO: The debtor does not have any more witnesses.

THE COURT: Okay. Does Rigmora have any witnesses or evidence they want to present on this motion?

MR. TAFT: No, Your Honor.

THE COURT: Okay. Thank you.

Ms. McCollum?

MS. MCCOLLUM: No evidence.

THE COURT: Okay, so the evidentiary record is closed.

MS. LABOVITZ: Your Honor, we're a little confused, as usual. The debtors filed and offered in support of their motions and referred to in their motions the declarations of Dr. Harrison and three declarations of Mr. Mandarino. Ms. Tomasco is now suggesting that those will not be moved into evidence and may not be moved into evidence.

THE COURT: They don't have to be. I had testimony; I had people on the stand.

MS. TOMASCO: Yeah, I come from the very traditional Texas courts where declarations are not a thing.

THE COURT: They aren't -- they aren't evidence.

MS. LABOVITZ: Well, here we go then.

MS. TOMASCO: So, Your Honor, we've moved into -- we've had the witnesses, we've moved into evidence all of the exhibits that we wanted to have admitted with respect to the funding motion. My understanding is that Rigmora has no witnesses and obviously, to the extent they have exhibits, they would need to be self-authenticating.

MS. LABOVITZ: Do you have any argument in support of your motion, Patty?

THE COURT: Okay. Well, I'm making sure I've got the evidence closed.

MS. TOMASCO: The evidence is closed, Your Honor.

THE COURT: Okay. So, now we can turn to argument. And obviously we're not getting to the motion to enforce today.

MS. TOMASCO: Your Honor, I think that the evidence is overwhelmingly on the debtors' side. Rigmora has taken its shots, but the debtor has demonstrated that the funding motion is in the best interest of these estates.

While one could say that this should happen in the form of an equity investment in the portfolio companies versus a loan, the loan seemed to make the most sense given that that was the structure that the debtors had adopted when the funding became uncertain. And you can certainly understand that from an intercreditor viewpoint, just like every other intercreditor borrowing that happens in a Chapter 11 case, usually it's done in the cash management motion, in this case it's not going to happen that way, it's going to happen via secured loans. We could call them, you know, superpriority administrative loans and the effect would be the same, and that is that these are funds from one debtor to another of a jointly administered estate where the equity is fully owned by the partnership debtor. Any of those loan proceeds will go to pay what would otherwise be a claim

against the portfolio debtor, either in the form of rejection damages or employee contract damages, and because this will be a solvent estate before it reaches the partnership, the limited partners, those amounts are going to have to be paid in full anyway. And, from a pure pragmatic viewpoint, what you're going here is simply preventing for a period of time the abrupt shutdown and nonpayment of valid vendor claims, employee claims, and contract claims.

THE COURT: When you say it's going to be a solvent estate, I need some further explanation on that. What's going to be a solvent estate?

MS. TOMASCO: Well, just structurally. Each one of the portfolio companies has its funding from the partnership debtor, but it is done pursuant to the Series A funding agreements by which they can say I've met this -- I've met this criteria and you have to fund me now. Right?

So, it's not as if you can strand any of these individual portfolio companies without them in turn or their creditors saying we relied on these Series A funding agreements before we entered into this CRO agreement or before we entered into this employment agreement, and those are all going to be claims that need to be paid whether we stop today or we stop six months from now, those claims are going to be rejection damages claims, and that's the kind of harm that we're preventing.

THE COURT: Well, I understand the harm; I don't understand the solvent debtor comment.

MS. TOMASCO: Well, so --

THE COURT: I understand the harm.

MS. TOMASCO: Correct, Your Honor, but in order for money to flow up to the limited partners there has to -- all of the creditors have to be paid in full.

THE COURT: Well, yes, I understand that in the sense of, if there's going to be a distribution up the chain, there can only be a distribution in a scenario where creditors are paid, but you're talking about putting money down into a debtor and how do you know that debtor is going to be solvent? That's what I thought you were saying; that's what I don't understand.

MS. TOMASCO: Oh, well, Your Honor, it -- the funding agreements between the limited partners and the portfolio companies are obligations of the limited partnership.

THE COURT: So there's a claim.

MS. TOMASCO: There's a claim.

THE COURT: There's a claim --

MS. TOMASCO: Correct.

THE COURT: -- that would have to be brought --

MS. TOMASCO: That would have to be brought and the limited amount of funding compared to the overall

budgeted amount --

THE COURT: Is fair, I get that.

MS. TOMASCO: Okay. Now, what we're doing is we're preventing that claim from ever having to be brought; whether it's successful or not, we don't know, but that is one of the elements of the debtors' justification and its business judgment.

Now, you add on top of that is like, where do we go from here. And I know it's on everybody's mind and we have -- you know, we have meetings and plans and things that will come to fruition shortly, but Mr. Mandarino's and Mr. Harrison's testimony, which is the only evidence before the Court, was quite clear, you can't shut down these portfolio debtors mid-experiment or mid-clinical trial, that in and of itself is going to produce more claims and, you know, it's not possible to isolate those at the portfolio companies with any certainty.

We also know that the interest in these debtors, from Mr. Mandarino's testimony, is as a portfolio and not as cherry-picked debtors that are essentially you fund this, you don't fund that.

What has happened here is what has -- what we know is the debtors' business judgment that is entitled to deference, and we've explained explicitly and painstakingly why each portfolio debtor needs this funding in order to

continue, and we've explained like the rationale behind how this funding gets us from point A to point B, and that's the point of the debtors' business judgment.

So, I know this is different because we're talking about a limited partnership and you have some nuances in the limited partnership agreement, but I look at this situation and I'm sort of sitting there going imagine if you had a corporate Chapter 11 debtor and you had a shareholder coming in and saying I don't like the debtors' DIP budget, I think they should be spending their money differently, right? But that shareholder doesn't have management rights, doesn't have the right to approve the budget after it's already been -- you know, after he's already invested his --

THE COURT: But this company does. These limited partners do have some rights with respect to budgets.

MS. TOMASCO: They have rights to approve budgets as a condition to making a capital call; after that, they do not.

THE COURT: So the general partner makes a capital call and says here's the budget I want you to fund.

MS. TOMASCO: Correct.

THE COURT: The limited partner funds that --

MS. TOMASCO: Correct.

THE COURT: -- based on the budget that was given.

MS. TOMASCO: Correct.

THE COURT: And then the general partner can use the money any way it wants to regardless of the budgeting and how that money came in?

MS. TOMASCO: Apparently, according to the documents at hand, that's how it's structured. And the problem -- and you would say, you know, as most conflicts appear before you, if the documents were written differently, that would not be the case, but once the funds come in and they're used for that portfolio debtor, the --

THE COURT: Do they have to be used for the portfolio debtor, or can they be used for another debtor?

MS. TOMASCO: Well, ordinarily, they would be used for that portfolio debtor, right?

THE COURT: And what makes this not ordinary?

MS. TOMASCO: So, currently, the funds that the debtor has on hand are property of the estate and any conditions on their use are subject to 541(c).

THE COURT: I keep hearing that. You're going to have to brief that for me at some point, but apparently you guys decided you weren't briefing that today.

So, tell me about -- so, the contractual right -- and I've looked at it and I'm going to ask the limited partners as well -- it just seems odd to me that you could base a budget -- you could make a capital call, get money based on a budget, and then execute differently than the

budget that was the basis of the capital call.

MS. TOMASCO: But that was the finding of the Chancery Court, Your Honor. They said --

THE COURT: Where did she make that finding?

MS. TOMASCO: -- she said explicitly that the milestones and the budgets were not -- were explicitly not applicable here.

THE COURT: No, she said something different about the milestones. I don't remember that. I'm not sure I -- I'll go back and read it. If she made that finding, great, but I don't think so.

MS. TOMASCO: Yes, Mr. -- I am not --

THE COURT: It's on page -- I want to say page 53, because it made an impression on me, the milestones. So -- and I think what she recognized is, yeah, you know, milestones, that's what we go for, but we don't always hit them. Okay?

MS. TOMASCO: I'm going to let the people who tried the case talk about it.

THE COURT: But what I really want to hear is where in the document -- and I have this for the limited partner -- where in the document does it say that once you fund and budgeting is explicitly on the capital call that you have then further discretion to -- where does it say that? I don't think it does.

MR. BERDON: Your Honor, Andrew Berdon on behalf of the debtors.

It is true that, under the LPA, funds that are called pursuant to a capital call are to be spent in accordance with an approved budget on the projects that have been approved.

THE COURT: Okay.

MR. BERDON: So we do not argue that there is discretion given in the LPA itself to spend capital that is called on projects other than the specific project for which the capital was called.

THE COURT: Okay. So how does that line up with what the debtor is asking to do here?

MR. BERDON: Your Honor, in -- I'm not a bankruptcy lawyer and the issue that needs to be briefed is a specific piece of the Bankruptcy Code --

THE COURT: Okay.

MR. BERDON: -- but I can --

THE COURT: Fair enough.

MR. BERDON: -- I'm here to go on record as stating our understanding as to how the LPA itself deals with the issue.

THE COURT: Okay. And the LPA says it needs to be for the project that the capital call was made for?

MR. BERDON: That's true.

THE COURT: Okay. Thank you.

MS. TOMASCO: Your Honor, and which is what we've tried to do with the charts that are on -- so we've spelled out the company-by-company authorized funding and how much of that funding is being used, right?

THE COURT: Right.

