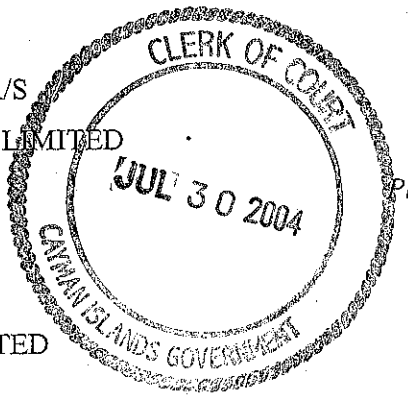
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 350 OF 2004

BETWEEN:

(1) EVEN WAHR-HANSEN
(2) ANDERS JAHRES REDERI A/S
(3) BRIDGE TRUST COMPANY LIMITED

Plaintiffs



- and -

(1) COMPASS TRUST CO LIMITED
(2) MADS ERIK MONSEN
(3) AALL GROUP INC
(4) AALL TRUST & BANKING CORPORATION LTD
(5) AALL & COMPANY LIMITED INC
(6) TOVE BROWN
(7) ANTHONY GEORGE MERRIK, BARON TRYON OF DURNFORD
(8) FORRESTER MARITIME LIMITED
(9) FORRESTER HOLDINGS LIMITED (IN VOLUNTARY LIQUIDATION)
(10) HURFORD HOLDINGS LTD
(11) ORNATE LTD
(12) BANK OF BUTTERFIELD INTERNATIONAL (CAYMAN) LTD
(13) ANCHOR TRUST CO LTD
(14) ROBERT N. SLATTER
(15) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants

WRIT OF SUMMONS

TO: COMPASS TRUST CO LIMITED
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166
North Church Street
George Town, Grand Cayman

AND TO: MADS ERIK MONSEN
535 South Sound Road
PO Box 1196
George Town, Grand Cayman

AND TO: AALL GROUP INC
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166
North Church Street
George Town, Grand Cayman

AND TO: AALL TRUST & BANKING CORPORATION LTD
c/o Aall Trust & Banking Corporation Ltd.
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PO Box 1166
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AND TO: AALL & COMPANY LIMITED INC
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166
North Church Street
George Town, Grand Cayman

AND TO: TOVE BROWN
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166
North Church Street
George Town, Grand Cayman

AND TO: ANTHONY GEORGE MERRIK, BARON TRYON OF DURNFORD
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166
North Church Street
George Town, Grand Cayman

AND TO: FORRESTER MARITIME LIMITED
c/o Aall Trust & Banking Corporation Ltd.
The Aall Building
PO Box 1166

INTRODUCTION

1. In this pleading:

1.1. the following definitions are used:

"Aall & Co"	Aall & Company Limited Inc, a Panamanian company with an operating branch in Japan
"Aall Hawaii"	Aall Hawaii Holdings, incorporated in Hawaii
"Aall Realty"	Aall Realty Holding Corporation, a Cayman Islands company
"Account 1-129"	an AT&B account to which the Contingency Fund was transferred shortly after 25 September 1980
"the AF"	the Aall Foundation
"AFF"	the firm of Arias, Fabrega and Fabrega, Panamanian lawyers
"AGI"	Aall Group Inc
"AIF"	Aall International Funds
"AIM Cayman"	Aall Investment Management (Cayman) Limited
"AJ Rederi"	Anders Jahres Rederi A/S, a Norwegian company beneficially owned by Jahre and now by the Estate
"Aleman"	Roberto R. Aleman of IGRA
"Amelon"	Amelon Corporation of Liberia
"Arias"	Roberto E. Arias of AFF
"ASIL"	Aall Shipping Investments Limited
"the AT"	the Aall Trust, a trust purportedly established by Monsen; and references to the Trustee of the AT are references to the Trustee for the time being of that trust
"AT&B"	Aall Trust & Banking Corporation Ltd, a Cayman Islands company
"Bess Jahre"	Freddie Bess Jahre, the wife (and widow) of Jahre
"Bettum"	Bjørn Bettum, the son of Frithjof Bettum
"Blue Range"	Blue Range Corporation, a Panamanian company; the assets held by this Panamanian company were transferred to a Cayman company, also called Blue Range Corporation, in early 1989,

	and references to Blue Range after that date are references to the Cayman company unless the context otherwise requires
"Bonde"	Peter Bonde
"Bratt"	Åke Bratt, of Lazards
"Bridge"	Bridge Trust Company Limited
"Brunsvig"	Dr Per Brunsvig, administrator of the Estate until 1991
"Bulls"	Bulls Tankrederi A/S, a Norwegian company
"the Bulls Shares"	the 65 shares in Bulls originally owned by AJ Rederi
"Carver"	Clifford N. Carver
"the Cash Payment"	the sum of $14,250,000 paid by CTC to Monsen in 1979 upon the redemption of the Retained Shares
"CduC"	Crevettes du Cameroun SA, a Cameroun company
"the CF"	the Continental Foundation, a purported settlement which was in fact void; and references to the Trustees and Advisors of the CF are references to the persons purportedly appointed as such
"the CF Memorandum"	the Memorandum of Agreement dated 20 July 1976 by which the CF was purportedly established
"Clarmon"	Clarmon Corporation of Liberia
"the Contingency Fund"	a fund established by CTC which is the subject-matter of Part IV of this pleading
"CTC"	Continental Trust Company Inc, a Panamanian company formerly known as Pankos
"the CTC Shares"	the 10,000 bearer shares in CTC delivered to Lazards in July 1976
"Dalman"	Gösta Dalman, a director of Leffler
"de Geer"	Carl de Geer
"DnC"	Den norske Creditbank, a Norwegian bank
"Erik Monsen"	Mads Erik Monsen, Monsen's elder son
"the Estate"	the Estate of Jahre
"Forrester Holdings"	Forrester Holdings Limited

"Forrester Maritime"	Forrester Maritime Limited, a Cayman company formerly called Aall Maritime Consultants Limited
"Flanagan"	Frank Flanagan
"Gibson"	F Douglas Gibson, a Canadian lawyer
"Hardman"	Arthur Hardman
"Harmon"	Harmon Corporation, a Panamanian company formerly known as STC
"Harmon (Cayman)"	Harmon (Cayman) Limited, a Cayman subsidiary of Harmon
"Hurford Holdings"	Hurford Holdings Ltd
"the Hurford Trust"	a trust purportedly declared in the second codicil dated 22 February 1991 to the Will of Monsen; and references to the Trustee of the Hurford Trust are references to the Trustee for the time being of that trust (as far as the Estate is aware, the Hurford Trust is now known as the Bise Trust)
"IGRA"	the firm of Icaza, Gonzalez-Ruiz & Aleman, Panamanian lawyers
"Jahre"	Anders August Jahre
"Kihlström"	Otto Kihlström, a director of Leffler
"Kindersley"	Hugo Kindersley, a director of Lazards
"the Kobe property"	the land at Kobe, Japan, transferred to Sterling in 1986
"Kosmos"	Kosmos A/S, a Norwegian company
"Kosmos II"	Kosmos II A/S another Norwegian company
"Larmal"	Larmal Corporation of Liberia
"Lazards"	Lazard Brothers & Co. Limited, a London bank (since 1 August 2000 renamed Lazard Bank Limited)
"LBIIF"	Lazard Brothers International Income Fund Limited, an investment fund regulated in the Cayman Islands
"Leffler"	A/B August Leffler & Son, a Swedish company
"Lord Tryon"	Anthony George Merrik, Baron Tryon of Durnford
"Meinertzhagen"	Daniel Meinertzhagen, a director of Lazards
"Monsen"	Thorleif Monsen

"the No 2 'A' account"	the Lazards account which held the Contingency Fund as from 11 March 1980
"the NWT"	the New World Trust
"Old Forrester"	Old Forrester Holdings Limited
"Ornate"	Ornate Ltd
"Palmstierna"	Jacob Palmstierna
"Pankos"	Pankos Operating Company, SA
"Penser"	Wilhelm Penser, a Swedish lawyer
"the Retained Shares"	the 2,000 shares in CTC (out of the 10,000 CTC Shares) not purportedly settled on the trusts of the CF in November 1976
"SEB"	Stockholms Enskilda Bank, later Skandinavska Enskilda Bank, a Swedish bank
"Simon"	Charles Simon
"Slatter"	Robert N. Slatter
"STC"	Sunday Trading Corporation, later renamed Harmon
"Sterling"	Sterling Trust Company, a Turks and Caicos Islands company
"Thorand"	Thorand (Cayman) Limited, at one time a Trustee of the CF
"Tove Brown"	Mrs Tove Brown, a daughter of Monsen
"Transglobal"	Transglobal Trustcompany, a Turks and Caicos Islands company owned by Slatter which became a Trustee of the AF
"Transworld"	Transworld Trustcompany, a Turks and Caicos Islands company owned by Slatter which was at one time a Trustee of the CF and a Trustee of the AF
"the Trust Shares"	the 8,000 shares in CTC (out of the 10,000 CTC Shares) purportedly settled on the trusts of the CF in November 1976
"UWC"	United World Colleges, an educational charity
"Worsley"	John A. Worsley
"Wrigley"	Alan C. Wrigley, an employee of Lazards

1.2. Currencies are referred to as follows:

£	Pounds Sterling
$	US Dollars
NOK	Norwegian Kroner
SEK	Swedish Kroner
JPY	Japanese Yen
FRF	French Francs
FCFA	Francs Communité Financière Africains

2. Where a document is referred to, the Estate will refer at the trial to such document for its full terms and effect.

3. An index to this Statement of Claim is provided at the start of the pleading.

THE FIRST PLAINTIFF

4. Mr Wahr-Hansen, the First Plaintiff, is party to this action in his capacity as representing the Estate of Jahre. Mr Wahr-Hansen represents the Estate as follows:

4.1. Jahre died on 26 February 1982 in Sandefjord, Norway and domiciled in Norway.

4.2. On 6 April 1982 his Estate was taken under public administration by the Sandefjord skifterett (Probate Court) at the request of his widow, Bess Jahre.

4.3. On 13 April 1982 the Sandefjord skifterett appointed Dr Per Brunsvig as "bobestyrer" (administrator) to assist the court in the administration of the Estate.

4.4. On 17 January 1991 the Sandefjord skifterett appointed Mr Wahr-Hansen as bobestyrer in place of Brunsvig (who had asked to be released on grounds of ill-health).

4.5. On 29 July 1992 Letters of Administration to the Estate were granted to Mr Wahr-

Hansen by the High Court of Justice in England.

4.6. On 16 August 1992 those Letters were resealed by the Grand Court, Cayman Islands.

THE SECOND PLAINTIFF

5. AJ Rederi, the Second Plaintiff, is a company incorporated in Norway and owned beneficially by Jahre and after his death by the Estate. At all material times, Jahre was the beneficial owner of all of the shares of AJ Rederi: Jahre held 2,432 of the 2,434 issued shares, the other two being technically held in the names of Bess Jahre and Frithjof Bettum as nominees for Jahre. The Estate is now the owner of all of the shares of AJ Rederi. AJ Rederi is a party to this action in its personal capacity. AJ Rederi sues in respect of the claims pleaded in Part IV below.

THE THIRD PLAINTIFF

6. Bridge, the Third Plaintiff, is party to this action in its capacity as the present Trustee of the AF and as the assignor of the claims pleaded in Part V below, and sues only in respect of breaches of trust in relation to the assets or income held by it which derived from or represented the Trust Shares. Bridge is the present Trustee of the AF as follows:

6.1. The AF is a charitable trust established by a Memorandum of Agreement dated 7 October 1982.

6.2. By deed dated 28 January 1994, Bridge was appointed as a Trustee of the AF with Slatter as Bridge's co-trustee.

6.3. Slatter resigned as a Trustee of the AF with effect from 6 December 2000; and accordingly Bridge became the sole Trustee of AF and all assets vested in the Trustees for the time being of the AF vested solely in Bridge.

THE REPRESENTATIVE CAPACITIES OF CERTAIN OF THE DEFENDANTS

7. The following Defendants are sued in a representative capacity:

7.1. Compass is a party to this action in its capacity as the personal representative of Monsen.

7.2. The Twelfth Defendant is a party to this action in its capacity as the present trustee of a trust known as the Hurford Trust. As far as the Estate is aware, this trust is now known as the Bise Trust. However, the Estate has not seen the relevant documents evidencing the change of name and therefore, for the purpose of this Statement of Claim the Estate shall continue to refer to this trust as the Hurford Trust.

7.3. The Thirteenth Defendant is a party to this action in its capacity as the present Trustee of a purported trust known as the AT.

7.4. Slatter is a party to this action in his capacity as the sole surviving Trustee of the CF. As will be pleaded in detail hereafter, a number of the Estate's claims are brought as beneficiary of a resulting trust of the assets purportedly held on the trusts of the CF. For the sole purpose of correctly constituting this action in relation to such claims, Slatter has been joined in his capacity as such Trustee, not in his personal capacity.

7.5. The Attorney General of the Cayman Islands is a party to this action in his capacity as the trustee of certain "Protective Rights", the benefit of which have been assigned to the Estate, as explained in Paragraphs 271-276 of Part V below.

8. The other Defendants are sued in their personal capacities.

SUMMARY OF THE ESTATE'S CASE

9. This Statement of Claim is divided into six Parts and three Schedules as follows:

9.1. Part I sets out the factual basis for the Estate's case that Jahre was immediately

before 9 November 1976 the legal and beneficial owner of all of the 10,000 shares of the Panamanian company CTC ("the CTC Shares"). Further details are pleaded in Schedule 1 to this Statement of Claim.

9.2. Part II sets out the Estate's case that Jahre remained the beneficial owner of the CTC Shares at all material times after 9 November 1976. In summary, the Estate's case is that:

9.2.1. On 9 November 1976, 8,000 of the 10,000 CTC Shares ("the Trust Shares") were purportedly settled on a trust, the CF. In fact the CF was void, as was declared to be the case by the Privy Council on 26 June 2000 on appeal from the Court of Appeal of the Cayman Islands in Cause 296 of 1994.

9.2.2. Accordingly, the Trust Shares purportedly held on the trusts of the CF, and the assets or income derived from or representing the Trust Shares, were held by the Trustees of the CF on resulting trust for Jahre and after his death the Estate. These assets were later transferred to another trust, the AF.

9.2.3. After 9 November 1976, the remaining 2,000 of the 10,000 CTC Shares ("the Retained Shares"), and the assets or income derived from or representing them, continued to be beneficially owned by Jahre as they were held on trust for him by Monsen. Alternatively under Norwegian law Jahre continued to be the beneficial owner of the Retained Shares and Monsen held them as "stråmann" and/or "representative" (these being capacities under Norwegian law).

9.3. Part III sets out the Estate's entitlement to trace, follow and seek compensation as a result of the dishonest misappropriation by Monsen (with the dishonest assistance of companies which he owned or controlled) of the Retained Shares, and the assets or income derived from or representing them, in or after 1982. Further details are pleaded in Schedule 2 to this Statement of Claim.

9.4. Part IV sets out the Estate's entitlement to trace, follow and seek compensation as a result of the fraudulent misappropriation by Monsen (with the dishonest assistance of companies which he owned or controlled) of the Contingency Fund in the period 1982 to 1988. The Contingency Fund was a fund held by CTC on trust for Jahre and/or AJ Rederi. This fund had its origins in CTC setting aside assets to reimburse Jahre and/or AJ Rederi for expenses they had incurred on CTC's behalf.

9.5. Part V sets out the Estate's claims in respect of the misappropriation of assets vested in the CF. Further, Part V sets out the Estate's claims to bring to account the individuals (principally Monsen, Erik Monsen and others associated with them) and companies responsible for the wholesale misappropriation of the assets vested in the AF. The Estate is entitled to bring these claims by reason of the assignment to the Estate by Bridge of such title as it possessed to the claims and/or by reason of the facts and matters pleaded in Part I and Part II hereof.

9.6. Part VI sets out the Estate's entitlement to follow and seek the repayment or refund of assets forming part of the Estate of Monsen distributed by Compass as his personal representative.

9.7. The Estate's case after recoveries in other proceedings is set out in Paragraph 506.

9.8. Schedule 3 sets out calculations of interest.

9.9. Schedules 1, 2 and 3 hereto form part of this pleading.

10. The Defendants to the claims made in each Part of this Statement of Claim are as follows:

10.1. The Defendants to the claims in Part III are Compass, Forrester Holdings, Hurford Holdings, Forrester Maritime, AT&B and the Thirteenth Defendant (the present Trustee of the AT).

10.2. The Defendants to the claims in Part IV are Compass, Forrester Holdings, Hurford Holdings, Forrester Maritime, AT&B, Erik Monsen and Ornate.

10.3. The Defendants to the claims in Part V are Compass, Aall & Co, AGI, AT&B, Erik Monsen, Tove Brown and Lord Tryon.

10.4. The Defendants to the claims set out in Part VI are Compass and the Twelfth Defendant (the present Trustee of the Hurford Trust).

10.5. The Attorney General of the Cayman Islands and Slatter are parties to this action only for the purposes set out in Paragraphs 7.4-7.5 above.

PART I

BENEFICIAL OWNERSHIP OF CTC: THE FACTS

11. The Estate's case that Jahre was the beneficial owner of the CTC Shares in July 1976 is based, inter alia, on the following matters:

    11.1. The circumstances surrounding the use by Jahre of the assets of CTC to make a donation for a new town hall in Sandefjord: see Paragraphs 12-22 below.

    11.2. The circumstances in which the CF was established: see Paragraphs 23-29 below.

    11.3. The management by Jahre of the assets of CTC and his use of them for his private purposes: see Paragraphs 2-7 of Schedule 1 hereto.

    11.4. Other miscellaneous indicia of ownership: see Paragraphs 9-12 of Schedule 1.

    11.5. Jahre's interest in CTC (then called Pankos) from its incorporation: see Paragraphs 14-19 of Schedule 1 hereto.

THE TOWN HALL DONATION

12. In 1972 Jahre promised on behalf of CTC a donation of NOK 40m to the Sandefjord kommune (municipality) as a contribution for the building of a new town hall, as follows:

    12.1. At a meeting on 12 October 1968 with the Mayor of Sandefjord, Einar Abrahamsen, and a councillor, Finn Sandberg, and in a letter dated 14 October 1968 to Abrahamsen, Jahre offered to make a substantial contribution (in the millions of kroner, the precise amount to be specified subsequently) to the building of a new Town Hall for Sandefjord. The donation was discussed and accepted by the formannskap (Board of Aldermen) on 22 October 1968 and announced to the bystyre (Town Council) on 5 November 1968.

12.2. By letter to Abrahamsen dated 13 March 1972 and headed Sandefjord rådhus (Sandefjord Town Hall), Jahre specified the amount of the donation as NOK 40m, to be paid by four half-yearly instalments of NOK 10m. He offered this sum on behalf of CTC, and named its directors as Bonde, de Geer and Palmstierna. He also gave a personal guarantee for CTC's contribution. This was reported to a Council meeting on 21 March 1972.

12.3. In fact there was no functioning Board of directors of CTC at that date. The directors last notified to the Panamanian Corporate registry were Dalman, Carver and Arias, who had been registered as directors on 12 May 1958 as having (purportedly) been elected on 17 February 1953. Of these, by 1972 Dalman and Carver were dead, and Arias was an invalid.

12.4. The three directors named in the letter of 13 March 1972 had not then been appointed, and of these Palmstierna never became a director, having refused to be appointed: see Paragraph 14.5 below.

12.5. No meeting of the Board of directors had taken place authorising Jahre to commit CTC's funds as a donation for the town hall.

12.6. No meeting of shareholders had taken place authorising Jahre to commit CTC's funds as a donation for the town hall.

13. In the circumstances Jahre offered the sum of NOK 40m out of the resources of CTC without reference to, or the approval of, anyone else. It is to be inferred that the reason why he was able to and did make such an offer was because he was himself the sole person interested in CTC's assets and was the beneficial owner of CTC.

FIRST ATTEMPT TO REGULARISE THE AFFAIRS OF CTC – THE 1972 MINUTES

14. After his letter of 13 March 1972, Jahre, together with Bettum acting on his behalf, sought to bring the affairs of CTC into order. (Bettum was the son of Frithjof Bettum who had been a partner of Jahre's in his firm, Firma Anders Jahre; Bettum replaced his father as partner in the firm in 1970.) They first sought to have new directors and officers registered

at the Panamanian Corporate Registry, as follows:

14.1. On 4 July 1972 Jahre wrote to Aleman asking him to register as new directors Bonde, de Geer and Palmstierna who he said had been elected at the last general meeting, and to register as officers himself as President and Bettum as Vice-President and Secretary.

14.2. On 12 July 1972 Jahre wrote to Aleman asking for names of the directors and officers of CTC.

14.3. On 27 July 1972 Aleman gave to Jahre details of the registered directors (namely Arias, Carver and Dalman) and registered officers (namely Jahre President and Treasurer), Arias (Secretary), Carver (Vice-President) and Frithjof Bettum (Assistant Secretary)) and asked for minutes of the meetings of shareholders and/or directors to bring up to date the registration of directors and officers.

14.4. On 26 September 1973 Jahre wrote to Aleman that he would receive separately a copy of the minutes of a shareholders' meeting covering election of directors and officers.

14.5. Palmstierna was asked to be a director at some date unknown to the Estate between July 1972 and October 1973. He refused to be appointed.

14.6. On 3 October 1973 Bettum asked Simon to be a director instead of Palmstierna, and he agreed.

14.7. On 3 October 1973 Bettum wrote to de Geer with a draft of minutes of a shareholders' meeting of CTC purporting to elect de Geer, Bonde and Simon as directors, and purporting to appoint as officers Jahre (as President and Treasurer) and Bettum (as Vice-President and Secretary); the draft minutes were undated but Bettum said they were to be dated in February 1972 so that they would precede Jahre's letter of 13 March 1972; Bettum also informed de Geer that Jahre had agreed to everything now being arranged regarding ownership matters.

14.8. On 10 October 1973, Bettum sent to Simon draft minutes of the meeting "probably to be dated 28 February 1972" and a proxy to cover the meeting dated 25 February 1972. On 18 October 1973 Simon returned the proxy signed.

14.9. At a date unknown to the Estate, minutes of a shareholders' meeting dated 28 February 1972 were signed by Jahre and Bettum. The minutes showed the meeting as having appointed de Geer, Bonde and Simon as directors, and Jahre (President and Treasurer) and Bettum (Vice-President and Secretary) as officers.

14.10. In the event the minutes were never sent to Panama for registration being replaced by minutes dated 25 January 1971 as specified in Paragraph 18 below.

15. In the circumstances Jahre (together with Bettum acting on his behalf) was in a position to, and did, decide without reference to anyone else who would be registered as directors and officers of CTC and with effect from what date. It is to be inferred that the reason why he was able to do so was that he was himself the sole beneficial owner of CTC.

PAYMENT OF NOK 40M FOR THE TOWN HALL IN SANDEFJORD

16. The NOK 40m due under Jahre's letter of 13 March 1972 was due by four half-yearly instalments. The first instalment for the Sandefjord Town Hall was due at the beginning of January 1973. The four instalments were paid as follows:

16.1. The first payment of NOK 10m was made on 2 January 1973. The payment was made through AJ Rederi, the company of which Jahre was the sole beneficial owner. (The payment was in fact made from an account held by Kosmos at DnC, Kosmos being reimbursed by Anders Jahres Rederi A/S).

16.2. The second payment of NOK 10m was made on 2 July 1973. The payment was made from CTC's bank account at SEB in Stockholm to DnC in Sandefjord for the account of Sandefjord Kommune by order of Jahre. No licence had been obtained from the Bank of Norway for this transfer, and by letter dated 18 September 1973 the Bank of Norway informed DnC that a licence was required.

16.3. The third payment of NOK 10m was made in January 1974. NOK 9,721,589.82 was paid from CTC's account with SEB in Stockholm to DnC on 2 January 1974 and held in a blocked account pending permission from the Bank of Norway; and a further NOK 278,410.18 was paid on 11 January 1974. The Bank of Norway gave DnC permission to pay NOK 10m to Sandefjord Kommune by letter dated 9 January 1974, but stated that it had not yet completed inquiries and that further transfers relating to the donation could only be made after the matter had been submitted to the Bank of Norway.

16.4. No permission had been received from the Bank of Norway by July 1974 when the fourth payment was due (and no further permission was ever received). Jahre therefore told the Bank of Norway by letter dated 9 July 1974 that he had arranged for the payment of NOK 10m himself. This sum was in fact paid by AJ Rederi which borrowed the money from Kosmos and Bulls (in the sum of NOK 5m each).

16.5. In order to repay Kosmos and Bulls, Jahre procured AJ Rederi to make an ostensible sale of the Bulls Shares, as follows:

16.5.1. In October 1975, AJ Rederi owned the Bulls Shares (i.e. the 65 shares of NOK 1,000 each out of the then total issued share capital of 400 shares in Bulls). Bulls was a Norwegian shipping company of which Jahre had been one of the promoters, of which he was (in 1975) a director, and the administration of which was managed by Firma Anders Jahre (a partnership controlled by Jahre, who owned a 60% interest in it).

16.5.2. Jahre procured AJ Rederi to transfer the Bulls Shares to Lazard Brothers & Co Limited ("Lazards") on 10 October 1975 for NOK 9.1m. In a transaction organised by Bettum and a director of Lazards, Lazards agreed to act as ostensible purchaser and, at a time unknown to the Estate but before the end of 1975, paid NOK 9.1m from a CTC account under the guise of an ostensible sale on to CTC.

16.5.3. Lazards however remained the registered holders of the Bulls Shares and held them as nominee for the account of CTC, which in turn held them for

Jahre and/or AJ Rederi. Thus the transaction did not affect the beneficial ownership of the Bulls Shares, with the result that Jahre and/or AJ Rederi remained the true beneficial owners of them.

17. Hence Jahre paid NOK 20m out of his own assets in Norway in respect of the first and fourth instalments to honour CTC's promise to Sandefjord Kommune. The remaining NOK 20m for the second and third instalments was paid from abroad by CTC. Jahre's payment of instalments owed by CTC led to the creation of the Contingency Fund by CTC for the benefit of Jahre and/or AJ Rederi, as pleaded below in Part IV of this pleading.

SECOND ATTEMPT TO REGULARISE THE AFFAIRS OF CTC – THE 1971 MINUTES

18. In 1974 Jahre, and Bettum acting on his behalf, made a second attempt to bring the affairs into CTC in order, as follows:

18.1. In a memorandum to Jahre dated 15 January 1974, Bettum suggested that the ownership of CTC and the board of directors should be put in order and that this should be done as soon as possible, and that it would be difficult to do without meetings in New York and Panama. On the same day Bettum sent a letter to de Geer explaining that Jahre found it difficult to understand that it was necessary to clear the matter up.

18.2. On 24 April 1974 Jahre telexed AFF asking if any new stock certificates had been issued in 1958 (when the name of Pankos was changed to CTC), and who the resident agents were. AFF replied on 29 April 1974 to the effect that they had no record of any shares issued in 1958 and that it was the resident agent.

18.3. On 8 May 1974 Bettum sent a memorandum to Jahre, following a conversation with de Geer on 7 May 1974, recommending that a board be elected as early as 1971 and suggesting as directors de Geer, Bonde, Simon, "Clifford Maxwell Carver" (replaced in manuscript by "John D Carver") and Aleman. He also suggested that officers be elected and that new shares be issued in the name of CTC.

18.4. On 10 May 1974 Jahre telexed Aleman and asked him to meet Bettum in New York on 14 or 15 May 1974. In the telex he introduced Bettum as "my associate" who "will on my behalf undertake the organization of Continental Trust".

18.5. Aleman met Bettum in New York on 14 and 15 May 1974. At the meetings it was agreed that certificates for 10,000 bearer shares should be issued with a date of 1 April 1954 signed by Jahre; that there should be created minutes of a shareholders' meeting in Nassau to be dated in 1969 or 1970 electing directors and resolving to make the town hall donation; that that meeting should be followed by a directors' meeting electing officers; that a Panama corporation should issue bearer shares in exchange for the shares in CTC, and then settle the shares in CTC on a trust for itself; that the shares of the new corporation would be placed in safe keeping in such manner as might be directed by Jahre. This plan was subject to Jahre's approval, and to Jahre agreeing to hold Aleman harmless.

18.6. Three successive versions of a memorandum summarising the plan as decided on at the meetings of 14 and 15 May were drawn up between 15 May and 28 May 1974:

18.6.1. In the 1st (manuscript) version, it was envisaged that the minutes should record the shareholders' meeting as having been attended by Jahre and de Geer, with de Geer presenting the outstanding shares; and as having elected as directors de Geer, Bonde, Simon, John D Carver and Aleman.

18.6.2. In the 2nd (typed) version, it was envisaged that the directors should be de Geer, Bonde, Simon, Aleman and a person to be nominated by Lazards.

18.6.3. In the 3rd (typed) version, it was envisaged that the directors should be de Geer, Bonde, Simon, Aleman and Monsen, and that the minutes should record the meeting as having been attended by Jahre, de Geer and Monsen with Monsen presenting the outstanding shares.

18.7. On 15 May 1974 a note was made of the dates when Jahre had been in Nassau in 1969 and 1970 with a view to identifying a possible date on which the meeting

could be said to have taken place.

18.8. On 28 May 1974 Bettum sent the 3rd version of the memorandum to Jahre and suggested that a further meeting be held in London as soon as possible.

18.9. By telex dated 29 May 1974 Jahre informed Aleman that he accepted the plan outlined in the memorandum and confirmed this by letter of the same date.

18.10. A meeting was held in London in the first half of June 1974 attended by Jahre, Bettum, de Geer and Aleman at which the plan was further discussed, and Jahre approved it. The Estate's case is that this meeting was probably on 10 June 1974 and that at or around the time of that meeting 10,000 bearer shares in Pankos, dated 1 April 1954, were issued under Jahre's signature.

18.11. By 14 June 1974 the date of 25 January 1971 had been identified as the date on which the meeting was to be recorded as having taken place. On that date de Geer sent Aleman a proxy signed by Bonde dated 2 January 1971 appointing de Geer to represent him at a meeting to be held on 25 January 1971.

18.12. On 17 June 1974 Aleman prepared new share certificates for the CTC Shares (i.e. 10,000 new bearer shares in the name of CTC) and sent them to de Geer. It is to be inferred that it had been agreed at the meeting held in London in the first half of June 1974 that the 10,000 bearer shares in Pankos dated 1 April 1954 were to be replaced by the new CTC Shares.

18.13. On 18 June 1974 Jahre sent to de Geer inter alia minutes of a shareholders' meeting and a directors' meeting of CTC both in Nassau dated 25 January 1971. The minutes of the shareholders' meeting showed the election of Aleman, Bonde, de Geer, Monsen and Simon as directors; a decision that up to $6m should be donated to some purpose to be decided upon by Jahre, who decided on a donation for the town hall; and a decision that new stock certificates would be issued in the name of CTC and exchanged for the existing. The minutes of the directors' meeting showed the election as officers of CTC of Jahre (President), de Geer (Vice-President and Treasurer), Aleman (Secretary) and Simon (Assistant

Secretary).

18.14. On the same day Bettum sent to Aleman a copy of the 3rd version of the memorandum signed by way of acceptance by Jahre, and a letter from Jahre to Aleman holding the latter harmless and confirming that he fully approved the action discussed between them concerning CTC.

18.15. Also on the same day Bettum sent Simon a proxy to be signed by him dated 15 January 1971 appointing Jahre to act for him at a meeting on 25 January 1971. On 20 June 1974 Simon sent it signed to Aleman.

18.16. On 24 or 25 June 1974 de Geer sent the signed minutes of the shareholders' and directors' meeting to Aleman.

18.17. On 25 June 1974 de Geer sent the CTC Shares (i.e. the new stock certificates in the name of CTC) to Bettum. The CTC Shares were then kept in Norway in the possession of Jahre.

18.18. On 12 July 1974 an excerpt of the minutes of the shareholders' meeting dated 25 January 1971 was registered at the Panamanian corporate registry.

19. In the circumstances Jahre (together with Bettum acting on his behalf) was in a position to, and did, decide without reference to anyone else all matters relating to CTC. The Estate relies on:

19.1. the decision to issue shares in the name of Pankos to be dated 1 April 1954;

19.2. the decision to issue the CTC Shares in the name of CTC to be exchanged for those in the name of Pankos;

19.3. the decision as to who should be appointed as directors and officers and with effect from what date;

19.4. the decision as to the terms of the resolution purportedly passed in 1971 to

contribute to the Sandefjord Town Hall;

19.5. the requirement by Aleman that Jahre personally approve the reorganisation plan and his doing so by signing the memorandum of 15 May 1974 and by his letter to Aleman of 18 June 1974;

19.6. the requirement by Aleman that Jahre personally hold him harmless and his doing so by his letter to Aleman of 18 June 1974;

19.7. the description by Jahre of Bettum as undertaking the organization of CTC "on my behalf" in his telex of 10 May 1974

19.8. the fact that the CTC Shares were sent to Bettum on 25 June 1974 and then kept in Norway in the possession of Jahre.

It is to be inferred that the reason why Jahre was able to do so was that he was himself the sole beneficial owner of CTC.

20. Further:

20.1. It follows from Paragraph 18.6 above that Monsen was not suggested as a possible purported director and shareholder of CTC until the third version of the memorandum of 14 / 15 May 1974.

20.2. The third version of the memorandum was in fact the first occasion on which it was suggested that Monsen should have any connection of any sort with the affairs of CTC.

20.3. In the circumstances Monsen had no interest (beneficial or otherwise) in CTC prior to 15 May 1974.

21. The reason why Monsen was chosen as a possible director and ostensible shareholder of CTC was because he had for many years performed similar services for Bettum and his family. The Estate will rely on the following:

21.1. Panova was incorporated in Panama on 20 May 1966. Its first directors included Monsen (who was also appointed President) and Frithjof Bettum (who was also appointed Vice-President and Secretary).

21.2. Panova was ostensibly owned by Monsen, but was in fact established for the benefit of the Bettum family. Thus on 15 August 1973 Meinertzhagen reported to a Lazards Managing directors' meeting that David Thomson, a Lazards employee, had been asked to rejoin the board of Panova which was described as "controlled by the Bettum family"; and Lazards' internal instructions in relation to Panova's account recorded that it was connected with interests of Frithjof Bettum, that statements were to be handed to Bettum on request from him and that Bettum was to be kept in close touch with the management of the funds.

21.3. Monsen had originally acquired shares in Panova pursuant to a Board meeting of Panova on 26 January 1967 at which the Board accepted his offer to acquire shares in return for 400 shares in Guardian Investment Trust SA. The latter was another Panamanian company which was listed in Bettum's note of 27 May 1964 (referred to in Paragraph 11 of Schedule 1 hereto) and against which Bettum had written Frithjof Bettum's name.

21.4. In 1968 Monsen granted certain members of the Bettum family (including Bettum and Frithjof Bettum) an option to purchase his shareholding, exercisable by registered letter to Swiss Bank Corporation in Zurich, and deposited the shares with Swiss Bank Corporation to secure the option.

21.5. By letter dated 7 March 1977 to Swiss Bank Corporation the Bettum family members informed the Bank that they had abandoned the option; this was sent by Bettum to Monsen to be forwarded to the bank with a request that the Bank continue to hold the shares on Monsen's behalf.

21.6. Despite the ostensible cancellation of the option, Monsen signed a declaration at the same time to the effect that the option continued to subsist between himself and the Bettum family.

21.7. The Estate will rely on the foregoing both as an explanation as to why Monsen was selected to act as ostensible owner of CTC for the benefit of Jahre as true owner, and as similar facts in support of its case that he did so act.

22. The Estate further relies on the circumstances surrounding the change of CTC's registered agent in Panama from AFF to IGRA in support of its case that Jahre was the sole beneficial owner of CTC in July 1976:

22.1. By 1973 CTC's registered agent in Panama was AFF, which firm had in its possession the corporate books of CTC (namely the Minute Book and Stock Register) held subject to Jahre's instructions, as pleaded in Paragraph 9.4 of Schedule 1 hereto. AFF also held in safe custody a document purporting to be one bearer share certificate in Pankos dated 15 May 1940.

22.2. In his letter to Aleman of 26 September 1973 (referred to above), Jahre asked IGRA to become CTC's registered agent in place of AFF; he also asked Aleman to advise on the appropriate way for CTC's corporate books to be transferred from AFF to IGRA. Aleman replied to Jahre by letter dated 23 October 1973 that IGRA would be prepared to act as registered agent "of your company" and that there would be no problem in obtaining the corporate books from AFF once IGRA had been appointed.

22.3. In a further letter to Jahre dated 14 November 1973, Aleman recommended that "you proceed to hold a meeting of the shareholders, at which meeting you may proceed to elect a new Board and to appoint Icaza, Gonzalez-Ruiz & Aleman as Registered Agent of the company".

22.4. By telex dated 29 May 1974, Jahre notified AFF that IGRA were to be appointed as registered agents; and he instructed AFF to deliver to IGRA the documents referred to in AFF's letter of 29 April 1974 (i.e. the corporate books and the purported bearer share) and any other documents concerning CTC. On 31 May 1974 AFF sent CTC's corporate books and the purported bearer share certificate to Aleman of IGRA in accordance with Jahre's instructions.

22.5. A document stating that IGRA had been appointed as CTC's registered agent on 10 June 1974 was registered at the Panamanian corporate registry on 13 November 1974.

22.6. In the circumstances, Jahre was in a position to change CTC's registered agent without reference to anyone else. The corporate books and purported bearer share certificate dated 15 May 1940 were under his control and held to his order. It is to be inferred from this that Jahre was the sole beneficial owner of CTC.

OWNERSHIP OF CTC – THE SUNDAY TRADING PLAN

23. As appears from Paragraph 18.5 above part of the plan discussed in New York on 14 / 15 May 1974 and in London in June 1974 was for the shares in CTC to be transferred to another Panamanian corporation and then settled. Aleman and Bettum took further steps to implement this part of the plan but it was ultimately abandoned:

23.1. On 15 May 1974 Bettum met Joseph De Paolo, a Vice-President of Chemical International Finance Ltd, in New York and asked him if the settlor and beneficiary of a trust could be the same person.

23.2. By letter to Bettum dated 21 May 1974 De Paolo confirmed that they could.

23.3. Aleman asked Richard M Rosenthal, a New York attorney, to draft a trust agreement. On 14 June 1974 Rosenthal sent Aleman a draft trust agreement under which STC would settle 10,000 shares of CTC on the Bank of New Providence Trust Co Ltd (a Bahamian subsidiary of Chemical Bank) to hold on a Bahamian trust for the sole benefit of STC.

23.4. STC was a Panamanian corporation that had been incorporated on 29 July 1968.

23.5. Bettum kept Jahre informed of the progress with this plan, as follows:

23.5.1. By memorandum dated 9 July 1974 he informed him that Aleman had

made preparations for the CTC shares to be placed in a Chemical Bank trust in Nassau, as agreed in London, and that as soon as it had been done, the Bank would act as shareholder at general meetings of CTC.

23.5.2. By memorandum dated 14 August 1974 he informed him that Aleman had drafted a trust agreement together with Chemical Bank, and that after the documents had been considered, the formalities could be concluded in New York and Nassau.

23.5.3. By memorandum dated 28 October 1974 he summarised the plan for the shares in CTC to be transferred to STC and then settled in trust, with the shareholders in STC thereby having complete control of the trust, which could be dissolved at any time. He described the result of this plan as being that at annual general meetings of CTC the bank in Nassau would act as shareholder but the real owners of CTC would retain control over the Company without appearing to.

23.5.4. By note dated 30 October 1974 Bettum summarised the plan again; and noted that directors and officers would be needed for STC, suggesting Aleman, Monsen and a senior director from Lazards; and suggested that the ownership of shares in STC could be worked out with the help of Lazards or someone else "in whom you [i.e. Jahre] have confidence".

23.6. By 6 February 1975 it had been decided to shelve the STC plan and it was never in fact implemented.

24. In the circumstances Jahre (together with Bettum and Aleman acting on his behalf) was in a position to decide without reference to anyone else how the shares of CTC should be dealt with, how, where, on whom and on what trusts they should be settled and who should be the apparent owners of CTC. It is to be inferred that the reason why Jahre was able to do so was that he was himself the sole beneficial owner of CTC.

OWNERSHIP OF CTC – THE CF PLAN

25. After the shelving of the STC plan, a new plan was evolved for settling the shares on a trust, which became the CF:

25.1. As early as June 1974 Bettum had asked Meinertzhagen for advice on where to locate an international foundation; on 17 June 1974 Meinertzhagen wrote to Bettum to the effect that he did not recommend a Swiss foundation but did recommend a Liechtenstein foundation.

25.2. On a date unknown to the Estate but some time before 28 May 1975 Bettum and Jahre spoke at Jahre's home at Midtåsen, Sandefjord about CTC. It was agreed that it was necessary to adapt CTC with a view both for a short-term and long-term solution.

25.3. As a result Bettum spoke to Meinertzhagen again about setting up a trust. On 23 May 1975, Meinertzhagen wrote to Bettum recommending that a trust be established in Canada, and specifically Ontario rather than Quebec.

25.4. On 28 May 1975 Bettum summarised the then position in a memorandum of that date to Jahre. He recommended that CTC be organised as a self-owning foundation with a suitable international purpose, with Jahre indicating guidelines for how that purpose should be interpreted (the long-term solution). He also suggested that a sum, possibly $10m, be separated from CTC as soon as possible to provide assets readily available to Jahre and Bess Jahre (the short-term solution). He told Jahre that Meinertzhagen had recommended setting up a trust in Canada, and suggested further investigation of this without committing either CTC or Jahre personally. In due course the short-term solution evolved into a plan which led to 20% of the shares of CTC being held by Monsen for the benefit of Jahre (as pleaded in detail in Part III of this pleading).

25.5. On 15 October 1975 Bettum sent another memorandum to Jahre, reminding him that he had several times agreed that CTC should be established as a self-owning international foundation, where Jahre could indirectly maintain control as long as he wished and was able to. He suggested that Jahre discuss the matter with Kindersley who was visiting him on 20 October 1975. Jahre did so and on 28

October wrote to Kindersley asking him to consider the problems further with Meinertzhagen.

25.6. Kindersley replied on 11 November 1975 to the effect that Lazards were looking into the question and would let Jahre know progress through Bettum, and by a note on the letter addressed to Bettum told him he would ask Worsley (who was in Canada) to consult lawyers etc.

25.7. By letter dated 5 December 1975 Bettum told Kindersley that he was coming to London and would like to have a meeting with him and Meinertzhagen; and expressed the hope that Kindersley would have some news from Canada by then.

25.8. On 11 December 1975 Bettum prepared a memorandum for Jahre reciting that it had recently been agreed that the CTC assets should go to an international foundation, and that the questions to be considered were who should administer the foundation; what its purpose should be; and the management of the assets which Bettum suggested should probably be done by an international bank or finance house. On the same day Jahre signed the memorandum, it is to be inferred by way of approval.

25.9. The matter was considered again in February 1976 when a note (in English and dated London 23 February 1976) referred to the possibility of transferring all or part of CTC or all or part of its assets into a Charitable Trust and identified as the basic questions to be answered: the domicile of the Trust, the future management of the Trust; and how the purpose of the Trust should be defined. The Estate's case is that this was prepared by Bettum, and that the suggestion that some of CTC's shares or assets would not be settled into a Charitable Trust reflected the proposal to hold assets back to achieve the short-term solution mentioned in Bettum's memorandum of 28 May 1975.

25.10. A series of meetings were held in London on 1, 2 and 3 July 1976 between Bettum, Aleman, Kindersley and Hardman. At those meetings it was proposed to set up a trust in either the Bahamas or Grand Cayman. Among the matters discussed were whether the shares of CTC or assets should be settled, and how to separate out

some of CTC's assets. (It is the Estate's case that the assets so separated were intended to be used to achieve the short-term solution mentioned in Bettum's memorandum of 28 May 1975.) It was agreed that Aleman would draft minutes of a directors' meeting covering approval of the Trust Agreement and election of officers; of a shareholders' meeting ratifying the action taken by the board and electing directors; and if CTC's shares rather than assets were settled, of a directors' meeting authorising CTC to enter into a Management Contract with Lazards under which Lazards would manage all its assets.

25.11. By Note dated 15 July 1976 Bettum reported to Jahre. This enclosed a copy of a memorandum dated 2 July 1976 which referred to the decision of the shareholders to set up a Trust in the Bahamas or Cayman Islands with its purpose being made as wide as possible so that it could distribute funds to practically whatever international purpose desirable and Lazards to manage the funds, and that it was hoped that all arrangements could be completed at further meetings in London on 20 – 22 July 1976. The Note also: referred to a suggestion from de Geer that it would no longer be appropriate for there to be two Swedes on the board of CTC and so Kindersley should replace Bonde; suggested that Jahre should remain President and that Bettum should not be appointed Vice-President as Jahre had some time before wanted him to be; and informed Jahre that although Lazards would take over the management of the funds, he (Jahre) could receive reports as often as he wished (Bettum suggested quarterly) and the investment policy would be decided between Kindersley and him.

25.12. On the same day Jahre signed the Note "Lest 15.7.1976 OK" ("Read 15.7.1976 OK"). He also signed the memorandum of 2 July 1976 with his initials, it is to be inferred by way of approval.

25.13. After Jahre had approved the arrangements as set out in the Note and the memorandum. The CF was purportedly established by a Memorandum of Agreement dated 20 July 1976 ("the CF Memorandum") and signed by Monsen, Slatter, Kindersley and Worsley in London, on or shortly after 20 July 1976. The CF Memorandum purportedly constituted Slatter as the sole Trustee of CF, and Monsen, Kindersley and Worsley as the Advisors of the CF.

25.14. In fact, the trusts purportedly declared in the CF Memorandum were void from the outset.

25.15. At or about the time of the execution of the CF Memorandum, $1,000 in cash was purportedly settled on Slatter as the Trustee of the CF. The Estate's case is that the $1,000 was most probably provided by Jahre or at his expense.

25.16. At or about the same time there were held (or purportedly held) a meeting of the Board of CTC (ostensibly on 20 July 1976) at which the Board re-elected Jahre as President, de Geer as Vice-President and Treasurer, Aleman as Secretary and Simon as Assistant Secretary and resolved that Lazards be entrusted with the handling and management of CTC's assets, and a meeting of the shareholders of CTC (ostensibly on 21 July 1976) at which the action taken by the Board at its meeting of 20 July 1976 was ratified and approved; and a new board was elected consisting of de Geer, Monsen, Simon, Aleman and Slatter.

26. In the premises, in July 1976, the issued share capital of CTC was the 10,000 CTC Shares (i.e. the 10,000 bearer shares in the name of CTC). It is the Estate's case that:

26.1. At a date unknown to the Estate but after 25 June 1974 and before 23 July 1976, the CTC Shares had replaced the 10,000 bearer shares in Pankos dated 1 April 1954.

26.2. On or shortly before 23 July 1976, the CTC Shares were delivered to Lazards in London. Until July 1976 the CTC Shares had been physically held in Sandefjord, Norway and in the possession of Jahre; they were collected from there by employees of Lazards and delivered to Hardman pursuant to Jahre's instructions on or shortly before 23 July 1976.

27. On 23 October 1976 a meeting was held at Midtåsen at which the transfer of 80% of the CTC Shares into the CF was approved by Jahre:

27.1. On 22 October 1976 Bettum sent Jahre a Memorandum on CTC and the CF and a Note concerning a meeting to be held on 23 October.

27.2. Bettum's Memorandum of 22 October 1976 referred to the establishment of the CF, and summarised the provisions of the CF Memorandum governing its purposes, trusteeship, advisors and domicile. It referred to the fact that Lazards had been requested to manage the assets with regular reports to be sent to Jahre among others, and that the costs of running the CF and CTC would be negligible compared to CTC's assets.

27.3. The meeting on 23 October was attended by Jahre, Bess Jahre, Monsen, Kindersley, Worsley and Bettum. Jahre was taken in detail through the points in Bettum's Memorandum, and had no objections to the plan as summarised in the Memorandum.

27.4. Following that meeting, 80% only of the shares of CTC (that is the Trust Shares as defined above) were purportedly settled on the trusts of the CF in accordance with Jahre's instructions given at the meeting on 23 October 1976, as follows:

27.4.1. By a letter dated 9 November 1976, Monsen instructed Lazards to deliver 8,000 of the CTC Shares to the Trustees of the CF. (In fact, at that time there was only one (ostensible) Trustee of the CF, namely Slatter.)

27.4.2. Lazards delivered 8,000 of the CTC Shares to the Trustees of the CF by means of a letter dated 10 November 1976 addressed to the Trustees of the CF stating that they had placed 8,000 of the CTC Shares into the Trustees' dossier.

28. Further, it is to be inferred from the matters pleaded in Paragraphs 18-27 above that at the meeting at Midtåsen on 23 October 1976 there was also discussion of the Retained Shares, i.e. the 20% of the CTC Shares not intended to be settled on the CF. The Estate will say that such discussion was in furtherance of Bettum's proposal for the short-term solution as set out in his memorandum of 28 May 1975:

28.1. As pleaded above, on a number of occasions prior to the meeting of 23 October 1976 Bettum had suggested in his memoranda and notes to Jahre that not all of the shares or assets of CTC should be transferred to the CF.

28.2. Although Bettum's Memorandum of 22 October 1976 did not detail how the short-term solution was to be implemented, it referred to the possibility that only a part of the shares of CTC would be settled on the CF.

28.3. In the premises, the Estate will say that:

28.3.1. Jahre intended that the Retained Shares would not be settled on the CF but rather held back to be later settled on a trust (whose terms had as of October 1976 not yet been determined) which would give effect to the short-term solution.

28.3.2. Jahre permitted Monsen in the meantime to hold the Retained Shares at Lazards in London.

28.4. Monsen knew that this is what Jahre intended. Monsen gave no consideration for the Retained Shares which Jahre permitted him to hold.

28.5. The Estate will rely in support of these contentions on the existence in 1979 of the plan to settle the assets derived from the Retained Shares on the New World Trust, as pleaded in Paragraphs 50-64 below.

29. In the circumstances, it was Jahre (together with Bettum acting on his behalf) who decided how the shares of CTC should be dealt with, how, where, on whom and on what trusts they should be settled. The Estate relies in particular on the following:

29.1. Bettum's request to Meinertzhagen, after speaking to Jahre, for advice on setting up a trust in May 1975.

29.2. The terms of Bettum's memorandum to Jahre of 28 May 1975, and in particular the discussion of setting aside a fund to provide for the short-term solution.

29.3. Jahre's discussion with Kindersley in October 1975 and request to him to consider the problems.

29.4. Bettum's obtaining of Jahre's approval to his memorandum of 11 December 1975 before travelling to London to meet Kindersley.

29.5. The discussion at the meetings attended by Bettum in London on 1, 2 and 3 July 1976 of ways of settling part of the shares or assets of CTC on a proposed trust (which was to become the CF), whilst separating out some of CTC's assets which were not to be so settled.

29.6. The terms of Bettum's report to Jahre on 15 July 1976 and the fact that Jahre signed it by way of approval, and the memorandum of 2 July 1976, before the CF was established.

29.7. The meeting of 23 October 1976 at which Jahre approved the arrangements with regard to the CF before the 80% of the CTC Shares were (purportedly) settled on the CF.

29.8. The fact that Jahre intended that the Retained Shares be held back to be later settled on a trust which would give effect to the short-term solution.

It is to be inferred that the reason why Jahre (and Bettum on his behalf) did so was that he was himself the sole beneficial owner of CTC.

OTHER MATTERS RELEVANT TO THE ESTATE'S CASE AS SET OUT ABOVE

30. In support of its case that immediately before 9 November 1976 Jahre was the sole beneficial owner of CTC, the Estate relies on the way in which the affairs of CTC and the CF were conducted after that date:

30.1. During the period after November 1976, regular meetings were held of the directors and shareholders of CTC, and of the Trustees and Advisors of the CF, in various cities around the world. Bettum was regularly present at such meetings, including (at least) the following:

30.1.1. 4 March 1977 in Paris.

30.1.2. 25 August 1977 in London.

30.1.3. 9 March 1978 in Paris.

30.1.4. 22 August 1978 in Hamburg.

30.1.5. 7 February 1979 in the Bahamas.

30.1.6. 25 September 1980 in Honolulu.

30.2. Bettum held no formal position in CTC or the CF. The Estate's case is that the explanation for his presence at the meetings was to supervise Monsen and guard the interests of the person for whose benefit Monsen held the Retained Shares, namely Jahre. It is also to be inferred that Bettum attended the meetings to guard the interests of Jahre as the true settlor of the Trust Shares purportedly settled on the CF.

30.3. Accordingly, when the CF was purportedly amended by Amending Agreement dated 7 February 1979 to provide that in certain circumstances additional Advisors were to be appointed from a list of persons supplied to the Trustees, Bettum was nominated by the other Advisors in a letter dated 8 March 1979 as such an "alternative Advisor" to the CF.

31. The Estate will say that other events subsequent to 1976 (which are set out in detail later in this pleading) support its case that Jahre was the sole beneficial owner of CTC immediately before 9 November 1976; and also that those events are inconsistent with Monsen ever having been the beneficial owner. In particular, the Estate relies on the following:

31.1. The steps taken in 1979 pursuant to the short-term solution to settle the Retained Shares into the New World Trust (albeit that the settlement did not take place), as pleaded in Paragraph 50-64 below.

