



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 RAMY LAKAH and MICHEL LAKAH, :
 Petitioners, : Findings of Fact
 : and
 : Conclusions of Law
 - against - :
 : :
 UBS AG, et al., : 07-cv-2799 (LAP)
 : :
 Respondents :
 -----X

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LORETTA A. PRESKA, United States District Court Judge:

The following constitutes the Court's findings of fact and conclusions of law.

I. Background

A. Parties

Respondent UBS AG ("UBS") is a Swiss corporation with head offices in Zurich and Basel, Switzerland and with branches in London and New York. (Joint List of Undisputed Facts, Fact No. 1.) Respondent Exporters Insurance Company, Ltd. ("EIC") (c/k/a/ Island Capital Ltd.) is a corporation organized in Bermuda and has its registered seat in Hamilton, Bermuda. (Id., No. 2.) Respondent National Bank of Abu Dhabi ("NBAD") is a corporation organized in the United Arab Emirates with its head office in the Emirate of Abu Dhabi. (Id., No. 3.) Respondent National Bank of Oman ("NBO") is a corporation organized in the Sultanate of Oman with its head office in Muscat. (Id., No. 4.) Respondent Arab Banking Corporation ("ABC") is a corporation organized under the laws of the Kingdom of Bahrain and has a head office in Manama, Bahrain. (Id., No. 5.)

Petitioner Ramy Lakah (a/k/a Ramy Raymond Lakah a/k/a Ramy Ramon Lakah) is a citizen of Egypt and of France. (Reply to Answer to Complaint [dkt. no. 8], ¶ 11). Petitioner Michel

Lakah (a/k/a Michel Raymond Lakah a/k/a Michel Raymon Lakah) is a citizen of Egypt and of Canada. (Id. at ¶ 12.)¹

B. Procedural History

On June 8, 2006, Respondents (also referred to as “Bondholders”) commenced arbitration against, inter alia, the issuer of \$100 million in Eurobonds, the four guarantor companies of those bonds², and Petitioners Ramy and Michel Lakah. (Dkt. no. 471-1.) The Respondents invoked three clauses in the Eurobond transaction documents as the bases for arbitration. (Id. at ¶¶ 31-33.)

On March 19, 2007, the Lakahs petitioned the Supreme Court of the State of New York to stay the arbitration proceeding against them on the ground that they did not sign the Eurobond transaction documents in their individual capacities for all purposes and, thus, had not made an agreement to arbitrate with Respondents. (Dkt. no. 468-1 at ¶¶ 18-20, 28.) Respondents timely removed the petition to this Court on April 6, 2007, and filed a cross-petition to compel arbitration on April 16, 2007. (Dkt. no. 3.) Respondents argued that Petitioners should be deemed bound by the arbitration clauses contained in the

¹ Petitioner Michel Lakah is Petitioner Ramy Lakah’s younger brother. (Joint List of Undisputed Facts, No. 7.) They will be referred to as “Petitioners” or “the Lakahs.”

² See Findings of Fact, No. 12 (indicating that HCFI, TMSE, Mediquip, and ASF were guarantors.

Eurobond transaction documents (the "Arbitration Agreements") on the basis of veil piercing and estoppel theories and sought, pursuant to 9 U.S.C. §§ 4 and 206, an order compelling Petitioners to appear in the arbitration proceeding pursuant to the Arbitration Agreements. (See id. at 5; see also dkt. no. 5 at 17-34.)

The parties then engaged in more than nine years of litigation. During this period, Petitioners moved preliminarily to enjoin the arbitration panel from determining whether Petitioners were bound by the Arbitration Agreements. (Dkt. no. 468-3.) The Court granted this motion. See In re Lakah, 602 F. Supp. 2d 497, 498 (S.D.N.Y. 2009). Respondents, in turn, moved for summary judgment, which the Court denied on the basis that there were issues of fact as to the making of the Arbitration Agreements—namely whether Petitioners should be treated as parties to the Arbitration Agreements—and that a trial was therefore necessary. See Lakah, 996 F. Supp. 2d at 269.

1. Pre-trial Motions

The parties thereafter proceeded to prepare for trial and filed extensive pre-trial motions. Respondents filed several motions seeking to preclude Petitioners' proposed witnesses. On January 20, 2016, the Court denied Respondents' motion to preclude the expert testimony of Donald Capelin and granted

Respondents' motion to preclude the expert testimony of Maye Kassem on the basis that Petitioners had not timely identified Ms. Kassem as an expert witness. (Dkt. no. 356.) On February 16, 2016, after holding a Daubert hearing, the Court granted Respondents' motion to preclude Sherif Nour from testifying as an expert witness. (Dkt. no. 382.) The Court held that Petitioners had failed to meet their burden of showing that Mr. Nour was the author of his expert reports, that his opinions were the product of reliable principals and methods, and that Mr. Nour had reliably applied any such principles and methods to the facts of the case. (Id.) After additional briefing was filed, the Court also determined that Mr. Nour did not have any relevant testimony to provide as a fact witness and, therefore, granted Respondents' motion to preclude Mr. Nour from testifying at trial. (Dkt. no. 476.)

The Court further determined that the deposition of Tamim Foda, the Respondents' expert witness on Egyptian law, was admissible and that his reports and declaration were admissible to the extent that such materials aided the Court in its determination of foreign law under Fed. R. Civ. P. 44.1 and would assist the Court in determining the admissibility of the Egyptian Government reports under Fed. R. Evid. 104(a). (Dkt. no. 425.) The Court also found that the Respondents' proposed testimony of Ahmed Al Bardai (the former Chairman of Banque du

Caire ("BdC")) was admissible under Rule 104(a) and for impeachment purposes at trial. (Dkt. no. 459.)

Additionally, the parties filed pre-trial motions concerning the arguments that the parties could raise at trial. Respondents moved for Petitioners to be judicially estopped from raising, inter alia, a fraud in the inducement defense. The Court denied this motion on the basis that Petitioners had never indicated that they would not raise these arguments at trial and, therefore, that their current position was not inconsistent with any prior statements on these matters. (Dkt. no. 406.) The Court also determined that, if Respondents sought to pierce the corporate veil on the basis of fraud, such as by proving that they were fraudulently induced by misrepresentations or omissions in the Eurobond Offering Circular, Respondents would be required to demonstrate that they had reasonably relied on those misrepresentations or omissions. (Dkt. no. 373.)

The Court ultimately set a trial date for March 14, 2016. (Dkt. no. 376.) Petitioners' counsel filed a request to adjourn the trial on the basis that Petitioner Ramy Lakah would not be able to obtain his visa in time to attend and testify. (Dkt. no. 363.) The Court granted Petitioners' request and adjourned the trial to July 5, 2016. (Dkt. no. 376.) The Court scheduled a final pre-trial conference for June 30, 2016.

Two days before this conference, Petitioners filed an emergency application stating that they had recently discovered that Respondents had unsuccessfully appealed a dismissal of a criminal investigation conducted against the Lakahs. Petitioners argued that Respondents failed to disclose that they had appealed this dismissal, that Respondents' arguments had been rejected by the Egyptian Public Prosecutors' Office ("PPO"), and that the PPO had determined that the Petitioners had not broken any Egyptian laws. Accordingly, the Petitioners requested that Respondents be collaterally estopped from now relitigating the same issues that were raised in the Egyptian appeal and that the Court should order Respondents immediately to produce all documents relating to their appeal of the dismissal order. (Dkt. no. 452.) In support of its arguments, Respondents submitted a declaration from their Egyptian counsel, Gamil Halim, stating that he had discovered that Respondents had filed its appeal on June 16, 2016 and that, although he was permitted to look briefly at the PPO's dismissal order, he had not been permitted to make a copy of the order. (Halim Supp. Decl. ¶ 8.)

On June 30, 2016, the Court held its final pretrial conference, at which time it addressed Petitioners' motion and found that, even in light of Mr. Halim's declarations, Petitioners had not made a sufficient showing collaterally to

estop Respondents from litigating the instant action. (Dkt. no. 476 "6/30 Tr." at 21.³) The Court indicated that Petitioners would be permitted to introduce Mr. Halim's testimony at trial and that Respondents would be permitted to introduce evidence responding to this testimony. (Id.)

The Court went on to address several of the parties' evidentiary objections and made a number of rulings, some of which were adverse to Petitioners. (See dkt. no. 476, 6/30 Tr.) As is particularly relevant here to the Court's determination, the Court admitted various letters that had been written by Petitioners' former counsel, Laurence Steckman, while he represented Petitioners during the arbitration proceedings, and portions of the testimony of Respondents' expert accounting witness, Basil Imburgia.⁴ (Id. at 28) The Court also admitted the declarations of four Egyptian non-party witnesses.⁵ The Court excluded as hearsay a report commissioned by Barclays Bank and prepared by PricewaterhouseCoopers ("PwC"), which analyzed the financial conditions of the Guarantor companies after the Petitioners notified the Bondholders that they would not be able

³ Reference is to the transcript of June 30, 2016.

⁴ The Court deemed this testimony admissible to the extent that it did not summarize the PPO investigatory reports and reserved on the remaining portions until the Court had made its determination as to the admissibility of the PPO reports.

⁵ Adel Shourbagy, Mohamed Khadr, Amgad Zarif, and Adham Oda Pacha. These witnesses' depositions also had been previously admitted.

to make a coupon payment on the Eurobond. (Id. at 28-30.) The Court also excluded the Interim Arbitration Award, which was issued after the first phase of the parties' arbitration proceedings concluded. (Id.)

The Court reserved its determination as to the admissibility of the Egyptian PPO investigatory reports, the declarations of certain Bondholder officers, and several analyst reports. (Id. at 46.) The Court directed counsel to meet and confer about the admissibility of exhibits to which there had been no objection or an objection has been overruled and documents that had not been produced in discovery before September 13, 2011. (Id. at 31-33.)

Finally, although Petitioners' counsel conceded that "[the parties] did previously agree" on the list of undisputed facts submitted to the Court by the Respondents on February 16, 2016, and that he "believed that [these facts] are accurate," Respondents noted that Petitioners' counsel had not signed this list of facts. (Id. at 42: 24-25.) Petitioners' counsel stated that there was no basis not to accept these facts "other than the fact that [his] client told [him] not to sign them." (Id. at 43:24-25.) Petitioners then requested an opportunity to review the statements because, according to their counsel, Petitioner Ramy Lakah had found "what he believes are minor

inaccuracies.”⁶ (Id. at 61:25-62:1.) The Court permitted Petitioners until noon on the following day to submit any objections to opposing counsel. (Id. 62:6.) The Court has not received an updated list of undisputed facts or submissions from Petitioners identifying Petitioner Ramy Lakah’s objections, if any. Accordingly, the February 16, 2016 list of facts is deemed to be undisputed by both parties.

2. Trial

The evening before trial began – on July 4, 2016, a national holiday – Petitioners moved that the Court make certain disclosures and, if appropriate, recuse itself from this case. (Dkt. no. 460.) The following day, the Court denied this motion after explaining why it did not have a disqualifying interest. (Dkt. no. 468-6 (“7/5 Tr.”⁷) at 2:9-10:12.) Immediately thereafter, Petitioners’ counsel presented the Court with a motion to dismiss for mootness. Although Petitioners were not present at trial, their counsel submitted declarations on their behalf, dated July 5, 2016, stating:

As a result of the Court’s denial of or failure to timely rule upon my Motion to Recuse, and because I do not believe that I can get a fair trial in this matter, I

⁶ The record also reflects that Respondents’ counsel overheard Petitioners stating off the record that these inaccuracies are “not minor.” (Id. at 62:12-15.) However, this representation was never made by either Petitioner or Petitioners’ counsel.

⁷ Reference is to the transcript of July 5, 2015.

hereby irrevocably consent to arbitrate the claims previously asserted against me in the Statement of Claim filed in the arbitration pending before the [arbitration panel].

(Dkt. nos. 464, 465.)

Petitioners' counsel then argued that because the Petitioners had consented to proceed with arbitration, the instant action was moot and the Court no longer had subject matter jurisdiction. (Dkt. no. 468-6 at 11:10-12.) Petitioners requested, in the alternative, that the Court permit them to dismiss this case voluntarily with prejudice under Rule 41(a)(2). (See id. at 40:11-13.) Respondents noted their opposition, and the Court directed the parties to brief this matter. (Id. at 34:19-20.)

The Court then directed counsel to proceed with opening statements, and Petitioners' counsel stated that they had been instructed by their clients not to participate in the trial. (Id. at 37:15-19.) Accordingly, the Court deemed that the trial had concluded and permitted Respondents to identify written testimony in lieu of any oral testimony that would have been offered at trial. (Id. at 51:10-12.)

On July 29, 2016, after receiving the parties' briefing on the mootness issue, the Court denied in part and granted in part Petitioners' motion. (Dkt. no. 479.) Petitioners' motion to dismiss this case for lack of subject matter jurisdiction was

denied, but the Court allowed Petitioners to dismiss their own petition voluntarily with prejudice on the condition that Respondents' cross-petition would remain pending and that the Court would reserve judgment as to Respondents' request for attorneys' fees and costs. (Id.) The parties thereafter submitted to the Court additional written testimony in lieu of oral testimony that they would have presented at trial.⁸

3. Admissibility of Evidence

In its April 20 order, (see Order dated Apr. 20, 2016 [dkt. no. 404], at 2), this Court adhered to the findings of Judge Cedarbaum's summary judgment opinion, (see order dated Mar. 20, 2014 [dkt. No. 232], at 4-9) regarding the admissibility of the government reports (RTX 105-135) and the private banking

⁸ By letter dated July 12, 2016, Respondents UBS AG, National Bank of Abu Dhabi, National Bank of Oman, and Island Capital LTD identified the following evidence that was being submitted in lieu of live testimony at trial: Declaration of Basil Imburgia (RTX 270 and 271); Declaration of Sreenivasan Sampath (National Bank of Oman) (RTX 291-298); Declaration of Samson Checkove Somarajan (National Bank of Abu Dhabi) (RTX 299-306); Declaration of Richard Stern (Island Capital LTD) (RTX 307-317); Declaration of Kurt R. Schmid (UBS AG) (RTX 318-327); Supplemental Declaration of Kurt R. Schmid (UBS AG) (RTX 318-327); Deposition transcript, video recording, (continued) (continued) and exhibits of Ahmed El Bardai (for impeachment and rebuttal) (RTX 328-331); Affidavit of Ahmed (continued) (continued) El Bardai (for impeachment and rebuttal); Declaration of Todd M. Mahoney (UBS AG); and designated Deposition Testimony of Ehab Taha. Respondent ABC identified the Declaration of Moh'd Nabil Hamdan, in lieu of the live testimony that was to be given by Stephen Jenkins, an executive at ABC. (Dkt. no. 481 (citing ABCTX 1).)

documents signed by the Lakahs (RTX 137-143), which had been in possession of the PPO. The Court echoed Judge Cedarbaum's evidentiary findings that: (1) the government reports are authentic under Fed R. Evid 901 and 902(3); (2) these reports contain factual findings from an investigation authorized by the Egyptian government under Fed. R. Evid. 803(8); and (3) several private banking records signed by one or both of the Lakahs are authentic and admissible under Fed. R. Evid. 901(a) and 801(d)(2). (See Order, dated Apr. 20, 2016 [dkt. no. 404], at 2.)

Judge Cedarbaum, however, had excluded the government reports (RTX 105-135) from consideration at the summary judgment stage because, while authentic, she ruled that on the record in front of her at that point, that the Lakahs had established that the documents lacked "indicia of trustworthiness" under 803(8). The Court left the determination of the trustworthiness of the reports - in other words, their admissibility under FRE 803(8) - for trial. (See Order, dated. Apr. 20, 2016 [dkt. no 404], at 2.)

(a) Various Government Reports (RTX 105-135)

Fed R. Evid. 803(8) provides a hearsay exception in civil cases for public records that include "factual findings from a legally authorized investigation" as long as "neither the source

of the information nor other circumstances indicate a lack of trustworthiness." Fed. R. Evid. 803(8). To be admissible under this exception, the proponent of the evidence must prove that the evidence "contains factual findings based on a factual investigation." (See Order, dated. Apr. 20, 2016 [dkt. no 404], at 6.) If the proponent has established this, then it becomes the burden of the party opposing the admission of evidence to show untrustworthiness. Ariza v. City of NY, 139 F.3d 132, 134 (2d. Cir. 1998). In Bridgeway Corp v. Citibank, 201 F.3d 134, 143 (2d Cir. 2000), the Court of Appeals laid out a four-factor approach to determining lack of trustworthiness of a factual report offered under 803(8) which considers: "(a) the timeliness of the investigation, (b) the special skills or experience of the official, (c) whether a hearing was held and the level at which it was conducted, and (d) possible motivation problems."

Judge Cedarbaum ruled that "all of the government reports contain factual findings from a legally authorized investigation." Lakah 996 F. Supp. 2d at 256. As noted, this Court previously adhered to Judge Cedarbaum's holding, explaining that "the Petitioners have shown no substantive basis to relitigate them." (See Order, dated Apr. 20, 2016 [dkt. no. 404], at 2.) Because this Court has already held that the government reports (RTX 105-135) are factual findings from a legally authorized investigation under 803(A)(iii), at trial,

the burden remained with the Petitioners to show untrustworthiness of the reports. Ariza v. City of New York, supra, 139 F.3d at 134). Had the Petitioners participated in the trial, the Court would have engaged in the trustworthiness analysis applying 803(8)(B) and the four-factor test from Bridgeway by assessing the credibility of the Lakah witnesses at trial. The Petitioners, however, did not participate in the trial held on July 5, 2016. Accordingly, they did not submit evidence on the untrustworthiness of the government factual investigations and therefore did not carry their burden under 803(8)(B). The presumption of trustworthiness thus remains, see Ariza, 139 F.3d at 134, and the reports (RTX 105-135) are admissible under 803(8)(A)(iii)'s exception to hearsay.

(b) Private Bank Records signed by the Lakahs in Possession of PPO (RTX 137-143, 348-49, 351)

i. RTX 137-143

The Bondholders offered evidence in the form of private bank records signed by at least one of the Lakahs that had been in the custody of the PPO (RTX 137-143). Judge Cedarbaum held that these documents were admissible as party admissions under 801(d)(2). Once again, the Court adhered to this evidentiary finding of Judge Cedarbaum. (See Order, dated Apr. 20, 2016 [dkt. no. 404], at 2.)

ii. RTX 348 and 349

There are three further bank records trial exhibits signed by the Lakahs (RTX 348, 349, and 351) that the Bondholders sought to have admitted. These three exhibits were not ruled on by Judge Cedarbaum or before trial by the Court during pre-trial briefing. RTX 348 is a memorialization of a sale of assets of Arab Steel Factory ("ASF") addressed to Banque du Caire and signed by Ramy Lakah. RTX 349 is an agreement between Banque du Caire and HCFI and ASF regarding bank deposits held as collateral signed by Ramy Lakah. RTX 351 is a settlement protocol, dated October 8, 2000, agreed to in Egypt between the Lakahs and nine aggrieved Egyptian bank creditors of their Lakah Group companies (HFCI and subsidiaries). (See dkt. no. 391 at 5.)

Before trial, the Bondholders initially moved to admit RTX 348 and 349 but then withdrew that request. The admissibility determination was then left for trial so that the Court could evaluate the credibility of both the Petitioners' and Bondholders' witnesses. Petitioners objected to the introduction of RTX 348 and 349 on the basis of Ramy Lakah's deposition testimony, in which Mr. Lakah disavowed knowledge of both documents and suggested that they were forgeries. (See dkt. no. 386 at 7.) In other words, the Petitioners' only objection to

the admission of RTX 348 and 349 was on the basis of authenticity.

"The requirement of authentication ... is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Fed.R.Evid. 901(a). The standard for authentication "is not particularly high." United States v. Gagliardi, 506 F.3d 140,151 (2d. Cir. 2007) (quoting United States v. Dhinsa, 243 F.3d 635, 658 (2d Cir.2001)).

"Generally, a document is properly authenticated if a reasonable juror could find in favor of authenticity." Gagliardi, 506 F.3d at 151 (quoting United States v. Tin Yat Chin, 371 F.3d 31, 38 (2d Cir.2004)). The proponent need not "rule out all possibilities inconsistent with authenticity, or to prove beyond any doubt that the evidence is what it purports to be."

Gagliardi, 506 F.3d at 151 (quoting United States v. Pluta, 176 F.3d 43, 49 (2d Cir.1999) (internal quotation marks and citation omitted))).

A reasonable juror could find in favor of the authenticity of RTX 348 and 349 for two principal reasons. First, both exhibits include the same Lakah Group stationery that appears in other exhibits whose authenticity is not contested, for example, one of the Petitioners' own trial exhibits. (See dkt. no. 391 at 7.) Secondly, Bondholders offered the nonexpert testimony of Mr.

Mohamed Khadr about handwriting under FRE 901(b)(2) in regard to the authenticity of both RTX 348 and 349. (See dkt. no. 391 at 7.) Mr. Khadr, who identified Ramy Lakah's signatures on both documents, was a former Vice Chairman of HCFI and had experience of ten or more years of witnessing Mr. Lakah's signing of various documents. (Id.) Even if Mr. Lakah had testified at trial, the stationery and Mr. Khadr's opinion would have provided sufficient reason for a reasonable juror to find in favor of their authenticity. Thus, RTX 348 and 349 are admitted.

iii. RTX 351

The settlement protocol's (RTX 351) authenticity is not in dispute. Petitioners concede that it is in fact a document that the "Lakahs negotiated with various Egyptian banks in November 2000." (See dkt. no. 386 at 8.) Instead, petitioners object to the admission of the settlement protocol solely on the grounds of FRE 408 in that it is evidence taken from settlement negotiations.

FRE 408(a) prohibits evidence from settlement negotiations from being admitted "to prove or disprove the validity or amount of a disputed claim. . . ." FRE 408(a). FRE 408(b), however, provides exceptions to the rule pronounced in 408(a), allowing

the court to admit evidence from settlement negotiations for "another purpose." FRE 408(b).

Indeed, here the November 2000 settlement protocol is being offered by the Bondholders for another purpose under FRE 408(b). The Bondholders do not offer the settlement protocol in order "to prove or disprove the validity or amount of a disputed claim nor to impeach a prior inconsistent statement or a contradiction." FRE 408(a). The settlement protocol does not involve a disputed claim here at issue. The settlement protocol is an agreement between the Lakahs and nine Egyptian banks. The Bondholders in this case do not seek to prove or disprove the validity of the Egyptian banks' claims (if they ever existed) against the Lakahs. (See dkt. no. 391 at 5.) Therefore, Rule 408 does not apply here.

Even if Rule 408 did apply here, the settlement protocol would be admissible under 408(b). The Bondholders seek to introduce the settlement protocol to bolster their veil piercing argument, not to prove the validity or amount of a claim or to impeach by a prior inconsistent statement. Id. Thus, RTX 351 is admitted.

(c) Basil Imburgia Expert Report

Petitioners challenged the admission of Basil Imburgia's expert report. Rule 702 requires that expert testimony be "based

on sufficient facts or data" to be admissible. Fed. R. Evid. 702(b). Rule 703 provides that an expert "may base an opinion on facts or data in the case that the expert has been made aware of or personally observed." Fed. R. Evid 703. That is to say, if certain facts or data are admissible, an expert may rely on those facts or data in his testimony. Even in the case where some facts or data are inadmissible, experts may use such facts or data in their testimony "if experts in the particular field would reasonably rely on those kinds of facts or data." Id.

Mr. Imburgia's expert report explicitly states that in composing his report he considered the various Egyptian government agency reports mentioned above (RTX 105-135) as well as the private bank documents that had been in the possession of the PPO, e.g., RTX 137-143. The footnotes to Mr. Imburgia's work reveal numerous findings throughout his report that rely upon government reports and private bank documents. Both parties agree Imburgia's report may rely on documents otherwise found admissible by the Court. (Ct. Conf. (5/27/2016) Tr. At 12-13.) Because RTX 105-135 and RTX 137-143, 348-349 and 351 are all admissible as noted above, to the extent that Mr. Imburgia bases his opinions on these documents, his report is not inadmissible

for the reason that it cites or employs these documents. Fed. R. Evid. 703.⁹

II. Findings of Fact

The Court is cognizant that the Supreme Court and the Court of Appeals have from time to time voiced their displeasure with verbatim adoption of proposed findings of fact. See e.g., Anderson v. City of Bessemer City, N.C., 105 S.Ct. 1504, 1510-11, 470 U.S. 564, 571-73 (U.S., 1985), Allied Chemical Intern. Corp. v. Companhia de Navegacao Lloyd Brasileiro, 775 F.2d 476, 481, (2d Cir. 1985), Monroe County Conservation Council, Inc. v. Adams, 566 F.2d 419, 425 n. 7 (2d Circ. 1977), International Controls Corp. v. Vesco, 490 F.2d 1334, 1341 n. 6 (2d Circ. 1974). Here, however, the Court believes that adopting, in large part, the findings of fact submitted by Respondents is beneficial in conserving judicial resources and is warranted for several reasons.

First, unlike the situation in El Paso Natural Gas, referred to in Anderson, the proposed findings of fact submitted by Respondents here were not conclusory statements unsupported by citation to the record. Anderson, 105 S.Ct. at 1510, 470

⁹ Even supposing that the government reports and private bank documents were inadmissible, Mr. Imburgia's report would still be admissible because under Rule 703, they are documents upon which an expert in a particular field would "reasonably rely."

U.S. at 571, citing U.S. v. El Paso Natural Gas Company, 376 U.S. 651, 656-57, 84 S.Ct. 1044, 1047-1048 (1964). The proposed findings here were also not "loaded down with argumentative overdetailed partisan matter." See Roberts v. Ross, 344 F.2d 747, 752 (3d Cir. 1965), abrogated by Lansford-Coaldale Joint Water Authority v. Tonolli Corp., 4 F.3d 1209, 1215 n.5 (3d Cir. 1993), quoted in C. Wright and A. Miller, Federal Practice and Procedure § 2578 (3d ed. 2016). To the contrary, the proposed findings of fact submitted by Respondents are exceptionally detailed with generous citations to the record. Indeed, given the level of detail in the proposed findings, it would have been a huge waste of judicial resources to rewrite them for the sake of rewriting.

Second, having made a "thorough in-depth review of the record," see Monroe County, 566 F.2d at 425 n. 7, the Court finds the proposed findings of fact, as adopted, to be well supported in the record.

Finally, as noted above, Petitioners directed their attorneys not to participate in the trial. Accordingly, there was no evidence contrary to Respondents' evidence, and no credibility issues were created. Accordingly, under these circumstances, the Court has in large part adopted Respondents' proposed findings of fact.

Federal Rule of Civil Procedure 52(a) requires that district judges must, whether in a written opinion or on the record, "find the facts specially and state [their] conclusions of law separately" in an action tried upon the facts without a jury. Fed. R. Civ. P. 52(a). The district judge's duty under 52(a) is mandatory and cannot be waived by the parties. Wright and Miller, supra, § 2579. Consequently, the Lakahs' waiver of participation in the trial in no way disposes of this Court's responsibility under 52(a) to find the facts and state its conclusions of law.

In order for a district court to fulfill its duty under Rule 52(a) to "find the facts specially," the court must "make sufficiently detailed findings to inform the appellate court of the basis of the decision and to permit intelligent appellate review." Krieger v. Gold Bond Bldg. Products, 863 F.2d 1091, 1097 (2d Cir. 1988)(finding Rule 52(a) satisfied where court spent half of its 29-page opinion describing facts and included detailed references to documentary evidence). Though the court's mandatory duty under 52(a) requires a level of consideration and detail, this responsibility has its bounds: as the Court of Appeals has stated, "nothing in the Rules requires '[l]eith[er] punctilious detail [] or slavish tracing of the claims issue by issue and witness by witness.'" Id. (quoting Ratliff v.

Governor's Highway Safety Program, 791 F.2d 394, 400 (5th Cir. 1986)(brackets in original)).

In composing its findings of fact and conclusions of law for this case, the Court has been presented with an unusual situation, namely that the Lakahs waived their participation in the trial. Perhaps because of the rarity of this situation, there is a lack of relevant authority to guide the Court's approach to drafting the findings of fact and conclusions of law in this precise situation. Nevertheless, the Court considers the situation before it as fairly analogous to that of a Court considering an unopposed motion for summary judgment under Rule 56(e)(2). Consequently, the Court looks to the process governing unopposed summary judgment motions under Rule 56 for guidance here.

When a motion for summary judgment is unopposed, a Court may consider the facts asserted by the moving party in its supporting materials filed according to Rule 56(c) as undisputed under Rule 56(e)(2). Fed. R. Civ P. 56(e)(2). Nonetheless, an unopposed motion, without more, does not warrant the Court in granting summary judgment. When "a nonmoving party chooses the perilous path of failing to submit a response to a summary judgment motion, the district court may not grant the motion without first examining the moving party's submission to

determine if it has met its burden of demonstrating that no material issue of fact remains for trial." See Amaker v. Foley, 274 F.3d 677, 681 (2d Cir. 2001). Otherwise, "summary judgment is inappropriate." Id.

A district court has an obligation before granting summary judgment to "ensure that each statement of material fact is supported by record evidence sufficient to satisfy the movant's burden of production even if the statement is unopposed." Jackson v. Federal Exp., 766 F.3d 189, 194 (2d Cir. 2014) Finally, while Rule 56(a) requires that the district court "state on the record the reasons for granting or denying the motion," Fed. R. Civ. P. 56(a), a district court is not required to "write elaborate essays using talismanic phrases," id. at 196, when granting summary judgment. A district court fulfills its role so long as it provides an explanation for granting summary judgment that provides a record sufficient to allow informed appellate review. Id. at 196-97.

The situation of an unopposed summary judgment motion, which triggers the legal process described above, is largely mirrored by the situation here, that is, the Lakah's waiver of trial. Therefore, because of the similarity of the two situations, the Court believes that the reasoning and process

dictated by the Rule 56 case law provides a blueprint for how to proceed here.

Because the Lakahs opted not to participate in the trial, the Court will consider all properly admitted evidence submitted by the Bondholders as undisputed. Cf. Fed. R. Civ. P. 56(e)(2); Cf. Wright and Miller, supra, § 2578 (explaining that in the case of default it is acceptable for the prevailing party to prepare the Rule 52(a) findings). However, the simple fact that the Lakahs did not participate in the trial, without more, does not warrant a finding for the Bondholders. The Court does not apply a simple default principle. Instead, the Court has an obligation before granting judgment to "ensure that each statement of material fact is supported by record evidence sufficient to satisfy the [participating party's] burden. . . . even if the statement is unopposed." Id. at 194.

The Court has examined the Bondholders' proposed findings of fact and conclusions of law and the evidence cited by those documents. The Court finds that the arguments and evidence adduced below are undisputed because, by not participating at trial, the Lakahs have failed to contest the Bondholders' assertions of fact. Cf. Fed. R. Civ. P. Rule 56(e)(2). In addition, the Court finds that each statement of material fact offered by the Bondholders, as adopted, is supported by record

evidence sufficient to satisfy their burden of demonstrating by a preponderance of the evidence that they are entitled to judgment.

A. Party Relationships

1. During the period 1998-2001 Ramy Lakah and Michel Lakah shared all of their business enterprises on approximately a 50/50 basis. (R. Lakah Depn. (10/4/2011) Tr. at 76:5-9; RTX 177 (Decl. of Mohamed Aly Khadr, executed 11/8/2010 ("Khadr Decl." ¶11.)

2. The Holding Company for Financial Investments (Lakah Group) S.A.E. ("HCFI") was formed by the Lakahs as an Egyptian holding company on November 29, 1998. (Joint List of Undisputed Facts, Fact No. 10; RTX 45 (Eurobond Offering Circular ("OC")) at 8.)

3. At all relevant times, Ramy and Michel Lakah together owned between 69% and 100% of the issued shares of HCFI. (Joint List of Undisputed Facts, Fact No. 24; RTX 45 (OC at 16, 37).

4. As of December 6, 1999, Ramy and Michel Lakah together owned not less than 69% of the issued shares of HCFI. (Joint List of Undisputed Facts, Fact No. 24; RTX 45 (OC at 16, 37).

5. As of the time of the Eurobond offering:

"Messrs. Ramy Lakah and Michel Lakah owned approximately 70 percent of the outstanding shares of the Lakah Holding Company [HCFI]. These shareholders are able to exert substantial control over the Lakah Holding Company [HCFI] and, as long as they directly or indirectly own such shares, they will have the ability to elect all of the Lakah Holding Company's directors, to cast a majority of the votes with respect to virtually all matters submitted to a vote of Lakah Holding Company's shareholders and to prevent a change in the control of the Lakah Holding Company [(HCFI)]."

(Joint List of Undisputed Facts, Fact No. 46; RTX 45 (OC at 16).)

6. As of December 6, 1999, HCFI owned not less than:

- (a) 97.6% of the shares of Trading Medical System Egypt, S.A.E. ("TMSE"), an Egyptian corporation;
- (b) 97.8% of the shares of Medequip for Trading and Contracting, S.A.E. ("Medequip"), an Egyptian corporation;
- (c) 97.9% of the shares of Arab Steel Factory, S.A.E. ("ASF"), an Egyptian corporation; and
- (d) 100% of the shares of Lakah Funding Limited ("LFL").

(Joint List of Undisputed Facts, Fact No. 25.)

7. As of December 6, 1999, Ramy Lakah and Michel Lakah also personally owned the following percentages of the shares of the following companies:

- (a) Ramy Lakah (0.35%) and Michel Lakah (0.04%) of TMSE;
- (b) Ramy Lakah (0.065%) and Michel Lakah (0.04%) of Medequip; and
- (c) Ramy Lakah (0.873%) and Michel Lakah (0.999%) of ASF

(Joint List of Undisputed Facts, Fact No. 26.)

8. Lakah Funding Limited was incorporated under the laws of the British Virgin Islands as a wholly-owned subsidiary of HCFI, and was organized as a special purpose vehicle to issue a Eurobond. (Joint List of Undisputed Facts, Fact No. 27.)

9. Prior to December 1998, the term "Lakah Group" was used to denote all of the companies owned or controlled by Ramy and Michel Lakah. (See R. Lakah Depn. (11/13/2008) Tr. at 49; B. Murphy Depn. (2/21/2008) at 31-32 (referring to the Lakah Group in 1996))

10. Beginning in December 1998, the term "Lakah Group" was used in general to denote HCFI and its subsidiaries. (RTX 45 (OC); R. Lakah Depn. (10/20/2011) Tr. at 8:2-25, 9:11-10:24; M. Lakah Depn. (11/11/2008) Tr. at 7-8; B. Murphy Depn. (2/21/2008) at 40; Taha Depn. Tr. at 6-7; see also Zarif Depn. Tr. at 49:14-50:4.)

B. The Lakah Eurobond Transaction and Default

1. The Lakah Eurobond Offering

11. On or about December 8, 1999, LFL issued and offered a 5-year, \$100,000,000 Eurobond, paying interest at 12% per annum, with semi-annual interest payments (the "Eurobond" or the "Bond"). (Joint List of Undisputed Facts, Fact No. 28.)

12. On or about December 8, 1999, HCFI, TMSE, Medequip, and ASF (each a Guarantor, and collectively the "Guarantors"), jointly and severally guaranteed the Eurobond as primary obligors. (Joint List of Undisputed Facts, Fact Nos. 29, 172-73.)

13. In order to satisfy a condition precedent to the issuance of the Eurobonds, Ramy Lakah executed a "Certificate of No Default of the Guarantors," dated December 8, 1999, in which he certified:

"As required in the Subscription Agreement, I certify that there is outstanding no default, event of default or other breach, which has not been waived of any of the obligations of any Guarantor under the Bonds, the Guarantee, the Indenture, the Paying Agency Agreement or the Subscription Agreement."

(RTX 357 (S/J Undisputed Fact No. 80); RTX 94 and 48 Subscription Agreement Sections 61. And 6.4 and Annex B.)

14. The Eurobond transaction documents included:
- (a) the Indenture, dated as of December 8, 1999, among the Issuer, the Guarantors, and The Bank of New York, acting through its principal corporate trust office in New York City, as Trustee (the "Trustee") for the benefit of the bondholders, providing for the issuance of the Bonds; (RTX 52 (Indenture);)
 - (b) the Regulation "S" Global Bond (the "Bond"), including the Terms and Conditions of the Bonds ("TCB"); (RTX 51 (Bond))
 - (c) the Guarantee, dated as of December 8, 1999, made jointly and severally by each of the Guarantors to and in favor of

the Trustee for the benefit of the bondholders; and (RTX 46 (Guarantee))

(d) the Offering Circular, dated December 6, 1999, relative to the Eurobond (the "OC"). (RTX 45 (OC); see RTX 357 (S/J Undisputed Fact No. 12) as to each.)

15. The OC, Indenture, and Guarantee contain New York choice of law provisions. (ECF No. 72 (Memo of Law Opposing Reconsideration, pp. 9-10); RTX 45 (OC at 12), RTX 46 (Guarantee at 8), RTX52 (Indenture at 16 (§111).)

2. The Eurobond Offering Circular ("OC").

16. Ramy Lakah certified that the contents of the Eurobond Offering Circular were true and accurate. (RTX 357 (S/J Undisputed Fact No. 157); RTX 44 (Certificate dated 12/6/1999 signed by Ramy Lakah (RSM E 4049-50; L0675-76))

17. Specifically, Ramy Lakah executed a letter confirming that (1) he had reviewed the OC and was in agreement with its terms; and (2) the "Eurobond Offering Circular is true and accurate in all material respects, contains all material information with regard to the Issuer, ... [and Guarantors] and the Bonds and the transactions related thereto and does not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein not misleading; and there are no facts in relation thereto the omission of which would, in light of the circumstances under which the statements in the Offering Circular are made and in

the context of issue of the Bonds, make any statement in the Offering Circular regarding the Issuer, the Guarantors and the Bonds misleading, untrue or inaccurate as at their respective dates." (RTX 44 (Certificate dated 12/6/1999 signed by Ramy Lakah (RSM E 4049-50; L0675-76))

18. Ramy Lakah also executed a certificate that confirmed, on behalf of the Issuer and the Guarantors, that the representations in the OC concerning the Issuer and each of the Guarantors were complete and accurate as at December 6, 1999, and that no material adverse change had occurred as of the date of issuance of the Bonds on December 8, 1999. (Joint List of Undisputed Facts, Fact No. 47; RTX 50 ("Certificate of No Material Adverse Change", dated Dec. 8, 1999)).

19. Ramy Lakah executed an authorization to publish the Eurobond Offering Circular. (Joint List of Undisputed Facts, Fact No. 48; RTX 44 (L0675-76)).

20. The OC contains the following statement:

"The Issuer and the Guarantors ... confirm that this Offering Circular contains or incorporates all information with respect to the Issuer, the Guarantors, the Lakah Holding Company and its Subsidiaries (as defined below) taken as a whole (the "Lakah Group"), the Bonds and the Guarantee, which is material in the context of the issue and offering of the Bonds and the Guarantee;

that such information is true and accurate in all material respects and is not misleading in any material respect; ... and that there are no other facts the omission of which would make this Offering Circular as a whole or any such information ... misleading in any material respect ..."

RTX 45 (OC at 2).

21. The OC contains the following statement:

"[T]he Issuer and the Guarantors accept responsibility for the information contained in this document."

RTX 45 (OC at 2).

22. The OC contains the following statement:

"The Managers (as defined below) have not independently verified the accuracy or completeness of the information contained in this Offering Circular and, accordingly, make no representation, warranty, or undertaking (express or implied) with respect to, and do not accept any responsibility for (and hereby disclaim any liability for), the accuracy or completeness of this Offering Circular or any other information provided by the Issuer or the Guarantors, or any person, in connection with the Bonds, or their distribution or the Guarantee."

RTX 45 (OC at 2).

23. The OC contains the following statement:

"No person has been authorized to give any information or to make any representations other than those contained in this Offering Circular, the Subscription Agreement (as defined below), the Indenture, or the

Guarantee, and, if given or made, such information or representations must not be relied upon as having been authorized."

* * *

"The offering is being made on the basis of this Offering Circular. Any decision to purchase Bonds in the offering must be based on the information contained herein."

RTX 45 (OC at 2, 3).

24. The balance sheets of each of the Guarantor companies -- HCFI, Medequip, TMSE, and ASF -- as of June 30, 1999, as disclosed in the Offering Circular, indicated that the assets and liabilities of those companies, respectively, balanced. (Joint List of Undisputed Facts, Fact No. 93.)

3. The Guarantee

25. Petitioner Ramy Lakah signed the Guarantee on behalf of (a) HCFI (as its Chairman), (b) Medequip (as its Chairman), (c) TMSE (as attorney in fact), and (d) ASF (as attorney in fact). (Joint List of Undisputed Facts, Fact Nos. 31, 124.)

4. The Bond

26. Ramy Lakah signed the Bond on behalf of the Issuer and each of the Guarantor companies. (Joint List of Undisputed Facts, Fact Nos. 32, 124.)

5. The Indenture

27. The Indenture contains the following financial covenant:

"So long as any Bond remains Outstanding, ... the ratio of [HCFI's] ... Indebtedness (as defined in Section 101, except that there shall be excluded therefrom, solely for purposes of this Section 1005(b)(ii), any Indebtedness incurred in connection with the purchase of medical equipment, which is then leased or resold, provided that the Indebtedness is fully secured by lease receivables or promissory notes issued by lessees or purchasers of such equipment) to Net Worth shall not exceed 1:1."

Joint List of Undisputed Facts, Fact No. 62; RTX 52 (Indenture §1005(b)(ii)(A)). The terms and Conditions of the Bond contain a substantially similar condition. RTX 51 (TCB Condition 9(b)(i) in Indenture at A-9)).

28. The Indenture contains the following financial covenant:

"So long as any Bond remains Outstanding, [HCFI] ... will, at all times, maintain a Net Worth of not less than E£ 1 billion."

