In The Supreme Court of Bermuda

CIVIL JURISDICTION
2024 No. 195

IN THE MATTER OF CASSATT INSURANCE COMPANY, LTD.
AND IN THE MATTER OF THE COMPANIES ACT 1981

BETWEEN:

JEFFERSON HEALTH NORTHEAST SYSTEM
ABINGTON MEMORIAL HOSPITAL

Petitioners

and

(1) CASSATT INSURANCE COMPANY, LTD.
(2) GRAND VIEW HOSPITAL

Respondents

JUDGMENT

Date of Hearing: 14th November 2025

Date of Judgment: 27th November 2025

Appearances: *Kyle Masters* of Carey Olsen for the Petitioners
James Batten of Appleby for the 1st Respondent
Mark Chudleigh and *Laura Williamson* of Kennedys for the 2nd Respondent

JUDGMENT of Nick Segal, AJ

Introduction

1. On 14 November 2025 I heard a number of applications dealing with consequential matters following the handing down on 15 October 2025 of my judgment (the ***Judgment***).

2. Before that hearing, I had received written and at a hearing on 6 November 2025 heard oral submissions as to, and settled, the form of order to be made to give effect to the Judgment. I set out below the order I made and briefly explain the issues that arose regarding the form of order to be made and the reasons I made it in the form I did.

3. Once the form of order had been settled it became necessary to deal with a number of other applications relating to matters consequential on the Judgment and order. These were the Petitioners' application for leave to appeal (the Judgment or order); the Petitioners' application for interim relief so that, pending the hearing of its appeal by the Court of Appeal, the *status quo* was preserved; and orders relating to the costs of the Petitioners' application. These were the matters dealt with at the 14 November hearing.

4. At the conclusion of that hearing I informed the parties that I would refuse the Petitioners' application for leave to appeal but would reserve my judgment on the Petitioners' application for interim relief pending the determination of the application they intended to make to the Court of Appeal for leave to appeal. I also said that I had decided that the Petitioners should pay 80% of Grand View's costs of and occasioned by the Petitioners' application and the Company's costs of appearing on a watching brief on the Petitioners' application but reserved judgment on whether the Petitioners should be liable to pay such costs, if not agreed, on the indemnity or standard basis. I said that I would prepare a judgment explaining the justification and reasons for making the form of order I had made at the 6 November hearing and for the decisions I had announced at the 14 November hearing and setting out the decisions I had reached on the reserved matters. This is that judgment.

5. I set out below:

(a). a summary of the procedural history following the distribution of my Judgment in draft.

(b). my reasons as to why the Judgment assumed and only envisaged that the order to be made to give effect to the Judgment would be unconditional.

(c). my reasons for refusing leave to appeal.

(d). my reasons for deciding that the Petitioners should pay 80% of Grand View's costs of and occasioned by the Interim Relief Summons (as defined in the Judgment).

(e). my decision that Grand View should only be entitled to have those costs taxed on the standard basis, and not the indemnity basis, if not agreed.

(f). the reasons for my decision that the Petitioners should pay the Company's costs of appearing at and participating in the hearings before me (including the costs of preparing the costs skeleton for the 14 November hearing) to be taxed on the standard basis if not agreed, subject to the Petitioners having liberty to apply subsequently for an order that Grand View should pay a proportion of those costs if and to the extent that the Court subsequently rules that both the Petitioners and Grand View should share responsibility for the Company's costs of participating in these petition proceedings, including the hearings before me.

The procedural history after the distribution of the Judgment in draft up to the 14 November hearing

6. The Judgment dealt with the Petitioners' interlocutory application for injunctive relief to restrain Grand View Hospital (***Grand View***) from selling its shares in Cassatt Insurance Company, Ltd (the ***Company***) to Cassatt Solutions LLC (the ***Buyer***) (the ***Concert Transaction***) pending the trial and determination of the Petitioners' petition for relief under section 111 of the Companies Act 1981. The Buyer is a subsidiary of Concert Group Holdings, Inc ***(Concert Holdings)*** established for the purpose of the acquisition.

The Judgment stated that the application would be dismissed provided that the Buyer was prepared to take certain steps or give certain confirmations, as explained in the Judgment. Whether the Buyer would be prepared to confirm that it would take these steps and give these confirmations and any consequences of it not doing so needed to be determined before the order giving effect to the Judgment could be settled and made.

7. At the end of [8] of the Judgment, in which paragraph I had sought to provide a brief summary of my decision, to distil the effect of what I subsequently set out at [119] and [120] of the Judgment, I explained that in order to avoid the risk of serious substantive and procedural prejudice being suffered by the Petitioners, the Buyer would need to take certain steps to address that risk, in particular to confirm that it would sign the SHA and become a party to the proceedings. Grand View, as the primary respondent to the section 111 petition, would need to arrange for this to be done. The Buyer was not yet a party to the proceedings and so could not be ordered to take these or any other steps. It was for this reason that I described the taking of steps to deal with the risk of prejudice and the satisfaction of the requirements I had identified as "*conditions*."

8. The Judgment had been circulated in draft on 25 September 2025 with the usual request for the parties to provide corrections and comments. Thereafter, the parties took various steps.

9. On 7 October 2025, the Petitioners filed an application for leave to appeal the decision set out in the Judgment. They filed an Ex Parte Notice of Motion (the ***Notice of Motion for Leave to Appeal***) for Leave to Appeal against the draft Judgment (which was referred to as the "*draft ruling*") and the Seventh Affidavit of Ms Ramthun (***Ramthun 7***) in support. Exhibited to Ramthun 7 was a draft Notice of Appeal (the ***Notice of Appeal***) which set out 16 grounds of appeal. I have assumed that the Petitioners sought permission to appeal the order as and when made to give effect to the Judgment and for that purpose to challenge the reasoning in the Judgment even though the Notice of Motion was filed before the order was settled and drawn up (appeals are technically of course against the Court's decision as set out in the order and not the reasons behind it so that the decision/order may be upheld even if the appellate court considers the reasons to be wrong). The Notice of Motion for Leave to Appeal also sought interim relief to provide for the continuation of the undertakings not to complete the Concert Transaction until the

Petitioners' application for injunctive relief had been determined given by the Company (in a consent order) and by Grand View (in a letter from their attorneys, Kennedys) or alternatively for an order staying the effect of the (draft) Judgment pending the determination of the Petitioners' appeal (including a stay on the granting of relief consequential on the Judgment that would have the effect of releasing or discharging these undertakings). In the further alternative, the Petitioners sought an interim injunction to restrain the Company and Grand View from selling or transferring any shares or assets of the Company pending the determination of the Petitioners' appeal.

10. On 10 October 2025, Conyers, the attorneys acting for Concert Holdings, wrote (the ***10 October Letter***) to Kennedys, Carey Olsen, the attorneys acting for the Petitioners, and Appleby, the attorneys acting for the Company, in response to the draft Judgment. Under the heading "*The Interim Injunction Application*" Conyers provided, if I may say so, an excellent summary of my decision (emphasising that my decision was fundamentally based on the failure of the Petitioners to adduce adequate evidence to support their case). Conyers noted that I had set out "*the basis for his dismissal of the Petitioners' Application.*" Their summary was as follows:

> *"The Court accepted there was a serious issue to be tried, but held an injunction was not justified because the Petitioners failed to show that allowing completion of the sale and the contemplated distributions would frustrate an adequate final remedy in the s111 Proceedings.*
>
> *Here, the petitioners' primary relief is a buy-out order. As such, the Court can set a price reflecting the value their shares would have had absent any impugned conduct by Grand View. The Court held that there was no material risk that the Company would be unable to pay any sums due. On the evidence, expected distributions to Grand View would likely not exceed Grand View's reasonable share of the Company's equity. Using a cautious midpoint of competing valuations and entitlements, the Court estimated Grand View's equity and held that the contemplated distributions would not deplete the Company below what is needed to satisfy a buy-out award to the petitioners.*
>
> *Preserving the status quo was not an overriding factor requiring an injunction where monetary compensation was an adequate and available remedy.*
>
> *Further, Grand View will remain a party to the petition and can be ordered, if appropriate, to repay any distributions or pay/contribute to any buy-out amount. Thus, changing the shareholder from Grand View to the Buyer does not, in itself, impair the Court's ability to grant effective relief.*

Finally, the balance of convenience favoured permitting the sale to proceed. All parties are in agreement that the Company must transition to run-off and needs an experienced controller to do so. The proposed transaction with the Buyer (being affiliated with a reputable group experienced in insurance claims management and run-off) addressed that operational need."

11. Under the heading "*Conditional Dismissal*" Conyers went on to explain that Concert Holdings understood the reasons and rationale for the requirements I had imposed but that they considered that the risk of prejudice to the Petitioners from the Buyer not signing the SHA or becoming a party to the SHA that I had identified could be removed if the Buyer issued various undertakings to the Court (the ***10 October Undertakings***), which they set out. Conyers said as follows:

"Although the injunction was refused, the Court expressed concerns that a change of shareholder could complicate governance and impair effective relief unless the Buyer was brought within the existing shareholder framework and the Court's jurisdiction.

In particular, the Court was concerned that:

- *After closing, key decisions affecting the Company (including any further distributions or conduct relevant to the petitioners' oppression claim) would be taken by the Buyer.*
- *The Company's bye-laws and its shareholder agreement ("SHA") contemplate that any transferee would execute a deed of adherence and be bound by the SHA. If the Buyer were not bound, the Petitioners' ability to protect their interests pending trial—including seeking further interim relief if needed—could be undermined.*

Accordingly, the Court required the Buyer (i) to agree to be made a party to the s111 Proceedings, and (ii) to accede to and be bound by the SHA ("Proposed Conditions").

Concert Holdings appreciates the Court's concerns and its desire to ensure that any order it may make is not undermined by the conduct of the Buyer. As such, Concert Holdings proposes to address those concerns by the giving of (and by procuring the Buyer to give) undertakings to the Court.

Proposed Undertakings
<u>Dividends</u>

Upon becoming the sole shareholder of the Company, the Buyer shall cause the Company to not make any dividend payments or other distributions to it as shareholder until the s111 Proceedings have been finally determined by the Supreme Court or by the consent of the parties. As it currently does in the ordinary

course of business, unless modified by their respective regulators, the Company will continue to fund the runoff claims and operating expenses of its affiliate companies in Vermont. Any ordinary course service fees paid by the Company to the Buyer or any of its affiliates during such period shall be on an arm's length good faith basis.

SHA
The Buyer will not take any steps and will not cause the Company to take any steps that are inconsistent with or would directly or indirectly prevent the Company from complying with its obligations under the SHA.

Section 111 Relief

The Buyer will agree to be bound by the decision of the Court in the s111 Proceedings as it relates to the Company. It will not seek to intervene in those proceedings or take any steps that would directly or indirectly interfere with the enforcement by the Petitioners of any relief granted in the s111 Proceedings.

Jurisdiction of the Bermuda Court

The Buyer will also undertake to instruct Conyers to accept service of proceedings to enforce any of the above undertakings.

The Conditions Proposed by the Court

It is hoped that the above undertakings address the Court's concerns. Concert Holdings has carefully considered the Proposed Conditions. For the reasons set out below, Concert Holdings does not believe that they are capable of being reasonably implemented."

12. Conyers then set out the reasons why Concert Holdings considered that there were real difficulties, and why it would be unfair and unnecessary in order to deal with the concerns I had expressed and to protect the Petitioners, in it becoming a party to the SHA without the SHA being amended and to it becoming a party to the proceedings. Conyers confirmed that they and Concert Holdings were willing to discuss further their proposal with the Petitioners and reiterated that the proposal was intended to address the concerns raised by the Court in an efficient and pragmatic manner to enable the proceedings to continue unimpeded and to allow the Concert Transaction to proceed so that the Company can be placed in run-off.

13. On 15 October 2025 Carey Olsen, on behalf of the Petitioners, replied to the 10 October Letter. They said that the Petitioners regarded the taking of the steps I had required (the satisfaction of the two conditions) as insufficient to provide proper and adequate

protection to the Petitioners and that the 10 October Undertakings were also inadequate. They said that in the circumstances the Petitioners would be asking the Court to grant the interim injunction and would apply to the Court seeking further directions to deal with all consequential matters. Carey Olsen said as follows:

> *"It is our clients' view that the two conditions imposed in the Ruling for the dismissal of the Petitioners' interim injunction application provide insufficient protection to prevent the sale of Cassatt Insurance Company, Ltd. (Company) from irreparably prejudicing the Petitioners and their oppression claim. However, Concert Holdings' undertakings proposed as an alternative to complying with the conditions in the Ruling provide the Petitioners with no protection at all. The lack of protection provided by the proposed undertakings is evident from the fact that Concert Holdings (through its special purpose shell company) is effectively proposing to become the purported sole shareholder of the Company without otherwise accepting any of the obligations or liabilities which would come with being bound by the Company's constitutional documents and being added as a party to the Petitioners' oppression claim. That is obviously unacceptable to the Petitioners given that the Ruling found our clients were likely to be irreparably prejudiced if the Ruling's two conditions were not satisfied. Considering Concert Holdings' refusal to comply with both the conditions imposed in the Ruling, the Petitioners intend to seek consequential directions from Assistant Justice Segal with respect to next steps. That includes, among other things, seeking the imposition of an interim injunction on the same terms as originally sought by the Petitioners. It is our view that, given the reasoning in the Ruling, the Court granting an interim injunction must be the natural result of Concert Holdings' unwillingness to comply with the Ruling's two conditions."*

14. Also on 15 October 2025 (although I did not receive the letter until the following day), shortly after the Registry had distributed the final form of the Judgment, Carey Olsen wrote to the Court with a draft order and their request that the Court confirm that it would permit the parties to serve and file submissions concerning the orders to be made consequential upon and to give effect to the Judgment. They said that they expected that Grand View would propose a different form of order and that the Court would need to determine the form of order to be made.

15. On 16 October 2025 the Registry wrote to the parties as follows:

> *"The Judge accepts that, subject to reviewing any submissions which Kennedys (and if permissible Appleby) may wish to make, a further hearing to consider consequential matters including the form of order to be made and any applications for permission to appeal and a stay pending appeal, should be listed promptly. The*

Judge would be available on Monday 27 October (and might be able to make himself available on Friday 24 October if that were necessary) and invites counsel to discuss timetable and process and to revert to the Court to confirm whether one of these dates is acceptable and what is proposed. Of course, if the parties are unable to reach agreement the Judge will decide on the date of the hearing and give any necessary directions."

16. On 20 October 2025 Kennedys emailed the Court and confirmed that they expected to file the following day a letter in response to Carey Olsen's letter of 15 October setting out Grand View's understanding of the consequential matters to be determined along with Grand View's case management proposals and that they were available for a hearing on 27 October. On 21 October 2025 Carey Olsen wrote to the Court with a suggested agenda and directions for the consequentials hearing. Also on 21 October Kennedys wrote to the Court with Grand View's list of consequential matters and proposed directions.

17. On 22 October 2025, the Registry circulated to the parties an email from me in the following terms:

"I refer to Ms Taznae's email of yesterday and now write, as promised, to respond to the matters raised in Carey Olsen's letters to the Court dated 15 October and Kennedy's letter to the Court of yesterday (21 October).

I have read the correspondence to which Carey Olsen and Kennedys have referred me including Conyers' letter dated 10 October and it seems to me that the issues that now need to be addressed following the handing down of the Judgment are as follows:

(a). the form of order to be made to give effect to the Judgment, in particular (i) whether the undertakings now offered by Concert Holdings as set out in Conyers' letter can and should be accepted by the Court and treated (with or without further modification) as being sufficient to justify the removal from the order of the conditions to the dismissal of the Petitioners' application for the Injunction set out in the Judgment and (ii) if not, the manner in which the conditions should be dealt with in the order and the wording to be included in the order.

(b). once the order has been settled, confirmation of whether the Petitioners and/or Grand View wish to apply (or proceed with their application) for permission to appeal against the Judgment and the order and the directions to be given in relation to and timetable for such applications.

(c). confirmation of whether the Petitioners wish to apply for a stay (assuming that agreement cannot be reached on this issue with Grand View) and the directions to be given in relation to and timetable for such an application.

(d). costs - the order to be made as to the costs of the Interim Relief Summons (including the proposed application by the Petitioners for a non-party costs order against the Company's directors).

In my view, the most expedient way to proceed is for issues (a), (b) and (c) to be dealt with at one hearing. It also seems to me that Conyers on behalf of Concert Holdings should be given permission to appear to confirm the undertakings that Concert Holdings have offered to the Court and to deal with issues raised by the Petitioners (and which may be raised by the Court) as to whether it is appropriate to take these proposed undertakings into account when settling the order and as to the adequacy of those undertakings. It would also be expedient if possible, for the parties to propose for consideration at that hearing the directions to be given in relation to the filing of any further applications and of submissions in relation to costs. Grand View's undertaking (see [14] of the Judgment) should be treated as remaining in force at least until the order has been sealed.

I note from the correspondence that Mr Rhys Williams of Conyers is abroad and not available on 27 October (something of which I was previously unaware). It would clearly be preferable to list the next hearing on a date when he would be able to appear. Since the status quo is currently protected and preserved by the Undertaking and the fact that the Court's order has not yet been made, it seems to me to be preferable to vacate the hearing on 27 October and find a new date as soon as possible thereafter which all parties can accommodate. I would suggest 3, 6 or 7 November (I am tied up in hearings and meetings for the remainder of the week commencing 27 October).”

18. The consequentials hearing was subsequently listed on 6 November 2025, which was a date convenient to all parties including the Company and the Buyer. I invited the parties to agree the appropriate directions but they were unable to do so. Following a further letter from Carey Olsen on 24 October 2025 explaining the disputed issues, the Registry sent a further email from me to the parties as follows:

“I have just received and read Carey Olsen's letter of today.

I assume from that fact that Kennedys have explained and asked Carey Olsen to set out Grand View's position that Kennedys does not wish or intend separately to write to the Court. I note that Kennedys have said that Grand View does not object to permission being given for the filing of further evidence but that they were unsure which issue the further evidence would address and that time for Grand View to file evidence in response would be needed.

Carey Olsen is right that an issue arises as to whether, and the procedural steps that would need to be taken before, the Court can (if it is otherwise minded to do so) accept undertakings from Concert Holdings as being sufficient to justify dismissing the Petitioners' application for the Injunction despite the conditions to the dismissal as articulated and set out in the Judgment not being satisfied. That is

*why I said, when formulating issue (a) "the form of order to be made to give effect to the Judgment, in particular (i) whether the undertakings now offered by Concert Holdings as set out in Conyers' letter **can** and should be accepted by the Court and treated (with or without further modification) as being sufficient to justify the removal from the order of the conditions to the dismissal of the Petitioners' application for the Injunction set out in the Judgment ..."*

It will be a matter for submissions at the 6 November hearing as to whether the Court can make an order dismissing the application conditional upon the undertakings being given to the Court by Concert Holdings (instead of and in substitution for the conditions set out in the Judgment).

In my view it is primarily a matter for Grand View as to whether it wishes to make an application to the effect that in light of the undertakings now offered by Concert Holdings the Court should make such an order (dismissing the application conditional upon those undertakings being given to the Court). I have assumed from the correspondence that has been provided to me that Grand View does wish to do so and that this was the purpose of the undertakings being proffered. But Kennedys must decide what is needed (what form such an application should take) and how to proceed on this.

On the basis that Grand View does wish to proceed with such an application and rely on the proposed undertakings it will need to adduce evidence in support. This can include an affidavit filed by a representative of Concert Holdings in support of Grand View's application. The Petitioners should be permitted to adduce evidence in response. In view of the tight timing and the likely nature of the application, I do not see the need for Grand View to be given an opportunity to adduce evidence in reply.

I note that Carey Olsen have suggested in their letter the simultaneous filing of evidence but that seems to me to be inappropriate since, as I have explained, the relating to the effect of the proposed undertakings arises in the context of an application by Grand View to rely on them and for an order dismissing the Petitioners' application that is conditional on the undertakings being provided (rather than being conditional on the matters set out in the Judgment). The sequential filing of evidence is therefore more appropriate. The issue on which further evidence is needed is as to the change of circumstances since the hearing/Judgment arising by reason of Concert Holding's proposed undertakings. Grand View, if it wishes to rely on these undertakings and the changed circumstances, should set out the evidence on which it relies and the Petitioners should have an opportunity to adduce evidence in response.

I consider that the following core directions are appropriate:

(a). Grand View to confirm whether it wishes to make an application of the kind I have described and to file its evidence in support by noon on Wednesday 29 October 2025.

(b). if Grand View does so, the Petitioners to file any evidence in response by 4pm on Friday 31 October.

(c). written submissions (with copies of the authorities relied on) to be filed by 4pm on Tuesday 4 November 2025.

(d). the hearing bundle to be filed electronically no later than noon on 5 November.

(e). Concert Holdings to be given permission to appear and be represented at the hearing on 6 November.

The parties should settle and agree a form of order to incorporate these directions."

19. An order incorporating these directions was subsequently drawn up.

20. On 30 October 2025 Grand View, in response to my indication that it needed to make an application supported by evidence if it wanted the Court to accept the proposed undertakings, filed a summons (the ***GV Summons***) supported by the First Affidavit of Mr Matthew Wagner sworn on 29 October 2025. In the GV Summons Grand View sought an order that the Judgment or any order to give effect to it be varied so as to require that the Buyer give the undertakings set out in the GV Summons (so that the Petitioners' application would be dismissed on condition that these were given). The undertakings in the GV Summons went further than the 10 October Undertakings in two important respects. First, the Buyer now accepted that it would need, and agreed, to become a party to and bound by the SHA (provided that certain amendments were made to allow it to do so without immediately being in breach of the SHA). Secondly, the Buyer agreed to bound by this Court's decision (and order) in these proceedings as it related to the Company. The order sought in the GV Summons was as follows:

"1. That the Judgment dated 15 October 2025 and/or any order giving effect thereto be varied so as to provide that the Petitioners' application for an interim injunction preventing the sale of the Second Respondent's shares in Cassatt Insurance Company Ltd ("the Company") to Cassatt Solutions LLC ("the Buyer") be dismissed on condition that, from completion of the said sale and upon the Buyer becoming the sole shareholder of the Company:

(i) The Company waives the requirement for the Buyer to comply with the shareholder eligibility requirements as provided for at Section II.A of the Consolidated and Amended Shareholders' Agreement dated 16 November 2011 ("the SHA") ("the Eligibility Requirements");

(ii) Subject to the foregoing waiver of the Eligibility Requirements, the Buyer agrees to be bound by the SHA;

(iii) The Buyer gives the following undertakings:

(a) the Buyer shall cause the Company not to make any dividend payments or other distributions to it as shareholder until the s.111 proceedings have been finally determined by the Supreme Court or by the consent of the parties;

(b) as it currently does in the ordinary course of business unless modified by their respective regulators, the Company will continue to fund the runoff claims and operating expenses of its affiliate companies in Vermont. Any ordinary course service fees paid by the Company to the Buyer or any of its affiliates during such period shall be on an arm's length good faith basis;

(c) the Buyer will agree to be bound by the decision of the Court in the s.111 proceedings as it relates to the Company. It will not seek to intervene in the proceedings or take any steps that would directly or indirectly interfere with the enforcement by the Petitioners of any relief granted in the s.111 proceedings, save that the Buyer shall be entitled to participate in the proceedings in any manner it thinks fit if at any point it is added as a party to the proceedings;

(d) the Buyer will instruct Conyers to accept service of proceedings to enforce any of the above undertakings."

21. At the hearing on 6 November 2025 I dealt with the issue of what order should be made to give effect to the Judgment. It was agreed and I directed that a further hearing would be needed to deal with the Petitioners' Notice of Motion for Leave to Appeal including the application for leave to appeal and the Applications for Interim Relief pending the Appeal, as well as the costs of the Petitioners' application for injunctive relief. I listed that hearing to take place the following week on 14 November 2025.

22. The Buyer was represented at the 6 November hearing by Conyers and agreed to modify further the undertakings it offered to give to the Court. In particular, the Buyer agreed to be joined as a party to these proceedings (on the basis set out in the Judgment) when it became a shareholder in the Company following completion of the Concert Transaction (this was on the basis that I was satisfied that the requirements for joinder set out in RSC O. 15/4 would then be satisfied, which I considered they would be).

23. The orders made and directions given at the 6 November hearing (and the revised set of undertakings to be given to the Court by the Buyer) were recorded in a Minute of Order (the ***Minute of Order***) as follows:

> ***"UPON*** *the Petitioners' Summons dated 20 June 2025 for an interlocutory injunction restraining inter alios Cassatt Insurance Company, Ltd. ("**Company**") and Grand View Hospital ("**Grand View**"), from selling or transferring, or taking steps to sell or transfer, any shares of the Company in any manner whatsoever including, without limitation, any sale by Grand View to Cassatt Solutions LLC ("**Buyer**") pursuant to a Share Purchase Agreement dated 28 April 2025, or distributing any of the Company's assets in connection with any transaction involving the shares of the Company, pending the Court's final determination of the Amended Petition (now the Re-Amended Petition) or further order of the Court ("**Injunction Application**")*
>
> ***AND UPON*** *hearing counsel for the Petitioners and counsel for Grand View at a hearing on 28 and 29 August 2025 ("**Hearing**")*
>
> ***AND UPON*** *the Company having attended the Hearing on a watching brief through leading counsel*
>
> ***AND UPON*** *the Buyer not having been present or represented at the Hearing, but attending through counsel the subsequent hearing listed on 6 November 2025 to perfect the terms of this Order*
>
> ***AND UPON*** *the Buyer undertaking as follows [the **Minute of Order Undertakings**]:*
>
> - *To execute the Deed of Adherence to the Company's shareholder agreement dated 16 November 2011 ("**SHA**") upon the closing of the Share Purchase Agreement*
> - *To agree to be made a party to these proceedings upon the closing of the Share Purchase Agreement*
> - *To submit to the jurisdiction of the Bermuda Court and authorise Conyers, Dill & Pearman Limited to accept service on the Buyer's behalf in these proceedings*
> - *Upon becoming the sole shareholder of the Company, the Buyer shall cause the Company to not make any dividend payments or other distributions to it as shareholder until these proceedings have been finally determined by the Supreme Court or by the consent of the parties*
> - *As it currently does in the ordinary course of business, unless modified by their respective regulators, the Company will continue to fund the runoff claims and operating expenses of its affiliate companies in Vermont. Any*

ordinary course service fees paid by the Company to the Buyer or any of its affiliates during such period shall be on an arm's-length good faith basis

- *That it will not take any steps and will not cause the Company to take any steps that are inconsistent with or would directly or indirectly prevent the Company from complying with its obligations under the SHA*

AND UPON *Grand View confirming that it will immediately notify the Petitioners of the closing of the Share Purchase Agreement and thereafter file the consent order at Appendix A for sealing by the Court*

AND UPON *the Petitioners' Ex Parte Notice of Motion for Leave to Appeal filed on 7 October 2025 ("**Appeal Application**")*

AND UPON *Grand View agreeing that the undertaking it gave by letter from Kennedys dated 3 July 2025 [the **Grand View Letter Undertaking**] shall continue until determination of the Appeal Application by the Supreme Court*

AND UPON *Grand View's Summons dated 30 October 2025*

IT IS ORDERED THAT:

1. *Having regard to the undertakings by the Buyer as set out above, the Injunction Application is dismissed.*

2. *The Company shall continue to comply with its undertaking as set out in the consent order dated 5 June 2025 [the **Company's Consent Order Undertaking**] until determination of the Appeal Application by the Supreme Court.*

3. *There shall be liberty to apply.*

4. *There shall be no order on Grand View's Summons dated 30 October 2025.*

5. *There shall be directions for the Appeal Application as follows:*

    (a) *Grand View shall file and serve any evidence in response to the application by 17:30 on 10 November 2025;*

    (b) *The Petitioners shall file and serve any evidence in reply by 12:00 on 12 November 2025;*

    (c) *The parties shall file and exchange skeleton arguments, together with the authorities relied upon, by 16:00 on 13 November 2025;*

    (d) *The application shall be heard before Segal AJ via Zoom at 10:00 on 14 November 2025 with a time estimate of one day.*

6. *The Court shall consider the appropriate order for costs at the hearing on 14 November 2025. In this regard:*

(a) The Petitioners shall serve a separate skeleton argument (limited to no more than 20 pages) dealing specifically with the costs issues by 17:30 on 11 November 2025, which shall be filed on 12 November 2025;

(b) The Respondents shall file and serve skeleton arguments (subject to the same limitations) by 15:00 on 13 November 2025."

24. Grand View's evidence in response was the Second Affidavit of Mr Douglas Hughes (***Hughes 2***).

The Minute of Order – the basis for accepting the Buyer's undertakings

25. At the 6 November 2025 hearing, having read the parties' written submissions and the related correspondence, I had told the parties that I had no intention of making a conditional order, and that I had never envisaged the order on the Petitioners' application would be drawn up in a conditional form. I had identified certain matters relating to the position of the Buyer, a non-party, that in my view required to be rectified before the order dismissing the Petitioners' application for an injunction could be made. These matters (the Buyer not becoming a party to the proceedings and the apparent breach of the SHA resulting from the failure to require the Buyer to become a party to the SHA by executing a suitable form of Deed of Adherence) in my view gave rise to an unacceptable risk that the relief that the Court could grant in the section 111 proceedings would be adversely affected and that the Petitioners would be prejudiced during the proceedings if these were not rectified or resolved. Because the problems I had identified related to the position of a non-party and would require further input from them and Grand View it was clear to me that they would need to be discussed and dealt with as part of the process of deciding on the terms of the order and on the matters consequential on the handing down of the Judgment.

26. I had, in the brief summary of my decision at [8] of the Judgment, referred to the need to deal with the issues I had identified as a condition to making the order dismissing the Petitioners' application but this was only shorthand. I had said that (my underlining):

> *"I have concluded that the Petitioners' application for an injunction should be dismissed provided and on condition that the Buyer accedes to the shareholders agreement dated 16 November 2011(the **SHA**) (in relation to conduct and matters occurring after the date of its accession) and becomes a party to these proceedings. …… But I have concluded that it should be a condition of the dismissal of the Petitioners' application for an injunction that the Buyer be joined as a party to the Re-Amended Petition (and accedes to the SHA) so as to ensure that all those against whom orders may need to be made to protect the Petitioners and to ensure that an adequate remedy can be granted on the Re-Amended Petition following completion of sale of Grand View's shares are before the Court (and that it is appropriate and just and convenient to impose such a condition)."*

27. I did not say that the order dismissing the Plaintiffs' application should be drafted in conditional terms. I envisaged that before the order dismissing the application was drawn up it would be necessary for the Buyer to take the steps or agree to take the steps at some future date and that the details regarding the action to be taken and the time and manner in which the Buyer would take the necessary steps would be addressed by all parties at the consequentials hearing following the handing down of the Judgment (and before an order to give effect to the judgment was drawn up). The reference to "*conditions*" needs to be understood in this context. The action (by non-parties) I had identified needed to be undertaken, at a time and in a manner to be discussed and decided, before the order dismissing the application could and would be made.

28. It is true that the Judgment did not spell this out these procedural aspects of how it would be determined what the Buyer would do and no doubt it would have been helpful to the parties had it done so (I am afraid that sometimes the need to get a judgment to the parties results in some elements of the decision being dealt with in a summary way). But I had only dealt briefly and in headline terms with the requirements relating to the Buyer and did not seek to discuss in detail how and when these would be satisfied, primarily because the requirements had not been the subject of submissions and it was self-evident to me that the details would need to be considered by Grand View and the Buyer before being finalised and dealt with at the consequentials hearing. That is what has now happened.

29. In my view, the fact that the Judgment had been handed down did not prevent the Court from reviewing Grand View's and the Buyer's response to the issues raised relating to the position of the Buyer and assessing whether the proposed undertakings removed the identified the risk of prejudice and thereby satisfied the Court's concerns, with the result

that the order dismissing the Petitioners' application could then be made. This was because the Judgment envisaged or assumed that the manner in which this issue would be resolved required further debate among the parties before the Court's order could and would be made. The Court was able to deal with this as a consequential matter.

30. Alternatively, it was open to the Court before the order to give effect to the Judgment was made to revise its assessment of what steps the Buyer needed to take before the dismissal order was made in light of the new evidence and the undertakings which the Buyer had proposed. As Lady Hale said in *Re L* [2013] 1 WLR 634 at [16] "*It has long been the law that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected.*" At [19] Lady Hale said as follows: "*Thus there is jurisdiction to change one's mind up until the order is drawn up and perfected. Under CPR r 40.2(2)(b), an order is now perfected by being sealed by the court. There is no jurisdiction to change one's mind thereafter unless the court has an express power to vary its own previous order. The proper route of challenge is by appeal. On any view, therefore, in the particular circumstances of this case, the judge did have power to change her mind. The question is whether she should have exercised it*."

31. It seems to me that this analysis and approach apply to and are consistent with the procedural rules in this jurisdiction under the Bermuda RSC 1985 (see RSC Order 42). CPR r.40.2(2)(b) provides that every judgment or order must be sealed by the court. O.42, r.4(1) requires that orders be drawn up and it seems to me that being drawn up involves the sealing of the order. I do not consider that O.42, r.3 which provides that a judgment or order of the Court takes effect from the day of its date and shall be dated as of the day on which it is pronounced, given or made, unless the Court, orders it to be dated at some earlier or later day affects the analysis or the conclusion reached by Lady Hale as regards the Court's jurisdiction to review the decision contained in the judgment (see *Zuckerman On Civil Procedure*, 4th ed., 2021, at [23.34]).

32. Out of an abundance of caution I had required Grand View to file an application seeking an amendment to the relevant parts of the decision in the Judgment or seeking an order that took into account the post-judgment developments and the Buyer's offer to provide undertakings.

33. I was satisfied that the Minute of Order Undertakings removed the risk that the relief which the Court could grant in the event that the Petitioners were successful in the section 111 petition could be restricted and qualified in a way that would prejudice the Court's ability to do justice and grant fully effective relief (by requiring that the Company acted in the manner set out in the Court's order, which might involve requiring its sole shareholder, the Buyer, to pass resolutions to facilitate this or to repay sums received by it in breach of the undertakings it would give). The Minute of Order Undertakings therefore resolved the issues I had identified in the Judgment. Indeed, since the Buyer had eventually agreed to become a party to the section 111 proceedings and to execute a Deed of Adherence in respect of and to be bound by the SHA (albeit on the basis that the Company would waive certain requirements to avoid an immediate breach of the SHA), the two requirements (conditions) I had identified had been satisfied. The Minute of Order Undertakings were clearly to the considerable advantage and benefit of the Petitioners as they acknowledged when making their submissions on the appropriate costs order to be made – the Petitioners relied on the Minute of Order Undertakings to show that they had in fact been the successful parties on their application since they had achieved substantially all they had sought.

The Petitioners' application for leave to appeal

34. As I have already noted, at the conclusion of the 14 November hearing I informed the parties that I had decided that the Petitioners' application for leave to appeal the dismissal of their application for an interim injunction should be dismissed and therefore that permission to appeal was refused.

35. I carefully considered the grounds relied on by the Petitioners as identified in their Draft Notice of Appeal, Ms Ramthun's Seventh Affidavit and their skeleton argument filed for the 14 November hearing and sought, as objectively as any first instance judge can when reviewing a challenge to his or her decision, to assess their merits and prospects of success.

36. I also carefully considered Grand View's submissions in opposition to the Petitioners' application for leave to appeal.

37. The Petitioners included in their authorities bundle the Court of Appeal's judgment in *Trew v White and White* [2025] CA Bda 21 Civ and Mr Masters referred in his oral submissions to the discussion of the legal test for granting leave to appeal in the judgment of Justice Shade Subair Williams when sitting as an Acting Justice of Appeal. The learned Acting Justice of Appeal said this (my underlining):

> *24. In Credit Suisse Life (Bermuda) Ltd v Mr. Bidzina Ivanishvili [2020] BM 2020 SC 43 this Court distinguished between the test applicable to applications for leave to appeal in accordance with the current English Civil Procedure Rules and the test which previously governed leave to appeal applications under the former English procedural rules. Under the old procedural rules, the threshold for a successful leave application was grounded on the question of whether the applicant had established an 'arguable' case by way of appeal. However, from 26 April 1999 when Lord Woolf's reforms were implemented in the form of the CPR, the test changed. Part 52 of the CPR introduced a stricter standard for obtaining permission to appeal…..*
>
> *25. CPR 52.6, however, has no application under our procedural law. So, any reliance on that provision to promote the 'real prospects of success' test under Bermuda law would be flawed in principle. How the "real prospects of success" and the "arguable" tests diverge was regrettably misconceived in Apex Fund Services Ltd v Matthew Clingerman (as Receiver of a segregated account of Silk Road Funds Ltd) [2020] Bda LR 12. In that case, sitting as a first instance judge, I erred in stating that there is no meaningful distinction between the "real prospects of success" test and the "arguable" test. That was plainly incorrect.*
>
> *26. The 'arguable' test set by the former English rules did not pin an applicant so firmly against the wall. All that was required was for the applicant to demonstrate that the case on appeal was arguable, otherwise put as "reasonably arguable" or "arguable prospects of success" (see Dobie v Interinvest (Bermuda) Ltd and Black [2010] Bda LR 25, per Kawaley J.)*
>
> *27. The 'arguable test' has long been recognized by Bermuda Courts as having been seeded by the then Master of the Rolls, Lord Donaldson of Lymington, in Credit Commercial de France v Iran Nabuvat [1990] 1 WLR 1115. ……*
>
> *…..*
>
> *29. The threshold arguments for the granting of leave to appeal on the 'arguable' test appear in the following note in the 6th cumulative supplement to the Annual Practice. The note is quoted in the judgment as follows:*
>
> > *"Since the single Lord Justice will (prior to granting leave to appeal) have seen and considered the draft grounds of appeal, a transcript or note of judgment appealed against and (where the application was*

made out of time) the reasons for the delay, it is envisaged that respondents will not apply for grant of leave to set aside unless there are cogent grounds for believing that there is some point which was not before the single Lord Justice and which renders the appeal so weak as to justify the rescinding of the grant of leave to appeal."

30. Battling against the use of the arguable-threshold, Counsel in Iran Nabuvat submitted that leave to appeal should only be granted where there is a probability or a reasonable likelihood that the judge was wrong. That argument advocated for a strong bias against the granting of leave, particularly in respect of discretionary decisions. This approach was flatly rejected by Donaldson LJ who set out the position stated in the Annual Practice note. The Court unanimously determined that bias must always be towards allowing the full court to consider the complaints of the dissatisfied litigant. This did not ignore the Court's duty to consider any resulting unfairness to a respondent required to defend the appeal, or to other litigants waiting in line to be heard on their matters, nor did the Court ignore the potential for an appellant to be in need of saving from his or her own folly.

31. Donaldson LJ pointed out that if the Court were to employ the 'probability' or 'reasonable likelihood' test, it would be bound to consider the merits to the degree required by what would be very close to an actual hearing of the appeal. This was the foundational analysis to his reasoning when he said, as famously quoted by Kawaley CJ in Avicola Villalobos SA v Lisa SA and Leamington Reinsurance Co Ltd [2007] Bda LR 81:

"…no one should be turned away from the Court of Appeal if he had an arguable case by way of appeal" and "That is really what leave to appeal is directed at, screening out appeals which will fail."

38. Acting Justice of Appeal Shade Subair Williams reviewed the position again in a related judgment also handed down on 15 August 2025. This was *Trew v HSBC Bank Bermuda Ltd and another* [2025] CA Bda 22 Civ (15 August 2025) in which she said this (my underlining):

"17. The legal principles applicable to applications for leave to appeal were most recently addressed by this Court in Trew v White and White [2025] CA Bda 21 Civ (15 August 2025) and Credit Suisse Life (Bermuda) Ltd v Mr. Bidzina Ivanishvili [2020] BM 2020 SC 43. See, also, Apex Fund Services Ltd v Clingerman [2020] SC (Bda) 12 Com.

18. The ultimate question at this stage is whether the Applicant has established an 'arguable' case by way of appeal. That does not require us to scrutinize the merits of the appeal grounds for any purpose other than to weed out the claim if it has no realistic possibility of success. Much like the judicial probe required for a strike-out application, the assessment of applications for leave to appeal forms part of the Court's paramount duty to ensure that the Court's resources are not exhausted by litigants who have plainly hopeless claims.

> *This, as explained in Trew v White and White, lends a starting bias in favour of the Applicant, as the Court, at this stage, is not concerned with the strength of the claim as much as it is concerned with the extraction of irreparably incompetent claims."*

39. The arguable case standard establishes a low threshold and the applicant has the benefit of a "*starting bias*." The Court is required to assess whether it appears, without a detailed analysis of the grounds relied on, that the appeal will in all probability fail and therefore that there is no injustice in denying the applicant the opportunity to appeal and that the case is one which should not take up Court of Appeal time.

40. But it cannot be sufficient for the applicant just to say that he/she disagrees with the Court's findings and decision (i.e., that the Court refused to accept the applicant's case and evidence as set out at the hearing). Otherwise, the requirement for leave would cease to have any useful screening function. In my view the applicant must still show a cogent basis for challenging the Court's decision, albeit not one with a substantial chance of success. Where the decision that is challenged involved the Court exercising a broad discretion, it will be relevant whether the applicant has identified, and in my view important for the applicant to identify, factors which the Court failed to take, or improperly took, into account.

41. Since I have decided to refuse permission to appeal even though the threshold is, as I have said, low and the Petitioners have the benefit of the starting bias, I need to explain my reasoning and responses to the Petitioners' grounds in a little more detail than would usually be the case. As Mr Justice Martin said in *Re Bittrex Global (Bermuda) Limited (in liquidation)* [2025] SC (Bda) 113 Civ. (3 November 2025) (***Re Bittrex***) at [7]:

> *"The reasons for the refusal of leave to appeal are often short and pithy. This is because the refusal of leave is reserved for applications which are "doomed to fail", and it is usually easy to explain why a proposed appeal is hopeless in a few short, well-chosen sentences. However, in some cases, such as this one, the background and the number of points taken (especially in a technical area of the law) requires the Court to give a more detailed explanation as to why the points which are being raised on appeal have, on proper analysis, no realistic prospects of success."*

42. The Petitioners helpfully summarised at [19] of their skeleton arguments their grounds of appeal as more fully set out in the Notice of Appeal (in [19] the Petitioners said that

they relied on 14 grounds but then set out the full 16 grounds as referred to in the Notice of Appeal):

> *Ground 1-The Learned Judge erred in finding that the Court has the same power under Section 111 as the power of the English Courts under section 996 of England's Companies Act 2006. Rather, the Court's power under Section 111 is not as broad as that of the English Courts.*
>
> *Ground 2: The Learned Judge erred in paragraphs 107-108 by failing to consider the weight that should be given to the evidence in the First Affidavit of David Provost.*
>
> *Ground 3: The Learned Judge erred in conducting his own actuarial analysis and, as a result, making a finding of the incorrect value of the Company and, consequently, the incorrect amount of Grand View's share of the total equity.*
>
> *Ground 4: The Learned Judge erred in calculating the compensation that Grant View would receive from the Concert Transaction at paragraphs 23 and 33.*
>
> *Ground 5: The Learned Judge erred in failing to consider that the Court's ability to grant an appropriate oppression remedy following trial would be materially frustrated by the Company's Bermuda Monetary Authority licensing conditions.*
>
> *Ground 6: The Learned Judge erred in paragraphs 112 and 114 in finding that Grand View would likely be able to satisfy a buy-out order following trial after closing of the Concert Transaction and, therefore, that the Concert Transaction would not materially frustrate the Court's ability to grant an oppression remedy following trial.*
>
> *Ground 7: The Learned Judge erred in paragraph 110 in finding that the Court's ability to grant an appropriate oppression remedy following trial would not be materially frustrated by the Company being put into run-off under the sole control of Concert NewCo.*
>
> *Ground 8: The Learned Judge erred in paragraphs 74 and 85 of the Ruling in finding the Appellants had accepted that the relief in paragraph 85 of the Re-Amended Petition, which sought the rectification of the Company's Register of Members, "was not a free-standing application for relief but was only included as relief ancillary to, and to be relied only if needed to make effective, a buy-out order."*
>
> *Ground 9: The Learned Judge erred in paragraph 35 of the Ruling in noting the Appellants position was that they "could apply now or later for the [Concert NewCo] to be joined to these proceedings but [Concert NewCo]'s response and the outcome of such an application could not at this stage be predicted with certainty."*
>
> *Ground 10: The Learned Judge erred in paragraphs 92-95 of the Ruling in finding that the reasoning in Re Sibbasbridge Services PLC, [2006] EWHC 1564 (Ch) (Sibbasbridge), was distinguishable from the Appellants' circumstances.*

Ground 11: The Learned Judge erred in paragraph 8 of the Ruling in finding that the Appellants had "failed to demonstrate" that the closing of the Concert Transaction would result in "a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares."

Ground 12: The Learned Judge erred in the Ruling in finding that it would not be just and convenient to grant an interim injunction because allowing the Concert Transaction to close was justified in the circumstances. That finding was contrary to the law governing the determination of the balance of convenience in the context of an unfair prejudice petition.

Ground 13: The Learned Judge erred in paragraph 115 of the Ruling in finding that the Appellants' entitlement to an interim injunction had been prejudiced by the fact that the Appellants did not previously seek to rectify the Company's Register of Members and, in doing so, obtain an interim injunction preventing Grand View from selling 100% of the equity in the Company. That finding is inconsistent with the previous findings of the Court and is otherwise contrary to both fact and law.

Ground 14: The Learned Judge erred in paragraph 8 of the Ruling in ordering that the Appellants' application for an interim injunction (or alternatively, a freezing injunction or a preservation order) "should be dismissed provided and on condition that the Buyer accedes to the shareholders agreement dated 16 November 2011 (the SHA) (in relation to conduct and matters occurring after the date of its accession) and becomes a party to these proceedings." There was no basis in fact or law for the Learned Judge to make such a conditional order. The Petitioners may need to amend such ground upon receipt of the Judge's clarifying note referenced above at paragraph 14.

Ground 15: The Learned Judge erred in paragraph 122 of the Ruling in finding that the Petitioners had not satisfied the test for a freezing injunction in the context of a Section 111 petition.

Ground 16: The Learned Judge erred in paragraph 123 of the Ruling in finding that a preservation order was not available to the Appellants in the circumstance because "[i]t cannot be said the GV Shares are property which is the subject-matter of the Re-Amended Petition in this way." Such finding is contrary to the law and facts.

43. Grand View's position in opposition to the Petitioners' application for leave to appeal was clearly and, in my view, persuasively set out in its skeleton argument on this issue. At [17] - [22] Grand View summarised the key issues arising on the Petitioners' application and the main elements of my decision. I agree with Grand View's statement of the position in these paragraphs.

44. At [23] - [45] Grand View reviewed and commented on each of the 16 grounds of appeal raised by the Petitioners. Once again, I found their analysis and arguments to be persuasive. I will not repeat all the points they make but briefly summarise the main points arising on each of the 16 grounds:

(a). Ground 1: I agree with Grand View that the dispute as to the scope of section 111 of the Companies Act 1981 (whether it gives the Court jurisdiction to make orders against non-parties to a petition) is not determinative of or material to the outcome of the Petitioners' application where the Judgment required that steps be taken to ensure that orders could be made against the Buyer and in consequence the Buyer agreed to be added as a party on closing of the Concert Transaction and to give various undertakings to deal with the risk of prejudice to the Petitioners in the period before the trial and in relation to the remedies that could be granted if the Petitioners were successful at trial.

(b). Ground 2: There is no basis for suggesting that I failed to take into account the Petitioners' submissions as to, or to consider, the weight to be given to the evidence of Mr Provost. I noted the objections raised by the Petitioners but did not consider that they prevented Grand View or the Court from relying on Mr Provost's evidence for the purpose, at an interlocutory hearing where the details concerning the basis on which Mr Provost had prepared his evidence were not explored or tested and the Court was unable to resolve disputes between the experts, of ascertaining what the different experts had said as to the equity value of the Company and as to the claims to allocations of the equity made by the Petitioners and Grand View.

(c). Ground 3: As I explain further below, I did not conduct an actuarial analysis regarding or make findings concerning the value of the Company's equity and of the allocations of that value as between the Petitioners and Grand View. I simply sought to form a view, for the purpose of deciding whether the Petitioners had made out their case for interlocutory relief, based on the limited and largely disputed evidence, as to what it was reasonable to assume was the likely value (within a range) of the Company's equity and Grand View's share of that to see whether there was a real risk that the result of it receiving the proposed distributions would be that the Company would be unable to satisfy a buy-out order made against it (or

that the directors were acting in breach of duty in approving the payment of those distributions).

(d). Ground 4: the Petitioners say that I failed to accept that Grand View was being "*unjustly enriched*" as a result of the Buyer agreeing to discharge Grand View's liability to the Company in respect of unallocated adjusted expenses. My point was that this arrangement did not diminish the net assets of the Company because, as Grand View pointed out, the US$1.45m for ULAE was to be paid to the Company. It was therefore not an act or agreement that would affect the Company's ability to satisfy a buy-out order in favour of the Petitioners made on the petition and since this was the critical factor for determining whether to grant an injunction the fact that Grand View was receiving a further financial benefit in connection with the sale of its shares was not to be given any material weight.

(e). Ground 5: The Petitioners complain that I failed to take into account that the Company's ability to satisfy a buy-out order was likely to be *"materially frustrated"* by the change to the Company's BMA licensing conditions following the completion of the Concert Transaction. However, I did take into account and noted the Petitioners' submissions on this issue. But the Petitioners had not adduced any evidence (from a suitably qualified deponent) beyond copies of correspondence as to the relevant regulations, the precise nature and impact of the changes to be made following the closing of the Concert Transaction and the rights, duties and likely decision-making and attitude of the BMA which established a real risk that, if BMA approval was required for payment by the Company of a buy-out order, BMA approval could or would be withheld and not forthcoming. The Petitioners had relied on generalised and unsubstantiated assertions on this point.

(f). Ground 6: The Petitioners' claim that I found that Grand View would be likely to be able to satisfy a buy-out order and that this was not supported by the available evidence (and was wrong in law). This mischaracterises my decision. As matters stand, the Petitioners (despite having had the opportunity to do so) have not amended their petition to seek any relief against Grand View, including a buy-out order. Where the relief sought by the Petitioners was only a buy-out order against the Company, the primary issue was the Company's ability to satisfy such an order

if and when made. The financial position of Grand View was relevant as a secondary matter insofar as it was to receive payments which the Petitioners claimed would prejudice the Company's ability to satisfy a buy-out order. I decided that the Petitioners had failed to show that but that they had also failed to show that Grand View would be unable to pay back the sums it had received in the event that the relief granted on the petition included an order requiring them to do so. The Petitioners' evidence as to the financial position and governance of Grand View did not establish that there was a real risk that it would be unable or take steps to prevent itself from being able to satisfy any orders subsequently made against it.

(g). Ground 7: The Petitioners argued that I had failed to find and take into account that the Company's ability to satisfy a buy-out order would be materially prejudiced by the Company being put into run-off under the control of the Buyer. But as Grand View noted, this ground is misguided because it fails to recognise that the Company will be in run-off whether the Concert Transaction goes ahead or not. The Concert Transaction was not the cause of the Company having to enter run-off and as I explained the Petitioners had not shown (their case was only based on limited evidence and mainly on assertion in submissions) that the Buyer was planning to conduct or that there was a real risk that the run-off would be conducted improperly or in a manner that would prejudice the Company's ability to satisfy a buy-out order (and my requirement that the Buyer become a party to the proceedings and give the Minute of Order Undertakings meant that these risks had been largely removed or materially diminished).

(h). Ground 8: The Petitioners said that I had wrongly assumed that they had, or wrongly taken them to have, accepted that the relief at [85] of the petition was not a free-standing application for relief but was only included as relief ancillary to, and to be relied on only if needed to make effective, a buy-out order. As I made clear at the 14 November hearing, this seems to me to be a wholly unjustified, and disingenuous, claim since I had taken particular care during the oral argument to give Mr Masters an opportunity to explain his case on this point and to set out clearly whether the Petitioners were seeking relief that would involve them becoming full and long term members of the Company again, in the alternative to a purely financial remedy (a buy-out order). Mr Masters made it quite clear that the

Petitioners were not seeking such relief and his submissions proceeded on that basis. As Grand View noted in their written skeleton (at [34]):

> *"The Petitioners complain that the Learned Judge erred in finding that they did not pursue a free-standing claim for rectification and that this had only been included ancillary to a buy-out order.*
>
> *In fact, the Petitioners made this very submission at the hearing – see: p.161-165, 29 August 2025 Transcript, which concludes with the following exchange at lines 13-23 of p.164:*
>
> *THE COURT: But I think the gloss though is that what you're saying is that your primary claim for relief, what you really want is 83(b), you want to be paid the value of your equity. You're not going along saying, well, actually, we're going to be arguing on the hearing of the petition, that actually we don't want to be paid the value of our equity. We actually really want to be reinstated as members. That's not what you're saying, is it?*
>
> *MR MASTERS: No."*

(i). Ground 9: I agree with Grand View that the Petitioners' complaint that I erroneously proceeded on the basis (assumption) that they would be able to apply to join the Buyer to the proceedings is moot in view of the Buyer's agreement to become a party to the proceedings and to give the Minute of Order Undertakings. My focus was also on the ability of the Petitioners to apply to join the Buyer to the proceedings after closing of the Concert Transaction, since the Petitioners' claim to injunctive relief was made by reference to the position that would occur if the Concert Transaction was allowed to go ahead and complete.

(j). Ground 10: The Petitioners challenge my conclusion that the decision and reasoning in *Sibbasbridge* (a case to which I directed their attention) is distinguishable. As I said at [92] of the Judgment, Judge Raynor in that case had considered that it was necessary to preserve the *status quo* and restrain the proposed sale because if the sale went ahead there would be a change in the identity of the party against whom relief could be granted and therefore a risk that the remedies available to the petitioner would be adversely affected. That is not the case here and I do not consider that any of the arguments made in ground 10 put that into question or raise an arguable challenge to that conclusion.

(k). Ground 11: This is in substance simply a disagreement with the exercise of my discretion based on the evidence adduced by the parties. Further, as Grand View pointed out in their skeleton (at [39]):

> *"As part of this Ground, the Petitioners express concern about distributions that they say might be made following the closing of the Transaction. Whilst it remains to be seen whether the Petitioners pursue these arguments, the undertakings provided by the Buyer, as recited in the order of 15 October 2025, give the Petitioners more than enough protection in this regard, rendering this criticism on appeal entirely academic."*

(l). Ground 12: Once again this is in substance simply a disagreement with the exercise of my discretion based on the evidence adduced by the parties.

(m). Ground 13: The Petitioners have misunderstood what I said at [115] of the Judgment regarding their decision not to challenge the validity of the Forced Withdrawal Notice and seek injunctive relief to restrain the Company from removing them, or treating them as having been removed, as shareholders. The context is that [115] deals with the Petitioners' claim, which I rejected, that Grand View was purporting to sell the shares that were once owned by the Petitioners. I pointed out that Grand View had proceeded on the basis that the Forced Withdrawal Notice was effective so that all the shares in the Company were owned/held by it. In that context, I pointed out that the Petitioners had not challenged the Forced Withdrawal Notice and the cancellation of their shares and that it had been open to them to do so – and that had they done so and claimed that they remained shareholders, and that therefore Grand View was unable to transfer 100% of the equity in the Company, they would then have had a different basis for claiming an injunction to restrain the Concert Transaction going ahead and reasonable grounds for obtaining one. My point was simply that, having chosen not to challenge the Forced Withdrawal Notice and assert their rights as continuing shareholders and instead to seek only a financial remedy, the Petitioners had to accept that their entitlement to injunctive relief would be judged by reference to whether an injunction was necessary and justified in order to preserve and protect the financial relief they had sought.

(n). Ground 14: The Petitioners challenged the Court's power to make a conditional order. However, as I have explained, that was not what the Judgment intended or required and the order that has been made is an unconditional order. This ground therefore falls away. It may be that the Petitioners will wish to challenge whether the Court had the power to accept and should have accepted the Minute of Order Undertakings but that is a different point and would, in my view, for the reasons I have set out above, be a bad one.

(o). Ground 15: The Petitioners challenged the basis on which I concluded that they were not entitled to a freezing injunction. Their main ground for doing so, as far as I understood their case, was that the distributions to be made to Grand View in connection with the Concert Transaction "*were made by the Company as part of a Concert Transaction which would result in Grand View being unjustly enriched. There is no basis in law for the Learned Judge to find that such an unjust enrichment could be either "proper" or "lawful*" *[where permitting the Concert Transaction to proceed would permit the occurrence of further wrongdoing]"* (the words in square brackets summarise the Petitioners' cross-reference here to Ground 12 and in particular [13(a)] of their Draft Notice of Appeal). The Petitioners cannot mean to refer to a cause of action in unjust enrichment. They are, doing my best to understand their case, saying (repeating) that permitting the Concert Transaction to proceed would allow Grand View to benefit from the wrongful conduct of the Company (and Grand View in procuring or being complicit in it) in giving and relying on the unlawful Forced Withdrawal Notice and which is the subject of the complaints in the petition. But this fails to accept that having chosen only to seek a financial remedy by way of relief under section 111 of the Companies Act 1981 the critical issue is not whether Grand View was being paid more than the Petitioners alleged they were entitled to but whether the payments and the Concert Transaction as a whole put at risk the ability of the Court to grant the Petitioners a full and sufficient remedy. I did seek to look carefully at the evidence, such as it was, as to the decision making of the Company's board to see whether there was a basis for a claim that they were acting in breach of duty but was not satisfied that the evidence indicated that this was arguable. The Petitioners did not seek closely to focus on and interrogate the board minutes and resolutions to establish grounds for a breach of duty claim and I concluded that there was no or an insufficient basis,

and certainly that the Petitioners had not established that there were reasonable grounds, for concluding that the Concert Transaction and the related distributions involved a breach of duty by the directors. I would accept that the Judgment only dealt very briefly with the Freezing Injunction Ground and could have elaborated further on the reasons why I considered that the basis for granting a freezing injunction were not made out. But, apart from the need to avoid further delaying in the handing down of the Judgment and increasing its length, it seemed to me to follow from my discussion of the Interlocutory Injunction Ground that the Petitioners had failed to establish a critical component of the test for granting a freezing injunction, namely that there was objective evidence of a likelihood that assets would be dissipated to frustrate a future judgment on the petition. The Company and Grand View had explained and, in my view, given good commercial/business reasons why the Concert Transaction was needed and importantly I had already found that the Company's ability to satisfy a judgment (buy-out order) made on the petition if the Petitioners were successful would not be prejudiced.

(p). Ground 16: The Petitioners challenged my dismissal of their claim based on the Order 29 Ground. This was because "*the Court has the legal jurisdiction to grant a preservation order which restricts distributions made out of a company if the entitlement to the assets being distributed is the ultimate issue to be determined at trial. This is precisely [the Petitioners] circumstances and the test for a preservation order has been meet based on the law and facts*." But, as Grand View pointed out in their skeleton argument (at [45]), this formulation misunderstands the nature of the Petitioners' own case: *"The Petition is not about an argument over entitlement to the Company's assets. Rather it is about whether the Petitioners have been unfairly prejudiced/oppressed and whether the Company should be ordered to buy them out as a result*." The Petitioners have not in the petition made a claim to the assets of the Company, and there is no dispute as to the "*entitlement to the [Company's] assets being distributed*." The Court's jurisdiction under RSC O.29, r.2 is simply inapplicable in this case.

45. Accordingly, it seems to me that Grand View is correct to characterise the Petitioners' multiple grounds of appeal as essentially rehearsing and reiterating the arguments and

matters they relied on at the hearing and refusing to accept the reasons I gave for rejecting them, which reasons still appear to me to be justified and within the range of legitimate decision making by the Court when exercising the discretion to grant or refuse to grant injunctive relief. I also agree with Grand View that this is not a case in which the proposed appeal raises a novel question of importance upon which further argument and a decision of the Court of Appeal would be of wider public benefit.

46. It seems to me that the Petitioners' challenges are fundamentally misconceived. Their main difficulty, which they have failed to acknowledge or adequately take into account, was that they had failed when making their application to appreciate that they needed to address and adduce credible evidence as to the amount that the Court was likely to award them if they succeeded at the trial of the Re-Amended Petition (at least a reasonable range of the values that might be awarded) and why the distributions to be made to Grand View in connection with the Concert Transaction would give rise to a serious risk that the Company would have insufficient realisable assets to pay them that sum. Their evidence as to the likely total equity value of the company at the relevant time (they never clearly addressed when this would be) and the assessment of their entitlement to a share of that value, and the methodology to be used to calculate these sums, was only ever limited, thin and based on high-level assertions (that were contested). The Re-Amended Petition at [60] had referred to the WTW Report and said that the "*amount of equity to be returned to the Petitioners [without explaining whether this was based on the terms of the SHA or an assessment at the trial of the Re-Amended Petition] must at least be consistent with*" the WTW Report and asserted that "*the calculation of equity allocation is based primarily on premiums paid ..*" Ms Ramthun in Ramthun 4 (at [14] and [15]) had also referred to the WTW Report and its reference to the total equity of the Company as at 30 September 2023 being US$49,042,000 but had only noted that after the "*approximate shareholder equity allocation*" US$9,023,000 to Abington, US$7,866,000 to JNE and US$916,000 to Grand View "*The remaining USD$33,069,000 had not been allocated to any Institutional Shareholder.*" The Petitioners' expert evidence had failed to address these issues either. Mr Osborne, who was the Petitioners' expert, did not address the valuation issue, how the shares should be valued at the trial of the Re-Amended Petition or the share of the total equity that the Petitioners and Grand View were ultimately to be entitled to. Where he did comment on the value of the equity, he only made assumptions

that the total shareholder equity could be valued at between US$67 million and US$32 million (see Osborne 1 at [34]).

47. In these circumstances, the Court was left to understand and piece together as best it could the Petitioners' case on these matters (which is why I had pressed Mr Masters during his oral submissions to explain what the Petitioners' case was as to the sum they were entitled to and likely to be awarded if successful at the trial of the Re-Amended Petition and the basic valuation methodology for assessing this) and assess, in the context of an interlocutory application and in light of the contrary evidence and factual disputes raised by Grand View, whether the Petitioners had satisfied the burden on them to show that there was a real risk that if the Concert Transaction was permitted to proceed there would not be an adequate remedy at the end of the day for them and whether it would be just and convenient to grant the injunction sought (i.e. to assess where the balance of prejudice lay). The discussion and analysis at [97]-[111] of the Judgment did not involve the Court's own actuarial analysis of the value of the Company. Rather, it sought to understand, assess and apply the Petitioners' fragmentary evidence and incompletely articulated case to the key issue of whether the payment of distributions would so adversely affect the Company's financial (cash or balance sheet) position that there was a material doubt as to its ability, or a real risk that it would be unable, to satisfy a buy-out order in the sum that the Court is likely to order.

48. My conclusion, doing the best I could in view of the incomplete state of the evidence and the factual disputes, was that the Petitioners had failed to meet the required threshold. I summarised my conclusions at [8] of the Judgment as follows (omitting the part of [8] that dealt with the steps that the Buyer needed to take in order to ensure that there was no material risk that the Petitioners could be deprived of an adequate remedy at the end of the day if successful):

> *"I have carefully considered whether the evidence shows that the admittedly substantial distributions to be made by the Company in connection with the Concert Transaction result, when a reasonable estimate is made of the likely value of the Petitioners' and Grand View's share of the Company's equity (taking account of the substantial disputes as to their entitlement to share in the equity and the limited evidence as to the methodology to be adopted to value the Company's equity and the Petitioners' and Grand View's share of it), in a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares. I have*

concluded that on balance the Petitioners have failed to demonstrate such a risk. I have also concluded that the sale by Grand View of its shares, in circumstances where it will remain a party to the Re-Amended Petition and liable, if the Court considers it appropriate, to be ordered to repay the distributions made to it or, if a suitable amendment to the Re-Amended Petition is made, to pay or contribute to the sum to be paid for the Petitioners' equity interest in the Company, that the sale of these shares also does not create a real risk that the Court will be unable to award the Petitioners an adequate remedy after the trial of the Re-Amended Petition….."

49. The Petitioners will, importantly, have the right to seek permission to appeal from the Court of Appeal who will be able to make their own assessment of whether any or all of the grounds relied on by the Petitioners are arguable, and the members of the Court of Appeal may take a different view from the view I have formed. It seems to me that, while I obviously must give careful and serious consideration to the application for leave, this is the type of case in which the Court of Appeal is best placed independently to assess afresh whether the grounds relied on are arguable and whether this is an appropriate case for leave to appeal to be granted.

Position pending the determination of the Petitioners' application to the Court of Appeal for leave to appeal

50. The question now is whether in a case where the Court has refused permission to appeal, the Petitioners are entitled to relief to prevent the Company and Grand View from taking steps to complete the Concert Transaction until the Court of Appeal has had an opportunity to consider and determine the Petitioners' application for permission to appeal. In my view they are.

51. The Petitioners seek what is in substance an interim injunction pending the hearing and determination of their permission to appeal application. The Petitioners seek in advance of the hearing and determination of their application by the Court of Appeal an order that will prevent the Concert Transaction being completed until the Court of Appeal has decided whether to grant permission. The issue is what is the proper approach for the Court to adopt in a case in which it has refused to grant permission to appeal but the applicant intends to renew his application for permission before the Court of Appeal.

52. There are two ways in which the Petitioners can restrain Grand View and the Company from completing the Concert Transaction pending the Court of Appeal's decision on the Petitioners' application for permission to appeal. First, the Grand View Letter Undertaking and the Company's Consent Order Undertaking could be continued until the determination of that application. Alternatively, the Court could grant an interim injunction to restrain Grand View and the Company from taking steps to complete the Concert Transaction until the Court of Appeal has determined the application for permission to appeal or made a further and alternative order.

53. I note that the Minute of Order recorded that Grand View had agreed to extend the undertaking given in the Grand View Letter Undertaking until the determination by this Court of the Petitioners' application for permission to appeal and ordered that the Company's Consent Order Undertaking, originally given effect by the consent order dated 5 June 2025, also be continued until the determination by this Court of the Petitioners' application for permission to appeal. This Court cannot require Grand View to extend the Grand View Letter Undertaking for a further period until the determination by the Court of Appeal of the Petitioners' application for leave to appeal (or further order of the Court of Appeal) and the Petitioners, in view of the terms of the Minute of Order, will need to make a fresh application for the extension of the Company's Consent Order Undertaking. As Grand View submitted, the Minute of Order made it clear that both undertakings were intended only to last until this Court had made a decision on whether to grant the Petitioners leave to appeal and having decided that leave should be refused, the undertakings, which were based on the consent of the Company and Grand View and which they both did not agree should be extended further, should be allowed to lapse. I accept that argument.

54. The question then becomes whether the Court should grant an interim injunction pending the determination by the Court of Appeal of the application to it for leave to appeal (or until further order by the Court of Appeal). There are two issues. First, what is the test to be applied in deciding whether to grant such relief. Secondly, have the Petitioners satisfied the test and justified the granting of the interim injunctive relief they seek.

55. The Petitioners cited and relied on the following passage in *Commercial Injunctions* by Mr Steven Gee KC (Seventh Edition, 2021) at [24-039] (my underlining):

> *"If an applicant wishes to appeal against a decision declining to grant or continue an injunction, he may apply for an injunction pending appeal.*
>
> *The High Court may refuse to grant an injunction at an inter partes application made either before the trial or at the end of the trial, but still grant an injunction pending an appeal. Ordinarily an application for relief pending appeal must be made in the first instance to the judge who refused the relief, although another judge of the court of first instance does have jurisdiction to deal with the application. Even if the court of first instance is not minded to grant the injunction pending an appeal, the court will normally maintain the status quo pending the hearing of an application to the single judge or the Court of Appeal (as the case may be).*

56. The underlined proposition was not supported by any authority but Mr Masters submitted that Mr Gee was a sufficient authority to justify reliance on his statement of the law.

57. The Petitioners relied on the authorities dealing with the Court's jurisdiction to grant injunctive relief pending an appeal and cited the English Court of Appeal's judgment in *Novartis AG v Hospira UK Ltd* [2014] 1 WLR 1264 (CA) (***Novartis***) as applied by Justice Martin in this jurisdiction in *Furbert v Stevedoring Services Ltd* [2025] Bda LR 15 (SC). But in *Novartis* it was held that it was a condition to the grant an injunction that the Court considered that the appeal had a real prospect of success, which is not the case here.

58. The Petitioners however also cited a passage in *Bean on Injunctions* (15th, Edition, 2025) at [6-28] in which it was said that "*...an unsuccessful claimant may be granted interim protection if he is seeking to restrain some irreparable harm pending appeal, notwithstanding that he has been unsuccessful in asserting his right at trial*."

59. They also relied on the application of the solid grounds test in authorities in this jurisdiction in cases involving applications for a stay pending appeal. The Petitioners cited the judgment of Justice of Appeal Gloster in *Harold Joseph Darrell v Rachelle Frisby* [2023] CA Bda 31 Civ (***Darrell***) at [18] – [20] (my underlining) (this appears to have been a case in which leave to appeal was not required and in which the applicant sought a stay of a possession order pending his appeal of that order):

> *"18. The correct legal approach to the granting of a stay of execution of an order pending appeal is set out in the President's judgment in the recent Court of Appeal of Bermuda case of Hong Kong and Shanghai Banking v Newocean Energy [2021] CA (Bda) 214 Civ at [26] as follows…*

> *19. This approach was followed by Hargun CJ in Ivanishvili v Credit Suisse [2022] SC (Bda) 56 Civ5. In his judgment at [48 – 50], the Chief Justice emphasised that the assessment as to whether a stay is to be granted involves a two-stage process. First the appellant must establish solid grounds. Then, if it does so, the Court will undertake a balancing exercise weighing the risk to each side. Reference should also be made to the Chief Justice's comments at [49] where he said:*
>
> > *"In Contract Facilities v Rees [2003] EWCA Civ 465 at [10], the Court of Appeal quoted from the Hammond Suddards v Agrichem judgment referred to by Eder J (above) as follows: "On the question as to whether there might be a stifling of the appeal, again a further paragraph of Agrichem is material. That is paragraph 18. All I need to quote from that paragraph is that the court made it clear that where somebody seeks to stay orders what they need to do is: '... produce cogent evidence that there is a real risk of injustice if enforcement is allowed to take place pending appeal.'" [My emphasis.]*

60. The application of the solid grounds test in a case where the Court has already refused permission to appeal is supported by the judgment of Mr Justice Bryan in the English Commercial Court in *AssetCo plc v Grant Thornton UK LLP* [2019] EWHC 592 (Comm) (***AssetCo***), which was cited and relied on by Grand View. This was a case in which the judge had already refused permission to appeal (see [54]) against a money judgment. It was a stay case, in which an application was made for a stay against enforcement of the money judgment pending an application to the appellate court for permission to appeal. Bryan J set out the approach to be adopted to an application for a stay in these circumstances (my underlining):

> *"55. The general rule is that an appeal does not operate as a stay of execution, although the High Court and the Court of Appeal have power to order a stay pending the outcome of any appeal process under CPR rule 52.16 . Mr Templeman, for AssetCo, says that there is no good reason in this case to depart from the general rule. It is common ground that the court's decision is a matter of discretion.*
>
> *56. The relevant considerations are set out in the authorities summarised in the notes to the Supreme Court Practice at para 52.16.2. They are summarised by AssetCo in terms which I do not understand to be the subject of dispute by Mr Wolfson, on behalf of Grant Thornton.*
>
> *(1) The first question is whether solid grounds are put forward requiring a stay; see Aikens LJ in Mahtani v Sippy [2013] EWCA Civ 1820 [13]–[17]. This will usually require some irremediable harm to be shown on the evidence if no stay is granted: Mahtani at [15].*

(2) *If there are solid grounds, the court proceeds to consider all the circumstances of the case and weigh up the risks inherent in granting a stay and the risks inherent in refusing the stay: Mahtani at [13].*

(3) *In this respect, the court will consider the risk of an appeal being stifled if no stay is granted and the risk of the paying party being unable to recover in the event that an appeal is successful.*

(4) *Ultimately, the proper approach is to make the order which best accords with the interests of justice. Where the balance of prejudice is in doubt, the answer may well depend on the perceived strength of the appeal: see Leicester Circuits Ltd v Coates Brothers plc [2002] EWCA Civ 474 [13].*

57. *I am also referred to the case of Hammond-Suddard Solicitors v Agrichem International Holdings Ltd [2001] EWCA Civ 2065 , which essentially picks up, in particular, the interests of justice point at sub- para (4), where Clarke LJ (as he then was) held as follows at [22]:*

> *"By CPR rule 52.7 , unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?"*

58. *Certain preliminary matters are common ground. Firstly, there is no suggestion that if a stay is refused there is any risk of the appeal being stifled. Equally, this is not a case where it is suggested that the merits of the appeal are relevant. I should, therefore, make clear that whatever decision I make in relation to stay is in relation to all the circumstances and is not connected in any way, shape or form in relation to my view of the merits of any appeal, although, of course, self-evidently, having refused permission to appeal, I have concluded that there is no real prospect of success on such an appeal. But I put that out of my mind for the purpose of the question of a stay.*

59. *It is for Grant Thornton to show solid grounds…..*

……

62. *The question that, therefore, arises in the first instance is as to whether or not there are solid grounds for requiring a stay, which will usually require irremediable harm….*

.....

65. *Having looked at all the circumstances of the case and weighing up the risks inherent in granting a stay and the risks inherent in refusing a stay, I consider that if the monies are paid out to AssetCo there is a risk to the paying party (that is Grant Thornton) that it would be unable to recover in the event that it obtained permission to appeal and if an appeal was ultimately successful. In circumstances where AssetCo could pay out those monies and distribute those monies by way of dividend, the money could depart, perfectly properly, and then in the event of a successful appeal – however unlikely I feel a successful appeal might be – it would not then be able to recover its money."*

61. It seems to me that the approach taken by Mr Justice Bryan for dealing with applications for a stay pending an application to an appellate court for permission to appeal following a lower court's decision to refuse permission can and should also be applied to applications for an interim injunction in such circumstances. The application for an interim injunction to preserve the *status quo* pending the Court of Appeal's decision on the application for leave to appeal where this Court has refused to grant the interlocutory injunction for the duration of the petition proceedings sought by the Petitioners is functionally equivalent to an application to stay an order made by the Court so as to preserve the *status quo* pending such a decision by the Court of Appeal. It is not necessary in order to engage the jurisdiction to grant such an interim injunction for the Petitioners to show that their appeal is arguable. Mr Justice Bryan's approach follows and is entirely consistent with the authorities in this jurisdiction as set out by Gloster JA in *Darrell* (although I note that Mr Justice Martin appears to have taken a different view in *Re Bittrex* at [8] where he held that the Court had no jurisdiction to grant a stay pending an application to the Court of Appeal for permission to appeal unless it has given leave to appeal). Grand View did not challenge this proposition (that a stay may be granted even where the applicant has been unable to show an arguable case on appeal) and accepted that Mr Justice Bryan's approach was the right one. This started with an assessment of solid grounds as a threshold matter and then went to take into account other factors. The prospects of the appeal could be relevant where the balance of prejudice was in doubt.

62. Accordingly, the first issue (the first stage) is whether the Petitioners have established solid grounds (based on cogent evidence) to justify an order restraining completion of the Concert Transaction pending the determination by the Court of Appeal of their application for leave to appeal. As Mr Justice Bryan said, it is usually necessary in order

to show solid grounds to establish a real risk of irremediable harm on the evidence (in reliance on the statement by Lord Justice Aikens *in Mahtani v Sippy* at [14], a case in which permission to appeal had been granted but which acknowledged that permission did not of itself establish solid grounds, *"It has been said in one case, which is referred to at 52.7.1 [the CPR White Book], by Lord Justice Sullivan in DEFRA v Downs [2009] EWCA Civ 257 at paragraphs 8 to 9 that a stay is the exception rather than the rule and that the "solid grounds" which an applicant must put forward are normally "some form of irremediable harm if no stay is granted"*).

63. In the present case, the Petitioners' evidence is primarily set out in Ramthun 7. The Petitioners summarised their case at [32] of the skeleton argument (for leave to appeal) as follows:

> *"32. As set out in paragraphs 17 to 61 of Ramthun 7 the Petitioners consider they will suffer irreparable harm should a stay not be ordered including as:*
>
> *32.1. any relief granted to them in the appeal will be nugatory as Grand View will be able to do the very thing a successful appeal would otherwise prevent;*
>
> *32.2. any relief granted to them under the Petition may be nugatory on the basis that the terms of the [Minute of Order] do not expressly prevent payment away of the Company's assets to Concert's affiliates, the question of 'ordinary course of business' is unresolved;*
>
> *32.3. Concert is likely to change the Company's constitutional documents and governance structure; and*
>
> *32.4. the Bermuda Monetary Authority (BMA) will likely change the Company's licensing conditions once closing of the Concert Transaction has occurred, which will likely be irreversible*.

64. Grand View submitted that there was unlikely to be any relevant prejudice to the Petitioners if the request for an interim injunction was refused and the Concert Transaction was allowed to proceed, much less irremediable prejudice, because the remedy sought by the Petitioners was a buy-out order, which will still be available to them, and the Concert Transaction will not affect the Company's ability to pay. Therefore, whilst the Petitioners may be unable to obtain an injunction on appeal if the Transaction proceeds in the meantime, this was immaterial to the availability of their ultimate remedy (a buy-out order), such that the Court need not grant a stay to prevent

injustice to the Petitioners. Further, the five points relied on by Ms Ramthun in Ramthun 7 to establish irremediable harm were comprehensively rebutted in Hughes 2 at [19] – [24].

65. Grand View's position, also in summary, was this. There was no reason to suggest that the Buyer was likely to change the Company's constitutional documents and governance structure in a manner which irreparably prejudiced the Petitioners given the terms of the Minute of Order Undertakings. In any event, the changes that Ms Ramthun appeared to be concerned about related to the Company going into run-off, which was happening independent of the Transaction. Even if the Transaction had closed, it would remain open to the Court to rectify the register (if satisfied that the Petitioners have standing and that the test for rectification is made out) such that the Petitioners' available remedies will remain the same. There was also no reason to believe (and the Petitioners had no evidence to suggest) that the Buyer would dissipate the Company's assets, especially in light of the Minute of Order Undertakings and the regulatory oversight to which the Company was subject. Further, any changes to the Company's licensing conditions would occur irrespective of the Concert Transaction closing because they related to the Company going into run-off. Although Ms Ramthun had expressed concern about the Concert Transaction representing a sale of the Company at an undervalue, even if correct, this would not have any bearing on the remedies available to the Petitioners in due course.

66. These rebuttal points have a good deal of force but in my view the Petitioners have established solid grounds and a real risk of irreparable harm because they are entitled to say that on their case allowing the Concert Transaction to close will cause them irremediable prejudice and the Court should ensure that the ability of the Court of Appeal to protect them by preventing the sale going ahead should be preserved. In a case where a party seeks an injunction to prevent what it asserts (and claims) to be irremediable or irreparable harm but fails at first instance and applies for permission to appeal, on the basis that the first instance court was wrong to reject those claims, then the Court is entitled to give weight to those claims for the purpose of assessing the risk (and whether there are solid grounds for considering whether there is a risk) of serious prejudice to that party (as Mr Justice Bryan said, without taking into account the adverse view of the merits of the appeal which the Court has formed when dismissing the application for permission to appeal). In this case, the Petitioners assert, in light of their case as to the

value of the Company's equity and the value of their shares having regard to the allocation of equity as between themselves and Grand View, that allowing the Concert Transaction to proceed (with its associated distributions to Grand View) will prevent the Court being able to grant them an adequate and effective remedy for the oppression and unfair prejudice on which their petition is based, and would unfairly and unjustly permit Grand View and the Company to profit from and monetise their wrongdoing. Once the Concert Transaction has closed there will be certain significant consequences which will be impossible or difficult to unwind. It seems to me that these allegations cannot be dismissed out of hand and are sufficient for the Petitioners to overcome the solid grounds threshold.

67. The second issue (and second stage) is then for the Court to consider the balance of prejudice and what order best accords with the interests of justice. In my view, in the circumstances, having considered the evidence adduced by the parties, the just and appropriate order to make is to grant an injunction restraining Grand View and the Company from taking further steps to complete the Concert Transaction until the determination by the Court of Appeal of the Petitioners' application for permission to appeal or until further order of the Court of Appeal.

68. In Hughes 2, Mr Hughes asserted that there was a significant risk of irremediable harm being suffered by Grand View (together with the Company and others) if the Concert Transaction was prevented from closing pending the determination of the Plaintiffs' application for permission to appeal. In summary his evidence was as follows:

(a). Two of the three directors of the Company have resigned, taking with them many years of acquired institutional knowledge and expertise to the detriment of the Company and its policyholders and leaving behind only Mr Hughes, whose expertise is the business of running a healthcare institution, not an insurance company.

(b). the Petitioners have repeatedly made serious (and unfounded) allegations of impropriety against anyone who stands in their way, including the Company's directors, the Concert Group and even the Company's expert witness. Against this incredibly unattractive backdrop, Mr Hughes must try to find two more

directors willing to expose themselves to the wrath of the Petitioners and sit on the Company's Board. Despite the Petitioners' actions, the Buyer is (presently) willing to take on the running of the Company and ought to be permitted to do so. The longer the delay in determining the appeal (and it was likely to be a long delay, given the next session of the Court of Appeal was not until March 2026), the more likely it becomes that the Buyer would walk away from Concert Transaction, which would put the Company in a very precarious position.

(c). the state of dysfunction during the period of any stay would be likely to lead to severe challenges for the Company, including in relation to retaining and recruiting personnel.

69. It has become clear, after the hearing and as I had anticipated, that the Court of Appeal has responded to the urgency of the Petitioners' application for leave and made arrangements to expedite the appeal (contrary to some rather pessimistic predictions as to the speed with which urgent appeals could be heard in this jurisdiction made during the 14 November hearing). During the 14 November hearing I made it clear that I expected the Petitioners to expedite so far as possible their application to the Court of Appeal for permission to appeal and recently, on 21 November 2025, Mr Masters helpfully wrote to the Court to confirm that the Assistant Registrar of the Court of Appeal had confirmed that the hearing of the Petitioners' application for permission may be listed during the week of 15 December and that the parties had been asked to provide an indication of availability and were seeking to coordinate dates. While the position has not been finally confirmed, it appears that the Petitioners' application will be heard and that they will be before the Court of Appeal very rapidly, in a matter of only two to three weeks.

70. As a result, the proposed interim injunction will only have a very short duration. The concerns expressed by Grand View that the hearing of the Petitioners' application for leave could take, and therefore that an interim injunction and delays to the closing of the Concert Transaction were likely to last for, many months have proved to be unfounded, and Grand View and the Company will have an opportunity to ask the Court of Appeal to vary or discharge it when the Petitioners' application for permission is heard. It seems to me that in these circumstances the balance of prejudice lies firmly in favour of the

Petitioners. Mr Hughes as the sole remaining director will need to manage and stabilise the Company as best he can for a few more weeks. It also seems to me to be highly unlikely that the Buyer will decide to walk away from the Concert Transaction within that period, albeit that it has the right to do so. The Buyer has not said that it will withdraw and has already demonstrated its commitment to the Concert Transaction by appearing at hearings and offering to give the Minute of Order Undertakings. In my view it has made considerable effort to allow the Concert Transaction to be kept alive and behaved in a responsible and measured way in the process. It would be wholly inconsistent with the Buyer's attitude and conduct to date for it to decide not to wait a few more weeks for the hearing before the Court of Appeal.

Costs

My ruling and the further issues to be decided

71. At the end of the 14 November hearing I informed the parties that I had decided that a costs order should be made at this stage (and therefore that costs should not be reserved to the conclusion of the trial of the petition), that the Petitioners should pay 80% of Grand View's costs of and occasioned by the Interim Relief Summons (as defined in the Judgment) and the Company's costs of attending and participating in the hearings before me on a watching brief. I said that I would reserve my decision as to the basis on which the Petitioners should be liable on a taxation in the event that the relevant costs could not be agreed. I confirmed that as a result of this decision it was unnecessary for further consideration to be given or directions made regarding the Petitioners' application for non-party costs against the Company's directors.

72. There was no dispute as to the principles to be applied in deciding whether to depart from the principle that costs of an interim injunction application should usually be reserved and, if a costs order is to be made, as to the appropriate order to be made.

Should costs be reserved or a costs order made now?

73. In *Koza Ltd v Koza Altin Islemeleri SA* [2020] EWCA Civ 1263 Popplewell LJ said this at [4]:

> *"4. The appellants rely on the judgment of Neuberger J in Picnic at Ascot Inc v Derigs [2001] FSR 2 as establishing a principle that where an applicant obtains an interlocutory judgment on the balance of convenience, the court should reserve costs. However, Neuberger J's judgment was not to the effect that there is a general rule applicable in all such cases and there is no invariable practice as is illustrated by Albon v Naza Motor Trading SDN BHD [2007] CLC 782. Neuberger J's reasoning was that an interlocutory injunction was normally to hold the ring until trial, and the resolution of the issues at trial would often cast light upon the merits of the respondent having resisted the interim injunction at the earlier stage. In this case, however, the injunction is not of a holding the ring type, and the issues which were ventilated upon the application will not be revisited as part of the substantive dispute. That was the very complaint which underpinned the appellants' resistance to the application.*

74. In *Picnic at Ascot Inc v Derigs [2001] FSR 2* Neuberger J had said that it may be easier for a respondent to recover costs of successfully resisting interim relief and that the Court should ask two main questions: (a) would it be unfair for the party successful at the interim hearing to have their costs of the application even if they lost at trial, and (b) where relief is refused, was the launch of the application justified? Mr Justice Neuberger also noted that where the Court takes the substantive merits into account at the interlocutory stage, it must be careful before also taking them into account on the question of costs.

75. In my view, this is a case in which the fair and appropriate order is that costs be paid at this stage rather than reserved to the trial. The substantive merits of the Petitioners' case in the petition were not in issue (as I have noted, Grand View accepted that the petition gave rise to a serious issue to be tried) and the primary focus of the Petitioners' application were issues relating to the effect of the Concert Transaction, which issues will not need to be considered again at the trial of the petition. The Petitioners have failed to obtain the relief they sought and, in my view, it would not be unfair for Grand View to have its costs of the injunction application even if it loses at the trial of the petition. Taken together with my conclusion that the Petitioners' application was made without a proper basis to justify granting the injunctive relief they sought (and without adducing adequate evidence to support the claims they made), I consider that it would be inappropriate to defer the costs order until trial. The Court is well able now to determine the appropriate costs order and fairness demands that the order be made now and that Grand View not be required to wait until trial.

Who was the successful party and what costs order should be made?

76. As regards the costs order to be made, Grand View confirmed in its costs skeleton that it accepted the summary of the law in [23] – [26] of the Petitioners' costs skeleton:

> *"23. In Whiting v Torus Insurance (Bermuda) Ltd, [2015] SC Civ Bda 17 (SC) (Whiting) at paragraph 3, Chief Justice I. Kawaley (as he was then) found that this Court's discretion to award costs under Order 62, rule 3(3) of the RSC is subject to the Overriding Objective as set out in Order 1A of the RSC.*
>
> *24. Supreme Court Practice 1999 (Westlaw UK) (White Book 1999) at 62/3/3 confirms the general principle under Order 62, rule 3(3) of the RSC is that determining the successful party must be done on a case-by-case basis, as well as that costs can be awarded against an otherwise successful party if the successful party acted improperly in the conduct of the application:*
>
> > *A successful party to an action should not be ordered to pay any part of the costs of the hearing simply because he has failed to prove all of the allegations made. The successful party should not pay any of the costs unless he has acted improperly or unreasonably in raising issues (Re Elgindata (No. 2) [1992] 1 W.L.R. 1207, CA. The proper approach is to ascertain which side has won overall and then to apply the principle of dealing with the claim and equitable set off as one for the purposes of costs: see Hanak v. Green [1958] 2 Q. B. 9. It is then appropriate to consider whether the conduct of the successful party justifies depriving them of any costs, see Re Elgindata above; M.B. Building Contractors Ltd v. Ahmed The Independent, November 23, 1998 (C.S.), CA, but see Gerdes-Hardy v. Wessex Regional Health Authority [1994] P.I.Q.R. P36S, CA). ...*
>
> *25. Consistent with the foregoing principles, Whiting at paragraphs 7 and 10-11 confirms that the "starting assumption must be" that the successful party is entitled to costs but, in determining whether to award any costs and in what amount, the Court must "have regard to the commercial realities of the result in considering whether or not there has been a 'win' in what has elsewhere been referred to as 'real world terms'." In other words, the Court must determine how successful the applicant was at achieving what the applicant ultimately sought in the application and then award costs accordingly.*
>
> *26. The Bermuda Court of Appeal recently applied the same "real world" success principle when awarding costs in BHeC v Dr. Jay Jay Scares &Anor (Costs), [2025] CA(Bda) 12 Civ (CA) (Soares) at paragraphs 15(o) and 21 [AB/3]. In that case, the Court of Appeal awarded the respondents (applicants at first instance) 75% of their costs despite being "unsuccessful on certain issues" due to part of the appeal being granted. That was not an issue-by-issue costs award, which is impermissible under Bermuda law, but*

rather the proportionate adjustment of the costs awarded based on the "real world" success of the parties."

77. In my view it is clear, having regard to the commercial realities of the result in real world terms, that Grand View was the successful party. It successfully resisted the Petitioners' application for an injunction. However, in view of the fact that, before the application was dismissed, Grand View was required to procure that the Buyer come forward and respond to various issues and concerns that it had been unable to deal with and remove in its defence of the application, and that the Buyer was required to provide the Minute of Order Undertakings to provide protection to the Petitioners, it seems to me that it is appropriate to make a proportionate adjustment to the costs awarded to Grand View having regard to these matters (which reflect the real world success of the parties). I consider that a reduction of 20% fairly reflects the significance of these matters.

Grand View's application that the Petitioners be required to pay costs on the indemnity basis

78. Grand View sought an order that their costs be taxed on the indemnity basis if not agreed.

79. Grand View argued that indemnity costs can be granted in circumstances where either the nature or merits of the case (or application) or a party's conduct have been out of the norm, but there was no requirement for exceptionality (citing *St John's Trust Company (PVT) Limited v Medlands (PTC) Limited & others* [2022] CA (Bda) 18 Civ at [25], [30] and [38].) Grand View said that a claimant who failed to establish its claim having advanced and aggressively pursued serious, wide-ranging and unsupported allegations of dishonesty or other impropriety was exposed to an order for indemnity costs on this basis (citing *Clutterbuck and Paton v HSBC plc* [2015] EWHC 3233 (Ch), *Excalibur Ventures LLC v Texas Keystone Inc.* [2013] EWHC 4278 (Comm), *Natixis SA v Marex Financial* [2019] EWHC 2549 (Comm), *PJSC Aeroflot – Russian Airlines v Leeds et al* [2018] EWHC 1735 (Ch) and *Playboy Club London Limited v Banca Nazionale Del Lavoro SpA* [2018] EWCA Civ 2025).

80. Grand View submitted that the Petitioners had made a number of such allegations throughout their application for injunctive relief and that none of them had been upheld in the Judgment. The Petitioners had repeatedly implied dishonesty and other improper conduct on the part of the Company and Grand View in their evidence, including unjustified and unsupported allegations of misappropriation, collusion, conspiracy, self-dealing, misfeasance, disingenuous conduct, nefarious intent, breach of fiduciary duty, bad faith, and the deliberate flouting of court orders. Grand View gave the following examples:

(a). in paragraph 4 of the Petitioners' skeleton argument dated 24 June 2025: *"The Concert Deal cannot occur but for the Company and Grand View conspiring to oppress the Petitioners through the misappropriation of the Petitioners' shares (and controlling interest) in the Company."*

(b). in paragraph 32 of the Petitioners' skeleton argument dated 24 June 2025: *"The Company also requested and negotiated an extension of the document production deadline in the Directions Order in bad faith."*

(c). in paragraph 81 of the Petitioners' skeleton argument dated 24 June 2025: *"It is reasonable to assume that Grand View will dissipate the assets it receives from the Company as part of its acquisition by St Luke's."*

(d). in paragraph 85 of the Petitioners' skeleton argument dated 4 August 2025: *"Concert Group benefits because it is using a shell company to purchase the Company at undervalue and will then extract as much of the Company's remaining equity over the run-off period."*

(e). in paragraph 105 of the Petitioners' skeleton argument dated 4 August 2025: *"Dissipation appears to be the entire point of the Concert Deal."*

(f). in paragraph 106 of the Petitioners' skeleton argument dated 4 August 2025: *"The Concert Deal is also occurring with nefarious intent on the part of the Company and Grand View..."*

(g). in paragraph 107 of the Petitioners' skeleton argument dated 4 August 2025: *"the Company and Grand View have worked hard to keep the Concert Deal secret from both the Petitioners and the Court until such time as the transaction was far enough along that they believed the Court would be unable to intervene to stop the dissipation of the Company's assets. ... All of this illustrates the nefarious intent which this Court should consider in granting the injunction relief sought by the Petitioners."*

(h). in paragraph 113 of the Petitioners' skeleton argument dated 4 August 2025: *"it is reasonable to conclude that the Company's Board (including Mr Hughes) knowingly caused the Company to breach paragraph 7 of the Directions Order. The Board likely did that in an attempt to frustrate the Petitioners' ability to review the Company's 9,252 documents and identify further evidence of impropriety in relation to the Concert Deal."*

(i). in paragraph 148 of the Petitioners' skeleton argument dated 4 August 2025: *"Given the Funding Injunction Order was granted on the basis of clear misfeasance (without the need to consider the balance of convenience), it is appropriate for the Court to make a costs award against Grand View and the Company's directors personally."*

(j). in paragraph 16 of Ramthun 6: *"it is reasonable to assume that the Company's Board (including Mr Hughes) directed the Company's legal counsel to delay providing the Company's document disclosure to the Petitioners in an attempt to limit the Petitioners' ability to review and identify evidence of impropriety in relation to the Concert Deal."*

(k). in paragraph 27 of Ramthun 4: *"The Concert Deal is not commercially reasonable. It appears designed to create significant windfalls for the Purchaser (which has concerning and suspicious connections with Cassatt), Grand View, and the management and directors of the Company, all at the expense of the Petitioners."*

(l). in paragraph 26 of Ramthun 6: *"The Company's disclosure includes many new documents which indicate that the Company's Board and Concert Group*

manipulated the valuation of the Company in order to advance their own interests and otherwise suppress the true equity value of the Company."

(m). in paragraph 36 of Ramthun 6: *"Based on how the evaluation of the Company appears to have been manipulated by the Company's Board and Concert Group prior to the Concert Deal Indication of Interest Letter being formally presented to Grand View, it is reasonable to assume that Mr Hughes' claims regarding how the Concert Deal sale price was determined and negotiated are incorrect."*

(n). in paragraph 43 of Ramthun 6: *"It appears from the Company's document disclosure that its Board negotiated the sale of Grand View's shares for the benefit of the Board."*

(o). Ramthun 6 also implies dishonesty and improper conduct through the use of tendentious sub-headings (e.g. *"Improper nature and secrecy of the negotiation of the Concert Deal"*, [HB-94] *"Illegitimacy of the Concert Deal sale price and negotiations"* [HB-96]) whilst the 'evidence' said to support the sub-headings is either lacking or misrepresented in circumstances where the facts of the sale are entirely consistent with an ordinary, arms-length share transaction.

(p). in paragraph 20(a) of Ramthun 7: *"Concert NewCo is likely to change the Company's constitutional documents and governance structure pending appeal in a manner which irreparably prejudices the Applicants/Petitioners."*

(q). in paragraph 28 of Ramthun 7: *"Assuming the Ruling is correct and the shareholder exit provisions of the Company's SHA are relevant to the trial of the Applicants/Petitioners' oppression claim (which I understand is a question for trial), Concert NewCo can simply change those provisions in the SHA to preclude the Applicants/Petitioners from being entitled to any compensation for their shares in the Company. That would irreparably prejudice the rights of the Applicants/Petitioners as shareholders and otherwise make the conditions imposed on Concert NewCo by the Ruling effectively meaningless."*

(r). in paragraph 16 of Ramthun 9: *"I believe Concert Holdings is likely to use the Buyer to dissipate the Company's assets through the run-off process. It is now reasonable to assume that the dissipation will occur through the Buyer paying itself and its affiliates excessive run-off fees."*

81. I have carefully considered the basis for Grand View's claim but have decided that this is not an appropriate case in which to award indemnity costs against the Petitioners. While the Petitioners on occasions have been close to crossing the line, by making allegations of bad faith and nefarious conduct based on inference and little else, I do not consider that, having regard to the Petitioners' conduct of the Interim Relief Summons taken as a whole, that they acted outside the ordinary and reasonable conduct of the proceedings. The Petitioners clearly feel strongly that they have been improperly and unfairly removed as shareholders of the Company and are highly critical of Grand View's conduct. It remains to be seen, and will be a matter for the trial of the petition, whether the Petitioners' grievances and claims will be made out and justified. It was neither possible nor necessary to resolve and make findings on these matters on the hearing of the Interim Relief Summons. In the circumstances, an order that the Petitioners pay 80% of Grand View's costs of and occasioned by the Interim Relief Summons is the appropriate order.

The Company's costs

82. The history of the Company's involvement in the Petitioners' application for injunctive relief is complex and was summarised in the Company's costs skeleton as follows (my underlining):

> *"11. On 6 June 2025, the Petitioners filed a summons (**Interim Relief Summons**) for—*
>
> *a) leave to re-amend the Petition to include allegations relating to the SPA;*
>
> *b) leave to serve the Second Respondent out of the jurisdiction; and*
> *c) the SPA Injunction Application.*
>
> *12. On 23 June 2025, the Petitioners filed a further summons (**Further Relief Summons**) for—*

a) *permission to adduce the evidence of an expert in connection with the SPA Injunction (Gary Osborne);*

b) *confirmation that the Second Respondent was a respondent to the Proceedings or alternatively, an order granting joinder;*

c) *an order prohibiting the Company from expending its resources to oppose the Petitioners claims (**Funding Injunction Application**).*

13. *The Interim Relief Summons and Further Relief Summons were heard on 1 and 2 July 2025 (**July Hearing**) by Chief Justice Mussenden who delivered a ruling on 18 July 2025 (**July Ruling**).*

14. *The context here, is key. At the time of the July Hearing—*

a) *the Company was the sole respondent to these proceedings and had been since their commencement in March 2024;*

b) *the Petitioners re-amended petition dated 4 June 2025 (**Re-Amended Petition**) included fresh allegations, including against the Second Respondent at paragraphs 75 to 82, but only sought relief at paragraph 84, against the Company;*

c) *the evidence called by the Petitioners, including the expert evidence of Gary Osborne (**Osborne 1**), in support of the Funding Injunction Application and the SPA Injunction Application went to issues that were well beyond those newly introduced in the Re-Amended Petition; and*

d) *the Company's position was that no leave for expert evidence had been granted and the Court should refuse the Petitioners' request for leave to rely on Osborne 1 (Company's skeleton argument dated 27 June 2025 at [129] to [132) on the basis that the Company had no proper opportunity to consider and respond to the assertions made therein.*

15. *It is in that context that the Court adjourned the July Hearing. Chief Justice Mussenden said at paragraphs 32 to 34 of the July Ruling—*

> *32. ...I was satisfied that I should have regard to the Overriding Objective of enabling the Court to deal with the case justly by granting leave to the Petitioners to adduce expert evidence, bearing in mind that I was prepared to allow an adjournment in order for the Company to adduce its own expert evidence.*
>
> *33. In light of those reasons, I granted leave to adduce the expert evidence of Osborne 1.*

34. I note here that subsequent to my decision to admit Osborne 1, the parties agreed a four-week adjournment to enable the Company to seek an expert opinion in rebuttal to Osborne 1."

16. Having admitted Osborne 1 and granted the Company permission to call responsive expert evidence, the Company did so – with the Petitioners' agreement to a four-week adjournment for that purpose.

17. The bulk of the Company's skeleton for the July Hearing addressed the adequacy of damages and the balance of convenience. In short, the Company submitted that the relief sought by the Petitioners was monetary in nature and that the restraint of the SPA would cause issues for the Company, given that it was entering run-off. These were natural submissions for the Company to make at a time when it was the sole Respondent in these proceedings.

18. As set out in the July Ruling, following the addition of the Second Respondent, the Chief Justice was not satisfied that the Company had an independent position, separate from the Second Respondent, in respect of issues arising as between the Petitioners and the Second Respondent. The Company has fully complied with the July Ruling and has not participated in a partisan manner in respect of those issues. The Company remains however a more than merely nominal party in respect of the issues raised in the petition as it stood before 4 June 2025 and the Chief Justice noted the Company's interest in defending the Re-Amended Petition as it still pleads issues relating to the governance of the Company and the relief sought remains a buyout order against the Company that, in the Chief Justice's view, "plainly involved the Company's interest and requires its representations".

19. The Company attended the hearing on 28 and 29 August 2025 on a 'watching brief', prepared to assist the Court as needed but not to ally itself with the Second Respondent in defence of the SPA Injunction Application.

20. Following the July Ruling, the basis on which the Company proposed to participate in the hearings of the SPA Injunction Application was as set out in the Company's skeleton argument dated 5 August 2025 and was limited to making submissions—

a) on the expert evidence, for the purpose of identifying what was and was not in dispute between the parties based on the expert evidence that both the Petitioners and Company were given leave to adduce at the SPA Injunction Application; and

b) responding to allegations that the Company had breached court orders in the proceedings generally."

83. Accordingly, by the time of the first hearing before me on 28-29 August 2025, the Company was prohibited by the Funding Injunction (as defined in the Judgment) from

participating in the dispute between the Petitioners and Grand View (from "*using its assets for participation in the dispute as between the Company and Grand View* ….") but had been directed to adduce responsive expert evidence and would no doubt be required to provide discovery and possibly deal with issues relating to the governance of the Company and the relief sought against it.

84. It seems to me that, at this stage, I should only be dealing with the Company's costs incurred in relation to the hearings before me and not the hearings before the Chief Justice. Those costs seem to me to be a matter for the Chief Justice. As regards the hearings before me, as I have noted, representatives of the Company attended the hearings on what I described as a watching brief. There was no application by the Petitioners to prevent this or to exclude the Company's representatives. While I accept that the Company's representatives were in attendance in part to protect the Company's position, their primary role was to assist the Court and the other parties by ensuring that disputes concerning the expert and witness evidence adduced by the Company and any factual matters which were particularly within the knowledge of the Company were fairly represented and dealt with. The Company's representatives played only a very limited role and I would therefore expect their costs to be relatively low. It seems to me that in these circumstances the Company should not be liable for the costs of its representatives attending and participating in the hearings before me (including the preparation of the costs skeleton filed in connection with the 14 November hearing). In my view, subject to the point made below, the Petitioners, as the losing party, should be primarily responsible for the Company's costs, to be taxed on the standard basis if not agreed. I appreciate that I have only ordered the Petitioners to pay 80% of Grand View's costs as a proportionate adjustment to reflect the fact that Grand View did not completely succeed in resisting the Petitioners' application without having to adjust its position and provide further protections to the Petitioners. But I do not consider, admittedly on a rough and ready basis, that the same approach is appropriate as regards the Company's costs of attending primarily to assist the Court and the other parties.

85. Responsibility for the costs of the Company's participation in the petition generally and the basis on which those costs should be paid are not a matter that I consider I should deal with now. These are matters for further submissions and consideration subsequently and it may be that the Company's costs, insofar as the Company's

participation is required to assist the other parties, for example by providing discovery of documents, should be shared between the Petitioners and Grand View and paid on the indemnity basis to avoid the Company's own assets and funds being spent or used for the benefit of the disputing shareholders (as I mentioned to the parties at the 14 November hearing there will be other authorities to consider including perhaps my Cayman judgment in *Tianrui International Holding Company v China Shanshui Cement Group Limited and others* (Grand Court of the Cayman Islands, unreported, 30 October 2023)). I do not consider that I am in a position to apply this analysis in connection with the order to be made regarding the Company's costs of participating in the hearings before me. I have concluded, as explained above, that the right order to be made at this stage is that the Petitioners should pay the Company's costs of appearing at and participating in the hearings before me. However, to take account of the fact that the wider question of responsibility for the Company's costs has yet to be addressed, it seems to me only fair that I should give the Petitioners liberty to apply subsequently for an order that Grand View should pay a proportion of those costs if and to the extent that the Court subsequently rules that both the Petitioners and Grand View should share responsibility for the Company's costs of participating in these petition proceedings.

Dated this 27th Day of November 2025

HON. ASSISTANT MR. JUSTICE NICK SEGAL
ASSISTANT JUSTICE OF THE SUPREME COURT