In The Supreme Court of Bermuda

CIVIL JURISDICTION
2017: No. 293

BETWEEN:

(1) BIDZINA IVANISHVILI

(2) EKATERINE KHVEDELIDZE

(3) TSOTNE IVANISHVILI

(An infant, by his mother and next friend, Ekaterine Khvedelidze)

(4) GVANTSA IVANISHVILI

(5) BERA IVANISHVILI

(6) MEADOWSWEET ASSETS LIMITED

(7) SANDCAY INVESTMENTS LIMITED

Plaintiffs

-and-

CREDIT SUISSE LIFE (BERMUDA) LIMITED

Defendants

Before:	**Hon. Chief Justice Hargun**
Appearances:	**Mr. Joe Smouha QC, Ms. Sarah-Jane Hurrion and Ms. Judith Roche, Hurrion & Associates Ltd, for the Plaintiffs**
	Mr. Stephen Moverley Smith QC, Mr. John Wasty, Ms. Hannah Tildesley and Mr. Sam Riihiluoma, Appleby (Bermuda) Limited, for the Defendant
Dates of Hearing:	**22-23 October 2020**
Date of Ruling:	**22 December 2020**

RULING

Application for further directions; application to amend the Statement of Claim pleading a new cause of action potentially subject to foreign law and foreign limitation period; whether the issue of limitation should be determined in interlocutory proceedings or at trial; application for further and better particulars of the Statement of Claim; application for specific discovery

Hargun CJ

Introduction

1. The factual background to this action is set out in paragraphs 3 to 15 of my Ruling in relation to the strike out application dated 13 September 2018.

2. Briefly, the Plaintiffs' claim against Credit Suisse Life (Bermuda) Limited ("**CS Life**") is for losses suffered by two unit-linked life insurance policies ("**the Policies**"), which were issued to Meadowsweet Assets Limited and Sandcay Investments Limited, the Sixth and Seventh Plaintiffs (as policyholders) in 2011 and 2012 respectively. The First to Fifth Plaintiffs are the ultimate beneficiaries of the proceeds of the Policies, as the beneficiaries of trusts within which the Policies are held.

3. The Plaintiffs allege that they entrusted US $755 million to CS Life by way of lump sum insurance premiums ("**the Policy Assets**"). The Policy Assets were invested in accounts with Credit Suisse AG ("**the Bank**") in the name of CS Life ("**the CS Life Accounts**"). In 2015 the Plaintiffs discovered unauthorised, imprudent and fraudulent trading on the CS Life Accounts resulting in huge losses to the Policy Assets.

4. In these proceedings the Plaintiffs assert that CS Life owed the Plaintiffs various contractual, fiduciary, statutory and common law duties, and that CS Life breached those duties resulting in losses estimated to be in the region of US $400 million.

5. Over the course of two days in October 2020, the parties to these proceedings pursued 9 separate applications. The applications are:

   First, the Plaintiffs' application to amend their Statement of Claim in terms of the draft Amended Statement of Claim (the "**ASOC**") (the "**Amendment Application**") supported by the First and Sixth Affidavit of Ioannis Theodore Alexopoulos dated 10 July 2020 and 6 October 2020 respectively ("**Alexopoulos 1**" and "**Alexopoulos 6**"), and opposed by the Twelfth Affidavit of Janita Kate Burke dated 11 September 2020 ("**Burke 12**").

   Second, the Plaintiffs' application for an unless order arising out of the Defendant's non-compliance with the Specific Discovery Order, supported by the Fourth Affidavit of Judith Maria Roche dated 14 March 2020 ("**Roche 4**"), and the Seventh Affidavit of Mr Alexopoulos dated 6 October 2020 ("**Alexopoulos 7**"), and opposed by the Eleventh Affidavit of Ms Burke ("**Burke 11**").

   Third, the Plaintiffs' application for permission to adduce investment management expert evidence (the "**Investment Management Application**") supported by the Fourth Affidavit of Mr Alexopoulos dated 11 September 2020 ("**Alexopoulos 4**").

   Fourth, the Plaintiffs seek the costs of their specific discovery application.

   Fifth, the Defendant's application for a response to its request for further and better particulars (the "**RFBP Application**"), supported by the Seventh and Fourteenth Affidavits of Ms Burke dated 4 June 2020 and 6 October 2020 respectively ("**Burke 7**" and "**Burke 14**"), and opposed by the Second Affidavit of Mr Alexopoulos ("**Alexopoulos 2**").

   Sixth, the Defendant's application for an extension of time to exchange expert evidence (the "**Time Summons**"), supported by the Eighth Affidavit of Ms Burke dated 4 June 2020 ("**Burke 8**") and Burke 14, and opposed by Alexopoulos 2.

Seventh, the Defendant's application for specific discovery and a discovery methodology affidavit (the "**Defendant's Discovery Application**"), supported by the Tenth and Thirteenth Affidavits of Ms Burke dated 16 July 2020 and 6 October 2020 respectively ("**Burke 10**" and "**Burke 13**"), and opposed by the Third Affidavit of Mr Alexopoulos ("**Alexopoulos 3**").

Eighth, the Defendant's summons for an extension of time (the "**Methodology Summons**") to file its affidavit setting out the methodology of its discovery exercise in accordance with the Court's 11 February 2020 Ruling (the "**Methodology Affidavit**") supported by the Fifteenth Affidavit of Ms Burke dated 15 October 2020 ("**Burke 15**").

Ninth, the Plaintiffs' summons for directions (the "**Directions Application**") supported by the Fifth Affidavit of Mr Alexopoulos dated 5 October 2020 ("**Alexopoulos 5**").

Procedural background

6. These proceedings were commenced in August 2017. CS Life filed its Defence on 12 January 2018 and also served at the same time a request for further and better particulars. The Plaintiffs filed their Reply and response to the request for further and better particulars on 16 March 2018.

7. Directions were agreed by the parties and they filed a consent Order on 9 September 2019. Discovery was initially ordered to be exchanged on 4 September 2018 but this deadline was extended and provision made for the parties to exchange discovery on 10 December 2018, with CS Life providing a further list of documents received from the Bank by 31 January 2019.

8. Lengthy correspondence followed regarding the deficiencies in CS Life's discovery, and in July 2019 the Plaintiffs filed an application for specific discovery which was granted by

this Court in its Ruling of 11 February 2020 ("**the February Ruling"**) and resulted in the Specific Discovery Order dated the 2 June 2020.

9. CS Life sought leave to appeal and a stay of the February Ruling. CS Life was granted leave to appeal on two out of six grounds and the respective orders were stayed. Otherwise CS Life was ordered to comply with the February Ruling.

10. CS Life sought to comply with the Specific Discovery Order, to the extent that it had not been stayed, by serving Burke 5. The Plaintiffs did not accept that there was full compliance with the Specific Discovery Order and filed their application for an unless order.

11. CS Life's appeal against the Specific Discovery Order and CS Life's renewed application for leave to appeal were heard by the Court of Appeal on 4 June 2020.

12. On 17 July 2020 CS Life filed the Defendant's Discovery Application.

13. By Judgment dated 7 October 2020, the Court of Appeal dismissed CS Life's appeal on all grounds, save that the Court allowed the appeal against the finding that CS Life had waived privilege in relation to the correspondence with the Bank.

14. The parties agreed directions to trial by way of the September 2019 Directions and trial was subsequently listed for 18 January 2021.

15. Witness statements were due to be exchanged on 27 March 2020, but this was extended at the request of CS Life until 15 May 2020.

16. On 28 April 2020 CS Life sent its second request for further and better particulars, which is now the subject of the RFBP Application.

17. The Plaintiffs sent a draft Amended Statement of Claim to the Defendant on 5 May 2020. The draft Amended Statement of Claim provided further particulars of breach and loss following review of the discovery provided by CS Life, along with claims for declaratory relief and misrepresentation. This draft Amended Statement of Claim forms the basis of the Amendment Application.

18. Expert evidence in the field of forensic accounting and Swiss law was due to be exchanged on 31 July 2020. CS Life has sought an extension of time for filing expert evidence to a date 8 weeks after the date on which the Plaintiffs provide a response to the second request for further and better particulars. This forms the basis of the Time Summons.

19. Given the outstanding applications the parties have agreed that the January 2021 trial date is no longer a realistic possibility and have agreed to seek a date later in the year with additional directions arising out of these applications.

(1) The Amendment Application

20. The Plaintiffs seek leave to amend their Statement of Claim pursuant to RSC Order 20, rule 5. The amendments fall into four categories, two of which have been agreed by CS Life, and two of which are contested.

21. The agreed categories relate to minor amendments to update the pleadings and the inclusion of a claim for declaratory relief as to the effect of the total surrender of the policies at paragraphs 53A to 53C of ASOC. CS Life requests that certain case management directions be granted as a precondition to consenting to the agreed amendments. In particular, CS Life seeks provision in the trial timetable for amended pleadings, further discovery, further factual evidence if so advised, and additional time to file expert evidence.

22. These directions are not in dispute:

(a) The Plaintiffs have suggested that CS Life should be allowed three weeks, following the filing of the ASOC, to file the Amended Defence (paragraphs 4 to 6 of the Draft Directions).

(b) Separately, the Plaintiffs have proposed that the time for exchanging expert reports be extended to March 2021 (paragraph 11 of the Draft Directions).

(c) To the extent that the parties have further documents relevant to the issues in dispute, the Plaintiffs have made provision for exchange of further lists of documents at paragraph 7 of the Draft Directions.

(d) The Plaintiffs do not accept that any of the proposed amendments necessitate further factual evidence. Nevertheless, the Plaintiffs are willing to agree to provision in the timetable for filing such evidence, if so advised (paragraph 8 of the Draft Directions).

23. The disputed amendments fall into two categories. First, the inclusion of the misrepresentation claim at paragraphs 50A to 50H of the ASOC, with connected amendments at paragraphs 10, 19, 34 and 36 of the ASOC (referred to as the "misrepresentation amendments"). Second, certain further particulars of breach and loss (at paragraphs 50, 53 and 61 of the ASOC) which CS Life contends are "*not properly particularised*". These are referred to by CS Life as the "Category 4 Amendments".

The Misrepresentation Amendments

24. The parties agree that the Misrepresentation Amendment Application could not be determined at the October hearing and agree that this aspect of the Amendment Application should be adjourned to a future date. However, the parties disagree as to when this aspect of the Amendment Application ought to be determined by the Court. The Plaintiffs contend that as the Defendant's objections to the amendments involve consideration of Swiss and Georgian law issues, the application could not sensibly be determined in the context of an

interlocutory proceeding and should be held over to trial. CS Life seeks to have this issue determined at a further interlocutory hearing.

25. The proposed amendments assert that Mr Lescaudron's fraudulent activity had commenced years before he persuaded Mr Ivanishvili to make investments through the use of the Policies. The Plaintiffs contend that the Bank and/or Mr Lescaudron, acting on behalf of CS Life, induced the Plaintiffs to enter into the Policies by impliedly representing that the Bank was not fraudulently and/or imprudently managing the Plaintiffs' accounts and/or did not intend to manage the Policy Assets fraudulently. These representations, the Plaintiffs contend, were false, in that the Bank and/or Mr Lescaudron had for many years been fraudulently managing the Plaintiffs' Accounts and intended to carry on doing so. The Plaintiffs say that, absent these misrepresentations, they would not have entered into the Policies.

26. It is common ground that the governing law of the Misrepresentation Claim will be determined in accordance with the double actionability principle. Accordingly, the Court will have to consider whether the claim is actionable under both Bermuda law and the law of the country in which the tort was committed (See: *Lisa v Leamington Reinsurance Company* [2008] SC (Bda) 47 at [101]).

27. Section 34A of the Limitation Act 1984 provides that where foreign law governs a cause of action, the limitation period under the relevant foreign law shall apply.

28. The application is made under RSC Order 20 rule 5 which provides that:

> ***"20/5 Amendment of writ or pleading with leave***
>
> *(1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to*

costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment."

29. Accordingly, CS Life submits, the Court must not permit an amendment to plead a new claim the limitation period for which has expired, unless that new claim arises out of the same or substantially the same facts as an existing cause of action (See: *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 1 WLR 1409 (CA)).

30. CS Life contends that the proposed amendments are made extremely late in the day and relate to a claim that is entirely new and unrelated to the Plaintiffs' original claims in that it relies, not on CS Life's conduct in relation to the conduct of the Policies but on pre-contractual implied representations said to have induced the taking out of the Policies.

31. CS Life submits that the Misrepresentation Claim is almost certainly governed by Swiss law on the basis that the alleged implicit representations arise from the conduct of the Bank which occurred in Switzerland; the Plaintiffs allege they relied upon such representations by entering into the Policies which were entered into in Switzerland; and loss on the Policy Accounts occurred in Switzerland where the assets and accounts were located.

32. CS Life has filed the report of Swiss law expert, Dr Thomas Weibel, who concludes that, under Swiss law, the claim would be time-barred. CS Life acknowledges that the Plaintiffs contend that, if foreign law governs the Misrepresentation Claim, the relevant law is likely to be Georgian law. CS Life seeks directions that the Plaintiffs should be given an opportunity to file expert evidence of foreign law (both Swiss and Georgian) in support of their summons and then the summons should be relisted for hearing as soon as reasonably possible in order that the matter can be determined.

33. CS Life opposes the Plaintiffs' contention that the application to amend the Statement of Claim in relation to the Misrepresentation Claim should not be heard until trial. CS Life opposes this course on the basis that it is wholly unconventional and completely unsatisfactory. CS Life argues that if this course was adopted, both parties would be obliged to prepare for trial as though leave to amend had already been given to the prejudice of CS Life and with the attendant risk of a huge waste in both time and costs.

34. The above contentions by CS Life are not accepted by the Plaintiffs. The Plaintiffs contend that the Misrepresentation Claim is not governed by Swiss law (though the Plaintiffs accept that CS Life raises an arguable governing law issue which will be very fact sensitive and not capable of resolution on an interlocutory basis). In any event the Plaintiffs do not accept the conclusions in Dr Weibel's report and accordingly they will need to file responsive Swiss law evidence.

35. The Plaintiffs submit that in order to determine the amendment application relating to the Misrepresentation Claim, the following issues will need to be determined by the Court:

    (a) The governing law of the claims;

    (b) (Potentially) whether there is a viable claim under the law of the place where the tort was committed;

    (c) Whether the claim is time-barred under the applicable foreign law;

(d) Whether the claim arises out of the same or substantially the same facts as the causes of action pleaded in the original Statement of Claim; and

(e) Whether it is just to allow the proposed amendments.

36. In relation to the foreign law limitation defence, the Plaintiffs submit that it is inappropriate to determine limitation at an interlocutory hearing relying upon *Chandra v Brooke* [2013] EWCA Civ 1559 at [70]. The determination of this issue, the Plaintiffs contend, not only requires exchange of expert reports and cross examination of experts on any areas of disagreement, but it may also require factual findings as to the Plaintiffs' date of knowledge.

37. Given that CS Life has raised a foreign law limitation defence, the Plaintiffs have filed a separate writ (2000 No. 373) advancing the Misrepresentation Claim (the "**Misrepresentation Writ**") and have made an application that the Misrepresentation Writ action be consolidated with the existing proceedings, so as to allow the Court to give directions for the claims to be heard together at trial.

38. In the exercise of discretion, I accept Mr Smouha's submission, on behalf of the Plaintiffs, that the Misrepresentation Claim aspect of the Amendment Application be determined at trial along with the merits of the Misrepresentation Claim (advanced either as an amended claim or pursuant to the Misrepresentation Writ). I do so essentially for the reasons advanced by Mr Smouha:

(a) As the application will engage issues of Swiss and Georgian law, it is not desirable to have potentially complex issues of foreign law tried at an interlocutory hearing. The hearing would likely take some days and would be wasteful of costs and time given that issues of Swiss and Georgian law would have to be determined at trial in any event.

(b) It is preferable for the Court to hear all the Swiss law issues together as the Court may need to assess the quality of the expert evidence from the respective experts.

(c) The question as to what law governs the misrepresentation claim is one which is fact sensitive. It would be preferable for the Court to assess that question on the basis of all the facts and evidence at trial. It is undesirable for the Court to decide the governing law question on the basis of assumed or disputed facts on which it may take a different view after trial.

(d) From a case management perspective, proportionality and saving of costs, it is, in my view, strongly preferable to have all these questions, involving as they do conflict issues, foreign law issues (with potentially four experts giving evidence) and questions of fact, determined at trial and not at a lengthy interlocutory hearing for the purposes of deciding whether a claim can be advanced at trial.

39. There is disagreement between the parties as to whether the Misrepresentation Claim requires further evidence or discovery. If the parties consider further evidence needs to be filed, they should be given an opportunity to submit additional factual evidence. Accordingly, I order that there be a provision in the Directions Order allowing the parties to exchange further evidence of fact in respect of the Misrepresentation Amendments.

Category 4 Amendments

40. These amendments relate in the main to the provision of further particulars in paragraphs 50, 53 and 61 of the Statement of Claim. Thus, by way of an example, CS Life's request for further and better particulars dated 28 April 2020 requests, under paragraph 50.3, further particulars of the tracking investment referred to "*in derivative products (namely Unicredit Global Biotechnology Basket Strategy and Leonteq Biotech Strategy, together with tracking investment relating to those underlying investments) all of which had a*

significant exposure to Raptor stock." The proposed amendments to paragraph 50.3 seek to provide precisely this information.

41. The objection to these amendments is set out in Burke 12. These amendments are objected to on the basis that the amendments are not properly particularised. It is contended that the Plaintiffs are obliged to plead the allegations which they must then prove. In order to understand this objection one needs to keep in mind the level of particularity which CS Life requests under the pending request for further and better particulars. Thus, under paragraph 53.1(a) in relation to the allegation of "imprudent transactions" CS Life seeks "*full particulars of: (a) each and every transaction it is alleged was imprudent...*"

42. The application for further and better particulars is discussed at paragraphs 77 to 88 below but I am satisfied that, in relation to the Plaintiffs' application to amend the relevant paragraphs of the Statement of Claim referred to as Category 4, no valid objection exists which would justify the Court refusing leave to allow the proposed amendments.

43. The starting point is that the Court would ordinarily give leave to amend the Statement of Claim unless the proposed amendment is improper or the amendment is likely to cause irremediable prejudice. I am not satisfied that the proposed amendments in Category 4 are likely to have either of these consequences.

44. Furthermore, I am not clear which of the detailed proposed amendments are objected to by CS Life and the precise rationale for that objection (other than the general objection that the proposed amendments are not properly particularised).

45. In the circumstances, I propose to allow the amendments referred to as Category 4. I accept the objection made by Mr Moverley Smith that the qualifying words such as "*including*" and "*inter alia*" render the pleading open ended and as such are to be avoided.

(2) The Unless Order Application

46. The Plaintiffs seek an unless order to compel CS Life to comply with the Specific Discovery Order made pursuant to the February Ruling. In support of this application the Plaintiffs rely upon the following grounds, which they say, demonstrate that the discovery given by CS Life is wholly unsatisfactory.

47. First, the Plaintiffs rely upon inordinate delay in complying with the February Ruling. Following the February Ruling, CS Life sought leave to appeal the February Ruling to the Court of Appeal and sought a stay of the terms of the Order set out in the Ruling. By Ruling dated 25 February 2020 ("**the 25 February 2020 Ruling"**), the Court refused leave other than relating to the ground that CS Life provide information in relation to its conduct of discovery and the methodology it employed; and in relation to the issue of whether legal professional privilege had been waived in relation to certain correspondence. Paragraph 9 of the 25 February 2020 Ruling made it clear that otherwise CS Life was required to comply with the Orders made in the February Ruling and "*Having regard to the passage of time in determining the leave application, I extend the time limited for compliance with the discovery Orders to 10 March 2020."*

48. Despite the clear terms of the 25 February 2020 Ruling that compliance was required by 10 March 2020, it seems clear that there was no real attempt made to comply with the terms of that Ruling. Even on CS Life's own case compliance was not achieved until Burke 16 was filed with this Court on 21 October 2020, the day before the hearing of this application for an unless order. This is a delay of over 7 months and CS Life made no application to the Court seeking an extension of time to comply with the clear orders of this Court.

49. In explaining this delay CS Life points to the spread of COVID-19 which led to the near global shutdown of travel and offices, including in the UK, Switzerland, and Bermuda, where CS Life's legal teams are located, severely limiting the number of personnel able to work on the further tasks ordered by the Court. I accept that spread of COVID-19 could

properly justify a reasonable extension of time but the delay of 7 months is inordinate and unjustifiable.

50. Second, the Plaintiffs point to the entirely unorthodox tactics employed by CS Life in providing discovery which are designed to ensure that the Plaintiffs are taken by surprise at any discovery applications before the Court. The Court has now heard two applications by the Plaintiffs in relation to CS Life's failure to comply with its obligations to provide proper discovery. The first hearing took place on 21-22 January 2020. As I noted in paragraph 15 of the February Ruling, the Sixth List of Documents was served upon the Plaintiffs one day before the hearing on 20 January 2020. Mr. Hollander QC, who appeared for the Plaintiffs at that hearing, complained bitterly that this tactic was employed by the Defendant to disrupt the hearing before the Court.

51. This hearing took place on 22-23 of October 2020. Burke 11, sworn on 11 September 2020, states at paragraph 32 that CS Life is in the process of compiling further discovery which it will serve along with copies of the relevant documents before the end of September 2020. Despite the promise that the final List of Documents would be filed well before the scheduled hearing on the 22 October 2020, CS Life elected to serve its Eighth List of Documents on the 19 October 2020, 2 days before the hearing; and served its Ninth List of Documents on 21 October 2020, the night before the hearing. The Eighth List of Documents disclosed 229 documents and the Ninth List of Documents disclosed a further 263 documents. Mr Smouha justifiably complains that this was a repeat of the tactic employed by CS Life which was designed to disrupt the hearing and in particular the application for an unless order. I have no doubt that the timing of the service of the Ninth List of Documents had the effect of disrupting this hearing and these tactics are to be deprecated.

52. Third, Mr Smouha complains of the lack of frankness and forthrightness in the provision of discovery by CS Life. As an example, Mr Smouha complained that CS Life had not provided native versions of the documents within its discovery and had indicated no intention of doing so. He explained that to date, CS Life had provided 10 documents out

of 4700 in a format other than PDF and he submitted that it was not realistic to suggest that all but 10 documents discovered by CS Life had been redacted, which CS Life contends cannot be provided in the native format. Mr Smouha contended that there were at least 129 documents which have been disclosed in PDF format which had no redactions and as such should have been disclosed in the native format. Mr Moverley Smith submitted that all documents which had not been redacted are available in the native format and can be inspected. In his reply submissions, Mr Smouha pointed out that whilst he was making his opening submissions in relation to the failure by CS Life to provide documents in the native format, 129 documents were added by CS Life to the documents available in the native format. No explanation was provided to the Court by CS Life as to why the 129 documents were not originally disclosed in the native format and why they were only added during the hearing when this issue had been highlighted by Mr Smouha.

53. I accept that the discovery provided by CS Life has been unsatisfactory. However, for the purposes of considering whether it is appropriate to make an unless order, the Court needs to consider carefully in what respects it is still contended that CS Life has failed to comply with the terms of the Specific Discovery Order and whether CS Life is in a position to do so. In this regard, Mr Smouha highlighted two issues. First, despite being ordered to do so, CS Life has not revealed unredacted versions of the redacted documents discovered to ensure that any redactions are in accordance with Bermuda law. Second, despite being ordered to do so, CS Life has failed to provide discovery of documents in native or original format. The second issue is related to the first issue in that it is contended by CS Life that it is not possible to provide documents in the native format if the document has been redacted and a copy of the redacted document has been taken in the PDF format.

54. In relation to the issue of redactions paragraph 5 of the Order dated 2 June 2020 required CS Life to:

> *"Confirm that the Defendant has examined the disclosed documents including the emails and the documents referred to at Coffey 4 paragraph 26 (i)-(v) in unredacted form and satisfied itself that any reductions are appropriately made in accordance*

with Bermuda law. To the extent that such reductions are not appropriately made in accordance with Bermuda law, provide a further list of unredacted versions of the disclosed documents."

55. The Plaintiffs submit that CS Life has not complied with the Order that redactions may only be made in accordance with Bermuda law. First, CS Life should have ensured that all of the redactions were effected by or reviewed by Appleby Bermuda or other Bermuda qualified lawyers. Second, Burke 11 at paragraphs 34 to 40 explains that Swiss lawyers, Homburger, have conducted a review of the unredacted documents. Third, paragraph 12 of Burke 16 states that the redactions applied by Flexlaw to CS Life's own emails were "*to ensure compliance with the confidentiality requirements of Swiss law."* Accordingly, the Plaintiffs submit, there is no evidence of any review of redactions being compliant with Bermuda law since none of the various lawyers mentioned as being involved in the discovery process are Bermudian attorneys.

56. Mr Moverley Smith contends that the submission of the Plaintiffs in relation to the redactions issue fails to take into account that there are mandatory requirements of Swiss law, relating to client confidentiality and secrecy, which require the documents to be reviewed, in the first instance, by Swiss lawyers. He says, thereafter, the documents are provided to Appleby Bermuda for the purposes of their review to ensure that all relevant documents are disclosed. Mr Moverley Smith freely admits that the impact of mandatory provisions of the Swiss law in relation to the issue of redactions was not raised at the February 2020 hearing. He says that he was himself unaware of the precise impact of the Swiss provisions.

57. The issue of the impact of mandatory provisions of Swiss law first appears to have been raised in Burke 5, sworn on 11 March 2020. In paragraph 14 of that affidavit she states that CS Life has instructed the Swiss legal firm Homburger to review the redactions made to the documents provided by the Bank to CS Life. In paragraph 15 she states that prior to releasing documents to CS Life the Bank, as holder of the documents, made redactions to them as set out in the letter from the Bank exhibited to her affidavit. That letter is the letter

from Schellenberg Wittmer, a firm of Swiss lawyers, to Appleby dated 10 March 2020. In that letter they set out the basis on which the Bank has redacted the documents provided to CS Life. The letter states:

> *"Credit Suisse, as a bank domiciled in Switzerland and subject to Swiss laws must adhere to Swiss law when it concerns the provision of information and documents in particular to the extent such documents and information shall be transferred abroad, and moreover avail itself of certain privileges under Swiss law:*
>
> > ***Swiss attorney-client privilege**: Art. 160 Swiss Code of Civil Procedure stipulates that neither a party or a third party shall be required to produce documents concerning the exchanges with a lawyer. As a result, Credit Suisse is not required to produce such documents.*
> >
> > ***Swiss supervisory privilege**: Art. 42c para. 5 Federal Act on the Swiss Financial Market Supervisory Authority prohibits the transmission, publication or forwarding of files related to the Swiss financial market supervisory authority's ("FINMA") supervisory activities to foreign entities if so ordered by FINMA.*
> >
> > ***Swiss banking secrecy:** Art. 47 Federal Act on Banks prohibits the disclosure of secrets which have been entrusted to a director, employee or agent of a Swiss bank. As a result, Credit Suisse is not permitted to disclose information regarding a client or account relationship, save where a client has given his consent that such information may be shared, where banking secrecy has been waived by client, or where the information is no longer a secret.*
> >
> > ***Swiss data protection law/Swiss employment Law**: The Federal Act on Data Protection applies to the processing of personal data in Switzerland, which includes both personal data of natural persons and corporate*

entities. Also, Art. 328, Swiss Code of Obligations requires an employer to acknowledge and safeguard the employees' personality rights, and Art 328b Swiss Code of Obligations makes express reference to the Federal Act on Data Protection as far as the employees' personal data is concerned and the same principles apply. The transfer of personal data outside Switzerland to a country not providing an equivalent level of data protection (this encompasses Bermuda […]) is restricted."

58. CS Life maintains that not only the documents belonging to the Bank are subject to Swiss mandatory laws, as set out above, but also the documents which belong to CS Life which are stored on the Bank's servers in Switzerland. This is explained in Burke 11, sworn on 11 September 2020. At paragraph 25 she explains that emails sent by Bank employees (including when they were acting on behalf of CS Life) are stored on the Bank's servers in Switzerland and accordingly, they are subject *inter alia* to the stringent data protection and banking secrecy laws of that jurisdiction. In order to comply with its obligations under Swiss law, she explains, the Bank is required to redact certain information contained in documentation transferred out in Switzerland. This issue appears to be disputed by the Plaintiffs.

59. CS Life has employed the Swiss firm of Homburger to review the redactions. According to Burke 16, sworn on the 21 October 2020, Homburger has reviewed the redactions in issue (apparently some 71,000) and documents containing erroneous redactions were reproduced and those redactions lifted and Appleby reviewed them for relevance to the proceedings. The relevant documents have been discovered in CS Life's Ninth List of Documents.

60. It can be seen from the above review of the evidence and respective arguments that the literal terms of paragraph 5 of the Specific Discovery Order have not been complied with. It was acknowledged at the February 2020 hearing that different jurisdictions have different confidentiality regimes and it was important in relation to redaction of documents that the documents were redacted having regard to the legal position in Bermuda. It was for this

reason that paragraph 5 provided that CS Life must ensure that the redactions are in accordance with Bermuda law. There was no suggestion, as Mr Moverley Smith acknowledges, that all the documents, both belonging to the Bank and CS Life, were subject to mandatory redactions, as set out in the letter from Schellenberg Wittmer. Despite the terms of paragraph 5 of the Specific Discovery Order, approximately 71,000 redactions on the documents of the Bank and CS Life have not been reviewed by a Bermuda lawyer, in order to ascertain whether those redactions are appropriate as a matter of Bermuda law.

61. Mr Smouha submits that in the event CS Life found that it could not comply with the terms of paragraph 5, as a consequence of the mandatory requirements of Swiss law, then CS Life should have come back to the Court to seek variation of the terms of paragraph 5. Mr Moverley Smith accepts that this was a course open to CS Life but urges the court not to make an order which is impossible for the Bank or CS Life to comply with.

62. The difficulty the Court faces is the way in which the Swiss law issues have been raised. There is no proper evidence before the Court of Swiss law other than the brief summary set out in the letter from Schellenberg Wittmer. There was no order of the Court allowing parties to adduce evidence of Swiss law in relation to these issues. As a result, no evidence of Swiss law has been filed by the Plaintiffs in relation to these issues. The end result is that it is not possible for this Court to take a considered view as to the impact of Swiss law on CS Life's obligations under paragraph 5 of the Specific Discovery Order.

63. The issue of proper redactions under paragraph 5 of the Order has a significant impact upon the second issue dealing with the discovery of the native documents. As noted above, paragraph 2 of the Specific Discovery Order requires CS Life to provide a further and better list of all native documents emanating from the sources of documents listed in Coffey 4 paragraphs 26 (i) to (v) and the email accounts referred to in paragraphs 14 and 15 of Coffey 4.

64. The Plaintiffs submit that CS Life has wholly failed to comply with this aspect of the Specific Discovery Order in that CS Life has provided only 10 documents out of 4,700 in

a format other than PDF. The Plaintiffs contend that it is not realistic to suggest that all but 10 documents discovered by CS Life have been redacted. As noted above, a further 129 native documents were added to the list during the October hearing. It does appear that the substantial reason why they are so few native documents disclosed is that a large proportion of the discoverable documents have been redacted.

65. At one time the Plaintiffs appeared to accept that documents which have been redacted could not be produced in the native format. Thus, the letter from Hurrion & Associates Ltd ("**Hurrion**"), the Plaintiffs' Bermuda attorneys, dated 7 January 2019 to Appleby suggested that in relation to e-discovery: "*Where a document has been reviewed to be relevant and no redactions have been made (for example to remove irrelevant or privileged material), the native version of the document is discovered"* (emphasis added). The proper scope of redactions, as can be seen, has a direct impact upon the scope of the documents to be produced in the native format.

66. Returning to the issue of the review of the redactions to ensure that they comply with Bermuda law, as required by paragraph 5 of the Order, Mr Smouha urges that the Court should make an unless order requiring CS Life to comply with the terms of paragraph 5. Mr Moverley Smith submits that the Bank and CS Life have no option but to comply with the mandatory requirements of Swiss law as they relate to redaction of documents to be produced in foreign discovery. In those circumstances, he submits, it is wrong in principle to make an unless order which the party cannot comply with having regard to the mandatory requirements of foreign law which is applicable to that party.

67. Having regard to these considerations, I have come to the view that it would not be appropriate to make an unless order at this stage without clarifying the position as a matter of Swiss law. The course I intend to take is to require CS Life to comply with the exact terms of paragraph 5, namely, that it is obliged to review the appropriateness of redactions solely by reference to Bermuda law and in particular without reference to the requirements of Swiss law. I also order that they must comply with this order within the next 28 days. In the event CS Life takes the position that it is unable to comply with paragraph 5 due to the

mandatory requirements of Swiss law, then it must, within 21 days, make an application to the Court to vary the terms of paragraph 5. Such an application must be supported by expert evidence of Swiss law. This course will allow the Plaintiffs to properly consider the position under Swiss law and if they disagree with the position taken by CS Life, they are in a position to contest the application to vary paragraph 5 of the Order. The Plaintiffs, in that event, are also at liberty to file expert evidence of Swiss law.

68. As stated above, I decline to make an unless order at this stage. The primary reason for seeking an unless order related to the issue of redactions and the production of documents in the native format and as a result most of the hearing in relation to this application was taken up by these two issues. However, if the Court has overlooked any other substantive discovery issue raised at the hearing which can properly be dealt with by means other than an unless order, the Court gives leave to the Plaintiffs to raise any such issue and the Court will make its determination on paper.

(3) The Investment Management Application

69. The Plaintiffs seek leave to rely on expert evidence in the field of investment management. The Plaintiffs propose that the investment management expert will address the following topics:

    (a) The investment profile, risk tolerance and investment goals of the First, Sixth and Seventh Plaintiffs. It is said that CS Life's witness evidence comments on the level of risk associated with various products on the CS Life Accounts and seeks to draw conclusions regarding the Plaintiffs' risk appetite, namely that Mr Ivanishvili had an "*aggressive investment appetite*". The Plaintiffs are not qualified to give evidence as to the level of risk associated with various products on the CS Life Accounts, and in any event, it is not a suitable topic for a witness of fact. Accordingly, the Plaintiffs contend that they should be afforded an opportunity to challenge CS Life's evidence as to the level of risk associated with the products on the CS Life Accounts.

(b) The indices to be applied when determining the counterfactual scenario on which the Plaintiffs rely to establish quantum of their claims.

(c) The appropriate concentration of investment in a single stock.

(d) The extent to which investments on the Policy Accounts were disguised indirect investments in other objectionable stocks, namely Raptor and Pearl Gold.

(e) The transactions on the Policy accounts, namely unsuitable and/or imprudent investments, unusual trading activity, options, and leveraging.

70. CS Life does not oppose the application provided it also has the opportunity to file evidence from an investment management expert and that it has the opportunity to make submissions regarding the scope of the evidence and the division of responsibility between the forensic accounting and investment management experts.

71. I am satisfied that the issues raised above are properly raised in the pleaded case and the subject matter is properly a matter of expert evidence. Accordingly, I make the order that the parties shall have leave to adduce expert evidence in the field of investment management.

(4) Application for costs in relation to the specific discovery application

72. The Plaintiffs, as the successful parties, seek the costs of their specific discovery application dated 5 August 2019 in accordance with the usual rule that costs follow the event. The Plaintiffs point out that at paragraph 98 of the February Ruling I stated that "*My provisional view is that the Plaintiffs' costs of and occasioned by the Plaintiffs' Summons for Specific Discovery should be paid by the Defendant but if this is not agreed I will hear the parties on this issue."*

73. Mr Moverley Smith argues that CS Life was successful on one issue before the Court of Appeal and that issue related to whether certain correspondence from Appleby was subject to legal professional privilege ("**LPP**"). He says that CS Life should have costs in relation to that issue or alternatively the Court could make a percentage deduction from the costs awarded to the Plaintiffs.

74. The Court of Appeal in Bermuda has cautioned against adopting the issue-based approach to costs and has reaffirmed that the basic principle remains that costs follow the event and that success should be measured in practical terms. The current position is summarised in the decision of Kawaley CJ in *Kentucky Fried Chicken (Bermuda) Ltd v Minister of Economy Trade and Industry (Costs*) [2013] Bda LR 34, at [13]-[14]:

> *"13… Firstly, this Court's jurisdiction to make*
> *issues-based costs orders finds no express support in the Rules unlike the position under the English CPR (paragraph 44.3(6)(f)); the Court of Appeal for Bermuda has cautioned this Court against playing fast and loose, as it were, with the basic principle that costs follow the event and that success should be measured in practical terms. In First Atlantic Commerce v Bank of Bermuda Ltd [2009] Bda LR 18, Sir Anthony Evans JA (giving the Judgment of the Court) opined as follows:*
>
> > *"65. The Judge rightly indicated that the fact that the recovery, regarded as equivalent to US$4 million was less that the amount claimed was not, of itself, a good reason for holding that the successful claimant could recover only a proportion of its costs (paragraph 29). However, he reduced the proportion to one-third on the ground that that was a generous estimate of the costs incurred in relation to the recoverable loss issue, as distinct from liability issues (paragraphs 30 and 32).*
> >
> > *66. We do not follow why the costs recovery should be limited in this way. The recoverable loss issue was concerned with causation and the measurement of quantum, questions that did not arise unless liability was*

first established. The position was complicated in the present case by the fact that the outcome was essentially an agreed settlement, though embodied in the first Order (7 November 2007), and the Court could not assess the chances of success on that issue alone (Judgment para 7, ref para 48 above). In our judgment, however, if the claimant is entitled to costs on the basis that he has achieved substantial success, as FAC is, he should recover the costs of establishing liability, as well as causation and damages.

67. But it does not follow that he shall recover the whole of those costs. The award remains subject to the principle recognised in In re Elgindata Ltd (No 2)[1992] 1 WLR 1207 : in short, the successful party's recoverable costs can be proportionately reduced when superfluous issues were raised unnecessarily, or for other good reason. The question here, in our judgment, is whether the principle applies in the present case. [emphasis added]

[…]14. In Binns v Burrows [2012] Bda LR 3, after considering the quoted passage and other authorities, I summarised the relevant Bermudian costs principles as follows:

"6. The above authorities suggest that, unless the Court or the parties have identified discrete issues for determination at the trial of a Bermudian action, the Court's duty in awarding costs will generally be to:

i. determine which party has in common sense or "real life" terms succeeded;

ii. award the successful party its/his costs; and

iii. consider whether those costs should be proportionately reduced

because eg they were unreasonably incurred or there is some other compelling reason to depart from the usual rule that costs follow the event."

75. Here, at the February 2020 hearing, the Plaintiffs were successful in relation to most issues canvassed before the Court. They were successful in relation to documents belonging to CS Life which had to be discovered; in relation to providing information relating to the conduct of discovery and methodology; in relation to the issue of privilege; and in relation to an issue which consumed most time at the hearing, namely, whether CS Life had the right to obtain documents from the Bank under Article 400 of the Swiss Code of Obligations. In the circumstances, I have no hesitation in ordering that the Plaintiffs' costs of and occasioned by the Plaintiffs' Summons for Specific Discovery shall be paid by the Defendant in any event. I further order that this is a suitable case where there should be a certificate for two counsel.

76. I should add that even if the Court had taken the view that the Defendant should succeed in relation to the issue of privilege, I would, having regard to the overall success of the Plaintiffs at the hearing, have ordered the Defendant should pay the entirety of the costs of and occasioned by the Plaintiffs' Summons for Specific Discovery.

(5) The Defendant's RFBP Application

77. CS Life makes an application that the Plaintiffs should be required to provide Further and Better Particulars of the Statement of Claim, pursuant to RSC Order 18, rule 12 (3), in response to CS Life's Request dated 28 April 2020 (the "**Request**").

78. CS Life argues that the purpose of an order for particulars is to enable the other party to know the case it is meeting and to prevent the other party being surprised at trial (*Spedding v Fitzpatrick* (1888) 38 Ch. D. 410 at 413 per Cotton LJ) and that a party is entitled to particulars of the other side's case and that the Court should order sufficient particulars to

enable the applicant to know what it needs in order to prepare its evidence and to prepare for trial.

79. CS Life submits that from the outset it has been clear that the Plaintiffs' Statement of Claim fails properly to set out their claim in that particulars of identity of the investments complained of, the breaches of duty said to have arisen in respect of each of those investments and the losses thereby allegedly caused are wholly lacking. Instead, CS Life asserts that the Statement of Claim contains vague allegations concerning (1) investments (often unidentified) being, for example, "*unauthorised*", "*imprudent*" or "*unsuitable*"; (2) breach of duties alleged to have been owed by CS Life, unconnected to any particular investment; and (3) inchoate losses unconnected either to any particular investment or to any alleged breach on the part of CS Life, leaving the Plaintiffs' case on causation entirely opaque. Mr Moverley Smith, in his oral submissions, stated that there had been a failure by the Plaintiffs to address the fundamental aspects of that case and that CS Life remains entirely unclear as to what is being said against it.

80. In response, the Plaintiffs point out that this is not the first request for further and better particulars. CS Life's first Request for Further and Better Particulars of the Statement of Claim was served on 12 January 2018 and was responded to by the Plaintiffs on 16 March 2018. Nothing further was said by CS Life in relation to difficulties understanding the Plaintiffs' claim as pleaded in the Statement of Claim until the delivery of the second Request on 28 April 2020, more than two years after the first request had been responded to by the Plaintiffs.

81. The second Request, the Plaintiffs complain, contains 121 separate requests, many of which comprise multi sub-requests. If the Plaintiffs are required to plead out the responses to each request and sub-request in the Statement of Claim, the Plaintiffs submit, it would result in an extremely lengthy and prolix pleading and would not serve any necessary or proportionate purpose. The Plaintiffs submit that this is not what Order 18 of the RSC envisages and is not required.

82. The Plaintiffs assert that the alleged justification for the Request - , that large portions of the Statement of Claim lack even the most basic particularity to enable CS Life to prepare to meet the Plaintiffs' case; and that CS Life cannot commence, in any meaningful way, the preparation of its expert evidence in the field of expert accountancy until responses to the Request have been provided - is without justification. The Plaintiffs point out that the alleged justifications cannot be reconciled with the lateness of the second Request:

    (a) The Statement of Claim was served in August 2017 and CS Life filed its Defence on 12 January 2018, along with an extensive request for further and better particulars, to which, as noted above, the Plaintiffs responded on 16 March 2018. The Plaintiffs argue that if the Statement of Claim generally lacked even the most basic particularity, the Defendant would no doubt have noticed this when it made its first request and/or when it appeared and filed its Defence.

    (b) Further, CS Life applied to strike out parts of the Statement of Claim on 1 June 2018 without making any complaint about the adequacy of the Statement of Claim; and filed its factual evidence in May 2020 without in any way asserting that it had difficulty understanding the case it was required to meet.

    (c) In relation to the preparation of evidence, the Plaintiffs point out that CS Life agreed the timing for the exchange of expert evidence over a year ago and CS Life proposed a deadline of 31 July 2020 for exchange. Throughout that entire process, CS Life did not once contend it was somehow unable to progress its expert evidence until the Plaintiffs answered the 121 questions in the present Request.

83. In his oral submissions Mr Moverley Smith referred to paragraph 53.7 of the Statement of Claim alleging that CS Life failed to monitor the investment of the Policy Assets and/or supervise the Bank and argued that this allegation was difficult to understand unless the Plaintiffs specified when the duty to monitor arose. In response Mr Smouha pointed out that CS Life had no difficulty understanding this allegation bearing in mind that CS Life

has in fact served evidence dealing with this allegation. He refers to the evidence filed by CS Life in the form of Ms Homann's statement dated 15 May 2020 at paragraph 20; Mr Celia's first statement at paragraphs 59 and 85; Mr Coffey's first statement at paragraphs 55, 56, 63-67; Mr Keusch's first statement at paragraphs 25, 26, 45-47; and Mr Vaccaro's first statement at paragraphs 29, 42, 43-45, 47-49, 51-52.

84. The Plaintiffs also point out that in fact, of the 121 requests, at least 50 have been answered by the Amended Statement of Claim. CS Life accepts that part of the Request has been answered by the so-called Category 4 Amendments to the Statement of Claim.

85. It seems that the dispute between the parties appears to be the demarcation line between what is properly required in the pleading and the supporting evidence. Mr Smouha submits that the Amended Statement of Claim complies with order 18, rule 7(1), in that it concisely sets out the material facts which are necessary to prove the Plaintiffs' case. He argues that this would no longer be the case if the pleading set out answers to each of the hundreds of requests and sub- requests. The purpose of the statement of claim, he says, is to ensure that the defendant knows the nature of the case it has to meet. CS Life understands the case it has to meet as it has already filed its Defence and supporting witness statements.

86. Mr Smouha submits that many of the Requests are in reality requests for evidence and/or seek excessive or irrelevant detail. For example, request 1 seeks lists of trades taking place in the CS Life Accounts. The relevant transactional documents for these accounts run to over 900 PDF documents detailing tens of thousands of transactions. He says it is absurd for CS Life to suggest that each of these transactions should be individually particularised in the Statement of Claim. Instead, he says, it is appropriate for the transactions to be identified and considered by the parties' forensic accounting experts.

87. I agree that many of the requests for particulars made by CS Life are in reality requests for evidence in support of the allegations already made in the Statement of Claim. I accept that identification of these detailed particulars is properly the subject matter of forensic accounting experts. I did not understand that Mr Moverley Smith disputed this. Indeed, I

understood that he agreed that this was one way of providing the detailed particulars CS Life is seeking to obtain. In the circumstances I would refuse to make an order that the Plaintiffs respond to the Request on the basis that a substantial part of the Request has already been answered in the form of Category 4 Amendments to the Statement of Claim and the remaining requests can properly be considered by the parties' forensic accounting experts.

