Neutral Citation Number: [2024] EWHC 252 (Ch)

Case No: BL-2020-MAN-000067

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 9 February 2024

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

ASTON RISK MANAGEMENT LTD	**Claimant**
- and -	
(1) MR LEE JONES	
(2) MR RICHARD KILBURN	
(3) MR CLINTON JONES	
(4) PROFESSOR MARK LUTMAN	
(5) NEUTRINO NETWORK LTD	
(6) CUMULO ACCOUNTANCY AND TAXATION LTD	**Defendants**

- -
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Louis Doyle KC (instructed by **Fieldfisher LLP**) for the **Claimant**
The First Defendant appeared in person on behalf of himself and the **Fifth Defendant**

Hearing dates: 16, 18 and 19 January 2024

- -

Approved Judgment (Quantum)

Remote hand-down: This judgment was handed down remotely at 10.30 am on Friday 9 February 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

HHJ CAWSON KC:

Contents

Introduction

1. This judgment determines questions of quantum following the determination of liability in my judgment handed down on 20 March 2023 following a trial in January and February 2023 ("**the Liability Judgment**"). This judgment should be read together with the Liability Judgment which has the neutral citation number [2023] EWHC 603 (Ch).

2. I adopt in this judgment the definitions used in the Liability Judgment.

3. The quantum trial took place on 16, 18 and 19 January 2024. ARM continues to be represented by Mr Louis Doyle KC, and Mr Jones continues to act in person on behalf of himself and Neutrino.

4. There was only one witness at the quantum trial, namely Mark Fairhurst, FCA, MAE ("**Mr Fairhurst**"), a Forensic Accounting Consultant, who gave expert evidence on behalf of ARM, and who was cross examined by Mr Jones.

5. By my Order dated 28 April 2023, I directed, amongst other things, that ARM should by 4 PM on 23 June 2023: (a) file and serve Particulars of Loss and Damage corresponding with paragraph 36 of its Particulars of Claim and the Liability Judgment; and (b) file and serve its expert report, the parties each having been given permission to rely upon expert forensic accountancy evidence. I further directed that Mr Jones and Neutrino should, by 4 PM on 8 September 2023: (a) and serve their response to ARM's

Particulars of Loss and Damage; and (b) file and serve their expert report in response to that of ARM.

6. ARM punctually served its Particulars of Loss and Damage and its expert report, namely the Supplemental Expert Accountancy Report dated 23 June 2023 of Mark Fairhurst, FCA, MAE ("**Mr Fairhurst**"), who describes himself as an *"Independent Forensic Accounting Consultant"*. Mr Jones and Neutrino did not file or serve any response to ARM's Particulars of Loss and Damage until they filed and served a response dated 7 December 2023 in compliance with an unless order that I made at the PTR on 23 November 2023. Mr Jones and Neutrino have not file or served any expert evidence.

7. No further non-expert evidence was adduced at the quantum trial. Consequently, the only live evidence was that of Mr Fairhurst.

8. Issues that arose at the quantum trial included as to the amount (if any) properly payable by Mr Jones by way of equitable compensation for breach of fiduciary duty in respect of the making by ASS of payments to Neutrino, and the amount for which Neutrino is liable to account as constructive trustee for knowingly receiving the payments so made. However, the principal issue for determination is as to the amount (if any) payable by Mr Jones by way of equitable compensation for acting in breach of his fiduciary duties to ASS in transferring, or causing to be transferred, to AMR the ASS Business and Undertaking roughly contemporaneously with the entry of ASS into administration in December 2014.

9. It is unnecessary for me to repeat in this judgment the detailed factual narrative contained in paragraphs 7 to 131 of the Liability Judgment, to which reference should be made.

Preliminary matters

10. On 3 January 2024, having attempted to do so in December 2023, Mr Jones and Neutrino issued an application seeking an order: (a) that the claim be struck out unless ARM provided disclosure of the working papers of the Joint Administrators and Joint Liquidators of ASS; and (b) permission to commence committal proceedings against various parties identified in the evidence in support of the application. I directed that this application be heard at the commencement of the quantum trial.

11. In support of the application for disclosure, Mr Jones maintained that the disclosure sought was required in respect of an argument that sought to advance that the relevant office holders were complicit in the setting up of AMR and had either waived or compromised the claims that ARM pursues in the present proceedings as assigned thereof from ASS. The thrust of the way in which matters are put by Mr Jones, on behalf of himself and Neutrino, are perhaps best exemplified by the following extracts from Mr Jones' Skeleton Argument in support of the application dated 3 January 2024, and his Skeleton Argument prepared for the quantum trial:

    i) In paragraphs 8 and 9 of his Skeleton Argument prepared for the quantum trial, Mr Jones says this:

> "8. D does not understand how, given matters and their severity, contained within the Application, how the quantum trial can proceed as is given that matters pertaining to the Office Holders complicit involvement with procuring that AMR was set up to re-run reports for Quindell for the benefit of ASS in the sum of at least £280,000, which makes the Office Holders complicit, and have clearly waived all claims in relation thereto any transfer of business in entirety.
>
> 9. Following (10) in equity the claims, as assigned to C do not exist, as compromised by the Office Holders and or in the alternative, the Office Holders are at strict liability on an indemnity basis to D for any loss so occasioned by the Office Holders having procured, enticed, coerced and sought D1 (and D4) as stated in the Application to proceed to set up and run reports for Quindell to benefit financially both Quindell, ASS and the profit costs of the Office Holders directly who profited as a result thereof."

ii) In paragraph 13 of the Skeleton Argument in support of the application dated 3 January 2024, Mr Jones said this:

> "13. The documents are critical to overturn the judgement in the liability trial (in the ongoing appeal) and in the matter of any liability in the ensuing quantum trial, in particular because it has been argued, and evidenced, by D and Professor Mark Lutman ("D4") that the Office Holders procured, enticed, coerced and put pressure on D1 and D4 to run reports for the Office Holders and Quindell for the benefit of ASS, in which ASS was the beneficiary of significant sums of money, totalling around the very significant sum of £280,000 [Bundle C-382, Paragraph (68) and (71)] (to be ascertained in the disclosure) and the Office Holders then, having enticed D1 (and D4) to proceed with setting up AMR for the purpose thereof, then assigned alleged claims in which it was utterly and materially complicit, to C which is plain wrong in respect of which D1 seeks the indemnity of the Office Holders either in these proceedings or as collateral proceedings following the quantum trial outcome (the "Office Holder Claims") …"

12. In an extempore judgment delivered on the first morning of the quantum trial, I dismissed the application for disclosure on, essentially, four grounds:

i) Firstly, on the ground that ARM had already given disclosure of any documentation that might have emanated from the relevant office holders' files that it had in its possession or control, and that ARM did not have possession or control of any other of the office holders' working papers as such;

ii) Secondly, on the ground that the issue of disclosure of the relevant office holders' working papers had been ventilated in correspondence prior to the liability trial, and any application for disclosure ought to have been brought then, or at least well before the eve of the quantum trial and that it ought not to be allowed to place the ability of the quantum trial to proceed as listed in jeopardy;

iii) Thirdly, on the ground that the suggestion that the relevant officeholders had been complicit in the matters complained of in the present proceedings and/or had compromised or waived the claims that ASS purported to have assigned to ARM formed no part of the defence before the Court at the liability trial, and, consequently, ought not to be allowed to be not be raised now for the purposes of the quantum trial; and

iv) Fourthly, and having been taken by Mr Doyle KC to a number of emails and to Prof. Lutman's witness statement, on the ground that the evidence did not begin to support a case that the relevant office holders had procured, enticed, coerced or put pressure on anybody, been complicit in the matters alleged or waived or compromised the claims pursued in the present proceedings.

13. So far as the application for permission to bring committal proceedings is concerned, this has been adjourned to be dealt with together with other consequential matters following the handing down of this judgment.

14. Having dismissed the application for disclosure, I dismissed Mr Jones' informal application to adjourn the quantum trial. In addition to relying upon the disclosure issue in support of his application for an adjournment, Mr Jones argued that the matter should be adjourned in any event given that his application for permission to appeal to the Court of Appeal was yet to be dealt with by the Court of Appeal, and on the basis that he had had insufficient time to consider Mr Doyle KC's Skeleton Argument and the trial bundles.

15. It was unfortunate that the application for permission to appeal had yet to be dealt with at the time of the quantum trial[1]. However, I did not consider that this provided a proper ground to adjourn bearing in mind the waste of costs and Court time that would be involved, particularly if permission to appeal were refused. Having explored the position as to when Mr Jones received Mr Doyle KC's Skeleton Argument and the trial bundles, and having regard to the fact that Mr Jones had provided a responsive Skeleton Argument of his own, I was satisfied that he had had sufficient time in order to get on top of the matters, particularly bearing in mind that the Court was unable to sit on what would have been the second day of the quantum trial, and so further time was available to Mr Jones.

16. During the course of his submissions at the quantum trial, Mr Jones continued to advance his arguments with regard to the actions of the relevant officeholders, and that the claims pursued by ARM as assignee from ASS had been waived or compromised by the latter prior to the assignment to ARM.

[1] Permission to appeal was refused by the Court of Appeal on 6 February 2024, i.e., between the date of the quantum trial and the hand down of this judgment.

17. In paragraph 115 of the Liability Judgment, I had referred to an agreement reached between the Joint Administrators and QHS pursuant to which the latter had paid £200,000 plus VAT for pre-December 2014 invoices, as well as £40,000 plus VAT for post-December 2014 WIP. I put it to Mr Jones that no document had been identified supporting a case that Mr Jones, Neutrino or AMR had been party to any agreement with the Joint Administrators pursuant to which the claims that ARM seeks to pursue as assignee from ASS by way of the present proceedings were compromised or waived in some way. However, in case I had misunderstood Mr Jones' position, I invited him to identify any such document or documents that he relied upon by 4 PM on 23 January 2024.

18. In response to this invitation, Mr Jones has provided some 8 pages of analysis of various emails, and a bundle containing some 27 emails, most, if not all of which, are already to be found somewhere in the voluminous liability trial bundles. Mr Jones's position is, again, best exemplified by the following extract from paragraph 1 the document produced:

> "D1 finds itself on the end of a miscarriage of justice, of an unsafe liability trial already, and potentially an unsafe quantum trial, through no real fault of its own, but instead the fault of C and OH in its capacity as an officer of this court, and thus the Crown. The result of which could lead to D1 not being able, or legally and financially, fit to work again due thereto – which left un-addressed could lead to D1's inadvertent bankruptcy. Such a travesty, miscarriage of justice, and mirroring of the abuses carried out in the Post Office debacle. This entire process, trial, evidence, alleged assignment (etc) requires some kind of judicial intervention and referral to the CPS by the court at the very least, and D1 will not rest until all matters herein engaged are openly in the public domain for proper investigation so as to avoid further abuse of process and such that all proper judicial and police enquiries can take place. D1 urges the Court to intervene, in its capacity to do so, making such orders as appropriate, particularly given the contents of two key emails: **Email 20** *[dated 22 May 2015 from Mr Snowden to Mr Jones]* located at E/3026, (in which the OH in effect releases and waives all claims as against D1/5) and **Email 12** *[dated 23 January 2015 from Clinton Jones to Mr Jones and others]* (in D1/5's original supplemental bundle F/4391 onwards, but then redacted unknowingly to D1/5 by C in all further trial bundles, presumably for some self-serving benefit, in which Email 12 clearly evidences that the OH knew full well it should not be putting ASS into administration, and coerced D3 to support it, causing D3 to lie to the Court and causing the OH to obtain unlawful administration and liquidation fees of around £1M in monies by what is most likely deception and at the very least unlawful). D1 cannot, and will not, rest until these matters are properly addressed in the public domain and the conduct of C and the OH fully addressed."

19. I have considered the further document produced by Mr Jones with some care. I am not persuaded that it, or the email correspondence identified therein, leads to the conclusions that Mr Jones invites the Court to reach. However, I do not consider that a

more detailed analysis thereof is required in this judgment because the fundamental difficulty with the submissions that Mr Jones now seeks to make are that my functions as trial judge of the matters required to be decided at the liability trial ended once the Order dated 28 April 23 made consequential thereupon was made and sealed. Any challenge to my decision requires to be pursued by way of appeal, or, if there were the grounds for doing so, by bringing an action seeking to challenge the judgment on the grounds of fraud.

20. The matters that Mr Jones now seeks to raise, whilst perhaps touching upon matters of quantum, more fundamentally seek to challenge my decision as to liability by raising defences, in particular as to the validity of the assignment to ARM, which were neither pleaded nor raised at the liability trial. Thus, for example, the assignment to ARM is clearly pleaded in paragraph 2 of the Particulars of Claim, but Mr Jones' and Neutrino's Defence is entirely silent as to any challenge thereto, and certainly does not allege any waiver, compromise agreement, complicity on the part of the Joint Administrators, or any defence along those lines. Further, there was no attempt to raise these lines of argument during the course of the liability trial. The consequence of this was that the relevant points were not put to Mr Snowden under cross examination, and the relevant email correspondence was not scrutinised at the liability trial with a view to determining any such issues.

21. In the circumstances, I consider that I must proceed on the basis that Mr Jones is not entitled for the purposes of the quantum trial to raise the arguments that he now seeks to raise, and that I must proceed to determine the quantum issues that arise on the basis of my findings at the liability trial, the evidence that was before me at the quantum trial, and the further expert evidence of Mr Fairhurst.

Equitable compensation – the principles

22. It is necessary to consider the principles that apply to an award of equitable compensation.

23. The leading authority is the decision of the House of Lords in *Target Holdings Ltd v Redferns* [1996] 1 AC 421, a decision subsequently affirmed by the Supreme Court in *AIB Group (UK) Ltd v Mark Redler & Co* [2015] AC 1503. The following principles can be derived from these cases:

    i) Equitable compensation differs in a number of respects from common law damages in that common law principles of causation and remoteness do not apply to claims for equitable compensation.

    ii) However, there are two fundamental principles common to both damages at common law, and equitable compensation, namely:

        a) The *defendant's* wrongful act must cause the damage complained of; and

        b) The claimant is to be put *"in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation or reparation"* – see *Target* at 432, per Lord Browne-Wilkinson.

iii) At 434 B-D in *Target*, Lord Browne-Wilkinson identified that in respect of traditional trusts, the basic right of a beneficiary is to have the trust duly administered in accordance with the trust instrument, if any, and the general law, and that in the case of breach of trust involving a wrongful paying away of trust assets, the liability of the trustee is to restore to the trust fund what ought to have been there. Consequently, the basic rule, which applies also to trusts arising in a commercial setting and to a fiduciary with dealing trust property or property akin thereto, is that a trustee in breach of trust must restore or paid to the trust estate either the assets which have been lost to the estate or compensation for such loss. As Lord Browne-Wilkinson put it: *"If specific restitution of the trust* property *is not possible then the liability of the trustee is to pay sufficient compensation to the trust estate to put it back to what it would have been had the breach not been committed."*

iv) As Lord Browne-*Wilkinson* went on to say in *Target* at 434F: *"Thus the common law rules of remoteness of damage and causation do not apply. However, there does have to be some causal connection between the breach of trust and the loss to the trust estate, viz the fact that the loss would not have occurred <u>but for</u> the breach"* [Emphasis added]. See also *AIB* at [32]-[34], [36]. [64]-[70] per Lord Toulson JSC, and at [72]-[74] per Lord Reed.

v) At 438 in *Target*, Lord Browne-Wilkinson approved the following statement of the law by McLachlin J in the Canadian case of *Canson Enterprises Ltd v Broughton & Co* (1991) 85 DLR (4th) 129 at 163:

> "In summary, compensation is an equitable monetary remedy which is available when the equitable remedies of restitution and account are not appropriate. By analogy with restitution, it attempts to restore to the plaintiff what has been lost as a result of the breach, i.e. the plaintiff's loss of opportunity. The plaintiff's actual loss as a consequence of the breach is to be assessed with the full benefit of hindsight. Foreseeability is not a concern in assessing compensation, but it is essential that the losses made good are only those which, *on a commonsense view of causation*, were caused by the breach."

Lord Browne-Wilkinson added this:

> "In my view this is good law. Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and commonsense, can be seen to have been caused by the breach."

The same passage was also approved in *AIB* – see e.g. Lord Reed at [80] et seq, and [133].

24. Thus, the measure of equitable compensation is to be assessed at the date of the trial, with the benefit of hindsight and on a common-sense view of causation so as to establish that the losses were, in fact, caused by the breach. As Lord Reed observed in *AIB at*

[86]-[99], it is because damages are assessed at trial that foreseeability of loss is unlike in the case of common law damages, irrelevant.

25. Mr Doyle KC referred to the following observation of Kirkby J in the High Court of Australia in *Maguire v Makaronis* [1997] 188 CLR 449 at 496, which he submits is good law in this jurisdiction:

> "*[Equitable] remedies will be fashioned according to the exigencies of the particular case so as to do what is 'practically just' as between the parties. The fiduciary must not be 'robbed'; nor must the beneficiary be unjustly enriched*."

26. Mr Doyle KC refers to the fact that these words were cited with approval by the Court of Appeal in *Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2011] EWCA Civ 347, [2012] Ch 453 at [47] (per Neuberger MR, Richards and Hughes LJJ agreeing) in identifying that, "*although it is subject to limiting principles, equitable compensation is a more flexible concept than common law damages"*.

Scope of finding of breach at the liability trial

27. It follows that fundamental to the question as to what loss is recoverable by way of equitable compensation is the proper identification of the breach that is said to have given rise to the loss said to be recoverable as compensation, not least because it is only by clearly identifying the breach that one can begin to consider what the position of the claimant (here ASS) would have been but for the breach, assessing the same at the date of trial, with the benefit of hindsight and on a commonsense view of causation.

28. So far as the payments to Neutrino and Cumulo are concerned, these were dealt with in paragraphs 203-255 of the Liability Judgment, and my conclusions are set out in paragraph 291(ii) of the Liability Judgment. There can, as I see it, be no real dispute that the amount properly payable by way of equitable compensation is the amount in each case that Mr Jones caused or permitted, in breach of his fiduciary duties, to be paid away to ASS. I consider it to be reasonably clear that but for the breaches of fiduciary duty, the payments would not have been made, and ASS would not have suffered the loss.

29. The position requires rather more explanation in relation to my finding, summarised in paragraph 291(iii) of the Liability Judgment, that Mr Jones: *"acted in breach of his fiduciary duties as a de facto director in causing ASS to transfer the ASS Business and Undertaking to AMR roughly contemporaneously with the entry of ASS into administration …"*

30. It is necessary to consider my findings leading to this conclusion in paragraphs 264 to 280 of the Liability Judgment, and to note, in particular, the following:

    i) In paragraph 265 I identified that it was clear from the way that the case as a whole was pleaded and from the way that Mr Doyle KC put his case on behalf of ARM at the liability trial that what was being alleged was that, in the lead up to the administration of ASS, Mr Jones took steps to get AMR in place as a *phoenix* company, able to use the assets and connections of ASS in order to carry on business, effectively in succession to ASS once it had entered into

administration, either by acquiring the assets from the Joint Administrators on favourable terms if necessary, or by simply making use of those assets and connections in any event because AMR had been positioned to do so by the time that ASS entered into administration.

ii) In paragraph 268, I identified that there were clearly issues in relation to the ownership of intellectual property in software and systems developed by Neutrino, and in relation to data, and how the same might have been transferred to and/or utilised by AMR. However, at paragraph 269, I held that this ought not to matter once it was recognised that ARM's case was, in substance, that there was transferred to AMR all that which was necessary for AMR to carry on the business that ASS had previously carried on in succession to it, and that some assets at least were transferred including a number of corporate opportunities and relationships that had only come to Mr Jones through ASS, and his position as a de facto director thereof, including, in particular, the connection with QHS/Quindell Group.

iii) In paragraph 272, I identified that the key asset that Mr Jones was able to cause to be transferred to AMR was the connection with QHS/Quindell Group, which could be exploited, and was indeed subsequently exploited by AMR rather than ASS.

iv) In paragraph 274, I rejected Mr Jones's case that AMR took forward its own business model from scratch, identifying the matters referred to in paragraphs 274(i) to (v) of the Liability Judgment, and concluded that Mr Jones had got his ducks in a row so that AMR really did not need to do any deal with the Joint Administrators of ASS because, by transferring that which was transferred, AMR had got all that it needed to enter into a new agreement with a Quindell entity, which, with hindsight, it can be seen that it did.

31. I thus concluded in paragraphs 275 to 278 that it had been established that Mr Jones had caused ASS to transfer the benefit and substance of the ASS Business and Undertaking to AMR roughly contemporaneously with the entry of entry of ASS into administration, and that this amounted to a breach by Mr Jones of his fiduciary duties under s. 172 and 175 CA 2006.

AMR's Case as to Quantum

Introduction

32. AMR's Particulars of Loss and Damage identify four heads of loss, which are summarised therein as follows:

> "Head 1: C's further claim against D1 and D5 in consequence of findings in the Judgment in respect of payments by ASS caused to be made by D1 to D5 [Para 240, as claimed in Para 36(i) PoC]
>
> Head 2: The loss of the value of the Business and Undertaking of the Company [Paras 264 to 276 and Paras 278 to 280], as claimed in Para 36(ii) PoC, including the claim in Para 36(iii) PoC for "*the loss of*

earnings attributable to the use of the Business and Undertaking of [ASS]"

Head 3: The loss of outstanding work-in-progress due to ASS [Para 36(ii) PoC]

Head 4: The loss to the estate of ASS of the costs and expenses of the administration and subsequent liquidation of ASS [Para 36(v) PoC]

Interest

Total Value of Claim: £5,791,083.97 or £5,551,083.97".

Head 1 – Neutrino invoices

33. It can be seen from the Liability Judgment that the essence of ARM's case was that whilst ASS had invoiced Neutrino in amounts totalling £775,275.67, and received payments totalling £594,352.03, only £148,558.31 thereof was properly justifiable, and so there was an unjustified overpayment of £445,766.72. In paragraphs 210 to 240 of the Liability Judgment I considered the various invoices and concluded in paragraph 240 that further invoices totalling £241,007.45 (excluding VAT) have been justified in addition to the £123,798.60 (excluding VAT) accepted by ARM as being justified, leaving an unjustified balance of £130,418.95. I held that this was the amount that I considered was recoverable from Mr Jones by way of equitable compensation in respect of the misapplication of the relevant monies, subject to arguments in respect of duplication that I had identified in paragraph 238, and questions of mathematics.

34. However, in the Particulars of Damage, ARM maintains that as part of the current quantum exercise, I should find that very much more is due by way of equitable compensation than I had indicated in the Liability Judgment.

35. ARM's position is articulated in the Particulars of Loss and Damage as follows:

"HEAD 1: C's further claim against D1 and D5 in consequence of findings in the Judgment in respect of payments by ASS caused to be made by D1 to D5 [Para 240, as claimed in Para 36(i) PoC]: total value £139,469.45 exc VAT (or £167,363.34 inc VAT)

1. C claims the value of the following invoices, as raised by D5 acting by D1, on the basis that these invoices have no commercial basis for the reasons given and are not addressed in the Judgment. The value of the invoices and the seven additional payments identified below (totalling £341,713.60) under this head of claim is asserted against both D1 for breach of duty and also against D5 as the recipient and constructive trustee of the monies representing those payments.

1.1 Invoice 100 [E/606]; value claimed: £5,000 exc VAT

C admits that the Loan Worker System aspect of this invoice, as approved by Clinton Jones ("**D3**"), may be capable of justification, but without itself being capable of quantification,

the substance of the activity provided for in the invoice is not, namely: "*Development of Mapping API/interface extension to Diary and tools*", because that activity fell squarely within the scope of the "*sweat equity*" aspect of the MSA and ought not to have been charged and paid for as an additional and separate item.

1.2 Invoice 108 [E/1300]; value claimed: £10,099 exc VAT

This invoice is not addressed in the Judgment. It appears to have been overlooked. This invoice involves an over-charge in that the rate per re-run is identified in the invoice expressly as £8.7598. In fact, the re-run was, as agreed, £5 per re-run. Therefore, even if each re-run invoiced and paid for was valid, there is an overcharge of £10,099 exc VAT, (being £23,529 (on the basis of £8.7598 per re-run) less £13,430 (on the basis of £5 per re-run)).

1.3 Invoice 130 [E/2067]; value claimed: £105,575 exc VAT

This invoice relates to pre-payment in advance for re-runs which, on the evidence, were never undertaken by D5. The relevant email correspondence is at **[E/2025]**, **[E/2041** (D1: "*I attach invoices discussed earlier, this assumes re-running*")**]**, **[E/2341-2342]**, **[E/2497 (**D1 to Edward Judge of Irwin Mitchell on 4 December 2014**:** "*These still need to be re-run yet again*")**]**, **[E/2517**].

1.4 Invoice 138 [E/2250]; value claimed: £18,795.45

This is an invoice raised and paid, apparently in respect of 4,023 reports re-run in October 2014. There is no evidence that any such re-run was undertaken, and, in the circumstances, the production of such re-runs is implausible. The burden rests on D1/D5 to demonstrate in evidence that the re-runs were completed and paid for.

1.5. Seven additional payments made to D5 for which no invoice was raised; value claimed: £341,713.60

The following seven payments by ASS were caused to be made over thirty-four days to D5 (apparently without attracting VAT) after the raising of Invoice 130 (above, dated 13 October 2014). These payments do not tally with any invoice. They are completely unaccounted for and unexplained. It is legitimate for C to raise these payments here because, in the ordinary course of business, any such payments could only have been made on invoices (in the absence of any suggestion as there being legitimate grounds for gratuitous payments). D1 and D5 should not be able to escape scrutiny of these payments by reason of their own failure to generate a relevant invoice triggering or

justifying payment. These payments should be dealt with on the basis that, properly accounted for, D5 ought to have raised an invoice which could have been cross-checked by C as with the other invoices challenged:

23 October 2014:	£50,000
24 October 2014:	£50,000
3 November 2014:	£50,000
4 November 2014:	£50,000
24 November 2014:	£50,000
25 November 2014:	£50,000
26 November 2014:	£41,713.60
Total:	**£341,713.6**

TOTAL VALUE OF HEAD 1: £509,076.94 (including VAT on £139,469.45)"

36. It is fair to say that this particular head was not pursued by Mr Doyle KC with any great vigour after I had made a number of observations during the course of opening.

Head 2 – Loss of the value of the Business and Undertaking of ASS

37. In respect of the loss of the value of the Business and Undertaking of ASS, Mr Doyle KC recognises that, in considering what the position would have been *"but for"* the breach of fiduciary duty that has been established, it is necessary to consider the counterfactual if there had been no breach. It is ARM's case that, notwithstanding any cash flow issues and a need to re-run reports, as at November/December 2014, ASS had a fundamentally successful business model, and the potential to be a real money-spinner. This is said to be demonstrated, not least, by the performance of, and profits made by AMR pursuant to the QLS Agreement referred to in paragraph 117 of the Liability Judgment.

38. It is ARM's case that if Mr Jones had not acted in breach of his fiduciary duties in this respect, then either:

    i) ASS would have continued to trade under renegotiated terms similar to those in fact agreed as between AMR and QLS under the QLS Agreement; or

    ii) Alternatively, ASS would have alleviated its cash flow difficulties by way of further funding provision or creditor restructuring and would have continued to trade under the terms of its existing agreement with QHS.

39. It is ARMs case that, on the former hypothesis, ASS is entitled to equitable compensation of £1.66m, and on the latter hypothesis, ASS is entitled to equitable compensation of £1.36m, being figures supported by Mr Fairhurst's evidence in his report.

