IN THE HIGH COURT OF JUSTICE **Claim No. BL-2020-001343**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD) AND INSOLVENCY AND COMPANIES LIST (CHD)

B E T W E N

(1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY
(JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH
(JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

-and-

(1) MICHAEL ANDREW THOMSON
(2) SIMON HUME-KENDALL
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENT LIMITED
(10) HELEN HUME-KENDALL

Defendants

SECOND AND TENTH DEFENDANTS' OPENING WRITTEN SUBMISSIONS FOR TRIAL

Crowell & Moring U.K. LLP

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[redacted]

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A. INTRODUCTION

1. The Second and Tenth Defendants here provide their written submissions for trial in response to the Claimants' Opening Written Submissions for Trial dated 15 December 2023 ("**C Skeleton**").[1] References in the form "A1/1" are to the trial bundle, while other references are to document identification numbers in disclosure and to be found in trial bundle volume E.

2. The collapse of London Capital & Finance plc ("**LCF**") is a tragedy. There is no denying that many people have lost out since the December 2018 FCA raid which ended its business. But this litigation has not been the proper way to wind up the affairs of LCF and London Oil and Gas Limited ("**LOG**"). As the C Skeleton declares, over £60 million has already been spent on the administrations of LCF and LOG. Much of that money has been spent on this litigation, which has clearly distracted the administrators from the asset realisations on which they should have been focusing. Most notably, they rejected offers worth up to £60 million or more from credible corporate buyers for LOG's interest in Independent Oil and Gas Limited ("**IOG**"), preferring to speculate on the prospects of that company, which has now appointed administrators such that LOG's stake is probably worth little to nothing; they sold the Lakeview resort at an undervalue; and they were labouring under the misconception that the Dominican Republic property assets had no meaningful value, until their own expert in these proceedings opined that they are together worth c. £10 million.

3. At root in these proceedings is an allegation that the managers of LCF and the managers of LOG and its connected companies entered into a scheme to borrow money from other people with no intent to ultimately pay it back – a Ponzi scheme. Fundamentally missing from the C Skeleton is a fair consideration that the alleged Ponzi scheme included considerable investment in energy interests by LOG in IOG and Atlantic Petroleum ("**AP**"), which are in no way challenged, and that LCF lending into the group of companies regarding resort assets was part of an on-going hospitality development and asset acquisition program, involving fundraising from other sources both before and during the loaning from LCF.

[1] A2/1

4. In LOG's administration, LOG's asset holding in IOG has realized approximately £30 million compared to an investment of approximately the same sum. As will be discussed below, that asset was at various times considerably more valuable and the administrators of LOG failed to manage properly and failed to maximise or even maintain the value of LOG's investment in IOG, with the result that the deficiency in LOG's assets (and consequently the deficiency in LCF's assets) which form the basis of the Claimants' claims in fraudulent trading is larger than it would have been.

5. Fundamental to the case against D2 in the proceedings is that he is alleged to have given dishonest assistance to LCF in running a Ponzi scheme. But he was not a director of LCF, nor is he alleged to have been a shadow director, in the period since 2015 when the alleged Ponzi scheme is said to have been planned and executed. In 300 pages, the evidence the C Skeleton has brought to bear that D2 had any role in the management and operation of LCF does little to advance the case pleaded by May 2023. Thus, whatever infirmities in LCF's business practices in order to raise funds may be alleged, the case against D2 remains unparticularized.

6. At root in the remaining case against D2 are the circumstances surrounding his conduct as a director of LOG in 2018 and 2019 regarding two share purchase engagements. D2 consistently conducted his role with and through professional advice. Contrary to the case put in the C Skeleton, the evidence shows that the boards of LOG and its connected company London Power Corporation Limited ("**LPC**") were aware of the basis for the transactions and that LOG's business activities were funded by LCF. That the transactions and the associated corporate restructuring (further discussed below) were not entirely completed is a product of the disruption to and administration of LCF and LOG.

7. It is of course also the case that, after LCF was shut down in December 2018, D2 in his capacity as director of LOG did not simply abandon the business. Instead, he made a £5 million loan to LOG and LPC. Thus, compared with funds alleged improperly obtained and retained by D2 of £18 million, D2 actually returned nearly a third of that amount back into the LOG group's business, and he further assisted in seeking arrangements regarding

restructuring the loan position of Prime Resort Development Ltd (**"Prime"**) when LCF collapsed.

8. As for D10, she is barely mentioned in the C Skeleton. No accusation of specific knowledge of or participation in deliberate wrong-doing is made against her. The case against D10 is simply that she should not be allowed to retain her, approximately, £5 million portion from a £14 million sale of shares in a company there is no dispute she legally owned. After over three years of litigation, little to no attempt has been made to develop whether and how it is unconscionable for her to retain sums for sale of shares in a company which held interests in assets that, on the Claimants' own conduct and evidence now, subsequently realized £12 million on resale (the Lakeview resort) and which, while unsold, according to the Claimants' own expert, are each worth approximately US$5 million ("The Hill" and "The Beach"/ "Magante" Dominican Republic land plots). This is despite D10's solicitors having written to the Claimants' solicitors on 15.09.23 to flag the manifest deficiencies in their case against her,[2] a letter which received no response.

B. D2 AND D10 BACKGROUND

9. Section B3 of the C's Skeleton is incomplete. It is denied that it has any relevance to the case made by the Claimants against D2 and the events that are in play. Even if this potted history were relevant for present purposes (which it is not), the Claimants cannot cherry-pick their own history of events. Failure of some businesses is to be expected in the distressed asset investment world in which D2 operated. The failures cannot be considered in isolation, as the Claimants seek to do. For example, no mention is made of Burren Energy plc (a company formed for the purpose of acquiring the abandoned Burren oil field in Central Asia), in which D2 made a notable successful investment on which he has previously given evidence.[3] It is also important to note that on no occasion has D2 been accused of any wrongdoing. The summary is also inaccurate in places[4] (for example, it fails to acknowledge key parts of D2's background, such as his role as Kent Chairman at Clydesdale Bank).[5]

[2] Letter from Crowell & Moring U.K. LLP to Mishcon de Reya LLP dated 15.09.23
[3] D2D10-00066371
[4] C2/2, paras. 15 and 16; D2D10-00066382; D2D10-00066370
[5] D2D10-00066369

C. SANCTUARY

10. Section B3 of the C Skeleton introduces for the first time, allegations about D2 and D10's receipt of funds relating to Sanctuary International Resorts Limited ("**Sanctuary**"). Given their late appearance in this matter, these allegations have not been addressed in the evidence of D2 and so, despite the allegations having no direct bearing on the claims now asserted against D2 and D10, they warrant a detailed response to correct the improper characterization of D2 and D10's receipt of funds from this enterprise.

11. Mark Ingham owned interests in two developments in the Dominican Republic: "The Hill" and "The Beach"/ "Magante". The Sanctuary group of companies comprises Sanctuary and its three subsidiaries – namely:

    A. Sanctuary International PCC Limited which indirectly through its subsidiary Inversiones 51588 SRL owned the land known as "The Hill";

    B. Tenedora 58520 SRL; and

    C. Tenedora 98540 SRL.

12. Neither D2 nor D10 had any knowledge of, let alone involvement in, the management, operation or ownership of any of the Sanctuary group entities prior to or during the Sanctuary investment scheme in which circa £17,000,000 had been raised from investors who sought to purchase villas or timeshare interests in villas that were intended to be built on "The Hill" or "The Beach"/ "Magante".[6] The original investor contracts operated by Sanctuary provided no security or title over the land to the investors.

13. The failed Sanctuary investment scheme was operated by Royal Sunrise Country Club, which subsequently changed its name to Sanctuary. That entity was owned and operated by an individual called Andrew Woodcock, prior to it being acquired by D1. The scheme

[6] MDR00014167
(Continued...)

involved selling off-plan properties at "The Hill" to individual investors from at least 2011 onwards.[7] Neither D2 nor D10 were affiliated at all with Sanctuary at that time.

14. Through the process of disclosure in this case, D2 and D10 have identified evidence of the extent to which Ecoresorts Sales Limited, a company owned and operated by Mark Ingham and D3, received significant payments from the Sanctuary group throughout 2012 as "commission on completion".[8] D2 and D10 surmise that these payments were funded by receipts from investors. Unsurprisingly given their lack of involvement in the project, D2 and D10 did not receive any commission payment from these investor funds or indeed any commission payments relating to any of the fundraising and investment schemes referred to in these proceedings, of which D2 and D10 had no knowledge at the time.

15. In early 2013, Mark Ingham introduced Lakeview Country Club Limited ("**LCCL**") to the opportunity to assist with the rescue and subsequent acquisition of these Dominican resorts, as well as other opportunities to invest in UK and other international holiday resorts. Sanctuary offered LCCL the opportunity to provide cash flow and business support to stabilise the investment of the 284 investors in "The Hill" at El Cupey. In return, LCCL was promised the opportunity to benefit from certain development rights that were being pursued for "The Beach" / "Magante".

16. A company called International Resorts Group plc ("**IRG**") was incorporated on 19 December 2013 to be a holding company for these opportunities.[9]

17. IRG approached the investors in the Sanctuary project and gave them the chance to salvage some of their prior investment by acquiring a direct interest in the land at El Cupey through their investment trustee company. For an average payment of £7,000 to £8,000, the investors received security over their share of the ownership of the land.

18. During D2's involvement and interest in the Dominican resorts and indeed beyond to the tenure of Prime's ownership, there was every intention of building the development and

[7] D2D10-00066429
[8] D2D10-00066431; D2D10-00066433; D2D10-00066435; D2D10-00066437
[9] A1/5, page 34

offering the investors a choice of completing on the investment or liquidating their initial investment.

19. To protect the investors' interests, El Cupey Limited ("**El Cupey**") was formed in July 2013 to hold the shares in Inversiones (the owner of "The Hill") on trust for the investors who had invested in the failed villa scheme. D2 was a director of El Cupey from inception until April 2018 and understood and respected his duties to the investors. El Cupey had the right to determine whether the project should continue with the development or take another action such as sell "The Hill" for the benefit of the investors.[10]

20. In or around May 2013, Guzman and Co (a Dominican law firm) formally advised Sanctuary that it had proper title to the land at The Hill.[11] Moore Stevens confirmed the accuracy of previous open market valuations for the land which concluded that the two parcels of land at "The Hill" were valued at $28,000,000 and that the land at "The Beach"/ "Magante" was worth $76,000,000.[12] Additional valuations of both sites were obtained from Tasaciones at this time.[13] These advised that in their current state, the land at Playa Magante could be marketed for US$524.50 per square meter, equating to US$135,470,189 but that the land would more likely achieve a sale price of US$329.00 per square meter, equating to US$89,975,580.80. For the land at El Cupey, the land could be marketed for US$31.50 per square meter, equating to US$42,962,905.40 and a reasonable market value of US$16.69 per square meter, equating to US$22,763,520.40 could be achievable. Clearly therefore, the land at both sites was very valuable and had the potential to increase if the planned villas, services, utilities and public areas were developed.

21. D2 oversaw the removal of conflicted directors from El Cupey, such as D1 who had previously been involved with the failed Sanctuary investment scheme. He also (alongside the company itself) oversaw the appointment of Trust investors, Sue Brooks, Stephen Hebblethwaite and Mark Hrarbak as directors to the board of El Cupey.

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[10] D2D10-00005798
[11] D2D10-00006385
[12] D2D10-00005336; D2D10-00014365
[13] D2D10-00006612
(Continued...)

22. D2 was keen to ensure the successful development of "The Hill" and "The Beach"/ "Magante" and scrutinised the progress plans for both sites.[14] He was keen to understand why the planned development of "The Hill" and "The Beach"/ "Magante" had been unsuccessful under the stewardship of Sanctuary PCC and so prior to the removal of the Sanctuary directors from the board of El Cupey, meetings were held with those individuals to discuss the projects. Action plans arising from one such meeting, included meeting with architects to revise plans, arranging major infrastructural testing, investigating US built standard properties in the region, meeting with numerous valuers and agents and discussing legal issues with lawyers.[15] D2's approach to these projects demonstrates that they were genuine business opportunities.

23. The control and responsibility for "The Hill" rested with the investors on the board of directors of El Cupey. Various options were presented to the investor board members and other investor representatives at a meeting on 31 March 2013 to attempt to recoup losses and it was agreed that Sanctuary would recommence sales of some options at the same time as seeking to sell part of the land through a joint venture with IRG.[16]

24. Sanctuary invested more funds to progress the developments of both "The Hill" and "The Beach"/ "Magante", including progressing to the point of obtaining final Environment Department certificates validating the planning permission obtained from the Local and Regional Authorities and acquiring additional land at the Beach at a cost of circa $4,000,000 to ensure the facilities could be implemented on the site in accordance with the Authorities Planning permission.

25. In order to fund this acquisition and the associated costs, Sanctuary worked with Sustinere Group Plc (a D1/D8 company) which provided temporary funding to stabilise the financial position following the depletion of the investor funds that had all been spent on the development, including on management fees and commission.[17]

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[14] D2D10-00006388
[15] D2D10-00006538
[16] D2D10-00006714
[17] D2D10-00005737

(Continued...)

26. Sanctuary also received additional funding from Sales Aid Finance (England) Limited ("**SAFE**"), which agreed to provide a loan facility to Sanctuary PCC, initially for up to £675,000 but subsequently extended to £2,000,000.[18] The loan was secured by way of a debenture.[19] The C Skeleton makes the point that Sanctuary PCC did not own any property because of the declaration of trust in respect of shares in favour of El Cupey[20] but D2 as the borrower (having departed from SAFE by this time) had ensured that SAFE were aware of this.

27. As the Loan Agreement and subsequent revisions by way of a Facility Agreement demonstrated, the lending was provided on arm's length commercial terms with a commitment level of up to £2,000,000 for the period of 24 months, accruing interest on drawn funds at rates ranging from 30% per annum down to 2.75% above the rate SAFE agreed with its lender.[21] SAFE's agreement to lend funds only came about more than a month after D2 had resigned as a director of the company and so he was not involved in negotiating the agreement to lend or its subsequent revisions and extensions. D2 has no knowledge about the provenance of funds loaned by SAFE.

28. By 4 November 2015, Sanctuary owed £1,251,395.86 under the facility.[22] In addition to the investor funds and the third-party funding being used to develop "The Hill", the funds were also used to pay the original investors their monthly interest payments.

29. The Claimants seek to suggest some impropriety in the sums that were paid by Sanctuary to an intermediary company One Monday Limited ("**One Monday**") (owned by D1), a proportion of which were then paid to LV Management Limited ("**LV Management**"), a company owned by D2.[23] Those sums were received as consultancy fees for its part in rescuing the Hill project, for overheads and to pay expenses billed to One Monday.

[18] MDR00007913
[19] MDR00007895
[20] A2/1, para. C1.21
[21] D2D10-00040446; MDR00006324
[22] MDR00004386
[23] A2/1, para. B2.12.

30. Further, the Claimants fail to adduce any evidence to indicate that LV Management was not entitled to receive those funds for services provided to either One Monday or Sanctuary or that the funds in any event were subsequently paid to either D2 or D10.

31. A formal Development Agreement evolved out of the joint venture between El Cupey and IRG, pursuant to which, IRG was appointed to obtain all necessary consents to develop and organise the sale of houses on "The Hill" as they were constructed.[24]

32. Subsequently, by a Share Purchase Agreement dated 31 August 2015 between Sanctuary PCC and IRG, Sanctuary PCC sold its shareholding in Inversiones 51588 and Tenedora 98520 in exchange for IRG taking on Sanctuary PCC's liabilities in respect of its loans from SAFE and its liabilities in relation to the Inversiones and Tenedora shares.[25] D2 was a director of IRG.

33. By an agreement made on 17 June 2016 between London Group LLP ("**LG LLP**") (as trustee and owner of IRG) and El Cupey (as beneficiary) and Inversiones as the property owner of "The Hill", London Group agreed to discharge IRG's financial obligations under the Development Agreement.[26] In return for its financial commitment, Inversiones was obliged to pay 33.33% of the gross sales process (less sales costs) of the properties built on "The Hill".

34. This agreement was replaced by a new agreement made between LG LLP as the owner of London Group Plc ("**LG Plc**"), LG Plc (as trustee again), El Cupey (as beneficiary) and Inversiones (as property owner) pursuant to which LG LLP with LG Plc committed to making the necessary payments for planning costs and charges for the development (Phase 1) as well as providing cash to El Cupey in the sum of £3,200,000.[27] In return for those payments, it was agreed that the shares in Inversiones held by El Cupey would be transferred to Colina Property Holdings Limited ("**Colina Property**") .[28] Thus, "The Hill" was brought

[24] MDR00025098; D2D10-00008840
[25] D2D10-00011022
[26] D2D10-00029526
[27] D2D10-00046856
[28] D2D10-00064465

into the London Group and was no longer encumbered by the terms of the various declarations of trust.

