Neutral Citation Number: [2026] EWHC 159 (Comm)

Case No: CL-2023-000054

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 30/01/2026

Before :

THE HONOURABLE MR JUSTICE SAINI

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Between :

(1) TRAFIGURA PTE LTD
(2) TRAFIGURA INDIA PVT LTD **Claimants**

- and -

(1) PRATEEK GUPTA
(2) UIL (SINGAPORE) PTE LTD
(3) UIL MALAYSIA LTD
(4) TMT METALS AG
(5) TMT METALS (UK) LTD
(6) SPRING METAL LTS
(7) MINE CRAFT LIMITED
(8) NEW ALLOYS TRADING PTE LTD **Defendants**

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Nathan Pillow KC, David Peters KC, Edward Ho and **Yanni Goutzamanis** (instructed by **Stephenson Harwood LLP**) for the **Claimants**
Louise Hutton KC, Andrew Legg and John-Patrick Asimakis (instructed by **Larson LLP**) for the **First Defendant** throughout trial, for the **Second Defendant** until 12 December 2025 and for the **Third – Fifth Defendants** until 21 November 2025
The Sixth – Eighth Defendants did not appear and were not represented

Hearing dates: 17, 18, 24, 25, 26, 27, 28 November 2025 and 10, 11, 12 December 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on Friday 30 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 21 main sections as follows:

A. Overview

1. This is a case about trading in nickel. By its principal claim, the First Claimant ("Trafigura") alleges that it is the victim of a substantial fraud perpetrated by the Defendants. The First Defendant, Prateek Gupta ("Mr Gupta", or "D1") is said by Trafigura to have masterminded this fraud using the Second to Eighth Defendant companies ("the Corporate Defendants, or "D2-D8"). In short, Trafigura says it bought from the Corporate Defendants, for around US$500 million, cargoes sold to it as high-quality London Metal Exchange ("LME") Grade Nickel when in fact what was supplied in shipping containers were metals of low value (such as stainless steel or iron briquettes), or in fact wholly worthless material. LME Grade Nickel (referred to as "Nickel" in the remainder of this judgment) is nickel of an LME approved brand, with a minimum purity of 99.8%, and usually in full plate cathode or briquette form. It is a valuable and highly liquid commodity which has many industrial uses.

2. Trafigura is a Singaporean commodity trading company specialising in the oil and gas, minerals and metals, power and carbon trading, and renewable energy markets. Its parent company, Trafigura Group Pte Ltd ("the Trafigura Group"), is also incorporated in Singapore. The Second Claimant ("Trafigura India") is the Indian trading subsidiary within the Trafigura Group. It makes a different but related claim which, for reasons I give below at [10], is not for determination in the present trial but at what Counsel called "Phase II" of the proceedings. All references in this judgment to "Trafigura" are to the First Claimant company, unless stated expressly to the contrary.

3. Trafigura says that the losses it suffered were as a result of a conspiracy to defraud it devised by Mr Gupta and implemented by, and through, the Corporate Defendants. It says that between 2021 and 2022, it was fraudulently induced to enter into a series of Nickel purchase contracts with one of the Corporate Defendants. Under each such contract, the relevant Defendant company sold and agreed to deliver Nickel to Trafigura in instalments but, says Trafigura, the relevant selling entity never honestly intended to perform its obligations to deliver Nickel. Trafigura says that these Defendant companies, orchestrated by Mr Gupta and pursuant to a conspiracy with him (and amongst themselves), lied to Trafigura about what they were planning to sell and ship pursuant to the contracts being negotiated, which were always understood to be for Nickel. Trafigura says that false descriptions were given by the Corporate Defendants in the multiple shipping and commercial documents including Bills of Lading ("BLs"), and insurance certificates in respect of the relevant cargoes (collectively, "the shipping documents"). It is common ground that these documents all falsely stated on their face that the cargoes that had been sold to Trafigura by the Corporate Defendants were Nickel. It is also common ground that the cargoes, when eventually inspected, did not contain Nickel. Trafigura says the fraud was discovered at the end of 2022 as inspections of the containers began to reveal what they contained. It says it did not know about the full scale of the fraud until early 2023.

4. In the period relevant to this claim, the total trading between Trafigura and D2-D8 in Nickel (or at least what purported to be Nickel) involved 542 trades or cargoes, valued at about US$3.3 billion. It is a proportion of these trades, amounting to 107 trades/cargoes, for which Trafigura paid the Corporate Defendants about US$500 million, that is the subject of these proceedings. Under its principal claim, Trafigura seeks a declaration that on service of the Claim Form it validly rescinded the contracts and/or individual trades in respect of 91 shipments of cargo which it possessed (and to

which it held title) at the end of 2022. With one relatively limited exception, each of the cargoes of the actual low value material supplied under these trades has been sold by Trafigura for just under US$10 million. That is, for around 2% of what Trafigura paid to the Corporate Defendants for the cargoes. I will adopt the shorthand, "the Main Trades" to describe these 91 trades and in order to distinguish them from Trafigura's other claims. There are a number of additional/alternative tortious and contractual causes of action pursued in respect of the Main Trades, but rescission for fraudulent misrepresentation and proprietary relief was the primary focus of the claim made by Trafigura at trial.

5. Of the remaining 16 trades, the nature of Trafigura's claims is different. They arise under distinct fact patterns and the relief claimed is damages and declarations of indemnity as against future claims by third parties. I can summarise these complaints broadly at this stage as follows: (1) the first category is 3 trades where Trafigura, having paid the Corporate Defendants for the cargoes, sought delivery from Maersk A/S ("Maersk") (the carrier) who refused to deliver the containers because another party had presented it with BLs for the very same cargoes ("the Maersk Trades"); (2) the second category, is a single trade where Trafigura paid for what it thought was Nickel but never in fact obtained possession of it ("the Evergreen Trade"); (3) the third category concerns 10 trades where Trafigura bought from the Corporate Defendants what it thought was Nickel and then on-sold that to third parties but a complaint has been made by these buyers (or has yet to be made) that Nickel was not in the containers they were sold ("Third Party Trades"); and (4) the fourth category is 2 trades where it is said that cargoes of Nickel were shipped but the seller, D3, caused duplicate sets of BLs be issued for that cargo (one set to Trafigura and another to a third party, Hyphen Trading Ltd ("Hyphen")) ("the OOCL Trades").

6. It might be said that the defence to the main fraud claim is somewhat unconventional. So, Mr Gupta says that Trafigura at a senior level itself orchestrated, and actively participated in, the acts which form the basis of the claim. Mr Gupta says that Trafigura agreed (and indeed, in fact, itself proposed) that it would purchase and pay the full LME market price for, cargoes of what purported to be Nickel, but which it well knew might contain much less valuable material. He does not shirk from the fact that this was a scheme involving the creation of many hundreds of wholly false shipping documents. As to why Trafigura would enter into such an arrangement, the argument for Mr Gupta runs as follows. Trafigura used its low interest rate credit line with Citibank ("Citi") to fund its trading with D2-D8; and (from around October 2019) Trafigura and these Defendants embarked on a course of trading that involved Trafigura lending money from the Citi credit line to them, secured on containers of cargo at a higher interest rate to be paid by them to Trafigura. That security involved Trafigura acquiring title to the cargo by transfer of the relevant BLs – and the credit/loan was the "price" plus interest of around 4.6%-5.75%. In turn, Trafigura provided security to Citi by transferring title to Citi through the BLs. The "loan" would be repaid by D2-D8 re-purchasing the cargo from Trafigura. So, it is said, that this closed trading loop involved Trafigura advancing credit for the duration of the voyage, or more technically until the (re-)purchase price was paid by D2-D8 for the cargo that they had sold to Trafigura in the first place. The longer that period (the longer the voyage) the more money Trafigura earned. Mr Gupta's essential case is that Trafigura were not interested in whether the cargo was in fact Nickel. He says that while this "circle" kept turning, each of D2-D8, Citi and Trafigura gained and nobody suffered because D2-D8 would repurchase the relevant

cargoes. It was only when D2-D8 were unable to buy back these financed cargoes that a problem arose.

7. So, in short, it is said by Mr Gupta that Trafigura entered into what at trial became known as the "Alleged Arrangement" (Trafigura's term) or "the Arrangement" (Mr Gupta's term: see [31] below for his own detailed description of how he says it worked). I will use the term "the Arrangement" but, whatever the description, it is a scheme involving creation of false shipping documents where Trafigura agreed to purchase what was endorsed as Nickel but was known to be potentially other less valuable material, with a view to its subsequent sale back pursuant to a repo financing arrangement. Trafigura's claimed knowledge of, agreement to, and participation in the Arrangement is said to provide a complete defence to the claims and its existence is said to be supported by the documentary evidence of many so-called alleged "red flags". As appears below these "red flags" feature heavily in the defence.

8. For its part, Trafigura denies there was any Arrangement but also says that had there been any such understanding or agreement made by its employees it would have been so obviously fraudulent and contrary to Trafigura's commercial interests, that knowledge of it could not be attributed to Trafigura to defeat its claims against Mr Gupta and the Corporate Defendants.

9. In these circumstances, it was common ground that the principal factual issue for my resolution was whether the Arrangement was made or existed. As I describe in more detail below, that will depend on my findings of fact as to what happened at a meeting in Dubai on 5 June 2019. That is because it is Mr Gupta's case that he, Mr Harshdeep Bhatia ("Mr Bhatia"), a Trafigura Nickel Trader based in Mumbai, and Mr Sokratis Oikonomou ("Mr Oikonomou"), Head of the Trafigura Nickel Desk based in Geneva, concluded the Arrangement at this meeting and it was in fact their idea. This is not a case where the witnesses can have been mistaken about what happened, or may have forgotten about it. Rather, either the Trafigura witnesses (Messrs Bhatia and Oikonomou), or Mr Gupta, are lying in their sworn evidence to the Court (and indeed in earlier affidavits) as to what took place and was agreed (if anything) at the meeting in Dubai on 5 June 2019.

10. Trafigura India, the Second Claimant, makes a claim that it bought and was sold a cargo of Nickel by D3 but Hyphen holds a duplicate BL for that cargo. There is litigation ongoing between Trafigura India and Hyphen in Singapore as to the ownership of this cargo (with Trafigura maintaining its claim to ownership). It was submitted on behalf of Trafigura India in opening, and without opposition from D3, that its claim against D3 should await Phase II, given that the losses if any suffered by it are yet to be identified. I agree to that course and I say nothing further in this judgment about Trafigura India's claim. As I describe below, following the opening speeches, D3 was no longer represented at trial.

11. The claim was issued on 8 February 2023, which is when Trafigura says it rescinded the Main Trades. On 8 February 2023, Foxton J made a Worldwide Freezing Order ("the WFO") against the Defendants. An application to discharge the WFO made by D1-D5 ("the Discharge Application") was dismissed by Bright J on 15 December 2023: see [2023] EWHC 3184 (Comm).

12. Some of the evidence in the Discharge Application, particularly the affidavit of Mr Bhatia (who did not appear as a witness) featured in the trial before me. By the end of the trial, it was agreed that the 13 issues for resolution were those I have identified in my index above at Sections H-T. Not all of those issues concerned the represented Defendants (in fact by the end of the trial only Mr Gupta was represented). I will however deal with the pleaded defences of those Defendants who did not appear at trial (or ceased being represented during the trial).

13. Trafigura was represented by Nathan Pillow KC, David Peters KC, Edward Ho and Yanni Goutzamanis. The trial began with Louise Hutton KC and Andrew Legg representing Mr Gupta and D2-D5. By the time oral evidence began, Ms Hutton KC and Mr Legg represented only Mr Gupta and D2, and by the last day of oral closings they represented just Mr Gupta. They were ably assisted in their detailed closing written submissions by John-Patrick Asimakis. For the avoidance of doubt, when I refer below to Mr Gupta's "case" or "submissions" made on behalf of Mr Gupta that includes the case/submissions made on behalf of D2-D5 at the time Mr Gupta had joint representation with them.

14. I am grateful to all Counsel for the quality of their written and oral submissions. The advocacy on the 13 issues in dispute was helpfully divided between all Leading and Junior Counsel, as I describe below.

15. I pay particular tribute to Ms Hutton KC and her Counsel team who stepped into this substantial trial for D1-D5 just a few days before it was opened by Mr Pillow KC. With what must have been little preparation time for a document-heavy case, and with only a short break after the opening, they showed an impressive mastery of the detail and assisted me substantially. Ms Hutton KC's impressive and rapid assimilation of the detail was particularly apparent in her focussed and forceful, but measured, cross-examination of the main witness for Trafigura, Mr Oikonomou.

16. At the start of the trial, Mr Gupta's and D2-D5's case was that there was widespread knowledge of the Arrangement within Trafigura (that is, substantially beyond Messrs Bhatia and Oikonomou) but as I explain in more detail below in Section C, at [31]-[39], their case as to knowledge was not always consistent between their pleadings (the Re-Amended Defence ("the RAD")), the witness statements of Mr Gupta, and their skeleton ("the Trial Skeleton"), settled by earlier Leading and Junior Counsel instructed before Ms Hutton KC and her team. In compliance with a direction I made after oral openings requiring a fresh Statement of Case from Mr Gupta and D2-D5 as to the precise scope of their case as to knowledge of the Arrangement within Trafigura to be advanced at trial, the case was substantially narrowed. It was limited to an allegation that just two persons within Trafigura, Messrs Bhatia and Oikonomou, had actual knowledge of the Arrangement. Mr Gupta/D2 abandoned their original case of knowledge on the part of seven other named Trafigura personnel.

B. The Defendants

17. In the various written submissions and pleadings there are different approaches adopted to identifying the Defendants. For consistency and to avoid confusion, when I refer below to D2-D8, the Corporate Defendants, I will in most cases use the umbrella term "UIL" or the "UIL companies" (as opposed to "the Corporate Defendants"). The relevance of the abbreviation "UIL" is explained further below at [21] (it was a

shorthand term for the D2-D8 companies adopted by the parties during the trading relationship and in their written evidence before me). I emphasise that my use of this term is merely for convenience in the narrative and without prejudice to the fact that these are separate corporate entities. It is also without prejudice to Mr Gupta's defence on joint tortfeasorship and his case as to his relationship with, or control of, D6-D8 (he accepts, as I describe below, a form of control over D2-D5).

18. Each of D2-D8 were counterparties to the trades with Trafigura in issue in this claim and entered into what Trafigura calls "the Master Contracts" (between 6 October 2021 and 17 August 2022) for the supply of Nickel, as I describe in more detail below in Section F.

19. I now turn to describe the Defendants in more detail. I take the substance of what I set out below from part of the Factual Narrative document agreed between the parties (they have used the terms "de facto" and "legal control" which I adopt below). In the interests of brevity, I have omitted parts of what is set out in the Factual Narrative (concerning the identities of other named persons involved in the relevant companies) because it was not explained why it was relevant to the issues before me.

20. Mr Gupta is currently a Dominican citizen but he was an Indian national until August 2018. Mr Gupta was, at all material times, the ultimate beneficial owner and/or controller of UD Trading Group Holding Pte Limited ("UD Trading"), a Singaporean company. UD Trading acquired a minority interest in Ushdev International Limited ("Ushdev" or "UIL"), an Indian company, in December 2013. From 14 May 2018, control of Ushdev passed from Mr Gupta to an insolvency practitioner appointed by the National Company Law Tribunal.

21. I record at this stage, and as I suggested to Counsel during closing submissions, the impression I had obtained from the contemporaneous documents, the witness statements, and oral evidence, was that the terms "UIL" and sometimes "UD" were used by all parties to loosely describe the corporate entities associated in some way with Mr Gupta and which traded with Trafigura at the material time. Counsel did not disagree that this was the impression given. This usage seems to have been adopted to refer generally to the Corporate Defendants without any particular concern for their distinct corporate identities. The broad picture that emerged from all the evidence, is that Mr Gupta was in some way speaking for (or representing) "UIL" companies (sometimes called "UD") in their trading relationship with Trafigura in the period relevant to the proceedings. Mr Girdhar Rathi ("Mr Rathi") was the trader for UIL who dealt most often with Trafigura in Nickel trading. Mr Kishore Sebastian ("Mr Sebastian") sometimes dealt with Trafigura on behalf of D6-D8 in such trading but with Mr Rathi being an intermediary for Mr Sebastian (who also seems to have had some form of role within UIL/UD). Their precise positions were never fully explained in the evidence for the Defendants.

22. Mr Gupta was at all material times the de facto or legal controller, and indirect shareholder and a director, of D2 ("UIL Singapore"), a Singaporean company. UD Trading held a majority interest in D2 from early 2014 until one of UD Trading's lenders exercised their conversion rights in January 2023, as a result of which UD Trading's interest became a minority interest. During the trial, on 28 November 2025, a winding up order was made in respect of UIL Singapore.

23. Mr Gupta was at all material times the de facto or legal controller, an indirect shareholder in, and a director of, D3 ("UIL Malaysia") a Labuan company. UD Trading held a majority interest in D3 at all material times. Mr Gupta was one of three directors of D3 until 20 February 2023, when the other two directors resigned and were not replaced. D3 has been struck off the register of the Labuan Financial Services Authority.

24. Mr Gupta was at all material times the de facto or legal controller, an indirect shareholder in, and a director of, TMT Metals AG (D4) a Swiss company. His indirect shareholding in D4 became a minority interest as of 25 March 2021. From 11 March 2023, Mr Gupta was the sole board member of D4. D4 is currently in a liquidation process in Switzerland.

25. Mr Gupta was at all material times the de facto or legal controller of TMT Metals UK Limited (D5), an English company. He was a non-resident director of D5 from 12 January 2017 until 28 October 2020 and via his indirect shareholding has been a person with what the parties agree was "significant control" (since 28 March 2019). Mr Gupta's indirect shareholding in D5 became a minority interest as of 25 March 2021. D5 was dissolved on 21 October 2025 but I understand a restoration application by a third party is pending before the High Court.

26. Each of D4 and D5 are owned by TMT Metals Holdings. Mr Gupta was, at all material times, an indirect shareholder of TMT Metals Holdings (and a minority indirect shareholder from 25 March 2021). TMT Metals Holdings went into liquidation in August 2024.

27. Spring Metal Limited (D6) is a Labuan company, which holds itself out as a multi-commodity trading company. D6 has been struck off the register of the Labuan Financial Services Authority.

28. Mine Craft Limited (D7) is a Hong Kong company.

29. New Alloys Limited Pte. (D8) is a Singaporean company, which holds itself out as a wholesale metal trading company. D8 is in liquidation.

30. Unlike D2-D5, where Mr Gupta has control/ownership in the terms I have summarised above, Mr Gupta does not accept any such association with D6-D8.

C. Pleading issues and knowledge of the Arrangement

31. I will begin with how the Arrangement was explained in D1-D5's case in the RAD (amended as recently as 10 October 2025) and expressed in their Trial Skeleton. It was described as follows (with my underlining) in Mr Gupta's affidavit evidence in the Discharge Application (this evidence was expressly adopted and incorporated in the RAD):

> "In simplified terms, the arrangement worked as follows. One of the corporate Defendants would purchase nickel for market value from another metal trader. The cargo of nickel acquired, which could be either LME-grade, alloy or scrap, would remain in the port where it was located until an onward sale had been

> arranged. The relevant corporate Defendant would then propose a sale of the acquired metal to Trafigura. If Trafigura agreed to purchase the metal, then a shipment would be arranged to transport the cargo to another port, by the selling corporate Defendant and at its cost. Original Bills of Lading would be sent to Trafigura (after drafts were approved by Trafigura), and they would pay around 90% of the provisional price at this point, on production of a provisional invoice by the selling corporate Defendant. The price on the provisional invoice would be calculated by reference to the price of nickel on the LME at that time. Upon payment of the provisional invoice, Trafigura took title to the cargo but still owed 10% of the purchase price. The cargo would be shipped from one port to another and the voyage would typically take approximately 90 to 180 days. I understand from paragraph 70 of Mr Oikonomou's affidavit that where trades were being financed by Citigroup Global Markets Limited and Citibank, NA London Branch (together, "Citi"), Trafigura on sold the cargo to Citi after buying it from the relevant corporate Defendant. Trafigura then bought the cargo back from Citi when it needed to transfer the title back to a corporate Defendant. When the cargo arrived at the destination port, the selling corporate Defendant would raise a final invoice and the price for the full weight of nickel would be calculated by reference to the LME price of nickel at around the time of delivery. At this point, a sale of the cargo from Trafigura to another one of the corporate Defendants would be arranged. The price paid would also be calculated by reference to the LME price of nickel, such that the price Trafigura bought from the selling corporate Defendant would be the same as the price it sold to the purchasing corporate Defendant, plus a small premium, resulting in a small profit on the overall trade for Trafigura. The purchasing corporate Defendant would pay Trafigura in full on receipt of the bills of lading. Trafigura would then make a payment to the selling corporate Defendant to account for the fact that Trafigura only ever paid 90% of the provisional invoice for the cargo in the first place. This payment would be made less Trafigura's fee for entering the transaction, i.e., an interest charge of usually around 4% to 6% per annum, levied for each day the cargo was in transit".
>
> (My underlining)

32. I have underlined part of the description of the Arrangement above because, as I understand it, there did not in fact have to be anything in the containers for this scheme to work. It would work perfectly well with containers that were empty or, like some of the containers in this case, filled with worthless material. If all went to plan, nobody would look in the containers and the cargoes would simply be bought back by UIL on arrival at discharge ports. Ms Hutton KC fairly accepted this proposition as correct when I suggested it to her during her closing submissions.

33. Prior to the instruction of Ms Hutton KC and her team to act for D1-D5, the case advanced by these Defendants as to knowledge of the Arrangement was not clear or consistent. However, one thing was clear: the knowledge base was said to be widespread within Trafigura and went substantially beyond Messrs. Bhatia and Oikonomou. However, there was still a lack of consistency between the RAD, Mr Gupta's trial witness statement and the Trial Skeleton. I will briefly address each in turn.

34. So, their case in the RAD was that knowledge within Trafigura of the Arrangement as described above included: (i) the Deals Desk; (ii) the Traffic and Operations Department; (iii) the Credit Department and/or the Credit Committee (including the CFO) and/or the Risk Department; and (iv) Messrs Thibault Barthelme (Head of Trade Finance) and Mehdi Wetterwald (a Nickel trader based in Geneva).

35. Mr Gupta said in his original trial witness statement (Gupta 9) that the list of persons who knew about the Arrangement included: Mr Oikonomou, Mr Bhatia, Mr Prajish Nair (Manager Refined Metals, Geneva), Mr Divyanshu Sharma (Supply Chain Operations Analyst, Mumbai), Mr Anil Buddabasaynor (Senior Refined Metals Operator, Mumbai), Mr Bharat Rathod (Senior Refined Metals Operator, Mumbai), and Dayansh Jain (Senior Metal Operations Analyst, Mumbai).

36. Whilst the Trial Skeleton was not entirely clear as to who was alleged to have known about the Arrangement, it was said that those persons included at least the individuals referred to in Gupta 9 plus Mr Barthelme.

37. I will use the term "the Wider Trafigura Personnel" to refer to the set of additional people (beyond Messrs Oikonomou and Bhatia) said by D1-D5 in these various places to have had knowledge of the Arrangement.

38. The way the case was pleaded in the RAD and advanced in the Trial Skeleton relied upon a number (originally 8) of alleged "red flags" which it was said would have, and in fact did, expose the existence of the Arrangement to these Wider Trafigura Personnel. These original red flags were as follows: (i) the absence of a buy-back obligation in the Master Contracts; (ii) the use of incorrect Harmonised System ("HS") codes on relevant BLs; (iii) the absence of Certificates of Analysis ("CoAs"); (iv) failure to inspect cargoes and/or delays to such inspections; (v) voyage lengths; (vi) the alleged off-setting of debts owed by one UIL company against sums due from Trafigura to another; (vii) the alleged 'recycling' of cargoes; and (viii) UIL's lack of creditworthiness. As I describe below, Trafigura served witness statement evidence from many (but not all) of the Wider Trafigura Personnel to respond to this case as to their knowledge of what was plainly a fraudulent arrangement.

39. Given the lack of clarity in D1-D5's case as to knowledge, in particular what seemed to me to be apparent inconsistences between the pleadings, witness statements and Trial Skeleton, I directed following opening speeches, that D1-D5 provide a fresh and freestanding Statement of Case (supported by a Statement of Truth) identifying those said to have actual knowledge of the Arrangement. This document entitled *Statement of Case as to Knowledge*, settled by Ms Hutton KC and Mr Legg, was served on 21 November 2025 on behalf of just Mr Gupta and D2 (they and their solicitors having in the period between openings and the court sitting ceased to act for D3-D5). The Statement of Case is short and I will set it out in full:

> "1. This Statement of Case adopts the definitions used in the Re-Amended Defence of the First to Fifth Defendants. 2. This Statement of Case is served on behalf of the First and Second Defendants pursuant to the direction of Saini J on 18 November 2025 that a short statement of case setting out which of the Claimants' personnel is alleged to have had actual knowledge of the Arrangement. 3. The Claimants' employees said to have had such knowledge are: Mr Oikonomou; and Mr Bhatia".

40. The trial then continued on the basis that, although their RAD had not been formally amended, as far as Mr Gupta and D2 were concerned, I should proceed on the basis that their case at trial was now that only two persons, Mr Oikonomou and Mr Bhatia, had knowledge of the Arrangement. But what of the red flags on D1 and D2's new case? This is the issue which became controversial at the end of the trial, but I will start with what I understood to be an uncontroversial point. In closing, Ms Hutton KC relied on six alleged red flags as evidence said to support the *existence* of the Agreement of which now only Messrs Oikonomou and Bhatia were said to be aware. These are in effect said to be indicia of fraud and are narrower (but also overlap with) the original 8 pleaded red flags I have set out above. That these were red flags at all is strongly contested by Trafigura. I will describe them in more detail when I deal with the facts but for present purposes I will use the following shorthand for each: (i) Mr Barthelme's September 2020 email and responses to it; (ii) the nature of the trading/commercial rationale; (iii) voyage duration; (iv) absence of CoAs; (v) absence of inspections; and (vi) incorrect HS codes. It was not in issue that a case that these red flags are probative of the *existence* of the Agreement, was open to Ms Hutton KC to advance in closing (and I will address it in the course of this judgment).

41. However, Mr Pillow KC complained in his closing submissions that Ms Hutton KC was seeking to use the six red flags for another purpose, which was not open to her on the pleadings or as a matter of fairness to Trafigura. There was sustained argument on this issue in oral closings and I can best describe the nature of the dispute by referring to parts of Ms Hutton KC's Written Closing for D1 and D2 as an example of what Mr Pillow KC argued was not open to her. In the Written Closing it was said: "*…Mr Oikonomou and Mr Bhatia did all they could, by instructing others in the operations and trading teams and by placating the concerns of those in the trade finance team, to keep the Arrangement from discovery by others within Trafigura…*" (¶22)**;** "*…Mr Oikonomou and Mr Bhatia were able… to ensure that the transactions with the [Ds] were approved, payments were made without COAs, that inspections were not conducted, that trading was permitted to continue even where warehousing would have been the obvious commercial solution… and that effectively $600 million of unsecured finance was transferred to the [Ds], despite serious and articulated concerns and suspicions from others within Trafigura*" (¶76); "*…Mr Bhatia and/or Mr Oikonomou… provided sufficient justifications to others within Trafigura to permit the trading to continue… [and] at the time their explanations did not seem suspicious…*" (¶¶85.2-85.3); and, Mr Oikonomou "*must have led Mr Jansma to be sufficiently comfortable with the trading, as it continued to ramp up subsequently…*" (¶133).

42. Mr Pillow KC argued that this way of putting the case necessarily entails an allegation (never before pleaded) that when so-called red flags arose, Messrs Oikonomou and Bhatia positively acted to conceal the existence of the Arrangement from their

colleagues at Trafigura, including the Wider Trafigura Personnel. It was described in the submissions for D1/D2 variously, including *pulling the wool over their eyes* or *assuaging* or *placating* those who saw the red flags and asked questions. Mr Pillow KC argued that, having never been pleaded, these were not allegations which any witnesses were asked to deal with and had not in fact been properly put to Mr Oikonomou in cross-examination.

43. Ms Hutton KC argued in response that it was open to her as part of establishing her case as to the existence of the Arrangement that there had been attempts to deceive others within Trafigura when red flags appeared, and in order to conceal the existence of the Agreement. She also submitted that she had put this case to Mr Oikonomou.

44. I agree with Mr Pillow KC both as a matter of pleading and basic fairness. In my judgment, an allegation that Messrs Oikonomou and Bhatia took active (and what must have been dishonest) steps to mispresent the position to their colleagues in order to prevent discovery of the Arrangement by putting them off the scent when red flags emerged, is a serious allegation of fraud. Such an allegation had to be pleaded and it is common ground that this has not been done. Had it been pleaded, I am sure Trafigura's witnesses who were said to have been misled would have addressed it (in addition of course to Mr Oikonomou). Such a case against Messrs Oikonomou and Bhatia goes beyond being accused of being party to a dishonest arrangement and involves allegations of serial misrepresentation of the position to others. If D1 and D2 had a case of positive deception by these individuals of their colleagues such as to convert red flags into states of mind where there was no concern, then what they allegedly said/did by way of deception should have been pleaded.

45. Mr Pillow KC was also right to argue that Mr Oikonomou came to trial and gave his evidence in chief on the basis of one set of allegations (in the RAD), entirely unprepared and deliberately unprepared to deal with a case that he somehow deceived his own colleagues (a position fundamentally inconsistent with the RAD which alleges the Wider Trafigura Personnel had actual knowledge of the Arrangement). It is also correct that acts of Messrs Oikonomou and Bhatia which are said to have assuaged concerns of colleagues caused by alleged red flags are equally consistent with their honesty and the non-existence of the Agreement.

46. Although I have ruled this point is not open to Ms Hutton KC, when I come to assess my conclusions as to whether the Arrangement existed, I will of course take into account all of Mr Oikonomou's evidence in cross-examination.

D. The Witnesses

47. As I have indicated above, this is a case where I have to make findings in relation to the honesty of Mr Oikonomou and Mr Gupta. I cannot approach that exercise according only to matters such as demeanour or presentation in court. Contemporary documents must in a case of the present type be the primary means of getting to the truth. That applies to documents passing between the parties, but also to a party's internal documents including emails and encrypted instant messaging. Private and encrypted unguarded communications to which Mr Oikonomou, Mr Bhatia, Mr Gupta and Mr Rathi were party are particularly strong indicators as to the existence (or not) of the Arrangement. If it existed, one would expect their messaging in email and particularly by WhatsApp to refer to the Arrangement or implicitly to its workings. This is a case

where WhatsApp was the primary means of communication between the relevant individuals.

Claimants' witnesses

48. I heard oral evidence on behalf of Trafigura from a single witness, Mr Oikonomou (also referred to in the messages as "Socs"). I will address below, the witnesses Trafigura elected not to call following the revision of Mr Gupta's case as to knowledge of the Arrangement. Mr Oikonomou has substantial experience in the field of commodities trading, particularly metals. He holds a Bachelor's degree in International European Economic and Political Studies, as well as a Master's degree in Shipping, Trade and Finance from Cass Business School in London. After graduating from university in 2007, he joined the Group's Metals and Minerals division in Lucerne, Switzerland as a junior traffic operator. In 2008, he relocated to Johannesburg, South Africa to develop the Group's copper and cobalt business and then to oversee the Group's trading activity in Sub-Saharan Africa. Following this, he held several leadership positions within the Group, including the role of Head of Refined Metals for China. Between March 2017 and January 2023 (covering the period material to this claim), he was Head of Nickel and Cobalt Trading based in the Group's Geneva office. He reported to his manager, Amin Zahir until 2021, and thereafter, to Gonzalo De Olazaval ("Mr De Olazaval") on the strategy of the division, and performance issues. Mr Oikonomou's role at the time material to this claim included the following: setting targets and the strategy for the division on an annual basis; monitoring the deal flow his traders were bringing in on a global basis, the amounts the Group estimated generating from these trade flows and the exposures arising from those flows; approving the main commercial elements of any new deal (prior to Trafigura entering into the relevant contracts) and addressing matters which were escalated to him in this context; supporting the traders with their trading relationships, including by (i) attending meetings when the traders escalated matters to him, and (ii) attending courtesy meetings with existing and potential customers, as proposed by the traders, from time to time; and dealing with some direct customer trading relationships and accounts which were considered important relationships to the division. He explained in evidence, without contradiction, that this did not include UIL because it was not a "key" account. He was not involved in discussions with banks, drafting and approving contracts, approving credit limits, or the daily monitoring of operations.

49. When Mr Oikonomou started running the relevant book in March 2017, Trafigura's nickel trading business consisted principally of the following products: (a) refined nickel which he said included LME Grade Nickel; (b) nickel concentrates (which contain typically 8-14% nickel), (c) nickel pig iron (from specific producers, which contains typically 8-9% nickel); (d) ferronickel (which contains typically 20-30% nickel); and (e) battery-related products (nickel sulphate, mixed sulphide precipitate and mixed hydroxide precipitate consisting of more than 20% nickel). His unchallenged evidence was that his book did not trade nickel alloy and that none of these materials are to be classified as generic "nickel alloys". His division also did not trade materials such as stainless steel, carbon steel or scrap metal.

50. I found Mr Oikonomou to be an impressive, experienced and highly knowledgeable witness who was running a highly successful division within the Group until the matters which give rise to this claim occurred. He effectively lost his job as a result of these matters. Mr Oikonomou was pressed hard in cross-examination by Ms Hutton KC on a

fair but sustained basis over some 2 days as to his knowledge of (and indeed participation in) the Arrangement. I found Mr Oikonomou to be a wholly honest and straightforward witness. I accept his evidence without qualification. His evidence was strongly supported by the documentary record. When he appeared to show some sensitivity in his oral presentation, I consider that this was plainly because he had a real sense of professional embarrassment that the losses had arisen under his "watch", and through a sense of misplaced trust in the honesty of Mr Gupta and UIL. He was also measured and careful in his answers. On any view, the losses which Trafigura suffered would be a matter of professional concern for him. Having departed from Trafigura, Mr Oikonomou had no need or reason to put himself through the ordeal of cross-examination except to give his true account to the Court.

51. Ms Hutton KC argued that I should draw adverse inferences from what she said was Mr Oikonomou's destruction of documents. She referred to Mr Oikonomou's evidence that he threw away his notebooks when he was dismissed. However, Mr Oikonomou's plainly truthful evidence was that those notebooks did not relate in any way to the Defendants; that he did not recall keeping any notes in such notebooks during the course of the Defendants' business; and that all his communications in relation to the business with the Defendants were via email and WhatsApp. In my judgment, that is an inherently credible account (there is no suggestion in the evidence, for example, that he even had a notebook at any of his meetings with Mr Gupta), given by a witness I have concluded is honest.

52. Complaint was also made by Ms Hutton KC about the limited number of emails from senior management. I reject the suggestion that Trafigura has not complied fully with all the disclosure orders in this case. I am satisfied that a thorough and professional search was conducted by its solicitors (Stephenson Harwood). I note that the Defendants made no successful challenge to the disclosure process, or its results, at the relevant time (during the interlocutory phase); and the number of documents the Claimants have produced is a function of the scope of those orders. There is no basis for the allegation in closing submissions that Trafigura has failed to disclose documents not considered in its interests.

53. Trafigura adduced the evidence of a number of other witnesses by hearsay notice. These witnesses dealt mainly, but not wholly, with quantum issues following the indication on behalf of D1-D5 that they did not wish to challenge their evidence on quantum matters. These witnesses were Aritri Kumar (Operations Head for Refined Metals and Concentrates for Trafigura Global Services based in Mumbai), Aleksandr Khodov (a Trader in the Trafigura Battery Metals Desk), and Daniel Green (in-house Legal Counsel employed within a Trafigura subsidiary). My conclusions in relation to quantum issues are largely based on their uncontradicted evidence.