40. The essence of Mr Fairhurst's analysis, as expert, is as follows:

i) Mr Fairhurst rules out a market approach and a cost approach to valuation, in favour of an income approach that: *"... provides an indication of value by converting future cash flow to a single current value. Under the income approach, the value of an asset is determined by reference to the value of income, cash flow or cost savings generated by the asset"* – see paragraph 7.10 of Mr Fairhurst's report quoting IVS 105 Valuation Approaches and Methods, paragraph 40.1.

ii) Mr Fairhurst relies on IVS 105 Valuation Approaches and Methods, paragraph 40.2 as stating that:

> "The income approach should be applied and afforded significant weight under the following circumstances:
>
> (a) the income producing ability of the asset is the critical element affecting value from a participant perspective; and/or
>
> (b) Reasonable projections of the amount and timing of future income are available for the subject asset, but there are few, if any, relevant market comparables."

iii) Mr Fairhurst has analysed ASS's revenues for the period from May 2014 to November 2014 in terms of sums invoice to QHS by ASS. As to this, in respect of reports provided, ASS invoiced on the basis of £62.50 being payable forthwith on production of a report, and a further £137.50 being payable on deferred terms, essentially on conclusion of the relevant case or within two years, whichever the earlier. There is an issue between the parties as to whether the second payment involved an element of contingency, and as to whether there were one or two reports as such. These are issues to which I will need to return. However, in his calculations, Mr Fairhurst has taken both figures into account and produced an annualised sales figure of £6,678,000. He has then applied an annualised cost of sales figure of £1,728,000 to arrive at a gross profit of £4,000,950. From these he has produced an annualised expenditure figure of £476,000, making adjustments to reflect the sums found to have been properly payable. This results in an annualised net profit figure of £4,475,000. See the summary in paragraph 4.44 of Mr Fairhurst's report following on from the analysis in the previous paragraphs. Under cross examination, Mr Fairhurst recognised that whether or not the further £137.50 payable in respect of reports was contingent, and the likely impact of any such contingency, was liable to affect the relevant profit figure.

iv) Mr Fairhurst then analysed the profit and loss account of AMR for the year ended 31 December 2015. This showed a turnover of £4,026,653, cost of sales of £2,417,548, administrative expenses of £571,612 and interest payable of £302,000, leading to a profit before taxation of £1,037,191 – see paragraph 6.13 of Mr Fairhurst's report. However, Mr Fairhurst identified that the costs of sales figure included an amount of £1,473,968 charged by RFD Network Ltd, a company ultimately controlled by Mr Jones or his wife, which in turn, in the year in question, paid £911,667 for *"consultancy services"* to Zaro Equestrian Ltd, another company ultimately controlled by Mr Jones or his wife, as

explained in paragraphs 124 and 125 of the Liability Judgment. As to these latter payments, Mr Fairhurst considers the same in paragraph 6.21 et seq of his report, and, having regard to equivalent payments made by ASS and other considerations, concludes that the whole amount charged by RFD Network Ltd cannot be commercially justified, and that in considering the net profit made by AMR in the year to 31 December 2015, and adjustment of £639,000 required to be made, resulting in a net profit of £2,113,000, that Mr Fairhurst has worked from in his report.

v) In applying the income approach to valuation, Mr Fairhurst has consider the appropriate multiplier to apply, and any adjustments and discounts to be applied to the annualised profit figure for ASS. Having regard to the fact that we know, with hindsight, that AMR only traded for a year, Mr Fairhurst has applied a multiplier of only one year.

vi) In considering adjustments, Mr Fairhurst has taken into account in that in the deal done between AMR and QLS, as reflected in the QLS Agreement, a fixed price of £125 plus VAT per referred case was agreed in place of the previous pricing structure, representing a reduction in the average price per case referred by QLS of 11%. Further, Mr Fairhurst has taken into account that under the QLS Agreement the average monthly volume of cases referred to AMR decreased by some 28.5%. Again, applying hindsight, Mr Fairhurst has applied these reductions to the annualised profit figures for ASS so as to arrive at a net cash flow figure of £1,932,000 – see Appendix 8 to Mr Fairhurst's report.

vii) In order to reflect the relative degree of risk, Mr Fairhurst has then applied a discount, but only of 20% given that, *"with the benefit of hindsight, the anticipated future cash flows are limited to a period of 12 months (based on actual, known, circumstance), a significant element of risk will have already been accounted for in the cash flows themselves"* - see paragraph 8.27 of Mr Fairhurst's report.

viii) Applying this 20% discount to the £1,932,000, one gets to Mr Fairhurst's figure of £1.66 million, on the hypothesis that ASS to trade under terms similar to those negotiated between AMR and QLS.

ix) The alternative figure of £1.36 million is based on the hypothesis that cash flow difficulties could be relieved, and that ASS continue to trade on its current terms with QHS. This figure is arrived at taking into account the adjustments identified by Mr Fairhurst in paragraph 8.30 et seq, and Appendices 11 and 12 of his report.

x) Mr Fairhurst use the adjusted annualised profit figures of ASS to arrive at his valuation, and not the profit actually achieved by AMR. However, it is his position that the profit actually made by AMR, as adjusted as referred to above, provides a helpful point of reference that lends support to the valuations arrived at in his report.

41. In short, in his submissions, Mr Doyle KC relied upon Mr Fairhurst's report in support of ARM's primary submission that the sum payable by way of equitable compensation under this head is an amount of £1.66 million.

Head 3 – Loss of value of outstanding work in progress due to ASS

42. I note that although the introduction to the Particulars of Loss and Damage refers to this head *"as claimed in Para 36(ii) Poc"*, paragraph 36(ii) of the Particulars of Claim merely identifies: *"The loss of the value of the Business and Undertaking of the Company (as defined in paragraph 27 above), to be the subject of expert valuation."* Paragraph 27 of the Particulars of Claim makes no express reference to work in progress albeit referring to the assets of ASS including those listed therein. Further, there is no other reference in paragraph 36 of the Particulars of Claim to work in progress.

43. As to how ARM's case in respect of this head was sought to be advanced at the quantum trial, I can do little better than set out the relevant paragraphs of Mr Doyle KC's Skeleton Argument:

> "35. This Head relies upon the accounting records of ASS as would have been under the overall responsibility and control of D1 as the de facto director of ASS with overall control of its management.
>
> 36. As at 2 December 2014, ASS's balance sheet disclosed debtors (as part of current assets) of £2,972,539.01: see Liability Trial hearing bundle [E/2684]. That figure is at least not inconsistent with the sales figure for the same year which was disclosed as at 2 December 2014 as being £1,842,412.50 [E/2683].
>
> 37. The administration of ASS, of course, followed about a fortnight after 2 December 2014.
>
> 38. What, therefore, remains is the question of what happened to the debtors so disclosed in ASS's balance sheet and profit and loss account (above) or their value.
>
> 39. As C's starting point, and based on the analysis of the incidence of the burden of proof in the Liability Judgment [Q1/49-50, paras 185-193], the burden of proof must rest on D1 in explaining what became of the unrealised debtors of c.£3m. (For argument's sake, C uses the figure £2.75m, which appears from the emails below, to be common ground).
>
> 40. The wider findings in the Liability Judgment made against D1 render it implausible that D1, as the architect of the administration of ASS and the misappropriation of its Business and Undertaking into AMR, could have no knowledge or idea as to what has happened to the missing debtor book or its value. If the response of D1/D5 is to say, in response to the above, that D1 has no idea/cannot remember/was not best placed to have a view on the book debts, then C's case is as pleaded in paragraphs 41 to X (sic) below.
>
> 41. As a starting point, D1 was fully alive to the book debts and their value around the time of ASS's administration. The following

contemporaneous documents, as comprised in the Liability Trial hearing bundle, demonstrate this.

[F/4269] Email D1 to Mr Snowdon (administrator) *[dated 23 December 2014]* confirming that circa £3m in fees (ie book debts) due to ASS from Quindell.

[F/4273] *[23 December 2014]* D1 makes offer to Mr Snowdon to collect in the book debts from Quindell for a 30% of realisations 'cut'.

[F/4277] D1's email *[dated 24 December 2014] "the reports Quindell have are now effectively useless* [because Prof Lutman would not agree to stand by them]". By way of what amounted to blackmail on D1's part as part of the plan to capture the value of the book debts: *"If you refuse to deal with us ['us' equating to D1/D5], you leave the creditors abandoned with absolutely no prospect of recovering any money whatsoever* [for all old reports and December WIP] *and face a reclaim by Quindell"*. The irony in D1 suggesting that he was somehow working for the benefit of creditors needs no belabouring.

[F/4456] *[dated 26 January 2015]* D1 explains how (to his thinking) Quindell can avoid paying any of the sums due to ASS. Again, D1 is concerned with the interests of nobody but himself – and certainly not ASS - notwithstanding his fiduciary relationship with ASS.

42. Against the above background, C will refer to the emails at [F/4590], reading backwards (but forwards in time) to [F/4584]. In these emails, perhaps imagining that they would never see the light of day, D1 commits to setting out his intentions, effectively to avoid ASS realising the £2.7m book debts due from Quindell and to secure, instead, a £300k benefit into D1's phoenix, AMR. This starts with, *"the ASS administrator is aware and wholly accepts that ASS will not be able to collect the deferred £2.7m unless the reports are re-run and provided by ASS to QHS, which ASS cannot do unless AMR* [ie D1's phoenix which, of course, D1 controlled] *agrees to do so, which AMR has refused to do for various reasons"*. To the same effect, *"AMR (or ASS) also need my company, [D5], who operate the reporting systems, to run the reports in any event, and as Neutrino is one of/the main creditor, it has refused"*. De-coded from the somewhat obtuse language used by D1, these communications come down to D1 representing that (a) the £2.7m was due by Quindell to ASS, (b) payment would not be made by Quindell (so D1 said) unless AMR and D5 agreed, and D5 undertook the re-runs, (c) AMR would not agree (for *"various"* reasons not explained), and (d) Neutrino, as D1's alter ego, would not agree to the re-runs, apparently because it was the largest creditor of ASS (in the absence of any other reason being provided). Such conduct on

> D1's part is the very antithesis of the sort of conduct the law mandates on the part of a fiduciary such as D1 in relation to ASS.
>
> 43. Having single-handedly frustrated the re-running of the reports, as would have secured the collection of the £2.75m due, the administrator of ASS, who was otherwise powerless, had no option in seeking to realise value but to agree with Quindell to sell the data to Quindell. As D1 knew, the effect of this was that AMR could step in – if it had not already primed Quindell to this effect – and offer to re-run the reports using the data in return for the benefit of the outstanding WIP and a further £300k charged to Quindell for the re-runs.
>
> 44. The £2.75m book debt was not, therefore, somehow mysteriously lost; rather, by way of D1's intervention, it was effectively sold to Quindell for £300k, which Quindell paid to AMR for the re-runs Neutrino refused to undertake, in return for Quindell being forgiven payment of the £2.75m. That conduct on the part of D1 unarguably amounted to a breach of the fiduciary duty owed by D1 to ASS, most obviously the duty encapsulated in s.172 of the Companies Act 2006. As above, D1's conduct was designed to operate for the benefit of AMR, as D1's phoenix, and to the detriment of ASS."

Head 4 – Loss of costs and expenses of administration and liquidation

44. The costs and expenses in question are quantified at £709,468.02, the costs of the administration of ASS being £484,904.49, and the costs of the subsequent liquidation being £224,563.53.

45. The essential case that is advanced is that but for Mr Jones' breaches of fiduciary duty, ASS would not have entered into either administration or liquidation, and therefore these costs would not have been incurred as a depletion on the assets of ASS. It is said that as assignee of ASS, ARM is entitled to recover this loss, which could have been recovered by ASS pre-assignment.

46. It is submitted on behalf of ARM that the starting point is that the placing of ASS into administration was a component part of the scheme orchestrated by Mr Jones for the acquisition into AMR of ASS's Business and Undertaking, and that it is unrealistic to suppose that the administration was brought about by anybody other than Mr Jones. It is submitted by Mr Doyle KC that the claim under this head becomes clearer once the fact that ASS need never have gone into administration is grasped on the basis that there were no pressing creditors and there was every likelihood that, if approached, HMRC could have been persuaded to enter into a time to pay arrangement. It is said that this was never explored because this was the very opposite of what Mr Jones was seeking to secure in terms of the transfer of ASS's Business and Undertaking to his *phoenix*, AMR, in the face of the receipt of a letter before action dated 25 November 2014, and having held a meeting with representatives of Quindell in Liverpool on 12 December 2014 as found in the Liability Judgment.

Mr Fairhurst

47. It is Mr Jones's and Neutrino's case that Mr Fairhurst is not to be regarded as an independent expert witness, and therefore that I should disregard his evidence as being inadmissible. The basis for this is a contention that Mr Fairhurst was engaged at an early stage by ARM to provide advice which, so it is contended by Mr Jones, ARM and its legal representatives have been less than frank about. It is said that this compromises Mr Fairhurst's independence and demonstrates that he lacks the necessary independence to permissibly give expert evidence on behalf of ARM, or at least that I should attach no, or no significant weight to it, with the result that ARM's case under this head has not been proved.

48. During the course of the hearing, and in the face of Mr Jones' submissions, ARM voluntarily disclosed a *"Preliminary Quantum Appraisal"* dated 6 March 2020 prepared by Mr Fairhurst – a document that would, but for such waiver, probably have been privileged (see *Jackson v Marley Developments Ltd* [2004] 1 WLR 2926). I note the following comments made by Mr Fairhurst in his introduction to this document:

> "I am instructed in this matter by Fieldfisher, Solicitors, who act on behalf of the claimant Aston Risk Management Limited ("ARML").
>
> My instructions are to undertake a preliminary appraisal of the loss of claim, as presented, and to provide a preliminary assessment of the quantum aspects of the constituent heads of loss as set out in the draft claim.
>
> I am instructed in this matter as an accountant. My comments within this appraisal limited to my expertise as an accountant. I am not qualified to comment on matters of law nor am I qualified to comment on the legal merits of the claim.
>
> This appraisal is prepared solely for the purpose of assisting my instructing solicitors in the furtherance of litigation and in assisting those instructing me to better understand the potential risk elements solely from a quantum viewpoint in advance of a proposed litigation funding application."

49. As I see it, the purpose of this document was merely to provide a preliminary indication from the point of view of an expert forensic accountant as to the quantum aspects of the claim as it was being formulated. Whilst the document does deal with other heads of claim than those in respect of which Mr Fairhurst was ultimately asked to provide expert evidence for the quantum trial, I do not consider that advice given thereby impinges upon Mr Fairhurst's ability to give independent expert forensic accounting evidence for the purposes thereof. I hasten to suggest that it would not be unusual for an expert identified as a potential expert to provide an expert report for trial to be asked, at an earlier stage of the proceedings, to give a preliminary indication, or appraisal, of the issues that arise regarding quantum.

50. I did not detect in the way that Mr Fairhurst gave his evidence, any partiality on his part. To the contrary, when I asked him a number of questions that were potentially inconsistent with, or disadvantageous to ARM's case, he gave what I consider to be

frank answers that did not necessarily assist ARM's case, e.g. as to the potential effect on the profitability of ASS of there being a contingent element to its agreement with QHL.

51. In these circumstances, I do not consider there to be any proper basis for ruling Mr Fairhurst's evidence to be inadmissible as not being independent expert evidence.

52. I found Mr Fairhurst to be a good witness, who had clearly grasped the quantum issues that arose in respect of Head 2 of the claim to equitable compensation, and the value of ASS's Business and Undertaking. He gave clear and considered answers to the questions that were posed of him, and I consider that I am entitled to place very considerable weight and reliance on his expert evidence.

Work in progress/debtors

53. Before determining the various issues that arise concerning quantum, it is necessary to give consideration to the status of the invoices issued by ASS to QHS in so far as they related to the deferment of the sum due of £137.50 payable per report given that this represented a net balance of £2,046,962.50 in ASS's accounting records – see paragraph 4.4 of Mr Fairhurst's report. This is because a consideration thereof is clearly relevant to Head 3 of the claim for equitable compensation, and potentially relevant also in respect of Head 2.

54. As I have identified, the terms as between ASS and QHS were that whilst a screening fee of £62.50 was payable in any event in respect of the production of a report, a second payment of £137.50 was only payable on completion of the relevant case or within two years, whichever the earlier. However, ASS issued invoices for the full amount thereof on production of the report, although only recognising income in its accounting records in respect of the initial screening fee of £62.50 on receipt thereof.

55. In the administration of ASS, its Statement of Affairs, verified by Prof Lutman by statement of truth on 3 February 2015, shows ASS as having *"Uncharged assets"* of £2,972,663, which were estimated to realise only £444,545. The Statement of Affairs therefore significantly discounts the value of the sums due under invoices issued by ASS prior to entering into administration.

56. In his further written submissions made on 23 January 2024, Mr Jones drew my attention to an email dated 23 January 2015 from Clinton Jones to Mr Jones and others recounting a discussion with Mr Snowden with regard to the completion of the Statement of Affairs. This email included the following:

> "[Mr Snowden] explained that when completing form we should put down the debtors to the company and clearly define the work outside of the QHS so a list of debtors to ASS including reports prepared by [Prof Lutman]. And then a separate debt owed by QHS he said I should be careful in putting the figure as it may appear that we shouldn't of been placed in to administration because we appear solvent on that figure. I should put down a figure that would represent a reflection of what we could expect to recover. As the VAT element would be payable only on the recover debt and not the whole amount. This would mean putting down a figure we could expect to recover after

> any failures in claims. Also I could talk to him before submitting form."

57. This suggests that in completing the Statement of Affairs, consideration was given to what could be expected to be recovered in realisation of WIP/debtors.

58. As I have already identified, there is an issue as to whether one or two reports were prepared in relation to each claim that were payable for separately, or whether there was just one report, payable for as to £65 upfront and as to £137.50 on a deferred basis. There is a further issue as to whether or not the second payment was conditional or contingent. I do not consider it strictly necessary to determine the first of these points. However, I do consider it more likely on the evidence that I have seen that, at least where the report was positive, there was simply one report. Indeed, it would have been somewhat odd for ASS to have invoiced, albeit on deferred terms, for a second report that was yet to be produced.

59. As to the conditional/contingency point, this turns upon an email dated 2 May 2014 from Mr Moose to Tom Pennigton of Quindell, copying in, amongst others, Mr Jones, Clinton Jones and Mr Sayer. The email refers to a meeting the previous Wednesday at which a number of variations to the existing terms as between ASS and QHS had been discussed and agreed, and it sought to record what had been agreed. There was, therein, reference to revised terms under which ASS would charge £62.50 per report as from 1 May 2014, whether positive or negative. The email, at paragraph 5, then recorded that it had been agreed that:

> "5. For positive test results, ASS would continue to provide the full audiological examination and full report service as previously described and provided and would raise a invoice for £137.50 for each report in addition to the screening fee of £62.50, as the balance due for the full report fee, the additional charge to be deferred to case conclusion or two years, whichever was the earlier event.
>
> Subject to recoverability of the fee on the balance (if for any reason QHS is unable to recover the then it will be credited – however the £62.50 will stand)."

60. As I read it, this latter email was saying that the recoverability of the £137.50 was conditional upon QHS itself recovering the fee. There are, as I see it, a number of reasons as to why the fee might not be recoverable, in particular where, although a report had proved to be positive, the claim to which it related had turned out to be unsuccessful and the relevant client and made no recovery.

61. A further consideration is the question of whether and when ASS became liable for VAT on the deferred element of the invoices that were provided to QHS. As I have mentioned, in its accounting records, ASS only recognised income on actual receipt of monies. However, on the basis that ASS had issued invoices for the full amount, including the £137.50, advice was received that it was liable to pay VAT on the full amount. Whilst there may have been an exemption until turnover reached a certain level, the position was that ASS was, in consequence of the effect of this advice, potentially liable to make a payment of some £500,000 in respect of VAT in January

2015, notwithstanding that the deferred element of the invoices would not become payable for some considerable time thereafter. According to Mr Jones, this was something that those behind ASS were unaware of until advised in respect thereof by Mr Snowden after he had been engaged as potential administrator in the lead up to the administration applications that were made.

