Claimants
H Shinners
Second
11 October 2023

Claim No. BL-2020-001343

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD) AND INSOLVENCY AND COMPANIES LIST (ChD)

B E T W E 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
~~(11) FRANCIS MICHAEL WILLIAM STARKIE~~
~~(12) MARTIN STEPHEN RUSCOE~~
~~(13) ERIC BOSSHARD~~
~~(14) ROGER STEPHEN FILTNESS (REPRESENTATIVE OF THE ESTATE OF ROBIN HUDSON)~~
~~(15) CHARLES HENDRY~~

Defendants

SECOND WITNESS STATEMENT OF HENRY SHINNERS

I, HENRY SHINNERS, of EVELYN PARTNERS LLP, 45 GRESHAM STREET, LONDON EC2V 7BG, **WILL STATE as follows:**

1. I am one of the joint administrators of London Capital & Finance plc (**LCF**), alongside Finbarr O'Connell, Adam Stephens, Colin Hardman and Geoffrey Rowley. I make this statement in my capacity as a joint administrator of LCF and lead administrator for managing the interest in Independent Oil & Gas plc (**IOG**) held by London Oil & Gas Limited (**LOG**) and in support of the Claimants' claim against the Defendants. I am duly authorised to make this witness statement on behalf of the administrators of LCF and on behalf of LCF and LOG.

2. I have previously made a statement in these proceedings dated 27 April 2023 (my **First Witness Statement**). At that time, the Defendants had not advanced any arguments concerning quantum or mitigation. However, the Second Defendant has since produced an Addendum to its Defence addressing issues of quantum and mitigation, dated 31 July 2023 (the **D2 Addendum**). The purpose of this statement is to respond to certain points in the D2 Addendum insofar as they relate to LOG's interest in IOG and to provide an update in relation to LOG's interest in IOG more generally.

3. This statement has been prepared following three discussions with my solicitors, Mishcon de Reya LLP (**Mishcon**), over three video calls. Unless specified otherwise below, I have not been referred to any documents during the course of those calls or preparing this witness statement. Unless specified otherwise below, I have a good recollection of the facts addressed in this witness statement as I have been continually involved in managing LOG's shareholding in IOG to date.

4. The facts and matters set out in this statement are within my own knowledge and they are true to the best of my knowledge and belief.

Previous strategy of IOG shareholding

5. I recall receiving the RISC Advisory Report, although the Joint Administrators did not commission it, since it was produced prior to our appointment. We did read and digest the report and we understood that the report had taken account of the potential technological and geological risks that came with the IOG investment.

6. As we are not oil and gas experts ourselves, the Joint Administrators engaged Cenkos Securities plc (**Cenkos**) to advise us in this field. As explained in my First Witness Statement, Cenkos was recommended to the Joint Administrators by colleagues in the Corporate Finance team at Evelyn Partners LLP (then, Smith & Williamson). Shortly after our appointment, one of the Joint Administrators (Finbarr O'Connell) approached one of our Corporate Finance partners at Evelyn and explained that a company over which we had recently been appointed (meaning LOG) held an interest in an AIM listed oil and gas company and we would require expert assistance in order to manage those interests. Cenkos were then recommended on the basis that they had relevant expertise in the oil and gas sector.

7. I reject the suggestion at paragraph 22 of the D2 Addendum that Cenkos' advice did not address the risks involved in retaining, as opposed to realising, LOG's investment in IOG that arose from, for example, the possibility that IOG would encounter production difficulties.

8. The valuations that Cenkos produced from time to time did take account of risks associated with IOG, including exploration and drilling risks. Cenkos' valuations included what they called a "risk weighted" or "risk based" net asset value approach. Any assumptions taken into account by Cenkos would have been based on publicly available information, which is all that Cenkos had access to, including about the commercial prospects of the various wells that IOG was exploring and drilling to produce the levels of gas that IOG might have been expected to produce. For example, I have been referred to a Memorandum dated 30 August 2019 produced by Cenkos (**MDR_POST_00000815**). The Memorandum refers specifically to the commercial prospects (and risks) of the drilling at the Harvey exploration well. For the purposes of this statement, I have not revisited all the advice that Cenkos provided to the Joint Administrators.

9. As to Cenkos' use of the equity analyst valuation model, there has to be *some* equity analysis because LOG's interest is primarily in the shares of IOG.

'Retain vs realise' LOG's shareholding in IOG

10. The question of whether LOG should either retain or realise its interest in IOG falls into two parts., reflecting that LOG had both equity and debt interests in IOG. First, the challenges of selling or otherwise realising LOG's entire equity interest in IOG which comprised of held shares. For the majority of the period since we've been

acting as Joint Administrators, there simply hasn't been the demand in the market, or at least there wasn't that sort of demand, to buy significant chunks of LOG's shareholding. Indeed, the advice we received (from Cenkos) was that being overly aggressive in our disposals could negatively affect the share price and therefore the value of LOG's holding in IOG.

11. Retaining the ability to react and sell shares was a key reason why we decided not to become "insiders" at IOG. Becoming an insider would have meant we would be privy to more information from IOG, but it would have restricted our ability to sell shares, which was contrary to our strategy to be able to react and sell shares where possible and at maximum value. We had been insiders at the time of the farm-out transaction in July 2019 but not since.

12. The Joint Administrators have been proactively identifying opportunities to sell chunks of LOG's shareholding from time to time. Clearly, we have tried not to look like we are desperate sellers, so we have sold at times when the market has had a positive view of IOG and its prospects. We've broadly sold only when the share price is increasing and avoided selling when the share price is decreasing. That is in line with the advice that the Joint Administrators have received (from Cenkos). We have always been mindful of the market's awareness of LOG being both a significant shareholder in IOG and a company in administration. The market would have been aware that, as administrators, we were not in the position of an ordinary shareholder, but had duties to others, including – where necessary – to realise assets for the benefit of creditors. This made us, in the eyes of the market, a seller. It would have been obvious that we couldn't hold the shares indefinitely. We were able to sell shares at or around their share value but only to the extent there was a market to buy at those prices. We could have sold bigger chunks but we would likely needed to have offered a discount in order to do so. Consistent with our duties as administrators, we wanted to realise assets for their best possible value in order to maximise returns for LOG's creditors. Based on the advice we were receiving, the view was that we could not justify selling at a discount. Indeed, the perception among market analysts for a considerable period was that the IOG share price was materially lower than the expectations of its prospects and assets.

13. It is worth noting here that we took considerable comfort from the fact that CalEnergy had concluded its farm-out agreement with IOG in July 2019. I understood that CalEnergy was a serious player in the oil and gas industry, and we saw their

involvement as signalling a real vote of confidence in IOG. They were experts in the field in a way that the Joint Administrators could not be. CalEnergy's expertise, investment and presence on the ground gave us comfort to maintain our strategy and not sell at a perceived undervalue. As reflected in the LOG Progress Reports at the time, we believed that the agreement with CalEnergy would provide IOG with a platform for further growth and ultimately would increase the share price and in turn, improve the outcome for LOG's creditors.

14. Second, we had to manage LOG's debt interests in IOG which took the form of term loans that were convertible into equity. Converting the loans into equity was practically impossible to do in an environment where LOG owned a large percentage (just shy of 30%) in, for most of the time, an illiquid AIM-listed company. We had to be careful not to exercise our warrants, for example, that would give us the ability to buy shares that would have taken us to more than a 30% stake in IOG as this would trigger a mandatory takeover bid under the Takeover Code. The 30% was effectively a hard ceiling on our ability to convert debt into shares as LOG was not in a position to fund a cash purchase of IOG.

Previous offers for LOG's entire shareholding

15. That aside, LOG has in the past received two offers for the entirety of its interest (debt and equity) in IOG. The first was from RockRose Energy (Rockrose) (which I explained in my First Witness Statement) which was received quite early in the LOG administration. It was prior to my involvement, but I understand that Mr Orrell had been engaged by LOG prior to the administration. He was a former banker with significant restructuring experience and was engaged by LOG and the Joint Administrators as a consultant. I recall that Mr Orrell reported back on a frequent basis, probably on a daily basis around the time of LOG entering administration and then later probably several times a week. The decision taken by the Joint Administrators was not to sell to RockRose – their offer, at the time, was significantly lower than what we collectively thought LOG might achieve and therefore would not maximise the outcome for LOG's creditors. The RISC Report, which I relied on, had suggested the value of the underlying assets of IOG to be between £60m and £290m – so Rockrose's offer appeared to undervalue LOG's interest. I have been referred to my notes of a meeting between me, Mr Orrell and Russell Cook of Cenkos on 26 March 2019 where Rockrose's first offer of £40million is discussed (**MDR_POST_00000302**). I see from my notes that the Rockrose offer was

considered to be low, and specific reliance is placed on the RISC Report's valuation of IOG's assets. I also note that the failure of IOG was (at that time) deemed to be unlikely given the probability of successful fundraising. It was assumed at that time that the gap between the IOG share price and the net asset value would reduce.

16. The other offers were via London Power Corporation Limited (**LPC**), but the offers were never credible and ultimately the process turned out to be a complete waste of everyone's time. Edwin Kirker was the administrator of LPC and he had decided that he would try to market LOG's interests in IOG to third parties without our consent or cooperation. I do not know why he took this course of action. Mr Kirker instructed Hannam Partners to market LOG's interest in IOG for sale, despite having no authority to do so or the ability to transact on behalf of LOG. LPC did receive some offers which I believe remained subject to due diligence. LPC and Mr Kirker approached the FSCS (LCF's principal creditor) in an effort to bypass the LOG and LCF Joint Administrators. Mr Kirker was engaged in this activity for several months and the process went nowhere. When we became aware of Mr Kirker's activities, we were concerned that the marketing of LOG's entire interest had the possibility of both destabilising IOG and negatively affecting its share price. I was also informed by Rupert Newell (the IOG chief executive) that IOG was extremely unhappy with Mr Kirker's activities and in fact had reported Mr Kirker and Kroll to the Takeover Panel for breaches of the Takeover Code. I was informed by Mr Newell that Kroll were subsequently censured by the Takeover Panel for those activities. However, as administrators we were of course receptive to considering any bona fide opportunities to sell which could have realised maximum value for LOG's creditors. I recall telling Mr Kirker that to the extent he was aware of any potential purchasers, he should direct them to us. We never received any approaches. Unfortunately, despite asking Mr Kirker for such basic details as term sheets, proof of funds etc. – no such details were forthcoming. Ultimately, Mr Kirker was removed as administrator and Finbarr O'Connell, Colin Hardman and Lane Bednash were subsequently appointed as replacement joint administrators of LPC.

Distinction between LOG and Lombard Odier

17. Paragraph 28 of the D2 Addendum states "*By way of contrast, Lombard Odier, a private bank and asset management firm, sold over 50 million shares in the period March 2021 to June 2022 according to public disclosures, realising some £13 million. There appears to be*

no reason why, having resolved to sell shares in IOG and realise the value in LOG's interest, so few shares were in fact sold."

18. To my knowledge, Lombard Odier only had equity interests in IOG – they did not have any warrants or options to buy further shares and therefore did not have to consider the pros and cons of conversions of instruments. In that respect, they were just a normal shareholder who acquired shares in IOG in the market. Lombard Odier's shareholding in IOG was smaller than LOG's (I think around 20%) and although they had announced themselves as a buyer of stock, they did not have the same considerations as LOG relating to the Takeover Code. However, the main distinction between LOG and Lombard Odier is that Lombard Odier would (I assume) operate on a broad portfolio basis in terms of its investments. As Joint Administrators of LOG, we don't have the same luxury of taking a portfolio view on investments or our assets. I recall that Lombard Odier sometimes sold shares at very low values, which they could do in a manner in which the Joint Administrators could not (because of our duty to maximise value for LOG's creditors). It is impossible for me to say why Lombard Odier took the decisions they did and why it may have been different from the decisions taken by the Joint Administrators. Ultimately, the investment in IOG was volatile and carried significant risks -different parties took different views of the prospects of IOG and acted accordingly.

IOG's brokers

19. At times, the Joint Administrators were approached by IOG's brokers – Peel Hunt (IOG's main broker) and FinnCap with promises that they could source good prices for significant chunks (i.e. much greater numbers than we could realistically sell through normal market trading) of LOG's shares in IOG to (as they explained it to me) institutional investors known to the brokers who would be interested in acquiring blocks of shares at mutually beneficial prices. As it was consistent with our strategy to sell at the right price, we expressed an interest in them finding those deals for us. Whilst some smaller transactions were brokered through PeelHunt and FinnCap (for example, I am referred to an email dated 22 August 2019 confirming a sale of 12.4m shares at 17p a share[1]) both brokers ultimately failed to find potential buyers for larger blocks of LOG's interest. If IOG's own brokers were not able to

[1] **MDR_POST_00000771**

find us buyers for substantial parts of LOG's shareholding then, frankly, that paints the picture of an illiquid stock in an uncertain market.

Current position

20. Since my First Witness Statement, IOG has filed a notice of intent to appoint an administrator (the **NOI**). I am not aware of any administrator having yet been appointed. If an administrator is appointed, IOG could be restructured and come out of administration, whether through a company voluntary arrangement (**CVA**) or otherwise.

21. At this early stage, I would be speculating if I said I knew what the outcome of IOG's administration is going to be. The speculation includes the prospect that LOG's shares will no longer have any value in the future, because there is almost always a shortfall for creditors in an administration and therefore no value for equity.

22. However, it is important to note that we have already 'banked' £25 million in respect of LOG's investment in IOG because of the value of the shares sold previously. Of LOG's remaining interest in IOG, £11.6 million is made up of loan notes which are not vulnerable to share price movements (although those loan notes are subordinate to the Nordic bond). The Nordic Bond is a secured bond issued by IOG and listed on the Oslo stock exchange. I cannot provide any information as to what the impact of IOG entering administration on the loan notes might be.

23. Trading in IOG shares is currently suspended and we are waiting to see whether administrators will be appointed and, if so, what their plans will be for IOG, its business and assets. Until then, it is very difficult to know what the impact of the NOI is on the value of LOG's interest in IOG. If a CVA is needed, IOG would use a decision process which would involve consulting with its creditors (including LOG, which is a creditor because of the loan notes). Should a restructuring occur which involves doing something with the equity, LOG will have to be consulted because of our position as a significant shareholder.

24. On one end of the scale, it's possible that there is no further value for LOG through the administration. At the other end of the scale, the administrator(s) could be brought in as a protective process to allow for restructuring to take place in the background, using the benefit of the administration moratorium.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: [redacted]……

Name: Henry Shinners ……

Date: 11 October 2023 ……

WITNESS CONFIRMATION OF COMPLIANCE

I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.

I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.

This witness statement sets out only my personal knowledge and recollection, in my own words.

On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.

I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.

Signed: [redacted]……

Name: Henry Shinners ……

Date: 11 October 2023 ……

LEGAL REPRESENTATIVE CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.

2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Henry Shinners.

3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

Signed: [redacted]

Name: Barry Coffey

Position: Partner

Date: 11 October 2023

Claimants
H Shinners
Second
11 October 2023

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~~**(REPRESENTATIVE OF THE ESTATE OF**~~

~~**ROBIN HUDSON)**~~
~~**(15) CHARLES HENDRY**~~

Defendants

SECOND WITNESS STATEMENT OF HENRY SHINNERS

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