(Joint List of Undisputed Facts, Fact No. 61; RTX 52 (Indenture §1005(b)(i)). The Terms and Conditions of the Bond contain a substantially similar condition. (RTX 51 (TCB Condition 9(a)).)

29. The Indenture defines "Net Worth" to mean: with respect to any period, the sum of the issued and paid-up Capital Stock of the Parent Guarantor, adjusted as follows:

- (i) by adding the aggregate amount standing to the credit of the reserves of the Parent Guarantor or any of its Subsidiaries (on a consolidated basis, including retained income);
- (ii) by adding or subtracting any amount standing to the credit or debit, as the case may be, of Consolidated Net Income to the extent not already included in retained income;
- (iii) by adding any amounts attributable to goodwill or other intangible assets;
- (iv) by adding any amounts representing minority interests of the Parent Guarantor;
- (v) by subtracting any amounts set aside for dividends or taxes; and
- (vi) by subtracting any impairments of the issued share capital of the Parent Guarantor; in each case, for such period.

(Joint List of Undisputed Facts, Fact No. 63; RTX 52 (Indenture at 7). The Terms and Conditions of the Bond contain a substantially similar definition of "Net Worth." RTX 51 (TCB at 16).)

30. The Indenture requires the application of International Accounting Standards ("IAS") to determine the terms defined in Indenture §1005. The Terms and Conditions of the Bonds contain a substantially similar requirement regarding the application of IAS to determine the terms defined in TCB Condition 9(e). (Joint List of Undisputed Facts, Fact No. 64.)

31. Ramy Lakah signed the Indenture on behalf of (a) LFL (as its Chairman), (b) HCFI (as its Chairman), (c) Medequip (as its Chairman), (d) TMSE (as attorney in fact), and (e) ASF (as attorney in fact). (Joint List of Undisputed Facts, Fact Nos. 30, 124.)

32. Ramy Lakah also signed the Indenture in his personal capacity. (RTX 52 (Indenture p. 62).)

33. Michel Lakah also signed the Indenture in his personal capacity. (RTX 52 (Indenture p. 62).)

6. The Respondents' Eurobond Holdings

34. The following Respondents ("Bondholders") hold Eurobonds in the following face amounts respectively: UBS (\$17,420,000); EIC (c/k/a Island Capital) (\$10,000,000); NBAD (\$5,000,000); and NBO (\$5,000,000). (RTX 357 (S/J Undisputed Fact No. 18); RTX 318 (Schmid Decl. ¶6); RTX 307 (Stern Decl. ¶6); RTX 299 (Somarajan Decl. ¶6); RTX 291 (Sampath Decl. ¶6).)

35. At or about December 8, 1999, the following Respondents purchased Eurobonds in the indicated amounts: UBS (\$3,420,000), NBAD (\$5M), and NBO (\$5M). (ECF No. 208 (Petitioners' Statement of Undisputed Facts, ¶ 18).)

36. On or about October 18, 2001, Respondent UBS received an assignment of Eurobonds in the face amount \$14,000,000 from

National Commercial Bank. NCB had purchased those bonds at or shortly after they were issued on December 8, 1999. (RTX 328 (Supplemental Decl. of K. Schmid, dated 05/19/2008 ("Supp. Decl. of K. Schmid")) ¶ 8.)

7. Lakah Company Defaults

37. The Issuer and the Guarantors defaulted and have been in default on their interest and principal payment obligations to the Bondholders under the Bond since June 8, 2001. (Joint List of Undisputed Facts, Fact No. 33)

C. The Underlying Arbitration and this Proceeding

1. Arbitration Provisions

38. The Indenture (at Section 110) provides for arbitration in New York of disputes "arising out of or in connection with the Bonds, the Guarantee or this Indenture":

- (a) any dispute or difference whatsoever arising between the Issuer or any Guarantor, as the case may be, and the Trustee (or a Holder of Bonds) or any Agent arising out of or in connection with the Bonds, the Guarantee or this Indenture shall be finally settled by submission to arbitration by the American Arbitration Association under its Commercial Arbitration Rules, as at the time in force, by a panel of three arbitrators appointed in accordance with such rules.
- (b) The place of the arbitration shall be New York, New York or London, England; the language of the arbitration shall be English; and the appointing authority shall be the American Arbitration Association.

(Joint List of Undisputed Facts, Fact No. 34.)

39. The Terms and Conditions of the Bond (at Section 18) sets forth an arbitration clause that is substantially the same as the arbitration clause of the Indenture. (Joint List of Undisputed Facts, Fact No. 35.)

40. The Guarantee (at Section 13) sets forth an arbitration clause that is substantially the same as the arbitration clause of the Indenture. (Joint List of Undisputed Facts, Fact No. 36)

2. The Arbitration

41. On or about June 8, 2006, the Bondholders filed with the American Arbitration Association in New York a Demand for Arbitration and Statement of Claim (the "Arbitration Demand") against the Issuer, the Guarantors, Ramy Lakah, Michel Lakah, and other companies, and thus commenced the underlying Arbitration. (Joint List of Undisputed Facts, Fact No. 37.)

42. On or about December 19, 2008, the panel of arbitrators issued an award in Phase 1 of the Arbitration in favor of the Bondholders against the Issuer and the Guarantor companies for more than \$100,000,000 plus interest (which continues to accrue) plus costs, including attorneys' fees. (Joint List of Undisputed Facts, Fact No. 45.)

43. Counsel for the Lakah companies in the arbitration also represented the Lakahs personally in the arbitration. (RTX 288 (Letter dated October 29, 2008 from L. Steckman to Panel); RTX 353 (Arb. Hrg. (6/23/2008) Tr. at 5:5-10.)

44. Counsel for the Lakah companies in the arbitration also represented the Lakahs personally in this proceeding, until those counsel withdrew and were replaced by the Lakahs' current counsel. (RTX 288 (Letter dated October 29, 2008 from L. Steckman to Panel); RTX 1 (Order to Show Cause).)

D. The Lakahs Exercised Complete Control of the Guarantor Companies

1. In General

45. As of the time of the Eurobond offering:

"Messrs. Ramy Lakah and Michel Lakah owned approximately 70 per cent of the outstanding shares of the Lakah Holding Company [HCFI]. These shareholders are able to exert substantial control over the Lakah Holding Company [HCFI] and, as long as they directly or indirectly own such shares, they will have the ability to elect all of the Lakah Holding Company's directors, to cast a majority of the votes with respect to virtually all matters submitted to a vote of Lakah Holding Company's shareholders and to prevent a change in the control of the Lakah Holding Company [(HCFI)]."

(Joint List of Undisputed Facts, Fact No. 46 (admitting statement in OC); RTX 357 (S/J Undisputed Fact No. 27, admitting fact).)

46. During the relevant period, "the Lakah family remain[ed] firmly in control of The Lakah Group. . . ." (RTX 357 (S/J Undisputed Fact No. 31); RTX 84 (excerpt from Lakah Group website); R. Lakah Depn. (5/13/2009) Tr. at 12:14-13:17.)

47. During the period 1998-2001, there was no decision regarding HCFI, or Medequip, or ASF, or TMSE that Ramy Lakah did not have authority to make. (R. Lakah Depn. (10/4/2011) Tr. at 341:5-16, 342:11-14, 343:21-24, 350:5-8.)

48. Ramy Lakah and Michel Lakah completely controlled every significant aspect of the Lakah Guarantor companies, including their management, their finances, and their assets, and treated those companies as personal (or family) enterprises. (RTX 177 (Khadr Decl. ¶ 10); Khadr Depn. Tr. at 544-47; RTX 245 (Shourbagy Decl. ¶¶ 13-45).)

49. The Lakahs' control extended to every company that they owned, including each of the Guarantor companies, whether or not Ramy or Michel Lakah or both formally held a position of any kind with the company, whether in management or on the

Board. (RTX 177 (Khadr Decl. ¶ 14); Khadr Depn. Tr. at 116-17, 548-49; see also Zarif Depn. Tr. at 48:7-11.)

50. Generally, all decisions by Ramy Lakah were implemented, and unless Ramy Lakah made or approved a significant decision above the day-to-day business level, it would not be implemented. (RTX 177 (Khadr Decl. ¶12); Khadr Depn. Tr. at 553, 557-58.)

51. Typically, whatever the transaction -- e.g., acquiring property or a company, or obtaining or using financing -- the Lakahs took decisions and then told people who were needed to complete the transaction. Others would hear about these deals after they were done. There were never any Board of Directors meetings to decide about any such things. (RTX 177 (Khadr Decl. ¶15); Khadr Depn. Tr. at 106-11.)

52. The only "strategic planning" that was done within the Lakah Group was the decisions of Ramy and (to a lesser extent) Michel Lakah. HCFI had no strategic plan, and it did no strategic planning for or regarding any of its subsidiaries. (RTX 177 (Khadr Decl. ¶ 76); Khadr Depn. Tr. at 428-30.)

53. Ramy and Michel Lakah were the real decision makers in their companies. Nobody could tell them "no." (RTX 245

(Shourbagy Decl. ¶ 24); Shourbagy Depn. Tr. at 38:15-39:11; Zarif Depn. Tr. at 312:17-314:11.)

54. Ramy and Michel Lakah were usually members of the Boards of Directors of all of the Guarantor companies. (ECF No. 208 (Petitioners' Undisputed Facts, ¶ 62).)

55. Ramy Lakah "acted as 'Chairman' of each of the Guarantors, responsible for strategic, policy and major business decisions at the HCFI level." (Joint List of Undisputed Facts, Fact No. 174.)

56. In 1999, Ramy Lakah acted as "Chairman" of each of the Guarantors (except ASF), and was responsible for the strategic, policy and major business decisions at the HCFI level. (ECF No. 208 (Petitioners' Undisputed Facts, ¶ 10).)

57. Michel Lakah was on certain of the Guarantor companies' Boards of Directors and had the title "Vice-Chairman" and co-CEO. (Joint List of Undisputed Facts, Fact No. 51 (Vice Chairman and co-CEO of HCFI); ECF No. 207 at 43 (admission in Lakah Mem. of L.).)

58. As between Ramy and Michel, Michel was considered "the numbers person." (RTX 177 (Khadr Decl. ¶ 53); Khadr Depn. Tr. at 445-46)

59. Michel Lakah had a background in accounting and probably filled the Chief Financial Officer function for HCFI, etc. (RTX 177 (Khadr Decl. ¶ 53); Khadr Depn. Tr. at 445-46)

60. No Board of Directors within the Lakah Group actually functioned. (RTX 177 (Khadr Decl. ¶15); Khadr Depn. Tr. at 100-07; RTX 245 (Shourbagy Decl. ¶ 13-19, 43, 46-52 (as to TMSE)); Shourbagy Depn. Tr. at 28:17-29:17.)

61. No Board of Directors meetings were held, and no notices of Board meetings were given. (RTX 177 (Khadr. Decl. ¶¶ 14-15, 17-32); RTX 245 (Shourbagy Decl. ¶¶ 18, 46, 48); Shourbagy Depn. Tr. at 28:17-29:17 (TMSE); RTX 265 (Zarif Decl. ¶¶ 36-38); Zarif Depn. Tr. at 55:19-22.)

62. The Lakahs produced no notices of Board meetings.

63. Ramy Lakah and to a lesser extent Michel Lakah unilaterally placed people on the Boards of their companies and removed them at will. (RTX 177 (Khadr Decl. ¶ 24); Khadr Depn. Tr. at 101.)

64. No budgeting was ever reviewed or approved by the Board of Directors of HCFI or of Medequip or TMSE. (RTX 177 (Khadr Decl. ¶75); Khadr Depn. Tr. at 127.)

65. Ramy Lakah and Michel Lakah controlled, and rarely delegated, the banking signature powers for their companies. (RTX 177 (Khadr Decl. ¶54); Khadr Depn. Tr. at 153.)

66. The Lakahs had authority to sign bank checks for all of the Guarantor companies. (ECF No. 207 (Lakahs' SJ Br. at 101).)

67. In Egypt, a company is required to identify in its Commercial Register the person(s) within the company who were eligible to interact with banks, and in every instance during the relevant period, Ramy Lakah and Michel Lakah retained the right to interact with banks on behalf of the Guarantor companies even for periods when they were not nominally on the Board of Directors of a company. (RTX 28 (HCFI Commercial Register); RTX 29 (ASF Commercial Register at 2-4, 9); RTX 30 (TMSE Commercial Register) at 3, 4, 8-10); RTX 31 (Medequip Commercial Register).)

68. In most cases, the Lakahs did not delegate control of their companies' accounts. (RTX 177 (Khadr Decl. ¶54); Khadr Depn. Tr. at 153.)

69. The senior managers of every Lakah Group company were selected and hired by Ramy Lakah and/or Michel Lakah personally. (RTX 177 (Khadr Decl. ¶63); Khadr Depn. Tr. at 263-64.)

70. Titles, if given, were general and meaningless within the Lakah companies, including within the Lakah Group. Titles and positions were given or changed by Ramy Lakah or (to a lesser extent) Michel Lakah. (RTX 177 (Khadr Decl. ¶64); Khadr Depn. Tr. at 265-71.)

71. Ramy Lakah and (to a lesser extent) Michel Lakah decided the compensation of the senior employees of each of the Lakah companies. (RTX 177 (Khadr Decl. ¶73); Khadr Depn. Tr. at 271-72.)

72. Ramy or Michel could instruct any employee to do anything that he chose or asked them to do. (RTX 177 (Khadr Decl. ¶65); Khadr Depn. Tr. at 265-71.)

73. It was not unusual for Lakah Group employees to be assigned to work at any of the Lakahs' companies, both within and outside of the Lakah Group. (RTX 177 (Khadr Decl. ¶66-67); Khadr Depn. Tr. at 265-71.)

74. For example, Ramy Lakah and Michel Lakah often assigned Ramy Oda Pacha and Mohamed Khadr - senior officers and managers in HCFI - to provide input and to attend meetings with the Lakahs or on their behalf regarding many of their businesses and business ventures, both inside and outside the Lakah Group. (RTX 177 (Khadr Decl. ¶68); Khadr Depn. Tr. at 265-71, 393-94.)

75. For example, in 1998, the Lakahs assigned Ramy Oda Pacha to take a major part in the start-up of their airline company, Midwest Airlines, which was not owned by HCFI. (RTX 177 (Khadr Decl. ¶69); Khadr Depn. Tr. at 265-71.)

76. For example, while Mohamed Khadr was an officer (and nominal director) of HCFI, his principal responsibility concerned the medical equipment businesses - primarily Medequip's. However, from time to time Khadr also acted as Ramy Lakah's representative at Midwest Airlines - a company owned by the Lakahs outside the Lakah Group. Though Khadr was never an employee or director of, or a consultant to, Midwest Airlines, Ramy Lakah instructed Khadr from time-to-time to review matters at Midwest Airlines, to report to Ramy, and to advise Ramy regarding Midwest Airlines affairs. (RTX 177 (Khadr Decl. ¶70); Khadr Depn. Tr. at 393-94.)

2. Public Information Source: Egyptian Commercial Registers

77. Every Egyptian corporation is required to create a Commercial Register file when the company is formed. (See Taha Depn Tr. 140-44.)

78. The Commercial Register is a public record in Egypt that is maintained at local Commercial Registry offices. (RTX 357 (Lakahs' admission at Fact No. 362); See Taha Depn Tr. 140-44.)

79. By Egyptian law, the Commercial Register must contain company information, including concerning its formation, legal status, location, directors, and capital. (Taha Depn. Tr. 140:18-141:17.)

80. By Egyptian law, the company is required to maintain complete, accurate, and current information in its Commercial Register. (RTX 357 (S/J Undisputed Fact No. 33); R. Lakah Depn. (10/21/2011) Tr. at 242:6-9, 240:14-16, 241:20-214:5; Taha Depn. Tr. 142:5-21.)

81. By Egyptian law, everyone is entitled to rely on the information in a company's Commercial Register as current, accurate, and complete. (Taha Depn. Tr. 144:9-13, 143:13-15.)

82. By Egyptian law, in order for a company to be permitted to record in its Commercial Register an increase of its paid in capital, the company must present to the Commercial Registry a certification from an authorized bank indicating that funds in the amount of the capital increase have been deposited in the capital account of the company with that bank. (RTX 282 (Foda Rpt (2) at p. 4 of 21).)

3. Control of HCFI

83. Beginning at HCFI's formation in November 1998, and through at least March 2009, Ramy Lakah was the Chairman of the

Board of Directors and Managing Director of HCFI. (RTX 357 (S/J Undisputed Fact No. 34); RTX 27 (HCFI's Commercial Register as of 1/29/2001) at 3-4; RTX 45 (OC) at 71.)

84. Beginning at HCFI's formation in November 1998, and until at least April 10, 2000, Michel Lakah was the Vice Chairman and co-CEO of HCFI. (RTX 357 (S/J Undisputed Fact No. 35); RTX 28 (HCFI Commercial Register as of 1/29/2001) at 3-4; M. Lakah Depn. (2008) Tr. at 48; RTX 45 (OC at 71).)

85. Beginning at HCFI's formation in November 1998, until at least March 2009 (i.e., the date as of which a Commercial Register extract obtained during discovery in this proceeding was current), Ramy Lakah and Michel Lakah each had the power to bind HCFI in dealings with banks. (Joint List of Undisputed Facts, Fact No. 51 (admitting such power until at least April 2000) and Fact No. 53 (admitting there were no changes to HCFI's commercial register between April 11, 2000 and 2010); RTX 27 (HCFI's Commercial Register, dated 1/29/2001, at 3-4); RTX 28 (HCFI Commercial Register, dated Mar. 4, 2009, at 3-4).)

86. The banking signature powers for HCFI and the other Lakah Group companies were held and determined by Ramy Lakah and Michel Lakah. (RTX 177 (Khadr Decl. ¶ 54); Khadr Depn. Tr. at 153.)

87. In approximately February 1999, Mohamed Khadr, Ramy Lakah, and others from the Lakah Group were in London making a presentation to the Fitch-IBCA credit rating company. During that trip, the Lakahs' Egyptian financial adviser, from a company called Capex Corporation, said that HCFI, as well as each of its subsidiaries, needed to have Boards of Directors in order for HCFI to receive a good rating. (RTX 177 (Khadr Decl. ¶ 17); Khadr Depn. Tr. at 92-94, 471-73.)

88. Soon after that meeting, the Lakahs made Khadr one of the Directors of HCFI, and Ramy Lakah delivered that news to Khadr. (RTX 177 (Khadr Decl. ¶¶ 17, 18); Khadr Depn. Tr. at 95.)

89. The Lakahs established a sham board of directors of HCFI to give the appearance of having a regular corporate form. (RTX 177 (Khadr Decl. ¶¶ 17-27); Khadr Depn. Tr. at 106-07.)

90. During the time that Khadr was on HCFI's Board, the Board never met and it performed no function. (RTX 177 (Khadr Decl. ¶¶ 18, 20); Khadr Depn. Tr. at 45-47, 100.)

91. Khadr was unaware of anyone else attending a meeting of HCFI's Board. (RTX 177 (Khadr Decl. ¶ 19); Khadr Depn. Tr. at 46-47.)

92. Khadr had no duties as a member of the Board of Directors of HCFI. (RTX 177 (Khadr Decl. ¶ 20); Khadr Depn. (6/26/2011) Tr. at 91.)

93. Khadr never saw any resolution by the Board of Directors of HCFI (or by the Board of Directors of any other Lakah Group company). (RTX 177 (Khadr Decl. ¶ 21); Khadr Depn. Tr. at 48.)

94. Purported Minutes of meetings of the Board of Directors of HCFI during 1999 and 2000, which the Lakahs produced to Respondents in this proceeding, falsely indicate that Khadr attended and participated in such meetings. (RTX 177 (Khadr Decl. 22 and Exhs. "1" - "6" and "36" thereto (RTX 180-185 and RTX 213); Khadr Depn. Tr. at 49-83.)

95. Although Mohamed Khadr was nominally put on the Board of Directors of HCFI sometime in the first quarter of 1999, he did not learn about an E£ 400,000,000 local bond issue by HCFI until after it was done sometime in April 1999. (RTX 177 (Khadr Decl. ¶100); Khadr Depn. Tr. at 165-66.)

96. Neither of the Lakahs ever discussed the intended use of the E£ 400 million raised by HCFI in a local bond issue in April 1999 in Khadr's presence. (RTX 177 (Khadr Decl. ¶101); Khadr Depn. Tr. at 165-66.)

97. Medequip and TMSE did not receive any of those funds. (RTX 177 (Khadr Decl. ¶101); Khadr Depn. Tr. at 160-63; RTX 245 (Shourbagy Decl. ¶¶73-74); Shourbagy Depn. Tr. at 60:9-11.)

98. Purported minutes of a meeting of the Board of Directors of HCFI on July 29, 1999, which the Lakahs produced in this proceeding, falsely state that Khadr gave his proxy to "Abed El Kader Farid." (RTX 177 (Khadr Decl. ¶23 and Exh. "7" (RTX No. 186)); Khadr Depn. Tr. at 86-87.)

99. Khadr's apparent signature on the purported proxy to Mr. Abed El Kader Farid, in connection with a "board meeting dated July 29, 1999," was falsified. (RTX 177 (Khadr Decl. ¶23 and Exh. "8" (RTX 187)); Khadr Depn. Tr. at 86-87.)

100. The purported minutes of two alleged board meetings of HCFI on December 25, 1999 were shams. Brian Murphy, a nominal member of HCFI's Board, who was identified in the supposed minutes as attending one of the meetings, expressed surprise during his deposition at seeing minutes of two Board meetings apparently held on Christmas day. (Indeed, the Lakahs themselves are Maronite Catholics.) (See Murphy Depn. Tr. at 517:11-519:5)

101. During the time that Khadr was working for Medequip and then for HCFI, and during the time that he was nominally on

the Board of Directors of HCFI, he never received a notice of a shareholders' meeting for any Lakah Group company; he was never invited to attend a shareholders' meeting for any Lakah Group company; and he never attended a shareholders' meeting of any Lakah Group company. (Indeed, Khadr did not learn until 2010 that he was a shareholder of HCFI in 1999-2000.) (RTX 177 (Khadr Decl. ¶59); Khadr Depn. Tr. at 108-10.)

102. Khadr learned for the first time in 2010 (ten years after he left HCFI) that someone had given him 5,000 shares of HCFI, apparently in connection with his appointment by Ramy and Michel to the Board of Directors of HCFI. (RTX 177 (Khadr Decl. ¶32); Khadr Depn. Tr. at 107-08.)

4. Control of TMSE

103. From on or about March 3, 1996 until on or about December 19, 1998, Ramy Lakah was the Chairman of the Board of Directors and Managing Director of TMSE, and he had the power to bind TMSE in dealings with banks. (Joint List of Undisputed Facts, Fact No. 54; RTX 30 (TMSE Commercial Register) at 3-4, 8.)

104. From on or about March 3, 1996 until on or about December 19, 1998, Michel Lakah was Vice Chairman of the Board of Directors of TMSE, and he had the power to bind TMSE in

dealings with banks. (Joint List of Undisputed Facts, Fact No. 55; RTX 30 (TMSE Commercial Register) at 3-4, 8).)

105. Ramy Lakah and Michel Lakah withdrew from TMSE's Board of Directors on December 19, 1998, but each retained the power to bind the company in dealings with banks. (RTX 30 (TMSE Commercial Register) at 4, 8.)

106. From approximately September 1, 1995, through the time of the Eurobond offering, and until approximately January 2001, Adel El Shourbagy ("Shourbagy") was employed in TMSE, at first as an area sales manager, then as the sales manager, and finally as its President/CEO. (RTX 245 (Shourbagy Decl. ¶ 3); Shourbagy Depn. Tr. at 23:22-24:8.)

107. TMSE's Commercial Register indicates that Shourbagy became TMSE's Chairman of the Board of Directors and Managing Director on December 19, 1998. (Joint List of Undisputed Facts, Fact No. 56; RTX 30 (TMSE Commercial Register) at 4, 8.)

108. It was not until early 1999 that Shourbagy learned that Ramy Lakah gave him the titles of the CEO and President/Chairman of TMSE. (RTX 245 (Shourbagy Decl. ¶ 13); Shourbagy Depn. Tr. at 24:5-14.)

109. Shourbagy was not asked whether he wanted to be a director or "Chairman" or "Managing Director" of TMSE's Board of Directors. (RTX 245 (Shourbagy Decl. ¶ 16).)

110. Shourbagy learned then that Ramy Lakah was choosing a Board of Directors for TMSE, and that Ramy Lakah had put Shourbagy and several other TMSE employees on the Board. (RTX 245 (Shourbagy Decl. ¶ 13); Shourbagy Depn. Tr. at 24:9-18.)

111. Shourbagy believed that the Lakahs had given him the titles of "President," "Chairman" and "Managing Director" as acknowledgements of his importance to TMSE, but the titles had no significance in the operation of TMSE. (RTX 245 (Shourbagy Decl. ¶ 15); Shourbagy Depn. Tr. at 25:9-16.)

112. Shourbagy did not know what duties the position included. (RTX 245 (Shourbagy Decl. ¶ 16).)

113. Shourbagy's duties did not change; he was still responsible only for managing the daily sales and service operations regarding Toshiba products. (RTX 245 (Shourbagy Decl. ¶ 15); Shourbagy Depn. Tr. at 25:17-26:2, 26:17-18.)

114. Shourbagy never had power to act as Chairman or Managing Director of TMSE. (RTX 245 (Shourbagy Decl. ¶ 18); Shourbagy Depn. Tr. at 27:14-28:4.)

115. Shourbagy was never asked to hold a meeting of TMSE's directors, and he never called a meeting of the Board of Directors. (RTX 245 (Shourbagy Decl. ¶ 18); Shourbagy Depn. Tr. at 28:17-29:17.)

116. Shourbagy never attended a meeting of the Board of TMSE. (RTX 245 (Shourbagy Decl. ¶ 18); Shourbagy Depn. Tr. at 28:17-29:17.)

117. To Shourbagy's knowledge, no TMSE Board meeting was held during the period that he held a title as a director of TMSE, from early 1999 until Shourbagy resigned from the Board in late 2000. (RTX 245 (Shourbagy Decl. ¶ 18); Shourbagy Depn. Tr. at 28:17-29:17.)

118. Shourbagy does not recall receiving notice of any meeting of TMSE's Board of Directors. (RTX 245 (Shourbagy Decl. ¶ 18).)

119. Shourbagy does not recall seeing any minutes of a meeting of TMSE's Board of Directors. (RTX 245 (Shourbagy Decl. ¶ 18).)

120. Shourbagy was never asked to consider any activity or to vote as a member of the TMSE Board of Directors. (RTX 245 (Shourbagy Decl. ¶ 18); Shourbagy Depn. Tr. at 28:17-29:17.)

121. The Lakahs have produced in this proceeding purported minutes of meetings of TMSE's Board of Directors. But those minutes are shams. (RTX 245 (Shourbagy Decl. ¶18); Shourbagy Depn. Tr. at 32:22-33:22; see also RTX 177 (Khadr Decl. ¶¶ 19-23) (HCFI minutes are shams).)

122. When Shourbagy became a director, he was given a small amount of shares of TMSE, because, he was told, a director in an Egyptian joint stock company must own a minimum amount of shares of that company. (Shourbagy has not transferred those shares.). (RTX 245 (Shourbagy Decl. ¶ 20); Shourbagy Depn. Tr. at 33:18-37:3.)

123. Shourbagy does not recall ever learning of any meeting of the shareholders of TMSE, and he never received a notice of a shareholders' meeting regarding TMSE. (RTX 245 (Shourbagy Decl. ¶ 21); Shourbagy Depn. Tr. at 37:4-15.)

124. Shourbagy does not recall ever learning of any capital increase of TMSE. (RTX 245 (Shourbagy Decl. ¶ 22); Shourbagy Depn. Tr. at 37:16-18.)

125. Although Shourbagy was the President and Chairman of TMSE when TMSE guaranteed the Eurobonds, he was not aware that TMSE had given a guarantee of the Eurobonds. (RTX 245 (Shourbagy Decl. ¶ 46); Shourbagy Depn. Tr. at 30:4-14.)

126. Shourbagy first learned of that guarantee many years later. (RTX 245 (Shourbagy Decl. ¶46); Shourbagy Depn. Tr. at 30:7-9.)

127. Shourbagy never saw documentation concerning the Eurobonds. (RTX 245 (Shourbagy Decl. ¶ 46); Shourbagy Depn. Tr. at 30:15-21.)

128. Shourbagy signed no documents concerning the Eurobonds. (RTX 245 (Shourbagy Decl. ¶ 46); Shourbagy Depn. Tr. at 31:21-32:9.)

129. Shourbagy did not discuss the Eurobond offering with anyone before it occurred. (RTX 245 (Shourbagy Decl. ¶ 47); Shourbagy Depn. Tr. at 31:21-32:9.)

130. Shourbagy was not asked to and did not review a prospectus or offering circular regarding the Eurobond. (RTX 245 (Shourbagy Decl. ¶ 47); Shourbagy Depn. Tr. at 30:15-32:9.)

131. Shourbagy was unaware of the structure of the Eurobond offering or of plans for TMSE to guarantee the Eurobond. (RTX 245 (Shourbagy Decl. ¶ 47); Shourbagy Depn. Tr. at 31:21-32:9.)

132. TMSE's Board of Directors held no meeting to discuss the Eurobonds. (RTX 245 (Shourbagy Decl. ¶¶ 46, 48); Shourbagy Depn. Tr. at 29-34, 384.)

133. Authorizations by each of the Guarantor companies (a) to issue the Eurobond Guarantee, and (b) for Ramy Lakah to execute the Guarantee on behalf of the Guarantor company, were apparently based in each case on resolutions adopted at a meeting of the Board of Directors on October 6, 1999, as indicated in purported minutes of such Board meeting(s). (RTX 41 (TMSE); RTX 180 (HCFI); RTX 197 (HCFI).)

134. However, the 6th of October is a national holiday in Egypt. (Shourbagy Depn. Tr. at 34; ECF No. 207 at 105n.35 (admission by Lakahs).)

135. Although purported minutes of a meeting of TMSE's Board of Directors on Oct. 6, 1999 purport to bear Shourbagy's signature, he did not sign those minutes, his signature was forged, and he never saw the purported minutes before 2010. (Shourbagy Depn. Tr. at 32-33; RTX 245 (Shourbagy Decl. ¶48).)

136. Shourbagy does not recognize the name of the person who apparently signed purported minutes of an Oct. 6, 1999 meeting of TMSE's Board of Directors as secretary. (Shourbagy Depn. Tr. at 34, 340-41; RTX 245 (Shourbagy Decl. ¶48).)

137. Although TMSE's purported Board minutes for Oct. 6, 1999 were a fraud, Ramy Lakah certified that those minutes - and each of the other Guarantor companies' Board of Directors

minutes, all of which were dated Oct. 6, 1999 - were "true copies". (RTX 95 and 93; RTX 245 (Shourbagy Decl. ¶ 49 and Exh. "C" (RTX 248)); Shourbagy Depn. Tr. at 34:21-35:11)

138. The Lakahs now admit that no Board of Directors meetings were held on Oct. 6, 1999. (RTX 357 (Lakahs' admissions at Fact Nos. 343-349); ECF No. 207 (Lakahs' Mem. at 105 n. 35).)

139. A document that appears to be a "Power of Attorney" given by TMSE to Ramy Lakah to sign certain Eurobond transaction documents - including the Indenture, Subscription Agreement, and Guarantee (the "TMSE Power of Attorney") - was forged. (RTX 245 (Shourbagy Decl. ¶ 50 and Exhibit D (RTX 249)); Shourbagy Depn. Tr. at 29-32, 35-36.)

140. Although the TMSE Power of Attorney purports to have been executed by Shourbagy -- then TMSE's nominal Chairman of the Board -- he did not sign that document. (Shourbagy Depn. Tr. at 35-36; RTX 245 (Shourbagy Decl. ¶50 and Ex. D (RTX 249)).)

141. Shourbagy had no understanding or expectation of what was to be done with the proceeds of the Eurobond offering. (RTX 245 (Shourbagy Decl. ¶ 51); Shourbagy Depn. Tr. at 166:14-19.)

142. Nobody suggested to Shourbagy that any of the Eurobond proceeds would or might be used for TMSE, and, to Shourbagy's

knowledge, none were. (RTX 245 (Shourbagy Decl. ¶ 51); Shourbagy Depn. Tr. at 59:12-14.)

143. Michel Lakah became TMSE's Chairman of the Board of Directors and Managing Director on March 30, 2000, and he had the power to bind the company in dealings with banks. (Joint List of Undisputed Facts, Fact No. 58; RTX 357 (S/J Undisputed Fact No. 45); RTX 30 (TMSE Commercial Register) at 8-9.)

144. TMSE's Commercial Register indicates that in March 2000, when Michel Lakah replaced Shourbagy as Chairman, Shourbagy became TMSE's Vice Chairman. (Joint List of Undisputed Facts, Fact No. 131. Shourbagy Depn. (6/25/2011) Tr. at 53-55; RTX 30 (TMSE Commercial Register); RTX 245 (Shourbagy Decl. ¶43 and Ex. A (RTX 246)).)

145. Shourbagy was never told that Michel Lakah became the Chairman of TMSE's Board of Directors in March 2000 or that Shourbagy then became Vice-Chairman. (Shourbagy Depn. Tr. at 53-55; RTX 245 (Shourbagy Decl. ¶43).)

146. Michel Lakah had no official position with TMSE, so far as Shourbagy knew, while Shourbagy was there. (RTX 245 (Shourbagy Decl. ¶ 43 and Exh. "A" (RTX 246)); Shourbagy Depn. Tr. at 53:11-13, 174:21-175:2.)

147. Shourbagy was unaware that TMSE's Commercial Register was amended to represent that Michel Lakah became Chairman of TMSE's Board in March 2000. (Shourbagy Depn. Tr. at 53-55; RTX 245 (Shourbagy Decl. ¶43).)

148. That change to TMSE's Commercial Register was not made by anyone within TMSE, to Shourbagy's knowledge. (RTX 245 (Shourbagy Decl. ¶ 43); Shourbagy Depn. Tr. at 56:2-4.)

149. TMSE's Commercial Register indicates that on August 2, 2000, Ramy Lakah became the Chairman of the Board of Directors and Managing Director, that Ramy Lakah had the power to bind the company in dealings with banks, and that Michel Lakah withdrew from TMSE's Board of Directors on August 2, 2000. (RTX 30 (TMSE Commercial Register) at 8-9; Joint List of Undisputed Facts, Fact No. 59 (as to R. Lakah).)

150. After Shourbagy had left TMSE, Ramy Lakah was again identified as TMSE's Chairman and Managing Director, and Michel Lakah was identified as TMSE's Vice Chairman, as of July 1, 2001. (RTX 246 at 10n.11; Joint List of Undisputed Facts, Fact No. 60 (as to R. Lakah).)

151. Ramy Lakah had no official position with TMSE while Shourbagy was there, as far as Shourbagy knew. (RTX 245 (Shourbagy Decl. ¶ 38); Shourbagy Depn. Tr. at 52:8-10.)

152. But Ramy Lakah controlled TMSE; if Ramy Lakah gave Shourbagy a direction, Shourbagy would have to follow it. (RTX 245 (Shourbagy Decl. ¶ 38); Shourbagy Depn. Tr. at 38:15-17, 314:10-315:16.)

153. Generally, Ramy Lakah could make all significant decisions by and concerning TMSE, and he could direct any activity that he chose. (RTX 245 (Shourbagy Decl. ¶ 23); Shourbagy Depn. Tr. at 38:15-25, 39:12-14.)

154. TMSE did not have full control of its assets or funds. The Lakahs had that control. (RTX 245 (Shourbagy Decl. ¶ 25); Shourbagy Depn. Tr. at 41:24-44:13.)

155. Ramy Lakah (and, to a lesser extent, Michel Lakah) had control of TMSE's company accounts. (RTX 245 (Shourbagy Decl. ¶ 23); Shourbagy Depn. Tr. at 38:4-7.)

156. Ramy Lakah retained the power to bind TMSE in dealings with banks after he purportedly resigned from TMSE's Board of Directors. (RTX 30 (TMSE Commercial Register) at 3, 4, 8-10.)

157. Investment decisions for TMSE too were made by Ramy Lakah. (RTX 245 (Shourbagy Decl. ¶ 27); Shourbagy Depn. Tr. at 186:20-23.)

158. Though nominally the President, CEO, Managing Director, and Chairman of TMSE, Shourbagy was never in full control of the financial part of TMSE's business and was not given access to review TMSE's financial documents. (RTX 245 (Shourbagy Decl. ¶ 5); Shourbagy Depn. Tr. at 133:3-18.)

159. Shourbagy could not, for example, go to a bank and open a line of credit. (RTX 245 (Shourbagy Decl. ¶ 26); Shourbagy Depn. Tr. at 39:15-17.)

160. Financing decisions were made by Ramy Lakah (using his finance assistants at HCFI). (RTX 245 (Shourbagy Decl. 706, 711-714, 717-719, ¶ 26); Shourbagy Depn. Tr. at 27:14-18, 38:4-7.)

161. TMSE had no Chief Financial Officer ("CFO") or finance department. Instead, the CFO function was performed by HCFI. (RTX 245 (Shourbagy Decl. ¶ 42); Shourbagy Depn. Tr. at 53:4-10.)

162. Any financial statements and financial accounting concerning TMSE was done by the Lakahs' finance assistants at HCFI. (RTX 245 (Shourbagy Decl. ¶¶ 83, 77); Shourbagy Depn. Tr. at 38:4-7, 40:9-25.)

163. Neither Shourbagy nor anyone else at TMSE was involved in the preparation of financial statements or audited financial

statements of the TMSE company. (RTX 245 (Shourbagy Decl. ¶ 77); Shourbagy Depn. Tr. at 40:9-25.)

164. When banks requested financial information, Shourbagy contacted the finance assistants at HCFI and asked them to provide the information. (RTX 245 (Shourbagy Decl. ¶ 26); Shourbagy Depn. Tr. at 39:18-40:3.)

165. Furthermore, TMSE's company books were removed each year by HCFI. (RTX 245 (Shourbagy Decl. ¶ 28); Shourbagy Depn. Tr. at 41:6-11.)

166. HCFI took TMSE's accounting and bookkeeping records after each year end. Those records were not maintained by TMSE. (RTX 245 (Shourbagy Decl. ¶ 79); Shourbagy Depn. Tr. at 40-41, 146:4-16.)

167. Shourbagy received no periodic TMSE company banking statements. (RTX 245 (Shourbagy Decl. ¶ 32); Shourbagy Depn. Tr. at 48:5-20, 145:19-146:3.)

168. The Lakahs dealt with TMSE's banks on behalf of TMSE. (RTX 245 (Shourbagy Decl. ¶ 32); Shourbagy Depn. Tr. at 37:19-38:12.)

169. The HCFI financial department was supposed to prepare financial reports to give to the banks in connection with the

banks' relationships with the Lakah-owned companies. (RTX 245 (Shourbagy Decl. ¶ 80); Shourbagy Depn. Tr. at 40:18-25.)

170. However, no financial statements, audited or unaudited, were prepared by or for TMSE in 2000. (RTX 245 (Shourbagy Decl. ¶ 81); Shourbagy Depn. Tr. at 86:9-17.)

171. In at least one case, a bank (Export Development Bank) reduced TMSE's credit line during the second half of 2000 due to TMSE's failure to submit audited financial statements. (RTX 245 (Shourbagy Decl. ¶ 81); Shourbagy Depn. Tr. at 75:6-18.)

172. All Shourbagy could do was to request information regarding the receipt (or not) of expected payments or the like from the Lakahs' finance assistants at HCFI. (RTX 245 (Shourbagy Decl. ¶ 32).)

173. The Lakahs could and did open all of the banking accounts of TMSE. (RTX 245 (Shourbagy Decl. ¶ 30); Shourbagy Depn. Tr. at 38:8-12, 318:2-18.)

174. Consequently, Shourbagy could not be certain that he knew every account that TMSE had. (RTX 245 (Shourbagy Decl. ¶ 30).)

175. Ramy Lakah had the power to use TMSE company funds whenever and for whatever he wanted. (RTX 245 (Shourbagy Decl. ¶ 31); Shourbagy Depn. Tr. at 47:2-14, 191:12-17.)

176. Prior to 2000, Shourbagy had some control of accounts for day-to-day use, while Ramy Lakah had control of all TMSE accounts for any purpose he chose. (RTX 245 (Shourbagy Decl. ¶ 31); Shourbagy Depn. Tr. at 44:8-13.)

177. Beginning in 2000, Shourbagy had no control of the use of TMSE company funds at all. (RTX 245 (Shourbagy Decl. ¶ 31); Shourbagy Depn. Tr. at 47:19-24.)

178. In early 2000, all of TMSE's funds went under the control of Ramy Lakah, even the company checkbooks. Ramy Lakah took TMSE's checkbooks in 2000. (RTX 245 (Shourbagy Decl. ¶¶ 31, 79); Shourbagy Depn. Tr. at 47:2-14.)

179. Furthermore, Shourbagy was never involved in updating the Commercial Register of TMSE, and he never learned how the Commercial Register of TMSE was changed from time to time. (RTX 245 (Shourbagy Decl. ¶ 33); Shourbagy Depn. Tr. at 55:20-23.)

180. As far as Shourbagy knew, someone working for the Lakahs at HCFI was supposed to update TMSE's Commercial Register. (RTX 245 (Shourbagy Decl. ¶ 33); Shourbagy Depn. Tr. at 55:24-25.)

181. TMSE prepared no formal strategic plans, and no strategic plans were prepared for TMSE. (RTX 245 (Shourbagy Decl. ¶ 29); Shourbagy Depn. Tr. at 26:15-27:22.)

182. Shourbagy's authority at TMSE was to determine what level of product inventory would be needed, what training was needed, what industry meetings to attend, and matters such as those that involved day-to-day decisions concerning sales and service of the Toshiba products. (RTX 245 (Shourbagy Decl. ¶ 34); Shourbagy Depn. Tr. at 303:1-18.)

183. However, concerning day-to-day business of TMSE too, Ramy Lakah could intervene regarding any decision if he chose to. (RTX 245 (Shourbagy Decl. ¶ 34); Shourbagy Depn. Tr. at 187:8-11.)

184. Decisions like whether or not to add (or to try to add) another supplier as an agency relationship; or whether to add or to expand a product line; or whether to expand to a complementary business; or anything regarding financing; or whether or not to add product inventory could not be made without getting the approval of Ramy Lakah. (RTX 245 (Shourbagy Decl. ¶ 35); Shourbagy Depn. Tr. at 316:7-19.)

185. Also, Ramy Lakah would give directions to TMSE to hire people, and those persons often received special salaries, as

specified by Ramy. (RTX 245 (Shourbagy Decl. ¶ 36); Shourbagy Depn. Tr. at 325:5-25, 384:23-385:10; 326:20-327:8, 327:12-328:4.)

186. For example, Ramy Lakah sometimes directed Shourbagy to hire Ramy's friends, and Shourbagy had to take them and find positions for them. (RTX 245 (Shourbagy Decl. ¶ 39); Shourbagy Depn. Tr. at 52:11-16.)

187. Ramy Lakah also directed Shourbagy to pay Ramy's friends starting salaries greater than they otherwise might have earned even after working for TMSE for years, and TMSE had to pay that. (RTX 245 (Shourbagy Decl. ¶ 39); Shourbagy Depn. Tr. at 52:17-22.)

188. Ramy Lakah also told Shourbagy at times to give discounts to certain TMSE customers, and Shourbagy had to do that. (RTX 245 (Shourbagy Decl. ¶ 40); Shourbagy Depn. Tr. at 42:23-53:3, 330:6-331:5, 385:11-18.)

189. Ramy Lakah also made all of the decisions regarding the TMSE office space, regarding the acquisition of cars for company personnel, and regarding the use of funds for other than day-to-day purposes. (RTX 245 (Shourbagy Decl. ¶ 37); Shourbagy Depn. Tr. at 49-51, 145-146.)

190. The office location for TMSE was chosen by Ramy Lakah. TMSE did not sign a contract with the landlords and never paid rent. The Lakahs paid the rent for TMSE in some other way. (RTX 245 (Shourbagy Decl. ¶ 41); Shourbagy Depn. Tr. at 49-51.)

191. The Group and TMSE changed office locations -- at Ramy Lakah's direction -- two times in 2000. (RTX 245 (Shourbagy Decl. ¶ 41); Shourbagy Depn. Tr. at 49-51.)

192. In 2000, Ramy Lakah instructed TMSE to move from the Merghany Street location, and TMSE moved its offices to the Sheraton Heliopolis Building, along with most of the Lakah Group. (RTX 245 (Shourbagy Decl. ¶ 41b); Shourbagy Depn. Tr. at 49-51.)

193. TMSE left the Sheraton location suddenly after a short time and moved into a residential building (a "palace") at 37 Al Orouba Street in Heliopolis in the second half of 2000. Ramy and Michel Lakah owned that building, and TMSE did not pay rent. TMSE occupied part of the basement of that building. (RTX 245 (Shourbagy Decl. ¶ 41b); Shourbagy Depn. Tr. at 49-51.)

194. Shourbagy was unaware of financial problems in the Lakah Group until TMSE's access to funds dried up, beginning in the middle of 1999. (RTX 245 (Shourbagy Decl. ¶¶ 53-59, 84); Shourbagy Depn. Tr. at 66-67.)

195. TMSE appeared to be profitable, and Shourbagy knew that no financial problems were being caused by TMSE's business because it was making sales and he would have heard from banks if a TMSE client was not paying. (RTX 245 (Shourbagy Decl. ¶ 84); Shourbagy Depn. Tr. at 61-63.)

196. Shourbagy did not see records of where TMSE's funds were being transferred. (RTX 245 (Shourbagy Decl. ¶ 85 (citing paras. 53-74)).)

197. As far as Shourbagy knew, before the formation of the holding company (HCFI), TMSE was a company owned by Ramy and Michel Lakah, and was part of a Lakah family business group of companies. (RTX 245 (Shourbagy Decl. ¶ 8); Shourbagy Depn. Tr. at 21.)

198. Shourbagy was unaware that a holding company was going to be formed by the Lakahs and learned about it only after HCFI was formed. (RTX 245 (Shourbagy Decl. ¶9); Shourbagy Depn. Tr. at 21.)

199. After HCFI was formed, Shourbagy did not know how to distinguish it from the "Lakah Group" or the "Group." To Shourbagy's understanding, "the Group" included Lakah-owned companies that were not inside the holding company, but Shourbagy did not know precisely which Lakah companies were

inside and which were outside the holding company. (RTX 245 (Shourbagy Decl. ¶ 10); Shourbagy Depn. Tr. at 313-14.)

200. Shourbagy believed that the Lakah Group included the "Medical Companies" (TMSE and Medequip), the Arab Steel Factory, a light bulb factory, a detergent factory, Midwest Airline, Quest Consult S.A.E., and Scandinavian for Touristic Development (which was developing a hotel at Sharm El Sheikh). (RTX 245 (Shourbagy Decl. ¶ 11); Shourbagy Depn. Tr. at 110:17-19.)

201. In fact, some of those companies were not subsidiaries of HCFI. (RTX 45 (OC) at 35.)

202. Shourbagy always understood that all of the Lakahs' companies were operated as a single company with business units, not as independent companies. (RTX 245 (Shourbagy Decl. ¶8); Shourbagy Depn. Tr. at 23.)

203. The Commercial Register for TMSE falsely states that Shourbagy's resignation from the Board of Directors of TMSE was accepted on June 25, 2001. (RTX 245 (Shourbagy Decl. ¶ 93 and Exh. "A" (RTX 246)); Shourbagy Depn. Tr. at 91:2-8.)

204. Shourbagy actually resigned from the Board of TMSE in September 2000 in a conversation with Ramy Lakah. (RTX 245 (Shourbagy Decl. ¶¶ 89, 92); Shourbagy Depn. Tr. at 89:21-91:13, 90:19-23, 91:9-13.)

205. Shourbagy resigned his employment at TMSE in January 2001, and then was a consultant to TMSE until March 2001. (RTX 245 (Shourbagy Decl. ¶ 3); Shourbagy Depn. Tr. at 90:19-23, 91:9-13.)

5. Control of Medequip

206. From approximately the time of Medequip's formation in or about December 1994 until at least December 2006 (i.e., the date of the commercial register extract in RTX 31), Ramy Lakah was its Chairman and a Managing Director, Michel Lakah was its Vice Chairman and a Managing Director, and each had the power to bind the company in dealings with banks. (RTX 31 (Medequip Commercial Register); RTX 52 (Indenture signature page); Zarif Depn. Tr. at 359:10-363:12.)

207. Prior to the formation of HCFI at the end of November 1998, Ramy and Michel Lakah were the senior management of Medequip, although they had no management titles and were not employed by Medequip. This did not change functionally after the formation of HCFI. (RTX 177 (Khadr Decl. ¶170); Khadr Depn. Tr. at 40.)

208. While day to day decisions concerning the performance of medical equipment sale contracts and turnkey projects, maintenance or warranty work, and the like were made by a few trusted senior managers -- whether or not they were employed by

Medequip or had a title indicating such responsibilities or functions -- Ramy Lakah could override any decision on any level. (RTX 177 (Khadr Decl. ¶ 16); Khadr Depn. Tr. at 560-61.)

209. During the period 1990 through roughly the end of 1998, Mohamed Aly Khadr ("Khadr") was one of two sales managers at Medequip, reporting directly to the company's then Chairman -- Ramy Lakah -- and its Vice Chairman -- Michel Lakah. (RTX 177 (Khadr. Decl. ¶ 1).)

210. After HCFI was formed, Medequip became a subsidiary of HCFI in early December 1998. (RTX 177 (Khadr Decl. ¶173); Khadr Depn. Tr. at 38-39.)

211. Ramy and Michel Lakah continued to make all significant decisions regarding the business of Medequip. (RTX 177 (Khadr Decl. ¶175); Khadr Depn. Tr. at 559-60.)

212. Medequip's Board of Directors had no function. (RTX 177 (Khadr Decl. ¶175); Khadr Depn. Tr. at 104.)

213. Although Khadr had been nominally a senior manager of Medequip, he did not know of any meetings held by the Board of Directors of Medequip either before or after the formation of HCFI. (RTX 177 (Khadr Decl. ¶175); Khadr Depn. Tr. at 104-05.)

214. Amgad Zarif ("Zarif") was appointed to the Board of Directors of Medequip on or about August 3, 1999. (Joint List of Undisputed Facts, Fact No. 129; A. Zarif Depn. (6/24/11) Tr. at 51-54; RTX 31 (Medequip Commercial Register); RTX 265 (Zarif Decl. ¶35 and Ex. D (RTX 269)).)

215. Zarif was never informed that he had been appointed to Medequip's Board of Directors. (A. Zarif Depn. (6/24/11) Tr. at 54-57); RTX 265 (Zarif Decl. ¶37).)

216. Zarif was never invited to any meeting of Medequip's Board of Directors and is unaware whether any such meeting was ever held. (A. Zarif Depn. (6/24/11) Tr. at 55-56; RTX 265 (Zarif Decl. ¶36-37).)

217. Zarif has never acted in the capacity of a member of the Board of Directors of Medequip. (RTX 265 (Zarif Decl. ¶ 37); Zarif Depn. Tr. at 56:6-8.)

218. Amgad Zarif was removed from Medequip's Board of Directors on or about January 1, 2000. (RTX 357 (S/J Undisputed Fact No. 358); A. Zarif Depn. (6/24/11) Tr. at 53-54; RTX 31 (Medequip Commercial Register); RTX 265 (Zarif Decl. ¶35).)

219. Zarif was never informed that he had been removed from Medequip's Board of Directors. (A. Zarif Depn. (6/24/11) Tr. at 54-57; RTX 265 (Zarif Decl. ¶¶35-37).)

220. Khadr did not know of any shareholders' meetings held by Medequip, including any general, ordinary or extraordinary shareholders' meetings. (RTX 177 (Khadr Decl. ¶62); Khadr Depn. Tr. at 110.)

221. In the first quarter of 1999 (approximately March), Ramy Lakah moved Khadr into HCFI and gave him the title of Senior Vice President. (RTX 177 (Khadr. Decl. ¶7); Khadr Depn. Tr. at 42.)

222. At HCFI, Khadr was responsible for monitoring Medequip, primarily its turnkey construction business. (RTX 177 (Khadr Decl. ¶¶ 7, 174); Khadr Depn. Tr. at 106.)

223. As before, Khadr reported to Ramy and Michel Lakah in principle, but he was reporting almost exclusively to Ramy Lakah. (RTX 177 (Khadr Decl. ¶7); Khadr Depn. Tr. at 42.)

224. Medequip did no strategic planning. Ramy Lakah or Michel Lakah made the business decisions concerning Medequip. (RTX 177 (Khadr Decl. ¶77); Khadr Depn. Tr. at 112-13, 121.)

225. That continued to be the case until Khadr resigned from HCFI at the end of 2000. (RTX 177 (Khadr Decl. ¶7); Khadr Depn. Tr. at 233-37 (resignation).)

226. No budget was produced by or regarding Medequip. (RTX 177 (Khadr Decl. ¶ 75); Khadr Depn. Tr. at 127.)

6. Control of ASF

227. From the formation of ASF in 1995 until August 5, 1999, Ramy Lakah was its Chairman of the Board of Directors and Managing Director, and Michel Lakah was its Vice Chairman of the Board of Directors and Managing Director. (RTX 357 (S/J Undisputed Fact No. 49); RTX 29 (ASF Commercial Register at 2-3, 9); Zarif Depn. Tr. at 329:4-331:5.)

228. Ramy Lakah and Michel Lakah withdrew from the Board of Directors of ASF on August 5, 1999, but they retained the power to bind the company in dealings with banks. (RTX 29 (ASF Commercial Register at 2-4, 9).)

229. After the formation of HCFI in late 1998, the principal companies of the Lakah Group -- including HCFI, Medequip, and TMSE -- were physically located in offices in a single building at 68 Merghany Street in the Heliopolis section of Cairo. (RTX 177 (Khadr Decl. ¶ 33); RTX 245 (Shourbagy Decl. ¶12); Zarif Depn. at 17:9-18:10.)

230. Decisions regarding the business of ASF were also made in the Merghany Street offices by Ramy and Michel Lakah, even though the steel manufacturing factory was located in Tenth of

Ramadan City, outside of Cairo. (RTX 177 (Khadr Decl. ¶33); Khadr Depn. Tr. at 566-71.)

231. Beginning April 20, 2000, Ramy Lakah was Chairman of the Board of Directors and Managing Director of ASF and had the sole power to bind ASF in dealings with banks. (RTX 357 (S/J Undisputed Fact No. 52); RTX 29 (ASF Commercial Register at 9-10).)

232. HCFI took from ASF in 2000 an "administrative fee" of E£ 13.7 million (i.e., more than \$4 million), notwithstanding that all of ASF's operating assets were sold in the first quarter of 2000. (RTX 81 and RTX 89 (RSM E 2).)

7. Additional Indicia of Lakah Domination and Control of Guarantor Companies

7.1 Efforts to Create Appearance of Corporate Trappings

233. Brian Murphy ("Murphy"), who the Lakahs placed on HCFI's Board of Directors, tried to create a corporate appearance for HCFI and its subsidiaries for purposes of the Eurobond offering and a prior (August 1999) sale of HCFI stock by the Lakahs in the form of Global Depository Shares ("GDS"). For example, he gathered data about TMSE (and, apparently, other Lakah Group companies). The materials that he prepared were, to Shourbagy's understanding, made to impress investors. (RTX 245 (Shourbagy Decl. ¶ 88); Shourbagy Depn. Tr. at 385-86.)

234. For example, Murphy wrote up job descriptions and an employee handbook. (Khadr Depn. Tr. at 190; RTX 245 (Shourbagy Decl. ¶ 88); Shourbagy Depn. Tr. at 88-89.)

235. Murphy created a TMSE employee handbook to give investors a sense that the company looked professional. (Shourbagy Depn. Tr. at 385-86; Khadr Depn. Tr. at 190.)

236. The handbook was in English, which was not understood by many of the TMSE employees. (Shourbagy Depn. Tr. at 192-93.)

237. Shourbagy was not asked to distribute the handbook to TMSE's employee, and it was not distributed. (Shourbagy Depn. Tr. at 363-64, 386; Khadr Depn. Tr. at 190, 193.)

238. TMSE did not use Mr. Murphy's employee handbook. (RTX 245 (Shourbagy Decl. ¶ 88); Shourbagy Depn. Tr. at 88-89.)

239. The Murphy-produced form of employee handbook was used as window dressing to make the Lakah Group companies appear regular to the attorneys for the bond manager of the Eurobond transaction, just as it had been used earlier to make HCFI and its subsidiaries seem regular to the underwriters' lawyers in connection with the GDS issue. (RTX 177 (Khadr Decl. ¶121); Khadr Depn. Tr. at 190-94, 459-61, 464-65.)

240. Murphy also wrote employee contracts for everyone at TMSE and explained that they were needed for the GDS offering. (RTX 245 (Shourbagy Decl. ¶ 86); Shourbagy Depn. Tr. at 86-87.)

241. Shourbagy does not recall signing such a contract, and the TMSE employees were not asked to sign them. (RTX 245 (Shourbagy Decl. ¶ 86); Shourbagy Depn. Tr. at 87.)

242. No copies of such employee contracts were provided to the TMSE employees. (RTX 245 (Shourbagy Decl. ¶ 86); Shourbagy Depn. Tr. at 87.)

243. There were no operational changes within the Lakah companies as a result of the documentation prepared by Brian Murphy, and no "restructuring" changes within the Lakah Group. (RTX 245 (Shourbagy Decl. ¶ 88); Shourbagy Depn. Tr. at 89.)

8. Examples of Falsification by the Lakahs of Guarantor Company Documents and Formalities

8.1 Forgery of Purported TMSE Power of Attorney in Favor of Ramy Lakah, and Falsification and Forgery of Minutes of Purported Meeting of TMSE Board of Directors, in Connection with TMSE's Guarantee of the Eurobond

244. Ramy Lakah signed the Eurobond Transaction Documents on behalf of TMSE as "attorney in fact." (Joint List of Undisputed Facts, Fact No. 124.)

245. Ramy Lakah provided a power of attorney, dated 12/4/1999, from TMSE in his favor as his authorization to execute the Eurobond Transaction Documents on behalf of TMSE (the "TMSE Power of Attorney"). (Joint List of Undisputed Facts, Fact No. 125; RTX 43.)

246. The authorizing signature of the nominal Chairman of the Board of Directors of TMSE, Adel Shourbagy, on that purported TMSE power of attorney was forged. (RTX 245 (Shourbagy Decl. ¶ 50 and Exh. D (RTX 249)); Shourbagy Depn. Tr. at 29-32, 35-36.)

247. Purported minutes of a meeting of TMSE's Board of Directors on October 6, 1999 indicate that TMSE's Board authorized the company's guarantee of the Eurobonds. But no such meeting had occurred, and no such authorization had been given. (RTX 41; RTX 347; RTX 245 (Shourbagy Decl. ¶ 48); Shourbagy Depn. Tr. at 32-34, 340-41); RTX 357 (S/J Undisputed Fact No. 344 (admitting purported minutes)).)

248. Although purported minutes, dated October 6, 1999, indicate that a meeting of TMSE's Board of Directors was called and attended that day by Adel Shourbagy, then TMSE's nominal chairman. He did not call or attend any such meeting. (Shourbagy Depn. Tr. at 31-34; RTX 245 (Shourbagy Decl. ¶48).)

249. The signatures of Adel Shourbagy, the nominal Chairman of the Board of Directors of TMSE, on those purported Board meeting minutes, dated October 6, 1999, were forged. (Shourbagy Depn. Tr. at 32-33; RTX 245 (Shourbagy Decl. ¶ 48).)

250. Shourbagy does not recognize the name of the person who apparently signed those Board minutes as secretary. (Shourbagy Depn. Tr. at 34, 340-341; RTX 245 (Shourbagy Decl. ¶ 48).)

251. No board meeting was held by any of the Guarantor companies on 6 October 1999. (Khadr Depn. Tr. at 51-52; RTX 177 (Khadr Decl. ¶19).)

252. October 6 is a national holiday in Egypt. (Joint List of Undisputed Facts, Fact No. 126. Shourbagy Depn. Tr. at 34; RTX 245 (Shourbagy Decl. ¶48); Murphy Depn. (5/18/2010) Tr. at 510-11; Khadr Depn. Tr. (6/26/2011) at 51-52.)

253. Ramy Lakah certified that the respective Board of Directors minutes, dated October 6, 1999, of each of the Guarantor companies were "true copies". (RTX 357 (S/J Undisputed Fact No. 350); RTX 95 and RTX 93.)

254. The Lakahs produced purported minutes of meetings of the Boards of each Guarantor, held October 6, 1999. But the Lakahs now admit that no Board meetings were held on that date.

(RTX 357 (Lakahs' admissions at Fact Nos. 343-349); ECF No. 207 (L. Mem. at 105 n.35).)

8.2 Forgery of Mohamed Khadr's Signature on a Purported Waiver of Shareholder Rights to Participate in New HCFI Stock Offering in June 1999, etc.

255. Ramy and Michel Lakah submitted certain instruments by which other shareholders of HCFI allegedly had waived their respective rights to participate in the June 1999 subscription to 35 million newly issued HCFI shares. (Joint List of Undisputed Facts, Fact No. 127; RTX 34.)

256. Among the waivers of shareholder rights was one seemingly signed by Mohamed Khadr, then a nominal member of the Board of Directors of HCFI and a holder of a small number of HCFI shares. (Joint List of Undisputed Facts, Fact No. 129; RTX 34 (MAK DX 9); Khadr Depn. (6/26/2011) Tr. at 180-82 (referring to MAK DX 9); RTX 177 (Khadr Decl. ¶1, 32, 113).)

257. The signature of Mr. Khadr on that purported waiver was forged. (RTX 177 (Khadr Decl. ¶ 113); Khadr Depn. (6/26/11) Tr. at 180-82 (referring to MAK DX 9 (RTX 188)).)

258. Mohamed Khadr had not been aware that any such stock subscription waiver existed. (Khadr Depn. (6/26/2011) Tr. at 180-82; RTX 177 (Khadr Decl. ¶113).)

8.3 Forgery of Mohamed Khadr's Signature on a
Confirmation of
Receipt of Funds at MI Bank

259. The apparent signature of Mohamed Khadr was also forged on a purported fax transmission, dated December 9, 1999, from Khadr (as a Lakah Group representative) to Warburg Dillon Read, the lead manager of the Eurobond, concerning the receipt by Misr International Bank of a large amount of funds (some of the Eurobond-related proceeds) on December 8, 1999, and a request that UBS-Zurich confirm to Misr International Bank that the intended beneficiary of the funds was HCFI. (RTX 177 (Khadr Decl. ¶126 and Exh. 10 (RTX 189); Khadr Depn. Tr. at 196-98, 597.)

E. The Guarantor Companies Were Grossly Undercapitalized

260. The Eurobond Guarantors were all inadequately capitalized. (RTX 271 (Imburgia Report) at 5 and ¶¶178-209)

261. It was represented in the Offering Circular that, as of the date of the Eurobond Offering (Dec. 8, 1999), the holding company HCFI (on a consolidated basis) had paid-in capital of E£ 1,499,880,000 (ca. US\$441,142,000). (Joint List of Undisputed Facts, Fact No. 65; RTX 45 (OC) at 8, 24, 36, 37, F-38, F-46 (Note 17).)

262. It was represented on the Lakah Group website that the paid-in capital of the holding company, HCFI, was E£ 1,499,880,000. (RTX 84 (Lakah website) at 2.)

263. From the time that HCFI was established in late 1998, the Lakahs asserted regularly that it was "the largest private group in Egypt, in terms of paid-up share capital." They did this in order to give the Lakah Group a "wealthy image". (RTX 177 (Khadr Decl. ¶166).)

264. The Lakahs had said that the holding company (HCFI) had more than one billion Egyptian pounds in capital shortly after it was formed in late November 1998. (RTX 177 (Khadr Decl. ¶167).)

265. To Mohamed Khadr, a senior officer and nominal director in the Lakah Group, the statement seemed strange and surprising. (RTX 177 (Khadr Decl. ¶168).)

266. Actually, HCFI's paid in capital, as represented in the Offering Circular, was grossly inflated. (RTX 271 (Imburgia Report) at 5-6, ¶¶178-84.)

267. At least 97% of HCFI's disclosed paid-in capital of E£ 1,499,880,000, as represented in the OC, was fictitious. (RTX 271 (Imburgia Report) at 5-6, ¶¶178-84.)

268. At the time of the Eurobond Offering, HCFI's actual paid-in capital was not more than E£ 44.5 million. (RTX 271 (Imburgia Report) at 5-6 and ¶¶ 77, 178, 184.)

269. On the eve of the Eurobond Offering, HCFI's indebtedness was nearly E£ 1 billion. (Joint List of Undisputed Facts, Fact No. 66; Joint List of Undisputed Facts, Fact No. 66; RTX 271 (Imburgia Report) at 5-6 and ¶ 184.)

270. Upon issuance of the Eurobonds, HCFI's total debt was more than E£ 1.7 billion. (Joint List of Undisputed Facts, Fact No. 67; RTX 271 (Imburgia Report) at 6 (¶1.4)).)

271. One of the terms of the Lakah Eurobond transaction was the requirement that HCFI's Net Worth would be not less than E£ 1 billion throughout the tenor of the Eurobond. (RTX 52 at 53 (Indenture §1005(b)(i) "Maintenance of Net Worth).)

272. At the time of the Eurobond Offering, HCFI's Net Worth, as defined in the Indenture and the Terms and Conditions of the Bond, was already materially less than the required minimum of E£ 1 billion. (RTX 271 (Imburgia Report) at 5-6 and ¶ 184.)

273. With no more than E£ 44.5 million in capital and nearly E£ 1 billion in debt, HCFI and the other Guarantors were substantially undercapitalized even as of June 30, 1999 -- i.e.,

long before they guaranteed the \$100 million Eurobond Offering. (RTX 271 (Imburgia Report), at 5-6 and ¶178.)

274. The Indenture and the Terms and Conditions of the Bonds contained covenants that the ratio of HCFI's Debt to its Net Worth after issuance of the Eurobonds was not to exceed 1:1. (RTX 52 (Indenture §1005(b)(ii)(A); Indenture at A-9); RTX 271 (Imburgia Report) ¶183, 184 and n. 289.)

275. On the eve of the Eurobond Offering, HCFI was already in breach of that covenant. (RTX 271 (Imburgia Report) ¶183, 184 and n. 289; see also RTX 52 (Indenture §1005(b)(ii)(A); Indenture at A-9).)

276. Although the Eurobond Offering Circular presented financial data indicating a debt-to-equity ratio for HCFI of 0.82, the company's actual debt-to-equity ratio was at least 6.72. (RTX 271 (Imburgia Report), Table 7, p. 82.)

277. Upon issuance of the Eurobonds, HCFI's total debt climbed immediately to more than £1.7 billion, taking HCFI even further out of compliance with the debt-to-equity ratio covenants in the Indenture (RTX 52 §1005(b)(ii)(A)) and in the Terms and Conditions of the Bonds (RTX 52 at A-9 §9(b)). (RTX 62 at 5 (HCFI financial statement as of 12/31/1999, at BH 0960

(reporting total liabilities of more than EF 1.7 billion)); RTX 271 (Imburgia Report) at 6 (¶1.4).)

278. These debt-to-equity ratios indicate an untenable amount of leverage which, if stated accurately by the companies, would have effectively precluded the possibility of HCFI's obtaining additional credit and taking on additional debt, as they did in the Eurobond offering. (RTX 271 (Imburgia Report) ¶181.)

279. The stated paid-in capitals of the Guarantor companies were inflated principally (but not solely) by means of the use of two schemes: (1) a Stock Kitting Scheme, (2) a False Capital Scheme. (RTX 105 (relating stock kiting scheme); RTX 132 (investigation memorandum re: same); RTX 113 (report of Administrative Control Authority relating to false capital scheme); RTX 136 (report of MIBank re: same); RTX 124 (report of Banks Control Committee re: same).)

280. With stated capital falsely inflated, the Guarantor companies' assets and their valuations were falsely inflated to correspond to the stated capital. (RTX 271 (Imburgia Report) at 7, and ¶¶71-75, 125-177.)

281. The defaults by HCFI and ASF on their local bond payment obligations, as occurred beginning in April 2000 and

thereafter, was a predictable consequence of their inadequate capitalizations. (RTX 271 (Imburgia Report) ¶¶190-191, 194-97.)

282. The defaults of all of the Guarantors on their Eurobond payment obligations, as occurred beginning in June 2001 and thereafter, was a predictable consequence of their inadequate capitalizations. (RTX 271 (Imburgia Report), ¶¶ 190-91.)

283. Medequip's cessation of operations by 2001 and bankruptcy in 2002 were predictable results for a company that was inadequately capitalized. (RTX 271 (Imburgia Report) ¶194.)

284. TMSE's cessation of operations by 2001 and its lack of assets thereafter are predictable results for a company that was inadequately capitalized. (RTX 271 (Imburgia Report) ¶197.)

285. What is more, during the period Sept. 1998 through June 2000, the Guarantor companies reportedly raised nearly US\$500,000,000 in debt financing, equity financing, and proceeds from the sale of the assets of ASF. (Joint List of Undisputed Facts, Fact No. 140; RTX 271 (Imburgia Report) ¶187.)

286. The failure of HCFI (and ASF) to satisfy even their respective bond interest payment obligations in 2000 and 2001, even as and after they reportedly were receiving such large cash infusions, was a predictable consequence of (i) their under-

capitalizations and (ii) the Lakahs' manipulation and looting of those companies. (RTX 271 (Imburgia Report) ¶¶ 187, 190.)

F. The Lakah Guarantor Companies Raised Approximately US\$500,000,000 in Debt and Equity Financing, and Asset Sale Proceeds, Between September 1998 and June 2000

287. During the period late 1998 through mid-2000, the Guarantor companies reported that they had raised nearly US \$500 million in debt financing, equity financing, and proceeds from the sale of the assets of ASF. (Joint List of Undisputed Facts, Fact Nos. 140, 141; Khadr Depn. Tr. at 200-01.)

288. The debt and equity financing reportedly raised by the Guarantor companies in 1998, 1999 and the first half of 2000 included:

- (i) E£ 250 million (approximately \$74 million) in bonds issued by ASF in or about September 1998;
- (ii) E£ 400 million (approximately \$118 million) in bonds issued by HCFI in or about April 1999;
- (iii) E£ 350 million (approximately \$103 million) in stock issued by HCFI in or about June 1999; and
- (iv) approximately E£ 340 million (\$100 million) in Eurobonds issued by HCFI in December 1999.

(Joint List of Undisputed Facts, Fact No. 141; RTX 271 (Imburgia Report) ¶188.))

289. The Lakah Guarantor companies reportedly raised another E£ 331 million (approximately \$100 million) in the first quarter of 2000 by selling the operating assets of ASF. (Joint

List of Undisputed Facts, Fact Nos. 140, 141; RTX 72 (Officers' Certificate to Indenture Trustee); RTX 74 (Lakah press release); RTX 79 (HCFI Financial Statement as of June 30, 2000 at Note 30); RTX 271 (Imburgia Report) ¶189.)

G. The Lakah Companies Nevertheless Defaulted On Their Debts, the Lakahs Left Egypt, and the Guarantor Companies Evaporated

290. Despite the Lakah Guarantor companies' reportedly having raised approximately E£ 1,671,000,000 (US\$488,530,000) in debt financing, equity financing, and by the sale of ASF's assets during the period from the fourth quarter of 1998 through the second quarter of 2000, Guarantor ASF ceased doing business in or about February 2000, Guarantor TMSE ceased doing business during 2001, and Guarantor Medequip ceased doing business during 2001 and was placed in bankruptcy in 2002. (Joint List of Undisputed Facts, Fact No. 139-41, 145, 148, 151, 153; RTX 3 (Pets.' Response to First Set of Interrogatories and Document Requests of Respondents-Cross-Pets., dated 9/28/2007, (Chart for TMSE page 1 of 3, Chart for Medequip page 1 of 3, Chart for ASF page 1 of 3)); RTX 271 (Imburgia Report) ¶27.)

291. And holding company HCFI also effectively ceased doing business as the Lakahs left Egypt and the operating companies collapsed. (Joint List of Undisputed Facts, Fact No. 139; R. Lakah Depn. (5/13/09) Tr. 93:6-22.)

1. Company Defaults and Collapses

292. TMSE and Medequip were having difficulty doing business during the second half of 1999 because their financial resources were being drained from those companies. (RTX 177 (Khadr Decl. ¶¶91-96); Khadr Depn. Tr. at 156; Shourbagy Depn. Tr. at 341-42, 346-52, 354-55; RTX 245 (Shourbagy Decl. ¶¶53-56).)

293. In a note to HCFI's consolidated financial statement as of June 30, 2000, the Lakahs explained that there had been a "significant decline" in net sales in the first half of 2000 (down from E£ 1.2 billion for 1999 to less than E£ 0.2 billion for first six months of 2000) because (a) "the sale of a productive fixed assets in Arab Steel Factory ..." and (b) "the complete halting of the subsidiaries activities for [a] particular period to reorganize the financial and organization structure for all the subsidiaries ..." (RTX 79 at BH 00205, Note 22.)

294. However, other than the sale of ASF's assets in early 2000, there was no reorganization or halting of subsidiaries' activities during the first half of 2000. (Shourbagy Depn. Tr. at 82:17-83:3; M. Lakah Depn. (11/12/2008) Tr. at 208-09.)

295. In mid-2000 - before the first interest payment on the Eurobonds was due - both HCFI and ASF defaulted on payment of

interest due on their respective E£-denominated local bonds.
(Joint List of Undisputed Facts, Fact No. 142.)

296. The Guarantor companies ceased doing substantial business beginning in mid-2000. (Joint List of Undisputed Facts, Fact No. 139)

297. The Lakah Issuer and Guarantor companies made no payment of any kind under the Eurobond after the interest payment that was due on December 8, 2000. (Joint List of Undisputed Facts, Fact No. 144; RTX 318 (Schmid Decl. ¶¶11-15); RTX 307 (Stern Decl. ¶¶11-15); RTX 299 (Somarajan Decl. ¶¶11-15); RTX 291 (Sampath Decl. ¶¶11- 15).)

298. On June 8, 2001, the Lakah Group companies defaulted on the Eurobond. (Joint List of Undisputed Facts, Fact No. 143; ECF No. 208 (Petitioners' Undisputed Fact No. 157); RTX 357 (S/J Undisputed Fact No. 19))

299. By late 2001, Medequip and TMSE ceased doing any business. (Joint List of Undisputed Facts, Fact No. 145)

300. At the time of the Eurobond offering in December 1999, the value of Medequip's assets was stated to be E£ 614 million (ca. \$180.6 million). (Joint List of Undisputed Facts, Fact No. 147; RTX 45 (OC at F-49))

301. Medequip ceased doing business by the last quarter of 2001. (Joint List of Undisputed Facts, Fact No. 148)

302. By 2002, Medequip was in an insolvency proceeding in Egypt. (Joint List of Undisputed Facts, Fact No. 146)

303. Medequip was placed in bankruptcy liquidation on October 25, 2002. (Joint List of Undisputed Facts, Fact No. 149.)

304. At the time of the Eurobond offering in December 1999, the value of TMSE's assets was stated to be E£ 186 million (ca. \$54.7 million). (Joint List of Undisputed Facts, Fact No. 150; RTX 45 (OC at F-56).)

305. TMSE -- which was described in the OC as being the exclusive distributor for Toshiba Medical Equipment in Egypt -- ceased operations by the fourth quarter of 2001. (Joint List of Undisputed Facts, Fact No. 151; RTX 357 (S/J Undisputed Fact No. 408); RTX 3 (Petitioners' Response to First Set of Interrogatories, dated 9/28/2007, TMSE Table, p. 1 of 3) RTX 265 (Zarif Decl. p. 7, ¶27); Zarif Depn. Tr. at 319:9-17.)

306. There is no indication that TMSE had any assets by that time. (Joint List of Undisputed Facts, Fact No. 152; RTX 357 (S/J Undisputed Fact No. 409); RTX 271 (Imburgia Report) ¶197.)

307. ASF ceased its operations upon the sale of its assets in or about February 2000. (Joint List of Undisputed Facts, Fact No. 153; RTX 79 (HCFI financial statement as of 6/30/2000 at BH 000205); RTX 3 (Chart re ASF at 1)]; see RTX 82 (ASF financial statement as of 12/31/2000).)

308. The Lakahs diverted most of the proceeds of sale of ASF's assets to support HCFI's obligations to Banque du Caire. The rest -- E£ 100 million in "cash" - is unaccounted for. (RTX 271 (Imburgia Report) ¶¶206-07; M. Khadr. Depn. (6/26/2011) Tr. at 165, 230-231; RTX 177 (Khadr Decl. ¶148); R. Lakah Depn. (5/12/2009) Tr. at 127:24-128:9 (R. Lakah does not know what was done with the E£ 100 million in cash paid by the purchaser).)

309. ASF had no operations and no assets of significant value thereafter. (RTX 177 (Khadr Decl.) ¶180-81; RTX 271 (Imburgia Report) ¶¶204-05; Khadr Depn. Tr. at 222.)

310. Arab Cast Iron & Steel Co. ("ACIS"), an alleged subsidiary of ASF, if it ever existed, never conducted any business. (RTX 177 (Khadr Decl.) ¶180-81; Khadr Depn. Tr. at 288.)

311. As a consequence of ASF's ceasing its operations upon the sale of its assets in or about February 2000, the reported revenues of two other subsidiaries of Guarantor HCFI --

Universal for Heavy Transport and Amitrade for Trading -- fell precipitously because the latter companies reportedly did most of their businesses with ASF. (RTX 357 (S/J Undisputed Fact Nos. 382-384, 414); RTX 271 (Imburgia Report) ¶205; RTX 79 (HCFI Financial Statements as at 6/30/2000 at Note 22 (at BH0205)); Depn. of B. Murphy 05/18/2010 Tr. at 397-400, 404-05.)

312. The Guarantors failed to pay any interest or principal due on the Eurobonds beginning in June 2001 and thereafter. (ECF No. 208 (Petitioners' Undisputed Fact No. 157); RTX 357 (S/J Undisputed Fact No. 19); Court Conf. (5/1/2008) Tr. at 28:16-18 (admitting default in 2001); Court Conf. (2/26/14) Tr. at 43:12-14 (admitting default); Court Conf. (2/10/2009) Tr. at 25:15-17 (same); Murphy Depn. (5/18/2010) Tr. at 566-569; Murphy Depn. (02/21/2008) Tr. at 96-97)

2. The Lakahs Fled Egypt

313. The Lakahs fled from Egypt in about June 2000 (Michel Lakah) and in July 2001 (Ramy Lakah), respectively; they remained abroad until March 2010. (Joint List of Undisputed Facts, Fact No. 52; RTX 177 (Khadr Decl. ¶133); Khadr Depn. Tr. at 208-09, 214.)

314. No new information was recorded in HCFI's Commercial Register from April 11, 2000, until the Lakahs returned to Egypt in 2010. (Joint List of Undisputed Facts, Fact No. 53.)

315. The Lakah Group website was unsupported since 2001 because the companies "ceased activities" and there was no reason to have a website. (R. Lakah Depn. (5/13/09) Tr. 9:16-18, 9:24-10:6.)

3. Michel Lakah Delivered Bad Checks to BdC and Then Fled From Egypt (Spring 2000)

316. As an inducement to cause BdC to release a commercial mortgage on ASF's assets that BdC held as collateral (in relation to financing facilities that BdC had provided to ASF), and as had been agreed by the Lakahs, Michel Lakah wrote personal checks to BdC to buy back HCFI stock that was then owned by the Bank. (This was a buy-back of HCFI stock that Michel Lakah personally had sold to BdC for around E£ 115,000,000 in December 1998 shortly after the formation of HCFI.) (M. Lakah Depn. (11/11/2008) Tr. at 12-14; M. Lakah Depn. (11/12/2008) Tr. at 170-72; RTX 177 (Khadr Decl. ¶156); Khadr Depn. Tr. at 208-10, 227-30, 532-33.)

317. Michel Lakah's checks bounced. (M. Lakah Depn. (11/12/2008) Tr. at 170; RTX 177 (Khadr Decl. ¶ 157); Khadr Depn. Tr. at 208-10, 532-33.)

318. Michel knew that his checks would bounce, and he left the country after delivering his checks to Banque du Caire. (M.

Lakah Depn. (11/12/2008) Tr. at 170-72; RTX 177 (Khadr Decl. ¶157); Khadr Depn. Tr. at 208-10, 532-33.)

4. Michel Lakah's Phony Resignation(s).

319. Michel Lakah maintains that he resigned from the Boards of Directors of each of the Guarantor companies by means of an Arabic language letter of resignation, dated May 25, 2000, addressed only to the "Chairman of the Board of Directors." The letter is on a blank piece of paper. It is purportedly signed by Michel Lakah (using both his Arabic and English signatures), and countersigned by Ramy Lakah (dated May 29, 2000). (PTX 271.)

320. Messrs. Khadr and Shourbagy, though being nominal directors respectively of HCFI and TMSE, never heard of M. Lakah's resigning from either company. (RTX 245 (Shourbagy Decl. ¶44); Shourbagy Depn. Tr. at 56-57; RTX 177 (Khadr Decl. ¶ 139); Khadr Depn. (6/26/2011) Tr. at 214-16.)

321. HCFI's minutes of shareholders' meeting of Nov. 19, 2000 indicate that M. Lakah was then a member of HCFI's Board of Directors and that R. Lakah was acting on his behalf. (RTX 103.)

322. A letter, signed by Ramy Lakah on behalf of HCFI to the Egyptian Capital Markets Authority ("CMA"), regarding a "General Assembly" (shareholders' meeting) of HCFI reportedly held April 9, 2001, says that it included an "[a]uthorization

[i.e., a proxy] issued by Mr. Michele Remon Lakah, the Vice Chairman to Mr. Ramy Remon Michele Lakah, the Chairman for replacing him in meeting." (RTX 102.)

323. HCFI's Commercial Register has no record of a resignation by M. Lakah. (RTX 27 at 3-4 (no resignation recorded).)

324. HCFI, a publicly-traded company, made no announcement and gave no public notice regarding a resignation by Michel Lakah, its then Vice Chairman and Board member. (Khadr Depn. Tr. at 216; R. Lakah Depn. (5/12/2009) Tr. at 36:16-37:22.)

325. TMSE's Commercial Register indicates that M. Lakah resigned from TMSE's Board on Aug. 2, 2000 and rejoined TMSE's Board on July 1, 2001. (RTX 30 at 8-10.)

326. Medequip's Commercial Register has no record of a resignation thereafter by M. Lakah. (RTX 31.)

327. M. Lakah's purported resignation letter indicates his resignation also from the Board of Directors of ASF, but he was not formally on that Board at the time. (RTX 29 (ASF Commercial Register at 2-4, 9-10).)

328. M. Lakah first produced a photocopy of his purported resignation letter in 2008, but he refused to produce the

original or "oldest existing copy" of that letter for inspection. (RTX 5 (M. Lakah Response to 4th Doc. Req. Response No. 2).)

H. How the Lakahs Cooked the Books: Inflating Stated Assets

329. If a company's balance sheet contained overstated paid-in capital and yet purported to balance, then the balance sheet must have contained (a) overstated assets, and/or (b) understated liabilities. And vice versa. (RTX 271 (Imburgia Report) at 7-9 and ¶¶74-75; see also Depn. of Ehab Taha Tr. at 266-67.)

330. During 1999-2000, not less than £ 788 million of assets stated on HCFI's consolidated balance sheet was identifiably fictitious or gross overstated, accounting for 53% of HCFI's stated paid-in capital. (See details below)

331. The HCFI assets disclosed in the Offering Circular, including on HCFI's balance sheet as of June 30, 1999, were falsely overstated. (RTX 271 (Imburgia Report) at 7-9, ¶¶74-77, 125-177; RTX 45 (OC at F-38).)

332. The ASF assets disclosed in the Offering Circular, including on ASF's balance sheet as of June 30, 1999, were falsely overstated. (RTX 271 (Imburgia Report) at 7-9, ¶118 and Table 5; RTX 45 (OC at F-62).)

333. The TMSE assets disclosed in the Offering Circular, including on TMSE's balance sheet as of June 30, 1999, were falsely overstated. (RTX 271 (Imburgia Report) at 7-9, ¶118 and Table 5; RTX 45 (OC at F-56).)

334. The Medequip assets disclosed in the Offering Circular, including on Medequip's balance sheet as of June 30, 1999, were falsely overstated. (RTX 271 (Imburgia Report) at 7-9, ¶118 and Table 5; RTX 45 (OC at F-49).)

1. The Stated HCFI Investment Asset "Intermedica"
(£ 30,600,000) Was Falsely Overstated

335. It was stated in the Eurobond Offering Circular that HCFI's assets included an investment in Intermedica (£ 30,600,000) that allegedly was made after the GDR offering but before the Eurobond offering. (RTX 357 (S/J Undisputed Fact No. 163); RTX 45 (OC at 8, 38-39, F-43); RTX 271 (Imburgia Report) ¶¶132, 229-38.)

336. The Intermedica asset stated on HCFI's balance sheet was fictitious or overstated. (RTX 271 (Imburgia Report) ¶¶229-38); RTX 91 (RSM-E-1087); RTX 45 (See OC at 8, 38-39, F-43).)

337. It was represented in the Eurobond Offering Circular that HCFI's assets as of December 6, 1999 included an investment in Intermedica of £ 30,600,000, and that it was expected that HCFI would make an additional investment of £ 37,740,000 upon

the formation of Intermedica. (RTX 357 (S/J Undisputed Fact No. 164); RTX 45 (OC at 38-39).)

338. But Intermedica had already been formed on November 24, 1999. (RTX 357 (S/J Undisputed Fact No. 165); RTX 33 (Intermedica's Commercial Register).)

339. It was also stated in HCFI's financial statement as of December 31, 1999 that HCFI owned 51% of Intermedica. (RTX 357 (S/J Undisputed Fact No. 167); RTX 62 (HCFI Consolidated Balance Sheet as of December 31, 1999, Note 1); RTX 66 (Intermedica (S.A.E.) Financial Statements as of December 31, 1999, Note 9 (BH 001004)).)

340. HCFI's stated investment of E£ 30,600,000 in Intermedica, as described in the Eurobond Offering Circular, was not the subject of any meeting of HCFI's Board of Directors.

341. HCFI has no Board of Directors records reflecting a decision to invest E£ 30,600,000 in Intermedica, as described in the Eurobond Offering Circular.

342. HCFI has no transaction documents regarding HCFI's stated investment of E£ 30,600,000 in Intermedica, as described in the Eurobond Offering Circular.

343. HCFI has no banking documents with respect to HCFI's stated investment of E£ 30,600,000 in Intermedica, as described in the Eurobond Offering Circular.

344. HCFI has no bookkeeping documents with respect to HCFI's stated investment of E£ 30,600,000 in Intermedica, as described in the Eurobond Offering Circular.

345. According to Intermedica's financial statements as of December 31, 1999, Intermedica's total paid-in capital was not more than E£ 250,000, and the value of HCFI's equity ownership of Intermedica was not more than E£ 117,500 (i.e., 47% of the actual capital). (RTX 91 (RSM E 1087); RTX 271 (Imburgia Report) ¶231.)

346. The stated value of HCFI's investment in Intermedica changed to only E£ 117,500 in HCFI's financial statements as of June 30, 2000 and as of December 31, 2000. (RTX 79 (HCFI Financial Statements as of June 30, 2000, Note 5); RTX 80 (HCFI Financial Statements as of December 31, 2000, Note 5 (BH 008068))); RTX 271 (Imburgia Report) ¶231.)

347. The Lakahs had indicated to Mohamed Khadr, who was a Senior Vice President and nominal member of the Board of Directors of HCFI, that they wanted to purchase 50% of a company called Intermedica, and that they had made a purchase agreement

during the third quarter of 1999. (RTX 177 (Khadr Decl. ¶¶1, 130).)

348. Months before the Eurobond offering, Michel Lakah made a down payment of a relatively small amount toward the purchase of 50% of a business in that regard. But the Lakahs never paid the remainder of the purchase price, to Khadr's knowledge, and that deal never closed. (RTX 177 (Khadr Decl. ¶130).)

349. To Mohamed Khadr's knowledge, neither the Lakahs nor any Lakah Group company acquired a 50% interest in Intermedica. (RTX 177 (Khadr Decl. ¶130).)

350. It was represented in the Offering Circular that Ramy Lakah, Michel Lakah, and HCFI together purchased a 51% interest in two partnerships that were to be combined to become Intermedica and that HCFI would own 51% of Intermedica once it was formed. (RTX 45 (OC at 8, 38-39).)

351. Ramy Lakah has produced no documents regarding any personal investment in Intermedica.

352. Michel Lakah has produced no documents regarding any personal investment in Intermedica.

353. Ramy Lakah does not recall the name Intermedica, or what Intermedica was, or what his or HCFI's relationship to

Intermedica was, or whether HCFI made an investment in Intermedica. (R. Lakah Depn (10/4/2011) Tr. at 36:21-23, 37:7-8, 33:22-34:16.)

354. Ramy Lakah does not recall if HCFI made an investment of ca. E£ 30-31 million to purchase 51% of the ownership interests in two partnerships - IMMS and IDMS; whether he and Michel Lakah and HCFI together made such an investment; or whether those two partnerships were converted into a single Egyptian joint stock company. (R. Lakah Dep. (10/4/11) Tr. 34:17-35:16; 170:8-25.)

355. Ramy Lakah does not recall whether HCFI invested another E£37-38 million in Intermedica to subscribe to new shares after it was formed, or whether he, Michel Lakah, and HCFI together made such an additional investment, or whether HCFI provided financing to Intermedica of approximately E£ 85-86 million during 1999. (R. Lakah Dep. (10/4/11) Tr. 35:15-36:20, 37:18-21, 41:21-43:2; 170:8-25.)

2. The Stated HCFI Investment Asset "Helio Medical" (a/k/a Helio Lab) (E£ 130,000,000) Was Falsely Overstated

356. It was represented in the Eurobond Offering Circular that HCFI's assets beginning August 15, 1999, and as of the time of the Eurobond offering, included an investment of

€ 130,000,000 in Helio Medical (a/k/a HelioLab). (RTX 357 (S/J Undisputed Fact Nos. 163, 169); RTX 45 (OC at 38).)

357. The representation in the OC that HCFI had a € 130,000,000 investment in Helio Medical was false. (RTX 271 (Imburgia Report) ¶238; see R. Lakah Depn. (5/12/2009) Tr. at 155-56; R. Lakah Depn. (10/4/2011) Tr. at 46-50, 169-70; M. Lakah Depn. (8/16/2011) Tr. at 48-50.)

358. It was represented in the Eurobond OC that HCFI owned 98% of the issued share capital of Helio Medical. (RTX 357 (S/J Undisputed Fact No. 170); RTX 45 (OC at 38).)

359. However, instead of including Helio Medical as a part of the Lakah Group in HCFI's consolidated financial statement as of December 31, 1999, which would have been required if HCFI owned 98% of Helio Medical, HCFI listed Helio Medical as a "long term investment," in which HCFI did not have a majority interest. (RTX 357 (S/J Undisputed Fact No. 172); RTX 271 (Imburgia Report) ¶235; RTX 62 (HCFI Consolidated Balance Sheet as of 12/31/99, Note 9 (BH 000967)).)

360. It was stated in HCFI's financial statements as of December 31, 1999 that HCFI had only a € 65 million investment and a 46.89% equity interest in Helio Medical. (RTX 357 (S/J

Undisputed Fact No. 171); RTX 62 (HCFI Consolidated Balance Sheet as of 12/31/99, Note 9 (BH 000967)); RTX 91 (RSM E 1087).)

361. HCFI did not sell a E£ 65 million interest in Helio Medical between December 6, 1999 and December 31, 1999. (RTX 271 (Imburgia Report) ¶¶170, 237.)

362. As of June 30, 2000 and December 31, 2000, HCFI reported no investment in Helio Medical. (RTX 357 (S/J Undisputed Fact No. 174); RTX 80 (HCFI Consolidated Financial Statements as of 12/31/2000, Note 5); RTX 79 (HCFI Financial Statements as of 6/30/2000, Note 5 (BH 000198)).)

363. HCFI did not sell a E£ 65 million interest in Helio Medical in 2000. (RTX 271 (Imburgia Report) ¶¶170, 238.)

364. The Lakahs are unable to explain the disappearance of the alleged investment in Helio Medical. (RTX 357 (stating, in response to proposed undisputed Fact No. 176, "While it is undisputed that HCFI reported no investment in Helio Lab as of HCFI's June 30, 2000 financial statements, the reason for the elimination of the investment is unknown.")). (RTX 357 (stating, in response to proposed undisputed Fact No. 176, "While it is undisputed that HCFI reported no investment in Helio Lab as of HCFI's June 30, 2000 financial statements, the reason for the elimination of the investment is unknown.")).)

365. Michel Lakah testified that he does not recall any company by the name of HelioLab. (Joint List of Undisputed Facts, Fact No. 94.)

366. The Commercial Register for HelioLab identifies Michel Lakah as its Chairman of the Board in 2001. (RTX 357 (S/J Undisputed Fact No. 178); RTX 32 (Commercial Register for HelioLab).)

367. Michel Lakah denied that he was Chairman of the Board of HelioLab in 2001. (M. Lakah Depn. (8/16/2011) Tr. at 49-50.)

368. Ramy Lakah, who was the Chairman and CEO of HCFI during that timeframe, testified that he would have known if HCFI had made an investment in another company of E£ 50 million or more. (R. Lakah Depn. (10/4/2011) Tr. at 27:22-29:22; 31:5-16.)

369. Ramy Lakah does not recall any information about a company called Helio Medical, Heliopolis Laboratory for Medical Analysis, or HelioLab. (R. Lakah Depn. (5/12/2009) Tr. at 155-56; R. Lakah Depn. (10/4/2011) Tr. at 46-50, 169-70.)

370. HCFI has no transaction documents regarding HCFI's stated investment of E£ 130 million in HelioMedical (a/k/a Helio Lab), as described in the Eurobond Offering Circular.

371. The Lakahs have produced no transaction documents with respect to HCFI's stated investment in HelioMedical (a/k/a Helio Lab), as described in the Eurobond Offering Circular.

372. HCFI has produced no banking documents with respect to HCFI's stated investment of E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular.

373. HCFI has produced no bookkeeping documents regarding HCFI's stated investment of E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular.

374. HCFI's stated investment of E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular, was not the subject of any meeting of HCFI's Board of Directors for which minutes have been.

375. HCFI has produced no Board of Directors records reflecting a decision to invest E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular.

376. No documents have been produced reflecting HCFI's Board of Directors authorization of the sale or transfer in 1999 or 2000 of any portion of its stated investment of E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular.

377. HCFI has produced no Board of Directors records reflecting a decision to sell or transfer in 1999 or 2000 any portion of its stated investment of E£ 130 million in HelioMedical, as described in the Eurobond Offering Circular.

378. HCFI has produced no transaction documents regarding a sale or other disposition of any portion of HCFI's stated investment in HelioMedical, as described in the Eurobond Offering Circular.

379. HCFI has produced no bookkeeping documents with respect to a sale or other disposition of any portion of HCFI's stated investment in HelioMedical, as described in the Eurobond Offering Circular.

380. HCFI has produced no banking documents with respect to a sale or other disposition of any portion of HCFI's stated investment in HelioMedical, as described in the Eurobond Offering Circular.

381. Ramy Lakah said to Mohamed Khadr that the Lakahs would use the proceeds of the Eurobond to create private renal dialysis centers in Egypt that would be built, owned, and operated by the Lakah Group. This was never done, however. (RTX 177 (Khadr Decl. ¶131); Khadr Depn Tr. at 201-202.)

3. The Stated HCFI Investment Asset of Medical Equipment Activities in "North Africa, Middle East, and Turkey" (more than E£ 305,000,000) Was Falsely Overstated

382. HCFI's financial statement as of December 31, 1999 -- 23 days after the Eurobond closing and immediately after the alleged addition of E£ 315 million in paid-in capital to HCFI's balance sheet -- includes for the first time a stated long-term investment asset of E£ 305,448,805 in "medical equipment activities in North Africa, Middle East, and Turkey." (RTX 357 (S/J Undisputed Fact Nos. 180-181); RTX 62 (HCFI Financial Statement as of 12/31/1999) at Note 9 (BH0967); RTX 45 (OC (HCFI financial statements as of 6/30/1999); RTX 271 (Imburgia Report) at 8, ¶¶128-38.)

383. That stated long term investment asset -- E£ 305,448,809 in "investments in medical equipment activities in North Africa, Middle East and Turkey" -- was fictitious, and was invented to "balance" the fictitious (unfunded) capital stated in HCFI's financial statements. (RTX 271 (Imburgia Report) at 8 and ¶138.)

384. None of the Lakah Group companies owned any investments outside of Egypt, at least through the end of 2000. (RTX 177 (Khadr Decl. ¶169); Khadr Depn. Tr. at 286; RTX 245

(Shourbagy Decl. ¶ 76 (as to TMSE)); Shourbagy Depn. Tr. at 84:8-10.)

385. HCFI's stated investment asset of more than E£ 305,000,000 in North Africa, Middle East, and Turkey was not mentioned in the Offering Circular, dated December 6, 1999. (RTX 357 (S/J Undisputed Fact No. 181); RTX 45 (OC) passim.)

386. The stated E£ 305+ million investment in North Africa, Middle East & Turkey, was not made before December 6, 1999. (RTX 271 (Imburgia Report) ¶128; RTX 45 (OC).)

387. The purported investment of more than E£ 305 million in North Africa, Middle East, and Turkey would have comprised more than 20% of HCFI's reported paid-in capital (of E£ 1,499,880,000) as of 12/31/1999. (RTX 357 (S/J Undisputed Fact No. 182); RTX 62 (HCFI Financial Statement as of 12/31/1999, at BH0960).)

388. HCFI's stated investment of E£ 305,448,809 in North Africa, Middle East, and Turkey, as disclosed in its financial statements as of December 31, 1999, and December 31, 2000, was not the subject of any meeting of HCFI's Board of Directors. (RTX 57, RTX 59; RTX 60; RTX 61.)

389. HCFI has produced no transaction documentation concerning its stated investment of E£ 305,448,809 in North

Africa, Middle East, and Turkey, as disclosed in its financial statements as of December 31, 1999, and December 31, 2000.

390. HCFI has produced no bookkeeping documents regarding its stated investment of E£ 305,448,809 in North Africa, Middle East, and Turkey, as disclosed in its financial statements as of December 31, 1999 and December 31, 2000.

391. HCFI has produced no banking documents with respect to its stated investment of E£ 305,448,809 in North Africa, Middle East, and Turkey, as disclosed in its financial statements as of December 31, 1999, and December 31, 2000.

392. The banking account and other documents for December 1999 contained in HCFI's accountant's (RSM's) files do not show any outflow of funds from HCFI in the amount of E£ 305,448,809 that month. (RTX 91 (RSM E 1076-1105).)

393. The Lakahs have argued that an investment of E£ 305,448,809 was made in a company called "Sea Star." (ECF No. 207 (Lakah Mem. of Law) at 71.)

394. Audit work papers produced by the Lakahs in this proceeding indicate that the auditors were told in 2001 that the investment of E£ 305,448,809 was in a company called "Sea Star." (RTX 89 (at RSM-E-17); RTX 271 (Imburgia Report) ¶135 and n.218.)

395. Michel Lakah, the Vice Chairman of HCFI at the time, does not recall an investment of E£ 305,448,809 in North Africa, Middle East, and Turkey. (M. Lakah Depn (8/16/2011) Tr. at 50-52.)

396. Ramy Lakah, who was the Chairman and CEO of HCFI during that timeframe, testified that he would have known if HCFI had made an investment in another company of E£ 50 million or more. (R. Lakah Depn. (10/4/2011) Tr. at 27:22-29:22; 31:5-16)

397. Ramy Lakah does not recall whether any Eurobond Guarantor company made any investment or owned any investment outside of Egypt during the period 1998-2001. (R. Lakah Dep. (10/4/11) Tr. 50:23-51:14, 55:8-56:12; see also id. at 163:20-164:15 (R. Lakah does not recall what long-term investments HCFI had as of 12/31/1999); id. at 171:2-22.)

398. Ramy Lakah testified that the stated investment of E£305,448,809 in North Africa, Middle East, and Turkey might refer to a company called Sea Star, but he is unsure. (R. Lakah Depn. (10/4/2011) Tr. at 171:23-172:16.)

399. Ramy Lakah testified that the Sea Star investment was his idea. (R. Lakah Depn. (10/4/2011) Tr. at 183:25-184:2.)

400. Ramy Lakah testified that he does not recall: where Sea Star was located, his relationship to Sea Star, HCFI's relationship to Sea Star, how long Sea Star was in operation, whether any investment had been made in Sea Star, when an investment (if any) was made, who or what company was an investor, which of his companies owned the investment, who managed Sea Star, or how the investment was made. (R. Lakah Depn. (10/4/2011) Tr. at 59-67, 171, 174-76, 178, 183-84.)

401. Ramy Lakah testified that he did not recall who the managers of Sea Star were or who was on the Board of Directors of Sea Star. (R. Lakah Depn. (10/4/2011) Tr. at 176:8-17, 178:8-13.)

402. Ramy Lakah testified that he was not sure who owns Sea Star and what percentage, if any, was owned by HCFI. (R. Lakah Depn. (10/4/2011) Tr. at 174:13-175:10.)

403. Ramy Lakah testified that he did not know whether any Lakah company made or owned an investment in Sea Star or, if they did, the amount of the investment. (R. Lakah Depn. (10/4/2011) Tr. at 178:14-21; id. at 183:10-23.)

404. Ramy Lakah testified that he did not recall how an investment was made in Sea Star. (R. Lakah Depn. (10/4/2011) Tr. at 184:3-8.)

405. Ramy Lakah did not recall any other information about the nature of such an investment or the persons involved. (R. Lakah Depn. (10/4/2011) Tr. at 178:5-7; 218:7-219:4.)

406. Ramy Lakah does not recall whether he or HCFI had any business dealings with a company called Sea Star. (R. Lakah Depn (10/4/2011) Tr. at 59-63.)

407. Ramy Lakah could not describe a "joint venture" with Sea Star and did not recall one. (R. Lakah Depn. (10/4/2011) Tr. at 229:14-17.)

408. Ramy Lakah testified that he thought Sea Star might have sold disposable medical products. (R. Lakah Depn. (10/4/2011) Tr. at 171-72.)

409. Brian Murphy, a nominal director of HCFI at the time, said that he first heard of an investment in North Africa, Middle East, or Turkey sometime in 2001, but he knew no details. (Murphy Depn. (5/18/10) Tr. at 360-70.)

410. Mohamed Khadr -- a nominal director of HCFI, who worked closely with Ramy Lakah -- never heard of Sea Star or any investment outside of Egypt for that matter. (Khadr Depn. Tr. at 287-88; ECF No. 207 (Lakah Mem. of L.) at 43 (admitting Khadr's role).)

411. Adel Shourbagy, a former Chairman and member of the Board of Directors of TMSE at the time, had not heard of Sea Star and was unaware of any investment outside of Egypt.

(Shourbagy Depn. Tr. at 84.)

4. The Stated HCFI Revenue of E£ 63,670,515 From the Stated Investment Asset of Medical Equipment Activity in "North Africa, Middle East, and Turkey" Was Falsely Overstated

412. HCFI's financial statement as of December 31, 1999 also includes an asset of E£ 63,670,515 in the category "Debtors -- Short Term Balances (Net)" and is further described as "[a]ccrued investment revenues." (Joint List of Undisputed Facts, Fact No. 95; RTX 62 (HCFI Financial Statements as of 12/31/1999, Note 4 (BH 000965)); RTX 271 (Imburgia Report) ¶150.)

413. Ramy Lakah testified that the source of the stated revenue of E£ 63,670,515 was the investment in Sea Star. (R. Lakah Depn. (10/4/2011) Tr. at 182:5-183:9.)

414. Ramy Lakah then testified that he did not recall what business activity produced those revenues. (R. Lakah Depn. (10/4/2011) Tr. at 185:20-186:17.)

415. The "accrued investment revenues" of E£ 63,670,515 were said in the Lakah companies' accountants' papers to have been produced by the purported E£ 305+ million investment in

North Africa, Middle East & Turkey. (RTX 357 (S/J Undisputed Fact No. 185); RTX 271 (Imburgia Report) at 8 and ¶¶150-52; RTX 91 (RSM E 1101 and 1084).)

416. HCFI's stated revenue over a period of not more than 24 days from the inception (sometime between December 8 and 31, 1999) of the alleged investment in North Africa, the Middle East, and Turkey, would equate to more than a 317% annual return on investment. (RTX 271 (Imburgia Report) ¶151.)

417. HCFI's reported "accrued investment revenues" asset of E£ 63,670,515 is unsubstantiated and most likely fictitious. (RTX 271 (Imburgia Report) ¶151.)

5. The Stated HCFI "Investment Portfolio" Asset
(E£ 134,551,191) Was Falsely Overstated

418. HCFI's financial statements as of June 30, 2000 and as of December 31, 2000 each have an entry for a "Long Term Investments" asset in the amount of E£ 134,551,191 that is described only as "Investment Portfolio." (RTX 357 (S/J Undisputed Fact No. 190); RTX 271 (Imburgia Report) ¶¶139-49; RTX 79 (HCFI Financial Statements as of June 30, 2000, Note 5); RTX 80 (HCFI Financial Statements as of December 31, 2000, balance sheet and Note 5 (BH 8061, 8068)).)

419. Ramy Lakah, who was the Chairman and CEO of HCFI during that timeframe, testified that he would have known if

HCFI had made an investment in another company of E£ 50 million or more. (R. Lakah Depn. (10/4/2011) Tr. at 27:22-29:22; 31:5-16.)

420. Ramy Lakah testified that he did not recall what the investment portfolio of E£ 134,551,191 was, and he had no idea of whether HCFI had any investments, as of 12/31/00, that would fit under the category "investments portfolio". (R. Lakah Depn. (10/4/2011) Tr. at 215:11-216:9, 217:12-218:6, 222:21-223:21, 224:10 225:3.)

421. The "Investment Portfolio," stated as a long term investment asset of HCFI as of June 30 and December 31, 2000, and valued at E£ 134,551,191 (approximately \$39,573,800), reportedly consisted of Lakah Eurobonds, but HCFI did not own Eurobonds at the time. (RTX 357 (S/J Undisputed Fact No. 198); see RTX 357 (S/J Undisputed Fact Nos. 190-95, 196-97); RTX 271 (Imburgia Report) ¶149.)

422. The Lakahs have admitted that on June 30, 2000, HCFI did not own the "investment portfolio" asset, valued at E£ 134,551,191 that was stated in HCFI's financial statements as of June 30, 2000. (RTX 357 (S/J Undisputed Fact No. 198).)

423. The stated HCFI "investment portfolio" asset of more than E£ 134.5 million was fictitious, yet HCFI's balance sheet

balanced. (RTX 271 (Imburgia Report) ¶¶149, 211; RTX 79 (BH0205 at Note 21 (HCFI Financial Statement as of 6/30/2000)); RTX 67; RTX 68; RTX 76; RTX 78; RTX 357 (S/J Undisputed fact no. 198).)

6. The Stated ASF Investment Asset "Arab Cast Iron & Steel Company (ACIS)" (E£ 124,000,000) Was Falsely Overstated

424. Arab Cast Iron & Steel Company ("ACIS") (a/k/a the "East Port Said Project" a/k/a/ "Sharq al Tafria") was listed as an ASF investment asset, and was valued at E£ 124,000,000 (ca. \$36,500,000), in HCFI's consolidated financial statement as of June 30, 1999 in the Offering Circular. (Joint List of Undisputed Facts, Fact No. 98; RTX 357 (S/J Undisputed Fact No. 200); RTX 45 (OC) at F-10, F-30, F-33, F-43, F-62, F-66.)

425. The ASF financial statements in the OC also indicated that, as of June 30, 1999, ASF's assets included a long term investment in ACIS valued at E£ 124,000,000. (RTX 45 (OC) at 33, 58, F-62, and F-66; RTX 271 (Imburgia Report) ¶¶159-66.)

426. The East Port Said Project was described in the OC (as of December 6, 1999) as an investment by Ramy and Michel Lakah (52%) and ASF (48%) in a company called Arab Cast Iron & Steel Production, S.A.E. ("ACIS") in the East Port Said development area. (Joint List of Undisputed Facts, Fact No. 99; RTX 357 (S/J Undisputed Fact No. 201); RTX 45 (OC at 58).)

427. HCFI's financial statement as of June 30, 2000 indicated that HCFI (on a consolidated basis and, thus, including ASF's assets) owned 49% of ACIS, and valued that investment at E£ 120,000,000. (Joint List of Undisputed Facts, Fact No. 100; RTX 357 (S/J Undisputed Fact No. 202); RTX 79 (HCFI Financial Statement as of 6/30/2000 at 198, note 5).)

428. ASF's financial statement as of December 31, 2000 indicated that ASF continued to own 49% of ACIS, valued at E£ 120,000,000. (Joint List of Undisputed Facts, Fact No. 101; RTX 357 (S/J Undisputed Fact No. 203); RTX 82 (ASF Financial Statement as of 12/31/2000 at RSM E 3149 ("Long Term Investments")); and RTX 80 (HCFI Consolidated Financial Statement as of 12/31/2000 at Note 5).)

429. ASF's stated 48% or 49% interest in the ACIS asset, valued on ASF's balance sheets during the period 1998 through 2000 as E£ 124 million and then E£ 120 million, was unsubstantiated and was likely grossly overstated. (RTX 271 (Imburgia Report) ¶166.)

430. "Arab Cast Iron and Steel Company" or ACIS was actually a name without a business. (RTX 177 (Khadr Decl. ¶ 180); Khadr Depn. Tr. at 288.)

431. ACIS consisted of some land in the East Port Said area that the Lakahs obtained (probably by license or lease) from the Government to develop at the request of one of the Egyptian ministries. (RTX 177 (Khadr Decl. ¶ 180); Khadr Depn. Tr. at 288-92.)

432. The Lakahs had made the gesture of undertaking a project there in order to appear to do a favor for the Egyptian government, which was trying to develop the East Port Said area. The Lakahs put up some framing for a structure on the site, but nothing more was done with the land or ACIS. (RTX 177 (Khadr Decl. ¶180); Khadr Depn. Tr. at 288-92.)

433. Khadr visited the East Port Said site of ACIS in 2000 and observed there was empty land except for bit of framing of a structure. If ACIS had any assets, they were not visible, and Khadr never learned the purpose of ACIS. (RTX 177 (Khadr Decl. ¶181); Khadr Depn. Tr. at 288-92.)

434. ACIS never conducted any business and consisted of only an empty structure on the project site. (Khadr Depn. (6/27/2011) Tr. at 288-91; RTX 177 (Khadr Decl. ¶180).)

435. Khadr described as "impossible" the notions (a) that ACIS had paid-in capital E£ 250,000,000; and (b) that 50% of the

value of ACIS at the end of 2000 amounted to about E£ 120,000,000. (RTX 177 (Khadr Decl. ¶181); 290-92.)

436. According to the [Eurobond Offering Circular], Ramy Lakah and Michel Lakah together owned 1.3 million shares of ACIS, reportedly valued at more than E£ 124 million, at the time of the Eurobond Offering. (Joint List of Undisputed Facts, Fact No. 102; RTX 357 (S/J Undisputed Fact No. 206); RTX 45 (OC at 58).)

437. Ramy Lakah testified that he does not recall the name "East Port Said Project" or "Sharq El-Tafria". (R. Lakah Depn. (10/4/2011) Tr. at 378-80.)

438. Ramy Lakah testified that he does not recall whether he or ASF had an investment in a company called Arab Cast Iron and Steel Company ("ACIS"). (Joint List of Undisputed Facts, Fact No. 104; R. Lakah Depn. (10/4/2011) Tr. at 378-80.)

439. Ramy Lakah testified that he does not recall whether he or Michel Lakah or ASF ever owned any shares in ACIS. (R. Lakah Depn. (10/4/2011) Tr. at 378-80.)

440. Ramy Lakah testified that he does not recall whether ACIS had any assets at any time during the period of 1998 through 2001. (Joint List of Undisputed Facts, Fact No. 105; R. Lakah Depn. (10/4/2011) Tr. at 378-80.)

441. Ramy Lakah testified that he does not recall whether ACIS existed at the time of his deposition (in 2011). (Joint List of Undisputed Facts, Fact No. 107; R. Lakah Depn. (10/4/2011) Tr. at 378-80.)

442. Michel Lakah testified that while he knew ASF owned shares in a company at East Port Said, he did not recall the amount or the quantity, and he did not recall whether he owned shares in that company; and he did not remember anything about the project. (Joint List of Undisputed Facts, Fact No. 108; M. Lakah Depn. (11/11/2008) Tr. at 134-35; M. Lakah Depn. (11/12/2008) Tr. at 252-53.)

443. Michel Lakah has no recollection of ACIS or the East Port Said Project or Sharq al Tafria or whether he personally owned any interest in the company at East Port Said. (M. Lakah Depn. (11/11/2008) Tr. at 134-35; M. Lakah Depn. (11/12/2008) Tr. at 252-53.)

444. The Lakahs have produced no records concerning their stated holding of 1.3 million shares of ACIS, as represented in the Eurobond Offering Circular.

445. Ramy Lakah has produced no documents regarding his reported investment in ACIS, as described in the Eurobond Offering Circular.

446. Michel Lakah has produced no documents regarding his reported investment in ACIS, as described in the Eurobond Offering Circular.

447. ASF has produced no banking documents regarding its stated investment in ACIS, as disclosed in the Eurobond Offering Circular.

448. ASF has produced no bookkeeping documents regarding its stated investment in ACIS, as disclosed in the Eurobond Offering Circular.

449. ASF has produced no transaction documents regarding its stated investment in ACIS, as disclosed in the Eurobond Offering Circular.

450. ASF's stated acquisition of 1.2 million shares of ACIS, as disclosed in the Eurobond Offering Circular, was not the subject of any meeting of ASF's Board of Directors for which minutes have been produced.

451. ASF has produced no Board of Directors records reflecting a decision to acquire 1.2 million shares of ACIS, as disclosed in the Eurobond Offering Circular.

452. ASF has produced no Board of Directors records reflecting a decision to invest approximately E£ 124 million in ACIS, as disclosed in the Eurobond Offering Circular.

I. How the Lakahs Cooked the Books: Inflating States Capital with the Stock Kiting Scheme

453. In early December 1998, immediately after their formation of HCFI, Ramy and Michel Lakah transferred almost 97% of the shares of TMSE, Medequip, and ASF, at their then market-value, to HCFI in exchange for new shares of HCFI. (Joint List of Undisputed Facts, Fact Nos. 68, 69, 70, 116-118.)

454. The statement in the Offering Circular of HCFI's paid in capital was inflated in part by means of a stock-kiting scheme. The Lakahs artificially increased the respective share prices of Medequip, TMSE and ASF during the several months prior to the Lakahs' "payment in" of their shares of those companies (valued at their then inflated market prices) to HCFI in exchange for newly-subscribed shares of HCFI (priced at par of E£ 10 per share). (RTX 271 (Imburgia Report) at 29-31, 33-36, 61-63.)

455. During the period June-November 1998, the Lakahs caused the prices of the shares of Medequip, TMSE, and ASF to increase by trading them repeatedly in small amounts in related-party transactions in the stock market. (RTX 111 (Capital Market

Authority letter to Prof. Dr. Aly ElGhatit dated October 1, 2006, at 1-2); RTX 112 (Capital Market Authority letter to Prof. Dr. Aly ElGhatit dated October 18, 2006); RTX 107 (Report on Case No. 637 of 2001, Supreme Public Property Prosecution Bureau, 4/27/2004) transl. at 1, 6, 9-10, 13-14, 16- 17, 22, 24-28); RTX 132 (transl. at 1-2); RTX 109 (Interview under oath, on 10/12/02, by Egyptian Public Prosecutor of Maher Ahmed Salah El Din, Capital Market Authority Economic Researcher and member of the CMA Inspection Committee regarding El Eman Securities Brokerage) transl. at 3-5, 10, 15-17); RTX 105 (Memorandum addressed to CMA Chairman concerning the results of the inspection of Al Eman, 1/23/2001) transl. at 8); and RTX 106 and 129.)

456. Generally, the Lakahs acted as follows:

- (a) Ramy and Michel Lakah caused the market prices of the shares of Medequip, TMSE, and ASF, respectively, to increase by making many small trades of those stocks during the period June -- November 1998;
- (b) While the stock trades often involved accounts of nominal counter-parties other than the Lakahs, the nominal trading counter-parties were for the most part associates (employees and agents) of the Lakahs;
- (c) All of the trades in question were settled in the accounts of Ramy Lakah and Michel Lakah;
- (d) The stock that was traded ultimately returned to the possession or control of the Lakahs;
- (e) Daily stock price increases caused by those small trades were kept just below the daily Egyptian regulatory control ("red flag") limit of 5%;

(f) The stock trading was conducted through a brokerage company (El Eman Securities Brokerage) that was principally owned by the Lakahs' accountant, sometime company controller, and sometime auditor -- Mohamed Sabry Abdel Gayed.

(R. Lakah Depn. (10/20/11) Tr. at 15:10-16:3 (admitting shares of Medequip, TMSE, and ASF were traded on stock exchange); RTX 109 (Interview under oath, on 10/12/02, by Egyptian Public Prosecutor of Maher Ahmed Salah El Din, Capital Market Authority Economic Researcher and member of the CMA Inspection Committee regarding El Eman Securities Brokerage) transl. at 3-5, 10, 15-16); RTX 132 (transl. at 1-2); RTX 107 (Report on Case No. 637 of 2001, Supreme Public Property Prosecution Bureau, 4/27/2004) transl. at 28); see RTX 357 (admitting in response to Fact No. 92 that it is "Undisputed that certain trading of shares in Medequip, TMSE and Medequip occurred in accounts at El Eman").)

457. The stock trades in question were made mostly in the names of persons connected to the Lakahs, including employees of the Lakah companies. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 12); RTX 108 (PP Investigative Report, CMA Undersecretary's Statement on 10/1/02, PP00059-63); RTX 109 (PP Investigative Report, CMA Economic Researcher's Statement on 10/12/02, PP00073-77); RTX 108 (Other Minutes of CMA Undersecretary's statement on 10/1/02) at 5-6, 9-10).)

458. The stock trades in question closed in accounts of Ramy Lakah and Michel Lakah at El Eman. (RTX 107 (CMA Report dated 4/27/04) at 28); RTX 105 (CMA Report to CMA Chairman, dated 1/23/01) at 5); RTX 132 (PP Internal Memorandum dated 1/8/02) at 2); RTX 109 (PP Investigative Report, CMA Economic Researcher's Statement on 10/12/02, PP00073-77); RTX 108 (Other Minutes of CMA Undersecretary's statement on 10/1/02) at 5-6, 9-10); RTX 129 (Investigation Minutes of Chief DA dated 9/16/01) at 3; RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 12).)

459. The stock trading in question began in small increments of 25 shares per day and increased eventually to 1,000 shares per day. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 12; RTX 108 (PP Investigative Report, CMA Undersecretary's Statement on 10/1/02, PP00059-63); RTX 109 (PP Investigative Report, CMA Economic Researcher's Statement on 10/12/02, PP00073-77).)

460. The stock prices in question were increased by means of such trading up to the regulatory control level of 5% per day. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 12; RTX 108 (PP Investigative Report, CMA Undersecretary's Statement on 10/1/02,

PP00059-63); RTX 109 (PP Investigative Report, CMA Economic Researcher's Statement on 10/12/02, PP00073-77).)

461. There was no news or event during June - December 1998 that could have caused or resulted in Medequip's stock price increase during that period. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 24-25; RTX 108 (Other Minutes of CMA Undersecretary's statement on 10/1/02) at 12.)

462. The share trading volume during the period in question was small and did not indicate an increase in market demand for Medequip's stock. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 24-25; RTX 108 (Other Minutes of CMA Undersecretary's statement on 10/1/02) at 12.)

463. The increase in the price of Medequip's stock during June-November 1998 was artificial. (RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 24-25; RTX 108 (Other Minutes of CMA Undersecretary's statement on 10/1/02) at 12.)

464. The share trading volumes during the period in question were small and did not indicate an increase in market

demand for the stock of TMSE or of ASF. (RTX 108 (Minutes of PP's Interview of CMA Undersecretary, pp. 9-10, 12).)

465. The increase in the price of TMSE's stock during the period in question was artificial. (RTX 107 (CMA Report dated 4/27/04) at 10; RTX 108 at 5-6.)

466. The increase in the price of ASF's stock during the period in question was artificial. (RTX 107 at 14; RTX 108 at 5-6.)

467. Ramy and Michel Lakah each had a personal brokerage account at El Eman. (Joint List of Undisputed Facts, Fact Nos 75-79; RTX 88 (Letter from Frankfurt Kurnit Klein & Selz, P.C., to Mintz Levin Cohn Ferris Glovsky and Popeo, PC, dated 12/21/2009 at 1).)

468. Michel Lakah traded shares of the Guarantor companies through El Eman. (Joint List of Undisputed Facts, Fact Nos. 75-76.)

469. El Eman also handled Michel Lakah's transfers to HCFI of shares of ASF, TMSE, and Medequip. (Joint List of Undisputed Facts, Fact No. 77.)

470. Michel Lakah's shares of HCFI were also held in a personal account at El Eman. (Joint List of Undisputed Facts, Fact Nos. 75-78.)

471. Mohamed Sabry Abdel Gayed was the Chairman and principal owner of El Eman Securities Brokerage. (Joint List of Undisputed Facts, Fact No. 73.)

472. Mohamed Sabry Abdel Gayed was also an accountant. (Joint List of Undisputed Facts, Fact No. 74.)

473. Mohamed Sabry Abdel Gayed was an accountant for the Lakahs' companies. (RTX 357 (S/J Undisputed Fact No. 99); R. Lakah Depn. (11/13/2008) Tr. at 86-87; Amgad Edward George Haddad Depn. Tr. at 167-68, 245-47.)

474. Ayman Mohamed Sabry Abdel Gayed is the son of Mohamed Sabry Abdel Gayed, and was also an officer/director of El Eman. (R. Lakah Depn (10/4/2011) at 282:12-20.)

1. Kiting of Medequip Stock

475. During the period from June 1 through November 29, 1998, Medequip's share trading price was increased by 78% from E£ 100/share to E£ 178/share. (RTX 357 (S/J Undisputed Fact No. 84); RTX 40 (GDS Offering Circular) at 52; RTX 107 (Report on Case No. 637 of 2001, Supreme Public Property Prosecution Bureau, 4/27/2004) transl. at 6-8, 10, 13); RTX 105 (Memorandum

addressed to CMA Chairman concerning the results of inspection of Al Eman, 1/23/2001) transl. at 8; RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 22-25); RTX 109 (Other Minutes of CMA economic researcher's statement on 10/12/02) at 8-9); RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 9-10.)

476. On or about December 6, 1998, the Lakahs transferred ownership of 978,000 of their shares of Medequip -- approximately 97% of the company's issued shares -- valued at E£174,084,000 according to the then market share price, to HCFI in exchange for shares of HCFI valued at par of E£ 10 per share. (Joint List of Undisputed Facts, Fact Nos. 68, 116; RTX 45 (OC at 36); R. Lakah Depn. (11/14/2008) Tr. at 92; R. Lakah Depn. (10/4/2011) Tr. at 14-17; RTX 40 at 52; M. Lakah Depn. (11/11/2008) Tr. at 121-23; RTX 45 (OC at 42, F- 21, F-54); RTX 107 (CMA Report dated 4/27/04) at 21-23, 28-30; RTX 113 (ACA Report dated 12/28/02) at 8-9; RTX 111 (CMA Letter dated 10/1/06); RTX 115 (PP Investigative Report, ACA Member Statement, dated 1/1/03); RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 26; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 10; RTX 8 (Petitioner Michel Lakah's Responses to Respondents' Amended

Requests for Admission (Set #2), dated 7/1/2011, Answer No. 26);
RTX 40 (RSM E 2745).)

477. The artificially inflated cumulative market price of the Medequip shares that the Lakahs transferred to HCFI was recorded as an increase of HCFI's paid-in capital. (RTX 271 (Imburgia Report) ¶14-15, 57, 78, 122- 23; see RTX 357 (S/J Undisputed Fact No. 89) (admitting the recording of increase of HCFI's paid-in capital).)

2. Kiting of TMSE Stock

478. During the period from June 6 to November 26, 1998, TMSE's share trading price was increased by 81% from E£ 100/share to E£ 181.65/share. (RTX 357 (S/J Undisputed Fact No. 90); RTX 107 (Report on Case No. 637 of 2001, Supreme Public Property Prosecution Bureau, 4/27/2004) transl. at 6, 10-13); RTX 105 (Memorandum addressed to CMA Chairman concerning results of inspection of Al Eman, 1/23/2001) transl. at 8; RTX 112 (CMA Letter dated 10/18/2006); RTX 109 (Other Minutes of CMA economic researcher's statement on 10/12/02) at 7-8; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 10); RTX 40 (GDS Offering Circular) at 52.)

479. On or about December 6, 1998, the Lakahs transferred ownership of 488,000 of their shares of TMSE -- approximately 97% of the company's issued shares -- valued at E£ 88,645,200

according to the then market share price, to HCFI in exchange for shares of HCFI valued at par of E£ 10 per share. (Joint List of Undisputed Facts, Fact Nos. 69, 115; RTX 40 at 52; M. Lakah Depn. (2008) Tr. at 121-23); RTX 45 (OC at 36, 50, F-28, F-60); RTX 107 (CMA Report dated 4/27/04) at 21-23, 28-30; RTX 113 (ACA Report dated 12/28/02) at 8-9; RTX 111 (CMA Letter dated 10/1/06); RTX 115 (PP Investigative Report, ACA Member Statement, dated 1/1/03); RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 26; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 10; RTX 8 (Petitioner Michel Lakah's Responses to Respondents' Amended Requests for Admission (Set #2), dated 7/1/2011, Answer No. 26); R. Lakah Depn. 11/13/2008 Tr. at 200-02; R. Lakah Depn. 11/14/2008 Tr. at 92; R. Lakah Depn. 5/12/2009 Tr. at 56-66; R. Lakah Depn. 10/4/2011 Tr. at 14-17.)

480. The artificially inflated cumulative market price of the TMSE shares that the Lakahs transferred to HCFI was recorded as an increase of HCFI's paid-in capital. (RTX 271 (Imburgia Report) ¶14-15, 57, 78, 122-23; see RTX 357 (S/J Undisputed Fact No. 92) (admitting the recording of increase of HCFI's paid-in capital).)

3. Kiting of ASF Stock

481. During the period from June 3 to December 1, 1998, ASF's share trading price was increased by more than 94% from E£ 10/share to E£ 19.42/share. (RTX 357 (S/J Undisputed Fact No. 93); RTX 107 (Report on Case No. 637 of 2001, Supreme Public Property Prosecution Bureau, 4/27/2004) transl. at 6, 10, 13, 14-16; RTX 105 (Memorandum addressed to CMA Chairman concerning results of inspection of Al Eman, 1/23/2001) transl. at 8; RTX 112 (CMA Letter dated 10/18/2006); RTX 115 (Other Minutes of CMA economic researcher's statement on 10/12/02) at 9-10; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 9; RTX 40 (GDS Offering circular) at 52.)

482. On or about December 6, 1998, the Lakahs transferred ownership of 24,480,400 of their shares of ASF -- approximately 97% of the company's issued shares -- valued at E£ 475,409,369 according to the then market share price, to HCFI in exchange for new shares of HCFI valued at par of E£ 10 per share. (Joint List of Undisputed Facts, Fact Nos. 70, 117; M. Lakah Depn. (2008) Tr. at 121-23; RTX 45 (OC at 36, F-66); R. Lakah Depn. 11/14/2008 Tr. at 92; R. Lakah Depn. 10/4/2011 Tr. at 14-17; RTX 107 (CMA Report dated 4/27/04) at 21-23, 28-30; RTX 113 (ACA Report dated 12/28/02) at 8-9; RTX 111 (CMA Letter dated 10/1/06); RTX 115 (PP Investigative Report, ACA Member

Statement, dated 1/1/03, PP00124-25); RTX 110 (PP Investigation Report, CMA economic researcher's statement on 5/8/04) at 26; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 10; RTX 8 (Petitioner Michel Lakah's Responses to Respondents' Amended Requests for Admission (Set #2), dated 7/1/2011, Answer No. 26); RTX 40 at 52 (RSM E 2745).)

483. The artificially inflated cumulative market price of the ASF shares that the Lakahs transferred to HCFI was recorded as an increase of HCFI's paid-in capital. (RTX 271 (Imburgia Report) ¶¶14-15, 57, 78, 122-23; see RTX 357 (S/J Undisputed Fact No. 95) (admitting the recording of increase of HCFI's paid-in capital).)

J. How the Lakahs Cooked the Books: Inflating Stated Capital with the False Capital Scheme

484. The Lakahs were the sole subscribers to virtually all of the issued shares of each of the Guarantor companies -- Medequip, TMSE, ASF, and HCFI. (RTX 14-26 (For Medequip, see RTX 18 (LD0482-85 (describing initial share subscription (1994))), RTX 19 (LD0513-16 (March 1996 share subscription), RTX 20 (March 1998 share subscription); For TMSE, see RTX 21 (LD0518-23 (describing initial share subscription (1994))), RTX 22 (LD0555-58 (March 1996 share subscription)), RTX 23 (LD0559-62 (March 1998 share subscription)); for ASF, see RTX 24 (LD0564-68 (describing initial share subscription (1994))), RTX 25 (LD0603-

07 (March 1996 share subscription)), RTX 26 (LD0594-98 (March 1998 share subscription)); and for HCFI, see RTX 14 (LD0427-32), RTX 15 (LD0435-37 (describing initial share subscription (Nov. 1998))), RTX 16 (LD0469-72 (December 1998 share subscription)), and RTX 17 (LD0473-78 (June 1999 share subscription)).)

485. In nearly every instance in which the Lakahs purported to add capital to the Guarantor companies by subscribing to new shares, the Lakahs did not pay for those shares, the companies did not receive unencumbered payment for those shares, and the companies did not retain any payment for those shares. (RTX 271 (Imburgia Report) at 6, 9, ¶¶36-50, 76-119; RTX 113 (ACA fictitious capital report dated December 28, 2002) transl. at 9-10); RTX 136 (Report of Misr International Bank dated October 12, 2003, at 46, 48); M. Lakah Depn. 8/16/2011 Tr. at 12-13, 24-25, 88-91 (testifying that he did not deposit with HCFI any of the E£ 35 million down payment for share subscription in 1999); R. Lakah Depn. 10/4/2011 Tr. at 273 (testifying that he did not pay in to HCFI that E£ 35 million down payment or any of the E£ 350 million capital increase in 1999); RTX 56 (Fax, dated December 9, 1999, from Lakah Group to WDR (Eurobond manager)); RTX 54 (Acknowledgement of receipt of payment from HCFI to The Bank of New York (L1066-1067)); RTX 55 (Misr Clearance for Settlement and Central Depository (S.A.E.) (L645-49)); see also

RTX 49; RTX 57 (Board meeting minutes of HCFI, dated 12/12/1999); RTX 59 (Board meeting minutes of HCFI, dated 12/25/1999, 9 a.m. (LD 2081-2084)); RTX 60 (Board meeting minutes of HCFI, dated 12/25/1999, 11 a.m. (LD 0189-0190, 0194)); RTX 61 (Board meeting minutes of HCFI, dated 12/27/1999); RTX 91 (RSM E 1079-1089); Ex 109 (RSM E 1160-1161, 1179); RTX 62 (HCFI Consolidated Balance Sheet (BH 000960,966); see also RTX 63 and 64 (BH1015)).)

486. Although the Guarantor companies in each such instance did not retain any subscription capital payment from or on behalf of the Lakahs, the Guarantor companies falsely recorded and stated subscription capital increases nonetheless. (RTX 271 (Imburgia Report) at 6, 9, ¶¶36-50, 76-119; RTX 113 (ACA fictitious capital report dated December 28, 2002); RTX 136 (Report of Misr International Bank dated October 12, 2003, at 6-9, 14-15, 45, 46, 48); RTX 45 (OC at F-38 (HCFI Balance Sheet as of 6/30/99), F-49 (Medequip Balance Sheet as of 6/30/99), F-56 (TMSE Balance Sheet as of 6/30/99), and F-62 (ASF Balance Sheet as of 6/30/99); RTX 27, 29-31 (Commercial Registers of Guarantors); RTX 14-17 (Companies Sheet (for HCFI, see LD0427-32, LD0435-37 (describing initial share subscription (Nov. 1998)), LD0469-72 (December 1998 share subscription), and LD0473-78 (June 1999 share subscription); RTX 18-20 (for

Medequip, see LD0482-85 (describing initial share subscription (1994)), LD0513-16 (March 1996 share subscription), DBLON 01760-63 (March 1998 share subscription); RTX 21-23 (for TMSE, see LD0518-23 (describing initial share subscription (1994)), LD0555-58 (March 1996 share subscription), LD0559-62 (March 1998 share subscription)); and RTX 24-26 (for ASF, see LD0564-68 (describing initial share subscription (1994)), LD0603-07 (March 1996 share subscription), LD0594-98 (March 1998 share subscription)).)

487. The Lakahs actually used Guarantor company funds in order to create the appearance of payment for their personal subscriptions to newly issued shares of those companies. (RTX 271 (Imburgia Report) at 9 and ¶¶78-113; RTX 113 (ACA fictitious capital report dated December 28, 2002); RTX 136 (Report of Misr International Bank dated October 12, 2003, at 6-9, 14-15, 45, 46, 48); RTX 45 (OC at F-38 (HCFI Balance Sheet as of 6/30/99), F-49 (Medequip Balance Sheet as of 6/30/99), F-56 (TMSE Balance Sheet as of 6/30/99), and F-62 (ASF Balance Sheet as of 6/30/99); RTX 27, 29-31 (Commercial Registers of Guarantors); RTX 14-17 (Companies Sheet (for HCFI, see LD0427-32, LD0435-37 (describing initial share subscription (Nov. 1998)), LD0469-72 (December 1998 share subscription), and LD0473-78 (June 1999 share subscription); RTX 18-20 (for Medequip, see LD0482-85

(describing initial share subscription (1994)), LD0513-16 (March 1996 share subscription), DBLON 01760-63 (March 1998 share subscription); RTX 21-23 (for TMSE, see LD0518-23 (describing initial share subscription (1994), LD0555-58 (March 1996 share subscription), LD0559-62 (March 1998 share subscription)); and RTX 24-26 (for ASF, see LD0564-68 (describing initial share subscription (1994)), LD0603-07 (March 1996 share subscription), LD0594-98 (March 1998 share subscription).)

488. With respect to each of the Guarantor companies, the Lakahs' "False Capital Scheme" was carried out essentially as follows:

- (a) Ramy Lakah and Michel Lakah subscribed to an issue of new shares from the company and thereby incurred a subscription capital payment obligation to the company;
- (b) an agent or surrogate of the Lakahs personally borrowed funds from a bank in the amount of the share subscription payment obligation and transferred those funds into the company's account at that same bank;
- (c) the company's funds were simultaneously pledged to the bank as security for the personal loan given to the Lakahs' agent or surrogate;
- (d) the bank issued a certificate indicating the deposit of the borrowed funds in the company's account;
- (e) the company submitted the deposit certificate to an Egyptian ministry as evidence of a capital investment and was thus able to record on the company's Commercial Register an increase of paid-in capital in the amount of the deposit;
- (f) the company funds were then quickly transferred from the company account back to the account of the Lakahs' agent or

surrogate, or directly to the bank, to pay the personal debt obligation of the Lakahs' agent or surrogate to the bank - that is, the Lakahs used the company's funds to repay the personal debt to the bank;

- (g) the company did not reduce its stated paid-in capital accordingly, either in its Commercial Register or on its balance sheets; and
- (h) the Lakahs kept the company's shares, to which they had subscribed.

(RTX 271 (Imburgia Report) at 6, 9, ¶¶36-50, 76-119; RTX 113 (ACA fictitious capital report dated December 28, 2002) transl. at 9-10; RTX 136 (Report of Misr International Bank dated October 12, 2003, at , at 6-9, 14-15, 45, 46, 48); RTX 27-31 (Commercial Registers of the 4 Guarantors)).)

489. Mohamed Sabry Abdel Gayed and his son, Ayman Mohammed Sabry Abdel Gayed, each acted as an agent or surrogate of the Lakahs in the False Capital Scheme. (RTX 113 (ACA fictitious capital report dated December 28, 2002) transl. at 9-10; RTX 136 (Report of Misr International Bank dated October 12, 2003, at 46, 48); M. Lakah Depn. 08/16/2011 Tr. at 22-24, 94-95, 134-35).)

490. Mohammed Sabry Abdel Gayed was involved in recording the increases of HCFI's capital in 1999. (RTX 357 (S/J Undisputed Fact No. 133); M. Lakah Depn. 8/16/2011 Tr. at 21-22, 24; RTX 17 (at LD0478).)

491. Michel Lakah ordered the transfer of Guarantor company funds from the company account to the account of the Lakahs' agent or surrogate, or directly to the bank, to pay the personal debt obligation of the Lakahs' agent or surrogate to the bank. (RTX 115 (Interview under oath on 1/1/2003, by Egyptian Public Prosecutor of Amr Mohamed Taher, member of the Administrative Control Authority) transl. at 7.)

492. There were some 37 cases of the Lakahs' use of the False Capital Scheme during the period from March 13, 1996 through December 21, 1999, with regard to companies within the Lakah Group, producing fictional capital increases of E£ 1,240,000,000. (RTX 271 (Imburgia Report) ¶60; RTX 120 ("Examination Report Bank Deposit Certificates Issued by of Misr International Bank -- El Alfya and Giza Branches.") transl. at 2-7, 10-14 (detailed description of bank-loan fraud); RTX 136 (MI Bank Report, dated 10/12/03) at 6-18, 45-46, 49-52; RTX 133 (PP Investigative Memorandum dated 5/25/05) at 2; RTX 135 (PP Investigative Memorandum dated 12/18/07) at 2-3; RTX 134 (PP Investigative Memorandum, dated 5/07) at 2.)

493. The use by the Lakahs of the False Capital Scheme produced inflated balance sheet numbers and thus enabled the Guarantor companies to attract financing based on false appearances of financial strength. (RTX 271 (Imburgia Report) at

7, and ¶¶ 51-52, 69, 74, 125, 178; RTX 115 (PP Investigative Report, ACA Member Statement, dated 1/1/03) at 12; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 3-11; RTX 115 (Other Minutes, ACA Member Statement, dated 1/1/03) at 6-8, 12)).)

494. The False Capital Scheme was used as a basis to record increases of the stated capital of ASF as follows:

- (a) March 4, 1996 -- stated capital was increased from E£ 250,000 to E£ 20,000,000 (bank: Misr International Bank ("MI Bank"), El Alfy Branch). (RTX 25 (LD0603-07); RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02 at 7); RTX 113 (ACA Report dated 12/28/02) at 7.)
- (b) March 15, 1998 -- stated capital was increased from E£ 20,000,000 to E£ 135,000,000 (bank: MI Bank, El Alfy Branch). (RTX 26 (LD0594-98); RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) transl. at 7); RTX 113 (ACA Report dated 12/28/02) at 7.)
- (c) March 22, 1998 -- stated capital was increased from E£ 135,000,000 to E£ 250,000,000 (bank: MI Bank, Giza Branch). (RTX 26 (LD0594-98); RTX 113 (ACA Report dated 12/28/02) at 7; RTX 136 (MI Bank Report dated 10/12/03) at 6-7; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) transl. at 7).)

495. The False Capital Scheme was used as a basis to record increases of the stated capital of Medequip as follows:

- (a) March 14, 1996 -- stated capital was increased from E£ 250,000 to E£ 20,000,000 (bank: Misr International Bank ("MI Bank"), El Alfy Branch). (RTX 113 (ACA Report dated 12/28/02) at 5; RTX 131 (PP Investigative Report dated 12/30/02) at 3-6; RTX 115 (Other Minutes, ACA Member Statement, dated 1/1/03) at 5, 10-13 28.)

- (b) March 29, 1998 -- stated capital was increased from E£ 20,000,000 to E£ 100,000,000 (bank: MI Bank, Giza Branch). (RTX 20; RTX 136 (MI Bank Report dated 10/12/03) at 7-8; RTX 131 (PP Investigative Report dated 12/30/02) 5, 10-12 28; RTX 115 (Other Minutes, ACA Member Statement, dated 1/1/03) at 5, 10-13 28.)

496. The False Capital Scheme was used as a basis to record increases of the stated capital of TMSE as follows:

- (a) March 1996 -- stated capital was increased from E£ 250,000 to E£ 20,000,000 (bank: MI Bank, El Alfy Branch). (RTX 22 (LD0555-58); RTX 113 (ACA Report dated 12/28/02) at 5-6); RTX 131 (Other Minutes, PP's review of ACA report dated 12/30/02) at 5-6); RTX 115 (Other Minutes, ACA Member Statement, dated 1/1/03) at 15).)
- (b) March 29, 1998 -- stated capital was increased from E£ 20,000,000 to E£ 50,000,000 (bank: MI Bank, Giza Branch). (RTX 23 (LD0559-62); RTX 136 (MI Bank Report dated 10/12/03) at 8); RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 5-6.)

497. The False Capital Scheme was used as a basis to record increases of the stated capital of HCFI as follows:

- (a) November 29, 1998 -- initial stated subscription capital recorded was E£ 3,000,000 (bank: MI Bank, Giza Branch). (RTX 14 (LD0427-32); RTX 15 (LD0435-37); RTX 136 at 46; R. Lakah Depn. (10/20/2011) Tr. at 18:25-19:10 (admitting capital increase recorded in late November or early December 1998); R. Lakah Depn. (5/12/2009) Tr. at 53:2-15 (R. Lakah does not recall whether any of the E£ 3 million initial subscription capital was ever paid into HCFI); R. Lakah Depn. (10/4/2011) Tr. at 249:2-6, 248:10-14 (same).)
- (b) June 30, 1999 -- stated capital was increased by E£ 35,000,000 (bank: MI Bank, Giza Branch). (RTX 17 (LD0473-78); RTX 136 at 15; M. Lakah Depn. (8/16/2011) Tr. at 12-13, 24-25, 88-91 (admitting that he did not deposit with HCFI any of the E£35 million down payment for the share subscription); R. Lakah Depn. (10/4/11) Tr. at 251:10-252:2 (neither R. Lakah nor M. Lakah increased the capital by E£ 35 million in 1999); R. Lakah Depn.

(5/12/2009) Tr. at 90:13-91:5 (R. Lakah cannot identify any document showing that HCFI received the E£ 35 million down payment subscription payment from R. Lakah or M. Lakah); R. Lakah Depn. (10/4/2011) Tr. at 26:18-27:4, 254:21-255:22, 274:3-15 (R. Lakah did recall whether he and M. Lakah had paid in any of the E£ 350 million subscription in 1999); id. at 273:20-24 (R. Lakah did not pay in any of the E£ 350 million capital increase in 1999).)

498. The Lakahs used the same False Capital Scheme to inflate the stated paid-in capital of another company owned by them personally -- i.e., Scandinavian Company for Touristic Investments. Adham Oda Pacha, its General Manager, witnessed the utilization of that False Capital Scheme. (RTX 214 (Oda Pacha Decl.) ¶¶12, 30- 45; Depn. of A. Oda Pacha at 41-42, 47, 49, 51-61, 64-70, 75-76, 248-53 (referring to his declaration ¶¶30-45), 268-69; R. Lakah Depn. (11/13/2008) Tr. at 178-80 (ownership of Scandinavian); M. Lakah Depn. (8/16/2011) Tr. at 134-35 (re: involvement of Abdel Gayed).)

499. The Lakahs used the same False Capital Scheme to inflate the stated paid-in capital of another company owned by them personally -- i.e. Empain for Touristic Investments. Adham Oda Pacha, its CEO, witnessed the utilization of that False Capital Scheme. (Depn. of A. Oda Pacha at 41-42, 43-44, 61-64, 258-59 (referring to his declaration ¶46), 286-87, 288; RTX 214 (Oda Pacha Decl. ¶46); R. Lakah Depn. 11/14/2008 Tr. at 15-17 (re: ownership).)

500. Mohammed Sabry Abdel Gayed was involved in increasing the capital of ASF. (RTX 357 (S/J Undisputed Fact No. 125); M. Lakah Depn. (08/16/2011) Tr. at 94-95; RTX 26 (at LD598); RTX 25 (LD607).)

501. Michel Lakah does not know whether he invested any personal funds in ASF. (M. Lakah Depn. (2008) Tr. at 233.)

502. Michel Lakah does not recall paying in capital to TMSE in 1997 or 1998. (M. Lakah Depn. (2008) Tr. at 234-35.)

503. Mohamed Sabry Abdel Gayed was involved in increasing the capital of Medequip in 1998. (RTX 357 (S/J Undisputed Fact No. 118); M. Lakah Depn. (8/16/2011) Tr. at 94; RTX 20 (at DBLON1763); RTX 26 at 4.)

504. Michel Lakah does not recall paying any subscription capital into Medequip in 1997 or 1998, including in June 1998. (M. Lakah Depn. (2008) Tr. at 234-35; M. Lakah Depn. (8/16/2011) Tr. at 94 (referring to RTX 136, p. 44).)

505. The Lakahs admitted their Fictional Capital Scheme on the record in papers and in several judicial conferences:

"Here, the companies improved their balance sheets, a legitimate business purpose, using a practice which was legal and permissible under then-existing Egyptian law."

(RTX 104 (excerpts from Petitioners' Memorandum of Law Addressing Factors Relevant to Piercing the Corporate Veil, dated November 5, 2009) at 6.)

"These capital increases were legal in Egypt at the time that this occurred, and it would have been so said by any attorney and any accountant."

(Jud. Conf. (1/20/10) (Tr. 12:21-24) (statement by L. Steckman).)

"It's clear that the bank certificate fraud was designed to increase the capital of these companies to make them more attractive to investors to get money for the companies."

(Jud. Conf. (3/9/10) Tr. at 27:9-12 (statement by R. Minkoff).)

"Well, there was a determination by the Court in Cairo that with respect to the transactions, when looking at it with respect to the banks and banking law at the time, they had found that the transactions did not violate any banking laws at the time. And subsequent to what -- subsequent to these allegations, without conceding anything, the Egyptian government passed a law to bar these kinds of transactions, which is, of course, implying that they weren't illegal at the time."

(Jud. Conf. (3/9/10) Tr. at (33:14-22) (statement by J. Goldman) (emphasis added).)

"What the Lakahs did through their companies and with the blessing of their accountants was absolutely legal at the time. Subsequently, after these transactions . . . the law was changed in Egypt by the Central Banking Committee."

(Jud. Conf. (4/5/11, before Mag. J. Maas) Tr. at 24:23-25:2

(statement by L. Steckman).)

“Your Honor, when I was last in Egypt, I spent some considerable time with an Egyptian accountant, with a rather impeccable resume, who told me what I just told you, which is that these events were absolutely lawful at the time that they were entered into.”

(Jud. Conf. (4/5/11, before Mag. J. Maas) Tr. at 28:13-17

(statement by L. Steckman).)

506. The Lakahs argued in this proceeding that their False Capital Scheme was legal and commonplace in Egypt:

“Your Honor, I ask again, tell me the law that was violated. I know what happened in Egypt. This was not illegal. This was a widespread practice, and at a certain point in history in Egypt’s law, a law was passed that made it an illegal practice. At the time this occurred, it was legal. It was widespread. No action was taken against the Lakahs, because nobody determined the law was violated. So if counsel thinks the law was violated, why doesn’t he tell me now what law and when?”

(Jud. Conf. (10/22/09) (Tr. 109:4-12; 110:12-16) (statements by

L. Steckman).)

507. However, the Lakahs’ expert witness regarding Egyptian law, Ehab Taha, opined that the False Capital Scheme was illegal in Egypt at the time that the Lakahs utilized it. (Taha Depn. Tr. at 89:12-90:7 (describing the transactions), id. at 221:4-

222:9 (same); id. at 272:21-276:14 (same and concluding that it would be illegal not to record a decrease in the company's funds after paying those funds back to the bank); id. at 266:3-267:7 (concluding "it's definitely wrong."); id. at 209:22-209:24 (admitting that Egyptian law prohibits fraud); id. at 215:12-215:20 (admitting that Egyptian law prohibits misrepresentation in a company's financial statement and commercial register).)

K. How the Lakahs Cooked the Books: Additional Fictional Increased of Capital of HCFI (E£350,000,000), and Usurpation by the Lakahs of Company Funds (E£350,000,000), in Connection with the GDS Offering of HCFI Shares (Aug. 1999)

508. The Lakahs subscribed to 35 million newly issued shares of HCFI in June 1999, sold them in a public offering in August 1999, received the sale proceeds, and paid in no subscription capital to HCFI. (RTX 357 (S/J Undisputed Fact Nos. 127-29, 131, 139, 146-48, 150-54); R. Lakah Depn. (10/4/2011) Tr. at 273; RTX 271 (Imburgia Report) at 9, and ¶¶18-19, 41-43, 78-119.)

509. In June 1999, HCFI issued 35 million new shares (par value E£ 10 each); Ramy Lakah and Michel Lakah subscribed to all of those shares in equal amount. (Joint List of Undisputed Facts, Fact No. 81.)

510. The Lakahs subscribed to those 35 million new shares of HCFI with the stated intent to re-sell them in the

international market "packaged" as Global Depository Shares ("GDSs") (also referred to as Global Depository Receipts ("GDRs")). (Joint List of Undisputed Facts, Fact No. 84.)

511. Each GDS represented three ordinary shares (par value E£ 10 each) of HCFI. (Joint List of Undisputed Facts, Fact No. 85.)

512. Regarding the GDS offering:

- (a) HCFI did not sell shares to the public; Ramy Lakah and Michel Lakah subscribed to HCFI shares and sold those shares, packaged as GDSs, to the public. (RTX 357 (S/J Undisputed Fact Nos. 141, 146, 148); RTX 40 (GDS Prospectus) at 1-2, 8, 23-25, 52, 54, 104, 147; (Minutes of HCFI Board Meeting on June 28, 1999); RTX 38 (titled "HOLDING COMPANY 39 FOR FINANCIAL INVESTMENTS (LAKAH GROUP), S.A.E., Minutes of Resolutions Adopted at the Meeting of the Board of Directors on July 12, 1999"); RTX 39 (Minutes of HCFI board resolution dated 7/29/1999).)
- (b) HCFI's Board of Directors did not authorize the share issuance. No meetings of HCFI's Board of Directors were held; therefore, the alleged Board meeting minutes indicating that consent and authorization of the GDS offering were given by a Board of Directors were falsified. (RTX 177 (Khadr Decl. 14-15, 17-32); Khadr Depn. Tr. at 60-61; See RTX 214 (Decl of A. Oda Pacha at 78); Murphy Depn. Tr. at 518-519 (regarding meeting allegedly held on Christmas Day) and 499-506 (regarding meeting allegedly held on 6 Oct. 1999).)

513. Mohamed Khadr, a nominal member of the Board of Directors of HCFI, first learned that HCFI planned to make a stock offering in 1999 when Ramy Lakah asked him to prepare information regarding the medical businesses for purposes of the

transaction. (RTX 177 (Khadr Decl. ¶103); Khadr Depn. Tr. at 168-69.)

514. The Lakahs did not tell Khadr the purpose or intended use of the financing they would raise in this way. (RTX 177 (Khadr Decl. ¶105); Khadr Depn. Tr. at 172.)

515. In the Prospectus for the Global Offering of GDSs, Ramy and Michel Lakah (referred to as the "Selling Shareholders") represented that the GDS Prospectus contained

"all information with respect to the Company [i.e., HCFI], the Company and its Subsidiaries (as defined therein) taken as a whole, the Shares, the GDSs and the Master GDR which is material in the context of the issue and offering of the GDSs, the statements contained herein are in every material particular true and accurate and not misleading, ... there are no other facts the omission of which would, in the context of the issue and offering of the GDSs, make any statement in [the GDS Prospectus] misleading in any material respect and...[the Selling Shareholders] accept responsibility for the information contained in this Offering Circular; provided that this confirmation does not extend to information set out under the heading "The Egyptian Health and Medical Sectors" and "The Arab Republic of Egypt" (except that the Company and the Selling Shareholders accept responsibility for the correct extraction of publicly available information)."

(RTX 357 (S/J Undisputed Fact No. 141); RTX 40 (GDS Prospectus at 3, 8).)

516. Michel Lakah and Ramy Lakah approved the printing and distribution of the GDS Prospectus and the offering of the GDSs. (Joint List of Undisputed Facts, Fact No. 86.)

517. The subscription price for the 35 million new shares issued by HCFI to the Lakahs in June 1999 was E£ 350 million. (Joint List of Undisputed Facts, Fact No. 82.)

518. Ramy Lakah and Michel Lakah were personally obligated, as of June 1999, to pay in to HCFI subscription capital of E£ 175 million each. (Joint List of Undisputed Facts, Fact No. 83.)

519. The Lakahs represented in the OC that they personally made a first subscription capital payment to HCFI in July 1999 of E£ 35,000,000 (10% of their subscription payment obligations) for their share subscriptions in June 1999. (Joint List of Undisputed Facts, Fact No. 87); RTX 45 (OC) at 8, 22, 36-37 and F-46-47 (HCFI Financial Statement as at 6/30/1999, Note 17).)

520. HCFI recorded an increase of paid-in capital of E£ 35 million in its Commercial Register on or about July 12, 1999. (Joint List of Undisputed Facts, Fact No. 88; RTX 27 (HCFI Commercial Register extract dated 1/29/2001, trans. at 8, 10 (entry no. 4)).)

521. This was an instance of the Lakahs' use of the False Capital Scheme; HCFI did not receive and retain the alleged E£ 35,000,000 payment by the Lakahs. (M. Lakah Depn. 8/16/2011 Tr. at 12-13, 24-25, 88-91 (testifying that he did not deposit with HCFI any of the E£ 35 million down payment for share subscription in 1999); R. Lakah Depn. 10/4/2011 Tr. at 273 (testifying that he did not pay in to HCFI that E£ 35 million down payment or any of the E£ 350 million capital increase in 1999); RTX 136 (MI Bank Report, dated 10/12/03) at 15; RTX 113 (ACA Report dated 12/28/02) at 10 (stating that HCFI received no funds from the GDS offering); RTX 271 (Imburgia Report) at 9.)

522. Michel Lakah did not pay in to HCFI any of the E£ 35 million capital increase that was stated to have been made in June or July 1999. (M. Lakah Depn. (8/16/2011) Tr. at 12-15 (does not recall paying any of the E£ 35 million), 20-21, 24-25, and 88-91 (saying he did not deposit any of the E£ 35 million into HCFI's account).)

523. Michel Lakah does not recall paying any capital into HCFI. (M. Lakah Depn. (11/12/2008) Tr. at 237-39.)

524. Ramy Lakah did not pay in to HCFI any of the E£ 350 million capital increase that was stated to have been received by the company in 1999. (R. Lakah Depn. (10/4/2011) Tr. at 273.)

525. Ramy Lakah does not recall whether he or Michel Lakah bought shares from HCFI in June 1999. (R. Lakah Depn. (10/4/2011) Tr. at 26:18-27:4, 142:15-143:11.)

526. On or about August 2, 1999, the Lakahs' 35 million new HCFI shares were sold in a GDS Offering underwritten by Nomura Securities (among others). (Joint List of Undisputed Facts, Fact No. 89.)

527. The proceeds of that GDS offering were approximately US\$102 million (equivalent to E£ 350 million). (Joint List of Undisputed Facts, Fact No. 90.)

528. It was represented in the Eurobond Offering Circular that the Lakahs (i) kept E£ 35 million of the GDS sale proceeds as reimbursement for their alleged first payment of E£ 35 million to HCFI in July 1999, and (ii) paid the remaining GDS proceeds (i.e., E£ 315 million) to HCFI to satisfy their remaining share subscription payment obligations. (Joint List of Undisputed Facts, Fact No. 91.)

529. The Lakahs did not pay in to HCFI any of the GDS proceeds. (RTX 113 (ACA Report dated 12/28/02 at 10 (stating that HCFI received no funds from the GDS offering)); RTX 136 (MIBank Report dated 10/12/03) at 15, 48 (indicating false CD transaction of E£ 35M, and payment of E£ 52.5M out of E£

85.8825M transferred from BdC); M. Lakah Depn. (2008) Tr. at 237-39 (testifying that he does not recall paying any capital into HCFI); M. Lakah Depn. 8/16/2011 Tr. at 12-13, 24-25, 88-91 (testifying that he did not deposit with HCFI any of the E£ 35 million down payment for share subscription in 1999); R. Lakah Depn. 10/4/2011 Tr. at 273 (testifying that he did not pay in to HCFI that E£ 35 million down payment or any of the E£ 350 million capital increase in 1999).)

530. HCFI did not record an increase of paid-in capital of the E£ 315 million (or any part thereof) in its Commercial Register at or about the time of the GDS offering in August 1999. (RTX 357 (S/J Undisputed Fact Nos. 150-52); RTX 27 (HCFI Commercial Register extract dated 1/29/2001 (Doc. No. 13-14) trans. at 7-8, 10-11).)

531. HCFI's Commercial Register indicates that the company's paid-in capital increased by E£ 35 million July 1999, and by a total of E£ 315 million in December 1999. (RTX 357 (S/J Undisputed Fact Nos. 144, 151-54); RTX 27 (HCFI Commercial Register extract dated 1/29/2001 (Doc. No. 13-14) trans. at 7-8 (entries 4, 6-8) and at 10-11 (showing dates for each entry)).)

532. HCFI did not record an increase of paid-in capital of the E£ 315 million (or any part thereof) in its Commercial Register before the Eurobond offering on December 8, 1999. (RTX

357 (S/J Undisputed Fact No. 151); RTX 27 (HCFI Commercial Register extract dated 1/29/2001) trans. at 8 (entries 6-8) and at 10-11 (showing dates for each entry); RTX 57, RTX 59-61 (Minutes of HCFI Board Meetings on 12/12/99, 12/25/99, and 12/27/99 approving deposits of E£ 52.5M, E£ 140M, and E£ 122.5M for paid up capital).)

533. HCFI's Commercial Register reflects three increases of paid-in capital in December 1999, totaling E£ 315 million (ca. \$92.65 million). (Joint List of Undisputed Facts, Fact No. 92.)

534. The three increases of paid-in capital reflected in HCFI's Commercial Register in December 1999 occurred after HCFI received approximately US\$63 million (then equivalent to approximately E£ 214 million) of proceeds from the Eurobond offering. (RTX 357 (S/J Undisputed Fact No. 152); RTX 27 (HCFI Commercial Register extract dated 1/29/2001) trans. at 8, 10); RTX 57, RTX 59-61 (Minutes HCFI Board Meetings on 12/12/99, 12/25/99, and 12/27/99 approving deposits of E£ 52.5M, E£ 140M, and E£ 122.5M for paid up capital)).)

535. The three increases of paid-in capital, totaling E£ 315 million, were recorded in HCFI's Commercial Register in late December 1999 as follows:

- (a) on December 25, 1999, an increase of E£ 52.5 million;

- (b) on December 28, 1999, an increase of E£ 140 million;
- (c) on December 29, 1999, an increase of E£ 122.5 million.

(RTX 357 (S/J Undisputed Fact No. 153); RTX 27 (HCFI Commercial Register at 8 (entries 6-8) and at 10-11 (showing dates for each entry)); RTX 57 & 59-61 (Minutes of HCFI's Board meetings held 12/12/1999, 12/25/1999, and 12/27/1999).)

536. Ramy Lakah relies on HCFI's Commercial Register as the record of the payment in to HCFI of E£ 350 million from the GDS offering. (R. Lakah Depn. (5/12/09) Tr. 97:6-98:11, 99:22-100:11.)

537. The capital increases that were recorded in HCFI's Commercial Register in late December 1999 were intended to reflect receipts by HCFI of capital from the Lakahs due to their share subscriptions in June 1999. (RTX 357 (S/J Undisputed Fact No. 154); RTX 6 (Petitioner Michel Lakah's Answers to Respondents' First Request for Admissions, dated 5/13/2011, Answer No. 16); M. Lakah Depn. (8/16/2011) Tr. at 13-15.)

538. None of the three recordings of HCFI capital increases in December 1999 reflected true corresponding inflows of capital to HCFI. (RTX 271 (Imburgia Report) ¶¶88-117 (also see Fact Nos. 550-552 infra; RTX 136 (MI Bank Report, dated 10/12/03) at 15, 48; RTX 113 (ACA Report dated 12/28/02) at 9.)

539. The Lakahs usurped more than US\$35,000,000 of the Eurobond proceeds in December 1999 and used those funds to make it appear that they paid a substantial portion of their personal subscription capital payment obligations to HCFI. (RTX 271 (Imburgia Report) at ¶ 8, and ¶¶91, 97-113; RTX 91 (RSM E 1076-1105, at RSM E 1079, 1081-83, 1088-89); RTX 92 (RSM E 1160, 1162,1179); RTX 60 (Minutes of meeting of Board of Directors of HCFI, held on December 25, 1999 at 11:00 a.m. (LD 0189-90, LD 0194)); RTX 124 (Egyptian Public Prosecution (BCC) Report on The Banque du Caire -- Sarwat Branch (ASF), p. 19); RTX 62 (HCFI Consolidated Balance Sheet) (BH 000960, 966); RTX 63 (RSM E 3211-3216); RTX 64 (BH1013-1021 at 1015); RTX 113 (The Arab Republic of Egypt, Administrative Control Authority, Record 23/2, December 28, 2002) transl. at 9, 10; RTX 55 (L645-49); RTX 49 (Letters regarding loan agreement; BH 4639-4642); RTX 58 (Memorandum regarding Escrow Agreement; L1064-65); RTX 27 (Extract of the HCFI Commercial Register) transl. at 8, 11.)

540. Of the E£ 140 million that was recorded on December 28, 1999 as capital paid in by (or on behalf of) the Lakahs to HCFI, at least E£ 120,235,500 (i.e., US\$35 million) actually consisted of proceeds of the Eurobond sale. (RTX 271 (Imburgia Report) ¶¶97, 104-113 and Ex. "E"; RTX 92 (RSM E 1160, 1161, 1179); RTX 91 (RSM E 1076-1105, 1081-83); RTX 27 (Extract of the

HCFI Commercial Register, transl.) at 8, 11; RTX 25 (HCFI Consolidated Balance Sheet (BH 000960, 966)); RTX 63 (RSM E 3211-3216); RTX 64 (BH1015); RTX 9 (Petitioner Michel [sic: Ramy] Lakah's Answers to Respondents' First Requests for Admissions" dated 7/29/2011, Answer Nos. 17 and 18 (Ramy Lakah cannot deny that (i) at least USD 35 million of HCFI's own funds, which were received from ASF, were used as a basis for recording an increase of HCFI's paid-in capital on or about December 28, 1999, and (ii) HCFI's recorded increase of paid-in capital on or about December 28, 1999, was based on a certificate that was issued by BdC indicating that HCFI had received E£ 140 million into its capital account, and that Ramy Lakah and Michel Lakah collectively paid in to HCFI less than or equal to E£ 20 million of those funds out of their personal assets).)

541. The E£ 52.5 million that was recorded on December 26, 1999 as paid in capital consisted of Eurobond sale proceeds. (RTX 271 (Imburgia Report) ¶¶91-96; RTX 113 (ACA fictitious capital report, dated December 28, 2002, transl.) at 9-10; RTX 136 (Report of Misr International Bank dated October 12, 2003) transl. at 48; RTX 57 (Board meeting minutes of HCFI, December 12, 1999 ("completion of the payment of the increase in the Issued Capital of the Company, amounting to E£ 350,000,000 ... so

that the paid portion of the said increase reaches 25% through the payment of E£ 52,500.000 ... and this results in the paid up capital being E£ 1, 237,380,000 ... which amount shall remain frozen at the bank pending annotation on the Commercial Register.")); RTX 56 (Fax, dated December 9, 1999, from Lakah Group to WDR (Eurobond manager) (BH 002166)); RTX 66 (Intermedica (S.A.E.) Financial Statements as of December 31, 1999 (BH 1000)); RTX 91 (Intermedica's "Amounts due to affiliates" (RSM E 1088 - 1089)); RTX 62 (Financial Statement of HCFI as of December 31, 1999, Note 1).)

542. The medical equipment and related turnkey-projects businesses of the Lakah Group (Medequip and TMSE) never received any of the proceeds of the GDS sale of HCFI shares, which raised US\$102 million. (RTX 177 (Khadr Decl. ¶112 (Medequip)); Khadr Depn. Tr. at 163 (Medequip and TMSE); RTX 245 (Shourbagy Decl. ¶¶73-74 (TMSE)); Shourbagy Depn. Tr. at 61 (TMSE).)

543. Furthermore, no significant amount of the Eurobond proceeds went to Medequip or TMSE, which were financially squeezed and needed liquidity at the time of the Eurobond issue. (RTX 177 (Khadr Decl. ¶124); Khadr Depn. Tr. at 163 (Medequip and TMSE); RTX 245 (Shourbagy Decl. ¶¶73-74); Shourbagy Depn. Tr. at 58-59 (TMSE).)

L. Taking, Usurpation and Misappropriation by the Lakahs of Eurobond Proceeds (1999 and 2000)

1. Taking by the Lakahs of Eurobond Sale Proceeds (US\$9.09 Million) Paid to HCFI by the Predecessor of Bondholder Exporters Insurance (c/k/a Island Capital)

544. In late November 1999, prior to the issue of the Eurobond, HCFI (Ramy Lakah) agreed to take \$37 million (face amount) of the Eurobonds with the intention of selling them itself. (Joint List of Undisputed Facts, Fact No. 175; RTX 357 (S/J Undisputed Fact No. 194).)

545. The \$37 million (face amount) of Eurobonds were deposited into a custodial account, for HCFI's benefit, with UBS (London). (Joint List of Undisputed Facts, Fact No. 96.)

546. The \$37 million (face amount) of Eurobonds were sold by HCFI to third parties in varying amounts at various times during the first half of 2000 in accordance with instructions by Ramy Lakah. (RTX 357 at 133 (admitting in response to proposed Undisputed Fact No. "416 [sic: 417]" that it is "Undisputed that HCFI ... sold certain of HCIF's Eurobonds and directed that a portion of the proceeds be disbursed to Eurotechniques Hellas."); RTX 67, RTX 68, RTX 76, RTX 78; RTX 79 (Financial Statement of HCFI as of June 30, 2000 at Note 21).)

547. By about June 30, 2000, HCFI had sold all of the \$37 million (face amount) of residual Eurobonds to third parties. (Joint List of Undisputed Facts, Fact Nos. 97, 175; RTX 79 (BH0205 at Note 21 (HCFI Financial Statement as of 6/30/2000)).)

548. On June 1, 2000, Ramy Lakah instructed the UBS custodian of the unsold Eurobonds to transfer \$10 million (face amount) of the Eurobond from the custodial account to Ecoban Finance Limited "against payment for US\$9,537,000." (RTX 357 (admitting in response to Fact No. 213 that it is "undisputed that Ramy executed such an instruction on behalf of HCFI."); RTX 76 (Letter from Ramy Raymond Lakah to Mr. Ron Pye, Global Custody, June 1, 2000); RTX 6 (Petitioner Michel Lakah's Answers to Respondents' First Request for Admissions, dated 5/13/2011, Answer No. 38); see RLDX 77; R. Lakah Depn. 5/12/2009 Tr. at 227-32.)

549. Those \$10 million (face amount) of Eurobonds are currently held by respondent Exporters Insurance Co. (c/k/a Island Capital). (Joint List of Undisputed Facts, Fact No. 175; RTX 357 (S/J Undisputed Fact No. 214); RTX 307 (Stern Decl. ¶7).)

550. In a June 7, 2000 letter to UBS (London), Ramy Lakah directed that the proceeds of the sale of \$10 million (face amount) of Eurobonds to Ecoban Finance Limited be transmitted in

various amounts to the bank accounts of several recipients, including: \$200,000 to Medhat Sobhy Michael El Zid, and \$9,087,000 to Eurotechniques Hellas Ltd. (RTX 357 at 133 (admitting in response to Fact No. "416 [sic: 417]" that it is "Undisputed that HCFI ... sold certain of HCIF's Eurobonds and directed that a portion of the proceeds be disbursed to Eurotechniques Hellas."); RTX 77 (Letter from Ramy Raymond Lakah to Mr. Brent Joslrz at Global Custody, June 7, 2000); R. Lakah Depn. 5/12/2009 Tr. at 229-36.)

551. Eurotechniques Hellas was not related to HCFI. (RTX 357 (S/J Undisputed Fact No. 217); R. Lakah Depn. (5/12/2009) Tr. at 232:11 20, 234:24 236:13; ECF No. 12 (Affidavit of M. Lakah, July 5, 2007) ¶16; M. Lakah Depn. (11/12/2008) Tr. at 300-301; R. Lakah Depn (11/13/2008) at 71; see also id. at 189-91 (refusing to answer questions concerning Medequip France).)

552. Eurotechniques Hellas Ltd. was at all relevant times, including in June 2000, a wholly-owned Greek subsidiary of Medequip France, which in turn was wholly-owned (or virtually wholly-owned) personally by the Lakahs. (Joint List of Undisputed Facts, Fact No. 110; RTX 357 (S/J Undisputed Fact No. 217); M. Lakah Depn. (2008) Tr. at 82-85, 300-01; ECF No. 12 (Affidavit of M. Lakah, July 5, 2007) ¶16; Shourbagy Depn. Tr. at 112; R. Lakah Depn. (11/13/2008) Tr. at 62, 71, 187-89); R.

Lakah Depn. (5/12/2009) Tr. at 232-34; RTX 177 (Khadr Decl. ¶132).)

553. Ramy Lakah had no explanation for his instruction to transfer \$9,087,000 out of the proceeds of HCFI's sale of Eurobonds to Ecoban to a bank account of Eurotechniques Hellas. (R. Lakah Depn. (5/12/2009) Tr. at 232:11-233:4, 234:9-236:13.)

554. Medhat Sobhy Michael El Zid was, in June 2000, a member of the Board of Directors of HCFI. (Joint List of Undisputed Facts, Fact No. 109.)

555. Ramy Lakah's instruction to UBS to transfer US\$200,000 to Medhat Sobhy's personal account was surprising to Mohamed Khadr, who did not see that Lakah instruction document until years later. (RTX 177 (Khadr Decl. ¶132 referring to RTX 198); Khadr Depn. Tr. at 206.)

2. The Lakahs Took the Other Proceeds of the Sale by HCFI of \$37 million of Eurobonds in 2000

556. In light of the fact that the "Investment Portfolio" asset on HCFI's balance sheet, which was said to be a portfolio of Eurobonds, was admittedly fictitious, there is no basis to believe that HCFI received any of the proceeds of the sales of Eurobonds (\$37 million face amount), ostensibly by HCFI, in 2000. (RTX 357 (S/J Undisputed Fact No. 198, undisputed that the

"Investment Portfolio" did not exist); RTX 271 (Imburgia Report) ¶211; R. Lakah Depn. (5/12/2009) Tr. at 191:2-6, 192:25-194:9, 202:16-203:23, 204:12-22, 208:17-211:25, 205:13-207:16, 188:12-190:2, 214:15-216:23, 212:17-213:20, 195:4-7 (R. Lakah does not recall what was done with any of proceeds of the sales in 2000); see supra Fact Nos. 429-434.)

M. Other Examples of the Lakahs' Person Taking or Use of Guarantor Company Assets

1. In General

557. The funds of all Lakah-owned companies, whether inside the Lakah Group or outside the Lakah Group, were treated as if they were in one purse, and that purse belonged to the Lakahs. (RTX 177 (Khadr Decl. ¶40); RTX 245 (Shourbagy Decl. ¶¶25, 31, 54, 60, 63, 68-71); Khadr Depn. Tr. at 581-83.)

558. Whenever Ramy or Michel Lakah needed funds, the companies' funds were at their disposal. (RTX 177 (Khadr Decl. ¶41); Khadr Depn. Tr. at 581-83; RTX 245 (Shourbagy Decl. ¶¶ 25, 31, 54).)

559. They could and did simply instruct one of their personal assistants to pick up funds from any of the Guarantor (and other Lakah) companies. (RTX 177 (Khadr Decl. ¶41).)

560. They would also direct their assistants in accounting/finance to purchase things for them. (RTX 177 (Khadr Decl. ¶41).)

2. Examples

561. Out of the E£ 400,000,000 proceeds of HCFI's local bond issue in or about April 1999, E£ 55,000,000 were transferred to the account of Midwest Airlines, a company owned by the Lakahs outside the Lakah Group. (RTX 122 (BCC Report dated 2/29/04) at 13-15; RTX 177 (Khadr Decl. ¶¶69-70) (Midwest was not part of HCFI); RTX 45 (OC) at 35 (same).)

562. Michel Lakah personally took a payment from Draeger in 2001 of €600,000 that was owed to Medequip. (M. Lakah Depn. (11/11/2008) Tr. at 139-48; M. Lakah Depn. (11/12/2008) Tr. at 249.)

563. The charges on personal Visa credit cards of Ramy Lakah, his wife, Michel Lakah, his wife, and another Lakah relative were paid by Medequip until at least late summer 2000. (ECF No. 207 (Lakah Mem. of L. at 53); RTX 122 (Egyptian Public Prosecution (BCC) Report on The Banque du Caire - Sarwat Branch (HCFI)) transl. at 18; RTX 156 (Internal Banque du Caire letter, from Head Office to General Credit Department, August 17, 2000) transl. at 2.)

564. The revolving credit limits of each of the aforesaid personal credit cards of Ramy Lakah, his wife, Michel Lakah, and his wife, which were paid by Medequip, were in the hundreds of thousands of dollars. (RTX 122 (Egyptian Public Prosecution (BCC) Report on The Banque du Caire - Sarwat Branch (HCFI)) transl. at 18; RTX 156 (Internal Banque du Caire letter, from Head Office to General Credit Department, August 17, 2000) transl. p. 2.)

565. Ramy Lakah had a debt payment obligation of some E£ 10,000,000 - 20,000,000 per month to the International Islamic Bank, which Ramy paid off with funds from various Lakah Group company and other accounts. (RTX 177 (Khadr Decl. ¶46); Khadr Depn. Tr. at 146-47.)

566. The Lakahs used company funds for personal purchases such as automobiles, including a Mercedes S Class car; houses; and non-Lakah Group company expenses of various kinds. (RTX 177 (Khadr Decl. ¶47); Khadr Depn. Tr. at 579-81.)

567. The following amounts were paid from a Medequip account at the Sarwat Branch of Banque du Caire: E£ 4,000,000 to Michel Lakah's personal account at Banque du Caire; E£ 9,900,000 to Atef Felix Mubarak; and E£ 3,400,000 for payments on Visa credit cards issued to the Lakahs' wives. (RTX 125 (Egyptian

Public Prosecution (BCC) Report on Banque du Caire -- Sarwat Branch (relationship with Medequip), 2/29/2004, p. 9).)

568. In December 1998, Michel Lakah personally sold 11,498,800 of his shares of HCFI - approximately 10% of HCFI's shares at the time - to BdC for E£ 114,988,000. (RTX 357 (admitting, in response to Fact No. 299, that it is "Undisputed that Michel personally sold 11,498,800 of his shares of HCFI (7.66% of HCFI's shares at the time) to BdC for E£114,988,000); M. Lakah Depn. (11/11/08) Tr. at 78; M. Lakah Depn. (8/16/2011) Tr. at 103-04, 115 (referring to RTX 146 (MLDX 53)); RTX 45 (OC at 36 and F- 14); RTX 126 (Banque du Caire report on the Bank's Participation in the capital of the HCFI, p. 7).)

3. Examples of Lakahs' Diversion of Guarantor Company Funds and Resulting Non-Performance of Projects by Lakah Companies

569. E£ 10.4 million and E£ 12 million from construction financing provided to Medequip by National Bank of Egypt ("NBE"), ostensibly in relation to a project owned by Empain for Touristic Investment (a Lakah-owned company outside the Lakah Group), were transferred from a Medequip account at NBE (El Borg Branch) to accounts of Quest Consult (another Lakah Group company) in other banks on June 14, 1998 and July 29, 1999 respectively. When NBE inspected the supposed project site in July 2000, it found only "vacant land with a concrete mixing

station thereon, in addition to some concrete bases." (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip), transl.) at 18-20 (E£ 30 million was withdrawn on the account.); R. Lakah Depn. (11/14/2008) Tr. at 15-17 (re: ownership).)

570. Other construction financing provided to Medequip by NBE was with respect to a project owned by Scandinavian Company for Touristic Investment, a Lakah-owned company outside of the Lakah Group. However, as of July 29, 1999, after Medequip had received the full amount of the construction financing facility from NBE (El Borg Branch), the bank found that only 45% of the construction work had been completed. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip), transl.) at 22-24.)

571. Egyptian government investigators later found that "[t]he closely related sister companies, in their capacity as the awarding bodies, submitted achievement reports to the Bank containing untrue data of the achievement proportions of the executed operations.... The client misled the Bank by submitting a contract in which the operation awarded by the Scandinavian Company for the establishment of a tourist resort at Neama Bay [Sharm El Sheikh] was exaggerated." (RTX 119 (Egyptian Public

Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip), transl.) at 23-24.)

572. On April 22, 1999, E£ 3.7 million was transferred from a Medequip construction financing account at National Bank of Egypt (El Borg branch) to Amitrade for Trading & Contracting, purportedly in connection with a project -- a "tourism center" in Dahab City -- owned by the Scandinavian Company for Touristic Investment -- a company owned by the Lakahs outside of the Lakah Group. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 19-20.)

573. As of July 29, 1999, after Medequip had received the full amount of the pertinent construction financing from National Bank of Egypt (El Borg branch) for a Dahab City project, the bank determined that only 50% of the work had been done. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 19-20.)

574. In July 2000, National Bank of Egypt investigated the construction site in Dahab City and found that "no work exists on the plot of land on the project." (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 19-20.)

575. After National Bank of Egypt (El Borg branch) provided E£ 29.2 million in construction financing to Medequip for its Al Kabary Public Hospital project, Medequip withdrew E£ 24.5 million of those funds between August 1998 and April 1999, and transferred those funds to individuals and other Lakah-owned companies without an identified business reason. NBE later found that at most 52.3% of the Al Kabary Public Hospital project had been completed. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 16.)

576. Most of the other Lakah Group and other Lakah-owned companies and business ventures in Egypt caused "drainage" of credit lines, funds and assets of the "Medical Companies" - i.e., Eurobond Guarantors Medequip and TMSE. (RTX 177 (Khadr Decl. ¶92); Khadr Depn. Tr. at 156; RTX 245 (Shourbagy Decl. ¶¶53-59).)

577. For example, funds and credit lines of Medequip were used to support companies like Midwest Airlines, which was owned by the Lakahs but was not a subsidiary of HCFI. (RTX 177 (Khadr Decl. ¶92); Khadr Depn. Tr. at 587-91.)

578. The Lakahs also used company funds and credit lines to start-up and support their entertainment company, their tourism development company (e.g., Indigo Travel Services), their real

estate development ventures (e.g., Scandinavian Company for Touristic Investments and Empain for Touristic Investments), etc. -- all outside the Lakah Group. (RTX 177 (Khadr Decl. ¶92).)

579. For example, in 1998, Medequip transferred funds to Empain for Touristic Investments (a Lakah-owned company outside of the Lakah Group) to buy three plots of land for nearly E£ 6 million. (RTX 214 (Oda Pacha Decl. ¶¶18, 20, 22); Depn. of A. Oda Pacha (6/23/11) Tr. at 44-46, 100, 116-23; R. Lakah Depn. (11/14/2008) Tr. at 15-17 (re: ownership).)

580. Down payments that Medequip received for projects, including government projects, were used by the Lakahs for other of their companies. (RTX 177 (Khadr Decl. ¶43); Khadr Depn. Tr. at 581-83.)

581. For example, in approximately late 1999 or early 2000, Medequip received a down payment of E£ 23,000,000 (50% of a total project price of E£ 46,000,000) from the Egyptian Ministry of Health ("MoH") in connection with a project for the construction by Medequip of five 62-bed hospitals. The down payment went to Medequip's account at the Egyptian Gulf Bank. But those down payment funds from the MoH disappeared from Medequip for use in some other Lakah enterprise. The Lakahs

never returned those funds. (RTX 177 (Khadr Decl. ¶43, 95); Khadr Depn. Tr. at 581-83.)

582. With the Lakahs having taken that E£ 23,000,000 down payment, and with Medequip's accounts and lines of credit being frozen at the time in order to support the debts of other Lakah-owned companies to the bank, it became impossible for Medequip to perform that contract with the Ministry of Health in 2000. (RTX 177 (Khadr Decl. ¶95); Khadr Depn. Tr. at 160-61.)

583. Consequently, the Ministry of Health engaged another contractor to finish the five small hospitals. (RTX 177 (Khadr Decl. ¶95); Khadr Depn. Tr. at 161-62.)

584. The financing deficiencies that the Medical Companies experienced due to "drainage" of their funds to the Lakahs and the Lakahs' other companies became severe beginning in the second half of 1999. (RTX 177 (Khadr Decl. ¶93); Khadr Depn. Tr. at 156; RTX 245 (Shourbagy Decl. ¶¶53-54).)

585. The second half of 1999 began a time of extraordinary difficulty for the Medical Companies. (RTX 177 (Khadr Decl. ¶94); RTX 245 (Shourbagy Decl. ¶¶53-59); Shourbagy Depn. Tr. at 66-69.)

586. Messrs. Khadr and Shourbagy received no explanation from the Lakahs, but the banks blocked and cut off additional

financing to the Medical Companies, and their sales revenues were disappearing. (RTX 177 (Khadr Decl. ¶94); RTX 245 (Shourbagy Decl. ¶¶53-73); Shourbagy Depn. Tr. at 66-68, 351-52.)

587. TMSE's funds and credit lines too were being used to support, pay for, or secure the debts of other Lakah companies, including Medequip. (RTX 245 (Shourbagy Decl. ¶¶ 54, 60); Shourbagy Depn. Tr. at 66-67, 347-348.)

588. Shourbagy recalled times when he expected TMSE to have money in its account but found that its funds had been directed elsewhere without his knowledge. (Shourbagy's approval of such transfers was not required.). (RTX 245 (Shourbagy Decl. ¶ 63); Shourbagy Depn. Tr. at 66-67, 351-52.)

589. TMSE should have had no problem drawing on its existing lines of credit, but banks began (a) refusing to issue letters of credit and letters of guarantee, (b) refusing to finance transactions with TMSE's customers, and (c) refusing to discount TMSE's customers' deferred payment checks (representing TMSE receivables). (RTX 245 (Shourbagy Decl. ¶ 62); Shourbagy Depn. Tr. at 66-67.)

590. By the end of 1999, Banque du Caire ("BdC") -- TMSE's principal bank -- stopped providing additional financing to

TMSE. (RTX 245 (Shourbagy Decl. ¶ 65); Shourbagy Depn. Tr. at 65-67, 349-51.)

591. Because of the Lakahs' other obligations to the bank, BdC blocked TMSE's accounts so that it could not access cash, could not discount client checks, and could not get BdC to issue letters of credit or letters of guarantee. (RTX 245 (Shourbagy Decl. ¶ 65); Shourbagy Depn. Tr. at 61, 64, 66-67.)

592. The International Islamic Bank ("IIB") was another one of the principal banks that the Lakahs used. (RTX 245 (Shourbagy Decl. ¶ 68); Shourbagy Depn. Tr. at 68-69, 387.)

593. IIB internally treated all of the Lakah company accounts virtually as one. (RTX 245 (Shourbagy Decl. ¶ 68); Shourbagy Depn. Tr. at 69-70.)

594. IIB too blocked TMSE's accounts, primarily because of Medequip's problems, but also because TMSE's funds and lines there had been directed to pay or cover the obligations of other of the Lakahs' companies. (RTX 245 (Shourbagy Decl. ¶ 68); Shourbagy Depn. Tr. at 44:18-22, 346:11-347:17, 354:4-355:11.)

595. TMSE and Medequip regularly used each other's bank lines of credit and funds, and such inter-company transactions were not documented. (Shourbagy Depn. Tr. at 45-46, 348-49; RTX 245 (Shourbagy Decl. ¶60, 68, and 70).)

596. For example, Shourbagy knew from prior practice that TMSE could draw down Medequip's line of credit at IIB to obtain a letter of guarantee. (RTX 245 (Shourbagy Decl. ¶ 68); Shourbagy Depn. Tr. at 46:8-11, 69:14-21.)

597. By 2000, IIB refused to provide financing that TMSE needed to do business because Medequip's account was blocked. (RTX 245 (Shourbagy Decl. ¶ 68a); Shourbagy Depn. Tr. at 69-70.)

598. Thus, in 2000, when TMSE had received a payment of funds into its account at IIB, and Shourbagy wanted to use those funds to pay salaries for employees, IIB refused to release the funds. (RTX 245 (Shourbagy Decl. ¶ 68d); Shourbagy Depn. Tr. at 70:25-71:22.)

599. Shourbagy was not in a position to ask IIB to provide a statement showing how much of TMSE's funds were being used for Medequip. Ramy and Michel Lakah interacted with the banks, and they knew about the problems that TMSE was experiencing with the banks. (RTX 245 (Shourbagy Decl. ¶ 68c).)

600. Export Development Bank ("EDB") was another bank used by TMSE. (RTX 245 (Shourbagy Decl. ¶ 69); Shourbagy Depn. Tr. at 51:11-19, 71-72.)

601. TMSE's account at EDB was opened in or about 1999 by Ramy Lakah or Michel Lakah. (RTX 245 (Shourbagy Decl. ¶ 69); Shourbagy Depn. Tr. at 71:23-72:5.)

602. When Shourbagy was informed about it, he found that that TMSE account already had a negative balance of E£ 8- E£ 10 million (approximately US\$2.4 - US\$3.0 million at the time). (RTX 245 (Shourbagy Decl. ¶ 69); Shourbagy Depn. Tr. at 72:6-22.)

603. Shourbagy never learned why the debt existed, where those funds had gone, or what the funds had been used for. (RTX 245 (Shourbagy Decl. ¶ 69a).)

604. When the first installment came due on that debt sometime in 1999, EDB asked TMSE for payment of more than E£ 1 million and threatened to close TMSE's line of credit if the payment was not made. Shourbagy notified one of the Lakah Group finance assistants, and the payment was made, in cash, by someone other than TMSE. (RTX 245 (Shourbagy Decl. ¶ 69b); Shourbagy Depn. Tr. at 72:23-75:2.)

605. TMSE paid later installments on that debt -- millions of pounds -- to EDB even while TMSE was having difficulty obtaining financing from other banks. (RTX 245 (Shourbagy Decl. ¶ 69c); Shourbagy Depn. Tr. at 75:3-5.)

606. During the second half of 2000, EDB reduced TMSE's credit line due to TMSE's failure to submit audited financial statements. (RTX 245 (Shourbagy Decl. ¶ 69d); Shourbagy Depn. Tr. at 75.)

607. By third Quarter of 2000, TMSE did not have sufficient cash in EDB or any financing from EDB. (Shourbagy Depn. Tr. at 76.)

608. Ramy Lakah and Michel Lakah each had signature authority for TMSE's accounts at Arab African Bank. (RTX 245 (Shourbagy Decl. ¶ 70); Shourbagy Depn. Tr. at 76:15-25.)

609. The accounts of Medequip and TMSE at Arab African Bank too were commingled - each company could use the other's credit line(s) - and cross-guaranteed. (RTX 245 (Shourbagy Decl. ¶ 70); Shourbagy Depn. Tr. at 233:3-6.)

610. TMSE occasionally used Medequip's line of credit to open a letter of guarantee. (RTX 245 (Shourbagy Decl. ¶ 70); Shourbagy Depn. Tr. at 77:18-78:11.)

611. Although TMSE and Medequip used each other's funds and finance facilities when lines were short, Shourbagy does not recall any documentation of such inter-company transactions. (RTX 245 (Shourbagy Decl. ¶ 60); Shourbagy Depn. Tr. at 348:9-25, 349:7-15.)

612. Shourbagy does not know whether other Lakah companies (besides Medequip) also could or did draw on TMSE's line or accounts there, but TMSE's credit line was fully drawn in 1999 and 2000, so that TMSE could not borrow on it. (RTX 245 (Shourbagy Decl. ¶ 70); Shourbagy Depn. Tr. at 62:20-64:6, 78:12-15.)

N. Other Commingling and Use by Lakahs of Guarantor Company Assets

613. The Lakahs regularly commingled assets of the Guarantor companies, other Lakah-owned companies, and the Lakahs, and used those assets arbitrarily.

- See examples below.

1. Examples of Instructions by Lakahs to Banks to Commingle Accounts

614. By letter dated March 13, 2000, Michel Lakah instructed International Islamic Bank as follows: "You are kindly requested to carry out the necessary actions to consider all our companies and to permit the Bank to transfer from one company to another of our companies including the Holding Company for Financial Investments (Lakah Group). Please consider the above as standing instructions to you." (RTX 137; M. Lakah Depn. (8/16/2011) Tr. at 78-84; Shourbagy Depn. Tr. at 69-70, 341-42, 346-48, 352-57; RTX 245 (Shourbagy Decl. ¶68).)

615. Michel Lakah gave written instructions to the International Islamic Bank in which he defined the "Lakah Group of Companies" to include:

- (1) Medequip for Trading and Contracting
- (2) Trading Medical Systems Egypt
- (3) Arab Steel Factory
- (4) Amitrade for Trading and Contracting
- (5) Ramy Raymond Michel Lakah (Medequip).
- (6) International for Heavy Transport
- (7) Arab Factory for Refined Steel
- (8) The American Marketing Company

(RTX 137; M. Lakah Depn. (8/16/2011) Tr. at 78- 84.)

616. "Ramy Raymond Michel Lakah (Medequip)" was privately owned by Ramy Lakah, was different from Medequip for Trading and Contracting, and was never a subsidiary or otherwise a part of HCFI. (Joint List of Undisputed Facts, Fact No. 112.)

617. Arab Factory for Refined Steel was different from ASF, and was not a subsidiary (or otherwise a part) of HCFI. (Joint List of Undisputed Facts, Fact No. 113.)

618. In that letter to International Islamic Bank, Michel Lakah instructed it as follows:

"You are kindly requested to make the necessary transfers between all of our accounts opened with your branches for all purposes and in all currencies, whether to cover overdraft accounts, to cash checks or to cover all other banking services such as

opening letters of credit, issuing letters of guarantee and other matters. Please consider the above as standing instructions to you pending advice to you of instructions to the contrary."

(RTX 137.)

619. Michel Lakah also separately instructed the International Islamic Bank in writing as follows:

"You are kindly requested to make the necessary transfers between our accounts bearing Nos. 46426, 46427, 46428, 28144 with your bank, and also account No. 47752 under the name of the American Company for Trade and Distribution, for all purposes, whether to cover overdraft balances, cash checks, or to cover the remaining banking services such as opening letters of credit, issuing letters of guarantee and other matters. Please consider the above as standing instructions to you pending advice to you of instructions to the contrary."

Regards,

On behalf of

Medequip for Trading and Contracting
Trading Medical Systems Egypt
Medequip (Ramy Raymond Lakah).
Arab Factory for Refined Steel
Egyptian American Company for Marketing
The American [Company] for Trade and
Distribution

(RTX 137; M. Lakah Depn. 8/16/2011 Tr. at 78-84.)

620. "Medequip (Ramy Raymond Lakah)" was privately owned by Ramy Lakah and was never a subsidiary of HCFI. (Joint List of Undisputed Facts, Fact No. 111.)

2. Examples of Commingling of Funds and Other Assets

621. Ramy Lakah supported TMSE's requests to banks for letters of credit by using funds from other sources as collateral. (Shourbagy Depn. Tr. at 231, see also *id.* at 78, 321, 311, 348-49; RTX 245 (Shourbagy Decl. ¶¶60, 68, 70).)

622. Assets of ASF were used as collateral for Banque du Caire's guarantee of payments on the E£ 400M local bond issued by HCFI in or about April 1999. (RTX 124 at 17-18.)

623. The Eurobond Offering Circular states that ASF occupied a plot of land of 150,000 m².

"Pursuant to a preliminary sales contract between Arab Steel and the Prosecutor General of Egypt as successor of the former bankrupt owner, the Prosecutor General irrevocably empowered Mr. Ramy Lakah, both in his capacity as Arab Steel's chairman and personally, to irrevocably act on behalf of the Prosecutor General to register this parcel in the name of Arab Steel."

(Joint List of Undisputed Facts, Fact No. 114 (referring to RTX 45 (OC) at 56).)

624. However, Ramy Lakah registered that parcel in the name of HCFI. (RTX 70 (LD 0239-42 (minutes of HCFI board meeting held Feb. 13, 2000, indicating that HCFI owned that plot)).)

3. Commingling: Asset Takings and Transfers by the Lakahs without Documentation or Explanation Was a Regular Practice

625. In June 1997, BdC approved financing to ASF of up to E£ 135,000,000; but the funds were transferred from ASF to Ramy Lakah's personal account and to the accounts of other Lakah-owned companies, as follows:

- (a) E£ 58M was paid to R. Lakah's accounts at other banks.
 - (b) E£ 3.4M was paid to an account of Midwest Airlines (a Lakah company unrelated to ASF or HCFI).
 - (c) E£ 13M was paid to Medequip.
 - (d) E£ 6M was paid to an account of TMSE at BdC, to pay down its debt to that bank.
 - (e) E£ 1.3M was paid to First Power Co. (a Lakah-owned company unrelated to ASF or HCFI).
 - (f) E£ 700K was paid to International Co. for Heavy Transport.
- (RTX 124, transl. at 6-7.)

626. E£ 62 million and E£ 130 million were transferred in June 1997 and July 1997, respectively, from an ASF account at the Sarwat Branch of Banque du Caire to Ramy Lakah's personal account at that bank. (RTX 124 (Egyptian Public Prosecution (BCC) Report on Banque du Caire -- Sarwat Branch (ASF)), p. 6; RTX 139 (Letter from ASF to Banque du Caire, June 30, 1997).)

627. Of E£ 62M transferred from ASF to Ramy Lakah's account at Banque du Caire on June 30, 1997, Ramy Lakah then transferred E£ 6M to TMSE. (RTX 139 (Instruction letter from ASF to BdC, and

debit notes); RTX 145 (BdC Account Statement for 6/97-7/98); RTX 138 (Letter from Ramy Lakah to general Manager of Banque du Caire -- Sarwat Branch, dated July 21, 1997); RTX 124 (Egyptian Public Prosecution (BCC) Report on Banque du Caire -- Sarwat Branch (ASF)) transl. at 6-7.)

628. Amounts subsequently paid from Ramy Lakah's personal account at Banque du Caire in 1997 included: E£ 17 million to another Ramy Lakah personal account; E£ 41 million to Ramy Lakah's personal account at National Societe General Bank; E£ 3.4 million to MidWest Airline Company (a non-Lakah Group company owned by the Lakahs) at the New York International Bank; E£ 13 million to Medequip (by check dated July 21, 1997); E£ 1.3 million to First Power Company (a non-Lakah Group company owned by the Lakahs); and E£ 0.7 million to International Heavy Transport Company. (RTX 124 (Egyptian Public Prosecution (BCC) Report on Banque du Caire -- Sarwat Branch (ASF), transl.) at 6, 7; RTX 139 (Letter from ASF to Banque du Caire, June 30, 1997); RTX 138 (Letter from Ramy Lakah to general Manager of Banque du Caire -- Sarwat Branch, July 21, 1997).)

629. From September 10, 1997 to July 28, 1998, checks and withdrawals of over E£ 1.8 million were issued without an identified business reason from an ASF account at Banque du

Caire to various individuals. (RTX 145 (Summary of Banque du Caire transactions for various accounts).)

630. On September 17, 1997 and March 9, 1998, checks of E£ 207,500 and E£ 360,000 were issued without an identified business reason from an ASF account at Banque du Caire to Ekladious Renee Ekladious. (RTX 145 (Summary of Banque du Caire transactions for various accounts).)

631. Between November 23, 1997 and June 16, 1998, 14 checks totaling US\$1.3 million (approximately E£ 4.42 million) were issued to various individuals from an ASF account at Credit Lyonnais Bank (Cairo Branch) where "[i]t is not evidenced to the [Central Bank of Egypt's Banks Control] Committee that the purpose and aspects of the payment of these checks conformed with the object of the financing granted to the client, namely, to open import documentary credits and to finance the client's requirements of raw materials from the local market." (RTX 127 (Public Prosecutor examination report on Banque Credit Lyonnais -- Cairo Branch) transl. at 4.)

632. Electricity generating units, valued at E£ 36,700,000, and actually belonging to First Power Company (a Lakah-owned company outside the Lakah Group), were included among ASF's stated fixed assets on its balance sheet as of February 28,

1997. (RTX 124 (Egyptian Public Prosecution (BCC) Report on Banque du Caire -- Sarwat Branch (ASF)) transl. at 4.)

633. Checks drawn on a Medequip account with National Bank of Egypt (El Borg Branch) were issued to TMSE between May 21, 1998 and April 26, 1999. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt Heliopolis and El Borg Branches relationship with Medequip, 3/31/2003, transl.) at 5, 14-15.)

634. Funds from Medequip accounts were transferred to, and used by, other HCFI-owned companies in violation of loan conditions, as follows:

- (a) On 6/14/1998, a check for E£ 10.4 million was drawn in favor of Quest Consult (• RTX 119, transl. at 13)
- (b) On 07/09/1998, a check for E£ 8.0 million was drawn in favor of the International American Company; (RTX 119 transl. at 22;)
- (c) On 07/09/1998, a check for E£ 8.0 million was drawn in favor of Quest Consult Company; (RTX 119, transl. at 22.)
- (d) On 2/25/1999, a check for E£ 10M was drawn to reduce the debt of an affiliate company. (RTX 119, transl. at 7.)
- (e) On 3/17/1999, a check for E£ 50M was drawn to reduce debt of an affiliate company. (• RTX 119, transl. at 7.)
- (f) On 04/22/1999, a check for E£ 3.7 million was drawn in favor of the Medical Centers Management Company with the International Islamic Bank. (RTX 119, transl. at 12.)
- (g) On 4/22/1999, a check for E£ 3.7 million was drawn in favor of Amitrade for Trading & Contracting; (RTX 119, transl. at 20.)

(h) On 07/29/1999, a check for E£ 12 million was drawn in favor of Quest Consult Company; (RTX 119, transl. at 18.)

635. On June 24, 1998, E£ 10 million was transferred from a Medequip construction financing account at the National Bank of Egypt to a Quest Consult account at Banque du Caire [et] Paris. (RTX 119 (BCC Report on National Bank of Egypt Heliopolis and El Borg Branches (Medequip)) transl. at 12.)

636. On both June 24, 1998 and June 28, 1998, E£ 8.5 million was transferred from a Medequip construction financing account at the National Bank of Egypt to Medical Centers Management Company. (RTX 119 (BCC Report on National Bank of Egypt Heliopolis and El Borg Branches (Medequip)) transl. at 12.)

637. On June 28, 1998 and April 22, 1999, E£ 10 million and E£ 3.7 million, respectively, were transferred from a Medequip construction financing account at the National Bank of Egypt to Medical Centers Management Company. (RTX 119 (BCC Report on National Bank of Egypt Heliopolis and El Borg Branches (Medequip)) transl. at 12.)

638. On July 9 and July 16, 1998, E£ 8 million, and E£ 12 million, respectively, were transferred from a Medequip construction financing account at National Bank of Egypt (El Borg Branch) to Quest Consult. (RTX 119 (BCC Report on National

Bank of Egypt - Heliopolis and El Borg Branches (Medequip), transl.) at 22-24.)

639. On August 5, 1998, \$548,000 from a TMSE account at Misr America International Bank was transferred without an identified business reason to Medequip. (RTX 118 (BCC Report on Misr America International Bank - Heliopolis (Mid-West Airlines and TMSE), transl. 7-8, 16).)

640. On August 12, 1998, E£ 600,000 was transferred without an identified business reason from an ASF account at The Egyptian Commercial Bank to Mahmoud El Sayed Ali Khalil. (RTX 128 (Egyptian Public Prosecution (BCC) Report on The Egyptian Commercial Bank -- Heliopolis (ASF)) transl. at 8.)

641. On August 17, 1998, E£ 8 million was transferred from an ASF account at The Egyptian Commercial Bank to Quest Consult. (RTX 128 (BCC Report on The Egyptian Commercial Bank -- Heliopolis (ASF)) transl. at 8.)

642. Quest Consult was engaged in the business of finishing construction in medical facilities. (RTX 357 (S/J Undisputed Fact No. 236); RTX 45 (OC at 39, 40-41).)

643. On December 23, 1998, E£ 30 million was paid from an ASF morabha¹⁰ account at the Islamic Bank for Investment & Development to Medequip to cover Medequip's overdraft current account. (RTX 117 (BCC Report on The Islamic Bank for Investment & Development (Medequip, TMSE, Amitrade, ASF, MCMC, and Indigo for Tourism)) transl. at 18.)

644. On December 23, 1998, E£ 7.4 million was paid from an Amitrade morabha account at the Islamic Bank for Investment & Development to TMSE (to cover its overdraft). (RTX 117 (BCC Report on the Islamic Bank for Investment & Development (Medequip, TMSE, Amitrade, ASF, MCMC, and Indigo for Tourism)) transl. at 12, 14.)

¹⁰ "Morabha is the most common vehicle for finance of all Islamic financing products." Morabha, NBK Online (last visited February 13, 2017, 11:33AM), <http://www.nbk.com.eg/en/islamic-banking/corporate/finance-products/morabha>.

645. During the period December 1998 to July 2000, Scandinavian Company for Investment and Touristic Development -- (a company owned by the Lakahs outside the Lakah Group) -- transferred US\$8.6M (approx. E£ 29.25M) out of its construction financing account to Medequip, and Medequip then transferred the funds to various individuals and companies (in violation of the conditions of Scandinavian's construction financing), as follows:

- (a) \$2.17M was transferred to various insiders, including A.E. George, S. Iskandar, A.F. Moubarak, A.M. Oda Pacha;
- (b) \$1M was transferred to M. Lakah;
- (c) \$1.5M was transferred to Medical Centers Management Co.;
- (d) \$200K was transferred to Midwest Airlines (a company owned by the Lakahs outside the Lakah Group);
- (e) \$1.2M was transferred to Medequip France (a company owned by the Lakahs outside the Lakah Group);
- (f) \$2.7M was transferred to TMSE.

(RTX 118 (BCC Report dated 3/31/03) at 9-11, 16.)

646. Assets of ASF were used as collateral for Banque du Caire's guarantee of payments on the E£ 400M local bond issued by HCFI in or about April 1999. (RTX 124 at 17-18.)

647. Some E£ 55 million out of the E£ 400 million proceeds of HCFI's April 1999 local bond issue were transferred by check

to Midwest Airlines -- a Lakah-owned company outside the Lakah Group -- and another E£ 14.8 million in checks were issued from those proceeds to individuals where "the nature for ... cashing these checks was unknown". (RTX 122 (BCC Report on The Banque du Caire - Sarwat Branch (HCFI)) transl. at 14-15.)

648. On June 23, 1999, E£ 2 million was transferred from a Medequip account at the Egyptian Saudi Finance Bank to Ramy Lakah's personal account at Banque du Caire. (RTX 116 (BCC Report on Egyptian Saudi Finance Bank (Amitrade and Medequip)) transl. at 12.)

649. On June 30, 1999, E£ 10 million was transferred from an account of Amitrade for Trading & Contracting (a subsidiary of HCFI) at the Egyptian Saudi Finance Bank to Ramy Lakah's personal account at the Islamic Bank, and then E£ 8 million was transferred from that R. Lakah personal account to a Medequip account at the Islamic Bank to cover an overdraft in that account. (RTX 116 (BCC Report on Egyptian Saudi Finance Bank (Amitrade and Medequip)) transl. at 12.)

650. On July 13, 1999, approximately E£ 9.5 million was transferred from an Amitrade account at the Egyptian Saudi Finance Bank to a Medequip account at the Islamic Bank to cover an overdraft in that account. (RTX 116 (Egyptian Public

Prosecution (BCC) Report on Egyptian Saudi Finance Bank
(Amitrade and Medequip)) transl. at 9.)

651. On both July 15, 1999 and August 15, 1999, E£ 8 million was transferred from an Amitrade account at the Islamic International Investment & Development Bank to an ASF account at The Egyptian Commercial Bank. (RTX 128 (Egyptian Public Prosecution (BCC) Report on The Egyptian Commercial Bank -- Heliopolis (ASF)) transl. at 9.)

652. On July 15, 1999, a check for E£ 9.5 million payable to Ramy Lakah was drawn on a Medequip account at the Egyptian Saudi Finance Bank. (RTX 116 (BCC Report on Egyptian Saudi Finance Bank (Amitrade and Medequip)) transl. at 9.)

653. On July 28, 1999, E£ 15 million was transferred from a morabha account of Medical Centers Management Company at the Islamic Bank for Investment & Development to Medequip to cover its overdraft current account. (RTX 117 (BCC Report on the Islamic Bank for Investment & Development) transl. at 21.)

654. On August 16, 1999, E£ 12.4 million was transferred from a TMSE morabha account at the Egyptian Saudi Finance Bank "to pay a special Morabha at 'Medequip Sole Enterprise' [a sole proprietorship company owned personally by Ramy Lakah], against the purpose of what the finance was allocated for, which is the

purchase of medical equipment for preparation of clinics and medical centers." (RTX 117 (BCC Report on The Islamic Bank for Investment & Development (Medequip, TMSE, Amitrade, ASF, MCMC, and Indigo for Tourism)) transl. at 8.)

655. On January 3, 2000, E£ 2.5 million was paid from a Medequip account to an ASF account at the Egyptian Commercial Bank. (RTX 151 (Letter from the Egyptian Commercial Bank Credits Department to the Main Office regarding ASF, 1/13/2000) transl. at 4.)

656. On January 31, 2000, E£ 13 million was paid from an Amitrade morabha account at the Islamic Bank for Investment & Development to Medequip. (RTX 117 (BCC Report on the Islamic Bank for Investment & Development) transl. at 12, 14.)

657. On March 19 and April 24, 2000 -- after the sale of ASF's assets -- checks totaling E£ 4.5 million were drawn on a Medequip account at the Islamic International Investment & Development Bank to ASF at the Egyptian Commercial Bank. (RTX 128 (BCC Report on The Egyptian Commercial Bank -- Heliopolis (ASF)) transl. at 9.)

658. On April 19, 2000, E£ 5 million was transferred from an Amitrade account at the Egyptian Saudi Finance Bank to Quest Consult to finance the purchase of Korean merchandise. (RTX 116

(BCC Report on Egyptian Saudi Finance Bank (Amitrade and Medequip)) transl. at 10.)

659. TMSE drew -- via Atef Felix Mubarak and Amgad Edward George, a low level HCFI employee-assistant of Ramy Lakah -- approximately E£ 11 million from Medequip accounts at Misr America International Bank. (RTX 118 (Egyptian Public Prosecution (BCC) Report on Misr America International Bank - Heliopolis (Mid-West Airlines and TMSE)) transl. at 12.)

660. "TMSE transfer[red] approximately 2.5 million Egyptian pounds to the account of Medequip [for] Trading & Contracting at the Banking Corporation Bank". (RTX 118 (BCC Report on Misr America International Bank - Heliopolis (Mid-West Airlines and TMSE)) transl. at 12.)

661. The following checks were drawn on an ASF account with The Egyptian Commercial Bank (Heliopolis branch): E£ 1.6 million to TMSE and E£ 250,000 to Medequip. (RTX 128 (BCC Report on The Egyptian Commercial Bank - Heliopolis (ASF)) transl. at 6-7.)

662. E£ 12 million in checks were issued from a morabha account of Amitrade for Trading & Contracting at the Islamic Bank for Investment & Development and deposited in an ASF account at Barclays Cairo Bank. (RTX 117 (BCC Report on The

Islamic Bank for Investment & Development (Medequip, TMSE, Amitrade, ASF, MCMC, and Indigo for Tourism)) transl. at 12.)

663. The following transfers and withdrawals were made without identified business reasons from a Medequip account at Misr America International Bank:

- (a) \$461,000 to Amgad Edward George (a low-level Lakah employee-assistant of Ramy Lakah) and \$955,000 to Atef Felix Mubarak (RTX 118 (Egyptian Public Prosecution (BCC) Report on Misr America International bank -- Heliopolis (Mid-West Airlines and TMSE) 3/31/2003) transl. at 10.)
- (b) \$500,000 to Samy Iskandar and \$500,000 to Adham Mostafa Oda Pacha (an officer of Scandinavian Company, a Lakah-owned company outside the Lakah Group). (RTX 118; RTX 214 (Oda Pacha Decl. ¶10).)
- (c) approximately \$1 million to Michel Lakah; approximately \$2.7 million to TMSE; approximately \$1.2 million to Medequip France (a company owned by the Lakahs outside the Lakah Group); \$1.5 million to Medical Centers Management Company; and \$200,000 to Mid-West Airlines (a company owned by the Lakahs outside the Lakah Group) (RTX 118 (BCC Report on Misr America International Bank -- Heliopolis Branch, (Mid-West Airlines and TMSE)) transl. at 9-16.))

664. The following checks were issued from an ASF account with The Egyptian Commercial Bank (Heliopolis branch): E£ 1.0 million to First Power Company (a company owned by the Lakahs outside the Lakah Group); E£ 230,490 to Hany Simon Michel Lakah (a cousin of the Lakahs); and E£ 587,500 to Amgad Edward George (a low-level Lakah employee assistant to Ramy Lakah). (RTX 128 (BCC Report on The Egyptian Commercial Bank -- Heliopolis

Branch, dated 2/29/04) transl. at 6-7; R. Lakah Depn. (11/13/08) Tr. at 81-83 (identifying Hany Simon Michel Lakah).)

665. On March 18, 2004, E£ 3 million was transferred from "Industrial Developments" (a Lakah Group company) to Credit Lyonnais Bank (Cairo branch) to release the Lakahs from their personal obligations to the bank relative to the debts of ASF. (RTX 127 (BCC Report on Banque Credit Lyonnais -- Cairo Branch (ASF and Medequip)) transl. at 9.)

- O. The Lakahs Sold off Guarantor ASF's Assets Shortly after the Eurobond Offering, Did Not Replace them, and Rendered ASF Incapable of Satisfying its Obligations as a Guarantor

666. It was represented in the Offering Circular, dated December 6, 1999, that "ASF's principal objective is to increase production levels to reach 90 percent of its meltshop's maximum optimal capacity." (RTX 45 (OC at 55).)

667. It was represented in the Offering Circular that: "As production efficiencies are improved, ASF estimates that it will be capable of producing approximately 360,000 tons of steel billet in 2001 representing capacity utilization of 90 percent of nominal capacity." (RTX 45 (OC at 56).)

668. It was represented in the Offering Circular that: "Management of the Lakah Holding Company is considering the possibility of implementing a plan of reorganization pursuant to

which the shares of some or all of the Subsidiaries in the Industrial Group may be transferred to another entity, which would be owned at least 51 percent by, and controlled by, the Parent Guarantor [HCFI] and/or the Lakah Family. Any such reorganization would affect the Guarantee. No decision has been taken by the Board of Directors in this respect." (OC at 69 (DBLON000897).)

669. The financial statements of ASF in the OC stated that, as of June 30, 1999, ASF had assets valued at E£ 597,206,027. (Joint List of Undisputed Facts, Fact No. 134; RTX 45 (OC) at F-62.)

670. The financial statements of ASF as of December 31, 1999, indicated that:

- (a) in the final six months of 1999, the value of ASF's assets had increased by more than 27%; and
- (b) the value of ASF's assets as of 12/31/1999, less than two months before those assets were sold, was stated at E£ 760,810,309, and included an interest in ACIS valued at E£ 124,000,000.

(Joint List of Undisputed Facts, Fact No. 135.)

671. Shortly after the Eurobond issuance, the Lakahs caused the sale of all or virtually all of the assets of Guarantor ASF, the proceeds of that sale were diverted to HCFI and to unknown recipients, ASF's assets were not replaced, ASF ceased its operations, and ASF ceased to be able to meet its obligations as a Eurobond Guarantor. (Joint List of Undisputed Facts, Fact Nos.

136-139, 142, 153; Khadr Depn. Tr. at 218; RTX 177 (Khadr Decl.) ¶¶140-49; RTX 271 (Imburgia Report) ¶¶ 26, 30, 187, 189-90, 198-209, 219, and p. 112.)

672. Within approximately two months after the Eurobond issue, the Lakahs sold ASF's assets for E£ 331,000,000. (Joint List of Undisputed Facts, Fact Nos. 136-139, 142, 153; RTX 73; Khadr Depn. Tr. at 218; RTX 72 (Certification of R. Lakah and M. Lakah, 2/16/2000, to Eurobond Trustee).)

673. A press release published on HCFI's website stated that the sale price of the ASF assets was E£ 331,000,000. (RTX 357 (S/J Undisputed Fact No. 375); RTX 74.)

674. Ramy Lakah and Michel Lakah issued an officer's certificate, dated February 16, 2000, to the Eurobond Indenture Trustee, in which they each certified that the sale price of ASF's assets was E£ 331 million and that "the purchase price received in connection with the ASF Sale was received, in full, by ASF simultaneously with the disposal of the subject assets, 100% in cash." (Joint List of Undisputed Facts, Fact Nos. 137-138; RTX 72 (Certification, 2/16/2000, by R. Lakah and M. Lakah to Bank of New York (Eurobond Trustee)).)

675. However, the purported agreement for the sale of ASF's assets (the "ASF Sale Agreement") states that the consideration

paid by the purchaser -- Egypt Steel (a/k/a Misr Steel, part of the Kouta Group) -- was E£ 331,280,000, consisting of (a) a cash payment of E£ 100,000,000, and (b) 72 deferred payment non-interest bearing promissory notes with face amounts totaling E£ 231,280,000, which notes were to mature monthly beginning on January 1, 2001 and until January 1, 2006. (RTX 357 (S/J Undisputed Fact No. 379); RTX 72; RTX 73 (Sale agreement for ASF's assets at 18/42 - 20/42); RTX 74 (Lakah press release re: ASF sale).)

676. HCFI's financial statements as of June 30, 2000 stated that the purchaser of ASF's assets gave promissory notes totaling E£ 220 million, not E£ 231 million as the ASF Sale Agreement indicates. (RTX 357 (S/J Undisputed Fact No. 387); RTX 79 (HCFI 6/30/2000 financial statement at Note 30).)

677. The Lakahs have not explained the disappearance of the E£11 million of proceeds that were paid in the form of promissory notes.

678. The ASF asset sale included all real estate assets, all production lines, machinery, equipment, artificial (intangible) assets (including licenses, studies, founding expenses, training), and spare parts. (RTX 357 (S/J Undisputed Fact No. 373); RTX 73 (Sale agreement for ASF's assets) at 12-13, 19.)

679. All of the assets of Arab Steel Factory with any value were sold to Egypt Steel Company. (RTX 177 (Khadr Decl. ¶147); RTX 73 (ASF sale agreement); Khadr Depn. Tr. at 222.)

680. Cash, prepaid expenses, advance payments, and tax refunds were excluded from the sale, as was the purported ACIS (East Port Said Project) investment. (RTX 357 (S/J Undisputed Fact No. 374); RTX 73 (Sale agreement for ASF's assets); RTX 69 (Minutes of meeting of HCFI Board of Directors, 2/10/2000, p. 2).)

681. Although ASF's assets (excluding its purported investment in ACIS) had been stated by the company to have a value, as of 12/31/1999, of approximately E£ 637,000,000, and those assets were sold for no more than E£ 331,280,000 (out of which E£ 231,280,000 was to be paid without interest over 5 years beginning almost a year after the sale), HCFI's financial statement as of December 31, 2000 stated that the ASF asset sale had resulted in "capital profits" of E£ 63.5 million. (RTX 271 (Imburgia Report) ¶204; RTX 80 (HCFI audited financial statement as of 12/31/2000).)

682. Ramy Lakah executed the ASF Sale Agreement on behalf of ASF. (Joint List of Undisputed Facts, Fact No. 136; RTX 73 (ASF Asset Purchase Contract).)

683. The ASF assets were sold to Egypt Steel after Ramy Lakah worked out a deal with Banque du Caire. (RTX 177 (Khadr Decl. ¶154); Khadr Depn. Tr. at 224-25.)

684. At the time of the ASF asset sale, Banque du Caire held a commercial mortgage on ASF's assets, which Ramy Lakah had in effect provided as collateral in connection with the Bank's guarantee of ASF's local bond issue in Sept. 1998. (RTX 286; RTX 290; Khadr Depn. Tr. at 223-25; RTX 177 (Khadr Decl. ¶150).)

685. In particular, as part of the transaction in which ASF issued bonds in Egypt in the amount of E£ 250,000,000, guaranteed by Banque du Caire, Ramy Lakah (on behalf of ASF) provided a Power of Attorney in favor of Banque du Caire to enable Banque du Caire to create a mortgage on ASF's assets in favor of Banque du Caire as collateral. (RTX 286; RTX 288 (Letter from Lakahs' counsel to Arbitration Panel) at 3.)

686. By not later than August 1998, using the POA provided by Ramy Lakah, Banque du Caire created a mortgage in its favor on the assets of ASF. (RTX 290.)

687. As of the date of the Eurobond closing, Dec. 8, 1999, Ramy Lakah had not told Brian Murphy, a nominal member of HCFI's Board of Directors, about the power of attorney that Ramy Lakah

had given to BdC on behalf of ASF in 1998. (Joint List of Undisputed Facts, Fact No. 165.)

688. In order to enable the sale of ASF's assets, Ramy Lakah negotiated with BdC to release the mortgage on ASF's assets and agreed, among other things, to transfer the proceeds of the ASF sale to BdC as collateral for other Lakah company obligations to the Bank. (RTX 349, RTX 354, RTX 355, and 356 (underakings given by Ramy Lakah on behalf of HCFI and ASF); RTX 348; Khadr Depn. Tr. at 227-28 and at 528-30 (on examination by Lakahs' counsel); RTX 80 (HCFI Financial Statement as of 12/31/2000) at Note 19; RTX 153 (Minutes of meeting of Board of Directors of Banque du Caire, held 2/17/2000) p. 10; RTX 154 (Minutes of meeting of Board of Directors of Banque du Caire, held 3/12/2000) p. 2; RTX 124 (BCC Report re ASF's relationship with Banque du Caire (Sarwat Branch), as of 2/29/2004) at 19-22; R. Lakah Depn. (5/12/2009) Tr. at 130- 34; RTX 177 (Khadr Decl. ¶153).)

689. Ramy Lakah agreed to endorse, transfer and deliver to Banque du Caire the deferred payment promissory notes, reportedly totaling approximately E£ 220 million, in order to induce the bank to release its commercial mortgage on ASF's assets so that the Lakahs could sell those assets. (RTX 349, RTX 354, RTX355, and RTX 356 (underakings given by Ramy Lakah on

behalf of HCFI and ASF); RTX 348; RTX 80 (HCFI Financial Statement as of 12/31/2000) at Note 19; RTX 153 (Minutes of meeting of Board of Directors of Banque du Caire, held 2/17/2000) p. 10; RTX 154 (Minutes of meeting of Board of Directors of Banque du Caire, held 3/12/2000) p. 2; RTX 124 (BCC Report re ASF's relationship with Banque du Caire (Sarwat Branch), as of 2/29/2004) at 19-22; R. Lakah Depn. (5/12/2009) Tr. at 130- 34.)

690. By agreement with Ramy Lakah, Banque du Caire was to place the E£ 220 million (face amount) of deferred payment promissory notes into a blocked account, into which the proceeds of the notes were to be deposited as they matured, and the note proceeds were to serve as collateral for Banque du Caire's guarantee of payment of HCFI's obligations on its E£ 400 million local bond. (RTX 349, RTX 354, RTX 355, and RTX 356 (underakings given by Ramy Lakah on behalf of HCFI and ASF); RTX 348; RTX 153 (Minutes of meeting of Board of Directors of Banque du Caire, held 2/17/2000, p. 10; RTX 154 (Minutes of meeting of Board of Directors of Banque du Caire, held 3/12/2000, p. 2); RTX 124 (BCC Report re ASF's relationship with Banque du Caire (Sarwat Branch), as of 2/29/2004, at 19-22); RTX 80 (Notes to HCFI Financial Statements as of December 31, 2000); R. Lakah Depn. (5/12/2009) Tr. at 130-34.)

691. The promissory notes (totaling E£ 220 million) were transferred by the Lakahs to Banque du Caire. (RTX 349, RTX 354, RTX 355, and RTX 356 (underakings given by Ramy Lakah on behalf of HCFI and ASF); RTX 348; RTX 177 (Khadr Decl. ¶155, 159); Khadr Depn. Tr. at 229-33; RTX 80 (Notes to HCFI Financial Statements as of December 31, 2000); R. Lakah Depn. (5/12/2009) Tr. at 130-34; RTX 153 (Minutes of meeting of Board of Directors of Banque du Caire, held 2/17/2000, p. 10; RTX 154 (Minutes of meeting of Board of Directors of Banque du Caire, held 3/12/2000, p. 2); RTX 124 (BCC Report re ASF's relationship with Banque du Caire (Sarwat Branch), as of 2/29/2004, at 19-22).)

692. HCFI's consolidated financial statement as of June 30, 2000, which Ramy Lakah sent to Ecoban in Feb. 2001, states that the "notes receivable" due from Misr Steel (Egypt Steel) as consideration for its purchase of ASF's assets were recorded as a combination of long term notes receivable (E£ 208,780,000) and short term notes receivable (E£ 11,220,000) totaling E£ 220,000,000. (Joint List of Undisputed Facts, Fact No. 162; RTX 79 (HCFI 6/30/2000 Financial Statement; at BH 0209 & Note 30).)

693. HCFI's consolidated financial statement for the period ending June 30, 2000, which Ramy Lakah sent to Ecoban in Feb.

2001, does not state or allege that BdC took any of ASF's assets. (Joint List of Undisputed Facts, Fact No. 161; RTX 79.)

694. HCFI's consolidated financial statement for the period ending Dec. 31, 2000, does not state or allege that BdC took any of ASF's assets. (Joint List of Undisputed Facts, Fact No. 163; RTX 80; RTX 81; see RTX 82 (ASF financial statement).)

695. HCFI's consolidated financial statement for the period ending Dec. 31, 2000, includes stated long term notes receivable in the amount of £ 191,720,000, and short term notes receivable in the amount of £ 28,280,000, still totaling £ 220,000,000. (Joint List of Undisputed Facts, Fact No. 164 (admitting long-term notes receivable); RTX 80 at BH08061; see also RTX 82 (ASF Financial Statement; RSM E 3148-53 at 3149 and 3151); RTX 90 (RSM E 93; RSM E 110) (audit work papers).)

696. There is no evidence that ASF received any valuable consideration from HCFI in exchange for the deferred payment promissory notes that were part of the purchase payment for ASF's assets. (RTX 81 (RSM E 3217-22 (HCFI 12/31/2000 Financial Statement (unconsolidated))); RTX 82 (ASF 12/31/2000 Financial Statement)).)

697. ASF did not receive any of the proceeds of the sale of its operating assets in 2000. (RTX 354, RTX 355, and RTX 356

(underakings given by Ramy Lakah on behalf of HCFI and ASF); RTX 348; RTX 177 (Khadr Decl. ¶¶142-155, 158-59); M. Khadr. Depn. (6/26/2011) Tr. at 165, 230-231.)

698. The Lakahs have produced no documents showing that ASF received any of the proceeds of the sale of its operating assets in 2000.

699. The alleged cash payment of E£ 100 million by Egypt Steel in its purchase of ASF's assets was not received by ASF. (M. Khadr. Depn. (6/26/2011) Tr. at 165, 230-231; RTX 177 (Khadr Decl. ¶148); R. Lakah Depn. (5/12/2009) Tr. at 127:24-128:9 (R. Lakah does not know what was done with the E£ 100 million in cash paid by the purchaser).)

700. The Lakahs have produced no documents concerning any receipt by ASF of E£ 100 million in cash from Egypt Steel as part of the purchase price for ASF's assets.

701. The Lakahs have produced no documents concerning any transfer by ASF to HCFI of the deferred payment promissory notes that ASF received in partial payment for its sale of assets in 2000.

702. After the sale of ASF's operating assets in 2000, ASF's operating assets were not replaced. (See Joint List of

Undisputed Facts, Fact No. 153; RTX 82 (ASF financial statements as of 12/31/2000).)

703. After the sale of ASF's operating assets in 2000, ASF was no longer able to satisfy its obligations as a Eurobond Guarantor. (See Joint List of Undisputed Facts, Fact No. 142 (ASF defaulted on local bond obligation in mid-2000); id. Fact No. 33 (default on Eurobond); RTX 82 (ASF financial statements as of 12/31/2000); ECF No. 208 (Petitioners' Statement of Undisputed Facts) ¶157; RTX 318 (Schmid Decl. ¶¶11-15); RTX 307 (Stern Decl. ¶¶11-15); RTX 299 (Somarajan Decl. ¶¶11-15); RTX 291 (Sampath Decl. ¶¶11- 15).)

704. Neither ASF's operating assets, nor ASF as a Guarantor of the Eurobond, were ever replaced. (See Joint List of Undisputed Facts, Fact No. 142 (ASF defaulted on local bond obligation in mid-2000); id. Fact No. 33 (default on Eurobond); RTX 82 (ASF financial statements as of 12/31/2000).)

705. ASF has no Board of Directors minutes or resolutions concerning a transfer to BdC of any proceeds of the ASF asset sale in 2000.

706. ASF has no documentation showing the disposition of the proceeds of the ASF asset sale in 2000.

707. The value of ASF's assets stated in the Lakah Group financial statements as of December 31, 1999 - i.e., more than E£ 630 million net of the stated value of the alleged ACIS asset - was nearly twice the amount for which those assets were reportedly sold (E£ 100 million plus a deferred E£ 231 million) less than two months later. (RTX 62 (HCFI financial statement as of 12/31/1999).)

708. The sale of ASF's assets led to the shuttering of other HCFI subsidiaries that had reportedly been dependent on business from ASF. (Joint List of Undisputed Facts, Fact No. 153; RTX 79 (HCFI Financial Statement as of 6/30/2000 at BH0205, Note 22); Depn. of B. Murphy (5/18/2010) Tr. at 399-400.)

709. Amitrade for Trading & Contracting ("Amitrade") (a/k/a Amitrade for Commerce & Contracting), which was reportedly largely reliant on business with ASF, and which stated a net profit of nearly E£ 25 million in 1999, "ceased operation following sale of ASF['s] business and assets" and became "[d]ormant save only for some minor assets and liabilities to be settled." (Joint List of Undisputed Facts, Fact No. 153; RTX 65 (Amitrade for Commerce and Contracting (S.A.E.) Financial Statements as of December 31, 1999).)

710. Universal Trucking, another subsidiary of HCFI that was said to be largely reliant upon business with ASF,

reportedly ceased or virtually ceased doing business. (Joint List of Undisputed Facts, Fact No. 153.)

711. The Lakahs thus made a transaction that sold off ASF's operating assets, rendered ASF unable to satisfy its obligations as a Eurobond Guarantor, rendered ASF and two other HCFI subsidiaries unable to generate revenues, diverted the proceeds from the sale of ASF's assets to other entities, and provided no substitute assets, collateral, or guarantor for the Eurobond holders. (RTX 271 (Imburgia Report) ¶209; see Fact Nos. 677-721 supra.)

712. Although ASF's operating assets were sold off in February 2000, HCFI nevertheless took from ASF in 2000 an "administrative fee" of E£ 13.7 million (i.e., more than \$4 million). (RTX 81 and 89 (RSM E 2).)

713. Purported minutes of a meeting of the Board of Directors of HCFI on February 10, 2000 falsely state that Khadr attended a Board meeting on that date and that the HCFI Board (not ASF's Board) approved the sale of ASF's assets and authorized Ramy Lakah to sign "all the necessary documents and contracts". (RTX 177 (Khadr Decl. ¶144 and Exh. 5 thereto (RTX 184)).)

714. But there were no HCFI Board of Directors discussions at all of any such sale of assets. (RTX 177 (Khadr Decl. ¶143).)

715. Though Mohamed Khadr was nominally a director of HCFI, he was not informed about negotiations or documentation or decisions or terms concerning the sale of ASF's assets. (RTX 177 (Khadr Decl. ¶143).)

716. Khadr had never seen or heard about any valuation reports concerning ASF that allegedly were distributed at an alleged HCFI Board meeting on February 10, 2000, as described in those falsified minutes. (RTX 177 (Khadr Decl. ¶144); RTX 184 (minutes).)

717. Khadr did not learn the terms of sale and never saw an agreement, regarding the sale of ASF's assets. (RTX 177 (Khadr Decl. ¶145).)

718. Ramy Lakah was the only representative of ASF or HCFI in the discussions with the buyer, the Kouta Group. (RTX 177 (Khadr Decl. ¶146).)

719. Khadr was told that the ASF asset purchase payment was made with checks, payable over five years, amounting to E£ 220,000,000, that were guaranteed by National Bank of Egypt. (RTX 177 (Khadr Decl. ¶148).)

720. Neither Ramy or Michel Lakah said anything to Khadr about any cash payment by the buyer, and Khadr had no knowledge of the cash portion of the sale price for ASF's assets. (RTX 177 (Khadr Decl. ¶148).)

721. After the Lakahs announced that they were selling ASF, Ramy Lakah said that they needed the proceeds of that sale in order to be able to fulfill contracts in the medical business. (RTX 177 (Khadr Decl. ¶ 158).)

722. However, nothing from the proceeds of the sale of ASF went to either of the Lakah Group "Medical" companies, Medequip and TMSE. (RTX 177 (Khadr Decl. ¶159); RTX 245 (Shourbagy Decl. ¶ 74); Shourbagy Depn. Tr. at 61.)

P. Absence of Relevant Guarantor Company or Lakah Personal Documentation

1. No Records of Inter-company Transactions

723. Transactions between Lakah companies were not formalized and recorded. (RTX 245 (Shourbagy Decl. ¶ 60); RTX 177 (Khadr Decl. ¶ 183); Shourbagy Depn. Tr. at 46.)

724. No records of intercompany transfers were kept. (RTX 245 (Shourbagy Decl. ¶60 (no records were kept)); cf. RTX 177 (Khadr Decl. ¶¶183, 187-88 (he does not know whether records were kept)); Shourbagy Depn. Tr. at 46.)

725. Indeed, there were only limited legitimate inter-company transactions within the Lakah Group. (RTX 177 (Khadr Decl. ¶183).)

726. For example, Medequip occasionally bought Toshiba equipment from TMSE for Medequip's turnkey construction projects, but even those transactions were relatively small. (Medequip usually bought such equipment directly from Toshiba.) Also, Medequip made small service contracts with TMSE regarding Toshiba products. (RTX 177 (Khadr Decl. ¶183).)

727. Therefore, if there were any transfers of substantial funds from Medequip to TMSE, it is unlikely that they were due to legitimate sales of goods or services by TMSE to Medequip. (RTX 177 (Khadr Decl. ¶ 183).)

728. TMSE made no purchases from Medequip. Therefore, transfers of funds from TMSE to Medequip were not due to legitimate sales of goods or services by Medequip to TMSE.

2. No Guarantor Company or Lakah Personal Records

729. The Lakahs admit that they have produced no financial records of the Eurobond Guarantor companies in this proceeding. (ECF. No. 207 (Lakah Mem. of L.) at 3.)

730. None of the four Lakah Guarantor companies produced any accounting ledgers, journals, or book-keeping records for any part of the period between January 1, 1998 and June 8, 2001 (the date of the first Lakah Eurobond default).

731. None of the four Lakah Guarantor companies produced records of any transmittal of notices of meetings of their Boards of Directors in 1999 or 2000.

732. None of the four Lakah Guarantor companies produced Board meeting minute books for any period between January 1, 1998 and June 8, 2001 (the date of the first Lakah Eurobond default).

733. HCFI has produced no Board minutes concerning the 1999 divestiture of "Scandinavian and companies in the portfolio of IIC," as described on page 36 of the Eurobond Offering Circular.

734. Ramy Lakah has produced no records showing any payment by him to HCFI for the 17,500,000 new shares of HCFI to which he subscribed in June 1999.

735. Michel Lakah has produced no records showing any payment by him to HCFI for the 17,500,000 new shares of HCFI to which he subscribed in June 1999.

736. HCFI has produced no records showing any payment by either Michel Lakah or Ramy Lakah to HCFI for the 35,000,000 new shares of HCFI to which they together subscribed in June 1999.

737. Ramy Lakah has produced no records showing any payment by him to HCFI for the new shares of HCFI to which he subscribed at its formation in 1998.

738. Michel Lakah has produced no records showing any payment by him to HCFI for the new shares of HCFI to which he subscribed at its formation in 1998.

739. HCFI has produced no records showing any payment by either Michel Lakah or Ramy Lakah to HCFI for the new shares to which Ramy Lakah and Michel Lakah subscribed at its formation in 1998.

740. Ramy Lakah has produced no records showing a payment by him to TMSE for any TMSE shares to which he subscribed.

741. Michel Lakah has produced no records showing a payment by him to TMSE for any TMSE shares to which he subscribed.

742. TMSE has produced no records showing a payment by either Michel Lakah or Ramy Lakah to TMSE for any shares to which they subscribed.

743. Ramy Lakah has produced no records showing a payment by him to Medequip for any Medequip shares to which he subscribed.

744. Michel Lakah has produced no records showing a payment by him to Medequip for any Medequip shares to which he subscribed.

745. Medequip has produced no records showing a payment by either Michel Lakah or Ramy Lakah to Medequip for any shares to which they subscribed.

746. Ramy Lakah has produced no records showing a payment by him to ASF for any ASF shares to which he subscribed.

747. Michel Lakah has produced no records showing a payment by him to ASF for any ASF shares to which he subscribed.

748. ASF has produced no records showing a payment by either Michel Lakah or Ramy Lakah to ASF for any shares to which they subscribed.

Q. Commingling: Contributions of Lakah Personal Assets and Credit to Prop Up the Guarantor Companies While They Were Needed

1. Ramy Lakah Provided Personal Funds (E£ 19,000,000) to ASF

749. On or about December 21, 1999, Ramy Lakah personally took an advance of E£ 19 million from Banque du Caire,

collateralized by some of his HCFI stock, and transferred those funds into a frozen time deposit account of Arab Steel Factory at Banque du Caire. (RTX 357 (S/J Undisputed Fact No. 304); R. Lakah Depn.(5/13/2009) Tr. at 37-39, 41; RTX 92 (RSM E 1161); RTX 124 (Egyptian Public Prosecution (BCC) Report on The Banque du Caire - Sarwat Branch (ASF)) transl. at 20); RTX 149 (Letter, dated December 29, 1999, from Banque du Caire Head Office (Credit) to general Credit Dept.); RTX 150 (Banque du Caire receipt of transfer of E£ 19 million from Ramy Lakah to ASF, dated December 21, 1999); RTX 114 (ACA Report dated 12/30/02) at 3 (BdC granted R. Lakah a credit facility of E£ 19M, secured by his HCFI stock); RTX 123 (BCC Report dated 2/29/04) at 2; RTX 131 (Other Minutes, PP's review of ACA report, dated 12/30/02) at 15); RTX 148, 152 (BdC Letters and Board Minutes); RTX 271 (Imburgia Report) at 1, 108, 154,155.)

750. ASF did not record a liability (debt obligation) of E£ 19 million to Ramy Lakah. (RTX 357 (S/J Undisputed Fact No. 306); RTX 271 (Imburgia Report) ¶157; RTX 64 (ASF Financial Statement as of 12/31/1999); RTX 92 (Creditor Banks' Accounts (RSM E 1164)).)

751. HCFI's consolidated financial statement does not indicate a E£ 19 million liability to Ramy Lakah. (RTX 357 (S/J

Undisputed Fact No. 307); RTX 271 (Imburgia Report) ¶158; RTX 62 (HCFI Financial Statement as of 12/31/1999).)

752. ASF's and HCFI's audited financial statements as of December 31, 1999 (a) included the E£ 19 million among ASF's assets, (b) did not indicate a debt (liability) of ASF to Ramy Lakah for such E£ 19 million, and nevertheless (c) indicated that ASF's (and HCFI's) liabilities and assets balanced. (RTX 357 (S/J Undisputed Fact No. 305); RTX 271 (Imburgia Report) at 8 and ¶¶153-158; RTX 64 (ASF Financial Statement as of 12/31/1999); RTX 62 (HCFI Financial Statements as of 12/31/1999, Note 7 (BH 0966)); RTX 92 (RSM E 1140).)

753. Either (a) Ramy Lakah gifted personal funds (E£ 19 million) to ASF, (b) or ASF's and HCFI's financial statements falsely understated their liabilities, by failing to include a corresponding liability to Ramy Lakah, in order to "balance" their fictitious capital. (RTX 271 (Imburgia Report) ¶158.)

754. In any case, Ramy Lakah treated his funds and the Guarantor companies' funds as part of the same basket of assets. (RTX 177 (Khadr Decl. ¶¶10, 40-55).)

2. The Lakahs Agreed to Transfer Personal Assets (E£ 137,104,380) and to Provide Additional Collateral to HCFI in Connection with a "Protocol" Settlement Agreement with the Lakah Group's Egyptian Bank Creditors

755. In October 2000, the Lakahs and their companies were assisted by the Government of Egypt in settling the debts of HCFI and its subsidiaries to nine Egyptian banks by entering into a protocol agreement. (Joint List of Undisputed Facts, Fact No. 118; see RTX 350, transl. at 1, 2, 7.)

756. The protocol "was reached and signed following a number of negotiations and meetings attended by the Central Bank of Egypt and the Ministry of Economics & Foreign Trade." (RTX 350, transl. at 2.)

757. Among other things, the protocol provided for the assistance of a representative of the Ministry of Economy in a negotiation to "end[] the dispute between Banque du Caire and the Customer as regard to repurchasing by the Customer of the shares of Banque du Caire in the Holding Company for Financial Investments." (RTX 351, transl. at 7-8.)

758. In the October 2000 "protocol" agreement with several of the Lakah Group's Egyptian creditor banks, Ramy Lakah and Michel Lakah agreed to contribute personal assets that they valued at E£ 137,104,380 (approximately \$40 million). (Joint List of Undisputed Facts, Fact No. 118; R. Lakah Depn.

(5/13/2009) Tr. at 27-28; RTX 89 (Balance and Statement of Fixed Assets, Balance of Long Term Loans, Balance of Creditors, Long Term Balances, Time Deposits (RSM E 11-12, 48-49, 50) and General Notes, Auditing Remarks, and Analytical Statement of Debtors for Long Term Balances (RSM E 51)); RTX 79 (HCFI financial statements as of 6/30/2000 (BH0194)).)

759. Specifically, the Lakahs agreed in October 2000 to transfer substantial personal assets to HCFI in connection with a protocol agreement with the Egyptian bank creditors of the Guarantor companies. (Joint List of Undisputed Facts, Fact Nos. 119, 122; RTX 89 (Balance and Statement of Fixed Assets, Balance of Long Term Loans, Balance of Creditors, Long Term Balances, Time Deposits (RSM E 11-12, 48-49, 50) and General Notes, Auditing Remarks, and Analytical Statement of Debtors for Long Term Balances (RSM E 51)); RTX 79 (HCFI financial statements as of 6/30/2000); R. Lakah Depn. (5/13/2009) Tr. at 27-28.)

760. The personal assets that the Lakahs agreed to contribute to HCFI in connection with the "protocol" also included E£ 92,104,380 in real estate "assets that were added to the Holding Company by Ramy and Michel Raymond Lakah in order to enhance the financial position of the Company." (Joint List of Undisputed Facts, Fact Nos. 121, 123; RTX 89 (RSM E 11-12, 50-51); RTX 80 (HCFI financial statement (consolidated) at

12/31/2000 -- (BH 8061 and 8070); RTX 81 (HCFI financial statement (unconsolidated) at 12/31/2000 (RSM E 3217-22, at 3219).)

761. The assets that the Lakahs agreed to transfer to HCFI pursuant to the protocol included a E£ 45 million debt obligation owed to Ramy Lakah by Midwest Airlines. (Joint List of Undisputed Facts, Fact No. 119; RTX 89 (RSM E 3, 11-12, 31, 33, 34, 48-49, 50, 51); RTX 80 (HCFI financial statement (consolidated) at 12/31/2000 (BH 8061 and 8070)); RTX 81 (HCFI financial statement (unconsolidated) at 12/31/2000 (RSM E 3217-22, at 3219)).)

762. Midwest Airlines was owned by Ramy and Michel Lakah, not by HCFI. (Joint List of Undisputed Facts, Fact No. 120.)

3. Other Contributions of Lakah Personal Assets and Credit to Prop Up the Guarantor Companies While They Were Needed

763. On October 2, 1997, Credit Lyonnais Bank approved E£ 3 million in credit facilities to ASF, which were personally guaranteed by Ramy Lakah. (RTX 127 (Egyptian Public Prosecution (BCC) Report on Banque Credit Lyonnais -- Cairo Branch relationships with ASF and Medequip) transl. at 4.)

764. On October 5, 1997, the National Bank of Egypt (El Borg branch) approved two credit facilities -- with limits of E£ 120 million and E£ 150 million, respectively -- for Medequip

based on credit facility documents that included "the signature of both Messrs. Ramy Raymond Michel Lakah and Michel Raymond Michel Lakah in their personal capacities and in their capacities as natural guardians of their minor children..." (RTX 144 (Letters re recommendation (9/24/97) and approval of banking facilities (10/5/97) from National Bank of Egypt, Head Office to Credit and Credit Settlements Department -- El Borg Branch (re Medequip) transl. at 2).)

765. On November 16, 1997, the Egyptian Commercial Bank approved an amendment to its E£ 5 million credit facility for ASF, and the bank's credit department referenced "a credit facility [to ASF] covered by a promissory note" for E£ 25 million guaranteed by Michel Lakah. (RTX 128 (Egyptian Public Prosecution (BCC) Report on the Egyptian Commercial Bank -- Heliopolis relationship with ASF, 2/19/2004) transl. at 4-5).)

766. In 1998, Ramy Lakah caused the Lakahs' personally-owned Scandinavian Company for Touristic Investments to transfer \$2.3 million to Medequip for no identified business reason, Medequip did not apply those funds in connection with work for Scandinavian, and Scandinavian did not cause Medequip to repay those funds. (RTX 214 (Oda Pacha Decl. ¶¶58-59, 65, 69); Depn. of Oda Pacha at 202-04, 287-88, 294.)

767. On January 26, 1999, Michel Lakah paid E£ 12.3 million from his account at Banque du Caire to ASF, and paid E£ 32.7 million from his account at Banque du Caire to Medequip. (M. Lakah Depn. (8/16/2011) Tr. at 103-06, 116-18; RTX 146; RTX 161 (BdC Memorandum and credit/debit forms); RTX 140 (Letter requesting transfer from Michel Lakah's account to Medequip dated 1/26/1999).)

768. On January 31, 1999, Michel Lakah paid E£ 2.1 million from his account at Banque du Caire to a Medequip account at Islamic International Investment and Development Bank. (RTX 141 (Letter, dated 1/31/1999, from Ramy Lakah to general Manager of Banque du Caire, Sarwat Branch, which M. Lakah signed as Deputy Chairman of an unspecified company); M. Lakah Depn. 8/16/2011 Tr. at 106.)

769. On February 10, 1999, E£ 15M was transferred from Michel Lakah's personal account to Amitrade (an HCFI subsidiary). (M. Lakah Depn. 8/16/2011 Tr. at 124-25 (referring to MLDX58 (RTX143)); RTX 143 (Banque du Caire receipt of transfer of E£ 15 million from Michel Lakah to Amitrade, dated 2/10/1999, p. 2).)

770. On February 10, 1999, E£ 1.66 million were transferred from Michel Lakah's account at Banque du Caire to TMSE. (RTX 142 (Letter from Michel Lakah to general Manager of Banque du Caire,

Sarwat Branch); RTX 142 (Instruction Letter from M. Lakah, and BdC transfer notes); M. Lakah Depn. (8/16/2011) Tr. at 110-12.)

771. On June 2, 1999, in connection with the Egyptian Saudi Finance Bank's approval of a credit facility for Amitrade, Ramy Lakah provided a personal undertaking "to settle the value of any bills of exchange [from Arab Steel Factory] that are not paid on dates of maturity thereof." (RTX 116 (Egyptian Public Prosecution (BCC) Report on Egyptian Saudi Finance Bank (Amitrade and Medequip)) transl. at 4.)

772. On July 28, 1999, E£ 7 million was transferred from an account of Michel Lakah at Banque du Caire to Medequip. (RTX 147 (Banque du Caire receipt of transfer of E£ 7 million from Michel Lakah to Medequip dated July 28, 1999 (MLDX59)); M. Lakah 8/16/2011 Depn. Tr. at 126-27 (referring to MLDX 59).)

773. On or about December 15, 1999, Ramy Lakah personally paid coupon interest that was due on ASF's local bond. (RTX 124 (BCC Report dated 2/29/04) at 20.)

774. Michel Lakah transferred E£ 3.3 million from his personal account to pay coupon interest due on ASF's local bond. (RTX 124 (BCC Report dated 2/29/04) at 8.)

775. On January 16, 2000, ASF's E£ 12.7 million debt to The Egyptian Commercial Bank was rescheduled based on a mortgage or

pledge by the Lakahs of approximately 1,690,000 of their shares of HCFI. (RTX 128 (Egyptian Public Prosecution (BCC) Report on The Egyptian Commercial Bank -- Heliopolis (ASF)) transl. at 9; RTX 151 (Letter from the Egyptian Commercial Bank Credits Department to the Main Office regarding ASF, 1/13/2000) transl. at 4.)

776. In April 2000, the Lakahs pledged E£ 250,000,000 worth of their HCFI shares to Banque du Caire as additional collateral for Banque du Caire's guarantee of interest payments on the ASF and HCFI local bonds. (RTX 155 (Letter from Banque du Caire General Department to Banque du Caire Head Office, 4/5/2000); RTX 153 (Minutes of the Board of Director Meeting of Banque du Caire, Meeting No. 4/2000, 2/17/2000) transl. at 4.)

777. In April 2000, in connection with the renewal of various credit facilities for Medequip and "sister companies" at the National Bank of Egypt, the Lakahs provided a declaration to the bank "regarding the sale of the Global Depository Receipts Lakah Group GDR [i.e., of HCFI stock] that are owned by the clients in favour of our Bank, together with assigning the foreign currency proceeds resulting from the monthly sale of the Global Depository Receipts at the Bank, and depositing the equivalent in Egyptian pounds in the Company's [Medequip's] account in settlement of the debts due..." (RTX 119 (Egyptian

Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 8.)

778. On or about June 19, 2009, Ramy and Michel Lakah entered into a settlement agreement with Banque Misr (as representative of and/or successor to Banque du Caire) that provided that the Lakahs personally would pay and/or guarantee payment of the debts of the Guarantor companies to Banque du Caire. (RTX 357 (S/J Undisputed Fact No. 336); RTX 87 (Settlement Agreement, dated 6/19/09).)

779. In July 2000, ASF's approximately E£ 9 million debt to the Egyptian Commercial Bank was assumed by Ramy Lakah personally at his request. (RTX 157 (Memorandum containing bank approval from The Egyptian Commercial Bank Credit Department, July 12, 2000) transl. at 5.)

780. Ramy Lakah issued personal checks and transferred other funds to Medequip accounts at the National Bank of Egypt in the respective amounts of E£ 8 million (check), E£ 2.5 million, E£ 7 million (check), and E£ 6.1 million. (RTX 119 (Egyptian Public Prosecution (BCC) Report on National Bank of Egypt - Heliopolis and El Borg Branches (Medequip)) transl. at 12, 13.)

781. Ramy or Michel Lakah personally guaranteed a E£ 5 million bank loan to ASF. (RTX 124 (BCC Report dated 2/29/04) at 5.)

782. Ramy Lakah personally guaranteed a US\$3 million (approximately E£ 10.2 million) bank loan to ASF. (RTX 127 (BCC Report dated 2/29/04) at 2-3.)

783. Ramy and Michel Lakah provided personal guarantees to Egyptian Commercial Bank ("ECB") to collateralize financing facilities of E£ 25M to ASF. (RTX 128 at 3-4.)

784. The Lakahs sold a hotel project in Sharm El Sheikh (owned by the Lakahs outside of the Lakah Group) and used part of the proceeds to pay creditors of HCFI. (RTX 357 (S/J Undisputed Fact No. 338); R. Lakah Depn. (11/13/2008) Tr. at 114-15.)

R. False Statements and Material Omissions in the Eurobond Offering Circular

785. The Eurobond prospectus or Offering Circular ("OC") included the representation that it contained complete and accurate audited financial information concerning HCFI, ASF, Medequip, and TMSE, respectively. (See RTX 45 (OC) at 2 and F-1 through F-64.)

786. The Offering Circular does not contain disclosures (i) that the stated capitals (including alleged increases of paid-in capital) of the Guarantor companies were mostly fictitious, or (ii) that the balance sheets of the Guarantor companies in the OC included fictitious and overstated assets to cover up the fictitious capital. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

787. There was no disclosure in the OC (or otherwise):

- (a) that the alleged Boards of Directors of the Guarantor companies were shams;
- (b) that the Lakahs had used forged documents in connection with the GDS offering and the Eurobond offering; or
- (c) that the Lakahs commingled funds with the Guarantor companies and used Guarantor company assets for their personal benefit.

(RTX 45 (OC) passim.)

788. There was no disclosure in the OC (or otherwise) that the Guarantor companies' financial statements in the OC contained numerous false statements. (RTX 45 (OC) passim.)

789. There was no disclosure in the OC (or otherwise) of the existence of (i) the power of attorney given by ASF to BdC or of (ii) the mortgage of ASF's assets in favor of BdC. (RTX 45 (OC) passim. (No mention of POA or mortgage); Murphy Depn. Tr. at 215-16, 227 (Murphy, a nominal director of HCFI, did not know about power of attorney until sometime in 2000); id. at 546-47

(had not seen mortgage); id. at 658 (was unaware of mortgage); id. at 217-18 (had not seen agreements underlying the local bond transactions).)

790. The Lakahs never disclosed to the Bond Managers or their counsel the existence of the ASF power of attorney or the mortgage on ASF's assets in favor of BdC (despite requests for information of that type). (RTX 45 (OC) passim. (no mention of POA or mortgage); Murphy Depn. Tr. at 215-16, 227 (did not know about power of attorney until sometime in 2000); id. at 546-47 (had not seen mortgage); id. at 658 (was unaware of mortgage); id. at 217-18 (had not seen agreements underlying the local bond transactions).)

791. Ramy Lakah met with BdC on the day before the Eurobond closing and learned that BdC planned to record its commercial mortgage on ASF's assets, but he did not disclose that information to the Bond Managers or their counsel, and it was not disclosed in the OC or otherwise to potential bondholders. (RTX 288 at 4-5 (proffer letter from Lakahs' counsel).)

792. It was not disclosed that the statement in the Offering Circular of HCFI's paid-in capital was inflated by means of the Stock Kiting Scheme. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

793. It was not disclosed that the statement in the Offering Circular of HCFI's paid-in capital was inflated by means of the False Capital Scheme. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

794. It was not disclosed that the statement in the Offering Circular of Medequip's paid-in capital was inflated by means of the False Capital Scheme. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

795. It was not disclosed that the statement in the Offering Circular of TMSE's paid-in capital was inflated by means of the False Capital Scheme. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

796. It was not disclosed that the statement in the Offering Circular of ASF's paid-in capital was inflated by means of the False Capital Scheme. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

797. There was no disclosure in the Offering Circular that the capital that was supposed to have been paid-in by the Lakahs to HCFI, Medequip, TMSE, and ASF for shares to which the Lakahs subscribed and which they received had not been paid-in and retained by those companies. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

798. It was not disclosed in the Offering Circular that HCFI's funds had been taken from the company and used to repay personal bank loans that had been drawn to finance the Lakahs' subscriptions to shares of HCFI. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC) passim.)

799. It was not disclosed in the Offering Circular that funds of HCFI were used to pay personal debts of Ramy Lakah or Michel Lakah. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

800. It was not disclosed in the Offering Circular that Medequip's funds had been taken from the company and used to repay personal bank loans that had been drawn to finance the Lakahs' subscriptions to shares of Medequip. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

801. It was not disclosed in the Offering Circular that funds of Medequip were used to pay personal debts of Ramy Lakah or Michel Lakah. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

802. It was not disclosed in the Offering Circular that TMSE's funds had been taken from the company and used to repay personal bank loans that had been drawn to finance the Lakahs'

subscriptions to shares of TMSE. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

803. It was not disclosed in the Offering Circular that funds of TMSE were used to pay personal debts of Ramy Lakah or Michel Lakah. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

804. It was not disclosed in the Offering Circular that ASF's funds had been taken from the company and used to repay personal bank loans that had been drawn to finance the Lakahs' subscriptions to shares of ASF. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

805. It was not disclosed in the Offering Circular that funds of ASF were used to pay personal debts of Ramy Lakah or Michel Lakah. (RTX 357 (S/J Undisputed Fact Nos. 64-65); RTX 45 (OC).)

S. Reliance by Bondholders on the Offering Circular and Other Eurobond Transaction Documents

806. It is stated in the Eurobond Offering Circular:

"The Issuer and the Guarantors ... confirm that this Offering Circular contains or incorporates all information with respect to the Issuer, the Guarantors, the Lakah Holding Company and its Subsidiaries (as defined below) taken as a whole (the "Lakah Group"), the Bonds and the Guarantee, which is material in the context of the Issue and Offering of the Bonds and the Guarantee...

* * *

No person has been authorized to give any information or to make any representations other than those contained in this Offering Circular, the Subscription Agreement (as defined below), the Indenture or the Guarantee and, if given or made, such information or representations must not be relied upon as having been authorized.

* * *

The Offering is being made on the basis of this Offering Circular. Any decision to purchase Bonds in the Offering must be based on the information contained herein."

(RTX 357 (S/J Undisputed Fact No. "418 [sic: 419]");

RTX 45 (OC at 2-3).)

1. NBO

807. NBO purchased Lakah Eurobonds in the principal amount of \$5,000,000 on or about March 30, 2000, for approximately 100% their face value. (RTX 291 (Sampath Decl.).)

808. Before NBO purchased such Bonds, NBO received and reviewed the following documents:

- (a) the Offering Circular, dated December 6, 1999, relating to the Bonds;
- (b) the Regulation S Global Bond, dated December 8, 1999;
- (c) the Terms and Conditions of the Bonds;
- (d) the Guarantee, dated as of December 6, 1999, made jointly and severally by each of the Guarantors to and in favor of the Trustee and for the benefit of the Bondholders; and
- (e) the Indenture, dated as of December 8, 1999, by and among the Issuer, the Guarantors, and the Bank of New York as Trustee, for the benefit of the Bondholders, and providing for the issuance of the Bonds.

(RTX 291 (Sampath Decl.).)

809. NBO relied on the completeness and accuracy of the contents of the Offering Circular, Regulation S Global Bond, Terms and Conditions of the Bonds, Guarantee, and Indenture when it decided to acquire. Based on the information contained in those documents, including the descriptions of the Issuer and Guarantors contained in the Offering Circular, NBO decided to purchase the Bonds. (RTX 291 (Sampath Decl. ¶¶ 7-9).)

810. If NBO had known that any of the financial information in the OC and the other Bond Transaction Documents was inaccurate or incomplete, it would not have purchased the Bonds. (RTX 291 (Sampath Decl. ¶¶ 7-9).)

811. NBO holds Bonds in the total principal amount of US \$5,000,000. (RTX 357 (S/J Undisputed Fact No. 18); RTX 291 (Sampath Decl).)

2. UBS

812. UBS holds Bonds in the total principal amount of US \$17,420,000. (RTX 357 (S/J Undisputed Fact No. 18); RTX 318 (Schmid Decl.); RTX 328 (Suppl. Decl. of K. Schmid).)

813. UBS purchased Bonds in connection with the original offering on or about December 8, 1999, out of which it retained Bonds in its portfolio in the principal amount of \$3,420,000. UBS acquired \$2,770,000 of those Bonds effectively on or about December 8, 1999 and \$650,000 of those Bonds effectively on or about December 13, 1999. (RTX 328 (Suppl. Decl. of K. Schmid).)

814. Before UBS acquired the Bonds, it received and reviewed the following documents:

- (a) the Offering Circular, dated December 6, 1999, relating to the Bonds,
- (b) the Regulation S Global Bond, dated December 8, 1999;
- (c) the Terms and Conditions of the Bonds;
- (d) the Guarantee, dated as of December 6, 1999, made jointly and severally by each of the Guarantors to and in favor of the Trustee and for the benefit of the Bondholders;
- (e) the Indenture, dated as of December 8, 1999, by and among the Issuer, the Guarantors, and the Bank of New York as

Trustee, for the benefit of the Bondholders, and providing for the issuance of the Bonds; and

(f) a Preliminary Offering Circular, dated October 11, 1999 (the "Preliminary Offering Circular").

(RTX 318 (Schmid Decl.); RTX 328 (Suppl. Decl. of K. Schmid).)

815. UBS relied on the completeness and accuracy of the contents of those documents when it decided to acquire the first tranche of the Bonds. Based on the information contained in those documents, including the descriptions of the Issuer and Guarantors contained in both the Preliminary Offering Circular and the Offering Circular, UBS decided to acquire the first tranche of \$3.42 million in Bonds. (RTX 328 (Suppl. Decl. of K. Schmid).)

816. If UBS had known that any of the financial information in the OC and the other Bond Transaction Documents and Preliminary Offering Circular was inaccurate or incomplete, it would not have acquired the Bonds. (RTX 328 (Suppl. Decl. of K. Schmid) ¶¶4-6; RTX 318 (Schmid Decl. ¶¶ 7-9).)

817. On or about October 18, 2001 UBS took assignment from National Commercial Bank ("NCB") of Bonds in the face amount of \$14,000,000. UBS understood that NCB had purchased those Bonds on the basis of the Bond Transaction Documents, effective December 8, 1999, the Bond issuance date, from two or more sellers, including UBS. UBS received assignment of those Bonds

from NCB in exchange for an agreement that NCB shall receive a 50% participation in the recoveries obtained by UBS with respect to those Bonds. (ECF No. 296 (Objection to Magistrate's Decision on the Record dated 2.11.15, pp. 11-12); RTX 328 (Suppl. Decl. of K. Schmid).)

3. NBAD

818. NBAD holds Bonds in the total principal amount of US \$5,000,000. (RTX 357 (S/J Undisputed Fact No. 18); RTX 299 (Somarajan Decl.).)

819. NBAD purchased Bonds in the principal amount of \$5,000,000 on or about March 30, 2000. (RTX 299 (Somarajan Decl.).)

820. Before NBAD purchased any of the Bonds, NBAD received and reviewed the following documents:

- (a) the Offering Circular, dated December 6, 1999, relating to the Bonds,
- (b) the Regulation S Global Bond, dated December 8, 1999;
- (c) the Terms and Conditions of the Bonds;
- (d) the Guarantee, dated as of December 6, 1999, made jointly and severally by each of the Guarantors to and in favor of the Trustee and for the benefit of the Bondholders; and
- (e) the Indenture, dated as of December 8, 1999, by and among the Issuer, the Guarantors, and the Bank of New York as Trustee, for the benefit of the Bondholders, and providing for the issuance of the Bonds.

(RTX 299 (Somarajan Decl.).)

821. NBAD relied on the completeness and accuracy of the contents of those documents when it decided to purchase Bonds. Based on the information contained in those documents, including the descriptions of the Issuer and Guarantors contained in the Offering Circular, NBAD decided to purchase the Bonds. (RTX 299 (Somarajan Decl.).)

822. If NBAD had known that any of the financial information in the OC and the other Bond Transaction Documents was inaccurate or incomplete, it would not have purchased the Bonds. (RTX 299 (Somarajan Decl. ¶¶ 7-9).)

4. EIC (c/k/a Island Capital).

823. Exporters Insurance (c/k/a Island Capital) holds Bonds in the total principal amount of US \$10,000,000. (RTX 357 (S/J Undisputed Fact No. 18); RTX 307 (Stern Decl.).)

824. These Bonds were initially purchased by Ecoban Finance Limited ("Ecoban") ostensibly from HCFI. (RTX 307 (Stern Decl.).)

825. Before purchasing the Bonds, Ecoban received, reviewed, and relied on the following documents:

- (a) a solicitation letter, dated April 4, 2000, from Integrated Financial Services S.A.E. ("Integra") to Ecoban, in which Integra, purportedly acting on a mandate from the Issuer

and the Guarantors, solicited Ecoban to underwrite or place some US\$30 million of the Bonds;

- (b) a set of financial information, provided via Integra, including a Consolidated Balance Sheet (as of December 31, 1999) and Consolidated Income Statement (for the period January 1, 1999 to December 31, 1999) for Holding Company for Financial Investments (Lakah Group) S.A.E., and the auditors' report in that regard; notes to the consolidated financial statements (as of December 31, 1999) of the Holding Company for Financial Investments (Lakah Group) S.A.E.; a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Medequip for Trading and Contracting, S.A.E.; a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Trading Medical System Egypt, S.A.E.; and a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Arab Steel Factory, S.A.E.;
- (c) a copy of a Fitch IBCA rating report, dated September 29, 1999, provided via Integra, regarding the Holding Company for Financial Investments (Lakah Group);
- (d) an analyst's report, dated June 1, 2000, from the Middle East and North Africa Research Department of HSBC Investment Bank plc, regarding the Lakah Group, indicating that the report relied on information provided by the Lakah Group, including consolidated financial statements provided by the Lakah Group, as well as information regarding Medequip, TMSE, and Arab Steel Factory, among others, all apparently provided by the Lakah Group; and
- (e) portions of the Offering Circular, dated December 6, 1999, provided via Integra, including the Terms and Conditions of the Bonds, and a summary of the principal terms of the Guarantee, dated as of December 6, 1999, made jointly and severally by each of the Guarantors to and in favor of the Trustee and for the benefit of the Bondholders.

(Testimony of Jean-Yves Baudoin.)

826. On or about July 14, 2000, Ecoban sold the Bonds to Erste Bank der Oesterreichischen Sparkassen AG ("Erste Bank"). In connection with that sale, Ecoban purchased from Exporters a

Credit Insurance Policy (Policy No. 00-005-36920-3), which Exporters issued on July 17, 2000 (the "Policy"). The Policy provided coverage to Erste Bank, the insured, against loss caused by nonpayment of any amount owed under the Bonds up to a limit of liability of \$10,600,000. (RTX 307 (Stern Decl.); testimony of J.-Y. Baudoin.)

827. Before it issued the Policy, Exporters received from Ecoban and reviewed the following documents:

- (a) a solicitation letter, dated April 4, 2000, from Integrated Financial Services S.A.E. ("Integra") to Ecoban, in which Integra, purportedly acting on a mandate from the Issuer and the Guarantors, solicited Ecoban to underwrite or place some US\$30 million of the Bonds;
- (b) a set of financial information, provided via Integra, including a Consolidated Balance Sheet (as of December 31, 1999) and Consolidated Income Statement (for the period January 1, 1999 to December 31, 1999) for Holding Company for Financial Investments (Lakah Group) S.A.E., and the auditors' report in that regard; notes to the consolidated financial statements (as of December 31, 1999) of the Holding Company for Financial Investments (Lakah Group) S.A.E.; a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Medequip for Trading and Contracting, S.A.E.; a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Trading Medical System Egypt, S.A.E.; and a Balance Sheet (as of December 31, 1999) and Income Statement (for the period January 1, 1999 to December 31, 1999) for Arab Steel Factory, S.A.E.;
- (c) a copy of a Fitch IBCA rating report, dated September 29, 1999, provided via Integra, regarding the Holding Company for Financial Investments (Lakah Group);
- (d) an analyst's report, dated June 1, 2000, from the Middle East and North Africa Research Department of HSBC

Investment Bank plc, regarding the Lakah Group, indicating that the report relied on information provided by the Lakah Group, including consolidated financial statements provided by the Lakah Group, as well as information regarding Medequip, TMSE, and Arab Steel Factory, among others, all apparently provided by the Lakah Group; and

- (e) portions of the Offering Circular, dated December 6, 1999, provided via Integra, including the Terms and Conditions of the Bonds, and a summary of the principal terms of the Guarantee, dated as of December 6, 1999, made jointly and severally by each of the Guarantors to and in favor of the Trustee and for the benefit of the Bondholders.

(RTX 307 (Stern Decl.); testimony of J.-Y. Baudoin.)

828. Exporters relied on the completeness and accuracy of the contents of those documents when it decided to issue the Policy. Based on the information contained in those, Exporters agreed to issue the Policy. (RTX 307 (Stern Decl.); testimony of J.-Y Baudoin.)

829. If Exporters had known that any of the financial information [provided by the Lakahs] in those documents was inaccurate or incomplete, it would not have insured the Bonds.

(RTX 307 (Stern Decl. ¶¶ 7-10); testimony of J.-Y. Baudoin.)

830. The Policy provides in pertinent part that

"In the event of any payment by [Exporters] under this Policy, [Exporters] shall be subrogated to all of the Servicer's [Ecoban's] and Insured's [Erste Bank's] rights of recovery against any person or organization and the Insured and the Servicer shall execute and deliver all instruments and papers and do whatever else

is necessary to secure and perfect such rights." (Policy § VI.B.).

(RTX 307 (Stern Decl.).)

831. Moreover, one of the preconditions for payment by Exporters to the Insured under the Policy was that

"The insured and the Servicer have assigned to [Exporters] all of their rights and interests with respect to the Eligible Credit [the Lakah Eurobond], such assignment to be effective upon payment of the Loss by [Exporters] to the Insured..." (Policy § V.C.).

(RTX 307 (Stern Decl.).)

832. As a result of communications received thereafter from Ramy Lakah to the various Bondholders, including Erste Bank (and Ecoban), Exporters became aware that the Issuer and Guarantors expected to default on the remaining required interest payments and on the required principal payment at maturity of the Bonds. Exporters decided to pay out the policy limit, and thus to receive assignment of the Bonds from its insured. (RTX 307 (Stern Decl.); testimony of J.-Y. Baudoin.)

833. Exporters acquired the \$10,000,000 (face amount) of Bonds from its insured, Erste Bank, effective on December 31, 2001, and was subrogated to the rights of Erste Bank. (RTX 307 (Stern Decl.); testimony of J.-Y. Baudoin.)

T. Identification of Lakah Signatures on Documents

834. Ramy Lakah's signature (or signatures) appear(s) on each of the following documents: RTX 44, 52, 77, 190-207, 217-236, 251-254, 256-261, 351. (RTX 177 (Khadr Decl. ¶ 194 and the following Exhibits to that declaration: "11", "12" (at top and bottom), "13", "14", "15" (in English), "16", "17" (executed for himself and for Michel Lakah with power of attorney), "18" - "27" (RTX 190-207)); RTX 214 (Oda Pacha Decl. ¶ 98 and the following Exhibits to that declaration: Exhs. "C" - "V" (RTX 217-236 and 242). RTX 245 (Shourbagy Decl. ¶ 127 and the following Exhibits to that declaration: Exhs. "F", "G", "H" (at page 9), and "I" - "P" (RTX 251-254, and RTX 256-261)). R. Lakah Depn. (5/12/09) Tr. 38:16-39:12, 41:12-19; R. Lakah Depn. (11/14/08) Tr. 206:17-207:2, 207:17-208:12; R. Lakah Depn. (5/12/09) Tr. 228:9-14; R. Lakah Depn. (10/4/11) Tr. 89:9-14, 90:4-7.)

835. Michel Lakah's signature (or signatures) appear(s) on each of the following documents: RTX 195, 199, 206-208, 210-212, 227, 237-244, 256, 262. (RTX 177 (Khadr Decl. ¶195 and the following Exhibits to that declaration: "16" (RTX 195), "20" (RTX 199), "28" (RTX 206), "29" (RTX 207), "31" (RTX 208) (in many places, including on each page, including pages 2 and 3), and "33" - "35" (RTX 210 - 212); RTX 214 (Oda Pacha Decl. ¶99

and the following Exhibits to that declaration: "M" (RTX 227), "W" - "DD" (RTX 237-244); RTX 245 (Shourbagy Decl. ¶ 129 and the following Exhibits to that declaration: "K" (RTX 256), and "R" (RTX 262)).)

U. Regarding CPLR 7503(C)

836. The Bondholders transmitted copies of a "Notice Pursuant to New York Civil Practice Law and Rules 7503(c)" (the "Notice") and the Arbitration Demand to Petitioner Michel Lakah, via Federal Express, at his residence in Canada (999 Rue White, St. Laurent, Quebec), and those documents were delivered and signed for on or about June 12, 2006. (Joint List of Undisputed Facts, Fact No. 38; RTX 345 (Affid. of Delivery of Notice [to ML] (filed 9/25/12; ECF No. 168); M. Lakah Depn. 11/11/2008 Tr. at 6 (confirming his residence address).)

837. The Bondholders transmitted copies of the Notice and the Arbitration Demand to Petitioner Michel Lakah, via Federal Express, at his business address in Canada (c/o LBIG Construction, 1176 Rue Bishop, Montreal, Quebec), and those documents were delivered and signed for on or about June 12, 2006. (Joint List of Undisputed Facts, Fact No. 39; RTX 345 (Affid. of Delivery of Notice [to ML]).)

838. On or about July 20, 2006, copies of the Notice and the Arbitration Demand were served at Petitioner Ramy Lakah's

residence in France (24 rue Galilee, Paris) by a French bailiff. (RTX 344 (Affidavit of Delivery of Notice [to RL] (filed 9/25/12; ECF No. 169)); R. Lakah Depn. (11/13/08) Tr. 11-12 (confirming his residence address in Paris).)

839. The service by a French bailiff of the Notice and the Arbitration Demand at Ramy Lakah's residence on or about July 20, 2006 was in accordance with French law. (RTX 344 (Affid. of Delivery of Notice [to RL], ¶6 and Ex. B).)

840. The Notice stated that the Bondholders intended to arbitrate the controversies described in the Arbitration Demand. (Joint List of Undisputed Facts, Fact No. 40; RTX 344; RTX 345; RTX 343.)

841. The Notice specified the agreements pursuant to which arbitration was sought, namely: (a) the Indenture; (b) the Guarantee; and (c) the Bond including the Terms and Conditions of the Bond ("TCB"). (Joint List of Undisputed Facts, Fact No. 41; RTX 344; RTX 345; RTX 343.)

842. The Notice specified the name and address of an agent of the Claimants (i.e., attorneys for Bondholders herein). (Joint List of Undisputed Facts, Fact No. 42; RTX 343; RTX 344; RTX 345.)

843. The Notice contained the following language: "Unless within twenty (20) days after the service of this Notice, you apply, pursuant to the provisions of § 7503(c) of the New York Civil Practice Law and Rules, for a stay of the arbitration, you will thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time." (RTX 343; RTX 344; RTX 345.)

844. Neither Petitioner applied to stay the Arbitration within 20 days of service of the Arbitration Demand and Notice. (RTX 1 (Petitioners' Order to Show Cause with Affirmation of Dennis Rothman, dated 3/19/2007, at para. 22 (affirming that "No other application has been made for the relief sought herein."))).

III. Conclusions of Law

1. The Court has jurisdiction over this proceeding. (9 U.S.C. §203.)

2. The arbitration agreements in this proceeding concern commercial relations between citizens of different countries and are therefore governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. (9 U.S.C. §202; Caldarola v. Calabrese, 298 F.3d 156, 160 (2d Cir. 2002).)

3. Federal law governs arbitrability and veil-piercing in this case. (Lakah v. UBS AG, 996 F. Supp. 2d 250, 259-60 (S.D.N.Y. 2014).)

A. Piercing the Corporate Veil

4. Piercing the corporate veil, or alter ego theory, is one of the fundamental legal bases for compelling a non-signatory of an arbitration agreement to arbitrate against a signatory. (Thomson-CSF, S.A. v. American Arb. Ass'n, 64 F.3d 773, 776-78 (2d Cir. 1995).)

5. The corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, inter alia, the corporate form would otherwise be misused to accomplish wrongful purposes. (United States v. Bestfoods, 524 U.S. 51, 62 (1998).)

6. The veil-piercing equitable remedy is designed "to achieve justice, equity, to remedy or avoid fraud or wrongdoing, or to impose a just liability." (In re Cambridge Biotech Corp., 186 F.3d 1356, 1376 (Fed. Cir. 1999).)

7. Veil-piercing may be utilized to achieve substantial justice. Therefore, the veil-piercing doctrine "may not be reduced to definitive rules governing the varying circumstances when the power may be exercised." Courts disregard the corporate form when necessary to prevent wrongful conduct from

succeeding or otherwise to achieve equity. (Morris v. New York State Dept. of Taxation, 82 N.Y.2d 135, 141 (1993); Southern New England Telephone Co. v. Global NAPS Inc., 624 F.3d 123, 139 (2d Cir. 2010); Ridge Clearing & Outsourcing Solutions, Inc. v. Khashoggi, No. 07 Civ. 6611 (RJH), 2011 U.S. Dist. LEXIS 91352, at *28, *34-35 (S.D.N.Y. Aug. 16, 2011).)

8. Where the veil-piercing claims are not based on allegations of fraud, the liberal "notice pleading" standard of Rule 8(a) applies. (See In re Currency Conversion Fee Antitrust Litigation, 265 F.Supp.2d 385, 425 (S.D.N.Y. 2003); United Feature Syndicate, 216 F.Supp.3d at 223; Old Republic Ins., 170 F.R.D. at 375; Rolls-Royce Motor Cars, Inc., v. Schudroff, 929 F.Supp. at 117, 122 (S.D.N.Y. 1996). Thus, all of the elements of a fraud claim, for example, reliance, do not have to be proved. (American Card Cash Corp. v. AT&T Corp., No. 99-7894, 2000 U.S. App. LEXIS 6318, at *12 (2d Cir. Apr. 6, 2000); Ridge Clearing, 2011 U.S. Dist. LEXIS 91352, at *34-35; Key Items, Inc. v. Ultima Diamonds, Inc., No. 09 Civ. 3729 (HBP), 2011 U.S. Dist. LEXIS 111524, at *22 (S.D.N.Y. Sept. 289, 2011); Rotella v. Derner, 283 A.D.2d 1026, 1027 (4th Dep't 2001); Lederer v. King, 214 A.D.2d 354 (1st Dep't 1995).)

9. Where the veil-piercing claims are based on allegations of fraud, however, the heightened pleading standard

or Rule 9(b) is the lens through which those allegations must be examined. (See *426 In re Currency Conversion Fee Antitrust Litigation, 265 F.Supp.2d 385, 425 (S.D.N.Y. 2003); United Feature Syndicate, 216 F.Supp.3d at 223; Old Republic Ins., 170 F.R.D. at 375; Rolls-Royce, 929 F.Supp. at 122; see also Network Enters., Inc. v. APBA Offshore Prods., Inc., No. 01 Civ 11765 (CSH), 2002 WL 31050846, at *6 (S.D.N.Y. Sept. 12, 2002).) To establish liability, a plaintiff must prove all of the elements of fraud under federal law: "(1) defendant made materially false representations, (2) defendant knew the representations were false, (3) defendant acted with intent to defraud plaintiff, and (4) plaintiff reasonably relied on the false representations." (Seanto Exports v. United Arab Agencies, 137 F.Supp.2d 445, 451 (S.D.N.Y. 2001) (citing Marcus v. AT&T Corp., 138 F.3d 46 (2d Cir. 1998).))

10. The elements of veil-piercing, including fraud or misconduct, must be proven by a preponderance of the evidence and not more. (Gartner v. Snyder, 607 F.2d 582, 586 (2d Cir. 1979); United Rubber, Cork Linoleum & Plastic Workers v. Great American Indus., Inc., 479 F. Supp. 216, 242 (S.D.N.Y. 1979).)

11. A shareholder's fraud or wrongdoing need only proximately result in injury to the plaintiff in order to justify piercing the corporate veil. It is enough that the

plaintiff is of a kind (e.g., financiers or creditors or investors) that one could reasonably foresee could be injured by the shareholder's conduct. It is not necessary that the misconduct be committed with a subjective intent to harm a specific plaintiff. (Freeman, 119 F.3d at 1052; Passalacqua, 933 F.2d at 138; Ridge Clearing, 2011 U.S. Dist. LEXIS 91352 at *37; Mishkin v. Gurian (In re Adler, Coleman Clearing Corp.), 469 F. Supp. 2d 112, 123-26 (S.D.N.Y. 2007); Tokio Marine and Fire Ins. Co. v. Rosner, No. 02-CV-5065 (RJD), 2007 WL 4373240, at *3 (E.D.N.Y. Dec. 10, 2007).)

12. An injury is proximately caused by a fraud or wrong if it is a natural or probable consequence of the defrauder's misrepresentation or if the defrauder ought reasonably to have foreseen that the injury was a likely consequence of the fraud. (Banque Franco-Hellenique De Commerce Int'l et Maritime, S.A. v. Christophides, 106 F.3d 22, 27 (2d Cir. 1997).)

13. The law requires only that the shareholder's wrongdoing "resulted in" plaintiff's injury. (Morris, 82 N.Y.2d at 141; Freeman, 119 F.3d at 1052; Passalacqua, 933 F.2d at 138.)

14. There is no requirement here that Respondents show that the injuries resulting to them were caused by the Lakahs'

wrongful conduct to the exclusion of all other possible influences. (Passalacqua, 933 F. 2d at 138.)

15. There is no rigid rule for piercing the corporate veil. The party seeking to pierce the veil "need only demonstrate that it would be unfair under the circumstances not to disregard the corporate form." (Alman v. Danin, 801 F.2d 1, 3 (1st Cir. 1986); Southern New England, 624 F.3d at 139; Williamson v. Recovery L.P., 542 F.3d 43, 53 (2d Cir. 2008).)

1. Veil-Piercing to Avoid Wrongdoing or Inequity

16. Federal courts find two sorts of inquiries useful in demonstrating that it would be unfair under the circumstances not to disregard the corporate form: (1) whether a shareholder dominates and controls a corporate entity, and (2) whether a shareholder uses his control of a corporation to perpetrate a fraud or other wrong or to affect an injustice upon another party. (Goldberg v. Colonial Metal Spinning & Stamping Co., No. 92 Civ. 3721 (JFK), 1993 WL 361672, at *4-8 (S.D.N.Y. Sept. 14, 1993); Freeman v. Complex Computing Co., 119 F.3d 1044, 1052 (2d Cir. 1997).)

17. The following factors and indicia, among others, are relevant to the determinations of shareholder domination and control and use of the corporate form to perpetrate a wrongful or inequitable act:

(1) inadequate capitalization of the corporation; (2) intermingling of funds or other assets between entities and individuals; (3) movement of funds into and out of the corporation for personal rather than corporate purposes; (4) use of company property by the shareholder as if it were his own; (5) stripping of assets of an obligor company; (6) dealings between corporation and shareholder that are not at arm's length; (7) disregard of corporate formalities; (8) the degree of discretion exercised by the allegedly dominated corporation; (9) whether the corporation is treated as an independent profit center; (10) payment or guarantee of the corporation's debts by the dominating person; (11) common office space/address and telephone numbers of corporate entities; and (12) overlap in ownership, officers, directors or personnel.

18. Importantly, no single factor or combination of factors is dispositive. (MAG Portfolio Consult, GMBH v. Merlin Biomed Group, LLC, 268 F.3d 58, 63 (2d Cir. 2001); Am. Fuel Corp. v. Utah Energy Dev. Co., 122 F.3d 130, 134 (2d Cir. 1997); Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc., 933 F.2d 131, 138, 139 (2d Cir. 1991); Kinetic Instruments, Inc. v. Lares, 802 F. Supp. 976, 985-86 (S.D.N.Y. 1992); Gen. Textile Printing & Processing Corp. v. Expromtorg Int'l Corp., 891 F. Supp. 946 (S.D.N.Y. 1995); Shanghai Join Buy Co. v. PSTEX Group, Inc., No. 05 Civ. 3766 (NRB), 2006 WL 2322648, at *3 (S.D.N.Y.

Aug. 10, 2006); Freeman, 119 F.3d at 1052; Network Enterprises, Inc. v. APBA Offshore Productions, Inc., 427 F. Supp. 2d 463, 488-89 (S.D.N.Y. 2006).)

19. Domination and control exist, for example, "when a corporation is used by an individual to accomplish his own and not the corporation's business" or "[w]here there is proof that defendants were doing business in their individual capacities to suit their own ends -- shuttling their own funds in and out without regard to the corporation's form. . ." (Passalacqua, 933 F.2d at 138; Ridge Clearing, 2011 U.S. Dist. LEXIS 91352 at *28-29.)

20. Here, there is no requirement that Respondents demonstrate that the Lakahs gained personal benefit from their use of the Guarantor companies in order to pierce the corporate veil. (Williamson, 542 F.3d at 53; Solomon v. R.E.K. Dress, 670 F. Supp. 96, 100 (S.D.N.Y. 1987).)

21. Although there is no requirement that the Lakahs personally benefitted from their misconduct, proof of their personal benefit is a factor that is relevant to the equities. (Passalacqua, 933 F.2d at 139.)

22. Inadequate capitalization of a company is a classical and weighty factor supporting piercing the corporate veil to do justice. "[C]arrying on a business without substantial capital

and leaving the corporation without substantial assets to meet its debts can justify piercing the corporate veil." (Id. at 139; Dolco Invs., Ltd. v. Moonriver Dev., Ltd., 486 F. Supp. 2d 261, 271 (S.D.N.Y. 2007); Freeman v. Complex Computing Co., 119 F.3d 1044, 1053 (2d Cir. 1997); Last Time Beverage Corp. v. F & V Distrib. Co., LLC, 98 A.D.3d 947, 951, 951 N.Y.S.2d 77, 81 (2d Dep't 2012); Weinreich v. Sandhaus, 850 F. Supp. 1169, 1179 (S.D.N.Y.), amended on other grounds, 156 F.R.D. 60 (S.D.N.Y. 1994); see Ridge Clearing, 2011 U.S. Dist. LEXIS 91352 at *9-10, *12-13, *18-19, *30, and *36.)

23. Undercapitalization is a particularly compelling factor where, as here, there has been a misrepresentation regarding the assets of the company as well. (Oriental Commercial & Shipping Co., v. Rosseel, N.V., 702 F. Supp. 1005, 1020 (S.D.N.Y. 1988); Columbine Shipping, Inc. v. China Metallurgical Import & Export Corp., No. 94 Civ. 9260(WK), 1998 WL 223229, at *3 (S.D.N.Y. Jan. 14, 1998).)

24. The tenuous economic condition of a corporation weighs in favor of veil-piercing if that condition was created purposely by the shareholders, e.g., by stripping the company's assets in order to avoid its obligations. (Sahu v. Union Carbide Corp., No. 04 civ. 8825 (JFK), 2006 84475 24 (S.D.N.Y. Nov. 20, 2006); Lederer v. King, 214 A.D.2d 354 (1st Dep't 1995).)

25. If a controlling shareholder strips the assets of a corporation so that it cannot satisfy its obligations to its creditors, sufficient grounds exist to pierce the corporate veil. (See Kinetic Instruments, Inc. v. Lares, 802 F. Supp. 976, 985-86 (S.D.N.Y. 1992); Gen. Textile Printing & Processing Corp. v. Expromtorg Int'l Corp., 891 F. Supp. 946, 950 (S.D.N.Y. 1995); Shanghai Join Buy Co. v. PSTEX Group, Inc., No. 05 Civ. 3766 (NRB), 2006 WL 2322648, at *3 (S.D.N.Y. Aug. 10, 2006).)

26. A shareholder's payment of corporate debt or guarantee of corporate credit or transfer of assets to a corporation in other than an arm's-length documented transaction clearly support veil-piercing. (In re Stewart Adler, 467 B.R. 279, 293-94 (Bankr. E.D.N.Y. 2012); Federal National Mortgage Ass'n v. Olympia Mortgage Corp., 724 F. Supp. 2d 308, 319, 321 (E.D.N.Y. 2010); Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv., Inc., 210 A.D.2d 24, 619 N.Y.S.2d 29, 30 (1st Dep't 1994).)

27. A shareholder's payment or collateralization of a corporation's debt or contribution of assets to the company is a classic indicium of domination and control, regardless of whether the benefit is said to be personal or corporate. (Passalacqua, 933 F.2d at 139; Federal Nat'l Mortgage Ass'n v. Olympia Mortg. Corp., 724 F. Supp. 2d 308, 319 (E.D.N.Y. 2010).)

28. Intermingling or commingling of personal assets with company assets is another factor indicating a shareholder's control over a company. (Freeman, 119 F.3d at 1052; Passalacqua, 933 F.2d at 139.)

29. As set forth in the Findings of Fact, including those in II. D-Q, the Lakahs dominated and controlled the Guarantors and used that control to commit wrongdoing that proximately caused injury to the Bondholder-Respondents. (Williamson, 542 F.3d at 53; Passalacqua, 933 F. 2d at 138-139.) In so doing, the Lakahs used the corporate form to achieve wrongful purposes. (United States v. Best Foods, 524 U.S. 51, 62 (1998)). Piercing the corporate veil is justified in this case because doing so would accomplish justice and equity. (See Brunswick Corp. v. Waxman, 599 F.2d 34, 36 (2d Cir. 1979)(requiring showing that piercing the corporate veil would "accomplish justice or equity"); see also U.S. for use of Tower Masonry, Inc. v. J. Kokolakis Contracting, Inc., No. 93 Civ. 6369 (LBS), 1995 WL 539742, at *7 (S.D.N.Y. Sept. 8, 1995) (quoting Aries Ventures Ltd. v. Axa Finance S.A., 729 F.Supp 289, 296 (S.D.N.Y. 1990) (stating that courts will not pierce corporate veil "unless it would accomplish justice or equity") (citation omitted)(internal quotation marks omitted)); Aspex Eyewear, Inc. v. Altair Eyewear, Inc., 361 F.Supp.2d 210, 217 (S.D.N.Y. 2005)(piercing corporate veil permitted to "prevent fraud, illegality. . .[or]

. . . injustice")(citation omitted); Network Enterprises, Inc. v. APBA Offshore Productions, Inc., 427 F. Supp.2d 463, 487 (S.D.N.Y. 2006)(quoting Walkovsky v. Carlton, 18 N.Y.2d 414, 417 (1966)("courts will. . . pierce the corporate veil. . . whenever necessary to prevent fraud or to achieve equity").)

2. Veil-Piercing to Avoid Fraud

30. As set forth in the Conclusions of Law above at paragraph 9, the elements of fraud under federal law are "(1) defendant made materially false representations, (2) defendant knew the representations were false, (3) defendant acted with intent to defraud plaintiff, and (4) plaintiff reasonably relied on the false representations." (Seanto Exports v. United Arab Agencies, 137 F.Supp.2d 445, 451 (S.D.N.Y. 2001) (citing Marcus v. AT&T Corp., 138 F.3d 46 (2d Cir. 1998).)

31. As set forth in the Findings of Fact, including in those in II. R and S, the Lakahs, using the corporate form, knowingly made materially false representations of fact and material omissions to the Respondents with the intent to cause Respondent-Bondholders to proceed with the Eurobond transaction. The Respondent-Bondholders were ignorant of the true facts, reasonably relied on the Lakahs' misrepresentations and omissions and, by proceeding with the Eurobond transaction, suffered damage proximately caused by the misrepresentations and

omissions of the Lakahs. (See Seanto Exports v. United Arab Agencies, 137 F.Supp.2d 445, 451 (S.D.N.Y. 2001) (citing Marcus v. AT&T Corp., 138 F.3d 46 (2d Cir. 1998).) Thus, veil-piercing is required to achieve justice and equity and to avoid fraud. (See Brunswick Corp. at 36; Network Enterprises at 487.)

B. Estoppel

32. Estoppel is one of the fundamental legal bases for compelling a non-signatory of an arbitration clause to arbitrate against a signatory. (Thomson-CSF, S.A. v American Arb. Ass'n, 64 F.3d 773, 776, 778 (2d Cir. 1995).)

33. A non-signatory who knowingly accepts benefits "flowing directly from [an] agreement" that contains an arbitration clause is estopped from avoiding arbitration by a signatory. (MAG Portfolio Consult, GMBH v. Merlin Biomed Group LLC, 268 F.3d 58, 61 (2d Cir. 2001).)

34. When a commercial agreement containing an arbitration clause provides for the creation, use, or transfer of an asset, a non-signatory who exploits the agreement to acquire or use that asset for his own benefit normally will be compelled to arbitrate. (American Bureau of Shipping v. Tencara Shipyard S.P.A, 170 F.3d 349, 353 (2d Cir. 1999); Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9F.3d 1060, 1063-64 (2d Cir. 1993).)

35. Estoppel is applied to compel arbitration when a benefit to a non-signatory is provided or contemplated in the agreement containing the arbitration clause or when it is otherwise clearly contemplated by the signatory parties. (Deloitte Noraudit, 9 F.3d at 1063-64.)

36. A non-signatory who reaps a direct benefit made possible by the agreement will be estopped from avoiding an arbitration commenced by a signatory. (Hartford Fire Ins. Co. v. Evergreen Org., Inc., 410 F. Supp. 2d 180, 182, 186-87 (S.D.N.Y. 2006); Maronian v. American Communications Network, Inc., No. 07-CV-6314 (CJS), 2008 WL 2917183, at *5-6 (W.D.N.Y. July 24, 2008); In re Belzberg (Lindbergh v. Verus Inv. Holdings, Inc.), 95 A.D.3d 713, 714-16, 945 N.Y.S.2d 67, 69-70 (1st Dep't 2012).)

37. The Lakahs' diversion of Eurobond proceeds for their personal benefit(s) is sufficient, without more, to establish the Lakahs' knowing exploitation of the Eurobond agreements to receive direct benefits from them. (Hartford Fire Ins., 410 F. Supp. 2d at 187.)

C. Affirmative Defenses

38. Because Petitioners chose not to participate in the trial, there is no evidence to support any affirmative defense proffered by them. Thus, the Court does not make findings as to any such affirmative defense.

D. Arbitrability

39. The Lakahs are not entitled to an injunction against the arbitration as against them. (Thomson-CSF, 64 F.3d at 776-78 (non-signatories can be bound by arbitration agreement through veil-piercing and estoppel).)

40. The Lakahs are bound to arbitrate by one or more of the contractual arbitration provisions in the Eurobond transaction documents by reason of the doctrine of piercing the corporate veil. (9 U.S.C. §4; Thomson, 64 F.3d at 776-78.)

41. The Lakahs are bound to arbitrate by one or more of the contractual arbitration provisions in the Eurobond transaction documents by reason of the doctrine of estoppel. (9 U.S.C. §4; Thomson, 64 F.3d at 776, 778.)

IV. CONCLUSION

Respondents' Cross-Petition to Compel International Arbitration [dkt. no. 3] is granted on the theories of piercing the corporate veil and estoppel.

Respondents shall 1) inform the Court if there are any additional steps necessary to resolve this matter, and 2) submit a proposed form of judgment.

SO ORDERED.

Dated: February 14, 2017
New York, New York



LORETTA A. PRESKA
United States District Judge