D. D2 HAD NO DE JURE OR DE FACTO ROLE IN LCF AFTER AUGUST 2013

35. D2 exited South Eastern Counties Finance Limited ("**SECF**") (which went on to become LCF) when he resigned as a director on 15 August 2013. He was not a shareholder and had no financial interest in SECF. Subsequent to D2's resignation from SECF, D1 purchased SECF to make use of its credit licence. Its name was changed to SAFE and then two years later to LCF.[29]

36. Following his resignation, D2's attention was largely focused on the Dominican Republic assets, as detailed above and additionally, on Lakeview Resort, having been appointed as a director of LCCL on 11 June 2013.[30]

37. In July 2015, it was agreed between D1, D2 and D3 that D2 and D3 would separate their remaining interests from D1 and this was documented in a series of agreements.

38. Under a Memorandum of Understanding, D1 would continue to own and develop his own separate business, LCF, without any involvement or interest from D2 or D3.[31] D1 would continue to have a 5% interest in D2 and D3's companies. This retained interest arose out of necessity as D2 and D3's companies had insufficient cashflow to facilitate a total financial separation of their interests.[32] D1 was not to take any active or passive role in D2 and D3's businesses other than as a minority shareholder. It was expressly recorded that the "*parties shall each operate their separate businesses totally at arm's length*".[33]

39. D1, D2 and D3 also entered into a Share Purchase Agreement at this time to recognise D1's beneficial interest in and subsequent transfer of his shareholding interests in D2 and D3's companies.[34] The purchase price was stated to be an amount which is equivalent to 5% of

[29] A1/5, pages 70-71.
[30] A1/5, page 63
[31] D2D10-00057595
[32] C2/2, para. 71
[33] D2D10-00057595
[34] D1-0000766

the value of each of D2 and D3's companies which is realised during the period of 5 years up to a maximum of £5,000,000.

40. D1 covenanted that he would operate his business LCF independently of D2 and D3 businesses and would not interfere with their management. D2 and D3 similarly covenanted that they would operate their companies independently of the business of LCF and not interfere with D1's ownership or management of LCF.

41. D1 has also given evidence to this effect:[35]

> *I discussed this with Simon, Elten and the others and we entered into two written agreements, which were signed on 15 July 2015: a memorandum of understanding and a share purchase agreement. By the former, it was agreed that I would withdraw from the businesses we had set up or developed together. I would retain/be considered to have a shareholding of 5% in each of them but would take no part whatsoever in running the business and would, if it was ever appropriate, vote my 5% shareholding as directed by the others. By the latter, I agreed to sell my interests to Simon and Elten for a price reflected the realised value of the businesses over the next 5 years, capped at £5 million*."

42. Following the Separation Agreement, D2's dealings with D1, were restricted to discussions about the possibility of development financing for the Lakeview Resort and the Dominican Republic resort sites. D1 had familiarity with these assets[36] and the need for funding, having previously explored potential funding options with D2 prior to the Separation Agreement.[37]

43. The Separation Agreement marked a genuine separation of both financial and commercial interests. By July 2015, D1's plans for running a finance business were simultaneous with the plans D2 was formulating with D3 and D4 to create a hospitality and resorts group of domestic and international properties. Simultaneously, D2, D3 and D4 were also reviewing oil and gas production opportunities that were beginning to emerge from members of LOG.[38]

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[35] C2/2, para. 24
[36] C2/2, para. 40
[37] C2/2, para. 42
[38] C2/2, para. 44
(Continued...)

44. There was also a physical separation at this time. As D1 and D2's business relationship was changing, it was thought inappropriate to continue sharing space, so it was agreed that D1 needed to find alternative office space. However, D2 did not play a role in selecting LCF's new office space.[39]

45. D1 confirms that D2 played no "central role" in LCF. Indeed, he goes considerably further:[40]

> *"My previous business partners helped me out to some degree but it was mainly high-level type support for a new business. Nothing more than that. They did not play any part in ownership of or decision-making at LCF at all. They were no longer my business partners. By about the end of 2015, I had reached a point where I did not need any further support and was able to hire others to build the business with me".*

46. It is unclear precisely what knowledge of LCF's fundraising and/or D6's involvement in this, is implied in the Claimants' assertion that D2 retained a role in LCF, which was simultaneously described as a "*central role in LCF's business*"[41] and a "*less central role in LCF's affairs*,"[42] as this is not dealt with in any detail within the C Skeleton. However, as D2 has said in evidence:[43]

> *"I didn't have any significant dealings with Surge until 2016, when Mr Golding introduced me to them and I entered into an introduction agreement with them. However, it wasn't until 2017 that I briefly worked together with Ms Venn to see whether Surge could help raise finance for the London Group as we were looking to purchase some additional gas fields – the "North Sea Oil Bond". It is fair to say that I was aware of Surge's relationship with Mr Thomson and Mr Golding from 2015, but I was not involved in their activities.*"

47. Notwithstanding D2's resignation as director from SECF and the subsequent Separation Agreement, the Claimants' opening written submissions claim that during 2013-2014, SAFE (which at that time was called SECF), was being run on a day to day basis by D1 and D2

[39] C2/2, para. 45
[40] C2/1, para. 29
[41] A2/1, para. C4.5
[42] A2/1, para. C4.5
[43] C2/2, para. 123
(Continued...)

and thereafter that "*both D4 and D2 continued to play a central role in LCF's business*"[44] after the Separation Agreement terms were settled in July 2015. This is somewhat tempered by the Claimants' assertion that "*D2 played a less central role in LCF's affairs. He was consulted on LCF's affairs and took charge when D4 was unavailable*". The statement is nevertheless incorrect. Whatever the position regarding D4, that is not the case regarding D2.

48. The C Skeleton seek to support their contention that D2 played a central role in LCF with the use of such phrases as "*the continued role of both D4 and D2 is also apparent from…*"[45] notwithstanding that all prior examples given and indeed examples directly following this statement, do not include D2 or otherwise indicate that he was party to the discussions or correspondence that is being relied upon.

49. The examples provided to support this assertion are weak in the extreme. There is no evidence to suggest that D2 actively sought out opportunities to be involved in the running or decision making of LCF. The first example cited is to an email dated 22 January 2016, about amendments to an LCF brochure which was copied to D2.[46] D2 was not involved with preparing the LCF brochure and he did not respond to that email.

50. The second example is to an email sent by a very junior employee of LCF forwarding a draft letter to D2.[47] The employee had previously been employed by D2. As they continued to share the same office space at that time,[48] D2 made no comment on the substance and merely confirmed that in style it was appropriately professional.

51. The final example concerns discussions with various Defendants regarding a draft exclusivity agreement with D6.[49] As is evident from the document, LCF is not a party to that agreement and even the C Skeleton does not suggest that this went anywhere at the time. The discussions and resulting draft were never intended to bind LCF or control how LCF

[44] A2/1, para. C4.5.
[45] A2/1, para. C4.11
[46] A2/1, para. C4.20
[47] A2/1, para. C4.11
[48] C2/2, para. 40
[49] EB0014118

obtained funding or lent those funds on. In any event, the exclusivity agreement did not proceed and D6 was not engaged by the London Group to introduce business.

52. To the extent the Claimants seek to imply that D2's dealings with D6 establish a link back to LCF, this is simply incorrect. The background to D2's involvement with D6 is already in evidence. In 2017, D2 worked together with Ms Kerry Venn to see whether D6 could help raise finance for the London Group to purchase some additional gas fields – the "North Sea Oil Bond".[50]

53. D2 trial's witness statement addresses attempts by D2 to launch, with the assistance of D6, a North Sea Bond in 2017:[51]

> *"I didn't have any significant dealings with Surge until 2016, when Mr Golding introduced them to them and I entered into an introduction agreement with them. However, it wasn't until 2017 that I briefly worked together with Ms Venn to see whether Surge could help raise finance for the London Group as we were looking to purchase some additional gas fields – the "North Sea Oil Bond". and*
>
> *"Ultimately, my discussions with Surge about this potential funding did not come to anything as Surge were unable to raise the required finance."*

54. D2 had been interested to work directly with D6 (in the belief they would be able to find a more competitive product for North Sea oil and gas products) on this potential opportunity without D1's involvement so as to minimise the cost of the fund raising – because if D1 was involved, he would likely be entitled to a commission payment which would be added to the costs the London Group would be required to fund. Conversely, as can be seen by D6's trial witness statement, D6 was also keen to "*diversify its client base*."[52]. It also had concerns that D1 "*had considered working with another marketing company and bringing the outsourced services back in house*."[53]

[50] D2D10-00024416; EB0036917
[51] C2/2, paras.123-125
[52] C2/4, para. 91.
[53] C2/4, para. 89.

55. D2's involvement with the North Sea Oil Bond himself was fairly limited. D6 (Ms Venn in particular) had been working with a senior LOG executive, Clint Redman. The intention had been to fund existing projects and other projects LOG were undertaking due diligence on at the time. This included the acquisition by IOG of a small gas reserve (the Thames pipeline), which would allow IOG to deliver gas production from all its Southern North Sea fields to processing facilities at Bacton on the Norfolk coast owned by BP.[54]

56. Ultimately, however, by the end of 2017, the North Sea Oil Bond had failed to get off the ground. In the circumstances, Ms Venn considered LOG's proposed security to be insufficient for the product. A key reason for this was that, there had not yet been any independent valuation of the oil assets, and it would take at least five months to obtain one, as referred to by Ms Venn in paragraph M17.13 of the C Skeleton:[55]

> *"They [LOG] have said that they do not have the assets independently valued. To do this they need competent persons reports at each site and it will take a minimum of 5 months to get this done (geological studies take time) and actually they might not be able to get it fully complete at some sites where more in depth tests need to happen".*

57. Shortly after D6's failure to source funding for the North Sea Oil Bond in late 2017, D5 D6, D7 and Ms Venn were engaged in another project (known ultimately as the Westminster Corporate Finance Bond), the motivation for which was not as set out at M22.2 of the C Skeleton but instead, as follows. D6 approached D2 and D4 (amongst others) due to concerns in respect of how LCF was being run, its sustainability and as LOG was the major borrower. Several meetings took place and various directors and officers were identified (as the C Skeleton notes). An information memorandum was prepared using different advisers (including RW Blears LLP as legal adviser) but again D6 chose not to pursue the project it appears, because D6 and LCF were back working together and had resolved their differences.[56]

[54] MDR00117324
[55] SUR00137494-0001
[56] D7D9-0007344.

58. At paragraphs 26 and 27 of their Amended Reply to D2's Amended Defence, the Claimants also refer to D2's approval of a small payment (£5,000) by Buss Murton to D6 in July 2015, but as explained in D2's witness evidence, this was in the context of approving the payment of a debt owed to D1 by way of payment to a third party instead of him, and not because D2 had any relationship with D6 at the time[57].

59. Accordingly, D2's involvement in the examples cited by the Claimants and in his dealings with D6 are not indicative of someone having a central role in LCF. He exercised no control over its business activities whatsoever.

E. LAKEVIEW SPA

E1. Lakeview Resort Acquisition, 2013

60. In the summer of 2012, D2 and D10 were considering other investments and were made aware of a 100-acre holiday resort in Cornwall comprising a large country house, further central facilities (such as a swimming pool, restaurant, and gym), a golf course, a fishing lake, tennis courts and a number of holiday lodges ("**Lakeview Resort**").

61. At that time, the resort was owned by John and Penelope Vernon. D2 and D10 were introduced to Mr and Mrs Vernon and the opportunity to acquire this resort by a mutual acquaintance, Mr Clint Redman (who also re-introduced them to D4, whose brother Ryan Golding had invested in an aborted bid to purchase the resort with money raised from investors (the "**Telos Investors**") as briefly discussed below).

62. The C Skeleton agrees that the Telos Investors' purchase of Lakeview via an Isle of Man entity, Telos (IOM) Limited ("**Telos**"), failed following exchange of contracts and payment of a non-refundable deposit because the directors of Telos (who included John Banks and Geoffrey Alan William Hunt) were unable to pay the balance of the sale price.[58]

[57] C2/2, para. 45
[58] A2/1, para. B4.5

63. Lakeview Resort was then placed back on the market in late Summer 2012 and there followed a period of negotiations between D2 and the vendors stretching over a period of 7 months (as explained below) in respect of the price.

64. In the meantime, an offer[59] was made to the Telos Investors whereby, in return for (i) providing loans to assist with the acquisition and (ii) assigning to LCCL their personal claims against the directors of Telos, they would be entitled to receive:

A. a return of 8% per annum and a further recovery in the form of a portion of the recovery from the directors of Telos; and

B. a share, amounting to 10%, of the gross proceeds of any subsequent re-sale of Lakeview Resort.

65. On 18 December 2012, LCCL was incorporated to act as the acquisition vehicle. [60] The share capital of LCCL consisted of a single share held by Buss Murton (Nominees) Limited ("**B M Nominees**"). On 19 December 2012, LCCL's ownership was adjusted via a declaration of trust[61] pursuant to which it was agreed that B M Nominees would hold the sole share in LCCL on trust for:

A. D1 as to 5% in light of his role managing Lakeview Resort and work on planning issues;

B. D10 as to 23.75% in light of her role in providing (i) the guarantees which enabled LCCL to obtain finance from Mr Hunt and Mr Banks and (ii) intended role in the development of Lakeview Resort including refurbishment of the lodges and the country house; and

C. D4 and his family (through D1 as trustee) as to 71.25% in light of the £1 million loan facility he had provided.

[59] C2/2, paras 48 and 49
[60] A1/5, page 60
[61] MDR00224886
(Continued...)

66. As the C Skeleton acknowledge, there were a number of delays to completion of the acquisition (for which LCCL were required to pay compensation) and which also led to further negotiations concerning the price.[62] These were principally caused by concerns raised by D8 about the results of Land Registry searches and also difficulties faced by LCCL in raising finance.

67. Ultimately, LCCL acquired Lakeview Resort on 5 April 2013[63] for a total of £1,609,268.62[64] as the C Skeleton acknowledge following the revised signing terms, using monies loaned to it as follows:

    A. Ortus Secured Finance of up to £800,000 (the **"Ortus Loan"**);

    B. a series of loans totalling around £700,000 from those Telos investors who were prepared to make loans;

    C. loans totalling £200,000 (from a larger sum of £482,500 lent) from Mr Hunt and Mr Banks, guaranteed by a solicitor's undertaking provided on the instructions of D10 to repay the loans from the net proceeds of a potential future sale of Hook House (discussed further below); and

    D. a £1,000,000 facility made available by D4 to invest in the acquisition of further leasehold lodges.

68. On 19 December 2012, Buss Murton Law LLP (**"Buss Murton**") gave an undertaking on behalf of Bewl Holiday Homes LLP that the loaned sums would be repaid out of the net proceeds of the potential future sale of Hook House[65] as Hook House was being marketed for sale by Knight Frank on or around this time. D2 also gave a personal guarantee for repayment out of the potential future sale proceeds of Hook House.[66] On 19 September 2011, HK Lamberhurst LLP, which subsequently changed its name to Bewl Holiday Homes LLP,

[62] A2/1, paras. B4.19, B4.15, B4.17
[63] MDR00012442; MDR00012549
[64] MDR00013168
[65] MDR00225494; MDR00225495
[66] MDR00010451; MDR00225493

purchased Hook House from Kent Attractions LLP ("**Kent Attractions**"), however, its acquisition had been funded by Lamberhurst Holdings Limited ("**Lamberhurst Holdings**").

69. D10 was the principle investor in Lamberhurst Holdings. In 2000, she had invested £120,000 of her own money into Lamberhurst Holdings in return for which she was allotted 25% of the Ordinary Shares in 2002. Subsequently, she acquired the majority of the voting shares in Lamberhurst Holdings and so as a consequence of her corporate control of Lamberhurst Holdings, she was entitled to determine how the company's assets were used and held the commercial interest in the proceeds of any sale of Hook House.[67] That commercial interest was secured by a charge over Hook House provided by Bewl in respect of the funding provided by Lamberhurst Holdings ("*all present and future monies owed*…")[68] and so D10's interest in Hook House was fully preserved.

70. D10 also gave a personal guarantee to assist with securing the Ortus Loan,[69] alongside D2 and D1. Subsequently when LCCL was required to refinance the Ortus Loan, D10 gave a further personal guarantee to secure lending from Ultimate Capital Limited.[70]

E2. Initial agreement for sale of LCCL

71. The C's Skeleton claims that "*by selling the shares in LCCL to London Trading, the shareholders of LCCL, would effectively be selling to themselves*".[71] Whatever the position for D1, D3 and D4, clearly it is not correct say that D2 and D10 were on both sides of the transaction and were therefore self-dealing. At this point in time, shares in London Trading and Development Group Limited ("**London Trading**") were owned solely by International Resorts Partnership LLP ("**IR Partnership**").[72] IR Partnership held shares in London Trading on trust for D4 (7,125 shares), D2 (2,375 shares) and D1 (500 shares) but not D10.[73]

[67] D2D10-00066447; D2D10-00066372
[68] D2D10-00066385
[69] MDR00012403
[70] MDR00013516; MDR00013397
[71] A2/1, para E2.5
[72] A1/5, page 80
[73] MDR00002220
(Continued...)

