In The Supreme Court of Bermuda

CIVIL JURISDICTION

(COMMERCIAL COURT)

2024: No. 70

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

BETWEEN:

JEFFERSON HEALTH NORTHEAST SYSTEM
ABINGTON MEMORIAL HOSPITAL

Petitioners

and

CASSATT INSURANCE COMPANY, LTD.
GRAND VIEW HOSPITAL

Respondents

JUDGMENT

Dates of Hearing:	**28 & 29 August 2025**
Date Draft Ruling Circulated:	**25 September 2025**
Date of Final Ruling:	**15 October 2025**
Appearances:	**Kyle Masters & Matthew Summers of Carey Olsen (Bermuda) Limited for the Petitioners** **Claire van Overdijk, KC of Appleby (Bermuda) Limited for the First Respondent** **Mark Chudleigh &Vinesh Mistry of Kennedys for the Second Respondent**

JUDGMENT of Segal, AJ

The Petitioners' application for an injunction

1. This is my judgment on the Petitioners' application for injunctive relief to restrain Grand View Hospital (***Grand View***) from selling its shares in Cassatt Insurance Company, Ltd (the ***Company***), a Bermuda company. The application was heard remotely on Thursday 28 and Friday 29 August 2025. Mr Kyle Masters of Carey Olsen Bermuda Limited appeared for the Petitioners and Mr Mark Chudleigh of Kennedys appeared for Grand View. Ms Claire Van Overdijk KC of Appleby (Bermuda) Limited had a watching brief for the Company, At the conclusion of the hearing, I reserved judgment and told the parties that I would provide them with my decision and written reasons as soon as I could. This judgment now sets out that decision and my reasons.

2. The Petitioners are Jefferson Health Northeast System (***JNE***) and Abington Memorial Hospital (***Abington***). They have filed a petition against the Company pursuant to section 111 of the Companies Act 1981 (***section 111***) based on allegations that the affairs of the Company have been and are being conducted in a manner oppressive of and prejudicial to their interests as members of the Company. The petition has been amended twice and now stands as the Re-Amended Petition (the ***Re-Amended Petition***) with the latest amendments having been made on 4 June 2025.

3. The Petitioners were and claim that they remain shareholders in the Company. Grand View was the only other shareholder in the Company but now claims to be the sole shareholder following the purported exercise by the Company of a contractual right to force the withdrawal of a shareholder and to cancel its shares. The Petitioners dispute this and say that the forced withdrawal provisions were improperly and invalidly exercised. The circumstances giving rise to the alleged termination of the Petitioners' rights as shareholders are the subject matter of the Re-Amended Petition. Grand View was joined as a party to the Re-Amended Petition on 1 July 2025 for the reasons set out in the Chief Justice's Ruling dated 18 July 2025 (the ***Chief Justice's Ruling***).

4. The Petitioners now seek an interlocutory injunction to restrain Grand View from taking steps to sell its shares in the Company, in particular pursuant to a sale agreement dated 28 April 2025 (the ***SPA***) entered into by Grand View (and the Company) with a special purpose company owned or controlled by Concert Group Holdings, Inc ***(Concert Holdings)*** and to restrain the Company from distributing funds to Grand View in connection with a sale of its shares, including in connection with the SPA, until the final determination of the Re-Amended Petition or further order of the Court (the sale to Concert Holdings or a company controlled by it and the associated distributions by the Company are referred to as the ***Concert Transaction***).

5. The interlocutory injunction (the ***Injunction***) sought by the Petitioners is set out in [4] of their summons dated 20 June 2025 (the ***Interim Relief Summons***) as follows (my underlining):

> *"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."*

6. The Petitioners put their case for the Injunction on three separate grounds. First, that they are entitled to an interlocutory (or interim) injunction to preserve the *status quo* pending the hearing and determination of the Re-Amended Petition and thereby prevent Grand View from taking action which would undermine and interfere with the relief sought by the Petitioners in the Re-Amended Petition (the ***Interlocutory Injunction Ground***). In the alternative, and secondly, the Petitioners sought a freezing injunction on the basis that they had demonstrated a real risk that Grand View's views conduct, and the implementation of the Concert Transaction, would involve the improper transfer of the assets of the Company and materially prejudice the Company's ability to satisfy an order to purchase the Petitioners' shares made on the Re-Amended Petition (the ***Freezing Injunction Ground***). Further and once again in the alternative, the Petitioners relied on the Court's jurisdiction under RSC O.29, r.2 (the ***Order 29 Ground***) to make an order for the preservation of any property which is the subject-matter of the relevant action and argued that Grand View's shares and the assets and funds of the Company which were to be distributed to Grand View as part of the Concert Transaction were part of the subject-matter of the Re-Amended Petition.

7. The Petitioners' application is opposed by Grand View.

My decision in brief

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

The evidence and the Company's position

9. In support of their application for the Injunction the Petitioners filed the Fourth Affidavit (***Ramthun-4***) and Sixth Affidavit of Ms Lisa Ramthun (***Ramthun-4***). Ms Ramthun is the Vice President for Clinical Risks and Claims Management at Thomas Jefferson University and Jefferson Health (***Jefferson***). Jefferson is the corporate parent of the two Petitioners. The Petitioners also relied on the Third and Fifth Affidavit of Ms Ramthun and on the First Affidavit of Mr Gary Osborne (***Osborne-1***). Mr Osborne's affidavit was filed by the Petitioners, with the permission of the Court, to provide expert evidence on various matters. Mr Osborne is Vice President, Alternative Risk Programs at Risk Partners, Inc. and has over thirty-nine years' experience in the captive insurance business. Grand View filed and relied on the First Affidavit of Mr Douglas Hughes (***Hughes-1***). Mr Hughes is one of the three directors of the Company. Mr Hughes was appointed by Grand View.

10. The Company was originally the sole respondent to the petition (as I have already noted Grand View was only joined as a party on 1 July 2025) and remains in the Re-Amended Petition the only party against whom the Petitioners seek relief (as further explained below). However, the Company is now prohibited from participating in the dispute between the Petitioners and Grand View concerning the Concert Transaction.

11. Pursuant to [2] of this Court's order dated 2 July 2025 (the ***Funding Injunction Order***), made to give effect to the Chief Justice's Ruling dated 18 July 2025 (the ***Funding Injunction Ruling***), the Court granted the following injunction (the ***Funding Injunction***)

(to remain in force until the Court makes a final determination on the Re-Amended Petition or orders otherwise):

> *"An injunction is granted prohibiting the Company from using its assets for participation in the dispute as between the Company and Grand View as set out in paragraphs 75-82 of the Re-Amended Petition in the section entitled "The Concert Deal and Further Acts of Oppression", except in the following circumstances:*
>
> *a. To comply with the terms of the Directions Order dated 8 November 2024 (as amended) or any Order granted by this honourable Court.*
>
> *b. To retain an expert and produce an expert affidavit in accordance with paragraph 6(a) of the Order dated 1 July 2025.*
>
> *c. With the written consent of the Petitioners and Grand View or otherwise with leave of this Court."*

12. Accordingly, the Company is unable to take an active part in the proceedings relating to the Interim Relief Summons. However, prior to the date on which Grand View was joined and to the Funding Injunction Ruling, the Company had filed the First Affidavit of Mr Eric Dethlefs (***Dethlefs-1***) (sworn on 13 June 2025) in support of its planned opposition to the Petitioners' application for an interim injunction and in response to Ramthun-4. Mr Dethlefs is another director of the Company and was until recently one of two independent directors on the Company's board. The other was Mr Terence Power. On 26 August 2025 Mr Dethlefs swore his Second Affidavit (***Dethlefs-2***) - filed without permission although the Petitioners did not object to the Court reading it – in which he said that on 15 August 2025 he had given notice of his resignation as a director with effect from 14 November 2025 and that Mr Power had, on 21 August 2025, given notice of his resignation as a director with effect from 22 August 2025.

13. In addition, the Court ordered (by an order dated 1 July 2025) that the Company had leave to file a rebuttal expert affidavit in response to Osborne-1. This rebuttal expert evidence was only permitted to refer to documents and records which had as of 1 July 2025 already been disclosed to the Petitioners or were otherwise before the Court in these proceedings. Pursuant to this permission, the Company retained Mr David Provost who swore his First Affidavit (***Provost-1***) on 29 July 2025. Mr Provost is the retired Deputy Commissioner, Captive Insurance at the Vermont Department of Financial Regulation in the USA. The Petitioners argued that Provost-1 had impermissibly relied on new financial information that as at 1 July 2025 had only been available to the Company and therefore and to that extent had been prepared in breach of the 1 July order. However, they made it clear that they did not seek to strike out the offending parts of Provost-1 but instead asked the Court to take this into account when determining the weight to be attached to Mr Provost's evidence.

Grand View's undertaking and the Petitioners' cross-undertaking - the consent order dated 23 July 2025 (the *Consent Order*)

14. Grand View has already given the following undertaking (the ***Undertaking***) as referred to in the Consent Order until final determination of the Petitioners' injunction application or until the parties agree otherwise in writing or further order of the Court):

> *"that Grand View will not complete any transfer of the shares of the Company – including without limitation, by closing the share purchase agreement dated 28 April 2025 between the Company and Cassatt Solutions LLC - until after 14 July 2025 or further order of the Court (whichever is sooner), it being acknowledged that Grand View's rights are and shall remain fully preserved in relation to its ability to make whatever arguments might otherwise have been available to it in relation to both the injunction application and the proceedings more generally, including but not limited to any challenges it might raise in relation to the jurisdiction of the Bermuda Court, the order adding it as a party, the order granting leave to serve it outside the jurisdiction, the order granting leave to serve it by substituted service, and/or the appropriateness of the Petitioners having sought an ex parte injunction against it, this undertaking having been offered strictly on the understanding that the Petitioners will not rely on the undertaking to contest any such challenge Grand View might raise when served."*

15. The Petitioners also gave an undertaking to abide by any order which the Court may make as to damages in the event the Court finds that the Petitioners were not entitled to an interim injunction as against Grand View and that Grand View has suffered damages by reason of the Undertaking which the Petitioners should pay (the ***Cross-Undertaking***). The Petitioners offer to continue the Cross-Undertaking in the event that the Court grants their application.

The Cassatt Group

16. The Company's business is as a (re)insurer of medical professional liability risks. There is a sole cedant, Cassatt Risk Retention Group, Inc, a Vermont domiciled and regulated insurer (***Cassatt RRG***). The Company reinsures primary policies issued by Cassatt RRG and also issues excess coverage to the Cassatt insureds/members above the Cassatt RRG primary policies. The Company and Cassatt RRG are owned by Cassatt RRG's policyholders from time to time (who were referred to as Institutional Shareholders). This is an important context for understanding the Company's governance structure and the provisions in the SHA pursuant to which Institutional Shareholders who cease to participate in the Company's insurance programme are required to sell their shares to the Company and which permit the Company's board to decide that other Institutional Shareholders, for example those who are in breach of the obligations and polices

established by the programme, be required to withdraw and sell their shares to the Company.

17. RRG Holdco (another Vermont corporation) is a wholly owned subsidiary of Grand View and the parent company of Cassatt RRG and Cassatt Insurance Group, Inc. Cassatt RRG and Cassatt Insurance Group Inc provide insurance and claims management services to the Company. Cassatt RRG and Cassatt Insurance Group, Inc are together referred to as the ***Other Cassatt Companies*** and all three are referred to as the ***Cassatt Group***.

The Re-Amended Petition – allegations made and relief sought

18. I set out below the key parts of the Re-Amended Petition for the purpose of identifying the key factual allegations made by the Petitioners and the grounds on the which the Re-Amended Petition is based together with the relief sought by the Petitioners. I appreciate that this is a very lengthy extract but these parts of the Re-Amended Petition are an important and relevant background to the Interim Relief Summons:

> *"3. The Petitioners, as majority shareholders of the Company, are the victims of oppressive and prejudicial misconduct perpetrated by the Company's management ("Management") and minority shareholder. As a result, the Petitioners have completely and irreparably lost trust and confidence in Management and the minority shareholder. The Company has also lost its purpose and therefore its substratum.*
>
> *4. The Petitioners seek an Order pursuant to section 111 of the Companies Act 1981 to enforce all of their rights as shareholders of the Company, and to promote a clean break between the shareholders.*
>
> ……
>
> *7. The number of Institutional Shareholders has reduced significantly over the past 12 years due to the withdrawal of participating hospitals from the Cassatt Group's captive insurance program. Despite this reduction in Institutional Shareholders, the Company maintains a large amount of assets. Those assets include more than $50 million dollars in excess capital, well beyond the amount necessary to satisfy the insurance needs of the insureds three remaining Institutional Shareholders, including the run-off claims related to former shareholders, and for reserves. The majority of the Cassatt Group's assets are held by the Company*
>
> *8. …… The Company at one point had eight Institutional Shareholders, but now there are only three Institutional Shareholders (which are also the only insureds). Those three Institutional Shareholders include the two Petitioners (Abington and JNE) as well as Grand View Hospital ("Grand View"). The*

*corporate parent of Abington and JNE is Thomas Jefferson University and Jefferson Health ("**Jefferson**")*

9. *The two Petitioners collectively hold two-thirds of the equity in the Company. They also account for the overwhelming majority of the business of the Company and the Cassatt Group generally. In the 2023/2024 policy year, the Petitioners paid approximately 93.3% of the premiums received by the Cassatt Group, with Grand View paying only 6.7% of the premiums.*

10. *The Governing Documents outline, among other things, the procedures for the appointment of the Company's Directors. Given the nature of the Company as a closely held captive insurer, the Institutional Shareholders have the right to, among other things, appoint their own "Institutional Directors" to the Board of Directors ("Board"), as well as to appoint "Alternate Directors."*

11. *The Institutional Shareholders also have the right to vote amongst themselves to elect "Independent Directors" to the Board. The rights set out in the Governing Documents are intended to ensure that each Institutional Shareholder is always represented on the Board and has a voice in the Company's governance and management.*

12. *In late 2023, the Petitioners collectively appointed two new Institutional Directors and a new Alternate Director to the Board. Cristina Cavalieri and John Mordach were appointed as the Institutional Directors, and Lisa Ramthun was appointed as Alternate Director (collectively, the "Petitioners' Directors").*

13. *At the same time, the other three Directors of the Company were Eric Dethlefs (President & CEO of the Cassatt Group and Independent Director), Douglas Hughes (Grand View's President & CEO and Institutional Director), and Terence Power (Vice President of the Company and Independent Director) (collectively, the "Other Directors").*

14. *Mr Hughes was appointed by Grand View. Mr Dethlefs and Mr Power were elected in 2022 by the Company's Institutional Shareholders for a term that was intended to expire in October 2023.*

15. *Two separate Company meetings were scheduled to occur in Bermuda on 23 October 2023: (a) the Annual General Meeting ("AGM") of the shareholders, and (b) a meeting of the Board. The terms of Mr Dethlefs and Mr Power as Independent Directors were intended to expire at the 2023 AGM. However, on 20 October 2023, only days before the 2023 AGM and the Board meeting*

were scheduled to occur, the Other Directors caused the Company's Secretary to cancel the 2023 AGM and the Board meeting.

