Neutral Citation Number: [2025] EWHC 2706 (Ch)

Case No: BL-2025-001269 and BL-2024-001337

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20/10/2025

Before :

MR JUSTICE MANN (SITTING IN RETIREMENT)

- -

Between :

Claim no. BL-2025-001269

(1) CAPE INTERMEDIATE HOLDINGS LIMITED **(2) CAPE PLC** **(a company incorporated under the laws of Jersey)**	**Claimants/ Applicants**
- and -	
(1) PETER D. PROTOPAS **(2) ANGLO AMERICAN PLC** **(3) DE BEERS PLC** **(4) DE BEERS CENTENARY AG** **(5) DE BEERS CONSOLIDATED MINES PROPRIETARY LTD.** **(6) DE BEERS UK LTD.** **(7) DE BEERS JEWELLERS LTD.** **(8) DE BEERS JEWELLERS US, INC.** **(9) ANGLO AMERICAN US HOLDINGS INC** **(10) ELEMENT SIX US CORP.** **(11) ELEMENT SIX TECHNOLOGIES US CORP.** **(12) PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.** **(13) LIGHTBOX JEWELRY INC.** **(14) FOREVERMARK US INC.** **(15) ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC**	**Respondents/ Defendants**

Claim no. BL-2025-001269

(1) CAPE INTERMEDIATE HOLDINGS LIMITED **(2) CAPE PLC** **(a company incorporated under the laws of Jersey)** **- and -** **PETER D. PROTOPAS**	**Claimants/** **Defendant/**
(1) ANGLO AMERICAN PLC **(2) DE BEERS UK LTD** **(3) DE BEERS PLC** **(4) DE BEERS CENTENARY AG** **(5) DE BEERS CONSOLIDATED MINES PROPRIETARY LTD.**	**Third party Applicants**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Derek Dale KC and **Peter Webster** (instructed by **Signature Litigation LLP**) for the **Cape Parties**
David Joseph KC, Ciaran Keller KC and **Stephen Donnelly** (instructed by **Addleshaw Goddard LLP**) for the **De Beers Parties**

Hearing date: Friday, 17th October 2025

- - - - - - - - - - - - - - - - - - - -

APPROVED JUDGMENT

Note – because of the urgency of this matter this judgment was not able to be the subject of proposed corrections by the participating parties

Mr Justice Mann:

Introduction and the parties

1. This is my judgment in two applications each of which is essentially the counterpart of the other. The applications flow from an order of mine dated 22nd November 2024 and from the preceding judgment of which the neutral citation number is [2024] EWHC 2999 (Ch). In that judgment I granted declarations as to the status of Mr Protopapas, a receiver appointed over Cape Intermediate Holdings Ltd ("CIHL") in the courts of South Carolina. Essentially, I declared that in the circumstances, and under English law in relation to an English company, he had no authority to act for or bind CIHL, and I made injunctions preventing from so acting - the terms of that injunction appear below.

2. The underlying facts and reasoning for that order appear in my judgment, and this judgment presupposes that the reader has read it. The urgency with which this judgment is required means that I do not have time to set out again the acts of the receiver which led up to my earlier judgment, and for the same reason this judgment is shorter than it otherwise would have been. I record that I have taken into account all the arguments advanced by the parties before me, whether recorded or dealt with in this judgment or not.

3. Mr Protopapas is pursuing a large number of people and corporations in the third party proceedings described in my earlier judgment, seeking, as receiver, contribution towards what he says is a liability for asbestos-related injuries. He purports to do so as court-appointed receiver over CIHL. One of those groups of defendants is a group of companies including companies with the well-known name of De Beers. I will call that group the De Beers defendants, or just De Beers. That group has decided it wishes to settle with Mr Protopapas. The applications before me raise the question of whether they should be restrained from doing so (CIHL's application) and whether I should vary the terms of the injunction to ensure that they are not complicit in a breach if they do (De Beers's application).

4. These applications came on on very short notice for reasons which will appear. Essentially there is a scheduled trial in South Carolina on Monday 20th October (ie the date of this judgment - these applications were heard by me on Friday 17th October). A settlement agreement would avoid the trial, and an answer is needed by the time the trial is scheduled to start at 9.30 local time. They raise quite complex issues. Nonetheless, the able submissions Mr Derek Dale KC for CIHL and Mr David Joseph KC for De Beers meant that argument was completed within a day (as it had to be).

Relevant history

5. As I have indicated, I will not recount the history of the matter which appears in my previous judgment. I will take up the story from there, dealing with matters shortly.

6. It would appear that my previous judgment and order, and the English law analysis contained in the judgment, have had no effect in South Carolina. Mr Protopapas has carried on his claims regardless, and the South Carolina courts have rejected all challenges to his appointment, status and authority. Those challenges have been mounted by other Cape-associated entities (the Alstrad entities) and by De Beers. The considerable amount of activity has been described in the evidence that I have seen. It is unnecessary to set it all out here. It is sufficient to record that all challenges have, so far, been rebuffed, albeit only in interlocutory rulings (I understand that they can revisited at a final hearing), and Chief Justice Toal has recently confirmed the status and the legitimacy of the acts of Mr Protopapas as receiver.

7. In an attempt to forestall the third party proceedings against the Cape defendants in the third party proceedings, CIHL and other Cape-related entities entered into an agreement which released all claims relating to asbestos injuries inter se. That release, so far as effective, would remove the basis on which the receiver in South Carolina is suing Cape-related entities, qua CIHL, in the third party proceedings. They sought a declaration from the (English) court to the effect that that agreement was valid and effective to release those Cape-related entities, and Marcus Smith J ruled that it was - [2025] EWHC 2470 (Ch) . In an order dated 30th September 2025 he declared that the agreement was lawful, effective and binding in relation to (inter alia) the claims in the third party proceedings, and he granted an injunction restraining Mr Protopapas from taking further steps against those Cape-related entities in behalf of CIHL and requiring him to terminate those proceedings as against those entities. As I understand it, so far that judgment and order have had no visible effect on the activities of Mr Protopapas.

8. The progress of the third party proceedings has led to an imminent three day trial as between Mr Protopapas as receiver, purporting to act on behalf of CIHL, and De Beers, seeking a determination of liability on the contribution claim. It is set down for three days to start on Monday 20th October 2025. Apparently De Beers have been participating in the litigation (and mounting its challenges to jurisdiction) whilst reserving its rights to challenge jurisdiction and authority in a final ruling, which it is apparently entitled to do. However, having resisted so far, De Beers has recently decided that despite its case that Mr Protopapas is not entitled to be doing what he has done (which, as I understand it, is aligned with CIHL's case as referred to in my first judgment), and that they are under no liability whatsoever, and particularly in the third party proceedings, they nonetheless wish to settle with him on a purely commercial view of the matter. As explained in the evidence, De Beers is concerned at the litigation risk in the current proceedings, the foreshadowing of further claims, the possible

creation of a blueprint for future claims and reputational damage (asbestos being a very emotional subject-matter).

9. At a pre-trial conference in South Carolina on 6th October 2025 it was mentioned that De Beers and Mr Protopapas had reached an agreement in principle to settle the third party complaint on confidential terms. Having heard about this the next day (7th October) solicitors for CIHL wrote to De Beers saying that a settlement would amount to a breach of my order. Undertakings were sought which would have prevented the settlement. There then followed further correspondence in which an undertaking not to enter the settlement was sought, given in limited terms and then not extended.

10. That led to the two applications which are now before me. On 13th October De Beers issued an application seeking a variation of the injunctions in my order so that it could not be said that they stood in the way of a third party wishing to enter into a settlement with the receiver. A hearing of that application was arranged for Friday 17th October. On Wednesday 15th October CIHL applied for injunctive relief (in the absence of an undertaking), and that application was stood over to be heard with De Beers' application. Mellor J restrained the settlement pending further order of the court and ordered that both applications be heard together. Thus the matters arrived before me.

11. The trial of the third party proceedings as between the receiver/CIHL and De Beers (as it would be described in South Carolina) remains due to start on Monday 20th October. Mr Oren, the solicitor for CIHL, sought to cast doubt on whether that was really going to happen in the absence of a settlement, because he said there had been previous adjournments and there were procedural reasons for supposing that it was not likely that it could take place. However, Chief Justice Toal, before whom the trial will take place, has very recently issued a direction as follows:

> "All parties in this matter are hereby notified that this Court has taken no action to continue or delay the trial in this matter which is scheduled to begin Monday, October 20, 2025."

12. In the light of that and other observations made on procedural matters by De Beers I therefore assume that the trial is likely to happen unless the settlement is signed off before then. That generates an obvious urgency about this matter. I note, however, it was not said that the commencement of the trial would mean that the settlement was off. Nonetheless, it is my intention that this judgment should be delivered before the trial actually starts so that the parties know where they stand by then, taking into account the time difference between here and South Carolina.

The orders of this court

13. Central to this application are the orders made by this court, and especially my order of November 2024. In that order I declared as follows:

> " 1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland ("the South Carolina Court") dated 16 March 2023 appointing Mr Peter Protopapas ("Mr Protopapas") as a receiver over CIHL ("the Receivership Order") is not recognised and has no legal effect in England and Wales and worldwide.
>
> 2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.
>
> 3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
>
> 4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings ("the 3P Complaint"), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.
>
> 5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide."

14. I further ordered:

> "6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
>
> 7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.
>
> 8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).
>
> 9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).
>
> 10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide."

15. It is unnecessary to set out the orders of Marcus Smith J, which are of themselves less relevant to these applications because they concern Cape parties and not De Beers parties.

The proposed settlement

16. The proposed settlement terms are now set out in an as yet unsigned document which has now been produced in redacted form by De Beers - the redaction is simply the amount of money to be paid to the receiver under it. The relevant terms of that agreement are as follows:

> (i) The agreement is described as being between "Peter D. Protopapas, in his capacity as the court-appointed South Carolina Receiver for Cape Intermediate

Holdings Limited (f/k/a Cape Asbestos Company Limited, hereinafter referred to as "Cape") ("Third-Party Plaintiff"), for the Receiver itself, its agents, executors, administrators, heirs, successors, assigns, and all who claim derivatively through the Receiver (hereinafter referred to as the "Releasing Party")," and De Beers and other companies in group."

(ii) It provides for a sum of money to be paid into a "Qualifying Settlement Fund" whose terms have been, or are to be, approved by the court. This is apparently an established technique in group-type actions in the US. The terms of the fund ("the QSF") have not been disclosed. However, it appears that part of the fund will be used to pay Mr Protopapas, for expenses and otherwise, and part will be used to pay claimants. It is also said, and I accept, that it is likely that part of the fund is likely to be deployed in further claims, including pursuing claims against CIHL and its associated companies. This is a particular concern of CIHL, and as a pure matter of fact that view is in my view justified.

(iii) Clause 4 contains "Releases and Discharges". Under it the Releasing Party releases:

"(i) all claims, demands, and causes of action asserted by Third-Party Plaintiff against the Released Parties in the Lawsuit, recognizing the Receiver's authority is limited to claims asserted in South Carolina; and

(ii) all claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, equity, or workers compensation claims), kind or description whatsoever, known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, that the Releasing Party has or may have against the Released Parties, arising out of, or relating to injuries arising from alleged exposure to Cape Asbestos Products or any other asbestos products, including, but not limited to, claims arising by reason of, directly or indirectly, bodily or other personal injury, property damages, wrongful death, survival action, and economic loss. In the interest of clarity, the releases and discharges contained in Section 4(a) are limited to claims brought in South Carolina."

Although the Releasing Party is descibed as the receiver, it is quite clear that he is purporting to act for, and to bind, CIHL.

The claims made in these applications

17. In their application De Beers seek the following:

> "The Mann Order [ie my order of November 2024] be varied by the addition of the following paragraph:
>
> "For the avoidance of any doubt, paragraphs 6 to 10 of the Mann Order do not preclude the Applicants from entering into a settlement of the Third-Party Complaint and any other claims as contemplated in the draft Confidential Settlement Agreement."

The application is made under CPR 40.9 since De Beers claims to be a non-party affected by an order of the court and entitled to apply under it, and so far as necessary under CPR 3.7(1) (the power of the court to vary its orders). I deal with their locus below.

18. For their part, as mentioned above, CIHL claims an injunction restraining De Beers from entering into the settlement agreement.

19. It will be apparent that each application is the converse of the other and the arguments by each side propounding its case are also relevant to resisting the opposing application. The real question is whether the relief already granted by this court should stand in the way of De Beers settling its claim. If it should not then the injunction will be refused and De Beers' application should succeed (insofar as it can be said the my injunctions would otherwise pose the risk that they will be in contempt by entering into the settlement). Conversely, if CIHL is entitled to its injunction the De Beers application should fail.

The approach on this interlocutory application

20. The claim to the injunction is a claim to an interim injunction, which invokes *American Cyanamid* considerations. However, the nature and timing of this application, and the proximity of the trial, means that, as both parties agreed, the nature of the consideration required was more akin to a trial of the real issue - should De Beers be restrained from settling a claim brought against them in South Carolina if it wished to do so. That is therefore the issue on which I will focus, though I will have to make some reference to

underlying points which theoretically go to whether there is a serious question to be tried (ie what CIHL's causes of action are). There was little real analysis before me of the question of the adequacy of damages either way.

The locus of De Beers

21. In their own application De Beers invoke CPR 40.9:

> "40.9 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied."

22. There was faint resistance to the application of this from Mr Dale, but in my view De Beers are plainly entitled to invoke it. They propose to enter into a settlement with a receiver who has been restrained from acting as such by an order of this court. They have notice of that order. They are at risk that they would be accused of aiding and abetting a breach of that order and thus in contempt if they entered into the settlement agreement, as CIHL itself avers. They are therefore directly affected by the order and entitled to make their application. I was referred to authority which it was said supported De Beers' right to apply, but it is unnecessary to set it out here. The relief to which De Beers may be entitled as a result is, of course, a different matter.

The basis of the claim to an injunction

23. Mr Dale put his claim to an injunction on the following legal bases. I can deal with them briefly because once one is established the others do not matter so much.

(i) Third party contempt. The principle is summarised in Grant on Civil Fraud, 1st Edn:

> "35-045 …third parties are not directly affected by an order or undertaking. However, such a third party may nonetheless be guilty of a contempt of court if, knowing of the order or undertaking, he takes steps which aid or abet the respondent in breaching the order or otherwise does an act which obstructs or frustrates the object of the order. The classic statement of principle was laid down by *Lord Hope in Attorney General v Punch Ltd*."

That principle is uncontroversial. I agree that it is strongly arguable that by entering into the settlement agreement De Beers would be aiding and abetting a breach of paragraphs 6 and 8 of my order. (This is one basis of De Beers' application under CPR 40.9). The contrary was not seriously argued by Mr Joseph.

(ii) Aiding the commission of a tort by Mr Protopapas. This is said to flow from my finding in my earlier judgment that Mr Protopapas committed a tort by purporting to act as an agent without authority. Prima facie this wrong is made out, though a proper determination might benefit from further argument if it ever matters.

(iii) The "Marex" tort - see *Marex Financial Ltd v Sevilleja* [2017] 4 WLR 105. The elements are set out by Bryan J in *Lakatamia Shipping Co Ltd v Su* [2021] EWHC 1907:

> "(1) The entry of a judgment in the claimant's favour,
>
> (2) Breach of the rights existing under that judgment,
>
> (3) The procurement or inducement of that breach by the defendant,
>
> (4) Knowledge of the judgment on the part of the defendant, and
>
> (5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment."

It is not clear to me that this adds anything to the claim based on participation in a breach of the injunctions in my earlier order. There might be a nice debate about whether the settlement agreement is somehow a "breach" of the rights flowing from the declaration (as opposed to the injunction). It might be said that a party who voluntarily participates in a settlement of a claim which that party maintains (in line with CIHL) is brought by a person invalidly appointed, which is made without justification, is without merit and is brought via a person with no English-law recognised authority, it not "breaching" the declarations. The declarations, the status of the counterparty and the effect on CIHL is nil. The paying party is effectively making a present to the receiver, so far as English law is concerned. However, there was no debate about that, and it is unnecessary for me to develop it. I would accept this claim as properly arguable (or there is a serious question to be tried) for present purposes so far as necessary.

(iii) Unlawful means conspiracy. The contempt, the tort of purporting to act as agent without authority and the Marx tort are relied on as the unlawful means and the settlement is said to amount to a joinder in those acts for the purposes of

conspiracy. Again, this was not developed in argument, but I am prepared to accept the arguability of this point (or that there is a serious question to be tried).

(iv) In all these cases loss is said to be caused, or threatened, by the conspiracy, arising out of the mechanisms below which I deal with when considering prejudice to CIHL.

(v) Mr Dale claimed a right to an injunction on the footing of protecting against conduct in foreign jurisdictions which represents an attack on the judgments, jurisdiction and policies of this domestic forum. He gave as an instance the grant of anti-suit injunctions when based on conduct that is vexatious or oppressive, and his main authority in support of his case was *Stichting Shell Pensioenfunds v Krys* [2015] AC 616. I am not at all convinced that this ground is available to Mr Dale. *Stichting* was a case in which the court acknowledged that in the area of insolvency, conduct should be restrained in a foreign jurisdiction which offended against the pari passu rule in the jurisdiction of the insolvency. That is a very narrow application, and a very long way from the present case. I do not consider it demonstrates a jurisdiction which would cover the present case. However, once again it is unnecessary to say anything more about it, because Mr Dale has other bases for his claim.

The adequacy of damages; balance of convenience; and discretion

24. That brings me to the factors which lie at the heart of this matter - the underlying question of whether it would be right to grant an injunction, or maintain the effect of the present injunction, to restrain a party from settling a case brought in a foreign jurisdiction.

25. Mr Dale relied on a number of matters as justifying the grant/maintenance of the injunction. He said the following matters caused grave prejudice, or had the potential to cause grave prejudice, if his client did not prevail.

(i) Mr Protopapas would be entering into the proposed settlement on the basis that he is authorised to act for CIHL when that is not the case and when it is a wrong (a tort) vis-a-vis CIHL. CIHL's interests in that respect required to be protected by an injunction. De Beers would be aiding him in that tort if they were allowed to settle.

(ii) The proposed settlement would seriously adversely affect CIHL in various ways. First, it would embolden Mr Protopapas in what CIHL say are his illegitimate pursuits. Second, it would provide him with funds with which he can pursue his activities and (as CIHL would put it) persecute CIHL further. Third, success by Mr Protopapas in the form of manoeuvering a substantial group such as the De Beers

group into a settlement in the circumstances of this matter, when De Beers were once clearly aligned with CIHL in challenging his authority and techniques, would be likely to embolden copycat tactics elsewhere, to the detriment of CIHL and principles of private international law.

(iii) Allowing the proposed settlement to go ahead would involve this jurisdiction failing to uphold basic rules of English private international law, which this court has sought to uphold by the grant of the previous declarations and injunctions of Marcus Smith J and myself.

(iv) If the settlement happens then it would give rise to concerns within CIHL's, bankers and shareholders whom CIHL has sought to reassure by obtaining its orders hitherto. Auditors of the Cape group generally might require provisions to be made, suppliers may alter terms to reflect risks of insolvency and staff recruitment and retention may be more difficult. Bankers may be concerned about insolvency and change credit terms. This could have an effect on the Cape Scheme of Arrangement and the credit rating of bonds issued by the parent company (AIA SAS) might be affected.

(v) The ongoing claims of Mr Protopapas cause damage and harm to the reputation of the claimants.

(vi) A settlement agreement might prejudice the position of other companies in the Cape group who have pending appeals as to the receivership, by implicitly endorsing the legitimacy of Mr Protopapas's position. As appears above, is right to say that not all challenges to the receivership and its activities have yet been exhausted.

(vii) This court should be careful not to suggest that it had somehow given up in the differences between this court and the South Carolina court. The orders and judgments that this court has already issued reflect the English position on the governance of an English company; the maintenance of that assertion requires that the settlement agreement be not not allowed to proceed. As Mr Dale put it, at the very moment that it matters, the English court should not give up and say that Mr Protopapas wins, as some people might think it has. It would be wrong to "feed" an impostor.

26. Mr Joseph's case boiled down to this, while accepting in terms that he recognised the receiver had no authority. His clients were, in the familiar metaphor, between a rock and a hard place. They, like CIHL, have sought to resist the receiver, his appointment and his acts, and have so far have failed, though they have not technically reached the end of the road. His clients have decided, no doubt reluctantly, that while they do not accept his legitimacy, matters of pragmatism have driven them to decide to settle - the financial and reputational risks are such that they do not want to risk a trial and a large money judgment, however much they maintain that such claims are bad in law and in fact. It would be quite wrong to prevent a party settling a foreign claim which it no longer wishes to defend, and there is no authority in which this has ever been done (contrast the wealth of anti-suit injunction cases where prosecuting litigation has been restrained). There is nothing vexatious or unconscionable about settling - again,

contrast the basis of some anti-suit injunction cases. There is no interference with the declarations made by this court - they will have precisely the same effect after a settlement as before. He relied on *EDF Man (Sugar) Ltd v Haryanto (No 2)* [1991] 2 Lloyds Rep 429 as demonstrating that the court will not restrain a defendant from defending itself in a local jurisdiction by all proper means, and on *Mamidoil-Jetoil v Okta* [2003] 1 Lloyds Rep 1 as demonstrating that the court will not put a defendant between a rock and a hard place. Mr Joseph asserted that it cannot have been the intention of my order that a defendant should not be able to conduct a defence (in proceedings which it did not invite) in whatever manner it thinks appropriate, including settling. It would be very unfair and unjust to force De Beers to risk the significant financial and reputational risks which they seek to avoid. They were, after all, not a party to the proceedings in which my orders were obtained.

My decision

27. I have come to the clear decision that I should refuse the injunction and grant relief to De Beers which ensures that if they enter into the settlement agreement then they do not risk a determination of contempt against them, though perhaps not in the terms in which they currently seek that relief.

28. I have already indicated that this is not a case in which there was detailed reliance on the appropriateness of damages for either side. It was treated as a case in which I was being invited to decide in principle and on the facts, in circumstances of some urgency, whether or not a settlement should be permitted which would forestall a trial which is apparently about to start in South Carolina. I would agree that in theory damages might be an adequate remedy, technically speaking, for both sides, but computation of those damages would be extremely difficult. But no-one really argued about that.

29. I will therefore go along with the parties in their approach (which I consider to be correct) and consider the merits of the dispute as it stands. In these highly unusual circumstances I have to bite the bullet of the merits of the dispute so far as I can do so.

30. I consider it would be too strong a thing to refuse this party the right to settle a case in a foreign jurisdiction which it no longer wishes to fight. What would the alternative be? If I granted the injunction the settlement would not happen, and indeed no settlement could happen. On analysis this case was not just about the terms of this settlement; it is about any settlement (or at least any settlement which provided benefits to the receiver). Accordingly, the third party proceedings in South Carolina would presumably proceed to trial. At the moment the trial is of liability only, with remedies to come later if liability is found. But then De Beers would be faced with a further trial of remedies and quantum. If CIHL is right De Beers could not settle that either, so they

would be forced to fight that. That would or could result in a money judgment which, on this hypothesis, would be likely to be substantial.

31. The critical question then is whether they would be entitled to satisfy a judgment notwithstanding the injunction that I granted. Logically speaking, on Mr Dale's case they would not - settling a judgment would contravene the injunction and amount to the wrongs that he averred and he would be entitled to an injunction to restrain it. Mr Dale, after some equivocation, and with obvious reluctance, seemed to accept that that was the case, but he also sought to say that that would be a different situation from the present. I do not see that it would. My present view is that this court would not intervene to prevent De Beers satisfying a judgment of the foreign court even though this court (and De Beers) would take the view that that judgment should never have been available or obtained on the reasoning in my first judgment. The fact is that the foreign court (on this hypothesis) has given a judgment. If De Beers chose to pay for reasons of financial and reputational risk (the reputational risks probably being stronger once a judgment was obtained), and even though it maintained that it was paying a man without authority and on the basis of what it says is flawed procedure (supported by the English court) then it is very difficult to see why it should not be entitled to do so. It would, of itself, not offend against English law and jurisdictional principles for De Beers to fulfil its commercial needs in that way. International private law remains intact. All that has happened is that De Beers have decided that they do not wish to have the benefit of what is established.

32. If that is right then in my view the same applies to a settlement. If De Beers would be entitled to satisfy a judgment if one were obtained, then in my view a settlement into which it would seem to have been bludgeoned is something they would be entitled to do even if the English law position is that the man with the bludgeon should not have had it in the first place. They would be as entitled to mitigate the risks of a judgment, (which on this hypothesis they would have to pay) as to satisfy a judgment itself.

33. I do not think that the *EDF Man* case assists Mr Joseph much in this respect, though it is true that Mann LJ did observe:

> "I do not see how it can be unconscionable for a person to defend himself by any means permissible under local law" (p440)

and it could be said that settling a case is a means of defending against a local claim. Of more assistance to him is the *Mamidoil* case. In that case there was a local interlocutory order made in The Former Yugoslav Republic of Macedonia which prevented Okta from satisfying a judgment. The Court ruled, as a matter of discretion (also considering comity) that it would not restrain Okta from relying on that order in the local court. Aikens J said:

> "Furthermore if an injunction were granted it might place Okta and its officers in an impossible position if Jetoil attempted to enforce this judgment in the FYROM Courts. Those Courts have granted an interlocutory injunction preventing Okta from paying damages to Jetoil. To disobey that in the FYROM may well be the equivalent of a contempt and could expose officers of Okta to criminal sanctions."

34. That is not the same situation with which De Beers are faced in this case because this case does not involve a possible contempt in South Carolina but it does demonstrate that the court will not lightly put a party between the rock and the hard place that Mr Joseph referred to.

35. In my view an English court would not normally require a party to defend foreign litigation (as opposed to preventing prosecuting it), and short of a contractual obligation it is difficult if not impossible to see how that would ever be justified. But it would be the effect of my granting the injunction sought by CIHL. If I granted the injunction De Beers would be forced to defend an action that it no longer wishes to defend. To bring that about would not seem to me to be a principled decision. If that is right then it must be open to De Beers to be able to settle the action if it wishes to do so.

36. I acknowledge that there is some degree of detriment to CIHL in "allowing" the settlement. It is possible that it will encourage copycat litigation by claimants and others who might wish to consider adopting Mr Protopapas's techniques. I also acknowledge that it is likely that the settlement funds could be further used to pursue CIHL. It is not known for certain whether the funds could be used for that purpose, because the terms of the QSF have not been disclosed, but that was expressed as a fear in CIHL's evidence and it has not been met by a denial, and the history of the matter indicates that it is eminently plausible. However, if copycats are encouraged then that is because US jurisdictions, as a matter of local law, permit it. Unless and until a court rules against Mr Protopapas's techniques CIHL (and others, I suppose) remain exposed in any event. If Mr Protopapas manages to get funds made available to him by settling cases then that is because the local law and the *realpolitik* of litigation enables it. It would not be right for an English court to try to exercise some sort of extra-territorial control by denying a defendant the right to settle cases brought which an English court may regard as unmeritorious, even if likely to cause trouble, but which the defendant no longer wishes to run.

37. I am less convinced by CIHL's other claims to prejudice. Part of the purpose of my granting declarations in my first judgment was to be able to demonstrate to people such as auditors, bankers, lenders and suppliers that as a matter of English law Mr Protopapas's claims had no validity. That still stands. Although that cadre of people

would have to speak for themselves, I am not sure why their views, whatever they may be, would be changed by the fact that another set of parties no longer has the stomach for a fight. It is not obvious to me how any risk to CIHL is increased, at least on the evidence I have seen. The same should apply to employees and would-be employees. However, even if I have underestimated the significance of this factor, it does not have much weight in a decision as to whether De Beers should be restrained from settling.

38. Nor do I consider it likely that allowing the settlement will somehow give credence in the South Carolina courts to the techniques deployed by Mr Protopapas. The South Carolina courts will make their own decisions as to their own procedures and laws, without any assistance from me, and in any event no-one reading this judgment could think that I am in any way resiling from the English position on Mr Protopapas's status.

39. Mr Joseph made much of an averment that people in the position of his client cannot have been intended to be caught by the injunction restraining the receiver. He is right about that to a degree. The position of third parties was not the subject of consideration, and in the unusual circumstances of this case they may require special consideration. These applications provide that special consideration.

40. For his part Mr Dale emphasised that not granting his injunction, and releasing the present injunction to allow the settlement, would amount to the English court giving up in its attempts to control what it has found to be the illegitimate activities (under English law) of Mr Protopapas, and that to do so would somehow nullify the effect of the relief granted. I do not accept that submission. To allow the settlement would in no way go counter to the declarations which I have granted. They would continue to have their full force and effect. What would be permitted is a settlement by a third party who wishes to pay money to a person who has no entitlement (under English law) to demand or receive it. If De Beers wish to do that that is a matter for them. It does not make any difference to the force and effect of the determinations that I have made as to the status of that person. Nor is the court giving up in some sort of tussle between the two jurisdictions. It is merely acknowledging that if a commercial entity wishes to take a commercial view of its own position, which contrasts with the legal position, all in its own interests, because it is caught in a dilemma, then it should be allowed to do so. Mr Joseph's skeleton argument made it plain that his clients "did not disagree" with the proposition that the settlement agreement would not be binding on CIHL and would be of no effect under private international law. He is right about that. The English court is not giving up any sort of principled position in not standing in the way of De Beers.

The relief to be granted

41. I would therefore refuse the injunction sought by CIHL. I would also modify the injunction granted against Mr Protopapas so as to remove the risk of De Beers being in contempt of court if it settles and pays money, but not in the terms sought by De Beers. I need to return to the fact that these matters are essentially interlocutory even though I have given heavy weight to what I consider what the result of a trial would be if there were a trial of at least the injunction application. These applications were brought on with great urgency, and I would not wish to adopt a course which would have the effect of depriving CIHL of claims to damages if they have them and wish to pursue them. If I granted the relief sought by De Beers it might remove claims in tort based on the existence of the injunction, depending on how one analyses the torts. I do not intend to do that on this application. All I intend to do is make sure the De Beers can enter into their settlement knowing that whatever else they might be liable for, contempt remedies are not a risk. I believe that that can be done by expressing the relief in terms which remove remedies but leave the potential wrong in place. I confess that I have not had time to work this thought process through but I would hope that it can be achieved as a matter of drafting with the assistance of the experienced counsel before me. Whether or not De Beers might be said to be entitled to more than that, so that the basis of any injunction-based tort can be cut away, can be a matter of a trial if necessary. This may seem to be a bit convoluted, but decisions have to be taken now and I do not wish for my decision to decide anything beyond that which it needs to decide going to the variation of orders.