

On behalf of the Administrators
A J Manson
Fifth witness statement
17 August 2022
Exhibit AJM5

Claim No. CR-2022-002121
Company Registered No. 04343841

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

IN THE MATTER OF PETROPAVLOVSK PLC
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIFTH WITNESS STATEMENT OF ALLISTER JONATHAN MANSON

I, **ALLISTER JONATHAN MANSON** of Opus LLP, Fourth Floor, Euston House, 24 Eversholt Street, London NW1 1DB, **WILL SAY AS FOLLOWS:**

Introduction

- 1 I am the same Allister Manson who made witness statements in these proceedings on 11 July 2022 (“**Manson 1**”), 19 July 2022 (“**Manson 2**”), 27 July 2022 (“**Manson 3**”) and 30 July 2022 (“**Manson 4**”). Terms not defined in this witness statement have the meanings given to them in my previous statements.
- 2 I am one of the Administrators of the Company. I make this witness statement on behalf of the Administrators in support of our application under rule 12.39(9) of the Insolvency (England and Wales) Rules 2016 (“**IR 2016**”) seeking a direction that a limited number of documents (or parts of documents) in the exhibits should not for the time being be made available for inspection, including by creditors or members of the Company, without the permission of the Court.
- 3 I refer in this witness statement to the paginated bundle of documents labelled “AJM5”.

Unless otherwise indicated, any references in this witness statement are references to that exhibit. References are to [Exhibit/Tab/Page(s) (if relevant)]. Any reference to “we” in this witness statement refers to the Administrators or our staff.

4 The facts and matters stated herein are either within my own knowledge, in which case they are true, or based on documents and information supplied to me by others, in which case they are true to the best of my knowledge, information and belief.

5 As required by paragraph 18.1(5) of CPR Practice Direction 32, I can confirm that this witness statement has been prepared with assistance from our solicitors, JHA.

Rule 12.39 of the IR 2016

6 While I am not a lawyer, without waiving privilege, I am advised that:

6.1 Pursuant to r. 12.39(1), IR 2016, where documents are filed with the court under the Insolvency Act 1986 of the IR 2016, the court must place such documents on the court file;

6.2 Relevant to the present case:

(i) Pursuant to rr. 12.39(3) & (4), IR 2016, creditors and members of the Company, among others, in the absence of any direction to the contrary, have a right to inspect the court file, or obtain from the court a copy of the court file, or of a document in the court file; and

(ii) Pursuant to r. 12.39(6), IR 2016, other persons may inspect the file or obtain copies if the court gives permission; and

6.3 Pursuant to rr. 12.39(9) & (10), the relevant officeholder, among others, may apply for, and the court may make, a direction that the file, a document (or part of it) must not be made available under rr. 12.39(3) & (4), IR 2016, without the permission of the court.

7 The relevant approach to be taken by the court in relation to an application under r. 12.39(10), IR 2016, is a matter properly to be addressed by way of submission as appropriate. However, again, without waiving privilege, I am further advised that:

- 7.1 The default position whereby creditors and members of the Company, among others, have an automatic right to inspect the court file, or obtain copies from it, can be departed from where there are countervailing reasons operating against it; and
- 7.2 A direction pursuant to r. 12.39(9), IR 2016, of course does not prevent an application being made to inspect the parts of the court file which are subject to such a direction, or obtain copies from those parts, in any event.
- 8 As explained in further detail below:
- 8.1 A full account of every matter which the Administrators relied upon in support of their application for directions by Application Notice dated 27 July 2022 is set out in the witness statements relied upon in support (with the result that it is not necessary for someone seeking to understand the basis of the Court's decision upon the Administrators' application to see the underlying documentation exhibited to the various witness statements);
- 8.2 The Administrators have published copies of all witness statements (albeit without exhibits) filed in these proceedings both on behalf of the directors and Administrators on the Company's website;
- 8.3 Further, other than the limited categories of documents identified below, in respect of which third parties have asserted rights of confidentiality or which otherwise appear to the Administrators to be confidential or commercially sensitive, the Administrators intend to publish the underlying documents exhibited to the witness statements in any event; and
- 8.4 The Administrators' reporting obligations will ensure that further information will be provided as required by and in compliance with IR 2016.

Timing of this application & potential urgency

- 9 We are conscious that this application could have been made at the time the evidence was filed or the relevant applications heard and we apologise for the additional burden on the Court's time caused by the present application.

- 10 Both the administration application and the Administrators' application for directions were made (and heard) in circumstances of urgency and it was not yet clear to us the extent to which confidentiality concerns might arise. In addition, our legal representatives had to give consideration to making the best use of the Court's limited time at the available hearings: the administration application was listed for half a day on an urgent basis and all of that time was used in dealing with the points that were raised; our application for directions was initially listed for half a day but the Judge made 3.5 hours available for the hearing, all of which was required to deal with the points in issue, and then reserved judgment. On each occasion, it was considered necessary to make available to the Court all of the materials that were filed, but, in circumstances where, as explained above, a full account of every matter which the Administrators relied upon was set out in the witness statements themselves, on the understanding that it was unlikely that detailed reference would be made to the underlying documents exhibited in open court.
- 11 We are also aware that Ms Caroline Edwards, who claims to be a shareholder in the Company, has contacted the Court requesting access to the exhibits to the witness statements, in particular Exhibit CBE1/AJM1. A copy of an email from Ms Edwards to the court dated 10 August 2022 was provided to my solicitors, Joseph Hage Aaronson LLP ("JHA"), under cover of an email dated 12 August 2022 in which it was explained that Deputy Judge Jonathan Hilliard QC had asked that Ms Edwards' email be forwarded to JHA for any comments [AJM5/1].
- 12 On Monday 15 August 2022 JHA responded by email to the Court explaining, in a reference to this application, that the Administrators anticipated this week making an application under rule 12.39(9), IR 2016, seeking a direction that a number of documents (or parts of documents) in the exhibits should not for the time being be made available for inspection, including by creditors or members of the Company, without the permission of the Court. On this basis, JHA respectfully asked the Court not to provide copies of the exhibits to any non-party in the meantime [AJM5/2].
- 13 In response to JHA's email and a further email to the Court from Ms Edwards dated 16 August 2022, the Court by email of the same date [AJM5/3] circulated the following from Deputy Judge Jonathan Hilliard QC:

“The Administrators state they are shortly going to make an application seeking a direction that some of the documents filed at court or parts of them should not be available for inspection, and Ms Edwards wishes to obtain information from the administrators and have asked what avenues are available to do so. It seems to me that given the administrators’ objections to disclosing the full exhibit, any request needs to be dealt by an application to the Court and by a vacation judge.

1. *Any further correspondence should just be sent to the Court not to the Judge direct.*
2. *In response to Ms Edwards e-mail, the Judge is on leave and therefore not available to deal with any application but has read the e-mails. The Judge considers that in light of*

(i) the request for documentation on the Court file,

(ii) the Administrators’ response that they consider that certain documentation should not be made available, and

(iii) the Administrators’ intention to make an application for a direction in relation to (ii),

any request for documentation should be dealt with by an application to a Judge, who can consider the application and the Administrators’ response to it, together with- if made in time- the Administrators’ application.

3. *Ms Edwards, the Court cannot provide you with legal advice but any applications you have can be made to the Court in the vacation (giving your details), and that any application should be copied to the Administrators so that they have the chance to respond.” Any applications should be accompanied by a certificate for urgent vacation business.”*

14 In circumstances where no application has yet been made in line with the Judge’s comments, it is currently not considered that this application constitutes urgent vacation business. However, in the event that such an application, or a further request to inspect

the court file, or obtain copies of documents on the court file, is made, it will be necessary for this application to be determined in advance (and this application will become urgent as a consequence). We, therefore, reserve the right to request that this application is determined in advance of any such application or request.

Communications with stakeholders and the market

15 The Administrators have sought to keep the market informed of developments since our appointment. In particular:

15.1 We issued press releases on 19 July, 3 August, 5 August and 8 August 2022 [AJM5/4-7], all of which have also been posted on the Company's website (at <https://petropavlovskplc.com/administration-news/>). These explained the circumstances surrounding the Administrators' appointment, our work and conclusions since our appointment, our application seeking liberty to enter into the transaction with UMMC, and the terms and anticipated timing of that transaction.

15.2 On 8 August 2022, we published copies of all witness statements (without exhibits) filed in these proceedings on behalf of the directors and Administrators on the Company's website.¹ On the same date, we published our report under Statement of Insolvency Practice 16 [AJM5/8], which was also sent directly to known stakeholders.

15.3 We have continued to receive and respond to queries from shareholders, although given the volume of such queries we have generally directed them in the first instance to the information and documents already published by the Administrators.

16 In accordance with our reporting obligations, we will provide further updates to stakeholders throughout the course of the Administration. This will include the circulation of statutory proposals to creditors, which we anticipate will take place within

¹ Being (i) the first witness statement of Charlotte Philipps dated 11 July 2022; (ii) the first witness statement of Allister Manson dated 11 July 2022; (iii) the second witness statement of Charlotte Philipps dated 14 July 2022; (iv) the second witness statement of Allister Manson dated 19 July 2022; (v) the third witness statement off Allister Manson dated 27 July 2022; and (vi) the fourth witness statement of Allister Manson dated 20 July 2022.

the next four weeks. This will also include publication (via the Company's website) of all documents exhibited to the witness statements filed in these proceedings other than the limited categories of documents identified below. We intend to publish the documents which are not the subject of this application later this week.

Reasons for the application

- 17 The Administrators wish to provide stakeholders with as much information as practicable regarding our work and conclusions. This is why we published the witness statements in support of the administration application and the Administrators' application for directions. All else being equal, we would also wish to publish all the underlying material contained in the exhibits to those statements.
- 18 However, there are a number of documents in the exhibits in respect of which third parties have asserted rights of confidentiality or which otherwise appear to the Administrators to be confidential or commercially sensitive. Although we consider that it was incumbent on us to put all such material before the Court, in circumstances where, as explained above, a full account of every matter which the Administrators relied upon was set out in the witness statements themselves, we did so on the understanding that the risk of it being referred to in detail in open court was limited, and we do not consider it appropriate, at least at this stage, for that material to be made available more widely. To do so would risk causing prejudice to third parties and could, we are advised, give rise to liability on the part of the Company to the detriment of the stakeholders as a whole.
- 19 In addition, as noted above, we intend shortly to publish all of the documents in the exhibits save for those described below. We consider that publication by the Administrators is a more proportionate way of communicating the relevant materials to those with a right to inspect them than responding to individual requests made either to the administrators or to the court for copies of documents on the court file. We are advised that any party applying for access to the file under r. 12.39(3)(c) or r. 12.39(4)(a)(ii) of IR 2016 would have to demonstrate that they are a creditor or member of the Company. Similarly, the Administrators would in the ordinary course seek to verify the identity and standing of any person who requested information on the basis that they were an interested party. The approach we have adopted of publishing

documents to the market is intended to be both more efficient and transparent.

20 The full list of documents included in the exhibits which the Administrators consider should not, at least at this stage, be made available for inspection without the permission of the Court is set out at the end of this witness statement. The documents fall into the following categories:

20.1 Drafts of the sale and purchase agreement between the Company and UMMC.

20.2 Correspondence between individual shareholders and the Company and/or Administrators.

20.3 Kroll's valuation report dated 2 May 2022.

20.4 A draft of the Administrators' SIP 16 report.

20.5 A draft of the consent protocol by which the Administrators authorised certain directors of the Company to carry out specified functions during the administration.

21 Each is considered in turn below.

Drafts of the SPA

22 The terms of the draft SPA are described in detail in the witness statements filed in these proceedings, including in particular at paragraphs 55 to 89 of my third witness statement, all of which, as explained above, have been published.

23 The Administrators have also already provided the market with a significant amount of detail regarding the terms of the SPA, as executed on 1 August 2022, by way of our announcements, and the publication of the SIP 16 report.

24 In the circumstances, we do not consider that it is necessary, in order to understand the basis of the Court's decision, to have sight of drafts of the SPA which were exhibited to witness statements filed in these proceedings (which, albeit in substantially final form, have, in any event, been superseded now by the executed SPA).

25 Further, the executed SPA (which is not on the court file) and each of the drafts of the SPA which have been exhibited to the evidence in these proceedings contains express

confidentiality restrictions at clause 17:

25.1 Clause 17.1 provides:

Subject to clause 17.3, the Seller undertakes to the Buyer to keep confidential the terms of this deed and all the information that they have acquired about the Buyer and to use such information only for the purposes contemplated by this deed.

25.2 Clause 17.3 provides:

The Seller and the Buyer shall keep the terms of this deed (including its existence) strictly confidential save that:

(a) The Seller and the Administrators may disclose the terms of this deed (or its existence) as part of any report to or proposal for the Seller's creditors without the prior approval of the Buyer;

(b) Either party may disclose any information that it is otherwise required to keep confidential under this clause 17:

(i) to such professional advisers, consultants and employees or officers of its group and, in the case of the Seller and the Administrators, the Administrators' firm, employees and agents (the "Representatives"), as are reasonably necessary to advise on this deed, or to facilitate the Transaction, provided that the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party;

(ii) with the written consent of the Administrators and the Buyer;

(iii) to the extent that the disclosure:

(A) is required for the purposes of the administration or any subsequent liquidation of the Seller, including any application for an administration order whether made before or after the date of this deed;

(B) is required by law; or

(C) is required by a regulatory body, tax authority or securities exchange or (in the case of a disclosure by the Seller or the Administrators) is required in the Administrators' opinion to enable them to comply with any applicable requirements of insolvency practice or disclosure requirement to which they are subject (whether as a matter of law, practice or professional conduct);

but shall use reasonable endeavours to consult the Administrators (in the case of a disclosure on the part of the Buyer) or the Buyer (in the case of a disclosure on the part of the Seller or the Administrators) and to take into account any reasonable requests it may have in relation to the disclosure before making it; or

(iv) to a tax authority to the extent reasonably required in connection with the disclosing party's Tax affairs.

(c) Either party may disclose any information that it is otherwise required to keep confidential under this clause 17 if it can demonstrate that:

(i) the information concerned was lawfully in its possession or the possession of any of its Representatives (as evidenced by written records) and not subject to any obligation of secrecy on its part prior to its being received or held as set out in clause 17.1 or clause 17.2; or

(ii) the information concerned has come into the public domain other than through its fault (or that of its Representatives) or the fault of any person to whom such information has been disclosed in accordance with this clause 17.3.

26 The Administrators anticipate that the executed SPA will be made available to stakeholders in due course (and it may be sent to creditors by way of the Administrators' statutory proposals, as envisaged by clause 17.3(b)). However, UMMC have made it clear to the Administrators that for commercial reasons they do not wish the SPA itself

to be made public until after the transaction has completed (including, we understand, because they are concerned that hostile parties may use the information therein to seek to interfere with the transaction).

- 27 At the time the relevant evidence was being finalised, we and the applicant directors consulted with UMMC and explained to them that it was necessary for us to exhibit the draft SPA. UMMC consented to this on the express understanding that the SPA would need to be referred to by counsel and explained to the Court, but that the document itself would only be made “public” to the extent required for the purpose of the applications being made.
- 28 The versions of the SPA included in evidence, and which are therefore on the court file, are unexecuted drafts. As explained in the evidence, these drafts were in substantially final form but were still subject to negotiation between the parties.
- 29 The Administrators considered that it was obviously necessary for us to put the draft SPA before the Court for the purposes of the administration application and our application for directions. We consider that it would not be appropriate for the drafts to be made available more widely, in circumstances where: (i) they were draft versions of a commercial agreement which was subject to further negotiation and revision; (ii) the executed version of the agreement, and the drafts on the court file, contain express confidentiality provisions preventing disclosure by the Administrators except where required for the purposes of the administration or by law; and (iii) UMMC’s wish that the SPA not be made public until after completion, further to their position at the time that the evidence was filed that the copies of the SPA referred to therein would be kept confidential to the extent possible notwithstanding their inclusion in evidence.

Correspondence with individual shareholders

- 30 The exhibits to the evidence include copies of correspondence between the Company or Administrators and individual shareholders. These include major shareholders (UGC, Prosperity and Match Liquidity) as well as retail investors. A detailed summary of this correspondence is set out in the witness statements filed in these proceedings, including in particular at Philipps 1, paragraphs 112-139; Philipps 2, paragraphs 12-16; and Manson 3, paragraphs 36-42, all of which have been published.

31 Once again, therefore, in the circumstances, we do not consider that it is necessary, in order to understand the basis of the Court's decision, to have sight of the correspondence itself which was exhibited to witness statements filed in these proceedings.

32 While the Administrators considered it necessary to put this material before the Court, we have concerns that, in the absence of agreement from the relevant parties, making this correspondence available more widely may be prejudicial to the legitimate interests of the correspondents. In some cases, this correspondence contains potentially sensitive information regarding the shareholders and their holdings. In any event, we consider that all such shareholders writing directly to the Company or Administrators would expect their correspondence to be kept confidential. We considered contacting all such shareholders to seek their consent to their correspondence being made public but, given the number of communications we have received, we did not consider this practical.

Kroll's valuation report dated 2 May 2022

33 As set out in the witness statements filed in these proceedings, the Administrators relied, inter alia, on Kroll's 2 May 2022 report to reach the conclusion that the transaction with UMMC was for a fair value and represented the best outcome achievable for the Company's stakeholders. It was therefore necessary for us to put that report before the Court.

34 We have sought Kroll's permission to publish their report more widely. Kroll have refused consent to the report being made public (including in redacted form). Kroll's reasoning is that the valuation was not intended to be public when Kroll were engaged and Kroll's terms of engagement with the Company contain restrictions on the Company's ability to provide the report to third parties.

35 The Administrators would prefer to be able to make Kroll's report public but do not consider it appropriate to do so in the face of an express objection from Kroll. We also note that Kroll's methodology and conclusions are summarised in the Opus Pear Tree report dated 28 July 2022, which report we do intend to make public (later this week, along with all other documents we have relied on other than those within the ambit of this application). In the circumstances, we consider that the account of Kroll's methodology and conclusions contained within the Opus Pear Tree report is sufficient

in order to understand the basis of the Court's decision.

Draft SIP16 report

36 A draft of the Administrators' SIP 16 report, dated 27 July 2022, was included in the exhibit to my third witness statement, made in support of our application for directions. Since then, on 8 August 2022, the report was finalised, sent to stakeholders, and published on the Company's website.

37 We do not consider that it is necessary to have sight of the draft report, which has now been superseded, to understand the basis of the Court's decision. The draft report also includes several errors which were corrected in the published version, and as such may cause confusion.

Draft consent protocol

38 My third witness statement also referred to and exhibited a draft consent protocol between the Administrators and certain directors of the Company.

39 That draft has been superseded by the final version executed by the Administrators, the terms of which we anticipate will be disclosed to creditors in our forthcoming statutory proposals. We do not consider that it is necessary to have sight of the draft document to understand the basis of the Court's decision. The draft also contains commercially sensitive material relating to the management of the Company which we do not consider would be appropriate to publish.

List of documents

40 The full list of documents which are the subject of this application is as follows.

Exhibit	Tab	Document	Date
CBEP1/AJM1	28	Correspondence between the Board and Match Liquidity	5 April – 20 May 2022
CBEP1/AJM1	29	Correspondence between the Board and Prosperity	8 April – 28 June 2022
CBEP1/AJM1	50	Kroll Advisory Ltd valuation	2 May 2022

Exhibit	Tab	Document	Date
CBEP1/AJM1	78	Draft SPA	2 July 2022
CBEP1/AJM1	81	Email from Mr Potapov (UGC) to the Company with attachment	11 July 2022
CPEB2	8	Letter from Mr Strukov (UGC) to the Board	12 July 2022
CPEB2	9	Letter from Mr Strukov to the Board	13 July 2022
CPEB2	12	Letter from Chairman to Mr Strukov	14 July 2022
CPEB2	14	Email from the Company to UGC	14 July 2022
AJM3	10	Letter from the Administrators to UGC	12 July 2022
AJM3	13	Letter from Mr Strukov to the Company	15 July 2022
AJM3	15	Letter from Mr Strukov to the Administrators	18 July 2022
AJM3	20	Letter from the Administrators to Mr Strukov	19 July 2022
AJM3	21	Letter from Administrator to Prosperity	19 July 2022
AJM3	37	Draft SIP 16 statement	27 July 2022
AJM3	38	Draft SPA	Undated
AJM3	39	Draft consent protocol	Undated
AJM4	3	Emails between stakeholders and Opus	23-28 July 2022
AJM4	4	Email from kpr_spb@mail.ru to Opus	28 July 2022

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

ALLISTER JONATHAN MANSON

Date: 17 August 2022