88. There was disagreement between the parties as to whether the reports of the forensic accounting experts dealing with the issues which are the subject of the Request should be exchanged or served on a sequential basis. I have reviewed the "Plaintiffs' questions to their Forensic Accountancy Expert" and it does seem to me that many of the questions seek to elicit evidence which in the ordinary course the Defendant would be expected to respond to. In the circumstances I consider it appropriate that the Plaintiffs should initially serve their forensic accounting expert report on CS Life and 14 days later, CS Life should serve its forensic accounting expert report. The Court would expect CS Life to engage with the Plaintiffs to agree the questions to be posed to the forensic accountancy experts so that all areas, such as calculation of damages, are adequately covered. It is also expected that even though CS Life would be serving its forensic accounting expert report 14 days after the Plaintiffs' report, CS Life's expert would undertake all the necessary preparatory work so as to enable CS Life to serve its report within the 14 day period.

(6) CS Life's Time Summons

89. CS Life's Summons filed on 5 June 2020 seeks an extension of time to exchange expert evidence pursuant to paragraph 5 of the Order of 9 September 2019, to a date eight weeks from the date on which the Plaintiffs' reply to CS Life's Request. Given that the Request has been dismissed, this application also stands to be dismissed and the issue of filing of expert evidence is dealt with at paragraphs 142-145 below.

(7) CS Life's Discovery Application

90. CS Life seeks an order, pursuant to RSC Order 24, rule 7, that the Plaintiffs shall carry out the searches stipulated below and provide discovery of the documents in relation to the following categories of documents within 21 days:

1.1. Bonus payments

a. Search for and discover and/or confirm that the Plaintiffs have discovered all documents evidencing bonus payments made, directly or indirectly, by the First Plaintiff to Mr Patrice Lescaudron during the relevant period, including invoices and records of payments from Chista, the Cartu Group and any other entity or individual used to make or process payment of such bonuses.

b. Search for and discover and/or confirm that the Plaintiffs have discovered all documents evidencing the relationship between the First Plaintiff and/or any other individuals or entities acting on his behalf and New Frontier SA.

1.2 Emails and other forms of correspondence

a. Search for and discover and/or confirm that the Plaintiffs have discovered the relevant material from the following email accounts:

i. belonging to the First Plaintiff, including [three email accounts]; and

ii. belonging to his agents/assistants, including George Bachiashvili, Zviad Khukhunshvili, Irakli Garibashvili and Irakli Karseladze.

a. Search for and discover and/or confirm that the Plaintiffs have discovered all other forms of correspondence between:

i. the First Plaintiff (and/or his agents/assistants) and the Bank; and

ii. the First Plaintiff and his agents/assistants.

1.3 Notes of calls/meetings

a. Search for and discover and/or confirm that the Plaintiffs have discovered relevant attendance, meeting notes, calendar entries and call records in respect of meetings and calls involving the Bank and the First Plaintiff (and/or his agents/assistants, including George Bachiashvili, Zviad Khukhunshvili, Irakli Garibashvili and Irakli Karseladze).

b. Search for and discover and/or confirm that the Plaintiffs have discovered attendance notes, meeting notes, calendar entries and call records of meetings involving the First Plaintiff and one of his agents/assistants, including George Bachiashvili, Zviad Khukhunshvili, Irakli Garibashvili and Irakli Karseladze.

1.4 Telephone Records:

a. Search for and discover and/or confirm that the Plaintiffs have discovered all of the telephone records of the First Plaintiff and his agents/assistants, including George Bachiashvili, Zviad Khukhunshvili, Irakli Garibashvili and Irakli Karseladze.

1.5 Raptor Investments:

a. Search for and discover and/or confirm that the Plaintiffs have discovered all documents concerning the Plaintiffs' investments in

Raptor Pharmaceutical Corp either made directly or indirectly by the Plaintiffs or by individuals or institutions on behalf of the Plaintiffs, including records of investment through institutions outside the Credit Suisse group of companies (including Coutts bank and Raiffeisen bank).

1.6 Account statements:

a. Search for and discover and/or confirm that the Plaintiffs have discovered all account statements of Meadowsweet Assets Limited.

b. Search for and discover and/or confirm that the Plaintiffs have discovered all account statements of Sandcay Investments Limited.

1.7 Investment agreements/contracts/profiles:

a. Search for and discover and/or confirm that the Plaintiffs have discovered all documents concerning the Plaintiffs' investment agreements/contracts/profiles with third party banks/financial institutions and for all of his Credit Suisse accounts.

1.8 Portfolios with third party banks/financial institutions:

a. Search for and discover and/or confirm that the Plaintiffs have discovered all documents concerning the Plaintiffs' investment portfolios with third party banks/financial institutions.

91. The Court has set out the terms of the Summons so that it can be seen the wide ranging discovery which is sought by CS Life. In addition, CS Life seeks an order that in relation to each of the foregoing searches, the Plaintiffs shall identify the parameters of the searches carried out including any word searches, the date range, identifying the sources searched,

who conducted the search, the steps taken by Hurrion to supervise the search, and whether back-up, archived and deleted documents have been searched.

92. CS Life also seeks an order that the Plaintiffs shall review the redactions they have made to the documents disclosed to date and confirm that all redactions are made appropriately in accordance with Bermuda law and that to the extent such redactions are not appropriately made, the Plaintiffs shall provide a further list of unredacted versions of the disclosed documents and provide discovery of the same.

93. Finally, CS Life seeks an order that the Plaintiffs shall review the placeholder documents they have deemed not relevant to date and confirm that those placeholders have been appropriately determined to be not relevant in accordance with Bermuda law. To the extent documents have been inappropriately determined to be placeholders, the Plaintiffs shall provide a further list of those documents and provide electronic discovery of the same.

94. In considering this application I have reviewed Burke 10, Alexopoulos 3, Burke 13, the written submissions made on behalf of the Plaintiffs and CS Life; and the oral submissions made by Mr Smouha and Mr Moverley Smith. Having considered the affidavit evidence and submissions of Counsel, I have determined that this application fails both as a matter of principle and in relation to the individual categories of documents sought.

95. At paragraphs 12 to 22 of Alexopoulos 3, he outlines the detailed steps taken on behalf of the Plaintiffs to provide comprehensive discovery on their behalf of all relevant documents. Mr Alexopoulos confirms that:

    (a) In respect of the Sixth and Seventh Plaintiffs, members of Hurrion and Signature Litigation LLP ("**Signature**"), the Plaintiffs' London solicitors, liaised with local Singapore and Guernsey lawyers instructed for the Sixth and Seventh Plaintiffs to obtain copies of potentially relevant documents.

(b) In respect of the First to Fifth Plaintiffs, Hurrion and Signature liaised on the appropriate search protocols to cover both data extracted from the devices and email accounts of the relevant custodians of the Plaintiffs' documents in Tbilisi with the assistance of the IT Consultants (the "**Tbilisi collection**"), as well as the documents otherwise held by Signature on behalf of the First to Fifth Plaintiffs (the "**London searches**").

(c) Data from electronic devices and email accounts of the First Plaintiff, George Bachiashvili, Zviad Khukhunshvili, and Irakli Garibashvili was collected and processed by the IT Consultants as overseen by Signature. Search terms were applied to identify potentially relevant documents, so that such documents could be removed from Tbilisi and uploaded to the Relativity document database hosted by the IT Consultants in the United Kingdom.

(d) Forensic images were taken from the desktops and laptops of the First Plaintiff, Mr Bachiashvili, Mr Khukhunashvili, and Mr Garbashvili including the mobile phone and removable storage device of the First Plaintiff.

(e) The entirety of the email boxes belonging to the First and Second Plaintiffs, and George Bachiashvili, Zviad Khukhunashvili and Irakli Garibashvili, were extracted.

(f) From the First Plaintiff's electronic devices and email accounts, a total of 4.9 million files were extracted. The IT service provider narrowed this document population by selecting appropriate file types to be indexed. Search terms were applied in English, French and Georgian. Archived, deleted and backup files were extracted and searched. These steps were in line with EDRM-suggested data processing standards. This resulted in 34,207 responsive documents. A start date of 1 January 2010 was then applied to the data. The data was copied onto a portable hard drive, handcarried to London, and uploaded to Relativity by the IT Consultants.

(g) PDF files for each of Mr Bachiashvili, Mr Khukhunashvili, and Mr Garibashvili were extracted remotely and OCR'd by the IT Consultants. Search terms in English and French were applied and the results were then uploaded to a secure FTP site for the IT Consultants' team to process and upload to Relativity. Any PDFs in Georgian were reviewed manually for relevance by Signature personnel with a native Georgian speaker, and the potentially relevant documents uploaded.

(h) The IT Consultants travelled to Tbilisi to collect PDFs from the First Plaintiff. The First Plaintiff's PDFs, of which there were 25,072 after de-duplication, were OCR'd locally. The search terms in English and French were then applied, and the results were uploaded to a secure FTP site for the IT Consultants to process and upload to Relativity. The Georgian PDFs were set aside electronically by the IT Consultants, reviewed for relevance by the same Georgian speaker supervised by Signature, and the potentially relevant documents were uploaded to Relativity.

(i) Searches were conducted at Signature's office in London for documents provided to Signature prior to the proceedings or otherwise obtained by Signature on behalf of the Plaintiffs.

(j) Documents from the Tbilisi collection and the London searches uploaded to Relativity were then batched for review. The review was conducted by English qualified members of the Plaintiffs' legal team under Hurrion's guidance as to the requirements of Bermuda law.

(k) The Plaintiffs discovered a first, comprehensive set of documents on 10 December 2018. This list comprises over 10,000 documents. A second list served on 18 May 2020 comprises 8 documents, three of which the Plaintiffs came across during preparation of witness evidence, two of which came into existence in 2019 (including the Swiss Court of Appeal judgment in the criminal proceedings against Mr Lescaudron) and three of which came into

existence in 2020 (namely policy reports for the month ending April 2020 and the Swiss Federal Court judgment in the criminal proceedings). All documents were discovered in native format, save where redactions were applied or placeholder documents in which case these documents were imaged, consistently with EDRM production standards.

96. On 18 March 2020, over 15 months after the Plaintiffs' discovery was provided, CS Life's Bermuda attorneys wrote to Hurrion raising alleged deficiencies and demanding further discovery and confirmation. Hurrion responded to these allegations in its letter of 25 March 2020. The discovery summons was not issued until almost 4 months later. Mr Alexopoulos contends that the application is made in retaliation for the Plaintiffs' successful discovery application and is intended to delay matters, given the unsubstantiated and unreasonable demands are likely to result in little or no probative material.

97. I accept Mr Smouha's submission that this application is made too late. The Plaintiffs discovered their principal list of over 10,000 documents over 17 months ago. No reasonable explanation has been provided as to why this application could not have been made earlier if, as the Defendant now contends, that there are serious deficiencies in relation to that list. There was no suggestion of these serious deficiencies in the Plaintiffs' discovery when the Court heard and determined the Plaintiffs' application for specific discovery in January 2020.

98. Second, the scope of the additional discovery sought is so broad that it essentially requires the Plaintiffs to undertake the same exercise which resulted in their first list of documents. It is entirely unreasonable that the Plaintiffs should be required to undertake this exercise and incur substantial expense.

99. Third, I also accept Mr Smouha's submission that the requests are far too broad and, in many cases, appear to be fishing exercises. The probative value of the documents sought is so marginal that it does not, in my view, justify the inconvenience and expense of effectively repeating the discovery process.

100. I now turn to consider each of the categories of documents sought by CS Life.

Bonus payments

101. CS Life seeks all documents "*evidencing bonus payments made, directly or indirectly, by [Mr Ivanishvili] to Mr Patrice Lescaudron during the relevant period including invoices and records of payments from Chista, the Cartu Group and any other entity or individual used to make or process payments of such bonuses".*

102. I accept the Plaintiffs' submission that this is nothing more than a fishing expedition and in any event the discovery sought is entirely disproportionate to the evidential value of any documentary material which may exist.

103. First, it appears that the First Plaintiff has always been open as regards these payments. In his interview with the Swiss Prosecutor, the minutes of which were discovered in these proceedings, the First Plaintiff discusses the bonus payments and the Plaintiffs' discovery includes, *inter alia* the indictment, identifying details of 6 bonus payments totalling US $1.5 million. There is no evidence that any additional bonuses were paid over and above these 6 payments. CS Life has not been able to identify a single document that casts doubt on this conclusion. CS Life does not contend that the First Plaintiff paid more than US $1.5 million in bonus payments; it simply asserts that *"the level of bonus payments is not agreed".* To the extent that CS Life requests that the Plaintiffs conduct an open ended search of third-party documents for any documents evidencing further bonus payments (for which there is no evidence), it is not a proper subject matter of a specific discovery application and is in the category of a fishing expedition.

104. Second, the payment of bonuses to Mr Lescaudron is not a matter that arises on the pleadings. CS Life contends that the level of the bonus payments is a "*fact from which the*

Court can infer the degree of closeness" of Mr Ivanishvili and Mr Lescaudron. However, as the Plaintiffs contend, whether or not the First Plaintiff paid bonus payments to Mr Lescaudron is irrelevant to the issue whether the First Plaintiff was investment manager and/or whether CS Life had a role in selecting the investments. In any event, the First Plaintiff admits that he paid the bonus payments and therefore CS Life is already in a position to run this argument and further discovery in this regard is unnecessary and would not be proportionate.

105. Third, the primary justification given in Burke 10 for this specific discovery order is the contention that 4 documents referred to in the Swiss Criminal Proceedings were not discovered. Mr Alexopoulos explains in his Third Affidavit that the omission of these 4 documents was entirely understandable given that the Plaintiffs received some 33,000 pages of material from the Swiss prosecutor, in relation to which it was not proportionate to conduct a manual review. These documents have now been discovered. To the extent that there is a suggestion that there is missing correspondence regarding the bonus payments, Mr Alexopoulos has confirmed that the Plaintiffs have searched for and discovered all emails with Mr Lescaudron which relate to the bonus payments. Finally, in relation to CS Life's request for documents "*evidencing the relationship between [Mr Ivanishvili]...and New Frontier SA*", there is no evidence to suggest that Mr Ivanishvili has or had a relationship with New Frontier, and no reason to go behind the confirmation provided by Mr Alexopoulos in his Third Affidavit that no such relationship has ever existed.

Emails, correspondence and records of meetings and calls between Mr Ivanishvili, his agents and the Bank

106. These requests are open-ended requests for "*all correspondence*" and "*all documents",* rather than being properly limited to relevant documents and therefore are bound to capture a great deal of irrelevant material. In any event, as the summary of the evidence in Alexopoulos 3 shows, to the extent that emails, correspondence, and meeting notes are relevant, the Plaintiffs' discovery exercise has already appropriately covered these

requests. The email accounts and devices of Mr Ivanishvili and his assistants Mr Bachiashvili, Mr Khukhunashvili and Mr Garibashvili were extracted, reviewed and the relevant documents discovered.

107. The Plaintiffs say that the only caveat is that they have not searched Mr Karseladze's device or email accounts on the basis that he had only an extremely limited role after the events giving rise to these proceedings took place. I accept that in the circumstances it would be disproportionate for the Plaintiffs now to be ordered to search all his devices and/or email accounts.

108. The Plaintiffs have requested records from third-party phone providers, and have told the Court that they will discover any relevant documents resulting from searches of the same. The Plaintiffs are also checking for any relevant calendar entries that may be contained on the forensic images of the Plaintiffs' devices.

109. I accept the submission that there is no proper basis for these specific discovery orders: (i) the requests are drawn far too broadly; (ii) there is no good basis to go behind the Plaintiffs' discovery exercise or to suppose that further relevant documents even exist.

Raptor documents

110. CS Life seeks "*all documents concerning the Plaintiffs' investments in Raptor Pharmaceutical Corp either made directly or indirectly by the Plaintiffs…including records of investment through institutions outside of the Credit Suisse Group*."

111. The fact that the First Plaintiff invested in Raptor outside Credit Suisse is not in dispute. The First Plaintiff acknowledged these investments in his 14 May 2020 witness statement, explaining, *inter alia*, that he purchased Raptor shares on his account at Coutts and Cartu Bank in 2011, which he then held. The Plaintiffs say that there is no issue between the parties about the fact of these investments, and therefore an order that the Plaintiffs search for and discover documents concerning the same is not necessary.

112. It appears that CS Life wishes to argue that the First Plaintiff's investments in Raptor with third party banks are relevant on the premise that they indicate that he considered Raptor to be a sound investment, and they could not have involved Mr Lescaudron and any unlawful conduct in which he may have engaged. It is also said that these documents are relevant to assess whether Raptor investments on the Policy Accounts were in line with the Plaintiffs' investment goals and risk tolerance and because these positions are alleged to be indicative of Mr Ivanishvili's attitude to the Raptor on the LPI Accounts.

113. The Plaintiffs contend that the investments in Raptor on the Policy Accounts are relevant because the Plaintiffs complain, *inter alia*, that the investments should not have been made as Raptor was on the Bank's restricted list and Raptor was over concentrated on the Policy Accounts. For the purposes of this discovery application, I accept the Plaintiffs' submission that the Plaintiffs' investment in Raptor outside the Policy Accounts are irrelevant to these complaints.

114. Mr Moverley Smith argued that the Raptor investments with third party banks are relevant as it demonstrated Mr Ivanishvili's risk tolerance and his risk tolerance was relevant to the counterfactual damages analysis. He says that such counterfactual analysis would take into account where Mr Ivanishvili was likely to have invested as an alternative to purchasing the Policies with CS Life. For purposes of this discovery application I prefer the submission by Mr Smouha that ordinarily the counterfactual damages analysis would be carried out on the basis of the risk profile of the investment with the Bank and that ordinarily one looks at the risk profile for the particular account in question. In any event, as Mr Ivanishvili accepts that he has invested in Raptor outside the Bank, CS Life is able to deploy any argument based upon the evidence.

115. In all the circumstances I accept the submission that this is neither a justifiable nor a proportionate request

Documents concerning the Plaintiffs' investment agreements/contracts/profiles with third party banks/financial institutions and for all his CS accounts

116. CS Life has redrafted this request in Burke 13 and now seeks an order that the Plaintiffs:

> *"Search for and discover all documents relating to the First, Sixth and Seventh Plaintiffs' level of experience and their risk profile as investors, including but not limited to investment agreements, contracts and associated profiles between the First, Sixth and Seventh Plaintiffs or entities in which they had a beneficial interest and Credit Suisse and third party banks/financial institutions from 2004 – 2015"*

117. The Plaintiffs justifiably complain that this request is unreasonably wide. It would require, for example, the First Plaintiff to search and discover documents relating to any investments made by any company, including trading companies, in which he had a beneficial interest, going back over a period in excess of 15 years.

118. The rationale for seeking this order is set out in paragraph 58-60 of Burke 10. She refers to the First Plaintiff's witness statement at paragraph 97 where he says that "*at no time, however, did I intend to take responsibility for managing investments within the accounts… I had no experience of managing such a large sums of money… I was paying Credit Suisse (as the experts) substantial sums of money to provide this service".* Ms Burke states that these documents are likely to set out arrangements for the investment of the assets in those accounts and who should be responsible for directing investments. As a result she asserts that "*the documents will be important to ascertain the credibility of Mr Ivanishvili's assertion at paragraph 97 of his witness statement."*

119. Whilst the Court retains jurisdiction to order disclosure of documents relating only to credibility, it will only be ordered in an exceptional case (see: *Favor Easy Management Ltd v Wu* [2011] 1 W.L.R. 1803, [2010] EWCA Civ 1630; *First Subsea Ltd v Balltec Ltd* [2013] EWHC 584 (Ch)). I accept Mr Smouha's submission that Mr Ivanishvili's credibility can be tested in the usual way, through cross examination and that the requested

order is far too wide. It would capture a huge number of documents which could not, on any view, speak to whether Mr Ivanishvili intended Credit Suisse to manage the investment in the Policy Accounts.

120. The discovery sought for the purposes of testing credibility is in any event unnecessary given that the Plaintiffs have discovered documents relating to the risk appetite of the First, Sixth and Seventh Plaintiffs insofar as they relate to the Policy Assets (either held in the accounts with the Bank or with Julius Baer) or investments held with the Bank. This is confirmed by Mr Alexopoulos in his Third Affidavit.

All documents concerning the Plaintiffs' investment portfolios with third party banks/financial institutions

121. I accept that this request is far too wide as it captures all investment portfolios the Plaintiffs have ever entered into with any financial institution and it is not restricted by time or relevance.

122. This request is justified by CS Life on the basis that these documents would permit CS Life to test the Plaintiffs' case that had they not invested in the Policies they would have invested in medium risk profiles with a reputable European bank. To the extent that CS Life seeks to rely upon the Plaintiffs' risk tolerance, the Plaintiffs have already discovered documents relating to the risk appetite of the Plaintiffs. This request, as worded, is oppressive and disproportionate.

Methodology Affidavit

123. CS Life seeks an order that the Plaintiffs serve, in relation to each of the searches identified above, evidence setting out the discovery methodology adopted by the Plaintiffs including word searches, the date range, identifying the sources searched, who conducted the search, the steps taken by Hurrion to supervise the searches, and whether backup, archived and deleted documents have been searched.

124. The Court accepts, as the Court of Appeal confirmed in its Judgment, that the Court may order a party to give an affidavit setting out the methodology employed in the discovery process. However, such an order has to be justified by the party seeking it. The Court of Appeal justified the making of such an order in this case on "*the unusual circumstances of the case and, in particular, in circumstances where responsibility for the discovery process had, in effect, been delegated on a wholesale basis to Credit Suisse AG*". No such circumstances exist as far as the discovery given by the Plaintiffs is concerned. Paragraphs 12 to 22 of Alexopoulos 3 set out in considerable detail the methodology employed in the discovery process which resulted in the Plaintiffs discovering over 10,000 documents in their first principal list. In the circumstances, the Court is not satisfied that there is sufficient justification to make an order that the Plaintiffs set out in an affidavit the methodology employed in providing discovery.

Redactions and placeholders

125. CS Life seeks an order that the Plaintiffs be required to review the redactions they made to the documents they have disclosed to date and confirm that all redactions are made appropriately in accordance with Bermuda law. CS Life also seeks an order that the Plaintiffs review the placeholder documents they have deemed not relevant and confirm that those placeholders have been appropriately determined to be not relevant.

126. The Plaintiffs point out that out of some 10,000 documents that had been discovered, CS Life complains about five allegedly erroneous redactions/placeholders. The Plaintiffs and their lawyers have re-reviewed each of the documents and have confirmed that the redactions/placeholders are compliant, save with respect to one document, which now has been discovered.

127. I accept the Plaintiffs' submission that a single inadvertent error such as this does not provide a proper basis to order the Plaintiffs, at great time and cost, to re-review every single redaction and placeholder, as CS Life contends.

Summary orders and directions

128. Given that this Ruling will not be delivered until December 22, 2020 I have sought to push back the timetable suggested by Counsel at the hearing. However, if the parties can agree to a different timetable for the various steps that would, in principle, be acceptable to the Court. In making these orders I am following the format and referring to the draft order submitted by the Plaintiffs as an appendix to their written submissions. I make the following orders:

Preamble

129. The Court accepts the preamble as set out in the draft order.

Plaintiffs' Summons for leave to amend

130. The Court makes the orders in terms of paragraphs 1 to 3.

Defendant's Summons for a response to its Request for Further and Better Particulars

131. The Court makes an order in terms of paragraph 4. In addition the Court orders that the Plaintiffs serve their Forensic Accountants Report, dealing with some of the particulars sought, on the Defendant by 4 pm on 16 April 2020 and the Defendant serves its Forensic Accountants Report on the Plaintiffs by 4 pm on 30 April 2020**.**

The Unless Order

132. The Plaintiffs' application for an unless order is dismissed. The Court makes an order that the Defendant is required to comply with the exact terms of paragraph 5 of the Specific Discovery Order, namely, to review the appropriateness of redactions solely by reference to Bermuda law and in particular without reference to the requirements of Swiss law. The

Court further orders that the Defendant must comply with this Order within the next 28 days. In the event CS Life takes the position that it is unable to comply with paragraph 5 due to mandatory requirements of Swiss law, then it must make an application to the Court, within the next 21 days, to vary the terms of paragraph 5. Such an application must be supported by expert evidence of Swiss law. In the event the Plaintiffs disagree with the relief sought by CS Life, the Plaintiffs are at liberty to file expert evidence of Swiss law within 21 days after the service of Swiss law by CS Life. The Court will thereafter hear and determine the application.

The Defendant's Time Summons

133. The Court makes an order in terms of paragraph 6 and 7 of the draft order.

The Investment Management Summons

134. The Court makes an order in terms of paragraph 8 of the draft order, giving leave to the parties to adduce expert evidence in the field of investment management.

The Defendant's Summons for Discovery

135. The Court makes an order in terms of paragraph 9 of the draft order, dismissing the Defendant's Summons filed on 17 July 2020 for an order pursuant to RSC 24, rule 7 and Order 1A, rule 1 for discovery and associated orders.

Plaintiffs' Summons for Directions

Pleadings

136. The Court makes an order in terms of paragraph 10, save that the Plaintiffs shall file and serve their Amended Statement of Claim by 4 pm on 22 December 2020.

137. The Defendant shall file and serve its Amended Defence in respect of the Amended Statement of Claim by 4 pm on 22 January 2021.

138. The Plaintiffs shall serve their Amended Reply by 4 pm on 19 February 2021.

Discovery

139. The Parties shall exchange any further discovery in respect of the Amendments by 7 March 2021.

Factual Evidence

140. The Parties shall exchange any further evidence of fact in respect of the Amendments by 19 March 2021.

141. The Parties shall exchange any evidence in reply to the further evidence by 9 April 2021, if so advised.

Expert evidence

142. The parties shall have leave to adduce expert evidence of Swiss and Georgian law in respect of the Plaintiffs' Summons to amend.

143. (i)The Parties shall exchange expert reports in relation to Swiss and Georgian law on or before 4 pm on 30 April 2021. (ii) In relation to the expert evidence relating to investment management, the Plaintiffs shall serve their expert report by or before 4 pm on 6 February 2021 and the Defendant shall serve its expert report by 4pm on 30 April 2021. (iii) In relation to the expert evidence relating to forensic accounting, the Plaintiffs shall serve their expert report by 4 pm on 16 April 2021 and the Defendant shall serve its expert report by 4 pm on 30 April 2021.

144. The Parties shall, if so advised, exchange Reply expert reports on or before 4 pm on 28 May 2021.

145. The Court makes an order in terms of paragraph 19 of the draft order save that the relevant experts are to confer by 10 June 2021 and agree upon the issues so far as possible by 9 July 2021.

Trial Bundles

146. The Plaintiffs shall file and serve agreed trial bundles on a date to be agreed between the parties not less than 8 weeks prior to the commencement of trial.

Pre-Trial Review

147. There be a pre-trial review, by way of restored hearing of the Summons for Directions on a date as may be fixed by the Registrar with the agreement of the parties between 6 and 8 weeks prior to the commencement of trial. Such hearing is to take place remotely via video link.

Skeleton Arguments

148. The Parties shall exchange skeleton arguments 7 clear business days before the commencement of the trial.

Trial

149. The listing for trial commencing 18 January 2020 be vacated.

150. Within 2 weeks of the date hereof, the parties shall submit agreed dates to the Registrar for the trial to be listed for hearing before a Commercial Court Judge, for the first available date convenient to the parties on or after 7 September 2021 with a time estimate of 5 weeks.

Liberty to Apply

151. There will be liberty to apply.

Costs

152. The Defendant pay the Plaintiffs' costs of the Plaintiffs' Specific Discovery Summons dated 5 August 2020 determined by the Ruling of 11 February 2020.

153. The Court will hear application in relation to the issue of costs arising out of the hearing on 22-23 October 2020, if required.

Dated this 22nd day of December 2020

NARINDER K HARGUN

CHIEF JUSTICE