Neutral Citation Number: [2026] CA (Bda) 4 Civ

Civil Appeal No. 18 of 2025

IN THE COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
COMMERCIAL COURT
BEFORE ASSISTANT JUSTICE SEGAL
CASE No. 70 of 2024

IN THE MATTER OF CASSATT INSURANCE COMPANY LIMITED
AND IN THE MATTER OF SECTION 111 OF THE COMPANIES ACT 1981

Dame Lois Browne-Evans Building
Court Street
Hamilton HM12
Bermuda

Date: 23/04/2026

Before:

THE RT HON SIR CHRISTOPHER CLARKE, JUSTICE OF APPEAL
THE RT HON DAME ELIZABETH GLOSTER DBE, JUSTICE OF APPEAL
and
THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL

- - - - - - - - - - - - - - - - - - - -

Between:

(1) JEFFERSON HEALTH NORTHEAST SYSTEM
(2) ABINGTON MEMORIAL HOSPITAL

Petitioners/Appellants

- and -

(1) CASSATT INSURANCE COMPANY LIMITED
(2) GRAND VIEW HOSPITAL

Respondents

Appearances: **Kyle Masters and Matthew Summers** of **Carey Olsen (Bermuda) Limited** for the Petitioners/Appellants
Claire van Overdijk KC and James Batten of **Appleby (Bermuda) Limited** for the First Respondent
Mark Chudleigh and Laura Williamson of **Kennedys** for the Second Respondent

Hearing date(s): 17-19 December 2025
Further written submissions 23-31 December 2025
Date of Judgment: 23 April 2026

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APPROVED JUDGMENT

HICKINBOTTOM JA:

Introduction

1. This appeal arises out of a Petition issued under section 111 of the Companies Act 1981 ("Section 111") in which the Petitioners, Jefferson Health Northeast System and Abington Memorial Hospital ("the Petitioners"), seek to enforce their rights in the First Respondent company, Cassatt Insurance Company Limited ("the Company"). The Second Respondent, Grand View Hospital ("Grand View"), is currently the sole remaining shareholder in the Company.

2. Section 111 provides (so far as relevant to this appeal):

> *"(1) Any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself…, may make an application to the Court by petition for an order under this section.*
>
> *(2) If on any such petition the Court is of opinion—*
>
> *(a) that the company's affairs are being conducted or have been conducted as aforesaid; and*
>
> *(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,*
>
> *the Court may, with a view to bringing to an end the matters*

> *complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise."*

3. Of the equivalent provision in England and Wales (section 996(2)(e) of the Companies Act 2006), it has been said that: *"The most important and commonly granted remedy… is an order for the purchase of the petitioner's shares either by another member or the company or both"*, because it enables a *"clean break"* with the petitioner able to realise the fair value of his shares without having the company wound up (Hollington on Shareholders' Rights (10th Edition) at paragraph 8-16); and, in the Petition, the primary remedy sought by the Petitioners is for the Company to pay it fair value for what were, prior to the Petitioners being excluded from the Company in the circumstances described below, their shares in the Company.

4. Before this Court, the Petitioners seek to appeal the decision of Assistant Justice Segal ("Segal AJ" or "the Judge") to dismiss their application dated 20 June 2025 for an interlocutory injunction restraining the Company and Grand View from selling any shares in the Company including, in particular, any sale by Grand View to Cassatt Solutions LLC ("the Buyer") pursuant to a Share Purchase Agreement dated 28 April 2025 ("the SPA") or distributing any of the Company's assets in connection with any transaction involving shares in the Company, pending the Court's final determination of the Petition (now, in the form of a Re-Amended Petition dated 17 October 2025).

5. As the Petitioners wish to challenge a decision in respect of an interlocutory matter, they require leave to appeal (section 12(2)(a) of the Court of Appeal Act 1964). Segal AJ refused leave following a hearing on 28 November 2025. Consequently, the Petitioners need the leave of this Court. However, we agreed to treat the hearing as rolled up, i.e. to deal with both the application for leave to appeal and, if granted, the substantive appeal, a course to which both parties consented.

6. At the hearing, held remotely on 17-19 December 2025, Kyle Masters and Matthew Summers of Carey Olsen (Bermuda) Limited appeared for the Petitioners, and Mark Chudleigh and Laura Williamson of Kennedys for Grand View. Claire van Overdjik KC and James Batten of Appleby (Bermuda) Limited held a watching brief for the Company. Following the hearing, and at the request of the Court, the parties made further written submissions on the figures for the valuation of the equity in the Company (and Grand View's and the Petitioners' respective proportions of that equity) and the distributions it is proposed to make to Grand View under the SPA, namely Grand View's Note on Quantum dated 23 December 2025 ("the Grand View Note on Quantum"), (ii) the Petitioners' Reply Note dated 31 December 2025 ("the Petitioners' Note on Quantum" and (iii) Kennedys' email in response dated 31 December 2025.

7. It may assist if I set out, in index form, the order in which I propose to deal with matters:

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8. All references to dollars ($) in this judgment are to US dollars.

Background

9. The Petitioners and Grand View are all non-profit hospitals incorporated, and with a principal place of business, in Pennsylvania. Grand View has recently been acquired by St Luke's University Health Network ("St Luke's") which is a non-profit health system also based in Pennsylvania.

10. The Company is a member of a group of companies which together form a closely-held group captive insurance structure established in the early 1990s to pool medical malpractice risk and provide insurance coverage for a number of independent Pennsylvania hospitals. It is unnecessary to descend to the fine detail of the corporate structure of the group for the purposes of this appeal. However, briefly, each hospital was a shareholder in Cassatt RRG Holding Company ("Cassatt Holding") which was the sole shareholder in Cassatt Insurance Group Inc ("Cassatt Insurance", a captive insurance company) and Cassatt Risk Retention Group Inc ("Cassatt RRG", a Vermont protected cell of Cassatt Insurance which issued policies of insurance to the hospital shareholders of Cassatt Holding). Cassatt Holding also employed staff that provided professional, insurance and claims management services to the other Cassatt companies. All those companies are Vermont business corporations. I will refer to all these group companies collectively as "the Cassatt Group", although the Petition is in respect of the Company and the application before us focused exclusively on the Company.

11. The Company is a Bermuda corporation which provided excess insurance above the Cassatt RRG primary coverage and substantially reinsured that coverage. Its shareholders were the same hospitals as were shareholders in Cassatt Holding. Other than from investment, the Company's only income was from premiums paid by the hospitals; and its outgoings essentially comprised the costs of administering the relevant primary and reinsurance cover including the costs of managing and paying claims made under that cover.

12. The essential arrangements between the Company and its shareholders are set out in two documents: the Company's Bye-laws ("the Bye-laws") and the Consolidated and

Amended Shareholders' Agreement ("the Shareholders' Agreement"), both dated 16 November 2011. In these documents, all the insurance/reinsurance written by Cassatt RRG and the Company, and administered by Cassatt Holding, is referred to collectively as "the Insurance Program"; and the participating hospital shareholders as "the Institutional Shareholders" (see, e.g., paragraph 1.1 of the Bye-Laws). As they have been the only shareholders, I will refer to them simply as "the Shareholders".

13. Under those documents and in line with the purpose of the Company, to be eligible to acquire or maintain shares in the Company, a Shareholder must be ultimately controlled by a non-profit health system and must participate in the Insurance Program; and a failure to comply with those requirements *"shall be grounds for a forced withdrawal upon Board approval…"* (paragraphs 3.2 and 3.3 of the Bye-Laws). A hospital is required to be a Shareholder during the period it participates in the Insurance Program; but, upon the cancellation or termination of that participation, *"[s]ubject to complying with Bermuda law and the [Shareholders' Agreement], the Company shall purchase all of the Institutional Shares held by the Institutional Shareholder immediately…"* (paragraph 5.2 of the Bye-Laws). So, when a Shareholder ceases participation in the Insurance Program, for whatever reason, the Shareholder is obligated to sell, and the Company obligated to buy, all of its shares *"at a price determined pursuant to, and in accordance with the terms set forth in, Article I, Section C…"* of the Shareholders' Agreement (Article I, Section B.1 of that Agreement).

14. Article I, Section C provides, so far as relevant:

> *"2. The Departing Shareholder's Shareholder Equity Balance (the 'Initial Shareholder Equity Balance') will be calculated, as set out in Article III hereof, as part of the Company's annual Internal Accounting Report, as of 30 June of the year of the Termination Date.*
>
> *…*
>
> *4. The Departing Shareholder's Shareholder Equity Balance will be calculated as of 30 June of each year following the Termination Date, as part of the Company's annual Internal Accounting Report. The balance so determined by the Company on the fifth (5th) anniversary of the Termination Date will constitute the 'Final Shareholder Equity Balance'.*
>
> *4.1. In the event that the lower of the Initial Shareholder Equity Balance and the Final Shareholder Equity Balance is positive, the Company will, subject to the approval of the Board and in its sole discretion, pay the lower amount to the Departing Shareholder (the 'Payment'). The Payment, to the extent approved by the Board, shall be made in five (5) equal, annual instalments starting on the sixth (6th) anniversary of the Termination Date, and continuing until the Payment is completed on the tenth (10th) anniversary of the Termination Date.*
>
> *…*
>
> *6. All claims attaching to policies of insurance issued to the Departing Shareholder in force prior to the Termination Date and comprised within*

> *the Insurance Program shall continue to be managed as authorised by the Company."*

Therefore, in short, the Departing Shareholder has to wait for a considerable time for payment out of any equity. It receives a payment for its equity in a figure of the lower of the value of the equity as shown in the accounts as at 30 June of (i) the year in which its participation in the Insurance Program ended and (ii) the year in which the fifth anniversary of that date falls – but payable only in the following five years (i.e. in the years in which the sixth to tenth anniversaries of that date fall).

15. Those provisions equally apply where there is a "*forced withdrawal*" approved by a majority of the Board. Under the heading *"Forced Withdrawal"*, Article I, Section E provides, so far as relevant: *"Automatically upon… the vote of a majority of the Board, an Institutional Shareholder shall sell its Shares to the Company at a price and on payment terms as set forth in Subsection C above"*.

16. *"Shareholder Equity"* is defined as *"the net assets of the Company (total assets less total liabilities), which shall include the total of share capital, share premium, additional paid-in capital, retained earnings and other comprehensive income, as calculated from time to time by the Company"*; and *"Share Equity Balance"* as *"that portion of the Company's total Shareholder Equity that is allocated by the Company and/or its independent actuaries, from time to time, to its individual shareholders, in accordance with, among other things, the procedures described in Article III above"* (Article VI, Section N).

17. Article III, Section B provides that:

> *"Allocation of the Annual Operating Results among [Shareholders] shall be undertaken by the Company's independent actuaries in accordance with the methodology as set out in Exhibit 1 [in fact, Exhibit A] to this Agreement."*

18. Paragraph 3 of Exhibit A provides:

> *"The starting point for the analysis is the total premium earned for a given policy year. The premium is allocated by coverage component and by Shareholder. The premium is allocated to each Shareholder in accordance with percentages derived from the actuarially-determined premium allocation formula as applied at the commencement of the policy year to the coverage component by Shareholder. Those percentages assigned to each Shareholder for each coverage component then remain fixed, and form the basis for future calculations relating to the allocation of operating results in any financial reporting year that are attributed to that policy year (the 'Member's Participation Allocation')."*

19. Paragraph 4 states that: *"On an annual basis, the Company analyzes and allocates its results for each policy year by program component…"*; and it sets out the basis for that allocation.

20. Other provisions of these Company documents that are relevant to the appeal are as follows.

(i) Each Shareholder is entitled to appoint one Director who is required to be a member of Senior Management ("Institutional Directors"): all the Shareholders elect the other Directors ("Independent Directors") (paragraphs 21.2.1 and 21.2.2 of the Bye-Laws).

(ii) Subject to the Shareholders' Agreement, the Board is given the power to *"declare dividends, or distributions out of contributed surplus, to be paid to Shareholders according to their rights and interests"* (paragraph 33.1 of the Bye-Laws), having first *"set aside such sums as it thinks proper as reserves…"* (paragraph 34 of the Bye-Laws). In other words, having assessed the amount that needs to be retained to fund the administration of the Insurance Program (including claims that may be made under it), the Board may distribute any funds held above that amount.

(iii) Article VI, Section G of the Shareholders' Agreement provides that the Agreement cannot be modified or terminated, nor can any provisions be waived, *"except in a written agreement signed by eighty percent (80%) or more of the [Shareholders]…"*.

21. There were at one stage eight Shareholders in the Company; but, by 2014, there were only six. Three of those ceased to participate in the Insurance Program (and consequently relinquished their shares) on 1 July 2014, 1 July 2016 and 1 July 2023 respectively. However, they continued to have some financial interest in the Company, (i) as policyholders of Cassatt Group companies with pending medical malpractice claims and (ii) in relation to potential distributions of any Final Shareholder Equity Balance due to them from the sixth anniversary of their departure under the provisions of Articles I and III, and Exhibit A, set out above.

22. From 1 July 2023, there were, therefore, three remaining Shareholders, i.e. the two Petitioners and Grand View, each with a one-third shareholding. Of those, the Petitioners had the majority of the coverage provided by the Cassatt Group and correspondingly paid most of the premiums: in the 2023-24 policy year, the Petitioners paid (or received premium credits for) about 93.7% of the total premiums paid to the Company, with Grand View paying only about 6.3%.

23. During 2023, the Institutional Director appointed by each Petitioner, upon terminating their employment with that Petitioner, resigned as a Director of the Company; and each Petitioner purported to appoint a replacement Director, and both appointed an Alternate Director. The other three Directors were Douglas Hughes (President and CEO of Grand View) ("Mr Hughes") as Institutional Director appointed by Grand View; and two "Independent Directors", who had been elected by the Shareholders as a whole, in the form of Eric Dethlefs (the President and CEO of the Cassatt Group) ("Mr Dethlefs") and Terence Power (the Vice President of the Company) whose terms were due to expire at the Company's Annual General Meeting in October 2023.

24. The Company's Annual General Meeting and Board Meeting were due to take place on 23 October 2023. However, on 20 October (the last working day before those meetings were due to take place), the Company management notified the Petitioners that both meetings were cancelled; that the Petitioners' replacement Directors were ineligible (because not from Senior Management); and that the three remaining Directors would continue to run the Company on the basis that they were the only Directors.

25. On 31 October, the Company's Counsel wrote to the Petitioners asserting that they were not in compliance with the Company's claims and risk management procedures.

26. Following further correspondence (during which the possibility of the Petitioners not continuing to be members of the Company was raised), on 29 January 2024 the Company emailed the Petitioners ending negotiations and indicating the Company's Board (which continued to exclude any representative of the Petitioners) had authorised the sending of a Notice of Forced Withdrawal to each of them. Later the same day, (i) the Company in fact served on each of the Petitioners a Notice of Forced Withdrawal, approved by the Board and with immediate effect, and the Petitioners' shares were cancelled and they were excluded from the management of the Company from that date; and (ii) a number of Cassatt Group companies commenced proceedings in Vermont against the Petitioners on the basis of the alleged breaches set out in the 31 October 2023 letter ("the Vermont Proceedings"). The Vermont Proceedings were stayed on 4 December 2024 pending determination of these proceedings.

27. On 13 February 2024, the Petitioners formally responded to that notice denying its legitimacy on the basis that the Board process by which it was issued was fatally defective; and denying any breach. The next day, they gave notice of the renewal of their insurance coverage with the Company for the 2024-25 policy year and requesting premium pricing; but, on 22 February 2024, the Company refused to renew, primarily on the basis that, from the time the Notice of Forced Withdrawal was served on 29 January 2024, the Petitioners were no longer members of the Company and no longer covered by the Insurance Program. The Petitioners thus had to go outside the Program to obtain coverage from 1 July 2024.

28. The Petitioners did not seek to challenge the Notice of Forced Withdrawal or the purported consequences of it, namely that they no longer had any registered shares in the Company or any part in the management or affairs of the Company.

29. The exclusion of the Petitioners from the Company resulted in there being only one Shareholder, i.e. Grand View, with its 100 shares being the only registered shares in the Company. As the Petitioners accept (see paragraphs 65-66 of the Counterclaims in the Vermont Proceedings), from January 2024, the purpose of the Company had gone: with only one Shareholder to be covered, there could be no pooling of risk and the Company could not lawfully continue to operate as a risk retention group. It was required to cease writing new business and enter voluntary run-off with a view to eventual wind-up. In any event, Grand View say – and, there being no evidence to the contrary, I accept – that, as a healthcare institution, they have no interest in running an insurance company which they are ill-equipped to do.

The Section 111 Proceedings

30. On 15 March 2024, the Petitioners issued a petition under Section 111 *"to enforce all of their rights as shareholders of the Company, and to promote a clean break between shareholders"* (paragraph 4). In this judgment, I will refer to the proceedings under the Petition as "the Section 111 Proceedings".

31. In the Petition, the Company was the sole Respondent; and the Petitioners sought an order "that promotes a clean break between the parties" (paragraph 83 of the now Re-Amended

Petition). As relief, the Petitioners claimed:

(i) *"... a payment by the Company to the Petitioners in an amount that [the] Court determines to be a fair value of the Petitioners' equity interest in the Company"* (paragraph 83(b));

(ii) Further or alternatively an order winding up the Company (paragraph 84) (but the claim for this relief was abandoned by an amendment on 19 July 2024);

(iii) *"Further, or in the alternative, an Order rectifying the shareholder register of the Company as and if necessary"* (paragraph 85) (added by amendment on 1 July 2025);

(iv) *"Further, or in the alternative, such other relief as [the] Court may deem just in the circumstances in order to regulate the conduct of the Company's affairs in the future"* (paragraph 86);

(v) *"Payment of the Petitioners' costs"* (paragraph 87); and

(vi) *"Such other or further relief as the Petitioners may request and [the Court] may deem fit"* (paragraph 88).

Given the abandonment of (ii) (winding up) – and the supportive nature of (iii) (rectification) in the sense that it was pursued, not as an independent remedy, but only to support a buyout order if required (see paragraphs 141-142 below) – the relief claimed in (i) (a payment by the Company in the amount of the fair value of the Petitioners' equity interest) was understandably described during the hearing as the Petitioners' "primary" claim.

32. In the meantime, as Cassatt Holding and the Company moved from operating as "live" insurers (both issuing insurance policies and managing claims) to "run-off" insurers (only managing and running-off claims under policies for earlier periods), Grand View, for commercial reasons, sought to dispose of its 100% shareholdings in both the Company and Cassatt Holding (which was itself sole shareholder in Cassatt Insurance and Cassatt RRG (see paragraph 10 above)). On 28 April 2025, Grand View entered into the SPA whereby its shares in the Cassatt Group companies would be sold to the Buyer, a wholly owned subsidiary of Concert Group Holdings Inc ("Concert Holdings") and part of the Concert Group of companies which are insurers and providers of services to the insurance industry. Whilst the SPA is in respect of the shares in all the Cassatt Group companies (in each of which Grand View was ultimately the sole shareholder), the application before us proceeded on the basis that the real value lay in the shares of the Company and, so, the value of the other parts of the group (notably, the shareholding in Cassatt Holding) could, for most practical purposes, be disregarded. The Buyer was created by Concert Holdings as a special purpose shell company with the purpose of purchasing the Company and three other companies in the Cassatt Group. I will refer to these overall arrangements under which Grand View proposes to dispose of its shares in the Cassatt Group companies as "the Concert Transaction".

33. Under the SPA:

(i) The Purchase Price for its shares (i.e. all the registered shares in the Company), to be paid by the Buyer to Grand View as Seller, was $4.45m to be paid as follows (Section 2.2):

> *"On the day of the Closing, Buyer shall remit payment to Seller of $3,000,000 in cash…, and $1,450,000 shall be applied by Buyer to settle and release Seller from any obligation to pay the Companies [i.e. the Company and Cassatt Holding] for [ULAE]…".*

"Allocated loss adjusted expenses" (or "ALAE") are loss adjustment expenses linked to the settlement of an individual claim or loss. "*Unallocated loss adjusted expenses*" (or "ULAE") are such expenses that cannot – or cannot yet – be tied to any specific claim (First Affidavit of Gary Osborne sworn 18 June 2025 ("Osborne 1"), paragraph 29; and First Affidavit of David Provost sworn 29 July 2025 ("Provost 1"), paragraph 21). All these sums were to be paid by the Buyer, and consequently did not deplete the assets of the Company. Indeed, as the amount of $1.45m was to be paid by the Buyer to the Company in exchange for a release by the Company of Grand View of its obligation to pay ULAE, it had the benefit for the Company of converting an account receivable (i.e. a debt owed by Grand View to the Company) into cash.

(ii) By Section 6.7(a) of the SPA, the Company was required to pay Grand View "*Seller Approved Distributions*", a reference to "*Approved Seller Distributions"* defined in Section 1.1 as *"distributions in an amount not in excess of $3,450,000 in aggregate…".* Any such payment would be a payment out of the Company to Grand View.

(iii) By Section 10.7, all expenses of the parties to the SPA in connection with the Concert Transaction were to be borne by the party incurring them except, it said, *"[Grand View] shall pay all amounts included within clause (a) of the definition of Transaction Expenses at the Closing to the extent set forth on the Transaction Expense Certificates"*. *"Transaction Expenses"* were defined in Section 1.1 in two clauses, (a) and (b). Clause (a), which is referred to in Section 10.7, covers a variety of fees and expenses incurred by the parties, set out there at some length. However, the section concluded:

> *"For the purposes of this definition, Transaction Expenses attributable to clause (a) shall not exceed (i) $2.25m million with respect to Buyer, (ii) the greater of (1) $850,000 or (2) $1,000,000 with respect to the Companies, provided to qualify for clause (2), the Companies must send notice to Buyers' counsel (email being sufficient) promptly upon learning it has exceeded the amount contemplated in clause (1), and (iii) $200,000 with respect to [Grand View]".*

So, Transaction Expenses as attributable to clause (a) as defined could not exceed $3.45m in total. By Section 6.10, each party to the SPA was to provide to the other parties a *"Transaction Certificate"* no later than three days before closing that identified the amount of Transaction Expenses *"provided, however that no Party shall be entitled to any amounts from [Grand View] in excess of those contemplated*

by the final sentence of the defined term Transaction Expenses"; and, *"[i]n connection with the Closing, [Grand View] shall pay the amounts to the respective third parties set forth on the Transaction Expenses Certificates to the extent that such amounts are include in clause (a) of the definition 'Transaction Expenses'"*. The relationship between Section 6.7(a) and Section 10.7 of the SPA is in issue in Ground 11 (see paragraphs 174-179 below).

