



[2026] JMCC Comm 14

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
COMMERCIAL DIVISION**

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COMMERCIAL DIVISION**

**CLAIM NO. SU 2024 CD 00239**

<b>BETWEEN</b>	<b>PETER CHIN</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>ROBERT CHIN</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>ALLIANCE INVESTMENT MANAGEMENT LIMITED</b>	<b>3<sup>RD</sup> CLAIMANT</b>
<b>AND</b>	<b>MELWOOD HOLDINGS LIMITED</b>	<b>4<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>WILLO CAPITAL LIMITED</b>	<b>5<sup>TH</sup> CLAIMANT</b>
<b>AND</b>	<b>SAGICOR GROUP JAMAICA LIMITED</b>	<b>DEFENDANT</b>

**Mr Walter Scott K.C., Mr Weiden Daley & Ms Shaydia Sirjue instructed by Hart Muirhead Fatta for and on behalf of the Claimants/Applicants.**

**Ms Carlene Larmond K.C., Ms Caroline P. Hay K.C., & Ms Giselle C. Campbell, instructed by Patterson Mair Hamilton, and on behalf of the Defendant/Respondent herein.**

**Heard: October 3, 2025, November 21, 2025, April 17, 2026 and April 24, 2026.**

**Civil Procedure – Disclosure – Specific Disclosure – Criteria for Ordering Specific Disclosure – Whether documents requested are directly relevant to the issues in**

**dispute – Civil Procedure Rules, 2002, Rule 28.1, 28.1(4), 28.2, 28.6, 28.6(5), 34.1, 34.4.**

## **BROWN BECKFORD J**

### **Introduction**

[1] This Ruling is in respect of the Claimants' Notice of Application for Court Orders filed 21 March 2025, that the Defendant supply the Claimants with further information and documents as detailed in the application. The application was made necessary as the Claimants' Request for Information made on 19 February 2025 to be supplied by 28 February 2025 was not complied with.

### **THE CLAIM**

[2] The Claimants were all shareholders in the entity known as Alliance Financial Services Limited (AFSL), and the Defendant is a public liability company listed on the Jamaica Stock Exchange. The Claimants sold all their issued shares in AFSL to Sagicor. The particulars of the deal are captured in the Share Sale Agreement made on 9 February 2022. The purchase price had three components. Firstly, there would be an initial payment, secondly, there would be a conditional payment based on terms and conditions set out in the agreement, and finally, there would be a deferred consideration or 'earn-out' calculated using an agreed formula set out in the schedule to the agreement.

[3] The claim is for specific performance of the share sale agreement or, alternatively, damages in lieu of specific performance. Damages are also sought for breach of contract and for breach of statutory duty. The Amended Particulars of Claim allege that Sagicor has breached the contractual provisions relating to each tranche of conditional payment and 'earn-out' payments under the agreement. These are particularised in paragraphs 39 to 59 of the Amended Particulars of Claim.

[4] In a nutshell, the Claimants argue that the requirement in the contract that AFSL provide a Bond Redemption Sum with respect to unsecured bonds issued by AFSL,

be deducted from the purchase price and credited to AFSL, was not done. The amount of conditional payment was to be based on whether more or less than the Adjusted Gross Revenue of **THREE HUNDRED AND SEVENTY-THREE MILLION JAMAICAN DOLLARS (\$373,000,000.00)**. It is claimed that Sagicor permitted **NINE MILLION UNITED STATES DOLLARS (\$9,000,000.00)** from the company's accounts instead of its own resources to be used to repay the Bonds. This resulted in a shortfall of working capital, leading the company to borrow funds for operations. This caused the company to suffer loss and negatively affected the conditional payment.

- [5] With respect to the earn-out payment, the Claimants allege Sagicor breached an express term of the contract that it should not take any action, the principal purpose of which was to circumvent or adversely affect the Claimants' ability to receive the earn-out consideration. Sagicor also breached its agreement to operate the company in a manner reasonably calculated to maximise the Claimants' ability to receive the earn-out consideration, and to devote sufficient resources to the company to allow it to operate in a manner materially consistent with how it was operated by the Claimants prior to the date of the agreement. Sagicor was to operate the company separate from its other businesses and not dispose of any of the material assets of the company without the Claimants' prior written consent.
- [6] Sagicor also breached its agreement to diligently pursue the realisation of the commercial arrangements contemplated by and or entered into with the company as of the date of the agreement and to operate the company in a manner reasonably calculated to maximise the Claimants' ability to receive the earn-out payment. Under this head, the Claimants allege that Sagicor failed to continue the ePay card arrangements with Norbrook Transaction Services Limited and the agreement with Unicomer (Jamaica) Limited.
- [7] In its Amended Defence, Sagicor denies the alleged breaches as spelt out in paragraphs 39 to 59. (See paragraphs 25 and 26 of the Amended Defence). It contends the conditional payment was settled by agreement and that the failure to

pursue the mentioned commercial agreements was based on the actions and decisions taken by the other parties to the agreements.

### **THE REQUEST FOR INFORMATION**

[8] This request for information was made pursuant to part **34.1** of the **Civil Procedure Rules**, which provides that a party may obtain from any other party information about any matter which is in dispute in the proceedings. On a request for information, an order may only be made if a) it relates to a matter in dispute and b) it is necessary to dispose fairly of the claim or to save costs. In considering whether to make an order, the court should consider a) the likely benefit which will result if the information is given, b) the likely cost of giving it, and c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

[9] The Request for Information required Sagicor to give information and produce documents, which totalled 42 categories or classes of documents. The grounds on which the application is made are 1) that it is directly relevant, 2) that the absence of the information is hampering the Claimants' preparation of their case, and 3) it is hampering the Claimants' ability to supply instructions to the experts who have been appointed by the Court.

[10] There is also a general statement that is in compliance with the overriding objective of the **Civil Procedure Rules**, that is to say that the information is required to give effect to the overriding objective to deal with cases justly, including saving expenses, and allotting to the matter an appropriate share of the court's resources while taking into account the need to allot resources to other cases, and are necessary for the just, fair, efficient, and effective disposal of the cause or matter and to save costs.

[11] The affidavit of Mr Peter Chin, given on behalf of himself and the other Claimants, in support of the application, repeats the grounds and adds nothing further. An Affidavit in Response to the Application was given by Joanna Banks, on behalf of

Sagicor, on the basis that the request was exceedingly wide relating to nearly 60 categories of items which themselves had numerous sub-categories; that the Claimants have not indicated in the application or affidavit in support any basis for asserting why the specific requests are directly relevant, nor have they stated the specific issues to which the information or documents are said to relate; and finally, that several requests as it relates to documents predate the transaction between the parties and so ought properly to be in the Claimants' possession as shareholders and directors of AFSL.

[12] There is an affidavit in reply from Mr Peter Chin, again on behalf of himself and all the Claimants, in which he indicates that his earlier affidavit was not intended to provide arguments but was limited to evidence. He also indicated that a large number of the documents sought in the application were required by the court-appointed expert, Mr Prem Lobo, as demonstrated by a memorandum written by Mr Lobo to the Attorneys-at-Law for the Claimants. The other aspects dealt with in the affidavit concerned whether the documents were within the control of the Defendant.

[13] Certain of the documents requested were provided to the Claimants through the process of standard disclosure. Written submissions were filed, and oral submissions were made on behalf of the parties. In the interest of brevity, I will not repeat the submissions in full, adverting to them only where necessary.

[14] The Court appreciates, on an examination of the application, that this is not only a request for information but also for specific disclosure, being mainly a request for documents. Indeed, the submissions on behalf of the Claimants speak to the requirements for an order for specific disclosure. It is noted that requests for information and specific disclosure are governed by different rules under the CPR and require different treatments.

[15] **CPR 28.6** is the applicable rule. On an application for specific disclosure, the applicant is required to establish, as a threshold, that the documents are directly relevant to one or more matters in issue in the proceedings. In deciding whether to

make an order for specific disclosure, the court must consider whether it is necessary in order to dispose fairly of the claim or to save costs. Again, the court is to have regard to the likely benefits of specific disclosure, the likely costs, and whether it is satisfied that the financial resources of the party, against whom the order would be made, are likely to be sufficient to enable that party to comply with any such order.

[16] The parties have generally agreed that **The Attorney General of Jamaica v BRL Limited and Village Resort Limited** [2021] JMCA Civ. 14 (**AG v BRL**) expounds the applicable law.

[17] 'Directly relevant' has the meaning ascribed to it in the Rules. That is, the party with control of the document intends to rely on it, it tends to adversely affect that party's case, or it tends to support another party's case. This element must be established on the pleadings or by affidavit in support of the application (see paragraphs 96 to 98 **AG V BRL**). The fact that the documents may be relevant or relate to an issue in dispute is not sufficient to make it subject to an order for specific disclosure pursuant to **CPR 28** (See paragraph 103 **AG V BRL**). The fact that Mr Lobo requested the documents clearly cannot be sufficient. It would have to be demonstrated that they were directly relevant, within the meaning of the CPR, to the matters in issue.

[18] I start by saying that in preparing to hear the application, I did not appreciate the necessity for the commentary which follows. My first observation in preparing the ruling was that the evidence in support of the application was sorely lacking. Neither the application nor the affidavit identifies the manner in which any of the numerous categories of information/documents relate to any matter in dispute, or is necessary to dispose of the claim, or how it will save costs. The affidavits and the application do not indicate the likely benefit to be achieved from the information and documents requested, the likely costs of preparing the information and documents, or that the financial resources of the party to provide the information and documents are

sufficient. This, bearing in mind that the burden to show why the application should be granted rests with the Applicants.

[19] This application comes at an early stage. There are no witness statements, no statement of facts and issues, and no pre-trial memoranda that would assist the Court. It is therefore left to the court to trawl through the pleadings to determine, without any input from the parties, except for the submissions made in the application, to make that determination. This Court instinctively recoiled at the idea that justice could be done between the parties in such circumstances.

[20] But this Court is not alone. This type of deficiency in such an application was addressed by Williams F, JA, in the case of **Miguel Gonzales v Suzette Saunders and Leroy Edwards** [2017] JMCA Civ 5, the salient portions being reproduced below.

*“[23] One important observation that it is necessary to make at this stage is that there is no affidavit evidence by the respondent addressing any of the three circumstances mentioned in the rule. The respondent did not at first instance put forward any evidence showing that the documents that he wished to have disclosed (i) were going to be relied on; or (ii) would either assist his case or (iii) adversely affect that of his opponents. (Although it is to be noted that part 28 of the CPR does not require the filing of affidavit evidence, it is not, in my view, unreasonable to expect that there must be some material upon which the court would be expected to exercise its discretion.) Indeed, there is nothing indicating specifically what is contained in the documents. From one perspective, the breadth of the request for disclosure (that is: „all motor vehicle accident claim forms“) could itself be taken as suggesting that the exact document sought and its contents are not known. All that was put forward were submissions on behalf of the respondent as to what, in the general course of things, such documents would be expected to contain. So that, for example, the simple fact that the documents were prepared and submitted as a result of the accident, although perhaps suggesting relevance in a general sense, would not be enough to satisfy*

*the particular requirements of rule 28.1(4)(b) and (c) of the CPR, given the specific definition and criteria in those parts of the rule.*

...

*[26] Even if we were to say, for the sake of argument, that the appellants at one stage had possession of the form, and even if it could be accepted that "party" includes the insurance company, it is my view that there is no material available to suggest that either the appellants or the insurance company intends or intended to rely on it. That, therefore, would still prevent the respondent from successfully establishing the two requirements of rule 28.1(4)(a) of the CPR. As regards the requirements of rule 28.1(4)(b) and (c) of the CPR, (which, on a proper interpretation of rule 28.1(4) in its entirety, should be read disjunctively from rule 28.1(4)(a)), the respondent (applicant at that stage) would have had to show that the said documents either (i) aid the appellants' case or (ii) negatively affect his case. There was no material before the learned judge to satisfy either of these requirements.*

*[27] In relation to my view on the desirability of affidavit evidence from the respondent in the circumstances of this case (accepting, as I have, that part 28 does not mandate the giving of affidavit evidence), I am aware of dicta in at least one other case that suggest that affidavit evidence may not necessarily be required. That case is the first instance judgment of **Maxwell Gayle and others v Desnoes and Geddes Limited and others**, claim no HCV 1339 of 2004, judgment delivered 13 May 2005. At paragraph 9 of that judgment, Mangatal J observed as follows:*

*"...the determination of the question whether the documents are directly relevant can be made by looking at the Claim and at the law, whatever the contents of the application or of the Affidavit."*

*[28] In that case, however, (in contradistinction to this one) Mangatal J, in particular at paragraph 12 of the judgment, conducted a fairly detailed*

examination of the claim form and compared it with the contents of the affidavits. In this case, an examination of the nature of the claim appears to be limited to paragraph [25] of the judgment, which mentions, in a brief and general sense, the nature of the claim. In my respectful view, that paragraph does not delve into the matter in a manner that would assist with a decision on whether the documents in question were "directly relevant". The following are the contents of paragraph [25] of the judgment of the court below:

"[25] The motor vehicle accident report was submitted two days after the incident and would have been the first formal communication between the insured and the insurer as it relates to the facts and circumstances of the accident. The Defendants, though not disputing the fact of the accident are at odds with the Claimant as to the circumstances, a factor that goes to the root of the Claim: liability for the accident. Especially as the Defendant [sic] assert that there is an element of contribution on the part of the Claimant in the accident, the documents are therefore, in accordance with Rule 28.6 (5), relevant to the determination of the issue of liability in these proceedings."

...

[31] In further consideration of what would be regarded as constituting relevant documents in applications for specific disclosure at common law, Mr Livesy QC (sitting as a deputy judge of the Chancery Division), at paragraph 6 of **African Strategic Investment (Holdings) Limited, Randgold and Exploration Company Limited v Christopher Paul MacDonald Main** [2012] EWHC 4423 (Ch), stated that:

"...Where a party makes an application for specific disclosure, the primary exercise for the court is to identify the factual issues that would arise for decision at the trial in accordance with an analysis of the pleadings. An order for disclosure should be limited to documents which are relevant to the pleaded issues."

*[32] As an examination of rule 28.1(4) of the CPR shows, however, the specific criteria needed to establish that a document is "directly relevant" in this jurisdiction, are different and need to be met.*

...

*[34] It is not impossible that the contents of the form could have been used by the respondent to attempt to establish a previous inconsistent statement or to ascertain whether the appellants were being consistent in putting forward, at the trial and in their pleadings, the account of events that they first advanced shortly after the accident. No clear conclusion can be made in this regard, however, as there is no evidence as to what the form contained. In the absence of affidavit evidence as to the contents of the form and/or addressing the requirements of rule 28.1(4) of the CPR, it might very well have been useful for the learned judge to have inspected the form itself in order to gain assistance in deciding whether he could properly have made the order for specific disclosure.*

*Rule 28.7 - criteria for ordering specific disclosure*

***[36] There not having been any affidavit evidence or any other material fact put before the court by the respondent, he would not have sufficiently demonstrated that the documents sought were "directly relevant" within the meaning of rule 28.1(4) of the CPR. There not having been proof that the documents were directly relevant, or even what their contents were, the learned judge would not have been put in a position properly to address the considerations set out in rule 28.7 of the CPR. So that, for example, he could not have spoken to the necessity for specific disclosure in order to dispose fairly of the claim and/or to any likely benefits of ordering specific disclosure of the said documents.***

*[37] Additionally, it not having been demonstrated by the respondent that the documents were "directly relevant", it was not required of the learned judge to have proceeded to the other hurdle of considering whether the document would*

have been privileged or not. Or, if he could properly have done so, the appellants' opposition to the documents being disclosed would have been strengthened by the failure to satisfy the required prior consideration of whether the test of direct relevance had been satisfied.

**[38] It is apparent from a reading of part 28 of the CPR that an applicant in applications for specific disclosure must satisfy the judge or master in chambers on the basis of evidentiary or other material that the requirements of part 28 of the CPR have been scrupulously complied with. Failure to do so will necessarily result in such an application being unsuccessful.**

[39] It is my view that my finding in relation to this preliminary hurdle renders it unnecessary for me to consider the remaining issues and grounds of appeal.

### **Conclusion**

[40] It seems to me that in the court below there would have been an onus on the respondent (he being the applicant then) to (i) satisfy the court that the documents in respect of which he sought disclosure were "directly relevant" within the meaning of rule 28.1(4) of the CPR; and/or (ii) that specific disclosure was necessary in order to fairly dispose of the claim or to save costs, as required under rule 28.7(1) of the CPR. In failing to satisfy itself that the respondent had crossed this first hurdle, the court below regrettably fell into error. I propose, therefore, that the appeal be allowed; and that the order for specific disclosure and inspection be set aside, with costs to the appellants to be agreed or taxed." (**emphasis mine**)

Brooks P referred to this case in **Bramwell v Gibson** [2023] JMCA App 25 stating:

"[18] In considering whether the document is directly relevant, the judge is entitled to examine the respective parties' statements of case. In para. [6] of **African Strategic Investment (Holdings) Limited, Randgold and Exploration Company**

**Limited v Christopher Paul MacDonald Main** [2012] EWHC 4423 (Ch), Mr Livesy QC, sitting as a deputy judge of the Chancery Division, said:

*“...Where a party makes an application for specific disclosure, the primary exercise for the court is to identify the factual issues that would arise for decision at the trial in accordance with an analysis of the pleadings. An order for disclosure should be limited to documents which are relevant to the pleaded issues.”*

[19] Although F Williams JA, in **Gonzales v Edwards**, said that the equivalent rule in the English and Wales Civil Procedure Rules may be less stringent in its application than rule 28.1(4), the principle of using the parties’ respective statements of case as part of the process of determining whether a document is “directly relevant”, is eminently sensible. The primary purpose of statements of case, particularly the particulars of claim, the defence and the reply, is to identify the issues in dispute between the parties. Rule 8.9(1) of the CPR speaks to a claimant setting out its case:

*“The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.”*

While rule 10.5(1) of the CPR speaks to the contents of the defence:

*“The defence must set out all the facts on which the defendant relies to dispute the claim.”*

[20] Indeed, in **AG v BRL**, McDonald-Bishop JA conducted a thorough perusal of the parties’ respective statements of case as she found that “it is necessary to establish what the issues are that arise from the parties’ statements of case to be resolved by the court at trial” (see para [32] of the judgment).

[21] A judge who is considering an application for specific disclosure may, of course, in identifying the issues in dispute, rely on affidavit evidence or other material which is placed before the court. F Williams JA noted the absence of such

*other material on behalf of the respondent in **Gonzales v Edwards** (see para. [23] of his judgment).”*

[21] I included paragraphs 19 and 20 to make it clear that it is not that the Court cannot determine the issues on the pleadings, and in a simple, uninvolved or non-technical case, the pleadings may be sufficient to allow a Judge to consider and rule on an application for specific disclosure or request for information. The nature and classes of the documents suggest this case is not one such. In **AG V BRL McDonald Bishop JA** (as she then was) pointed out that the applicant would be required to put forward evidence, if not arising objectively on the facts of the case, to establish that the documents required to be disclosed were directly relevant (see paragraph 104).

[22] The Court considered whether it should rule on the application in full. In **Bramwell v Gibson** another path is shown. The trial court in that case adjourned the case management conference to allow for the filing of written submissions and further affidavit evidence and for a ruling on the request for the specific disclosure (see para 8). I acknowledge that it would also be easier to consider the requests for information since it is fairly certain that at least some of the material relates to the matter in dispute, and the consideration would be whether it is necessary to dispose fairly of the case. Of course, given the dearth of evidence, the Court would not be able to consider whether it would save costs.

[23] It may be that, in keeping with the overriding objective to deal with cases fairly, I ought to allow a further opportunity for the required evidence to be placed before the court before ruling substantively on the application. I will hear submissions on the point.

### **POSTSCRIPT**

[24] The Court has seen altogether too many of these applications for specific disclosure where the affidavits in support do not deal sufficiently with the elements of which a court is required to be satisfied. It is hoped that this judgment will go a small way to improving the way these applications are prepared.

## **ORDERS**

- [1] Trial dates of 13th April 2026 to 1<sup>st</sup> May 2026 are vacated. Trial is fixed for 11th to 29th January 2027.
- [2] Claimants/Applicants are at liberty to file affidavit on or before 18th December 2025.
- [3] The Defendant/Respondent is at liberty to file affidavit on or before 7th January 2026.
- [4] The Parties to file and exchange written submissions on or before 14th January 2026.
- [5] The Notice of Application for Court Orders filed on 21st March 2025 is further adjourned 2:10 am on 19th January 2026.

## **ADDENDUM**

**DELIVERED APRIL 17, 2026**

### **OPENING REMARKS**

- [1] This Addendum is further to the decision delivered on 21 November 2025 and together constitute the judgment on Notice of Application filed 21 March 2025. The Court granted the parties time to file further affidavits and submissions in relation to the application. Further Affidavits were filed on behalf of the Claimants. On 9 February 2026, Counsel for the parties agreed that the Court rule on the Application made on paper resting on the further written submissions. This Ruling is further to that agreement.
- [2] The Court has considered both the initial and supplemental submissions. Since the application was made, a number of the requested documents have been disclosed. This Addendum addresses the outstanding documents. The format hereafter describes the document(s), information requested, the arguments for and against disclosure (in italics) and the ruling for each document or group of documents (in paragraph).

### **DOCUMENTS IN GROUP A (REQUEST OF EXPERT)**

#### ***Affidavit of Prem Lobo [Extract]***

#### **2.0 SUMMARY OF KEY ISSUES, AND RELATED INFORMATION REQUIRED**

*21. Based on my understanding of the loss quantification context in these proceedings, there are three primary issues for which the Requested Information is directly relevant ("Issue Areas 1, 2 and 3", respectively):*

*(1) Allegations that the Defendant has undertaken actions which have prevented Alliance Financial from achieving the performance targets required for the full conditional payment and the deferred consideration.*

*The Claimants are alleging that the Defendant, through various actions, has breached the contractual provisions of the Share Sale Agreement, impacting Alliance Financial's*

*ability to achieve the conditions and performance targets required for the full conditional payment and the deferred consideration.*

*In order to independently assess and quantify the potential financial loss, sufficient documents/information that speak to the financial position and operational performance of Alliance Financial, both prior to and subsequent to the date of the purchase-sale transaction, is directly relevant to this matter. In other words, documents/information that factually address if/how the financial position and operational performance of the Company changed before versus after the purchase-sale transaction, and the potential reasons for any change.*

*(2) Allegation that the Defendant's redemption of bonds depleted the cash resources of Alliance Financial, and thereby prevented the Company from achieving the performance targets required for the full conditional payment and the deferred consideration.*

*The Claimants are alleging that after the Defendant took control of the Company, the Defendant caused and/or inappropriately permitted the Company to redeem the existing J\$1.35 billion bonds payable (plus interest and related expenses) out of the Company's own cash resources without reimbursing the Company for that payment. Allegedly, the money used to redeem these bonds was required for the proper commercial and profitable operation of the Company's cambio business.*

*In order to independently assess and quantify the potential impact that the bond redemption payment had on the operating performance of the Company, and, in turn, the conditions and performance targets for the conditional payment and the deferred consideration, sufficient information/documentation that speaks to the nature and repayment of the bond is directly relevant to this matter. In other words, documents/information that factually address if/how the financial position and operational performance of the Company changed before versus after the bond redemption transaction, and the potential reasons for any change.*

*(3) Allegation that the Defendant paid Alliance Financial's preferred share assets as purchase consideration to the Claimants, without crediting/contributing such assets back to the Company, and thereby prevented the Company from achieving the performance targets required for the full conditional payment and the deferred consideration.*

*The Claimants are alleging that the Defendant used Alliance Financial's investment asset in preferred shares of Alliance Investment (St. Lucia) Ltd. to settle a portion of the purchase consideration without crediting/contributing a similar amount in respect of these assets back to the Company. Allegedly, crediting/contributing a similar amount in respect of these assets back to the Company was required for the proper commercial and profitable operation of the Company's cambio business.*

*In addition, the Defendant recorded the transfer of the preferred shares as an impairment expense on the Company's financial statements as opposed to recognizing amounts receivable from the Defendant to reimburse the Company. The Claimants allege this further decreased the reported earnings of the Company, and prevented the achievement of performance targets required for the full conditional payment and the deferred consideration.*

*In order to independently assess and quantify the potential impact that the above actions had on the operating performance of the Company, and, in turn, the performance targets for the conditional payment and the deferred consideration, sufficient information/documentation that speaks to the nature, payment and accounting treatment of the preferred shares is directly relevant to this matter. In other words, documents/information that factually address if/how the financial position and operational performance of the Company changed before versus after the preferred share payment/transfer, and the potential reasons for any change.*

## **COMMENTS**

- [3] It is clear from the Affidavit that Mr Lobo is using the layman's definition of "directly relevant" in relation to the documents requested. "Directly relevant" has the meaning ascribed to it in **CPR 28.1(4)** which is that:
- a) the party with control of the document intends to rely on it
  - b) it tends to adversely affect that party's case or
  - c) it tends to support another party's case.
- [4] An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings. **(CPR 28.6 (5))**
- [5] Mr Lobo's affidavit does not address these requirements. Neither do the submissions by Counsel for the Claimants which speak generally to "directly related" documents. This may suffice for the request for information where the test under **CPR 34.1** is that the information must relate to a matter in dispute. However, the information must be necessary to dispose fairly of the claim or to save costs. In considering whether to make an order, the Court should consider:
- a) the likely benefit which will result if the information is given,
  - b) the likely cost of giving it, and
  - c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

[6] The analysis of the documents and information sought by the application is conducted against this background. References in the rulings to 'directly relevant' or 'direct relevance' have the meaning set out above.

***Document/ Information Requested: Item A(2)***

*Affidavit of Prem Lobo filed December 18, 2025*

*A(2) Annual financial statements of AFSL internally or externally prepared, for years ended 30 September 2020 to present, segregated by each business line, namely, cambio operations, remittance operations, and payment services operations;*

***Claimants' Reasons***

*Rationale/Direct Relevance: The financial statements ("FS") of AFSL from 2020 to present speak directly to the financial position, operational financial performance and cashflow generation of AFSL both prior to and subsequent to the purchase-sale transaction. They factually address if/how the financial position and operational performance of the Company changed after the purchase-sale transaction, and the potential reasons for any change. Directly Related to Issue Areas 1, 2 and 3.*

***Document/ Information Requested: Item A(3)***

*Affidavit of Prem Lobo filed December 18, 2025*

*A(3)A summary of the total revenue segregated by business line (that is, cambio operations, remittance operations, and payment services operations) for the fiscal years ended 30 September 2020 to present;*

***Claimants' Reasons***

*Rationale/Direct Relevance: A summary of AFSL's revenue by business line from 2020 to present speak directly to the operational financial performance of AFSL both prior to and subsequent to the purchase-sale transaction. They factually address if/how the financial position and operational performance of the Company changed after the purchase-sale transaction, and the potential reasons for any change. Directly Related to Issue Areas 1, 2 and 3.*

***Document/ Information Requested: Item A(4)***

*Affidavit of Prem Lobo filed December 18, 2025*

A(4) Monthly internal financial statements (including balance sheet and income statement) for AFSL for each month during the fiscal years ended 30 September 2017 to present;

### **Claimants' Reasons**

*Rationale/Direct Relevance: Monthly FS, particularly balance sheets, from 2017 to present speak directly to whether sufficient cash and working capital was on hand monthly subsequent to the purchase-sale transaction (as compared to prior) in order to allow the various business lines of AFSL to properly operate. They factually address if/how the financial position and operational performance of the Company changed after the purchase-sale transaction, and the potential reasons for any change. Directly Related to Issue Areas 1, 2 and 3.*

### **Defendant's Opposition**

#### Defendant's Further Submissions on Claimants' Application for Further Information

19. At Page 7 of his affidavit, Mr Lobo deals with these requests. The Audited Financial Statements for 30 September 2020 to present have been provided. Nowhere in his affidavit does Mr Lobo state that the Audited Financial Statements are not sufficient for the exercise he is to carry out, or why he would also require annual financial statements. Mr Lobo attributes the factual purpose to these three (3) requests:

***“They factually address if/how the financial position and operational performance of the Company changed after the purchase-sale transaction, and the potential reasons for any change.”***

20. In respect of Item A(2), which segregates the AFSL business into three (3) business lines – cambio operations, remittance services and payments services operations – which is also done for Item A(3), the Court will note that the Claimants' claim with respect to the conditional payment and earn-out is specific to the cambio operations and remittance services. The alleged breaches specifically relate how the alleged shortage of working capital affected the cambio operations and remittance operations. The Court should also note that on the Claimants claim, the complaint as to insufficient liquidity and working capital relates to a specific period – April 2022 to June 2022.

21. For all the numerous paragraphs in them and their repetitive nature, both the Particulars of Claim and the witness statements, reflect distinct and essential features of the claim:

- i. *there was US\$9,000,000 available for working capital when business resumed in April 2022 which, in breach of Clause 9.1 of the Agreement, was used to redeem the AFSL Bond called in March 2022, and not for working capital when operations resumed in April 2022. Had the \$9,000,000.00 been used for working capital, US\$3,500,000 (“**which would have been not only necessary but sufficient for business operations**”) would have been used in operations, and \$5,500,000 would have been used to liquidate a debt to Alliance Finance;*
- ii. *operationally, and instead of using the \$5,500,000 of the US\$9,000,000 as the Claimants’ thought it should have been, the Company held on to US Dollars generated by MoneyGram operations to accumulate the sum of US\$5,500,000 instead of using those funds to carry on the cambio operations in a manner consistent with the Company’s normal practice by the Defendant acquired the shares and took control of the Company;*
- iii. *the parties worked out the losses associated with holding the US Dollars and the Conditional Payment was upwardly adjusted to reflect this, and the Claimants were paid. Robert Chin is now saying that this payment was only for April 2022 and that there was no payment for May 2022;*
- iv. *It was not until June 2022 that there was sufficient liquidity.*

22. *The Claimants have already pleaded that there was not enough working capital, and have expressly stated what, in their assessment, was available for working capital for the Company’s business operations – US\$3,500,000. On their case, if the US\$9,000,000 was used for operations and repaying the Alliance Finance debt instead of redeeming the bond, there would be no complaint.*

23. *The Defendant has pleaded that the very sum the Claimants say was required for working capital was put into the Company within 3 days of the 4 April 2022 start of operations, that is, US\$3,000,000; J\$300,000,000; J\$400,000,000 and J\$200,000,000. The Promissory Notes with respect to these sums, amounting to J\$1.35B (US\$9M) were made available to the Company between 4 and 8 April 2022.*

24. *There is nowhere in the narrative, on the pleadings or in their affidavits, that Mr Lobo or the Claimants demonstrate the need to go back to 2017 or even 2020 for information to quantify the Claimants' alleged loss with respect to these specific activities. No affiant states why monthly internal financial statements – **Item A(4)** – needs to go back to 2017, amounting to **60 months** of monthly financial statements; **48 months** of which preceded the Share Sale Agreement.*
25. *In fact, the Court will note that with respect to Items A(2) to A(4), in his **memo** Mr Lobo asked for information for the years ended 30 September 2017 to present. Yet, inexplicably, in the Request for Information and affidavit, he asked for information from 30 September 2020 to present. Mr Lobo gave no reason why he needed the information from 2017 in the first place; and having changed it seemingly arbitrarily to 2020, he gives no reason why he shaved off three years.*
26. *Interestingly, in his memo but not in his affidavit, Mr Lobo says Item A(4) would show whether sufficient cash and working capital was on hand monthly subsequent to the purchase-sale transaction (as compared to prior) in order to allow the various lines to adequately operate.*
27. *The flaw in this request is that the expert does not need to know if sufficient cash and working capital was on hand monthly for an unidentified period subsequent to the purchase-sale transaction, because that is not the Claimants' case. In fact, they put a time limit on the impact of not using the US\$9,000,000 for working capital – they say it was not until the injection of 13-month loan facility in June 2022 that the Company was put in a position to have available to it the liquidity to operate the business as it had previously done.<sup>5</sup>*
28. *There is a complaint about interest and new financial obligations; but nowhere is there a complaint that this interest and new financial obligations caused a shortage of working capital. The material already disclosed is sufficient. Mr Lobo needs no further information outside of the construct of the claim. The Claimants pointedly say the funds were in place by June 2022 but at a cost. The Term Sheet for the \$1.35B bond has been provided. The cost of the financing is clear.*
29. *We ask the Court to reject the requests at Items A(2) – A(4) as disproportionate to the issues in the claim, as fishing and certainly not necessary to the fair disposal of the claim and the saving of costs.*

## **RULING**

- [7] An Audited Financial Statement includes a Balance Sheet, Income (profit and loss) Statement and a Cash Flow Statement. It reflects a company's financial position and performance. It is also externally verified/created by a Certified Professional Accountant (CPA). The Audited Financial Statements from 2020 to present have been disclosed.
- [8] The documents and information sought are the Annual Financial Statements, which would speak to the financial position, operational financial performance and cash flow generation of AFSL, a summary of total revenue by business line which would speak to the operational financial performance of AFSL and the monthly internal balance sheets and income statements which would speak to whether sufficient cash and working capital was on hand monthly from 2020 (2017 in Notice of Application) to present. The purpose was to enable a comparison of the periods before and after the Share Purchase transaction. Given the nature of an Audited Financial Statement, the Claimants have not established that the information requested cannot be gleaned from it, and therefore that compliance is necessary to fairly dispose of the case or to save costs. With respect to the documents, it is not shown that they meet the test of direct relevance. Even if some greater leeway should be granted to the expert witness given his duty to assist the court, it would seem that the Audited Financial Statements would be the best and most reliable source documents.

***Document/ Information Requested: Item A(5)***

***Affidavit of Prem Lobo filed December 18, 2025***

*A(5) All financial projections, budgets, and forecasts for AFSL as at or after March 2022 (for the business as a whole and/or by business line);*

***Claimants' Reasons***

*Rationale/Direct Relevance: Financial projections/budgets/forecasts for AFSL as at or after March 2022 will be helpful to determine expectations for AFSL just after the purchase-sale transaction. They factually address if/how the financial position and operational performance of the Company changed after the purchase-sale transaction, and the potential reasons for any change (why the actual performance diverged from projections). Directly Related to Issue Areas 1, 2 and 3.*

***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

*8. But the concession as to item 1(A)(5) is remarkably unclear and not particularly helpful to the Court's expert or the Court, since Mr Lobo needs and has specifically*

requested “All financial projections, budgets, and forecasts for AFSL as at or after March 2022 (for the business as a whole and/or by business line)”. So that the bald statement in Appendix 1 that “our client has instructed that it has a Budget for 2022-2025, and we now enclose a copy” (which copy has been supplied) is not at all compliant, satisfactory or acceptable since that vague statement does not assert or deny that Sagicor has other documents which are “financial projections, budgets, and forecasts for AFSL as at or after March 2022 (**for the business as a whole and/or by business line**)” (emphasis added).

9. This clarification, assertion, or denial is plainly required. It is not likely that Sagicor, a huge listed financial enterprise, would have merely an unauthenticated 1-page document with the purported 4-year budgets for the year 2022, the year 2023, the year 2024, and the year 2025, with no other documents containing any adjustments at all for any year, including actual as against projected results for any of those years with narrative explaining variances and corrective actions or other changes recommended to meet budgeted items.

10. Furthermore, **CPR 34.4** requires that “Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12”. With merely Appendix 1, Sagicor has failed to comply with CPR 34.4.

### **Defendant’s Opposition**

#### Defendant’s Submissions on Specific Matters in Claimants’ Further Submissions filed on 14 January 2026

10. The date of 21 November 2025 referred to in Paragraph 7 is inaccurate. On 3 October 2025 Sagicor conveyed through its counsel, first to Claimants’ counsel and then to the Court that it is prepared to provide information and documents at for the items at A(1), A(5), A(13), B(6), B(10) and B(24). With respect to A(5), it was expressly indicated to Counsel and to the Court that what AFSL had was a Budget for 2022 – 2025 and that we were instructed to provide that.

11. Paragraph 8 ignores that express indication and is suggestive that Sagicor agreed to all of (A)(5), yet only provided a Budget. We wish to make it clear on record what was conveyed on behalf of the Defendant since, if the Claimants’ submissions are left unanswered it could lead the Court to conclude that the Defendant agreed to provide every item listed in (A)(5).

### **RULING**

[9] The Court agrees with the recollection of the Defendant’s Counsel as to what documents were indicated to be disclosed.

[10] To the extent that Clause 11.2 of the Share Sale Agreement imposes certain obligations on the Defendant during the Earn-Out Period, this information at first glance seems to relate to a matter in dispute since how the AFSL was being operated is a matter in contention. However, the averments as to how the Defendant breached the contract are specific. There is no allegation of mismanagement generally. It has not been shown how the breadth of documents sought are directly relevant to one or more matters in issue in the proceedings.

***Document/ Information Requested: Item A(6)***

***Affidavit of Prem Lobo filed December 18, 2025***

*A(6) Sagicor's internal analyses, management reporting, correspondences, Board of Directors minutes, Board of Directors reporting and other documents and information that pertain to the operating performance of AFSL after the purchase-sale transaction, and commentary/reasons for such operating performance, including an assessment of AFSL's assets/liquidity and market and economic conditions, as well as comparison to forecasted or budgeted results;*

***Claimants' Reasons***

*Rationale/Direct Relevance: This information speaks to why the financial position and operational performance of the Company may have changed after the purchase-sale transaction (for instance, due to policy changes, management directives and/or competitive/economic factors). Directly Related to Issue Areas 1, 2 and 3.*

***Defendant's Opposition***

***Defendant's Further Submissions on Claimants' Application for Further Information***

*30. This request is raising an enquiry into the operating performance of AFSL post-transaction that is overbroad, and not necessary for the fair disposal of the matter.*

*31. The court is reminded that the Claimants' complaints are specific. They complain that there was insufficient working capital because certain funds were used to repay the Bond when those funds should have been used as working capital and/or to repay a loan. They say Sagicor caused the Company to borrow money when it need not have, causing additional interest to be borne by the Company to their detriment as Sellers.*

*32. We invite Court to look at **Paragraphs 59(1) to 59(10)** of the Particulars of Claim (Pages 190 – 197 of the Judge's Bundle). It is entirely unnecessary to so broadly*

request information about “**operating performance**” when the Claimants have narrowly defined (a) what is alleged to have caused them loss; (b) the period over which the actions took place and (c) the date by which liquidity was restored.

33. Further, it would be disproportionate, in the context of witness statements and disclosure, to require the Defendant to provide this raft of information that in no way can be said to assist in fairly disposing of the claim and saving costs.

## **RULING**

[11] Whether the information and documents being sought are necessary to dispose of the case fairly and are directly relevant has not been demonstrated. The Claimants’ averments are specific that the Defendant failed to:

- operate the company in a manner reasonably calculated to maximise the Sellers’ ability to receive the conditional payment earn-out consideration
- devote sufficient resources to the Company to allow it to operate in a manner materially consistent with how it was operated by the Sellers prior to sale
- operate the Company separately from its other businesses
- diligently pursue the realisation of the commercial arrangements contemplated by and/or entered into with the Company as at 9 February 2022, including, but not limited to, that between the Company and Unicomer Jamaica limited

Further, the Defendant disposed of material assets without the Sellers’ prior written consent.

[12] The expert is expected to speak to the first only. The specific act complained of was that the Defendant used, or wrongfully permitted or procured to be used, financial assets of the Company to settle a portion of the purchase consideration that was and is Sagicor’s own obligation to settle at its own cost (the sum of **ONE BILLION THREE HUNDRED AND FIFTY MILLION JAMAICAN DOLLARS \$1,350,000,000.00**) used to redeem bonds not credited to the Company) thus depriving the Company of investible assets while failing to provide any other investible assets/working capital which would have contributed materially to the company’s earnings and in turn contributed positively to the amount of cash that the Sellers would be entitled to receive as the conditional payment and earn-out consideration from 9 April 2022.

***Document/ Information Requested: Item A(7) & Item A(8)***

Affidavit of Prem Lobo filed December 18, 2025

A(7)Sagikor's internal analyses, correspondence (including but not limited to letters and electronic mail), written notes or notations, or rationale for AFSL's accounting write-off, that is, as an impairment loss or expense, in respect of the transfer of the preferred shares to the Claimants;

**Claimants' Reasons**

*Rationale/Direct Relevance: Such information would indicate why the Defendant/AFSL recorded an expense in respect of the transfer of these preferred shares, rather than a receivable asset from the Defendant. Directly Related to Issue Area 3.*

**Defendant's Opposition**

Defendant's Further Submissions on Claimants' Application for Further Information

34. This request amounts to fishing and is, in any event, overbroad. The **"rationale/direct relevance"** stated by Mr Lobo is that, **"Such information would indicate why the Defendant/AFSL recorded an expense in respect of the transfer of these preferred shares, rather than a receivable asset from the Defendant"**. The Claimants are required, on their own case, to prove that the accounting treatment is wrong. They are not unaware of the treatment given. They devoted several paragraphs of their Amended Particulars of Claim to describing everything that is wrong about the treatment. The treatment is also reflected in the 2022 audited financial statement for AFSL. Further and in any event, on Mr Lobo's own instructions, as set out in his affidavit, the **"why"** for the accounting treatment, because he is preparing his report on the basis that the court accepts that the treatment given was wrong.

35. Sagikor's and AFSL's rationale for the treatment is also stated in the Defence. To trawl through Sagikor's internal correspondence and five other categories of items for information concerning the decision is disproportionate to what is required for the fair disposal of the matter.

36. Further, the Claimants are specific with respect to the impact of the accounting treatment on them. They say the accounting treatment of the funds as an impairment was wrong and that when the sum of J\$1.35B was injected in the Company in June 2022 when a bond was issued, the Company was placed in a position where interest was incurred and deprived the Company of either new share capital or an investible asset. The expert is not here to wade through irrelevant documents to determine a loss – he remit is to quantify the loss

*described by the Claimants as having been sustained by them in specific circumstances, on specific facts over a specific period.*

**Item A(8)**

*A(8) All correspondences between Sagicor and the Claimants with respect to the transfer of the preferred shares from AFSL to the Claimants pursuant to the purchase-sale transaction;*

**Claimants' Reasons**

*Rationale/Direct Relevance: Such information would indicate why the Defendant/AFSL recorded an expense in respect of the transfer of these preferred shares, rather than a receivable asset from the Defendant. Directly Related to Issue Area 3.*

**Defendant's Opposition**

**Defendant's Further Submissions on Claimants' Application for Further Information**

*37. This Item shares the same “**rationale/direct relevance**” as Item A(7) and, like that item, amounts to fishing. There is a clear agreement between the parties for the preference shares to be transferred and there is no dispute that this was done.*

*38. The court is invited to look at Page 30 of the Bundle on Mr. Lobo's 12 December 2024 memo – his note below Paragraph 12 which is identical to this request. It is quite curious that this expert is only interested in Sagicor's understanding. In any event, the Defence set out why AFSL treated the preference shares as an impairment, the standard disclosure process already included correspondence exchanged between Sagicor and the Claimants on various issues, and the Witness Statement of Andre Ho Lung sets out why the treatment was given.*

*39. It is entirely disproportionate, particularly where the Claimants would also have this correspondence, to look to Sagicor solely. None of the Claimants affiants have, in any event, given evidence as to why this would save costs or enable the fair disposal of the claim.*

**RULING**

[13] Mr Lobo's instructions require him to “independently quantify the financial losses, if any, incurred by the Claimants from the alleged actions of the Defendant. These documents are not relevant to that purpose. Moreover, they have not been shown to be directly relevant or that the information is necessary to fairly dispose of the case.

**Document/ Information Requested: Item A(9)**

Affidavit of Prem Lobo filed December 18, 2025

A(9)Sagikor's internal calculations and/or narrative in respect of the Claimants' earn-out entitlements for the years ended 30 September 2023 and 30 September 2024;

**Claimants' Reasons**

*Relevance/Direct Relevance: I understand that a \$nil earn-out amount was calculated as owing or paid. It would be relevant to have these calculations, if any, to refer to, and to potentially form the basis for what the earn-out may have been if certain adjustments were made to net income, based on factual findings of the Court with respect to the Defendant's alleged actions. Directly Related to Issue Areas 1, 2 and 3.*

**Defendant's Opposition**

Defendant's Further Submissions on Claimants' Application for Further Information

*40. Again, this is quite disproportionate, does not save costs and is not necessary to dispose fairly of the case. The Agreement clearly provides a formula for the calculation of the earn-out at Schedule 2 of the Agreement – Page 143 of the Judge's Bundle. The Net Profit After Tax for the two financial years in question is determined from the Audited Financial Statement for the respective years. The Audited Financial Statements have been disclosed. If Mr Lobo determines that there needs to be any adjustment to net income he is already positioned, by the terms of the Agreement, to refer to the formula and the Net Profit After Tax as disclosed in the audited financial statements.*

**RULING**

[14] The Court does not understand how the Defendant's calculations could form the basis of what the earn-out consideration should be, based on findings of the court. The Share Sale Agreement provides a formula. That is the reference for any calculation based on factual findings. Further, the documents do not meet the test for direct relevance.

**Document/ Information Requested: Item A(10)**

Affidavit of Prem Lobo filed December 18, 2025

A(10) Sagikor's Auditor's analyses, correspondence (including but not limited to letters and electronic mail, written notes, or notations, and information) or rationale for AFSL's

accounting write-off, that is, as an impairment loss/expense, in respect of the transfer of the preferred shares;

**Claimants' Reasons**

*Rationale/Direct Relevance: Same reasoning as Request 7 and 8.*

**Defendant's Opposition**

*Defendant's Further Submissions on Claimants' Application for Further Information*

41. This is the same as Item B(15) to which we respond below. We also repeat Paragraphs 34 to 39 above, since Mr Lobo says this item shares the same "**rationale/direct relevance**" as Items A(7) and A(8).

**RULING**

[15] See ruling on A(7) and A(8). The documents do not meet the test for direct relevance.

**Document/ Information Requested: Item A(11)**

*Affidavit of Prem Lobo filed December 18, 2025*

A(11) All documentation evidencing the terms (including but not limited to bond and loan payable agreement, key characteristics and terms), disbursement to AFSL and repayment by AFSL in respect of the J\$1,350,000,000 in Bonds payable and J\$774,528,357 in loans payable to Alliance Finance Limited;

**Claimants' Reasons**

*Rationale/Direct Relevance: Such information provides relevant context to understand the nature of the outstanding bond debt and its existing impact and/or potential future impact on the financial position and operating performance of AFSL, and why the bonds were redeemed instead of being refinanced. Directly Related to Issue Area 2.*

**Defendant's Opposition**

*Defendant's Further Submissions on Claimants' Application for Further Information*

44. This is overbroad, disproportionate and also repetitive. Under Item A(13), the Defendant provided the Term Sheet relating to the loan of J\$1.5B. Under Item B(6), the Defendant provided information as to the disbursement and in the process of disclosure.

## **RULING**

[16] Such information may be relevant but has not been shown to be directly relevant.

### **Document/ Information Requested: Item A(12)**

Affidavit of Prem Lobo filed December 18, 2025

A(12) AFSL's general ledger account details relating to the investment in the Class C Preferred Shares of AFSL St. Lucia for the years ended 30 September 2020 to 30 September 2022, showing the initial accounting for the preferred shares, the subsequent write off, and any additional accounting entries;

### **Claimants' Reasons**

*Rationale/Direct Relevance: Same reasoning as Request 7 and 8.*

### **Document/ Information Requested: Item A(16) & Item A(17)**

Affidavit of Prem Lobo filed December 18, 2025

A(16) Sagicor's general ledger details setting out accounting journal entries in respect of intercompany account/transactions between AFSL and Sagicor, for the years ended 30 September 2022 to present; and

(17) AFSL general ledger details setting out accounting journal entries in respect of intercompany account/transactions between AFSL and Sagicor, for the years ended 30 September 2022 to present.

### **Claimants' Reasons**

*Rationale/Direct Relevance: Such information will confirm whether assets or resources were provided to AFSL by the Defendant after the purchase-sale transaction as means to reimburse the Company for previously utilized cash resources potentially needed by the Company to ensure proper operations. Directly Related to Issue Areas 1, 2 and 3.*

### **Defendant's Opposition**

#### **Defendant's Further Submissions on Claimants' Application for Further Information**

42. Mr Lobo clearly stated in his memo that subject to review of financial statements, he may need to make general ledger requests. More importantly, however, there has been no issue raised on the claim in relation to any intercompany transactions between the Defendant and AFSL. Mr Lobo's "**rationale/direct relevance**" for this request makes it quite plain that this is fishing. The

*Defendant has pleaded, and no dispute has been taken with, the fact that it obtained loans, in local and United States Currency, in the form of Promissory Notes in the sum of J\$1.35B. The Promissory Notes have been disclosed and they show the lender in each case.*

*43. In any event, and to the extent that Mr Lobo believes he requires confirmation that assets or resources were provided to AFSL by the Defendant, he has access to the Audited Financial Statements that would reveal what any such transactions are, and the terms of same.*

## **RULING**

[17] The direct relevance for these documents has not been established. Further, they are not required for Mr Lobo to carry out his instructions.

### ***Document/ Information Requested: Item A(14)***

#### ***Affidavit of Prem Lobo filed December 18, 2025***

*A(14) The subordinated loan agreements between AFSL and Alliance Investment Management Limited, as noted on PDF pg. 36 of the Alliance Financial IPO prospectus, and provide full details of the key characteristics and terms of these loans;*

### ***Claimants' Reasons***

*Rationale/Direct Relevance: Same reasoning as Request 11.*

### ***Defendant's Opposition***

#### ***Defendant's Further Submissions on Claimants' Application for Further Information***

*45. This is not directly relevant. The Claimants might have considered it necessary to provide Mr Lobo with an IPO Prospectus dated 16 December 2020 which precedes the Agreement between the Parties, but it has no bearing on the claim. The subordinated loan agreements referred to in that Agreement also precede the Agreement between AFSL and Alliance Investments St Lucia (AISL). The only investment arrangement between AFSL and AISL that arises in this claim are the preference shares held by AFSL in AISL which have since been transferred to the Claimants pursuant to the Agreement. If at all relevant, any such subordinated agreements are in any event within the control of the Claimants who are shareholders and principals of AISL.*

## **RULING**

[18] The documents are not relevant to Mr Lobo's instructions and not directly relevant. The information is not shown to be necessary in order to fairly dispose of the case or to save costs

**Document/ Information Requested: Item A(15)**

Affidavit of Prem Lobo filed December 18, 2025

A(15) *The accounting journal entries and/or general ledger details, from Sagicor's accounting records, to record Sagicor's purchase of AFSL including but not limited to, recording of:*

a) *The Initial Consideration of J\$4,000,000,000;*

- i. *the J\$1,350,000,000 in respect of the transfer of the Class C Preferred Shares from AFSL to the Claimants; and,*
- ii. *the J\$2,650,000,000 less closing costs, paid in cash to the Claimants.*

b) *The Conditional Payment of J\$578,208,540 of the maximum J\$1,000,000,000 paid in cash to the Claimants; and,*

c) *All journal entries relating to the Deferred Compensation/ Earn-Out.*

**Claimants' Reasons**

*Rationale/Direct Relevance: A summary of these entries provides an understanding of how the Defendant treated the purchase-sale transaction from an accounting perspective. Further, it confirms whether the Defendant may have recognized an amount payable to AFSL at the time of the purchase-sale transaction to account for its alleged obligation to AFSL for using AFSL's assets as part of the purchase consideration in the purchase-sale transaction. Directly Related to Issue Area 3.*

**Defendant's Opposition**

Defendant's Further Submissions on Claimants' Application for Further Information

*46. This, again, amounts to fishing. The issue in this claim is the accounting treatment given to the preference shares on AFSL's records. There is absolutely no relevance as to how the Defendant recorded the acquisition in its own books, and the information is not necessary for the fair disposal of the claim nor does it save costs.*

**RULING**

[19] Not relevant to Mr Lobo's instructions. He was not instructed to give evidence on which method of accounting was correct. A different expert was appointed for this purpose. Direct relevance has also not been established.

## **DOCUMENTS IN GROUP B**

### ***Document/ Information Requested: Item B (1)***

#### ***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

1. ***1(B)(1):*** *State in full detail how Sagicor arrived at the total value for the shareholder equity of AFSL of J\$7,500,000,000 as at March 2022, and supply copies of the valuation analyses (whether internally or externally prepared) by Sagicor that set forth the basis for the purchase price, and what assets and liabilities were included in the overall purchase price, and setting out any valuation adjustments.*

### ***Claimants' Reasons***

#### ***Rationale:***

*Since the Share Sale Agreement dated 9<sup>th</sup> February 2022 (the "Agreement") provides for a maximum total purchase consideration of J\$7.5B (Initial consideration, Conditional Payment, and Deferred consideration – "Earn-out" combined), this necessarily means that Sagicor had concluded that the total value for the shareholder equity of AFSL was J\$7.5B as at March 2022, otherwise there is no rational reason let alone commercial reason for Sagicor assuming an obligation to pay up to J\$7.5B for the Sale Shares. However, throughout its Defence, Amended Defence and witness statements Sagicor now asserts that the sum of up to J\$7.5B was never attainable or payable under the Agreement. It is therefore only fair that the Court, its expert witnesses and the Sellers be provided with copies of the valuation analyses (whether internally or externally prepared) by Sagicor that set forth the basis for the purchase price, and what assets and liabilities were included in the overall purchase price, and setting out any valuation adjustments. These documents are not only directly relevant to this issue but also quite important to the support or undermine the credibility of both the Sellers' witnesses and Sagicor's witnesses who make diametrically opposite assertions on this issue.*

### ***Defendant's objections***

Defendant's Further Submissions on Claimants' Application for Further Information

48. This amounts to fishing and is a plain attempt to look behind the Agreement, that is supportive of the glaring efforts of the Claimants to rewrite their bargain. The **parties** negotiated and arrived at an Agreement with a Purchase Price of J\$5,000,000,000.00 subject to certain adjustments, and payable in three tranches as set out above. There is absolutely no dispute between the parties as to how they arrived at the shareholder equity of AFSL as at March 2022. In fact, on the witness statement of Robert Chin, this plainly does not arise. Beyond saying, at Paragraph 16 of his Witness Statement that:

**“Peter and I personally (in consultation with various kinds of advisors to the Sellers), actively and directly and indirectly (through the Sellers’ attorneys-at-law for the transaction, Cartier Lindo) participated in negotiating with Sagicor the commercial and other terms and provisions of the Agreement and related matters after the signing of the Agreement”,**

Robert Chin says no more of the negotiations or how the Purchase Price was arrived at. The Claimants, all shareholders (and in some instances, Directors) of AFSL were not passive bystanders; and the Agreement was expressly arrived at by all the Parties.

49. There is absolutely no relevance to how the parties arrived at the Purchase Price; and there is no disputed issue in the claim as to the value of any shareholder equity. The request for information machinery was not created to serve the purposes of enabling parties dissatisfied with a bargain to use the process to attempt to extract an alternative more suitable to them.

**RULING**

[20] There is no factual issue arising for decision on the validity of the agreement or its terms. The submissions misinterpret Sagicor’s position on the purchase price which is a denial that there was a fixed price, the price being subject to certain conditionalities, indeed, it is the operation of those conditionalities which are now in dispute. There is no indication that Sagicor intends to rely on these documents, or that they tend to adversely affect its case. Similarly, they do not support the Claimants’ case, not being in dispute. The information does not relate to any issue in dispute.

**Document/ Information Requested: Item B (2)**

Claimants' Further Submissions In Support Of Application To Compel Compliance With Request For Information And For Unless Order

13.

2. 1(B)(2): State in full detail all actions (if any) taken by Sagicor or AFSL after the purchase-sale transaction (including operating loans or transfers of cash, including dates of each of the same) to ensure that AFSL had sufficient cash/liquidity to operate the cambio, remittance operations and payments processing business segments.

**Claimants' Reasons**

Rationale:

In paragraph 59(6) of the Particulars of Claim the Sellers make the important allegation that Sagicor made far-reaching changes in the operation and management of AFSL which resulted in, inter alia, the unavailability of Jamaican dollars to timeously reimburse MoneyGram subagents, resulting in subagents performing below established standards and consequently resulting in losses to AFSL and therefore the Sellers. Sagicor makes a bald denial of this important allegation in paragraph 26 of its Amended Defence. This issue is covered in great detail in the witness statement of Peter Chin in paragraph 79(12), and is anticipated in the evidence of subagent Teno Mair (paragraph 11, witness summary) and subagent Patrick King (paragraph 8, witness summary).

**Defendant's objections**

Defendant's Further Submissions on Claimants' Application for Further Information

50. This is excessive and disproportionate. It also leads to a waste of time and costs in circumstances where the Defence, the witness statements and documents already disclose that AFSL obtained loan facilities amounting to J\$1.35B and an intraday liquidity facility of J\$200,000,000 to operate the cambio and remittance operations. There is no issue on the claim regarding the payments processing business segments.

We repeat Paragraphs 21, 22 and 23 of these submissions; and reiterate that the Claimants' claim was specific regarding the alleged working capital insufficiency; and the Defendant has provided information in this regard that is sufficient to fairly dispose of the claim.

## RULING

[21] The information has already been produced in that Sagicor has disclosed what actions were taken. At issue is the sufficiency. Though the information may be related to the issue in dispute, there is no likely benefit from repeating information already given. The information relating to the payments processing business is not directly related to any issue in dispute.

### ***Document/ Information Requested: Items B(3) an B(4)***

### ***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

3. ***1(B)(3):*** *State whether AFSL set up/record a receivable from Sagicor (or other asset) in respect of the preferred shares.*

### ***Claimants' Reasons***

*Rationale: the centrality of this issue of the wrong/correct accounting treatment of the preference shares which Sagicor caused AFSL to account for as an "impairment" is reflected not only in the Parties' pleadings but also in witness statements of the witnesses of both sides (Amended Particulars of Claim, paragraphs 53(1), (2), and (3), 56, and 57(4); Amended Defence, paragraph 32-34; Amended Reply, paragraphs 14(5), 15, and 17; witness statement of Peter Chin, paragraphs 73(1), (2), and (3), 76, 77(4), 79(8)(e), 79(9) and (11), witness statement of Linroy Marshall, paragraphs 8, 30, 34, 35(4) 37(2)(e), 37(3), and 37(5); witness statement of Sagicor's witness Christopher Zacca, paragraphs 48 and 49; and the witness statement of Sagicor's own witness Andre Ho Lung, paragraph 12. In fact, the overwhelming focus of the witness statement of Andre Ho Lung is on this very critical issue and the accompanying issue of AFSL not having been "credited" as required by clause 9.1 of the Agreement.*

*Importantly, also, among the grounds on which the Court has appointed expert witness Cyrus F. Khory on the Sellers' application and expert witness Mr Anura Jayatillake on Sagicor's application, is to assist the Court with their professional opinions as to wrongness or correctness of this specific accounting treatment. See grounds (c) and (d) of the Sellers' application filed 17<sup>th</sup> February 2025; and Appendix 3 to these submissions where Sagicor (in ground 2) underscores this issue and ground.*

CPR 1.1(2) provides that:

*“Dealing justly with a case includes:*

- a. ensuring, so far as is practicable, that the parties are on an equal footing...”*

CPR 26.1(2)(v) is also important regarding the powers of the Court, as it provides that:

*“(2) Except where these Rules provide otherwise, the court may -*

*...*

- (v) take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.”*

*It would be fundamentally self-evidently defeating of the interest of justice for Sagicor say “whether AFSL set up/record a receivable from Sagicor (or other asset) in respect of the preferred shares” as asked only and for the first time at trial in cross-examination of its witnesses but only after the Sellers shall have closed their case and the Court’s expert witness Mr Khory has given evidence on this very issue. It is therefore not only desirable but also necessary to further the overriding objective for this answer (further and better particulars) to be provided at this time.*

*In **Esa Ali v. Nafisa Ramsurance** Robin N. Mohammed, J., stated:*

*“49. In **Real Time Systems Limited v Renraw Investments Limited** Civil Appeal No. 238 of 2011, Jamadar JA considered the responsibility of a Court to manage cases and further the overriding objective. To do this, a judge does have the power to request ‘particulars’ of the statement of case when it is found to be lacking. Jamadar J.A stated at page 9, paragraphs 22, 23 and 24:*

*“22. .... **Clearly judicial officers now have the responsibility not just for managing the pace of litigation but also the shape of litigation. Hence the ‘intense focus ... on the pre-trial stages.’** What then are the ‘noble objectives embodied in Part 25’? Simply put, the core objective is to ‘further the overriding objective by actively managing cases,’<sup>18</sup> which includes achieving, inter alia, the thirteen objectives listed in Rule 25.1, CPR, 1998. I have already identified that these include, the early*

identification of the issues and the sorting out of which issues need a full investigation and which ones can be dealt with summarily, and ensuring that no party gains any unfair advantage by reason of a lack of full disclosure of all relevant facts.

23. In order to achieve the above, **case management, which necessarily includes issue management, is central to achieving the Overriding Objective of the CPR, 1998, which is to deal with cases justly.** And, to achieve success in this task the court is given certain general wide ranging powers of management. These are listed at Rule 26.1, CPR, 1998. Among these powers are several which are directly related to identifying issues and determining whether they should be heard and if so when and how. And critical to these powers of management is the specific power to: **“take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.”**

24. **This specific power includes the power to order the delivery of ‘further and better particulars’ on either a statement of case or a Defence. And, in exercising this power the court can act on its own initiative, pursuant to its duty and power to actively manage cases. Clearly this is a necessary power, because there will always be matters in which a ‘pleading’, whether a statement of case or a Defence, is defective by reason of the inadequacy of facts disclosed, but not to the extent to make it an abuse of process or to constitute such a non-compliance with Parts 8 or 10 to reasonably or proportionally justify striking it out pursuant to Part 26.2. In such cases a court ought to be able to manage the matter so as to properly identify the issues to be responded to, in say a Defence, by making an appropriate order for the supplying and serving of ‘further and better particulars’ as directed. In my opinion, a purposive reading and interpretation of the CPR, 1998 reveals this intention”.**

See also *The Caribbean Civil Court Practice* (3<sup>rd</sup> Ed.), Note 18.3.

**Document/ Information Requested: Item B (4)**

Claimants’ Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order

13.

4. 1(B)(4): State in full Sagicor's rationale for not having AFSL set up/record a receivable from Sagicor (or other asset) in respect of the preferred shares.

### **Claimants' Reasons**

#### Rationale:

This issue goes together with, and is consequential on, the immediately preceding question 1(B)(3). Accordingly, the Sellers rely on the rationale set forth above in respect of 1(B)(3).

### **Defendant's Objections**

#### Defendant's Further Submissions on Claimants' Application for Further Information

52. The Defendant has already pleaded in its Defence that AFSL how it treated the Preference Shares – that is, as an impairment - the disclosed Audited Financial Statements of AFSL and the notes to same outline the reason for doing so and the witness statement of Andre Ho Lung plainly state why this was done. The Claimants' case is that a recording as a receivable is appropriate; and it is for them to say why they consider it to be so. It is not for the Defendant to say why AFSL did not do so, in circumstances where the Defendant has already stated how it treated the Preference Shares and the reasons therefor.

### **RULING**

- [22] The Witness Statement of Peter Chin (paragraphs 65 to 76) deals with the treatment of the preference shares. Paragraph 71 shows what 'appears' to be the bookkeeping record for the transaction which is as an impairment. This information is taken from the Company's audited financial statements and Statement of Financial Position. It is the Claimants' contention it should be treated as a receivable and credited to the company. It does not serve the overriding objective to ask the Defendant to answer a question which is not its case. Besides, the Claimants claim the treatment by the Defendant is wrong. It is their burden to prove it.

#### **Document/ Information Requested: Item B (11)**

#### Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order

13.

5. 1(B)(11): State the “certain conditions agreed by the parties” that Sagicor alleges in paragraph 14 of the Defence, and all documentation (if any) containing the same.

### **Claimants’ Reasons**

#### Rationale:

To demonstrate the overobvious necessity for Sagicor to provide this information, the full wording of paragraph 14 of the Defence (the word “Defence herein refers to the Amended Defence)

“14. The Defendant denies that the purchase consideration due to the Sellers totals \$7.5B as alleged in Paragraphs 17 and 18 of the Amended Particulars of Claim and will say that the purchase consideration was subject to certain conditions agreed by the parties; and that the purchase consideration actually due to the Sellers, save for the Initial Consideration, was determined by the said conditions. For that reason, the Conditional Payment and Deferred Consideration were capped at \$1,000,000,000.00 and \$2,500,000,000.00, respectively.” (Emphasis added).

This mere cryptic reference to “certain conditions agreed by the parties” which Sagicor alleges strikes at the heart of and justified its non-payment in a dispute concerning up to \$7.5B cannot in any context be proper way in which serious commercial litigation is conducted. Again, it can only be unfair and palpably unjust for the Sellers to hear of the answer to this most fundamental and far-reaching question after it has closed its case and the Court’s expert witness Mr Prem Lobo shall have already given evidence. It is therefore not only desirable but also necessary to further the overriding objective for this answer (further and better particulars) to be provided at this time.

### **Defendant’s Objections**

#### Defendant’s Further Submissions on Claimants’ Application for Further Information

53. This request for information is entirely unnecessary, and leads to the waste of time and costs. There is an Agreement between the parties which expressly sets out the terms and conditions between the parties. The information is evident from the Agreement – Definition of Purchase Price (**Page 113 of Judge’s Bundle**); Schedule 2 of the Agreement (**Page 143 of Judge’s Bundle**).

### **RULING**

[23] The arrangements for the sale and purchase of AFSL is the subject of a written agreement. The Defendant's reference to 'certain conditions agreed by the parties' are clearly a reference to the terms of the Share Sale Agreement. This information is not necessary to fairly dispose of the matter or save costs. The relevant document is the Share Sale Agreement made between the parties.

***Document/ Information Requested: Item B (12)***

***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

6. *1(B)(12): State whether Sagicor contends that the "letter dated 9 November 2022" (a) is the only document and (b) contains all the terms upon which Sagicor relies in alleging a "agreed reduction in the Purchase Price" referred to in paragraph 16 of the Defence.*

***Claimants' Reasons***

***Rationale:***

*Like the immediately preceding question, this question too ought to be answered before trial so that the Sellers may be aware of Sagicor's case in relying on terms it contends were agreed to reduce the Purchase Price started in the Agreement. As is well settled, the parole evidence rule does not permit a party to adduce at trial evidence contradicting or inconsistent with a written contract (as is the Agreement in the instant case). Accordingly, it is presumed that Sagicor intends to tender at trial documentary evidence upon which it relies to contradict the Purchase Price stated in the Agreement and, if so, the Court, the expert witnesses, and the Sellers ought to be supplied with the same at this time. Indeed, in any contract for the sale of anything nothing is more important than certainty of the purchase price and the res being sold. Accordingly, any term alleged to affect the Purchase Price in the instant case must be disclosed at the earliest opportunity.*

***Defendant's Objections***

***Defendant's Further Submissions on Claimants' Application for Further Information***

54. *This request is not only unnecessary but is made in complete disregard of other aspects of the defence and Claimants' own amended Particulars of Claim.*

- a. First, Paragraphs 44 and 45 of the Defence make it clear that the 9 November 2022 letter is relied upon as part of a series of other letters listed at Paragraph 45 (**Pages 283 to 284 of the Judge's Bundle**).
- b. Second, Paragraph 15(i) of the Defence expressly speaks to the agreed reduction, its amount and why it arose (**Page 271 of the Judge's Bundle**).
- c. Third, the Claimants' own Paragraph 19 of the Amended Particulars of Claim (**Page 179 of the Judge's Bundle**) expressly states that the Total Consideration was reduced by 2 deal breakers of \$70,000,000 each.

## **RULING**

[24] The information requested was already provided, see Paragraphs 44 to 45 of Amended Defence.

### **Document/ Information Requested: Item B(14)**

#### Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order

13.

7. 1(B)(14): Supply copies of the "Promissory Note" and all documentation upon which Sagicor relies to support its allegation in paragraph 27 of the Defence that a "Promissory Note was later converted to the said Preference Shares".

### **Claimants' Reasons**

#### Rationale:

Sagicor is obligated, by virtue of CPR 28.17, to give the Sellers inspection of the Promissory Note. This does not admit of dispute by Sagicor.

Since Sagicor relies on and alleged subsequent steps and documentation leading to the conversion of that Promissory Note to the said Preference Shares, it is only fair that the Sellers be supplied therewith.

### **Defendant's Objections**

#### Defendant's Further Submissions on Claimants' Application for Further Information

56. *This Promissory Note was a pre-Share Sale Agreement document that should be in the Claimants' possession. More importantly, however, is the fact that there is no dispute that there was a J\$1.35B loan by AFSL to AISL evidenced by that Promissory Note. In fact, Mr Lobo observes that in another pre-Share Sale Agreement document in which the Claimants would have been integral (that is, the 2020 AFSL IPO) referred to the Promissory Note of \$1.35B from AFSL St Lucia (Page 31 of the Judge's Bundle).*

57. *It is also not disputed that the Promissory Note was later converted to Preference Shares, and the Share Sale Agreement refers to that. These Claimants negotiated for those very Preference Shares to be transferred to them. None of this information is necessary for a fair disposal of the matter.*

## **RULING**

[25] It appears that the Defendant intends to rely on the Promissory Note. It is therefore directly relevant and is to be disclosed.

### **Document/ Information Requested: Item B (15)**

#### Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order

13.

8. 1(B)(15): *Of "The said entry was reviewed and had the approval of the Company's auditors PriceWaterhouse Coopers" alleged in paragraph 34 of the Defence, supply copies of all documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations requesting, leading up to, containing, and otherwise connected with the said review and the said approval.*

### **Claimants' Reasons**

#### Rationale:

*In its Defence (paragraph 34), in the witness statement of Christopher Zacca (paragraph 48), in the witness statement of Andre Ho Lung paragraph 12, there is the bald assertion that PriceWaterhouse Coopers approved the accounting treatment of the purported impairment in the accounts of a person (that is, AFSL) of an asset (that is, the preference shares) not owned by that person. Not only is that facially absurd but it is extraordinarily curious, and obvious inadmissible hearsay, that Sagicor and its witness expect this Court*

*and the Sellers to accept as true and the full truth that PriceWaterhouse Coopers in fact gave that advice and approval.*

*If that is so, which is facially unlikely and the individual at PriceWaterhouse Coopers who gave that advice (or anyone from there for that matter) is notably not a witness, it is absolutely certain that (1) this advice and approval and the reasons therefore will have been in writing and the fact; (2) PriceWaterhouse Coopers would not have approved something not specifically brought to it for consideration and (if thought fit) approval, and so there must exist documentation initiating the request for the advice/approval. The law is well settled and is pellucidly clear, the communication with PriceWaterhouse Coopers is not protected by privilege and is definitely disclosable.*

*In Regina (Prudential plc and another) v. Special Commissioner of Income Tax and another (Institute of Chartered Accountants of England and Wales and others intervening) [2013] 2 WLR 325, at paragraph 51, the UK Supreme Court held that attorney-client privilege would not be extended to accountants even in a case where accountants were giving tax advice. Lord Neuberger of Abbotsbury PSC stated, coincidentally concerning chartered accountants, PricewaterhouseCoopers):*

*“51 Turning to this case, then, despite the powerful arguments advanced to the contrary, and in agreement with the clear and careful judgments below, I consider that we should not extend LAP to communications in connection with advice given by professional people other than lawyers, even where that advice is legal advice which that professional person is qualified to give.”*

*Apart from credibility of the Sagicor witnesses, which is at stake, the Court, the experts witnesses the Court has appointed for their opinion, and the Sellers ought not to be deprived of this vital evidence. Sagicor’s ipse dixit will not do. These documents are also required to satisfy the important best evidence rule.*

### **Defendant’s objections**

#### **Defendant’s Further Submissions on Claimants’ Application for Further Information**

*58. Again, this is an overbroad request which does not advance the matter any further and is a fishing expedition.*

### **RULING**

[26] It appears that the Defendant would need to present evidence in proof of its assertion of approval by the Company's Auditors in support of its treatment of the preference shares. The documents being sought are therefore directly relevant and are to be disclosed.

***Document/ Information Requested: Item B (17)***

***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

9. ***1(B)(17)***: Of "AFSL obtained an Intraday Liquidity facility from Sagicor Investments Jamaica Limited pursuant to Facility Agreement dated 4<sup>th</sup> May 2022" alleged in paragraph 43 of the Defence:

- a. *supply copies of all documents, records, correspondence (including but not limited to letters and electronic mail), completed forms, written notes or notations requesting, leading up to, and otherwise connected with the said "Intraday Liquidity facility" and each disbursement and repayment thereunder and in connection therewith;*

***Claimants' Reasons***

***Rationale:***

*Sagicor in its standard disclosure given after the Sellers' request for information, has provided a copy of that "Facility Agreement dated 4<sup>th</sup> May 2022" agreement which was sought in 1(B)(1)(b).*

*It is essential for the Court, the Court's expert witness, and the Sellers to be made aware of the actual contemporaneously documented discussion, reasons and negotiations (if any) leading to that agreement so that the reasons for the substantial drain it inflicted on AFSL and the Sellers may be duly considered in the interest of arriving at the truth and achieving the ends of justice. Merely banding about an allegation of "fishing expedition" will not deter meeting these necessary ends.*

***Defendant's Objections***

***Defendant's Further Submissions on Claimants' Application for Further Information***

60. *The Intraday Facility Agreement was provided at (39) of the Defendant's List of Documents. This overbroad request is fishing, and goes beyond what is necessary for the fair disposal of the claim.*

## **RULING**

[27] There is no indication that the Defendant intends to rely on these documents save for the Intraday Liquidity Facility already disclosed. Nor is there indication that the documents adversely affect its case. It has not been shown that the documents tend support either party's case. The request does not meet the test of direct relevance.

### ***Document/ Information Requested: Item B (21)***

#### ***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

10. ***1(B)(21)***: *Of "the loan was fully repaid on 2 May 2022" alleged in paragraph 48 of the Defence, supply copies of all documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations, leading up to, containing, and otherwise connected with the repayment alleged.*

### ***Claimants' Reasons***

#### ***Rationale:***

*It is inexorably essential that this allegation of repayment by substantiated and the reasons why repayment was not made earlier to cauterize the haemorrhaging of the funds (by way of interest and any other loan-related expenses) of AFSL into the pockets of Sagicor.*

### ***Defendant's objections***

#### ***Defendant's Further Submissions on Claimants' Application for Further Information***

61. *This is addressed by correspondence disclosed at (45), (46), (47) and (48) of the List of Documents. There is no dispute that the loan was repaid, and that the Adjusted Gross Revenues of the Company were increased by the amount of a revaluation loss. There can be no saving of costs, nor can there be a fair disposal of the matter, to provide these broad categories of items for repayment of the loan.*

## **RULING**

[28] Again, these documents do not meet the test of direct relevance. There is no indication that the Defendant intend to rely on them and it is not shown how they may adversely affect its case or support the Claimants' case.

***Document/ Information Requested: Item B(22)***

***Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order***

13.

11. ***1(B)(22):*** *Copies of the minutes of all Leadership Meetings of Sagicor and of all presentations made in respect of the possible acquisition of, and the recommendation to acquire, the Company from the Claimants.*

***Claimants' Reasons***

***Rationale:***

*Sagicor seeks to give the (disputed) impression and repeats multiple times throughout its pleadings and witness statements (Defence, paragraphs 4; witness statement of Christopher Zacca, paragraphs 9,10 (twice mentioned), 11, 16, 43) it was carrying out a "rescue" operation/mission in acquiring AFSL, and suggest they were doing the Sellers a favour in acquiring SFSL and that the Chins approaches Sagicor begging them to acquire AFSL. This is not so, and given the importance of that posture by Sagicor it is only fair and just that the credibility of its witnesses be measured against the contemporaneous documented reasons and sequence of events leading to Sagicor's offer to acquire AFSL.*

***Defendant's Objections***

***Defendant's Further Submissions on Claimants' Application for Further Information***

62. *This is alarming and frankly irrelevant. Minutes of Leadership meetings within the Defendant regarding the acquisition has no bearing, and does not arise, on the claim or defence. The parties negotiated and arrived at a Share Sale Agreement, and the business rationale discussed among Sagicor's leadership for its acquisition and any recommendation to acquire AFSL is not relevant for the fair disposal of the claim. The parties, in the Agreement, settled on a preamble and with respect, there is no legal basis, to go beyond or behind the Agreement.*

**RULING**

[29] There is no issue arising for decision relating to the basis on which the Agreement was reached. In any event, the rationale for these documents is flawed as the Share Sale Agreement in its Recitals states that the Purchaser “by way of a business rescue operation” made an offer to purchase the Sellers' shares which was accepted. Clause 4 of the Share Sale Agreement is headed “Rescue Actions after Signing & Initial Closing”.

**Document/ Information Requested: Item B(23)**

**Claimants’ Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order**

13.

12. **1(B)(23)**: *Of “removing and prospect of the Company re-entering the market in partnership with NTS” alleged in paragraph 55A (iii) of the Defence:*

- a. *provide full particulars of the facts upon which Sagicor relies in respect of that allegation;*
- b. *supply copies of all documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations upon which Sagicor relies in respect of that allegation.*

**Claimants’ Reasons**

**Rationale:**

*The rationale for this request is more conveniently dealt with in respect in item 1(B)(26) below, which is here adopted and relied upon.*

**Defendant’s objections**

**Defendant’s Further Submissions on Claimants’ Application for Further Information**

63. *This must be viewed in the context of the entire section of the defence, which displays that it is **self-evident that AFSL** could not re-enter the market with NTS. A response to this request neither assists in the fair disposal of the matter nor does it save costs.*

**RULING**

[30] See B (26) below.

**Document/ Information Requested: Item B (25)**

**Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order**

13.

13. 1(B)(25): Of "there was no good commercial reason to do otherwise" alleged in paragraph 55A (v) of the Defence:

- a. provide full particulars of the facts upon which Sagicor relies in respect of that allegation;
- b. supply copies of all documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations upon which Sagicor relies in respect of that allegation.

**Claimants' Reasons**

Rationale:

The rationale for this request is more conveniently dealt with in respect in item 1(B)(26) below, which is here adopted and relied upon.

**Defendant's Objections**

**Defendant's Further Submissions on Claimants' Application for Further Information**

65. Again, when viewed in the context of the entire section of the defence, it is clear that the reference to no good commercial reason relates to the information immediately preceding it. There can be no utility to a response, nor does this save costs.

**RULING**

[31] See B (26) below.

**Document/ Information Requested: Item B (26)**

**Claimants' Further Submissions in Support of Application to Compel Compliance with Request for Information and for Unless Order**

13.

14. 1(B)(26): Of "Sagicor Bank Jamaica Limited's re-entry into the prepaid card business 2 years after the acquisition of the Company is in no way related to, or

*in breach of, the Share Sale Agreement between the parties and that the Claimants' assertions and averments in this regard are scandalous, oppressive and prejudicial to the Defendant" alleged in paragraph 55A (vi) of the Defence:*

- a. provide full particulars of the facts upon which Sagicor relies in respect of that allegation;*
- b. supply copies of:*
  - i. all documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations upon which Sagicor relies in respect of that allegation;*
  - ii. all notices of and agenda for the meetings of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*
  - iii. when and all reasons why Sagicor Bank Jamaica Limited exited the prepaid card business;*
  - iv. all notices of and agenda for the meetings of the subcommittees of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*
  - v. all minutes, records, notes, and recordings of the proceedings of all meetings of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*
  - vi. all minutes, records, notes, and recordings of the proceedings of all meetings of the subcommittees of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*
  - vii. all resolutions, decisions, instructions, and directions of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*
  - viii. all resolutions, decisions, instructions, and directions of the subcommittees of the board of directors of Sagicor and of Sagicor Bank Jamaica Limited, respectively, concerning such re-entry;*

- ix. *all minutes of all Leadership Meetings of Sagicor and of Sagicor Bank Jamaica Limited of all presentations made in respect of the possible such re-entry, and the recommendation for such re-enter; and*
- x. *all business plans, documents, records, correspondence (including but not limited to letters and electronic mail), written notes or notations considering such re-entry, proposing such re-entry, recommending such re-entry, leading up to such re-entry,*

## **Claimants' Reasons**

### Rationale:

*The prepaid card service (known as "ePay") was an important business line of AFSL, with 50,000 cardholding customers at the time Sagicor acquired AFSL. Through the Alliance ePay Mastercard, customers can receive remittances directly to the prepaid card without visiting a physical location. The Company is a pioneer of this game changing "direct to card" benefit, which is the first for Jamaica. It allows customers the peace of mind to receive remittance virtually during this challenging period and is supported by a convenient app.*

*The prospectus for AFSL was clear that "The Company intends to use its prepaid card solution to support, enhance and compliment the remittance business." See extracts of the prospectus at Appendix 4 hereto.*

*Therefore, Sagicor's decision to end the prepaid card service and restore it (not as a business line of AFSL but rather) in the hands of its own Sagicor Bank but only after the Earn-Out period must be fully explained to the Court, the Court's expert witness so that they may properly formulate their opinions on the impact on loss quantification, and the Sellers so that they may fairly prepare their case for trial.*

*The hearsay and wholly speculative superficial narrative sought to be offered by Sagicor's witness Omar Brown, (CEO of AFSL since Sagicor acquired AFSL) contained in paragraph 25 of his witness statement and in Christopher Zacca's witness statement at paragraph 38, as to why this important business line was discontinued is not only unsatisfactory and implausible but is also inadmissible.*

*It is therefore necessary for the true and full reasons for the ending of the service to the Sellers' direct and inevitable detriment to be supplied by*

*Sagicor. The curious reference by Omar Brown to a television news item as being the basis for a serious commercial discussion impacting not only the Sellers but also AFSL and Sagicor is not credible.*

*Furthermore, even if the alleged agreement between NTS and JMMB was relevant to discontinue this important line of business, surely there can be no basis for assuming that alleged agreement was exclusive and prevented NTS from providing prepaid card platform services to AFSL or (alternatively) Sagicor Bank providing comparable prepaid card platform services.*

*It must be expected that in a huge regulated financial services group that carefully thought-out reasons and explanations for the discontinuation, all properly documented, had to have been given to or by Sagicor by those in charge of the operations of AFSL since Sagicor acquired it. The contemporaneous documentation containing the initiation of the discussions on the possible discontinuation, the exchange of views on the discontinuation, the provision of reasons and explanations for the (then) proposed discontinuation, and the making and the recording of the discontinuation decision, must all be disclosed by Sagicor in the interest of fairness, the noble pursuit of the truth, and in furtherance of the overriding objective.*

*All this information can be found in the documents answering the description in paragraph 1(B)(26) of the Application.*

*It is important to note that the Sellers are not asking for all board minutes and so on, but is with due circumspection specifically limited to those "concerning such re-entry".*

### **Defendant's Objections**

#### **Defendant's Further Submissions on Claimants' Application for Further Information**

*66. This 11-part request is nothing short of a quantum leap; and perhaps the boldest attempt at fishing in this application. To describe it as irrelevant and overbroad is almost a misnomer.*

*67. Sagicor Bank Jamaica Limited is not a party to the claim and is not a party to the Share Sale Agreement. No clarification is needed from a statement which says that the Bank's re-entry into the market is in no way related to or is in breach of the Share Sale Agreement. That is self-evident.*

*68. What the Claimants have sought to do is tack-on a scandalous bit of innuendo, and now by way of Request for Information wish to wade into the commercial*

*affairs of a non-party, both to the Claim and Share Sale Agreement, in order to ascertain whether there is any material that may establish their speculative pleading. This request is not necessary for the fair disposal of the claim, and will not save costs.*

## **RULING**

[32] Paragraph 55(iii) of the Amended Defence, read in its entirety, is self-explanatory requiring no information to fairly dispose of the claim or to save costs. The documents requested have not been shown to be directly relevant.

[33] Paragraph 55(v) relates to an issue in contention, that is whether the Defendant diligently pursued the realisation of the commercial arrangements contemplated by/ or entered into with the Company. This has relevance to the earn-out consideration. The information may therefore be said to be needed to fairly dispose of the claim and should be supplied. Whether the documents requested are directly relevant, however, has not been shown.

[34] Paragraph 55(vi) is a statement relating to the actions of a different entity. The Purchaser/Defendant is Sagicor Group Jamaica Limited, described in the Particulars of Claim and a public limited liability company. The entity entering the prepaid market was Sagicor Bank Jamaica Limited. The doctrine of corporate personality laid down in **Salomon v Salomon** [1897] AC 22 applies. Without the lifting of the corporate veil, the operations and decisions and the documents supporting them are not within the remit of the Defendant to disclose. Disclosure is limited to documents which are or have been in the party's control (**CPR 28.2**).

## **ORDERS**

**[1] The Defendants shall disclose the information at paragraph 1B(14) and 1B(15) of the Notice of Application for Court Orders filed on 1 March 2025, by 6 May 2026.**

**[2] Unless the Defendant complies with order number 1 herein then it cannot rely on any document not disclosed.**

**[3] The Parties to file and exchange submissions on costs by 30 July 2026.**

**[4] Leave to appeal refused.**

**[5] Claimants' Attorneys-at-Law to prepare file and serve Formal Order.**