IR Partnership had two members[74] – D1 and D2. D1 held 5% in his own right and 71.25% on trust for D4. D2 owned the balance namely 23.75%.

72. At E2.7 and E2.19 of the C's Skeleton, the Claimants assert that as part of the original deal that was made in respect of the Share Purchase Agreement between D1/D10 and London Trading on or around 22 July 2015,[75] (the "**Original SPA**") "*LCCL transferred the entirety of the Lakeview resort with the exclusion of a plot known as the development land, to LV Resorts Limited….*"[76]. This does not reflect the nature of the evolving agreement and negotiations between the parties following signature of the Original SPA which, ultimately, led to the full value of £14,260,260 moving from Leisure & Tourism Developments Limited ("**L&TD**").

73. As D2[77] and D8[78] have both independently said in evidence, D4 had made it be known that as part of the original transaction he wished to take as security for the payment of his portion of the proceeds (£1.5 million)[79] the resort's "Manor House" and several lodges. This split of assets was agreed by the other parties, subject to their right to purchase back the Manor House and lodges for £1,000,000.[80] Thus, L&TD would take on the remainder of the Lakeview Resort site and the development of a hotel and lodges, while D4 would retain a smaller part of the site and he and the other original owners were compensated and relieved of any concerns regarding LCCL debt.

E3. Re-negotiation and additional Lakeview SPA elements

74. However, several months later, this requirement had been dropped by D4 and so (save in respect of a plot of land known as the development land as acknowledged in the C's Skeleton)[81], the transfer of the Manor House and the lodges to D4 did not proceed and the land was not parcelled up. Additionally, there was no funding available to meet the

[74] A1/5, page 62
[75] A2/1, para E2.7
[76] A2/1, para E2.19
[77] C2/2, para. 70
[78] C2/5, para. 21
[79] D2D10-00058137; D8-0001654; D8-0001352
[80] D1-0000884
[81] A2/1, para. E2.19
(Continued...)

obligations of the purchase in accordance with the loan notes, and therefore new financing had to be sourced for the transaction to proceed.[82]

75. The C's Skeleton appears to infer something untoward about LCCL transferring the entirety of the Lakeview Resort (with the exclusion of the development land) to LV Resorts Limited ("**LV Resorts**") on 27 July 2015.[83] This is not understood. LCCL was left with the development land because its new owner, London Trading (which was subsequently acquired by L&TD) made the decision to re-structure its business following signature of the Original SPA. The development land was indeed LCCL's sole asset having been charged to Lakeview UK Investments PLC ("**LUKI**") as security for a bond issued by the Kudos Group in the sum of approximately £4 million [84]

76. As the C's Skeleton agrees[85], following signature of the Original SPA and by October 2015, there were further discussions about how further amounts would become due to account for other assets that had not been separately valued pursuant to the Original SPA for D1 and D10 in respect of their shares in LCCL depending upon three price components, the detail for which still needed to be worked through (but had been by August 2017 when figures had been inserted into the updated version of the Original SPA):

    A. the valuation of a site in the Dominican Republic (described elsewhere). LCCL assisted with the initial funding of the venture, contributed to the cost of obtaining planning permission and to other essential development work in relation to this land (the "**Magante Asset**");

    B. the repurchase of short leases from the Lakeview timeshare club, which held 24 lodges, and which was contingent on agreement to sell by the timeshare club (the "**Time Share Claim**); and

[82] C2/2, para. 72
[83] MDR00026597; EB0014453; EB0014454
[84] EB0014454; D2D10-00050210; D2D10-00006593; D2D10-00013629; D2D10-00061930
[85] A2/1, paras. E3, E4, E8, E12, E14

C. the outcome of claims of historic LCCL against the directors of Telos, which had been assigned to LCCL by the Telos investors (the "**Telos Claim**").

77. These three price components are explained further as follows.

Magante Asset

78. It is suggested by the Claimants (as explained above) that Tenedora had not acquired the land at "The Beach" / "Magante" and therefore it had no significant value. This is incorrect. Through a purchase contract dated 22 August 2012, an Addendum dated 31 August 2012, and the payment of a deposit, Tenedora acquired the right to purchase land totalling 258,284.44 square metres at the "The Beach/"Magante" site from 42 individual title owners, 38 of whom were represented by Ignacio Gomez.[86]

79. A legal dispute regarding the purchase contract arose, however subsequently entered into a new purchase contract, pursuant to which all existing legal claims were compromised and it was agreed that Tenedora would acquire all of the "The Beach" / "Magante" land and this would be reflected by a "Deslinde" which was required to pull together all the individual titles into a single Title that would be registered in the name of the purchaser. Only once the Deslinde had been registered, did the balance of the purchase price, then being $3,527,311.78 become payable.

80. The Claimants seek to argue that nothing had occurred to justify a price increase for "The Beach/"Magante". This entirely overlooks the resolution of this dispute including contemporaneous valuations which indicate that the market value on the land in November 2016 was (i) US$11.6 million in current condition; (ii) US$16.8 million with approved development; and (iii) US$25.8 million with development completed.[87] The subsequent allocation of £4,250,000 against the Magante Asset by August 2017 (**"August 2017 Agreement**")[88] is substantially less than the contemporaneous valuations provided, Rafael Oviedo in November 2016 as can be seen from the above.

[86] D1-0002823
[87] MDR_POST_00001239
[88] D1-0004427

81. Further, title had been secured for some of the "The Beach" / "Magante" properties by Tenedora and it had options to acquire the rest of the entire "The Beach" / "Magante" site.

82. Given that the contemporaneous valuations obtained for the "The Beach" / "Magante" significantly exceeded the final payment that was due under the Purchase Sales Contract, there was substantial value in the interest that Tenedora had acquired in "The Beach" / "Magante". The final payment to the original sellers of the land, only fell due for payment after the administration of the London Group of companies.

83. As explained elsewhere, the shares in Tenedora were transferred to IRG on 31 August 2015 and LCCL had used its cashflow to fund the early stages of IRG's investment in this enterprise, making the acquisition of "The Beach" / "Magante" possible so it was agreed that the shareholders of LCCL should be entitled to a carried interest in the eventual development of "The Beach" / "Magante".

84. D8 has given evidence that *"*[International Resorts Group PLC] *was owned by the 1st and 2nd Defendants on trust for the shareholders of LVCCL and LVCCL assisted with the initial funding of the venture* [being the Dominican Republic projects]*"*.[89]

85. "The Beach" / "Magante" (like "The Hill") was a genuine investment opportunity. Once the assets were within the London Group's control, significant further resources were expended by the group on developing both Dominican Republic sites – *see,* for example, the various business plans, feasibility studies, etc., which were produced with the assistance of a number of London Group's advisors.[90] These properties went into the control of the Prime administrators – including Messrs O'Connell, Hardman, Stephens and Bednash – five years ago and have been left fallow.

86. The Dominican Republic was an attractive opportunity for D2 as it is one of the most popular tourist destinations in the Caribbean. As D2 has said in evidence and also explained

[89] C2/5, page 6
[90] MDR00009438; MDR00009442
(Continued...)

elsewhere, he visited both sites on a number of occasions and D10 was involved in the plans for "The Beach" / "Magante".[91]

87. "The Hill" was a development in the hills (bordering on the national park), close to the town of Puerta Plata on the north coast of the Dominican Republic. The site was over half a mile and we had planning for development of villas, apartments, a spa and restaurant (Phase 1 of the project). There was an area that had no development rights and D2 had earmarked this for walking, biking and horse trails. There was also an opportunity to produce own brand chocolate and coffee as cocoa trees and coffee plants grew on the site.[92]

88. "The Beach"/ "Magante" was located on the North coast and required a consolidation of a number of landowners. Like "The Hill", the development had "no objection" planning for a number of luxury properties ranging from apartments to villas.[93] D2 engaged with lawyers, consultants, architects and engineers including Garibaldi Salazar and appointed consultants to look at the site from a hospitality perspective, analysing the international market and likely cliental (whom he expected to be predominantly from North America)[94] **.** The resort's manager (the late) Mr Richard Marsh and his assistant, Belkis Almonte, were very well connected in the area and D2 also hoped to attract wealthy Dominican Republic nationals, as well as international tourists from North and South America.[95]

Telos Claim

89. In September 2016, an agreement was reached with the Telos investors' trust which restructured debt and obligations historically burdening LCCL, and which effectively retroactively improved its position by transferring approximately £1 million of obligations towards the Telos investors to Waterside as the new owner of Lakeview.[96]

[91] C2/2, para. 59
[92] D2D10-00035319; D2D10-00029471
[93] MDR00089354
[94] D2D10-00024041
[95] D2D10-00030738
[96] D2D10-00066393
(Continued...)

Time Share Claim

90. It is disingenuous for the Claimants to claim that the Lakeview Resort did not benefit from the agreement made on 06.12.16[97] because it did not own the land anymore. D2 has given evidence that the re-purchase of the 24 lodges had taken place,[98] which was a deal under negotiation since before the transfer of the Lakeview Resort from LCCL.

Lakeview Resort Valuation

91. Whilst not a price component itself, as acknowledged by the C's Skeleton,[99] GVA advised IRG on 11 April 2015 that the market value of the Lakeview Resort itself for balance sheet purposes was £7.15 million (increasing to £12.4 million on the completion of the redevelopment plan)[100]. Again, it is clear that discussions about further price increases between July 2015 and April 2017 were anchored in contemporaneous valuations. Further, the pricing in the original deal matters because it was based on this GVA valuation of £7.15m not any other valuation including those of Savills.[101]

92. The price increase mechanism together with the evolving nature of the deals being made by the various parties explained above should also be seen in the context of the following points discussed further below:

93. the development of the Lakeview Resort from 2013 (including the acquisition of lodges) onward and the Dominican Republic sites of "The Hill" and "The Beach/"Magante"; and

94. (as discussed below) other attempts at fund raising endorsed by E5.3 and E11.2 of the C's Skeleton.

[97] A2/1, para E15.4; EB0033879
[98] C2/2, para. 78; D2D10-00066392, page 5
[99] A2/1, para E2.16.
[100] MDR00016310
[101] C2/2, para. 70

E4. Development of Lakeview

95. D1, D10 and the Lakeview Resort management team worked on the business and its development. This included commencing the purchase of leasehold lodges from private owners to supplement the lodges that were acquired with the site.

96. D10 was also responsible for renovating and refurbishing lodges ("*Helen will commence work on the lodge refurbishments at the end of April 2015, starting with one bungalow and one A-Frame*"[102] and "*Lodges – Helen Hume-Kendall has worked hard to design a template for our lodge refurbishments. Helen will start with two lodges and will then repeat the process throughout others.…*"[103]). the Manor House and the communal facilities at the resort, including the gym/leisure centre,[104] large entrance hall and reception area of the hotel, the bar and restaurant. In addition to the seven freehold lodges on site that were owned by Lakeview at the time of LCCL's acquisition, twenty-four further lodges were purchased from private owners during 2014-2016. Nearly all of these lodges required significant refurbishment ("*Lodges – We continue to improve the lodges where possible and have installed approximately 20 bathroom floors. We have had to replace three dishwashers, 4 washer/dryers and a fridge. In addition to this, we have had full carpet cleans of lodges and have installed around 12 shower screens that were either broken or missing from lodges*")[105] as well as the Manor House and the majority of the communal areas and major parts of the infrastructure, giving rise to the increased value between August 2015 and September 2016.

97. D1's role at that time included looking after management of the site, and concluding on the planning permission to further develop the site, which included building 36 additional lodges and a hotel. He successfully concluded planning permission within the remaining nine months' timeframe to expiry. This was with the assistance of various specialist consultants that he engaged, including the Architect Calford Seadon. D1 was also able to negotiate the

[102] D2D10-00010431; D2D10-00010242
[103] EB0003212
[104] D2D10-00011407
[105] D2D10-00011407
(Continued...)

removal of pylons from the site and the laying of power lines underground[106] which greatly increased the usability of the land and therefore its capacity to add new buildings.

98. The repayment of the initial Ortus Loan was funded partly through commercial lending from Ultimate Capital Limited ("**Ultimate Capital**"), which was later replaced by a loan from Mr Ruscoe. In late 2013, a loan facility of up to £17,000,000 was agreed with LUKI to fund the development of Lakeview Review, which LUKI sourced through the issue of bonds. D1 was responsible for working with LUKI on the bond issue and for managing the finances.

99. The LUKI facility provided rather less than the £17,000,000 facility limit and in mid-2016, LUKI decided to close the finance and take a charge over the development land with a guarantee from L&TD.

100. In 2014, D3 was brought in to assist D1 with the management of the development works at the resort, especially multiple urgent infrastructure improvements. He was remunerated for his work by being awarded a 5% carried interest in LCCL.

101. By July 2015, it was contemplated that LCF would give a loan to L&TD to finance the acquisition of the further lodges at the Lakeview resort. Funds were first drawn by 28 August 2015. The facility agreement between LCF and L&TD was dated 27 August 2015 (the "**L&TD Facility**"). D2 signed the L&TD Facility in undated form and concedes it may have been post-dated following his execution, but without his knowledge.[107]

E5. Fund raising

102. Early in 2016, D2 was introduced by Robin Hudson (a director of LOG) to Best Asset Management ("**Best**"). Through Best, L&TD obtained a loan agreement from Waterside Villages Bond Limited ("**WVB**") which gave the potential for long term funding up to €25,000,000 in 5 tranches. WVB however only raised £3.05 million, and thus L&TD's funding continued to be supported by LCF.[108] However, the intention was a raising of €25

[106] C2/1, para. 16; EB0016073; MDR00014149
[107] C2/2, para. 87
[108] C2/2, para 89
(Continued...)

million. Of the amount raised by WVB, £1,200,001 was lent to L&TD between June and September 2016.[109] The remainder was transferred to Waterside Villages plc, LCCL and LG Plc, and mainly used to fund the running costs and acquisition of further lodges at Lakeview Resort, as well as the costs of the fund-raise itself (such as trustee services and marketing fees).

103. Following the cessation of the Best facility, LCF requested a valuation of LCCL based on an aggregation of its existing assets against which the L&TD Facility funds were being loaned, and were required to have those values covered by professional indemnity insurance. The December 2016 valuation of £14,990,000 was obtained from Porters valuers.

104. The Claimants state that as at February 2016, there "*was still no signed facility agreement between LCF and L&TD*" and that "*LCF had no security for any of the monies that it had loaned L&TD*".[110] Whilst this may be correct, it was not for D2 to finalise arrangements for LCF loans. Pursuant to the Separation Agreement,[111] D1 would raise money for D2 (and others) expressly at arms-length from his former business partners including in order to fund the development and acquisition of Lakeview by L&TD. As can be seen from D2's testimony, the arrangements for signing and dating documents and other formalities such as security documents were run by D8 and LCF's lawyers – not him.[112]

105. In addition, as set out above, D2 was actively pursuing other sources of financing. In contemplation of this, security was being drawn up in respect of the forms of deals and also for LCF to release security earlier than L&TD drawing down the funds. For instance, a Debenture dated 31 July 2015 for a facility for LV Resorts as borrower from LCF dated the same. D2's was aware of a plan about a LV Resorts facility at the time and that there was a debenture granted. That explains the context on the lack of L&TD paper trail until 2016, because to him LCF was supposed to be getting security in the summer of 2015 when it

[109] C2/2, para 89
[110] A2/1, para. E5.7
[111] D2D10-00057595
[112] C2/2, para. 87
(Continued...)

started lending to L&TD. In Autumn 2015, there is also a plan for an LV Resorts Bond[113] which shows that D2 was actively pursuing other funding possibilities.[114]

F. ELYSIAN SPA AND PRIME SPA

F1. The Elysian SPA changed control of assets

106. By early 2017, as will be discussed below in Section G, LOG had been set up and was busy with an energy investment program. LG Plc was renamed Global Resort Property Plc ("**GRP**") on 08.02.17.[115] Prior to the sale of the leisure and tourism businesses, the company structure was that GRP was the parent company of various subsidiaries, including CV Resorts Limited ("**CV Resorts**") holding the Paradise Beach, Cape Verde asset rights, Waterside Villages Plc ("**Waterside Villages**") holding the Lakeview Resort, Costa Property Holdings Limited ("**Costa Property**") holding Tenedora 58520 shares and thereby the **"**The Beach"/ **"**Magante" rights, and Colina Property Holdings Limited ("**Colina Property**") holding Inversiones shares and "The Hill." D1, D2 and D3 were the shareholders of GRP.