34. To complete the picture:

(i) At the Company's Board Meeting on 28 April 2025, it was resolved to waive the Transfer Restrictions and Shareholder Requirements in the Shareholders' Agreement which effectively require any shareholder to be ultimately controlled by a non-profit health system (see paragraph 13 above). Such a waiver was necessary because the Buyer was an insurance company experienced in run-off which was the only corporate function left in the Company; and could be made under Article VI, Section G of the Shareholders' Agreement (see paragraph 20(iii) above).

(ii) In the Minutes of that Board Meeting, there is a reference to proposed Resolutions (a) to authorise the transfer of the Company's issued and outstanding shares to the Buyer as outlined in the draft SPA which was attached, (b) *"a distribution out of contributed surplus to Grand View in connection with transaction expenses (to a maximum of $2.5 million)"*, and (c) general ratification and authorisation of the directors to effect the Concert Transaction. In the recital to the relevant attached Resolution, there is reference to *"a distribution out of contributed surplus in the amount of up to $[•] to [Grand View] prior to the Closing of the Transaction"*; and a Resolution *"that the Company hereby declares and shall pay to [Grand View] a distribution in an aggregate amount of $[•] immediately prior to, and conditioned upon, the Closing of the Transaction, provided that such amount may be reduced by the mutual agreement of [Grand View] and the President of the Company to give effect to the intentions of the parties to the [SPA]"*. I shall return to Transaction Expenses when I deal with Ground 11 (see, again, paragraphs 174-179 below).

35. The Petitioners were unaware of the Concert Transaction until the SPA was disclosed to them on 9 May 2025, when the Company advised the Petitioners that, because of the SPA, it would be unable to provide discovery in these Section 111 Proceedings in accordance with the timetable by the Court.

36. In response, on 2 June 2025, the Petitioners advised the Company that, unless the Company provided appropriate undertakings, the Petitioners would apply to the Court for an urgent interim injunction to prevent the closing of the SPA.

37. On 5 June 2025, the Company agreed to a Consent Order which, amongst other things, prohibited the Company from (i) effecting any further changes to the Company's Register of Members, (ii) transferring legal title to the shares in the Company (including as part of the Concert Transaction), and (iii) dissipating its assets to Grand View outside the ordinary course of business. This Order consequently maintained the *status quo* until the Court's determination of an Interim Relief Summons.

38. However, even after they were aware of this pending sale, the Petitioners did not seek to challenge the Forced Withdrawal Notice directly by (e.g.) seeking a declaration that it had been improperly and invalidly given and of no effect, and/or an order that the Notice and the cancellation of the Petitioners' shares be set aside, the Petitioners be reinstated as Shareholders and the Company's Register of Members duly rectified.

39. Instead, on 20 June 2025, they issued a Summons in the Section 111 Proceedings which sought (i) an order for leave to file a Re-Amended Petition adding Grand View as a Second Respondent (and consequential orders relating to service of Grand View, which are not relevant to this appeal) and adding rectification as relief (see paragraph 31(iii) above), and (ii) an interlocutory injunction in the following terms (paragraph 4):

> *"An order pursuant to Order 29 of the RSC, or otherwise based on the Court's inherent jurisdiction, which grants an interlocutory injunction restraining the Company and Grand View Health, or any other party, as well as their servants, agents, affiliates, and any other party acting on their behalf, from selling or transferring, or taking steps to sell or transfer, any shares of the Company in any manner whatsoever including, without limitation, any sale by Grand View Health to Cassatt Solutions LLC pursuant to a Share Purchase Agreement dated 28 April 2025, or distributing any of the Company's assets in connection with any transaction involving the shares of the Company, pending the Court's final determination of the Amended Petition dated 19 July 2024 or further order of the Court".*

The relief sought in the application therefore focused, not on the buyout of the Petitioners in itself, but rather wholly on the proposed sale of the Company to the Buyer. I will refer to this application as "the Interim Injunction Application".

40. Other than this interim injunction, no relief has been sought against Grand View in the Petition or any of its amended forms. However, by Order of 2 July 2025, with limited exceptions, the Company was made subject to a funding injunction prohibiting the use of its assets to participate in the issues raised in paragraphs 75-82 of the Petition concerning the Concert Transaction on the basis that these are really part of a dispute between current and/or past shareholders (i.e. Grand View and the Petitioners), the resolution of which the Company should not fund. As the Petitioners' case is that, if the SPA is closed, the Company will not be able to pay fair value for their equity interest in the Company, this meant that the Company played no active part in the hearing of the Interim Injunction Application, the engaged parties being the Petitioners and Grand View.

41. The Petitioners put their Interim Injunction Application on three bases, namely:

    (i) an injunction was necessary in support of the Petition to preserve the *status quo* and prevent Grand View from taking action which would prejudice the relief sought by the Petitioners in the Petition, i.e. a payment from the Company for the fair value of their equity share in the Company;

    (ii) the Petitioners were entitled to a freezing injunction on the basis that there was a real risk that Grand View's conduct, and the implementation of the Concert

Transaction, would involve the improper dissipation of the assets of the Company and materially prejudice the Company's ability to satisfy an order to purchase the Petitioners' shares; and

(iii) the Petitioners were entitled to a preservation order under the Rules of the Supreme Court ("RSC") Order 29 rule 2, for the preservation of property the subject matter of the Petition, namely the assets and funds of the Company that were to be distributed to Grand View as part of the Concert Transaction.

42. Segal AJ heard the application on 28 and 29 August 2025 ("the August 2025 Hearing"), and, at the conclusion of the hearing, he reserved judgment. What procedurally followed is controversial and at the heart of one of the primary grounds of appeal (Ground 14).

43. On 25 September 2025, Segal AJ circulated a draft of his "Ruling" on the Interim Injunction Application. In paragraph 8, under the heading *"My decision in brief"*, he said:

> *"I have concluded that the Petitioners' application for an injunction should be dismissed provided and on condition that the Buyer accedes to the [Shareholders' Agreement] (in relation to conduct and matters occurring after the date of its accession) and becomes a party to these proceedings. I explain the basis and reasons for this decision below. I have carefully considered whether the evidence shows that the admittedly substantial distributions to be made by the Company in connection with the Concert Transaction result, when a reasonable estimate is made of the likely value of the Petitioners' and Grand View's share of the Company's equity (taking account of the substantial disputes as to their entitlement to share in the equity and the limited evidence as to the methodology to be adopted to value the Company's equity and the Petitioners' and Grand View's share of it), in a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares. I have concluded that on balance the Petitioners have failed to demonstrate such a risk. I have also concluded that the sale by Grand View of its shares, in circumstances where it will remain a party to the Re-Amended Petition and liable, if the Court considers it appropriate, to be ordered to repay the distributions made to it or, if a suitable amendment to the Re-Amended Petition is made, to pay or contribute to the sum to be paid for the Petitioners' equity interest in the Company, that the sale of these shares also does not create a real risk that the Court will be unable to award the Petitioners an adequate remedy after the trial of the Re-Amended Petition. But I have concluded that it should be a condition of the dismissal of the Petitioners' application for an injunction that the Buyer be joined as a party to the Re-Amended Petition (and accedes to the Shareholders' Agreement) so as to ensure that all those against whom orders may need to be made to protect the Petitioners and to ensure that an adequate remedy can be granted on the Re-Amended Petition following completion of sale of Grand View's shares are before the Court (and that it is appropriate and just and convenient to impose such a condition)."*

44. Therefore, at the core of this passage, the Judge said that he had concluded that the Interim Injunction Application should be dismissed *"provided and on condition that"* (i) the Buyer acceded to the Shareholders' Agreement and thus agreed to be bound by its terms and (ii) the Buyer be joined into the Section 111 Proceedings as a party. The nature of these provisos is in issue; but, for convenience, I will refer to them as "conditions" (as the parties did before us). That conclusion – for which the Judge proceeded in the Ruling to set out his detailed reasons – is the focus of this appeal (Petitioners' Skeleton Argument, paragraph 3).

45. The circulation of that draft Ruling prompted a number of procedural steps.

46. First, on 7 October 2025, the Petitioners lodged a Notice of Motion for Leave to Appeal, made *ex parte* but on notice to Grand View and the Company. The Petitioners explain the timing of this, as follows (paragraph 11 of their Skeleton Argument):

> *"The [Petitioners] filed their Leave to Appeal Application within 14 days of the release of the draft Interim Injunction Ruling because of the current uncertainty under Bermuda law regarding what constitutes the 'date of decision' triggering the 14-day leave to appeal deadline pursuant to Order 2, rule 3(1)(a) of the Rules of the Court of Appeal for Bermuda…. Since there are generally no formal 'handing down' hearings in Bermuda, the date of the 'decision' which triggers the leave to appeal deadline can vary depending on the judge's preference in dating their written judgments…".*

I deal with the date of decision from which the time for appeal runs below (see, especially, paragraphs 86(vii) and 88(ii)).

47. On 10 October 2025, Concert Holdings wrote on behalf of the Buyer to all the parties to the Petition saying it would comply with neither of the conditions required in paragraph 8 of the Draft Ruling, but proposing that the Buyer *in lieu* provide undertakings to the Court for the dismissal of the Interim Injunction Application, namely:

(i) the Buyer would cause the Company not to make any dividend payment or other distributions to it as shareholder except by agreement of the parties or after the Section 111 Proceedings had been finally determined; and the Buyer would continue to fund the run-off claims and operating expenses, on the basis that any ordinary course business fees paid by the Company to the Buyer or its affiliates should be on an arm's length good faith basis;

(ii) the Buyer would not take any steps and would not cause the Company to take any steps that were inconsistent with or would directly or indirectly prevent the Company from complying with its obligations under the Shareholders' Agreement;

(iv) the Buyer would not seek to intervene in the Section 111 Proceedings or take any steps that would directly or indirectly interfere with the enforcement by the Petitioners of any relief granted in the Section 111 Proceedings; and

(v) the Buyer would instruct Conyers to accept service of proceedings on its behalf to enforce these undertakings.

48. On 15 October 2025, the Petitioners responded to that letter, rejecting the proposed undertakings on the basis that they would provide no real protection to the Petitioners, and saying that the Petitioners proposed applying to Segal AJ for consequential directions including an order granting the Interim Injunction Application due to the Buyer's refusal/failure to comply with the conditions for its dismissal as set out in the draft Ruling. That day, the Petitioners filed a letter with the Court, addressed to Segal AJ, attaching a proposed form of order in those terms.

49. Later that same day, a final version of that Ruling, in the same form as the draft and dated 15 October 2025, was sent to the parties by the Court by email ("the Interim Injunction Ruling"). That version was sealed by the Court and stamped, "Signed". The appeal before us proceeded on the basis that this version had, indeed, been signed by the Judge.

50. The following day (16 October 2025), Segal AJ agreed to hear submissions from the parties on consequential directions arising from the Interim Injunction Ruling. Later, he directed that that hearing would consider and determine:

    (i) the form of order giving effect to the Interim Injunction Ruling including (a) whether the Buyer's proposed undertakings *"can and should be accepted by the Court and treated (with or without further modification) as being sufficient to justify the removal from the order of the conditions to the dismissal of the [Interim Injunction Application]"*, and (b) *"if not, the manner in which the conditions should be dealt with in the order and the wording to be included in the order"*: he also allowed the Buyer (who was not a party to the Petition) to file submissions on the form of the order, and attend the hearing;

    (ii) directions for the determination of any applications for leave to appeal;

    (iii) directions for the determination of the Petitioners' application for a stay and/or injunction pending appeal; and

    (iv) directions for the determination of the costs of the Interim Injunction Application.

    He also confirmed that Grand View's undertaking not to dispose of any shares in the Company "until final determination" of the Interim Injunction Application, or further written agreement of the parties or order of the Court, "should be treated as remaining in force at least until the order has been sealed".

51. On 24 October 2025, on behalf of the Judge, the Court sent an email to the parties in which he directed that *"…despite the conditions to the dismissal as articulated and set out in the Judgment … it will be a matter for submissions at the [6 November 2025 Hearing] as to whether the Court can make an order dismissing the application conditional upon the undertakings being given to the Court by Concert Holdings (instead of and in substitution for the conditions set out in the Judgment)…"*.

52. On 29 October 2025, encouraged by the Judge, Grand View filed a Summons which sought to vary the Interim Injunction Ruling so that the Interim Injunction Application be dismissed on the conditions referred to in paragraph 8 of the Ruling together with the undertakings offered by the Buyer in the 10 October 2025 letter.

53. The hearing to consider consequential directions took place on 6 November 2025 ("the 6 November 2025 Hearing"). Both the Petitioners and Grand View had made written submissions on the basis that Segal AJ had made a conditional order in the Interim Injunction Ruling – and, of course, Grand View had made a specific application that that order be varied.

54. However, at the start of the hearing, the Judge made it clear that many of the written submissions had been made on a false premise, namely that he intended to make a conditional order. Whilst it is a quite lengthy passage (Transcript page 11 line 8 to page 14 line 20), this lies at the heart of Ground 14 of the Grounds of Appeal, and so it is necessary to set out what the Judge said in full. I do so as it was transcribed, without the Judge having had an opportunity to make any corrections.

> *"Let me just kick off with one preliminary comment because I think – have read carefully, the detailed erudite submissions, and legal analyses that have been put together, which I think in part have been put together on the basis of an erroneous assumption. And it's partly my fault for not having spelt this out clearly in the judgement.*
>
> *I have never envisaged the Court would be making a conditional order. The – what the judgement seeks to do, and what the judgement envisages, is that there would be an order. I anticipated an order dismissing the injunction application provided that, and on condition that, but provided that the matters that I had identified regarding the buyer were dealt with.*
>
> *And the Court is not – and the Court has not been in a position to direct precisely what the buyer should do. But in circumstances where I regarded the position of the buyer as relevant to the relief and the remedies, which the Court would be in a position to grant upon the hearing and determination of the petition.*
>
> *I wanted those two issues to be addressed before the order determining the outcome of the injunction application was settled and drawn up.*
>
> *So as far as I'm concerned, there's no question of a conditional order being made. The question is whether or not – the question is what response the buyer through Grand View, as the respondent to the petition, provides to the matters that I have raised in the judgment.*
>
> *And therefore, the extent to which the issues that the judgment raises concerning Grand View's – excuse me – concerning the buyer's position, and the impact of the buyer's position on the Court's ability to grant suitable remedies upon the determination of the petition.*
>
> *What the position of the buyer is, and the extent to which the concerns which the judgment addresses and raises, and says need to be disposed of or dealt with, before a final order is made on the judgment.*
>
> *The extent to which the buyer is responding and proposing to comply with the substance, or the form of what the judgment requires.*

So I hope that's helpful because it seems to me that all of the learning and analysis regarding conditional orders, is entirely beside the point. And I have read carefully, the submissions, including those detailed submissions which were made in Mr. Masters' [Counsel for the Petitioners'] very erudite skeleton.

But at the moment, it seems to me that it's absolutely clear that in circumstances where the Court has delivered a judgment, has indicated that it considers that the application should be dismissed, subject to certain matters relating to the buyer's position being adequately addressed.

And I identified the way in which I considered that those ought to be addressed, but those are not written in stone.

In those circumstances, it's quite clear to me that the Court has jurisdiction in the event, as has happened, that Grand View and the buyer have come forward and sought to indicate what the buyer is prepared to do by way of undertakings, to address the issues that are raised in the judgment.

Now I say that upfront not because I am seeking to prejudge or predetermine the issues that arise under issue number one. But because having read the submissions, I'm concerned we don't end up spending hours and hours on issues that seem to me, whilst technically interesting, of no relevance and no significance on this particular application.

So with that by way of introduction, why don't I hand over to you, Mr Chudleigh [Counsel for Grand View], just to run through your position, and what you say the Court should do in terms of dealing with the form of order and dealing with the issues that I said needed to be dealt with as conditions to, and before the Court could make an order and draw up and seal an order dismissing the application."

55. The Judge then proceeded to hear submissions from the parties for the purpose of settling an order – which he did in an order apparently signed and sealed by the Registry on 7 November but dated 15 October 2025 ("the Dismissal Order"). That Order recited undertakings which the Buyer had by then given to the Court, as follows:

> *"• To execute the Deed of Adherence to the [Shareholders' Agreement] upon closing of the [SPA]*
>
> *• To agree to be made a party to these proceedings upon closing of the [SPA]*
>
> *• To submit to the jurisdiction of the Bermuda Court and authorise Conyers, Dill & Pearman Limited to accept service on the Buyer's behalf in these proceedings*
>
> *• Upon becoming the sole shareholder of the Company, the Buyer shall cause the Company to not make any dividend payments or other*

> *distributions to it as shareholder until these proceedings have been finally determined by the Supreme Court or by the consent of the parties*
>
> - *As it currently does in the ordinary course of business, unless modified by their respective regulators, the Company will continue to fund the runoff claims and operating expenses of its affiliate companies in Vermont. Any ordinary course service fees paid by the Company to the Buyer or any of its affiliates during such period shall be on an arm's-length good faith basis*
>
> - *That it will not take any steps and will not cause the Company to take any steps that are inconsistent with or would directly or indirectly prevent the Company from complying with its obligations under the [Shareholders' Agreement]."*

That Order also gave directions for a further hearing on 14 November 2025 in respect of the applications for leave to appeal and costs.

56. Following that further hearing ("the 14 November 2025 Hearing"), on 28 November 2025, the Judge circulated a draft ruling dismissing the application for leave to appeal, but extending the interim relief pending a renewed application to this Court. It also ordered the Petitioners to pay Grand View 80% of its costs *"of an occasioned by the Interim Relief Summons"* on a standard basis; and all the Company's costs of appearing at the August 2025 hearing on a watching brief and the costs of its skeleton argument for the 14 November 2025 Hearing on a standard basis. The parties lodged consolidated observations on the draft on 1 December 2025.

57. The Court issued a signed and sealed ruling from the 14 November 2025 Hearing on 2 December 2025 (but dated 27 November 2025) ("the Leave to Appeal Ruling") with an email from the Judge asking the parties to agree a form of order.

58. In the Leave to Appeal Ruling, the Judge further said this of the Interim Injunction Hearing and the subsequent procedure:

> *"25. At the 6 November 2025 hearing, having read the parties' written submissions and the related correspondence, I had told the parties that I had no intention of making a conditional order, and that I had never envisaged the order on the Petitioners' application would be drawn up in a conditional form. I had identified certain matters relating to the position of the Buyer, a non-party, that in my view required to be rectified before the order dismissing the Petitioners' application for an injunction could be made. These matters (the Buyer not becoming a party to the proceedings and the apparent breach of the [Shareholders' Agreement] resulting from the failure to require the Buyer to become a party to the [Shareholders' Agreement] by executing a suitable form of Deed of Adherence) in my view gave rise to an unacceptable risk that the relief that the Court could grant in the section 111 proceedings would be adversely affected and that the Petitioners would be prejudiced during the proceedings if these were not rectified or resolved. Because the problems*

I had identified related to the position of a non-party and would require further input from them and Grand View it was clear to me that they would need to be discussed and dealt with as part of the process of deciding on the terms of the order and on the matters consequential on the handing down of the Judgment.

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

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

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

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

be considered by Grand View and the Buyer before being finalised and dealt with at the consequentials hearing. That is what has now happened.

29. In my view, the fact that the Judgment had been handed down did not prevent the Court from reviewing Grand View's and the Buyer's response to the issues raised relating to the position of the Buyer and assessing whether the proposed undertakings removed the identified the risk of prejudice and thereby satisfied the Court's concerns, with the result that the order dismissing the Petitioners' application could then be made. This was because the Judgment envisaged or assumed that the manner in which this issue would be resolved required further debate among the parties before the Court's order could and would be made. The Court was able to deal with this as a consequential matter.

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

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

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

33. I was satisfied that the Minute of Order Undertakings removed the risk that the relief which the Court could grant in the event that the

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

"CPR" is a reference to the Civil Procedure Rules 1998 as amended, which now govern practice and procedure in the Courts of England and Wales. It is clear from that passage that, in his Interim Injunction Ruling, the Judge did not intend to make any order without (i) hearing submissions from the parties and (ii) obtaining assurances/undertakings from the Buyer which he assumed would be given.

59. In the meantime, on 21 November 2025, the Petitioners filed in this Court an unissued Notice of Motion for Leave to Appeal supported by the Tenth Affidavit of Lisa Ramthun (a Vice President of Thomas Jefferson University and Jefferson Health, the corporate parent of the Petitioners) sworn 20 November 2025 which exhibited, as Exhibit LR-10, a Draft Notice of Appeal setting out sixteen Grounds of Appeal against *"that part of the decision… of [Segal AJ] which was circulated in draft on 25 September 2025… wherein the Learned Judge conditionally dismissed the [Interim Injunction Application] (or alternatively, a freezing injunction or a preservation order) prohibiting [the Company] and its purported sole remaining shareholder, [Grand View], from selling or transferring any shares or assets of the Company pending the final determination of the [Petitioners'] oppression claim pursuant to [Section 111]"*, including prohibiting the closing of the SPA (opening rubric and paragraph 1). As substantive relief, the Petitioners sought the setting aside of Segal AJ's decision conditionally to dismiss the Interim Injunction Application, and an order granting that injunction or substituting an appropriate freezing injunction or preservation order (paragraphs 18-20). The grounds of appeal set out in that exhibit were the grounds pursued before us.

60. Segal AJ referred to the timing of this application in paragraph 9 of the Leave to Appeal Ruling (which did not appear in the circulated draft), as follows:

> *"I have assumed that the Petitioners sought permission to appeal the order as and when made to give effect to the Judgment and for that purpose to challenge the reasoning in the Judgment even though the Notice of Motion*

> *was filed before the order was settled and drawn up (appeals are technically of course against the Court's decision as set out in the order and not the reasons behind it so that the decision/order may be upheld even if the appellate court considers the reasons to be wrong)…".*

61. As recorded in the Chief Justice's Order dated 23 July 2025, Grand View has undertaken not to complete the transfer of their shares in the Company pursuant to the SPA until final determination of the Interim Injunction Application, an undertaking which is continuing.

The Legal Tests

62. Before I deal with the grounds of appeal, it would be helpful to clear the decks in respect of several matters relating to the legal tests and approach of the Court to cases such as this, namely (A) the correct approach to an application for an interlocutory injunction, (B) the correct approach to an appeal in respect of the same, and (C) the test in respect of leave to appeal.

