

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

IN THE MATTER OF NORTEL NETWORKS S.A. (the “Company”)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**APPLICANTS’ SUPPLEMENTAL SKELETON ARGUMENT
FOR 20th SEPTEMBER 2021 HEARING**

Time estimate: Half a day (plus half a day of pre-reading)

Suggested pre-reading (additional):

- (1) This supplemental skeleton argument; and
- (2) The twentieth witness statement of Mr Alan Robert Bloom dated 16 September 2021 [5/A1359-1369]¹; and
- (3) The supplemental hearing bundle filed on Sunday 19 September 2021.

¹ References are to the updated application e-bundle, as filed on Friday 16 September 2021, which is identical to the original e-bundle save for the addition of tabs 5 and 6 (i.e. the supplemental evidence filed on 16 September 2021). References to this updated e-bundle are given in the form [x/y], where: “x” refers to the tab number and “y” to the page letter/number.

INTRODUCTION

1. At paragraphs 41 to 51 of the skeleton argument filed last Wednesday 15 September 2021, there was discussion of certain issues concerning various Humanis² insurance policies (the Humanis Policy, the New Humanis Policy and four Humanis Health Policies), as well as the Humanis Reserve (the “**Humanis issues**”).
2. As adumbrated at paragraph 51 of the original skeleton argument, Mr Bloom has since filed his twentieth witness statement in these proceedings (“**Bloom20**”) [5/A1359-1369], exhibiting a number of documents thereto at [6/A1370-1519], all of which go to the various Humanis issues referred to above.
3. Since Bloom20 was filed on 16 September 2021 certain further correspondence has taken place between the Administrators and certain of the former employees referred to in Bloom20, as well as with Me. Rogeau (the former French Liquidator as well as one of the Mandataires). These documents have been collated into the supplemental application e-bundle filed today (19 September 2021) and are referred to here in the form [1/B3], [2/B10], etc.
4. Given the volume of new documentation which has been filed at Court since the original skeleton was drafted, it was considered prudent to file this supplemental skeleton argument with a view to navigating the Court through that new documentation and explaining the Administrators’ views in relation to it.
5. **For convenience, the passages of this supplemental skeleton argument below which deal with matters postdating and therefore not covered by Bloom20 are set out in bold.**
6. The following Sections of this supplemental skeleton argument deal, thematically, with the various matters to which this new documentation relates, specifically:
 - (1) Section A: Overview of the Humanis issues;

² Capitalised words and phrases refer to the definitions set out in the original skeleton argument, save where otherwise stated.

- (2) Section B: Further correspondence with Employee #1;
 - (3) Section C: Further correspondence with Employee #2;
 - (4) Section D: Further correspondence with Employee #3;
 - (5) Section E: Further correspondence with Employee #4.
7. **Finally, the Administrators note that at least one of the Redundant Employees is seeking to attend the hearing at 10:00 on 20 September 2021. On Friday 17 September 2021 at 17:19 one of the Employees referred to in Bloom20 (Employee #2) indicated his interest in attending the forthcoming hearing remotely. The Administrators have notified Employee #2 (in the email at [4/B84]) that, if he wishes to attend the hearing remotely from overseas, then permission for him to do so will be a matter of the Court’s discretion and permission may be made subject to conditions ([4/B84]). Absent confirmation from Employee #2 whether he was intending to dial into the hearing from overseas, in the interest of giving him the opportunity to attend, HSF provided him with the dial-in details to the hearing in the afternoon of Sunday 19 September 2021, making him aware that these details should not be forwarded to third parties and (if he was dialling in from overseas) the Court may ask him to confirm his agreement to any conditions in writing before the commencement of the hearing or orally at the beginning of the hearing.**

A. OVERVIEW OF THE HUMANIS ISSUES³

8. After the conclusion of the Secondary Proceedings, the Administrators were prompted by one of the Redundant Employees to investigate the Humanis Policy, a life and disability insurance policy entered into by the Company in 1993 (a copy of which is at [4/A1071]), and the Humanis Reserve in connection with the Humanis Policy, which the Administrators understood from the former French Liquidator could be “made available” to the Company in certain circumstances.

³ This topic is addressed at Bloom20 §§7-10 [5/A1360-1362].

9. The former French Liquidator had investigated the Humanis Policy and the Humanis Reserve over a number of years and concluded that the significant work involved in investigating and realising the Humanis Reserve (the prospects of which were highly uncertain) was disproportionate to the potential benefit to the Secondary Proceedings.
10. The upshot of the Administrators' own investigations of the Humanis Policy and the Humanis Reserve is set out at Bloom20 §8 [5/A1360] and is not repeated here.
11. Given the absence of any written response from Humanis, the Administrators contacted the Health Employees by email to remind them of the Humanis Health Policies. A copy of the email sent to each of the employees on 31 August 2021 is at [4/A1156]). Of the four Health Employees⁴, only three have responded (as detailed below).

B. FURTHER CORRESPONDENCE WITH EMPLOYEE #1

12. Employee #1 confirmed by emails dated 1 and 2 September 2021 and during a telephone conversation with EY on 10 September 2021 that:
 - (1) following his redundancy, he had received payments from Humanis under a disability, incapacity and death policy (the Administrators' understanding is that this is likely to be a reference to the New Humanis Policy), but such payments had ceased after he had been re-employed elsewhere (and he had received a letter from Humanis at the time confirming this);
 - (2) he had been one of the final four employees to have been made redundant in 2013; following his redundancy, he had received a further letter from Humanis advising him that he was a beneficiary under a health insurance contract (i.e., a Humanis Health Policy);

⁴ According to Humanis' oral representations to HSF Paris, in addition to the New Humanis Policy the Company had entered into the Humanis Health Policies in 2010 and 2013 under which four Redundant Employees had certain benefits. They are referred to as the "**Health Employees**".

- (3) he had not expected to receive a health insurance policy, had not entered into it directly and he was not aware who arranged it on his behalf;
 - (4) he speculated that this Humanis Health Policy for the benefit of the final remaining employees may have been funded from the Humanis Reserve;
 - (5) and he had made claims under the Humanis Health Policy in the past (although not in recent years).
13. A summary of the Administrators' communications with Employee #1 is set out at Bloom20 §13-14 [5/A1362]. Employee #1 has expressly confirmed to the Administrators he has no concerns with the termination of the Administration and that he did not wish to hold up the Final Distribution (which he stands to share in) on account of his Humanis Health Policy.

C. FURTHER CORRESPONDENCE WITH EMPLOYEE #2

14. A response was received from Employee #2 on 13 September 2021, a copy and a translation of which is at [6/A1401] and [6/A1406] respectively, which provided as follows:
- (1) Employee #2 considers that he remains a beneficiary of both: (i) a disability, incapacity and death policy (the Administrators' understanding is that this is likely to be a reference to the New Humanis Policy); and (ii) a health insurance policy (i.e. a Humanis Health Policy) arranged by the Company;
 - (2) he believed that had the Company not arranged these policies on his behalf, Humanis would not have been entitled to disclose information about them to the Administrators;
 - (3) his understanding was that under the terms of the End of Strike Agreement (details of which are at paragraph 22 of Bloom19 [3/A11]) and the associated "Job Preservation Plan" (Plan de Sauvegarde de l'Emploi (PSE), which is at [6/A1409] and a translation of the relevant excerpt is at [6/A1470]), which had been approved by order of the Commercial Court of Versailles on 24 September 2009 (a copy of which

is at [6/A1471]), the Humanis Reserve must be used to secure the provision of disability, incapacity and death and health insurance cover until the Redundant Employees return to work or retire;

- (4) he had neither returned to work or retired and, as such, remained a beneficiary of the insurance arrangements set out in subparagraph (1) above; and
- (5) he sought clarity on the future use of the Humanis Reserve and the continued provision of his insurance benefits in light of the Mandataires' planned dissolution of the Company.

15. The Administrators responded to Employee #2 by email (at [6/A1400]). In response to the specific points noted by Employee #2, the Administrators noted that:

- (1) the Administrators' understanding of the facts in relation to insurance policies with Humanis were summarised in paragraphs 69 to 77 of Bloom19 (and provided them with a link to Bloom19 on the EMEA Website);
- (2) despite their efforts, neither the Administrators nor the former French Liquidator had been furnished with documentation in relation to the Humanis Health Policies, such that the Administrators were not in a position to determine whether the proposed dissolution of the Company may negatively impact any Former Employees' rights under the Humanis Health Policies;
- (3) whilst the Administrators and the former French Liquidator had taken significant steps to investigate the Humanis Reserve, the Administrators had concluded that it was unlikely that the Humanis Reserve could be recovered by the Company for the benefit of its creditors and that the cost of continuing the Administration to pursue an uncertain asset could be substantial; and
- (4) they understood from Humanis that there were no further beneficiaries under the New Humanis Policy.

16. **Employee #2 contacted the Administrators by telephone on the morning of 17 September 2021, noting that he was disappointed that documentation in relation to**

the New Humanis Policy and the Humanis Health Policies was not available to the Administrators, and that he benefitted from cover under a Humanis Health Policy until his retirement age in several years. He noted that he considered that the conclusion of the Administration would compromise his rights under his Humanis Health Policy. He noted that as a former union representative, he was knowledgeable about the French legislation regarding the provision of insurance benefits and that while the general position in redundancy situation was for cover to last for 12 months following redundancy, in the case of the Company a more generous arrangement had been agreed that did not expire until the employee in question either retired or was re-employed. He requested a copy of Bloom20, which the Administrators made available to him on the same day. He also indicated that he would provide the Administrators with further documents as explained in his email at [4/B84-85].

17. At 18:06 on 17 September 2021, Employee #2 wrote a detailed email to Mr Bloom, Mr Taylor and Me. Rogeau [6/B104-106], followed by another email timed at 18:30 attaching a number of documents [6/B104].

(a) Annexes to the 18:30 email

18. As to the documents attached to Employee #2's 18:30 email:

- (1) Annex 1: Letter from Me. Michel to Employee #2 dated 20 September 2010. The highlighted parts are:

- a) A bullet point indicating that the Job Preservation Plan/ PSE contains a reference to an insurance arrangement (a point which is not controversial) [6/B115].
- b) The following statement: "*Finally, I would like to point out to you that by replacing the device for the portability of rights referred to in Article 14 of the ANI [French law regarding insurance in the context of redundancy] of January 2008, you have the possibility of benefiting from the maintenance of the guarantee of the collective contracts subscribed*

by NNSA with NOVALIS in accordance with the plan to the Job Preservation Plan” [6/B116]. Again, this is not controversial.

- (2) Annex 2: Extract from End of Strike Agreement ([6/B117]; an English translation is at [4/A135-144]).
- (3) Annex 3: Judgment of Versailles Court of 24 September 2009 ([6/B120] and [6/A1471]).
- (4) Annex 4: Extract from the PSE ([6/B127-128]; an English translation is at [6/A1470]).

19. The detailed points set out in Employee #2’s 18:06 email are addressed below.

(b) Humanis Health Policy

- 20. Under the underlined heading “Health Benefit”, Employee #2 explains in detail how it is that he has come to benefit from a Humanis Health Policy following the implementation of PSE, which was approved by the French Court on 24 September 2009 and pursuant to which the Humanis Reserve had to be used to secure the provision of disability, incapacity and death and health insurance cover until the Redundant Employees return to work or retire. Employee #2 emphasises (at §2.4) that the coverage required extended beyond the usual 12 months (“*This paragraph means that the coverage is not limited to 12 monts [sic] as usual but under the conditions of the Layoff plan as referenced above.*”). He also emphasises (at §2.3.1) that the PSE envisages the provision of both disability, incapacity and death and health insurance cover until the Redundant Employees return to work or retire.
- 21. None of this is controversial.
- 22. Employee #2 emphasises his view that dissolving the Company would have an adverse effect on his rights and those of his former colleagues:

“Dissolving the company would result in the ending of the Nortel Networks SA account with Malakoff Humanis and therefore losing the benefits indicated and agreed to in the Layoff Plan by the Juge Commissaire of the Tribunal de Commerce.

WHICH IS THEREFORE IMPACTING MY RIGHTS AND BENEFITS ENTITLEMENT AS WELL AS OTHER FORMER COLLEGUES?"

23. The question of the dissolution of the Company is a matter for the Mandataires and is not a step required by the order sought from this Court. The Administrators do not consider (and the former French Liquidator agrees) that the termination of the Administration would, per se, have the effect of prejudicing Employee #2's rights.

(c) Death, Disability and incapacity insurance

24. Employee #2 states as follows:

"I benefit from the Disability insurance and possibly some of the other former employees may benefit. My understanding from discussing with Humanis on september 15, is that the dissolution of the company would have not impact on these benefits which I receive.

However if I would recover from this situation, le dissolution of the company would result in the disappearance of this innsurance and therefore losing it as well as the Health Insurance which is contrary to the agreements agreed upon!"

25. The Administrators' understanding of the position in relation to the Humanis Policy and the New Humanis Policy is summarised at Bloom20 §8 [5/A1360]. The Administrators' understand from oral representations of Humanis via telephone that there are no remaining beneficiaries of the Humanis Policy or the New Humanis Policy. The assertion of Employee #2 that he continues to benefit from (what the Administrators understand to be) the New Humanis Policy is at odds with the information conveyed by Humanis to HSF Paris by telephone. For the avoidance of doubt, it is not the Administrators' understanding that there are no Redundant Employees who continue to benefit from Humanis Health Policies, as Employee #2 suggests in §2.6 of his email. This is why the Administrators decided to contact the Health Employees by email on 31 August 2021, as explained in Bloom20 §8.4.3 [5/A1361].
26. Employee #2's concern is that the dissolution of the Company would result in the termination of the "*disability insurance*" that he claims currently to enjoy. However, again, the question of the dissolution of the Company is a matter for the Mandataires and is not a step required by the order sought from this Court. The Administrators

do not consider (and the former French Liquidator agrees) that the termination of the Administration would, per se, have the effect of prejudicing Employee #2's rights.

(d) Humanis Reserve

27. In relation to the Humanis Reserve, Employee #2 states relevantly as follows:

“This [i.e. the recovery of the Humanis Reserve for the Employees] would however require to setup an alternate proceeding by which the benefits could be guaranteed [sic] while at the same time being able to recover the Humanis Reserve, if such a process could be setup and agreed upon by the affected 4, 5 or more remaining beneficiaries; as well as setting up a simple process by which this Reserve could be split between all employees as actually also benefitting from the other distribution on an equal basis as applied so far for other distributions to make it simple. A proceeding of this could happen.”

28. The Administrators' understanding of the position in relation to the Humanis Reserve is summarised at Bloom20 §§7-8 [5/A1360]. The Administrators' decision (consistent with that of the former French Liquidator) that the Humanis Reserve is not one which it would be proportionate for the officeholders to seek to realise, having regard to the uncertainties surrounding the asset.

29. Moreover, as explained at paragraph 46 below, Me. Rogeau has confirmed in writing that, were the Employees to want to place the Company into a French voluntary liquidation in order to seek to realise the Humanis Reserve, then this is a step that they could take even after the Company has been dissolved.

(e) Conclusion

30. In short, the Administrators do not consider that there is anything in Employee #2's recent communications with the Administrators which alters the analysis that the relief sought by the Administrators is appropriate and should be granted.

D. FURTHER CORRESPONDENCE WITH EMPLOYEE #3

31. Employee #3 responded on 13 September 2021, noting the following:
- (1) he was a beneficiary under a Humanis Health Policy which was paid for annually by the Company; and
 - (2) he considered that the liquidation of the Company would negatively impact him, and provided a copy of records relating to his Humanis Health Policy on 15 September 2021 (which are materially similar to the records provided by Employee #1 exhibited at [6/A1396]).
32. The Administrators responded to Employee #3 by email on 13 and 15 September 2021 (at [6/A1484] and [6/A1485] of ARB20) on materially the same terms as their response to Employee #2 (summarised above), save that no comments were made in relation to the New Humanis Policy and the Humanis Reserve.

E. FURTHER CORRESPONDENCE WITH EMPLOYEE #4

33. In addition to the engagement with the three Health Employees outline above, the Administrators also received an email from a further employee, "Employee #4", in response to the Administrators' notice of intention to make the Application (a copy of which is at [4/A1257]).
34. In his email dated 13 September 2021 (a copy of which is at [6/A1492]), Employee #4 noted that:
- (1) he understood that the Humanis Reserve still contained "hundreds of thousands of euros" and was being used by Humanis to fund contributions towards (what the Administrators understand to be) the New Humanis Policy;
 - (2) he had received payments under (what the Administrators understand to be) the New Humanis Policy until his retirement in 2017;

- (3) he understood that a meeting had been planned between the former French Liquidator and a representative of Humanis (with both of whom Employee #4 had been in correspondence) to discuss the Humanis Reserve but that he was unaware of the outcome of that meeting;
 - (4) from his previous correspondence with the representative of Humanis, he understood that Humanis intended to keep the funds in the Humanis Reserve, and that this was contrary to an agreement reached with union representatives and Kerry Trigg, who was acting on behalf of the Administrators (and that the minutes of such meeting evidencing such agreement could be made available to the Administrators on request); and
 - (5) in the absence of a satisfactory response from the Administrators in relation to the future of the Humanis Reserve, he would take the matter to the French Courts, which he considered to have jurisdiction in relation to the Humanis Reserve.
35. The Administrators responded to Employee #4 by email on 13 and 15 September 2021 (at [6/A1490]), on materially the same terms as their response to Employee #2 (summarised above), save that no comments were made in relation to the Humanis Health Policies, and save that the Administrators also requested a copy of the minutes of the meeting with the union representatives and Kerry Trigg mentioned above.
36. **On 17 September 2021, at 13:24, Employee #4 wrote to the Administrators [2/B10-14], enclosing:**
- (1) **An information sheet summarising French law issues around insurance contracts and employee redundancy plans [2/B15-25];**
 - (2) **The minutes of an ordinary meeting of the Comité d'Entreprise of the company on 8 April 2009 [2/B26-66]. The main text of Employee #4's email sets out his English translation of §6.1 of these minutes ([2/B62]; English translation at [2/B10]);**
 - (3) **A newsletter of Novalis (now part of Humanis) dated July 2009 [2/B67-70]; and**

(4) An overview of withdrawals from the Humanis Reserve between 30 June 2010 and 31 December 2016 [2/B71-72].

37. Shortly afterwards, at 14:35, Employee #4 sent a follow-up email [3/B73-74]:

“... in my previous message, you can read how Ms K.Trigg representing the Administrators participated in meetings where the Humanis contract and the reserve were discussed back in 2009.

I have been able to contact by telephone someone this week at Humanis who confirmed that certain ex Nortel employees were still benefiting from the reserve. I have just managed to speak to her again this afternoon and she has told me that I should write a letter to the Service Juridique Malakoff Humanis, 21 rue Lafitte, 75009 PARIS in order to obtain information on the status of this reserve and the number of ex Nortel employees still benefiting from their cover.

Contrary to what is written in the witness statement 19 document, Humanis continue to cover ex Nortel employees for both health insurance and “prévoyance” that includes incapacity/invalidity and death. I can provide the annual invoices for around €5000 that the ex French liquidator sent to me confirming these payments. These policies were not “new” policies but the same ones that Nortel contracted with Humanis and were an integral part of the work contract and the employee had no choice but to pay the monthly contributions that Nortel deducted from the wage slip. The PSE enabled the continuation of these same policies for Nortel employees made redundant in 2009-2010 who provided proof every three months that they were still unemployed.

As stated in the witness statement 19 if there remained €520,232 in September 2018 with four ex Nortel employees still benefiting and if there are still four today, $4 \times €5000 \times 3 = €60000$. This would mean that there is still a minimum of €460,000 in the reserve.

There exists a protocol between the ex French liquidator and Humanis regarding this Nortel reserve. However despite repeated attempts it has been impossible to obtain a copy of that protocol. What is even more regrettable in my eyes, is that I do not believe the involved parties ever met to discuss the status of the reserve and possible outcomes regarding the reliquat of the reserve in the eventuality that it was not all used up ... I have attached two emails from Humanis that confirm their willingness to have a meeting to discuss the reserve and their difficulty in meeting the ex French liquidator.

I do note in para 77 of the Witness Statement 19: “In the unlikely event that the Humanis Reserve were to be made available to the Company following its dissolution, HSF Paris have advised the Joint Administrators that in such circumstances a French law voluntary liquidation of the Company could be opened by the French Court to recover such asset and make further distributions.” Could you provide details on how that would be implemented concretely?

I have repeated made the proposal that the reserve be used for ex Nortel employees including those now reaching their pension age to benefit a reduction in an individual contract with Humanis. This would be win-win for both Humanis and ex Nortel employees. More ex Nortel employees might decide to contract an individual health insurance policy with Humanis and by the same token be offered a percentage reduction on those policies drawing from the reserve.

To sum up I believe that the responsibility of the Joint Administrators has always been engaged with regards the Humanis policy and the reserve as proved on Page 37 in the document 090408_PV_CE_NNSA.PDF recently provided.

Had the ex French liquidator or the Administrator done proper diligence in the due form and time to understand and find suitable solutions concerning the Humanis contract and the associated reserve, there would have been additional funds available now to serve higher interest in the upcoming fourth distribution."

38. Employee #4 enclosed an email from Me. Delgove (of Humanis) to the French Liquidator dated 31 August 2017 [3/B79-80], as well as an email from Me Delgove 28 August 2018 [3/B81-83]. These emails indicate that Humanis was in the past prepared to engage with the former French Liquidator in respect of the Humanis Reserve. The email from Gerard Delgove of 28 August 2018 also refers to an agreement between the Company and Humanis on the maintenance of the employee benefits ("*Je ne peux vous transmettre le document juridique évoqué par vos soins, ce document concernant les maintiens Nortel relève d'accord collectif passé entre la société Nortel et notre groupe.*" which translates to: "*I cannot send you the legal document you refer to, this document concerning the Nortel reserve [the Humanis Reserve] being part of a collective agreement between the [the Company] and our group [Humanis].*" Despite the Administrators concerted efforts over the past months, Humanis has not provided them with this agreement.
39. In brief, this further correspondence from Employee #4 has not changed the Administrators' view in relation to the status of the Humanis Reserve, nor in relation to the appropriateness of this Court terminating the Company's administration. The Administrators' specific responses to this recent correspondence are set out below.
 - (a) Employee #4's comments about the New Humanis Policy and the Humanis Reserve
40. Employee #4 notes that according to his telephone conversations with Humanis "this week" (i.e. in the week commencing on 6 September 2021) that "*certain ex Nortel employees were still benefiting from the reserve*". This is consistent with the

Administrators understanding, set out in §26.2 of Bloom 20 [5/A1367] that Humanis has been drawing from the Humanis Reserve to fund the premiums for the New Humanis Policy and the Humanis Health Policies. Humanis orally represented to HSF Paris by telephone that there remained no further beneficiaries under the New Humanis Policy (see Bloom19 at §73.2 at [3/A22]).

41. The statement of Employee #4 that "*Contrary to what is written in the witness statement 19 document, Humanis continue to cover ex Nortel employees for both health insurance and "prévoyance" that includes incapacity/invalidity and death*" is at odds with what Humanis communicated orally to HSF Paris by telephone (see Bloom19 at §73.2 at [3/A22]).

(b) Ms Trigg's comments at 8 April 2009 meeting

42. First, as to the comments made by Ms Trigg (acting on behalf of the Administrators) recorded in the minutes of an ordinary meeting of the Comité d'Entreprise of the company on 8 April 2009, the passage of these minutes relied upon (and translated into English [2/B10]) by Employee #4 is (relevantly) as follows:

"K. Trigg: In the event of the liquidation of NNSA, the reserve fund would be used for employees. ... from 1 May 2009, all French companies will be required to set up with the pension provider "the maintenance of the rights in terms of health coverage to the same as the coverage in force in the Company for any employee dismissed and taken in charge by Assedic for a minimum period of three months and equal to one third of the duration compensation – eight months for employees under the age of fifty and twelve months for employees over fifty years of age. » If a plan or liquidation were to be put in place, the use of the reserve could enable the Company to comply with this legislation, without additional costs.

P. Campi: Is it possible to send us a copy of the pension contract? That the document was not communicated to the Novalis Commission.

Mr. Clément: We take that as notice. I would like to point out that the reserve fund belongs to Nortel, and not to Novalis.

P. Campi: If the entire reserve fund were not used, what would happen to the balance? The reserve fund, which corresponds to a considerable sum, was set up by the employees. To this title, would it be possible to use it until exhaustion for employees remaining at Assedic during more than three months?

K. Trigg: I will ask Novalis that question."

43. This meeting took place whilst the Administrators were still working towards the rescue of the Nortel Companies. It predates the 21 July 2009 PSE (referred to above)⁵, which was subsequently approved by order of the Commercial Court of Versailles on 24 September 2009, pursuant to which the Humanis Reserve had to be used to secure the provision of disability, incapacity and death and health insurance cover until the Redundant Employees return to work or retire. Indeed, the terms of the insurance alluded to by Ms Trigg at the meeting were less beneficial (more limited in time) than the insurance which was ultimately provided pursuant to the PSE. In any event, the minutes of this April 2009 meeting do not reflect what was ultimately agreed (and sanctioned by the French Court).
44. Moreover, as to Ms Trigg's statement "*In the event of the liquidation of NNSA, the reserve fund would be used for employees*", it is not entirely clear whether she is referring to dissolution or liquidation here. In any event, it was not within Ms Trigg's expertise (as was clear from her status acting on behalf of the English Administrators at this meeting) to give a view as to what would occur to the Humanis Reserve following the Company's dissolution as a matter of French law. The French Liquidator (and latterly the Administrators), assisted by their French legal teams, have grappled with the question regarding any potential interest the Company may have in the Humanis Reserve. As noted previously, the view which has been reached is that it would be disproportionate to seek to achieve any realisation given the uncertainties surrounding this potential asset.
45. Accordingly, the Administrators are of the view that the contents of these minutes (and the statements recorded therein as having been made by Ms Trigg) do not change the analysis as regards the status of the Humanis Reserve.

(c) Me. Rogeau's response

46. On the evening of 17 September 2021, Me. Rogeau confirmed to the Administrators that, notwithstanding the contents of these various documents sent through earlier in the day by Employee #4, he remained of the same view as before regarding the Humanis Reserve [5/B87-88].

⁵ This is at [6/A1409] and a translation of the relevant excerpt is at [6/A1470].

47. In that email Mr. Rogeau also confirmed, in response to Employee #4's query regarding the practicalities of opening a French law voluntary liquidation following the Company's dissolution in order to realise the Humanis Reserve: "*In addition, if the employees were to initiate proceedings against NOVALIS/HUMANIS after the dissolution of NNSA and to do so, to challenge NNSA, it would be sufficient for them to request the appointment of a new ad hoc representative for the purpose of representing NNSA in the litigation they would bring.*"

(d) Other documents provided by Employee #4

48. The Administrators do not consider that any of the other documents affect the conclusions reached by them, or by the French Liquidator before them, regarding the status of the Humanis Reserve. For example, the newsletter of Novalis (now part of Humanis) dated July 2009 [2/B67-70] is apparently just a general information document produced by Novalis, not a contractual or other legal document relating to the Company.

(e) Conclusion

49. For all these reasons, the Administrators respectfully request that the Court grant the relief sought.

19th September 2021

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