107. Although other parties considered buying the resort assets in discussions beginning in late 2016 and through early 2017,[116] ultimately two senior members of the management team, Mr Mark Ingham and Mr Tom McCarthy agreed a management buyout of the resort assets by buying GRP through Elysian RGL on 29.04.17.[117] The share ownership of GRP was transferred to Elysian RGL that day.[118] Mark Ingham initially held the shares of Elysian RGL as of 28.04.17, while Mr McCarthy was registered as a person with significant control at Companies House.[119] Thus the transaction removed beneficial ownership of the resort assets from D2 and others, which goes unacknowledged in the C Skeleton.

[113] MDR00017458
[114] MDR 00017706; D2D10-00066441
[115] A1/5, page 41
[116] D2D10-00023162; MDR00077334; MDR00079699
[117] EB0044955; D2D10-00028008; D2D10-00028009
[118] D2D10-00066446, page 3
[119] A1/5, page 104
(Continued...)

108. The C Skeleton acknowledges Messrs Ingham and McCarthy had been involved in the acquisition and development of Lakeview, the Dominican Republic assets at "The Beach"/"Magante" and "The Hill", and the Cape Verde asset, for some time, attested to also by D2's testimony and others such as Mr Friedland in his section 236 interview.[120] Given that, this was a transaction where the buyers were very much aware of the assets and what was being bought.

F2. D2 was not part of the Elysian facility agreements with LCF

109. As part of the Elysian sale process, L&TD's debt to LCF was restructured through Cape Verde Support Limited ("**Cape Verde Support**"), Waterside Support Limited ("**Waterside Support**"), Costa Support Limited ("**Costa Support**"), and Colina Support Limited ("**Colina Support**") (together, the "**Support Companies**") which ultimately held £25 million of the debt. The Support Companies held debentures over the property-owning companies,[121] which held the various resort asset interests, and granted debentures to LCF.[122] But it was the responsibility of the Support Companies to repay the £25,000,000 debt and interest.

110. The balance of the L&TD Facility debt of around £16 million was transferred to Atlantic Support (later renamed LPE Support Limited ("**LPE Support**")). LPE Support's debt was secured by a deed of guarantee and indemnity from LPC, a debenture, and ultimately a guarantee from LG LLP to LPC.[123]

111. D2 has given evidence that he was aware of this aspect of the restructuring, and agreed the split of the L&TD debt.[124] He has also discussed how the debt being retained as the responsibility of the Support Companies was a factor in the price of the Elysian SPA.[125]

[120] M1/8; C2/2, paras. 58, 60, 94
[121] D2D10-00028135; D2D10-00028138; D2D10-00028140; D2D10-00028142
[122] MDR00005270; MDR00005205; MDR00005227; MDR00005245
[123] D8-0063175
[124] C2/2, paras. 96-97; MDR00085038
[125] C2/2, para. 97
(Continued...)

112. To finance the Elysian SPA and continued development of the resort properties, in May 2017 Messrs Ingham and McCarthy executed facilities with LCF entered into by Waterside Villages, Colina Property and Costa Property and CV Resorts after the Elysian transaction.[126] Discussions referred to in the C Skeleton in April 2017 prior to the Elysian SPA which sometimes copied D2, in email exchanges between Alex Lee, D1 and D8, were under the subject line "*LTD re-financing*" and related to the LTD debt restructuring.[127] In May 2017, shortly before the further facilities were executed, Mr Ingham did email D1 saying "*I understand that you have had some discussions with Simon regarding our funding facility?*" D1 actually responded that he and D2 had talked about their own lender-borrower relationship: "*I did speak with Simon but he just asked about the availability of funds*."[128]

113. Section F5 of the C Skeleton does not allege D2 requested, instructed or directed payments from LCF to GRP after April 2017, now controlled by Messrs Ingham and McCarthy. Indeed, as noted by the C Skeleton, much of the funds advanced to GRP by September 2017 had not in fact been used to satisfy the terms of the Elysian SPA.[129]

F3. The assets underlying the Elysian SPA

114. The Elysian SPA priced the exchange of the resort assets, without passing the L&TD debt to the buyer, at £82,125,000. The breakdown the C Skeleton identifies valued the primary assets as: (i) £18,745,000 for the Lakeview Resort; (ii) £3,000,000 for CV Resorts; (iii) £32,100,000 for "The Beach"/ "Magante"; and (iv) £28,280,000 for "The Hill".[130] By this time, Mr Ingham especially and Mr McCarthy had been involved in all the property sites at a management level for several years.

115. By April 2017, all the assets involved in the Elysian SPA had been valued several times independently: Lakeview Resort had been valued by GVA at £7-12 million in December

[126] MDR00005204; MDR00226341; MDR00005229; MDR00005247; MDR00005264; MDR00005207; MDR00005230; MDR00005248; MDR00005415; MDR00005425
[127] MDR00084180; MDR00084182; EB0044316; MDR00084233; MDR00084281
[128] MDR00086648
[129] A2/1, para. F5.22 (stating 53% of the total funds received by GRP had been transferred to D1, D2, D3, D4 and Mark Ingham).
[130] MDR00007516
(Continued...)

2014[131] and Porters at £15 million in December 2016.[132] The above valuation is therefore in line with the continuing growth and development of the property throughout 2014 through 2017 discussed above, including the acquisition of further lodges continually, and the settlement of the timeshare dispute which added 24 lodges to the portfolio at the beginning of 2017. "The Hill" had been valued by JCPP, validated by Moore Stephens at around US$23 million in May 2013,[133] and by J Marshall Limited at $19 million in March 2014.[134] The figure of £28,280,000 was derived out of a US$16.69 per square meter valuation, the basis of the 2013 report.[135] As discussed above, "The Beach"/ "Magante" had been valued by JCPP / Moore Stephens by Rafael Oviedo at US$11-26 million in November 2016,[136] The figure of £32,100,000 was derived out of a US$329 per square meter valuation, also the basis of May 2013 independent valuation report on the site.[137] Paradise Beach in Cape Verde had been valued by civil engineers João Tolentino Ramos, Rogério Soulé and Humberto Landim at 12,458,222,500 Cape Verde Escudos, equating to approximately £97 million, in June 2014,[138] and Savills at €40-57 million in November 2015.[139] The C Skeleton does not mention that the Savills report was actually in that range, not a flat valuation at €40.55 million. While the contract rights for Paradise Beach were for acquisition at €57 million,[140] and many such as D2 had been cautious as to whether to exercise that right to purchase in 2016, events had continued to develop – the Savills valuation in November 2015 was now in the context of an April 2017 transaction, and D2's remarks even in November 2016 were in the context that there was an "*enhanced current market*"[141] i.e. the position appeared to be improving. The above valuation of £3,000,000 does not price this component of the assets much ahead of break-even, and Mr Ingham, in particular, was fully aware of the circumstances of CV Resorts.

[131] D2D10-00038723
[132] D2D10-00038652
[133] D2D10-00014365; D2D10-00005336
[134] D2D10-00013673
[135] D2D10-00014365; D2D10-00005336
[136] MDR_POST_00001239
[137] D2D10-00014365
[138] D2D10-00019126
[139] D2D10-00012769
[140] MDR00005376
[141] EB0032302

116. Consequently, there are historical valuations which contextualize the valuation of the Elysian SPA, and the buyers were also aware of the debt encumbrance which was being removed to make the assets debt-free, and which was instead being handled by payment through the Elysian SPA to finance the retained debt.

F4. The Prime SPA changed control of assets and L&TD debt

117. Messrs Ingham and McCarthy had a change of heart and agreed to sell on the resort properties, while interested parties from prior to the Elysian sale were still keen to buy.[142]

118. While the C Skeleton alleges that the Prime SPA was not a genuine commercial transaction, it never actually states that the Prime SPA did not once again effect a change of ownership of the companies and assets involved. Elysian RGL, and through it Colina Property, Costa Property and Waterside Villages, and now the Support Companies all came under the structure of ownership of Prime.[143] Prime was owned by Ian Sands, on trust for others.[144] Its directors were Philippa Isbell, Angel Rodriguez Campos and Ian Sands.[145] D2 and companies in which he had an interest or was a director of, ceased to have a connection with the companies and assets of the resort assets other than the Cape Verde asset Paradise Beach.

119. The consideration payable by Prime included £10.3 million of secured loan notes (to be issued to LG LLP), and £12 million of preference shares (of which £9.5 million were to be issued to LG LLP, and the remaining £2.5 million to Messrs Ingham and McCarthy).[146] Of course, the Prime SPA transaction involved moving ownership of the four Support Companies and associated debts, and further debt incurred by Waterside Villages, Colina Property and Costa Property. This was ultimately reduced by £5 million by the complete transfer of debt and asset positions regarding Lakeview in 2018 by the sale of LCCL to Prime, moving the development land and debt which had been separated after the Lakeview

[142] EB0051471
[143] A1/5, pages 10, 12, 14, 16, 104
[144] MDR00107521; MDR00107524
[145] A1/5, page 94
[146] EB0066391; EB0066393
(Continued...)

SPA.[147] The C Skeleton's assertion that LCCL being sold for £1 at the time undermines its value in the Lakeview SPA[148] is nonsensical – as discussed above, the pricing of the Lakeview SPA was with regard to the elements of rights and assets as they stood at July 2015 and crystalized over time thereafter. Its price in onward sale in 2018 after it had been divested of some assets is simply not a comparable transaction.

120. As the C Skeleton itself discusses, payments under the Elysian SPA had not completed when the Prime SPA was being discussed and finalized between September 2017 and December 2017.[149] Messrs Ingham and/or McCarthy describing the position of their consideration in the onward sale as a "fee" when discussing the terms of the agreement in September 2017[150] does not change the nature of the position that they controlled Elysian RGL, and thereby assets which were changing hands. The discussions referred to in the C Skeleton between Messrs Ingham and McCarthy appear largely to be driven by interests of tax treatment,[151] but do not change that what the Prime SPA was about was replacing Elysian RGL, and its obligation to pay for assets, with a new buyer, while those behind Elysian RGL retained a sum as part of the onward sale.

121. The Prime SPA moved much of the L&TD debt elsewhere than the company group owned and managed by D2 and his colleagues. But D2 has given evidence that in 2018 he sought to set up a mechanism for those debts originally drawn by L&TD and remaining with the group (through CV Resorts and LPE Support) to be settled with LCF.[152] Indeed, D2 and D8 approached D1 and Alex Lee to propose a mechanism to wrap up both the LPE Support and CV Resorts debt in July and August 2018,[153] and a draft term sheet was prepared by November 2018.[154] But this was not finalised in the circumstances of the disruption to the affairs of LCF and LOG and their ultimate administrations from December 2018 onward.

[147] MDR00141470; MDR00141582; MDR00141591; MDR00141629; MDR00141630; EB0088414; MDR00141663; MDR00216566; EB0114581; MDR00217259
[148] A2/1, Section E16
[149] A2/1, para. F5.26; D2D10-00037660
[150] D2D10-00033287
[151] D2D10-00033425
[152] C2/2, para. 106
[153] D2D10-00048686
[154] D2D10-00057281; D2D10-00057282
(Continued...)

F5. D2 was not part of lending processes for the Prime SPA either

122. Section G8 of the C Skeleton does not allege D2 requested, instructed or directed payments from LCF to GAD (which was owned and controlled by D8, not D2[155]) on behalf of Prime. As in the case of GRP while it was owned by Elysian, funds drawn from LCF on behalf of Prime were not in any event simply being drawn to make payments under the SPA. Mr Ingham's commentary in March 2018 in response to queries from D8, who was in control of GAD, indeed makes clear his understanding that those in charge of Prime were in part spending their drawings on other matters ("*The payment for Inversiones is for the continuing property purchases in the Dominican Republic and the payment to ERG is in respect of the continuing capital expenditure on the Cornwall site*."[156]). When D8 sought D2's input, D2 responded was that it was a matter for LCF to decide whether to monitor the use of funds: "*I am sure that LCAF will require at minimum a brief schedule of application of funds.*"[157]

G. LPE SPA AND LPT SPA

G1. Introduction

123. The C Skeleton in Sections H and I traverses a history of LOG and its connected companies that barely discusses the fact that LOG invested in IOG and AP, or that other hydrocarbon and energy technology investments were explored by the LOG group and LOG's board between 2016 and 2018, in a wide-ranging set of activities.

124. Before discussing quantum, the extent of the C Skeleton's engagement with IOG is to mention once that it was drawing funds from LOG in 2016,[158] and an acknowledgement that in 2018 "*LOG's most valuable asset was its investment in IOG*."[159] Indeed, the Claimants have always accepted that LOG lending to IOG and AP was conducted at arm's length (as will be discussed further below).

[155] A2/1, para. G8.4 and references therein.
[156] D2D10-00043102
[157] D2D10-00043102
[158] A2/1, para. H2.1
[159] A2/1, para. I9.6
(Continued...)

125. LOG-based debt to LCF by 31 December 2018 after gross-up was approximately £122 million, based on actual drawdowns received of £87 million. Of this, onward lending to IOG totalled £30.7m, with accrued interest included £34 million.[160] Onward lending to AP totalled £3.5 million.[161] The C Skeleton therefore contends that LCF-LOG lending was a Ponzi scheme, while failing to acknowledge approximately half the funds drawn from LCF were onward lent in undisputed arm's length transactions. Meanwhile, as will be discussed below, the LOG group put further efforts and sums towards running costs while exploring other hydrocarbon and alternative energy opportunities, and connected parties provided seed capital to artificial intelligence technology businesses.

G2. LOG's corporate structure

126. In August 2015, D2 and D3 (through IRG) purchased a company named London Oil & Gas Limited (company number 02504629), and subsequently changed its name to London Group Limited.

127. LOG (company number 09734575) was created on 15.08.15 and was then owned 60% by London Group Limited with the remaining shares being owned by Leman Oil & Gas Limited, a company owned by Dr Bosshard who had been involved with London Oil & Gas Limited (as it was), the late Mr Robin Hudson and Mr Brett Stacey.[162]

128. Initially D2 was the sole director of LOG. In November and December 2015 and February 2016, further directors were appointed to assist with running the business, including Mr Barker, Mr Starkie, Mr Ruscoe, Dr Bosshard and the late Mr Hudson.[163]

129. LPC was incorporated in December 2016, with D2 and D3 as founding directors.[164] LG LLP is a limited liability partnership that D2 and D3 incorporated in March 2017.[165] LPC became a holding company for LOG on 04.05.17. LPC in turn had a number of shareholders, including LG LLP which held 50,000 ordinary shares, the entirety of the voting shares for

[160] D8-0050462
[161] EB0120384; D2D10-00057180
[162] A1/5, page 77
[163] A1/5, page 77
[164] A1/5, page 75
[165] A1/5, page 81

the company. D2 also held around 28% of the non-voting "A" Ordinary shares. LG LLP would also be the first to receive any consideration on sale of LOG by being granted 25 million preference shares in May 2017. In the process of this reorganisation in April and May 2017 various shareholdings in LOG for the interested parties mentioned above and others were replaced with shareholdings in LPC. In October 2017 further directors were appointed to the LPC board, overlapping with the LOG board: Mr Hendry, Mr Ruscoe and Mr Starkie joined the LPC board as well. At the same time, Mr Peattie joined the LPC board.

G3. LOG's gas investments

130. LOG's first major investment was in IOG, a UK based, AIM Listed energy company founded in 2011, which owned (or, during the period of LOG's investment, came to own) significant gas reserves in the North Sea, including working interests in the Blythe, Elgood, Nailsworth, Southwark, Southsea, and Grafton fields.[166]

131. Between December 2015 and February 2016, LOG agreed three loan facilities, totalling £13.55 million, with IOG.[167] In each case, the agreements were negotiated in the days and weeks prior to their execution date, largely through email exchanges between the parties' respective lawyers: D8 for LOG, assisted by Lewis Silkin in the case of the third facility; and Field Fisher Waterhouse for IOG.[168]

132. Save for one issued at LOG's request in April 2018,[169] IOG did not send LOG formal drawdown notices under these loan facilities. Rather, it requested drawdowns by way of emails from its Chief Financial Officer (Peter Young, and later James Chance) to D2 or other colleagues, which stated the desired amount and timing of the drawdown, and gave details of how the funds would be used.[170] LOG's board would then discuss the request, and D2 or others would make enquiries about the use of funds before payments made and confirmed

[166] D2D10-00043690; MDR00226941, pages 9, 11-13, 85, 100
[167] D2D10-00041615; D2D10-00041603; D8-0003243
[168] D2D10-00012817; D8-0002050; D8-0002110; EB0009241; D8-0002431; MDR00028800; D2D10-00014303; D8-0003098
[169] D2D10-00044487
[170] EB0016988; D2D10-00016225; EB0026078; MDR00058248
(Continued...)

by IOG.[171]AP, a Faroese company established in 1998, was another significant investment by LOG, holding interests in two UK North Sea license assets, namely Orlando (oil field, then operated by Decipher Energy and now operated by Serica Energy Plc) and Pegasus (a significant gas discovery made in 2014).[172] In March 2016, LOG entered into a facility agreement with AP, with a limit of £8 million.[173] As with the facilities between LOG and IOG, loans made under this facility agreement were convertible into shares in AP at LOG's option.