31.2. The steps taken in the period 1980 to 1982 to transfer the assets held by CTC and the CF to Blue Range Corporation ("Blue Range") and the AF, as pleaded in

Paragraph 40 below.

31.3. Monsen's refusal to assist with the Estate's attempts after Jahre's death to identify the assets that belonged to Jahre, as pleaded in Paragraphs 73-74 and 112-117 below.

31.4. The facts and matters pleaded in Parts III, IV and V of this pleading which set out the Estate's claims as to how Monsen and others acting with him dishonestly misappropriated or misapplied the assets representing the CTC Shares. In particular, it is the Estate's case that the fraudulent breaches of trust committed by Monsen in relation to the CF and the AF (pleaded in Part V) are inconsistent with him having beneficially owned the CTC Shares, it being absurd to suppose that Monsen would attempt to settle property for charitable or benevolent purposes and then take elaborate steps to take it back for himself.

32. The Estate further relies on the facts and matters pleaded in Schedule 1 hereto (which sets out the history of CTC and other matters showing Jahre's ownership in the period 1928 to 1978) in support of its case that Jahre was the sole beneficial owner of CTC immediately before 9 November 1976.

PART II

BENEFICIAL OWNERSHIP OF CTC PRIOR TO AND AFTER 9 NOVEMBER 1976

33. Part II of this pleading sets out the legal basis for the Estate's case that Jahre was the sole beneficial owner of the CTC Shares immediately before 9 November 1976 and at all material times thereafter.

THE ESTATE'S CASE ON OWNERSHIP OF THE CTC SHARES IMMEDIATELY BEFORE 9 NOVEMBER 1976

34. The Estate contends that the issue of whether there was a transfer of the legal ownership of the CTC shares by the physical transfer thereof is governed by either English law (being the law of the place where the CTC Shares were situated) or alternatively Panamanian law (being the law of CTC's place of incorporation). The law of England as regards transfer of title to bearer shares is the same as the law of the Cayman Islands.

35. The law of Panama is as follows:

35.1. the person with lawful possession of a bearer share certificate is presumed to be the owner of the shares;

35.2. the company in which such shares subsist is entitled to regard the possessor of the share certificate as the shareholder;

35.3. accordingly when the share certificate is physically transferred, the company is entitled to regard the transferee as the shareholder, no particular formality being required for such transfer;

35.4. the ownership of the shares represented by the share certificate depends on the relationship between transferor and transferee; in order for ownership of the shares to pass to the transferee, the transferor must transfer the certificate with the intention of transferring ownership;

35.5. if the owner of shares physically transfers the share certificate to another, he would remain the owner unless he intended to transfer ownership;

35.6. it follows that if the owner of shares deposits the share certificate with a bank, he would remain the owner unless he intended to transfer ownership to the bank.

36. In the circumstances pleaded in Paragraphs 18-28 above:

36.1. Until 9 November 1976, Jahre remained the legal owner of the 10,000 CTC Shares. The share certificates for the CTC Shares were never in Monsen's physical possession; but even if (which is denied) they were, it is denied that this gave Monsen ownership (legal or beneficial) of the shares as a matter of English or Panamanian law prior to 9 November 1976 – all it did was entitle CTC to regard him as shareholder in his relations with CTC.

36.2. Immediately before 9 November 1976 Jahre was the beneficial owner of the CTC Shares and if, which is denied, Monsen was the legal owner of them, Monsen held them on trust for Jahre.

36.3. The Estate's case is that as Monsen was not the legal owner prior to 9 November 1976, there is no basis on which he could have become the beneficial owner; alternatively, if he became the legal owner of the CTC Shares prior to 9 November 1976, Jahre remained the beneficial owner, as follows.

36.4. The relationship between Monsen and Jahre as at July 1976 (and immediately prior to 9 November 1976) in relation to the CTC Shares was governed by English law:

36.4.1. This was the law of the place where Monsen acquired legal title to the CTC Shares (if he did).

36.4.2. Further, England was the place with which the transaction had the closest connection as these arrangements were planned by Bettum and Jahre with the assistance and advice of Lazards with all concerned doing so

employing English law concepts and on the basis of what they believed would be their effect under English law.

36.4.3. Further or alternatively, by reason of the matters referred to in sub-Paragraph 36.4.2 above, Jahre is to be taken to have impliedly chosen that English law would apply to the transaction with Monsen in respect of the CTC Shares.

36.5. Under English law, Jahre remained the beneficial owner as a result of the presumption of resulting trust where property belonging to B is transferred without consideration into the name of A (English law in this respect being the same as Cayman law).

36.6. Alternatively if, which is denied, the relationship between Monsen and Jahre was not governed by English law, then it was governed by Norwegian law.

36.7. Under Norwegian law, Jahre remained the beneficial owner as a result of the application of the doctrine of pro forma. Pro forma is a concept of Norwegian law under which the real owner gives a person (the "stråmann" or "strawman") apparent (formal) authority as the real owner. In a case of pro forma, property in the name of the stråmann remains owned by the real owner, and Monsen acted as stråmann for Jahre.

36.8. Further or alternatively, under Norwegian law, Jahre remained the beneficial owner because Monsen would be regarded by Norwegian law as being no more than a "representative" of Jahre. A representative is a type of agent with limited authority.

36.9. The Estate will say that Jahre and Monsen had an express or implied agreement or understanding that Monsen would act as stråmann and/or representative for Jahre. It is absurd to suppose that either Jahre or Monsen intended, agreed or understood that Jahre was giving the CTC Shares to Monsen personally, or that on failure of the trusts of the CF Monsen could keep the Trust Shares or the assets representing those share for himself, or that if the short-term solution become impossible or for

any other reason was not implemented that the Retained Shares or the assets representing them might be kept by Monsen personally. The Estate also relies on Monsen's subsequent conduct in relation to the Retained Shares prior to Jahre's death (as pleaded in Paragraphs 50-64 below) as showing that Monsen was strâmann and/or representative for Jahre.

36.10. In the further alternative, in the absence of any other law being shown to apply, this issue is to be decided as if the law of the Cayman Islands applied, under which Jahre remained the beneficial owner as a result of the presumption of resulting trust.

JAHRE AND AFTER HIS DEATH THE ESTATE REMAIN SOLE BENEFICIAL OWNERS OF THE TRUST SHARES AND THE RETAINED SHARES

37. Paragraphs 38-43 below set out the Estate's claim that Jahre, and after his death the Estate, remained the sole beneficial owner of both the Trust shares and the Retained Shares and any assets or income derived from or representing them at all material times after 9 November 1976.

THE TRUST SHARES

38. The purported settlement of the 8,000 Trust Shares on the trusts of the CF, in accordance with Jahre's instructions, on 9 November 1976 had the following consequences:

38.1. Slatter, as the ostensible Trustee of the CF, became (under English or Panamanian law, being the law governing the legal ownership of the Trust Shares) the legal owner of the Trust Shares. Accordingly, Slatter became entitled, as against Lazards, to possession of the Trust Shares.

38.2. Slatter held the Trust Shares and the assets or income derived from or representing them on trust for Jahre. The law governing this question is either:

38.2.1. the law of England (being the law of the place where the CTC Shares were transferred to Slatter); or

38.2.2. the law of the Bahamas (as the putative proper law of the void trusts on which Slatter purported to acquire the Trust Shares). The law of the Bahamas was the putative proper law by reason of clause 39 of the CF Memorandum which purported to declare that the trust should be subject to the laws of the country that the Trustees should from time to time elect or in default subject to the laws of the country where a plurality of the Trustees are normally resident; at the time of the execution of the CF Memorandum there was only one Trustee, namely Slatter, and he was normally resident in the Bahamas.

It is not however alleged by the Estate that there is any relevant difference between the laws of England or the Bahamas (or indeed the Cayman Islands) on this point.

38.3. Under either the law of England or the law of the Bahamas, Slatter held the Trust Shares and all assets derived from them on resulting trust for the existing beneficial owner Jahre, there being no effective declaration of any other trusts by reason of the purported trusts of the CF being void.

38.4. As against Slatter, Jahre was and remained entitled to possession of the Trust Shares as their beneficial owner.

39. By a deed dated 22 December 1976, Thorand was purportedly appointed as an additional Trustee of the CF. The deed was effective to vest the legal ownership of the Trust Shares and the assets or income derived from or representing them in Thorand and Slatter jointly. However, contrary to the purported effect of the deed, they held those assets on resulting trust for Jahre, not on the trusts of the CF.

40. In the period 1980 to 1982, the assets held by CTC and the CF were transferred to Blue Range and the AF. The transfer from CTC and the CF to Blue Range and the AF was carried out as follows:

40.1. In April 1980 at the request of the Norwegian authorities CTC's bank account at SEB was attached by the Swedish court.

40.2. Pursuant to decisions taken at meetings of CTC and the CF held on 25 September 1980:

40.2.1. when the attachment of the SEB account was lifted on 13 October 1980, the balance standing to CTC's account was immediately transferred to Lazards and held in accounts in the name of AT&B;

40.2.2. the Trust Shares were withdrawn from Lazards' custody in about November 1980 and a new share certificate issued and deposited in a bank in the Bahamas.

40.3. On 20 February 1981 Aleman incorporated the Panamanian company, Blue Range.

40.4. On 9 March 1981 at a board meeting of CTC in Nassau it was resolved that the entirety of CTC's assets (other than the Contingency Fund, the Bulls Shares and 2,368 shares in Kosmos) be paid by way of dividend to its then sole shareholder, the Trustees of the CF. This resolution was implemented on 13 March 1981 and a dividend of assets then valued at $61.7m was paid to the Trustees of the CF. All except $1.7m of the assets so dividended were then purportedly used by the Trustees of the CF to subscribe for the all of the 1,000 shares of Blue Range.

40.5. By Memorandum of Agreement dated 7 October 1982, the AF was established. (The provisions of the AF Memorandum of Agreement are more fully explained in Paragraphs 277-280 of Part V.)

40.6. By a deed dated 8 October 1982 and signed by the Trustees and Advisors of the CF, the 1,000 shares in Blue Range were purportedly transferred to the Trustees of the AF to be held by them on the trusts of the AF.

41. The effect of the deed dated 8 October 1982 was as follows:

41.1. The legal ownership of the Blue Range shares was transferred to the then Trustees of the AF.

41.2. However, by reason of the CF being void and its assets being held on a resulting trust for the Estate, the Trustees of the CF had no power to transfer the beneficial interest in those shares to the Trustees of the AF or to affect the true beneficial ownership of those shares.

41.3. Accordingly, contrary to the purported effect of the deed, the then Trustees of the AF held the Blue Range shares on resulting trust for the Estate, not on the trusts of the AF.

41.4. At all material times after 8 October 1982, the Trustees for the time being of the AF held the Blue Range shares, and any assets or income derived from or representing them, on resulting trust for the Estate.

41.5. The remaining assets or income derived from or representing the Trust Shares (i.e. those not comprised in the shares of Blue Range) continued to be held by the ostensible Trustees for the time being of the CF on resulting trust for the Estate.

41.6. By an agreement dated 16 November 2003 made between Bridge, the Estate, Slatter, and Even Wahr-Hansen in compromise of the respective claims of the Estate and Bridge in proceedings before the Grand Court of the Cayman Islands in Cause 296 of 1994, but expressly without prejudice to the Estate's claims (pleaded in this Part and Part II) to beneficial ownership of the assets vested in the AF prior to the Effective Date of the Agreement (as therein defined), Bridge agreed to assign to the Estate, inter alia, the claims pleaded in Part V in the Statement of Claim and assets to the value of $37.5 million.

41.7. On 26 November 2003 the Honourable Mr Justice Henderson granted a Declaration in Cause 296 of 1994 permitting the proceedings to be compromised on the terms of the above agreement.

THE RETAINED SHARES

42. In the circumstances pleaded in Paragraph 28 above (which deals with the meeting at Midtåsen on 23 October 1976), the Estate's case is that under English or Panamanian law

Monsen was the legal owner of the Retained Shares as at 9 November 1976.

43. However, Monsen did not thereby become the beneficial owner of the Retained Shares. In the circumstances pleaded in Paragraphs 18-28 above, Jahre remained the beneficial owner of the Retained Shares at all material times after 9 November 1976:

43.1. The relationship between Monsen and Jahre in relation to the Retained Shares at the time when Monsen acquired legal title to those shares was governed by English law:

43.1.1. This was the law of the place where Monsen acquired legal title to the Retained Shares which were located in England at Lazards.

43.1.2. Further, England was the place with which the transaction had the closest connection as these arrangements were planned by Bettum and Jahre with the assistance and advice of Lazards with all concerned doing so employing English law concepts and on the basis of what they believed would be their effect under English law.

43.1.3. Further or alternatively, by reason of the matters referred to in sub-Paragraph 43.1.2 above, Jahre is to be taken to have impliedly chosen that English law would apply to the transaction with Monsen in respect of the Retained Shares.

43.2. Under English law, Jahre remained the beneficial owner of the Retained Shares as a result of:

43.2.1. the presumption of resulting trust pleaded in Paragraph 36.5 above; and further or alternatively

43.2.2. a resulting trust which arose by virtue of Jahre's failure at the meeting at Midtåsen on 23 October 1976 and thereafter to declare sufficiently certain trusts to dispose effectively of his beneficial interest in the Retained Shares (English law in this respect being the same as Cayman law).

43.3. Alternatively if (which is denied) the relationship between Monsen and Jahre as regards the Retained Shares was not governed by English law, then it was governed by Norwegian law. Under Norwegian law, Jahre remained the beneficial owner of the Retained Shares as a result of the application of the doctrine of pro forma and/or by virtue of his status as a representative, as pleaded in Paragraphs 36.7 to 36.9 above.

43.4. In the further alternative, in the absence of any other law being shown to apply, this issue is to be decided as if the law of the Cayman Islands applied, under which Jahre remained the beneficial owner as a result of the matters pleaded in sub-Paragraph 43.2 above.

PART III

THE RETAINED SHARES

44. Part III sets out the Estate's case as regards the Retained Shares. Paragraphs 45-48 below set out the Estate's case as to the duties owed by Monsen to Jahre. The remainder of Part III sets out the Estate's case as to the way in which the Retained Shares and the assets or income derived from or representing them were misappropriated by Monsen and his companies after Jahre's death in 1982.

DUTIES OWED TO JAHRE AND AFTER HIS DEATH TO THE ESTATE IN RESPECT OF THE RETAINED SHARES

45. By reason of the Retained Shares being held on trust by Monsen for Jahre as set out in Paragraphs 42-43 above, Monsen was liable to account as a trustee for the Retained Shares and any assets or income derived from or representing them to Jahre and after his death to the Estate.

APPLICABLE PRINCIPLES IF THE RELATIONSHIP GOVERNED BY NORWEGIAN LAW

46. If, contrary to the Estate's primary case, Norwegian law governed the relationship between Jahre and Monsen in 1976 as regards the Retained Shares:

46.1. As Monsen held the Retained Shares pursuant to a pro forma arrangement, and by virtue of the express or implied terms of the agreement or understanding pursuant to which Monsen was Jahre's stråmann and/or representative (as pleaded in Paragraph 43.3 above), Monsen owed the following duties to Jahre in respect of those shares and any assets or income derived from or representing them:

46.1.1. a duty not to dispose of, sell, use or otherwise deal with the Retained Shares without Jahre's permission;

46.1.2. a duty to protect and preserve Jahre's interests as the real owner of the Retained Shares and a duty to prevent his personal interests from

conflicting with Jahre's said interests;

46.1.3. a duty to deal with the Retained Shares in accordance with Jahre's instructions, and in particular a duty to return the Retained Shares to Jahre together with any assets or income derived from or representing them when instructed to do so by Jahre;

46.1.4. a duty not to take the Retained Shares or any of the assets or income derived from or representing them for himself;

46.1.5. a duty not to make a personal profit out of his position as stråmann and/or representative of the Retained Shares or otherwise use them for his own benefit, except with Jahre's authorisation; and

46.1.6. a duty to keep the Retained Shares and any of the assets or income derived from or representing them separate from his own assets.

46.2. If Norwegian law governed Monsen's duties as regards the Retained Shares or the assets representing them at any time after Jahre's death, then the above duties were owed by Monsen to the Estate. Further, after Jahre's death, only the Estate could give the aforementioned instructions, permissions or authorisations which Jahre could have given during his lifetime.

47. As will be pleaded in detail below, it is the Estate's case that subsequent to 1976 Monsen misappropriated the assets representing the Retained Shares. However, even if Norwegian law governed the relationship between Jahre and Monsen in 1976, or if at any material time Norwegian law governed beneficial ownership of the assets which are the subject-matter of these proceedings, the Estate's case is as follows:

47.1. As will be pleaded in detail hereinafter, those assets were misappropriated in circumstances where:

47.1.1. the assets misappropriated were situated in the Cayman Islands or England;

47.1.2. the acts by which they were misappropriated took place in the Cayman Islands or England; or

47.1.3. the proceeds of the misappropriations were received in the Cayman Islands or England.

47.2. In those circumstances, the nature of the duties owed to Jahre by his strâmann and/or representative Monsen was such that the Court should characterise those duties as fiduciary duties which were owed in relation to particular property under Monsen's control and the assets or income derived from or representing it. The Estate's primary case is that Monsen is liable to account in the same manner as a trustee for breach of such fiduciary duties.

47.3. Further, in the circumstances set out in sub-Paragraph 47.1, the Court should characterise wrongdoing whereby a person:

47.3.1. knowingly received property belonging under Norwegian law to Jahre or the Estate, as knowing receipt of trust property; or

47.3.2. dishonestly assisted another to misappropriate property belonging under Norwegian law to Jahre or the Estate, as dishonest assistance in a breach of trust;

and accordingly such persons are liable to account as constructive trustees and/or to pay equitable compensation in respect of such wrongdoing.

NORWEGIAN LAW ON LIABILITY FOR AND CONSEQUENCES OF MISAPPROPRIATION OF ASSETS REPRESENTING THE RETAINED SHARES

48. Alternatively if, contrary to the above, Norwegian law governs the liability for and consequences of the misappropriations pleaded below, the following principles of Norwegian law will be applicable:

48.1. Under Norwegian law, the owner of property may assert his ownership against any recipient into whose hands the property has come and may recover the property from that recipient by bringing an Eierkrav (proprietary claim). (However, where there is a pro forma arrangement, the real owner may not assert his ownership against a third party who purchased the property for value in good faith from the strâmann without knowledge of the pro forma arrangement; and for this purpose knowledge includes what the third party knew or should have known.)

48.2. The owner's rights as set out in sub-Paragraph 48.1 above extend to new assets into which the owner's property has been converted. Norwegian law regards those new assets as belonging to the owner if they can fairly be said to be assets which represent, in whole or in part, the owner's original property.

48.3. Further, where a person breaches a duty owed to another pursuant to an agreement between them (including fraudulent or dishonest breaches), under Norwegian law that other may bring an Erstatningskrav (compensation claim) against the person in breach of duty in order to recover compensation for the loss caused by the breach. Compensation is awarded which will compensate the plaintiff for the real loss which he has suffered.

48.4. Further, under the Norwegian legal concept of Delict, where a person by his dishonest actions causes loss to another he is liable to that other for the loss so caused. In such a case, the plaintiff may bring a compensation claim to recover compensation for the loss caused. Accordingly, if a person dishonestly assists or procures another to steal, conceal or otherwise misappropriate property from its owner, that person is liable to the owner in Delict for the loss caused to the owner.

48.5. If it is necessary for the Estate to bring its claims under Norwegian law, it is the Estate's case that the limitation law of the forum should be applied. In the circumstances of the present case, a proprietary claim or a compensation claim would vindicate rights which under the law of the forum would be protected by claims to which no limitation periods apply, namely claims for fraudulent breach of trust or fiduciary duty, tracing claims and the assertion of proprietary rights. Thus a proprietary claim or compensation claim should be characterised by the

Court as analogous to such claims and no limitation period should be applied to them.

(The Estate will also refer to the above principles in its claim in respect of the Contingency Fund as set out in Part IV below.)

THE MISAPPROPRIATION OF THE ASSETS DERIVED FROM THE RETAINED SHARES: THE ESTATE'S CASE ON THE FACTS

49. The remainder of Part III sets out the Estate's case as to: the replacement of the Retained Shares by other assets in 1979 in pursuance of the short-term solution; the investment of those assets in the shipping business; the failure to implement the short-term solution; and Monsen's misappropriation of those assets after Jahre's death in 1982.

THE REDEMPTION OF THE RETAINED SHARES

50. Between November 1976 and about July 1979, Monsen continued to hold the Retained Shares for the benefit of Jahre. However, no instructions to settle the Retained Shares were ever given to Monsen by Jahre. The Retained Shares remained at Lazards.

51. The Estate's case is that Monsen continued to hold the Retained Shares on trust for Jahre. If, contrary to the Estate's primary case, Norwegian law governed the relationship between Jahre and Monsen in 1976 as regards the Retained Shares, Monsen continued to act as Jahre's stråmann and/or representative for the Retained Shares.

52. By 1979, Jahre was mentally incapacitated and unable to manage his own affairs. In that year, new arrangements were discussed and made for the way in which the Retained Shares were held. Jahre neither knew of nor consented to these arrangements; nor, given his mental incapacity, could he have known of or consented to them.

53. The following arrangements were discussed:

53.1. In a handwritten note written in June 1979, Slatter stated that CTC was to buy back the 2,000 Retained Shares held by Monsen for a price based on the 30 June valuation

of CTC prepared by Lazards after providing for a contingent liability of $5,000,000 and an unpaid liability of $200,000; that the 2,000 Retained Shares (by which Slatter meant the proceeds of redemption of those shares) would be sold or transferred to a Panamanian company; and that the shares of the Panamanian company would be settled into the New World Trust by Monsen, but Monsen "may keep the shares in his name as he will be managing the company in the shipping business."

53.2. In a further handwritten note dated 11 July 1979, Slatter stated that at a CTC shareholders' meeting the following week CTC's share capital would be reduced by 20% and 2,000 of the 10,000 CTC Shares cancelled; that CTC would buy the shares back at their approximate worth based on the 30 June Lazards valuation, namely 20% of $75m less $5m, rounded down; and that the proceeds of the sale would be transferred to a new company, Harmon Corporation ("Harmon"), which would be held by Monsen for the Trustees of the NWT.

54. In the premises, the Estate will say that in about early 1979 a decision was taken that the Retained Shares would be redeemed in order to facilitate what was believed by those involved to be the implementation of the short-term solution.

55. The following steps were then taken:

55.1. By a resolution dated 16 July 1979 the shareholders of CTC resolved to reduce its authorised capital so that the same would henceforth be represented by 8,000 shares of no par value rather than the existing 10,000 shares.

56.2 At the same time STC, the Panamanian company (which as set out in Paragraph 23 above had been intended for use in the Sunday Trading plan as a vehicle for holding the CTC shares for Jahre, and/or was owned by Jahre) changed its name to Harmon. 10,000 bearer shares in Harmon were issued and held by Monsen who had only become a director thereof a few weeks earlier.

56.3 The capital reduction was effected by cancelling the 2,000 Retained Shares held by Monsen in exchange for a sum not exceeding 20% of the net assets of CTC. The figure agreed by those concerned as representing 20% of the assets of CTC (less the

Contingency Fund, which was then valued at about $5m) was $14,250,000 at 30 June 1979. This sum ("the Cash Payment") was held to Monsen's order by Lazards and then transferred on Monsen's instructions on or about 14 August 1979 to Harmon by a deposit of these funds in Harmon's account with Lazards in London.

56. From 14 June 1979, the directors and officers of Harmon (then called STC) were Monsen, Aleman and Hardman. Monsen, who was the President of Harmon, controlled the company; the other directors and officers exercised no real influence. Monsen was thus the directing mind and will of Harmon and his knowledge is to be attributed to it. As from 14 August 1979, Harmon's sole asset was the Cash Payment.

57. In the premises, the shares of Harmon and/or the Cash Payment (which were located in England and/or Cayman) were the traceable proceeds of the Retained Shares. On the basis that English law had applied to the relationship between Jahre and Monsen as regards the Retained Shares from November 1976:

57.1. Upon taking possession of the 10,000 bearer shares in Harmon in about July-August 1979, Monsen held them on trust for Jahre.

57.2. Further or alternatively, by reason of Harmon's knowledge (through Monsen) that the Cash Payment represented property held on trust by Monsen for Jahre, Harmon held its underlying assets, namely the Cash Payment and any assets derived from it, on trust for Jahre from about July-August 1979.

58. Alternatively if, contrary to the Estate's primary case, Monsen was Jahre's strâmann and/or representative in respect of the Retained Shares, then by virtue of the Norwegian law pleaded in Paragraphs 48.1 to 48.2 above, from this time Monsen held the Harmon shares as strâmann and/or representative for Jahre, and/or Jahre remained the owner of Harmon's underlying assets which were held for him by Harmon.

THE NEW WORLD TRUST

59. On 7 February 1979 Monsen purported to establish a trust named New World Trust ("NWT"). Monsen was named as Settlor in the trust instrument. For the avoidance of

doubt, no admission is made as to whether the trusts purportedly declared in the NWT trust instrument were valid.

60. It is to be inferred that the NWT had been purportedly established in order to hold the Retained Shares or 20% of the assets of CTC in an attempt to achieve the short-term solution:

60.1. The purported beneficiaries of NWT, as identified in its trust instrument, were (in summary) any individuals, corporations, institutions, associations, organisations of any kind, public or private, which are directly or indirectly related to the shipping industry in areas in which the Settlor had been associated (including, in particular, Scandinavia, Japan, the United Kingdom, Hong Kong, the Cayman Islands, the Commonwealth of the Bahamas and Canada or any of them), and charitable organisations including in particular the Continental Foundation subject to the exercise of the Trustees' discretion.

60.2. Hence the NWT was drafted with a class of purported beneficiaries so wide that Jahre (and Bess Jahre and possibly the Norwegian foundations established by Jahre during his lifetime) would fall within it. (The Norwegian foundations in question were the Anders Jahres Humanitære Stiftelse (Anders Jahre's Humanitarian Foundation) and Anders Jahres Fond Til Vitenskapens Fremme (Anders Jahre's Fund for the Furtherance of Science.))

60.3. Bettum was sent the NWT trust instrument by letter dated 16 February 1979. He was also nominated as an "alternative Advisor" to the NWT by letter dated 8 March 1979 (in which letter he had also been nominated as an "alternative Advisor" to the CF, as pleaded in Paragraph 30.3 above). The Estate will say that this was done because Bettum was supervising the proposed implementation of the short-term solution in order to protect Jahre's interest in the Retained Shares.

60.4. On 7 February 1979, the same day as the purported establishment of the NWT, Monsen purported to establish another trust known as the Aall Trust ("the AT") for the benefit of, inter alia, his family and companies owned or controlled by them. In the premises, the Estate will say that the NWT was not established for the

benefit of Monsen and his family, and it is to be inferred that the NWT was established as part of the proposed implementation of the short-term solution.

61. In the event, however, when the capital reduction of CTC was effected Monsen did not settle either the shares of Harmon or the Cash Payment on NWT or any other trust for the benefit of Jahre. Accordingly the Harmon shares and/or Cash Payment continued to be held on trust for Jahre as aforesaid or alternatively continued to be Jahre's property under Norwegian law.

USE OF THE ASSETS REPRESENTING THE RETAINED SHARES IN THE SHIPPING BUSINESS

62. Monsen used the assets of Harmon to finance a series of shipping transactions, further particulars of which are pleaded in Schedule 2 to this pleading. In summary, Harmon made a series of loans of the Cash Payment to various Liberian shipping companies which had been established for the purpose of putting those shipping transactions into effect, as follows:

62.1. Harmon lent Clarmon Corporation, a Liberian company, ("Clarmon") $765,160 of the Cash Payment in about July 1979 to finance Clarmon's acquisition of the vessel Japana ("the Acquisition Loan"). The vessel was then placed on bareboat charter to Kosmos. In 1980-1981, Harmon lent further sums of the Cash Payment totalling $3,484,297.61 to Clarmon in connection with the conversion of Japana to a car carrier ("the Conversion Loans"). Particulars of this transaction are pleaded in Paragraph 1.1 of Schedule 2.

62.2. Harmon lent Amelon Corporation, a Liberian company, ("Amelon") about $786,000 of the Cash Payment in 1979 to finance Amelon's acquisition of the vessel Jaricha. This vessel was then placed on bareboat charter to Kosmos. Particulars of this transaction are pleaded in Paragraph 1.2 of Schedule 2.

62.3. Harmon lent or used further sums derived from the Cash Payment to finance the purchase of the vessel Honam Topaz by Larmal Corporation, a Liberian company, ("Larmal"), or alternatively invested those sums in the shares of Larmal or otherwise transferred them to Larmal. The Estate is unable to give full particulars

of this transaction, but its case as regards Larmal is set out in Paragraphs 65-66 below.

63. The use of a part of the assets derived from the Retained Shares in the shipping business through Clarmon and Amelon was of benefit to companies with which Jahre, and his associate Bettum, was closely associated:

63.1. As pleaded above, the Japana and the Jaricha were chartered to Kosmos, a company of which Jahre was a promoter and a shareholder, and of which until 1 March 1978 he was the managing director. After 1 March 1978, Bettum was the managing director of Kosmos.

63.2. The initiative for purchasing the Japana and the Jaricha came from Kosmos, which wanted to establish a fleet of bulk or car carriers. The decision to sell the Japana in 1986 was made by Kosmos.

63.3. Further, Jahre Ship Management A/S (a company then managed by Bettum and owned by Kosmos) was appointed as Amelon's agent and ship manager for the Jaricha on 2 April 1979, and as Clarmon's agent and ship manager for the Japana on 19 June 1979. Jahre Ship Management A/S had been paid $884,297.61 for its management of the Japana by April 1981.

63.4. In 1986, Anders Jahre A/S (a company then managed by Bettum and owned by Kosmos) conducted the negotiations for the sale of the Japana on behalf of Clarmon.

63.5. The charter hire payable by Kosmos to Clarmon and Amelon for the Japana and the Jaricha was precisely calculated in such a way as to enable Clarmon and Amelon to discharge their ship financing liabilities to Harmon and their other creditors, namely Lazards, Chemical Bank and Arizona Shipping & Trading Corporation.

63.6. Hence Kosmos bore the risk of the said investments in the shipping industry, and had the opportunity to make any profits. In effect, therefore, a large component of the assets derived from the Retained Shares were borrowed by Kosmos to fund its own investment in the shipping business.

63.7. In support of this allegation, the Estate will also rely on the internal Lazards memorandum addressed to Lazards' directors dated 15 May 1979 in which Lazards' loans to Clarmon and Amelon are described as "Kosmos risk" and "Kosmos loans". The memorandum records that Bettum had proposed the purchase of the Japana because he and Kosmos' board wanted the ship, but the borrower would be Clarmon because if Kosmos directly owned the vessel there would be considerable costs in altering it to meet Norwegian standards.

64. The Estate will say that the use of a part of the assets derived from the Retained Shares in the shipping business is consistent with Monsen's knowledge that he held those assets for the benefit of Jahre, either on trust or as the stråmann and/or representative of Jahre, in that:

64.1. The decision to invest assets derived from the Retained Shares in the shipping business in 1979 was a precursor to their planned settlement on the NWT, as mentioned by Slatter in his note of June 1979 referred to in Paragraph 53.1 above.

64.2. Although the plan to settle those assets on the NWT was for the time being left in abeyance, Monsen invested the assets in businesses connected to Jahre. It is the Estate's case that in so doing Monsen acted under the guidance of Jahre's associate Bettum.

LARMAL CORPORATION OF LIBERIA

65. The Estate is unable to give full particulars of the transaction as regards Larmal prior to discovery, save that:

65.1. Larmal was incorporated in Liberia on 5 October 1978, at or about the same time as Clarmon and Amelon.

65.2. In a Memorandum of Meeting dated 6 January 1983, Slatter recorded that Monsen had admitted holding assets in "Forrester" (which the Estate will say was one of the companies owned or controlled by Monsen) for others. Slatter recorded that "slightly less than $4,000,000" was held for a man and wife in Norway, that a similar sum was held for someone else, and that Larmal was related to one of these assets. It is to be inferred that the man and wife in question were Jahre (then deceased) and Bess Jahre.

66. By reason of the foregoing, the Estate will say it is likely that a part of the assets derived from the Retained Shares and/or Cash Payment were lent, invested in or otherwise transferred to Larmal by Harmon. Accordingly, it is to be inferred that the benefit of any debt owed by Larmal to Harmon, or alternatively Harmon's interest in Larmal or its assets, formed a part of the underlying assets of Harmon. These were therefore held for the benefit of Jahre as pleaded in Paragraph 57-58 above. However, the Estate reserves the right to apply to amend its case with regard to Larmal after discovery.

OTHER USES OF THE ASSETS DERIVED FROM THE RETAINED SHARES

67. Harmon used the balance of the assets derived from the Retained Shares (i.e. those which were not invested in the shipping business) as follows:

67.1. Harmon deposited $4,871,000 with Lazards in about August or September 1979, this amount rising to $6,347,000 by October 1979.

67.2. Harmon purchased 4,350 shares in Lazard Brothers International Income Fund Limited ("LBIIF"), a fund regulated in Cayman, on or about 8 December 1980. The Estate estimates that the cost of the shares was about $4.35m; it is to be inferred that the deposits held at Lazards referred to in the previous sub-Paragraph were probably used to fund the purchase.

67.3. On 20 February 1980, Harmon (Cayman) was incorporated in the Cayman Islands. This company became a wholly-owned subsidiary of Harmon on 1 May 1980. Further:

67.3.1. At a date unknown to the Estate but prior to January 1983, Harmon (Cayman) acquired 150 shares in Aall & Co or alternatively the right to receive the proceeds of sale of those shares. It is to be inferred that a part of the assets derived from the Retained Shares was used to acquire Harmon (Cayman)'s shareholding in Aall & Co. As is pleaded below in Paragraph 2.1 of Schedule 2, Harmon (Cayman) eventually received $2.025m upon sale of its shares in Aall & Co in January 1983.

67.3.2. As far as the Estate is aware, Harmon (Cayman) was controlled by Monsen. Through Harmon, Monsen used Harmon (Cayman) as a vehicle in which to hold a part of the proceeds of the Cash Payment. It is to be inferred that Harmon (Cayman) was a nominee of Harmon. Accordingly, Harmon (Cayman)'s assets were held by it for Harmon. The shares of Harmon were held by Monsen for the benefit of Jahre, and/or Harmon held its underlying assets (which included those held for it by Harmon (Cayman)) for the benefit of Jahre, as set out above.

67.4. Prior to discovery, the Estate is unable to give any further particulars of the application of the assets or income derived from or representing the Retained Shares prior to Jahre's death.

JAHRE'S DEATH

68. Jahre died on 26 February 1982 in Sandefjord, Norway.

69. By reason of the matters set out in Paragraph 57-58 above, at all material times after Jahre's death Monsen held the shares of Harmon on trust for the Estate or alternatively as stråmann and/or representative for the Estate. Further or alternatively, Harmon held its assets on trust for the Estate or alternatively the Estate was the owner of those assets under Norwegian law. The shares of Harmon and Harmon's underlying assets were the assets or

income derived from or representing the Retained Shares and/or the Cash Payment and were the traceable proceeds thereof.

70. The Estate's case, as set out in detail in the rest of Part III, Part IV and Part V of this pleading, is that following Jahre's death:

70.1. Monsen deliberately concealed from the Estate its interest in the Retained Shares and the assets derived from them and obstructed the Estate's enquiries into Jahre's ownership of CTC.

70.2. Monsen deliberately took steps to conceal the whereabouts of assets belonging to the Estate, and thereby put himself into a position to misappropriate those assets for himself and/or companies he owned and controlled.

70.3. Monsen then misappropriated those assets by taking them for himself and/or his companies.

71. The Estate will say that, in the premises, following the death of Jahre Monsen embarked on a course of conduct designed to facilitate and achieve the misappropriation of the assets of the Estate, namely the assets derived from the Retained Shares, the Contingency Fund and the assets derived from the Trust Shares.

CONCEALMENT OF ASSETS BELONGING TO THE ESTATE

72. Monsen was at the time of Jahre's death:

72.1. A director of CTC (a position he had held since 1974 and continued to hold until 1 May 1984);

72.2. CTC's President, a position he held until 1 May 1984 having been so appointed on 9 March 1978. (He had been the company Treasurer from 1977-78.)

72.3. An Advisor of the CF.

73. Monsen knew of Jahre's death soon after the event. Further, shortly after Jahre's death, Monsen became aware that Brunsvig had been appointed as "bobestyrer" (administrator) to assist in the administration of the Estate, and that Brunsvig on the Estate's behalf was attempting to ascertain whether Jahre owned the assets previously held by CTC:

73.1. As CTC's President, as a CTC director and as an Advisor of the CF, Monsen was aware in the period after Jahre's death of communication, some of which referred to Monsen as the purported settlor of the CF, between CTC and Brunsvig, the then administrator of the Estate. The correspondence began soon after Jahre's death and included:

73.1.1. A letter dated 14 June 1982 from Aleman (then CTC's Vice-President and secretary) to Per Brunsvig; a letter dated 14 September 1982 from Aleman to Per Brunsvig; and

73.1.2. A letter dated 7 December 1982 from Arthur Hardman (then CTC's treasurer and assistant secretary) to Per Brunsvig.

73.2. In particular, Nicolai Herlofsen (a Norwegian lawyer) met Monsen in or about November 1982 at Brunsvig's instigation:

73.2.1. On behalf of Brunsvig, Herlofsen asked Monsen about the ownership of CTC. Monsen falsely denied that Jahre had been the owner, failed to inform Herlofsen about his involvement in the events of 1974 to 1976 (as set out in Part I above) and declined to give any assistance to the Estate. Indeed Monsen went so far as to try to give Herlofsen the false impression that others, including Aristotle Onassis, were the true owners of CTC and that Onassis was reluctant to claim ownership because he was under investigation by the Greek tax authorities (which was anyway untrue).

73.2.2. Herlofsen informed Brunvsig of Monsen's responses in a letter dated 25 November 1982. Thus Monsen deceived Brunsvig and the Estate about the ownership of CTC.

74. The Estate will say that Monsen's failure to inform the Estate of Jahre's interests in the assets derived from the Retained Shares, and his deliberate provision of false and misleading information to the Estate about the ownership of CTC was a preliminary step in the subsequent misappropriation of those assets as set out below.

MISAPPROPRIATION OF THE ASSETS DERIVED FROM THE RETAINED SHARES AFTER JAHRE'S DEATH

75. By late 1982 the assets of Harmon included at least the following:

75.1. 4,350 shares of LBIIF, which had been transferred by Monsen (or at Monsen's direction) to Harmon's account 1-130 with AT&B on 11 August 1982; the Estate estimates that the 4,350 shares had a value substantially in excess of $4,350,000 by the end of 1982;

75.2. Cash deposits with Lazards (but held in the name of AT&B accounts 1-130 and 5-130) which by then were at least $1.17m (the Estate does not at present know whether such deposits included repayments under the loans to Clarmon and Amelon mentioned in sub-Paragraphs 75.4 and 75.5 below);

75.3. Harmon's shareholding in Aall & Co held through its subsidiary company Harmon (Cayman);

75.4. The benefit of the said loans totalling $4,249,247.61 made to Clarmon in relation to the acquisition and conversion of the Japana, together with interest payable thereon and such further rights as Harmon was entitled to by virtue of the loans being "equity" loans;

75.5. The proceeds of repayment of the said loan of approximately $786,000 made to Amelon (this loan having been repaid following the sale of the Jaricha in 1981), together with such interest as was repaid thereon and such further benefits as Harmon received by virtue of the loan being an "equity" loan;

75.6. The said loans to, or investments in, or other interests in Larmal.

76. On or about 24 September 1982 Monsen gave directions to Michael Nash of AT&B, a Cayman company which was the custodian of the bearer shares of Harmon, that henceforth the said shares in Harmon were to be held to the order of a company named Forrester Holdings absolutely. Forrester Holdings was wholly owned and controlled by Monsen (as set out in Paragraph 97 below).

77. Nash replied that in accordance with Monsen's instructions he was placing a note to this effect on the outside of the envelope containing the said shares which were then held in AT&B's security box at Canadian Imperial Bank of Commerce, Grand Cayman Branch. Further by a letter dated 10 December 1982 Monsen wrote to Hardman describing the funds in AT&B Account 1-130, which was Harmon's bank account with AT&B, as his personal funds and that he expected to continue using that account in the future.

78. By directing AT&B in September 1982 that the bearer shares of Harmon were to be held to the order of his company Forrester Holdings, Monsen dishonestly misappropriated the 10,000 bearer shares of Harmon and put himself in the position to misappropriate the underlying assets of Harmon and Harmon (Cayman) in the manner pleaded below.

79. The Estate relies on the following particulars of dishonesty:

79.1. Monsen knew by virtue of the facts and matters pleaded in Paragraphs 21, 25-28 and 55-57 above that he held the shares of Harmon for the benefit of Jahre absolutely, and further or alternatively that Harmon held its assets for the benefit of Jahre absolutely.

79.2. Monsen knew that the Estate was now entitled to the shares of Harmon and/or its underlying assets and that by transferring these to himself or companies owned by him he was misappropriating property that belonged beneficially to the Estate.

79.3. As set out in Paragraphs 73-74 above, Monsen deceived Brunsvig and the Estate about ownership of CTC. Monsen did not notify the Estate of its interest in the

shares of Harmon and/or Harmon's underlying assets in the knowledge that unless informed of its interest the Estate would not, or probably would not, discover that Monsen and/or Harmon held such assets for the benefit of the Estate and therefore would not be able to take possession of them.

79.4. In support of the above claim that Monsen dishonestly misappropriated the shares of Harmon and put himself in a position to misappropriate its underlying assets, the Estate will rely on the following:

79.4.1. In a conversation in 1979 in Fountainbleau, France, Monsen suggested to Bettum that they should take the assets which Monsen held on trust for Jahre and divide them equally between themselves. Bettum, who at that time was still loyal to Jahre's interests, refused.

79.4.2. The Estate's case is that after Jahre's death Bettum was no longer prepared to act to protect Jahre's interests, and it is to be inferred that by September 1982 Monsen felt able to carry out his intention of misappropriating assets derived from the Retained Shares for his own benefit:

79.4.2.1. It is to be inferred that at a time unknown to the Estate, but in any event by late 1982, Bettum and Monsen had come to an agreement or understanding whereby Bettum would co-operate with Monsen or at least that Bettum would not obstruct Monsen's actions. The Estate relies on the following matters.

79.4.2.2. By January 1983, Monsen had promised to Bettum that Bettum would become a shareholder in companies owned and/or controlled by Monsen. In particular, by that time Monsen had earmarked $2.025m (which was derived from Harmon's underlying assets, as explained in Paragraph 2.1 below) for Bettum's equity participation in such companies when Bettum left Norway to work with Monsen.

79.4.2.3. In the event, Bettum did not leave Norway to work with Monsen and the $2.025m was not paid to him or applied for his benefit.

79.4.2.4. However, by February 1985, Bettum was still seeking payment of the $2.025m. In a handwritten memorandum drawn up by Bettum on 12 February 1985 (and signed by Monsen, it is to be inferred by way of agreement), Bettum sought a number of benefits from Monsen, including:

(i) the said $2.025m, which Bettum claimed was due in 1990;

(ii) $60,000 per year;

(iii) a position in Aall Maritime Consultants (which as explained below in Part IV was a company controlled by Monsen, later re-named Forrester Maritime) and a position as "Advisor/Governor Foundation/Trust" (which the Estate will say is a reference to the AF and/or other trusts which Monsen could influence); and Bettum claimed that such positions should be given to him when he decided "to come out", by which he meant when he left Norway.

79.4.3. Further, as pleaded in Paragraph 21 above, for many years Monsen had assisted Bettum by acting as the ostensible owner of Panova. Monsen continued to do so until Panova's final dissolution in around early 1988. By reason thereof, Bettum was beholden to Monsen and therefore unable or unwilling to oppose Monsen's misappropriation of assets which were not his.

79.5. Further, the Estate relies on the dishonest misappropriation by Monsen the assets derived from Contingency Fund and the Trust Shares as set out in Parts IV and V hereof in support of the claim that Monsen dishonestly misappropriated the assets

derived from the Retained Shares. The Estate will say that such dishonesty forms part of a pattern of dishonest dealings by Monsen from about 1982 in relation to the assets of CTC and Jahre.

80. The shares of Harmon and the said underlying assets were located in Cayman or in London at the time that they were misappropriated by Monsen. The Estate's primary case is that, as pleaded above, the shares of Harmon were held on trust by Monsen for the Estate in September 1982. The law governing the liability for and the consequences of the misappropriation which occurred in September 1982 was Cayman law or alternatively English law. (It is not however alleged by the Estate that there is any relevant difference between the laws of England and the Cayman Islands on this point.)

81. The misappropriation of the Harmon shares by Monsen was a dishonest breach of trust. Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account. If Monsen personally received any of the assets so misappropriated (or assets representing them), he held them on trust for the Estate absolutely.

THE POSITION IF NORWEGIAN LAW APPLIED IN SEPTEMBER 1982

82. Alternatively if, contrary to the Estate's primary case, Monsen held the shares of Harmon as strâmann and/or representative for the Estate under Norwegian law in September 1982, then:

82.1. On the basis pleaded in Paragraph 47.2 above, the duties owed by Monsen as strâmann and/or representative, as set out in Paragraph 46 above, are to be characterised as fiduciary and Monsen is liable to account in the same manner as a trustee. By dishonestly misappropriating the assets derived from the Retained Shares, Monsen fraudulently breached those duties. Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

82.2 Further or alternatively, by virtue of the Norwegian law relating to proprietary claims pleaded in Paragraphs 48.1 to 48.2 above the assets so misappropriated continued to be beneficially owned by the Estate. The Estate is entitled to recover those assets, and any assets representing them, from those who have received them, to the extent that they still hold such assets or assets representing them. The Estate will say that Compass and Hurford Holdings now hold such assets and the Estate is entitled to recover those assets from them.

82.3 Alternatively, in the premises, Monsen acted in dishonest breach of his duties as stråmann and/or representative (pleaded in Paragraph 46 above). Under the Norwegian law relating to compensation claims set out in Paragraph 48.3 above, the Estate is entitled to recover compensation for the loss sustained as a result of such breach. Compass, as Monsen's personal representative, is liable to pay such compensation.

MISAPPROPRIATION OF THE ASSETS OF HARMON IN THE PERIOD 1982-1988

83. Subsequent to the dishonest misappropriation of the Harmon shares by Monsen, between 1982 and 1988 Monsen took for himself and/or his companies at least the following underlying assets (and particulars of the way in which he did so are, so far as known to the Estate, set out in Paragraphs 2.1 to 2.8 in Schedule 2 to this pleading):

83.1. The proceeds of the 150 shares in Aall & Co, namely $2.025m, were misappropriated in about May 1983 when $2m was transferred to the AT; it is to be inferred that the remaining $25,000 was misappropriated in the same or similar way. (Particulars are set out in Paragraph 2.1 in Schedule 2.)

83.2. In or about April 1985 Harmon assigned to a company owned and controlled by Monsen named Old Forrester its right to repayment of the Acquisition Loan and the Conversion Loans. As of April 1985, the full $765,160 of the Acquisition Loan was outstanding and about $2,400,000 of the Conversion Loans was outstanding, in both cases with interest thereon. Thus the benefit of these loans was misappropriated, as were the repayments of the loans after April 1985. (Particulars are set out in Paragraphs 2.3 and 2.5-2.7 in Schedule 2.)

83.3. Harmon was finally dissolved in January 1988. It is to be inferred that upon or before its final dissolution, Harmon's cash deposits, which had been at least $1.17m in late 1982, were misappropriated. The Estate's case is that Harmon's deposits would have been substantially in excess of that by 1988 because between 1980 and April 1985 Clarmon had repaid (at least) $2,259,148.20 to Harmon in respect of the Conversion Loans. Further, Harmon's cash deposits would have included the proceeds of the repayment of the loan to Amelon. (Particulars are set out in Paragraphs 2.2, 2.4 and 2.7 in Schedule 2.)

83.4. Further, it is to be inferred that upon or before Harmon's final dissolution in January 1988, Harmon's 4,350 shares in LBIIF were misappropriated. (Particulars are set out in Paragraph 2.8 in Schedule 2.)

83.5. Further, it is to be inferred that upon or before Harmon's final dissolution in January 1988, the benefit of Harmon's loans to, or investments in, or interests in Larmal were misappropriated. (Particulars are set out in Paragraph 2.8 in Schedule 2.)

83.6. The Estate is currently unable to say whether other assets derived from the Retained Shares were misappropriated in this period, but reserves the right to provide further particulars after discovery.

84. The Estate's primary case is that, during the period of the misappropriations identified in Paragraph 83 above, Monsen continued to hold the shares of Harmon on trust for the Estate; and/or Harmon continued to hold its and Harmon (Cayman)'s underlying assets on trust for the Estate. The assets so misappropriated were situated in England or in the Cayman Islands. Therefore the law governing the liability for and the consequences of those misappropriations was Cayman law or alternatively English law. (It is not however alleged by the Estate that there is any relevant difference between the laws of England and the Cayman Islands on this point.)

85. In the premises, the misappropriation of those assets during the period 1982-1988 were further fraudulent breaches of trust by Monsen. The Estate repeats the particulars of dishonesty set out in Paragraph 79 above. Compass, as Monsen's personal representative,

is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account. If Monsen personally received any of the assets so misappropriated (or assets representing them), he held them on trust for the Estate.

86. Further or alternatively, if Harmon held its assets and Harmon (Cayman)'s assets on trust for the Estate in the period 1982 to 1988:

86.1. The transfer of those assets as aforementioned to Monsen or his companies were breaches of trust by Harmon.

86.2. Monsen, as the individual who controlled Harmon, dishonestly assisted in or procured those breaches. The Estate repeats the particulars of dishonesty set out in Paragraph 79 above. Further, if Monsen personally received any of the assets so transferred (or assets representing them), then such receipt amounted to active participation by Monsen in Harmon's breaches of trust, and therefore amounted to further dishonest assistance by Monsen in breaches of trust.

86.3. Consequently, Compass, as Monsen's personal representative, is liable to account as a constructive trustee and to equitable compensation on the taking of that account.

THE POSITION IF NORWEGIAN LAW APPLIED TO THE MISAPPROPRIATIONS BETWEEN 1982 AND 1988

87. Alternatively if, contrary to the Estate's primary case, Monsen held the shares of Harmon as strâmann and/or representative for the Estate under Norwegian law during the period 1982-1988, the Estate repeats Paragraph 82.1 to 82.3 above. On the basis there set out, Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and/or to pay equitable compensation, and/or the Estate is entitled to assert proprietary claims against Compass and Hurford Holdings, and/or Compass is liable to pay compensation.

88. Alternatively if, contrary to the Estate's primary case, Harmon held assets which under Norwegian law would be regarded as owned by the Estate during the period 1982-1988, the Estate's case is as follows:

88.1. By dishonestly procuring that Harmon transfer its assets to him or his companies in the manner set out above, Monsen further breached his duties as stråmann and/or representative, which duties are to be characterised as fiduciary. The Estate repeats Paragraph 82.1 above. On the basis there set out, Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

88.2. Further or alternatively, on the basis pleaded in Paragraph 47.3 above, Monsen's wrongdoing is to be characterised as dishonest assistance in a breach of trust. Compass, as Monsen's personal representative, is liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

88.3. Further or alternatively, the Estate is entitled to recover the assets so misappropriated from Compass and Hurford Holdings to the extent that they still hold such assets or assets representing them. The Estate repeats Paragraph 82.2 above.

88.4. Alternatively:

88.4.1. The Estate is entitled to recover compensation from Compass, as Monsen's personal representative, for Monsen's breach of his duties as stråmann and/or representative as set out in Paragraph 82.3 above.

88.4.2. Further, Monsen, as the individual who controlled Harmon, dishonestly caused loss to the Estate by procuring that Harmon transfer its assets as aforementioned. Compass, as Monsen's personal representative, is therefore liable to the Estate in Delict for the loss so caused under the principles set out in Paragraph 48.4 above.

MISAPPROPRIATION OF PART OF THE CONTINGENCY FUND ON THE STRENGTH OF MONSEN'S HOLDING OF THE RETAINED SHARES

89. Further, on or about 21 October 1982 Monsen used his positions as director and President of CTC and as an Advisor of the CF to direct the transfer to himself of $1,465,000 from the Contingency Fund. As described in detail in Part IV below, the Contingency Fund was a fund of cash and other assets held by CTC. $1,465,000 represented approximately 20% of the assets held in the name of CTC as the Contingency Fund; these assets were situated in Cayman or England.

90. Monsen procured the payment of this sum to himself on the purported basis that he was the beneficial owner of the Retained Shares.

91. As will be set out in detail in Part IV below, the balance of the Contingency Fund was later transferred to NWT and/or Forrester Maritime, both of which Monsen at that time controlled. At some point during the period February 1985 to September 1988, at a time when NWT and/or Forrester Maritime held the Contingency Fund, Monsen used his positions as an Advisor to NWT and as a director of Forrester Maritime to cause and/or procure and/or assist the transfer to himself of a further sum of $600,000 from the Contingency Fund, as follows:

91.1. As will be pleaded below in Part IV, from 1981 the Contingency Fund included the Bulls Shares. These shares had been originally recorded as part of the Contingency Fund at the value of $108,330, which was substantially less than their market value.