62. There were further issues in relation to WIP/debtors in that there is evidence that, notwithstanding that reports may already have been re-run, there was a need to carry out further or additional re-runs of the reports, and possibly also to take further steps to remedy the same, before the invoices relating to the same became collectable in practical terms. Having said that, it is not without significance that QHS did make a substantial payment of £252,000 odd to ASS in respect of the outstanding debt on 19 December 2014, shortly after the entry of ASS into administration.

63. Following the entry of ASS into administration, there was considerable correspondence between Mr Snowden and Mr Jones, in particular, with regard to the re-running of reports. I have touched thereupon in paragraphs 103 and 106 of the Liability Judgment. In a further email dated 23 December 2014 from Mr Jones to Mr Snowden, Mr Jones made reference to running reports for: *"December and historic 30,000 to Quindell in order to secure the December and £3M of deferred payment, that your actions have now deliberately ruined."* In a further email sent the same day, Mr Jones again referred to running all December and past 30,000 reports, stating that: *"Our fee for this is 30% of the outstanding receivable"*. However, in the event, in the circumstances described in the Liability Judgment, no agreement was reached between Mr Snowden and Mr Jones.

64. In the event, as referred to in paragraph 115 of the Liability Judgment, the Joint Administrators reached agreement with QHS as recorded in the Joint Administrators First Progress Report dated 10 August 2014. This involved QHS paying ASS £200,000 plus VAT for pre-December 2014 invoices, as well as £40,000 plus VAT for post-December 2014 WIP.

65. In support of his contention that he and/or AMR had been party to discussions or correspondence with the Joint Administrators, the effect of which was that any claim by ASS against them had been waived or in some way compromised, Mr Jones referred me to an email dated 22 May 2015 from Mr Snowden to Mr Jones, responding to an email received from Mr Jones. This was clearly written in the lead up to the agreement between the Joint Administrators and QHS referred to in paragraph 115 of the Liability Judgment. In the final paragraph of this email, Mr Snowden said this:

> "Therefore to answer your final paragraph it would be helpful if you could point out to Quidnell (sic) the terms that we would be willing to settle on re. the December WIP and strongly suggest it is included in the current settlement in order that you can get the comfort that you need, directly from them post settlement, with a side letter from us if necessary. And of course some funds for the creditors of ASS.
>
> Of course you have not seen our draft settlement with Quidndell so to enlighten you the plan basically is that post settlement we would no longer be in a position to bring a claim for the pre-December reports or December WIP as our draft agreement would surrender these rights

> to Quidnell (sic), leaving them free to enter a deal with AMR (or someone else should they so wish, although I don't know of any plans they have to do so) which was the way I understood they had originally planned to resolve the current position, I.e. Bilaterally with us and then you (AMR Neutrino colectively (sic)).”

66. Even if it were, which is not for the reasons that I have explained above, permissible for me to entertain the argument that there had been some waiver or compromise by the Joint Administrators of the claims that ARM seeks to pursue by the present proceedings, I do not consider that the email dated 22 May 2015 lends support thereto. However, what this email does demonstrate is that, in the background to bilateral discussions leading to a bilateral agreement between the Joint Administrators and QHS, there were discussions or correspondence between Mr Jones, and various entities that he controlled (including AMR), and one or other Quindell companies which presupposed QHS crystallising its liability to ASS, which is what it did.

Determination in respect of quantum

Head 1 – Neutrino Invoices

67. Mr Jones’ position is that the issues in relation to the invoices were dealt with in the Liability Judgment, save in respect of questions of duplication and mathematics, neither of which ARM seeks to raise, and that it is not open to ARM to re-argue other points that I have already decided. In particular, in relation to invoices concerned with re-runs, Mr Jones makes the point that I dealt with the same in the Liability Judgment (see paragraph 234 in particular) and decided to give Mr Jones the benefit of the doubt in respect thereof for the reasons set out, including the fact that Mr Jones and Neutrino were being asked to explain the invoices some eight years after the event.

68. I consider that Mr Jones is essentially correct in the submissions that he makes in this respect. However, the liability trial was listed to deal with liability rather than quantum, and only led to the making of interim payments orders as against Mr Jones and Neutrino. It might be said that it is open to me to correct any fundamental errors in my analysis so long as this does not involve me having to reconsider any specific findings. Nevertheless, even if this is right, I am not persuaded by ARM that any adjustment to the overall figure that I have arrived at under this head is necessary or appropriate. I shall deal with each of the issues raised by ARM in paragraph 1 of the Particulars of Loss and Damage in turn.

69. Invoice 100 (£5,000) – This invoice was in an amount of £7,500 plus VAT, of which £5,000 is expressed on the invoice to relate to *“Development of Mapping AP/Interface extension to Diary and tools”*, and of which £2,500 plus VAT is expressed to relate to *“Loan Worker system”*. In paragraph 225 of the Liability Judgment I dealt with invoice 100 dated 19 May 2014, finding that it was not objectionable because it had been specifically approved in relation to the Loan Worker system by an email from Mr Sayer dated 14 May 2014. However, ARM takes the point that I did not have regard to the fact that £5,000 worth of invoice 100 related to something else than Loan Worker system.

70. In the course of the quantum hearing, Mr Jones provided me with a copy of an email dated 13 May 2014, which is an email from Mr Moose to Mr Jones that does appear to

authorise works of the kind falling within the description of *"Development of Mapping AP/Interface extension to Diary and tools"*, recognising that the same was *"not envisaged as part of the system we discussed originally"*. However, I note that Mr Moose's email responded to an email from Mr Jones in which he referred to the expenditure in question as having an estimated cost of £2,150, which is significantly less than £5,000. Nevertheless, Mr Moose's email does recognise that the work in question fell outside what had originally been discussed, i.e., as falling outside the terms of the MSA. In the circumstances, notwithstanding the difference in amount, I do not consider that I can safely conclude that the sum of £5,000 that is now claimed as falling within this head is properly recoverable against either Mr Jones or Neutrino.

71. Invoice 108 (£10,099) – It is said that this invoice is not addressed in the Liability Judgment and appears to have been overlooked. It is one of the invoices that relates to re-runs. In fact, I did deal with this invoice in the Liability Judgment albeit that, by typographical error, I refer to it as invoice numbered 100, rather than invoice numbered 108, in paragraph 238 thereof, having already dealt with the correctly referred to invoice numbered 100 in paragraph 225. I see no good reason to alter the conclusion that I so reached in the Liability Judgment as to invoice numbered 108, and I therefore do not consider it to be appropriate to do so.

72. Invoice 130 (£105,575) – This is another re-run invoice that fell within the scope of my decision in paragraph 234 of the Liability Judgment that I should give the benefit of the doubt to Mr Jones and Neutrino for the reasons set out therein, leading to the conclusion in paragraph 238 that the invoice had been sufficiently justified. In paragraph 1.3 of its Particulars of Loss and Damage, ARM essentially seeks to persuade me that that a consideration of the emails identified therein ought to lead me to the conclusion that I was wrong to give Mr Jones the benefit of the doubt, and thus wrong to decide as I did in relation to invoice 130. I am not persuaded that this email correspondence does point, as ARM contends, to such a conclusion. Indeed, it might be said that the email dated 4 December 2014 from Mr Jones to Edward Judge of Irwin Mitchell is consistent with there having been previous re-runs in that it refers to reports that *"still need to be re-run yet again"* [my emphasis]. I further note that in another email sent later the same day, Mr Jones made a contemporaneous reference to a *"second re-run"*.

73. Mr Doyle KC accepted that Mr Jones had not been cross examined at the Liability Trial on the emails referred to in paragraph 1.3 of the Particulars of Loss and Damage that ARM now seeks to rely upon. Having reached the conclusion that I did in the Liability Judgments in respect of this and other invoices relating to re-run reports on the basis of the evidence then before me, I do not consider that it would be right to reopen the question now and find that invoice 108 had not been justified.

74. Invoice 138 (£18,795.45) – This is another invoice dealt with as part of my decision in respect of re-run invoices in, in particular, paragraphs 234 and 238 of the Liability Judgment. Again, I do not consider it appropriate to reopen my decision in respect thereof.

75. Seven additional payments for which no invoice was raised (£341,713) – I am afraid that I consider ARM's case in respect of the seven payments to be totally misconceived. The invoices in question are included within the figure of £495,293.40 (excluding VAT) referred to in paragraph 240 of the Liability Judgment. A schedule showing the various invoices and payments was included in the liability trial bundles at E3637-3639.

This shows the payments in question as being included within the figure therein of £594,352.03, i.e., £495,293.40 plus VAT. It was as against this sum that amount of the invoices that I found could be justified (totalling £364,874.05 (excluding VAT)) was applied to arrive at the difference of £130,418.95 that I found to be due from Mr Jones to ARM by way of equitable compensation, and in respect of which Neutrino is liable to ARM (as assignee from ASS) as constructive trustee as a knowing recipient. Having already brought these invoices into account in determining the liability under this Head 1 as being for £130,418.95, I do not consider it appropriate to do so again.

76. Conclusion – My overall conclusion therefore is, having held that no adjustment is appropriate, that ARM is entitled to final judgment for equitable compensation against Mr Jones under Head 1 of £130,418.95, and that Neutrino is liable to ARM in such a sum as constructive trustee. It was accepted at the Liability Trial that the Joint Administrators will have recovered VAT on the relevant invoices. Consequently, the award should not include VAT on the £130,418.95.

Head 2 – Loss of the value of the Business and Undertaking of ASS

77. I remind myself that the measure of equitable compensation is to be assessed at the date of trial, with the benefit of hindsight and on a common-sense view of causation so as to establish that the losses were, in fact, caused by the breach.

