

ENGLAND AND WALES / JUDGMENT

Waldorf Production UK Plc, Re

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Neutral Citation Number: [2025] EWHC 765 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES INSOLVENCY & COMPANIES COURT (ChD)
Case No: CR-2025-001323 The Rolls Building 7 Rolls Buildings Fetter Lane London EC4A 1NL
Date: Wednesday, 5 th March 2025 Before: MR. JUSTICE HILDYARD

- ----- Between: IN THE MATTER OF WALDORF PRODUCTION UK PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006

- -----

- ----- MR. DANIEL BAYFIELD KC and MS. CHARLOTTE COOKE
(instructed by White & Case LLP) for the Plan Company MR. MATTHEW ABRAHAM
(instructed by Milbank LLP) for SteerCo MR. JON COLCLOUGH (instructed by Mayer Brown
International LLP) for Capricorn MR. STEFAN RAMEL (instructed by HMRC) for His
Majesty’s Revenue and Customs

- ----- Approved Judgment Transcript of the Stenograph Notes of Marten
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Web: www.martenwalshcherer.com Mr Justice Hildyard Approved Judgment MR. JUSTICE
HILDYARD: Waldorf Productions UK PLC 05.03.25 1. 2. 3. 4. 5. 6. 7. 8. This is an application
brought by Waldorf Production UK Plc (which I shall refer to as “the Plan Company”) to
convene two meetings of its creditors (which I shall refer to as “the Plan Creditors”) to
consider and, if thought fit, approve a restructuring plan under Part 26A of the Companies
Act 2006. The Plan Company, which appears by Mr. Daniel Bayfield KC, leading Ms. Charlotte
Cooke, is a public limited company incorporated and registered in England and Wales and
liable to be wound-up under the Insolvency Act here. A useful structure chart was provided
in the core bundle and I have taken some of what follows from that chart and other bits of it
from the useful skeleton argument provided to me as advance reading before the actual
hearing. In very brief summary: the Plan Company is an indirect subsidiary of Waldorf
Energy Partners Limited (which I shall refer to as “WEPL”, and which is presently in
administration) and Waldorf Production Limited (which I shall refer to as “WPL”, which is
also in administration). The Plan Company is in turn the parent company of Waldorf
Production North Sea Limited and Waldorf Real Estate Limited (which I shall refer to as
“WREL”) and those companies are together referred to as the “WPUK Group”. The WPUK
Group is part of a larger corporate group, of which WEPL is the ultimate parent company. I

shall call that broader composition of companies “the Group”. The direct and indirect subsidiaries of WEPL, other than members of the WPUK Group, are referred to as the “WEF Group”. The WPUK Group comprises an oil and gas enterprise engaged in exploration and production of oil and gas in the United Kingdom Continental Shelf. Its key assets consist of interests held by certain of WPL's subsidiaries in licences granted by the United Kingdom North Sea Transition Authority which allow them to search and bore for petroleum on the seabed of the UK Continental Shelf. These are referred to as “Licences” in this judgment. As I shall come on to explain in more detail, the Plan, which is part of a proposed wider WPUK Group restructuring, seeks to compromise the rights of the ultimate beneficial owners of Senior and Super Senior Secured Bonds issued by the Plan Company, which are governed under Norwegian law, and to extinguish the rights of its Unsecured Creditors in return in their case for a cash payment of 5% of their debts and a contingent profit-sharing right in what is in effect any reconstruction surplus which emerges if the Plans are successful. Certain intercompany indebtedness, where the Plan Company is a debtor is also to be extinguished under the Plan. The Plan Company's application is supported by the Bond Trustee and by a healthy majority of the beneficial owners of the Bonds. They are grouped, or have, for administration purposes, subscribed as members of SteerCo who have a right to bring claims against the Plan Company as contingent creditors. They do so under and by virtue of a Deed Poll executed by the Plan Company and acknowledged by the Bond Trustee. They appear by Mr. Matthew Abraham of counsel. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 9. 10. 11. 12. 13. 14. 15. A short word on the Deed Poll may be appropriate. But for the Deed Poll, which is governed by English law, the only persons who would be entitled to bring proceedings as creditors under the arrangements would be the Bond Trustee. In order to give the beneficial owners a choice, and I am satisfied not for any purpose of artificially creating a class or establishing a jurisdictional link, the Deed Poll provides for the Plan Company in effect to recognise a debt owing to each of the beneficial Bondholders with the concurrence of the Bond Trustee. As the Bonds are governed under Norwegian law, an issue could arise as regards the effectiveness of all of that. So the Bond Trustee has in turn committed to make reflective or mirror arrangements reflecting what is happening under the Deed Poll governed by English law, to make sure that the effect of that is under and recognised pursuant to Norwegian law. I may have to come back to the Deed Poll, but that is, for present purposes, I think sufficient to explain the standing (as contingent creditors) of the individual Bond beneficial holders. SteerCo, the vast majority of the persons beneficially interested in the Bonds and, for that matter, as I understand it, the Bond Trustee, support the application made today and that has been made clear to me by Mr. Abraham of counsel. In that regard, Mr. Bayfield has also shown me the documentation containing permanent undertakings on behalf of the Bond Trustee to reflect the arrangements I have briefly described. The Plan, and certain procedural aspects of this application, are, however, opposed by the principal Unsecured Creditors to the Plan Company, namely Capricorn Energy Plc (which I shall refer to as “Capricorn”), which is owed some \$30 million, and His Majesty's Revenue & Customs, HMRC, who are owed, as I understand it, in aggregate, some \$79 million in respect of outstanding liabilities under the

Energy (Oil and Gas) Profits Levy Act 2022 (which I shall refer to as the “EPL”, but which is sometimes more generally referred to as a windfall tax). Capricorn and HMRC appear by Mr. Jon Colclough of counsel and Mr. Stefan Ramel of counsel respectively. As to the matters that must be dealt with today, as David Richards J explained in *Telewest* some time ago, it is “emphatically not” for this convening hearing to consider the merits and fairness of the restructuring plan. That will be a matter for any further sanction hearing which will be necessary if meetings are convened and the Plan is approved by at least one of the class meetings directed. The main points to be considered at this convening hearing are whether the court has jurisdiction to and should convene plan meetings, whether the classes proposed by the Plan Company for those meetings are considered by the court to be appropriate and what directions should be given to enable the opponents of the Plan to consider and answer the Plan Company's evidence and to put forward their arguments in respect of any sanction hearing which follows. I turn first to set out some of the salient background in more detail, starting with an elaboration of the business of the Plan Company and the Group. As explained earlier, the Plan Company's main assets comprise a number of licence interests, including licence interest shares in respect of two of the Group's largest oil-producing assets, being interests in the Kraken Field and the Greater Catcher Areas. Mr Justice Hildyard Approved Judgment *Waldorf Productions UK PLC* 05.03.25 16. 17. 18. 19. 20. 21. 22. Some of the licences in which the Plan Company holds an interest were originally acquired as part of a sale and purchase of the entire share capital of a company called Capricorn North Sea Limited (now having its name changed to WREL) and a sale and purchase agreement originally entered into between WPL and Nautical Petroleum Limited (now trading as Capricorn Energy UK and which I shall refer to as necessary as the “Capricorn SPA”). In November 2021, WPL novated its rights and obligations relating to the Capricorn SPA to the Plan Company. WREL then transferred its licences to the Plan Company as part of a hive-up of WREL's assets in February 2022. On 19th December 2023 the Plan Company entered into a Settlement Agreement with, amongst others, Capricorn Energy Plc (that is to say Capricorn as I have defined it and which I shall sometimes call as it is thus referred to in the skeleton arguments as the M&A Creditor) in order fully and finally to settle amounts due and owing under the Capricorn SPA. The Plan Company is also a party to several key contracts in connection with the Licences in which it holds an interest. These are typical of ventures in the North Sea and elsewhere, and include a Joint Operating Agreement (ordinarily referred to as a “JOA”) in respect of each licence, setting out the respective rights, interests, duties and obligations of the Plan Company and each joint venture partner in connection with the joint use of the relevant licence and the hydrocarbons which are derived therefrom. There are also Decommissioning Security Agreements (which I shall refer to as “DSAs”) pursuant to which the Plan Company and the joint venture partners in the JOA are required to set aside certain amounts of security held in trust to meet obligations arising in relation to the decommissioning of a field, which can be very substantial. The Plan Company itself has 23 employees who constitute all of the Group's employees; and it leases the Group's offices in Aberdeen and London and is party to various critical contracts relating to insurance, IT and infrastructure matters which are not

to be compromised, as I understand it, under the Plan. Turning to the Bonds and the Secured Creditors, the Plan Company has issued, first, on 1st October 2021, Senior Secured Bonds due in September 2025, in the sum of US\$300 million (the “Original Bonds”). I should explain in this regard that all of the sums I will refer to, including sums owed to HMRC, are denominated in US dollars, because that is the currency of account in oil and gas ventures and it is the currency of account in which HMRC levy the tax. On 19th July 2024 and 27th November 2024 respectively, and in necessary response, as it is submitted on behalf of the Plan Company, to severe financial problems which confronted the Plan Company, which I shall come on to describe, the Plan Company issued Super Senior Bonds, due in September 2025, in an amount of \$53,706,770 with a coupon at 13% (the “Initial Super Senior Bonds”) and \$15 million Super Senior Bonds due also in September 2025 (the “Company Super Senior Bonds”; together with the Initial Super Senior Bonds, the “Super Senior Bonds”). The Super Senior Bonds, together with the Original Bonds are referred to as the Bonds. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 23. The Original Bonds are guaranteed by the Plan Company's direct subsidiary (which I have referred to as “WREL”) and benefit from security including in respect, first, of shares in the Plan Company held by its direct parent company, Waldorf Acquisition Company Limited (“WACL”) and, secondly, the Plan Company's own assets, including but not limited to, shares in its subsidiaries, its key contracts, receivables and bank accounts. 24. In addition to the guarantee and the security described in the previous paragraph:

- (1) the Super Senior Bonds benefit from the guarantees and security described in the previous paragraph and in addition (1) pursuant to a supplemental debenture and global security confirmation agreement dated 31st July 2024, the Initial Super Senior Bonds benefit from security granted by, and over, certain of the companies in the WEF Group, which I need not detail for present purposes, but which are all, as I say, within the wider Group.
- (2) the Company Super Senior Bonds benefit from security granted by, and over, the material companies in the WEF Group, namely, WEF, WCNS(I), WCNS(II), WPRL, WHL and WOL. The security granted in respect of the Super Senior Bonds ranks in priority to all other debt issued by members of the WEF Group which have granted security for them, including the senior secure Bonds issued by WEF pursuant to Bond Terms dated 1st March 2023 as amended and restated on 18th July 2024, but subsequently waived and amended on 27th November 2024 (these are referred to as the “WEF Bonds”). As at 27th February 2025, the principal amounts outstanding of the Original Bonds was US\$55,021,352 and of the Super Senior Bonds was US\$62,206,770. I turn to unsecured liabilities. The Plan Company also has certain actual and contingent unsecured liabilities including the following. First, there is an estimated liability of some US\$74,890,820 as at the record time owing to HMRC under the 2022 Act which I have referred to. This is in two tranches. First, a liability of approximately \$47 million owed in respect of EPL, the tax, in other words, the windfall tax I have referred to, accrued by the Plan Company during the current year ended 31st December 2023, together with accrued interest and penalties of approximately US\$2,890,820 as at 27th February 2025. Secondly, there is a liability of approximately US\$25 million in respect of EPL

accrued during the financial year ended 31st December 2024, again together with any accrued interest and penalties, (these together are described as the “EPL Liabilities”). Apart from that, liabilities of some \$29.5 million are owed to Capricorn (which I have also referred to as the M&A Creditor) arising under the Settlement Agreement and comprising a liability of US\$22,500,000 which became due and payable on 3rd January 2025 but has not been paid. There is also a liability owed to Capricorn in the amount of approximately \$7 million, which will become due and payable on 15th May, also pursuant to the Settlement Agreement, in the event the sale transaction which had been agreed in respect of the 25. 26. 27. 28. 29. 30. 31. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 32. 33. 34. 35. 36. 37. 38. transfer of the Plan Company's interest in one of its licence interests, namely the Columbus Field, which is subject to certain conditions precedent the fulfilment of which is outside the Plan Company' control, is not completed by 31st March. The Plan Company also has certain other unsecured liabilities, including net intercompany liabilities, which as at 27th February 2025 total some US\$60 million owed to WACL and some \$451 million plus owed to WREL. These liabilities are to be waived or released under the Plan. Certain liabilities also, the payment of which is considered critical as I have described, will be paid in the ordinary course of business. The basis of this treatment is that these creditors have acted in good faith and have provided and will continue to provide goods or services which are critical for the Group. Those critical creditors are, as it were, to be hived-off from the Plan and paid in full in order to enable the Plan Company to continue, that being amongst the objectives, at least on a temporary basis, of the arrangements which are proposed. I said that this indebtedness was in response to financial difficulties and it is to those which I now turn to describe. In May 2022, the 25% levy comprising the EPL came into force. It was initially presented as a temporary measure which would fall away on 31st December 2025, but in November 2022 it was announced that the levy was far from being abandoned, was to increase to 35% and the period during which EPL would apply was extended to 31st March 2028. In November 2024, the rate was again increased to 38% for profits accrued after 1st November 2024 and the regime was further extended until 31st March 2030. This increase and extension in terms of the tax percentage and the duration of the tax has placed considerable pressures on the Plan Company and the Group. These pressures have been exacerbated by the fact that the introduction of the EPL post-dated the Plan Company's entry into the Capricorn SPA as have the various increases and extension of the EPL taking effect after that acquisition of several licences, including Group companies. These acquisition agreements involve the payment of deferred and contingent consideration which was calculated without calculating for the implementation of or increases in EPL. The Group's issues were then further exacerbated when there was notification in April 2024 that certain third party working capital arrangements which enabled the Group or companies within it to discount receivables would be withdrawn in May 2024 due to, amongst other factors, internal investment restrictions of a third-party financier. Such funding had been critical to the facilitation of cash flow and the maintenance of sufficient working capital through the Group. Despite efforts to pursue negotiations with several other third-party financiers to substitute the retreating financier, the evidence is that it did not prove possible to replace

those funding arrangements. In short, and as a result of these liquidity issues, on 3rd June 2024, the Plan Company and WEF failed to comply with their covenant to deliver to the Bond Trustee their annual financial statements for 2023 by the end of the applicable remedy period under the Bond Terms and the WEF Bond Terms respectively. Secondly, WEF failed to Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 39. 40. 41. 42. 43. 44. 45. 46. 47. make certain amortisation and interest payments when due or satisfy the liquidity covenants under the WEF Bond Terms. In those circumstances, on 4th June 2024, the directors of WEPL and WPL (which I have explained were the Plan Company's ultimate parent companies) resolved to appoint administrators and, as I have previously explained, each such holding company continues in administration. The purposes of the administration and the appointment of administrators in the case of those companies was to provide what is described in Mr. Bayfield's skeleton argument as a stable platform at parent level in order to allow the subsidiaries to continue trading and to maintain their going concern value and allow the Administrators to run a sale process in respect of WPL shares in its subsidiaries. In order also to address its position with HMRC, on 28th June 2024, the Group agreed "time-to-pay" arrangements in respect of its EPL and certain corporation tax liabilities arising from the financial year ending 2022 which allowed payment in a number of monthly payments, all of which have now been made. On 18th July 2024, the members of the Group and certain holders of WEF Bonds completed the implementation of a refinancing of the Bonds and the WEF Bonds (which I refer to as the "July Refinancing"), first to implement the transfer of the Original Bonds from their prior holders to a Steering Committee of holders of the WEF Bonds at that time (which I previously referred to as "SteerCo") and the further transfer of certain of the Original Bonds held by SteerCo to other holders of the WEF Bonds and, secondly, the maturity of the Original Bonds was extended from its original date to 2nd September 2025. There were provisions for deferment and roll-up of all amortisation payments arising pursuant to the terms of the Original Bonds to the new maturity date, all of which was intended to provide the Plan Company with improved liquidity headroom. An injection of new money by SteerCo and certain other holders of the WEF Bonds of approximately US\$23 million via the issue of the Super Senior Bonds was also agreed and implemented to stabilise the liquidity position of the Group. There was also a roll-up on a cashless basis of a certain proportion of the WEF Bonds into the Super Senior Bonds, A forbearance and standstill agreement was implemented in respect of the pre-existing Events of Default under the terms of the WEF Bonds and certain undertakings were also agreed on behalf of the WEF and the guarantors pursuant to the WEF Bond Terms. Furthermore, on 18th July an Amendment and Restatement Agreement to effect certain amendments to the WEF Bonds, and, on 1st July 2024 an amendment and restatement agreement to effect certain amendments to the Bond Terms and waive all pre-existing Events of Default thereunder, were also agreed. These arrangements did stabilise the financial position of the Plan Company and their broader group at least sufficiently to enable administrators to run a sale process; and the Plan Company and the wider group were enabled to commence substantive Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 48. 49. 50. 51. 52. 53. 54. 55. discussions with SteerCo to explore longer-term solutions to the

unsustainable maturity profile and capital structure of the Group borrowings. However, in the second half of 2024, the position worsened. First, oil prices fluctuated significantly, which adversely impacted the Group's anticipated revenue; secondly, the Group faced certain operational difficulties, including delays in start-ups from the planned shutdown of certain assets, with a consequential impact on revenue and, thirdly, the annual postings into trust, required under the DSAs across the Group, were more onerous or higher than had been expected. These factors further squeezed the Plan Company, and in order to be able to fund some of these postings, the Plan Company lent \$15 million to a key operating member of the Group to enable it to fund the postings required. That established an Intra-Group Loan and in connection with the Intra-Group Loan, the Plan Company issued and subscribed for the Company's Super Senior Bonds (which are subject to certain undertakings given by the Plan Company). These concern the voting on any resolution decision or action taken under relevant intercreditor arrangements or in any scheme or restructuring plan under Part 26 or Part 26A of the Act. The Intra-Group Loans were utilised by WCNS(I) directly and subsequently on-lent in part to other members of the WEF Group. There were certain pre-payments made. Further to those payments, upon receipt of amounts extended, the Plan Company cancelled a corresponding amount of Company Super Senior Bonds. In mid-December 2024, the Administrators informed the Plan Company that the initial stage of the Sales Process had concluded; but they had received no offers for the Plan Company that were considered implementable or acceptable to SteerCo, due at least in part it was said to the concerns of prospective bidders as to the overall debt profile of the Plan Company and the burden of the windfall tax. The actual M&A liability under the Settlement Agreement fell due on 3rd January 2025, but was not paid. In parallel with the sales process, the Plan Company, together with its financial and legal advisers, considered potential alternative long-term solutions for the Plan Company, including a financial restructuring. Following the update received from the Administrators regarding the outcome of the sales process in December 2024 the Plan Company, its legal advisers and financial advisers, accelerated preparation for and negotiations in respect of restructuring, the majority of which is now represented by the Plan on which class meetings are proposed. Turning to the Plan now proposed, the fundamental purpose of the restructuring and the Plan which forms part of it is to enable the Plan Company to continue to trade in the ordinary course while it pursues a solvent sale; and in the event that a solvent sale is not consummated, to enable the Plan Company to continue to realise value from its assets for the benefit of its creditors. The Plan is intended to facilitate the compromise of the EPL Liabilities and the M&A Liabilities and extend the maturity date of the Bonds by two years to give the Plan Company some headroom in that regard. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 56. 57. 58. 59. 60. The key features of the proposed restructuring can be described as follows: first, the Bond Terms will be amended; secondly, the unsecured liabilities will be extinguished in full in exchange for a cash payment of 5% of the amount thereof; thirdly, each Unsecured Creditor will be entitled to receive contingent Upside-Sharing Payments in an amount pro rata to and capped at the principle amount of the claims extinguished by the Plan (this is what I have described as the

sharing of any upside or reconstruction surplus); fourthly, the net company liabilities owed to WACL and WREL should be waived and released in full; fifthly, any other Intra-Group claims owned by the parent company should be waived and release or discharged by way of set off and compromise; and lastly, any amounts outstanding under the Intra-Group Loan will be repaid in full and the remaining Company Super Senior Bonds will be cancelled in accordance with and subject to the terms of a voting undertaking and of the Bond Terms, provided that in the opinion of the directors of WCNS(I) in their sole discretion acting reasonably, such repayment can lawfully be made. By way of summary, the proposed amendments of Bonds are as follows: (1) the maturity date of the Bonds will be extended to 31st May 2027; (2) cash-pay interest will continue to be payable at a rate of 13%; (3) the Super Senior Bonds and the Original Bonds will maintain their current security and guarantee position; (4) the minimum liquidity covenant will be amended so that the aggregate amount of any cash and cash equivalent investments shall be no less than \$10 million; (5) a covenant will apply requiring the Plan Company to comply with the sale protocol and governance agreement; (6) a new mandatory early redemption mechanic shall be introduced whereby any cash held by the Plan Company and its subsidiaries in their bank accounts in excess of a specified amount will be applied within ten business days to mandatory early redemption of the Bonds; (7) the existing call premium mechanic (which amongst other things provided for the Bonds to be redeemed at a fixed price) shall be replaced with a new call premium mechanic which is dependent on oil prices and applies only to the excess cash sweep; (8) the Plan Company shall be entitled to occur up to \$10 million worth of indebtedness through a tap issuance of the Bonds, that is a further issuance of Bonds in the same series, ranking in priority to the Bonds with respect both to payment and to guarantees and security which are to be called the “Super Priority Debt”, subject to certain conditions. The implementation of the Restructuring is conditional on Confirmatory Amendments of the Bond Terms being passed by the requisite majority of the Bondholders in accordance with the contractual provisions therein set out. Accordingly, the Plan creditors are: (1) those persons being the ultimate beneficial owners of the Bond who under the Deed Poll are contingent creditors and thus creditors for the purposes of the Plan; (2) HMRC in respect of the EPL Liabilities I have described; (3) Capricorn, the M&A Creditor, in respect of the M&A Liabilities which are outstanding. In respect of the Bondholders and the Bond Trustee, and after a period of engagement and negotiation, the Plan Company agreed in principle with them, and in particular with SteerCo, certain terms of the restructuring leading to their commitment to a Lock-Up Agreement dated 5th February 2025, whereby in short they agreed to facilitate the Plan in return for which they also received a certainly not unusual percentage payment. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 61. 62. 63. 64. Those are the facts as they relate to the Plans and the persons affected by them. The next thing I must consider is the relevant alternative. The relevant alternative is perhaps the lynchpin of the entire edifice of the Part 26A architecture and requires to be identified in order to assess the fairness of the Plan but also the appropriateness of the class constitution if an issue should arise in that regard. The evidence is that if the Plan is not sanctioned, the directors are likely to conclude that the Plan Company no longer has a reasonable prospect

of avoiding entering into a formal insolvency process. In fact, that would be because the efforts in the past to effect a sale have foundered on the problems inherent in the considerable indebtedness of the Plan Company and its liability to windfall tax and it is unlikely that these will be resolved and, secondly, because of the maturity date of 2nd September 2025 in respect of all the Bonds which would be, in those circumstances, unlikely to be met. An independent expert report has been prepared by Lisa Rickelton of FTI to address what is most likely to happen if the Plan is not sanctioned and to provide an estimated outcome of the return to Plan Creditors in such circumstances. That is called the "Relevant Alternative Report". In addition, Dr. Stuart Amor of FTI has addressed the valuation of the Plan Company on a cash-free and debt-free basis, that for the purposes no doubt of analysing the matter from the other point of view of the Plan being sanctioned.

65. Mr. Niels Kirk of KLC has addressed the likelihood of a sale of the Plan Company taking place following a restructuring with the capital structure tidied up under it.
66. Ms. Rickelton's opinion is that the relevant alternative in these circumstances is the Plan Company entering into formal insolvency proceedings. In that regard, I questioned Mr. Bayfield as to what was meant by this, because it would be more usual for the specific insolvency process to be identified. He explained that it could either be an administration or a liquidation, according to what was considered most suitable, but that there should be no problem in that regard because under either process the Unsecured Creditors would be well underwater and have no prospect of any return. 67. 68. Looking at the other side of the coin, and what would happen if the Plan is implemented and a suitable sale or continuance thereby enabled, Ms. Rickelton has estimated that the returns to Bondholders were expected to be some 33% in the Relevant Alternative, compared with 42.65% in a low case and 72.97% in a high case under the Plan. On that ground, therefore, the relevant creditors, the Bondholders, would be better off under the Plan than under the relevant alternative. According to this evidence, returns to the M&A Creditor and HMRC would be some 0.15% in the relevant alternative, as compared with the 5%, together with the prospective for contingent advantage of the sharing arrangements under the Plan. This is subject to the fact that the Plan Company has a potential VAT receivable which in the relevant alternative HMRC would be able to set off against amounts due from the Plan Company, reducing the claim in respect of EPL by the same amount. 69. The real advantage hoped to be secured is the identification and achievement of an arrangement and agreement with potential buyers, which would attribute value to the Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 70. 71. 72. 73. 74. 75. business and also synergy value in the case of a purchaser who identified some reason to suppose that if it acquires these licences or the companies, that it will benefit or generate additional profits from the combination. It is supposed that stripped of its problems or burdens, the Plan Company's portfolio with these licences would be an attractive portfolio for a potential acquirer. That is the background against which I must assess the primary issue which arises for my decision at this stage of the process. The procedure for a convening hearing under Part 26A of the Companies Act 2006 is governed or at least assisted by the Practice Statement. The court's

function is limited to considering; first, whether the jurisdictional conditions laid down by section 901A of the Companies Act are satisfied; whether the relevant creditors have been given sufficient notice of the convening hearing; secondly, whether in that context there is any roadblock is that would unquestionably prevent the court from sanctioning the Plan; and thirdly, whether the class meetings proposed by the Plan Company would be properly constituted if the proposal of two class meetings is adopted. As I have already stressed, the function of the court at this stage is “emphatically not” to consider the merits or fairness of the Plan. Those are matters for any future sanction hearing, assuming the Plan is approved by the requisite majority at at least one of the class meetings convened. The Practice Statement contemplates and stipulates that the Plan Creditors will be given notice of the convening hearing. No specific notice period is laid down and it is a matter for assessing whether in the circumstances sufficient notice has been given. A rule of thumb which Edwin Johnson J called an “informal tariff” of some 21 days’ notice is adopted. In this case there has been more than that, some 27 days and by reference to the general standard it seems to me, therefore, that the Practice Statement Letter posted by e-mail on 5th February and thereafter published in Stamdata and the clearing system, confirming the availability of the PSL on the Plan website was sufficient notice for the purposes of the PSL. I shall return to an aspect of the notice later when determining certain points made by HMRC in respect of the fact that although the PSL was circulated in good time, the draft Explanatory Statement (which I must also consider in outline) was not delivered to them until last Friday; and I think the hearing bundles were only delivered on Monday, today being Wednesday of this week. As indicated, I must also consider whether there is any obvious reason why the court should not have jurisdiction to sanction the Plan. I put it that way because at this stage of the process, it is not my function finally to determine the issue. Rather, it is to consider whether it is obvious that the court has no jurisdiction to sanction the Plan as proposed, or whether there are other factors which in effect amount to a roadblock because it is obvious that in the light of them, there is no realistic prospect of the court exercising its discretion to sanction the Plan, even if otherwise it was satisfied as to its jurisdiction in a strict sense to do so. 76. As to jurisdiction and in outline: I must be satisfied that the jurisdictional pre- conditions stipulated by Condition A and B as set out in section 901A are fulfilled. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 77. 78. 79. 80. 81. 82. 83. 84. Condition A is that “... that the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.” Condition B is that (a) a compromise or arrangement is proposed between the company and its creditors or any class of them and (b) the purpose of the arrangement is to eliminate, reduce or prevent or mitigate the effect of any of the financial difficulties mentioned in sub-section (2). It has been held repeatedly that these conditions are not difficult to satisfy, as Zacaroli J (as he then was), said in Hurricane Energy plc [2021] EWHC 1418 (Ch), that the threshold for satisfying Condition A at least is “relatively low” I am satisfied first, the Plan Company is, as I have said, incorporated under the laws of England and Wales, liable to be wound up under the Insolvency Act 1986 and therefore is “a company” as defined in section 901A(4)(b) of the Companies Act

2006. Secondly, I am satisfied that the Plan Company has encountered or is likely to encounter financial difficulties that are affecting or may or will affect its ability to carry on business as a going concern. I am in no doubt, and I do not think it has been argued to the contrary, that Condition A is satisfied in this case. Condition B requires assessment of the following matters. First, I consider that the Plan contains the necessary elements of “give and take”, such as to constitute what is proposed as an “arrangement” within the meaning of the relevant section. The issue of “give and take” has been canvassed in the authorities and it is now fairly clear that there is no assessment as to whether it is sufficient, only whether there is “give and take” in the almost semantic sense, to qualify as an arrangement. By way of contrast, a forfeiture would not be an arrangement; it would simply be a forfeiture. Second, I am satisfied that the arrangement is one between the Plan Company and classes of its creditors. Thirdly, I am satisfied that the purpose of the Plan is to eliminate, reduce or mitigate the effect of the Plan Company’s financial difficulties. Thus, on the present state of things, both Condition A and Condition B seem to me *prima facie* to be satisfied sufficiently to warrant me moving to the next stage of considering the appropriate composition of class meetings. However, I note in that regard that HMRC has expressly sought to reserve its position and wishes to consider further whether an argument is available to it that Condition B is not satisfied. This was not elaborated in argument and HMRC have kept their cards quite close to their chest as to exactly what they intend to argue, if at all. Mr Bayfield urged me to direct that the point be determined now. However, in circumstances where HMRC submit that they need more time to consider all the evidence they received this week, it seems to me that I should allow some leeway. If HMRC subsequently determine that that condition is not satisfied and provide good reason, then they should have the ability and will have the obligation to apply to the court under the relevant provision of the Practice Statement before the creditors’ meetings get underway in order to argue the point. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 85. 86. 87. 88. 89. 90. That said, I will have to consider later, in brief, a further argument as to whether other matters relating to the substantive jurisdiction of the court also have to be raised in that way; but I should stress that if the matter goes to the convening of the class meetings and as to whether the jurisdictional pre-conditions for such an order convening the meetings are satisfied, that issue must be raised for practical reasons before the meetings take place. In that regard, paragraph 12 of the Practice Statement Letter provides that it is open to the court to make provision for a limited time in which an application can be made relating to class meetings and the pre-condition of that aspect of jurisdiction so that the matter can be argued out before the class meetings take place, which might be a waste of time if the point carries substance. Before considering the classes proposed to be convened, I should also consider whether there may be more general reasons why the court lacks jurisdiction or why, even if it has jurisdiction in the strict sense, it would not in all likelihood be prepared to exercise it. These are ordinarily referred to as “roadblocks”. As I conceive it, the function of the court at the convening stage is to satisfy itself or to consider the question of whether there are obvious roadblocks. Examples of such roadblocks are where there is quite obviously no

sufficient connection with the jurisdiction or because the plan proposed is so ostensibly and immediately obviously unfair and sanction so unlikely that there may be no sufficient purpose in the applicant company proceeding with the matter at all. (In my experience, the court seldom has to make a determination: the relevant company is likely not to wish to proceed with a plan so unlikely to achieve sanction.) One possible roadblock in this case which had to be addressed was whether there was some provision of Norwegian law in respect, as I have said, of the Bonds governed by Norwegian law which would prevent the implementation or recognition or enforcement of the Plan even if sanctioned by the English court. The English court is obviously extremely concerned neither to tread on the toes of another jurisdiction in respect of something which is obviously not properly the English court's business, but also it is keen to ensure that it does not obviously act in vain. For the present, as I conceive it, my task is to identify and consider obvious roadblocks, not by way of determining the issue finally, but by way of being reasonably satisfied that proceeding now is not obviously a waste of time, costs and resource. As to this, the issue of a recognition of enforcement in Norway, at first did concern me because the evidence is (and this is to some extent unusual) that the Norwegian law would probably not recognise and enforce a plan. However, as I have briefly explained, the solution which has been proposed and which is considered apparently entirely unobjectionable under Norwegian law, as I read the evidence, is for the necessary arrangements to be given duplicative effect under Norwegian law by an undertaking given by the Bond Trustees to do that. As far as I can see presently, although this will be a matter capable of being argued at the sanction hearing, I do not regard that as an obvious roadblock to the Scheme or as some substantial reason for believing that I should proceed with the Scheme no further. 91. In short, I am satisfied on the present evidence that there is no immediately obvious roadblock which has been identified as an obviously fatal impediment. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 92. 93. 94. 95. 96. 97. 98. Returning to the issue of classes, I am also satisfied in regard to that that the proposal for there to be two class meetings, in effect one comprising the Secured and the other comprising the Unsecured Creditors, is the appropriate class composition. The test as to whether people are rightly convened together in a single class, is whether their rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. This was laid down as far back as 1892 and is repeated on almost every occasion within the context of a scheme or plan. I have obviously been wary of the particular issue which may arise in the context of a restructuring plan as to the artificial creation of classes in order to squeeze out known dissentients or to establish a cramming class whereby to use the class processes subsequently as an anvil on which to beat out those dissenting under the cross-class cram down provisions now provided for this 26A, which are in truth its hallmark. As it seems to me, as I say, what is proposed is prima facie eminently sensible and perhaps realistic in the context where some 96% of the Bondholders have already, in effect, agreed under the Lock-Up Agreement and where there is no real differentiation that I have been able to identify between HMRC and Capricorn as regards the unsecured class. I have obviously wondered about the remaining 4% who are neither represented, as I understand it, before me, by Mr.

Abraham, and about whom I know nothing. I do not know whether the fact they are not parties to the Lock-Up Agreement signifies some distaste for the Plan or some other issue, but in any event, I must consider, first, whether they have properly been notified, as to which I am satisfied and, secondly, that there is no obvious argument that they might raise against the class constitution which is proposed: and I am so satisfied. I should make clear that I have also, in this context, considered whether there are any factors outside, as it were, the obvious which might fracture the classes and require, contrary to one's inclination, some separate class structure. The first issue I considered is whether the Lock-Up Agreement itself is a fracturing factor. It seems to me that the Lock-Up Agreement and the fee payable under it, which was available to all persons within that class, is not a fracturing event. Nor, for that matter, and secondly in this context, is a further transaction fee which is payable to members of SteerCo at the restructuring effective date. I was taken by Mr. Bayfield to a pithy explanation of why that should be so in a judgment of Marcus Smith J, in the matter of Haya Holdco 2 plc [2022] EWHC 1079 (Ch), the particular paragraphs being as regards advisers' fees and work fees, sub-paragraphs (5) and (6) of paragraph 72 of his judgment in that case. In short, it is to all the work done and to provide compensation from the fact that since they are privy to confidential information they may be precluded from trading in the meantime and might be justified in requiring some compensation in that regard. I am satisfied that what is proposed in this case is not a fracturing event. 99. I therefore have had no reason to suppose that what is proposed by way of the structure and composition of the class meetings is any other than the obvious and appropriate course. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 100. 101. That brings me to the question as to what directions to give with respect to the potential opposition to the Plan presently through Capricorn and potentially through HMRC, though I should make clear that HMRC has not determined finally whether it will or will not oppose the Plan. In that regard, subject to one point, my understanding is that the parties have reached broad agreement, for which I am very grateful. There is no disagreement about class composition. There are two points, perhaps three, which I should briefly address.

102. One point is the question of disclosure. This is a point which not infrequently arises. Capricorn wishes to explore documentation relevant to a particular point of its, which could be and may in the end prove to be, fatal to the Plan. This point relates to a distribution or dividend which was paid out by, I think, the Plan Company, and which might be a voidable payment, either because it was made at a time when the relevant company did not have distributable profits and it was improper to make the payment, or because under the more general law it was improper to make the payment, or thirdly because it might be avoided under one or more of the Insolvency Act provisions. 103. 104. In that regard, it is plainly a matter on which Capricorn has given due notice and of which it is likely to be entitled to disclosure of relevant material. In this sort of context, there are no general rules or general practice in this regard, save this: that it does behove all parties to work together to provide a sensible response to such a request and I very much hope that this will not lead to the need

for any further application. I would hope and expect that that matter should be dealt with by agreement between the Plan Company and Capricorn in order to ensure that the court does not have to wade into issues of documentary analysis which are not likely to be particularly enticing. The second matter which relates more expressly to HMRC concerns an issue of some general application which has arisen in respect of the Practice Statement. I have explained that as to part of the argument, I have already been persuaded that HMRC must, if it considers that there is a failure to satisfy Condition B, such that my order convening classes would be defective, notify the Plan Company and all other persons affected and make an application in that regard in good time before the class meetings happen. Otherwise, something which the court would not recognise as effective might take place by reason of its own order, which would waste time and be entirely inappropriate.

105. However, that seems to me to be a different matter from the question of whether HMRC should also, if it (or Capricorn or any other party for that matter) identifies what it considers to be a 'roadblock' such as to preclude sanction of the Plan (whether with regard to the cross-border element or otherwise) be obliged to bring an application for the disposition or determination of that issue prior to the sanction hearing. 106. I understood Mr. Bayfield to submit that the proper construction of the Practice Statement, and the proper interpretation of the guidance generally given pursuant to Re Hawk, was that it was for the opposing creditor not only to identify such a point, but seek its preliminary determination so that we should not proceed to a sanction hearing in circumstances where a potential roadblock has been identified. Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 107. 108. I do not think that that is quite what the Practice Statement requires. Nor do I think that is what was in the mind of the Court of Appeal in implementing the new practice under Re Hawk. That guidance primarily concerns class constitution issues; and though it has extended to other potentially fatal impediments to sanction, its application in the latter case is necessarily more nuanced. In the case of potential 'roadblocks', it seems to me that, if a creditor considers that there is a jurisdictional or quasi-jurisdictional impediment to sanction which is apparent from the documentation notified in good time before the hearing, it should define and raise the issue as soon as possible, and at least at the convening hearing, so that the court, with the assistance of the parties, can consider the point. If the court considers, after argument, that there is an obviously fatal impediment which will cause or require the court to refuse to sanction the plan or scheme it is likely to express its view. In my view, however, this does not mandate prior determination of more arguable points by way of what would in effect be a preliminary point.
109. As it seems to me, if the practice were to require the preliminary determination of more arguable points, or points which the party raising them justifiably needs more time to consider in the light of all the evidence, it would be necessary in many cases for the court to set aside a further date, possibly half a day or a day, to determine an issue which could then be subject to appeal. That could very much dislocate the whole process as well as requiring the court to make a further day available to the same litigants at the expense of others. 110. Furthermore, the practice requires the PSL to be sent in good time before the convening

hearing; and that may be sufficient to crystallise a point of objection, which the creditor should raise. But it is not unusual for creditors not to have received the fuller details contained in the draft Explanatory Statement, and not unreasonably be in a position of concern but not definite objection. It seems to me that in those circumstances, such as are present in this case, the appropriate course is for the creditor who has identified what it thinks is a roadblock relating to something other than class constitution as such, but who justifiably needs further time to consider the evidence, to raise that matter with the Plan Company, for the Plan Company to consider it and if it believes that its plan is under serious threat, for it to refer to the matter at the convening hearing, and either to agree to the matter being determined at the sanction hearing, or indicate to the court that it may need to raise the matter under the liberty to apply which I propose to give for directions as to whether that matter should be determined in advance of the sanction hearing. In most circumstances, I would personally be likely to be quite reluctant to make such a direction, given the risks that I have described and the burden on the court which it necessarily imposes, unless the point is plain and obvious. 111. Therefore, I consider that the directions should be that HMRC should, within a given time after it received the Explanatory Statement which it received on, I think, Friday, gather its thoughts, crystallise any 'roadblock' point, notify the Plan Company and other persons interested and possibly the court too, but then leave it to the Plan Company which has carriage of the Plan to determine whether it considers it a matter which is sufficiently crystallised and sufficiently dangerous that it should be determined. The Plan Company can then refer it to the court for its determination whether it in effect wishes to order a preliminary issue. I do not think it would be right Mr Justice Hildyard Approved Judgment Waldorf Productions UK PLC 05.03.25 in at this stage to direct a hearing of a preliminary issue not yet crystallised and indeed of which the court is for the present in the dark. 112. That is my view as to the practical application in the present case of the Practice Statement as it presently is set out. Mr. Bayfield suggested that, if that is correct more generally, it is a pity: a requirement for early disposition of suggested impediments would be salutary; and he went on to suggest that more detailed provisions in a new Practice Statement may well be appropriate in the particular case of plans of arrangement under Part 26A (which are much more complex than schemes under Part 26 or capable of being so) and which attract much more sustained opposition given the cross-class cram down power. 113. It may be that some process of preliminary hearing will become the norm. I think that might also entail provisions for earlier provision of the Explanatory Statement and other information to ensure that all parties are fully informed. Be that as it may, I can only deal with the case before me and apply what I conceive to be the practical application of the present practice in the circumstances I have described. (For continuation of proceedings: please see separate transcript)

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