91.2. At some point after the transfer of the Contingency Fund to NWT and/or Forrester Maritime in 1985, the Bulls Shares were revalued to $3m.

91.3. Upon the revaluation, $600,000 (i.e. 20% of $3m) was transferred by NWT and/or Forrester Maritime to Monsen. It is to be inferred that Monsen took this sum under the guise of being the former beneficial owner of the Retained Shares, in the same manner as he took the sum of $1,465,000 referred to above.

92. In the premises, Compass, as Monsen's personal representative, is liable to account and/or to pay equitable compensation to the Estate in respect of the said sums of $1,465,000 and/or $600,000 on three alternative bases, namely that:

92.1. both sums were a part of the Contingency Fund held on trust for the Estate and misappropriated by Monsen, as set out in Paragraphs 171-175 of Part IV below; or alternatively

92.2. the sum of $1,465,000 was an asset of CTC to which Monsen was not entitled, with the result that its payment to him amounted to a breach of fiduciary duty by Monsen and a breach of trust by the CF in which Monsen was a dishonest assistant, as set out in Paragraphs 258-267 of Part V below; or alternatively

92.3. both sums were assets which Monsen acquired by virtue of being the former holder of the Retained Shares and which therefore are to be treated as a part of the assets or income derived from or representing the Retained Shares; and on this basis, the Estate will say that Compass is liable in the manner set out in the following Paragraphs 93-94 below.

93. It is the Estate's primary case that Monsen was the trustee of the Retained Shares. Upon receipt of the said sums of $1,465,000 and $600,000 he held them on trust for the Estate. Thus by taking the said sums of $1,465,000 and $600,000 for his own benefit Monsen committed a fraudulent breach of trust. Accordingly Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account. The Estate repeats the particulars of dishonesty set out at Paragraph 79 above.

94. Alternatively if, contrary to the Estate's primary case, Monsen held the Retained Shares as strâmann and/or representative for the Estate, the Estate repeats Paragraph 82 above. On the basis there set out, Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty. Further or alternatively, the Estate is entitled to assert proprietary claims against Compass and

Hurford Holdings; alternatively, Compass, as Monsen's personal representative, is liable to pay compensation.

DISHONEST ASSISTANCE BY COMPANIES UNDER MONSEN'S CONTROL

95. The Estate's case on the accessory liability of the various companies who were actively involved in Monsen's misappropriation of the assets derived from the Retained Shares is set out in the following Paragraphs 96-111 below.

DISHONEST ASSISTANCE BY FORRESTER HOLDINGS AND HURFORD HOLDINGS: THE RETAINED SHARES

96. As set out in Paragraphs 76-78 and 83 above and in Paragraph 2 of Schedule 2, between 1982 and 1988 Forrester Holdings and Old Forrester received assets consisting of or representing the shares of Harmon and/or Harmon's underlying assets and/or Harmon (Cayman)'s underlying assets. Such assets were held by Monsen and/or Harmon for the benefit of the Estate and were the traceable proceeds of the Retained Shares and/or the Cash Payment.

97. Forrester Holdings and Old Forrester were companies which Monsen personally owned and controlled. In a manner unknown to the Estate, Forrester Holdings and Old Forrester were either merged with, or their shares or assets transferred to, Hurford Holdings, another company which Monsen personally owned and controlled. In support of these contentions, the Estate relies on the following:

97.1. Forrester Holdings was incorporated in the Cayman Islands on 2 March 1982 and registered in the Cayman corporate registry on 5 March 1982. As far as the Estate is aware, it has been in voluntary liquidation since 22 November 1985.

97.2. Slatter prepared a Memorandum in 1992 for the meeting of AF held in September of that year. According to the Slatter Memorandum, "FH" (by which Slatter must have meant Forrester Holdings) was "TM's company".

97.3. Old Forrester was incorporated in the Cayman Islands on 29 January 1979 and registered in the Cayman Islands on 31 January 1979 under the name "Forrester Holdings Limited". On 22 February 1982, the company changed its name to "Old Forrester Holdings Limited". It is to be inferred from this that Old Forrester was associated with Forrester Holdings and that, like Forrester Holdings, it was owned and controlled by Monsen. Old Forrester was struck off the Cayman corporate register on 30 June 1993.

97.4. Hurford Holdings was incorporated in the Cayman Islands on 9 August 1989 and registered in the Cayman corporate registry on 10 August 1989. It was de-registered and moved to another jurisdiction on 14 September 1994.

97.5. In two memoranda dated 8 October 1990, Slatter stated that "Hurford" (which the Estate will say is a reference to Hurford Holdings) eventually received the assets representing the Retained Shares. The first of the two memoranda records that the Cash Payment "was the source of the bulk of the assets now in Hurford". The second of the memoranda makes reference to "Hurford (Forrester)" and states that the basis for "Hurford's value" was the 20% of CTC received by Monsen. It also refers to "Forrester Holdings Ltd., (i.e. TM)".

97.6. A letter dated 4 October 1993 concerning Hardman's pension (and signed by Monsen's son Erik Monsen on behalf of Hurford Holdings), refers to "Hurford (formerly Forrester)".

97.7. In his Will dated 16 July 1989, Monsen left the shares of Forrester Holdings to Erik Monsen. By the second codicil to that Will dated 22 February 1991, Erik Monsen (acting as one of Monsen's joint receivers) revoked this gift and left the shares of Hurford Holdings to the Trustees of the Hurford Trust.

97.8. Further, according to the accounts prepared by Slatter in the administration of Monsen's estate and scheduled to an affidavit by Slatter dated 21 September 1993, Monsen owned the shares of Hurford Holdings, which company held all of the assets purportedly owned by Monsen.

97.9. It is to be inferred from this that all of the assets derived from the Retained Shares which were received by Old Forrester and Forrester Holdings were eventually transferred to Hurford Holdings in about late 1989 or in 1990.

98. The Estate will say that Monsen, as the individual who owned and controlled Forrester Holdings, Old Forrester and Hurford Holdings, was the directing mind and will of these companies so his knowledge and dishonesty is to be attributed to them. The Estate repeats the particulars of dishonesty pleaded in Paragraph 79 above.

99. In the premises:

99.1. Forrester Holdings and Hurford Holdings knew (through Monsen) that the assets transferred to them were trust property held by Monsen and/or Harmon for the benefit of the Estate. Such receipt amounted to active participation in the transactions whereby Monsen misappropriated property which Monsen and/or Harmon held on trust for the Estate. In the premises, Forrester Holdings and Hurford Holdings dishonestly assisted in Monsen's and/or Harmon's said breaches of trust.

99.2. Such receipt and assistance took place in the Cayman Islands, from where the companies were controlled.

99.3. Forrester Holdings and Hurford Holdings are therefore liable to account to the Estate as constructive trustees and to pay equitable compensation on the taking of that account.

100. Alternatively if, contrary to the Estate's primary case, during 1982-1988 Monsen held the shares of Harmon as stråmann and/or representative for the Estate (or if Harmon held assets of which the Estate was the beneficial owner under Norwegian law), the Estate's case as regards accessory liability is as follows:

100.1. On the basis pleaded in Paragraph 47.2 above, Monsen owed duties to the Estate in respect of those assets which are to be characterised as fiduciary duties. As set out

in Paragraphs 87-88 above, Monsen dishonestly breached those duties.

100.2. Accordingly, by reason of the matters pleaded in Paragraph 99 above, Forrester Holdings and Hurford Holdings dishonestly assisted in Monsen's said breaches of fiduciary duty. Forrester Holdings and Hurford Holdings are therefore accountable to the Estate as constructive trustees and liable to pay equitable compensation on the taking of that account.

100.3. Further or alternatively, on the basis pleaded in Paragraph 47.3 above, Forrester Holdings' and Hurford Holdings' dishonest assistance in Monsen's misappropriation of assets belonging to the Estate is to be characterised as dishonest assistance in breaches of trust. Those companies are therefore accountable to the Estate as constructive trustees and liable to pay equitable compensation on the taking of that account.

100.4. Further or alternatively, Forrester Holdings and Hurford Holdings received assets which belonged beneficially to the Estate. Accordingly, as set out in Paragraph 48.1 to 48.2 above, the Estate is entitled under Norwegian law to recover the assets so misappropriated from Forrester Holdings and Hurford Holdings to the extent that they still hold such assets.

100.5. Alternatively, Forrester Holdings and Hurford Holdings dishonestly assisted in Monsen's and/or Harmon's transfer to Monsen or his companies of assets which under Norwegian law belonged to the Estate. Thus Forrester Holdings and Hurford Holdings dishonestly caused loss to the Estate. In the premises, those companies are liable to the Estate in Delict for the loss so caused, under the principles set out in Paragraph 48.4.

DISHONEST ASSISTANCE BY FORRESTER MARITIME: THE RETAINED SHARES

101. As set out above in Paragraphs 89-94 above, Monsen committed a breach of trust by taking for himself the sum of $600,000 from the Contingency Fund at some point in 1985 to 1988. Monsen directed Forrester Maritime to transfer this sum to himself. By so doing, Forrester Maritime dishonestly assisted in Monsen's breach of trust, as follows:

101.1. Monsen knew that he was not entitled to receive the sum of $600,000; the Estate repeats the particulars of dishonesty set out in Paragraph 79 above.

101.2. As will be pleaded below in Paragraph 188 of Part IV, Forrester Maritime was a company controlled by Monsen to which Monsen's knowledge and dishonesty is to be attributed.

101.3. In the premises, Forrester Maritime is liable to account as a constructive trustee and to pay equitable compensation on that taking of that account.

102. If, contrary to the Estate's primary case, Monsen held the Retained Shares as stråmann and/or representative for the Estate, then Forrester Maritime is liable for giving dishonest assistance on the bases set out in Paragraphs 100.1 to 100.3 and Paragraph 100.5 above which the Estate repeats mutatis mutandis.

DISHONEST ASSISTANCE BY AT&B: THE RETAINED SHARES

103. The following Paragraphs 105-111 set out the Estate's case as to AT&B's dishonest assistance in Monsen's breaches of trust in relation to the Retained Shares.

104. The Estate's case in summary is that Monsen and Kindersley knew that Monsen held the Harmon shares, and/or that Harmon held its underlying assets, for the benefit of the Estate; and the Estate will say that this knowledge as well as Monsen's dishonesty is to be attributed to AT&B.

105. AT&B was a bank incorporated in 1980 in the Cayman Islands on the initiative of Monsen:

105.1. AT&B was incorporated as a wholly-owned subsidiary of Aall & Co. Aall & Co was a company controlled by Monsen whose shares were at that time owned or controlled by Monsen and related interests as set out in detail in Part V below.

105.2. A letter dated February 1980 from Lazards to Aall & Co headed "Agency Agreement" set out the terms upon which Lazards would assist Aall & Co in the

establishment of its new bank. The letter was signed by Monsen and Michael Nash on behalf of Aall & Co.

105.3. According to the letter, the first directors of AT&B would be Monsen and Michael Nash (nominated by Aall & Co) and Kindersley and Wrigley (nominated by Lazards).

105.4. Soon after AT&B's incorporation, the cash and securities held by CTC and Harmon (i.e. assets derived from the Trust Shares, the Retained Shares and the Contingency Fund) were transferred to AT&B accounts. Thus it is the Estate's case that one of Monsen's primary motivations in founding AT&B was to create a financial institution over which he had control to hold those assets.

106. Thus Monsen controlled AT&B from its inception. Lazards was involved in AT&B's affairs by virtue of the "Agency Agreement", and Kindersley (a director of Lazards) was one of the main points of contact between Monsen and Lazards as by then he had close links to Monsen through the CF and the AT (of which they were both Advisors).

107. Thus the Estate will say that:

107.1 Monsen and Kindersley became directors of AT&B upon its incorporation, as envisaged by the letter of February 1980;

107.2 Monsen and Kindersley were still directors in and around September 1982.

108 By September 1982:

108.1 AT&B held the bearer shares of Harmon as a custodian;

108.2 AT&B also held some of Harmon's underlying assets. The best particulars which the Estate can currently give are those set out in Paragraph 75 above and Schedule 2. Thus AT&B had under its control (at least) Harmon's 4,350 shares in LBIIF and its cash deposits in accounts 1-130 and 5-130.

109 As set out in Paragraphs 76-78 above, on or about 24 September 1982, Monsen instructed AT&B to hold the shares of Harmon to the order of Forrester Holdings. AT&B complied with this instruction.

110. In so doing, AT&B dishonestly assisted Monsen to commit a breach of trust, as follows:

110.1. The transfer of the Harmon shares to Monsen was a breach of trust, as pleaded in Paragraph 81 above, in that Monsen dishonestly misappropriated the 10,000 bearer shares of Harmon and put himself in the position to misappropriate the underlying assets of Harmon and Harmon (Cayman).

110.2. In effecting the transfer of the Harmon shares to Forrester Holdings, AT&B assisted Monsen to commit the above breach of trust.

110.3. At the time of the transfer Monsen was a director of AT&B. He was its directing mind and will or at least had control of the company in matters relating to, inter alia, CTC, the CF, the AF, Blue Range, Harmon, NWT, Forrester Maritime, Forrester Holdings and Hurford Holdings.

110.4. In the premises, the knowledge and dishonesty of Monsen is to be attributed to AT&B. Monsen knew that he held the Harmon shares for the benefit of the Estate, and/or that Harmon held its underlying assets for the benefit of the Estate. The Estate repeats the particulars of dishonesty set out in Paragraph 79 above.

110.5. Further or alternatively, Kindersley was also a director of AT&B and therefore his knowledge is to be attributed to AT&B.

110.6. Kindersley knew that Monsen held the Harmon shares for the benefit of the Estate, and/or that Harmon held its underlying assets for the benefit of the Estate. Kindersley also knew at the time of the transfer of the Harmon shares to Forrester Holdings that Monsen was dishonestly misappropriating them.

110.7. In support of its case as regards Kindersley's knowledge, the Estate relies on the following facts and matters:

110.7.1. As set out in Paragraph 25 of Part I, Kindersley had been assisting Bettum during the period 1975 to 1976 during the evolution of the plan to settle the Trust Shares on the CF. The Estate will say that Kindersley knew from this that Jahre was the beneficial owner of CTC.

110.7.2. Further, it is to be inferred that Kindersley knew that Monsen held the Retained Shares for the benefit of Jahre. The Estate relies on the following:

(i) As set out in Paragraphs 25.5, 25,7 and 25.10, Kindersley met Jahre in October 1975, and Bettum in December 1975 and July 1976, to discuss CTC; and at the July 1976 meeting there was discussion of separating out assets of CTC which were not to be settled on the CF, which eventually became the Retained Shares.

(ii) Kindersley attended at the meeting in Midtåsen on 23 October 1976. The Estate will say that at that meeting, or in preparation for that meeting, there was discussion (to which Kindersley was party) of for whose benefit the Retained Shares were to be held.

110.7.3 Further, Kindersley attended the regular meetings of the CF with Monsen and Bettum. He was also an Advisor of the AT with Monsen and Bettum from 1979. He was thus associated with Monsen and Bettum and (through them) the affairs of Harmon. For example, Kindersley attended at the CF meetings in Paris on 21 September 1979 at which there was discussion of the fact that Monsen had redeemed the Retained Shares. Kindersley also attended a meeting of the CF on 28 September 1981 which was held at the same time and in the same place as a board meeting of Harmon.

110.7.4 It is the Estate's case that Kindersley knew from his association with Monsen and Bettum that Monsen had redeemed the Retained Shares, and that the proceeds of redemption were transferred to Harmon and held for the benefit of Jahre. Thus it is the Estate's case that Kindersley knew that

Monsen held the shares of Harmon for the benefit of Jahre, and/or that Harmon held its assets for the benefit of Jahre, and Kindersley knew that after Jahre's death these assets were held for the benefit of the Estate.

110.7.5 The Estate will further rely on the following in support of the claim that Kindersley knew that Monsen had embarked on a course of misappropriation of assets belonging to the Estate:

(i) The fact that as a condition of his retirement as an Advisor to the AF in 1987, as set out in Paragraph 444 to 450 below, Kindersley agreed with Monsen that he would receive substantial payments from the AF to which he was not entitled, namely the transfer to him of West Green Farm and the payment of $50,000 per year from 1987.

(ii) The fact that upon being questioned by Slatter about the extent of these benefits, Monsen stated "it was not much for what he got for me".

110.8. In the premises, by holding the Harmon shares to the order of Forrester Holdings, AT&B dishonestly assisted in Monsen's misappropriation of assets which AT&B knew were held by Monsen for the benefit of the Estate.

110.9. AT&B is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

111. Alternatively if, contrary to the Estate's primary case, Monsen held the shares of Harmon as stråmann and/or representative for the Estate under Norwegian law in September 1982, the Estate's case as regards AT&B's accessory liability in relation to the misappropriation of Harmon's shares in September 1982 is as follows:

111.1. On the basis pleaded in Paragraphs 47.2 above, Monsen owed duties to the Estate in respect of those assets which are to be characterised as fiduciary duties. As set out in Paragraphs 82 above, Monsen dishonestly breached those duties.

111.2. Accordingly, in the circumstances set out in Paragraphs 109-110 above, AT&B dishonestly assisted in a breach of fiduciary duty by Monsen. AT&B is therefore accountable to the Estate as a constructive trustee and to pay equitable compensation on the taking of that account.

111.3. Further or alternatively, on the basis pleaded in Paragraph 47.3 above, AT&B's dishonest assistance in Monsen's misappropriation of assets belonging to the Estate is to be characterised as dishonest assistance in a breach of trust. AT&B is liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

111.4. Alternatively, by dishonestly assisting Monsen to transfer to himself or his company assets which under Norwegian law belonged to the Estate, AT&B dishonestly caused loss to the Estate. In the premises, it is liable to the Estate in Delict for the loss so caused.

FAILURE TO NOTIFY THE ESTATE OF ITS INTEREST IN THE ASSETS DERIVED FROM THE RETAINED SHARES

112. In further support of the Estate's case that, from the death of Jahre, Monsen embarked on a course of conduct designed to facilitate the misappropriation of the assets of the Estate, the Estate relies upon the following:

112.1. Monsen knew in 1982 by virtue of the matters pleaded in Paragraph 73 above of the efforts being made by Brunsvig on behalf of the Estate to ascertain whether the assets previously held by CTC belonged to Jahre.

112.2. Further, at all material times thereafter he knew that the Estate's efforts were continuing and unsuccessful. In support of this contention, the Estate will rely on the fact that Monsen would have been aware, by virtue of his positions within CTC and the CF and also as an Advisor of AF and the President of Blue Range, of the continuation of the correspondence between CTC and Brunsvig (as referred to in Paragraph 73.1 above), for example:

112.1.1. A letter dated 11 January 1984 from Per Brunsvig to Aleman;

112.1.2. A letter dated 12 January 1984 from Aleman to Brunsvig;

112.1.3. A letter dated 20 February 1984 from Aleman to Brunsvig;

112.1.4. A letter dated 7 March 1984 from Aleman to Brunsvig;

112.1.5. A letter dated 24 February 1984 from Aleman to Brunsvig;

112.1.6. A letter dated 25 April 1984 from Lord Kindersley (then the CF Advisor) to Brunsvig regarding CTC; and

112.1.7. A letter dated 24 May 1984 from Lord Kindersley to Per Brunsvig.

113. This correspondence did not reveal to the Estate the facts surrounding Jahre's ownership of CTC. In particular it did not reveal the involvement of Monsen, Aleman, Kindersley and Hardman (as set out in Part I above) in the arrangements made during 1974 to 1976 as a result of which the CTC Shares came to be held by Monsen and the Trustees of the CF.

114. The Estate will say that such facts were deliberately withheld from the Estate and that, unbeknownst to the Estate, Aleman, Kindersley and Hardman were acting under the direction or control or at least in concert with Monsen. Hardman was Monsen's employee and secretary; and through Hardman Monsen orchestrated Aleman's, Hardman's and Kindersley's obstruction of the investigation by Brunsvig.

115. Monsen knew that the likelihood of the Estate establishing the facts relating to Jahre's ownership of CTC was greatly diminished by the transfer of the assets held by CTC and the CF to Blue Range and the AF in 1980 to 1982 (as set out in Paragraph 40 above) and by the transfer of the Contingency Fund to NWT in 1985 (as set out in Paragraph 185-188 in Part IV below).

116. Further, Monsen knew of the legal proceeding initiated in 1984 by Brunsvig to obtain testimony in England regarding the ownership of CTC from Kindersley and Hardman. He knew of the efforts to resist the giving of such testimony which led to the proceedings in England under the short name and reference *In Re The State of Norway's Applications Nos.1 and 2* [1990] AC 723 which were in due course heard by the House of Lords on appeal from the Court of Appeal of England and Wales. Monsen paid the costs of those witnesses from the Contingency Fund (which according to the Slatter Memorandum prepared for the AF meeting in September 1992 were in the sum of $928,732).

117. By his aforementioned conduct, and by his deception of Herlofsen and Brunsvig in 1982, Monsen obstructed the Estate's investigations and thus concealed the true facts surrounding ownership of CTC.

118. Notwithstanding his knowledge of the Estate's enquiries, Monsen did not at any time after the death of Jahre seek to arrange or procure the transfer of shares or assets of Harmon to the Estate. Nor did he arrange for, or procure that, or cause Harmon to notify the Estate of Jahre's interest or that it held its assets on trust for Jahre. He knew that without them being so informed they would not know, or likely would not know, of such interests.

119. In the premises, at all material times between Jahre's death in 1982 and Monsen's death in 1992, Monsen's failure to transfer the assets derived from or representing the Retained Shares to the Estate, or to notify the Estate of its interest in them, was a fraudulent breach of trust by Monsen. The Estate repeats the particulars of dishonesty set out in Paragraph 79 above. Compass, as Monsen's personal representative, is therefore liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account.

120. If Harmon held its assets on trust for the Estate, Harmon's failure to transfer its assets to the Estate or to notify the Estate of its interest in them was a breach of trust. Monsen, as the individual who controlled Harmon, dishonestly procured that Harmon should fail so to do, and accordingly Monsen is liable for dishonestly assisting in Harmon's breach of trust. The Estate repeats the particulars of dishonesty set out in Paragraph 79 above. Compass, as Monsen's personal representative, is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

121. If, contrary to the Estate's primary case, Monsen held the shares of Harmon and/or its underlying assets and/or Harmon (Cayman)'s underlying assets as stråmann and/or representative for the Estate (or if Harmon held assets of which the Estate was the beneficial owner under Norwegian law) at any time after Jahre's death, the Estate will say that:

121.1 Monsen's dishonest conduct, as set out above, was a breach of his duties as stråmann and/or representative, which duties are to be characterised as fiduciary. The Estate repeats Paragraph 82.1 above. Compass, as Monsen's personal representative, is therefore liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

121.2 Further or alternatively, if Harmon held assets which were owned by the Estate, then on the basis pleaded in Paragraph 47.3 above, Monsen's wrongdoing is to be characterised as dishonest assistance in a breach of trust. Compass, as Monsen's personal representative, is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

121.3 Alternatively:

121.3.1 The Estate is entitled to recover compensation from Compass, as Monsen's personal representative, for Monsen's breach of his duties as stråmann and/or representative under the principles of Norwegian law as set out in Paragraph 48.3 above.

121.3.2 Further, Monsen committed a Delict by dishonestly procuring Harmon to cause loss to the Estate; thus Compass is liable to pay compensation under the principles of Norwegian law set out in Paragraph 48.4 above.

TRACING CLAIMS

122 The Estate is unable to give further particulars of the application of the assets derived from or representing the Retained Shares and the Cash Payment prior to discovery. However,

further or alternatively to the Estate's claims as set out so far in Part III, the Estate is entitled to trace and follow all such assets and puts the Defendants to this claim on notice of its intention to do so. The Estate reserves the right to amend this pleading upon receipt of further information as to the destination of those assets.

123 Without prejudice to the generality of the foregoing, the Estate is entitled to trace and follow the traceable proceeds of:

123.1 the shares of Harmon and/or Harmon's assets transferred to Forrester Holdings, Old Forrester and/or Monsen in the period 1982 to 1988;

123.2 the sum of $1,465,000 paid to Monsen in October 1982; and

123.3 the sum of $600,000 paid to Monsen between 1985 and 1988.

124 To the best of the Estate's knowledge, all or some of these assets or assets derived from them were transferred to (at least) the following Defendants:

124.1 Forrester Holdings;

124.2 Hurford Holdings;

124.3 Compass (after its appointment as Monsen's personal representative); and

124.4 The Thirteenth Defendant (in its capacity as present Trustee of the AT, as explained below);

and the Estate is entitled to trace and follow those assets (or assets representing them) into the hands of those Defendants, and, to the extent that they still hold those assets, recover them.

125 The tracing claim against the Thirteenth Defendant is made on the following basis:

125.1 As set out in Paragraph 83.1 above, the sum of $2m was paid to the then Trustees of the AT in about May 1983 after the disposal of Harmon (Cayman)'s 150 shares in Aall & Co.

125.2 Accordingly, this sum was one of the assets derived from or representing the Retained Shares. The Estate is entitled to trace and follow this sum into the hands of the Trustees for the time being of the AT.

125.3 The Thirteenth Defendant, which to the best of the Estate's knowledge is the present Trustee of the AT, has been joined to this action in its capacity as such Trustee for the purposes of this tracing claim.

125.4 The Estate therefore claims from the Thirteenth Defendant such traceable proceeds of the said sum of $2m as it now holds.

126 If, contrary to the Estate's primary case, Norwegian law governs the liability for and consequences of the misappropriations referred to above, the Estate will say that the right to trace assets is a remedy which forms part of the law of the forum and therefore the Estate is nevertheless entitled to trace the assets in equity as aforesaid. Further or alternatively, the Estate will rely on the principles of Norwegian law set out in Paragraph 48.1 and 48.2 above to assert its rights against the property into which the assets belonging to it under Norwegian law have been converted.

RELIEF CLAIMED AND QUANTUM IN RESPECT OF THE CLAIMS MADE IN PART III

127 Where compensation is sought from Compass, Forrester Holdings, Hurford Holdings, Forrester Maritime and AT&B in the claims set out above, the compensation is to be calculated as follows:

127.1 As regards the misappropriation of the shares of Harmon and Harmon's assets:

127.1.1 The Estate is entitled to compensation for the value of the shares of Harmon in September 1982. The Estate estimates that the value of those shares at that date was at least $14,250,000 (i.e. the amount of the Cash

Payment made in 1979). This compensation is claimed from Compass, Forrester Holdings and AT&B.

127.1.2 Alternatively, the Estate is entitled to compensation for the value of the assets of Harmon at the dates at which they were misappropriated during the period 1982 to 1988. This compensation is claimed from Compass. The Estate is unable to give particulars of the value of such assets prior to the taking of the accounts claimed herein, save that it claims $2,025,000 in respect of the misappropriation of the proceeds of Harmon (Cayman)'s 150 shares in Aall & Co.

127.1.3 Alternatively, the Estate is entitled to compensation for the value of the assets of Harmon at the dates when they (or assets representing them) were transferred to Forrester Holdings and Hurford Holdings. The Estate is unable to give particulars of the value of such assets as at that date prior to the taking of the accounts claimed herein. This compensation is sought from Forrester Holdings and Hurford Holdings.

127.2 The Estate is entitled to compensation of $1,465,000 in respect of the payment of $1,465,000 to Monsen from the Contingency Fund on or about 21 October 1982. This compensation is claimed from Compass. (This claim is made as an alternative to the claims in Part IV and Part V in respect of the same payment.)

127.3 The Estate is entitled to compensation of $600,000 in respect of the payment of $600,000 to Monsen from the Contingency Fund in the period 1985 to 1988. This compensation is claimed from Compass and Forrester Maritime. (This claim is made as an alternative to the claims in Part IV in respect of the same payment.)

128 The Estate is entitled to interest, except from the Thirteenth Defendant, on all sums found due and owing to it as aforementioned:

128.1 Interest is claimed on the basis that the Defendants from whom the above compensation is sought and/or each of them have acted in wilful default (or, in

the case of Compass, that Monsen acted in wilful default).

128.2 Accordingly, the Estate claims interest with yearly rests at a rate of 1% per annum above the US$ prime rate. Schedule 3 hereto provides details of those rates of interest. Alternatively, the Estate claims interest at such other rate as the Court deems appropriate or in the further alternative pursuant to statute.

129 In particular, on the basis that the Estate is entitled to compensation for the Harmon shares in the sum of $14,250,000, the Estate claims interest from September 1982 on $14,250,000 with yearly rests at a rate of 1% per annum above the US$ prime rate. This amounts to interest of $50,587,500 to 30 June 2004, which with the said sum of $14,250,000 amounts to $64,837,500.

PART IV

THE CONTINGENCY FUND

130 The Plaintiffs who bring the claims in Part IV are the Estate and AJ Rederi. AJ Rederi is an additional or alternative Plaintiff in respect of these claims. References to the Estate in this Part IV are, where the context requires, references to the Estate and/or AJ Rederi.

131 As pleaded in Paragraphs 12-16 above, in 1973 and 1974 Jahre procured that AJ Rederi pay two of the four instalments of NOK 10 Million owed by CTC to Sandefjord Kommune in respect of the new Town Hall ("the Town Hall payments"). The then dollar value of the two instalments paid by AJ Rederi was about $3,355,500. This sum was thus owed by CTC to AJ Rederi and/or Jahre

132 As set out in detail hereafter:

132.1 By March 1980 at the latest a fund held by CTC which came to be known as the Contingency Fund was established by CTC and Lazards in London. The Contingency Fund was segregated from the other assets of CTC and held by it on trust for Jahre and/or AJ Rederi absolutely. In due course certain shares which were held for Jahre and/or AJ Rederi were transferred into the Contingency Fund and held on trust for them also

132.2 The Contingency Fund was held by CTC until May 1984 (apart from 20% thereof which was misappropriated by Monsen in 1982) when, upon the dissolution of CTC, the Contingency Fund was paid by way of dissolution dividend to its sole shareholder, the CF which then held the Contingency Fund on trust for Jahre and/or AJ Rederi until about late 1984.

132.3 In late 1984 or early 1985 Monsen procured that the Trustees of the CF transfer the fund through NWT, first to Forrester Maritime (a company owned or controlled by Monsen) in 1985, and then in 1988 to Forrester Holdings (a company also owned and controlled by Monsen). Monsen thereby misappropriated the Contingency Fund. The Contingency Fund has since 1985 and/or 1988 been used by Monsen,

Erik Monsen, the companies owned by them and/or the trusts of which they are beneficiaries, as their own property.

133 The Estate brings the claims in relation to the Contingency Fund set out hereafter on two alternative bases.

134 The primary case is that, regardless of who owned the shares of CTC, the Contingency Fund was held by CTC on trust for Jahre and/or AJ Rederi absolutely. Therefore the Estate is entitled to the delivery of so much of the said Fund or property derived therefrom as remains and to equitable compensation for breach of trust and fiduciary duty and/or accounts on the footing of wilful default. In so far as Norwegian law governs liability for breach of Monsen's duties to Jahre as regards the Contingency Fund, the Estate makes claims under Norwegian law which are analogous to those mentioned in this Paragraph.

135 Alternatively, if the Contingency Fund was not beneficially owned by Jahre and/or AJ Rederi by virtue of CTC holding it on trust for them, the Estate claims on the basis that, by reason of the fact that the CF was void, the Contingency Fund was held on resulting trust for the Estate and from at the latest 1984, when CTC transferred the Contingency Fund by way of dividend to the CF. Therefore the Estate is entitled to equitable compensation and/or accounts as aforementioned.

CTC'S LIABILITY TO JAHRE AND/OR AJ REDERI

136 As pleaded in Paragraphs 16.1 and 16.4 above in Part I, Jahre and/or AJ Rederi paid on CTC's behalf two of the NOK 10m instalments payable by CTC in respect of the Town Hall in Sandefjord. By so doing, Jahre and/or AJ Rederi became entitled to be reimbursed by CTC as follows:

136.1 Norwegian law governed the entitlement to reimbursement which arose in favour of Jahre and/or AJ Rederi in 1973-1974. Norway was the place where CTC's promise to make the Town Hall payments was to be performed, Jahre's guarantee of that promise was governed by Norwegian law, CTC was managed from Sandefjord in Norway, Jahre was resident in Norway, and AJ Rederi was incorporated in (and its shares held by Jahre in) Norway. Further, the payments

made by Jahre and/or AJ Rederi were made in Norway.

136.2 Under Norwegian law, CTC was contractually bound to make the Town Hall payments (consideration not being an essential feature of contracts under Norwegian law).

136.3 Jahre and/or AJ Rederi paid two of the instalments on CTC's behalf with CTC's agreement (which was impliedly given on CTC's behalf by Jahre). Hence CTC became liable under Norwegian law to reimburse Jahre and/or AJ Rederi as a result of the application of the Norwegian legal doctrine of Regress. This doctrine imposes a restitutionary obligation where one person discharges the liability of another with the other's consent, with the result that the other is obliged to reimburse the person who discharged the liability for the expense he has incurred.

137 At all material times leading up to the creation of the Contingency Fund (which, as will be pleaded below, had taken place by March 1980 at the latest), the officers and directors of CTC knew or believed that CTC was liable to repay Jahre and/or AJ Rederi for the Town Hall payments which had been made on CTC's behalf in 1973-1974. In support of these contentions, the Estate will rely on the matters pleaded in Paragraphs 14, 18 and 25-28 above and in particular the following:

137.1 Jahre paid two of the Town Hall payments on CTC's behalf (and/or procured that AJ Rederi made the payments) notwithstanding his intention that CTC should make all of the Town Hall payments. At the time of the payments, Jahre owned and controlled CTC and was thus in a position to procure that CTC reimburse Jahre and/or AJ Rederi. Thus:

137.1.1 It is to be inferred that Jahre intended that CTC would repay him and/or AJ Rederi for the two instalments paid on CTC's behalf; and

137.1.2 Jahre's intention is to be attributed to CTC. Jahre was the President of CTC at the time of the Town Hall payments, and remained so until 9 March 1978 when he became Honorary President. He was also the sole beneficial owner as pleaded in detail in Parts I to III above.

137.2 Jahre procured that the CTC minutes dated 28 February 1972 and 25 January 1971 were created in 1973 and 1974 (as set out in Paragraphs 14 and 18 above) in order to regularise the affairs of CTC following CTC's offer to make the Town Hall payments. In particular, the minutes dated 25 January 1971 made express reference to CTC's money being donated for the Town Hall in Sandefjord. In the premises, it is to be inferred that at about the time of the creation of those minutes, the persons who became officers and directors of CTC in 1974 learned about the Town Hall payments, CTC's inability to obtain a currency licence, and the Town Hall payments made on CTC's behalf by Jahre and/or AJ Rederi. Thus by November 1976 (and probably in 1974 or 1975), the persons who became officers and directors of CTC in 1974 recognised, in accordance with Jahre's wishes, CTC's liability to reimburse Jahre and/or AJ Rederi.

137.3 The persons who became officers and directors in 1974 were:

137.3.1 Aleman, who remained an officer and director of CTC until after the resolution to dissolve the company on 2 May 1984;

137.3.2 Bonde, who remained a director of CTC until about 21 July 1976 (but who was not an officer);

137.3.3 de Geer, who remained an officer and director of CTC until his death in February 1978;

137.3.4 Monsen, who remained a director of CTC until 1 May 1984 and who was an officer between 4 March 1977 and 1 May 1984; and

137.3.5 Simon, who remained an officer of CTC until 4 March 1977 and who remained a director until 5 February 1981.

137.4 Further, Slatter and Hardman became officers (and, in Slatter's case, a director) of CTC after 1974:

137.4.1 Slatter became a director of CTC on about 21 July 1976 and an officer on 1 May 1984, and remained an officer and director until after the resolution to dissolve the company on 2 May 1984; and

137.4.2 Hardman became an officer of CTC on 4 March 1977 and remained so until 7 February 1984.

The Estate will say that around the time of their appointments, Slatter and Hardman became aware of the contents of the said CTC minutes dated 25 January 1971, and learned or believed that CTC was liable to Jahre and/or AJ Rederi in respect of the Town Hall payments made on CTC's behalf.

138 Further, the purported Trustees and Advisors of the CF knew or believed that CTC was liable to Jahre and/or AJ Rederi as aforementioned:

138.1 The purported Trustees of the CF were: Slatter, who was a Trustee at all material times; Thorand, which was a Trustee from 22 December 1976 until 25 January 1983; and Transworld, which became a Trustee on 25 January 1983 and remained so at all material times thereafter until its dissolution.

138.2 As pleaded above, Slatter knew or believed that CTC was liable to Jahre and/or AJ Rederi. Slatter was a director and/or manager of Thorand and of Transworld (which latter company he also owned) and his knowledge or belief is to be attributed to them.

138.3 The Advisors of the CF were Monsen, Kindersley and Worsley. Monsen's knowledge or belief has been pleaded above in Paragraphs 137.2 and 137.3. It is to be inferred that Kindersley and Worsley learned of CTC's liability to Jahre and/or AJ Rederi in the course of their involvement with the plan to establish the CF, as pleaded in Paragraphs 25, 27 and 28 above. In any event, Kindersley and Worsley knew or believed that such liability existed by 1978 at the latest by virtue of their attendance at the meetings in Paris where the liability was discussed (see Paragraph 148.1 below) and by virtue of it being mentioned in CTC's letter of 23 May 1978 (see Paragraph 148.2 below). Kindersley helped draft that letter and

Worsley saw it before it was sent.

139 In any event, CTC's aforementioned liability to Jahre and/or AJ Rederi was recognised by CTC and the purported Trustees and Advisors of the CF by November 1976 at the latest. When the Trust Shares were settled on the CF it was necessary for the officers and directors of CTC and the Trustees and Advisors of the CF to identify CTC's liabilities in order to know how much money held by CTC was represented by the Trust Shares (and thus was available to the CF) and how much by the Retained Shares.

MONSEN'S DUTY TO JAHRE AND/OR AJ REDERI IN RESPECT OF THE CONTINGENCY FUND

140 As CTC's sole beneficial owner and the individual who controlled the company, Jahre was in a position to ensure that CTC repaid him and/or AJ Rederi for the Town Hall payments. However, as set out in Part I of this pleading, at the meeting at Midtåsen on 23 October 1976, the immediate formal control of the company passed to Monsen (who held the Retained Shares) and the Trustees and Advisors of the CF (which held the Trust Shares). Therefore Jahre would have to rely on others to ensure that he and/or AJ Rederi were repaid.

141 In the premises, it is to be inferred that at or about the time of the meeting at Midtåsen on 23 October 1976 (pleaded in Paragraphs 27-28 above), Monsen expressly or impliedly undertook a duty to Jahre (and/or to AJ Rederi on whose behalf Jahre was also acting) as follows:

141.1 that he would use his positions as a director of CTC, as the legal owner of the Retained Shares, and as an Advisor to the CF, to ensure that CTC reimbursed Jahre and/or AJ Rederi in respect of the Town Hall payments; and the Estate's case is that, when the Contingency Fund was established, this duty extended to protecting it and to ensuring that it and any assets or income derived from or representing it would be applied for the benefit of Jahre and/or AJ Rederi.

141.2 Monsen also expressly or impliedly undertook the following duties with which he was to comply (so far as his positions in CTC and the CF enabled him to do so) upon the establishment of the Contingency Fund:

141.2.1 not to permit CTC to dispose of, sell, use or otherwise deal with the Contingency Fund without Jahre's and/or AJ Rederi's permission;

141.2.2 to protect and preserve Jahre's and/or AJ Rederi's interests as the beneficial owner of the Contingency Fund;

141.2.3 to prevent his personal interests from conflicting with Jahre and/or AJ Rederi's said interests;

141.2.4 to deal with the Contingency Fund in accordance with Jahre's and/or AJ Rederi's instructions and to procure that CTC should do the same;

141.2.5 not to take the Contingency Fund or any of the assets or income derived from or representing it for himself; and

141.2.6 not to use his said positions in CTC or the CF to make a personal profit out of the Contingency Fund or otherwise use it for his own benefit, except with Jahre's and/or AJ Rederi's authorisation.

142 After Jahre's death, those of the above duties which had been owed to Jahre were owed to the Estate; and only the Estate could give the instructions, permissions or authorisations which hitherto Jahre had been entitled to give.

143 The relationship between Monsen and Jahre and/or AJ Rederi as regards Monsen's said duties was governed by English law or alternatively Norwegian law:

143.1 The Estate's primary case is that the relationship was governed by English law. England was the place with which the transaction had the closest connection. The arrangements made for CTC, the Trust Shares and the Retained Shares were planned by Bettum and Jahre with the assistance and advice of Lazards with all

concerned doing so employing English law concepts and on the basis of what they believed would be their effect under English law. The Trust Shares and the Retained Shares were situated in London. Further or alternatively, by reason of the matters referred to in this sub-Paragraph, Jahre and Monsen are to have taken to have impliedly chosen that English law would govern the relationship.

143.2 Alternatively if, contrary to the Estate's primary case, the relationship was not most closely connected with English law, then it was most closely connected with Norwegian law because Monsen's duties were undertaken at the meeting at Midtåsen in Norway or confirmed at that meeting; further, the duties were owed to Jahre who was resident in Norway and/or to AJ Rederi which was incorporated in (and whose shares were held by Jahre in) Norway.

144 If English law governed the relationship, the duties pleaded in Paragraph 141 above were fiduciary in nature. Accordingly when the Contingency Fund was established Monsen directly owed a fiduciary duty to Jahre (and after his death the Estate) and/or AJ Rederi in relation to particular property under Monsen's control, namely the Contingency Fund and the assets or income derived from or representing it. Such duties included an obligation to inform the Estate and/or AJ Rederi of the existence of the Contingency Fund after Jahre's death. The Estate's primary case is that Monsen is liable to account in the same manner as a trustee for breach of such fiduciary duties.

145 If, contrary to the Estate's primary case, Norwegian law governed the relationship, Monsen's duties to Jahre and/or AJ Rederi would have been those pleaded in Paragraph 141 above. Such duties included an obligation to inform the Estate and/or AJ Rederi of the existence of the Contingency Fund after Jahre's death.

146 However, even if Norwegian law governed the relationship, the Estate's case is as follows:

146.1 As will be pleaded in detail hereinafter, the Contingency Fund was misappropriated in circumstances where:

146.1.1 its assets were situated in the Cayman Islands or England;

146.1.2 the acts by which it was misappropriated took place in the Cayman Islands or England; or

146.1.3 the proceeds of the misappropriations were received in the Cayman Islands or England.

146.2 In those circumstances, the Court should characterise Monsen's duties as fiduciary duties which were owed in relation to particular property under Monsen's control and the assets or income derived from or representing it. The Estate's primary case is that Monsen is liable to account in the same manner as a trustee for breach of such fiduciary duties.

147 Alternatively if, contrary to the above, Norwegian law governs liability for the misappropriations pleaded below, under the principles of Norwegian law set out in Paragraph 48.3 of Part I above, breach of Monsen's duties would entitle Jahre (and after his death the Estate) and/or AJ Rederi to bring a compensation claim for the loss caused by the breach of duty.

THE CREATION OF THE CONTINGENCY FUND

148 The Estate's case is that the Contingency Fund was established as a segregated fund held for the benefit of Jahre and/or AJ Rederi by 11 March 1980 at the latest, although prior to that date CTC had recognised the obligation to repay Jahre in respect of the Town Hall and to set aside assets for that purpose. The Estate relies on the following:

148.1 On 9 March 1978 a board meeting of CTC was held in Paris (on the same date and in the same place as meetings of CTC's shareholders and the CF). At that meeting, there was discussion of the possibility of establishing a separate bank account in which to hold the assets which were to become the Contingency Fund (or, if already established, the Contingency Fund itself). It was resolved that instead of establishing a special account into which such funds could be deposited, CTC should write a letter to the Bank of Norway seeking permission for the transfer of some $4 million to Jahre in Norway. (It is to be inferred that CTC's directors calculated that this amount represented NOK 20 million plus

approximate interest since the dates of payment).

148.2 Pursuant to that resolution CTC sent a letter to the Bank of Norway dated 23 May 1978 in which CTC expressed its concern that Jahre had discharged from his own resources part of the obligation owed by CTC in respect of the Town Hall in Sandefjord, and offered to remit to Jahre in Norway funds held by CTC in respect of his outlay.

148.3 The Bank of Norway did not give permission for the transfer of funds to Norway as requested in CTC's letter of 23 May 1978.

148.4 In 1979 CTC recognised the obligation to keep assets separate for the benefit of Jahre and/or AJ Rederi in order to repay him:

148.4.1 As pleaded in Part III of this pleading (which deals with the Retained Shares), on 16 July 1979 at a shareholders' meeting of CTC it was agreed that the capital of CTC be reduced by redeeming the 2,000 Retained Shares.

148.4.2 In establishing the price to be paid for the Retained Shares, the directors of CTC and Lazards carried out calculations of the value of CTC. As evidenced by Slatter's notes of June 1979 and 11 July 1979 (as set out in Paragraph 53 above), the sum of $5 million, representing the value then calculated for, and assigned to, the Contingency Fund by the directors and officers of CTC as of that date, was deducted from the total asset value of CTC and the remaining assets were divided on an 80/20 basis.

148.5 In February 1980 it was agreed at a meeting in the Bahamas that the $5 million should be transferred to a separate account. CTC resolved and/or the Trustees and Advisors of the CF procured CTC to transfer the Contingency Fund to a segregated account.

148.6 Accordingly on 11 March 1980 assets valued at $5,231,608.34 (representing the sum of $5 million plus estimated interest from August 1979), were transferred to

a segregated account maintained at Lazards in London, under the name "Continental Trust Company Ltd No 2 'A' Account" ("the No 2 'A' account") and was called or became known as "the Contingency Fund".

149 References to the Contingency Fund hereafter are to the assets of that fund at the time of its establishment and to the assets or income derived from or from time to time representing the same and to assets added to the fund.

150 By reason of the foregoing, it is to be inferred that:

150.1 By 11 March 1980 (at the latest), CTC recognised the Contingency Fund as a segregated fund belonging beneficially to Jahre and/or AJ Rederi absolutely. CTC decided that the Contingency Fund be held for Jahre and/or AJ Rederi absolutely, that it should be kept separate from CTC's other assets, and that it should be transferred with any interest or income thereon and with any assets representing the same to Jahre and/or AJ Rederi.

150.2 CTC's decision was made by Monsen, who was a director and then President of CTC and who controlled and was the directing mind and will of the company. The other officers and directors of CTC (who since 9 March 1978 had been Aleman, Hardman, Simon and Slatter) agreed with or acquiesced in Monsen's decision.

150.3 Lazards, through Kindersley and Hardman, knew that the assets in the No 2 'A' Account was held for Jahre and/or AJ Rederi absolutely and irrevocably.

150.4 Jahre and/or AJ Rederi were informed by CTC either directly or through Bettum as their agent that the Contingency Fund had been created for them.

LEGAL BASIS OF JAHRE'S AND/OR AJ REDERI'S BENEFICIAL OWNERSHIP OF THE CONTINGENCY FUND

151 In the premises, Jahre and/or AJ Rederi became the absolute beneficial owners of the Contingency Fund upon its establishment as a segregated fund.

152 The law governing legal and beneficial ownership of the Contingency Fund upon its establishment was English law or alternatively Cayman law:

152.1 English law is the law of the place where the assets of the said Fund were situated. The Estate will say that, upon its creation, the Contingency Fund was located at Lazards in London: the assets transferred to the No 2 'A' Account had been held by Lazards prior to the transfer and continued to be held in that account for several months after the transfer.

152.2 Further or alternatively, English or Cayman law were the systems of law with which the creation of the Contingency Fund was most closely connected. These were systems of law with which the officers and directors of CTC were familiar: the assets of CTC were then managed by Lazards in London and the basic administration of the company was carried out by Hardman in England; and Monsen controlled CTC via a centre of operations in the Cayman Islands. Further, after July 1979 the Trustees of the CF held CTC's shares on the purported trusts of the CF which, following a deed dated 22 December 1976, was purportedly governed by Cayman law.

152.3 In the further alternative, in the absence of any other law being shown to govern legal and beneficial ownership of the Contingency Fund, this issue is to be decided as if the law of the Cayman Islands applied.

153 Under English or Cayman law (there being no difference between them on this point), by virtue of the facts and matters set out in Paragraphs 148-150 above:

153.1 At all material times, CTC remained the legal owner of the cash and other assets in the Contingency Fund.

153.2 The establishment of the Contingency Fund on or before 11 March 1980 constituted CTC as the trustee of the Contingency Fund for the benefit of Jahre and/or AJ Rederi absolutely. CTC was at all times thereafter liable to account as trustee to Jahre (and after his death the Estate) and/or AJ Rederi for the

Contingency Fund and all assets or income derived from or representing the same.

CONTINUED SEGREGATION OF THE CONTINGENCY FUND FROM CTC'S OTHER ASSETS AFTER MARCH 1980

154 On 25 September 1980 an agreement was reached at a meeting of CTC's board in Honolulu to the effect that accounts should no longer be maintained at Lazards in the name of "Continental". The Contingency Fund was thereafter transferred from the No 2 'A' account to a different segregated account, numbered 1-129 HB and held by CTC in the name of AT&B ("Account 1-129"). Thereafter the Contingency Fund was kept by CTC in Account 1-129 and held for the benefit of Jahre and/or AJ Rederi absolutely.

155 On 8 December 1980, assets of the Contingency Fund were used to purchase 5,339 shares of LBIIF.

156 On 25 February 1981 assets of the Contingency Fund were used to purchase 100 additional shares of LBIIF. At the time, the value of each share of LBIIF was at least $1,000, so that the total investment of Contingency Fund assets in LBIIF exceeded $5,439,000. In a telex dated 25 February 1981 from Aleman to Hardman of Lazards, Aleman referred to "the sum of approximately 5,500,000.00 US Dollars held by the company in its contingent account".

157 By reason of the foregoing, the assets held in Account 1-129 and the LBIIF shares purchased with Contingency Fund assets were assets or income derived from or representing the Contingency Fund. Accordingly they were held on trust by CTC for Jahre and/or AJ Rederi absolutely.

158 On 9 March 1981, as set out in Paragraph 40.4 above, all of the assets of CTC, except for the Contingency Fund (which was then valued at some $5,500,000), the Bulls Shares and 2,368 shares of Kosmos were transferred by way of dividend to the CF.

159 On or about 13 March 1981 the Bulls Shares and the 2,368 Kosmos shares were transferred to Account 1-129 at Lazards and thus to the Contingency Fund. In fact, the shares were already beneficially owned by Jahre and/or AJ Rederi:

159.1 Jahre's beneficial ownership of the Bulls Shares is pleaded above at Paragraph 16.5 in Part I of this pleading; and

159.2 The Kosmos shares, like the Bulls Shares, were also assets to which CTC had acquired nominal title from Jahre, with Jahre maintaining beneficial ownership of them, the shares having been nominally but not actually purchased by CTC from Jahre in 1971.

160 Following the transfer to the Contingency Fund of the Bulls Shares and the 2,368 Kosmos shares on 13 March 1981, CTC held them on trust for Jahre and/or AJ Rederi absolutely as an accretion to the Contingency Fund.

THE DEATH OF JAHRE

160. Jahre died on 26 February 1982. The Estate's case, as set out in detail in the rest of Part IV of this pleading, is that following Jahre's death:

160.1 Monsen deliberately concealed from the Estate and/or AJ Rederi their interest in the Contingency Fund and the assets derived from it and obstructed the Estate's enquiries into Jahre's ownership of CTC.

160.2 Monsen deliberately took steps to conceal the whereabouts of the Contingency Fund, and thereby put himself into a position to misappropriate it and take the assets of the Contingency Fund for himself and/or companies he owned and controlled.

160.3 Monsen then misappropriated those assets by taking them for himself and/or his companies.

161. In the premises the Estate will say that, following the death of Jahre, Monsen embarked on a course of conduct designed to facilitate and achieve the misappropriation of assets belonging to the Estate and/or AJ Rederi, namely the Contingency Fund.

162. When Jahre died the assets in the Contingency Fund, valued at about $7,325,000, were

held in Account 1-129. Upon Jahre's death, CTC held the Contingency Fund on trust for the Estate and/or AJ Rederi absolutely.

163. Immediately after Jahre's death:

163.1 Monsen was, as set out in Part III above, a director of CTC, CTC's President and an Advisor of the CF (the purported Trustees of which were the legal owners at that time of 100% of CTC's shares).

163.2 Monsen was also the person to whom Jahre and/or AJ Rederi had entrusted the protection of the Contingency Fund; and accordingly Monsen now owed the Estate and/or AJ Rederi the duties in relation to the Contingency Fund which are pleaded above in Paragraph 141, 144 and 145.

THE CONTINGENCY FUND CONCEALED FROM THE ESTATE

164. As set out in Paragraph 73 of Part III above, Monsen knew soon after the event that Jahre had died on 26 February 1982 in Sandefjord, Norway, and that Brunsvig had been appointed as administrator of the Estate shortly thereafter.