16. *The Other Directors indefinitely cancelled the 2023 AGM and the Board meeting without explanation or the legitimate authority to do so. It was only after multiple inquiries from the Petitioners that Mr Dethlefs subsequently claimed that the 2023 AGM and the Board meeting were cancelled because the Other Directors objected to the appointment of the Petitioners' Directors to the Board.*

17. *With the Petitioners' Directors purportedly excluded from the Board, and the terms of the Independent Directors being improperly extended beyond their intended expiry in October 2023, the Other Directors purported to improperly approve and serve the Petitioners with a Notice of Forced Withdrawal dated 29 January 2024 ("Notice of Forced Withdrawal"). The Notice of Forced Withdrawal purports to remove the Petitioners as Institutional Shareholders of the Company.*

18. *If the Petitioners are forced out of the Company, the Other Directors will attempt to withhold the Petitioners' equity in the Company, indefinitely secure their positions as Directors and/or Officers of the Company, and use the Company's considerable excess assets for the sole benefit of Management and the final remaining shareholder, Grand View. That constitutes oppressive and prejudicial conduct by the Other Directors, Grand View, and Management, and is a breach of fiduciary duty as well as the Petitioners' rights, and contrary to the purposes for which the Company was created.*

19. *The Other Directors and Grand View have acted in a manner that is oppressive and prejudicial to the interests of the Petitioners and are in breach of their fiduciary duty. By attempting to force the Petitioners out of the Company on manufactured grounds, the Other Directors have acted for the improper purpose of advancing their own self-interest as well as that of Management and Grand View.*

20. *The Other Directors have also acted in a perverse manner in breach of the Petitioners' rights pursuant o the Governing Documents and contrary to their duties as Directors. The Petitioners have lost their right to be represented on the Board, to participate in the governance and management of the Company, and are being robbed of the true value of their ownership interest in the Company.*

21. *Additionally, while the Company's purpose and function has slowly eroded over time as participant hospitals have left the Cassatt Group, the removal*

of the Petitioners as Institutional Shareholders will completely destroy what is left of the Company's intended purpose and function.

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28. *As of October 2023, the Company's Board properly included the following five Directors:*

    a. *Cristina Cavalieri is one of the Petitioners' two Institutional Directors. Ms Cavalieri is also the Executive Vice President & Chief Legal and Risk Affairs Officer at Jefferson.*

    b. *John Mordach is the second of the Petitioners' two Institutional Director. Mr Mordach is also the Executive Vice President & Chief Financial Officer at Jefferson.*

    c. *Lisa Ramthun is the Petitioners' Alternate Director. [She] is also the Vice President for Clinical Risks and Claims Management at Jefferson.*

    d. *Douglas Hughes is Grand View's Institutional Director. Mr Hughes is also the President & CEO at Grand View.*

    e. *Eric Dethlefs is an Independent Director who was elected in 2022 for a term that was intended to expire in October 2023. Mr Dethlefs is also the President & CEO at the Cassatt Group.*

    f. *Terence Power is an Independent Director who was elected in 2022 for a term that was intended to expire in October 2023. Mr Power is also the Vice President of the Company as well as a service provider through Strategic Risk Solutions.*

29. *Mr Hughes, Mr Dethlefs, and Mr Power have purported to use their position on the Board and/or as Officers of the Company to improperly exclude the Petitioners' Directors (Ms Cavalieri, Mr Mordach, and Ms Ramthun) from the Board and to promote their own self-interest. Mr Dethlefs and Mr Power have purported to do so despite their terms as Independent Directors being intended to expire in October 2023.*

30. *At the beginning of 2023, the Petitioners' Institutional Directors were Alison Ferren (then-President Chief Operating Officer at Abington) and Michael Walsh (then-Senior Vice President of Finance at Abington). The Petitioners' Alternate Director was Ronald Kumar (Senior Vice President & Chief Administrative Officer at Jefferson Medical Group).*

31. *Ms Ferren and Mr Walsh resigned as Institutional Directors effective February and July 2023, respectively, at the same time as their employment with the Petitioners ended. Mr Kumar intended to resign as Alternate Director once a new Alternate Director was appointed to replace him. The Petitioners were therefore entitled to appoint two new Institutional Directors and corresponding Alternate Directors in accordance with Article IV(A) of the Shareholders Agreement and Bye-Laws 21.2, 22, and 23.*

32. *At the request of the Petitioners, and prior to the appointment of the Petitioners' Directors, Management made its own recommendation about who the Petitioners should choose to appoint to the Board. On 3 August 2023, William Black, Jr (Assistant Board Secretary and Vice President & General Counsel at Cassatt Holding) emailed the Petitioners a memorandum that recommended the Petitioners appoint Aimee James (Vice President and Principal Counsel at Jefferson) and Brian Sweeney (President for North Region at Jefferson) as Institutional Directors, with Mr Kumar to again be appointed as Alternate Director.*

33. *In September 2023, the Petitioners gave notice that they were appointing Ms Cavalieri, Mr Mordach, and Ms Ramthun as their Directors, instead of the candidates recommended by Mr Dethlefs and Mr Black. The Petitioners' Directors qualify as "Senior Management" of the Petitioners in accordance with the definition in the Company's Bye-Laws. That is demonstrated by the fact that the Petitioners' previous Alternate Director, Mr Kumar, is also employed by Jefferson rather than by Abington or JNE. It is also demonstrated by the fact that Mr Dethlefs and Mr Black originally recommended the appointment of Ms James and Mr Sweeney as Institutional Directors despite knowing that they are both employed by Jefferson rather than Abington or JNE.*

34. *The Company and the Board accepted the appointment of the Petitioners' Directors. Accordingly, on 8 September 2023, Mr Dethlefs emailed the Petitioners and explicitly addressed the topic of Ms Cavalieri's and Mr Mordach's eligibility to be appointed as Institutional Directors. Mr Dethlefs wrote that, "[a]lthough our understanding is that neither Cris Cavalieri nor John Mordach would technically be considered 'Senior Management' of the entities -Abington and [JNE] - that are Cassatt shareholders, we believe that their roles and responsibilities at Jefferson would nevertheless qualify them to be appointed and recognized as Institutional Directors under [the Bye-Laws]."*

35. *Although initially also questioning whether Ms Ramthun qualified as Senior Management, Mr Dethlefs separately accepted Ms Ramthun's appointment as Alternate Director as well. Accordingly, on 18 September 2023, Mr*

Dethlefs emailed Ms Cavalieri and stated that he understood the Petitioners were "appointing [Ms Cavalieri] and John Mordach as Directors, and Lisa Ramthun as Alternate Director." Mr Dethlefs ended the email by writing, "[w]e look forward to having all of you join the Board of Cassatt!"

36. *Additionally, on 11 October 2023, Mr Black and his Administrative Assistant, Laurie Natalie, sent emails to the Petitioners' Directors, among others, attaching certain documents in preparation for the 2023 AGM and the Board meeting. The attached documents included a "List of Board of Directors" dated 6 October 2023, which included the names of all of the Petitioners' Directors along with the Other Directors.*

37. *Ms Natalie also circulated itineraries and booked travel and hotel arrangements for Ms Ramthun's trip to Bermuda for the 2023 AGM and the Board meeting. Ms Ramthun was intended to attend the 2023 AGM and the Board meeting in person as the Petitioners' representative.*

Attempts to Improperly Exclude the Petitioners' Directors from the Board

38. *At some point between 11 and 20 October 2023, the Other Directors determined that they would seek to remove the Petitioners as Institutional Shareholders of the Company.*

39. *The 2023 AGM and the Board meeting were scheduled to occur on Monday, 23 October 2023 in Bermuda. Ms Ramthun, on behalf of the Petitioners' Directors, was booked to attend those meetings in person. Suddenly, on Friday, 20 October 2023, the Other Directors caused the Company's Corporate Secretary, Walkers Corporate (Bermuda) Limited ("Walkers"), to send an email (the "Walkers Email") to the Petitioners' Directors, among others, stating without any explanation that the 2023 AGM and the "newly-constituted Board of Directors meeting" was cancelled indefinitely, subject to rescheduling by the Board. The 2023 AGM and the Board meeting were never subsequently rescheduled.*

40. *The Walkers Email also stated that the Other Directors were purporting to unilaterally form what was effectively an alternate Board for the Company (the "Pretend Board"). The Pretend Board would still meet on 23 October 2023 as part of what was referred to as a "meeting of the current Board of Directors" ("October 2023 Pretend Board Meeting"). The Pretend Board excluded the duly appointed Petitioners' Directors but included Mr Dethlefs and Mr Power, the two Independent Directors whose elected terms were intended to expire in October 2023.*

41. *Over the next three days, in response to multiple inquiries from the Petitioners, Mr Dethlefs purported to explain in emails to the Petitioners' Directors why the 2023 AGM and the Board meeting had been cancelled. Mr Dethlefs claimed that the Petitioners' Directors were being excluded from the Board because the Other Directors unilaterally determined that the Petitioners' Directors did not qualify as Senior Management pursuant to the Governing Documents. Mr Dethlefs made that claim despite the fact that he had previously recognized the appointment of the Petitioners' Directors to the Board.*

42. *Mr Dethlefs claimed that the Other Directors would meet at the October 2023 Pretend Board Meeting to determine how to address the ineligibility of the Petitioners' Directors. Mr Dethlefs also stated that the Pretend Board intended to otherwise continue to carry on the business of the Board as if the Other Directors were the Board's only members. That is, the Other Directors would govern the Company without allowing the Petitioners' Directors to participate, and despite the elected terms of Mr Dethlefs and Mr Power as Independent Directors being intended to expire in October 2023.*

43. *Since the 2023 AGM was not rescheduled or held, the shareholders of the Company were never provided with an opportunity to elect new Independent Directors in accordance with Bye-Law 21.2.2 and Article IV(A)(2) of the Shareholders' Agreement. The Other Directors instead purported to undertake a fundamental restructuring of the governance of the Company, while excluding the Petitioners from having any voice in the governance and management of the Company. The exclusion of the Petitioners' Directors from the Pretend Board also prevented the Petitioners from otherwise protecting their interests as majority shareholders of the Company.*

44. *It became apparent over the next several months that the improper and unjustified formation of the Pretend Board was undertaken by the Other Directors as part of a larger plan to force the Petitioners out of the Company and the Cassatt Group generally. The objective of that plan was to appropriate the Petitioners' capital in the Company and the Cassatt Group for the benefit of the Other Directors, Grand View, and Management.*

45. *The actions of the Other Directors, Grand View, and Management are contrary to the Governing Documents. The Governing Documents state that Institutional Shareholders "shall be entitled" to be properly represented on the Board at all ·times by their Institutional Directors, and are also entitled to vote on the election of Independent Directors at AGMs. The actions of the Other Directors and Management prevented the Petitioners from exercising those rights and also constitute a breach of fiduciary duty.*

46. For example, Bye-Laws 21.2.1 and 21.3 are clear that an Institutional Director becomes a member of the Board upon appointment by their Institutional Shareholder. That procedure is consistent with Article (IV)(A)(1) and (3) of the Shareholders' Agreement. There is no requirement that an appointed Institutional Director be approved by Management, the Other Directors, or that the new Institutional Director's appointment is ineffective until the next AGM is held.

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50. There is no basis for the Other Directors or Management to argue that the Petitioners' Directors are ineligible for appointment to the Board because they do not qualify as "Senior Management" of the Petitioners in accordance with Bye-Law 21.2 and Article (IV)(A)(l) of the Shareholders' Agreement. Senior Management is defined in Bye-Law 1.1 as including, "the President, Chief Executive Officer, Chief Operating Officer, General Counsel or similar position, or Chief Financial Officer of the Institutional Shareholder or any of its subsidiaries." The Petitioners' Directors are all Senior Management of Jefferson. Since Jefferson is the corporate parent of both Abington and JNE, Jefferson's executives qualify as the Petitioners' Senior Management when acting on behalf of the Petitioners.

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52. Even if for some reason the Petitioners' Directors were ineligible for appointment as Directors of the Company, the Petitioners still have the right to immediately appoint replacement Institutional Directors to the Board. For example, Bye-Law 21.5 is clear that, "provided always that where the Institutional Director was removed then the relevant Institutional Shareholder shall be entitled to appoint an individual to replace the Institutional Director so removed."

53. The Other Directors and Management do not have the power to exclude the Petitioners' Directors from the Board, refuse to allow new Institutional Directors to be appointed, and then cancel the 2023 AGM and the Board meeting in order to prevent the Petitioners from participating in the governance of the Company and exercising their right to vote on the election of new Independent Directors. All of that was a breach of the Company's Governing Documents and the Other Directors' fiduciary duty.

54. The reason that the Other Directors are wrongfully attempting to exclude the Petitioners' Directors from the Board appears to be because they are improperly acting in their own self-interest, as well as in the interest of Management and Grand View. The Other Directors, representing the

Officers of the Company and CEO of Grand View, have sought to take certain actions that are contrary to the interests of the Petitioners. That is despite the Petitioners being the majority shareholders of the Cassatt Group, who paid over 90% of the premiums and held most of the insurance coverage provided by the Cassatt Group.