78. As the authorities that I have referred to demonstrate, the starting point is to consider what would have happened *"but for"* the breach, and thus identify the likely counterfactual. In other words, in the present case, it is necessary to consider what would have happened if Mr Jones had not acted in breach of his fiduciary duties by transferring the benefit and substance of the ASS Business and Undertaking to AMR in the way established roughly contemporaneously with the entry of ASS into administration with Mr Jones having identified AMR as a phoenix company to carry the business forward in circumstances in which he was able to and did ensure that AMR could benefit from all the assets of ASS (including in particular its ongoing connection with the Quindell group) that AMR required to carry on business in place of ASS.

79. I have found that it is not open to Mr Jones to maintain for the purposes of the quantum trial that there was any form of compromise or waiver on the part of the Joint Administrators, or that the Joint Administrators were complicit in some way in the breaches of fiduciary duty that have been established as against Mr Jones, even if, which I do not consider to be the case, there were evidence in support of any such line of argument.

80. The substance of Mr Jones' maintainable defence on quantum is: firstly, that I ought not to have regard to Mr Fairhurst's evidence on the basis that he is not properly to be regarded as an independent expert witness; and, secondly, that there was no value in the Business and Undertaking of ASS in any event. I have already rejected the first of these arguments above. As to the second, Mr Jones' argument is that ASS was beset with problems, that AMR commenced a successful new business without the benefit of assets/opportunities transferred from ASS, and that AMR needed nothing from ASS. However, the problem with this argument is that it is an argument that I rejected at paragraph 274 of the Liability Judgment for the reasons that I then gave, and I do not consider it to be open to me, or otherwise appropriate for me to re-open the issue.

81. There clearly were difficulties with ASS given:

    i) The need to re-run reports, and the fact that after trading for a not insubstantial period of time, there were still difficulties with the format thereof, matters that Mr Jones has variously blamed on Mr Moose, Mr Sayer and Prof Lutman;

    ii) The VAT issue identified by Mr Snowden in the lead up to ASS entering into administration, which contributed to a potential cash shortfall in the period between 20 December 2014 and 19 May 2015 of £858,000;

    iii) The deferred and contingent nature of the terms on which the second payment for positive reports were to be made, namely on completion of the case or within two years, whichever was the lesser, and only if QHS could recover the same.

82. However, as against this, there can be little doubt that, subject to resolving the above issues, ASS had a fundamentally sound and profitable business model based upon the relationship with the Quindell group that Mr Jones had been introduced to through his involvement with ASS as a de facto director, which operated at high margins. To an extent, this is demonstrated by the success that AMR was able to achieve over a comparatively short period of time making very significant profits in the year ended 31 December 2015, albeit that the relationship with Quindell came to an end thereafter.

83. So far as the entry of ASS into administration is concerned, I regard it as highly significant that the approach to Mr Snowden with regard to placing ASS into administration came after Mr Jones and others had received a letter before action from Solicitors acting for Mr Moose and Mr Sayer, and in circumstances where Mr Jones had identified the need for a *phoenix* company. Further, I consider it not without significance that the original administration application was brought by Mr Jones' company, Neutrino, as a creditor, in circumstances where there was no other evidence of credit pressure. When that administration application was opposed by Mr Moose and Mr Sayer and adjourned, an application was then brought by Prof Lutman in his capacity as sole director of ASS. Mr Jones' position at the quantum trial was that this was something that Prof Lutman did of his own volition, without Mr Jones knowing that an application was being made by Prof Lutman. Frankly, I found this suggestion on the part of Mr Jones utterly fanciful in the light of his and Prof Lutman's evidence in their witness statements as to the circumstances in which ASS entered into administration. I refer, in particular, to paragraph 62 of Prof Lutman's trial witness statement, where he refers to the decision to make the application as being a collective one between Mr Jones, Clinton Jones, Mr Kilburn and Prof Lutman, and also to paragraphs 151 and 152 of Mr Jones's first witness statement dated 25 March 2022.

84. I consider that, but for Mr Jones acting in breach of fiduciary duty in the way established, the likely counterfactual, in particular once the issue in relation to VAT had come to the fore, is that ASS would have renegotiated its contractual relationship with QHS, or entered into a new contractual relationship with QSL, in similar terms to that negotiated between AMR and QSL as contained in the QSL Agreement.

85. I agree with Mr Doyle KC that in considering the counterfactual, one is entitled to have regard to the characteristics of the party who has acted in breach of fiduciary duty, and in the case of an individual such as Mr Jones, with an aptitude for dealmaking, is the

sort of person who, if acting in accordance with his fiduciary duties rather than in breach thereof, would have looked for, and found, a solution to the difficulties that ASS faced.

86. The deal with QSL that AMR concluded came at a price, namely a reduction in the price per report, but on terms providing for it to be paid for in full up front. This would, if applied to ASS, have avoided, at least going forward, the cash flow difficulty created by being accountable for the VAT some considerable time before the invoice fell due for payment. Further, I can see no reason in principle why, if Mr Jones had not acted in breach of fiduciary duty:

    i) The existing future and contingent liability of QHL to ASS could not, and would not, have been restructured in some way, if necessary, by the issue of credit notes, and re-invoicing, which overcame the existing cash flow difficulty created by the VAT liability – see paragraphs 5.9 and 5.10 of Mr Fairhurst's report; and

    ii) With appropriate concessions in relation to the outstanding WIP/debt, an issue to which I return to in considering Head 3 below, ASS could have, and would have overcome its difficulties through some new arrangement with QHL or QHS.

87. Further, absent evidence of credit pressure, I see no reason why this could not, or would not have been achieved without the necessity of ASS entering into administration. Even if administration had been necessary in the face of credit pressure, I see no reason in principle why the administration could not, but for Mr Jones' breach of fiduciary duty, have provided a breathing space to ensure the survival of ASS through negotiation of new terms with QHL or QHS.

88. As I have identified, on the scenario of the most likely counterfactual, namely ASS continuing to trade under renegotiated terms similar to those agreed between AMR and QLS, Mr Fairhurst, as expert, has valued that which ASS was deprived of, and AMR gained, namely the substance of ASS's Business and Undertaking, at £1.66m. It is unfortunate that Mr Jones does not rely upon expert evidence in response to Mr Fairhurst's report, which might have enabled the same to have been more closely tested. It is necessary for me, without the benefit of any expert evidence from Mr Jones, to determine whether the figure arrived at by Mr Fairhurst properly represents the amount of equitable compensation that ought to be awarded under this head.

89. Mr Fairhurst did describe the Business and Undertaking of ASS as comprising a collection of assets, the value of which was liable to be diminished if all the assets were not complete. This does, of course, raise questions such as entitlement to the use of intellectual property and data where there may be issues as to ownership. However, I consider that any issue arising therefrom is answered by my finding in paragraph 269 of the Liability Judgment that what matters is that there was transferred to AMR that which was necessary for AMR to carry on the business that ASS had previously carried on, including in particular the corporate opportunities and relationships, such as that with QHS/Quindell, that ASS enjoyed.

90. I am satisfied that the income approach to valuation adopted by Mr Fairhurst is the correct approach. There was no market with which to compare the business of ASS, and a cost approach is inappropriate for the reasons explained by Mr Fairhurst. Further,

I consider that, in the circumstances, and given that it is appropriate to apply hindsight, it was appropriate for Mr Fairhurst to adopt a multiplier of one year knowing that AMR's relationship with Quindell came to an end within approximately such a period.

91. Subject to a number of considerations that I turn to, I consider that it was appropriate for Mr Fairhurst to take as the basis for his one-year cash flow the annualised figures that he has incorporated within Appendix 8 to his report, subject to the deductions of 28% and 11% to reflect the lower price per report negotiated as between AMR and QLS, and the lesser number of reports actually processed by AMR per month than those previously processed by ASS. Thus, subject to the considerations that I will turn to, I consider the figure of £1,932,000 was the appropriate figure to which to apply the discount rate of 20% referred to in paragraphs 8.27 to 8.29 of Fairhurst's report, so as to arrive at the figure of £1.66 million.

92. However, there are, as I see it, a number of issues that arise in respect of this figure of £1,932,000.

93. Firstly, there is the question of the recoverability of WIP/debtors, and the value thereof. It is not in issue that Mr Fairhurst has valued the business and undertaking of ASS going forward, and not the value of the WIP/debtors itself, and to that extent the collectability thereof does not affect Mr Fairhurst's valuation in that WPR/debtors is not included therein. However, Mr Fairhurst recognised under cross examination that the collectability of the second payment of £137.50 payable under ASS's invoices to QHL was, potentially at least, at relevant consideration for the purposes of his valuation on an income approach because this could affect the cash flow figures which assumed collectability of the second payments. The question thus arises as to whether there ought to be further adjustment to take this into account bearing in mind my finding as to the contingent or conditional nature of the liability of QHL to make these payments as set out in the email dated 2 May 2014 referred to in paragraph 59 above.

94. The position is complicated by the lack of clear evidence as to the collectability of the sums in question created not least by how matters were represented in the Statement of Affairs on administration. However, what the financial results of AMR demonstrate is that, subject to the adjustments already made by Mr Fairhurst, when the full amount was invoiced and paid upfront, there is an income yield consistent with that provided for in Mr Fairhurst's Schedule 8 relating to ASS. In these circumstances, I do not consider that any further adjustment is required on this account.

95. However, a major difference between the projections in Mr Fairhurst's Appendix 8 and the accounts of AMR for the year ended 31 December 2015 is the amount paid for services akin to those provided by Neutrino to ASS prior to ASS entering into administration. As referred to in the Liability Judgment and above, services are purported been provided by RFD, a company ultimately controlled by Mr Jones and/or his wife, to AMR, with RFD, in turn, paying a management charge to Zaro, another company ultimately controlled by Mr Jones and/or his wife, with £1.474 million having been paid by AMR to RFD, and £912,000 having been paid by RFD to Zaro.