165. At all material times between Jahre's death in 1982 and Monsen's death in 1992, Monsen knew that efforts were being made by Brunsvig on behalf of the Estate to ascertain whether the assets previously held by CTC belonged to Jahre. Monsen deliberately obstructed these efforts and thus concealed the true facts surrounding ownership of CTC. In support of these contentions, the Estate repeats the facts and matters pleaded in Paragraphs 73-74 and 112-117 of Part III above, which are in summary:

165.1 Monsen's meeting with the Estate's representative Nicolai Herlofsen in or before November 1982, during which he deceived Herlofsen (and through him Brunsvig and the Estate) about the ownership of CTC;

165.2 Monsen's knowledge of the considerable correspondence between CTC and Brunsvig;

165.3 The deliberate withholding of relevant facts from the Estate by persons acting under the direction or control or at least in concert with Monsen;

165.4 Monsen's knowledge of the unlikelihood that the Estate would establish the facts relating to Jahre's ownership of CTC due to the transfer of the assets held by CTC and the CF to Blue Range and the AF; and

165.5 Monsen's knowledge of the proceedings to obtain testimony from Kindersley and Hardman and his payment from the Contingency Fund of their costs in resisting those proceedings.

166. Despite his knowledge of the Estate's investigations, Monsen did not at any time after the death of Jahre seek to arrange or procure the transfer of the Contingency Fund, then worth about $7,325,000, from CTC either to the Estate or to AJ Rederi. Nor did he procure CTC to notify the Estate of the existence of the Contingency Fund, or of the fact that CTC held that fund for the benefit of Jahre and/or AJ Rederi.

BREACH OF TRUST BY FAILURE TO DELIVER THE CONTINGENCY FUND TO THE ESTATE AND/OR AJ REDERI

167. The failure to deliver up the Contingency Fund to the Estate and/or AJ Rederi upon Jahre's death, and/or the concealment of and/or failure to disclose the existence of the fund not only in 1982 but at any material time thereafter, amounted to a continuing breach of trust on the part of CTC, as trustee. Monsen (as a director and President of CTC and its directing mind and will) was a dishonest participant in and/or dishonestly procured or assisted in the breach of trust by CTC. Thus Compass, as Monsen's personal representative, is liable to account as constructive trustee and to pay equitable compensation to the Estate and/or AJ Rederi on the taking of that account.

168. The Estate relies on the following particulars of dishonesty:

168.1 By reason of the matters set out at Paragraphs 148-150 above, Monsen knew that the Contingency Fund was held on trust for Jahre (and after his death the Estate) and/or AJ Rederi absolutely;

168.2 Monsen knew that by withholding the Contingency Fund from the Estate and/or AJ Rederi he would be depriving them of assets belonging to them.

168.3 Monsen knew that neither he, his companies nor his family were entitled to any part of the Contingency Fund.

168.4 Monsen knew that by taking any part of the Contingency Fund for himself, his companies or his family he would be taking assets belonging to the Estate and/or AJ Rederi.

168.5 Monsen knew that without the Estate and/or AJ Rederi being informed of the existence of the Contingency Fund, they would not, or likely would not, know that there was such a fund or that it was held on trust for them.

168.6 As set out in Paragraph 165 above, Monsen deceived Brunsvig and the Estate about ownership of CTC and obstructed the Estate's investigations. Monsen knew that this would further reduce any prospect that the Estate and/or AJ Rederi might discover the Contingency Fund.

168.7 An honest person would have responded truthfully to Brunsvig's and the Estate's enquiries. Monsen did not do so.

168.8 In support of its case as to Monsen's dishonesty in 1982 immediately following the death of Jahre, the Estate relies on the fact that Monsen also dishonestly misappropriated:

168.8.1 $1,465,000 of the Contingency Fund in October 1982, as pleaded in Part III above (and which will also be referred to below);

168.8.2 the remainder of the Contingency Fund, which he took for himself and his companies between 1984 and 1988 as set out in detail below; and

168.8.3 assets derived from the Retained Shares and the Trust Shares as set out in Parts III and V hereof.

168.9 The Estate will say that such dishonesty forms part of a pattern of dishonest dealings by Monsen from about 1982 in relation to the assets of CTC and Jahre from which it is to be inferred that his conduct in relation to the Contingency Fund was also dishonest.

169. Further or alternatively by procuring CTC's failure to notify the Estate of the existence of the Contingency Fund and by deliberately obstructing the investigation by Brunsvig, Monsen dishonestly breached the duties he owed to the Estate and/or AJ Rederi as set out in Paragraph 141-145 above. The Estate repeats the above particulars of dishonesty.

170. By reason of Monsen's dishonest breach of the duties he owed to the Estate and/or AJ Rederi:

170.1 Monsen committed a breach of fiduciary duty. On the basis set out in Paragraph 144 above, Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

170.2 Alternatively if, contrary to the Estate's primary case, Norwegian law governed the duties owed by Monsen to Jahre and/or AJ Rederi, the Estate will say that Monsen controlled the Contingency Fund via a centre of operations in the Cayman Islands; and its assets were held by AT&B in accounts in the Cayman Islands or London. Thus Monsen breached duties which, on the basis pleaded in Paragraph 146.2 above, are to be characterised as fiduciary. Therefore Compass, as Monsen's personal representative, is liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

170.3 Alternatively if, contrary to the above, Norwegian law governs liability for Monsen's breach of duty, Compass, as Monsen's personal representative, is liable to pay compensation for the loss caused to the Estate and/or AJ Rederi by Monsen's breach of duty under the principles of Norwegian law pleaded in Paragraph 48.3 of Part III above.

MONSEN MISAPPROPRIATES $1,465,000 FROM THE CONTINGENCY FUND

171. On or about 21 October 1982, Monsen directed CTC to transfer to himself $1,465,000 from the Contingency Fund (representing approximately 20% of the Contingency Fund's assets at that time), on the purported basis that he was the beneficial owner of the Retained Shares, as pleaded in Paragraph 89-90 above.

172. As pleaded in Paragraphs 92 of Part III above, the Estate brings its claim in respect of the said transfer on three alternative bases, namely as part of the claim for the assets derived from the Retained Shares (as set out in Paragraphs 89-94 of Part III above), as a breach of the purported trusts of the CF (as set out in Paragraphs 258-267 of Part V below) or as part of the claim for the Contingency Fund (as now set out in the following Paragraphs).

173. By directing CTC to transfer $1,465,000 to himself, Monsen dishonestly misappropriated assets of the Contingency Fund which he knew were held on trust for Jahre and/or AJ Rederi; the Estate repeats the particulars of dishonesty pleaded at Paragraph 168 above.

174. As pleaded in Paragraphs 153 above, CTC held on the Contingency Fund on trust for CTC and/or AJ Rederi. By paying $1,465,000 to Monsen, CTC committed a breach of trust, in that Monsen was not entitled to the money. By directing CTC to pay a part of the Contingency Fund to himself, and by receiving it and retaining the said payment, Monsen dishonestly assisted CTC to commit a breach of trust. Compass, as Monsen's personal representative, is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

175. Further or alternatively, by directing CTC to pay him $1,465,000, and by retaining that sum for himself, Monsen dishonestly breached the duties, set out in Paragraph 141 above, he owed to the Estate and/or AJ Rederi. The Estate repeats the particulars of dishonesty set out in Paragraph 168. Compass, as Monsen's personal representative, is thus liable to account and/or pay compensation on the alternative bases set out in Paragraph 170 above.

THE TRANSFER OF THE CONTINGENCY FUND FROM CTC TO THE CF

176. Monsen ceased to be an officer and director of CTC on 1 May 1984. However, CTC continued to act as directed by Monsen: he controlled the company and the directors complied with his wishes. At that time, the Contingency Fund was CTC's sole asset.

177. On 2 May 1984 Monsen directed that CTC be dissolved and that the Contingency Fund be transferred by dividend to the CF. The assets comprising the Contingency Fund were transferred to the CF's bank account number 1-135 at Lazards (but held in the name of AT&B) on or about 11 May 1984. Those assets consisted of some 6,000 shares of LBIIF with a value in excess of $6 million, the 65 Bulls Shares (which assets were transferred from Account 1-129), and $175,000 in cash from a call account (which the Estate believes to be a sub-account of Account 1-129).

178. The Estate will say that the transfer of the Contingency Fund to the CF on or about 2 May 1984 was (i) a further attempt to conceal the existence of the Contingency Fund from the Estate or to prevent the Estate discovering it, and (ii) a further step in the misappropriation of the Contingency Fund by Monsen.

179. The Estate's case is that:

179.1 The transfer of the Contingency Fund from CTC to the CF was a breach of the trust upon which CTC held the Contingency Fund for the Estate and/or AJ Rederi.

179.2 By directing the dissolution of CTC and the transfer of the Contingency Fund to the CF, Monsen dishonestly assisted CTC to commit a breach of the trust under which it held the Contingency Fund for the Estate and/or AJ Rederi in that:

179.2.1 Monsen knew that the Contingency Fund was held on trust for the Estate and/or AJ Rederi;

179.2.2 Monsen knew that the CF was not entitled to the Contingency Fund;

179.2.3 Monsen was the directing mind and will of CTC as regards the transfer

of the Contingency Fund to the CF; and

179.2.4 Monsen acted dishonestly; and the Estate repeats the particulars of dishonesty set out at Paragraph 168 above.

179.3 Compass, as Monsen's personal representative, is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

180. Further or alternatively, by directing CTC to transfer the Contingency Fund to the CF, Monsen dishonestly breached the duties, set out in Paragraph 141 above, he owed to the Estate and/or AJ Rederi. Compass, as Monsen's personal representative, is thus liable to account and/or pay compensation on the alternative bases set out in Paragraph 170 above.

181. Further, it is the Estate's case that at the time of the transfer of the Contingency Fund from the CF to CTC, the Trustees and Advisors of the CF knew that the Contingency Fund was held for the benefit of Jahre and/or AJ Rederi absolutely:

181.1 At all material times, the Advisors of the CF were Monsen, Kindersley and Worsley.

181.1.1 Monsen knew (as set out above) that the Contingency Fund was held for the benefit of Jahre and/or AJ Rederi absolutely.

181.1.2 Kindersley and Worsley also knew that the Contingency Fund was held by CTC for the benefit of Jahre and/or AJ Rederi absolutely. The Estate will rely in support of this contention on the matters pleaded in Paragraphs 138.3 above; and it is also to be inferred that Kindersley and Worsley learned about the existence of the Contingency Fund and/or the decision to create it by virtue of having attended at the meeting at Midtåsen on 23 October 1976 and at the various meetings of the CF which were held at the same time and in the same place as the board meetings of CTC.

181.2 Slatter was at that time one of the Trustees of the CF. From his knowledge of CTC's affairs as one of its directors and as a Trustee of the CF, Slatter was aware that the Contingency Fund had been set aside by CTC to pay Jahre and/or AJ Rederi and that income earned thereupon was to accrue to that fund separately from the other assets of CTC. The Estate will say that Slatter knew (in that he had actual knowledge or alternatively paid reckless disregard to or was wilfully blind to the fact) that the Contingency Fund was held by CTC for the benefit of Jahre and/or AJ Rederi absolutely. The other Trustee of the CF at that time was Transworld, to which Slatter's knowledge is to be attributed as set out in Paragraph 138.2 above.

181.3 Alternatively if, which is denied, the Trustees and Advisors of the CF and NWT did not know or believe that the Contingency Fund was held for the benefit of Jahre and/or AJ Rederi absolutely, then, subsequent to the transfer of the Contingency Fund to the CF, they must have believed that it belonged beneficially to the only other candidate for ownership, namely the (ostensibly) charitable or benevolent objects under the purported trusts of the CF.

182. By reason of the foregoing, the Trustees of the CF held the Contingency Fund (or assets representing it) on constructive trust for the Estate and/or AJ Rederi absolutely.

ALTERNATIVE BASIS OF CLAIM: RESULTING TRUST

183. Further if, which is denied, Jahre and/or AJ Rederi were not already the beneficial owners of the Contingency Fund, the Estate will say that upon the transfer of the Contingency Fund to the CF it was thereupon held by the Trustees of the CF for the true beneficiary of the assets of the CF. By reason of the purported trusts of the CF being void and the matters pleaded above in Parts I and II of this pleading, the true beneficial owner of the CF's assets in May 1984 was the Estate. Thus from about May 1984 and at all material times thereafter the Contingency Fund was held by the Trustees of the CF on resulting trust for the Estate absolutely.

184. Accordingly, the Estate's claims as set out in the remaining Paragraphs of Part IV of this pleading are brought on the following alternative bases:

184.1 on the basis that the Estate and/or AJ Rederi were the beneficial owners of the Contingency Fund by virtue of CTC having held it on trust for them as a segregated fund, as set out above; or alternatively

184.2 if, which is denied, the Estate and/or AJ Rederi were not the beneficial owners of the Contingency Fund on that basis, on the basis that the Estate was the beneficial owner under the said resulting trust.

THE TRANSFER OF THE CONTINGENCY FUND FROM THE CF TO NWT AND/OR FORRESTER MARITIME

185. Monsen was the Settlor of and an Advisor to the NWT, a private non-charitable trust which was purportedly established in the circumstances set out in Paragraph 59-60 of Part III above, and which had its situs in the Cayman Islands. The other Advisors of NWT were Kindersley and Worsley, and the Trustees were Slatter and Slatter's company Transworld (later replaced by Slatter's company Transglobal).

186. For the reasons set out in Paragraph 189 below, the Estate will say that Monsen exercised unfettered control over the activities of the NWT.

187. As the plan to settle the Retained Shares on NWT had not been effected, NWT did not function before 1985. However, in that year Monsen used it as a vehicle for misappropriating the remainder of the Contingency Fund as hereafter described.

188. Monsen used his positions as Advisor of the CF and NWT to direct the following steps to be taken:

188.1 In late 1984, Forrester Maritime was incorporated on Monsen's instructions under the name Aall Maritime Consultants Limited. (Aall Maritime Consultants Limited changed its name to Forrester Maritime on 19 October 1988.) Its directors included Monsen and Slatter. At the first meeting of its board of directors on 6 December 1984, Monsen and Slatter were appointed Forrester Maritime's

President and Treasurer respectively. The Estate will say that Monsen exercised unfettered control over Forrester Maritime.

188.2 Also in late 1984, NWT acquired the 100 issued shares in the company at Monsen's direction, as follows:

188.2.1 According to a letter dated 8 November 1984 from Slatter to Aall & Co, NWT's 100 shares in Forrester Maritime were to be held by AT&B in NWT's account.

188.2.2 On or about 4 December 1984, three employees of AT&B subscribed for shares in Forrester Maritime.

188.2.3 It was resolved at the said meeting of Forrester Maritime's directors on 6 December 1984 (at which Monsen and Slatter were present in person or by proxy) that one of these subscriber shares be transferred into the name of AT&B account 1-252. It was further resolved to approve the subscription by AT&B account 1-252 for 97 shares in Forrester Maritime. On or about 6 December 1984, 97 shares in Forrester Maritime were issued to AT&B account 1-252 and one subscriber shares was transferred to AT&B account 1-252.

188.2.4 It is to be inferred from this that account 1-252 was NWT's account and that 98 of the shares of Forrester Maritime were held in that account to NWT's order by AT&B. It is also to be inferred that the other two Forrester Maritime shares were held by AT&B's employees to the order of NWT.

188.2.5 Thus all 100 issued shares of Forrester Maritime were held by AT&B, either through its employees or in account 1-252, for NWT.

188.3 In late 1984 Monsen directed the Trustees of the CF to transfer the Contingency Fund to NWT. This was effected by a transfer of the assets comprising the Contingency Fund (namely shares in Aall International Fund and the Bulls Shares)

to Forrester Maritime and by NWT's aforementioned acquisition of the shares in Forrester Maritime.

188.4 As at 31 December 1984 the total assets of Forrester Maritime were $7,951,895 in cash and securities, as shown in Forrester Maritime's balance sheet as at that date.

188.5 The transfer of the Contingency Fund from the CF was acknowledged by NWT in a Memorandum dated 7 February 1985. In that Memorandum, Slatter and Transworld, the then Trustees of NWT, and Kindersley, Monsen and Worsley as Advisors to NWT, acknowledged receipt of securities and cash valued at $7,814,190. Further, in that Memorandum, the said receipt was expressed to be in response to an undertaking and agreement by the Trustees and Advisors of NWT that the entire proceeds would be applied for charitable purposes and that they would be separately accounted for both as to principal and income for such purposes.

189. As set out above, it is the Estate's case that from 1982 Monsen embarked in a course of conduct designed to facilitate the misappropriation of the Estate's and/or AJ Rederi's assets including the Contingency Fund. The Estate will say that Monsen directed the transfer of the Contingency Fund from the CF to the NWT in order to misappropriate the Contingency Fund:

189.1 By late 1984, Monsen exercised complete control over the assets that had once belonged to CTC but were by that time held by Harmon, Forrester Holdings, the CF and AF.

189.2 Further, Monsen controlled Forrester Maritime and was its directing mind and will.

189.3 Under clause 5 of the CF Memorandum purportedly creating the CF, Monsen's consent to the transfer of the Contingency Fund to the NWT was expressed to be essential.

189.4 Monsen controlled the NWT and knew that any decisions he made about the affairs of the NWT would be implemented and approved by the Trustees and Advisors of

192.2 Alternatively if, which is denied, Monsen did not know or believe this at any material time after the transfer of the Contingency Fund to the CF in 1984, then he must have believed that the Contingency Fund belonged beneficially to the only other candidate for ownership, namely the (ostensibly) charitable or benevolent objects under the purported trusts of the CF.

192.3 In any event, Monsen knew that neither he, his companies nor his family were entitled to any part of the Contingency Fund.

192.4 Monsen knew that by taking any part of the Contingency Fund for himself, his companies or his family he would be taking assets belonging to the Estate and/or AJ Rederi, or alternatively to the beneficiaries of the CF. He knew that they were assets not belonging to him, his companies or his family.

192.5 Monsen had in fact embarked on a course of conduct designed to facilitate the misappropriation of the Contingency Fund. The Estate repeats the particulars in Paragraph 189 above.

192.6 Further, the Estate relies on its case as to Monsen's dishonesty as regards the assets derived from the Retained Shares and the Trust Shares as set out in Parts III and V in support of its claim that Monsen dishonestly misappropriated the Contingency Fund. The Estate will say that such dishonesty forms part of a pattern of dishonest dealings by Monsen from about 1982 in relation to the assets of CTC and Jahre.

193. By reason of the matters aforesaid, by directing the Trustees of the CF to transfer the Contingency Fund to the NWT and/or Forrester Maritime, Monsen dishonestly assisted the aforesaid breach of trust by the Trustees of the CF. Compass, as Monsen's personal representative, is therefore liable to account as constructive trustee and to pay equitable compensation on the taking of that account.

194. Further or alternatively, by directing the transfer of the Contingency Fund to the NWT and/or Forrester Maritime, Monsen dishonestly breached the duties, set out in Paragraph 141 above, that he owed to the Estate and/or AJ Rederi. Compass, as Monsen's personal

representative, is thus liable to account and/or pay compensation on the alternative bases set out in Paragraph 170 above.

195. Further or alternatively, by directing the transfer of the Contingency Fund to the NWT and/or Forrester Maritime, Monsen dishonestly breached the fiduciary duties he owed to the beneficiaries of the CF (as set out in detail in Part V below), namely duties to act bona fide in their best interests when exercising the powers vested in him as an Advisor, and not to allow his personal interests to conflict with the interests of the beneficiaries of the CF. Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation for breach of fiduciary duty.

196. As regards NWT and Forrester Maritime:

196.1 The Trustees and Advisors of NWT knew that the Contingency Fund was held by the CF for the benefit of the Estate and/or AJ Rederi absolutely. Alternatively if, which is denied, they did not know or believe this, then they must have known or believed that it belonged beneficially to the (ostensibly) charitable or benevolent objects under the purported trusts of the CF. In this regard, the Estate repeats its case as to the knowledge of the Trustees and Advisors of the CF (pleaded in Paragraph 181 above) who were at that time the same persons as the Trustees and Advisors of NWT, namely Slatter, Transworld, Monsen, Kindersley and Worsley.

196.2 Thus Monsen knew that the Contingency Fund was held on trust for the Estate and/or AJ Rederi, or alternatively for charity; and, as Forrester Maritime's directing mind and will, Monsen's knowledge and dishonesty is to be attributed to the company. The Estate repeats the particulars of dishonesty pleaded in Paragraph 192 above.

197. In the premises, on the transfer of the Contingency Fund to NWT and/or Forrester Maritime, NWT held the shares of Forrester Maritime and/or the Contingency Fund, and/or Forrester Maritime held the Contingency Fund, on resulting or constructive trust for the Estate and/or AJ Rederi absolutely.

198. Further, by receiving the Contingency Fund, Forrester Maritime actively participated in the transaction by which the Contingency Fund was transferred from the CF to NWT. Forrester Maritime thereby assisted the CF Trustees to commit a breach of trust. As Monsen's knowledge and dishonesty is to be attributed to Forrester Maritime, it is liable for dishonestly assisting the Trustees and Advisors of the CF to commit a breach of trust and dishonestly assisting Monsen to commit a dishonest breach of the duties he owed to the Estate and/or AJ Rederi (which duties were either fiduciary or, as set out in Paragraph 146.2 above, are to be characterised as fiduciary).

199. In the premises, Forrester Maritime is liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

PAYMENT OF $600,000 TO MONSEN AFTER THE TRANSFER TO NWT AND/OR FORRESTER MARITIME

200. Further, at some point during the period February 1985 to September 1988, at the time when NWT and/or Forrester Maritime held the Contingency Fund, NWT and/or Forrester Maritime paid or otherwise transferred $600,000 to Monsen from the Contingency Fund in the manner already pleaded in Paragraph 91 of Part III above.

201. In like manner to its claim for the $1,465,000 taken by Monsen in 1982, the Estate brings its claim in respect of the said transfer of $600,000 on alternative bases. As regards the transfer of $600,000, the Estate brings its claim as part of the claim for the assets derived from the Retained Shares (as set out in Paragraphs 89-94 above), or as part of the claim for the Contingency Fund (as set out in the following Paragraphs).

202. As pleaded in Paragraphs 197 above, the Trustees and Advisors of NWT and/or Forrester Maritime held the Contingency Fund (and/or, in the case of NWT, the shares of Forrester Maritime) on trust for the Estate and/or AJ Rederi absolutely. Thus:

202.1 by paying or otherwise transferring $600,000 to Monsen, Forrester Maritime committed a breach of trust; and

202.2 by procuring or permitting such payment or transfer to be made, NWT committed a breach of trust.

203. Monsen, as the individual who controlled Forrester Maritime and NWT, dishonestly directed NWT and/or Forrester Maritime to transfer to himself the sum of $600,000. The Estate repeats the particulars of dishonesty set out in Paragraph 192 above.

204. In transferring the sum of $600,000 to Monsen, Forrester Maritime committed a dishonest breach of trust:

204.1 Monsen knew that he was not entitled to the sum of $600,000;

204.2 Monsen's knowledge and dishonesty is to be attributed to Forrester Maritime.

204.3 Forrester Maritime is therefore liable to account on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation.

205. Further or alternatively, by directing NWT and/or Forrester Maritime to transfer to him the sum of $600,000, and by accepting and retaining the same, Monsen dishonestly assisted in the breaches of trust by NWT and Forrester Maritime. Compass, as Monsen's personal representative, is therefore liable to account as a constructive trustee and to pay equitable compensation on that taking of that account. Accordingly, Monsen held the $600,000 on constructive trust for the Estate and/or AJ Rederi.

206. Further or alternatively, by reason of the matters aforesaid, Monsen dishonestly committed a breach of the duties he owed to the Estate and/or AJ Rederi as set out in Paragraph 141 above. The Estate repeats the above particulars of dishonesty. Compass, as Monsen's personal representative, is thus liable to account and/or to pay compensation on the alternative bases set out in Paragraph 170 above.

207. Further or alternatively, in the premises Forrester Maritime's payment or transfer of $600,000 to Monsen amounted to dishonest assistance by Forrester Maritime in Monsen's breach of the duties he owed to the Estate and/or AJ Rederi (which duties were fiduciary

or, on the basis pleaded in Paragraph 146.2 above, are to be characterised as fiduciary). Forrester Maritime is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

TRANSFER OF THE CONTINGENCY FUND TO FORRESTER HOLDINGS

208. As pleaded in Part III above, Monsen owned and controlled the company Forrester Holdings.

209. On or about 26 September 1988 the Trustees and Advisors of NWT executed a Notice of Approval and Distribution transferring the trust property of the NWT to Forrester Holdings. At that time, the Trustees of NWT were Slatter and Transglobal, and the Advisors of NWT were Monsen, Worsley, Tove Brown, Gibson and Lord Tryon.

210. Pursuant to that Notice, what remained of the Contingency Fund was transferred to Forrester Holdings, as follows:

210.1 AT&B transferred all of the shares in Forrester Maritime (which hitherto had been held by AT&B for NWT as described above) to a nominee company, Meriken Nominees Limited, on or about 1 October 1988. The Estate's case is that Meriken Nominees Limited was a nominee for Forrester Holdings.

210.2 According to the Final Report of NWT's Trustees dated 23 January 1989, the Contingency Fund with assets valued at $9,612,555 was transferred to Forrester Holdings with effect on 1 October 1988. The Final Report stated that the assets of the Contingency Fund comprised the shares of Forrester Maritime (at the time of the transfer still called Aall Maritime Consultants Limited) with a book value of $1,828,095 and a receivable owed by Forrester Maritime to NWT in the sum of $7,784,460.

210.3 However, despite this apparent receivable owed by Forrester Maritime, in Slatter's affidavit dated 21 September 1993 (which was prepared in the administration of Monsen's estate), it was stated that Forrester Maritime's book value was $9,238,630 as at the date of its transfer to Forrester Holdings.

210.4 Thus the Estate's primary case is that Forrester Maritime held the Contingency Fund and that the shares of Forrester Maritime represented the full value of the Contingency Fund. As from about 1 October 1988, Forrester Holdings held the shares of Forrester Maritime.

211. At the time of the transfer to Forrester Holdings, Monsen controlled NWT. The Estate repeats Paragraph 189 above. The Estate will also rely in support of this contention on the second of Slatter's two Memoranda dated 8 October 1990 (referred to in Paragraph 97.5 of Part III). In that Memorandum:

211.1 Slatter stated that he believed it was Monsen who decided that the shares of Forrester Maritime should be transferred to Forrester Holdings and that Gibson followed Monsen's instructions in participating in the transfer.

211.2 Slatter stated that the other Advisors, Worsley, Tove Brown and Lord Tryon, signed whatever documents Monsen and Gibson told them to sign.

211.3 Slatter admitted that he should not have participated in the transfer but he stated that "we all know how persuasive TM [i.e. Monsen] could be."

212. As set out above, at the time of the transfer, NWT held the Contingency Fund and/or the shares of Forrester Maritime on trust for the Estate and/or AJ Rederi absolutely. The said transfer to Forrester Holdings was therefore a breach of trust.

213. It is the Estate's case that Monsen directed the Trustees and Advisors of NWT to transfer the said shares of Forrester Maritime so as to take them and with them the Contingency Fund for himself and/or companies owned and controlled by him. In so doing, Monsen acted dishonestly; the Estate repeats the particulars of dishonesty pleaded in Paragraph 192 above.

214. By directing the NWT to transfer the Contingency Fund and the shares of Forrester Maritime to Forrester Holdings, Monsen dishonestly assisted in NWT's breach of trust. Compass, as Monsen's personal representative, is liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

215. Further or alternatively, by directing the transfer to Forrester Holdings, Monsen dishonestly breached the duties (which were fiduciary or are to be characterised as fiduciary) he owed to the Estate and/or AJ Rederi as set out in Paragraph 141 above. Compass, as Monsen's personal representative, is thus liable to account and/or pay compensation on the alternative bases set out in Paragraph 170 above.

216. Forrester Holdings received the Contingency Fund knowing that it was trust property transferred to it in breach of trust, in that Monsen was the directing mind and will of Forrester Holdings and his knowledge and dishonesty is to be attributed to it (as pleaded in Paragraphs 97-98 of Part III above). The Estate repeats the particulars of dishonesty in Paragraph 192 above.

217. Forrester Holdings thereby actively participated in the transaction by which the Contingency Fund was transferred out of the NWT. Thus Forrester Holdings dishonestly assisted the breach of trust by the Trustees and Advisors of NWT, and also Monsen's aforementioned breach of the duties he owed to the Estate and/or AJ Rederi (which duties were either fiduciary or, as set out in Paragraph 146.2 above, are to be characterised as fiduciary).

218. In the premises, Forrester Holdings liable to account as a constructive trustee and/ to pay equitable compensation on the taking of that account. Accordingly it held the shares of Forrester Maritime on constructive trust for the Estate and/or AJ Rederi absolutely.

AT&B AS AN ACCESSORY TO THE MISAPPROPRIATION OF THE CONTINGENCY FUND IN 1988

219. The following Paragraphs 220-222 set out the Estate's case as to AT&B's liability as an accessory to the misappropriation of the Contingency Fund in 1988.

220. As far as the Estate is aware, in 1988 Monsen was a director of AT&B. In any event, he was its directing mind and will or at least had control of the company in matters relating to, inter alia, CTC, the CF, AF, Blue Range, Harmon, NWT, Forrester Maritime, Forrester Holdings and Hurford Holdings. As pleaded in Paragraphs 105-107 of Part III above, Monsen had controlled AT&B's affairs from its inception.

220.1 Thus his knowledge and dishonesty is to be attributed to AT&B.

220.2 As pleaded above, at all material times, Monsen knew that the Contingency Fund was held on trust for the benefit of the Estate and/or AJ Rederi, or alternatively for charity. Further, at all material times Monsen acted dishonestly; and the Estate repeats the particulars of dishonesty set out in Paragraph 192 above.

221. Further, to the best of the Estate's knowledge, by 1988 Worsley, Slatter and Gibson were also directors of AT&B having been appointed at an earlier date unknown to the Estate.

221.1 Their knowledge is also to be attributed to AT&B as they were directors.

221.2 Worsley knew that the Contingency Fund was held on trust for the benefit of Jahre and/or AJ Rederi, or alternatively he believed it was held for charity, as set out in Paragraph 181 above.

221.3 Slatter knew that the Contingency Fund was held on trust for the benefit of Jahre and/or AJ Rederi, or alternatively he believed it was held for charity, as set out in Paragraph 181 above.

221.4 Gibson also knew that the Contingency Fund was held on trust for Jahre and/or AJ Rederi, or alternatively he believed it was held for charity. The Estate relies on the following facts and matters in relation to Gibson's knowledge or belief:

221.4.1 Gibson was involved in the evolution of the plan to settle the Trust Shares on the CF during 1976. He drafted the CF Memorandum.

221.4.2 Gibson attended meetings of the AF and the CF from (at least) 8 October 1982. He was appointed as an Advisor of AF in 1985.

221.4.3 Gibson was closely involved in the affairs of both the CF and the AF and drafted many of the trust deeds and documents for the both of these foundations during the 1980s.

221.4.4 Gibson was also involved in the business run by Monsen through Aall & Co. As will be pleaded in detail in Part V below, Gibson assisted in the reorganisation of Aall & Co in January 1983 which led to the creation of Aall Group Inc ("AGI").

221.4.5 In the premises, it is to be inferred that, through his contact with Monsen, the CF and the AF, Gibson knew at all material times that the Contingency Fund was held on trust for Jahre and/or AJ Rederi.

221.4.6 Alternatively if, which is denied, Gibson did not know this, then he believed that the Contingency Fund was held for the only other candidate for ownership, namely the (ostensibly) charitable and benevolent objects of the CF. In support of this contention, the Estate will say that it is to be inferred that Gibson drafted, or advised on, the Memorandum dated 7 February 1985 in which it was stated that the Trustees and Advisors of NWT undertook to apply the assets of the Contingency Fund for charitable purposes.

221.5 The Estate further relies on the facts and matters in Paragraphs 451 to 465 of Part V below to support the claim that Worsley and Gibson knew that Monsen was misappropriating assets belonging to the Estate and/or AJ Rederi.

222. At all material times leading up to the transfer of the Contingency Fund to Forrester Holdings in 1988, the assets of the Contingency Fund were under AT&B's control:

222.1 As pleaded in Paragraph 154 above, following a resolution of CTC's board on 25 September 1980 that CTC should no longer have accounts in the name of

"Continental", the Contingency Fund was transferred to Account 1-129. Account 1-129 was a CTC account in the name of AT&B.

222.2 As pleaded in Paragraph 177 above, in May 1984 the balance of the Contingency Fund was transferred to the CF's account 1-135 in the name of AT&B.

222.3 As pleaded in Paragraph 188 above, in late 1984 the Contingency Fund was transferred to Forrester Maritime. It is the Estate's case that the assets of the Contingency Fund continued to be held in bank accounts at AT&B:

222.3.1 Despite the existence in Forrester Maritime's balance sheets of an ostensible debt owed to its shareholders (as referred to in Paragraph 210.2 to 210.3 above), the cash and securities of the Contingency Fund were in fact held as assets of Forrester Maritime.

222.3.2 The cash and securities of most or all of the other entities who held assets derived from the Trust Shares or the Retained Shares were held in AT&B accounts. For example, the CF, the AF, CTC, Blue Range and Harmon all had AT&B accounts.

222.3.3 It is to be inferred from this that Forrester Maritime also held its cash and securities in an AT&B account at all material times in the period 1984 to 1988. Thus the assets of the Contingency Fund were held by AT&B in Forrester Maritime's accounts, notwithstanding Forrester Maritime's ostensible debt to its shareholders.

222.4 In any event, it is the Estate's case that the shares of Forrester Maritime represented the full value of the Contingency Fund, for the reasons set out in Paragraph 210 above. The shares of Forrester Maritime were, as pleaded in Paragraph 188.2 above, held from about late 1984 by AT&B to the order of NWT.

222.5 On or about 1 October 1988, at the time of the transfer of the shares of Forrester Maritime from NWT to Forrester Holdings, the shares of Forrester Maritime

were still held by AT&B. As described in Paragraph 210.1 above, they were transferred by AT&B to a nominee of Forrester Holdings. Thus the shares of Forrester Maritime were under AT&B's control at the time of the transfer to Forrester Holdings. Further, for the reasons given above it is to be inferred that Forrester Maritime's cash and securities were also held in AT&B accounts at this time.

223. In the premises, on or about 1 October 1988, AT&B dishonestly assisted in a breach of trust and fiduciary duty in relation to the transfer of the Contingency Fund to Forrester Holdings, as follows:

223.1 The transfer of the Contingency Fund to Forrester Holdings was effected by AT&B transferring the shares of Forrester Maritime to the nominee of Forrester Holdings Limited, and further by transferring the cash and securities held in Forrester Maritime's AT&B account to Forrester Holdings or into Forrester Holdings's control.

223.2 The transfer of the Contingency Fund to Forrester Holdings was a breach of trust by the Trustees and Advisors of NWT, as set out in Paragraph 212 above. It was also a breach of fiduciary duty by Monsen (or a duty which is to be characterised as fiduciary), as set out in Paragraph 215 above.

223.3 Monsen's knowledge and dishonesty is to be attributed to AT&B in relation to the transfer of the Contingency Fund to Forrester Holdings, as set out above. Further, the knowledge of Worsley, Gibson and Slatter (if they were directors of AT&B at this time) is to be attributed to AT&B in relation to this transfer, as set out above.

223.4 Thus in effecting the transfer, AT&B dishonestly assisted the Trustees and Advisors of NWT to commit the above breach of trust, and dishonestly assisted Monsen to commit the above breach of fiduciary duty, in that AT&B knew that the Contingency Fund was trust property not belonging to Forrester Holdings and that Monsen was misappropriating it.

223.5 AT&B is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

ERIK MONSEN

224. Erik Monsen is Monsen's son. Erik Monsen was closely involved with business conducted by his father and his father's companies and with the assets derived from CTC, including the Contingency Fund:

224.1 He was a director of Aall & Co (Monsen's main Japanese shipping company) and took charge of its operations in the mid-1980s.

224.2 At some point during the 1980s he became closely involved in the affairs of AGI and AT&B and was a director of the latter company, if not also AGI, by (at the latest) 1989.

224.3 As will be set out in detail in Part V below, Erik Monsen first attended a meeting of the AF in October 1983 and regularly attended meetings thereafter. In March 1985 he was appointed an additional Advisor to AF, such appointment to take effect in order for him to succeed Monsen as an Advisor, or at such earlier date as Monsen elected. He was also appointed a Governor of AF at some point in 1985. Erik Monsen was purportedly formally appointed an Advisor to AF on 17 July 1989.

224.4 Erik Monsen became a director of the Cayman company Blue Range in around June 1988. As will be pleaded in Part V below, this was the company in which the bulk of AF's assets were held.

224.5 By the end of 1989, Monsen was mentally incapacitated.

224.6 In the premises, the Estate will say that by about late 1989 Erik Monsen had taken over his father's role as the individual who controlled the affairs of AGI and its subsidiaries (which included AT&B) and the AF. As set out further below in Paragraphs 230, Erik Monsen also took control of Hurford Holdings and other

companies owned by Monsen in about 1990. It is to be inferred from this that after Monsen's mental incapacity, Erik Monsen took over all aspects of Monsen's affairs and the companies which Monsen had formerly controlled.

ERIK MONSEN'S KNOWLEDGE: THE CONTINGENCY FUND

225. The Estate's case is that from about 1986, and at the latest by about 1990, Erik Monsen knew that (in that either he had actual knowledge or was wilfully blind to the fact that, or paid reckless disregard to the fact that) the Contingency Fund held by Forrester Maritime was a fund containing trust monies set aside for Jahre and/or AJ Rederi and that after Jahre's death it was held for the benefit of his Estate and/or AJ Rederi. The Estate relies, inter alia, upon the following matters.

226. The Estate relies on the following particulars of knowledge:

226.1 In conversations held between Erik Monsen and Jørgen Jahre Junior (Jahre's great-nephew) in January 1986 proposals were discussed for:

226.1.1 payments to Jahre's widow, Bess Jahre, from the Contingency Fund of $100,000 per annum; and/or

226.1.2 the sale of the Bulls Shares (which remained an asset of the Contingency Fund) from Forrester Maritime to Jørgen Jahre Shipping with the proceeds of that sale ultimately being paid to Bess Jahre.

226.2 It is to be inferred from this, and from the facts and matters set out in Paragraph 224 above, that as a result of his close involvement in his father's business and the AF during the 1980s, Erik Monsen learned from Monsen, Kindersley, Worsley, Gibson and Slatter:

226.2.1 that the Contingency Fund was held for the benefit of Jahre and/or AJ Rederi; or alternatively

226.2.2 at the least, that the Contingency Fund had originally been set aside to reimburse Jahre, that it was kept as a segregated fund and that it might still be claimed by the Estate or those claiming through Jahre. Thus Erik Monsen knew facts which would lead an honest and reasonable person to conclude that the Contingency Fund belonged beneficially to the Estate.

226.3 Further:

226.3.1 By a Memorandum dated 8 October 1990 a copy of which was provided at the time to Erik Monsen, Slatter set out part of the history of the Contingency Fund and recorded that Erik Monsen had already been told of the history of the Contingency Fund by Bettum. It is thus to be inferred that Bettum told Erik Monsen about the facts concerning the setting aside of the Contingency Fund for Jahre and/or AJ Rederi and that the fund was treated as belonging beneficially to Jahre and/or AJ Rederi.

226.3.2 The said Memorandum also refers to claims being made by "Norwegian Jahre interests" to assets of the Contingency Fund in the context of a dispute about ownership of the Bulls Shares; the Memorandum also refers to the possibility of what Slatter described as a "contingency" still attaching to the Contingency Fund.

226.3.3 It is therefore to be inferred from the above that by about 1990 at the latest Erik Monsen had learned (if he did not already know):

(i) that the Contingency Fund was held on trust for the Estate and/or AJ Rederi absolutely; or alternatively

(ii) facts which would lead an honest and reasonable person so to conclude.

227. Further or alternatively, Erik Monsen learnt (if, which is denied, he did not already know) of the circumstances giving rise to the creation of the Contingency Fund and that it was the property of the Estate and/or AJ Rederi from legal proceedings to which he was a party,

issued by the Estate in London on 9 May 1994 and subsequently discontinued following procedural applications concerning jurisdiction.

228. Alternatively if, which is denied, Erik Monsen did not know of the Estate's and/or AJ Rederi's beneficial ownership of the Contingency Fund, then by about 1990 he believed at the very least that it belonged beneficially to the only other candidate for ownership, namely the (ostensibly) charitable or benevolent objects under the purported trusts of the CF from which it was derived.

229. The Estate relies on the following particulars of knowledge:

229.1 By reason of his close involvement in the affairs of AF, as set out above, it is to be inferred that Erik Monsen learned from Monsen, Kindersley, Worsley, Gibson and Slatter that the Contingency Fund had at one point been held by the Trustees of the CF and/or that it had subsequently been held by the Trustees of the NWT purportedly subject to an undertaking to apply it for charitable purposes.

229.2 In particular, Slatter had explained the history of the Contingency Fund to Erik Monsen in about 1988 telling him expressly that a private Monsen company ought not to have acquired ownership of Forrester Maritime.

229.3 By about 1989, Slatter was asserting to Erik Monsen that the Contingency Fund should not have been transferred to Forrester Holdings but should in fact be held for charity.

229.4 In particular, in handwritten notes dated 8 August 1989, Slatter noted his suspicions that Monsen had never owned CTC. Slatter also recorded a discussion he had had with Erik Monsen in which Erik Monsen had proposed that the shares in Forrester Maritime should be transferred by Forrester Holdings to AF (by means of a "swap" for AF's shares in AGI). Slatter's notes also recorded that "MEM [i.e. Erik Monsen] feels that FM [i.e. Forrester Maritime] does not 'belong' in Forrester [i.e. Forrester Holdings] – RNS [i.e. Slatter] mentioned to MEM that in his view FM should have gone to AF."

229.5 Further, in Slatter's said Memorandum of 8 October 1990 (a copy of which was provided at the time to Erik Monsen), Slatter explained how the Trustees and Advisors of NWT had in 1985 given an apparent undertaking to apply the Contingency Fund for charitable purposes. He also explained that the assets of the Contingency Fund had been held in Forrester Maritime. Slatter repeated his view that Forrester Maritime should be held for charity and that the transfer to Forrester Holdings had been what he described as a "mistake" which should be reversed by transferring Forrester Maritime to AF.

229.6 Slatter consistently asserted thereafter that the Contingency Fund should in fact be transferred to AF to be held by it for charity. For example, in the Slatter Memorandum prepared in 1992 for the Trustees and Advisors of AF (who included Erik Monsen), Slatter repeated his question as to whether the AF had any rights in Forrester Maritime and asked whether legal advice should be taken as regards the distribution of the Contingency Fund to NWT.

ERIK MONSEN SUCCEEDS TO MONSEN'S ESTATE

230. At all material times from about 1989, Erik Monsen has controlled the Contingency Fund either directly or indirectly through companies he owns or controls. Although the Estate is unable to give full particulars of the way in which Erik Monsen has dealt with the Contingency Fund, the Estate relies on the following facts and matters:

230.1 As set out above, by about late 1989 Erik Monsen was making proposals to Slatter about transferring Forrester Maritime (and thus the Contingency Fund) to AF. Such proposals are consistent only with Erik Monsen having the power to dispose of the Contingency Fund and the shares of Forrester Maritime.

230.2 It is to be inferred from this that by about the end of 1989 Erik Monsen controlled Forrester Holdings, the company to which the shares of Forrester Maritime had been transferred in 1988.

230.3 Further or alternatively, Erik Monsen jointly executed two codicils to Monsen's Will on 12 February 1991 and 22 February 1991 respectively. In both codicils he

signed as one of the joint receivers of Monsen, having been appointed as such on 10 May 1990.

230.4 Thus it is the Estate's case that by virtue of being appointed one of the joint receivers of Monsen on or about 10 May 1990, Erik Monsen had complete control over the affairs of Monsen. Thus as from at the latest May 1990 Erik Monsen controlled Forrester Holdings and Hurford Holdings (if he did not already control them), both of which companies were owned by his father Monsen.

230.5 On 20 December 1991, at a meeting of Forrester Maritime's shareholders, the persons appointed as directors included Erik Monsen. Further, the Slatter Memorandum prepared for the AF meeting in September 1992 referred to President's expenses being paid by Forrester Maritime to Erik Monsen from 1990; it is to be inferred from this that Erik Monsen became Forrester Maritime's President in that year. The Estate will say that Erik Monsen was able to procure his appointment as director and President by virtue of his control over Forrester Maritime's shares through either Forrester Holdings or Hurford Holdings.

230.6 At some time prior to Monsen's death on 10 October 1992 Hurford Holdings acquired the shares in Forrester Maritime, and thus the Contingency Fund.

230.7 Further, after Monsen's death on 10 October 1992, AT&B became executor of Monsen's Will and the said codicils. According to Slatter's affidavit dated 21 September 1993 (already referred to in Part III above) the principal asset in Monsen's estate were the shares of Hurford Holdings which were valued at $36,630,674. The assets purportedly owned by Hurford Holdings included the shares of Forrester Maritime which were valued at $9,238,630. Thus these assets were all under the control of AT&B as Monsen's executor.

230.8 At this time, AT&B was controlled by Erik Monsen. Thus the assets in Monsen's estate, in particular Hurford Holdings, were indirectly under his control.

230.9 AT&B later resigned as executor in favour of Compass, a company controlled by Erik Monsen. Thus it is to be inferred that all of the said assets in Monsen's estate,

in particular Hurford Holdings, continued to be controlled by Erik Monsen through Compass.

230.10 Further:

230.10.1 In Monsen's Will dated 16 July 1989 and executed by Monsen personally, Monsen had left all of the shares in Forrester Holdings to Erik Monsen. However, by the second codicil dated 22 February 1991 to Monsen's Will, the earlier gift was revoked and the shares of Hurford Holdings were left to the Bank of Butterfield International (Cayman) Limited as Trustee of the Hurford Trust. This codicil was, as explained above, executed by Erik Monsen as one of Monsen's joint receivers.

230.10.2 The Estate will say that it is unlikely that Erik Monsen would have revoked an absolute gift of the shares to himself and replaced that gift with a settlement of the shares on a trust in which he had no interest. Thus it is to be inferred that Erik Monsen was either a beneficiary of, and/or in some other respect controlled, the Hurford Trust.

THE CONTINGENCY FUND HELD ON CONSTRUCTIVE TRUST BY FORRESTER MARITIME, FORRESTER HOLDINGS, AND HURFORD HOLDINGS

231. By reason of the foregoing:

231.1 Erik Monsen has controlled Forrester Holdings and Hurford Holdings, and through them Forrester Maritime and the Contingency Fund, at all material times from about late 1989.

231.2 Since his father's death, such control has been exerted by Erik Monsen by virtue of the shares of Hurford Holdings being held by Compass or companies controlled by Compass. Alternatively if the shares of Hurford Holdings having been distributed to the Trustees of the Hurford Trust, they have remained under Erik Monsen's control either by virtue of him being a beneficiary of the Trust and/or a person who otherwise controls it, or by virtue of the shares having been distributed by the Hurford Trust to Erik Monsen or companies which he owns or controls.

231.3 Further, by reason of the facts and matters set out in the particulars of knowledge pleaded in Paragraphs 226 and 229 above, Erik Monsen knew by 1990 at the latest that Forrester Maritime, Forrester Holdings and Hurford Holdings were not the true beneficial owners of the Contingency Fund. He knew that they held assets which were trust property belonging either to the Estate and/or AJ Rederi, or if (which is denied) he did not believe this, he believed that they held property belonging to charity.

232. In the premises, the Estate will say that:

232.1 Erik Monsen's said knowledge and belief is thus to be attributed to Forrester Maritime, Forrester Holdings and Hurford Holdings as he was their directing mind and will. As pleaded in Paragraph 230 above, Erik Monsen has at all material times from about late 1989 controlled Forrester Maritime, Forrester Holdings and Hurford Holdings.

232.2 Forrester Maritime and Forrester Holdings continued to hold the Contingency Fund, and in Forrester Holdings' case the shares of Forrester Maritime, on constructive trust for the Estate and/or AJ Rederi absolutely after Erik Monsen took control in about late 1989. Such constructive trusts arose by virtue of the knowledge Forrester Maritime and Forrester Holdings had acquired through Monsen during his lifetime as set out in detail above; and further or alternatively by virtue of Erik Monsen's said knowledge being attributed to them.

232.3 Further, at some point prior to Monsen's death in 1992, the shares of Forrester Maritime were transferred from Forrester Holdings to Hurford Holdings. As pleaded above, Hurford Holdings was another company controlled by Erik Monsen after about late 1989 or 1990. He was its directing mind and will and thus his said knowledge and belief is to be attributed to Hurford Holdings.

232.4 By reason of the foregoing, when the shares in Forrester Maritime were transferred to Hurford Holdings, Hurford Holdings knew or believed that the Forrester Maritime shares were trust property which did not belong beneficially to it, but in fact belonged to the Estate and/or AJ Rederi, or to charity. Thus Hurford Holdings held them on constructive trust for the Estate and/or AJ Rederi.

232.5 Further, Forrester Maritime has continued to hold its assets, namely the Contingency Fund, on constructive trust for the Estate and/or AJ Rederi at all material times after Monsen's death on 10 October 1992.

232.6 By reason of the facts and matters set out in the particulars of knowledge pleaded in Paragraphs 226 and 229 above, at all material times from about 1990, Erik Monsen has known or believed that (or known or believed facts which as a matter of law would lead to the result that) Forrester Maritime, Forrester Holdings and Hurford Holdings were constructive trustees of the Contingency Fund (and/or in Forrester Holdings' and Hurford Holdings' case, that they held the shares of Forrester Maritime on constructive trust) either for the Estate and/or AJ Rederi, or for charity.

BREACH OF TRUST BY FAILURE TO TRANSFER THE CONTINGENCY FUND TO THE ESTATE AND/OR AJ REDERI

233. Forrester Maritime, Forrester Holdings and Hurford Holdings committed breaches of the trusts upon which they held assets for the Estate and/or AJ Rederi, with the assistance of Erik Monsen, in that:

233.1 At all material times since Erik Monsen took control of the companies in about late 1989, Forrester Maritime and Hurford Holdings have committed a continuing breach of trust in that they have retained the Contingency Fund for themselves (and in Hurford Holdings' case, it has retained the shares of Forrester Maritime) and failed to transfer those assets to the Estate and/or AJ Rederi despite their knowledge (through Erik Monsen) that the Contingency Fund did not belong beneficially to them.

233.2 Further, Forrester Holdings committed a continuing breach of trust at all times up to the point at which it transferred the shares of Forrester Maritime to Hurford Holdings prior to Monsen's death, in that it retained the Contingency Fund (and the shares of Forrester Maritime) and failed to transfer those assets to the Estate and/or AJ Rederi. The transfer of the shares to Hurford Holdings was itself a further breach of trust.

233.3 Further or alternatively, Forrester Maritime and Hurford Holdings committed a breach of trust when they retained the Contingency Fund for themselves (and in the case of Hurford

Holdings, when it retained the shares of Forrester Maritime) and failed to transfer those assets to the Estate and/or AJ Rederi, despite their knowledge (through Erik Monsen) that the Estate was seeking to recover Jahre's assets:

233.3.1 Such knowledge was acquired by Erik Monsen (at the latest) by mid-1993 as the Estate's claims had been intimated to AT&B, a company controlled by Erik Monsen, in letters dated 26 October 1992 to AT&B and 3 June 1993 to AT&B's attorneys.

233.3.2 Thus upon the Estate intimating its claims, Hurford Holdings and Forrester Maritime committed a breach of trust.

233.4 Erik Monsen, as the individual who controlled Forrester Maritime, Forrester Holdings and Hurford Holdings, directed them to retain the Contingency Fund and/or the shares of Forrester Maritime. He thus assisted them to commit the aforesaid breaches of trust. In so doing, Erik Monsen acted dishonestly.

234. The Estate relies on the following particulars of Erik Monsen's dishonesty:

234.1 As set out above, Erik Monsen knew that the Contingency Fund and/or the shares of Forrester Maritime were trust property held for the Estate and/or AJ Rederi absolutely, or alternatively if (which is denied) he did not believe this, then he believed that it was trust property held for charity. He knew, as set out in Paragraph 232.6 above, that Forrester Maritime, Forrester Holdings and Hurford Holdings were constructive trustees of this property.

234.2 Erik Monsen therefore knew that by retaining any part of the Contingency Fund or the shares of Forrester Maritime for himself or companies owned or controlled by him, he would wrongly be withholding property from its true beneficial owners. He also knew that if he transferred any part of the Contingency Fund or the shares of Forrester Maritime to himself or companies owned or controlled by him, he would wrongly be taking property from its true beneficial owners.

234.3 An honest person would not retain, use or dispose of such trust property in this way. An honest person would have transferred the Contingency Fund or the shares of Forrester

Maritime (or any other vehicle that held the Contingency Fund) to the Estate and/or AJ Rederi or to whoever else he may have thought was the true owner. An honest person would not have kept and used such assets for himself or his companies.

234.4 The Estate further relies on the dishonest conduct of Erik Monsen as set out in Part V hereof in relation to the breaches of trust committed while the assets derived from CTC were held by the AF in support of its claim that Erik Monsen acted dishonestly in relation to the Contingency Fund. The Estate will say that such dishonesty forms part of a pattern of dishonest dealings by Erik Monsen in relation to assets derived from CTC and Jahre.

235. Accordingly:

235.1 By reason of the foregoing, from about 1990 Erik Monsen dishonestly assisted in Hurford Holdings', Forrester Holdings' and Forrester Maritime's breaches of trust. He is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

235.2 Further, as Erik Monsen's knowledge and dishonesty is to be attributed to Forrester Maritime, Forrester Holdings and Hurford Holdings, the breaches of trust committed by them were fraudulent. Accordingly each of them is liable to account on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation.

