Neutral Citation Number: [2026] CIGC (FSD) 5

Cause No: FSD 2025-0146 (JAJ)
and Cause No: FSD 2025-0151 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) UNICORN BIOTECH VENTURES ONE LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR ONE LP)

(2) UNICORN BIOTECH VENTURES TWO LTD
(in its capacity as general partner of RIGMORA BIOTECH INVESTOR TWO LP)

Plaintiffs

-and-

ATP III GP, LTD
(in its capacity as general partner of ATP Life Science Ventures, L.P.)

Defendant

Appearances:	**Mr Andrew Scott KC of counsel instructed by Mr Liam Faulkner, Mr Hugo Farmer, Ms Yuan Wen, and Mr Jordie Fienberg of Campbells LLP for the Plaintiffs**
	Mr Andrew Ayres KC of counsel instructed by Mr Rupert Bell, Ms Shelley White and Ms Laure Astrid Wigglesworth of Walkers (Cayman) LLP for the Defendant
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**28 November 2025**
Decision communicated	**1 December 2025**
Judgment:	**27 January 2026**

Practice and procedure—legal professional privilege—whether party entitled to raise issues of privilege under Cayman law in respect of documents disclosed in parallel proceedings in Delaware and ordered to be admissible and useable in proceedings before the Grand Court

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JUDGMENT

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A. Introduction

1. There are two actions before the Court, which have been case managed and have proceeded in tandem. The purpose of this judgment is to determine a summons filed by the Defendant in each action raising an issue as to whether the Defendant is able to claim privilege over certain documents, which are agreed to be relevant to the issues in the two actions, or can otherwise prevent the Plaintiffs from using the documents at the trials of these two matters.

2. I communicated my decision to the parties on 1 December 2025 that the Defendant cannot maintain a claim to privilege in respect of the documents in question and that they are available for use by the Plaintiffs in the actions before the Grand Court. I now return to this matter to provide my reasons for that decision. This apparently simple question has a relatively complex factual and procedural background, which I must set out for context.

3. I also record that the conduct of the Defendant's onshore attorneys at law in this matter has fallen seriously below that which I am entitled to expect from them, as I explain later in this judgment.

B. Relevant background

B.1 The proceedings before the Grand Court and in Delaware and their genesis

4. The first of the two actions before the Grand Court is a writ action commenced by the Plaintiffs on 2 June 2025 with Cause No. FSD 2025-0146. The second is a winding up petition, with the Plaintiffs as petitioners, presented on 6 June 2025 on the just and equitable basis with Cause No. FSD 2025-0151. In addition, there is an ongoing action in Delaware commenced on 30 May 2025 by the Defendant in the Grand Court proceedings against the Plaintiffs in these proceedings.

5. The Delaware proceedings have been assigned to Chancellor McCormick, who ordered that the Delaware trial should be expedited. The evidentiary hearing took place on 16 and 17 October 2025, the parties filed their written closing arguments from late October to mid November 2025 and, at the time of the oral argument before me on the Defendant's summonses, the parties were awaiting judgment in that action. Chancellor McCormick subsequently handed down her judgment on 5 December 2025, after I had communicated my decision on the Defendant's summonses to the

parties on 1 December 2025. I have not reviewed or considered the content of Chancellor McCormick's judgment in the course of preparing this judgment.

6. The trials of the Grand Court actions were fixed to commence on 12 January 2026, i.e. just over 7 months from the date of issue and some six weeks from the date when I heard the Defendant's summonses. As I have indicated in earlier judgments in these matters, the procedural timetable has been significantly compressed and the procedural steps to be taken by the parties have been streamlined in order to achieve the 12 January 2026 trial date.

7. However, on 17 December 2025, I had to vacate the trial due to the Defendant filing for Chapter 11 bankruptcy protection in the United States of America on 9 December 2025. Whilst there is no automatic recognition in the Cayman Islands of a Chapter 11 filing in the USA or of the stay upon other proceedings flowing from such a filing, the reality was that the parties were unable to continue to prepare the matter for trial in light of that filing.

8. All three proceedings arise out of the collapse of the personal relationships between the individuals involved in an exempted limited partnership formed under Cayman Islands law ("**the Fund**"). The Fund has a single general partner entity, which is the Defendant in the writ action and the subject of the winding up petition. I will refer to the Defendant as the GP. The dispute is between the main investors in the Fund and the GP. The two Plaintiff investors are vehicles for Dr Dmitri Rybolovlev, a Cypriot national of Russian origin. The sole director of the GP, Dr Seth Harrison, is an entrepreneur responsible for developing a number of portfolio companies in which the Fund has interests, each of which is involved in the life sciences industry. Dr Harrison, his family trust and certain employees comprise the other members of the Fund. It is common ground that the Plaintiffs have contributed roughly 98% of the Fund's capital and that the Fund is currently worth at least US $2.4 billion. As the other limited partners in the Fund are not taking part in the proceedings, I will refer to the Plaintiffs as the LPs.

9. The relationships between the partners in the Fund are governed by a limited partnership agreement, which has gone through multiple amendments and revisions ("**the LPA**").

10. On 15 May 2025, in the course of discussions regarding the Fund's capital requirements, the LPs wrote to the GP indicating that they did not consider that it was in the Fund's best interests to allocate further funding to certain early-stage portfolio companies, which they said had failed to meet required milestones. They stated that they understood that the GP held a similar view, based on the GP's proposal to reallocate the investments budgeted for those early-stage companies to other portfolio companies. The LPs continued that if the GP disagreed then it should provide a detailed explanation of its position. The LPs confirmed that they intended to comply with the requirements of the LPA and would be cooperative if the GP could demonstrate that the LPA permitted the GP to call for further funding. The LPs requested that, if the GP agreed with the LPs' position, then the GP should put forward proposals to salvage value from the early-stage portfolio companies in question. In addition, the LPs indicated that they would consider approving new budgets for the portfolio companies that appeared to be commercially viable if they were provided with certain information.

11. As I have indicated, the GP commenced the Delaware proceedings on 30 May 2025. In that action, the GP claims that the LPs' email dated 15 May 2025 was a repudiatory breach of the LPA.

12. On 30 May and 1 June 2025, the GP made a large number of capital calls demanding payment by the LPs of a total of over US $101 million, with payment required within 14 days. The LPs say that they have contributed all the capital to the Fund that they are required to contribute and that the capital calls were made by the GP to try to engineer a default by the LPs under the terms of the LPA. The LPs say this is because the GP has alleged that the LPA gives the GP power to confiscate up to 50% of a limited partner's interest and to re-allocate it to other limited partners where a default has occurred and certain other steps have been taken. The LPs believe that the GP was manoeuvring to put itself in a position to exercise that power against the LPs and in favour of the other limited partners in the Fund, including Dr Harrison's family trust. Interests in the Fund worth up to about US $1.2 billion could potentially be transferred away from the LPs to other limited partners if the LPs were in default of the LPA and the other steps required under the LPA were taken.

13. Against that background, the LPs commenced the writ action in the Grand Court on 2 June 2025, which was the first working day after 30 May 2025, seeking declarations that they are not in default of the LPA. By the winding up proceedings, commenced on 6 June 2025, the LPs seek an order that

the Fund be wound up on the just and equitable basis, primarily on the ground that they have lost all trust and confidence in Dr Harrison and, through him, in the GP as general partner of the Fund.

B.2 The Consent Orders for discovery in the Grand Court actions

14. On 12 June 2025, the LPs filed an *ex parte* summons in the writ action seeking an interim injunction to restrain the GP from taking any steps to enforce any of the provisions in the LPA premised on a default by the LPs in making the disputed capital calls and from making any further capital calls other than with the LPs' consent. The summons was listed before me *ex parte* on notice on 20 June 2025, when I granted an injunction substantially in the terms sought by the LPs.

15. The two Grand Court matters came back before me on 1 August 2025: (a) on the return date of the injunction; (b) on summonses filed by the GP to stay each of the Grand Court actions in favour of the Delaware action; and (c) on summonses for directions filed in each action by the LPs. Both parties were represented at the hearing by experienced leading counsel: the LPs by Mr Andrew Scott KC, who continues to appear for the LPs, and the GP by Ms Sue Prevezer KC, who has been replaced since that hearing by Mr Andrew Ayres KC. Ms Prevezer, on behalf of the GP, sought to vary the terms of the injunction and also sought an order that the LPs fortify their undertaking in damages, both of which I refused. The parties agreed that the GP would withdraw its summonses to stay the Grand Court actions, with costs reserved. The parties indicated that they had agreed directions to enable the trials of the Grand Court actions to be heard on 12 January 2026 and that they would prepare a draft order for directions in each action. The directions would necessarily require a streamlined process to enable all of the essential procedural steps to be taken in time for a trial on that date.

16. On 12 August 2025, the parties provided the Court with a draft consent order for directions in each action, which were in essentially the same terms. I circulated revised draft orders the same day and the parties provided their comments on 20 August 2025. I made some further minor revisions to the draft consent orders and the parties indicated their agreement to those revisions. I therefore finalised and signed the Consent Orders on 20 August 2025 but dated the Orders as of 1 August 2025 to reflect that that was when the parties had reached their agreement in principle on the terms of the Consent Orders.

B.3 The draft discovery protocol

17. The Consent Orders refer to a discovery protocol, which is to be agreed by the parties. Campbells LLP, the LPs' Cayman attorneys, circulated an initial draft discovery protocol on 4 July 2025. As I explain later in this judgment, there does not appear to have been any active discussion on the content of this draft protocol before the directions hearing on 1 August 2025. The issues regarding discovery were advanced in correspondence between the parties during July and August 2025 instead.

18. On 2 September 2025, Walkers (Cayman) LLP, the GP's Cayman attorneys, produced a superseding draft discovery protocol. In harmony with the Consent Orders, this document is explicitly in two parts, addressing first the question of the admissibility and use of the discovery in the Delaware action for the purposes of the Grand Court actions, and then the treatment of additional discovery in the Grand Court actions. Campbells provided their comments on the new draft discovery protocol on 4 September 2025. Following the developments in Delaware regarding discovery between 2 and 8 September 2025, discussed in the following section of this judgment, the GP sought to make further revisions to the draft protocol on 12 September 2025. Discussions between the parties continued during September and October 2025. The protocol was eventually agreed on 29 October 2025, but incorporating a provision that the court would determine the issue of privilege under Cayman law raised by the GP's summonses.

B.4 Relevant procedural steps in the Delaware proceedings

19. In the Delaware proceedings, the parties agreed a stipulation dated 21 July 2025 regarding confidentiality of discovery materials. This was made an order of the Delaware Court on the same date, with one clarification or modification ordered by the Chancellor. The confidentiality stipulation addresses the use of confidential documents and information from the Delaware proceedings in the Grand Court actions, amongst other things. The stated effect of the confidentiality stipulation is that the parties are permitted to use any discovery material from the Delaware proceedings in the Grand Court actions provided that they use reasonable efforts to agree or to obtain orders from the Grand Court preserving the confidentiality of documents similarly to the protections in the confidentiality stipulation. The parties are agreed that the terms of the discovery protocol will satisfy the requirement for equivalent confidentiality provisions to apply.

20. On 30 July 2025, two days before the directions hearing before me on 1 August 2025, the GP indicated that it was claiming privilege in Delaware in respect of approximately 15,000 documents. The LPs disputed the GP's claim to privilege, in particular for documents pre-dating 15 May 2025, which apparently numbered about 14,500 of the 15,000 documents. The LPs asserted that, as 98% limited partners in the Fund, they were within any applicable privilege for any period when the GP shared a "mutuality of interest" with the Fund, i.e. when there was no adversity between the GP and the LPs. Given that the GP's case in the Delaware action is that the relationship between the parties broke down following receipt of the LPs' letter dated 15 May 2025, the LPs asserted that there was mutuality of interest at all times before that date.

21. The parties were unable to resolve the privilege issue by agreement. On 17 August 2025, the LPs filed a Motion to Compel, which challenged the GP's claim to privilege in respect of documents of various kinds that pre-dated 15 May 2025 and sought an order for discovery of the 15,000 documents. In its opposition to the Motion to Compel, the GP did not contest the "mutuality of interest" approach to the question of privilege.