A. The Approach to an Application for an Interlocutory Injunction

63. It was common ground before us that the proper approach for an interim injunction in the context of an unfair prejudice claim was described by Hoffmann J in Re Posgate & Denby (Agencies) Limited [1987] BCLC 8 at ("Posgate") pages 13-15, i.e. the three-stage test set out in American Cyanamid Company v Ethicon Limited [1975] AC 396 applies but appropriately modified because stage 2 (whether damages would be an adequate remedy), taken literally, poses an inappropriate question in the context of unfair prejudice claims as the governing statutory scheme does not provide for damages as a remedy.

64. Therefore, in order to succeed in its Interim Injunction Application to restrain the closing of the Concert Transaction, the Petitioners had to establish that:

    (i) there is a serious issue to be tried in the Section 111 Proceedings;

    (ii) without an injunction, the Petitioners would be unable to obtain an adequate remedy at trial; and

    (iii) the balance of convenience favours granting an injunction.

65. However, although no relief (over and above an interim injunction) is sought against Grand View, Grand View accepted that there is a serious issue to be tried here. Furthermore, the ability to obtain an adequate remedy at trial substantially informs the balance of convenience exercise.

66. Therefore, the argument before us focused on whether, if the injunction were not granted, the closing of the Concert Transaction would disenable the Petitioners from obtaining an adequate remedy at trial. Given that the Petitioners seek a buyout order at fair value as their primary relief in the Section 111 Proceedings, that remedy is financial; so, the question turns on whether the sale of the shares in the Company to the Buyer will or might adversely affect the Petitioners' right to be bought out in the sum which, at trial, the Court assesses is appropriate. In other words, can the Petitioners be compensated at

trial by orders which enable them to receive the fair value of their shares or would the Concert Transaction result in their not recovering that fair value? I return to that issue below (paragraphs 147-183).

67. I would also emphasise that the Judge was (and this Court is now) dealing with an interlocutory application, not the substantive trial of the Petition. At the eventual trial, "fair value" will have to be determined on the basis of findings made by the Court on full evidence, but also in the light of the terms of the Shareholders' Agreement including the provisions relating to the payment out of the Petitioners' equity in Article 1, Section C, which apply in the event of a forced withdrawal (see paragraphs 14-15 above). That will involve not only evidence (including expert evidence) that was available to neither Segal AJ nor this Court on appeal, but also consideration of both the payment out being limited to the lower of the equity value at the end of the year of termination and the fact that no payments out are made until five years after termination and not all are made until year ten. Any order of the Court eventually made may (e.g.) take into account a discount for early payment. But, on the evidence and submissions before the Judge and us, such an exercise is not possible, nor does an interlocutory application require it.

68. At this stage of the proceedings, when not all of the evidence is available, any exercise of considering "fair value" is incapable of the mathematical exactitude that might be expected on the hearing of the Petition when each party will (for example) have an opportunity to cross-examine witnesses including the experts, Gary Osborne instructed by the Petitioners and David Provost instructed by the Company. Mr Osborne is an accountant with extensive professional experience in the captive insurance market, and Mr Provost also has extensive experience in that market both as a manager and a regulator. Neither is a valuer; rather, because of their background, they are able to opine on how the assessments the Judge and now this Court are considering were and should be made. Like the Judge before us, we are considering these assessments on the basis of the evidence before us which is limited and, in the case of this Court, for the limited purpose of determining whether the Judge was wrong to refuse the interim relief sought by the Petitioners as he did.

B. The Approach to an Appeal in respect of an Interlocutory Injunction

69. The approach of this Court to an appeal in respect of an interlocutory judgment is well-settled.

70. Whilst *"all civil appeals shall be by way of rehearing"* (section 15 of the Court of Appeal Act 1964), we were referred to Lord Diplock's statement of principles applicable to appeals from interlocutory injunctions in Hadmor Productions v Hamilton [1983] 1 AC 191 at page 220A-F (which, so far as Bermuda is concerned, was adopted by this Court in Commissioner of Police v Bermuda Broadcasting Co Ltd [2007] Bda LR 48 at [18]-[20]) to the effect that, as an interlocutory injunction is discretionary relief, an appellate court has a limited review function. It will defer to the exercise of discretion by the judge below and will not interfere merely on the ground that members of the appellate court would have exercised the discretion differently. In this context, the phrase *"evaluative assessment"* (rather than *"discretion"*) tends to be used now; but, in substance, that statement holds good.

71. However, as Lord Diplock made clear and Counsel for the Petitioners stressed, an

appellate court may interfere if the judge in any way materially erred in law including by proceeding on a misunderstanding of the law or if the judge's decision is one which no judge could reasonably have reached.

C. The Test for Leave to Appeal

72. Perhaps surprisingly, there was an issue before us as to the test for leave to appeal. I can deal with it shortly.

73. The classic formulation of the test in the Courts of England and Wales is found in the judgment of Lord Woolf MR in Smith v Cosworth Casting Processes Limited: Practice Note [1997] 1 WLR 1538 at [1]-[2], namely that the Court will only refuse leave if satisfied that the applicant has no realistic prospect of success; and will grant leave if satisfied that the appeal has a realistic prospect of success or where the appeal raises an issue which, in the public interest, should be examined by the court, e.g. because the law requires clarification. That two-pronged test has been adopted by this Court (see, e.g., Wang v Wong and Grand View Private Trust Company Limited [2022] Bda LR 115 at [52]-[54]).

74. Although Lord Woolf said, *"There can be many reasons for granting leave even if the court is not satisfied that the appeal has any realistic prospect of success"* (of which he gave the public interest as but one example), the circumstances in which an appellant, having no realistic prospect of success and being unable to show that it is otherwise in the public interest to have the appeal heard, is given leave to proceed with an appeal must be vanishingly rare. We were not referred to any example of this having happened in England and Wales.

75. However, Mr Summers suggested that there was one Bermudian authority that fell within this category. In Re Royal Chemie International Limited [2016] Bda LR 75, Kawaley CJ (as he then was) gave leave to appeal to this Court from his decision that the company had failed to make out a *prima facie* case that the presentation of a winding-up petition would be an abuse of process on the basis that the appeal was arguable. He went on to say (at [8], emphasis in the original):

> *"Further, I accept that while the question of how the Facilities Agreement should interpreted as regards the individual enforcement rights and collective enforcement rights issue is concerned may not be a question of general public importance, I do take into account the fact that this issue is of general legal importance in Bermuda and elsewhere. Moreover, it does have some practical significance because, even if the appeal were to succeed on a narrow historic basis only, any decision which the Court of Appeal might make on the nature and scope of the Respondents' individual enforcement rights would have a bearing on the future conduct of the parties."*

76. Speaking for myself, I do not consider anything turns on the distinction between whether an issue is of *"general public importance"* or *"general legal importance"* – because the Court may well consider that it is in the public interest to consider an issue on either basis or both – but Mr Summers suggested that the last sentence quoted established or confirmed a further ground upon which leave to appeal might be granted, i.e. because the

Court of Appeal's clarification of the scope and nature of the parties' rights would have a bearing on their future conduct. However, in my view, that reads too much into the Chief Justice's observation, made both *ex tempore* and *obiter*, which was simply that the public interest in having the matter considered by the Court of Appeal in any event was, in that case, supported by the practical benefits for the parties of doing so. It clearly did not intend to extend the well-established, two-pronged test.

The Grounds of Appeal

77. The Grounds of Appeal are sixteen in number and cover 21 pages. However, they can be conveniently broken down as follows:

Ground 14: This ground is essentially procedural in nature. The Petitioners submit that the Judge erred in paragraph 8 of the Interim Injunction Ruling (set out above: paragraph 43), by dismissing the Interim Injunction Application subject to conditions. That paragraph is said to be the focus of the whole appeal (Petitioners' Skeleton Argument, paragraph 3). I deal with this ground in paragraphs 78-131 below.

Grounds 1-13: These grounds, taken together, challenge the Judge's finding that the closing of the Concert Transaction will not materially prejudice the Court's ability to grant an adequate oppression remedy following trial. It could be said that these grounds are focused generally, but not exclusively, on the merits. The focus of the argument was on issues associated with Ground 11, namely that the *"Judge erred in paragraph 8 of the Interim Injunction Ruling in finding that the [Petitioners] had 'failed to demonstrate' that the closing of the Concert Transaction would result in 'a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended petition requiring it to pay the full value of the Petitioners' shares'"*. I deal with Ground 11 and associated issues in paragraphs 147-190 below, and Grounds 1-10 and 12-13 in paragraphs 141-146 and 191-225.

Grounds 15-16: These grounds concern the Petitioners' alternative case that a freezing order and/or a preservation order should have been made. I deal with these grounds in paragraphs 226-235 below.

Ground 14

Introduction

78. This was the main ground of appeal in the sense that it spilled most ink and took up most time at the hearing.

79. Three strands of the ground were developed in the Petitioners' skeleton argument, under the heading *"Erred in conditionally dismissing the Interim Injunction Application"*:

(i) First Sub-Ground: The Judge erred in conditionally dismissing the Interim Injunction Application, there being in Bermuda no power to make such a general conditional order equivalent to the power in CPR rule 3.1(3)(a) for the Courts of England and Wales *("When the court makes an order, it may… make it subject to conditions…"*),.

(ii) Second Sub-Ground: Alternatively, if the Judge had power to make a conditional order, the order he did make was unlawful because the conditions he attached to it were unclear and/or impossible to satisfy and/or were not a proportionate and effective means of achieving the Judge's stated purpose for imposing them. As well as that submission, further overlapping strands of argument were developed in the Petitioners' skeleton argument and oral submissions, namely that, leaving aside the challenge to the Judge's conclusion that the closing of the Concert Transaction would not materially prejudice the Court's ability to grant adequate and effective oppression remedies following trial (which is the subject of Grounds 1-13), the undertakings on which the Dismissal Order was made were insufficient to protect the rights and interests of the Petitioners in a way which (it is said) rendered that Order *"unjust due to irregularity"*. Those can conveniently be considered under the umbrella of this second sub-ground.

(iii) Third Sub-Ground: Alternatively, if he made a lawful conditional order, having perfected that order when the Interim Injunction Ruling was signed and sealed on 15 October 2025, the Judge had no power to vary that order as he purported to do in the Dismissal Order issued on 7 November following the 6 November 2025 Hearing. I will deal with this sub-ground first.

Judgments, Orders, Determinations and Decisions of the Court

80. The third sub-ground of Ground 14 concerns where the line is to be drawn in Supreme Court civil proceedings between (i) the stage when proceedings (which I use to include not only an entire action or matter, but also an application within an action or a matter which is determined by the Court or something done by the Court on its own initiative) are in the jurisdiction of the Supreme Court and (ii) the stage after the Supreme Court has lost its jurisdiction and any jurisdiction in relation to the proceedings has moved to this Court as the Court of Appeal. In other words, what step in the Supreme Court is necessary and sufficient to bring an end to the jurisdiction of that Court?

81. Considerable time before us was consequently spent in the debate of a number of issues relating to the nature of court *"decisions"*, when and how such decisions are made, and when and how they might be reviewed or varied by the court making them (and, so, when they can only be challenged by way of an appeal), issues which went to the substance of the ground as a whole. It would be convenient to tackle those issues first.

82. To do so, it is necessary to consider the position in the Courts of England and Wales because submissions were made on the footing that, in Bermuda, the position is either (i) the same or (ii) different. In particular, the Petitioners submit that the Judge erred in proceeding on the basis that the position with regard to the finalisation of a decision in the Bermuda Supreme Court to a point where the Court is unable to review or vary its own decision (and the jurisdiction of this Court as the Court of Appeal kicks in) is the same as in the Courts of England and Wales, whereas the position is significantly (and in the context of this appeal, it was submitted, crucially) different.

83. It is important to be able to consider the relevant concepts and rules without being unnecessarily distracted by terminological issues in an area where words have changed their meaning and are inconsistently used.

84. In England and Wales, various terms have been – and still are – used for decisions of the Court. Historically, a final decision or outcome in an action was called a *"judgment"*, all other decisions or outcomes being *"orders"*. For the purposes of enforcement, that distinction did not survive the large-scale eradication of the forms of action by the Judicature Acts 1873 (see paragraph 42/1/7 of the Supreme Court Practice 1999 ("the White Book 1999") under the heading *"Orders enforceable like judgments"* and the authorities there cited); although, whilst *"judgments"* had still to be *"entered"* by presentation at the appropriate office for entry into a book kept for the purpose, an *"order"* was simply drawn up and sealed (Rules of the Supreme Court of England and Wales ("RSC E&W") Order 42 rules 4 and 5). Now, in the CPR, *"judgment"* and *"order"* appear to be used without any discernible discrimination. But other terms have also been introduced, e.g. section 77(1) of the County Courts Act 1984 which, subject to the satisfaction of various criteria, gives a party to any proceedings in the County Court who is dissatisfied with *"the determination"* of a judge or jury a right to appeal, *"determination"* not being defined. The corresponding table of routes of appeal in Paragraph 3.5 of CPR PD 52 instead uses the term *"decision"* which is defined as including *"any judgment, order or direction of the High Court or the County Court"* (article 2 to the Access to Justice Act 1999 (Destination of Appeals) Order 2016).

85. However, as paragraph 52.0.6 of Civil Procedure 2025 ("the White Book 2025"), to which we were referred at the hearing, makes clear under the heading *"Appeals are against orders, not reasoned judgments"*, none of this now matters in the context of appeals because, as Coulson LJ said in Anwer v Central Bridging Loans Limited [2022] EWCA Civ 201 at [17]:

> *"What is much more important is that, however it may be labelled, an appeal can only lie against something which has been decided: a result, a conclusion, an outcome. It does not lie against any observation or comment by the judge along the way to that result. In this way, the winner cannot appeal against a finding or a reason for the judge's decision…. It is only the result that matters for the purposes of an appeal. That is why, although it is technically inaccurate…, judges are so fond of saying that 'an appeal lies against an order, not a judgment'."*

The focus is therefore on, not form, but outcome, i.e. what might be described as "the operative decision".

86. So far as practice and procedure in England and Wales is concerned:

(i) It is common practice in England and Wales for a judge to circulate a draft of a reasoned decision (usually described as a *"judgment"*, although it is not necessarily a judgment in the true, historic sense of the word described above) so that the parties have an opportunity to lodge any suggested corrections before it is finalised and formally handed down.

(ii) Following the giving or making of a reasoned decision (either *ex tempore*, or by handing down a final written copy), which usually includes some or all of the proposed outcome, a distinct document (usually described as an "*order*") is generally prepared which distinctly sets out the operative decision of the judge in

carefully considered and drafted terms.

(iii) Commonly, orders are finalised only after further written and/or oral submissions from the parties on the form of the order and other consequential matters such as costs and permission to appeal. In the High Court, it is the usual practice for the court to draw up orders (CPR rule 40.3(1)); but it is also quite common for an order to be drafted by the parties and approved by the Court (CPR rule 40.3(1)(a) and (b)). An order is not, however, inevitable or necessary: indeed, CPR rule 40.1(3)(c) expressly allows the court to dispense with the need to draw up an order in certain circumstances.

(iv) Every judgment or order must *"bear the date it is made"* (CPR rule 40.2(2)(a)).

(v) Whilst the CPR provide that *"[e]very judgment or order must…be sealed by the court"* (CPR rule 40.2(2)(b)), it was common ground before us (and my own experience) that, although they have the Court's coat of arms in the header, reasoned judgments in the High Court and the Court of Appeal in England and Wales are not generally sealed with the stamp of the court, but orders containing the operative decision are so sealed. Orders are used as proof of the court's operative decision for (e.g.) the purposes of enforcement.

(vi) A judgment or order takes effect when the judge pronounces it, not when it is drawn up (Holtby v Hodgson (1890) LR 24 QBD 103). CPR rule 40.7(1) now provides that: *"A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify"*. It has also been long-settled that, subject to narrow exceptions not relevant to this appeal, an order when drawn must be dated the day it was pronounced rather than the date on which it is drawn up (paragraph 42/3/5 of the White Book 1999, citing the unreported case of Reeves v Ivimey (15 April 1890)).

(vii) Reflecting CPR rule 40.7(1), the time for appealing begins with *"the date of the decision of the lower court"*, i.e. the date the judge gives or makes the decision as provided by CPR rule 40.7(1) by giving it orally or formally handing it down in written form, not the date when the order reflecting that decision is drawn up (CPR rule 52.4(2) as explained by Sayers v Clarke Walker [2002] EWCA Civ 645 at [5], Owusu v Jackson [2002] EWCA Civ 877 at [25], and paragraph 52.3.7 of the White Book 2025). CPR rule 52.4(2) marked a change of practice from its predecessor (RSC E&W Order 59 rule 4(1)) which provided that the time began to run from *"the date on which the judgment or order of the court below was sealed or otherwise perfected"*.

(viii) Although paragraph 3(3)(a) of CPR PD 52C requires an appellant to provide, with any appellant's notice, a copy of *"the sealed order… being appealed…"*, *and "it would be very surprising these days if there were no order"*, *"the absence of an order is no bar to an appeal"* (Re L (Children) [2013] UKSC 8 ("Re L") per Baroness Hale of Richmond giving the judgment of the Supreme Court at [36], approving Re B (A Minor) [2000] 1 WLR 790, CA). In this context, paragraph 6 of CPR PD 52C provides that, if an appellant cannot provide all the necessary documents in time, then the appeal notice must be completed on the basis of available documents.

(ix) Until an order has been drawn up and *"perfected"*, then a judge has *"jurisdiction to change [his or her] mind"*; but, since the Judicature Acts 1873, there has been no general jurisdiction to do so after the order is perfected, the appropriate route being to appeal (Re L at [19]). An order is "*perfected"* by being sealed (CPR rule 40.2(2)(b) as explained in Re L, again at [19]). Before us, this jurisdiction to vary the operative part of a decision before it is perfected was referred to as *"the Barrell jurisdiction"* (after Re Barrell Enterprises [1973] 1 WLR 19). For the reasons given by Lady Hale in Re L at [21]-[27], the restrictive principles set out in that decision have long been disapproved: for example, *"exceptional circumstances"* are not required for an order to be reviewed prior to it being perfected, only the interests of justice. However, *"the Barrell jurisdiction"* is still a commonly used term – for example, it is used in the White Book, and it was extensively used in argument before us – and I shall adopt the term to describe this jurisdiction. Therefore, before an order is perfected, a court may exercise the Barrell jurisdiction by reconsidering and, if justice requires, changing the operative decision. Whilst it has been said that any change must be *"justified"*, as Lady Hale said in Re L (at [27]): "*A carefully considered change of mind can be sufficient"*.

(x) Once a judgment or order has been perfected, then the circumstances in which the court which made it can review it are limited. Generally, mistakes can only be corrected by an appeal court. However, CPR rule 40.12(1) and its predecessor in the RSC E&W (in its last iteration, RSC E&W Order 20 rule 11), which have formulated the so-called "slip rule", have allowed the court to correct *"an accidental slip or omission in a judgment or order"*. The rule thus exists to correct clerical and other simple errors.

(xi) Whilst this jurisdiction cannot be used to change a perfected judgment or order which reflects what the judge intended, it is well-established that the High Court has inherent jurisdiction to vary its own perfected orders so as to carry out its intention when it was made or to make its meaning plain (see paragraph 20/11/1 of the White Book 1999 and the authorities there cited). So, in Bristol-Myers Squibb Company v Baker Norton Pharmaceuticals Inc [2001] EWCA Civ 414, Aldous LJ (with whom Laws LJ and Blackburne J agreed), having reviewed the historical authorities, set out the scope of the court's jurisdiction under and the limitations of the slip rule, as follows (at [25]):

> *"Those cases establish that the slip rule cannot enable a court to have second or additional thoughts. Once the order is drawn up any mistakes must be corrected by an appellate court. However it is possible under the slip rule to amend an order to give effect to the intention of the Court."*

Another example of the exercise of that power is Williams v Williams [2023] EWCA Civ 1465 ("Williams") (see paragraphs 92(ii) and 127-129 below), relied upon by the Petitioners in a different context. That inherent power is now confirmed in paragraph 4.5 of CPR PD 40B: *"The court has an inherent power to vary its own orders to make the meaning and intention of the court clear"*.

(xii) The consequence of looking at the requirement for appealing in time together with rules under which a court might vary its own order was considered by Sir Andrew

McFarlane P in R (Nettleship) v NHS South Tyneside Clinical Commissioning Group [2020] EWCA Civ 46 at [70]-[86] in a judgment specifically devoted to clarification of the position (and expressly agreed by Peter Jackson LJ at [69]). The President reviewed the relevant authorities, and endorsed this passage from Zuckerman, 3rd Edition, at paragraph 23.23:

> *"The principle that a judgment takes effect immediately sits awkwardly with the rule that a court is functus officio only when its judgment has been formally entered and perfected. Until a judgment has been perfected, the court's jurisdiction is not exhausted and the court may recall the judgment or vary it, as described below. It would therefore appear that a judgment takes effect before the matter has been conclusively determined in the sense that the judgment can no longer be recalled."*

That analysis, with which I respectfully agree, means that a Court may have jurisdiction to change its decision after the period for appealing that decision mandated by the rules has started and, indeed, even ended.

(xiii) It was submitted on behalf of the Petitioners, relying on Barrie v J Barrie (Plant Hire) Limited [2001] EWCA Civ 614, that a court loses its jurisdiction to change its own decision once an appeal is pending. However, that case is not authority for that proposition. It is true that, in that case, an application to revisit an order of the Court allowing summary judgment was made after an application for permission to appeal had been lodged, and the Court of Appeal indicated that that was, in the circumstances, inappropriate. However, an order of the District Judge below appears to have been perfected, and appealed to the High Court where the appeal was dismissed and (it seems) an order in respect of that dismissal too was perfected. The comments made by Aldous LJ in the Court of Appeal appear to have been to the (conventional) effect that, in all the circumstances, there was no basis under the Barrell jurisdiction for the lower court to revisit its earlier perfected order. There seems no jurisdictional reason why a Court might lose its power to revisit its earlier decision simply because an appeal may be pending; although, in exercising its discretion whether to do so or not, it will no doubt have well in mind any appeal that has been made which may, in some cases, be an important factor. In others (e.g. where there has been a simple clerical error), the lower court may consider it appropriate to change its earlier order and thereby save the parties (as well as the appeal court) the time and cost of a full appeal.

87. That is the position in the Courts of England and Wales. The appeal before us, was argued – I consider rightly – on the basis that the Supreme Court of Bermuda has the same inherent powers as the High Court in England and Wales; and, generally, that similar (but far from identical) principles are applicable in the Supreme Court of Bermuda, even where inherent powers have now been confirmed in specific, express procedural rules in England and Wales.

88. RSC Order 42 covers *"Judgments and Orders"*. The required procedure and processes generally mirror those in England and Wales.

(i) Any judgment or order *"takes effect from its date"* (rule 42.3(1)), and shall be

"dated as of the day on which it is pronounced, given or made, unless the Court, the Registrar or a special referee orders it to be dated as of some earlier or later day, in which case it shall be dated as of that other day" (rule 42.3(2)).

(ii) The time to appeal runs from the date on which the judgment or order appealed against is "signed, entered or otherwise perfected" (rule 2.2).

(iii) Any *"judgment"* has to be in the form set out in Appendix A of the Rules (rule 42.1(1)) if, in the case of the judgment in question, a form thereof is prescribed in the Appendix ; and *"judgments"*, when presented for entry at the Registry, are to be entered into the book kept for that purpose by the Registrar. On entering the judgment in the Register, the Registrar is required to file the judgment and return a duplicate to the party who presented it (rule 42.5(4)). Unlike the position in England and Wales, there is no requirement for *"judgments"* to be sealed.

(iv) On the other hand, subject to exceptions not relevant to this appeal, every *"order"* shall be drawn up unless the court orders otherwise (rule 42.4(1)). Every order made and required to be drawn up must be drawn up by the party taking out the *"summons, notice or other document"*, although the other party may draw up the order if that party fails to do so (rule 42.5(5)). An order must be sealed (rule 42.1(3)).

(v) RSC Order 44 indicates that the operative part of a judicial decision for the purposes of enforcement may be contained in either a judgment or an order.

(vi) Whilst, for the purposes of a civil appeal, *"judgment"* is defined in section 1 of the Court of Appeal Act 1964 to include *"any decree, order or decision"*, neither *"judgment"* nor *"order"* is defined in the RSC. Given that only judgments are entered into the book kept by the Court Registry for the purpose and orders are generally to be drawn by a party, but the general enforcement rules (Order 44) use the term *"judgment or order"*, it seems that the use of these terms in the RSC may be a throwback to the historical use in England and Wales (see paragraph 82 above).

(vii) None of the mandatory forms for *"judgments"* set out in Appendix A of the RSC facilitates the giving of reasons, suggesting that the Rules envisage a court's reasons being in a separate document from the operative part of the decision.

89. Whilst there are, therefore, similarities between the position in England and Wales on the one hand, and Bermuda on the other, it was submitted on behalf of the Petitioners that the difference in practice in England and Wales where judgments are not sealed, and the Supreme Court of Bermuda where they are, was crucial to Ground 14 of the Grounds of Appeal. I deal with that issue in the context of the third sub-ground of Ground 14 immediately below.

<u>The Third Sub-Ground: The Nature and Effect of the Interim Injunction Ruling</u>

90. I now turn to the third sub-ground of Ground 14 itself, and the nature and effect of the Interim Injunction Ruling.

91. On behalf of the Petitioners, it was submitted that, when the Interim Injunction Ruling was signed by the Judge and sealed by the Court on 15 October 2025, that was a perfected decision or order of the Court which the Judge had no jurisdiction to vary as he purported to do in the Dismissal Order following the 6 November 2025 Hearing. The Judge decided in the Interim Injunction Ruling that the application should be dismissed if two conditions were met, namely that the Buyer (a) acceded to the Shareholders' Agreement and thus agreed to be bound by its terms and (ii) be joined into the Section 111 Proceedings as a party. The Buyer refused to do either thing, and therefore neither condition for dismissal of the application was met. Given the conditional order he had made, it is submitted that the Judge ought thereafter to have allowed the Interim Injunction Application, leaving it to Grand View or the Company to apply for a variation if it wished (e.g.) to have the interim injunction set aside on the basis of undertakings. The Judge erred in not taking that course.

92. The Petitioners' case relied upon the following propositions and submissions.

    (i) By section 12(1) of the Court of Appeal Act 1964, *"any person aggrieved by a judgment of the Supreme Court…"* may appeal to the Court of Appeal in a *"civil appeal"*. For these purposes, as I have already indicated, *"'judgment'… includes any decree, order or decision…"* (section 1).

    (ii) Relying on Williams at [24], it was submitted that, where a judge, exercising judicial power, makes a decision or gives a direction in a document which is then stamped with the court's seal, then that is a perfected order which cannot be reviewed by the same court, the seal being an indication that it has been entered into the Court Record and it is consequently *"perfected"*.

    (iii) Until a judicial decision or order has been drawn up and perfected, then a judge has "*jurisdiction to change [his or her] mind"*; but there is no jurisdiction to do so thereafter, the appropriate route being to appeal (Re L at [19]).

    (iv) Unlike in the High Court of England and Wales (where, in practice, judgments are not generally sealed), the general practice of the Bermuda Supreme Court is to seal its judgments, the seal being stamped over the signature of the judge. The Interim Injunction Ruling in this case was sealed.

    (v) The Judge's decision to dismiss the Interim Injunction Application on the two conditions he identified was therefore a perfected decision of the Court, in writing and sealed. The Judge could not thereafter review or vary it. He erred in law in purporting to do so in the Dismissal Order.

93. I have concerns about several steps in that analysis – and I deal with some of those below – but there is a straightforward answer to this sub-ground and, indeed, to Ground 14 as a whole. Each part of the ground relies on the premise that, in the Interim Injunction Ruling, the Judge made a conditional order that he could not vary; but that premise is (I consider, unarguably) false. In my view, (i) when the Interim Injunction Ruling is considered objectively in its proper context, fairly and as a whole, it did not make any operative decision, judgment or order at all; (ii) if, contrary to my view, it did make a conditional order, then that order did not arguably correspond with the Judge's intention and, so, he was able to vary it under the slip rule so that it did; and (iii) even if I am wrong

in my view that he could vary any order under the slip rule because the order did not reflect his intention, as he made an order on the basis that the Buyer would give certain assurances/undertakings, when the Buyer refused/refused to do so, then that was a material variation of circumstances which enabled the Judge to vary the order in any event.

94. I accept that, following the circulation of the draft Ruling, the parties and Concert Holdings considered that the Judge had made (or, at least, intended to make) an order dismissing the Interim Injunction Application on condition that the Buyer acceded to the Shareholders' Agreement and joined these Section 111 Proceedings as a party. Indeed, based on that understanding and even encouraged by the Judge, Grand View made an application to vary on the basis that the Interim Injunction Ruling intended to make a conditional dismissal order, and the Petitioners made substantial written submissions for the 6 November 2025 Hearing as to the Judge's lack of jurisdiction to make any such an order. Such an application would not have been necessary unless there was an extant order that might require variation.

95. However, at the 6 November 2025 Hearing, the Judge made it abundantly clear that he had never intended to make an order of any kind, and particularly not a conditional order, before hearing further submissions (paragraph 54 above), which he reiterated in paragraphs 25-30 of his Leave to Appeal Ruling (paragraph 58 above); and, when the Interim Injunction Ruling is looked at objectively, in its proper context, I consider it properly reflected that intention and did not make any sort of operative decision, judgment or order. The use of the word *"condition"* in paragraphs 8 and 120 of the Interim Injunction Ruling does not mean either that the Interim Injunction Ruling considered objectively was an operative judgment or order, or that it was the Judge's intention when giving the Ruling to make a decision in that Ruling, there and then, to dismiss the Application if, and only if, the two conditions to which he referred were satisfied. Indeed, looking at the evidence as a whole, it seems to me that that is not the true meaning of the Ruling objectively construed and, certainly, it is clear that the Judge never had any intention of making such an operative decision, judgment or order.

96. As the Judge himself accepted at the 6 November 2025 Hearing, he might have expressed himself more clearly in the Interim Injunction Ruling; and I accept that what he meant by *"conditions"* in paragraph 8 of the Interim Injunction Ruling might, without more, be ambiguous. However, he made clear what he considered the Ruling to do, and meant and intended it to do, at the 6 November 2025 Hearing and then in the Leave to Appeal Ruling, perhaps most clearly in paragraph 27 of that Ruling, quoted at paragraph 58 above as follows:

> *"I did not say that the order dismissing the Plaintiffs' application should be drafted in conditional terms. I envisaged that before the order dismissing the application was drawn up it would be necessary for the Buyer to take the steps or agree to take the steps at some future date and that the details regarding the action to be taken and the time and manner in which the Buyer would take the necessary steps would be addressed by all parties at the consequentials hearing following the handing down of the Judgment (and before an order to give effect to the judgment was drawn up). The reference to*

> *'conditions' needs to be understood in this context. The action (by non-parties) I had identified needed to be undertaken, at a time and in a manner to be discussed and decided, before the order dismissing the application could and would be made."*

In other words, as Gloster JA said during the course of argument, in what might properly be described as *"the usual way"* (or at least *"a common way"*), having given his Ruling, the Judge expected further submissions on how effect could be given to it after the Buyer had been given an opportunity to address the two concerns he had raised; and his use of the term *"conditions"* had to be understood in that context. He, thus, never intended at the time of the Ruling (or, indeed, at any time) to make any form of *"conditional order"*.

97. Indeed, that he never intended to make an order of any sort – he always intended to hear further submissions before making any operative decision – is reflected in even the matters relied upon by the Petitioners to show the opposite. For example, in the Court's email to the parties dated 24 October 2025 which the Court sent to the Parties on behalf of the Judge, the Judge directed that *"…despite the conditions to the dismissal as articulated and set out in the Judgment … **it will be a matter for submissions at the [6 November 2025 Hearing]** as to whether the Court can make an order dismissing the application conditional upon the undertakings being given to the Court by Concert Holdings (instead of and in substitution for the conditions set out in the Judgment)…"* (emphasis added).

98. None of that is surprising. At the time of the Interim Injunction Ruling, the Judge had not heard submissions on any form of disposal of the application, including the *"conditions"*. As he made clear in his observations at the 6 November 2025 hearing (set out at paragraph 58 above), it was as obvious to the Judge as it was to the parties and the Buyer that the Court could not impose conditions, as such, on the Buyer as a non-party: it was not *"in a position to direct precisely what the Buyer should do"*. Nor did the Judge suggest what the sanction might be if the conditions were not, in the event, met: he clearly never intended to make an order that, if either of the conditions were not met, then the Interim Injunction Application would be *granted*, irrespective of what the parties might further have to say.

99. So, when looked at objectively, fairly and in its full context, I do not consider that the Interim Injunction Ruling made any operative decision, judgment or order at all. That it was signed by the Judge and sealed by the Court does not, of itself, make it such.

100. However, even if, looked at objectively, it was an operative decision in the form of a perfected judgment or order, what is clear from Judge's comments at the 6 November 2025 Hearing and then in the Leave to Appeal Ruling – and clear beyond any doubt – is that, in the Interim Injunction Ruling, he never *intended* to make a conditional order or, indeed, an order of any sort.

101. The Petitioners did not seek to submit at the 6 November 2025 Hearing that the Judge was wrong in denying any such intention. However, before us, they did make precisely that submission, i.e. that, in the Interim Injunction Ruling, the Judge *did* intend to make, not just an order, but a conditional order; and he understood paragraph 8 of that Ruling to constitute a conditional dismissal order, as evidenced by the following (paragraphs 65-66 of the Petitioners' Skeleton Argument):

(i) In paragraphs 8 and 120 of the Ruling, the Judge refers four times to a *"condition"* for the dismissal of the Interim Injunction Application.

(ii) Paragraph 11 of the Leave to Appeal Ruling quotes the 10 October 2025 letter from Concert Holdings to the parties to the Section 111 Proceedings in which Concert Holdings, under the heading *"Conditional Dismissal"*, described the Interim Injunction Ruling as requiring the two conditions.

(iii) Paragraph 17 of the Leave to Appeal Ruling quotes an email dated 22 October 2025 which the Court sent to the Parties on behalf of the Judge, in which he directed the issues to be determined at the 6 November 2025 Hearing would include whether the Buyer's Undertakings were *"sufficient to justify the removal from the order of the conditions to the dismissal of the Petitioners' application for the Injunction set out in the Judgment …"*.

(iv) Paragraph 18 of the Leave to Appeal Ruling quotes the email dated 24 October 2025 which the Court sent to the Parties on behalf of the Judge referred to in paragraph [51] above, in which he directed that *"…despite the conditions to the dismissal as articulated and set out in the Judgment … it will be a matter for submissions at the [6 November 2025 Hearing] as to whether the Court can make an order dismissing the application conditional upon the undertakings being given to the Court by Concert Holdings (instead of and in substitution for the conditions set out in the Judgment)…"*.

(v) Paragraph 20 of the Leave to Appeal Ruling quotes Grand View's Variation Summons filed for the 6 November 2025 Hearing as seeking to have the Interim Injunction Application *"dismissed on condition that, from completion of the said sale and upon the Buyer becoming the sole shareholder of the Company…"* certain undertakings were in place.

102. A submission that a Supreme Court Judge did not intend what he unequivocally says he did intend – or that he intended what he unequivocally says he did not intend – is, to say the least, bold. Any such submission requires a very compelling foundation. In the circumstances of this case, it is a submission which does not withstand any scrutiny.

(i) Examples of the parties and others expressing an understanding that the Interim Injunction Ruling contemplated a conditional order, before the Judge explained his intention at the 6 November 2025 Hearing, do not assist in ascertaining what the Judge's intention, in fact, was. Nor are instances of the Judge setting out such examples as reportage, or otherwise referring to *"conditions"* (as that term was used in the Interim Injunction Ruling) in his Leave to Appeal Ruling in which he made clear both his intention in the earlier Ruling and the context in which he used the word *"conditions"*.

(ii) But, in any event, the Judge clearly neither intended to make an order nor considered that he was doing so in issuing the signed and sealed Interim Application Ruling on 15 October 2025. On the evidence, I do not consider it is arguable that he intended to make a conditional order so that, even if (contrary to my view), looked at objectively, the Interim Injunction judgment was a perfected order, it was not open to the Judge to vary it to accord with his original intention.

Indeed, in my respectful view, it falls far short of even that low hurdle.

(iii) Insofar as the Judge suggested, encouraged or required Grand View to file an application seeking to vary the Interim Injunction Ruling (see paragraph 52 above), the Judge made it clear that he did so, not because he ever intended to make a conditional order, but *"out of an abundance of caution"* (see paragraph 32 of his Leave to Appeal Ruling, quoted at paragraph 58 above). Even if the Ruling was a perfected order which the Judge was not able to vary under the slip rule, he made it on the basis that the Buyer would give the assurances he identified. When they did not, then that was a material change of circumstances which enabled the Judge to vary any earlier order he made.

(iv) Indeed, in my view that caution was justified, because, depending on the outcome of the debate on other ways in which his intention could be implemented, it would have been open to the Judge to have varied any order made because of a material change in circumstances, namely that the Buyer had refused or otherwise failed to give the assurances/undertakings that the Judge has assumed they would give (see paragraph 58 above).

103. In the circumstances, I do not consider that the Interim Injunction Ruling, properly construed, is a *"perfected decision"* (whether judgment or order) such as to have deprived the Supreme Court of further jurisdiction in relation to the Interim Injunction Application. It was, at its highest, a decision in principle but one which expected and required further submissions and further consideration by the Judge before the outcome of the application was approved by him let alone perfected. As such, before finalising and perfecting the decision in the 6 November 2025 Order, it did not require the exercise of even the Barrell jurisdiction let alone the Court's jurisdiction to change a perfected order. If I am wrong in that, then (i) the order did not correspond with the Judge's intention when he made it, and consequently he could vary it under the slip rule so that it did correspond, and (ii) even if the power to correct the order under the slip rule was not available, it was open to the Judge to vary any earlier order because of a material change of circumstances.

104. That is sufficient to dispose of Ground 14: it is unarguable, and I would refuse permission to appeal in respect of it.

105. Having disposed of Ground 14 in that way, it is unnecessary to determine other sub-grounds or points raised in the context of Ground 14. However, in deference to the submissions of Counsel, I make the following three observations on those issues.

First Observation

106. As what I have described as *"the first sub-ground"*, it was submitted on behalf of the Petitioners that the Judge erred in making a conditional order because, in this context, the RSC do not contain a provision which gives the Supreme Court the general power to make conditional orders akin to CPR rule 3.1(3) which provides that: *"When a court makes an order, it may… make it subject to conditions"*.

107. However:

(i) CPR 3.1(3) merely codified an inherent power in the High Court to make conditional orders. We were referred to paragraph 12.75 of Zuckerman (5th Edition) which confirms the earlier inherent power of the High Court, itself referring to Marcan Shipping (London) Limited v Kefalas [2007] EWCA Civ 463 at [11]-[15] which traces the power to make conditional orders back to 1878.

(ii) The Bermuda Supreme Court has recognised the same, well-established, inherent power (see, e.g., Heart & Soul Construction Limited v Eve [2017] Bda LR 142 at [25]-[26]). Mr Summers submitted that this inherent power is restricted to an *"unless order"*, i.e. a peremptory order that, unless some procedural step is taken by a particular time, then some sanction will apply. However, the inherent jurisdiction to make conditional orders, as now found in CPR rule 3.1(3), has never been so restricted and has always been used (for example) to direct payment of money for case management purposes such as an order granting permission for late service of particulars of claim conditional on payment into court despite other possible procedural routes by which this could be accomplished (see Zuckerman (5th Edition) at paragraph 12.77-12.84 and the cases there cited). There is no basis for constraining the power as Mr Summers suggested.

(iii) In any event, a general power to make conditional orders is granted to the Bermuda Supreme Court by statute, and has been for some considerable time. Section 18 of the Supreme Court Act 1905 provides that *"the Court, in the exercise of the jurisdiction vested in it by virtue of this Act, shall have power to grant, and shall grant, either absolutely* ***or on such reasonable terms and conditions as seems just****, all such remedies or relief whatsoever, whether interlocutory or final…"* (emphasis added).

108. For those reasons, if it were a live issue, I would not consider the first sub-ground to be arguable either.

Second Observation

109. As *"the second sub-ground"*, it was submitted that the conditional order would, in any event, be unlawful because the conditions were unclear and/or impossible to satisfy and/or were not a proportionate and effective means of achieving the Judge's stated purpose. The short answer to this sub-ground is that no conditional order was made (see paragraphs 78-104 above); but I need to consider it further because parallel and supplemental submissions were made in respect of the undertakings which were eventually accepted *in lieu* of any *"conditions"*.

110. The two conditions referred to by the Judge in the Interim Injunction Ruling were that (i) the Buyer acceded to the Shareholders' Agreement and thus agreed to be bound by its terms and (ii) the Buyer be joined into the Section 111 Proceedings as a party. The Petitioners submit that the Judge's stated purpose for imposing those conditions was set out at paragraphs 8 and 117-119 of the Interim Injunction Ruling.

111. It is said (Petitioners' Opening Submissions, paragraph 70) that the first condition was proposed to ensure that *"the Buyer would become a formal party to the SHA so that the Company and its corporate governance structure would continue in its current form pending trial…"*. It is submitted that this constitutes an error of law because:

(i) the Buyer could not accede to the Shareholders' Agreement because it did not and could not meet the explicit shareholder requirements in both Part II of the Shareholders' Agreement and Bye-Law 3.2 of the Bye-Laws, in that (e.g.) it is an insurance company not ultimately controlled by a non-profit health system nor is it intending to participate in the Insurance Program (see paragraph 13 above); and

(ii) the proposed condition is not a *"proportionate and effective means of achieving"* the identified purpose because acceding to the Shareholders' Agreement does not prevent the fundamental alteration in the Company's governance documents in a manner which prejudices the Court's ability to grant an adequate remedy following trial. Indeed, it was suggested that the waiver in itself amounted to such an alteration.

112. However:

(i) The fact that the Buyer was not ultimately owned by a healthcare system and did not intend to participate in the Insurance Program (because it had no medical malpractice risk to cover) does not prevent it being a shareholder in the Company. It is open to the Company to waive the relevant requirements if at least 80% of shareholders agree (see paragraph 20(iii) above), as it has in fact done. A copy of the Company's Board Resolution was in evidence before the Judge in Exhibit LR-4 to Ms Ramthun's Fourth Affidavit sworn 4 June 2025 (at page 76); and the letter from the Company to the Buyer confirming the waiver as Exhibit B to the SPA. Such a waiver does not amount to a *"fundamental alteration in the Company's governance documents"*. Far from being or enabling a "*fundamental alteration in the Company's governance documents*", this was an example of those documents in action.

(ii) The waiver made here did not change either the role of the (sole) shareholder or the ability of that shareholder to make changes to the Company as allowed by the Shareholders' Agreement, only the identity of that shareholder. Of course, as the Company is in run-off, it is not involved in new insurance coverage, but rather only administering and paying the claims on existing policies as and when they arise. However, the Company being in run-off is not the result of any sale to the Buyer, but rather the exclusion of the Petitioners as shareholders of the Company leaving just one shareholder (Grand View) which made run-off inevitable (see paragraph 29 above). The role and powers of the sole shareholder and the governance structure of the Company would not change as a result of the Concert Transaction being closed. The only thing that would change is the identity of that shareholder.

113. It is said that the second condition was bad because:

(i) it was an error of law to make the joinder of the Buyer into the Section 111 Proceedings a condition of dismissal in circumstances in which there was *"no proper legal or factual basis to join the Buyer as a party at this stage"*; and joining the Buyer as a *"nominal party"* would cause the Buyer disproportionate prejudice and be procedurally unnecessary; and

(ii) contrary to the overarching intention of the Judge, joining the Buyer would not provide the Petitioners with sufficient protection with regard to eventual remedy,

because the Buyer was created by Concert Holdings for *"litigation risk purposes"* and is intended to be a shell company with no assets beyond those required to close the Concert Transaction, so that it (the Buyer) is unlikely to have any assets to satisfy a buyout order granted by the Court following trial or to pay any damages from breach of the Buyer's undertakings.

114. However:

(i) The Buyer eventually agreed to be a party to the Section 111 Proceedings, as covered in the undertaking recited in the preamble to the Dismissal Order. Whether the joinder of the Buyer was necessary to ensure adequacy of remedy after trial was an assessment in the hands of the Judge. He did not arguably err in considering that it was necessary.

(ii) Liability for the buyout of the Petitioners falls, primarily, on the Company; and, then, if the Company cannot meet that liability, on Grand View insofar as it is ordered to repay distributions made to it or to pay or contribute to the sum to be paid for the Petitioners' equitable interest in the Company. In his analysis of these liabilities, the Judge concluded that *"the sale of [Grand View's] shares in the Company will not adversely affect the remedy available to the Petitioners or prevent the Petitioners being granted adequate relief following the trial of the Re-Amended Petition"* (Interim Injunction Ruling, paragraph 114). I consider these liabilities in detail in relation to Ground 11 (see paragraphs 147 and following below). The financial standing of the Buyer plays no part in these analyses. The risk of the Company distributing its assets to the Buyer is now covered by the Buyer's undertaking to the Court, recorded the preamble to the Dismissal Order, to *"cause the Company to not make any dividend payments or other distributions to it as shareholder until these proceedings have been finally determined by the Supreme Court or by the consent of the parties"* (quoted in full at paragraph 55 above). I consider the submission made on behalf of the Petitioners, that a material risk to the ability of the Court to make an effective buyout order would arise if the run-off were in the hands of the Buyer and its affiliates, below (paragraph 203).

115. In addition to these criticisms of the conditions indicated in the Interim Injunction Ruling, it was submitted on behalf of the Petitioners that the Buyer's undertakings set out in Dismissal Order would be insufficient to replace a properly granted injunction, in that it would not properly guard against the risk of the assets of the Company being depleted under the control of the Buyer such that they would be insufficient to meet an award by the Court that the Company pays the Petitioners the fair value of their shares. This overlaps with the subject matter of the other grounds in the appeal, dealt with below; but the Petitioners rely on four *"fundamental issues"*, set out in paragraphs 50-60 of their Skeleton Argument and expanded in oral submissions, which I will cover here.

116. First, it is said that the undertakings allow the Buyer to cause the Company to pay to the Buyer and its affiliates (i.e. Concert Holdings or other Concert Group companies), amongst other things, *"ordinary course service fees"*, which the Judge declined to define; so that the Buyer can therefore still be used to dissipate the Company's assets through run-off.

117. However, the (then proposed) undertaking was discussed at the 6 November Hearing

(Transcript pages 70-74) where the Judge indicated that (i) what is in *"the ordinary course of business"* is a *"self-evident and clear"* term of art, and (ii) the undertaking could be policed in the usual way, and, if the Buyer failed to obtain pre-approval for any fees that might not fall within that category, it would be at its risk. That appeared to have satisfied the Petitioners. It was said on their behalf: *"That was the clarification on policing that we were looking for, especially in the context of dissipation of assets"* (Transcript page 74 lines 15-17).

118. In any event, there are no grounds for this concern. The Company is in run-off, which means that fees are going to continue to be incurred – as they have been to date – in servicing the run-off claims. Whilst I accept that what is captured by "ordinary course service fees" is a mixed question of law and fact, "ordinary course" is a term in common use in business including insurance, and the question of what falls within or outside that term in particular circumstances is highly fact specific. The Judge was right not to attempt to define the term or set out what might fall within/outside it, a task which was both unnecessary and impossible. There is no evidence in support of the assertion that the Buyer and its Concert affiliates wish or intend to abuse their ability to claim such fees, and the speculation that they may (and that may lead to further litigation between the parties) is something which the Judge clearly considered – as he was asked by the Petitioners to do – but not of any significant force in relation to the issues before the Judge.

119. There was nothing arguably objectionable to this undertaking. The risk of the Buyer breaching the undertaking in circumstances in which it could not pay any loss which resulted to the Petitioners was a matter for the Judge to take into account in his overall assessment of the impact of the closing of the Concert Transaction on the adequacy of remedy that would be available to the Petitioners after trial.

120. Second, it is said that the undertakings do not prevent the Buyer from fundamentally changing the nature and governance of the Company in a manner which prejudices the Court's ability to grant an adequate oppression remedy after trial. The evidence relied on by way of example – presumably regarded by the Petitioners as the most telling example – is Section 3.3 of the Company Group Disclosure Schedule to the SPA, which states that:

> "Prior to Closing, the Company Parties [i.e. the Company and Cassatt Holding] shall amend or terminate the CICL Governance Agreements [notably, in this context, the Company Shareholders' Agreement], or otherwise waive the applicable restrictions contained therein, so that such restrictions will not apply at the time of Closing."

121. However, this is essentially the same point as was raised in relation to the conditions, dealt with above (paragraphs 109-112), and, as I indicated there, the answer to it is the same: a waiver of the relevant restrictions neither amounts to nor enables a fundamental alteration in the Company's governance documents, but rather an example of those documents in action. This point does not materially add to the Petitioners' submission to the Judge as to the potential impact of the run-off business being conducted by the Buyer/Concert Group which, after careful consideration, the Judge found did not materially increase the risk of the Company being unable to satisfy a buyout order (paragraph 110 of the Interim Injunction Ruling). Furthermore, insofar as the governance

of the Company post-closing is concerned, it will be (i) a run-off company, and (ii) regulated by the Bermuda Monetary Authority ("the BMA"), the regulator for insurance companies operating in Bermuda.

122. Third, it is submitted that the undertakings are ineffective because they do not require Grand View to remain a Respondent in the Section 111 Proceedings or to maintain funds that might be required to satisfy an order against it (Grand View) in respect of compensating the Petitioners following trial; and the Judge erred in not requiring Grand View to give such undertakings.

123. However, there is nothing in this either. Whether Grand View remains a Respondent is not entirely in its hands, because the leave of the Court would be necessary for it to withdraw. The Court would not allow it to do so unless satisfied that that would not adversely affect the rights of the Petitioners. An undertaking that it remain as a party was, and still is, unnecessary. In respect of Grand View retaining specific funds, the Judge proceeded on the basis that any award in the Petition could and would be satisfied by the Company and, so, the financial position of Grand View is not relevant. I deal with this under Ground 11 (paragraph 146 and following below).

124. Fourth and finally, it was submitted on behalf of the Petitioners that the Judge erred at the 6 November Hearing in not allowing a full re-hearing of the application at which the Petitioners could have made full submissions before him (what Mr Summers called before us, *"the missing hearing"*), such that his decision to refuse the application for interim relief was *"unjust for irregularity"*. This complaint is both lacking in merit and unfair.

125. In support of it, the Petitioners placed reliance on Labrouche v Frey: Practice Note [2012] EWCA Civ 881 at [21]-[39]. However, that case is authority for the unsurprising and uncontroversial proposition that, at a hearing, a court must retain an open mind and not (e.g.) having considered the papers and formed a view, refuse to hear oral submissions from a party who was entitled to be heard; and there is simply no basis for the assertion that Segal AJ, having considered the possibility of a dismissal on the basis of undertakings from the Buyer, shut his mind or refused to hear further submissions from any party including the Petitioners.

126. Indeed, far from it. The Petitioners had the relevant material in relation to the proposed undertakings, which was before the Court at the 6 November 2025 Hearing. For example, in relation to requirements so far as shareholders were concerned as set out in the Shareholders' Agreement and Bye-Laws – and their waiver – the documents were before the Court. Before that hearing, the Petitioners filed the Ninth Affidavit of Ms Ramthun sworn 30 October 2025 which, in paragraphs 11 and following, set out what were essentially submissions on *"Concert Holdings' proposed undertakings provide no protection for the Petitioners"*, taking the proposed undertakings in turn. Further, the Judge, far from shutting out the Petitioners, encouraged them to make submissions, in terms expressly inviting them to do so (Transcript page 45 lines 10-11); and, the transcript suggests, patiently listened to all the submissions that were made on behalf of the Petitioners (although, on the basis that the submissions they now say they were deprived of making were those set out above, there was no substance to them in any event). It simply cannot be suggested that he had a closed mind or refused to listen to and consider the Petitioners' submissions on the proposed undertakings. He did not, of course, agree

with them; but that is a very different point.

The Third Observation

127. Third, as I have described (paragraph 92(ii) above), relying on Williams, Mr Summers submitted that, where a judge, exercising judicial power, makes a decision or gives a direction in a document which is then stamped with the court's seal, then that is a perfected order which cannot be reviewed by the same court, the seal being an indication that it has been entered into the Court Record.

128. In Bermuda (unlike England and Wales), there is no procedural requirement for judgments to be sealed (see paragraphs 86(v) and 88(iii) above); and judgments, but not orders, have to be presented to the Registry *"to be entered into the book kept for that purpose by the Registrar"* (see, again, paragraph 88(iii) above). But, leaving those points aside, whilst, for the reasons set out above (paragraphs 86(vii) and 88(ii)), time to appeal begins to run when a judicial decision is made or given (rather than when it is perfected), I accept that, once an order is perfected by the court sealing it, then that order can be reviewed and changed by the same court only under the limited circumstances set out above, i.e. under the slip rule (including in circumstances in which the court varies its own perfected order to reflect or clarify its meaning or intention) (see paragraph 86(x)-(xi) above).

129. However:

(i) In this context, I do not consider that Williams assists at all here. It concerned very different circumstances, i.e. the procedure adopted in England and Wales on applications to an appeal court for permission to appeal to that court, which are usually determined without a hearing, on a form designed for the process which includes both the outcome (usually, *"Leave to appeal refused"* or *"Leave to appeal granted"*) together with brief written reasons. The issue for the Court of Appeal in Williams was whether such a document was an order for the purposes of the slip rule, so that it could be varied by the judge who had completed the form to clarify his meaning and intention as to whether he had in fact granted leave in respect of a specific ground. Given that the form was headed *"Order"*, and the relevant rule (CPR rule 52.5) envisaged that such applications would be determined on paper, the Court of Appeal unsurprisingly held that it was. But that, it seems to me, does not assist with the resolution of the issues in the appeal before us.

(ii) As described above (paragraph 88), I accept that, in Bermuda, where a judge exercising a judicial function gives or makes an operative decision, judgment or order, then:

(a) time for appealing that decision begins to run from the date the decision is given or made, and not from the date it is perfected (i.e. expressed in a sealed judgment or order);

(b) after a decision has been given or made, but before it is perfected, then the Court has an inherent power to vary that decision: although that power has to be justified and exercised in a judicial way, a considered and informed change of mind will be sufficient justification; and

(c) once that decision is perfected, then, subject to the inherent power to vary it under the slip rule (including the power to vary it to ensure that the judgment or order properly reflects the judge's intention at the time it was made or given), that judgment or order cannot be reviewed or varied by that court but can only be challenged on appeal.

(iii) However, that does not mean that every document that is sealed by the court is a perfected judgment or order (nor did any party suggest that it was). It can only be a perfected judgment or order if, objectively considered, it is an operative decision. Even then, the Judge may reconsider and vary it if it fails to set out his intention at the time he made or gave it.

(iii) The respective practices of the Supreme Court of Bermuda and the Courts of England and Wales are different in that, in the former, reasoned "judgments" are sealed whereas in the latter they are not. This is driven by convention, not the procedural rules: indeed, as I have described, in the Supreme Court of Bermuda, *"judgments"* as opposed to *"orders"* do not have to be sealed, and in the Courts of England and Wales there is a procedural requirement that both are sealed. Furthermore, the conventional position is made curiouser in practice by the fact that judgments in this Court (the Court of Appeal of Bermuda) are *not* sealed. In any event, the terms *"judgment"* and *"order"* in Bermuda, and England and Wales, are not consistently used; and it is sometimes not expressly or clearly stated how those terms are being used in any particular context.

(v) Given that state of uncertainty as identified in this appeal, and pending any guidance the Chief Justice may give, it seems to me it would be helpful if every ruling in the Supreme Court made clear if further submissions are required before any decision is finalised and whether the Ruling (or any part of it) does or does not constitute an operative decision in the form of a "*perfected judgment or order"*. In most cases, it would be sufficient for the ruling simply to say, if it be the case, that nothing in it constitutes a perfected judgment or order, the terms of which will be settled in a separate, sealed document. If that is made clear in a ruling, it would not matter whether the ruling itself is sealed by the Court.

Conclusion

130. For those reasons:

(i) The Interim Injunction Ruling did not constitute an order or judgment of the Court at all.

(ii) Insofar as it did constitute such an order or judgment, then that order or judgment did not accord with the intention of Segal AJ at the time he made it; and, so, it was open to him to vary it under the slip rule so that it did so accord. The contrary to this proposition is unarguable.

(iii) Insofar as it was a conditional order that was incapable of being corrected under the slip rule, when the Buyer refused or otherwise failed to give the assurances required, that was a material change of circumstances which enabled Segal AJ to review and vary his initial order or judgment.

131. Consequently, particularly given (ii), I consider Ground 14 to be unarguable, and I would refuse leave to appeal on this ground.

Grounds 1-13: Introduction

132. Grounds 1-13 in various ways challenge the Judge's finding that the closing of the Concert Transaction will not materially prejudice the Court's ability to grant an adequate oppression remedy following trial.

133. The primary relief sought by the Petitioners is that the Company pay them *"an amount that [the] Court determines to be a fair value of the Petitioners' equity interest in the Company"* (paragraph 83(b) of the Re-Amended Petition, quoted at paragraph 31(i) above). It is therefore perhaps unsurprising that the focus of the debate before us was on whether the closing of the Concert Transaction would result in a real risk that the Company would be unable to satisfy an order made at the trial of the Petition requiring it to pay the Petitioners fair value for their shares, although with some submissions being made on the issue of whether, if the Company could not satisfy such an order, whether and how Grand View may be called upon to do so.

134. The Petitioners' case on these issues before the Judge, so far as recovery against the Company is concerned, was set out in paragraphs 77-79 of their Skeleton Argument for the 1 July 2025 hearing in the Petition:

> *"77. First, the Petitioners are unlikely to be able to recover the full value of their equity interest from the Company because the terms of the Concert Deal require a significant dissipation of the Company's assets through payments to Grand View. The Concert Deal involves the Company directly or indirectly compensating Grand View up to $7,400,000 comprised of: (i) $3,450,000 as part of the Grand View Approved Distributions, (ii) $2,500,000 as part of the Grand View Expense Distributions, and (iii) $1,450,000 in the form of the Debt Write-Off.*
>
> *78. To put those figures into perspective, the November 2023 WTW Report valued Grand View's less than one-third of allocated equity in the Company at just $916,000… That represents approximately 5.1% of the allocated equity in the Company, which roughly coincides with the percentage of the total premiums paid to the Company by Grand View. The Petitioners having historically paid over 90% of the premiums to the Company….*
>
> *79. In a best-case scenario for Grand View, assuming Grand View and the Petitioners could split the full value of the unallocated equity on a pro rata basis (which is unlikely), the most that Grand View could expect to receive for its total equity in the Company is $2,617,275. However, by purporting to oppressively force the Petitioners out of the Company and secretly negotiate the Concert Deal, Grand View would now receive approximately $8 million more than it would otherwise be entitled to but for the oppression (including the compensation from the Company and the $3 million*

payment from [the Buyer]).”

135. This reflects the evidence of the Petitioners’ expert, Mr Osborne. He appears to have accepted that the valuations of total shareholders’ equity in the WTW November 2023 Report and in the June 2024 Accounts were properly equivalent to net asset value as it stood as at those dates; that, although the result of the run-off cannot be certain, there is no reason to think that the run-off would in itself reduce the total equity in the Company; and, so, if the Company did not distribute more than the value of Grand View’s equity, then the Company would have net assets sufficient to satisfy any buyout order of the Court in favour of the Petitioners (Osborne 1, paragraphs 18-20).

136. Therefore, the main focus of the debate before the Judge – and also before us – was whether the amount of the assets of the Company moving away from the Company in the form of distributions to Grand View as part of the Concert Transaction was more than the value of Grand View’s equity in the Company as at 29 January 2024. If it was, then it was argued that there was a risk that an award by the Court for the Company to buy out the Petitioners’ equity (valued as at 29 January 2024) might not be met by the Company; if it was not, then, with one caveat, there was no such risk. That was the main issue between the parties on the “merits”, both before the Judge and (under Ground 11 as expanded) before this Court. I will refer to it as “*the central issue*”. The caveat came in the form of narrow, identified post-Concert Transaction matters upon which the Petitioners relied to show risk because they might result in the diminution of the assets of the Company after the closing of the Transaction (such as the fact that the Buyer would be involved in the run-off as a sole shareholder and, thus, “unsupervised”) which were covered in the debate before us on the expanded Ground 11 but also as Grounds 5 and 7 in the appeal.

137. I therefore respectfully disagree with Clarke JA that the Judge assumed that the valuation of the Company’s equity would not change after January 2024 (see paragraph 254 below); nor do I make such an assumption. Rather, the Judge and I have proceeded on the basis that the valuation of the equity would not change except on the specific, identified and disputed grounds relied upon by the Petitioners (e.g. the assets of the Company might be adversely affected by the Company’s business being run-off by the Buyer/Cassatt Holdings) upon which the parties submitted evidence and made submissions.

138. Before I consider the grounds, it would be helpful to set out the Judge’s assumptions, findings and conclusions in the relevant part of his Ruling on these issues which, to a substantial extent, the Petitioners now seek to challenge. They are as follows:

    (i) The total equity in the Company was, as at the date of the Forced Withdrawal Notice, approximately $39.5m, i.e. the midway point between the figure in the WTW Report ($49m) and the figure in the Company’s latest financial statements of $30m (paragraph 108).

    (ii) For the purposes of the application, the Petitioners were entitled to 78.5% of the equity in the Company (i.e. the midway point of the range of 90% and two-thirds claimed by the Petitioners, the 94.9% figure being “an outlier” and too high to be used) and Grand View was entitled to 21.5% (paragraphs 99 and 108).

(iii) On the basis of those figures, the value of Grand View's equity in the Company was approximately $8.5m (21.5% of $39.5m).

(iv) As a result of the Concert Transaction, Grand View would receive $5.95m from the Company by way of distribution (paragraph 109).

(v) The Petitioners were therefore unable to show that, if that distribution were made by the Company, it would exceed the value of its share of the equity (net assets) in the Company to which Grand View is entitled (paragraphs 109 and 113); and the Company's Board could be assumed to have been satisfied (as was the Judge) that the sums being distributed to Grand View were in an amount to which Grand View was in any event likely to be entitled (paragraph 112).

(vi) Consequently on the central issue, as the value of the Company's assets after discharging liabilities is approximately equivalent to the value of shareholders' equity, such a distribution would not pose a real risk that the Company will retain insufficient net worth to be able to satisfy an order that it pay the Petitioners full and fair value for their share of the equity when forced out of the Company (paragraph 109).

(vii) On the evidence, the Judge was not satisfied that there was a material risk that the Company's ability to satisfy a buyout order would be adversely affected by the Company's business being run-off by the Buyer/Concert Holdings (paragraph 110).

(viii) Assuming the Company does not make distributions of over the $5.95m figure, the Petitioners had therefore failed to establish that there is a material or sufficient risk that the distributions which the Company proposes to make to Grand View would prejudice its ability to satisfy a reasonable estimate of the sum which would be payable to the Petitioners if the Court makes a buyout order (paragraph 111).

(ix) The Judge considered the evidence of Mr Hughes (paragraph 20 of his First Affidavit sworn 25 July 2025) and Mr Dethlefs (paragraph 43 of his First Affidavit sworn 13 June 2025) as to Grand View's ability to return the distributions or itself to pay the Petitioners the fair value of the shares. Both asserted that the Company was solvent and, based on its current financial position, would be able to meet an order for payment of the amount the Petitioners sought in the Section 111 Proceedings. However, the Judge considered the evidence was generalised and limited, and it was challenged by the Petitioners. He considered it was insufficient to justify a finding that there was no risk of the Petitioners being unable to obtain a remedy if the proposed distributions by the Company exceeded a reasonable assessment of Grand View's equity interest (paragraph 112). I do not consider it is necessary for the purposes of this application/appeal to revisit that conclusion. I shall proceed on the basis that any award by the Court in favour of the Petitioners in respect of the fair value of their shares will have to be met by the Company.

(x) In view of the Company's (as well as Grand View's) need to introduce additional expertise to organise and manage the run-off, the Concert Transaction is needed by, and would be in the best interests of, the Company (paragraph 113); and the Company's Board could be assumed to have been satisfied (as was the Judge) that

Grand View needed funds to be able to undertake and complete the Concert Transaction and that, in view of the Company's (as well as Grand View's) need to introduce additional expertise to organise and manage the run-off, the Concert Transaction was needed by and would be in the best interests of the Company, (paragraph 112).

(xi) Consequently, the sale of Grand View's shares to the Buyer *"will not adversely affect the remedy availability to the Petitioners or prevent the Petitioners being granted adequate relief following the trial of the Re-Amended Petition"* (paragraph 114).

(xii) The Petitioners *"ha[d] not demonstrated that the Concert Transaction or the making of the proposed distributions involve or give rise to a real risk of the dissipation of assets resulting in the Company being unable to satisfy a buyout order made on the Re-Amended Petition"* (paragraph 122).

(xiii) It seemed to the Judge *"[to] be unarguable that the payment by the Company of the distributions which it proposes to make, in the circumstances…,could be said to be acting improperly or unlawfully or with a view to evading a judgment subsequently made by this Court on the Re-Amended Petition"* (paragraph 122).

139. The Grounds of Appeal are extremely lengthy and discursive, and some have several strands of argument, not all of which were actively pursued before us. Having cleared the decks of two grounds relating to rectification (Grounds 8 and 13), I will deal with the central issue under Ground 11. I then deal with the other individual grounds more briefly.

140. The order in which I will deal with the grounds is, therefore, as follows: (i) Grounds 8 and 13, which concern rectification (paragraphs 141-146 below); (ii) Ground 11 and the wider arguments deployed with it (paragraphs 147-190); (iii) Grounds 2-4 and 12, which are closely linked to Ground 11 and the arguments I deal with under that ground (paragraphs 191-202); (iv) Grounds 5 and 7, which concern post-closing matters (paragraphs 203-209); (v) Grounds 1 and 6, which concern Grand View's potential liability in respect of any buyout order (paragraphs 210-221); Grounds 9 and 10 which are subsidiary grounds (paragraphs 222-225); and (vi) Grounds 15 and 16, which concern alternative bases of claiming an injunction (paragraphs 226-235).

Grounds 8 and 13

141. As Ground 8, it is submitted that, in paragraph 74 and 85 of the Interim Injunction Ruling (reiterated in paragraph 44(h) of the Leave to Appeal Ruling), the Judge erred in proceeding on the basis that the prayer in paragraph 85 of the Petition, seeking an order for rectification of the Company's share register, *"was not a free-standing application for relief but was only included as relief ancillary to, and to be relied upon only if needed to make effective, a buyout order"* (paragraph 74 of the Leave to Appeal Ruling); and he consequently failed to consider whether the closing of the Concert Transaction would materially prejudice the Court's ability to grant an oppression remedy other than a buyout order.

142. However:

(i) The relief sought in the Petition is set out above (Paragraph 31). Leaving aside the prayers for orders not relevant for these purposes (i.e. for the winding up the Company (abandoned on 1 July 2025), the regulation of the conduct of the Company's affairs in the future, payment of costs and the general prayer for *"such other or further relief..."*), the prayer seeks (i) a buyout in the following terms: *"payment by the Company to the Petitioners in an amount that [the] Court determines to be a fair value of the Petitioners' equity interest in the Company"* (paragraph 84); and (ii) *"further, or in the alternative, an Order rectifying the shareholder register of the Company as and if necessary"* (paragraph 85).