THE TRANSFER OF THE CONTINGENCY FUND TO ORNATE LTD

236. After the Estate intimated its claims, the 100 issued shares of Forrester Maritime (and thus the Contingency Fund) were transferred to a company called Ornate Ltd.

236.1 The transfer took place on 19 May 1994. So far as the Estate is aware, the shares of Forrester Maritime are at present still held by Ornate.

236.2 In the premises, it is to be inferred that Ornate is a company owned or controlled directly or indirectly by Erik Monsen. The Estate believes that Erik Monsen continues to control the Contingency Fund, which is still held by Forrester Maritime, via Ornate. In support of this contention, the Estate relies on the fact that during proceedings in 2003 between

the Estate and Forrester Maritime in the Court of Appeal in Agder, Norway, the advocate for Forrester Maritime stated in court that Forrester Maritime is controlled by Erik Monsen and that Erik Monsen is Forrester Maritime's President.

236.3 The Estate is unable to give further particulars of how Ornate came to hold (through Forrester Maritime) the Contingency Fund. However, by reason of the foregoing, the Estate will say that Erik Monsen directed Hurford Holdings to transfer its shares in Forrester Maritime to Ornate. The Estate does not know whether the transfer was made directly from Hurford Holdings to Ornate, or whether other companies were interposed between them when the transfer was made. In any event, such transfer was made at Erik Monsen's direction.

237. Such transfer was a breach of the constructive trust upon which Hurford Holdings held the Contingency Fund and/or the shares of Forrester Maritime, in that Hurford Holdings failed to transfer the Contingency Fund to the Estate and/or AJ Rederi and instead transferred it to a company owned or controlled directly or indirectly by Erik Monsen.

238. By directing the said transfer, Erik Monsen dishonestly assisted in Hurford Holdings's breach of trust. The Estate repeats the particulars of dishonesty set out in Paragraph 234 above. Further, the Estate will say that Erik Monsen acted dishonestly in that:

238.1 The transfer of the shares to Ornate was effected on 19 May 1994, the day upon which it was entered into Forrester Maritime's Register of Members. This was 10 days after the Writ was filed in London on 9 May 1994 in the proceedings referred to in Paragraph 227 above. Although Erik Monsen was not formally served until later, it is to be inferred that he knew about the Estate's claims very soon after the Writ was issued:

238.1.1 The Estate's claims had, to the knowledge of Erik Monsen, already been intimated by letters dated 26 October 1992 and 3 June 1993, as set out above.

238.1.2 On 13 May 1994 the Estate stated in a press announcement that legal action had been started in England against Monsen's estate and his successors. The same day Økonomisk Rapport (a Norwegian financial journal) contained an article entitled "the Jahre fortune to be brought home" which described the Estate's claims and mentioned Erik Monsen by name. The following day, Sandefjords Blad (a daily newspaper in Sandefjord, Norway) contained an article entitled "the Estate claims return of the foreign fortune of Anders Jahre" which described the Estate's claims, including claims against the Monsen family.

238.2 It is therefore to be inferred that Erik Monsen procured the transfer of the shares of Forrester Maritime to Ornate because he knew about the Estate's claims and feared that they would succeed. He therefore dishonestly sought to prevent the Estate from recovering the Contingency Fund by procuring its transfer as aforesaid.

238.3 In the premises, Erik Monsen dishonestly assisted in Hurford Holdings's breach of trust. He is therefore liable to account as a constructive trustee and to pay equitable compensation on the taking of that account.

239 Further, as Erik Monsen's knowledge and dishonesty is to be attributed to it, the breach of trust committed by Hurford Holdings (as pleaded in Paragraph 237 above) was fraudulent. Accordingly Hurford Holdings is liable to account on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation.

OTHER APPLICATION OF THE ASSETS OF THE CONTINGENCY FUND

240 Prior to discovery, the Estate is unable to give full particulars of the way in which the Contingency Fund has been dealt with. However:

240.1 According to Forrester Maritime's balance sheet dated 31 March 1992, the total assets for the previous year were $11,602,368 but for the current year had fallen to $8,810,107. The loss was partly caused by the writing-off of two investments in their entirety, namely in Syscan (recorded in the previous year at $900,000) and Cruisematch Cruise Lines (recorded in the previous year at $600,000).

240.2 In the Slatter Memorandum prepared for the meetings of the AF in 1992, Slatter recorded that assets of Forrester Maritime (and thus the Contingency Fund) had been used in the following ways between about 1984 and 1992:

240.2.1 Forrester Maritime paid $387,000 in President's expenses (to Monsen until 1990 and to Erik Monsen thereafter) at the rate of $50,000 per year;

240.2.2 Forrester Maritime paid $1,444,373 in legal and professional fees ($928,732 of which was in respect of resisting the Estate's attempts to obtain testimony from Kindersley and Hardman, and $515,641 of which was paid to Gibson);

240.2.3 Forrester Maritime paid $489,893 to "AIM", purportedly for advisory fees (and the Estate will say that this is probably a reference to Aall Investment Management (Cayman) Limited);

240.2.4 Forrester Maritime paid $142,000 to AT&B, purportedly for management and administration fees;

240.2.5 Forrester Maritime made two payments for what Slatter described as "TM Sundry": first, a payment of $150,000 to South Star Inc in March 1988, and secondly a payment of $40,755 to Worsley in March 1988;

240.2.6 Forrester Maritime distributed 7,800 shares in Texaco to Forrester Holdings as of 31 December 1988, which Slatter valued at $353,925.

240.2.7 Slatter also identified the losses made by the investments in Syscan and Cruisematch already referred to above (then said to be $899,999 and

$460,863 respectively), and a further loss of $229,714 on an investment in Ocean Freight Fund.

240.3 According to a note of a meeting between Bettum and Slatter dated 17 September 1994, Slatter stated that the Contingency Fund was less than half its expected value as "it had been dipped into to support Monsens and for heavy expenses".

241 The Estate reserves the right to give further particulars after discovery and/or to amend to add further claims in relation to the use of the Contingency Fund, in particular as regards the matters set out in the previous Paragraph. Further or alternatively, the Estate reserves the right to give further particulars of these matters upon the taking of the accounts claimed herein.

TRACING CLAIMS

242 The current position is that assets of the Contingency Fund and/or the assets or income representing those assets either remain in the control of Erik Monsen and/or Forrester Maritime and/or Hurford Holdings and/or Ornate or have been disposed of or distributed, possibly as part of the estate of Monsen.

243 The Estate is unable to give further particulars of the application of the assets or income derived from or representing the Contingency Fund prior to discovery. However, further or alternatively to the Estate's claims as set out so far in Part IV, the Estate is entitled to trace and follow all such assets and puts the Defendants to this claim on notice of its intention to do so. The Estate reserves the right to amend this pleading to trace such assets upon receipt of further information as to their destination.

244 Without prejudice to the generality of the foregoing, the Estate is entitled to trace and follow the traceable proceeds of:

244.1 the sum of $1,465,000 transferred to Monsen in 1982;

244.2 the sum of $600,000 transferred to Monsen between about 1985 and about 1988;

244.3 the balance of the Contingency Fund transferred to Forrester Maritime and/or NWT in about 1984 and the remainder transferred to Forrester Holdings in 1988, and any property derived from or representing such assets, including the shares of Forrester Maritime.

245 To the best of the Estate's knowledge, all or some of these assets or assets derived from them were transferred to (at least) the following Defendants:

245.1 Compass (after its appointment as Monsen's personal representative);

245.2 Forrester Holdings;

245.3 Forrester Maritime; and/or

245.4 Ornate;

and the Estate is entitled to trace and follow those assets (or assets representing them) into the hands of those Defendants, and, to the extent that they still hold those assets, recover them; and in particular the Estate is entitled to trace, follow and recover the shares of Forrester Maritime held by Ornate.

246 To the extent that Norwegian law is relevant to the claims set out in this Part IV, the Estate will say that the right to trace assets is a remedy which forms part of the law of the forum and therefore the Estate is nevertheless entitled to trace as aforesaid.

RELIEF CLAIMED AND QUANTUM IN RESPECT OF CLAIMS MADE IN PART IV

247 Where compensation is sought from Compass, Forrester Holdings, Hurford Holdings, Forrester Maritime, AT&B and Erik Monsen in the claims set out above, the compensation is to be calculated as follows:

247.1 As regards the failure to deliver up and the concealment of the Contingency Fund in February 1982, the Estate is entitled to compensation from Compass for

the value of the Contingency Fund at that date, which the Estate will say was approximately $7,325,000.

247.2 Alternatively, as regards the subsequent steps taken to misappropriate the Contingency Fund, the Estate is entitled to compensation in amounts to be determined upon the taking of the accounts and the inquiries claimed herein:

247.2.1 The Estate is entitled to compensation from Compass for the value of the Contingency Fund when it was transferred from CTC to the CF on or about 2 May 1984.

247.2.2 Alternatively, the Estate is entitled to compensation from Compass and Forrester Maritime for the value of the Contingency Fund when it was transferred from the CF to NWT and/or Forrester Maritime in late 1984 or early 1985.

247.2.3 Alternatively, the Estate is entitled to compensation from Compass, Forrester Holdings and AT&B for the value of the Contingency Fund when it was transferred from NWT to Forrester Holdings in September or October 1988.

247.2.4 Alternatively, the Estate is entitled to compensation from Erik Monsen, Forrester Maritime, Forrester Holdings and Hurford Holdings for the value of the Contingency Fund at the time of the failure to transfer it to the Estate and/or AJ Rederi from about late 1989-1990 and afterwards. Alternatively, the Estate is entitled to compensation from Erik Monsen, Forrester Maritime, and Hurford Holdings for the value of the Contingency Fund at the time of the failure to transfer it to the Estate and/or AJ Rederi upon the Estate intimating its claims. Alternatively, the Estate is entitled to compensation from Erik Monsen, and Hurford Holdings for the value of the Contingency Fund at the time of the transfer of the shares of Forrester Maritime to Ornate on 19 May 1994.

247.3 Alternatively, the Estate is entitled to compensation of $1,465,000 from Compass in respect of the payment of $1,465,000 to Monsen from the Contingency Fund on or about 21 October 1982. (This claim is made as an alternative to the claims in Part III and Part V in respect of the same sum.)

247.4 Alternatively, the Estate is entitled to compensation of $600,000 from Compass and Forrester Maritime in respect of the payment of $600,000 to Monsen from the Contingency Fund in the period 1985 to 1988. (This claim is made as an alternative to the claims in Part III in respect of the same sum.)

248 The Estate and/or AJ Rederi are entitled to and claim interest, except against Ornate, on all sums found due and owing to them as aforementioned:

248.1 Interest is claimed on the basis that:

248.1.1 the Defendants and/or each of them have acted in wilful default, and

248.1.2 the Contingency Fund (apart from the shares) while held by the Defendants was or ought to have been invested in investments such as LBIIF or in similar investments;

248.1.3 if the Contingency Fund had been transferred to the Estate after Jahre's death as it should have been it would have been converted to NOK and invested.

248.2 Accordingly, the Estate claims interest with yearly rests at a rate of 1% per annum above the US$ prime rate. Schedule 3 hereto provides details of those rates of interest. Alternatively, the Estate claims interest at such other rate as the Court deems appropriate or in the further alternative pursuant to statute.

249 In particular, on the basis that the Estate is entitled to compensation from February 1982 when Jahre died and the Contingency Fund (then worth approximately $7,325,000) was concealed from the Estate as aforementioned, the Estate claims interest from February 1982 on $7,325,000 with yearly rests at a rate of 1% per annum above the US dollar prime rate.

This amounts to interest of $26,736,250 to 30 June 2004, which with the said sum of $7,325,000 amounts to $34,061,250.

PART V

BREACH OF TRUST CLAIMS

(1) THE CONTINENTAL FOUNDATION - BREACH OF TRUST CLAIMS

THE ESTATE'S ENTITLEMENT TO SUE

250 By reason of the facts and matters pleaded in section III above, the assets of the CF, including the causes of action for the breaches of trust pleaded below, were at all material times held by the Trustees of the CF on resulting trust for the Estate.

251 The Estate is entitled at law to bring these claims in its own name as being beneficially interested in the proper performance by the surviving Trustee of the CF, namely Slatter, in circumstances where Slatter is disabled by his own participation in the said breaches of trust from pursuing the causes of action for breach of trust on behalf of the Estate.

PRESIDENT'S EXPENSES

252 From the establishment of the CF in 1976 to the transfer of the assets in CTC to Blue Range (the Panamanian corporation) in 1981, Monsen was paid $306,231 by CTC by way of so called "President's Expenses" in addition to receiving fees as a director of CTC. Thereafter from 1981 until the transfer of the assets of Blue Range to the AF in 1983, Monsen was paid so called "President's Expenses" by Blue Range in the sum of $100,000, in addition to receiving fees as a director.

253 These sums were not paid in respect of any services provided by Monsen, whether to the CF, CTC or Blue Range, but simply as he demanded. At all material times from 1976 to 1983 the assets of the CF held in CTC and thereafter in Blue Range were fully invested in professionally managed funds and accounts, principally at Lazards, for which substantial fees were paid.

254 As an Advisor to the Trustees of the CF Monsen owed, inter alia, the following fiduciary duties to the beneficiaries of the CF:

254.1 a duty to act bona fide in the best interests of the beneficiaries of the CF; and

254.2 a duty not to allow his personal interests to conflict with the interests of the beneficiaries of the CF.

255 The Estate's case is that the Advisors are liable to account to the Estate for breaches of the aforesaid fiduciary duties as if they were trustees of the CF (see Paragraphs 281 to 283 below).

256 In procuring and accepting the payment of these sums and thereby personally profiting from his position as the President of CTC, and Blue Range, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the CF in that:

256.1 Monsen knew that the assets in CTC and thereafter in Blue Range belonged directly or indirectly to the Trustees of the CF;

256.2 Monsen knew that he was not entitled to be paid the sums;

256.3 Monsen knew that it was contrary to the interests of the beneficiaries of the CF that he be paid sums of money to which he was not entitled.

257 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

THE MISAPPROPRIATION OF $1,465,000 FROM THE CONTINGENCY FUND

258 As pleaded in Paragraph 89 of Part III above, $1,465,000 was transferred by CTC from the Contingency Fund to Monsen on or about 21 October 1982.

259 Parts III and IV above set out the Estate's alternative claims in respect of this payment on the bases that the payment was a breach of the trusts upon which either the Retained Shares or alternatively the Contingency Fund were held.

260 The following Paragraphs set out the Estate's claim in the further alternative, namely that the payment of $1,465,000 was a breach of trust by the Trustees of the CF in which Monsen was a dishonest assistant. This claim is brought on the basis that, if the Contingency Fund was not held on trust for Jahre and/or AJ Rederi by virtue of its segregation from the other assets of CTC (as described in Part IV), then it formed part of the trust property of the CF held indirectly through CTC. This trust property was held on resulting trust for the Estate by virtue of the CF being void as set out in Part II above.

261 The sum of $1,465,000 was paid to Monsen by CTC as aforesaid on the strength of Monsen being the former holder of 20% of the shares of CTC, namely the Retained Shares. The payment was made from that part of CTC's assets known as the Contingency Fund. However:

261.1 The Retained Shares had been redeemed in 1979 by Monsen for the price of $14,250,000 which was agreed at the time, as set out in Paragraph 56.3 of Part III.

261.2 There was therefore no basis to entitle Monsen, in his capacity as a former shareholder, to any further part of CTC's assets after the redemption of the Retained Shares.

261.3 The payment caused a loss to the Trustees of the CF in that the Trust Shares of CTC, which were the CF's principal asset, were diminished in value.

262 Monsen procured the payment of the said sum of $1,465,000 from the Contingency Fund to himself:

262.1 At the time of the payment on or about 21 October 1982, Monsen was the President and a director of CTC. The Estate's case is that he procured that the payment be made to him by using his positions in CTC.

262.2 Further, at the time of the payment, the Trustees of the CF were the shareholders of 100% of the shares of CTC. The proposal to pay $1.4m to a former shareholder of CTC (i.e. Monsen) was discussed at a meeting of the CF on 8

October 1982 at which Monsen attended as an Advisor. Thus the Estate's case is that Monsen also used his position as Advisor to the CF to procure the payment of $1,465,000 to himself.

263 In procuring this payment to himself and thereby personally profiting from his positions in CTC and the CF, Monsen dishonestly breached his aforementioned fiduciary duties to the beneficiaries of the CF, as follows:

263.1 Monsen knew that the assets in the Contingency Fund were trust property not belonging to himself;

263.2 Monsen knew that he was not entitled to be paid the sum of $1,465,000;

263.3 Monsen knew that the payment to him of a sum of money to which he was not entitled was contrary to the interests of the beneficiaries for whom the assets in the Contingency Fund were ultimately held.

264 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default and to pay what is found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

265 Further, in permitting CTC to pay the said sum of $1,465,000 to Monsen, the Trustees of the CF committed a breach of trust, as follows:

265.1 In October 1982, the Trustees of the CF held 100% of the shares of CTC (i.e. the Trust Shares). They were thus in a position to control the company and prevent the wrongful distribution of its assets.

265.2 The Trustees of the CF knew that the payment was going to be made as it had been discussed at the aforementioned meeting of the CF on 8 October 1982. After that meeting, the Trustees of the CF permitted CTC to make the payment of $1,465,000 to Monsen on or about 21 October 1982. In so doing, the Trustees of the CF enabled CTC's assets to be improperly and unjustifiably distributed.

265.3 The Estate will say that in permitting CTC to make the payment to Monsen, the Trustees acted at the direction of Monsen and without any regard at all to the interests of the beneficiaries of the trusts upon which they held the Trust Shares.

266 Further, Monsen dishonestly assisted in the breach of trust committed by the Trustees of the CF, as follows:

266.1 Monsen used his position as an Advisor to direct the actions of the Trustees of the CF as set out in Paragraph 262.2 above. He thus procured and/or assisted in their breach of trust.

266.2 In so doing, Monsen acted dishonestly, and the Estate repeats the matters set out in Paragraph 263 above.

267 In the premises, Compass, as Monsen's personal representative, is liable to account to the Estate as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

(2) THE AALL FOUNDATION - BREACH OF TRUST CLAIMS

THE ESTATE'S ENTITLEMENT TO SUE

268 By an Agreement dated 16 November 2003 ("the Settlement Agreement") made between Bridge, the Estate, Slatter and Even Wahr-Hansen in compromise of the respective claims of the Estate and Bridge in proceedings before the Grand Court of the Cayman Islands in Cause 296 of 1994 ("the Cayman Proceedings"), but expressly without prejudice to the Estate's claims (pleaded in Parts I and II above) to beneficial ownership of the assets vested in the AF prior to the effective date of the Settlement Agreement (as therein defined), Bridge agreed to assign to the Estate the following claims ("the Breach of Trust Claims"):

> "Any claims for or in relation to or connected with breach of trust or any other breach of duty or liability to account, deliver up or return money or other property or pay equitable compensation or damages against the Monsen and Aall parties (which without prejudice to the generality of the foregoing shall include claims for

knowing receipt of trust property, dishonest assistance in breach of trust, procuring breach of trust, liabilities as constructive trustee, claims to trace property, liability to account on the basis of wilful default, breach of fiduciary duty, tortuous conspiracy to commit any of the foregoing and/or to defraud or harm, the claims made or arising from allegations set out or referred to in Cause No 275 of 1995, Cause no 543 of 1995, the English Proceedings and Cause no 41 of 2000) currently vested in Bridge as the Trustee of the AF whether these claims arise in relation to AF or the assets held at any time by AF or CF and the assets held or purportedly held by the CF at any time."

269 By an assignment dated 18 March 2004 Bridge assigned the Breach of Trust Claims to the Estate.

270 In the premises, without prejudice to its entitlement to the benefit of the Breach of Trust Claims by reason of the facts and matters pleaded in Part III above, the Estate is entitled to prosecute the Breach of Trust Claims and Bridge are joined as a co-Plaintiff for the avoidance of doubt.

THE JOINDER OF THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

271 In addition to assigning the Breach of Trust Claims to the Estate, pursuant to clause 10(1) of the Settlement Agreement Bridge assigned to the Estate "the Protective Rights", defined (in clause 1.16) as:

> "Bridge's rights (such as they may be) under such standstill agreements as may have been made between the Attorney General of the Cayman Islands and all or any of the Monsen and Aall Parties and ..., so far as Bridge may have any such rights, its rights in respect of actions commenced by or on behalf of the Attorney General of the Cayman Islands in respect of or connected with the breach of trust claims in relation to the Aall Foundation .. or the assets held or purportedly held by such foundations (including Cause No 275 of 1995 and Cause No 543 of 1995)."

272 By the assignment dated 18 March 2004 Bridge assigned the Protective Rights to the Estate.

273 The Estate's case is that by reason of the aforesaid assignment of the Protective Rights the Estate is entitled to the benefit of the standstill agreements entered into by the Attorney General on behalf of Bridge, and, in so far as necessary, is entitled to call for the transfer to the Estate of the legal interest in the standstill agreements in the event that the same remains vested in the Attorney General.

274 The Estate will say as follows:

274.1 In the course of a Beddoe application in August 1994 in Cause 277 of 1994 the Trustees of the AF, namely Bridge and Slatter, obtained a direction from the Grand Court that they were at liberty not to investigate the breach of trust claims that had been alleged by the Estate in the English Proceedings that had been issued earlier that year. The Trustees, however, indicated to the Court that they would investigate the limitation position in relation to the breach of trust claims.

274.2 Upon being advised that the limitation period on several of these claims may be due to expire, the trustees sought the assistance of the Attorney General to protect the limitation position relating to those breach of trust claims.

274.3 At the request of the Trustees of the AF the Attorney General agreed to issue protective writs ("the Protective Writs") in his capacity as protector of charity so as to preserve the limitation position in relation to the relevant breach of trust claims.

274.4 This mechanism of preserving the limitation position in relation to the breach of trust claims was authorised by an Order of the Grand Court dated 11th August 1995 entitling the Trustees to an indemnity from the trust assets for the costs of assisting the Attorney General in the preparation and issue of the Protective Writs.

274.5 Consequent to the issue of the Protective Writs, the Attorney General entered into standstill agreements with the Defendants to the Protective Writs, under which the limitation position in relation to the breach of trust claims was preserved.

274.6 In entering into the aforesaid standstill agreements, the Attorney General was either acting for the benefit of (a) the Trustees of the AF or (b) for the benefit of the charitable interests of the AF, and not for his own benefit.

274.7 In the premises, the Attorney General held the contractual rights he had acquired under the standstill agreements either for the benefit of the Trustees of the AF or for the benefit of the charitable interests of the AF.

274.8 In so far as the Attorney General held the benefit of the standstill agreements for the Trustees of the AF, the benefit has now been assigned to the Estate pursuant to clause 10(1) of the Settlement Agreement.

274.9 If, alternatively, the Attorney General held the benefit of the standstill agreements on trust for the charitable interests of the AF, the benefit of the standstill agreements formed part of the assets of the AF, and the Estate's case is that:

274.9.1 Bridge was entitled in 2003 to dispose of charity's beneficial interest in the standstill agreements as the sole trustee under the terms of the AF memorandum of agreement;

274.9.2 further, Bridge was entitled in 2003 to dispose of charity's beneficial interest in the standstill agreements by virtue of its appointment as the representative of the charitable interests of the AF by Order of the Honourable Chief Justice Smellie dated 23 March 2001 in Cause 277 of 1994 in succession to the Attorney General.

274.10 In the event, Bridge did in fact dispose of charity's beneficial interest in the standstill agreements pursuant to the terms of the Settlement Agreement with the Estate and the Estate is now entitled to call upon the Attorney General to transfer to it the legal interest in the standstill agreements.

275 The Estate requested the Attorney General to transfer the legal interest in the standstill agreements to the Estate in a letter from its Cayman attorneys dated 8 March 2004. In a letter dated 19 March 2004 the Attorney General declined to accede to the Estate's request.

276 In the premises the Estate is obliged to join the Attorney General as a Defendant for the purpose, in so far as necessary, of asserting its entitlement to the benefit of the standstill agreements.

THE ESTABLISHMENT OF THE AF

277 The AF was established by memorandum of agreement on 7 October 1982 between (i) Monsen, as Settlor, (ii) Slatter and Transworld, a company incorporated in the Turks and Caicos Islands and wholly owned and controlled by Slatter, as Trustees and (iii) Monsen, Kimiko Odagaki, and Gibson, as Advisors.

278 The initial property settled on the AF consisted of the sum of $1,000.

279 By Deed of Resettlement dated 8 October 1982 between (i) Slatter and Thorand, as trustees of the CF (ii) Slatter and Transworld, as Trustees of the AF and (iii) Monsen, Kindersley and Worsley, as Advisors to the trustees of the CF, the entire issued share capital of Blue Range, was settled on the AF.

280 By Deed of Appointment and Notice of Retirement dated 8 October 1982 Kimiko Odagaki and Gibson were replaced as Advisors to the Trustees of the AF by the appointment of Kindersley, Aleman, Hardman and Worsley.

ROLE AND FUNCTION OF THE ADVISORS

281 Under the terms of the AF memorandum of agreement the Advisors controlled the distribution, investment and management of the trust assets by the Trustees by reason of, inter alia, the following:

DISTRIBUTIONS TO CHARITY

281.1 Under clause 3 of the AF memorandum of agreement:

281.1.1 it was a condition of the making of any distribution of income or capital that the Trustees first give notice to the Advisors of their intention to make a distribution with an explanation as to the intended purpose or reason for such distribution;

281.1.2 unless shorter notice was accepted by the Advisors the Trustees were required to give thirty days notice of any distribution under $1,000, ninety days notice of any distribution in excess of $5,000 and one hundred and eighty days notice of any distribution in excess of $20,000; and

281.1.3 the written approval of the Advisors of any distribution either of income or capital made by the Trustees would be absolute and incontrovertible evidence that the distribution was a proper discharge of the Trustees' obligations under the terms of the AF memorandum of agreement (clause 3);

281.2 in the premises, on the true interpretation of the distribution provisions the Trustees were required to obtain prior written approval of any distribution of either income or capital;

281.3 alternatively, the Estate will say that each of the Advisors to the Trustees of the AF knew that in practice no distribution of income or capital would be made without the Advisors prior knowledge and approval. The Estate will rely upon the followings facts and matters:

281.3.1 each of the Advisors knew that the Trustees were required to give the Advisors notice of any intention to distribute either income or capital;

281.3.2 the Trustees could by obtaining the written approval of the Advisors prove that the distribution was a proper discharge of their obligations;

281.3.3 from the establishment of the CF, Slatter and his wholly owned company, Thorand, had at no point made any distribution without the prior approval in writing of the Advisors to the CF;

281.3.4 Slatter and his wholly owned company, Transworld, were appointed as Trustees of the AF;

281.3.5 on 21 November 1985 Slatter granted AGI an option to acquire for the sum of $5,000 the entire issued share capital of the successor trustee to Transworld, namely Transglobal, a company incorporated in the Turks and Caicos Islands and wholly owned and controlled by Slatter;

281.3.6 on 11 May 1990 Transglobal was replaced as a trustee of the AF by AT&B, a wholly owned subsidiary of AGI, and controlled at that time, like AGI, by Erik Monsen;

281.3.7 the Advisors had in practice the ability to remove any Trustee by the exercise of the power to appoint new trustees;

281.3.8 the Advisors had a power to recommend charitable objects to the Trustees; and

281.3.9 throughout the period which is the subject matter of the Breach of Trust claims set out herein, the Trustees at no point made any distribution to charity without the prior approval in writing of the Advisors to the AF.

INVESTMENT AND MANAGEMENT

281.4 Under clause 5 of the AF memorandum of agreement the Trustees were obliged to invest the Trust Fund solely in investments that would be authorised for life insurance companies under the laws of the Province of Ontario, provided that investments outside that class were permitted with the written approval of the Advisors;

281.5 Under clause 7 of the AF memorandum of agreement the Trustees had unlimited discretion in the investment and management of the Trust Fund, only with the written approval of the Advisors;

281.6 The Estate will say that each of the Advisors to the Trustees of the AF knew that from the establishment of the AF until the incapacity of Monsen in or around late

1989, in practice the investment and management of the Trust Fund was controlled by Monsen. The Estate will rely upon the following facts and matters:

281.6.1 each of the Advisors knew that the Trustees were required to obtain the written approval of the Advisors for any exercise of the investment and management powers under clause 5 and 7 of the AF memorandum of agreement;

281.6.2 from the establishment of the CF, Slatter and his wholly owned company, Thorand, had at no point exercised any investment of management power without the prior approval in writing of the Advisors to the CF;

281.6.3 Slatter and his wholly owned company, Transworld, were appointed as Trustees of the AF;

281.6.4 on 21 November 1985 Slatter granted AGI, which was controlled by Monsen at the time, an option to acquire for the sum of $5,000 the entire issued share capital of the successor trustee to Transworld, namely Transglobal, a company incorporated in the Turks and Caicos Islands and wholly owned and controlled by Slatter;

281.6.5 on 11 May 1990 Transglobal was replaced as trustee of the AF by AT&B, a wholly owned subsidiary of AGI, and controlled at this time, like AGI, by Erik Monsen;

281.6.6 the Advisors had in practice the ability to remove any Trustee by the exercise of the power to appoint new trustees;

281.6.7 throughout the period which is the subject matter of the Breach of Trust claims set out herein, the Trustees at no point exercised any investment or management power without the prior approval in writing of the Advisors to the AF; and

281.6.8 from the establishment of the AF until his incapacity in or around late 1989, and to the knowledge of each Advisor at any material time, all decisions as to the investment of funds by the AF requiring the approval of the Advisors were taken by Monsen, and implemented and approved, without question or investigation, by the Trustees and Advisors.

THE ADVISORS' FIDUCIARY DUTIES

282 In controlling the distribution, investment and management of the Trust Fund and in exercising the powers vested in them under the terms of the AF memorandum of agreement, the Advisors owed, inter alia, the following fiduciary duties to the beneficiaries of the AF:

282.1 a duty to exercise their powers in good faith and in the best interests of the beneficiaries of the AF;

282.2 a duty not to allow their personal interests to conflict with the interests of the beneficiaries of the AF.

283 The Estate's case is that the Advisors are liable to account to the Estate for breaches of the aforesaid fiduciary duties as if they were trustees of the AF.

THE ACQUISITION BY THE AF OF SHARES IN AGI

284 In or around early January 1983 AGI was incorporated in the Cayman Islands on the instructions of Monsen. The initial share capital of AGI was $900,000 divided into 600,000 ordinary shares of $1.00 each and 300,000 preference shares of $1.00 each.

285 AGI was ostensibly incorporated because it had been determined by Monsen that the non-Japanese assets of the holding company for the Monsen family business, Aall & Co Limited Inc ("Aall & Co"), a company incorporated in Panama, and operating through a branch in Japan, should be separated from the Japanese assets of Aall & Co.

286 At some point unknown to the Estate, but it is assumed prior to the incorporation of AGI, Monsen determined that the AF should acquire the 300,000 preference shares in AGI for a sum of $9.6 million and that its money should be used by AGI in part to buy shares in Aall & Co. The Estate will rely upon the following:

286.1 Aall & Co was the holding company of the Monsen family businesses. Its shares prior to the incorporation of AGI were held by Monsen (namely the shares acquired by Harmon (Cayman) as set out in Part III above), or directly or indirectly owned by members of his family, the two senior employees of Aall & Co and by AT, the trust established by Monsen for the benefit of his family;

286.2 On 20 January 1983 Gibson, acting on behalf of Monsen, wrote a memorandum to the Trustees and Advisors of the AF setting out in detail decisions which it is to be inferred had already been taken, namely that:

286.2.1 the AF would acquire the 300,000 preference shares in AGI for a sum of $9.6 million;

286.2.2 AT would acquire the 600,000 ordinary shares in AGI in exchange for contributing 1025 ordinary shares of Aall & Co which were held by or on behalf of the Trustee of AT;

286.2.3 AGI would acquire the balance of the Aall & Co shares from the minority shareholders, namely the nominee companies of Monsen, Erik Monsen and Tom Monsen, and of two senior employees of Aall & Co, Frank Naito and Jan Helgeson;

286.2.4 AGI would pay the minority shareholders $13,500 per share and pay the purchase consideration in accordance with agreements that had already been reached.

286.3 There had been no meeting of the Trustees and Advisors prior to 25 January 1983 at which the question of the acquisition of shares in AGI by the AF had been discussed or considered in detail.

286.4 Prior to the meeting of the Trustees and Advisors of AF held on 25 January 1983 a draft subscription for 300,000 preference shares in AGI by the AF was prepared.

286.5 On 24 January 1983 prior to the meeting of the Trustees and Advisors of AF held on 25 January 1983, the sum of $9.6 million was recorded in the Journal of the AF as having been received by AF for the purposes of subscribing for shares in AGI.

286.6 From the establishment of the AF until his incapacity in or around late 1989 all decisions as to the investment and management of funds by the AF requiring the approval of the Advisors were made by Monsen, and implemented and approved, without question or proper investigation by the Trustees and Advisors.

287 On 25 January 1983 there was a meeting of the Trustees and Advisors of the AF attended by Slatter, Aleman, Hardman, Kindersley, Worsley and Gibson. At this meeting the acquisition by AF of the 300,000 preference shares in AGI was purportedly considered by the Trustees and Advisors and then approved by the Advisors of the AF.

288 On dates unknown to the Estate, and to the best of the Estate's knowledge, the following transactions occurred:

288.1 The Trustees of the AF subscribed for 300,000 preference shares in AGI for a sum of $9.6 million.

288.2 The Trustee of the AT, Transworld Trustcompany NV, a Dutch Antilles company, subscribed for 600,000 ordinary shares in AGI in consideration for the transfer to AGI of 1025 shares in Aall & Co.

288.3 AGI acquired 475 shares in Aall & Co held by Monsen, and directly or indirectly owned by Erik Monsen, Tom Monsen, Frank Naito and Jan Helgeson. Until discovery herein the Estate is unable to plead the exact number of shares in Aall & Co that were held by these individuals respectively.

288.4 To the best of the Estate's knowledge sums amounting to $6,412,500 were transferred, it is presumed by AGI, as follows:

288.4.1 $675,000 was transferred to Intermarine Investments SA c/o AT&B for the benefit of Frank Naito.

288.4.2 $337,500 was transferred to Zeta Limited (Bahamas) c/o Bank of America Trust and Banking Corporation (Bahamas) Limited for the benefit of J. Helgeson.

288.4.3 $2,025,000 was settled on the Trustees of the Aall Group Pension Plan in accordance with agreements with Frank Naito and Jan Helgeson.

288.4.4 $2,025,000 was transferred to Harmon Cayman and then to Transworld Trustcompany NV on the instructions of Monsen and held by Transworld Trustcompany NV with a view to transferring the same to Bettum. Thereafter in May 1983 this sum was purportedly settled by Monsen on Transworld Trustcompany NV as the trustee of the AT.

288.4.5 $1,350,000 was transferred to Alison Corporation c/o BankAmerica Trust and Banking Corporation for the benefit of Erik Monsen and Tom Monsen.

288.5 Aall & Co purportedly declared a dividend of its assets other than the Japanese assets (which included Aall Shokai K.K.) to AGI.

BREACH OF TRUST BY THE TRUSTEES

289 The subscription for 300,000 preference shares in AGI for $9.6 million by the Trustees of the AF was plainly contrary to the interests of the beneficiaries of the AF and amounted to a breach of trust. The best particulars that the Estate can give prior to discovery are as follows in that:

289.1 prior to the meeting on 25 January 1983 at which the Advisors approved the subscription by the Trustees for the shares in AGI, a memorandum was prepared by Slatter, on information provided by or on behalf of Monsen, which purported to analyse the merits of the investment by the AF in AGI.

289.2 The memorandum identified:

289.2.1 that Slatter could only estimate the book value of Aall & Co as being $15 million;

289.2.2 that whilst substantial Japanese taxes would arise in the event that any of the Japanese properties were sold, the current value of those properties was "believed to be many times the book value"; and

289.2.3 that property in the Cayman Islands was conservatively worth $4 million more the book value.

289.3 It is to be inferred from the terms of this memorandum:

289.3.1 that Slatter was not provided with exact figures to enable him to determine whether the price of $9.6 million was a fair and proper price for the shares in AGI which the AF was to acquire;

289.3.2 that the valuation of the assets of Aall & Co by Slatter was rudimentary at best;

289.3.3 that no independent valuation of the assets of Aall & Co had been prepared;

289.3.4 that no attempt had been made to value the business of Aall & Co as a going concern;

289.3.5 that no attempt had been made to establish whether the acquisition of shares in AGI was likely to produce income to the AF by way of dividends;

289.3.6 that no attempt had been made to analyse the business that AGI was to be engaged in to determine whether the investment in the shares was likely to be profitable;

289.3.7 that no attempt had been made to consider whether it was appropriate for the AF to provide the financing for AGI to purchase the shares in Aall & Co owned by Monsen family members and their two senior employees;

289.3.8 that no attempt had been made to consider the disparity between the price that the AF was paying for its shares and either (a) the value of the assets being contributed by AT for its shares or (b) the price at which the shares of the Monsen family members were being acquired.

289.4 It was obvious on the information before the Trustees and Advisors at the meeting on 25 January 1983 that the AF should not have been paying $9.6 million to acquire a minority interest in AGI in circumstances where:

289.4.1 AT was contributing assets worth only some $10 million to acquire two thirds of the shares in AGI; and

289.4.2 AGI was going to acquire one third of the shares of Aall & Co from the Monsens and their employees for $6,412,500.

289.5 There was no basis upon which the Trustees or Advisors could be satisfied that the price of $9.6 million was fair and proper in that:

289.5.1 the AF was paying considerably more for the AGI shares than the value of the assets of Aall & Co justified;

289.5.2 the AF was paying considerably more for the AGI shares than even the value placed by the Monsens on their own shares in Aall & Co justified;

289.5.3 the evidence to support the price was incomplete, unverified, and based on assumptions; and

289.5.4 the impact of Japanese taxation upon the value of the assets of Aall & Co was entirely unclear.

289.6 Further there was no basis upon which the Trustees and Advisors could be satisfied that the acquisition of shares in AGI was or was likely to be a good investment in that:

289.6.1 no attempt had been made to ascertain the value of Aall & Co as a going concern;

289.6.2 no attempt had been made to determine whether the AF was likely to receive income from its shares by way of dividend;

289.6.3 no attempt had been made to determine whether AGI was likely to be profitable;

289.6.4 no consideration had been given to the fact that there was no market for the shares in AGI, being the shares in a private Monsen family company.

289.7 Further there was no basis upon which the Trustees and Advisors could have properly concluded that the acquisition of shares in AGI was in the interests of the beneficiaries of the AF:

289.7.1 an investment in the Monsen family business was an inappropriate investment for what was believed at the time to be a charitable foundation at the time holding assets generating substantial income;

289.7.2 the acquisition of shares in AGI placed the Trustees in a position of irreconcilable conflict of interest as shareholders in AGI with obligations to protect the interests of the beneficiaries of the AF in circumstances where:

(i) one of the trustees of the AF, Transworld, was not only wholly owned and controlled by its other trustee, Slatter, but was also the trustee of the majority shareholder in AGI, AT;

(ii) Aall & Co and AGI were controlled by Monsen and his nominees;

(iii) Monsen was, it is assumed, a beneficiary of AT, an Advisor to the AT, a director of AGI and a director of Aall & Co, at the same time as being the Advisor to the AF who made the decisions as to the distribution, investment and management of the Trust Fund.

289.7.3 In the premises, the Trustees of the AF were unable to act in the best interests of the beneficiaries of the AF as regards any dealing with the AGI shares.

289.8 Further there was no basis upon which the Trustees and Advisors can have properly concluded that it was appropriate to deal with the assets of the AF in a manner directly benefiting Monsen, his family, and his associates on the basis of partial and incomplete information provided by or on behalf of Monsen.

289.9 The Estate will rely upon the following further facts and matters in support of the allegation that the subscription for the shares in AGI was a breach of trust by the Trustees:

289.9.1 The minutes of the meeting of the Trustees and Advisors held on 25 January 1983 record that the Advisors' approval to subscribe for shares in AGI was subject to the assurance by AT that a confidential study be undertaken as to the Japanese tax implications and effects on Aall & Co with specific attention to the real property holdings in Japan.

289.9.2 Having recognised that there was insufficient information in relation to the impact of Japanese taxation on the value of Aall & Co, the Trustees and Advisors should at the very least have obtained such information prior to considering whether to subscribe for the shares in AGI.

289.9.3 In the event on 1 March 1983 Slatter wrote to Kindersley, with a copy to Monsen, requesting, as agreed at the meeting on 25 January 1983, that Kindersley identify two or three Japanese tax experts and make a general enquiry as to the Japanese tax implications and effects relating to the disposition of real property by Aall & Co. To the best of the Estate's knowledge no further action was taken and no report was ever produced on the aforesaid Japanese tax implications.

289.10 In the light of the matters set out in Paragraphs 286 and 289.1 to 289.8 above, the Estate will say:

289.10.1 that the meeting on 25 January 1983 gave no consideration, alternatively no genuine consideration, to the question of whether the Trustees of the AF should subscribe for shares in AGI;

289.10.2 that the meeting on 25 January 1983 gave no genuine consideration as to whether the subscription for the shares in AGI was in the interests of the beneficiaries of the AF;

289.10.3 that the purpose of the meeting on 25 January 1983 was simply to endorse a decision that had already been taken by Monsen that the AF would subscribe for shares in AGI;

289.10.4 that the Trustees of the AF were directed by Monsen to subscribe for shares in AGI.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY MONSEN

290 In directing the Trustees to subscribe for shares in AGI for the sum of $9.6 million, and in approving the purported decision of the Trustees to subscribe, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently. The Estate relies upon the following particulars of that dishonesty:

290.1 Monsen knew that he controlled the investment and management of the Trust Fund;

290.2 Monsen further knew that any decision which he made as to the investment of the Trust Fund would be implemented by the Trustees with the approval of the Advisors;

290.3 Monsen knew that the acquisition of shares in AGI was not in the interests of the beneficiaries of the AF or alternatively recklessly disregarded the interests of the beneficiaries of the AF in that:

290.3.1 Monsen knew that the price that the AF was paying for the acquisition of shares was excessive;

290.3.2 Monsen knew that the Trustees had no proper basis upon which to judge that this price was appropriate or whether the AF should even consider investing $9.6 million in AGI shares;

290.3.3 Monsen knew that there was no market for the shares in AGI that the AF was to acquire;

290.3.4 Monsen knew that the Trustees would be placed in an irreconcilable position of conflict by acquiring shares in AGI;

290.3.5 Monsen knew that it was inappropriate for the AF to invest in unmarketable shares in a private family company, alternatively gave no

thought whatsoever as to whether that investment was in the interests of beneficiaries of the AF.

290.4 The Estate will say that it is to be inferred that Monsen directed the Trustees to subscribe for shares in AGI for the improper collateral purpose of:

290.4.1 paying off his associates, Frank Naito and Jan Helgeson;

290.4.2 funding Bettum's move from Norway which was then in contemplation;

290.4.3 transferring money from the AF to his children; and

290.4.4 obtaining a cash transfusion for the Monsen family businesses.

290.5 As a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put himself in a position whereby his personal interests conflicted with the interests of the beneficiaries of the AF, Monsen knew that it was improper to direct the Trustees to subscribe in AGI in circumstances where:

290.5.1 he and his family stood to gain personally from that investment; and

290.5.2 he would be placed in an immediate and irreconcilable position of conflict by reason of his interest as a beneficiary of and Advisor to the majority shareholder AT.

291 The Estate will rely upon the further claims pleaded against Monsen in this Part of the Statement of Claim and the facts and matters pleaded in Paragraphs 442 to 487 below in further support of the allegations that Monsen acted dishonestly in directing the Trustees to subscribe for shares in AGI and in approving that subscription. The Estate will say that there was a pattern of dishonest conduct by Monsen and Erik Monsen in relation to the affairs of AF which it is entitled to rely upon in support of the specific allegations of dishonesty made in respect of the transactions in relation to which it seeks to recover compensation in this action.

292 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default, and/or to account for the profits made by Monsen from his dishonest breach of fiduciary duty and to pay the sums found to be due on the taking of those accounts and/or is liable to pay equitable compensation to the Estate for breach of fiduciary duty.

293 Further and in the alternative, by reason of the facts and matters pleaded above in Paragraphs 289 to 290, Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and Compass, as Monsen's personal representative, is liable to account as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST ASSISTANCE BY AGI

294 As set out above AGI issued the AF 300,000 preference shares upon payment by the AF of $9.6 million. In so doing AGI dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen to commit a dishonest breach of fiduciary duty in that:

294.1 the subscription by the AF for shares in AGI was a breach of trust as pleaded in Paragraph 289 above;

294.2 in directing the Trustees of the AF to subscribe for shares in AGI and in approving that subscription, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently, as pleaded in Paragraph 290 above;

294.3 Monsen was the directing mind and will of AGI for the purpose of the subscription by AF for shares, and his knowledge is accordingly to be attributed to AGI; the Estate will rely upon the facts and matters pleaded in Paragraphs 281.6, 285 to 286 and 289 to 290 above.

294.4 Monsen had the knowledge pleaded in Paragraph 290 above; and

294.5 in the premises acceptance by AGI of the sum of $9.6 million from the Trustees of the AF and the issue to the AF of preference shares was dishonest, and facilitated the breach of trust by the Trustees of the AF and the breach by Monsen of his fiduciary duties.

295 In the premises AGI is liable to account to the Estate as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

THE KOBE PROPERTY TRANSACTION

296 Prior to the establishment of the AF, the CF had from 1978 provided support by way of donations to an educational charity known as United World Colleges ("UWC"). At a point unknown to the Estate, but by October 1982, Monsen commenced discussions with representatives of UWC with a view to persuading UWC to establish a UWC college in Japan.

297 From October 1982 to November 1985 Monsen and others on his behalf, namely Kindersley, Hardman and Erik Monsen, continued to discuss the establishment of a UWC college in Japan with both Sir Ian Gourlay, the UWC director general, and with the UWC representatives in Japan, including one Mr Morita.

298 Monsen's initial proposal was to give land owned by Aall & Co in Kobe to UWC upon which to build a UWC college. The land in question (the "Kobe property") had been acquired by Aall & Co in 1973. It consisted of some 60 acres set in a valley with very steep sides and crossed by a major power line. The Kobe property was subject to significant planning restrictions in that it could not be developed for residential purposes, but only for, amongst other things, schools, temples and retirement homes.

299 The Japanese representatives of UWC were unenthusiastic about the proposal to establish a college in Japan offering the international baccalaureate.

300 Notwithstanding that lack of enthusiasm Monsen continued to seek the agreement of UWC to establish a college in Japan on the Kobe property. By November 1985 an alternative

plan to the donation of the Kobe land to UWC had been devised. Under this plan Aall & Co would have donated the Kobe property to the Kobe Municipality, which would then lease the Kobe property to UWC.

301 By February 1986 it had become apparent that a donation of the Kobe property to the Kobe municipality would not be possible because of a potential conflict with the Central Government educational policy. Accordingly a yet further plan was suggested by Hardman, on Monsen's behalf, that, inter alia:

301.1 AF would establish a property company which would purchase the Kobe property from Aall & Co for a consideration equal to the original acquisition cost in JPY, together with any tax-allowable additions, plus a sum sufficient to absorb the accumulated losses in Japan, including an estimate of the 1986 loss;

301.2 AF would then seek to compensate AGI in the Cayman Islands for disposing of the Kobe property, bearing in mind that the potential value of the Kobe property could, so it was said, be very much higher than the consideration proposed; the extent of the compensation would be a matter for negotiation;

301.3 Once AF owned the Kobe property, it would lease the whole property to UWC for five years to give UWC time to finalise plans for the building of a college. An extension to that lease to enable building work would be granted, and on the opening of the college, the land required by UWC would be gifted by the AF to UWC, or a further lease granted;

301.4 In the event that UWC did not wish to build on the land, then other uses of the Kobe property would be explored.

302 On 8 February 1986 a written valuation of the Kobe property was received by Aall & Co which indicated that the market value of the Kobe property, assuming that the planning restrictions were removed at some point in the future, was JPY1,634 million ($8,539,284 at the then prevailing rate of exchange).

303 On 10 February 1986 there was a meeting of the Trustees and Advisors of the AF at Lyford Cay in the Bahamas. The meeting was attended, inter alia, by:

303.1 Slatter and Transglobal as the Trustees of the AF;

303.2 Monsen, Gibson, Kindersley, Worsley and Tove Brown as Advisors; and

303.3 Erik Monsen and Hardman as Governors.

304 Tove Brown had been appointed an additional Advisor to the Trustees of the AF on 8 February 1986. Erik Monsen had been appointed a Governor of the AF at some point in 1985.

305 The minutes of this meeting record:

305.1 that Hardman reported that it was far from certain that the project to establish a UWC college in Japan would proceed. The UWC officials in London were enthusiastic but without the cooperation and support of the Japanese representatives of UWC the project could not proceed;

305.2 that Monsen advised that notwithstanding the lack of a decision to proceed with the UWC Japan project he and the other Advisors recommend that AF proceed with the purchase of the Kobe property as a possible site for a UWC college;

305.3 that it was agreed after discussion that the Kobe property should be purchased for $21 million; and

305.4 that the Trustees were instructed to proceed with the purchase in consultation with Gibson.

306 On 14 February 1986 Slatter met with Gibson, Erik Monsen and Ian Cucknell, of Aall & Co, to discuss the purchase of the Kobe property by the AF. At that meeting it was apparently agreed that advice was needed as to valuation, tax and legal matters.

307 Following this meeting on 24 February 1986 Ian Cucknell wrote to S.Soma, a Japanese tax advisor, enclosing the valuation referred to in Paragraph 301 above, seeking advice on the market value of the Kobe property and indicating:

307.1 that it was likely that the Kobe property would be sold to a related foreign group for approximately JPY 1,000 million depending on tax advice;

307.2 that it was the intention of the new land owner to lease the Kobe property to a non-profitable educational facility for a nominal yearly sum and allow them to build a school and dormitory facility for Japanese and foreign students;

307.3 that the lease would be for an unrestricted period but if the property ceased to be used as a school, the owner would use the property as an old people's home with a geriatrics clinic.

308 On 7 March 1986 S.Soma advised in reply, inter alia, that:

308.1 under Japanese tax law, the sale of the property was required to be made on an arm's length basis even if the parties are related;

308.2 that the fair market value of the Kobe property was primarily determined by reference to comparable sales;

308.3 that the appraised value of JPY 1,634 million assumed that the Kobe property would be developed as residential land and the comparables used those of residential land in the vicinity of the Kobe property which had been developed;

308.4 that the appraiser's approach was not necessarily appropriate in circumstances where the development of the land was for a non-profitable educational facility or an old people's home;

308.5 that the estimated value of JPY 1,000 million was based on reasonable comparables;

308.6 there was a good prospect that the tax authorities would accept that the true market value of the Kobe property was JPY 1,000 million ($5,541,000 at the then prevailing rate of exchange); and that

308.7 capital gains on any subsequent sale would be paid whether the land owner was a Japanese corporation or a foreign corporation.

309 On 27 March 1986:

309.1 Aall & Co agreed to sell the Kobe property to Sterling Trust Company ("Sterling") for the sum of JPY 1,000 million. Sterling had been incorporated in the Turks and Caicos Islands in June 1983. It was a wholly owned subsidiary of Blue Range. Sterling had been identified as the company through which the AF would effect the purchase of the Kobe property from Aall & Co;

309.2 on the instructions of Slatter the sum of $5,540,166.20 was debited from a call account in the name of Blue Range at AT&B (no. 1-392) and credited, via an account in the name of Sterling, to an new account in the name of Aall & Co (Japan) at AT&B (no. 1-455).

310 On 18 August 1986 the Advisors to the AF, namely Monsen, Gibson, Kindersley, Worsley, and Tove Brown signed a written approval of the acquisition by the AF of the Kobe property for the sum of $21 million.

311 On 28 August 1986 Slatter instructed AT&B to transfer assets (including cash) to the value of $15,459,833.80, purportedly representing the balance of the purchase price of the Kobe property, from Blue Range to AGI.

312 On 9 September 1986 a draft letter to UWC prepared by Gibson, on the instructions of Monsen, was reviewed at a meeting of the Trustees and Advisors of the AF. The letter requested a response from UWC in relation, it is assumed, to the proposal that the UWC establish a college on the Kobe property. The meeting was attended, inter alia, by:

312.1 Slatter and Transglobal as the Trustees of the AF;

312.2 Monsen, Gibson, Kindersley, Worsley and Tove Brown as Advisors; and

312.3 Erik Monsen and Hardman as Governors.

313 By January 1988, after meetings at the Kobe property in Japan in 1987 with UWC officials, attended by Monsen and Erik Monsen, it became clear that UWC would not take up any offer in relation to the Kobe property.