Attempts to Wrongfully Force the Petitioners out of the Company

57. *On 31 October 2023, the Company's Bermuda legal counsel, Appleby (Bermuda) Limited ("Appleby") sent the Petitioners a letter confirming the exclusion of the Petitioners' Directors from the Board (the "October 2023 Appleby Letter"). That letter made various unsubstantiated allegations that the Petitioners were non-compliant with the Governing Documents, as well as with other unspecified claims and risk management procedures of the Company. The letter threatened to force the Petitioners, as majority shareholders, out of the Company unless they met certain broad and vague demands.*

58. *Shortly after the October 2023 Appleby Letter was sent, Management contacted the Petitioners to propose that the Petitioners exit as shareholders of the Company and the Cassatt Group generally. Management proposed making various payments to the Petitioners in exchange for the Petitioners' voluntary "disengagement." However, the amount offered by Management did not constitute a fair and reasonable offer to purchase the Petitioners' interest in the Company. Management knew that the amount offered was significantly less than what even the Company's own actuaries estimated was the Petitioners' allocated equity in the Company.*

59. *For example, in the Cassatt Internal Accounting Report dated November 28, 2023 (the "November 2023 WTW Report"), Willis Towers Watson plc provided the Company with the following approximate shareholder equity allocation as at September 30, 2023:*

    a. *the total equity in the Company was USD$49,042,000;*

    b. *Abington was entitled to USD$9,023,000 of the total equity;*

    c. *JNE (as Aria) was entitled to USD$7,866,000 of the total equity;*

    d. *Grand View was entitled to USD$916,000 of the total equity; and*

    e. *The remaining USD$33,069,000 had not been allocated to any Institutional Shareholder (the Unallocated Equity).*

60. *The Petitioners made clear to Management that they would only "disengage" from the Company in exchange for a reasonable return of their equity in the Company. The amount of equity returned to the Petitioners must be at least consistent with the November 2023 WTW Report, as updated to reflect any increase in shareholder equity. That is, the Petitioners are directly entitled to approximately USD$16,889,000 of the Company's equity, plus an appropriate allocation of the Unallocated Equity (subject to provisions necessary to meet all of the Company's obligations under its outstanding insurance policies). While the Petitioners hold two-thirds of the Company's shares, the calculation of equity allocation is based primarily on premiums paid, such that greater than 90% of increases in shareholder equity accrues to the Petitioners.*

61. *Additionally, the fact that Management offered the Petitioners a "disengagement" rather than a "withdrawal" demonstrates that the Cassett Group's offer constituted an ultimatum rather than a good faith compromise. Based on what has occurred to date, it is clear that the allegations made against the Petitioners in the October 2023 Appleby Letter were disingenuous. Those allegations merely represent an attempt by the Other Directors, Grand View, and Management to manufacture a justification for implementing their wrongful plan to force the Petitioners out of the Company and the Cassatt Group.*

62. *That is, the Notice of Forced Withdrawal cites Article l(E) of the Shareholders' Agreement as the basis or forcing the Petitioners out of the Company in exchange for a future payment to be determined pursuant to Article l(C) of the Shareholders' Agreement. The Petitioners are therefore to be removed as the majority shareholders of the Company by a Pretend Board, from which the Petitioners' Directors have been wrongfully excluded but Independent Directors are allowed to serve past the intended expiry of their terms.*

……

Oppression and Loss of Substratum

69. *The Other Directors, Grand View, and Management have implemented their plan to force the Petitioners out of the Company and appropriate the Petitioners' equity. Mr Hughes (as Institutional Director) is attempting to ensure that his own company, Grand View, is the sole remaining Institutional Shareholder, and can exclusively benefit from the Cassatt Group's insurance program using the Petitioners' withheld equity. In exchange, Mr Dethlefs and Mr Power (as Independent Directors) are attempting to secure their roles as Officers of and service providers to the Company and the Cassatt Group.*

70. *In attempting to force the Petitioners out of the Company, the perverse decisions of the Other Directors have run entirely contrary to the spirit of the Governing Documents, could not have been contemplated by the Company's shareholders at the time the Governing Documents were drafted, and are contrary to commercial sense. The actions of the Other Directors and Management have been in breach of their fiduciary duty, Grand View has breached the Governing Documents, and the Petitioners have been the victims of oppressive and prejudicial conduct.*

…….

The Concert Deal and Further Acts of Oppression

75. *In May 2025. as a result of late and limited disclosure finally produced by the Company in this action (which was provided after the Court-ordered deadline for document production had passed. and only after the Petitioners filed an urgent application to compel document production and issued notice under 0.24. r.7 of the Rules of the Supreme Court 1985). the Petitioners discovered Grand View's and the Other Directors' true intentions with the Company.*

76. *After purporting to force the Petitioners out of the Company (and likely long before). Grand View and The Forced Withdrawal provision in the shareholders agreement dated 16 November 2011 (the SHA) the Other Directors had made plans to sell the Company without the Petitioners' knowledge. To facilitate their plan. by no later than August 2024, Grand View and the Other Directors had entered secret discussions with a group of companies called "Concert Group".*

77. *On 12 August 2024, unknown to the Petitioners at the time, Cassatt Holdings entered into a non-disclosure agreement (NDA) related to a potential sale of the Company to Concert Group (the Concert Deal). The Petitioners were not advised of the NOA until May 2025.*

78. *On 28 April 2025, Grand View and the Other Directors caused the Company to enter a stock purchase Agreement (SPA) with Grand View and Cassatt Solutions LLC (Buyer) pursuant to which Grand View will sell to Buyer purportedly all of the shares in the Company and its sister company Cassatt Holding. The Petitioners were not advised of the SPA or the Concert Deal until May 2025.*

79. *The Concert Deal is scheduled to close on 1 July 2025 in accordance with the terms of the SPA. The purports to sell all of the shares in the Company*

and Cassatt Holding to the Buyer for a sum significantly less than the value of the Company and Cassatt Holding.

80. The Buyer is wholly owned by "Concert Group Holding, Inc" (Concert Holding). The largest shareholder of Concert Holding (43.01%) is ultimately owned and controlled by an affiliate or subsidiary of Strategic Risk Solutions, Inc. (Strategic Risk Solutions) and its founder/CEO Brady Young.

81. Strategic Risk Solutions is a longtime provider of professional insurance services to the Company. One of the Other Directors who colluded to wrongfully ouster the Petitioners from the Company, Mr Power, also happens to be a director of Strategic Risk Solutions.

82. <u>But for the wrongful conduct of Grand View, the Other Directors, and the Company, as described above, the Petitioners would have been entitled to vote on and veto the Concert Deal. In secretly entering the Concert Deal, after purportedly stripping the Petitioners of their rights as shareholders, Grand View, the Other Directors, and the Company have unfairly prejudiced, and oppressed, the Petitioners. The Concert Deal constitutes a further act of oppression, or, in the alternative, a continuing effect of the oppressive conduct described above</u>."

19. The relief sought by the Petitioners is set out in the prayer to the Re-Amended Petition as follows:

"83. An Order pursuant to section 111 of the Companies Act 1981 that promotes a clean break between the parties as follows:

a. Directs that an audit of the Company be conducted to determine the equity entitlement of the Petitioners in the Company; and

b. Requires a payment by the Company to the Petitioners in an amount that this Honourable Court determines to be the fair value of the Petitioners' equity interest in the Company.

85. Further, or in the alternative, an Order rectifying the shareholder register of the Company as and if necessary.

86. Further or in the alternative, such other relief as this Honourable Court may deem just in the circumstances in order to regulate the conduct of the Company's affairs in the future.

...."

The Forced Withdrawal provision in the SHA

20. As I have mentioned and as is set out in the Re-Amened Petition, the Petitioners claim that their nominees to be directors of the Company satisfied the relevant eligibility requirements and were validly appointed and challenge the subsequent purported exercise by the other directors of the Company's right to force their (the Petitioners') withdrawal as shareholders and to cancel their shares in the Company. The Petitioners argue that the Notice of Forced Withdrawal was not properly authorised by the Company's board (since their duly appointed directors were not given notice of or permitted to vote on the decision to issue that notice) and even if it was, was issued for an improper purpose and was part of a course of conduct undertaken by the Company's other directors and Grand View to expropriate their shares and remove them as shareholders of the Company. This conduct, the Petitioners say, constituted oppressive and unfairly prejudicial conduct within and entitling them to relief under section 111.

21. The forced withdrawal provision is in subsection IE of the SHA which provides as follows (my underlining):

> *"Forced Withdrawal Automatically upon its filing for bankruptcy or protection from creditors or 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."*

22. Subsection IC of the SHA provides as follows (my underlining):

> *"1. Any Institutional Shareholder that does not wish to continue to participate in the Insurance Program (the "Departing Shareholder") must notify the Company of its intent to terminate its participation in accordance with Article I, Section B.2 above.*
>
> *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.*
>
> *3. In the event that the Departing Shareholder has any outstanding obligation to pay capital in to the Company, the Departing Shareholder shall be obligated to pay to the Company the amount of any such obligation prior to the Termination Date. To the extent that the Departing Shareholder fails to make any such payment prior to the Termination Date, the Company will be considered to have completed the purchase of the shares and no payment will be due to the Departing Shareholder on account of its Institutional Shares, its Shareholder Equity Balance at any time, or otherwise.*

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.

4.2 In the event that the Final Shareholder Equity Balance is zero or negative, no payment is due to the Departing Shareholder. 5. In no event shall the Company be obligated to pay interest for any period to the Departing Shareholder on account of, or with respect to, any account, amount or balance which may exist at any time, on or after the Termination Date, including but not limited to the Initial Shareholder Equity Balance, the Final Shareholder Equity Balance and the Payment.

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.

D. Failure of the Company to Purchase Shares The failure of the Company to purchase any Institutional Shares as required by this Article I shall in no event affect the applicability or enforceability of this Agreement. The Company shall not be liable in damages as the result of any failure to purchase any Shares and the parties hereto acknowledge that no Court shall grant an order for specific performance of the purchase if such purchase would cause the Company to breach Bermuda law.

The Concert Transaction

23. The Concert Transaction is briefly described in the Re-Amended Petition. Pursuant to the SPA (governed by Delaware law) Cassatt Solutions LLC, a Delaware limited liability company (the ***Buyer***), established by Concert Holdings for the purpose of the acquisition, agreed to purchase from Grand View all Grand View's shares (the ***GV Shares***) in the

Company for the Purchase Price. The Purchase Price is set out in Section 2.2 of the SPA which states that the gross consideration shall be US$4.45 million and that on the day of the closing the Buyer must pay Grand View US$3 million in cash and that *"$1.45 million shall be applied by the Buyer to settle and release [Grand View] from any obligation to pay the Company for unallocated adjustment expenses*." It appears that the Buyer will pay this latter sum to the Company to settle Grand View's liability to the Company so that it is in substance a further payment to Grand View (to avoid the Buyer paying Grand View and Grand View then paying the Company, the Buyer makes a payment direct to the Company). The Company will therefore receive the funds and be paid what it is owed rather than releasing Grand View without receiving payment. The Petitioners referred to this element as a debt write-off, but it does not appear that there will technically be any write off, only a payment to the Company and after that payment the discharge and release of Grand View's liability to the Company in respect of such expenses.

24. It was also agreed that simultaneously with the sale of the GV Shares, the Company would make certain distributions to Grand View out of contributed surplus. The Petitioners claimed, based on documents exhibited to Ramthun-4, that there were two categories of distribution to be made to Grand View by the Company at the time of and conditional on completion of the Concert Transaction (see [39.5] and [40] of the Petitioners' Skeleton Argument for the Hearing on 1 July 2025). First, there were the Approved Seller Distributions. It was agreed (see section 6.7 of the SPA) that prior the closing of the SPA, the Company would make the Approved Seller Distributions (erroneously referred to as the Seller Approved Distributions in sections 6.7(a)(i)) to Grand View. These were defined as "*distributions in an amount not in excess of $3,450,000 in the aggregate paid to [Grand View] by [the Company] and/or RRG Holdco...*" Second, there were distributions up to US$2.5 million which the minutes of the board meeting on 28 April 2025 (the ***April Board Meeting***) described as being made "*in connection with transaction expenses*." The SPA provides that certain expenses, defined as Transaction Expenses, were to be paid (and certified) by the parties (see section 6.10).

25. The SPA also provides (in section 8.2(d)) that Grand View's obligation to consummate the Concert Transaction is subject to the condition that such consummation will not violate any injunction granted by a competent court.

26. The board of the Company (the Company is a party to the SPA) approved the Company's entry into the SPA ("*in accordance with the Resolution of the Company's sole shareholder [Grand View]*") at the April Board Meeting attended by Mr Hughes, Mr Dethlefs and Mr Power. At the April Board Meeting, as I have noted, the board approved and passed a resolution authorising the making of distributions to Grand View conditional upon the closing of the Concert Transaction, "*in connection with transaction expenses (to a maximum of $2.5 million) …*" There appears to have been no board approval for the making of any other distributions but the actual amount of the distributions to be made is left blank in the relevant documents and Grand View's and

the Company's evidence did not disclose and confirm the amount that would be upstreamed and distributed to Grand View. In fact, the evidence adduced by Grand View and the Company does not mention let alone explain 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 light of the pending Re-Amended Petition (and the need to consider the position of the Petitioners).

27. Grand View's resolutions (the ***GV Resolutions***) approving the Concert Transaction were adopted on 22 April 2025. They stated that Grand View voted to approve the sale of its interests in the Company "*for $3,000,000 in cash and $1,450,000 being applied to unallocated loss adjustment expenses and Buyer assuming [Grand View's] position in the Cassatt Litigation*…." The GV Resolutions also state that the Company declared a distribution in an unspecified aggregate amount immediately prior to and conditioned upon closing of the Concert Transaction. The recitals to the GV Resolutions include the following recitals that refer to Grand View merging with or being acquired by St. Luke's University Health Network (***SLUHN***). The recitals stated that:

> *"WHERAS there is ongoing litigation related to the Cassatt Companies and the former membership interest holders of the Cassatt Companies ("Cassatt Litigation") and*
>
> *WHERAS as part of [Grand View's] pre-closing obligations with St Luke's University Health Network ("SLUHN") [Grand View] is obligated to resolve the Cassatt Litigation to the satisfaction of SLUHN."*

The Interlocutory Injunction Ground – the Petitioners' submissions

Matters to be established

28. The Petitioners accepted that they needed to show that (a) the Re-Amended Petition gave rise to a serious issue to be tried; (b) that the conduct that they sought to restrain would, if not prohibited, cause them irreversible harm and materially prejudice the Court's ability to grant them the relief sought in the Re-Amended Petition and (c) that it was in all the circumstances just and convenient that the interlocutory injunction be granted.

Serious issue to be tried

29. The Petitioners noted that neither the Company nor Grand View challenged their case that their claim for the relief sought in the Re-Amended Petition (which related only to relief as against and in relation to the Company) gave rise to a serious issue to be tried. The Petitioners submitted that, in particular now that Grand View was a party to the Re-Amended Petition, they did not need for the purpose of obtaining the Injunction against Grand View to show that they were seeking relief *against Grand View* in the Re-

Amended Petition and had a claim *against Grand View* that gave rise to a serious issue to be tried. It was sufficient that the Petitioners could show that their claim to relief in the Re-Amended Petition gave rise to a serious issue to be tried and that it was necessary, and just and convenient, that Grand View's conduct be restrained in order to prevent steps being taken which would undermine their ability to be granted effective relief (and as a result cause them irreparable harm). The Petitioners noted that *Hollington on Shareholders' Rights*, 10th Ed., 2024 (***Hollington***) stated at [8-39] that a respondent could be joined to an oppression claim for the sole purpose of seeking an injunction against them where that was ancillary and incidental to a claim in the petition against another respondent. The Court's power to make interlocutory orders by way of injunction was wide and covered "*in all cases in which it appears to the court to be just and convenient to do so*." The Petitioners argued that the position was the same under section 111.

Irreversible harm

30. The Petitioners submitted that the Court was required first to focus on the harm which the Petitioners were, on the evidence, likely to suffer if the Concert Transaction was permitted to go ahead and complete.

31. The Petitioners submitted that:

    (a) the Concert Transaction would result in substantial value being extracted from the Company (because of the cash distributions being paid by the Company to Grand View which were well in excess of the true value of Grand View's equity interest in the Company) and in control of the Company being passed to a new party who would not be bound by or subject to the terms of the SHA and who would be free to manage the Company (by way of a run-off) in a manner that could involve the extraction of further value, for example by way of further distributions to the Buyer (the run-off would be managed by Concert Holdings and its affiliates for their benefit) or the worsening of the financial position of the Company. As a result, the ability of the Company to pay and satisfy an order to purchase the Petitioners shares was put at risk and prejudiced.

    (b) the Concert Transaction allowed Grand View to continue its oppression of the Petitioners and constituted further conduct prejudicial to the Petitioners' interests, carrying into effect the oppressive and prejudicial conduct complained of in the Re-Amended Petition. It allowed Grand View to rely on and benefit from its improper cancellation of the Petitioners' shares in the Company. Grand View would be permitted to sell and receive the value of 100% of the Company's equity. This would permit Grand View to profit from and monetise its misconduct by being paid the full value of the Company's equity when it was only entitled to a one-third share of that equity. The Petitioners as holders of two-thirds of the shares in the Company were entitled to control the disposal of that part of the Company's equity

and the identity of the purchaser and the terms of any sale, and also to receive the consideration payable. Accordingly, the Concert Transaction constituted a further act of oppression which was part and an extension (indeed the completion) of the course of conduct on which the Re-Amended Petition was based.

32. In these circumstances, the Court should give great weight to the need to preserve, and the fairness of preserving, the *status quo* pending the determination of the Re-Amended Petition. The Court should not permit while the Re-Amended Petition was pending (a) those accused of expropriating the Petitioners' majority (two-thirds') interest in the equity to exit the Company with a cash payment that reflected the value of the Petitioners' expropriated shares/equity interest and (b) a new shell shareholder to take control of the Company without becoming (and its parent company becoming) bound by and subject to the obligations to which Grand View was subject under the SHA, with the opportunity to conduct the run-off in a manner that further weakened the Company's financial position and removed further funds from the Company by way of distributions or other payments.

33. The Petitioners argued that they were unlikely to be able to recover the full value of their equity interest from the Company because the terms of the Concert Transaction required a significant dissipation of the Company's assets through payments to Grand View. The Concert Transaction involved the Company directly or indirectly compensating Grand View up to $7,400,000 comprising $3,450,000 by way of Approved Distributions, $2,500,000 by way of expense distributions and $1,450,000 by way of the Company writing off Grand View's ULAE expenses (although as I have noted it seems to me that it is not intended that the Company write-off any liability). The Petitioners said that these figures needed to be put in perspective and compared with Grand View's true equity interest and the proper value of its shares in the Company, on the Petitioners' case. Grand View's one-third allocated equity was only valued in the November 2023 WTW Report at US$916,000. That represented approximately 5.1% of the allocated equity of the Company, which approximately coincided with the percentage of total premia paid to the Company by Grand View (whereas the Petitioners had historically paid over 90% of the premia). The Petitioners submitted that in the best outcome for Grand View, assuming Grand View and the Petitioners could split the full value of the unallocated equity on a pro rata basis (which the Petitioners argued was unlikely), the most that it could expect to receive for its total equity in the Company was US$2,617,275 (that is the US$916,000 plus a 5.1% share of the Unallocated Equity, which totalled approximately US$33 million in the WTW Report). Under the Concert Transaction and the related arrangements, Grand View was taking at least US$5.95 million out of the Company and therefore receiving considerably more from the Company than Grand View's equity interest was actually worth. In addition, Grand View was receiving a further US$4.45 million for its equity interest from the Buyer.

34. The Petitioners said that the Buyer was a newco without any other assets which was being used by Concert Holdings to shield itself from liability resulting from and which might

arise after the completion of the Concert Transaction (see Ramthun-6 at [45]-[48]). While relief could in principle and subject to a suitable amendment be granted against the Buyer pursuant to the Re-Amended Petition, if further value was extracted from the Company by the Buyer it could be paid away by it and the Buyer would then not be good for any claim against it.

35. The Petitioners also submitted that the Concert Transaction completely ignored and could complicate the conduct of these proceedings. The Buyer had failed to offer to become a party to the SHA or to be made a party to these proceedings although it appeared that Grand View accepted that it would need to remain a party to the Re-Amended Petition. The result was that the Petitioners would find themselves in the unattractive position of being left to proceed with the Re-Amended Petition without the new sole shareholder in the Company being a party and with Grand View remaining a party when it no longer had any rights in relation to the Company. While the only relief sought in the Re-Amended Petition at present was orders against the Company, and the Buyer's acquisition of all the shares in the Company could not affect the Company's liability to the Petitioners, the Petitioners' position could be prejudiced if the Buyer subsequently intervened and objected to the relief sought as a new shareholder who was not responsible for the misconduct on which the Re-Amended Petition was based. This would at a minimum risk introducing added complexity and also involve difficulties if the Petitioners needed to apply to the Court again for further relief to restrain other action to be taken by the Company which action further weakened its ability to meet a buy-out order. The Petitioners could apply now or later for the Buyer to be joined to these proceedings but the Buyer's response and the outcome of such an application could not at this stage be predicted with certainty.

36. The Petitioners submitted that it was not possible to conclude at this stage that the Company would clearly remain able to satisfy a buy-out order in their favour after the completion of the Concert Transaction. The evidence indicated that the assessment of the financial position of the Company was complicated by the effect of the improper forced removal of the Petitioners, the controversial and contested changes made by the Company's remaining directors to the estimates of unallocated loss adjusted expenses (***ULAE***) (the meaning of which I address briefly below) and the need for and impact of a run-off of the Company's insurance business under the control of a new single shareholder whose plans had not been explained by it to the Petitioners or the Court.

37. The Petitioners said that for the purpose of the Interim Relief Summons and for assessing the likely amount which the Company would be required to pay pursuant to a buy-out order their case was that the value of their shares and equity interest in the Company, at the time that the Petitioners' shares and interest were expropriated, was not less than US$32 million. Their case was that they were entitled to two-thirds of the Company's shares and therefore at least two-thirds of its equity value and they relied, as was averred in the Re-Amended Petition, on the November 2023 WTW Report as providing a reliable estimate of the equity value of the Company (as at 28 November 2023). This estimated

the value of the total equity of the Company at just over US$49 million. Two thirds of this figure is US$32 million. The WTW Report showed that together the Petitioners were entitled to approximately US$16.9 million and they argued that they were also entitled to at least to two-thirds of the Unallocated Equity of approximately US$33 million (thus a further US$22 million) giving a total of US$38.9 million. The Petitioners said that this was the lowest figure since they argued that in view of their high share of premium payments made to the Company, a fair and proper assessment of how the equity value of the Company should be valued and shared would give them a 90% share including of the Unallocated Equity.

38. The Petitioners argued that Mr Dethlefs in his evidence had significantly underestimated the value of their equity interest and the amount to which they would be entitled if a buy-out order was made.

39. Further they submitted that it was not clear that after the Company had distributed $5.95 million to Grand View and after it came under the control of Concert Holdings it would remain able to pay and satisfy such a buy-out order.

40. The Petitioners argued that there were serious doubts over the financial statements prepared by the Company. The substantial and recent increase in the board's ULAE estimate was suspicious and potentially involved a significant reduction in the Company's value (albeit that the quantification of the proper ULAE estimate could also affect the calculation of the value of the Petitioners' equity interest). The Petitioners noted Mr Osborne's evidence on this issue. He said as follows in Osborne 1 (my underlining):

> *"28. I have reviewed the unaudited financials through March 31, 2025 along with the latest audited financials through June 30, 2024, which shows a sudden and dramatic decrease in shareholder equity.*
>
> *a. Loss reserves were not substantially changed and remained consistent with historic reserves.*
>
> *b. But an entirely new and theretofore never recorded reserve liability for unallocated loss adjustment expense (ULAE) was recorded in the amount of in excess of $28 million. This is a significant change.*
>
> *29. ULAE is a category of a certain type of costs of an insurance company in handling claims that are not allocated to a particular claim - hence the term unallocated. Every insurance company has such costs, and the Company has had them for its entire existence. They consist only of the overhead associated with the adjusters necessary to adjust the remaining claims. As the number of claims goes down as the insurance business runs off (as is the case with the Company), the amount of ULAE declines.*

30. *The inexplicable aspect of the Company's treatment of such costs is the sudden appearance of such a reserve in the amount of $28,677,652, which had the effect of dramatically reducing stated capital and is entirely inappropriate.*

31. *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. In my entire career, I have never seen another captive insurer act in this manner.*

32. *Moreover, the Company's most-recent actuarial report states that the purported ULAE figures were not tested by any actuary but are based solely on figures supplied by management……*

    a. *if it was appropriate to post a separate reserve liability for ULAE, the Company was required to reserve and should have been reserving for ULAE liabilities on an ongoing basis. That is ULAE expenses are incurred and must be accounted for at the time when the Company reserves for Incurred But Not Reported (IBNR) reserve liabilities.*

    b. *the amount of the ULAE reserve liability is orders of magnitude greater than any actual ULAE to run off the remaining claims being managed by the Company. While the Company's financials and other documents are not transparent as to how this ULAE reserve liability was calculated, it appears that the Company is estimating ULAE at 17% of all losses and allocated loss adjustment expense (ALAE) paid. That percentage is not in line with what I have observed other captive insurers to have done and appears to be grossly above the Company's own historic ULAE expenses (or lack of expenses).*

33. *I understand that the Company posted this new ULAE reserve liability only after a Non-Disclosure Agreement was signed in August 2024 with Concert Group to negotiate a sale of the Company to Concert Group (Sale Transaction).*

34. *But even assuming that the ULAE reserve is appropriate in some amount, the $4.45 million purchase price contemplated for the Sale Transaction for which - in theory - the entire Company is being sold is a small fraction of total shareholder equity.*

a. *if shareholder equity in the Company is $67 million (disregarding the new ULAE reserve liability), the $4.45 million purchase price is 6.7% of shareholder equity*

b. *if shareholder equity in the company is $32 million (after establishing a new ULAE reserve liability), the $4.45 million purchase price is 13.9% of shareholder equity.*

35. *In my 39 years of experience in the captive insurance industry, I have never seen a captive insurance company about to enter run-off being sold at such a discount to shareholder equity. There is no apparent explanation for why the Company is purportedly being sold for 6.7% or 13.9% of shareholder equity."*

41. The Petitioners argued that there was no clear indication of how the Buyer (and Concert Holdings) would manage the run-off and as to the effect on the Company's financial position of their run-off plan. Some correspondence and filings with the Captive Insurance Division of the Vermont Department of Financial Regulation had been put in evidence, in particular a letter dated 27 May 2025 (the ***PFC Letter)*** from the Vermont attorneys Paul Frank & Collins (***PFC***), which discussed the Company's "*Post-Closing Plan of Operations*" and "*Post-Closing Management.*" PFC had stated that Cassatt RRG would cease to issue new policies but continue to recover reinsured loss payments from the Company and had attached "*five-year pro-forma financial statements illustrating the projected status*" of Cassatt RRG (which was to change its name to Cassatt Legacy Risk, an incorporated cell) over the first five years of the run-off process. The PFC Letter had also stated that "*Depending on how the runoff process unfolds, [Concert Holdings] may also pursue one or more interim distributions of equity from [Cassatt RRG], and the appropriate regulatory approvals will be sought at that time.*" The Petitioners argued that it was unclear from the PFC Letter precisely what would happen to the financial position of the Company after completion of the Concert Transaction and whether Concert Holdings planned to procure distributions from the Company was well as from Cassatt RRG. Further, the financial statements, the run-off plan and assurance were not contained in evidence from Concert Holdings or the Buyer in these proceedings and were therefore to be given only limited weight.

42. The Petitioners noted that they had written to the Vermont Department of Financial Regulation to raise various objections and had commenced proceedings in Vermont in consequence of the Concert Transaction, but those proceedings had been stayed pending the outcome of the Re-Amended Petition.

43. The Petitioners also noted that Grand View's Bermuda attorneys (Conyers) had written to the Bermuda Monetary Authority on the same date as the PFC Letter and discussed "*The Rationale for the Acquisition*", the "*Impact of the [Concert Transaction] on the Company's Bermuda Operations*" and changes to the statutory function holders and

service providers. But once again, the Petitioners said, the precise impact of the new regime remained unclear.

44. The Petitioners argued that in these circumstances allowing the Concert Transaction to proceed would at least introduce material further uncertainty and complexity and risk the Company being unable or less able to satisfy an order to purchase the Petitioners' shares if and when the Court made such an order.

45. As regards the financial position of Grand View, the Petitioners argued that they were unlikely to be able to recover from Grand View the compensation that it would receive from the Company as part of the Concert Transaction because, as a result of Grand View's acquisition by SLUHN and Grand View's demonstrably poor financial condition. The Petitioners submitted that while St Lukes' post-acquisition plans for Grand View were not in evidence, it was reasonable to assume that Grand View will dissipate the assets it extracts from the Company in order to pay its outstanding debts and/or through payments to St. Luke's. That was a reasonable assumption given Grand View's publicly known status as the Pennsylvania hospital with the "largest" and "most significant" operating losses in its operating region. Grand View needed money to cover its significant losses.

46. The Petitioners argued that it was important to note that this was not a case of an arm's length sale of assets or its business by a company subject to a section 111 petition, where it was clear that the company's financial position was not being affected so that its ability to satisfy a buy-out order remained unaffected and its governance arrangements were not being radically changed by the introduction of a new controlling shareholder who would have control of the company in the period before the determination of the petition. Such a situation was radically different from that created by the Concert Transaction. The Concert Transaction resulted in significant changes to the Company's position, both as regards governance and finance, and gave rise to a serious risk that its ability to meet a buy-out order would be adversely affected.

47. The Petitioners also submitted that there was evidence to suggest that the Concert Transaction was at an undervalue (based on their limited review of the Company's document disclosure to date) and that the sale price had been artificially reduced by the Company's management to make a sale more likely and therefore to preserve their jobs (Ramthun 6 (at [26]-[44]). The Court should not permit such a transaction to proceed. The value of the equity was materially undervalued. The valuation on which the Concert Transaction was based should certainly not be used as a basis for valuing the Petitioners' expropriated shares. In so far as Grand View was prejudiced, that was a matter for it as it could decide at what price to sell its minority interest. But this also prejudiced the Petitioners because more should be paid for the acquisition of 100% of the Company's equity.

48. The Petitioners further argued that the closing of the Concert Transaction was likely to reduce further the ability of the Company and Grand View to comply with any share buy-

out order because, if the Petitioners succeeded at trial, the Company and Grand View were likely to be in breach of the representations and warranties made in the SPA so that the Company and Grand View were likely to have additional liabilities to the purchaser as a result of those breaches, which would reduce their assets considerably and further frustrate any oppression remedy.

49. The Petitioners submitted that the Court was also entitled to take into account the fact that Grand View (and the Company) had sought to conceal (and avoid or delay until the last minute the disclosure to the Petitioners of) their sale negotiations with Concert Holdings so as to prevent the Petitioners from taking appropriate action. The Company had (as was explained in Ms Ramthun's Third Affidavit) sought to delay fulfilling its document discovery and inspection obligations for this purpose.

50. The Petitioners argued that care was needed when considering the scope of relief that would be available under section 111 following the trial if they were successful, in particular as regards relief against Grand View as a shareholder and former shareholder by reason of its receipt of the distribution payable pursuant to the Concert Transaction. It was not clear they said that the English authorities relating to the UK's unfair prejudice jurisdiction (section 459 of the Companies Act 1985 and then section 994 of the Companies Act 2006) could be applied without modification in this jurisdiction. They noted that the UK legislation dealt specifically with the relief available against third parties (see for example section 996(2)(c) of the 2006 Act which permitted the Court to authorise that civil proceedings be brought in the name of the company against third parties) whereas section 111 did not do so. The Petitioners cited the judgment of Lord Justice Newey in *Ntzegkoutanis v Kimionis* [2024] 1 BCLC 354 at [32] in which he referred to the judgment of Charles Aldous QC sitting as a Deputy High Court Judge in *Lowe v Fabey* [1996] 1 BCLC 262 at 268 where Mr Aldous had said that "*where … the unfairly prejudicial conduct involves the diversion of company funds, a petitioner is entitled as a matter of jurisdiction to an order under section 461 [of the 1985 Act which was a predecessor of section 996 of the 2006 Act] for payment to the company itself not only against members former members or directors allegedly involved in the unlawful diversion but also against third parties who have knowingly received or improperly assisted in the wrongful diversion*."

Just and convenient

51. The Petitioners noted that in *National Commercial Bank Jamaica* at [19] Lord Hoffmann had said that *"... the underlying principle is … that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other...*" They submitted that granting the Injunction would achieve that result in this case.

52. First, the Concert Transaction would involve the Company going into run-off managed by Concert Holdings based on the regulatory approval granted by the Bermuda Monetary Authority. As a result, the Company would never have more assets than it had at present

and by definition would have less assets each year until it eventually had no assets. It was therefore inevitable that the Company would reach a point (if it was not there already) where it was unable to pay to the Petitioners the true value of their equity interest as at the date that the oppressive conduct occurred. Allowing the Concert Deal to close meant that the Petitioners would be deprived their ability to control how the run-off of the Company occurs, and the run-off was therefore likely to occur to the prejudice of the Petitioners.

53. Secondly, given that the Company entering into run-off required regulatory approval from the Bermuda Monetary Authority, such approval was likely to make it more difficult for the Court to grant a remedy to the Petitioners that interfered with the sale, once closed and approved, because of the well-established legal principle that the Court will give deference to statutory regulators (this will restrict the Court's ability to grant an oppression remedy if the Petitioners are successful at trial).

54. Thirdly, it would be unjust to permit Grand View to continue its oppression of the Petitioners – as noted already, the Petitioners say that the Concert Transaction will clearly constitute further oppressive conduct. The Petitioners relied on the judgment in *Dilato Holdings Pty Ltd v Learning Possibilities Ltd* [2015] 2 BCLC 199 (Ch) where the English court granted an interim injunction preserving the *status quo* pending the trial of a director exclusion claim. In doing so, the court found at [24] that the respondents should not be allowed to take advantage of their alleged breach of a shareholder agreement pending trial (my underlining):

> *"…. The substance of the underlying dispute is as to whether the claimant is a minority shareholder or a shareholder able to control the affairs and business of the Company. If the claimant wins at trial against the Company, the claimant will control the Company. On that basis, the claimant should already be in control of the Company. On that basis, the reason that the claimant does not already control the Company is attributable to the Company's past and continuing breach of its contract with the claimant. In those circumstances, I consider that it is open to the court on an interim basis, pending trial, to prevent, to an appropriate extent, the Company from taking advantage of its breach of contract. After all, the reason that the matter has not been rectified already is the inevitable delay in the matter coming to trial. That is on the assumption that the claimant succeeds at trial."*

55. The Petitioners argued that the very same reasoning should be applied by this Court to preserve the *status quo* pending the trial of the Petitioners' oppression claim.

56. The Petitioners also placed particular reliance on the judgment of Mr Justice Warren in *Palmer v Loveland* [2017] 8 WLUK 192 (Ch) (***Palmer***) as support for the proposition that the Court would, in the context of its unfair prejudice jurisdiction, not permit a party to continue its wrongful conduct and would grant an injunction to stop that.

57. In this case Warren J had been required to determine whether to continue a freezing order which the applicant (P) had obtained against the three respondents (L, Starlight and HGJ). P and L were 50% shareholders in Starlight. HGJ was wholly owned by L, who was also the sole director. P and L had been in a romantic relationship. Following the breakdown of their relationship, on P's case, L had excluded her from the Starlight business. She asserted that L had made many unauthorised payments to himself, to HGJ and to third parties. She alleged that he had also misappropriated Starlight's business by effectively taking its goodwill and trade connections. She presented an unfair prejudice petition under section 994 of the Companies Act 2006 seeking orders that L and/or HGJ should purchase her shares based on Starlight's value before L's withdrawal of business, employees, cash and assets. Warren J held that the section 994 petition itself founded jurisdiction for injunctive relief against Starlight, and also against a third-party recipient of Starlight's assets. The judge held that it was appropriate to grant injunctive relief against Starlight. The evidence about L's conduct in relation to Starlight was sufficient to raise real concerns about the dissipation of his assets by making enforcement of any orders for sale more difficult by putting assets out of reach or by putting value into assets such as HGJ rather than remaining with L himself. As to HGJ, it was not clear that the court could make an order against HGJ directly simply because L was the 100% shareholder and director, but it could make an order against him which would have the same effect. The appropriate course in relation to L was therefore, in addition to a standard freezing order, to make an order preventing him from disposing of or in any way dealing with his shareholding in HGJ or any part of it, from appointing new directors, or from procuring any disposition of Starlight's assets otherwise in the ordinary course of its business. Mr Justice Warren considered that the court had the power to grant injunctive relief to prevent wrongdoing. He said this on the question of the court's jurisdiction to grant injunctive relief to preserve the status quo pending the determination of the unfair prejudice petition:

> *"40. The second aspect is that that assumes that Mr Loveland loses the section 459 petition. As yet, I do not know whether he is opposing it, but if he were to oppose it and were successful then Ms Palmer would find herself a 50 per cent shareholder in a company that has had its assets dissipated. Of course, she could bring a derivative action in respect of what has already happened and seek injunctive relief in that context, but it would be wrong, in my judgment, for the court to impose such a requirement on a petitioner in Ms Palmer's position.*
>
> *41. It seems to me that the court must have jurisdiction to prevent, during the course of the petition, a company from dissipating its assets. That jurisdiction, reflecting what has been said in other cases, may not properly be seen so much as what used to be the Mareva jurisdiction, and now is the freezing order jurisdiction, but simply an aspect of the court's powers to grant injunctive relief to prevent wrong-doing."*

58. The Petitioners also relied on a case that I had drawn to the parties' attention as being potentially relevant, namely the judgment of His Honour Judge Raynor QC in *Re Sibbasbridge Services PLC* [2006] EWHC 1564 (Ch) (***Sibbasbridge***). This was a case dealing only with the issue of costs, but the Judge had considered the court's jurisdiction in the context of English unfair prejudice petitions under section 459 of the Companies Act 1985 to grant injunctions. The applicant (P) had applied for an interim injunction to restrain the second respondent company (V) from disposing of any interest it owned in shares in the third respondent company (S). P and V, who were both shareholders in S, were in dispute in relation to V's shareholding and P had presented a petition pursuant to section 459. V had opposed the application for an injunction until some three weeks prior to the hearing. At that time, whilst contending that the application for an injunction had been unnecessary and misconceived, V offered to undertake not to effect any sale or transfer of the shares until the petition hearing, on the basis that the costs of the application be reserved to the judge hearing the petition. P submitted that the court must exercise its discretion, the relief having in effect been conceded, and that the costs should follow the result of the application. The Judge made a costs order in favour of P since the application for an injunction was manifestly justified. It should have been clear to V at the outset that an undertaking should be given to avoid the considerable wastage of costs on the application, and the respondents had been wholly unreasonable in choosing to fight the matter. Judge Raynor said this (my underlining):

> *"11. The breakdown in the relationship between Mr Brooks and Mr Miller is well documented in the proceedings. This present application arose from a letter that was sent by Battlebridge Secretaries Ltd, as company secretary of Sibbasbridge Services PLC, notifying Mr Miller that Vale Market wished to sell its shares in the company to Battlebridge Group Ltd and notice of a board meeting was given. Mr Miller objected to that board meeting taking place when he was away and at the same time attempted to find out who it was that owned the shares, i.e. who it was that was Vale Market Ltd. An invalid section 212 notice was served but that matter was put right later.*
>
> *……*
>
> *13. On 13 October 2005, the solicitors for the respondents stated in a letter that the whole purpose behind suggesting that the shares be transferred was: "Simply to make the position cleaner." The petitioner's solicitors (in my view entirely understandably) did not understand that and so queried in a letter of 13 October 2005 precisely what was meant by "make it cleaner". There was no response to that letter.*
>
> *……..*
>
> *17. The simple matter that is alleged on behalf of the respondents, who offered an undertaking on 4 January 2006 with the question of costs being reserved,*

is that the application is misconceived because it is said the petitioner has put forward no reasonable basis on which it is asserted that the threatened transfer could in any way adversely prejudice the claim made in the petition. That is the stark point that is made on behalf of the respondents.

22. *I have to bear in mind all of the circumstances here and it seems to me that the fundamental question I have to consider first of all is whether, as Mr Hill-Smith submits, this application was basically misconceived, a waste of time and a waste of cost, because the threatened action was in no way capable of adversely affecting the claimed relief. I have concluded that not only was this application for injunction justified, it was manifestly justified given the progress of the correspondence. I have concluded that the only reasonable response to it, even on the facts as asserted by the respondents, was immediately to proffer the undertaking that was proffered as recently as 4 January 2006.*

23. *Firstly, the effect of giving the undertaking which has now been proffered is to preserve the status quo. In In Re a Company Harman J, who did conclude that the proposed action would be liable to be prejudicial, stated:*

> *"I would add that, as it seems to me, in cases of litigation under section 75 it is most desirable that the position of the company be not altered or disturbed more than is absolutely essential, between the presentation and the hearing of the petition. The existing share structure, the existing contractual rights, the present service contracts and so forth, should in my judgment be maintained as they are pending the determination of the litigation. There might be circumstances where change was essential, but if possible the existing position should be preserved. In my judgment, that is a factor which in these matters arising under contributories petitions is particularly powerful and is more than the normal 'Cyanamid' [American Cyanamid Co v Ethicon Limited [1975] 1 All ER 504, [1975] AC 396] force in favour of preserving the status quo, since it is the very nature of this matter that the status quo must affect the remedy which may be available."*

24. *In his work Shareholders' Rights, the author, Mr Hollington, has stated after that citation:*

> *"If an alteration of the status quo can be fully compensated or allowed for in the final remedy, then it is unlikely that a change to the status quo will be injuncted: it is only if such a change will 'affect the remedy which may be available' that the balance may come down in favour of the injunction."*

25. *In this case, Mr Hill-Smith submits that the change that is proposed in no way was capable of affecting the remedy but the fact of the matter is that the change that was proposed, by its very nature, would substitute for one owner of the block of shares another legal entity that by very definition would have different financial status. In the context of a claim such as the present for relief under section 459 , as Mr Justice Harman said, the status quo, which includes the status of who is the shareholder in the company, ought not to be altered unless there is some very good reason. Mr Justice Harman did not refer to a very good reason; he referred to the change being "essential."*

26. *In this case no convincing good reason has been proffered by the respondents. Not only is it not asserted that it is essential to effect the change, it now transpires that the change is not under the undertaking going to take place and it is not even asserted in any convincing way that there are or were any good reasons for the change. There is absolutely no reasonable basis for altering the status quo and that being so the obvious response should have been, rather than waste costs, for the respondents to do what they have now been well and sensibly advised to do.*

27. *Secondly, in the context of these proceedings for relief under section 459, it seems eminently sensible to defer the legal transfer until the beneficial interest in the shareholding that is claimed by the second respondent has been clarified. Given that relief is being sought in relation to a company, it is ill advised to do anything that alters the position until investigations have been made and matters have been clarified.*

28. *Thirdly, given that there has been no sensible reason pointed out for the change, the petitioner was well advised to be wary and suspicious as to what the true motive was. In the real world there could well have been steps attempted to his prejudice when the legal ownership of the majority of the shares in the company was held in the name of a company in which Mr Brooks was claiming that the petitioner had no beneficial interest. I bear in mind in that regard the complete breakdown in trust between the parties that I have mentioned already."*

The Interlocutory Injunction Ground – Grand View's submissions

Grand View's case in overview

59. Grand View's central submission is that the sale of its shares and the upstreaming of distributions by the Company pursuant to the Concert Transaction will not impact on the Company's ability to pay the sum likely to be awarded to the Petitioners if they are successful and the Court makes the buy-out order sought in the Re-Amended Petition. Therefore, injunctive relief is not needed, is unjustified and should not be granted.

60. Grand View submitted that the evidence filed as to the Company's current financial position and as to its likely financial position after the Concert Transaction showed that there was no basis for the Petitioners' assertion that the Concert Transaction would affect the Company's ability to satisfy a buy-out order.

61. The Petitioners characterisation of the Concert Transaction was misconceived, and their criticism of Grand View's conduct was unjustified. Following what Grand View maintained was the justifiable and lawful exercise by the Company of the forced withdrawal provision in the SHA, Grand View had been left in a very difficult position as the sole remaining shareholder of a captive insurance company which needed to go into run-off but not having the requisite expertise or resources to manage the run-off process. The interests of the Company and its insureds required that a new shareholder be found with the relevant expertise to oversee and manage the run-off process and Concert Holdings was such a company. Concert Holdings was a substantial and well respected (and regulated) insurance holding company (as the filings with the Vermont Department of Financial Regulation that were adduced in evidence demonstrated). Grand View had not sought to evade its disclosure obligations to the Petitioners nor sought improperly to conceal the negotiation of the Concert Transaction from the Petitioners. It had simply sought and been required to preserve commercial confidentiality during those negotiations as any party to a sensitive sale transaction would.

Serious issue to be tried

62. As I have already noted, Grand View accepted that the Petitioners' case in the Re-Amended Petition raised a serious issue to be tried. While Grand View had argued, as I have also already noted, that in the absence of a claim for relief against it which itself raised a serious issue to be tried the Court could and should not grant injunctive relief against it, the point was not pressed during oral submissions. It seems to me that the Petitioners were clearly right, for the reasons they gave as summarised above, that the Court has the power (there is jurisdiction) to grant an injunction restraining the conduct of a party (as Grand View now is) even where relief is not sought against it, where that is necessary to protect the petitioners' right to obtain an effective remedy if successful.

Irreparable harm

63. Grand View argued that the relief sought by the Petitioners was purely financial and that this financial remedy was unaffected by the Concert Transaction. The Court will not be bound by the price agreed by Grand View and Concert Holdings and will be able by reference to the evidence adduced at the trial of the Re-Amended Petition to determine the fair value of the Petitioners' shares and make a buy-out order in an appropriate amount in the event that the Petitioners were successful.

64. Grand View submitted that the evidence showed that the Company was solvent and clearly able to pay the sum claimed by the Petitioners. It was subject to stringent solvency requirements and in any event if the Company was unexpectedly unable to meet such a sum the Court would be able to order Grand View to repay monies received by it from the Company under the Concert Transaction.

65. Grand View, in reliance on the Company's evidence and following the Company's earlier submissions, argued that neither completion of the SPA (which was subject to regulatory approval by the Bermuda Monetary Authority) nor the distribution to be made on closing of the SPA would prevent the Company from being able to comply with a buy-out order, in the event of the Court making such an order.

66. Grand View noted that Mr Dethlefs had dealt with the Company's (and its own) financial position in Dethlefs-1 at [42]-[52]. Mr Dethlefs had said as follows:

> *"43. "Company [was] solvent and based on the Company's current financial position, would be able to meet an order for payment to Petitioners in the amount that the Petitioners state reflects their approximation of the amount due to them at paragraph 60 of the [Re-Amended Petition] (US$16,889,000). Of course, under the [SHA], the calculation of each petitioners' final equity balance would fall to be determined on the fifth anniversary of the date on which their participation in the insurance programme came to an end (ie June 30, 2029). However, for the purposes of assessing an adequate remedy, I am assuming in the Petitioners' favour that their case would succeed at trial…*
>
> *44. In support of the Company's solvency, I refer to the Company's most recent audited financial statements dated 30 June 2024, management accounts dated 31 March 2025 and indicative financial statements indicating the anticipated financial position of the Company once the SPA has closed. These financial statements illustrate that the Company has adequate financial resources to discharge its obligations. [copies of the audited financial statements dated 30 June 2024 and management accounts dated 31 March 2025 were exhibited].*
>
> *45. ….. if the Court determined that it should make an order against Grand View, I believe (based on my knowledge of their financial position) that they would be in a position to pay."*

67. Grand View also noted that Mr Dethlefs had confirmed that the Company was subject to "*stringent statutory capital and solvency requirements applicable to insurers*" which ensured that the Company "*will be well-positioned to satisfy any judgment in the Petitioners' favour*" (Dethlefs 1, [42]). Grand View submitted that the evidence showed that the Company is solvent and will be able to meet an order for a payment to Petitioners

of US$16,889,000, which was the basic sum claimed in [60] of the Re-Amended Petition (Dethlefs 1, [43]). They relied on (a) the most recent audited financial statements dated 30 June 2024; (b) the management accounts dated 31 March 2025 and (c) the indicative financial statements, indicating the anticipated financial position of the Company following completion of the SPA. Grand View submitted that the Petitioners had been unable seriously to challenge this evidence.

68. Grand View also noted that the Petitioners had claimed (both in [60] of the Re-Amended Petition and in their written and oral submissions on this application) that the value of their shares would also need to include and take account of their entitlement to a substantial share of the Unallocated Equity. The claims made by the Petitioners were not accepted and in any event the determination of the value of the Petitioners' equity was not yet established and remained uncertain.

69. Grand View also relied on the evidence of the Company's expert Mr Provost, to show that the Petitioners' claims, based on Mr Osborne's evidence, were seriously challenged. In particular, Grand View noted that:

    (a) Mr. Provost disagreed with Mr. Osborne's opinion that once all claims of the Company had been paid the remaining assets would approximate to the equity on the financial statements. Future operating expenses of the Company needed to be accounted for, which were covered by the ULAE.

    (b) Mr. Provost disagreed with the assertion that the financial statements showed a sudden, dramatic and suspicious decrease in shareholder equity. The decrease in shareholder equity appeared to be attributable to the fact that the Petitioners had left the Company but not agreed to pay their share of the ULAE, resulting in those unpaid expenses appropriately being recorded as a liability on the financial statements. Therefore, there was no new unexplained reserve liability for ULAE recorded as contended by Mr. Osborne, and Mr. Provost disagreed that the Company's treatment of the ULAE as a liability reserve was inexplicable. Mr. Provost also opined that while he agreed with Mr. Osborne that this change in accounting treatment of the ULAE reduced the stated capital, both he and the Company's outside auditors disagreed that it was "*entirely inappropriate*" as Mr. Osborne had contended.

    (c) Mr. Provost rejected Mr. Osborne's assertion that the Company did not and had in the past failed appropriately to account for ULAE liabilities. The Company had done so at all times. In the past, the Company had made a separate assessment on its then shareholders for the ULAE and such assessments had been paid. But because the Petitioners had failed to pay their share of ULAE since they left the Company's insurance programme, the Company now recorded that unpaid ULAE as a reserve liability on its financial statements. Grand View noted that this was a decision that the Company's outside auditors had agreed was appropriate.

(d) Mr. Osborne had opined that the amount of the ULAE reserve liability was "*orders of magnitude greater than any actual ULAE to run off the remaining claims…*". However, Mr. Provost had disagreed with this assertion and instated contended that no individual could predict what that actual amount will be. Mr. Provost also stated that Mr. Osborne was incorrect to assert that the Company's documents were not transparent as to how the ULAE reserve liability was calculated. Mr. Provost draws attention to certain documents which clearly lay out the various calculation methodology.

70. Grand View also noted that Mr Dethlefs had confirmed that the Company was subject to strict rules which limited the possibility of any distribution of its assets (Dethlefs-1 at [49]-[50]) and that these rules will continue to apply after the completion of the SPA (Dethlefs 1 at [50]-[51]). The Petitioners' contention seemed, Grand View argued, to be premised on the notion that the trial of the Re-Amended Petition would not take place until sometime in the distant future when as a result of the Company being in run-off its asset base would have dwindled, and it would be unable to comply with a buy-out order. But this was wholly unrealistic. There was no basis for thinking that a trial would be delayed for years so that the Company's assets would be substantially reduced to the point at which it was unable to satisfy a buy-out order.

71. Grand View submitted that if the Court later held that Grand View should return the distributions paid to it in connection with the Concert Transaction the Court would have jurisdiction to order Grand View to do so. Further or alternatively, the Court could make a buy-out order against Grand View alone, or against the Company and Grand View jointly and severally. Grand View had been joined and would remain as an additional Respondent to the Petition and the Court will have jurisdiction to make orders against Grand View in due course.

72. Grand View, following the Company's submissions, argued that the Court *did* have jurisdiction under section 111 to order Grand View to repay the distribution in the event that the Court held that this was necessary to remedy any unfair prejudice or oppression which was found to exist. The Petitioners were wrong to suggest otherwise or that the scope of the jurisdiction under section 111 was materially different from that under section 996 of the UK's 2006 Act. Like the Petitioners, they cited the judgment of the English Court of Appeal in *Kimionis*, in which, they said, it was confirmed that the Court had jurisdiction in the context of an unfair prejudice petition to require a third party to repay monies to the company. They noted that Newey LJ had cited (at [32]) the passage from *Lowe* I have already set out and also the judgment of His Honour Judge Norris QC (as he then was) in *Clark v Cutland* [2004] 1 WLR 783, in which gave judgment against a director in favour of the company in respect of money taken from it without authority in unfair prejudice proceedings (also citing [2] and [3] of Arden LJ's judgment on appeal). The English Court of Appeal had confirmed that the company was entitled to

trace payments into the hands of the trustees to whom some of the money had been paid. Grand View also relied on the following passage from *Hollington* at [8-13]:

> "*the court has power under ss 994-996 to make any order that it could have made if the proceedings had instead been brought as a derivative action, including an order for the payment in favour of the company by way of compensation for any loss suffered or by way of an account of profits, and in particular orders against third parties who have been properly joined as parties for this purpose.*"

73. Grand View, again adopting and following the Company's submissions, submitted that the Court's ability to make such orders against Grand View would not be affected by the fact that Grand View will have ceased to be a shareholder (as a result of the sale of its shares to the Buyer). As *Hollington* at [8-13] made clear: "*an order may be made against past members … There are also cases where orders may be made against or directly affecting persons who have never been members*." Mr Justice Hoffmann's (as he then was) judgment in *Re A Company (No 005287 of 1985)* [1986] BCLC 68 at 71e–f had confirmed the point.

74. Grand View noted that the Petitioners had complained (e.g. Ramthun 4 at [26]) that if they had never been removed as shareholders they would have been able to veto the SPA and that an injunction was necessary to preserve their veto rights. However, Grand View argued, this was irrelevant because the Petitioners only seek a buy-out order. What they wanted was money. The Petitioners had accepted that the prayer in [85] of the Re-Amended Petition seeking, "*as and if necessary*", an order for the 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 only if needed to make effective, a buy-out order. Grand View submitted that where the Petitioners only sought a buy-out order and were to be bought out, they should not have any veto right and should not be able to prevent the remaining shareholder (Grand View) from selling its shares before the determination of the Re-Amended Petition.

75. An injunction to prevent the SPA and/or the proposed distribution was therefore entirely unnecessary given that the Court would always have the power under section 111 to grant an adequate remedy if the Petitioners succeed in establishing unfair prejudice or oppression at trial.

Just and convenient

76. Grand View argued that the balance of convenience and prejudice justified the refusal of the Petitioners' application for injunctive relief.

77. Grand View argued that the Petitioners had accepted that that a run-off of the Company's business was now essential. Grand View submitted that the SPA would facilitate this common objective and allow the run-off to be conducted by a responsible party with the

requisite expertise. Granting an injunction to restrain completion of the Concert Transaction would be unjust and inconvenient in circumstances where it would prevent the Company's board from achieving what was in substance a common objective and implementing their preferred solution to the Company's difficulties following the withdrawal and removal of the Petitioners.

78. Grand View said that the Petitioners' reliance on the fact that since the Company now had to go into run-off it will never have more assets than it does now did not assist them. Any such reduction in the value of the Company's assets would not be the result of the Concert Transaction. It will occur whether or not the SPA completes. It followed that this could not be a reason for restraining completion of the SPA.

79. There was, Grand View said, no evidential basis for the Petitioners suggestion (or claim) that the run-off under the control of Concert Holdings would be mismanaged and, in any event, the Interim Relief Summons did not seek an injunction against mismanagement of the Company's run-off.

80. Further, the Petitioners' contention that the maintenance of the *status quo* was the overriding factor which trumped all other considerations was inconsistent with the long line of authorities including in particular *Re Posgate & Denby (Agencies) [1987] B.C.L.C. 8* (***Posgate***) and *Pringle v Callard* [2008] 2 B.C.L.C. 505 which made it clear that in order to justify injunctive relief a petitioner in a section 111 case had to show that it was necessary in order to allow the petitioner to obtain and be granted the relief it sought in the petition. In this case, the Petitioners sought a buy-out order, which will continue to be available as an adequate remedy after completion of the SPA. It was relevant that after the making of such a buy-out order the Petitioners could not prevent Grand View (as the sole remaining shareholder in the Company) from selling its shares to the Buyer. The fact that the Petitioners would not be able to obtain an injunction against the SPA after the implementation of the remedy sought in the Re-Amended Petition meant that they could not obtain an injunction against the SPA before the trial of the Re-Amended Petition.

The Interlocutory Injunction Ground – discussion and decision

The law

81. There was no dispute that on an application for an interlocutory injunction by a section 111 petitioner the Court will apply the principles set out in *American Cyanamid v Ethicon* [1975] AC 396 in a slightly modified form. The Court is required to consider:

    (a) whether there is a serious issue to be tried.

    (b) if so, whether compensation would be an adequate financial remedy for the petitioner.

(c) if not, whether the balance of convenience lies in favour of or against the grant of an injunction.

82. As Mr Robin Hollington KC points out in *Hollington* at [8-40] (my underlining):

> *"However, as Hoffmann J pointed out in Re Posgate & Denby (Agencies) [1987] B.C.L.C. 8 Ch D, the American Cyanamid v Ethicon principles cannot be applied literally to an unfair prejudice petition, since the common law remedy of damages is not available to a petitioner: instead, the court has to consider whether it is appropriate to grant interim injunctive relief in the context of its wide powers under s.994. So the first and more important issue, in a case where the petitioner applies for interim injunctive relief, is the final remedy that he is likely to obtain at the hearing of the petition, and the risk of that remedy being frustrated by the acts which are sought to be enjoined."*

83. As Mr Justice Briggs (as he then was) noted in *Re Canterbury Travel (London) Ltd* [2010] EWHC 1464 (Ch) "*all interim relief in circumstances of this type [an unfair prejudice petition under section 994] needs to be addressed by reference to the possible final outcome and to the duration of the likely interim period*."

84. In the present case, as I noted, it is accepted by Grand View that the first condition for relief is satisfied. The dispute in this case turns on the application of the second and third conditions.

85. As regards the second condition, the dispute turns in particular on the weight to be given to the need to preserve the *status quo* by preventing a change in the shareholding in the Company, or preventing payments being made by and out of the Company, pending the determination of the Re-Amended Petition. The Petitioners have confirmed that the primary remedy they seek is a buy-out order and that the claim for rectification of the share register is only ancillary to that and sought to the extent that rectification is needed to permit a buy-out order to be effective and implemented. The authorities show that preservation of the *status quo* is an important but not always or necessarily an overriding consideration. The key question is whether on the facts the petitioner has shown that it will not be or that it is likely that it will not be adequately compensated by the buy-out order which it seeks, taking into account the ability of the Court to make appropriate adjustments to the sum awarded to reflect the fair value of the petitioner's shares at the relevant date without any reduction caused by the action which it seeks to restrain. But if there is a material doubt as to whether the petitioner can and will be fully compensated, and protected, following the trial of the petition, the Court may, and is likely, to lean in favour of preserving the *status quo*.

86. The position is neatly summarised in *Hollington*, also at [8-40]:

"In the Re Posgate & Denby case, the petitioner sought an injunction restraining the board from entering into certain sales of assets at an alleged undervalue pending the hearing of the petition. Hoffmann J held that, on the balance of convenience, it was not appropriate to grant the injunction sought:

> *"The position is therefore that if I grant an injunction and allow the holders of a majority of the equity shareholders the right to veto the transaction, there is a risk (to put the matter no higher) of thereby causing irreparable harm to the company and its shareholders as a whole. If I refuse the injunction and the transaction turns out on the hearing of the petition to have been unfairly prejudicial to [the petitioner], he can in my judgment be fully compensated by orders which enable him to receive the value his shares would have had if the transaction had not taken place. [Counsel for the petitioner] said that this would be shutting the stable door too late, when it might be impossible to quantify the loss, if any, which the sales had caused to the company. But I think that proof of some undervalue must be an essential element in [the petitioner's] case and the quantification of that undervalue, difficult as it might be, is a familiar problem faced by the courts in many different contexts. It does not prevent financial compensation from being an adequate remedy."*

In Re A Company [1985] B.C.L.C. 80, Harman J observed, obiter, that as a general rule it is desirable to preserve the status quo in the case of a petition on the unfair prejudice ground (at 82–83):

> *"I would add that, as it seems to me, in cases of litigation under s.75 [of the 1980 Act] it is most desirable that the position of the company be not altered or disturbed more than is absolutely essential, between the presentation and the hearing of the petition. The existing share structure, the existing contractual rights, the present service contracts and so forth, should in my judgment be maintained as they are pending the determination of the litigation. There might be circumstances where change was essential, but if possible the existing position should be preserved. In my judgment, that is a factor which in these matters arising under contributories patterns is particularly powerful and has more than the normal 'Cyanamid' (American Cyanamid Co v Ethicon Ltd [1975] 1 All E.R 504; [1975] A.C. 396) force in favour of preserving the status quo, since it is the very nature of this matter that the status quo must affect the remedy which may be available."*
>
> *However, it is only if a change in the status quo will "affect the remedy which may be available" that the balance may come down heavily in favour of the status quo. In Pringle v Callard [2008] 2 B.C.L.C. 505, Arden LJ emphasised the difference between cases where the grant of an interim remedy would and where it would not affect the remedy ultimately available. The general principle was that the applicant had to show a serious issue to be tried and*

the court had to consider whether there was an adequate remedy at the end of the day."

87. The judgment of Lady Justice Arden (as she then was) in *Pringle v Callard* sets out and provides helpful and authoritative guidance as to the approach to be adopted by the Court on an application for an interim injunction, including an analysis of the important judgment of Hoffmann J in *Posgate*, albeit in a different context where the petitioner in a section 459 case sought an injunction restraining the removal of a director, which the Court of Appeal was not prepared to grant since *"... it was contrary to principle to impose a director on a company.*" Arden LJ said as follows (my underlining):

> *"21. I now go to the general subject of the approach to interim remedies on a Section 459 petition. It is common ground that in general the principles in American Cyanamid Co v Ethicon [1975] AC 373 apply and that accordingly the court must first be satisfied that there is a serious issue to be tried and that damages would not be an adequate remedy.*
>
> *……*
>
> *23. Mr Parsons submits that the principles in American Cyanamid have a qualified application in this context. He relies on the judgment of [Harman J] in Re a Company [1985] BCLC 80 at 82 to 83:*
>
> > *"I would add that, as it seems to me, in cases of litigation under s75 it is most desirable that the position of the company be not altered or disturbed more than is absolutely essential, between the presentation and the hearing of the petition. The existing share structure, the existing contractual rights, the present service contracts and so forth, should in my judgment be maintained as they are pending the determination of the litigation. There might be circumstances where change was essential, but if possible the existing position should be preserved. In my judgment, that is a factor which in these matters arising under contributories petitions is particularly powerful and has more than the normal 'Cyanamid' (American Cyanamid Co v Ethicon Ltd [1975] I All ER 504, [1975] AC 396) force in favour of preserving the status quo, since it is the very nature of this matter that the status quo must affect the remedy which may be available."*
>
> *24. In that case there was a risk of irreversible damage if an interim remedy was not granted. That is because the respondents to the unfair prejudice petition in that case proposed to make a rights issue and [Harman J] held that there was an arguable issue as to unfair prejudice where the object of the issue, and its effect, might be to deplete the resources of the petitioner to such an*

extent that he could no longer properly prosecute the petition and where he could not take up his proportionate entitlement under the rights issue.

25. *In my judgment it is very important to read what [Harman J] said against the background of those facts. He had in mind a situation where the refusal of the interim remedy could affect the remedy that might be available at trial. Accordingly, when [Harman J] says that "it is the very nature of this matter that the status quo must affect the remedy which may be available", he is referring to the very nature of the matter which was before him, and his observations as to the desirability of maintaining the status quo being a particularly powerful matter in a contributory's petition apply where, and only where, the failure to maintain the status quo may affect the remedy sought in the petition.*

26. *It is a very different matter where the remedy sought at the end of the day is a buyout and where the matters complained of on an interim basis can be taken into account in the process of the valuation of the shares for the buyout. This is made clear by Hoffmann J in Re Posgate and Denby (Agencies) Ltd [1987] BCLC 8 . Hoffmann J said this at pages 16 to 17:*

> *"Assuming that I am wrong in holding that the petitioner has not made out an arguable case, the next question is whether it is just and convenient that I should grant the injunction. That is a question to which as it seems to me the American Cyanamid rules apply by analogy. One cannot literally ask whether damages would be an adequate remedy because s. 461 does not provide for an award of damages at common law. But the section allows the court to order various forms of financial compensation, for example the respondents can be ordered to buy the petitioner's shares at a price which reflects the value they would have had if the unfairly prejudicial issue conduct had not taken place.*
>
> *"I cannot see how the petitioner can suffer prejudice from the proposed transactions unless it turns out that the syndicates could have been sold at a higher price. The fact that the equity shareholders have not been given the right to block the sales cannot constitute prejudice let alone unfair prejudice without regard to the financial consequences to the shareholders and sales going through. On the other hand, if the evidence at the hearing of the petition shows that it is well founded and that the syndicates have been sold an undervalue, the court can order financial compensation. On the respondents' side there is a good deal of evidence to show that continuing uncertainty about the future of the syndicates is damaging to the goodwill attaching to their management and that unless they are quickly sold that goodwill may disappear.*

Although there is some dispute about the degree of urgency the existence of such a risk is not seriously denied.

"The position is therefore that if I grant an injunction and allow the holders of the majority of the equity shareholders the right to veto the transaction there is a risk (to put the matter no higher) of thereby causing irreparable harm to the company and its shareholders as a whole. If I refuse the injunction and the transaction turns out on the hearing of the petition to have been unfairly prejudicial to the petitioner, he can in my judgment be fully compensated by orders which enable him to receive the value that his shares would have had if the transaction had not taken place. Counsel for the petitioner said that this would be shutting the stable door too late, when it might be impossible to quantify the loss, if any, which the sales had caused to the company. But I think that proof of some undervalue must be an essential element in the petitioner's case and the quantification of that undervalue, difficult as it might be, is a familiar problem faced by the courts in many different contexts. It does not prevent financial compensation from being an adequate remedy.

"The balance of convenience is therefore in my judgment heavily against the grant of an injunction. The right course is to allow the board to proceed with the proposed sales and to leave the petitioner, if so advised, to pursue such other remedies as may be available under S. 461."

27. *So Hoffmann J refused on that basis to grant an interim remedy in a Section 459 petition when an order was sought seeking to enjoin the disposal of certain of the company's assets. He said that that could all be dealt with at the stage when the valuation of shares was being done if the petition was successful. Accordingly, as I see it, when considering the grant of interim remedies the court must consider whether there is an issue to be tried and, if there is, then the court has to consider whether there is an adequate remedy at the end of the day for the petitioner."*

88. As Lady Justice Arden said, "*the court has to consider whether there is an adequate remedy at the end of the day for the petitioner*." Where a buy-out is the remedy sought by the petitioner the court has the power under the UK's unfair prejudice jurisdiction to order various forms of financial compensation and the respondents can be ordered to buy the petitioner's shares at a price which reflects the value they would have had if the unfairly prejudicial issue conduct had not taken place. It seems to me that the position is the same under section 111 which gives the Court a very wide power "*with a view to bringing to an end the matters complained of, [to] 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." It seems to me that, at least for the purposes of this application, there is no basis for saying that that the jurisdiction and this Court's powers under section 111 are narrower than those of the English court under the unfair prejudice jurisdiction arising under section 996 of the 2006 Act (or that the absence from section of the equivalent to section 996(2)(c) of the 2006 Act means that this Court has now power to make orders against non-parties to a section 111 petition in appropriate circumstances).

89. As Lady Justice Arden also said, the *status quo* is a particularly powerful matter in a contributory's petition where, but only where, the failure to maintain the *status quo* may affect the remedy sought in the petition.

90. A real risk of non-payment of the sums ordered to be paid by the Court in the event that the petitioner succeeds as trial, resulting from the action to be restrained by the injunction sought, is relevant. As Mr Hollington KC notes, in my view correctly, at [8-41] of *Hollington* "*In both Re Posgate and Trident European Fund v Coats Holdings [[2003] EWHC 2471 (Ch)] it was clear that the respondents were well able to pay whatever price was fixed by the court. If there was a substantial doubt about the respondent's ability to pay that price, so that the petitioner might be forced to have recourse to the assets of the company for an effective remedy, then the position would be otherwise.*" The evidence of the ability of the party against whom a buy-out order is sought to pay the sum likely to be awarded to the petitioner is relevant to the assessment of whether in the circumstances the buy-out order will be a sufficient, effective and adequate remedy. In *Trident European Fund* Mr Justice Blackburne held that interim injunctive relief to prevent preference shares being de-listed was inappropriate in a petition under section 459 of the Companies Act 1985 where a buy-out order at an appropriate price made at trial of the petition would give the petitioners entirely adequate relief.

91. As Mr Justice Harman said in *Re A Company [1985] B.C.L.C. 80* (***Re a Company***) the *status quo* will include maintaining the existing share structure of the company and the existing contractual rights of the parties.

92. In the only case that I or the parties' counsel have been able to find where the respondent to an unfair prejudice petition who was accused of misconduct sought to sell its shares while the petition was pending, the court considered that it would have been appropriate, indeed that it was clear that it would have been right, to grant an injunction to restrain the sale of the shares. This was the judgment of Judge Raynor in *Sibbasbridge*. It is true that it is only a decision on costs and that the judgment was handed down in 2006 before and without reference to the judgments in *Posgate* and *Pringle* and accordingly it needs to be understood subject to what is said in those cases. Judge Raynor clearly asked himself the right question. The respondent's case was that the petitioner had put forward no reasonable basis on which it was asserted that the threatened transfer could in any way

adversely prejudice the claim made in the petition and he quoted the passage that remains in the current edition of Hollington, which I have also quoted, namely that if an alteration to the *status quo* could be fully compensated or allowed for in the final remedy it was unlikely that a change to the *status quo* would be injuncted and it was only if such a change will affect the remedy which may be available that the balance may come down in favour of the injunction. But it appears that the critical feature of the case was that the petitioner had sought a buy-out order against not only the company (Sibbasbridge), the third respondent, but also against the other shareholder, the second respondent, which was the party that intended to sell its shares (see [1] and [10] of the judgment). As Judge Raynor pointed out at [25] of his judgment, *"[counsel for the other shareholder submitted that the change that is proposed in no way was capable of affecting the remedy but the fact of the matter is that the change that was proposed, by its very nature, would substitute for one owner of the block of shares another legal entity that by very definition would have different financial status*." The financial position of the buyer of the shares would be different from that of the existing shareholder and therefore it might be less able to satisfy a buy-out order. The effectiveness of the buy-out order would therefore be directly affected. Judge Raynor was also clearly influenced by (on an issue going to the balance of convenience) his conclusion that the second respondent had given and could show no "*convincing good reason*" for needing to sell its shares.

93. Accordingly, *Sibbasbridge* is distinguishable from the present case. First, because no buy-out order is, at least as yet, claimed against Grand View, secondly because Grand View has accepted, as I understand its position, that it should remain a party to the proceedings and that the sale of its shares will not affect the Court's ability to make a buy-out order against it, should that be considered appropriate and thirdly because Grand View has adduced evidence as to why there is a pressing commercial need for it to bring into the Company someone with the expertise and resources to conduct the run-off process.

94. The second point of distinction is particularly important. It means that the Concert Transaction will not result, as Judge Raynor clearly thought would happen in *Sibbasbridge*, in a change in the party against whom relief could be granted and in the strength of the covenant of the person who would have to pay the sum awarded under any buy-out order. Grand View, as I have noted, accepted in its submissions that the Court would, even after the Concert Transaction, be able to make a buy-out order against it if the Petitioner subsequently amended the Re-Amended Petition and sought such an order and that relief could be justified.

95. As regards the evidence as to the justification and need for a sale of shares before the determination of the Re-Amended Petition, I would note that there was also a good deal of evidence in *Posgate* to show that a transfer of the assets and business (rather than the shares in) of the company was a commercial imperative. Hoffmann J noted that continuing uncertainty about the future of the syndicates was damaging to the goodwill attaching to their management and that unless they were quickly sold that goodwill may

disappear (although there was some dispute about the degree of urgency the existence of such a risk was, he said, not seriously denied).

Will the Concert Transaction affect the remedy sought by the Petitioners and prevent them being awarded an adequate remedy? Should the status quo be preserved?

96. It seems to me that in order to determine the impact of the Concert Transaction on the remedy available to the Petitioners and whether even if the sale goes ahead there will be an adequate remedy at the end of the day for the Petitioners it is necessary to consider the effect of the Concert Transaction on the position of the Company and the rights of the Petitioners.

The impact of the proposed distributions to Grand View

97. The first and most obvious way in which the Concert Transaction impacts on the position of the Company is that it involves and requires a very substantial distribution of funds to be made to Grand View to enable it to pay its own and others' professional and other fees. As I have noted, the precise amount of the distribution is unclear and has not been confirmed in Grand View's or the Company's evidence. On my reading of the SPA and the board minutes of the 28 April Board Meeting, it is likely that the only distributions to be made will relate to the Transaction Expenses and will not exceed US$2.5 million as they appear to be the only distributions approved by the board. However, in the absence of a clear confirmation from Grand View or the Company (and it seems to me that it is a serious deficiency in Grand View's evidence), the position is unclear, and it is possible that the distributions will be in the larger sum claimed by the Petitioners (see Ramthun-4 at [29]).

98. The question therefore arises as to whether the Petitioners have established that payment of any distributions or distributions in the amount they assert are to be paid would so adversely affect the Company's financial (cash or balance sheet) position that there is a material doubt as to its ability, or a real risk that it will be unable, to satisfy a buy-out order in the sum that the Court is likely to order.

99. The first issue is how to assess this sum for the purpose of the Interim Relief Summons. It seems to me that the most appropriate approach is to use as a reference point the Petitioners' case as to the share of the Company's total equity to which they were entitled at the date of the Forced Withdrawal Notice. This seems to me to be what the Petitioners suggested or at least is consistent with their submissions. The Petitioners claim that they are entitled to 90% and in any event to at least two-thirds of the value of the Company's equity. They claim that Grand View is only entitled to a small share of that value, between 10% (or possibly 5.1%) and one-third. The figures are contested by Grand View (and by the Company) and remain subject to disputes concerning the proper methodology to be used for calculating the value of the Petitioners' shares (and the Company's equity

generally) as well as disputes concerning the proper approach to establishing the ULAE reserve and accounting for the sums said to be owing by the Petitioners).

100. Recognising that the Court cannot resolve these disputes on the Interim Relief Summons, it seems to me that the proper approach is to test the impact of the proposed distributions by reference to the Petitioners' core case, that is that they have a right to between 90% and two-thirds of the value of the Company's total equity (for which at least for some purposes the Company's net assets can stand as a rough equivalent).

101. The second issue is then whether, making these assumptions, the Petitioners have demonstrated that the payment of any distributions to Grand View in connection with the Concert Transaction, or the payment of distributions in the sum of US$2.5 million or US$5.95 million, will adversely affect the ability of the Company to satisfy a buy-out order, and if they have, whether the availability of an order against Grand View itself to repay the distributions or to acquire and pay for the Petitioners' equity interest is a sufficient protection for the Petitioners so as to ensure that they can be adequately compensated and protected by the relief that could be granted by the Court if they succeed at the trial of the Re-Amended Petition.

102. The question then is whether on the assumption that the Petitioners make out their case as to the share of the equity to which they are entitled and are otherwise successful at the trial of the Re-Amended Petition, the making of any distributions to Grand View now, or distributions in the sums that the evidence shows may be paid, will involve Grand View receiving more than its likely share of the equity value of the Company, thereby leaving the Company with insufficient surplus value (loosely described as net assets) with which to pay the full amount of the proper value of the Petitioners' equity.

103. If one takes the two-thirds figure as the reference point, this means that if the distributions to Grand View exceed the value of the one-third of the likely value of the equity which was held by Grand View at the time of the Forced Withdrawal Notice, the Company will be left with insufficient funds to cover the value of the Petitioners' two-thirds of the equity. Alternatively, if the 90% figure is used, any distribution in excess of the likely value of 10% of the total equity of the Company will be an overpayment and leave the Company with insufficient net assets to cover the Petitioners' right to be paid the value of 90% of the value of the Company's total equity.

104. On the Petitioners' case, the share of the equity value of the Company to which Grand View was entitled was very small, so that any material distributions to Grand View would result in an overpayment of Grand View's equity and a deficiency in funds left and available in the Company to cover the value of the Petitioners' equity.

105. This seems to me to be the key point. The fact that the Company is solvent is not in itself significant on this issue. The Petitioners' claim, it must remembered, is not an ordinary debt claim. The Petitioners' claim assumes that the Company has been highly solvent.

To establish their claim in the amount they now assert, they will need to show that the Company had substantial shareholder equity (as at the date of the Forced Withdrawal Notice), as well as that they were entitled to a large share of that equity value. The issue is not whether the Company is and will remain solvent but whether the payment now of substantial distributions to Grand View considerably in excess of Grand View's likely or potential entitlement will leave insufficient assets in the Company to cover the value of the Petitioners' equity.

106. Mr Dethlefs' evidence in Dethlefs -1 (at [43]) was clear (and was supported by Mr Hughes in Hughes-1) that the Company, by reference to its most recent financial statements, was solvent and would be able to meet a buy-out order in favour of the Petitioners assuming that the sum ordered to be paid would be US$16,889,000. The figure for total equity in the 30 June 2024 audited financial statements that Mr Dethlefs adduced in evidence was US$30,616,106 and in the management accounts as at 31 March 2025 was US$32,222, 595. The cash figure in the management accounts was US$9,420,115.

107. If these figures (for 2024 and 2025 – the Notice of Forced Withdrawal was dated 29 January 2024) are broadly correct and are applied as at the date of the Forced Withdrawal Notice, a 10% share of the Company's equity will be worth approximately $3 million and a one-third share will be worth $10 million. If the total equity figure in the WTW Report of US$49 million is used, then a 10% share of the equity would be worth US$4.9 million and a one third share would be worth roughly US$16 million. If the Petitioners' case that Grand View is only entitled to 5.1% of the total equity using for the value of the total equity the WTW Report figure (as explained above) is justified, then Grand View's true entitlement is only approximately US$2.5 million. However, I also note that Mr Provost (see [28] of Provost-1]) when responding to Mr Osborne's evidence as to the proper assessment of the relationship between the US$4.45 million being paid by the Buyer for Grand View's shares and the value of the shareholder equity had said that while he agreed with Mr Osborne that shareholder equity as at 31 March 2025 was US$32 million, he considered that it was appropriate to take into account the undiscounted figures for the reserves which reduced the shareholder equity to US$15.4 million.

108. In my view in view of these competing claims, disputes and uncertainties to which I have referred, 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 value 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. It seems to me that the Petitioners' case that Grand View is only entitled to 5.1% of the Company's equity value is an outlier and too low to be used. A figure based on an average of the Petitioners' claim that Grand View's share between 33% and 10% seems to me to be more reasonable, adopting a cautious approach as to size of Grand View's entitlement to the value of the Company's equity to avoid an overpayment and therefore prejudice to the Petitioners

while the Amended Petition is pending. A figure for the total value of between the Petitioners' WTW Report figure of US$49 million and the figure in the Company's current financial statements of US$30 million seems to me to be reasonable. That would give an approximate equity value of US$39.5 million and a figure for Grand View's share of the total equity of 21.5%. This would result in Grand View's equity being valued at approximately US$8.5 million.

109. On this basis, it seems to me that the Petitioners are unable to show that the proposed distributions in the aggregate sum of US$5.95 million would result in an overpayment and distribution to Grand View of more than its share of the equity (net assets) in the Company. The evidence, assessed as best I can, indicates that Grand View is likely to be able to establish that its share of the Company's equity will at least equal this sum and therefore that there is not a real risk that the Company will retain insufficient net worth to be able to satisfy a buy-out order (the value of the Company's assets after discharging other liabilities is approximately equivalent to the value of the shareholders equity).

110. The Petitioners relied on a further uncertainty deriving from the potential impact of the run-off of the Company's business by Concert Holdings. I have reviewed the evidence adduced by Grand View and the Petitioners' challenges and am 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 buy-out order. It remains to be seen what approach to future distributions Concert Holdings will take. No further distributions may be made and indeed no further distributions may be permissible. If excessive further distributions are proposed before the Re-Amended Petition has been determined and the Petitioners consider that they would prejudice the Company's ability to satisfy a buy-out order, then they can apply for injunctive relief if they consider that to be appropriate. Since, as I discuss below, I have decided that the Buyer should accede to the SHA, I would expect the Petitioners to have the opportunity to find out about proposed future distributions but would in any event expect the Buyer to agree to give notice of such proposed distributions in advance to the Petitioners. I note that no undertakings or assurances have been offered as whether further distributions will be made out of the Company in the period before the Re-Amended Petition has been determined but it seems to me that this is not determinative. I also note Mr Dethlefs evidence regarding the regulatory restrictions that apply to the level of capital to be maintained by the Company and to further distributions out of capital, which seem to me to provide some, albeit only limited, assurance that any future distributions will only be properly made.

111. It therefore seems to me that the Petitioners have not established, assuming that the Company will not make distributions above the US$5.95 million 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 buy-out order.

112. I accept that since Grand View will remain as a party to these proceedings it will, as I have already discussed, be possible for Grand View to be ordered after the trial of the Re-Amended Petition to return the distributions which it is to receive or ordered itself to pay to the Petitioners the fair value of their shares. I also note the evidence of Mr Hughes and Mr Dethlefs as to Grand View's ability to do so. But I would not have regarded this 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 that there was a material risk that the proposed distributions to be paid by the Company would exceed a reasonable assessment of the value of Grand View's equity interest. The evidence adduced as to Grand View's financial position is generalised and limited and has been challenged by the Petitioners. Of particular significance is the fact that at least US$2.5 million of the distributions to be made will immediately be disbursed and used to pay expenses and fees, so that Grand View will not retain the funds. It is far from clear on the evidence that it will have the resources to replace those funds and to repay them if required to do so. The Petitioner's evidence as to the financial difficulties faced by Grand View and the impact of the St. Luke's merger or takeover raises real concerns and uncertainties as to its financial resources in the short to medium term.

113. Grand View and the Company have adequately explained why they consider that a sale to Concert Holdings, as a respectable party with the experience is needed efficiently to manage and oversee the Company's run-off process. But they have not sought to explain or justify why the Company should be paying Grand View's, and it appears at least some of Concert Holdings', costs, and fees (such as the "*success fee contemplated by the commitment letter for the transaction*" which is included in the definition of Transaction Expenses in the SPA). It is clear that the Company's board has approved the upstreaming and satisfied itself that it is justifiable in the circumstances, although the evidence does not show that in doing so the board considered the position of the Petitioners and how that would be protected. This is an omission, I think, and unsatisfactory. But I think that taking the evidence as a whole I am entitled to make the assumption that they were satisfied, as I have on balance been, that the sums being distributed were in an amount to which Grand View was in any event likely to be entitled, that Grand View needed the funds to undertake and complete the Concert Transaction and that the Concert Transaction was also needed by and would be in the best interests of the Company, 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 impact of the sale of the sale of the GV Shares

114. It seems to me that Grand View is right that in this case, where it will remain a party to the Re-Amended Petition and subject to such orders as the Court considers to be justified and appropriate, the sale of its 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.

115. I also accept that even though Grand View is being paid a sum by the Buyer (in effect Concert Holdings) that reflects and represents the full value of the equity in the Company, which the Petitioners say they are not entitled to as they, the Petitioners, remain entitled to a substantial proportion of the equity value in the Company, this is not a basis for preventing Grand View from completing the sale and the Concert Transaction. Grand View is not purporting to sell the shares that were once owned by the Petitioners. It is treating those shares as having been cancelled and is selling its own shares which following that cancellation now represent 100% of the Company's equity. It was open to the Petitioners to challenge the Forced Withdrawal Notice directly by seeking a declaration that it was improperly and invalidly given and of no effect or an order that it and the cancellation of the Petitioners' shares be set aside and an order for the rectification of the Company's register of members and the reinstatement of the Petitioners as shareholders. Had the Petitioners' taken this route they could have applied for and would have had a basis for obtaining an interim injunction to prevent Grand View seeking to sell 100% of the equity in the Company. However, the Petitioners have chosen to pursue a financial remedy by way of a buy-out order within a petition under section 111 jurisdiction and thereby no longer have standing to assert the rights of a subsisting shareholder, or a person who is seeking the immediate rectification of the register of members, to restrain a sale of shares by another shareholder which would arguably affect or interfere with such rights.

116. I have also already explained why I consider that *Sibbasbridge* is distinguishable in the present case. If a shareholder who is a party to a section 111 petition seeks to sell their shares while the petition is pending and to extricate themselves from the proceedings by substituting another party as the shareholder the petitioner is likely to be entitled to an injunction to restrain them from doing so. But that is not the case here.

117. It is worth noting that Grand View is acting in a manner permitted by the SHA and the Bye-Laws, subject to one important qualification. Shareholders are permitted to sell their shares without the consent of the other shareholders. However, the SHA and the Bye-Laws contemplate that the buyer will accede to and become bound by the SHA. The board is given the power to refuse to register a transfer of shares unless and until the transferee has executed a deed of adherence ([12.2.4] of the Bye-Laws and see clause IA of the SHA which states that all shares are subject to the restrictions on transfer imposed by the SHA and the Bye-Laws and that "*All approved transferees will execute a Deed of Adherence in the form attached hereto as Schedule 1*"). In addition, clause VIA of the SHA states (as Mr Chudleigh pointed out at the hearing) that "*Each person or entity who now or hereafter acquires any legal or equitable interest in any Shares shall be bound by the terms of [the SHA]*." It may be arguable that any buyer of shares in the Company that bought with notice of clause VIA would be treated as having agreed or would be estopped from denying that it was bound by the SHA but a written confirmation of this and agreement to be bound is clearly desirable and, in the form of the deed of adherence, envisaged.

118. The evidence does not disclose whether the Company's board will be requiring the Buyer (and Concert Holdings) to execute a deed of adherence. In view of the terms of the Bye-Laws and the SHA to which I have referred it seems to me that the board would need to have a very good reason for not doing so and I cannot currently see how that could be justified.

119. In any event, it seems to me that the Petitioners can say that the Concert Transaction may affect and prejudice the remedy to which they are entitled if at least the Buyer (leaving aside Concert Holdings) does not accede to the SHA and agree to become a party to the Re-Amended Petition in relation to its future conduct (but without becoming liable for the conduct of and breaches by Grand View, which would remain liable for these). Displacing Grand View as a shareholder with the Buyer without the Buyer becoming subject to the SHA and the jurisdiction of this Court will affect both the governance structure of the Company and the ability of the Petitioners to seek relief against the Buyer during the course of or at the trial of the Re-Amended Petition. While it is true that the Petitioners are not seeking to enforce or do not rely directly on the SHA and the Bye-Laws in the Re-Amended Petition, it seems to me that their ability to seek further relief before and at the trial of the Re-Amended Petition could be adversely affected if the only remaining party to the Re-Amended Petition and the SHA was a former shareholder who could no longer exercise rights over and ensure the proper governance of the Company's affairs.

120. This result seems to be consistent with what was discussed between Grand View and Concert Holdings. As I have already noted, the GV Resolutions stated that Grand View voted to approve the sale of its interests in the Company on the basis of the "*Buyer assuming [Grand View's] position in the Cassatt Litigation*…." I am satisfied that this condition and requirement is just and convenient in the circumstances. It should not interfere with or delay the Concert Transaction but will provide the Petitioners with some additional protection and ensure that all parties against whom relief may need to be granted at the trial of the Re-Amended Petition are before the Court.

The Freezing Injunction Ground and the Order 29 Ground

121. In can deal with both of these alternative grounds very briefly. They were both relied on by the Petitioners and dealt with briefly in their skeleton arguments, which I have carefully reviewed and considered, although they were not pressed at any length at the hearing.

122. It seems to me that while the Petitioners are right that the Court has the power to grant a freezing injunction in a section 111 case (see Hollington at [8-44]), they have 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 buy-out order made on the Re-Amended Petition. To succeed, the Petitioners need to show a real risk, judged objectively, that the buy-out order against

the Company (which is currently the only party against whom such an order I sought) would not be satisfied or paid because of an *unjustified* dissipation of the Company's assets. It seems to me be unarguable that the payment by the Company of the distributions which it proposes to make, in the circumstances I have described above, 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.

123. In my view it is clear that relief on the basis of RSC O.29, r.2 is not available in the present case. That jurisdiction applies where a claim is made in respect of and to assert rights against or over, and where there is a dispute concerning the entitlement to specific property. The specific property is then the subject matter of the action. It cannot be said the GV Shares are property which is the subject-matter of the Re-Amended Petition in this way.

DATED this **15th** day of **October 2025**

NICHOLAS SEGAL
ASSISTANT JUSTICE