The absent Mr Bhatia and Trafigura witnesses who were not in the event called

54. I did not hear oral evidence from Mr Bhatia (also referred to in the messages as "Harsh"). As appears from what I have said above, Mr Bhatia was a central player in events and together with Mr Oikonomou he is said, by Mr Gupta, to have been the originator of the Arrangement at the meeting on 9 June 2019 in Dubai. Mr Bhatia was given notice terminating his employment with Trafigura India in February 2023 and currently lives abroad. I accept that despite Trafigura's efforts, Mr Bhatia has declined to appear as a witness for his own personal reasons. There was no power to compel him.

The Court does, however, have his detailed witness statement dated 6 October 2023, served for the Discharge Application. In that statement Mr Bhatia gave evidence denying any knowledge of or participation in the Arrangement and stated unequivocally: "…*At all times until I found out about certain containers being opened in Rotterdam in November 2022, I believed that all of the cargoes purchased by Trafigura contained LME-grade nickel*". The statement has been admitted following a hearsay notice but Ms Hutton KC invited me to draw adverse inferences against Trafigura because of the failure to call Mr Bhatia. Given that his evidence has not been tested by cross-examination, I will approach it with caution and consider whether it is consistent with the inherent probabilities, with the documentary evidence and the oral evidence, particularly from Mr Oikonomou whose evidence was forcefully challenged at trial.

55. Ms Hutton KC also invited me to draw adverse inferences against Trafigura for its failure to call a number of other witnesses whose statements had been served (that is, Messrs Barthelme, Nair, Sharma, Buddabasaynor, and Jain). These witnesses were all timetabled to give evidence, they were present at trial, and their statements responded to the now abandoned case which implicated them in the Arrangement. In their statements, they denied that they knew about the Arrangement, and explained the basis for that denial. I decline to draw any adverse inference against Trafigura. Once Mr Gupta had abandoned his case as to knowledge there was no need to call them and offer them for cross-examination. In my judgment, the only proper function of any cross-examination of those witnesses would have been to challenge that evidence. Once the allegation that they knew about the Arrangement was withdrawn, their evidence was no longer subject to any material challenge, and the need for cross-examination upon it fell away. Trafigura was therefore entitled not to call them, and it was both sensible and reasonable for them not to do so. Ms Hutton KC complained that her clients were deprived of an opportunity to "explore" with these witnesses how Messrs Oikonomou and Bhatia might be claimed to have been able somehow to prevail upon their colleagues to ignore, or miss, or overlook, the red flags. That however is not a case open to Mr Gupta for the reasons I have given above. In short, the permissible functions of cross-examination do not include enabling these Defendants to fish for material in support of a case that (i) is unpleaded; and (ii) is inconsistent with the case that <u>is</u> pleaded.

Mr Gupta

56. I heard oral evidence from Mr Gupta as the sole defence witness. Mr Gupta gave evidence by remote link from Dubai over some 3 days. He is an experienced and highly sophisticated businessman with a wide variety of financial interests, including in metals trading. I am sorry to say that I did not find him to be an honest witness. By the end of his evidence, I had concluded that I could not rely on his oral or written evidence in respect of any of the material issues I need to decide. I will set out below, in my narrative of factual findings, the aspects of his account which I found difficult to accept as true, but the overriding impression I was left with at the end of Mr Pillow KC's careful and skilful cross-examination of Mr Gupta was that nothing he said in his evidence could be relied on unless supported by documents. I also found that whenever Mr Gupta was faced with difficult questions or documents which might contradict the existence of the Arrangement, he sought to deflect by saying words to the effect "*this was all dealt with by the operations teams"* of UIL and Trafigura. He also sought to

deflect difficulties by saying that he was not concerned with "*operational modalities*", which were for Messrs Rathi and Bhatia. When he was asked to explain what he meant by this term, he was curiously reticent. I find that this language was, as argued by Mr Pillow KC, essentially meaningless verbiage designed to fob off questions Mr Gupta preferred not to answer. I note that, by contrast, when he identified matters of detail in documents or communications which fitted his case theory as to the existence of the Arrangement, he sought to deploy them with a mastery of the detail. Mr Gupta, when asked whether something was true or not, would often in evidence not simply answer but would rather unhelpfully say "*potentially*". This was a way, I find, of giving himself wriggle room.

57. Mr Gupta also employed a tactic of saying he was just "*following instructions*" from Trafigura when confronted with the undeniable proposition that on his own case the Arrangement and his participation in it was fraudulent, and when there was evidence that he had told obvious lies to Mr Oikonomou or others at Trafigura (such as by resisting inspections on the basis of false claims that the cargoes had already been sold to UIL's customers). I concluded that from Mr Gupta's perspective, the obvious attraction of claiming that he was "*only following orders*" was that it allowed him to purport to sidestep any unhelpful document emanating from UIL, by reference to alleged oral 'instructions' he claimed had been given by Messrs Oikonomou and/or Bhatia - of which there would (by definition) be no written record. However, in the absence of any documentation evidencing the existence of such instructions, their alleged existence depended entirely on Mr Gupta's own word - to which I have concluded little weight should be given.

58. Mr Gupta also used these proceedings to introduce into evidence in open court wholly false allegations against Trafigura that it was somehow involved in market manipulation at the time of the LME Squeeze in March 2022 (see [106] below). There was absolutely no basis for that allegation and it was understandably not pursued by Ms Hutton KC in cross-examination of Mr Oikonomou. Mr Gupta refused however to withdraw the allegation when given an opportunity to do so in evidence.

59. In cross-examination, Mr Gupta was taken to other legal proceedings in England and Wales, Singapore, the US and Malaysia where Trafigura say a scheme similar to that in issue in this case appears to have been used by entities under Mr Gupta's control. That is, obtaining trade finance or other financial indulgences using false security documents, including BLs which misdescribed cargo as Nickel. Mr Pillow KC put to Mr Gupta that these other proceedings, like the present claim, show that dealing in fraudulent BLs was a regular form of fraud used by him and his companies. Mr Gupta denied this. I will return briefly to these other cases at [357] below in relation to the OOCL Trades.

E. The Facts

60. My narrative in this section is based on the contemporaneous documents and the written and oral evidence. Where I refer expressly to a particular witness' evidence, I accept it as accurate unless I indicate to the contrary. I have also used parts of the helpful Factual Narrative agreed between the parties at the start of the trial. There is a substantial amount of detail in the witness statements on issues that are not controversial. I will not set out that detail but will focus on evidence said to support/not support the Arrangement with a focus on the alleged red flags on which Ms Hutton KC relied in

closing submissions. These are: (i) Mr Barthelme's September 2020 email and responses to it; (ii) the nature of the trading/commercial rationale; (iii) voyage duration; (iv) absence of CoAs; (v) absence of inspections; and (vi) incorrect HS codes.

The early period 2014-2018

61. The trading relationship in metals between Trafigura and Mr Gupta predates the events giving rise to these proceedings, and started in around 2014 or 2015. At that time, it appears Mr Gupta was contracting using Ushdev (or companies related to Ushdev) to trade with Trafigura, and this was replaced in due course by UIL. In this early period, trading volumes between Trafigura and entities controlled by Mr Gupta were relatively small, consisting of one-off sale and purchase transactions. The trading relationship between the parties was a "direct sale" one, meaning that Trafigura would purchase a containerised shipment of Nickel from UIL, and Trafigura would then sell it on to its own customers (as opposed to the "buy-back" system which was to later develop). There were no issues or complaints about Trafigura or end customers not receiving the contracted Nickel cargoes under these trades. On the part of Trafigura it was mainly Mr Bhatia, based in Mumbai, who dealt with transactions with UIL. There is no suggestion on the part of the Defendants that until the Arrangement was made this trading was in anything other than Nickel.

2018 onwards: trading volumes grow

62. From around 2018, trading volumes between Trafigura and the UIL companies began to grow. At this time, Trafigura and UIL started to engage in a form of trading known as "transit financing", or what the witnesses sometimes called "buy-back" trades. I need to describe this form of trading (which continued until late 2022) and its *two legs* in more detail because it is at the centre of this claim. In Section F below at [200], I will describe the terms of the Master Contracts in more detail.

Transit financing and buy-backs

63. Under the *first leg*, Trafigura would purchase containerised shipments of Nickel from a UIL company under the Master Contracts on CIF terms. The Master Contracts each provided for significant quantities of Nickel to be supplied in instalments over a period of months. It is common ground on the pleadings that the parties negotiated and agreed individual sales and purchase of consignments (described by Trafigura as "assignments") of materials, in one or more shipping containers. In particular, although made under the Master Contracts, each individual consignment was separately subject to its own transactional documentation in respect of the particular shipment (including invoicing/pricing and shipping documents). The material sold, described in the BL, and insured was always Nickel.

64. In the vast majority of cases, at the time the shipment was approaching the discharge port, UIL would instigate the *second leg* which was a buy-back of the same Nickel from Trafigura under a repurchase contract (also on CIF terms). At that point, Trafigura would issue a sales invoice which the relevant UIL entity would pay and Trafigura would send the original BL (which it had repurchased from Citi: see [66] below) to the UIL buying entity. Trafigura would not open the containers in this process between sale and buy-back. The parties are agreed that generally, one of D4-D8 would act as the UIL sellers on the first leg of the buy-back trades, with D2 and D3 acting as the UIL buyers

for the second leg. However, this system of who was the UIL "buyer" and who was the UIL "seller" was not always followed and appears to have broken down over time for reasons which are not clear, and which may not in fact ultimately matter.

65. Trafigura would prepare and send a calculation which computed (i) the difference between the final purchase price, and the amount Trafigura had already paid, and (ii) the interest cost (for the number of days Trafigura had financed the cargo in transit). If UIL agreed with this calculation, the relevant UIL entity would issue a final invoice which would typically result in Trafigura making a balancing payment to it. That balancing payment comprised the amount Trafigura still owed for its purchase of the container as part of the first leg of the transaction less any interest owed by the relevant UIL entity. In effect, Trafigura's profit on these buy-back trades was the commercial equivalent of 'interest' it earned for financing the first leg.

66. I pause here to record that Trafigura made arrangements to refinance the buy-back trades that it entered into with UIL through a facility with Citi. The refinancing arrangements allowed Trafigura to profit from the transactions without tying up its own capital. These arrangements were dealt with by the Trafigura Trade Finance Team (headed by Mr Barthelme). Citi provided a repurchase facility ("Repo") to Trafigura to finance its activities across various products and businesses not just for Nickel. By 2022, it was for up to US$850 million and I will provide a broad outline of the stages which involved Citi. As described above, Trafigura would first purchase the relevant cargoes from UIL with confirmation that original BLs had been received. It would then provide information to Citi about the proposed trade, and ask Citi if it wished to finance the cargoes under its Repo. If Citi decided to finance the cargoes, then Citi would acquire title to the cargoes. The original BLs would be sent to Citi. At this point in time, Trafigura passed the "hedge" risk related to the volumes financed by Citi, and Citi held the position for the duration of the financing but with a commitment from Trafigura to take it back at maturity. Once UIL wanted to buy back a particular cargo, the Trafigura Operations Team would inform the Trade Finance Team, who would liaise with Citi. Once title over the cargo passed back to Trafigura, the "hedge" risk linked to such volumes also transferred back to Trafigura. Trafigura would then sell the cargo back to UIL. Under the terms of the Citi facility, Trafigura borrowed funds from Citi on a short-term basis (around a month or so). At the end of that term, if there was still a financing requirement for the cargo, the loan was extended (or "rolled") to the following month or until such time that Trafigura repurchased the material.

67. The transit financing was structured on a "non-obligated" basis. This meant that, at the time Trafigura purchased Nickel from UIL, there was no corresponding binding commitment for the UIL selling company to repurchase that Nickel from Trafigura. However, there was an expectation that they would, under the repo contracts, buy back the majority of what they had sold to Trafigura. Mr Oikonomou explained, and I accept at the level of principle, that one might be comfortable with this non-obligated buy-back structure because: (1) even if UIL did not re-purchase the Nickel, given that Nickel is a highly liquid commodity, Trafigura would still have the ability to sell the Nickel easily in the market (either to another buyer or to the LME); and (2) under the Master Contracts, Trafigura took possession of the original BLs upon payment of the provisional price, and the final pricing only crystallised at the point that Trafigura sold it on.

68. Under the Master Contracts, when buying the Nickel, Trafigura paid around 90% of a provisional price in the first instance resulting in a 10% balance, which Trafigura kept as a positive margin. The provisional price was based on the LME index price (of Nickel). At a later stage, UIL sent Trafigura a final invoice, which was based on the final LME index price determined as per the Master Contract terms. This meant that by the time the final invoice was payable, Trafigura still had to pay UIL the difference between 100% of the final price, and the 90% it paid on the provisional price. Because of this split in pricing, there were fluctuations in the LME index price between payment of the provisional invoice and payment of the final invoice. This was one of the reasons why Trafigura kept a 10% margin on the provisional invoice.

69. If the index price fluctuated by more than 10%, that would have resulted in either a negative or positive exposure for Trafigura. Positive exposure occurred when the prices had increased beyond the provisional price, and Trafigura owed money to UIL at the point the final price was payable. Negative exposure occurred when the prices had decreased, and UIL owed money to Trafigura. A negative exposure scenario would have resulted in Trafigura taking a credit risk for UIL.

A period of "honest" buy-back trading between 2018 and October 2019

70. Before I come to make findings in relation to the issues in dispute, it is important to note a preliminary undisputed factual matter. As I have already indicated above, on Mr Gupta's case something fundamentally changed in October 2019, so there was no longer any expectation shared by the parties that Nickel would be supplied (despite the statements in the shipping documents and Master Contracts governing the sales). That change is a defining feature of the Arrangement. Mr Gupta's case is that the Arrangement took effect in around October 2019, having been concluded at the Dubai Meeting on 9 June 2019 with Messrs Oikonomou and Bhatia. However the prior historic period between 2018 and October 2019 of what one might call "honest" buy-back trading between UIL and Trafigura is potentially significant when assessing whether the Arrangement would have been made, and in particular assessing the relevance of the alleged "red flags" (as indicia of the Arrangement existing). By "honest" trading I mean transactions where both parties expected and agreed that what was specified in the Master Contracts and the shipping documents (always Nickel) was in fact what would be supplied to Trafigura under the *first leg*.

71. It was Mr Gupta's own evidence that the trade financing arrangements with buy-back trades began as an honest one, with genuine Nickel being shipped and sold and repurchased, and that it ran from 2018 through to September 2019. So, on his case, there was at least a year of trading under this very same model which was honest and involved Nickel. I note that the spreadsheets Mr Gupta provided in his evidence showed there were 27 cargoes financed between October 2018 and September 2019 under this honest trading. That was about 8,345 MT of Nickel with a value of around US$100 million being sold to Trafigura, financed and ultimately sold back by Trafigura to UIL, with interest. It was not disputed by Ms Hutton KC that this structure displayed the same "red flags" as the later trades said to be made under the operation of the Arrangement. So, the "honest" trades included the absence of buy-back obligations, the absence of inspections, very long voyage times, and delays in buying back. As identified during Mr Gupta's cross-examination, these buy-backs sometimes took more than a year in the case of the honest trades. I note that in some cases the voyages between ports very close together in South East Asia took an extraordinarily long time

(such as voyages between Malaysia and Shanghai taking up to 80 days). When the Arrangement is said to have kicked in from October 2019, on the evidence before me, there was no different outward objective characteristic of this apparent trading in Nickel that might give rise to an inference of something odd going on.

72. Mr Pillow KC fairly submitted that someone in Mr Gupta's position would know that these honest transactions passed unremarked upon, and as long as he kept them looking the same from the outside, he had every reason to think that that would carry on. So, an honest trade for Nickel made in September 2019 would have all the features of a trade made under the Arrangement in October 2019. This identicality is a feature which suggests that honest/dishonest trading were marked by the same "red flags", if in fact they are any indicators of concern.

The meetings in Mumbai and Dubai

73. This is the area of major factual dispute. The first meeting was in Mumbai on 28 March 2019 ("the Mumbai Meeting") between Mr Bhatia and Mr Gupta, and the second meeting was in Dubai on 5 June 2019 ("the Dubai Meeting") between Mr Bhatia, Mr Oikonomou and Mr Gupta. Mr Gupta's case is that the Arrangement was concluded at the Dubai Meeting. Mr Oikonomou and Mr Bhatia said that did not happen. In the interests of brevity, I will not set out every detail of the competing accounts but will provide a broad overview of what Mr Gupta, Mr Bhatia and Mr Oikonomou say. Although I had to form an impression of the witnesses' oral evidence, my findings as to what happened at the meetings is necessarily informed by what subsequent events/documents suggest occurred.

The Mumbai Meeting: 28 March 2019

74. The following does not appear to be in dispute. On 24 March 2019, Mr Bhatia contacted Mr Gupta to arrange a meeting between him and Mr Oikonomou in either Dubai or Singapore. This was because Mr Oikonomou was in the region and he was Head of the Nickel Desk. Mr Gupta agreed to a meeting and requested a prior meeting with Mr Bhatia in Mumbai. Accordingly, on 28 March 2019, Mr Bhatia met Mr Gupta at the Oberoi Hotel, Nariman Point, Mumbai. It is agreed that the meeting lasted about 40 minutes but there are very different accounts of what was discussed.

75. Mr Gupta's evidence was that he was told at the meeting by Mr Bhatia that Mr Oikonomou was "aggressive" in his trading approach and outlook and that he wanted to expand Trafigura's Nickel trading operation to a position of dominance in the market. Mr Gupta said that at the time, Trafigura's Nickel desk "paled in comparison to its direct competitors" and the UD Group had a monopoly on the Nickel market in India with a market share of over 40%. It was therefore a significant player in the global market and had significant experience and expertise in trading Nickel, all of which was well understood by Trafigura. Mr Gupta's evidence was that Mr Bhatia had come to him because "…without us, Trafigura would have not expanded their position and [Mr Bhatia] believed that increasing the trade between UD Group and Trafigura could assist in achieving the aim of elevating Trafigura to a position of dominance in the market". Mr Gupta said that Mr Bhatia took the lead and explained that in line with Trafigura's plans to increase its share of the global Nickel market, it would be looking to increase volume to around 50,000 MT per year. Mr Gupta said that he saw this as a significant roadblock because UD would not be capable of sourcing that amount of Nickel to sell

to Trafigura on an annual basis. In his evidence Mr Gupta said that in or around 29 May 2019, Mr Bhatia asked him to produce a proposal for an expanded trading relationship with Trafigura, to be presented and discussed at the meeting with Mr Oikonomou. He said Mr Bhatia "required" him to send it first to him in draft, so that he could modify it as he saw fit, before it being officially submitted. Mr Gupta's evidence was that over time, he identified what he called a "clear and recurring pattern of conduct" involving both Mr Bhatia and Mr Oikonomou in which they would routinely issue specific directives to Mr Gupta via WhatsApp, often informal in nature, while instructing him to draft and send formal email communications that were entirely different versions of the guidance. He said that "this practice appeared calculated to create a discrepancy between internal discussions and the official record…". Mr Gupta was cross-examined in relation to this evidence and it was suggested it was untrue and dishonest. He however maintained it was true.

76. Mr Gupta said he and Mr Bhatia explored ways in which UD/ UIL could achieve the volume of trading Trafigura required and in particular they discussed the possibility of using nickel alloys "…with varying degrees of nickel content as a means by which the required volumes could be hit". This first reference to "nickel alloys" appears to be the genesis for what Mr Gupta says formed part of the Arrangement.

77. I do not accept Mr Gupta's account. In particular, I reject his evidence that there was any form of discussion along the lines of trading nickel alloys to boost volumes. In short, in all material respects, I prefer Mr Bhatia's account (which I will summarise below), although it was not tested in cross-examination. I approach this evidence with caution for that reason, but his account accords with the inherent probabilities, the subsequent evidence and the oral evidence of Mr Oikonomou about the discussions at the later Dubai Meeting.

78. I find that the Mumbai Meeting was no more than a short courtesy meeting with a trusted counterparty. Mr Gupta said he wanted to understand what would be discussed during the meeting due to take place with Mr Oikonomou, and Trafigura's plans for growing their business, and how they could work together to achieve this given their history. Mr Gupta told Mr Bhatia that he wanted some kind of credit structure in place whereby Trafigura would extend a credit line to UD/UIL. He also raised the issue of credit insurance. Mr Bhatia said these were not his areas. Mr Bhatia did not inform Mr Gupta that Mr Oikonomou wanted to expand Trafigura's Nickel trading operation to a position of dominance in the market. They did however discuss growing the trading relationship between Trafigura and UIL during the meeting but not in any specific volumes. Mr Bhatia did not ask Mr Gupta to produce a proposal to be presented and discussed at the meeting with Mr Oikonomou. Rather, at his own initiative, Mr Gupta said that his team would prepare a presentation for the meeting and would send it to Mr Bhatia (who agreed to receive it). Mr Gupta wanted him to have a look at the draft proposal before he sent it to Mr Oikonomou to ensure that nothing had been overlooked by his team in terms of numbers. Mr Bhatia considered the draft out of politeness and provided initial high-level feedback.

79. Mr Gupta did inform Mr Bhatia that UIL was in the scrap business and that he wanted to trade scrap with Trafigura. Mr Bhatia told Mr Gupta that Trafigura had been a base metal trader since 2013, but Mr Gupta said he wanted to pursue the idea anyway. In these circumstances, Mr Bhatia said he could bring it up for discussion when he met with Mr Oikonomou, if he wished. I find as a fact that there was no discussion of the

possibility of trading scrap metal with Nickel and other nickel alloys in order to achieve any so-called required trading volumes. Not least, because I find there was no discussion of target volumes which Trafigura wished to achieve. That was not a matter under discussion.

80. Following the Mumbai Meeting there was an email exchange between Mr Gupta and Mr Bhatia on 31 May 2019 in which Mr Gupta asked whether Mr Bhatia thought he should "*add a short presentation on SS scrap and SS FG*" to his proposal for the meeting with Mr Oikonomou. Mr Bhatia responded: "*Suggest we test waters with Credit limits first and bring scrap during discussion…*". This response refers to two separate points. The first is credit limits that Mr Gupta wished to have with Trafigura (raised as I set out below at the Dubai Meeting). The second relates to the scrap and stainless steel business which Mr Gupta of his own motion wished to raise with Mr Oikonomou.

81. The proposal is a short document which summarises the UIL corporate structure, the Nickel volumes it traded in the last year (about 100,000 MT), its desire to increase Nickel business in the next year and to have a "long term business relationship with Trafigura", and a desire for credit. It says nothing expressly or implicitly concerning the Arrangement and Mr Gupta accepted this in evidence. The proposal was concerned only with Nickel.

The Dubai Meeting: 5 June 2019

82. It is not in issue that on 5 June 2019, Mr Gupta, Mr Oikonomou and Mr Bhatia met for lunch at the FIVE Palm Jumeirah Hotel, Dubai. Mr Bhatia had earlier forwarded the proposal to Mr Oikonomou (who was late arriving in Dubai). This was the first time Mr Gupta and Mr Oikonomou had met and they were not to meet again for about 2 years. I turn to the factual dispute about what happened at this meeting. Again, I will begin with a summary of Mr Gupta's account.

83. Mr Gupta says that at this meeting Mr Oikonomou explained to him his background on the copper trading desk at Trafigura and his aim of expanding the Nickel desk. Mr Gupta's evidence is that in light of the quantities of Nickel that Trafigura was looking to trade, they first discussed credit insurance limits and the impracticality of trading such quantities of high-quality Nickel within those limits. Specifically, he says "*they*" (that is, Mr Oikonomou and Mr Bhatia) "*…raised the possibility of broadening the trading relationship beyond nickel to nickel alloys*" when up to this point in time UD Group had only traded LME-grade Nickel with Trafigura (this is a reflection of some of Mr Gupta's account of what he claims to have discussed at the Mumbai Meeting). Mr Gupta said that Mr Oikonomou indicated he wanted that to change if it meant increasing the volume of trades and that he was very keen to start trading other metals and nickel alloys in line with his plans to grow Trafigura's position in the market. Mr Gupta said he knew that Mr Bhatia shared the vision of trading other metals and alloys because they had discussed it prior to the Dubai Meeting (at the Mumbai Meeting). He said that the plan they discussed was to trade in nickel and nickel-based alloys along with other commodities like tin. Crucially, however, he said that this "*was based on the understanding that their desk would also add a new commodity such as Tin. However, this was only to reduce the risk of detection, it was not important to Trafigura or us what material precisely would be traded or its value, given that it would be held out as LME-grade nickel in any event*". In his witness statement and in the RAD, Mr Gupta

said he understood that the reason for this was that Trafigura's financing bank was not prepared to extend credit for trades of Nickel with purity of less than 99.8%. He said that Mr Oikonomou told him that he (Mr Oikonomou) would need to consider how such an arrangement could be structured in practice and how to "*sell it*" to his superiors in Geneva; and that he would devise a strategy and revert, noting that he would get approval to add the trading of alloys to this arrangement. Mr Gupta said that during the Dubai Meeting, and in connection with the discussion about Trafigura's interest in purchasing alloys, he told Mr Oikonomou about a production plant in Europe which produced nickel alloy; and on 10 June 2019 Mr Rathi sent to Mr Bhatia some details about potential purchases from the plant by email. Mr Gupta said that in the following period, Trafigura showed no interest in a credit-insured proposal put by Mr Gupta but there was a push from Mr Oikonomou and Mr Bhatia to expand into trading non-LME-grade materials such as nickel alloys. He said that "*while this was presented as a means to achieve higher volumes, I now understand it also allowed Trafigura to circumvent the restrictions their financiers imposed on sub-99.8% nickel trades. The effect was that the contractual documents continued to present the trades as LME-grade nickel, while in practice other materials were agreed to be supplied*".

84. To summarise what Mr Gupta said was agreed in Dubai, I can reproduce what Mr Pillow KC helpfully put to Mr Gupta (and which he agreed was correct) as to the nature of what was proposed by Mr Oikonomou:

> "*…in this very first meeting with him, over lunch in a public place, you say he proposed to you a massive fraudulent arrangement whereby you would be pretending to sell Trafigura large quantities of LME-Grade nickel, but you would in fact secretly supply other, much cheaper or worthless, material.*"

85. Mr Gupta said that, after the Dubai Meeting, Mr Bhatia contacted him by phone in or around August 2019. He relayed that Mr Oikonomou was keen to move forward with the proposal (that is, the Arrangement) to begin trading in alloys but said that it would need to be kept "*quiet*"; and Mr Bhatia indicated that Trafigura wanted to use one of their existing methods of trading, i.e., something similar to transit financing, as the structure for the Arrangement. He said that over the following months, they had various conversations about how the Arrangement would work in practice. Mr Gupta says that he understood from Mr Rathi that Mr Bhatia had told him that *"…the contracts would need to specify LME-grade nickel but was assured by him that this would not result in contractual risk to UD Group. This was because, under Trafigura's standard terms and conditions incorporated into all of our contracts with Trafigura, there is a clause that states that in the absence of a weight or quality discrepancy notice being issued, payment by the buyer (i.e. Trafigura) against the relevant shipping documents would constitute a waiver of rights in respect of any deficiencies in the delivered material that are apparent from the shipping documents. Trafigura made no such reservations across multiple trades*". I set out the relevant Trafigura General Terms and Conditions for the Sale and Purchase of Physical Non-Ferrous Metals dated October 2019 ("the GTCs") at [203] below. I turn to my findings.

86. I reject Mr Gupta's account of the Dubai Meeting as wholly untrue. I prefer Mr Oikonomou's evidence (and that of Mr Bhatia although he has not given oral evidence) on all material aspects of this meeting. First, I find there was no specific purpose for the meeting beyond a courtesy "thank you" from Mr Oikonomou for a customer's

business and to see if there were any issues. He was due to be in Dubai for business meetings with another customer so this was not a specially arranged meeting. As I have described above, by this point, Trafigura had been doing regular Nickel business with Mr Gupta's companies for at least two years. The relationship with Mr Gupta through Mr Bhatia was a positive one where Trafigura's trust had been gained as an honest counterparty. As Mr Oikonomou explains, it was common for the traders such as Mr Bhatia in his division to want to bring him along to meetings with their customers so he, as head of the Nickel book, could discuss with them broader topics and trends affecting the market.

87. On the day of the meeting, Mr Oikonomou was running late and he and Mr Bhatia did not have time to meet beforehand. Mr Bhatia therefore forwarded him a document over WhatsApp that Mr Gupta had prepared for the meeting. This was the proposal. It contained an overview of UIL's business and Mr Gupta's proposals for the future relationship with Trafigura. This included more than doubling the volumes of Nickel the parties were trading (which was 22,500MT between October 2017 and June 2019) to 50,000MT within the following 18 months. Mr Gupta stipulated in the proposal that this increase in volume would require Trafigura financing 1/3 of the trades using its credit. There was a discussion between Mr Gupta and Mr Oikonomou about increasing the volumes of Nickel and the obtaining of trade credit from Trafigura. Mr Oikonomou said he would review this request and discuss internally with his Credit Finance team. During the meeting Mr Gupta informed Mr Bhatia and Mr Oikonomou that he had a plant in Italy which was producing an alloy product that was similar to nickel pig iron from scrap materials. He explained he was effectively sourcing scrap from Europe, shredding the scrap and creating some sort of nickel pig iron product that contained 8-9% nickel. Mr Gupta said that he thought Trafigura could help him finance the business by buying the product from that plant and delivering it to stainless steel mills in India. That would allow him to buy more scrap to produce more of the material. Mr Gupta presented this as an entirely separate line of business to the line Trafigura and UD/UIL were currently doing, which was for Nickel alone. Mr Oikonomou informed Mr Gupta that if he sent him a proposal, Trafigura would look at it, but he was not keen on the idea of his division trading in other metals with him. Trafigura's Nickel desk did not trade in generic alloys or scrap metal. Mr Oikonomou was only interested in looking at the plant in Italy because it was presented as making a product similar to nickel pig iron, which was a line of business that Trafigura was already involved with; and it could be sold to stainless steel mills in India, who were existing customers of Trafigura's other nickel products.

88. Other than in relation to this specific plant, I find Mr Gupta and Mr Oikonomou did not discuss the possibility of trading in scrap or any other metals more generally. In particular, I find, contrary to allegations Mr Gupta makes in his evidence, there was no discussion about trading in metals that bore some resemblance to Nickel. I also find that there was no discussion of a plan or scheme to trade in metals that bore resemblance to Nickel to reduce the risk of detection, or that Mr Oikonomou agreed that he would need to consider how such a plan could be structured in practice and sold to his superiors within Trafigura. I also find there was no discussion at any point about Trafigura's GTCs as protection for UIL, as suggested by Mr Gupta in his evidence.

89. In short, I have no hesitation in rejecting Mr Gupta's oral evidence that the Arrangement was made at the Dubai Meeting. Although this conclusion is based on my assessment

of the oral evidence which I have summarised above, the further events also strongly support this conclusion. By the end of the trial, I was convinced that the documentary evidence (some of which I set out below) countering the existence of an Arrangement to which Mr Oikonomou and Mr Bhatia were party, was overwhelming. Their communications, including purely private communications with one another and with Mr Gupta, make no sense if they had all along known that Trafigura was not buying Nickel but in fact low value or worthless cargoes of other metals.

The credit request

90. Following the Dubai Meeting, Mr Oikonomou had several exchanges with Mr Bhatia about UIL's credit proposal, which had been referred to Trafigura's Trade Finance Team for consideration. In the following months, Mr Bhatia asked him to join calls and follow up with the Trade Finance teams in order to show his support for UIL's proposal. It was however decided that within Trafigura that no credit would be offered to UIL. Mr Gupta accepted in evidence that this was communicated to him.

Covid: early to late 2020

91. Due to China and other countries being locked down, there was a knock-on effect on the long-term Nickel sales contracts that Trafigura had in those countries. These contracts were not being performed on time. On the other side, there were delays with the suppliers in countries where the mines were situated, which had also been closed down. There was significant disruption to the industry and Trafigura made reasonable adjustments for all its customers, including UIL. As accepted by Mr Gupta, as a result of these pressures the UIL companies were running out of money.

Trafigura Trade Finance involvement September 2020

92. Ms Hutton KC relied strongly upon a series of internal emails within Trafigura's Trade Finance Team in this period in support of a submission that there were red flags supporting the existence of the Arrangement. It was forcefully submitted that these documents identify what she said were the obvious concerns raised by this trading some 2 years before the first inspection of any of the cargoes, and over 2 years before Citi withdrew from financing this trading.

93. The principal email relied upon by Ms Hutton KC was sent on 24 September 2020 by Mr Barthelme, Head of Trade Finance for Refined Metals (based in Geneva) to Stephan Jansma (Global Head of Structured and Trade Finance) and Camille Trejou (Global Head of Trade Finance), copied to Quentin LeFloch ("Mr LeFloch") (Senior Trade Finance Officer for the Nickel and Aluminium books). The concerns and comforts about the trading set out in the email are self-explanatory. Given the strong reliance placed on this document, I will set it out in full:

> "*Please see below for a specific Nickel flows that we wanted to flag to you both. We will continue to gather more information but thought it would be worth making you aware as it is not a standard flow but however one that is not being very much scrutinized internally. For quite some time now, we have been doing transit BLs financing for a Indian company called UIL. UIL is a privately owned company involved in metals business*

(not extremely clear what exactly – steel, scrap, etc) that we used to have a credit limit with a few years ago, before they went under. It is the trading arm of the holding called UD Holding Limited, incorporated in the UAE. We have very limited information today on the CP as we deal with them on a "secured" basis (ie basis original BLs), so no one is really digging too much. Latest available financials are attached: $1bn revenue for $3mn profit, $80mn of equity for $60mn of debt, all ST (but $12mn of finance costs!!), $56mn of CF from Operations. Under this transhipment BL financing structure that we have with UIL, we finance basis OBLs the transit time of nickel materials that go from Europe to Asia. The voyage time is extremely long (min 3-4 months, up to 6 months(!)) as the material gets discharged and picked up again in ports along the way. When it gets discharged, we have HCs issued. We buy from a company called New Alloy / Minecraft (same company) basis reception of OBLs, ie approx. 10-12d after BL date. According to Ops, that's the time it takes for originals to reach us. We pay between 85-95% of the cargo, rest is settled upon sale. At the time we purchase the material, we have the sale contracts with UIL so we basically carry the stocks for UIL during the "voyage time". It's unclear what UIL does with the volumes after: we have been told that they sell it to clients but we sometimes have to push them to purchase back the volumes because it's been with us for more than 180d and we have difficulty to continue financing it. We charge UIL L+5% for this whilst we finance most of the materials under Repo. This is therefore quite a profitable (financing) business, reason why the commercial team has been growing it. We currently have ~30KT / $430mn of nickel stock financed under this "structure". This has grown from 15KT / $270mn inSept19 and 21KT / $263mn in Feb20 so volumes have doubled YoY. We have the OBLs so in case something goes wrong, we can take delivery of the cargo. Ops also does regular checks to monitor the material. But we have a few points of concerns / interrogations- we are told that New Alloys / Minecraft and UIL are unrelated but that's not very clear. And the overall arrangement with 85-95% upfront payment, rest at deliveries raises questions

- it's a strange business strategy: long voyage time, high interest costs, irregular sales.

- surprising that they would accept to pay L+5% for something we can finance L+0.75%

- looking at the financial, we seem to finance a sizeable portion of the CP total turnover

- we know that UIL owes money to CS and DB, both banks have refused any payments from/to UIL.

> *We don't have much more info on this at this stage- potential reputational risk if it goes sour. We will dig deeper into this and have another chat with the commercial team to better understand the complete picture. It would be good to have a deeper review of New Alloy / UIL as well Stephan, would be worth checking with Socs what's his views on this flows. It accounts for ~50% of the Nickel book we finance. Main concern is that we have become the bank of this company and that if we stop doing this, they have no other way to finance their business. Even if it's extremely profitable, we may want to reduce the volumes to a more appropriate level*".

94. Mr LeFloch added some "additional comments" to Mr Barthelme's email on the same day, 24 September 2020, in an email sent about 30 minutes later:

> "*Transhipment BL is basically hitchhiking, the container has no priority and can do stop(s) on the way. If the shipping line can have a full cargo with the other orders, our container will not depart and wait for the next voyage, sometime this delays ETA buy up to 3 months. In the meantime the container stays on the port dock in open air area (often at Port Klang for this business). When the container makes a stop, we cannot get a HC (it is not handled by a warehouse, only by the shipping line). This is cheaper and avoid paying warehouse costs: but given that we charge 5% interests to the CP, I never understood why they opt for this option (instead of short voyage). We ship container from Asia to RTDM and vice versa. Once Rabobank asked us why same day we asked them to finance two containers for almost matching quantities going in the exact opposite direction (same brand).. This seems to be a clear indicator that the company is doing this business in order to use the BL*".

95. Mr Oikonomou was cross-examined about these emails and the concerns Mr Barthelme and Mr LeFloch had recorded. He accepted that the assessment of the commercial benefit of this trading was his responsibility. He also said he could understand the basis for Mr LeFloch's concern that UIL were doing this trading in order to obtain a financing facility. He also fairly accepted that: (1) Trafigura does not normally aim to generate its profits by providing a general borrowing facility; and (2) Mr Barthelme's concern about UIL having to be pushed to take their cargo at the other end of the voyage was understandable. He could not however remember whether there was any follow up following the emails but Mr Jansma may have done so.

96. Ms Hutton KC submitted that Mr Oikonomou had no explanation of why in the light of these emails he nevertheless committed Trafigura to this trading, and never himself identified to senior management (or for discussion with UIL) any "red flag", including the problem in identifying UIL's genuine commercial interest in the buy-back trading. She argued that it is properly to be inferred that he did not do so, and instead worked to "assuage" these concerns of Mr Barthelme and others without undertaking any inspections or checks, because he was seeking to hide the Arrangement from others within Trafigura and keep it going undetected.

97. In my judgment, Mr Gupta's case on the September 2020 emails faces considerable difficulties. Aside from the fact that this is a new point, not thus far raised in any of the Defendants' pleadings, evidence, or in the Trial Skeleton, I consider the point has no merit. Even if there were some evidential or analytical basis for the submission that Trafigura's return, or the cost of the credit to UIL was unusually high, that would not be probative of the existence of the Arrangement. It would simply be a function of the nature and level of the financing that UIL needed, and the price at which they could obtain it. In any event, the issue was clearly one to which Trafigura's Trade Finance Team was alert, but it is not alleged on behalf of Mr Gupta (following his abandonment of his original case of knowledge of the Arrangement on the part of the Wider Trafigura Personnel) that it gave a basis for anyone in that Team to know of (or to even suspect) the existence of the Arrangement. I also find that there is no evidential basis for any submission that Mr Oikonomou said or did something to fend off commerciality concerns of Trade Finance. His evidence that he could not remember any follow up was honest. The overriding impression that the September 2020 episode leaves is that Trafigura considered itself secured by the BLs which UIL were using as the basis for obtaining finance. And at worst it risked a reputational problem. I also return to the point that the 2018-2019 period of "honest" trading (before the Arrangement is said to have been made) displayed all the features, including lack of commerciality from UIL's perspective of the claimed trading under the Arrangement. To that one can add the lack of any concern expressed by Citi. In short, I find the Barthelme episode revealed no red flag and Mr Oikonomou did nothing, following these emails, to suppress investigation as part of an attempt to cover up the Arrangement.

98. Reliance was also placed in relation to this period by Ms Hutton KC on Mr Bhatia's emails. So, on 2 September 2020, Mr Bhatia told Mr Rathi by WhatsApp that "*We need to split co … trade finance raising questions*" and on 22 September 2020, Mr Bhatia messaged Mr Rathi stating "*Sale to Traf and Buy from Traf, break it into two*". It was suggested on behalf of Mr Gupta that the decision to use some of the UIL companies to sell cargoes to Trafigura and some to purchase cargoes from it resulted from information given by Mr Bhatia to Mr Barthelme and/or Mr LeFloch (reference is made to the statement in the Barthelme 20 September 2020 email, "*we are told that New Alloys / Minecraft and UIL are unrelated but that's not very clear*"). Reliance was also placed on subsequent instructions said to be given by Mr Bhatia to Mr Rathi and on which the UIL companies acted. One such example is said to be on 7 October 2020 where Mr Rathi told Mr Bhatia that there should be a number of sales from TMT Metals AG, New Alloys and Mine Craft to Trafigura, followed by purchases of those cargoes from Trafigura by UIL Singapore, UIL Malaysia and Spring Metals. Ms Hutton KC argued that these are messages in which Mr Bhatia is clearly seen to act as part of a "team" with Mr Rathi to fend off difficult questions from Mr Barthelme and/or Mr LeFloch.

99. I do not accept this interpretation and prefer Mr Bhatia's evidence which I summarise as follows. Mr Bhatia recalls Trafigura required the sales and purchases under the transit financing arrangement to be split out from one another, so that one group of companies were designated as "sellers" and another group were designated as "purchasers". This was an issued raised by Trade Finance and Operations because having the same company designated as the seller under one contract and the buyer under another was causing issues on their end. By September 2020, the volumes of trades were increasing, and the Operations and Trade Finance Teams were struggling to keep track of these

without any sort of differentiation between the selling party and the buying party. In short, I accept that this structuring was to make things easier for Operations and Trade Finance, as opposed to something more sinister related to covering up difficulties arising from the Arrangement.

100. I pause here to record for the purposes of the narrative that the 107 trades in issue in this claim took place between January 2022 and October 2022. They were each on the terms of the Master Contracts with BLs, invoices and insurance certificates each reflecting the fact that the cargoes were of Nickel. The HS Codes did not record this (one of the alleged red flags to which I will return below).

Voyage lengths

101. Mr Oikonomou was updated quarterly about the voyage lengths. As I have noted above, they are one of the "red flags" said to support the existence of the Arrangement. I was taken to a number of emails in this regard. I accept voyage lengths were causing concerns (including with Trade Finance) and will provide some samples to provide a general flavour of this concern (rather than setting out each document). So, on 17 April 2021, Mr Sharma (an Operator at Trafigura, based in Mumbai) emailed Mr Rathi identifying "*need for urgent actions from your end*" highlighting that "*7.5KT were 180 days + (indeed, one was 312 days)*" and that "*last time reviewed it was 6.2 KT and it was promised to bring down to 2.5KT by April Mid*". In Mr Sharma's handover email to Mr Buddabasaynor (Operator for Trafigura based in Mumbai) on 5 May 2021, he wrote under the heading '*Risks Mitigation*': "*Always keep a track on ETA and push CP to buy BLs which on T/s port for long duration. Follow up to buy cargo arriving on Port as Banks don't finance cargo on port.*" Mr Nair (Operations manager in Mumbai), who managed the trading operations in respect of this trading added additional comments in blue as follows: "*Pressurize to buy back cargo on water over 3 months, escalate to Harsh and have more joint call with CP and Hars-CP-you and me.*". Sometime later, on 25 October 2021, Mr Buddabasaynor sent an email to Mr Rathi, copying Mr Nair and Mr Jain, noting a cargo of 321.704.MT "*above 150 days*", chasing for payment regarding late buy-back trades and seeking buy-back dates for cargoes that have not yet been arranged. On 13 January 2022, after some late payments Mr Buddabasaynor was chasing for were not paid, these were referred to by him as "*Red Flags*". When these were still not paid by 19 January 2022, Mr Jain wrote saying the "*Red Flags*" had increased. On 26 January 2022, Mr Jain wrote to Mr Rathi complaining that the 95-day transit time on the BL from Taiwan to China (instead of what should have been only a few days) was not credible. He said: "*luckily Citi accepted this one, with little suspicion, but we might not get as lucky in the future*". In the response Mr Rathi explained the delays were "*due to current space shortage around the globe*" and sought to suggest that the cargo would be shipped sooner if shipping lines were able to.

102. On the basis of these and a number of additional documents (including emails going into September and November 2022), Ms Hutton KC argued that the voyage lengths were both an odd feature of the dealings with UIL, and a cause for serious concern. This was said to support the inferential case for the existence of the Arrangement. I do not accept the probative value of this point. In my judgment, lengthy voyages are no more consistent with the existence of the Arrangement than with its non-existence. I would add that, if anything, Trafigura's toleration of lengthy voyages is much more consistent with the belief that the relevant cargoes contained Nickel. That is for a number of

reasons: (i) in that scenario, any concerns Trafigura would otherwise have had would have been assuaged by knowing that their position was fully secured; and (ii) if the Arrangement had existed, lengthy voyages (and related delays to buy-backs) would have been a harbinger of likely and imminent disaster. It is also to be noted that Mr Gupta's own evidence was that there were long delays before buy-backs for cargoes he accepts *were* genuine Nickel. For these reasons, there is nothing in the voyage lengths point.

Meeting at The Four Seasons Hotel, Geneva, 16 August 2021

103. Mr Gupta and Mr Oikonomou next met some 2 years after the Dubai Meeting. They had not spoken in this period. Indeed, one can see in the WhatsApp messages between Mr Bhatia and Mr Gupta arranging this meeting that Mr Bhatia had to remind Mr Gupta of who Mr Oikonomou was and of his history as a trusted and respected "*old hand*" in Trafigura. It seems somewhat surprising (if a secret and dishonest arrangement had been entered into between these three individuals and had been running for some 2 years) that such an introduction or reminder was necessary. Mr Gupta had no answer to why Mr Bhatia would have said this about a co-conspirator.

104. This second meeting was at the Izumi restaurant in The Four Seasons Hotel in Geneva on 16 August 2021. It was a generic meeting to touch base on how the relationship was going at a time when Mr Gupta happened to be in Geneva. Jack Gebler ("Mr Gebler"), a Trafigura Nickel Trader in Switzerland, also attended. During the meeting, Mr Gupta told them about a tin mine business that he had. It was something that he wanted Trafigura to look at. From the middle of 2021, Mr Oikonomou was overseeing the activities of the Metals Business Development team at Trafigura which was exploring trading in other metals such as platinum group metals and rare earth metals. Trafigura was looking at trading in tin again around that time. Mr Gebler was doing some work with tin, and one of the potential sources of that supply was Mr Gupta. Following the meeting, Mr Oikonomou asked Mr Bhatia to get the relevant details from Mr Gupta about this line of business. As with his plant in Italy, this was for consideration as a totally separate line of business from Nickel trading.

105. I reject Mr Gupta's evidence that, at the meeting in Geneva, Mr Oikonomou and Mr Gebler (who Mr Gupta does not suggest knew of the Arrangement) told Mr Gupta that Trafigura was very happy with the performance of the transit financing arrangement and that they wanted to grow the Nickel desk to approximately 70,000 to 80,000 MT per annum. Nothing that passed in the meeting supports the Arrangement.

The LME Squeeze and events in March 2022

106. In around March 2022, the price of Nickel rose sharply and by 8 March 2022, the LME suspended trading in that commodity. The suspension remained in place until 18 March 2022. There was a certain amount of evidence about the scale of price increases but the extent of the price spike is well-illustrated by this table.

107. In outline, this so-called *short-squeeze* was a result of Nickel prices increasing following the Russian invasion of Ukraine on 24 February 2022 and the potential for sanctions on Russian products. At the time, Russia accounted for approximately 10% of the relevant global production. Ms Hutton KC relied upon the conduct of Messrs Bhatia and Oikonomou (including emails) at the time of the short squeeze in support of Mr Gupta's case that they were seeking to avoid a course of action (inspections at an LME warehouse) that would have revealed Nickel was not being shipped (and thus exposed the Arrangement).

108. The Nickel price affected Trafigura because it had large positions on the LME across all Nickel products, and consequently it had to pay out a large amount in margin calls to its brokers, or reduce the position by either effecting more physical sales or delivering material into the LME. As explained by Mr Oikonomou: (1) Nickel prices were very high and there were very low stocks available in the LME warehouses; (2) the LME asked for Nickel to be delivered into LME warehouses to provide more physical liquidity (which would in turn help to normalise prices); and (3) Trafigura was considering how it could do this because doing so would reduce the margin calls Trafigura was facing. When the LME Squeeze occurred, the volume of Nickel being financed by Citi was around 27,000 MT.

109. The Trafigura emails at the time demonstrate that the price spike was a serious concern within Trafigura, including in relation to the trading with UIL. So, on Sunday 6 March 2022 (that is, during the weekend before trading was suspended), Mr Barthelme emailed Mr Bhatia and others at Trafigura (including members of the Operations Team and Traders on the Nickel desk) as follows:

> "*Hi Harsh,*
>
> *What the plan for UIL business going forward and can we get an update on the reduction schedule? With what is currently happening in the market, the financing risk on this one becomes even bigger: with Nickel @ $30K/T, we have an exposure of*

> *about $800mn. This is a lot to take for the only Repo that can take this flow. In addition, a lot of this business is for Russian origin materials. Over the past week, almost all our banks have decided to just fully stop financing Russian origin business. Luckily enough, Citi has not taken this position but it changes daily. If they stop, we will have no other option (the BB can take new Russian material) and if they ask us to buy all back, it would be catastrophic. I know this business makes money and you were considering increasing it but I am afraid that's not going to be possible with the recent events. If things were to deteriorate and we have no reduce the exposure to more appropriate levels, it could jeopardize a lot more than just your PnL…*"

110. Mr Nair replied to Mr Barthelme on 7 March 2022 with a plan for buy-backs and a back-up plan involving locating the in-transit location of stock and "*if the intransit location is closer to a port with LME whse* [warehouse] *we halt the voyage, surrender the BL and will prepare it for warrants and drop*" (this is a reference to liquidating the Nickel at LME warehouses). Mr LeFloch sent an email as part of the same chain on 9 March 2022 saying he had had a call from Citi and Trafigura needed to be prepared to buy-back from them, potentially a material amount, because they had a regulatory constraint on the total physical mark-to-market value of Nickel they could hold. He explained that Trafigura "*cannot really transfer this material to another repo because of the transhipment BLs*". He said that if the price went to $50k/MT, Citi would want Trafigura to buy back 11KT (i.e. a cost of US$550,000,000). Mr LeFloch asked the team to: "*See how much buybacks we can get within the next week without buying new ones. (I doubt we will be able to finance any new BL for now)*" and "*[c]heck the number of BLs close to arrival which we could warrant at destination and drop (or possibly move to another H repo once in storage if there is interest)*". I understand that the reference to "*warrant at destination and drop*" is a reference to having the cargoes transferred into a LME warehouse at their port of destination in exchange for warrants (i.e. liquidating the cargoes).

111. Mr Bhatia replied on 9 March 2022 to the Traders and the Operations Team only, but also copying in Mr Oikonomou (who had not been on the earlier chain) setting out the "*Discussions/Action Plan with UIL and Others so far*". He said there was a reduction plan "*under execution*" involving sales to "*HYT*" (a reference to a buyer, Hang Yue Tong Co., Ltd). He then set out a "*PROPOSED PLAN*" as follows (underlined emphasis added):

> "*A. Moving to HC*
>
> *Discussed with UIL and proposed to move some of cargo on Transhipment port having LME whse (PKL, Singapore, KHH) to warehouses under HC's [holding certificates], this will allow other banks to finance reducing CITI financed cargo.*
>
> *UIL is discussing internally and will come back shortly on this, with our assurance no cargo will be warranted.*
>
> *B. Quicker Churning of existing cargo*

> *Proposal is we finance new BL from UIL – say I KT at 90% of Ni LME. UIL will immediately (within 48 hours) buyback the already priced 2 KT. This helps in reduction of total tonnages as well as Financed and MTM*
>
> *With this every 1KT there will be net reduction of approx. $50mn in financed cargo/MTM immediately…*"

112. Ms Hutton KC argued that this was not a plan from Mr Bhatia to have the cargoes delivered into LME warehouses if not bought back; rather it was a plan to move the cargoes to warehouses where they would be held under holding certificates (HCs), i.e. non-LME warehouses on the express basis of an assurance from Trafigura that no cargo would be deposited into an LME warehouse ("*warranted*"). She submitted that this was Mr Bhatia sticking with the Arrangement and in effect "protecting" the cargoes from deposit at LME warehouses because that would involve inspection (and reveal the truth of what was in the containers).

113. Mr Oikonomou's oral evidence was that at this time Trafigura was pushing UIL to either make delivery of the cargo so they could deliver it into the LME or buy back the cargo. He said that their first port of call was Mr Gupta because at that point they were carrying substantial amounts of stock with him. He said he instructed Mr Bhatia around mid-March to have a discussion with Mr Gupta to propose delivering some stock to LME warehouses rather than selling it back to UIL, and that he and Mr Bhatia had a conference call with Mr Gupta about that very proposal. Mr Oikonomou's evidence was that Mr Gupta was adamant he had "*confirmed onward sales*" and did not want his trades to be disrupted by depositing cargoes into the LME. He said in his statement that he and Mr Bhatia "*continued to push him [Mr Gupta] so that we could find a solution and we were waiting for him to tell us, of the material we were holding, which cargo we could deliver directly to the LME instead of delivering back to UIL, as planned. Specifically, we kept pushing in our communications with Mr Gupta for him to identify cargoes that could be delivered into the LME without interrupting UIL's supposed onward trades, in order to ease the situation with the LME and to ease Trafigura's margin calls*".

114. Ms Hutton KC invited me to find this evidence was untrue based on the 9 March 2022 email from Mr Bhatia, the messages between Mr Oikonomou, Mr Bhatia, Mr Gupta and Mr Rathi, and the responses from Mr Gupta and Mr Rathi to which she took me. She also relied on WhatsApp messages on 14 and 15 March 2022 between Mr Bhatia and Mr Gupta which are said to show Mr Bhatia and Mr Oikonomou "working hard with the Defendants to fend off the risk" of inspections. She relied on the following exchanges between them (1) at 3:12:17 PM on 14 March, "*will need some serious buying back in this week to ensure we don't end up getting into WH [warehouse] etc*"; (2) at 3:42:58 PM on 14 March, "*Pls ask Girdhar to show 2-3K for WH as will help ease out lots of nerves here*"; and (3) at 7:29:35 PM on 15 March, "*Intent to do Warehousing is critical to buy time for everyone... As Socs assured, he will personally ensure nothing is done without your consent. Will need quick confirmation e-mail from Girdhar on same so can keep things under control at our side*".

115. Ms Hutton KC argued that the documentary evidence of the responses from Mr Gupta and Mr Rathi to Mr Oikonomou and Mr Bhatia demonstrate that no real pressure was being put on UIL to sell cargoes to third parties or for warranting in LME warehouses.

Basing herself in the documents and in summary, Ms Hutton KC's argument was that Trafigura's failure to insist on cargoes being delivered into the LME warehouse and their willingness to countenance instead the delivery of cargoes into non-LME warehouses, to be held under HCs demonstrated that they were trying to avoid a course of action that would have revealed the Agreement.

116. This submission was persuasively presented and developed in some detail in the written closing submissions. I cannot accept it. I consider Mr Oikonomou's evidence was plainly truthful. In my judgment, the basic problem with the analysis advanced is that it is based on a false premise. On the evidence (including Mr Gupta's *own* evidence), it is common ground that moving cargoes into a non-LME warehouse, to be held under HCs, would have resulted in the cargoes being unloaded and examined, and therefore would have revealed the existence of the Arrangement. I consider the key point to take from Mr Bhatia's email of 9 March 2022 is therefore precisely the opposite of the one advanced by Ms Hutton HC: he was positively proposing a course of action (moving cargoes into warehouses, to be held under an HC), which would have revealed the existence of the Arrangement, if carried out. If Mr Bhatia was party to the Arrangement, it is inconceivable that he would have made such a proposal. I will continue with events in March 2022 by reference to some further documents.

117. In early March 2022, Mr Rathi sent to Mr Gupta copies of documents in draft before they were to be sent to Trafigura and copies of documents then sent to Trafigura. These included, on 11 March 2022 a draft of an email to be sent to Trafigura concerning reductions in the amount of Nickel being financed by Trafigura (which was in due course sent to Trafigura); and the list of cargoes financed by Trafigura as of 9 March 2022 "*for In-Whse movement*".

118. On 16 March 2022, Mr Bhatia sent Mr Oikonomou a draft letter from UIL Singapore. This had been sent to him by Mr Rathi (and Mr Gupta was copied in). In the letter, UIL Singapore confirmed they were working on repurchasing 3,200 MT of Nickel in the coming weeks, and that they were in discussion with other traders and financiers to provide "offtake" support for an additional 2-3,000 MT, but that they first needed Nickel trading on the LME to resume. Mr Oikonomou said he understood "offtake support" to mean other counterparties whom UIL needed to sell the material to. He regarded this as being of very little value as it was not in his view legally enforceable. Mr Gupta also proposed reducing the position by "rotating cargoes", which involved UIL buying back more cargo from Trafigura than they were due to deliver.

119. On 18 March 2022, there were a series of emails between Mr Rathi and Mr Bhatia (copied to Mr Oikonomou) in which Mr Rathi was proposing to sell some of the cargoes awaiting buy-back by UIL to third parties including Cheongfuli and Axiom Limited ("Axiom"). Again, these emails make no sense if Messrs Bhatia and Oikonomou knew these containers did not in fact contain Nickel. Mr Gupta had no answer in evidence to this point.

120. On 21 March 2022, there was a WhatsApp exchange between Mr Bhatia and Mr Gupta in which Mr Bhatia said "…*Just finished meeting with [trade finance] and post call with Bank… 4kmt needs to be reduced by 25th regardless of drop in prices… They insist we move 1k to [warehouse] to show back stop in business is realistic (can we do at least 1k of [warehouse]?*". This, like many other private communications he had with Mr Gupta and Mr Rathi, demonstrates that Mr Bhatia did not know that there was not

Nickel in the containers. When pressed in cross-examination on this point Mr Gupta was not able to come up with any explanation. He said it "*did not occur to him*" to respond to Mr Bhatia to query why he was proposing the very thing (delivery) that would expose the Arrangement.

121. On 29 March 2022 Mr Gupta sent Mr Oikonomou a WhatsApp message entitled "*Discussion Points with Socs*" and in it he proposed that: UIL would buy back 3,000 MT from Trafigura and, at the same time, UIL would sell 2,000 MT to Trafigura. The idea was that the receivable due from Trafigura to UIL for the 2,000 MT would be set-off; and UIL would make a cash payment for the 1,000 MT difference. This way, UIL were incrementally reducing the exposure. Mr Oikonomou understood the word "rotate" in this message to refer to offsetting different cargoes or rotating the financing between different cargoes and this was not challenged. Also, because of the Russian sanctions imposed after the invasion of Ukraine, Trafigura wanted to sell back to UIL Russian-origin cargo and replace it with non-Russian origin cargo. Mr Gupta's evidence was that "*to avoid a backlog of cargoes at discharge ports (where the risk of inspection was high), Trafigura would encourage the use of offsetting*...". I reject this. Trafigura did not propose the use of offsetting for this reason (in fact, Mr Gupta proposed and encouraged this form of offsetting). I do not accept Trafigura was concerned about the risk of inspection.

122. Mr Gupta also proposed in the "*Discussion Points with Socs*" document reducing UIL's position by using the 'positive margin' of Nickel. Mr Oikonomou's understanding of that proposal (which I accept) was this: Trafigura believed that UIL had delivered Nickel to it; while Trafigura had paid the 'provisional price' for that Nickel, it still had to pay UIL the 'final price' for the Nickel when the buyback trades were closed out; and the 'final price' which was still owed to UIL had increased significantly above the 'provisional price' (because the LME Squeeze had caused the market price of Nickel to increase dramatically). There was therefore a significant amount (i.e. the 'Positive Margin' or positive exposure) that Trafigura owed to UIL. Mr Gupta's proposal was that rather than Trafigura paying that amount to UIL (which would then in effect be paid back to Trafigura under the relevant repurchase contract), UIL would instead buyback the relevant cargo under the repurchase contract without requiring Trafigura to pay the 'final price' under the relevant Master Contracts, and instead would take back an amount of cargo from Trafigura with a cash value equivalent to the Positive Margin.

123. Mr Gupta's evidence was that "*this was only ever a notional plan used to placate Citi*." I do not accept this. In fact, Mr Gupta came up with this proposal, following repeated requests from Trafigura for a plan as to how he intended to reduce the exposure. To state the obvious, this proposal only made sense on the basis that Trafigura believed that it was holding cargo containing Nickel for which provisional payments had been made and for which it still had 'final' payments to make. I accept Mr Oikonomou's evidence that if he (or Mr Bhatia) had known that the cargoes were in fact worthless, they would not have considered this as a positive exposure, and they would not have considered Mr Gupta's proposal.

124. I would add that the "*Discussion Points with Socs*" was a document that Mr Gupta sent to Mr Oikonomou personally, using an encrypted messaging service. At the risk of re-stating the obvious, if the Arrangement had existed, there would have been no reason for him to maintain the pretence to Mr Oikonomou that the cargoes contained Nickel. However, that is what he plainly intended this document to do.

125. I pause here to summarise my conclusions about the period of the LME Short Squeeze. I find the conduct of Messrs Bhatia and Oikonomou as demonstrated by the documents at this time wholly contradicts Mr Gupta's case that the Arrangement existed. As I have identified above with some examples, Mr Gupta's oral evidence failed to address these problems for his case arising on the documents.

Delays in buy-backs in the second half of 2022

126. For the remainder of 2022, the trading relationship between the parties continued to come under strain because of the delay in UIL buying back cargoes from Trafigura. The evidence shows that, from June 2022, when UIL had agreed to buy back the cargoes, they often failed to effect timely payment and sometimes failed to pay at all. This led to material being bought back after arrival at the discharge port, which caused further demurrage costs to be incurred. Instead of buying back the cargoes themselves, UIL arranged for third party buyers. So, Mr Rathi introduced Trafigura to a number of third parties who were potentially to purchase some of these cargoes. These sales were arranged on the basis that UIL would buy back the same cargoes from the relevant third parties in due course. Following such third party introductions, Trafigura entered into (so far as is relevant for present purposes) 10 trades with Argentum. These are the Third Party Trades which give rise to distinct claims in these proceedings.

127. UIL's financial difficulties continued. By early September 2022, Trafigura was taking the buy-back delays extremely seriously and this became a major cause for concern. The evidence shows the Trade Finance Team at Trafigura contacting the Trading Team, asking for a plan from UIL to deal with the cargo at the ports that had been stuck there for a long time. Mr Oikonomou informed Mr Bhatia and Mr Wetterwald of his view that the situation was getting out of control. He was referring to the fact that 8,500 MT of cargo had been at port for over five months and UIL had not yet repurchased it. In his evidence he referred to his WhatsApp exchanges with Mr Bhatia around this time. I will provide an example to provide a flavour. So, in one exchange with Mr Bhatia, he said "*UIL… I need a clear solution on everything… Need everything that is stuck in ports for 5 months to either move or we take delivery*". Again, this would be an odd thing to say to a co-conspirator if they had been colluding in the Arrangement (which delivery would have exposed).

128. As the month moved forward, the concerns became greater. So, on 21 September 2022, Mr Wetterwald wrote to Mr Bhatia, copying Mr Oikonomou:

> "*As discussed repeatedly over the past weeks the situation with UIL is critical and we've made no progress with them. Attached stock ageing report, some of the BLs have been financed for nearly a year and we have no less than 5kmt at disport (some sitting at port for over 3 months) with UIL clearly not able to buy back. Only solution: we take delivery of all stock at disport against surrending BLs and we deliver to LME, offsetting any cost against our positive exposure. Given history we should do that in stages, providing you agree a clear deadline with UIL by Monday next week by which we'll start taking delivery of the cargo in 500mt tranches.*"

The missing CoAs

129. On the following day Mr Wetterwald raised the issue of the CoA's and insurance certificates with Mr Bhatia (copying Mr Jain):

> "*I understand from [Mr Jain] today that several payments have been authorized to UIL without COAs (undermining our ability to deliver to LME) as well as without insurance certificates (!)*
>
> *Please advise*
>
> *1) whether above is correct and if so we need the breakdown of BLs that are pending either COA or insurance certificate immediately.*
>
> *2) who authorized these payments to be done against contract?*
>
> *I will call you with Socs tomorrow Geneva open.*"

130. Mr Bhatia responded that *"Insurances are always received"* and added that:

> "*COA were included in contract to cover our interest In case of any requirement. (We never had any interest to deliver to LME when business was initiated and was always last resort, if ever but still insisted in contracts). Wherever, COA are not available, we always push to clear those cargoes on priority. Exactly reason payments were done only 85-95% to cover our interests*".

131. Mr Jain replied on the issue of CoAs: "As of now we are short of 12.2 KmT of insurances […] For COA's we are short of approx. – 19.2 KMT". Mr Wetterwald was concerned about this and said "We re missing COAs for 75% of the cargo we paid for? How could payments go through/invoiced get confirmed ??". Mr Nair forwarded that email to Ms Kabanova, Global Head of Operations for Refined Metals. He informed Ms Kabanova that "efforts have been to ask [UIL] to open cargo at transshipment port or collect all cargo since bl is with us and move to warehouse but it is very delayed given lack of intent". Mr Nair is not said to have been aware of the Arrangement but he described a "fear of what will happen when opened".

132. The missing CoAs form an important part of Mr Gupta's case on alleged red flags. As appears in more detail below at Section F, the Master Contracts required payment to be made against (amongst other documents) "Certificates of analysis/quality", the CoAs. It is common ground that Trafigura nevertheless made payment for the buy-back trades without requiring or receiving CoAs. Ms Hutton KC relied on evidence of Mr Nair that, at the instance of Mr Bhatia, CoAs were not required in relation to buy-back trades in approximately 2019, which she says coincides with the inception date of the Arrangement. She also relied on other witness statements from Trafigura personnel in this regard including the statements served by Trafigura for the Discharge Application. Mr Nair's statement on this was also put to Mr Oikonomou in cross-examination. The statement was to the effect that Mr Bhatia had told the Operations Team in approximately 2019 that CoAs were not required for the buy-back trades, and he did not disagree.

133. Mr Bhatia said in his witness statement that this was "*not unusual*" because "*obtaining and checking these documents, which could be multiple pages long, could take time and cause delays*". Mr Hutton KC argued that little or no weight should be given to Mr Bhatia's explanation and that on this issue, the evidence is shown to be untrue by: the fact that COAs were required for the direct trades; and the reaction of the Trading Team who did not know about the Arrangement when they learned that CoAs had not been provided. She relied in particular on Mr Wetterwald's response (which I have set out above) on learning of this on 22 September 2022 and on Mr Nair's fears of what would be discovered on inspection.

134. In my judgment, the fact that Trafigura paid the provisional price due under the buy-back trades without receiving CoAs confirming that the cargoes were Nickel does not support the existence of the Arrangement for a number of reasons. First, Trafigura itself on-sold the relevant cargoes to Citi without in general providing Citi with any CoAs. The absence of CoAs is not therefore amongst the indicia of the existence of or participation in the Arrangement, nor indeed evidence of non-standard market practice. There is no suggestion or evidence that Citi knew of or was part of the Arrangement; and yet Citi financed the cargoes without generally requiring CoAs. Citi, like Trafigura, had no reason to suppose the cargoes were not Nickel; and Citi, like Trafigura, doubtless believed they were adequately secured by their possession of the original BLs, which expressly described the cargoes they were financing as Nickel. Citi, just like Trafigura, therefore had no reason to demand CoAs, and the fact neither generally did so is not suspicious or surprising. Second, Trafigura had no particular need for the CoAs before making payment. The relevant cargoes were at sea. Trafigura had no way to check that the cargo corresponded to the CoAs; and so, while CoAs might have given a further level of documentary comfort, in the real world they would not materially enhance Trafigura's security position. Rather, Trafigura believed it was adequately secured because it had received original BLs giving them title to what UIL had expressly promised would be, and was expressly described in the documents of title as being, Nickel.

135. Finally, and in any event, it is clear from the documents that when Trafigura was provided with the CoAs in respect of a particular shipment, UIL supplied apparently conforming CoAs from the manufacturer, showing that the relevant lots did indeed consist of pure Nickel - even when it is now clear that the relevant cargo in fact consisted of stainless steel sheets. I was taken by Mr Peters KC to an example of this which was the shipment sold by D7 under BL EGLV520200051099. So, when called upon to do so, UIL were willing and able to produce CoAs, which indicated (falsely) that the relevant cargoes did consist of Nickel. I also accept Trafigura's submission that CoAs were of no real utility in the context of dealings that both sides agree were supposed to operate as transit financing (particularly in circumstances where the CoAs themselves could not be correlated with a particular cargo without inspecting it and checking the individual parcels of Nickel). Finally, Mr Gupta's case fails to account for the contemporaneous email of 18 March 2019 (relied on by Mr Gupta himself in his evidence) that showed Mr Paliwal of Trafigura (not alleged to have known of the Arrangement) telling Mr Rathi that the provision of CoAs was only a general requirement for <u>non</u>-LME-grade cargoes, including de-listed brands.

136. For completeness on the issue of COAs, I must address Ms Hutton KC's submission that Mr Oikonomou lied in his evidence about when he discovered the absence of the

COAs. I do not accept this. A number of matters were relied on in support of this submission. First, that Mr Oikonomou said in his witness statement that he had learned about the absence of COAs at "*around the time of the November inspection*". Ms Hutton KC relied on an email chain to which Mr Oikonomou was party from September 2022, in which the point about the absence of COAs was made. Second, she also relied on: (a) Mr Oikonomou's statement that he made internal enquiries, which must have meant he learned the true position and (b) the absence of any email or WhatsApp response from him showing when he learned the truth - which Ms Hutton KC submitted was incomprehensible unless he had always known the true position. I have found Mr Oikonomou to be an honest witness. I do not accept he lied to me because he chose to describe the period when he gained knowledge of time as "*around this time*" (9 November 2022) rather than several weeks earlier. There was no advantage to him suggesting he learned of the CoAs later than he really did, by a matter of a few weeks. It would be a self-harming and pointless exercise. I accept his evidence that when he learned of the absence, he was surprised because it indicated that the Operations Team had not followed protocol. He had expected UIL to provide all documents required under the contracts before Trafigura paid UIL for the cargoes.

137. I conclude that the absence of CoAs does not assist Mr Gupta's case in seeking to prove the existence of the Arrangement.

Incorrect HS Codes

138. This is also an alleged red flag relied upon by Mr Gupta. The '*Harmonised System*' is a standardised numerical method of classifying products in international trade. Different types of goods are given different '*HS Codes*', which are used by countries around the world to identify and describe products for purposes such as assessing customs duties and gathering import/export statistics. Mr Gupta's case at the start of trial was essentially as follows. First, the HS Codes that appeared on the BLs for cargoes subject to the Arrangement would generally be '75089090', which is the HS Code for '*other articles of nickel and nickel alloy*', not refined nickel. Secondly, while Trafigura would correct the HS Codes on draft BLs supplied by the UIL for <u>non</u>-buy-back cargoes (*i.e.*, where it was purchasing Nickel for its own trading), Trafigura would not do so for buy-back cargoes. This, it was said, shows that the Operations Department at Trafigura knew of the Arrangement and that UIL were not in the latter case supplying Nickel.

139. I do not accept these points for the following reasons:

(1) There is no dispute that the BLs sent by UIL to Trafigura stated on their face that the cargo being shipped was Nickel of an LME specified brand and shape (that is, LME Grade Nickel). Simply reading the product description on the BLs would therefore give the clear impression that Nickel was being shipped. If the Arrangement existed, there is no conceivable reason why UIL and Trafigura should - despite those other false representations on the face of the BLs (and in the other commercial documents including insurance certificates) - have nonetheless agreed that the HS Code for a *different* type of nickel product should be used.

(2) Practices in relation to the HS Codes to be used for exports or imports vary from country to country, and I accept that Trafigura's Operations Team personnel who worked on UIL's account did not keep an encyclopaedic knowledge of every

eight-digit HS Code in their heads. A discrepancy with the HS Code would not immediately leap out to personnel and demand explanation.

(3) As each member of the Trafigura's Operations Team has explained, HS Codes were of no real significance to Trafigura in the context of the buy-back trades. They might be important for clearing the cargoes through customs at the load or discharge port, but they were not important when Trafigura was meant to be financing the cargoes only *between* the load and discharge ports. The team therefore had no particular reason to check or be concerned by the HS Codes, especially when the bills of lading said on their face that what was being shipped was Nickel.

(4) I would add that the suggestion that Trafigura's approach to HS Codes was suspicious or did not reflect standard market practice, and instead is conduct consistent with participation in the Arrangement, is contradicted by the fact that there is no evidence or suggestion that anyone at Citi—to whom Trafigura transferred the BLs for the buy-back cargoes by way of security for Trafigura's own financing arrangements with Citi—raised any issues with the HS Codes either. Since no-one suggests Citi knew of or participated in the Arrangement, and since Trafigura and Citi's approach to HS Codes seems to have been no different, it is hard to see how HS Codes can be indicia of the existence of or participation in the Arrangement. The incorrect HS Codes were plainly not a red flag.

(5) Finally, the fact that, on occasion, Trafigura's Operations Team *did* send comments on the HS Codes on some draft BLs proves nothing. In every such instance identified by Mr Gupta, Trafigura was on-selling to its own customers, who, because they would need to import the cargo once it reached the disport, had themselves commented on the HS Code needed (or not needed: sometimes the customer asked for the code to be removed entirely) for that jurisdiction. Trafigura simply passed on those comments to UIL. Trafigura, however, had no need to do likewise with the buy-back cargoes that it was financing because its expectation was that it would not be responsible for their import. That was a matter for UIL and if they were happy with the HS Codes they had caused to be given on their bills, then Trafigura had no reason to remark or dissent.

140. In my judgment, the fact of incorrect HS Codes does not assist Mr Gupta's case that the Arrangement existed. At most, the incorrect codes show Trafigura's Operations Team failing to question UIL about the HS Codes they had given for cargoes that they and Trafigura both anticipated would be bought back by them anyway. And of course Mr Gupta does not now allege the Operations Team knew of the Arrangement.

141. I would add that Mr Pillow KC was right to identify that no case on HS codes (or their relevance to the existence of the Arrangement) was put to Mr Oikonomou. The case on HS codes is technically no longer open to the Defendants but for the reasons I have given I consider that it is any event without merit. I return to the chronological narrative.

The UD Progress Report: October 2022

142. Mr Oikonomou continued to ask Mr Bhatia to put pressure on Mr Gupta to present his buyback plan to Trafigura. On 22 October 2022, Mr Gupta sent Mr Oikonomou (via

WhatsApp) a document called the "UD Progress Report" in PowerPoint form. This was, in effect, a buy-back plan, the detail of which I address further below. In his oral evidence, Mr Gupta did not accept approving this report. He said this was because he did not handle "*day to day operations*". As in other respects, I find that this was an attempt by him to distance himself from the contents of the report, which he clearly approved some 10 days in advance: the evidence shows that Mr Gupta requested a "note" from Mr Rathi on 12 October 2022, the text of which became the UD Progress Report.

143. The material parts of the UD Progress Report include the following text:

"Business Background

- In May 2018 – UD started business with Trafigura on inventory credit with USD 10 million of initial transaction (780MT Nickel Briquettes) that Increase further after few transactions.

- A total of 17,417MT Nickel sourced on credit through Trafigura (USD 218 million) in 2018.

- At peak, Trafigura has supplied 30000MT Nickel for UD on credit that the Company reduced over a period of time considering market volatility.

Summary of Volumes done with Trafigura:

Year	**MT**	**Amount (in USD Mn)**
2018	17,417	218.26
2019	38,601	510.09
2020	57,222	804.15
2021	69,165	1,288.35
2022 (till date)	27,564	679.25
TOTAL	**209,969**	**3,500.10**

Immediate Past

- In March 2022, Nickel prices increase to USD 100K per MT. At that moment, Trafigura were holding 26200MT

> Nickel for supply to UD. The Company managed to bring it down to 22500MT level by end of June 2022.
>
> - As of 30th Sept 2022, the Company's pending purchase exposure with Trafigura is close to 25000MT Nickel.
>
> …
>
> Plan Ahead
>
> Irrespective of above challenges, UD's idea is to bring these purchase obligations down on the following stages:
>
> - by end of December 2022: from 25000MT Nickel to 22000MT (reduction of 3000MT value USD 70 million);
>
> - by March 2023 – from 22,000MT down to 20000MT (reduction of more 2000MT value USD 45 million);
>
> - further reduction to 18000MT over a period of time (to be mutually agreed based on progress of above 2 reductions).
>
> …
>
> Our Request
>
> While UD is working of action plan as per previous slide, we need to ensure that the reduction is done without affecting long-term commitments to our customer. Therefore we request:
>
> (a) Trafigura to allow an amount determined purchase credit limit of USD 500Mn;
>
> (b) Trafigura should allow UD to clear cargos within agreed credit purchase limit as per (a) above; and
>
> (c) Operational flexibilities to be considered for abnormal market fluctuations such as price spike in March 2022 to avoid any adverse business impact."

144. I start by noting that it was not in issue that the volumes of "UD" trading in this report include the trades of each of the UIL companies (D2-D8) as being those of what was called "UD". It is clear why Mr Gupta sought to distance himself from this report. This was an encrypted communication being sent only to a person said to be a party to the Arrangement, Mr Oikonomou, yet it clearly represented that the UD companies had been selling Nickel and not something else to Trafigura. That representation makes no sense if Mr Oikonomou was in on the dishonest arrangement. I found wholly unconvincing Mr Gupta's explanation, never mentioned in any earlier evidence, that the falsities in the report were stated because it was for the Trafigura Trade Finance Team's consumption or the report was in a form requested by Mr Bhatia. In short, the

contents of the UD Progress Report are wholly inconsistent with the existence of the Arrangement.

Requests for inspections from Citi: October 2022

145. In October 2022, the Trade Finance Team informed Mr Oikonomou that Citi was conducting an internal review of the financing line. They also said that Citi had stated, during a call on 21 October 2022, that if they decided to renew the financing, they would want to inspect some of the containers of Nickel and/or to supervise the loading of the cargoes going forward. By this point in time, Mr Oikonomou understood that Citi would refuse to "roll-over" the financing if Trafigura did not start to carry out inspections.

146. After he had received the UD Progress Report, Mr Oikonomou spoke to Mr Gupta on 22 October 2022 and informed him of Citi's request for an inspection. They agreed on the call that an inspection of 20% of the cargo that was being held at port at that time could take place. Mr Oikonomou also suggested to Mr Gupta that, going forward, and in order to satisfy Citi's requirement that there be some inspections at loading, 20% of all new containers would be inspected by a surveyor appointed by Trafigura. The surveyors he suggested were SGS and AHK. They are independent surveyors and are widely used by many market participants. Mr Gupta agreed to this on the call.

147. On 24 October 2022 (at 12:18), Mr Barthelme emailed Mr Oikonomou as follows:

> "*We had Citi on a call again on Friday, we told them we would be sharing a plan shortly. They are insisting on inspections, which we will have to do on the containers that are arriving at port. This is key for them and we can't avoid it this time. We have $70mn of loans rolling this Friday and approx. $430mn on the 4th of Nov. They will likely refuse to roll if we haven't done any inspections (which they can do), meaning we will have to buy it all back, which we don't want. Then the question is do we want to get them involved in the inspection process. It will give them greater comfort if they are (ie if they still finance the containers which are checked) but if we find no materials or if there is an issue, they will know immediately and who knows how they will react. We can decide to buy back and then do the checks but it might looks suspicious. Let me know on the plan and confirmation that we can inspect the containers arriving. Then we can decide if we involve Citi or not*".

148. Mr Oikonomou replied to that email on 24 October 2022 (at 16:29), stating (insofar as relevant):

> "*We are finalising today a list of containers that are in transhipment ports (approximately 20% of the total stock) that will be moved to a warehouse for immediate inspection. I will revert with more details on the last point once we have all the details*."

149. Mr Barthelme replied stating (insofar as material):

> "*The inspection plan looks ok, as you mentioned, we are currently working with them on the total list of containers that we could inspect (based on logistics since it takes min a week to move the containers) and then we will chose some that need to be inspected. Total inspection will cover ~20% of the current volumes.*"

150. At around the time of this email discussion between Mr Barthelme and Mr Oikonomou, Mr Bhatia sent the following WhatsApp messages to Mr Gupta:

> "*24/10/2022, 14:27 - HB: PIs advise on container as need to inform GVA [Geneva] accordingly*
>
> *25/10/2022, 12:53 - HB: Sir - pls revert on container details. Our guys met yesterday and meeting bank later today/tom @ LME.. Container details awaited.*"

151. On 27 October 2022, before any inspection had taken place, Citi notified Trafigura that it would cease financing Trafigura's trades with UIL with immediate effect. Christophe Salmon (the CFO) then emailed various Trafigura employees including Messrs Barthelme and Oikonomou stating, amongst other things, that "*Citi is terminating the Ni repo business with UIL related bills of lading with immediate effect*". Following 4 November 2022, after all of Citi's positions had matured, Trafigura financed the UIL buy-back trades itself.

152. The withdrawal of Citi on 27 October 2022 did not however mean that Trafigura halted the process for inspection. I am satisfied the evidence shows both Mr Bhatia and Mr Oikonomou going full steam ahead with this. That is far from action consistent with the Arrangement they are said to have authored and participated in.

Process for identifying cargoes for inspection

153. Following the 22 October 2022 call between Mr Oikonomou and Mr Gupta, Mr Gupta agreed that they would coordinate to identify 500-600MT of cargo for inspection. Mr Oikonomou instructed Mr Bhatia to ask the Trafigura Operations Team to put together a list of containers that could be inspected. This was based on the location of the containers, being those containers that were at discharge ports. The intention was then for the UIL and Trafigura Operations Teams to coordinate to identify specific cargoes that UIL had not committed to sell on to its customers. However, it took almost two weeks for these teams to reach agreement on this list. Mr Oikonomou chased Mr Gupta on an almost daily basis for a response. Mr Gupta's evidence, which I reject as dishonest, is that the only reason Trafigura contacted him and others at UIL about these matters was because Trafigura wanted UIL to help identify cargoes which held Nickel. I have found that Mr Oikonomou was not aware that any cargoes did not contain Nickel at this time. In my judgment, the evidence shows that UIL was plainly stalling and playing for time so as to avoid exposure of what was in fact in the containers.

154. Further, I accept Mr Oikonomou's evidence that Trafigura was asking UIL to identify cargoes in order to minimise disruption to UIL's business of claimed onward customer

sales of the Nickel (a matter repeatedly invoked by Mr Gupta). I note that, contractually, Trafigura did not need UIL's approval to remove cargo for inspection, but, due to the repeated warnings from Mr Gupta about not interrupting his business (these claimed onward sales), Trafigura felt given their good working relationship they had to inform him that they were planning on removing cargo for inspection. It was not in issue before me that it could take between one or two weeks to remove a container for inspection, to inspect the cargo, and subsequently to re-seal the container and return it to the warehouse.

155. By 31 October 2022, Mr Rathi had identified two cargoes he was content to be inspected - but only, it is clear on the evidence, by the agency UIL had selected for that purpose: Trans Border Safety Control LLC. However, by 4 November 2022, he was strongly objecting to Trafigura taking steps to move these same cargoes into a warehouse for inspection. I accept Mr Pillow KC's submission that there is only one change of circumstance that could have provoked this *volte face* - namely, Trafigura's insistence that the inspection be carried out by its own nominated inspectors, and not Trans Border Safety Control LLC - which had been de-listed (and penalised) by the Indian authorities for previous mis-declarations in certificates it had issued. I conclude from the contemporaneous documents evidencing this episode that Mr Rathi had planned for UIL to obtain a false inspection report from a 'friendly' inspector, and only objected to inspections once that plan unravelled. It is also clear that Mr Gupta knew of this plan; and, in his affidavit evidence in support of the Discharge Application, deliberately twisted it to pretend that it was *Trafigura's* idea to obtain a false inspection report in this manner. I note that this assertion did not appear in his trial evidence.

Messages with Mr Gupta before the eventual inspection

156. On 7 November 2022, Mr Oikonomou informed Mr Gupta (via WhatsApp) that Trafigura would proceed to inspect "*the 20 containers that we agreed two weeks ago*". By this point in time, the difficulties between Trafigura and UIL had led Mr Gupta to message Mr Bhatia and suggest that they had to exit "*gracefully*" from the relationship. This message to Mr Bhatia (forwarded by him to Mr Oikonomou without comment), is hardly consistent with joint knowledge that a massive fraud to which they were party (but which had been kept secret from everyone else at Trafigura) was soon to be exposed.

157. Mr Gupta referred in his evidence to a WhatsApp exchange between himself and Mr Bhatia on 7 November 2022 in which Mr Bhatia said: "*Pls ask ur team to support on these .. one Ni is seen, Socs will be able to hold for future inspection basis your reduction plan ... That's my view.*". Mr Gupta's case is that this meant if Nickel was simply "seen", that would be enough to enable other cargoes being prevented from being inspected, and allow UIL to raise funds to buy back the remaining cargoes (and so, the Arrangement would not be exposed). Mr Gupta also relied on a message he sent to Mr Oikonomou on 7 November 2022, saying: "*I would need you to stall the inspection of the above mentioned cargo's in order to avoid any issues between us.*" Mr Gupta stated that he knew that Mr Oikonomou would "*read between the lines*" (that is appreciate the containers would not contain Nickel). Mr Oikonomou was cross-examined on these exchanges and I accept his evidence in relation to them as I summarise below. Had he been party to the Arrangement, these exchanges with Mr Gupta in a private encrypted medium make no sense. Mr Oikonomou plainly did not know that there would be no Nickel found in the containers, if inspected.

158. Mr Oikonomou said that he could not understand the reason for the delay in providing cargoes for inspection and asked Mr Gupta by phone why this was. He was told by Mr Gupta that because the cargo had been on the water for so long, he feared that some of the bundles and the packaging of the cathodes may have broken. He also said he feared that if Citi found out that the Nickel was not packaged properly, they would walk away from the financing. Mr Oikonomou replied that this was not a problem and that it was normal for bundles to break in transit for various reasons and that it was standard practice to re-bundle before delivering to the LME, if required. He also informed Mr Gupta that Trafigura would go ahead with the inspection and explain to Citi that they would re-bundle the cargo if any bundles were found to be broken. Mr Gupta said this was fine. In these circumstances, in my judgment, Mr Oikonomou fairly assumed Mr Gupta's reference to "*issues between us*" in his WhatsApp message was to this concern about the bundles breaking in transit. The "*issue*" was plainly not a concern that the containers would not contain Nickel.

159. Mr Oikonomou responded to Mr Gupta's WhatsApp on 7 November 2022, stating: "*We will not proceed with any further inspections apart from the 20 containers that we agreed two weeks ago. I have informed Harsh of the same.*" I accept Mr Oikonomou's explanation that this limitation on the inspections was because he did not want to interrupt Mr Gupta's business and the agreement they had reached by this point was for the inspection of 20 containers. His priority at the time was ensuring that the inspection went ahead. That, again, is wholly inconsistent with the Arrangement.

Eventual inspection on 9 November 2022

160. Trafigura organised the inspection for 9 November 2022 in Rotterdam. It inspected a sample of containers that it had previously bought from D5, but which had since been sold back to D3. Had Mr Oikonomou wanted to avoid inspection of these containers he had a complete excuse given this buy-back. The inspection however went ahead and it was discovered that they contained what appeared to be carbon steel, rather than Nickel cathodes as the BL had specified.

161. On 10 November 2022, and in response to this revelation, Mr Oikonomou contacted Mr Gupta and asked him when he was available to talk. Mr Gupta said that he was "*in between medical checks*" but that he would call as soon as he was finished. I will return to Mr Gupta's claimed medical issues below.

162. When they eventually spoke, Mr Oikonomou confronted Mr Gupta about the results of the inspection and asked for an explanation. Mr Gupta expressed surprise at the findings. He said that his expectation was that some of the containers Trafigura inspected contained what he called a "*retreated high-grade nickel alloy*" (an entirely different product to Nickel) but none of them should have contained steel. Mr Oikonomou identified a real problem, but I accept he had not appreciated the scale of the problem at this time. Mr Gupta said he would need to verify Trafigura's findings with what he called his "*aggregators*" (which Mr Oikonomou understood to mean the UIL corporate entities) and that he would ask them why the containers contained different material to that which he was expecting. Mr Gupta said he would check the position and get back to Mr Oikonomou. During the discussion, Mr Gupta was apologetic and indicated that he had simply "*lost track*" of where the containers were and what they contained. I find Mr Gupta's explanations were lies. He had been found out and he was playing for time.

163. Mr Oikonomou made urgent arrangements to meet Mr Gupta in Dubai accompanied by his manager, Mr De Olazaval. At the same time he sent Mr Wetterwald (a Geneva-based Trafigura trader described as Mr Oikonomou's "right hand man") to Singapore to meet Mr Rathi, together with Mr Bhatia.

Meeting between Mr Rathi, Mr Bhatia and Mr Wetterwald in Singapore, 14–18 November 2022

164. Over the course of a number of days these participants discussed UIL's payment plan and how they were going to clear the cargoes that were stuck at port and were not being bought back. The Trafigura representatives also repeatedly asked Mr Rathi about the 20 containers that had been opened in Rotterdam, and how many additional containers Trafigura should expect not to contain Nickel. They wanted to understand what their exposure was and how many containers were affected. At this point, Mr Bhatia was hoping that the problem only related to the containers that had been inspected in Rotterdam, and did not extend to the rest of the cargo subject to the transit financing arrangement. Mr Rathi did not give a clear answer to any of these questions during the meetings, which were very tense.

165. After the second day, Mr Wetterwald had to leave as he had other commitments, but Mr Bhatia was asked by him and Mr Oikonomou to stay in Singapore to try to get some straight answers from UIL. The idea was if he remained in UIL's offices, this would put pressure on them to come up with a solution. I reject as false Mr Gupta's evidence that Mr Bhatia stayed in Singapore after Mr Wetterwald left so that he could discuss the Arrangement freely with Mr Rathi and work out how to keep it from being exposed. Based on the documentary evidence I have summarised above, I have already found that Mr Bhatia had no knowledge of the fraud being practised on Trafigura. His actions and communications throughout show him pressing for inspections in an ever more desperate fashion.

166. Mr Wetterwald told Mr Oikonomou that the meetings with Mr Rathi were going nowhere and they were unable to get any information about what was in what containers. On 17 November 2022, Mr Bhatia sent Mr Oikonomou a WhatsApp message informing him he was still in the UIL Singapore office and that UIL were working on collecting the container data. Later that day, he sent Mr Oikonomou a photograph of an excel spreadsheet which showed what was called a broad "*tonnage break-up*", and said UIL was working on CoAs and a detailed cargo break-up. At that point, the break-up was showing 4,400 tonnes of carbon steel and 20,700 tonnes of nickel alloy. This was an early iteration of what became the "Materials Spreadsheet" to which I make reference below at [174]-[175].

167. Ultimately, Mr Bhatia informed Mr Oikonomou that Mr Rathi still had not provided him with an explanation for what had happened during the inspection and had told him that Mr Gupta would obtain the information they were seeking from the aggregators. In short, the Singapore meetings did not move matters forward at all from the perspective of Trafigura. I turn to the meeting of senior personnel on the Trafigura and UIL sides which took place at the same time in Dubai.

Meeting at Trafigura's office in Dubai on 15 November 2022

168. This meeting is significant for a number of reasons, including the reliance by Mr Gupta on Trafigura's actions at the meeting as an affirmation of the Master Contracts and/or the Main Trades, precluding the rescission claims. The attendees were Mr Oikonomou, Mr De Olazaval (Mr Oikonomou's manager), Mr Gupta, and a newly introduced person, Arvind Prasad ("Mr Prasad"). Mr Prasad was described at the meeting as Mr Gupta's long-term partner. In Mr Gupta's evidence to me he was referred to as the "Managing Director of UIL". He will appear again later in the narrative as the conveyor of settlement offers to Trafigura.

169. There is a contemporaneous note ("the Note") of this meeting which was made by Mr De Olazaval. The Note strongly corroborates Mr Oikonomou's oral evidence, which I accept over Mr Gupta's evidence as to what took place at this meeting. It is also significant that Mr Oikonomou's evidence in the WFO application served before this Note was seen by him is wholly consistent with the Note.

170. The objective of the meeting was for Trafigura to understand directly from Mr Gupta what had happened, following the discovery at the inspection in Rotterdam on 9 November 2022. Trafigura also wished to urgently obtain more information about what exactly they were sitting on in terms of cargoes supplied to them by UIL. This would enable an assessment of risk. They also wanted to ascertain Mr Gupta's plans for repayment and to explore what collateral he might provide to cover Trafigura's substantial financial exposure. Their tone during the meeting was firm, and Mr Gupta came across as extremely apologetic and acknowledged that there was an issue which needed to be resolved.

171. During the meeting, Mr Gupta explained that he had entered into an agreement with his "partner" in India, who he said was a majority owner in a steel mill in India that Mr Gupta had invested in. Mr Gupta said that pursuant to that agreement, he undertook to ship Nickel which was of Russian origin to India, which his partner was then supposed to smelt into an alloy. He said this smelting process was intended to change the composition of the resulting metal to approximately between 60 to 85% nickel (as opposed to the 99.8% required by the Master Contracts). The objective behind this was said to be to change the origin of the metal from Russian origin to an Indian (or at least non-Russian) re-treated alloy, at a time when Russian-origin material was becoming hard to sell in the market and difficult to obtain financing for from banks. Mr Gupta said that the reason he delivered this to Trafigura was because Citi was threatening to walk away if UIL provided nickel of Russian origin. His solution was therefore to smelt the Russian-origin nickel to create a different material and deliver that material to Trafigura. Mr Oikonomou concluded at the time that this explanation did not make much sense. As he explained in evidence to me, smelting Nickel into an alloy makes no sense commercially because one will incur additional costs in processing and acquiring the other material to smelt it with. The overall reduction in purity would mean that the end product would also be sold at a discounted price. Mr Gupta also stated that his belief was that the BLs which Trafigura held would comprise about 20KT of nickel alloy and around 5KT of "*other material*". He explained that the containers had been at sea for a long time and so he could not immediately inform Trafigura which containers contained what material, but that Mr Rathi would send Trafigura that information in due course. Mr Gupta stated that he had been "*crossed*" by his partner in India, who appeared to have "*swapped*" the materials. He indicated to Mr De Olazaval and Mr Oikonomou that he thought the fact that he could not travel to India enabled his partner

to easily swap out the material in this way. Mr Gupta was not admitting any fraud by UIL. Rather, he portrayed himself as a victim of fraud at the hands of his Indian partner.

172. Unsurprisingly, the Trafigura representatives were rather concerned by this explanation of the Indian partner's actions. When they asked Mr Gupta how he intended to resolve the issue, he and Mr Prasad offered to provide security to Trafigura while they put in place a phased repayment plan to pay back to Trafigura the money it had paid for the cargoes it was still holding. Mr Gupta and Mr Prasad said they would share the details of the security but that broadly, they would be able to pay between US$25 million – US$50 million before the end of November 2022 and another US$25 million – US$50 million before the end of December 2022. Trafigura's understanding at the time was that Mr Gupta was offering to buy back all of the material and that this would merely be the first payment towards that end (the total sums due being in the region of US$500 million). No agreement was reached at this meeting under which Trafigura would compromise its claims. Matters were still very much at the investigative stage.

173. I find the explanation given by Mr Gupta at the meeting for the failure of UIL to supply Nickel as they had contracted to do (the "crossing" Indian partner story), was wholly untruthful. Portraying UIL as the victim of his Indian partner's fraud was Mr Gupta playing for time and seeking to blame others when it looked like he might have been found out. As I said to Mr Legg during his closing submissions, when he addressed his client's case on affirmation, insofar as Mr Gupta seeks to rely on what he says was agreed by Trafigura at this meeting as an act of affirmation, that is not a particularly attractive submission when Mr Gupta was in fact being untruthful in his explanation of why Nickel had not been supplied.

The Materials Spreadsheet: working out what was in fact in the containers

174. Between mid-November 2022 and 7 December 2022, Mr Bhatia and Mr Oikonomou pressed Mr Gupta repeatedly for a breakdown of what material was in the containers. The messages show that Mr Bhatia applied almost daily pressure on Mr Gupta to disclose this information. Mr Bhatia's messages to Mr Gupta show him becoming more and more desperate for a solution and the true picture slowly dawning on him. Those messages are wholly inconsistent with Mr Bhatia being a participant in the Arrangement. Mr Bhatia's increasingly desperate and candid exchanges with an alleged co-conspirator make no sense if he was in on the fraud. Mr Bhatia did his best to force an inspection in these messages while Mr Gupta sought to put him off from "…*this inspection nonsense*" (7 November 2022 to Mr Bhatia).

175. As I have noted above, on 17 November 2022, Mr Bhatia sent Mr Oikonomou a "*Broad tonnage breakup*", which was an Excel spreadsheet indicating that the containers shipped to Trafigura comprised 4,400 tonnes of carbon steel and 20,700 tonnes of nickel alloy. Over the following weeks, Mr Bhatia continued to press Mr Gupta for a more detailed breakdown of the material in the containers.

176. Internally within UIL they had around this time prepared an earlier iteration of what became the Materials Spreadsheet sent on 8 December 2022 to Trafigura. This early iteration was attached to a later email (one of the rare internal emails in the trial bundle from the UIL side) dated 30 November 2022. It was sent by Mr Rathi to various persons in UIL as a response to information they appear to have requested. The attachment (what I have called the early iteration) is a table. It includes 93 of the trades in issue in

this claim and shows that within UIL they had a record under the heading "Material" of what was in the cargoes that had been sold to Trafigura as Nickel. That material is described in most cases as stainless steel, a few instances of iron briquettes and a few instances of aluminium. It shows Mr Rathi was able to work out with some speed and with some precision what was actually in these cargoes. This version of the spreadsheet was not sent to Trafigura.

177. In the version which was sent to Mr Bhatia on 8 December 2022 ("the Materials Spreadsheet" - a document entitled "*Cargo details – Traf*") someone within UIL had changed the contents under the Column P, "Materials", heading. In broad terms, the change between the two iterations can be summarised as follows: "aluminium" remained the same, "iron briquettes" were changed to "carbon steel", and "stainless steel" was changed to "nickel alloys" (none of the cargoes were identified as Nickel).

178. Mr Peters KC made the fair observation that it is hard to see why UIL would need to doctor the Materials Spreadsheet in this way if it were true that Trafigura knew (in the persons of Messrs Bhatia and Oikonomou) that the cargoes did not in fact contain Nickel. I find that the reason for the change can only have been to give support to Mr Gupta's lie in the 17 November 2022 meeting about the containers containing "nickel alloys"- it was plainly intended to bolster Mr Gupta's story. I find that the amendments made to the first iteration to create the Materials Spreadsheet were made (as a matter of obvious inference) on Mr Gupta's direction to someone within UIL, likely Mr Rathi. There can be no other candidate as the originator of this doctoring programme. What Trafigura was being told as at 8 December 2022 in the Materials Spreadsheet was untrue. That poses substantial problems for any case that Trafigura's steps in this period were informed acts of affirmation, precluding rescission.

179. For completeness, I should record that the Materials Spreadsheet covers *all* cargoes sold by the UIL companies and not just those sold by D2-D5. It identifies each selling UIL company by name. It supports Trafigura's case that Mr Gupta was acting on behalf of all the UIL companies without distinctions between D2-D5 and D6-D8.

180. Having received the Materials Spreadsheet on 8 December 2022, Mr Bhatia and Mr Oikonomou were understandably alarmed. Trafigura had paid many millions of dollars in buying cargoes of Nickel, which were now being represented as a variety of other low value metals. Their first reaction was to ascertain the financial consequences and they asked one of their metals traders to liaise with Trafigura's Deals Desk to understand the extent of Trafigura's exposure based on the list of materials in column "P" of the Materials Spreadsheet. Mr Oikonomou subsequently shared the exposure figures with Mr De Olazaval, and they discussed the position internally with the division.

181. Following these discussions, Mr Oikonomou spoke to Mr Gupta and asked for the assay reports relating to the claimed nickel alloy (which would assist Trafigura in understanding the value of the alloy, and hence the scale of Trafigura's exposure). Mr Gupta said he had some assay reports, which he was going to try to find. Mr Oikonomou also informed Mr Gupta that Trafigura would need to open and inspect the containers which contained nickel alloy to establish the percentage of nickel contained in the alloy. Mr Gupta did not provide the assay reports.

182. For completeness, I should record that in November and December 2022 Trafigura issued various final invoices in respect of earlier sales for sums around US$50 million. These were said (for the first time in closing submission for Mr Gupta) to be clear affirmations (requiring balancing payments to be made) after the 9 November 2022 inspection and on or after the meetings on 15 November 2022. Mr Gupta also relies on the fact that in December 2022, despite knowing that it had supplied cargo to HYT that was not Nickel and terminating those contracts on 5 December 2022, Trafigura proceeded to sell that cargo, identifying it as Nickel by invoice to D5 and to D7. I will return to these matters under Issue 5. As appears below, well into January 2023, Trafigura was still investigating what was in the containers.

Mr Gupta's claimed medical issues in November 2022

183. Towards the end of Mr Gupta's cross-examination, I made an Order under CPR 39.2 for part of the hearing to be in private because it concerned medical records of Mr Gupta supplied as part of his application to give evidence remotely from Dubai. Those records had been relied on earlier in these proceedings to say that Mr Gupta's heart condition precluded long-haul travel. In advance of trial, the court accordingly directed he could give evidence by remote-link.

184. There is a private transcript of the relevant part of the cross-examination at trial on 28 November 20225 (which identifies the records and their content). In this section of my judgment, I will avoid referring to the content of those medical records but will focus on my conclusions.

185. The background to this issue is to be found in a number of WhatsApp messages in which Mr Gupta said to Messrs Bhatia and Oikonomou that he was suffering from serious cardiac issues including that at this time (in early November 2022) he had just had a heart attack. I refer to the series of WhatsApp messages on this theme sent by Mr Gupta to (i) Mr Bhatia on 3 November 2022 at 08:29:48 and on 4 November 2022 at 12:23:44, on 7 November 2022 at 08:18:35, and on 28 November 2022 at 11:00:35; and (ii) Mr Oikonomou on 7 November 2022 at 06:26:54. In order to provide a flavour of what Mr Gupta was saying on these lines, I will reproduce some of these exchanges:

> "*[20/11/22, 11:14:37 AM] Prateek gupta Dubai New: Gm sir,*
>
> *I'm scheduled to have my surgery in the coming week, so i won't be available next week.*
>
> *[25/11/22, 3:40:00 PM] Harsh Bhatia: Hello Sir.*
>
> *Hope surgery went well and all fine now..*
>
> *Are you back yet ?*
>
> *[26/11/22, 2:36:44 PM] Harsh Bhatia: Hi - hope all well.*
>
> *[26/11/22, 2:37:00 PM] Harsh Bhatia: Let me know when good to speak, just wanted to catch up*
>
> *[26/11/22, 2:38:25 PM] Harsh Bhatia: At your convenience bhai ...*

> *[28/11/22, 11:00:35 AM] Prateek gupta Dubai New: Sir, finished my procedure on Friday.*
>
> *Apparently very complicated took 6hrs for a stenting process due to complications involved.*
>
> *3 blockages tackled which were 100% blocked.*
>
> *3 others will be taken up subsequently.*
>
> *Shifted to the room yesterday.*
>
> *Could i request to text me, if any work, easier than talking.*
>
> *[28/11/22, 11:01:37 AM] Harsh Bhatia: Take care Sir. Just wanted to touch base and enquire abt health*
>
> *being..*
>
> *Glad all going well and wish you God Speed Recovery*
>
> *[28/11/22, 11:01:51 AM] Prateek gupta Dubai New:*
>
> *[28/11/22, 11:02:30 AM] Harsh Bhatia: Socs in touch with you ? All going fine ?*
>
> *[28/11/22, 3:51:48 PM] Harsh Bhatia: By when u expected back/out of office, don't want to disturb while u in hospital*."

186. Based on the material in the private transcript, including Mr Gupta's answers (and refusals to answer Mr Pillow KC's perfectly appropriate questions), I am satisfied that Mr Gupta lied to Messrs Bhatia and Oikonomou in these messages about these claimed cardiac problems and procedures. The lies he told these individuals were: first, that he had been taken to intensive care after suffering a serious heart attack; and, secondly, that he had undergone complex surgery as a result. He had neither been hospitalised nor had any surgical procedure in late 2022 at all.

187. Mr Gupta was prepared to fake serious illness, even to those he now seeks to implicate in his fraud. The only inference is that he told such lies, to people who had no idea about the fraud, to enable him to play for time to work out how to explain to them, and deal with the fallout from the exposure of, what he had done. The fact that he lied to his alleged co-conspirators (Messrs Oikonomou and Bhatia) about this is yet further evidence that there was no Arrangement.

Offers of payment and security and points said to support affirmation

188. Following the 9 November 2022 inspection, and running into January 2023, Mr Gupta and those acting for him put forward a number of offers of payment and security. I note that these were not restricted to offers for D2-D5 but sought to cover all of the UIL companies' liabilities (that is, the offers included D6-D8's liabilities). The detail of these offers was not challenged when Mr Oikonomou gave evidence and I will summarise the position. In making these offers, it is obvious that Mr Gupta appeared to

accept that UIL was liable to Trafigura for the losses incurred in having been sold cargoes which were not Nickel.

189. Mr Prasad contacted Mr Oikonomou by WhatsApp on 15 November 2022 and said that he would provide a "pen drive" containing details of proposed assets which were to be offered by way of security. Those assets included: a renewable energy development project, known as the "Bandhara Wind Project", which was a wind farm in Gujarat, India; an alternative energy platform company called Ultravolt Power Pte. Limited; a project value chain solutions company called Hangji Global Limited; and a group of companies which were identified as the "Group's operating companies for Credit Insurance" - they included TMT Metals AG, TMT Metals (UK) Ltd, TMT Metals, Seychelles, UIL (Singapore) Pte Ltd, UIL Malaysia Ltd and UIL DMCC. Mr Prasad indicated that Hangji Global Limited was worth in the region of $200-250 million and that one of the power projects was worth in the region of $50 million. This offer (which related to the provision of security) was made in the context of guaranteeing Mr Gupta's overarching offer to buy back all of the delivered material. Trafigura concluded that there was insubstantial value in these assets because they were either not generating income, had low cash flows or were illiquid.

190. Mr Oikonomou arranged and attended a further meeting on 30 November 2022 with Mr Prasad in Dubai. Mr Prasad was accompanied by Vipul Choudhari, whom he introduced as the "CFO". During the meeting, Mr Prasad informed them that TMT AG was in the process of raising €50 million through a corporate bond issuance, which would be raised in December, and that TMT AG had lined up an investor for these purposes. Mr Prasad explained that the investor asked for a guarantee, which he was finalising.

191. Mr Bhatia's communications with Mr Gupta on 1 December 2022 show he was extremely worried about the emerging picture using comments such as *"we need to get out of it ASAP as consequences are beyond words"*. When seen in the context of all his communications this is not, as suggested on behalf of Mr Gupta, support for the existence of the Arrangement. Rather, the communications show the enormity of the situation was dawning on Mr Bhatia (who had been the main point of contact with UIL). He, with justification, had become very concerned that what he believed was millions of dollars of Nickel bought by him and his traders might in fact be something else, and UIL was dragging its feet on identifying what was in the containers. The thing he considered they needed "*to get out of*" was this situation and its consequences for him and his employer.

Meeting at the Intercontinental Hotel in Dubai on 9 December 2022

192. On 9 December 2022, Mr Oikonomou, accompanied by Mr Wetterwald, attended another meeting with Mr Gupta at the Intercontinental Hotel, Dubai. Whilst Mr Gupta reiterated that his partner in India was responsible for the non-conforming contents of the containers, he was more focused on the TMT bond issuance to which I have made reference above. In his evidence for the Discharge Application, Mr Gupta said that Mr Wetterwald and Mr Oikonomou informed him that Trafigura was planning to carry out further inspections of cargoes and urged him to identify containers that contained Nickel in Rotterdam. Mr Gupta stated that they told him they would ensure those particular containers would be inspected and that might prevent further action being taken internally. I find that they did not say this. Notably, it is also not now suggested

by Mr Gupta in his new statement of case that Mr Wetterwald knew of the Arrangement. I find that what happened was that Mr Oikonomou informed Mr Gupta that Trafigura was going to proceed with further inspections as there were containers in Rotterdam that they had not yet inspected because they were still being organised. He told him about the inspections as an 'FYI' so he would know that Trafigura would be taking out more containers to inspect.

Investigations as to the contents of the containers

193. On 22 December 2022, in line with the above, Trafigura inspected eight containers in Rotterdam which D6 had supplied to Trafigura. The containers contained carbon steel, rather than Nickel. The Materials Spreadsheet inaccurately recorded the contents of these specific containers in this shipment as "Nickel Alloys". This was the first inspection after 9 November 2022, and was the start of the slow and demanding process by which Trafigura was starting to discover for itself what exactly had been delivered to it.

194. The slowly developing knowledge base within Trafigura is demonstrated by an email chain in December 2022 between senior management in Trafigura, discussing the problem which had been exposed. The chain shows Mr van Leeuwen, the Financial Controller at Trafigura, asking (on 20 December 2022) a number of questions including: "*I need to have a summary/narrative of the nature of the fraud/theft. What happened/what went wrong*?". That was answered by Mr Ahmed, Head of Operations on the same day as follows: "*In response to some of your questions: to clarify there is no formal identification of a fraud/theft to date, once containers are opened will know whether we have an issue*."

195. That is consistent with the evidence at the Discharge Application given by Mirza Reza Ispahani, a member of Trafigura's legal team, who was handling this matter from the middle of December 2022. In short, his evidence was that even well into January 2023, Trafigura did not have knowledge of precisely what had been delivered by UIL and was still trying to figure out the position. He explains that Trafigura spent time in January trying to open containers in various ports. In this regard, it developed and implemented a plan to open more containers throughout January in Rotterdam, Jebel Ali and Kaohsiung. It is obvious that this would amount to a large scale and logistically complex exercise involving hundreds of containers in multiple locations and at various stages of transit. It required Trafigura's legal and operations teams to establish (in conjunction with Stephenson Harwood and local lawyers in the relevant jurisdictions) how and where containers could be opened (whether in the container yard or in bonded warehouses), whether such container openings were required to be carried out in the presence of the relevant customs authorities, the extent to which they required the cooperation of the carriers, whether the shippers would be notified (giving rise to potential tipping off concerns) and whether there would be any adverse legal or regulatory implications for Trafigura if containers were found not to contain Nickel as described in the BLs. Once a decision had been made to open a particular set of containers in a particular location, Trafigura had to make arrangements with the local customs authorities, independent surveyors and the operators of the warehouses in which the material would subsequently be stored. Trafigura also had to send the original BLs by courier to its local representatives. This information gathering process started in the first week of January 2023 and continued through the entire month. I mention

these details because they are relevant to the level of knowledge Trafigura had obtained at this stage.

Meeting in Heathrow on 7 January 2023

196. Mr Oikonomou had a final meeting with Mr Gupta near Heathrow on 7 January 2023, during which he provided updates on various of his offers of security/settlement. At this meeting, Mr Gupta also produced a table (which Mr Oikonomou photographed). The table identified UIL owed about US$516 million to Trafigura. Thereafter, Mr Oikonomou continued to have discussions with Mr Gupta about his various offers, although by that point, Trafigura had concluded that the matter was incapable of settlement. Trafigura started making preparations to issue proceedings against Mr Gupta and UIL. Mr Oikonomou's last exchange with Mr Gupta was on 7 February 2025.

Third party complaints

197. As I have noted above, in order to deal with its inability to buy back cargoes sold to Trafigura, UIL introduced a number of third party buyers to Trafigura. On 12 January 2023, one of these buyers, Axiom, shared an inspection report with Trafigura from their inspector, ALS, and said in correspondence that "*there are large discrepancies/deviations between our mutually agreed contract terms and the material actually supplied*". On 13 January 2023, another third-party buyer, Mind ID, emailed Trafigura stating that on 5 and 7 January 2023 it had opened 5 containers from each of BLs MEDUP8075145 and MEDUP8054892 at a transhipment port, Tanjung Pelepas, in Malaysia. It said that these containers did not contain material meeting the description and specification stated in the contract or on the BLs (Nickel) but instead contained material of a lower quality.

Proceedings are issued

198. On 8 February 2023, Trafigura issued the Claim Form and obtained the WFO from Foxton J. On 15 December 2023, Bright J dismissed an application by D1-D5 to discharge the WFO.

F. The Master Contracts

199. There are 9 Master Contracts, made between 6 October 2021 and 17 August 2022, which are relevant to this claim. Each Master Contract was made between Trafigura and one of the UIL companies as set out in the following table:

Defendant	Date	Material	Quantity	Delivery details
D6	6-Oct-2021	Nickel cathodes with a quality of NI 99.80% Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	13,200 MT (+/- 2 per cent)	CIF LME WH / CIF Shanghai, China (Incoterms 2010) in lots between October 2021 and September 2022.

D8	13-Oct-21	Nickel cathodes and briquettes with a quality of NI 99.80% Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	3,600 MT (+/- 2 per cent)	CIF LME WH (Incoterms 2010) in lots between October 2021 and December 2021.
D5	9-Dec-21	Nickel in the form of cathodes and/or briquettes with a quality of NI 99.80% Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	1,750 MT (+/- 2 per cent)	CIF LME Locations and/or CIF Shanghai, China (Incoterms 2010) in lots between December 2021 and January 2022.
D7	18-Jan-22	Nickel in the form of cathodes and/or briquettes with a quality of NI 99.80% Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	21,050 MT (+/- 2 per cent)	CIF LME Location or CIF Shanghai, China (Incoterms 2010) in lots between January 2022 and September 2022.
D4	9-Feb-22	Nickel in the form of cathodes with a quality of NI 99.80% Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	12,000 MT (+/- 2 per cent)	CIF Shanghai, China (Incoterms 2010) in lots of 1,500 MT (+/- 2 per cent) per month from February 2022 to September 2022.
D3	30-May-22	Nickel briquettes with a quality of NI 99.80%. The briquettes were required to be BHP or Minara High Grade Nickel Briquettes at Trafigura's option and of Australian origin.	492 MT (+/- 2 per cent)	CIF Rotterdam, the Netherlands (Incoterms 2010) in July 2022.
D2	1-Aug-22	Nickel with a quality of NI 99.80%. Any LME registered brand acceptable to Trafigura Pte and any origin acceptable to Trafigura Pte.	1,100 MT (+/-2 per cent)	CIF Rotterdam, the Netherlands and/or Jebel Ali, UAE (Incoterms 2010) in August 2022.
D3	13-Aug-22	Nickel in the form of briquettes with a quality of NI 99.80%. The briquettes were required to be Minara brand and of Australian origin.	504 MT (+/- 2 per cent)	CIF Nhava Sheva or CIF Mundra (Incoterms 2010), between 15 August 2022 and 31 August 2022.
D3	17-Aug-22	Nickel in any shape, brand and origin acceptable to Trafigura Pte with a quality of NI 99.80%.	1,000 MT (+/- 2 per cent)	CIF Rotterdam, the Netherlands and/or Jebel Ali, UAE and/or Kaohsiung, Taiwan (Incoterms 2010) during August 2022.

200. For the purposes of my summary in this section, there is no material distinction between any of the Master Contracts, which all follow the same pattern. In short, by each Master Contract, Trafigura (defined as "Buyer") agreed to purchase, and the relevant UIL company (defined as "Seller") agreed to deliver, a specified total quantity of LME Grade Nickel on CIF terms, with that Nickel to be shipped in "lots" per month.

201. For the detail, I will use the Master Contract between Trafigura and D4 as an example (this is the contract relating to BL MEDUP963340 to which I will refer in the illustrative transaction I set out below). The Master Contract expressly records at Clause 1 that the "*Material*" to be supplied is "*Nickel in the form of Cathodes*" and at Clause 3 the "*Quality*" of what is to be supplied is "*Material… of NI 99.80% quality*" of "*any LME registered brand acceptable to Buyer*". It then identifies, at Clause 4, the quantity as 12,000 MT, and the price at Clause 5 as the "*LME nickel price*" subject to a discount. The payment provisions are as follows:

> "5. PRICE

The price shall be the unknown official cash settlement price or off-screen quotation (as nominated by the buyer) for Nickel as quoted in the London Metal Exchange over the market days of the quotational period minus discount as per following:

For Pricing three months after delivery – US $100.00 (US Dollar Hundred) per Metric Ton.

For Pricing two months after delivery – US $60.00 (US Dollar Sixty) per Metric Ton,

6. QUOTATIONAL PERIOD

The quotational period ("QP") shall be three months after the month of scheduled delivery (M+3).

Any quantity of Material remaining un-priced at 11.30 London time on the final London Metal Exchange market day of the quotational period shall automatically be priced at the official London Metal Exchange cash settlement quotation for Nickel for that day.

7. DELIVERY

Delivery shall be CIF Shanghai-C. Steinweg No. 98 Changman Road, China (Incoterms 2010).

Delivery shall be from February 2022 to September 2022 lots of 1,500 Metrics Tons per month plus/minus a tolerance of 2 percent. (Quota 16 to 23)

8. PAYMENT

Buyer shall pay the 90% of Provisional invoice amount in US Dollar by telegraphic transfer within 3 (three) Business Days from invoice date and against Buyer's receipt of the following original documents:

- Full Set of Bill of Lading
- Seller's invoice
- Certificate of analysis/quality issued by the producer
- Insurance Certificate

In Buyers Option to pay 85% to 95% of cargo value as per overall exposure and balance would be paid upon sales finalization. The provisional price shall be calculated on the LME official cash settlement quotation for Nickel averaged over the 1 (one) Business Day prior to the invoicing date. Should the cash settlement price for Nickel plus the contractual premium at

> any time be lower than 105% of the Buyer's provisional invoice value then the Seller shall pay a cash deposit promptly upon the Buyer's demand to the Buyer's representative of the sum equivalent to the difference between the current cash settlement price plus the premium and the value of 105% of the Buyer's provisional invoice value. Should the Seller fail to pay such cash deposit to the Buyer within 5 Business Days of receiving such a demand, and the value of the material is equivalent to the value of the Buyer's provisional invoice value, then the Buyer may, at its complete discretion, require the Seller to set the price for any un-priced tonnage with all direct and indirect costs and liabilities incurred by such action to be borne solely by the Seller.
>
> In the event payment is made on a provisional basis, any difference between the provisional and final invoice values shall be paid by telegraphic transfer by the owing party within 10 (ten) Calendar Days after final invoice date to the owed party's nominated account."

202. So, in short, as to pricing, the Master Contracts provided for 90% of the provisional invoice to be paid against a full set of BLs, a seller's invoice, CoA and an insurance certificate. The Master Contracts then referred to the possibility that there would be a buy back by mutual agreement (not a matter of obligation) as follows:

> "If mutually agreed between Buyer and Seller to sell the cargo back to Seller, the interest cost of 4.60% shall be levied for the duration of title purchase by Buyer to title transfer to Seller. All related logistics expenses of moving cargo risk on to risk off shall be on account of the Seller (as per the contract) in case of buy back arrangement with the Seller."

203. Like all the Master Contracts this contract expressly incorporated the GTCs. The particular provision in the GTC's relevant to the issues before me is Clause 5 where under the heading "*Quality*", it is provided that:

> "5.2 The Buyer shall inspect the Metal within thirty (30) Days following the arrival of the Metal at the Named Destination (the "Inspection Period") to verify that the Delivered Metal is of the Contract Quality.
>
> 5.3 If the Delivered Metal is not of the Contract Quality, the Buyer may give Notice to the Seller no later than the expiry of the Inspection Period specifying the Buyer's findings as to the quality of the Delivered Metal (the "Buyer's Quality Results") and of the discrepancy (a "Quality Discrepancy Notice")
>
> […]
>
> 6.1 Notwithstanding any provision of the Contract or any rule of law to the contrary, any rights the Buyer may have under the

> Contract and/or at law shall be deemed waived by the Buyer and barred unless:
>
> The Buyer has given a [...] Quality Discrepancy Notice. [...] Payment by the Buyer against the Shipping Documents shall, unless a written reservation is made, constitute a complete waiver of all rights in respect of any deficiencies in the Delivered Metal that are apparent from the Shipping Documents."

A sample trade

204. Mr Peters KC very helpfully took me in his opening submissions through the documents concerning one of the Main Trades (that is, a trade where Trafigura was holding (at the start of this claim) a BL for Nickel and the actual cargo had not been bought back by UIL). It was not suggested in argument that the example Mr Peters KC chose was not representative of the trades of this type in issue in this claim. I will adopt it for illustrative purposes.

205. BL MEDUP9633405 ("the BL") concerns a purchase under the Master Contract, which I have summarised above. It is dated 4 February 2023 and was issued by the Mediterranean Shipping Company which has stamped it at various places. D4 is stated to be the shipper and it has also applied stamps at various points with an unclear signature over the stampings. The BL is endorsed in blank on the reverse. There are 3 Rider pages. The "Consignee" is "To Order", so once endorsed by the shipper, as it has been, it was negotiable. D4, as the shipper, provided "Particulars" of the goods as: 17 itemised bundles of "Nickel Full Plate Cathodes" with the weight and "Brand: Severonickel combine H-1" (which is agreed to be an LME registered brand of Nickel). However, the HS Code printed on the BL for these goods is specified as "75089090". That is the code for "Other articles of nickel" and which it is common ground is not the code for Nickel.

206. As to the Certificate of Insurance for this cargo, it provides "INTEREST INSURED: NICKEL FULL PLATE CATHODES" with an insured value US$11.3m and a sum insured of US$12.5m. As to the invoice, the product purchased is specified as follows: "MATERIAL: NICKEL FULL PLATE CATHODES" and "BRAND: SEVERONICKEL COMBINE H-1". Again, it is not in issue this is Nickel. The Certificate of Insurance specifies the total value as US$11.386m and a discount with a 95% rate payable leading to an invoice value of US$10.77m. That completes the first stage of this transaction.

207. Like all others, this cargo was financed by Citi and the terms of the material contract between it and Trafigura can be summarised as follows. It provides that Trafigura must provide "Payment Documents" which are defined to include a BL properly endorsed to the order of Citi, a Warrant and an invoice. The contract does not however provide for a CoA as a condition of financing. The email correspondence I was taken to by Mr Peters KC shows that for this cargo the original BLs were couriered to Citi; and there is no suggestion (in the case of this or indeed any other cargo it financed) that Citi had identified the HS Code did not represent Nickel. In due course CoAs were produced for this particular cargo and they stated (falsely) that it was Nickel.

G. The Relevant Trades

208. I turn to the specific trades which give rise to the claims before me. The factual basis for each of the claims advanced by Trafigura in their Amended Particulars of Claim ("the APOC") was not contested at trial; in particular, no challenge was made to the facts set out in the Annexes 1-7 to the APOC, which set out (amongst other matters) what was found in the containers which were sold by UIL to Trafigura as Nickel. No positive case was advanced to suggest that case was factually incorrect in any way, and I accept it as I set out below. I will set out my factual findings in summary form. I will turn to the causes of action/relief said to flow from these facts separately but, for ease of reference, I will signpost the relief sought at this stage when I deal with each distinct factual situation.

209. As appears from the agreed Factual Narrative, individual trades of consignments of Nickel ("the Trades") were concluded pursuant to the Master Contracts. Mr Rathi for UIL communicated on trading matters with Trafigura's Nickel traders mainly via a group on WhatsApp, which included Mr Bhatia and members of Trafigura's Operations team. Mr Rathi principally negotiated and arranged the Trades on behalf of the UIL companies with some involvement from Mr Sebastian. These individual consignments (described by Trafigura as "assignments") of Nickel under individual BLs were to be effected by separate shipments of an agreed quantity of Nickel ("the Cargoes") in one or more shipping containers.

210. The universe of transactions concluded under these Master Contracts with Trafigura comprised 193 Trades. Of these, 86 Trades are not in issue but 107 Trades are the subject of the claims before me.

211. As to the 86 Trades not in issue, between approximately 23 September 2021 and 4 July 2022, the bulk of these Cargoes were first bought by Trafigura and then in turn re-purchased (under the buy-back arrangements I have described above) by UIL pursuant to re-purchase contracts. Trafigura was paid in full (in cash and/or by way of set-off against sums it understood that it owed to UIL). A small number of Cargoes within these 86 Trades (I understand that these were those purchased from D3 and D8), were sold by Trafigura to its other clients. The Cargoes within these 86 completed trades were never inspected (save for that in respect of a single BL on 9 November 2022).

212. As to the 107 Trades in issue, Trafigura's claims can be broken down into different categories. I find as follows:

    1) **91 Trades ("the Main Trades")**. These concern shipments of Cargo to which Trafigura held title at the end of 2022. Annexe 2 to the APOC sets out (on an uncontested basis) the relevant UIL seller, the Master Contract/Assignment number, the BL, the invoice and the price paid by Trafigura (these documents follow the pattern I have set out in the sample trade above). These were sold by UIL as Nickel but when inspected (with uncontradicted details set out in Annex 6 to the APOC), the Cargoes were shown in fact to be wholly different materials: so, (i) 77 were stainless steel plates or sheets; (ii) 3 were aluminium ingots; and (iii) 11 were iron briquettes. I find that these uncontested allegations have been proved. Rescission for misrepresentation and damages for consequential losses are the primary relief sought by Trafigura in respect of these Main Trades. In the alternative, if it does not

succeed in the rescission claim, Trafigura seeks damages in deceit for the difference between what it paid for these Cargoes and what it received from the sales.

2) **The Maersk Trades (concerning BLs MAEU218437143, MAEU221715093, and MAEU218910101).** In these 3 Trades, Trafigura was sold Nickel (described as Nickel Full Plate Cathodes) by D3 under Master Contract 6769784. In February 2023, Trafigura presented BLs relating to these Cargoes to Maersk. However, Yancoal Trading Co. Ltd ("Yancoal") had also presented Maersk with what appear to be original BLs in relation to these very Cargoes. This led to a tri-partite dispute. Maersk argued that responsibility for the substantial charges and fees that had accrued in relation to these Cargoes (mainly demurrage) fell on the true owner. The dispute continued through 2023-2024. I was taken to an independent content inspection report dated 12 September 2023, prepared by Bureau Veritas following a joint instruction by all three parties. That includes photographs which shows that part at least of the cargo was not in fact Nickel Full Plate Cathodes but "Hot/cold rolled stainless steel coil". I infer and find that the remainder was also not Nickel and indeed the contrary has not been argued by the Defendants. In order for Trafigura to obtain possession of these Cargoes, the evidence is that it would have to pay about US$487,000.00 as additional costs to acquire cargo which was probably not Nickel. In all these circumstances on 28 October 2024, Trafigura informed Maersk that it was treating the BLs issued to it as void and invalid. It was then for Maersk to dispose of these Cargoes. I find all the facts I have set out above proved. So, I further find that, from the deceit perspective, these 3 Trades are factually the same as the 91 Main Trades save that Trafigura did not obtain possession of the Cargoes. In relation to relief, it seeks damages representing the amount paid to D3 for worthless material, and the legal costs of dealing with the dispute.

3) **The Evergreen Trade (concerning BL EGLV003200283851)**. The Evergreen Trade is, again, materially identical analytically to the 91 Main Trades but with the difference that Trafigura never obtained possession of the Cargo. It was sold by D8 to Trafigura as Nickel Full Plate Cathodes. It was in port at Shanghai, but before Trafigura could export it from China to a location where it could carry out an inspection, the Chinese customs authorities seized and sold it at auction as "metal plates". I find that, based on the price obtained, this Cargo was not Nickel Full Plate Cathodes. It was sold for the modest sum of (following Yuan/Dollar conversion) of about US$198,000. Had this been Nickel, at the prevailing price at the time of sale, this quantity (300 MT) would have been valued at around US$5.46 million. I was also taken to some photos of the Cargoes which suggests it was stainless steel bearing no resemblance to Full Plate Cathodes. As to relief, this claim follows the pattern of the Maersk Trades and Trafigura seeks damages for the difference between what it paid for the cargo, and the value it received (zero), as well as legal costs.

4) **6 Third Party Trades with settlements**. These Trades are set out in Annexe 3 to the APOC. In short, Trafigura bought Nickel from D2 and unaware of the fact that none of these Cargoes were in fact Nickel, and as part of the scheme that was agreed with UIL to try and reduce the amount Trafigura was financing, and in coordination with them, Trafigura sold the Cargoes to a number of third parties: Hyphen/Argentum, Mind ID, and Axiom. The Cargoes were not Nickel. Those third

parties made claims against Trafigura for not receiving the contracted for Nickel. Those claims are subject to settlements which are confidential. All the facts I set out above I find proved. By way of relief, Trafigura seeks damages representing the sums paid under these settlement agreements, and the legal costs incurred in dealing with each of those claims.

5) **4 Third Party Indemnity Trades where claims are ongoing or have not yet been made**. These fall into two sub-categories. The first concern a single sale by D7 of Nickel to Trafigura which Trafigura then on-sold to Cheongfuli (Hong Kong) Company Limited ("Cheongfuli"). Cheongfuli has inspected the Cargo and has said that it is not Nickel, and I was taken by Mr Ho, in this regard, to its Statement of Case (in redacted form) in arbitral proceedings against Trafigura (where it pleaded that the Cargo in fact consisted of iron with minimal traces of nickel). Trafigura's pleaded case before me (APOC [59.2]), supported by a Statement of Truth, is that Nickel was not supplied (and so it would follow Cheongfuli is correct in what it says in the arbitration). I accept that and make a finding that Nickel was not supplied by D7 to Trafigura. It seeks declaratory relief that it is entitled to an indemnity in respect of the reasonable sums it might be required to pay Cheongfuli. The second sub-category, comprises 3 Cargoes sold by Trafigura to a third party but there has not yet been a complaint by that third party (HYT) that it was not provided with Nickel. Trafigura seeks by way of relief what it calls a "protective indemnity" against liabilities and costs in the case of a complaint.

6) **2 Trades by D3 to Trafigura of Nickel but the issuer of these BLs (OOCL) had not in fact issued them**. This is not a claim about a failure to deliver Nickel but about duplicate BLs which is the subject of its own separate issue (Issue 13). I will make my findings on this claim below at Section T. Damages are the sole relief sought.

H. Issue 1: did the Arrangement exist?

213. It will be apparent from my findings above that I have concluded there was no Arrangement made at the Dubai Meeting or at all. This conclusion is based on the documents and oral evidence. In particular, the documents produced to give effect to the trades between Trafigura and UIL, and the contemporaneous communications between them wholly undermine Mr Gupta's case as to what was agreed. I will return below to the evidence to make some findings as to how the scheme of purportedly selling Nickel, but in fact supplying something else, was implemented and conceived, and in particular as to Mr Gupta's role. But before doing this I will explain why, independently of the oral evidence and documents, the Arrangement made no commercial sense, and why Mr Gupta's account is incredible.

Commerciality of the Arrangement

214. As was recognised in his Trial Skeleton, what Counsel called the "commerciality" of the Arrangement is critical to Mr Gupta's case. That is because, unless the Court concludes that it was of some sufficient commercial benefit to Trafigura, then it would be highly unlikely to conclude (i) that the Arrangement existed at all; and/or (ii) even if it did, that any knowledge of the same on the part of Trafigura's employees can be attributed to it.

215. The starting point is that the Arrangement, as explained by Mr Gupta, was a clear fraud on Trafigura, implemented by deceitful documentation, and in turn necessitating a substantial fraud on third parties, including banks, shipping lines, and insurers. It cannot have been—and I find that no honest person can have believed that it was—of commercial benefit to or in the interests of Trafigura for it to be involved in such a scheme.

216. Addressing on its merits Mr Gupta's case that the Arrangement was in Trafigura's commercial interests, the following points arise:

1) The original case that the Arrangement benefited Trafigura because it allowed it to gain a dominant position in the Nickel market (and/or to manipulate that market) was not put to Mr Oikonomou and appears wisely to have been abandoned. It was a case which faced substantial difficulties.

2) The only case on supposed commercial benefit that was put to Mr Oikonomou, is that Trafigura benefited from the Arrangement to the extent of the margin between the 'interest' it charged UIL, and the price of its line of finance from Citi. In my judgment, that is no true benefit at all. Mr Pillow KC was right to submit that every perpetrator of a Ponzi scheme could say that their victims obtained (or would, if only the scheme had lasted longer or they had exited earlier, have obtained) a 'benefit' in the form of the promised returns on their 'investment'. But that supposed (contingent) benefit does not begin to compensate the victim for the fraudster running off with their money—leaving them with no money, and no return. That is precisely what has happened here.

3) Moreover, Mr Gupta's apparent notion of what constitutes a 'benefit' ignores the very essence of Trafigura's business. It is a commodities trader. It could never be in a trader's interest to conduct its business on the pretence that it owned a commodity, when it did not. The fact that the business may include a financing line is nothing to the point: it is trade financing based on physical commodities acting as (supposed) security.

4) Even before one sets it against the enormous and uncommercial disbenefit to Trafigura inherent in the Agreement, the supposed benefit identified by Mr Gupta was plainly derisory in nature and amount: (a) until his Trial Skeleton he had accepted that Trafigura only stood to make a "*small premium*" or "*small profit*" on the financing; (b) however, in the Trial Skeleton, this was described as a "*pure*", "*tidy profit*" and was elevated to become the primary commercial rationale for entering the Arrangement; and (c) it was said that Trafigura was able to obtain a *c.* 3-5% annual return on the financing provided to UIL. By the time of Mr Oikonomou's cross-examination, the margin was put as "*considerable*" and "*significant*". Howsoever described, such a rate of return would in my judgment be wholly inadequate and uncommercial as compensation for the risk of unsecured lending (let alone quasi-lending), *a fortiori* to admitted fraudsters.

5) In terms of the actual amount of the profit Trafigura stood to make, Mr Gupta relied on a detailed presentation setting out the income and strategy of Trafigura's Nickel and Cobalt desk, dated 20 June 2019. In particular, reliance was placed on the statement in that presentation that the dealings with UIL were anticipated to "*enhance*" the desk's profit by US$2m. But, for Trafigura, that is a very modest

sum. Indeed, I note it represented only a tiny fraction of the profits earned by the desk: the figures in evidence show that it was expecting to earn a profit of at least US$55.141m in 2019/20. Mr Oikonomou was right to observe in his evidence that the total profit from trading with UIL was expected to represent less than 5% of the desk's overall profit/loss. In my judgment, it is unrealistic to suppose that Mr Oikonomou would have been willing to expose Trafigura (and ultimately himself) to the risks of losing hundreds of millions of dollars or more in return for so modest an improvement in the trading performance of his desk.

6) It is therefore clear that, even leaving aside the *inherently* fraudulent and damaging nature of the scheme, there was no meaningful commercial benefit to the Arrangement from Trafigura's perspective.

217. On the other hand, the positive "uncommerciality" of the Arrangement is laid bare when one considers the enormous risks that Trafigura would have been taking in entering into it:

1) On their face, the Master Contracts between Trafigura and UIL provided for a relationship analogous to a pledge. Trafigura acquired Nickel from them for a discount against its true value; and was therefore initially *over*-secured by design. UIL did not have to repurchase the Nickel; but if they wished to do so, then they would have to repay Trafigura in full, with interest.

2) However, if the relationship were conducted pursuant to the Arrangement, then it was not one of secured lending at all—in that it involved *neither* lending *nor* security: once UIL had received payment, they were under no obligation to re-pay. If they were unwilling, or unable, to make payment, then they could simply refuse to do so. In substance, Trafigura would therefore have been making a *gift* of its money—with UIL having a free option to return that gift, or not, if or when it suited them; if, at the point of payment, Trafigura had been indifferent to the contents of the cargoes it was buying, then it was knowingly taking the risk of being entirely unsecured for its money, which mounted up quickly into very large sums indeed (given the value of each cargo traded).

3) Mr Gupta has invoked UIL's lack of creditworthiness as a factor pointing in favour of the existence of the Arrangement. But in my judgment, it points in the opposite direction. If Trafigura thought it was secured, then it had less reason to be concerned with the creditworthiness of its counterparty. By contrast, if it really had been proceeding on the basis of the Arrangement, then the ability (and inclination) of UIL to repay (and whether they could be legally required to do so) would have been critical.

4) Finally, the Arrangement would necessarily have involved Trafigura defrauding its own banks—and thereby running the risk that, if or when the Arrangement were discovered, its relationship with Citi (and its many other bankers) would have been irreparably damaged.

218. If the Arrangement was uncommercial from Trafigura's perspective, then the position is *a fortiori* in relation to Messrs Oikonomou and Bhatia:

1) It has never been Mr Gupta's case that Mr Oikonomou or Mr Bhatia stood to gain personally from their participation in the Arrangement; and no such case was therefore put to Mr Oikonomou in cross-examination. This however exposes a real hole in Mr Gupta's case, especially as it is now put (*i.e.*, that *only* Messrs Oikonomou and Bhatia knew of the Arrangement).

2) As a matter of common sense people do not risk personal and financial ruin if there is nothing in it for them. It is inconceivable that Mr Oikonomou or Mr Bhatia would have behaved in the way Mr Gupta alleges in the absence of any identifiable incentive to do so. Whilst it was put to Mr Oikonomou (and he accepted) that he was "*well rewarded*" for his performance as the head of the Nickel desk, that does not assist Mr Gupta: he would have been "*well rewarded*" anyway. If anything, it only serves to emphasise how much he had to lose from participating in the Arrangement.

3) Mr Gupta's case theory involves these two individuals embarking on dealings that they regarded as necessary to conceal from everyone else in Trafigura (and the outside world)—doubtless because (i) it involved deception and forgery on a grand scale; (ii) it risked enormous losses falling on Trafigura; and (iii) it was self-evident that honest people would not have permitted it to happen or continue (and would have held to account those who did). Having behaved in that way, Messrs Oikonomou and Bhatia would have faced professional ruin upon the (almost inevitable) revelation of the existence of the Arrangement. Dismissal from Trafigura would have been inevitable, but would reasonably have been expected only to be the start: they would have faced allegations of co-conspiracy with Mr Gupta, and therefore potential personal liability for hundreds of millions of dollars—not to mention potential (serious) criminal sanctions, given the fraudulent character of the Arrangement and the attendant production of false commercial documents.

219. In summary, in my judgment, there was no reason for Mr Oikonomou or Mr Bhatia (or anyone else at Trafigura) to agree to or participate in the Arrangement, and a host of compelling reasons for them not to do so. The position is placed beyond any reasonable doubt by an examination of the actual evidence which I have set out above.

The incredible nature of Mr Gupta's account

220. In my judgment, Mr Gupta's account as to how the Agreement was formed, and then carried out, is on its face incredible:

1) It is common ground that the very first meeting between Mr Oikonomou and Mr Gupta took place over lunch at the FIVE Palm Jumeirah Hotel in Dubai on 5 June 2019. Mr Gupta claims that, at this first meeting, in a public place, Mr Oikonomou proposed to him, out of the blue, that they embark on (and cause their respective companies to be embroiled in) a fraud involving trading what would appear to be billions of dollars' worth of Nickel, but which would in fact involve much less valuable (or worthless) material. Even if Mr Oikonomou were the sort of person minded to consider such a dangerously self-harming course, it is incredible to suggest that he would have proposed this over lunch to a complete stranger.

2) The incredibility of this account is underlined by the subsequent encounters between Messrs Oikonomou and Gupta. In short, as I have identified in my narrative above, there were none for more than two years, before their next meeting in August 2021 in Geneva. Mr Gupta's account therefore requires me to believe that, having decided to propose and embark upon a multi-billion-dollar fraud at their very first meeting, Messrs Oikonomou and Gupta then completely ignored each other for years. And when they did eventually meet again in August 2021, it was plainly as effective strangers (see [103] above in relation to Mr Bhatia's reminder as to who Mr Oikonomou was and his history at Trafigura), and not as long-standing co-conspirators.

3) A further layer of incredibility arises from Mr Oikonomou' s attendance at the August 2021 dinner with Mr Gebler—who Mr Gupta says (for reasons that are unclear given his case theory) was not aware of the Arrangement. Mr Gupta's case therefore requires (i) Mr Oikonomou and Mr Bhatia to set up a meeting with their alleged co-conspirator; (ii) Mr Gupta, after being asked whether he wished for an unidentified third party to attend, to express indifference; (iii) Mr Oikonomou to choose to bring along a colleague who knew nothing about the alleged conspiracy (and who was therefore being misled as to the nature of the dealings between Trafigura and UIL); and (iv) both Mr Oikonomou and Mr Bhatia to have neglected to provide Mr Gupta with any prior warning of this—leaving Mr Gupta in the position of having to guess whether he could safely discuss the Arrangement. This is all fanciful (and of a piece with the attendance of Mr De Olazaval and Mr Wetterwald at the 15 November 2022 meetings with Mr Gupta and Mr Rathi respectively).

221. Finally, there is the striking way relevant individuals conducted themselves at the time the fraud started to be uncovered, and thereafter:

1) I found it established on the evidence that Messrs Oikonomou and Bhatia forcefully pressed ahead with inspections of containers in November 2022 (on Mr Gupta's case, knowing that this would result in the revelation of the Arrangement because there was no Nickel to inspect) despite: (i) the original driver for such inspections (*i.e.*, pressure from Citi) having fallen away; and (ii) there being an obvious pretext to delay the inspections (*viz.*, that the cargoes proposed to be inspected had already been bought back by UIL). They also permitted (and indeed required) those inspections to be carried out by an inspector of Trafigura's choosing, rather than a "*friendly*" inspector nominated by Mr Rathi (as to which, see further below).

2) In seeking to delay inspections, no one on the UIL side pointed out - even in the otherwise much-used private WhatsApps - that such inspections would result in, or even risked, the revelation of the Arrangement.

3) When confronted with the fact that the inspected cargoes did not contain Nickel, no one on the UIL side claimed that this had been known to Trafigura, or that it was the result of an arrangement reached between Messrs Oikonomou, Bhatia, and Gupta. And no-one raised the alleged 'defence' so carefully set up—on Mr Gupta's (hearsay) evidence—by Mr Rathi, that the terms of the contracts (the GTCs) somehow insulated UIL from any liability.

4) Indeed, Mr Gupta did not so much as mention the supposed existence of the Arrangement until June 2023, when he and D2-D5 applied unsuccessfully to discharge the WFO against them—not even when he was sitting in meetings with Trafigura personnel talking about what was (supposedly) in the containers or how he was going to pay Trafigura back for the hundreds of millions of dollars of loss it had suffered.

Mr Gupta's role

222. In a case such as the present, where there has been little internal disclosure from the UIL side (a matter to which I return below at [224]), where Mr Gupta was a wholly untrustworthy witness, and I have no evidence from Mr Rathi or Mr Sebastian, my conclusions have to be based on inferences I can draw from the documents (or lack thereof), and the inherent probabilities.

223. I find that Trafigura was duped by Mr Gupta (using Mr Rathi as his "point man" in dealings with Trafigura's traders) into paying UIL for what it was dishonestly led to believe by them was Nickel, pursuant to a fraud conceived and directed by Mr Gupta. He was accurately described by Trafigura as the "mastermind" behind this fraud. I also find that Mr Gupta's factual case as to existence of the Arrangement, as first deployed in the Discharge Application, and then developed in his trial witness statements and oral evidence before me, is a story invented after the fact by knitting together pieces of communications (taken out of context) to suggest Mr Bhatia and Mr Oikonomou (and indeed, originally the Wider Trafigura Personnel) were parties to what Mr Gupta accepts was a fraudulent arrangement. This knitting job appears to have first been undertaken in his 11th affidavit of 16 June 2023 seeking discharge of the WFO. Mr Pillow KC rightly said in closing submissions that having no real defence to the fraud claim, Mr Gupta decided to go "on the attack" by inventing the story of the Arrangement.

224. As to disclosure, I consider there are relevant categories of documentation, which the Defendants could and should have produced, but which they have not. Most importantly, Mr Gupta has admitted having access to Mr Rathi's emails and WhatsApps. Given his own insistence that Mr Rathi was principally responsible for the conduct (or at least the "*operational modalities*") of the relationship with Trafigura, these communications would have been highly significant. However, in the material before me, only a modest selection thereof has been disclosed and none of the most important category: the private WhatsApps (or other text/instant messages) which must have passed between Mr Gupta and Mr Rathi (to which Mr Gupta should also have access from his own side). The natural inference (and the inference I draw) is that such communications have been withheld from disclosure because they are unhelpful to Mr Gupta's case. It is clear that the perpetration of the fraud would have required the production of false shipping and other commercial documentation on a grand scale. There must be a substantial body of contemporaneous documentation showing how, and by whom, that exercise was carried out; and who knew what was happening. No such documentation has been produced, and Mr Gupta had no cogent explanation for this failure. I infer that this documentation has been suppressed or destroyed because it would show that which is obvious: namely, that Mr Gupta, his associates and UIL were perpetrating a fraud on Trafigura, without the knowledge or involvement of anyone on Trafigura's side. I am confident that the documents would also have shown that Mr Gupta was pulling all the strings, as opposed to Mr Rathi.

225. As I noted above when commenting on the witnesses, Mr Gupta regularly used the tactic, when he was asked anything about how the Arrangement was carried out, of claiming that all "*operational modalities*" and/or "*day-to-day matters*" were left to Mr Rathi. I agree with Mr Pillow KC's submission that this attempt to push everything on Mr Rathi was hopeless. Despite his unwillingness to admit it whilst giving oral evidence, Mr Gupta was, on his own case, using UIL to conduct a massive fraud. It is fanciful for him to suggest that, having masterminded that fraud (together, on his case, with Mr Oikonomou over lunch in June 2019), he would then just leave Mr Rathi to get on with it unsupervised. Fraudsters need to pay close attention to how their frauds are carried out, as that is usually the only way they can avoid getting caught (or, at least, satisfy themselves that appropriate steps are being taken to prevent that from happening). This fraud required careful management both of the enormous cashflows that were swirling around the various UIL companies; and a myriad of false or forged shipping and other commercial documentation, across multiple companies and hundreds of individual trades. Mr Gupta needed to be intimately involved in, and at least fully aware, of all of this.

226. Mr Gupta's approach in evidence resulted in him trying to characterise as "*day-to-day matters*" or "*operational modalities*" things that plainly were not—such as how the hundreds of millions of dollars paid to the UIL companies were disbursed (and accounted for) between them. This was not a mere administrative matter, but a fundamental part of the structure and object of the fraud. In my judgment, it is inconceivable that Mr Gupta did not have (and does not still have) detailed knowledge of the money his businesses needed, how that money was (to be) extracted from Trafigura, and what was intended to be (and actually has been) done with Trafigura's money. Relatedly, Mr Gupta also sought to dodge questions about what had become of Trafigura's money more generally. When asked about this, he repeated the mantra that he did not have a "*detailed breakdown*", despite not having been asked for one. I infer that Mr Gupta knows where Trafigura's money has gone, but is deliberately concealing that information from Trafigura.

227. It is also significant that Mr Gupta's lack of claimed involvement in "*operational modalities*" was contradicted by contemporaneous documentation showing that Mr Rathi sent him copies of communications with Trafigura, and drafts of documentation that were to be sent to Trafigura, including *e.g.*: (i) a draft of an email concerning reductions in the amount of Nickel being financed by Trafigura, which was sent to Trafigura in March 2022 [117]; (ii) the list of cargoes financed by Trafigura as of 9 March 2022 "*for In-Whse movement*" [117]; (iii) the letter, dated 16 March 2022 [118]; (iv) exchanges dating from July 2022 concerning the UIL plans to buy back cargoes; and (v) the first iteration of the Materials Spreadsheet [174]. Mr Gupta was also personally responsible for sending the "*discussion points with Socs*" note [121] and the UD Progress Report [142], each referred to above, directly to Mr Oikonomou.

228. My conclusion is that the fraud was conceived of by Mr Gupta when he discovered (following the 2018 period of honest trading) that as long as Trafigura did not carry out inspections and accepted the truth of what was stated in the shipping documents, and UIL bought back the cargoes, Trafigura would not discover that they had bought and financed worthless material and not Nickel. That period provided a useful "test run" and established a relationship of trust between the UIL companies and Trafigura (particularly Mr Bhatia). Although others within the UIL companies, including Mr

Rathi and Mr Sebastian were responsible for making the Master Contracts, agreeing individual trades and putting the fraud into effect by creating false shipping documents (and on occasions issuing duplicate BLs when the financial situation became difficult), I conclude that this fraudulent structure was the creation of Mr Gupta and was for his benefit. Once in place he allowed Mr Rathi and others in UIL to implement it on a day to day basis using whichever UIL companies worked for their cash flow and which they picked at their convenience. Indeed, Mr Gupta did not seek to suggest (if his case on the Arrangement failed) that any other person within UIL was responsible for the creation of this fraudulent scheme. The findings I have made above are relevant to Issue 11 (joint liability) and I will need to return to Mr Gupta's role in more detail below when applying the law on joint tortfeasorship.

229. I decide Issue 1 in favour of Trafigura. There was no Arrangement but rather a scheme on its lines devised by Mr Gupta and hidden from Trafigura who at all times believed they were purchasing Nickel from the UIL companies under the buy-back financing structure, which had operated since at least 2018.

I. Issue 2: If the Arrangement existed, could Trafigura be bound by it and/or attributed with knowledge of it?

230. Given my conclusion that the Arrangement was not made, Issue 2 does not arise. However, given the time spent by Counsel in oral and written submissions on it, I will address this issue (albeit more briefly than the issues which remain live). In particular, I will not refer to every case to which I was taken in submissions. So, in this section, I proceed on the factual assumption, contrary to my findings above, that Messrs Oikonomou and Bhatia made the Arrangement with Mr Gupta at the Dubai Meeting.

231. Ms Hutton KC's core submissions on this issue had two parts: (i) first, that Trafigura was a "party" to the Arrangement, as it was entered into by agents or employees of Trafigura acting within the scope of their agency; alternatively, (ii) that knowledge of the Arrangement was "attributable" to Trafigura. She submitted success in either of her submissions is a sufficient basis for all the claims to fail. Mr Peters KC took issue with both ways of putting the case. His core submission was that the Arrangement was plainly contrary to Trafigura's interests and, had Messrs Oikonomou and Bhatia participated in it, they themselves would have been liable to their employer along with Mr Gupta on a conspiracy or joint tortfeasor basis.

232. I will begin with three legal principles, which I did not understand to be in dispute.

1) First, "[*a*]*uthority to act as agent includes only authority to act honestly in pursuit of the interests of the principal*": *Bowstead & Reynolds on Agency* (23rd ed., 2023) ("*Bowstead*") at §3-011, Article 23. That statement of principle was expressly approved in Philipp v Barclays Bank UK plc [2024] AC 346 (SC) ("Philipp") at [72]-[74].

2) Secondly, "[*n*]*o act done by an agent in excess of actual authority is binding on the principal with respect to persons having notice that in doing the act the agent may be exceeding the agent's authority*": *Bowstead* at §8-047, Article 73 and Philipp at [86].

3) Thirdly, turning from authority to attribution of knowledge, the basic rules on the attribution of an employee's knowledge to a company relevant to this case are accurately summarised in Articles 95(1) and (4) of *Bowstead* at §8-208:

> "(1) A principal is generally imputed with knowledge relating to the subject matter of the agency which an agent acquired while acting for the principal.
>
> …
>
> (4) Knowledge is not attributed to the principal where the principal is claiming in respect of a breach of duty by an agent that relates to the information in question. Otherwise, whether a fraudulent or miscreant agent's knowledge is imputable to the principal depends upon the type of legal issue that arises. There is, therefore, no general fraud exception to imputation to the principal of the knowledge, or the acts, of an agent."

233. To summarise, where an agent or employee acts fraudulently against the company that is their principal or employer, the agent or employee's knowledge is not attributable to the company in a claim by the company either against them or against a third party connected with their fraud. That is not because there is a 'fraud exception' that means knowledge that would otherwise be attributed to the company is not so attributed, but because there is never any attribution at all: *Bowstead* at §8-214.

234. The general principles of attribution explained in *Bowstead* are reflected in a long line of authority focused on the more specific point that, in a claim for deceit, it is not a defence that the fraudulent misrepresentation was made to an agent of the claimant and the agent knew the truth: Wells v Smith [1914] 3 KB 722 at 725-726, Strover v Harrington [1988] Ch 390 at 408C and Nationwide Building Society v Dunlop Haywards Ltd [2007] EWHC 1374 (Comm) at [75]. By way of a helpful recent example relied upon by Mr Peters KC, in OMV Petrom SA v Glencore International AG [2015] EWHC 666 (Comm), the Claimant company sued the Defendant in deceit for having fraudulently induced its predecessors in title to pay for cargoes of crude oil that the latter represented were particular grades of crude, when it knew they were not. The Defendant alleged that the purchaser's agent (i) was the only person to whom any representations were made; and (ii) was aware of the fraud, and so was not deceived. At [151], Flaux J concluded that these allegations could never, as a matter of legal analysis, have provided the Defendant with any defence, essentially because the agent's knowledge of the relevant deceit could not (even arguably) be attributed to the Claimant where the agent was party to that deceit.

235. I understood Ms Hutton KC to accept that an agent's fraud will not generally be attributable to the principal where the principal is the "primary" victim of the alleged fraud. As to the issue of so-called "primary" *vs* "secondary" victims, Ms Hutton KC relied on various authorities referring to the fact that the knowledge and actions of a company's agent will *not* be attributed to the company where it is the "victim" of the relevant fraud and/or is the person at whom that fraud is aimed. She argued that Trafigura was not the primary victim of the fraud but in fact substantially benefitted from the Arrangement as part of the trading financing structure until international events led to it unravelling. In particular, she said that Trafigura's claims were of the

type of what she called "secondary victimhood" rejected in the case of Morris v Bank of India [2005] BCC 739 ("Morris") at [114], [124] and [128]. I will need to consider Morris in more detail below given the strong reliance placed upon this case by Ms Hutton KC. I turn then to the two ways in which the case for Mr Gupta has been put.

236. As to the claim that Trafigura was a 'party' to the Arrangement, I reject that submission because the Arrangement was manifestly contrary to Trafigura's interests for reasons I have given above at [215]-[217]. Had Mr Oikonomou or Mr Bhatia agreed to it, they would not have been acting honestly in pursuit of Trafigura's interests. They could therefore never have had actual authority to conclude the Arrangement on behalf of Trafigura. Further, since it was obvious that the Arrangement was contrary to Trafigura's interests (indeed its basic effect was to cause Trafigura to pay enormous sums of money for worthless cargoes), Mr Gupta must have known that neither Mr Oikonomou nor Mr Bhatia could have had actual authority to agree to it on Trafigura's behalf; and they therefore could not have had apparent authority either.

237. As to the case that knowledge of the Arrangement (and specifically UIL's intention not to supply Nickel) can be attributed to Trafigura, in my judgment that also fails. Had the Arrangement existed, the dealings of Mr Oikonomou and Mr Bhatia would have (i) involved a plain breach of their duties to Trafigura; (ii) been contrary to Trafigura's interests; and (iii) meant that they were participants with Mr Gupta in the fraud upon Trafigura (such that they could have been sued by Trafigura as co-defendants). In these circumstances, their assumed knowledge of the Arrangement could never be attributed to Trafigura, either in a claim by Trafigura against them, or in a claim by Trafigura against Mr Gupta and UIL who also participated in, and who ultimately benefited from, the fraud.

Morris v Bank of India

238. Morris was creatively deployed by Ms Hutton KC, but ultimately I did not find it of assistance. Morris was not concerned with general principles at common law for attribution, but was expressly decided by reference to a special rule of attribution, which the court considered to be appropriate in the specific context of claims under section 213 of the Insolvency Act 1986 ("the 1986 Act"). Such a special rule was necessary to avoid the policy of the Act being frustrated: see [120]. The case is rightly cited as an example of a bespoke rule of attribution being fashioned for a particular context by the editors of *Grant & Mumford on Civil Fraud* (1st Ed., 2022) at [19-031].

239. In any event, Morris concerned a factual scenario that could not be further removed from the present one. Bank of India was sued under section 213 of the 1986 Act by BCCI's liquidators on the basis that it had been knowingly concerned in transactions by which BCCI's creditors had been defrauded. This was therefore a case in which the question was whether the knowledge of the bank's dishonest agent (Mr Samant) could be attributed to it in the context of a claim by innocent primary victims of the dishonest trading in which it had been caused to participate. Morris was, using the helpful description in *Grant and Mumford* at [19-051], plainly a classic "liability" case where a company was being sued by an innocent third party victim in a claim arising from the misconduct of a director, employee or other agent of the company. That is not this case.

240. I was not persuaded by Ms Hutton KC's submission that sought to characterise Trafigura as some form of "beneficiary" (or merely a secondary victim) of the

Arrangement. In my judgment, the relevant question is not whether a party to a transaction might, on one permutation of the possible outcomes, gain (or have gained) a benefit from it. Rather, the correct question is whether the transaction as a whole was an honest, commercial one. Mr Peters KC was right to submit that investors in a Ponzi scheme *might* just be the lucky ones who get out before their money is lost, but that does not mean that if they turn out to be amongst the unlucky ones, they were never the intended primary victims of the fraud. Considered as a whole, in my judgment, the Arrangement was plainly both patently dishonest, and obviously and seriously prejudicial to Trafigura. The moment Trafigura was caused to pay UIL the full Nickel price for a cargo of much lower (or no) value, it suffered an immediate loss (in the multiple millions of US$ for each cargo). That loss was equal to the difference between the amount paid and the true value of that cargo. Trafigura's ability to recover that loss depended wholly on whether UIL had, in due course, the inclination and ability to buy back the cargo voluntarily (at what UIL knew to be an enormous overvalue). The potential 'benefit' to Trafigura from having those losses inflicted on it (if the contingency of buy-back ever materialised) was derisory. Equally, the suggestion that Trafigura were merely a secondary victim of the Arrangement is somewhat unreal. The Arrangement involved substantial sums of Trafigura's funds being passed to UIL, with Trafigura receiving little or nothing in return. In my judgment, Trafigura was the sole and primary victim of the fraud in the Arrangement.

241. In summary, my conclusion is that the Arrangement was plainly contrary to Trafigura's interests; and, had Mr Oikonomou and Mr Bhatia conceived, known of, participated in, and/or sought to hide it from others within Trafigura, they would themselves have been acting fraudulently against Trafigura and would be liable to Trafigura (along with Mr Gupta and UIL) as joint tortfeasors and co-conspirators for the loss they thereby inflicted upon it. On the assumed facts, in my judgment this case falls squarely within the category of so-called "*redress*" cases, in which the rules of attribution prevent Trafigura being imputed with the individuals' knowledge "*because it would be absurd and unjust*" to do so: see *Grant & Mumford* at [19-053]. In such cases, a company seeks to make its own delinquent director/employee, or an accomplice of such a person (such as a co-conspirator) accountable for the loss that the company itself has suffered as a result of the director's/employee's breach of duty.

242. Accordingly, had Issue 2 been live, I would have decided the agency and attribution points against the Defendants.

J. Issue 3: Fraudulent Misrepresentation

243. The legal principles were not in dispute. First, it is necessary to establish that a representation – that is a statement of fact or law on which the representee is intended and entitled to rely – has been made by the representor to the representee. This can be an express or implied representation. Second, the representation must be false. Third, the representation must be made either knowing it to be untrue, or recklessly not caring whether it was true or not. Fourth, the representor must intend the representee to rely on the statement in the sense in which it was false. Fifth, the representee must in fact have been induced to take action in reliance on the representation.

244. As to the first requirement, Trafigura's case is that UIL represented that they intended honestly to perform their obligation to supply Nickel under the Master Contracts being negotiated ("the Representations"). Mr Ho submitted that implied representations of

this nature were inherent in the negotiation of contracts for the sale of Nickel by UIL to Trafigura.

245. Mr Gupta of course denies that the Representations were made because of the existence of the Arrangement which would be in direct opposition to any such implication. During the oral openings and on the basis of the pleadings and the Trial Skeleton for D1-D5, it appeared to me that, save for this threshold point, it was not in dispute that the Representations pleaded would have been made. Mr Ho took me through the pleadings and clarified that this was in fact the position during his oral opening, and it was not suggested for D1-D5 that this was wrong.

246. In written closings however, Ms Hutton KC and Mr Legg took the point that no implied Representations in this form were made (even if Mr Gupta failed on the existence of the Arrangement). Mr Ho responded that this point was not open on the pleadings. Having been taken through the pleadings (with a particular focus on [11] APOC and [50] RAD), I am satisfied that Mr Ho was correct. I will however also consider the substantive objection made on behalf of Mr Gupta.

247. Ms Hutton KC's essential submission was that the case on implied representations failed because there were not clear words or clear conduct of UIL from which the Representations could be implied, relying on Property Alliance Group Ltd v Royal Bank of Scotland PLC [2018] 1 WLR 3529 at [132]. She underlined that the Court should consider what, if anything, a reasonable person would have inferred was being impliedly represented by the defendant's words and conduct in the context in which they were used: Marme Inversiones 2007 SL v Natwest Markets Plc [2019] EWHC 366 (Comm) at [115] per Picken J. Ms Hutton KC submitted that that there is no authority for the proposition that an implied representation of honesty in a transaction can be implied generally or in a wide range of cases, relying on Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd [2023] EWHC 2759 (Comm) at [308] per Cockerill J. She fairly accepted however that in some circumstances, a party who offers to contract may impliedly represent its intended honesty in relation to the proposed transaction. But she emphasised, relying on SK Shipping Europe Limited v Capital VLCC 3 Corp [2022] 2 All ER (Comm) 784 ("SK Shipping"), per Males LJ at [51), that the general principle is that "*in the absence of words of representation, the mere offer of contractual terms will not amount to any representation*". Ms Hutton KC submitted that not only had Trafigura failed to call any witness evidence to support its case that fraudulent misrepresentations were made, but nothing is relied on by Trafigura in support of the alleged representations of honesty other than the existence of draft contracts and the allegation that there were negotiations and an agreement in respect of each Trade. I do not accept these submissions. In my judgment, Trafigura's case that the Representations were made has been established, essentially for the reasons given by Mr Ho.

248. I begin with the law:

1) The fuller citation of Males LJ's observations in SK Shipping at [51] is the starting point. Having considered the authorities, he explained:

> "… these cases illustrate a general principle that, in the absence of words of representation, the mere offer of contractual terms will not amount to any representation, there are some

> circumstances where an offer to contract on certain terms carries with it an implied representation as to the party's honesty in relation to the proposed transaction. It is not difficult to see why this should be so. Such honesty is the necessary substratum for all commercial dealings. It goes without saying."
>
> (my underlined emphasis)

2) One example given by Males LJ in SK Shipping at [54] of such a situation was where:

> "[a] customer who orders a meal in a restaurant makes an implied representation that he is able to pay for the meal: DPP v Ray [1974] AC 370, 379D. That too is a representation which has to do with the honesty of the customer in relation to the transaction and which is so obvious as to go without saying."

3) The example of Ray and other similar situations were taken up by the Privy Council in Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53, where Lord Leggatt for the Board explained:

> "129. The scope of what counts as a representation for this purpose [i.e. the tort of deceit] is very broad. The concept is not limited to statements which expressly assert the truth of a proposition. Indeed, it is not limited to statements: it includes actions as well as words. For the purpose of the law of deceit, the term "representation" encompasses any words or act calculated to cause another person to believe a proposition.
>
> …
>
> 132. There is nothing recent or novel in the notion that deceit can be perpetrated by entirely non-verbal conduct, including conduct of which the claimant is unaware. An old example is Schneider v Heath (1813) 3 Camp 506, where the seller of a ship, to hide the fact that the hull was worm-eaten and the keel broken rendering the ship unseaworthy, had the ship removed from the ways where she lay dry and floated in a dock so that the defects would not be seen when the buyer came to bid for her. Sir James Mansfield CJ had no hesitation in holding that on these facts the buyer was entitled to succeed in a claim to recover back his deposit on the ground that he was induced to pay it by deceit.
>
> 133. Two further examples discussed in oral argument were, first, the case of a person who orders food in a restaurant. By doing so the person (absent special circumstances) represents that he or she has the means and intention to pay for the meal. The second, similar, example discussed was that of a person who hails a taxi available for hire by waving her arm. Counsel for CS Life accepted that by this action the prospective passenger

> ordinarily represents that she has the means and intends to pay the fare."

249. The cases show that the law as to implied representations marches hand in hand with common sense. Commerce plainly involves unstated assumptions of the honesty of one's counterparty: some things go without saying. So, the customer in a restaurant or passenger in the taxi cannot avoid liability in deceit by asserting that payment was only a contractual promise, still less that they made no representation as to their intention at all.

250. In my judgment, UIL as "the Sellers" under the Master Contracts were no different. It went (or should have gone) without saying that where the parties negotiated and agreed contracts for the supply of Nickel, UIL represented that it honestly intended to deliver that commodity and did not intend to substitute some cheap or worthless material instead. Adopting Males LJ's language, that was the necessary "substratum" for the dealing between UIL and Trafigura, without which it would have been a nonsense.

251. That this was the case is readily identified when one looks at the negotiations for any Master Contract. I was taken by Mr Ho to some examples of discussions on the Trader's WhatsApp group leading to the conclusion of particular Master Contracts. It was not said on behalf of Mr Gupta that the impression given by these examples was anything but representative of what one sees in many such chats.

252. I find the sellers made the Representations when they negotiated each Master Contract. There can be no dispute that Trafigura and the relevant seller discussed (as a bare minimum) the quantity of Nickel to be sold by that seller to it over a certain period (indeed if this were to be in issue they would have to explain how a Master Contract ever came to be concluded). Once those details were agreed, a Master Contract would be drawn up for the relevant seller's comments and ultimately signature. Inherent in the sellers' conduct in negotiating the volumes to be sold under a given Master Contract was the Representation. It was the very bedrock of the parties' deal that the seller honestly intended to sell and deliver Nickel, and did not intend to deliver worthless or low value materials.

Reliance

253. Ms Hutton KC and Mr Legg addressed reliance under Issue 4 (Rescission), but given it is an essential component of any fraudulent misrepresentation/deceit claim, it is convenient to address it at this stage as part of the fraudulent misrepresentation and related deceit claims. They argued that if the Representations were made, Trafigura did not rely on them and was not induced by them to enter into the contracts because of the Arrangement (that case has already been rejected by me). They further submitted, in the alternative, that Trafigura relied on the relevant express terms of the Master Contracts and/or the individual trades providing for the supply of Nickel, and not on the Representations. It was said that Mr Oikonomou himself volunteered in cross-examination that no inspections of the cargoes were carried out because Trafigura were relying "*on a contractual agreement*", and when it was put to him that "*You wouldn't normally just rely on your contract, you would check what's going on, wouldn't you?*", he said, "*We were relying on what we had and what was the contractual agreement*".

254. I reject this alternative case for a number of reasons. First, this new case on reliance is not open to Mr Gupta. As Trafigura correctly identified in opening submissions, the only pleaded basis on which D1-D5 disputed reliance was predicated on the existence of the Arrangement and no more. But even if their pleaded case is ignored, I agree with Mr Ho that new case on reliance is without merit. Given their failure on Issues 1 and 2, Trafigura self-evidently relied on its belief that the sellers honestly intended to deliver Nickel when contracting. Absent that fundamental belief, the Master Contracts would have been contrary to Trafigura's interests - the fact that the sellers were honestly intending to deliver Nickel was the very bedrock of the entire transaction. Unsurprisingly Trafigura therefore assumed, and acted on the assumption, that the Representations were true. Mr Oikonomou' s evidence was clear and unchallenged in cross-examination: "*I would not have agreed to Trafigura entering into the Contracts, or the buy-back trades, if I had known the cargoes did not contain Nickel but instead contained much less valuable materials. If I had known this, I would not have provided my approval to the 'trade recap', and I would have notified all the relevant departments to stop the Contracts from being executed*".

255. In my judgment the Master Contracts were each induced by the relevant UIL seller's representations to Trafigura that they honestly intended to perform their obligations to deliver Nickel. The representations were false, dishonestly made, and induced Trafigura to contract. It has established a claim for fraudulent misrepresentation by proving each of the elements of the cause of action. Trafigura accordingly succeeds on Issue 3. It also follows that it has a like claim at common law in deceit for damages, as considered under Issue 10 below.

K. Issue 4: is Trafigura entitled to rescind the Main Trades?

256. Trafigura seeks to rescind in equity the 91 Main Trades (it seeks damages/declaratory relief in respect of the 11 others). Having established that the Master Contracts were induced by fraudulent misrepresentation, Mr Ho submitted that rescission is the usual and appropriate remedy for such a wrong. That was not disputed, and I accept that at the level of principle this proposition is established by a line of cases. However, there is a dispute as to the *scope* of what can be rescinded by Trafigura (assuming other bars to rescission do not operate).

257. In his well-focussed and persuasive submissions, Mr Ho argued that the Main Trades can be individually rescinded, without Trafigura needing to rescind either the Master Contracts generally or all the trades under them. He submitted that this is because the Master Contracts are all severable contracts for delivery of goods by instalment or lots. Mr Ho said that it was no more strange or surprising that Trafigura could rescind individual Main Trades than it could choose to sue for damages in respect of some trades, but not others.

258. In the Trial Skeleton, it appeared to have been conceded on Mr Gupta's behalf that, subject to defences, Trafigura was entitled to rescind just the Main Trades. However, in closing submissions Mr Legg departed from Mr Gupta's previous position. First, he quarrelled with Mr Ho's labelling of the contracts in issue as "Master Contracts" (although this appears to have been accepted in the agreed Factual Narrative). He submitted that they were not "umbrella" agreements but simply individual contracts. Mr Legg accepted that the individual lots delivered to Trafigura by the UIL sellers had separate shipping documents including BLs, insurance documents, and invoices per

consignment. He argued however that all of this was done in accordance with the Master Contracts without further negotiation. Mr Legg said these were mere administrative acts that implemented these contracts in accordance with their terms. He persuasively submitted that if one steps back and looks at the context, the instalments cannot be treated as separate bargains or effectively severable contracts, but as items within the Master Contracts. He accordingly argued that, if there is to be rescission at all, it should be of Master Contracts and that means *all* of the trade falling within those contracts must be unwound, not just the Main Trades. Mr Legg said that the importance of that is that profit would have been generated in respect of those trades and credit needs to be given in the context of a rescission for profits that have been made, as well as losses that have been incurred in respect of the overall contract. Mr Legg also drew to my attention a number of cases concerning the prohibition on partial rescission, including Marme Inversiones (cited above at [247]), per Picken J at [333]-[338].

259. I turn to the law. Rescission is concerned with putting the claimant and the defendant back in the position in which they were before the impugned transaction was made. It follows that the starting point is that if a contract is to be rescinded, the representee claimant must rescind the whole contract or none of it. It is all or nothing. As a matter of principle, one cannot elect to rescind only the part said to have been affected by the misrepresentation, whilst retaining the advantages of the remainder of the contract. The law does not permit partial rescission and this prohibition even extends in some cases to deny rescission when the contract in question is part of a wider transaction, the components of which are commercially interdependent.

260. However, it is also an established principle that "[i]f the contract or transaction is (on ordinary contractual principles) severable, then there is no objection to rescission of a severable part without rescission of the rest": Grant & Mumford, *Civil Fraud* at [22-073]; O'Sullivan *et al.*, *The Law of Rescission* (3rd ed., 2023) at [19.06]; Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (7th ed., 2025) at [4-14]. See also Re: Mount Morgan (West) Gold Mine [1886-90] All ER Rep 689 ("Mount Morgan") *per* Kay J at 691. I will return to the Mount Morgan case below.

261. As explained in *Benjamin's Sale of Goods* (12th ed., 2023) at §8-062, "[c]ontracts for the delivery of goods by instalments will more often be construed as severable (or divisible) contracts than as entire". See also Peel, *Treitel on The Law of Contract* (16th ed, 2025) at §17-035. Ultimately, Counsel were agreed whether or not a contract for the sale of goods by instalments is severable (and is thus capable of this form of rescission) turns on the proper interpretation of that contract.

262. While this is always a matter of construction of the particular contract, it was not in issue that the following general factors are indicia of severability. First, whether payment is due from time-to-time as performance of a specified part of the contract is rendered (so, for example, where payment is due as and when goods deliverable by instalment are delivered): see Jackson v Rotax Motor and Cycle Company [1910] 2 KB 937at p.946-7 *per* Farwell LJ. Second, whether the contract envisages the shipment or delivery of instalments in the same vessel on the same day, or by different vessels on different days: see J Rosenthal & Sons v Esmail [1965] 1 WLR 1117 at p.1131A-B *per* Lord Pearson. Third, whether the contract envisages separate invoices or sets of shipping documents (in particular, BLs, but also invoices, insurance policy certificates, *etc.*) for each instalment: see J Rosenthal & Sons at p.1131D.

263. In my judgment, the Main Trades can be individually rescinded without Trafigura needing to rescind either the Master Contracts generally or the other trades. I have concluded that as a matter of construction the Master Contracts are all plainly severable contracts, which can be divided into the individual instalments (*i.e.*, the separate trades) for which they provide. My reasons are as follows:

1) they provided for the delivery of goods over a period of months in discrete 'lots' or instalments;

2) they envisaged separate invoices and shipping documents for each instalment, including separate BLs;

3) they provided for payment of the Provisional Price on delivery of the shipping documents for each instalment, such that payment occurred from time-to-time as performance was rendered by the UIL seller;

4) they provided for each instalment to be priced separately (the Provisional Price, for example, depending on when the provisional invoice was issued for that instalment);

5) they envisaged each instalment would be shipped separately on different vessels (it would be impossible for delivery to occur over a period of months, as the Master Contracts expressly provided for, if in fact there was to be a single shipment at a single moment in time);

6) it was not disputed that before agreeing to purchase each particular cargo, Trafigura would consider and evaluate it individually, and give individual confirmation that the cargo was acceptable—this established (and admitted) practice between the parties forms part of the factual background admissible to interpreting the Master Contacts; and

7) the Master Contracts incorporated the GTCs which included provisions that bar certain claims after a certain time following the arrival of the goods at the discharge port. These provisions only make sense if each instalment delivered under the Master Contracts is properly to be analysed as a distinct and severable sale.

264. I return to the Mount Morgan case, which I found helpful. In that case, the plaintiff had been allotted 400 shares which he had purchased relying on statements in a prospectus. The statements were false (the prospectus was an "audacious fraud" in the words of Kay J). Before he discovered the fraud the plaintiff had sold certain of the shares at par. He sought to rescind the allotment in respect of the shares he continued to hold. It was said against him that this was not permissible because (in effect) he could not give counter restitution of all the shares. Kay J had little hesitation in rejecting that proposition at 691G-H:

> "Let us try that on principle: A man applies to the company for shares as in this case. He asks for 1,000 shares, but he only gets 400. The application generally is: 'Send me a specified number of shares, or as many of that number as you can let me have at so much per share'. The contract is always at so much per share. It is not a lump sum. Why should not a man who has parted with

> his shares before he discovered that he has been defrauded, say to the company, as to the shares that remain in his hands, 'Now that I have found out the fraud I seek to have my contract rescinded?' I can see no reason to the contrary. The contract seems to me plainly a divisible contract, a severable contract, and, if you like to put it so, a separate contract as to each share which he took."

265. In terms of principle, the same considerations appear to me to apply to the present case. The Trades were not for a lump sum but were individually priced per tonne depending on where the LME market price was at the time, and the lots were for delivery in severable instalments. The Main Trades are those where, when the fraud of Mr Gupta and the UIL companies was discovered, Trafigura retained the relevant cargoes as severable lots. They are like the shares still held by the plaintiff in Mount Morgan when he discovered the fraud. I conclude there is no unfairness to the UIL companies in rescission being limited to those transactions. I consider each Trade bears all the characteristics of a separate bargain.

266. Subject to the bars to rescission, I conclude that Trafigura was entitled to rescind the Main Trades as voidable transactions. Trafigura succeeds on Issue 4. I turn to the first bar to rescission relied upon by Mr Gupta, affirmation.

L. Issue 5: Has Trafigura affirmed the Master Contracts and/or the Trades?

267. I will begin with a summary of the governing legal principles. I was referred to a range of authorities and textbooks, but I did not understand the following core principles to be in dispute: (1) the right to rescind a voidable contract or transaction is lost if the claimant affirms it; (2) to affirm, the claimant must communicate that decision to the defendant by an unequivocal act or statement that is consistent only with electing to affirm the contract, and inconsistent with retaining the right to rescind; (3) this can be an implied or express act/statement but matters must be assessed on an objective basis, as opposed to by reference to the subjective intentions of the innocent party; (4) where the right to rescind arises from a misrepresentation, no election can be made until the misled party is aware of the true facts, such that it could properly plead a case of fraudulent misrepresentation; (5) no election can be made to rescind until the claimant knows of their legal right to rescind; and (6) the burden of proof rests on the defendant to establish that a claimant has affirmed, and in particular that they knew of the true facts and their right to rescind at the time they affirmed.

268. It is fair to say that the pleaded case for D1-D5 on affirmation was rather opaque. As a matter of law, given that the onus of proving affirmation rests on the party against whom rescission is sought, that party must positively and fully plead it as an answer to the claim to rescind. This requires, as a minimum, proper particulars of when and how the affirmation occurred, including the words or specific acts said to constitute affirmation. Such particulars of the alleged affirmation were not provided in the RAD.

269. D1-D5's case as to affirmation in opening (as expressed in the Trial Skeleton) was a bit clearer and exclusively based on the events at the 15 November 2022 meeting in Dubai between Messrs Oikonomou and De Olazaval on the Trafigura side and Messrs Gupta and Prasad for UIL: see [168]-[173] above. Mr Legg relied on the fact that Mr Gupta said to the Trafigura side at this meeting that the cargoes that had been delivered were

not Nickel, but consisted of about 20KT of "*nickel alloy and around 5KT of other material*" (statements of Mr Gupta which I have found to be knowingly false). Mr Legg emphasised Mr Oikonomou's evidence that it was at this stage that the true "*scale of the problem dawned on him*". He accordingly argued that by this time, Trafigura was aware of sufficient of the facts, even if not all the aspects of those facts. He submitted that a form of fraud was known of if not the precise fraud which the Defendants had committed and in those circumstances pressing for buybacks of the cargoes was an affirmation of the Master Contracts and/or individual transactions. Mr Legg said that there was agreed a plan at the 15 November 2022 meeting that UIL should repurchase all the cargo they had sold and delivered to Trafigura, and this was consistent only with the affirmation of the original sales of those cargoes from them to Trafigura. He argued that the later dealings between the parties from then on proceeded on the basis that UIL was raising funds for that purpose.

270. In closing submissions, Mr Gupta's case on affirmation was supplemented by reliance on two wholly new points not previously mentioned or explored in evidence. First, on Trafigura's issuing of invoices on 15 and 16 November 2022 for certain cargoes in respect of earlier sales for sums in excess of $53m. It was said that these invoices were clear affirmations requiring balancing payments to be made that were issued after the 9 November 2022 inspection and/or on or after the meeting on 15 November 2022 (which Mr Gupta says provided requisite knowledge of the fraud). The second new point was that despite knowing that it had supplied cargo to HYT that was not Nickel (and terminating those contracts on 5 December 2022), Trafigura proceeded to sell that cargo, identifying it as Nickel by invoice (with full knowledge that it was not Nickel) to two of the Defendants. Mr Legg says these acts of affirmation were of a piece with continuing to press for buybacks after the revelations at the 15 November 2022 meeting.

271. As to knowledge of the legal right to rescind, Mr Legg submitted that it was inconceivable that Trafigura, a global commodities giant, whose trading team had all known since September 2022 that hundreds of millions of dollars had been paid for cargoes devoid of CoAs, would not have had (in-house and/or external) legal advisers on hand advising on Trafigura's possible exposure and potential remedies available to it; or that such advice would not have been available (and all the more sought) following the 9 November 2022 inspection. Mr Legg also emphasised that Trafigura has not waived privilege in respect of the advice it did receive around that time and/or in respect of the Trades.

272. I agree with Mr Ho that the case on affirmation fails on the facts by some margin. I can summarise my conclusions in three parts.

273. First, in my judgment Trafigura did not know on 15 November 2022 of all the facts that would have enabled it to properly plead a case of fraudulent misrepresentation against the Defendants. As to reliance on what Mr Oikonomou was told by Mr Gupta as to what was in the cargoes, that would not prove that Trafigura knew all the facts that would have enabled them to plead a case. In particular, Trafigura did not know that, contrary to what Mr Gupta dishonestly said at the meeting, there was not 20KT of nickel alloys with a 70% nickel content (which would still have been quite valuable), and that instead most of the cargoes were much less valuable stainless steel with only trace nickel content. Mr Gupta's story that he had been crossed by his business partner and had shipped 20KT of nickel alloys with 70% nickel content was in my judgment a lie designed precisely to prevent Trafigura knowing the true facts. I also consider that it

does not assist Mr Gupta to point to the results of the 9 November 2022 inspection: not only was that an inspection of just two non-Main Trade Cargoes (so it could not tell Trafigura what the Main Trade Cargoes comprised), but what Mr Gupta said at the 15 November 2022 meeting (and had said previously on a call with Mr Oikonomou on 10 November 2022) was designed to hide the true facts from Trafigura and was inconsistent with what Mr Gupta now claims the 9 November 2022 inspection revealed (*i.e.*, that all of the Cargoes were not Nickel).

274. Trafigura also did not know at the 15 November 2022 meeting that Mr Gupta and UIL had acted fraudulently (in any respect) prior to and at the time the Master Contracts were concluded, such that Trafigura could rescind. To the contrary, at that meeting, Trafigura was told by Mr Gupta that he had no idea that the containers did not have Nickel when they were loaded, that he had been crossed, but that valuable material had still been shipped. If that were true, and at this stage (*i.e.*, during the very meeting where the information was given), Mr Oikonomou specifically and Trafigura generally could not determine if it was true, then whatever other claims Trafigura might have had, it would not have had the facts sufficient to plead a fraudulent misrepresentation claim. That is entirely consistent with Mr Oikonomou's evidence, which he maintained in cross-examination: "*At this point* [prior to the 15 Nov 2022 Meeting] *I did not know the full details of what had happened or what UIL had done* (*I certainly did not know Trafigura had been the victims of a long-running fraud*)." Mr Gupta was also not admitting a fraud by himself or UIL at this meeting - he was claiming he was the victim of a fraud.

275. Second, Trafigura did not know on 15 November 2022 that it had the legal right to rescind. Neither Mr Oikonomou nor Mr De Olazaval are lawyers, still less English lawyers. Even if Mr Gupta had told them at the meeting all of the facts needed properly to plead a fraudulent misrepresentation case (which he did not), it remains entirely unexplained how either individual is meant to have known that that gave rise to an English law right to rescind the Main Trades (or indeed the Master Contracts). Significantly, it was not even put to Mr Oikonomou in cross-examination that he or Mr De Olazaval knew that Trafigura had a legal right to rescind. Nor is there any evidence, or even a suggestion, that Mr Oikonomou or Mr De Olazaval left the meeting to obtain legal advice.

276. Thirdly, Trafigura did not on 15 November 2022 unequivocally communicate a decision to affirm the Main Trades. It remains unexplained by precisely what words or conduct Mr Gupta says that Trafigura unequivocally communicated such a decision. Nor in fact was it put to Mr Oikonomou in cross-examination in terms that he or Mr De Olazaval had affirmed. Rather what was put to Mr Oikonomou (and his answer) was as follows:

> "*Q. And in terms of the substance of the meeting, you agreed that UIL Singapore and UIL Malaysia would buy back all the cargoes sold to Trafigura on the basis of a discounted upfront payment, which was provisionally agreed to be $50 million to be paid in two instalments, one of 25 million in November 2022 and one of 25 million in December 2022?*
>
> *A. That is absolutely not true.*"

277. Mr Gupta's case appears to be that Trafigura affirmed the Main Trades by agreeing that D2 and D3 would buy back cargoes for which Trafigura had paid hundreds of millions of dollars in return for a total payment of just US$50 million. It remains unexplained how an agreement to "*buy back all the cargoes sold to Trafigura*" (as put in the question I have quoted above) would be a clear and unequivocal communication of a decision to affirm the Main Trades, as opposed simply to an agreement to compensate Trafigura for its losses from the Main Trades (which it did not affirm).

278. Further, the Arrangement is nonsensical: it would have been absurd for Mr Oikonomou or Mr De Olazaval to have agreed at a single meeting, before they even knew of the full facts or had consulted Trafigura's lawyers and senior management, a deal that would have left it with losses of hundreds of millions of dollars (such a deal is also difficult to reconcile with the table produced by Mr Gupta on 7 January 2023 (see [196 above) indicating a UIL liability to Trafigura of some US$516 million). I would add that this affirmation case is also impossible to reconcile with the only contemporaneous note of the meeting of 15 November 2022, which was taken by Mr De Olazaval, and which contains no suggestion of any affirmation of the Main Trades or indeed of any other agreement (even a 'provisional' one). Rather, as I have found above, the note is entirely consistent with Mr Oikonomou's evidence and suggests that Mr Gupta, having (as it transpired, falsely) described what had happened, then explained the 'solution' proposed by him on behalf of UIL.

279. As to the new case first referred to in closing submissions and to the effect that affirmation actually occurred *after* the 15 November 2022 meeting, it is not fair to Trafigura to allow this late case to be made. The case on affirmation as expressed in the Trial Skeleton was clearly articulated in response to Trafigura having specifically identified in its skeleton the deficient particulars of D1-D5's affirmation case. The only case advanced was that affirmation occurred at the 15 November 2022 meeting. That was a very late and last chance for Mr Gupta to articulate a case. I agree with Mr Ho, that Mr Gupta cannot now run a completely different case on affirmation after the evidence has closed. Trafigura had no chance to test it in cross-examination with Mr Gupta, or to demonstrate what access to legal advisers Mr Oikonomou or Mr De Olazaval had at the times subsequent affirmations are meant to have occurred. There has also been no factual investigation of the circumstances surrounding these new claimed acts of affirmation. This case is not as a matter of fairness open to Mr Gupta.

280. Aside from this basic fairness point, the new affirmation arguments are in any event without merit essentially for the reasons given by Mr Ho. The issuing of invoices on 15 and 16 November 2022 for certain cargoes (shortly after an inspection of just a few containers on 9 November 2022 when the true scale and nature of the fraud was not known) or the fact that Trafigura sold certain cargoes back to D4 and D7 in December 2022, cannot have been a wholesale affirmation of the Main Trades. In short, Mr Ho was right to submit that at the time of these acts, Trafigura did not have the knowledge to affirm the Main Trades or knowledge of the legal right. As I have described above, even running well into January 2023, Trafigura was still taking steps to discover the true position (indeed, that remained a work in progress even when it applied for the WFO). Had these new points on affirmation been open to Mr Gupta, and had they succeeded, at most the affirmations would have been limited in scope to these particular trades.

281. I conclude there was no affirmation. Trafigura succeeds on Issue 5.

M. Issue 6: Is Trafigura barred from seeking rescission of the Main Trades because it cannot give counter-restitution?

282. I will begin with the law. Again, there was a substantial amount of helpful material by way of case law and academic discussion provided to me, but I do not consider the basic principles to be controversial. The classic starting point is that rescission will be barred if it is "impossible" for the representee to make counter-restitution. The modern view however is that rather than speaking of a "bar", based on this concept of "impossibility", it is more accurate to say that counter-restitution is a condition of the remedy. So, it is a precondition for recovery that the amount recovered by a claimant should be reduced by the amount of the benefits it has received from the defendant: see Mitchell *et al.*, *Goff & Jones The Law of Unjust Enrichment* (10th ed., 2022) at [31-02].

283. In approaching this question, that is identifying the just counter-restitution to which the remedy will be subject, the courts apply a flexible approach of seeking "practical justice". As explained by Lord Blackburn in Erlanger v New Sombrero Phosphate Co (1878) 3 App Cas 1218 (HL) (at pp. 1278-9):

> "…I think the practice has always been for a Court of Equity to give this relief [i.e., rescission] whenever, by the exercise of its powers, it can do what is practically just, though it cannot restore the parties precisely to the state they were in before the contract."

284. When deciding whether practical justice can be done, the question is "whether, although the parties cannot be restored to their precise positions prior to the contract, restitution can be achieved in a practically just way by making adjustments and allowances": Patarkatsishvili v Woodward-Fisher [2025] EWHC 265 (Ch) per Fancourt J at [188]. The particular concern of this bar to rescission "…is to protect the defendant from unjustified prejudice...": Patarkatsishvili at [219], approving Elliott, *Snell's Equity* (34th ed.) at [15-014]. See also Spence v Crawford [1939] S.C. 52 (HL Scot) *per* Lord Wright at pp. 77-78. At the level of principle, practical justice can be done where the claimant has sold fungible property received from the defendant under the contract the claimant wishes to rescind and the claimant either (i) offers materially identical goods in counter-restitution or (ii) accounts for the profit of the sale: see *e.g.*, Smith New Court Ltd v Scrimgeour Vickers (Asset Management) Ltd [1997] A.C. 254, HL, at 262 (Lord Browne-Wilkinson); Savery v King (1856) 5 HLC 627 at 667; and Virgo, *The Law of Restitution* (4th ed., 2024) at p. 29.

285. In short, in most cases, identifying the just level of counter-restitution is about settling on a money sum to be paid or credited as a condition. With that focus, I turn to the facts. For the purposes of Issue 6, the 91 Main Trades can be divided into two groups: the first group has 11 trades, and the second has 80 trades.

286. By 11 of the Main Trades, Trafigura acquired iron briquettes and, as I have said above, it still has them. It can therefore give counter-restitution *in specie* of those Cargoes if so required. Despite that, on behalf of Mr Gupta it was argued that even for these Cargoes counter-restitution is not possible because D4 is in liquidation and D5 is dissolved. I consider this point to be academic because the iron briquettes are in my judgment of no value (see [288] below). I will however briefly indicate why I do not accept this submission.

287. In my judgment, the legal position is accurately stated in O'Sullivan, *The Law of Rescission*, (3rd ed, 2023) at [21.4]:

> "It has been suggested that if the counter-party to the voidable transaction has ceased to exist, or cannot be found, the rescinding party may obtain restitution from the remote recipient upon deducting the amount due to the original transferee. It is doubtful that this is correct. The claim against the remote recipient follows rescission of the original transaction, and whether rescission is possible should not be affected by the extent of that claim. Moreover, the obligation to make counter-restitution is owed to the party entitled to receive it. There is no warrant for treating the obligation as discharged by a notional deduction from the claim against a different party. Where the first party has ceased to exist or cannot be found it will depend upon the particular circumstances of the case whether, by reason of that fact, rescission is barred or not. In the case of a fraudster who has paid a deposit and then absconded, there will be no difficulty in recovering title from a third party who took with notice of the fraud, or as a volunteer. The absence of the fraudster will provide no impediment, for he cannot complain if by his own act he has put it out of the power of the rescinding party to actually repay the deposit, and a fortiori the third party cannot complain, for he suffers no prejudice if the deposit remains with the claimant." (emphasis added)

288. This logic applies here: if D4 or D5 have disabled themselves from receiving counter-restitution, that is a problem of their making. Fraudsters should not be permitted to stymie proprietary claims by simply dissolving themselves or the vehicles for their fraud inserted between themselves and their victims. As to D4, the liquidation poses no obstacle to providing counter-restitution. D4 exists as a legal person, and Trafigura can give D4's liquidators control over and possession of the iron briquettes, if they so require (which one might doubt given their value). Indeed, on the material before me it seems that despite being in liquidation since August 2024, D4 has never before identified (still less amended to plead) any difficulty with accepting counter-restitution. D8 is also in liquidation, and also delivered cargoes of iron briquettes, but Mr Gupta does not suggest there is any difficulty making counter-restitution to D8's liquidators. It is unclear to me why D4 has been singled out as a special case. The central point however in relation to the iron briquettes is their value. I am satisfied on the uncontradicted evidence of Mr Khodov (see [304]) that these Cargoes are worthless Accordingly, for the purposes of counter-restitution I will assign them a zero value- there is nothing in money terms for Trafigura to credit for these briquettes as a condition of rescission of the underlying transaction.

289. As for the second group, the remaining 80 Main Trades, it was not clear to me that Mr Gupta was advancing a counter-restitution defence. In D1-D5's Trial Skeleton it was rightly accepted that equitable rescission does not depend on the claimant providing counter-restitution *in specie*, especially in cases of fraud, and said that their position on this would be revisited in closings. In the written closings nothing was said to suggest that Trafigura providing counter-restitution in the form of the sale proceeds it achieved

for these Cargoes (plus the interest earned on those proceeds) would be inadequate, such that rescission is barred.

290. I note for completeness, that before selling any of these 80 Main Trade Cargoes, Trafigura wrote to D1-D5 to seek to agree a consensual sale process. A number of points from that correspondence are significant. D1-D5 never suggested that the Cargoes should not be sold because they wished them to be returned. Rather, their main concerns were to ensure that they were inspected properly before sale and sold at an appropriate price (as indeed I find happened). Ultimately, despite months of correspondence, the parties could not reach agreement on the process for selling these Cargoes. On 22 January 2024, Trafigura therefore wrote to the D1-D5 asking them to confirm by 5 February 2024 that they would collect these Cargoes, failing which they would be sold (in order to avoid incurring further storage costs). I note that no response was received to that letter. Having had the opportunity to take delivery of these Cargoes, but refusing to do so, and having failed to object in principle to the sale of these Cargoes to mitigate loss, in my judgment the Defendants cannot avoid rescission by complaining that counter-restitution *in specie* is no longer possible.

291. I reject all complaints (those originally pleaded and those advanced at trial) in relation to the impossibility of counter-restitution. Trafigura was entitled to rescind the 91 Main Trades subject to the accounting of financial benefits I have described above. Trafigura succeeds on Issue 6.

N. Issue 7: Is Trafigura barred from rescinding the Main Trades by the GTCs?

292. Mr Gupta and D2 no longer take this point but it remains a live issue on D3-D5's RAD (and was developed in the Trial Skeleton when these defendants were represented by different Counsel). I will accordingly address this objection. As I have described above at [203], each of the Master Contracts incorporated the GTCs. In summary, the GTCs:

1) gave Trafigura the right to inspect the Nickel within 30 days of its arrival at the named destination port (clause 5.2);

2) gave it the right to serve a '*Quality Discrepancy Notice*' ("QDN") and/or a '*Weight Discrepancy Notice*' if the metal delivered was not of the quality and/or quantity required by the contract (clause 5.3); and

3) provided that (a) all Trafigura's rights under the contract (or at law) would be deemed waived, and barred, unless it had served a notice under clause 5.3; and (b) payment against shipping documents, without a written reservation, would constitute a waiver of any deficiencies in the delivered metal which were apparent from those documents (clause 6.1).

293. As originally pleaded, D1-D5's case was that clause 6.1 provided a complete defence to any claims to rescind because: (i) Trafigura did not serve a QDN in the time provided by clause 5.3, and/or (ii) it made payment against the relevant shipping documents without a written reservation and thereby waived their claims. I reject that case for three reasons which I summarise as follows before turning to the detail. First, in my judgment, clauses 5.2, 5.3, and 6.1 cannot exclude the Seller's liability for fraudulent misrepresentation/deceit. Second, in any event, on their proper interpretation, clauses 5.2, 5.3, and 6.1 concern disputes about the quality of any

Nickel actually delivered, and they do not apply where the Seller deliberately failed, and never intended, to deliver Nickel at all. Thirdly, the relevant deficiencies in the delivered material (*i.e.*, that it was not Nickel at all) were not apparent from the relevant shipping documents. I will now provide my reasons for these conclusions in more detail.

The GTCs cannot exclude liability for fraudulent misrepresentation and deceit

294. Clause 6.1 GTC is a "time bar" clause: if a QDN is not given within 30 days from the Metal arriving at the discharge port, then clause 6.1 provides that "…*any rights the Buyer may have under the Contract and/or at law shall be deemed waived by the Buyer and barred*." It is well established that such clauses are to be construed in the same way as clauses excluding or limiting liability: Atlantic Shipping and Trading Co. v Louis Dreyfus [1922] 2 AC 250, and Lewison, T*he Interpretation of Contracts* (8th ed., 2023) at [12.150]-[12.151]. It is also well-settled that contractual limitation periods for the notification or bringing of claims are forms of exclusion clause: Nobahar-Cookson v Hut Group Ltd [2016] 1 CLC 573 per Briggs LJ at [9].

295. In HIH Casualty and General Insurance Ltd v Chase Manhattan Bank [2003] 2 Lloyd's Rep. 61, the House of Lords observed that a party cannot, as a matter of public policy, exclude their liability for fraudulently inducing a contract. Lord Bingham said at [16]: "It is clear that the law, on public policy grounds, does not permit a contracting party to exclude liability for his own fraud in inducing the making of the contract". At [76], Lord Hoffmann said: "There is no doubt that a party cannot contract that he shall not be liable for his own fraud".

296. Applying these principles to this case, in my judgment, clause 6.1 GTC could never exclude or limit the UIL sellers' liability for fraudulently inducing the Master Contracts. Even if it purported to do so, it would as a matter of public policy be of no effect.

The GTCs do not apply to Trafigura's claims

297. Clauses 5.2, 5.3, and 6.1 of the GTCs concern claims about quality. In my judgment, they plainly do not concern claims flowing from a deliberate failure to deliver any of the product contracted for at all, still less claims that the Master Contracts were induced by fraud. That much is apparent from the ordinary and natural meaning of the words used.

298. So, the Master Contracts distinguish between (i) in clause 1, the obligation to deliver Nickel in a particular form, and (ii) in clause 2, the obligation for the Nickel delivered to possess a certain quality. The GTCs contain the same distinction. Clause 2 concerns delivery of actual Nickel to Trafigura, whereas clause 5 contains a specific regime for dealing with issues of 'Contract Quality', *i.e.*, where the Nickel the Seller has delivered, pursuant to clause 1 of the Master Contract and clause 2 of the GTCs, is alleged to fail to meet the contractual specifications prescribed in clause 2 of the Master Contract. It follows that clause 5 is not engaged where the dispute is not one about 'Contract Quality', but instead concerns a total failure to deliver any Nickel at all. Still less is it engaged where the claim concerns inducement of the contract by fraudulent misrepresentation. And if clause 5 is not engaged, the waiver in clause 6.1, on which the Defendants relied cannot be engaged either.

299. That interpretation accords with the general principle of contractual interpretation that a court is unlikely to be persuaded that a party to a contract has abandoned valuable rights arising by operation of law unless the terms of the contract make it sufficiently clear that that was intended. It would be most surprising if Trafigura had given up the right to bring claims for fraudulent misrepresentation or in deceit absent clear, express words. It is plain to me that the purpose of provisions such as clauses 5 and 6 of the GTCs is to ensure that disputes about quality are raised in a timely fashion, so that both sides can make the necessary investigations and collect relevant evidence promptly; that purpose is not engaged where the Seller deliberately delivers goods of a totally different kind from those contracted for, still less where it induces the contract by fraudulent misrepresentation, where there is no need to analyse promptly the quality of the delivered goods to determine whether there has been a breach.

It was not apparent from the shipping documents that the Cargoes were not Nickel

300. Clause 6.1 of the GTCs provides that payment can constitute a complete waiver in respect of deficiencies in the delivered metal "*that are apparent from the Shipping Documents*". The term '*Shipping Documents*' is not defined in the GTCs, but when read with the payment clause in clause 8 of the Master Contract, in my judgment it plainly means the documents identified in that clause. D3-D5 say that, since Trafigura made payment in each of the Main Trades, this waiver was engaged. I reject this. It was not apparent from any of the Shipping Documents that the Cargoes were not Nickel. To the contrary, the Shipping Documents sent to Trafigura fraudulently concealed that fact. I have dealt above with the argument that the HS codes contained in the BLs showed that the metal being delivered was nickel alloy. But in circumstances where Mr Gupta abandoned the case that anyone but Mr Oikonomou and Mr Bhatia knew of the Arrangement, any HS Codes case is now hopeless. In any event, I consider the waiver is, at most, of Trafigura's rights "*in respect of any deficiencies in the Delivered Metal*". The waiver is therefore confined to claims about the quality of the Delivered Metal; it does not extend to claims that it was fraudulently induced to contract for the Delivered Metal, or that the Delivered Metal was not in fact the metal contracted for, in the first place.

301. I reject the case on the GTCs. Trafigura succeeds on Issue 7.

O. Issue 8: Relief if the Main Trades are rescinded

302. It was not clear to me that there remained any real dispute on this issue. First, it is common ground that, if the Main Trades are rescinded, Trafigura has a personal restitutionary claim against each relevant UIL seller for the return of the purchase monies paid to that particular seller, provided that Trafigura accounts for the benefits received under those trades from the particular Seller.

303. Second, as a matter of law, upon Trafigura electing to rescind the Main Trades (as I find it did by issuing the Claim Form on 8 February 2023), an equitable proprietary interest in the property transferred by it to the UIL under those Trades vested in Trafigura. As explained in Independent Trustee Services Ltd v GP Noble Trustees Ltd [2013] Ch. 91 (CA) per Patten LJ at [53]: "In relation to assets transferred to the representor, the better view (encapsulated in the authorities reviewed by Rimer J in Shalson v Russo) is that title revests in the representee retrospectively once the election to rescind the contract is made". See to the same effect: Mitchell et al., *Goff & Jones on*

Unjust Enrichment at [40-21] and [40-22]: "Various authorities support this analysis, and hold that the trust arises at the time when the rescinding party elects to exercise his right to rescind". As explained in O'Sullivan, *The Law of Rescission* at [16.25]: "Disaffirming a voidable transaction confers an equitable interest in the assets transferred if the transaction was procured by fraud". As a matter of law, once an effective election is made to avoid a contract or transaction induced by fraudulent misrepresentation, from that point what may be termed a 'rescission trust', or form of equitable interest, arises and the representor from that time becomes a trustee of the property transferred.

304. As to the quantum of the sums subject to this equitable interest, it is common ground that Trafigura paid UIL the sum of US$499,539,198.34 under the rescinded transactions. The amounts to be provided by way of counter-restitution against this sum (reflecting the sale of the Cargoes under these Trades) have been dealt with in the unchallenged evidence of Mr Khodov, a trader on the Battery Metals Desk at Trafigura. Mr Khodov was either directly involved in, or is aware of, the efforts that Trafigura made to sell these Cargoes. In short, 77 Cargoes were stainless steel sheets and there was not a liquid market for them. They were sold at a single auction lot for about US$7.9 million (placed into a segregated account). 3 Cargoes were aluminium ingots sold by Trafigura's aluminium team at the prevailing market price for about US$1.7 million (also placed in a segregated accounts). Finally, 11 Cargoes were iron briquettes which Trafigura has not been able to sell and which it says, without contradiction, are worthless. Rescission will be on condition of Trafigura crediting US$9,752,386.62 as counter-restitution. The leaves a net sum of US$489,786,311.72.

305. Trafigura succeeds on Issue 8. I will make a declaration that it has an equitable proprietary interest in this sum, and that it is entitled to trace into the fruits, or traceable proceeds or credits representing these proceeds. The parties are agreed that Phase II of these proceedings will address that exercise by way of an account or inquiry. Nothing I say here is intended to predetermine whether there are in fact proceeds into which Trafigura can trace, or how tracing would in this case be worked through in practice. That will depend on a factual examination.

P. Issue 9: Do the UIL companies hold the sums Trafigura paid for under the Main Trades on constructive trust?

306. This claim was advanced as an alternative to Trafigura's primary claim to rescind the Master Contracts and/or the Main Trades for fraudulent misrepresentation. The alternative pleaded case was that the UIL companies held the purchase monies on constructive trust for Trafigura on the basis that (a) the Main Trades and the Master Contracts under which they were effected were nothing more than "instruments of fraud", or alternatively (b) the contract sums were paid under a "fundamental mistake". These arguments were not developed in oral or written closings for Trafigura, but Mr Ho said the alternative constructive trust claim was maintained in the event that Trafigura failed on Issue 8. I have found that Trafigura did lawfully rescind the Main Trades and this issue does not arise. It has established a form of beneficial interest in the purchase monies or their traceable substitutes and does not need to resort to an alternative basis for its proprietary claims.

Q. Issue 10: Are the UIL sellers liable for damages in deceit for the cargoes which they sold that did not contain Nickel?

307. I have found that the Defendants have failed on Issues 1, 2 and 3. It was common ground that the requirements of the tort of deceit are the same as for fraudulent misrepresentation. The ingredients of the tort of deceit have been established and Trafigura has proved damage in respect of the following:

1) the 91 Main Trades;

2) the 3 Maersk Trades;

3) the 1 Evergreen Trade; and

4) the 6 Third Party Trades where settlements have been concluded with those who thought they had bought Nickel from Trafigura (that is the 4 Mind ID 3P Trades; the Hyphen 3P Trade; and the Axiom 3P Trade).

(I will address the Cheongfuli and Indemnity Third Party Trades separately below because those are cases where specific loss or damage has yet to be identified).

308. The principles governing the quantification of damages for deceit were summarised by Lord Browne-Wilkinson in Smith New Court Securities Ltd v Scrimgeour Vickers [1997] AC 254 at p.267A-D, and are not in dispute:

> "In sum, in my judgment the following principles apply in assessing the damages payable where the plaintiff has been induced by a fraudulent misrepresentation to buy property: (1) the defendant is bound to make reparation for all the damage directly flowing from the transaction; (2) although such damage need not have been foreseeable, it must have been directly caused by the transaction; (3) in assessing such damage, the plaintiff is entitled to recover by way of damages the full price paid by him, but he must give credit for any benefits which he has received as a result of the transaction; (4) as a general rule, the benefits received by him include the market value of the property acquired as at the date of acquisition; but such general rule is not to be inflexibly applied where to do so would prevent him obtaining full compensation for the wrong suffered… (6) In addition, the plaintiff is entitled to recover consequential losses caused by the transaction; (7) the plaintiff must take all reasonable steps to mitigate his loss once he has discovered the fraud".

The 91 Main Trades

309. If I am wrong about its entitlement to rescission, Trafigura would be entitled as a fall-back to the same net sum of US$489,786,311.72 (see Issue 8 and [304]), as damages in deceit in respect of the 91 Main Trades (to be divided, subject to Issue 12, between the distinct UIL companies that were party to the Trades). Those are the direct losses flowing from the relevant transactions induced by the fraudulent Representations. I reject the submission made on behalf of Mr Gupta that the profits which were made by Trafigura in trades not the subject of this claim are to be deducted from such damages. That is for the same reason that I find the Main Trades to be severable transactions.

310. On rescission of the Main Trades, Trafigura is entitled to damages for consequential losses it has suffered as a result of the deceit. I accept its evidence and quantification of those losses which are identified and explained in detail in Ms Kumar's trial witness statement (and in particular in the '*Expenses Spreadsheet*' attached to that statement). In short, they comprise (i) shipping and demurrage costs; (ii) warehousing and storage costs; (iii) surveying and inspection costs; and (iv) on-sale costs. The headline figures are given in Appendix B to the closing submissions, and were not challenged. Trafigura is entitled to judgment for US$6,326,631, €2,475,308 and SGD 549,995 in respect of consequential losses.

The 3 Maersk Trades

311. Trafigura is entitled to judgment for the difference between what it paid D3 (US$11,306,154.30) and the undisputed value of the goods it received (which was zero because the goods were never delivered to it). Subject to an issue of quantum (which I address below), it is entitled to the legal costs it incurred in dealing with the dispute between it, Yancoal International Trading Co. Ltd, and Maersk about the Maersk Trades cargoes.

The Evergreen Trade

312. Trafigura is entitled to judgment for the difference between what it paid D8, and the undisputed value of the goods it received (which again was zero because the goods were never delivered to it, having been impounded and auctioned by the Chinese customs authorities). I accept its quantification of US$6,564,324.75. It is also entitled to judgment for the legal costs it incurred in dealing with the Evergreen Trade. I will address the basis for assessment of legal costs below.

The Third Party Trades resulting in claims now settled: the 4 Mind ID 3P Trades, the Axiom 3P Trade, and the Hyphen 3P Trade

313. Trafigura is entitled to judgment for the undisputed settlement sums it has paid to the various counterparties to whom, as result of the fraud, it sold cargo that was not Nickel. Subject to a point concerning the OOCL Trades, I accept the quantification (which I will not set out) in confidential Appendix B to the closing submissions which identifies the settlement amounts it paid, together with references to the relevant settlement agreements and proofs of payment. There does however appear to me to be an issue in relation to the settlement of the Hyphen Third Party Trade which appears to also include settlement of the distinct dispute with Hyphen relating to the OOCL Trades. I refer to this matter further at [363(2)] below and an apportionment may be necessary.

314. Trafigura is also entitled to the legal costs it incurred in dealing with the disputes engendered by these trades. Again, I address the basis for assessment of legal costs below.

The Cheongfuli Trade

315. This is a single Third Party Trade where Trafigura's dispute in arbitral proceedings with its buyer, Cheongfuli, is ongoing and it is at present unclear (i) whether, and if so what sums, it will have to pay Cheongfuli (by way of principal, interest, and/or costs); and (ii) what, if any, sums it will recover by way of costs from Cheongfuli. I have found at

[212(v)] above that Nickel was not supplied by Trafigura to Cheongfuli (as a result of D7's wrongdoing). Trafigura is entitled to a declaration of indemnity in respect of (*i*) such of its reasonable costs, assessed on the indemnity basis, as it does not recover from Cheongfuli; and (*ii*) such sums as it is ordered (or agrees by way of reasonable settlement) to pay to Cheongfuli.

The Indemnity Third Party Trades

316. In respect of these Trades, no complaints have thus far been raised against Trafigura. As a matter of discretion, I am not willing to make a form of open-ended declaration of indemnity at this stage. It is premature to seek such relief. On the material before me, it is not yet known whether there is any loss or damage flowing from the deceit (in particular it is not known whether the Cargoes sold did or, did not, consist of Nickel). I will however give Trafigura permission to raise this issue with updated evidence at Phase II at the same time as Trafigura India's claims if any are considered by the court. In principle, if the deceit has caused loss, Trafigura is entitled to compensation.

Legal costs

317. Although Mr Gupta took no issue with any aspects of Trafigura's case on quantum which I have addressed above, Mr Legg took a number of points about the legal costs which Trafigura seeks as part of their damages claims. These costs were incurred in defending or dealing with other legal proceedings caused by the fraud (that is, the Maersk Trades, the Evergreen Trade, the Third Party Trades). I will summarise the 3 main points of dispute as I understood them by the end of the trial.

318. First, there is disagreement about the law, and specifically whether Trafigura is entitled to recover its costs of those other proceedings on the indemnity basis (as it argues) or the standard basis (as submitted for Mr Gupta). I prefer the arguments of Mr Ho for Trafigura on this issue. In Herrmann v Withers LLP [2012] PNLR 28 at [111] Newey J held that the indemnity basis was the correct one. Herrmann has subsequently been followed or approved in a number of cases cited to me: Greenwich Millenium Village Ltd v Essex Services Group Plc [2014] EWHC 1099 (TCC) at [172] (*obiter*); Hawksford Trustees Jersey Ltd v Halliwells LLP (In Liquidation) [2015] EWHC 2996 (Ch) at [163]; UCP Plc v Nectrus Limited [2019] EWHC 3274 (Comm) at [36(ii)]; and Trafigura Maritime Logistics PTE Limited v Clearlake Shipping PTE Limited [2022] EWHC 2625 at [26]. The position is accurately stated in Hurst, *Civil Costs* (6th ed., 2018) at [5-005]:

> "Where costs incurred by a party in separate (sometimes foreign) proceedings are claimed as damages, the question arises whether those damages should be assessed on the standard basis or the indemnity basis. Since the introduction of the CPR, the indemnity basis is now the measure applied to detailed assessment of costs as between solicitor and client."

319. Mr Legg relied strongly on what I understand to be the only case subsequent to Herrmann in which the standard basis approach has been taken. That is Partakis-Stevens v Sihan [2023] EWHC 1051 (TCC) at [54]-[65]. I agree with Mr Ho that when one looks at the judgment of HHJ Stephen Davies (sitting as a Judge of the High Court) in

that case, this was a decision very much motivated by the particular facts. It is not a sound basis from departing from the position now well-established by Herrmann.

320. Mr Legg's second complaint was that Mr Green (the relevant Trafigura quantum witness on legal costs) put forward only a limited number of schedules of costs. Having elected not to cross-examine Mr Green, I do not accept it is fair for Mr Gupta to complain that there is no evidence of what work was done and therefore precisely to what the costs claimed relate. Mr Ho was right to submit that had there been any real concerns about the reasonableness of the work done for which costs are claimed, Mr Gupta's representatives could and should have asked Mr Green about that matter. Moreover, in circumstances where the burden is on him to show that the costs incurred were not reasonable, it is not good enough to assert, without particulars or analysis, that costs may not be reasonable, without specifically identifying why and to what extent.

321. Mr Legg's third complaint concerned the reasonableness of the hourly rates charged by Stephenson Harwood (SH), Trafigura's lawyers. I was not persuaded by these submissions:

1) Most of the SH fee earners charged only slightly above the guideline hourly rates. I note, for example, in 2024 the guideline rate for Grade A fee earners was £546 per hour, and most of the Grade A fee earners charged £560 per hour.

2) While one lawyer's rate of £700 per hour was above the guideline rate: (i) she was an outlier; (ii) she did not work for significant periods, or indeed at all, on the claims in respect of which costs are claimed; and (iii) in any event her hourly rate, as the partner with conduct of this case, was in my judgment reasonable. *The Guide to the Summary Assessment of Costs* (*White Book* 2025 Vol.1 p.1443) explains that the guideline rates are broad approximations only, and a starting point for those faced with summary assessment. In substantial and complex litigation hourly rates in excess of the guideline rates can be appropriate. Relevant factors which can justify higher rates include the value of the litigation, its importance, its complexity, and whether it has an international element. In my judgment, those factors all exist here.

322. Trafigura is entitled to recover as damages for deceit its costs of other legal proceedings on the indemnity basis. Taking a broad brush approach to the costs claimed overall, I will direct that judgment be for 75% of the amount claimed.

Other pleaded responses to the deceit claim

323. Before leaving the issue of deceit, I should for completeness address a final point. In the Trial Skeleton, D1-D5 raised an 'estoppel by acquiescence' defence in answer to the claim in deceit. This was not pursued by Ms Hutton KC and Mr Legg on behalf of Mr Gupta in closing submissions, but formally remains an argument pursued by D2-D5 and I need to address it. I reject the argument for following three reasons.

324. First, in my judgment that defence has no vitality independent of the case on Issues 1 and 2. The primary way this defence is put is expressly predicated on the existence of the Arrangement and the attribution of knowledge of it to Trafigura, and so plainly cannot survive the failure of these Defendants on Issues 1 or 2. The alternative way the defence is put pre-supposes that, after November 2022, Trafigura sold the cargoes it had bought from the UIL companies as Nickel to third parties. That did not happen; so

the factual premise for this alternative case is misconceived. Secondly, estoppel by acquiescence requires an assumption which (in this case) these Defendants communicated to Trafigura, in which Trafigura acquiesced. See: Republic of India v. India Steamship Co [1998] AC 878 at p.913F *per* Lord Steyn: and Starbev v. Interbrew [2014] EWHC 1311 (Comm) *per* Blair J at [125]. But these Defendants have failed to identify (*i*) precisely what was the assumption they claim to have held; or (*ii*) when, to whom at Trafigura, and how, they supposedly communicated that assumption. Thirdly, there is no allegation that Trafigura acquiesced in any assumption by some positive act or conduct. The suggestion seems to be that they did so by silence. But since this was a simple commercial relationship involving the sale and purchase of goods (rather than any 'joint project' in which they were 'business partners'), Trafigura can only have acquiesced by silence if they had a duty to speak: Starbev at [126]-[128]. They had no such duty, whether expressly or impliedly under the Master Contracts, or as a result of owing any duty of good faith; and these Defendants have not identified why or how they say such a duty was owed. Finally, for any estoppel to arise, it would have to be unconscionable to allow Trafigura to go back on the supposed shared assumption: Starbev at [125(2)] These Defendants have not specifically addressed this requirement either, and it is unclear what their case is.

R. Issue 11: Is Mr Gupta liable in deceit as a joint tortfeasor?

325. I have found that the UIL companies are liable to Trafigura in deceit. Trafigura's case is that Mr Gupta induced, directed and/or otherwise caused or procured the UIL sellers to commit the fraudulent misrepresentations. I have already made some findings above at [222]-[228] about Mr Gupta's role in the material events, and will need to consider these when applying the law on joint liability, which I summarise below. I begin with Trafigura's pleaded basis for seeking to hold Mr Gupta responsible as a joint tortfeasor, which is set out in the APOC at [40]. In summary, in support of its case as to Mr Gupta's accessory liability, reliance was placed on four main points: (1) ownership and/or control by Mr Gupta of the UIL companies; (2) that Mr Gupta dealt with Trafigura on the basis that he had overall responsibility for their dealings; (3) the provision by Mr Gupta of the 'Materials Spreadsheet' (see [174] below); and (4) Mr Gupta's participation in settlement discussions on behalf of the UIL sellers after the 9 November 2022 inspection in Rotterdam.

326. Ms Hutton KC and Mr Legg argued that these matters do not establish Mr Gupta's personal liability for the deceit of the UIL companies (if established). They relied on the principle that a director or controlling shareholder of a company is not jointly liable for a deceit committed by that company simply because they may be a director or controlling shareholder: see, for example, Standard Chartered Bank v Pakistan National Shipping [2003] 1 AC 959 at [22] per Lord Hoffmann. They accepted however that a director (or a controlling shareholder) may be jointly liable for a deceit if he or she themselves committed all the relevant elements of the tort, as was found to be the case in Pakistan National Shipping itself, but say that Trafigura does not advance any claim on that basis against Mr Gupta because it cannot do so. They say that the alleged fraudulent misrepresentations are not alleged to be representations made by Mr Gupta or on his behalf. As to the allegation that Mr Gupta "*induced, directed and/or otherwise caused or procured*" the alleged deceit, they forcefully submitted that this claim is based on inference only, and the pleaded particulars from which Trafigura says it is to be inferred that Mr Gupta did such acts are manifestly inadequate.

327. As to the law, I need only to refer to a single case. In Lifestyle Equities CV v Ahmed [2025] AC 1 Lord Leggatt at [135]-[137] set out the principles governing joint liability in tort, as follows:

> "135. To summarise, there is a general principle of the common law that a person who knowingly procures another person to commit an actionable wrong will be jointly liable with that other person for the wrong committed. The liability of the procurer is an accessory liability…
>
> 136. There is a further, distinct principle of accessory liability by which a person who assists another to commit a tort is made jointly liable for the tort committed by that person if the assistance is more than trivial and is given pursuant to a common design between the parties. On the facts of a particular case both principles may be engaged. But on the present state of the law assistance which falls short of procuring the primary wrongdoer to commit the tort cannot lead to liability unless it is given pursuant to a common design.
>
> 137. Although procuring a tort and assisting another to commit a tort pursuant to a common design are distinct bases for imposing accessory liability, they must operate consistently with each other and such that the law of accessory liability in tort is coherent. Considerations of principle, authority and analogy with principles of accessory liability in other areas of private law all support the conclusion that knowledge of the essential features of the tort is necessary to justify imposing joint liability on someone who has not actually committed the tort..."

328. It is not in dispute that a person may be liable in deceit as a joint tortfeasor if he or she is a knowing and active party to a scheme to defraud, even if he has not himself said anything. He can be liable even though the actual representation has been made by someone else.

Joint liability with D2-D5

329. I agree with Mr Ho that on the pleadings it appeared to be common ground that Mr Gupta was jointly liable for the deceit (if established) of D2-D5. I will not go into the pleadings because I consider Mr Ho was right to further argue that on the facts, this concession was inevitable. The following matters are relevant in this regard. D1-D5 admitted that at all material times Mr Gupta was the indirect controlling shareholder of D2 and D3; an indirect shareholder of D4 and D5; and had *de facto* and/or legal control over D2-D5. Similarly, Mr Gupta's evidence was that "…*as head of UD Group* [of which D2-D5 are an admitted part] *I had overall responsibility for running the business*". Against that background, I consider it inconceivable that D2-D5 could have engaged in a massive fraud, which spanned years, without Mr Gupta being behind it, directing it, and knowing and approving it. I have already made some findings above about Mr Gupta's role in the fraud. By his own admission, Mr Gupta was the originator of the relationship between Trafigura and UIL and he is the one who approached Trafigura to initiate the buy-back trading. I have also found that Mr Gupta clearly

procured at least D2-D5 to make the fraudulent misrepresentations in a scheme devised by him. I find that, for the purposes of this claim, they are essentially his creatures and he directed them to do what they did. He is therefore jointly liable for their torts because he procured them to commit deceit, knowing the essential facts that made the Representations to Trafigura actionable in tort. Indeed, Mr Gupta even signed the relevant Master Contracts to which D4 and D5 are party. I reject as untrue his evidence in cross-examination that his signature had been applied to these contracts without his knowledge.

Joint liability with D6-D8

330. In my judgment, Mr Gupta is also jointly liable for the deceit of D6-D8 on the two distinct bases identified by Lord Leggatt in Lifestyle Equities: more than trivial assistance under a common design, and the procuring of deceit.

331. As to the first basis, Trafigura does not need to prove that Mr Gupta controlled D6-D8. It suffices in law if Mr Gupta gave D6-D8 more than trivial assistance to commit their deceit, pursuant to a common design between them, and with knowledge of the essential elements of the tort they were committing. On the facts I have found, Trafigura can easily satisfy that test against Mr Gupta. Mr Gupta knew that D6-D8 were not delivering Nickel, and had no intention to do so, despite having represented to Trafigura they would do so and inducing it to contract on that basis. Mr Gupta conceived of the fraud and, by his own admission, was involved in it from the very outset. He knew how it worked. Indeed his own witness statement explains "[*h*]*ow the transit financing arrangement worked in principle*", and specifically explains that it involved one UIL company selling to Trafigura "*alloy or scrap*" at the Nickel price, while another UIL company would then buy it back by reference to the same price. Trafigura has succeeded on Issues 1 and 2, and it follows that, without Trafigura's knowledge, one of the UIL companies sold it cargo pretending it was Nickel but knowing it was not, while another then promised to buy that worthless cargo back, pretending it was Nickel and paying Nickel prices, despite knowing it was not. Mr Gupta's knowledge of the basic structure of the scheme means that he knew of the essential elements of D6-D8's deceit. Since Mr Gupta also knew D6-D8 were participating in precisely the same fraud as D2-D5, he must have known they were committing precisely the same wrongful conduct as D2-D5.

332. There was in my judgment plainly a common design between the UIL companies to defraud Trafigura. Mr Legg complained that the common design case was not pleaded but Mr Ho was correct to submit that it is inherent in the pleaded unlawful means conspiracy claim. The basic structure of the scheme, which I have found Mr Gupta conceived, depended on co-ordinated action between all of the UIL companies. I note that all of them needed to make it look like they were all selling and buying Nickel. A common design was therefore essential, otherwise the UIL company that bought back cargo would have complained it had paid Nickel prices for worthless cargo. A common design was also vital to enable the monies needed to perpetrate and continue the fraud, and the monies representing its proceeds, to be moved between the UIL companies. As even Mr Gupta accepted in cross-examination, the very structure of the scheme required there to be a "*grand reckoning*" to make sure money got to the right UIL company. Mr Gupta had no explanation for why disclosure showing this "*grand reckoning*" process had not been provided.

333. I find that Mr Gupta provided D6-D8 with non-trivial assistance to commit their deceit: he conceived of the fraud and must have persuaded the legal owners of the entities to allow him to use those entities; he must also have explained (or got others to explain) to those acting for D6-D8 how it would work; he laid the groundwork by negotiating the basic buy-back financing structure with Trafigura; he co-ordinated and controlled D2-D5's fraudulent behaviour, which was necessary for D6-D8 to benefit from and perpetuate it; and Mr Gupta's own evidence is that "[*i*]*nsofar as the arrangement with New Alloys was concerned this meant sharing the benefits with them*", so he must have been involved in ensuring that the proceeds of the fraud were shared with D8 (and presumably also D6 and D7).

334. I turn to the second basis for Mr Gupta's liability for D6-D8's tort. I accept Mr Ho's submission that Mr Gupta is also liable on the basis that he controlled these companies and knowingly procured them to commit deceit. If Mr Gupta did not ultimately own and control D6-D8, it is a mystery (i) who did; (ii) why Mr Gupta would have introduced these third parties into the fraud; and (iii) why the true owner(s) or controller(s) of D6-D8 would willingly have engaged, or allowed their companies to engage, in obviously fraudulent conduct. Mr Gupta offered no coherent explanation for these basic points in cross-examination. I would add that these companies have simply pleaded bare denials that Mr Gupta was their *de facto* or legal controller. They have not, as they easily could have done, pleaded any positive case about who else their true owner and/or controller *was* or how they came to be involved in what was fraudulent trading in purported Nickel.

335. Although ordered to give disclosure about their *de facto* or legal controller, D6-D8 have failed to do so (and have tendered no witnesses to address that issue). I consider they have not done so because Mr Gupta was their effective controller. They were plainly fronts for him:

1) D6 (Spring Metal) was incorporated by Mr Aman Uday Chourasia, who signed the statement of truth on D6's 'bare defence'. But Mr Chourasia owns and personally runs (or at the very least in July 2023 ran) a small sandwich shop in Hong Kong. With respect to him, I consider it is most unlikely that Mr Chourasia had the financial wherewithal or expertise to engage in large scale Nickel trading. The fair inference is that Mr Chourasia, whose father was previously employed by Mr Gupta, was simply allowing his company to act as a front for Mr Gupta. That inference is supported by the fact that Mr Gupta had access to and use of the "*trader@springmetal.com*" email address.

2) The Annual Return for D7 (Mine Craft) for 2021/22 identified that (i) the company's sole director was a Mr Shovakhar Upadhyay (who gave a personal residential address in Dubai), and (ii) D7 was wholly owned by a Hong Kong company called Aurum Global Trading Limited, of which Mr Upadhyay was the sole shareholder. However Mr Upadhyay is (or at least in July 2023 was) a chef at Palm Jumeirah in Dubai, where Mr Gupta lives. Like Mr Chourasia in Hong Kong, and with respect to Mr Upadhyay, I consider it is most improbable that Mr Upadhyay had the financial wherewithal or expertise to engage in large scale Nickel trading. Again, the fair inference is that he was simply acting as a front for Mr Gupta.

3) As for D8 (New Alloys Trading), as of 30 November 2022, one of the two directors and the sole shareholder was Mr Manoj Menon. Mr Menon was the 25% owner of a now insolvent Mauritian bank called Silver Bank—the remaining 75% of which was owned by Mr Gupta's wife, and whose largest borrower was none other than Mr Gupta himself. In May 2023, it was reported that Mr Gupta "…*was almost always physically present at the bank before the Trafigura affair. He was the de facto head of the institution*…" (but I bear in mind that newspaper reports may not be the most powerful evidence). The bank was put into conservatorship by the Bank of Mauritius on 13 February 2024 and there have been extensive reports of alleged wrongdoing at the bank. At the least, Mr Gupta and Mr Menon therefore appear to be close business associates. The fair inference is that Mr Gupta was either the true owner of D8; or, at the very least, was its *de facto* controller.

336. The economics of the scheme devised by Mr Gupta are revealing. It involved the UIL sellers receiving a certain amount of money per month, based on the amount of Nickel they pretended to sell to Trafigura. Since all of the UIL companies were controlled and/or owned by Mr Gupta, the amount of incoming cashflow they received was (as it logically needed to be) centrally managed. Thus, I note that in cross-examination, Mr Gupta said that there was a "*common book*" between all of the UIL companies and Trafigura, and when asked whether he was saying "…*that those people* [Mr Rathi, the CFO of UD Trading (Ms Aditi Lall), and Mr Anand Raman] *would decide how much cash your businesses needed across all the defendants and then arrange a quantity of nickel to put in each contract accordingly?*" (emphasis added), he simply responded: "*They were handling the day-to-day.*" Mr Gupta also accepted that those individuals would discuss with him what they were planning, although he claimed that did not happen on a regular basis.

337. The evidence is that Mr Rathi negotiated on behalf of D6-D8, just as he did for D2-D5, and Mr Gupta was keen throughout his cross-examination to emphasise that Mr Rathi was supposedly running the operation, not him. But Mr Rathi plainly worked for Mr Gupta, whom he called his "boss"; and in cross-examination, Mr Gupta accepted that (at least on one occasion) Mr Rathi referred to him as his "boss". That is only consistent with D6-D8 being just as much Mr Gupta's creatures as D2-D5. I find the reason Mr Rathi controlled all the UIL companies is that they were all ultimately controlled by '*the boss*', Mr Gupta, who had conceived of the fraud.

338. Mr Sebastian's role is similarly revealing. While Mr Gupta accepted that Mr Sebastian had previously worked for him, he was keen to suggest that by the time of the Arrangement, Mr Sebastian had left to run the entirely distinct D6-D8. I find that was untrue and Mr Sebastian remained in Mr Gupta's control and effective employment. Strikingly, Mr Gupta had no explanation in cross-examination either for (i) why in September 2020, Mr Sebastian was sending Mr Jain BLs on behalf of both D4 and D7 (even though he had supposedly left Mr Gupta's employment by this point), or (ii) why in July 2021, Mr Sebastian was still using a *@udgroup.ae* email address (indeed Mr Sebastian was still using that address in May 2022).

339. Finally, there are numerous contemporaneous documents that show that all of the UIL companies were controlled and acted as a single unit, under the direction of Mr Rathi and, ultimately, Mr Gupta:

1) As Mr Gupta accepted in cross-examination, D7 had been involved in the buy-back financing that Trafigura had provided to Mr Gupta's companies *before,* on his case, the Arrangement existed. It is unexplained how that can have made any economic sense if D7 was not owned or controlled by Mr Gupta: were it otherwise, D7 was receiving huge sums in return for selling cargoes to Trafigura, which were cargoes that were repurchased (and the financing thereby repaid) by D2 or D3 (which Mr Gupta accepts he did own and control).

2) In early March 2022, Mr Rathi updated Mr Gupta about all the cargoes then being financed by Trafigura. No distinction was drawn between cargoes sold by D2-D5 and D6-D8. Mr Gupta was updated about them all.

3) On 31 March 2022, Mr Rathi sent an email to Trafigura, copying in Mr Gupta, headed "*Cargoes at Transhipment Point – Trafigura/UIL*" (emphasis added). The cargoes in that list included cargoes sold by D6, yet nonetheless Mr Rathi described them as '*UIL*' cargo. Mr Rathi must have done that because D6 was as much as part of the UIL group as D2-D5.

4) On 25 October 2022, Mr Gupta sent the "*UD Group Progress Report*" to Mr Oikonomou: see [142]. That document, as Mr Gupta conceded in cross-examination, referred to D6-D8 as part of the 'UD Group'. The document drew no distinction between D6-D8 and D2-D5.

5) On 30 November 2022, Mr Rathi emailed Mr Gupta (amongst others at UIL) attaching a spreadsheet entitled "*UIL cargo 11 Nov* (*1*)". I have addressed this as the first iteration of the Materials Spreadsheet above at [174]. That identified the cargoes Trafigura had sold to third parties "*on behalf of us*". The spreadsheet detailed the cargoes UIL had sold to Trafigura and the cargoes it had sold to third parties, which included cargoes bought from D6-D8. Again, no distinction was drawn between D2-D5 and D6-D8 - all of their business featured without distinctions in the "*UIL cargo"* spreadsheet. The only sensible explanation for Mr Rathi's description and treatment of these cargoes is that Mr Gupta ultimately owned and/or controlled all of the UIL companies and they were used and treated interchangeably.

6) Once the fraud began to unravel, Mr Gupta himself provided the Materials Spreadsheet on behalf of all UIL companies, reflecting all of the Trades without distinction; and he made settlement proposals on behalf of all these companies too. I find that Mr Gupta behaved in that way because D6-D8 were just as much his companies as were D2-D5. Similarly, there was no separate representative from D6-D8 at any of the meetings following the November 2022 inspection. All were represented by Mr Gupta (and/or other UD/UIL personnel including Mr Prasad).

340. Given their involvement in the fraud that Mr Gupta conceived and oversaw, I find that Mr Gupta knowingly procured D6-D8 to commit the deceit that is the subject of the claims before me. The reality is that the fraud depended on co-ordinated action amongst all the UIL sellers; Mr Gupta was the mastermind of the fraud; and he procured all the UIL sellers to lie in order to perpetuate the fraud.

341. Mr Gupta is liable in deceit as a joint tortfeasor. Trafigura succeeds on Issue 11.

S. Issue 12: are the Defendants liable for unlawful means conspiracy?

342. Trafigura relies on this tort as a further means of seeking relief in respect of the fraudulent trades. As explained by Mr Ho, the unlawful means conspiracy claim is a "vehicle" by which to impose personal liability on all of Defendants in respect of each particular UIL company's deceit. Trafigura's essential case is that the UIL companies, under the ultimate direction and control of Mr Gupta, combined together to engage in fraudulent trades by which they would purport to sell Nickel, which would never be supplied to Trafigura. Trafigura says that this combination "*falls to be inferred*" from various facts and matters, including (i) Mr Gupta's ownership and/or control of the UIL sellers; (ii) the UIL sellers' common representation by Mr Rathi; (iii) the provision of the Materials Spreadsheet; (iv) the settlement proposals made by Mr Gupta on behalf of the UIL sellers; and (v) what Trafigura describes as "*the employment… of an identical modus operandi in effecting the alleged fraud*": APOC [42].

343. The principles governing a claim for unlawful means conspiracy did not appear to me to be in dispute between the parties. I take the four elements of the cause of action from ED&F Man Capital Markets v Come Harvest Holdings Ltd [2022] EWHC 229 at [465]-[466] per Calver J): (a) a combination between the defendant and one or more other persons; (b) an intention on the part of the defendant to injure the claimant; (c) concerted action pursuant to the combination, involving the use of unlawful means; and (d) causing loss to the victim of the conspiracy.

344. D1-D5's pleaded response to this claim was limited to the arguments under Issues 1 and 2 (which I have decided in favour of Trafigura), and reliance on the GTCs as barring Trafigura's claim (which, as I have explained, is not maintained by Mr Gupta/D2, if the Main Trades are rescinded, and which I have in any event rejected). In their closing submissions, however, Ms Hutton KC and Mr Legg relied upon a number of additional points which go to the four elements of the cause of action. Given the findings of fact I have already made, and for the reasons I set out below, I was not persuaded by these new submissions. I turn to these new points.

345. First, it was argued for Mr Gupta that there was no combination between the Defendants. It was submitted, by reference to extensive case law and commentary, that a combination is not possible between a company and its sole director. In my judgment, that legal debate is academic. The only UIL company of which Mr Gupta was ever a sole director, for even a time, was D5 (in the period between 12 January 2017 to 28 October 2020 - not relevant to the trades in issue which are from November 2020) and Mr Gupta is in any event jointly liable for D5's deceit (Issue 11). For the reasons I have already given, the fraud that the Defendants perpetrated depended on co-ordination and combination between them. That was built into the very structure of the scheme, without which the fraud would make no logical or economic sense. And if there had been no combination, it is entirely unexplained by Mr Gupta how it is that the fraud operated in practice and how it came to happen that all of the UIL sellers began deceiving Trafigura at precisely the same time, in precisely the same way, under materially identical transactions, which interlocked (in the sense that the perpetuation of the fraud depended on one UIL seller buying back cargo it knew was not Nickel, after a different UIL seller had sold that cargo to Trafigura).

346. Second, it was denied by Mr Gupta that there was an intention to injure Trafigura. Reference was made to the decision in ED&F Man as identifying when the requisite

intention to injure will be found, and in particular highlighting the three categories of intention set out by Calver J at [487]. As I understood Mr Legg's submissions, there was no dispute that if harm to the claimant is the means by which a defendant seeks to secure their end, then the requisite intention is made out. There was also no dispute as to Calver J's fourth category of intention, which he identified at [489] as follows "…if harm to the claimant was the necessary consequence (i.e. obverse side of the coin) of the defendant's actions and the defendant knew this then although the purpose of the defendant's action was not to harm the claimant, he/she will be considered as having intended to harm the claimant (category 4)."

347. In my judgment, harm to Trafigura was (a) the means by which the Defendants sought to secure their end (of receiving large sums of money in return for cargoes worth little or nothing); and/or (b) the necessary consequence of the Defendants' action as they knew: causing Trafigura to buy worthless or much less valuable material for the price of Nickel (especially in the absence of any obligation to buy it back), caused it an immediate loss or harm on each trade, as the Defendants must have known.

348. Mr Legg argued that the Defendants did not intend to cause Trafigura harm because one of the UIL companies planned to buy the cargoes back, and so the trading was mutually beneficial. I do not accept that fairly reflects the true position. As Mr Ho correctly submitted, apart from anything else, the Defendants have not even attempted to explain how they claim to have intended to use the money Trafigura paid to generate a return that would enable them to buy-back the cargoes (with interest), without needing to resort to more and more fraudulent trades in the first place. There remained total silence about that; and in cross-examination, Mr Gupta could not even explain where the money Trafigura had paid had gone.

349. Finally, it was argued on behalf of Mr Gupta that there was no concerted action pursuant to the combination involving the use of unlawful means. I have already upheld Trafigura's claims in respect of unlawful means (deceit). It was argued that Trafigura has not established, as against Mr Gupta, any act he did in his personal capacity, as opposed to on behalf of a particular seller. I do not accept this submission. It ignores the fact that it was Mr Gupta who conceived and masterminded the fraud; who introduced the idea of buy-back trading to Trafigura; and who oversaw the overall operation of the fraud (for example, the distribution of monies amongst all the various UIL companies who were party to the conspiracy). He was the person ultimately running and controlling the fraud, and for (I infer) whose ultimate personal benefit he ran the business in which the UIL companies participated.

350. For completeness, I need to address a further pleaded point originally relied on by D1-D5 but not pursued by Ms Hutton KC and Mr Legg on behalf of Mr Gupta at trial. It was said that clause 6.1 of the GTCs bars Trafigura's unlawful means conspiracy claim. I reject that both for the reasons I have given in relation to Issue 7 above, and for the following further reasons. Clause 6.1 provides that, if a QDN is not given within 30 days from the Metal arriving at the discharge port, then "…*any rights the Buyer may have under the Contract and/or at law shall be deemed waived by the Buyer and barred.*". Clause 6.1 does not provide that it bars rights that the Buyer, *i.e.*, Trafigura, has against third parties. It might be argued that this is implicit in the words "*any rights the Buyer may have… at law*". But in my judgment all those words mean is that, if clause 6.1 applies, Trafigura is barred both under the Master Contract, and more generally, from claiming against its contractual counterparty. They do not bar its claims

against third parties. In any event, the words used in clause 6.1 are at least ambiguous, and "…if there is any doubt about what the time-bar clause means (i.e. whether it applies to any given set of facts is ambiguous) then that ambiguity in meaning should be resolved in such a way as not to prevent an otherwise legitimate claim from being pursued": BP Oil International Ltd v Vega Petroleum Ltd [2021] EWHC 1364 (Comm) at [254] per Cockerill J. Similarly, a court is unlikely to be satisfied that a party to a contract has abandoned valuable rights arising by operation of law, *a fortiori* as against strangers to the contract, unless the terms of the contract make it sufficiently clear that that was intended. The more valuable the right, the clearer the language will need to be: Triple Point Technology Inc v PTT Public Co Ltd [2021] AC 1148 at [110] *per* Lord Leggatt. In my judgment, the words used in clause 6.1 are not sufficiently clear to suggest Trafigura agreed to give up its rights against not only its contractual counterparties but all other third parties too.

351. I am satisfied that Trafigura has made out the unlawful means conspiracy. It succeeds on Issue 12.

Quantum

352. I apply the principles identified in ED&F Man by Calver J at [562]. The damages for unlawful means conspiracy, where the means are deceit, are to be approached in the same way as deceit damages. The damages I award for Trafigura's unlawful means conspiracy claim will therefore be the same as for deceit.

T. Issue 13: Are the D's liable for the duplicate bills of lading - the OOCL Trades?

353. This claim concerns two trades (BLs No. OOLU2702252220 and OLU2704265540) where Trafigura purchased Nickel (described in the relevant BLs as "126 BAGS OF LME REGISTERED NICKEL BRIQUETTES") from D3. However, duplicate BLs were delivered to both Trafigura and a third party, Hyphen, by D3. There was a dispute as to who was the true owner of the relevant cargoes. The carrier, OOCL Singapore Pte. ("OOCL"), investigated the position and concluded that it had not issued the BLs delivered by D3 to Trafigura; it said they were invalid, that Hyphen held the genuine originals and so it would deliver the goods only to them.

354. So, Trafigura did not obtain title to the Cargo for which it had paid D3 the sum of US$6,639,926.82. That would plainly be a breach of contract for which Trafigura is entitled to damages from D3. I note that while D3 pleaded a bare denial that it did not provide Trafigura with duplicate BLs, no pleaded (or other) explanation has been provided in response to OOCL's position that Trafigura does not hold the true BLs. That is a surprising omission for a party represented until shortly before the evidence began.

355. The wider factual question however as far as the OOCL Trades are concerned is whether there was a fraud. In particular, the issue is whether, as argued for Trafigura, D3 and the Defendants collectively were involved in issuing, or causing or procuring the issuing, of duplicate and knowingly false BLs that were put into circulation by D3. Mr Ho submitted that the Defendants combined together (under the control or direction of Mr Gupta) to defraud Trafigura of the purchase monies that were paid for Nickel, but in the main they did that by promising to deliver Nickel but then delivering something else (this is the subject of the other claims). However, he argued that I should

infer that they also acted unlawfully by combining to procure the issuing of duplicate BLs to make it look like D3 was delivering Nickel (and obtaining payment) when in fact the Nickel belonged to somebody else, or had in fact been sold to somebody else. So, as I understood his case, he essentially argued that the duplicate BLs were a related form of fraud to the main fraud (promising but not delivering Nickel), which I have found established. As put in Mr Pillow KC's question in cross-examination of Mr Gupta, this was selling the same cargo "twice over".

356. Other than relying on their submissions under Issue 12, and a point in relation to the GTCs (each of which I will address below) Ms Hutton KC and Mr Legg did not advance other arguments on Issue 13. In particular, no case was advanced as to how the duplicates came to be in circulation, even though their client, Mr Gupta, accepts control and indirect ownership of D3 at the material time. Equally, it was not suggested that the delivery of duplicate BLs would be anything other than an unlawful act if established.

357. I turn to my conclusions. I was not persuaded that the evidence showed there was an unlawful means conspiracy between all the Defendants in relation to the OOCL Trades. Unlike the other claims, where the UIL companies were all part of a fraud requiring them to play their part in the fraudulent scheme of selling and buying back of the Cargoes fraudulently represented to be Nickel, the OOCL Trades seem to me to involve just D3 and Mr Gupta combining. I did not consider there was a basis for an inference of involvement of *all* the Defendants in an unlawful combination. Save as regards this aspect, I accept the thrust of Mr Ho's submissions as to why D3 and Mr Gupta are together liable:

1) First, I consider that the way Trafigura's case is put is the only logical explanation for how the duplicate sets of BLs came to be in circulation. No-one but D3 and Mr Gupta had any interest in that happening and I have found that the UIL companies he controlled and directed have a track record of procuring the issuing of fraudulent shipping documents on a grand scale (that is, all of the shipping documents issued for the buy-back trades, which represented that UIL had shipped Nickel, when in fact they knew they had shipped something entirely different). I find that this duplicate BL fraud is a variation, agreed by D3 and Mr Gupta, of that dishonest trading practice, plainly intended to injure Trafigura.

2) Secondly, the carrier, OOCL, having investigated the situation, concluded that the BLs held by Trafigura were invalid and no issue has been taken with that conclusion and I accept it is correct. In particular, Mr Gupta and D3 have not explained either (i) on what basis they say OOCL is wrong (in circumstances where, for example, OOCL obviously knew who had paid freight and who had approached it as the shipper); or (ii) how, therefore, D3 came to acquire the BLs it sent to Trafigura, if it (D3) considered them to be genuine.

3) Thirdly, and relatedly, D3 and Mr Gupta have conspicuously failed to explain or evidence the following: how D3 acquired title to the cargoes the subject of the OOCL Trades; when and how D3 communicated the particulars of those cargoes to OOCL for inclusion in the BLs; when and how D3 approached OOCL to organise shipment of those cargoes if D3 was the genuine shipper (it would have ample communications, both internal and with OOCL, evidencing its organising carriage for these goods); the payment of freight by D3 for the carriage of these goods (or at the very least an appropriately evidenced explanation of who had paid the freight

for these goods and why); or how, when D3 endorsed the BLs that were delivered to Trafigura, it had a genuine belief that it was entitled to endorse them. In cross-examination, Mr Gupta accepted that goods could not be loaded on a vessel without the shipper communicating with the carrier, but he had no explanation for why, if D3 were the genuine shipper, documents proving that had not been disclosed. Indeed, Mr Gupta offered no explanation at all in cross-examination for how duplicate BLs came to be issued. I find that Mr Gupta did not provide an explanation because there is no innocent one.

4) Fourthly, the OOCL Trades are not isolated incidents. In my judgment, it is significant that duplicate BLs were issued in the three Maersk Trades, the Hyphen Third Party Trade, and the trades which are the subject of Trafigura India's claims. I find that on each of these cases, the UIL companies were able to perpetrate their fraud because of the involvement of Techies Logistics (S) Pte Ltd ("Techies"), UIL's Singapore agents and freight forwarders. Techies were, in the OOCL Trades, named as 'Shipper' in the BLs ultimately delivered to Hyphen. They are the common thread in other claims involving duplicate BLs. It cannot be a coincidence. So, (i) in the Maersk Trades, duplicate sets of BLs were issued for the same cargo and Maersk investigated and concluded (and it has not been contradicted before me) that, "*Maersk has investigated the circumstances which led to the competing delivery demands. It is clear from these investigations that only one set of Bills of Lading was issued. However, without Maersk's authorisation,* [Techies] *printed two sets of the Bills of Lading*"; (2) in the Hyphen Third Party Trade a duplicate BL was issued and again the apparent issuer of the BL was OOCL, but when the BL was ultimately delivered to Hyphen by Trafigura (who had bought the Cargo from UIL), both OOCL and Hyphen concluded the BL was a fraudulent duplicate and not the genuine BL for the cargo. Hyphen sued Trafigura in the High Court and averred, "*In light of the suspicious nature of the redirection of the Goods away from Rotterdam, and Techies' appearance as a named party on the OOCL BL (as defined below at paragraph 30.a), Hyphen infers that Techies' actions… were motivated by a complicity or other kind of involvement in the Gupta Fraud.*" In my judgment, absent any other explanation, the obvious inference in the OOCL Trades is that D3 (via Techies) procured the issuing to Trafigura of duplicate BLs, and did so at the direction of Mr Gupta. Mr Gupta has provided no explanation for how this came to happen in all of these trades concerning entities he controlled. I repeat, it cannot be a coincidence.

5) Fifthly, and similarly, Mr Gupta had no explanation for how the claimants in other proceedings (Sucden and Kataman Metals) had also, at around the same time (the summer of 2022), received false BLs for non-existent Nickel from UIL companies.

6) Sixthly, nothing was said in the Trial Skeleton about the OOCL Trades. If D3 and Mr Gupta had any answer to this claim, they would have provided it by now.

358. As I have said, although Ms Hutton KC and Mr Legg did not formally make submissions on behalf of D3 in respect of this issue, they did argue that D3's liability for the OOCL Trade claim would be barred by Clause 6.1 of the GTCs. I found that a difficult submission to follow given that the OOCL Trades claim is that D3 never delivered goods to Trafigura, and instead issued fraudulent and invalid BLs to it. Clause 6.1 would not be engaged in a situation where no goods were ever delivered to Trafigura.

359. It was also argued for Mr Gupta that he is not liable in unlawful means conspiracy for D3 having issued duplicate BLs. That submission relied on the same points as made under Issue 12, which I have rejected. In short, I find that in circumstances where Mr Gupta is jointly liable for D3's deceit because he procured it, it is unrealistic to suggest that Mr Gupta did not similarly procure D3 to issue BLs. And I conclude that is all the more so when there is, as explained above, a clear course of conduct of duplicate BLs being issued across multiple trades. The OOCL Trades were not a one-off, but part of a clear and systematic pattern of fraudulent conduct of a similar nature, which I find Mr Gupta must have known of, approved, and directed, acting in combination with D3.

360. Although not developed orally, I would also have found, had it been necessary, that D3's clear breach of contract in issuing duplicate BLs was procured by Mr Gupta as a distinct tort. The facts establish a breach of contract which was procured by Mr Gupta, knowingly, intentionally, and without lawful justification, applying the principles in Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] 1 CLC 284 at [21] per Popplewell LJ.

361. Trafigura succeeds on Issue 13, as regards the liability of D3 and Mr Gupta.

Quantum

362. I conclude as follows in relation to the quantum of damages in respect of the OOCL Trades:

1) US$6,639,926.82 was the amount D3 was paid Trafigura for the OOCL Trades Cargoes. It received nothing in return, and so is entitled to recover US$6,639,926.82 as damages from Mr Gupta and D3.

2) Trafigura is entitled to the sum it paid under the confidential global settlement agreement with Hyphen but I note that this appears to also cover the Hyphen Third Party claim (and not just the OOCL Trades). The amount paid and the reference to the settlement agreement are identified in Appendix B to the closing submissions. There may be an issue, on which I will hear submissions if necessary, as to how the settlement sum is to be divided between Hyphen Third Party claim (where all Defendants are jointly liable) and the OOCL Trades (where have found that only Mr Gupta and D3 are jointly liable).

3) It is entitled to the legal costs incurred in dealing with the disputes engendered by these trades. These costs overlap on the schedule provided to me with some of the costs for the Maersk, Evergreen and Mind ID Third Party Trades. Again, an apportionment may be necessary for the purpose of identifying the distinct liability of Mr Gupta and D3 in respect of the OOCL Trades.

U. Conclusion

363. Trafigura succeeds in this claim on its principal causes of action. It has established an entitlement to proprietary relief for sums of about US$500 million, together with substantial damages. Trafigura was the victim of fraud on a grand scale devised and implemented by Prateek Gupta using the Corporate Defendants. By that fraud, Mr Gupta and entities that he effectively controlled extracted around US$500 million from Trafigura under the pretence that they were selling LME Grade Nickel when in fact

they supplied cargoes of low value or worthless materials. Phase II of this claim will consider tracing remedies in relation to the sums where Trafigura has established proprietary rights. Mr Gupta is also personally liable for around US$500 million.

364. Finally, it is important that I record that Mr Harshdeep Bhatia and Mr Sokratis Oikonomou (both formerly of Trafigura) are wholly innocent of any wrongdoing. They knew nothing of the fraud, and are themselves in a sense victims of Mr Gupta's fraud through having been falsely accused in this case of being parties to it. They emerge from these proceedings with their personal and professional reputations intact.