

**2022 KIRBY CONTRACT MOOT**  
**CLARIFICATIONS**  
**29 JULY 2022**

**A. Errors**

1. Paragraph 1 of the Joint Referral to Arbitration should provide that the date of the Agreement was 3 March 2020, not 28 March 2020.
2. Paragraph 7 of the Expert Determination should say “February 2020”, not “February 2022”.
3. Paragraph 20.1 of the Expert Determination should be “\$42,000”, not “\$32,000”.

**B. Clarifications**

4. Parties should address each of the three claims made by FDC and the counterclaim made by APM. Parties should not introduce additional heads of damages.
5. Parties should not contend for a collateral contract.
6. APM did not give FDC notice of an intention to terminate the Agreement.
7. The MPE produced bottles of 135mL capacity. The bottles were full of Old Smokey (holding 135mL) when delivered by FDC, as described in paragraph 21 of the Expert Determination.
8. The capacity of the bottles produced by the MPE was not tested after it was installed at FDC’s premises.
9. Parties may assume that a breach of the implied term by APM was sufficient to enliven a right for FDC to terminate the Agreement.
10. Parties may assume that the high concentration of alcohol alone caused the PET to disintegrate in the manner described in paragraph 23 of the Expert Determination.
11. Parties may assume that supplying PET in pellets (as opposed to another form) was not, of itself, relevant to any defects in the bottles produced by the MPE.
12. The \$5,000 referred to in cl 6.3 of the Agreement was inserted by APM. APM did not provide evidence of the of its calculation or selection of that amount.

13. Parties may assume that, during the conversation referred to in paragraphs 8 and 9 of the Expert Determination, Ms Swanson told Mr Adams that FDC intended to bottle hand sanitiser comprised of not less than 80% alcohol. During that conversation, Mr Adams suggested the MPE as the appropriate piece of equipment and stated that it employed the kind of PET plastic which was in fact supplied.
14. Parties may assume that the MPE was delivered and installed with a fixed mould for the bottles, which FDC could not and did not alter.