(ii) There appears to be no evidence that the Petitioners have ever evinced a desire for the Company to continue to operate as a live insurer. Further, despite Mr Summers' submission on behalf of the Petitioners that, "we may have to go in and run-off the Company ourselves" (Hearing Transcript 18 December 2025, page 102 lines 18-19), there appears to be no evidence that the Petitioner hospitals have any appetite to do that either. They have accepted that the Company's original business model has concluded, save for the run-off phase. In the Section 111 Proceedings, they seek a "clean break" from the Company (Paragraph 83 of the Re-Amended Petition). They wish to receive fair value for their equity in the Company.

(iii) As the phrase *"as and if necessary"* implies, rectification was not sought other than to enable the Petitioners to obtain that fair value in money terms.

(iv) The prayer seeking rectification of the share register to reinstate their shareholdings in the Company was sought and added by amendment at the 1 July 2025 hearing because an issue arose as to their *locus standi* under section 111 (see paragraph 62 of the Company's Skeleton Argument for the 1 July 2025 Hearing).

(v) At the August 2025 Hearing, the issue of relief was considered; and Mr Masters confirmed that, whilst the claim for rectification was a discrete claim, what the Petitioners wanted was to be paid the value of their equity, and they were not making any submission that: *"[W]e don't want to be paid the value of our equity. We actually really want to be reinstated as members."* (29 August 2025 Transcript, page 164 lines 13-23).

(vi) The Judge consequently did not materially err in proceeding on the basis that, as they had accepted, the Petitioners sought a buyout and only sought rectification of the share register if that were required in support of a buyout order (e.g. to give them *locus* in pursuing the Section 111 Proceedings, or any particular relief such as a derivative action to enable them to recover money through the Company).

(vii) In the event, the only relief that was considered by the Judge at the August 2025 Hearing was a buyout of the Petitioners. He did not err in not considering other forms of relief. He was only bound to consider whether there was an adequate oppression remedy that was not put in jeopardy by the closing of the Concert Transaction (which, he found, there was, in the form of a buyout at fair value): he was not bound to consider the adequacy of all possible remedies.

143. As Ground 13, it is submitted that the Judge erred in paragraph 115 of the Interim Injunction Ruling in taking into account, against the Petitioners, the fact that they had

failed to pursue an alternative course of action to the Section 111 Proceedings, namely a claim based on breach of the Shareholders' Agreement and/or the Company Bye-Laws for rectification of the Register of Shareholders to reinstate them.

144. However, this complaint is unwarranted. In paragraph 115, the Judge was dealing with a different point, namely the submission on behalf of the Petitioners that, in pursuing the Concert Transaction, Grand View was acting improperly because they were purporting to sell the whole equity of the Company including the shares once owned by the Petitioners. For the reasons given by the Judge, that submission has no force because the Petitioners have not owned shares in the Company since the forced withdrawal on 29 January 2024. What they have is a right to pursue the Section 111 Proceedings in which they claim the value of the shares as at 29 January 2024, which is a very different thing from a claim based on continuing ownership of the shares.

145. The point being made by the Judge was simply that, if the Petitioners had wanted to retain their shareholding, then that was something they could have done by an action for rectification as a result of breach of contract. As I have described (paragraphs 31 and 141-142 above), the claim for rectification in the Section 111 Proceedings is merely in support of their claim for a buyout order: they are not claiming immediate rectification of the register to restrain the sale of shares by another shareholder as they could have done in other proceedings. In any event, the Judge did not hold the fact that they had not taken the opportunity to pursue other proceedings against the Petitioners in respect of the relief they sought in these Section 111 Proceedings.

146. I do not consider either ground to be arguable, and would refuse leave to appeal in respect of each.

Ground 11

Introduction

147. In the written Grounds of Appeal, as Ground 11, it is said that the Judge erred in finding that the Petitioners had *"failed to demonstrate"* that the closing of the Concert Transaction would result in *"a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares"* on two bases:

    (i) In paragraph 113 of the Interim Injunction Ruling, the Judge said that he was *"entitled to make the assumption"* that the distributions to Grand View were considered by the Company's Board to be appropriate, whilst expressing the view (at paragraph 26) that authorisation for a distribution of $2.5m was given by the Board on 28 April 2025 despite the evidence *"adduced by Grand View and the Company…. not mention[ing] let alone explain[ing] the basis for the upstreaming of funds to Grand View nor do the minutes of the April Board Meeting indicate that the Board considered whether it was proper and appropriate to make the distributions despite and in the light of the pending Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares"*.

    (ii) The Judge found that the Petitioners *"had not established, assuming the Company will not make distributions above the $5.95m figure in the evidence, that there is a*

> *material or sufficient risk that the distributions which the Company proposes to make to Grand View would prejudice its ability to satisfy a reasonable estimate of the sum which would be payable to the Petitioners if the Court makes a buyout order"*; but, it is submitted, the assumption (that a distribution of no more than $5.95m would be made) is insupportable in the face of the evidence.

148. In fact, in oral submissions, far beyond those two sub-grounds (to which I will specifically return: see paragraphs 185-188 below), there was detailed consideration of each step in the analysis as to whether the closing of the Concert Transaction would prejudice the Company's ability to comply with any Court order that it buys out the Petitioners by paying them fair value for their shareholding in the Company because of a distribution to Grand View of more than the value of its equity as at 29 January 2024, i.e. what I have described as "the central issue". Those steps being:

    (i) the valuation of the equity (net assets) in the Company;

    (ii) the assessment of the proportion of that equity that belonged to the Petitioners and Grand View respectively;

    (iii) as a consequence of (i) and (ii), the value of the equity holding of the Petitioners and Grand View;

    (iv) the amount of the distribution payable to Grand View as part of the Concert Transaction; and

    (v) whether the amount of the distribution payable to Grand View, if paid by the Company, would exceed the value of Grand View's equity as at 29 January 2024 and, thus, prejudice the Company's ability to comply with any Court buyout order.

149. The Petitioners challenged the Judge's approach and conclusions in relation to several of these steps – indeed, as did Grand View (although the parties disagreed on the correct approach and outcome). I will consider each of these steps in turn. In doing so, I again emphasise that these issues were being considered in an interlocutory context and the consequent limitations on the Judge and now on this Court (see paragraphs 67-68 above).

Valuation of the Equity/Net Assets of the Company

150. As I have already described (paragraphs 31 and 141-142 above), the Petitioners' primary relief claimed is that the Company pays them an amount which the Court determines to be fair value for the Petitioners' equity interest in the Company. As described above (paragraphs 134-137), for the purposes of the application this was treated as the value as at the date of forced withdrawal, i.e. 29 January 2024.

151. As I have indicated (paragraph 137(i) above), the Judge proceeded on the basis that the total equity in the Company was $39.5m, which was the midpoint between the figure in the *"Petitioners' WTW Report figure of $49 million and the figure in the Company's current financial statements of $30 million"* which *"seem[ed] to [the Judge] to be reasonable"* (paragraph 108 of the Interim Injunction Ruling).

152. The $49m figure comes from paragraph 59(a) of the Re-Amended Petition which cites a

Report of Willis Towers Watson US LLC ("WTW") dated 28 November 2023 ("the WTW November 2023 Report") for the proposition: *"The total equity in the Company was $US49,042,000"* as at 30 September 2023. WTW were actuaries instructed on behalf of the Company.

153. The $30m figure comes from the Company's audited accounts for the period to 30 June 2024 ("the June 2024 Accounts"), which calculates the *"Total Shareholders' Equity"* to be $30,616,106 as at 30 June 2024. That figure appears to have been accepted by Mr Osborne, who said that he had *"no reason to think that the Company's actuaries or management or its auditors understated its loss reserves or overstated the values of its assets posted by the Company"* (Osborne 1, paragraphs 21 and 25, the quotation coming from paragraph 25). In other words, Mr Osborne appears to accept that that valuation of total shareholders' equity is properly equivalent to net asset value as of June 2024.

154. Mr Osborne has only one quibble with the Total Shareholders' Equity figure in the June 2024 Accounts, namely the treatment of ULAE for which a reserve of $28,677,652 was made, an increase of $26,068,299 from the previous year. Mr Osborne describes the treatment of this element of costs as *"inexplicable"* (Osborne 1, paragraph 30), continuing: *"Moreover, there is no explanation for why the Company, for decades, operated without posting any separate reserves for ULAE and then suddenly determined it appropriate to post a reserve of this magnitude just as it enters run-off…"* (paragraph 31).

155. The Judge did not add that reserve back into the net assets of the Company. The Petitioners submitted (albeit, it seemed to me, with ebbing vigour as the appeal hearing wore on) that he was wrong not to do so.

156. As Mr Osborne indicated, the reserve for ULAE in the June 2024 Accounts was increased by over $26m which resulted in the total equity in the Company being reduced from $59.1m to $30.4m, and the total equity in the Company and Cassatt Holding together being reduced from $64.1m to $35.4m. This is the reduction that Mr Osborne describes as unexplained and inexplicable. In his submissions, Mr Masters also referred us to a letter from the Concert Group on behalf of the Buyer to Grand View dated 30 August 2024 which, under the heading *"Adjustment of Cassatt Equity Value"*, refers to the lower figures, compared with a draft of the same letter dated the previous day (29 August 2024) referring to the higher figures, in support of the contention that the revision to the Company's estimation of the ULAE, which resulted in this change of reserve, was unwarranted and in some way linked to the Concert Transaction.

157. However, far from being inexplicable, the reserve is clearly explained in the evidence.

    (i) In Article XIV of the Amended Shareholders' Agreement for Cassatt Holding, each shareholder acknowledges its responsibility for ULAE both while participating as a shareholder of the company and after its withdrawal. That simply reflects a shareholder's ongoing responsibility for claims in respect of the period of its coverage. It seems common ground that that ongoing responsibility for ULAE after withdrawal applies equally to the Company.

    (ii) As the Concert Group letter (in both draft and final version) indicates, historically, these continuing expenses, required for the continued funding of the claims team,

were directly billed to the current and (where appropriate) past members of the Company.

(iii) After the Petitioners withdrew from the Company, they were presented with invoices for their share of the ULAE (which, because of their recent dominance of cover, was a large percentage), but they refused to pay.

(iv) In those circumstances, the Company recorded the unpaid ULAE amounts as a reserve liability.

(v) Mr Provost considers that to have been an appropriate way to deal with ULAE, particularly as, by this time, Grand View was the only remaining shareholder and the relevant expenses related to former insureds including (indeed, as I understand it, particularly) the Petitioners.

158. It was said on behalf of the Petitioners that:

(i) if it was appropriate for a reserve to be made for ULAE, then it ought to have been made on an ongoing basis and not just from 2024 (Osborne 1, paragraph 32(a));

(ii) the ULAE was calculated on the basis of figures produced by the Company management itself (Osborne 1, paragraph 32, relying on Section VI Exhibit 1A at col 2 and note 2), and these data were not tested by WTW; and

(iii) ULAE at 17% of all losses was high and not in line with either the Company's historic ULAE or the ULAE seen in other captive insurers (Osborne 1, paragraph 32(b)).

159. However:

(i) If a reserve in 2024 was appropriate, then it would not be any less so if an appropriate reserve had not been made in earlier accounts. In any event, the change in the way in which the reserve was made has been explained: in previous years, no reserve was necessary because ULAE expenses were paid by relevant current/former members on invoices being rendered (as I understand it, they were effectively paid by the relevant shareholders out of income). It became necessary when former shareholders did not pay on those invoices.

(ii) & (iii) Whilst the figures for ULAE produced by the Company's management were not audited or verified by WTW, WTW did review them for *"reasonableness and consistency"* (WTW 5 November 2024 Report on ULAE as of 30 June 2024, Section 5). Mr Provost considered that that was standard actuarial practice (Provost 1, paragraph 24); and the auditors apparently found no cause to raise a query in this regard.

160. Given the evidence, it cannot be said that the Judge was wrong in not adding the reserve in respect of ULAE back into the net assets of the Company.

161. With ULAE left out of account, the June 2024 Accounts gave a figure of just over $30m for the Company's net equity. The Re-Amended Petition states that the WTW November 2023 Report gave a figure of just over $49m as at September 2023. There does not appear

to be any substantial evidence that undermines either of those figures.

162. At first blush, simply to take the midway point between those two figures, as the Judge did, appears to be unprincipled. Further, I appreciate that, in paragraph 108 of his Interim Injunction Ruling, the Judge said that *"the best approach that the Court can follow is to find a figure that is reasonable in light of the range of outcomes for the value of Grand View's equity that would be produced using the Petitioners' best and worst case of their share of the equity, the range of values for the Company's total shareholders' equity in the evidence and suitable adjustments to take account of Grand View's case"*, i.e. he did not express himself as seeking the appropriate figure for total equity as at 29 January 2024 by reference to available figures either side of that date. However, the figures of $30m and $49m are for June 2024 and September 2023 respectively, and the Judge was seeking to value the equity as at 29 January 2024, roughly half way between those two dates which would justify taking a figure for that date somewhere in the middle of those figures.

163. As I have stressed, the Judge did not have the benefit of the evidence that will be available at trial, notably the cross-examination of the two experts. However, on the evidence he did have, although not perhaps for the exact reasons he gave, I do not consider he was wrong to proceed on the basis that the net equity in the Company, as at the date of forced withdrawal, was approximately $39.5m. On the basis of all the evidence, that was an appropriate figure for the value of the total equity in the Company as at 29 January 2024 for the purposes of considering interim relief in Section 111 Proceedings seeking an order that the Company pays the fair value of the Petitioners' shares.

Grand View's Percentage Entitlement

164. As I have indicated (paragraph 137(ii) above), the Judge considered that the Petitioners were entitled to 78.5% of the equity of the Company, i.e. the midway point of the range 90% to two-thirds claimed by the Petitioners. He consequently proceeded on the basis that Grand View was entitled to the balance, i.e. 21.5%.

165. However, for the purposes of this appeal, Grand View accepted that its entitlement percentage should be taken as 10%, i.e. on the basis of the Petitioners' reasonably best case.

The Value of Grand View's Equity

166. On the basis of the above, the value of Grand View's equity in the Company as at 29 January 2024 is 10% of $39.5m, i.e. $3.95m.

The Cost of the Concert Transaction to the Company; and Grand View's Distribution/Receipts from the Transaction

167. I have set out the relevant provisions relating to the Concert Transaction payments above (paragraph 33).

168. At the Interim Injunction Hearing, the Petitioners submitted that the terms of the Concert Transaction involved *"significant dissipation of the Company's assets through payments to Grand View"*, that transaction *"[involving] the Company directly or indirectly*

compensating Grand View up to $7,400,000 comprised of: (i) $3,450,000 as part of the Grand View Approved Distributions, (ii) $2,500,000 as part of the Grand View Expense Distributions, and (iii) $1,450,000 in the form of Debt Write-Off" (paragraph 77 of their Skeleton Argument for the 1 July 2025 Hearing quoted in full in paragraph 134 above).

169. The Judge proceeded on the basis that the distributions by the Company to Grand View, as part of and/or around the time of the Concert Transaction, were to be in the sum of $5.95m, which appears to have been calculated as the sum of (i) and (ii).

170. Neither party before us supported that figure as being correct. It was submitted on behalf of the Petitioners that the Judge erred in not including the additional sum of $1.45m in respect of "Debt Write-off". They submitted that the correct figure for distributions by the Company to Grand View as a part if the Concert Transaction was, consequently, $7.4m. On the other hand, Mr Chudleigh for Grand View submitted that the $1.45m was not a distribution by the Company at all: it was a payment made by the Buyer which simply settled a debt owed by Grand View to the Company by a cash payment. He further submitted that the $2.5m distribution referred to in the Board Minutes of the 28 April 2025 Board Meeting was an incorrect figure: it ought to have been the amount of the "the Approved Distributions" in the SPA, i.e. $3.45m, or was by way of payment on account in respect of Approved Distributions. The way in which he put it in paragraph 7 of the Grand View Quantum Note was that the Board approved distribution of $2.5m was in fact a payment on account of the Approved Seller Distributions, leaving a balance of $950,000 for potential further Approved Seller Distributions to Grand View subject to Board approval. In any event, he submitted, by adding the figure for Approved Distributions to the figure in the Board Resolution, there was double counting because the Board Resolution approved the payment of the Approved Distributions, in whole or in part.

171. The precise figure used by the Judge did not, of course, greatly matter on his analysis and calculations, because he concluded that, on the basis that the payment out of the Company to Grand View of no more than $5.95m, that was no more than the amount to which Grand View was entitled for its share of the net equity in the Company; and, the Company being solvent, on the central issue, what was left in the Company was enough to satisfy any buyout order that the Court might make in favour of the Petitioners as an oppression remedy in the Section 111 Proceedings.

172. However, I too have concluded that the figure adopted was wrong. In my view, it was too generous to the Petitioners.

173. The $1.45m is the amount to be paid by the Buyer to the Company to settle Grand View's liability to the Company for ULAE (see paragraph 33(i) above). During the course of the hearing, there was some discussion as to the precise nature of this payment, and the extent to which Grand View benefited from it – which, of course, it did: it was part of the Purchase Price albeit a sum to be paid to the Company to settle a debt owed by Grand View to the Company. However, what is clear is that it was not a payment by the Company nor did it reduce the assets of the Company in any way. So far as the Company is concerned (and to the Company's benefit), it replaced an account receivable (a debt owed to the Company by Grand View) with cash. The Judge was not arguably wrong in not treating it as diminishing the assets of the Company.

174. The $3.45m figure derives from the "Approved Seller Distributions". By Section 6.7(a) of the SPA, the Company was required to pay Grand View "Approved Seller Distributions" defined in Section 1.1 as "distributions in an amount not in excess of $3,450,000 in aggregate…" (see paragraph 33(ii) above). That was clearly intended to be a payment by the Company to Grand View. The phrase "not in excess of" is, on the face of it, curious, particularly as there is no immediate mechanism for the calculation of the precise sum in either Section 1.1 or Section 6.7. However, Mr Chudleigh submitted that, if the SPA is looked at as a whole, the mechanism is apparent. Under the SPA, whilst generally the parties are to pay their own costs and expenses of the transaction, by Section 6.10(b) read with the definition of "*Transaction Expenses*" in Section 1.1, Grand View are required to pay the cost and expenses of all the parties up to an aggregate figure of $3.45m subject to those costs being, in effect, self-certified before the closing date (see paragraph 33(iii) above). Mr Chudleigh submitted that the provisions in the SPA regarding Approved Seller Distributions, when read with those in respect of Transaction Expenses, set out a mechanism – convoluted but, he submitted, ultimately clear – for the Company via Grand View to pay the costs of all parties in respect of the transaction up to an aggregate limit of $3.45m.

175. I accept that submission. As a matter of contractual construction, the parties cannot have intended to provide in the SPA for a distribution by the Company to Grand View that was not for a fixed sum and for which there was no means of calculation. *"Approved Seller Distributions"* were not for a fixed sum, but rather in terms of *"an amount not in excess of $3,450,000 in aggregate…"*. It cannot be a coincidence that the figure for the Transaction Expenses to be paid by Grand View is a maximum of $3.45m, which is the same maximum sum for the distribution. In my view, it was clearly the intention of the parties – as derived from the wording of the SPA itself – that the mechanism in place to assess the amount of Transaction Expenses payable by Grand View also ascertained the figure for the distribution.

176. On behalf of the Petitioners, it was (i) submitted that there was no evidence of that intention, and (ii) suggested that it may be unlawful in Bermuda for a Company to support the sale/purchase of its own shares. However:

    (i) This is a question of contractual interpretation, in respect of which external evidence of subjective interpretation is irrelevant and inadmissible: the intention of the parties is to be assessed on the basis of the words used by the parties seen in their proper context. In any event, contrary to the Judge's indication, there was relevant evidence: Mr Dethlefs (a Director of the Company) confirmed that "no funds will be distributed out of the Company save for the transaction expenses payable to third-parties either directly or through the contemplated distribution payable to Grand View" (Dethlefs 1, paragraph 38). "Directly" here may be a reference to the possibility that the Company's costs of the Concert Transaction might exceed the amount to be reimbursed through Grand View under the contractual procedure (although there is no evidence that, in the event, they did). Be that as it may, it clearly does not refer to any form of distribution to Grand View which is what we are concerned with here.

    (ii) We had no submissions on whether this arrangement was or was not lawful in Bermuda: the suggestion that it might be was insufficient to begin to persuade me

that, in the light of the words used by the parties seen in context, this was other than a mechanism by which the Company paid, not only its costs of the transaction, but also the costs of the Buyer and Grand View as Seller. Given that the Concert Transaction would put the only remaining activity of the Company (run-off) in the hands of a company experienced and expert in run-off, the Transaction is understandably seen as beneficial to the Company (as it was found by the Judge to be: Interim Injunction Ruling, paragraph 113; and see paragraph 138(x) above).

177. That construction is supported by the relevant company documents.

(i) The Concert Transaction was approved (and the SPA authorised) by the Grand View Board on 22 April 2025, the Minute recording the approval of the sale of its interests in the Company and Cassatt Holding for $3m in cash and $1.45m *"in being applied to [ULAE]…"* with no mention of any additional sum being received as part of the Transaction, e.g. by way of distribution by the Company. That is, at least, consistent with Grand View receiving no net positive sum by way of distribution.

(ii) The Company approved the Concert Transaction at its Board Meeting of 28 April 2025. The Minutes of that meeting – which we have unsigned, but on the basis that they were final Minutes – had a Resolution attached for *"Authorization of [the SPA]"*. The Minutes themselves say:

> *"Those resolutions, attached hereto, addressed (1) authorization of the [SPA]; (2)* ***a distribution out of contributed surplus to Grand View in connection with transaction expenses (to a maximum of $2.5 million)****, (3) general ratification and authorization of the directors and officers of the Company to effectuate the proposed transaction"* (emphasis added).

The emboldened words make clear that the envisaged distribution was in respect of *"transaction expenses"*. The reference to *"to a maximum of $2.5m"* is unexplained. In fact, as described above (paragraph 34(ii)), the actual Resolutions themselves have the amount of the distribution left blank (inevitably because, if it related to Transaction Expenses, those could not be ascertained until certified which they had not by 28 April 2025). As I have indicated (paragraph 170 above), Mr Chudleigh submitted that the figure of $2.5m in the Minutes was possibly a payment on account. It may simply have been an error. There was no evidence as to this. However, what is clear, is that the distribution being made was in respect of *"transaction expenses"* (or, rather, *"Transaction Expenses"* as defined in the SPA) and was therefore not additional to any distribution made by the Company to reimburse Grand View for such expenses it was required to pay under the SPA.

178. In my view, the Judge was therefore wrong to conclude that, although it is likely that the amount of the distribution will not exceed $2.5m, it is possible that it will be in the larger sum claimed by the Petitioners (i.e. $5.95m, being $3.45m plus $2.5m). The only relevant obligation of the Company under the SPA was that contained in Section 6.7(a), i.e. the obligation to pay Approved Seller Distributions as defined in Section 1.1 (see paragraph 33(ii) above). Those distributions were not defined otherwise than by saying that they were to be in an amount not in excess of $3.45m. The distributions that the

Seller (i.e. the Company) was to make up to that amount under Section 10.7 were in respect of Transaction Expenses, which were obviously a distribution by the Company approved by it. It does not seem to me that the SPA can be sensibly construed as meaning that the Company was under some liability to pay, not only up to $3.45m under Section 6.7(a) but, in addition, at least another $2.5m on some other basis which is wholly unclear. Further, insofar as reliance is placed on the Board Minutes, it is apparent from them that the $2.5m was to be made in connection with Transaction Expenses, which Grand View had to pay under Section 10.7. There is no sound basis for inferring that the $2.5m was being, or to be, paid pursuant to some obligation on the part of the Company other than that contained in Section 6.7(a). The natural inference is that the Approved Seller Distributions to be paid by the Company were intended to reimburse Grand View in respect of its liability for the payment of Transaction Expenses under the SPA.

179. As part of the SPA/Concert Transaction, in my view, the Company was required to pay Grand View no more than $3.45m by way of Approved Seller Distribution. Of that, no more than $0.2m was in respect of Grand View's own costs of the Transaction (and, therefore, constituted a benefit), no more than $2.25m was in respect of the costs of the Buyer's costs of the Transaction, and the balance (no more than $1m) was in respect of the Company's own costs. Thus, whilst this distribution benefited Grand View to the tune of no more than $0.2m, the cost to the Company (in terms of diminution of its net assets) was up to $3.45m.

The Level of Distribution compared with the Value of Grand View's Equity

180. Therefore, in respect of the central issue, although not (or not necessarily) calculated on the basis of the value of Grand View's equity in the Company, the maximum distribution which might be made to Grand View as part of the Concert Transaction ($3.45m) was less than the value of its equity in the Company ($3.95m).

Risk to the Buyout Oppression Remedy

181. The Judge concluded that Grand View was able to establish that its share of the equity in the Company as at 29 January 2024 will at least equal the sum of the proposed distribution to it by the Company as a result of the Concert Transaction and, consequently, subject to any post-Concert Transaction matters raised by the Petitioners, "there is not a real risk that the Company will retain insufficient net worth to be able to satisfy a buyout order…" (paragraph 109 of the Interim Injunction Ruling).

182. However, over and above their submissions in respect of the central issue, the Petitioners relied upon narrow, identified post-Concert Transaction matters which they submitted, will put at risk the Company's ability to pay any award the Court may make in the Section 111 Proceedings. The Petitioners submitted to the Judge that, even if the payments out of the Company as part of the Concert Transaction are sufficient, the proposed undertakings are insufficient to ensure that that will also be the case by the end of the trial in the Section 111 Proceedings. I deal with that submission above (paragraphs 113-126). There is no force in the Petitioners' submission that the Judge failed properly to take into account the efficacy of the undertakings made with regard to the future and the risk of the Company being unable to satisfy any buyout order that may be made in the future.

183. However, the Petitioners' also made particular submissions that there is a material risk that the Company's ability to satisfy a buyout order will be adversely affected by (i) the licensing conditions likely to be imposed on the Company by the BMA post-closing of the SPA, and (ii) the Company's business being run-off by the Buyer/Concert Holdings without any independent shareholder. These are the subject of Grounds 5 and 7 respectively, in the context of which I deal with these submissions below (paragraphs 203-209).

Alternative Basis for Rejecting Ground 11

184. I have had the benefit of seeing the judgment of Gloster JA and, insofar as my analysis of the issues raised by Ground 11 is wrong, then I would, in any event, reject the appeal on Ground 11 and associated grounds dealt with below for the reasons she gives at paragraphs 242-252 below (which to an extent reflect Clarke JA's reasoning).

The Specific Sub-Grounds

185. I briefly return to the specific sub-grounds relied on by the Petitioners, set out in paragraph 147 above.

186. First, it is submitted that, in paragraph 113 of the Interim Injunction Ruling, the Judge's assumption that the distributions to Grand View were considered by the Company's Board to be appropriate was inconsistent with his view (at paragraph 26 of the Ruling) that authorisation for a distribution of $2.5m was given by the Board on 28 April 2025 despite the evidence *"adduced by Grand View and the Company…. not mention[ing] let alone explain[ing] the basis for the upstreaming of funds to Grand View nor do the minutes of the April Board Meeting indicate that the Board considered whether it was proper and appropriate to make the distributions despite and in the light of the pending Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares"*.

187. However, as described above (paragraphs 167-179), although the relevant Resolution (which does not state the amount) does not have any explanation for the reason for the distribution, the Board Minutes (which refer to the sum of $2.5m) do: they state that the distribution is "in connection with transaction expenses (to a maximum of $2.5 million)". I discuss those Minutes and Resolution above (especially, paragraph 177(ii)). There is no basis for the assertion that the Company's Board did not consider a distribution to Grand View, in the context of the Concert Transaction, to have been appropriate.

188. Second, it is submitted that the assumption of the Judge that a distribution of no more than $5.95m would be made to Grand View was "insupportable in the face of the evidence" because (as I understand the submission) it failed to take into account the $1.45m "debt write-off". This is the foundation of Ground 4 (see paragraphs 198-200 below). I do not consider that the submission has any force for the reasons set out in paragraphs 174-179 above.

Conclusion

189. For those reasons, I do not consider the Judge's conclusion that the closing of the SPA/Concert Transaction would not materially prejudice the Company's ability to comply with a future Court order that it buys out the Petitioners by paying them fair value

for their shareholding in the Company was wrong. Indeed, on the evidence available to him, I consider it to have been correct.

190. Given that I consider the Judge's analysis in respect of the value of the equity in the Company to have been arguably flawed, although his conclusion was correct, I would grant leave to appeal, but refuse the substantive appeal, on this ground.

Grounds 2-4 and 12

191. I have either largely covered these grounds above, or they have been rendered redundant by my conclusions in relation to Ground 11. They are all, in any event, closely related to Ground 11 and the arguments I have dealt with in relation to that ground. I will deal with them, briefly, in turn.

Ground 2

192. It was submitted that the Judge erred in the weight he gave to the evidence of Mr Provost, compared with that he gave to Mr Osborne.

193. However:

(i) This ground was not pressed before us.

(ii) The weight given to evidence was quintessentially a matter for the Judge.

(iii) The suggested reasons for giving Mr Provost's evidence less weight (e.g. he lacks independence, and he prepared his evidence, contrary to the Court's express order, by reference to "impermissible materials") are uncompelling.

(iv) The main complaints seem to be in respect of Mr Provost's evidence that it was appropriate to reduce the shareholder equity to reflect undiscounted figures in the reserves (which the Judge did not do), and the proportion of the total equity attributable to Grand View's share (which was not in issue before us). By the time this matter came before us, any force in this ground had evaporated.

194. I do not consider this ground arguable, and would refuse leave to appeal.

Ground 3

195. It was submitted that the Judge erred in his approach to the equity value of the Company. He disregarded the expert evidence and simply formed his own preliminary *"view"* of value. Mr Osborne concluded that the equity value was either $67m or $32m depending on the validity of the Company's treatment of ULAE. Neither of the experts suggested the equity value was $39.5m, as the Judge found it to be. The Judge also erred, it is said, in using 21.5% as the proportion of the total equity which represented Grand View's share: that share should have been calculated on the basis of either shareholdings (33%) or premiums paid (something less than 10%).

196. I have dealt with the substance of this ground in the context of Ground 11. In short, with the other relevant evidence, the Judge took the evidence of the experts – neither of whom is a valuer – into account in assessing the value of the equity in the Company.

(i) The $32m figure appears to have been derived from the Unaudited Management Financial Statements for the 9-month period to 31 March 2025, which showed the Total Shareholder Equity as at 31 March 2025 as $32,222,595. The value in the June 2024 (Audited) Accounts was, as I have indicated, $30,616,106.

(ii) For the reasons I have given (see paragraphs 33(i) and 154-160 above), the Judge was right (and, certainly, entitled) to proceed on the basis that the ULAE was appropriately dealt with by the Company and should not be added back into the net assets of the Company.

(iii) For the reasons I have given (see paragraphs 151-164 above), in the light of the WTW November 2023 Report valuation (recited in the Re-Amended Petition), the valuation in the June 2024 Accounts and the relevant date for the valuation being the date of forced withdrawal (i.e. 29 January 2024), $39.5 was an appropriate figure for the value of the total equity in the Company for the purposes of considering interim relief in Section 111 Proceedings seeking an order that the Company pays the fair value of the Petitioners' shares.

(iv) For the purpose of the appeal, Grand View accepted (and it was common ground) that 10% should be used as the proportion of the whole equity which represented Grand View's share.

197. This ground is closely related to Ground 11 and the issues associated with that ground discussed above. I would grant leave to appeal in respect of it, but refuse the substantive appeal.

Ground 4

198. It is submitted that the Judge erred in concluding that the $1.45m which the Buyer was to pay the Company to settle Grand View's liability for ULAE does not qualify as debt-write off in favour of Grand View and consequently Grand View was (unjustly) enriched by that sum.

199. However, whilst I accept that the $1.45m was part of the purchase price for Grand View's shares – and, so, although paid to the Company to settle Grand View's obligation to the Company in respect of ULAE, was a benefit for Grand View – as I have explained (paragraphs 33 and 167 above), it will be paid by the Buyer and will not diminish the assets of the Company at all. That is the important point so far as the analysis above is concerned: the Judge did not err in not taking into account the $1.45m as part of the net assets of the Company.

200. This ground too closely related to Ground 11 and the Petitioner's arguments I deal with under that ground. I would grant leave to appeal in respect of it, but refuse the substantive appeal.

Ground 12

201. It is submitted that the Judge erred in concluding that to grant an interim injunction would not be "just and convenient" because allowing the Concert Transaction to close was justified in all the circumstances. Whilst several strands of argument are set out in the

Grounds of Appeal document, before us the focus was on (i) the failure properly to assess the monies to be received by Grand View, and (ii) the submission the Judge was wrong to draw that conclusion in circumstances in which not granting the injunction would allow Grand View to take advantage of its own wrongdoing pending the trial. However, I deal with the first point above (especially at paragraphs 168-180), and there is nothing in this second point. It was common ground for the purposes of the Interim Injunction Application that the Petitioners had a good arguable case on the merits of their claim, and the application proceeded (rightly) on that basis which the Judge applied. Doing so, he concluded that there was no material risk that the Company will not be able to satisfy a buyout order, on a fair valuation, if made by the Court in the future. There is no basis for the contention that, by refusing the application, the Judge was allowing Grand View to profit from its own wrongdoing.

202. The first limb of this ground too is closely related to Ground 11 and the Petitioners' arguments I deal with under that ground. I would grant leave to appeal in respect of it, but refuse the substantive appeal.

Grounds 5 and 7

203. On the basis of evidence from Ms Ramthun (paragraphs 40-47 of her Seventh Affidavit sworn on 8 October 2025), the Petitioners say, as their Ground 5, that the closing of the Concert Transaction pending the outcome of the Section 111 Proceedings will result in changes to the Company's licensing conditions imposed by the BMA which will frustrate the Court's ability to grant an appropriate oppression remedy following trial. It is said that the Judge erred in not taking this into account when concluding that the application for interim injunctive relief should be refused.

204. The two examples of changes referred to by Ms Ramthun are that she believes:

    (i) a restriction is likely to be placed in the Company's Certificate of Registration restricting it from entering into new business (paragraph 41 of her Affidavit); and

    (ii) any payout by the Company pursuant to a buyout ordered by the Court will require BMA approval, and that "may not be forthcoming after the Company has already dissipated its available equity through interim distributions to Concert Holdings or some other third party as part of the run-off of the Company" (paragraph 44).

205. That second concern is reflected in Ground 7, in which it is submitted the Judge failed to take into account the fact that, following the closing, the run-off affairs of the Company will be performed by the Buyer and the Concert Group without any independent shareholder oversight with the risk that the Company's assets will be dissipated pending trial through incurring unnecessary and inflated run-off expenses that will ultimately be paid to the Buyer and other Concert Group companies.

206. However, the Judge did take into account the Petitioners' submissions with regard to the BMA (see paragraph 44(e) of the Leave to Appeal Ruling); and, as he noted in that same paragraph, evidence with regard to the nature and impact of any potential changes was very thin. Ms Ramthun's examples do not give any significant force to the argument. A condition that the Company should not enter into any new business was inevitable because it is in run-off (which it will be, whether the sale closes or not). The Concert

Transaction will have no effect with regard to that condition. There appears to be no evidential support for the assertion that the fact that BMA approval will be required for the Company to pay the Petitioners under a buyout order made by the Court materially increases the risk that such a payment will not be made. As the Judge said, on this point, the Petitioners relied on *"generalized and unsubstantiated assertions"*.

207. Similarly, with regard to Ground 7, the Judge carefully considered the *"uncertainty deriving from the potential impact of the run-off of the Company's business by Concert Holdings"* in paragraph 110 of the Interim Injunction Ruling (from which I quote in this paragraph). The Company will be in run-off, and with a single shareholder without *"independent shareholder oversight"*, whether the sale closes or not. The undertakings now offered by the Buyer will be protective of the Petitioners' position, and there is no evidence to suggest that it will fail to comply with them. Indeed, the Judge concluded, on the evidence, that the Concert Transaction was needed by, and was in the best interests of, the Company in view of the Company's (as well as Grand View's) need to introduce expertise to organize and manage the run-off (paragraph 113 of the Interim Injunction Ruling). That was a conclusion to which the Judge was clearly entitled to come on the evidence, and it is not undermined by the fact that such expertise might have been introduced into the Company in ways other than a sale, e.g. by Grand View employing a run-off manager, as to which there was no evidence as to its practicability nor as to whether it would be as effective, in run-off management terms, as a sale to the Buyer.

208. In respect of each of these grounds, the Judge was clearly entitled to conclude that he was *"not satisfied that the Petitioners have established that this is a material risk that is likely to affect the Company's ability to satisfy a buyout order"*.

209. The Judge did not arguably err in relation to his approach or conclusion as to the matters now raised in Grounds 5 and 7. I would refuse leave to appeal on each ground.

Grounds 1 and 6

210. Grounds 1 and 6 concern Grand View's ability to pay any order that might be made against it if the Company is not able to satisfy a buy order. The Judge, of course, concluded that the evidence adduced in relation to Grand View's financial position was not sufficient to justify a finding that there was no risk of the Petitioners being unable to obtain an adequate remedy if he had found that there was a material risk that the distributions to be paid by the Company would exceed the value of Grand View's equity interest (i.e. that there was a material risk that the Company would not be able to satisfy any buyout order that might be made by the Court).

211. However, as I have found that the Judge was not wrong to conclude that the Company will be able to satisfy any such order, the ability of Grand View to do so is not an issue. Nevertheless, I should make some brief observations on Grounds 1 and 6.

212. It is trite law that a petitioner can only generally seek a personal remedy in an unfair prejudice claim. Ground 1 concerns the authorisation of a petitioner by the Court to pursue a derivative action on behalf of a company to recover losses incurred by the company arising from the unfair prejudice as found by the Court. The Petitioners say that they may require such a derivative action to recover money paid by the Company to Grand View by way of distribution (if, for example, Grand View had been overpaid by

the Company in respect of its equity) or to the Buyer if it breaches its undertakings prohibiting shareholder distributions or service fee payments which are not "ordinary course". In order to prosecute a derivative action, the Petitioners would require (i) rectification of the Company's Shareholder Register to reinstate them as shareholders (because only a shareholder can pursue such an action, and the Petitioners have not been shareholders in the Company since January 2024); and (ii) the Court's authorisation to commence a derivative claim behalf of the Company. It is therefore linked to Ground 8, which concerns rectification.

213. The Petitioners submit that the Judge erred in holding, in paragraph 88 of the Interim Injunction Ruling, that Section 111 gives the Court the same power to authorise derivative actions as does section 996 of the Companies Act 2006 in England and Wales. Section 996 of the 2006 Act expressly provides for the Court to authorise a derivative claim. Section 111 does not.

214. In support of this ground, the Petitioners rely on Ntzegkoutanis v Kimionis [2023] EWCA Civ 1480 at [61]-[74] where Snowden LJ considered the interplay between derivative and unfair prejudice claims under the law of England and Wales, including (at [72]-[74]) confirming that it is section 260(2)(b) of the 2006 Act which permits the Court to grant an oppression remedy pursuant to section 996(2)(c) which authorises the petitioner "*to bring a claim on behalf of the company after his unfair prejudice petition has succeeded…*". That authorisation (it is submitted) is an explicit exception to the requirement for a claimant to obtain the court's permission for a derivative claim (CPR rule 19.14(1)(b)).

215. However:

(i) Although, in Ntzegkoutanis, Snowden LJ carefully analysed the current statutory position in England and Wales, as he made clear at the beginning of his exposition (at [62]): "*Part 11 of the Companies Act 2006 is a statutory codification of a long-standing common law procedure for the bringing of 'derivative actions' by members of a company*". That is indicative of there being a common law power to authorise a shareholder to bring a derivative action.

(ii) Even if the Bermudian Court does not have that power to authorise a derivative action under Section 111, that power arises from (or is, at least, recognised by) RSC Order 15 rule 12A.

(iii) The Petitioners suggest that the Judge found that they would not have standing to obtain rectification of the Register and then commence a derivative action; but he does not appear to make any such finding. He considered that rectification was sought, not as a stand-alone remedy but only in support of a buyout order; but rectification and a derivative action would be in support of a buyout order, in circumstances in which the Company had not been able to meet such an order.

(iv) In any event, as I have concluded, the Judge did not err in concluding that there was no material risk of the Company not meeting any buyout order made without recourse to any derivative action against Grand View. Consideration of a process under which Grand View might be called upon to assist in meeting such an order is consequently unnecessary.

216. For those reasons (but crucially (iv)), this must fail; but because it fails essentially for the reasons given under Ground 11 (for which I have granted leave), I would also grant leave to appeal on this ground but refuse the substantive appeal.

217. As Ground 6, it is submitted that the Judge erred in failing adequately to consider Grand View's ability to satisfy a buyout order if called upon. It is said that, in paragraphs 112 and 114 of the Interim Injunction Ruling, he found that the application should be dismissed because Grand View would remain a party to the Section 111 Proceedings and could therefore be held liable to satisfy a buyout order if called upon to do so; but the evidence demonstrates that Grand View is "cash flow insolvent".

218. This ground is misconceived. As I have described (paragraph 137(ix) above), the Judge was unimpressed by the evidence in relation to Grand View's finances and its ability to meet any liability to the Petitioners under a buyout order made by the Court. In paragraph 112 of the Interim Injunction Ruling, the Judge makes clear that, despite the availability of Grand View as a target of an order after trial to return distributions it has received or ordered itself to pay the Petitioners the fair value of their equity in the Company, he says:

> *"But I would not have regarded [the evidence] as sufficient to justify a finding that there was no risk of the Petitioners being unable to obtain an adequate remedy if I had found there was a material risk that the proposed distributions to be paid by the Company would exceed a reasonable assessment of the financial value of Grand View's equity interest."*

He went on to say why: he considered the evidence generalised and limited, and at least $2.5m of the distribution made to Grand View was to be expended immediately on transaction expenses and so not retained by Grand View.

219. I accept that the reasons the Judge gave for refusing leave to appeal on this ground (in paragraph 44(f) of the Leave to Appeal Ruling) do not necessarily reflect this analysis; but it is clear from the Interim Injunction Ruling that the Judge did not consider that he could proceed on the basis that, if the Company failed to meet a buyout order, then there was no material risk that Grand View would not meet it.

220. However, that was an academic point then, as it is now: because the Judge properly concluded that there was no material risk that the Company would not meet any such order, so Grand View's ability to do so was not to the point.

221. Ground 6 is unarguable, and I would refuse leave to appeal on it.

Grounds 9 and 10

222. I can deal with these two grounds shortly.

223. Ground 9: It is submitted that the Judge erred in proceeding on the basis that the Petitioners could apply to add the Buyer as a substantive respondent to the Section 111 Proceedings prior to the closing of the Concert Transaction. However, the Buyer has now agreed to be a substantive party, and there is an order that, upon closing, it becomes a Respondent. This ground is consequently empty, and has been empty for some time. It should have been formally abandoned.

224. Ground 10: It is submitted that the Judge erred in distinguishing the case of Re Sibbasbridge Service PLC [2006] EWHC 1564 (Ch), the only case that Counsel had found in which the Court considered that it would have been appropriate to have granted an injunction to restrain the sale of shares where the respondent to an unfair prejudice petition who was accused of misconduct sought to sell his shares while the petition was pending. However, cases involving interim relief are, inevitably, highly fact-specific, and it was unnecessary for any detailed analysis as to the differences between the two cases. One obvious difference is that, in that case, there was no injunction made, the shareholder (who, unlike Grand View, was a respondent to the petition against whom relief was sought) agreeing to give undertakings without any obligation or prejudice, the judgment only concerned with costs. I am afraid that, despite the submissions for the Petitioners, Sibbasbridge could offer no assistance in the resolution of the issues before the Judge and is of no more assistance to this Court.

225. Neither of these grounds is arguable. I would refuse leave to appeal in respect of each.

Ground 15: Freezing Injunction

226. Before the Judge, as an alternative basis for the interim relief sought, the Petitioners sought a freezing injunction, i.e. an interim injunction to protect assets against which judgment might be enforced in due course. In the context of this case, in which the Petitioners seek a buyout order against the Company, the relevant assets are those of the Company, and any interim injunction would be made on the basis that, without such a restraint, there is a real risk that the Company will deal with its assets other than in the ordinary course of business with the result that the assets are diminished so that a judgment might be left unsatisfied.

227. Paragraph 99 of their Skeleton Argument for the August 2025 Hearing identifies the particular risk envisaged by the Petitioners: "The freezing injunction sought by the Petitioners would only prohibit the Company from dissipating its assets to Grand View as part of the Concert Deal". Before us, the focus was different and more diverse, and included the risk of the Company making distributions post-SPA closing.

228. In paragraphs 121-122 of the Interim Injunction Ruling, the Judge dismissed this alternative basis for an interim injunction shortly, noting that it had not been pressed at any length at the hearing. He concluded that the Petitioners had not demonstrated that the Concert Transaction or the making of the proposed distributions involved or gave rise to a real risk of dissipation of assets resulting in the Company being unable to satisfy a buyout order. He found it *"unarguable"* that, in paying the distributions proposed, made in the circumstances of this case as he found them to be, the Company *"could be said to be acting improperly or unlawfully or with a view to evading a judgment subsequently made by this Court on the Re-Amended Petition"*. There was no risk of any unjustified dissipation of assets by the Company.

229. In my view, this alternative claim adds nothing to the primary claim, in the sense that I cannot envisage circumstances in this case in which a freezing injunction would be appropriate where the application for an injunction on the primary basis of material risk that the Company will not be able to satisfy a buyout order fails. I have already considered each of the risks identified above in the context of freezing injunctions, and found that there is no material risk of any buyout order not being satisfied by the

Company as a result of the Company dissipating its assets either to Grand View as part of the Concert Transaction or, indeed, otherwise. That is sufficient to determine this ground of appeal.

230. In my view, this alternative claim never added anything of substance to the main claim. The Judge was right to dismiss it summarily. I would refuse leave to appeal on this ground.

Ground 16: Preservation Order

231. As Gloster JA said in Crisson v Marshall Diel & Myers Limited [2021] Bda LR 52 at [20], approving the Chief Justice's observation in Dawson-Darner v Lyndhurst Limited [2019] Bda LR 10, in making a preservation order, the Court *"is merely seeking to ensure that the subject matter of the claim is preserved pending identification of the rightful owner"*. Hence, in England and Wales, the terms *"proprietary injunction"* is preferred. Therefore, in respect of this type of injunction, no dissipation is required: an injunction can be made over all of the assets over which ownership is claimed.

232. The Petitioners' original position in relation to this second alternative basis on which an interim injunction was sought was that a preservation order should be made over the Petitioners' two-third shareholding in the Company. However, those shares were cancelled in January 2024. The sights of this claim consequently moved to the "*more than 90% of the total equity value in the Company… effectively represented by the shares in the Company purportedly held by Grand View*", with the result that "… any preservation order should apply to at least 90% of the assets of the Company" (paragraph 89 of their Skeleton Argument for the August 2025 Hearing).

233. The Judge dealt with this second alternative claim equally briefly (in paragraph 123 of the Interim Injunction Ruling), on the basis that it could not be said that the Grand View shares were property which is the subject matter of the Section 111 Proceedings in the way required for a preservation order.

234. I agree – indeed, I do not consider the contrary arguable. As was submitted on behalf of Grand View, the Section 111 Proceedings are not about entitlement to the Company's assets: it is about whether the Petitioners have been unfairly prejudiced or oppressed and whether, as a result, the Company should be ordered to buy them out. There is no claim that the shares that Grand View proposes to sell to the Buyer (or any assets of the Company) in fact belong to them. This is clearly not an appropriate case for consideration of a preservation order.

235. Again, the Judge was unarguably right to dismiss this claim summarily, as he did; and I would refuse leave to appeal on this ground.

Conclusion

236. For the reasons I have given, I do not consider any ground of appeal has been made good.

237. As I have indicated, although I consider the Judge's conclusion that the closing of the Concert Transaction would not result in any material risk that the Company will be unable to satisfy an order after the trial of the Re-Amended Petition requiring it to pay

the fair value of the Petitioners' shares to have been correct, I do not agree with the whole of his analysis. That was the subject matter of Ground 11, and the wider issues that arose out of that ground as described above. On that ground, and the grounds which turned on the same issues and substantially overlapped with that ground (i.e. Grounds 1, 3 and 4), I would consequently grant leave to appeal but, for the reasons I have given, I would refuse the appeal on each. I would refuse leave to appeal on the other grounds which I consider stood no realistic chance of success and which gave rise to no issue which warranted a full appeal being heard in any event.

Costs

238. Following circulation of these judgments in draft, the parties made written submissions on costs. On any view, Grand View has been successful and the Petitioners unsuccessful in the application, leave to appeal being refused in respect of 11 of 16 grounds, and the substantive appeal being dismissed in the other five grounds. I see no reason for departing from the usual order that costs follow the event (RSC Order 62, rule 3(3)). That we have refused the Petitioners' appeal on differently articulated grounds is no reason for departing from that rule, especially as we are agreed that the appeal should in any event be dismissed for the reasons given by Clarke JA; and none of the authorities to which we have been referred, which were decided on their own particular facts, suggests to me that there should be any departure. I would order the Petitioners to pay Grand View's costs of the appeal to be taxed on the standard basis if not agreed, with a certificate for two Counsel.

239. Grand View seeks (i) an order that these costs be taxed now, rather than at the conclusion of the Section 111 Proceedings, and (ii) an interim payment on account of its costs in relation to the interim injunction Proceedings. I do not consider either order is warranted in the circumstances of this case. Taxation and accounting for this costs order should take place at the end of the substantive Section 111 Proceedings, in the usual way.

240. The Company also seeks its costs of the appeal from the Petitioners. I am persuaded that such an order should be made. On 18 July 2025, the Chief Justice made an order restraining the Company from expending funds in relation to the dispute between the Petitioners and Grand View other than on a non-partisan basis; but that was in furtherance of the principle that, in a dispute between shareholders, a company's assets should not be used to benefit some, but not all, shareholders. However, in the appeal, (i) the Company had its own interest as reflected in the costs order sought by the Petitioners from Segal AJ that the Company pay the Petitioners' costs of the application and (ii) the Company reasonably considered that it needed to have watching brief representation in case anything which was said, or proposed to be done, impacted on its ongoing business as an insurance company. Its directors have independent duties irrespective of the dispute between shareholders. With regard to its non-partisan participation, I consider it is entitled to its costs, on an indemnity basis, from the unsuccessful party to the appeal which, in the event, is the Petitioners.

Disposal

241. By way of disposal, I would therefore:

    (i) refuse leave to appeal in relation to Grounds 2, 5-10 and 12-16;

(ii) grant leave to appeal but refuse the substantive appeal in relation to Grounds 1, 3, 4, 11 and 12;

(iii) revoke all undertakings and orders restricting the transfer of shares in the Company including as part of the Concert Transaction or by way of closing the SPA;

(iv) order the Petitioners to pay Grand View's costs of the appeal to be taxed on the standard basis if not agreed, with certification that it is proper in the circumstances of this case for Grand View to have been represented by two Counsel at the hearing of the appeal; and

(v) order the Petitioners to pay the Company's costs of the appeal to be taxed on the indemnity basis if not agreed .

GLOSTER JA:

242. I agree with the judgment of Hickinbottom JA and his disposition of the various grounds of appeal.

243. I do not agree with the judgment of Clarke JA to the extent that his analysis of the figures differ from that of Hickinbottom JA. However, as appears below, I do, to a considerable extent, agree with Clarke JA's reasons for dismissing the appeal in any event.

244. Whilst I agree with Clarke JA: (a) that any payment by the Company by way of buyout will not fall to be made until some date in 2026 or 2027, or possibly later, when a ruling is made on the section 111 application; and (b) that it may well be the case that, by that date, such amount, if any, ordered to be paid to the Petitioners, will not be based on a value of the Company of $39.5m, those facts I regard as irrelevant in coming to the conclusion which I have, namely that this appeal should be dismissed.

245. The first reason why that is so is because neither party on the appeal (or indeed below) presented their submissions on the basis of a general submission with regard to what might be the financial position of the Company at a future valuation date. The second reason is that, on any basis, I conclude, to some extent reflecting the reasons provided by Clarke JA in paragraphs 254-276 of his judgment, that even if there is a possibility that the financial position of the company might deteriorate in run-off, there is no justifiable basis for granting an interlocutory injunction restraining the completion of the Concert Transaction in order to preclude the risk that, if it is carried into effect, the recovery of the Petitioners from the Company in future litigation might be reduced by the distribution to be made by the Company to Grand View as part of the Concert Transaction.

246. From my perspective, these reasons may be summarised as follows:

247. First, even if the effect of allowing the Concert Transaction to continue may be that the deficiency in assets of the Company needed to make up the alleged $35.5m due to the Petitioners will be $3.45m more than it would otherwise have been, the fact is that that figure, although not small, is, however, less than 10% of the Petitioners' claim for an alleged $35.5m. Like Clarke JA, I would not regard it as "*just and convenient*" to injunct a *bona fide* commercial transaction in relation to the Company on the speculative ground

that it might increase any shortfall in the Petitioners' recovery, particularly when that shortfall would be the result of a drop in the subsequent value of the assets of the Company – a risk which the Petitioners would bear in any event, if they had remained with the Company.

248. Second, it is highly speculative as to what will be the amount at which a court may ultimately order the Company to buy out the Petitioners. Although the claim, as presented in the interlocutory proceedings before us, is for 90% of the January 2024 value of the Company, that is not how it is put in the Petition where the relief claimed is for "*an amount that [the] Court determines to be a fair value of the Petitioners equity interest in the Company*".

249. Third, whilst the Petitioners complain that their Forced Withdrawal from the Company in January 2024 was unjustified, if they had remained as part of the Insurance Program, the value of their shareholding would have gone up and down according to how the Company prospered (or did not); thus, as Clarke JA says, if they had come out of the Program and became Departing Shareholders, the value of their equity (the Departing Shareholders' Equity Balance) would have fallen to be calculated on a rolling basis over a five year period and the Company would pay, "*subject to the approval of the Board and in its sole discretion…the lower*" of the Initial Shareholder Equity Balance and the Final Shareholder Equity Balance in the event that the lower balance was positive; and payment would be made by five equal annual instalments: see Article I, Section C.4 of the Shareholders' Agreement. No interest would be payable: Article I, Section C.5.

250. Fourth, the evidence demonstrated that the sale of the Company as part of the Concert Transaction would be of real benefit to the Company since it would become owned by a shareholder who was highly experienced in the business of running off insurance portfolios. It would obviously be in such shareholder's interest to maximise returns from the conduct of the run-off (whether by favourable commutations or otherwise), and accordingly increase the value of the Company's equity. The employment of a manager *per se* would not have achieved that result. In those circumstances it would be wholly inappropriate to restrain the sale, since that would be disadvantageous to the Company and to the Petitioners, in whose interest it is that the Company should flourish and the value of their ultimate buy-out sum should be maintained and, if appropriate, enhanced.

251. Fifth, the evidence did not support any allegation, if made, that the sale was other than one on *bone fide* arm's-length terms. In those circumstances, it would be inappropriate for a court to interfere with the business judgment of the Company's directors. It was clear that any prejudice to the Company would outweigh the prejudice to the Petitioners.

252. For the above alternative reasons, I would also conclude that the appeal on Ground 11 (and associated grounds) should be dismissed.

CLARKE JA:

253. For my part I would approach the case differently from Hickinbottom JA.

254. As the judgment of Hickinbottom JA acknowledges, the primary relief claimed is for the value of the Petitioners' equity in the Company as at 29 January 2024 and he does not accept that "*the Judge's conclusion that the closing of the SPA/Concert Transaction*

would not materially prejudice the Company's ability to comply with a future Court order that it buys out the Petitioners by paying them fair value for their shareholding in the Company was wrong" (paragraph 189 above)

255. In reaching this conclusion both the Judge and Hickinbottom JA addressed the value of the Petitioners' interest as at January 2024. In short the calculations were as follows:

Net equity of the Company for January 2024 was **$39.5m**, a figure midway between $49,042,000 as at 30 September 2023 and $30,616,106 as at 30 June 2024

Grand View's equity at 10% = **$3.95m**

Petitioners claim to equity at 90% = **$35.55 m**

Distributions to be made by Company under the Concert Transaction to Grand View, reducing the Company's net assets were **$3.45m**

$**3.45m** was less than the value of the equity held by Grand View in the Company namely $**3.95m**. Accordingly, it was held, there was not a material risk that the distributions to be paid by the Company would exceed the value of Grand View's equity interest (i.e. a risk that the Company would not be able to satisfy any buyout order that might be made by the Court).

256. I agree that the distribution which falls to be taken into account is, and is only, the $3.45m figure, for the reasons stated above.

257. But these figures, other than the $3.45m, are all based on the value of the Company as at January 2024. However, any payment by the Company by way of buyout will not fall to be made until some date in 2026 or 2027, or possibly later, when a ruling is made on the section 111 application. It is not at all clear that when the amount (if ordered) falls to be paid the value of the Company will be $39.5 million. The calculations made by the Judge and in the judgment above would appear to assume that that valuation would not change.

258. If, for instance, the net asset value of the Company at the time for payment was $30m the Petitioners' claim (to $35.55m) would exceed the value of the equity and the $3.45m figure would be $450,000 more than the value of the equity to which Grand View was entitled, namely $3m, being 10% of $ 30m. Further, the payment out by the Company of the $3.45m, would, *pro tanto*, increase the insufficiency of the assets of the Company to cover the value of the Petitioners claim, based on the equity at January 2024, i.e. $35.55m.

259. If the distribution in connection with the Concert transaction is to be $3.45m and the remaining assets after that distribution need to be $35.55. there would need to be net assets of $39m to satisfy the Petitioners' entitlement. If the distribution to be taken into account was $5.95m the net assets would need to be $41.5m.

260. There must be a real risk that the net assets of the Company will not be of the order of $39m when payment of the Petitioners falls to be made, if that is ordered.

261. It is not, of course, possible to tell what the net asset figure will be when payment to the Petitioners falls to be made (if it does). As to the figures, the $39.5m figure is as at

January 2024. The net assets of the Company in the accounts as at 30 June 2024 were $30,616,106 (Company's Audited Financial Statements Years Ended 30 June 2024 and 2023, page 4). The net assets in the unaudited Company Management Accounts as at 31 March 2025 were $32,222,595 (paragraph 196(i) above). In the Grand View Quantum Note, the following is said

> *"14. In addition, according to paragraph 28 of the Petitioners' Answer, Affirmative Defenses and Counterclaims in the Vermont proceedings (SHB/28/1144), as at 9 September 2024, $3,973,219 of additional shareholder equity was retained by RRG Holdco, implying aggregate net equity in the Company and RRG Holdco combined of $34,589,323 or $36,039,325 once the ULAE contribution of $1,450,000 is factored in."*

262. It does not seem to me right to take into account the combined equity of the Company and Cassatt Holding. But even if it is, and even if it is right to add in $1.45m to the assets of the Company, the figures are:

30.6.24 $30,616,106 + $1,450.000 $**32,066,106**

31.3.25 $32,222,595 + $1,450,000 $**33,672,596**

Company and Cassatt Holding as at 9 September 2024

$34,589,232 + $1,450,000 $**36,039,323**

These figures are all well below the $39 million needed.

263. Whether it is right to treat the $1.45m as an increase in the assets of the Company is, to me at any rate, unclear. It is said that to swap a debt from Grand View for cash is entirely neutral: see the Petitioners' Quantum Note, paragraph 18. In principle that is right. In that note the Petitioners also point out that it is not clear that a payment into the Company in cash will in fact be made and suggest that the Buyer could simply arrange for the Company to write off the debt, which, of itself, would reduce the assets of the Company. On the other hand, it is said by Grand View that the $1.45m would simply reduce the reserve for ULAEs in the Balance Sheet and thereby increase the net assets: see the Grand View Quantum Note, paragraphs 11-13.

264. It seems to me tolerably clear that the SPA calls for $1.45m to be made available by the Buyer in some way, the effect of which would release Grand View from any obligation to pay the Company for unallocated loss adjustment expenses. The resolution of the present issue (namely whether, on account of the $1.45m there would be an increase in the Net Assets of the Company) would seem to me to depend on an analysis of what was contained in the accounts and, in particular, whether they include not only a reserve for ULAEs (which they do) but also a receivable from Grand View in the amount of $1.45m or more. If they do include such a receivable then the provision of $1.45m to the Company (if made) would not appear to increase the net asset figure in the accounts (since there would simply be a swap of liability for cash). The relevant question, the answer to which is not apparent to me, is whether the payment of $1.45m would increase the net assets as shown in the accounts because it is only if it would that the $1.45m figure should be added to the existing figures for net assets in the accounts.

265. But, leaving those complications aside, the net assets of the Company do not at present appear to amount to $39m and after going into run-off may reduce. In those circumstances the question arises as to whether the Court ought to restrain the completion of the Concert Transaction in order to preclude the risk that, if it is carried into effect, the recovery of the Petitioners from the Company may be reduced by the distribution of $3.45m to be made by the Company.

266. In my judgment the Court should not do so for a number of reasons. First, the effect of allowing the Concert Transaction to continue may be that the deficiency in assets of the Company needed to make up the $35.5m will be $3.45m more than it would otherwise have been. That figure, although in no way minimal, is, however, less than 10% of the Petitioners' claim for $35.5m. I would not regard it as "*just and convenient*" to prevent a *bona fide* commercial transaction in relation to the Company because it might increase a shortfall in the Petitioners' recovery, particularly when that shortfall would largely be the result of a drop in value of the assets of the Company – a risk which the Petitioners would bear if they had remained with the Company.

267. Second, although I recognise that the claim as presently put is for 90% of the January 2024 value of the Company, that is not how it is put in the Petition where the relief claimed is for "*an amount that [the] Court determines to be a fair value of the Petitioners equity interest in the Company*". In relation to that question, it seems to me that it may be simplistic to calculate a fair value by applying a percentage (90%/10%) to a figure for net assets. In the light of the complicated procedures to which I refer below a Shareholder would not be paid by the Company an amount representing x% of the value of the Company on a particular date.

268. Whilst the Petitioners understandably complain that their Forced Withdrawal from the Company in January 2024 was unjustified, if they had remained (as they plainly wished to do in order to be part of the Insurance Program) the value of their shareholding would go up and down according to how the Company prospered (or did not) and, if they came out of the Program and became Departing Shareholders the value of their equity (the Departing Shareholders' Equity Balance) would fall to be calculated on a rolling basis over a five year period and the Company would pay, "*subject to the approval of the Board and in its sole discretion…the lower*" of the Initial Shareholder Equity Balance and the Final Shareholder Equity Balance in the event that the lower balance was positive; and payment would be made by five equal annual instalments: see Article I, Section C.4 of the Shareholders' Agreement. No interest would be payable: Article I, Section C.5.

269. The SHA provides that the Initial Shareholder Equity Balance will be calculated as of 30 June of the year of the Termination Date (Article I, Section C.2), that date being the year in which termination is to take place (Article I, Section B.2). The Departing Shareholder Equity Balance is to be calculated as of 30 June of each year following the Termination Date and the balance so determined on the fifth anniversary of the Termination Date will constitute the Final Shareholder Equity Balance: Article I, Section C.4. If, therefore, the Petitioners were seeking to terminate in 2024, the calculation of their Initial Shareholder Equity Balance would be as of 30 June 2024. The Final Shareholder Equity Balance would be as of 30 June 2029.

270. The position in relation to Forced Withdrawal is more obscure. Article 1 E of the Shareholders' Agreement provides:

"***Forced Withdrawal***

Automatically upon …. the vote of a majority of the board, an Institutional Shareholder shall sell its shares to the Company at a price and on payment terms as set forth in Subsection C above"

271. That would appear to mean that the price shall be determined in like manner as would apply in the case of a voluntarily Departing Shareholder. On that basis it would be necessary to start the process with the Equity Balance as at 30 June 2024.

272. The complication in the present case is that the Petitioners (a) did not wish to be Departing Shareholders; and (b) contend that their Forced Withdrawal was illegitimate. Nevertheless, there is, as it seems to me, considerable room for argument that the valuation taken should be as at 30 June 2024 on the ground that the Petitioners ought not to be able to recover markedly more than they would recover as Departing Shareholders or on a valid Forced Withdrawal, and on the basis that the value as at 30 June 2024 – the date for the calculation of the Initial Shareholder Equity Balance – could be taken to represent the date for the calculation of the lower of the Initial and Final Shareholder Equity Balance (absent the possibility of having any information about the latter Balance, which would fall to be assessed in the future) which would have determined their entitlement to payment. (I appreciate that, since the Petitioners have been forced to withdraw and there is only one shareholder in the Company, which is to go into runoff, these complicated provisions are (I assume) unworkable. But if the Petitioners had remained they would have been workable.) I note that in its Quantum Note, Grand View suggested that for the application for leave to appeal the starting point should be the net assets as shown in the Company's audited accounts as at 30 June 2024, being the end of the accounting year in which the Petitioners ceased to be shareholders of the Company.

273. If that approach were taken the equity to which the Petitioners would have been entitled is no more than 90% of $ 30.6m i.e. **$ 27.54m** and Grand View's entitlement would be $3.06m. If the figure was $32.2m, the Petitioners would have been entitled to **$28.98m** and Grand View to $3.22m. These figures are very close to $3.45m. Further, the assets of the Company as at that date would be very nearly sufficient to buy the Petitioners out; and greater assets might be available in the year in which the order is made.

274. In those circumstances, namely where the entitlement of the Petitioners may be considerably less than $35.5m; and the entitlement of Grand View not much less than $3.45, I would not regard it as appropriate to restrain the Company and Grand view from carrying out the Concert Transaction.

275. Third, the sale of the Company as part of the Concert Transaction would be of manifest benefit to the Company since it would put it in the hands of those well-equipped to manage the run-off. If an order to prevent the sale is made now that may well cause the sale never to take place, to the acute disadvantage of the Company directly and also the Petitioners, in whose interest it is that the Company should flourish. The prejudice to the Company would outweigh the prejudice to the Petitioners.

276. I would, therefore, dismiss the appeal on Ground 11 (and associated grounds), but for different reasons.

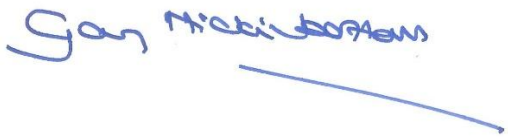
277. So far as the grant of leave to appeal is concerned I am not minded to dissent from the view of Hickinbottom JA that leave should be granted in relation to Grounds 1, 3, 4, 11 and 12. I would not grant leave in relation to Ground 14 because, although it seems to me arguable that the Interim Injunction Ruling was a perfected conditional decision, it does not seem to me arguable that the judge erred in exercising his inherent jurisdiction to clarify or correct it so that it corresponded with his intention as at 15 October 2025 and subsequently. I would not grant leave in relation to the other grounds for the reasons given by Hickinbottom JA and by Segal AJ in his Leave to Appeal Ruling (save for his reasons on Ground 6).

278. For those reasons, I agree with the disposition of this appeal in the terms set out by Hickinbottom JA (see paragraph 241 above).

Signed

Clarke JA

Gloster JA



Hickinbottom JA