22. On 2 September 2025, Chancellor McCormick ruled on the LPs' Motion to Compel. On the basis of the parties' mutual interest in the Fund before 15 May 2025, the Chancellor ordered that the parties select a special discovery magistrate to conduct a review of 100 documents selected by the LPs from the GP's list of privileged documents. She continued that if the special discovery magistrate were to conclude that the GP had improperly withheld more than 30 of those documents, then she would grant the discovery sought by the LPs, subject to an exceptions process.

23. The LPs rely on a note prepared by an independent Delaware law firm, Bayard P.A., as expert evidence on Delaware procedure and practice. The note explains that the mechanism that I have set out in the previous paragraph is commonly used by the Delaware courts, and that it is well established that improper claims to privilege in Delaware can result in the loss of privilege. This is particularly so in expedited proceedings, where the parties are expected to take extra care in preparing their privilege log correctly in the first instance. The LPs submit that the only unusual feature of Chancellor McCormick's order was the generosity of the 30% error rate in favour of the GP: the note suggests that the Delaware court tends to allow a 10% error rate. Although it was not in the form normally required for expert evidence, the substance of this evidence was not challenged

by the GP. I take the evidence into account insofar as it assists in understanding this procedural step in the progress of the Delaware proceedings, but it does not have any wider impact on my decision on the GP's summonses.

24. The parties appointed an independent lawyer to act as special discovery magistrate in Delaware. The parties agreed with the special discovery magistrate on 3 September 2025 that he would conduct a two-step analysis of the sampled documents:

    24.1 the magistrate would assess whether the document was privileged and, if not, it should be produced;

    24.2 for putatively privileged documents, the magistrate would assess whether there was adversity between the GP and the LPs in respect of the document and, if not, then the document should be produced.

25. The magistrate conducted his review and reported on 3 September 2025 that 60 of the 100 documents had been improperly withheld, with 8 of them not being privileged at all and there being no adversity between the GP and the LPs in relation to 52 of them.

26. The GP filed an application with the Chancellor on 3 September 2025 to clarify whether the LPs had waived production of certain categories of documents. On 5 September 2025, the GP sought to raise a number of exceptions to production with the Chancellor, arguing that the magistrate had misapplied Delaware law regarding mutuality of interest. On 8 September 2025, the Chancellor rejected the GP's applications and ordered that the GP produce all 15,000 documents. I will adopt the GP's description of these documents as the Compelled Documents for convenience; it does not indicate that I accept Mr Ayres' argument that the GP should be treated as having been compelled to produce the documents in question for the purpose of deciding whether the GP has lost any privilege in the documents under Cayman law.

27. The GP did not appeal the Chancellor's decisions of 2 or 8 September 2025 and produced the Compelled Documents in the Delaware action over the period between 8-15 September 2025. The GP designated most of the Compelled Documents as either "Confidential Discovery Material" or "Highly Confidential Discovery Material" in accordance with the mechanism set out in the confidentiality stipulation. However, the GP did not seek any other protection from the Delaware

court regarding the Compelled Documents and their use in the Delaware proceedings, or in the Grand Court actions.

B.5 The LPs' application to appoint provisional liquidators

28. On 17 September 2025, the LPs filed a summons in the Grand Court winding up proceedings seeking to appoint provisional liquidators in respect of the Fund. The LPs relied on 10 documents from the Compelled Documents to support the relief sought by the summons. Walkers wrote on 21 September 2025 complaining about the LPs' intended reliance on those documents, asserting that they remained highly confidential and privileged, and could not be used in the Grand Court proceedings. They demanded that the LPs withdraw the summons.

29. Following further applications in Delaware, the LPs did withdraw the summons to appoint provisional liquidators, with some reluctance. Nevertheless, the LPs maintained that they were fully entitled to use the Compelled Documents within the Grand Court actions.

B.6 The GP's summonses

30. The GP filed the summonses on 2 October 2025 in response to the LPs' application to appoint provisional liquidators over the Fund. However, following the LPs' withdrawal of that summons, the GP continues to pursue the relief sought due to the wider implications for the use of the Compelled Documents within the Grand Court actions, and particularly at the trials.

31. The GP's summonses seek the following relief:

    31.1 a declaration that the 10 documents relied upon by the LPs to support their summons to appoint provisional liquidators are privileged under Cayman law;

    31.2 a declaration that the GP has not waived privilege in any of the Compelled Documents (including the 10 documents relied upon by the LPs) by their production in the Delaware action or by the Consent Orders dated 1 August 2025;

    31.3 a declaration that the LPs cannot use or rely in the Grand Court actions on any of the Compelled Documents which are privileged under Cayman law;

31.4 a declaration that the LPs cannot use or rely in the Grand Court actions on any privileged information that they have obtained from the Compelled Documents which are privileged under Cayman law;

31.5 return, destruction and/or redaction of the Compelled Documents by Campbells;

31.6 orders that certain of the evidence filed in respect of the GP's summonses be sealed;

31.7 if any relief is granted, then an order that the Grand Court trials be heard by a different judge; and

31.8 costs.

B.7 The evidence on the GP's summonses

32. The evidence relied upon in respect of the GP's summons in the writ action is set out below. In each case, the same or corresponding evidence was relied upon in the winding up proceedings:

32.1 the first affirmation and exhibit PB-1 of Patrik Blöchlinger, the LPs' Chief Legal Officer, affirmed on 22 September 2025 in support of the LPs' application to appoint provisional liquidators over the Fund, redacted to remove references to the content of the 10 documents;

32.2 the first affidavit and exhibit DF-1 of Daniel Finkelman, the GP's general counsel, sworn on 3 October 2025, also redacted to remove references to the content of the 10 documents;

32.3 the second affirmation and exhibit PB-2 of Patrik Blöchlinger affirmed on 4 November 2025; and

32.4 the second affidavit and exhibit DF-2 of Daniel Finkelman, the GP's general counsel, sworn on 17 November 2025, again redacted in certain respects.

33. Shortly before the hearing of the GP's summonses on 28 November 2025, the parties agreed that they should each be permitted to adduce some further evidence of recent developments in the Delaware proceedings. That further evidence was put before me in the following forms:

33.1 the second affidavit and exhibit JF-2 of Jordie Fienberg, an attorney at Campbells, sworn on 25 November 2025; and

33.2 the signed approved draft affidavit and exhibit AB-1 of Andrew Berdon, the lead partner at Quinn Emanuel Urquhart & Sullivan, the GP's primary on-shore attorneys, dated 27 November 2025.

34. Mr Fienberg's evidence was sworn: (a) to support the LPs' case that the GP has lost any privilege in respect of four documents that are referred to in the publicly filed version of the LPs' post-trial brief in the Delaware action; (b) to put forward that the GP's attorneys had had the opportunity to request redactions to the publicly filed version of the LPs' post-trial brief but did not do so; and (c) to state that Mr Berdon had referred to and made submissions on one of the documents during his own oral closing arguments in Delaware, implicitly confirming that the GP has waived any privilege or no longer relies upon privilege in relation to those documents.

35. Mr Berdon's signed approved draft affidavit dated 27 November 2025 was prepared to answer Mr Fienberg's evidence and to argue that the LPs had breached the confidentiality stipulation embodied in the order of the Delaware Court dated 21 July 2025 and other sealing rulings of Chancellor McCormick by referring to the four documents in the public version of its post-trial brief. It also made other allegations regarding the LPs' conduct in relation to the Delaware proceedings. Mr Berdon swore his affidavit in the same form as his signed approved draft on 2 December 2025. I will therefore refer to it in this judgment as his affidavit, although it was in unsworn form before me on 28 November 2025.

C. The parties' positions on the GP's summonses

C.1 The GP's arguments

36. Mr Ayres commenced his oral submissions by stating that the GP is no longer seeking the relief in paragraph 1(a) of the GP's summonses, namely a declaration that the 10 documents that the LPs had sought to rely upon in support of their application to appoint provisional liquidators are privileged. He says that the focus of the GP's summonses has shifted as a result of the LPs abandoning their application to appoint provisional liquidators. Instead, the GP only seeks a declaration that it has not waived privilege under Cayman law or lost confidentiality in respect of the Compelled Documents as against the LPs, whether by their production to the LPs in Delaware or by the Consent Orders dated 1 August 2025 in the Grand Court actions, and consequential relief. Mr

Ayres argues that any question whether particular documents are privileged should be determined on another occasion, once the GP has carried out a privilege review of the Compelled Documents applying Cayman law. By taking this position, the GP seeks to avoid having to deal with the third of the LPs' arguments, which I summarise in the following section of this judgment.

37. Mr Ayres summarises the GP's case as being that there has been no waiver of privilege under Cayman law in respect of the Compelled Documents, and that the limited loss of confidentiality resulting from the production of the Compelled Documents does not prevent the GP from continuing to assert privilege against the LPs. He argues that:

37.1 The issues raised by the GP's summonses are governed by Cayman law, as the law of the forum: *Primeo Fund v Bank of Bermuda* [2016] 2 CILR 353 at [6]-[9].

37.2 Privilege under Cayman law has not been lost:

(a) the fact that privilege may have been lost in another jurisdiction does not affect whether it applies under Cayman law: *Thanki on Privilege* at 5.42; citing *Bourns v Raychem* [1999] 3 All ER 154 and [1999] FSR 641, per Aldous LJ at 167;

(b) because the Compelled Documents were produced pursuant to an order of the Delaware court, their production does not have the necessary voluntary character to give rise to a waiver of privilege under Cayman law: *British American Tobacco v United States* [2004] EWCA Civ 1064, per Mummery at [35];

(c) properly construed, the 1 August 2025 Consent Orders do not amount to any waiver of privilege or consent to the use of the Compelled Documents in the Grand Court actions;

(d) the GP's position on the effect of the Consent Orders is supported by the surrounding context, in particular the terms of the draft discovery protocol; and

(e) the position was made clear by the GP's revisions to the draft discovery protocol on 12 September 2025.

37.3 The LPs' case that any confidentiality regarding the Compelled Documents has been lost is misconceived. But, if there were any loss of confidentiality in respect of the Compelled Documents, then it was only as regards the LPs, or their legal advisors only for documents marked "Highly Confidential Discovery Material", and does not prevent the GP from asserting privilege under Cayman law against the LPs.

37.4 In relation to the four Compelled Documents that are referenced by the LPs in the publicly filed version of their post-trial brief in Delaware, and the Compelled Documents referred to by the GP, Mr Ayres submitted orally, based on Mr Berdon's affidavit that:

(a) the LPs have wrongfully breached the confidentiality stipulation in the Delaware proceedings and should not be permitted to rely upon their own breaches of privilege and confidentiality in Delaware to argue before the Grand Court that the GP has lost the ability to claim privilege in relation to those documents under Cayman law; and

(b) any references to the four Compelled Documents by the GP in the GP's own post-trial brief was inadvertent and is in the course of being removed, and therefore should not be treated as supporting a conclusion that the GP has waived privilege or confidentiality.

C.2 The LPs' response

38. Mr Scott's argument on behalf of the LPs is that both the Delaware confidentiality stipulation and the Consent Orders permit the LPs to use the Compelled Documents in the Grand Court actions.

39. Mr Scott complains that because of the GP's last-minute abandonment of its claim for a declaration that the 10 documents relied on by LPs on their application to appoint provisional liquidators are privileged, there is no remaining foundation for the GP's application to prevent the LPs from deploying those documents.

40. In addition, Mr Scott argues that the GP could never assert privilege over any of the Compelled Documents against the LPs. He says that the GP's position is that it obtained legal advice on behalf of the Fund in the period up to 15 May 2025 and paid for it, properly, from Fund assets. He says that the LPs do not accept that factual case: but having adopted this position, the GP cannot properly assert any privilege in documents containing such legal advice, including the Compelled Documents, against the LPs. That is because any privilege would be that of the Fund rather than the GP personally, and the Fund includes the LPs as members. The LPs are therefore entitled to see documents for which they have paid or are to be treated as having paid. Mr Scott says that the position would be otherwise only if the GP could show that it obtained and paid for the relevant legal advice in its personal capacity, but that is not the GP's case.