133. Funding for LOG's plans was ultimately obtained through facilities agreed with LCF beginning in March 2016, with the final form of document ultimately approved by LOG's board by June 2016.[174] D8 was responsible for transaction document drafting on LOG's side, while Alex Lee of Buss Murton handled the matter for LCF.[175]

134. LOG, via its US subsidiary London Oil & Gas Alaska Inc, also explored the idea of partnering with Great Bear Petroleum LLC (**"Great Bear"**) to acquire interests in oilfields in Alaska.[176] By October 2017, the project was seriously contemplated for investment by D2 and the LOG board, but ultimately discontinued.[177] By October 2017, the LOG group also considered numerous other oil and gas opportunities.[178] As noted in the 11.04.18 LPC board minutes, the group also considered different potential energy investments to be managed through a subsidiary called London Future Energy Limited such as regarding Sunamp, a thermal battery technology prospect.[179]

135. LOG, and D2 in particular, were aware in late 2017 and into early 2018 of ongoing funding needs for IOG, which was planning on reaching its final investment decision (**"FID"**, the point in an exploration project when the decision to make major financial commitments is

[171] MDR00050874; EB0026692; MDR00061122; MDR00050874; MDR00061030; MDR00058339
[172] D2D10-00059086, page 8
[173] J1/6
[174] MDR00006103; MDR00046296.
[175] MDR00035715; MDR00035747; MDR00037955; D8-0004174
[176] MDR00031464; D2D10-00026704
[177] MDR00105585; C2/2, para. 116
[178] D8-0024545, page 4
[179] D2D10-00044517; D2D10-00044518, pages 4-5; D2D10-00044519; D2D10-00044520
(Continued...)

taken) in 2018.[180] As it turned out, in the course of 2018, IOG's intended FID date was repeatedly delayed, shifting from Q1 2018 to Q1 2019.[181]

136. The LOG group also discussed in early 2018 with ABG Sundal Collier a substantial fund-raise by means of a Nordic corporate bond to be issued by IOG.[182] The bond issue was completed in September 2019, and IOG raised some €100 million,[183] but this was of course too late to avoid the administration of LOG. Eventually, by two further facility agreements, entered into on 20.02.18 and 13.09.18, LOG agreed to lend a further £25 million to IOG.[184] Like the previous facility agreements discussed above, these were negotiated in the days and weeks leading up to their execution, mainly by exchange of emails between the parties' lawyers. Field Fisher Waterhouse again acted for IOG, while LOG was assisted by Jo Marshall, Lewis Silkin and D8 (in respect of the February agreement).[185]

G4. Background to the technology companies

137. In 2016, D2 and D3 incorporated LPE Enterprises Limited ("**LPE**") and were both directors of that company. TW Private LLP ("**TW Private**") is the sole shareholder of LPE. LG LLP, D2 and D3 are the members of TW Private.

138. The LPE SPA also involved a holding company, ITI, and three operating companies: Reserec, LAI and Asset Mapping.

139. ITI was incorporated on 16.11.16 and legally owned by Mr Ingham, who held 90% of the shares on trust, including for D2 and D3.[186]

[180] D2D10-00028963; D2D10-00028660; D2D10-00039437; D2D10-00043006
[181] D2D10-00043006; D2D10-00047588; MDR00174497; D2D10-00054301
[182] D2D10-00040156; EB0073077; D2D10-00045079
[183] D2/2, para. 14
[184] D2D10-00042163; D2D10-00049881
[185] MDR00129609; D8-0031607; D2D10-00049662; D2D10-00049683; D2D10-00049701
[186] C2/2, para. 131; D2D10-00022449; D2D10-00022467; EB0053714
(Continued...)

140. ITI provided seed capital to Asset Mapping through convertible loan facilities from December 2016 onward,[187] and acquired its entire issued share capital in the summer of 2017.[188]

141. LAI was incorporated on 30 June 2017 with D2 and D3 as directors and persons with significant control.[189]

142. In March 2018, ITI entered into an agreement in with Reserec, to purchase up to 20% of its shares for a price of up to £1.5 million.[190]

143. As discussed below, the C Skeleton systematically downplays the achievements and potential of the operating companies at the relevant times.

144. Central to both Reserec and LAI was Dr Jagadeesh Gorla, who D2 had known since late 2015.[191] Dr Gorla was the founder of Reserec, and in late 2017 had entered into a consulting agreement with LAI to develop the company's intended product – namely, an artificial intelligence solution for commodities trading.[192]

145. The C Skeleton states: *"Jagadeesh 'Jaggu' Gorla is a computer programmer from the state of Telangana in India who seems to have settled in the UK after some initial visa difficulties"*.[193] The relevance of any visa issues is left unexplained, and appears to be a misguided attempt to undermine Dr Gorla's credentials. Similarly, the reference to *"Jagadeesh 'Jaggu' Gorla"* appears designed to mask his PhD, and his qualifications are vastly understated by the Claimants' description of him as merely *"a computer programmer"*. In fact, Dr Gorla had extensive experience in the field of artificial intelligence (**"AI"**). As D2 explains in his witness evidence:[194]

> [Dr Gorla] *had been carrying out research into natural language processing since 2005, held a PhD in search relevance and machine*

[187] MDR00006377; MDR00006490
[188] D8-0015804; D8-0015805
[189] A1/5, page 68; D2D10-00066442
[190] D2D10-00043497
[191] C2/2, para. 129
[192] D2D10-00036392; D2D10-00036393; MDR00006520
[193] A2/1, para. H8.3
[194] C2/2, para. 129

> *learning (having been a Microsoft Research Cambridge scholar at University College London), and was the recipient of a Dorothy Hodgkin Postgraduate Award from the UK government. He had also shown that he could use his technical expertise to develop successful commercial products: among other things, he had developed an algorithm for Match Capital to match businesses with potential investors, and had built and deployed recommendation models for Channel 4.*

146. The Claimants' description of Reserec as *"a company which carried out IT development work"* is equally reductive. Reserec sold AI products to the advertising and marketing industry, and boasted WPP as its marquee customer, serving 15 brands and realising average monthly revenues of more than £30,000 from the company as at late March 2018. It also had prospective customers including such names as Kantar TNS, Omnicom and Sky.[195]

147. The potential that LAI had to succeed must also, of course, be viewed in the context of Dr Gorla's impressive credentials and track record.

148. In the same vein, the C Skeleton adopts a description of Asset Mapping as merely a "*small, non-profitable company*",[196] ignoring that: (i) Asset Mapping had developed a cloud-based software platform for the monitoring and management of commercial smart buildings; (ii) the smart buildings market was undeniably a large one with significant growth potential (worth many billions of dollars and forecast to rise to more than US$60 billion by 2024); (iii) the company was already selling its product to Stanley Security (now part of Securitas), a global provider of security solutions; and (iv) it also had pilots and projects with blue-chip companies such as Lloyds Bank and GSK.[197]

G5. Background to the LPT and LPE SPAs

149. By late 2017, a number of other shareholders in LPC were looking to vary their shareholding.[198] All of the voting shares of LOG were owned by LPC. An impediment to the purchase and sale of shares as between LPC's shareholders was this fact that under the then structure, LG LLP owned (i) the only voting shares; and (ii) the preference shares in

[195] D2D10-00044804; D2D10-00066349
[196] A2/1, para. H7.2-7.3
[197] EB0092251; D2D10-00066379
[198] D2D10-00066445, para. 17; D2D10-00066444, para. 12

LPC, essentially entitling LG LLP to 30% of the value of LPC (and consequently of LOG) on any sale or redemption event.

150. A board meeting of LPC was held on 11.04.18, at which the board approved Mr Elliott to instruct Mazars LLP ("**Mazars**") to produce a plan which would facilitate the restructuring and also enable us to reward the executive team with shares.[199] This was further discussed at the 14.06.18 LPC board meeting.[200]

151. At the same meeting, the board approved to bring the technology companies into the group under a new Topco (to be created as part of the Mazars plan, as discussed below). D2's motivation for disposing of his interests in the technology companies was as follows:[201]

> *I was also in late 2017 starting to think about my retirement and it was the next logical step for me personally to sell my interests in the technology businesses. Due to the synergies between these technologies and the investments under LPC, I believed this transfer had the potential to be incredibly beneficial to the LPC group. And so whilst I was divesting my direct ownership of the assets, I hoped that the technologies would increase the profitability and liquidity of oil and gas investments in the group, and so increase its value and in turn, my returns as a shareholder; that was my long-term strategy.*

152. After the 14.06.18 board meeting, D8 prepared two SPAs.[202] The first, the LPE SPA, was dated 21.06.18 and provided for D2 and D3 to transfer their interests in ITI and LAI to LPE for £20 million.[203] The second, the LPT SPA, was dated 27.07.18 and provided for D2 and D3 to transfer their LPC preference shares to LPT for a consideration of £32,225,096, which was calculated as 30% on the net asset value of LPC as per its latest balance sheet, and subject to adjustment in the event of any changes to that value.[204]

[199] D2D10-00044518
[200] MDR00000405; MDR00154909; MDR00157040
[201] C2/2, para. 138
[202] C2/2, paras. 150, 154; C2/5, paras. 64-72
[203] MDR00157770
[204] MDR00163962; D2D10-00066448, para. 16

G6. Execution of the LPE and LPT SPAs was incomplete, not incoherent

153. Sections H6 and I8 of the C Skeleton make great play of the fact that, immediately following the LPE and LPT SPAs, the ultimate beneficial ownership of the assets did not change. But this ignores the crucial context in which the SPAs were entered into: they were part of a broader corporate restructuring of LPC, approved by the board of that company, which received extensive legal and accounting advice from highly reputable firms. The SPAs accordingly cannot be considered in isolation. Rather, they must be analysed as part of the suite of agreements entered into as part of the reorganisation, or which would have been entered into but for the intervening administration of LCF. When that is done, the ownership position pre and post SPAs is not an *"incoherence"* at all.

The LPT SPA

154. Cs are correct that: (i) prior to the LPT SPA, the LPC preference shares were transferred from LG LLP to D2 and D3; (ii) by the LPT SPA, the preference shares were sold to LPT; (iii) LPT had a sole share held by D2; (iv) LPT was beneficially owned by LG LLP, because D2 held its sole share on trust for LG LLP; and (iv) beneficial ownership of the preference shares thus did not change.

155. However, the context of the SPA is that LPC was planning to consolidate into a single Topco, to simplify its share structure and enable certain shareholders to exit. To this end, Mr Elliott had been speaking with the accounting firm Mazars to develop a restructuring strategy that met the company's objectives in a tax-efficient way. This is all recorded in the minutes of LPC's 11.04.18 board meeting, along with the board approving the restructuring, to be progressed by Mr Elliott, Ms Marshall and D2.[205]

156. Prior to LPC's 14.06.18 board meeting, Mr Elliott sent the board members various documents including the latest draft Mazars plan for the restructuring.[206] The first three steps of the plan were as follows:

[205] D2D10-00046563
[206] D2D10-00046561; D2D10-00046566

157. First, LG LLP would distribute its shares in LPC (including its preference shares) to its members – namely, D2 and D3.

158. Secondly, a new company would be formed by the members of LG LLP who wished to retain an interest in LPC – again, D2 and D3.

159. Thirdly, the members who formed the new company would transfer their shares (including preference shares) in LPC to the new company.

160. It was therefore entirely clear to the LPC board that, at this stage of the plan, the beneficial ownership of the preference shares would not change. The minutes of the 14.06.18 meeting then record that the sale of the preference shares was *"authorized* […] *under the strategy currently in development with Mazars"*, and *"the board approves for LPC to form the required shell companies and for preference shares to begin to be transferred as the first step in the restructure"*.[207] The preference share sale was thus approved by the board with full knowledge of the ownership position that would result. Indeed, Mr Elliott, who had been most closely involved with the creation of the Mazars plan, later commented in the 12.02.2019 LOG board meeting that *"as far as* [he was] *concerned, the procedure followed in relation to the purchase of the preference shares by LPT was in accordance with the agreed step plan"*.[208]

161. The Mazars plan was finalised, broadly unchanged from the draft discussed above, on 29 June 2018.[209] The first three steps of the plan were then actioned.

162. On 19 July 2018, the members of LG LLP resolved to distribute the preference shares to themselves, and did so.[210]

163. The following day, with the advice and assistance of Lewis Silkin (who had been provided with a copy of the Mazars plan and saw no issues with it), the new company – LPT – was

[207] MDR00157040
[208] MDR00212113
[209] MDR00219494
[210] MDR00163493
(Continued...)

formed.[211] Its formation was ratified by the LPC board at its 07.08.18 meeting.[212] As noted above, although D2 held the only share, this was subject to trust in favour of LG LLP, such that LPT was beneficially owned by D2 and D3.

164. On 27 July 2018, by way of the LPT SPA, it was agreed that the LPC shares (including preference shares) would be transferred to LPT. D8 later provided the SPA to Lewis Silkin, who did not express any concerns with it.[213]

165. Step 5 of the Mazars plan was for LPT to purchase the remaining LPC shares (i.e. not owned by D2 or D3) by way of share exchange (for shareholders that wished to retain an interest) or cash (for those that wished to exit). Step 4 involved the raising of debt finance to enable the cash purchases. It was noted in the minutes of the LPC 07.08.18 board meeting that the company would write to all shareholders to present the proposed buyout structure, and it was approved that D2, Mr Elliott and Ms Marshall would continue to progress the plan alongside Lewis Silkin, who would draft the necessary documentation.[214]

166. By late 2018, step 5 was ready to be actioned, with Lewis Silkin and D8 having drafted the offer letters to be sent to LPC shareholders.[215] Had this step been completed, the beneficial ownership of the preference shares would have changed, as various other LPC shareholders (i.e. beyond D2 and D3) wished to retain an interest in the group,[216] so that they would have become owners of LPT (and in turn the preference shares) alongside D2 and D3. But in the event, this was not possible, because of the FCA raid and subsequent administration of LCF, which meant that funding could no longer be raised to cash out those LPC shareholders who wanted to exit.

[211] EB0093503; MDR00158707; D8-0037556; D2D10-00047734; MDR00155438; MDR00155439
[212] MDR00162086; D2D10-00055620
[213] C2/5, para. 74; D8-0039113
[214] MDR00162086; D2D10-00055620
[215] D8-0043518; MDR00189214; D8-0043725; D2D10-00053987; D8-0043941; EB0109776; D8-0044105; D2D10-00054356; D8-0044321; EB0113720; D2D10-00053833; D2D10-00053834; D8-0044761; D8-0044762
[216] C2/2, para. 139; D2D10-00046563; D2D10-00066444, para. 14.a.
(Continued...)

The LPE SPA

167. The Claimants are correct that: (i) prior to the LPE SPA, D2 and D3 owned shares in the technology companies; (ii) by the SPA, those shares were sold to LPE; (iii) as explained above, LPE was owned by TW Private; (iv) TWP's ultimate beneficial owners included D2 and D3; and (v) D2 and D3 thus remained beneficial owners of the shares.

168. However, Cs' narrative misses a key component: there also existed a call option, by which LOG had the right to acquire TWP's assets (including the shares of LPE) for £1.[217] This option was entirely consistent with the LPC board having approved on 14.06.18 to *"bring Technology into the core activities of the new Topco"*,[218] and the LOG board were aware of it: as Mr Elliott later explained in their 12.02.19 meeting, with reference to a document showing the ownership structure of the technology companies (including the call option),[219] *"the intention to purchase those companies for £1 but with £20m of debt was discussed and agreed by the board"*.[220]

169. Because LOG's beneficial ownership extended far beyond D2 and D3, the beneficial ownership of the technology company shares would have changed had the option been exercised. However, the technology assets were not to be brought within the group until the restructuring of LPC's shareholding had taken place, because of the effect that the introduction of assets valued at £20 million would have had on the value of the LPC shares (and in turn the benefit that would accrue to the exiting shareholders). As D8 explains in his witness evidence in the proceedings:[221]

> […] *I wanted to deal with the acquisition* [of the technology assets] *in a manner which was consistent with the treatment of the Preference Shares and which would be neutral in value terms for those shareholders who wanted to exit from their investment in LPC. In other words, my view was that the shareholders who were selling their LPC shares would not want the value of those shares to be affected (one way or the other) by the value of the Technology*

[217] MDR00214308
[218] MDR00157040
[219] D2D10-00057125; D2D10-00057145
[220] MDR00212113
[221] C2/5, paras. 66-67

> *Assets, and so a value for shares in LPC should be agreed without taking the Technology Assets into account.*
>
> *This informed the decision to fund the acquisition through a loan from LOG to LPE with a call option in favour of LOG granted by the 100% owner of LPE, TW Private LLP. As a result, there would be a credit in respect of the loan from LOG to LPE and a debit for the loan received by LOG from London Capital & Finance ("LC&F"). The result would be neutral from the perspective of outgoing shareholders of LPC, LOG's 100% shareholder.*

170. As discussed above, the LPC restructuring was stalled by the FCA raid and subsequent administration of LCF. Had those events not occurred, and the Mazars plan been completed, the beneficial ownership of the technology company shares would ultimately have changed as the LPC and LOG boards intended.

G7. The valuation of the LPC preference shares in the LPT SPA

171. The C Skeleton levels criticism at the LPT SPA valuation of the LPC preference shares at £32,225,096, even going so far as to refer to it (at paragraph I9.1) as *"fanciful"*. This is unfair and contrary to the contemporaneous documents.

172. First, as noted above, the valuation was expressly subject to change in the event that the balance sheet net asset value of LPC changed.

173. Secondly, as the C Skeleton acknowledges, given LPC's ownership of LOG, whose largest asset was its investment in IOG, the valuation of the preference shares was largely driven of the valuation of LOG's interests in IOG. In that regard, on 12.06.18, a valuation of LOG's interests in IOG at more than £200 million was produced.[222] The valuation had been prepared by David Elliott and Mike Starkie (both of whom were qualified accountants with many years' experience, Mr Starkie in the oil and gas sector). This was distributed to the board members of LPC for a meeting to take place on 14.06.18 to formally discuss the

[222] D2D10-00046865; D2D10-00046864. *See* also D2D10-00047584, D2D10-00047585, D2D10-00047586 and MDR00163956

(Continued...)

Mazars plan and the acquisition of the technology assets.[223] The valuation was also discussed by the LPC board at their meeting on 07.08.2018.[224]

174. This valuation was well in excess of the LOG debt to LCF as it was then in June 2018, and as it ultimately rested by early 2019. The LOG group's valuations of its IOG interest continued to maintain a level in excess of £100 million through late 2018.[225] Indeed, an independent report on IOG's assets obtained by the Claimants continued to value IOG's assets at £60 million to £290 million[226] (and therefore LOG's interest on a net asset value basis at potentially over £100 million).

175. The Claimants' argument concerning the IOG valuation is that *"Claimants' expert, Mr Osborne, considers that* [LOG's investment in IOG] *was worth between £26.4 million and £53.6 million on 27.07.18. D2's expert, Mr Wright, considers that it was worth* [between] *£56.0 million and £62.2 million. The range of possible values is therefore £26.4 million to £62.2 million.*"[227] What this omits is that: (i) all the methodological analysis of both experts occurs in the context of pricing the sale of the IOG asset; and (ii) that is not what LOG and LPC's boards were attempting to do at the time; they were long-term investors with no immediate intention to sell. As Mr Wright observed in his first report:[228]

> *Another permissible approach, particularly in the period prior to the administration of LOG when it was a long-term investor with no immediate obligation to monetise its interests, would be to value IOG based on its NAV [net asset value]. A company's NAV is based on an assessment of the future cashflows of its assets, discounted at a certain rate. This NAV may then be adjusted by the application of risk factors – to reflect, for example, operational risks (e.g. the chances of success of a well to be drilled or the chance that an asset can be commercially developed) – and corporate matters (e.g. the amount of debt in the business, the expected requirement for future external funding, and central costs). The NAV for IOG could then be used to derive a NAV-based valuation of LOG's interests in the company.*

[223] EB0092181; EB0092183
[224] MDR00162086; D2D10-00055620
[225] EB0094592; MDR00159253; EB0121717
[226] MDR_POST_00000337
[227] A2/1, para. I9.6.
[228] D2/2, paras. 24-25.

> *It is highly likely that the results of a NAV-based valuation would differ significantly from the share-price-based valuation that I have undertaken, and I note in this regard that the overwhelming majority of oil and gas companies listed in the UK trade at significant discounts to their NAV. The amount of the discount varies on a company-by-company basis, due to factors including the nature of the assets (particularly whether they are still in the* ***exploration*** *or* ***appraisal*** *phase or have already begun producing) and their location.*

176. The Claimants' expert, Mr Osborne, makes a similar point in his first report:[229]

> *The valuation standard applied in any given valuation seeks to take into account the context in which the valuation is being conducted* […]
>
> *(i) market value explicitly takes into account market factors, the discounts or premiums that a willing buyer and seller would take into account when considering the price at which they would be willing to transact;*
>
> *(ii) fair value, in contrast, is usually assessed without consideration of market factors. Because fair value is usually applied in the context of financial reporting, it is commonly the case that the assets being valued are not being held for sale. Accordingly, it is not generally considered appropriate to take into account market factors at the date of valuation because it is not known at the date of valuation, or necessarily relevant to the valuation, what market factors might be taken into account were the asset or liability ever to be disposed of* […]

177. Given its status as a long-term investor in IOG, LOG's valuations of IOG (including the one referred to above) were carried out on a net asset value or fair value basis. It is thus no surprise that the quantum of LOG's valuation of its investment in IOG in June 2016 was rather higher than that provided by the experts in these proceedings, given the differing approaches taken. The primary relevance of the expert evidence is therefore in considering the values at which Cs might have sold the asset later on, during LOG's administration, had they attempted to do so (as will be discussed further below).

[229] D2/1, para. 3.41.

G8. The valuation of the technology company shares in the LPE SPA

178. The C Skeleton also criticises the £20 million valuation in the LPE SPA. However, it neglects to mention that this was approved by the LPC board, who were familiar with the companies and aware of their stage of development at the relevant time, and knew about the risks and challenges of valuing early-stage companies.

179. As D2 explains in his witness evidence:[230]

> *LAI and Reserec had each taken space in the LPC group's London offices, as a result of which there was considerable interaction between those companies and many of the LOG and LPC board members. Presentations on the technology assets had also been given to the LOG and LPC boards prior to the 14 June 2018 meeting […]*

180. One such presentation was given to the LPC board by Dr Gorla,[231] with reference to a briefing note on LAI that had been circulated ahead of their 14.06.18 meeting.[232] The briefing note set out in detail the stage that testing of LAI's product had reached, and the results that had been achieved. It was clear that:

> *The next major project milestone is to bring the system to a stage where it will be able to trade on live markets, as opposed to back testing. This will initially be conducted in a controlled environment with synthetic funds. this will allow us to establish whether the machine is able to replicate its current +80% accuracy in live predictions. This turns it from an interesting study on the possible applications of AI into a commodifiable product that can be used to trade.*

181. Having seen the presentation and briefing note, Mr Ruscoe concluded that LAI's testing had *"shown very positive results in the gas market"*, and its platform *"had considerable potential for other commodities"*.[233]

[230] C2/2, para. 147. *See* also in this regard D2D10-00066445, para. 24
[231] MDR00000405
[232] EB0092181; EB0092190
[233] D2D10-00066443, para. 20

182. The briefing note further explained that: (i) the LAI platform was being developed by Reserec researchers and engineers; and (ii) Reserec had built and provided AI systems to marketing and advertising companies including WPP and others.

183. As for Asset Mapping, Mr Starkie has given evidence in other proceedings that he was *"well acquainted with"* the company, having been appointed as one of its directors in November 2017.[234] He would doubtless have shared his knowledge of the business, and his views on its prospects, with the rest of the LPC board.

184. In any event, the board were sent a briefing note on Asset Mapping ahead of their 14.06.18 meeting, which addressed (among other things): the company's product; the market opportunity it was targeting; its customers and prospects; its financial forecasts; and the Kilby Fox valuation of the business based on those forecasts.[235] Of particular note, the document was clear that: (i) most of the brands with which the company was working were at the pilot stage; and (ii) the company's business plan, on which the aforesaid valuation was based, had not been independently validated.

185. The LPC board were thus under no illusion regarding the stage of development of the technology companies, or the risks of investing in them. With that knowledge, as Mr Starkie has further said in his evidence in the novation proceedings, the *"opportunity to invest in the Technology Assets was broadly welcomed by the non-executive directors"*, and as a result the LPC board *"by the end of 2017* […] *in principle, agreed that during 2018* [they] *would reorganise LPC to* [among other things] *introduce into the group the Technology Assets"*.[236]

186. At the 14.06.18 board meeting, Mr Hudson opined that the technology assets were together worth £20 million, and the associated minutes record that the board approved the acquisition at a fair valuation estimated at £20 million.[237] The board were fully cognisant of the difficulties of valuing early-stage technology companies: as Mr Ruscoe commented in his

[234] D2D10-00066445, para. 24
[235] EB0092250; EB0092251
[236] D2D10-00066445, paras. 18-19
[237] MDR00000405; MDR00154909; MDR00157040; C2/2, para. 146; D2D10-00066445, para. 23
(Continued...)

witness evidence in the novation proceedings, "*valuation of early stage companies is notoriously difficult and these companies were no different*."[238]

187. Further, at the LPC board meeting on 12.02.19, Mr Hudson opined that the technology assets were worth more than £20 million,[239] and there is no evidence that any of board objected to this valuation.[240] By that time, LPC had identified an accounting and corporate finance firm called Kreston-Reeves[241] to carry out valuations of the technology companies. As at the end of February 2019, Kreston-Reeves were still completing their KYC checks and preparing a draft letter of engagement,[242] but the insolvency process appears to have interrupted matters shortly thereafter, and the contract was not signed.

G9. The financing of the SPA transactions

188. The LOG board were aware that the LPE and LPT SPA transactions were to be funded by LCF loans. As discussed above, the Mazars plan involved the raising of debt finance to enable the cash purchases of LPC shares by LPT. Moreover, the board knew that LOG's activities were almost entirely funded by LCF,[243] and the company had been in discussions with LCF regarding a formally expanded facility from late 2017.[244]

189. An increase of the LOG facility to £150 million was discussed at a LOG board committee meeting on 27.09.18 (which included Messrs Hendry, Starkie and Elliott as well as D2 and D3), in light of the fact that LOG's indebtedness to LCF had reached circa £100 million.[245] On 02.10.18, Mr Elliott said: "*it is intended that the facility will be split between LOG, LPT*

[238] D2D10-00066443, para. 20
[239] D2D10-00066445, para. 27
[240] D2D10-00058087
[241] EB0116413
[242] EB0120430
[243] D2D10-00066445, para. 16
[244] The C Skeleton discusses a 'gin and tonic' clause as delaying the facility negotiations (A2/1, paras. H2.16, H2.17, I2.1, I2.2). D2 made clear on several occasions, such as in July 2018, that LOG needed protection from LCF recalling its loans early while LOG was in the heavy investment phase of 2018 (MDR00158973). Interim agreements were drafted as between Alex Lee for LCF and D8 (MDR00134357; MDR00134358).
[245] MDR00177013; MDR00177925; MDR00174819
(Continued...)

(new holdco) and the tech businesses".[246] On 03.10.18, the LOG board approved the £150 million facility.[247]

190. In November 2018, D2 was approached by Mr Elliott regarding the audit process that LOG's auditors, BDO, were carrying for the period ended 30 September 2018.[248] In the usual way, Mr Peacock provided trial balances for these entities to BDO, BDO responded with further information requests, and Mr Peacock and Mr Elliott discussed and replied to these. One of the areas on which BDO had sought clarification was the inter-company balance between LOG and LG LLP of around £32.6 million. As said elsewhere in evidence by Mr Peacock, it emerged in the course of Mr Peacock and Mr Elliott's review, that there had been an accounting error, in that this sum should have been recorded as LOG loans to LPT (in connection with the LPT SPA) and LPE (in connection with the LPE SPA) rather than to LG LLP.[249] However, out of an abundance of caution, this was brought to board level for discussion in February 2019.[250]

191. Having taken advice from Lewis Silkin, the LOG board, at their 12.02.19 meeting, ratified the aforesaid LOG loans to LPT and LPE.[251]

192. Mr Hendry has subsequently given evidence that, although not present at the 12.02.19 meeting, he would have approved the loans as well.[252]

H. D2'S RESPONSE TO FCA INTERVENTION AT LCF

193. The FCA raided LCF on 10.12.18.[253] Following the lack of funding from LCF due to their likely impending administration after the FCA notice of cessation of trade, D2 first loaned £1.16 million on 17 December 2018 to LPC.[254] LPC passed on £1 million to LOG, which then paid this onto IOG. D2 then loaned a further £4 million to LOG on 4 and 9 January

[246] MDR00134608
[247] MDR00134608; MDR00134611; MDR00134613
[248] D2D10-00054341
[249] D2D10-00066448, paras. 29-39
[250] D2D10-00057125
[251] MDR00220834; MDR00212113
[252] D2D10-00066444, para. 19
[253] MDR00001606
[254] O2/15, page 21
(Continued...)

2019, which enabled further investment in IOG of £500,000 and £3,425,000.[255] D2 has given evidence that he did this to protect IOG's solvency, and thus LOG's investment, given the cash flow difficulties for the LOG group the events at LCF created.[256] D2 also engaged in discussions in February 2019 regarding the refinancing of Prime's position.[257] To further protect IOG, on 05.03.19 under a deed of guarantee and indemnity D2 agreed to make available further funding for IOG in support of its facility to draw funds from LOG.[258]

194. Together with the discussion above regarding restructuring the CV Resorts and LPE Support debt to LCF left off on LCF's end in November 2018, the general position of D2's conduct was to seek to support investments and lending positions at this time.

195. LCF was placed in administration on 30.01.19, with Smith & Williamson ("**S&W**") as administrators and Mishcon de Reya ("**MdR**") as their solicitors. In late January and D2 worked with IOG and LOG to continue to support IOG's push to FID through finding a way to fund the balance of the LOG-IOG facility.[259] D2 provided the agreement to S&W and they responded on 11.02.19.[260]

196. Martin Orrell was shortly thereafter appointed to LOG's board as LCF's nominee, at the request of S&W. With a view to protecting LOG's assets and maximising LCF's recovery of LOG's debt, Mr Orrell discussed a potential 'hive down' with D2 and D3, by which a new company, to be owned by the LCF administrators, would purchase LOG's interests in IOG, AP, CV Resorts and (following the intended exercise of LOG's call option with TW Private) LAI. On 08.03.19, Mr Orrell forwarded me a draft proposal, prepared by MdR on behalf of S&W, in which the indicative price for these interests was £80 million, based on valuations of: £60 million for IOG; £10 million for AP; £5 million for CV Resorts; and £5 million for

[255] O2/15, page 22
[256] C2/2, para. 160
[257] D2D10-00056867; D2D10-00056868
[258] D2D10-00058342
[259] D2D10-00057134; D2D10-00057137; D2D10-00057138;
[260] D8-0047133
(Continued...)

LAI.[261] The proposal provided that D2 and D3 would be given full transparency and regular information in relation to the progress of the purchase.

197. At the LOG Board meeting on 17.03.19, MdR and Mr Orrell proposed the administration of LOG, with S&W to be appointed as administrators.[262] D2 has said the following in evidence regarding that meeting:[263]

> *The minutes of this board meeting show that with the exception of (i) Mr Barker who voted "no" (I believe on the advice of his solicitor who had informed him that the SFO did not have the requisite powers to shut LOG down) and (ii) Mr Orrell (who "abstained"), the entire board (including myself) voted in favour of S&W's immediate appointment as LOG administrators. My reasons for this were twofold: (i) I had been led to believe by Mr Mike Stubbs of MdR that the SFO would use its powers to close LOG down within a matter of days and (ii) as discussed above, I genuinely felt that the LCF administrators and Mr Orrell believed in LOG and wanted to preserve its assets as their "hive down" proposal showed. Our relations were very amicable; the LCF administrators' proposal was something I felt would be beneficial for LOG and, 10 days later (on the advice of Mr Orrell who told me he felt there would have been a conflict of interest had I stayed on as a LOG director if the potential "hive down" was to come to fruition), I resigned my LOG directorship. Ultimately, I felt strongly that it was better for LOG to have been in the LCF administrators' hands than those of the SFO. In retrospect, we should have taken the 14-day grace period as LOG, at that time, had cash reserves. I also think the LOG directors would have stepped in to provide necessary funding if required. But I was in state of shock, particularly after the surprise of my police interview and a raid on my home on 15 March 2019.*

I. OTHER ALLEGED PAYMENTS TO D2 AND D10

198. The C Skeleton also discusses payments alleged made to D10 of £186,200 from LCF on 12.05.17 and £200,000 from LOG on 14.06.17, saying of both of them: "*Nothing can be found to explain or justify this*."[264] The C Skeleton is wrong in multiple ways.

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[261] EB0121795; EB0121847
[262] D8-0050609
[263] C2/2, para. 167
[264] A2/1, paras. J6.2, J6.3
(Continued...)

199. Regarding the first of these payments, D10's PIO evidence, and D2's trial witness statement, addressed this matter as the return of loan monies to D10. D2 explained:[265]

> *The amount of £186,200 Helen received in May 2017 was part of the repayment of £700,000 of bridging finance loans she had made to London Group LLP in December 2016 and January 2017 to assist the financing of the activities of what had by 2017 become called Global Resort Property Plc (discussed below) regarding lodge acquisitions and London Oil & Gas Limited (in its lending to Independent Oil & Gas Limited, as I will also discuss below). In May 2017, through Global Resort Property Plc and LCF payments, these loans were reimbursed to Helen.*

200. As set out in D10's evidence in exhibit HHK2, D10 had transferred £200,000 on 06.12.16 "*to part fund purchases of lodges at Lakeview. This loan was repaid to HHK's Santander account Santander (Acc. No. 36123505 / Sort code 09-01-28), as per the GRP schedule appended hereto*"[266] and £500,000 on 16.01.17 also London Group PLC "*to part fund a loan from LOG to IOG. This loan was repaid to HHK's Santander account Santander (Acc. No. 36123505 / Sort code 09-01-28), as per the GRP schedule appended hereto*."[267]

201. D10 subsequently received £186,200 from LCF on 12.05.17 and £413,800 from GRP on 17.05.17, mirroring the £700,000 previously loaned.[268]

202. The £200,000 transfer from LOG, on 14.06.17, was in fact a payment to the joint Metro account with account number 20978546 in the names of both D2 and D10, as the Claimants are aware.[269] As said in D2's evidence:[270]

> *I note the allegations against myself and Helen set out at paragraphs 70 of the RRAPoC in respect of payments into our Joint Metro Bank Account (Account no 20978546). I would like to take this opportunity to reiterate the position put in our Amended Defence, that the sums paid into this account were done so at my instruction and that I – not Helen – made these decisions*

[265] C2/2, para. 82
[266] O2/17, page 11
[267] O2/17, page 12
[268] O2/17, page 31; MDR00007314 page 9
[269] See, e.g., A1/7, page 24
[270] C2/2, para. 169
(Continued...)

notwithstanding the fact that the account was technically also in her name and she was therefore a signatory.

203. Although marked as "LOG Share Payment" on the reconciliation statement referenced in the C Skeleton, the sum was by way of a loan to Mr Hume-Kendall.[271] Thus, the amount was not even a matter regarding D10 anyway.

204. Other "*payments to D2*" are discussed in the C Skeleton, but which are actually payments to LV Management from within the LOG group.[272] Regardless of the funding position of the LOG group from LCF facilities, since no allegation is made that LV Management passed on sums to D2, these are not payments to D2.

J. CLAIMS AGAINST D2 AND D10

205. The claims against D2 are related to:[273] (i) Dishonest assistance to fraudulent trading of LCF by D1 and D4 within section 246ZA of the Insolvency Act 1986, and further or alternatively to fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986 (ii) Breach of duty to LOG of duties, including fiduciary duties, he owed to LOG under sections 171 to 177 of the Companies Act 2006 (iii) Proprietary tracing claims for all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by him (alternatively and where applicable, holds on trust for LOG all monies paid from LOG and their traceable proceeds which are held by him) (iv) Knowing receipt in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.

206. As discussed further in the submissions on the law accompanying these submissions for trial, a pleading involving dishonesty and fraud must be particularised in some detail. Those details remained very much lacking regarding the claims against D2 in the RRAPOC[274] and the Further Particulars of May 2023,[275] as noted in the Amended Defence of D2[276] and his

[271] B2/2, para. 176.4.1
[272] A2/1, para. J6.1
[273] A2/1, para. O3.1 and citations to B1/2 therein
[274] B1/2
[275] B1/4
[276] B2/2
(Continued...)

Addendum.[277] As discussed above particularly in Section D, the C Skeleton remains unparticularised in the extreme on issues of knowledge and dishonesty when claiming that D2 had any role in the running and management of LCF.

207. The proprietary and knowing receipt claims against D2 are otherwise driven by the allegation that a variety of SPAs were not genuine commercial transactions. The circumstances of those transactions are discussed throughout Sections E-G above. As to the claim of breach of duties to LOG, Sections G and H discuss how D2 entered into transactions in 2018 with the knowledge of the board of LOG, involving professional advisors, and that he sought to assist LOG after LCF was stopped from trading.

208. The Claimants plead against D10 that monies received by her are amenable to either:[278] (i) Proprietary tracing claims or (ii) A claim for receipt as nominee for D2. The pleaded case was minimal in the RRAPOC, as discussed in the letter dated 15.09.23 mentioned above.

209. The proprietary tracing claim pleaded was that D10's receipt of funds was "[in exchange for] *no consideration and/or received such monies with such knowledge as to make it unconscionable for them to gain or retain any beneficial interest therein and accordingly cannot claim to be bona fide purchasers for value without notice*."[279] Yet, as discussed in Sections E, K2 and K3 above, the Lakeview SPA was an exchange of the shares D10 held in LCCL to entities in which D10 had no interest, which LCCL shares had interests in properties of real value, whether or not the exact value is disputed. The transaction was evidently for consideration. There is no pleading in the RRAPOC, nor any discussion in the C Skeleton, of any alleged fact of knowledge of D10 such as to make it unconscionable to retain the sums of a transaction for consideration.

210. There is equally no pleading in the RRAPOC, nor any discussion in the C Skeleton, of how D10 is understood to be a nominee of D2. D10 took legal and beneficial title to LCCL shares after providing guarantees for financing (as discussed in Section E1) and in consideration of

[277] B2/3
[278] A2/1, para. O10.1; B1/2, paras. 64-65, 70-71, 73-74
[279] B1/2, para. 65

further management efforts (undertaken as discussed in Section E4). Other funds received, or alleged received, by D10 are discussed in Section I above.

K. QUANTUM AND MITIGATION OF DEFICIENCY

K1. Introduction

211. C1 and C3 are essentially run by the same people in the form of their administrators, C2 and C4. Among C2 and C4, Finbarr O'Connell, Adam Stephens, and Colin Hardman are administrators of both C1 and C3. Prime entered administration in February 2019, C1 appointed administrators over Prime as a qualifying floating charge holder.[280] The administrators appointed were Finbarr O'Connell (an administrator of both C1 and C3); Adam Stephens (an administrator of both C1 and C3); Colin Hardman (an administrator of both C1 and C3); and Lane Bednash (an administrator of C3) and Mark Ford (the "**Prime Administrators**").

212. The Claimants, effectively being in control of the administration of Prime as the Prime Administrators, are also able to realise Prime's assets for the ultimate benefit of LCF, thereby reducing LCF's deficit, and to the benefit of LCF's creditors, in much the same way as they are able to do so for LOG for the benefit of LCF's creditors.

213. These proceedings are not the first time the Claimants' conduct as administrators has been called into question.

A. In *Vegas Investors IV LLC v Shinners & Ors* [2018] EWHC 186 (Ch), Mr Registrar Jones removed Messrs Shinners, O'Connell and Hardman as administrators, for having failed to appreciate an obvious conflict of interest. This was despite them having already offered, after cross-examination of Messrs Shinners and Hardman, to resign, in respect of which evidence the Registrar said: *"I unhesitatingly reach the conclusion* […] *that the Respondents have lost perspective of their role* […] *their evidence demonstrated that they are primarily and essentially concerned with the defence of any*

[280] H3/1

claim against S&W and not with the competing, conflicting interests of the Company […] *I will not embarrass them further by providing specific examples* […]*".*

B. There are also ongoing negligence claims against Messrs Shinners, O'Connell and Hardman concerning their role in the same administration, in which it is alleged, among other things, that they failed to act with reasonable care and skill and/or obtain the best price for an asset, with the consequence that the asset was sold at an undervalue (*see Vegas Investors IV LLC v Shinners & Ors* [2023] EWHC 1786 (Ch)).

K2. Lakeview

214. On 22.04.22, the Prime Administrators sold Prime's interests in the Lakeview Resort to Park Holidays UK Limited for the sum of £10.2 million.[281] The sale represented an undervalue. Had the Prime Administrators obtained proper value for the Lakeview Resort, LCF would have recovered more of the sum owed to it under the Prime Loan, and its deficiency would accordingly be lower. This reduced deficiency should be taken into account in calculating (i) any contribution in the Claimants' fraudulent trading claim and/or (ii) the quantum of any claim for damages for dishonest assistance.

215. As to the value of the Lakeview Resort as at the time of the sale on 22.04.22, the position is as follows.

216. A number of valuations were carried out prior to the administration of LCF, LOG or Prime, all of which exceed the ultimate sale price obtained by the Claimants and which can be summarised as follows:

Valuer	**LCF connected company**	**Date**	**Value**
GVA	IRG	December 2014	£7,150,000[282] £12,400,000[283]
Porters Valuation	LCF	December 2016	£15,070,000
John Spacey	Prime	June 2018	£33,199,350[284]

[281] MDR_POST_00002345.
[282] Market value of the whole of the Lakeview Resort.
[283] Market value of whole of the Lakeview Resort with business plan achieved.
[284] Fraser Real Estate assert this to have been an "appraisal" not a valuation, though it is unclear what distinction is being drawn: see MDR_POST_00000173.

217. Furthermore, in or around September 2019, a number of individuals approached the Prime Administrators seeking to purchase the Lakeview Resort for the price of £35 million, but the sale did not progress.[285]

218. However, the Prime Administrators consistently undervalued the value of the Lakeview Resort in internal assessments and communications, including:

A. In an 'Assessment of the Best-Case Trading Potential of the Property and Review of Potential Realisations based upon these Trade Assessments", produced by Miller Commercial the real estate agent with conduct of the sale in or around 2019 (the document itself is undated), a 'realistic scenario' for the purchase price was suggested as being £6.3 million without planning permission (addressed below) or £7.9 million with planning permission;[286] and

B. In February 2020, Miller Commercial valued the Lakeview Resort on a '*pared down*' basis, without central facilities but including holiday lodges other than those owned independently, at £2-2.5 million.[287]

219. Finally:

A. on 19.12.18, planning permission had been granted for the development of an additional 118 units of holiday accommodation, for extensions and alternations to the existing main facilities building, and for the conversion of the Waterside Country House (forming part of the Lakeview Resort) into a 10-room hotel (the "**Planning Permission**");

B. as is standard in such situations, the grant of the Planning Permission was conditional on the development work being commenced before the expiration of 3 years from the grant of permission; that is by 18.12.21;

[285] MDR_POST_00000836
[286] MDR_POST_00000392; MDR_POST_00000527; MDR_POST_00000485; MDR_POST_00000509.
[287] MDR_POST_00001164.

220. No, or alternatively insufficient, steps were taken to either (i) preserve the Planning Permission whether by extension or by commencing development work; or (ii) to complete the sale in time for steps to be taken by the purchaser to preserve the Planning Permission. By the time of the completion of the sale on 22.04.22, the Planning Permission had lapsed.

221. The effect of the sale of the Lakeview Resort after the Planning Permission had lapsed was to depress the value of the asset. Miller Commercial expressed their view that the Planning Permission had value in that it *"removes an element of risk for a buyer"*, communicated to the Prime Administrators in an email from Joe Pitt (of Fraser's Real Estate, an adviser to the Prime Administrators).[288] Similarly, Miller Commercial made the comparison between the Lakeview Resort and a holiday park in St Ives, Cornwall, which had sold for the sum of £25 million in part on account of the Planning Permission.[289]

K3. Dominican Republic properties

222. The progress report by the Prime Administrators dated 01.03.23 states as follows:[290]

> *Enquiries are ongoing concerning the property interests in the Dominican Republic and whether there will be a commercial benefit in realising [Prime's] indirect interest in that land. It is still considered unlikely that there will be any material realisations from the sites in the Dominican Republic. We are liaising with our legal advisors and professional agents and are nearing a conclusion following an extensive review of these sites and to ascertain whether there are any prospects of recovery in this regard.*

223. Based on the Claimants' disclosure, the 'extensive review' of the sites undertaken by the Claimants mainly comprises:

224. Appraisals of the Beach producing a market value of US$4 million and of the Hill producing a market value of US$2 million, carried out by Cushman & Wakefield in June 2020.[291] The appraisals were prepared: (i) on the basis of the appraiser not having inspected the site; (ii) on the express basis that the site was sold as a *"raw parcel of land"* and (iii) that there were

[288] MDR_POST_00002240.
[289] MDR_POST_00002198.
[290] H3/6
[291] MDR_POST_00002205; MDR_POST_00002205

"no approvals in place for any development on the subject site". Furthermore, the appraisal was clear that the impact of Covid-19 was particularly significant (and the Covid pandemic was near its peak in June 2020) with the result that market conditions were likely to change more significantly and more rapidly than in normal conditions.

225. Valuation reports in respect of the sites provided on or around 12.11.20 with the assistance of Rofiasi Ingenieria, a local valuer.[292] The reports gave a valuation of US$2,682,800 for the Beach and US$928,227 for the Hill. In the case of the latter, the report is predicated on the land being in disuse and with grazing livestock being its *"greatest and best use"*, a conclusion that was expressed to have been reached *"without the need for in-depth analysis"*.

226. It appears that no steps were taken by the Claimants to update those valuations, both of which were undertaken during the Covid pandemic, which disproportionately affected the leisure and tourism sectors, and would have had a significant effect on the value of the properties and on the viability of developing them as tourist resorts.

227. In contrast, reports carried out in 2018 by Julio Cesar P. Pena, an agricultural engineer and appraiser, valued the sites at US$80-100 million in aggregate.[293] The Claimants do not appear to have made any meaningful attempt to understand the discrepancy between the valuations of Mr Pena and those that they had obtained.

228. In the circumstances, they were not in position properly to draw the conclusion that the sites had no realisable value.

229. In their subsequent progress report dated 29.08.23 (the latest at the time of writing), the Prime Administrators made a very similar statement concerning the sites:[294]

> *Enquiries are ongoing concerning the land and titles in the Dominican Republic and whether there will be a commercial benefit in continuing to pursue these assets and whether there is any prospect of achieving material realisations, which is still considered unlikely. We continue to liaise with our legal advisors and*

[292] MDR_POST_00002202; MDR_POST_00002197
[293] MDR_POST_00000152; MDR_POST_00000158;
[294] H3/7

professional agents and will provide a further update once these enquiries have concluded.

230. It thus appears that the Claimants did next to nothing in the intervening seven months to ascertain whether it was worth pursuing realisations of the Dominican Republic assets, let alone actually seeking to realise value from them. If that is correct, it is inexcusable.

231. In any event, any determination of the value of LCF's deficit should include the value that ought to be realisable in respect of the Hill and the Beach. In that regard, the Claimants' expert evidence in these proceedings paints a much more positive picture than the Cushman & Wakefield and Rofiasi reports. Specifically: (i) the *"highest and best use"* of the Beach is tourism-related development, and the site is worth US$4.9 million;[295] and (ii) the Hill has *"high potential* […] *for the development of environmental conscious* [sic]*, lodging products"* (contrary to Rofiasi's conclusion), with a site value of US$5.4 million.[296]

K4. IOG

232. The Claimants failed properly to manage LOG's investment in IOG, and in so doing breached their duties as administrators. In particular, as detailed below, the Claimants: (i) unreasonably rejected substantial offers from third-party purchasers; (ii) failed actively to consider a block trade of IOG shares; and (iii) appear to have blindly relied on advice from Cenkos Securities plc (**"Cenkos"**), which in various material respects ought to have been questioned.

233. This all resulted in a greater deficiency in LOG's (and consequently LCF's) assets than would otherwise have existed. Of course, IOG has now itself appointed administrators and its shares are suspended from trading – with the consequence that, as the Claimants acknowledge, there may well be no further value in LOG's interests in the company.[297] The Claimants' actions thus fall to be considered as a failure to mitigate in respect of both their claims in fraudulent trading and for alleged breaches of D2's director's duties pertaining to LOG.

[295] D1/1
[296] D1/2
[297] C1/7, para. 23-24

Unreasonable rejection of offers to purchase LOG's entire interest in IOG

234. The Claimants' rejection of offers to purchase LOG's interests was unreasonable. Prudent administrators seeking to maximise value would not have left LOG exposed to the considerable risk inherent in early-stage oil and gas operations, of which the Claimants at all material times were (or certainly ought to have been) well aware. This is particularly so given IOG was in the pre-production phase: it was thus inevitably an investment fraught with especially acute geological and developmental risks.

235. Mr Osborne, instructed by the Claimants, recognises those risks. In his first expert report, Mr Osborne characterises LOG's investment in IOG as "*a leverage bet*", noting, at paragraph 4.6, that: *"In my experience, it is unusual for a responsible investor to place such a concentrated bet on the prospects of a single junior resources company finding commercially recoverable deposits of natural resources"*. In his supplemental report, Mr Osborne expands on this characterisation of IOG as something of a "*bet*". At paragraph 3.11, he identifies elevated risk for LOG: "*because IOG had no positive cash flows* [,] *because IOG had very low market capitalisation* [,] *and because the future value of IOG shares was heavily contingent on the discovery and exploitation of sizeable quantities of commercially viable natural gas*." D2 and D10 query the relevance of these statements: Mr Osborne was asked to opine on value, not LOG's investment strategy. But if it was "*irresponsible"* for LOG – a long-term investor in early-stage companies – to place such a leveraged bet on IOG, it was more irresponsible still for LOG's administrators to elect to continue LOG's exposure to that risk when they were under a duty to realise value and there were viable opportunities to exit. It bears emphasising that the circumstances of elevated risk identified by Mr Osborne obtained no less during LOG's administration.

236. The unreasonableness of the Claimants' apparent willingness to accept continued exposure to this risk falls into sharp focus in the context of their having received multiple offers for the purchase of LOG's interests in IOG.

237. In March 2019, RockRose Energy plc ("**RockRose**"), an energy and production company with a focus in the North Sea, made a number of improving bids to purchase these interests. On 25.03.19, RockRose announced that it had offered to purchase the outstanding debt owed

to LOG by IOG for £40 million.[298] Days later, on 27.03.19, it offered £52.5 million plus a deferred sum.[299] The offer was rejected by LOG's administrators, who made counter-offers at £120 million, and later £140 million (two minutes before the offer was due to expire).[300] That approach is confusing: (i) absent any material change in the value of the subject asset during negotiations, a seller increasing their price is most unusual if they have any genuine intention of selling; (ii) in this case, the share price of IOG *declined* in the period between the Claimants' counter-offers;[301] and (iii) there is no evidence of the Claimants undertaking or receiving any analysis whatsoever to support the valuations in either of their counter-offers (and Mr Shinners' evidence makes no mention of the counter-offers at all).

238. While the details of the deferred sum remain unknown to D2 and D10, even the £52.5 million upfront portion of RockRose's offer represented a substantial premium to Mr Osborne's valuations of LOG's interest as at 01.04.19 – namely: £47.2 million on a theoretical basis;[302] or £33.1 million to £41.5 million on an adjusted basis (*i.e.* including assumed discounts to realise value)[303]. It was even at a premium to Mr Osborne's adjusted valuations as at 18.03.19 (£36.9 million to £51.4 million),[304] when IOG's share price was much higher.[305]

239. In his Second Witness Statement, Mr Shinners seeks to justify the administrators' rejection of RockRose's offer on the basis of separate valuation, contained in a report by RISC Advisory (a specialist advisory services provider with expertise in the energy sector) of £60 million to £290 million. Mr Shinners emphasises that "s*pecific reliance*" was placed upon that valuation.[306] However, this valuation: (i) was unrisked and undiscounted, such that it

[298] MDR00002078
[299] MDR_POST_00000304
[300] MDR_POST_00000319
[301] D2/2, "Portfolio value" tab: the IOG closing share price on 27.03.19 (the day before the Claimants' £120 million counter-offer) was 18.25p; and the closing price on 29.03.19 (the day before the Claimants' £140 million counter-offer) was 17.13p
[302] D2/1, Figure 4.16
[303] D2/1, Figure 5.7
[304] D2/1, para. 5.37
[305] [305] D2/2, "Portfolio value" tab: the IOG closing share price on 18.03.19 was 19.00p; and on 01.04.19 it was 11.50p
[306] C1/7, para. 15
(Continued...)

did not reflect the realisable value of IOG's assets as at the valuation date; and (ii) valued IOG's *entire* asset base as opposed to LOG's interests in the company.[307]

240. Moreover, RISC was highly doubtful of IOG management's ability to achieve its plans.[308] This scepticism was shared by Cenkos: in his note of a 26.03.19 meeting with Martin Orrell and Russell Cooke of Cenkos, Mr Shinners records that the latter said *"his colleagues know IOG well and are a little sceptical of the business"*.[309] The business was thus known by this time as one with a track record of overpromising and underdelivering. As such, the Claimants should have been focusing firmly on the lower end of RISC's valuation range.

241. There is no evidence that the Claimants considered any of the above points in rejecting the RockRose offer, and Mr Shinners does not deal with them in his written evidence. Had the Claimants focused on the lower end of the RISC valuation range, and adjusted this valuation to reach a realisable value for LOG's interests (as opposed to IOG's assets), the RockRose offer would almost certainly have exceeded (perhaps substantially) the lower end of the resulting valuation and should, therefore, have been accepted.

242. Worse still, especially given the importance to the Claimants' case of their reliance on Cenkos, they did not obtain Cenkos' advice on the RockRose offer or their counter-offers to Rock Rose. Mr Shinners' aforesaid note continues, *"RC accepts that he <u>will be expected to provide advice</u> on any offer from RR that delivers materially greater value for bondholders than par"* (emphasis added). Thus Cenkos had not, by the end of March 2019, been asked to advise on the offer. Indeed, it was only engaged in late May of that year.[310] The offer was accordingly rejected without professional advice, based solely on the RISC valuation

[307] MDR_POST_00000337, page 13; MDR_POST_00000302, where Mr Shinners records, *"It was agreed that an offer for LOG's debt at par is not attractive as the RISC report suggests <u>the value of the underlying assets</u> is £60M to £290M"* (emphasis added)
[308] MDR_POST_00000337: *"IOG have not demonstrated an ability to achieve their own plans. It is RISC's opinion that the Phase #1 development will take longer to get to first gas and cost more than IOG are showing in their plans"* (page 1); *"The FID date of Q1 2019 in the Management Presentation (dated February 2019) is not achievable* […] *RISC expect IOG to have more operational difficulties than IOG have so far discussed with RISC* […] *IOG do not appear to have a good understanding of onshore modifications required at the Bacton Gas Terminal"* (page 2); *"RISC recommends that the Administrators proceed with caution and continue to monitor IOG. We have reached this recommendation because although IOG's senior management team have experience and proven historic competency in the oil and gas industry with larger companies, they have continually failed to achieve the planned activities whilst at IOG"* (page 5)
[309] MDR_POST_00000302
[310] MDR_POST_00001304

without (as discussed above) any attempt to translate this value to a realisable value of LOG's interests.

243. But even with these failures, the Claimants should have known the RockRose offer was an attractive one. Mr Shinners' aforesaid note referred to a "see through" valuation of LOG's interests of £58.4 million. Even excluding any deferred consideration, RockRose's final offer of £52.5 million was at circa 90% of this value – a minor discount. In circumstances where rejecting the offer left the Claimants exposed to the risks of gas price fluctuation, and IOG's ability to overcome operational issues (about which both RISC and Cenkos had expressed real doubts), the offer should have been accepted.

244. The value inherent in the final RockRose offer can also been discerned in the IOG's equity raise announced on 01.04.19, which involved a share price far lower than that which was implied by the RockRose offer,[311] of which the Claimants must have been aware.

245. In light of all the above, the Claimants' rejection of the RockRose offer was in breach of their obligations as administrators.

246. The passage of time then brought further offers for LOG's interest in IOG. Unfortunately, the Claimants rejected these too. In early May 2022, there was a sale process run by Hannam Partners on the instructions of Edwin Kirker as the then-administrator of LPC. While Mr Shinners, in his witness evidence, strongly criticises Mr Kirker's conduct, it is undeniable that the process resulted in Petrogas and Waldorf making preliminary offers of £61.2 million and £40 million, respectively, for LOG's interests in IOG. Mr Osborne valued those interests at £46.5 million to £54.2 million on an adjusted basis (*i.e.* including assumed discounts to realise value) as at 03.05.22.[312] As a result, the Petrogas offer was well above the values that the expert instructed by the Claimants thought realisable. Even at the time, Hannam Partners recommended that the offer be progressed.[313] The administrators should therefore have engaged with Petrogas with a view to converting it into a binding offer.

[311] See, D2/2, page 25.
[312] D2/1, figure 5.5
[313] D2/1, para. 2.54
(Continued...)

247. But they rejected the offer outright. According to Mr Osborne, they did so on the basis that Petrogas *"sought considerable additional details about IOG's operations that, I understand, the administrators were unable to provide"*.[314] Petrogas' requests were set out by Mr Kirker in an email to James Darbyshire and Guy Enright of the FSCS.[315] There were eight of them, spanning technical, financial and legal aspects of the business. The requests do not appear at all excessive, and Mr Kirker shared this view, commenting in his email: "*The information outlined above is typical for a transaction of this nature and has been requested by most investors as part of the process*". In his response to D2/D10's CPR 35.6 questions 1.5 and 2.2, Mr Osborne explains that he does not know why the administrators were *"unable"* to provide the information; he was simply relying on instructions that this was the case. Mr Kirker's aforesaid email continued: "*The refusal by Smith & Williamson to provide this is a major deterrent to a share sale"*. In circumstances where the Petrogas offer was well above the market values now estimated by the Claimants' expert, they should have at least attempted to get Petrogas what it was seeking.

248. It now appears that, in their rejection of the Petrogas offer, the administrators were improperly influenced by their negative views of Mr Kirker. For example, when forwarding Mr Kirker's aforesaid email to his colleagues and Cenkos, Mr Shinners dismissively refers to the associated sale process – which had generated real interest from large corporate entities – as *"the shenanigans embarked upon by Kirker/Kroll"*.[316] This view is reinforced by an email from Smith & Williamson's Thomas Walls to the administrators, noting that: *"Kirker has reared his head again suggesting he has received an offer"*.[317]

249. The administrators' negative view of Kirker and the process is also apparent from paragraph 16 of Mr Shinners' Second Witness Statement, where he goes into some detail about events resulting in Mr Kirker being replaced as administrator of LPC but, curiously, fails to explain his conclusion that the offers LOG received "*were never credible*". Notably, he has nothing

[314] D2/1, para. 2.54
[315] MDR_POST_00002404
[316] MDR_POST_00002404
[317] MDR_POST_00002457

to say about the how or to what extent (if at all) the administrators engaged with the potential buyers in order to assess how credible (or otherwise) the offers were.

Failure actively to consider block trade

250. As for their own attempts at disposal of LOG's equity interests in IOG, Mr Wright states in his first report (at paragraph 100) that a block sale "*would have been the most appropriate way for the LOG administrators to significantly reduce LOG's shareholding (once the decision had been taken to reject RockRose' offer for LOG's interests and restructure the same)*".

251. However, there does not appear to be any evidence of the Claimants actively considering a potential block trade. A Cenkos memorandum dated 30.08.19 prepared by Cenkos' Russell Cook refers to an intention to work with Peel Hunt to complete a block trade within 12 months.[318] A few months later, Mr Cooke wrote to Martin Orrell[319], with David Hudson on copy, saying: *"I feel that there is now greater prospect of arranging a full or partial institutional placing of the shares over the coming weeks"*. It is unclear what proactive steps the administrators took to make that happen. Indeed, Mr Shinners' witness evidence paints a picture of the Claimants relying on approaches from other brokers – namely, Peel Hunt and FinnCap – rather than instructing Cenkos to explore the market on their own behalf.[320]

Unquestioning reliance on Cenkos' advice, despite obvious inconsistencies

252. Mr Shinners correctly acknowledges in his witness evidence that it was ultimately the Claimants' responsibility to decide when and how to dispose of LOG's interests in IOG.[321] But it is clear from his evidence that their strategy was simply to take advice from Cenkos and follow it.[322] Worse still, the contemporaneous documents reveal several material aspects of that advice that prudent administrators would have questioned, but the Claimants did not.

[318] MDR_POST_00000815
[319] MDR_POST_00001041
[320] C1/7, para. 19
[321] C1/3, para. 14
[322] C1/3, paras. 8-11, 14; C1/7, paras. 6-12
(Continued...)

253. First, Cenkos insisted on numerous occasions that the Claimants should only sell IOG shares at a price per share of 30 pence or more. That was said to have been their view from the outset of their engagement in May 2019, and remained their recommendation at least as late as December 2021.[323] However, the documentary record does not appear to include anything justifying that sale price, save for late 2021 references in the vaguest possible terms to *"market sentiment and current demand for stock"*,[324] and Mr Shinners' evidence does not even refer to the 30p recommendation, let alone try to explain it. Further, even if the recommendation was explained at the outset of Cenkos' involvement, the lack of any updated (proper) analysis validating its continuation, despite changes in IOG's share price and business prospects over the subsequent two and a half years, should plainly have been questioned.

254. Secondly, Cenkos frequently provided the Claimants with net-asset-based valuations, and detailed narrative around IOG's prospects, prepared by its oil and gas equity analyst, James McCormack.[325] However, these valuations were consistently (and often substantially) above the aforesaid 30p target exit price, and it is unclear what their relevance was (if any) to Cenkos' ultimate advice to the Claimants on what to do with the LOG investment.

255. As the Claimants knew, oil and gas companies almost always trade at a discount to their net asset value.[326] However, in his 10.06.21 email to Mr O'Connell, Mr Cooke declined to answer the question when there will be an *"acceptable level"* of discount to NAV at which to sell, and did not say what an acceptable level would be, instead reverting to the 30p recommendation. The Claimants should have pressed for a proper answer on this point, but failed to do so.

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[323] For example: MDR_POST_00001723 a 10.06.21 email from Mr Cooke to Mr O'Connell, saying *"I remain of the view that if/when the shares reach 30p we should consider carefully whether to sell to crystallise the investment"*; MDR_POST_00001896, a 28.09.21 email from Katy Birkin to Mr Shinners, saying: *"We had, some time ago at the beginning of our involvement, and more recently (June 2021), indicated that sale price by LOG should be a minimum of 30p"*; MDR_POST_00002005, a 13.12.21 email from Ms Birkin to Mr O'Connell, saying *"We had, some time ago at the beginning of our involvement with LOG, and more recently (in June and September 2021), indicated that any sale price by LOG should be a minimum of 30p. It remains our advice that should the price rise again above 30p* […] *that LOG should sell a proportion of its shareholding in IOG"*

[324] MDR_POST_00001896; MDR_POST_00002005

[325] MDR_POST_00002454; MDR_POST_00002273; MDR_POST_00002458; MDR_POST_00002437

[326] MDR_POST_00000815; MDR_POST_00001723

256. In her 29.09.21 email to Mr Shinners, Cenkos' Katy Birkin seemed to suggest that the Claimants should ignore Mr McCormack's net asset value based valuations altogether: *"As discussed, James McCormack is away currently and we will obtain his revised valuation as soon as possible but we do not expect it to have changed significantly since the previous valuation provided in July 2021 (core NAV of 61.8p) and this should not impact any potential selling at c. 30p"* (emphasis added). This begs the question: what was the point of the extensive net asset value -based analysis and associated narrative, and why were the Claimants paying for it?

257. By 08.03.22, Ms Birkin ascribed at least some relevance to the net asset value -based valuation, writing to Mr Shinners that said valuation was "*c. 2.2x the current share price and therefore represent*[ed] *significant upside potential*."[327] But Cenkos' recommendation to the Claimants, referring once again to the 30p target, was nevertheless to sell between 5 and 10 million shares. The Claimants appear not to have questioned this obvious discrepancy at all.

258. Thirdly, to the extent that the Claimants relied on Mr McCormack's net asset value based valuations, they were wrong to do so, or at least should have first raised questions and ensured Cenkos properly answered these. Specifically, the valuations: (i) were highly sensitive to fluctuations in predicted gas prices;[328] and (ii) relied on operational and financial forecasts provided by IOG management, which should have been treated with caution in view of the company's track record discussed above. The Claimants do not appear to have probed Cenkos on either point. Regarding the second, in a 19.10.22 email to Mr Shinners, Ms Birkin expresses concerns that IOG management were *"too optimistic in their reserves estimates and production performance"*, as a result of which Mr McCormack nearly halved his valuation (from 58p down to 36p a share),[329] indicating that his valuation was always over-optimistic and he was not sensitising his assumptions appropriately in the first place.

[327] MDR_POST_00002273
[328] MDR_POST_00002437: a 20.09.22 email from Cenkos to the administrators, showing Mr McCormack's historic valuations over time, accompanied by explanations for the variations – almost always fluctuations in gas price forecasts.
[329] MDR_POST_00002458

259. The above is all the more concerning when Mr Bednash (one of the Claimants and LOG administrators) expressed concerns about the Claimants' reliance on Cenkos, and the consequences of the same, and appears to have been ignored by the other administrators. On 19.02.20, he said in an email to a colleague: *"we are speculating that the share price will improve considerably* […] *we are saying no to cash today when we* [have] *funds in hand and potentially saleable shares in IOG* […] *I understood we appointed Cenkos to assist us and to avoid being liable for speculation"*.[330] Two years later, he was clearly still concerned about these points , saying in another email, with Mr O'Connell in copy: *"We have made a massive investment in Cenkos (£20k per month?), so it is clear we are taking their guidance very seriously* […] *I just want to know that we are receiving proper advice, understand what is going on and know when shares are to be sold"*.[331]

[330] MDR_POST_00001112
[331] MDR_POST_00002053