MS. TOMASCO: Okay. So --

THE COURT: And with respect to those that have an approved -- an unfunded, but approved budget, at least I have a budget, which quite frankly to me means that the limited partners made a decision already that it was in the business judgment to fund these companies to this amount --

MS. TOMASCO: Right.

THE COURT: -- even though they may not think so now, but at some point they did --

MS. TOMASCO: Correct.

THE COURT: -- because they -- there was an approved budget and a decision made there, but what about those for which there is not an approved budget?

MS. TOMASCO: Your Honor, that is where there are funds on hand from the capital calls, granted, perhaps from other sources, but for which these debtors need to be able to use funds notwithstanding the fact that they're outside of the budget. The basis for doing that is 541(c), and that is that any restriction on the use of property of the estate is

abrogated in a bankruptcy -- in a Chapter 11 case.

THE COURT: I don't think that's what it says. You're going to have to convince me of that. It says it can come -- it says property can come into the estate notwithstanding a restriction on it. So, now it's in the estate.

MS. TOMASCO: Correct.

THE COURT: Where does it say, once it's in the estate, I can just ignore the restrictions on it? It's in the estate. That's the transfer from the debtor to now the debtor-in-possession, our two fictional entities, right?

MS. TOMASCO: Correct, but if those restrictions continued to exist, then 541(c) would have no meaning.

THE COURT: No, I don't think so.

MS. TOMASCO: Well, if --

THE COURT: What about commodity futures? I mean, it's -- the bankruptcy makes -- there are other provisions of the Code that impact pre-bankruptcy rights. You're going to have to brief me on 541(c) because that is not how I read it. I haven't had the issue before, but it's not how I read it. It brings it into the estate is what it does.

MS. TOMASCO: The debtor can use property of the estate under 363(b) in the ordinary course.

THE COURT: But, for example, you can't sell property that state law prohibits you from selling, Third

Circuit, whatever -- that's Integrated Solutions. Okay? There is law out there that says, wait, restrictions matter. Now, maybe this restriction doesn't, but you're going to have to show me that it doesn't.

MS. TOMASCO: Okay, Your Honor, it sounds like we have agreement with respect to at least six of the nine debtors.

THE COURT: It could be.

MS. TOMASCO: With respect to the three additional debtors, perhaps the Court would benefit from some briefing, but I will note that this goes beyond what Rigmora objects to. They object to funding any pre-clinical company --

THE COURT: I understand that.

MS. TOMASCO: -- regardless of the fact that they approved a budget before.

THE COURT: I understand that.

MS. TOMASCO: And that's been really the source of the tension since May, right? And that is that the debtors are not willing to give up those pre-clinical companies with approved budgets in order to trash them because Rigmora wants to.

THE COURT: Yeah, I hear the debtors' business judgment and I don't doubt that. I don't doubt the debtors' business judgment here --

MS. TOMASCO: Sure.

THE COURT: -- that all the funding they've requested should be granted, but there's a couple of different questions.

MR. BERDON: Your Honor, Andrew Berdon for the debtors, I just want to add a fact that you asked about that our colleagues have offered to make a presentation on. Well, money is fungible, there is cash on hand derived from two sources, one was the repayment of a note by Braeburn that was owed to the fund that was done in July of 2025, and that put I believe $42 million into the fund, there was then a $10 million payment as a post-closing earn-out payment from the sale of a company called Tendyne that was received. And so there was $52 million basically paid into the fund in July and August of 2025 that's independent of any specific response to a capital call on an approved budget.

THE COURT: Okay. Thank you.

MS. TOMASCO: So, Your Honor, because we have -- if we were to say whether or not Rigmora has an interest in the funds sufficient under 363(f), our argument is that they don't have -- it's not a lien. Whatever interest they have is contractual, right? It's under an LPA agreement that once we, you know, find an alternative investor and reorganize that LPA agreement will no longer be around. And this particular set of funds to the non-approved-budget debtors should be viewed as not subject to Rigmora's interest to the

extent one would exist under 363(f). And to the extent that they could be forced in an equitable proceeding to accept the money judgment, I also think that 363(f) supports the relief.

THE COURT: Yeah. I don't know if it's 363(f) that's an issue, though. This is really interesting to me. And it's not a good word coming from a Bankruptcy Judge, oh, this is interesting, right? But what I am hearing is that there are funds that belong to the limited partnership --

MS. TOMASCO: Correct.

THE COURT: -- that it has that it wants to loan to the portfolio companies. And there hasn't been a dividend declared and so the money is at the limited partnership.

MS. TOMASCO: That's correct, Your Honor, and to the extent the Court wants additional evidence on that, we're happy to present it. But also briefing, to the extent the Court needs it, can be done very quickly. And we suggest that, critically, one of the unbudgeted portfolio debtors is Aulos, who is in the middle of clinical trials for cancer patients, for all those reasons --

THE COURT: As I said, I think the evidence was compelling. Maybe there should have been some discussions.

Ms. Labovitz?

MS. MCCOLLUM: Your Honor --

THE COURT: Oh, Ms. McCollum.

MS. MCCOLLUM: -- if I might beg the Court's

indulgence for a brief recess? My garage closes at 7:00 and I can't get my car out if I'm still there. So, if you could give me ten minutes to go --

THE COURT: Yes --

MS. MCCOLLUM: -- and move my car --

THE COURT: -- I'll give you ten minutes. We're in recess.

MS. MCCOLLUM: Thank you, Your Honor.

(Recess taken at 6:28 p.m.)

(Proceedings resumed at 7:00 p.m.)

THE COURT: Please be seated.

MS. TOMASCO: The debtors wish to express their appreciation to the U.S. Trustee for making us take a break because I think we have a resolution for today --

THE COURT: For today.

MS. TOMASCO: -- only for today. The most significant thing is that we are going to reduce -- if you want to turn to page 18 in the PowerPoint.

THE COURT: Yes.

MS. TOMASCO: Okay. Rigmora has agreed to fund the Aulos amount.

THE COURT: The Aulos amount?

MS. TOMASCO: Correct --

THE COURT: Okay, that's --

MS. TOMASCO: -- 3.7 million --

THE COURT: -- where is that?

MS. TOMASCO: Okay, the bottom column on page 18.

Oh, sorry, I have a wrong version of the PowerPoint.

THE COURT: Okay, I've got that.

MS. TOMASCO: Okay. Sorry about that.

THE COURT: It's okay.

MS. TOMASCO: Okay. So, as you know, these are the debtors' funds, they have withdrawn their objection to the funding of the Aulos amount in the amount of 3.7 million.

If you go up that column to where it says Nine Square --

THE COURT: Yes.

MS. TOMASCO: -- okay, that amount is going to be reduced to $210,000, instead of 1.434 million.

THE COURT: Okay.

MS. TOMASCO: The Nereid amount is going to go from 1,556,125 to 835,000.

THE COURT: Eight thirty five. Okay.

MS. TOMASCO: This is only -- this is contingent on a couple of things. Also, we are going to defer the $750,000 payment to Mr. Harrison's management company. We are not -- nobody is waiving any rights, this is an interim agreement.

THE COURT: I understand.

MS. TOMASCO: The debtors' funding based on the funding motion will only last through approximately the week of the 13th, but -- we need to have a hearing, but -- we have a hearing date set for the 13th, but we need to move it to the next week. The 18th or 19th, Your Honor, is preferred.

THE COURT: Since I'd rather start this in the morning, I'm going to go with the 19th at 10:00.

MS. TOMASCO: That's perfect, Your Honor. Thank you.

THE COURT: And we're going to save the day, which I hope we don't need.

(Laughter)

MS. TOMASCO: We're all going to take Evelyn Woods speed-speaking lessons for --

THE COURT: No, I don't want speed speaking --

(Laughter)

THE COURT: -- no, I want resolution.

MS. TOMASCO: Yeah, we'll -- and we had retentions scheduled for the 13th, those are also going to be moved to the 19th.

THE COURT: We're going to move everything, yeah.

MS. TOMASCO: Correct, Your Honor.

THE COURT: Now, I want to make sure, you didn't go through the other six --

MS. TOMASCO: Yeah --

THE COURT: -- are they being funded at those amounts?

MS. TOMASCO: Correct.

THE COURT: Okay. I just want to make sure I understand the agreement.

MS. TOMASCO: Correct. So we think that that resolves the parties' issues, there's obviously still going to be some wood to chop. I believe that that is the agreement; we think it resolves the motion fairly.

I believe that Ms. Labovitz wants to speak her piece.

THE COURT: Okay.

MS. LABOVITZ: Your Honor, I waited all day, and I've been waiting for a couple hearings now.

I just want to frame a couple of the legal issues which were discussed, but I didn't have a chance to weigh in on the way I'm thinking about those legal issues, and I think it will help the Court as we all go back into our offices over in the next three weeks and get ready for what may be a couple of meaty hearings.

One point: Ms. Tomasco I think just said these are all the debtors' funds. I just want to put down a marker and say that's not the way we actually think it works in these cases and at some point, as you say, we'll have to brief this.

Ms. Tomasco has stated the debtors' position that under Section 541(c), notwithstanding any provisions of the LPA -- and perhaps notwithstanding any provisions of Cayman law, I'm not sure how she's trying to think about that, but it may be that she's using Section 541(c) to address that -- they're arguing that these funds are all part of the partnership debtors' estate. From our perspective, as Ms. Selden laid out in the early days of this Chapter 11 case, we believe that under Cayman law the fund constitutes a trust. And so that brings up issues under Section 541(d) and I want to make that point that, if we're briefing 541(c), we're briefing 541(d). I think this is a trust and that means the assets are not necessarily part of the partnership debtors' estate. So, I want to put a pin in that. I want to put a pin in a couple of other points as well.

Your Honor, there's been a lot of discussions today about milestones and whether they restrict or don't restrict the funds, what the Chancery Court ruled. And I think we agree with the summary that says that you can't take -- under the LPA, right, you can't take funds that were budgeted for one portfolio company and use them for another, and it may be that the milestones were meant more as guidelines. From our perspective, though, that is really important from -- in answering the question of what was ordinary course of business, what was the legitimate

expectation of the investors in the fund, of the parties in interest. The expectation, though, was that there would be some level of milestone, there would be some level of progress, measurement of the process.

And if we had gotten deeper into all of this today, I think part of what we would have highlighted is, Dr. Harrison testified a lot about we just need a little more funding to get to a better place, we haven't focused on how much funding has already gone into the portfolio companies and, from the perspective of the LPs, that matters a lot. For the record, if there's anybody still listening who's an employee, a landlord, or any other constituent of the portfolio companies, the LPs have invested two -- over $2 billion in the fund, they have every interest in maximizing the value of that investment.

I think we've all seen cases, Your Honor, where there's a secured creditor that comes in and says let me just sell the assets so that I get -- you know, in a fire sale so that I get my value back and who cares about the junior creditors. It almost feels like that's what the debtors are saying is happening here that the LPs are just out for the LPs and they're not out for the portfolio companies or they're not out to invest in science. They invested $2 billion in science, actually they care about science.

THE COURT: They did with Dr. Harrison as their

management.

MS. LABOVITZ: So I'm just coming back to it, though, and that is an issue that we think is before the Cayman court. We're going to deal with that on February 25th, right? But I think the key point, though, is that the LPs want to maximize the value of their investment, they're just very concerned about the priorities that are being applied here.

And it's things like the testimony we heard today when -- well, gosh, the presentation they put forward says the purpose of the Chapter 11 case is to maximize the value of the portfolio companies, not even thinking about the fund, which is a debtor where both Dr. Harrison and Mr. Mandarino have fiduciary duties, that's confusing to me. I think that there needs to be a lot more clear safeguards about who's looking out for the fund, who's looking out for the LPs, they are the fulcrum security at the level of the fund. There may be creditors at the level of the portfolio companies, but the LPs are the fulcrum security at the level of the fund. It's troubling to me that business judgment decisions are being made without consulting at all with the LPs who are the fulcrum security.

THE COURT: But wasn't that the structure? That's the structure of the limited partnership agreement --

MS. LABOVITZ: So --

THE COURT: -- funding management -- I've looked for those kinds of things. And I don't want to say too much because --

MS. LABOVITZ: No, I get it.

THE COURT: -- you guys have an agreement, okay?

MS. LABOVITZ: We do, I'm just --

THE COURT: And I'm holding you to it --

MS. LABOVITZ: -- I'm saying my piece --

THE COURT: -- we're not backing out of that.

MS. LABOVITZ: -- we're not going to go much further.

THE COURT: But that's what -- you know, I'm looking big picture, how does this work, funding, management. Things changed a couple years ago, I understand that. So --

MS. LABOVITZ: I'm looking big picture too. And to be candid, much as I love appearing before Your Honor and I do, we do think that this should be heard in the Cayman Islands.

THE COURT: I understand that, and you'll have your day on that.

MS. LABOVITZ: Yeah, and we will. But, Your Honor, to the extent that we're here, this is a Chapter 11 case. And so, from my perspective, in a Chapter 11 case you're not looking at debt covenants anymore, you're looking at what is the best thing for the investors, what is the best

thing for the fulcrum security, and we're saying that we think they should talk to us. Today was actually a perfect example. There was a deal to be had, this deal is not very different from the deal that's been on the table -- actually, it's in our pleadings, if you go back and read it -- the position we landed on today is not very different from the place where the LPs started.

When we come back on February 19th, I think we just agreed, they're going to be looking for more funding, the cheapest place to get it is probably the $97 million that's on hand. They should probably talk to us. It would probably be a good idea for -- in consultation with counsel for Dr. Harrison to decide to share the information he has that demonstrates why he thinks that the funding is in the best interest of the fund of the LPs. And, ultimately, what we have here, it's a two-party dispute, right? That also we're going to deal with on February 25th, I am not pre-arguing it, but what we have is a breakdown in trust, a breakdown in communication. And we're saying for as long as we're here, which is at least the next 34 days, we think that there should be better communication. That's all.

THE COURT: Thank you.

MR. TAFT: We rest.

(Laughter)

THE COURT: Okay. So, I will look for a form of

order that memorializes the agreement that was reached here today and put on the record.

I will say that -- oh, yes?

UNIDENTIFIED FEMALE SPEAKER: No, I'm so sorry. We do have one more housekeeping item, so I'd like to preview it with Ms. Tomasco, first. I don't want to --

(Counsel confers)

THE COURT: Let me suggest, since I overheard this --

(Laughter)

UNIDENTIFIED FEMALE SPEAKER: That looks easier, Your Honor. This is sausage-making in real time.

THE COURT: Yes. Let me suggest that there be an agreed-upon communication that is brief to the judge, who, of course, is entitled to know that, I think, dates that he has set aside on his calendar aren't going to happen because of the schedule that we just set in this court, which extends beyond the dates that he has set aside. And so, certainly, as a matter of courtesy, if nothing else, there needs to be a joint communication.

But the stay is still in place and there's not to be a communication that slants anything one way or the other or suggests any untoward motives on either party; simply a communication with a schedule of this Court, which makes the dates in front of him not possible, in an agreed-upon,

hopefully, one communication.

I can't tell the Cayman lawyers what to do and their responsibilities, but the stay is in place.

UNIDENTIFIED FEMALE SPEAKER: That's understood, Your Honor.

UNIDENTIFIED FEMALE SPEAKER: Oh, but that brings up one more housekeeping matter and that is, that we were going to hear the stay-enforcement motion.

We always thought that it should be heard along with the lift stay, because (indiscernible), but to the extent we're not hearing it today, should that also be continued to the --

THE COURT: Yeah, let's throw it all on there.

UNIDENTIFIED FEMALE SPEAKER: -- 19th?

THE COURT: Yes.

UNIDENTIFIED FEMALE SPEAKER: Okay.

THE COURT: So, I've got you on the 19th and on --

UNIDENTIFIED FEMALE SPEAKER: The 25th.

THE COURT: I see that, but...

(Laughter)

THE COURT: That was too much, huh?

Okay. So, I mean, we -- I understand the funding issues, so, okay.

UNIDENTIFIED FEMALE SPEAKER: All right.

THE COURT: We will address that.

I would, of course, as always in every case, encourage parties to talk. I understand the Dallas litigation. That has been happening for the last, what, seven months now, and I'm sure before that, the issues.

But we are in bankruptcy and that changes the landscape, too. So parties should talk. Where there can be agreement, there should be. Where there can't be, I'll decide things. But if they can be narrowed, if things can be narrowed; it helps everybody.

MS. TOMASCO: (Inaudible.)

(Laughter)

THE COURT: I'm not getting out of here. Okay.

UNIDENTIFIED FEMALE SPEAKER: Or are we?

UNIDENTIFIED FEMALE SPEAKER: We also -- you also had scheduled the first days for the three recent Debtors: Nereid --

Yeah, I'll let Ms. Good speak.

THE COURT: Well, y'all have the joint administration and then the order that adds some other stuff.

Can y'all -- can we do a certification on that?

UNIDENTIFIED FEMALE SPEAKER: We have to read them --

THE COURT: Right.

UNIDENTIFIED FEMALE SPEAKER: -- but, probably, yes.

THE COURT: Okay.

MS. GOOD: Yeah, that's what I was going to say. I know we had requested that to go forward today. I think it makes sense for us to talk and see if we can't submit an order under COC, and if we can't, we'll be in communication with chambers.

THE COURT: Okay. Perfect.

Anything else?

(No verbal response)

THE COURT: Last chance.

Thank you, Ms. McCollum, for forcing the break.

MS. MCCOLLUM: Just to throw a wrench in everything, we appointed a committee today.

THE COURT: Oh, okay. Interesting. Someone else to talk to, everybody. Okay?

We're adjourned.

(Proceedings concluded at 7:17 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 21, 2026
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski January 21, 2026
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams January 21, 2026
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand January 21, 2026
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable

EXHIBIT FF

A T P

Apple Tree Partners
Portfolio Lift-out Opportunity

December 2025

JX-116


Apple Tree Partners (ATP), a pioneer and leader in life science ventures, is building the next generation of transformative biotechnology companies.
A T P

ATP Founder and Managing Partner

Seth Harrison, MD



- Seth has 35 years of experience leading in life sciences venture capital, first at Sevin Rosen Funds, then at Oak Investment Partners, before starting ATP in 1999.
- He has built his career working with eminent scientists and entrepreneurs to create and grow valuable and enduring biotech enterprises, with particular strategic focus on translation of novel therapeutic interventions and assets.
- Seth played a major role in the creation, early sourcing, financing and development of dozens of companies, including multiple investments that have reached valuations exceeding $1 billion.
- Some of his notable early-stage investments include Heartware International (Medtronic $1.1B), Syntimmune (Alexion/AZ $1.2B), Corvidia (Novo Nordisk $2.1B), Chinook (Novartis $3.5B), Akero Therapeutics (AKRO), and Stoke Therapeutics (STOK).
- He is co-founder/founding investor and current board member of Akero, Stoke, Braeburn, Galvanize Therapeutics, Ascidian Therapeutics, Aulos Bioscience, Marengo Therapeutics, Replicate Biosciences, Deep Apple, Aethon Therapeutics, and ATP's other portfolio companies.

A T P

ATP innovates for success
Pioneering new formats for biotech asset growth

1990s	2000s	2010-present
Generalist Funds IT & biotech; VC “manager model”	**Specialist Funds** Evolution from first IT bubble	**Megafunds** Market expansion and megadeals
SLH at Sevin Rosen and Oak Investment Partners (1991-99)	SLH founds ATP I as Oak biotech portfolio spin-off; develops “founder/builder” model	SLH founds ATP LSV to expand “founder/builder” model with focus on supermajority ownership
	ATP I 2nd highest returning fund globally for vintage (1999) **TVPI=DPI: 3.2x (net)**	ATP LSV best in class over 12 years **TVPI: 2.7x (net); DPI: 1.0x (net)**
ArQule ViroPharma Incorporated	HeartWare Gloucester Pharmaceuticals	braeburn akero Stoke Therapeutics Chinook Therapeutics Corvidia Precision Cardiovascular Therapeutics

ATP

ATP Life Science Ventures (ATPLSV)

Pioneer biotech “mega fund” with best-in-class performance

Returns of all pure play biotech funds >$1 billion

Fund Name	Vintage	Size ($m)	IRR	TVPI	DPI
ARCH Venture Fund XIII	2024	3,000	-2.2%	0.99x	0.32x
Flagship Pioneering Fund VIII	2024	2,600	-23.3%	0.85x	Unknown
OrbiMed Private Investments IX	2023	1,860	7.5%	1.05x	0.00x*
ARCH Venture Fund XII	2022	2,975	3.2%	1.05x	0.00x*
Third Rock Ventures VI	2022	1,105	-44.8%	0.86x	0.00x*
Flagship Pioneering Fund VII	2021	3,370	13.7%	1.25x	0.00x*
ARCH Venture Fund XI	2021	1,941	11.7%	1.32x	0.15x
Bain Capital Life Sciences Fund III	2021	1,900	54.4%	1.50x	0.45x
OrbiMed Private Investments VIII	2021	1,500	10.1%	1.26x	0.15x
OrbiMed Private Investments VII	2018	1,029	19.2%	1.73x	0.48x
Median		1,921	8.8%	1.15x	0.15x
ATP Life Science Ventures (net)	**2012**	**2,341****	**23.22%**	**2.7x**	**1.0x**

ATP Life Science Ventures	
Net of Fees and Expenses	
TVPI	**2.7x**
Specialty Pharma (Pool Braeburn)	4.1x
Biotech (Pool IV – partial; Pool V3-partial); Pools V1 and V2)	2.3x
Biotech / Specialty Pharma	3.1x
DPI	**1.0x**
Specialty Pharma	0.9x
Biotech	1.2x
Biotech / Specialty Pharma	1.1x

Source: Pitchbook: Search Criteria: Fund Size >$1B, 2011+ Vintage, disclosed return data, life sciences/biotech exposure only.
TVPI = Total value-to-paid in capital; DPI = Distribution-to-paid in capital. Net of fees and expenses.
*Pitchbook lists some funds at 0.0x; unclear if actually 0.0x or no info.
** Rolling number, 2012-, multiple commitments to separate pools from single major LP comprising multiple vintage years.

A T P

Why ATP's approach works

	Large Biotech and Mixed Funds	Conventional Life Science VC Funds	ATP Approach
Ownership	Many stakeholders / investors	Company founded and built with multiple investors	**Founding role** Company founded and built with ATP as sole investor allows for lower cost of capital
Control	Diluted ownership with low level of control	Higher level of control but ownership still diluted	**High level of ownership** High ownership and control by ATP fosters disciplined growth, integrates and maintains the technology base
Financing	Syndication Many investments with smaller stakes	Serial fundraising rounds	**Disciplined funding** Milestone-based tranches of capital infused over time in close collaboration with ATP expert networks
Returns	Wins pay for losses	Exits via IPO or M&A	**Multiple routes for returns** Self-sustaining capital base insulates growing asset from market shifts Profits / royalties from commercialization Optionality for IPO and M&A

A T P

ATP's asset-building ecosystem

ATP "Hub+Spoke" support

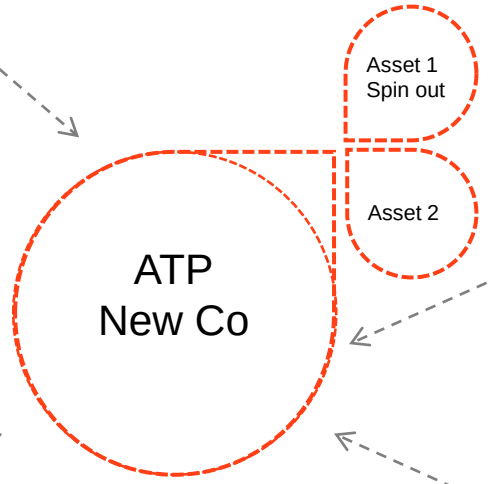
In-house network of world class experts with functional specialization (legal, regulatory, scientific, and business)

ATP Labs

In-house CRO ensures efficiency and quality of pre- and clinical work thru PoC

ATP funding discipline

Sustained and flexible funding with tranched capital infusions



ATP scientific network

Longstanding relationships with eminent scientist cofounders, close collaboration

ATP management network

Seasoned CEOs for each step of development, deep management resources grown from ATP Venture Partner, Entrepreneur-in-Residence networks and in-house Head of Talent

A T P

ATP expert investment and operating team

A T P

ATPLSV portfolio lift-out opportunity

- Take over a restructured, mature, stage-diversified portfolio biotech portfolio; total capital invested $650M
- Portfolio would continue to be managed by the highly successful ATP team
- **6 stand-alone companies**, 4 w/sustaining strategic partnerships that generate non-dilutive cashflow
  - All founded, built, and supermajority owned by ATPLSV
  - [redacted]
  - [redacted]
  - Multiple opportunities for syndication
- **2 preclinical asset bundles**:
  - Oncology (7); neurodegenerative disease (3) – all new mechanisms, sought after targets for major unmet needs
  - Distilled from 6 breakthrough platform companies that ATPLSV founded, built, and owns
  - [redacted]
  - Option to create and syndicate companies pre- or post-cPoC
  - Being considered: a stand-alone acquires neuro, and a preclinical oncological company is created

Independent companies

A T P

Precision immunotherapy platform, with lead asset in Ph2 w/ single-agent activity in CPI-resistant tumors

Marengo

Company overview:

- Novel immunotherapy antibody platform; selectively activates super-potent anti-tumor T cells that persist and have immune memory
- Status: Funded by partnership, but lead program will need coco or other deal, or equity funding to move beyond cPoC; readily syndicable at PoC

Clinical data:

[redacted]

Partnerships: [redacted]

A T P

Novel immune-activating monoclonal antibody addresses multiple major solid tumor indications

aulos

Company overview:

- First in-silico designed antibody to enter the clinic, Aulos' antibody imneskibart binds to anticancer immune messenger IL-2, sharpening its well-known anticancer effects but removing its side effects
- Not an IL-2 agent; in fact, designed to combat problems plaguing all IL-2 agents since field's inception
- [redacted]

Clinical data:

[redacted]

Partnership potential: [redacted]

A T P

Rewriting RNA to treat complex genetic disease

ascidian

Company overview:

- First-ever RNA exon editing platform, addresses genetic diseases impossible to treat with gene therapy or editing
  - Gene therapy durability without the risks of DNA-level intervention; multiple genes, cell, and tissue types
  - Achieves editing levels up to 80%+ depending on gene target, well in excess of what is needed for recessive and dominant diseases
- Status: Partnership-funded; equity would accelerate lead program and enable pipeline development; readily syndicable

Clinical data:

[redacted]

Partnerships:

[redacted]

A T P

Early-exitable, nextgen vaccines and biotherapeutics

REPLICATE

Company overview:

- Self-replicating RNA drugs create cellular “factories” to make therapeutic proteins inside the body
  - Dosed 100X - 1,000X < existing RNA and protein technologies
  - Unmatched safety and much lower manufacturing cost
- Status: Partnership funded through 2026; equity funding would advance internal programs to high value/exit; readily syndicable

Clinical data and pipeline:

- [redacted]

Partnerships: [redacted]

[redacted]

A T P

Clinically validated broad spectrum anti-viral platform with qd nasal/inhaler delivery and placebo-like safety

Company overview:

- [redacted]

Clinical data and pipeline:

- [redacted]

Partnership potential: [redacted]

A T P

Industry-leading AI drug discovery platform focused on obesity

Company overview:

- Merges AI/deep learning, structural biology, cryo-EM, and ultra high-volume virtual screening to dramatically accelerate discovery in high-value disease areas
- All programs to date have moved from discovery to development candidate in [redacted]
- Focused on obesity/metabolic diseases and inflammation, but broadly applicable
- Status: Funded by partnership(s), but equity would advance/accelerate programs and value; readily syndicable

Pipeline:

- [redacted]

Partnerships: [redacted]

Incubation portfolio

- Options: Single company or SPV with spinco model
- Divisions: Keep intact, divide by TA or by modality
- Consolidation option: Deep Apple acquires neuro, preclinical oncology is consolidated into a single company, remainder part of ATP Labs
- Cost: [redacted] 11 preclinical assets to clinical entry decision

Incubation portfolio: Two TA bundles

Oncology

1. CKAP5 (Nereid)
2. C-Myc (Nereid)
3. m-TORC1 (Apertor)
4. p53 Y220C + multivar (Aethon)
5. KRAS (Aethon)
6. SF3BI (Marlinspike)
7. Pan-AR-V (Initial)

Neurology

1. TRPML1 (Nine Square)
2. Parkin (Nine Square)
3. TDP43 (Nereid)

A T P

CKAP5 inhibitor (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- [redacted]
- Potency against tumors with [redacted] drives therapeutic window
- Shows superior efficacy c/w standard of care in animals implanted w/colorectal, breast, ovarian, lung cancers
- [redacted]

Development path:

- IND 3Q2026
- cPoC: 3Q2028
- Patient selection based on tumor types with high chromosomal instability [redacted]

Partnerability and commercial potential:

- [redacted]

A T P

Myc inhibitor (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- Myc is an oncogenic driver of growth and resistance in major tumors
- A small molecule inhibitor of Myc is a first in pharmaceutical research, enabled by Nereid's platform
- Nereid's drug [redacted]
- Does so at tolerated doses [redacted]

Development path:

[redacted]

Partnerability and commercial potential:

[redacted]

A T P

m-TORC1 selective inhibitor (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- mTORC is a master immune regulator; disorders can promote cancer
- Two subtypes, mTORC1 and mTORC2; Apertor's pure mTORC1 inhibitor is a first in pharmaceutical research
- Non-selective mTORC inhibitors have led to adverse effects, stopping programs
- [redacted]

[redacted]

Development path:

[redacted]

Partnerability and commercial potential:

[redacted]

A T P

P53 Y220C + multi variant correctors (small molecules)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- p53, the primary tumor suppressor protein, is mutated in 50% of solid tumors
- [redacted]
- Aethon's [redacted] drug is differentiated because it is covalent and a more effective corrector than the non-covalent
- 2nd program targeting [redacted] p53 [redacted] expands number of potentially targetable tumors, w/validated leads
- Screens are same [redacted] using insights from each program to advance the other

Development path:

[redacted]

Partnerability and commercial potential:

- Market for a successful targeting of mutated p53 across multiple tumors is exceptionally large and will grow

A T P

Amplified KRAS T-cell engager (antibody)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- Aethon's bispecific antibody [redacted]
- Only targets cells with mutated (cancer-causing) KRAS, and spares cells w/normal (wild type) KRAS

[redacted]

Development path:

[redacted]

Partnerability and commercial potential:

- ~80 KRASi's in development today; [redacted]
- Pharmas trying to move to earlier lines of therapy: All are 2L *today*; [redacted]

[redacted]

A T P

SF3B1 covalent inhibitor (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- RNA damage repair is an important new area in cancer drug discovery. Cancers that cannot get rid of mis-spliced RNA generate a rapid, lethal immune response, and subsequently immune memory
- Marlinspike's RNA damage repair drug prevents cancer cells from repairing RNA mis-splicing. It targets cancers [redacted]
- Tolerated in mice at doses well above predicted efficacious doses, w/ necessary drug-like properties to move to IND

- **Development path:** [redacted]
- **Partnerability and commercial potential:**
  - Myc remains undrugged. Several major/large market tumors (e.g., breast, lung) are targetable with Marlinspike drug
  - Analogous to DNA damage repair drugs w/>$8b in 2024 ww revenue; expect high interest after regulatory tox work

A T P

Pan AR-V translation inhibitor (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Oncology

Mechanism and data:

- Proteins are assembled from amino using an mRNA template at the ribosome (the protein factory), a process called “translation”
- Initial discovered a drug [redacted]
- Androgen receptor mutations drive metastatic prostate cancer
- Inhibits most oncogenic mutations of the androgen receptor, achieving metastatic prostate cancer cell killing

Development path:

- [redacted]

[redacted]

[redacted]

Partnerability and commercial potential:

[redacted]

[redacted]

TRPML1 activator (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Neurodegenerative disease

Mechanism and data:

- TRPML1 is a factor controlling the synthesis of lysosomes, the cellular organelles that get rid of cellular debris; neuronal debris and aggregate accumulation is a hallmark of all neurodegenerative disorders
- Restores function of TRPML1 in cells and in animals genetically modified to create a human movement deficit proxy
- TRPML activators w/developable properties were impossible to discover until 9S ML/high-content imaging platform
- Efficacy in animals already shown via plasma biomarkers accepted for human efficacy (one an FDA approval endpoint)

Development path:

[redacted]

Partnerability and commercial potential:

[redacted]

A T P

Parkin activator (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Neurodegenerative disease

Mechanism and data:

- Mitochondria are the energy generating organelles of cells. Mutations in parkin, an essential protein that destroys damaged mitochondria, are a cause of Parkinson's disease
- Prior parkin activation programs failed because they targeted all mitochondria, not just damaged mitochondria
- 9S drug exquisitely targets damaged mitochondria in animal models, as shown by FDA-accepted biomarkers in plasma and brain

Development path:

[redacted]

- **Partnerability and commercial potential:**

[redacted]

A T P

TDP43 modulator (small molecule)

Quarters to clinical entry decision: [redacted]

Disease area: Neurodegenerative disease

Mechanism and data:

- TDP43 causal target for many neurodegenerative disorders, but TDP43 drugs have not advanced to the clinic

[redacted] Nereid's platform discovers drugs that modify such targets

- First-ever in vivo reduction of an FDA-accepted biomarker (neurofilament light chain) for ALS
- Lead compounds rescued an essential protein for motor neuron survival, damage of which is a hallmark of ALS

Development path:

[redacted]

- **Partnerability and commercial potential:**

[redacted]

A T P

ATPLSV lift-out portfolio
12-quarter value inflection point model

To be provided under CDA.

Thank you.

A T P

EXHIBIT GG

EXECUTION VERSION

APPLE TREE PARTNERS IV, L.P. - AMENDMENT NO. 18

AMENDMENT NO. 18 (this "Amendment"), dated November 5, 2020, to the First Amended and Restated Limited Partnership Agreement, as amended from time to time (the "Agreement"), of Apple Tree Partners IV, L.P. (the "Partnership"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Whereas, the parties hereto desire to amend the Agreement as set forth herein.

Now, therefore, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. **Pools.** Paragraph 20 to the Agreement is hereby amended and restated in its entirety to read as follows:

"20. Pools.

(a) Separate Pools. Except as otherwise expressly provided in this Paragraph 20 and to the maximum extent possible, all of the Partnership's assets and liabilities shall be divided into five separate pools ("Pools"). One Pool ("Company Building Pool C") shall consist of the assets, liabilities, income, gains, losses and expenses associated with Kynos Therapeutics Ltd and any new Projects or Portfolio Companies arising on or after September 9, 2020 ("Pool C Projects"), including (i) certain expenses as set forth in Paragraph 20(e) and (ii) such amount of Contingent Subscriptions by the Subject Limited Partner as is equal to $1 billion minus the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to a second Pool ("Company Building Pool B"), including, for the avoidance of doubt, any capital contributions made by the Subject Limited Partner in respect of Company Building Pool B and its Projects and Portfolio Companies on or prior to the date of Amendment No. 18 to the Agreement. Company Building Pool B shall consist of the assets, liabilities, income, gains, losses and expenses associated with the following Projects and Portfolio Companies: Chinook Therapeutics U.S., Inc., Nine Square Therapeutics Corporation and Initial Therapeutics, Inc. ("Pool B Projects"), including (i) certain expenses as set forth in Paragraph 20(e) and (ii) such amount of Contingent Subscriptions by the Subject Limited Partner as is equal to the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to Company Building Pool B. A third Pool ("Company Building Pool A") shall consist of $1.5 billion in aggregate Contingent Subscriptions by the Subject Limited Partner, Dr. Harrison and Les Pommes and all other assets, liabilities income, gains, losses and expenses of the Partnership, including certain

Joint Exhibit
JX-0126
C.A. No. 2025-0607-KSJM

expenses as set forth in Paragraph 20(e) ("Pool A Projects"). Notwithstanding the foregoing, (1) a fourth Pool ("Core Holdings Pool 1") shall consist of such assets as may be distributed from time to time by the Partnership to Core Holdings Pool 1 from Company Building Pool A and/or Company Building Pool B, and any assets, liabilities, income, gains, losses and expenses associated with or arising in respect of such distributed assets, including, without limitation, (i) certain expenses as set forth in Paragraph 20(e) and (ii) any capital contributions made from time to time by the Subject Limited Partner to Core Holdings Pool 1, and (2) a fifth Pool ("Core Holdings Pool 2") shall consist of such assets as may be distributed from time to time by the Partnership to Core Holdings Pool 2 from Company Building Pool C, and any assets, liabilities, income, gains, losses and expenses associated with or arising in respect of such distributed assets, including, without limitation, (i) certain expenses as set forth in Paragraph 20(e) and (ii) any capital contributions made from time to time by the Subject Limited Partner to Core Holdings Pool 2. No investments in new Projects or new Portfolio Companies shall be made out of (i) Company Building Pool A or Company Building Pool B after September 9, 2020 or (ii) Core Holdings Pool 1 or Core Holdings Pool 2. For the avoidance of doubt, follow-on investments with respect to any Project or Portfolio Company in Company Building Pool A, Company Building Pool B, Company Building Pool C, Core Holdings Pool 1 or Core Holdings Pool 2 shall continue to be made in the same Pool in which such Project or Portfolio Company is then held. Except as otherwise expressly provided in this Paragraph 20, the intent of the Partners is that the assets, liabilities, income, gains, losses and expenses associated with any particular Pool shall affect only that Pool and the Limited Partners participating therein, and not the Partnership generally, the other Pools or the Limited Partners participating in such other Pools. Accordingly, except as otherwise expressly provided in this Paragraph 20, separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses shall also be accounted for separately on a Pool-by-Pool basis.

(b) Core Holdings. The Subject Limited Partner and Dr. Harrison may, upon mutual agreement, designate Portfolio Companies that are Freely Marketable (as defined below) of Company Building Pool A and/or Company Building Pool B as Core 1A Companies and Core 1B Companies, respectively, and together as Core 1 Companies. The Subject Limited Partner and the Pool Committee (as defined in sub-paragraph 20(j)(ii)) may, upon mutual agreement, designate Portfolio Companies of Company Building Pool C that are Freely Marketable (as defined below) as Core 2 Companies. The Subject Limited Partner's entire interest in any Core 1 Company or Core 2 Company shall be distributed to Core Holdings Pool 1 or Core Holdings Pool 2, as the case may be, and the Partnership's remaining holdings of (A) such Core 1A Company shall be distributed in accordance with sub-paragraph 8(d)(ii), (B) such Core 1B Company shall be distributed in accordance with sub-paragraph 20(g)(ii)(B)(ii) and (C) such Core 2 Company shall be distributed in accordance with sub-paragraph 20(g)(ii)(D)(ii), in each case to the other Limited Partners entitled to participate in such distribution (i.e., certain Limited

Partners other than the Subject Limited Partner). "Freely Marketable" means any securities that satisfy the following conditions: (i) such securities can be immediately sold by the Partnership to the general public without the necessity of any federal, state or local government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act or Section 13 or 16 of the Securities Exchange Act of 1934, as amended), (ii) such securities are either listed on a national securities exchange or carried on a national securities or NASDAQ and market quotations are readily available for such securities, and (iii) any "underwriter's lock-up" with respect to such securities has expired.

(c) Capital Contributions. All capital invested in Pool C Projects or attributable to expenses or liabilities of Pool C Projects (or liabilities or expenses otherwise apportioned to Company Building Pool C pursuant to Paragraph 20(e)) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Company Building Pool C. All capital invested in Pool B Projects or attributable to expenses or liabilities of Pool B Projects (or liabilities or expenses otherwise apportioned to Company Building Pool B pursuant to Paragraph 20(e)) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Company Building Pool B. All capital invested in Core Holdings Pool 1 or Core Holdings Pool 2 or attributable to expenses or liabilities of a Core 1 Company or Core 2 Company (or liabilities or expenses otherwise apportioned to Core Holdings Pool 1 or Core Holdings Pool 2) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Core Holdings Pool 1 or Core Holdings Pool 2, as the case may be. No other Partner shall be required to contribute any capital with respect to Pool C Projects or Company Building Pool C generally, to Pool B Projects or Company Building Pool B generally, to Core 1 Companies or Core Holdings Pool 1 generally, or to Core 2 Companies or Core Holdings Pool 2 generally. On and after February 1, 2020, capital contributions to the Partnership in respect of Company Building Pool A shall be made in the following percentages: (i) Ezbon - 50.7974%; (ii) Blue Horizon - 48.8054%; (iii) Dr. Harrison - 0.2383% and (iv) Les Pommes - 0.1589%. At any time, Dr. Harrison and/or Les Pommes may elect to purchase up to 2.5% in the aggregate of the Subject Limited Partner's interests in Company Building Pool B and Company Building Pool C at a price equal to the fair market value of such percentage interests purchased, determined as of the date of purchase. For this purpose, fair market value shall be as set forth in the Partnership's financial statements for the calendar quarter immediately preceding the purchase (which financial statements shall be reviewed by the Partnership's auditors), as appropriately adjusted for any capital contributions, distributions and major events (e.g., positive or negative clinical study results, merger proposals, IPOs) occurring with respect to such Company Building Pools and their Portfolio Companies after the date of such financial statements. Upon such election, and for so long as Dr. Harrison and/or Les Pommes holds such portions of such interests, Dr. Harrison and/or Les Pommes, as the case may be, shall contribute capital in respect of Company Building Pool B and Company Building Pool C in an amount equal to the purchased interest percentage of any Company Building Pool B capital call or Company Building Pool C capital call, as the case may

be, made on or after the date of such election, and allocations and distributions under the Agreement shall be appropriately adjusted in respect thereof.

(d) Profits and Losses. The profits and losses of each Pool shall also be calculated on a separate basis. The profits and losses with respect to Company Building Pool A shall be allocated exclusively to the Limited Partners participating in Company Building Pool A, the profits and losses with respect to Company Building Pool B shall be allocated exclusively to the Limited Partners participating in Company Building Pool B, the profits and losses with respect to Company Building Pool C shall be allocated exclusively to the Limited Partners participating in Company Building Pool C, the profits and losses with respect to Core Holdings Pool 1 shall be allocated exclusively to the Limited Partners participating in Core Holdings Pool 1, and the profits and losses with respect to Core Holdings Pool 2 shall be allocated exclusively to the Limited Partners participating in Core Holdings Pool 2. Subject to the last sentence of Paragraph 20(c), for U.S. federal income tax purposes, all expenses attributable to Company Building Pool B, Company Building Pool C, Core Holdings Pool 1 or Core Holdings Pool 2 shall be allocated solely to the Subject Limited Partner, with a priority allocation of subsequent net income or gains, if any, to the Subject Limited Partner in a corresponding amount.

(e) Expenses and Liabilities; ATLS Fee.

(i) Expenses and Liabilities. Any expenses directly attributable to a particular Pool shall be apportioned to such Pool. Any expenses that are attributable to more than one Pool shall be apportioned among the applicable Pools in accordance with the relative cost basis of each applicable Pool's remaining assets at the time such apportionment is made. By way of example only, (i) all of the Partnership's legal and accounting expenses attributable to the preparation and negotiation of amendments to this Agreement, to the extent pertaining to the creation of Company Building Pool C, shall be borne solely by Company Building Pool C and (ii) the Management Fee and the ATLS Fee shall be allocated among all five Pools in accordance with the relative cost basis of each Pool's remaining assets at the time such allocation is made. For the avoidance of doubt, the cost basis of assets in a Core Holdings Pool that were distributed to such Core Holdings Pool from a Company Building Pool shall be determined by reference to the cost basis of such assets in such Company Building Pool

(ii) ATLS Fee. The General Partner shall prepare, for each fiscal year of the Partnership in advance of such fiscal year, a budget for the annual fee to be paid by the Partnership to ATLS (the "ATLS Fee"). Such budget shall be presented to the Subject Limited Partner for approval, and the Subject Limited Partner shall, within ten (10) business days of the budget being provided by the General Partner, either approve the budget or inform the General Partner that the Subject Limited Partner declines to provide such approval along with the reasons therefor. If the Subject Limited Partner fails to so respond within such ten (10)

business day period, the budget shall be deemed to have been approved. If the Subject Limited Partner so informs the General Partner that it declines to approve the proposed budget, the Subject Limited Partner and the General Partner shall discuss in good faith any objections presented by the Subject Limited Partner to the initial proposed budget, and thereafter the General Partner shall have an opportunity to prepare a revised budget, which shall again be submitted for approval as set forth above. If a budget is not approved for a fiscal year, then the approved budget for such fiscal year shall be deemed to be the most recently approved budget for a prior fiscal year. In no event, however, shall the ATLS Fee be less than $8,500,000, except to the extent otherwise agreed by the General Partner. The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee.

(f) Distributions Generally. Except as otherwise expressly provided in this Paragraph 20, distributions with respect to each Pool shall be calculated and made separately and solely from assets of the applicable Pool.

(g) Pool Distributions.

(i) For the avoidance of doubt, (A) Paragraph 8(a) is the one captioned "Tax Distributions", (B) the provisions of Paragraph 8(b), which was captioned "Tracking Unit Distributions", have been deleted from the Agreement and, accordingly, Paragraph 8(b) is now captioned "Reserved", (C) Paragraph 8(c) is the one captioned "Timing of Other Distributions", (D) Paragraph 8(d) is the one captioned "Apportionment of Other Distributions", (E) Paragraph 8(e) is the one captioned "Limitations on Distributions", and (F) Paragraph 8(f) is the one captioned "Distributions with Respect to Designated Profits", and any incorrect references to such paragraphs in the Agreement prior to September 9, 2020 are hereby deemed corrected to reflect the foregoing.

(ii) Distributions in respect of Company Building Pool B, other than Tax Distributions and distributions of Core 1B Companies, shall be made as follows: (A) first, to the Limited Partners, in proportion to their respective capital contributions to Company Building Pool B, until they have received aggregate distributions pursuant to this sub-paragraph (A) equal to their aggregate capital contributions to Company Building Pool B; and (B) thereafter, (i) 87.50% to the Limited Partners in proportion to

their respective capital contributions to Company Building Pool B and (ii) 12.50% to the Limited Partners participating in the carried interest attributable to Company Building Pool B in proportion to their respective Pool B Carried Interest Percentages (as defined below); provided, however, that if the General Partner has granted in the aggregate less than a 12.50% interest to the Limited Partners participating in the Company Building Pool B carried interest, then they shall be distributed such lesser percentage pursuant to clause (ii) and the balance shall be distributed in accordance with clause (i). Distributions in respect of Company Building Pool C, other than Tax Distributions and distributions of Core 2 Companies, shall be made as follows: (C) first, to the Limited Partners, in proportion to their respective capital contributions to Company Building Pool C, until they have received aggregate distributions pursuant to this sub-paragraph (C) equal to their aggregate capital contributions to Company Building Pool C; and (D) thereafter, (i) 87.50% to the Limited Partners in proportion to their respective capital contributions to Company Building Pool C and (ii) 12.50% to the Limited Partners participating in the carried interest attributable to Company Building Pool C in proportion to their respective Pool C Carried Interest Percentages (as defined below); provided, however, that if the General Partner has granted in the aggregate less than a 12.50% interest to the Limited Partners participating in the Company Building Pool C carried interest, then they shall be distributed such lesser percentage pursuant to clause (ii) and the balance shall be distributed in accordance with clause (i). Distributions in respect of Core Holdings Pool 1, other than Tax Distributions, shall be made as follows: (E) first, to the Subject Limited Partner until it has received aggregate distributions pursuant to this sub-paragraph (E) equal to its aggregate capital contributions to Core Holdings Pool 1 (with each in-kind distribution to Core Holdings Pool 1 from Capital Building Pool A or Capital Building Pool B being deemed to have been contributed to Core Holdings Pool 1 by the Subject Limited Partner at the volume weighted average price per share for the thirty trading days preceding the date of such distribution multiplied by the number of shares distributed to Core Holdings Pool 1); and (F) thereafter, (i) 98% to the Subject Limited Partner and (ii) 2% in the aggregate to Dr. Harrison and Ms. Batarina, split between them as mutually agreed by Dr. Harrison and the Subject Limited Partner; provided, however, that if the Subject Limited Partner has agreed to the grant of up to an additional 0.5% aggregate interest to other Limited Partners providing services with respect to Core Holdings Pool 1, then they shall be distributed such greater percentage pursuant to clause (ii) and the distribution in accordance with clause (i) shall be reduced accordingly. Distributions in respect of Core Holdings Pool 2, other than Tax Distributions, shall be made as follows: (G) first, to the Subject Limited Partner until it has

received aggregate distributions pursuant to this sub-paragraph (G) equal to its aggregate capital contributions to Core Holdings Pool 2 (with each in-kind distribution to Core Holdings Pool 2 from Capital Building Pool C being deemed to have been contributed to Core Holdings Pool 2 by the Subject Limited Partner at the volume weighted average price per share for the thirty trading days preceding the date of such distribution multiplied by the number of shares distributed to Core Holdings Pool 2); and (H) thereafter, (i) 98% to the Subject Limited Partner and (ii) 2% in the aggregate to Dr. Harrison and Ms.Batarina, split between them as mutually agreed by Dr. Harrison and the Subject Limited Partner; provided, however, that if the Subject Limited Partner has agreed to the grant of up to an additional 0.5% aggregate interest to other Limited Partners providing services with respect to Core Holdings Pool 2, then they shall be distributed such greater percentage pursuant to clause (ii) and the distribution in accordance with clause (i) shall be reduced accordingly. Carried interest distributions in respect of Core Holdings Pool 1 or Core Holdings Pool 2 shall be made on the third anniversary of the date on which such Pool first had any assets and on each three-year anniversary thereafter; provided, however, that such carried interest distributions may be made earlier at the discretion of the Subject Limited Partner and shall be made upon the expiration of the term of such Pool and upon the completion of liquidation of such Pool; and provided further, however; that Tax Distributions shall also be made in respect of such Pool in accordance with Paragraph 8(a). For the avoidance of doubt, (W) Paragraph 8(d) captioned "Apportionment of Other Distributions" shall not be applicable to Company Building Pool B, Company Building Pool C, Core Holdings Pool 1 or Core Holdings Pool 2, (X) Paragraph 8(e) captioned "Limitations on Distributions" shall be interpreted and applied on a Pool-by-Pool basis, (Y) in the General Partner's sole discretion, Limited Partners with Pool B Carried Interest Percentages, Pool C Carried Interest Percentages, Core Holdings Pool 1 Carried Interest Percentages or Core Holdings Pool 2 Carried Interest Percentages may waive carried interest attributable to Company Building Pool B, Company Building Pool C, Core Holdings Pool 1 or Core Holdings Pool 2, as the case may be, in a manner consistent with the principles set forth in Paragraph 8(f) captioned "Distributions with Respect to Designated Profits", and (Z) distributions in respect of Company Building Pool A shall be unaffected by Amendment No. 18 to the Agreement, except that distributions of Core 1 Companies from Company Building Pool A shall be made as provided in sub-paragraph 8(d)(ii).

(h) Distribution Override. Notwithstanding any provision of the Agreement (including Amendment 18 thereto) to the contrary, except for Tax Distributions, distributions of Core 1 Companies and distributions of Core 2 Companies, no amounts otherwise distributable in

respect of Pool B Carried Interest Percentages or Pool C Carried Interest Percentages to Limited Partners holding a Pool B Carried Interest Percentage ***and/or*** a Pool C Carried Interest Percentage shall be made until the Subject Limited Partner has first been returned all of its capital contributions with respect to both Company Building Pool B ***and*** Company Building Pool C in the aggregate. In order to protect against an over-distribution to the Subject Limited Partner, once the Subject Limited Partner has received distributions from Company Building Pool B or Company Building Pool C in an amount equal to its aggregate capital contributions to such Pool, then any carried interest distributions with respect to such Pool otherwise distributable to Company Building Pool B carried interest participants or Company Building Pool C carried interest participants, as the case may be, shall be held in the Partnership and distributed to the Company Building Pool B carried interest participants or Company Building Pool C carried interest participants, as the case may be, only if and when the Subject Limited Partner has received from the Partnership (whether from Company Building Pool B and/or Company Building Pool C) an amount equal to its aggregate capital contributions with respect to both Company Building Pool B ***and*** Company Building Pool C. For the avoidance of doubt, if the Subject Limited Partner does not receive aggregate distributions at least equal to its aggregate capital contributions to both Company Building Pool B ***and*** Company Building Pool C, then any carried interest distributions retained by the Partnership pursuant to this Paragraph 20(h) shall be distributed upon the liquidation of the Partnership to the Subject Limited Partner until it has received aggregate distributions at least equal to its aggregate capital contributions to both Company Building Pool B ***and*** Company Building Pool C, and any remaining carried interest distributions retained by the Partnership shall then be distributed to the Company Building Pool B and Company Building C carried interest participants, as applicable and on a pro-rata basis.

(i) Pool Carried Interest and Vesting. The Limited Partners participating in the carried interest attributable to Company Building Pool B and their respective initial Company Building Pool B carried interest percentages ("Pool B Carried Interest Percentages") shall, subject to the provisions of this Paragraph 20(i), be as determined by the General Partner and set forth in a schedule maintained by the General Partner and provided from time to time by the General Partner to the Subject Limited Partner and Dr. Harrison. Such schedule shall provide that the initial aggregate Pool B Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be 7.50% (provided, however, that the Pool B Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be subject to a potential partial reduction (but in no event below 5.00%) following the Partnership's final liquidation, as set forth in Schedule F hereto) and that the initial Pool B Carried Interest Percentage for Anna Batarina shall be 2.00%. Each other Limited Partner participating in the Company Building Pool B carried interest shall be granted such Pool B Carried Interest Percentage as may be determined from time to time by the General Partner in its sole discretion; provided, however, that the aggregate Pool B Carried Interest Percentages do not exceed 12.50% at any time (subject to the aforesaid potential partial reduction). Dr. Harrison, Les Pommes and their respective affiliates and Ms. Batarina shall vest in their respective Pool B Carried Interest Percentages monthly on a straight-line basis over 120 months (except that, in the case of their death or disability, vesting shall instead be over 60 months)

commencing as of February 6, 2019, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool B Carried Interest Percentage. Any other Limited Partner receiving a Company Building Pool B Carried Interest Percentage shall vest therein monthly on a straight-line basis over the lesser of 120 months and the number of full calendar months remaining in the Initial Term and extensions which are at the option of the General Partner, commencing from the date such Limited Partner began providing services to the Partnership, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool B Carried Interest Percentage (including, but not limited to, provisions for acceleration of vesting in the event of their death or disability). The Limited Partners participating in the carried interest attributable to Company Building Pool C and their respective initial Company Building Pool C carried interest percentages ("Pool C Carried Interest Percentages") shall, subject to the provisions of this Paragraph 20(i), be determined by the Pool Committee and as set forth in a schedule maintained by the General Partner and provided from time to time by the General Partner to the Subject Limited Partner and Dr. Harrison. Such schedule shall provide that the initial aggregate Pool C Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be 7.50% (provided, however, that the Pool C Carried Interest Percentage for Dr. Harrison, Les Pommes and their respective affiliates shall be subject to a potential partial reduction (but in no event below 5.00%) following the Partnership's final liquidation, as set forth in Schedule F hereto) and that the initial Pool C Carried Interest Percentage for Anna Batarina shall be 2.00%. Each other Limited Partner participating in the Company Building Pool C carried interest shall be granted such Pool C Carried Interest Percentage as may be determined from time to time by the Pool Committee in its sole discretion; provided, however, that the aggregate Pool C Carried Interest Percentages do not exceed 12.50% at any time (subject to the aforesaid potential partial reduction). Dr. Harrison, Les Pommes and their respective affiliates and Ms. Batarina shall vest in their respective Pool C Carried Interest Percentages monthly on a straight-line basis over 120 months (except that, in the case of their death or disability, vesting shall instead be over 60 months) commencing as of February 6, 2019, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool C Carried Interest Percentage. Any other Limited Partner receiving a Pool C Carried Interest Percentage shall vest therein monthly on a straight-line basis over the lesser of 120 months and the number of full calendar months remaining in the Initial Term and extensions which are at the option of the General Partner, commencing from the date such Limited Partner began providing services to the Partnership, so long as such Limited Partner continues to provide services to the Partnership and in accordance with any other conditions set forth in any separate agreement granting such Limited Partner a Pool C Carried Interest Percentage (including, but not limited to, provisions for acceleration of vesting in the event of their death or disability). The Limited Partners participating in the carried interest attributable to Core Holdings Pool 1 and their respective Core Holdings Pool 1 carried interest percentages, which shall not exceed 2% (or 2.5% in certain circumstances as provided above) in the aggregate ("Pool 1 Carried Interest Percentages"), shall be as determined from time to time by the General Partner and agreed to by the Subject Limited

Partner. The Limited Partners participating in the carried interest attributable to Core Holdings Pool 2 and their respective Core Holdings Pool 2 carried interest percentages, which shall not exceed 2% (or 2.5% in certain circumstances as provided above) in the aggregate ("Pool 2 Carried Interest Percentages"), shall be as determined from time to time by the General Partner and agreed to by the Subject Limited Partner. The Core Holdings Pool 1 carried interest and the Core Holdings Pool 2 carried interest shall be calculated based upon the net increase in value of Core Holdings Pool 1 and Core Holdings Pool 2, respectively, with the initial cost basis of any Core 1 Company or Core 2 Company being the value determined according to Paragraph 20(g)(ii)(E) or (G), as the case may be, and after taking account of all applicable Core Holdings Pool 1 or Core Holdings Pool 2 expenses. Any Limited Partner receiving a Pool 1 Carried Interest Percentage or Pool 2 Carried Interest Percentage shall remain vested therein only so long as such Limited Partner continues to provide services to the Partnership, except for any such longer period as may otherwise be determined to from time to time by the Subject Limited Partner and the General Partner or the Pool Committee, as applicable, with respect to any such Limited Partner, and shall forfeit its Pool 1 Carried Interest Percentage or Pool 2 Carried Interest Percentage, as the case may be, immediately thereafter. The Subject Limited Partner and the General Partner may adopt such other rules and regulations regarding the determination and application of Pool 1 Carried Interest Percentages as they may jointly agree upon from time to time. The Subject Limited Partner and the Pool Committee may adopt such other rules and regulations regarding the determination and application of Pool 2 Carried Interest Percentages as they may jointly agree upon from time to time. For the avoidance of doubt, the "vesting" provisions described in this Paragraph 20(i) shall be construed as "divesting" provisions, and so long as a Limited Partner with a Pool B Carried Interest Percentage, Pool C Carried Interest Percentage, Pool 1 Carried Interest Percentage or Pool 2 Carried Interest Percentage continues to provide services to the Partnership, such Limited Partner shall be entitled to full allocations and distributions with respect to its Pool B Carried Interest Percentage, Pool C Carried Interest Percentage, Pool 1 Carried Interest Percentage or Pool 2 Carried Interest Percentage, as the case may be. For the avoidance of doubt, (i) vesting in respect of Company Building Pool A carried interest and (ii) Schedule F shall be unaffected by Amendment No. 18 to the Agreement.

(j) Management.

(i) Company Building Pools A and B and Core Holdings Pool 1. So long as ATP III GP, Ltd. continues as the General Partner, the management of Company Building Pool A, Company Building Pool B and Core Holdings Pool 1, including, without limitation, any investment decisions, capital calls and budget approval requests with respect to Company Building Pool A, Company Building Pool B or Core Holdings Pool 1, shall be the sole responsibility of the General Partner, subject to any consent or other approval rights of the holders of the Preferred Units, as provided for in this Agreement.

(ii) Company Building Pool C and Core Holdings Pool 2. So long as ATP III GP, Ltd. continues as the General Partner, the management of Company Building Pool C and Core Holdings Pool 2, including, without limitation, any investment decisions, capital

calls and budget approval requests with respect to Company Building Pool C or Core Holdings Pool 2, shall be delegated by the General Partner to, and shall be the sole responsibility of, a committee established with respect to Company Building Pool C and Core Holdings Pool 2 (the "Pool Committee"), subject to any consent or other approval rights of the holders of the Preferred Units, as provided for in this Agreement. The Pool Committee shall consist of Dr. Harrison (so long as he is providing services to the Partnership) and, initially, Ms. Batarina. All decisions of the Pool Committee shall be made by unanimous consent of the members of the Pool Committee. So long as Dr. Harrison is providing services to the Partnership, he may remove Ms. Batarina (or any of her successors) as a member of the Pool Committee and may replace her (or any of her successors) on the Pool Committee with such United States person who is nominated by him, subject to the reasonable acceptance of the Subject Limited Partner.

(iii) Sales of Core Holdings Securities. Notwithstanding the foregoing, upon the written request of the Subject Limited Partner, the General Partner, in the case of Core Holdings Pool 1, or the Pool Committee, in the case of Core Holdings Pool 2, shall, subject to compliance with all applicable laws, use commercially reasonable efforts to sell all or part of the Partnership's holdings of a Core 1 Company or Core 2 Company, as the case may be, as so requested by the Subject Limited Partner and in accordance with such restrictions (including, without limitation, the sales price, the sales volume, the type of sale transaction, and the applicable stock exchange) as may be specified by the Subject Limited Partner, and distribute the net proceeds from such sale to the Subject Limited Partner.

(k) Core Holding Pool Leverage. Core Holdings Pool 1 and/or Core Holdings Pool 2 may utilize such leverage as may be agreed upon from time to time by the Subject Limited Partner and the General Partner, in the case of Core Holdings Pool 1, or the Subject Limited Partner and the Pool Committee, in the case of Core Holdings Pool 2; provided that any such leverage and its associated liabilities shall only affect Core Holdings Pool 1 or Core Holdings Pool 2, as the case may be, and shall not affect any other Pool."

2. **Term**. Paragraph 10(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(a) Term of Partnership. Subject to Paragraph 10(b) or operation of law, (i) the term of the Partnership, Company Building Pool B, Company Building Pool C and Core Holdings Pool 2 shall end on February 6, 2029 (the "Initial Term"); provided, however, that the Initial Term may be extended by the General Partner for up to two one-year periods, (ii) the term of Company Building Pool A shall end on December 31, 2022; provided, however, that such term may be extended by the General Partner for up to two one-year periods, and (iii) the term of Core Holdings Pool 1 shall end on December 31, 2022, solely with respect to securities distributed to such Pool from Company Building Pool A, and shall otherwise end on February 6, 2029 with respect to all other securities; provided, however, that such term may in each case be extended

preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period; provided further that, for the avoidance of doubt, a Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall be determined on an Pool-by-Pool basis."

8. **Miscellaneous**. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

9. **Effectiveness**. In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Seth L. Harrison, Director

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)

by the General Partner for up to two one-year periods. Notwithstanding the foregoing, the term of Core Holdings Pool 1 and/or Core Holdings Pool 2 may be shortened or further extended, in each case with the consent of the General Partner and the Subject Limited Partner."

3. **Miscellaneous**. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

4. **Effectiveness**. In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Seth L. Harrison, Director

In the presence of:

_____
Witness

_____
Name of Witness (please print)

LIMITED PARTNERS:

Executed as a deed by: Elena Constantinou

Ezbon International Limited

By: [illegible]
Title: Director, on behalf of M.C.R.S. Limited

In the presence of:

Witness

Eliana Giannakou Hadjisavva
Name of Witness (please print)

Executed as a deed by: Anna Maria Taylor

Blue Horizon Enterprise Ltd.

By: [illegible]
Title: Director, on behalf of M.C.R.S. Limited

In the presence of:

Witness

Adonis Zachariou
Name of Witness (please print)

Executed as a deed by:

Seth L. Harrison

In the presence of:

Witness

Name of Witness (please print)

Executed as a deed by:

LES POMMES LLC

By: _____
Seth L. Harrison, Manager

Executed as a deed by:

Ezbon International Limited

By: _____

Title: _____

In the presence of:

_____

Witness

_____

Name of Witness (please print)

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____

Title: _____

In the presence of:

_____

Witness

_____

Name of Witness (please print)

Executed as a deed by:

_____

Seth L. Harrison

In the presence of:

_____

Witness

Margaret M. Bigelow

Name of Witness (please print)

LES POMMES LLC

By: _____
Seth L. Harrison, Manager

In the presence of:

_____
Witness

Margaret M.Bigelow
Name of Witness (please print)

Executed as a deed by:

_____
Anna Batarina

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)