41. Even if the Compelled Documents might be privileged as regards other persons, Mr Scott says that they cannot be privileged against the LPs following their production in the Delaware proceedings and applying the confidentiality stipulation and the Consent Orders. The LPs should therefore be able to deploy the Compelled Documents at trial subject only to making appropriate arrangements to sit in camera as necessary where documents designated as Confidential Discovery Material or Highly Confidential Discovery Material are being discussed.

42. Mr Scott argues that the issue for determination on the GP's summonses is not whether the Compelled Documents are privileged, which Mr Ayres has conceded the GP is not arguing now, but whether the GP can properly prevent the LPs under Cayman law from deploying the Compelled Documents in the Grand Court actions. He says that this raises three questions:

    42.1 can the GP show that the Compelled Documents are privileged – which the GP is not willing or able to prove now;

    42.2 can the GP show that it personally is the beneficiary of the privilege, and not the Fund – which would require the GP to argue the opposite of the factual case that it puts forward regarding the circumstances in which any privileged Compelled Documents were created; and

    42.3 did the LPs receive the Compelled Documents subject to an equitable duty of confidence that prevents use of the documents – which the GP cannot prove given the circumstances in which the Compelled Documents were produced in Delaware.

43. As to the third issue, Mr Scott identified the relevant circumstances of production as being that the Compelled Documents were produced:

    43.1 pursuant to the confidentiality stipulation, which expressly provides that they can be used in the Grand Court actions;

    43.2 in the context of the Consent Orders that expressly permit documents produced in the Delaware proceedings to be used in the Grand Court actions;

    43.3 following the contested Motion to Compel, as a result of which the Delaware court determined that the GP could not assert privilege in respect of the Compelled Documents; and

43.4 without the GP seeking to appeal the decision of Chancellor McCormick or to obtain any order from the Chancellor limiting or preventing the use of the Compelled Documents in the Grand Court actions.

44. In addition, Mr Scott complains that the GP is seeking to "kick the can" of determining the privilege status of the Compelled Documents with a view to disrupting or delaying progress towards the trials, and preventing the trials from proceeding on 12 January 2026, as ordered. Mr Scott says that this is consistent with the GP's previous attempts to derail the trials.

D. Analysis

D.1 The applicable law

45. I accept the general propositions of law advanced by Mr Ayres that privilege is to be determined according to the law of the forum and that there are strong public policy considerations underpinning the availability of legal professional privilege. In *R v Derby Magistrates' Court, ex p. B* [1996] AC 487 at 507, Lord Taylor described legal professional privilege as:

> *"[…] much more than an ordinary rule of evidence […] It is a fundamental condition on which the administration of justice as a whole rests."*

46. I also accept Mr Ayres' submission that the rationales for legal professional privilege are the twin public policies of the promotion of the rule of law and facilitating access to justice: *Three Rivers District Council v Bank of England (No 6)* [2005] 1 AC 610 per Lord Scott at [34].

47. I agree with Mr Ayres that the loss of privilege in another forum does not necessarily prevent privilege being asserted in proceedings before the Grand Court. Finally, I accept that if a party is compelled to give disclosure of documents in another forum, that does not necessarily result in a voluntary waiver of privilege, so that the party may still be able to rely on privilege in other contexts.

D.2 The effect of the confidentiality stipulation in Delaware

48. In my judgment, the answer to the dispute between the parties is provided by the terms of the confidentiality stipulation, which was made an order of the Delaware court on 21 July 2025, and the Consent Orders made by this Court dated 1 August 2025.

49. Paragraph 1 of the confidentiality stipulation defines "Discovery Material" to cover a wide range of documents of various kinds, including deposition testimony, exhibits and transcripts, responses to requests for admissions and to interrogatories, and discovery provided within the Delaware proceedings.

50. Paragraph 1 includes definitions of two sub-categories of Discovery Material, namely "Confidential Discovery Material" and "Highly Confidential Discovery Material". The definition of Confidential Discovery Material is Discovery Material that contains non-public, confidential, personal, business, strategic, proprietary or commercially sensitive information, which has not become part of the public record. It therefore requires that the document in question retains an element of confidentiality. Highly Confidential Discovery Material takes the concept one step further in that the designation is available in respect of Confidential Discovery Material that, if disclosed other than subject to the requirements of the confidentiality stipulation, is substantially likely, in the good faith and reasonable belief of the person producing the document, to cause injury to them.

51. In summary, paragraph 7 of the confidentiality stipulation provides that Confidential Discovery Material can be shared with the parties and their internal management involved in conducting the litigation; their attorneys-at-law and service providers assisting with the conduct of the litigation; factual and expert witnesses, but only to the extent necessary for them to give their evidence; persons already familiar with the content of the document, whether as author, addressee, recipient, custodian etc; court staff; mediators etc; and others explicitly authorised by the Delaware court. Implicitly, Confidential Discovery Material cannot be shared publicly.

52. Paragraph 8 of the confidentiality stipulation addresses Highly Confidential Discovery Material. It further limits the dissemination allowed by paragraph 7 of the confidentiality stipulation by excluding the parties themselves and their internal management (other than in-house counsel) from the persons who may view the material.

53. The effect of the confidentiality stipulation in relation to Confidential Discovery Material and Highly Confidential Discovery Material generally is therefore to preserve, so far as reasonably possible and consistently with the proper resolution of the Delaware proceedings, the existing confidentiality in such materials. This is subject to the rider ordered by Chancellor McCormick when she made the

confidentiality stipulation an order of the Delaware court, namely that to the extent that there is any conflict between the confidentiality stipulation and Court of Chancery Rule 5.1, Rule 5.1 shall take precedence.

54. Paragraph 4 of the confidentiality stipulation provides, so far as relevant, as follows:

> *"4. Confidential Discovery Material and Highly Confidential Discovery Material can only be used for purposes of this Litigation and cannot be used for any other purpose […]. Notwithstanding anything to the contrary in this Stipulation, and without prejudice to any party's discovery obligations in the Cayman Actions (as defined below), any party may use Confidential Discovery Material and Highly Confidential Discovery Material, including deposition transcripts designated as Confidential or Highly Confidential, in the proceedings pending before the Financial Services Division of the Grand Court of the Cayman Islands […] Cause No. FSD 146 of 2025, and […] Cause No. FSD 151 of 2025 […] so long as such party uses reasonable efforts to obtain confidentiality protections in the Cayman Action that are substantially equivalent to those in the Stipulation..[…]"*

55. The effect of paragraph 4 of the confidentiality stipulation is therefore that all Discovery Material, including Confidential Discovery Material and Highly Confidential Discovery Material, can be used within the Grand Court proceedings provided that the parties use reasonable efforts to obtain similar confidentiality protections as those which apply in Delaware under the confidentiality stipulation.

56. Notably, paragraph 18 of the confidentiality stipulation expressly records that:

> *"18. Entering into this Stipulation, producing or receiving Discovery Material (regardless of its designation), agreeing to produce or receive Discovery Material (regardless of its designation), or otherwise complying with the terms of this Stipulation, does not:*
>
> *a. Prejudice any right of any Party to (i) seek production of documents or information; (ii) object to the production of documents or information; […]*
>
> *[…]*
>
> *e. Operate as a waiver of any Privilege."*

Thus, the confidentiality stipulation does not affect the ability of the parties to pursue disputes before the Chancellor as to the adequacy of the discovery provided in Delaware and to assert privilege in the Delaware action over particular documents, as occurred in respect of the Compelled Documents.

57. In these circumstances, in my judgment, at the time that they agreed the terms of the confidentiality stipulation on 21 July 2025, the parties must have proceeded on the basis that any issues of privilege in respect of discovery in Delaware would be raised before and decided by the Delaware court.

D.3 The effect of the Grand Court Consent Orders

58. To recap, it was at the hearing before the Grand Court on 1 August 2025 that the parties indicated that they had agreed directions in principle leading to a trial commencing on 12 January 2026. This was two days after the GP had claimed privilege in Delaware in respect of the Compelled Documents. When addressing the Court on the withdrawal of the GP's summonses to stay the Grand Court proceedings and in respect of the agreement reached as to directions, Ms Prevezer stated (at page 60, line 9 of the transcript):

> *"[…] the agreements being reached by the parties, is that we will file a defence to the petition by 20 August, and we can draw up an order for Your Lordship that the discovery in Delaware stands as the discovery in Cayman, I think that gets moving on 13 August, that any additional discovery requests, all requests have to be made by 3 September and delivered by 24 September […]"*

59. The draft consent orders were prepared in the period between 4 and 20 August 2025, and the Consent Orders were finalised on 20 August 2025, although dated 1 August 2025. Throughout this period, the GP and the LPs were well aware that the GP was seeking to claim privilege in Delaware in respect of the Compelled Documents, and for most of this period they also knew that the LPs were challenging that claim. This is relevant background context.

60. So far as it addresses discovery, the Consent Order in the writ action is in the following terms:

> *"3. Nothing in this Order shall vary or modify any existing rights of the parties to demand, receive or inspect documents.*
>
> *4. The parties shall give discovery in accordance with GCR O.24, as modified by this Order.*
>
> *5. The following documents from the proceedings with case no. 2025-0607-KSJM before the Court of Chancery in the State of Delaware ("the Delaware Proceedings") shall be deemed to have been disclosed in this cause, shall be admissible and may be relied upon at trial:*
>
> *a) all documentary discovery given by the Plaintiffs and the Defendant;*
>
> *b) deposition testimony, exhibits and transcripts;*
>
> *c) responses to written discovery requests;*
>
> *d) responses to interrogatories; and*
>
> *e) responses to requests for admissions.*
>
> *6. By 4:00 pm on 5 September 2025, the parties may request discovery and/or inspection of any additional categories of discoverable documents that have not been disclosed in the Delaware Proceedings. For the avoidance of doubt, these requests may include requests for discovery and inspection of documents that were withheld in the Delaware Proceedings for reasons that would not justify their withholding from discovery and inspection in the Cayman Islands.*

> 7. *By 4:00 pm on 26 September 2025, the parties shall exchange Lists of Documents and shall give inspection contemporaneously in accordance with the terms of a discovery protocol to be agreed by the parties.*
> 8. *Documents disclosed in FSD 151 of 2025 (JAJ) shall be deemed also to have been disclosed and to be admissible in this cause and vice versa.*
> 9. *By 4:00 pm on 3 November 2025 any party requiring inspection of a document in its original form shall give notice to the disclosing party and the disclosing party shall make such document available for inspection at the offices of its Cayman Islands' attorneys (or such other agreed place) within 21 days of such notice (or at such later time as is agreed).*
> 10. *Subject to GCR O.24, r.22 and to paragraph 8 of this Order, all documents disclosed or deemed to be disclosed in this cause shall be subject to the implied undertaking of confidentiality."*

The paragraphs of the Consent Order in the winding up proceedings concerning discovery mirror these paragraphs. The date when exchange of Lists of Documents was due was subsequently extended by the parties by consent to 30 October 2025.

D.4 The discussions regarding the draft discovery protocol

61. The origin of the wording in paragraph 5 of the Consent Order set out above, that the listed items from the Delaware action *"shall be deemed to have been disclosed in this cause, shall be admissible and may be relied upon at trial"*, is a letter from Walkers dated 17 July 2025. Walkers' letter was written against the background of the draft discovery protocol circulated by Campbells LLP on 4 July 2025, but which the parties appear thereafter largely to have ignored. The last sentence of the extract from Walkers' letter set out below makes clear that Walkers' letter was drafted with the impending agreement of the confidentiality stipulation in Delaware well in mind. Walkers said in their letter dated 17 July 2025:

> *"(b) Our client proposes that the parties agree that the discovery made in the Delaware Proceedings stand as the discovery in both the Writ Action and Petition. […]*
>
> *(c) Following completion of discovery in the Delaware Proceedings, we would propose that the parties have the opportunity to request discovery of specific categories of document in the Writ Action and the Petition, to the extent that the parties consider that there are any relevant documents for those proceedings that have not been previously discovered in the Delaware Proceedings. This would be an efficient and cost-effective way of dealing with discovery, where otherwise the parties would be required to re-produce many of the same documents that have previously been produced in the Delaware Proceedings. With that in mind, we understand that the parties' US counsel are currently liaising in relation to the terms of a confidentiality protocol which would, inter alia, allow the parties to deploy documents discovered in the Delaware Proceedings in each of the Writ Action and the Petition."*

62. Campbells replied on 23 July 2025, two days after the confidentiality stipulation was agreed and approved by the Chancellor in Delaware, that Walkers' proposal was agreed in principle, with certain reservations. Walkers wrote back on 25 July 2025 that:

> *"(a) we agree that documents that have been discovered in the Delaware Proceedings be immediately deemed as discovered in the Writ Action and Winding Up Petition on 13 August 2025. This will mean that neither party is required to produce these documents or request inspection of the same;*
>
> *(b) with regard to the confidentiality provisions in your proposed discovery protocol (enclosed with your letter of 4 July 2025), whilst we consider the parties still need to agree the exact terms of a discovery protocol, we agree that the parties should be able to agree terms regarding confidentiality within that protocol that meet the condition in the Delaware Protocol;*
>
> *(c) we propose that the parties should endeavour to agree a discovery protocol (including terms as to confidentiality), although we do not think this requires a formal Court order. We are content to begin by providing our comments on your draft protocol following the hearing on 1 August 2025, in the event that the proceedings are not stayed;*
>
> *(d) we agree that where a document has been withheld from discovery and inspection in the Delaware Proceedings for reasons that would not justify the withholding of discovery and inspection in the Cayman Islands, it will be open to one of the parties to seek production/inspection of that document in the Writ Action or Winding Up Petition;*
>
> *(e) we consider that the parties' requests for additional categories of document will need to be subject to a deadline in order to ensure the other party has sufficient time to search for and review those documents. […]*
>
> *(f) we consider that it will be most practical, with regard to lists and inspection of documents, that the parties agree that they be permitted to file identical lists of documents in respect of the two sets of proceedings given that many documents will be relevant to both of the proceedings and it would be inefficient, given the tight timeframe for discovery, for the parties to spend time determining whether some documents be disclosed in just one of the proceedings or both of them;"*

63. Walkers do not indicate in their letters of 17 or 25 July 2025 that they are asserting or intending to assert or reserve any right of the GP to withhold documents in the Grand Court actions where those documents have been produced in the Delaware proceedings; nor do they suggest that the parties should be entitled to raise issues of privilege under Cayman law in respect of documents disclosed in the Delaware proceedings and *"deemed as discovered"* in the Grand Court actions as a result. This was the position going into the Grand Court hearing on 1 August 2025.

64. Nothing was said in Court on 1 August 2025 by Ms Prevezer on behalf of the GP to indicate that there was any intention on the GP's part to qualify the position regarding the status of and use of the Delaware discovery within the Grand Court proceedings, as set out in Walkers' letter dated 25 July 2025. To the contrary, her position, as recorded in the agreed transcript of the hearing, was that *"the*

discovery in Delaware stands as the discovery in Cayman", reflecting Walkers' statement in the same terms in their letter dated 17 July 2025.

65. The next working day following the hearing on 1 August 2025 was 4 August 2025. On that day, Campbells sent a draft consent order to Walkers for their comments, which included the deeming wording regarding the Delaware discovery that I have set out earlier in this judgment and which appears again in the following paragraph of this judgment. That wording remained unchanged through the various drafts of the Consent Orders that followed and was carried into the final version of the Consent Orders.

66. The Consent Orders distinguish between: (a) discovery which has been given in the Delaware proceedings, which *"shall be deemed to have been disclosed in this cause, shall be admissible and may be relied upon at trial"*; and (b) additional discoverable documents relevant to the Grand Court actions, for which detailed mechanisms are set out in the draft discovery protocol concerning their handling and management. It is clear to me from the terms of the documents that at the time that the Consent Orders were prepared, finalised and made by the Court, the parties intended, as the Consent Orders state, that documents in the specified classes that were disclosed in Delaware would be deemed to have been disclosed in each of the Grand Court actions, would be admissible and could be relied upon at the trials in the Grand Court actions. There is no qualification in the Consent Orders to allow the parties to raise issues of privilege under Cayman law in respect of the Delaware discovery material. This is to be contrasted with the position regarding additional discovery that would be made specifically within the Grand Court proceedings only, where the parties were expressly permitted to raise issues of privilege.

67. Objectively, this makes good sense. The Delaware action concerns the GP's claim that the LPs are in repudiatory breach of the LPA; whereas the issues in the winding up proceedings are wider, including whether the LPs can show a *bona fide* basis for their assertion that they have lost all trust and confidence in Dr Harrison and, through him, in the GP as general partner of the Fund. This will necessarily require a review of the GP's management of the Fund, which is not necessary in the Delaware action. Treating the discovery in Delaware as disclosed and admissible in the Grand Court proceedings has the obvious benefit of saving time, effort and cost by avoiding the need to repeat the discovery process in relation to the Delaware discovery documents and applying GCR O.24 only

in relation to additional discovery required for the Grand Court proceedings. It is also consistent with the parties' desire to advance the procedural progress of the Grand Court actions as rapidly as reasonably possible to achieve the trial date of 12 January 2026 in that it significantly reduces the work required on discovery and hence the time to be taken by that process.

D.5 The GP's arguments that it has not waived privilege under Cayman law for the Grand Court proceedings

68. Mr Ayres seeks to row back on the position regarding the effect of the Consent Orders on two grounds. The first is by reference to the initial draft discovery protocol circulated by Campbells on 4 July 2025. He draws my attention to paragraph 30 of that draft, which follows a heading *"Privilege"* and is in the following terms:

> *"30. Nothing in this Protocol will prevent a Party from withholding documents from inspection by the other Parties on the basis of any applicable Cayman Islands law."*

Mr Ayres argues that this was still the only draft discovery protocol in existence throughout the period up to 2 September 2025 and, he submits, it indicates that the parties intended throughout that period that privilege under Cayman law could still be raised in respect of documents disclosed in Delaware and brought into the Grand Court actions.

69. I do not accept that submission. I consider that the correspondence between Walkers and Campbells in July 2025 that I have already set out demonstrates that the parties had moved on from the approach of Campbells' draft discovery protocol by no later than 25 July 2025 and before the Consent Orders were made. The draft discovery protocol circulated by Campbells is a relatively basic document that proceeds on the basis that all discovery will take place under Cayman law and in accordance with GCR O.24. There is no evidence of any discussion of the content of the draft discovery protocol before the hearing on 1 August 2025. Instead, the correspondence proceeds on the basis that there will be the bifurcated approach to discovery in Delaware and in the Cayman Islands that I have described. I therefore consider that, by no later than 25 July 2025, the provisions in Campbells' draft discovery protocol regarding privilege had been superseded as regards the treatment of any Delaware discovery materials and the draft discovery protocol is not relevant to the determination of the proper effect of the Consent Orders in that respect.

70. The second ground on which Mr Ayres argues that the GP is still able to raise issues of privilege in respect of discovery in Delaware is based on the revisions to Walkers' draft discovery protocol which Walkers proposed on 12 September 2025. These seek to introduce the ability of the parties to raise privilege under Cayman law in respect of documents disclosed in Delaware, whatever their treatment in Delaware. Mr Ayres argues that the LPs cannot conceivably have relied upon any of the Compelled Documents by this date, because the Compelled Documents had only been produced starting from 8 September 2025, and so it is not unfair for the GP on 12 September 2025 to limit any waiver of privilege that had taken place. Mr Ayres relies on a judgment of the Hong Kong Court of Appeal to support the proposition that the GP could clarify or confirm the purpose for which the Compelled Documents were produced, and any limitations on that production, as late as 12 September 2025: *Citic Pacific Limited v Secretary for Justice* [2012] HKCA 153.

71. Citic was a company listed on the Hong Kong Stock Exchange. Following the financial crisis in 2008, Citic was under investigation by the Securities and Futures Commission in Hong Kong ("**the SFC**") as to the reasons why it had delayed publication of a substantial profit warning indicating it anticipated losses of HK $15 billion. Pursuant to a statutory notice, Citic provided the SFC with a number of documents including six documents that it asserted were subject to legal professional privilege, which was not disputed in the proceedings. Some weeks later, the SFC queried with Citic's solicitors the extent to which privilege in the documents had been waived. Citic's solicitors responded on 26 November 2008 that privileged was waived for the sole purpose of the SFC investigation.

72. In March 2009, the Hong Kong Police commenced a criminal investigation into Citic's conduct. Citic discovered that the SFC had provided copies of the privileged documents to the Hong Kong Ministry of Justice to obtain legal advice and that the Hong Kong police wished to view the privileged documents. Citic commenced the proceedings seeking orders for the return of the privileged documents on the basis that Citic had waived privilege for the limited purpose of the SFC investigation only and that the Ministry of Justice did not have lawful authority to retain them; and a declaration that, if the Ministry of Justice did have lawful authority to retain the documents, then the Ministry could not disclose them to any third party, including the Hong Kong Police.

73. The judge at first instance dismissed Citic's claim. He concluded that when Citic provided the documents to the SFC, it had not expressly or impliedly imposed any condition on that disclosure,

so that there was a full waiver of privilege by Citic. He also held that there was a *prima facie* case that the documents had been created to further a fraudulent scheme, and so they were not privileged for that reason in any event.

74. The Hong Kong Court of Appeal disagreed with the judge's decisions on both issues. The Court of Appeal carried out an extensive survey of the law on privilege to determine whether the concept of a partial waiver of privilege is part of the law of Hong Kong, which it concluded it is. Mr Ayres relies in particular on paragraph 76 of the judgment of Hartmann JA, with whom the other members of the Court of Appeal agreed, to support his argument that the GP was able on 12 September 2025 to limit the scope of its waiver of privilege in respect of the Compelled Documents, even though that was after production had taken place. Hartmann JA said:

> *"76. The solicitors' letter of 26 November 2008 was afforded little weight at first instance. On the evidence, however, there appears to be nothing to suggest that at about the time the letter was drafted Citic knew of any police investigation or had reason to believe that one was about to be launched and, regretting its earlier full waiver of privilege, was seeking to claw back at least some partial privilege in the documents in order to avoid them falling into the hands of the police. Citic's general counsel and the company's legal advisers may of course have had a change of heart concerning surrender of the documents to the SFC but there is nothing to suggest that. Accordingly, I must disagree with the judge at first instance. I am satisfied on the probabilities that the letter is not to be seen as a tactical device but as a simple statement of what Citic had always considered to be the basis upon which privilege in the documents had been waived several weeks earlier. As such, I am satisfied that the contents of the letter stating Citic's understanding that waiver of privilege had not been absolute must be given due weight."*

75. I do not accept Mr Ayres' analysis of ***Citic***. In my judgment, the Hong Kong Court of Appeal did not conclude that it is possible for a party subsequently to qualify the extent of a waiver of privilege that has already occurred. Instead, the Court of Appeal in paragraph 76 of its judgment found on the evidence and on a balance of probabilities that Citic had always intended that its waiver of privilege should be limited to the SFC. The relevance of the solicitors' subsequent letter was simply that it provided confirmatory evidence of Citic's intention *at the time* that the documents had been produced.

76. It is therefore necessary to consider the evidence in this case to determine whether on 12 September 2025 the GP was expressing a position it had always taken or was seeking to adopt a new position regarding privilege.

77. I have already set out the relevant discussions between the GP and the LPs before 1 August 2025. On 21 August 2025, Campbells chased Walkers for their input on the draft discovery protocol and re-attached a copy of the draft that they had circulated on 4 July 2025. Walkers responded to Campbells on 22 August 2025. Their letter included the following:

> *"In circumstances where the documents from the Delaware proceedings will be deemed to have been disclosed in the Cayman proceedings, we consider that the Cayman discovery protocol should, as far as possible […] align with the protocols agreed in Delaware […].*
>
> *We appreciate that the draft protocol you shared reflects certain alignment with the Delaware protocols. However, we have identified a few material differences that we consider need to be reconciled with the Delaware Protocols to ensure the Cayman discovery properly adopts, and does not cut across, the Delaware discovery and the provisions of the Delaware Protocols, but at the same time is compliant with Cayman Islands law. In particular, we are concerned to ensure that, at the very least, (i) production format, (ii) privilege claims and logs, and (iii) treatment of confidential documents are as consistent as possible between the Delaware and Cayman proceedings. If we do not do so, then unnecessary costs will likely be incurred and there may be confusion and uncertainty as a result of the inconsistency.*
>
> *[…]*
>
> *Additionally, we consider that the Cayman protocol should include the parties' agreement(s) concerning the practical considerations relating to how the Delaware discovery will be dealt with in Cayman – for example, whether the Delaware discovery is required to be re-listed and re-produced and whether the parties in Cayman adopt the bates numbering used in Delaware, etc."*

78. Walkers' letter does not express anywhere any intention that either party should be able to raise issues of privilege under Cayman law in respect of documents disclosed in Delaware and therefore deemed to be disclosed in the Grand Court actions. To the contrary, Walkers' letter expressly indicates that the GP's intention was *"the Cayman discovery properly adopts, and does not cut across, the Delaware discovery"* and that the treatment of privilege and confidentiality was to be *"as consistent as possible between the Delaware and Cayman proceedings"*, all to avoid unnecessary costs, confusion and uncertainty. Such statements contradict the suggestion that the GP intended at this time that the parties could raise issues of privilege under Cayman law in respect of documents disclosed in the Delaware proceedings and brought into the Grand Court actions by that route.

79. Walkers provided their own draft discovery protocol on behalf of the GP on 2 September 2025. This adopts the bifurcated approach to discovery, differentiating between Delaware discovery, which automatically comes into the Grand Court actions, and additional discovery for the Grand Court actions, which was not within the discovery in Delaware. Paragraph 3 of the draft discovery protocol states:

> *"3. Pursuant to the Directions Orders, the Parties are to give discovery in accordance with Order 24 of the Grand Court Rules (2023 Revision) (the "GCR"), as modified by the Directions Orders, including, inter alia, that:*
>
> *(a) all documentary discovery given by the Parties in proceedings with case no. 2025-0607-KSJM before the Court of Chancery in the State of Delaware (the "Delaware Proceedings") shall be deemed to have been disclosed in the Cayman Proceedings, shall be admissible and may be relied upon at trial (see paragraph 5 of the Directions Order in the Writ Proceedings and paragraph 6 of the Directions Order in the Petition Proceedings (the "Delaware Discovery")); […]"*

80. Part I of the draft discovery protocol then addresses the treatment of the Delaware discovery while Part II addresses additional Cayman discovery. Part I provides:

> *"7. The Parties agree, pursuant to the terms of the Discovery Orders, that the Delaware Discovery is to be deemed to have been discovered in the Cayman Proceedings and is admissible and may be relied upon at trial in the Cayman Proceedings.*
>
> *8. Accordingly, the Parties shall not be required to:*
>
> *(a) include the Delaware Discovery in the Parties' respective List of Documents to be exchanged in the Cayman Proceedings;*
>
> *(b) re-produce any documents already disclosed as part of the Delaware Discovery; and*
>
> *(c) prepare any separate privilege log beyond those already provided in the Delaware Proceedings, save for any documents solely subject to discovery in the Cayman Proceedings, over which any party claims privilege for the purposes of the Cayman Proceedings.*
>
> *[…]*
>
> *11. The Delaware Discovery shall not be subject to the requirements of this Protocol and the following Delaware Protocols (and any further agreements between the Parties) shall continue to govern the Delaware Discovery […]"*

81. The GP's draft discovery protocol therefore proceeds on the basis that all discovery from Delaware is to be admissible and can be used at the trial of the Grand Court actions. The GP's draft discovery protocol contemplates that discovery for the Grand Court proceedings may be wider than discovery in the Delaware proceedings and, to that extent, provides in paragraph 8(c) for the possibility that privilege might be asserted over documents disclosed in the Grand Court proceedings only.

82. In addition to the broad deeming wording in paragraph 7 of the draft discovery protocol that I have already considered in relation to the Consent Orders, there are additional features of these paragraphs of the GP's draft discovery protocol that I consider to be inconsistent with an intention on the part of the GP that the parties would be able to raise issues of privilege under Cayman law in respect of the Delaware discovery. The first is that the parties are not required to include the Delaware discovery in their Lists of Documents. The List of Documents is where any claim to privilege

under Cayman law would be made, by including such documents within Schedule 1, part 2. By excluding the requirement to list the Delaware discovery, it follows that the GP was also excluding the parties' ability to identify documents within the Delaware discovery in respect of which they wish to claim privilege. Secondly, the exclusion of a requirement to prepare any separate privilege log beyond those provided in Delaware, except for the additional Cayman discovery, contradicts the suggestion that the GP intended at this time that privilege under Cayman law should be a live issue in respect of the Delaware discovery.

83. Part I of the draft discovery protocol continues relevantly in paragraphs 16 and 17, which state:

> *"16. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged (subject to any waiver of privilege or a finding against a claim of privilege by the Delaware court), and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings.*
>
> *17. If a document the subject of a claim of privilege in the Delaware Proceedings is inadvertently discovered in the Cayman Proceedings, the inadvertent production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege […]"*

84. It is clear from these paragraphs that on 2 September 2025:

84.1 the GP's intention was that issues of privilege as regards documents that were disclosed in Delaware were to be determined under Delaware law – hence the provision in paragraph 16 of the draft discovery protocol that privileged documents would carry over that status into the Grand Court actions; and

84.2 a finding by the Delaware court against a claim of privilege would also be carried over to the Grand Court to determine the privilege status of Delaware disclosed documents.

It is significant, in my view, that the GP's draft discovery protocol did not make any provision for the parties to be able to claim privilege under Cayman law in respect of documents disclosed in Delaware and brought into the Grand Court actions as a result. This omission is inconsistent with Mr Ayres' suggestion that that was the GP's intention at this time.

85. Campbells provided their comments on Walkers' draft discovery protocol on 4 September 2025. Campbells did not suggest any changes to paragraphs 3, 7, 8 and 11, which are therefore to be taken as agreed. Due to some other suggested revisions, paragraphs 16 and 17 in Walkers' draft protocol became paragraphs 15 and 16 in Campbells' response. Campbells did not suggest any revisions to

(new) paragraph 16 but did propose some relevant changes to (new) paragraph 15, as follows, with revisions from the previous version shown by underlining and strike-out:

> *"~~16.~~15. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged ~~(subject to any~~ , unless there is a waiver of privilege and/or a finding against a claim of privilege by the Delaware court and/or a finding against a claim of privilege by the Court~~)~~, and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings. Any dispute as to whether a document is privileged shall be resolved by the Court in accordance with Cayman Islands law."*

By their proposed amendment to this paragraph, Campbells were contemplating that documents that are privileged for the purposes of the proceedings in Delaware might nonetheless be determined by the Grand Court not to be privileged under Cayman law. However, they were not suggesting that documents that are not privileged in Delaware might be ordered to be privileged under Cayman law for the purpose of the Grand Court proceedings. Thus, Campbells' proposed revisions are consistent with the overall position regarding privilege that I have already described.

86. There was then a short hiatus whilst the GP's claim to privilege over the Compelled Documents was being considered in Delaware by Chancellor McCormick and the special discovery master. It was only following the decision in Delaware against the GP's ability to claim privilege in respect of the Compelled Documents that the GP first sought to introduce the issue of privilege under Cayman law in the draft discovery protocol as regards the Delaware discovery. Walkers circulated a further revised draft of the discovery protocol on 12 September 2025. This draft also did not make any changes to paragraphs 3, 7 and 8, but it did seek to make a significant change to paragraph 15 (renumbered as paragraph 16 again), with the revisions from the previous version once more shown by underlining and strike-out:

> *"~~15.~~16. Any documents subject to a claim of privilege in the Delaware Proceedings shall maintain their designation as privileged, unless there is a waiver of privilege and/or a finding against a claim of privilege by the Delaware court and/or a finding against a claim of privilege by the Court)~~,~~. For the avoidance of doubt, any Party may apply to the Court seeking that a document is privileged and shall not be relied upon notwithstanding the treatment of that document in Delaware. ~~and the Parties shall not be required to review such documents for Relevance in the Cayman Proceedings.~~ Any dispute as to whether a document is privileged shall be resolved by the Court in accordance with Cayman Islands law."*

87. This was clearly a fundamental change in the intended treatment of the Delaware discovery, which sought to reverse the effect of the Consent Orders. It also contradicts paragraph 3(a) of the draft

discovery protocol, which Walkers had originally drafted and had not sought to revise, and which was agreed by Campbells for the LPs. Unsurprisingly, Campbells' response on 25 September 2025 was to delete Walkers' proposed addition to paragraph 16 of the draft discovery protocol.

88. In my view, the further drafts of the discovery protocol that were circulated during October 2025 do not assist, as the difference between the parties regarding the treatment of the Delaware discovery had crystallised by then and the drafts simply record that there is disagreement between them.

89. I consider that it is clear from the correspondence and the various drafts of the discovery protocol, as well as the Consent Orders, that the GP did change its position on the question of privilege on or shortly before 12 September 2025. I find it did so as a direct response to the Chancellor's ruling in Delaware that the Compelled Documents were not privileged and would have to be disclosed in Delaware, and that the Compelled Documents would therefore automatically be admissible in and available to be used at the trials of the Grand Court actions unless the GP sought to put the privilege genie back into the bottle.

D.6 Did the LPs deliberately breach privilege and confidentiality in the public version of their post-trial brief in Delaware?

(a) The confidentiality stipulation

90. As I have already recorded, the definition of Discovery Material in the confidentiality stipulation is very broad. Paragraphs 2 and 3 of the confidentiality stipulation address the applicability of the confidentiality stipulation as follows:

> *"2. This Stipulation governs the handling of Discovery Material by or among any Party or non-Party to this Litigation, except to the extent Discovery Material is filed with the Court.*
>
> *3. This Stipulation does not govern the filing of Discovery Material with the Court. Only Court of Chancery Rule 5.1 governs the filing of Discovery Material with the Court."*

Paragraphs 2 and 3 therefore include an important carve out that the confidentiality stipulation does not apply where any document containing Discovery Material is filed with the Delaware court and that Court of Chancery Rule 5.1 will apply in that situation instead.

91. When approving the confidentiality stipulation and making it an order of the Delaware court on 21 July 2025, Chancellor McCormick additionally ordered:

"To the extent of any conflict between this order and Court of Chancery Rule 5.1, Rule 5.1 will control."

92. Thus, it appears from the provisions that I have set out that the handling of any document filed at court in Delaware, including post-trial briefs, is governed, not by the confidentiality stipulation, but by Court of Chancery Rule 5.1. This is reinforced by the Chancellor's order when she approved the confidentiality stipulation and made it an order of the Delaware court.

(b) Court of Chancery Rule 5.1

93. Mr Scott provided me with a copy of Court of Chancery Rule 5.1 during oral argument at the hearing on 28 November 2025. Court of Chancery Rule 5.1, so far as relevant, provides as follows:

> *"**(a) General Principles of Public Access.***
>
> *[…]*
>
> *(3) Papers filed with the Register in Chancery ("Filed Documents") must be available to the public, except as provided in this rule.*
>
> *[…]*
>
> ***(b) Confidential Information.***
>
> *(1) Public access to a Filed Document may be limited only if the Filed Document contains Confidential Information.*
>
> *[…]*
>
> ***(d) Making a Confidential Filing.***
>
> *(1) A person may make a Confidential Filing if the person believes that the paper contains Confidential Information.*
>
> *(2) A person must make a Confidential Filing if the person believes that another person would contend that the paper contains Confidential Information.*
>
> *[…]*
>
> ***(e) Notice of Confidential Filing.***
>
> *(1)* Obligation to Give Notice. *After making a Confidential Filing, the filer must use best efforts to give notice to any person who has designated information in the Confidential Filing as Confidential Information or who the filer believes could have a legitimate interest in designating information in the filing as Confidential Information.*
>
> *(2)* Notice to a Person Who Has Appeared. *If the person has appeared, the filer must provide the notice to the person's attorney […]*
>
> *[…]*
>
> *(4)* Contents of the Notice. *The notice must refer to this rule and include a proposed public version of each Confidential Filing for which a public version is required. The proposed public version may redact information that the filer believes constitutes Confidential Information or that the filer believes another person would contend constitutes Confidential Information. The notice must identify the date and time by which this rule requires the recipient of notice to identify any additional information for redaction.*
>
> *[…]*

> *(6)* Designating Confidential Information for Redaction in Response to Notice.
>
> *(A) Any recipient of notice may designate additional information for redaction if the person believes in good faith that the information qualifies as Confidential Information or that another person would contend that it qualifies as Confidential Information.*
>
> *(B) The recipient of notice must identify any additional information for redaction within the time period set by this rule.*
>
> *[…]*
>
> *(7)* Timing of Notice and Designation of Confidential Information for Redaction.
>
> *[…]*
>
> *(B) […] the filer should give notice contemporaneously with the Confidential Filing and must give notice not later than 3:00 p.m. two days after the filing. Any recipient must designate any additional information for redaction by 3:00 p.m. on the fifth day after the filing.*
>
> ***(f) Filing a Public Version.***
>
> *(1)* Public Version Required. *A public version is required for every Confidential Filing, except for an exhibit or lodged deposition.*
>
> *(2)* Timing of Public Version. *The filer must file a public version of every Confidential Filing that was the subject of a Rule 5.1(e) notice the day after the deadline for designating additional information for redaction. The public version must contain the redactions in the proposed public version and any additional information designated for redaction in response to the notice unless the filer and a person receiving notice agree to make fewer redactions."*

94. In the absence of evidence from an independent expert on Delaware law and practice, I am conscious that I should be cautious in interpreting Court of Chancery Rule 5.1. Nevertheless, the provisions of Rule 5.1(e) setting out the mechanism and timeline by which a litigant should take steps to redact confidential information contained in a proposed public filing and should give notice to other parties to allow them to make further redaction proposals are clear, simple and straightforward on their face, and are easy to understand. In short, the filer must give notice to the other parties at the same time as filing the document on a confidential basis, and the other parties have 5 days to respond with any further redaction requests (or to agree to omit redactions). The filer must then file a publicly accessible version of the document the following day.

(c) The GP's case that the LPs deliberately breached the confidentiality stipulation

95. The use of confidential discovery material in open court is addressed in paragraph 25 of the confidentiality stipulation as follows:

> *"25. If any Confidential Discovery Material or Highly Confidential Discovery Material is used in open court during any proceeding or introduced into evidence as a trial exhibit, the material loses its confidential status and becomes part of the public record, unless the*

> *Producing Person applies for and obtains an order from the Court specifically maintaining the confidential status of the material. Before any court proceeding where Confidential Discovery Material or Highly Confidential Discovery Material will be used, the Parties must confer in good faith on procedures to protect the confidentiality of any of the Confidential Discovery Material or Highly Confidential Discovery Material."*

96. In a section of his affidavit entitled *"Rigmora LPs' breach of Confidentiality Stipulation"*, Mr Berdon asserts:

> *"28. Notably absent from Fienberg 2 is that the fact that the Rigmora LPs inclusion of quotations or detailed descriptions of the Four Documents in their publicly filed post-trial brief was in breach of the parties' Confidentiality Stipulation and the Delaware Court's sealing rulings.*
>
> *29. As outlined above, in preparing public versions of post-trial submissions, the parties were expected to apply redactions consistent with the Delaware Court's sealing ruling. In other words, the onus to maintain the confidentiality of the documents which were designated Highly Confidential applies equally to both parties. Contrary to that position, the Rigmora LPs did not seek to redact the relevant portions of the public version of their post-trial brief and thereby breached the Confidentiality Stipulation.*
>
> *30. Although Quinn Emanuel did not, when reviewing the Rigmora LPs' post-trial brief, take notice of the relevant material and ask Rigmora's US counsel to apply the appropriate redactions, that oversight was entirely inadvertent and was a result of the extreme time pressure under which my firm was required to file its post-trial reply brief, which was due a mere 3 business days after receipt of the Rigmora LPs' PTRB (which was 64 pages in length).*
>
> *31. Having now become aware of this matter, Quinn Emanuel have written to the Rigmora LPs' US-counsel, Richards Layton & Finger, P.A. ("RLF") who serves as Delaware Counsel for Debevoise & Plimpton ("Debevoise"), on 26 November notifying them of the breach of the Confidentiality Stipulation and the Sealing Order and have requested that Debevoise promptly file a corrected public version of their post-trial brief with the offending passages redacted (the "**QE Email**") **[AB-1/1]**, […]"*

97. The email exhibited by Mr Berdon is from Ms Shannon Doughty, an associate in Quinn Emanuel's Wilmington office. It was sent at 6:03 pm on 26 November 2025 to a number of attorneys at Richards Layton & Finger LLP, who were acting for the LPs, and was sent or copied to attorneys at Quinn Emanuel and at Ross Aronstam & Moritz LLP acting for the GP but not, apparently, Mr Berdon. The email is in the following terms:

> *"Counsel:*
>
> *[…] it has come to our attention that when Rigmora filed the public version of its post-trial brief, it failed to redact certain portions of its brief that referred to or quoted ATP's Highly Confidential Documents that the Court had ordered at trial should be treated as 'under seal' and closed the Courtroom accordingly, specifically JX-2153, 2178, 2155, 2138. While we had originally hoped that this was just an oversight on behalf of Rigmora, it now appears that Rigmora is attempting to use their own failure to comply with the Court's ruling as justification to claim a waiver of privilege in the Cayman.*

> *The Court's sealing order is unambiguous and required Rigmora to shield ATP's Highly Confidential Information from public dissemination. ATP therefore requests that Rigmora remedy the erroneous disclosures in the public version of its post-trial brief by filing the attached corrected version in its place. […]"*

98. During oral argument on 28 November 2025, the LPs handed up a clip of *inter partes* correspondence relevant to the assertions made by Mr Berdon that I have set out and to Ms Doughty's email.

99. First is an email from Mr Zachary Greer, an associate at Richards Layton & Finger, the Delaware attorneys for the LPs, which was sent at 8:16 pm on 26 November 2025 in response to Ms Doughty's email sent 2 hours 13 minutes earlier. Despite its subject matter, timing and obvious relevance, this email was not discussed and nor was it exhibited by Mr Berdon when he approved and signed his affidavit and exhibit on 27 November 2025. Mr Greer's email appears to provide a complete answer to the complaints made in Ms Doughty's email that was exhibited by Mr Berdon. It states:

> *"Shannon*
>
> *ATP, after having the opportunity to propose redactions, expressly confirmed that it had no redactions to Defendant's Post-Trial Brief before it was filed publicly.*
>
> *In accordance with Court of Chancery Rule 5.1(e), on November 12, Defendants provided ATP with the opportunity to propose any redactions it had to Defendants' Post-Trial Brief which was filed under seal. In accordance with Rule 5.1, we let ATP know that it had until 3:00 PM ET on November 17 to propose any redactions it saw fit under the rule. Counsel for ATP responded on November 17 saying, 'I'll be sending a few redactions shortly. Apologies for the delay' See attached email thread. Defendants provided ATP with additional time and waited for confirmation as to its proposed redactions.*
>
> *On November 18, Plaintiff responded, 'Apologies for the delay, Plaintiff does not have any redactions.' See attached email thread. Later that day, Defendants filed a public version of their Post-Trial Brief as approved by ATP. Plaintiff has not raised this issue since, including during oral argument with the Court on November 21 (nor could it given that Defendants complied with Rule 5.1 and filed the public version of their brief in accordance with ATP's instructions and as required by Rule 5.1). ATP cannot now seek to seal Defendants' brief for perceived tactical gain in the litigation between the parties in the Cayman Islands. […]"*

100. The emails to which Mr Greer referred were also provided to me by the LPs. Again, none of these emails were discussed or exhibited by Mr Berdon when he approved and signed his affidavit and exhibit on 27 November 2025 despite their obvious relevance. They show the following:

100.1 At 2:53 pm on 12 November 2025, Mr Greer sent to a number of attorneys at Quinn Emanuel and Ross Aronstam & Moritz LLP (not apparently including Mr Berdon) a proposed public version of the LPs' post-trial brief. As required, Mr Greer stated that he was doing so pursuant to Court of Chancery Rule 5.1. He continued:

> *"If you wish to designate any information as confidential, please provide proposed redactions by November 17 at 3pm. If no additional information is designated for redaction, we will file the attached proposed public version on November 18."*

100.2 At 3:02 pm on 17 November 2025, after the time imposed by Court of Chancery Rule 5.1(e)(7)(B) and specified by Mr Greer for any response had expired, Morgan Harrison of Quinn Emanuel replied to Mr Greer's email, not copying other attorneys at Quinn Emanuel or Ross Aronstam & Moritz LLP, saying:

> *"Hi Zack*
> *I'll be sending a few redactions shortly. Apologies for the delay.*
> *Thank you*
> *Morgan"*

100.3 At 10:00 am on 18 November 2025 Ms Harrison replied again to Mr Greer's email of 12 November 2025, copying a number of attorneys at Quinn Emanuel and Ross Aronstam & Moritz LLP (but not apparently including Mr Berdon), as follows:

> *"Hi Zack*
> *Apologies for the delay. Plaintiff does not have any redactions.*
> *Thank you*
> *Morgan"*

These emails thus contradict the argument made in Ms Doughty's email and espoused by Mr Berdon in his affidavit that the LPs had acted wrongfully in including references to the four documents in the public version of their post-trial brief.

101. Mr Berdon's description of the GP's failure to request additional redactions in relation to the references to the four documents as being an *"oversight"* that was *"entirely inadvertent"*, and that it was due to Quinn Emanuel having only 3 business days to review the LPs' post-trial brief is very difficult to reconcile with the following points:

101.1 Court of Chancery Rule 5.1(e)(7)(B) provides a period of 5 days for any responsive requests for redaction, without limiting that period to business days, whatever the length of the document that requires review. Quinn Emanuel therefore always knew that they would have 5 days from receipt to carry out their review of the public version of the LPs' post-trial brief to determine whether to request any additional redactions.

101.2 In fact, the LPs gave the GP six days to respond with any additional proposed redactions to the public version of its post-trial brief. There is nothing to suggest that the LPs would not have

provided yet more time, if the GP requested it. Quinn Emanuel did not request any additional time, if they required longer to complete their review of the LPs' post-trial brief.

101.3 The clear inference to be drawn from Ms Harrison's emails of 17 and 18 November 2025 is that Quinn Emanuel gave active thought to the question of additional redactions of the public version of the LPs' post-trial brief and determined that they did not wish to request any further redactions.

101.4 That Quinn Emanuel gave active thought to the question of additional redactions is also supported by the fact that Quinn Emanuel included unredacted references to the documents in question in the GP's own post-trial brief, whilst redacting other text.

101.5 Given the GP's continued focus at the trial on seeking to preserve the possibility of arguing before the Grand Court that the relevant documents remained privileged, which I address later in this judgment, it is very hard to credit that the decision not to request any further redactions in the public version of the LPs' post-trial brief was an entirely inadvertent oversight, as Mr Berdon asserts.

101.6 The number of partners apparently working on this matter at Quinn Emanuel and at Ross Aronstam & Moritz also cannot be reconciled with the suggestion that the decision not to request any further redactions in the public version of the LPs' post-trial brief was an entirely inadvertent oversight.

101.7 Given Mr Berdon's role as lead partner with overall control of the Delaware litigation on behalf of the GP and that he had expressly raised during the trial the question of protecting possible privilege under Cayman law, as recorded in the transcript at page 120 set out later in this judgment, any suggestion that he was not aware of and was not a participant in the decision not to request any further redactions to the public version of the LPs' post-trial brief is equally difficult to credit.

102. Having regard to the emails from Mr Greer that I have discussed, I wholly reject the GP's argument, put forward by Mr Berdon in his affidavit, that the LPs breached the terms of the confidentiality stipulation and did so in order to bolster their case before the Grand Court that the GP has waived privilege in respect of the documents in question. Moreover, it appears likely on the material that I have seen that at the time that it completed its post-trial brief and engaged in oral argument, the GP had decided it no longer intended to assert privilege in respect of the documents that Mr Berdon

referenced, however I do not need to reach a conclusion on that particular point in light of my other findings on the substance of the GP's summonses.

D.7 Conclusion on the GP's summonses

103. For the reasons that I have set out, I conclude that the GP and the LPs agreed to waive any available privilege arguments under Cayman law in respect of documents disclosed in the Delaware proceedings. Instead, those documents were to be automatically disclosed, admissible and available to the parties to use in the Grand Court actions. This was the result of their agreement of: (a) the confidentiality stipulation in Delaware; and (b) the Consent Orders. As regards the discovery in the Delaware proceedings, the parties' approach was that all questions of privilege etc would be determined by the Delaware court under Delaware law. As recorded in the Consent Orders, the Delaware discovery and the other documents from the Delaware proceedings identified in the Consent Orders are to be deemed to have been disclosed in the Grand Court actions, are admissible and may be relied upon at trial. The GP therefore cannot prevent the LPs from using the Compelled Documents in the Grand Court proceedings provided that the LPs comply with the requirements applicable to Confidential Discovery Material and Highly Confidential Discovery Material that are set out in the confidentiality stipulation or make similar arrangements to protect wider dissemination of the documents in those categories. I therefore dismiss the GP's application for declarations and consequential relief in relation to the Compelled Documents.

104. I also dismiss the GP's application that its evidence in support of its summonses should be sealed save to the extent that redactions have already been applied to the affidavits and exhibits of Mr Blöchlinger and Mr Finkelman.

105. In addition, I reject the GP's argument that the LPs deliberately breached privilege and confidentiality in Delaware by referring to four of the Compelled Documents in the public version of their post-trial brief for the Delaware trial. I hold that the LPs gave appropriate notice to the GP that they intended to include unredacted references to those documents in the public version of their post-trial brief. Quinn Emanuel did not request any additional redactions, as they were entitled to do and could have done. It does not seem to me that there was anything inherently wrong in the LPs then filing the public version of their post-trial brief in the form approved by Quinn Emanuel,

and the LPs' case is that they were obliged to do so in order to comply with Court of Chancery Rule 5.1.

106. Given my conclusions on the effect of the confidentiality stipulation and the Consent Orders, I do not consider it necessary to add further to this lengthy judgment by addressing in detail the questions whether, in principle, the loss of privilege in Delaware prevents privilege under Cayman law from being claimed; and whether the way in which the circumstances in which the GP disclosed the Compelled Documents in Delaware was or was not sufficiently voluntary in nature to give rise to or to prevent a voluntary waiver of privilege under Cayman law. Those issues simply do not arise on the conclusions that I have reached.

E. The misleading evidence filed on behalf of the GP

107. Before leaving this matter, it is necessary that I address the misleading evidence filed in support of the GP's summonses by Mr Berdon in his signed approved draft affidavit dated 27 November 2025. Unhappily, this judgment should be read with my judgment in *Unicorn Biotech Ventures One Ltd v ATP III GP Ltd (No.4)* [2025] CIGC (FSD) 124, which was delivered before this judgment but concerns events that occurred after the hearing of the GP's summonses on 28 November 2025. It provides my reasons for vacating the trial at the hearing on 17 December 2025 but also records my criticisms of the GP and Quinn Emanuel for actively misleading the Grand Court and the Court of Appeal in the period before that hearing regarding the GP's intention that the trial on 12 January 2026 should go ahead, and apparently Walkers as well, and for Quinn Emanuel's attempts to bully an attorney at Campbells. As I indicate in that judgment, it is extremely concerning that there have been two instances of Quinn Emanuel being involved in misleading the Grand Court within 3 weeks.

108. In the course of his oral submissions on 28 November 2025, Mr Scott criticised Mr Berdon's evidence in his affidavit in trenchant terms as being misleading in certain important respects. Mr Ayres and Walkers were in court and attorneys from Quinn Emanuel observed the hearing on 28 November 2025 remotely. Following the hearing on 28 November 2025, and notwithstanding the submissions by Mr Scott that Mr Berdon's draft affidavit was seriously misleading, Mr Berdon proceeded to swear his affidavit on 2 December 2025 in the form of the draft that he had approved on 27 November 2025.

109. For the reasons that I now set out, I conclude that Mr Scott's criticisms of Mr Berdon's evidence are justified.

110. As I have indicated earlier in this judgment, Mr Berdon describes himself in his affidavit as being the lead partner at Quinn Emanuel with conduct of the Delaware action on behalf of the GP. He is based in Quinn Emanuel's New York office. He is supported by a number of attorneys within Quinn Emanuel, including attorneys based in Quinn Emanuel's Wilmington, Delaware office. In addition to Quinn Emanuel, the GP is represented in the Delaware action by a number of partners and associates from Ross Aronstam & Moritz LLP, who are also based in Wilmington, Delaware and who hold themselves out as being experienced in litigating the most significant corporate and commercial disputes before the Delaware Court of Chancery. In the circumstances, it is appropriate to infer that the GP's legal team, including Mr Berdon, should be fully familiar with the appropriate practice and procedure before the Delaware Court of Chancery.

111. In addition, the GP is represented in the Cayman Islands by Mr Ayres and Walkers, both of whom are experienced in conducting litigation before the Grand Court and with the ethical requirements associated with being officers of the Court and attorneys at law in the Cayman Islands. I do not believe that either would knowingly have assisted in any attempt to mislead the Court.

112. I find that Mr Berdon's statements that the facts and matters set out in his affidavit which are within his knowledge are true and correct, and are true and correct to the best of his information and belief where they are not within his knowledge, are extremely questionable. I conclude that the content of Mr Berdon's affidavit is seriously misleading in several important respects, which are material to the argument put forward before me on behalf of the GP that the LPs deliberately breached the confidentiality regime in Delaware in order to assist them in resisting the GP's summonses, and also in respect of Mr Berdon's wider criticisms of the LPs' conduct in Delaware. I cannot see how Mr Berdon was not aware that his affidavit is seriously misleading.

E.1 The effect of the confidentiality stipulation

113. The confidentiality stipulation was signed by Mr Berdon, along with a number of his colleagues at Quinn Emanuel and by their co-counsel from Ross Aronstam & Moritz LLP. Mr Berdon must be taken

to be familiar with its contents and with Chancellor McCormick's qualification that its application to the Delaware action is subject to Court of Chancery Rule 5.1 as regards documents filed at court.

114. In paragraphs 5 to 8 of his affidavit, Mr Berdon describes the effect of the confidentiality stipulation in the Delaware action. He asserts that:

> *"5. […] As the Rigmora LPs will be aware, the Confidentiality Stipulation governed not only the handling, review and use of designated materials during discovery, but also the manner in which such materials could be referenced in motion practice, at trial, and in any publicly filed submissions, including by requiring redaction or sealing where necessary to preserve the protections conferred.*
>
> *6. The confidentiality protections took on particular importance following the Delaware Court's 8 September 2025 order compelling production of the Privileged Documents […]*
>
> *7. More specifically, a number of the Privileged Documents in the Compelled Production which were plainly privileged and which contained sensitive material were designated by Quinn Emanuel as "Highly Confidential". Where the documents marked with Highly Confidential designations were to be relied upon at the trial, pursuant to the Confidentiality Stipulation, the parties were required to ask the Court to restrict access to the courtroom […]*
>
> *8. Consistent with the confidentiality regime, the parties were required, when preparing public versions of post-trial briefs, to respect the confidentiality of sealed documents and to ensure that highly confidential content was not placed into the public domain. In particular, where highly confidential material was to be cited, it was to be handled through targeted redactions and, where necessary, sealing. Indeed, as stated in Finkelman 1, the Confidentiality Stipulation was intended to preserve the protections over designated materials notwithstanding their disclosure to adversary counsel, and that nothing in the Delaware process effected privilege, including Cayman privilege, or confidentiality outside the confines of that case."*

115. These passages in Mr Berdon's affidavit are to be contrasted with the terms of paragraphs 2 and 3 of the confidentiality stipulation, which is exhibited by Mr Finkelman, and which I have already set out earlier in this judgment. Those paragraphs make clear that *"the manner in which such materials could be referenced in motion practice, at trial, and in any publicly filed submissions"* is governed, not by the confidentiality stipulation, as Mr Berdon asserts in paragraph 5 of his affidavit, but by Court of Chancery Rule 5.1, which Mr Berdon wholly fails to address in his affidavit. This is reinforced by the terms of the Chancellor's rider when she approved the confidentiality stipulation and made it an order of the Delaware court. I am forced to conclude that Mr Berdon's evidence on this aspect is plainly wrong. Further, his complete failure to address Court of Chancery Rule 5.1 in his evidence is inexplicable.

116. Moreover, Mr Berdon's statement that the LPs *"will be aware"* that the confidentiality stipulation governs reference to confidential discovery material in publicly filed submissions is unjustified and is also wrong. There is no reason for the LPs to form that view because paragraphs 2 and 3 of the confidentiality stipulation and the Chancellor's endorsement all make plain that the applicable procedure in respect of documents filed at court is that set out in Court of Chancery Rule 5.1 and not the confidentiality stipulation.

E.2 The LPs' alleged objection to sealing of the courtroom during the Delaware trial

117. I have set out the terms of paragraph 25 of the confidentiality stipulation earlier in this judgment. Paragraph 25 deals with the use of confidential discovery material in open court.

118. In paragraph 7 of his affidavit, Mr Berdon states:

> *"7. […] Where […] documents marked with Highly Confidential designations were to be relied upon at the trial […] the parties were required to ask the Court to restrict access to the courtroom, with members of the public being required to leave the courtroom so as to preserve their confidentiality. Notwithstanding this stipulated agreement, the Rigmora LPs objected to the Partnership's timely request to seal the courtroom when Highly Confidential information was to be presented in court. The Court granted the Partnership's request over the Rigmora LPs' objection, noting that it would not be appropriate to have material which was plainly privileged referred to in open Court. […]"*

119. Mr Berdon picks up this point again in paragraph 10 of his affidavit, where he says:

> *"10. On the first day of the Delaware Trial, the Partnership moved to seal the Courtroom during the cross-examination of Dr Seth Harrison when the Rigmora LPs sought to use Highly Confidential documents that contained privilege communications (see October 16, 2025 Trial Transcript at 120:13-24 [DF-2/5]) in an effort to preserve the confidentiality of these documents. The Court granted the motion to seal the Courtroom and, in so doing, Chancellor McCormick stated 'I think the solution is to seal the courtroom and for you all to identify who in the courtroom is within the scope of privilege so that showing it doesn't blow privilege' (see Oct. 16 Tr. 126:10-13 [DF-2/11]) (the "Sealing Order")."*

120. The extracts from the transcript of the trial to which Mr Berdon refers are exhibited by Mr Finkelman; Mr Berdon does not himself exhibit any parts of the transcript. The extracts exhibited by Mr Finkelman disclose that it was Mr Berdon who was the advocate appearing for the GP during this part of the trial before Chancellor McCormick. At page 120, lines 13-24 of the transcript, Mr Berdon is recorded as interjecting in the cross-examination of Dr Harrison as follows:

> *"ATTORNEY BERDON: Your Honor, as Your Honor knows, there's been a roll-off production of otherwise documents that were claimed as privileged. And we would ask that they be treated as*

> *highly confidential in this proceeding because, even if used in this proceeding among the parties, they will still retain privilege in Cayman under Cayman law as long as they are not disclosed to the public.*
>
> *So we would ask that the courtroom be sealed during any questioning relating to otherwise privileged information that was in the roll-off production."*

121. Ms Shannon Selden of Debevoise & Plimpton, who was appearing for the LPs, responded to Mr Berdon's submission. In summary, she said that the LPs had sought to agree to de-designate the documents that she wished to put to Dr Harrison as highly confidential but had not received any response from the GP's attorneys; the GP's attorneys did not raise their concern about closing the courtroom in advance; and they had not sought an order from the court as required by paragraph 25 of the confidentiality stipulation. In other words, Ms Selden was being ambushed by the GP. The transcript at page 121, lines 1 to 23, exhibited by Mr Finkelman, is as follows:

> *"ATTORNEY SELDEN: Your Honor, paragraph 25 of the pretrial order governs the use of confidential or highly confidential information in this proceeding. It requires the parties to meet and confer in advance of trial, which defendants attempted to do. We asked plaintiffs to de-designate this material by letter dated September 29, by letter dated October 8, and by chaser email dated October 12.*
>
> *Plaintiffs have declined to engage with us with respect to the reduction in designation of that material, and did not raise this concern about closing the courtroom in advance.*
>
> *Paragraph 25 of the pretrial order further provides that if the parties are unable to reach agreement -- which we had very much hoped to do -- the parties seeking to maintain highly confidential information throughout trial should seek an order from the Court, which plaintiffs have not done in advance of trial.*
>
> *So we would ask, including for the interest of time, to be able to use this information, which we understand is subject to a privilege waiver publicly and with the witness."*

122. Mr Berdon responded that the GP had suggested a meet-and-confer to take place on 13 October 2025, three days before the trial was due to commence, which had not taken place. The transcript then sets out a discussion between Ms Selden and Chancellor McCormick regarding the LPs' objection to the documents in question continuing to be designated as "highly confidential", which the Chancellor pointed out was different from the question of privilege in the documents and was the point being raised by Mr Berdon. The transcript records the statement of the Chancellor at page 126, lines 10-13 quoted by Mr Berdon in his affidavit, but Mr Berdon omits from his quotation important context and the Chancellor's further comments. The full text of this part of the transcript at page 126, line 7 to page 127 line 2 is as follows:

> *"[THE COURT:] So I see the concern here. I don't know whether the document you're discussing now or about to show the witness falls into that category. But if it does, I think the solution is to seal the courtroom and for you all to identify who in the courtroom is within the scope of privilege*

> *so that showing it doesn't blow privilege. So I'm not sure how we do that now. Maybe you want to [take] a break and do it, or maybe you want to talk about it over the lunch break. Either way, I'm open to.*
>
> *ATTORNEY SELDEN: Thank you, Your Honor.*
>
> *I would suggest that, in the interest of time, we skip ahead and I'll proceed with questions that don't implicate those documents, and then we can discuss during the lunch break whether and how to seal the courtroom and who's within the scope of privilege.*
>
> *Would that be acceptable, Your Honor?*
>
> *THE COURT: That works, yes."*

123. Neither Mr Finkelman nor Mr Berdon exhibit the part of the transcript covering the period after the lunch break or refer in their affidavits to what happened when the Delaware court resumed hearing the trial after the lunch break. This part of the transcript was handed up by the LPs during oral argument before me on 28 November 2025. At page 137, lines 4 to 12, the transcript records the following exchange between the Chancellor and Ms Selden, when the hearing resumed:

> *"[THE COURT:] So what did you work out?*
>
> *ATTORNEY SELDEN: Good afternoon, Your Honor. We have consulted with plaintiff's counsel. We are happy to seal the courtroom. I apologize for any confusion. I didn't know plaintiff's counsel had wanted to do that before this morning, but we are happy to seal the courtroom.*
>
> *We have asked from our team anyone outside the privilege to leave. […]"*

124. Having considered the extracts from the transcript to which I have referred, it seems to me that:

124.1 Mr Berdon's statement in paragraph 7 of his affidavit that the GP had made a *"timely"* request to seal the courtroom is highly questionable in light of the GP's failure to make an application in advance of trial under paragraph 25 of the confidentiality stipulation and the apparent ambush of Ms Selden at trial during her cross-examination of Dr Harrison.

124.2 Mr Berdon's statement in paragraph 7 of his affidavit that the Chancellor granted the GP's request to seal the courtroom over the LPs' objection is simply wrong. The sealing of the courtroom was by consent, once Ms Selden had considered the GP's request over the lunch break. There was no question of the Chancellor ruling against the LPs, as stated by Mr Berdon. Moreover, given that Mr Berdon was the advocate who was appearing for the GP at the hearing, it is inexplicable how he could have made these errors and why he did not give a full explanation of events in his affidavit.

124.3 Of more concern, is that neither Mr Finkelman nor Mr Berdon referred at all to and did not exhibit a copy of page 137 of the transcript of the Delaware trial, which puts a completely

different complexion on how the debate regarding sealing the courtroom concluded. I do not understand why a full account of the hearing was not given in Mr Berdon's affidavit. I am driven to the conclusion that this was an attempt by Mr Berdon to mislead the Court as to the LPs' position and the Chancellor's response to it.

E.3 The GP's case that the LPs deliberately breached the confidentiality stipulation

125. In my judgment, there was a further attempt by Mr Berdon to mislead the Court, which is more serious. I have set out earlier in this judgment paragraphs 28-31 of Mr Berdon's affidavit entitled *"Rigmora LPs' breach of Confidentiality Stipulation"*. I have also discussed earlier in this judgment the mischaracterisation by Mr Berdon of the effect of the confidentiality stipulation and the omission by Mr Berdon in his evidence of any reference to Court of Chancery Rule 5.1 and its relevance to the issues that he advances in his affidavit. The result is that Mr Berdon's repeated assertions in his affidavit that the LPs breached the confidentiality stipulation by referring to putatively privileged documents in the public version of their post-trial brief are simply wrong. The preparation of the post-trial briefs on each side was governed by Court of Chancery Rule 5.1, not by the confidentiality stipulation. It was, thus, not a *"fact"* that the LPs had breached the confidentiality stipulation, as stated by Mr Berdon in paragraph 28 of his affidavit.

126. I have also noted earlier in this judgment that Mr Berdon exhibited an email sent by Ms Doughty at 6:03 pm on 26 November 2025 without also exhibiting or even referencing in his affidavit the following other highly relevant contemporaneous emails between the parties' attorneys:

126.1 email sent at 2:53 pm on 12 November 2025 by Mr Greer circulating a proposed public version of the LPs' post-trial brief pursuant to Court of Chancery Rule 5.1 and seeking the GP's additional redactions by 3:00 pm on 17 November 2025;

126.2 email sent at 3:02 pm on 17 November 2025 by Ms Harrison, after the time specified in Rule 5.1 and by Mr Greer for any response had expired, indicating that Quinn Emanuel would provide a few redactions shortly;

126.3 email sent at 10:00 am on 18 November 2025 by Ms Harrison stating that the GP did not have any redactions; and

126.4 email from Mr Zachery Greer sent at 8:16 pm on 26 November 2025 in response to Ms Doughty's email, which rehearses the previous correspondence and appears to provide a complete answer to the complaints made in Ms Doughty's email.

127. Finally, I record that, in response to Mr Scott's oral submission that Mr Berdon's omission from his affidavit of copies of, or any reference to, the emails of 12, 17, 18 and 26 November 2025 was inexcusable, Mr Ayres was in the unhappy professional position of having to tell the Court at the hearing on 28 November 2025 that: (a) Mr Greer's email of 26 November 2025 *"absolutely should have been included in the exhibit"*; and (b) neither he nor Walkers had seen or were aware of Mr Greer's email before it was put before the Court by the LPs.

128. It seems to me that Mr Ayres' concession that Mr Berdon should have exhibited the emails must apply with equal force to the emails of 12, 17 and 18 November 2025, and I infer that neither Mr Ayres nor Walkers were aware of those emails until the LPs produced them in court. If they had been aware of them, Mr Ayres would not have made the oral submissions that he did regarding the LPs' alleged deliberate breach of privilege or Walkers would not have permitted him to do so.

129. It is extremely concerning that Walkers and Mr Ayres were not informed of any of the emails of 12, 17, 18 and 26 November 2025 by the GP or Quinn Emanuel and that, as a result, Mr Ayres made oral submissions to the Court regarding the public version of the LPs' post-trial brief and its potential effect on the privilege issues on the basis that the matters stated in Mr Berdon's affidavit that I have identified are correct, when they are plainly not.

130. Mr Berdon's failure to exhibit or to refer to the emails of 12, 17, 18 and 26 November 2025 that I have discussed is highly concerning. The only apparent explanations for it are that it was gross incompetence in the preparation of his affidavit, of a kind that is very difficult to conceive would occur within a well-resourced firm of the stature of Quinn Emanuel, or that it was a deliberate attempt to mislead the court. I am driven to the latter conclusion, having regard to:

130.1 the timing of the email from Mr Greer sent on 26 November 2025: while Mr Berdon was not apparently copied into either Ms Doughty's email or Mr Greer's response, he was clearly provided with a copy of Ms Doughty's email in order to prepare his affidavit and it is inconceivable that he was not also provided with a copy of Mr Greer's response sent just over

two hours later or that he did not enquire whether a response to Ms Doughty's email had been received before approving his affidavit; it is also inconceivable that he did not review or ask to see the relevant correspondence preceding Ms Doughty's email;

130.2 Mr Berdon's role as lead partner on the Delaware action: it is equally inconceivable that Mr Berdon, as lead partner, was not aware of Mr Greer's earlier emails sending the draft public version of the LPs' post-trial brief and the substance of the responses to that sent by Ms Harrison, as well as the email exchange on 26 November 2025 between Ms Doughty and Mr Greer; and

130.3 the fact that, notwithstanding that Mr Scott made trenchant criticisms of Mr Berdon and Quinn Emanuel in his oral argument before me on 28 November 2025, and that attorneys from Quinn Emanuel observed the hearing remotely, there has been no communication from Mr Berdon, Quinn Emanuel or anyone on their behalf since that hearing, some 7 weeks ago, responding to Mr Scott's complaints or suggesting that Mr Berdon or Quinn Emanuel accept that there were any errors in Mr Berdon's affidavit: to the contrary, Mr Berdon proceeded to swear his affidavit on 2 December 2025 in the form of the draft that he had approved on 27 November 2025, in the face of the submissions by Mr Scott on 28 November 2025 that it was misleading in the ways set out above and despite Mr Ayres' concession that Mr Greer's email *"absolutely"* should have been exhibited.

131. If Mr Berdon were an attorney-at-law in the Cayman Islands, it is likely that he would face a disciplinary complaint in relation to these matters. As he is not, I simply record my extreme dissatisfaction with his conduct and that of Quinn Emanuel in the respects that I have set out.

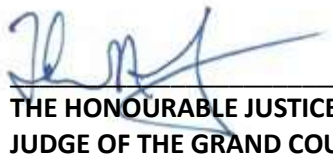
E.4 Post-script

132. In the usual way, a draft of this judgment was circulated to the parties' attorneys for them to propose corrections to typographical and factual errors. In response, Walkers drew to my attention that Mr Berdon had sworn a second affidavit on 2 December 2025; that Campbells had objected to that evidence being filed; and that Walkers had then conceded that Mr Berdon's second affidavit would not be filed. Mr Berdon's second affidavit has not been filed. Walkers invited me to review it and the exhibit, and also the *inter partes* correspondence, which I have done. Mr Berdon's second affidavit exhibits Ms Doughty's email sent on 26 November 2025, Mr Greer's response that day, and two

subsequent emails between the parties' US attorneys arguing about whether the LPs' public version of their post-trial brief breached any sealing orders in Delaware. Those two emails post-date the hearing before me on 28 November 2025. It does not exhibit any of the emails of the emails of 12, 17 or 18 November 2025 or the extract from the transcript of the hearing before the Chancellor after the lunch break.

133. Mr Berdon does not express any apology or explanation in his second affidavit for the omission of Mr Greer's email from the exhibit to his first affidavit. He does not provide any response to the detailed criticisms of his evidence made by Mr Scott at the hearing on 28 November 2025. In my judgment, Mr Berdon's second affidavit does not provide any reason for me to alter the findings that I have already made and the concerns I have expressed about his conduct.

Dated 27 January 2026



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT