SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-063570-242

DATE: March 24, 2026

BY THE HONOURABLE ANDRES C. GARIN, J.S.C.

CLEARSPRING CAPITAL PARTNERS II L.P.
and
CLEARSPRING CAPITAL PARTNERS US (II) L.P.
and
THE SF FUND LIMITED PARTNERSHIP
and
THE SHOTGUN FUND LIMITED PARTNERSHIP
Plaintiffs
v.
LOGISTIK UNICORP HOLDINGS INC.
Defendant

JUDGMENT

INTRODUCTION

[1] The SF Fund Limited Partnership, The Shotgun Fund Limited Partnership (collectively the **Shotgun Funds**), Clearspring Capital Partners II L.P. and Clearspring Capital Partners US (II) L.P. (collectively **Clearspring**), Placements Louis Bibeau Inc. (**Placements Bibeau**) and Logistik Unicorp Holdings Inc. (**Unicorp Holdings**) are all parties to a Share Purchase Agreement dated August 1, 2018 (the **SPA**).[1] Pursuant to the SPA, Unicorp Holdings purchased 100% of the issued and outstanding shares of Logistik Unicorp Inc. (**Logistik**) from the Shotgun Funds, Clearspring and Placements Bibeau.

[2] The Shotgun Funds and Clearspring have instituted proceedings against Unicorp Holdings seeking payment of amounts required to reimburse certain notes issued under the SPA.

[3] The dispute between the parties relates to whether sales of medical personal protective equipment (**Medical PPE**) made by Logistik in its fiscal years ended May 31, 2020, and May 31, 2021, as well as grants received by Logistik pursuant to the Canada Emergency Wage Subsidy program (**CEWS**) during that period, ought to be included in its 2020 and 2021 earnings before interest, taxes, depreciation and amortisation (**EBITDA**) as defined in the SPA. If so, the notes at issue must be reimbursed.

---

[1] Exhibit PCS-1.

[4] The determinative issue raised by this matter is whether the parties are bound by an accountant's determination, made pursuant to an expert determination clause in the SPA, that the disputed items ought to be included in Logistik's EBITDA. For the reasons that follow, I conclude that the expert's determination is not tainted by any manifest error, binds the parties and Unicorp Holdings must reimburse the notes it issued under the SPA.

CONTEXT

1. THE PARTIES AND THE SHARE PURCHASE AGREEMENT

[5] Logistik is a company based in St-Jean-sur-Richelieu, Quebec, conducting business in the uniforms and workwear field. Its clients are largely Canadian and Australian public sector entities operating in various sectors, including military, law enforcement, transportation and healthcare. They include the Canadian Department of National Defence, the Australian Defence Force, Canada Post, NSW[2] Health, and Urgences-santé.

[6] Logistik differentiates itself from the competition by offering what it describes as a "managed clothing solution". Using Logistik's proprietary information technology, employees of its clients are able to order and receive individualised delivery of correctly sized uniforms and workwear.

[7] Not all of Logistik's clients opt for a managed clothing solution model. For instance, Logistik describes its relationship with the Australian Defence Force as being that of "prime vendor". Under this model, large quantities of uniforms are delivered to military bases, rather than to individual service members. On occasion, as discussed further below, Logistik also makes what may be described as "bulk orders" to existing or new clients.

[8] Logistik was founded in 1992 by Mr. Louis Bibeau. In early 2000, the Shotgun Funds acquired a 50% interest in Logistik. At the time, Mr. Richard Reid, the Shotgun Funds' President and General Manager, became a member of Logistik's board of directors and served as such until August 2018.

[9] Subsequently, in 2011, Clearspring acquired a 37% interest in Logistik. Mr. Lawrence Stevenson, Clearspring's Managing Director, become Chairman of Logistik's Board of Directors and served in that capacity until August 2018.

[10] As a result of Clearspring's investment in Logistik, the Shotgun Funds' shareholding was reduced to 31.5%. The remaining 31.5% of Logistik's shares were held by Placements Bibeau, a holding company controlled by Mr. Bibeau.

---

[2] New South Wales (Australia).

[11] By the spring of 2017, Clearspring and the Shotgun Funds wished to sell their respective interests in Logistik. The Canadian Imperial Bank of Commerce was retained to assist in the process of identifying a purchaser and a Confidential Information Memorandum (**CIM**)[3] was prepared for distribution to potential purchasers executing a non-disclosure agreement (**NDA**). One of the potential purchasers executing an NDA was Wynnchurch Capital LLC (**Wynnchurch**).

[12] On June 21, 2018, Wynnchurch presented a letter of intent (**LOI**) in accordance with which an affiliated entity would purchase 100% of Logistik's shares.[4] The base purchase price offered by Wynnchurch was $241 million, including the assumption of $12.8 million of debt.[5] In addition to the base purchase price, the LOI proposed a $15 million earnout which would be based upon Logistik's financial performance in 2020 and 2021. In the event that Logistik met the earnout targets, the total purchase price would thus rise to $256 million.

[13] Logistik's shareholders selected the offer reflected in Wynnchurch's LOI over a competing offer presented by another private equity firm.[6] Accordingly, as of August 1, 2018, the Shotgun Funds, Clearspring and Placements Bibeau, as sellers, and Unicorp Holdings, as purchaser,[7] entered into the SPA.[8]

[14] Wynnchurch is Unicorp Holdings' indirect majority shareholder.[9] Placements Bibeau rolled the funds received for its Logistik shares into Unicorp Holdings and is a minority shareholder. Mr. Bibeau thus remains actively involved in Logistik and is its Chief Executive Officer.

2. THE REVERSE EARNOUT MECHANISM

[15] The $241 million base purchase price for Logistik's shares stipulated in the SPA was subject to certain agreed adjustments.[10] One of the agreed adjustments to the base purchase price was the $15 million earnout proposed in the LOI. In implementing this aspect of their agreement, the parties adopted a reverse earnout mechanism pursuant to

---

3 Exhibit D-1.
4 Exhibit PCS-17.
5 The LOI was preceded by an indication of interest dated April 23, 2018, a first letter of intent dated May 30, 2018, and an updated offer dated June 18, 2018. The price offered by Wynnchurch for Logistik's shares in these various proposals evolved over time: see exhibit PCS-17.
6 Exhibit PCS-18.
7 The named purchaser in the SPA is 9381-7187 Québec Inc. On August 6, 2018, 9381-7187 Québec Inc. changed its name to Logistik Unicorp Holdings Inc.: see exhibit D-23.
8 Exhibit PCS-1.
9 Exhibit D-23.
10 Section 2.2 SPA (exhibit PCS-1).

which payment was a function of Logistik's financial performance in the fiscal years ending on May 31, 2020, and May 31, 2021 (the **Reverse Earnout Mechanism**).[11]

[16] Under this Reverse Earnout Mechanism, for each of 2020 and 2021, Unicorp Holdings issued a series of promissory notes (the **Reverse Earnout Notes)** to each of the Shotgun Funds, Clearspring and Placements Bibeau. The aggregate value of such notes was $15 million. In accordance with the SPA, the Reverse Earnout Notes would, depending on Logistik's financial performance, be paid in full or returned to Unicorp Holdings for cancellation. The agreed purpose of this mechanism was to determine the fair market value of the shares purchased by Unicorp Holdings.[12] In this respect, the parties indicated that they reasonably expected that the Reverse Earnout Notes would be fully reimbursed.[13]

[17] Logistik's financial performance for the purposes of the Reverse Earnout Mechanism in the SPA is measured by its EBITDA. In this regard, the parties adopted a specific definition of EBITDA (the **EBITDA Definition**), which is central to their dispute and can thus be usefully reproduced at this early stage:

> **EBITDA** means, for a given period (in this definition, the **applicable period**), earnings before net interest, income taxes, depreciation and amortization (per the statement of cash flows for the applicable period), provided, however, that the calculation of EBITDA shall not take into account management fees, non-recurring gains and losses, non-cash losses and gains, Transaction Expenses, transaction expenses for future successful and unsuccessful transactions involving the Business Operators, and any one-time expenses or income that are not incurred or realized in the ordinary course of business, as agreed from time to time between the Parties, it being understood, for greater certainty, that expenses incurred in the applicable period that are outside of the ordinary course of business shall not be taken into consideration for the purpose of calculating EBITDA to the extent that such expenses do not generate additional EBITDA in the applicable period.[14]

[18] In accordance with the Reverse Earnout Mechanism, Logistik's directors were to prepare EBITDA statements[15] for each of 2020 and 2021 respectively, setting out the company's 2020 EBITDA and 2021 EBITDA, as defined:

> **2020 EBITDA** means the combined EBITDA of the Business Operators for the fiscal year beginning on June 1, 2019, and ending on May 31, 2020, determined by the directors of the parent entity of the Business Operators based on the audited financial statements for such fiscal year of the Business Operators, prepared in accordance

---

11 Section 2.10 SPA (exhibit PCS-1).
12 Section 2.10(j) SPA (exhibit PCS-1).
13 *Ibid.*
14 Section 1.1(rr) SPA (exhibit PCS-1).
15 Section 2.10(a) SPA (exhibit PCS-1).

> with ASPE[16], applied consistently with the Financial Statements for the year ended May 31, 2018, as may be modified pursuant to Sections 2.10(h) and 2.10(i).
>
> […]
>
> **2021 EBITDA** means the combined EBITDA of the Business Operators for the fiscal year beginning on June 1, 2020, and ending on May 31, 2021, determined by the directors of the parent entity of the Business Operators based on the audited financial statements for such fiscal year of the Business Operators, prepared in accordance with ASPE, applied consistently with the Financial Statements for the year ended May 31, 2018, as may be modified pursuant to Sections 2.10(h) and 2.10(i).[17]

[19] Pursuant to the Reverse Earnout Mechanism, should Logistik's 2020 EBITDA exceed $34 million, the Reverse Earnout Notes for that year would be paid in full by Unicorp Holdings.[18] In such case, should Logistik's 2021 EBITDA also exceed $34 million, the Reverse Earnout Notes for 2021 would similarly be paid in full.[19] Moreover, in the event that Logistik's 2020 EBITDA did not exceed $34 million, but its cumulative EBITDA for 2020 and 2021 exceeded $68 million, the Reverse Earnout Notes for both years would be paid in full.[20]

[20] On the other hand, if Logistik's 2020 EBITDA was less than $34 million and the cumulative EBITDA for 2020 and 2021 was less than $68 million, the 2020 Reverse Earnout Notes would be returned for cancellation.[21] Similarly, if Logistik's 2021 EBITDA was less than $34 million and the cumulative EBITDA for 2020 and 2021 was less than $68 million, the 2021 Reverse Earnout Notes would also be returned for cancellation.[22]

[21] The SPA further provides for a dispute resolution process in the case of disagreement between the purchaser and sellers as to Logistik's EBITDA for 2020 or 2021. That process begins with delivery by the sellers of a Notice of EBITDA Objection and, if brought to completion, culminates with an expert determination by an Independent Accounting Firm.[23]

---

16 ASPE refers to Accounting Standards for Private Enterprises in Canada: see section 1.1 (m) SPA (exhibit PCS-1).

17 Sections 1.1 (b) and (d) SPA (exhibit PCS-1).

18 Section 2.10 (c) SPA (exhibit PCS-1).

19 Section 2.10 (d) SPA (exhibit PCS-1).

20 Section 2.10 (e) SPA (exhibit PCS-1).

21 Section 2.10 (f) SPA (exhibit PCS-1). Curiously sections 2.10 (f) and (g) refer to EBITDA Notes, an undefined term, rather than to the defined "Reverse Earn-Out Notes".

22 Section 2.10 (g) SPA (exhibit PCS-1). The SPA does not appear to explicitly deal with the treatment of the 2021 Reverse Earnout Notes in the event that the 2021 EBITDA exceeds $34 million, but the cumulative 2020 and 2021 EBITDA is less than $68 million.

23 Sections 2.10 (h) and (i) SPA (exhibit PCS-1). See also: *Clearspring Capital Partners II c. Logistik Unicorp Holdings Inc.*, 2023 QCCS 894 [***Clearspring Partners***].

3. THE DISPUTE

[22] The parties disagree as to whether payment is due by Unicorp Holdings under the 2020 and 2021 Reverse Earnout Notes. Their dispute relates to whether certain funds earned or obtained by Logistik in the context of the COVID-19 global pandemic ought to be excluded from the company's 2020 and 2021 EBITDA (the **EBITDA Dispute**).

[23] On September 3, 2020, pursuant to section 2.1(a) SPA, Unicorp Holdings delivered a 2020 EBITDA Statement to Clearspring, the Shotgun Funds and Placements Bibeau.[24] The statement indicates that Logistik's 2020 EBITDA is $23,391,000, which is less than the $34 million required for payment of the 2020 Reverse Earnout Notes.

[24] Notably, the 2020 EBITDA Statement deducts $3,305,000 from Logistik's 2020 EBITDA for what it describes as non-recurring income. There are two components to that deduction:

- A salary subsidy of $1,223,000, consisting of grants received by Logistik pursuant to CEWS, a temporary federal government program providing wage subsidies to qualified employers during the COVID-19 pandemic; and
- $2,082,000 for Medical PPE sales (described as "Nonrecurring PPE" in the 2020 EBITDA Statement).

[25] Without these two deductions (the **2020 COVID-19 Deductions**), Logistik's 2020 EBITDA would be $26,696,000, an amount nevertheless short of the $34 million threshold for payment of the 2020 Reverse Earnout Notes.

[26] On October 7, 2020, Clearspring and the Shotgun Funds delivered to Unicorp Holdings a Notice of EBITDA Objection, objecting to the 2020 COVID-19 Deductions.[25] According to Clearspring and the Shotgun Funds, an upward adjustment of Logistik's 2020 EBITDA in the amount of $3,305,000 was required.

[27] The following year, on September 22, 2021, Unicorp Holdings delivered a 2021 EBITDA Statement to Clearspring, the Shotgun Funds and Placements Bibeau.[26] The statement indicates that Logistik's 2021 EBITDA is $19,891,000, an amount less than the $34 million target under the SPA. It further states that the sum of Logistik's 2020 and 2021 EBITDA was $43,282,000, which is less than the cumulative target of $68 million under the Reverse Earnout Mechanism for payment of the 2020 and 2021 Reverse Earnout Notes. Accordingly, the 2021 EBITDA Statement requests that the Reverse Earnout Notes be returned to Unicorp Holdings for cancellation.

---

[24] Exhibit D-3.
[25] Exhibit D-4.
[26] Exhibit D-5.

[28] As was the case in 2020, the 2021 EBITDA Statement makes certain contested deductions from Logistik's EBITDA (the **2021 COVID-19 Deductions**), as follows:

- A COVID-19 salary subsidy of $1,822,000, again consisting of grants received by Logistik pursuant to CEWS; and
- $37,777,000 for Medical PPE sales (described in the 2021 EBITDA Statement as "COVID-19 medical contracts").

[29] Without the 2021 COVID-19 Deductions, Logistik's 2021 EBITDA would be $59,490,000. Moreover, without the 2020 and 2021 COVID-19 Deductions, Logistik's cumulative 2020 and 2021 EBITDA would be $86,186,000, an amount well in excess of the $68 million cumulative target for payment of the 2020 and 2021 Reverse Earnout Notes.

[30] On November 3, 2021, counsel for Clearspring and the Shotgun Funds delivered a second Notice of EBITDA Objection, taking issue with the 2021 COVID-19 Deductions.[27] According to Cleaspring and the Shotgun Funds, an upward adjustment of $39,598,000 to Logistik's 2021 EBITDA was required. As such adjustment would push Logistik's cumulative 2020 and 2021 EBITDA above the $68 million threshold under the Reverse Earnout Mechanism, Clearspring and the Shotgun Funds requested payment of the 2020 and 2021 Reverse Earnout Notes.

[31] The following table set outs the EBITDA targets under the Reverse Earnout Mechanism and the parties' respective positions in respect of Logistik's 2020 and 2021 EBITDA:

Year	EBITDA Target	EBITDA Statements (Unicorp Holdings)	EBITDA Objections (Clearsping and the Shotgun Funds)
2020	$34,000,000	$23,391,000	$26,696,000
2021	$34,000,000	$19,891,000	$59,490,000
Cumulative	**$68,000,000**	**$43,282,000**	**$86,186,000**

[27] Exhibit D-6.

4. THE PROCEEDINGS AND THE BDO REPORT

[32] On June 23, 2022, Clearspring and the Shotgun Funds instituted proceedings against Unicorp Holdings asserting that Logistik's 2020 and 2021 EBITDA were greatly understated and seeking payment of their 2020 and 2021 Reverse Earnout Notes.

[33] The originating application brought by Clearspring and the Shotgun Funds was met by a declinatory exception from Unicorp Holdings, who sought to have the parties' dispute referred to arbitration pursuant to sections 2.8(b) and (c) and 2.10(i) SPA.

[34] I heard Unicorp Holdings' application to refer the matter to arbitration in February 2023. On March 16, 2023, I held that sections 2.8(b) and (c) and 2.10(i) SPA did not constitute an arbitration clause, but rather provided for alternative dispute resolution through expert determination by an Independent Accounting Firm.[28] Since an expert determination clause does not oust this Court's jurisdiction, I dismissed Unicorp Holding's declinatory exception. On the other hand, I further held that proceedings should be suspended while the parties engaged in the expert determination process that they had contractually agreed upon.[29]

[35] In this regard, while Unicorp Holdings' declinatory exception was under reserve, I was advised that the parties had agreed that BDO Canada LLP (**BDO**) should act as Independent Accounting Firm and that Mr. Alan T. Mak should lead that firm's engagement, acting either as arbitrator or expert in accordance with the parties' respective positions.[30] As a result, in my judgment dismissing the declinatory exception, I appointed BDO to prepare an expert report in accordance with sections 2.8(b) and (c) and 2.10(i) SPA.

[36] On April 12 and 13, 2023, counsel for the parties executed an engagement letter with Mr. Mak of BDO.[31] On April 17, 2023, Mr. Mak provided the parties with a timeline setting out a series of steps leading to the issuance of a report in August 2023.[32] Such steps included:

1. Exchange and delivery of initial submissions;

2. Exchange and delivery of responses to initial submissions;

3. Submissions of questions by BDO and exchange and delivery or responses thereto;

---

28 *Clearspring Partners*, *supra*.
29 *Ibid.*, paras. 63-71.
30 *Ibid.*, para. 68.
31 Exhibit PCS-8
32 Exhibit PCS-9.

4. Exchange and delivery of comments on responses to BDO questions;

5. Submission of a redacted draft report by BDO for comments on factual matters; and

6. Exchange and delivery of comments on factual portions of the draft BDO report.

[37] On August 29, 2023, BDO submitted to the parties its final report on the EBITDA Dispute (the **BDO Report**).[33] In its report, BDO agreed with Clearspring and the Shotgun Funds that the 2020 and 2021 EBITDA Statements understated Logistik's EBITDA as defined in the SPA.

[38] The BDO report essentially examines two issues:

1. Whether Logistik's Medical PPE sales in 2020 and 2021 should be deducted from its EBITDA as defined in the SPA; and

2. Whether the CEWS grants received by Logistik in 2020 and 2021 should be deducted from its EBITDA as defined in the SPA.

[39] In addressing each issue, the BDO Report examines whether Logistik's Medical PPE sales and its CEWS grants constitute "non-recurring gains and losses" and whether they constitute "one-time expenses or income that are not incurred or realized in the ordinary course of business".

[40] With respect to Medical PPE sales, the BDO Report finds that these are properly considered to be revenues from Logistik's business activities and should not be viewed as "gains".[34] Moreover, the BDO Report further finds that the Medical PPE sales were realised through the pursuit of commercial opportunities encountered in Logistik's business and were recurring in nature.[35] Accordingly, the BDO Report concludes that Medical PPE sales ought not to be deducted from Logistik's EBITDA as non-recurring gains.[36]

[41] Furthermore, the BDO Report finds that there had been multiple instances of Medical PPE sales by Logistik, to multiple customers in successive fiscal periods.[37] As a result, according to the BDO Report, these sales did not constitute "one-time income transactions".[38] Moreover, the BDO Report further finds that Logistik's Medical PPE sales were consistent with its "bulk order" business model and that such sales were reasonably

---

33 Exhibit PCS-14.
34 BDO Report, para. 2.4.
35 *Ibid.*, para. 2.5.
36 *Ibid.*, para. 2.6.
37 *Ibid.*, para. 2.7.
38 *Ibid.*

considered within the scope of the business's procurement and manufacturing capacity.[39] In short, according to the BDO Report, Medical PPE sales were realised in the ordinary course of Logistik's business. The BDO Report thus concludes that these sales ought not to be deducted from Logistik's EBITDA as one-time income not realised in the ordinary course of business.[40]

[42] With respect to the CEWS grants, the BDO Report indicates that these wage subsidies were not earned in the ordinary course of business and thus are not typically recorded as revenue, but may be considered to be "gains".[41] Nevertheless, because CEWS funding was received as multiple payments over successive fiscal periods and years, the BDO Report finds that these grants were recurring in nature.[42] Given the recurring nature of the CEWS grants, the BDO Report concludes that they could not be deducted from Logistik's EBITDA pursuant to the SPA as either non-recurring gains or one-time income not realised in the ordinary course of Logistik's business.[43]

[43] In view of its findings in respect of the deduction of the Medical PPE sales and the CEWS grants from Logistik's EBITDA, the BDO Report concludes that, properly calculated in accordance with the SPA, Logistik's EBITDA for the relevant period was as follows[44]:

2020	2021	Cumulative
$26,695,561	$59,489,311	$86,184,872

[44] On September 14, 2023, counsel for Unicorp Holdings advised counsel for Clearspring and the Shotgun Funds that, in his client's view, the BDO Report was fundamentally flawed and should be set aside.[45] As a result, the proceedings, which had been suspended by my judgment of March 16, 2023, were reactivated.

POINTS IN ISSUE

[45] By *Modified Originating Application*, Clearspring and the Shotgun Funds wish to give effect to the BDO Report's findings in respect of Logistik's 2020 and 2021 EBITDA.

---

39 *Ibid.*, paras. 2.8 and 2.9.
40 *Ibid.*, para. 2.10.
41 *Ibid.*, para. 2.11
42 *Ibid.*, para. 2.12.
43 *Ibid.*, paras. 2.13 and 2.14.
44 *Ibid.*, paras. 2.3 and 6.54.
45 Exhibit PCS-6.

They thus seek orders condemning Unicorp Holdings to pay the Reverse Earnout Notes issued to them. Together, these notes amount to $9,704,736.[46]

[46] Unicorp Holdings argues that the BDO Report is tainted by manifest error. It seeks an order setting it aside and dismissing the plaintiffs' claims.

[47] The parties' respective positions and arguments raise the following issues:

1. What is the Court's role and the standard of review applicable when reviewing the BDO Report?

2. What evidence is admissible before the Court when reviewing the BDO Report?

3. Should the BDO Report be set aside on the basis that it is tainted by manifest error?

4. Were sworn statements given by former Logistik executives and submitted to BDO in the expert determination process obtained in breach of the plaintiffs' former attorneys' ethical obligations and Unicorp Holdings' fundamental right to counsel? If so, should they be excluded from the evidence before the Court on the basis that they would bring the administration of justice into disrepute?

ANALYSIS

1. THE EXPERT DETERMINATION PROCESS AND THE COURT'S ROLE ON REVIEW OF AN EXPERT DETERMINATION

[48] Various forms of alternative dispute resolution may be chosen by parties in order to resolve their legal disputes.[47] One of these is an expert determination.[48]

[49] Expert determinations can be used in a variety of circumstances. For instance, they can be utilised in the absence of an existing dispute to make a determination required to settle a term of a contract. They can also be used to resolve an actual dispute, which might otherwise be submitted to the courts or to an arbitrator. Typically, experts will rely on their own expertise and knowledge and not solely on submissions and evidence offered by the parties. Unlike an arbitration clause, a contractual provision whereby parties submit an issue to an expert does not oust the courts' jurisdiction over the dispute.

---

46 The amount claimed is less than $15 million as Placements Bibeau does not seek reimbursement of its Reverse Earnout Notes.

47 *Sport Maska Inc. v. Zittrer*, [1988] 1 SCR 564, p. 580 [***Sport Maska***].

48 *Rondeau v. Boulé*, 2021 QCCS 3371, para. 94; *Applied Industrial Technologies, LP v Sirois*, 2018 ABQB 818, para. 111 [***Applied Industrial***].

[50] In section 2.10(i) SPA, the parties agreed to submit any dispute relating to Logistik's 2020 or 2021 EBITDA to an Independent Accounting Firm for expert determination.[49] The contractual provisions governing the agreed expert determination process are sections 2.8(b) and (c) SPA. While these provisions expressly deal with disputes in respect of post-closing Working Capital and Net Debt adjustments, they apply *mutatis mutandis* to the parties' EBITDA Dispute and read as follows:

> **2.8 Settlement of Disputes in Respect of Draft Statements**
>
> […]
>
> (b) If the Sellers dispute any Draft Statement, the Parties shall work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 20 days after delivery of the Notice of Objection by the Sellers to the Purchaser. If the Parties fail to reach a resolution as to the amount of Working Capital and/or Net Debt, as applicable, any remaining dispute will be submitted for determination to an independent national firm of Chartered Professional Accountants mutually agreed to by the Purchaser and the Sellers (and, failing such agreement within a further period of two Business Days, such independent national firm of Chartered Professional Accountants shall be Ernst & Young or, if Ernst & Young is not independent of each of the Parties, KPMG LLP (the Independent Accounting Firm). The Parties shall execute any reasonable agreement(s) required by the Independent Accounting Firm to accept its engagement pursuant to this Section 2.8 (b). Each Party shall be afforded the opportunity to present to the Independent Accounting Firm, with a copy to the other Party, its position in relation to any dispute regarding the Draft Statements as identified in the Notice of Objection, as well as any other written material relating to the calculation of Working Capital and/or Net Debt, as applicable, but shall not be entitled to propose any new disagreement. The Independent Accounting Firm shall, within 30 days following its selection, deliver to the Purchaser and the Sellers a written report determining such disputed calculations, and its determinations will be final and binding upon the Parties and will not be subject to appeal, absent manifest error, for the purposes of calculating Working Capital and/or Net Debt, as applicable. The Independent Accounting Firm shall not attribute a value to any disputed amount

---

[49] Section 2.10(i) SPA provides as follows:

> **2.10 Reimbursement or Cancellation of Reverse Earn-Out Notes**
>
> …
>
> (i) If the Sellers dispute the determination by the directors of the applicable Business Operators of the 2020 EBITDA or 2021 EBITDA, as the case may be, the Parties shall work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 45 days after delivery of the Notice of EBITDA Objection by the Sellers to the Purchaser. If the Parties fail to reach a resolution as to the 2020 EBITDA or 2021 EBITDA, as the case may be, any remaining dispute will be submitted for determination to the Independent Accounting Firm, and the provisions of Sections 2.8 (b) and 2.8 (c) shall apply *mutatis mutandis*.
>
> [Emphasis added.]

> greater than the greatest amount proposed by the Purchaser or the Sellers nor an amount less than the least amount proposed by the Purchaser or the Sellers. The Independent Accounting Firm shall be deemed to be acting as an expert and not as an arbitrator.
>
> (c) The Sellers and the Purchaser will each bear the fees and expenses of their respective accountants, auditors or other advisors, if any, in preparing or reviewing, as the case may be, the Draft Statements. If an Independent Accounting Firm is retained to resolve such dispute, the costs and expenses of such firm will be borne equally by the Sellers, on the one hand, and the Purchaser, on the other hand. However, the Sellers and the Purchaser will each bear their own costs in presenting their respective cases to such firm.
>
> [Emphasis added.]

[51] As mentioned, the parties here eventually participated in the expert determination process provided for in the SPA. Given Unicorp Holdings' disagreement with the outcome of that process, the issue before me is whether the parties are bound by BDO's determination.

[52] In this respect, there is little Canadian case law on the courts' role when reviewing an expert determination. The English courts, on the other hand, have provided useful guidance.

[53] The starting point is to recognise that an expert determination, performed pursuant to an expert determination clause, is a matter of contract. The parties are held to such determination because they have contractually agreed to be bound by it. A court giving effect to an expert determination is simply holding the parties to their bargain. The courts' role in reviewing an expert determination will thus largely depend on what the parties agreed upon.

[54] As a general matter, an expert determination provided for by contract may be set aside by the court on three grounds:

1. bad faith or fraud;[50]

2. material departure by the expert from its mandate or instructions;[51] and

3. such other grounds as provided for by the contract itself.

---

[50] *Smiechowski v. Preece*, 2015 ABCA 105, para. 5 [***Smiechowski***]; *Campbell v. Edwards*, [1976] 1 WLR 403 (EWCA), p. 407 [***Campbell***]; *Veba Oil Supply & Trading Gmbh v. Petrograde Inc.*, [2001] EWCA Civ 1832, para. 33 [***Veba Oil***].

[51] *Ivaco Inc. (Re)*, 2007 ONCA 746, para. 3 [***Ivaco***]; *Smiechowski*, *supra*, para. 5; *Saputo Inc v. Dare Holdings Ltd.*, 2012 ONSC 4981, para. 7 [***Saputo***]; *Veba Oil*, *supra*, paras. 26 iii) and vi).

[55] With respect to the third ground, to the extent that parties agreeing to an expert determination do not wish to be bound by a report that is tainted by error, they must expressly provide for that eventuality. Otherwise, absent fraud, if the expert abides by its instructions or mandate, the parties will be bound by the resulting determination, even if tainted by error.[52] The point was put thus by Lord Denning in *Campbell v. Edwards*:

> It is simply the law of contract. If two persons agree that the price of property should be fixed by a valuer on whom they agree, and he gives that valuation honestly and in good faith, they are bound by it. Even if he has made a mistake they are still bound by it. The reason is because they have agreed to be bound by it. […].[53]

[56] Similarly, in *Re Ivaco Inc.*, the Ontario Court of Appeal expressed the principle succinctly as follows:

> [3] […] If the expert […] went beyond the mandate given to it in the agreements, the report prepared by the expert cannot stand. Equally, if the expert stayed within its mandate, its report is final and binding and not subject to judicial review […].[54]

[57] A reviewing court can thus examine an expert determination to ensure that the expert complied with its mandate or instructions. In the event of a departure from that mandate, the expert determination will be vitiated.[55] In such case, it will not be binding, as the parties did not agree to what was done, or to be bound by it.

[58] On the other hand, a mistake by an expert is not tantamount to a departure from its mandate.[56] Accordingly and as noted, should parties not wish to be bound by an expert determination tainted by error, they must specify as much in their contract.[57] One means frequently used by contracting parties to achieve that purpose is by stating that the expert's determination will be final and binding absent "manifest error".[58]

[59] That is what the parties did here. Section 2.8(b) SPA provides that the Independent Accounting Firm acting as an expert will deliver to the parties a written report determining the disputed EBITDA calculations. The clause further provides that the

---

52 *Applied Industrial*, *supra*, para. 89; *Veba Oil*, *supra*, para. 26 iii); *WH Holdings Limited v. E20 Stadium LLP*, [2025] EWHC 140 (Comm), para. 18 [***WH Holdings***]; C. Freedman and J. Farrell, *Kendall on Expert Determination*, 5th Ed. (London: Sweet & Maxwell), para. 14.11-1 [**Kendall**].

53 *Campbell*, *supra*, p 407.

54 *Ivaco*, *supra*, para. 3; see also: *Saputo*, *supra*, para. 7.

55 *Applied Industrial*, *supra*, para. 161. The English case law suggests that an immaterial departure from the parties' instructions will not vitiate the expert's determination. An immaterial departure is one that is *de minimis* or trivial in that it is obvious that it could make no possible difference to either party. See: *Veba Oil*, *supra*, para. 26 vi).

56 *Applied Industrial*, *supra*, para. 163.

57 *Applied Industrial*, *supra*, paras. 89 and 165; *Veba Oil*, *supra*, para. 33.

58 *Applied Industrial*, *supra*, para. 119(i); Kendall, *supra*, para. 14.11-1.

expert's determinations "will be final and binding upon the Parties and will not be subject to appeal, absent manifest error".

[60] The meaning of the words "final and binding" in section 2.8(b) SPA are quite plain. However, there are two aspects of the language employed by the parties in that clause that require further consideration. The first relates to the use of the word "appeal". The second is the notion of "manifest error".

[61] I propose to begin by examining what the parties meant by the concept of "appeal".

[62] In *Applied Industrial Technologies, LP v. Sirois*, the Alberta Court of Queen's Bench considered an expert determination clause drafted in virtually identical terms.[59] In his reasons, Eamon J. explained that the reference to an "appeal" in the clause under consideration "is simply sloppy drafting, and was obviously meant to impose a limit on the contractually binding effect of the decision".[60] I agree.

[63] The use of the word "appeal" is indeed somewhat misplaced. Appeals are solely creatures of statute[61] and, in Quebec law, there exists no statutory right of appeal from an expert determination. What the parties evidently intended was that they would not be bound by determinations tainted by a manifest error, thereby excluding the "final and binding" nature of the expert's determinations in such case. By contemplating the possibility of an "appeal" in the case of "manifest error", the parties simply agreed to grant the Court the ability to review any expert determination for "manifest error" and, in the face of such error, the power to relieve them of the contractually binding nature of the determination.

[64] What then is meant by the notion "manifest error"?

[65] The meaning of that expression, as used in the context of expert determination clauses, has been considered by courts in various jurisdictions. The leading English precedent on this point appears to be the opinion of Lord Justice Simon Brown in *Veba Oil Supply & Trading Gmbh v. Petrograde Inc.*[62] In that case, Simon Brown L.J. defined "manifest errors" as "oversights and blunders so obvious and obviously capable of affecting the determination as to admit no difference of opinion" (italics omitted).[63]

---

59 *Applied Industrial*, *supra*, para. 35.
60 *Ibid.*, para. 119(i).
61 *R. v. Smith*, 2004 SCC 14, para. 21.
62 *Supra*.
63 *Veba Oil*, *supra*, para. 33; See also: *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd*, [2023] UKSC 2, para. 32 [***Sara & Hossein***]; Kendall, *supra*, para. 14.11-2; and the judgment of the Superior Court of Delaware in *Pazos v. AdaptHealth LLC*, 322 A.3d 492 (2024), p. 503 [***Pazos***] (appeal dismissed: 2025 Del. LEXIS 116).

[66] In *Applied Industrial Technologies*, Eamon J. also considered the meaning of the notion of "manifest error". In his view, these words imply deference to the expertise of the decision-maker chosen by the parties:

> [172] The parties' words did not simply except an "error". The parties chose to except only "manifest error". I must interpret a contract to give all the words meaning if possible. The word "manifest" must have been intended to express a higher standard than simply looking to see whether some error is apparent from the papers. The parties' choice to include words of limitation implies deference to the Expert's determination.
>
> […]
>
> [175] Taking the plain language of the contract in its context, the parties' choice of the words "manifest error" indicates the parties wanted the opinion of a financial expert, not the Court, and a speedy process with some degree of finality. […][64]

[67] According to Eamon J., "manifest error" thus signifies unreasonable error:

> [176] An error is manifest or obvious where it is unreasonable: the conclusion is outside the range in which experts could reasonably differ. If the conclusion is within the range and sufficiently intelligible in the context of any contractually required reasons, an error is not "obvious" or manifest, because reasonable minds can differ.[65]

[68] When parties agree to permit review of an expert determination for manifest error, they typically seek to balance several competing objectives. First, by opting for an expert determination, they have selected a dispute resolution mechanism intended to be expeditious and efficient, drawing upon the specialised knowledge of their chosen expert. Second, they also seek a dispute resolution mechanism presenting a degree of certainty and finality.[66] Finally, they wish to protect themselves from being bound by expert determinations that are tainted by certain types of errors—a "safety valve" to use Eamon J.'s expression.[67]

[69] Drawing on these competing objectives and the wisdom of the case law which has considered the meaning of the expression "manifest error", I find that the standard is a deferential one with three related dimensions. First, there must be a degree of obviousness to the error. It must be plain or easily demonstrable without extensive investigation.[68] Second, the determination must be clearly wrong, in the sense that the

---

64 *Applied Industrial*, *supra*, paras. 172 and 175.

65 *Ibid.*, para. 176.

66 *Invensys PLC v. Automotive Sealing Systems Ltd.*, [2001] EWHC 501 (Comm), para. 17 [***Invensys***]; *Smiechowski*, *supra*, para. 6.

67 *Applied Industrial*, *supra*, para. 165.

68 *Sara & Hossein*, *supra*, para. 31; *Invensys*, *supra*, para. 16(iv); *Pazos*, *supra*, p. 503; An analogy may be drawn here with the notion of "palpable error" used for appellate review and Justice Morissette's

error does not admit of any reasonable difference of opinion in light of the reasons given by the expert.[69] Third, the error must be one that is capable of affecting the determination being reviewed.[70] In view of the objectives of celerity and finality, the parties to a contract with an expert determination clause would hardly intend to allow the courts to set aside the result of their agreed process for inconsequential errors.

[70] Of course, because expert determinations and review for manifest error are matters of contract, in each case, the common intent of the parties must prevail. In the present case, the parties are sophisticated commercial actors who were represented by experienced solicitors. They did not negotiate the SPA directly, but did so through their respective legal advisors. There is nothing in the text or context of the SPA suggesting that their intent was to use the expression "manifest error" in any way other than that revealed by the above analysis.

[71] Having clarified the meaning of "manifest error", I turn now to the Court's role in reviewing the BDO Report. As we have seen, the standard of "manifest error" requires deference to the expert. This has an incidence on how the Court should engage in reviewing its determination. As noted by Wallace J. of the Superior Court of Delaware in *Pazos v. AdaptHealth LLC*, "To be sure […], the Court's review in deciding whether 'manifest error' exists is by design meant to be limited" and is simply to decide whether such an error "infected the expert's determination".[71]

[72] In a somewhat different context, Lord Hamblen of the United Kingdom Supreme Court explained in *Sara & Hossein Asset Holdings Ltd. v. Blacks Outdoor Retail Ltd.* that demonstration of a "manifest error" in most instances "will need to be done readily—ie by an investigation limited in both time and extent" and "cannot depend on 'a full blown trial'".[72]

[73] I take that to mean that the reviewing court must not undertake a full-blown trial in respect of the matters that the expert was mandated to determine. Such a trial would defeat the very purpose of the expert determination process and the parties' objectives of celerity and finality.

[74] However, in the context of Quebec procedural law, a trial on certain issues may well be unavoidable. The Shotgun Funds and Clearspring seek orders condemning Unicorp Holdings to pay them the amounts corresponding to their respective Reverse Earnout Notes. In the present case, the only way to obtain that relief is by a trial in which

---

instructive metaphor of the "beam in the eye", rather than the "needle in the haystack": *J.G. v. Nadeau*, 2016 QCCA 167, para. 77.

69 *Sara & Hossein*, *supra*, para. 32; *Veba Oil*, *supra*, para. 33; *Applied Industrial*, *supra*, para. 176.

70 *Veba Oil*, *supra*, para. 33; *Sara & Hossein*, *supra*, para. 32; *Pazos*, *supra*, p. 503.

71 *Pazos*, *supra*, pp. 503-504.

72 *Sara & Hossein*, *supra*, para. 33.

they prove their entitlement to the orders they seek and in which Unicorp Holding is afforded the opportunity to advance such defences as may be available to it.

[75] Of course, the issues on which there must be a trial will be limited to the matters that the claimant must prove and the opposing party's legitimate grounds of defence. Here, for instance, those matters would largely be limited to the existence of the SPA and the Reverse Earnout Notes, the existence of the EBITDA Dispute, the Independent Accounting Firm's determination and, finally, the presence of any "manifest error".

[76] On these matters, a trial was necessary and appropriate. In the present case, however, the only real point of contention as between the parties was whether the BDO Report was tainted by "manifest error". In this respect, the four-day hearing before the Court trespassed somewhat beyond that and delved unnecessarily into matters that did not assist in the identification of such an error.[73]

2. WHAT EVIDENCE IS ADMISSIBLE WHEN REVIEWING THE BDO REPORT FOR MANIFEST ERROR?

[77] The Court received voluminous documentary evidence at trial, including notably:

1. The material submitted to BDO during the expert determination process;
2. The BDO Report;
3. A sworn statement given by Mr. Larry Stevenson (Clearspring);
4. A sworn statement given by Mr. Richard Reid (the Shotgun Funds);
5. Transcripts of the depositions of Messrs. Stevenson and Reid;
6. A sworn statement given by Mr. Bibeau;

---

[73] For example, there was much discussion in the evidence in respect of a contract for supplying combat uniforms to the Canadian Department of National Defence (the **C2 Contract**) which Logistik anticipated would be awarded to it shortly after conclusion of the SPA. It was suggested that the EBITDA thresholds under the Reverse Earnout Mechanism were a function of the C2 Contract being awarded to Logistik and generating EBITDA in 2021. Ultimately, the C2 Contract was awarded to Logistik in September 2022, outside the relevant period under the Reverse Earnout Mechanism. However, as noted by counsel for Unicorp Holdings during oral argument, whether the Reverse Earnout Mechanism was connected to the C2 Contract was not particularly relevant. Indeed, in the CIM, Logistik projected generating EBITDA in excess of the $34 million threshold in 2020 even without the C2 Contract (see exhibit D-1, pp. 19 and 43). The C2 Contract question was a lengthy distraction from the real issue, to wit, whether the BDO Report was tainted by a manifest error.

7. A sworn statement given by Ms. Erin Murphy, President and Secretary of Unicorp Holdings and Partner in Wynnchurch;

8. An expert report dated January 31, 2024, prepared by Mr. Jas Chahal (the **MNP Report**)[74] and a supplemental letter dated June 5, 2024, also prepared by Mr. Chahal (the **MNP Letter**)[75].

[78] Moreover, Messrs. Stevenson and Reid were called to testify at trial on behalf of Clearspring and the Shotgun Funds, respectively. Unicorp Holdings called Mr. Bibeau, Ms. Murphy and Mr. Chahal to testify.

[79] Clearspring and the Shotgun Funds submit that the admissible evidence on review of the BDO Report is essentially limited to the material adduced before BDO itself. According to them, the sworn statements of Mr. Bibeau and Ms. Murphy, as well as the testimonial evidence adduced by all parties relating to the determination of Logistik's EBITDA is irrelevant to the issue of whether the BDO Report is tainted by a manifest error and should thus be excluded. In their view, the same must be said of the MNP Report, the MNP Letter and Mr. Chahal's testimony.

[80] In this regard, Clearspring and the Shotgun Funds rely on the language in section 2.8(b) SPA providing that the expert's determination is final and binding and not subject to appeal absent manifest error. In view of the parties' use of the word "appeal", they argue that the only admissible fresh evidence[76] is material that meets the test for admission of fresh evidence on appeal.

[81] The plaintiffs' position echoes the one adopted by the Alberta Court of Queen's Bench in *Applied Industrial*. In that case, faced with similar language to that found in section 2.8(b) SPA, Eamon J. held that, when reviewing an expert determination for manifest error, fresh evidence relating to the merits of the determination was limited to evidence that meets the *R. v. Palmer* test for the admission of fresh evidence on appeal.[77]

[82] In *Palmer*, McIntyre J. identified the following factors for the admission of fresh evidence before an appellate court:

1. The evidence could not, by the exercise of due diligence, have been adduced at trial;

2. The evidence is relevant as it bears upon a decisive or potentially decisive issue;

---

74 Exhibit D-25A.
75 Exhibit D-25B.
76 By "fresh evidence" I mean evidence that was not adduced before BDO during the expert determination process.
77 *Applied Industrial*, *supra*, para. 181.

3. The evidence is reasonably capable of belief and thus credible; and

4. Taken with the other evidence adduced at first instance, if believed the evidence could reasonably be expected to affect the result.[78]

[83] Fresh evidence that meets the *Palmer* test may well be admissible where the Court is tasked with reviewing an expert determination for manifest error. That said, as a matter of principle, I do not believe that *only* fresh evidence meeting the *Palmer* criteria can be admitted when reviewing the merits of an expert determination for manifest error.

[84] To begin with, the *Palmer* test governs applications to adduce fresh evidence in the context of true appeals. As we have seen, however, while the parties used the word "appeal" in section 2.8(b) SPA, that word reflects sloppy drafting and the process before the Court is not a true appeal that would formally engage the *Palmer* criteria.

[85] Moreover, one can conceive of circumstances where fresh evidence that does not satisfy all the *Palmer* criteria—notably the first requirement of due diligence—should nevertheless be admitted.

[86] The possibility of fresh expert evidence comes to mind in this regard. Parties will typically elect expert determination in order to benefit from the specialised knowledge of their chosen decision-maker and from a simplified and expedited dispute resolution mechanism. As the norms and standards applicable to the decision-maker's specialised field ought to be well known to the expert they choose, the parties might legitimately elect not to adduce evidence thereon. For instance, parties who appoint a business valuator in accordance with an expert determination clause would be forgiven for not adducing evidence before their expert as to the principles governing business valuations.

[87] An expert may nonetheless commit an error in the selection or application of the norms and standards applicable to its field of expertise. These are not matters, however, that a generalist judge would be able to take judicial notice of. It follows that there may be cases where demonstration of a manifest error would require a party to adduce evidence, including expert evidence, not presented to the contractually chosen decision-maker. In this regard, as a matter of principle, limiting fresh evidence to material that could not be adduced through the exercise of due diligence would be improper.

[88] What then is the correct approach?

[89] The answer is to recall that the claim before the Court is strictly a contractual one. Clearspring and the Shotgun Funds are seeking the enforcement of payments that they claim the SPA entitles them to. Also relying on the terms of the SPA, Unicorp Holdings

---

[78] *Palmer v. The Queen*, [1980] 1 SCR 759, p. 775; see also: *Barendregt v. Grebliunas*, 2022 SCC 22, paras. 29 and 36-46.

resists that claim. It follows, therefore, that as a matter of principle, the evidence that may be adduced is that which is relevant to establish or defeat the claim advanced by Clearspring and the Shotgun Funds under the SPA.

[90] In the present case, the true disagreement between the parties relates to whether manifest error taints the BDO Report. In this respect, beyond those cases where expert evidence is required to show a manifest error in the selection or application of the norms and standards relevant to the decision-maker's specialised field, the circumstances in which fresh evidence relating to the merits of the expert's determination will be relevant is not altogether obvious.

[91] Indeed, in the abstract, it is difficult to see how material not adduced before that expert might show the existence of an error that is plain or easily demonstrable without extensive review. It seems probable that fresh evidence will often consist of a colourable attempt to have the Court perform anew the exercise that the parties entrusted to the expert.

[92] That said, I cannot exclude the possibility that fresh evidence relating to the merits of the expert's determination will be relevant and admissible. Accordingly, the better approach to the admission of fresh evidence is to stringently apply the test of relevance through the dual prisms of the standard applicable to the review of the expert's determination and the Court's role when performing that review.

[93] In view of the foregoing, when reviewing for manifest error, the test for adducing fresh evidence not presented to the expert and that relates to the merits of its determination is whether the evidence:

1. is relevant, in that it is logically capable of demonstrating an error in the expert determination that is:

    a. plain or easily demonstrable without extensive review;

    b. clearly wrong, not admitting any reasonable difference of opinion;

    c. capable of affecting the outcome; and

2. does not invite the court to redo the exercise that the parties chose to entrust to an expert.[79]

[94] The above standard for adducing fresh evidence is evidently subject to any applicable exclusionary rule and only applies to evidence aimed at the merits of the

---

[79] Evidence that meets this test is also likely to satisfy the second, third and fourth *Palmer* criteria for fresh evidence.

expert's determination. Moreover, it may or may not be applicable depending on the language adopted by the parties in their expert determination clause.

[95] In the present case, while much of the testimonial evidence and a good portion of the MNP Report does not meet this standard, there is no Quebec case law offering guidance to the parties on this issue. In these circumstances, in making my determination that the BDO Report is not tainted by a manifest error and is thus final and binding on the parties, I have had regard to all the evidence adduced by them.

3. IS THE BDO REPORT TAINTED BY MANIFEST ERROR?

3.1 Introduction

[96] There is no suggestion in this case that BDO, *qua* expert, departed from its mandate or that its determination is tainted by fraud. The sole issue is whether the BDO Report contains a manifest error such that it is not "final and binding". In this respect, counsel for Unicorp Holdings properly and fairly recognised that, as the party disputing the final and binding nature of the BDO Report, his client bore the burden of establishing the existence of a manifest error.[80]

[97] My analysis below is thus limited to whether the BDO Report is tainted by a manifest error. With respect to the numerous manifest errors alleged by Unicorp Holdings, my inquiry into the BDO Report will be a thorough one, albeit conducted in a manner consistent with the deferential nature of the standard chosen by the parties in section 2.8(b) SPA.

[98] Ultimately, the question raised by the parties' dispute and submitted to BDO for expert determination was whether earnings derived from Logistik's Medical PPE sales and the CEWS grants it received were properly removed from its 2020 and 2021 EBITDA in accordance with the SPA. The SPA's EBITDA Definition is what governs this question.[81] For ease of reference, I reproduce that definition again here:

> **EBITDA** means, for a given period (in this definition, the **applicable period**), earnings before net interest, income taxes, depreciation and amortization (per the statement of cash flows for the applicable period), provided, however, that the calculation of EBITDA shall not take into account management fees, non-recurring gains and losses, non-cash losses and gains, Transaction Expenses, transaction expenses for future successful and unsuccessful transactions involving the Business Operators, and any one time expenses or income that are not incurred or realized in the ordinary course of business, as agreed from time to time between the Parties, it being understood, for greater certainty, that expenses incurred in the applicable period that are outside of the ordinary course of business shall not be taken into consideration

---

80 See in this regard *Invensys*, *supra*, para. 22.

81 I note that while EBITDA is a broadly used notion in business and accounting, it is not an ASPE concept.

> for the purpose of calculating EBITDA to the extent that such expenses do not generate additional EBITDA in the applicable period.[82]
>
> [Emphasis added.]

[99] The text of the parties' agreed EBITDA Definition provides two grounds upon which Logistik's Medical PPE sales and the CEWS grants might possibly be removed from its 2020 and 2021 EBITDA.

[100] First, the EBITDA Definition excludes "non-recurring gains and losses". Evidently, neither the CEWS grants nor the earnings derived from Logistik's Medical PPE sales are losses. The issue for BDO was whether they constituted "gains" and, if so, whether they were "non-recurring". On the face of the EBITDA Definition, both of these conditions must be satisfied if this deduction is to be properly applied.

[101] Second, the SPA's EBITDA Definition excludes "one time expenses or income that are not incurred or realized in the ordinary course of business". Here too, it is evident that the CEWS grants and the earnings derived from Logistik's Medical PPE sales are not "expenses". The issue for BDO was whether they constitute "income" and, if so, whether they can be characterised as one-time and not realised in the ordinary course of business. Again here, on the face of the EBITDA Definition, each component of this deduction must be satisfied if it is to apply.

[102] One issue addressed by the parties in argument relates to the words "as agreed from time to time between the Parties" also found in the EBITDA Definition. The Shotgun Funds and Clearspring suggest that these words signify that any deduction from Logistik's 2020 and 2021 EBITDA ought to have been agreed to in advance.

[103] The BDO Report considers this argument to be a legal issue and does not rely on the phrase "as agreed from time to time between the Parties" in its determination of Logistik's 2020 and 2021 EBITDA.[83] Since my role is to review the BDO Report for manifest error, I find that it is unnecessary to address the parties' respective arguments based on these words.

[104] My analysis will thus focus on the BDO Report's conclusion that the deductions in the EBITDA Definition for non-recurring gains and for one-time income not realised in the ordinary course of business are inapplicable. I will divide my analysis in this regard to reflect the two components to the EBITDA Dispute: (1) Logistik's Medical PPE sales, and (2) the CEWS grants.

---

82 Section 1.1(rr) SPA (exhibit PCS-1).
83 BDO Report, paras. 6.3 and 6.4.

3.2 Logistik's Medical PPE Sales

[105] The BDO Report concludes that earnings from Logistik's Medical PPE sales ought to be included in its 2020 and 2021 EBITDA as defined in the SPA. Should this finding not be tainted by manifest error, it alone results in Logistik's EBITDA exceeding the cumulative threshold of $68 million for 2020 and 2021, thus triggering payment of the Reverse Earnout Notes.

[106] In the following sections, I will begin by providing some background to the Medical PPE sales at issue in the EBITDA Dispute. I will then turn to one of the key complaints advanced by Unicorp Holdings in respect of the BDO Report, which is that it reflects a misunderstanding of Logistik's business. Thereafter, I will examine the argument that the BDO Report ignores relevant accounting guidance. Finally, I will consider whether Unicorp Holdings has demonstrated that the BDO Report's specific conclusions in respect of Logistik's Medical PPE sales are tainted by any manifest errors.

3.2.1 Background to Logistik's Medical PPE Sales

[107] While Logistik has important clients that operate in the healthcare sector, prior to the COVID-19 pandemic, it was not in the business of selling Medical PPE. In 2020 and 2021, however, Logistik was very active in this field. Broadly, Logistik made earnings from the sale of two types of Medical PPE products: medical gowns and nitrile gloves.

[108] With respect to medical gowns, on April 4, 2020, Mr. Bibeau received a letter from the Government of Canada indicating that it was interested in Logistik "dedicating all of its manufacturing capacity as soon as possible to the production of medical gowns".[84] The letter further states that the Government of Canada would commit to quickly establishing a contract with a pre-approved process to buy all gowns meeting Health Canada's requirements for a period of at least six months.[85]

[109] Mr. Bibeau felt that Logistik should do what it could to help with the COVID-19 effort and the company decided to respond favourably to the Government's initiative. Logistik thus undertook the necessary efforts to acquire material and equipment for manufacturing medical gowns and entered into this segment in a significant way.

[110] On April 24, 2020, Public Works and Government Services Canada granted Logistik an initial contract for medical gowns.[86] On May 4, 2020, Logistik issued a press release announcing its agreement with the Government of Canada and that it would "mobilize its domestic supply chain to produce millions of level 1, 2 and 3 medical

---

84 Exhibit D-26 (Request no. 5).
85 *Ibid.*
86 Exhibit PCS-15B.6 (exhibit P-7).

protective gowns".[87] Pursuant to its contract with the Government of Canada, Logistik committed to deliver 4.33 million medical gowns for a total contract value of $126.4 million.[88]

[111] Logistik did not sell medical gowns exclusively to the Government of Canada. In April 2020, it also received purchase orders from the *Centre hospitalier universitaire de Québec – Université Laval* (**CHU de Québec**) for a total value in excess of $10 million and from Canada Emergency Medical Manufacturers (Ontario Health Services) for a value in excess of $5 million.[89] Deliveries of the gowns purchased by the Government of Canada, the CHU de Québec and Ontario Health Services were largely completed before Logistik's 2021 year-end of May 31, 2021.

[112] In addition to medical gowns, during the COVID-19 pandemic, Logistik also made significant sales of medical nitrile gloves. The opportunity to sell nitrile gloves arose differently from the sale of medical gowns. It was initially presented to Mr. Bibeau by an employee of a company held by his children. While that person had contacts with nitrile glove suppliers, his employer was not equipped to take advantage of the opportunity, which was thus transferred to Logistik.

[113] In April and July 2020, Logistik received purchase orders for nitrile gloves from the CHU de Québec for a total value of $65.3 million.[90] Following a successful bid made by Logistik pursuant to a call for tenders, a further purchase order for a total value of $2 million was received from the City of Montreal in February 2021.[91] Deliveries of nitrile gloves, none of which were manufactured by Logistik, occurred in fiscal years 2021 and 2022.

[114] As a result of these Medical PPE sales, the statements of income in Logistik's consolidated audited financial statements for 2021 and 2022 record sales of Medical PPE as follows:

---

87 Exhibit PCS-15B.6 (exhibit P-8). Logistik also obtained a Medical devices establishment licence: exhibit PCS-15B.6 (exhibit P-26).

88 Exhibit PCS-15B.6 (exhibit P-7). See also exhibit D-8, p. 21.

89 See in this regard: exhibit PCS-15B.6 (exhibits P-9 and P-14); exhibit D-8, p. 21; and exhibit PCS-15B.5 (exhibit PU-3, p. 2).

90 Exhibit PCS-15B.6 (exhibits P-10 and P-12); exhibit D-8, p. 21; and exhibit PCS-15B.5 (exhibit PU-3, pp. 2-3). In May 2020, Logistik submitted prices for nitrile gloves to CHU de Québec through its agent SigmaSanté; see: exhibit PCS-15B.5 (exhibit PU-9, pp. 3-4, and Schedule X).

91 Exhibit PCS-15B.6 (exhibits P-15, P-16 and P-17); exhibit D-8, p. 21; and exhibit PCS-15B.5 (exhibit PU-3, p. 3).

2020[92]	**2021**[93]	**2022**[94]
$4,079,913	$191,328,927	$2,396,093

[115] Thereafter, Logistik has made no further sales of Medical PPE and is no longer active in this market.

3.2.2 The Medical PPE Sales and Logistik's Business

[116] One of the key complaints advanced by Unicorp Holdings relates to the BDO Report's understanding of Logistik's business and its conclusion that the Medical PPE sales fell within the ordinary course of that business.

[117] According to Unicorp Holdings, the BDO Report failed to properly apprehend Logistik's business and the niche market in which it operates. In its view, the Report further failed to appreciate the unprecedented nature of the COVID-19 pandemic.

[118] The evidence does not support the suggestion that BDO failed to understand Logistik's business. In particular, paragraphs 3.9, 3.15, 6.10 and 6.13 of the BDO Report read as follows:

> 3.9 From submissions and documents provided by both parties, the following are descriptions of Logistik's business;
>
> a. "Business means the design, development, manufacturing and distribution of clothing and uniforms, including related apparel such as shoes, backpacks and related apparatus, through a managed clothing solution or prime vendor approach, the whole as currently conducted by the Acquired Companies."
>
> b. "The Company carried on the business of providing managed services uniform programs to large organizations, as well as selling and manufacturing garments for them."
>
> c. "Logistik is in the business of complex, personalized, end-to-end solutions, and does not compete with the traditional workwear and uniform providers."
>
> d. "The Company offers an integrated managed clothing solution to its clients, including garment design and testing, sourcing of items, certain manufacturing capabilities, warehousing, inventory management, and order processing and distribution."

92 Exhibit D-8, pp. 3 and 22.
93 *Ibid.*
94 Exhibit PCS-15C.4 (exhibit PU-15).

e. “The global leader for uniform solutions. We partner with public and private organization to create, make, procure and distribute clothing and equipment for their employees. Using our proprietary technologies, we simplify complexity and exceed expectations through our personalized, localized service.

[…]

3.15 Logistik’s revenues are categorized under one of its “managed clothing solution” or “bulk order” sales models. Managed clothing solution refers to the ongoing facilitation of all aspects of a customer’s uniform program through a proprietary web-based solution. Bulk order refers to individual purchase transactions of goods placed by customers.

[…]

6.10 Logistik’s business is in providing uniforms and workwear through a managed clothing solution (“Managed Clothing Solution”) model and bulk orders (“Bulk Orders”). Logistik’s Managed Clothing Solution model allows “clients to fully outsource all aspects of uniform design, production and distribution decision process for its employees” and provides a web-based ordering platform. We understand Bulk Orders to be individual orders placed by customers that may or may not be repeat clients.

[…]

6.13 The Plaintiffs’ and Defendant’s submissions refer to Logistik’s “Prime Vendor Approach” We note that the Confidential Information Memorandum lists the following service offerings for Logistik:

a. Military Prime Vendor Program.

b. Military Managed Clothing Solutions.

c. Managed Clothing Solutions.

d. Personalized Bulk Order.

e. Non-Military Prime Vendor Program.[95]

[119] Each of these paragraphs was included in a redacted draft report presented by BDO to the parties for comment.[96] Unicorp Holdings provided BDO with its comments on the draft redacted report, but said nothing in relation to the above paragraphs.[97] The BDO

95 BDO Report, paras. 3.9, 3.15, 6.10 and 6.13.
96 Exhibit PCS-15G.
97 Exhibit PCS-15I.

Report reveals a perfectly adequate understanding of Logistik's business in general and I find no "manifest error" in this regard.

[120] The same holds true for the BDO's appreciation of the exceptional nature of the COVID-19 pandemic and its impact on Logistik's business. In particular, paragraphs 3.14, 3.19 and 3.20 of the BDO Report describe some of the impacts of the pandemic on Logistik's activities. More significantly, it is evident that BDO understood that Logistik only entered the Medical PPE market as a result of the COVID-19 pandemic. In this regard, paragraph 6.17 of the Report reads as follows:

> 6.17 We understand that prior to FY2020, Logistik did not report any sales in the Medical PPE market relating to gowns, gloves and masks. Logistik's healthcare industry focus historically was on the supply of uniforms, workwear and related apparel.[15] The sale of Medical PPE products began in FY2020, following the advent of the COVID-19 pandemic.
>
> ---
>
> [15] We note that Logistik was previously involved in the healthcare sector with 5% of its total revenues in FY2017 coming from this market. (See the Confidential Information Memorandum.) One of the client case studies included in the CIM related to the supply of uniforms (but not PPE) for the New South Wales Government Department of Health.[98]

[121] The BDO Report also notes that Logistik's foray into the Medical PPE market was short-lived. Paragraph 3.17 of the Report explains that:

> 3.17 Logistik elected to discontinue its activities in the medical gown and nitrile glove market at the end of the 2021 fiscal year. The return to more normal, stabilized market and pricing conditions made these products less profitable for Logistik when competing with established, specialty manufacturers.[99]

[122] It is obvious from the BDO Report that the expert understood that Logistik's Medical PPE sales arose as a result of the COVID-19 pandemic and that Logistik exited this line of business in 2021. There is no manifest error here. Moreover, the BDO Report was drafted in August 2023, at a time when COVID-19 was very fresh in the collective consciousness. The fact that it does not further elaborate upon the exceptional nature of the COVID-19 pandemic hardly constitutes a manifest error.

[123] Can it be said nonetheless that the BDO Report falls into manifest error in finding that Logistik's Medical PPE sales were realised in the ordinary course of its business?

---

98 BDO Report, para. 6.17.
99 *Ibid.*, para. 3.17.

[124] The BDO Report notes that the expression "realized in the ordinary course of business" is not defined by the Accounting Standards for Private Enterprises in Canada (**ASPE**).[100] As a result, BDO applies its understanding of these terms from common accounting practice.[101] In this respect, the BDO Report determines that Logistik's sales of Medical PPE fall within its "bulk orders" business, consisting of individual orders placed by customers that may or may not be repeat clients.[102]

[125] Relying on financial information provided by Logistik,[103] the BDO Report then notes that a significant portion of Logistik's overall revenues is derived from bulk orders.[104] In BDO's view:

> 6.15 […] Based on our review of the Medical PPE sales, including the contracts provided for our review, we believe that Medical PPE sales are consistent with Logistik's Bulk Orders business. Bulk Orders have historically been included in the reported revenues and earnings of Logistik's business. We further note that Bulk Order sales continued to be reported in Logistik's financial results for 2020 and 2021, as well as is in its forecasts and budgets for those years.[105]

[126] The material presented to BDO contains various references to Logistik's "bulk order" business. One key document is the CIM prepared in the context of the efforts to sell Logistik in 2018.[106] The CIM illustrates how Logistik seeks to move clients from a single bulk order to its preferred managed clothing solution model.[107] Similarly, the Vendor Due Diligence Report (**VDD**) prepared in the context of the efforts to sell Logistik also contains numerous references to bulk orders.[108]

[127] A review of the evidence suggests that Logistik is not perfectly consistent in the use of the term "bulk orders". In its financial documents, it occasionally includes sales made to important clients outside of its Managed Clothing Solution offering as "bulk orders". For instance, in a response to one of the plaintiffs' requests for information, Logistik's Chief Financial Officer (CFO) divides Logistik's consolidated revenues as between managed clothing solution, bulk orders, cafeteria, and medical as follows:[109]

---

100 *Ibid.*, para. 6.8. On the application of ASPE see sections 1.1(m) and 1.9 SPA (exhibit PCS-1).
101 BDO Report, para 6.8.
102 *Ibid.*, paras. 6.10-6.11.
103 In particular, by Logistik's Chief Financial Officer: exhibit D-10, Schedule V.
104 BDO Report, paras. 6.12 and 6.14.
105 *Ibid.*, para. 6.15.
106 Exhibit D-1.
107 *Ibid.*, p. 38; see also pp. 13, 15, 20 and 48.
108 Exhibit D-22, pp. 29, 56, 63 and 66.
109 Exhibit D-10, Schedule V.

Consolidé	**2019**	**2020**	**2021**
Managed clothing solution	151,210,948	176,748,923	139,780,633
Bulk order	96,292,915	81,384,814	94,825,675
Cafeteria	162,863	153,296	103,803
Medical	-	4,709,913	191,328,927
Total	**247,666,726**	**262,996,946**	**426,039,038**

[128] Much of the bulk orders referred to by Logistik's CFO relates to sales made to the Australian Defence Force. In other contexts, Logistik characterises its contract with the Australian Defence Force as a "Prime Vendor" relationship. That said, it does not follow that all of Logistik's sales fall exclusively within either the Managed Clothing Solution or the Prime Vendor categories, leaving no room for bulk orders to new clients.

[129] The CIM is instructive in this regard and presents Logistik's 2017 revenues by service offering as falling within five categories:

- Military Prime Vendor Program – 43%;
- Military Managed Clothing Solutions – 31%;
- Managed Clothing Solutions – 21%;
- Personalized Bulk Order – 3%; and
- Non-Military Prime Vendor Program – 2%.[110]

[130] While bulk orders in 2017 represent a small portion of Logistik's revenue profile, it can hardly be said that these sales were not part of its business. On the contrary, when discussing Logistik's 2016 results, the VDD expressly states the opposite:

> The FY16 other customers include $4.2M of bulk sales for Syrian refugees. As per Management, chasing bulk opportunity is part of normal business as these types of contracts can be converted in managed services contracts.[111]
>
> [Emphasis added.]

[131] The mention of sales for Syrian refugees in the VDD is instructive. These sales result from an approach made to Logistik by the Government of Canada seeking winter coats for Syrian refugees. While of a different scale than the COVID-19 pandemic, the

[110] Exhibit D-1, p. 20.
[111] Exhibit D-22, p. 29.

Syrian refugee crisis can also be described as an extraordinary event that resulted in a unique business opportunity that Logistik was able to take advantage of by making a bulk sale.

[132] In his testimony, Mr. Bibeau described the Syrian refugee contract, which was in place for merely three or four months, as a managed service contract. I do not accept his testimony on this point. The VDD was prepared years before the present dispute and is a document in which Logistik sought to accurately present its business and finances to potential purchasers. I find that the description it contains of the Syrian refugee contract is far more reliable than Mr. Bibeau's testimony.

[133] Logistik's ability to respond to a request to supply winter coats for Syrian refugees demonstrates that, where it's resources and know-how permit, Logistik will react to and seek to take advantage of business opportunities made available to it by the market. I find no manifest error in the BDO Report's conclusion that Logistik's Medical PPE sales fall within this form of profit-seeking business behaviour:

> 6.21 In our opinion, the successful pursuit of Medical PPE sales opportunities is consistent with how Logistik has previously conducted its business within its scope of expertise, competencies and capacity. In this case, the opportunity first arose for Logistik as a result of the Government of Canada seeking domestic capacity for producing medical gowns. Additional opportunities for Logistik with other customers, including public sector buyers, followed for the supply of medical gowns and nitrile gloves.[112]

[134] Unicorp Holdings contests the suggestion that Logistik pursued the Medical PPE contracts. It argues that the Government of Canada approached Logistik with a view to having it supply medical gowns. No doubt the initial approach for significant quantities of medical gowns came from the Government of Canada. That said, the evidence supports BDO's finding that Logistik pursued contracts for Medical PPE. Notably, it successfully bid on a call for tenders from the City of Montreal and submitted prices for nitrile gloves to SigmaSanté, acting as agent for the CHU de Québec.[113] Moreover, Logistik's Business Update & Amendments Document dated July 31, 2020, contains a section entitled "Medical Opportunities" in which the company describes its Medical PPE contracts. In that same section, Logistik states that:

- It had "developed a unique proprietary washable mask that filters more than 60% of the COVID-19 with potential for ~ $5.2 million of revenue" for which patent protection was being sought;

---

[112] BDO Report, para. 6.21.
[113] Exhibit PCS-15B.6 (exhibits P-11, P-13, P-16 and P-17).

- It was currently "working on a tender for Toronto and Saskatchewan that may bring in an extra~$10 million in revenue"; and

- It was "actively pursuing additional contracts".[114]

[135] The evidence thus suggests that Logistik rather enthusiastically launched itself into the Medical PPE field. As explained by the BDO Report:

> 6.35 In the context of the COVID-19 pandemic, an opportunity arose in the market that resulted in significant demand for Medical PPE. Logistik was able to capitalize on Medical PPE sales during a time where the market required additional suppliers of these products and in a profitable manner. In our view, this is consistent with Logistik's stated business strategy of identifying new markets to grow its business (which included the healthcare sector).[115]

[136] In short, there is no manifest error in the BDO Report's conclusion that the pursuit of bulk orders is part of Logistik's business model, nor in its specific finding that Logistik's Medical PPE sales fall within the broad category of "bulk orders". It follows that Unicorp Holdings has failed to demonstrate that the BDO Report's conclusion that Logistik's Medical PPE sales were realised in the ordinary course of business is tainted by any manifest error.

3.2.3 The BDO Report and Relevant Accounting Concepts

[137] Accounting principles and standards are central to the EBITDA Dispute. Indeed, the parties agreed by contract that such dispute would be resolved by an "independent national firm of Chartered Professional Accountants".[116] In this respect, they further agreed that ASPE would govern any accounting issues raised by their contractual relationship.[117]

[138] According to Unicorp Holdings, in making its determination, BDO ignored certain fundamental sources of accounting guidance. In support of this argument, it relies on the MNP Report and the MNP Letter. At trial, Mr. Chahal testified in support of the MNP Report and Letter and was qualified as an expert in accounting and audit.

---

114 Exhibit D-26 (Request no. 4, p. 268).

115 BDO Report, para. 6.35.

116 Sections 2.8(b) and 2.10(i) SPA (exhibit PCS-1).

117 Section 1.1(m) SPA (exhibit PCS-1). For instance, they agreed that Logistik's audited financial statements—used notably to determine its 2020 and 2021 EBITDA—would be prepared in accordance with ASPE (see sections 1.1 (b) and (d) SPA). They further agreed that all accounting and financial terms and references not defined or otherwise described in the SPA would be interpreted in accordance with ASPE (see section 1.9 SPA). The SPA contains numerous other references to ASPE (see sections 1.1(a), 1.1(u), 1.1(ii), 1.1(jj), 1.1 (jjjj), 5.11(a) and 5.13(h) SPA).

[139] There are essentially two aspects to the MNP Report. One the one hand, it identifies accounting guidance that is not addressed in the BDO Report and which MNP considers important to determining whether Logistik's Medical PPE sales and CEWS grants were properly excluded from its 2020 and 2021 EBITDA.[118] On the other, it offers its own analysis of the proper treatment of the Medical PPE sales and the CEWS grants, concluding that these are unusual items pursuant to ASPE guidance.[119]

[140] The first aspect of the MNP Report is potentially relevant. Indeed, as discussed earlier, to the extent that it identifies accounting concepts that were improperly ignored or incorrectly applied by BDO, such evidence might assist is disclosing a manifest error.

[141] That said, the second aspect of the MNP Report is, to a large extent, neither relevant nor useful.[120] As noted, review for manifest error cannot signify that the Court will perform its own independent and fresh analysis of the parties' dispute. In this respect, an expert report that effectively performs that exercise, as the MNP Report does, invites the Court to do precisely what it must decline to do. This aspect of the MNP Report does not assist in identifying any manifest error.

[142] What then of the accounting guidance that the MNP Report says BDO ignored?

[143] In essence, MNP takes issue with the BDO Report's failure to consider the notion of "unusual items" as explained in CPA Canada's Guide to Accounting Standards for Private Enterprises (**GASPE**).[121] According to MNP, assessing whether the Medical PPE sales are "unusual" is fundamental to whether they are recurring and in the ordinary course of business, a matter that BDO does not explore.[122]

[144] MNP recognises that the expressions "ordinary course of business" and "non-recurring" found in the SPA's EBITDA Definition are not terms defined by ASPE. It thus uses the ASPE derived notion of "unusual items" to interpret these concepts.

[145] MNP's reasoning is essentially as follows. To begin with, ASPE 1400.19 and 1520.04(m) require the separate presentation or disclosure of "unusual items" that are not expected to occur frequently or that do not typify the enterprise's normal business activities:

---

118 See notably: MNP Report, paras. 4.1 to 4.34.

119 See notably: MNP Report, paras. 2.10 to 2.24, 3.1 to 3.20, 3.25 to 3.75, 5.13 to 5.14 and 6.1. See also MNP Letter, p. 4 of 6.

120 Had the first aspect of the MNP Report disclosed a manifest error at the accounting principles level, some further analysis explaining the incidence of that error on BDO's determination might be necessary. However, the second aspect of the MNP Report goes well beyond that.

121 MNP Letter, p. 3 of 6.

122 *Ibid.*; MNP Report, para. 4.34.

> **ASPE 1400.19**
>
> An entity shall separately disclose revenue, expenses, gains or losses resulting from transactions or events that are not expected to occur frequently over several years, or do not typify normal business activities of the entity.
>
> **ASPE 1520.4(m)**
>
> The following items shall either be presented separately on the face of the income statement or disclosed in the notes to the financial statements or supporting schedules […]
>
> Revenue, expenses, gains or losses resulting from transactions or events that are not expected to occur frequently over several years, or do not typify normal business activities of the enterprise.[123]

[146] The MNP Report then reproduces GASPE guidance on the identification of "unusual items" pursuant to ASPE 1520.04(m):

> 10-13. Revenue, expenses, gains or losses from transactions, or events that are either not expected to occur frequently over several years or do not typify normal business described in paragraph 1520.04(m) will often be referred to as "unusual items" and must be identified. Judgment is often required in the identification of these unusual items whether separate presentation on the face of the income statement or disclosure in the notes is appropriate. Examples of such items include the following:
>
> • Disposal of assets outside normal operations – sale of land, buildings, etc.
>
> • Impairments of assets – investments, land, buildings, equipment, intangibles, goodwill, inventory and receivables (if not in the normal course of business), etc.
>
> • Costs incurred in restructuring the business
>
> • Losses because of non-recurring events – fire, tornado and other weather-related events
>
> • Gains or losses on expropriations[124]

The MNP Report also reproduces GASPE guidance on disclosure of unusual items as required by ASPE 1400.19:

> 4-27 The fair presentation of financial statements includes the separate disclosure of any items not typical of normal operations or not expected to occur frequently,

---

123 MNP Report, para. 4.1.
124 *Ibid.*, para. 4.8.

> sometimes referred to as unusual items. This allows the users of the financial statements to isolate the item's effect when evaluating current performance and predicting future results. […]
>
> Examples of an unusual item that would require separate disclosure include:
>
> • Gains and losses on disposal of capital assets and investments;
>
> • Restructuring costs;
>
> • Litigation settlements; and
>
> • Impairments of intangibles, investments, goodwill, etc.
>
> Each item should be shown separately, if material, and is not shown net of any income tax measurement.[125]

[147] For MNP, revenues that are *not* "unusual" would thus typify normal business practice.[126] MNP notes, however, that "revenues can be generated from 'unusual items'".[127] According to MNP, "revenues that by definition are 'resulting from the ordinary activities of an entity'[128] can be outside of 'normal business activities of the enterprise' based on the above ASPE 1520.04(m) and 1400.19".[129]

[148] The MNP report further considers the Canada Revenue Agency definition of "extraordinary items" and the Canadian Securities Administrators' definition of "unusual items".[130] It then discusses the notions of EBITDA and Adjusted (or Normalised) EBITDA, which are non-ASPE, and indeed non-GAAP (Generally Accepted Accounting Principles) measures.[131]

[149] The MNP Report concludes its review of the accounting guidance not considered by BDO as follows:

> 4.32 Based on the guidance in ASPE as set out above, we interpret that [*sic*] terms "non-recurring" or "one time" as the same as "not expected to occur frequently over several years". Additionally, we interpret the term "ordinary course of business" as equivalent to "normal course of business" and "normal business activities" based on the general understanding of those terms.

---

125 *Ibid.*, para. 4.9.
126 *Ibid.*, para. 4.10.
127 *Ibid.*
128 ASPE 3400.03 defines "revenue" as *inter alia* the inflow of cash arising in the course of the ordinary activities of an enterprise (see BDO Report, para. 6.5).
129 MNP Report, para. 4.10; see also MNP Letter, p. 4 of 6.
130 MNP Report, paras. 4.13 to 4.19.
131 *Ibid.*, paras. 4.20 to 4.31.

> 4.33 Consequently, through the technical guidance set out above, it is reasonable to conclude that "unusual items," as inferred by ASPE 1520.04(m) and 1400.19 and related GASPE guidance, is synonymous with "extraordinary" or "not ordinary". Furthermore, in assessing the key characteristics of what is "unusual", it is clear across the relevant guidance available as set out above that unusual activities are either non-recurring or one time in nature, and therefore not expected to yield a financial impact beyond the short term. While ASPE does not specifically define a term to be classified as "short term", this can be considered to be no more than two years after disclosure when using the guidance provided by the CSA.
>
> [Emphasis added.]

[150] In essence, for MNP, if an item is "unusual" as per the guidance identified in its Report, it will be non-recurring, one-time and not in the ordinary course of business. In such case, the item should, according to MNP, fall outside of the SPA's EBITDA Definition. This is particularly evident from the questions MNP seeks to answer in the "Detailed Findings" section of its Report:

> 5.4 Our detailed analysis centres on the two following questions:
>
> 1. Is the COVID-19 pandemic response considered an unusual event?
>
> 2. Are any of the COVID-19 Contracts and the CEWS grant considered to be "unusual items" as per ASPE and related guidance?
>
> 5.5 We consider these questions appropriate since the description of "unusual items" follows the EBITDA definition and terms noted in the SPA and covers both 1) non-recurring or one time events or transactions, including revenue, expenses, gains or losses and 2) ordinary business activities requirements. […]

[151] I find that the accounting guidance referred to and relied upon in the MNP Report does not reveal any "manifest error" in the BDO Report.

[152] To begin with and most obviously, the guidance relied on is aimed at defining a concept—"unusual items"—that is not found in the EBITDA Definition agreed to by the parties to the SPA. That definition uses specific and precise wording. Indeed, the various drafts of the SPA adduced into evidence show that the wording of the parties' definition of EBITDA evolved over the course of their negotiations.[132]

[153] As noted, the parties to the SPA are sophisticated commercial actors and were represented by experienced solicitors. Had they wished to use the concept of "unusual items" in their agreed definition of EBITDA, they evidently could and likely would have

---

[132] Exhibit D-2 (compare SE Draft of June 18, 2018; NRF Draft of June 29, 2018; SE Draft of July 6, 2018 (in particular footnote 3); SE Draft of July 14, 2018; NRF Draft of July 20, 2018; SE Draft of July 24, 2018; and NRF Draft of July 29, 2018); see also exhibit PCS-15C.4 (exhibit PU-12).

done so. I can find no “manifest error” in the BDO Report’s focus on the words actually used by the parties, rather than on a concept that is not found in the SPA.

[154] The same must be said of the concepts of “Normalized EBITDA”, “Adjusted EBITDA” and “Standardized EBITDA” mentioned in the MNP Report and relied upon by Unicorp Holdings in its submissions. None of these expressions are used in the SPA’s EBITDA Definition. To be sure, the purpose of the various agreed exclusions from the definition of EBITDA is to make certain adjustments in order to “normalise” Logistik’s EBITDA. However, the parties agreed to achieve such “normalisation” in a specific way and used precise and specific words to achieve that purpose. By focussing on those words, rather than other, broader and less precise concepts, the BDO Report does not commit a “manifest error”, quite the contrary.

[155] Moreover, the MNP Report adopts a form of “reverse reasoning”. The syllogism it presents is as follows:

1. The terms “non-recurring”, “one-time” and “ordinary course of business” used in the SPA definition are similar to and should be interpreted in light of concepts used to explain the notion of “unusual items” in ASPE and GASPE;

2. “Unusual items” are therefore excluded from the SPA’s definition of EBITDA;

3. Logistik’s Medical PPE sales and the CEWS grants it received constitute “unusual items”;

4. Since they are “unusual items”, Logistik’s Medical PPE sales and the CEWS grants are therefore “non-recurring”, “one-time” and not in the “ordinary course of business”.

[156] Respectfully, MNP’s syllogism does not disclose any “manifest error” in the BDO Report’s approach, which was to directly consider whether Logistik’s Medical PPE sales and CEWS grants constitute non-recurring gains or one-time income not realised in the ordinary course of business.

[157] Finally, and while not determinative, I note that the examples of “unusual items” used in the GASPE guidance relied on by the MNP Report differ from Logistik’s Medical PPE earnings, which result from the sale of goods manufactured or sourced by Logistik. For ease of reference, the examples quoted in the MNP Report include:

- Disposal of assets outside normal operations—sale of land, buildings, etc.;

- Impairments of assets—investments, land, buildings, equipment, intangibles, goodwill, inventory and receivables (if not in the normal course of business), etc.;

- Costs incurred in restructuring the business;
- Losses because of non-recurring events—fire, tornado and other weather-related events;
- Gains or losses on expropriations; and
- Litigation settlements.

[158] Undoubtedly, the business opportunities that resulted in Logistik's Medical PPE sales arose on account of an exceptional event—the COVID-19 global pandemic. That said, like other businesses, Logistik was able to take advantage of those opportunities by adjusting its activities and operations in order to manufacture, source and sell very significant quantities of Medical PPE. It is far from obvious that Logistik's Medical PPE sales are analogous to the disposal of an asset outside of normal operations or to a gain resulting from litigation or an expropriation.

[159] One final point to be addressed relates to the impact of Note 17 to Logistik's 2021 audited financial statements. Note 17 accompanies the Medical COVID-19 line under the "Sales" section of Logistik's consolidated statement of income.[133] The note presents separately Logistik's Medical PPE sales revenues for 2020 and 2021, as well as its revenues derived respectively from its sales of medical gowns and nitrile gloves.[134] The note explains the context in which Logistik entered the Medical PPE market and describes its various Medical PPE contracts, asserting that they were "not performed through a managed clothing solution or a prime vendor approach".[135]

[160] Note 17 also contains the following additional statements:

> […] In this extraordinary context and outside its core business of managed services for uniform programs, the Company was awarded two types of one time, non-recurring, short-term COVID-19 medical contracts for Personal Protective Equipment (PPE).
>
> […]
>
> Our revenues and results for fiscal year 2021 are significantly impacted and distorted by the unusual nature of these two types of non-recurring and exceptional contracts. […][136]

[161] The BDO Report is succinct in its discussion of Note 17, stating simply:

---

133 Exhibit D-8, p. 3.
134 *Ibid.*, p. 22.
135 *Ibid.*, p. 21.
136 *Ibid.*, pp. 21-22.

> 6.25 Note 17 to Logistik's financial statements sets out disclosures regarding Logistik's Medical PPE contracts for 2020 and 2021. Note 17 states that Medical PPE sales were "outside its core business of managed services for uniform programs" and were "one time, non-recurring, short-term". We understand that Logistik's financial statements, including Note 17, are general purpose financial statements as prepared by management to report on the company's financial results. We have set out our analysis in this report for the purposes of calculating the EBITDA as specified in the SPA.[137]

[162] MNP criticizes BDO's treatment of Note 17 as follows:

> Note 17 in the Company's 2021 audited financial statements discloses that the COVID-19 Contracts are "outside its core business of managed services for uniform programs" and were "one-time, non-recurring, short-term". The BDO Report fails to analyze or explain why its conclusion significantly differs from the disclosure noted in Note 17 of the audited financial statements. Additionally, the BDO Report does not comment on why such added disclosures were deemed necessary to the users of the financial statements.[138]

[163] Logistik's financial statements were audited and are thus not without probative value.[139] That said, Note 17 was drafted by Logistik's management and audited by its accountants at a time when Clearspring and the Shotgun Funds had already issued Unicorp Holdings with their 2020 Notice of EBITDA Objection.[140] The parties to the SPA decided that an Independent Accounting Firm, not Logistik's management, nor its auditors, would be tasked with deciding the EBITDA Dispute.

[164] In this respect, BDO was evidently entitled to give what weight it saw fit to the adjectives selected by Logistik's management when describing its Medical PPE sales. To hold otherwise would give Logistik's management and auditors—and indirectly Unicorp Holdings, Logistik's controlling shareholder[141] and one of the parties to both the SPA and the EBITDA Dispute—the ability to effectively bind BDO in its expert determination. That would render the expert determination process largely meaningless and cannot reflect the common intent of the parties under the SPA.

[165] I find no "manifest error" in BDO's assessment that Note 17 could not be determinative of its calculation of Logistik's EBITDA in accordance with the SPA.

---

137 BDO Report, para. 6.25.
138 MNP Letter, p. 3 of 6; see also p. 4 of 6 and MNP Report, paras. 4.34 and 6.12.
139 *CHSLD juif de Montréal v. Entreprises Francer inc.*, 2008 QCCA 2402, paras. 43-46.
140 Exhibit D-4.
141 Exhibit PCS-15B.6 (exhibit P-2).

3.2.4 No Manifest Error Taints the BDO Report's Determination In Respect of Logistik's Medical PPE Sales

[166] As noted, the BDO Report concludes that Logistik's Medical PPE sales in 2020 and 2021 are neither non-recurring gains, nor one-time income not realised in the ordinary course of business. I will address each issue, beginning with whether any manifest error taints the finding that these revenues are neither gains, nor non-recurring.

3.2.4.1 Logistik's Medical PPE Sales are not "Non-Recurring Gains"

[167] The BDO Report explains that to determine whether certain earnings are non-recurring gains requires an initial analysis of whether they are "revenues" or "gains".[142] In this respect, BDO relies on the ASPE definitions of these notions:

> Gains are increases in equity from peripheral or incidental transactions and events affecting an entity and from all other transactions, events and circumstances affecting the entity except those that result from revenues or equity contributions.[143]
>
> Revenue is the inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise, normally from the sale of goods, the rendering of services and the use by others of enterprise resources yielding interest, royalties and dividends.[144]
>
> [Emphasis added by BDO.]

[168] As may be observed from the above definitions, pursuant to ASPE, increases in equity that result from revenue do not constitute "gains". According to BDO, Logistik's Medical PPE sales were "realized in the ordinary course of business" and therefore constitute revenue and not "gains".[145]

[169] As noted earlier, the BDO Report's understanding of Logistik's business and its conclusion that the Medical PPE sales were consistent with its bulk order business and thus realised in the ordinary course of business are not tainted by manifest error. It follows that BDO's finding that the Medical PPE sales produced revenue and did not result in a "gain" is equally exempt from such error.

[170] I add that while the 2020 and 2021 EBITDA Statements giving rise to the EBITDA Dispute identify certain items as "gains",[146] Logistik's Medical PPE sales are not so identified. Moreover, in its response to the plaintiffs' 2020 Notice of EBITDA Objection,

---

142 BDO Report, para. 6.6.
143 ASPE 1000.34 (BDO Report, para. 6.5).
144 ASPE 3400.03 (BDO Report, para. 6.5).
145 BDO Report, para. 6.31.
146 Exhibits D-3 and D-5.

Unicorp Holdings describes the Medical PPE sales as having generated revenue.[147] Similarly, Unicorp Holdings' response to the 2021 Notice of EBITDA Objection takes the position that Logistik's Medical PPE sales resulted in "income", rather than a "gain".[148] Finally, during the expert determination process, in response to a question from BDO, Unicorp Holdings recognised that "There is no controversy around the conclusion that the Medical PPE sales are revenues from an ASPE perspective, hence their inclusion as revenues for the purposes of Logistik's income statement."[149]

[171] In view of the foregoing, BDO's conclusion that Medical PPE sales do not constitute "gains" from an ASPE perspective is not tainted by manifest error.

[172] BDO's finding that Logistik's Medical PPE sales do not constitute gains was sufficient for it to conclude that the deduction for "non-recurring gains" in the SPA's EBITDA Definition cannot apply. Nevertheless, BDO further examined whether Logistik's Medical PPE sales were "non-recurring" and concluded that they were not.

[173] In the absence of an ASPE definition of "non-recurring", BDO relied on the following definition from the *Dictionnaire de la comptabilité et de la gestion financière*:

> *Se dit d'une opération ou d'un événement qui ne se produit que rarement au cours d'un certain nombre d'exercices*.[150]

[174] According to BDO, Logistik's Medical PPE sales were recurring as they were the result of ongoing activities to pursue new business opportunities:

> 6.36 Further, it is our opinion that it is not appropriate to assess whether revenues are recurring with reference to individual customers. Businesses continuously evolve, including the gain and loss of specific customers. Assessing revenue performance generally views sales dollars to be fungible, or inter-changeable, as between customers. Hence, the recurring nature of Medical PPE revenues should not be specific to a customer or a product, but rather to available opportunities in the market for Logistik that are within its operational capabilities. We understand from the CIM that Logistik did not have a pre-existing strategy to enter the Medical PPE market as of 2019. However, for Logistik, the significant demand for Medical PPE during the COVID-19 pandemic warranted a shift to produce Medical PPE products, which it successfully executed and subsequently pursued.

147 Exhibit PCS-15B.6 (exhibit P-34).
148 Exhibit PCS-15B.6 (exhibit P-35).
149 Exhibit PCS-15E.2 (p. 6).
150 BDO Report, para. 6.32.

> 6.37 In our view, Logistik's Medical PPE sales are appropriately considered to recurring as they are part of its ongoing activities to pursue new market as they arose.[151]

[175] There is no manifest error tainting BDO's conclusion that Logistik's Medical PPE sales were recurring.

[176] Indeed, during the period in which Logistik launched itself into the Medical PPE market, it made multiple sales of both medical gowns and nitrile gloves. As we have seen, these sales were made to multiple clients[152] pursuant to multiple contracts or purchase orders. CHU de Québec alone made multiple purchases of medical gowns and nitrile gloves from Logistik. Moreover, Logistik's audited financial statements reveal that Medical PPE sales were made over the course of three fiscal years.[153] In short, during the period in question, Medical PPE sales were not a rare occurrence for Logistik.

[177] In this respect, on the issue of what may be described as "non-recurring", the MNP Report refers to guidance provided by the Canadian Securities Administrators' as follows:

> 4.18 CSA's Staff Notice 52-306 (Revised) "Non-GAAP Financial Measures" issued on January 2016 and effective until August 25, 2021, provides the following description for "non-recurring", "infrequent" or "unusual" items:
>
> *In order to ensure that a non-GAAP financial measure does not mislead investors, an issuer should:*
>
> *[…]*
>
> *6. ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years.*
>
> 4.19 CSA's National Instrument 52-112 "NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE", effective since August 25, 2021, provides the following description for "non-recurring", "infrequent" or "unusual" items:
>
> *(c) does not describe a reconciling item as "non-recurring", "infrequent", "unusual", or using a similar term, if a loss or gain of a similar nature is reasonably likely to occur within the entity's 2 financial years that immediately follow the disclosure, or has occurred during the entity's 2 financial years that immediately precede the disclosure.*

---

151 *Ibid.*, paras. 6.36-6.37.

152 Interestingly, these clients included existing Prime Vendor or Managed Clothing Solution customers who made modest Medical PPE purchases from Logistik worth $3.9 million: see Exhibit PCS-15E.2 (p. 5).

153 Exhibits D-8 and PCS-15C.4 (exhibit PU-15).

[Underlining added; italics in the MNP Report][154]

[178] These elements do not suggest that the BDO Report's conclusion as to the recurring nature of Logistik's Medical PPE sales is tainted by a manifest error.

[179] Indeed, at the end of fiscal year 2020, Logistik had made some Medical PPE sales and, having recently landed the medical gowns contract with the Government of Canada, expected to make additional similar sales in fiscal year 2021. As for the end of fiscal year 2021, Logistik expected to make modest Medical PPE sales in fiscal year 2022 and stated as much in Note 17 to its audited financial statements.[155]

[180] In other words, at the end of both fiscal years 2020 and 2021 it was "reasonably likely" that Logistik would make Medical PPE sales "within the […] 2 financial years that immediately follow the disclosure".[156] Similarly, at the end of Logistik's fiscal year 2022, it had made Medical PPE sales "during the […] 2 financial years that immediately precede the disclosure".

[181] While not determinative, it follows that the Canadian Securities Administrators' guidance can be read as suggesting that Logistik's Medical PPE sales should not to be described as "non-recurring". Arguably, this guidance is rather supportive of BDO's conclusion as to the recurring character of such sales.

[182] Be that as it may, for all the reasons set out above, BDO's conclusion that Logistik's Medical PPE sales do not constitute "non-recurring gains" that should be excluded from it 2020 and 2021 EBITDA, as defined, is exempt from manifest error.

3.2.4.2 Logistik's Medical PPE Sales Do Not Constitute One-Time Income Not Realised in the Ordinary Course of Business

[183] The EBITDA Definition also excludes one-time income not realised in the ordinary course of business. For reasons already explored, the BDO report concludes that Logistik's Medical PPE sales were realised in the ordinary course of business.[157] As discussed, this finding is not tainted by manifest error.

[184] The BDO Report further considers whether such sales can nevertheless be described as one-time income. In this respect, in the absence of an ASPE definition, BDO defines "one time expenses or income" as signifying "expenses or income that are expected to occur only once in a fiscal year or in consecutive years".[158] BDO concludes

---

154 MNP Report, paras. 4.18 and 4.19.
155 Exhibit D-8, p. 21.
156 MNP Report, para. 4.19.
157 BDO Report, para. 6.44.
158 *Ibid.*, para. 6.45.

that Logistik's Medical PPE sales were made to multiple customers over multiple fiscal periods and are not reasonably or appropriately viewed as one-time income.[159]

[185] The evidence supports BDO's conclusion that Logistik made multiple sales of Medical PPE to different clients spanning more than one fiscal year. Regardless of how these sales may be described, "one-time" they were not and the income they generated cannot be characterised as such.

[186] I detect no manifest error in BDO's finding that Logistik's Medical PPE sales do not constitute one-time income not realised in the ordinary course of business.

3.2.5 Conclusion on Logistik's Medical PPE Sales

[187] In the absence of a manifest error affecting BDO's conclusion that Logistik's Medical PPE sales ought to be included in its EBITDA as defined in the SPA, it follows that $2.08 million should be added to its 2020 EBITDA and $37.78 million to its 2021 EBITDA. By themselves, these additions push Logistik's EBITDA well above the cumulative threshold for payment of the Reverse Earnout Notes.[160]

[188] On this basis alone, Clearspring and the Shotgun Funds are entitled to payment of the Reverse Earnout Notes. As a result, their action should be allowed.

[189] Although not strictly necessary, I will nonetheless consider whether BDO committed a manifest error in concluding that the CEWS grants received by Logistik ought also to be included in the calculation of its EBITDA pursuant to the SPA. However, because nothing turns on the CEWS issue, I will be relatively succinct.[161]

3.3 The CEWS Grants Received by Logistik

[190] CEWS was a program introduced by the Government of Canada to encourage Canadian businesses to maintain employees on their payroll during the COVID-19 pandemic. As may be observed from its title—Canada Emergency Wage Subsidy—the program was an emergency measure.

---

159 *Ibid.*, paras. 6.47-6.48 and 6.50.

160 Without the deduction of its Medical PPE sales, Logistik's 2020 and 2021 EBITDA amount respectively to $25,472,644 and $57,667,738. Accordingly, when the Medical PPE sales are not deducted, Logistik's cumulative 2020 and 2021 EBITDA is $83,140,382, an amount in excess of the cumulative EBITDA threshold of $68 million.

161 Indeed, had I come to the opposite conclusion that there was a manifest error in the BDO Report's conclusion that Medical PPE sales should be included in Logistik's EBITDA, the CEWS issue would be equally inconsequential. Without the inclusion of Medical PPE sales, the threshold for payment of the Reverse Earnout Notes cannot be met, irrespective of whether the CEWS grants are included or excluded from Logistik's EBITDA.

[191] Pursuant to CEWS, employers who met the eligibility criteria received a wage subsidy in order to avoid employee layoffs and terminations. The program was in place from March 15, 2020, to October 23, 2021.[162] Logistik received CEWS grants in its fiscal years ended May 31, 2020, and May 31, 2021.[163] In the 2020 and 2021 EBITDA statements delivered pursuant to the SPA, Unicorp Holdings respectively deducted CEWS grants of $1.22 million and $1.82 million from Logistik's EBITDA.[164]

3.3.1 The BDO Report is Not Tainted by Any Manifest Error in Respect of Logistik's CEWS Grants

[192] In its report, BDO concludes that the CEWS grants received by Logistik should be included in its EBITDA as defined in the SPA.

[193] The BDO Report first notes that the CEWS grants received by Logistik were not, on their face, the result of its ordinary business activities.[165] Accordingly, while Logistik's 2021 audited financial statements recorded CEWS as income,[166] in BDO's opinion, these grants do not constitute revenue and are properly considered "gains".[167]

[194] Although the CEWS grants were "gains", in BDO's view they could not be described as "non-recurring":

> 6.39 The CEWS funding deducted in the EBITDA Statements were $1,223,000 and $1,822,000 in its 2020 and 2021 fiscal years, respectively. This is consistent with the CEWS program spanning multiple fiscal years. In view of the program spanning multiple fiscal years, requiring successive periodic (monthly) applications to the government to establish a business' eligibility, it is our opinion that CEWS is a recurring transaction.[168]

[195] Unicorp Holdings emphasises the fact that CEWS is an "emergency" response measure and that the Canada Revenue Agency's guidance on CEWS indicates that it would generally be considered an extraordinary item.[169]

[196] Be that as it may, the fact remains that Logistik applied for and received CEWS grants over two fiscal years.[170] Although the program was a temporary one, aimed at

---

162 See BDO Report, paras. 6.38-6.39; MNP Report, paras. 3.71-3.75.
163 Exhibit D-8, p. 3. I note that Logistik's consolidated financial statements for its fiscal year ended May 31, 2022, also report the receipt of CEWS in that fiscal year: see exhibit PCS-15.C4 (exhibit PU-15, p. 3).
164 Exhibits D-3, p. 4 of 5, and D-5, p. 3 of 5.
165 BDO Report, paras. 2.11 and 6.30.
166 Exhibit D-8, p. 3.
167 *Ibid.*, paras. 6.40-6.42.
168 BDO Report, para. 6.39.
169 See MNP Report, paras. 4.13-4.14.
170 Exhibits D-3, p. 4 of 5, and D-5, p. 4 of 5.

responding to the exigent circumstances of the COVID-19 pandemic, CEWS grants were received by Logistik on several separate occasions. These grants thus "occurred again"[171] during the period in question. In the circumstances, I cannot find that BDO's conclusion that the CEWS grants are recurring gains is so clearly wrong as to not admit any difference of opinion.

[197] BDO also states that the CEWS grants cannot be considered one-time income as multiple payments were received by Logistik in multiple fiscal years.[172] This conclusion is not affected by any manifest error.

[198] Indeed, the evidence shows that Logistik received CEWS grants in five separate months over its 2020 and 2021 fiscal years.[173] To the extent that the CEWS grants constitute "income" received by Logistik, such income simply cannot be described as "one-time".

[199] Finally, and in any event, for the reasons given earlier, any error in the BDO Report regarding the CEWS grants is simply incapable of affecting its determination that, properly calculated, Logistik's 2020 and 2021 EBITDA exceeds the cumulative threshold for payment of the Reverse Earnout Notes. Any error in this regard is inconsequential. Accordingly, it cannot give rise to a manifest error which would permit the Court to intervene and set aside an expert determination that the parties agreed would govern their dispute relating to the calculation of Logistik's EBITDA.

3.4 Concluding Comments

[200] Prior to turning to Unicorp Holdings' application to exclude several sworn statements tendered to BDO during the expert determination process, some final comments regarding the parties' dispute over the BDO Report are in order.

[201] A complaint raised by Unicorp Holdings is that, while the BDO Report states that it does not consider the legal issues raised by the parties in its analysis,[174] BDO did in fact interpret legal concepts.[175]

[202] The complaint is unusual, since MNP states in its Report that it too worked on the same assumption that the legal issues raised by the parties would have no impact on its accounting analysis.[176]

---

171 See definition of "recur" in J. Pearsall, *The Concise Oxford Dictionary*, 10th Ed. (Oxford University Press, 1999), p. 1198.
172 BDO Report, para. 6.52.
173 Exhibits D-3, p. 4 of 5, and D-5, p. 4 of 5.
174 BDO Report, paras. 2.2 and 6.3-6.4.
175 *Defendant's Outline of Arguments*, para. 144 c).
176 MNP Report, paras. 1.24 c), 2.5 and 5.1.

[203] MNP nevertheless criticizes the BDO Report for failing to take into consideration section 2.10(j) SPA, which indicates that the parties reasonably expected that the Reverse Earnout Notes would be fully reimbursed and adds that the sole purpose of section 2.10 SPA is to provide a mechanism for determining the fair market value of Logistik's shares. According to MNP, this provision thereby implies that the parties' expectation was that payment under the Reverse Earnout Mechanism would result from existing opportunities identified prior to closing, rather than from earnings generated as a result of the extraordinary COVID-19 pandemic.[177]

[204] Respectfully, MNP's argument under section 2.10(j) SPA relates to the identification of the common intent of the parties and thus to contract interpretation. It is a legal argument *par excellence* and falls precisely within what both MNP and BDO said lay beyond their bailiwick.

[205] I cannot fault BDO for seeking to remain within its field of expertise, to wit, accounting. I further find that, unlike MNP, it did not stray improperly into matters of legal interpretation.

[206] A final issue raised in Unicorp Holdings' written submissions relates to the "accounting credentials", so to speak, of Mr. Alan Mak, the person chosen by the parties to lead BDO's engagement as expert pursuant to section 2.8(b) SPA.

[207] In its book of authorities, Unicorp Holdings includes four judgments of the Ontario Superior Court of Justice that are critical of the expert evidence offered by Mr. Mak.[178] Unicorp Holdings argues that these precedents demonstrate that his methodology and accounting opinions are unreliable and that the BDO Report should not be given weight.[179]

[208] There are two things to be said of this line of argument.

[209] First, and obviously, the cases relied on by Unicorp Holdings do not demonstrate the existence of a manifest error in the BDO Report, which is the germane issue before the Court.

[210] Second, prior to Mr. Mak's appointment pursuant to my order of March 16, 2023, I was advised by counsel that *both* parties accepted his appointment as either expert or

---

[177] MNP Report, para. 6.11; MNP Letter, pp. 4 and 5 of 6. Arguably, the fair market value of Logistik's shares might also be a function of the fact that the business purchased by Unicorp Holdings had the flexibility to adapt to new and challenging market conditions and thus profitably take advantage of novel commercial opportunities presented to it in that context.

[178] *Bayens v. Kinross Gold Corp*., 2013 ONSC 6864; *Gould v. Western Coal Corporation*, 2012 ONSC 5184 *Polla v. Croatian (Toronto) Credit Union*, 2019 ONSC 1641; and *Delongte v. Delongte*, 2024 ONSC 3454.

[179] *Defendant's Outline of Arguments*, para. 258-271.

arbitrator in accordance with their respective positions on Unicorp Holdings' declinatory exception.[180] The proper time to inquire into and raise any qualms as to Mr. Mak's qualifications and capacity to act as an expert in accounting was then and not now.[181] Unicorp Holdings' *ex post facto* misgivings about Mr. Mak cannot relieve it of the binding effect of the BDO Report.

[211] For all these reasons, I have found that the BDO Report is not tainted by any manifest error and is binding on the parties. Unicorp Holdings must therefore reimburse the Reverse Earnout Notes in accordance with its contractual obligations under the SPA.

4. THE APPLICATION TO EXCLUDE THE RAQUEPAS AND GRAHAM AFFIDAVITS

4.1 Introduction

[212] The final matter for consideration is an application by Unicorp Holdings entitled *Defendant's Application for the Exclusion of Evidence, for an Order to Destroy Evidence Illegally Obtained and to Strike Allegations Related Thereto* (the **Application to Exclude Evidence**).

[213] This application relates to sworn statements given by two former Logistik executives, Messrs. Alain Raquepas and Matthew Graham, that were tendered to BDO during the expert determination process. Unicorp Holdings seeks orders excluding these affidavits from the Court record, requiring the plaintiffs and their attorneys to destroy all information obtained as a result of their collaboration with Messrs. Raquepas and Graham and striking references to these sworn statements.

[214] The Application to Exclude Evidence is based on the assertion that the collaboration between Messrs. Raquepas and Graham and the plaintiffs' former counsel contravened the latter's deontological obligations and also breached Unicorp Holdings' right to counsel guaranteed by the *Charter of Human Rights and Freedoms* (the ***Quebec Charter***).[182]

4.2 Context of the Application to Exclude Evidence

[215] Mr. Raquepas held the following roles with Logistik and Unicorp Holdings:

- Logistik:

---

[180] *Clearspring Partners*, *supra*, paras. 67-68.

[181] In this respect, I note that, with the exception of *Delongte v. Delongte*, *supra*, the cases relied upon by Unicorp Holdings to attack the general reliability of Mr. Mak's methodology and opinions were all in existence when the parties jointly proposed him to the Court.

[182] CQLR c. C-12.

- Chief Financial Officer and Vice-President of Corporate Affairs: fall of 2015 to fall of 2018; and
- President and Chief of Operations: fall of 2018 to December 2019;

➢ Unicorp Holdings (according to its corporate records[183]):

- Chief Financial Officer from August 3, 2018, to November 14, 2018; and
- Chief Operating Officer from November 14, 2018, to December 20, 2019.

His relationship with Logistik and Unicorp Holdings came to an end in December 2019.[184]

[216] As for Mr. Graham, he was Logistik's "President International" from March 2013 until December 2018. He was also Chief Executive Officer and Chairman of Australian Defence Apparel Pty Limited, a Logistik subsidiary. His relationship with Logistik terminated in March 2019.[185]

[217] On May 11, 2023, each of Messrs. Raquepas and Graham gave sworn statements that were included with the submissions tendered to BDO by Clearspring and the Shotgun Funds. On June 7, 2023, they each gave further sworn statements, which were also tendered to BDO by the plaintiffs.

[218] On July 21, 2023, counsel for Unicorp Holdings wrote to former counsel for Clearspring and the Shotgun Funds to take issue with his collaboration with Messrs. Raquepas and Graham.[186] According to Unicorp Holdings' attorney, the plaintiffs' former counsel could not engage with Messrs. Raquepas and Graham without his consent, and by doing so, breached section 120 of the *Code of Professional Conduct of Lawyers*:

> **120.** A lawyer must not communicate in a matter with a person whom he knows to be represented by a lawyer, except in the presence or with the consent of that lawyer or unless he is authorized to do so by law. In the event of an unsolicited or accidental communication, the lawyer must promptly inform the person's lawyer of the circumstances and content of the communication.
>
> Subject to the first paragraph, a lawyer may seek information from any potential witness, but he must disclose the interests of the person for whom he is acting.[187]

---

183 See exhibit R-1.
184 Exhibit R-2.
185 Exhibit R-3.
186 Exhibit R-6.
187 CQLR c. B-1, r. 3.1.

[219] Unicorp Holdings took the position that former counsel for the plaintiffs and his firm were thus disqualified from acting in the proceedings before this Court, should they become reactivated following BDO's expert determination. The plaintiffs' former counsel disagreed that they had breached their ethical obligations and that they were disqualified from this matter.

[220] Eventually, on November 12, 2023, Unicorp Holdings brought an application seeking the disqualification of the plaintiffs' former attorneys.[188] On December 1, 2023, former counsel for the plaintiffs withdrew from this matter on a without prejudice and without admission basis.[189]

[221] Former counsel's withdrawal did not, however, put an end to the issue. Notably, on August 28, 2024, Messrs. Stevenson and Reid gave sworn statements in these proceedings that refer to the sworn statements of Messrs. Raquepas and Graham and that attach them as exhibits. As a result, on November 28, 2024, Unicorp Holding brought its Application to Exclude Evidence.

4.3 Analysis

[222] Unicorp Holdings' Application to Exclude Evidence is based on article 2858 of the *Civil Code of Québec*. This provision allows Quebec courts to exclude evidence obtained in breach of a person's fundamental rights and freedoms:

> **2858.** The court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are violated and whose use would tend to bring the administration of justice into disrepute.
>
> The latter criterion is not taken into account in the case of violation of the right of professional secrecy.

[223] According to Unicorp Holdings, as senior executives of the Logistik group of companies, Messrs. Raquepas and Graham were parties represented by counsel in the present matter within the meaning of section 120 of the *Code of Professional Conduct of Lawyers*. In Unicorp Holdings' view, when the plaintiffs' former lawyers engaged with Messrs. Raquepas and Graham, they breached both their ethical obligations under section 120 and Unicorp Holdings' right to counsel guaranteed by section 34 of the *Quebec Charter*.

---

188 Curiously, the sworn statements of Messrs. Raquepas and Graham are produced as exhibits in support of the disqualification application and were thus initially filed into the court record by Unicorp Holdings (see exhibit DW-4).

189 Exhibit R-11.

[224] It follows, in Unicorp Holdings' submission, that the sworn statements given by Messrs. Raquepas and Graham constitute evidence obtained in breach of its fundamental rights and that their admission would bring the administration of justice into disrepute.[190]

[225] The fundamental premise upon which the Application to Exclude Evidence rests is that Messrs. Raquepas and Graham were parties represented by Unicorp Holdings' attorneys in this case. That premise is incorrect and neither section 120 of the *Code of Professional Conduct of Lawyers*, nor article 2858 of the *Civil Code of Québec* are engaged here.

[226] It is well established that section 120 of the *Code of Professional Conduct of Lawyers* pursues three related objectives: (1) the protection of litigants, (2) the preservation of the integrity of the judicial process by ensuring that a party's litigation strategy is not disclosed to its opponent, and (3) the protection of the attorney-client relationship.[191] It is also well established that, as a general rule, witnesses do not "belong" to any party, even if they are current or former employees of a corporate litigant.

[227] That said, instances do arise where certain current or former executives or agents of a party are assimilated to that party for the purposes of section 120 of the *Code of Professional Conduct of Lawyers*, thereby engaging the protection offered by that provision. As recently explained by the Court of Appeal:

> *[21] Certains salariés, cadres ou mandataires peuvent cependant être assujettis à l'interdiction de communication de l'article 120 du Code de déontologie des avocats, et ce, même s'ils ne sont pas personnellement partie à l'instance. Le rôle qu'ils occupent dans le cadre général du litige entrepris doit être analysé afin de déterminer si l'on peut les assimiler à la personne morale impliquée dans le litige. Autrement dit, un employé ou ex-employé d'une personne morale n'est pas de ce seul fait son représentant. Il faudra notamment vérifier et s'assurer que cette personne occupe ou occupait des fonctions qui lui conféraient un pouvoir décisionnel ou encore stratégique lié à l'affaire*.[192]

[228] With respect to former employees of a corporate litigant, they will fall within the protection of section 120 of the *Code of Professional Conduct of Lawyers* in two scenarios:

---

190 See in this regard: *Compagnie immobilière Revere ltée v. Abandonato*, 2017 QCCS 362.

191 *Churchill Falls (Labrador) Corporation Ltd. v. Hydro-Québec*, 2015 QCCA 782, para. 15 [***Churchill Falls***]; *Ville de Montréal v. 3286916 Canada inc. (Excavation Gricon)*, 2022 QCCA 893, para. 18 [***Gricon***].

192 *Gricon*, *supra*, para. 21.

1. Where the former employee held a strategic position in the company (i.e., possessed the power to make decisions on behalf of the company or bind the company) *and* actively participated in the facts that led to the dispute; or

2. Where the former employee was involved in the litigation or occupied a top-ranking position when the litigation unfolded.[193]

[229] Evidently, the second scenario has no application here. Both Mr. Raquepas and Mr. Graham had left Logistik years prior to the commencement of litigation in June 2022. They were neither involved in this litigation, nor did they occupy top-ranking positions when it unfolded.

[230] What then of the first scenario?

[231] I accept that both Mr. Raquepas and Mr. Graham held strategic positions with Logistik. I note, however, that Logistik is not the defendant in the present case, Unicorp Holdings is.[194] Unicorp Holdings only came into existence in July of 2018.[195] It is a holding company that has no employees. Beyond owning shares in Logistik, it has no commercial activities.[196]

[232] The evidence does not disclose that Mr. Graham played any role in Unicorp Holdings. As for Mr. Raquepas, the only evidence adduced by Unicorp Holdings consists of extracts of its corporate records, which identify him as Chief Financial Officer and subsequently as Chief Operating Officer.[197] Unicorp Holdings' evidence does not reveal whether Mr. Raquepas actually did anything in these roles.

[233] Be that as it may—even accepting for the sake of argument that Messrs. Raquepas and Graham, though their roles with Logistik, or directly as an officer in the case of Mr. Raquepas, were senior executives of Unicorp Holdings—it does not follow that section 120 of the *Code of Professional Conduct of Lawyers* applies to them. This is so because they had no involvement in the facts leading to the dispute before the Court.

[234] As we have seen, the EBITDA Dispute relates to whether Logistik's Medical PPE sales and the CEWS grants it received should be included in its EBITDA as defined in the SPA. The key facts in this regard all occurred after March 2020 in the context of the COVID-19 global pandemic. Neither of Mr. Raquepas, nor Mr. Graham were involved with Logistik or Unicorp Holdings at that stage, having left in December 2019 and March 2019

---

193 *Churchill Falls*, *supra*, para. 27; *Gricon*, *supra*, para. 23.

194 I note that the *Churchill Falls*, *supra*, matter illustrates that corporate separateness cannot simply be ignored for the purposes of section 120 of the *Code of Professional Conduct of Lawyers*.

195 Exhibit D-23.

196 Testimony of L. Bibeau.

197 Exhibit R-1.

respectively. Evidently, they had no involvement in the decision to deduct Logistik's Medical PPE sales or the CEWS grants it received from the 2020 and 2021 EBITDA Statements prepared by Unicorp Holdings.

[235] Unicorp Holdings asserts, however, that Messrs. Raquepas and Graham were significantly involved in the SPA, which is the legal instrument that governs the relationship between the parties. This is true, although the dispute between the parties is not really about the facts that led to the SPA.

[236] Most significantly, it is important to recall that, prior to the sale of their shares to Unicorp Holdings on August 1, 2018, Clearspring and the Shotgun Funds together held the majority of Logistik's shares and were represented on its board of directors. In this regard, while Messrs. Raquepas and Graham were involved in the transaction leading to the sale of Logistik's shares to Unicorp Holdings, they were not on Unicorp Holdings' side of that transaction.

[237] In short, the factual situation is as follows.

[238] Prior to the conclusion of the SPA, Messrs. Raquepas and Graham worked on the transaction, but on the seller's side. They did not act for, nor represent Unicorp Holdings in that context. At the time, they held no strategic position with Unicorp Holdings and possessed neither the power to bind that company, nor to make any decisions on its behalf. To the extent that the dispute relates to facts surrounding the conclusion of the SPA—and this is not the real dispute between the parties—section 120 of the *Code of Professional Conduct of Lawyers* would not apply to include Messrs. Raquepas and Graham within the category of persons represented by Unicorp Holding's attorneys.

[239] Following the conclusion of the SPA, Messrs. Raquepas and Graham held senior roles with Logistik for several months. They had the power to make strategic decisions on behalf of and bind Logistik. However, the evidence does not reveal they had that power in respect of Unicorp Holdings. Most importantly, they both left Logistik well before the true facts at the heart of the dispute arose and they had not participation in those facts. It follows that section 120 of the *Code of Professional Conduct of Lawyers* does not extend to Messrs. Raquepas and Graham in respect of the EBITDA Dispute.

[240] In short, the Application to Exclude Evidence is an attempt to stretch the no contact rule to former employees of Logistik, who likely had no decision-making authority in relation to Unicorp Holdings, were not involved in this litigation, were on the opposite side of the transaction from Unicorp Holdings when the SPA was concluded and were no longer employed by Logistik when the true facts giving rise to the dispute between the parties arose. While this suffices to dismiss the Application to Exclude Evidence, a few further points merit mention.

[241] The first is that Messrs. Raquepas and Graham claim that they are contractually entitled to lump sum payments as a result of the reimbursement of the Reverse Earnout Notes at issue in the present case. In this regard, they have instituted legal proceedings of their own against Logistik.[198]

[242] Without by any means deciding the matter, which is not before me, it appears that success for Messrs. Raquepas and Graham in those proceedings could well be contingent on the plaintiffs' success in this case. In short, Messrs. Raquepas and Graham have an interest that seems directly adverse to that of Unicorp Holdings in the present proceedings. In these circumstances, any conclusion that Messrs. Raquepas and Graham are represented in this case by Unicorp Holding's lawyers—who are in fact acting against them for Logistik in the other proceedings[199]—would be perplexing, to say the least.

[243] The second relates to Unicorp Holdings' complaint that Messrs. Raquepas and Graham disclosed confidential information to the plaintiffs. In view of the ongoing litigation between these individuals and Logistik, it would be unwise for me to weigh in on this. That said, I note that whatever was known to Messrs. Raquepas and Graham about Logistik prior to its acquisition by Unicorp Holdings was also known by Clearspring and the Shotgun Funds.[200]

[244] Finally, Unicorp Holdings argues that since the sworn statements given by Messrs. Raquepas and Graham were submitted to BDO in the expert determination process, that process is tainted and the BDO Report is thus undermined.[201] Unicorp Holdings asserts that this can be assimilated to an instance of manifest error.

[245] Even were I of the view that the sworn statements at issue had been obtained in breach of section 120 of the *Code of Professional Conduct of Lawyers*, and thus ought to be excluded under article 2858 of the *Civil Code of Québec*, I would dismiss this argument.

[246] Unicorp Holdings first formally complained of the contacts between the plaintiffs' former attorneys and Messrs. Raquepas and Graham on July 21, 2023,[202] more than two months following the receipt of their initial sworn statements and a month following the

---

198 Exhibit PCS-19.

199 *Ibid.*

200 In his testimony, Mr. Bibeau confirmed that Mr. Larry Stevenson, who was Chairman of Logistik's Board and representative of its largest shareholder, had full access to Logistik's confidential information prior to the conclusion of the SPA. See also, section 1.8 SPA (exhibit PCS-1). Moreover, Mr. Bibeau was unable to identify any confidential information in the sworn statements given by Messrs. Raquepas and Graham.

201 *Defendant's Outline of Argument*, paras. 214-216.

202 Exhibit R-6.

receipt of their responding sworn statements. Given the gravity ascribed to this issue, one might have expected that Unicorp Holdings react more promptly.

[247] Be that as it may, on July 21, 2023, counsel for Unicorp Holdings wrote to the plaintiffs' attorneys to assert that they had breached section 120 of the *Code of Professional Conduct of Lawyers* and were disqualified from acting in this matter.[203] However, Unicorp Holdings chose, at that stage, not to seek any relief in respect of this complaint. Rather, counsel explained in their July 21 letter that:

> At this stage, raising the issue before the Independent Accounting Firm would only have resulted in additional delays in obtaining the final report. We have accordingly decided not to further disrupt BDO's work and let Alan and his team complete the mandate. This should not be construed in any way as a waiver of our client's right to seek your disqualification and that of your firm in the Court Dispute, should you not comply with our request below and should the matter be resumed once the mandate of the Independent Accounting Firm is completed.[204]

[248] I appreciate that BDO would not be equipped to deal with an assertion that section 120 of the *Code of Professional Conduct of Lawyers* had been breached. However, Unicorp Holdings could well have sought relief from the Court in respect of this issue, notwithstanding the suspension of proceedings resulting from my judgment of March 16, 2023.

[249] What Unicorp Holdings could not do was allow the expert determination process to proceed to completion on the basis of a record that included the sworn statements and then complain that those same sworn statements fatally taint the process. In other words, it is improper for Unicorp Holdings to complain about the sworn statements in an exchange between counsel, choose not to seek concrete relief in the hope that the result of the process will be favourable to it and, when that result is not the one hoped for, argue that it is tainted by the same sworn statements that it did not seek, at the time, to have excluded.

[250] For all these reasons the Application to Exclude Evidence must be dismissed. Moreover, Unicorp Holdings' argument based on section 120 of the *Code of Professional Conduct of Lawyers* does not reveal any manifest error in the BDO Report that relieves the parties of its binding nature.

* * * *

---

203 *Ibid.*

204 *Ibid.*, p. 3.

DISPOSITION

FOR THESE REASONS, THE COURT:

[251] **GRANTS** the Modified Originating Application of the plaintiffs The SF Fund Limited Partnership, The Shotgun Fund Limited Partnership, Clearspring Capital Partners II L.P. and Clearspring Capital Partners US (II) L.P.;

[252] **DISMISSES** the defendant Logistik Unicorp Holdings Inc.'s *Brief Outline of the Grounds of Defense*;

[253] **DISMISSES** the defendant Logistik Unicorp Holdings Inc.'s *Application for the Exclusion of Evidence, for an Order to Destroy Evidence Illegally Obtained and to Strike Allegations Related Thereto*;

[254] **CONDEMNS** the defendant Logistik Unicorp Holdings Inc. to pay to Clearspring Capital Partners (US) II L.P. the amount of $1,687,970, as follows:

a) $843,985, in reimbursement of Reverse Earn-Out Note REON1;
b) $843,985 in reimbursement of Reverse Earn-Out Note REON2;

[255] **CONDEMNS** the defendant Logistik Unicorp Holdings Inc. to pay to Clearspring Capital Partners II L.P. the amount of $3,554,004, as follows:

c) $1,777,002 in reimbursement of Reverse Earn-Out Note REON3;
d) $1,777,002 in reimbursement of Reverse Earn-Out Note REON4;

[256] **CONDEMNS** the defendant Logistik Unicorp Holdings Inc. to pay to The SF Fund Limited Partnership the amount of $4,340,036, as follows:

e) $2,170,018 in reimbursement of Reverse Earn-Out Note REON7;
f) $2,170,018 in reimbursement of Reverse Earn-Out Note REON8;

[257] **CONDEMNS** the defendant Logistik Unicorp Holdings Inc. to pay to The Shotgun Fund Limited Partnership the amount of $122,726, as follows:

g) $61,363 in reimbursement of Reverse Earn-Out Note REON9;
h) $61,363 in reimbursement of Reverse Earn-Out Note REON10;

[258] **CONDEMNS** the defendant, Logistik Unicorp Holdings Inc., to pay to the plaintiffs interest on the above sums at the rate of 8% per annum from September 14, 2023;

[259] **WITH** legal costs in favour of the plaintiffs.

_____

ANDRES C. GARIN, J.C.S.

Mtre. Sébastien Richemont
Mtre. Charlie Marineau
FASKEN MARTINEAU DUMOULIN S.E.N.C.R.L., S.R.L.
Attorneys for The SF Fund Limited Partnership, The Shotgun Fund Limited Partnership, Clearspring Capital Partners II L.P. and Clearspring Capital Partners US (II) L.P.

Mtre. André Ryan
Mtre. Kristina Pellerin-Stonier
Mtre. Florence Thibodeau
BCF LLP
Attorneys for Logistik Unicorp Holdings Inc.

Hearing dates: September 22, 23, 24 and 25, 2025