96. There are serious questions at least that might be asked as to the propriety of these latter payments, which are particularised in the box at paragraph 6.38 of Mr Fairhurst's report. Further, Mr Fairhurst's has subjected these figures to some scrutiny in paragraph 6.36 et seq of his report to which Mr Jones has provided no substantive response in

order to justify the quantum of the payments apart from saying that the relevant accounts were audited. Consequently, in preparing his valuation, and in justifying it at the quantum trial, I consider that Mr Fairhurst was entitled, for the reasons that he gave, to proceed on the basis that, in considering profits of AMR, the profit figure to which he should have regard should be reduced to reflect the fact that RFD's charges to AMR significantly exceeded a proper commercial level of remuneration for services provided.

97. Having said this, had it been necessary to renegotiate terms with QHL/QLS, and establish a somewhat different regime for the production of reports to overcome the difficulties that had confronted ASS, then I consider it appropriate to proceed on the basis that the expenses in question would have been significantly more going forward than as provided for in respect of Neutrino's charges in the cash row projections at Appendix 8 of Mr Fairhurst's report. There is, of course, the *"sweat equity"* question, but if it had become necessary to re-negotiate terms in a fairly fundamental way with QHL/QLS, and to develop software to overcome the difficulties encountered by ASS in preparing reports, then one can well see that, if matters were to be done properly, the expenses properly chargeable are likely to have been significantly more than those provided for by Mr Fairhurst and justifiably charged as extending beyond that envisaged by the initial MSA with regard to *"sweat equity"*.

98. As matters stand, Appendix 8 allows for £212,232 to be paid to Neutrino. I consider this to be unrealistically low. Doing the best that I can on the evidence available[2], I consider that a more realistic assessment to be in the region of £600,000, having regard to what FRG charged AMR, but taking into account what I consider to be the legitimate criticisms identified above as to the quantum of those charges.

99. On this basis, Mr Fairhurst's figure of £1,932,000 requires to be reduced by £387,768 to £1,544,232 - (i.e. £1,932,000 – (£600,000 - £212,000) = £1,544,232). One then needs to apply Mr Fairhurst's 20% risk discount rate to the latter figure (i.e. deduct £308,846.40 (20% of £1,544,232)), to give a balance of recoverable equitable compensation under this head of £1,235,285.

100. I thus find the equitable compensation payable under this head to be £1,235,285.

101. I should add that I have considered whether a further discount should be applied to reflect the chance of ASS having been able to renegotiate terms along the lines of those negotiated by AMR as reflected in the QLS Agreement. It might be argued that as this was dependent upon events beyond Mr Jones' control, and dependent upon QLS agreement, this was the correct approach in accordance the principles in respect of loss of chance principles identified in Allied *Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602. Although I have heard no argument on the point, I do not consider this can be right in principle given that common law principles of causation and quantification do not apply to claims for equitable compensation and given the approach to be taken by a court of equity in relation thereto, which is founded on the principle that the fiduciary in breach must restore or repay the assets which have been lost to the estate or pay compensation for such loss. Further, I am mindful of the fact that I found Mr Jones to be in breach of s. 175 CA 2006, and s. 175(2) provides that, in

[2] I consider this to be a permissible approach in accordance with authority – see *Capita Alternative Fund v Drivers Jonas* [2012] EWCA Civ 1417, at [43] per Gross LJ.

respect of such breach, it is immaterial whether the company could have taken advantage of the property or opportunity that it has been deprived of, cf. *Goldtrail Travel Ltd v Aydin* [2016] 1 BCLC 635, at [43], per Vos LJ. Although we are concerned here with equitable compensation rather than an account of profits, this must, as I see it, at least play some part in informing the Court's approach to causation issues.

Head 3 – Loss of outstanding work in progress due to ASS

102. I have already identified in paragraph 42 above that whilst the introduction to the Particulars of Loss and Damage refers to this head *"as claimed in Para 36(ii) Poc"*, paragraph 36(ii) of the Particulars of Claim merely identifies: *"The loss of the value of the Business and Undertaking of the Company (as defined in paragraph 27 above), to be the subject of expert valuation"*, when paragraph 27 makes no express reference to work in progress, and there is no other reference in paragraph 36 of the Particulars of Claim to work in progress.

103. Mr Doyle KC submits that paragraph 27 of the Particulars of Claim referred to the Business and Undertaking of the Company as *"including"* the various assets set out therein, and thus that paragraph 27 encompassed WIP/debtors even if not expressly referred to therein. What I consider is clear from other paragraphs of the Particulars of Claim is that the assets referred to in paragraph 27 as comprising the Business and Undertaking of the Company only extend to those that it was alleged had been wrongly transferred to AMR. It formed no part of ARM's case that the WIP/debtors was/were transferred to AMR. Rather, AMR's case has been that these were assets that the Joint Administrators would seek to recover on behalf of ASS, hence the receipt of monies shortly after their appointment, and the compromise ultimately reached with QHL in relation thereto. In the circumstances, I do not consider that paragraph 36(ii) of the Particulars of Claim can properly be construed as extending to this head of loss in relation to the value of WIP/debtors.

104. I am mindful that Mr Jones appeared in person, and that many of the issues that I have identified in relation to WIP/debtors were not explored at the liability trial in the detail that I consider that they are likely to have been if it had it been identified prior thereto that it was contended that Mr Jones was liable, effectively, for the loss of the value thereof. In the circumstances, I consider that it would be unjust not to hold ARM to its pleaded case as contained in its Particulars of Claim.

105. However, even if it were open to ARM to pursue this head of loss, I am by no means persuaded that the loss in question is properly recoverable against Mr Jones in any event for the following reasons.

106. Firstly, I consider that there are difficulties in properly saying that, taking a commonsense view of causation, this is loss caused by the breach that I have held has been established in relation to the transfer of the Business of Undertaking to AMR. The loss has arisen from the failure or inability of the Joint Administrators to realise the WIP/debtors to the full extent of their book value. Whilst this might have been a consequence of the breach that has been established, it is rather more difficult to see that it was caused thereby (taking a commonsense view of causation).

107. The point is, perhaps, illustrated by the way that Mr Doyle KC has sought to argue the point in paragraph 18 of his written Closing Submissions, by way of further expression

of the argument contained in paragraph 44 of his Skeleton Argument. In the former, he says this:

> "The Claimant's position is that, with its core rooted in the notion of loyalty, Mr Jones was in breach of his fiduciary obligations to ASS (which were ongoing during the administration) by failing to take steps to secure a better outcome for ASS in the realisation of the £2.7M."

However, the breach of duty thus alleged is different from the breach alleged in the Particulars of Claim that I found to be established. In consequence, there was only limited exploration at the liability trial, and indeed also at the quantum trial, as the reasons why the Joint Administrators did not realise more than they did in relation to the collection of WIP/debtors.

108. Secondly, it seems to me that any consideration of this particular head of loss requires to be considered on the basis of the same counterfactual is considered in respect of Head 1, namely ASS renegotiating terms with QHL akin to those actually negotiated as between AMR and QLS. What is reasonably clear that those terms were successfully negotiated on behalf of AMR against a background of QLS, encouraged by Mr Jones, e.g. by his email dated 30 January 2015, proceeding on the basis that the Joint Administrators would not be in a position to recover anything approaching the whole amount of the outstanding WIP/debtors from QLS's sister company, QHL. In these circumstances, I consider it highly likely that if ASS had been in the position of renegotiating new terms with QHL or QLS, it would have been constrained to make significant concessions to the latter in relation to the collection of outstanding WIP/debtors.

109. Further, as considered in paragraphs 55 to 67 above, there were significant issues in relation to the collection of the WIP/debtors in any event, which make it difficult for me to come to any sensible conclusion as to the true value thereof for the purposes of awarding equitable compensation against Mr Jones.

110. Consequently, I consider that ARM's claim under this head must fail.

Head 4 – Loss of the costs and expenses of administration and liquidation of ASS

111. Mr Doyle KC was fairly frank in accepting that this head of loss may be too remote or reductive. Although, as explained, common law principles of remoteness and causation do not apply to a claim for equitable compensation, the court still needs to be satisfied that, taking a commonsense view of causation, the breach of fiduciary duty in question has caused the particular loss.

112. Although my finding at the Liability Trial was to the effect that Mr Jones had used the cloak of the administration of ASS to effect the transfer of the Business and Undertaking in breach of his fiduciary duties, it formed no part of ARM's case that Mr Jones acted in breach of his fiduciary duties in causing ASS to enter into administration when it ought not to have done so. Consequently, I made no finding to that effect.

113. In the circumstances again, although the administration may have been a consequence of Mr Jones's actions in breach of his fiduciary duties, I do not consider that the breach of fiduciary duties that have been established are sufficiently causative, taking what I

consider to be a commonsense view, so as to entitle ARM to equitable compensation that extends to the costs of the administration and liquidation.

114. Consequently, I consider that ARM's claim under this head must fail.

Overall conclusion

115. The net effect of this judgment is that ARM equitable compensation against Mr Jones, and therefore to judgment in the following sums:

i) £130,418.95 in respect of the payments to Neutrino;

ii) £33,900 in respect of the payments to Cumulo;

iii) £1,235,285 in respect of the transfer of the Business and Undertaking to AMR.

116. In addition, ARM is entitled to judgment against Neutrino as constructive trustee for knowing receipt in the sum of £130,418.95.

117. ARM seeks interest on the above amounts. By my Order dated 17 May 2023, I fixed interest on the sums then awarded at 1% above base rate from time to time. Subject to further submissions to the contrary when I deal with consequential matters, I consider that interest should be paid at such rate on the above sums.