**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>Apple Tree Life Sciences, Inc., *et al.*,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 25-12177 (LSS)<br><br>(Jointly Administered)<br><br>**Re: Docket No. 226** |

**NOTICE OF FILING OF AMENDED REDACTED QUINN RETENTION OBJECTION**

PLEASE TAKE NOTICE that, on January 29, 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] Limited Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Application for an Order Authorizing the Retention and Employment of Quinn Emanuel Urquhart & Sullivan, LLP as Co-Counsel for the Debtors Effective as of the Petition Date* [Docket No. 226] (the "**Redacted Quinn Retention Objection**") 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 Quinn Retention Objection (the "**Amended Redacted Quinn Retention Objection**") 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 9, 2026
Wilmington, Delaware

Respectfully Submitted,

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**Exhibit 1**

**Amended Redacted Quinn Retention Objection**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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

**LIMITED OBJECTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP TO DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF QUINN EMANUEL URQUHART & SULLIVAN, LLP AS CO-COUNSEL FOR THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

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**"), respectfully submit the following limited objection (the "**Limited Objection**")[2] to the *Debtors' Application for an Order Authorizing the Retention and Employment of Quinn Emanuel Urquhart & Sullivan, LLP as Co-Counsel for the Debtors Effective as of the Petition Date* [Docket No. 132] (the "**Retention Application**"), which seeks to retain and employ as counsel to all of the above-captioned debtors and debtors in possession

[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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *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. 204] (the "**Amended Motion to Dismiss**").

(the "**Debtors**") the law firm Quinn Emanuel Urquhart & Sullivan, LLP ("**Quinn Emanuel**") under section 327(a) of the Bankruptcy Code, and state as follows:

## PRELIMINARY STATEMENT

1. The LPs do not argue that Quinn Emanuel should be barred from *any* role in these chapter 11 cases; rather, the LPs object to Quinn Emanuel trying to represent *all* the Debtors as primary restructuring counsel, with no safeguards in place to mitigate the inherent conflicts of interest among the filing entities and their differing stakeholders.

2. Two things have become clear already since these chapter 11 cases were filed. There are effectively three different groups of Debtors in these cases, with different economic interests, obligations, and core stakeholders: ATP III GP, Ltd. (the "**GP**"), ATP Life Science Ventures, L.P. (the "**Fund**"), and the Debtor Portfolio Companies,[3] whose preferred shares are included in the assets of the investment fund established for the benefit of the Fund's limited partners and held on trust for them under Cayman law (the "**Fund Assets**").[4] And, the Debtors' proposed end game for these chapter 11 cases, as frankly previewed by Quinn Emanuel, will necessarily deepen the inherent conflicts among these groups, leading to an irreconcilable structural conflict as detailed herein. Absent effective safeguards, which do not exist here and in fact have not even been seriously considered, no one professional can maximize value and

[3] The portfolio company debtors are Apertor Pharmaceuticals, Inc., Initial Therapeutics, Inc., Marlinspike Therapeutics, Inc., Red Queen Therapeutics, Inc., Evercrisp Biosciences, Inc., Nine Square Therapeutics, Inc., and Nereid Therapeutics Incorporated (collectively, the "**Debtor Portfolio Companies**").

[4] As the Court is aware, the LPs take the position that the Fund lacks sufficient corporate personality to be a debtor under the Bankruptcy Code, the Fund Assets are exempt from inclusion in any of the Debtors' estates because they are held on trust under Cayman law, and the chapter 11 cases of both the Fund and the GP should be dismissed for these and other reasons. These issues are before the Court to be determined at a later time. *See* Amended Motion to Dismiss. If the motion to dismiss is successful, that would resolve the issues raised here. For now, however, Quinn Emanuel seeks to be retained by each and every Debtor and maintains that both the Fund and the Fund Assets are subject to the jurisdiction of this Court. Unless approval of the Retention Application were to be deferred pending final resolution of the Amended Motion to Dismiss, the serious concerns raised in this Limited Objection must be addressed.

appropriately consider stakeholders' interests for *all* of the Debtors—the interests of one or another category of Debtors must necessarily take precedence. That type of constraint on effective representation is squarely what section 327(a) of the Bankruptcy Code seeks to prevent.

3. As the Court is aware, the GP and the Fund (together, the "**Fund-Level Debtors**"), which are comfortably solvent, are very differently situated from the Debtor Portfolio Companies, which are speculative medical-research ventures that have burned through millions of dollars of Fund Assets prepetition, each with their own separate stakeholders, and all of whom are currently seeking investments from Fund Assets which in some cases exceed the approved budgets available to support them and which are not permitted under the terms of the limited partnership agreement establishing the Fund and governing investment of the Fund Assets (the "**LPA**"). And, the GP is deeply enmeshed in litigation with the LPs who are the largest contributors of the Fund Assets, including in the Cayman Trial which is poised to determine questions of Fund governance under Cayman law and, as explained further herein, may have direct financial implications for Quinn Emanuel.[5]

4. On this fact pattern, multiple conflicting interests are apparent, and two are particularly relevant to the LPs. *First*, in purporting to represent both the solvent GP and the solvent Fund, Quinn Emanuel owes duties to two masters: the GP is ultimately owned and directed by Dr. Seth Harrison (a former Quinn Emanuel client, in his personal capacity), whereas the Fund must be managed for the benefit of its investors, of which the LPs are by far the largest, and the GP owes its duties *directly* to the Fund's limited partners. *Declaration of Mark Phillips KC in Support of Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for*

[5] Whether it was appropriate for the GP to transfer $20 million of Fund Assets to Quinn Emanuel after the Cayman winding-up proceeding was commenced, and whether that transfer should be unwound, is a live issue in the Cayman Court proceedings, as detailed further herein.

*Relief from the Automatic Stay* [Docket No. 126] (the "**Phillips Decl.**") ¶¶ 74–81. In some cases involving a general partner and the partnership it manages, such conflicting duties might appear more hypothetical than real; after all, the GP itself has entered a contract saying it will manage the Fund Assets for the benefit of the Fund's investors, and it has fiduciary duties directly to the limited partners under Cayman law. In this situation, however, the conflicts are not only ripe; they are the subject of active litigation in three different courts. Further, both Quinn Emanuel and Dr. Harrison have already made clear, including in statements to this Court, that the GP will seek to displace the LPs from the Fund, notwithstanding that the Fund Assets dramatically exceed any associated liabilities, and that the LPs hold far more than a controlling position in the class of interests that would be the fulcrum security if the Fund's chapter 11 case is not dismissed. *See Declaration of Dr. Seth L. Harrison in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the "**First Day Decl. of Dr. Seth Harrison**") ¶ 17; Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 152:20–23. Thus, it is already clear that the issues of what the GP may wish to do, the impact it would have on the Fund's limited partners, and whether the proposed impact is even permissible under the Bankruptcy Code will be the heart of what must be determined in these chapter 11 cases if the Amended Motion to Dismiss is not granted. The inter-debtor conflict, in which Quinn Emanuel has aligned itself with the owner of the GP squarely against the interests of the Fund's stakeholders, is not at all hypothetical and appears impossible to mitigate because it is so core to the chapter 11 cases.

5. *Second*, there is a ripe conflict between the Fund-Level Debtors and the Debtor Portfolio Companies because the GP ought to recognize—and any professionals retained for the Fund if it remains in chapter 11 will certainly owe—a duty to maximize the value of the Fund Assets. This duty is owed to the LPs both under the LPA and because the LPs would be the

fulcrum class in the Fund's solvent-debtor chapter 11 case if this Court were to rule that the Fund's chapter 11 case should proceed. On the other hand, the Debtor Portfolio Companies are cash-needy and seek immediate funding for research, without vetted prospects of commercial success. In short, it is invariably in the commercial interests of the Debtor Portfolio Companies to continue to receive additional funding from the Fund, but it is not necessarily in the commercial interests of the Fund (or its limited partners) to provide it. Once again, this conflict is not merely hypothetical: Contested issues as to the propriety of using Fund Assets to make loans to the Debtor Portfolio Companies, and the terms of that funding, have already arisen twice in these cases and undoubtedly will arise again. Another example of this irreconcilable conflict is found in the position apparently taken by Quinn Emanuel on behalf of all the Debtors, that the Fund has outstanding funding obligations in excess of $200 million to the Debtor Portfolio Companies. Glibly asserting the validity of any such obligations—which do not exist, as further detailed herein—is obviously against the interest of the Fund. Thus, if the Fund and the Debtor Portfolio Companies had separate representation as they should, the purported obligations would give rise to litigable inter-debtor claims. Unconflicted counsel representing the interests of the Fund would not concede them off the bat.

6. The Debtors' professionals attempt to gloss over this obvious conflict by suggesting that there is an identity of economic interest between the Fund and the Debtor Portfolio Companies. This is not true. Each of the Debtor Portfolio Companies has at least some other equity investors and creditor stakeholders besides the Fund, meaning that professionals seeking to represent Debtors at both levels have a significant misalignment of constituent stakeholders. Further, it is just not accurate to say that a managed investment fund always has an economic interest in funding portfolio companies that have failed to be profitable: This Court is well aware that portfolio

companies of private equity and venture capital funds regularly fail when their sponsor fund does not see an economic basis for further investment, even if the fund itself has available capital and would be able to invest if it believed it should. That is particularly true in early-stage biotech investing, where all acknowledge the failure rate is—and is expected to be—high. In proposing uses of the Fund Assets, the GP *and any professionals retained to represent the GP or the Fund* have a duty to make a thoughtful investment decision as to whether such a use will in fact benefit the Fund and its investors, the LPs.

7. Unfortunately, it appears that Quinn Emanuel and the Debtors' other professionals have given no thought to this obligation to consider investments from the perspective of the Fund or the fact that the interests of (i) the GP, (ii) the Fund (or, to state the proper position under Cayman law, the LPs for whom the Fund Assets are held on trust and to whom fiduciary duties are directly owed), and (iii) the Debtor Portfolio Companies are all divergent. The Debtors' suite of proposed retentions and corporate governance do not even provide for the safeguards one would typically expect in a multi-debtor chapter 11 case where different groups of debtors and their stakeholders have competing interests. For example, there are no customary corporate governance protections in place at the Debtors whose interests are in conflict, such as independent officers and directors or special committees empowered to decide that a conflict matter has arisen and then seek legal advice from a conflicts counsel or retain its own counsel. When pressed on the absence of these kinds of safeguards, the Debtors' Chief Restructuring Officer testified that he "ha[dn't] thought about it" but it would be "a waste of dough."[6] Ex. A, Second Day Hr'g Tr., Jan. 20, 2026,

[6] The Fund Assets are the "dough" that would be wasted by such a retention. If Fund Assets are used, the party that stands to lose the most is the LPs who hold nearly all of the economic interests in the Fund. It is inexplicable that a professional seeking to be retained by the Fund would not think carefully about whether to engage an independent advisor or advisors to protect their interests and, once the issue was raised, consider whether the LPs would support such a use of the Fund Assets held in trust for them.

at 121:16–122:10. There is no proposed retention of separate counsel for each of the three conflicting sets of Debtors, and Quinn Emanuel has not proactively sought to limit its scope of work in certain sensitive areas, apparently holding itself out as the primary counsel on every issue and for every Debtor. Even though these safeguards alone would not resolve Quinn Emanuel's conflict, their absence speaks to the lack of any forethought or protection for the Fund's unique interests in these chapter 11 cases.

8. The one thing Quinn Emanuel has done already, however, is choose sides, openly pursuing the interests of the Debtor Portfolio Companies over the interests of the Fund during these chapter 11 cases as described above and herein, apparently at the direction of the GP in breach of its own fiduciary duties. This obvious conflict calls into question the positions taken in these cases—would unconflicted and well-advised professionals representing the Fund's interests oppose the motion to lift the stay, when permitting the Cayman Trial to proceed forward would provide an efficient determination of whether the GP is entitled under Cayman law to continue acting for the Fund and its limited partners, or is Quinn Emanuel trying to escape a legal proceeding before a judge that has criticized its partners and will determine whether the firm must disgorge a $20 million retainer? Again, this shadow of potentially conflicted decision-making is what the Bankruptcy Code seeks to guard against when it provides that no professional retained by a debtor may hold or represent an interest adverse to the estate.

9. For all of these reasons, if the Fund-Level Debtors' cases are not dismissed, Quinn Emanuel should act as primary restructuring counsel only for the Debtor Portfolio Companies, the entities for whose benefit it believes these chapter 11 cases must be run.[7] Independent,

[7] *See* Ex. B, Excerpt of Quinn Emanuel Second Day Hr'g PowerPoint, at 15.

unconflicted professionals should be retained to represent the Fund's interests and the related interests of the LPs as required under the terms of the LPA.

## FACTUAL BACKGROUND

10. The Fund-Level Debtors and Debtor Portfolio Companies are structurally and economically distinct. The Fund-Level Debtors are solvent.[8] The Fund is a Cayman Islands exempted limited partnership that has no legal personality separate and apart from its partners.[9] The Fund is, in effect, a fund-of-one, as the LPs are the Fund's largest limited partner, having contributed approximately 98% of the Fund's overall capital and 100% of the capital for the Debtor Portfolio Companies. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 5, 12, 14, 17 n.99; First Day Decl. of Dr. Seth Harrison ¶¶ 10, 27. The GP, a Cayman entity owned and controlled by Dr. Harrison, holds the legal title to the Fund Assets on statutory trust for the benefit of the limited partners (principally, the LPs) and owes fiduciary duties to the Fund's limited partners. Ex. D, *Kuwait Ports Authority v Port Link GP Ltd* [2023] (1) CILR 50 at [54], [56]; *see generally* Phillips Decl. ¶¶ 24(b), 26–27, 57–81; Ex. E, Chancery Court Pre-Trial Order, Sept. 5, 2025, ¶¶ 13–15.

11. The relationship between the two Fund-Level Debtors is complicated, however, because of the fractured relationship between Dr. Harrison and the LPs. As this Court is by now aware, the LPs and Dr. Harrison have been in active litigation for many months. As most relevant here, in the Cayman Court proceedings underway since June 2025, the LPs contend that the GP

[8] Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 142:2–3; *see* Amended Motion to Dismiss ¶ 10. As recounted in detail in the Amended Motion to Dismiss, the Fund-Level Debtors collectively hold assets in the range of $1 billion to $10 billion with only twelve non-insider, unsecured creditors with claims totaling $204,066. Case No. 25-12178, Docket No. 1, Fund's Form 201, at 4, 9; Case No. 25- 12179, Docket No. 1, GP's Form 201, at 4, 10.

[9] Ex. F, *Kuwait Ports Authority v Williams* [2024] UKPC 32 at [35]; Ex. G, *Re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106 ("Cayman Judgment, Nov. 6, 2025") ¶¶ 32-34; Ex. H, Expert Report of Michael Bloch KC, Aug. 15, 2025, ¶ 30; *see generally* Phillips Decl. ¶¶ 24(a), 26–27, 31–56.

mismanaged the Fund by, *inter alia*, (i) improperly charging expenses to the Fund; (ii) failing to maintain Fund records as required under Cayman law; (iii) suing in the Court of Chancery for a declaration that the LPs owed the Fund hundreds of millions of dollars more than they had committed; and (iv) seeking to impose a default penalty that would allow the GP to seize 50% of the LPs' interests in the Fund and redistribute it to Dr. Harrison and his family trust. *See* Ex. I, Cayman Amended Winding-Up Petition, Nov. 21, 2025, ¶ 4.[10]

12. The relationship between the Fund-Level Debtors becomes even more complicated for present purposes because of Quinn Emanuel's entanglement in the GP's mismanagement of the Fund. First, in August 2025, a $20 million retainer was transferred into Quinn Emanuel's client account from Fund Assets—specifically the proceeds of Braeburn Inc. (a non-Debtor portfolio company) prepaying certain convertible loan notes and a post-closing earnout payment from exiting Tendyne (a former portfolio company). Quinn Emanuel has since exhausted those Fund Assets in representing the GP in the Court of Chancery and Cayman Court, and there is a live issue in the Cayman Court proceedings as to whether it was appropriate for the GP to transfer $20 million to Quinn Emanuel and whether there is any basis under the LPA or Cayman law for the Fund to pay the GP's legal fees related to the Cayman Court proceedings, which could result in a Cayman Court order directing return of those funds. *See* Ex. J, Walkers Letter to Campbells, Sept. 8, 2025, ¶¶ 7–16, 27; *id.* at 12 (Schedule of Payments); Retention Application ¶ 21. Second, Quinn Emanuel was the GP's counsel when the GP made an earlier, improper attempt to oust the LPs from the Fund: The GP made capital calls and then immediately sued the LPs in the Court of

[10] The GP's default claim as originally formulated was contrary to the terms of the LPA and Cayman law in the first place, causing the Cayman Court to enter an injunction prohibiting the GP from "'taking any steps against [Rigmora] to enforce any purported default provisions' related to the May 30 and June 1 capital calls." Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 79–80.

Chancery for anticipatory breach, operating on the assumption that the LPs could not pay $100 million in capital calls at once, which would allow the GP to deem the LPs "Defaulting Partners" and thus cause the LPs to lose critical rights under the LPA and up to 50% of their economic interest in the Fund. *See* Ex. K, Chancery Court Compl., May 30, 2025, ¶ 15. The question of whether the GP (aided by Quinn Emanuel) has sought to adopt an illegitimate strategy to default the LPs is a live issue in the Cayman Court proceedings, so the LPs do not here litigate Quinn Emanuel's liability to the partnership or the serious questions this raises about Quinn Emanuel's adherence to its ethical obligations.[11] It, however, does make clear that Quinn Emanuel has potential liability to the Fund on two fronts arising from the Cayman Court proceedings.

13. Unlike the Fund-Level Debtors, the Debtor Portfolio Companies are cash-strapped, preclinical start-ups with uncertain scientific and economic promise that burned through millions of dollars of Fund Assets over many years before the petition date. So far in these chapter 11 cases, the Debtor Portfolio Companies have received millions of dollars of additional Fund Assets to continue their operations, even though certain Debtor Portfolio Companies have exhausted their approved budgets under the LPA. *See Final Order to (I) Make and Accept Secured Loans to Portfolio Companies, (II) Authorize to the Extent Outside the Ordinary Course of Business Payment of Management Company Expenses, and (III) Grant Related Relief* [Docket No. 206] ¶ 2. And although the Fund is the majority investor in the Debtor Portfolio Companies, the GP does *not* owe the Debtor Portfolio Companies fiduciary duties, and thus when managing the Debtor Portfolio Companies, the GP's fiduciary duty remains to "act solely in the interests" of the LPs. Phillips Decl. ¶ 80. Each Debtor Portfolio Company has its own board of directors, but they all

[11] Chancellor McCormick expressly refused to make findings as to whether the Court of Chancery proceedings were brought in good faith, as she recognized that issue was relevant to the Cayman Court proceedings and thus was best left to the Cayman Court to determine. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 77–79.

share one director in common: the deeply conflicted Dr. Harrison. *See, e.g.*, Ex. L, Seth L. Harrison, M.D., ATP – Team Biography. These boards owe fiduciary duties to their own unique constellations of stakeholders. The Fund owns no more than 90.5% of each of the Debtor Portfolio Companies, *see* First Day Decl. of Dr. Seth Harrison, Ex. A, and each Debtor Portfolio Company has non-Fund creditors, resulting in the recent appointment of the Unsecured Creditors Committee, which includes only creditors of the Debtor Portfolio Companies, not the Fund-Level Debtors, *see Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 194].[12]

14. As separate entities with their own distinct obligations, interests, fiduciaries, and stakeholders, the Debtors have potential claims against each other that are not mere claims that amount to intercompany accounting. Instead of considering those claims from the Fund's perspective, the Debtors' professionals represented to this Court—without any basis and contrary to the operative stock purchase agreements (the "**SPAs**")—that the Fund purportedly owes more than $200 million to the Debtor Portfolio Companies in outstanding funding obligations, when these obligations are not, in fact, due and owing based on the sworn testimony of Dr. Harrison. *Compare* First Day Decl. of Dr. Seth Harrison ¶ 47 *and* First Day Hr'g Tr., Dec. 17, 2025 [Docket No. 81], at 12:20–22 *with* Ex. M, Harrison Dep. Tr., Oct. 6, 2025, at 273:2–7 (agreeing with characterization that the Fund had the "right but not the obligation to invest further" if five companies failed to achieve milestones in their SPAs); *see also* Ex. N, Chancery Court Trial Tr., Oct 16-17, 2025, at 195:11–17 (testimony of Debtors' expert, Dr. Mark Robbins, accepting that

[12] *See* Case No. 25-12201, Apertor Pharmaceuticals, Inc. Form 201 [Docket No. 1], at 14–16; Case No. 26-10000, Evercrisp Biosciences, Inc. Form 201 [Docket No. 1], at 11–13; Case No. 25-12202, Initial Therapeutics, Inc. Form 201 [Docket No. 1], at 11–13; Case No. 25-12203, Marlinspike Therapeutics, Inc. Form 201 [Docket No. 1], at 11-13; Case No. 26-10048, Nereid Therapeutics, Inc. Form 201 [Docket No. 1], at 12–14; Case No. 26-10001, Nine Square Therapeutics Inc. Form 201 [Docket No. 1], at 12–14; Case No. 25-12204, Red Queen Therapeutics, Inc. Form 201 [Docket No. 1], at 11–12.

all early-stage companies had missed investment memorandum milestones).[13] In addition, the Fund has recently received secured notes issued by the Debtor Portfolio Companies on an atypical, emergency basis to operate and continue external research and development on terms that were "exceedingly favorable to the [Debtor] Portfolio Companies." *See Debtors' Motion for Entry of Interim and Final Orders to (I) Make and Accept Secured Loans to Portfolio Companies, (II) Authorize to the Extent Outside the Ordinary Course of Business Payment of Management Company Expenses and (III) Grant Related Relief* [Docket No. 89] (the "**Funding Motion**") ¶ 30. No assessment was made as to whether the Fund would receive a return on its investment, let alone whether the Debtor Portfolio Companies could ever repay the loans. Ex. O, Mandarino Dep. Tr., Jan. 19, 2026, at 49:6–15, 82:9–14; Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 119:14–120:3.

15. Even though the Fund, GP, and Debtor Portfolio Companies have divergent interests and find themselves on opposite sides of transactions and potential claims, Quinn Emanuel has requested that this Court permit it to represent *all* the Debtors in these chapter 11 cases under section 327(a) of the Bankruptcy Code. *See* Retention Application ¶¶ 4–5. However, none of the industry-standard arrangements to mitigate inter-debtor conflicts have been made: The Debtors have not retained special counsel for bankruptcy advice, conflicts counsel, or independent directors, even though Quinn Emanuel has previously represented Dr. Harrison. *See Declaration of Patricia B. Tomasco in Support of the Debtors' Application for an Order Authorizing the Retention and Employment of Quinn Emanuel Urquhart & Sullivan, LLP as Co-Counsel for the Debtors Effective as of the Petition Date* [Docket No. 132-3], at 32. The only reason thus far that the Debtors have given for the lack of any safeguards is that they "haven't thought about it" and it

[13] Furthermore, to the extent that the GP committed the Fund to provide $200 million in funding to the Debtor Portfolio Companies, that would greatly exceed the upper limit of the contingent subscription, which the Court of Chancery found to be $2.425 billion. Ex. C, Chancery Court Post-Trial Op., Dec. 5, 2025, at 54–55.

would "waste" money. Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 121:16–122:10. In fact, by filing the Fund and the GP for chapter 11, the GP and Quinn Emanuel have *prevented* the appointment of independent fiduciaries by the Cayman Court and deprived the LPs of the safeguards to which they are entitled under Cayman law.

16. Despite the lack of articulated safeguards in this process that could ameliorate (but not eliminate) inter-debtor conflicts, Quinn Emanuel has made clear whose interests it believes it is representing in these cases. Quinn Emanuel pays lip service to the idea that "the Debtors must act in the best interests of all of the estates, not just" the Fund. *Debtors' Reply to Limited Omnibus Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Motion for Entry of Interim and Final Orders to (I) Make and Accept Secured Loans to Portfolio Companies, (II) Authorize to the Extent Outside the Ordinary Course of Business Payment of Management Company Expenses, and (III) Granting Related Relief and Debtors' Other Operational Motions and Supplements Thereto* [Docket No. 160] (the "**Funding Motion Reply**") ¶ 7. In truth, though, Quinn Emanuel has already made plain whose side it is on, stating that "[t]he primary purpose of these Chapter 11 Cases is to save, preserve and maximize the *value of the Portfolio Companies*," Ex. B, Excerpt of Quinn Emanuel Second Day Hr'g PowerPoint, at 15 (emphasis added), without even recognizing that a professional retained on behalf of the Fund should be seeking to maximize the value of the Fund Assets.[14] The Debtors' Chief Restructuring Officer has echoed those sentiments when he said that the Debtor Portfolio Companies "aren't intended to make money." Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 110:2–3. And Quinn

[14] Quinn Emanuel has again taken this position with respect to a proposed, new funding motion. *See* Ex. P, Email from Quinn Emanuel to Debevoise and Plimpton, Jan. 27, 2026 ("As has been the goal of these cases to preserve and enhance the value of existing investments in various portfolio companies and discharge obligations owed to portfolio companies, either tomorrow or Thursday we will be filing a motion seeking authority to use cash on hand to provide financing . . .")

Emanuel has informed this Court that it intends to find an "alternative investor" to displace the LPs, *id.* at 152:20–23, [15] in violation of the LPs' rights under the LPA and the duties owed to them as the largest economic party in interest, *see, e.g.*, Ex. Q, *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No. 4)* [2025] CIGC (FSD) 124 ("**Cayman Judgment, Dec. 22, 2025**") ¶ 21 (commenting that the displacement of the LPs appears 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").

17. Quinn Emanuel's neglect for the interests of the Fund before this Court is unfortunately consistent with its actions in Cayman Court proceedings, where its misrepresentations have impacted the Fund's need for clarity as to its governance under Cayman law. It began when Mr. Berdon of Quinn Emanuel knowingly submitted a seriously misleading affidavit in a deliberate attempt to mislead the Cayman Court in the context of a privilege dispute. Ex. R, *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No. 3)* [2026] CIGC (FSD) 5 at [107], [112], [124.3], [125], [130]. It then continued when the GP's Cayman counsel repeatedly represented that the GP intended to fully participate in the Cayman winding-up process, including in a letter sent at 12:16 pm on the same day that the Fund-Level Debtors, under the care of Quinn

[15] This was not a singular, off-the-cuff statement. The Debtors have repeatedly stated their intention to displace the LPs as part of a reorganization plan. First Day Decl. of Dr. Seth Harrison ¶ 17 ("The Debtors now seek the Bankruptcy Court's protection to preserve their valuable PortCos, potentially bring in new investors to replace the defaulting limited partners, and maximize value for all stakeholders, including the other limited partners, employees and creditors of portfolio companies, and ultimately, the patients who may benefit from the medical treatments being developed."); *Declaration of Perry M. Mandarino, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 25] ¶ 11 ("Chapter 11 may permit the Debtors to bring in new investors to replace the defaulting Rigmora LPs, investors who are willing and able to fund the Portfolio Companies' development, so that the Portfolio Companies can continue to pursue their life-saving drug programs."); First Day Hr'g Tr., Dec. 17, 2025 [Docket No. 81], at 17:1–6 (Patricia Tomasco, proposed Debtors' counsel: "there was no other choice but to commence a Chapter 11 to preserve those values and to find and locate and work with an alternative financing partner, whoever that may be").

Emanuel, abruptly and without notice filed for bankruptcy. Ex. S, Correspondence from Walkers to Campbells, Dec. 3, 2025 (stating that the GP is "ready and willing to proceed to trial on 12 January 2026"); Ex. T, Correspondence from Walkers to Cayman Court, Dec. 8, 2025 (requesting judgment on the privilege summonses as quickly as possible "so as not to imperil the January trial fixture"); Ex. U, Walkers Letter to Campbells, Dec. 9, 2025 (insisting that the GP's appeal of the Cayman court's decision on the privilege summonses was not "unmeritorious or a tactical attempt to delay the [Cayman] trial"). Following these events, Justice Asif admonished Quinn Emanuel for its behavior, stating that "it is now clear that, for the second time within less than 3 weeks, the GP and Quinn Emanuel have not informed Walkers [the GP's Cayman Counsel] 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." Ex. Q, Cayman Judgment, Dec. 22, 2025, ¶ 6. Quinn Emanuel's track record of being admonished for making misrepresentations to the Cayman Court may contribute to Quinn Emanuel's desire to avoid proceedings in front of Justice Asif, even though it is in the Fund's interests for the Cayman Court proceeding to move forward promptly so issues as to its governance can finally be settled.

## ARGUMENT

18. The Debtors have requested that they be permitted to retain and employ Quinn Emanuel for legal representation of all the Debtors under section 327(a) of the Bankruptcy Code. Section 327(a) requires that any law firm seeking to represent the Debtors show that it "do[es] not hold or represent an interest adverse to the estate" and that it is "disinterested." *In re Boy Scouts of Am.*, 35 F.4th 149, 157 (3d Cir. 2022); *In re Enviva Inc.*, 2024 WL 2795274, at *5 (Bankr. E.D. Va. May 30, 2024) (explaining that the burden is on the law firm to show disinterestedness).[16]

[16] As relevant here, the Bankruptcy Code defines a "disinterested person" as an individual that, *inter alia*, "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security

Although the two requirements of section 327(a) are "formally distinct," in many cases "they effectively collapse into a single test": whether the law firm seeking to be retained "holds or represents an adverse interest to the interests of the debtor and its estate." *In re Boy Scouts of Am.*, 35 F.4th at 157 (quoting 1 COLLIER ON BANKRUPTCY ¶ 8.03[9] (16th ed. 2022)); *see* Tr. of Bench Ruling Hr'g at 11:12–16, *In re Franchise Grp., Inc., et al.*, Case No. 24-12480 (LSS) (Bankr. D. Del. Feb. 12, 2025) (the "**Franchise Group Bench Ruling**"). In other words, any law firm with an "actual conflict of interest" is *per se* disqualified under section 327(a). *In re Marvel Ent. Grp., Inc.*, 140 F.3d 463, 476 (3d Cir. 1998). The Third Circuit has been clear that "a conflict is actual when the specific facts before the bankruptcy court suggest that 'it is likely that a [law firm] will be placed in a position permitting it to favor one interest over an impermissibly conflicting interest.'" *In re Boy Scouts of Am.*, 35 F.4th at 158 (citing *In re Pillowtex, Inc.*, 304 F.3d 246, 254 (3d Cir. 2022)). In line with that precedent, this Court has observed that an actual conflict of interest exists "[i]f counsel's ability to advocate on behalf of the debtors is impaired or constrained." Franchise Group Bench Ruling at 11:17–19. The assessment of whether an actual conflict of interest exists is a fact-specific inquiry. *See In re BH&P, Inc.*, 949 F.2d 1300, 1315 (3d Cir. 1991); Franchise Bench Ruling at 11:19–22. Courts have regularly found that inter-debtor conflicts and claims that debtors have against their counsel give rise to such disabling actual conflicts of interest. *See, e.g.*, *In re JMK Constr. Grp., Ltd.*, 441 B.R. 222, 231–37 (Bankr. S.D.N.Y. 2010); *In re Star Broad., Inc.*, 81 B.R. 835, 841 (Bankr. D.N.J. 1988); *In re BH&P, Inc.*, 949 F.2d at 1315; *In re First Jersey Secs., Inc.*, 180 F.3d 504, 509, 513–14 (3d Cir. 1999).

holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. § 101(14)(C).

19. That is the exact position in which Quinn Emanuel finds itself here. First, there is a ripe conflict between the Fund and the GP, which implicates Quinn Emanuel's own interests. The LPs and Dr. Harrison, as the owner and controller of the GP, have been in active litigation for close to a year over the GP's actions on behalf of the Fund, with the LPs contending vigorously before the Cayman Court that the GP has mismanaged the Fund, repeatedly breached its fiduciary duties to the LPs, and failed to exercise its fiduciary powers for a proper purpose. Those duties are owed to the Fund as a whole and to the LPs, to which the GP owes direct fiduciary duties as the majority investors in the Fund. Quinn Emanuel has now jumped into the breach, seeking to represent both the Fund and the GP, while parroting back Dr. Harrison's stated goal of displacing the LPs without critically examining whether the Debtors can be aligned that such displacement is a proper goal in these cases. First Day Decl. of Dr. Seth Harrison ¶ 17; Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 152:20–23; First Day Hr'g Tr., Dec. 17, 2025 [Docket No. 81], at 17:1–6. It is not.

20. To start, it is entirely unclear how Quinn Emanuel could accomplish this goal, when testimony about the Fund Assets makes clear that they exceed any associated claims by multiple billions of dollars, almost all of which are held on trust for the LPs, who would be the controlling vote in the class of interests for the Fund's solvent chapter 11 case if this Court were to deny the pending motion to dismiss. But more pressingly for purposes of this Limited Objection, the stated goal of displacing the LPs aligns with the interests of the individual who controls the GP but does *not* align with applicable United States or Cayman law, the GP's contractual and fiduciary duties to the Fund and the LPs, or any position that a professional representing the interests of the Fund should take. Quinn Emanuel thus finds itself in an impossibly conflicted position, and its chosen path for handling it, thus far, has been to do the unexamined bidding of the individual who controls

the GP, which would cause the Fund to act contrary to its own interests and cause the GP to violate applicable law.

21. This conflicted position becomes all the more striking when considering that the Fund may have potential claims against Quinn Emanuel based on its entanglement with the GP's mismanagement of the Fund. Quinn Emanuel was the GP's counsel when the GP attempted to oust the LPs from the Fund in the Court of Chancery proceeding, which gives rise to potential claims that the Fund may have against Quinn Emanuel to the extent it aided and abetted the GP's conduct. Further, there is a live issue in the Cayman Court as to whether the Fund will be entitled to claw back from the GP and/or Quinn Emanuel the $20 million retainer that was paid to Quinn Emanuel from Fund Assets.[17] It is thus unclear how Quinn Emanuel could ever advise either of the Fund-Level Debtors what to do with respect to these issues, when its own financial interests are at stake, further highlighting the need for independent counsel to represent the Fund's interests in these chapter 11 cases. *See In re First Jersey Secs., Inc.*, 180 F.3d at 509 (explaining that a law firm has "an interest adverse to the estate when counsel has a competing economic interest tending to diminish estate values or to create a potential or actual dispute in which the estate is a rival claimant" (internal citation omitted)).

[17] To preview the issue for this Court, if the winding-up proceeding in the Cayman Court is successful and the GP does not seek a validation order (as it has thus far failed to do) or such an order is not granted, the Fund is entitled to bring a claw back claim to recover its assets under Cayman law. In this instance, the LPs maintain that the GP was not permitted to transfer the $20 million away from the Fund, as there was no basis to do so under the LPA, as none of the money was used to meet Fund expenses, and insofar as proceeds received from Braeburn were used to fund the $20 million, that was illegitimate as such funds should have been distributed in accordance with the contractually agreed waterfall for Pool Braeburn. Ex. V, LPA Amendment No. 22 (amending LPA ¶ 21(d)). In addition, the GP is not entitled to have the Fund pay its legal fees associated with the Cayman Court proceedings under the LPA because (1) Justice Asif found that the winding-up proceeding is between the LPs and the GP (*i.e.*, expenses incurred by the GP in connection with the same are not Fund expenses but are properly characterized as expenses of the GP); and (2) the GP is not entitled to up front indemnification because the winding-up proceeding was initiated by "the holders of a majority of the Preferred Units," *i.e.*, the LPs. *See* Ex. W, LPA Amendment No. 9 ¶ 11; Ex. X, First Amended and Restated LPA ¶ 15(c); Ex. G, Cayman Judgment, Nov. 6, 2025, ¶¶ 30–34, 41.

22. Second, there are inherent conflicts between the Fund-Level Debtors and the Debtor Portfolio Companies. The GP, in managing the Fund, owes its fiduciary duties exclusively to the LPs, including its duty to maximize the value of their investments in the Fund. The Fund-Level Debtors, however, do *not* have parallel duties to the Debtor Portfolio Companies and thus cannot myopically focus on bailing them out to the detriment of the Fund's limited partners. On the other hand, the Debtor Portfolio Companies have their own interest in continuing cash-intensive scientific research, rather than maximizing economic value in the near-term, to serve their unique constellations of stakeholders. The Fund-Level Debtors and Debtor Portfolio Companies therefore have different objectives: The Fund-Level Debtors are focused on return on investment, while the Debtor Portfolio Companies appear determined to pursue scientific progress regardless of the cost. The Fund (through its GP) and the Debtor Portfolio Companies are arms-length parties to the SPAs, which give the Fund rights—and the portfolio companies, obligations—that the Fund-Level Debtors as advised by Quinn Emanuel appear unwilling to consider, let alone enforce.

23. Quinn Emanuel has repeatedly ignored the important distinctions between the Fund-Level Debtors and the Debtor Portfolio Companies so far in these chapter 11 cases. Citing the idea that Quinn Emanuel believes that it "must act in the best interests of all the estates, not just" the Fund, it requested that the Fund loan money to the Debtor Portfolio Companies on "exceedingly favorable" terms to the Debtor Portfolio Companies, without assessing the likelihood of the Fund being repaid. Funding Motion ¶ 30; Funding Motion Reply ¶ 7; Ex. O, Mandarino Dep. Tr., Jan. 19, 2026, at 49:6–9, 53:13–16; Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 116:13–117:15. This process is directly contrary to the independent, objective assessment that an unconflicted professional, looking out for the Fund's interests, would undertake to ensure that

further investment of Fund Assets in the Debtor Portfolio Companies would yield a return on investment.

24. Quinn Emanuel has also given no heed to the very real possibility of inter-debtor litigation in this case. Quinn Emanuel has unabashedly, and incorrectly, represented to this Court that the Fund owes more than $200 million in outstanding funding obligations to the Debtor Portfolio Companies.[18] Funding Motion ¶ 10; Hr'g Tr., Dec. 15, 2025 [Docket No. 55], at 10:1–4. But making such a representation is *not* in the Fund's best interests. If Quinn Emanuel were unconflicted, it would instead dispute that such obligations are due and owing, for the reasons that the LPs laid out earlier in this Limited Objection (and that the GP has previously admitted under oath). That, however, only highlights the further need for unconflicted counsel to represent the Fund, because if the Fund contests the validity of the funding obligations to the Debtor Portfolio Companies (as it should), that would surely give rise to litigable claims amongst the Debtors, of which Quinn Emanuel could not be on both sides without facing a disabling conflict of interest.[19]

25. Despite the conflicts that have already arisen among the Debtors and the high likelihood of inter-debtor claims should the Fund-Level Debtors remain in this Court, the Debtors

[18] If it is true that the GP committed the Fund to make these payments, in excess of the contingent subscription under the LPA, that would not help Quinn Emanuel avoid a conflict here because that would be yet one more example of the GP's mismanagement that would give rise to a claim that the Fund and/or LPs could bring against the GP.

[19] *See, e.g.*, *In re JMK Constr. Grp., Ltd.*, 441 B.R. at 231–37 (finding an actual conflict of interest where debtors had contribution claims against each other and were otherwise creditors of each other's estates based on outstanding debts owed); *In re Star Broad., Inc.*, 81 B.R. at 841 (finding that there was an actual conflict of interest stemming from the unsecured claim of one debtor against the other, because "where one estate is indebted to the other, there exists two groups of creditors which have conflicting claims and payment for one group is necessarily at the expense of the other"); *In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 672-73 (Bankr. S.D.N.Y. 2006) (finding that a law firm had an actual conflict of interest stemming from inter-debtor disputes, in part, because the same law firm cannot be on both sides of the same litigation); *In re BH&P, Inc.*, 949 F.2d at 1315 (finding that a law firm had an actual conflict of interest when one debtor filed a claim against two other debtors because, *inter alia*, the law firm would need to evaluate the validity of one debtor's claim on behalf of the other debtors).

have put in place *none* of the safeguards that are standard industry practice. In other multi-debtor chapter 11 cases, where estates may have competing interests and thus prospective conflicts are apparent, properly advised debtors have implemented procedural safeguards. They have retained independent directors, authorized special committees, retained or designated conflicts counsel to mitigate conflicts of interest, and/or retained special counsel to handle inter-debtor conflicts.[20] None of that has happened here, and the fact of these filings has prevented proceedings to address the GP's conflict of interest from happening on schedule in the Cayman Court. Here, instead of an independent director or special committee, Dr. Harrison, the owner and controller of the GP that owes fiduciary duties to the LPs under Cayman law, sits on the board of each of the Debtor Portfolio Companies and acts for the Fund as contractual counterparty and investor under the SPAs. And in lieu of conflicts counsel or special counsel to handle matters that are most likely to give rise to conflicting positions between the Debtors, the Debtors have sought to retain three law firms under section 327(a), without designating *any* as conflicts counsel or special counsel to the

[20] For example, in *FTX*, the four debtor silos had separate independent directors, with the ability to retain independent counsel to resolve anticipated intercompany claims, and special counsel Quinn Emanuel and local co-counsel were available to represent the debtors if the debtors' lead counsel had a conflict. *In re FTX Trading Ltd., et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. 2023), Docket No. 24, *Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings* ¶¶ 9, 47, 49; *In re FTX Trading Ltd., et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. 2023), Docket No. 509, *Debtors' Omnibus Reply in Support of Debtors' Retention Applications* ¶ 26. Similarly, in *Intelsat*, the four debtors, where "interrelationships exist[ed]," retained "independent counsel at the direction of their disinterested directors or managers" to advise them on conflict matters "pertaining to these chapter 11 cases." *In re Intelsat, S.A., et al.*, Case No. 20-32299 (Bankr. E.D. Va. 2020), Docket No. 295, Ex. B, *Declaration of Steven N. Serajeddini in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP* ¶ 46. Finally, within the last month, one of the two debtor groups in *Saks* appointed an independent director and moved to retain a separate chief restructuring officer, financial advisor, and independent general bankruptcy counsel to represent different silos of debtors. *In re Saks Global Enterprises LLC, et al.*, Case No. 26-90103 (ARP) (Bankr. S.D. Tex. 2026), Docket No. 37, *Declaration of Andrew D.J. Hede in Support of SO5 Digital Debtors' Chapter 11 Petitions and First Day Pleadings* ¶¶ 22–26; *In re Saks Global Enterprises LLC, et al.*, Case No. 26-90103 (ARP) (Bankr. S.D. Tex. 2026), Docket No. 466, *Global Debtors' Application for Order Authorizing the Retention and Employment of Willkie Farr & Gallagher LLP as Co-Counsel for the Global Debtors Effective As of the Petition Date* ¶ 10.

Fund, GP, or Debtor Portfolio Companies—and without any apparent attempt during the eight-week history of these chapter 11 cases to involve either of Quinn Emanuel's co-counsel meaningfully in decision-making or negotiations.

26. Although these kinds of safeguards could not eliminate Quinn Emanuel's actual conflict in this case, they are nonetheless important, as they ensure that law firms in multi-debtor cases comply with the debtors' "duties to refrain from favoring or appearing to favor one or another of their estates and its creditors over another." *See In re Innkeepers USA Tr.*, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010). But here, because Quinn Emanuel has paid no attention to the conflicts that are endemic in these chapter 11 cases, the firm has already chosen a side: the Debtor Portfolio Companies. Quinn Emanuel has told this Court that it views "the Debtors' sole business purpose" as "fund[ing] portfolio companies," Funding Motion Reply ¶ 18, and thus that "[t]he primary purpose of these Chapter 11 Cases is to save, preserve and maximize the value of the Portfolio Companies," Ex. B, Excerpt of Quinn Emanuel Second Day Hr'g PowerPoint, at 15. It has also informed the Court that it will bring in an "alternative investor" to displace the LPs, even though that is directly contrary to the GP's fiduciary duties and the Fund's interests. Ex. A, Second Day Hr'g Tr., Jan. 20, 2026, at 152:20–23. This complete disregard for the Fund's interests is further reinforced by Quinn Emanuel's unethical aiding of the GP's attempt to oust the LPs by manufacturing an anticipatory breach, its duplicitous behavior in the Cayman Court proceedings, and its opposition to the lift-stay motion, when it would be in the Fund's best interests to have its governance definitively resolved as soon as possible. Because Quinn Emanuel has committed "one of the most serious sins that a lawyer can commit"—"[t]he unsanctioned representation of conflicting interests"—it should be permitted only to continue representing the side it has already chosen: the Debtor Portfolio Companies. *See, e.g.*, *In re Star Broad.*, 81 B.R. at 844 (permitting

conflicting counsel to choose only one debtor to represent); *In re JMK Constr. Grp.*, 441 B.R. at 238 (same).

## CONCLUSION

WHEREFORE, the LPs request that the Retention Application be approved only to the extent that Quinn Emanuel may be retained and employed solely by the Debtor Portfolio Companies in these chapter 11 cases. If the Fund-Level Debtors' chapter 11 cases are not dismissed, separate counsel should be retained to represent the interests of the Fund in these chapter 11 proceedings.

Dated: January 29, 2026
Wilmington, Delaware

Respectfully Submitted,

**RICHARDS, LAYTON & FINGER, P.A.**

*/s/ Clint M. Carlisle*

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**EXHIBIT A**

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:

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[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 B**

A T P

# Presentation for January 20, 2026 Hearing

***Apple Tree Life Sciences, Inc., et al.*, (Case no. 25-12177)**

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE**

**HONORABLE LAURIE S. SILVERSTEIN**

**January 20, 2026**

# Funding Motion

## Funding the Portfolio Companies

- The primary purpose of these Chapter 11 Cases is to save, preserve and maximize the value of the Portfolio Companies.
- Prior to the Petition Date, the Partnership Debtor provided funding to each Portfolio Company.
  - The aggregate commitment amount was $501.2 million and the Partnership Debtor funded, in the aggregate, $340.6 million.
- Without funding, the Portfolio Companies will cease operations.
  - "**The negative impacts of a funding default for early-stage life sciences companies can be fatal**," and although companies can "ramp up" research "upon receipt of funding," they "cannot stay in a holding pattern indefinitely." Delaware Chancery Judgment at 66.
- Certain Portfolio Companies are engaged in active pharmaceutical trials, in which they provide treatments to human test subjects. Funding is necessary to continue these treatments.
- Specifically, **pursuant to the Funding Motion, the Partnership Debtor would provide a total of approximately $13.9 million to seven Portfolio Debtors and two non-Debtor Portfolio Companies**.

**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.*

Blake Rohrbacher, Daniel E. Kaprow, Christine J. Chen, Zachary R. Greer, Benjamin O. Allen, RICHARDS, LAYTON & FINGER, P.A, Wilmington, Delaware; Shannon Rose Selden, William H. Taft V, Zachary Saltzman, Natascha Born, Carl Micarelli, Sebastian Dutz, DEBEVOISE & PLIMPTON LLP, New York, New York; *Counsel for Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP.*

**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]

[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

[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**

[2023 (1) CILR 50]

# KUWAIT PORTS AUTHORITY, PUBLIC INSTITUTION FOR SOCIAL SECURITY and THE PORT FUND L.P. v. PORT LINK GP LIMITED, WILLIAMS, WELLSPRING CAPITAL GROUP INCORPORATED and KGL INVESTMENT COMPANY ASIA

C.A. (Field, Birt and Beatson, JJ.A.) January 20th, 2023

*Partnership — exempted limited partnership — derivative action by limited partners — derivative action by limited partner against general partner struck out where exempted limited partnership had no claim against general partner and limited partner had adequate alternative remedy, namely direct claim against general partner for breach of duty*

*Partnership — exempted limited partnership — derivative action by limited partners — derivative action by limited partner against shareholder of general partner and others not struck out — general partner alleged to be involved in wrongdoing had conflict of interest in relation to whether to institute proceedings*

The plaintiffs/respondents brought claims concerning an exempted limited partnership.

The first and second plaintiffs were Kuwaiti state-owned enterprises financed by Kuwaiti public funds. They were two of the eleven limited partners in an exempted limited partnership, The Port Fund L.P. ("TPF"). The first and second plaintiffs had invested US$125m. in TPF, which was almost two-thirds of the total investment. The first defendant/appellant, a Cayman Islands exempted limited company, was the general partner of TPF ("D1" or "the GP"). The second defendant/appellant ("D2") was the sole shareholder of Port Link Holdings USA Inc., which was the sole shareholder of the GP. D2 was the CEO, CFO, President, Vice-President, Treasurer and Secretary of the third defendant/appellant ("D3"), a company incorporated in the United States. D2 was also closely involved in the management of the fourth defendant/appellant ("D4"), a Cayman Islands incorporated company, now in voluntary liquidation, which had provided administrative support to TPF.

The plaintiffs pleaded that in breach of statutory, contractual, common law and fiduciary duties owed by the GP to TPF and the limited partners and pursuant to a conspiracy to injure TPF and the limited partners by

unlawful means, the GP had made very substantial payments using TPF moneys that were not for the benefit of TPF and the limited partners. The plaintiffs alleged that the defendants' wrongdoing had caused TPF and its limited partners losses in excess of US$100m. The plaintiffs claimed to be entitled to bring their claims against the GP alleging systematic unlawful conduct in relation to the assets and affairs of TPF on their own behalf, but in the alternative they also advanced the claims as derivative claims on behalf of TPF. Similarly, the plaintiffs' primary case was that they were entitled to bring claims against D2 and D3 on their own behalf, but they also sought to advance like claims as derivative claims on behalf of TPF. The plaintiffs' claims against D4 were advanced solely on the derivative basis.

The plaintiffs' direct claims against D2 and D3 were for relief under the Fraudulent Dispositions Act (1996 Revision). They claimed that those defendants culpably participated in the improper payments made by the GP and/or dishonestly received such payments or the traceable proceeds thereof. They claimed that D3 was party to an unlawful means conspiracy, dishonestly assisted in a breach of trust/duty by the GP, knowingly procured a breach of the contractual obligations the GP owed to the limited partners and was liable in knowing receipt. The plaintiffs claimed that D2 conspired and dishonestly assisted in the GP's breaches of duty and was in breach of the fiduciary duties to TPF and the GP.

The derivative claims were brought pursuant to s.33(3) of the Exempted Limited Partnership Act ("the ELPA") on the basis that the GP had without cause failed or refused to initiate the proceedings and there was no real prospect of it doing so. Section 33 provided:

"(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.

…

(3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

The GP's current directors claimed to have conducted an extensive investigation into the alleged wrongdoing and to have concluded that there was not cause to bring the claims advanced by the plaintiffs as derivative claims. The plaintiffs submitted that the current directors, although not implicated in the defendants' alleged wrongdoing, were not independent and had not investigated matters properly.

The GP applied to strike out the direct and derivative claims against it. It accepted that the pleaded allegations were arguable but contended in relation to the direct claims that it was impermissible for two of eleven limited partners to claim damages from the GP to be paid directly to themselves except by seeking partnership accounts that would require the joinder of the other limited partners. D2–D4 applied to strike out the

derivative claims against them. D2 and D3 did not apply to strike out the direct claims against them but they did not admit that the plaintiffs had standing to bring the claims and maintained that they should have been pursued by way of a partnership account as against the GP.

In the Grand Court, the judge rejected the submission that direct claims by a limited partner could only be vindicated by the taking of partnership accounts. The judge accepted the plaintiffs' submission that the claims advanced were principally direct claims vested in the individual limited partners rather than in TPF and that the taking of partnership accounts was not the only procedural route available to the plaintiffs.

The GP submitted that (a) the application of the partnership accounts rule/principle to limited partnerships was not inconsistent with the provisions of the ELPA and therefore was not disapplied by s.3; (b) the GP relied on authorities which held that claims by partners *inter se* could only be brought in the context of the taking of partnership accounts; (c) there were sound practical reasons for the application of the partnership account rule/principle to Cayman Islands exempted limited partnerships; (d) the judge's holding that the property of an exempted limited partnership was held "on trust for each of the limited partners" was a misreading of s.16(1) of the ELPA which provided that the rights and property of an exempted limited partnership, including all choses in action, were held "by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement."

The plaintiffs submitted that (a) the reasons given by the judge for concluding that the partnership rule/principle was disapplied by s.3 of the Act and was inconsistent with the scheme of the ELPA were correct; (b) the authorities relied on by the GP emphasized the reciprocity of personal obligation and trust and the mutuality of personal liability in an ordinary partnership, which was absent in a limited partnership; (c) the plaintiffs relied on authority to show that in a partnership dispute it was not always necessary to have a claim for a partnership account at the outset; and (d) because an exempted limited partnership had no separate legal personality, the only sensible construction of s.16(1) of the ELPA was that the general partner of an exempted limited partnership held its assets on trust for all the limited partners. The judge was correct so to hold. Because the general partner owed fiduciary duties to all the limited partners, any breaches of those duties must be enforceable by the limited partners themselves. Where there was a claim against the general partner itself, it could not be only the general partner who could institute proceedings.

The Grand Court did not strike out the plaintiffs' claims. The judge rejected the defendants' submission that, when considering s.33(3), the court had to apply principles derived from cases dealing with derivative claims in other contexts. The judge considered s.33(3) to be ***sui generis***. On appeal, the defendants submitted that the judge erred in stating that the principles applicable in other contexts, such as trusts and companies, were not applicable in relation to the statutory test. The plaintiffs submitted that the judge was correct to hold that s.33(3) "occupies the field" and that there

was no scope or reason to import any "special circumstances" test or other common law or equitable principles that applied to derivative claims in respect of other entities or structures. The GP submitted that, regardless of whether the test in s.33(3) was otherwise met, the derivative claim against the GP should be struck out because, on the judge's finding, TPF had suffered no loss or damage and therefore had no claim of its own to bring. The judge held that s.33(3) required a finding as to whether the GP had failed or refused to institute the proceedings without cause, not the directors at the relevant time. The judge concluded that there was a good arguable case that the GP had a relevant inhibition because it was conflicted in relation to the plaintiffs' claims. Its decision not to bring the claims against D2–D4 was made unsafe by the facts giving rise to its conflict of interest. (The Grand Court judgment is reported at 2022 (1) CILR 12.)

**Held, judgment as follows:**

(1) The GP's appeal against the refusal of the judge to strike out the plaintiffs' direct claims against it would be dismissed. The differences between ordinary partnerships and exempted limited partnerships meant that it was not appropriate to require that a direct claim by a limited partner against the general partner must always be initially brought by way of a claim for partnership accounts and that it was not necessary to protect the positions of the creditors and other limited partners by requiring this. The scheme of the ELPA with the absence of reciprocity and mutuality of rights and obligations was inconsistent with requiring claims by a limited partner to be brought by taking partnership accounts in proceedings to which all the limited partners were party. The court accepted the submission that because an exempted limited partnership had no separate legal personality the only sensible construction of the words in ELPA s.16(1) was that the general partner of an exempted limited partnership held its assets on trust for all the limited partners. Because a trust also had no separate legal personality, thus making the position similar to the statutory trust created by ELPA s.16(1), the court regarded the position of a claim by a beneficiary of a trust against the trustee as important. The beneficiary of a subsisting trust including a discretionary trust was entitled to bring a claim against the trustee to recover loss suffered by the trustee's breach of trust, but the remedy was for an order to restore to the trust what ought to have been there. The partnership accounts rule/principle was inconsistent with the ELPA and the judge was correct in his conclusion. In proceedings against the GP, a limited partner could recover for loss suffered by the breach of the statutory trust but the remedy would be the restoration of the exempted limited partnership's fund thus compensating the direct losses suffered by all the limited partners. This remedy prevented a limited partner claimant from benefitting alone from any recovery either at the expense of the other limited partners or of the exempted limited partnership's creditors. The problem of multiplicity of actions could be dealt with by robust case management. The court's rejection of the submission that the direct claims were defective in not at the outset joining all partners and seeking

partnership accounts did not mean that the court could not direct that there be such a procedure at a later stage as part of its case management powers if that proved necessary (paras. 53–64).

(2) If D2 and D3 had applied to strike out the plaintiffs' direct claims against them, the court's preliminary view was that the objections raised to the plaintiffs' standing to bring the claims were unfounded. The question was whether, if D2 and D3 were held liable to the plaintiffs for breach of their statutory, equitable and other obligations, it was open to the court to order that those defendants restored the fund rather than paid the plaintiffs. The court's preliminary view was that the plaintiffs had a good arguable case that, where third parties were liable for breaches such as those claimed against D2 and D3, the court could order those defendants to restore the fund rather than pay the plaintiffs and thus avoid the risk of prejudice to other limited partners or creditors. As in the case of a claim against the general partner, the starting point was the position of a claim by a beneficiary of a trust. It was clear that the interest of a beneficiary of a discretionary trust was enforceable against a third party who received trust property which the trustee did not have authority to transfer and the third party knew enough to make it unconscionable to retain the asset for his own benefit. The beneficiary's only right would be to have the asset or its proceeds reinstated to the trustee. Given the analogy between a non-partnership trust, an exempted limited partnership with no separate legal personality and the statutory trust imposed by s.16(1) of the ELPA, it was possible to order third parties such as D2 and D3 to restore the fund where the claim against them succeeded. The analogy rested on the fact that, in cases of knowingly assisting a trustee in a fraudulent and dishonest disposition of trust property, although the third party was not in fact a trustee, he was made liable in equity as if he were a trustee. This reflected the fact that it was the fund which had suffered the loss and an order to restore was the only way in which all beneficiaries' rights could be protected. For these reasons, had D2 and D3 applied to strike out the plaintiffs' direct claims against them, the court's preliminary view was that the objections raised to the plaintiffs' standing to bring the claims were unfounded. It would be for the court hearing the claims to decide whether they were made out on the merits and whether, in the circumstances of this case, an order to restore the fund should be made and, given that the GP would be implicated in the wrongdoing, steps such as placing the assets in escrow, the appointment of a receiver or the taking of partnership accounts were necessary (paras. 65–72).

(3) The legislature had prescribed in s.33(3) of the ELPA when a derivative action could be brought in respect of an exempted limited partnership, *i.e.* "if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings." Where the legislature established a statutory test for bringing a derivative action in respect of an exempted limited partnership, the courts were duty bound to apply that statutory test. The test could not be replaced by

common law and equitable principles developed in other contexts even if, in the absence of a statutory test, the courts would no doubt have applied those principles to an exempted limited partnership. Nor could those principles form an additional threshold beyond the statutory test. The statutory test was in general and imprecise terms and left open how the test should be applied in practice. However, the expression "without cause" must carry the implication of "good" cause. The court was entitled to have regard to and could derive assistance from the developed principles in other contexts. In particular, given the existence of the statutory trust imposed by s.16(1) of the ELPA, the court was likely to derive assistance from considering whether special circumstances (as established in the contexts of trusts and English limited partnerships) existed. If special circumstances existed, this was likely to assist the court in deciding whether a general partner's decision not to institute proceedings was "without cause." However, the court emphasized that its duty was to apply the statutory test of "without cause"; it was not sufficient simply to consider whether there were special circumstances and, if so, then to allow a claim under s.33(3). If the court decided that the facts would satisfy the special circumstances test, it must nevertheless go on and consider whether they therefore satisfied the "without cause" test in s.33(3). Conversely, the facts of a case might enable the court to find that the general partner's decision was "without cause" without consideration of whether there were special circumstances. The two tests were not to be equated although it was envisaged that consideration of whether there were special circumstances was likely in most cases to be of considerable assistance in determining whether the decision was "without cause" (paras. 94–99).

(4) The court summarized its conclusions in relation to s.33(3): (i) There was no requirement for leave to bring derivative proceedings under s.33(3). A limited partner could simply institute such proceedings. (ii) A limited partner must however plead the facts and matters relied upon as showing that he could bring himself within the requirements of the subsection because this formed an essential part of his cause of action. (iii) If a defendant wished to raise an issue as to the standing of a limited partner to bring such derivative proceedings, he should do so by means of a strike out application or seek the trial of a preliminary issue. (iv) Whichever route was chosen did not affect the test that had to be applied in deciding whether s.33(3) was complied with and whether a limited partner should be permitted to continue with the derivative claim. (v) The decision of the court on such an application or preliminary issue was determinative (subject to appeal). If the court held that the derivative claim could be continued, the limited partner thereafter had the necessary standing to pursue the claim. It was not an issue which was deferred until or revisited at trial (save possibly in the context of costs at the end of the trial). (vi) The court should not conduct a mini trial as to whether the requirements of s.33(3) were satisfied. The court had to reach its decision on the basis of the material before it, which would be more limited than it would be following discovery and trial. (vii) At the hearing, the onus was on the

limited partner to satisfy the court that the requirements of s.33(3) were met. Reference to "onus" was not to be mistaken as a reference to a "burden" in the sense of having to show something on the balance of probabilities. (viii) The essential task for the court at such a hearing was to determine whether the limited partner had failed or refused to bring the relevant proceedings without cause. (ix) In determining this issue, the court was likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) existed, but the court's task remained one of applying the statutory test set out in s.33(3). (x) Whilst reference to a "good arguable case" might be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of s.33(3) were met, the court's task was essentially an evaluative one having regard to the facts as they appeared to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action was an exception to the general principle in the ELPA that management (including decisions as to litigation) of an exempted limited partnership was for the general partner not the limited partners. The court should consider, *inter alia*, the strength of the evidence that the general partner had failed or refused to institute proceedings without cause, the strength of the underlying claim that was sought to be brought and the likelihood and nature of any injustice if the derivative claim was not permitted. (xi) The court should reach its decision as to standing by reference to the facts as they appeared at the date of the hearing of the strike out or preliminary issue. (xii) Even where the requirements of s.33(3) were met, the court had a discretion as to whether to permit a derivative claim to continue. One of the factors which was likely to be relevant in exercising that discretion was whether the plaintiff had an alternative remedy (para. 140).

(5) The GP's appeal against the refusal of the judge to strike out the plaintiffs' derivative claims against it would be allowed and the claims would be struck out. A derivative action allowed a party to bring a claim in the name of and on behalf of a second party against a third party. It followed that the second party must have a claim against the third party before the first party could be permitted to bring such a claim derivatively. Section 33(3) presupposed that there was a claim to be brought by the GP on behalf of the partnership. If, as the judge held, the partnership had no claim against the GP, there could be no failure by the GP to bring such a claim without cause. Even if this were wrong, the derivative claim against the GP would not be permitted because the plaintiffs as limited partners had an adequate alternative remedy. A limited partner had the right to claim against a general partner for breach of duty on the part of the general partner. In the event of such a claim succeeding, the appropriate remedy would almost certainly not be an award of equitable compensation to the particular limited partners who had sued but instead an order that the general partner restore the trust fund. In these circumstances, exactly the same would be achieved by a direct claim as would be the case in a

derivative action. In the event of the plaintiffs succeeding in their direct claim, the estate of TPF would be made whole by payment from the GP pursuant to an order for restoration of the trust fund. Success in a derivative action would have the same result. Accordingly, there was simply no need for a derivative action; it would add nothing to the direct claims brought by the limited partners coupled with an order for restoration of the trust fund in the event of such claims succeeding. Therefore, as a matter of discretion, the derivative claim against the GP should not be permitted (paras. 141–151).

(6) The appeals of D2, D3 and D4 against the refusal of the judge to strike out the plaintiffs' derivative claims against them would be dismissed. The GP had a conflict of interest in relation to whether to institute proceedings against D2–D4. On the plaintiffs' case, D1 as the GP was deeply involved in all the alleged wrongdoing, as was D2. D1 had to decide whether to institute proceedings against D2–D4 in circumstances where (i) the essential wrongdoing giving rise to the claims against D2–D4 was that of D1 itself in making the various payments and where it was said to be part of the unlawful means conspiracy to injure TPF involving D2 and D3; (ii) the contemplated proceedings would have to be brought against the beneficial owner of the GP and against two companies in which D2 was deeply and closely involved, namely D3 and D4; and (iii) D1 would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy. On the face of it, by reason of the obvious and serious conflict of interest, D1 was under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also meant that the failure by D1 to bring proceedings against D2–D4 was without cause for the purposes of s.33(3). The defendants' submissions that this was not the position because (i) the current directors of D1 were wholly independent and were not in office at the time of the alleged wrongdoing on the part of D1, and (ii) the independence of the current directors was fortified by the fact that D2 had given an undertaking that the shareholder of the GP would not exercise any powers so as to remove the current directors or interfere in any way in the exercise of their functions did not overcome the inhibition. In relation to the first point, the judge was correct to focus on the entity which was the general partner rather than the directors for the time being of that entity. Section 33(3) referred to the "general partner" having failed or refused to bring proceedings without cause. The general partner was the legal entity D1. D1 was subject to the conflicts of interest and thus could not be seen to be in a position to take a fair and independent decision about the potential litigation. New directors were not in the same position as a liquidator, who was appointed by and subject to the supervision of the court and therefore clearly independent of the company, its directors and shareholders. The current directors owed a fiduciary duty to act in the best interests of D1. The defendants submitted that because D1 owed fiduciary duties to act in the best interests of the partnership, the current directors therefore had a duty to act in the best

interests of TPF. However, there was certainly the potential for conflict between acting in the best interests of TPF (which might include taking action against D1 as a co-conspirator) and acting in the best interests of D1 (which might be said to include the avoidance of being sued). The undertaking given by D2 was insufficient to overcome the inhibition from which D1 as general partner suffered. The plaintiffs, who alleged that there had been serious wrongdoing by the defendants which had cost TPF over US$100m., would have a justified lack of confidence that a fair and independent decision was taken by D1 as to whether to seek recompense from any one or more of the defendants, even following the appointment of the current directors. There was no doubt that D1 suffered from an inhibition which led to the conclusion that, subject to the exercise of any discretion, it was appropriate for the plaintiffs to bring derivative claims on behalf of TPF pursuant to s.33(3) against D2–D4. As to discretion, the defendants submitted that because the plaintiffs were bringing direct claims against D2 and D3, they had an alternative remedy in respect of those two defendants and there was no need for them to bring a derivative action. However, D2–D4 expressly reserved the right to challenge the plaintiffs' standing to bring such claims. It would be inconsistent with the overriding objective and highly undesirable to run the risk of the court eventually finding against D2 and D3 on the underlying merits of the claims but also finding that the plaintiffs did not have standing for the direct claims or that it could not make an order for restoration of the trust fund in the absence of a derivative claim on behalf of TPF. There was sufficient uncertainty about whether the plaintiffs had direct claims against D2 and D3 or whether the court could order restoration of the trust fund on the success of such claims that, as a matter of discretion, it was just and fair to allow the derivative claims to proceed alongside the direct claims so that they were all heard at the same time. If, following a trial, the direct claims were upheld and the court also held that it could order restoration of the trust fund as a remedy for such claims, there would be no need to make any award on the derivative claims; if, on the other hand, the direct claims were found not to be maintainable or restoration of the trust fund could not be ordered, the derivative claims would be necessary to provide a remedy, assuming that the underlying allegations against the defendants were upheld (paras. 158–170).

(7) The GP's appeal against the refusal of the judge to order the plaintiffs to provide security for costs would be dismissed. The judge erred in proceeding on the basis that there was a presumption arising from comity and common sense that security for costs should not be awarded against the plaintiffs, although each case would be decided on its own facts. When dealing with a security for costs application against a foreign state or foreign state agency that enjoyed good standing in the international community, the court should treat this as a factor in favour of such a plaintiff to be weighed with all the other factors when the court exercised its discretion. The judge also erred in stating that a foreign plaintiff did not have to establish that it had fixed and permanent property within the

jurisdiction. Evidence that a foreign plaintiff had valuable property within the jurisdiction would obviously be of relevance but the significance of this evidence would depend on all the facts of the case, including any evidence as to the permanency of the property and its freedom from encumbrances (or the lack of such evidence) and other evidence tending to show that the plaintiff could be trusted to honour an adverse costs order. The judge's errors played such a significant role in the exercise of his discretion that his decision must be set aside. In the circumstances it was open to the court to exercise the discretion conferred by GCR O.23, r.1(1). The court proceeded on the assumption that the defendants were correct that there would be very real difficulties in enforcing in Kuwait costs orders made against the plaintiffs if their claims against the defendants were dismissed. Although it was a necessary condition for the ordering of security for costs that there was a real risk that an adverse costs order would not be enforced against a foreign plaintiff in his/its home jurisdiction, this was not a sufficient condition for ordering security for costs whatever the other circumstances of the case. Instead, it was open to the court, if there was sufficient evidence to support such a conclusion, to find that there was no real risk that the plaintiff would not honour an adverse costs order and to decline to order security for costs. The present case was such a case. The plaintiffs were agencies of a foreign state, Kuwait, which was of good standing in the international community and enjoyed diplomatic relations with HM Government. Further, a formal letter had been sent to the judge on behalf of the State of Kuwait, among others, confirming that the plaintiffs were wholly owned by the State of Kuwait and attaching letters by the plaintiffs confirming that they would comply with any final and binding costs orders made against them in the proceedings. The letters amounted to a representation intended to be relied on by the Grand Court that the plaintiffs would honour any final and binding costs orders made against them. The letters provided strong support for the conclusion that there was no real risk that such costs orders would not be paid. Further support for this conclusion came from the evidence as to the financial resources of the plaintiffs, which showed that they could be expected to have the ready funds to pay an adverse costs award (paras. 188–217).

**Cases cited:**

(1) *Ahmad Hamad Algosaibi & Bros. Co.* v. *Saad Invs. Co. Ltd.*, 2017 (2) CILR 602, referred to.
(2) *Autumn Hldgs. Asset Inc.* v. *Renova Resources Private Equity Ltd.*, 2017 (2) CILR 136, referred to.
(3) *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.*, 1998 CILR 102, considered.
(4) *Barnes* v. *Addy* (1873–74), 9 Ch. App. 244, referred to.
(5) *Barrett* v. *Duckett*, [1995] 1 BCLC 243; [1995] BCC 362, considered.
(6) *Chief Commr. of Stamp Duties* v. *Buckle*, [1998] HCA 4; (1998), 192 CLR 226; 38 NSWLR 574; 151 ALR 1, considered.

(7) *Commr. of State Revenue* v. *Rojoda Pty. Ltd.*, [2020] HCA 7; (2020), 268 CLR 281; 94 ALJR 423; 376 ALR 378, considered.
(8) *Costa Rica (Rep.)* v. *Erlanger* (1876), 3 Ch. D. 62, referred to.
(9) *Cybervest Fund, In re*, 2006 CILR 80, followed.
(10) *Elliott* v. *Cayman Islands Health Serv. Auth.*, 2007 CILR 163, referred to.
(11) *Foss* v. *Harbottle* (1843), 2 Hare 461; 67 E.R. 189, referred to.
(12) *Golstein* v. *Bishop*, [2013] EWHC 881 (Ch); [2014] 1 Ch. 131; [2013] 3 W.L.R. 572; on appeal, [2014] EWCA Civ 10; [2014] 1 Ch. 455; [2014] 2 W.L.R. 1448; [2014] 3 All E.R. 397, considered.
(13) *Henderson PFI Secondary Fund II LLP* v. *Henderson Equity Partners (GP) Ltd.*, [2012] EWHC 3259 (Comm); [2013] 1 Q.B. 934; [2013] 2 W.L.R. 1297; [2013] 3 All E.R. 887; [2012] 2 CLC 905, followed.
(14) *Hugh Stevenson & Sons* v. *Akt. für Cartonnagen-Industrie*, [1918] A.C. 239, referred to.
(15) *Hughes* v. *Colin Richards & Co.*, [2004] EWCA Civ 266; [2004] PNLR 35, referred to.
(16) *Hurst* v. *Bryk*, [2000] UKHL 19; [2002] 1 A.C. 185; [2000] 2 All E.R. 193, referred to.
(17) *Iesini* v. *Westrip Holdings Ltd.*, [2009] EWHC 2526 (Ch); [2010] BCC 420, considered.
(18) *Kleanthous* v. *Paphitis*, [2011] EWHC 2287 (Ch), referred to.
(19) *Knight & Tabernacle, &c., Socy., In re* (1892), 2 Q.B. 613; 62 L.J.Q.B. 33, considered.
(20) *Leyvand* v. *Barasch*, [2000] WL 191256, considered.
(21) *Meyer* v. *Faber (No. 2)*, [1923] 2 Ch. 421, referred to.
(22) *Ministère de la Culture &c. de France* v. *Lielb*, [1981] 1 WLUK 253, considered.
(23) *Ministry of Foreign Affairs (Italy)* v. *Simeone*, [2016] QDC 160, referred to.
(24) *Ninemia Maritime Corp.* v. *Trave Schiffahrts G.m.b.H. und Co. K.G., The Niedersachsen*, [1984] 1 All E.R. 398; [1983] 2 Lloyd's Rep. 600; [1983] Com. L.R. 234, considered.
(25) *PJSC Tatneft* v. *Bogolyubov*, [2019] Costs L.R. 977, referred to.
(26) *Papua New Guinea* v. *Sandline*, [1998] QDC 298, referred to.
(27) *Pisante* v. *Logothetis*, [2020] EWHC 3332 (Comm), referred to.
(28) *Prudential Assur. Co. Ltd.* v. *Newman Indus. Ltd.*, [1982] Ch. 204; [1982] 2 W.L.R. 31; [1982] 1 All E.R. 354, followed.
(29) *Public Trustee* v. *Elder*, [1926] 1 Ch. 776, referred to.
(30) *Roberts* v. *Gill & Co. Solicitors*, [2010] UKSC 22; [2011] 1 A.C. 240; [2010] 2 W.L.R. 1227; [2010] PNLR 30; [2010] WTLR 1223, considered.
(31) *St. John's Trust Co. (PVT) Ltd.* v. *Medlands (PTC) Ltd.*, [2021] CA (Bda) 20 Civ, Bermuda C.A., December 12th, 2021, followed.
(32) *Scully Royalty Ltd.* v. *Raiffeisen Bank Intl. Ltd.*, 2022 (1) CILR 118, referred to.

(33) *Selangor United Rubber Estates Ltd.* v. *Craddock (No. 3)*, [1968] 1 W.L.R. 1555; [1968] 2 All E.R. 1073, referred to.
(34) *Sierra Leone Govt.* v. *Davenport*, [2003] EWHC 1913 (Ch); [2003] All E.R. (D.) 183; 2003 WL 21047383, referred to.
(35) *Smith* v. *Croft (No. 2)*, [1988] Ch. 114; [1987] 3 All E.R. 909; 1987 PCC 209; [1987] 1 FTLR 319, considered.
(36) *Soar* v. *Ashwell*, [1893] 2 Q.B. 390, referred to.
(37) *SPhinX Group, In re*, 2010 (1) CILR 234, referred to.
(38) *Target Hldgs. Ltd.* v. *Redferns*, [1996] A.C. 421; [1995] 3 W.L.R. 352; [1995] 3 All E.R. 785; [1995] CLC 1052; [1995] N.P.C. 136; [1995] 3 LRC 162, considered.
(39) *Tasarruf Mevduati Sigorta Fonu* v. *Wisteria Bay Ltd.*, 2006 CILR 351, considered.
(40) *Top Jet Enterprises Ltd.* v. *Sino Jet Holding Ltd.*, 2018 (1) CILR 18, referred to.
(41) *Waddington Ltd.* v. *Chan Chun Hoo Thomas*, [2008] HKCFA 63; (2008), 11 HKCFAR 370; [2009] 4 HKC 381; [2008] HKCU 1381; [2009] 2 BCLC 82, considered.

**Legislation construed:**
Exempted Limited Partnership Act (2021 Revision), s.3: The relevant terms of this section are set out at para. 34, fn. 7.
s.16(1): The relevant terms of this subsection are set out at para. 19.
s.32(12): The relevant terms of this subsection are set out at para. 36, fn. 9.
s.33: The relevant terms of this section are set out at para. 20.

Grand Court Rules 1995, O.23, r.1(1): The relevant terms of this subrule are set out at para. 176.
*C. Stanley, K.C., P. Tyers-Smith* and *T. Wright* for the first appellant;
*G. Chapman, K.C., A. Pullinger* and *H. Shaw* for the second to fourth appellants;
*D. Allison, K.C., J. Fox, O. Green* and *H. Clark* for the respondents.

1 **FIELD, J.A.:**

**Introduction**

This is the judgment of the court to which each member has contributed.

2 There are two appeals before the court. The first is brought by all the appellants from the order made by Parker, J. ("the judge") dismissing their summonses to strike out certain claims in the amended statement of claim[1] ("the ASOC") ("the strike out appeal," reported at 2022 (1) CILR 12). The second appeal is brought by the first appellant against the dismissal of its

1 The defendants' application to strike out those paragraphs of the ASOC that pleaded the criminal convictions in Kuwait of a Ms. Lazareva and a Mr. Dashti was not opposed and the judge so ordered.

summons for security for costs ("the SFC appeal"). Hereinafter, we refer to the appellants as "the defendants" or "D1," "D2," "D3" and "D4" and to the respondents as "the plaintiffs."

***The strike out appeal***

3 This appeal raises important issues concerned with: (a) the nature of a Cayman Islands exempted limited partnership ("ELP") established under the Exempted Limited Partnership Act (2021 Revision) ("the ELPA"); (b) whether a limited partner of an ELP can sue, independently of any of the other limited partners, alleged wrongdoers, including the ELP's general partner, who are alleged to have been parties to the wrongful misappropriation of the ELP's assets held on trust by the general partner and, if so, what is the appropriate remedy to be granted by the court; and (c) the circumstances in which a limited partner can bring a derivative action under s.33(3) of the ELPA in the name of the ELP against the general partner for breaches of contractual, statutory and fiduciary duty.

4 The ELP in question is The Port Fund L.P. ("TPF") which was registered on March 21st, 2007. It was established as a vehicle for investments in port-related assets around the world. It has one general partner and eleven limited partners including the two plaintiffs, the Kuwait Ports Authority ("KPA"), which it is alleged has invested US$85m. giving it at least a 41% interest in TPF and the Public Institution for Social Security ("PIFSS"), which it is alleged invested US$40m. (giving it a 23.77% interest in TPF). The total invested in TPF by the limited partners was US$188,152,000.

5 The first defendant, Port Link GP Ltd. ("the GP" or "D1"), is a Cayman Islands exempted limited company incorporated on March 8th, 2007. It was appointed the general partner of TPF pursuant to a limited partnership agreement ("the LPA") made on March 21st, 2007 between it and the original limited partners of TPF. The whole of the GP's share capital is held by Port Link Holdings USA Inc. ("PLH"), a Delaware company; and the whole of PLH's share capital is held by the second defendant ("Mr. Williams"). Mr. Williams is also CEO, CFO, President, Vice President, Treasurer and Secretary of the third defendant, Wellspring Capital Group Inc. ("Wellspring"), a company incorporated in the US State of Georgia. Wellspring is owned by the Mark E. Williams Living Trust, the trustees of which are Mr. Williams, his wife, Laura Williams, and his brother, Dylan Williams.

6 TPF's sponsor and placement agent was KGL Investment Co. KSCC, a Kuwaiti company ("KGLI Kuwait"). From September 2007 until 2008, Mr. Williams was KGLI Kuwait's Vice President and he was its Investment Director from 2009 to 2011. He was also a member of TPF's Investment Committee in the years 2009–2013.

7 Pursuant to an agreement with the GP dated June 28th, 2007 ("the IMA"), KGL Investment Cayman Ltd. was appointed TPF's investment manager. In July 2018, KGL Investment Cayman Ltd. changed its name to Emerging Markets PE Management Ltd. ("EMPEML"). The ultimate beneficial owner of EMPEML as at the date of the IMA and until around January 2018 was KGLI Kuwait, which is the 100% shareholder of the fourth defendant ("KGLI Asia"). KGLI Asia is said by the defendants to have provided administrative support to TPF between December 2017 and August 2020 pursuant to an agreement for the provision of such services dated December 1st, 2017 ("the ASA").

8 Briefly put, the plaintiffs plead in the ASOC that assets of TPF worth hundreds of millions of US dollars held on trust by the GP have been misappropriated as part of an unlawful means conspiracy and/or dishonest breaches of trust and fiduciary duty and that each of the defendants has wrongfully participated in some or all of these defalcations, in some cases having knowingly received some or all of the proceeds thereof. Amongst the allegations made against the defendants is a claim that the GP made substantial improper payments using TPF moneys that were not for the benefit of TPF.

9 Two of the other limited partners in TPF, Gulf Investment Corp. ("GIC") and General Retirement and Social Insurance Authority of Qatar ("GRSIA"), who between them it is alleged invested 15.14% of the total alleged investment in TPF, have brought claims against the second and third defendants in the US State of Georgia alleging that those parties are guilty of dishonesty, deliberate breaches of fiduciary and unlawful means conspiracy. GIC and GRSIA have consented to a stay of their claims in the courts of Georgia pending determination of the instant proceedings which they support.

10 The two current directors of the GP ("the FFP directors") are individuals recruited from FFP (Directors) Ltd. Mr. Andrew Childe ("Mr. Childe") was appointed on January 29th, 2020 and Mr. Richard Lewis ("Mr. Lewis") on October 28th, 2020, replacing Mr. Christopher Rowland ("Mr. Rowland") who had been appointed at the same time as was Mr. Childe.

11 The FFP directors have no connection to any of the wrongdoing alleged in the ASOC and describe themselves as "independent directors." In his third affidavit, Mr. Lewis states that, fully cognisant of their fiduciary duties, they have conducted an intensive, forensic investigation into the actions of the GP and the former management team of TPF for the benefit of all the limited partners and not just the plaintiffs. The stated results of the FFP directors' forensic investigation are set out in a series of memoranda issued to the limited partners in an update to the limited partners dated May 29th, 2021, save for their investigations into the DIFC

proceedings claim and the Lazareva lobbying campaign which are respectively dealt with in paras. 300–345 and 346–399 of Mr. Lewis's third affidavit. In their view, there is currently no cause to bring the derivative claims and even if TPF had meritorious claims, it would be necessary to consider whether the claims were worth pursuing on a cost/benefit analysis and, if so, whether TPF was in a position to pursue them or could raise funding to do so, and whether it would be in the best interests of TPF to do so.

12 The plaintiffs plead individual direct claims against the defendants for losses each has suffered as a limited partner in TPF by reason of the defendants' actionable involvement in the wrongful misappropriation of assets held on trust by the GP. Relying on s.33(3) ELPA, they also plead derivative claims against the GP and the other defendants on behalf of TPF in respect of the aforesaid alleged misappropriation of assets.

**The direct claims and the applications to strike them out**

13 We first consider the direct claims brought against the GP (D1), Mr. Williams (D2), and Wellspring (D3). It is not necessary to consider the plaintiffs' claims against KGLI Asia (D4) for their losses from payments made to that entity under the ASA because the plaintiffs' counsel, Mr. Allison, K.C., accepted that there is no direct claim against D4 (see respondents' skeleton, para. 48).

14 The plaintiffs plead that in breach of the statutory, contractual, common law and fiduciary duties owed by the GP to TPF and the limited partners and pursuant to a conspiracy to injure TPF and the limited partners by unlawful means, the GP made very substantial payments using TPF moneys that were not for the benefit of TPF and the limited partners. These payments were allegedly made to the following five recipients and/or for the following purposes: (i) Apache Asia Ltd. and its related Macau entity, Apache Asia Ltda. ("Apache") which received US$58,528,399 from the GP, of which US$45,850,000 was purportedly for services under an advisory agreement and US$14,550,000 was directed to be paid to KGLI Kuwait; (ii) Wilfredo Placino who received US$2,920,000 purportedly by way of "advisor fees"; (iii) lawyers and lobbyists acting for Ms. Marsha Lazareva (a director of the GP from March 8th, 2007 to May 24th, 2018), and Mr. Saeed Dashti (a director of the GP from April 16th, 2007 to May 24th, 2018); (iv) a group of Kuwaiti service providers, allegedly for services rendered, of which US$14,070,000 was paid to Golden Shahin General & Trading Contracting Co. ("Golden Shahin"), which is part of a group of companies associated with KGLI Kuwait and Mr. Dashti; and (v) Wellspring, which received US$59,990,461.30 ("the Wellspring payment") by way of a payment alleged to be due under a judgment given

in proceedings brought by EMPEML against the GP and TPF in the Dubai International Finance Centre Court ("the DIFCC").

15 The alleged background to (v) is that on November 15th, 2017, US$496,429,767 (representing part of the net proceeds resulting from the sale by the GP of a TPF asset in the Philippines called "Clark City") were transferred to the GP's account with Noor Bank PJSC ("Noor Bank"). The same day, Noor Bank made a suspicious transaction report to the Financial Intelligence Function of the UAE which issued a report to the Dubai Public Prosecutor who successfully moved to freeze the transferred money, an order that remained in place until February 2019. On July 9th, 2018, EMPEML commenced proceedings ("the DIFC proceedings") against the GP and TPF in the DIFCC of First Instance claiming unpaid carry in the sum of US$45,462,000, compound interest on the unpaid carry sum, and unpaid management fees of US$8,106,386 with compound interest thereon at 8% pa. The GP acknowledged service of the claim, submitted to the jurisdiction of the DIFCC and admitted the claim in the sum of US$56,808,005. The DIFCC then entered judgment ordering the GP and TPF to pay US$56,999,978 and, at the request of EMPEML, the GP transferred US$59,990,461.30 to Wellspring in satisfaction of the judgment. The plaintiffs claim, *inter alia*, that this payment was made by the GP in wilful and negligent breach of trust in that EMPEML had no entitlement to the claimed management fees having assigned its rights therein to KGLI Kuwait; there was no contractual right to interest; it was wrong to submit to the jurisdiction of the DIFCC when the law of the Cayman Islands governed the relationship between the GP and EMPEML; and the IMA contained an exclusive jurisdiction clause in favour of the courts of the Cayman Islands. The plaintiffs also allege that the payment made in satisfaction of the DIFCC judgment was made on the advice of the same legal counsel who, to the GP's knowledge, was also advising EMPEML with respect to its entitlement.

16 The plaintiffs' direct claims against D1 and D3 are for relief under the Fraudulent Dispositions Act (1996 Revision) (see ASOC, paras. 179 and 189). They claim that these defendants culpably participated in the aforementioned improper payments made by the GP that are related in paras. 14 and 15 above and/or dishonestly received such payments or the traceable proceeds thereof. They maintain that Wellspring was party to an unlawful means conspiracy, dishonestly assisted in a breach of trust/duty by the GP, knowingly procured a breach of the contractual obligations the GP owes the limited partners, and is liable in knowing receipt for the Wellspring payment, holding the Wellspring payment or its traceable proceeds on constructive trust for TPF. The plaintiffs also claim that Mr. Williams conspired and dishonestly assisted in the GP's breaches of duty and was in breach of his fiduciary duties to TPF and the GP by orchestrating the DIFC proceedings and the Wellspring payment.

17 The GP applied to strike out the direct and the derivative claims against it but not on the ground that they lacked merit. Instead, it accepted that the pleaded allegations were arguable, but contended in relation to the direct claims that it is impermissible for two members of a class of eleven limited partners to claim damages from the GP to be paid directly to themselves except by seeking partnership accounts that would require the joinder of the other limited partners.

18 D2–D4 applied to strike out the derivative claims against them but D2 and D3 did not apply to strike out the direct claims against them. They have not appealed the judge's decision, but do not admit that the plaintiffs have standing to bring the direct claims that they face. Like D1, they maintain that these claims "ought to be pursued by way of a partnership account as against the GP."

**The general rule as to who may bring proceedings by or against an ELP**

19 Section 16 ELPA provides that all rights or property of an ELP shall be held on trust by the GP as an asset of the ELP and s.33 contains the general rule as to who can bring proceedings by or against an ELP. Section 16(1) reads:

> "Any rights or property of every description of the exempted limited partnership, including all choses in action … 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." [Emphasis added.]

20 The material provisions of s.33 are:

> "(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.
>
> (2) If the court considers it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 20(1) or to enforce the return of the contribution, if any, required by section 34(1).
>
> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

21 It is important to note that, as recognized in paras. 2 and 6 of D2–D4's skeleton argument for the appeal, the effect of ELPA s.33 is that "ordinarily, actions *for and on behalf of an ELP* must by statute be brought by the general partner of that ELP" and "*a claim belonging to a limited partnership must be brought by the GP acting for and on behalf of the ELP*." [Emphasis added.] Sections 33(1) and (3) thus apply only to claims brought by or on behalf of an ELP, that is to derivative claims. They therefore do not apply to direct claims brought by a limited partner in respect of its own right of action against the GP and others.

**The judge's decision on the direct claims**

22 The judge dealt with direct claims by a limited partner at 2022 (1) CILR 12, paras. 61–65. Before doing so (*ibid.*, at paras. 46–60) 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 (*ibid.*, at paras. 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 (*ibid.*, at para. 46) to the provision in s.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 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 (*ibid.*, at paras. 46–53):

(1) By ss. 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 (para. 48).

(2) By s.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 (paras. 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 (para. 50).[2]

2 The judge did not mention, but must have been aware, that this statutory duty is subject to any express provisions to the contrary in the partnership agreement.

(4) Whereas in an ordinary partnership, mutual and reciprocal rights and obligations are owed to each other by partners, s.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 (para. 51).

**(b)** ***Characteristics of an ELP that differ from those of a company***

25 The judge stated (*ibid.*, at paras. 54–55) 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 (paras. 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 (paras. 57–59).

(3) By s.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* (11) where the wrongful directors are in control of the company. The judge stated that (2022 (1) CILR 12, at para. 60):[3]

> "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."

3 In para. 60, the judge does not mention s.33(3) of the ELPA which, as we have seen, permits a limited partner to bring a derivative action: "an action on behalf of an [ELP] if any one or more of the general partners with authority to do so have, without cause, failed or refused to do so."

**(c)** ***Direct claims by a limited partner***

27 The judge accepted the submissions of counsel for the plaintiffs, Mr. Allison, K.C., based on the characteristics of an ELP which differ from those of an ordinary partnership and a company, in particular that an ELP has no separate legal personality and that a limited partner does not owe fiduciary duties to the ELP or to the other limited partners. He stated that (*ibid.*, at paras. 61–62):

> "[T]he logical consequence of the aforesaid analysis of the nature and characteristics of an ELP is that the GP's obligations must be capable of enforcement by each of the partners to whom it owes duties individually. That is to be contrasted with the situation where directors of a company hold the company's assets and are treated as trustees because they owe fiduciary duties to the company. In that situation they hold the assets for the company, rather than the shareholders.
>
> 62 … [T]he GP of an ELP owes fiduciary duties to each of the limited partners and any breaches are therefore enforceable by the limited partners themselves."

28 The judge then stated (*ibid.*, at para. 63):

> "It follows that where an ELP is alleged to have suffered loss, as in this case, that is the loss of each of the limited partners. There is no distinct or separate loss in respect of 'the partnership' (TPF), which as an entity does not exist at law. The limited partners in enforcing their individual claims do not owe duties to each other: …"[4]

29 He concluded that (*ibid.*, at para. 64):

> "[T]he direct claims in respect of the individual partners' losses are vested in the limited *partners* alone, and are not claims that can be brought on behalf of TPF derivatively, except in the circumstances permitted by s.33(3) of the ELPA where the limited partners who wish to obtain redress for TPF are in effect put in the place of the GP, and bring claims on behalf of TPF."

30 The judge rejected the submission on behalf of the GP and the other defendants that s.16(1) of the ELPA and cll. 3.1 and 3.3 of the LPA prevented such direct claims because the limited partners cannot usurp the function of the GP, who is the only authorized agent of the partnership, here TPF, able to sue. He stated (*ibid.*, at para. 76) that: "the practical difficulty with that submission is that in practice the GP could obviously

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4 The last sentence, stating that, in enforcing their individual claims, limited partners do not owe duties to each other, contains a footnote referring to s.19(2) of the ELPA, on which see para. 24(4) above.

not sue itself and suffers from the conflict of interest" that arises if the GP is the arbiter of whether to bring claims against itself which clearly gives rise to a conflict of interest (see *ibid.*, at para. 60).

**(d)** ***The Henderson case***

31 The judge considered (*ibid.*, at paras. 66–78) the decision of Cooke, J. in the English Commercial Court in *Henderson PFI Secondary Fund II LLP* v. *Henderson Equity Partners (GP) Ltd.* (13) (hereafter "*Henderson*"). That case concerned the similar but by no means identical UK statutory regime in the Limited Partnerships Act 1907 under which such partnerships also have no legal existence independent of their constituent partners. The focus of *Henderson* was whether limited partners were entitled to pursue derivative claims on behalf of the partnership, and, if so, the consequence of doing so.[5] We therefore primarily consider it when giving our conclusion and reasons about the derivative claim against D1 at paras. 147–148 below. But in considering entitlement to pursue a derivative claim, Cooke, J. also considered whether a limited partner could sue the general partner for "its own loss on its own claim" under the limited partnership agreement ([2012] EWHC 3259 (Comm), at para. 32). He stated that it could because it "has its own contractual or fiduciary claim for its own loss" (*ibid.*, at para. 28).

32 In the present case, the judge stated that Cooke, J. held that:

(i) "each limited partner could in its own individual capacity sue … the general partner, for its own losses in respect of liabilities under the limited partnership agreement" (2022 (1) CILR 12, at para. 69);

(ii) "any claim brought by each limited partner as an individual contractual or fiduciary claim would not involve management of the partnership business" (*ibid.*, at para. 72); and

(iii) "the partnership which consisted of the limited partners and the general partner together, had no form of joint right or claim against the general partner" (*ibid.*, at para. 72).

**(e)** ***Must direct claims by a limited partner be by seeking an order for partnership accounts?***

33 The judge considered the GP's submission that direct claims by a limited partner can *only* be vindicated by the taking of partnership accounts (*ibid.*, at para. 79ff.). He rejected it and accepted the plaintiffs' submission that the claims advanced were principally direct claims vested in the individual limited partners rather than in TPF (the ELP itself) and that the

5 *I.e.* whether the pursuit of derivative claims constituted taking part in the management of the business of the partnership so that, under s.6(1) of the 1907 Act, claimants doing so would forfeit their limited liability.

taking of partnership accounts was not the only procedural route available to the plaintiffs (*ibid.*, at paras. 86–87).[6]

34 The judge took into account the distinct characteristics of an ELP and the provisions of the ELPA (*ibid.*, at paras. 80–81). He considered that the English authorities on ordinary partnerships which Ms. Stanley submitted were "pellucidly clear" in requiring rights and obligations between partners only to be procedurally adjudicated by the taking of partnership accounts had no direct application to Cayman Islands' ELPs. His reasons were that, unlike ordinary partnerships, under a Cayman Islands' ELP:

(i) there are no reciprocal fiduciary obligations or reciprocal duties between the limited partners unless the LPA provides otherwise (*ibid.*, at para. 84);

(ii) the absence of reciprocal fiduciary obligations between the limited partners means that the joinder of all partners to any proceedings so that the necessary accounting for any monetary claims required by *Public Trustee* v. *Elder* (29) ([1926] 1 Ch. at 789) does not apply to a Cayman Islands' ELP (2022 (1) CILR 12, at para. 82, fn. 18);

(iii) the general partner owes fiduciary and contractual duties directly to the limited partners and those duties are enforceable directly by the limited partners (*ibid.*, at para. 83);

(iv) each limited partner is not, as is the case in an ordinary partnership, jointly and several liable for the partnership's liabilities; referring to ss. 3,[7] 4(3), 16(1) and 19(2) of the ELPA, the judge stated that "The rules of equity and common law applicable to ordinary partnerships are in this respect inconsistent with express provisions of the ELP …" (*ibid.*, at para. 85);

(v) claims against the general partner for a breach of the statutory, equitable, common law or contractual duties owed to the limited partners are vested in the limited partners themselves and may be brought directly (*ibid.*, at para. 87).

**The questions before us and the submissions**

35 We have stated that D2 and D3 did not apply to strike out the direct claims against them but do not accept that the plaintiffs have standing to bring such claims against them and, although D2 and D3 were not partners, maintain that their direct claims "ought to be pursued by way of a partnership account as against the GP." The result was that the focus of the submissions before us was on the judge's rejection of the application to

6 His summary of the GP's submissions is at para. 32(i)–(ii).

7 "The rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding ss. 31, 45–54 and 56–57 shall apply to an exempted limited partnership, except where they are inconsistent with the express provisions of this Act."

strike out the direct claims against the GP. Little was said specifically about the direct claims against D2 and D3. Ms. Stanley for D1, accepted in substance, that there are direct claims against the GP. But, supported by Mr. Chapman, she submitted that the judge erred in two respects. The first was his finding that the rule/principle that claims by partners *inter se* can only be brought by the taking of partnership accounts does not apply to a limited partnership. She maintained that the judge erred in holding (*ibid.*, at para. 85) that the application of the rule/principle is inconsistent with the express provisions of the ELPA and that it has therefore been disapplied by s.3 of the ELPA. She submitted that his second error was in holding (*ibid.*, at para. 55) that the GP holds the property of the ELP "on trust for each of the partners." That, she submitted, was a clear misreading of ELPA s.16(1). However, she accepted that before the dissolution of a partnership, although there is jurisdiction to obtain a partnership account, "it is an exceptional jurisdiction to allow an account pre-dissolution."

36 On behalf of the plaintiffs, Mr. Allison submitted that the partnership accounts rule/principle does not apply to ELPs in this jurisdiction, in the same way that it does not apply to limited partnerships in England and Wales.[8] This, he maintained, is because the element of reciprocity of fiduciary duties in an ordinary partnership is absent in an ELP. Moreover, in an ordinary partnership, but not an ELP, all the partners have unlimited liability for the partnership's liabilities, and (subject to contrary agreement) are entitled to take part in the management of the partnership business. Mr. Allison further argued that to apply the rule/principle would be inconsistent with ELPA s.32(12)(c)[9] which makes it clear that partners in an ELP have a right to an account. Here the pleaded claims against the GP and D2 and D3 include claims for accounts and equitable compensation for the plaintiffs' individual losses. Mr. Allison submitted that they are entitled to bring these against the GP because of the GP's position as a fiduciary and statutory trustee and its overarching duty to account. Although less clearly stated, it appears that the basis for the plaintiffs' entitlement to bring direct claims against D2 and D3 is their knowing receipt of TPF's property or moneys which the GP transferred to them in breach of its statutory, equitable and other obligations, and their participation in a conspiracy to cause loss to the plaintiffs by unlawful means. During Ms. Stanley's oral submissions there was some debate as to whether, in a claim by a limited partner against the GP or against a third party, the court could order that the remedy against an unsuccessful defendant should be the restoration of

8 In fact the Limited Partnership Act 2007 applies throughout the UK.

9 "A partnership agreement may provide that, as against any other partner, any assignment or other disposition by a partner of any right, debt or other chose in action arising under a partnership agreement shall confer economic rights only and for the purposes of this section 'economic rights' are … The right to an account for the purpose of ascertaining the amount of share of any of the foregoing …"

the trust fund by analogy with the position where a claim is brought by the beneficiary of a trust: *Target Hldgs. Ltd.* v. *Redferns* (38) (hereafter "*Target* v. *Redferns*"). Ms. Stanley accepted that this was possible in a claim against the GP but did not accept that it was possible in a claim against a third party such as D2 and D3. She stated that the obvious way for a limited partner to make a claim against a third party would not be by a direct claim but, using the trust analogy, by a claim on behalf of the trust. That appears to be a submission that the claim must be a derivative claim and thus subject to the requirements of ELPA s.33(3). Mr. Chapman's written submissions on behalf of D2 and D3, to which we have referred, are to the same effect.

37 In principle, two main questions arise in respect of the direct claims although, in the light of the way the appeal has proceeded, the second does not in fact arise. The first question is whether a direct claim by a limited partner against the general partner must be made by claiming partnership accounts in proceedings to which all the partners are parties as it must in an ordinary partnership. Can a limited partner claim an account against a general partner for breach of fiduciary or other duty without at the outset joining the other partners and, if the breach is established, may a limited partner obtain an order that the general partner restore the fund?

38 The second question is whether the ELP itself, although not a legal entity, also has a claim against the GP or a third party such as D2 and D3 for breach of their fiduciary and other obligations. The judge stated (2022 (1) CILR 12, at para. 63) (set out at para. 29 above) that there is no distinct or separate loss in respect of "the partnership" which does not exist in law as an entity. When dealing with the derivative claims later in this judgment, we state that, for the reasons we give at para. 145 below, we are not to be taken as agreeing that the judge was correct in concluding that the partnership has no claim against the GP. However, absent a respondents' notice in respect of the judge's finding or any submission by the plaintiffs that the judge was wrong, the question is not properly before us. But since it is accepted that a limited partner may have a direct claim against the GP for breach of its fiduciary and other duties, albeit only in the context of partnership accounts, uncertainty as to whether TPF itself also has a claim *qua* ELP does not affect our resolution of the dispute about the plaintiffs' direct claims.

39 There were three limbs to Ms. Stanley's submissions. The first was that the application of the partnership accounts rule/principle to limited partnerships is not inconsistent with the provisions of the ELPA and therefore is not disapplied by s.3. She accepted that there are obvious examples of inconsistency between the rules of equity and common law that apply to ordinary partnerships and the provisions of the ELPA governing limited partnerships. She gave three examples. The first is the disapplication by ELPA ss. 4(2) and 16(2) of the rule that in ordinary

partnerships each partner is liable jointly and severally with the other partners for all partnership liabilities. The second is s.32(11)'s provision that in limited partnerships the rule that a partner cannot assign its partnership interest to a third party without the consent of the other partners does not apply. The third is that, in the case of limited partnerships, the rule in ordinary partnerships that certain events cause a dissolution of the partnership does not apply to the events specified in ELPA s.35(a)(i)–(vi). But she submitted that none of these "shed light on the fundamental question at issue on Grounds 2 and 3, namely whether limited partners are entitled to bring direct claims against the GP." It would appear this may require some reformulation in the light of her acceptance during her oral submissions in response to questions by Birt, J.A. that in a claim by a limited partner against the GP the court could order that the defendant restore the fund and that it is exceptional to obtain partnership accounts whilst the partnership is continuing.

40 As to the meaning of "inconsistent," Ms. Stanley relied on *In re Knight & Tabernacle, &c., Socy.* (19) ([1891] 2 Q.B. at 69). That case concerned a statutory provision that its provisions were to apply except where those provisions were inconsistent with those of another statute. She submitted that this approach applied where, as in the case of s.3 of the ELPA, the question is whether non-statutory rules and principles are inconsistent with the express provisions of a statute and that the partnership accounts rule/principle is not inconsistent with these provisions in the sense used in *Re Knight & Tabernacle.* That case stated that to be "inconsistent," the rule/principle must be so at variance with the machinery and procedure indicated by the statute that, if it is applied, the statute would not work. Ms. Stanley argued that this shows that "inconsistent" means "irreconcilable" rather than "different from," and that there is no such irreconcilability between the partnership accounts rule/principle and the provisions of the ELPA.

41 Ms. Stanley also referred to the judge's statement (2022 (1) CILR 12, at para. 86) that there is "no good reason why the taking of partnership accounts should be the only procedural route available to the plaintiffs to obtain redress under the ELPA." She submitted that the judge thus "accepted that partnership accounts *were* a means of redress available" which showed that there is no irreconcilability or inconsistency between the partnership accounts rule/principle and the provisions of the ELPA.

42 Mr. Allison's response to these submissions was that the reasons given by the judge (*ibid.*, at paras. 82–85) (summarized at para. 34 above) for concluding that the partnership rule/principle was disapplied by ELPA s.3 and is inconsistent with the scheme of the ELPA were correct. As to the scheme of the ELPA, he also submitted that the inconsistency is shown *inter alia* by s.16(1) which makes the GP trustee of an ELP's assets, and

by s.32(11) which permits the assignment of a limited partner's interest without the consent of the other partners, and s.32(12)(c) which gives a limited partner the right to claim an account.

43 The second limb of Ms. Stanley's submissions were the authorities which hold that claims by partners *inter se* can *only* be brought in the context of the taking of partnership accounts. She referred to the statements in *Meyer* v. *Faber (No. 2)* (21) ([1923] 2 Ch. at 439) and *Hurst* v. *Bryk* (16) ([2002] 1 A.C. at 194) respectively that in an action against a co-partner "the only relief which the plaintiff could obtain would be an account" and that "the amount owing to a partner by his fellow partners is recoverable only by the taking of an account in equity after the partnership has been dissolved." Mr. Allison's response was that the cases relied on by Ms. Stanley emphasize the reciprocity of personal obligation and trust and the mutuality of personal liability in an ordinary partnership, and Cooke, J. in *Henderson* (13) ([2012] EWHC 3259 (Comm), at para. 28) emphasized the absence of this in a limited partnership.

44 The third limb of Ms. Stanley's submissions were considerations of "practicality and policy." She maintained that there were sound practical reasons for the application of the partnership account rule/principle to Cayman Islands ELPs. The rule/principle ensures that the creditors of the partnership are paid first before the partners (as they should be) and that all the limited partners will be bound by the outcome. It, she argued, prevents a multiplicity of proceedings with resulting chaos by providing a mechanism for the orderly winding up of the affairs of the ELP.

45 Ms. Stanley submitted that if the partnership accounts rule/principle does not apply "the limited partners would have to bear the additional burden of the costs of the GP dealing with a multiplicity of proceedings, rather than one." There was, she argued, no prejudice to the partners of an ELP by the application of the rule/principle because "claims can all be dealt with in the managed process of the taking of partnership accounts." She relied on the statements in *Public Trustee* v. *Elder* (29) ([1926] Ch. at 784) that all partners needed to be joined "to avoid multiplicity of actions," in *Hugh Stevenson & Sons* v. *Akt. für Cartonnagen-Industrie* (14) ([1918] A.C. at 247) that partners "cannot sue each other excepting for the balance of the account taken in accordance with the principles which the courts of equity apply in working out the results of dissolution," and on "Partnerships, Limited Partnerships and LLPs," 29(1) *Atkins Court Forms*, at para. 15.

46 In his oral submissions, Mr. Allison relied on *Golstein* v. *Bishop* (12) to show that in a partnership dispute it is not always necessary to have a claim for a partnership account at the outset. Mr. Christopher Nugee, Q.C., sitting as a Deputy High Court judge, stated ([2013] EWHC 881 (Ch), at paras. 2 and 24) that factual matters and the merits of the claim in that case, which included a claim for damages for breach of the partnership

agreement,[10] would be determined but that dissolution accounts would be taken at a later stage. In the Court of Appeal, Briggs, L.J., with whom Kay and Sullivan, L.JJ. agreed, recognized that there are remedies other than the taking of a partnership account that might be available for breaches of duty in an ordinary partnership (see [2014] EWCA Civ 10, at para. 11). Ms. Stanley submitted that *Golstein* v. *Bishop* was distinguishable for two reasons. The first was that the point before us did not arise in that case because the parties had agreed to this being dealt with by way of preliminary issue. Secondly, the substance of the partnership rule/principle was satisfied in that case because there were only two partners, and they were both before the court. Notwithstanding the force of those points, the case shows that, even in the case of an ordinary partnership, there is room for flexibility.

47 As to misreading ELPA s.16(1), its material provisions are set out at para. 19 above. It expressly provides that the rights and property of an ELP, including all choses in action are held "***by the general partners jointly, upon trust as an asset of the exempted limited partnership*** in accordance with the terms of the partnership agreement." [Emphasis added.] Ms. Stanley compared its wording with the judge's holding (2022 (1) CILR 12, at para. 55) that the property of an ELP is held "***on*** trust for each of the limited partners." [Emphasis added.]

48 She submitted that the judge's holding was clearly a misreading of s.16(1). The legislature has directed that the assets are those of "the partnership." Thus, giving full recognition to the fact that whilst an ELP has no independent legal personality, it provided for there to be a first call on the assets by the creditors of limited partnerships and that the limited partners stand behind those creditors. She argued that s.16(1) is consistent with the preservation of the operation of the partnership accounts rule/principle which enables the court to identify the assets of the ELP which are "actually available" for distribution to limited partners after the creditors had been paid.

49 Drawing on the analogy of the position under a non-partnership trust, she also relied on the statements in the decisions of the High Court of Australia in *Chief Commr. of Stamp Duties* v. *Buckle* (6) and *Commr. of State Revenue* v. *Rojoda* (7). In *Buckle's* case the High Court stated ([1998] HCA 4, at para. 48) that:

> "The entitlement of the beneficiaries is confined to so much of those assets as is available after the liabilities in question had been discharged or provision has been made for them."

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10 The Chancery Report omits paras. 178–214 of the judgment which deal with the claim for damages for breach of the partnership agreement but those paragraphs are included in the neutral citation version available on the BAILII website.

In *Rojoda*, the High Court stated that ([2020] HCA 7, at para. 33):

> "unlike a beneficiary of a fixed trust, it was well established that a partner's interest was not an interest in, or in relation to, any specific asset other than an entitlement to the partner's share of the net proceeds from the sale of each asset at the completion of winding up. In other words, the only right that the partners have, both before and after dissolution, in relation to each asset is a right to the account and distribution after sale of the proceeds of that asset—'not to an individual proportion of a specific article, but to an account: the property to be made the most of, and divided.'"

50 In *Buckle's* case, the High Court also stated ([1998] HCA 4, at para. 47) that in aid of the right of a trustee to reimbursement or exoneration for liabilities properly incurred by the trustee in the administration of the trust, "the trustee cannot be compelled to surrender the trust property to the beneficiaries until the claim has been satisfied." It stated that (*ibid.*, at para. 48), until such reimbursement or exoneration, "it is impossible to say what the trust fund is."

51 Mr. Allison submitted that because an ELP has no separate legal personality the only sensible construction of the words in ELPA s.16(1) is that the general partner of an ELP holds its assets on trust for all the limited partners. The judge was correct so to hold. Because the general partner owes fiduciary duties to all the limited partners, any breaches of those duties must be enforceable by the limited partners themselves. Where there is a claim against the general partner itself it cannot be only the general partner who can institute proceedings. The absence of separate legal personality means that, legally, it is the ELP's constituent limited partners who suffer loss directly and the general partner's fiduciary obligations "must be capable of enforcement by the other partners (just as the obligations of any other trustee are enforceable at the suit of the beneficiaries)."

**Conclusions on the direct claims**

52 We first consider the direct claims brought by the plaintiffs against the GP and then consider the direct claims brought against D2 and D3.

**(a) *Direct claims by a limited partner against the GP***

53 There is considerable force in the considerations of "practicality and policy" relied on by Ms. Stanley and the need to protect the positions of the creditors of an ELP and of the other limited partners. But we have concluded that the differences between ordinary partnerships and ELPs mean that it is not appropriate to require that a direct claim by a limited partner against the GP must always be initially brought by way of a claim for partnership accounts and that it is not necessary to protect the positions

of the creditors and of the other limited partners by requiring this. We have so concluded for the following reasons.

54 First, we have borne in mind two related factors based on the wording of the ELPA. One is the inconsistency of the proposition that such a claim must be by way of partnership accounts with the right given to a limited partner under ELPA s.32(12)(c) to claim "an account." The legislature addressed the question and used the word "account" but not the term "partnership account." We agree with Mr. Allison's submission that it is difficult to see a principled justification for refusing a limited partner a claim to "an account" but permitting such a partner to claim "a partnership account" although there are no mutual and reciprocal rights and obligations between limited partners or fiduciary duties. The other is that ELPA s.16(1) provides that the general partner holds or is deemed to hold "[a]ny rights or property of every description of the exempted limited partnership, including all choses in action … *upon trust as an asset of the exempted limited partnership* in accordance with the terms of the partnership agreement." [Emphasis added.] That in substance (see para. 56 below), provides that the assets of an ELP are held by the general partner on a statutory trust for the limited partners.

55 Secondly, an ELP does not have the mutuality and reciprocity of obligations that are the hallmark of an ordinary partnership. This is because ELPA s.19(2) provides that, absent express provision in the partnership agreement, the limited partners owe no fiduciary duties. The statements in the cases relied on by Ms. Stanley requiring the claim to be brought by way of a partnership account emphasize the reciprocity and mutuality that exists between conventional partners.

56 We turn to Ms. Stanley's submissions based on s.3 of the ELPA that, absent inconsistency with the rules of equity and of common law applicable to partnerships, those rules "shall apply to an exempted limited partnership" and *Re Knight & Tabernacle* (19). We bear in mind the modern purposive approach to statutory interpretation. We consider that, as well as provisions such as ss. 16(1), 19(2) and 32(12)(c), the scheme of the ELPA with the absence of reciprocity and mutuality of rights and obligations is inconsistent with requiring claims by a limited partner to be brought by taking partnership accounts in proceedings to which all the limited partners are party. We accept Mr. Allison's submission that because an ELP has no separate legal personality the only sensible construction of the words in ELPA s.16(1) is that the GP of an ELP holds its assets on trust for all the limited partners. On its own, the judge's use of the phrase "on trust for each of the partners" (2022 (1) CILR 12, at para. 55) may leave some uncertainty as to whether he meant to treat the entitlement of each of the partners as totally individuated, but (*ibid.*, at 61) what he said was

"capable of enforcement by each of the partners to whom [the GP] owes duties individually."

57 Because a trust also has no separate legal personality, thus making the position similar to the statutory trust created by ELPA s.16(1), we also regard the position of a claim by a beneficiary of a trust against the trustee as important. The beneficiary of a subsisting trust including a discretionary trust is entitled to bring a claim against the trustee to recover loss suffered by the trustee's breach of trust, but the remedy is for an order to restore to the trust what ought to have been there: see *Target* v. *Redferns* (38); *Lewin on Trusts*, 20th ed., para. 21–046 (2020) and *Snell's Equity*, 34th ed., paras. 2–003 – 2–004, and 21–046 (2022).

58 In *Target* v. *Redferns* ([1996] A.C. at 436D–E), Lord Browne-Wilkinson stated that the rule developed by equity reflected the fact that while each beneficiary had the right to claim, "no one beneficiary was entitled to the trust property" and there was a "need to compensate all beneficiaries for the breach." He had earlier stated (*ibid.*, at 434C–D) that an order to restore was "the only way in which *all* beneficiaries' rights [could] be protected" [Emphasis added]. The remedy thus ensured that all the beneficiaries' rights were protected and that the beneficiary who issued the proceedings did not steal a march on the others and scoop the pool. There is no inconsistency between such an order and what was stated in *Chief Commrs. of Stamp Duties* v. *Buckle* (6) and *Rojoda* (7) because all that is ordered at that stage is restoration of the fund. Should there be a claim against the ELP, it can then be determined. There is also no inconsistency between such an order and what was said by the High Court of Australia in *Rojoda* about the nature of the partnership trust in an ordinary partnership and the difference between that and that of the beneficiary of a fixed trust because ordering restoration of the fund does not give an individual limited partner an interest in any specific asset.

59 We consider that this approach and remedy is equally applicable in the case of the statutory trust created by s.16(1) ELPA. We have had regard to the two factors based on the wording of the ELPA referred to at paras. 54 and 55 above; the inconsistency of the proposition that such a claim must be by way of a partnership account with the right expressly given to a limited partner under ELPA s.32(12)(c) to claim "an account" and the absence in an ELP of the mutuality and reciprocity of obligations that is the hallmark of an ordinary partnership. Whilst, as Ms. Stanley submitted at paras. 20–25 of her reply skeleton by reference to *Rojoda*, assets held by a partner of an ordinary partnership are also held on trust for the partnership, these factors lead to the conclusion that the partnership accounts rule/principle is inconsistent with the ELPA and the judge was correct in his conclusion. Mr. Allison accepted that it was likely that the plaintiffs could not have as a remedy equitable compensation payable directly to them because that took no account of the other limited partners

and of the ELP's creditors. We have concluded that in proceedings against the GP, a limited partner can recover for loss suffered by the breach of the statutory trust but that the remedy would be the restoration of the ELP's fund thus compensating the direct losses suffered by all the constituent limited partners. We discuss further aspects of ordering the restoration of the fund and its doctrinal underpinning when considering the plaintiffs' direct claims against D2 and D3. The important point is that while the individual partners, like the beneficiaries of a discretionary trust, have a direct claim, if established, the remedy for that claim reflects the fact that no one partner is entitled to all of the fund.

60 This remedy prevents a limited partner claimant from benefitting alone from any recovery either at the expense of the other limited partners or of the ELP's creditors. It thus directly meets the "stealing a march" and "scooping the pool" elements of the practical and policy reasons relied on by Ms. Stanley, the substantive elements of her case for requiring a claim by a limited partner against the GP to be by way of partnership accounts from the outset. As we have stated, *Golstein* v. *Bishop* (12) shows that even in the case of an ordinary partnership there is room for flexibility and that a trial of the merits of the claim may be held before taking a partnership account. It suggests that where there is no prejudice either to the creditors of the partnership or to other third parties it is possible to have a trial of the merits of a claim brought by a partner before a partnership account is taken.

61 We consider that the problem of multiplicity of actions and what Mr. Chapman referred to as an "ungated litigation superhighway" can be dealt with by robust case management. Later claims brought in a single jurisdiction can be stayed or consolidated and ordered to be heard together. Where claims are brought in more than one jurisdiction, stays or anti-suit injunctions can also be used to avoid the problems identified by Ms. Stanley and Mr. Chapman.

62 Mr. Allison's description (see skeleton, at para. 89) of the insistence on the joinder of all the limited partners from the outset as "unedifyingly formalistic" may put it too highly. We, however, consider that insistence that a claim for partnership accounts always be made at the outset reflects an entirely technical procedural approach. In her responses to questions by the court, Ms. Stanley at one stage suggested that the plaintiffs in effect should start again and now seek the taking of partnership accounts and that this either be by the court now directing further pleadings or an inquiry to identify what is being alleged by the limited partners. She argued that the taking of partnership accounts occurs "in a much more court managed process than a fraud trial where anything goes …"

63 Our rejection of the submission that the direct claims are defective in not at the outset joining all partners and seeking partnership accounts does not mean that the court cannot direct that there be such a procedure at a

later stage as part of its case management powers if that proves necessary. If, after the merits of the plaintiffs' claims against the GP have been determined, it appears that an order to restore the fund should be made but that, given the GP's wrongdoing, steps such as placing the assets in escrow, appointing a receiver, or taking partnership accounts are necessary, the court can make appropriate directions. Alternatively, if the plaintiffs so apply, we would allow them now to add a prayer for the taking of partnership accounts to their pleading, but that such accounting should take place only after the resolution of the issues in their current claims and only if, at that time, it appears necessary.

64 In summary, for the reasons we have given, we dismiss the GP's appeal against the judge's refusal to strike out the plaintiffs' direct claims against the GP. The consequence is that the plaintiffs may bring their direct claim against the GP. We wish to make it clear that, in the event of success, the likely remedy would be an order to restore the trust fund rather than equitable compensation payable directly to the relevant limited partner.

**(b)** ***Direct claims by a limited partner against third parties such as D2 and D3***

65 We have stated that there was no application by D2 and D3 to strike out the direct claims against them on the merits but they submit that the plaintiffs do not have standing to bring the direct claims against them and ought to have brought the claims against the GP seeking the taking of partnership accounts.

66 The question is whether, if D2 and D3 are held liable to the plaintiffs for breach of their statutory, equitable and other obligations, it is open to the court to order that those defendants restore the fund rather than pay the plaintiffs. If the court is not able to order this, there will be a risk of prejudice to the creditors of the ELP and/or to the other limited partners in the ways we have discussed in the context of claims against the GP but concluded it did not exist in that context. Indeed, since different limited partners may bring claims against different third parties, there may be a multiplicity of both plaintiffs and defendants and the risk of chaos referred to by Ms. Stanley and Mr. Chapman might well be greater. That risk would be avoided by a derivative action where the requirements of s.33(3), discussed at paras. 94–98 below, are satisfied.

67 Ms. Stanley submitted that it is not possible to order D2 and D3 to restore the fund and that the only way that TPF would be entitled to anything is if the plaintiffs' claims are made on its behalf and are thus derivative claims. During an exchange primarily about the claims against the GP, it was put to Mr. Allison that against the other defendants he might not be able to get an order restoring the trust. His response was "arguably

not" but it is not altogether clear whether the exchanges related to the direct or the derivative claims against D2 and D3.

68 Since D2 and D3 did not apply to strike out the direct claims against them, strictly the question of whether it is possible for the court to order D2 and D3 to restore the fund is one which falls for determination after the merits of the claims against them have been determined. Although we did not hear full argument on this question, in the light of the points that were made, we consider it appropriate to give our preliminary view on the question. We consider that the plaintiffs have a good arguable case that, where third parties are liable for breaches such as those claimed against D2 and D3, the court may order those defendants to restore the fund rather than pay the plaintiffs and thus avoid the risk of prejudice to other limited partners or creditors.

69 As in the case of a claim against the general partner, the starting point is the position of a claim by a beneficiary of a trust. It is clear that the interest of the beneficiary of a discretionary trust is enforceable against a third party who received trust property which the trustee did not have authority to transfer and the third party knew enough to make it unconscionable to retain the asset for his own benefit: see *Lewin on Trusts*, 20th ed., para. 21–046, at 901 (2020), and *Snell's Equity*, 34th ed., paras. 2–003 – 2–004, at 22–23, and para. 21–046, at 650 (2022).

70 *Snell* also states (*op. cit.*, para. 21–045, at 650) that "the beneficiary's only right would be to have the asset or its proceeds reinstated to the trustee" (to the same effect, see para. 22–005, at 655–656, and para. 30–015, at 845–846). The reason given is that the beneficiary "could not compel the third party to transfer the asset directly to himself since this would give him a greater equitable right against the third party than he had against the trustee …" In para. 2–004, at 22–23 of *Snell*, it is stated that "the third party's duty is to restore the trust asset to the properly appointed trustee" and that this would happen "if the original trust involved continuing duties to manage a fund and if the beneficiary did not have the entire beneficial interest in the trust asset." Nolan, "Equitable Property" (2006) 122 LQR 232, at 242–243 states that the cases on the rights of a beneficiary against the recipients of misapplied trust assets all acknowledge that a recipient is bound to restore the assets and their proceeds to the relevant trustees, or else transfer them at the direction of a beneficiary or beneficiaries who, being absolutely entitled to the assets in equity, may terminate the trust and direct such a transfer. He states (*op. cit.*, at 255) that the cases provide a doctrinal basis for actions to restore the integrity of a pool of assets held in trust, should it be depleted without authority.

71 That doctrinal basis explains why, given the analogy between a non-partnership trust, an ELP with no separate legal personality, and the

statutory trust imposed by s.16(1) of the ELPA, it is possible to order third parties such as D2 and D3 to restore the fund where the claim against them succeeds. The analogy rests on the fact that, in cases of knowingly assisting a trustee in a fraudulent and dishonest disposition of the trust property, although the third party is not in fact a trustee, he is made liable in equity "as if he were" a trustee: *Selangor United Rubber Estates Ltd.* v. *Craddock* (33) ([1968] 1 W.L.R. at 1580 and 1582), citing Lord Esher, M.R. in *Soar* v. *Ashwell* (36) ([1893] 2 Q.B. at 394–395), and Lord Selborne, L.C. in *Barnes* v. *Addy* (4) (9 Ch. App. at 251). This reflects the fact that it is the fund which has suffered the loss and, in the words of Lord Browne-Wilkinson in *Target* v. *Redferns* (38), an order to restore is "the only way in which *all* beneficiaries' rights" could be protected ([1996] A.C. at 434).

72 For these reasons, had D2 and D3 applied to strike out the plaintiffs' direct claims against them, our preliminary view is that the objections raised to the plaintiffs' standing to bring the claims are unfounded. The consequence is that the plaintiffs may bring these claims against D2 and D3. It will be for the court hearing the claims to decide whether they are in fact made out on the merits and, if they are, whether, in the circumstances of this case, an order to restore the fund should be made and, given that the GP would be implicated in the wrongdoing, steps such as placing the assets in escrow, the appointment of a receiver, or the taking of partnership accounts are necessary.

**The derivative claims**

73 We turn to consider the derivative claims brought against D1 and D2–4. This is the first occasion on which one or more limited partners of a Cayman Islands ELP have sought to bring a derivative claim pursuant to s.33(3) ELPA and accordingly we shall proceed to review the approach adopted by the judge and consider if we can provide any guidance for the future.

74 We begin with a brief discussion of derivative claims generally before turning to consider the interpretation of s.33(3). We shall then consider a number of specific matters of principle raised by the parties before turning to apply our conclusions on the law to the facts of this case.

**(a) *Derivative claims in general***

75 The general rule is that the only person who can bring an action against another who has caused injury or damage is the person who has suffered that injury or damage. As the Court of Appeal put it in the leading case of *Prudential Assur. Co. Ltd.* v. *Newman Indus. Ltd.* (28) ([1982] 1 Ch. at 210):

> "A derivative action is an exception to the elementary principle that A cannot, as a general rule, bring an action against B to recover

damages or secure other relief on behalf of C for an injury done by B to C. C is the proper plaintiff because C is the party injured, and, therefore, the person in whom the cause of action is vested. This is sometimes referred to as the rule in *Foss v Harbottle* (1843) 2 Hare 461 when applied to corporations, but it has a wider scope and is fundamental to any rational system of jurisprudence."

76 The court went on to outline an exception to the rule in *Foss* v. *Harbottle* (11) in the following terms (*ibid.*, at 211):

"There is an exception to the rule where what has been done amounts to fraud and the wrongdoers are themselves in control of the company. In this case the rule is relaxed in favour of the aggrieved minority, who are allowed to bring a minority shareholders' action on behalf of themselves and all others. The reason for this is that, if they were denied that right, their grievance could never reach the court because the wrongdoers themselves, being in control, would not allow the company to sue."

77 A further helpful general description of a derivative claim in the context of companies is to be found in the judgment of Lewison, J. in *Iesini* v. *Westrip Hldgs. Ltd.* (17) ([2009] EWHC 2526 (Ch), at para. 73):

"I should begin by saying a little about derivative claims generally. In the first place the new code has replaced the common law derivative action. A derivative claim may 'only' be brought under the [Companies Act 2006]. As section 260 (1) makes clear a derivative claim is one in which the cause of action is vested in the company, but where the claim is brought by a member of the company. This reflects the old law in which a derivative action was an exception to the general principle (known as the rule in *Foss v Harbottle* … that where an injury is done to a company only the company may bring proceedings to redress the wrong. Allied to this principle was the principle that whether a company should bring proceedings to redress a wrong was a matter that was to be decided by the company internally; that is to say by its board of directors, or by a majority of its shareholders if dissatisfied by the board's decision. The court would not second guess a decision made by the company in accordance with its own constitution. The exception to these principles was necessitated where the company's own constitution could not be properly operated. If the wrongdoers were in control of the company (because they were a majority of the shareholders) they would not in practice vote in favour of taking proceedings against themselves, even though the taking of proceedings would be in the company's best interests …"

78 Derivative claims are not restricted to companies. They can also be brought, for example, in connection with trusts and limited partnerships.

79 In relation to trusts, it is well-established that, although in general terms the only person who may bring an action against a third party on behalf of a trust is the trustee, a beneficiary can, in special circumstances, bring a derivative action so as to stand in the place of the trustee. In ***Roberts*** v. ***Gill & Co. Solicitors*** (30), Lord Collins of Mapesbury summarized the position as follows ([2011] 1 A.C. 240, at para. 46):

> "The cases go back to the 18th century, and many of them were reviewed in ***Hayim v Citibank NA*** [1987] AC 730. The special circumstances which were identified in the earliest authorities as justifying a beneficiary's action were fraud on the part of the trustee, or collusion between the trustee and the third party, or the insolvency of the trustee, but it has always been clear that these are merely examples of special circumstances, and that the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy …"

80 To like effect is the observation of Lord Walker of Gestingthorpe (***ibid.***, at para. 110) (omitting references):

> "There is ample authority, comprehensively reviewed in the judgment of Lord Collins JSC, as to the need for special circumstances before the court will countenance a derivative action. Such actions are now relatively common in cases concerned with mismanaged companies, and in many jurisdictions actions by or on behalf of minority shareholders are now regulated by a statutory code … Derivative actions by beneficiaries under inter vivos trusts or wills are less common … But in all these cases the unifying factor—what has to be special about the circumstances—is that the derivative action is needed to avoid injustice …"

81 A helpful summary of the position in relation to trusts under the law of England and Wales is to be found in ***Lewin on Trusts***, 20th ed., at paras. 47–006 and 47–008, at 1024–1026:

> "47–006. However, as an alternative to proceedings brought in the name of trustees, a beneficiary may, sometimes, bring an action in his name on behalf of the trust against a third party. The fact that the action is brought in the name of the beneficiary rather than the name of the trustee does not alter its character. The action is a derivative action in which the beneficiary stands in the place of the trustees and sues in right of the trust, and does not enforce duties owed to him rather than the trustees; a beneficiary can be in no better position than trustees carrying out their duties in a proper manner …

> 47–008. A beneficiary can bring a derivative action only in special circumstances, *for example circumstances which tend to disable the trustees from suing (as where their acts and conduct with reference to the trust fund are impeached), or circumstances rendering it difficult or inconvenient for the trustees to sue, as where there is a conflict between their interest and duty.* Special circumstances are not confined to circumstances of these kinds. The guiding principle is that there must be exceptional circumstances, which embrace a failure, excusable or inexcusable, by the trustees in the performance of a duty to the beneficiaries to protect the trust estate, or to protect the interests of the beneficiaries in the trust estate. The special circumstances relied on must have something to do with the willingness or ability of the trustee or alleged trustees to bring the action." [Emphasis added]

As can be seen from the emphasized passage, circumstances where the trustees are inhibited from suing because their own conduct in relation to the trust is impeached or they are under a conflict of interest are leading examples of "special circumstances."

82 Turning to English limited partnerships, the question of whether and, if so, in what circumstances a limited partner can bring a derivative claim on behalf of the limited partnership arose in *Henderson* (13) referred to above in para. 31. As we have already stated, although by no means identical, there are similarities between an English limited partnership and an ELP. In particular, neither is a separate legal entity and, as in an ELP, the limited partners in an English limited partnership may not take part in the management of the partnership business which is to be left in the exclusive hands of the general partner. Thus, in the ordinary way, a limited partner cannot sue a third party in the name of the limited partnership; such action can only be taken by the general partner.

83 In *Henderson*, a majority of limited partners instituted derivative proceedings on behalf of the partnership against the general partner and the manager of the partnership (who had been appointed as manager by the general partner on behalf of the partnership). The manager was a sister company of the general partner. The claims sought compensation in respect of various alleged breaches of duty by both the general partner and the manager. It was directed that a preliminary issue should be tried as to whether the claimants could bring derivative claims on behalf of the partnership against the general partner and the manager, and it was this issue which came before Cooke, J.

84 For reasons discussed below, Cooke, J. held that the limited partners could not bring a derivative claim against the general partner. However, having referred to *Roberts* v. *Gill* (30) and to the equivalent passage in the 18th edition of *Lewin* (2007) to that referred to at para. 81 above, he held that special circumstances existed which enabled the derivative claim to be

brought against the manager. The special circumstances were that the general partner had an irremediable conflict of interest because it was a sister company of the manager and was therefore not in a position to be seen fairly to determine whether to sue the manager. Cooke, J. therefore allowed the derivative claim against the manager to proceed, but went on to hold that, under the relevant provision of the English statute, the limited partners would lose their limited liability as a consequence.

85 In summary, Cooke, J. applied the "special circumstances" test concerning trusts (as summarized in *Lewin*) to limited partnerships.

86 Although the ability to bring a derivative action in respect of a company is now governed by statute in England and by the Grand Court Rules in this jurisdiction, the principles governing such claims were developed as a matter of common law. Similarly, the requirement of special circumstances in connection with trusts and limited partnerships has been developed entirely by the courts.

87 The position is different in relation to ELPs because of the terms of s.33(3) of the Act and accordingly we turn next to consider the correct interpretation of that provision.

**Interpretation of s.33(3) of the ELPA**

88 Unlike in the case of trusts or English limited partnerships, the legislature has prescribed in s.33 ELPA when a derivative action may be brought in respect of an ELP. For convenience we repeat the relevant provisions of s.33 at this stage:

> "(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.
>
> (2) …
>
> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings."

As can be seen, the key requirement is that the general partner must have "without cause, failed or refused to institute proceedings."

89 Before the Grand Court, the defendants argued that, when considering s.33(3), the court had to apply principles derived from cases dealing with derivative claims in other contexts. The judge rejected this submission. His conclusion is expressed in his judgment (2022 (1) CILR 12, at paras. 98–101):

> "98 The terms of s.33(3) ELPA which allows a limited partner in an ELP to bring proceedings on behalf of the ELP if the general partner has *without cause failed or refused* to do so has no language requiring permission or special circumstances. In my view the principles taken from the common law or equity for bringing derivative claims whether as regards companies, trusts, limited partnerships or associations are not applicable.
>
> 99 In my judgment s.33(3) is *sui generis* and is not subject to the rules relating to permission or for special circumstances for derivative actions in other contexts. I accept Mr. Allison, Q.C.'s submission that to this extent it can be said to 'occupy the field' in the Cayman Islands with respect to ELPs and there is no room for a case-by-case judge led formulation of a common law or equitable test.
>
> 100 I have, in coming to this view, had regard to the principles Ms. Stanley, Q.C. and Mr. Chapman, Q.C. referred me to relating to cases which dealt with failures or refusals to bring claims in other contexts, for example where the board of the company or the trustee had the relevant inhibition which prevented a decision to bring claims. Whilst these principles provide helpful guidance, the company and trusts law cases to which I was referred do not directly apply to the position in this case which involves the application of a specific statutory test for Cayman Islands ELPs.
>
> 101 I note, however, that the common thread running through those cases is that where the authorized decision maker is inhibited, the court may permit, in the interests of justice, derivative claims." [Emphasis in original.]

90 On appeal, the defendants have argued that the judge fell into error in stating (*ibid.*, at paras. 98 and 99) that the principles applicable in other contexts, such as trusts and companies, are not applicable in relation to the statutory test. At para. 68 of her skeleton argument, Ms. Stanley submitted that "without cause" should be interpreted by reference to the well-established tests applied in all other derivative actions. Similarly, at para. 8 of his skeleton argument, Mr. Chapman submitted that the statutory gateway prescribed by s.33 did not oust the ordinary rules of common law and equity. On the contrary, it provided a *further* statutory hurdle or threshold that had to be met, together with those imposed by the common law and equity, before a derivative claim would be permitted. He submitted that this was a fundamental error in the judge's approach.

91 Conversely, in his skeleton argument, Mr. Allison submitted at paras. 124 and 125 that the judge was correct to hold that s.33(3) "occupies the field" and that there was no scope or reason to import any "special circumstances" test or other common law or equitable principles that apply

to derivative claims in respect of other entities or structures. There was no reason to imply any requirements for derivative claims beyond those explicitly mentioned in s.33(3).

92 It seems to us that, during the course of the hearing, both sides rather modified their submissions and were eventually not very far apart in relation to the proper construction of s.33(3). Thus Mr. Chapman (who by agreement with Ms. Stanley presented the main argument on the derivative claims on behalf of all the defendants) conceded that, to the extent that his written submissions had suggested that one imported wholesale the common law and equitable principles on derivative claims, this might go too far. He accepted that one had to apply the statutory test set out in s.33(3), but submitted that this test was consistent with the established principles and that one derived assistance from those principles when construing and applying the statutory test.

93 Similarly, Mr. Allison accepted that, when applying the statutory test and determining whether the failure by the general partner to institute proceedings was "without cause," one could have regard to the principles established in other contexts, such as whether special circumstances existed.

94 In our judgment, in circumstances where the legislature has established a statutory criterion for bringing a derivative action in respect of an ELP, the courts are duty bound to apply that statutory test. The test cannot be replaced by common law and equitable principles developed in other contexts even if, in the absence of a statutory test, the courts would no doubt have applied those principles to an ELP. Nor can those principles form an additional threshold beyond the statutory test, as submitted by Mr. Chapman in his skeleton argument referred to at para. 90 above.

95 The statutory test is in general and imprecise terms and leaves open how the test should be applied in practice. However, we think that the expression "without cause" must carry the implication of "good" cause. The legislature cannot have intended that a decision for ***any*** cause, no matter how inhibited or conflicted the decision-maker, would be sufficient to prevent a derivative action. This is so notwithstanding the fact that, as originally enacted, the legislation referred to "good cause" whereas, in its current form, the word "good" is omitted. No guidance as to the reason for this change is to be found in the legislative materials produced in relation to the revision of the statute and we cannot attribute any significance to the change.

96 In these circumstances, we are of the view that the court is entitled to have regard to and may derive assistance from the developed principles in other contexts. In particular, given the existence of the statutory trust imposed by s.16(1) of the ELPA (namely that the general partner holds the property of the ELP "upon trust as an asset of the exempted limited

partnership in accordance with the terms of the partnership agreement"), the court is likely to derive assistance from considering whether special circumstances (as established in the contexts of trusts and English limited partnerships) exist.

97 If special circumstances exist, this is likely to assist the court in deciding whether a general partner's decision not to institute proceedings is "without cause." Indeed, in opening his oral submissions on appeal, Mr. Allison (rightly in our view) accepted that, if a general partner were under a relevant inhibition or conflict of interest—concepts which emerge strongly from consideration of special circumstances as stated in the emphasized passage from para. 47–008 of *Lewin* quoted at para. 81 above—his decision would necessarily and unavoidably be "without cause."

98 We emphasize, however, that the court's duty is to apply the statutory test of "without cause"; it is not sufficient simply to consider whether there are special circumstances and, if so, then to allow a claim under s.33(3). Consideration of whether there are special circumstances, if it assists at all, is simply a step on the road to determining the statutory test. If the court decides that the facts would satisfy the special circumstances test, it must nevertheless go on and consider whether they therefore satisfy the "without cause" test in s.33(3). Conversely, we do not rule out the possibility of a case in which the facts enable the court to find that the general partner's decision is "without cause" without consideration of whether there are special circumstances. The two tests are not to be equated, although we envisage that consideration of whether there are special circumstances is likely in most cases to be of considerable assistance in determining whether the decision is "without cause." Indeed, it was common ground before us that a decision by a decision-maker which is made under a relevant inhibition will be a decision "without cause."

99 Although there is some ambiguity and possible inconsistency between paras. 98 and 99 of the judge's judgment on the one hand and para. 100 on the other, we do not see the judge's decision on this aspect as being essentially any different from our own. Paragraphs 98 and 99, when read in context, simply state that the court's duty is to apply the statutory test, not the common law and equitable principles, but para. 100 goes on to explain that, although they are not directly applicable, these principles provide helpful guidance. The fact that such helpful guidance may be obtained is emphasized by the fact that, when he goes on to consider the application of the statutory test to the facts of this case, the judge concentrates exclusively on the fact that, in his view, the GP was subject to an inhibition because of its conflict of interest. Inhibition is not a word which appears in s.33 but, as the judge correctly states at para. 101 of his judgment, it is a concept which is a common thread in the cases which

allows the court to permit derivative claims in other contexts in the interests of justice.

100 Having expressed our view as to the correct interpretation of s.33(3), we turn next to consider a number of supplementary points which were argued before us in relation to the statutory test.

**Procedure for determining the statutory test**

101 Unlike in the case of companies, there is no requirement under s.33 for a limited partner to seek leave from the court to bring derivative proceedings under s.33(3). It follows that a limited partner is free to commence derivative proceedings without leave.

102 In this respect, the position is the same as derivative claims in respect of companies prior to the introduction by statute and/or rules of court of a requirement for leave and is the same as it remains in respect of trusts and English limited partnerships. But, despite the historical lack of a requirement for leave in respect of companies, it was established as long ago as 1982 in *Prudential* (28) that the question of whether a plaintiff should be permitted to bring a derivative action on behalf of a company should be determined at an early stage rather than left until trial. In *Prudential,* the defendant applied by summons to have heard as a preliminary issue whether the plaintiff was entitled to maintain the derivative action. The judge dismissed the summons on the ground that it was more convenient to decide the issue after the action had been heard. The Court of Appeal was very critical of this decision saying ([1982] Ch. at 221):

> "First, as we have already said, we have no doubt whatever that Vinelott J. erred in dismissing the summons of May 10, 1979. He ought to have determined as a preliminary issue whether the plaintiffs were entitled to sue on behalf of Newman by bringing a derivative action. It cannot have been right to have subjected the company to a 30-day action (as it was then estimated to be) in order to enable him to decide whether the plaintiffs were entitled in law to subject the company to a 30-day action. Such an approach defeats the whole purpose of the rule in *Foss v. Harbottle* and sanctions the very mischief that the rule is designed to prevent."

103 Following *Prudential*, it has been the practice that a plaintiff's standing to bring a derivative action is determined at an early stage in the proceedings rather than the issue being left to trial, with all the disadvantages which that course would bring as described in *Prudential.* Where there is a leave requirement (*e.g.* for companies) the issue is dealt with on the application for leave. Where there is no requirement to obtain leave, the matter is traditionally dealt with on an application by the defendant to strike out the proceedings on the ground of a lack of standing

on the part of the plaintiff or by the court ordering, at the request of the defendant, the trial of a preliminary issue as to whether the plaintiff has the necessary standing to bring a derivative action.

104 The practice was conveniently summarized by Chadwick, P. in this court in the case of *Autumn Hldgs. Asset Inc.* v. *Renova Resources Private Equity Ltd.* (2) (2017 (2) CILR 136, at para. 26), where he quoted with approval from the judgment of Ribeiro, P.J. in the Hong Kong Final Court of Appeal in the case of *Waddington Ltd.* v. *Chan Chun Hoo Thomas* (41) where that learned judge said ([2009] 2 BCLC 82, at paras. 13–14):

> "[13] … Procedurally, there is no requirement at common law for a person seeking to sue derivatively first to obtain the leave of the court …
>
> [14] The time honoured practice at common law is for the plaintiff to issue proceedings 'on behalf of himself and the other shareholders other than the defendants', naming the company on whose behalf the proceedings are brought as one of the defendants. A challenge to the plaintiff's locus generally takes the form of an application by the relevant defendants to strike out the claim or to have the court determine as a preliminary issue that the plaintiff has no locus to sue on the company's behalf."

105 In our judgment, this is also the appropriate procedure to be followed in relation to proceedings brought under s.33(3). The subsection is clear that a limited partner may only *bring* a derivative claim if the general partner has refused or failed to do so without cause. It is therefore necessary for the court to decide at an early stage of the proceedings whether the limited partner can indeed bring himself within s.33(3) and therefore "bring" the claim. For the reasons set out so graphically in *Prudential* (28), this is not a matter which should normally be left until trial. We agree therefore that a defendant wishing to challenge the right of a limited partner to have instituted proceedings on behalf of an ELP pursuant to s.33(3) should do so either by applying to strike out the proceedings on the ground of a lack of standing (as was done in this case) or by applying for the court to direct the trial of a preliminary issue as to the limited partner's ability to bring himself within subs. (3).

106 The question then arises as to the approach which the court should adopt on such an application. In the first place, it is clear that the outcome cannot depend on which of the two courses a defendant chooses to follow. The court's approach must therefore be the same whether there is a strike out application or the trial of a preliminary issue.

107 The judge held that, as this was a strike out application, the normal approach on such an application should be adopted, with the result that the defendants had to show that it was certain that, at trial, the plaintiffs would

fail to bring themselves within the terms of s.33(3); see *Hughes* v. *Colin Richards & Co.* (15), cited with approval in *In re SPhinX Group* (37) (2010 (1) CILR 234, at para. 37). The burden lay upon the defendants to show this and there was no burden on the plaintiffs to show that they came within s.33(3). If there was an arguable case that at trial the plaintiffs would be able to satisfy the requirements of that subsection, that was sufficient to enable the case to proceed.[11] It would only be at trial that it would be finally resolved whether the plaintiffs had brought themselves within s.33(3).[12] Although at times the judge used slightly inconsistent language about his approach,[13] we are satisfied that he essentially applied the test we have just described and which he spelt out at 2022 (1) CILR 12, para. 33. Mr. Allison submitted that the judge had followed the right approach.

108 Mr. Chapman, on the other hand, submitted that this was the wrong approach. In his submission, the onus lay upon the plaintiffs to satisfy the court that they came within s.33(3), *i.e.* that the GP had refused or failed to institute proceedings without cause.

109 In other contexts, the onus lies upon a plaintiff to satisfy the court that he should be permitted to bring a derivative action. Thus in *Prudential* (28), after the passage cited above, the Court of Appeal went on to say ([1982] 1 Ch. at 221–222):

> "… [W]e do not think that the right to bring a derivative action should be decided as a preliminary issue upon the hypothesis that all the allegations in the statement of claim of 'fraud' and 'control' are facts, as they would be on the trial of a preliminary point of law. In our view, whatever may be the properly defined boundaries of the exception to the rule, the plaintiff ought at least to be required before proceeding with his action to establish a prima facie case (i) that the company is entitled to the relief claimed, and (ii) that the action falls within the proper boundaries of the exception to the rule in *Foss v. Harbottle.*"

This approach has been followed in this jurisdiction in relation to companies; see *Top Jet Enterprises Ltd.* v. *Sino Jet Holding Ltd.* (40) (2018 (1) CILR 18, at para. 29, *per* Segal, J.).

110 It is not entirely clear what standard the Court of Appeal in *Prudential* was intending to set by referring to a plaintiff "at least" being required to establish a "prima facie" case that he falls within the exception to the rule in *Foss* v. *Harbottle* (11). Some assistance can be derived from

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11 2022 (1) CILR 12, paras. 33, 119, 123.
12 2022 (1) CILR 12, paras. 33(ii), 138.
13 Thus at 2022 (1) CILR 12, para. 102 the judge refers to "good arguable case" and paras. 106 and 136 might be said to suggest that he was in fact making a clear finding that D1 had failed without cause to bring proceedings rather than that it was simply arguable.

the subsequent judgment of Knox, J. in *Smith* v. *Croft (No. 2)* (35) ([1988] Ch. at 138–139), approved in *Top Jet* (2018 (1) CILR 18, at para. 30) as follows:

> "My conclusion is that it is the question stated by the Court of Appeal that has to be decided as a preliminary matter, that it is a special form of procedure concerned with giving sensible operation to the rule in *Foss v Harbottle* … and which is concerned with avoiding the Scylla and Charybdis, on the hand of having a preliminary issue which effectively requires one to try the whole action where the rules serves no useful purpose, and on the other side of the strait, of assuming that everything the plaintiffs allege is necessarily correct as a matter of fact, which is of course the technique the court adopts when it has was called a strict demurrer. The Court of Appeal has laid down a halfway house for this very special type of case, one in which the legal issues in this particular case are sufficiently well defined for the parties to be able to argue them."

In other words, the approach should be a halfway house between a strike out application and a full trial.

111 When pressed during the hearing as to what he thought the Court of Appeal meant by a *prima facie* case, Mr. Allison suggested that it meant a good arguable case and that was in fact an expression the judge used at para. 102 of his judgment, despite his references (see para. 107 above) to mere arguability being the test. This court recently had occasion to consider what was meant by the expression "good arguable case" in *Scully Royalty Ltd.* v. *Raiffeisen Bank Intl. Ltd.* (32) (2022 (1) CILR 118, at paras. 47–52). In particular, the court approved the observation of Mustill, J. in *Ninemia Maritime Corp.* v. *Trave Schiffahrts G.m.b.H. und Co., The Niedersachsen* (24) ([1983] 2 Lloyd's Rep. at 605) where he said:

> "I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes to have a better than 50 per cent chance of success."

112 During the hearing, the court invited counsel to ascertain whether recent English decisions in relation to derivative actions offered any assistance as to the standard to be applied when considering whether the grounds for permitting a derivative action had been made out. However, counsel's researches were unable to come up with anything of significant assistance.

113 Mr. Chapman referred us to the decision of the English Court of Appeal in *Barrett* v. *Duckett* (5), which was decided before the requirement for leave in relation to companies was introduced by statute. This was a case where B & D each held a 50% shareholding in a company. B instituted

a derivative action against D and others on behalf of the company alleging wrongdoing by D and others, D being the sole director of the company. The defendants applied to strike out the claim on the basis that it was not a proper case for a derivative action. In the course of his judgment, Peter Gibson, L.J. sought ([1995] 1 BCLC at 249) to summarize the principles in relation to derivative actions concerning companies in the following terms (omitting passages not relevant for our purposes):

> "The general principles governing actions in respect of wrongs done to a company or irregularities in the conduct of its affairs are not in dispute:
>
> 1. The proper plaintiff is prima facie the company.
>
> 2. …
>
> 3. There are however recognised exceptions, one of which is where the wrongdoer has control which is or would be exercised to prevent a proper action being brought against the wrongdoer: in such a case the shareholder may bring a derivative action (his rights being derived from the company) on behalf of the company.
>
> 4. When a challenge is made to the right claimed by a shareholder to bring a derivative action on behalf of the company, it is the duty of the court to decide as a preliminary issue the question whether or not the plaintiff should be allowed to sue in that capacity.
>
> 5. In taking that decision it is not enough for the court to say that there is no plain and obvious case for striking out; it is for the shareholder to establish to the satisfaction of the court that he should be allowed to sue on behalf of the company.
>
> 6. …"

114 Mr. Chapman relied in particular on the second part of 5 above, namely that it is for the shareholder to establish to the satisfaction of the court that he should be allowed to sue on behalf of the company. He submitted not simply that this places the onus on the shareholder, which we accept, but that it means that the shareholder must establish his ability to sue on the balance of probabilities. He says that *Barrett* changed the test set out in *Prudential* (28), with its reference to a *prima facie* case.

115 We are unable to place such weight on the decision in *Barrett*. Peter Gibson, L.J. was simply recording general principles, which were not in dispute. We do not think that it assists on how a shareholder satisfies the court that he should be allowed to sue on behalf the company. What is made clear, however, in the first part of 5 above is that the court should not apply the normal strike out test. It is therefore inconsistent with the approach which the judge adopted in the present case.

116 It is perhaps of note that the relevant provisions of the English Companies Act set out a number of factors which the court should consider when deciding whether it should allow a derivative action, but the matter is ultimately left to the court as a matter of evaluation. In our judgment, that approach is consistent with the observation of Lord Collins ("the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy") and Lord Walker ("the unifying factor—what has to be special about the circumstances—is that the derivative action is needed to avoid injustice") in *Roberts* v. *Gill* (30) quoted above in relation to special circumstances.

117 It is clear that, whether the matter is being considered on a strike out application or on the trial of a preliminary issue, the court should not hold a mini trial in order to decide whether the criterion in s.33(3) is met. However, it should, as in the present case, permit the parties to adduce affidavit evidence on the topic. Ultimately, the court must then reach a view on the material provided to it.

118 Whilst reference to a "good arguable case" may in some cases be a helpful criterion, in our judgment the task is ultimately an evaluative one. The court must decide, on the basis of the material before it, whether the likelihood of the general partner having failed or refused to institute proceedings without cause is sufficient to lead the court to conclude that a derivative action should be permitted in the interests of justice. In reaching this evaluative conclusion, the court will no doubt have regard, *inter alia*, to the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.

119 For these reasons, we respectfully disagree with the judge that, because this was a strike out application, the burden was on the defendants and he only had to consider whether it was merely arguable that the plaintiffs met the statutory criterion in s.33(3). That was to set the bar too low. It follows that, as Mr. Chapman submitted, he erred in this respect.

120 However, we have before us the same affidavit evidence that was before the judge and accordingly we propose to reach our own decision, applying the approach we have just described.

**Timing**

121 As occurred in this case, and as will invariably be the position, given that there is no requirement for leave before commencing an action in reliance on s.33(3), the hearing of a strike-out application or a preliminary issue as to whether the claim falls within s.33(3) will take place at some point after the action is begun. The question then arises as to whether the

court should assess compliance with s.33(3) by reference to the facts at the time of commencement of the action or as at the date of the hearing of the strike out or preliminary issue.

122 The judge held (2022 (1) CILR 12, at paras. 127–128) that the question of whether the general partner had failed or refused to bring a claim without cause was to be judged on the relevant facts as they were at the time the proceedings were commenced.

123 The plaintiffs support the judge's decision. They point out that the words "failed or refused" in s.33(3) are in the past tense, which suggests that the relevant failure or refusal must have taken place before the date of institution of the derivative claim.

124 We do not agree with the judge's decision on this point, essentially for the reasons advanced by Mr. Chapman. The plaintiffs' approach would require the court to ignore anything that has happened between the institution of the proceedings and the hearing of the relevant strike out application/preliminary issue. This could lead to highly unsatisfactory results. Thus, suppose that, after the institution of the proceedings, a new general partner was appointed with completely separate ownership, so there was no longer any question of an inhibition or conflict of interest. Suppose further that the new general partner has reviewed the alleged claim and decided in good faith on commercial grounds to maintain the decision of the former general partner not to institute proceedings against the alleged wrongdoer.

125 In our judgment, the legislature cannot have intended that the court should allow a derivative claim to proceed in circumstances where, as at the date of the hearing of the strike out or preliminary issue, the requirements of s.33(3) are not met because, for example, any inhibition of the general partner has disappeared. In our judgment, the natural meaning of s.33(3) is that the court should consider the issue of whether the requirements of the subsection are met by reference to the facts as they are at the time of the hearing of the strike out or preliminary issue. Mr. Allison submitted that the court could surmount any difficulty which his construction of s.33(3) might cause by taking any change of circumstances into account when considering whether to exercise its discretion to allow the derivative claim to proceed. However, we do not see that as a satisfactory solution, nor is it in our view consistent with the natural meaning of s.33(3).

126 Whilst by no means determinative—because the legislation is not the same—we note that in England and Wales, in the context of derivative actions for companies, the court does take into account events which have occurred between the institution of the proceedings and the hearing before the court as to whether the derivative action should be allowed to proceed: see, for example, the decision of Newey, J. in *Kleanthous* v. *Paphitis* (18), where the judge placed great weight on the fact that, since the institution

of the proceedings, the company had appointed a special committee of independent directors which had decided that the company should not bring or continue the claim which the plaintiff was seeking to bring derivatively.

127 In our judgment therefore, a judge hearing a strike out application or preliminary issue in relation to an ELP should consider whether the test in s.33(3) is met by reference to the facts as they appear at the time of the relevant hearing.

**Pleading**

128 In relation to the derivative claim against D1, para. 25 of the ASOC pleads:

> "In the alternative, if and to the extent that the claims set out in this Statement of Claim (or any of them) are properly regarded as and/or must be brought as derivative claims on behalf of TPF, the Plaintiffs will contend that Port Link has without cause failed to initiate proceedings on behalf of TPF against itself (and there is no real prospect of it doing so) such that the requirements of section 33(3) of the Exempted Limited Partnership Act (2020 Revision) (the 'ELP Act') are satisfied, such that the Plaintiffs should be permitted to prosecute the relevant claims on behalf of and in the name of TPF."

129 In relation to the derivative claims against D2, D3 and D4, para. 25B of the ASOC pleads:

> "The balance of the claims against Mr Williams and Wellspring and the claim against KGLI Asia are brought by the Plaintiffs as derivative claims on behalf of TPF in circumstances where Port Link has without cause failed to initiate proceedings on behalf of TPF against those parties and there is no real prospect of it doing so. Not only did Port Link fail to commence such claims; as described in paragraph 4 above, it deliberately withheld from the Limited Partners the information upon which the claims are based. In the premises, the requirements of section 33(3) of the ELP Act are satisfied such that the Plaintiffs should be permitted to prosecute these claims on behalf of and in the name of TPF."

130 The judge held (2022 (1) CILR 12, at para. 127) that para. 25B of the ASOC was sufficient to enable the defendants to understand the gist of the case, which had also been factually set out in the detailed evidence filed in the strike out applications.

131 That conclusion was criticized by Mr. Chapman. He submitted that it was necessary for a limited partner to plead the facts and matters relied upon as allowing the limited partner to bring a derivative claim pursuant to

s.33(3) and that the particulars in this case were wholly inadequate to serve that purpose. Thus, there was no pleading of the facts and matters relied upon to show that D1 as general partner was under an inhibition or suffered from a conflict of interest.

132 Mr. Allison, on the other hand, submitted that the facts and matters relied upon emerged with sufficient clarity from the detailed allegations of wrongdoing against D1 and the other defendants set out in the ASOC.

133 In our judgment, the ASOC was inadequately pleaded in this respect. In *Roberts* v. *Gill* (30), Lord Walker, in relation to a derivative claim on the grounds of special circumstances concerning an estate or trust, said this (2011] 1 A.C. 240, at para. 103):

> "So while he need not obtain prior leave from the court, he must plead the special circumstances entitling him to the court's indulgence. Those special circumstances are part of his cause of action."

134 In our judgment, the position is analogous in cases brought pursuant to s.33(3). There is no requirement for leave but a limited partner may only bring a claim where the general partner has failed or refused to bring proceedings without cause. The failure or refusal without cause is part of the cause of action brought by the limited partner and must therefore be pleaded. In our judgment, it is not sufficient simply to plead the wording of s.33(3) as was done by the plaintiffs in this case. A limited partner must plead the facts and matters relied upon as showing that he comes within the provisions of s.33(3).

135 What is relied upon by the plaintiffs in this case is that D1 as general partner is under a clear inhibition arising from its conflict of interest. The facts and matters relied upon as showing that this was so should therefore have been pleaded. Accordingly, we differ from the judge's assessment that the pleading was adequate. However, we are satisfied that no prejudice has been caused to the defendants by this failure. As the judge correctly stated, the points of issue emerge very clearly from the evidence filed during the strike out applications and it is clear that the defendants knew the case which they had to meet. We therefore decline to decide this case on a technical pleading point, although we emphasize, for the future, that simply pleading that a claim is brought pursuant to s.33(3) is not sufficient and that a plaintiff must plead the facts and matters relied upon as showing that he falls within the subsection.

**Need for a request to sue**

136 It is common ground that the plaintiffs in this case did not request or demand that D1 as general partner bring proceedings against D2–D4. Mr. Chapman submits that there must be such a request before a general partner

can be said to have failed or refused to bring such proceedings. We agree that the word "refused" implies the existence of a request. However, this is not so in relation to the word "failed." A general partner can be said to have "failed" to bring proceedings if he simply has not brought such proceedings.

137 Whilst it will often be the case that, before instituting derivative proceedings under s.33(3), a limited partner will have requested the general partner to institute the relevant proceedings, it is not a necessary pre-condition that he has done so. In this case, it is perfectly apparent from the evidence that D1 has not brought the relevant proceedings and has no intention of doing so. As outlined earlier, it has reached a decision not to institute proceedings even following the change in the board of directors by the appointment of the FFP directors. The requirement of s.33(3) that the general partner has failed to bring proceedings on behalf of TPF has obviously been satisfied.

**Discretion**

138 It is well established in other contexts that the court has a discretion whether or not to allow a derivative claim even where the relevant ground for the bringing of such an action (*e.g.* an exception to the rule in *Foss* v. *Harbottle* (11) in the case of companies and "special circumstances" in the case of trusts or limited partnerships) is met. Although there is no reference to the existence of a discretion in s.33(3) itself, the judge considered that he had such a discretion and it was common ground before us that there is such a discretion.

139 Thus, even if it be satisfied that a plaintiff can bring himself within s.33(3), the court may in its discretion decide that he should not be permitted to continue the derivative claim. One relevant factor in the exercise of this discretion is likely to be whether the plaintiff has an alternative remedy, so that a derivative action is not required in order to avoid injustice.

**Summary**

140 Pulling the threads of the above discussion together, we would attempt to summarize our conclusions in relation to s.33(3) as follows:

(i) There is no requirement for leave to bring derivative proceedings under s.33(3). A limited partner may simply institute such proceedings.

(ii) A limited partner must however plead the facts and matters relied upon as showing that he can bring himself within the requirements of the subsection because this forms an essential part of his cause of action.

(iii) If a defendant wishes to raise an issue as to the standing of a limited partner to bring such derivative proceedings, he should do so by means of a strike out application or seek the trial of a preliminary issue.

(iv) Whichever of these routes is chosen does not affect the test which has to be applied in deciding whether s.33(3) is complied with and whether a limited partner should be permitted to continue with the derivative claim.

(v) The decision of the court on such an application or preliminary issue is determinative (subject to appeal). If the court holds that the derivative claim may be continued, the limited partner thereafter has the necessary standing to pursue the claim. It is not an issue which is deferred until or revisited at trial (save possibly in the context of costs at the end of the trial).

(vi) The court should not conduct a mini trial as to whether the requirements of s.33(3) are satisfied. The court has to reach its decision on the basis of the material before it, which will be more limited than it will be following discovery and trial.

(vii) At the hearing, the onus is on the limited partner to satisfy the court that the requirements of s.33(3) are met. Reference to "onus" is not to be mistaken as a reference to a "burden" in the sense of having to show something on the balance of probabilities.

(viii) The essential task for the court at such a hearing is to determine whether the limited partner has brought himself within the terms of s.33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.

(ix) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in s.33(3).

(x) Whilst reference to a "good arguable case" may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of s.33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the ELPA that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. As stated at para. 118 above, the court should consider, ***inter alia***, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.

(xi) The court should reach its decision as to standing by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.

(xii) Even where the requirements of s.33(3) are met, the court has a discretion as to whether to permit a derivative claim to continue. One of the factors which is likely to be relevant in exercising that discretion is whether the plaintiff has an alternative remedy.

**Application to the facts**

**(a)** ***The claim against D1***

141 It is to be recalled that, as described at para. 75 above, a derivative action allows a party to bring a claim in the name of and on behalf of a second party against a third party for loss and damage caused to the second party. It follows that the second party must have a claim against the third party before the first party can be permitted to bring such a claim derivatively.

142 Ms. Stanley submits that, regardless of whether the test in s.33(3) is otherwise met (*i.e.* that D1 is subject to an inhibition which makes its decision in relation to potential proceedings one which is without cause), there is a more fundamental reason why the derivative claim against D1 should be struck out, namely that, on the judge's finding, the ELP has suffered no loss or damage and therefore has no claim of its own to bring.

143 The judge said (2022 (1) CILR 12, at para. 63):

> "It follows that where an ELP is alleged to have suffered loss, as in this case, that is the loss of each of the limited partners. There is no distinct or separate loss in respect of 'the partnership' (TPF), which as an entity does not exist at law."

144 To similar effect is the decision of Cooke, J. in *Henderson* (13) in relation to limited partnerships ([2012] EWHC 3259 (Comm), at paras. 28–32). Thus at para. 28 he said:

> "The Partnership, unlike a limited company, does not possess a corporate legal personality. Like an ordinary partnership under the Partnership Act, 'the Partnership' is simply a convenient way of referring to the body of partners as a whole. In my judgment therefore, no difficulty arises for a Limited Partner's claim against the General Partner, regardless of whether or not removal and substitution of the General Partner is possible. The claim to be made against the General Partner is that of the individual Limited Partners and is not a Partnership Asset. Each Limited Partner has its own contractual or fiduciary claim for its own loss, where the inter-relationship with the General Partner is governed by the RPA. *The Partnership, which*

> *consists of the Limited Partners and the General Partner together has no form of joint right or claim against the General Partner, as the claimants suggest.*" [Emphasis added.]

145 We are not to be taken as agreeing that this is correct. As already stated, s.16(1) of the Act provides that the general partner will hold the assets of the ELP upon trust. In the case of a trust, whilst a beneficiary undoubtedly has a direct claim against the trustee for breach of trust, the appropriate remedy (as discussed above by reference to *Target* v. *Redferns* (38)) is for an order that the trustee restore the trust fund to what it would have been had the breach not been committed. Such a claim may be brought by one or more beneficiaries, but a successor trustee will often bring such a claim against a former trustee for breach of trust on behalf of the trust as a whole and will hold any sums recovered from the former trustee upon the terms of the trust. Thus, even though like an ELP, a trust is not a separate legal entity, it can properly be said that the trust as well as a beneficiary has a claim against a trustee for breach of trust and that such a claim can be considered as an asset of the trust. It seems to us strongly arguable that the position is the same in relation to an ELP, particularly given that the general partner is also a trustee.

146 However, there has been no respondents' notice in respect of the above finding of the judge and indeed the plaintiffs have not sought to argue that the judge was wrong in this respect. What they say is that the judge was correct in what he said (2022 (1) CILR 12, at para. 64) where, immediately following the passage quoted above in para. 143 above from para. 63, he said:

> "64 I therefore find that the direct claims in respect of the individual partners' losses are vested in the limited *partners* alone, and are not claims that can be brought on behalf of TPF derivatively, except in the circumstances permitted by s.33(3) of the ELPA where the limited partners who wish to obtain redress for TPF are in effect put in the place of the GP, and bring claims on behalf of TPF." [Emphasis in original.]

147 With respect to the learned judge we cannot accept that s.33(3) permits a claim in such circumstances. The subsection presupposes that there is a claim to be brought by the general partner on behalf of the partnership. If, as the judge held, the partnership has no claim against the general partner, there can be no failure by the general partner to bring such a claim without cause.

148 Even if we are wrong on this point, there is a second reason for not permitting the derivative claim against D1 as a matter of discretion; that is because the plaintiffs as limited partners have an adequate alternative remedy.

149 As we have held earlier in this judgment, a limited partner has the right to claim against a general partner for breach of duty on the part of the general partner. In the event of such a claim succeeding, the appropriate remedy will almost certainly not be an award of equitable compensation to the particular limited partners who have sued (thereby potentially causing difficulties in relation to those who have not also joined in the action and in respect of creditors of the ELP), but instead an order that the general partner restore the trust fund as outlined in *Target* v. *Redferns*.

150 In these circumstances, exactly the same will be achieved by a direct claim as would be the case in a derivative action. In the event of the plaintiffs succeeding in their direct claim, the estate of the ELP will be made whole by payment from the general partner pursuant to an order for restoration of the trust fund. Success in a derivative action would have the same result. Accordingly, there is simply no need for a derivative action; it would add nothing to the direct claims brought by the limited partners coupled with an order for restoration of the trust fund in the event of such claims succeeding. Indeed, during oral argument, Mr. Allison accepted that, if the plaintiffs have a valid direct claim against D1 for which restoration of the trust fund can be awarded, there would be no need for the derivative action. In those circumstances, we conclude that, as a matter of discretion, the derivative claim against D1 should not be permitted.

151 Accordingly, for both of the above reasons, we strike out the derivative claim of the plaintiffs against D1.

**(b)** ***The claims against D2–D4***

152 We have described the claims brought against the various defendants at paras. 13–16 above. The relevant features for present purposes can be summarized as follows:

(i) The plaintiffs invested some 65% of the total amount invested in TPF.

(ii) Other limited partners, who invested 15.14%, have instituted broadly similar claims against D2 and D3 in the State of Georgia, USA. Thus a total of 80.3% by value of limited partners are litigating on the basis of alleged serious wrongdoing on the part of the GP.

(iii) Of the remaining 19.7% (by value), 14% are associated with the GP.

(iv) The plaintiffs allege that D1 as the general partner has been guilty of wrongdoing which has caused TPF loss said to be well in excess of US$100m.

(v) The claims against D1 essentially allege that, in breach of its fiduciary, contractual and other duties, it acted contrary to the interests of TPF and the limited partners by making substantial payments, using TPF's moneys, that were not for the benefit of TPF and/or the limited partners.

Amongst these is the alleged sham settlement of the DIFC proceedings brought against it in the DIFCC as a result of which the Wellspring payment of US$59,990,461.30 was paid to D3. The ASOC alleges that D1 conspired with, amongst others, D2 (Mr. Williams) and D3 (Wellspring) to cause loss to TPF and/or the limited partners by unlawful means in relation to the DIFC proceedings and the Wellspring payment.

(vi) The claims against D2 are that he orchestrated the DIFC proceedings and the Wellspring payment and was accordingly party to the above conspiracy. It is further alleged that he dishonestly assisted in D1's breach of trust/fiduciary duty, knowingly procured D1 to breach its contractual duties and was in breach of fiduciary duties he owed to TPF and/or D1.

(vii) The claims against D3 are for knowing receipt of the Wellspring payment, conspiracy in relation to the Wellspring payment and the DIFC proceedings and for repayment of the Wellspring payment pursuant to s.4 of the Fraudulent Dispositions Act (1996 Revision).

(viii) The claim against D4 is for knowing receipt in respect of a number of payments said to have been made to it in breach of trust and/or fiduciary duty by D1 as general partner.

153 The judge held (2022 (1) CILR 12, at para. 106) that s.33(3) required a finding as to whether the GP (*i.e.* the relevant corporate entity) has failed or refused to institute the proceedings without cause, not the directors at the relevant time. He concluded (*ibid.*, at para. 102) that there was a good arguable case that D1 had and still has a relevant inhibition because it is conflicted in relation to the plaintiffs' claims. Its decision not to bring the claims against D2–D4 was infected and made unsafe by the facts giving rise to its conflict of interest.

154 The underlying facts in relation to the inhibition were not disputed before us and would appear to be as follows:

(i) Mr. Williams, D2, is the sole shareholder of PLH, a Delaware company, which in turn is the sole shareholder of D1. Thus Mr. Williams is the sole ultimate beneficial owner of the general partner of TPF. He was the investment director of TPF's sponsor and placement agent from 2009–2011 and a member of the Investment Committee of TPF from 2009–2013.

(ii) On January 23rd, 2020, he was appointed as the authorized representative of D1 in relation to proceedings against D1 by certain limited partners (including the first plaintiff) pursuant to s.22 of the ELPA seeking disclosure of full information regarding the state of the business and financial condition of TPF. The resolution conferred full authority on Mr. Williams to take all necessary actions in relation to the s.22 proceedings. The application of the limited partners under s.22 was opposed by D1 at a time when the FFP directors were in post and eventually Parker, J. ruled against D1 and ordered it to make disclosure. Thereafter, D1 sought to

appeal that decision but the appeal was eventually compromised and D1 agreed to provide the necessary information.

(iii) Mr. Williams is the CEO, CFO, President, Vice-President, Treasurer and Secretary of D3, Wellspring. The company is owned by the Mark E. Williams Living Trust, of which Mr. Williams, his wife and brother are the trustees. The ASOC pleads that it is to be inferred that the beneficiaries are also Mr. Williams' family.

(iv) D4, KGLI Asia is a company incorporated in the Cayman Islands and Mr. Williams was its CEO from January 1st, 2012.

155 As can be seen therefore, Mr. Williams is the ultimate beneficial owner of the GP and has very close connections with Wellspring and KGLI Asia.

156 In considering whether D1 as the general partner would be under an inhibition in relation to the taking of proceedings against D2–D4, it is useful to refer to the case of *Henderson* (13). The facts of that case are summarized at paras. 83–84 above. Certain limited partners of an English limited partnership sought to bring a derivative action against, *inter alia*, the manager, who had been appointed by the general partner and was a sister company of the general partner.

157 Cooke, J. held ([2012] EWHC 3259 (Comm), at para. 59) that as a result the general partner had an irreconcilable conflict of interest in relation to whether to institute proceedings against the manager and this constituted "special circumstances" which therefore justified the limited partners being able to bring a derivative claim. In coming to that conclusion, he held that (i) the ability (which was not straightforward) under the limited partnership agreement for the limited partners to remove and replace the general partner, and (ii) the ability of the limited partners to sue the general partner for wrongly failing to institute proceedings against the manager, were not satisfactory alternative remedies so as to refuse the limited partners the ability to bring a derivative claim.

158 We respectfully agree with the decision of Cooke, J. in *Henderson.* In our judgment there is a similar conflict of interest in the present case. On the plaintiffs' case, D1 as the general partner was deeply involved in all the alleged wrongdoing, as was Mr. Williams. D1 has to decide whether to institute proceedings against D2–D4 in circumstances where:

(i) The essential wrongdoing giving rise to the claims against D2–D4 was that of D1 itself in making the various payments and where it is said to be part of the unlawful means conspiracy to injure TPF involving Mr. Williams and Wellspring.

(ii) The contemplated proceedings would have to be brought against the beneficial owner of the GP and against two companies in which Mr.

Williams is deeply and closely involved, namely Wellspring and KGLI Asia.

(iii) D1 would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy.

159 On the face of it, by reason of the obvious and serious conflict of interest, D1 is under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also means that the failure by D1 to bring proceedings against D2–D4 is without cause for the purposes of s.33(3).

160 However, the defendants say that this is not the position for two associated reasons. First, they point out that the present directors of D1, namely the FFP directors, are wholly independent and were not in office at the time of the alleged wrongdoing on the part of D1. They do not therefore suffer from any conflict of interest. They are in a position to bring an independent and impartial view to bear on whether claims should be brought against D2–D4 and in this respect are in the same position as a liquidator of a company who has to decide whether to bring a claim against former directors or other parties for injury caused to a company. The defendants point out that, as summarized in the third affidavit of Mr. Lewis, the FFP directors have reviewed the position thoroughly with the benefit of legal advice and have concluded that the interests of TPF are best served by not instituting any claims against D2–D4 for the reasons there set out.

161 It is clear, submit the defendants, that the court must give great weight to the commercial judgment of those who have responsibility for the management of the relevant entity under the constitutive documents; see for example the observation of the Lewison, J. in *Iesini* (17) quoted at para. 77 above.

162 Secondly, they submit that the independence of the FFP directors is fortified by the fact that Mr. Williams has given an undertaking that the shareholder of the GP will not exercise any powers so as to remove the FFP directors or interfere in any way in the exercise of their functions. Thus, submit the defendants, the FFP directors are, and are seen to be, free to act independently.

163 In our judgment, these submissions do not overcome the inhibition referred to earlier. In relation to the first point, the judge was in our view correct to focus on the entity which is the general partner rather than the directors for the time being of that entity. Section 33(3) refers to the "general partner" having failed or refused to bring proceedings without cause. The general partner is the legal entity D1. D1 is subject to the conflicts of interest we have summarized above and thus cannot be seen to be in a position to take a fair and independent decision about the potential

litigation. New directors are not in the same position as a liquidator, who is appointed by and subject to the supervision of the court and therefore clearly is and is seen to be independent of the company, its directors and shareholders. The FFP directors owe a fiduciary duty to act in the best interests of D1. The defendants submitted that because D1 owes fiduciary duties to act in the best interests of the partnership, the FFP directors therefore have a duty to act in the best interests of TPF. However, there is certainly the potential for conflict between acting in the best interests of TPF (which might include taking action against D1 as a co-conspirator) and acting in the best interests of D1 (which might be said to include the avoidance of being sued).

164 In connection with the undertaking, we were referred to the case of *St. John's Trust Co. (PVT) Ltd.* v. *Medlands (PTC) Ltd.* (31) ("*B Trust*"), a decision of the Court of Appeal of Bermuda. That was a case which involved a number of issues but for present purposes it is sufficient to say that one of the issues before that court was whether it would be appropriate to reappoint St. John's Trust Co. (PVT) Ltd. ("SJTC") as trustee of the B Trust. SJTC was wholly owned by a company, Cabarita, which was in turn wholly owned by a Mr. T. Mr. T was said to have misappropriated funds from the B Trust and there were ongoing proceedings against him in this respect.

165 Mr. T had appointed two independent directors of SJTC and, before the Bermuda Court of Appeal, he proffered an undertaking not to interfere with the appointment of these two individuals. Despite this, the Bermuda Court of Appeal held ([2021] CA (Bda) 20 Civ, at para. 62) that it was clearly not appropriate for SJTC to be trustee. It would be contrary to the interests of the beneficiaries for Mr. T to have any control or influence over the B Trust. This would be possible, despite his undertaking, by reason of his ownership of Cabarita which owned SJTC. The undertaking did not meet the fundamental issue of Mr. T's potential influence.

166 Mr. Chapman sought to distinguish *B Trust* on three grounds. First, he pointed out that Mr. Williams is only an *indirect* beneficial owner of D1, but that was also the case in *B Trust* as Mr. T owned Cabarita which owned SJTC. Secondly, he referred to the undertaking by Mr. Williams not to interfere. However, an undertaking was also given by Mr. T in *B Trust* and this did not persuade the Bermuda Court of Appeal that his potential influence was thereby negated. Thirdly, he submitted that *B Trust* was concerned with whether there might be interference in the future by Mr. T whereas the present case was concerned with a decision (namely not to issue proceedings) which had already been taken. However, we do not see that this is a significant point of difference. The fact is that the decision as to whether to institute proceedings on behalf of TPF involved consideration by the GP of whether to sue itself as an alleged co-conspirator and whether

to sue its beneficial owner and two closely linked companies in circumstances where the claims were said to arise on the basis of the wrongdoing of the GP and its beneficial owner.

167 We find the reasoning of the Court of Appeal of Bermuda to be persuasive. In our judgment, the undertaking given by Mr. Williams is insufficient to overcome the inhibition from which D1 as general partner suffers. If one stands back and considers how it would appear to the plaintiffs (who allege that there has been serious wrongdoing by D1–D4 which has cost TPF over US$100m.) for the decision as to whether to seek recompense from any one or more of D1–D4 to be left in the hands of D1, they would have no confidence that a fair and independent decision had been taken, even following the appointment of the FFP directors. In our judgment, they would be justified in this lack of confidence. There is no doubt in our view that D1 was and is suffering from an inhibition which leads to the conclusion that, subject to the exercise of any discretion, it is appropriate for the plaintiffs to bring derivative claims on behalf of TPF pursuant to s.33(3) against D2–D4.

168 Given our decision to uphold the judge's conclusion that it is the position of D1 as the general partner which must be considered in relation to any inhibition rather than the position of the directors from time to time, it is not necessary for us to address his finding about the position of the FFP directors. Suffice it to say that, if we had found it necessary to do so, we would have considered that the judge was entitled to reach the conclusions which he did in this respect.

169 As to discretion, the defendants submit that, because the plaintiffs are bringing direct claims against D2 and D3, they have an alternative remedy in respect of those two defendants and there is no need for them to bring a derivative action. They point out that they have not sought to strike out the direct claims against D2 and D3. That is so, but it is of note that footnote 10 at para. 15 of the skeleton argument of D2–D4 states:

> "For the avoidance of doubt, [D2–D4] do not admit that the Respondents, in particular KPA, have standing to bring the direct claims, and expressly reserve the right to challenge the Respondents' standing to bring such claims, including on the basis of a lack of authority in the case of KPA."

170 As stated at para. 67 above, Ms. Stanley asserted in oral argument that the only way to get the proceeds of any successful claim against D2 and D3 into TPF is by way of a derivative claim. Furthermore, despite the defendants' explanation, submitted in response to the draft of this judgment, that footnote 10 was only intended to cover the KPA lack of authority point and the partnership accounting point, the fact remains that the footnote expressly reserves the right to challenge the plaintiffs' standing to bring the direct claims in general terms and the KPA point is

merely mentioned by way of inclusion as a ground of challenge. We bear in mind the overriding objective and, in our view, it would be inconsistent with that objective and highly undesirable to run the risk of the court eventually finding against D2 and D3 on the underlying merits of the claims but finding that the plaintiffs did not have standing for the direct claims or that it could not make an order for restoration of the trust fund in the absence of a derivative claim on behalf of TPF. The existence of an alternative remedy is a matter to be taken into account when determining whether to allow a derivative claim to proceed although its existence is not conclusive of the matter; see *Henderson* (13) ([2012] EWHC 3259 (Comm), at para. 39). In our judgment, whilst we have expressed certain preliminary views at paras. 65–72 above, in the light of the above matters there is sufficient uncertainty about whether the plaintiffs have direct claims against D2 and D3 or whether the court could order restoration of the trust fund on the success of such claims that, as a matter of discretion, it is just and fair to allow the derivative claims to proceed alongside the direct claims so that they are all heard at the same time. If, following a trial, the direct claims are upheld and the court also holds that it can order restoration of the trust fund as a remedy for such claims, then there will be no need to make any award on the derivative claims; if on the other hand the direct claims are found not to be maintainable or restoration of the trust fund cannot be ordered, the derivative claims will be necessary to provide a remedy, assuming that the underlying allegations against the defendants are upheld.

171 We add by way of postscript, that both sides sought to raise arguments based on the position of the Cayman Islands as a leading centre for the establishment of investment funds. Thus the defendants argued that, by setting the bar for derivative actions too low, the judge had rendered it less likely that promoters of investment funds in the form of ELPs would choose the Cayman Islands as the location of their funds because of the comparatively easy exposure to derivative claims.

172 Conversely, the plaintiffs argued that it was important for the reputation of the Cayman Islands as a centre for investment funds that persons who have invested in ELPs should have a remedy when the general partner is alleged to have been guilty of wrongdoing and that a derivative action is the only remedy in such circumstances. It should not therefore be too difficult to bring such an action.

173 Whilst noting these arguments, we have not decided this case by reference to the arguments' respective merits, which are more matters for the legislature. We have confined ourselves to construing s.33(3) in the light of the words used against the background of the law on derivative claims generally.

**Summary of conclusions reached on the derivative claims**

174 In respect of D1, for the reasons which we have given above, we allow the appeal to the extent of striking out the plaintiffs' derivative claims against it.

175 In relation to the derivative claims against D2–D4, we dismiss the appeals brought by these defendants, with the consequence that the plaintiffs may bring those claims under s.33(3).

**The SFC appeal**

176 At the hearing below, the GP (D1) applied for security of costs ("SFC") in the sum of US$5,536,025.50 and the sum sought by D2–D4 was US$2,720,000. It is and was common ground that the plaintiffs are both Kuwait state-owned enterprises ordinarily resident out of the jurisdiction and accordingly the judge had jurisdiction to exercise the discretion conferred on the court by GCR O.23 r.1(1), which reads in relevant part:

> "Where, on the application of a defendant to an action or other proceedings it appears to the Court—
>
> (a) that the plaintiff is ordinarily resident out of the jurisdiction …
>
> then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just."

177 Briefly summarized, the defendants' case was that there were substantial obstacles to the enforcement in Kuwait of an adverse costs order since there was no treaty between Kuwait and the Cayman Islands for the mutual enforcement of judgments and as a matter of Kuwaiti law even a judgment of the Kuwaiti courts was incapable of enforcement against the plaintiffs because they were state entities.

178 In dismissing the SFC applications, the judge began by setting out the legal principles he found to be applicable. He then analysed the principles and applied them to the case before him and then proceeded to give the reasons for his decision. The key elements of this part of his judgment can be summarized as follows:

***The applicable principles***

179 (i) There is no presumption that the court will ordinarily require a foreign plaintiff to give SFC; rather the discretion "is to be exercised on a case-by-case basis, as the rule states, having regard to all the circumstances

of the case"; see *In re Cybervest Fund* (9) (2006 CILR 80, at para. 24, *per* Smellie, C.J.) (para. 149).

(ii) The court should follow the guidance on the interpretation of O.23 r.1(1) provided by the following passage in the judgment of Smellie, C.J. in *Tasarruf Mevduati Sigorta Fonu* v. *Wisteria Bay Ltd.* (39) (2006 CILR 351, at para. 14) (para. 150):

> "There is no hard and fast rule that every foreign plaintiff must be required to put up security. The matter is one, as already stated, of discretion to be exercised in every case. All the circumstances will be considered including the means and ability of the plaintiff to pay and even, in an appropriate case, the relative strength or weakness of the case for each side provided those factors are clearly discernable from the evidence. See, for these propositions, the leading case of *Sir Lindsay Parkinson & Co. Ltd.* v. *Triplan Ltd.* …"

(iii) The court's discretion must be exercised impartially and must not be exercised discriminately; see *e.g. Ahmad Hamad Algosaibi & Bros. Co. Ltd.* v. *Saad Invs. Co. Ltd.* (1) (2017 (2) CILR 602, at para. 21) (para. 151).

(iv) The merits of the case will only be relevant if: (i) either party can clearly demonstrate a strong probability of success, or (ii) the court is considering a summary judgment application at the same time (para. 152).

***Analysis and application of the principles to this case***

(v) In this case, the merits could not be properly determined at this stage (para. 153).

(vi) The issue to be decided was whether the defendants had shown there are objectively justified grounds for concluding that there are obstacles or burdens to the enforcement of a costs order against the plaintiffs, such that there is a real risk of non-enforcement and whether, if there are such real risks, it is just in the circumstances to order security and if so, on what terms (para. 154). (This proposition, like principle (iii) above, is based on *AHAB* v. *Saad*, where Smellie, C.J. stated (2017 (2) CILR 602, at paras. 15–16):

> "… the focal concern of the modern case law is not to ensure that a plaintiff is seldom required to provide security or that orders for security are only exceptionally made but to ensure that such orders are not imposed in an arbitrary or discriminatory manner. Accordingly, the making of such orders against a non-resident plaintiff would be appropriate, and may now be justified, not simply on the discriminatory basis of the plaintiff's foreign status but because real risks of unenforceability are shown 'on objectively justified

> grounds' to exist: *per* Gloster, L.J. in her *dictum* cited above from *Bestfort* …, applying the *dictum* of Mance, L.J. from *Nasser* …
>
> 16 This approach dictated by the modern cases is aimed at addressing not only basic tenets of fairness but more particularly, the requirements of the Constitutional Bill of Rights where, in s.16, it is mandated that 'government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution'—the most directly operative here being that right to a fair and public trial guaranteed by s.7 which states that 'Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.'"

(vii) Where the plaintiff is a foreign government or state agency, there is a presumption that SFC should not be awarded, although each case will turn on its own facts. The presumption arises from comity and common sense and may be displaced by the evidence; see *Tasarruf* (39) (2006 CILR 351, at para. 22) (para. 156).

(viii) As Smellie, C.J. observed in *Tasarruf*, the only modern reported case in which SFC had been ordered against a foreign government was *Sierra Leone Govt.* v. *Davenport* (34) where the circumstances were exceptional in that Sierra Leone had recently emerged from a civil war (para. 157).

(ix) PIFSS (the second plaintiff) was the subject of the SFC application determined in *Cybervest* (9), where PIFSS was petitioning as a shareholder for the winding up of a Cayman incorporated investment fund. In giving judgment in this case, Smellie, C.J. noted that PIFSS had "immensely valuable assets to be regarded as being within the jurisdiction" and so if PIFSS failed to pay an order for costs it would be open to the applicant to seek recourse. The SFC application was dismissed on the grounds that: (a) PIFSS's very valuable shareholding in the fund was to be treated as assets within the jurisdiction; and (b) PIFSS was (2006 CILR 80, at para. 27):

> "a state agency of a foreign government of undoubted resources and enjoying a high reputation in the global financial and commercial community. This is relevant insofar as it would tend to negate any concern that the plaintiff would be unlikely to obey an order for costs made in favour of the respondent."

(x) Security will not be required of a foreign plaintiff who has substantial assets within the jurisdiction: see *Cybervest* (*ibid.*, at para. 25) (para. 160).

(xi) Where any liability for costs on the plaintiffs' part will inevitably be joint and several, security will not be required if at least one plaintiff has substantial assets within the jurisdiction (para. 160).

(xii) A foreign plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction (para. 161). See the following extract from the judgment of Lightman, J. in *Leyvand* v. *Amnon Barasch* (20) ([2000] WL 191256, at para. 6):

> "The common sense principle applies that the existence of assets within the jurisdiction, their fixity and performance, are among a number of potentially relevant factors, their importance depending on the particular facts of the case. The Court will not infer the existence of a real risk that assets within this country will be dissipated or shipped abroad to avoid their being available to satisfy a judgement for costs unless there is a reason to question the probity of the claimant: there is no such reason in this case. If there is a reason to question the claimant's probity, the character of his property within the jurisdiction is relevant in assessing the risk: the risk may be greater if the property is cash or immediately realisable or transportable, and less if fixed and permanent."

(xiii) Undertakings given by a plaintiff that it will not raise any of the potential defences in their home jurisdiction should an award of costs be made against it would be very persuasive evidence in any court in the plaintiff's home jurisdiction (para. 162). See Sanderson, Ag. J. in *Elliott* v. *Cayman Islands Health Serv. Auth.* (10) (2007 CILR 163, at para. 18).

***The judge's reasons why, on the application of the foregoing principles, the SFC application would be refused***

(xiv) The plaintiffs are both wholly owned by, and are the agents of, the State of Kuwait. There is therefore on the decided cases a rebuttable presumption that security for costs should not be ordered (see *Tasarruf* (39) (2006 CILR 351, at para. 23)). This presumption has not been rebutted on the evidence adduced. The plaintiffs appeared to have ready access to funds and would be able to satisfy any adverse costs order in a timely manner (paras. 164–166).

(xv) KPA is an internationally recognized commercial organization and relies on its international reputation to do business. Its profit for the financial year 2020–2021 was KWD56,450,000 (about US$187,522,553 based on the exchange rate on August 9th, 2021). The Director General of KPA has confirmed that it has sufficient resources to meet any costs order made against it in these proceedings, and will comply with any such costs orders in a timely fashion, a position that has been reconfirmed by the Kuwaiti Department for Legal Advice and Legislation ("DLAL"). In addition, KPA has provided a written undertaking to this effect to the court on May 27th, 2021 (paras. 167–169).

(xvi) PIFSS is a public institution which administers Kuwait's pension fund for all Kuwaiti citizens in the workforce, both in public and private sectors. It operates independently from the State of Kuwait and has its own budget and board of directors. It has a global investment asset portfolio worth approximately US$133.7bn. (as at March 31st, 2021). Its profit for the period March 2020 to December was US$18.9bn. An officer in PIFSS's Compliance and Government Department had confirmed that PIFSS had sufficient resources to meet any costs order made in these proceedings and will comply with any such orders in a timely fashion. PIFSS has provided a written undertaking to this effect to the court. In addition, PIFSS has been party to several sets of proceedings before the Cayman Islands courts and has never failed to comply with any costs order (paras. 170–172).

(xvii) It would be clearly detrimental to PIFSS's ongoing commercial reputation and business to be in breach of an order of the Cayman Islands courts (para. 173).

(xviii) Accordingly, after a careful consideration of the evidence, the presumption against ordering security against agents of a foreign state has not been rebutted. Accordingly, it would not be just to grant the SFC applications against the plaintiffs (para. 174).

(xix) It is well established that security will not be ordered against a foreign plaintiff who has substantial assets within the jurisdiction (see *Cybervest* (9)) and PIFSS is such a plaintiff by reason of its interest valued at €35,074,942 as a March 31st, 2021 in the Jermyn Street Commercial Real Estate Fund ("the Jermyn Street Fund"), of which PIFSS is a limited partner (paras. 175–176).

(xx) There is no reason to doubt the probity of PIFSS, which is an agent of the State of Kuwait and familiar with conducting international litigation (including in the Cayman Islands) (para. 177).

(xxi) There is no reason to conclude that PIFSS's interest in the Jermyn Street Fund is encumbered, or not amenable to enforcement if necessary, and no reason to conclude that PIFSS would dispose of or otherwise encumber its interest to attempt to defeat an order as to costs (para. 177).

(xxii) Accordingly, since PIFSS has sufficient assets within the jurisdiction to cover any costs order that is made against the plaintiffs (in respect of which they would be jointly and severally liable), and in circumstances where both plaintiffs have given written undertakings to the court, it would not be just to require the plaintiffs to pay security for costs (even if they were not agents of the State of Kuwait) (para. 178).

(xxiii) In light of the correspondence between Campbells (for D2–D4) and Ogier (for the plaintiffs) there was no basis to form the view that PIFSS would seek to frustrate the enforcement of a cost order against it by

disposing of its interest in the Jermyn Street Fund, even if it were able to do so (para. 179).

(xxiv) The enforceability of Cayman Islands judgments in Kuwait does not therefore arise for determination (para. 189).

***The case advanced by the GP (D1)***

180 (i) By reason of the errors made by the judge in reaching his decision to refuse to order SFC, his decision should be set aside and the SFC summons remitted to another judge of the Grand Court or alternatively the judge himself.

(ii) Although the discretion under GCR O.23, r.1(a) is at large, it can only be properly exercised when *all* of the circumstances are taken into account, and this the judge failed to do because he did not consider the obstacles of enforcement in Kuwait. Instead, he appears to have been satisfied that the plaintiffs could and would pay adverse costs order without question and the defendants had not proved otherwise.

(iii) The judge erred in principle in proceeding on the basis that there was a presumption that a foreign government or state agency will not be ordered to provide security for costs unless the applicant "rebuts" the presumption. The authorities the judge relied for the presumption—*Cybervest* (9) and *Tasarruf* (39)—laid down no such principle. Instead, Smellie, C.J. in the former case decided it on the basis that the court had a wide discretion which fell to be exercised on a case-by-case basis and in the latter case, Smellie, C.J. highlighted that it was all a matter of discretion taking into account all the circumstances. The true ratio was that the court does not apply the rules for SFC differently depending on whether the plaintiff is a state or an individual but on the basis that all plaintiffs who seek to engage the court's jurisdiction must play by the same rules. This, after all, is the position in England (see *Sierra Leone (Govt.)* v. *Davenport* (34)) and in Australia (see *e.g. Papua New Guinea* v. *Sandline* (26) ([1998] QDC 298, *per* Andrews, J.) and *Ministry of Foreign Affairs (Italy)* v. *Simeone* (23)).

(iv) Where there is joint and several liability between plaintiffs for costs and one of them is in the jurisdiction, it is the practice not to make a SFC order against the plaintiff who is resident outside the jurisdiction if it is inevitably to be inferred by the court that there will be joint liability for costs between the plaintiffs. Assuming that this practice can apply to a situation where both plaintiffs are outside the jurisdiction but one has substantial assets within the jurisdiction, D1 submits that there were no sufficient grounds for the judge to have concluded that the plaintiffs would be jointly and severally liable for the costs. Indeed, D1 pleads a defence against KPA that it commenced and carried on its claims against them

without due authority, and ratification of these acts is not possible under Kuwaiti law.

(v) The judge erred in taking into account the confirmation from the Director General of KPA, Mr. Al-Sabah, which was related to Mr. Florent, who in turn related it in para. 18 of his third affidavit, that KPA had sufficient resources to meet a costs order made against it in these proceedings, and would comply with any such costs order in a timely fashion. Mr. Florent's third affidavit was sworn on August 27th, 2021 but Mr. Al Sabah had been suspended from the position of Director General of KPA by the Minister of Commerce and Industry on October 24th, 2021 pending investigations of "violations" attributed to him. The expert evidence before the judge was that during his suspension Mr. Al-Sabah was not authorized to represent KPA in any capacity or exercise any powers on behalf of KPA.

(vi) The judge erred in treating the letters he called "undertakings" to pay an adverse costs order as if they were indeed "undertakings" when they were merely "comfort letters" since they contained the words, "Without prejudice to the exercise of KPA's legal rights" and stated "*we confirm* that KPA will comply with any final and binding costs orders …" Even if the letters had contained express undertakings on behalf of the plaintiffs to pay an adverse costs order, the judge should have considered whether there remained a significant risk that such a costs order would not be paid and gone on to find that there was such a risk because the undertaking could only be enforced by committal or sequestration proceedings in the jurisdiction and such an order would not be enforceable in any other court. Nor was it clear that the comfort letters would be enforced by the courts of Kuwait.

(vii) The judge erred in placing reliance on the evidence given in Mr. Florent's third affidavit to the effect that PIFSS had never failed to comply with any costs order made in proceedings before the courts of the Cayman Islands when there was no evidence that any adverse costs order had ever been made against PIFSS in any Cayman Island proceedings. What the judge should have done was to require production of examples of Cayman Islands costs orders that had been honoured by PIFSS.

(viii) The judge made the following errors in giving the weight he did to PIFSS's assets within the jurisdiction:

(a) He stated that the plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction when that burden in fact lay upon the plaintiffs and he should have taken note of the fact that PIFSS's interest in the Jermyn Street Fund was not of a fixed or permanent nature but was in the nature of a receivable in the event that a distribution were to be made and/or the Fund were wound up.

(b) He was wrong to consider whether there was any reason to doubt the probity of PIFSS when the question to be considered was whether there was a real risk that the assets in the jurisdiction may not be available if and when a case of enforcement arises; see Butcher, J. in *PJSC Tatneft* v. *Bogolyubov* (25) ([2019] Costs L.R. 977, at para. 49) and Henshaw, J. in *Pisante* v. *Logothetis* (27) ([2020] EWHC 3332 (Comm), at paras. 65–66).

***Discussion and decision***

181 We deal first with D1's submission that the judge erred in proceeding on the basis there was a presumption that a foreign government or state agency will not be ordered to provide security for costs unless the applicant "rebuts" the presumption.

182 The principal authority relied on by the judge for the aforesaid presumption was *Tasarruf* (39). Here, as related in Smellie, C.J.'s judgment (2006 CILR 351, at paras. 2–3), in that case, the plaintiff was a Turkish state entity authorized by statute to recover deficiencies in the accounts of insolvent banks by, among other things, the seizure and sale of the assets of their managers, shareholders or auditors. This authorization was given as part of a regulatory scheme to protect depositors against bank failure. In March 2004, the plaintiff seized in Turkish waters two motor yachts registered in the Cayman Islands Shipping Registry in the names of the corporate defendants. These yachts were said to belong to the controlling shareholders of a leading Turkish bank now in the administration of the plaintiff. In December 2004, the plaintiff brought an action in the Grand Court to prevent the completion of registration of mortgages for amounts in excess of their total value, granted against each vessel in favour of the third defendant in person.

183 On the question whether the plaintiff should be ordered to provide SFC, in *Tasarruf* the Chief Justice said that the fundamental question was whether an agency of a friendly foreign state, enjoying good standing in the international community and which has invoked the jurisdiction of this court, should be required to put up security for a defendant's costs of the action (*ibid.*, at para. 14). In earlier times there had been a practice that a foreign plaintiff should be ordered to provide SFC[14] but given the changes to the Rules since then and the discretionary nature of the exercise requiring the court to consider all the circumstances, a modern and different approach where the plaintiff is a foreign state, was discernible from the judgments in *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.* (3) and *Ministère de la Culture &c. de France* v. *Lielb* (22) ([1981] 1 WLUK 253, at paras. 16–18). This modern principle (*ibid.*, at para. 22) was—

14 See *e.g. Costa Rica (Republic)* v. *Erlanger* (8).

> "that where the plaintiff is the government (or a state agency) of a foreign state enjoying good standing in the international community (in particular from this court's point of view, enjoying diplomatic relations with H.M. Government) it should be assumed as a matter of comity and common sense, in the absence of anything to the contrary, that it will honour its obligations for costs made against it. Nonetheless, as the question remains one to be decided on a case by case basis in the discretion of the court, an order for security for costs could undoubtedly be made against a foreign state in appropriate circumstances."

184 In *Banco Economico S.A.* v. *Allied Leasing & Fin. Corp.* (3), the plaintiff, a Brazilian bank, itself in liquidation and under the control of a liquidator appointed by the Brazilian Government, petitioned for the winding up of the respondent. Mr. Justice Smellie (as he then was) was of the *prima facie* view that there was merit in the petition (1998 CILR at 112–113) and he concluded:

> "that the proper balance is struck when account is taken of the consideration that the petitioner is now under the control of a liquidator who is appointed by the Brazilian Government. Even in the ordinary case, the fact of insolvency will not by itself dictate an order for security. When the entity is a large bank, as the petitioner is, any such presumption becomes even less appropriate as grounds for ordering security for costs: see *Dartmouth Harbour Commrs.* v. *Mayor of Dartmouth Hardness* … and the notes in 1 *The Supreme Court Practice 1997*, para. 23/1–3/13, at 412.
>
> Although Ms. Collins (who argued the aspect of the matter for the petitioner) had no instructions to give an undertaking as to costs, I have nothing at all before me to support any suggestion that the Brazilian Government would not ensure that its obligations for costs (to be incurred if its appointed officer proves unsuccessful before this court) would not be honoured. In the interest of comity, I would consider that any presumptions would arise in favour of such obligations being met and not the other way around. The rule in the *Dartmouth Harbour Commrs.* case applies, *a fortiori*, to the present circumstances."

185 As related at para. 179 (ix) above, *Cybervest* (9) concerned a petition to wind up a fund incorporated in the Cayman Islands presented by PIFSS which faced a SFC application. In his judgment, Smellie, C.J. said (2006 CILR 80, at paras. 22–24):

> "The wording of [O.23, r.1(1)] plainly reveals the wide discretion to be exercised in the making of an order.

> 23 The wording does not admit any judicial policy that would mandate the making of an order simply because the plaintiff is a foreign plaintiff; the requirement that the plaintiff is ordinarily resident outside the jurisdiction is simply a pre-condition to the making of an order under the particular O.23, r.1(1)(a). It is a precondition just like those stipulated in (b)–(d), the other sub-rules, which are aimed at plaintiffs who may not ordinarily reside out of the jurisdiction …
>
> 24 … I would simply add that discretion is to be exercised on a case-by-case basis, as the rule states, having regard to all the circumstances of the case."

186 After noting the significant fact that PIFSS had immensely valuable assets (its shares in the fund PIFSS was seeking to have wound up) that were to be regarded as being within the jurisdiction, Smellie, C.J. went on to say (*ibid.*, at para. 27):

> "Another circumstance, of some weight, is the fact that the petitioner is a state agency of a foreign government of undoubted resources and enjoying a high reputation in the global financial and commercial community. This is relevant insofar as it would tend to negate any concern that the plaintiff would be unlikely to obey an order for costs made in favour of the respondent. To my mind, it also addresses the concern raised by Mr. Farrow, that efforts to enforce an order in Kuwait, if it ever came to that, could be met with a plea of state immunity."

187 The judge supported his statement in his judgment (2022 (1) CILR 12, at para. 165) that there was a rebuttable presumption that SFC should not be ordered by reason of the plaintiffs being the agent of, and wholly owned by, the State of Kuwait by footnote 28 which reads "*TMSF* v. *Wisteria Bay Ltd.* … (2006 CILR 351, at para. 23)." However, it is clear that the paragraph of the judgment in *Tasarruf* (39) to which the judge intended to refer was para. 22 which reads:

> "Taken together, there is a common practical principle to be discerned from these last cited three cases which is that where the plaintiff is the government (or a state agency) of a foreign state enjoying good standing in the international community (in particular from this court's point of view, enjoying diplomatic relations with H.M. Government) *it should be assumed* as a matter of comity and common sense, *in the absence of anything to the contrary*, that it will honour its obligations for costs made against it. Nonetheless, as the question remains one to be decided on a case by case basis in the discretion of the court, an order for security for costs could undoubtedly be made

against a foreign state in appropriate circumstances." [Emphasis added.]

188 It was no doubt in light of the emphasized words in this passage that the judge expressed himself as he did in para. 165 of his judgment. In our view, with respect to the judge, the Chief Justice is not to be taken here as laying down a principle based on a presumption that was to prevail unless it was rebutted. We say this having regard to the words used in the following sentence in the quoted passage that stress that the court is exercising a broad discretion on a case-by-case basis. It follows, in our opinion, that the judge erred in law in proceeding as he did on the basis that there was a presumption arising from comity and common sense that security for costs should not be awarded against the plaintiffs, although each case will be decided on its own facts.

189 In our opinion, the approach of the court when dealing with an SFC application against a foreign state or foreign state agency that enjoys good standing in the international community should be that it can treat this as a factor in favour of such of a plaintiff to go into the scales but on the basis that it is just one amongst all the other factors that must be weighed by the court when exercising the discretion conferred upon it.

190 We also accept Ms. Stanley's submission that the judge erred in stating that a foreign plaintiff does not have the burden of establishing that it has fixed and permanent property within the jurisdiction. The judge supported this statement by citing Lightman, J.'s *dictum* in *Leyvand* v. *Barasch* (20) that the court will not infer a real risk that assets within the jurisdiction will be dissipated or moved abroad in the absence of a question over the plaintiff's probity. Whilst the judge clearly intended this statement to apply to a situation where the evidence showed that a foreign plaintiff had property within the jurisdiction but there was nothing or very little about the property's permanency or freedom from encumbrances, we find it to have been too broadly expressed. Evidence that a foreign plaintiff has valuable property within the jurisdiction will obviously be of relevance but the significance of this evidence will depend on all the facts of the case, including any evidence as to the permanency of the property and its freedom from encumbrances (or the lack of such evidence) and other evidence tending to show that the plaintiff can be trusted to honour an adverse costs order. We also respectfully disagree with Lightman, J.'s *dictum* in *Leyland* v. *Barasch.* In our view, the approach adopted by Butcher, J. in *PJSC Tatneft* v. *Bogolyubov* (25) ([2019] Costs L.R. 977, at para. 49) and Henshaw, J. in *Pisante* v. *Logothetis* (27) ([2020] EWHC 3332 (Comm), at para. 65): "the question is not whether a lack of probity has been shown, but whether there is a real risk that the assets in a Contracting State may no longer be available if and when an asset enforcement arises," is to be preferred.

191 We turn to Ms. Stanley's submission challenging the finding by the judge (2022 (1) CILR 12, at para. 178) that, if the plaintiffs' claims against the defendants all fail, there will be a costs order in respect of which KPA and PIFSS will be jointly and severally liable, the latter having substantial assets within the jurisdiction. Ms. Stanley's submission is based on the contention now pleaded in para. 12 of D1's defence that KPA's claim is a nullity because it was not authorized by the Chairman of KPA, who, as a matter of Kuwaiti law (having regard to KPA's constitution) is the only officer of KPA who can authorize the bringing of claims by the company and who has no authority to delegate this power or to ratify an earlier unauthorized issue of proceedings.

192 D1's defence and counterclaim to KPA's claim was served and filed on January 31st, 2022, over three months after the hearing below. In her skeleton argument for this appeal, Ms. Stanley submits that:

> "As recorded in the evidence [the fourth affidavit of Mr. Lewis] and then set out in the GP's Defence at [12], there is a major factual dispute in this case as between KPA and the Appellants as to whether these proceedings have been commenced and continued on behalf of KPA with its authority (there being no power under Kuwaiti law to ratify proceedings if brought without authority.)"

193 Attention was first drawn to the significance of the plaintiffs being joint and several debtors under an adverse costs order in para. 20 of Mr. Florent's third affidavit, dated August 27th, 2021, where he deposed that he had alerted PIFSS to the possibility that, owing to the joint and several nature of costs orders in the Cayman Islands, it was possible that PIFSS would be required to satisfy any costs order that may be made in these proceedings in full from its own resources.

194 In paras. 42–47 of his fourth affidavit, dated September 17th, 2021, Mr. Lewis deposed that the FFP directors had been sent an opinion of Mr. Omar Al Qahtani of the Turkey office of Al Tamimi & Co. ("the Al Tamimi opinion") stating that only the Chairman of KPA had authority to approve the issuance of proceedings by KPA and this authority was not capable of being delegated; nor could an unauthorized issuance of proceedings be ratified by the KPA's Chairman. Reference was also made to the suspension of Mr. Al Sabah on August 24th, 2021 from his position as Director General KPA.

195 Curious as to how this lack of authority contention was deployed below, the court has perused the skeleton arguments relied on before the judge and the transcript of the oral submissions advanced below by Ms. Stanley for D1, Mr. Chapman for D2–D3 and Mr. Allison for the plaintiffs.

196 In para. 245 of his skeleton argument for the hearing below, Mr. Allison contended that PIFSS had sufficient assets within the jurisdiction

to cover any costs order that might be made against the plaintiffs in respect of which they would be jointly and severally liable.

197 Mr. Chapman did not contend in either his skeleton argument or his oral opening submissions that one of the consequences of the Tamimi opinion was that it was not inevitable that if the plaintiffs' claims were dismissed they would both be jointly and severally liable for the costs of the proceedings.

198 Ms. Stanley also did not contend in her skeleton argument or in her opening or closing submissions that, in light of the Tamimi opinion, KPA's claim was a nullity so that it could not be said that it was inevitable that if KPA's and PIFSS's respective claims were dismissed, the plaintiffs would be jointly and severally liable for the costs of the proceedings. Instead, she contended that the effect of the Tamimi opinion was that it undermined the plaintiffs' contention that an adverse costs order would be enforceable in Kuwait and undermined KPA's reliance on assurances given by KPA's Director General, Mr. Al Sabah, both before and after he was suspended from that office, that KPA would honour any costs order made against it.

199 In his oral submissions in reply, Mr. Allison observed that the defendants had not taken the point that it was only one of the plaintiffs, PIFSS, that had assets within the jurisdiction and contended that, even if it had been taken, as Mr. Florent explained in para. 30 of his third affidavit, PIFSS was well aware of the joint and several nature of costs orders so that it may have to pay the whole sum from its own resources. Mr. Allison also submitted that the "lack of authority issue" was not a live issue in the proceedings before the court because there had been no application to strike out KPA's claim on that basis or to seek the determination of a preliminary issue.

200 In the course of his reply submissions made ahead of Ms. Stanley's reply submissions, Mr. Chapman accepted that, if the plaintiffs' claims were dismissed, the likely costs order would be a joint and several one, subject to the possibility that PIFSS might well argue that joint and several liability should not apply if KPA's claim was found to have been brought without authority.

201 Whilst Ms. Stanley had expressly adopted Mr. Chapman's opening oral submissions when she made her own opening oral submissions, she did not adopt the same course when she delivered her oral closing submissions, in the course of which she said she was going to deal just with the Al Tamimi/authority/suspension point and the point she wished to make was not the lack of authority to commence KPA's proceedings but the suspension of Mr. Al Sabah as Director General of KPA and the resulting loss of his authority to provide information to Mr. Florent upon which Mr. Florent had purported to rely in advancing KPA's case.

202 In our judgment, since the point now taken by D1[15] as to the impact of the lack of authority contention on what the judge said (2022 (1) CILR 12, at para. 178) was not taken on behalf of D1 below, when it plainly could have been, it is not open to D1 to take the point in this appeal in support of D1's case that the judge's decision refusing the defendants' SFC applications should be set aside.

203 In our judgment, the errors of the judge identified in paras. 188 and 190 above played such a significant role in the exercise of his discretion (see *e.g.* paras. 155, 165, 166 and 176) that his decision must be set aside.

204 In these circumstances, it is open to us to exercise the discretion conferred by GCR O.23, r.1(1) and since we have before us all the evidence and the parties' skeleton arguments that were before the judge and the transcript of the oral submissions the judge heard on the SFC issue, we propose to decide whether SFC should or should not be ordered against each of the plaintiffs.

205 We proceed on the assumption that the defendants are correct in their submission that there would be very real difficulties indeed in enforcing in Kuwait costs orders made against the plaintiffs if their claims against the defendants are dismissed.

206 Although it is a necessary condition for the ordering of SFC that there is a real risk that an adverse costs order would not be enforced against the postulated foreign plaintiff in his/its home jurisdiction, this is not a sufficient condition for ordering SFC whatever the other circumstances of the case. Instead, it is open to the court, if there is sufficient evidence to support such a conclusion, to find that there is no real risk that the plaintiff will not honour an adverse costs order and for this reason to decline to order SFC. In our judgment, this is such a case having regard to the following matters.

207 As is common ground, the plaintiffs are agencies of a foreign state, Kuwait, which is of good standing in the international community and enjoys diplomatic relations with HM Government. Further, as related above, an instrumentality of the State of Kuwait, the DLAL, acting by the Head of its International Arbitration and Litigation Sector, sent a formal letter to the judge on behalf not only of KPA and PIFSS but also the State of Kuwait that reads in relevant part:

> "Dear Sirs.
>
> Cause No. FSD 236 of 2020 (RPJ)—(1) Kuwait Ports Authority and (2) The Public institution for Social Security v (1) Port Link GP Ltd.,

15 See para. 180(iv) above.

(2) Mark Eric Williams, (3) Wellspring Capital Group, Inc and (4) KGL Investment Company Asia (the 'Proceedings')

I am the Head of the International Arbitration and Litigation Sector for the Department of Legal Advice and Legislation (the 'Department') of the State of Kuwait.

One of the responsibilities of the Department is to act as legal adviser to the State of Kuwait as well as to certain State entities and/or incarnations of the State. In particular, the Department currently advises and represents each of the Kuwait Ports Authority ('KPA') and The Public Institution for Social Security ('PIFSS') in connection with the Proceedings.

I hereby confirm, on behalf of the Department, that KPA and PIFSS are wholly owned by the State of Kuwait and bring to your attention the attached letters, duly signed by authorised representatives of KPA and PIFSS confirming that they will comply with any final and binding costs orders made against them in the Proceedings ('Costs Orders').

We respectfully request, on behalf of KPA and PIFSS [and the State of Kuwait][16] that the Grand Court take these letters into consideration in determining whether or not KPA and/or PIFSS should be required to provide security for costs in the Proceedings."

208 The letters (also addressed to the judge) that were sent with the DLAL letter on behalf of PIFSS and KPA were in common form. In relevant part, they read:

"Dear Sirs

We refer to the abovementioned Proceedings before the Grand Court of the Cayman Islands, in which Kuwait Ports Authority ('KPA') [PIFSS] is a Plaintiff.

Without prejudice to the exercise of KPA's [PIFSS's] legal rights, including without limitation its right to appeal, or to seek leave to appeal, any decision of the Grand Court, we confirm that KPA will comply with any final and binding costs order(s) made against KPA in the course of the Proceedings ('Costs Orders').

Yours faithfully"

209 The KPA letter is signed by Mr. Al Sabah in his capacity as KPA's Director General. The letter is dated May 27th, 2021, which was at least

16 The brackets do not signify that the words they contain were not part of the original letter: they were.

two months before Mr. Al Sabah was suspended from this office on August 24th, 2021.

210 Ms. Stanley criticizes the judge for placing the reliance he did on these letters. Focusing on the words, "Without prejudice to the exercise of KPA's [PIFSS's] legal rights, including without limitation to its right to appeal, or to seek leave to appeal, any decision of the Grand Court," she submits that the letters were merely "comfort letters" and further contends that the judge should have found there remained a significant risk that an adverse costs order would not be paid because the confirmation expressed in the letters could only be enforced by committal or sequestration proceedings in the jurisdiction and such an order would not be enforceable in any other court; nor was it clear that the comfort letters would be enforced by the courts of Kuwait.

211 We do not accept these criticisms. In our judgment, the three letters amount to a representation intended to be relied on by the Grand Court that the plaintiffs would honour any final and binding costs order made against them and we regard the letters as providing strong support for the conclusion that there is no real risk that such costs orders would not be paid. We say this because we have no doubt that the State of Kuwait and its agencies, KPA and PIFSS, would suffer very significant reputational damage if the plaintiffs were to depart from the confirmations given in the letters. Also, further support for this "no real risk" conclusion comes from the evidence as to the financial resources of the plaintiffs that shows that each could be expected to have the ready funds to honour an adverse costs award.

212 As related by the judge, the unchallenged evidence is that PIFSS, which administers independently Kuwait's pension fund for all Kuwaiti citizens in the workforce, had a global investment asset portfolio worth approximately US$133.7bn. as at March 31st, 2021 and earned a profit for the period March 2020 to December 2020 of US$18.9bn. Included in these assets is its investment in the Jermyn Street Fund, a Cayman Islands ELP, which was valued at €35,074,942 as at March 31st, 2021. It is true that PIFSS is likely to be entitled to redeem this investment under the partnership agreement and to do so without publicity but there are no reasons to think that PIFSS would set about redeeming its investment and transferring the proceeds out of the jurisdiction to avoid having to satisfy a costs order: accordingly its existence provides reassurance that PIFSS is going to have amply sufficient resources over at least the next five to six years to meet an adverse costs order should its claims against the defendants be dismissed.

213 When setting out KPA's financial details that are recorded in para. 179(xv) above when relating his reasons why the SFC applications should be dismissed, the judge was relying on the evidence given in Mr. Florent's

third affidavit which was based in part on information that had come from Mr. Al Sabah. Ms. Stanley submits that this evidence was and is inadmissible because it is hearsay and Mr. Florent's third affidavit was sworn on August 27th, 2021 after Mr. Al Sabah was suspended on August 24th, 2021. We are not impressed by this submission. Even assuming that the information from Mr. Al Sabah was provided to Mr. Florent after Mr. Al Sabah had been suspended (which we think unlikely), Mr. Al Sabah would have been in a position to provide reliable figures showing that KPA's profit for the financial year 2020–2021 was KWD56,450,000, the equivalent to c.US$187,522,553 (based on a foreign exchange currency conversion of KWD1: US$3.32 as at August 9th, 2021). Further, Mr. Florent exhibits a public announcement made by KPA on April 4th, 2021 that KPA's profit for the financial year 2020–2021 was KWD56,450,000.

214 Apart from its interest in the assets held on trust for it and TPF by the GP, KPA has no assets within the jurisdiction but it is clear to us from the level of profit earned by KPA for the year 2020–2021 that it is extremely likely to have ample resources to honour an adverse costs order over the next five to six years.

215 It was argued below by the defendants that the plaintiffs could not be trusted to honour an adverse costs order on two particular grounds: the attempts by the Attorney General of Kuwait to obtain the moneys that had been paid into the account held at the Noor Bank that were part of the proceeds from the sale of Clark City, TPF's asset in the Philippines; and the manner in which the defendants had conducted the proceedings, including the bringing of proceedings against Walkers, the defendants' previous attorneys, the bringing of derivative claims for proceeds that would be paid to the plaintiffs and the plaintiffs' alleged refusal to compromise the SFC issue. These contentions are not advanced by Ms. Stanley. Had they been, they would have found no favour with the court.

216 For the reasons given in paras. 205–215 above, we find that there is no real risk that the plaintiffs will not honour their confirmations that they will pay any final and binding costs order made against them and accordingly we order that the plaintiffs should not be ordered to provide security for costs.

217 It follows that D1's appeal against the judge's refusal to order SFC must be and is dismissed.

**Summary of conclusions**

218 We would summarize our conclusions as follows:

(i) D1's appeal against the refusal of the judge to strike out the plaintiffs' direct claims against D1 is dismissed.

(ii) D1's appeal against the refusal of the judge to strike out the plaintiffs' derivative claims against D1 is allowed and the claims are struck out.

(iii) The appeals of D2, D3 and D4 against the refusal of the judge to strike out the plaintiffs' derivative claims against them are dismissed.

(iv) The appeal of D1 against the refusal of the judge to order the plaintiffs to provide security for costs is dismissed.

219 Our preliminary view as to costs is:

(i) There should be no order as to costs in respect of D1's strike out appeal. Although D1 succeeded in having the derivative claim against it struck out, it did not succeed on its argument that the plaintiffs' claims were misconceived because they were not in the form of an application for partnership accounts.

(ii) D2, D3 and D4 should pay the costs of their strike out appeals.

(iii) D1 should pay the costs of its SFC appeal.

(iv) The parties are at liberty to contend for different costs orders than those set out in (i)–(iii) but they must serve (concise) written submissions in support thereof within 10 days of the issuance of this judgment.

220 **BIRT, J.A.:** I agree.

221 **BEATSON, J.A.:** I also agree.

***Judgment accordingly.***

Attorneys: *Kobre & Kim* for the first appellant; *Campbells LLP* for the second to fourth appellants; *Ogier* for the respondents.

**EXHIBIT E**

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. <u>Defendants</u>**

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 F**




**Michaelmas Term**
[2024] UKPC 32
**Privy Council Appeal No 0045 of 2023**

# JUDGMENT

# Kuwait Ports Authority and another (Respondents) *v* Mark Eric Williams and 2 others (Appellants) (Cayman Islands)

## From the Court of Appeal of the Cayman Islands

before

**Lord Reed**
**Lord Hodge**
**Lord Hamblen**
**Lord Leggatt**
**Lady Simler**

**JUDGMENT GIVEN ON**
**28 October 2024**

**Heard on 20 June 2024**

*Appellants*
Graham Chapman KC
Andrew Pullinger
Harry Shaw
(Instructed by Campbells LLP and Sinclair Gibson LLP)

*Respondents*
David Allison KC
Dan McCourt Fritz KC
Rachael Reynolds KC
(Instructed by Ogier (Cayman) LLP and Baker & McKenzie LLP (London))

**LORD HAMBLEN:**

## Introduction

1. The Cayman Islands Exempted Limited Partnership Act (2021 Revision) (the "Act") provides for the establishment of exempted limited partnerships (an "ELP"). A limited partner in an ELP enjoys limited liability but is precluded from participating in the conduct of the business of the ELP, which is carried out exclusively by a general partner.

2. This appeal concerns the circumstances in which a limited partner can bring a derivative action on behalf of the ELP for injury or damage done to the ELP. This is governed by section 33(3) of the Act which provides that such an action may be brought if the general partner has "without cause, failed or refused to institute proceedings".

3. This is the first case in which this issue has been considered. In its decision the Court of Appeal of the Cayman Islands (Sir Richard Field, Sir Michael Birt and Sir Jack Beatson JJA) provided general guidance as to the approach to be adopted to derivative actions brought pursuant to section 33(3) of the Act and concluded that the general partner in this case did refuse or fail to institute proceedings "without cause" and that as a matter of discretion it was appropriate to allow the respondents' derivative claims to be brought. The appellants contend that the Court of Appeal was wrong so to conclude. The respondents cross-appeal is in respect of one aspect of the general guidance provided, namely at what point in time the section 33(3) test falls to be assessed.

## Factual background

4. The Port Fund LP (the "Fund") is a Cayman Islands ELP which invested in port-related assets around the world. It was established in 2007 by KGL Investment Company KSCC ("KGLI Kuwait") which acted as the Fund's sponsor and placement agent and was also one of the limited partners in the Fund. The Fund has one general partner and eleven limited partners including KGLI Kuwait and the two respondents, Kuwait Ports Authority ("KPA") and The Public Institution for Social Security ("PIFSS"). The limited partners invested a total of US$188,152,000, approximately 65% of which was invested by the respondents.

5. The general partner of the Fund is Port Link GP Ltd, a Cayman Islands exempted limited company (the "General Partner"). It was appointed as the sole general partner from 21 March 2007 onwards pursuant to identical limited partnership agreements between itself and the limited partners.

6. The first appellant ("Mr Williams") is the ultimate beneficial owner of the General Partner and has very close connections with the second appellant, Wellspring Capital Group Inc ("Wellspring"), and the third appellant, KGL Investment Company Asia ("KGLI Asia"). In summary:

(1) Mr Williams was a vice president of KGLI Kuwait from September 2007 until 2008 and its investment director from 2009 until 2011. Mr Williams was also a member of the Investment Committee of the Fund from 2009 until 2013.

(2) Mr Williams is the sole shareholder and director of Port Link Holdings USA Inc ("Port Link Holdings"), which since July 2018 has owned the entirety of the issued share capital of the General Partner.

(3) On 23 January 2020 Mr Williams was appointed as the authorised representative of the General Partner in relation to proceedings against it by KPA seeking information regarding the condition of the Fund pursuant to section 22 of the Act ("the section 22 proceedings"). The resolution conferred full authority on Mr Williams to take all necessary actions in relation to those proceedings.

(4) Mr Williams is also the chief executive, chief financial officer, president, vice president, treasurer and secretary of Wellspring. Wellspring is owned by the Mark E Williams Living Trust, the trustees of which are Mr Williams, his wife and his brother.

(5) Mr Williams has been the chief executive officer of KGLI Asia since 1 January 2012. KGLI Asia is owned by KGLI Kuwait. KGLI Asia is said by the appellants to have provided administrative support to the Fund between December 2017 and August 2020 pursuant to an administrative services agreement dated 1 December 2017. KGLI Asia has been in voluntary liquidation since 20 December 2020.

7. The respondents began raising concerns with the General Partner concerning the management of the Fund from October 2016. On 29 January 2020, KPA commenced the section 22 proceedings against the General Partner seeking disclosure of certain documents to which it claimed to be entitled.

8. Also on 29 January 2020, after Mr Williams was appointed as the authorised representative of the General Partner, certain professional directors from FFP (Directors) Ltd (the "FFP Directors") were appointed as directors of the General Partner by Abdulghfoor Alwadhi ("Mr Alwadhi") and Mr Williams. They initially acted alongside Mr Alwadhi, who was a director of the General Partner from 2010 until he resigned on

28 March 2021. Mr Alwadhi was the sole appointed director from 24 May 2018 until 29 January 2020, which was when much of the wrongdoing alleged by the respondents took place. The FFP Directors have no connection to such wrongdoing and describe themselves as "independent directors". They remained in office until they resigned on 15 February 2023.

9. KPA's application in the section 22 proceedings was opposed by the General Partner at a time when the FFP Directors were in post, but KPA obtained an order requiring the General Partner to disclose various documents in August 2020. The General Partner sought to appeal that order but that appeal was compromised and the General Partner agreed to provide various documents to the respondents pursuant to a consent order made in November 2020.

**The proceedings**

10. On 14 October 2020, the current proceedings were commenced in the Grand Court of the Cayman Islands (the "Grand Court") by the respondents against the General Partner only.

11. On 12 February 2021, the respondents' statement of claim was amended and re-filed joining the appellants as the second to fourth defendants respectively. The respondents advance both direct and derivative claims on behalf of the Fund against Mr Williams and Wellspring, and derivative claims only against KGLI Asia. The respondents allege that the assets of the Fund, which are held on statutory trust by the General Partner, have been misappropriated as part of an unlawful means conspiracy and/or due to dishonest and/or negligent breaches of trust and fiduciary duty, in which each of the appellants have wrongfully participated, in some cases having knowingly received some or all of the proceeds.

12. So far as relevant, the claims made by the respondents may be summarised as follows (see para 152 of the Court of Appeal judgment):

(1) The respondents allege that the General Partner has been guilty of wrongdoing which has caused the Fund loss said to be well in excess of US $100m.

(2) The claims against the General Partner allege that, in breach of its fiduciary, contractual and other duties, it acted contrary to the interests of the Fund and the limited partners by making substantial payments, using the Fund's monies, that were not for the benefit of the Fund and/or the limited partners. Amongst these is the alleged sham settlement of proceedings brought against it in the Dubai International Finance Centre Court (the "DIFCC proceedings") as a result of which

US $59,990,461.30 (the "Wellspring Payment") was paid to Wellspring. It is alleged that the General Partner conspired with, amongst others, Mr Williams and Wellspring to cause loss to the Fund and/or the limited partners by unlawful means in relation to the DIFCC proceedings and the Wellspring Payment.

(3) The claims against Mr Williams are that he orchestrated the DIFCC proceedings and the Wellspring Payment and was accordingly party to the above conspiracy. It is further alleged that he dishonestly assisted in the General Partner's breach of trust/fiduciary duty, knowingly procured the General Partner to breach its contractual duties and was in breach of fiduciary duties he owed to the Fund and/or the General Partner.

(4) The claims against Wellspring are for knowing receipt of the Wellspring Payment, conspiracy in relation to the Wellspring Payment and the DIFCC Proceedings and for repayment of the Wellspring Payment.

(5) The claim against KGLI Asia is for knowing receipt in respect of a number of payments said to have been made to it in breach of trust and/or fiduciary duty by the General Partner.

13. The appellants deny the claims against them, counterclaim against the respondents, alleging that the proceedings are an abuse of process commenced for an improper collateral purpose, and crossclaim against the General Partner in respect of alleged underpayments and rights to indemnification. No application has been made to strike out the respondents' claims on their merits or for reverse summary judgment. The claims must therefore be treated as having a real prospect of success.

14. The FFP Directors stated in sworn evidence that, for the purpose of determining whether there was cause for the derivative claims to be pursued by the Fund as required by section 33(3) of the Act, they conducted an intensive, forensic investigation into the actions of the General Partner and the former management team of the Fund. The stated results of the FFP Directors' investigations are set out in various memoranda dated from 28 May 2021 and in the third affidavit of Richard Lewis (one of the FFP Directors) dated 4 June 2021. These set out that, in the General Partner's view (acting by the FFP Directors), there was currently no cause to bring the derivative claims against the General Partner or the appellants, and that even if such claims did have merit, the General Partner would need to undertake a cost/benefit analysis of whether it was in the best interests of the Fund to pursue them and, if so, whether the Fund was in a position to pursue them or could raise funding to do so.

15. On 7 June 2021, the General Partner and the appellants applied to the Grand Court to strike out the derivative claims against them, on the grounds that such claims failed to

satisfy the statutory test under section 33(3) of the Act. Those applications were heard by Parker J between 13-19 October 2021. On 25 November 2021, the Grand Court handed down its judgment granting part of the General Partner's summons on discrete points that did not result in any claims against it being struck out and dismissing the appellants' application.

16. The Grand Court's order was appealed by both the General Partner and the appellants. That appeal was heard by the Court of Appeal on 25 and 26 May 2022 and its judgment was handed down on 20 January 2023. It dismissed the strike out appeal save in relation to the derivative claims made against the General Partner.

17. On or around 15 February 2023, the FFP Directors resigned as the General Partner was apparently unable to pay their professional fees. The respondents thereafter applied (i) to be joined as defendants to the appellants' crossclaim against the General Partner and (ii) for receivers to be appointed in respect of the General Partner.

18. On 2 May 2023, the General Partner was placed into voluntary liquidation by resolution of its sole shareholder, Port Link Holdings, that is ultimately beneficially owned by Mr Williams.

19. By an order dated 1 June 2023, Parker J ordered the appointment of receivers in respect of the General Partner for the express purpose of conducting all litigation on behalf of the General Partner and the Fund (the "Receivers").

20. By an order dated 2 June 2023, Parker J ordered that the respondents be joined as defendants to the appellants' crossclaim against the General Partner in the proceedings. An appeal from this order was dismissed by the Court of Appeal on 15 August 2024.

21. The joint voluntary liquidators of the General Partner applied, in accordance with their statutory obligation to do so, to convert the voluntary liquidation of the General Partner into an official liquidation. This application was dismissed by Parker J on 18 September 2023 and the Receivers were permitted to continue managing the litigation commenced by and against the General Partner and the Fund. The Receivers therefore have conduct on behalf of the General Partner and the Fund of all litigation to which the General Partner or Fund are parties (save for the respondents' derivative claims). The Receivers have decided that the General Partner is not to appeal the Court of Appeal’s decision.

**The legal framework**

*The Act*

22. Section 3 provides that the rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding certain sections shall apply to ELPs, except where they are inconsistent with the express provisions of the Act.

23. Under section 4, ELPs are to consist of general partners and limited partners. General partners are liable for the debts and obligations of the ELP whilst limited partners generally have no such liability.

24. Section 14 provides that all contracts, letters, deeds, instruments or other documents are to be entered into by the general partner on behalf of the ELP and that the limited partners are not to take part in the conduct of the ELP's business.

25. Under section 16, any rights or property of the ELP, including choses in action, are held by the general partner upon trust as an asset of the ELP. The Act thereby creates a statutory trust.

26. Section 19 provides that the general partner is to act at all times in good faith. Subject to any express provisions to the contrary in the partnership agreement, the general partner is to act in the interests of the ELP and limited partners owe no fiduciary duties to the ELP or the other limited partners.

27. Proceedings involving an ELP are governed by section 33 which provides:

> "(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.
>
> (2) If the court considers it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 20(1) or to enforce the return of the contribution, if any, required by section 34(1).

> (3) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings.
>
> (4) If any action taken pursuant to subsection (3) is successful, in whole or in part, as a result of a judgment, compromise or settlement of any action, the court may award any limited partner bringing any action reasonable expenses, including attorney's fees, from any recovery in any action or from an exempted limited partnership."

*Relevant case law*

28. Although there is no prior case law concerning section 33 of the Act, the Court of Appeal recognised that some assistance may be derived from common law and equitable principles developed in relation to the bringing of derivative claims in the context of trusts and limited partnerships, particularly given the statutory trust imposed by section 16 of the Act (paras 101 and 140(ix)).

29. The relevant principles in relation to trusts are summarised in *Lewin on Trusts (20th Edition)* at paras 47-006 and 47-008:

> "47-006. However, as an alternative to proceedings brought in the name of trustees, a beneficiary may, sometimes, bring an action in his name on behalf of the trust against a third party. The fact that the action is brought in the name of a beneficiary rather than the name of the trustees does not alter its character. The action is a derivative action in which the beneficiary stands in the place of the trustees and sues in right of the trust, and does not enforce duties owed to him rather than to the trustees; a beneficiary can be in no better position than trustees carrying out their duties in a proper manner…
>
> 47-008. A beneficiary can bring a derivative action only in special circumstances, for example circumstances which tend to disable the trustees from suing (as where their acts and conduct with reference to the trust fund are impeached), or circumstances rendering it difficult or inconvenient for the trustees to sue, as where there is a conflict between their interest and duty. Special circumstances are not confined to circumstances of these kinds. The guiding principle is that there

> must be exceptional circumstances, which embrace a failure, excusable or inexcusable, by the trustees in the performance of a duty to the beneficiaries to protect the trust estate, or to protect the interest of the beneficiaries in the trust estate. The special circumstances relied on must have something to do with the willingness or ability of the trustee or alleged trustees to bring the action."

30. The fact that the special circumstances must have "something to do with the willingness or ability of the trustee or alleged trustees to bring the action" provides a clear link to the focus in section 33(3) on the justification for the failure or refusal of the general partner to institute proceedings.

31. Recent leading cases on the requirement for special circumstances include *Hayim v Citibank NA* [1987] AC 730 and *Roberts v Gill & Co* [2010] UKSC 22; [2011] 1 AC 240. In the latter case Lord Collins of Mapesbury provided the following summary of the law at para 46:

> "The cases go back to the 18th century, and many of them were reviewed in *Hayim v Citibank NA* [1987] AC 730. The special circumstances which were identified in the earliest authorities as justifying a beneficiary's action were fraud on the part of the trustee, or collusion between the trustee and the third party, or the insolvency of the trustee, but it has always been clear that these are merely examples of special circumstances, and that the underlying question is whether the circumstances are sufficiently special to make it just for the beneficiary to have the remedy…."

Lord Walker of Gestingthorpe (at para 110) stated that "what has to be special about the circumstances – is that the derivative action is needed to avoid injustice…."

32. The determination of whether there are circumstances which are special therefore involves a consideration of what the interests of justice require – see *In re Field, decd* [1971] 1 WLR 555 at 561 per Goff J, cited with approval by Lord Collins in *Roberts v Gill* at 258D-F: see also *Nurcombe v Nurcombe* [1985] 1 WLR 370 at 378D-H per Browne-Wilkinson LJ.

33. In *Certain Limited Partners in Henderson PFI Secondary Fund II LLP (a firm) v Henderson PFI Secondary Fund II LP (a firm)* [2012] EWHC 3259 (Comm); [2013] QB 934 ("Henderson") Cooke J held that that the special circumstances test also applied to the bringing of a derivative claim by a limited partner on behalf of an English limited

partnership. As with an ELP, a limited partnership established under the Limited Partnerships Act 1907 is not a separate legal entity and limited partners have no role in the management of the partnership business, which is exclusively carried out by the general partner. There is, however, no provision equivalent to section 33 of the Act.

34. The Board agrees with the Court of Appeal that the special circumstances test and case law are relevant to the interpretation and application of section 33. If there are special circumstances which mean that a derivative action is needed to avoid injustice then the failure or refusal of the general partner to institute proceedings may well be without cause. Conversely, if there are no such circumstances then the failure or refusal to do so may well be justifiable and therefore with cause.

35. Graham Chapman KC for the appellants submitted that the case law relating to the bringing of derivative claims on behalf of a company is also of assistance and in particular the fraud on the minority exception to the rule in *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189 that the proper plaintiff for a wrong done to a company is the company itself. There are, however, a number of important distinctions between ELPs and companies which mean that little assistance can be derived from such case law. In particular:

(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.

**The Court of Appeal judgment**

36. At para 140 of its judgment the Court of Appeal gave general guidance in respect of derivative proceedings under section 33(3) of the Act. This guidance will be considered further below, but it includes the following summary of the nature of the court's task in deciding whether the requirements of section 33(3) have been complied with:

> "(viii) The essential task for the court at such a hearing is to determine whether the limited partner has brought himself within the terms of section 33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.
>
> (ix) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in section 33(3).
>
> (x) Whilst reference to a 'good arguable case' may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of section 33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court and the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the [Act] that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. …

> the court should consider, inter alia, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim is not permitted.
>
> (xi) The court should reach its decision as to standing by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.
>
> (xii) Even where the requirements of section 33(3) are met, the court has a discretion as to whether to permit a derivative claim to continue. One of the factors which is likely to be relevant in exercising that discretion is whether the plaintiff has an alternative remedy."

37. In relation to the interpretation of section 33(3), the Court of Appeal held that the expression "without cause" must carry the implication of "good" cause**,** noting that the legislature cannot have intended that a decision for any cause, no matter how inhibited or conflicted the decision maker might be, would be sufficient to prevent the bringing of a derivative action under section 33(3) (para 95). The Court of Appeal further held that the relevant inhibition or conflict of interest is that of the general partner itself, as opposed to that of its directors from time to time (para 168).

38. On the facts, the Court of Appeal held that the section 33(3) test was satisfied as the General Partner was under a relevant inhibition when it determined (acting by the FFP Directors) that there was cause not to bring the derivative claims against the appellants. The Court of Appeal observed that, on the respondents' case, the General Partner was deeply involved in the alleged wrongdoing, as was Mr Williams, and that the General Partner had to decide whether to institute proceedings against the appellants, in circumstances where (para 158):

> (1) The essential wrongdoing giving rise to the claims against the appellants was that of the General Partner itself in making various payments and where the General Partner was part of the unlawful means conspiracy to injure the Fund involving Mr Williams and Wellspring.
>
> (2) The contemplated proceedings would have to be brought against Mr Williams, the ultimate beneficial owner of the General Partner and against two companies with which he is deeply and closely involved, namely Wellspring and KGLI Asia.

(3) The General Partner would also have to consider whether (as general partner) it should sue itself (in its own right) as a co-conspirator in the alleged unlawful means conspiracy.

39. The Court of Appeal found (para 159) that this amounted to an "obvious and serious conflict of interest" by reason of which the General Partner was under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and which also meant that the failure by the General Partner to bring proceedings was without cause. In so finding the Court of Appeal was upholding the Grand Court's conclusion to the same effect.

40. As to discretion, it was submitted that because the respondents have direct claims against the first and second appellants they have an alternative remedy against them and so there is no need to bring a derivative claim. The Court of Appeal concluded, however, that it was appropriate to allow the claim to continue in circumstances where there was uncertainty around whether the respondents had direct claims against the first and second appellants and whether the court could order restoration of the trust fund on the success of such direct claims in the absence of a derivative claim on behalf of the Fund (para 170). Both the direct and derivative claims against the first and second appellants were therefore permitted to continue.

**The appeal**

41. The appellants contend that the Court of Appeal erred in the interpretation of section 33(3) and/or the exercise of its discretion by:

(1) Finding that the General Partner was subject to a relevant inhibition precluding it from making a valid determination as to whether to bring the derivative claims.

(2) Failing to give due regard to the commercial judgment of the General Partner (acting by the FFP Directors) that the derivative claims should not be pursued.

(3) Allowing the respondents to continue the derivative claims in circumstances where the General Partner had validly determined with "cause" that the derivative claims should not be pursued.

(4) Establishing a test which allows a limited partner to bring or continue a derivative claim simply by impugning the conduct of the general partner so as to

> give rise (on the basis of the Court of Appeal's findings) to a perceived potential conflict of interest that inevitably renders any decision not to bring such claims as one "without cause".

*(1) Did the Court of Appeal err in finding that the General Partner was subject to a relevant inhibition precluding it from making a valid determination as to whether to bring the derivative claims?*

42. The appellants accept that a failure to bring proceedings may be without cause where the decision making is subject to a relevant inhibition.

43. The appellants also accept that an actual conflict of interest would be a relevant inhibition (see para 90 of their written case).

44. A conflict of interest is a clear example of special circumstances justifying the bringing of a derivative claim. This is one of the examples given in *Lewin* at para 47-008. It was also the basis upon which Cooke J held that special circumstances existed in *Henderson.* In that case a derivative claim was allowed to be brought by the limited partners for alleged wrongdoing by the management company appointed by the general partner, which was a sister company of the general partner. Cooke J held that this sister company relationship gave rise to an "irreconcilable conflict of interest" and that the partnership's prospects of obtaining redress against the management company were "virtually eliminated" (para 57).

45. Mr Chapman submitted that there was no relevant conflict of interest in this case as the Court of Appeal had merely held that there was a potential conflict of interest rather than an actual conflict of interest and there was no finding, as in *Henderson,* as to the impact of that conflict on the prospects of obtaining redress.

46. In the Board's view, it is clear that the Court of Appeal correctly held that there was an actual conflict of interest and indeed an equivalent conflict of interest to that found to be established in *Henderson.* As the Court of Appeal stated (emphasis added):

> "158. We respectfully agree with the decision of Cooke J in *Henderson*. In our judgment there *is* a similar conflict of interest in the present case. On the plaintiffs' case, D1 as the general partner was deeply involved in all the alleged wrongdoing as was Mr Williams. …

> 159. On the face of it, *by reason of the obvious and serious conflict of interest*, D1 *is* under an inhibition which would amount to special circumstances in the context of a trust or limited partnership and this inhibition also means that the failure by D1 to bring proceedings against D2 – D4 is without cause for the purposes of section 33(3).
>
> …
>
> 163. … [the General Partner] *is* subject to the conflicts of interest we have summarised above…
>
> …
>
> 167. … There is no doubt in our view that [the General Partner] *was and is* suffering from an inhibition … ."

47. It is correct that the Court of Appeal refers (at para 163) to the fact that the General Partner "cannot be seen to be in a position to take a fair and independent decision about the potential litigation", but that (and other like comments) is a description of the consequence of the conflict of interest rather than of its nature.

48. If the General Partner's decision whether or not to institute proceedings is subject to the conflict of interest which the Court of Appeal identified then the decision is inhibited thereby – it is not necessary or appropriate to go on to consider how it in fact affected the decision.

49. Further, in concluding that there was an actual conflict of interest the Court of Appeal was upholding the like finding made by the Grand Court:

> "104. The [General Partner] is a defendant to litigation where it is accused of serious wrongdoing: wilful default, liability under the Fraudulent Dispositions Act, and conspiracy with the other defendants are alleged.
>
> 105. A large number of the claims against [the appellants] are premised on a breach of duty by the [General Partner]. For example the allegation of knowing receipt is based upon a breach of duty by the [General Partner]. In the circumstances

> the [General Partner] cannot be expected to be the arbiter of whether to bring a claim against another defendant that is premised on its own breach of duty. It is in my view incapable of exercising an impartial decision-making function."

50. The Board agrees with the reasoning and conclusion of the Court of Appeal and the Grand Court.

*(2) Did the Court of Appeal err in failing to give due regard to the commercial judgment of the General Partner (acting by the FFP Directors) that the derivative claims should not be pursued?*

51. The appellants contend that the General Partner's decision not to bring the claims which are now brought derivatively was the product of a careful and thorough investigation and, ultimately, the considered exercise of commercial judgment by the General Partner acting by its independent FFP Directors. They reasonably concluded that the claims were not of sufficient merit to justify the bringing of proceedings. They appropriately also took into account how such claims might be funded and that the bringing of such proceedings might give rise to claims against the Fund, as it has done. This commercial decision is one with which the court should not interfere.

52. For a number of reasons, the fact that a commercial decision was taken by the FFP Directors does not avoid the conflict of interest which the Court of Appeal found there to be or the resulting inhibition on decision making.

53. First, as both the Grand Court and the Court of Appeal held, it is the position of the General Partner, not its directors, which must be considered. This is made clear by section 33 in general, which focuses on the "general partner", and by section 33(3) in particular, which refers to the "general partner" having failed or refused to bring proceedings without cause.

54. If, as the Court of Appeal held, the General Partner was subject to a disqualifying conflict of interest in making the decision whether or not to bring proceedings then that is not affected by the identity or independence of its directors. The conflict and the inhibition remain regardless of the identity of the directors from time to time.

55. Nor is this conclusion affected by the possibility adverted to by the Court of Appeal (at para 163) that different considerations might arise if liquidators were appointed by the court. It is not necessary to decide whether or not this is correct but, as the Court of Appeal observed, liquidators are not in the same position as directors as they are subject to the supervision of the court.

56. Secondly, even if it is appropriate to have regard to the position of the FFP Directors, they too were subject to a disqualifying conflict of interest and, moreover, one which they seemingly did not recognise. That conflict arises because the FFP Directors owed a duty to act in the best interests of the General Partner. Where there is a conflict between the interests of the General Partner and the Fund then that duty puts the FFP Directors in a conflicted position. The fact that the General Partner has a duty to act in the best interests of the Fund does not avoid that conflict; indeed, it highlights it.

57. As the Grand Court held, the FFP Directors were "seriously inhibited from making impartial decisions" regarding the bringing of proceedings because "they owe their duties primarily to the [General Partner] and it is obviously not in the [General Partner's] interests to be sued" (para 110). The Court of Appeal similarly recognised the conflict "between acting in the best interests of [the Fund] (which might include taking action against [the General Partner] as a co-conspirator) and acting in the best interests of [the General Partner] (which might be said to include the avoidance of being sued)" (para 163).

58. Thirdly, in any event the Grand Court further found that there was a "prima facie case that [the FFP Directors] are unable to assess the claims properly in an independent and objective way, notwithstanding Mr Lewis' extensive evidence" (para 110) and a "prima facie case that [the FFP Directors] have been guided (until recently) in their investigations by information provided by those who were under investigation themselves, and by their legal advisers, who were also conflicted" (para 111). This led the Grand Court to reach the following conclusion on the evidence:

> "121. Based on the available evidence, I have formed the view that there is a relevant inhibition which prevents the FFP Directors' decision making process being fair, because the decisions not to pursue the claims are insufficiently distinct from the wrongdoing upon which the claims are founded. …"

59. Mr Chapman submitted that this conclusion was undermined by the fact that the Grand Court had wrongly evaluated the evidence on the basis that it was only necessary to show a "prima facie" case. However, notwithstanding the different approach which the Court of Appeal held to be appropriate, it endorsed the Grand Court's conclusion, stating as follows:

> "168. Given our decision to uphold the judge's conclusion that it is the position of [the first defendant] as the general partner which must be considered in relation to any inhibition rather than the position of the directors from time to time, it is not necessary for us to address his finding about the position of the

> FFP Directors. Suffice it to say that, if we had found it necessary to do so, we would have considered that the judge was entitled to reach the conclusions which he did in this respect."

60. That endorsement of the Grand Court's conclusion necessarily includes the findings upon which that conclusion was based, as summarised above. Those findings are not open to challenge on this appeal.

*(3) Did the Court of Appeal err in allowing the respondents to continue the derivative claims in circumstances where the General Partner had validly determined with "cause" that the derivative claims should not be pursued?*

61. The basis upon which the appellants contend that the Court of Appeal so erred is that the FFP Directors had determined that the claims should not be pursued. All the reasons set out above as to why that decision was and remained conflicted and so was not made with "cause" equally apply to the exercise of any discretion to allow a derivative claim. This issue does, however, raise the question of whether there is such a discretion and, if so, its juridical basis. This question was raised by the Board at the hearing and, since the parties had not come to court prepared to deal with the issue, they were invited to address it by making written submissions.

62. Having had the benefit of those submissions, the Board concludes that there is no proper basis for the two stage approach adopted by the Court of Appeal whereby the court considers first if the section 33(3) test of whether there has been a refusal or failure to institute proceedings without cause is satisfied, and secondly whether as a matter of discretion the derivative claim should be permitted. Given that this two stage approach was common ground before the Court of Appeal, its appropriateness was not an issue which it addressed.

63. Section 33 does not refer to the court having any discretion, nor does it lay down any requirement for the court to grant permission or leave for the derivative proceedings to be brought. The sole statutory criterion is whether the requirements of section 33(3) are met. Although the subsection states that the limited partner "may" bring derivative proceedings where the test is satisfied, this relates to what the limited partner may do, not what the court may allow the limited partner to do. It is inconsistent with that statutory scheme to import a separate requirement that the bringing of derivative proceedings is additionally subject to the exercise of the court's discretion.

64. As explained above, however, the special circumstances test is relevant to the interpretation and application of section 33(3) and that involves a consideration of what the interests of justice require. This allows the court to take into account factors which

might otherwise be regarded as relevant to the exercise of a discretion ("discretionary considerations") as part of its evaluative determination of whether the requirements of section 33(3) are met. This would include, for example, whether there is an alternative remedy available, or whether the derivative claim is being brought for an ulterior motive, or views expressed by other limited partners.

65. Indeed, this is implicitly recognised in the Court of Appeal's description of how the court should approach the determination of whether the requirements of section 33(3) are met in para 140(x) of its judgment. It there refers to the court's task being an "evaluative one" which involves balancing "the need to avoid injustice" with "the need to respect the fact that a derivative action is an exception to the general principle" that decisions as to litigation are for the general partner. It also refers to the need to consider "the likelihood and nature of any injustice if the derivative claim is not permitted". Such an approach allows the court to have regard to discretionary considerations.

66. The Court of Appeal was therefore correct to have regard to discretionary considerations in reaching its conclusion, albeit that this should have been as part of its determination that the requirements of section 33(3) were met rather than as a separate step in a two stage approach. For the reasons stated in para 61 above, there was no error in its treatment of such factors.

*(4) Did the Court of Appeal err by establishing a test which allows a limited partner to bring or continue a derivative claim simply by impugning the conduct of the general partner so as to give rise (on the basis of the Court of Appeal's findings) to a perceived potential conflict of interest that inevitably renders any decision not to bring such claims as one "without cause"?*

67. As already stated, the Court of Appeal did not hold that there was "a perceived potential conflict of interest" but rather an actual conflict of interest and one which was, moreover, "obvious and serious".

68. Mr Chapman nevertheless submitted that the Court of Appeal's interpretation of section 33(3) set the bar too low and would be likely to lead to an undesirable proliferation of derivative claims in relation to ELPs.

69. As the Court of Appeal observed (para 173), such arguments do not bear on the proper interpretation of section 33(3) and are more matters for the legislature.

70. In any event, the Board would not accept that the bar has been set low. The Court of Appeal's decision is only likely to apply to a conflict of interest on the part of the general partner in the case of a claim against persons closely associated with the general

partner, or a claim in which the general partner is implicated, and which is seriously arguable.

71. Mr Chapman further submitted that the effect of the Court of Appeal's decision is that once a general partner is conflicted it is always likely to be conflicted and that the only way to avoid such a conflict is going to be the replacement of the general partner. Further, in the present case, due to the terms of the partnership agreement, that would lead to dissolution of the ELP.

72. Conflicts of interest may, however, take many different forms and be of varying levels of seriousness. In many cases, it may be possible to remove and resolve the conflict without there being any need to replace the general partner. This case may be different because of the "obvious and serious" nature of the conflict of interest, if there is substance in the allegations in the respondents' claims. As to the potential difficulties arising from the terms of the partnership agreement, this is not inherent in the operation of the Act; it is the consequence of the partnership terms agreed.

**The cross-appeal**

73. The respondents' position is that the Court of Appeal was correct as to the meaning, effect and application of section 33(3), save that, by their cross-appeal, the respondents submit that the Court of Appeal erred when it held that the point at which the section 33(3) test is to be assessed is the date of the strike out hearing, rather than, as the Judge held, at the time the derivative claim was commenced (the "Timing Issue").

74. On the Timing Issue the Court of Appeal held that the Judge's approach would require the court to ignore anything that had happened between the institution of proceedings and the hearing, which could lead to highly unsatisfactory results. It gave the example of the appointment of a new general partner which removed any question of inhibition or conflict of interest. It concluded that "the legislature cannot have intended that the court should allow a derivative claim to proceed in circumstances where, as at the date of the hearing of the strike out or preliminary issue, the requirements of section 33(3) are not met …" (para 125).

75. The respondents criticise that decision and rely in particular on the fact that the words "failed or refused" in section 33(3) are in the past tense, which suggests that the relevant failure or refusal must have taken place before the date of institution of the derivative claim.

76. In the Board's view the Court of Appeal reached the correct conclusion for a number of reasons.

77. First, although section 33(3) uses the past tense when it refers to whether the general partners "have, without cause, failed or refused to institute proceedings", that can refer to a failure or refusal to do so which began before the derivative action was commenced and continues up until the time of the court's determination. Similarly, although section 33(3) states that a limited partner may "bring" an action, which would most obviously refer to the commencement of the action, it can also refer to commencing and maintaining an action.

78. Secondly, this interpretation of section 33(3) is supported by pragmatic considerations and the fact that the nature of the evaluative decision which the court is called upon to make under section 33(3) is one which requires regard to be had to all relevant circumstances at the time of the decision. In particular, any consideration of what the interests of justice require can only properly be made on the basis of what justice currently requires, as opposed to what it may in the past have required.

79. As the Court of Appeal held, it would be highly unsatisfactory if the court could not have regard to how circumstances may have changed since the initiation of the proceedings, including, for example, the removal of the inhibition or conflict that was the basis for contending that the refusal or failure to institute proceedings was without cause.

80. Other examples given by the appellants of potentially important developments post-dating the initiation of proceedings include: (i) the insolvency of the derivative defendants; (ii) the defendants being denied insurance coverage for the claimed loss; (iii) determinative documents arising on discovery; (iv) adverse interlocutory findings during the course of proceedings; and (v) the costs of proceedings exceeding the value of the claim.

81. The respondents recognised the force of this point and acknowledged that it should be possible for the court to take into account later developments. They contended that the court could do so in the exercise of its discretion. On their approach there are two stages. The first stage is whether the requirements of section 33(3) are met, which is to be determined on the basis of the facts as at the time of the initiation of the proceedings. The second stage is the exercise of the court's discretion to allow the proceedings to be brought, which is to be determined on the basis of all facts as known at the time of the hearing before the court. However, for the reasons set out above, there is no two stage process; there is a single evaluative decision to be made which will include consideration of discretionary considerations. Unless that decision is made on the basis of the facts as they appear to the court at the hearing, it will not be possible to take into account changing circumstances, notwithstanding the respondents' acknowledgment of the need to do so.

82. Thirdly, the authorities on special circumstances show that that is an issue which goes to the cause of action being asserted and is required to be pleaded and proved. So,

for example, in *Roberts v Gill* Lord Walker stated that "special circumstances are part of his cause of action" which must be pleaded (para 103, p 272F) and that special circumstances are one of the "building blocks" and "essential facts … which must be pleaded and proved (if not admitted) in order to establish the cause of action" (para 108, p 274B-C).

83. This is borne out by the majority decision in *Roberts v Gill* that the amendment to add a derivative claim involved a new cause of action being brought after the expiry of the relevant limitation period. In that case the claimant commenced proceedings against two firms of solicitors who had advised the former personal representatives of his grandmother's estate. This claim was brought in his personal capacity as a beneficiary of the estate. After the limitation period had expired, he applied to amend to bring a derivative claim on behalf of the estate. The application was dismissed by the deputy judge on the grounds that no special circumstances existed. Although the Court of Appeal held that special circumstances did exist, it dismissed the appeal on the grounds that the amendment required the addition of a new party, the administrator of the estate, and that this was not permissible under CPR r 19.5(3)(b) (now CPR r 19.6(3)(b)) as such addition was not necessary in order to pursue the personal claim originally made. The House of Lords allowed the appeal against the Court of Appeal's decision as to the existence of special circumstances, but the majority (Lord Rodger of Earlsferry, Lord Walker and Lord Collins) also held that the Court of Appeal was correct to hold that the application did not meet the requirements of rule 19.5. Integral to that decision was their conclusion that the bringing of a derivative claim involved a new cause of action, as the capacity in which the party is suing is part of the cause of action. As Lord Collins stated at para 41:

> "The [derivative] claim is a claim involving a new cause of action since the capacity in which [the claimant] makes the claim is an essential part of the claim".

84. This decision implies that, at common law, the special circumstances justifying a derivative claim must, if disputed, be proved in order for the claim to succeed. If that is so, then it follows that, at common law, the special circumstances must continue to exist at the date of determination. Reading "bring" as meaning "commence and maintain" therefore has the consequence that the statutory regime is similar in this respect to the common law relating to derivative claims. That this is likely to have been intended is supported by the general preservation of common law rules except where inconsistent with express provisions (section 3 of the Act), and the link between the special circumstance mentioned in section 33(3) and the common law, to which attention has already been drawn (see paras 30−34 above).

**The guidance**

85. As referred to above, in its judgment the Court of Appeal gave general guidance as to how applications under section 33 should be approached and determined. The parties did not take issue with this guidance, save in relation to the Timing Issue. For the reasons explained above, the Board considers that the Court of Appeal erred in stating that the court has a discretion as to whether to permit a derivative action to continue even where the requirements of section 33(3) are met. There is a single evaluative decision to be made as to whether the statutory requirements are met, but that decision allows for account to be taken of discretionary considerations. For the same reason, it is not strictly correct to refer to the court permitting or allowing derivative proceedings to be brought. There is no permission or leave requirement. Subject to those clarifications, the Board endorses the guidance given by the Court of Appeal, in the amended form set out below:

(1) There is no requirement for leave to bring derivative proceedings under section 33(3). A limited partner may simply institute such proceedings.

(2) A limited partner must however plead the facts and matters relied upon as showing that it can bring itself within the requirements of the subsection.

(3) If a defendant wishes to raise an issue as to whether the requirements of the subsection are met, it should do so by means of a strike out application or seek the trial of a preliminary issue.

(4) Whichever of these routes is chosen does not affect the test which has to be applied in deciding whether section 33(3) is complied with.

(5) The decision of the court on such an application or preliminary issue is determinative (subject to appeal). If the court holds that the derivative claim may be continued, the limited partner may pursue the claim. It is not an issue which is deferred until or revisited at trial (save possibly in the context of costs at the end of the trial).

(6) The court should not conduct a mini trial as to whether the requirements of section 33(3) are satisfied. The court has to reach its decision on the basis of the material before it, which will be more limited than it will be following discovery and trial.

(7) At the hearing, the onus is on the limited partner to satisfy the court that the requirements of section 33(3) are met. Reference to ‘onus’ is not to be mistaken as

a reference to a 'burden' in the sense of having to show something on the balance of probabilities.

(8) The essential task for the court at such a hearing is to determine whether the limited partner has brought itself within the terms of section 33(3), namely that the general partner has failed or refused to bring the relevant proceedings without cause.

(9) In determining this issue, the court is likely to be assisted by consideration of whether special circumstances (as developed in cases concerning trusts, limited partnerships and other entities) exist, but the court's task remains one of applying the statutory test set out in section 33(3).

(10) Whilst reference to a good arguable case may be a helpful indicator of the level of comfort which the court should have when deciding whether the requirements of section 33(3) are met, the court's task is essentially an evaluative one having regard to the facts as they appear to the court at that stage of the proceedings from the material before the court. Regard should be had to the need to avoid injustice balanced with the need to respect the fact that a derivative action is an exception to the general principle in the Act that management (including decisions as to litigation) of an ELP is for the general partner, not the limited partners. The court should consider, inter alia, the strength of the evidence that the general partner has failed or refused to institute proceedings without cause, the strength of the underlying claim which is sought to be brought and the likelihood and nature of any injustice if the derivative claim does not proceed. This will allow for account to be taken of discretionary considerations, such as whether the plaintiff has an alternative remedy.

(11) The court should reach its decision by reference to the facts as they appear at the date of the hearing of the strike out or preliminary issue.

**Conclusion**

86. For the reasons set out above the Board will humbly advise His Majesty that the appeal and the cross-appeal should be dismissed.

**EXHIBIT G**

**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**<br>**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*

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# JUDGMENT

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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 H**

**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.,<br><br>Plaintiff,<br><br>v.<br><br>RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,<br><br>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.

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[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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## 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.

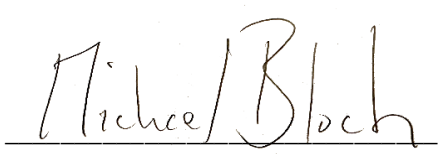
## G. CONCLUSION

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

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.

### Teva Pharma v Eli Lilly
Contractual construction and patent dispute.

### 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.

### 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.

### 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.

## 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

VAT registration number: 245722267

Barristers regulated by the Bar Standards Board

**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 I**

**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.**

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**AMENDED WINDING UP PETITION**

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**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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#3377166v2

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~~9~~8% 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~~8~~% 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 J**

Walkers

**BY EMAIL**

8 September 2025 Our Ref: JG/SW/RB/197133

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman KY1-9010
Cayman Islands

**Attention: Liam Faulkner, Hugo Farmer and Jordie Fienberg**

Dear Sirs

**UNICORN BIOTECH VENTURES ONE LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR ONE LP) AND UNICORN BIOTECH VENTURES TWO LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR TWO LP) V ATP III GP, LTD (IN ITS CAPACITY AS GENERAL PARTNER OF ATP LIFE SCIENCE VENTURES, L.P.)**
**CAUSE NO. FSD 146 OF 2025 (JAJ)**

**IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**
**CAUSE NO.: FSD 151 OF 2025 (JAJ)**

1. We refer to your first letter of 5 September 2025. Unless otherwise stated we adopt the definitions used in your letter and our previous correspondence.

**The funding emergency caused by the Rigmora LPs**

2. We are surprised by the tenor of your letter, both with regard to your clients' claim to be unaware of the Braeburn Repayment (which we address further below) and the implication that there may be something improper in the Investment Deals or the information provided to your clients in respect of the same.

3. As you are aware, the Delaware Proceedings, Cayman Writ Action and Winding Up Petition all concern your clients' obligation to fund the Partnership through capital calls and to approve budgets for the further investment in the Partnership's portfolio companies. Those issues will be determined by the Delaware Court following the hearing listed for 18-19 September 2025, i.e., in ten days.

4. In the meantime, our client has been placed in an impossible position, whereby it is unable to discharge its duties to the Partnership, both with regard to funding the Partnership's portfolio companies and in respect of the Partnership's expenses. This situation has been caused

solely by your clients starving the Partnership of funding by refusing to meet capital calls or approve budgets in accordance with their obligations under the LPA.

5. The situation the Partnership finds itself in is an emergency. If the Partnership is unable to fund the portfolio companies, those companies will collapse – along with any value they hold for the Partnership. This will have a devastating impact on the value of the Partnership, not to mention the termination of multiple ground-breaking medical research projects.

6. The interim funding discussions between our respective clients have been fruitless. In the circumstances, our client has had no choice but to find alternative means of funding the Partnership's essential expenditure to avoid the catastrophic consequences noted at paragraph 5 above. Similarly, the portfolio companies have had to rely on sources of funding outside of the Partnership. There is nothing improper about that. All transactions undertaken by any portfolio company are fully authorised by their charters, SPAs, etc., and boards.

**The Braeburn Repayment and Tendyne Earnout**

7. At the outset, we note that it is plainly incorrect to suggest that our client would be required to provide your clients with information regarding the Braeburn Repayment either during the negotiation phrase or immediately upon execution of the deal. The obligations under both section 22 of the ELP Act and paragraph 16(b) and (c) of the LPA relate to a limited partner's right to request (and receive) information.

8. Neither provision imposes an obligation on the general partner to inform limited partners of every business transaction concerning the Partnership as and when it arises. That is in line with sections 14(1) and 20 of the ELP Act and paragraph 2(b) of the LPA, which provide that the day-to-day management of an exempted limited partnership is a matter for the GP. Instead, the LPA imposes annual and quarterly reporting obligations on the GP. Your clients, in a thinly veiled attempt to support their false narrative of the GP providing inadequate information, now attempt to imply there are more stringent reporting obligations than those it agreed to under the terms of the LPA (or indeed, are provided for under the ELP Act).

9. In response to your questions regarding the Braeburn Repayment, we confirm that the repayment constituted an early repayment by Braeburn Inc. of certain convertible loan notes. The Partnership offered the Braeburn board of directors a 10% discount in return for early repayment, which the Braeburn board accepted in order to reduce its interest payments.[1]

10. Notwithstanding the fact that our client was not required to inform your clients of the Braeburn Repayment until the Q3 2025 Quarterly Report, it rejects the claim that the first your clients were aware of the Braeburn Repayment was through Yanchik's Deposition. Mr Yanchik even stated in his deposition that your clients "*had been receiving all the iterations of the documents."* Further, on 28 July 2025, Patrik Blochlinger and Yuri Bogdanov were both copied to an email from Sarah Gohary of Wilson Sonsini Goodrich & Rosati, attaching the latest draft Loan and Security Agreement, making it clear from the content of her email that the

[1] We confirm that Dr Harrison and Mr Yanchik recused themselves from the Braeburn board vote in this respect.

agreement now included the option for Braeburn to make a prepayment of the convertible notes up to US$42 million and that the prepayment would occur "*substantially concurrently with the Second Amendment [i.e. the Loan and Security Agreement] Effective Date*". Your clients raised no objections or concerns upon receiving this email.

11. The repayment received was US$41,736,871.30 on 1 August 2025. In addition, on 31 July 2025, the Partnership received a post-closing earnout payment from Abbott Laboratories in the amount of US$20,025,952.54 in respect of an exit from Tendyne, an older investment of the Partnership ("**Tendyne Earnout**"). As at 1 August 2025, the Partnership therefore held funds of US$61,762,823.84 from these two sources combined (the "**Q32025 Receipts**").[2]

12. The terms of the LPA are clear that the GP is entitled to apply these funds to (a) invest in projects and (b) discharge the Partnership's own expenses. Paragraph 8(c) of the LPA (as amended pursuant to Amendment 4 dated 1 April 2015) 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) end (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 written consent of the holders of a majority of the Preferred Units."* (emphasis added)

13. In the circumstances, the GP is entitled, under the terms of the LPA, to apply the US$61,762,823.84 to the extent necessary to discharge the Partnership's expenses and invest in the portfolio companies, and has done so, as more particularly set out below.

14. The Schedule to this letter sets out all payments made to and from the Partnership's bank account from 31 July 2025 to 4 September 2025. These payments are explained in more detail below. All are types of expenditure that the GP has discharged on behalf of the Partnership for years, without any objection from your clients until recently. The total in outgoing payments since 31 July 2025 made using the Q32025 Receipts is $39,306,044.00. The remaining sum of US$22,456,779.84 is in the Partnership's Banc of California account.

15. In pre-empting any arguments your clients might attempt to run with regard to these being payments made with "their" money, your clients cannot continue to gloss over the reality of the relationship between the parties. If Dr Rybolovlev had wanted to set up a personal investment vehicle over which he had complete control, he could have done so. However, he wanted Dr Harrison's knowledge, expertise, ability and network. In order for Dr Rybolovlev to access

[2] The Partnership's bank account held c.US$2,021,608.60 at the time of the Tendyne Earnout. However, all but c.US$152,000 of this was funds received pursuant to previous capital calls and was therefore ring-fenced for use by the portfolio company in question.

those benefits, the parties agreed to a partnership structure, run by a general partner, pursuant to the Cayman Islands statutory provisions which put that general partner in control of the business. It also included the so-called "*draconian*" default provisions, of which Dr Rybolovlev was well aware when he entered into the LPA via his affiliated entities and which were, and remain, necessary to ensure the proper operation of the Partnership. Dr Harrison explained clearly at the time why the global default mechanism was essential to the effective functioning of the Partnership, and Dr Rybolovlev entered into the arrangement on that basis. Those default measures have gone unchanged for nearly 14 years and throughout 22 amendments.

16. Dr Rybolovlev, through your clients, has now manufactured allegations of there being a breakdown in trust and confidence in order to extricate himself from his contractual obligations – obligations that he well understood and would have been well advised about – because he cannot or does not want to comply with his obligations for further funding. This will be brought out in evidence in both the Delaware and Cayman Proceedings. Given the constraints on the GP in light of the injunction order made by the Cayman Islands Court, the GP must, acting in the best interests of the Partnership, take steps to preserve the Partnership and its assets until such time as your clients' Winding Up Petition has been determined.

**Application of Q32025 Receipts**

*Funding the essential needs of, and investments in, portfolio companies with approved budgets*

17. The following companies have essential funding needs relating to running costs and/or research and development pursuant to approved budgets. The following payments have therefore been made:[3]

| | **Payment made (US$)** |
|---|---|
| Ascidian | 6,000,000 |
| Aethon | 2,000,000 |
| Replicate | 1,500,000 |
| Evercrisp | 250,000 |

18. In the case of the US$6,000,000 budget for Ascidian, this is reflective of the capital call dated 30 May 2025 and represents the total remaining budget for Ascidian. As explained in Dr Harrison's third affidavit in cause number FSD 146 of 2025 (JAJ), US$6,000,000 represents only a small fraction of the funds that Ascidian needs to stay on track with its groundbreaking research into congenital blindness. However, after re-forecasting their budgets, Ascidian management indicated that a US$6,000,000 injection of funding would make a difference to their ability to keep their clinical trial on track. Given the starvation of funding from the Partnership, Ascidian has had to make deep budget cuts and explore alternative funding, hence the discussions with Eli Lilly (described further below) which, assuming the deal closes, comes just in time for Ascidian to make up a portion of missing capital (combined with budget

[3] The payments to Initial Therapeutics and Apertor listed in the Schedule were made from money held pursuant to prior capital calls and were not made from the Q32025 Receipts.

cuts and the US$6,000,000 from the Partnership). Without further funding, Ascidian would have gone to cash zero during the fourth quarter of 2025.

19. The US$2,000,000 paid to Aethon was made to support the company's collaboration agreement with Revolution Medicines, a public biotech company. Revolution Medicines made it clear they had concerns as to Aethon's viability in light of your clients' default and were disinclined to continue the relationship unless Aethon could demonstrate some minimum viability. The Partnership's venture partner overseeing the investment, Paul Jardine, indicated that US$2,000,000 should be sufficient to preserve the Revolution Medicines relationship in the immediate term. However, it is a far cry from the amount Aethon needs to drive its programmes forward.

20. The US$1,500,000 paid to Replicate represents the total amount remaining in Replicate's budget prior to the closing of an upcoming LATAM partnership with Instituto Butantan for the continued development of Replicate's rabies vaccine candidate, which is due to close in Q3 2025.

21. There are payments to Evercrisp totalling US$250,000. Evercrisp has essential funding needs to the end of the year in relation to wages, severance pay, insurance and legal expenses (c. US$555,000) and payments to creditors (c. US$247,000).

22. The basis for the Partnership making these payments is clear: this is expenditure representing the bare minimum for Evercrisp to continue to function. Without it, Evercrisp would collapse; a situation that would mean irreparable harm being caused to the Partnership before the disputes between the parties are resolved. The same is true of all the Early-Stage portfolio companies that do not receive funding.

*Funding the needs of Nereid and Nine Square*

23. There are two portfolio companies with requirements to preserve asset value for the benefit of the Partnership, where small payments have been made as follows:

| | **Payments made (US$)** |
|---|---|
| Nereid | 250,000 |
| Nine Square | 150,000 |
| **TOTAL** | **400,000** |

24. These payments were made to meet severance costs and other payments relating to asset preservation, pending the resolution of the present Court proceedings. Your clients cannot seriously object to the Partnership making funds available to meet such critical expenditure in circumstances where the reason these companies are unable to survive is because of your clients' unreasonable refusal to approve further budgets. Moreover, as your clients are aware, these companies have legally-binding obligations in relation to payroll and taxes, in respect of which the officers and directors of the company may be held personally liable.

*ATLS Fee*

25. On 4 August 2025, the Partnership discharged US$8,906,044 overdue in respect of the 2H 2025 ATLS Fee.

26. As your client will be aware, the bi-annual fee due to ATLS does not require any fresh budget approval in the same manner as projects relating to portfolio company expenditure. The LPA contains a specific mechanism for the payment of these fees and for the approval of the level of the fee. If the parties are not able to reach agreement on the fee level, the LPA provides that the amount payable shall be the amount last approved by the parties. Your clients defaulted on the capital call that would have covered the ATLS Fee for the second half of 2025. The GP is therefore entitled to utilise the Q32025 Receipts to discharge the ATLS Fee (which, amongst other things, cover the salaries of the GP's employees) and it is certainly holding the ring and in the best interests of the Partnership as a whole that this is paid, to enable the Partnership to continue to function.

*Legal Fees*

27. The Partnership's legal fees have already been the subject of *inter partes* correspondence. At the outset, we note that the Partnership's transfer of US$20 million into the client account of Quinn Emanuel, does not in itself constitute a disposition of the Partnership's property, as those funds remain beneficially owned by the Partnership. The US$20 million is intended to be available to discharge both Quinn Emanuel's and Walkers' fees in relation to all the current legal proceedings between the parties.

28. In addition to the provisions of paragraph 8(c) of the LPA, as we have previously set out in correspondence, paragraph 11 of Amendment 9 to the LPA dated 22 December 2017 provides that, with the exception of certain defined expenses that are paid from the ATLS Fee, 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 the LPA, including without limitation professional fees, including legal expenses for the Partnership (including the Partnership's in-house counsel), and all expenses relating to any actual or threatened litigation or proceedings involving the Partnership. As a result, the legal fees that the GP has incurred on behalf of the Partnership fall to be paid by the Partnership. In circumstances where your clients have refused to meet any further capital calls, it is plain that paragraph 8(c) can and should be read so as to cover those legal expenses that would otherwise be met from capital calls.

29. With regard to the funding of the Delaware Proceedings, the Partnership needs, and is entitled to access Partnership funds in order to prosecute genuine and *bona fide* litigation in Delaware, in circumstances where that is necessary to resolve the disputes between the parties.

30. We note you have previously sought to rely on paragraph 15(c) of the LPA to argue that the GP is not entitled to utilise Partnership funds to discharge its legal costs in respect of the Cayman Proceedings, however, this is a misreading of the provision. The paragraph provides that:

> *"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."*

31. The provision is only applicable to legal expenses incurred by an Indemnified Party defending any action taken against that Indemnified Party and, similarly in respect of the carve out at the end of the paragraph, where proceedings are "*initiated against such Indemnified Party.*" It therefore has no application to legal expenses incurred by the Partnership.

32. The Cayman Writ Action has been initiated against the ATP III GP Ltd (in its capacity as general partner of ATP Life Science Ventures, LP). It is clear that paragraph 15(c) does not apply to the Cayman Writ Action.

33. With regard to the Winding Up Petition, whilst we note there is an unresolved dispute between the parties as to the correct respondent to the Winding Up Petition we note:

    (a) the Court has not directed that the GP be added as a respondent. Any legal costs are necessarily being incurred by the Partnership as the subject of a winding up petition presented against it; and

    (b) for reasons that we have already aired in correspondence and in the Partnership's skeleton argument for the 1 August 2025 hearing, your contention that the Winding Up Petition should proceed as an *inter partes* proceeding between your clients and the GP in its own right, has no proper basis in law.

34. Furthermore, paragraph 18(g)(iv) of the LPA provides that:

> *"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."* (emphasis added)

35. The terms of the LPA are therefore clear. Where a limited partner has breached the LPA (which, for the reasons set out in the Delaware Complaint, your clients have) the GP may take such action as it considers necessary in its sole discretion and that action is taken *"for the*

*Partnership and the other Partners."* This would naturally extend to defending a winding up petition brought by a limited partner with the goal of avoiding the consequences of its breaches under the LPA and as a blatant retaliatory move for the filing of the Delaware Complaint.

36. In any event, paragraph 15(c) cannot sensibly be read so to leave a GP acting on behalf of the Partnership, completely powerless to protect the Partnership against an attack by your clients even where that attack was improper and meritless. That would be to allow your clients to win any litigation by default simply by bringing it.

37. In the circumstances, our client is entitled to draw on Partnership funds to discharge the legal expenses it incurs acting in its capacity as GP of the Partnership. We would also stress that the level of the legal fees has escalated entirely due to your clients' actions in bringing two sets of parallel proceedings in the Cayman Islands. These costs continue to be exacerbated by correspondence such as this, where our client is forced to explain ordinary course of business actions. Your clients well know these activities are ordinary course, but, for strategic reasons, seek to portray them as improper. As the Chancellor of the Delaware Court noted in the Motion to Stay hearing on 27 June 2025, the Cayman Islands filings were reactionary in nature and she declined to grant a stay, as to do so would credit your clients for "*their forum selection maneuvers*". The same principle applies to the legal expenses now being incurred on behalf of the Partnership. Your clients chose to bring duplicative and unwarranted legal proceedings in the Cayman Islands despite the existence of the Delaware proceedings, and cannot now complain of the costs that are being incurred as a result of that decision.

38. You will also note that there was a payment of US$250,000 to Wilson Sonsini Goodrich Rosati on 22 August 2025. This payment was made on behalf of Initial Therapeutics ($77,000), Marlinspike ($100,000) and Nereid ($73,000).

**Validation of transactions**

39. As we set out in our letter of 10 July 2025, our client is cognisant of the provisions of section 99 of the Companies Act (2025 Revision). As you will be aware, section 99 does not operate to prevent companies or partnerships from operating in the ordinary course of business where there is an extant winding up petition. The Cayman Islands Courts have also made it clear that it is entirely possible for a retrospective application for validation of a transaction to be brought.

40. In a recent judgment of Asif J, he noted that, *"there is no difference in the principles to be applied where validation is sought retrospectively, but it should be possible for the evidence presented to the court in support of the application for retrospective validation more directly to address the impact of the transaction on the statutory requirement under s.99 of maintaining the status quo."*[4]

41. Asif J further noted that such transactions may even be adopted by a liquidator even if a winding up order is ultimately made:

[4] *AllFunds Bank S.A. v Rasmala Trade Finance Fund* (unreported Judgment 20 March 2025) at [17]

> *"In my judgment, it is important to bear in mind that where a winding up petition has been presented against a company, whether or not a validation order is sought or granted does not of itself prevent the company from continuing to carry out its normal business and does not prevent its directors from causing the company to enter into appropriate transactions. It simply has the result that such transactions may be susceptible to avoidance by the liquidator if a winding up order is made in due course. In fact, it is not uncommon for a liquidator in such a situation to adopt transactions that are bona fide and are not prejudicial to the company and the persons interested in the liquidation."*[5]

42. The transactions set out above clearly lie within the boundaries of transactions that it would be highly appropriate for the Court to validate, if an application for validation were made. They are exactly of the nature that "holds the ring" to ensure the survival of the Partnership and/or its assets until determination of the Winding Up Petition, although that is without prejudice to our client's position that truly "holding the ring" would involve the Partnership continuing to invest in the portfolio companies in line with the express stated purpose in the LPA. Our client is therefore confident that were a validation application made (whether retrospectively or prospectively) in respect of any of the transactions or payments outlined above, such transactions would be validated by the Cayman Islands Court. However, our client does not consider it necessary to trouble the Court with an urgent application for prospective validation in relation to transactions that are entirely ordinary course, in circumstances where it is clear from the Cayman Islands jurisprudence that a retrospective application is entirely possible (and in some cases preferable).

43. Our client will therefore make an application to Court seeking the validation of the above transactions if and when it considers it appropriate to do so.

**Investment Deals**

44. Finally, we address the Investment Deals referred to in your letter. We have already set out above why your clients are unjustified in using the Investment Deals as supposed evidence of our client withholding information improperly. In any event, your clients have now received the relevant transaction documents via our client's US lawyers, Quinn Emmanuel.

45. As Quinn Emmanuel set out in their email accompanying the disclosure of the transaction documents, the Q2 2025 Quarterly Report (the "**Q2 Report**") sent to your clients on 4 September provided such information as was appropriate in relation to the Investment Deals, as at the end of Q2 2025. It is therefore simply not the case that the GP is not meeting its reporting obligations. The Investment Deals all concluded in Q3 and would have been included in the Q3 2025 Quarterly Report.

46. By way of further information in respect of the Investment Deals:

    (a) Replicate: the Q2 Report refers to Replicate "*advancing discussions for three strategic partnerships*" including, *inter alia*, Novo Nordisk. As you are aware, this deal (a

[5] *Ibid* at [54]

Collaboration and Licence Agreement) closed on 26 August 2025. Whilst the overall deal figure is US$550 million, the upfront payment that Replicate will receive is an extremely modest US$6,500,000, with other payments either made by Novo Nordisk in the negotiated deal to fund its own project at Replicate or subject to milestones to be achieved in the collaboration. Furthermore, the Novo Nordisk deal relates to a particular preclinical collaboration. This is plainly not a case of a wholesale satisfaction of all of Replicate's funding needs.

(b) Aulos: the Q2 Report states that *"[o]wing to budget approval disputes arising in the Litigation, the company structured an interim financing round led by the family office of its CEO, an experienced oncology pharmaceutical and biotech executive. ATP did not participate*". The financing that concluded in August 2025 was not a Series B financing (in respect of which Dr Ehlers was mistaken) but a convertible note financing and was for only US$9,427,432.33.

The Partnership did not participate in this financing, given your clients' refusal to even discuss new budgets that would have allowed them to do so. To put this refusal into context, Aulos is a clinical-stage company that is currently trialling a drug for the treatment of deadly cancer that is showing promise in patients for whom other treatments have failed. The August 2025 financing was to ensure the continuation of the current phase 2 clinical trial. The total funding needs to conclude the trial are around US$20 million. It will be apparent that the funding actually raised falls far short of what is required and the company will run out of funding by year end. The provision of emergency funding from its CEO is not how a biotech company, much less a clinical-stage company, operates and has caused serious reputational damage to the Partnership as the investor that should be providing these funds.

The Partnership's lack of participation in the latest financing not only excludes the Partnership from a potentially lucrative business opportunity but has grave consequences for the lives of the patients relying on the clinical trial continuing.

*(c)* Ascidian: the Q2 Report refers to *"[c]ollaboration discussions"* with Eli Lilly. Our client wishes to make clear that it is far from certain that the transaction between Ascidian and Eli Lilly will close and when. This was acknowledged by Dr Ehlers' in his deposition: *"Never underestimate how slowly big pharma can move. But they've been -- I've -- it could be as early as October that it closes. That would be frigging land speed record for big pharma, but they like us, we like them…So as early as October, and certainly, I hope no later than January."* The deal would not close until Q4 2025 at the earliest, if it closes at all. Your clients will be aware of the deal between Ascidian and Astellas last year, which fell through at the very last minute (i.e. after signature pages were prepared for execution documents), indicative of the precarious nature of the Eli Lilly deal at term sheet stage,

The disclosure of the Ascidian/Eli Lilly term sheet deck to your clients at this juncture is without prejudice to our client's position that such disclosure is premature and outside the scope of what your clients would be entitled to, even pursuant to section 22 ELP Act or paragraph 16(b) or (c) of the LPA. However, the document has been provided to put to

bed the meritless allegation of our client being obstructive with regard to the provision of information.

(d) Galvanize: the Q2 Report refers to "*term sheet discussions regarding a Series C financing in the amount of $100 million to be led by Sofinnova Partners, with what was emerging as an oversubscribed book of major institutional investors.*" The Partnership's participation in this transaction was limited to the conversion of an old promissory note into stock and did not involve the Partnership providing any additional funds. The purpose of the financing is for Galvanize's ongoing operations.

47. It is unclear from your letter whether your clients contend there is something improper in the Investment Deals themselves. However, it should be apparent that there would be no credible basis for such a contention. The Investment Deals are, largely, transactions between portfolio companies and third parties. They represent steps taken by the portfolio companies in the face of being starved of funding from the Partnership. They are in no respects an adequate substitute for the proper financing by the Partnership.

48. We trust the information in this letter will bring an end to this particularly unproductive line of correspondence.

Yours faithfully

Walkers (Cayman) LLP

**WALKERS (CAYMAN) LLP**

**SCHEDULE OF PAYMENTS**

| DATE | AMOUNT | PAYMENT DETAILS | NOTES |
|---|---|---|---|
| 31/07/2025 | $20,025,952.54 | Incoming wire – Tendyne earnout payment | |
| 01/08/2025 | $41,736,871.30 | Incoming wire – Braeburn Repayment | |
| 04/08/2025 | ($20,000,000.00) | Outgoing wire – Quinn Emanual Urquhart Sullivan | |
| 04/08/2025 | ($8,906,044.00) | Payment of 2H 2025 ATLS Fee | |
| 08/08/2025 | $13,528.64 | Payment from Tendyne | Return of funds from Tendyne litigation escrow account. In 2020, the Partnership put $335,025 into the litigation account along with other investors to total $500,000. Of that $500,000, c.$20,000 remained at the time of the earnout. Since there are no more earnouts, the remaining funds were distributed pro rata to the investors who contributed to the litigation escrow. |
| 11/08/2025 | ($2,000,000.00) | Outgoing wire to Aethon Therapeutics | |
| 11/08/2025 | ($6,000,000.00) | Outgoing wire to Ascidian Therapeutics | |
| 14/08/2025 | ($120,000.00) | Outgoing wire to Evercrisp Biosciences | |
| 14/08/2025 | ($150,000.00) | Outgoing wire to Nine Square Therapeutics | |
| 14/08/2025 | ($250,000.00) | Outgoing wire to Nereid Therapeutics | |
| 14/08/2025 | ($575,000.00) | Outgoing wire to Initial Therapeutics | Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout). |
| 21/08/2025 | ($1,500,000.00) | Outgoing wire to Replicate Biosciences | |
| 22/08/2025 | ($250,000.00) | Outgoing wire to Wilson Sonsini Goodrich Rosati | |
| 27/08/2025 | ($130,000.00) | Outgoing wire to Evercrisp Biosciences | |
| 04/09/2025 | ($42,410.00) | Outgoing wire to Apertor Pharmaceuticals | Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout). |

**EXHIBIT K**

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.

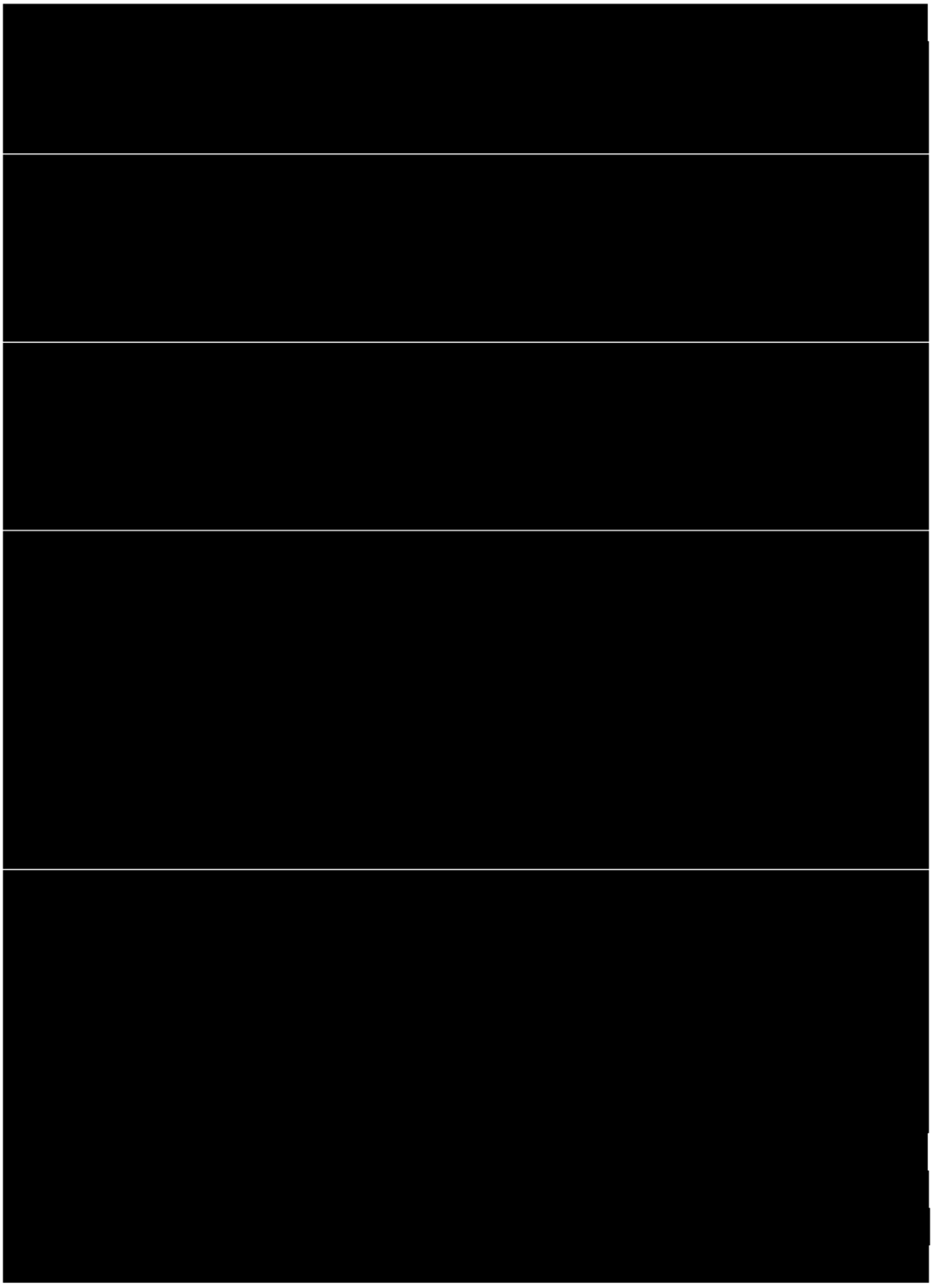
43. Two limited partner entities controlled by the Family Office have always held [redacted] of the partnership interests issued by the Fund. In addition to the Family Office LP, there are 17 other limited partners in the Fund, each of which owns a portion of equity in the Fund. The other limited partners 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. In Response to ATP's Valid Contractual Objections to the Braeburn Distribution, the Family Office LP Attempted to Strongarm ATP.**

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:



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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Shannon M. Doughty (#6785)
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DATED: May 30, 2025

**EXHIBIT L**

A T P

About
Team
Portfolio
ATP R&D
News
Locations
Contact

Seth L. Harrison, MD
Marie-Therese Afif
Anna Batarina, CFA
Paul Eisenberg, MD
Daniel Finkelman
Sally Jacob
Paul Da Silva Jardine, PhD
Neena Kadaba, PhD
Spiros Liras, PhD

Seth Harrison is founder and managing partner of ATP (Apple Tree Partners). Seth began investing in life sciences in 1991 as a venture partner at Sevin Rosen Funds and went on to be a general partner at Oak Investment Partners before starting ATP in 1999. Some of his earlier investments include Aileron Therapeutics, Akero Therapeutics, ArQule, Coelacanth, Corvidia Therapeutics, Cyrano Sciences, Gloucester Pharmaceuticals, HeartWare International, Informed Access, SGX Pharmaceuticals, Stoke Therapeutics, Syntimmune, Tendyne, Ultracision, and ViroPharma.

Seth currently serves on the boards of Akero Therapeutics and Stoke Therapeutics as well as the boards of all portfolio companies created within ATP's current fund to date. From 2002 to 2010, he was a member of the board of the International Partnership for Microbicides, a nonprofit product development partnership focused on women's health and HIV prevention. Seth received an AB from Princeton University and an MD and MBA

Stephanie Maiocco, PhD

Mark Mitchnick, MD

Vern Norviel

John F. Reilly, PhD

Aileen Salares, CFA

Brian Vash

Joseph A. Yanchik III

Eva Zhou

both from Columbia University, and completed a surgery internship at the Presbyterian Hospital in the City of New York.

**Board Responsibilities**

Aethon Therapeutics
Akero Therapeutics
Apertor Pharmaceuticals
Ascidian Therapeutics
Aulos Bioscience
Braeburn
Deep Apple Therapeutics
Evercrisp Biosciences
Galvanize Therapeutics
Initial Therapeutics
Marengo Therapeutics
Marlinspike Therapeutics
Nereid Therapeutics
Nine Square Therapeutics
Red Queen Therapeutics
Replicate Bioscience
Stoke Therapeutics

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A T P

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**EXHIBIT M**

***Entire Exhibit Filed Under Seal***

**EXHIBIT N**

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

APPEARANCES:

MICHAEL A. BARLOW, ESQ.
SHANNON M. DOUGHTY, ESQ.
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
ANDREW M. BERDON, ESQ.
RACHEL E. EPSTEIN, ESQ.
KATHRYN D. BONACORSI, ESQ.
JONATHAN M. ACEVEDO, ESQ.
JENNY BRAUN, ESQ.
TAYLOR L. JONES, ESQ.
of the New York Bar
Quinn Emanuel Urquhart & Sullivan, LLP
-and-
JESSICA T. REESE, ESQ.
JOHN F. FERRARO, ESQ.
HANNAH E. DAWSON, ESQ.
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:

BLAKE K. ROHRBACHER, ESQ.
DANIEL E. KAPROW, ESQ.
CHRISTINE J. CHEN, ESQ.
ZACHARY R. GREER, ESQ.
BENJAMIN O. ALLEN, ESQ.
Richards, Layton & Finger, PA
-and-
SHANNON ROSE SELDEN, ESQ.
WILLIAM H. TAFT V, ESQ.
NATASCHA BORN, ESQ.
CARL MICARELLI, ESQ.
SEBASTIAN DUTZ, ESQ.
ANDREW VAN DUYN, ESQ.
ZACHARY H. SALTZMAN, ESQ.
SARAH WOLF, ESQ.
LUCY SUNDELSON, ESQ.
NATHANIEL QUIGLEY, ESQ.
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.

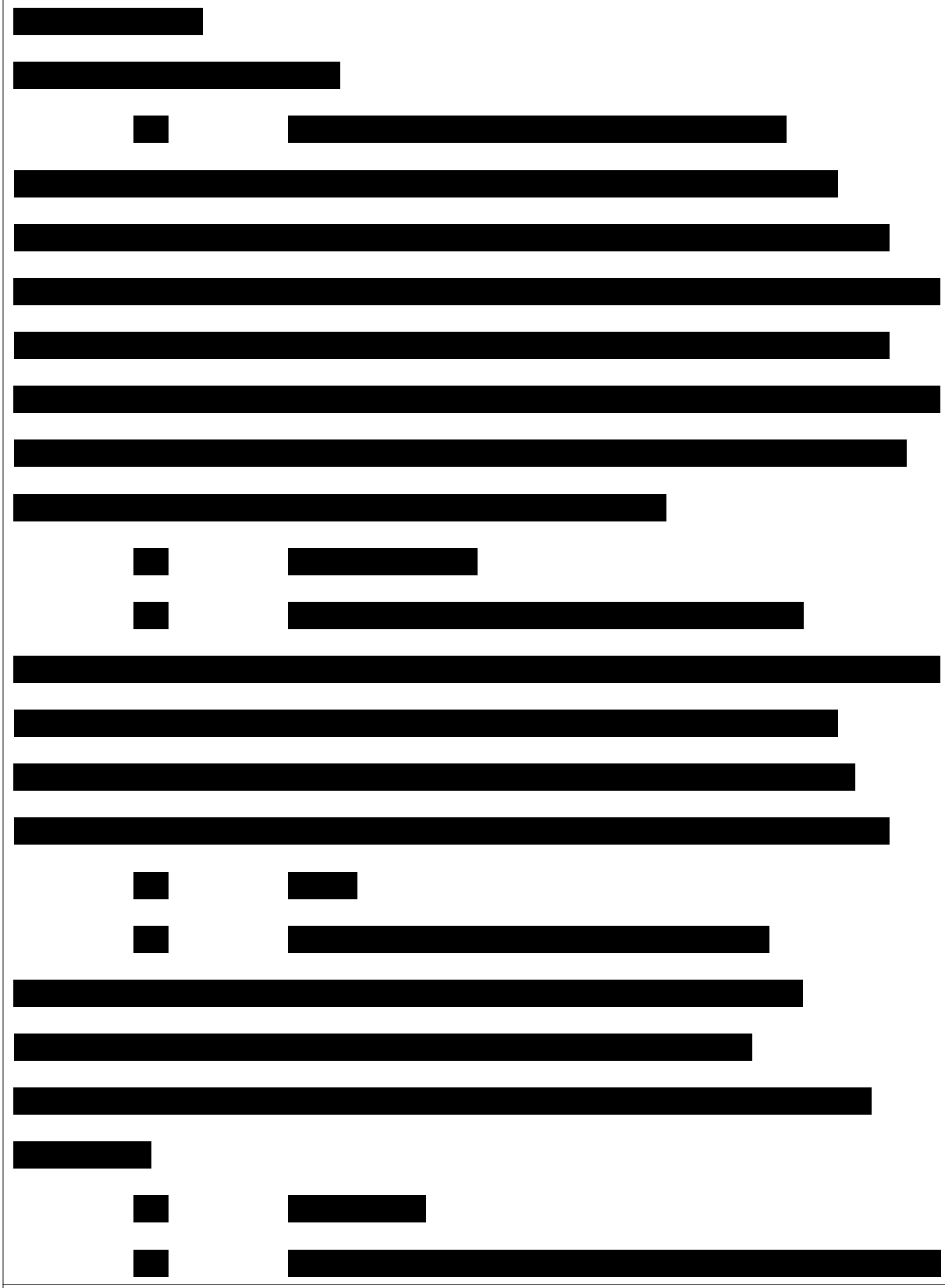
THE COURT: Yes. He's allowed.

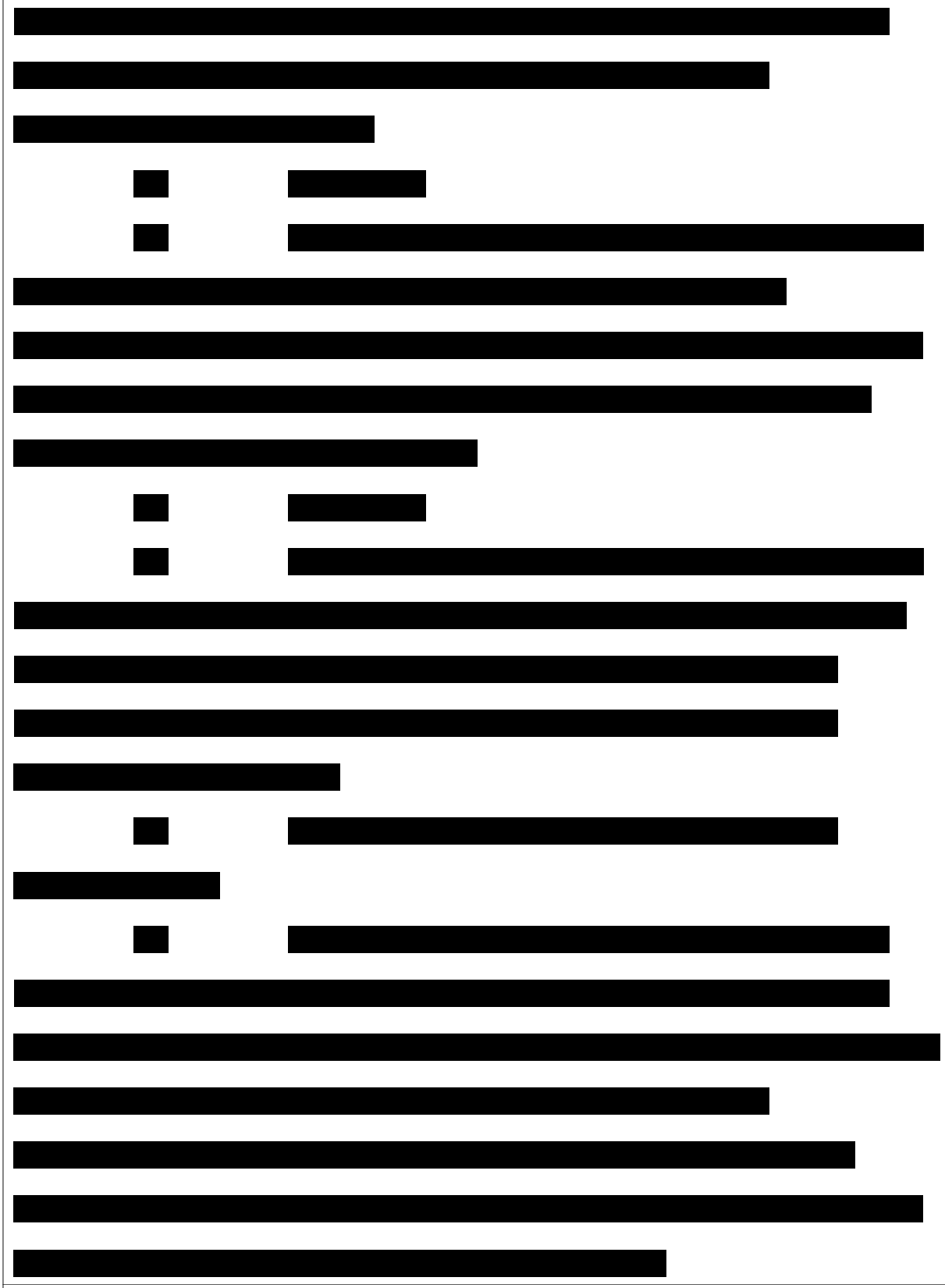
ATTORNEY SELDEN: Great. Thank you.

THE COURT: Shall we proceed?

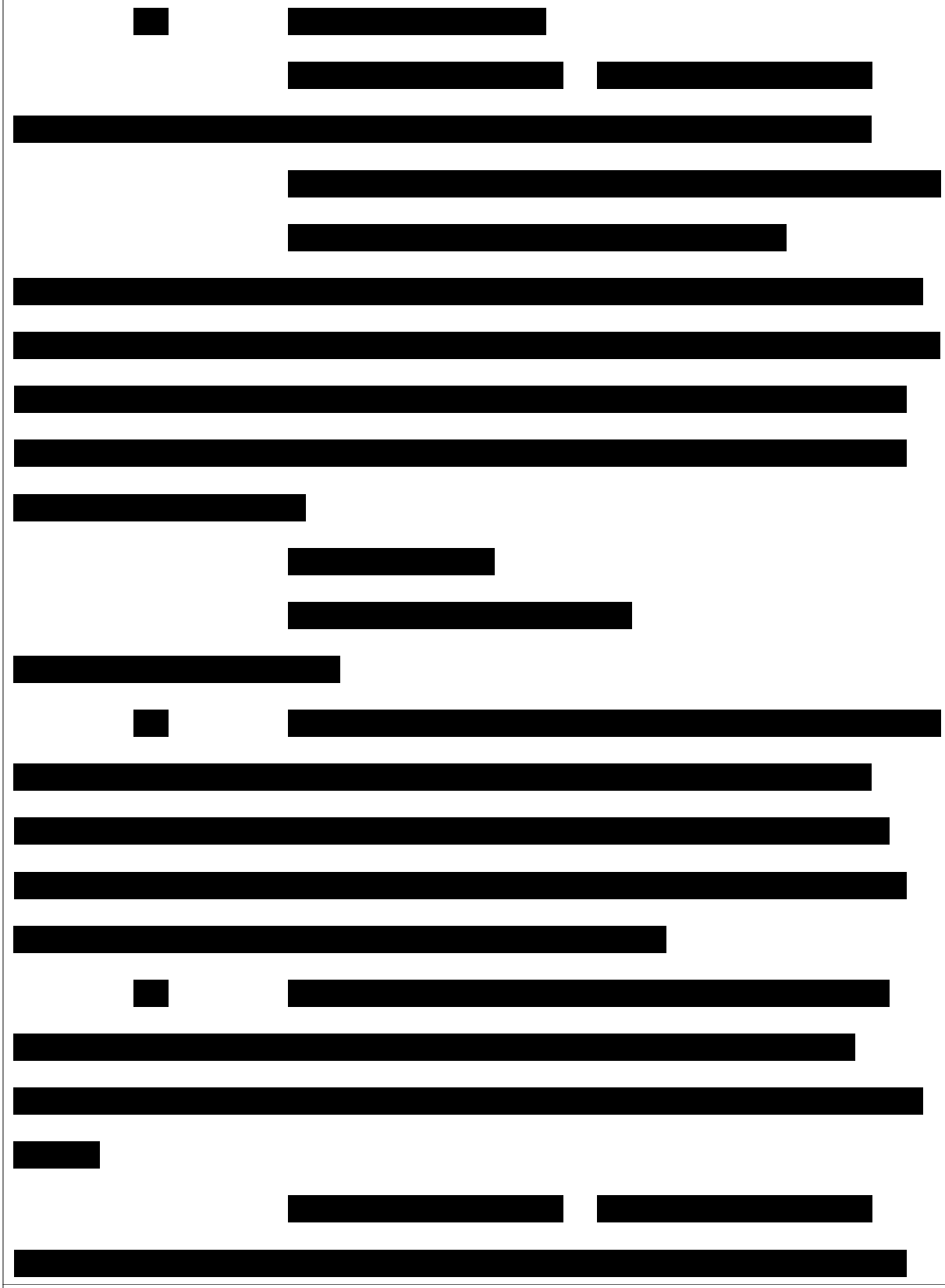
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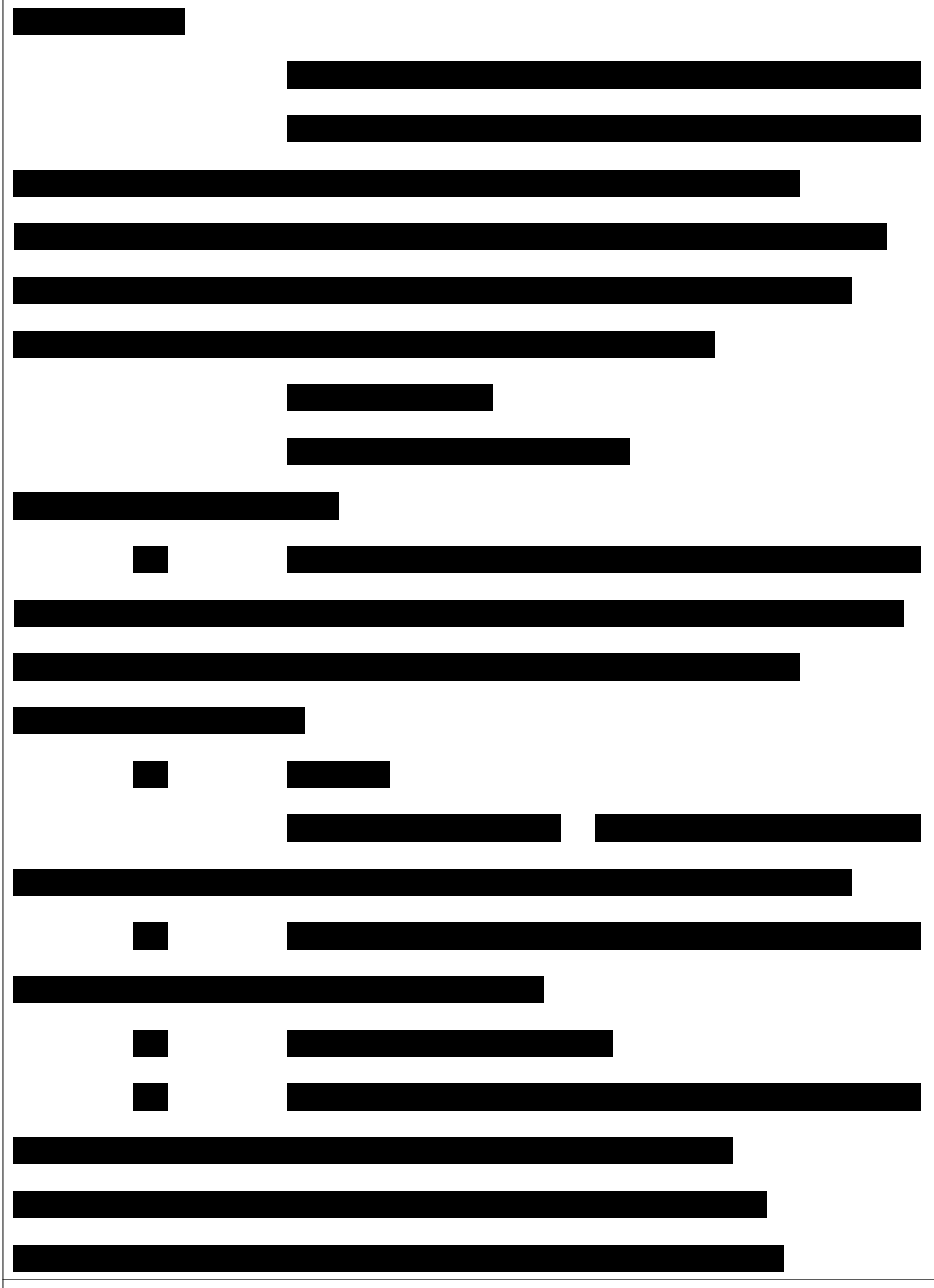
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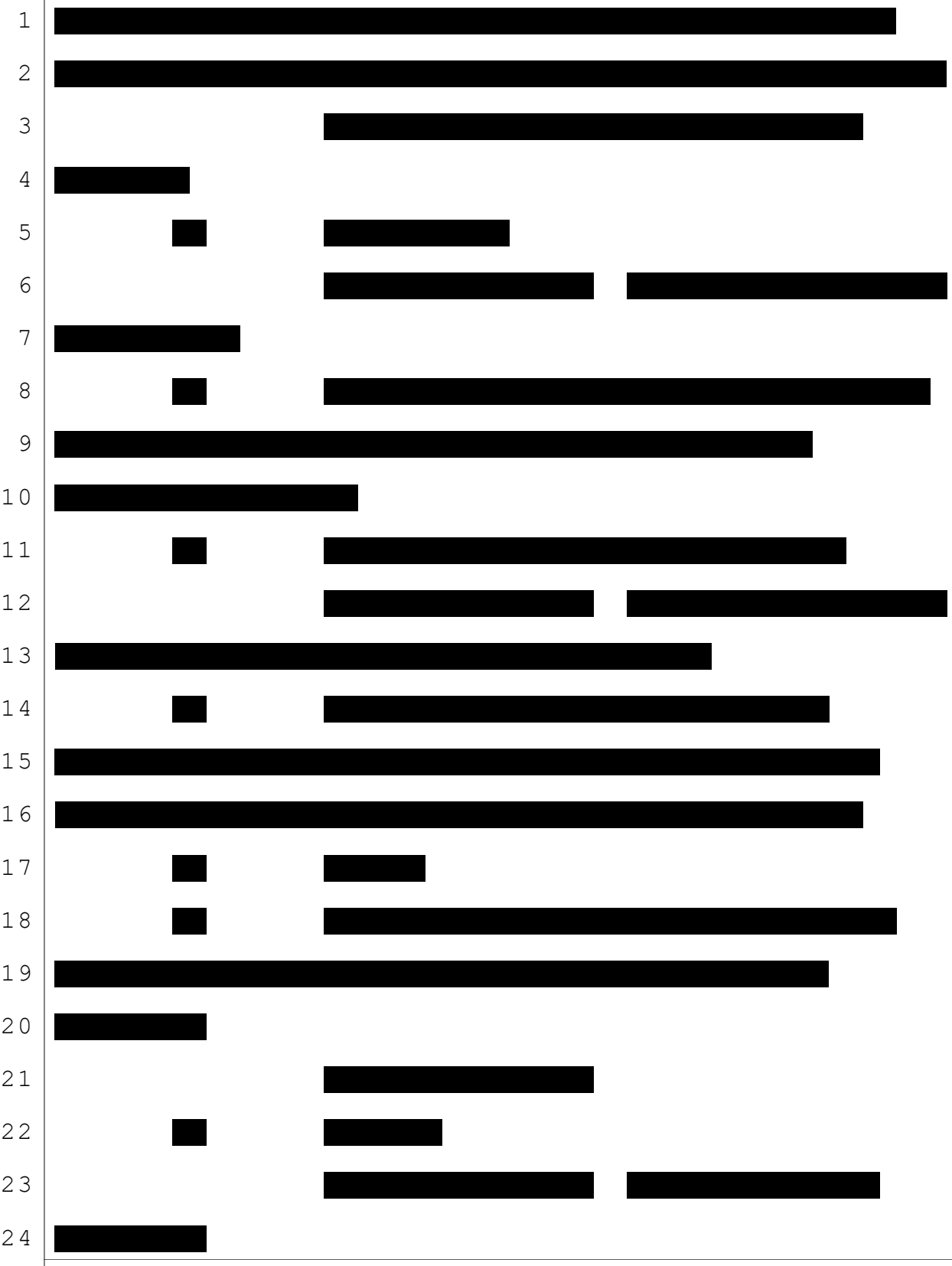


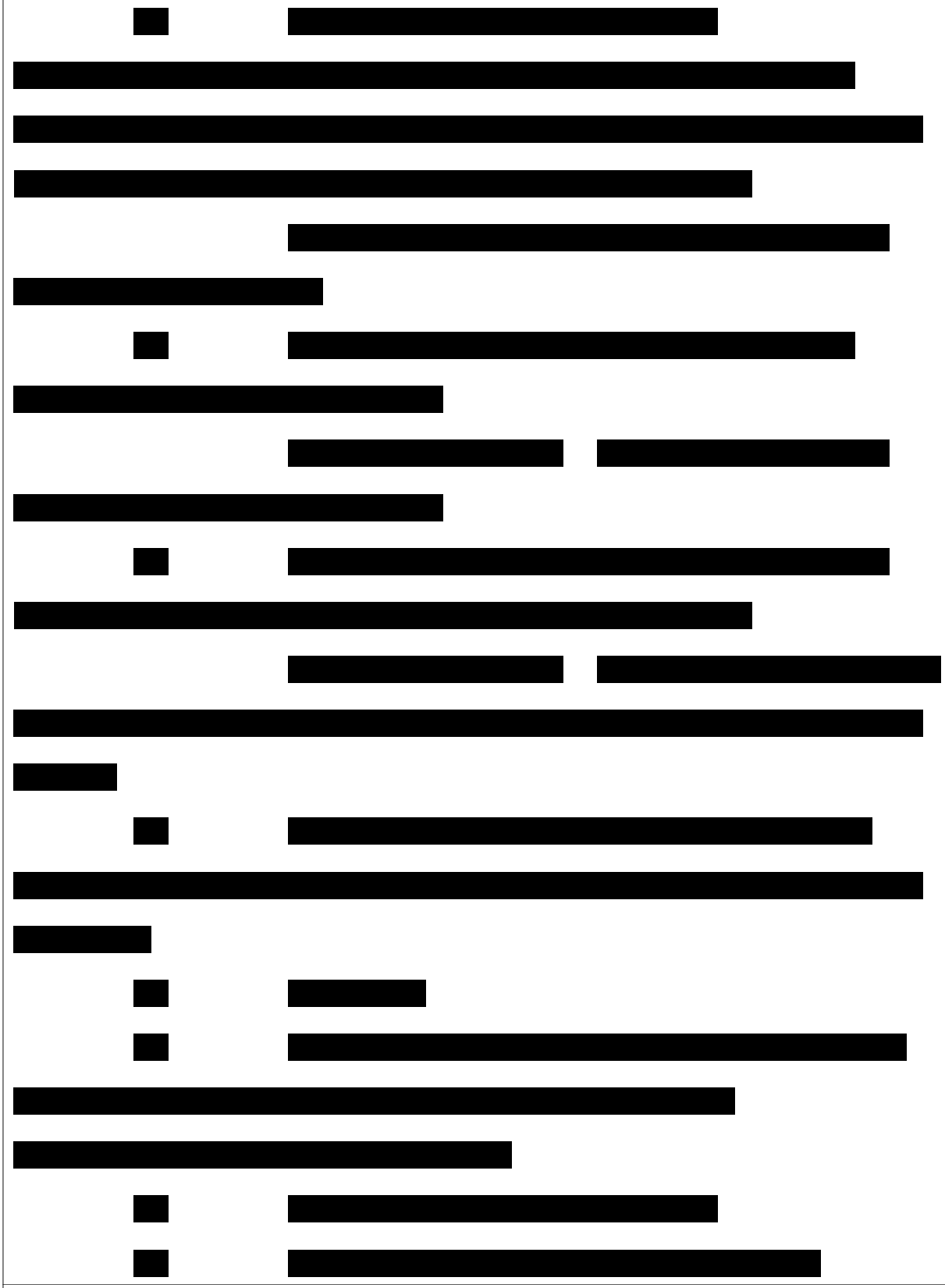


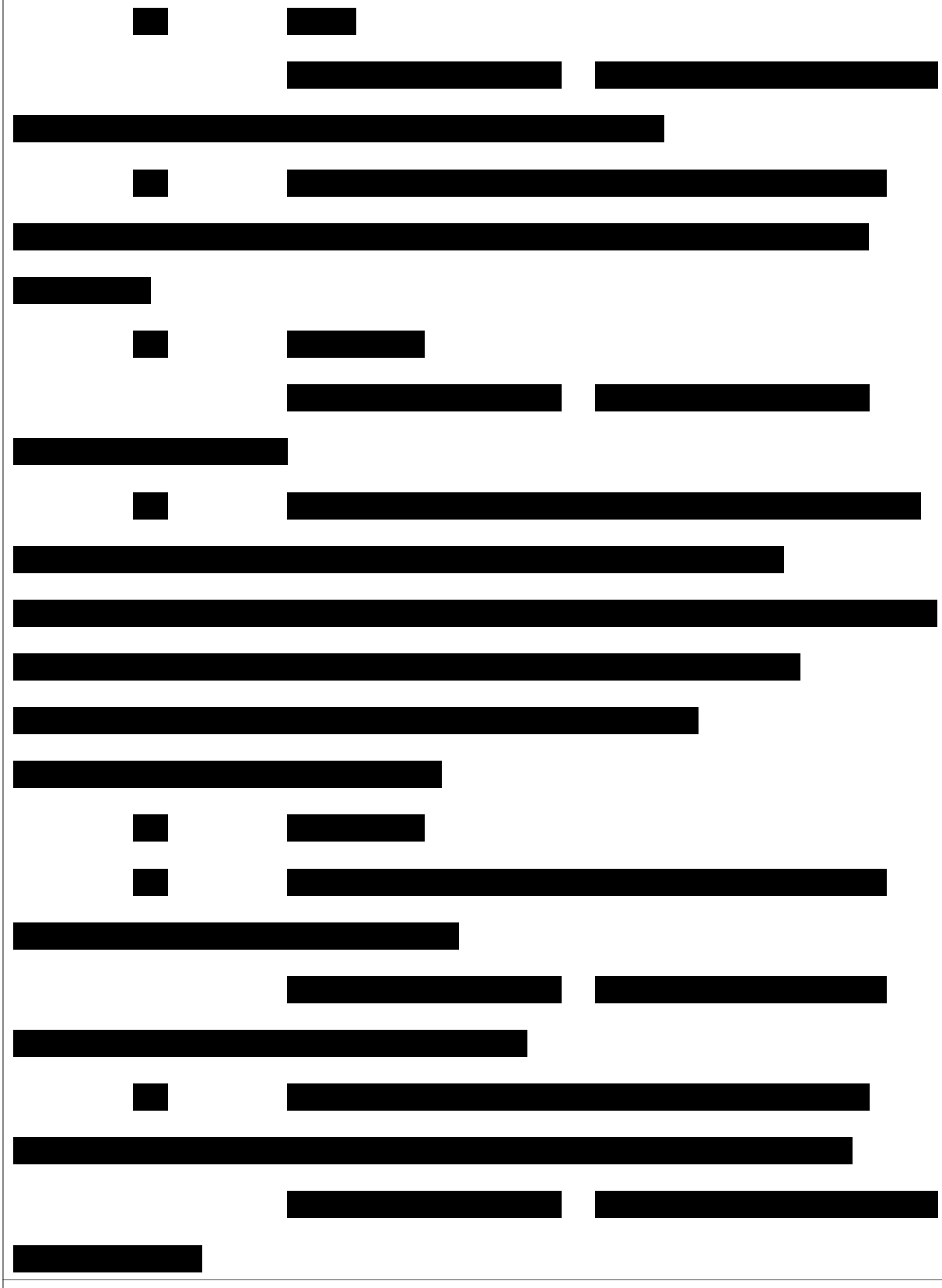
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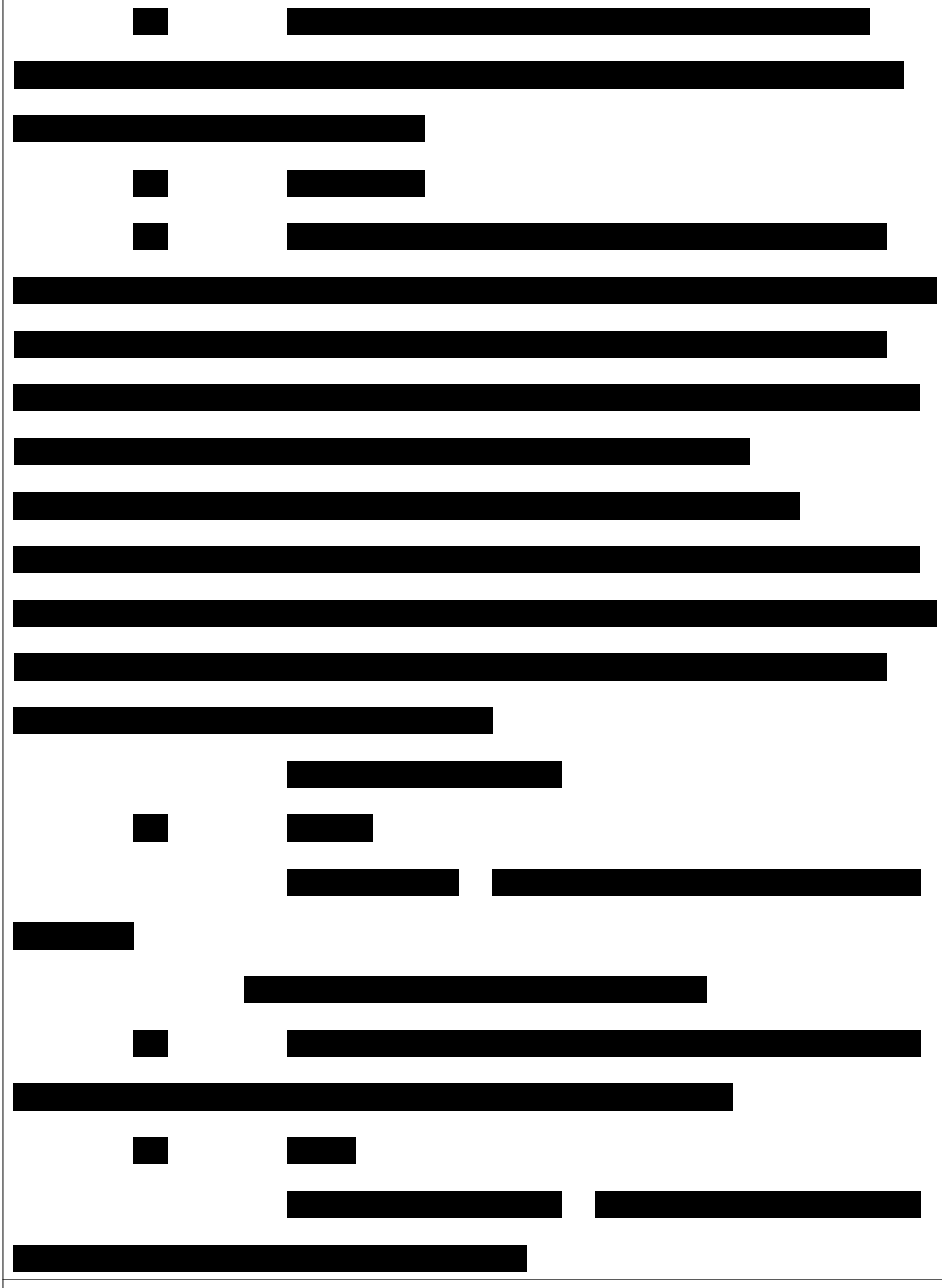


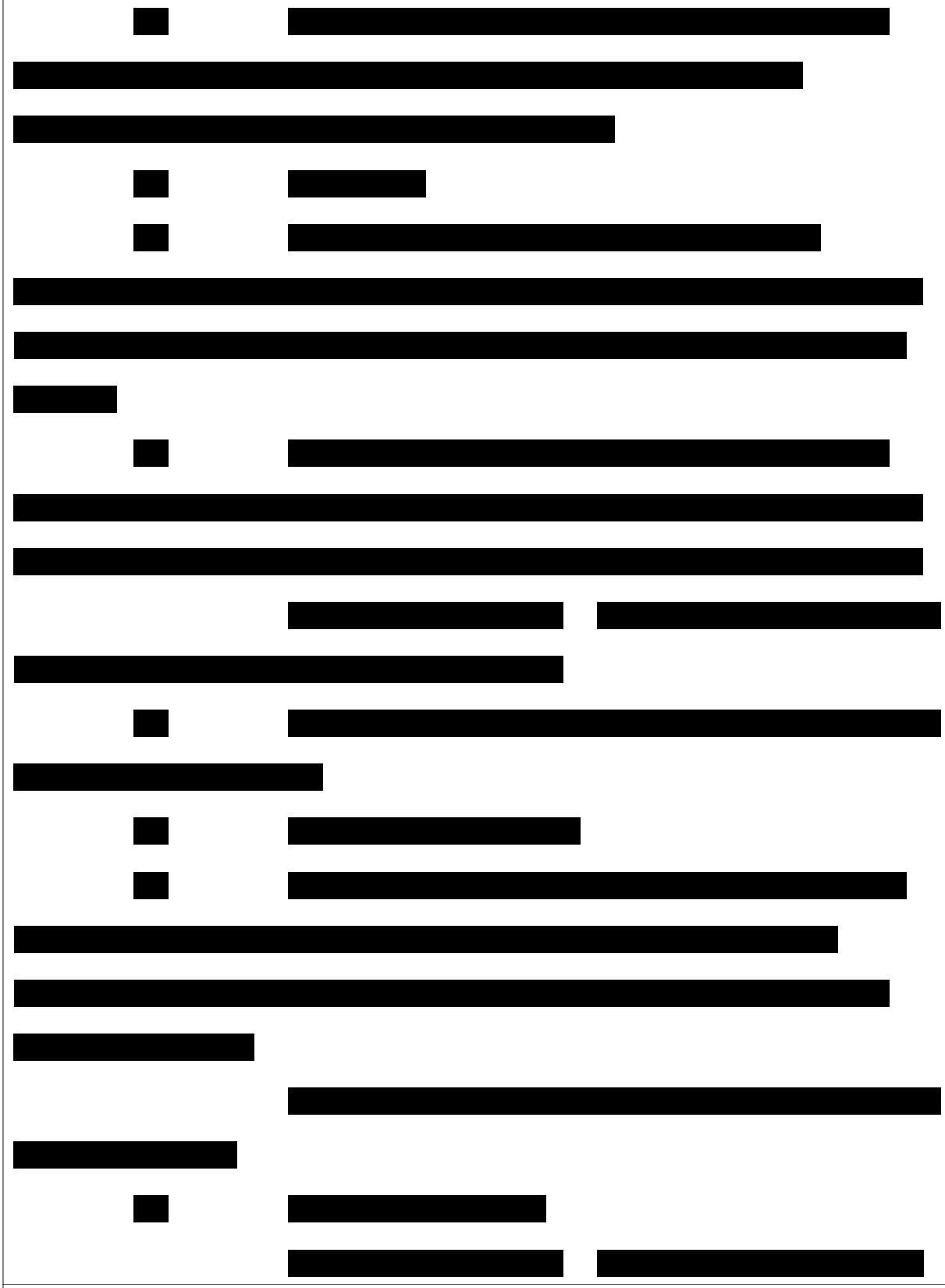


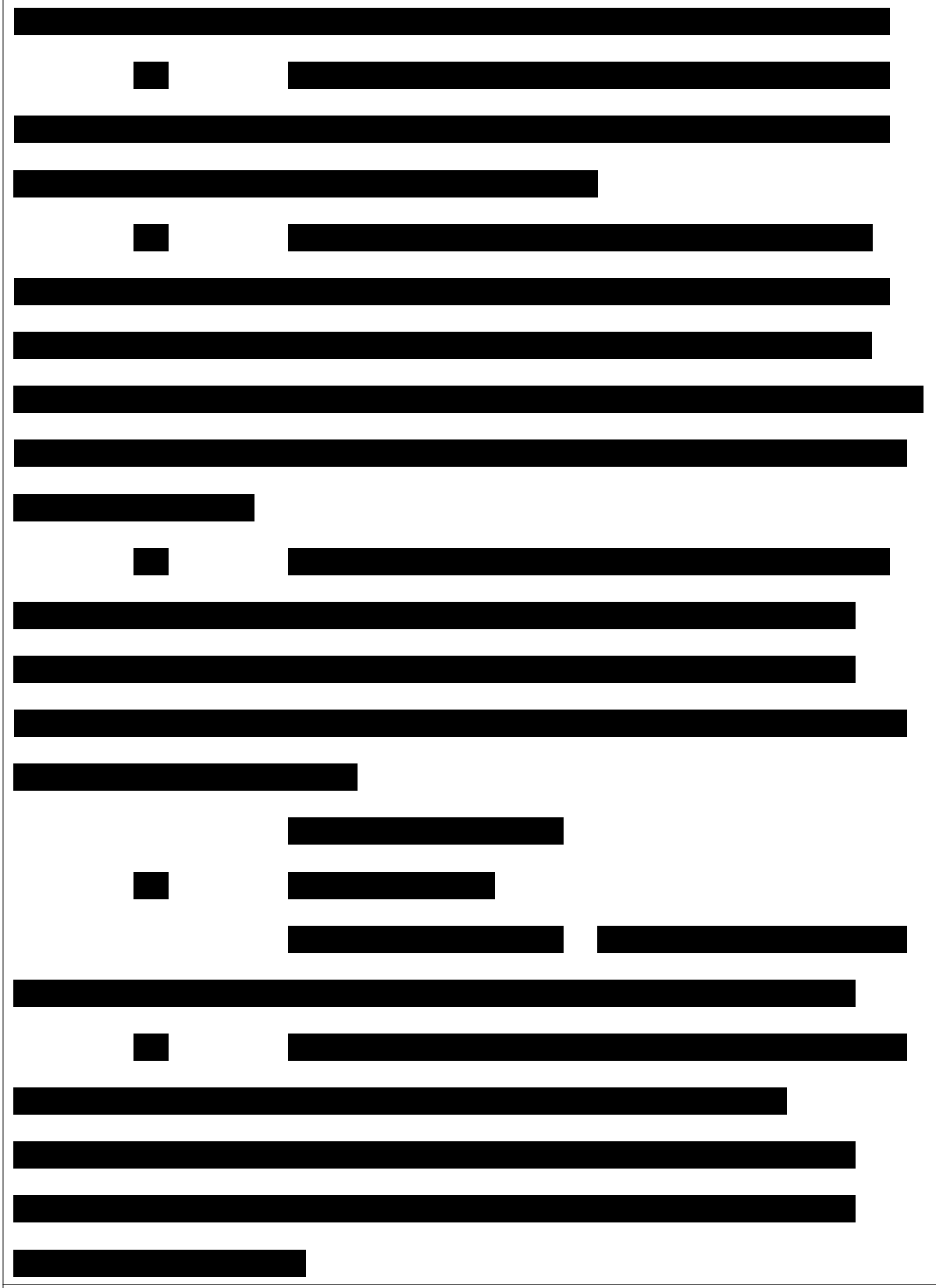


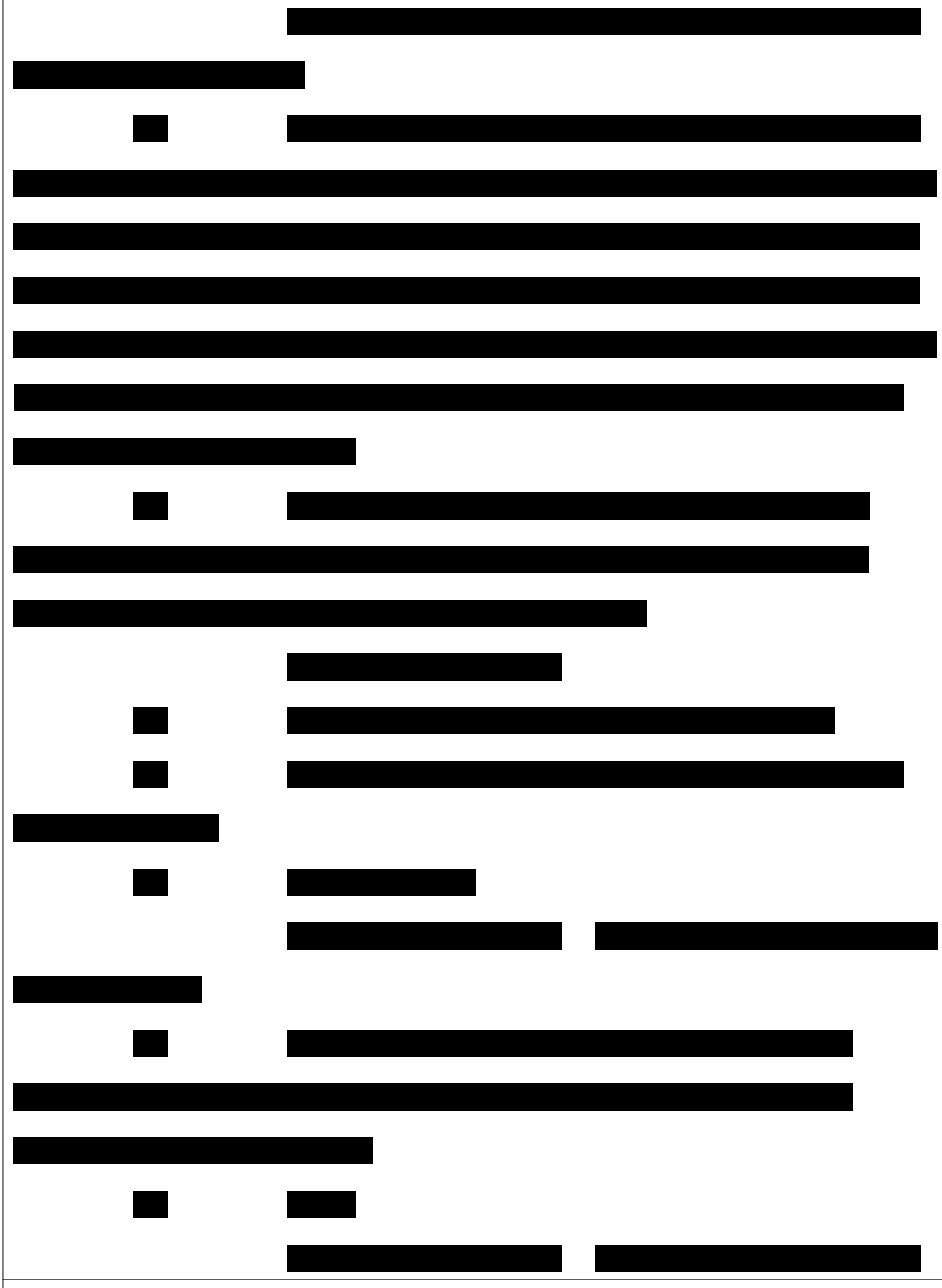


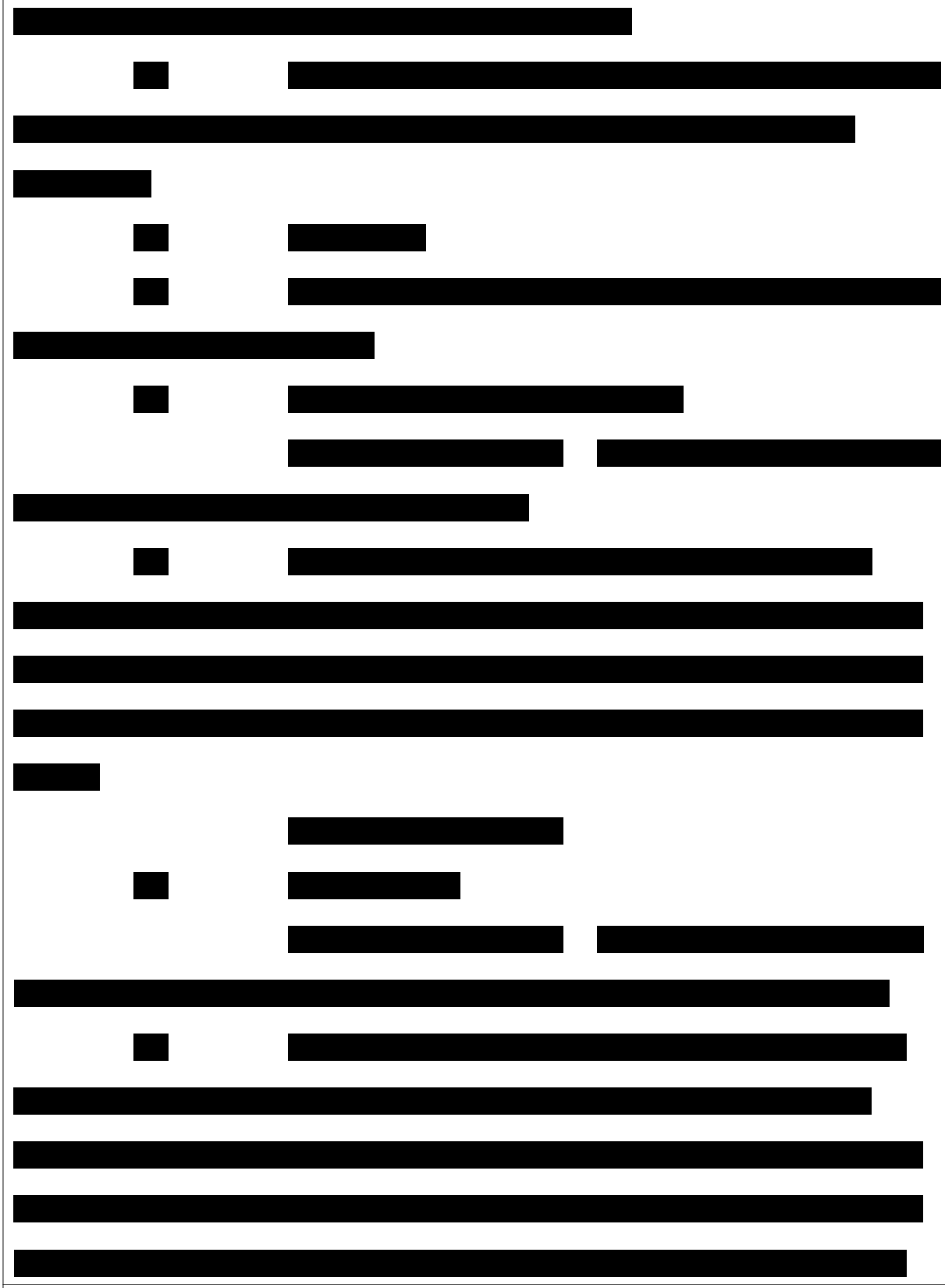


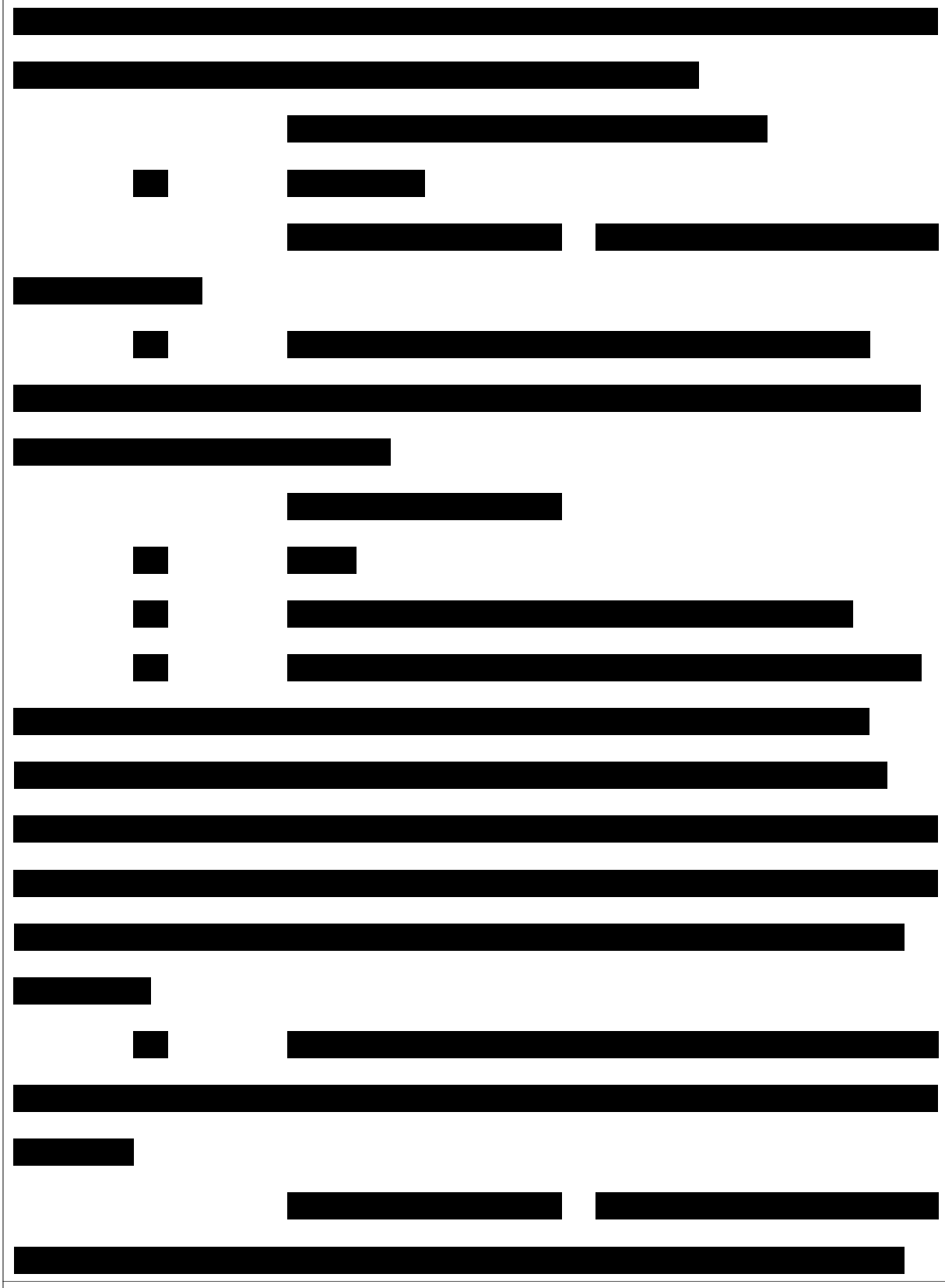


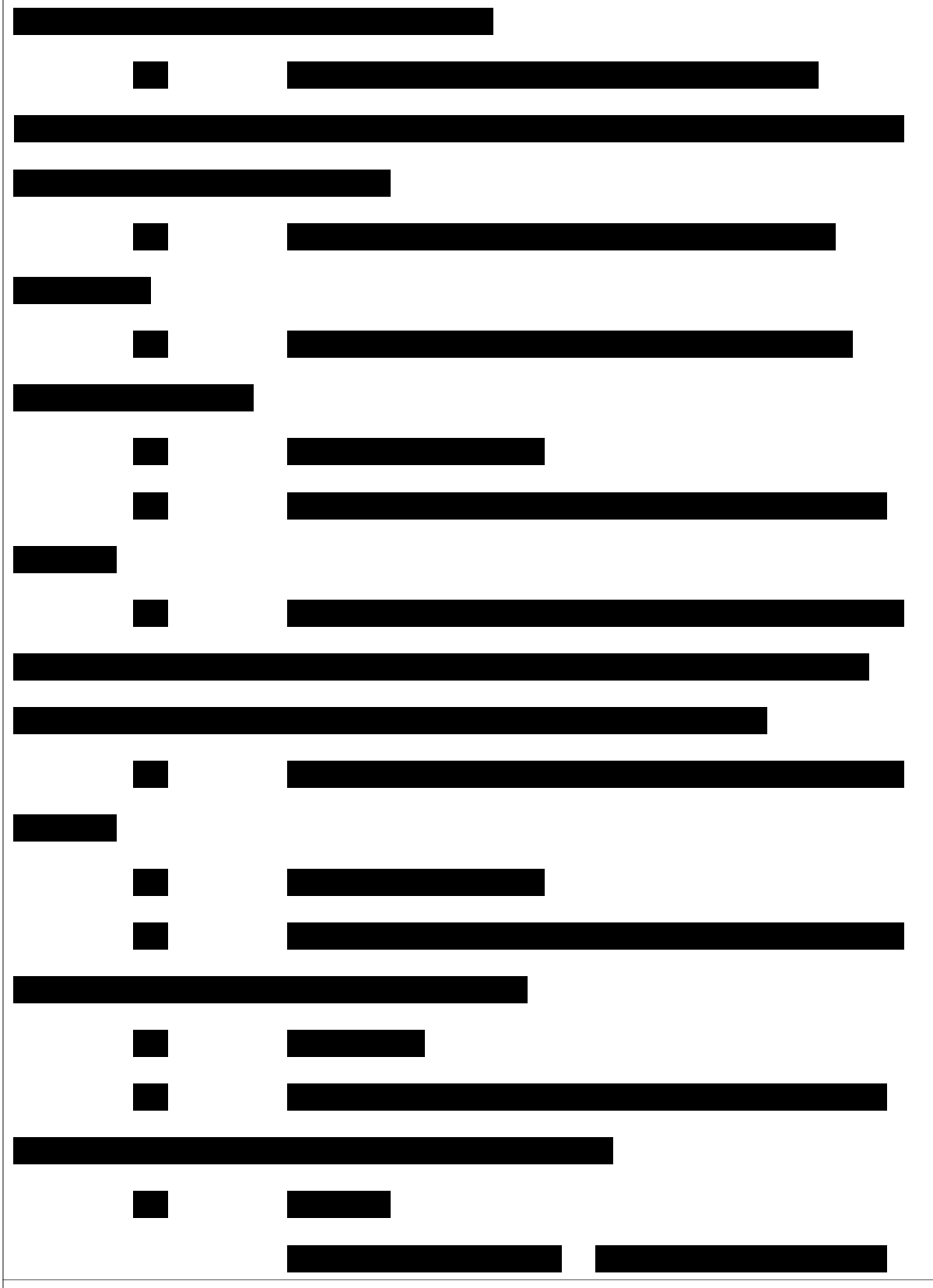


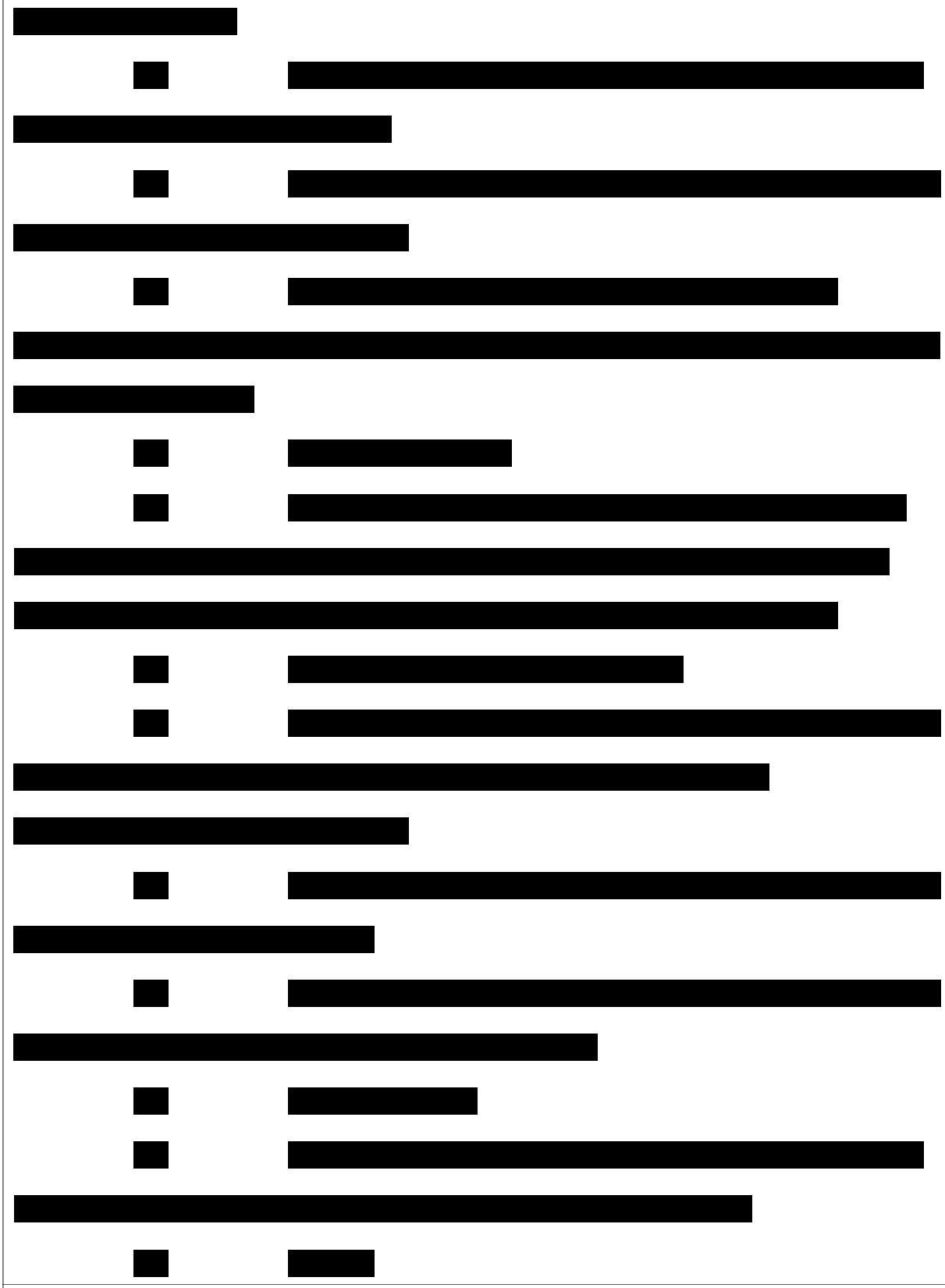


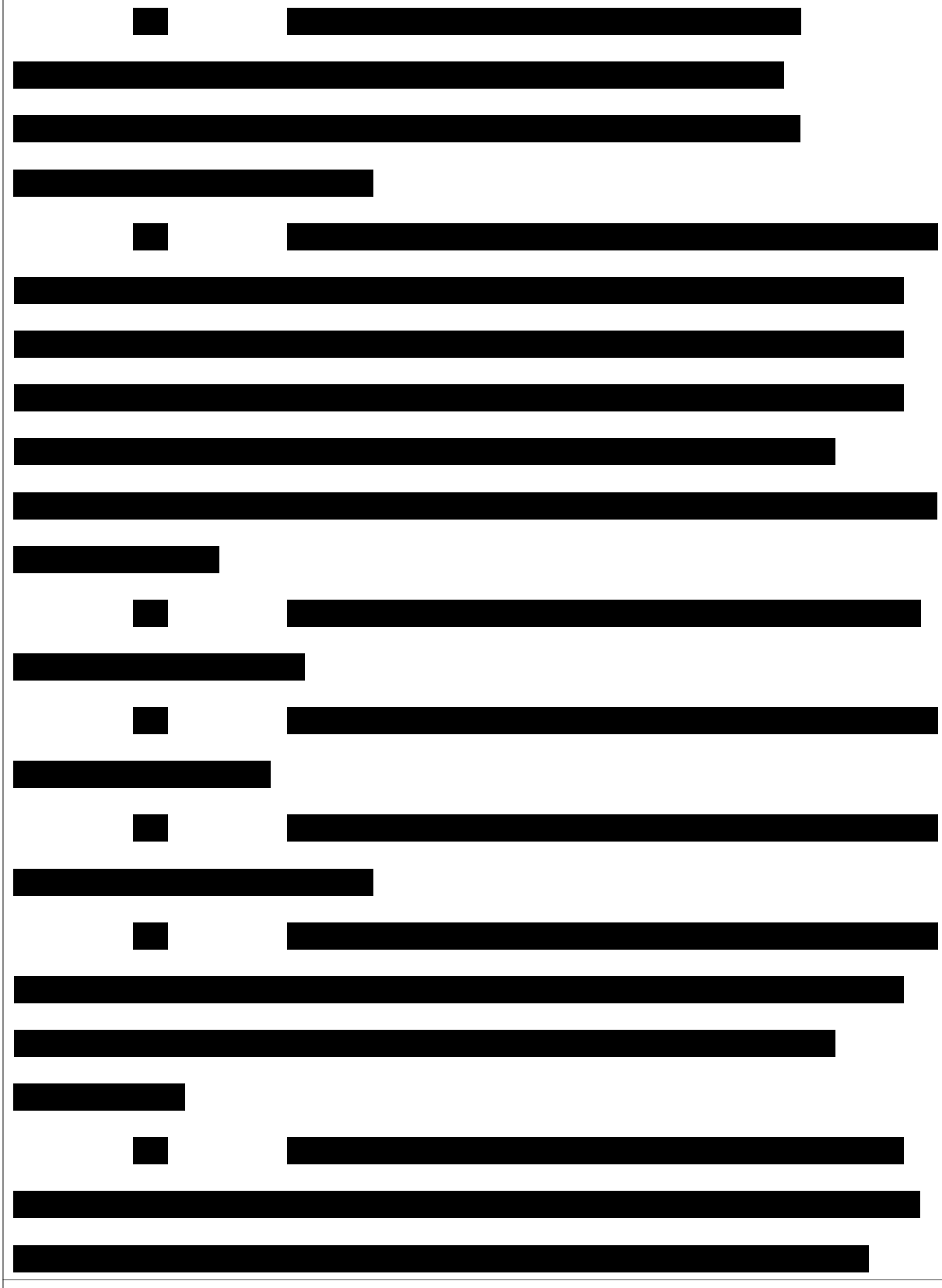












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(Witness excused.)

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

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Appearances Cont'd ...

APPEARANCES CONT'D:

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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 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 O**

Transcript of the Testimony of

**PERRY MANDARINO**

January 19, 2026

**In re: APPLE TREE LIFE SCIENCES, INC., et al.**

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IN THE UNITED STATES BANKRUPTCY COURT.
FOR THE DISTRICT OF DELAWARE
CHAPTER 11 CASE NO. 25-12177(LSS)

- - - - - - - - - - - - - - - - - - -x
IN RE:

APPLE TREE LIFE SCIENCES, INC., et al.,

Debtors.
- - - - - - - - - - - - - - - - - - -x

DEPOSITION OF:
PERRY MANDARINO
JANUARY 19, 2026
1:10 PM

LOCATION: RICHARDS LAYTON & FINGER
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

ORIGINAL

Reported by: Karen Friedlander, CCR-NJ, NYRCR, RDR, CRR
Job No.: 10464

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ALSO PRESENT:

Ed Caswell IV, Videographer

I N D E X

Examinations Page

PERRY MANDARINO

BY MR. TAFT 6

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THE VIDEOGRAPHER: We're now on the record. My name is Ed Caswell IV. I'm the videographer retained by Reliable Reporters.

Today's date is January 19, 2026. The time is 1:10.

This deposition is being held at location, 920 North King Street, Wilmington, Delaware, and it's on United States Bankruptcy Court for the District of Delaware, in the matter of In Re: Apple Tree Sciences, Inc.

The deponent is Perry M. Mandarino.

Counsel, if you want to introduce yourselves and who you represent.

MR. TAFT: This is Will Taft of the firm Debevoise & Plimpton. We represent Rigmora Investors LP 1 and 2.

I am joined by my colleague, Laura Hollis, and Michael Merchant from the firm Richards, Layton & Finger.

MS. TOMASCO: Hi, I'm Patty Tomasco, I'm counsel for the debtors, with the law firm of Quinn Emmanuel Urquhart & Sullivan.

THE VIDEOGRAPHER: The witness will now be sworn in.

(PERRY MANDARINO, having been duly sworn as a witness, testified as follows:)

EXAMINATION

BY MR. TAFT:

Q. Okay. Good afternoon, Mr. Mandarino.

**A. Good afternoon.**

Q. My name is Will Taft. I represent the Rigmora limited partners in this matter.

Have you been deposed before?

**A. Yes.**

Q. Okay. Today, you understand that your testimony is under oath, correct?

**A. Yes.**

Q. Okay. We're having a videotape taken of this.

Is there any reason you can't testify truthfully today?

**A. No.**

Q. Okay.

MR. TAFT: Could I have -- I'm marking as Exhibit 1, the further amended notice of deposition of Perry M. Mandarino, and if I could have -- thank you.

And I'll mark as Exhibit 2, debtors' motion for entry of interim and final orders to, one, make and accept secured loans to portfolio companies, to authorize to the extent outside of the ordinary course of business payment of management company expenses, and, 3, grant-related relief.

(Exhibit 1, Amended Notice of Deposition of Perry M. Mandarino, marked for identification.)

(Exhibit 2, Debtors' motion for entry of interim and final orders, marked for identification.)

BY MR. TAFT:

Q. Mr. Mandarino, are you familiar with the motion that I've marked as Exhibit 3 --

**A. Yes.**

Q. -- Exhibit 2?

**A. Yes.**

Q. And this is a motion that the debtors filed to seek authorization to have The Fund make certain loans to certain portfolio companies, correct?

**A. Yes.**

Q. Okay. And it also seeks authorization for The Fund to pay management company expenses, correct?

**A. Yes.**

Q. Today, I'm going to be referring to this motion as the funding motion. Okay?

**A. Sure.**

Q. Okay. Could you turn to Exhibit B of the funding motion, which is the final -- the proposed final order.

**A. Okay.**

Q. Okay. And have you reviewed this proposed final order before?

**A. I've read it, yes.**

Q. Okay. And if you look at page 2 of the proposed final order, it states that: "The partnership/debtor is authorized to provide portfolio funding pursuant to Section 363(b) of the bankruptcy code, in an amount not to exceed $13.9 million."

Do you see that?

**A. Yes.**

Q. And do you understand that the partnership/debtor is The Fund -- Apple Tree Limited?

**A. As it's defined in the -- in the motion, yes.**

Q. Okay. And do you understand that

the portfolio funding is also defined in the motion?

**A. Yes.**

Q. Okay. And the portfolio funding is -- maybe if you just turn to page 1 of the motion, you can see the portfolio is -- the funding is defined as the amount that the debtor, ATP Life Science Ventures, LP, the partnership/debtor would provide secured loans totally and approximately 13.9 million.

So that is the portfolio funding, correct?

**A. Right.**

Q. Okay. And then turn back to the proposed order, it says that: "The portfolio debtors are authorized to borrow portfolio funding pursuant to Section 364(c)(3) in an amount not to exceed $3.5 million," correct?

**A. Right.**

Q. And then if you turn the page to numbered paragraph 6 of the proposed final order, it says: "ATLS is authorized to pay management company expenses pursuant to Section 363(c) in an amount not to exceed $7.4 million."

Do you see that?

**A. Yes.**

Q. And other than the 7.4 million of management company expenses and the 13.9 of portfolio funding, does the funding motion seek authorization to spend any other amounts?

**A. It -- I believe that's it. It seeks to fund what's in accordance with the budget. So I think that covers it.**

Q. And -- and with respect to funds going from the partnership/debtor to the portfolio companies, the maximum amount being sought to fund pursuant to the funding motion is the $13.9 million, correct?

**A. From the debtors. From the debtor.**

Q. From the --

**A. From the --**

Q. From The Fund debtor.

**A. Yes, from The Fund debtor.**

Q. Okay. And with respect to management company expenses, the maximum amount that the funding motion seeks authorization to spend is the $7.4 million, correct?

**A. Yes. And I don't think this has**

**been amended. I'm looking at my counsel. I think we're still good with this.**

MS. TOMASCO: Except to the extent we've updated the budget.

**THE WITNESS: Yes, we have updated the budget. But the numbers are still good, how it's being spent.**

BY MR. TAFT:

Q. Let me -- let me -- you are not seeking to -- when you say "updated the budget," what -- what are you referring to?

**A. We provided you, if you recall, an Excel spreadsheet and a PDF of a revised budget to the one that was originally attached to these motions.**

Q. Is it your -- is it your recollection that you attached a budget to the original funding motion?

**A. It's my recollection we provided one. I don't recall if it was attached to the motion or not.**

Q. And has that -- has that budget changed between when this motion was filed on December 23rd and today?

**A. As you're aware, it is.**

Q. It has changed?

**A. Yes, as you're aware.**

Q. Okay. But the debtors are not seeking to spend any more -- you're not seeking to spend any more than the maximum amounts of 13.9 for portfolio funding, and 7.4 for management company expenses, correct?

**A. Correct.**

Q. Okay. Over what period will those amounts be spent?

**A. I think we've asked through -- I think we'll have another hearing on February 13th, but I think that spending is through February 27th, I believe, or February 20th.**

Q. Okay. Some -- at some points, you refer to a 13-week period, correct? 13 -- the budget that you're referring to as a 26-week budget and a 13-week budget, correct?

MS. TOMASCO: Objection. Form. Compound. I think you should ask that again.

**THE WITNESS: Could you ask that again, please.**

BY MR. TAFT:

Q. How -- how long was -- you

referred to a budget that was provided to us.

I'm going to distinguish between the -- when was the most recent budget provided to us, to your knowledge?

**A. Last week.**

Q. Okay. Do you recall the period that that budget covered?

**A. It covered from January 21st through July 30th or 31st of 2026.**

Q. And would that be a 26-week period?

**A. Approximately.**

Q. With a 10-day stub period?

**A. That's correct.**

Q. And so that budget is for a longer period than the period that debtors are seeking funding for in the funding motion, correct?

**A. Right, because this is an interim hearing.**

Q. Okay. And if you turn to Exhibit 2, on page 4, do you see in paragraph 9, a table of portfolio companies?

**A. On page 4, I see --**

Q. I'm sorry. Page -- on page 4 of

the motion itself.

**A. Sorry.**

Q. That's okay.

**A. Yes.**

Q. Okay. And this lists for nine different portfolio companies, a -- it identifies the portfolio company and then there's a column that reads: "Final Amount," correct?

**A. That's correct.**

Q. Okay. And if you were to add up the amounts in the final amount column, you would have approximately $13.9 million; is that correct?

**A. That's correct. Right.**

**So just to clarify, you know, when I say "interim," it's -- we're not asking -- we provided you 26-week budget or 26-week plus ten days. The final amount, this covers through the period before the next hearing.**

Q. So that would be through February --

**A. Again, I don't recall if it's February 20th or 27th.**

Q. Okay. Okay. Maybe during a

break, we can -- we can sort that out.

And the final amount for each portfolio company is the maximum amount that debtors are seeking authorization to have the partnership/debtor lend to that portfolio company, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: Is that any different than the question you asked me a few minutes ago of what we're looking to -- because I'm a little confused by it, if it's different from before.**

BY MR. TAFT:

Q. Well, before I asked -- in the aggregate -- about the 13.9 --

**A. Right.**

Q. -- million dollars.

Here, I'm asking, so just take Apetor, for example, which is the first name.

**A. Right.**

Q. Do I understand correctly the debtors are seeking authorization to have the partnership/debtor lend Apetor $979,780?

**A. Yes.**

Q. Okay. And that's a maximum

amount, correct?

**A. For this period, yes.**

Q. Okay. And that's true with respect to each final amount listed for each of the portfolio companies?

**A. Yes.**

Q. Okay. Does the funding motion seek Court approval for a DIP facility?

**A. No.**

Q. Does the funding motion seek Court --

MS. TOMASCO: Hold on. Does the funding motion seek a DIP facility?

MR. TAFT: Seek Court approval for a DIP facility.

MS. TOMASCO: Well, technically, the funding motion is a 364 motion, but it's between debtors, not necessarily from outside sources.

MR. TAFT: I understand that. I'm just trying to make sure that --

MS. TOMASCO: So what are you speaking of a DIP facility?

There is a DIP facility contained in the motion.

MR. TAFT: And where would I find -- I'm sorry.

BY MR. TAFT:

Q. Mr. Mandarino, are debtors seeking Court approval for a DIP facility?

**A. Could you please define what you mean by "DIP facility."**

Q. Are the debtors seeking permission to raise -- let me restate the question.

What is the source of funds that will be used to fund the $13.9 million in the aggregate that is covered by the funding motion?

MS. TOMASCO: Objection. Form.

MR. TAFT: Let me restate the question.

BY MR. TAFT:

Q. Mr. Mandarino, you've stated that the relief requested in the funding motion includes a request for authorization to have the partnership/debtor lend certain portfolio companies up to $13.9 million, correct?

**A. Yes.**

Q. What is the source of funds that will be used for those loans?

**A. The source of funds is The Fund -- is the source of the money is the funds that are held by The Fund currently.**

**And just to correct my answer from before, when you asked about a DIP facility and I said no, I had, in my mind, I said DIP facility, I was assuming, I should have asked you that the second time, that that was a third-party DIP facility. There is a DIP facility provision as is contained on page 10.**

**So I'm not a lawyer, so any more clarification on that, you'd need to discuss with counsel.**

Q. And just to confirm, your answer was the source of funds is the money that is currently held by The Fund?

**A. By The Fund or the management company, wherever it should be.**

Q. And with respect to the management company expenses of up to $7.9 million, what is the source of funds that would be used to pay those amounts?

**A. The same.**

Q. Okay. Does that -- what is the current balance of those funds?

**A. As of today, I believe it's, like, 17 million as of today. I know, projected, it's supposed to go down a little, but I think as of the 21st, we projected it to be closer to 15.5 million.**

Q. Okay. So that's as of January 21st, you're projecting approximately 15.5 million?

**A. Correct.**

Q. Okay. Those -- those funds do not include any of the money held in a segregated account that were paid by the Rigmora LP in satisfaction of the Delaware Chancery Court judgment, correct?

**A. If you're referring to the -- about little less than $97 million, it does not -- the 15.5 million does not include any part of the $97 million. I'm not sure if segregated account is the right definition. It may be, I'm just not sure.**

Q. Okay. In the initial -- I'm sorry, strike that.

In the funding motion, are the debtors seeking permission from the Court to use any part of that $97 million?

MS. TOMASCO: Objection. Form.

**THE WITNESS: Right now, no.**

BY MR. TAFT:

Q. And in the funding motion, are debtors seeking permission to obtain funds from an external or third-party DIP lender?

**A. No.**

MR. TAFT: I'd like to mark as Exhibit 3, declaration of Perry Mandarino, dated December 23rd, 2025.

(Exhibit 3, Declaration of P. Mandarino, marked for identification.)

BY MR. TAFT:

Q. Mr. Mandarino, this is the declaration you submitted in support of the funding motion, correct?

**A. It appears to be.**

Q. Okay. In paragraph 2, you describe your experience in the restructuring field, correct?

**A. Yes.**

Q. And your educational background and training is in accounting, correct?

**A. Originally, yes.**

Q. Okay. Do you have any training

in medicine?

**A. I do not.**

Q. Do you have any training in biology?

**A. I do not.**

Q. Okay. Do you have any training in pharmaceuticals?

**A. I do not.**

Q. Okay.

**A. Other than classes I may have taken in college on any of those subjects, of course.**

Q. Do -- have you ever been employed by a pharmaceutical company?

**A. No.**

Q. Okay. Have you, in your restructuring experience, ever been engaged by a pharmaceutical company?

**A. Yes.**

Q. Okay. When was the most recent engagement by a pharmaceutical company, to the extent you can remember.

**A. In 2023.**

Q. And which company was that?

**A. Scilex.**

Q. Okay. And do you remember, your -- that was in connection with a bankruptcy proceeding?

**A. Yes. Scilex was a subsidiary of a company called Sorrento.**

Q. And was Scilex the debtor in that proceeding?

**A. It was a nondebtor subsidiary, public company.**

Q. And in connection with that engagement, did you have to assess any ongoing scientific research?

**A. We had to assess the company's business plan, yes.**

Q. Okay. And did that include ongoing scientific research?

**A. I mean, the company had products. It was -- it was a -- it was a commercial company, but it had other products that it was seeking to develop. So I would guess so.**

Q. Have you ever been engaged as a restructuring professional by an early-stage biotechnology company that did not have a commercial product?

**A. We were engaged, it's a number of**

**years ago, maybe 10, 12 years ago, by a company called DeCode Genetics, which did genetic testing.**

**It was a case -- it was a Chapter 11 debtor pending hearing, District of Delaware, and I just don't recall if it was -- if it was clinical or preclinical, these genetic testings of DNA. I just don't recall the exact status of it.**

Q. And in connection with that engagement, did you have to assess ongoing scientific research?

**A. Yes.**

Q. Okay. And you believe that was 10 to 12 years ago?

**A. I -- I don't recall, something like that. It could have been 15 years ago. I don't know. It was a while ago.**

Q. Okay. Do you recall any engagements that you've been involved with in the last ten years, where you were engaged by an early-stage biotechnology company?

**A. I don't recall.**

Q. Do you consider yourself an expert in biotechnology?

**A. I do not.**

Q. Okay. When I -- we've already -- I've been referring here to the partnership/debtor, and I think we're agreed that that is ATP Life Science Ventures, LP, correct?

**A. I believe it's LP, yes.**

Q. Okay. So when I refer to the partnership/debtor, you'll understand that that's the entity I'm referring to?

**A. Yes.**

Q. Okay. I might also call it The Fund. If I call it The Fund, will you understand that's the same as the partnership/debtor?

**A. If you'd like to use those words interchangeably, sure, we could agree.**

Q. And there's a second debtor that is ATP III GP, Limited.

Do you recognize that as the general partner of The Fund?

**A. Yes.**

Q. Okay. And then there's a debtor entity called Apple Tree Life Sciences or ATLS.

What is ATLS?

**A. The management company.**

Q. Okay. So if I refer to them as the management company, you'll -- you'll understand what I'm referring to?

**A. Sure.**

Q. Okay. You are the chief restructuring officer for The Fund, the general partner, and ATLS, correct?

**A. Correct.**

Q. And you've also been engaged as the chief restructuring officer for several portfolio companies, correct?

**A. Correct.**

Q. Okay. When were you first contacted regarding this Chapter 11 proceeding?

**A. Well, I was contacted with respect to Apple Tree Partners, if we could again use Apple Tree Partners as the entire portfolio of companies. That's how I'm using it in -- in this answer.**

**Probably sometime around Thanksgiving of 2025.**

Q. And who contacted you initially?

**A. Ms. Tomasco.**

Q. Were you provided with any

information regarding The Fund or the GP or the management company at that time?

MS. TOMASCO: I'm going to object to that question to the extent it asks for attorney-client communications.

BY MR. TAFT:

Q. Okay. Don't -- I'm not asking for the information itself. I'm just asking, were you provided with information at that time.

**A. Yes.**

Q. Did you do any independent research yourself regarding The Fund or the GP or the management company at that time?

**A. Yes.**

Q. Okay. What independent research did you do?

**A. Well, Number 1 is, we did a conflict check of all -- of relevant parties, and, 2, just some background information based on public information with respect to the company.**

Q. Okay. Did you do anything to prepare for today's deposition?

**A. I did.**

Q. What did you do?

**A. I read the motions in front of me, that you handed as Exhibit 2, and my declaration as Exhibit 3.**

**I reviewed the 26-week cash flow, which was provided, and I reviewed my own analyses and notes with respect to the company, to the debtors, and I had discussions with counsel.**

Q. Okay. Did you bring any of those analyses or notes with you today?

**A. I did not.**

Q. Okay. Did you review the list of questions that were submitted in writing on January 12th by counsel for Rigmora?

MS. TOMASCO: Objection. Form. Are you asking, did he review those ever, or did he review those in connection with preparing for his deposition?

MR. TAFT: The latter. Thank you for the clarification, Ms. Tomasco.

**THE WITNESS: I was going to ask the exact same thing.**

**I reviewed -- I reviewed the answers that were provided by Quinn Emanuel this weekend.**

BY MR. TAFT:

Q. Okay.

**A. So I'm not sure I actually looked at the six-page list of questions. But I reviewed the responses that were provided to you.**

Q. Okay. Had you contributed in any way to those responses?

**A. Yes.**

Q. Okay. Had you reviewed those responses before they were transmitted back to counsel for Rigmora, LP?

**A. Yes.**

Q. And were those responses, to the best of your knowledge, accurate?

**A. Yes.**

Q. And did those responses represent the most complete answers that could reasonably be obtained at that time to the questions?

MS. TOMASCO: Objection. Form. The responses included objections as well as responses, so I think you're confusing the issue.

**THE WITNESS: I'm sorry. I don't understand your question.**

MR. TAFT: That's okay. It might help.

Could I get tab 40, please?

(Exhibit 4, Responses to Rigmora's diligence questions, marked for identification.)

MR. TAFT: I'm marking as Exhibit 4, a copy of responses to Rigmora's diligence questions regarding budget and operational motions.

BY MR. TAFT:

Q. Is this the document that you reviewed in preparation for today's deposition?

**A. It looks like it. I'm going to assume that you're -- you're handing me exactly what was submitted to you. So assuming that that's what you've done, then yes.**

Q. There's a -- there's a cover email, but -- which is not attached, but this is -- I'm representing that this is a copy of that complete document.

Could you turn back to what was marked as Exhibit 3, your declaration, please.

And, in particular, I'd like you to look at paragraph 5.

In paragraph 5, you write: "It

is my understanding that prior to the petition date, in the ordinary course of business, the partnership/debtor committed to provide pursuant to signed contracts and did provide funding to each portfolio company as set forth in the table below, the aggregate amount was 501.2 million and the partnership/debtor funded in the aggregate 340.6 million."

Do you see that?

**A. I do.**

Q. Okay. How did you come to that understanding?

**A. I saw an analysis that was provided by -- from the debtors' books and records.**

Q. And do you know who prepared that analysis?

**A. I don't.**

Q. Okay. Did you ask -- have you or -- I'm sorry.

B. Riley is the firm that you are associated with, correct?

**A. That's who I work for, yes.**

Q. Okay. Have you or anyone at B. Riley done any work to confirm that -- that

information?

**A. So we didn't audit it for sure. But I believe, you know, we certainly asked management if this was true and accurate, to the best of their knowledge, it was, Number 1, and that's Dr. Harrison, actually, it wasn't Dr. Harrison, it was Joseph Yanchik.**

**And then, Number 2, I had looked at the audits of the past few years, and the numbers generally -- I mean, you couldn't tie the numbers back to back, but generally, from, you know, it's a lot more funded as you're aware, but it seemed reasonable to me that these numbers were consistent with -- with amounts.**

**So, you know, relying on the debtors' books and records, which I don't have any reason to believe are not accurate, I was okay with this.**

Q. Okay. Did you or anyone at B. Riley review the contracts that relate to these purported obligations?

**A. I -- could you be more specific of the word "contracts," please.**

Q. Sorry. So there's a reference in here to amounts that were committed pursuant to

signed contracts.

Do you see that in paragraph 5?

**A. I do.**

Q. What contracts does that refer to?

**A. So the contracts that govern the partnership or the whole -- the partnership, for lack of a better word. So the LP, the limited partnership agreement and its 22 amendments. I, for sure, have read the limited partnership agreement and many of the amendments, if not all of them.**

Q. And what -- other than the LPA, what other contracts, if any, are you referring to in paragraph 5?

**A. I can't say. I mean, I'm probably referring to the LPA. I mean, to me, that's contracts again. That's a small C.**

Q. And are -- have you reviewed any shared purchase agreements entered into between The Fund and any portfolio company?

**A. They have a whole data room of information. I don't recall.**

Q. Okay. Do you think that you were referring to those agreements in paragraph 5?

**A. I may be. I just -- I really don't recall. The volume of information here is extraordinary in the short period of time when this was done.**

**So this was back in December, which seems like a few years ago, not a month ago.**

Q. Do you know whether The Fund has contractual obligations to purchase additional shares in any portfolio companies?

**A. That sounds like a legal question that I would not -- not comfortable answering.**

Q. Okay. Have you assessed -- made any assessment of The Fund's liabilities to portfolio companies?

**A. Again, I think that's a legal -- I don't know if you're asking for a legal conclusion.**

**How I can answer it is that there -- The Fund has -- The Fund has the ability to fund the portfolio companies related to the budgets that were approved. I'm not referring to the 13-or-26-week cash flow budget, to the capital B budgets.**

**And, however, the -- the filing**

**of the Chapter 11 may change a lot of those things, so that's where I am making the distinction that there's a lot of legal questions you're asking me that I can't -- I can't answer.**

Q. The funding motion seeks authorization to have funds loaned by the partnership/debtor to the portfolio companies, correct?

**A. Right.**

Q. It does not seek authorization to have The Fund acquire shares, additional shares in the portfolio companies, correct?

**A. That's -- that's right.**

Q. Do you know whether, prior to June 2025, the partnership had loaned money to portfolio companies?

**A. I don't know.**

Q. Okay. Do you know whether, prior to June of 2025, the partnership fund had purchased shares in portfolio companies?

**A. I believe it had.**

Q. Have you conducted any -- or have you or anyone at B. Riley conducted any analysis of whether additional funding to portfolio

companies should be done by way of a loan versus by acquiring additional shares in the portfolio companies?

**A. I can't answer that, because it would -- it would involve attorney-client discussion.**

Q. So just to be clear, I'm not asking about any advice you may have received or any questions you may have asked.

I'm asking whether, as an economic matter, the -- you or your colleagues at B. Riley have analyzed whether additional funding for portfolio companies should be made by loan versus a purchase of additional shares?

MS. TOMASCO: Objection. Calls for attorney-client privileged information.

He already said that decision was made in the context of attorney-client communications. It's a mixed legal and factual question.

BY MR. TAFT:

Q. Again, I'm not asking for any part of the analysis. I'm asking -- the legal analysis.

I just want to know, is that a

question, an economic issue that you assessed?

MS. TOMASCO: Objection. Form. Instruct the witness not to answer. It calls for attorney-client communications.

BY MR. TAFT:

Q. Okay. You have reached the conclusion that it is advisable for The Fund to invest in certain additional portfolio companies by way of a loan, correct?

**A. Yes.**

Q. Have you reached a conclusion that it is not advisable for The Fund to invest in those portfolio companies by way of an equity investment?

**A. I've reached the conclusion that it is best, I think that's the word you used, best to fund via the loans.**

Q. Okay. What is the basis for that conclusion, that the best method of funding the portfolio companies is via loans?

**A. That would require me to talk to -- and the only way I could answer it is if I talked about attorney-client communications, so I can't answer.**

Q. Just conceptually, if you invest

through equity by purchasing additional shares, The Fund would benefit from any increase in that equity -- in the value of that equity, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: I don't know.**

MS. TOMASCO: Calls for speculation.

**THE WITNESS: That's a hypothetical. I don't know. There's so many variables to that, I really can't answer that.**

BY MR. TAFT:

Q. Is the return analysis for a loan the same as the return analysis for a purchase of shares?

MS. TOMASCO: Objection. Form.

**THE WITNESS: Generally, or --**

BY MR. TAFT:

Q. Generally.

**A. No.**

Q. Because -- because those are different types of investments, correct?

**A. And generally levered -- levered transactions are more profitable for equity than unlevered transactions.**

Q. And have you -- and they have

different -- an equity transaction and a loan -- sorry, strike that.

The purchase of equity versus giving a loan has a different risk profile for the investor, correct?

**A. Could you define "investor" in this hypothetical that we're going down?**

Q. The Fund.

**A. You mean the equity?**

Q. Yes. If The Fund were to make an additional investment in the portfolio companies by way of a purchase of equity, that would have a different risk profile than a investment in the portfolio companies by way of a loan, correct?

**A. There's so many variables, it's hard to give a general answer to that.**

**But potentially, there could be different profiles, yeah, it could be good, it could be worse. Who knows.**

Q. Okay. Have you analyzed those different options?

**A. What options?**

Q. Investing versus it -- through a loan versus investing through a purchase in

equity?

**A. The determination was made for this, what we've put forth to the Court today.**

Q. Which is to purchase -- to invest via a loan.

**A. Via the loan, yes.**

Q. And without revealing client -- or attorney-client communications, I'm asking whether the -- an analysis has been done of whether it might be more advantageous to invest by equity?

MS. TOMASCO: To a debtor -- to a debtor that's in bankruptcy, you're suggesting an equity investment would be preferable?

MR. TAFT: First of all, I'm going to ask no speaking objections. That wasn't even an objection, actually, so move to strike.

**THE WITNESS: I'm sorry, what was your question again?**

BY MR. TAFT:

Q. The question was: Whether you or B. Riley have done an analysis of whether it might be more advantageous to The Fund to invest in these portfolio companies by purchasing

additional shares?

**A. When you say "analysis," do you mean like a written document or something like that?**

**What do you mean by "analysis"?**

Q. I mean a -- yes, it could be in writing, but I mean, an economic analysis of risks and benefits.

**A. Okay. The analysis I undertook unfortunately or fortunately, whatever, strike unfortunately or fortunately, but this is a highly contested matter that's been going on in different courts around the world, right, for many months, and I looked at it from what could -- what is best to protect the interest of my client, and that was the analysis that I came down to.**

**And I -- I can't go any further, because it would involve attorney-client communications. But that's the analysis that was done.**

**So, no, there was no written analysis to, you know, that -- that compared returns, if that's what you're asking.**

Q. In your last question, you said

you looked at --

**A. I didn't ask a question.**

Q. Sorry, in your last response, thank you.

You said that you looked at it from "what is best to protect the interest of my client," correct?

**A. Of the debtors.**

Q. Okay. So who do you consider your client for purposes of this Chapter 11 proceeding?

**A. The debtors.**

Q. So that would include The Fund?

**A. The debtors, yes.**

Q. Well, there are --

**A. Yes, it would include The Fund.**

Q. Okay. And it would include the GP and the management company, correct?

**A. Which are both debtors, yes.**

Q. And it would include each of the portfolio companies, which has filed for Chapter 11, correct?

**A. That's right.**

Q. So each of them are a client, correct?

**A. That's right.**

Q. And you've been engaged by each of them separately, correct?

**A. Well, we have one engagement letter.**

Q. You have -- there are authorizations by each of those entities appointing you as CRO for that entity, correct?

**A. Correct.**

Q. Okay. Do you owe independent duties to each of those debtors?

MS. TOMASCO: Objection. Calls for a legal conclusion.

**THE WITNESS: I would need to rely on counsel to help me answer that. Can I --**

BY MR. TAFT:

Q. Do you feel that you owe a fiduciary duty to the partnership/debtor?

MS. TOMASCO: Objection. Same objection.

**THE WITNESS: Again, if you're asking for a legal conclusion, I would -- I think our retention papers and the order, the proposed order for our retention covers what**

**we're doing.**

BY MR. TAFT:

Q. Do you feel that you owe a duty of care to each of the debtors?

MS. TOMASCO: Same objection.

**THE WITNESS: I answer it the same way with respect to a legal conclusion.**

**I owe a -- I owe my -- I view my responsibilities to the estates. Although, the way I think about it, yeah, from a nonlegal standpoint because I don't want to be coy with you, but I owe my obligations, my -- my responsibilities are to the estate, and that's to do the best for the estate and the debtors, and that flows down in whatever waterfall that exists, unpursuant to the bankruptcy code.**

**So if it benefits the top layer of the CAP stack, it should, in kind, reflect and work for the bottom layer of the CAP stack.**

BY MR. TAFT:

Q. In this case, as -- as CRO, with respect to the proposed loans between the partnership/debtor and the debtor PortCos, you are advising both the lender and the borrower, correct?

**A. I guess.**

Q. So you're on both sides of that transaction, correct?

**A. I don't view it as both sides.**

Q. Well, in this transaction, the lender has an interest in -- is going to be paid interest, correct?

**A. Per pursuant to the terms of the note, whatever the terms are, that's what it's entitled to, yes.**

Q. And it will be economically benefited if that interest rate is higher as opposed to being lower, correct?

**A. Right. And that benefit -- well, that benefit then flows through to everyone, everyone else. It's -- I don't -- I'm really trying to understand what you're getting at or what you're trying to solicit from me.**

**But I will tell you that what I'm doing is for the best interest of everyone that's included in this CAP -- let me finish, in this CAP stack.**

**So if it benefits -- if it benefits one party, then there's a waterfall that's been in place for a long time and it**

**benefits everyone, so it's to increase and maximize the value of the estate.**

Q. Well, if the loan from The Fund to a debtor PortCo was not repaid, if they defaulted -- do you have the hypothetical?

**A. Yeah, sure.**

Q. Would that benefit The Fund, the estate?

**A. Well, if an equity contribution was made and it was -- went away, it wouldn't -- I don't see there's much of a difference to anyone.**

Q. Well, here, I'm just --

**A. I don't -- I'm really trying not to be a --**

Q. Let me ask the questions and then we'll get them, and if it doesn't make any sense, that's my fault.

In a loan transaction, the borrower wants a low interest rate, correct?

**A. Maybe.**

Q. Okay. Did you consider in proposing the terms of the proposed loans between The Fund and the -- and the portfolio companies, what the correct interest rate should

be?

**A. The -- the terms that are included in here are the terms that are beneficial to everyone, that's fair in the right way.**

Q. Okay.

**A. And so, again, that's -- that's what my answer is.**

Q. But just on the question of interest rate, what's good for The Fund is not necessarily good for the portfolio company, correct?

**A. Or it could not necessarily be bad also. I can't -- I don't -- to me, it's neutral.**

Q. Okay. If a portfolio company concludes or if you conclude on behalf of a portfolio company, that it wants to borrow $10 million at zero percent interest, would it necessarily be in the best interest of The Fund to provide that loan?

**A. I don't know.**

Q. Okay. How would -- just as a matter of approaching it as the CRO of The Fund, how would you analyze that question?

**A. I would analyze it on a much more holistic basis on what is -- given the context of the situation that it's in, what is the most appropriate way to fund the company in order to ensure that funding continues from a counterparty that doesn't want any funding at all.**

Q. What is the -- sorry, you referred to a counterparty that doesn't want any funding at all.

What are you referring to there?

**A. Your guys.**

Q. You're referring --

**A. Your client.**

Q. -- to the Rigmora LPs?

**A. To whomever has -- yes, to the Rigmora LPs or whatever entities that they have.**

Q. And again, here, I'm talking about loans from The Fund to the portfolio company, correct?

**A. Right.**

Q. You're the CRO of both of those -- for the debtor portfolio companies and The Fund itself, correct?

**A. The answer hasn't changed in five**

**minutes, right.**

Q. Okay. And I'm asking, in a situation where you're on both sides of those transactions, have you taken any steps to resolve or even identify conflicts of interest?

**A. I don't --**

MS. TOMASCO: Objection. Form.

**THE WITNESS: I don't view that there are two -- the interest between The Fund and the portfolio companies are linked, and what's important is that the portfolio companies have adequate funding to complete and continue their missions, and so I don't view -- I view that the portfolio companies are being funded as the main driver, and if that means there's some interest that goes along with it, given the situation, which is caused by litigation in the non-funding of that $97 million that the Delaware Chancery Court, you know, ordered your clients to pay, then that's -- that overwhelms any economic interest -- it's -- I'm not, can't be myopic, and think of, you know, an interest rate that costs a couple dollars and it's to continue the mission of each of the portfolio companies.**

**And we concluded that this was the best way to do it, and a lot of that has to do with discussions with counsel, and the reasons why.**

BY MR. TAFT:

Q. Have you done an analysis as to the likelihood of the portfolio companies being able to repay the loans to The Fund?

**A. I have not.**

Q. Has anyone at B. Riley analyzed whether the portfolio companies are likely to be able to repay these loans?

**A. We have not done that or -- we have not also done an analysis of would there be a return on the equity.**

Q. Okay.

**A. If they were put in as equity.**

Q. If the loans are not repaid, would it still be to the benefit of The Fund to make the loan?

**A. I don't understand that question. I don't know how to answer it maybe. Like, I don't -- I don't understand the question.**

Q. Well, if -- if there were a 100 percent chance that the portfolio companies

borrowing this money would not be able to repay it, would it be in the interest of The Fund to make the loan?

**A. I don't know. If that's the only -- I still don't know the answer to the question because this is what this -- in a hypothetical situation, if a lender lent money to another party and they knew they couldn't get paid, well, then, you would think they wouldn't make the loan. However, this isn't that type of situation.**

Q. Some of these borrowers have no cash flow, correct?

**A. As you know, better than me, because you've been involved in this for a long time, the mission of these companies -- they're not supposed to have cash flow. They're supposed to invest, right?**

**This is a -- this is a biopharma venture fund, which it makes capital contributions, investments into portfolio companies to pursue a specific therapy or specific drug or some medical pursuit, and so, therefore, the whole premise of your questions seem to be inconsistent with the -- with the**

**mission or the business of The Fund itself and the GP and the management company itself.**

**So it's hard for me -- in a vacuum, answer your questions in a way they are all reasonable.**

Q. You have recommended that The Fund lend money to debtor portfolio companies, some of which have no cash flow, correct?

**A. We've concluded that that is the best thing to do, yes.**

Q. In connection with making that recommendation, you did not perform any analysis of whether those debtor portfolio companies were likely to be in a position to repay those loans, correct?

**A. It's -- that's not how this works. It is -- it is a -- the funds are being provided to the companies to continue their pursuits. Each company is different. You have, you know, you have seven or eight different companies that are getting money, they're all different, and so it is consistent with the -- I'm going to use the word charter, but a small C, a charter of The Fund to continue what they are supposed to do.**

**If they put it in as equity -- if the loan wasn't good, then the equity would be worth zero also, right? So that's where I'm really struggling to where you're getting at.**

Q. There's a question as to whether or not they should put it in at all. You understand that, right?

**A. I -- and that's where I'm trying to get out of you. Is that what you're asking me? So let's get there, if that's what you're asking me.**

Q. Have you considered, whether from The Fund's perspective, it makes sense to -- strike that.

Have you considered, whether from The Fund's perspective, it is likely to be repaid any of the amounts that you are proposing that it lend the portfolio companies?

**A. If the companies, you know, are successful in their missions, then yes, then it is likely that those loans will get repaid.**

Q. Have you done an analysis of the likelihood of the portfolio companies succeeding in their missions?

**A. I've spoken to management of the**

**portfolio companies. This is science. This isn't, you know, how many dresses you're going to sell off the rack.**

**And so it is consistent with the mission of the company that it's -- what I've concluded is that based on my meetings with the management teams of the companies and other people at The Fund, that it is appropriate to make these investments now.**

Q. And --

**A. When I say "investments," capital the loans now.**

Q. And -- and have you concluded that the loans being made -- to be made by The Fund are likely to be repaid?

**A. I don't know.**

Q. Okay. If they are to be repaid, have you analyzed how long it will take to repay them?

**A. No.**

MS. TOMASCO: We've been going about an hour.

Do you want to take a short --

MR. TAFT: Just -- really, just three, three or four more questions, then maybe.

(Exhibit 5, Responses to Rigmora's diligence questions, marked for identification.)

MR. TAFT: This is marked as Exhibit 5, debtors' reply to the limited omnibus objection of Rigmora biotech investor to the funding motion.

This is the reply in support of the funding motion.

BY MR. TAFT:

Q. In connection with your conversations with debtor management, were there any portfolio companies where they recommended not providing any additional funding?

**A. Yes.**

Q. Were there any portfolio companies where they recommended liquidating the portfolio company rather than continuing to fund it?

**A. No.**

Q. Could you take a look at paragraph 7 of Exhibit 5, which is the reply brief submitted by debtors on January 16th.

MS. TOMASCO: Objection to form.

**THE WITNESS: Yes.**

BY MR. TAFT:

Q. Okay. I'd like to direct you to the sentence that starts seven lines down.

It reads: "The debtors' estates are not substantively consolidated and therefore, the debtors must act in the best interest of all of the estates, not just the partnership debtor."

Do you see that?

**A. I do.**

Q. Is that consistent with what you consider your duties to be?

**THE WITNESS: Complete.**

MS. TOMASCO: Objection to form. Calls for a legal conclusion. You can answer to your understanding.

**THE WITNESS: Completely.**

BY MR. TAFT:

Q. Okay. Is there anyone who is tasked with acting solely in the best interest of the partnership/debtor?

**A. You'd have to ask a lawyer that.**

Q. You don't consider yourself to be responsible for acting solely in the best interest of the partnership/debtor, correct?

MS. TOMASCO: Objection. Form.

Same objection.

**THE WITNESS: I answered that question a few minutes ago and I said completely.**

BY MR. TAFT:

Q. Okay. The next sentence reads: "The debtors' carefully balanced all constituency's interest with an eye towards maximizing the overall estate's value while they pursue an exit strategy."

Do you see that?

**A. I do.**

Q. Okay. Is that an accurate statement of what you tried to accomplish in the proposed budget related to the funding motion?

**A. I believe it's incredibly consistent, yes.**

Q. So that budget was not designed to maximize the partnership's bankruptcy estate?

MS. TOMASCO: Objection. Form.

MR. TAFT: I'm sorry.

BY MR. TAFT:

Q. So that budget was not designed solely to maximize the value of the partnership's bankruptcy estate, correct?

**A. That's right.**

MR. TAFT: Let's take a break.

**THE WITNESS: Thank you.**

THE VIDEOGRAPHER: Off record. 2:18.

(Recess.)

THE VIDEOGRAPHER: We're back on record. 2:27.

BY MR. TAFT:

Q. Okay. Mr. Mandarino, have you determined which parties would benefit from an increase in the value of The Fund's bankruptcy estate?

**A. I'm sorry, I don't understand. What do you mean by "bankruptcy estate"?**

Q. So for the partnership/debtor, it's the debtor's position that there's a -- that the partnership/debtor has a bankruptcy estate, right?

**A. Yes.**

Q. Okay. And that estate has some value, correct?

**A. It should, yes.**

Q. And do you consider it to be your

responsibility to increase or at least preserve the value of that bankruptcy estate?

**A. I view my job as to help maximize the value of the estate.**

Q. Okay. So have you determined who would benefit, if you are successful in maximizing the value of The Fund's bankruptcy estate?

**A. I think it goes back to my answer before, which is, I need to ask you a question, but do you understand what I mean by waterfall? Because if not, then I could use a different word.**

**But if there's value that gets distributed, so if there's -- right now, two things have value and then who gets it, right?**

**So if there's value that's created or maintained or preserved or maximized, it would get distributed according to the waterfall, meaning the contractual documents that govern whatever entity it -- it goes. It would value -- it would benefit the waterfall in that order.**

Q. And for The Fund, that contractual document is the LPA, correct?

MS. TOMASCO: Objection to form. Calls for a legal conclusion.

**THE WITNESS: I believe so. I don't know if there's any nuances or other documents that would cover. But generally, the partnership agreement would cover that.**

BY MR. TAFT:

Q. Okay. Have you analyzed what parties would receive in the event the bankruptcy estate were distributed in accordance with the waterfall?

MS. TOMASCO: Objection. Same objection.

**THE WITNESS: I'm sorry. Are you asking what parties or what -- I'm -- I'm sorry. Could you repeat that?**

BY MR. TAFT:

Q. By parties -- by parties, I mean, you understand that there are partners in The Fund, correct?

**A. I do.**

Q. Okay. And is it your understanding that those partners in The Fund would receive assets that are distributed through the waterfall, if and when that were to

occur?

**A. I haven't done any analysis of the distribution of the value yet.**

Q. Okay. So you -- and to your knowledge, nobody at B. Riley has analyzed the value of the distribution?

**A. We haven't gotten there yet, no.**

Q. Okay. Have you -- do you agree that my clients, the Rigmora Limited Partners, would receive value through the waterfall?

**A. I mean, assuming the -- assuming value goes down to them, then sure they would. Assuming -- a lot of assumptions there, but sure.**

Q. Okay. And you haven't analyzed who else might receive value in the waterfall?

**A. I haven't analyzed if anyone would. As I said before, like -- like 30 seconds ago, I haven't analyzed the distribution under the waterfall.**

Q. The Chapter 11 petition for The Fund identifies a range of assets that The Fund owns, correct?

**A. I believe so, yes.**

Q. Do you recall what -- what range

was indicated?

**A. I don't.**

Q. Do you believe it was more than a billion dollars?

**A. I think -- that's why I don't remember the boxes, so I don't want to misstate. But I think so.**

Q. Okay. And it also indicates a range of liabilities, correct?

**A. That's right.**

Q. And to your recollection, do you recall roughly what range of liabilities was indicated for The Fund?

**A. It was -- I don't know, the 10 to 50 million box, maybe. I forget. I forget how those boxes go.**

Q. Okay. So just going on those broad sort of ranges, there is substantial equity value in The Fund, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: From a balance sheet perspective, assuming all those numbers end up being accurate, that's right.**

BY MR. TAFT:

Q. In performing your

responsibilities as CRO for The Fund, you are not considering who the ultimate beneficiaries of any distribution of The Fund's bankruptcy estate are?

**A. I -- no, I didn't say that. I said the -- the ultimate beneficiaries will be those that get the value, based on the documents that have existed way before I was ever involved.**

Q. But you haven't identified who those people are?

**A. I have not done that work yet.**

Q. Okay. Are you aware that The Fund's assets are held in different pools?

**A. I am.**

Q. Okay. And in seeking to maximize the value of The Fund's bankruptcy estate, have you taken into account the different pools that the assets are held in?

**A. It's an ongoing process, but sure. The assets are held in different pools and, you know, you have to, you know, make hay with what you have.**

Q. Is it your understanding that the limited partners of The Fund, and by that I

include both my clients and anyone else claiming to be a limited partner in The Fund, have different economic interests in assets depending on what pool they are in?

**A. I'm aware of that, yes.**

Q. And, therefore, the limited partners in The Fund may benefit or not, depending on what happens to the different pools, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: That sounds right.**

BY MR. TAFT:

Q. Okay. With respect to the nine portfolio companies covered by the funding motion, are you aware what pool they are in?

**A. This very second, no. I don't recall. I mean, I know that it's somewhere, but I don't know it.**

Q. Would you have taken that into account in forming your recommendations for the funding that is in the funding motion?

**A. Would I have taken what into consideration?**

Q. The -- what -- what pool each portfolio company is in.

**A. I don't know.**

Q. Okay.

I'd like to mark tab 36 here. We're going to actually need to log on to the computer.

**A. How do I do that?**

Q. There should be a password there.

**A. Yeah, but there's nothing -- oh, control, alt, delete.**

MS. HALLAS: Once you hit that, it should pop up.

**THE WITNESS: Sorry, I don't -- I use a Mac, so...**

**I got it.**

MS. TOMASCO: I take it you don't have one for me to look at?

MR. TAFT: We'll also be displaying it on the --

MS. TOMASCO: I'll come sit by him.

(Exhibit 6, Excel spreadsheet that is titled: "Project Newton 13-week Cash Flow, marked for identification.)

BY MR. TAFT:

Q. Okay. So we're marking as

Exhibit 6, an Excel spreadsheet that is titled: Project Newton 13-week Cash Flow 2026.01.11 -- sorry. Lower case vff-97MVDIST.

MS. TOMASCO: Is it pulling up for you?

MR. TAFT: We have a hard copy here.

BY MR. TAFT:

Q. Are you able to open that tab here?

**A. I don't see anything.**

Q. Sorry.

Mr. Mandarino, you are familiar with Microsoft Excel program?

**A. I am. Thank you.**

Q. And for the record, here is a hard copy of it, but some people prefer to use it in Excel.

**A. I'm old.**

Q. Is -- is this the most current version of the budget that has been provided by debtors in connection with the funding motion?

**A. I mean, the Excel that you have here, there's, like, the columns aren't formatted the right way, and I may need a few**

**minutes.**

**This appears to be the correct one.**

Q. Okay. If you'll recall, in the funding motion, there is a final amount for each portfolio company that was identified in a table, correct?

**A. Yes.**

Q. And those aggregate to the maximum of 13. -- $13.9 million requested by the funding motion, correct?

**A. Yeah. I'm not sure this is the right one. Hold on.**

Q. So I can -- I can represent to you that this is the Excel file that was provided to us by Quinn Emanuel on -- in response to our request for --

**A. But whoever printed this, screwed up, because they didn't -- they didn't open up all the columns, and so this doesn't -- there's -- I don't know if someone did something to this, but there's a number here that just is off by, like, $150,000. That worries me.**

Q. What number is that?

**A. I'm looking at the PortCo**

**funding, 2026.7.31 tab. It has --**

(Reporter seeks clarification.)

**THE WITNESS: Port.funding, open paren, 2026.7.31, close paren -- tab, and the total number there in the far in column view is 39,376,000. That number should be, like, 39,150.**

BY MR. TAFT:

Q. 39?

**A. 150 something.**

Q. You've reached 39,150,376. I'm looking -

**A. On mine, it reads 39,000,376. So there's something wrong with this.**

MS. TOMASCO: It's not -- usually, when you do this, what's on the screen should be the same as what's on his screen, and it's not. It's not tracking.

MR. TAFT: Okay. Do you have the hard copy?

**THE WITNESS: You can't look at the hard copy because it wasn't printed correctly.**

BY MR. TAFT:

Q. Maybe if you look at what was --

**A. Anyway, that's not right.**

MR. TAFT: Can you pull up the reply, please, that was previously marked as --

MS. HALLAS: Exhibit 5.

MR. TAFT: -- Exhibit 5.

MS. HALLAS: Docket 160.

BY MR. TAFT:

Q. And if you turn to exhibit --

**A. I'm sorry, what am I looking at?**

Q. Sorry. In Exhibit 5, which is the reply brief, and if you turn to Exhibit A.

**A. I'm sorry, Exhibit --**

Q. Exhibit A to that filing.

**A. Okay.**

Q. And you've got: "Project Newton 26-week cash flow, 1-15-2026."

Do you see that?

**A. I do.**

Q. Okay. Are you familiar with this document?

**A. Yes. This looks like the PDF that we provided to avoid things like this.**

Q. Okay. I'm sorry. What is this document?

**A. It's a PDF file of the**

**spreadsheet, a summary of all the tabs, you know, that was provided in a PDF format.**

Q. Okay. And this is the most current version of the 26-week budget, correct?

**A. I'm just looking. It appears to be, yes.**

Q. Okay. And does this budget tie out to the final amounts listed in the funding motion?

**A. Well, the funding motion numbers are a subset of some of the numbers in this budget, right, so the funding motion doesn't go all the way to the 26-week period. It's a much shorter timeframe. It's embedded in there, in other words.**

Q. If I wanted to determine what makes up the $979,780 as the final amount for Apetor, how would I do that using your budget?

**A. Well, you couldn't do it from this page. You'd need to -- we'd need to find the -- we would need to go to the -- you said Apetor, I think?**

Q. Mm-hmm.

**A. We would need to go to the 13-week one for Apetor and find it in there.**

**So if you looked at this page, for example, on page 12 of the PDF, there's funding for Apetor for the 25 weeks of $3,524,250.**

**And so the almost million dollars is a subset of that.**

Q. Okay. And in order to get to the 979,780, I would just select the weeks for Apetor that were covered by the funding motion; is that correct?

**A. That's right.**

Q. Okay. Can you describe the process by which you determined that $979,780 was the correct upper limit for the funding to be provided to Apetor personally to the funding motion?

**A. It was the amount that was needed for the period in question, based on the budget that was -- that was done for Apetor.**

Q. And who prepared that budget?

**A. So the original budget was prepared by the company and -- and then -- it was prepared by the company.**

Q. And do you know when it was prepared?

**A. It was an iterative document so the original was prepared, you know, awhile ago, and it was updated up until, you know, this was published.**

Q. Okay. And is that the same process that was used for the nine other portfolio companies that are covered by the funding motion?

**A. Yes.**

Q. I'm sorry, there were nine total, I think. So the eight other companies?

**A. Yes.**

Q. And did all of those companies have an existing budget as a starting point?

**A. Yes.**

Q. Okay. And did you or anyone else at B. Riley change or propose changes to any of the budgets prepared by the portfolio companies?

**A. Yes.**

Q. Okay. With respect to Apetor, do you recall what changes you or somebody at B. Riley proposed?

**A. No.**

Q. Do you recall any of the specific changes for any of the nine portfolio companies

that you or anyone at B. Riley proposed?

**A. Yes.**

Q. What changes -- what companies do you recall a specific change being made for?

**A. Well, I recall there were certain items we questioned, for example, you know, why was, you know, other expense at one of the companies so high. And it was because there was some equipment leases that needed to be done and the numbers seemed high.**

**So we went back and we looked into it and it ended up the number was less. And there were some bonuses and some bonuses were for insider, so we had to, you know, delineate between insiders and non-insiders.**

**You know, there were other expense lines. There was, you know, certain things with respect to timing of some CRO, meaning in this instance, contract research organization payments, you know, to -- I remember for one of them, may have been Aulos, I believe it's Aulos or Replicate, that we needed to, you know, actually take a look at the contract to see when the amount was due, and it got shifted by the weeks.**

**You know, we ensured that the payroll numbers included taxes.**

**We ensured that, you know, generally that the -- the amounts needed were, you know -- for example, the nonbankruptcy professional fees and nonbankruptcy legal fees, were they appropriate, given what we had to get done.**

**You know, were the rents being included, you know, make sure that there were no prepetition amount being paid in any of these -- in any of these budgets. You know, things like that.**

Q. With respect to external research and development spending --

**A. Right.**

Q. -- did you talk to each management team about those -- those budget items?

**A. So the management teams we spoke to -- so as you know, I believe, you know, there -- there are some individuals at Apple Tree that cover a new, you know, more than one company, and so we talked to those folks, and then yes.**

**So for example, at -- I'm sorry,**

**I -- because there's a lot of names and a lot of companies, I'm going to -- I don't want to screw up the -- the people and show any disrespect to them.**

**But, you know, we spoke to Nathaniel Wang at Replicate, I think that's right, to understand, you know, to understand his budget, because it's a big number. We spoke to Paul Eisenberg, we spoke to Spiros, if that's how you pronounce his name right. To Dr. Eisenberg, to Dr. Paul --**

Q. Paul DaSilva?

**A. DaSilva Jardine. Thank you. Dr. Jardine. We spoke to them. We spoke to Aaron Knickbocker, you know, on -- all as needed to really just understand, you know, their -- their procedures for putting the budget together and why.**

Q. Was Dr. Seth Harrison involved in any of those discussions?

**A. We spoke to -- in my discussions with the management teams, I think Dr. Harrison may have been on one call. I had separate calls with these guys on my own. But, yes, we also, thank you, we spoke to Dr. Harrison about this,**

**we spoke to Dr. Joe Yanchik about this, we spoke to, you know, Dan Finkelman on legal spend. We spoke to the, you know, internal accounting people on other numbers. So, yes.**

Q. Okay. Did you -- in those discussions, did you ever propose delaying the external research and development spend?

**A. We proposed to ensure that it matched when the payments were due, the contractual payments were due. Again, I believe it was Aulos, there's a payment due February 1st and so -- or maybe it was February 4th, so the timing, as I mentioned maybe, the timing changed. So we, you know, we ensured that the timing was right.**

Q. And with respect to the amounts, did you propose reducing or eliminating any amounts to be spent on external research and development?

**A. We didn't propose to reduce or increase any of the amounts.**

Q. So with respect to external research and development, the amounts at the portfolio companies, the amounts reflected in the budget are the amounts that were proposed by

management?

**A. Yeah. By the -- by the clinicians and the expert doctors who have been -- who have been, you know, doing this for a long time, yes.**

Q. Okay. Did you or anyone at B. Riley make an independent assessment as to whether or not those amounts were reasonable?

MS. TOMASCO: Objection. Form.

**THE WITNESS: What do you mean by "reasonable"?**

BY MR. TAFT:

Q. Whether they were more or -- whether they were -- whether the amounts were more than the value of the services being provided.

**A. More than the value of the services provided?**

Q. Let me back up.

Did you make -- did you familiarize yourself with what services would be obtained in exchange for these external research and development expenditures?

**A. Generally.**

Q. Okay. Did you make any

assessment as to whether or not the amounts being charged for those services were reasonable?

**A. The internal -- like, the payments that CRO were contractual, those payments were -- those contracts were signed a long time ago or, you know, in the past.**

**Those contracts were -- those contracts were, you know, presumably shopped and debated and therefore signed and it's what's due. And a lot of that, of the debtors' business -- of the company's business judgment and the business judgment of professionals, this is what they do is what I relied upon to, yes, consider that it was reasonable.**

Q. Are the only amounts to be paid to clinical research organizations covered by the 26-week budget amounts that are already contracted for?

**A. I'm not sure, because we looked at a couple of the larger ones and I didn't look at all the contracts that they have or, you know, if there's pending contracts. And if there's pending contracts, we presume -- I don't know, if it's ordinary course of business, we**

**haven't talked about it, but we may need to come and seek Court approval to enter a new contract, right?**

Q. So there may be amounts covered by this budget, where there's not an existing contractual obligation to a clinical research organization to perform that work?

**A. I don't know. I believe the -- I believe for the -- really, the three big spends, I believe I saw the contracts that they would all be covered, so I don't think there'd need to be any new contracts for the three large ones.**

Q. That would be Aulos, Replicate, correct?

**A. Yes.**

Q. What's the third?

**A. Oh, under their clinical, it just says two, I'm sorry, not three. Aulos and Replicate.**

Q. Okay.

**A. Sorry.**

Q. Those are the two companies that have ongoing clinical trials, correct?

**A. Yes.**

Q. Okay. And with respect to the

preclinical companies, are you aware of any of them that have entered into agreements with clinical research organizations to provide services?

**A. I think there's vendor agreements. So I'm not sure if they -- if they, you know, again, not making a legal conclusion, if there are contracts, but there's vendor agreements. I know that they have with some, my recollection.**

Q. But not all of the external research and development for the preclinical companies is currently contracted for, correct?

**A. I'm not sure.**

MS. TOMASCO: Objection to form.

**THE WITNESS: I'm not sure.**

BY MR. TAFT:

Q. Okay. If any of those amounts are not currently contracted for, then there would be no risk of breaching that agreement by postponing payments, correct?

MS. TOMASCO: Objection. Form. Compound.

**THE WITNESS: We can't have breach of an agreement if it doesn't exist,**

**right? I don't know if those are clever words. I'm not sure what you meant there.**

BY MR. TAFT:

Q. No. Nothing clever, I can assure you.

In -- could I ask you to turn to -- the assumptions tab, which is I think is on the first page of both the -- you can turn to it --

**A. I have it.**

Q. -- in the exhibit, if you're happy with that.

If you turn to page 12, oh, sorry, row 12 of the assumptions tab, the last sentence for both 12 and 13 reads: "Individual expense line items for each portfolio company are projected consistent with individual company research program requirements."

Do you see that?

**A. I do.**

Q. What is the source of those individual research program requirements?

**A. I'm sorry, what is the source?**

Q. What was the -- did you familiarize yourself with those individual

program requirements?

**A. Not in explicit detail. As I said a few minutes ago, I guess it's worth repeating, is that, you know, we spoke to the management teams on what they needed to do to keep these programs going.**

**It's not a huge rampup, it's not a -- it is to keep these -- the programs going, and I relied on their expertise as to that this was the most appropriate -- this was the most appropriate use of funds in order to keep these programs going.**

**I had no other, and no other input from anyone else of specifics, rather than just -- I had no specifics from everyone else.**

**You know, if you recall, we had conversations in -- in discussing this budget. I asked if Rigmora had a -- had retained a financial advisor or an expert, that I'd be delighted to talk to, to hear their point of view and your partner, Ms. Seldan, said that she was so familiar with this stuff and she could tell me that it's not worth putting the money in, something like that, and so perhaps she will testify tomorrow as to why.**

**But, you know, I didn't have any other evidence. I would have been delighted to hear from Rigmora if you did.**

Q. Are you prepared to testify tomorrow about the potential return on investment for the funding contemplated by the funding motion?

**A. I am not.**

Q. Is that because you have not performed any analysis of the potential return on investment for the proposed funding?

**A. I have not.**

MS. TOMASCO: Objection to form.

**THE WITNESS: I have not.**

BY MR. TAFT:

Q. Okay. Could you -- you can put aside the budget for now.

Could you turn back to, I think it was marked as Exhibit 3. Make sure they are responses to the due diligence questions.

**A. Is this budget part of this big thing here?**

MS. HALLAS: I'm afraid so.

MS. TOMASCO: Yes, we're going to have to go by ECF numbers to put it back

together because it's not stapled.

**THE WITNESS: Do you have a yellow sticky, just so I could put it on?**

MS. HALLAS: I'd be happy to.

**THE WITNESS: Thank you.**

MS. HALLAS: Would you like one?

MS. TOMASCO: No, I'm good.

BY MR. TAFT:

Q. It's Exhibit 4.

**A. I'm sorry, what am I looking at?**

Q. We're going to look at the responses to the due diligence questions, which were marked as Exhibit 4. Thank you.

If you turn to page 2, where -- under the heading: "Detailed Responses."

**A. Right.**

Q. You'll -- do you recall that a earlier version of the budget had an assumptions tab, which referenced "milestones"?

**A. Yes.**

Q. Do you know -- but that is no longer referred to in the current version of the budget, correct?

**A. Let me compare. I think you're right. That's right.**

Q. Do you know why that changed?

**A. I was hoping you were going to ask me that. Yes.**

Q. Why did that change?

**A. And the reason it changed, it was a better description to be more -- it was just a better description of the -- of the whole process.**

Q. Okay. And did that change take place sometime after we had asked the question about what milestones were referred to in the assumptions?

**A. I don't know.**

Q. Do you know when that change happened?

**A. No.**

Q. Okay. Are the proposed expenditures for portfolio companies no longer consistent with milestones?

**A. They're consistent --**

MS. TOMASCO: Objection to form.

**THE WITNESS: They're consistent with program requirements -- or I'm sorry, am I using the right wording?**

**Yeah, they're consistent with**

**company research and program requirements.**

BY MR. TAFT:

Q. But not milestones?

**A. Well, I think as, you know, milestones change based on -- or the milestones change based on the lack of funding, you know, for eight months, nine months, whatever it was.**

**And so therefore, without money, programs have to change, and so -- and even in the normal course of business, that milestones almost change from day one, is my understanding, based on my research, and so it was a better description.**

**So I don't want -- I don't want to use the word "milestones" anymore. I think program requirements are what the management teams need in order to continue the mission.**

Q. So there are currently no milestones associated with the proposed funding for the portfolio companies?

**A. I don't need -- I mean, certainly, the programs still have milestones, but again, you know, not to trip up on words, is a better description, the program requirements.**

Q. Did you -- your conversations

with portfolio company management or with ATP management, did you discuss what milestones are in place?

**A. I don't understand that question.**

Q. Okay. Did you discuss whether the proposed funding for any of these -- that portfolio companies, is tied to a milestone?

**A. It's tied to the program requirements to continue what they're doing in their research.**

Q. Okay. And did you talk about what the goals of that research are?

**A. Yes.**

Q. Okay. In discussing the goals of that research, did anyone ever refer to those goals as milestones?

**A. I don't remember if they used that word.**

Q. Okay. If you look at exhibit -- the responses to the due diligence questions, which is Exhibit 4.

**A. Right.**

Q. The answer on page 2, it says: "The debtors have compiled budgets based on research program requirements and milestones

determined by the management debtors and the management of the portfolio companies."

Do you see that?

**A. I do.**

Q. Is that accurate?

**A. Actually, it's small in milestones, it's not a defined term.**

**So I mean, milestones are when there's enough money in order to finish the research. As you probably know, Ms. Seldan knows, that, you know, as the -- as tests come in and they get data back, things could change, right?**

**So it's not like you need to hit a milestone by June 1st or the whole thing goes kaput, things could change, it's an iterative process.**

Q. Okay. Right now, these budgets are based on research program requirements and small M, milestones, correct?

**A. Yes. Getting to the milestone. How about that? Maybe that's the best way to describe it, and say to get to the next milestone, maybe that would have been worded better.**

Q. Okay. Did you discuss with respect to each of these portfolio companies, what the next milestone is?

**A. We discussed -- I don't recall if we -- how -- if we did it with each of the companies, but with some of them, you know, they need to conclude the testing. Like, there's people being treated, who are, you know, being tested for cancer -- cancer therapies, and they needed to finish the number -- they need to conclude the patients that are in process and get new patients in.**

**And so when that can be concluded, some of the -- you know, there are ranges of time, if that's answering your question.**

Q. So did you discuss how long it would take to achieve a milestone or how much money it would take to achieve the milestone or both?

**A. You know, generally, talked about what needed -- we were focused on the next 26 weeks plus the stub period. We were focused on this budget for that.**

**What has to happen -- what is --**

**what do you need in order to -- for the next six months, to keep the programs relevant and functioning, and that's what this was focused on.**

Q. Okay. And a milestone is, as used in this answer, what does the small M milestone refer to?

**A. The next step.**

Q. Okay. And did you identify, for each portfolio company, a next step?

**A. The next step was to continue the research.**

Q. That seems like the same step, if I may.

**A. Okay.**

Q. So the next step might just be more of the same?

**A. It may be continued research and advanced research based on the tests that come back and what they achieve. This is science.**

Q. You keep saying that.

Did you assess the likelihood of achieving the milestones within the budgets that are provided for each portfolio company?

**A. I assessed the company's plan to**

**do what they needed to do to keep these programs going.**

Q. You did not assess whether or not this funding would be sufficient to enable any portfolio company to complete a project, correct?

**A. Based on --**

MS. TOMASCO: Objection. Form.

BY MR. TAFT:

Q. Sorry. I'll restate it.

With respect to any portfolio company, did you assess whether or not the amount being budgeted was sufficient to complete a project?

**A. Well, they would like a lot more, right? Because a lot of these companies don't have the same number of employees that they would have liked to or they had in the past.**

**So they would like more, they would like a lot more money than this.**

Q. Did you assess whether or not the amount that you're proposing to budget for each of these companies sufficient to complete a project?

**A. Based on -- based on the**

**management's -- and this is judgment and their medical expertise and their program expertise, I concluded that -- I relied on their expertise, which was -- that was their conclusion, so I relied on their expertise that this was appropriate to put forth to the Court.**

Q. Okay. But you have not identified what specifically they intend to achieve using the funds that you're budgeting, correct?

**A. They -- they can -- they achieve the ultimate goal of -- it's a process, and they -- they're going to achieve the ultimate goal of making whatever drug or therapy viable or not.**

Q. So the amounts that you've provided for this 26-week budget, are what is necessary to make a viable therapy?

**A. Therapy or drug, whatever it is.**

Q. Okay. And that's the amount that is provided for in the 26-week budget?

**A. That is the business judgment of the experts that are doing this, and that's what is put forth, yes.**

Q. Okay. And do you have a basis

for concluding that, at the end of this 26 weeks, any of these portfolio companies will have developed a viable therapy or drug?

**A. I don't --**

MS. TOMASCO: Objection. Form.

**THE WITNESS: Well, I think the timing is probably beyond the six months.**

BY MR. TAFT:

Q. Okay. And with respect to the amount of money needed, do you believe that the amount of money budgeted for these companies is what is required to enable them to develop a viable therapy or drug?

**A. Well, it's what -- well, okay. That's a really good question, because if, you know, and as I believe you know, these companies have budgets, capital B budgets, you know, pursuant to the funding agreements and so on, that are -- the money that we're asking for, for this period, is a fraction of what is being -- what has originally been budgeted and determined by your client and by the debtors to be reasonable, right?**

**So your client actually thought that the dollars were reasonable, because this**

**is all less, and so this is part of that money. This is research, this is, as I keep saying, science, and it's a process.**

**So this is what's needed to continue the process.**

Q. Is that statement that the amounts are pursuant to an existing budget, is that true with respect to all of the portfolio companies covered by the funding motion?

**A. It is not.**

Q. Okay. Is that true with respect to Nereid?

**A. It is not.**

Q. Is that true with respect to 9 Square?

**A. It is not.**

Q. Is that true with respect to Aulos?

**A. Aulos, it is not.**

Q. Okay. So did you follow any different process with respect to determining the reasonableness of the budgets with respect to those three companies?

**A. Okay. So with Aulos, there was -- yes, with Aulos absolutely. There is a**

**May 22nd email from your client, his name, Yuri, and I apologize, I forget his last name.**

Q. Mr. Bogdanov?

**A. Bogdanov, thank you.**

Q. He's a CPA, just like you.

**A. There you go. But my CPA license is inactive.**

**He made an offer to fund Aulos. He -- when I say he, not personally, I don't think, Rigmora to fund Aulos another $10 million, right? So that was pretty cool, right? That was a good third-party data point.**

**For Nereid and 9 Square, you're right, there's no approved capital B budgets, as I refer to them.**

**But again, I was relying on doctors, I think that's Dr. Eisenberg and Spiros, you know, on continuing.**

**So that's where -- that's where that is.**

Q. Do you know whether, under the LPA, the general partner has the ability to approve budgets?

**A. Yes. Oh, the general partner, I'm sorry, I'm sorry. Withdrawn.**

MS. TOMASCO: Objection. Form. Calls for a legal conclusion. Speaks for itself.

**THE WITNESS: I mean, the LPA speaks for itself.**

MR. TAFT: I'd ask that you not coach the witness, I think.

MS. TOMASCO: I'm not coaching the witness.

**THE WITNESS: I was going to say it anyway.**

MS. TOMASCO: It's an objection. I can't help it if he mocks my objection.

**THE WITNESS: Excuse me. Can I get another bottle of water, please?**

MR. TAFT: Sure. Why don't we take a quick break. We've been --

THE VIDEOGRAPHER: Off the record 3:19.

MS. TOMASCO: We're going to need to leave by 4:30. We have an important call at 5 o'clock.

MR. TAFT: I'll see what I can do.

MS. TOMASCO: Okay. Well, we're

leaving.

MR. TAFT: No promises.

(Recess.)

THE VIDEOGRAPHER: We're back on. 3:28.

BY MR. TAFT:

Q. Mr. Mandarino, the funding motion provides for the payment of certain management company expenses, correct?

**A. Yes.**

Q. And that includes year-end bonuses, correct?

**A. Yes.**

Q. The total year-end bonus described in your --

THE VIDEOGRAPHER: One second.

MR. TAFT: Sorry.

THE VIDEOGRAPHER: Going off record. Time is 3:28.

(Pause.)

THE VIDEOGRAPHER: We're back on. 3:30.

BY MR. TAFT:

Q. Mr. Mandarino, could you turn to Exhibit 6, which is your declaration in support

of the -- sorry.

Do you have your declaration in front of you?

**A. Exhibit 3?**

Q. Exhibit 3, thank you.

MS. TOMASCO: ECF 90?

MR. TAFT: ECF 90, yes.

BY MR. TAFT:

Q. Okay. And if you turn to paragraph 10.

In describing the management company expenses, you see you list $2,101,204 for year-end bonuses for eligible employees?

**A. Yes.**

Q. Do you know if that total includes bonuses for insiders?

**A. That number has been refined. That number, I believe, does include some bonuses for insiders.**

Q. Do I understand correctly that in the funding motion, debtors are not seeking permission to pay bonuses to insiders?

**A. That is correct.**

Q. Okay. In the -- sticking on management fees, you also are seeking -- debtors

are also seeking permission to pay $750,000 to ATVM as a quarterly installment of the management fee, correct?

**A. Yes.**

Q. Okay. Have you done any inquiry into whether or not some or all of the management fee should be offset by amounts received by Dr. Harrison, in connection with the exercise of stock options in Akero, a former portfolio company?

**A. I have.**

Q. And can you describe that inquiry?

**A. Sure. We have to take a step back.**

**The original -- the management fee due pursuant to the 14th amendment of the LPA is $3 million, and that was all due, you know, at the beginning of the year.**

**It was my change to the budget that I thought paying that 3 million all upfront should be delayed, and I asked Dr. Harrison to defer that into quarterly amounts, and he agreed.**

**I then became aware of the Akero**

**stock options, and through your good graces, you sent us the agreement, and I looked at it, understand it, and, you know, the question I have is that there's -- and I can't get into attorney-client discussion, but my layman's reading of it is that -- that offset or potential offset is -- there's not a timing, you know, there's not a timing component to it, right?**

**Doesn't say -- at least my reading doesn't say, do it all, you know, the day it's vested or maybe I'm wrong.**

**And so, therefore, given the full -- the management fee is $3 million. That offset could take place down the road.**

Q. Have you calculated the amount of the offset?

**A. I inquired of Dr. Harrison, which stock options Akero would be subject to that offset. He has said that there were three grants, and I forget the dates there. I think the 2021 grants, and I believe, if I recall correctly, that the offset could have been up to, like, a million six-ish, like, somewhere between 1.6 and 1.7 million.**

**And so therefore, you know, we have plenty of room for an offset after the $750,000 payment, if it's determined that's appropriate.**

Q. Did Dr. Harrison dispute that an offset was appropriate?

**A. I didn't discuss that with him.**

Q. Okay. Prior to the Rigmora LPs having raised the issue of the Akero stock options, were you aware of the offset?

**A. I was not.**

Q. So Dr. Harrison did not previously bring that to your attention?

**A. It didn't come up, given everything else, and all the other inquiries that we're responding to, and given all the work we have, it did not come up.**

Q. Okay. Is it your current recommendation that ATVM be paid $750,000 pursuant to the funding motion, notwithstanding that some or all of that is subject to an offset?

MS. TOMASCO: Objection. Form.

**THE WITNESS: I think I described the thinking of why the budgets in there.**

**There's plenty of time to offset, if that offset is right. I don't know if Dr. Harrison has any claims to offset the offset.**

**So for now, he's, you know, again he was theoretically due 3 million and if the offset was a million six, he would be due a million four, so we're still ahead of the game.**

Q. Okay. In stating that there's plenty of time, for -- to give effect on the offset, are you assuming that the GP will continue to be the GP past 13 weeks?

**A. I'm assuming --**

MS. TOMASCO: Objection. Form. Calls for speculation.

**THE WITNESS: I'm assuming that the -- yes, I'm assuming that this -- this company will continue for at least the next 26 weeks.**

BY MR. TAFT:

Q. Okay. But not just -- when you say "the company" --

**A. The debtors.**

Q. The debtors. And you're assuming that the relationship among the debtors, including specifically the relationship between

the GP and The Fund, will continue for at least 26 weeks?

**A. Yes.**

Q. Okay. If the GP ceased to be the general partner of The Fund, the GP would no longer be entitled to a management fee, correct?

**A. Calls for a legal conclusion.**

Q. Okay. In the event that the GP were no longer providing services to The Fund because it had been removed, would you continue to support paying the management fee?

MS. TOMASCO: Objection. Form.

**THE WITNESS: That's a hypothetical, I don't know. I mean, if the GP -- if ATVM was not a party to -- if ATVM's relationship was terminated.**

**Is that what you're asking me?**

BY MR. TAFT:

Q. Yes.

MS. TOMASCO: Objection. Form.

**THE WITNESS: And I don't know -- actually, I don't know, because again, that's a legal conclusion, because perhaps, you know, ATVM would be -- you know, that's the management -- if it was fee due on January 1st of this**

**year, they could have rights, they could have rights to a claim. I don't know.**

**I mean, if, you know, for current services, would it be provided, does it mean that it doesn't, you know, wouldn't have a claim. I don't know. I would have to, you know, consult with counsel if -- if, under your assumption, that ATVM was -- and that's Apple Tree, management, Mr. -- Dr. Harrison's entity, if it were terminated, I would have to consult with counsel if it should be paid.**

**I mean, presumably not, but I don't know. I'd have to -- I would need advice of counsel on that.**

BY MR. TAFT:

Q. Have you assessed whether, under the terms of the management agreement, Dr. Harrison is required to pay to the management company, any amounts realized under the Akero stock option?

MS. TOMASCO: Objection. Form.

**THE WITNESS: I mean, I think it kind of calls for a legal conclusion. I mean, I've read the documents that were provided. I just don't recall explicitly what they say.**

MR. TAFT: Can we see tab 44?

BY MR. TAFT:

Q. Without sharing any advice, have you consulted with Mr. Finkelman regarding the stock options?

**A. I'm not sure if I spoke to Dan about them. I may have.**

MR. TAFT: I'm going to mark as Exhibit 7, a copy of the first amended and restated limited partnership agreement of Apple Tree Partners.

(Exhibit 7, First Amended and Restated Limited Partnership Agreement of Apple Tree Partners, marked for identification.)

BY MR. TAFT:

Q. I'd like you to turn to the Bates number JX 1.0006.

It should be towards the beginning of the exhibit.

**A. Okay.**

Q. In Section D, which reads: "Fees and Commissions."

Could you read the first sentence to yourself. It starts: "So long as..."

**A. Okay.**

Q. Okay. Is this consistent with there being an offset for the management fee?

MS. TOMASCO: Objection. Form. Calls for a legal conclusion.

**THE WITNESS: I was going to answer, that I don't see the word "offset" in here, but to me, it suggests that there would be a reduction of the management fee based on -- based on the receipt of any of these type of payments.**

BY MR. TAFT:

Q. Okay. And you agree that if The Fund were entitled to a reduction of the management fee, that would be beneficial to The Fund, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: It would reduce expenses of The Fund, so that would -- that would reduce expenses. Yes, that would be a benefit.**

BY MR. TAFT:

Q. Okay.

**A. Not having all these legal fees would be a bigger benefit.**

Q. Have you discussed with Dr.

Harrison whether he would be willing to forgo the $750,000 payment covered by the initial fund while the amount of the offset owed is finalized?

MS. TOMASCO: Objection. Form.

**THE WITNESS: I had a discussion with Dr. Harrison, but counsel was present, so I don't know if I'm allowed to answer.**

MS. TOMASCO: I instruct the witness not to answer about a conversation that he had within the presence of counsel.

BY MR. TAFT:

Q. Are you -- are you engaged by Dr. Harrison in any capacity?

**A. I am not.**

Q. Okay. In this -- in connection with this payment to be owed to a nondebtor, owed by -- the 750,000 would be paid to an entity called ATVM, correct?

**A. Yes.**

Q. That is a nondebtor?

**A. Yes.**

Q. It is owned by Dr. Harrison?

**A. I think Dr. Harrison and some trusts, but right.**

Q. Okay. Do you consider yourself to have any duty to Dr. Harrison?

**A. Not to ATVM, no.**

Q. Okay. And this is a situation where ATVM is seeking money from The Fund, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: ATVM is seeking to be paid a contractual amount from The Fund, is how I would describe it.**

BY MR. TAFT:

Q. In connection with the discussions with Dr. Harrison about this payment, was Dr. Harrison representing his interests as an owner of ATVM, or was he acting as an officer of the general partner?

**A. I don't know.**

Q. Okay. Do you know -- did -- do you know whether, in this situation, Dr. Harrison has a conflict of interest?

**A. I don't know.**

Q. Okay.

**A. Calls for a legal conclusion.**

Q. Has -- has Dr. Harrison refused to delay payment of any part of the ATVM -- has

Dr. Harrison refused to forego the $750,000 to be paid to ATVM in the -- under the funding motion?

MS. TOMASCO: Objection. Form.

**THE WITNESS: I'm sorry. I didn't follow you.**

**Has he refused to -- has he refused to defer the payment?**

BY MR. TAFT:

Q. Correct.

**A. Again, this discussion was had under counsel, which if I'm allowed to, I will answer. So I just need to be told if I'm allowed to.**

MR. TAFT: Are you instructing him not to answer?

MS. TOMASCO: I'm instructing him not to answer, because I think that the situation is a close call, and so I'm going to instruct him not to answer.

And I also think that the question, frankly, assumes a fact not in evidence, that Mr. Harrison was asked to forego it, as opposed to it being the judgment -- business judgment of the debtors to pay a

contractual obligation that is not readily subject to offsetting under the bankruptcy code.

BY MR. TAFT:

Q. I'll ask the predicate question, then.

Without revealing any legal advice that you might have received, was Dr. Harrison asked to forego payment of the $750,000 covered by the initial budget?

**A. We had a discussion about the 750 -- we had a discussion about his management fee.**

Q. Okay. And your recommendation is that The Fund should pay that fee, notwithstanding the fact that some or all of that $750,000 is subject to an offset?

MS. TOMASCO: Objection to form. We haven't determined that some or all is subject to an offset. It assumes a fact not in evidence.

**THE WITNESS: So I think I tried to answer it before. Let me give it another shot.**

**The management fee that was due beginning January was $3 million. I suggested a**

time to Dr. Harrison, just him and I, without anyone present, that that get broken out over quarters. The fact with respect to the stock options came about.

I determined that there's still time -- if that offset is valid, because I don't know, I'm not a lawyer. I've read the documents, I've read this, is it valid? I guess. I don't know.

Are there -- are there other offsets against that offset? I have no idea.

So given that there's time, it could be offset in the future, you know, there's another payment that, you know, that he would be due in three months or at the end of March.

Dr. Harrison, in my interactions with him, spends 24/7 on this company. I don't know if I think he should be compensated for that, right? And I mean, if it were up to me, we could spend -- without all this litigation, we could spend a lot less money than 7 -- a lot -- we would spend -- we're spending infinitely more money on all this litigation than 750,000 or $20,000 credit card bill that we've been asked about.

**And so in the scope of where we are, Dr. Harrison, you know, in my view, deserves to get paid. By the way, he's never threatened that he would leave if he wasn't going to get paid. If you're going to go there, that's never happened. But he deserves something and there's time for the offset. So that's what happened.**

BY MR. TAFT:

Q. So you believe Dr. Harrison would continue to render services, even if he were not to receive the $750,000?

**A. I don't know, I haven't asked him.**

MS. TOMASCO: Objection to form.

BY MR. TAFT:

Q. He hasn't?

**A. I haven't asked him, I don't know.**

Q. But in your view --

**A. He's never threatened it voluntarily.**

Q. Okay. And in your opinion, he's entitled to get paid, but no more than he's entitled to under the existing contracts,

correct?

**A. He's entitled to his contractual payment, yes.**

Q. Okay. And if that contractual payment is offset, then that offset is -- should be applied, correct?

MS. TOMASCO: Objection. Form.

**THE WITNESS: If it's a valid -- if it's a valid -- again, I hate the word "offset." If it's a valid reduction, sure, but I didn't see anything.**

**What I paid attention to, to the stuff you sent over, was, is there a timing on it, that -- to get it reduced immediately. I did not see that. I don't see that here.**

**If I missed it, please give -- put that as an exhibit and show me.**

MR. TAFT: Could we mark 45? Actually, 48. 46, 46.

BY MR. TAFT:

Q. Have you reviewed the management agreement between The Fund and the management company?

**A. I mean, I read it early on in the engagement.**

MR. TAFT: Okay. I'm marking as Exhibit 8, Amendment Number 8 to the LPA.

(Exhibit 8, Amendment Number 8 to the LPA, marked for identification.)

BY MR. TAFT:

Q. Have you reviewed this amendment before?

**A. I don't remember.**

Q. Okay.

MS. TOMASCO: Sorry.

MS. HALLAS: That's okay.

BY MR. TAFT:

Q. I'm sorry, this is -- this is an amendment to the management agreement between ATVM and The Fund.

If you look at Section 4, in the last sentence of management fee, it states that: "The amount of the fees and other remuneration paid or remitted to the management company, the general partner, Dr. Harrison, or any such affiliates from the partnership's portfolio companies, shall be computed for each year and any net amount due the partnership from the management company, or the management company from the partnership, shall be remitted within

30 days after such computation."

Do you see that?

**A. I do.**

Q. Do you see that that contemplates that there may be net amounts due to the partnership from the management company?

**A. You know, do you have Amendment Number 14? I don't -- I don't recall Amendment Number 14 saying that.**

Q. Amendment Number 14 --

**A. I think it was 14.**

Q. Okay.

**A. -- that increased the management fee to 3 million. And frankly, if that were true, what's happening, he's only getting paid 750. If it's 3 million and the offset, in your words, are a million six, he's still due a million four, so 750 is appropriate to be paid.**

**So that's not today's fight, that's maybe the next management fee's fight.**

Q. Okay.

**A. So then -- let's just say that happened, let's say the offset is right, then we're good, because he's still due a million four.**

Q. You haven't determined the amount of any offsets, though, correct?

**A. No, I mean, if -- no, that's not what I said. I said I believe it to be about a million six based on the options that were covered under this, when he was -- when it was still a portfolio company.**

Q. Okay. Turning to Apetor --

**A. Can I put these away?**

Q. You can put those away. Thank you.

So in the -- it might be helpful if you have in front of you the reply brief.

**A. Number 5?**

Q. Number 5. It has a printout of Exhibit A?

**A. The budget?**

Q. Of the budget, correct. Thank you, sir.

And I've just got a few questions about each of the portfolio companies.

So if you turn to -- I believe it's paragraph 12, this is a printout of the --

**A. You said paragraph 12.**

**Do you mean page 12?**

Q. Thank you. Page 12 is Port Funding 2026.7.31.

Do you see that?

**A. I'm on page 12. Sorry.**

**What were you asking about?**

Q. Sorry. So this is --

**A. Oh, yes, yes, I'm sorry. The date you were talking about. Excuse me.**

Q. Yes.

**A. I gotcha.**

Q. I wanted to make sure that we're on the same page there.

**A. Yes, sir.**

Q. And there, you see for Apetor, there's $2,537,499 of external R&D spend through July 31st, 2026, correct?

**A. Yes.**

Q. Okay. Is it your testimony that that number was provided by management for Apetor?

**A. It is.**

Q. Okay.

**A. -- or Apetor and the debtors, yes.**

Q. Okay. Do you know what

specifically the company intends to accomplish with that funding?

**A. Continue the research and continue development of the program.**

Q. Okay. Are there any particular milestones that the company expects to achieve with that funding?

**A. Eventually.**

Q. Are there any particular milestones within the budget period that the company intends to achieve with that funding?

**A. Milestones -- so could you please give me your definition of "milestones"?**

Q. Is there a -- a milestone is a significant development or a significant event in the drug development process.

So, for example, identifying a drug candidate would be a milestone. Submitting an IND would be a milestone. Even completing lead optimization for a drug candidate would be a milestone.

Have any of those types of events been identified by management for -- of Apetor as something that can be achieved with the funding covered by this budget?

**A. Okay. Sorry. My question, you didn't answer it the right way because I didn't ask it the right way.**

**I meant -- I knew what milestone meant based on how you answered. My question was: Do you mean the milestone per the original capital B budget?**

Q. I mean a milestone that has been described to you in your role as CRO as something -- at this point in time.

**A. Within this 26 weeks?**

Q. Within this 26 weeks.

**A. For Apetor, I don't believe so.**

Q. Okay. Do you know what the next milestone in Apetor's research program is?

**A. Sitting here right now, no. I know we talked about it. I just don't remember.**

Q. Okay.

**A. There's a lot of companies. We talked about a lot of detail. I just don't recall.**

Q. Okay. Do you believe that there is a next milestone in Apetor's research program?

**A. I believe that there are the**

**continued research, which will lead to the next phase, which is what I would call a milestone, based on whatever definition of milestone we want to use.**

Q. Okay. We requested information about what milestones were related to the proposed budgets, correct?

**A. Right. And it was answered in the reply.**

Q. Did you identify, with respect to Apetor, any milestones?

**A. Did I identify to what?**

Q. In the reply to the diligence questions.

**A. Did I? No.**

Q. Okay. Did you identify any milestones with respect to any of the portfolio companies in your response to the diligence questions?

**A. We did not.**

Q. Okay. Is that because there are no milestones for these portfolio companies?

**A. I think the answers speak for themselves. I could read one, which I think is the same for most of them.**

Q. Go ahead.

**A. This is --**

MS. TOMASCO: I mean, okay.

MR. TAFT: Please, he's offered.

MS. TOMASCO: No, no, stop. This document was sent under Rule 408 to attempt to answer questions that you guys posited. It is a 408 communication. It's not admissible into evidence.

You can ask questions about it, but you know it's not admissible.

MR. TAFT: I don't agree that it not admissible. This is informal discovery and --

MS. TOMASCO: It is not informal discovery. If you wanted to send --

MR. TAFT: This is -- this is formal discovery right now.

MS. TOMASCO: Correct, that's right. This is formal. That's informal.

MR. TAFT: And I'm asking him whether, in response to our questions to identify milestones, he -- you know what?

Are you instructing him not to --

MS. TOMASCO: I am.

MR. TAFT: -- read this response?

MS. TOMASCO: I am. It's not admissible into evidence under Rule 408 and to the extent, this is a deposition that's formal, it's not admissible.

BY MR. TAFT:

Q. Do you recall what you responded in response to our request for information about milestones?

**A. Well --**

MS. TOMASCO: Same objection. Same instruction.

**THE WITNESS: I didn't respond. The debtors responded. This isn't a document that I signed. This is from the debtors. A lot of people went into putting this together, so that's Number 1.**

BY MR. TAFT:

Q. Mm-hmm.

**A. Number 2, is that this is -- it's consistent with my other testimony, that it's a continuation of the research programs. And, you know, the milestones and the timing and, you know, the -- I'm not sure the dollar amounts change. Maybe some costs could have gone up,**

**given the incredible delay that's happened to these companies.**

**But that's what -- that's the premise of this budget. You've asked me six different ways and I think I've answered it eight different ways.**

Q. Have you assessed how Apetor might benefit if it achieves the next milestone?

**A. It will validate its program and it will get to the next step and come closer to commercialization -- or to clinical and then to commercialization.**

Q. And have you analyzed the potential impact of achieving that milestone on the value of Apetor?

**A. When I say "analyzed," like, if -- if the research programs continue and they are successful and it develops the drug or therapy that it's -- it's developing, then it would -- it increases the value of the company.**

**Now, there's been a lot of money that's gone into Apetor already.**

Q. Have you assessed how much the company's value would increase if it achieved the next milestone?

**A. I have not.**

Q. Okay. Do you know whether that potential change in value is more or less than the cost of funding Apetor through July 31st?

**A. Well, definitionally, it would have to increase it more than it's worth today. But it's -- I mean, I don't think you look at this thing as -- the dollar you spend today, is it going to be worth a dollar more six months from now? That's not the way this is done, right? This is -- this is --**

Q. When you're investing --

**A. Excuse me, excuse me, please. May I answer, please? May I answer -- may I finish my answer?**

**It's not like this linear, you know, dollar-on-dollar return, like, it's a publicly-traded equity or something, a poly-market.**

**It's, you know, it's a process that the investments are made, you know, this fund has had, you know, really good returns. They've proven their worth. They've done very well.**

**And the -- its business -- I**

**could rely -- I felt comfortable relying on the management's business judgment that this was worth going, because of that. And, you know, because, I mean, my reading of the Delaware Chancery Court opinion as well.**

Q. What is your basis for concluding that Apetor has done really well?

**A. No, I didn't say Apetor. I meant the overall fund. So sorry. To clear that up, not Apetor. I meant the historical Apple Tree, you know, returns.**

Q. Some of these portfolio companies have spent a lot of money. I think you've already confirmed that, correct?

**A. That's right.**

Q. And some of them are months, if not years away from a clinical trial, correct?

**A. Yes.**

Q. Would you consider those companies to have done really well?

**A. Well, if they're still continuing and they haven't -- they haven't -- it hasn't been determined they should be shut down, then they're doing what they're supposed to do.**

**This is -- this is medical**

**research. This isn't opening a, you know, 2,000 square foot, you know, bagel store.**

Q. So whose job is it or whose right is it to determine whether or not they should be shut down?

**A. I believe -- again, this is --**

MS. TOMASCO: Calls for a -- objection. Calls for a legal conclusion. You can answer to the extent --

**THE WITNESS: Because I don't want to tread on, you know, you're going to point out something, you know, an amendment, like, 30 -- or amendment 2016 that -- if I'm wrong about this.**

**You know, it's the general partner has that duty to determine what to do next. I can't tell you specifically anything about the limited partner. You know, the limited partner's rights are to stop funding or not. I do not believe they could -- if you will unbudget a company, I don't believe that's a right that they have, because I've -- you know, my reading and, you know, my understanding and that's a layperson's understanding, so you can point me out if I'm wrong.**

**But that's the mandate of the general partner and of The Fund to continue the programs that they have going. And that's what this is. That's what your clients bought into when they funded, you know, their $2.3 billion and they got a bunch of that money back.**

BY MR. TAFT:

Q. And now, it's also your responsibility to determine whether or not funding should be cut off for these portfolio companies, correct?

MS. TOMASCO: Objection. Form. Calls for a legal conclusion.

**THE WITNESS: Well, I mean, I was going to answer, says you, maybe? I don't know if you're arguing with me now or if you're asking --**

BY MR. TAFT:

Q. I'm asking: Do you consider it to be your responsibility to assess whether or not these portfolio companies warrant further investment?

**A. I think -- I think my responsibility is to rely on the people whose business judgment have -- are in charge of the**

**actual programs, and understand what they're doing, and make a determination, if at this stage, what's the best way to achieve value.**

**Because if you shut these programs down, I will tell you they are worth zero. And so all that money that went into them, that was your guys' money is worth zero.**

Q. This budget for Apetor calls for total funding through July 31st of $3.5 million, correct?

**A. $3,524,250.**

Q. At the end of that 30 -- you know, July 31st, is there a possibility that Apetor is worth zero?

**A. Yes.**

Q. Okay. Have you assessed the likelihood of that possibility?

**A. I can't assess the -- I cannot assess -- I'm sorry.**

**Have I -- what's the word you used?**

Q. Assessed.

**A. Assessed, sorry. I had a brain fog on that. Excuse me.**

Q. No problem.

**A. Have I assessed the likelihood? I assessed the likelihood that, based on the facts that they know today, the management team, the experts think it's worth funding.**

Q. But you have not independently analyzed -- and you and B. Riley have not analyzed the value of the -- the current value today of Apetor, correct?

**A. We have not.**

Q. And you haven't analyzed the expected value of Apetor if this 31-week funding budget goes forward, correct?

**A. What I've assessed is, the value of Apetor, if it gets shut down is zero.**

Q. Okay.

**A. And then given its mandate. Excuse me. Given its mandate and given that there hasn't been, you know, in my discussions with the management team, given its mandate, there hasn't been anything that would suggest that it should be cut off and not pursued, then it's worth going forward.**

**Because that's what this company does. That's what your guy invested in. Your**

**guy invested in thoughts and ideas of people. And that's what's going on here.**

**I will tell you, if you don't fund it, it's worth zero. That's an easy assessment.**

Q. And it might be worth zero today, correct?

**A. It might be.**

Q. Okay.

**A. Who knows? It might be, but it's worth -- but it's certainly worth the business judgment of the people say it's worth keeping going. None of these companies have we put forth where we said, gee, there's been some bad results, this hasn't worked, that hasn't worked. That hasn't happened.**

**And so you keep the mandate, you keep the normal, normal course of business. That's what this company does. It's not like all of a sudden, they decided to wake up and say, oh, we're going to try to cure cancer, we're going to try to get, you know, we're going to try to, you know, cure this flu or Parkinson's, right?**

**This is research that continues.**

**It's on a -- it's on a -- what's the word I'm looking for? It's on a --**

MS. TOMASCO: Iterative.

**THE WITNESS: No, no, no.**

MR. TAFT: Objection.

**THE WITNESS: The word I'm looking for -- it's on a continuum, sorry. It's on a continuum of starting from the idea and getting it to market, to commercialization. And that's a process, and the company is doing what it's supposed to do, what your guy bought into, and to invest in that process.**

**If your guy doesn't want to do it anymore, that's okay. But, you know, we're continuing with the process.**

BY MR. TAFT:

Q. So your recommendation as CRO is that, notwithstanding that Apetor might be worth zero today and might be worth zero 26 weeks from now, The Fund should invest a further $3.5 million in Apetor, correct?

**A. I -- that premise is something I cannot accept, because first of all, you've asked me that question 16 times and so she should be saying objective -- "objection, asked**

**and answered." But it's -- that's not how --**

MS. TOMASCO: Objection. Asked and answered.

**THE WITNESS: That's not how these companies work. These companies work, is that the determination to not fund is when -- is when the medical experts, are you trying to get me to say I'm not a medical expert, I'm not a medical expert, okay?**

**But I relied on people, who they are, okay? And their business judgment is that it continues, because it's worth zero if you don't. All the money that's gone into it was a waste of money.**

BY MR. TAFT:

Q. And you have the opportunity here to waste an additional $3.5 million that might or might not generate any return, correct?

**A. No. Because -- says you that it's a waste.**

Q. Have you concluded that it won't be a waste?

**A. I have concluded that it's worth zero. If it's -- it's worth zero, if it's not.**

**So then again, relying on the**

**business judgment of the management team, the management team who are the experts. Put up an expert. Let me talk to one of your guys that's an expert and let me hear what he or she has to say.**

Q. I've got --

**A. Be happy to.**

Q. I've got you.

Have you concluded that it will be worth at least $3.5 million if you spend this additional $3.5 million over the next 26 weeks?

**A. I don't know.**

Q. Okay. Have you done that analysis for any of the PortCos covered by the funding motion?

**A. I would answer, all the PortCos similarly, although with Aulos, which is a clinical stage company, it, you know, based on the discussions with the management team and based on, you know, Mr. Bogdanov, if I'm saying the name, Yuri's last name, based on his email, offering, you know, put in 10 million into it, that seems to be -- that seems to be, I don't know, evidence, if that's the right word, that Aulos is super, you know, super, worth putting**

**into it.**

**And with Replicate, given Replicate's investments from third parties -- and by the way, even the Red Queen, there's independent data points with the Michael J. Fox Foundation -- Red Queen is the Parkinson's company.**

MS. TOMASCO: 9 Square.

**THE WITNESS: 9 Square, I'm sorry. You know, there's third-party validation that, you know, these companies are worth investing in, and that's important.**

**And, you know, with Replicate -- with -- I think Replicate is the Gates Foundation and the Latin American Foundation, right? That's important, you know, facts.**

BY MR. TAFT:

Q. Is it your understanding that the Michael J. Fox Foundation has taken equity in 9 Square?

**A. No. They provided a grant.**

Q. Okay. And is it your experience, as a bankruptcy professional, that philanthropic organizations that provide grants have the same sort of criteria for allocating funds as

investors seeking a return on investment?

**A. I think they have a much more important criteria than money.**

Q. Okay.

**A. Right?**

Q. As -- as CRO, your goal is to maximize the value of the bankruptcy estates, correct?

**A. That's right. That's right.**

Q. And if that results in less science, then that's okay from your perspective as CRO, correct?

**A. I don't understand that question. I'm sorry.**

Q. If maximizing the value of the bankruptcy estates means reducing the amount spent on external R&D, then that would be your recommendation, correct?

**A. Yeah, and, you know what? This is a much lower number than the management teams want.**

Q. Apetor spent approximately $300,000 in the 90 days preceding the bankruptcy filing, correct?

**A. Yes.**

Q. Okay. And you are proposing to increase that spending by three times over the next 90 days, correct?

**A. I think ten times.**

Q. Ten times through July 31st?

**A. Oh, right.**

Q. But the funding motion about 990?

**A. Three times, right.**

Q. Okay. So that would be a significant increase in funding, relative to that period, correct, the prior 30 -- 90 days?

**A. If you believe three times is significant, then yes. I mean, the management team would tell you it's not -- nearly not enough, but that's okay.**

Q. Okay. Let's take a second with Marlinspike, if you can flip to here.

Marlinspike has a total budget of 1.968 million through July 31st, and I'll represent to you that the total funding in the funding motion is $699,000.

**A. That sounds right.**

Q. Do you know -- do you recall that Marlinspike spent $33,000 in the 90 days preceding its bankruptcy?

**A. I do.**

Q. Okay. So that would be a 20-time increase. It would go from $33,000 for 90 days before to 699 for the 90 days after, correct?

**A. That sounds right.**

Q. Okay. Would you agree that that is a material increase in spending activity?

**A. Same answer as -- as Apetor.**

Q. Which is that the managers want even more money?

**A. Yeah, well, is 20 times a lot more, sure, but -- yes.**

Q. With respect to Red Queen, they are working on COVID and flu, correct?

**A. Yeah, primarily different -- different flu strains.**

Q. Okay. Do you know whether any of the -- this spending is currently allocated to COVID programs?

**A. I believe most of the spending is for other flu strains, and so, you know, if it's -- because, as my understanding and this has nothing to do with Apple Tree, because unfortunately, I knew someone that died of COVID and, you know, the more -- the diseases like**

**that get stronger and as they get stronger, you know, just because it's, like, oh, there is a cure for COVID or COVID's become chronic, doesn't mean it is a, you know, you should just stop all research into it.**

**So I think -- and I had this discussion with -- I think it was Spiros. I think it was Spiros, may have been, may have been Dr. Jardine.**

**You know, but the research that's being done there, you know, is being done for flu strains that are not a lot more than COVID, but I think a small part is COVID.**

Q. Now, were you provided with any evidence of the potential -- the commercial potential for another flu treatment?

**A. No.**

Q. Okay. At some point, do you expect to examine the commercial potential for an additional flu treatment?

**A. I don't know.**

Q. Okay. Do you have -- do you know what the next milestone for Red Queen is?

**A. No.**

Q. Okay. And it wouldn't be

disclosed in the response to our due diligence questions, correct?

**A. Probably not.**

Q. Okay. Do you know whether Red Queen has a next milestone?

**A. I don't recall.**

Q. Okay. With respect to Initial, do you know what Initial's next milestone is?

**A. No.**

Q. Do you believe it has a milestone?

**A. I believe it does.**

Q. Do you know if the debtors disclosed what that milestone is in response to our diligence questions?

**A. I don't know. I don't recall.**

Q. Okay. Would it refresh your recollection to look at --

**A. You asked for Initial?**

Q. Initial.

**A. Is that what you're asking about?**

Q. Yes. On page 11?

**A. No.**

Q. And do you have any understanding how achieving the next milestone would impact

the value of Initial?

**A. I would give the same answer that we had our nice banter about before --**

Q. Okay.

**A. -- on Apetor.**

Q. And again, that is the same answer, because we are running short, that is the same answer you would give for every preclinical portfolio company, correct?

**A. Generally, yes. Right. Without Aulos and Replicate.**

Q. Obviously, if a portfolio company has no active clinical trials, then there's no -- you would agree that there's no risk that cutting research and development funding would lead to liability to participants in those clinical -- in clinical trials, correct?

**A. I'm --**

Q. I'm trying to keep you away from that document.

**A. I don't, I don't understand -- I tried to hang in there, but I couldn't follow it.**

Q. Part of your goal is to maximize value, and you can do that by avoiding incurring

liabilities or breaching contracts, correct?

**A. Yes.**

Q. I think we've -- to the extent a company is not engaged in any clinical trials, right, then it's not in danger of breaching any contracts related to those clinical trials, correct?

**A. Well, if it's by definition. But I don't know if there are other contracts that could be in breach.**

Q. With respect to Replicate --

**A. Wait, hold on. I have to finish my answer on that last question.**

**There, for sure, are unsecured liabilities or vendors at all the companies, you know. If, you know, sometimes avoiding liabilities, you know, could benefit, you know, for the funding to get cut off, even though there was the example of Initial, I think we were talking about.**

**There was an obligation from, you know, the general partner, although, who is the debtor, but presumably a vendor or a series of vendors could go after the limited partner for breaching their claims. I don't know if they**

**could or not.**

**But, you know, perhaps this is also protecting your guys too, I don't know. I'd need to think that through more.**

Q. And by protecting our guys, you are talking about protecting --

**A. From litigation.**

Q. You're protecting the stakeholders in The Fund.

Is that what you mean?

**A. Right, the limited partners who refuse to fund. I don't know.**

Q. With respect to Replicate, there are no amounts covered in the -- in the funding motion for Replicate; is that correct?

**A. That's right. That's right.**

Q. With respect to Nereid, Nereid recently filed for bankruptcy, correct?

**A. Yes.**

**Oh, no, no. There's money for Replicate. I'm sorry.**

Q. I'm sorry, there's --

**A. What was your question?**

**I want to make sure it's right. Replicate is in here.**

Q. So if you turn to the -- if you turn to --

**A. Oh, oh, in the inter-motion. I'm sorry. I'm thinking about --**

Q. In the funding motion.

**A. Yes, I'm sorry. I apologize.**

Q. Okay. Nereid recently filed for bankruptcy, correct?

**A. Yes.**

Q. Nereid has substantial debts relative to its assets, correct?

**A. Yes.**

Q. Have you considered that fact in connection with developing the proposed 26-week budget for Nereid?

**A. Sure.**

Q. Okay. And is there -- how have you been taking that into account?

**A. By continuing the -- the program, Nereid could -- again, management believes that it's a real program. There are some other thoughts they have about it of things they could get done, and it could, you know, ensure there's the payment of -- there's a path to pay those liabilities down and to pay them, right?**

**Because, to your point about, you know, obligations at the beginning, you know, obligations go in, you know, creditors come before equity, right? So there's an obligation to creditors as well.**

Q. Any amounts that The Fund loaned to Nereid will be spent by Nereid and the hope is that that will generate value, correct?

**A. Yes.**

Q. That value will be subject to claims by Nereid's creditors, correct?

**A. Yes.**

Q. Does that reduce the potential return to The Fund?

**A. It could --**

MS. TOMASCO: Objection to form.

**THE WITNESS: It could increase it.**

BY MR. TAFT:

Q. The fact that Nereid has substantial creditors could increase the -- potential return?

**A. Yes, if Nereid becomes a successful and commercial program, then The Fund is going to have -- it's going to enjoy equity**

**over what the creditors are, as opposed to if it gets shut down now, it's a zero, right?**

Q. And here, you're proposing that Nereid fund this by a loan, correct, or that The Fund put this money in as a loan, correct?

**A. Yes.**

Q. So that potential uplift from Nereid's potential success would not pertain to amounts invested pursuant to the funding motion, correct?

**A. But don't --**

MS. TOMASCO: Objection. Form.

**THE WITNESS: But don't forget, Nereid's owned a hundred percent by The Fund, if I recall correctly, I don't know if there were some other equity holders, but it's owned a majority by The Fund. So, you know, debt and equity is almost -- and I should have actually answered this before with this, but I just didn't -- didn't sort of occur to me until this very second when you said that, is that it doesn't -- it almost doesn't matter, they own it a hundred percent. There's not a third party where a third party benefits as the lender, right, outside of, you know, an equity holder,**

**right?**

**So, you know, there's a bit of a, in my view, a bit of a form over substance, you know, argument that you're making or trying to make or asked me about.**

**Either way, it's, you know, money is being used to continue the program.**

BY MR. TAFT:

Q. Okay. And you have not assessed the likelihood of Nereid reaching a commercial -- achieving a commercially successfully outcome, correct?

**A. That's right.**

Q. And so one possibility is that these funds are provided to Nereid and never returned to the partnership/debtor, correct?

**A. Potentially, yes.**

Q. I've been told that we have to wrap at 4:30. Actually, I do have just one more question, it's 4:29 thankfully.

With respect to outside or internal consulting fees, those are provided for -- those were determined by the ATLS budget, correct?

**A. I'm sorry, the internal**

**consulting fees?**

Q. The internal consulting fees. Yes.

**A. Yes.**

Q. And some of those amounts are paid to Ms. Anna Batarini, correct?

**A. Yes.**

Q. Could you explain why some amounts are paid -- those amounts are split between monthly and quarterly payments, right?

**A. Correct.**

Q. Could you please explain that?

**A. My understanding is that's the agreement that she has with the debtor.**

Q. Do you understand anything more about that agreement or why --

**A. No.**

Q. -- why it's structured that way?

**A. Only that she's an important part of The Fund, and, you know, has relationships that are important to the development of the companies, of the debtors.**

Q. Do you -- in responding to the due diligence questions, there were certain information that was not available or was to be

updated, correct?

**A. Right.**

Q. Do you consider -- are the debtors going to update that information when available?

**A. That's the plan, assuming the debtors are still debtors and not, you know -- yes.**

MR. TAFT: Okay. It's 4:31.

MS. TOMASCO: Yep.

MR. TAFT: I'll stop here for today.

**THE WITNESS: Thank you.**

THE VIDEOGRAPHER: Going off record. The time is 4:30.

MS. TOMASCO: 4:31.

(4:31 PM)

CERTIFICATE

I, Karen Friedlander, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action that I am not interested in the event nor outcome of this litigation.

S/Karen Friedlander
Karen Friedlander
Certified Court Reporter
License No. XI01282

Dated: 1-19-26

**EXHIBIT P**

**From:** Eric Winston <ericwinston@quinnemanuel.com>
**Sent:** Tuesday, January 27, 2026 7:41 PM
**To:** Dougherty, Jack; Alberto, Justin; Reilley, Patrick; Labovitz, Natasha; Selden, Shannon R.; Taft, William
**Cc:** QE- ATP-Restructuring; PAC-ATP; Harry B. Murphy; Andrew Lizotte
**Subject:** ATP Life Sciences - budget for second funding motion
**Attachments:** Project Newton - 26 Week Cashflow - 2026.01.27 vF.xlsx

***EXTERNAL***

Counsel:

As has been the goal of these cases to preserve and enhance the value of the existing investments in various portfolio companies and discharge obligations owed to portfolio companies, either tomorrow or Thursday we will be filing a motion seeking authority to use cash on hand to provide financing, to be heard at the February 19 hearing. The anticipated amounts and intended uses are set forth in the attached.

Please let us by tomorrow by 4 p.m. ET whether the Committee or Rigmora consent so that we can report to the Court whether the matter is contested.

Best,

Eric

**Eric Winston**
*Partner*
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**EXHIBIT Q**

**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**<br>**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*

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# JUDGMENT

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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 R**

**Neutral Citation Number: [2026] CIGC (FSD) 5**

**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, Ms Yuan Wen, and Mr Jordie Fienberg of Campbells LLP for the Plaintiffs** |
| | **Mr Andrew Ayres KC of counsel instructed by Mr Rupert Bell, Ms Shelley White and Ms Laure Astrid Wigglesworth of Walkers (Cayman) LLP for the Defendant** |
| **Before:** | **The Honourable Justice Jalil Asif KC** |
| **Heard:** | **28 November 2025** |
| **Decision communicated** | **1 December 2025** |
| **Judgment:** | **27 January 2026** |

*Practice and procedure—legal professional privilege—whether party entitled to raise issues of privilege under Cayman law in respect of documents disclosed in parallel proceedings in Delaware and ordered to be admissible and useable in proceedings before the Grand Court*

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# JUDGMENT

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## A. Introduction

1. There are two actions before the Court, which have been case managed and have proceeded in tandem. The purpose of this judgment is to determine a summons filed by the Defendant in each action raising an issue as to whether the Defendant is able to claim privilege over certain documents, which are agreed to be relevant to the issues in the two actions, or can otherwise prevent the Plaintiffs from using the documents at the trials of these two matters.

2. I communicated my decision to the parties on 1 December 2025 that the Defendant cannot maintain a claim to privilege in respect of the documents in question and that they are available for use by the Plaintiffs in the actions before the Grand Court. I now return to this matter to provide my reasons for that decision. This apparently simple question has a relatively complex factual and procedural background, which I must set out for context.

3. I also record that the conduct of the Defendant's onshore attorneys at law in this matter has fallen seriously below that which I am entitled to expect from them, as I explain later in this judgment.

## B. Relevant background

### *B.1 The proceedings before the Grand Court and in Delaware and their genesis*

4. The first of the two actions before the Grand Court is a writ action commenced by the Plaintiffs on 2 June 2025 with Cause No. FSD 2025-0146. The second is a winding up petition, with the Plaintiffs as petitioners, presented on 6 June 2025 on the just and equitable basis with Cause No. FSD 2025-0151. In addition, there is an ongoing action in Delaware commenced on 30 May 2025 by the Defendant in the Grand Court proceedings against the Plaintiffs in these proceedings.

5. The Delaware proceedings have been assigned to Chancellor McCormick, who ordered that the Delaware trial should be expedited. The evidentiary hearing took place on 16 and 17 October 2025, the parties filed their written closing arguments from late October to mid November 2025 and, at the time of the oral argument before me on the Defendant's summonses, the parties were awaiting judgment in that action. Chancellor McCormick subsequently handed down her judgment on 5 December 2025, after I had communicated my decision on the Defendant's summonses to the

parties on 1 December 2025. I have not reviewed or considered the content of Chancellor McCormick's judgment in the course of preparing this judgment.

6. The trials of the Grand Court actions were fixed to commence on 12 January 2026, i.e. just over 7 months from the date of issue and some six weeks from the date when I heard the Defendant's summonses. As I have indicated in earlier judgments in these matters, the procedural timetable has been significantly compressed and the procedural steps to be taken by the parties have been streamlined in order to achieve the 12 January 2026 trial date.

7. However, on 17 December 2025, I had to vacate the trial due to the Defendant filing for Chapter 11 bankruptcy protection in the United States of America on 9 December 2025. Whilst there is no automatic recognition in the Cayman Islands of a Chapter 11 filing in the USA or of the stay upon other proceedings flowing from such a filing, the reality was that the parties were unable to continue to prepare the matter for trial in light of that filing.

8. All three proceedings arise out of the collapse of the personal relationships between the individuals involved in an exempted limited partnership formed under Cayman Islands law ("**the Fund**"). The Fund has a single general partner entity, which is the Defendant in the writ action and the subject of the winding up petition. I will refer to the Defendant as the GP. The dispute is between the main investors in the Fund and the GP. The two Plaintiff investors are vehicles for Dr Dmitri Rybolovlev, a Cypriot national of Russian origin. The sole director of the GP, Dr Seth Harrison, is an entrepreneur responsible for developing a number of portfolio companies in which the Fund has interests, each of which is involved in the life sciences industry. Dr Harrison, his family trust and certain employees comprise the other members of the Fund. It is common ground that the Plaintiffs have contributed roughly 98% of the Fund's capital and that the Fund is currently worth at least US $2.4 billion. As the other limited partners in the Fund are not taking part in the proceedings, I will refer to the Plaintiffs as the LPs.

9. The relationships between the partners in the Fund are governed by a limited partnership agreement, which has gone through multiple amendments and revisions ("**the LPA**").

10. On 15 May 2025, in the course of discussions regarding the Fund's capital requirements, the LPs wrote to the GP indicating that they did not consider that it was in the Fund's best interests to allocate further funding to certain early-stage portfolio companies, which they said had failed to meet required milestones. They stated that they understood that the GP held a similar view, based on the GP's proposal to reallocate the investments budgeted for those early-stage companies to other portfolio companies. The LPs continued that if the GP disagreed then it should provide a detailed explanation of its position. The LPs confirmed that they intended to comply with the requirements of the LPA and would be cooperative if the GP could demonstrate that the LPA permitted the GP to call for further funding. The LPs requested that, if the GP agreed with the LPs' position, then the GP should put forward proposals to salvage value from the early-stage portfolio companies in question. In addition, the LPs indicated that they would consider approving new budgets for the portfolio companies that appeared to be commercially viable if they were provided with certain information.

11. As I have indicated, the GP commenced the Delaware proceedings on 30 May 2025. In that action, the GP claims that the LPs' email dated 15 May 2025 was a repudiatory breach of the LPA.

12. On 30 May and 1 June 2025, the GP made a large number of capital calls demanding payment by the LPs of a total of over US $101 million, with payment required within 14 days. The LPs say that they have contributed all the capital to the Fund that they are required to contribute and that the capital calls were made by the GP to try to engineer a default by the LPs under the terms of the LPA. The LPs say this is because the GP has alleged that the LPA gives the GP power to confiscate up to 50% of a limited partner's interest and to re-allocate it to other limited partners where a default has occurred and certain other steps have been taken. The LPs believe that the GP was manoeuvring to put itself in a position to exercise that power against the LPs and in favour of the other limited partners in the Fund, including Dr Harrison's family trust. Interests in the Fund worth up to about US $1.2 billion could potentially be transferred away from the LPs to other limited partners if the LPs were in default of the LPA and the other steps required under the LPA were taken.

13. Against that background, the LPs commenced the writ action in the Grand Court on 2 June 2025, which was the first working day after 30 May 2025, seeking declarations that they are not in default of the LPA. By the winding up proceedings, commenced on 6 June 2025, the LPs seek an order that

the Fund be wound up on the just and equitable basis, primarily on the ground that they have lost all trust and confidence in Dr Harrison and, through him, in the GP as general partner of the Fund.

***B.2 The Consent Orders for discovery in the Grand Court actions***

14. On 12 June 2025, the LPs filed an *ex parte* summons in the writ action seeking an interim injunction to restrain the GP from taking any steps to enforce any of the provisions in the LPA premised on a default by the LPs in making the disputed capital calls and from making any further capital calls other than with the LPs' consent. The summons was listed before me *ex parte* on notice on 20 June 2025, when I granted an injunction substantially in the terms sought by the LPs.

15. The two Grand Court matters came back before me on 1 August 2025: (a) on the return date of the injunction; (b) on summonses filed by the GP to stay each of the Grand Court actions in favour of the Delaware action; and (c) on summonses for directions filed in each action by the LPs. Both parties were represented at the hearing by experienced leading counsel: the LPs by Mr Andrew Scott KC, who continues to appear for the LPs, and the GP by Ms Sue Prevezer KC, who has been replaced since that hearing by Mr Andrew Ayres KC. Ms Prevezer, on behalf of the GP, sought to vary the terms of the injunction and also sought an order that the LPs fortify their undertaking in damages, both of which I refused. The parties agreed that the GP would withdraw its summonses to stay the Grand Court actions, with costs reserved. The parties indicated that they had agreed directions to enable the trials of the Grand Court actions to be heard on 12 January 2026 and that they would prepare a draft order for directions in each action. The directions would necessarily require a streamlined process to enable all of the essential procedural steps to be taken in time for a trial on that date.

16. On 12 August 2025, the parties provided the Court with a draft consent order for directions in each action, which were in essentially the same terms. I circulated revised draft orders the same day and the parties provided their comments on 20 August 2025. I made some further minor revisions to the draft consent orders and the parties indicated their agreement to those revisions. I therefore finalised and signed the Consent Orders on 20 August 2025 but dated the Orders as of 1 August 2025 to reflect that that was when the parties had reached their agreement in principle on the terms of the Consent Orders.

***B.3 The draft discovery protocol***

17. The Consent Orders refer to a discovery protocol, which is to be agreed by the parties. Campbells LLP, the LPs' Cayman attorneys, circulated an initial draft discovery protocol on 4 July 2025. As I explain later in this judgment, there does not appear to have been any active discussion on the content of this draft protocol before the directions hearing on 1 August 2025. The issues regarding discovery were advanced in correspondence between the parties during July and August 2025 instead.

18. On 2 September 2025, Walkers (Cayman) LLP, the GP's Cayman attorneys, produced a superseding draft discovery protocol. In harmony with the Consent Orders, this document is explicitly in two parts, addressing first the question of the admissibility and use of the discovery in the Delaware action for the purposes of the Grand Court actions, and then the treatment of additional discovery in the Grand Court actions. Campbells provided their comments on the new draft discovery protocol on 4 September 2025. Following the developments in Delaware regarding discovery between 2 and 8 September 2025, discussed in the following section of this judgment, the GP sought to make further revisions to the draft protocol on 12 September 2025. Discussions between the parties continued during September and October 2025. The protocol was eventually agreed on 29 October 2025, but incorporating a provision that the court would determine the issue of privilege under Cayman law raised by the GP's summonses.

***B.4 Relevant procedural steps in the Delaware proceedings***

19. In the Delaware proceedings, the parties agreed a stipulation dated 21 July 2025 regarding confidentiality of discovery materials. This was made an order of the Delaware Court on the same date, with one clarification or modification ordered by the Chancellor. The confidentiality stipulation addresses the use of confidential documents and information from the Delaware proceedings in the Grand Court actions, amongst other things. The stated effect of the confidentiality stipulation is that the parties are permitted to use any discovery material from the Delaware proceedings in the Grand Court actions provided that they use reasonable efforts to agree or to obtain orders from the Grand Court preserving the confidentiality of documents similarly to the protections in the confidentiality stipulation. The parties are agreed that the terms of the discovery protocol will satisfy the requirement for equivalent confidentiality provisions to apply.

20. On 30 July 2025, two days before the directions hearing before me on 1 August 2025, the GP indicated that it was claiming privilege in Delaware in respect of approximately 15,000 documents. The LPs disputed the GP's claim to privilege, in particular for documents pre-dating 15 May 2025, which apparently numbered about 14,500 of the 15,000 documents. The LPs asserted that, as 98% limited partners in the Fund, they were within any applicable privilege for any period when the GP shared a "mutuality of interest" with the Fund, i.e. when there was no adversity between the GP and the LPs. Given that the GP's case in the Delaware action is that the relationship between the parties broke down following receipt of the LPs' letter dated 15 May 2025, the LPs asserted that there was mutuality of interest at all times before that date.

21. The parties were unable to resolve the privilege issue by agreement. On 17 August 2025, the LPs filed a Motion to Compel, which challenged the GP's claim to privilege in respect of documents of various kinds that pre-dated 15 May 2025 and sought an order for discovery of the 15,000 documents. In its opposition to the Motion to Compel, the GP did not contest the "mutuality of interest" approach to the question of privilege.

22. On 2 September 2025, Chancellor McCormick ruled on the LPs' Motion to Compel. On the basis of the parties' mutual interest in the Fund before 15 May 2025, the Chancellor ordered that the parties select a special discovery magistrate to conduct a review of 100 documents selected by the LPs from the GP's list of privileged documents. She continued that if the special discovery magistrate were to conclude that the GP had improperly withheld more than 30 of those documents, then she would grant the discovery sought by the LPs, subject to an exceptions process.

23. The LPs rely on a note prepared by an independent Delaware law firm, Bayard P.A., as expert evidence on Delaware procedure and practice. The note explains that the mechanism that I have set out in the previous paragraph is commonly used by the Delaware courts, and that it is well established that improper claims to privilege in Delaware can result in the loss of privilege. This is particularly so in expedited proceedings, where the parties are expected to take extra care in preparing their privilege log correctly in the first instance. The LPs submit that the only unusual feature of Chancellor McCormick's order was the generosity of the 30% error rate in favour of the GP: the note suggests that the Delaware court tends to allow a 10% error rate. Although it was not in the form normally required for expert evidence, the substance of this evidence was not challenged

by the GP. I take the evidence into account insofar as it assists in understanding this procedural step in the progress of the Delaware proceedings, but it does not have any wider impact on my decision on the GP's summonses.

24. The parties appointed an independent lawyer to act as special discovery magistrate in Delaware. The parties agreed with the special discovery magistrate on 3 September 2025 that he would conduct a two-step analysis of the sampled documents:

    24.1 the magistrate would assess whether the document was privileged and, if not, it should be produced;

    24.2 for putatively privileged documents, the magistrate would assess whether there was adversity between the GP and the LPs in respect of the document and, if not, then the document should be produced.

25. The magistrate conducted his review and reported on 3 September 2025 that 60 of the 100 documents had been improperly withheld, with 8 of them not being privileged at all and there being no adversity between the GP and the LPs in relation to 52 of them.

26. The GP filed an application with the Chancellor on 3 September 2025 to clarify whether the LPs had waived production of certain categories of documents. On 5 September 2025, the GP sought to raise a number of exceptions to production with the Chancellor, arguing that the magistrate had misapplied Delaware law regarding mutuality of interest. On 8 September 2025, the Chancellor rejected the GP's applications and ordered that the GP produce all 15,000 documents. I will adopt the GP's description of these documents as the Compelled Documents for convenience; it does not indicate that I accept Mr Ayres' argument that the GP should be treated as having been compelled to produce the documents in question for the purpose of deciding whether the GP has lost any privilege in the documents under Cayman law.

27. The GP did not appeal the Chancellor's decisions of 2 or 8 September 2025 and produced the Compelled Documents in the Delaware action over the period between 8-15 September 2025. The GP designated most of the Compelled Documents as either "Confidential Discovery Material" or "Highly Confidential Discovery Material" in accordance with the mechanism set out in the confidentiality stipulation. However, the GP did not seek any other protection from the Delaware

court regarding the Compelled Documents and their use in the Delaware proceedings, or in the Grand Court actions.

***B.5 The LPs' application to appoint provisional liquidators***

28. On 17 September 2025, the LPs filed a summons in the Grand Court winding up proceedings seeking to appoint provisional liquidators in respect of the Fund. The LPs relied on 10 documents from the Compelled Documents to support the relief sought by the summons. Walkers wrote on 21 September 2025 complaining about the LPs' intended reliance on those documents, asserting that they remained highly confidential and privileged, and could not be used in the Grand Court proceedings. They demanded that the LPs withdraw the summons.

29. Following further applications in Delaware, the LPs did withdraw the summons to appoint provisional liquidators, with some reluctance. Nevertheless, the LPs maintained that they were fully entitled to use the Compelled Documents within the Grand Court actions.

***B.6 The GP's summonses***

30. The GP filed the summonses on 2 October 2025 in response to the LPs' application to appoint provisional liquidators over the Fund. However, following the LPs' withdrawal of that summons, the GP continues to pursue the relief sought due to the wider implications for the use of the Compelled Documents within the Grand Court actions, and particularly at the trials.

31. The GP's summonses seek the following relief:

    31.1 a declaration that the 10 documents relied upon by the LPs to support their summons to appoint provisional liquidators are privileged under Cayman law;

    31.2 a declaration that the GP has not waived privilege in any of the Compelled Documents (including the 10 documents relied upon by the LPs) by their production in the Delaware action or by the Consent Orders dated 1 August 2025;

    31.3 a declaration that the LPs cannot use or rely in the Grand Court actions on any of the Compelled Documents which are privileged under Cayman law;

31.4 a declaration that the LPs cannot use or rely in the Grand Court actions on any privileged information that they have obtained from the Compelled Documents which are privileged under Cayman law;

31.5 return, destruction and/or redaction of the Compelled Documents by Campbells;

31.6 orders that certain of the evidence filed in respect of the GP's summonses be sealed;

31.7 if any relief is granted, then an order that the Grand Court trials be heard by a different judge; and

31.8 costs.

### *B.7 The evidence on the GP's summonses*

32. The evidence relied upon in respect of the GP's summons in the writ action is set out below. In each case, the same or corresponding evidence was relied upon in the winding up proceedings:

32.1 the first affirmation and exhibit PB-1 of Patrik Blöchlinger, the LPs' Chief Legal Officer, affirmed on 22 September 2025 in support of the LPs' application to appoint provisional liquidators over the Fund, redacted to remove references to the content of the 10 documents;

32.2 the first affidavit and exhibit DF-1 of Daniel Finkelman, the GP's general counsel, sworn on 3 October 2025, also redacted to remove references to the content of the 10 documents;

32.3 the second affirmation and exhibit PB-2 of Patrik Blöchlinger affirmed on 4 November 2025; and

32.4 the second affidavit and exhibit DF-2 of Daniel Finkelman, the GP's general counsel, sworn on 17 November 2025, again redacted in certain respects.

33. Shortly before the hearing of the GP's summonses on 28 November 2025, the parties agreed that they should each be permitted to adduce some further evidence of recent developments in the Delaware proceedings. That further evidence was put before me in the following forms:

33.1 the second affidavit and exhibit JF-2 of Jordie Fienberg, an attorney at Campbells, sworn on 25 November 2025; and

33.2 the signed approved draft affidavit and exhibit AB-1 of Andrew Berdon, the lead partner at Quinn Emanuel Urquhart & Sullivan, the GP's primary on-shore attorneys, dated 27 November 2025.

34. Mr Fienberg's evidence was sworn: (a) to support the LPs' case that the GP has lost any privilege in respect of four documents that are referred to in the publicly filed version of the LPs' post-trial brief in the Delaware action; (b) to put forward that the GP's attorneys had had the opportunity to request redactions to the publicly filed version of the LPs' post-trial brief but did not do so; and (c) to state that Mr Berdon had referred to and made submissions on one of the documents during his own oral closing arguments in Delaware, implicitly confirming that the GP has waived any privilege or no longer relies upon privilege in relation to those documents.

35. Mr Berdon's signed approved draft affidavit dated 27 November 2025 was prepared to answer Mr Fienberg's evidence and to argue that the LPs had breached the confidentiality stipulation embodied in the order of the Delaware Court dated 21 July 2025 and other sealing rulings of Chancellor McCormick by referring to the four documents in the public version of its post-trial brief. It also made other allegations regarding the LPs' conduct in relation to the Delaware proceedings. Mr Berdon swore his affidavit in the same form as his signed approved draft on 2 December 2025. I will therefore refer to it in this judgment as his affidavit, although it was in unsworn form before me on 28 November 2025.

## C. The parties' positions on the GP's summonses

### *C.1 The GP's arguments*

36. Mr Ayres commenced his oral submissions by stating that the GP is no longer seeking the relief in paragraph 1(a) of the GP's summonses, namely a declaration that the 10 documents that the LPs had sought to rely upon in support of their application to appoint provisional liquidators are privileged. He says that the focus of the GP's summonses has shifted as a result of the LPs abandoning their application to appoint provisional liquidators. Instead, the GP only seeks a declaration that it has not waived privilege under Cayman law or lost confidentiality in respect of the Compelled Documents as against the LPs, whether by their production to the LPs in Delaware or by the Consent Orders dated 1 August 2025 in the Grand Court actions, and consequential relief. Mr

Ayres argues that any question whether particular documents are privileged should be determined on another occasion, once the GP has carried out a privilege review of the Compelled Documents applying Cayman law. By taking this position, the GP seeks to avoid having to deal with the third of the LPs' arguments, which I summarise in the following section of this judgment.

37. Mr Ayres summarises the GP's case as being that there has been no waiver of privilege under Cayman law in respect of the Compelled Documents, and that the limited loss of confidentiality resulting from the production of the Compelled Documents does not prevent the GP from continuing to assert privilege against the LPs. He argues that:

37.1 The issues raised by the GP's summonses are governed by Cayman law, as the law of the forum: *Primeo Fund v Bank of Bermuda* [2016] 2 CILR 353 at [6]-[9].

37.2 Privilege under Cayman law has not been lost:

(a) the fact that privilege may have been lost in another jurisdiction does not affect whether it applies under Cayman law: *Thanki on Privilege* at 5.42; citing *Bourns v Raychem* [1999] 3 All ER 154 and [1999] FSR 641, per Aldous LJ at 167;

(b) because the Compelled Documents were produced pursuant to an order of the Delaware court, their production does not have the necessary voluntary character to give rise to a waiver of privilege under Cayman law: *British American Tobacco v United States* [2004] EWCA Civ 1064, per Mummery at [35];

(c) properly construed, the 1 August 2025 Consent Orders do not amount to any waiver of privilege or consent to the use of the Compelled Documents in the Grand Court actions;

(d) the GP's position on the effect of the Consent Orders is supported by the surrounding context, in particular the terms of the draft discovery protocol; and

(e) the position was made clear by the GP's revisions to the draft discovery protocol on 12 September 2025.

37.3 The LPs' case that any confidentiality regarding the Compelled Documents has been lost is misconceived. But, if there were any loss of confidentiality in respect of the Compelled Documents, then it was only as regards the LPs, or their legal advisors only for documents marked "Highly Confidential Discovery Material", and does not prevent the GP from asserting privilege under Cayman law against the LPs.

37.4 In relation to the four Compelled Documents that are referenced by the LPs in the publicly filed version of their post-trial brief in Delaware, and the Compelled Documents referred to by the GP, Mr Ayres submitted orally, based on Mr Berdon's affidavit that:

(a) the LPs have wrongfully breached the confidentiality stipulation in the Delaware proceedings and should not be permitted to rely upon their own breaches of privilege and confidentiality in Delaware to argue before the Grand Court that the GP has lost the ability to claim privilege in relation to those documents under Cayman law; and

(b) any references to the four Compelled Documents by the GP in the GP's own post-trial brief was inadvertent and is in the course of being removed, and therefore should not be treated as supporting a conclusion that the GP has waived privilege or confidentiality.

***C.2 The LPs' response***

38. Mr Scott's argument on behalf of the LPs is that both the Delaware confidentiality stipulation and the Consent Orders permit the LPs to use the Compelled Documents in the Grand Court actions.

39. Mr Scott complains that because of the GP's last-minute abandonment of its claim for a declaration that the 10 documents relied on by LPs on their application to appoint provisional liquidators are privileged, there is no remaining foundation for the GP's application to prevent the LPs from deploying those documents.

40. In addition, Mr Scott argues that the GP could never assert privilege over any of the Compelled Documents against the LPs. He says that the GP's position is that it obtained legal advice on behalf of the Fund in the period up to 15 May 2025 and paid for it, properly, from Fund assets. He says that the LPs do not accept that factual case: but having adopted this position, the GP cannot properly assert any privilege in documents containing such legal advice, including the Compelled Documents, against the LPs. That is because any privilege would be that of the Fund rather than the GP personally, and the Fund includes the LPs as members. The LPs are therefore entitled to see documents for which they have paid or are to be treated as having paid. Mr Scott says that the position would be otherwise only if the GP could show that it obtained and paid for the relevant legal advice in its personal capacity, but that is not the GP's case.

41. Even if the Compelled Documents might be privileged as regards other persons, Mr Scott says that they cannot be privileged against the LPs following their production in the Delaware proceedings and applying the confidentiality stipulation and the Consent Orders. The LPs should therefore be able to deploy the Compelled Documents at trial subject only to making appropriate arrangements to sit in camera as necessary where documents designated as Confidential Discovery Material or Highly Confidential Discovery Material are being discussed.

42. Mr Scott argues that the issue for determination on the GP's summonses is not whether the Compelled Documents are privileged, which Mr Ayres has conceded the GP is not arguing now, but whether the GP can properly prevent the LPs under Cayman law from deploying the Compelled Documents in the Grand Court actions. He says that this raises three questions:

    42.1 can the GP show that the Compelled Documents are privileged – which the GP is not willing or able to prove now;

    42.2 can the GP show that it personally is the beneficiary of the privilege, and not the Fund – which would require the GP to argue the opposite of the factual case that it puts forward regarding the circumstances in which any privileged Compelled Documents were created; and

    42.3 did the LPs receive the Compelled Documents subject to an equitable duty of confidence that prevents use of the documents – which the GP cannot prove given the circumstances in which the Compelled Documents were produced in Delaware.

43. As to the third issue, Mr Scott identified the relevant circumstances of production as being that the Compelled Documents were produced:

    43.1 pursuant to the confidentiality stipulation, which expressly provides that they can be used in the Grand Court actions;

    43.2 in the context of the Consent Orders that expressly permit documents produced in the Delaware proceedings to be used in the Grand Court actions;

    43.3 following the contested Motion to Compel, as a result of which the Delaware court determined that the GP could not assert privilege in respect of the Compelled Documents; and

43.4 without the GP seeking to appeal the decision of Chancellor McCormick or to obtain any order from the Chancellor limiting or preventing the use of the Compelled Documents in the Grand Court actions.

44. In addition, Mr Scott complains that the GP is seeking to "kick the can" of determining the privilege status of the Compelled Documents with a view to disrupting or delaying progress towards the trials, and preventing the trials from proceeding on 12 January 2026, as ordered. Mr Scott says that this is consistent with the GP's previous attempts to derail the trials.

## D. Analysis

### *D.1 The applicable law*

45. I accept the general propositions of law advanced by Mr Ayres that privilege is to be determined according to the law of the forum and that there are strong public policy considerations underpinning the availability of legal professional privilege. In *R v Derby Magistrates' Court, ex p. B* [1996] AC 487 at 507, Lord Taylor described legal professional privilege as:

> *"[…] much more than an ordinary rule of evidence […] It is a fundamental condition on which the administration of justice as a whole rests."*

46. I also accept Mr Ayres' submission that the rationales for legal professional privilege are the twin public policies of the promotion of the rule of law and facilitating access to justice: *Three Rivers District Council v Bank of England (No 6)* [2005] 1 AC 610 per Lord Scott at [34].

47. I agree with Mr Ayres that the loss of privilege in another forum does not necessarily prevent privilege being asserted in proceedings before the Grand Court. Finally, I accept that if a party is compelled to give disclosure of documents in another forum, that does not necessarily result in a voluntary waiver of privilege, so that the party may still be able to rely on privilege in other contexts.

### *D.2 The effect of the confidentiality stipulation in Delaware*

48. In my judgment, the answer to the dispute between the parties is provided by the terms of the confidentiality stipulation, which was made an order of the Delaware court on 21 July 2025, and the Consent Orders made by this Court dated 1 August 2025.

49. Paragraph 1 of the confidentiality stipulation defines "Discovery Material" to cover a wide range of documents of various kinds, including deposition testimony, exhibits and transcripts, responses to requests for admissions and to interrogatories, and discovery provided within the Delaware proceedings.

50. Paragraph 1 includes definitions of two sub-categories of Discovery Material, namely "Confidential Discovery Material" and "Highly Confidential Discovery Material". The definition of Confidential Discovery Material is Discovery Material that contains non-public, confidential, personal, business, strategic, proprietary or commercially sensitive information, which has not become part of the public record. It therefore requires that the document in question retains an element of confidentiality. Highly Confidential Discovery Material takes the concept one step further in that the designation is available in respect of Confidential Discovery Material that, if disclosed other than subject to the requirements of the confidentiality stipulation, is substantially likely, in the good faith and reasonable belief of the person producing the document, to cause injury to them.

51. In summary, paragraph 7 of the confidentiality stipulation provides that Confidential Discovery Material can be shared with the parties and their internal management involved in conducting the litigation; their attorneys-at-law and service providers assisting with the conduct of the litigation; factual and expert witnesses, but only to the extent necessary for them to give their evidence; persons already familiar with the content of the document, whether as author, addressee, recipient, custodian etc; court staff; mediators etc; and others explicitly authorised by the Delaware court. Implicitly, Confidential Discovery Material cannot be shared publicly.

52. Paragraph 8 of the confidentiality stipulation addresses Highly Confidential Discovery Material. It further limits the dissemination allowed by paragraph 7 of the confidentiality stipulation by excluding the parties themselves and their internal management (other than in-house counsel) from the persons who may view the material.

53. The effect of the confidentiality stipulation in relation to Confidential Discovery Material and Highly Confidential Discovery Material generally is therefore to preserve, so far as reasonably possible and consistently with the proper resolution of the Delaware proceedings, the existing confidentiality in such materials. This is subject to the rider ordered by Chancellor McCormick when she made the

confidentiality stipulation an order of the Delaware court, namely that to the extent that there is any conflict between the confidentiality stipulation and Court of Chancery Rule 5.1, Rule 5.1 shall take precedence.

54. Paragraph 4 of the confidentiality stipulation provides, so far as relevant, as follows:

> *"4. Confidential Discovery Material and Highly Confidential Discovery Material can only be used for purposes of this Litigation and cannot be used for any other purpose […]. Notwithstanding anything to the contrary in this Stipulation, and without prejudice to any party's discovery obligations in the Cayman Actions (as defined below), any party may use Confidential Discovery Material and Highly Confidential Discovery Material, including deposition transcripts designated as Confidential or Highly Confidential, in the proceedings pending before the Financial Services Division of the Grand Court of the Cayman Islands […] Cause No. FSD 146 of 2025, and […] Cause No. FSD 151 of 2025 […] so long as such party uses reasonable efforts to obtain confidentiality protections in the Cayman Action that are substantially equivalent to those in the Stipulation..[…]"*

55. The effect of paragraph 4 of the confidentiality stipulation is therefore that all Discovery Material, including Confidential Discovery Material and Highly Confidential Discovery Material, can be used within the Grand Court proceedings provided that the parties use reasonable efforts to obtain similar confidentiality protections as those which apply in Delaware under the confidentiality stipulation.

56. Notably, paragraph 18 of the confidentiality stipulation expressly records that:

> *"18. Entering into this Stipulation, producing or receiving Discovery Material (regardless of its designation), agreeing to produce or receive Discovery Material (regardless of its designation), or otherwise complying with the terms of this Stipulation, does not:*
>
> *a. Prejudice any right of any Party to (i) seek production of documents or information; (ii) object to the production of documents or information; […]*
>
> *[…]*
>
> *e. Operate as a waiver of any Privilege."*

Thus, the confidentiality stipulation does not affect the ability of the parties to pursue disputes before the Chancellor as to the adequacy of the discovery provided in Delaware and to assert privilege in the Delaware action over particular documents, as occurred in respect of the Compelled Documents.

57. In these circumstances, in my judgment, at the time that they agreed the terms of the confidentiality stipulation on 21 July 2025, the parties must have proceeded on the basis that any issues of privilege in respect of discovery in Delaware would be raised before and decided by the Delaware court.

***D.3 The effect of the Grand Court Consent Orders***

58. To recap, it was at the hearing before the Grand Court on 1 August 2025 that the parties indicated that they had agreed directions in principle leading to a trial commencing on 12 January 2026. This was two days after the GP had claimed privilege in Delaware in respect of the Compelled Documents. When addressing the Court on the withdrawal of the GP's summonses to stay the Grand Court proceedings and in respect of the agreement reached as to directions, Ms Prevezer stated (at page 60, line 9 of the transcript):

> *"[…] 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 […]"*

59. The draft consent orders were prepared in the period between 4 and 20 August 2025, and the Consent Orders were finalised on 20 August 2025, although dated 1 August 2025. Throughout this period, the GP and the LPs were well aware that the GP was seeking to claim privilege in Delaware in respect of the Compelled Documents, and for most of this period they also knew that the LPs were challenging that claim. This is relevant background context.

60. So far as it addresses discovery, the Consent Order in the writ action is in the following terms:

> *"3. Nothing in this Order shall vary or modify any existing rights of the parties to demand, receive or inspect documents.*
>
> *4. The parties shall give discovery in accordance with GCR O.24, as modified by this Order.*
>
> *5. 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 cause, shall be admissible and may be relied upon at trial:*
>
> *a) all documentary discovery given by the Plaintiffs and the Defendant;*
>
> *b) deposition testimony, exhibits and transcripts;*
>
> *c) responses to written discovery requests;*
>
> *d) responses to interrogatories; and*
>
> *e) responses to requests for admissions.*
>
> *6. 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.*

> *7. By 4:00 pm on 26 September 2025, the parties shall exchange Lists of Documents and shall give inspection contemporaneously in accordance with the terms of a discovery protocol to be agreed by the parties.*
>
> *8. Documents disclosed in FSD 151 of 2025 (JAJ) shall be deemed also to have been disclosed and to be admissible in this cause and vice versa.*
>
> *9. 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).*
>
> *10. Subject to GCR O.24, r.22 and to paragraph 8 of this Order, all documents disclosed or deemed to be disclosed in this cause shall be subject to the implied undertaking of confidentiality."*

The paragraphs of the Consent Order in the winding up proceedings concerning discovery mirror these paragraphs. The date when exchange of Lists of Documents was due was subsequently extended by the parties by consent to 30 October 2025.

### *D.4 The discussions regarding the draft discovery protocol*

61. The origin of the wording in paragraph 5 of the Consent Order set out above, that the listed items from the Delaware action *"shall be deemed to have been disclosed in this cause, shall be admissible and may be relied upon at trial"*, is a letter from Walkers dated 17 July 2025. Walkers' letter was written against the background of the draft discovery protocol circulated by Campbells LLP on 4 July 2025, but which the parties appear thereafter largely to have ignored. The last sentence of the extract from Walkers' letter set out below makes clear that Walkers' letter was drafted with the impending agreement of the confidentiality stipulation in Delaware well in mind. Walkers said in their letter dated 17 July 2025:

> *"(b) Our client proposes that the parties agree that the discovery made in the Delaware Proceedings stand as the discovery in both the Writ Action and Petition. […]*
>
> *(c) Following completion of discovery in the Delaware Proceedings, we would propose that the parties have the opportunity to request discovery of specific categories of document in the Writ Action and the Petition, to the extent that the parties consider that there are any relevant documents for those proceedings that have not been previously discovered in the Delaware Proceedings. This would be an efficient and cost-effective way of dealing with discovery, where otherwise the parties would be required to re-produce many of the same documents that have previously been produced in the Delaware Proceedings. With that in mind, we understand that the parties' US counsel are currently liaising in relation to the terms of a confidentiality protocol which would, inter alia, allow the parties to deploy documents discovered in the Delaware Proceedings in each of the Writ Action and the Petition."*

62. Campbells replied on 23 July 2025, two days after the confidentiality stipulation was agreed and approved by the Chancellor in Delaware, that Walkers' proposal was agreed in principle, with certain reservations. Walkers wrote back on 25 July 2025 that:

> *"(a) we agree that documents that have been discovered in the Delaware Proceedings be immediately deemed as discovered in the Writ Action and Winding Up Petition on 13 August 2025. This will mean that neither party is required to produce these documents or request inspection of the same;*
>
> *(b) with regard to the confidentiality provisions in your proposed discovery protocol (enclosed with your letter of 4 July 2025), whilst we consider the parties still need to agree the exact terms of a discovery protocol, we agree that the parties should be able to agree terms regarding confidentiality within that protocol that meet the condition in the Delaware Protocol;*
>
> *(c) we propose that the parties should endeavour to agree a discovery protocol (including terms as to confidentiality), although we do not think this requires a formal Court order. We are content to begin by providing our comments on your draft protocol following the hearing on 1 August 2025, in the event that the proceedings are not stayed;*
>
> *(d) we agree that where a document has been withheld from discovery and inspection in the Delaware Proceedings for reasons that would not justify the withholding of discovery and inspection in the Cayman Islands, it will be open to one of the parties to seek production/inspection of that document in the Writ Action or Winding Up Petition;*
>
> *(e) we consider that the parties' requests for additional categories of document will need to be subject to a deadline in order to ensure the other party has sufficient time to search for and review those documents. […]*
>
> *(f) we consider that it will be most practical, with regard to lists and inspection of documents, that the parties agree that they be permitted to file identical lists of documents in respect of the two sets of proceedings given that many documents will be relevant to both of the proceedings and it would be inefficient, given the tight timeframe for discovery, for the parties to spend time determining whether some documents be disclosed in just one of the proceedings or both of them;"*

63. Walkers do not indicate in their letters of 17 or 25 July 2025 that they are asserting or intending to assert or reserve any right of the GP to withhold documents in the Grand Court actions where those documents have been produced in the Delaware proceedings; nor do they suggest that the parties should be entitled to raise issues of privilege under Cayman law in respect of documents disclosed in the Delaware proceedings and *"deemed as discovered"* in the Grand Court actions as a result. This was the position going into the Grand Court hearing on 1 August 2025.

64. Nothing was said in Court on 1 August 2025 by Ms Prevezer on behalf of the GP to indicate that there was any intention on the GP's part to qualify the position regarding the status of and use of the Delaware discovery within the Grand Court proceedings, as set out in Walkers' letter dated 25 July 2025. To the contrary, her position, as recorded in the agreed transcript of the hearing, was that *"the*

*discovery in Delaware stands as the discovery in Cayman"*, reflecting Walkers' statement in the same terms in their letter dated 17 July 2025.

65. The next working day following the hearing on 1 August 2025 was 4 August 2025. On that day, Campbells sent a draft consent order to Walkers for their comments, which included the deeming wording regarding the Delaware discovery that I have set out earlier in this judgment and which appears again in the following paragraph of this judgment. That wording remained unchanged through the various drafts of the Consent Orders that followed and was carried into the final version of the Consent Orders.

66. The Consent Orders distinguish between: (a) discovery which has been given in the Delaware proceedings, which *"shall be deemed to have been disclosed in this cause, shall be admissible and may be relied upon at trial"*; and (b) additional discoverable documents relevant to the Grand Court actions, for which detailed mechanisms are set out in the draft discovery protocol concerning their handling and management. It is clear to me from the terms of the documents that at the time that the Consent Orders were prepared, finalised and made by the Court, the parties intended, as the Consent Orders state, that documents in the specified classes that were disclosed in Delaware would be deemed to have been disclosed in each of the Grand Court actions, would be admissible and could be relied upon at the trials in the Grand Court actions. There is no qualification in the Consent Orders to allow the parties to raise issues of privilege under Cayman law in respect of the Delaware discovery material. This is to be contrasted with the position regarding additional discovery that would be made specifically within the Grand Court proceedings only, where the parties were expressly permitted to raise issues of privilege.

67. Objectively, this makes good sense. The Delaware action concerns the GP's claim that the LPs are in repudiatory breach of the LPA; whereas the issues in the winding up proceedings are wider, including whether the LPs can show a *bona fide* basis for their assertion that they have lost all trust and confidence in Dr Harrison and, through him, in the GP as general partner of the Fund. This will necessarily require a review of the GP's management of the Fund, which is not necessary in the Delaware action. Treating the discovery in Delaware as disclosed and admissible in the Grand Court proceedings has the obvious benefit of saving time, effort and cost by avoiding the need to repeat the discovery process in relation to the Delaware discovery documents and applying GCR O.24 only

in relation to additional discovery required for the Grand Court proceedings. It is also consistent with the parties' desire to advance the procedural progress of the Grand Court actions as rapidly as reasonably possible to achieve the trial date of 12 January 2026 in that it significantly reduces the work required on discovery and hence the time to be taken by that process.

### *D.5 The GP's arguments that it has not waived privilege under Cayman law for the Grand Court proceedings*

68. Mr Ayres seeks to row back on the position regarding the effect of the Consent Orders on two grounds. The first is by reference to the initial draft discovery protocol circulated by Campbells on 4 July 2025. He draws my attention to paragraph 30 of that draft, which follows a heading *"Privilege"* and is in the following terms:

> *"30. Nothing in this Protocol will prevent a Party from withholding documents from inspection by the other Parties on the basis of any applicable Cayman Islands law."*

Mr Ayres argues that this was still the only draft discovery protocol in existence throughout the period up to 2 September 2025 and, he submits, it indicates that the parties intended throughout that period that privilege under Cayman law could still be raised in respect of documents disclosed in Delaware and brought into the Grand Court actions.

69. I do not accept that submission. I consider that the correspondence between Walkers and Campbells in July 2025 that I have already set out demonstrates that the parties had moved on from the approach of Campbells' draft discovery protocol by no later than 25 July 2025 and before the Consent Orders were made. The draft discovery protocol circulated by Campbells is a relatively basic document that proceeds on the basis that all discovery will take place under Cayman law and in accordance with GCR O.24. There is no evidence of any discussion of the content of the draft discovery protocol before the hearing on 1 August 2025. Instead, the correspondence proceeds on the basis that there will be the bifurcated approach to discovery in Delaware and in the Cayman Islands that I have described. I therefore consider that, by no later than 25 July 2025, the provisions in Campbells' draft discovery protocol regarding privilege had been superseded as regards the treatment of any Delaware discovery materials and the draft discovery protocol is not relevant to the determination of the proper effect of the Consent Orders in that respect.

70. The second ground on which Mr Ayres argues that the GP is still able to raise issues of privilege in respect of discovery in Delaware is based on the revisions to Walkers' draft discovery protocol which Walkers proposed on 12 September 2025. These seek to introduce the ability of the parties to raise privilege under Cayman law in respect of documents disclosed in Delaware, whatever their treatment in Delaware. Mr Ayres argues that the LPs cannot conceivably have relied upon any of the Compelled Documents by this date, because the Compelled Documents had only been produced starting from 8 September 2025, and so it is not unfair for the GP on 12 September 2025 to limit any waiver of privilege that had taken place. Mr Ayres relies on a judgment of the Hong Kong Court of Appeal to support the proposition that the GP could clarify or confirm the purpose for which the Compelled Documents were produced, and any limitations on that production, as late as 12 September 2025: *Citic Pacific Limited v Secretary for Justice* [2012] HKCA 153.

71. Citic was a company listed on the Hong Kong Stock Exchange. Following the financial crisis in 2008, Citic was under investigation by the Securities and Futures Commission in Hong Kong ("**the SFC**") as to the reasons why it had delayed publication of a substantial profit warning indicating it anticipated losses of HK $15 billion. Pursuant to a statutory notice, Citic provided the SFC with a number of documents including six documents that it asserted were subject to legal professional privilege, which was not disputed in the proceedings. Some weeks later, the SFC queried with Citic's solicitors the extent to which privilege in the documents had been waived. Citic's solicitors responded on 26 November 2008 that privileged was waived for the sole purpose of the SFC investigation.

72. In March 2009, the Hong Kong Police commenced a criminal investigation into Citic's conduct. Citic discovered that the SFC had provided copies of the privileged documents to the Hong Kong Ministry of Justice to obtain legal advice and that the Hong Kong police wished to view the privileged documents. Citic commenced the proceedings seeking orders for the return of the privileged documents on the basis that Citic had waived privilege for the limited purpose of the SFC investigation only and that the Ministry of Justice did not have lawful authority to retain them; and a declaration that, if the Ministry of Justice did have lawful authority to retain the documents, then the Ministry could not disclose them to any third party, including the Hong Kong Police.

73. The judge at first instance dismissed Citic's claim. He concluded that when Citic provided the documents to the SFC, it had not expressly or impliedly imposed any condition on that disclosure,

so that there was a full waiver of privilege by Citic. He also held that there was a *prima facie* case that the documents had been created to further a fraudulent scheme, and so they were not privileged for that reason in any event.

74. The Hong Kong Court of Appeal disagreed with the judge's decisions on both issues. The Court of Appeal carried out an extensive survey of the law on privilege to determine whether the concept of a partial waiver of privilege is part of the law of Hong Kong, which it concluded it is. Mr Ayres relies in particular on paragraph 76 of the judgment of Hartmann JA, with whom the other members of the Court of Appeal agreed, to support his argument that the GP was able on 12 September 2025 to limit the scope of its waiver of privilege in respect of the Compelled Documents, even though that was after production had taken place. Hartmann JA said:

> *"76. The solicitors' letter of 26 November 2008 was afforded little weight at first instance. On the evidence, however, there appears to be nothing to suggest that at about the time the letter was drafted Citic knew of any police investigation or had reason to believe that one was about to be launched and, regretting its earlier full waiver of privilege, was seeking to claw back at least some partial privilege in the documents in order to avoid them falling into the hands of the police. Citic's general counsel and the company's legal advisers may of course have had a change of heart concerning surrender of the documents to the SFC but there is nothing to suggest that. Accordingly, I must disagree with the judge at first instance. I am satisfied on the probabilities that the letter is not to be seen as a tactical device but as a simple statement of what Citic had always considered to be the basis upon which privilege in the documents had been waived several weeks earlier. As such, I am satisfied that the contents of the letter stating Citic's understanding that waiver of privilege had not been absolute must be given due weight."*

75. I do not accept Mr Ayres' analysis of ***Citic***. In my judgment, the Hong Kong Court of Appeal did not conclude that it is possible for a party subsequently to qualify the extent of a waiver of privilege that has already occurred. Instead, the Court of Appeal in paragraph 76 of its judgment found on the evidence and on a balance of probabilities that Citic had always intended that its waiver of privilege should be limited to the SFC. The relevance of the solicitors' subsequent letter was simply that it provided confirmatory evidence of Citic's intention *at the time* that the documents had been produced.

76. It is therefore necessary to consider the evidence in this case to determine whether on 12 September 2025 the GP was expressing a position it had always taken or was seeking to adopt a new position regarding privilege.

77. I have already set out the relevant discussions between the GP and the LPs before 1 August 2025. On 21 August 2025, Campbells chased Walkers for their input on the draft discovery protocol and re-attached a copy of the draft that they had circulated on 4 July 2025. Walkers responded to Campbells on 22 August 2025. Their letter included the following:

> *"In circumstances where the documents from the Delaware proceedings will be deemed to have been disclosed in the Cayman proceedings, we consider that the Cayman discovery protocol should, as far as possible […] align with the protocols agreed in Delaware […].*
>
> *We appreciate that the draft protocol you shared reflects certain alignment with the Delaware protocols. However, we have identified a few material differences that we consider need to be reconciled with the Delaware Protocols to ensure the Cayman discovery properly adopts, and does not cut across, the Delaware discovery and the provisions of the Delaware Protocols, but at the same time is compliant with Cayman Islands law. In particular, we are concerned to ensure that, at the very least, (i) production format, (ii) privilege claims and logs, and (iii) treatment of confidential documents are as consistent as possible between the Delaware and Cayman proceedings. If we do not do so, then unnecessary costs will likely be incurred and there may be confusion and uncertainty as a result of the inconsistency.*
>
> *[…]*
>
> *Additionally, we consider that the Cayman protocol should include the parties' agreement(s) concerning the practical considerations relating to how the Delaware discovery will be dealt with in Cayman – for example, whether the Delaware discovery is required to be re-listed and re-produced and whether the parties in Cayman adopt the bates numbering used in Delaware, etc."*

78. Walkers' letter does not express anywhere any intention that either party should be able to raise issues of privilege under Cayman law in respect of documents disclosed in Delaware and therefore deemed to be disclosed in the Grand Court actions. To the contrary, Walkers' letter expressly indicates that the GP's intention was *"the Cayman discovery properly adopts, and does not cut across, the Delaware discovery"* and that the treatment of privilege and confidentiality was to be *"as consistent as possible between the Delaware and Cayman proceedings"*, all to avoid unnecessary costs, confusion and uncertainty. Such statements contradict the suggestion that the GP intended at this time that the parties could raise issues of privilege under Cayman law in respect of documents disclosed in the Delaware proceedings and brought into the Grand Court actions by that route.

79. Walkers provided their own draft discovery protocol on behalf of the GP on 2 September 2025. This adopts the bifurcated approach to discovery, differentiating between Delaware discovery, which automatically comes into the Grand Court actions, and additional discovery for the Grand Court actions, which was not within the discovery in Delaware. Paragraph 3 of the draft discovery protocol states:

> *"3. Pursuant to the Directions Orders, the Parties are to give discovery in accordance with Order 24 of the Grand Court Rules (2023 Revision) (the "GCR"), as modified by the Directions Orders, including, inter alia, that:*
>
> *(a) all documentary discovery given by the Parties in 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 the Cayman Proceedings, shall be admissible and may be relied upon at trial (see paragraph 5 of the Directions Order in the Writ Proceedings and paragraph 6 of the Directions Order in the Petition Proceedings (the "Delaware Discovery")); […]"*

80. Part I of the draft discovery protocol then addresses the treatment of the Delaware discovery while Part II addresses additional Cayman discovery. Part I provides:

> *"7. The Parties agree, pursuant to the terms of the Discovery Orders, that the Delaware Discovery is to be deemed to have been discovered in the Cayman Proceedings and is admissible and may be relied upon at trial in the Cayman Proceedings.*
>
> *8. Accordingly, the Parties shall not be required to:*
>
> *(a) include the Delaware Discovery in the Parties' respective List of Documents to be exchanged in the Cayman Proceedings;*
>
> *(b) re-produce any documents already disclosed as part of the Delaware Discovery; and*
>
> *(c) prepare any separate privilege log beyond those already provided in the Delaware Proceedings, save for any documents solely subject to discovery in the Cayman Proceedings, over which any party claims privilege for the purposes of the Cayman Proceedings.*
>
> *[…]*
>
> *11. The Delaware Discovery shall not be subject to the requirements of this Protocol and the following Delaware Protocols (and any further agreements between the Parties) shall continue to govern the Delaware Discovery […]"*

81. The GP's draft discovery protocol therefore proceeds on the basis that all discovery from Delaware is to be admissible and can be used at the trial of the Grand Court actions. The GP's draft discovery protocol contemplates that discovery for the Grand Court proceedings may be wider than discovery in the Delaware proceedings and, to that extent, provides in paragraph 8(c) for the possibility that privilege might be asserted over documents disclosed in the Grand Court proceedings only.

82. In addition to the broad deeming wording in paragraph 7 of the draft discovery protocol that I have already considered in relation to the Consent Orders, there are additional features of these paragraphs of the GP's draft discovery protocol that I consider to be inconsistent with an intention on the part of the GP that the parties would be able to raise issues of privilege under Cayman law in respect of the Delaware discovery. The first is that the parties are not required to include the Delaware discovery in their Lists of Documents. The List of Documents is where any claim to privilege

under Cayman law would be made, by including such documents within Schedule 1, part 2. By excluding the requirement to list the Delaware discovery, it follows that the GP was also excluding the parties' ability to identify documents within the Delaware discovery in respect of which they wish to claim privilege. Secondly, the exclusion of a requirement to prepare any separate privilege log beyond those provided in Delaware, except for the additional Cayman discovery, contradicts the suggestion that the GP intended at this time that privilege under Cayman law should be a live issue in respect of the Delaware discovery.

83. Part I of the draft discovery protocol continues relevantly in paragraphs 16 and 17, which state:

> *"16. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged (subject to any waiver of privilege or a finding against a claim of privilege by the Delaware court), and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings.*
>
> *17. If a document the subject of a claim of privilege in the Delaware Proceedings is inadvertently discovered in the Cayman Proceedings, the inadvertent production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege […]"*

84. It is clear from these paragraphs that on 2 September 2025:

84.1 the GP's intention was that issues of privilege as regards documents that were disclosed in Delaware were to be determined under Delaware law – hence the provision in paragraph 16 of the draft discovery protocol that privileged documents would carry over that status into the Grand Court actions; and

84.2 a finding by the Delaware court against a claim of privilege would also be carried over to the Grand Court to determine the privilege status of Delaware disclosed documents.

It is significant, in my view, that the GP's draft discovery protocol did not make any provision for the parties to be able to claim privilege under Cayman law in respect of documents disclosed in Delaware and brought into the Grand Court actions as a result. This omission is inconsistent with Mr Ayres' suggestion that that was the GP's intention at this time.

85. Campbells provided their comments on Walkers' draft discovery protocol on 4 September 2025. Campbells did not suggest any changes to paragraphs 3, 7, 8 and 11, which are therefore to be taken as agreed. Due to some other suggested revisions, paragraphs 16 and 17 in Walkers' draft protocol became paragraphs 15 and 16 in Campbells' response. Campbells did not suggest any revisions to

(new) paragraph 16 but did propose some relevant changes to (new) paragraph 15, as follows, with revisions from the previous version shown by underlining and strike-out:

> *"~~16.~~15. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged ~~(subject to any~~ , unless there is a waiver of privilege and/or a finding against a claim of privilege by the Delaware court and/or a finding against a claim of privilege by the Court~~)~~, and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings. Any dispute as to whether a document is privileged shall be resolved by the Court in accordance with Cayman Islands law."*

By their proposed amendment to this paragraph, Campbells were contemplating that documents that are privileged for the purposes of the proceedings in Delaware might nonetheless be determined by the Grand Court not to be privileged under Cayman law. However, they were not suggesting that documents that are not privileged in Delaware might be ordered to be privileged under Cayman law for the purpose of the Grand Court proceedings. Thus, Campbells' proposed revisions are consistent with the overall position regarding privilege that I have already described.

86. There was then a short hiatus whilst the GP's claim to privilege over the Compelled Documents was being considered in Delaware by Chancellor McCormick and the special discovery master. It was only following the decision in Delaware against the GP's ability to claim privilege in respect of the Compelled Documents that the GP first sought to introduce the issue of privilege under Cayman law in the draft discovery protocol as regards the Delaware discovery. Walkers circulated a further revised draft of the discovery protocol on 12 September 2025. This draft also did not make any changes to paragraphs 3, 7 and 8, but it did seek to make a significant change to paragraph 15 (renumbered as paragraph 16 again), with the revisions from the previous version once more shown by underlining and strike-out:

> *"~~15.~~16. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged, unless there is a waiver of privilege and/or a finding against a claim of privilege by the Delaware court and/or a finding against a claim of privilege by the Court)~~,~~. For the avoidance of doubt, any Party may apply to the Court seeking that a document is privileged and shall not be relied upon notwithstanding the treatment of that document in Delaware. ~~and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings.~~ Any dispute as to whether a document is privileged shall be resolved by the Court in accordance with Cayman Islands law."*

87. This was clearly a fundamental change in the intended treatment of the Delaware discovery, which sought to reverse the effect of the Consent Orders. It also contradicts paragraph 3(a) of the draft

discovery protocol, which Walkers had originally drafted and had not sought to revise, and which was agreed by Campbells for the LPs. Unsurprisingly, Campbells' response on 25 September 2025 was to delete Walkers' proposed addition to paragraph 16 of the draft discovery protocol.

88. In my view, the further drafts of the discovery protocol that were circulated during October 2025 do not assist, as the difference between the parties regarding the treatment of the Delaware discovery had crystallised by then and the drafts simply record that there is disagreement between them.

89. I consider that it is clear from the correspondence and the various drafts of the discovery protocol, as well as the Consent Orders, that the GP did change its position on the question of privilege on or shortly before 12 September 2025. I find it did so as a direct response to the Chancellor's ruling in Delaware that the Compelled Documents were not privileged and would have to be disclosed in Delaware, and that the Compelled Documents would therefore automatically be admissible in and available to be used at the trials of the Grand Court actions unless the GP sought to put the privilege genie back into the bottle.

***D.6 Did the LPs deliberately breach privilege and confidentiality in the public version of their post-trial brief in Delaware?***

*(a) The confidentiality stipulation*

90. As I have already recorded, the definition of Discovery Material in the confidentiality stipulation is very broad. Paragraphs 2 and 3 of the confidentiality stipulation address the applicability of the confidentiality stipulation as follows:

> *"2. This Stipulation governs the handling of Discovery Material by or among any Party or non-Party to this Litigation, except to the extent Discovery Material is filed with the Court.*
>
> *3. This Stipulation does not govern the filing of Discovery Material with the Court. Only Court of Chancery Rule 5.1 governs the filing of Discovery Material with the Court."*

Paragraphs 2 and 3 therefore include an important carve out that the confidentiality stipulation does not apply where any document containing Discovery Material is filed with the Delaware court and that Court of Chancery Rule 5.1 will apply in that situation instead.

91. When approving the confidentiality stipulation and making it an order of the Delaware court on 21 July 2025, Chancellor McCormick additionally ordered:

> *"To the extent of any conflict between this order and Court of Chancery Rule 5.1, Rule 5.1 will control."*

92. Thus, it appears from the provisions that I have set out that the handling of any document filed at court in Delaware, including post-trial briefs, is governed, not by the confidentiality stipulation, but by Court of Chancery Rule 5.1. This is reinforced by the Chancellor's order when she approved the confidentiality stipulation and made it an order of the Delaware court.

*(b) Court of Chancery Rule 5.1*

93. Mr Scott provided me with a copy of Court of Chancery Rule 5.1 during oral argument at the hearing on 28 November 2025. Court of Chancery Rule 5.1, so far as relevant, provides as follows:

> *"**(a) General Principles of Public Access.***
>
> *[…]*
>
> *(3) Papers filed with the Register in Chancery ("Filed Documents") must be available to the public, except as provided in this rule.*
>
> *[…]*
>
> ***(b) Confidential Information.***
>
> *(1) Public access to a Filed Document may be limited only if the Filed Document contains Confidential Information.*
>
> *[…]*
>
> ***(d) Making a Confidential Filing.***
>
> *(1) A person may make a Confidential Filing if the person believes that the paper contains Confidential Information.*
>
> *(2) A person must make a Confidential Filing if the person believes that another person would contend that the paper contains Confidential Information.*
>
> *[…]*
>
> ***(e) Notice of Confidential Filing.***
>
> *(1)* Obligation to Give Notice. *After making a Confidential Filing, the filer must use best efforts to give notice to any person who has designated information in the Confidential Filing as Confidential Information or who the filer believes could have a legitimate interest in designating information in the filing as Confidential Information.*
>
> *(2)* Notice to a Person Who Has Appeared. *If the person has appeared, the filer must provide the notice to the person's attorney […]*
>
> *[…]*
>
> *(4)* Contents of the Notice. *The notice must refer to this rule and include a proposed public version of each Confidential Filing for which a public version is required. The proposed public version may redact information that the filer believes constitutes Confidential Information or that the filer believes another person would contend constitutes Confidential Information. The notice must identify the date and time by which this rule requires the recipient of notice to identify any additional information for redaction.*
>
> *[…]*

> *(6)* Designating Confidential Information for Redaction in Response to Notice.
>
> *(A) Any recipient of notice may designate additional information for redaction if the person believes in good faith that the information qualifies as Confidential Information or that another person would contend that it qualifies as Confidential Information.*
>
> *(B) The recipient of notice must identify any additional information for redaction within the time period set by this rule.*
>
> *[…]*
>
> *(7)* Timing of Notice and Designation of Confidential Information for Redaction.
>
> *[…]*
>
> *(B) […] the filer should give notice contemporaneously with the Confidential Filing and must give notice not later than 3:00 p.m. two days after the filing. Any recipient must designate any additional information for redaction by 3:00 p.m. on the fifth day after the filing.*
>
> ***(f) Filing a Public Version.***
>
> *(1)* Public Version Required. *A public version is required for every Confidential Filing, except for an exhibit or lodged deposition.*
>
> *(2)* Timing of Public Version. *The filer must file a public version of every Confidential Filing that was the subject of a Rule 5.1(e) notice the day after the deadline for designating additional information for redaction. The public version must contain the redactions in the proposed public version and any additional information designated for redaction in response to the notice unless the filer and a person receiving notice agree to make fewer redactions."*

94. In the absence of evidence from an independent expert on Delaware law and practice, I am conscious that I should be cautious in interpreting Court of Chancery Rule 5.1. Nevertheless, the provisions of Rule 5.1(e) setting out the mechanism and timeline by which a litigant should take steps to redact confidential information contained in a proposed public filing and should give notice to other parties to allow them to make further redaction proposals are clear, simple and straightforward on their face, and are easy to understand. In short, the filer must give notice to the other parties at the same time as filing the document on a confidential basis, and the other parties have 5 days to respond with any further redaction requests (or to agree to omit redactions). The filer must then file a publicly accessible version of the document the following day.

*(c) The GP's case that the LPs deliberately breached the confidentiality stipulation*

95. The use of confidential discovery material in open court is addressed in paragraph 25 of the confidentiality stipulation as follows:

> *"25. If any Confidential Discovery Material or Highly Confidential Discovery Material is used in open court during any proceeding or introduced into evidence as a trial exhibit, the material loses its confidential status and becomes part of the public record, unless the*

> *Producing Person applies for and obtains an order from the Court specifically maintaining the confidential status of the material. Before any court proceeding where Confidential Discovery Material or Highly Confidential Discovery Material will be used, the Parties must confer in good faith on procedures to protect the confidentiality of any of the Confidential Discovery Material or Highly Confidential Discovery Material."*

96. In a section of his affidavit entitled *"Rigmora LPs' breach of Confidentiality Stipulation"*, Mr Berdon asserts:

> *"28. Notably absent from Fienberg 2 is that the fact that the Rigmora LPs inclusion of quotations or detailed descriptions of the Four Documents in their publicly filed post-trial brief was in breach of the parties' Confidentiality Stipulation and the Delaware Court's sealing rulings.*
>
> *29. As outlined above, in preparing public versions of post-trial submissions, the parties were expected to apply redactions consistent with the Delaware Court's sealing ruling. In other words, the onus to maintain the confidentiality of the documents which were designated Highly Confidential applies equally to both parties. Contrary to that position, the Rigmora LPs did not seek to redact the relevant portions of the public version of their post-trial brief and thereby breached the Confidentiality Stipulation.*
>
> *30. Although Quinn Emanuel did not, when reviewing the Rigmora LPs' post-trial brief, take notice of the relevant material and ask Rigmora's US counsel to apply the appropriate redactions, that oversight was entirely inadvertent and was a result of the extreme time pressure under which my firm was required to file its post-trial reply brief, which was due a mere 3 business days after receipt of the Rigmora LPs' PTRB (which was 64 pages in length).*
>
> *31. Having now become aware of this matter, Quinn Emanuel have written to the Rigmora LPs' US-counsel, Richards Layton & Finger, P.A. ("RLF") who serves as Delaware Counsel for Debevoise & Plimpton ("Debevoise"), on 26 November notifying them of the breach of the Confidentiality Stipulation and the Sealing Order and have requested that Debevoise promptly file a corrected public version of their post-trial brief with the offending passages redacted (the "**QE Email**") **[AB-1/1]**, […]"*

97. The email exhibited by Mr Berdon is from Ms Shannon Doughty, an associate in Quinn Emanuel's Wilmington office. It was sent at 6:03 pm on 26 November 2025 to a number of attorneys at Richards Layton & Finger LLP, who were acting for the LPs, and was sent or copied to attorneys at Quinn Emanuel and at Ross Aronstam & Moritz LLP acting for the GP but not, apparently, Mr Berdon. The email is in the following terms:

> *"Counsel:*
>
> *[…] it has come to our attention that when Rigmora filed the public version of its post-trial brief, it failed to redact certain portions of its brief that referred to or quoted ATP's Highly Confidential Documents that the Court had ordered at trial should be treated as 'under seal' and closed the Courtroom accordingly, specifically JX-2153, 2178, 2155, 2138. While we had originally hoped that this was just an oversight on behalf of Rigmora, it now appears that Rigmora is attempting to use their own failure to comply with the Court's ruling as justification to claim a waiver of privilege in the Cayman.*

> *The Court's sealing order is unambiguous and required Rigmora to shield ATP's Highly Confidential Information from public dissemination. ATP therefore requests that Rigmora remedy the erroneous disclosures in the public version of its post-trial brief by filing the attached corrected version in its place. […]"*

98. During oral argument on 28 November 2025, the LPs handed up a clip of *inter partes* correspondence relevant to the assertions made by Mr Berdon that I have set out and to Ms Doughty's email.

99. First is an email from Mr Zachary Greer, an associate at Richards Layton & Finger, the Delaware attorneys for the LPs, which was sent at 8:16 pm on 26 November 2025 in response to Ms Doughty's email sent 2 hours 13 minutes earlier. Despite its subject matter, timing and obvious relevance, this email was not discussed and nor was it exhibited by Mr Berdon when he approved and signed his affidavit and exhibit on 27 November 2025. Mr Greer's email appears to provide a complete answer to the complaints made in Ms Doughty's email that was exhibited by Mr Berdon. It states:

> *"Shannon*
>
> *ATP, after having the opportunity to propose redactions, expressly confirmed that it had no redactions to Defendant's Post-Trial Brief before it was filed publicly.*
>
> *In accordance with Court of Chancery Rule 5.1(e), on November 12, Defendants provided ATP with the opportunity to propose any redactions it had to Defendants' Post-Trial Brief which was filed under seal. In accordance with Rule 5.1, we let ATP know that it had until 3:00 PM ET on November 17 to propose any redactions it saw fit under the rule. Counsel for ATP responded on November 17 saying, 'I'll be sending a few redactions shortly. Apologies for the delay' See attached email thread. Defendants provided ATP with additional time and waited for confirmation as to its proposed redactions.*
>
> *On November 18, Plaintiff responded, 'Apologies for the delay, Plaintiff does not have any redactions.' See attached email thread. Later that day, Defendants filed a public version of their Post-Trial Brief as approved by ATP. Plaintiff has not raised this issue since, including during oral argument with the Court on November 21 (nor could it given that Defendants complied with Rule 5.1 and filed the public version of their brief in accordance with ATP's instructions and as required by Rule 5.1). ATP cannot now seek to seal Defendants' brief for perceived tactical gain in the litigation between the parties in the Cayman Islands. […]"*

100. The emails to which Mr Greer referred were also provided to me by the LPs. Again, none of these emails were discussed or exhibited by Mr Berdon when he approved and signed his affidavit and exhibit on 27 November 2025 despite their obvious relevance. They show the following:

100.1 At 2:53 pm on 12 November 2025, Mr Greer sent to a number of attorneys at Quinn Emanuel and Ross Aronstam & Moritz LLP (not apparently including Mr Berdon) a proposed public version of the LPs' post-trial brief. As required, Mr Greer stated that he was doing so pursuant to Court of Chancery Rule 5.1. He continued:

> *"If you wish to designate any information as confidential, please provide proposed redactions by November 17 at 3pm. If no additional information is designated for redaction, we will file the attached proposed public version on November 18."*

100.2 At 3:02 pm on 17 November 2025, after the time imposed by Court of Chancery Rule 5.1(e)(7)(B) and specified by Mr Greer for any response had expired, Morgan Harrison of Quinn Emanuel replied to Mr Greer's email, not copying other attorneys at Quinn Emanuel or Ross Aronstam & Moritz LLP, saying:

> *"Hi Zack*
> *I'll be sending a few redactions shortly. Apologies for the delay.*
> *Thank you*
> *Morgan"*

100.3 At 10:00 am on 18 November 2025 Ms Harrison replied again to Mr Greer's email of 12 November 2025, copying a number of attorneys at Quinn Emanuel and Ross Aronstam & Moritz LLP (but not apparently including Mr Berdon), as follows:

> *"Hi Zack*
> *Apologies for the delay. Plaintiff does not have any redactions.*
> *Thank you*
> *Morgan"*

These emails thus contradict the argument made in Ms Doughty's email and espoused by Mr Berdon in his affidavit that the LPs had acted wrongfully in including references to the four documents in the public version of their post-trial brief.

101. Mr Berdon's description of the GP's failure to request additional redactions in relation to the references to the four documents as being an *"oversight"* that was *"entirely inadvertent"*, and that it was due to Quinn Emanuel having only 3 business days to review the LPs' post-trial brief is very difficult to reconcile with the following points:

101.1 Court of Chancery Rule 5.1(e)(7)(B) provides a period of 5 days for any responsive requests for redaction, without limiting that period to business days, whatever the length of the document that requires review. Quinn Emanuel therefore always knew that they would have 5 days from receipt to carry out their review of the public version of the LPs' post-trial brief to determine whether to request any additional redactions.

101.2 In fact, the LPs gave the GP six days to respond with any additional proposed redactions to the public version of its post-trial brief. There is nothing to suggest that the LPs would not have

provided yet more time, if the GP requested it. Quinn Emanuel did not request any additional time, if they required longer to complete their review of the LPs' post-trial brief.

101.3 The clear inference to be drawn from Ms Harrison's emails of 17 and 18 November 2025 is that Quinn Emanuel gave active thought to the question of additional redactions of the public version of the LPs' post-trial brief and determined that they did not wish to request any further redactions.

101.4 That Quinn Emanuel gave active thought to the question of additional redactions is also supported by the fact that Quinn Emanuel included unredacted references to the documents in question in the GP's own post-trial brief, whilst redacting other text.

101.5 Given the GP's continued focus at the trial on seeking to preserve the possibility of arguing before the Grand Court that the relevant documents remained privileged, which I address later in this judgment, it is very hard to credit that the decision not to request any further redactions in the public version of the LPs' post-trial brief was an entirely inadvertent oversight, as Mr Berdon asserts.

101.6 The number of partners apparently working on this matter at Quinn Emanuel and at Ross Aronstam & Moritz also cannot be reconciled with the suggestion that the decision not to request any further redactions in the public version of the LPs' post-trial brief was an entirely inadvertent oversight.

101.7 Given Mr Berdon's role as lead partner with overall control of the Delaware litigation on behalf of the GP and that he had expressly raised during the trial the question of protecting possible privilege under Cayman law, as recorded in the transcript at page 120 set out later in this judgment, any suggestion that he was not aware of and was not a participant in the decision not to request any further redactions to the public version of the LPs' post-trial brief is equally difficult to credit.

102. Having regard to the emails from Mr Greer that I have discussed, I wholly reject the GP's argument, put forward by Mr Berdon in his affidavit, that the LPs breached the terms of the confidentiality stipulation and did so in order to bolster their case before the Grand Court that the GP has waived privilege in respect of the documents in question. Moreover, it appears likely on the material that I have seen that at the time that it completed its post-trial brief and engaged in oral argument, the GP had decided it no longer intended to assert privilege in respect of the documents that Mr Berdon

referenced, however I do not need to reach a conclusion on that particular point in light of my other findings on the substance of the GP's summonses.

***D.7 Conclusion on the GP's summonses***

103. For the reasons that I have set out, I conclude that the GP and the LPs agreed to waive any available privilege arguments under Cayman law in respect of documents disclosed in the Delaware proceedings. Instead, those documents were to be automatically disclosed, admissible and available to the parties to use in the Grand Court actions. This was the result of their agreement of: (a) the confidentiality stipulation in Delaware; and (b) the Consent Orders. As regards the discovery in the Delaware proceedings, the parties' approach was that all questions of privilege etc would be determined by the Delaware court under Delaware law. As recorded in the Consent Orders, the Delaware discovery and the other documents from the Delaware proceedings identified in the Consent Orders are to be deemed to have been disclosed in the Grand Court actions, are admissible and may be relied upon at trial. The GP therefore cannot prevent the LPs from using the Compelled Documents in the Grand Court proceedings provided that the LPs comply with the requirements applicable to Confidential Discovery Material and Highly Confidential Discovery Material that are set out in the confidentiality stipulation or make similar arrangements to protect wider dissemination of the documents in those categories. I therefore dismiss the GP's application for declarations and consequential relief in relation to the Compelled Documents.

104. I also dismiss the GP's application that its evidence in support of its summonses should be sealed save to the extent that redactions have already been applied to the affidavits and exhibits of Mr Blöchlinger and Mr Finkelman.

105. In addition, I reject the GP's argument that the LPs deliberately breached privilege and confidentiality in Delaware by referring to four of the Compelled Documents in the public version of their post-trial brief for the Delaware trial. I hold that the LPs gave appropriate notice to the GP that they intended to include unredacted references to those documents in the public version of their post-trial brief. Quinn Emanuel did not request any additional redactions, as they were entitled to do and could have done. It does not seem to me that there was anything inherently wrong in the LPs then filing the public version of their post-trial brief in the form approved by Quinn Emanuel,

and the LPs' case is that they were obliged to do so in order to comply with Court of Chancery Rule 5.1.

106. Given my conclusions on the effect of the confidentiality stipulation and the Consent Orders, I do not consider it necessary to add further to this lengthy judgment by addressing in detail the questions whether, in principle, the loss of privilege in Delaware prevents privilege under Cayman law from being claimed; and whether the way in which the circumstances in which the GP disclosed the Compelled Documents in Delaware was or was not sufficiently voluntary in nature to give rise to or to prevent a voluntary waiver of privilege under Cayman law. Those issues simply do not arise on the conclusions that I have reached.

## E. The misleading evidence filed on behalf of the GP

107. Before leaving this matter, it is necessary that I address the misleading evidence filed in support of the GP's summonses by Mr Berdon in his signed approved draft affidavit dated 27 November 2025. Unhappily, this judgment should be read with my judgment in *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No.4)* [2025] CIGC (FSD) 124, which was delivered before this judgment but concerns events that occurred after the hearing of the GP's summonses on 28 November 2025. It provides my reasons for vacating the trial at the hearing on 17 December 2025 but also records my criticisms of the GP and Quinn Emanuel for actively misleading the Grand Court and the Court of Appeal in the period before that hearing regarding the GP's intention that the trial on 12 January 2026 should go ahead, and apparently Walkers as well, and for Quinn Emanuel's attempts to bully an attorney at Campbells. As I indicate in that judgment, it is extremely concerning that there have been two instances of Quinn Emanuel being involved in misleading the Grand Court within 3 weeks.

108. In the course of his oral submissions on 28 November 2025, Mr Scott criticised Mr Berdon's evidence in his affidavit in trenchant terms as being misleading in certain important respects. Mr Ayres and Walkers were in court and attorneys from Quinn Emanuel observed the hearing on 28 November 2025 remotely. Following the hearing on 28 November 2025, and notwithstanding the submissions by Mr Scott that Mr Berdon's draft affidavit was seriously misleading, Mr Berdon proceeded to swear his affidavit on 2 December 2025 in the form of the draft that he had approved on 27 November 2025.

109. For the reasons that I now set out, I conclude that Mr Scott's criticisms of Mr Berdon's evidence are justified.

110. As I have indicated earlier in this judgment, Mr Berdon describes himself in his affidavit as being the lead partner at Quinn Emanuel with conduct of the Delaware action on behalf of the GP. He is based in Quinn Emanuel's New York office. He is supported by a number of attorneys within Quinn Emanuel, including attorneys based in Quinn Emanuel's Wilmington, Delaware office. In addition to Quinn Emanuel, the GP is represented in the Delaware action by a number of partners and associates from Ross Aronstam & Moritz LLP, who are also based in Wilmington, Delaware and who hold themselves out as being experienced in litigating the most significant corporate and commercial disputes before the Delaware Court of Chancery. In the circumstances, it is appropriate to infer that the GP's legal team, including Mr Berdon, should be fully familiar with the appropriate practice and procedure before the Delaware Court of Chancery.

111. In addition, the GP is represented in the Cayman Islands by Mr Ayres and Walkers, both of whom are experienced in conducting litigation before the Grand Court and with the ethical requirements associated with being officers of the Court and attorneys at law in the Cayman Islands. I do not believe that either would knowingly have assisted in any attempt to mislead the Court.

112. I find that Mr Berdon's statements that the facts and matters set out in his affidavit which are within his knowledge are true and correct, and are true and correct to the best of his information and belief where they are not within his knowledge, are extremely questionable. I conclude that the content of Mr Berdon's affidavit is seriously misleading in several important respects, which are material to the argument put forward before me on behalf of the GP that the LPs deliberately breached the confidentiality regime in Delaware in order to assist them in resisting the GP's summonses, and also in respect of Mr Berdon's wider criticisms of the LPs' conduct in Delaware. I cannot see how Mr Berdon was not aware that his affidavit is seriously misleading.

### *E.1 The effect of the confidentiality stipulation*

113. The confidentiality stipulation was signed by Mr Berdon, along with a number of his colleagues at Quinn Emanuel and by their co-counsel from Ross Aronstam & Moritz LLP. Mr Berdon must be taken

to be familiar with its contents and with Chancellor McCormick's qualification that its application to the Delaware action is subject to Court of Chancery Rule 5.1 as regards documents filed at court.

114. In paragraphs 5 to 8 of his affidavit, Mr Berdon describes the effect of the confidentiality stipulation in the Delaware action. He asserts that:

> *"5. […] As the Rigmora LPs will be aware, the Confidentiality Stipulation governed not only the handling, review and use of designated materials during discovery, but also the manner in which such materials could be referenced in motion practice, at trial, and in any publicly filed submissions, including by requiring redaction or sealing where necessary to preserve the protections conferred.*
>
> *6. The confidentiality protections took on particular importance following the Delaware Court's 8 September 2025 order compelling production of the Privileged Documents […]*
>
> *7. More specifically, a number of the Privileged Documents in the Compelled Production which were plainly privileged and which contained sensitive material were designated by Quinn Emanuel as "Highly Confidential". Where the documents marked with Highly Confidential designations were to be relied upon at the trial, pursuant to the Confidentiality Stipulation, the parties were required to ask the Court to restrict access to the courtroom […]*
>
> *8. Consistent with the confidentiality regime, the parties were required, when preparing public versions of post-trial briefs, to respect the confidentiality of sealed documents and to ensure that highly confidential content was not placed into the public domain. In particular, where highly confidential material was to be cited, it was to be handled through targeted redactions and, where necessary, sealing. Indeed, as stated in Finkelman 1, the Confidentiality Stipulation was intended to preserve the protections over designated materials notwithstanding their disclosure to adversary counsel, and that nothing in the Delaware process effected privilege, including Cayman privilege, or confidentiality outside the confines of that case."*

115. These passages in Mr Berdon's affidavit are to be contrasted with the terms of paragraphs 2 and 3 of the confidentiality stipulation, which is exhibited by Mr Finkelman, and which I have already set out earlier in this judgment. Those paragraphs make clear that *"the manner in which such materials could be referenced in motion practice, at trial, and in any publicly filed submissions"* is governed, not by the confidentiality stipulation, as Mr Berdon asserts in paragraph 5 of his affidavit, but by Court of Chancery Rule 5.1, which Mr Berdon wholly fails to address in his affidavit. This is reinforced by the terms of the Chancellor's rider when she approved the confidentiality stipulation and made it an order of the Delaware court. I am forced to conclude that Mr Berdon's evidence on this aspect is plainly wrong. Further, his complete failure to address Court of Chancery Rule 5.1 in his evidence is inexplicable.

116. Moreover, Mr Berdon's statement that the LPs *"will be aware"* that the confidentiality stipulation governs reference to confidential discovery material in publicly filed submissions is unjustified and is also wrong. There is no reason for the LPs to form that view because paragraphs 2 and 3 of the confidentiality stipulation and the Chancellor's endorsement all make plain that the applicable procedure in respect of documents filed at court is that set out in Court of Chancery Rule 5.1 and not the confidentiality stipulation.

***E.2 The LPs' alleged objection to sealing of the courtroom during the Delaware trial***

117. I have set out the terms of paragraph 25 of the confidentiality stipulation earlier in this judgment. Paragraph 25 deals with the use of confidential discovery material in open court.

118. In paragraph 7 of his affidavit, Mr Berdon states:

> *"7. […] Where […] documents marked with Highly Confidential designations were to be relied upon at the trial […] the parties were required to ask the Court to restrict access to the courtroom, with members of the public being required to leave the courtroom so as to preserve their confidentiality. Notwithstanding this stipulated agreement, the Rigmora LPs objected to the Partnership's timely request to seal the courtroom when Highly Confidential information was to be presented in court. The Court granted the Partnership's request over the Rigmora LPs' objection, noting that it would not be appropriate to have material which was plainly privileged referred to in open Court. […]"*

119. Mr Berdon picks up this point again in paragraph 10 of his affidavit, where he says:

> *"10. On the first day of the Delaware Trial, the Partnership moved to seal the Courtroom during the cross-examination of Dr Seth Harrison when the Rigmora LPs sought to use Highly Confidential documents that contained privilege communications (see October 16, 2025 Trial Transcript at 120:13-24 [DF-2/5]) in an effort to preserve the confidentiality of these documents. The Court granted the motion to seal the Courtroom and, in so doing, Chancellor McCormick stated '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' (see Oct. 16 Tr. 126:10-13 [DF-2/11]) (the "Sealing Order")."*

120. The extracts from the transcript of the trial to which Mr Berdon refers are exhibited by Mr Finkelman; Mr Berdon does not himself exhibit any parts of the transcript. The extracts exhibited by Mr Finkelman disclose that it was Mr Berdon who was the advocate appearing for the GP during this part of the trial before Chancellor McCormick. At page 120, lines 13-24 of the transcript, Mr Berdon is recorded as interjecting in the cross-examination of Dr Harrison as follows:

> *"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."*

121. Ms Shannon Selden of Debevoise & Plimpton, who was appearing for the LPs, responded to Mr Berdon's submission. In summary, she said that the LPs had sought to agree to de-designate the documents that she wished to put to Dr Harrison as highly confidential but had not received any response from the GP's attorneys; the GP's attorneys did not raise their concern about closing the courtroom in advance; and they had not sought an order from the court as required by paragraph 25 of the confidentiality stipulation. In other words, Ms Selden was being ambushed by the GP. The transcript at page 121, lines 1 to 23, exhibited by Mr Finkelman, is as follows:

> *"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."*

122. Mr Berdon responded that the GP had suggested a meet-and-confer to take place on 13 October 2025, three days before the trial was due to commence, which had not taken place. The transcript then sets out a discussion between Ms Selden and Chancellor McCormick regarding the LPs' objection to the documents in question continuing to be designated as "highly confidential", which the Chancellor pointed out was different from the question of privilege in the documents and was the point being raised by Mr Berdon. The transcript records the statement of the Chancellor at page 126, lines 10-13 quoted by Mr Berdon in his affidavit, but Mr Berdon omits from his quotation important context and the Chancellor's further comments. The full text of this part of the transcript at page 126, line 7 to page 127 line 2 is as follows:

> *"[THE COURT:] 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 [take] 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."*

123. Neither Mr Finkelman nor Mr Berdon exhibit the part of the transcript covering the period after the lunch break or refer in their affidavits to what happened when the Delaware court resumed hearing the trial after the lunch break. This part of the transcript was handed up by the LPs during oral argument before me on 28 November 2025. At page 137, lines 4 to 12, the transcript records the following exchange between the Chancellor and Ms Selden, when the hearing resumed:

> *"[THE COURT:] 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. […]"*

124. Having considered the extracts from the transcript to which I have referred, it seems to me that:

124.1 Mr Berdon's statement in paragraph 7 of his affidavit that the GP had made a *"timely"* request to seal the courtroom is highly questionable in light of the GP's failure to make an application in advance of trial under paragraph 25 of the confidentiality stipulation and the apparent ambush of Ms Selden at trial during her cross-examination of Dr Harrison.

124.2 Mr Berdon's statement in paragraph 7 of his affidavit that the Chancellor granted the GP's request to seal the courtroom over the LPs' objection is simply wrong. The sealing of the courtroom was by consent, once Ms Selden had considered the GP's request over the lunch break. There was no question of the Chancellor ruling against the LPs, as stated by Mr Berdon. Moreover, given that Mr Berdon was the advocate who was appearing for the GP at the hearing, it is inexplicable how he could have made these errors and why he did not give a full explanation of events in his affidavit.

124.3 Of more concern, is that neither Mr Finkelman nor Mr Berdon referred at all to and did not exhibit a copy of page 137 of the transcript of the Delaware trial, which puts a completely

different complexion on how the debate regarding sealing the courtroom concluded. I do not understand why a full account of the hearing was not given in Mr Berdon's affidavit. I am driven to the conclusion that this was an attempt by Mr Berdon to mislead the Court as to the LPs' position and the Chancellor's response to it.

***E.3 The GP's case that the LPs deliberately breached the confidentiality stipulation***

125. In my judgment, there was a further attempt by Mr Berdon to mislead the Court, which is more serious. I have set out earlier in this judgment paragraphs 28-31 of Mr Berdon's affidavit entitled *"Rigmora LPs' breach of Confidentiality Stipulation"*. I have also discussed earlier in this judgment the mischaracterisation by Mr Berdon of the effect of the confidentiality stipulation and the omission by Mr Berdon in his evidence of any reference to Court of Chancery Rule 5.1 and its relevance to the issues that he advances in his affidavit. The result is that Mr Berdon's repeated assertions in his affidavit that the LPs breached the confidentiality stipulation by referring to putatively privileged documents in the public version of their post-trial brief are simply wrong. The preparation of the post-trial briefs on each side was governed by Court of Chancery Rule 5.1, not by the confidentiality stipulation. It was, thus, not a *"fact"* that the LPs had breached the confidentiality stipulation, as stated by Mr Berdon in paragraph 28 of his affidavit.

126. I have also noted earlier in this judgment that Mr Berdon exhibited an email sent by Ms Doughty at 6:03 pm on 26 November 2025 without also exhibiting or even referencing in his affidavit the following other highly relevant contemporaneous emails between the parties' attorneys:

126.1 email sent at 2:53 pm on 12 November 2025 by Mr Greer circulating a proposed public version of the LPs' post-trial brief pursuant to Court of Chancery Rule 5.1 and seeking the GP's additional redactions by 3:00 pm on 17 November 2025;

126.2 email sent at 3:02 pm on 17 November 2025 by Ms Harrison, after the time specified in Rule 5.1 and by Mr Greer for any response had expired, indicating that Quinn Emanuel would provide a few redactions shortly;

126.3 email sent at 10:00 am on 18 November 2025 by Ms Harrison stating that the GP did not have any redactions; and

126.4 email from Mr Zachery Greer sent at 8:16 pm on 26 November 2025 in response to Ms Doughty's email, which rehearses the previous correspondence and appears to provide a complete answer to the complaints made in Ms Doughty's email.

127. Finally, I record that, in response to Mr Scott's oral submission that Mr Berdon's omission from his affidavit of copies of, or any reference to, the emails of 12, 17, 18 and 26 November 2025 was inexcusable, Mr Ayres was in the unhappy professional position of having to tell the Court at the hearing on 28 November 2025 that: (a) Mr Greer's email of 26 November 2025 *"absolutely should have been included in the exhibit"*; and (b) neither he nor Walkers had seen or were aware of Mr Greer's email before it was put before the Court by the LPs.

128. It seems to me that Mr Ayres' concession that Mr Berdon should have exhibited the emails must apply with equal force to the emails of 12, 17 and 18 November 2025, and I infer that neither Mr Ayres nor Walkers were aware of those emails until the LPs produced them in court. If they had been aware of them, Mr Ayres would not have made the oral submissions that he did regarding the LPs' alleged deliberate breach of privilege or Walkers would not have permitted him to do so.

129. It is extremely concerning that Walkers and Mr Ayres were not informed of any of the emails of 12, 17, 18 and 26 November 2025 by the GP or Quinn Emanuel and that, as a result, Mr Ayres made oral submissions to the Court regarding the public version of the LPs' post-trial brief and its potential effect on the privilege issues on the basis that the matters stated in Mr Berdon's affidavit that I have identified are correct, when they are plainly not.

130. Mr Berdon's failure to exhibit or to refer to the emails of 12, 17, 18 and 26 November 2025 that I have discussed is highly concerning. The only apparent explanations for it are that it was gross incompetence in the preparation of his affidavit, of a kind that is very difficult to conceive would occur within a well-resourced firm of the stature of Quinn Emanuel, or that it was a deliberate attempt to mislead the court. I am driven to the latter conclusion, having regard to:

130.1 the timing of the email from Mr Greer sent on 26 November 2025: while Mr Berdon was not apparently copied into either Ms Doughty's email or Mr Greer's response, he was clearly provided with a copy of Ms Doughty's email in order to prepare his affidavit and it is inconceivable that he was not also provided with a copy of Mr Greer's response sent just over

two hours later or that he did not enquire whether a response to Ms Doughty's email had been received before approving his affidavit; it is also inconceivable that he did not review or ask to see the relevant correspondence preceding Ms Doughty's email;

130.2 Mr Berdon's role as lead partner on the Delaware action: it is equally inconceivable that Mr Berdon, as lead partner, was not aware of Mr Greer's earlier emails sending the draft public version of the LPs' post-trial brief and the substance of the responses to that sent by Ms Harrison, as well as the email exchange on 26 November 2025 between Ms Doughty and Mr Greer; and

130.3 the fact that, notwithstanding that Mr Scott made trenchant criticisms of Mr Berdon and Quinn Emanuel in his oral argument before me on 28 November 2025, and that attorneys from Quinn Emanuel observed the hearing remotely, there has been no communication from Mr Berdon, Quinn Emanuel or anyone on their behalf since that hearing, some 7 weeks ago, responding to Mr Scott's complaints or suggesting that Mr Berdon or Quinn Emanuel accept that there were any errors in Mr Berdon's affidavit: to the contrary, Mr Berdon proceeded to swear his affidavit on 2 December 2025 in the form of the draft that he had approved on 27 November 2025, in the face of the submissions by Mr Scott on 28 November 2025 that it was misleading in the ways set out above and despite Mr Ayres' concession that Mr Greer's email *"absolutely"* should have been exhibited.

131. If Mr Berdon were an attorney-at-law in the Cayman Islands, it is likely that he would face a disciplinary complaint in relation to these matters. As he is not, I simply record my extreme dissatisfaction with his conduct and that of Quinn Emanuel in the respects that I have set out.

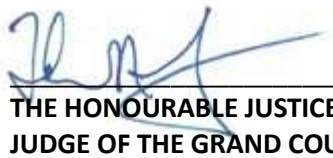
### *E.4 Post-script*

132. In the usual way, a draft of this judgment was circulated to the parties' attorneys for them to propose corrections to typographical and factual errors. In response, Walkers drew to my attention that Mr Berdon had sworn a second affidavit on 2 December 2025; that Campbells had objected to that evidence being filed; and that Walkers had then conceded that Mr Berdon's second affidavit would not be filed. Mr Berdon's second affidavit has not been filed. Walkers invited me to review it and the exhibit, and also the *inter partes* correspondence, which I have done. Mr Berdon's second affidavit exhibits Ms Doughty's email sent on 26 November 2025, Mr Greer's response that day, and two

subsequent emails between the parties' US attorneys arguing about whether the LPs' public version of their post-trial brief breached any sealing orders in Delaware. Those two emails post-date the hearing before me on 28 November 2025. It does not exhibit any of the emails of the emails of 12, 17 or 18 November 2025 or the extract from the transcript of the hearing before the Chancellor after the lunch break.

133. Mr Berdon does not express any apology or explanation in his second affidavit for the omission of Mr Greer's email from the exhibit to his first affidavit. He does not provide any response to the detailed criticisms of his evidence made by Mr Scott at the hearing on 28 November 2025. In my judgment, Mr Berdon's second affidavit does not provide any reason for me to alter the findings that I have already made and the concerns I have expressed about his conduct.

**Dated 27 January 2026**



**THE HONOURABLE JUSTICE JALIL ASIF KC**
**JUDGE OF THE GRAND COURT**

**EXHIBIT S**

Walkers

**BY EMAIL**

3 December 2025 Our Ref: JG/SW/RB/197133

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman KY1-9010
Cayman Islands

**Attention: Liam Faulkner, Hugo Farmer and Jordie Fienberg**

Dear Campbells

**UNICORN BIOTECH VENTURES ONE LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR ONE LP) AND UNICORN BIOTECH VENTURES TWO LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR TWO LP) V ATP III GP, LTD (IN ITS CAPACITY AS GENERAL PARTNER OF ATP LIFE SCIENCE VENTURES, L.P.)**
**CAUSE NO. FSD 146 OF 2025 (JAJ)**

**IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**
**CAUSE NO. FSD 151 OF 2025 (JAJ)**

1. We write regarding our client's Privilege Summonses and the Court's email dated 1 December in which the Judge dismissed our client's summonses (the "**Court's Email**"). We note that the Court's Email indicated that a fully reasoned judgment would follow in due course.

2. We write to put your clients on notice that our client intends to urgently appeal the Court's decision on the Privilege Summonses (the "**Privilege Appeal**"). In that regard, our client will plainly not be in a position to file an application for leave to appeal before the Court's fully reasoned judgment is available. In circumstances where the parties are operating on a condensed trial timetable, and in an effort to mitigate any disruption to the trial fixture, our client now writes to propose the following pragmatic approach:

   (a) As you will have noted, our client has already written to the Judge to request that his fully reasoned judgment in respect of the Privilege Summonses be provided as soon as possible;

   (b) Upon receipt of the fully reasoned judgment in draft form, our client will seek to file its application for leave to appeal within 7 days of receipt of the same (the "**Leave Application**");



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(c) Upon receipt of our client's Leave Application, we propose that your clients confirm within 2 days of service of the same whether they will oppose the application and, if so, on what basis. More specifically:

(i) In the event that your clients confirm that they will not object to the Leave Application, we intend to seek the Court's leave to appeal by presenting it with draft consent orders in respect of the Privilege Summonses to that effect; or

(ii) Alternatively, in the event that your clients indicate they will oppose the Leave Application, we propose that the parties will thereafter liaise with the listing officer to list our client's Leave Application as soon as possible on a date mutually convenient to the parties and the Court and, upon a listing date being provided, agree directions for submissions.

3. We also confirm that, should our client be granted leave to appeal from this Court, our client intends to write to the Court of Appeal to seek a special sitting so as to ensure the Privilege Appeal can proceed as swiftly as possible.

4. In our view, on any proper analysis and to protect the existing trial timetable, we consider that the most efficient course is for your clients to confirm they raise no objection to our client's Leave Application in this Court so as to facilitate it being granted expeditiously. This is particularly so in circumstances in which, in the event that our client's Leave Application were to be refused in this Court, our client would have no alternative but to seek leave to appeal by way of an *ex parte* application to the Court of Appeal which will inevitably only cause further delay to the progress of our client's prospective appeal.

5. Accordingly, please confirm your clients' agreement to the above proposed approach.

6. For the avoidance of doubt, our client is ready and willing to proceed to trial on 12 January 2026 and does not presently seek any variation to the directions to trial. The only effect of the Privilege Appeal, as matters stand, is that the trial cannot proceed by reference to the Compelled Documents unless and until the appeal is determined adversely to our client.

7. We separately address the respective consequential matters arising from our client's prospective Privilege Appeal below.

**Volume H Loadfile**

8. We refer to your email of 6:24am on 2 December and the enclosed loadfile containing the documents which your clients have proposed be uploaded to Volume H of the trial

bundle. We note that the loadfile attached to your email contains 84 of the Compelled Documents[1].

9. We can confirm that our client will not, at this stage, consent to the upload of the loadfile as provided for the following reasons:

   (a) The purpose of our client's Privilege Appeal is to restrain your clients' use at trial of a subset of the Compelled Documents relating to hostile litigation between the parties. Whilst the Privilege Appeal remains extant and directed to that very issue, it would be improper to include within the trial bundle the documents which are the subject of the proposed Privilege Appeal; and

   (b) This is particularly so because, if the Court were to see those materials and the Privilege Appeal were subsequently allowed, the prejudice would be irreparable such that the likely (if not inevitable) consequence would be a re-trial, with substantial cost and delay for all parties.

10. Accordingly, we ask that your clients provide a revised loadfile excluding any of the Compelled Documents relating to hostile litigation between the parties for our prompt review.

11. We would also ask that your clients refrain from uploading any Compelled Documents relating to hostile litigation between the parties pending determination of our client's Privilege Appeal.

12. To the extent that your clients will seek to rely on the Hostile Litigation Documents for the purpose of their trial statements which are due on 5 December, we put you on notice that any reference to the Hostile Litigation Documents either in your clients' witness statements themselves (whether by virtue of a passing reference or express quotation) and/or in any exhibit ought to be properly redacted before being filed with the Court pending the outcome of our client's Privilege Appeal.

**Invoices Letter**

13. We refer to your letter dated 24 November 2025 in which you asked our client to provide unredacted copies of numerous legal invoices, or, in the alternative, to describe the legal matters covered by those invoices and why it is asserted that the redacted information is covered by legal privilege.

14. We can confirm that our client will not provide unredacted versions of the legal invoices to your clients. The information redacted in those invoices was properly redacted due to legal privilege. Your clients are not entitled to see that information, which is and

[1] We note that a substantial number of the 84 documents contained in your clients' loadfile appear to consist of a subset of the Compelled Documents that relate to disputes between the GP/Partnership and the Rigmora LPs (the "**Hostile Litigation Documents**").

remains privileged, or to be provided with a description of the privileged material that has been appropriately redacted. We trust this brings an end to this line of correspondence.

**Status of Documents in the Trial Bundle**

15. We confirm that our client does not consent to documents within Volume H automatically standing as evidence in the proceedings.

16. It would not be appropriate to agree that all documents in the trial bundle automatically stand as evidence because mere inclusion in the bundle does not establish either admissibility or the truth of their contents, and short-circuits the safeguards that ensure a fair trial.

17. The civil evidence regime draws a clear distinction between authenticity, admissibility and weight and documents relied upon for their truth should either (i) be proved through a witness statement that stands as evidence in chief, allowing for proper testing by cross-examination, or (ii) be adduced as hearsay with a compliant notice so that the opposing party has a fair opportunity to address reliability, context and weight.

18. Collapsing these safeguards by deeming the entire bundle to be in evidence risks admitting material that is irrelevant, duplicative, or unfairly prejudicial, encourages trial by documents without proper foundations, and invites disputes at the point of submissions rather than through orderly proof. It also creates procedural unfairness by shifting the burden onto the responding party to police an amorphous mass of material and to anticipate unpleaded or undeveloped points smuggled in via the bundle, increasing the risk of satellite skirmishes about scope and weight. This is also a particularly unattractive approach in circumstances where the parties are already operating on an extremely condensed trial timetable. The parties should be endeavouring to streamline matters rather than adopting broadbrush approaches which will plainly have a much wider (and likely prejudicial) effect at trial.

19. On that basis, we consider that our client's proposed approach preserves procedural clarity, ensures efficient case management, and protects against trial by ambush while still allowing the parties to agree authenticity or other limited uses where appropriate.

20. If your clients wish to proceed on the basis they have proposed, we invite them to issue an application for appropriate declarations to that effect at the PTR.

**Confidentiality Ring Order**

21. Further to your second email of 12:16pm on 2 December 2025, the form of any confidentiality ring order will plainly be shaped by the outcome of our client's Privilege Appeal. On that basis, we do not consider it appropriate to provide a draft of that order until such time as the appeal is determined.

22. Please provide a response to this letter by 4pm on 4 December.

Yours faithfully

Walkers (Cayman) LLP

**WALKERS (CAYMAN) LLP**

**EXHIBIT T**

**From:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Sent:** Monday, December 8, 2025 11:38 AM
**To:** FSD Registry; Lauren Wood
**Cc:** Rigmora; Walkers-ATP
**Subject:** FW: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

**EXTERNAL EMAIL: This email originated from outside of Campbells.**



Dear FSD Registry,

We received an out of office from Ms Wood in response to our email below.

We would be most grateful if a member of the FSD Registry could assist with our email below in light of the urgency to our request.

Kind regards,
Laure-Astrid

Laure-Astrid Wigglesworth
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From: Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
Sent: 08 December 2025 11:28
To: Lauren Wood <Lauren.Wood@Judicial.ky>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
Cc: Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>

**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms Wood,

Thank you for your email.

We write to confirm that we are instructed to appeal the Judge's decision on the Privilege Summonses. In order to progress our client's appeal promptly and so as not to imperil the January trial fixture, we would be grateful if the reasoned judgment could be handed down as soon as reasonably practicable.

We know how busy the learned judge is, and we apologise for adding to that workload.

Should there be any update on a provisional indication of when the Court is likely to circulate its judgment, that would be most helpful.

Kind regards,
Laure-Astrid

**Laure-Astrid Wigglesworth**
Associate
**Walkers (Cayman) LLP**

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---

**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** 04 December 2025 10:55
**To:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

[this message is from an external sender]

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Dear Ms Wigglesworth,

Thank you for your clarification.

His Lordship' s position remains as set out in my earlier email: no written judgment has yet been handed down, and there is currently no fixed timetable for its release. The reasoned judgment will be circulated to the parties as soon as it has been finalised.

Kind regards,

Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC
Law Courts I 61 Edward St. I P.O. Box 495 I Grand Cayman, KY1-1106 I Cayman Islands
Main: (345) 949-4296 I Direct: (345) 244-3733
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**From:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Sent:** Thursday, December 4, 2025 10:21 AM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley

<Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
Cc: Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
Subject: RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms Wood,

Our apologies, there was a typographical error in our email below which was meant to read as follows:

We write further to the Court's email of 1 December 2025 communicating Justice Asif's decision on the Privilege Summonses and noting that a fully reasoned judgment will follow in due course.

We would, accordingly, be grateful if the Court could provide any indication as to when the judgment in the Privilege Summonses is likely to be circulated.

Kind regards,

Laure-Astrid

**Laure-Astrid Wigglesworth**
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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** 04 December 2025 09:46
**To:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

**[this message is from an external sender]**

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Dear Counsel,

Thank you for your email below.

His Lordship has not yet handed down judgment in respect of the Mediation Summonses. At the hearing, His Lordship indicated his decision and confirmed that a written judgment would follow, but no ex tempore judgment was delivered.

There is presently no fixed timetable for the hand-down. However, the reasoned judgment will be circulated to the parties as soon as it has been finalised and released.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
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**From:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Sent:** Wednesday, December 3, 2025 4:24 PM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>

**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms Wood,

We write further to the Court's email of 1 December 2025 communicating Justice Asif's decision on the Mediation Summonses and noting that a fully reasoned judgment will follow in due course.

We would be grateful if the Court could please circulate the reasoned judgment as soon as it is available. If there is any provisional timetable for hand-down or any indication as to when the judgment is likely to be released, we would also appreciate that guidance.

We remain at the Court's disposal.

Kind regards,

Laure-Astrid

**Laure-Astrid Wigglesworth**
Associate
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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** 01 December 2025 13:45
**To:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

**[this message is from an external sender]**

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Dear Counsel,

As indicated at the conclusion of the hearing on Friday, 28 November 2025, I now communicate Justice Asif's decision on the summons filed on 2 October 2025 regarding the documents disclosed in the Delaware proceedings. A fully reasoned judgment will follow in due course.

Justice Asif concludes that the documents in question may be used within the Cayman proceedings. This conclusion is based on two primary considerations:

1. Objective construction of the parties' agreement: Considering the matter objectively, this is what the parties must be taken to have agreed, having regard to the 1 August 2025 consent order and the relevant aspects of the agreed discovery protocol.
2. Partnership property and trust principles: The documents were obtained before 15 May 2025, at a time when the GP's case is that the relationship with the LPs had not broken down. They must therefore be taken to have been obtained ostensibly for the benefit of the partnership and paid for by the partnership. As such, they are properly to be regarded as partnership property held on trust for the LPs, in respect of which the GP cannot assert privilege as against the LPs.

For the avoidance of doubt, this does not mean the documents may not be privileged as against others. The Judge is willing to consider implementing any necessary and appropriate arrangements to preserve confidentiality and/or privilege, consistent with the protections in place in the Delaware proceedings.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky **I** Website: www.judicial.ky

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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** Thursday, November 27, 2025 10:47 AM
**To:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms. Wigglesworth,

Please accept my apologies if this was not already clear from my earlier correspondence. I confirm that the breakout room has been reserved as requested.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands

Main: (345) 949-4296 **I** Direct: (345) 244-3733
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**From:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Sent:** Thursday, November 27, 2025 10:43 AM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms Wood,

Thank you for the update.

We would be grateful if a breakout room could be reserved for Walkers and leading counsel as indicated in your email below.

Kind regards,
Laure-Astrid

**Laure-Astrid Wigglesworth**
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---

**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** 27 November 2025 10:39
**To:** Yuan Wen | Campbells <YWen@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>

**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

**[this message is from an external sender]**

---

Dear Ms. Wen,

I confirm the room has been reserved.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky **I** Website: www.judicial.ky

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**From:** Yuan Wen | Campbells <YWen@campbellslegal.com>
**Sent:** Thursday, November 27, 2025 10:36 AM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

Dear Ms Wood

In light of the change in Court room for this afternoon's hearing, we would also be grateful if a breakout room could be made available for Campbells and leading counsel.

Kind regards

Yuan

**Yuan Wen**

Associate

**E** ywen@campbellslegal.com

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**Campbells LLP**

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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** Thursday, November 27, 2025 10:32 AM
**To:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERS-AMER_DOCS.FID559398]

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Dear Ms Moseley,

Thank you for your email.

Please note that today's hearing has been moved from Hearing Room 1 to **Courtroom 6**. In light of this, I am able to offer a breakout room for Walkers and Leading Counsel for this afternoon.

Tomorrow's hearing remains scheduled to proceed in Hearing Room 1 and, on that basis, I am unfortunately not in a position to offer a conference/breakout room unless I am advised of a change to a courtroom.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky **I** Website: www.judicial.ky

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**From:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>
**Sent:** Wednesday, November 26, 2025 8:31 PM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERS-AMER_DOCS.FID559398]

Dear Ms Wood

Many thanks for circulating the Zoom links.

Just to confirm that some of our client's onshore legal team will also be joining remotely to observe the hearing, as well as Ms White of Walkers Cayman, who is currently travelling abroad.

We should also be grateful if a breakout room could be made available to Walkers and our Leading Counsel during Thursday afternoon and Friday.

Kind regards

Rebecca

**Rebecca Moseley**
Associate
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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** 25 November 2025 13:43
**To:** Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

**[this message is from an external sender]**

Dear Counsel,

I write to confirm that His Lordship has approved the request for remote attendance for the hearings listed for Thursday and Friday.

Please find below the relevant Zoom details for each day:

**Thursday – Zoom Link**
**Mediation Summonses**

Join Zoom Meeting

https://zoom.us/j/96191210548?pwd=Q9ELJL6Fo1HZQJhOeZblXtJaFT3tvu.1

Meeting ID: 961 9121 0548

Passcode: 705960

**Friday – Zoom Link**

**Privilege Summonses**

Join Zoom Meeting

https://zoom.us/j/99340142683?pwd=0ZhxpTmKq4O5ofhHSF9yuWZOAdQgKi.1

Meeting ID: 993 4014 2683

Passcode: 173099

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky **I** Website: www.judicial.ky

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**From:** Jordie Fienberg | Campbells <JFienberg@campbellslegal.com>
**Sent:** Tuesday, November 25, 2025 11:23 AM
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

Dear Ms Wood,

Representatives of our clients and their US/UK attorneys may wish to attend the hearings of both the Mediation Summonses and Privilege Summonses remotely. We would be grateful if you could please confirm whether His Lordship is content for them to do so.

Kind regards

Jordie

**Jordie Fienberg**

Associate

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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** Tuesday, November 25, 2025 10:45 AM
**To:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERS-AMER_DOCS.FID559398]

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---

Dear Counsel,

I confirm receipt and have passed your email and hard copies to the Judge.

I also confirm the Hearing Bundle has been updated.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands
Main: (345) 949-4296 **I** Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky **I** Website: www.judicial.ky

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**From:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>
**Sent:** Monday, November 24, 2025 4:39 PM
**To:** Yuan Wen | Campbells <YWen@campbellslegal.com>; Lauren Wood <Lauren.Wood@Judicial.ky>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERS-AMER_DOCS.FID559398]

Dear Ms Wood

Further to my email of Friday, please see attached the GP's skeleton argument for the Privilege Summonses with references to the joint authorities bundle now inserted.

For ease of the GP's skeleton arguments being in one email, I also re-attach the GP's skeleton argument in respect of the Mediation Summonses, as lodged on Friday.

The joint authorities bundle in respect of the Privilege Summonses can be downloaded here: https://walkersglobal.sharefile.com/public/share/web-s3bc12ed9f9ea4d4b99c2468e4f07e878. The link also contains the updated hearing bundle, with Tab 39 updated (formerly a placeholder) and additional correspondence included in Tab 40.

Hard copies of the above, including the hearing bundle inserts, are also being delivered to Court.

Kind regards

Rebecca

**Rebecca Moseley**
Associate
**Walkers (Cayman) LLP**

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www.walkersglobal.com

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**From:** Yuan Wen | Campbells <YWen@campbellslegal.com>
**Sent:** 24 November 2025 15:16
**To:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>; Lauren Wood <Lauren.Wood@Judicial.ky>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [WALKERS-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

Dear Ms Wood

Further to Walkers' email below, please see **attached** the Plaintiffs/Petitioners' skeleton arguments with updated bundle references.

We will shortly file copies on the Portal and arrange for hard copies to be delivered to Court.

Kind regards

Yuan

**Yuan Wen**

Associate

E ywen@campbellslegal.com

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**Campbells LLP**

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**From:** Rebecca Moseley <Rebecca.Moseley@walkersglobal.com>
**Sent:** Friday, November 21, 2025 5:20 PM
**To:** Yuan Wen | Campbells <YWen@campbellslegal.com>; Lauren Wood <Lauren.Wood@Judicial.ky>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731] [WALKERS-AMER_DOCS.FID559398]

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Dear Ms Wood

Please see attached the following documents on behalf of our client in advance of the hearing of the Mediation and Privilege Summonses listed for 27-28 November 2025 next week.

- GP's skeleton argument for the Mediation Summonses (with bundle references now inserted)
- GP's skeleton argument for the Privilege Summonses

The electronic hearing bundle (being a composite bundle for both applications) and joint authorities bundle for the Mediation Summonses can be accessed here: https://walkers.sharefile.com/public/share/web-sef25b2589fe44736bacf28c771140149. Hard copies have also been delivered to Court today.

As explained by Campbells below, as the parties have only exchanged skeleton arguments in respect of the Privilege Summonses at the same time as lodging with the Court, there has been insufficient time to prepare the joint authorities bundle by close of business today. In the event that His Lordship intends to commence pre-reading before Monday, the parties have agreed to each prepare electronic copies of their own authorities, with references in their respective skeleton arguments to those bundles. However, in accordance with the requirements of the FSD Guide, we will be preparing a joint authorities bundle to be lodged as soon as possible on Monday, at which point the parties will update their skeleton arguments with the joint authorities bundle references.

In that regard, the link above also contains the GP's authorities bundle for the Privilege Summonses.

Kind regards

Rebecca

**Rebecca Moseley**
Associate
**Walkers (Cayman) LLP**

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**From:** Yuan Wen | Campbells <YWen@campbellslegal.com>
**Sent:** 21 November 2025 17:14
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [WALKERSGLOBAL-AMER_DOCS.FID559398] [IMAN-IMANLIT.FID170731]

Dear Ms Wood

Please find **attached** a copy of the Plaintiffs'/Petitioners skeleton argument in respect of the privilege summonses.

We understand Walkers will be preparing a joint authorities bundle. In the meantime, the Plaintiffs' authorities can be downloaded via the link below:

https://campbellslaw.sharefile.com/i/i1f7efbf6b7e4161b

We will re-file our skeleton with updated references on Monday.

Kind regards

Yuan

**Yuan Wen**

Associate

E ywen@campbellslegal.com

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**From:** Lauren Wood <Lauren.Wood@Judicial.ky>
**Sent:** Friday, November 21, 2025 11:38 AM
**To:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>; Yuan Wen | Campbells <YWen@campbellslegal.com>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** Re: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

**EXTERNAL EMAIL: This email originated from outside of Campbells.**

---

Dear Counsel,

Confirming receipt of your email which was passed to the Judge.

Kind regards,

**Lauren Wood | Personal Assistant | Hon. Justice Jalil Asif KC**
Law Courts **I** 61 Edward St. **I** P.O. Box 495 **I** Grand Cayman, KY1-1106 **I** Cayman Islands

Main: (345) 949-4296 I Direct: (345) 244-3733
Email: Lauren.Wood@Judicial.ky I Website: www.judicial.ky

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**From:** Laure-Astrid Wigglesworth <Laure-Astrid.Wigglesworth@walkersglobal.com>
**Sent:** Thursday, November 20, 2025 6:20 PM
**To:** Yuan Wen | Campbells <YWen@campbellslegal.com>; Lauren Wood <Lauren.Wood@Judicial.ky>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** RE: FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [IMAN-IMANLIT.FID170731] [WALKERSGLOBAL-AMER_DOCS.FID559398]

Dear Ms Wood,

Please see attached our client's skeleton argument in respect of the Mediation Summonses listed for hearing at 2pm on 27 November.

We will similarly arrange for the skeleton argument to be updated with bundle references once the bundles have been finalised.

Kind regards,

Laure-Astrid

**Laure-Astrid Wigglesworth**
Associate
**Walkers (Cayman) LLP**

**T** +1 345 814 6844 | **M** +1 345 926 6844
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Bermuda | British Virgin Islands | Cayman Islands | Dubai | Guernsey | Hong Kong | Ireland | Jersey | London | Singapore




**From:** Yuan Wen | Campbells <YWen@campbellslegal.com>
**Sent:** 20 November 2025 16:11
**To:** Lauren Wood <Lauren.Wood@Judicial.ky>; FSD Registry <fsdregistry@Judicial.ky>
**Cc:** Walkers-ATP <Walkers-ATP@walkersglobal.com>; Rigmora <Rigmora@campbellslegal.com>
**Subject:** FSD 151 of 2025 and FSD 146 of 2025 - Mediation Summonses [IMAN-IMANLIT.FID170731]

Dear Ms Wood

Please see **attached** the Plaintiffs/Petitioners' skeleton for the mediation summonses listed for hearing at 2pm on 27 November 2025, which will shortly be filed on the portal.

We will re-file the skeleton with the bundle references once the bundles have been finalised.

Kind regards

Yuan

**Yuan Wen**

Associate

E ywen@campbellslegal.com

T +1 345 949 2648 D +1 345 914 6902 C +1 345 526 6902

**Campbells LLP**

Floor 4, Willow House, Cricket Square

Grand Cayman KY1-9010, Cayman Islands

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**EXHIBIT U**

Walkers

**BY EMAIL**

9 December 2025 Our Ref: JG/SW/RB/197133

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman KY1-9010
Cayman Islands

**Attention: Liam Faulkner, Hugo Farmer and Jordie Fienberg**

Dear Campbells

**UNICORN BIOTECH VENTURES ONE LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR ONE LP) AND UNICORN BIOTECH VENTURES TWO LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR TWO LP) V ATP III GP, LTD (IN ITS CAPACITY AS GENERAL PARTNER OF ATP LIFE SCIENCE VENTURES, L.P.)**
**CAUSE NO. FSD 146 OF 2025 (JAJ)**

**IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**
**CAUSE NO. FSD 151 OF 2025 (JAJ)**

1. We refer to your letter dated 4 December 2025 ("**Your Letter**"). Where terms aren't defined, we adopt the definitions used in previous correspondence.

**Appeal and timetable**

2. First, Your Letter appears to contend that because the parties are working to an expedited trial, any appeal should be discouraged or treated as waived. We reject that analysis. The existence of a compressed timetable does not, and cannot, deprive parties of their statutory and constitutional rights of appeal.

3. Second, and for the avoidance of doubt, we reject any suggestion in Your Letter that our client's appeal is in any way unmeritorious or a tactical attempt to delay the trial.

4. Third, as you will have seen (and contrary to your comments regarding our client's purported delay tactics), we have urgently requested the delivery of the Judge's fully reasoned judgment on the Privilege Summonses, and we have made immediate enquiries with the Court of Appeal regarding the earliest availability for an urgent hearing of our client's Privilege Appeal. In that context, it is unfortunate that your clients have not sought to agree our client's application for leave to appeal. That stance will, inevitably, generate further interlocutory steps and consequent delay in progressing the appeal.



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5. Fourth, and further to our client's email of 8 December to the clerk of the CICA, please provide your leading counsel's dates of availability between now and the trial for the listing of our client's urgent appeal so that the CICA can be approached on a joint basis for listing.

6. Fifth, turning to your clients' request that our client confirm it will not renew any application for leave to appeal to the CICA *ex parte*, that request is rejected. Our client has a statutory entitlement to seek leave from a single judge of the CICA *ex parte* on the papers and reserves that route as the appropriate and most expeditious course should leave be refused below.

**Stay**

7. For the avoidance of doubt, any application for a stay of Justice Asif's decision will be pursued in tandem with our client's application for leave to appeal.

8. In the interim, we would invite your clients to agree to the safeguarding mechanisms identified at paragraphs 9 to 14 below pending our client's application for a stay for the reasons contained therein.

**Witness statements**

9. Our client's approach to redactions in witness statements is directed to preventing Justice Asif from having sight of the Hostile Litigation Documents pending the determination of our client's Privilege Appeal.

10. As should be plain to your clients, if the Privilege Appeal is successful after the Judge has seen the impugned documents, the prejudice cannot be undone and the Judge would have no option but to recuse himself, with the inevitable consequence of either a re-trial or, alternatively further delay in obtaining a substitute Judge, both of which will result in additional cost and disruption for all parties. It is perplexing that your clients resist a straightforward approach designed precisely to avoid that outcome.

**Volume H and the Compelled Documents**

11. As stated in our letter of 3 December, our client cannot consent to the inclusion in the trial bundle of the subset of the Hostile Litigation Documents whilst the Privilege Appeal is extant. Including such documents now would risk irreparable prejudice and the risks we have identified above if the Privilege Appeal is subsequently allowed.

12. Further, it was plainly inappropriate of your clients to instruct Opus 2 to proceed with the upload to Volume H without our client's consent, on only a few minutes' notice, in circumstances where your clients had been notified that a substantive response would follow during the course of that day. In Your Letter, your clients also rely on the parties' 24-hour agreement around loadfile objections and the timestamp of an email. With respect, that does not meet the point. The expiry of a 24-hour window does not entitle

your clients to unilaterally instruct Opus 2 to upload documents, particularly after being told that a substantive response would follow the next day. The objection is not a procedural quibble about loadfile mechanics; it goes to the propriety of placing disputed materials before the Court in circumstances where an appeal on that very issue is being pursued.

13. Your Letter's separate assertion that there is “no basis” for our client to object to the Volume H loadfile is misplaced: the objection arises precisely because the appeal is directed at restraining the use at trial of the Hostile Litigation Documents.

14. As we have already identified, the prudent course is to exclude the Hostile Litigation Documents from any upload pending resolution of the Privilege Appeal. Our client maintains its position that references to those documents in trial statements should be appropriately redacted on an interim basis and we put you on notice accordingly, as previously set out.

**Confidentiality ring order**

15. As we have already outlined, there is no purpose in the parties preparing or negotiating a confidentiality ring order at this stage when the scope of any such order will plainly be dictated by the outcome of the Privilege Appeal. We, therefore, do not propose to circulate a draft order until the appeal has been determined, at which point the scope and carve-outs can be addressed in light of the appellate ruling.

**Status of documents in the trial bundle**

16. We note your attempt to elide the mechanics of compiling a trial bundle with the evidential status of its contents. Our client does not agree that documents in Volume H, or elsewhere in the bundle, should automatically stand as evidence of the truth of their contents merely by inclusion.

17. In so far as you rely on the Grand Court Rules to suggest that authenticity objections have been waived, you cite GCR O.27 r.4 and the 21-day period from inspection. That rule addresses authenticity objections; it does not convert bundle inclusion into proof of truth or admissibility for all purposes.

18. As we have previously outlined, we consider that our client’s position preserves procedural clarity and efficiency whist maintaining evidentiary safeguards to avoid against trial by documentary ambush. If your clients wish to proceed as proposed, you may put the issue before the Court at the PTR and our client will oppose such relief.

Yours faithfully

Walkers (Cayman) LLP

**WALKERS (CAYMAN) LLP**

**EXHIBIT V**

**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

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)

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 Alkiviadou
Name of Witness (please print)

Executed as a deed by:
Rigmora Biotech Investor Two LP

By: Georgiou
ALEXIA GEORGIOU

Title: on behalf of M.C.R.S. Limited

In the presence of:

Witness

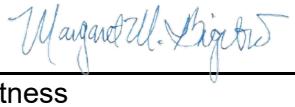
Evanthia Apeitou
Name of Witness (please print)

Executed as a deed by:



Seth L. Harrison

In the presence of:



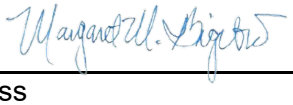
Witness

Margaret M Bigelow
Name of Witness (please print)

Executed as a deed by:
LES POMMES LLC

By: 
Seth L. Harrison, Manager

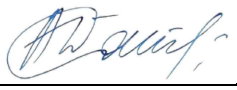
In the presence of:



Witness

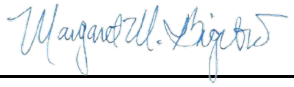
Margaret M. Bigelow
Name of Witness (please print)

Executed as a deed by:



Anna Batarina

In the presence of:



Witness

Margaret M. Bigelow
Name of Witness (please print)

## 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 W**

EXECUTION COPY

**APPLE TREE PARTNERS IV, L.P. - AMENDMENT NO. 9**

AMENDMENT NO. 9 (this "**Amendment**") dated December 22, 2017 to the First Amended and Restated Limited Partnership Agreement, as amended (the "**Agreement**"), of Apple Tree Partners IV, L.P. (the "**Partnership**").

Terms not otherwise defined herein shall have the meanings ascribed thereto 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. **Eligible Companies**. Ezbon and Blue Horizon (together, the "**Subject Limited Partner**") designate Elstar Therapeutics, Inc. ("**Elstar**"), Stoke Therapeutics, Inc. ("**Stoke**") and Limelight Bio, Inc. ("**Limelight**") as "**Eligible Companies**".

Until the earlier of (i) January 1, 2021 and (ii) the date on which an Eligible Company is selected as the Designated Company (as defined below) by the Subject Limited Partner, the Subject Limited Partner shall have the following rights in relation to each Eligible Company and the following governance protocols shall apply in relation to the operation and management of each Eligible Company:

a. Board Observer. The General Partner shall use commercially reasonable efforts to cause the Partnership to appoint one observer selected by the Subject Limited Partner (the "**Board Observer**") to the board of directors (the "**Board**") of each Eligible Company. Each Board Observer shall be provided reasonable access to information reasonably requested by such Board Observer regarding their respective Eligible Company and its officers and employees including, without limitation, financial data, due diligence materials and scientific data related to the research and development of technologies of such Eligible Company. The General Partner shall use commercially reasonable efforts to cause each Eligible Company and its officers and employees to cooperate with the requests of the Board Observer for provision of such information. The Board Observer shall be subject to the confidentiality provisions of Paragraph 16(d) of the Agreement.

b. Syndication. The General Partner shall use commercially reasonable efforts not to permit the issuance of equity securities or instruments or securities convertible into equity securities to any person other than or in addition to the Partnership or a wholly-owned subsidiary of the Partnership (a "**Syndication**") by an Eligible Company in a financing; provided, that any financing that is incidental to a transaction with a strategic partner of such Eligible Company, which shall include business combinations, joint ventures or other similar arrangements, shall not constitute a Syndication.

c. Advisory Board. As soon as reasonably practicable following the execution of this Amendment and in any event prior to June 30, 2018, the General Partner shall use commercially reasonable efforts to organize an advisory board in respect of each Eligible Company (each an "**Advisory Board**" and collectively, the "**Advisory Boards**") constituting not fewer than three and not more than five persons with industry, financial, or scientific expertise in the therapeutic and technology areas applicable to the relevant Eligible Company, which Advisory Board members shall be proposed by the General Partner.

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C.A. No. 2025-0607-KSJM

The proposed members of each Advisory Board shall be subject to the reasonable approval of the Subject Limited Partner and the General Partner shall use commercially reasonable efforts to make the proposed members of each Advisory Board reasonably available to meet with the Subject Limited Partner prior to the Subject Limited Partner's approval of the members of each such Advisory Board. If the Subject Limited Partner does not approve the composition of the Advisory Board within 15 days after the proposed Advisory Board is presented to the Subject Limited Partner by the General Partner, the Subject Limited Partner and the General Partner shall negotiate reasonably and in good faith to identify alternative Advisory Board members satisfactory to the General Partner and the Subject Limited Partner, acting reasonably. If no agreement can be reached with respect to the composition of the Advisory Board, the Subject Limited Partner and the General Partner shall each be permitted to reasonably appoint two representatives to the Advisory Board with industry, financial, or scientific expertise in the therapeutic and technology areas applicable to the relevant Eligible Company, neither of whom shall be a proposed member previously rejected by the Subject Limited Partner or the General Partner.

Except in the circumstances described in the preceding sentence, the General Partner shall use commercially reasonable efforts to promptly replace any members of the Advisory Board who resign or are removed from such Advisory Board by the General Partner, which replacement Advisory Board members shall be subject to the approval of the Subject Limited Partner, acting reasonably.

Each Advisory Board shall assist the Subject Limited Partner in coming to an informed decision as to which one of the Eligible Companies the Subject Limited Partner shall select as the Designated Company. The General Partner shall use commercially reasonable efforts to provide such information as may from time to time be reasonably requested by the Advisory Board to assist the Subject Limited Partner in evaluating the applicable Eligible Company. The Advisory Boards shall also assist in making the Strategic Plan and Syndication Plan (each as defined below) in respect of the applicable Eligible Company. Each member of the Advisory Board shall be subject to the confidentiality provisions of Paragraph 16(d) of the Agreement.

d. Presentation of Initial Strategic Plans and Syndication Plans. The General Partner, the Subject Limited Partner, and the management of each Eligible Company with the assistance of the applicable Advisory Board shall, under the General Partner's leadership, work together to propose a strategic plan (a "**Strategic Plan**") for each Eligible Company. The General Partner shall use commercially reasonable efforts to present the proposed Strategic Plan for each Eligible Company to the Subject Limited Partner and the applicable Advisory Board not later than 60 days prior to the date on which such Strategic Plan is to be implemented. The General Partner and the Subject Limited Partner shall negotiate reasonably and in good faith to incorporate any changes to the Strategic Plan reasonably requested by the Subject Limited Partner.

In addition to such Strategic Plan, the General Partner, the Subject Limited Partner, and the management of each Eligible Company with the assistance of the applicable Advisory Board shall, under the General Partner's leadership, and in parallel with the development of the Strategic Plan, work together to propose a Syndication plan and an optimal Syndication strategy (a "**Syndication Plan**") for each Eligible Company, which shall provide for an optimal milestone for Syndication to commence (such Syndication commencement milestone, "**SCM**"), a budget for the attainment of such SCM and a budget to continue the applicable Eligible Company's development for a period of 12 months subsequent to the attainment of such SCM.

For the avoidance of doubt, each of the Strategic Plans and Syndication Plans shall identify key developmental milestones (each, a "**Milestone**") and a reasonable forecast of the capital contributions required by the Partnership for the attainment of each such Milestone based on the information available at such time, it being understood that the forecasts of the capital contributions required for the attainment of such Milestones, other than the most proximate Milestone, may take the form of a range of amounts based on likely scenarios (such forecasts of the capital contributions, the "**Funding Ranges**").

If an agreement cannot be reached by the General Partner and the Subject Limited Partner with respect to the Strategic Plan for an Eligible Company, the Subject Limited Partner may immediately select such Eligible Company as the Designated Company, and if such Eligible Company is not so selected as the Designated Company the General Partner shall use commercially reasonable efforts to cause such Eligible Company to be Syndicated in accordance with the most recent Syndication Plan adopted by the General Partner and the Subject Limited Partner for such Eligible Company (or, if no such Syndication Plan has been so adopted, in accordance with such reasonable Syndication Plan as may be proposed by the General Partner in accordance with the budget most recently approved by the Board of such Eligible Company) and upon the commencement of such Syndication process, such Operating Company shall cease to be an Eligible Company.

e. Subject to the approval of the General Partner and the Subject Limited Partner, the Strategic Plan for Limelight will be drafted and implemented, and the Syndication Plan for Limelight will be drafted, promptly following the delivery of the results of Limelight's ongoing gene therapy research, which results are expected to be delivered prior to June 30, 2018. The General Partner and the Subject Limited Partner understand that Limelight may require one calendar quarter of funding as reasonably determined by the General Partner while such Strategic Plan and Syndication Plan are under discussion and agree that the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner, from time to time, in accordance with the Agreement in respect of Limelight in the aggregate amount sufficient to provide such calendar quarter of funding, provided that the aggregate amount of such calendar quarter of funding shall not exceed $4,000,000.

Subject to the approval of the General Partner and the Subject Limited Partner, the Strategic Plans for Elstar and Stoke will be implemented on January 1, 2019. The Strategic Plans and Syndication Plans for each of the Eligible Companies shall apply from the respective dates of their adoption until the General Partner and the Subject Limited Partner otherwise agree.

f. Annual Review of Strategic Plans and Syndication Plans. The General Partner, Advisory Board and Subject Limited Partner shall meet annually early in the fourth quarter to review whether each Eligible Company is meeting the objectives set forth in its Strategic Plan and Syndication Plan. The General Partner and the Subject Limited Partner shall negotiate in good faith to incorporate any necessary changes to the Strategic Plan and Syndication Plan and adopt such revised Strategic Plan and Syndication Plan, as the case may be; provided, however, that the failure of the General Partner and the Subject Limited Partner to agree with respect to a proposed modification to a Strategic Plan or a Syndication Plan shall not permit the General Partner to Syndicate the applicable Eligible Company and the previously agreed Strategic Plan or Syndication Plan shall remain in full force and effect, in each case to the extent reasonably practicable.

g. Milestone Budgets. At the time of the adoption of the Strategic Plan and Syndication Plan of an Eligible Company and thereafter at each annual review of such plans, the General Partner shall present to the Subject Limited Partner, for approval or review by the Subject Limited Partner, a budget setting forth in reasonable detail the amount of capital contributions required for the attainment of the subsequent Milestone in accordance with the then-current Strategic Plan (the "**Milestone Budget**"), which amount shall, to the extent reasonably practicable, be within the Funding Range set forth in respect of such Milestone in the then-current applicable Strategic Plan.

If the Subject Limited Partner declines to approve a Milestone Budget for an Eligible Company, the General Partner and the Subject Limited Partner shall negotiate reasonably and in good faith to reach an agreement with respect to such Milestone Budget. If, following such good faith negotiations, the General Partner and the Subject Limited Partner are unable to reach an agreement with respect to a Milestone Budget, the Subject Limited Partner may immediately select such Eligible Company as the Designated Company, and if such Eligible Company is not so selected as the Designated Company the General Partner shall cause the applicable Eligible Company to be Syndicated in accordance with the most recent Syndication Plan adopted for such Eligible Company.

2. **Funding Decisions for Certain Companies**. Notwithstanding anything to the contrary contained herein or in the Agreement, the General Partner and the Subject Limited Partner hereby agree as follows:

a. Elstar: The holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner, from time to time, in accordance with the Agreement in respect of Elstar in the aggregate amount of $24,000,000 for the period commencing January 1, 2018 and ending December 31, 2018.

If prior to December 31, 2018 the Subject Limited Partner and the General Partner agree to a Strategic Plan for Elstar the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner, from time to time, in accordance with the Agreement in respect of Elstar in accordance with the terms of such Strategic Plan.

If prior to December 31, 2018 the General Partner and the Subject Limited Partner do not agree to a Strategic Plan for Elstar, then Elstar shall be Syndicated and the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner, from time to time, in accordance with the Agreement in respect of Elstar and the then in effect Elstar Syndication Plan; provided, however that if the General Partner and the Subject Limited Partner have not prior to such date agreed to a Syndication Plan, then the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner, from time to time, in accordance with the Agreement in respect of Elstar in the aggregate amount of $34,000,000 for the period commencing January 1, 2019 and ending December 31, 2019.

b. Operating Companies Other than Eligible Companies: For Syntimmune, Inc. ("**Syntimmune**"), Gala Therapeutics, Inc. ("**Gala**"), Tusker Medical, Inc. ("**Tusker**") and any new Operating Companies, the General Partner has reasonably and in good faith determined the SCM for each such Operating Company.

The General Partner has proposed a budget to the Subject Limited Partner for Gala to attain its SCM and to continue its development for twelve more months thereafter (a "**Pre-Syndication Budget**"). The Subject Limited Partner has previously approved Pre-Syndication Budgets for Syntimmune and Tusker. The SCMs and Pre-Syndication Budgets for Syntimmune, Gala and Tusker are set forth in Exhibit A. Column I of Exhibit A sets forth the additional budget commitments that the General Partner currently anticipates requesting the Subject Limited Partner to approve to fund such Operating Company prior to such Operating Company attaining its SCM. Column J of Exhibit A sets forth the aggregate additional budget approval that the General Partner currently anticipates requesting the Subject Limited Partner to approve to fund in respect of each Operating Company to Syndication (including for the attainment of SCM and to continue its development for 12 months thereafter).

The Pre-Syndication Budget of Gala is approved by the Subject Limited Partner, as follows:

i. The holders of Preferred Units are required to make capital contributions in accordance with the Agreement to enable the Partnership to fund the SCM attainment budget portion of such Pre-Syndication Budget, amounting to US$10 million, provided that Gala achieves: (a) in its current ongoing clinical trial 12 patients at 6-months with average Quality of Life scores exceeding company targets initially determined in early 2017, including CAT improvement by 8 points, SGRQ improvement by 12 points; (b) clarity from a Notified Body on requirements for CE Mark including number of patients, time point (3 months vs 6 months) and ability to use only clinical data from the current G3 system.

ii. The holders of Preferred Units are required to make capital contributions in accordance with the Agreement to enable the Partnership to fund the portion of such Pre-Syndication Budget enabling Gala to operate for twelve-months from the date of the anticipated achievement of the SCM, amounting to US$18 million, provided that Gala's ongoing clinical trial has generated data to enable the company to apply for CE Mark, as reasonably determined by Gala's board.

iii. The General Partner has delivered to the Subject Limited Partner the current business plan in effect as of the date hereof as approved by the Board with respect to Gala, which business plan includes sufficient detail to support the Pre-Syndication Budget of Gala.

The shortfall of US$290,000 in the Pre-Syndication Budget of Syntimmune is approved by the Subject Limited Partner, and the holders of Preferred Units are required to make capital contributions in accordance with the Agreement to enable the Partnership to fund such Pre-Syndication Budget as increased by such shortfall amount.

The General Partner shall inform the Subject Limited Partner of any change in the operations of each such Operating Company known to the General Partner that would materially change its Pre-Syndication Budget and shall review the Pre-Syndication Budget and then-current business plan for each such Operating Company with the Subject Limited Partner on an annual basis.

c. For the avoidance of doubt, in each case where, pursuant to this Amendment, the holders of Preferred Units are required to make capital contributions "in accordance with the Agreement", such phrase shall not be interpreted to require the approval or consent of such holders to make such contributions other than such approvals and consents set forth in this Amendment.

3. **Syndication Process**. If an Operating Company is Syndicated the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner in accordance with the Agreement in an amount sufficient to enable the Partnership to participate in such Syndication and each successive Syndication *pro rata* based on the Partnership's preemptive rights percentage in respect of such Syndication as set forth in the documentation governing the most recent Syndication of such Operating Company or, in the case of the first Syndication of an Operating Company, as provided in the following sentence. Notwithstanding the foregoing, the Partnership shall not be required to make capital contributions in respect of the first Syndication of an Operating Company in excess of 25% of the total amount to be contributed in respect of such Syndication.

4. **Designated Company**. At any time prior to January 1, 2021, the Subject Limited Partner may select one of the Eligible Companies as the "**Designated Company**". The Subject Limited Partner shall endeavor in good faith to select the Designated Company as soon as reasonably practicable.

The Subject Limited Partner shall have the following rights in relation to the Designated Company and the following governance protocols shall apply in relation to the operation and management of the Designated Company until the exercise of the Distribution Option:

a. Board Representation. The General Partner shall use commercially reasonable efforts to cause the Partnership to appoint one representative and one observer to be appointed to the Board of the Designated Company each as selected by the Subject Limited Partner.

b. Executive Board. Promptly following the selection of the Designated Company, the General Partner shall propose an independent Executive Board composed of three to five persons, whose members shall be subject to the approval of the Subject Limited Partner, acting in good faith (the "**Executive Board**"). The members of the Executive Board shall be senior operating executives of mature pharmaceutical or biopharmaceutical companies who are scientific, financial and business experts in fields relevant to the Designated Company and may include members of the Advisory Board of the Designated Company. Each member of the Executive Board shall be subject to the confidentiality provisions of Paragraph 16(d) of the Agreement

c. Operating Plan. The Subject Limited Partner, the General Partner, the Designated Company and the Executive Board shall work together to propose an operating plan for the Designated Company (the "**Operating Plan**"), which shall include times at which it would be suitable for the Subject Limited Partner to decide whether or not to (a) exercise its Distribution Option (as defined below), (b) continue to cause the Partnership to fund the Designated Company to enable it to further develop its programs before the Subject Limited Partner chooses to exercise its Distribution Option, or (c) Syndicate the Designated Company in accordance with the most recent Syndication Plan adopted by the Designated Company. In parallel with the development of the Strategic Plan, the Subject Limited Partner, the General Partner, the Designated Company and the Executive Board shall work together to propose a Syndication Plan for the Designated Company.

The Operating Plan shall be subject to the approval of the Subject Limited Partner, acting reasonably and in good faith. If, following such good faith negotiations, the General Partner and the Subject Limited Partner are unable to reach an agreement with respect to the Operating Plan, the Subject Limited Partner may immediately exercise the Distribution Option, and if the Distribution Option is not so exercised, the General Partner shall use commercially reasonable efforts to cause such Designated Company to be Syndicated in accordance with the most recent Syndication Plan adopted by the Designated Company.

Until the first Operating Plan and the first Syndication Plan of the Designated Company have each been approved and adopted by the Subject Limited Partner: (a) the most recent Strategic Plan and Syndication Plan in effect when the Designated Company had been an Eligible Company shall continue to be in effect; (b) the holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units as required by the General Partner in accordance with the Agreement and such Milestone Budget most recently adopted while the Designated Company was still an Eligible Company; and (c) the General Partner shall use commercially reasonable efforts to cause the Designated Company to be operated in accordance with the most recent Strategic Plan and the Milestone Budget.

Following the approval of the first Operating Plan and prior to exercise of the Distribution Option, the General Partner shall use commercially reasonable efforts to cause the Designated Company to be managed in accordance with the Operating Plan, to the extent reasonable and practicable.

The General Partner, Executive Board and Subject Limited Partner shall meet annually to review whether the Designated Company is meeting the objectives set forth in the Operating Plan. The General Partner and the Subject Limited Partner shall negotiate in good faith to incorporate any necessary changes to the Operating Plan and adopt such revised Operating Plan, as well as any revised Syndication Plan arising therefrom; provided, however, that the failure of the General Partner and the Subject Limited Partner to agree with respect to a proposed modification to the Operating Plan shall not permit the General Partner to Syndicate the Designated Company and the previously agreed Operating Plan shall remain in full force and effect to the extent reasonably practicable.

d. Budgets. Prior to exercise of the Distribution Option, the General Partner shall propose to the Subject Limited Partner a 14-month budget (such budget commencing January 1 of the subsequent calendar year) approved by the Board of the Designated Company and consistent with the Operating Plan (the "**Designated Company Budget**") by September 30 of each year, commencing the year in which the Designated Company is selected. The Subject Limited Partner, the General Partner, the Designated Company and the Executive Board shall meet early during the fourth quarter of each year, commencing the year in which the Designated Company is selected to discuss the proposed Designated Company Budget. The Subject Limited Partner shall use commercially reasonable efforts to review and approve or disapprove the proposed Designated Company Budget promptly following such meeting. If the Subject Limited Partner declines to approve the Designated Company Budget, the General Partner and the Subject Limited Partner shall negotiate reasonably and in good faith to reach an agreement with respect to the Designated Company Budget. The General Partner shall use commercially reasonable efforts to cause the Designated Company to take such actions as may be required to facilitate such negotiations including, but not limited to, providing such information as may reasonably be requested by the Subject Limited Partner. If, following such good faith negotiations, the General Partner and the Subject Limited Partner are unable to reach an agreement with respect to the Designated Company Budget prior to December 1, the Subject Limited Partner may immediately exercise the Distribution Option, and if the Distribution Option is not so exercised, the General Partner shall use commercially reasonable efforts to cause such Designated Company to be Syndicated in accordance with the most recent Syndication Plan adopted by the Designated Company.

The Eligible Companies not selected as the Designated Company shall cease to be Eligible Companies and shall be Syndicated in accordance with the most recent Syndication Plans adopted by such Eligible Companies.

5. **Distribution Option**. Except as otherwise set forth in Section 4 above, if the Subject Limited Partner is funding the Designated Company Budget in accordance with the Operating Plan, it may, at any time, direct the General Partner to and the General Partner shall distribute in kind the securities of the Designated Company owned by the Partnership or, subject to the reasonable approval of the General Partner and the Subject Limited Partner, establish an alternative investment vehicle or other structure designed to achieve a similar objective (the "**Distribution Option**").

6. **Waterfall**. If the Subject Limited Partner exercises the Distribution Option prior to the date which is one year following the expiration of the underwriters' lock-up upon the initial public offering of securities of the Designated Company (the "**Liquidity Event Date**"), any distributions by the Partnership of the securities of the Designated Company following the exercise of the Distribution Option shall be allocated in accordance with Paragraph 8(c)(ii) of the Agreement; provided, however, that any such distributions shall not constitute a return to the holders of Preferred Units for purposes of Paragraph 8(c)(i) of the Agreement and shall not reduce the amounts otherwise distributable pursuant to Paragraph 8(c)(i). If the Subject Limited Partner exercises the Distribution Option subsequent to the Liquidity Event Date, the distribution of securities of the Designated Company shall be made in accordance with the then-applicable waterfall provisions under the Agreement. Notwithstanding the foregoing, if the Subject Limited Partner exercises the Distribution Option prior to the Liquidity Event Date, the General Partner may elect, in the exercise of its sole discretion, to instead cause the distribution of the securities of the Designated Company to be allocated in accordance with Paragraph 8(c)(i) of the Agreement, in which event such distributions shall constitute a return to the holders of Preferred Units for purposes of Paragraph 8(c)(i) of the Agreement and shall reduce the amounts otherwise distributable pursuant to Paragraph 8(c)(i). In any event, except as otherwise provided above, the exercise of the Distribution Option shall, to the extent reasonably practicable, be implemented in a manner designed to maintain the same economic structure as would apply if the distributed securities of the Designated Company had continued to be owned by the Partnership, including grants of equity to the holders of Incentive Common Units and Founder Common Units to account for the dilutive effect of subsequent capital contributions by the Partners to the Designated Company ("**Anti-Dilutive Grants**"), but only through the initial public offering of the Designated Company; provided, however, that, with respect to taxable income in respect of Anti-Dilutive Grants, the holders of Incentive Common Units and Founder Common Units shall be entitled to receive a tax distribution pursuant to Paragraph 8(a) of the Agreement equivalent to their respective Hypothetical Tax Liability.

7. **Repayment of Loan**. Any cash distributions to Dr. Harrison in respect of the Designated Company (other than tax distributions pursuant to Paragraph 8(a) of the Agreement) shall be applied to repay the loans from Ezbon to Dr. Harrison to the extent provided in Schedule D to the Agreement.

8. **Minority Rights**. In the event that the Subject Limited Partner exercises the Distribution Option prior to the Liquidity Event Date, the Subject Limited Partner shall prior to any initial public offering of securities of the Designated Company (a) exercise its control in respect of the Designated Company in a manner consistent with a company of its size, capitalization and stage in the product development life-cycle, including without limitation, evaluating partnerships, financing structures and liquidity options available to a company of this nature and (b) not permit an interested transaction to occur between the Designated Company and the Subject Limited Partner or its affiliates, without the consent of the General Partner, unless such transaction has been approved in good faith by the Board of the Designated Company and is not prejudicial to the Designated Company and its minority stockholders.

9. **Partnership Term**. The term of the Partnership shall end on December 31, 2022 (the "**Initial Term**"); provided, however, that the Initial Term may be extended by the General Partner for up to two one-year periods (the Initial Term, together with any extensions thereto, the "**Term**").

Following the end of the Term, the Subject Limited Partner may elect to require the General Partner to and the General Partner shall (a) effectuate the winding up of the affairs of the Partnership in accordance with Paragraph 11 of the Agreement or (b) cause the assets of the Partnership to be distributed to the Partners in kind.

10. **ATLS Fee**.

a. ATLS shall receive an annual fee (the "**ATLS Fee**") during the Initial Term in the amount of $8,500,000 per annum, payable semi-annually in advance. The ATLS Fee (both during and after the Initial Term) shall be in addition to the Management Fee payable to the Management Company, which shall also be payable annually in advance promptly following the delivery of the Partnership's budget for the applicable fiscal year to the Subject Limited Partner. 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. The parties agree that commencing January 1, 2018, the agreements herein, including with respect to the ATLS Fee, the allocation of Partnership expenses, as set forth in Section 11, below, and Incubation Activities shall supersede any Partnership budgets previously approved pursuant to 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.

b. Notwithstanding the foregoing, following the end of the Initial Term, the Partnership shall pay ATLS the ATLS Fee in an amount equal to (i) 1.5% of the cost basis of the Partnership's unrealized investments as of the end of the preceding year, as adjusted to reflect the aggregate amount of any write-downs of the Partnership's unrealized investments determined in accordance with generally accepted accounting principles in the United States as in effect from time to time (to the extent of any such write down only), as determined by the Partnership's independent public accountants or auditors, minus (ii) the Management Fee, provided, that in no event shall such ATLS Fee exceed the amount of the most recent ATLS Fee, except to the extent otherwise agreed by the General Partner and the Subject Limited Partner pursuant to Section 10(a) above.

The holders of Preferred Units shall make capital contributions to the Partnership in respect of their respective Preferred Units to fund the ATLS Fee semi-annually and the Management Fee annually, in each case, as required by the General Partner, from time to time, in accordance with the Agreement.

11. **Allocation of Expenses**. 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.

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 the Agreement, including without limitation: (i) the ATLS Fee and the Management Fee, (ii) Incubation Expenses (as defined below), (iii) 50% of the fully-burdened cost of the Partnership's facilities, including rent, utilities, lessor charges, property and general liability insurance, communications, including phone and internet, and IT support, (iv) all compensation and benefits for a fund analyst providing pharmaceutical or biopharmaceutical industry related services to the Partnership, (v) all compensation and benefits related to the Subject Limited Partner's representatives, (vi) fees and expenses of investment and other consultants, including subscription-based research consultants and databases, (vii) professional fees, including legal expenses for the Partnership (including the Partnership's in-house counsel), audit, tax compliance and tax structuring fees and expenses, (viii) all fees and expenses relating to Partnership boards, including the Advisory Boards and Executive Board, (ix) director and officer liability insurance and indemnification costs and expenses, (x) travel expenses relating to making and monitoring investments, including expenses relating to broken deals (except to the extent reimbursed by Operating Companies), (xi) all expenses related to meetings with the Subject Limited Partner, including travel, (xii) liquidation expenses, (xiv) sales or other taxes, fees and government charges which may be assessed against the Partnership, (xv) commissions or brokerage fees, finder's fees or similar charges incurred in connection with the purchase or sale of securities, (xvi) interest expenses for borrowed money (if any) and any other fees and expenses related to any Partnership credit facilities, (xvii) all expenses (including travel and travel-related expenses) relating to any actual or threatened litigation or proceeding involving the Partnership, (xviii) investment banking, commercial banking, valuation, appraisal and custodial fees expenses, and (xix) expenses associated with the preparation and delivery of the Partnership's financial statements.

12. **Incubation Expenses**. The General Partner may call capital in an amount not to exceed $1.5 million per annum in respect of the direct costs of the incubation and development of new technologies and companies which are not yet owned by an Operating Company ("**Incubation Activities**"). From time to time, the General Partner may present to the Subject Limited Partner for approval projects that emerge from Incubation Activities, including (a) major extensions of existing Incubation Activities ("**Incubation Projects**"), the funding of which shall cause, in the General Partner's reasonable estimation, the cost of Incubation Activities for any year to exceed $1.5 million, and (b) proposals for new Operating Companies based upon Incubation Activities ("**Incubated Operating Companies**"). Assets developed through the Incubation Activities shall be the sole and exclusive property of the Partnership; provided, however, that should the Subject Limited Partner decline to approve a proposal for the Partnership to fund an Incubation Project or an Incubated Operating Company, the assets underlying such Incubated Project or Incubated Operating Company may be sold by the Partnership at the sole discretion of the General Partner to any other private investment fund managed in whole or in part by Dr. Harrison at the greater of the cost or the fair market value of such Incubated Project or Incubated Operating Company, as determined by an independent, nationally recognized investment banking firm, accounting firm or appraisal firm selected by the General Partner from the list of firms set forth in Exhibit B hereto or to a third-party.

13. **Time Requirement**. Dr. Harrison shall devote such amount of his business time to the affairs of the Partnership as is reasonably required to direct its activities. Commencing January 1, 2020, Dr. Harrison shall be permitted to organize and manage one or more additional investment funds provided he meets his time requirement to the Partnership and the Subject Limited Partner is, until December 31, 2022, provided a right of first refusal to make an investment in each such successor private investment fund in an aggregate amount not to exceed 20% of the aggregate capital commitments of such successor private investment fund.

14. **Miscellaneous**.

a. Effectiveness. This Amendment will become effective on the date on which the General Partner and Subject Limited Partner have executed this Amendment.

b. Expenses. The parties shall each bear their own respective costs and expenses in connection with this Amendment.

c. Headings. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein.

d. Confirmation of Agreement. The terms, conditions and agreements set forth in the Agreement, as amended by this Amendment, are hereby ratified and confirmed and shall continue in full force and effect, to the extent not inconsistent with this Amendment. Notwithstanding anything to the contrary in the Agreement, the General Partner shall interpret and apply the provisions of the Agreement in good faith to give effect to the provisions of this Amendment.

e. Governing Law. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles.

f. Counterparts. 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.

[*Remainder of page intentionally blank – signature page follows*]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first written above.

**GENERAL PARTNER**

Executed as a deed by:

**ATP III GP, LTD.**

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Margaret M. Bigelow

Executed as a deed by:

**EZBON INTERNATIONAL LIMITED**

By: _____
Name:
Title:

In the presence of:

_____
Witness

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first written above.

**GENERAL PARTNER**

Executed as a deed by:

**ATP III GP, LTD.**

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness

Executed as a deed by:

**EZBON INTERNATIONAL LIMITED**

By: _____
Name: On behalf of M.C.R.S. Ltd
Title: Director

In the presence of: ELENA CONSTANTINOU

_____
Witness

**Executed as a deed by:**

**BLUE HORIZON ENTERPRISE LTD.**

By: Yury Bogdanov
Name:
Title: Director

**In the presence of:**

Yulia Sazykina
**Witness**

**Executed as a deed by:**

By: _____
**SETH L. HARRISON**

**In the presence of:**

_____
**Witness**

**Executed as a deed by:**

**LES POMMES LLC**

By: _____
**Seth L. Harrison**
**Manager**

**In the presence of:**

_____
**Witness**

Executed as a deed by:

**BLUE HORIZON ENTERPRISE LTD.**

By: _____
Name:
Title:

In the presence of:

_____
Witness

Executed as a deed by:

By: _____
**SETH L. HARRISON**

In the presence of:

_____
Witness Margaret M. Bigelow

Executed as a deed by:

**LES POMMES LLC**

By: _____
Seth L. Harrison
Manager

In the presence of:

Witness Margaret M. Bigelow

# EXHIBIT A

## PRE-SYNDICATION BUDGET

| A<br>Operating Company | B<br>SCM[1] | C<br>OOC Date[2] | D<br>Capital contributions required from the OOC Date to the SCM | E<br>Estimated date on which the SCM will be achieved | F<br>Estimated capital contributions required to fund development for a period of 12 months subsequent to attainment of SCM | G<br>Total capital contributions as at the date of the Amendment | H<br>Total budget approved as at the date of the Amendment | I<br>Total additional budget approval required to attain SCM | J<br>Aggregate additional budget approval required to attain SCM and to fund development for a period of 12 months subsequent to attainment of SCM |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | *Greater of 0 or D-(H-G)* | *Greater of 0 or (D+F) - (H-G)* |
| Gala | CE Mark data | 2Q2018 | US$10,000,000 | April 2019 | US$18,000,000 | US$13,890,000 | US$13,890,000 | US$10,000,000 | US$28,000,000 |
| Syntimmune | Human proof of concept in 1 indication + CEO | 2Q2018 | US$0 | February 2018 | US$25,000,000 | US$47,290,000 | US$72,000,000 | US$290,000 | US$290,000 |
| Tusker | Submission of Food & Drug Administration pre-market approval application | 2Q2018 | US$9,000,000 | November 2018 | US$20,000,000 | US$26,750,000 | US$60,000,000 | US$0 | US$0 |

[1] SCM means the optimal milestone for Syndication to commence in respect of such Operating Company, as determined by the General Partner.

[2] OOC means the date upon which the Operating Company is expected to be out of cash, based on the current Pre-Syndication Budget.

**EXHIBIT B**

**LIST OF APPROVED INVESTMENT BANKING, ACCOUNTING OR APPRAISAL FIRMS**

LEK
Trinity
Leerink

**EXHIBIT X**

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

*Proprietary and Confidential*

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]**

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% |