BREACH OF TRUST BY THE TRUSTEES

314 The decision by the Trustees of the AF to acquire the Kobe property for the sum of $21 million was plainly contrary to the interests of the beneficiaries of the AF and amounted to a breach of trust in that:

314.1 there was no reason why the AF should pay anything to acquire the Kobe property in circumstances where the original proposal was that the Kobe property simply be given away by Aall & Co;

314.2 there was no reason for the AF to commit to acquiring the Kobe property in order to lease it to UWC in circumstances where UWC had not accepted a prior offer of a gift of the Kobe property and where it was obvious that there was a very real possibility that UWC would not wish to establish a college in Japan on the Kobe property;

314.3 there was no information before the meeting on 10 February 1986 upon which the Trustees could determine what an appropriate price to pay for the Kobe property would have been;

314.4 the figure of $21 million was set by Monsen without explanation; the Estate will rely upon the fact that Slatter prepared a memorandum in the summer of 1992 for the purposes of discussing the past transactions of the AF and was unable to state how the figure of $21 million was arrived at;

314.5 in the premises there was no proper basis upon which the Trustees or Advisors could be satisfied that the value of the Kobe property was $21 million or that it should be acquired for that sum;

314.6 further there was no basis upon which the Trustees could have accepted that the Advisors could properly approve the acquisition of the Kobe property for $21 million;

314.7 the Estate will say there was no basis upon which the Trustees and Advisors could have properly concluded that it was appropriate to acquire the Kobe property in circumstances where:

314.7.1 the suggestion that the AF should acquire the Kobe property had been made by or on behalf of Monsen;

314.7.2 the beneficiaries of the transaction were companies controlled by Monsen and Erik Monsen, namely AGI and Aall & Co, in which the Monsen family trust, AT, was the majority shareholder;

314.7.3 Monsen, Erik Monsen and Tove Brown were beneficiaries of AT;

314.7.4 the price at which the AF should acquire the Kobe property was set by Monsen; and

314.7.5 it was plainly in the interests of Monsen, Erik Monsen and Tove Brown for AGI and Aall & Co to benefit; and further

314.7.6 it was plain from the memorandum written by Hardman in February 1986 referred to in Paragraph 301 above (which it is to be inferred was read by the Trustees and Advisors), that Monsen was seeking to obtain a collateral benefit to Aall & Co by the sale of this land to the AF, in that the initial consideration suggested by Hardman, was to include a sum to absorb the business losses of Aall & Co in Japan.

314.8 Slatter knew prior to the execution of the contract with Aall & Co that the market value of the Kobe property suggested by Aall & Co was only $5,540,166.20 and that there was no justification for paying US$21 million for the Kobe property.

314.9 Slatter knew prior to the transfer to AGI of assets to the value of $15,459,833.80 in August 1986 that the Japanese authorities had accepted that the market value of the Kobe property was only $5,540,166.20.

315 Further, in agreeing to pay Aall & Co the sum of $5,540,166.20, and to pay AGI the sum of $15,459,833.80 in the Cayman Islands the Trustees committed further breaches of trust in that:

315.1 the under declaration of the price that Aall & Co was in fact being paid for the Kobe property by $15,459,833.80 amounted to a fraud on the Japanese revenue authorities in which the Trustees of the AF participated;

315.2 participation in this fraud exposed Sterling to a secondary tax liability under Article 39 of the National Tax Collection Law in the event that the tax fraud was discovered;

315.3 the under declaration of the price that Aall & Co in fact received exposed Sterling to a wholly unnecessary capital gains liability in the event of any future sale at a price in excess of JPY 1,000 million.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY MONSEN

316 In directing the Trustees of the AF to acquire the Kobe property for $21 million, and in approving the purported decision of the Trustees to acquire the Kobe property, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently. The Estate relies upon the following particulars of that dishonesty:

316.1 Monsen knew that he was in a position to direct the Trustees of the AF to acquire the Kobe property by reason of the facts and matters pleaded in Paragraph 281 above;

316.2 Monsen further knew that any decision which he made in relation to the Kobe property would be implemented by the Trustees and approved by the Advisors;

316.3 Monsen knew that the acquisition of the Kobe property by the AF was not in the interests of the beneficiaries of the AF in that:

316.3.1 Monsen knew that there was no reason whatsoever for the Trustees of the AF to consider acquiring the Kobe property other than for the purpose of donating the same to UWC;

316.3.2 Monsen knew that it was entirely uncertain whether UWC would establish a college in Japan;

316.3.3 Monsen knew that the planning restrictions upon the Kobe property rendered it highly undesirable to prospective purchasers;

316.3.4 Monsen knew, prior to the meeting of the Trustees and Advisors on 10 February 1986, that the Kobe property had been valued in the amount of JPY 1,634 million ($8,539,284), on the basis that the planning restrictions would be removed at some point in the future;

316.3.5 Monsen therefore knew that the price that he had set of $21 million massively overstated the actual value of the Kobe property, and that there was no honest justification for his instructing the Trustees that $21 million was a proper price;

316.3.6 It is to be inferred that Monsen deliberately withheld the fact of this valuation from the Trustees of the AF;

316.3.7 Monsen knew that the Trustees had no proper basis upon which to judge that the price of $21 million was appropriate.

316.4 The Estate will say that Monsen directed the Trustees to acquire the Kobe property in order to misappropriate the assets of the AF for the benefit of companies that he controlled with Erik Monsen, namely Aall & Co and AGI, in which the Monsen family trust, AT, was the majority shareholder.

316.5 As a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put himself in a position whereby his personal interests conflicted with the interest of the beneficiaries of the AF, Monsen knew that it was improper to direct the Trustees to acquire the Kobe property in circumstances where he and his family stood to gain personally from that acquisition by virtue of their interest in the AT.

316.6 In approving the acquisition by the Trustees of the AF of the Kobe property by payment of $5,540,166.20 to Aall & Co and $15,459,833.80 to AGI, Monsen knew that, alternatively, recklessly disregarded whether the AF was participating in a tax fraud, and was exposing itself to wholly unnecessary tax penalties and liabilities.

317 The Estate will rely upon further claims pleaded against Monsen in this section of the Statement of Claim and on the facts and matters pleaded in Paragraphs 442 to 487 below in further support of the allegations that Monsen acted dishonestly in directing the Trustees to acquire the Kobe property and in approving that acquisition.

318 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default and to pay the sums found to be due on the taking of that account, and/or to pay equitable compensation to the Estate for breach of fiduciary duty. The compensation payable to the Estate is to be calculated by reference to the loss caused to the AF by the acquisition of the Kobe property, namely:

318.1 the loss of $21 million held by the AF in Blue Range – the Estate's case is that Blue Range held its assets on bare trust for the AF as its nominee in that the

Trustees of the AF, and directors of Blue Range, treated the assets held by Blue Range as if they were the assets of the AF;

318.2 in the alternative, the diminution in the value of the shares held by the AF in Blue Range.

319 Further and in the alternative by the reason of the facts and matters pleaded above in Paragraph 316, Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and Compass, as Monsen's personal representative, is liable to account as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY TOVE BROWN

320 In approving the acquisition by the Trustees of the AF of the Kobe property in August 1986 Tove Brown dishonestly breached the fiduciary duties that she owed to the beneficiaries of the AF, and exercised the powers vested in her as an Advisor fraudulently.

321 The Estate will say that Tove Brown either knew, or recklessly disregarded that:

321.1 there had been no information either before the meeting on 10 February 1986 or provided at any later date upon which to determine what an appropriate price to pay for the Kobe property would have been;

321.2 the figure of $21 million had been set by Monsen without explanation;

321.3 there was accordingly no proper basis upon which she, or any of the Advisors or Trustees, could be satisfied that the value of the Kobe property was $21 million;

321.4 there was no basis upon which to conclude that it was appropriate for the AF to acquire the Kobe property in circumstances where:

321.4.1 the original proposal was that the Kobe property simply be given away by Aall & Co;

321.4.2 there was a very real possibility that UWC would not wish to establish a college in Japan on the Kobe property;

321.4.3 the suggestion that the AF should acquire the Kobe property had been made by or on behalf of Monsen;

321.4.4 the beneficiaries of the transaction were companies controlled by Monsen and Erik Monsen, namely AGI and Aall & Co, in which the Monsen family trust, AT, was the majority shareholder;

321.4.5 Tove Brown herself was a beneficiary of the AT;

321.4.6 the price at which the AF should acquire the Kobe property was set by Monsen;

321.4.7 it was plainly in the interests of Monsen and his family for AGI and Aall & Co to benefit; and

321.4.8 it was plain from the memorandum written by Hardman in February 1986 referred to in Paragraph 301 above (which it is to be inferred was read by the Trustees and Advisors), that Monsen was seeking to obtain a collateral benefit to Aall & Co by the sale of this land to the AF, in that the initial consideration suggested by Hardman, was to include a sum to absorb the business losses of Aall & Co in Japan.

322 As a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put herself in a position whereby her personal interests conflicted with the interests of the beneficiaries of the AF, Tove Brown knew or recklessly disregarded that it was improper to approve the acquisition of the Kobe property in circumstances where she and other members of her family stood to gain personally from that acquisition by virtue of her interest in the AT;

323 Monsen, Erik Monsen, Gibson and Slatter knew:

323.1 that Aall & Co had identified the market value of the Kobe property to be JPY 1,000 million ($5,540,166.20);

323.2 that the Japanese authorities had accepted JPY 1,000 million as being the market value of the Kobe property; and

323.3 that there was no justification for paying US$21 million for the Kobe property.

324 In the premises, the Estate will say:

324.1 that the market value of the Kobe property was in fact only $5,540,166.20, and that Tove Brown at the very least recklessly disregarded what the actual market value of the Kobe property was;

324.2 alternatively that it is to be inferred that Tove Brown, as a member of the Monsen family actively participating in the affairs of the AF, knew that the market value of the Kobe property had been accepted by the Japanese authorities as being only $5,540,166.20 and that there was no justification for paying US$21 million for the Kobe property.

325 Further in approving the acquisition by the Trustees of the AF of the Kobe property by payment of $5,540,166.20 to Aall & Co and $15,459,833.80 to AGI, Tove Brown knew, alternatively, recklessly disregarded that the AF, through Sterling, was participating in a tax fraud, and was exposing itself to wholly unnecessary tax penalties and liabilities.

326 In the premises Tove Brown is liable to account to the Estate on the footing of wilful default and to pay such sums as are found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

327 Further and in the alternative by the reason of the facts and matters pleaded above in Paragraphs 320 to 325, Tove Brown dishonestly assisted the Trustees of the AF to commit

a breach of trust and is liable to account as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY ERIK MONSEN

328 By reason of his substantial involvement in the affairs of the AF, and in particular his involvement in the acquisition of the Kobe property by the AF, Erik Monsen undertook, alternatively owed the following fiduciary duties to the beneficiaries of the AF:

328.1 to act bona fide in the best interests of the beneficiaries of the AF when participating in the business of the AF;

328.2 not to allow his personal interests to conflict with the interests of the beneficiaries of the AF when participating in the business of the AF.

329 The Estate will rely upon the following matters:

ROLE WITHIN THE AF

329.1 Erik Monsen first attended a meeting of the Trustees and Advisors of the AF in October 1983. He attended every meeting of the Trustees and Advisors of the AF thereafter including the meeting on 10 February 1986.

329.2 In March 1985 Erik Monsen was appointed as an additional Advisor to the AF, such appointment to take effect in order for him to succeed Monsen as an Advisor, or at such earlier date as Monsen elected;

329.3 Erik Monsen attended meetings of the AF in this capacity thereafter, and in addition, at some point in 1985, was appointed as a Governor of the AF.

329.4 From 1986 Erik Monsen was paid so called "Advisors' Fees" by Monsen from the assets owned by the AF and held by Blue Range.

329.5 In the premises it is to be inferred that Erik Monsen was fully aware of the terms of the AF memorandum of agreement.

INVOLVEMENT WITH UWC

329.6 From at least October 1983 Erik Monsen was involved in the discussions with UWC officials in relation to the establishment of a UWC college in Japan.

329.7 Erik Monsen was a director of Aall & Co, which owned the Kobe property and directly participated in the arrangements for the sale of the Kobe property to the AF.

329.8 In the premises it is to be inferred that Erik Monsen knew that the initial proposal was that Aall & Co give the Kobe property to UWC.

330 The Estate will say that Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF in that:

330.1 Erik Monsen attended the meeting of the Trustees and Advisors of the AF on 10 February 1986 at which the Trustees were instructed to acquire the Kobe property from Aall & Co for $21 million;

330.2 Erik Monsen knew at that meeting:

330.2.1 that there was no reason whatsoever for the Trustees of the AF to consider acquiring the Kobe property other than for the purpose of donating the same to UWC;

330.2.2 that it was entirely uncertain whether UWC would establish a college in Japan;

330.2.3 that the planning restrictions upon the Kobe property rendered it highly undesirable to prospective purchasers;

330.2.4 that a valuation had been obtained which indicated that the highest value that could be put on the Kobe property, on the assumption that the planning restrictions were removed was JPY 1,634 million ($8,534,284);

330.2.5 that in the premises the price of $21 million massively overstated the actual value of the Kobe property, and that there was no honest justification for his father instructing the Trustees that $21 million was a proper price;

330.2.6 that the Trustees had no proper basis upon which to judge that the price of $21 million was appropriate.

330.3 Erik Monsen failed to inform the Trustees that the price put forward by his father as the price which the AF should pay to acquire the Kobe property was excessive.

330.4 The Estate will say that Erik Monsen was content to participate and assist in the dishonest breach of fiduciary duty being perpetrated by his father because he stood to gain personally from the transaction by reason of his and his family's control of Aall & Co and AGI, and his interest in AT.

330.5 As a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put himself in a position whereby his personal interests conflicted with the interests of the beneficiaries of the AF, Erik Monsen knew that it was improper to permit the Trustees to acquire the Kobe property in circumstances where he stood to gain personally from that acquisition by virtue of his interest in the AT.

330.6 Further Erik Monsen knew prior to the execution of the contract with Aall & Co that Aall & Co had identified the market value of the Kobe property to be JPY 1,000 million ($5,540,166.20), and further knew by August 1986 that this price was accepted by the Japanese authorities as being the market value of the Kobe property.

330.7 In the premises, Erik Monsen knew that there was no justification for the AF paying US$21 million for the Kobe property, and failed to inform the Trustees that and/or take steps to prevent a fraud being perpetrated on the beneficiaries of the AF.

330.8 Further Erik Monsen directly participated in the arrangements whereby Aall & Co was paid $5,540,166.20 for the Kobe property, and AGI paid the balance of $15,459,833.80. Erik Monsen knew or recklessly disregarded that the AF was thereby participating in a tax fraud, and was exposing itself to wholly unnecessary tax penalties and liabilities.

331 In further support of the Estate's claims that Erik Monsen acted dishonestly the Estate relies upon:

331.1 the facts and matters set out in Paragraphs 430 to 441 below dealing with the meetings of the Trustees of the AF at which the legitimacy of the acquisition of the Kobe property was considered; and

331.2 the facts and matters set out in Paragraphs 442 to 489 below demonstrating the consistent disregard of Monsen and Erik Monsen to the interests of the beneficiaries of the AF.

332 In the premises Erik Monsen is liable to account to the Estate on the footing of wilful default and to pay such sums as are found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

333 Further and in the alternative by reason of the facts and matters pleaded above in Paragraphs 303 to 309, 314 to 315 and 329 to 330. Erik Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and is liable to account as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST ASSISTANCE BY AALL & CO AGI AND AT&B

AALL & CO & AGI

334 As set out in Paragraph 309 above, Aall & Co received the sum of $5,540,166.20 for the Kobe property, and AGI received the sum of $15,459,833.80.

335 In receiving the aforesaid sums, and in participating in the acquisition by the AF, through Sterling, of the Kobe property, AGI and Aall & Co dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen, Tove Brown and Erik Monsen to commit dishonest breaches of their fiduciary duties in that:

335.1 The acquisition by the AF of the Kobe property was a breach of trust as pleaded in Paragraph 314 above;

335.2 Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently, as pleaded in Paragraph 316 above;

335.3 Tove Brown and Erik Monsen dishonestly breached the fiduciary duties that they owed to the beneficiaries of the AF, as pleaded in Paragraphs 321 to 325 and 329 to 330 above;

335.4 AGI was from its incorporation until late 1989 controlled by Monsen. At the material time in 1986 Monsen, Gibson and Slatter were directors of AGI. Monsen was responsible for AGI agreeing to accept the sum of $15,459,833.80 purportedly as part of the consideration for the acquisition by the AF of the Kobe property;

335.5 The knowledge of Monsen, Gibson and Slatter that a fraud was being perpetrated on the AF is to be attributed to AGI;

335.6 Monsen had the knowledge pleaded in Paragraph 316 above; Slatter had the knowledge pleaded in Paragraphs 314.8 to 314.9 above. Gibson knew the facts and matters pleaded in Paragraphs 298 to 314, and in particular knew prior to the

execution of the contract with Aall & Co that the market value of the Kobe property was $5,540,166.20 and not $21 million. Further Gibson was directly involved in the creation of the payment structure whereby the AF, through Sterling, participated in Aall & Co's tax fraud, and was exposed, through Sterling, to wholly unnecessary tax penalties and liabilities.

335.7 Monsen and Erik Monsen were directors of Aall & Co at the material tine. Monsen and/or Erik Monsen jointly and/or severally were responsible for Aall & Co agreeing to accept the sum of $5,540,166.20 as part of the consideration for the acquisition by the AF of the Kobe property.

335.8 The knowledge of these individuals that a fraud was being perpetrated on the AF is accordingly to be attributed to Aall & Co;

335.9 Monsen had the knowledge pleaded in Paragraph 316 above; Erik Monsen had the knowledge pleaded in Paragraphs 329 to 330 above.

335.10 In the premises the acceptance by AGI of the sum of $15,459,833.80, and by Aall & Co of the sum of $5,540,166.20, and the participation by both AGI and Aall & Co in the payment of these sums in a manner that involved the AF though Sterling in the commission of a fraud on the Japanese tax authorities, and exposed the AF to wholly unnecessary tax penalties and liabilities, assisted the Trustees in their breach of trust and assisted Monsen, Tove Brown and Erik Monsen to breach their fiduciary duties.

336 In the premises AGI and Aall & Co are liable to account to the Estate as constructive trustees, and to pay equitable compensation to the estate on the taking of that account

AT&B

337 At the material times in 1986 AT&B was a wholly owned subsidiary of AGI. As set out above:

337.1 on 28 March 1986 on the instructions of Slatter AT&B debited the sum of $5,540,166.20 from a call account in the name of Blue Range at AT&B (no. 1-392) and credited, via an account in the name of Sterling Trust Company ("Sterling")(1-453), to an new account in the name of Aall & Co (Japan) at AT&B (no. 1-455);

337.2 on 28 August 1986 on the instructions of Slatter AT&B transferred assets (including cash) to the value of $15,459,833.80 held in the name of Blue Range to AGI.

338 By effecting the above transfers AT&B dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen, Tove Brown and Erik Monsen to commit dishonest breaches of their fiduciary duties in that:

338.1 The acquisition by the AF of the Kobe property was a breach of trust as pleaded in Paragraphs 314 to 315 above;

338.2 Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently, as pleaded in Paragraph 316 above;

338.3 Tove Brown and Erik Monsen dishonestly breached the fiduciary duties that they owed to the beneficiaries of the AF, as pleaded in Paragraphs 321 to 325 and 329 to 330 above;

338.4 At all material times until late 1989, when he became incapacitated, AT&B was controlled by Monsen. To the best of the Estate's knowledge Monsen, Gibson, Slatter and Worsley were directors of AT&B at the material times in 1986. The Estate will say that the knowledge of these individuals that a fraud was being perpetrated on the AF is to be attributed to AT&B;

338.5 As to the knowledge of these individuals:

338.5.1 Monsen had the knowledge pleaded in Paragraph 316 above;

338.5.2 Slatter had the knowledge pleaded in Paragraphs 314.8 to 314.9 above;

338.5.3 Gibson had the knowledge pleaded in Paragraph 335.6 above;

338.5.4 It is to be inferred that Worsley knew the facts and matters pleaded in Paragraphs 298 to 314 and, in the premises, knew or recklessly disregarded the fact that AF was paying an excessive amount to acquire the Kobe property.

338.6 At the time when the above transfers were made AT&B knew that the monies and assets held in the accounts of Blue Range at AT&B belonged directly or indirectly to the AF.

338.7 AT&B accordingly assisted the Trustees of the AF in their breach of trust and assisted Monsen, Tove Brown and Erik Monsen to breach their fiduciary duties in the knowledge that the assets in the accounts of Blue Range were directly or indirectly trust assets.

339 In the premises AT&B is liable to account to the Estate as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

THE ESTATE'S ENTITLEMENT TO TRACE

340 Further to the personal compensatory claims pleaded above, the Estate will say that it is entitled to trace and follow the assets of the AF that were transferred to AGI in August 1986 on the basis that the transfer of the said assets to AGI did not form part of the true consideration for the acquisition of the Kobe property by the AF, which was, in so far as the said transfer was concerned, merely a pretext for the dishonest misappropriation of assets owned directly or indirectly by the Trustees of the AF.

341 Until discovery herein the Estate is unable to give further particulars of the destination of the said assets after they were transferred to AGI but puts the Defendants to this claim on notice of its intention to do so.

342 The Estate further reserves its right to plead additional claims, including accessory liability claims, upon discovery in the event that AGI has disposed of the assets fraudulently transferred to it under the pretext of the Kobe property acquisition.

THE HAWAII PROPERTIES

343 In or around December 1986 Monsen decided that a property in Honolulu, Hawaii, known as the Brewer Building, should be purchased in cash by the AF and AGI. Two companies were incorporated on Monsen's instructions to enable the purchase to be completed:

343.1 Aall Realty, a Cayman Islands company and,

343.2 Aall Hawaii, incorporated in Hawaii, and the wholly owned subsidiary of Aall Realty.

344 The shares in Aall Realty were initially owned as to two thirds by the AF, through Blue Range, and as to one third by AGI. The Brewer Building was purchased by Aall Hawaii for $8.7 million in cash. $5.7 million was provided by the AF through Blue Range, and the balance of approximately $3 million by AGI. $4.7 million was invested in Aall Hawaii as capital by Aall Realty, and the balance of $4 million by way of a promissory note paying interest at 10%.

345 The Estate will say that Monsen decided to acquire the Brewer Building, and that the purchase monies would be provided by the AF and AGI in the proportions identified above, without prior reference to the Trustees and Advisors of the AF. This followed the pattern of decisions made in relation to the assets of the AF by Monsen from the establishment of the AF as pleaded above and below, including Paragraphs 442 to 487.

346 The decision by Monsen that the AF should acquire the Brewer Building was approved by the Advisors of the AF at a meeting of the Trustees and Advisors in Grand Cayman on 20 January 1987, namely Monsen, Tove Brown, Gibson, Kindersley and Worsley. Erik Monsen attended this meeting as a Governor of the AF.

347 From September 1987 to December 1988 Monsen directed the AF upon a strategy of acquiring properties through Aall Hawaii adjacent to or within the immediate vicinity of the Brewer Building:

347.1 In or around September 1987 Monsen decided that the AF should acquire, through Aall Hawaii, 124 Queen Street, Honolulu. 124 Queen Street was in the same block as the Brewer Building. The property was purchased for cash from Alexander & Baldwin Inc on 17 September 1987 for a price of $3,260,000. The funds for the purchase were provided to Aall Hawaii by Blue Range.

347.2 On or around 28 October 1987 Monsen instructed the Trustees of the AF to acquire the shares of AGI in Aall Realty in consideration for the payment, by Blue Range, of $3,136,068, consisting of the initial capital outlay of AGI of $3 million and interest at 5.5%.

347.3 In or around December 1987 Monsen decided that the AF should acquire, through Aall Hawaii, 125 Merchant Street, Honolulu. 125 Merchant Street was in the same block as the Brewer Building. The property was purchased for cash in the sum of $2,129,000 on 13 January 1988. The funds for the purchase were provided to Aall Hawaii by Blue Range.

347.4 In or around August 1988 Monsen determined that the AF should acquire the James Campbell Building. This property was in the block opposite the Brewer Building, 124 Queen Street and 125 Merchant Street. The property was purchased for $28 million on 30 December 1988 with the assistance of a loan of that amount from the Bank of Hawaii. The loan was secured on the four properties in Hawaii owned by Aall Hawaii, and further by a pledge of $8 million of Eurodollar bonds.

348 The above decisions by Monsen that the AF acquire, through Blue Range, the entire share capital of Aall Realty and, through Aall Hawaii, the further properties in Hawaii were approved by the Advisors of the AF at meetings of the Trustees and Advisors in Grand Cayman on 19 January 1988 and 19 January 1989 (the Campbell Building). Monsen, Tove Brown, Gibson, Lord Tryon and Worsley attended these meetings as Advisors. Erik Monsen attended these meetings as a Governor of the AF.

THE TRANSFER OF THE SHARES OF AALL REALTY TO AGI

349 By July 1989 Blue Range was projected to have a negative cash flow for the year to June 1990 of $2,136,000 despite holding assets for the AF valued at a cost of in excess of $100 million. Blue Range was committed to substantial borrowing in Hawaii and in London to finance property acquisition and development, and had insufficient income producing assets to manage the cash flow requirements of Blue Range and its subsidiaries.

350 Slatter indicated in writing on 31 July 1989 to Erik Monsen, who had been appointed an Advisor to the AF on 17 July 1989, that the financial position of Blue Range would mean that assets would have to be sold.

351 In August 1989 Erik Monsen proposed to Slatter that Aall Realty should be sold to AGI in exchange for interest bearing debt. At this time Erik Monsen was actively pursuing a number of projects involving the properties owned by Aall Hawaii, and considering acquiring further property, in that:

351.1 Erik Monsen was pursuing a major development programme with the City and Council of Honolulu which involved the contribution and demolition of the Campbell Building;

351.2 Erik Monsen had bid for the Stangenwald Building which adjoined the Brewer Building, Queens Street and Merchant Street properties;

351.3 Erik Monsen was actively considering the acquisition of the First Federal Building, which was adjacent to the Brewer Building, and at some point unknown to the Estate believed he had secured a right of pre-emption over the First Federal Building.

352 Between September 1989 and October 1989 Slatter wrote to Erik Monsen suggesting a number of alternatives to alleviate the cash flow difficulties faced by Blue Range, including:

352.1 the acquisition by a Japanese subsidiary of AGI of the Aall Hawaii promissory note by payment to Blue Range of $3,835,548.77;

352.2 the transfer of $1.4 million held by Aall Hawaii to Blue Range;

352.3 the partial repayment by Aall Shipping Investments Limited ("ASIL") of loans made by Blue Range in 1987 in the aggregate sum of $12,455,000; and

352.4 the purchase by Aall & Co, which had assets against which to obtain finance for such a purchase, of Aall Hawaii.

353 None of the alternatives suggested by Slatter involved the transfer of Aall Realty to AGI in exchange for debt as had been suggested by Erik Monsen in August 1989.

354 Notwithstanding the above, in or around January 1990 Erik Monsen directed Slatter that:

354.1 Aall Hawaii should be transferred to AGI for a sum corresponding to the capital investment by Blue Range in Aall Hawaii as at 1 January 1990;

354.2 165,000 shares in Texaco Inc held by Blue Range should be transferred to AGI for a sum corresponding to the market value as at 1 January 1990;

354.3 Blue Range should "lend" AGI the monies to effect the above transfers; and

354.4 AGI would pay Blue Range interest on the debt.

355 On 11 May 1990 the above transactions were approved by the Advisors to the AF at a meeting of the Trustees and Advisors of the AF held in Grand Cayman. This meeting was attended by Slatter and Transworld as Trustees, and by Tove Brown and Erik Monsen as Advisors. By this time Monsen was incapacitated. He remained an Advisor but did not attend the meeting.

356 On 11 May 1990 the following agreements were executed:

356.1 an agreement dated 1 January 1990 between Blue Range, AGI and Aall Realty whereby the entire issued share capital of Aall Realty was transferred by Blue Range to AGI in consideration for the promise by AGI to pay Blue Range the sums invested by Blue Range in Aall Realty, namely $19,601,480, on the following terms:

356.1.1 Blue Range would continue to hold the shares of Aall Realty until the capital sum of $19,601,480 was paid in full;

356.1.2 AGI would have the option of making payments to reduce the capital sum at any time;

356.1.3 AGI would pay interest on the principal sum at 8% quarterly in arrears for 1990;

356.1.4 Thereafter AGI would pay interest at a rate to be agreed on an annual basis and in default at the then Eurodollar deposit rate offered by AT&B for deposits in excess of $1 million;

356.2 an agreement dated 1 January 1990 between Blue Range, AGI and Old Forrester whereby Blue Range transferred 165,000 shares in Texaco Inc to AGI in consideration for the promise by AGI to pay $9,714,375 to Blue Range, and interest on that capital sum until payment in full on the same terms as set above for the acquisition of the Aall Realty shares.

357 On the same day, 11 May 1990, Transglobal was replaced as the trustee of the AF by AT&B, which was wholly owned by AGI, which Erik Monsen now controlled.

BREACH OF TRUST BY THE TRUSTEES

358 The decision by the Trustees of the AF to transfer the shares of Aall Realty to AGI at a cost equal to the capital investment by Blue Range was plainly contrary to the interests of the beneficiaries of the AF and amounted to a breach of trust in that:

358.1 no attempt was made by the Trustees to obtain a valuation of the shares of Aall Realty to determine whether it was appropriate to transfer the shares at the cost of the capital investment;

358.2 no or no adequate consideration was given by the Trustees to the alternative options available to the AF as regards the shares in Aall Realty, including an arm's length sale of the properties;

358.3 no or no adequate consideration was given by the Trustees as to whether the transfer of the shares in exchange for debt from AGI was in the interests of the beneficiaries of the AF in that:

358.3.1 by 1990 the Slatter had recognised that there had been excessive co-mingling and co-investing of the assets of the AF with the Monsen family interests, in particular AT;

358.3.2 the transfer of assets by the AF to AGI in exchange for interest bearing debt amounted to yet further improper co-mingling of the assets of the AF with the Monsen family interests;

358.3.3 to the knowledge of the Trustees of the AF (a) Erik Monsen controlled AGI (b) AT was the majority shareholder of AGI (c) the shares in AGI held by AT constituted the only asset of AT (d) Erik Monsen, Monsen and Tove Brown were beneficiaries of AT and (e) Erik Monsen, Monsen and Tove Brown were the Advisors to the AF;

358.3.4 the Trustees of the AF had no means to control the repayment by AGI of its indebtedness, both by reason of the fact that Erik Monsen controlled AGI, and by reason of the fact that any decision by the Trustees of the AF to call in the indebtedness of AGI or enforce any security would have been subject to the approval of the Advisors.

358.4 further, the transfer of the Aall Realty shares to AGI in exchange for interest bearing debt from AGI was plainly contrary to the interests of the beneficiaries of the AF in circumstances where:

358.4.1 as at 1 January 1990 the AF had received no dividends at all from its acquisition of 300,000 preference shares in AGI for the sum of $9.6 million in 1983;

358.4.2 the transfer of the Aall Realty shares and the Texaco shares to AGI increased the AF's capital exposure to AGI, and its subsidiary ASIL, to a sum in excess of $40 million;

358.4.3 the terms of the loans themselves were open ended with no fixed terms for repayment and at preferential, non-commercial rates of interest in that (a) the rate agreed for 1990 of 8% was 2.5% below the US$ Prime Rate as at 1 January 1990 and (b) the default rate of interest for the remaining years was fixed by the AT&B Eurodollar deposit rate for deposits in excess of $1 million; and

358.4.4 the security for the loan of the purchase consideration for the Aall Realty shares was entirely inadequate in circumstances where control of Aall Hawaii was to pass to AGI, and the AF had no means of enforce that security for the reasons expressed in Paragraph 358.3 above.

358.5 in fact the values of the properties owned by Aall Hawaii had substantially increased by at least some $16,400,000;

358.6 In the premises, by transferring the shares of Aall Realty at cost, the AF suffered a substantial loss in the estimated sum of at least $14,000,000 (such sum being calculated by deducting the sum of $19,601,480 and the outstanding borrowing from the Bank of Hawaii, estimated to be in the region of $25,000,000, from the minimum market value of the Hawaii properties of $58,500,000).

358.7 The Estate will further rely upon the recognition by the Trustees and Advisors of the AF at their meetings in September 1992 that it had been improper to transfer the shares of Aall Realty without attempting to obtain an independent valuation of the properties owned by Aall Hawaii. The minutes of those meetings record that John Lyles was to be instructed to value the properties as at 1 January 1990. To the best of the Estate's knowledge, no such valuation was produced.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY ERIK MONSEN

359 Erik Monsen was purportedly formally appointed an Advisor to the AF on 17 July 1989 following the resignation of Gibson as described below in Paragraphs 451 to 461. A consequence of that resignation was that Gibson agreed to draft amendments to the AF memorandum of agreement whereby the office of Protector of the Trust was created.

360 The Protectors were given the power to appoint and remove Advisors, other than Monsen. Monsen, Erik Monsen, Tove Brown and Tom Monsen were appointed the Protectors of the Trust, and any successor to the office of Protector had to be a member of the Monsen family.

361 By December 1989 Monsen and Erik Monsen had procured the resignations of Worsley and Lord Tryon as Advisors to the AF. Accordingly by January 1990 members of the Monsen family, namely Monsen, Erik Monsen and Tove Brown were the only Advisors to the AF and the Monsens had assumed complete control over the affairs of the AF, in that:

361.1 they had monopolised the role of Advisors both for the present and for the future;

361.2 Erik Monsen controlled AGI, Aall & Co, AT&B, Blue Range and the principal subsidiaries of Blue Range, including Aall Hawaii;

361.3 AGI had the option to acquire the entire issued share capital of Transglobal; and

361.4 on 11 May 1990, as set out below, AT&B was appointed as a trustee of the AF in place of Transglobal.

362 As an Advisor Erik Monsen owed the fiduciary duties pleaded in Paragraph 328 above. Further by January 1990 Monsen himself was incapacitated and Erik Monsen had assumed the role previously adopted by his father, namely directing the Trustees of the AF as to the manner in which the affairs of the AF should be conducted.

363 In directing Slatter to transfer the shares of Aall Realty to AGI on the terms set out in Paragraphs 354 to 356 above, and in approving the transfer of those shares and the Texaco shares to AGI, Erik Monsen dishonestly breached the aforesaid fiduciary duties and exercised the powers vested in him as an Advisor fraudulently in that:

363.1 Erik Monsen had been directly involved in the acquisition by Aall Hawaii of the four properties referred to above;

363.2 Erik Monsen knew that the purpose of acquiring those properties was for development and not commercial yield;

363.3 in January 1990 Erik Monsen was actively pursuing:

363.3.1 a joint venture with Alexander & Baldwin involving the Campbell Building; and

363.3.2 the further acquisition of property for development, namely the First Federal Bank Building.

363.4 The values of commercial properties in downtown Honolulu between 1987 and 1 January 1990 had progressively increased and were continuing to rise;

363.5 It is to be inferred by reason of his active involvement in the property market in downtown Honolulu at the material time that:

363.5.1 Erik Monsen knew that the commercial property market was rising;

363.5.2 Erik Monsen knew that it was very likely that the values of the properties that had been acquired by Aall Hawaii, including their development value, had significantly increased in value; and

363.5.3 Erik Monsen believed that substantial profits were to be made in the Honolulu commercial property market;

363.6 In fact the values of the properties owned by Aall Hawaii had substantially increased in an amount of at least $16,400,000;

363.7 In the premises the direction by Erik Monsen that the Trustees of the AF acquire the shares of Aall Realty at cost, and the approval of that acquisition at cost without independent (or any) valuation, was dishonest in that, at the very least:

363.7.1 Erik Monsen knew that the value of the properties owned by Aall Hawaii, and thus its shares, was likely to be considerably in excess of cost; and/or

363.7.2 Erik Monsen recklessly or wilfully disregarded the actual value of the properties owned by Aall Hawaii.

363.8 Further Erik Monsen knew that the acquisitions by AGI of the Aall Realty shares and the Texaco shares on the terms of the agreements executed in May 1990 were contrary to the interests of the beneficiaries of the AF, alternatively recklessly disregarded whether those acquisitions were in the interests of the beneficiaries of the AF in that:

363.8.1 no or no adequate consideration was given by the Trustees or Advisors to the alternative options available to the AF as regards the shares in Aall Realty;

363.8.2 no or no adequate consideration was given by the Trustees or Advisors as to whether the transfer of the shares in exchange for debt from AGI

was in the interests of the beneficiaries of the AF for the reasons expressed in Paragraph 358.3 above;

363.8.3 the transfer of the Aall Realty shares in exchange for interest bearing debt from AGI was contrary to the interests of the beneficiaries of the AF for the reasons expressed in Paragraph 358 above.

363.9 As a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put himself in a position whereby his personal interests conflicted with the interests of the beneficiaries of the AF, Eric Monsen knew that it was improper to direct the Trustees to transfer the Aall Realty shares to AGI in circumstances where:

363.9.1 he and his family stood to gain personally; and

363.9.2 he would be placed in an immediate and irreconcilable position of conflict by reason of his control of AGI and his interest as a beneficiary of the majority shareholder AT.

363.10 The Estate will say that it is to be inferred that Erik Monsen directed the Trustees to transfer the Aall Realty shares to AGI for the improper collateral purposes of:

363.10.1 acquiring for AGI on improperly favourable terms the benefit of what he believed to be the substantial profits to be made in the commercial property market in Honolulu; and

363.10.2 thus acquiring these benefits for himself and the members of the Monsen family.

364 The Estate further relies upon the claims pleaded against Erik Monsen in this section of the Statement of Claim and the facts and matters set out in Paragraphs 442 to 487 below demonstrating the consistent disregard of Erik Monsen to the interests of the beneficiaries of the AF in further support of the Estate's claim.

365 In the premises Erik Monsen is liable to account to the Estate on the footing of wilful default and to pay such sums as are found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

366 The compensation payable to the Estate is to be calculated by reference to the loss caused to the AF by the sale of the Aall Realty shares at an undervalue, namely:

366.1 on the basis that Blue Range held the Aall Realty shares on bare trust for the AF as its nominee, the difference between the price at which the Aall Realty shares were transferred and the actual value of those shares, calculated by reference to the actual value of the Hawaii properties;

366.2 alternatively, the diminution in the value of the shares held by the AF in Blue Range caused as a result of the transfer of the Aall Realty shares at an undervalue.

367 The Estate's case is that that loss amounts to at least $14,000,000 and the loss of the income that ought to have been earned on that sum.

368 Further and in the alternative by the reason of the facts and matters pleaded above in Paragraphs 349 to 367, Erik Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and is liable to account as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST BREACH OF FIDUCIARY DUTY AND DISHONEST ASSISTANCE BY TOVE BROWN

369 In approving the transfer of the Aall Realty shares at cost Tove Brown dishonestly breached the fiduciary duties that she owed to the beneficiaries of the AF, and exercised the powers vested in her as an Advisor fraudulently. The Estate will say that Tove Brown either knew, or recklessly disregarded that

369.1 no attempt was made by the Trustees or Advisors to obtain a valuation of the shares of Aall Realty to determine whether it was appropriate to transfer the shares at the cost of the investment;

369.2 there was accordingly no basis upon which she could judge whether it was appropriate to transfer the shares of Aall Realty to AGI at the cost of the investment;

369.3 no or no adequate consideration was given by the Trustees or Advisors to the alternative options available to the AF as regards the shares in Aall Realty, including an arm's length sale of the properties;

369.4 no or no adequate consideration was given by the Trustees or Advisors as to whether the transfer of the shares in exchange for debt from AGI was in the interests of the beneficiaries of the AF;

369.5 the transfer of the Aall Realty shares in exchange for interest bearing debt from AGI was plainly contrary to the interests of the beneficiaries of the AF for the reasons expressed in Paragraph 358 above;

369.6 as a fiduciary owing obligations to act bona fide in the best interests of the beneficiaries of the AF, and not to put herself in a position whereby her personal interests conflicted with the interests of the beneficiaries of the AF, Tove Brown knew or recklessly disregarded that it was improper to approve the acquisition of the Aall Realty shares in circumstances where she and other members of her family stood to gain personally from that acquisition by virtue of her interest in the AT;

369.7 The Estate will say that it is to be inferred that Tove Brown was at the very least content simply to approve the decision of her brother, Erik Monsen, without any or any proper consideration of the interests of the beneficiaries of the AF.

370 In the premises Tove Brown is liable to account to the estate on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

371 Further and in the alternative by the reason of the facts and matters pleaded above in Paragraphs 355, 358 and 369. Tove Brown dishonestly assisted the Trustees of the AF to

commit a breach of trust and is liable to account as a constructive trustee on the footing of wilful default, and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST ASSISTANCE BY AGI

372 By entering into the above transactions referred, AGI dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Erik Monsen to commit a dishonest breach of fiduciary duty in that:

372.1 The transfer of the Aall Realty shares to AGI at cost was a breach of trust as pleaded in Paragraph 358 above;

372.2 in directing the Trustees of the AF to transfer the Aall Realty shares to AGI at cost Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, and exercised the powers vested in him as an Advisor to the Trustees of the AF fraudulently, as pleaded in Paragraphs 359 to 364 above;

372.3 Erik Monsen was the directing mind and will of AGI for the purpose of the acquisition of the Aall Realty shares, and his knowledge is accordingly to be attributed to AGI;

372.4 Erik Monsen had the knowledge pleaded in Paragraph 363 above; and

372.5 AGI accordingly acquired the Aall Realty shares in the knowledge that the shares were very much more valuable than the price being paid, and facilitated the breach of trust by the Trustees of the AF and the breach by Erik Monsen of his fiduciary duties.

373 In the premises AGI is liable to account to the Estate as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

PRESIDENT'S EXPENSES AND THE PAYMENT OF FEES TO THE ADVISORS

374 As set out in Paragraphs 252 to 254 above prior to the transfer of the shares of Blue Range into the AF, from 1976 until 1982 Monsen was paid "President's Expenses" by CTC and Blue Range. Monsen provided no services to CTC or Blue Range to entitle him to be paid these sums. Following the transfer of the assets of the CF to the AF, Monsen continued to misappropriate sums of money for his own benefit by way of purported "President's Expenses".

PAYMENTS OF PRESIDENT'S EXPENSES FROM 1982 TO 1985

375 From 1982 to 1985 Monsen was paid $800,000 by way of "President's expenses" by Blue Range in addition to receiving fees as a director of Blue Range.

376 These sums were not paid in respect of any services provided by Monsen, whether to Blue Range or the AF, but simply as he demanded. At all material times from the establishment of the AF, the assets of the AF held in Blue Range:

376.1 were fully invested in professionally managed funds and accounts, initially at Lazards, and thereafter in the Aall International Funds (see Paragraphs 395 to 399 below), for which substantial fees were paid; or

376.2 were invested in real property for which substantial management charges were paid; or

376.3 were invested in specific investments for which no management services were required.

377 In procuring and accepting the payment of these sums and thereby personally profiting from his position as the President of Blue Range, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF in that:

377.1 Monsen knew that the assets in Blue Range belonged directly or indirectly to the AF;

377.2 Monsen knew that he was not entitled to be paid the sums;

377.3 Monsen knew that it was contrary to the interests of the beneficiaries of the AF that he be paid sums of money to which he was not entitled.

378 In 1985 Monsen apparently paid Kindersley and Worsley $50,000 each from the sum of $300,000 that he received from Blue Range, purportedly as fees to Kindersley and Worsley as Advisors.

379 Neither Monsen, Kindersley or Worsley were entitled to be paid fees as Advisors. Clause 33 of the AF memorandum of agreement provided that:

> "The Advisors to the Trustees shall be entitled to be fully and generously reimbursed for any expenses incurred by them in carrying out their duties in respect of the Trust including a per diem allowance on a quantum meruit basis but unless an Advisor is also a Trustee he shall not be entitled to any compensation other than such reimbursement, or for professional fees."

380 The sums received by Monsen, Worsley and Kindersley were in addition to the reimbursement of expenses that each received for carrying out their duties as Advisors to the AF, and as regards Worsley in addition to sums paid to his employer for his time.

381 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default, and/or is liable to account for the profits made by Monsen from his dishonest breach of fiduciary duty and to pay what is found to be due on the taking of that account and/or is liable to pay equitable compensation to the Estate for breach of fiduciary duty.

382 Further in permitting the aforesaid payments to be made by Blue Range to Monsen, the Trustees of the AF committed a breach of trust for the reasons set out in Paragraphs 376 to 380 above. By virtue of the facts pleaded in Paragraphs 376 to 380 above, Monsen dishonestly assisted the Trustees of the AF to commit that breach of trust by failing to prevent and accepting payment of the aforesaid sums and Compass, as Monsen's personal representative, is liable to account as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

PAYMENTS FROM 1985 TO 1990

383 From 1985 to 1990 Monsen received further sums amounting to $3,350,000 by way of "President's expenses" by Blue Range in addition to receiving fees for his role as a director of Blue Range.

384 These sums were not paid in respect of any services provided by Monsen but simply as he demanded as set out in Paragraph 376 above.

385 Monsen apparently transferred part of these sums to the Advisors, namely:

385.1 $200,000 to Kindersley;

385.2 $300,000 to Worsley;

385.3 $1,300,000 to Gibson;

385.4 $250,000 to Tove Brown;

385.5 $150,000 to Lord Tryon; and

385.6 $250,000 to Erik Monsen.

386 On 21st November 1985 the Trustees and Advisors purported to effect amendments to the AF memorandum of agreement, inter alia, to re-write Clause 33 of the AF memorandum of agreement as follows:

> "..The Advisors to the Trustees shall be entitled to be fully and generously reimbursed for any expenses incurred by them in carrying out their duties and each Advisor shall also be entitled to receive as compensation for his or her services such amount as may be unanimously agreed to by the Advisors and Trustees provided that no Advisor shall in any year be paid compensation in excess of what is paid to the Trustees. In the event that a Trustee or an Advisor occupies a profession and renders professional services to the Trustees for which remuneration is paid then such remuneration shall not be taken into account in setting compensation." [Emphasis added]

387 The Estate will say that in so far as any attempt is made to rely upon the above amendment to the AF to justify payments to Monsen or by Monsen to the Advisors:

387.1 The exercise by the Advisors and Trustees of the power to amend clause 33 of the AF memorandum of agreement was improper and amounted to a fraud on that power, in that it was exercised to enable the Advisors to receive without justification assets belonging to a trust to which they were not entitled. The amendment was plainly self-dealing and contrary to the interests of the beneficiaries of the AF.

387.2 In the premises no reliance can be placed upon this amendment by Monsen or the Advisors, and it is liable to be set aside.

388 In procuring and accepting the payment of the above sums and thereby personally profiting from his position as the President of Blue Range, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF in that:

388.1 Monsen knew that the assets in Blue Range belonged directly or indirectly to the Trustees of the AF;

388.2 Monsen knew that he was not entitled to be paid the sums;

388.3 Monsen knew that it was contrary to the interests of the beneficiaries of the AF that he be paid sums of money to which he was not entitled.

389 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default, and/or is liable to account for the profits made by Monsen from his dishonest breach of fiduciary duty and is liable to pay what is found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

390 Further in permitting the aforesaid payments to be made by Blue Range to Monsen, the Trustees of the AF committed a breach of trust for the reasons set out in Paragraphs 383 to 388 above. By virtue of the facts pleaded in Paragraphs 383 to 388 above, Monsen dishonestly assisted the Trustees of the AF to commit that breach of trust by failing to prevent and accepting payment of the aforesaid sums and Compass, as Monsen's personal

representative, is liable to account as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST BREACH OF FIDUCIARY DUTY BY ERIK MONSEN

391 Between 1986 and 1991 Erik Monsen received sums in the amount of $250,000 derived from the so called "President's expenses" paid to his father, and from 1990 was paid sums amounting to at least $250,000 directly by Blue Range.

392 By receiving the sums from his father, and by procuring the payment of so-called "President's expenses" to himself from 1990, Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF pleaded in Paragraph 328 above, in that

392.1 Erik Monsen knew that the sums paid to him derived directly or indirectly from the assets of the AF;

392.2 From July 1989 Erik Monsen was a director of Blue Range and an Advisor to and Protector of the AF;

392.3 Erik Monsen knew that he was not entitled to be paid any of the above sums; and

392.4 Erik Monsen knew that it was contrary to the interests of the beneficiaries of the AF that he be paid sums of money to which he was not entitled.

393 In the premises Erik Monsen is liable to account to the Estate on the footing of wilful default, and/or liable to account for the profits he made from his dishonest breach of fiduciary duty and to pay what is found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

394 Further in permitting the aforesaid payments to be made by Blue Range to Erik Monsen, the Trustees of the AF committed a breach of trust for the reasons set out in Paragraphs 383 to 388 above. By virtue of the facts pleaded in Paragraphs 391 to 392 above, Erik Monsen dishonestly assisted the Trustees of the AF to commit that breach of trust by failing to

prevent and accepting payment of the aforesaid sums and is liable to account as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

AALL INVESTMENT MANAGEMENT (CAYMAN) LIMITED ("AIM CAYMAN")

395 Between 1984 and 1987 a substantial proportion of the assets of the AF were invested in the Aall International Funds ("AIF"), which were managed by a wholly owned subsidiary of AGI, Aall Investment Management (UK) Limited.

396 The AIF were established upon the resignation from Lazards of Alan Wrigley, who had managed the fixed income funds at Lazards in which a substantial proportion of the assets of the CF, and subsequently the AF, had been invested. Wrigley managed the AIF as an employee of Aall Investment Management (UK) Limited. In 1986 the AF had $67.3 million invested in the AIF.

397 AIM Cayman is a further wholly owned subsidiary of AGI, incorporated in the Cayman Islands. AIM Cayman has at no stage had any employees.

398 From 1 July 1986 AIM Cayman was paid a quarterly fee by Blue Range of 1% per annum of the value of an equity portfolio containing UK equities acquired for $3.6 million and managed by Lord Tryon, who was a director of Aall Investment Management (UK) Limited.

399 The AIF were wound up in July 1987. Thereafter the assets which had been invested in the AIF were realised, and substantially invested on the direction of Monsen in properties in Hawaii, California and in London, by way of loan to ASIL and in various funds and investments selected by Monsen.

400 From July 1987 until December 1989 AIM Cayman was paid a fee by Blue Range, ostensibly for investment management services provided to the AF. Until January 1990 that fee was calculated as 1% of the book valuation of all of the assets of the AF, including the various property holdings and loans to AGI. AIM Cayman was paid $2,562,089 by quarterly payments over this period.

401 From January 1990 until December 1992 the fee paid by Blue Range to AIM Cayman was calculated on the value of the assets of the AF, excluding the properties and the loans to AGI. AIM Cayman was paid sums in excess of $600,000 by quarterly payments over this period.

402 In fact AIM Cayman provided no services to justify the payment of the above or, to the best of the Estate's knowledge, any fees by Blue Range. As far as the Estate is aware, the entire administration of AIM Cayman was provided by AT&B, who were paid a monthly management fee by AIM Cayman.

403 The sums received by AIM Cayman from Blue Range were paid by AIM Cayman to AT&B, in respect of administration, and to AGI by way of dividend.

404 The Estate will say that, by reason of the fact that at all material times until late 1989 Monsen controlled the investment and management of the assets of the AF, Blue Range and AGI, it is to be inferred that Monsen directed Slatter that AIM Cayman should be paid the above fees.

BREACH OF TRUST BY THE TRUSTEES

405 By allowing payments to be made by Blue Range to AIM Cayman, the Trustees of the AF committed a breach of trust in that:

405.1 the assets of Blue Range were held on bare trust for the Trustees of the AF; alternatively the assets of Blue Range were indirectly the assets of the AF by reason of the ownership by the Trustees of the AF of the entire share capital of Blue Range;

405.2 Slatter was at all material times a director of Blue Range and a Trustee of the AF;

405.3 AIM Cayman provided no services to justify the payment of the fees paid by Blue Range;

405.4 even if AIM Cayman had provided investment management services, there was no justification whatsoever for calculating the fee payable by reference to book value of the property assets and loans to AGI, in circumstances where the AF, through Blue Range, was already paying fees for the management of these assets, or alternatively no management services were required;

405.5 the Estate will rely upon the belated recognition by the Trustees of the AF in January 1990 that calculation of fees by reference to book value of all of the assets of the AF was improper;

405.6 further, calculation of the fee by reference to book value of the assets of the AF excessively inflated the level of fees paid in that, at the very least, at all material times the book value of the Kobe property carried in the accounts of the AF was at the cost of the investment, namely $21 million plus the sums paid to Aall & Co in respect of management of the Kobe property, when the actual value was at most approximately $5.4 million.

405.7 in the premises, the payment of fees by Blue Range was plainly contrary to the interests of the beneficiaries of the AF and should not have been permitted by the Trustees, as was recognised in 1992 by the fact that no further fees were paid to AIM Cayman after 1992.

DISHONEST BREACH OF FIDUCIARY DUTY BY MONSEN

406 In directing Slatter that Blue Range should pay fees to AIM Cayman, Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, in that:

406.1 Monsen knew that AIM Cayman provided no services to justify the payment of the fees paid by Blue Range;

406.2 Monsen knew that even if AIM Cayman had provided any services, there was no justification for any fee being calculated on the basis of a percentage of the book value of all of the assets of the AF, including those in relation to which it could not possibly be said that investment management services were required, and those in

respect of which the AF, though its subsidiaries, was already paying for management services;

406.3 Monsen knew that it was in the premises plainly contrary to the interests of the beneficiaries of the AF that fees should be paid to AIM Cayman;

406.4 From 1987 to 1989 Monsen controlled Blue Range, AGI and AT&B and was in a position to prevent the payment of fees to AIM Cayman;

406.5 the Estate will say that it to be inferred that Monsen directed the payment of fees to AIM Cayman in order to misappropriate for the benefit of AGI assets which belonged directly or indirectly to the AF and thereby benefit himself and his family by reasons of (a) his control over AGI and (b) the ownership by AT of two thirds of the shares in AGI.

407 In the premises Compass, as Monsen's personal representative, is liable to account to the Estate on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

408 Further in permitting the aforesaid payments to be made by Blue Range to AIM Cayman, Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and Compass, as Monsen's personal representative, is liable to account as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST BREACH OF FIDUCIARY DUTY BY ERIK MONSEN

409 From July 1989 Erik Monsen was a director of Blue Range and an Advisor to the Trustees of the AF and Protector of the Trust. In permitting the payments to AIM Cayman to continue, after his appointment as a director of Blue Range, Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, in that:

409.1 Erik Monsen knew that AIM Cayman provided no services to justify the payment of the fees paid by Blue Range, alternatively recklessly disregarded whether AIM Cayman provided any such services;

409.2 From July 1989 Erik Monsen controlled Blue Range and AGI and was in a position to prevent the payment of fees to AIM Cayman;

409.3 Erik Monsen knew that it was contrary to the interests of the beneficiaries of the AF that the fees should be paid to AIM Cayman, alternatively recklessly disregarded the interests of the beneficiaries of the AF in permitting the payments to be made by Blue Range and received by AGI.

410 The Estate will further rely upon Erik Monsen's participation in meetings of the Trustees and Advisors of the AF in September 1992 and January 1993 in support of the claim that Erik Monsen acted dishonestly in relation to the payment of the AIM Cayman fees in that:

410.1 at the meetings in September 1992, which Erik Monsen attended, inter alia, as Chairman of AT&B, the Trustee of the AF from 11 May 1990, it was determined that the AIM Cayman fees paid from July 1987 to 1989 may have been artificially inflated and would be re-examined, but that the Trustees had no reason to question any other fees paid;

410.2 prior to the meetings in January 1993 Slatter requested Flanagan to re-calculate the fees paid to AIM Cayman on the basis of the formula applied from 1 January 1990, namely 1% on the market value of bonds and equities, venture capital and the lower of cost or valuation of other/non-marketable investments;

410.3 it is to be inferred that the re-calculated fees were placed before the meeting in January 1993, which Erik Monsen attended, inter alia, as Chairman of AT&B. Notwithstanding this it was resolved that all of the fees payable to AIM Cayman were justified;

410.4 there was no basis to justify the payment of the fees paid to AIM Cayman;

410.5 even if AIM Cayman had provided any services, there was no basis to justify the payment of fees calculated between July 1987 to December 1989 on the basis of a percentage of the valuation of all of the assets of the AF, including the properties and loans to AGI;

410.6 there was no basis to justify the payment of fees from 1990 as was expressly recognised by Flanagan, a director of AT&B, in a joint investment proposal prepared in August 1992 for the AF and Forrester Maritime and by the fact that no further fees were paid to AIM Cayman after 1992.

410.7 the Estate will say that there was no honest basis for the meeting in January 1993 to reach the conclusions expressed in the minutes.

411 In the premises Erik Monsen is liable to account to the Estate on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty.

412 Further in permitting the aforesaid payments to be made by Blue Range to AIM Cayman from July 1989, Monsen dishonestly assisted the Trustees of the AF to commit a breach of trust and is liable to account as a constructive trustee and to pay equitable compensation to the Estate on the taking of that account.

DISHONEST ASSISTANCE BY AGI AND AT&B

413 As set out in Paragraphs 403 to 404 above, the payments made to AIM Cayman were passed on to AT&B by way of administrative fees, and to AGI by way of dividend.

AGI

414 In receiving sums by way of dividend from AIM Cayman AGI dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen, and thereafter Erik Monsen to commit dishonest breaches of their fiduciary duties in that:

414.1 The payments to AIM Cayman were permitted to be made by the Trustees of the AF in breach of trust as pleaded in Paragraph 405 above;

414.2 Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF as pleaded in Paragraphs 406 above;

414.3 Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, as pleaded in Paragraphs 409 to 410 above;

414.4 Monsen was a director of AGI at all material times from 1986 to 1989. Monsen and Erik Monsen were directors of AGI at all material times from 1989 to 1992. Prior to his incapacity in late 1989 Monsen controlled the activities of AGI. Thereafter, from at least late 1989 Erik Monsen controlled AGI;

414.5 Monsen and Erik Monsen were responsible for AGI agreeing to accept dividends from AIM Cayman. Monsen and Erik Monsen had the knowledge pleaded in Paragraphs 406 to 409 respectively above, and in particular that AIM Cayman provided no services to justify payment of the fees paid by Blue Range;

414.6 the knowledge of Monsen and Erik Monsen is to be attributed to AGI; and

414.7 the acceptance by AGI of the sums from AIM Cayman by way of divided, assisted both the Trustees in their breach of trust and assisted Monsen and Erik Monsen to breach their fiduciary duties.

415 In the premises AGI is liable to account to the Estate as a constructive trustee, and to pay equitable compensation to the Estate on the taking of that account.

AT&B

416 As set out above, AIM Cayman had no employees, and was administered entirely by AT&B. At all material times AT&B was the banker for each of Blue Range, AIM Cayman, and AGI and was the wholly owned subsidiary of AGI. Further from 11 May 1990 AT&B was a Trustee of the AF.

417 In participating in the payment of fees to AIM Cayman by Blue Range, and in effecting the payment of these fees to AGI, and to itself, AT&B dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen and Erik Monsen to commit dishonest breaches of their fiduciary duties in that:

417.1 The payments to AIM Cayman were permitted to be made by the Trustees of the AF in breach of trust as pleaded in Paragraph 405 above;

417.2 Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF as pleaded in Paragraph 406 above;

417.3 Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, as pleaded in Paragraphs 409 to 410 above;

417.4 At all material times from 1986 to 1989 Monsen was a director of AT&B, and wholly controlled AT&B's shareholder, AGI. At all material times from 1989 to 1992 Monsen and Erik Monsen were directors of AT&B, and Erik Monsen controlled AGI.

417.5 Monsen and Erik Monsen had the knowledge pleaded in Paragraphs 406 to 409 respectively above, and in particular knew that AIM Cayman provided no services to justify payment of the fees paid by Blue Range.

417.6 At all material times AT&B knew through Monsen and Erik Monsen, that the monies and assets held in the accounts of Blue Range at AT&B belonged directly or indirectly to the AF.

417.7 The knowledge of Monsen and Erik Monsen is to be attributed to AT&B;

417.8 In the premises by participating in the payment by Blue Range of fees to AIM Cayman and the payment of dividends to AGI, AT&B dishonestly assisted both the Trustees in their breach of trust and assisted Monsen and Erik Monsen to breach

their fiduciary duties in the knowledge that the assets in the accounts of Blue Range were directly or indirectly trust assets.

418 In the premises AT&B is liable to account to the Estate as a constructive trustee, and to pay equitable compensation on the taking of that account.

PAYMENTS TO AALL & CO IN RESPECT OF THE KOBE PROPERTY

419 The Kobe property was managed, from its acquisition by the AF in 1986, by the property department of Aall & Co. From 1986 to May 1992 Aall & Co charged Sterling JPY 20,000,000 per annum as a management fee. No fee was paid from May 1992 to May 1993, and a fee of JPY 5 million per annum was paid from May 1993 to 1995.

420 From 1986 to 1995 Sterling paid JPY 150,000,000 (approximately $920,000) to Aall & Co for managing the Kobe property.

421 The fee of JPY 20,000,000 per annum was excessive, and was recognised to be excessive by Mr Tanaka of Aall & Co in a letter dated 29 June 1992 to Flanagan. The fee of JPY 5,000,000 per annum was also excessive, and was recognised to be excessive by the fact that Aall & Co was prepared to provide these services for a fee of only JPY 2,500,000 from 1995.

422 An appropriate fee for the management of the Kobe property throughout the period from 1986 to 1995 would have been in the region of JPY 2.5 million per annum (or $25,000), the fee that was agreed under a written management agreement between Sterling, Blue Range and AT&B dated 27 September 1995.

423 To the best of the Estate's knowledge Monsen and Erik Monsen were responsible for Aall & Co charging Sterling, and thereby the AF, excessive fees. The Estate relies upon the following:

423.1 Monsen was a director of and controlled the activities of Aall & Co from 1986 to 1989;

423.2 Erik Monsen was a director of Aall & Co from prior to the acquisition of the Kobe property and from 1989 exercised sole control over the activities of Aall & Co;

423.3 In June 1992 Erik Monsen informed Mr Tanaka that the reason that Aall & Co charged the sum of JPY 20,000,000 per annum was in view of possible development schemes including procedures of Government Offices.

424 The payment by the Trustees of the AF through Blue Range of excessive fees to Aall & Co for the management of the Kobe property amounted to a breach of trust.

425 In permitting the payment of excessive fees to Aall & Co and in permitting Aall & Co to retain these fees, Monsen and Erik Monsen dishonestly breached the fiduciary duties that they owed to the beneficiaries of the AF in that:

425.1 Monsen was a director of and controlled Blue Range and Aall & Co from 1986 to late 1989;

425.2 Erik Monsen was a director of Aall & Co at all material times, and from 1989 was a director of Blue Range, and controlled both Blue Range and Aall & Co.

425.3 Monsen and Erik Monsen knew that the fees being paid by Blue Range and demanded by Aall & Co were excessive, alternatively recklessly disregarded whether the fees being paid were excessive.

425.4 Monsen and Erik Monsen were in a position to prevent the payment by Blue Range of excessive fees to Aall & Co and did not do so.

426 Further as regards Erik Monsen the Estate will rely upon the following:

426.1 Erik Monsen knew from June 1992 that Mr Tanaka had admitted that the AF had been paying excessive fees to Aall & Co since 1986;

426.2 The subject of the management fees paid to Aall & Co was raised at the meeting of the Trustees and Advisors of the AF in January 1993, which Erik Monsen attended, inter alia, in his capacity as the Chairman of AT&B, one of the Trustees of the AF;

426.3 whilst the meeting noted that no fee was to be payable to Aall & Co for 1992, and that there was a proposal that the fee should be JPY 5 million for 1993, there is no record in the minutes of the meeting to:

426.3.1 the fact that to the knowledge of Erik Monsen, Slatter and Flanagan, the AF, through Blue Range, had been charged and had paid excessive fees to Aall & Co over a period of years from 1986;

426.3.2 to any remedial action that should have been proposed to recover these overpayments.

426.4 The Estate will say that it is to be inferred that Erik Monsen did not inform the meeting that he knew that the AF had been charged excessive fees and deliberately took no action to recover overpayments to Aall & Co, a company which he controlled, in circumstances where he had a duty to do so as an Advisor and Protector to the AF and as a director of the corporate Trustee of the AF, AT&B.

427 In the premises Compass, as Monsen's personal representative, and Erik Monsen are liable to account to the Estate on the footing of wilful default and to pay the sums found to be due on the taking of that account and/or to pay equitable compensation to the Estate for breach of fiduciary duty, to be calculated by reference to the extent of the overpayments to Aall & Co.

DISHONEST ASSISTANCE BY AALL & CO

428 By charging Sterling excessive fees for the management of the Kobe property, and further by retaining the payments made by Sterling, Aall & Co dishonestly assisted the Trustees of the AF to commit a breach of trust, and further dishonestly assisted Monsen and Erik Monsen to commit breaches of their fiduciary duties in that:

428.1 The payments to Aall & Co were permitted to be made by the Trustees of the AF in breach of trust as pleaded in Paragraph 424 above;

428.2 Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF as pleaded in Paragraph 425 above;

428.3 Erik Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF, as pleaded in Paragraphs 425 and 425 to 426 above;

428.4 At all material times from 1986 to 1989 Monsen was a director of and controlled Aall & Co, and its shareholder AGI. At all material times from 1989 to 1992 Erik Monsen was a director of and controlled Aall & Co and AGI.

428.5 Monsen and Erik Monsen had the knowledge pleaded in Paragraphs 425 to 426 respectively above, and in particular knew that the fees being paid to Aall & Co were excessive, alternatively recklessly disregarded whether the fees were excessive. Further Monsen and Erik Monsen knew that the assets of Blue Range, from which payments to Aall & Co were funded, were held directly or indirectly for the AF.

428.6 The knowledge of Monsen and Erik Monsen is to be attributed to Aall & Co;

428.7 By participating in the payment by Sterling of excessive fees to Aall & Co, Aall & Co dishonestly assisted both the Trustees in their breach of trust and assisted Monsen and Erik Monsen to breach their fiduciary duties in the knowledge that the assets in the accounts of Blue Range were directly or indirectly trust assets.

429 In the premises Aall & Co is liable to account to the Estate as a constructive trustee, and to pay equitable compensation on the taking of that account.

DISHONEST BREACH OF TRUST BY AT&B

430 From September 1992 to January 1993 a series of meetings of the Trustees of the AF were held in Grand Cayman to consider the matters raised in a substantial memorandum prepared by Slatter in 1992, which identified a number of serious concerns about the legitimacy of the past transactions of the AF.

431 The Trustees at the material times were Slatter and AT&B. AT&B were represented at the meetings by Erik Monsen, Lord Tryon and Flanagan. Tove Brown also attended the meetings as an Advisor to the AF.

432 As regards the acquisition of the Kobe property Slatter (in the 1992 memorandum):

432.1 identified the history of the communications with UWC relating to the establishment of a UWC college in Japan, attaching the relevant correspondence;

432.2 attached the memorandum prepared by Hardman in February 1986 referred to above (Paragraph 301);

432.3 attached the contemporaneous valuation of the Kobe property in the sum of JPY 1,634 million and identified that this valuation was on the basis that planning permission would be granted for residential development, and therefore appeared at the top end of the scale; and

432.4 attached the correspondence referred to above with Mr Soma identifying a market value for the Kobe property of JPY 1,000 million.

433 Slatter identified that the foremost question was to determine how the purchase price paid by the AF of $21 million was determined for the non arms length sale by Aall & Co of the Kobe property to the AF.

MEETINGS OF THE TRUSTEES IN SEPTEMBER 1992

434 The first occasion upon which the acquisition of the Kobe property was considered was at the meetings held between 23 and 26 September 1992. The minutes of these meetings record that, after having read the memorandum prepared by Slatter, and after having telephoned Hardman for information on the acquisition of the Kobe property, the Trustees' initial findings were as follows:

434.1 that the transaction should have been completed at a purchase price of JPY 1.6 billion;

434.2 that the Trustees had a duty to see the AF made "whole" in respect of the overpayment of the purchase price;

434.3 that whilst it was unclear why the Kobe property had not been gifted by AT, rather than AF, the acquisition of the Kobe property was not necessarily inappropriate;

434.4 that the Trustees inclination was to cause AGI to repay the difference between the independently appraised value of the Kobe property, and the amount paid by the AF together with interest.

435 Further meetings of the Trustees of the AF were held between 26 and 29 January 1993 at which the question of the acquisition of the Kobe property was reconsidered. Hardman was invited to these meetings and made comments as follows:

435.1 that there was a further purpose to the transaction beyond the gift to UWC, namely that the Kobe property was a genuine real estate investment;

435.2 that the Kobe property was seen as potentially very valuable, and this was borne out by the value carried in the books of Aall & Co;

435.3 that Gibson had advised Hardman that there was nothing untoward in having a substantial proportion of the purchase price paid outside Japan;

435.4 that it was believed that in the event of a sale steps could be taken to mitigate the tax liability that Sterling assumed by underdeclaring the actual purchase price;

435.5 that as far as he was aware, those involved genuinely believed the transaction to be in the best interests of the AF, and the property to be a good investment, and that the price paid by the AF to be a fair and reasonable one in all the circumstances;

435.6 that his honest and genuine belief was that the transaction was bona fide and not intended unfairly or unreasonably to enrich AT at the expense of the AF.

436 The minutes of the January meetings record that the Trustees of the AF considered the above evidence of Hardman and then resolved that they found no evidence of improper motive or negligence on the part of those involved or an intention on their part deliberately to benefit the AT at the expense of the AF. The Trustees further resolved that there was no need further to investigate the relevant circumstances, or to pursue any kind of claim in respect of the Kobe property transaction.

BREACH OF TRUST

437 The Estate will say that the conclusions reached at the January 1993 meetings by AT&B as the Trustee of the AF, and the consequent decision not to institute proceedings against, inter alia, Monsen for recovery of the loss caused to the AF as a result of the acquisition of the Kobe property amounted to a dishonest breach of trust by AT&B in that:

437.1 The material set out in and attached to the memorandum prepared by Slatter prior to the meeting identified that the AF had acquired the Kobe property at a very substantial overvalue, and that there was no evidence upon which the price of $21 million could be justified;

437.2 in September 1992 the Trustees of the AF had reached the conclusion, after discussing the acquisition of the Kobe property with Hardman, that the AF had acquired the Kobe property at a very substantial overvalue, and that there was no evidence upon which the price of $21 million could be justified;

437.3 no evidence was produced at the meetings in January which cast any doubt on the conclusion at the previous meeting that the AF had acquired the Kobe property at a massive overvalue in that:

437.3.1 Hardman provided no evidence whatsoever that the price paid by the AF was not well in excess of the actual value of the Kobe property, as identified (at the very least), by the contemporaneous valuation that had been obtained and by the value accepted as the market value by the Japanese authorities;

437.3.2 the evidence given by Hardman to the effect that the acquisition of the Kobe property was seen as an investment was plainly false, and in any event provided no honest justification for the AF paying well in excess of the value of the Kobe property;

437.3.3 the evidence given by Hardman in relation to the tax position following the transaction was plainly incredible;

437.4 the meeting plainly failed to consider the material issues as set out in Paragraph 314 above;

437.5 in the premises there was no honest basis upon which AT&B could have reached the conclusions that it reached at the January 1993 meetings.

437.6 In any event Erik Monsen knew at the time of the acquisition of the Kobe property by the AF that the market value accepted by the Japanese authorities was $5,540,166.20 and that there was no honest justification for the payment of $21 million, as set out in Paragraph 330 above;

437.7 Lord Tryon and Flanagan at the very least recklessly disregarded or were wilfully blind to the fact that the AF had acquired the Kobe property at a very substantial overvalue on the directions of Monsen: the Estate repeats Paragraphs 434 to 437.4 above.

437.8 The knowledge of Erik Monsen, Lord Tryon and Flanagan is to be attributed to AT&B for the purpose of the decision reached at the January meetings.

438 In the premises AT&B is liable to account to the Estate on the footing of wilful default and to pay the Estate the sums found to be due on the taking of that account. The Estate will say as follows as regards the taking of that account:

438.1 At a point unknown to the Estate but in or around January 1993 AT&B accepted appointment as the Executor under the will of Monsen.

438.2 Prior to accepting that appointment, at the series of meetings of the Trustees of the AF held between 24 and 26 November 1992, AT&B raised the question of the conflict of interests that it would face if it accepted appointment as Executor of Monsen's will in circumstances where it had an obligation as a Trustee of the AF to pursue a claim against Monsen's estate.

438.3 The minutes of these meetings record a consensus that if AT&B was to accept appointment as Executor of Monsen's estate, it must nevertheless take all decisions as Trustee of the AF with the additional conflicts of interests arising as a primary consideration;

438.4 On 3 March 1993 AT&B applied for and was granted probate of Monsen's estate. At that point AT&B came into possession of the assets of Monsen's Estate which were valued at in excess of $36 million.

438.5 The Estate will say that:

438.5.1 as set out above, AT&B ought to have concluded at the meetings in January 1993 that the AF had a strong claim against, inter alia, Monsen's estate, as a result of the acquisition by the AF of the Kobe property at a very substantial overvalue on the directions of Monsen;

438.5.2 in the premises AT&B ought to have taken proceedings against, inter alia, Monsen's estate to recover the loss suffered by the AF;

438.5.3 AT&B held the assets of Monsen's estate until September 1993; by that time the Trustees of the AF ought to have commenced proceedings against Monsen's estate, and taken steps to ensure that the assets of Monsen's estate were not distributed and put beyond the reach of Monsen's creditors;

438.5.4 if proceedings had been commenced, and appropriate steps taken by the Trustees of the AF to secure the assets of Monsen's estate, those assets would have been available to the AF in satisfaction of its claims against Monsen's estate;

438.5.5 in the event in September 1993, AT&B retired as the Executor of the Monsen's estate in favour of Compass:

(i) without taking any or any appropriate steps to ensure that the assets of Monsen's estate remained available to meet the legitimate claims of its creditors, including the Estate, which had by that time intimated to AT&B that it intended to make a claim against Monsen's estate; and

(ii) in the knowledge that Monsen's estate would be distributed by Compass, which was wholly owned and controlled by Erik Monsen.

439 In the premises AT&B should be held liable to account for the full value of the assets that it would have recovered from Monsen's estate.

DISHONEST ASSISTANCE BY ERIK MONSEN AND LORD TRYON

440 The Estate will say further that by participating, as the directors of AT&B, in the decision taken by AT&B at the meetings in January 1993 that the AF had and should bring no claims in relation to the acquisition of the Kobe property, Erik Monsen and Lord Tryon

dishonestly assisted AT&B to commit a breach of trust. The Estate repeats Paragraphs 434 to 437 above as particulars of the dishonesty of Erik Monsen and Lord Tryon.

441 In the premises Erik Monsen and Lord Tryon are liable to account to the Estate as constructive trustees and to pay equitable compensation to the Estate on the taking of that account.

THE PATTERN OF DISHONEST CONDUCT

442 As indicated above, the Estate relies upon the pattern of dishonest conduct by Monsen and Erik Monsen in relation to the affairs of the AF in support of the specific claims of dishonesty pleaded above in respect of which the Estate seeks to recover compensation in this action.

443 The following Paragraphs identify the further conduct of Monsen, Erik Monsen and the Advisors at various times to the AF to which the Estate will say that it is appropriate to have regard to in the determination of the dishonesty of the members of the Monsen family.

RETIREMENT OF KINDERSLEY

444 Kindersley retired as an Advisor to the AF in September 1987. On 31 December 1987 a payment of $2 million was made by the AF to the AT&B account of Forrester Holdings, a company owned by Monsen. This payment was made on the instructions of Monsen, with the knowledge of the Advisors, including Tove Brown, and, it is to be inferred, with the knowledge of Erik Monsen.

445 The payment was approved at the meeting of the Trustees and Advisors of the AF in Grand Cayman on 19 January 1988 attended by, inter alia, Monsen, Tove Brown and Erik Monsen.

446 The payment related to the transfer to Kindersley by Monsen of the shares in Oriental Maritime Corporation, which owned land and property known as Westgreen Farm, in Kent,

where Kindersley lived. Monsen had agreed to transfer these shares, and to continue to pay Kindersley $50,000 per annum, in order to facilitate his retirement.

447 The payment by the Trustees of the AF of the sum of $2 million to Monsen's company was a breach of trust.

448 In instructing the Trustees of the AF to pay this sum Monsen dishonestly breached the fiduciary duties that he owed to the beneficiaries of the AF in that:

448.1 Monsen knew that Kindersley was not entitled to receive any sums from the AF as a condition of his retirement;

448.2 Monsen knew that he was not entitled to direct the Trustees of the AF to make the payment of $2 million to Forrester Holdings;

448.3 In procuring payments to be made to Kindersley, Monsen was solely concerned with his own, and his family's interests. The Estate will rely upon the note recorded by Slatter in his memorandum dated 8 October 1990 that:

> "Thus [Kindersley']s resignation as an Advisor of the [AF] cost the [AF] $2 million. At the time I made a note in my file that on asking [Monsen] why [Kindersley] got so much he replied "it was not much for what he got me"."

448.4 In authorising the misappropriation of the assets of the AF, Monsen deliberately acted contrary to the interests of the beneficiaries of the AF.

449 The agreement by Monsen to continue to pay Kindersley an annual sum of $50,000 was a dishonest breach of fiduciary duty by Monsen for the reasons set out in Paragraph 448 above. The Estate will say that the payments made by Monsen to Kindersley are consistent with a desire on Monsen's behalf to purchase co-operation or silence on the part of Kindersley in relation to his misappropriation of assets belonging to the Estate and assets believed to be held on trust for the beneficiaries of the AF.

450 The Trustees of the AF recognised at the meetings in September 1992 that the payment to Monsen was a breach of trust. The capital sum of $2 million was recovered by way of compromise and release on 6 May 1994 between Bridge and Compass.

THE RESIGNATION OF GIBSON

451 In early 1989 Gibson decided that he and the other non-Monsen Advisors, namely Worsley and Lord Tryon, should take control of the affairs of the AF away from the Monsen interests. Gibson's apparent concerns were the worsening ill health of Monsen and the investment decisions that had been taken by Erik Monsen.

452 In or around March 1989 Gibson telephoned Slatter and informed him:

452.1 that he had had a meeting with Erik Monsen in New York;

452.2 that Slatter and Flanagan (who was in the room with Slatter during this telephone conversation) should not do anything on the instructions of Monsen or Erik Monsen;

452.3 that Gibson and the other Advisors were going to step in and take over the affairs of the AF from the Monsens; and

452.4 that Gibson was travelling to Hawaii to meet Monsen in this regard.

453 Gibson met with Monsen in Hawaii at some time shortly after the above telephone conversation. Following this meeting Monsen telephoned Slatter and informed him that Gibson was going to retire as an Advisor, that Monsen had agreed to pay him $5 million and that Slatter should arrange for the AF to pay this sum to Gibson.

454 Slatter refused to pay $5 million to Gibson from the assets of the AF. Instead he arranged for the sum of $1 million to be paid to Gibson, the amount being paid by Blue Range as "President's expenses" to Monsen.

455 The payment to Gibson was plainly a dishonest use of the assets of the AF and amounted to a breach of trust by the Trustees of the AF, and a dishonest breach of the fiduciary duties owed by both Monsen and Erik Monsen to the beneficiaries of the AF.

456 The Estate will say that Monsen's agreement to pay Gibson $5 million, to which Erik Monsen was privy, in order to prevent the Advisors of the AF wresting control of the AF away from the Monsens is consistent with the dishonest pattern of conduct demonstrated by Monsen and Erik Monsen towards the beneficiaries of the AF, and identified in this section of the claim in that:

456.1 Gibson was plainly not entitled to be paid any sums from the assets of the AF as a condition for his retiring as an Advisor;

456.2 Monsen was plainly not entitled to instruct Slatter to pay Gibson $5 million from the assets of the AF to facilitate Gibson's retirement;

456.3 Monsen was solely concerned with his own, and his family's interests;

456.4 in authorising the misappropriation of the assets of the AF, and in securing unfettered control over the affairs of the AF the Monsen family, and in particular Erik Monsen, Monsen deliberately acted contrary to the interests of the beneficiaries of the AF;

456.5 further in permitting the payment to Gibson to be made, Erik Monsen deliberately acted contrary to the interests of the beneficiaries of the AF.

457 As part of the agreement between Gibson and Monsen, Gibson drafted further amendments to the terms of the AF memorandum of agreement. Those amendments consisted of:

457.1 the introduction of the office of Protectors to the Trust, namely, Monsen, Erik Monsen, Tom Monsen and Tove Brown who were to have the power to appoint and remove Advisors, other than Monsen;

457.2 a further amendment to clause 33 of the AF memorandum of agreement, which would entitle an Advisor upon removal or retirement to receive continuing compensation of not less than ten times the highest compensation paid to such Advisor in any prior year.

458 The Estate will say that the purpose of these proposed amendments was:

458.1 to ensure that no challenge to the Monsens' control of the AF could be made in the future; and

458.2 to attempt to legitimise the payment of $1 million to Gibson

459 On 12 April 1989 Gibson wrote to Slatter enclosing his resignations as, inter alia, an Advisor to the AF and a director of AGI, Aall & Co and AT&B, and indicating that notice of his resignation would only take effect after the adoption of the amendments to the AF memorandum of agreement set out above.

460 In the event the AF memorandum of agreement was amended to introduce the role of Protector, but not so as to entitle the Advisors to compensation upon removal or retirement.

461 In 1994 the Trustees of the AF recognised that the payment to Monsen in respect of the agreement with Gibson was a breach of trust. The capital sum of $1 million was recovered by way of compromise and release on 6 May 1994 between Bridge and Compass.

THE RESIGNATION OF WORSLEY

462 The attempt by Gibson to challenge the control of the Monsens over the affairs of the AF led to Monsen demanding the resignations of Worsley and Lord Tryon in May 1989.

463 On 4 May 1989 Slatter sent Worsley a Notice of Resignation, as instructed by Monsen. On the same day Worsley telephoned Slatter. Slatter's note of that telephone conversation records:

"- I advised him resignations AF/AT were couriered to him

- He did not mention his request (per TM's earlier tel call) for 135,000 per annum.
- He advised that [Monsen] had told him that [Monsen] was going to transfer the AF to Forrester. My reply was that "only if I am no longer trustee"
- He asked for [Monsen's] London dates – he was going to meet him"

464 In the event Worsley only agreed to retire as an Advisor to the AF upon payment of Canadian $1 million, negotiated by Erik Monsen in December 1989 and having reached an agreement negotiated by Tove Brown in relation to certain farm property in Uxbridge, Canada, owned by the Monsen family, but farmed by Worsley's son.

465 The Estate will say that the payment of substantial sums of money to Gibson and Worsley in circumstances where neither was entitled to receive any payment upon retirement, and the consequent assumption of total control of the AF by the Monsens, are in the premises consistent only with

465.1 the desire on the Monsens' part to purchase co-operation or silence on the part of these Advisors; and

465.2 the desire on the Monsens' part to continue to utilise the assets of the AF unlawfully and for the benefit of the Monsen family.

THE APPOINTMENT OF AT&B AS TRUSTEE OF THE AF

466 As set out above, AT&B was appointed as a Trustee of the AF on 11 May 1990 in replacement of Transglobal. The Estate will say that the appointment of AT&B as a replacement Trustee of the AF was plainly contrary to the interests of the beneficiaries of the AF, designed to cement the Monsen's control of the AF following the events of 1989, and is further evidence of the pattern of dishonest conduct relied upon in support of the specific claims set out above.

467 Under clause 24 of the AF memorandum of agreement, the power to appoint a new Trustee was vested in the Advisors to the AF. Further, under clause 33 of the AF memorandum of agreement, the power to agree the level of remuneration paid to the Trustees was vested in the Advisors to the AF. In May 1990 the only competent Advisors were Erik Monsen and Tove Brown.

468 At the meeting of the Trustees and Advisors of the AF held on 11 May 1990, the day that AT&B was appointed as a Trustee, Slatter purportedly proposed that consideration be given to increasing the Trustees' fees from 1/10 of 1% of the value of the Trust Fund to 1/4 of 1% to take effect from 1 July 1990.

469 At some point unknown to the Estate this purported proposal was approved by Erik Monsen and Tove Brown, as the Advisors to the AF. The Estate will say that Erik Monsen directed Slatter to propose an increase in the fees payable to the Trustees for the benefit of AT&B.

470 The Estate will say that the decisions taken by Erik Monsen and Tove Brown to appoint AT&B and to increase the fees payable to the Trustees of the AF by 150% were fraudulent exercises of the powers vested in them as Advisors, and amounted to dishonest breaches of the fiduciary duties that they owed to the beneficiaries of the AF in that at the very least:

470.1 Erik Monsen and Tove Brown knew that the Trustees' fees were being increased by 150%;

470.2 Erik Monsen and Tove Brown recklessly disregarded whether there was any justifiable basis for increasing the level of fees paid to the Trustees by 150%;

470.3 It is to be inferred that the principal purpose of increasing the fees of the Trustees by 150% was to ensure:

470.3.1 that Slatter continued to receive the same level of remuneration that had previously been received by both Trustees of the AF; and

470.3.2 that AT&B upon appointment as a Trustee was paid an amount equivalent to the amount that was previously paid to both Trustees of the AF;

470.4 The exercise by Erik Monsen and Tove Brown of the above powers were plainly contrary to the interests of the beneficiaries of the AF in that:

470.4.1 there was no justification to pay Slatter the cumulative amounts that had previously been paid to Slatter and Transglobal in circumstances where Transglobal was being replaced as a Trustee;

470.4.2 there was no justification to set the level of the fees to be paid to AT&B by reference to the cumulative sums previously paid to Slatter and AT&B; and

470.4.3 it was plainly contrary to the interests of the beneficiaries of the AF that AT&B be appointed as a Trustee of the AF in that AT&B was incapable by reason of conflicts of interest from acting in the interests of the beneficiaries of the AF in circumstances where:

(i) AT&B was controlled by Erik Monsen;

(ii) AT&B was wholly owned by AGI, which was controlled by Erik Monsen;

(iii) AT&B was the Trustee of AT, the majority shareholder of AGI; and

(iv) the interests of the beneficiaries of the AF required that the Trustees of the AF extricate the AF from its dealings with AGI and the Monsens, as was already recognised at this time by Slatter.

471 The Estate reserves the right to claim relief in respect of any loss caused by the above breaches of fiduciary duty after discovery.

USE OF THE ASSETS OF THE AF TO BENEFIT THE INTERESTS OF THE MONSEN FAMILY BUSINESSES

472 As set out above, the Estate's case is that Monsen and Erik Monsen directed the Trustees of the AF to commit or failed to prevent breaches of trust with a view to benefiting the interests of the Monsen family businesses, and thereby their own interests by reason of

their control of the companies involved and their interests in AT, the majority shareholder of AGI, namely:

472.1 the acquisition of shares by the AF in AGI;

472.2 the acquisition of the Kobe property;

472.3 the payment of excessive fees by Sterling to Blue Range for management of the Kobe property;

472.4 the payment of fees to AIM Cayman;

472.5 the sale of the shares of Aall Realty.

473 The Estate will say that the following facts and matters further demonstrate the intention on the part of Monsen and his family to benefit the interests of the Monsen family businesses at the expense of the interests of the beneficiaries of the AF.

THE PAYMENT OF DIVIDENDS BY AGI TO AT

474 Notwithstanding the fact that the AF was a preference shareholder in AGI, Monsen and Erik Monsen procured that AGI declared no dividends in favour of the AF.

475 Furthermore, Monsen and/or Erik Monsen procured that AGI pay sums in the nature of dividends to AT. As at 31 December 1991 sums amounting to $300,000 had been paid to a subsidiary of AT, and payment of further sums of $250,000 was projected to be paid.

476 In a memorandum dated 3 August 1992 written by Slatter to Flanagan of AT&B, Slatter objected to the payment of further sums in the nature of dividends to AT, and identified that the AT would need to refund the amounts that it had previously been paid by AGI.

477 The memorandum further records that the AF had not received any dividends from AGI and that "[Erik Monsen] did not want the AF to receive dividends from [AGI]." Slatter

indicated that the matter would be included in the memorandum that he was preparing for the purpose of reviewing the past conduct of the affairs of the AF.

478 The minutes of the meetings of the Trustees and Advisors of the AF in September 1992 record that the payments to AT referred to above were tantamount to payment of a dividend and that Erik Monsen indicated that it was his recollection of events that the advances should have been made from a Monsen family company, Hurford Holdings. The meeting determined to consider the advances to the AT in more detail.

479 To the best of the Estate's knowledge the advances made by AGI were not considered further by the Trustees of the AF, and the sums paid to AT by AGI were not repaid.

THE BRISAS AND BRAVA LOANS

480 In November 1987 on the direction of Monsen the AF, through Blue Range, lent $7,455,000 to a wholly owned subsidiary of Blue Range, Embarcos Las Brisas ("Embarcos").

481 In December 1987, again on the direction of Monsen, the AF, through Blue Range, lent a further sum of $5,600,000 to another wholly owned subsidiary of Blue Range, Intermarine Investments Ltd ("Intermarine").

482 So far as the Estate is aware the purpose of these loans was to finance the acquisition of ships, known as "Brisas" and "Brava".

483 No formal loan documentation was ever executed for the above loans, and no security was provided for the loans, although it appears to have been agreed in or around December 1987 that:

483.1 The Brisas loan should carry interest at 7.5 % and should be repaid in 8 years;

483.2 The Intermarine (Brava) loan should carry interest at 9.5% and should be repaid in 3 and a half years.

484 At a point unknown to the Estate the ownership of the shares in Embarcos and Intermarine passed to ASIL, a wholly owned subsidiary of AGI.

485 The Estate will say that it was not in the interests of the beneficiaries of the AF that the funds of the AF should be invested in unsecured loans at favourable rates of interest to subsidiaries operating within the Monsen family businesses, the shares of which were ultimately transferred to AGI, so far as the Estate is aware, for no consideration.

486 In the premises the Estate will say that Monsen directed the Trustees of the AF to make the above loans in order to further the interests of the Monsen family businesses, without considering, alternatively with reckless disregard to, the interests of the beneficiaries of the AF.

CO-INVESTMENT AND CO-MINGLING OF THE ASSETS OF THE AF WITH THE ASSETS OF THE AALL GROUP

487 Finally, the Estate will say that, without regard and contrary to the interests of the beneficiaries of the AF, Monsen and Erik Monsen treated the assets of the AF as if they were the assets of the Monsen family businesses and not held on trust for interests other than the Monsens. The Estate will rely upon the following facts and matters:

487.1 Monsen and Erik Monsen directed the investment of the assets of the AF in joint investments with the assets of the AT, and AGI, and Monsen family companies including the Henry Venture Funds, Sunbelt, Arix (formerly Arete Systems Corporation), Action Investments.

487.2 Monsen directed the investment of the assets of the AF in a manner entirely inappropriate for an offshore trust believed at the time to be charitable, by acquiring non income producing real estate in onshore jurisdictions, and investing in speculative venture capital projects, as was belatedly recognised by the Trustees of the AF at the meetings held between September 1992 and January 1993 referred to above.

RELIEF CLAIMED AND QUANTUM

488 Schedule 3 hereto provides details of the rates of interest referred to below.

THE PAYMENT OF $1,465,000 FROM CTC TO MONSEN

489 The Estate claims that is entitled to receive the following compensation:

489.1 $1,465,000; plus

489.2 Interest in equity from 21 October 1982 at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

(This claim is made as an alternative to the claims in Part III and Part IV in respect of the same sum.)

THE ACQUISITION OF THE SHARES IN AGI

490 The Estate claims that is entitled to receive the following compensation:

490.1 $9,600,000; plus

490.2 Interest in equity from 25 January 1983 at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

491 The Estate will give credit for the sum of US$4.85 million received by the present Trustees in consideration for the redemption of the shares in AGI.

THE KOBE PROPERTY TRANSACTION

492 The Estate claims that is entitled to receive the following compensation:

492.1 $5,540,166.20; plus

492.2 interest on the above sum in equity from 27 March 1986 at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year; and

492.3 $15,459,833.80; plus

492.4 interest on the above sum in equity from 28 August 1986 at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

493 The Estate will give credit for the present value of the Kobe property. The best information that the Estate has as to the present value of the Kobe property is in the sum of JPY 322,425,000 ($2,418,509) in April 1998.

THE SALE OF THE SHARES OF AALL REALTY (THE HAWAII PROPERTIES)

494 The Estate claims that is entitled to receive at least the following compensation:

494.1 $14,000,000 being the difference between the price paid by AGI and the actual price; plus

494.2 interest in equity at a rate of 1% above the US$ Prime Rate from 1 January 1990 compounded annually on 31 December of each year.

PRESIDENT'S FEES

495 The Estate claims that is entitled to receive the following compensation:

MONSEN – THE CF

495.1 $198,687 from 31 December 1978;

495.2 $107,544 from 31 December 1980;

495.3 $100,000 from 31 December 1982; plus

495.4 plus interest in equity on each of the above sums at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

MONSEN – THE AF

495.5 $100,000 from 31 December 1982;

495.6 $200,000 from 31 December 1983;

495.7 $200,000 from 31 December 1984;

495.8 $300,000 from 31 December 1985;

495.9 $400,000 from 31 December 1986;

495.10 $400,000 from 31 December 1987;

495.11 $1,000,000 from 31 December 1988;

495.12 $350,000 from 31 December 1989 ;

495.13 $250,000 from 31 December 1990;

495.14 plus interest in equity on each of the above sums at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

ERIK MONSEN

495.15 $50,000 from 31 December 1986;

495.16 $50,000 from 31 December 1987;

495.17 $100,000 from 31 December 1988;

495.18 $50,000 from 31 December 1989;

495.19 $50,000 from 31 December 1990;

495.20 $100,000 from 31 December 1991

495.21 $100,000 from 31 December 1992

495.22 plus interest in equity on each of the above sums at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

AIM CAYMAN

496 The Estate claims that is entitled to receive the following compensation:

496.1 $257,984 from 30 September 1987;

496.2 $256,850 from 31 December 1987;

496.3 $252,119 from 31 March 1988;

496.4 $255,629 from 30 June 1988;

496.5 $258,241 from 30 September 1988;

496.6 $254,959 from 31 December 1988;

496.7 $254,461 from 31 March 1989;

496.8 $254,091 from 30 June 1989;

496.9 $255,517 from 30 September 1989;

496.10 $241,340 from 31 December 1989;

496.11 $55,317 from 31 March 1990;

496.12 $50,095from 30 June 1990;

496.13 $44,721 from 30 September 1990;

496.14 $50,648 from 31 December 1990;

496.15 $69,605 from 31 March 1991;

496.16 $70,223 from 30 June 1991;

496.17 $59,296 from 30 September 1991;

496.18 $54,291 from 31 December 1991;

496.19 $212,000 from 31 December 1992.

496.20 plus interest in equity on each of the above sums at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

EXCESSIVE PAYMENTS TO AALL & CO FOR MANAGEMENT OF THE KOBE PROPERTY

497 The Estate claims that is entitled to receive the following compensation. Each of the sums below is calculated by converting the payment of JPY to US$ and deducting therefrom the reasonable management fee of $25,000:

497.1 $89,000 from 1 June 1986;

497.2 $113,860 from 1 June 1987;

497.3 $134,940 from 1 June 1988;

497.4 $115,580 from 1 June 1989;

497.5 $106,400 from 1 June 1990;

497.6 $119,560 from 1 June 1991;

497.7 $21,730 from 1 June 1993;

497.8 $22,780 from 1 June 1994;

plus interest in equity on each of the above sums from at a rate of 1% above the US$ Prime Rate compounded annually on 31 December of each year.

PART VI

WRONGFUL DISTRIBUTION OF THE ESTATE OF MONSEN

498 As identified above:

498.1 Compass was appointed as the personal representative of the Estate of Monsen;

498.2 By the second codicil to Monsen's Will upon Monsen's death the shares of Hurford Holdings were left to the trustees of the Hurford Trust.

499 By a letter dated 26 October 1992 the Estate gave AT&B, the then executor of Monsen's Will, notice of its intention to bring claims. In a further letter of 3 June 1993 the Estate gave written notice to AT&B's attorneys of claims, including claims contained herein, that the Estate had against Monsen and his Estate upon his death.

500 In particular, the Estate's attorneys stated in the letter dated 3 June 1993 that:

> Our client accordingly gives your client notice that he has, and is maintaining, a claim of the above order against Mr Monsen's Estate and will look to your client personally (i.e., a claim de bonis propriis) in the event of its making any distribution of assets which causes there to be an insufficiency of assets in Mr Monsen's Estate to meet our client's claim and costs in their entirety. [...]
>
> ... if our client's claim is not met out of the Monsen Estate because your client has distributed, our client may be concerned with tracing and other remedies against the beneficiaries.

501 As already set out in Part V, by 1993 Erik Monsen was the individual who controlled AT&B. He knew from the above letters of the Estate's intentions to bring its claims.

502 Compass is controlled by Erik Monsen; as far as the Estate is aware Erik Monsen is a director of this company. The Estate will say that he is its directing mind and will and that his knowledge is to be attributed to the company. Thus Compass knew that the Estate had intimated its claims.

503 Notwithstanding the said letters Compass distributed the estate of Monsen to the beneficiaries of his Will and in particular distributed the shares of Hurford Holding to the trustees of the Hurford Trust.

504 The Estate has the right as a creditor of Monsen's estate in the event that Compass is unable to satisfy such claims to follow any assets distributed by Compass including in particular the shares of Hurford Holdings or any property representing those shares into the hands of the trustees of the Hurford Trust. So far as any such assets have been distributed by the said trustees to any persons (not being a purchaser for value without notice of the Estate's claims) the Estate is entitled to follow such property into their hands and to a refund of such distributions as a creditor.

505 The Estate is entitled to and claims an order that Compass and the trustees of the Hurford Trust disclose to whom the property forming the estate of Monsen coming into their hands has been distributed and an order for the transfer of such property to the Estate or such other order as may be necessary including any declarations, orders for sale or vesting orders to give effect to the Estate's rights against Monsen and his estate.

RECOVERIES IN OTHER PROCEEDINGS

506 The Estate has recovered various sums in settlement of claims that it has brought in Norway against Lazards and others and in Cayman by counterclaim in Cause 296 of 1994 relating to CTC and the assets of CTC or assets derived therefrom. The Estate contends that the sums received in settlement of these earlier actions do not extinguish, satisfy or reduce the claims herein.

AND THE PLAINTIFFS' CLAIM

(1) CLAIMS UNDER PART III

THE RETAINED SHARES

(1) A Declaration that the Retained Shares and the assets or income derived from or representing the same, including the Cash Payment, have at all material times been held on trust for Jahre (and after his death the Estate) absolutely, or alternatively owned beneficially by Jahre (and after his death the Estate) under Norwegian law.

(2) A Declaration that:

(a) from about 9 November 1976, Monsen held the Retained Shares and the assets or income derived from them on trust for Jahre absolutely; or alternatively that Jahre remained the beneficial owner of such shares, assets or income under Norwegian law;

(b) from about July or August 1979, Monsen held the 10,000 shares of Harmon and the assets or income representing them on trust for Jahre absolutely; or alternatively that Jahre remained the beneficial owner of such shares, assets or income under Norwegian law;

(c) from about July or August 1979, Harmon held all of its assets or income on trust for Jahre absolutely; or alternatively that Jahre remained the owner of the assets or income held by Harmon under Norwegian law.

AGAINST MONSEN/COMPASS

(3) An order that Compass account to the Estate on the footing of wilful default and pay the sums found to be due, including equitable compensation, on the taking of that account, and/or pay equitable compensation for breach of fiduciary duty (or a duty which is to be characterised as fiduciary), in respect of:

(a) the Retained Shares of which Monsen became the legal owner on or about 9 November 1976 and the assets or income derived from or representing them;

(b) the Cash Payment of $14,250,000 which was received in about August 1979 by Monsen or to his order upon the redemption of the Retained Shares;

(c) the assets or income which were taken by Monsen for his own benefit and/or for the benefit of companies owned or controlled by him in the period from September 1982 to 1988, including in particular the 10,000 shares of Harmon taken by him on or about 24 September 1982;

(d) the payments to or for the benefit of Monsen of $1,456,000 made in October 1982 and $600,000 made at some point in the period 1985 to 1988;

(e) the failure to transfer the assets derived from the Retained Shares and/or the Cash Payment to the Estate at any time after Jahre's death in 1982.

(4) An Order that Compass account to the Estate on the footing of wilful default and/or as a constructive trustee and pay the sums found to be due, including equitable compensation, on the taking of that account, for Monsen's dishonest assistance in breaches of trust or fiduciary duty (or for wrongdoing to be characterised as such) in relation to

(a) Harmon's transfer of its assets to Monsen and his companies in the period 1982 to about 1988; and

(b) Harmon's failure to transfer such assets to the Estate after Jahre's death.

(5) Alternatively that Compass pay equitable compensation for Monsen's breaches of fiduciary duty (or a duty which is to be characterised as fiduciary) in respect of (a) and (b) above.

(6) Alternatively, equitable compensation or damages in respect of all of the foregoing for Monsen's breaches of duties owed under Norwegian law and/or Delict committed by Monsen.

(7) A Declaration that Compass holds such of its assets as are derived directly or indirectly from the assets or income representing the Retained Shares and/or the Cash Payment on trust for the Estate absolutely, or that those assets belong to the Estate under Norwegian law.

(8) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST FORRESTER HOLDINGS AND HURFORD HOLDINGS

(9) An Order that Forrester Holdings account to the Estate as a constructive trustee and pay the sums found to be due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust or fiduciary duty (or for wrongdoing to be characterised as such) in respect of its receipt of the shares and/or assets of Harmon derived from the Retained Shares and/or the Cash Payment in the period 1982 to about 1988.

(10) An Order that Hurford Holdings account to the Estate as a constructive trustee and pay the sums found to be due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust or fiduciary duty (or for wrongdoing to be characterised as such) in respect of its receipt of the assets derived from the Retained Shares and/or the Cash Payment of $14.25 million in about 1989 or 1990

(11) Alternatively, equitable compensation or damages in respect of the foregoing for the Delict committed by Forrester Holdings and Hurford Holdings.

(12) A Declaration that Forrester Holdings and Hurford Holdings hold such of their assets as are derived directly or indirectly from the assets or income of the Retained Shares and/or the Cash Payment on trust for the Estate absolutely or that those assets belong to the Estate under Norwegian law.

(13) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST FORRESTER MARITIME

(14) An Order that Forrester Maritime account to the Estate as a constructive trustee and pay the sums found to be due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust or fiduciary duty (or for wrongdoing to be characterised as such) in respect of the transfer to Monsen of the said sum of $600,000 at some point in the period 1985 to 1988.

(15) Alternatively, equitable compensation or damages in respect of the foregoing for the Delict committed by Forrester Maritime.

(16) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST AT&B

(17) An Order that AT&B account to the Estate as a constructive trustee and pay the sums found to be due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust or fiduciary duty (or for wrongdoing to be characterised as such) in respect of Monsen's transfer in about September 1982 of the 10,000 shares of Harmon to Forrester Holdings.

(18) Alternatively, equitable compensation or damages in respect of the foregoing for the Delict committed by AT&B.

(19) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST THE THIRTEENTH DEFENDANT, THE TRUSTEE OF THE AALL TRUST

(20) A Declaration that the Estate is entitled to trace in equity and follow and recover the $2 million transferred to the trustees of the Aall Trust in or about May 1983 and the traceable proceeds thereof; or alternatively a Declaration that the Estate is the owner of such assets under Norwegian law.

(21) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST ALL PART III DEFENDANTS

(22) An Order that any assets or income which are held by the Defendants or any of them on trust for the Estate, or of which the Estate is the owner under Norwegian law, be transferred to the Estate.

(23) An Order that the Defendants other than the Thirteenth Defendant be charged with compound interest at the rate of 1 % above US$ Prime Rates as set out in Schedule 3 hereto with yearly rests on the amounts found to be due upon the taking of the above accounts or awarded as equitable compensation or damages.

(24) Alternatively, an Order that the Defendants pay interest pursuant to the Court's inherent jurisdiction or pursuant to statute.

(2) CLAIMS UNDER PART IV

THE CONTINGENCY FUND

(25) A Declaration that the Contingency Fund held by CTC, and the income thereof, have at all material times been held on trust for Jahre (and after his death the Estate) and/or AJ Rederi absolutely.

(26) Alternatively a Declaration that as from on or before 2 May 1984 when it was transferred to the Trustees of the CF the Contingency Fund, and the income thereof, were held by the Trustees of the CF on a resulting trust for the Estate.

AGAINST COMPASS/MONSEN

(27) An Order that Compass account to the Estate and/or AJ Rederi on the footing of wilful default and pay the sums due, including equitable compensation, on the taking of that account, and/or pay equitable compensation for breach of fiduciary duty, in

respect of the concealment, misappropriation, disposal and use of the Contingency Fund and any assets or income derived from the assets thereof in the period after Jahre's death in 1982, in particular in respect of Monsen's breaches of fiduciary duty (or breaches of a duty which is to be characterised as fiduciary) in relation to:

(a) the failure to transfer the Contingency Fund to the Estate and/or AJ Rederi after Jahre's death or at any time thereafter;

(b) the transfer to Monsen from the Contingency Fund of $1,465,000 in October 1982;

(c) the transfer of the balance of the Contingency Fund to the Trustees of the CF in 1984;

(d) the transfer of the balance of the Contingency Fund to Forrester Maritime and/or NWT in late 1984 or early 1985;

(e) the transfer of $600,000 to Monsen in the period 1985 to 1988; and

(f) the transfer of the Contingency Fund from the NWT to Forrester Holdings in 1988.

(28) An Order that Compass account to the Estate and/or AJ Rederi as a constructive trustee and pay the sums found due, including equitable compensation, on the taking of that account in respect of Monsen's dishonest assistance in breaches of trust in relation to the matters set out in (a) to (f) above.

(29) Alternatively, equitable compensation or damages in respect of the matters set out in (a) to (f) above in respect of Monsen's breaches of duties owed under Norwegian law.

(30) A Declaration that Compass holds such of its assets or income as are derived directly or indirectly from the Contingency Fund and the said sums of $1,465,000 and $600,000 on trust for the Estate and/or AJ Rederi absolutely.

(31) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST FORRESTER MARITIME

(32) An Order that Forrester Maritime account to the Estate and/or AJ Rederi as a constructive trustee and pay the sums found due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust and/or breach of fiduciary duty (or a duty which is to be characterised as fiduciary) in respect of:

(a) its receipt of the Contingency Fund in late 1984 from the CF; and

(b) its payment of $600,000 to Monsen in the period 1985 to 1988.

(33) An Order that Forrester Maritime account to the Estate and/or AJ Rederi on the footing of wilful default and pay the sums found due, including equitable compensation, on the taking of the account, and/or pay equitable compensation, in respect of its breaches of trust in failing to transfer the Contingency Fund to the Estate and/or AJ Rederi at any time after receiving it in 1984 and/or in keeping the Contingency Fund notwithstanding its knowledge of the Estate's claims.

(34) A Declaration that Forrester Maritime holds such of its assets or income as are derived directly or indirectly from the Contingency Fund on trust for the Estate and/or AJ Rederi absolutely.

(35) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST FORRESTER HOLDINGS

(36) An Order that Forrester Holdings account to the Estate and/or AJ Rederi as a constructive trustee and pay the sums found due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust and/or

breach of fiduciary duty (or a duty which is to be characterised as fiduciary) in respect of its receipt of the Contingency Fund in 1988.

(37) An Order that Forrester Holdings account to the Estate and/or AJ Rederi on the footing of wilful default and pay the sums found due, including equitable compensation, on the taking of the account, and/or pay equitable compensation, in respect of its breaches of trust in failing to transfer the Contingency Fund to the Estate and/or AJ Rederi at any time after receiving it in 1988 and/or in keeping the Contingency Fund and/or in transferring the shares in Forrester Maritime to Hurford Holdings at some point prior to Monsen's death.

(38) A Declaration that Forrester Holdings holds such of its assets or income as are derived directly or indirectly from the Contingency Fund on trust for the Estate and/or AJ Rederi absolutely.

(39) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST HURFORD HOLDINGS

(40) An Order that Hurford Holdings account to the Estate and/or AJ Rederi on the footing of wilful default and pay the sums found due, including equitable compensation, on the taking of that account, and/or pay equitable compensation, in respect of its failure to transfer the Contingency Fund to the Estate and/or AJ Rederi at any time after it received the Contingency Fund prior to Monsen's death and/or in keeping it notwithstanding its knowledge of the Estate's claims and/or in transferring the shares in Forrester Maritime to Ornate on 19 May 1994.

(41) A Declaration that Hurford Holdings holds such of its assets or income as are derived directly or indirectly from the Contingency Fund on trust for the Estate and/or AJ Rederi absolutely.

(42) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST ERIK MONSEN

(43) An Order that Erik Monsen account to the Estate and/or AJ Rederi as a constructive trustee and pay the sums found due, including equitable compensation, on taking the account in respect of:

(a) his dishonest assistance from about 1990 in the breaches of trust committed by Forrester Maritime by its failure to transfer the Contingency Fund to the Estate and/or AJ Rederi and/or its retention of the Contingency Fund notwithstanding its knowledge of the Estate's claims; and

(b) his dishonest assistance from about 1990 in the breaches of trust committed by Forrester Holdings by its failure to transfer the Contingency Fund to the Estate and/or AJ Rederi and/or its transfer of the shares in Forrester Maritime to Hurford Holdings; and

(c) his dishonest assistance from about 1990 in the breaches of trust committed by Hurford Holdings by its failure to transfer the Contingency Fund to the Estate and/or AJ Rederi and/or its retention of the Contingency Fund notwithstanding its knowledge of the Estate's claims and/or its transfer of the shares in Forrester Maritime to Ornate on 19 May 1994.

(44) A Declaration that Erik Monsen holds such of his assets or income as are derived directly or indirectly from the Contingency Fund on trust for the Estate and/or AJ Rederi absolutely.

(45) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST ORNATE

(46) A Declaration that the Estate is entitled to trace in equity and follow and recover such of the assets or income derived from or representing the Contingency Fund as are held by Ornate, including in particular the shares in Forrester Maritime transferred to Ornate on 19 May 1994 and the traceable proceeds thereof.

(47) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST AT&B

(48) An Order that AT&B account to the Estate and/or AJ Rederi as a constructive trustee and pay the sums found due, including equitable compensation, on the taking of that account for its dishonest assistance in a breach of trust and/or breach of fiduciary duty (or a duty which is to be characterised as fiduciary) in respect of the transfer of the Contingency Fund and/or the shares of Forrester Maritime to Forrester Holdings in or around October 1988.

(49) All necessary accounts, directions, inquiries or orders consequential to the above.

AGAINST ALL OF THE PART IV DEFENDANTS

(50) A Declaration that the Estate and/or AJ Rederi are entitled to trace in equity and recover the assets representing the Contingency Fund and all assets acquired directly or indirectly with the assets of the Contingency Fund from each of the Defendants to the extent that they hold such assets.

(51) An Order that any assets or income which are held by the Defendants or any of them on trust for the Estate be transferred to the Estate.

(52) An Order that the Defendants other than Ornate be charged with compound interest at the rate of 1% above US$ Prime Rates as set out in Schedule 3 hereto with yearly rests on the amounts found to be due upon the taking of the above accounts or awarded as equitable compensation or damages.

(53) Alternatively, an Order that the Defendants pay interest pursuant to the Court's inherent jurisdiction or pursuant to statute.

(3) CLAIMS UNDER PART V

THE AALL FOUNDATION – BREACHES OF TRUST

AGAINST MONSEN/COMPASS

THE PAYMENT OF $1,465,000 FROM CTC TO MONSEN

(54) An Order that Compass account to the Estate on the footing of wilful default in respect of the transfer to Monsen of $1,465,000 in October, 1982, and pay to the Estate sums found to be due, including equitable compensation, on the taking of that account.

(55) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 489 above.

(56) Further and alternatively, an Order that Compass account as constructive trustee to the Estate in respect of the payment of $1,465,000 as aforesaid, and paid to the Estate the sums found due, including equitable compensation on the taking of that account.

THE ACQUISITION OF SHARES IN AGI

(57) An Order that Compass account to the Estate on the footing of wilful default in respect of the acquisition by the AF of shares in AGI, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(58) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 490 above.

(59) Further and alternatively, an Order that Compass account as constructive trustee to the Estate in respect of the acquisition by the AF of shares in AGI, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

THE KOBE PROPERTY

(60) An Order that Compass account to the Estate on the footing of wilful default in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(61) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 492 above.

(62) Further and alternatively, an Order that Compass account as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

PRESIDENT'S EXPENSES

(63) An Order that Compass account to the Estate on the footing of wilful default in respect of the payments by Blue Range to Monsen as set out in Paragraphs 495.5 to 495.13 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(64) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraphs 495.5 to 495.13 above.

(65) Further and alternatively, an Order that Compass account as constructive trustee to the Estate in respect of the payments made by way of President's Expenses, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

AIM CAYMAN

(66) An Order that Compass account to the Estate on the footing of wilful default in respect of the payments by Blue Range to AIM Cayman as set out in Paragraph 496.1 to 496.7 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(67) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 496.1 to 496.7 above.

(68) Further and alternatively, an Order that Compass account as constructive trustee to the Estate in respect of the payments made by Blue Range to Aim Cayman, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

EXCESSIVE PAYMENTS IN RESPECT OF THE KOBE PROPERTY

(69) An Order that Compass account to the Estate on the footing of wilful default in respect of the payments by Blue Range/Sterling to Aall & Co as set out in Paragraph 497 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(70) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 497 above.

ALL CLAIMS

(71) As regards all claims an Order that Compass pay interest on the sums for which it is ordered to account, alternatively on any sum awarded by way of equitable compensation pursuant to the equitable jurisdiction of the Court at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(72) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST ERIK MONSEN

THE KOBE PROPERTY

(73) An Order that Erik Monsen account to the Estate on the footing of wilful default in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(74) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 492 above.

(75) Further and alternatively, an Order that Erik Monsen account as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

THE HAWAII PROPERTIES

(76) An Order that Erik Monsen account to the Estate on the footing of wilful default in respect of the sale of the shares of Aall Realty at an undervalue, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(77) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 494 above.

(78) Further and alternatively, an Order that Erik Monsen account as constructive trustee to the Estate in respect of the sale of the shares of Aall Realty at an undervalue, and pay to the state the sums found to be due, including equitable compensation, on the taking of that account.

PRESIDENT'S EXPENSES

(79) An Order that Erik Monsen account to the Estate on the footing of wilful default in respect of the payments by Blue Range to Monsen and to Erik Monsen as set out in Paragraphs 495.10 to 495.15 and 495.20 to 495.21 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(80) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraphs 495.10 to 495.15 and 495.20 to 495.21 above.

(81) Further and alternatively, an Order that Erik Monsen account as constructive trustee to the Estate in respect of the payments made by way of President's expenses, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

AIM CAYMAN

(82) An Order that Erik Monsen account to the Estate on the footing of wilful default in respect of the payments by Blue Range to AIM Cayman as set out in Paragraphs 496.8 to 496.19 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(83) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraphs 496.8 to 496.19 above.

(84) Further and alternatively, an Order that Erik Monsen account as constructive trustee to the Estate in respect of the payments made by Blue Range to Aim Cayman, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

EXCESSIVE PAYMENTS IN RESPECT OF THE KOBE PROPERTY

(85) An Order that Erik Monsen account to the Estate on the footing of wilful default in respect of the payments by Blue Range/Sterling to Aall & Co as set out in Paragraph 497 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(86) Alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 497 above.

FAILURE TO PURSUE MONSEN'S ESTATE

(87) An Order that Erik Monsen account as a constructive trustee in respect of the failure of AT&B to pursue a claim against Monsen's estate to recover the loss caused as a result of the acquisition by the AF of the Kobe property, and pay the sums found to be due, including equitable compensation, on the taking of that account.

ALL CLAIMS

(88) As regards all claims an Order that Erik Monsen pay interest on the sums for which he is ordered to account, alternatively on any sum awarded by way of equitable compensation pursuant to the equitable jurisdiction of the Court at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(89) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST TOVE BROWN

THE KOBE PROPERTY

(90) An Order that Tove Brown account to the Estate on the footing of wilful default in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the

sums found to be due, including equitable compensation, on the taking of that account.

(91) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 492 above.

(92) Further and alternatively, an Order that Tove Brown account as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

THE HAWAII PROPERTIES

(93) An Order that Tove Brown account to the Estate on the footing of wilful default in respect of the sale of the shares of Aall Realty at an undervalue, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(94) Further and alternatively, equitable compensation for breach of fiduciary duty in the amounts set out in Paragraph 494 above.

(95) Further and alternatively, an Order that Tove Brown account as constructive trustee to the Estate in respect of the sale of the shares of Aall Realty at an undervalue, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

ALL CLAIMS

(96) As regards all claims an Order that Tove Brown pay interest on the sums for which she is ordered to account, alternatively on any sum awarded by way of equitable compensation pursuant to the equitable jurisdiction of the Court at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(97) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST AGI

THE ACQUISITION OF SHARES IN AGI

(98) An Order that AGI account as constructive trustee to the Estate in respect of the acquisition by the AF of shares in AGI, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

THE KOBE PROPERTY

(99) An Order that AGI account to the Estate as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

(100) A declaration that the Estate is entitled to trace and follow into the hands of AGI such assets as derive directly or indirectly from the transfer of assets to AGI purportedly in respect of the acquisition by the AF of the Kobe property.

(101) An order that AGI do transfer to the Estate such assets as derive directly or indirectly from the said transfer of assets to AGI.

THE HAWAII PROPERTIES

(102) An Order that AGI account as constructive trustee to the Estate in respect of the sale of the shares of Aall Realty at an undervalue, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

AIM CAYMAN

(103) An Order that AGI account as constructive trustee to the Estate in respect of the payments made by Blue Range to AIM Cayman, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

ALL CLAIMS

(104) As regards all claims an Order that AGI pay interest on the sums for which it is ordered to account pursuant to the equitable jurisdiction of the Court, at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(105) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST AALL & CO

THE KOBE PROPERTY

(106) An Order that Aall & Co account as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

EXCESSIVE PAYMENTS IN RESPECT OF THE KOBE PROPERTY

(107) An Order that Aall & Co account as constructive trustee to the Estate in respect of the payments by Blue Range/Sterling to Aall & Co as set out in Paragraph 497 above, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

ALL CLAIMS

(108) As regards all claims an Order that Aall & Co pay interest on the sums for which it is ordered to account, alternatively on any sum awarded by way of equitable compensation pursuant to the equitable jurisdiction of the Court, at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(109) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST AT&B

THE KOBE PROPERTY

(110) An Order that AT&B account as constructive trustee to the Estate in respect of the acquisition by the AF of the Kobe property, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

AIM CAYMAN

(111) An Order that AT&B account as constructive trustee to the Estate in respect of the payments made by Blue Range to Aim Cayman, and pay to the Estate the sums found to be due, including equitable compensation, on the taking of that account.

DISHONEST BREACH OF TRUST

(112) An Order that AT&B account to the Estate on the footing of wilful default in respect of its failure to pursue a claim against Monsen's estate to recover the loss caused as a result of the acquisition by the AF of the Kobe property, and pay the sums found to be due, including equitable compensation, on the taking of that account.

ALL CLAIMS

(113) As regards all claims an Order that AT&B pay interest on the sums for which it is ordered to account pursuant to the equitable jurisdiction of the Court at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(114) All necessary accounts, directions, inquiries or orders consequential to the Orders sought above.

AGAINST LORD TRYON

(115) An Order that Lord Tryon account to the Estate as a constructive trustee in respect of the failure of AT&B to pursue a claim against Monsen's estate to recover the loss caused as a result of the acquisition by the AF of the Kobe property, and pay the sums found to be due, including equitable compensation, on the taking of that account.

(116) An Order that Lord Tryon pay interest on the sums for which he is ordered to account pursuant to the equitable jurisdiction of the Court at 1% above the US$ Prime Bank Rate, with annual rests, alternatively at such rate and for such period and compounded at such intervals as the Court shall think fit.

(117) All necessary accounts, directions, inquiries or orders consequential to the Order sought above.

(4) CLAIMS UNDER PART VI

FOLLOWING THE ESTATE OF MONSEN:

AGAINST COMPASS

(118) A declaration that the Estate are entitled to follow and recover the assets of or derived from the estate of Monsen in their hands.

(119) An order that Compass disclose details of the distributions that it has made of the estate of Monsen.

AGAINST THE TWELFTH DEFENDANT, THE TRUSTEES OF THE HURFORD TRUST

(120) A declaration that the Estate are entitled to follow and recover any assets of or derived from the estate of Monsen in their hands.

(121) An order that the trustees of the Hurford Trust disclose to the Estate details of any distributions and transfers it has made of property received by way of distribution from the estate of Monsen.

AGAINST ALL DEFENDANTS IN ALL CLAIMS

(122) All such accounts, inquiries or directions as shall be just.

(123) Further or other relief.

(124) Costs.

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SCHEDULE 1

OTHER MATTERS SUPPORTING THE ESTATE'S CASE ON JAHRE'S BENEFICIAL OWNERSHIP

1. This Schedule details further matters in addition to those set out in Part I of the Statement of Claim on which the Estate relies in support of its case that Jahre was the beneficial owner of the CTC Shares in July 1976. Unless otherwise stated, references in this Schedule are to paragraphs of this Schedule.

JAHRE'S MANAGEMENT AND USE OF CTC ASSETS

2. CTC (and before 1958 Pankos) for many years had one or more $ accounts with SEB, Stockholm. The first such account was opened on behalf of Pankos in 1940 by Dalman (who as explained below was then managing the affairs of Pankos). The Estate is unable to give full particulars of these accounts, but by 1970 CTC had substantial $ amounts in account with SEB (amounting in total to over $38m as at 1 January 1970). These accounts were managed by Jahre personally. The Estate relies on the following:

2.1. Until November 1975 all correspondence on the accounts was sent by SEB to Jahre in Sandefjord (written in Swedish).

2.2. On 19 November 1975 Bettum asked SEB thereafter to write correspondence in English and address it to CTC in Panama, but to enclose the letter in a sealed envelope addressed to Jahre in Sandefjord.

2.3. Instructions for operating the accounts were given by Jahre personally; he also personally negotiated interest rates with SEB, sometimes coming to the bank personally for this purpose.

2.4. The directors of CTC exercised no supervision over Jahre in his conduct of the accounts (or in anything else): the Estate will rely on the fact that Bonde, who was a director of CTC until July 1976, never attended any board meetings or played any part in CTC's affairs.

Ousbyholm Gods account.

4.7.2. On or around 5 November 1973 $10,000 was transferred by CTC to the Ousbyholm Gods account to cover expenses.

4.7.3. On or around 20 June 1975 SEK 70,000 was transferred by CTC to the Ousbyholm Gods account to cover expenses and Swedish taxes.

4.8. Such payments were not of regular amounts or at regular intervals but were irregular both in timing and amount. It is to be inferred that they had not been agreed in advance by anyone else, but were simply provided by Jahre as and when required. In particular, on 6 September 1977 Penser wrote to Jahre asking him to send SEK 40,000 as soon as possible to meet various expenses (such as tax, drains at the hunting lodge and repainting of the palace); this amount was promptly transferred to Penser from CTC's account at SEB.

4.9. In 1978 new arrangements had to be made for covering the costs of Ousbyholm, as follows:

4.9.1. After March 1978 Jahre was no longer able to give instructions to SEB for the operation of CTC's accounts (see Paragraph 2.6 above).

4.9.2. By the summer of 1978 Penser was becoming anxious about outstanding bills and expenses. Bess Jahre wrote to him on 25 July 1978 to the effect that she would discuss everything to do with Ousbyholm with Bettum after the vacation whereafter she hoped that everything would be in more regular order.

4.9.3. At a Board meeting of CTC on 22 August 1978, it was resolved that $300,000 be paid out of CTC funds towards the cost of past and current expenditure of Ousbyholm.

4.9.4. $100,000 was thereafter transferred to Penser out of CTC's SEB account on 15 November 1978, and a further $100,000 on 9 August 1979.

4.9.5. The ostensible reason given for the decision to pay $300,000 to Ousbyholm at the meeting of 22 August 1978 was, as recorded in the minutes, to reflect the use of the amenities there by personnel and associates of CTC over many years. And in a letter of 30 October 1980, Aleman (one of the directors present at the meeting) said that the Board had long recognised that high-level entertaining of the nature undertaken by Jahre was of great value in the successful development of CTC.

4.9.6. In fact, no use was made of Ousbyholm by personnel and associates of CTC other than Jahre; and by 1970 CTC's business was, and had for many years been, simply that of holding deposits for which high-level entertaining was irrelevant.

4.9.7. It is to be inferred that the Board decision in 1978 was prompted by Penser's concerns over meeting the costs of Ousbyholm, and that the real reason for the decision was a desire to enable Jahre to continue having access to CTC funds to help meet these costs as he had done previously.

5. In 1972 Jahre also used for his own benefit assets in the name of CTC, namely the proceeds of sale of a shareholding in CduC. The Estate relies on the following:

5.1. On 25 November 1968 176 shares in CduC were issued to CTC (with an address in Sandefjord).

5.2. In May 1971 CduC invited its shareholders to participate in an expansion of capital.

5.3. Jahre decided that CTC would not participate and so informed CduC by telex of 29 June 1971 confirmed by letter of 1 July 1971.

5.4. In February 1972 CTC's shares in CduC were sold. Jahre instructed CduC that the proceeds of sale, FCFA 1,056,000, should be credited to an account at Union de Banques à Paris. This was Jahre's personal account. CduC agreed to transfer the

2.5. Bettum sometimes accompanied Jahre to the bank, and at least on one occasion (on 28 September 1977) gave instructions to SEB by telephone (for the transfer of $1.5m to a Lazards' account).

2.6. Jahre remained in control of the accounts until 1978. At a Board meeting of CTC on 9 March 1978, Jahre was replaced as President by Monsen (and made Honorary President). Shortly thereafter Hardman sent a new list of signatories to CTC's bankers, including SEB, which did not include Jahre. As a result Jahre was no longer able to give instructions to SEB for the operation of CTC's accounts.

3. CTC also had accounts with Lazards. These too were managed by Jahre personally until 1975, when, as a result of a meeting between Jahre, Bettum and Wrigley in Sandefjord, Jahre allowed Lazards to manage some of the funds subject to his overriding instructions.

4. Over many years, assets in the name of CTC (and before 1958 Pankos) were used for Jahre's private purposes, in particular to meet the costs of a property belonging to him known as Ousbyholm Gods (Ousbyholm Estate) in Skåne, Sweden. The Estate relies on the following:

4.1. Jahre acquired Ousbyholm in October 1939. It consisted of a castle and a hunting estate, and was his and his wife's holiday home until his death.

4.2. After Norway came into the war in April 1940, Ousbyholm was requisitioned by the Swedish government for military purposes. It was returned to Jahre in autumn 1940. In December 1940 Jahre formed a Swedish company, A/B Ousbyholm (in which he held 14 of the 20 issued shares, the other 6 being held by nominees for him) to manage the estate.

4.3. In 1941 Pankos (whose affairs were then managed by Dalman) had a $ account at SEB, Stockholm. On 2 August 1941 the Swedish authorities ("Valutakontoret" or foreign currency office) gave permission to Dalman to sell $55,000 from this account for repairs, restoration and furnishing of Ousbyholm. Under this permission various sums were transferred to A/B Ousbyholm.

4.4. On at least one occasion (on 19 August 1942) A/B Götaverken, a Swedish shipbuilding company, invoiced Leffler (a company of which Dalman was a director) for an amount in relation to "Ousbyholm A/B (Pankos Operating)". Leffler at the time had an account with Götaverken on behalf of Pankos, and it is to be inferred that Dalman had asked Götaverken to provide cash or pay expenses for Ousbyholm, the amount to be charged to Pankos' account.

4.5. In 1950 Pankos applied to the Swedish authorities for, and was granted, permission to sell Norwegian dollar bonds to a nominal value of $57,000 held by SEB's New York bankers, Messrs Brown Bros. Harriman Ltd, and pay the sale proceeds in SEK to A/B Ousbyholm on terms that Pankos would not seek repayment.

4.6. The Estate is unable to give further particulars of payments for the benefit of Ousbyholm for periods before 1970. During the period 1970 to 1977, the great majority of payments out of CTC's accounts at SEB (other than transfers to Lazards) were for the benefit of Ousbyholm, as follows:

4.6.1. Between 6 June 1973 and 19 September 1977, 21 payments of a total value of over $200,000 were made to Penser who acted as manager for Ousbyholm.

4.6.2. Between 16 August 1974 and 11 November 1977, 16 payments of a total value of over $78,000 were made to an account in the name of Ousbyholm Gods.

4.6.3. Between 20 March 1975 and 11 July 1977, 4 payments of a total value of over $11,000 were made direct to various suppliers of goods and services to Ousbyholm.

4.7. In addition various other payments were made into the Ousbyholm Gods account from CTC funds. The best particulars the Estate can give are as follows:

4.7.1. On 12 September 1972 Lazards transferred $210,000 to SEB, of which $200,000 was to be credited to CTC's account and $10,000 to the

proceeds to this account.

5.5. From 1973 to 1975 the balance on the account was unchanged at FRF 58,529.61. On 5 February 1976 the account was closed at which time the balance was FRF 58,312.61, of which FRF 58,254.30 was transferred to the Ousbyholm Gods account and thereby used for Jahre's personal benefit.

6. Jahre further used for his own benefit assets in the name of CTC, namely an account at Bergens Privatbank in Oslo. The Estate relies on the following:

6.1. On 26 April 1973 Jahre opened a new account at Bergens Privatbank in the name of CTC and with an address c/o Jahre in Sandefjord.

6.2. Jahre was the sole signatory on this account, and all activity on the account was carried out by Jahre or by Bettum or Rolf Eriksen (Jahre's bookkeeper) on his behalf.

6.3. All withdrawals from the account were for the benefit of Jahre personally or his firm (Firma Anders Jahre).

6.4. On 20 December 1976, Bettum telephoned the bank and arranged for the account to be closed, the then balance being NOK 206,731.11. The closing balance was placed in cash in an envelope, collected from the bank against a receipt provided by Jahre and delivered to him.

7. The Estate relies on the matters pleaded in Paragraphs 2 to 6 above in support of its case that CTC was beneficially owned by Jahre in July 1976. In particular, the Estate relies on the following:

7.1. The fact that Jahre personally managed CTC's assets without reference to others.

7.2. The use for many years of the SEB accounts in CTC's name (and before 1958 Pankos') to meet Jahre's personal expenses at Ousbyholm; the fact that such payments were irregular and as required; the fact that no board authority was

sought until 1978 (at a time when Jahre was no longer able to control the account); and the fact that such authority, which was prompted by Penser's concerns, was readily given by the Board of CTC despite it not being in any real sense for the benefit of CTC.

7.3. The use by Jahre of the proceeds of sale of CTC's shares in CduC for his own benefit.

7.4. The use by Jahre of CTC's account at Bergens Privatbank for his own benefit.

7.5. Further, the Estate will rely on the fact that after the 1950s CTC carried on no business of its own and that its sole form of corporate activity consisted of the management of bank deposits. As pleaded above, Jahre was in personal control of this activity and directed it for his own benefit.

MISCELLANEOUS INDICIA OF OWNERSHIP

8. The Estate further relies on the miscellaneous matters pleaded at Paragraphs 9 to 12 below in support of its case that in July 1976 CTC was beneficially owned by Jahre.

9. Pankos' name was changed to CTC in 1958 as follows:

9.1. In 1958, an EGM of Pankos was held in Sandefjord (ostensibly on 2 February 1958) attended by Jahre as President at which all shares were said to be represented. At that meeting Jahre proposed that the name be changed to CTC, which was adopted.

9.2. He then asked Arias to register the change of name in Panama, enclosing an extract of the minutes of the meeting, signed by himself as President and Frithjof Bettum as Assistant Secretary.

9.3. Arias registered the change of name in Panama on 13 May 1958. However, Arias first had to register a shareholders' meeting dated 17 February 1953 which adopted new articles providing, among other things, for Pankos to have a President and

other officers and for AFF to be Pankos's registered agent in Panama, and which elected a new board (Dalman, Carver and Arias); and a Board meeting dated 31 March 1954 electing Jahre as President and Frithjof Bettum as Assistant Secretary.

9.4. By letter dated 15 May 1958, Arias informed Jahre that he had opened new corporate books for CTC to be held by AFF subject to Jahre's instructions. In that letter, Arias enquired whether Jahre wanted new stock certificates to be printed with the new name of CTC.

The Estate relies on this as showing that decisions ostensibly taken by the shareholders of Pankos were taken in Sandefjord and on Jahre's initiative.

10. On 17 January 1959, Jahre signed a draft will in which he disposed of his "Norwegian assets". In a separate document signed by Jahre on the same date, he gave his executors instructions in relation to his "foreign rights (options)", and it is to be inferred that this was a reference to his ownership of CTC.

11. Bettum was from 1964 to 1969 employed by Lazards as their Scandinavian Manager. On 27 May 1964 he signed a note headed "The Jahres (Sandefjord)" in which he listed a number of companies connected with them. This included CTC by which he had written "(Anders Jahre)".

12. Jahre on several occasions told Jørgen Jahre junior (his great-nephew) that he owned CTC and showed him a piece of paper on which were written figures reflecting the assets that Jahre owned abroad, held in the name of CTC. This piece of paper was kept by Jahre in a pocketbook which he carried with him in his suit jacket.

ORIGINS AND EARLY HISTORY OF PANKOS – 1939 TO 1955

13. The Estate also relies on the following matters relating to the origin and early history of Pankos. The Estate's case is that it is to be inferred from this that Jahre had from its origins in 1939 a substantial beneficial interest in Pankos, being either the sole owner or the majority owner.

subscriber share each; and Icaza was appointed as Registered Agent in Panama. Jahre was appointed Managing Director (and as such Legal Representative) and the first directors were Jahre, Frithjof Bettum and Icaza.

15.6. In 1940 (the precise date being unknown to the Estate but probably in May 1940) Dalman visited the Swedish foreign currency office and referred to M/T Janko as a tanker belonging to Jahre.

15.7. On 20 May 1941 Kihlström wrote to A/B Götaverken saying that Leffler would be transferring the equivalent of $200,000 in SEK for the credit of Pankos. He signed this in the name of Jahre and asked that Pankos be given the same terms as other Norwegian shipowners.

15.8. In June 1941 a mortgage deed was entered into with the mortgagees (of which the largest share was held by Jahre) for the sum of $1,150,000.

15.9. In September 1941 Jahre agreed a sale of M/T Janko without consulting Dalman. When Dalman discovered that the purchaser was Portuguese, he refused to allow the sale to proceed (which as ostensible owner he was in a position to do). But he told the British Legation in Stockholm on 3 October 1941 that although he (Dalman) held the shares in Pankos for the duration of the war, Jahre held the mortgages and was still the real owner, which meant that Dalman could not sell the ship without Jahre's permission (nor could Jahre sell without his agreement as he would have to appear as the legal seller).

15.10. On 25 September 1941 M/T Janko was detained in Aruba in the Dutch Antilles, and on 8 October 1941 it was seized as prize, on the grounds that the ship belonged to a technical enemy, the ownership interest being in occupied Norway.

15.11. On 5 November 1941 Kihlström wrote on behalf of Leffler acting for Pankos to the Norwegian Legation in Stockholm offering to allow M/T Janko to be chartered to English or Norwegian charterers on terms that the freights earned would be used to pay for new ships to be built at Swedish yards; these would be ordered by companies controlled by them, but not delivered until after the war and then

transferred to the Norwegian flag.

15.12. In a letter to the Swedish foreign currency office dated 14 September 1948 Dalman admitted that he held the shares on a *pro forma* basis for Jasmin Operating Company SA; and in a further letter of 23 September 1948 he told the foreign currency office that Pankos in reality belonged to foreigners, that he had never paid for the shares, and that it could be taken back by the true owners.

15.13. M/T Janko was returned to Pankos in 1947. In 1948 A/B Götaverken corresponded with Jahre about installing new engines in the ship, and on 19 March 1948 made a formal quotation for the work, addressed to Leffler but for the account of Jahre.

16. The Estate further relies on the use after the war of Pankos' assets for the benefit of Jahre, as follows:

16.1. Pankos had accumulated profits from freights earned during the war.

16.2. In 1947 A/B Jan was formed in Sweden. The shares in A/B Jan were held by Leffler, but subject to an option in favour of Jahre to purchase them for the nominal sum of SEK 100,000 (confirmed by Dalman on behalf of Leffler in a letter to Jahre dated 10 May 1951). This was another *pro forma* arrangement.

16.3. In 1947 Jahre decided to purchase M/T Atlantides in the name of A/B Jan. The purchase was in part financed by Pankos, and by December 1947 A/B Jan owed Pankos over SEK 700,000.

16.4. In 1950 Jahre obtained an option for the building of a new tanker at the Götaverken yard. In the event 3 new tankers were ordered, of which one was for A/B Jan (no. 667, subsequently called M/T Jaga), and in another one of which A/B Jan had a 1/3 interest (subsequently called M/T Jagala). Pankos assisted A/B Jan with these contracts. Thus:

16.4.1. By letter of 29 June 1950, Pankos guaranteed A/B Jan's obligations in

relation to no. 667.

16.4.2. In 1951 Pankos acquired from Jahre a 40% interest in Spermacet Whaling Company SA, a Panamanian company. By letter dated 11 February 1953, Spermacet asked A/B Götaverken to transfer a credit standing to its account of SEK 1,100,000 to A/B Jan's account for no. 667.

16.5. On 5 October 1953 Pankos agreed to lend A/B Jan SEK 815,223.36. This agreement was signed by Jahre on behalf of Pankos as President (even though he was not ostensibly appointed as President until 1954, and despite the fact that, according to minutes of a purported Pankos meeting dated 20 March 1941, Dalman was ostensibly President of the company).

16.6. Further, in 1950 Pankos was owed a substantial sum by A/B Fraternitas, a Swedish company in Gothenburg (in excess of SEK 2m as at 1 January 1950). Some of this was used for the personal benefit of Jahre as follows:

16.6.1. Jahre had bought a tanker, M/T Saturnus, from A/B Saturnus in Stockholm, on which he owed SEK 500,000 and interest. In July 1950 Pankos procured Fraternitas, in part repayment of its debt to Pankos, to pay SEK 527,000 to Saturnus on behalf of Jahre.

16.6.2. Similarly in July 1950 Pankos procured Fraternitas, in part repayment of its debt to Pankos, to pay SEK 5,138.89 in payment of a guarantee commission owed by Anders Jahre & Co A/S to SEB.

16.7. The Estate further relies on the use of Pankos assets for the benefit of Jahre's property at Ousbyholm in 1941, 1942 and 1950 as pleaded 4.3 to 4.5 above.

17. In 1954-55 the Norwegian authorities put pressure on Jahre to "repatriate" his overseas interests, ie to bring them back to Norway. In consequence a number of complex arrangements were made including the following:

14. Jahre was involved in the formation of Pankos, which was formed to take over an oil tanker, namely M/T Janko, then owned by a consortium in which Jahre had the largest share (60%), as follows:

14.1. M/T Janko was built in 1928 and originally called M/T Nike. It was acquired in 1938 by Skips A/S Jaguar, a Norwegian company in which Jahre held 119 out of the 200 issued shares (and Frithjof Bettum held 1, probably on behalf of Jahre) and renamed M/T Jaguar. The other shareholdings in Skips A/S Jaguar at this time were Axel Lorentzen (64 shares) and Jørgen Lorentzen (16 shares).

14.2. In January 1939 the ship broke in two off the Azores. The forepart sank but the afterpart was salvaged and towed to Holland where a new forepart was constructed. After the outbreak of war in September 1939 Lazards (who had been financing the reconstruction) were unable to continue to do so, and Skips A/S Jaguar agreed to abandon the ship to its mortgagees. It was taken over by a consortium of the mortgagees, of which Jahre held a 60% interest.

14.3. Pankos was formed in Panama on 12 December 1939. The incorporators were two Panamanian lawyers, Juan Lombardi and Carlos Icaza, to whom one subscriber share each was issued. Jahre was appointed by the articles of incorporation as European general agent until further action by the Board, and Icaza as registered agent in Panama. Its first directors were Dalman and Åke Bratt (both of whom were friends of Jahre) and Icaza.

14.4. The authorised share capital of Pankos was 105,000 shares of common stock without par value to which were assigned a value of $1 per share. Pankos' Certificate of Incorporation was amended on 22 December 1939 to reduce the number of authorised shares to 10,500 shares of no par value to which were assigned a value of $10 per share.

14.5. On 13 December 1939 the mortgagees sold the ship, by now renamed M/T Janko, to Pankos for NOK 4.7m, of which NOK 2.7m was payable within 30 days and the balance of NOK 2m was payable over 5 years and secured by a mortgage.

17.1. Jahre exercised his option to purchase the shares of A/B Jan for SEK 100,000; he then resold the shares to Leffler for SEK 10,000,000. In this way he personally benefited from the profits built up in A/B Jan with financing from Pankos.

17.2. Jahre formed 2 new Norwegian companies, Anders Jahres Rederi III A/S (on 10 November 1955) and Anders Jahres Rederi IV A/S (on 22 November 1955) to acquire ships from Panamanian companies, namely Spermacet and Pankos.

17.3. Anders Jahres Rederi III A/S bought 3 tankers from Spermacet (M/T Janita, M/T Janova and M/T Janega); and Anders Jahres Rederi IV A/S bought 2 tankers from Pankos (M/T Jaranda and M/T Jalanta) at £900,000 each.

17.4. M/T Jaranda and M/T Jalanta were chartered back to Pankos for 5 years.

18. At about the same time, in 1954 Dalman sold his shares in Pankos to Carver of New York for the sum of $130,000. This was a nominal sum and the Estate's case is that Carver also acquired the shares on a *pro forma* basis or as nominee.

19. The Estate relies on the foregoing as showing that from 1939 onwards Jahre had a substantial beneficial interest in Pankos. It is unclear whether he was originally the sole beneficial owner or there were others who had minority interests; if the latter, the Estate's case is that such interests no longer subsisted after 1955, and that Jahre was from then the sole beneficial owner. This is to be inferred from the matters already pleaded above.

SCHEDULE 2

THE MISAPPROPRIATION OF THE RETAINED SHARES AND THE ASSETS REPRESENTING THEM

1. This Schedule details further matters relating to the shipping transactions in which assets derived from the Retained Shares were used. Unless otherwise stated, references in this Schedule are to paragraphs of this Schedule. The full particulars of the shipping transactions summarised in Paragraphs 62.1 to 62.2 of Part III of the Statement of Claim are as follows.

1.1. The details of the transactions entered into as regards Clarmon are as follows:

1.1.1. Clarmon, a Liberian company, was incorporated on 5 October 1978. Harmon made a series of loans of the Cash Payment to Clarmon to assist it to purchase and convert to a Ro-Ro car carrier the vessel Eastern City, which was renamed Japana. The Japana was purchased by Clarmon for $15.25m pursuant to a Memorandum of Agreement dated 16 May 1979. The vessel was placed on bareboat charter to Kosmos commencing on 10 July 1979 for a duration of 12 years.

1.1.2. Harmon lent Clarmon $765,160 of the Cash Payment in about July 1979 in connection with the acquisition of the Japana (the "Acquisition Loan"). This was to be interest free for the duration of the Japana's time charter to Kosmos (to 10 July 1991), but the advance was to be repaid in half-yearly instalments to be held in an account at Lazards pending repayment by Clarmon of its liabilities to Lazards and Chemical Bank referred to below. Interest on the Acquisition Loan was to be paid at the termination of the charter at a rate to be agreed. Further, the Acquisition Loan was described on a number of occasions in Lazards' memoranda as an "equity loan" and the notes to Clarmon's financial statements recorded that an appropriate return would be paid to Clarmon at the termination of the charter based on the value of the Japana at that date.

1.1.3. Additional funds for the acquisition of the Japana were provided as follows:

(i) Lazards and Chemical Bank together provided bridging finance which was replaced on 12 December 1979 by a loan of $11,853,610.85 repayable over 10 years. The Acquisition Loan repayable by Clarmon to Harmon was subordinated to the repayment of Clarmon's liabilities to Lazards and Chemical Bank by an agreement dated 12 December 1979.

(ii) Arizona Shipping & Trading Corporation ("Arizona") provided a loan to Clarmon of $2,426,387 in about July 1979, the repayment of which was subordinated to the repayment of Clarmon's liabilities to Lazards and Chemical Bank in like manner to the Acquisition Loan. Thus the Acquisition Loan made by Harmon to Clarmon was 23.97% of the total loans made by Harmon and Arizona to Clarmon for the acquisition of the Japana in 1979.

1.1.4. In connection with the conversion of the Japana to a car carrier, Harmon made additional loans to Clarmon totalling $3,484,297.61 ("the Conversion Loans") as follows:

(i) On or about 10 September 1980 Harmon lent Clarmon $3.1m of the Cash Payment repayable over 130 months at 8.5% interest per annum.

(ii) On or about 10 May 1981, Harmon lent Clarmon a further sum of $384,297.61 of the Cash Payment repayable over 122 months at 8.5% interest.

(iii) The Conversion Loans were also described in Lazards' memoranda as "equity" loans, although the Estate does not at present know whether this means that Harmon was entitled to an increased share of the value of the Japana at the date of the termination of the charter to Kosmos.

(iv) The Conversion Loans were subordinated to Clarmon's liabilities to Lazards and Chemical Bank in like manner as the Acquisition Loan. However, Clarmon was permitted to make regular repayments of the Conversion Loans to Harmon for several years, until the vessel was sold in 1986.

1.1.5. Thus of the Cash Payment of $14.25 million transferred to Harmon from CTC in 1979, $4,249,247.61 was lent to Clarmon in respect of the Japana.

1.1.6. In fact the charter of the Japana to Kosmos was terminated when the vessel was sold in 1986. This led to compensation being paid to Clarmon as set out in Paragraph 2.6.2 below.

1.2. The details of the transactions entered into as regards Amelon are as follows:

1.2.1 Amelon, a Liberian company, was incorporated on 4 October 1978. In 1979, Harmon lent further sums derived from the Cash Payment to Amelon, in an amount as yet unknown to the Estate, to assist Amelon to purchase the vessel Wisa, which was renamed Jaricha and, like the Japana, placed on bareboat charter to Kosmos for 10 years commencing on 19 July 1979.

1.2.2 Further funds for the acquisition of the Jaricha were lent to Amelon in 1979 by Lazards and Chemical Bank (in the sum of $11,768,333.35) and by Arizona, in a series of transactions similar to those pleaded above in relation to Clarmon. The aggregate amount advanced to Amelon by Harmon and Arizona was $3,282,343.06, such loan being subordinated to Amelon's liabilities to Lazards and Chemical Bank. The loan was described in an agreement dated 27 December 1979 between Amelon, Lazards and Kosmos as an "equity loan".

1.2.3 The Estate therefore estimates that the amount lent by Harmon to Amelon was about $786,000, such estimation being predicated on the assumption

that Harmon's loan to Amelon was 23.97% of the aggregate advance from Harmon and Arizona to Amelon (23.97% being Harmon's proportionate share of the total advance from Arizona and Harmon to Clarmon for the acquisition of the Japana).

1.2.4 In fact the charter of the Jaricha to Kosmos was terminated when the vessel was sold on 25 November 1981. In a letter dated 18 May 1982, Amelon informed Kosmos that "the Jaricha business" was to be wound up and that the sale price achieved for the vessel was sufficient to discharge Amelon's ship financing liabilities. It is to be inferred from this that Amelon repaid the said Harmon loan, and that Harmon received such benefits as it was entitled to by virtue of the loan being an "equity loan" (which the Estate will say is likely to have involved the payment of interest or some other form of return on the loan).

2. The full particulars of the misappropriations which occurred between 1982 and 1988, as summarised in Paragraph 83 of Part III of this pleading, are (so far as known to the Estate) as follows:

2.1. The proceeds of the 150 shares in Aall & Co Ltd Inc were misappropriated in 1983 as follows:

2.1.1. As part of the reorganisation of Aall & Co Ltd Inc in early 1983, a series of transactions were entered into whereby Harmon (Cayman) Limited received $2.025m in return for transferring its 150 shares in Aall & Co Ltd Inc to Aall Group Inc. By reason of the matters aforesaid, the sum of $2.025m so received was an asset of Harmon (held through Harmon's subsidiary, Harmon (Cayman) Limited) and therefore formed part of the traceable proceeds of the Retained Shares.

2.1.2. In about May 1983 Monsen misappropriated $2m of the said sum of $2.025m by transferring it to the AT which had been established for the benefit or primarily for the benefit of Monsen's relations.

2.1.3. The Estate does not know what happened to the remaining $25,000 of the $2.025m received by Harmon (Cayman) Limited, but it was not transferred to the Estate and it is to be inferred that it was misappropriated by Monsen in the same or similar way as the said sum of $2m.

2.2. Harmon was dissolved by a certificate of dissolution dated 26 October 1984 filed with the Panamanian Registry on 28 January 1985. Pursuant to Article 85 of the Panamanian Corporate Law Section 32 of 1927 a corporation survives for 3 years after the date of filing of such a certificate of dissolution. Accordingly the dissolution of Harmon became final on or about 28 January 1988.

2.3. In or about April 1985 Harmon assigned to a company owned and controlled by Monsen named Old Forrester Holdings Limited its rights to the repayment of the Acquisition Loan and Conversion Loans owed by Clarmon to Harmon referred to in Paragraph 1.1.2 and 1.1.4 above, as follows:

2.3.1. By letter dated 7 November 1984 Slatter notified Lazards that Harmon wished to transfer to Old Forrester Holdings Limited the benefit of the debts owed by Clarmon to Harmon.

2.3.2. On 21 March 1985, a Harmon board resolution authorising the transfer to Old Forrester Holdings Limited of Harmon's rights to repayment of the Acquisition Loan and the Conversion Loans was prepared in draft.

2.3.3. In an agreement dated 28 August 1985, which was expressed to be made pursuant to a resolution dated 2 April 1985, Old Forrester Holdings Limited agreed not to demand repayment from Clarmon of the Acquisition Loan and the Conversion Loans without prior consent from Lazards and Chemical Bank.

2.3.4. By reason of the foregoing, it is the Estate's case that the transfer to Old Forrester Holdings Limited of the benefit of the Acquisition Loan and

the Conversion Loans took place in about April 1985, probably on 2 April 1985.

2.3.5. As of April 1985, no repayments of the Acquisition Loan had been made by Clarmon to Harmon. The monies earmarked for repayment of the Acquisition Loan were instead held by Lazards, together with certain other Clarmon funds, in a Clarmon account referred to by Lazards as the "US$ Call Account". Accordingly, as a result of the assignment of the benefit of the Acquisition Loan, Old Forrester became entitled to receive $765,160 from Clarmon together with interest and such rights as Harmon was entitled to by virtue of the Acquisition Loan being an "equity" loan.

2.4. The Estate does not have full particulars of repayments made by Clarmon to Harmon in respect of the Conversion Loans prior to April 1985. However:

2.4.1. According to an internal Lazards' memorandum dated 11 November 1981

(i) the first of the Conversion Loans was repayable over 130 months by equal payments of $36,308.45 (apparently inclusive of interest) commencing on 10 September 1980; and,

(ii) the second of the Conversion Loans was repayable over 122 months by equal payments of $4,705.73 (apparently inclusive of interest) commencing on 10 May 1981;

with the result that Clarmon would have been liable to repay to Harmon about $290,467.60 to May 1981 and a total of $246,085.08 every six months thereafter.

2.4.2. In the premises, it is the Estate's case that between about September 1980 and about April 1985, Clarmon repaid to Harmon $2,259,148.20 (at least) for the Conversion Loans.

2.5. In the agreement dated 28 August 1985 (referred to in Paragraph 2.3.3 above), it was recited that the amount outstanding on the Conversion Loan at that time was $2,402,993. Accordingly, as a result of the assignment of the benefit of the Conversion Loans to Old Forrester in around April 1985, Old Forrester became entitled to receive about $2,400,000 from Clarmon together with interest and such rights as Harmon was entitled to by virtue of the Conversion Loans being "equity" loans. An internal Lazards memorandum dated 5 November 1985 stated that, with effect from 10 September 1985, Old Forrester would be paid $246,085.08 together with interest thereon every six months in respect of the Conversion Loans.

2.6. By transferring the benefit of the Acquisition Loan and the Conversion Loans to Old Forrester in about April 1985, Monsen misappropriated these assets by taking them for himself and/or his companies. The benefit of the loans were valuable assets because Clarmon had sufficient funds to repay them both:

2.6.1. As of 1 March 1985, Clarmon's US$ Call Account held $1,775,864, which sum was earmarked for repayment of liabilities including the Acquisition Loan. Later in 1985 a part of the deposits in Clarmon's US$ Call Account was invested in the Aall International Floating Rate Fund.

2.6.2. In December 1986 Clarmon received a net sum of $3,581,074.36 upon the sale of the Japana. This sum was sufficient to enable Clarmon to discharge all of its liabilities including the amounts then outstanding to Harmon on the Acquisition Loan and the Conversion Loans.

2.6.3. By February 1987, Clarmon had on deposit with Lazards in London a bond portfolio then valued at $2.9m. In a telex dated 9 February 1987, Lazards were instructed to transfer all of Clarmon's securities to an account at AT&B because a decision had been taken "to wind-down Clarmon".

2.7 It is to be inferred from the foregoing that Clarmon discharged all of its outstanding indebtedness under the Acquisition Loan and the Conversion Loans

after April 1985 and that the repayments were made to Old Forrester pursuant to the assignment. The Estate's case is that the monies paid to Old Forrester were thereupon misappropriated by Monsen and/or companies owned by him.

2.7. Further it is to be inferred that upon or before the final dissolution of Harmon in 1988 its cash assets (which had been at least $1.17m in late 1982) were taken by Monsen and/or companies owned by him. Particulars of the dates of such misappropriation will be provided after discovery. However, it is the Estate's case that Harmon would have had cash deposits substantially in excess of $1.17m by reason of the repayment to Harmon of $2,259,148.20 (at least) on the Conversion Loans prior to April 1985 as pleaded in Paragraph 2.4 above. Further, as pleaded in Paragraph 1.6 above, Amelon repaid Harmon's loan for the financing of the Jaricha in or around 1981; thus Harmon's cash assets would have included the proceeds of Amelon's repayment (although the Estate does not currently know whether these were included in the deposit of $1.17m referred to above).

2.8. The Estate does not at present know what became of

2.8.1. Harmon's loans to, or investments in, or other interests in Larmal;

2.8.2. the 4,350 shares of LBIIF which had been transferred to Harmon's account 1-130 at AT&B on 11 August 1982.

However, these assets formed part of the underlying assets of Harmon which were transferred to Forrester Holdings when the shares of Harmon were transferred to that company in September 1982. It is to be inferred that Monsen and/or his companies misappropriated the benefit of these assets, and/or their traceable proceeds, either upon the final dissolution of Harmon in January 1988 or at an earlier date.

14.6. M/T Janko was delivered to Pankos in January 1940 and sailed under the Panamanian flag.

15. After Norway was brought into the war, the shares in Pankos were ostensibly held by Dalman and his associates. The Estate's case is that they were held on a *pro forma* basis for Norwegian interests, namely Jahre either alone or with others (in which case he had the major interest). The Estate relies on the following:

15.1. On 9 April 1940 Germany invaded Norway.

15.2. On 15 April 1940 Jahre wrote to Leffler (a company controlled by Dalman) in Göteborg, Sweden, asking them to act as his representative for the purpose of managing various ships including M/T Janko, which was due to arrive in Venice on 18 April 1940.

15.3. M/T Janko was detained in Venice at the request of the German authorities. On 10 May 1940 Dalman together with his associates took over the rights to virtually all the shares (10,498 out of 10,500) in Pankos at Jahre's request. Dalman did not however pay for the shares but gave a promissory note to Jahre for the price of $105,000, and gave Jahre an option (exercisable by himself or Kosmos and Kosmos II) to purchase the shares at $10 per share in the period 3 to 6 months after the end of the war. Dalman then succeeded in obtaining the release of the ship from Venice, and the permission of the British authorities for it to pass Gibraltar. It is to be inferred that Dalman took over the shares so that the ship could be presented to both German and British authorities as owned by neutral Swedish interests rather than Norwegian interests.

15.4. On 15 May 1940, (at least) one document purporting to be a bearer share certificate was issued in Gothenburg by Pankos (acting by one of its directors, Dalman).

15.5. On 12 May 1941 Jahre cancelled the option to purchase the shares, but it was replaced by an option in favour of Jasmin Operating Company SA. Jahre had a substantial interest in Jasmin. It was incorporated in Panama on 23 January 1940, and, as with Pankos, the incorporators were Lombardi and Icaza who took one

SCHEDULE 3

Compound interest calculation table at 1% above New York Prime Rate compounded annually on 31 December.

Year	*Av. Prime rate*	*+1%*	*multiple*
Feb 1982	12.13%	13.13%	1.10
1983	9.61%	10.61%	1.22
1984	10.72%	11.72%	1.36
1985	8.31%	9.31%	1.48
1986	6.77%	7.77%	1.60
1987	7.23%	8.23%	1.73
1988	8.05%	9.05%	1.89
1989	9.26%	10.26%	2.08
1990	8.25%	9.25%	2.27
1991	5.89%	6.89%	2.43
1992	3.84%	4.84%	2.55
1993	3.32%	4.32%	2.66
1994	4.87%	5.87%	2.81
1995	6.02%	7.02%	3.01
1996	5.51%	6.51%	3.21
1997	5.75%	6.75%	3.42
1998	5.53%	6.53%	3.65
1999	5.47%	6.47%	3.88
2000	6.56%	7.56%	4.18
2001	3.61%	4.61%	4.37
2002	1.78%	2.78%	4.49
(Dec) 2003	1.22%	2.22%	4.59
July 2004	1.3%	2.3%	4.65

1. The figure in the right hand column is the multiplier applicable in relation to a claim accruing in February 1982 (e.g. the Contingency Fund). The appropriate multiplier for a claim accruing in say December 1990 would be 4.59-2.27 = 2.32. The multiplicand is the value of the claim.

2. The multiplicand in relation to the Contingency Fund is $7,350,000 from February 1982. The multiplier in relation to February 1982 is 4.65. The value of this claim with compound interest with annual rests is $7,325,000 x 4.65 = $34,061,250.

3. The claim in relation to the Retained Shares depends on the value of Harmon in September 1982. Taking the value as $14,250,000 the value of the claim with interest as aforementioned is - $14,250,000 x 4.55 = $64,837,500.

4. The amount of the interest on the claims set out in Part V will be calculated upon the taking of the accounts claimed therein.

Filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiffs herein whose address for service is that of their said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO ..... OF 2004

B E T W E E N:

(1) EVEN WAHR-HANSEN
(2) ANDERS JAHRES REDERI A/S
(3) BRIDGE TRUST COMPANY LIMITED

Plaintiffs

- and -

(1) COMPASS TRUST CO LIMITED
(2) MADS ERIK MONSEN
(3) AALL GROUP INC
(4) AALL TRUST & BANKING CORPORATION LTD
(5) AALL & COMPANY LIMITED INC
(6) TOVE BROWN
(7) ANTHONY GEORGE MERRIK, BARON TRYON OF DURNFORD
(8) FORRESTER MARITIME LIMITED
(9) FORRESTER HOLDINGS LIMITED (IN VOLUNTARY LIQUIDATION)
(10) HURFORD HOLDINGS LTD
(11) ORNATE LTD
(12) BANK OF BUTTERFIELD INTERNATIONAL (CAYMAN) LTD
(13) ANCHOR TRUST CO LTD
(14) ROBERT N. SLATTER
(15) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

Important. Read the accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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1. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ Yes ☐ No

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2. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiffs (tick box).

☐ Yes ☐ No

Service of the Writ is acknowledged accordingly

(Signed) .....
[Attorney] for
Address for Service: