

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Apple Tree Life Sciences, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-12177 (LSS)

(Joint Administration Requested)

**NOTICE OF PRELIMINARY LIVE TRANSCRIPT REGARDING
DECEMBER 17, 2025 PRE-TRIAL REVIEW HEARING IN THE GRAND
COURT OF THE CAYMAN ISLANDS FINANCIAL SERVICES DIVISION**

PLEASE TAKE NOTICE that, on December 17, 2025, the Grand Court of the Cayman Islands Financial Services Division held a pre-trial review hearing in Cause No. FSD 146 of 2025 (JAJ) and Cause No. FSD 151 of 2025 (JAJ) (the “PTR Hearing”).

PLEASE TAKE FURTHER NOTICE that, attached hereto as **Exhibit A** is a preliminary live transcript of the PTR Hearing. The above-captioned debtors and debtors in possession (the “Debtors”) will file a final transcript when available.

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors’ service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.



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Dated: December 17, 2025
Wilmington, Delaware

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EXHIBIT A

Day 1PTR1 Draft, 17/12/2025

1

Wednesday, 17 December 2025

2

(3.00 pm GMT

3

JUSTICE ASIF KC: Good morning.

4

MR SCOTT: My Lord, good morning. I appear (inaudible) with

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Mr Faulkner for the plaintiffs and petitioners,

6

the Rigmora LPs, my learned friend Mr Ayres and Ms White

7

for the defendant, the GP.

8

As your Lordship knows, this is the PTR ahead of

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the January trial in these proceedings. We were last

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before your Lordship at the end of November when

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your Lordship dismissed the mediation and privilege

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summons brought by the GP.

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JUSTICE ASIF KC: Yes.

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MR SCOTT: There have since been two very significant

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developments in Delaware. The Delaware judgment came

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out on Friday, 5 December, and there followed, on

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Tuesday the 9th, commencement by the GP of Chapter 11

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proceedings against itself and against the partnership

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and against ATLS. There has since been a flurry of

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activity in Delaware. Subject to your Lordship, what

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I want to do this morning is address the court on three

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topics. The first is the Delaware judgment and its

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significance for your Lordship's purposes, and its

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principal significance is that, as a result of

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the Delaware judgment (inaudible) of the partnership is

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now gone, and it is gone because the Chancellor accepted

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our case as to what our total contingent subscriptions
3 are and accepted our case that we have an un(inaudible)
4 discretion over budget approval. And the upshot of that
5 is, once we have complied with the Delaware judgment, as
6 we will do in the coming days and paid many of
7 the capital calls which the Chancellor has required us
8 to pay, there will be just US\$29 million left in undrawn
9 contingent subscriptions left to call and we will have
10 an unfettered discretion over budget approvals in
11 respect of any future calls for that sum.

12 So the partnership has no future in the form that is
13 envisaged by the parties under the LPA. As I say,
14 (inaudible) as gone and so it needs to be wound up.

15 My Lord, that will be the first topic.

16 The second will be the Chapter 11 proceedings. As
17 your Lordship will have seen from our skeleton, we say
18 and are moving in Delaware to have them dismissed on
19 the basis that they are a bad faith filing, an attempt
20 to avoid the consequences of the Delaware judgment,
21 a device by which to kill the January trial in
22 your Lordship's court that the GP agreed should take
23 place, and a device pursued in circumstances where
24 the partnership is not facing financial distress in
25 the slightest, its stated assets being multiple orders
1 the magnitude greater than the paltry debts mentioned in
2 the petitions.

3 My Lord, the Delaware bankruptcy court will rule in
4 due course on the motion to dismiss. What I want to
5

focus on is the implications, again for your Lordship's
6 purposes, of the commencement of the Chapter 11
7 proceedings having regard to the relevant provisions of
8 the Limited partnership agreement, the LPA, and
9 the associated provisions of the ELP Act because,
10 regardless of whether the Chapter 11 filings were done
11 in good faith or bad faith, regardless of that,
12 the contractually agreed and statutory consequences of
13 their commencement in respect of the GP is that
14 the partnership shall now be wound up under
15 the supervision of this court.

So the issue that now confronts your Lordship in
17 these proceedings is not whether the partnership should
18 be wound up but rather how and by whom.

My Lord, that brings me to the third topic that
20 I wish to address, the question of how your Lordship
21 should manage these proceedings in the light of these
22 recent developments in Delaware.

JUSTICE ASIF KC: Mr Scott, before we go much further, can I just make sure that the message has got
back to

24 everyone that we absolutely must be finished by
25 2 o'clock. If we have to sit over lunch, we can do
1 that, but I've read erches' skeletons, I've read
2 the Delaware judgment, I've read the transcript of
3 the hearing before the bankruptcy judge in Delaware, so
4 I've got a pretty g picture of the current lie of
5 the land in Delaware, and so I would hope that this
6 morning -- and also I'm also very conscious of what
7 the parties are allowed to argue in front of me as

8 permitted by the bankruptcy judge in Delaware and what
9 they're currently not allowed to argue in front of me,
10 so I would hope that that might speed up matters today
11 somewhat.

12 MR SCOTT: I'm grateful, my Lord. That indication had
13 indeed come to us. I would not expect to be much more
14 than an hour on my feet.

15 My Lord, I should also say at this point there is,
16 I understand, a further hearing in Delaware I think
17 scheduled for 3.30 today.

18 JUSTICE ASIF KC: Yes, I did see that.

19 MR SCOTT: And it would be helpful, if possible, if
20 your Lordship were able to indicate at the end of
21 submissions this morning what your Lordship's view is on
22 the lie of the land and the way forward so that that can
23 be -- (overspeaking) --

24 JUSTICE ASIF KC: That's understandable, Mr Scott, and I'm
25 happy to do that -- well, assuming we've reached
1 a position where I'm able to.

2 MR SCOTT: I'm grateful, my Lord.

3 JUSTICE ASIF KC: I will provide whatever assistance to
4 the judge in Delaware that I can.

5 MR SCOTT: I'm grateful.

6 My Lord, just to complete the overview on the third
7 topic, how your Lordship should take forward these
8 proceedings, what we invite your Lordship to do is to
9 direct a two-day hearing ideally in the week commencing
10 19 January. We understand that that week had been

11 reserved in your Lordship's diary for judgment writing
12 further to trial. And the purpose of that two-day
13 hearing would be to determine the contractual and
14 statutory consequences of the recent development in
15 Delaware as a matter of Cayman law, and they are
16 the paragraph 10(b) issues, as we have termed them,
17 identified in our skeleton at paragraph 12. Perhaps can
18 I just ask your Lordship to take that up.

19 JUSTICE ASIF KC: Yes, I've got that.

20 MR SCOTT: Your Lordship sees at 12.1, 12.2 and 12.3
21 the paragraph 10(b) issues. They are all issues of
22 Cayman law. They are discrete issues capable of
23 determination without the need to resolve any factual
24 serious, because they're issues that -- they're simply
25 the legal consequences of what has happened in Delaware.

1 We say that a determination from your Lordship on
2 those issues would be helpful to the parties in
3 the context of these Cayman proceedings because, if we
4 are right about them, they will in practice dispose of
5 the case. A determination from your Lordship is also
6 likely to be very helpful in the context of
7 the Chapter 11 proceedings in Delaware, because it would
8 provide to the Delaware Bankruptcy Court and to third
9 parties an authoritative statement of the Cayman law
10 consequences of what has happened and that can then be
11 factored into whatever decisions need to be taken by
12 the bankruptcy judge in the US proceedings. And it will
13 obviate, for example, the need for the US bankruptcy

14 judge to hear Cayman law expert evidence on these
15 issues, because there could be no one more expert than
16 a judge of this court pronouncing on the issues as they
17 arise in this particular case.

18 JUSTICE ASIF KC: Can I just understand, how does this fit
19 in with your intended application in terms of to strike
20 out or to dismiss the Chapter 11 proceedings? Are you
21 saying that whatever I say about the position of the ELP
22 and the paragraph 10(b) issues needs to be determined
23 before that application is made, or is it not? ^.

24 MR SCOTT: So that application has been made.

25 JUSTICE ASIF KC: Yes, it's been made but I know it's not
1 been heard? It's not been heard. The parties as I know
2 are in the process of preparing a schedule to brief --

3 JUSTICE ASIF KC: And the Delaware judge has indicated
4 pretty plainly that she's not going to make a decision
5 on that in time for the trial here.

6 MR SCOTT: No, indeed.

7 JUSTICE ASIF KC: For the trial to go ahead ^.

8 MR SCOTT: Indeed. And the way we see this working is that
9 your Lordship's determination on the paragraph 10(b)
10 issues will be relevant for the purpose of disposing of
11 the motion to dismiss. They will also be relevant more
12 broadly.

13 JUSTICE ASIF KC: But how are -- in a case how are you going
14 to be able to run that before you've got a decision from
15 the Delaware judge permitting you to do that given
16 the automatic stay u Chapter 11?

17

MR SCOTT: Because my Lord what we intend to do and to do

18

before the end of this week is to make an application to

19

vary the moratorium.

20

JUSTICE ASIF KC: All right.

21

MR SCOTT: To permit us to have the paragraph 10(b) issues

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determined. If -- my Lord, I understand the position in

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Delaware so far as the rules are concerned to be that,

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having made that motion, the hearing can come on if it

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can be accommodated within 14 days thereafter. That

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takes us to the very early part of January and we would

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hope that the Delaware bankruptcy judge would hear us on

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the motion to vary the moratorium in very early January

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to enable us to come back before your Lordship later in

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the month to argue out the point. So that's

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the schedule that we have in mind.

7

All I'm asking to do is that your Lordship reserves

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the slot in the court's diary and we work towards it.

9

But of course if the judge in Delaware cannot

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accommodate the motion to vary, or is not prepared to

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grant motion to vary, then we will need to come back and

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deal with the consequences of that because, as I hope we

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made plain in the skeleton, and let me make it plain

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again orally, we intend to comply with the moratorium,

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and nothing that I'm saying to your Lordship today

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should be misrepresented or weaponised in Delaware as

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any suggestion to the contrary.

18

JUSTICE ASIF KC: No, that's fine. I just -- I was just

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trying to work out how the chronology would be likely --

20 lay down in my own head how the chronology would be
21 likely to work out.

22 MR SCOTT: That's the chronology as we see things.

23 JUSTICE ASIF KC: Right. For what it's worth, the week
24 commencing 19 January is -- looks to me to be possible,

25 but it does depend on a lot of goodwill from the judge
1 in Delaware being able to accommodate your motion in
2 time, and also because, presumably, everyone is going to
3 say that unless and until the Delaware judge has granted
4 your relief, no one can properly start spending all
5 the money for preparing the paragraph 10(b) arguments.

6 What I can say at this stage is, if the 19th -- if
7 the week of 19 January is not feasible, then subject to
8 26 January being a bank holiday, I could do later in
9 that week, I could do the week of the 2nd, but then
10 I can't do anything until 2 March.

11 MR SCOTT: Just so I have that clear, my Lord.

12 JUSTICE ASIF KC: Yes, the week of the 26th, the 26th is
13 a public holiday. I have something on the 27th, but
14 I could do the 28th, 29th or 30th January.

15 The week of the 2nd, I've got a short hearing on
16 Tuesday morning, but apart from that, that week is
17 currently clear. And then I could not to anything,
18 because of trials, until 2 March.

19 MR SCOTT: That's a very helpful indication, my Lord. Could
20 I just turn my back for one moment?

21 (Pause).

22 So my Lord with that --

23
JUSTICE ASIF KC: Can I also just say, again, with a few to
24 trying to assist the parties, this seems to me it's
25 preferable that I at least allocate some time at this
1 stage so that there is a space set aside in my calendar,
2 which fills up, as everyone knows, very quickly, because
3 if we don't do it now and simply wait until the judge in
4 Delaware has ruled, that builds in at least three or
5 four weeks of unnecessary delay in the resolution of
6 the matters that you want determined.

7
MR SCOTT: And the concern is, on our side of the court at
8 least, before you know it, those issues aren't getting
9 determined until the spring.

10
JUSTICE ASIF KC: Yes.

11
MR SCOTT: And we do say they really are serious of
12 fundamental importance. Some ways they're gating(?) ^
13 issues in the case.

14
JUSTICE ASIF KC: And the other thing, in my view, is this.
15 If it turns out that the Delaware judge says, no, you
16 can't do any of this, then it's much easier to release
17 the time than it is to try and work in the other
18 direction.

19
MR SCOTT: Well, we respectfully agree, my Lord.
20

My Lord, with that introduction, can I deal with my
21 first topic, which is the Delaware judgment and its
22 implications.

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JUSTICE ASIF KC: Yes.

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MR SCOTT: If I can ask your Lordship please to take up our
25 skeleton, paragraph 16.

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JUSTICE ASIF KC: Yes. I thought it's very interesting how
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both sides managed to portray the judgment as
3
a resounding victory. I mean, that's par for
4
the course.

5
MR SCOTT: Indeed. My Lord, without meaning to be flippant,
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it's an odd victory run by the GP that results in
7
a Chapter 11 filing just a couple of days later, but
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there we are.

9
My Lord, what I want to do is just invite
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your Lordship's attention to the contrast between what
11
the GP was asking for in May and what it achieved in
12
the Delaware judgment. Can I ask your Lordship to
13
re-read the rub paragraphs the paragraph 16, which
14
summarise the GP's ask back in May.
15
(Pause).

16
JUSTICE ASIF KC: Yes, I've read that.

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MR SCOTT: And if your Lordship will then please read
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paragraph 17, we set out there what we say the effect of
19
seeking this relief was.

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JUSTICE ASIF KC: Yes, I've read that.

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MR SCOTT: I'm grateful.

22
And as your Lordship knows from the submissions
23
I made at the August hearing in this matter, our
24
position consistently has been that there was never any
25
basis in the LPA for this suite of relief, and what
1
the Delaware complaint as issued was was an account in
2
effect to restructure the partnership through orders for
3
declaratory relief and supposed specific performance,

4 the specific performance of the obligations which didn't
5 exist under the LPA but which the GP invited
6 the Delaware Court to impose.

7 My Lord, the absence of any contractual basis for
8 that relief is illustrated by two things. The first is
9 that the GP has abandoned -- by the time the Delaware
10 trial took place with more still abandoned come
11 the closing argument.

12 The second is the fact that the Delaware Chancellor
13 has found in her judgment following the trial that
14 the GP's case in the most part has failed. It failed in
15 particular as regards the level of total contingent
16 subscriptions, and it failed in particular as regards
17 the attempt to strip us of budget approval rights.

18 If your Lordship will then go, please, to
19 paragraph 18 in our skeleton.

20 JUSTICE ASIF KC: Yes.

21 MR SCOTT: Your Lordship sees that by the time the music
22 stopped, so to speak, and we got to the end of the trial
23 in Delaware, there were five claims left in play, which
24 we identify in paragraph 18. First, the claim for
25 a declaration that we had breached the LPA or our common
1 law duet by refusing to consideration budget in good
2 faith and had waived our rights to do so in the future.
3 That claim failed and the declaration sought was
4 refused. And importantly, the claim failed because
5 the alleged duty relied upon derived from Braganza was
6 held by the Delaware judge not to exist in the context

7 of this partnership, and that chimes with an observation
8 that your Lordship made at the August hearing, that
9 the application of Braganza in the context of an ELP
10 did not appear to reflect Cayman law, as it does not.

11 My Lord, second, there was a claim from the GP for
12 specific performance requiring payment of the disputed
13 capital calls made in May. Now, this succeeded to
14 the extent of US\$96 million or so of those calls and we
15 intend to pay them as soon as the GP supplies us with
16 the account details required under the Chancellor's
17 post-judgment order, which includes protective measures
18 to hold the payment in a segregated account to the order
19 of the US Bankruptcy Court.

20 My Lord, third, the GP had sought a declaration that
21 its filing of the Delaware complaint was not done in bad
22 faith and was consistent with its fiduciary duties and
23 the terms of the LPA. The Chancellor declined to make
24 that declaration, or to deal with the issue in her
25 judgment, and that is because, as she said in her
1 judgment, it was an issue more appropriate for
2 determination by your Lordship.

3 My Lord, fourth, the GP had sought a declaration
4 that the default provisions in the LPA had not been
5 amended. That declaration bore in resemblance to
6 the relief initially sought in the Delaware complaint
7 whereby, if granted, the GP would have been entitled to
8 apply the default charge across all of our interests in
9 the partnership. That request was abandoned come

10 the trial. The declaration that was sought in its place
11 was pointless, because we had never disputed that
12 the default provisions had not been amended, and
13 the Chancellor duly refused to grant that pointless
14 declaration.

15 My Lord, fifth and finally, the GP had pursued
16 a claim for costs, but the Chancellor dismissed this too
17 finding that the claim had been waived in the course of
18 argument.

19 My Lord, the summary I've just given you is set out
20 in a bit more detail in paragraph 19 with references to
21 the Delaware judgment, but I'm not proposing, in
22 the light of your Lordship's indication, to take that up
23 at this stage. But we do say that there is a stark
24 contrast between what the GP sought to achieve by its
25 filing in May and what it has achieved. The GP had
1 claimed that the partnership had US\$550 million of
2 capital commitments remaining, had more than
3 US\$240 million of unfunded approved budgets and that we
4 had lost our rights to approve further budgets. And one
5 can readily see that if that reflected the true position
6 under the LPA, this partnership would have a future.
7 But it does not reflect the true position
8 under the LPA, as the Chancellor has found, because
9 following the Delaware judgment the GP has at most
10 \$29 million in capital commitments left it to call from
11 ^, and in circumstances where we are free to reject
12 further budgets, as it is our right to do and as we are

13 inclined to do given that we have no trust and
14 confidence in Dr Harrison and the GP.
15 My Lord, we respectfully submit that in those
16 circumstances the partnership sub stratum is simply gone
17 and there is no serious argument to the contrary.
18 That's not an issue that turns upon the facts about
19 whether the lots of trust and confidence is justified.
20 It doesn't depend on any of that. It just depends on
21 the financial implications of the Delaware judgment. So
22 what we would envisage as regards determination of that
23 issue in January are really our submissions to
24 your Lordship on the sub stratum case law and on
25 the application of the principles from those cases to
1 the financial landscape that results from the Delaware
2 judgment.

3 My Lord, can I make one thing clear at this point,
4 and it's important that this not be misrepresented in
5 Delaware or weaponised there. In saying what we do
6 about the loss of sub stratum of the partnership, we are
7 not saying that the partnership is financially
8 distressed. Plainly it is not. It has billions of
9 dollars in assets, it has piles of cash. There is no
10 suggestion that the partnership is unable to meet its
11 liabilities as they fall due, nor any suggestion of any
12 risk that such difficulties may arise at the partnership
13 level, whether imminently or otherwise. The point is
14 not that the partnership is in financial distress,
15 the point is that Dr Harrison has so managed

16 the partnership capital that the purpose for which it
17 was formed can no longer be carried out. It is
18 impossible or impracticable, the language used by
19 the case law, to continue where the partnership has just
20 29 million in remaining available capital, a sum that
21 would soon be burned through by the ATLS fee that
22 Dr Harrison causes to be charged.
23 Now, he must have recognised that that would be
24 the position if we were correct in our contentions on
25 total contingent subscription amounts and our unfettered
1 right under the LPA to give or refuse budget approvals,
2 and that is no doubt why he caused the GP to put its
3 case so high in the Delaware complaint as issued in May
4 and to persist in the fantasy that we had agreed to
5 contribute under it millions more in capital than we
6 ever did, because once the true contractual position is
7 ascertained, as it now has been, it was obvious and it
8 is obvious that the partnership cannot continue its
9 business within the contractually agreed framework of
10 the LPA.
11 My Lord, the attempt by the GP to achieve
12 a restructuring through the Delaware complaint having
13 died with the Delaware judgment, what happened is
14 the pivot just a few days later to Chapter 11 as
15 the means by which to achieve the restructuring. And
16 the commence.
17 Of those Chapter 11 proceedings effectively concedes
18 that the sub stratum of the partnership has gone,

19 because if the partnership could continue for
20 the purpose for which it was formed, there would be no
21 basis to seek restructuring under Chapter 11.

22 Importantly, the GP is not seeking Chapter 11 relief
23 to deal with any insolvency at the partnership level,
24 because there is none, and my Lord, that is apparent
25 from the Chapter 11 filings themselves. I don't know if
1 your Lordship has had the opportunity to look at those.

2 JUSTICE ASIF KC: I did not look at those, now.

3 MR SCOTT: Perhaps I should just show them to your Lordship.

4 They're not hearing bundle and they're in broadly
5 similar terms. If your Lordship would just give me
6 a moment to find an example. We take one in the case of
7 the partnership, it's at tab 14. Your Lordship sees
8 that it's expressed to be a voluntary petition. It
9 certainly wasn't voluntary from our perspective.

10 And if your Lordship turns to page 336 in the bundle
11 your Lordship sees the estimated assets of
12 the partnership are put at between \$1 billion and
13 \$10 billion and the estimated are put at between 1 and
14 \$500,000. Well, if that's financial distress, I suspect
15 many of us in the world would wish to be financially
16 distressed. That's the basis upon which this
17 restructuring relief is being sought.

18 My Lord, whatever the relief that will ultimately be
19 sought in Delaware if the Chapter 11 proceedings are not
20 struck out, it will be a form of reorganisation that
21 attempts to vary the terms upon which the Rigmora LPs

22 have agreed to participate in the past ^ and to do so
23 without our consent, and again, that illustrates that
24 the sub stratum of the partnership is gone.

25 My Lord, another illustration, if you would go,
1 please, to tab 24 in the hearing bundle at page 621, and
2 this is a declaration of Dr Harrison that was filed
3 earlier this week in the Chapter 11 proceedings. Can
4 I ask your Lordship please to read paragraphs 16 and 17.
5 (Pause).

6 As your Lordship sees, Dr Harrison there admits that
7 one of his aims in pursuing the Chapter 11 proceedings
8 is to effect "a restructuring of the partnership's
9 capital structure" and to bring in "new investors to
10 replace the defaulting limited partners" ^. Well, we're
11 not defaulting partners and the suggestion otherwise is
12 difficult to reconcile with the injunction that
13 your Lordship made earlier this need and continued in
14 August. That prevents the GP from treating us as
15 defaulting partners on the basis of those disputed
16 capital calls. As I have said, we intend to comply with
17 them as soon as the GP provides us with the relevant
18 account details.

19 But, my Lord, the fact that Dr Harrison is taking
20 this stance in the Chapter 11 proceedings, whatever
21 the rights and wrongs of it, further illustrates that
22 the sub stratum of this partnership is gone, because on
23 his own evidence he's seeking a restructuring of
24 the partnership's capital structure and admission of new

25 investors all without our consent or without any right
1 to do it under the Les. My Lord, it is, with respected,
2 impossible to see how Dr Harrison thinks he can get away
3 with that given there is a petition on foot in
4 your Lordship's court and given the provisions of
5 Section 99 of the Companies Act under which, in
6 the event that a winding-up order is made, any
7 alteration in the status of the partnership's members
8 would be void absent a validation order from
9 your Lordship, and there is no suggestion from the GP
10 that it intends to seek one of those, as it has not
11 during the life of these proceedings on a single
12 occasion.

13 Now, my Lord, these are among the points that we say
14 illustrate the abusive nature of the Chapter 11
15 proceedings and the Delaware Court will rule on that in
16 due course, I'm obviously not asking your Lordship to
17 rule upon it. The key point for your Lordship's
18 purposes is that the commencement of the Chapter 11
19 proceedings in the circumstances of this case concedes
20 that the sub stratum of the partnership has now gone and
21 that would be a sufficient basis for the court to wind
22 up the partnership on just and equitable grounds and to
23 do so summarily.

24 My Lord, that brings me to my second topic, which is
25 the contractual and statutory consequences of
1 the Chapter 11 proceedings themselves.

2 My Lord, before I address that, just a brief word,

3 if I may, on the circumstances in which the Chapter 11
4 bankruptcy proceedings were brought. They are nothing
5 short of extraordinary. Your Lordship will recall that
6 back in August when the GP abandoned its stay
7 application, it agrees to a trial of these Cayman in
8 January and joined with us in asking your Lordship to
9 make available a court to have the dispute resolved
10 because it was in the interests of all the parties that
11 it be resolved at the January trial. The GP did not
12 indicate at that stage that it might seek Chapter 11
13 protection, nor was that suggested to your Lordship at
14 the October mention, the October CMC, the recent
15 hearings on mediation and privilege sums -- during which
16 the GP kept this under wraps. Nor was it ever suggested
17 to the Chancellor in Delaware. Nor had the possibility
18 ever been suggested in the correspondence that passed
19 between (inaudible). The Chapter 11 proceedings were
20 entirely unheralded. The first we heard of them was in
21 a casual email from Mr Burdon ^ of Quinn Emanuel,
22 the individual who had filed misleading evidence before
23 your Lordship at the last hearing which my learned
24 friend Mr Ayres rightly apologised. We hear from him in
25 the course of email exchanges oned December about
1 settling the post-trial order in Delaware. Mr Burdon
2 said the GP has filed Chapter 11 proceedings. And that
3 was remarkable and remarkable in circumstances where
4 the GP had repeatedly represented to us that it was not
5 seeking to imperil the January trial.

6 If your Lordship will just go, please, to tab 6 in
7 the hearing bundle your Lordship should have there an
8 email from Walkers to the court on Monday of this week,
9 8 December -- so sorry, Monday last week. So sorry,
10 I've lost a week! Monday last week:
11 "Dear Ms Wood thank you for your email. We write to
12 confirm that we are instructed to appeal the judge's
13 decision on the privilege sums."
14 Well, no surprise that those instructions were
15 given. But then this:
16 "In order to progress our client's appeal promptly
17 and so as not to imperil the January trial fixture we
18 would be grateful if the reasoned judgment could be
19 handed down as soon as reasonably practicable."
20 JUSTICE ASIF KC: Yes, I spent most of the next day working
21 on the draft judgment because I also had the request
22 from the Court of Appeal to finalise it as soon as
23 possible.
24 MR SCOTT: And the GP didn't trouble to tell your Lordship
25 that at the same time that your Lordship was working
1 away on the judgment, the GP and Quinn Emanuel were all
2 working away on these petitions. Your Lordship may wish
3 to ask Mr Ayres when he gets on his feet when Walkers
4 first knew that this was underway, because it's very
5 difficult to see how an email can have been sent
6 properly in those terms if Walkers knew that Chapter 11
7 filings were going to be made.
8 My Lord, likewise, if you turn the tab, please, to

9 tab 7, we've got a letter hear from Walkers on
10 9 December, the very same day that the filings were
11 made. It's dealing with the appeal in relation to
12 the privilege sums ^, and your Lordship sees at
13 paragraph 3 Walkers say this:
14 "For the avoidance of doubt we reject any suggestion
15 in your letter that our client's appeal is in any way
16 unmeritorious or a tactical attempt to delay the trial."
17 One can (inaudible) communications to the Court of
18 Appeal demanding that it convene a special sitting in an
19 attempt to preserve the January trial.
20 Your Lordship will recall from prior hearings in
21 this case the concerns that we have repeatedly expressed
22 about the GP's wrecking strategy in relation to
23 your Lordship's jurisdiction and the repeated attempts
24 made to forestall this court's examination of the GP's
25 conduct and the application of its winding up
1 jurisdiction through this Cayman ELP. Your Lordship
2 will recall the failed stay application, the one
3 abandoned by Ms Prevezer in August and the one
4 informally made by Mr Ayres when he came on the scene at
5 the October mention. Your Lordship will recall
6 the charade at the October CMC when the GP turned up
7 without any proposals for directions to trial other than
8 that we kick everything off for a two-day CMC to be
9 listed who knows when. Your Lordship will recall
10 the failed mediation sums, the failed privilege sums,
11 the manoeuvrings in Delaware by which we were forced

12 to withdraw our PL application ^ and my Lord
13 the unheralded Chapter 11 proceedings coming hot off
14 the heels of the disaster that the Delaware judgment was
15 for the GP is all of a piece with the wrecking strategy
16 that Dr Harrison has evidently settled upon in relation
17 to proceedings in your Lordship's court.
18

Your Lordship sees that tragedy in some ways reach
19 the denouement shortly following the Chapter 11
20 proceedings, because if your Lordship will go next to
21 tab 9 in the hearing bundle, does your Lordship have
22 the -- an email from Ms Moseley of Walkers on the 10th?

23 JUSTICE ASIF KC: Yes.

24 MR SCOTT: And your Lordship will no doubt have read this, I suspect, as it came in. Your Lordship have asserted

25 that the effect of what happened in Delaware was to
1 automatically stay these Cayman proceedings such that
2 the PTR and the January trial had to be vacated. Now,
3 that is quite wrong as a matter of Cayman law, as we
4 explain in our skeleton, because it's a decision for
5 your Lordship how to conduct these proceedings and I'll
6 return to that in due course.

7 But when we declined to acquiesce to the GP's
8 suggestion that the PTR should simply come out of
9 the diary, declined because we said we wished to update
10 your Lordship on these important developments, we
11 received a truly remarkable letter from Quinn Emanuel,
12 and if your Lordship will please turn that up, it's
13 tab 10 --
14

JUSTICE ASIF KC: Yes, I've read that.

15

MR SCOTT: You've read the letter, I'm grateful. And

16

your Lordship will no doubt have formed his own view on

17

the appropriateness of a US law firm writing personally

18

to a Cayman attorney threatening him with severe

19

consequences in the event of any knowing violation of

20

the automatic stay. And my Lord, we would invite you to

21

note the contrast between the aggressive tone that Quinn

22

Emanuel took in this letter to Mr Farmer with

23

the position that they adopted before the judge in

24

Delaware on Monday.

25

JUSTICE ASIF KC: Yes, I've read the transcript as well.

1

MR SCOTT: Your Lordship will note that the Quinn Emanuel

2

counsel on that occasion did not draw to the Delaware

3

judge's attention the letter that Quinn Emanuel had sent

4

just a few days prior. As your Lordship knows, we filed

5

the motions to strike out the Delaware bankruptcy

6

proceedings on 12 December -- that was on Friday.

7

Ancillary to that we moved to shorten the timetables for

8

the GP to respond and that led to the scheduling hearing

9

on Monday, and your Lordship has indicated that you've

10

read the transcript so I don't need to go back over

11

that. Your Lordship will have seen that the Delaware

12

bankruptcy judge was content for the PTR to go ahead and

13

that is why we are before your Lordship today.

14

I've already addressed your Lordship on what we see

15

as the next steps in Delaware, a motion to vary

16

(inaudible) this week, a request to the Delaware judge,

17

18 if she can accommodate it, for a ruling in early January
19 that will then clear the field for a determination by
20 your Lordship of the paragraph 10(b) issues.

21 So let me turn then to those paragraph 10(b) issues,
22 and I've already addressed your Lordship on
23 the substratum aspect of it. I want to turn next to
24 the contractual and statutory consequences of
25 the commencement of the Chapter 11 proceedings, because
1 in the GP's desperate attempt to avoid your Lordship's
2 jurisdiction, it seems to have overlooked the statutory
3 and contractual consequences, because this latest front
4 in the wrecking strategy is in fact a form of kamakaze.

5 If I can ask your Lordship please to take up
6 the authorities bundle at tab 3.

7 JUSTICE ASIF KC: Yes.

8 MR SCOTT: The ELP Act. If I just invite your Lordship's
9 attention to section 36, subsection (1):

10 "An ELP shall be voluntarily wound up in accordance
11 with the provisions of the partnership agreement.

12 "(a) at the time or upon the occurrence of any event
13 specified in the partnership agreement."

14 And if your Lordship will then move ahead to
15 page 10, your Lordship sees that the winding up of an
16 exempted limited partnership shall be deemed to commence
17 upon the earlier to occur of the following, and then

18 (d):

19 "The occurrence of an event provided by
20 the partnership agreement from which the ELP is to be

wound up."

21

If your Lordship will then take up the hearing

22

bundle, please, at tab 5 and if your Lordship will go to

23

page (inaudible) -- that's a bad reference. It should

24

be page 56. At the foot of the page you should have

25

paragraph 10(b) -- 10(b) says this:

1

"The hardship shall be wound up and dissolved 1 upon

2

any event in respect of the general partner specified in

3

section 15 and of the ELP law."

4

This definition the ELP law as the 2012 revision as

5

amended from time to time, and the events to which

6

section 5 of the 2012 revision referred are now found in

7

section 36(7) of the act and if your Lordship would

8

please go to to section 36(7) your Lordship sees

9

the relevant events there set out, and at (b), one such

10

event is the commencement of liquidation, bankruptcy or

11

dissolution proceedings, and there can be no doubt, we

12

respectfully --

13

JUSTICE ASIF KC: Well, it's in relation to the sole or last

14

remaining qualified general partner, so it's specific to

15

the gentleman.

16

MR SCOTT: Indeed. And the point I was -- the follow-on

17

point is that where the general partner has commenced

18

Chapter 11 bankruptcy proceedings against itself, that

19

is plainly an event of withdrawal within the meaning of

20

this section and that brings about the termination

21

provision in 10(b) of the LPA.

22

The effect of these provisions, the contract and

23

24 the statute under which the partnership was created and
25 to which it owes its sole existence, the effect is that
1 a voluntary winding up is deemed to have commenced upon
2 9 December with the commencement of the Chapter 11
3 proceedings in respect of the GP. So that is why I say
4 the question is no longer whether the partnership should
5 be wound up, the parties have agreed that it shall and
6 the statutory revision ^ that it shall in the events
7 which have occurred, namely the Chapter 11 proceedings
8 in respect of the GP. And so the question now is how
9 and by whom the winding up should be conducted.

10 Our preference is for a compulsory winding up order
11 to be made.

12 JUSTICE ASIF KC: Can I just ask one question, Mr Scott.

13 MR SCOTT: Of course.

14 JUSTICE ASIF KC: If that is right, doesn't it have
15 the result that Section 99 only applies from 9 December
16 onwards so each you might want or you may have reason to
17 want me to -- of the winding up of the petition ^.

18 MR SCOTT: That was the first reason (inaudible) on
19 the petition, to preserve the operation of Section 99.

20 So that's the first reason and it's an important reason.

21 There is a further reason, that we apprehend -- and
22 I don't put it any higher than that -- that it may be
23 easier for court-appointed liquidators in a compulsory
24 liquidation to obtain Chapter 11 recognition in
25 the States and it would be for voluntary (inaudible).

1 So that's our preference, my Lord, and that's where

the substratum point comes in, because if we are right
2 on the substratum point, the consequence would be
3 a winding-up order on a just and equitable basis in
4 the existing petition.

5 My Lord, an alternative approach to the preference
6 I've just set out would be for the court to exercise its
7 power to remove the GP as liquidating agent in
8 the voluntary liquidation that is presently on foot and
9 replace it with court appointees. My Lord, the Cayman
10 Court of Appeal has confirmed that there is jurisdiction
11 to do just that. That's the One Thousand & One Voices
12 Africa Fund LP cases to which we refer at paragraph 35
13 of our skeleton and which your Lordship has at tab 8 of
14 the authorities bundle, page 152.

15 JUSTICE ASIF KC: I also read that yesterday.

16 MR SCOTT: I'm grateful. We say this would be a clear case
17 for exercising that jurisdiction where we have
18 the majority interest in the winding up and our
19 preference is that it be done by court appointees rather
20 than the GP. I don't know if your Lordship has had
21 the opportunity to remind himself of what Justice
22 Kawaley said on that issue at first instance in One
23 Thousand & One Voices Africa Fund LP.

24 JUSTICE ASIF KC: You mean the paragraph at the end?

25 MR SCOTT: Indeed.

1 JUSTICE ASIF KC: Yes.

2 MR SCOTT: I am grateful. About the importance of giving
3 due weight, save for exceptional circumstances --
4

JUSTICE ASIF KC: To the parties with economic interest.

5
MR SCOTT: And again, it seems to us that that's an issue

6
7 your Lordship properly can and should grapple with at
8 the January hearing we seek and an issue that won't
9 involve having to investigate whether trust and
10 confidence has justifiably gone, it will simply involve
11 taking due account of our interests as the majority in
12 having the winding up by court appointees rather than
13 a GP who we don't trust.

14 I turn finally to the question how the court should
15 proceed, and as I said earlier, we have every intention
16 of complying with and respecting the automatic stay,
17 which is why we have applied to have it lifted and why
18 we will be making the further application this week to
19 vary it to permit the termination of the paragraph 10(b)
20 issues in January. What I'm addressing your Lordship
21 on, as I am bound to do as an attorney of this court, is
22 your Lordship's powers and the principles that govern
23 them, and it's a matter for your Lordship how to proceed
24 in the light of the Chapter 11 proceedings. We address
25 the principles in our skeleton at 36 to 40.

1 The Chapter 11 stay is not a part of Cayman law. If it
2 is to have effect in this jurisdiction, it would be as a result of a decision by your Lordship to exercise his
3 own power to stay the proceedings and in the usual way
4 your Lordship would do that where the interests of
5 justice so require, where to do so would further
6 the overriding objective, and recognising that while
7 the court properly can and does give assistance to

foreign courts conducting insolvency proceedings,
8 the court cannot override local substantive law and
9 local public policies. And as a matter of Cayman
10 substantive law and public policy, it is ordinarily
11 important to hold commercial parties to their bargains
12 to protect the property rights that accrue to them under
13 such bargains and to supervise the winding up of legal
14 persons who owe their sole existence to Cayman law, as
15 does this partnership.

16 My Lord, we do say, applying those principles,
17 the most appropriate course would be for your Lordship
18 to direct the two-day hearing we seek to determine
19 the paragraph 10(b) issues. As I said, they are
20 discrete issues of Cayman law and they can be determined
21 without the need to resolve any contentious issues of
22 fact and where the resolution will, or at least may,
23 provide a shorthand to what should happen to this
24 partnership from the perspective of Cayman law under
25 which it exists.

1 If we are right that the Delaware judgment means
2 the substratum of the partnership has gone or if we are
3 right that the contractually agreed statutory -- of
4 Chapter 11 are that we are in winding up now already,
5 there will be no need for your Lordship to determine
6 the various other issues in these proceedings.

7 My Lord, a further practical practical significance
8 ^ because if we are right on the paragraph 10(b) point,
9 then the partnership has already entered voluntary
10

winding up and that being so, the GP is contractually
 11 obliged "to carry out the winding up of the affairs of
 12 the partnership pursuant to the LPA". That is expressly
 13 set out in paragraph 11(a) of the LPA. And the
 14 provision continues to explain that the GP is required
 15 to do two things, first, cause the partnership to
 16 satisfy its liabilities and obligations to creditors,
 17 and then, second, to distribute the net assets remaining
 18 to the partners. Those are the purposes for which
 19 the GP can act now that voluntary winding up is in
 20 train and they are the powers the GP can exercise.

21 JUSTICE ASIF KC: So are you saying that pursuant --
 22 a restructuring is outside the scope of the powers?

23 MR SCOTT: Yes. And that's among the reasons why we say it
 24 would be valuable to the Delaware bankruptcy judge to
 25 have your Lordship's views on that question, because if
 1 your Lordship agrees with us that pursuit of
 2 the restructuring is outside the GP's powers under
 3 the LPA, or at least an improper exercise of such powers
 4 that the GP has, that's in our matter that the Delaware
 5 judge may wish to bear in mind in determining how to
 6 proceed with the Chapter 11. We do say it's in
 7 the interests not just the parties but the Delaware
 8 court and indeed all stakeholders in relation to these
 9 Chapter 11 proceedings to have clarity on the position
 10 under Cayman law that results under this LPA and
 11 the ELP.

12 My Lord, we also say that would further
 13

the interests of justice and it would further
14 the overriding objective. It would avoid (inaudible) in
15 its entirety the January fixture that we have and
16 the work that the parties have been doing in preparation
17 for it. And the court we propose would not offend
18 against the Chapter 11 stay because, as I have said, we
19 intend to move in Delaware to have the stay lifted to
20 the extent necessary to permit determination of
21 the paragraph 10(b) issues.

22 My Lord, can I finish on this with a brief word
23 about the GP's position today. As I understand the GP's
24 skeleton, its position is that your Lordship should
25 simply vacate the January trial and give the parties
1 liberty to apply if the Chapter 11 stay is lifted.
2 That's paragraph 8 of their skeleton. That will achieve
3 the long-standing wrecking strategy that the GP has been
4 pursuing. The only reason given for it in the GP's
5 skeleton is the suggestion that "the most appropriate
6 way to recognise the effect of the worldwide stay
7 imposed by the US bankruptcy proceedings is to vacate
8 the trial". Your Lordship has my submission that
9 the question is not one of recognition, at least not at
10 this stage, that no appointee or approved restructuring
11 in the Chapter 11 proceedings yet and there may never be
12 one; all there is at this stage is the institution of
13 proceedings. That does not result in an automatic stay
14 under Cayman law. The question is instead a matter for
15 your Lordship's discretionary decision-making taking
16

17 account of all the circumstances. And we I do say
18 the appropriate and fair and just exercise of discretion
19 is the one that we propose whereby we try to do
20 something useful in January that will assist
21 all concerned in relation to progressing
22 the orderly winding up of this partnership.

23 If your Lordship will just give me one moment.

24 (Pause).

25 My Lord, if I can just come back to the helpful
1 indication that your Lordship gave about dates in
2 January and February. What we will propose is that we
3 can contact the court tomorrow after we have had
4 the scheduling conference in Delaware.

JUSTICE ASIF KC: That's fine, Mr Scott.

5 MR SCOTT: But what I can say, my Lord, and this is
6 the attempt to be helpful and I hope there will be
7 a similar attempt on the other side, what I can say is
8 that from our perspective our Cayman team can do all of
9 the dates that your Lordship has indicated. I think
10 I can do most of them.

11 JUSTICE ASIF KC: That's fine.

12 MR SCOTT: If Mr Ayres would be good enough to indicate his
13 side's availability, and if your Lordship is persuaded
14 to make these two days available, we can all work
15 together to get something in that fits both here and
16 with the schedule in Delaware.

17 Unless I can assist your Lordship further, and I'm
18 sorry I've slightly overrun.

19

20 JUSTICE ASIF KC: No, that's fine, Mr Scott. I'm not
21 suggesting this to anyone, the parties will take their
22 own counsel as to the course they want to pursue, but
23 I'm certainly conscious that judges in the Grand Court
24 in the past have made anti-suit injunctions proceeding
25 with liquidations or Chapter 11 in the States where
1 the companies are (inaudible). So I'm alive to the fact
2 that just because the GP has commenced Chapter 11
3 proceedings is not necessarily the end of the matter.

4 MR SCOTT: Well, I hope that has been heard on the other
5 side of the court. Obviously it's not an application
6 I am making to your Lordship, or can, but your Lordship
7 is quite right to identify the court's own powers to
8 protect its jurisdiction from these sorts of vexatious
9 and oppressive attacks.

10 JUSTICE ASIF KC: Yes. Thank you, Mr Scott.
11 Yes, Mr Ayres.

12 MR AYRES: My Lord, I'm going to be in my submissions much
13 shorter than my learned friend and part of the reason
14 for that is because I am going to be cautious about what
15 I say in light of the fact there is Chapter 11
16 bankruptcy proceedings, including the fact that although
17 the judge, Judge Silverstein, gave permission for this
18 PTR to take place, that was not a permission, as far as
19 we were concerned, where any party, myself included, or
20 the opponents, could simply trespass on the merits,
21 describe in detail the positions they wish to put
22 forward and effectively advance the merits. So,

23 my Lord, I am not going to respond in detail to a lot of
24 what my learned friend said and your Lordship should not
25 take that as an acceptance that he has.

1 My Lord, just one point of information in relation
2 to a document my learned friend took you to. If
3 your Lordship can go -- I think he took you to page 632,
4 which is part of the declaration of Dr Harrison in
5 relation to the application for Chapter 11
6 reorganisation --

7 JUSTICE ASIF KC: It's actually 621, I think.

8 MR AYRES: Yes, and if your Lordship goes down in that
9 document to the top of page 633 and reads paragraphs 46
10 and 47, you'll see, my Lord, in paragraph 47 it's set
11 out there that the partnership owes more than
12 \$221 million in unfunded commitments to certain
13 (inaudible). So my Lord that's --

14 JUSTICE ASIF KC: (inaudible).

15 MR AYRES: No, but it's an additional fact that's being put
16 before the court at the same time.

17 So, my Lord, in terms of what I want to say, as
18 I said, I'm going to be narrow and cautious in what
19 I say. Your Lordship's seen and read the transcript of
20 what happened in front of Judge Silverstein on Monday,
21 and of course there are -- or at that stage on Monday
22 there were two applications which were being made to
23 the Delaware Bankruptcy Court. First of all was
24 the motion to submission the whole bankruptcy. But
25 secondly, as my learned friend alluded to, I call it

1 the expedition motion but I think in Delaware speak it's
2 called "the motion to shorten time".

3 JUSTICE ASIF KC: Yes.

4 MR AYRES: And in terms of dealing with the motion to
5 shorten time, that was dismissed, and I know
6 your Lordship's looked at it but I just want to make
7 sure your Lordship's got the right page -- I know
8 your Lordship has -- just to remind you of the relevant
9 section where this is dealt with, 766 of the hearing
10 bundle, in the transcript, which is in tab 25. She
11 makes a ruling at line 13:

12 "I am not going to shorten time."

13 And then over the page your Lordship will see
14 between lines 3 and 16 the judge talks about her own
15 scheduling issues and of course the fact that she had
16 a case settle which would allow her to effectively deal
17 with the application quicker than the parties had hoped.
18 But, my Lord, she makes that comment effectively in
19 cognisance of you and she says:

20 "I am quite aware of setting aside scheduling time,
21 I am quite aware of preparing for matters that don't go
22 forward and I don't like to disrupt other judges'
23 schedules."

24 So your Lordship should be aware, you know, this is
25 in the context of obviously in multi-jurisdictional
1 case, that the Delaware Court is expressly cognisant of
2 the fact that it is either disrupting or potentially
3 disrupting something that is happening in this court, so

--

4
JUSTICE ASIF KC: Well, Mr Ayres, from my point of view,
5
the January trial is clearly not going ahead both
6
because of the consequences of the Delaware trial and
7
also because of the Chapter 11 process, the current
8
subsistence of the Chapter 11 whether it continues
9
beyond the dismissal or not ^.

10
I raised the question of my availability later than
11
19 January because I am slightly concerned that it's
12
a pretty optimistic timetable bearing in mind what
13
Judge Silverstein said about her own availability to
14
expect everyone to be read for 19 January. But as I've
15
indicated, as it happens, I do have availability in
16
early February and the week of 26 January subject to
17
the Bank holiday and the week of 6 February which seemed
18
to me to be a more realistic time frame to work with
19
without requiring the judge in Delaware to disrupt her
20
own schedule.

21
MR AYRES: So, my Lord, we are officers of the court and we
22
will cooperate with the question of giving our available
23
dates. I can say personally, myself, I am free on
24
the 19th because I was going to have to be anyway. But
25
my Lord, being officers of the court and co-operating
1
with our opponents and with you as to our available
2
dates, I should make it clear we are not consenting to
3
anything, we are not accepting that any of this should
4
be going ahead, and in fact quite the opposite. So
5
my Lord, I think that needs to be made clear.

6

Just back on the page, my Lord, if you've got --

7

I know your Lordship wants to get me on to the topic

8

of --

9

JUSTICE ASIF KC: No, no.

10

MR AYRES: -- where we go and how this works, but I just

11

want to just finish off that Judge Silverstein made it

12

very clear in lines 14 to 16 that she is she's it going

13

to grant the relief --

14

JUSTICE ASIF KC: Is this on 766 or 767?

15

MR AYRES: This is 767, lines 14 to 16 -- the whole passage

16

from 3 to 16 is appropriate. But she's very clear that

17

not any further than that at this point in time

18

JUSTICE ASIF KC: Well, I think, really my understanding of

19

what she says in the transcript -- and tell me if I'm

20

wrong -- is -- if you think I'm wrong -- is that she is

21

content for the parties and the court, the Grand Court,

22

to deal with, if I can describe it like this,

23

practicalities, but not substantive matters.

24

MR AYRES: Well, my Lord, partly correct, but there's

25

a narrower -- what she is content -- as I understand it

1

objectively, she is content for the parties to come

2

before your Lordship to discuss the vacation of

3

the January trial and that's it, and my opponents, I'm

4

afraid to say, have overstepped the mark in terms of

5

the Delaware Bankruptcy Court -- (overspeaking) --

6

JUSTICE ASIF KC: (inaudible).

7

MR AYRES: She'll decide that. But obviously my learned

8

friend, he made an hour's worth of submissions and on

9

10 two occasions he said "this should not be weaponised or
11 misrepresented". Well, of course it won't be
12 misrepresented, but he has said what he's said on
13 instructions from his client and he has been, in my
14 submission, highly incautious in relation to his
15 submissions to this court and how they will be treated
16 in a different court. But my Lord, that's not really
17 a matter for me, that is a matter for the Delaware
18 Court.

19 But, my Lord, I want to come back to the real topic
20 and I don't really have a great deal to say in relation
21 to this, or certainly more than a few more minutes'
22 worth of submissions, but question is: what is workable?
23 My opponents will say, well, of course he's saying it's
24 unworkable, why wouldn't he, because that's part of
25 the wrecking strategy that they always suggest that we
1 are guilty of. But my Lord, I am going to make some
2 submissions in relation to how this is actually going
3 to, in practical terms, work.

4 So there's already a motion to dismiss which needs
5 to be determined at some stage when Judge Silverstein
6 can do so. We are told that there is also going to be
7 a new motion issued in Delaware, which is a motion to
8 vary the stay, and as I understand it, we've been told
9 that we'll see that on 19 December. And as my learned
10 friend alluded to, if they can persuade
11 the Delaware Court to hear that in two weeks or as
12 promptly as possible, we're going to have -- and this is

of course conjecture -- a determination of that motion
13 to vary in early January. Now, first of all, we just
14 simply don't know at this stage whether that can happen.
15 You have heard anything from my learned friend to
16 the effect that they have got some promises or some
17 assurances or even some less than assurances from
18 the Delaware Court that that may happen. So that's got
19 to happen.

20 If the variation is granted, my Lord, then we can't
21 deal with all these new points that my learned friend
22 has addressed you on today, including the one you
23 mentioned at the very end of his submissions in a very
24 unstructured away and either without some form of
25 originating process which is new or the amendment of
1 the existing petition or both, and my Lord, we haven't
2 seen a draft of any of these amendments or new
3 originating process, but what we have been provided with
4 in the skeleton argument at paragraph 12 is what's
5 called the paragraph 10(b) issues. My learned friend
6 was good enough to suggest that they call them the 10(b)
7 issues, because I certainly call them 10(b) issues,
8 because the only one that really is a 10(b) issue is
9 the first one, 12.1.

10 Now, I would accept, subject to everything that I've
11 said earlier on, that 12.1 is a reasonably neat and tidy
12 question, it's slightly more than a point of law but it
13 involves the question of whether or not the references
14 to liquidation, bankruptcy or dissolution proceedings
15

15 includes Chapter 11, and my Lord, because I'm not going
16 to trespass on the merits, I'm not going to say anything
17 more about that, but you shouldn't take my non-trespass
18 as acceptance.

19 But, my Lord, the second and third issues which are
20 described at paragraph 10(b) issues, they're either
21 completely new issues or they are the reheating of
22 the existing dispute in a different context, and as far
23 as 12.2 is concerned, that is a request for a compulsory
24 winding up order, in other words the same sort of order
25 that is on the basis of the current petition, using
1 the fact or the suggestion that the partnership
2 substratum has now gone based upon recent events
3 including, as it says, a consequence of the Chapter 11
4 bankruptcy proceedings on the Delaware judgment.

5 Obviously your Lordship can do what you like, but the
6 reality of that is that that is going to need amendment
7 of the existing proceedings in order to be fair to
8 the GP no matter how rotten my learned friends think
9 the GP actually is.

10 And as far as 12.3 is concerned, that is not
11 a two-day determination, because that is a determination
12 of the question, notwithstanding what my learned friend
13 says about One Thousand & One Voices, as
14 to whether or not it is in fact the case that independent liquidators
15 should be appointed in place of the GP as liquidating
16 agent. Now, my Lord, one might make submissions about
17 the question of the economic interest, but of course in
18

One Thousand & One Voices there was
19 a considerable amount of misconduct of the GP in that
20 case during the course of the liquidation, which also supported
21 the decision that was made in that case. So it is not
22 a complete "slam dunk" that the LPs are going to be able
23 to say One Thousand & One Voices,
24 therefore that is a complete on easy application.
25

-- is that we are going to be considering the impact
1 of the Delaware judgment, the question of whether
2 the findings in the Delaware judgment are binding upon
3 you, and the question of whether or not the GP is as
4 rotten and guilty of misconduct as the Rigmora LPs say,
5 and that's simply a reheating of the whole dispute. So
6 it's completely unworkable that we can have a two-day
7 hearing. So, my Lord, we say it can't be fairly tried
8 procedurally either with a run up of two weeks in early
9 January to the 19th or in any of the dates that
10 your Lordship said in -- I think I should have a look at
11 the dates.

12 JUSTICE ASIF KC: February.

13 MR AYRES: So, my Lord, in terms of, I think, the 27th,
14 the week of that, I think I'm personally -- I'm
15 personally free, I think. Yes, so -- no, sorry, tell
16 a lie, I'm not free that week, but I am free in the week
17 of 2 February. I can do those dates.

18 I am also free in 2 March.

19 So, my Lord, I don't want to suggest in any shape or
20 form that I personally have availability issues. There
21

may be Walkers issues but we'll come back to that, and
22 obviously client issues, which we'll communicate with
23 Campbells about tomorrow. But it's simply not workable
24 to have that.

25 If your Lordship wants to set aside time for
1 the purposes of making sure that isn't taken up by other
2 cases then, my Lord, I've nothing more to say about
3 that, that's a matter for you and something you're
4 perfectly entitled to do. But the idea that this can
5 happen quickly, in January, is, we say, for the birds,
6 because there are too many hurdles, too much uncertainty
7 and too much contingencies in place.

8 So, my Lord, as I said, I'm going to be much shorter
9 than my learned friend. I'm not going to trespass on
10 the merits, I'm not going to argue against what my
11 learned friend said in relation to many of his points
12 not because I agree with them, because I do not want it
13 to be said that we are acquiescing in a hearing which is
14 effectively turning into a merits hearing. That is
15 completely contrary to the Chapter 11 bankruptcy stay.

16 My Lord, unless I can assist further, those are my
17 submissions.

18 JUSTICE ASIF KC: Thank you.

19 MR SCOTT: I hope your Lordship knows that none of my
20 submissions invited your Lordship to determine any point

21 on the merits. What I did was to identify to
22 your Lordship the issues as we see them arising out of
23 two undisputed facts: one, the Delaware judgment; and
24

two, the Chapter 11 proceedings. I understand Mr Ayres'
25 instructions will no doubt be to attempt to lay

1 the ground for some argument in Delaware that we have
2 breached the moratorium, but we have not.

3 What we would invite your Lordship to note is,
4 despite all the attempts to put roadblocks in the way of
5 the determination of the issues I've identified -- and
6 I'll come back to those roadblocks in a moment -- there
7 was no suggestion from Mr Ayres that the GP has
8 a substantive answer to them.

9 My Lord, before I deal with the 10(b) issues, can
10 I just correct or at least give our perspective on
11 the point from Dr Harrison's declaration that
12 your Lordship was taken to. If we can go back to it,
13 please, it's tab 24, 633. Your Lordship was shown 46.
14 In addition to the unsecured obligations by
15 the partnership, ATP and -- if your Lordship just pauses
16 there, those are the entities which filed on 9 December
17 and I'll show your Lordship one of the filings. What
18 then had happened by the time of Dr Harrison's petition
19 is that some of the portfolio companies had filed as
20 well and they are the filing portfolio companies, and it
21 is they who are said to owe more than 5.4 million to
22 dozens of creditors, as your Lordship would see from
23 the petitions from the portfolio portfolio companies
24 that are in the hearing bundle.

25 I should, while we have this open, invite
1 your Lordship's attention to 47, the suggestion that:
2

3 "The partnership owes more than \$221 million in
4 unfunded commitments to certain of the Port Cos."

5 That is wrong. The partnership does not owe
6 anything. It does not have any legal commitment or
7 liability whatsoever to those Port Cos. What
8 Dr Harrison means there is that he would wish to use
9 that money if it were available to him, which it is not
10 as a result of the Delaware judgment.

11 My Lord, while we have the hearing bundle open, if
12 we could just please go again to the transcript of
13 the conference earlier in the week and if I can ask
14 your Lordship please to take up page 766.

15 JUSTICE ASIF KC: Yes.

16 MR SCOTT: Lines 18 and 19 are, with respected, crystal
17 clear:

18 "I will grant relief from stay from the pre-trial
19 conference to go forward in the Caymans on Wednesday."

20 If your Lordship would just re-read it -- I know
21 your Lordship has read it already -- from line 18 down
22 to the bottom of the page. Nothing in what I have said
23 to your Lordship today is remotely inconsistent with
24 that.

25 So far as concerns the paragraph 10(b) issues, we're
1 not remotely (inaudible) about labelling -- call them
2 the issues if that would be more palatable. What they
3 are in effect are preliminary issues. What we're asking
4 your Lordship to do is direct their determination. In
5 the usual way, your Lordship will give such directions

as you think appropriate for the determination of those
6 issues. So if your Lordship takes the view that there
7 ought to be either amendments or the issuance of some
8 originating process, your Lordship has ample power to
9 direct that. Your Lordship might take the view that
10 the issues can be addressed in skeleton arguments.
11 That's certainly our view.

12 My Lord, so far as the issues themselves and whether
13 it makes sense to direct their determination,
14 I understood Mr Ayres to accept that, subject to his
15 overarching position of being unable to assist
16 your Lordship today, paragraph 12.1 is an issue that
17 makes sense to determine. I think he called it a "neat
18 and tidy" issue. We respectfully agree with that.

19 On paragraphs 12.2 and 12.3, they were objected to
20 as raising either new issues or rehashing the existing
21 issues on the case, and what underlies all of that is
22 the, with respect, false premise that the determination
23 of those issues depends on your Lordship reaching a view
24 about the GP's misconduct and it does not. What it
25 depends upon is your Lordship reaching a determination
1 based upon the two undisputed facts that are identified
2 in the Delaware judgment and the Chapter 11 bankruptcy
3 proceeding and then applying to those undisputed facts
4 principles of Cayman law.

5 My Lord, as for the suggestion that this cannot be
6 dealt with in a two-day hearing, can I just ask
7 your Lordship please to take up tab 7 of the authorities
8

bundle.

9

JUSTICE ASIF KC: Yes.

10

MR SCOTT: This is Justice Kawaley's decision in One

11

Thousand & One Voices Africa Fund LP. Your Lordship

12

will see that it was heard on a single day,

13

11 April 2024, and on the papers, and the decision

14

followed on 2 May ^.

15

If I could just invite your Lordship's attention to

16

paragraph 20, can I ask your Lordship please to read 20

17

down to 26, which summarise the principles that apply in

18

this context.

19

(Pause).

20

JUSTICE ASIF KC: Yes, I've read that.

21

MR SCOTT: So we do say, with respect, this issue is well

22

capable of being dealt with within the context of

23

the two-day hearing that we suggest. Once it is

24

recognised that this is not an issue that will require

25

your Lordship to form a view as to the allegations of

1

misconduct against the GP, and as I say, we're very much

2

in your Lordship's hands as to what, if any, additional

3

directions are necessary to bring the matter forward in

4

an orderly way. If your Lordship wants us to amend, of

5

course we'll do that, subject to lifting the stay to

6

the extent necessary to achieve that.

7

My Lord, unless I can assist the court further,

8

those are our submissions.

9

I am reminded that, if it will assist

10

the Delaware Court from our perspective to have

11

your Lordship's ruling on these issues, if it were
12 possible, in time for the hearing at 3.30 today.
13
JUSTICE ASIF KC: Just remind me, is Delaware currently on
14 the same time zone as --
15
MR SCOTT: I see parties to my right nodding.
16
JUSTICE ASIF KC: So I've got about four hours. That's
17 fine. I'm just going to rise for about 10/15 minutes
18 maximum and then I will come back and tell you what I'm
19 going to do.

20
(A short break)

21
(4.53 pm GMT)

22
JUSTICE ASIF KC: This matter --
23
MR AYRES: Before your Lordship's starts. It's probably in
24 everyone's interests that the microphones are unmuted.

25
JUSTICE ASIF KC: Thank you, Mr Ayres.

1
This matter is listed before me today for
2 a pre-trial review. This hearing has been fixed in
3 the calendar for quite some time and was intended to be
4 used as last-minute preparation for a trial of this
5 matter that is due to commence on 12 January next year.
6
I just record at this stage that, as in previous
7 hearings before me, the petitioners have been
8 represented by Mr Andrew Scott KC and the general
9 partner has been represented by Mr Andrew Ayres KC with
10 Mr Scott supported by attorneys from Campbells and
11 Mr Ayres supported by attorneys from Walkers.

12
Since this matter is listed for hearing, there has
13 been a very substantial development to (inaudible) such
14

a purpose which have largely derailed this matter.

15 The first is that on 5 December, just over 10 business
16 days ago, Chancellor McCormick in Delaware gave judgment
17 on the parallel proceedings between parties dealing with
18 certain issues about the general partner's entitlement
19 to make capital calls from the Limited partners, and
20 secondly and perhaps more significantly, on 9 December,
21 the general partner and certain other entities sought
22 Chapter 11 protection in the United States, including as
23 part of that protection an automatic stay of proceedings
24 in any other justification.

25 The general partner's intention to seek Chapter 11
1 protection was not foreshadowed in any way either to
2 the limited partners or to the court and indeed on 8 and
3 9 December, at the same time that the general partner in
4 Delaware was preparing its application, its Cayman
5 attorneys were dealing with the court and with the Court
6 of Appeal in relation to an intended expedited appeal
7 against an order I had made in November concerning
8 whether certain documents were or were not to be treated
9 as privileged and as a result incapable of use within
10 the trial.

11 With that short background, the hearing today has
12 therefore focused on the consequences of the filing of
13 the Chapter 11 proceedings in the United States and
14 the impact of the automaticity stay under American law
15 of what is happening in the Grand Court. It seems to me
16 the first point is the obvious one, that the trial
17

cannot proceed on 12 January. That is really for two
18 reasons. First of all, because the (inaudible) parties
19 are able to take steps to prepare for those proceedings
20 whilst the Chapter 11 proceedings are live and in
21 particular that is because the general partner and all
22 of the exempt Limited partnership assets are based in
23 the United States and no doubt if the parties were to
24 take steps to progress the matter in the Cayman Islands,
25 there would be arguments that they are in contempt of
1 the Delaware Court with potentially severe consequences
2 for all of (inaudible) assets. So I do not criticise
3 either party for taking the view that the January trial
4 cannot realistically proceed.

5 I note that the limited partners are seeking, first
6 of all, to dismiss the Chapter 11 proceedings, but
7 secondly, also for an order waiving the automatic stay
8 so far as a slimmed down and streamlined trial of
9 the issues that are intended to be run before
10 the Grand Court is granted so that that trial can
11 proceed. Those motions in Delaware have not yet been
12 determined and it appears unlikely that they will be
13 determined until some time during January 2026 at
14 the earliest, all of which, as I have indicated, is
15 inconsistent with the ability to proceed with
16 the intended trial on time for January ^.

17 The second reason why it seems to me that the trial
18 cannot and should not proceed on 1 January is that
19 the limited partner's position is that the effect of
20

the Chapter 11 filing is that the exempted partnership
21 is now -- under Cayman law and so a number of the issues
22 that were going to be fought out in 12 January trial are
23 no longer really live issues and no longer need to be
24 determined by the court, and so I have no hesitation
25 concluding that the trial that was fixed -- that is
1 fixed to commence on 12 January should be vacated.

2 The second question is whether the court should fix
3 a date in January or February 2026 for hearing
4 a streamlined version of the substantive winding up
5 petition presented by the limited partners, which is
6 the limited partners position or whether as the general
7 partner argues the court should simply await
8 developments in Delaware and effect essentially ^ take
9 no further steps to move the Cayman disputes forward
10 until clarity is obtained on the position in
11 the United States.

12 I do not find the general partner's position to be
13 a particularly attractive one. The parties have
14 throughout sought to advance the resolution of
15 the disputes between them both in Delaware and in
16 the Grand Court on an expedited basis. My own view is
17 that an orderly separation of the general partner from
18 the limited partner needs to occur sooner rather than
19 later to avoid the continuation of these obviously
20 corrosive disputes between the parties on each side. It
21 does not seem to me to be productive or a good use of
22 the parties' time and resources for this dispute to drag
23

on for any longer than absolutely necessary. The only
24 people who are profiting from this dispute at the moment
25 are the lawyers on each side.

1 I therefore conclude that I should fix a date for
2 the trial of what the limited partners have called
3 the paragraph 10(b) issues for the week commencing
4 2 February 2026. If for any reason events in Delaware
5 do not progress on a schedule that reasonably allows
6 the parties to prepare for and conduct that hearing,
7 then the parties can apply to me in mid--to-late-January
8 with a view to adjourning the trial and moving it
9 perhaps into March of 2026. But it seems to me that it
10 is far better that I allocate that time and give
11 the parties a date to be working towards now so that my
12 calendar does not fill up in the intervening period and
13 the parties come back to me following a decision by
14 the Delaware judge on (inaudible) proceedings a carve
15 out for the Grand Court proceedings (inaudible)
16 automatic stay so that the parties then come back to me
17 in mid-to late January and find that the earliest date
18 that I can then give them is not until the middle to
19 the end of March perhaps even into April 2026. But I am
20 inclined to accept Mr Scott's submissions that it ought
21 not to be necessary to get into the question whether
22 the limited partners have lost trust and confidence in
23 the general partner's ability to manage the limited
24 partnership given the changed position now applies as
25 a consequence of the filing of Chapter 11 proceedings in

the United States. It seems to me that Mr Scott is
2 right to say that the issue for the court or at least as
3 a preliminary issue for the court, the court can focus
4 on the question of whether there has been a loss of
5 substratum and which on its own would justify the making
6 of a winding-up order without the necessity to get into
7 the questions of loss and of trust and confidence. But
8 it seems to me that two days should be sufficient for
9 the court to determine the paragraph 10(b) issues which
10 are largely matters of law and construction of
11 the limited partnership agreement and it seems to me, to
12 the extent that there is likely to be any need to
13 consider questions of fact, they are likely to be
14 relatively circumscribed in their scope.

15 I note in passing with some admiration that
16 Justice Kawaley was able to hear a trial -- I note there
17 are significant difference in the procedural approach of
18 the US courts to the conduct of trials compared to
19 the approach of the Grand Court, but it certainly seems
20 to me that with goodwill and cooperation on both sides
21 it ought to be feasible to have a hearing of a more
22 limited nature proposed by the limited partners within
23 a two-day time estimate.

24 I do agree with Mr Ayres on behalf of the general
25 partner that it will be necessary for the limited
1 partner to make amendments to its petition so that it is
2 clear precisely what its case is both for the general
3 partner and also for the court when it comes to deal
4

with the hearing of this matter. It also seems to me
5 that Mr Scott is correct that the appropriate procedural
6 way to characterise the hearing in February that it is
7 essentially a trial of the preliminary issue so that if
8 for any reason I determine that the fund(?) ^ substratum
9 has not been lost Mr Scott has the ability to come back
10 and to argue the loss of trust and confidence points at
11 a later stage if there is any real appetite on either
12 side for the matter to proceed beyond February 2026.
13 However, having said that, I will not make an order
14 at this stage imposing any procedural timeline for
15 the preparation of amended proceedings because I am
16 conscious that there may well be arguments that
17 the parties are unable to take any such substantive
18 steps whilst the stays under Chapter 11 applies to them.
19 It does seem to me I understand that the matter is
20 before the Delaware judge this afternoon. It does seem
21 to me that at the very least it would be of real utility
22 for the Delaware judge to authorise the preparation of
23 amended pleadings on both sides in order to restate what
24 are the issues that the Grand Court needs to determine
25 in due course, and subject to that it also seems to me
1 that it would be of real utility for the Delaware judge
2 as soon as possible to determine that the limited issues
3 that the limited partner wishes to put before
4 the Grand Court for determination should be excluded
5 from the scope of the automatic stay so that
6 determination on those issues can be made. It seems to
7

me that that is or likely to be of real benefit to
the parties but also to the Delaware Court if
the Chapter 11 proceedings are not dismissed and
continue.

For what it is worth, I will conclude by saying that
I generally take the view that the conduct of winding up
of a Cayman exempted limited partnership and by whom
that winding up ought to be carried out are more
appropriately questions for the Grand Court to determine
supported by a Chapter 11 permission in due course
rather than by Chapter 11 proceedings. It is for
the Delaware judge to take whatever view of that
indication that she wishes to take.

It also occurs to me without the benefit of
enlargement ^ but as a preliminary view that
the proposal for capital restructuring and
the introduction of new investors, which is adverted to
by Dr Harrison in his declaration (inaudible)
the Chapter 11 proceedings appears at first blush to be
outside the proper scope of the general partner's powers
based on the limited partnership agreement which is
binding upon the general partner and also having regard
to applicable Cayman law on what a general partner's
obligations are in the context of a winding-up of
a Cayman exempted limited partnership. That will need
to be tidied up, my sentences fell to pieces in a few
areas, but I hope that gives a sufficient indication,
first of all, of my reasons and hopefully

some useful input for the judge in Delaware
11 this afternoon.

12
MR SCOTT: I'm very grateful, my Lord. I've been asked to
13 ask your Lordship if the court's audio recording could
14 be shared with Opus 2.

15
JUSTICE ASIF KC: Yes, of course.

16
MR SCOTT: I think that means shared right now so that we
17 can ensure that corrections are properly made.

18
JUSTICE ASIF KC: Yes. As soon as I rise I will ask Ms Wood
19 to make that available. Can you make sure that someone
20 gives me to give to her or emails her with an email
21 address for Opus 2 so that she can (inaudible) as
22 quickly as possible.

23
MR SCOTT: I'm grateful, my Lord.

24 I think in the usual way and in accordance with our
25 duty as counsel it falls to us to draft an order --

1
JUSTICE ASIF KC: Yes, please.

2
MR SCOTT: -- to reflect your Lordship's ruling.

3
JUSTICE ASIF KC: Yes. I think the only actual order is
4 that the needs to be vacated.

5
MR SCOTT: And the direction of preliminary issues.

6
JUSTICE ASIF KC: Yes, I suppose that's right. Yes, yes.

7
MR SCOTT: And we would also ask your Lordship to reserve
8 the costs of today.

9
JUSTICE ASIF KC: That's fine. I'm happy to do that.

10
MR SCOTT: I'm happy to put (inaudible) to do first draft of
11 the order.

12
JUSTICE ASIF KC: For what it's worth, again, it doesn't
13

14 seem to me in a there can be any sensible argument that
15 that is outside the scope of what the judge in Delaware
16 ordered was permissible in the context of what she said
17 in the transcript at page 766 of the hearing bundle
18 where she said she'll grant relief from the stay for
19 the pre-trial conference to go forward in the Caymans on
20 Wednesday. I don't know, it hasn't really been
21 described to me what would be -- what substantively will
22 go forward, what dates will be established by the court
23 and what is really left for the judge to decide, etc.
24 As I indicated to you in the course of argument I read
25 that as indicating that she was content for this court
1 and for the parties to deal with the procedural
2 consequences of the Chapter 11 filing and it seems to me
3 it's actually plain that that must include drawing up an
4 order after the hearing today in order to reflect
5 (inaudible).

6 MR SCOTT: Very grateful for that indication.

7 MR AYRES: Well, the only thing I would say is we have no
8 difficulty with the fact that the court needs to make an
9 order. That seems to be obvious. If counsel weren't
10 helpful, your Lordship would do it.

11 My Lord, just in relation to the question of whether
12 you're going to make any further directions beyond
13 a indication of the trial, my Lord, I would urge some
14 caution in relation to that, because there may be some
15 incongruence in the judgment. You've made it
16 clear that there will need to be amendments to

17 the pleadings and the pleadings in relation to
18 the preliminary issue can only sense be done once that
19 is filed. So I would ask your Lordship not to --
JUSTICE ASIF KC: Yes, Mr Scott, I did hesitate, because
20 when you were asking about that because I wasn't
21 entirely sure. I think it's right that until
22 the pleadings have been amended, it's probably better to
23 hold back on the wording of the order for
24 the preliminary issues. I mean, it seems to me it's
25 plain from what's said in paragraph 12 of the skeleton
1 that everyone knows what the issues are intended to be.

2
MR SCOTT: Indeed, and equally plain that your Lordship has
3 just ruled that there will be a trial of those issues.

4 JUSTICE ASIF KC: Yes.
5
MR SCOTT: I'm very happy to defer formalising that in an
6 order until we have been permitted to go through
7 the process of pleading.

8 JUSTICE ASIF KC: I think -- I think --
9
MR SCOTT: But I don't know anybody to be suggesting this
10 afternoon in Delaware that it hasn't happened, because
11 it has happened.

12 JUSTICE ASIF KC: Exactly. No, I think bearing it in mind
13 the sensitivities, everyone is concerned about
14 trespassing on the Delaware court, I'm very happy not to
15 include that in a form of order at this stage, but
16 I have given a very clear indication that that is what I intend to happen and absent something
happening in
17 Delaware to derail that, that is what I consider should
18 happen.

19

MR SCOTT: So the order within that case provides for

20

the January hearing to be --

21

JUSTICE ASIF KC: Vacated.

22

MR SCOTT: -- vacated and the to-day hearing to be fixed in

23

the week commencing the 2nd.

24

JUSTICE ASIF KC: Yes, and costs reserved.

25

MR SCOTT: My Lord, (inaudible) very shortly.

1

JUSTICE ASIF KC: All right. Thank you all very much.

2

(The hearing concluded)