

<p>1 Thursday, 26 February 2015</p> <p>2 (10.00 am)</p> <p>3 Submissions by MR ZACAROLI</p> <p>4 MR ZACAROLI: My Lord, it's Day 7 and we're on issue 7</p> <p>5 appropriately, but before I come back to issue 7 may</p> <p>6 I deal with two points that arose yesterday from</p> <p>7 my Lord's questions.</p> <p>8 The first was my Lord asked when did rule 2.86,</p> <p>9 dealing with conversion in administration, come into</p> <p>10 effect.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: The history is actually set out at</p> <p>13 paragraph 93 of my Lord's Waterfall 1 judgment and it is</p> <p>14 as follows: rule 4.91(1), which is in exactly the same</p> <p>15 terms but for liquidation, came into effect in 1986.</p> <p>16 MR JUSTICE DAVID RICHARDS: Right.</p> <p>17 MR ZACAROLI: Rule 2.86 came into effect in 2003 with the</p> <p>18 Enterprise Act.</p> <p>19 MR JUSTICE DAVID RICHARDS: That makes sense. Good. Thank</p> <p>20 you.</p> <p>21 MR ZACAROLI: The second question my Lord asked was in</p> <p>22 relation to the Judgments Act and when -- if you get</p> <p>23 a judgment and the Judgments Act rate applies and the</p> <p>24 Judgments Act rate thereafter changes, does that affect</p> <p>25 the interest running on the judgment? The answer is no;</p> <p style="text-align: center;">Page 1</p>	<p>1 appeared that ..."</p> <p>2 Can my Lord read that to the end of the sixth line</p> <p>3 at the top of the next. (Pause)</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR ZACAROLI: Lord Justice Nicholls, at page 14 of the</p> <p>6 transcript, five lines at the top of the page, says the</p> <p>7 same thing.</p> <p>8 MR JUSTICE DAVID RICHARDS: Thank you very much. (Pause)</p> <p>9 I'll probably just put this in the back of your --</p> <p>10 MR ZACAROLI: Our supplemental bundle, my Lord, yes.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes. Thank you for that.</p> <p>12 MR ZACAROLI: So turning to issue 7 and indeed issues 6, 7</p> <p>13 and 8.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR ZACAROLI: To remind my Lord of the stance we take, you</p> <p>16 have the, as it were, extreme positions on my left and</p> <p>17 my right and we steer a middle course in one respect.</p> <p>18 We agree with the administrators that interest runs on</p> <p>19 a contingent debt only from the date the contingency</p> <p>20 falls due, whereas we agree with the Senior Creditor</p> <p>21 Group and York in relation to future debts.</p> <p>22 Can I make this clear at the outset, that if my Lord</p> <p>23 finds that that distinction is one which we cannot</p> <p>24 sensibly hold on to or my Lord disagrees with it, then</p> <p>25 we fall in with the administrators on everything but I'm</p> <p style="text-align: center;">Page 3</p>
<p>1 in other words --</p> <p>2 MR JUSTICE DAVID RICHARDS: The rate is fixed at the date of</p> <p>3 the judgment.</p> <p>4 MR ZACAROLI: It is, and it stays that way.</p> <p>5 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>6 MR ZACAROLI: My Lord, there is one authority,</p> <p>7 a Court of Appeal case, which refers to this in clear</p> <p>8 terms which we thought it would be worth my Lord seeing</p> <p>9 to make that point good. It's called Pinnock v Wilkins.</p> <p>10 I believe a copy has been put on my Lord's desk.</p> <p>11 MR JUSTICE DAVID RICHARDS: It may have been put in</p> <p>12 a folder; I don't know.</p> <p>13 MR ZACAROLI: Another one is coming. (Handed)</p> <p>14 MR JUSTICE DAVID RICHARDS: Thank you very much.</p> <p>15 MR ZACAROLI: This was an appeal from a decision of</p> <p>16 Mr Justice Sheen, whereby he assessed damages for</p> <p>17 a breach of duty claim against a solicitor. One of the</p> <p>18 complaints was he awarded interest as a rate that was</p> <p>19 too high. The details of the case don't really matter.</p> <p>20 What matters is the general statement which one sees in</p> <p>21 both judgments.</p> <p>22 First of all, the judgment of</p> <p>23 Lord Justice Ralph Gibson at page 6 of the transcript.</p> <p>24 If my Lord reads just between the two hole-punches, the</p> <p>25 paragraph beginning, "In the course of argument it</p> <p style="text-align: center;">Page 2</p>	<p>1 not going to make any submissions in advance of issue 8.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR ZACAROLI: On the basis that we're wrong, I'll just fall</p> <p>4 in with what my learned friend Mr Trower will say.</p> <p>5 MR JUSTICE DAVID RICHARDS: Right.</p> <p>6 MR ZACAROLI: I propose to deal with this first of all -- so</p> <p>7 issue 7 I'm going to deal with in the main. We set out</p> <p>8 our case as a matter of principle by reference to the</p> <p>9 current regime because one is, again, dealing with</p> <p>10 a question of construction of a particular word in</p> <p>11 rule 2.88.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: Although that word must be construed in the</p> <p>14 context of the scheme which now exists across the board,</p> <p>15 including importantly in relation to what happens so far</p> <p>16 as discounting back is concerned.</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR ZACAROLI: Then, secondly, go to the authorities, some of</p> <p>19 which are clearly against us on the earlier regimes that</p> <p>20 my learned friend has taken my Lord to.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: So much is common ground between us and the</p> <p>23 Senior Creditor Group that administration, like</p> <p>24 liquidation, operates on the basis of an ascertainment</p> <p>25 of debts as at the commencement of the process. That's</p> <p style="text-align: center;">Page 4</p>

<p>1 obviously common ground. That's there in order to 2 enable a pari passu distribution to be effected, 3 including in relation to debts which are at that date 4 contingent or only fall due in the future.</p> <p>5 We therefore agree, because we have to, that in the 6 theoretical case of an administration which happens in 7 one day the assets are realised and paid out.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR ZACAROLI: The contingent creditor, and the future 10 creditor, would be paid out in full to the extent of 11 their estimated claim as at that date immediately.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: So to that extent we accept that there is 14 a delay in payment of that amount caused by the delay in 15 the administration of the estate because if there 16 weren't that delay, they would have been paid that 17 estimated amount immediately. That much is common 18 ground.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR ZACAROLI: This is where we part company. Taking, as 21 I said at the outset, our case as a matter of principle 22 based on the current regime, the question is the 23 construction of the phrase "outstanding since the date 24 of administration". One has to construe that in the 25 context of the scheme as a whole and, in particular, we</p> <p style="text-align: center;">Page 5</p>	<p>1 simple fact that one or more dividends may have been 2 paid since the relevant date; in other words, the full 3 amount of the debt may not have been outstanding for the 4 full period since the relevant date and only part of 5 that period."</p> <p>6 Now, this is one other area where the stance taken 7 on the various issues interrelate. We would say we 8 entirely agree with that. Indeed, I think I made that 9 same submission on issue 2. And it contradicts 10 completely the idea that "outstanding" means outstanding 11 in accordance with rule in Bower v Marris.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: That's an issue 2 point.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR ZACAROLI: Now, we also say, however, that the word in 16 the context of the rule and its purpose has another 17 function, namely delineating the start point from which 18 interest is payable and therefore that's why we say 19 a contingent debt isn't outstanding until the 20 contingency occurs.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: So far as the purpose of the rule is 23 concerned, I don't think my Lord needs any authority for 24 the proposition that the purpose of the rule is to 25 keep -- compensate creditors for being kept out of their</p> <p style="text-align: center;">Page 7</p>
<p>1 say one has to take a purposive approach to its 2 construction.</p> <p>3 By that I mean one has to ask: what is the purpose 4 of a rule which provides interest from the date of 5 administration? The purpose, we say, is to compensate 6 creditors for being kept out of their money for that 7 period and we say that purpose doesn't extend to the 8 case where a creditor is not in fact kept out of their 9 money because they only had a contingent debt. I'll 10 come back to that.</p> <p>11 Dealing with the word "outstanding" first of all. 12 My Lord knows that we submit in relation to issue 2 that 13 that word performs a very important function as the end 14 point at which interest ceases to run.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR ZACAROLI: That much is common ground between the 17 parties, at least between us and the Senior Creditor 18 Group and York. Can I show my Lord a page from 19 yesterday's transcript, Day 6, page 92. This 20 Mr Dicker's submissions on issue 7.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: At the bottom of page 92 he says: 23 "My Lord, fourthly, the reference to the periods 24 during which they have been outstanding since the 25 relevant date we say is intended to accommodate the</p> <p style="text-align: center;">Page 6</p>	<p>1 money. My Lord made that comment in Waterfall 1. There 2 is plenty of authority that that is the purpose of 3 interest. It is compensatory. So I don't need to take 4 my Lord to authority for that.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR ZACAROLI: We say that contingent creditor is not being 7 kept out of its money by reason of the delay in 8 administering a solvent estate until it acquires an 9 actual right to be paid. The obvious point is prior to 10 the occurrence of the contingency it's not known whether 11 the creditor will in fact be entitled to any money at 12 all. So it would be, first of all, a misuse of language 13 to say that its debt is outstanding until such time as 14 one knows it has a debt and, secondly, it's not being 15 kept out of anything until that contingency occurs.</p> <p>16 Of course, as I have accepted, it is being kept out 17 of something to the extent that it would have been 18 entitled to a payment theoretically on day one from 19 estimated value of its claim, but, my Lord, that, on any 20 view, would have been an early payment.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: It would --</p> <p>23 MR JUSTICE DAVID RICHARDS: Well, early as against its 24 contractual rights.</p> <p>25 MR ZACAROLI: Exactly. That's the reason we say although</p> <p style="text-align: center;">Page 8</p>

<p>1 that is in a sense an outstanding amount since the date 2 of the administration, that isn't what this rule is 3 getting at. The rule is getting at the case of 4 a creditor who is actually being kept out of money and 5 what it's getting because of the statutory scheme is an 6 early payment. It's getting that early payment because 7 that's necessary in order to ensure a pari passu 8 distribution amongst everybody. It's, in a sense, 9 a practical solution the regime adopts to enable 10 contingent debts to be brought into the process at all, 11 but it in no way affects the substance of the matter 12 which is it is still being paid early compared with its 13 contractual rights.</p> <p>14 Of course the converse is once a contingency occurs 15 of course it is being kept out of its money in a real 16 sense and so that's why interest runs from then.</p> <p>17 I mentioned that we say the rules must be construed 18 as a whole and that brings into account the rules in 19 relation to discounting. We accept that there is 20 a symmetry in theory at least between the concept of 21 a debt being discounted for the purposes of proof and 22 payments on that proof, and the question when interest 23 would run after the date of administration in relation 24 to that debt. The reason is obvious, that looking at 25 this -- standing back from this, if the amount the</p> <p style="text-align: center;">Page 9</p>	<p>1 due or not. So discounting back before it's fallen due 2 and discounting back after it's fallen due; so if 3 a dividend is paid before the debt has fallen due, what 4 is the approach to discounting and similarly afterwards? 5 Rule 2.81, it's probably worth turning the rule up: 6 "The administrators shall estimate the value or any 7 debt which ...(reading to the words)... does not bear 8 a certain value and may revise any estimate previously 9 made." 10 Again, we accept the numerous authorities which say 11 that the valuation of debts, contingent debts, is done 12 so that you have a value on that debt as at the date of 13 administration or liquidation. 14 However, we don't accept that that necessarily means 15 that there is a discount applied to that debt on the 16 basis of futurity. One is having to arrive at a value 17 as at the date of administration so that you have 18 a number against which dividends can be paid to ensure 19 a pari passu distribution with everybody else. That 20 doesn't necessarily mean that you need to discount the 21 number you have identified on the basis that, well, it 22 would have been paid in the future. 23 There is clearly nothing equivalent to rule 2.105 in 24 relation to contingent debts. 25 MR JUSTICE DAVID RICHARDS: No.</p> <p style="text-align: center;">Page 11</p>
<p>1 creditor is being paid is reduced to take account of the 2 time value of money, then it's only fair that when 3 creditors general really are compensated for being kept 4 out of their money it's included within that process. 5 I can't shy away from that.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR ZACAROLI: But it does mean that the regime as a whole 8 needs to be looked at, in particular what is the 9 approach of the regime to discounting back in relation 10 to contingent debts?</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: The point we say works both ways.</p> <p>13 MR JUSTICE DAVID RICHARDS: Right.</p> <p>14 MR ZACAROLI: If there is no discounting back, then, as 15 a matter of generality, there will be an element of 16 double-counting if the creditor gets paid the full value 17 as of two years later and interest on the basis of that 18 full value from two years prior to that.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR ZACAROLI: That is why no doubt there is a lot of 21 concentration on this issue by all parties on the 22 question of what is the approach to discounting back for 23 a contingent debt.</p> <p>24 It's helpful, we submit, to distinguish a contingent 25 debt for this question depending on whether it's fallen</p> <p style="text-align: center;">Page 10</p>	<p>1 MR ZACAROLI: As we mention in our skeleton, there's a good 2 reason for that, because, save in the case where 3 a contingent debt is contingent only as to amount or 4 existence but the date is otherwise certain, save for 5 that case -- which may have to be regarded as a hybrid 6 of a contingent and a future debt; it's known to be 7 payable in the future, if it's payable at all -- save 8 for that, one doesn't know the date on which the 9 contingency will arise. The essential fact which must 10 be known in order to discount a debt for the futurity is 11 the date on which it will fall due and that is an 12 essential part of the formula in rule 2.105 because it's 13 discounted from the date it would otherwise become 14 payable. 15 So you can't apply a formula to the pure contingent 16 debt for discounting purposes. 17 We say the process of estimation does not -- doesn't 18 split into two parts, which is (i) let's work out the 19 chances of the contingency arising, the likely value 20 when it does arise -- that's one part -- and once we've 21 done that let's now discount it back on the basis that 22 it will arise at some time in the future. The reason is 23 because the second part can't be done where you don't 24 know the date. So the estimation is a much broader -- 25 the approach -- is a much broader thing that is being</p> <p style="text-align: center;">Page 12</p>

<p>1 done than splitting it into that way, let's estimate the 2 value then discount it back.</p> <p>3 So when the debt is not yet due, we submit there is 4 no ability to discount for futurity and therefore that 5 doesn't happen. Once -- actually, before I move on to 6 once it's fallen in. Can I show my Lord my Lord's 7 judgment in MF Global. I know my Lord has seen it but 8 it's bundle 1 E, tab 161. Within the judgment my Lord 9 considered the hindsight principle at paragraph 48 and 10 following.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: I'll come back to this when we deal with once 13 the debt's fallen in, but for the present purposes it's 14 paragraph 54 which I know my Lord has looked at 15 yesterday, but just to remind my Lord of paragraph 54.</p> <p>16 MR JUSTICE DAVID RICHARDS: I will read that to myself. 17 (Pause) 18 Yes.</p> <p>19 MR ZACAROLI: So what my Lord identified in the process of 20 estimation were two things. The likelihood of it 21 occurring and the amount likely to become payable. True 22 my Lord refers to the "essentially a process of putting 23 a present value on possible future events or outcomes", 24 but that, we submit, does not mean discounting to the 25 present value. It's putting a value now on what you</p> <p style="text-align: center;">Page 13</p>	<p>1 of words from Lord Hoffmann is used, in the last 2 sentence of the passage quoted there.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR ZACAROLI: So far as the rules are concerned, there isn't 5 a rule which requires any discounting back process if 6 one is looking to value a claim, a contingent claim, 7 after the contingency has fallen in.</p> <p>8 Rule 2.81, we would submit, contrary to the argument 9 my Lord so far has heard, has no application if the 10 question is what's the value of a debt which has now 11 fallen due since the date of administration because once 12 it's fallen due, there is no -- it's not a debt of 13 uncertain value and it's no longer contingent so there's 14 no need to rely upon rule 2.81.</p> <p>15 MR JUSTICE DAVID RICHARDS: Well, I see, but is it not the 16 revision provision in 2.81(1) that the officeholder 17 applies when the contingency occurs?</p> <p>18 MR ZACAROLI: It depends. There are two possibilities. One 19 is that the first time he comes to consider proofs is 20 once a contingency has fallen in.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: In that case, no, the rule itself. In the 23 second case, yes, there would be a revision, but when 24 you revise it's no longer a debt of uncertain value and 25 you now know the amount at which it is to be claimed.</p> <p style="text-align: center;">Page 15</p>
<p>1 estimate the contingency to be.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR ZACAROLI: A different exercise.</p> <p>4 It's actually worth keeping that paragraph open 5 because I'm going to turn then to once the contingency 6 has fallen in, how does the law approach the valuation 7 of the debt then? In this passage of my Lord's 8 judgment, my Lord cites, first of all, MS Fashions -- 9 actually I'll start at paragraph 50. You cite the 10 Northern Counties case, the McFarlane claim, where, as 11 my Lord pointed out yesterday, there wasn't 12 a discounting back. True the fire only took place 13 a month after the liquidation but there wasn't 14 a discounting back. Then, in MS Fashions, Lord Hoffmann 15 described the hindsight principle as pervasive; then you 16 refer to Stein v Blake, and we rely on the last sentence 17 from the quotation of Lord Hoffmann in that passage.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR ZACAROLI: I accept that neither in Stein v Blake, nor in 20 MF Global, was the question of discounting back -- it 21 doesn't appear to have been in issue, as such, but the 22 way it's expressed is consistent with the way we say the 23 happens, namely the full amount becomes substituted once 24 it's known.</p> <p>25 Then again in Wight v Eckhardt the same formulation</p> <p style="text-align: center;">Page 14</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes, but it seems to me that 2 that is an exercise that falls within the second half of 3 the first sentence of 2.81.</p> <p>4 MR ZACAROLI: I don't disagree with that, but what I'm 5 saying is that when you do that you no longer need to 6 estimate is because you now know it so the process of 7 estimation --</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes, I follow that.</p> <p>9 MR ZACAROLI: Now, if one asks oneself with the benefit of 10 the hindsight principle, once the contingency has fallen 11 in, I now know that as at the date of administration 12 there was a debt payable in the future of a certain 13 amount on a certain date. That's what the hindsight 14 principle allows you to do because you now are certain 15 where there was previously uncertainty.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR ZACAROLI: That, for the purposes of the questions of 18 discounting back, has -- there's no distinction between 19 that and a debt which was a future debt at the date of 20 administration.</p> <p>21 MR JUSTICE DAVID RICHARDS: Correct.</p> <p>22 MR ZACAROLI: So for this purpose we say they are to be 23 treated exactly the same. There's no logic for applying 24 some different approach to discounting the amount of the 25 debt back to the date of administration where you're</p> <p style="text-align: center;">Page 16</p>

1 doing that exercise after a future debt has fallen in or
 2 where you're doing it after a contingent debt has fallen
 3 in because they have essentially the same
 4 characteristics.
 5 MR JUSTICE DAVID RICHARDS: I mean, it's a different
 6 exercise though, isn't it, because we know that for
 7 a future debt you prove for the full amount but if it --
 8 but then your dividend is reduced to the extent -- if
 9 it's not fallen due for payment by the declaration of
 10 the dividend, whereas here you're looking at the amount
 11 of proof? You say they're equivalent.
 12 MR ZACAROLI: They are different exercises I accept, but the
 13 point is this, that the essential characteristics of the
 14 debt, the future debt that's now fallen in, and the
 15 contingent debt where the contingency has now fallen in,
 16 with the benefit of hindsight are the same. They have
 17 the same --
 18 MR JUSTICE DAVID RICHARDS: So you would say -- sorry, let
 19 me just get this right -- if the administrator is
 20 estimating the contingent claim at a time when the
 21 contingency occurs he should estimate or he should
 22 substitute the actual liability or he should value it at
 23 the actual liability and should not discount for the
 24 time value of money?
 25 MR ZACAROLI: Yes. The reason for that is, as I say,

Page 17

1 because at that point the essential characteristics of
 2 that debt with the benefit of hindsight are the same
 3 characteristics as a future debt looked at from that
 4 point in time, and the regime and the 2.105 would not
 5 require you to discount back the future debt to the date
 6 of administration, or at all.
 7 MR JUSTICE DAVID RICHARDS: For the purposes of -- for the
 8 distribution, yes.
 9 MR ZACAROLI: Yes.
 10 MR JUSTICE DAVID RICHARDS: I see.
 11 MR ZACAROLI: So that's the essential point in this
 12 argument.
 13 MR JUSTICE DAVID RICHARDS: I see. I see.
 14 MR ZACAROLI: You ask oneself why is it that the regime
 15 would require you to discount back a contingent debt
 16 once it's fallen in, if you're considering its value
 17 then, when it doesn't require you to do the same thing
 18 for a future debt at that point?
 19 So that's the distinction between a future debt and
 20 a contingent debt is that prior to the contingency
 21 falling in you do discount one but you can't discount
 22 the other because you don't know when it's going to fall
 23 due. That's the distinction between the two, prior to
 24 the contingency falling in. But after the contingency
 25 has fallen they essentially have the same

Page 18

1 characteristics and you wouldn't discount in one so you
 2 should not discount in the other.
 3 MR JUSTICE DAVID RICHARDS: I follow.
 4 MR ZACAROLI: My Lord, that really is the essence of our
 5 argument.
 6 MR JUSTICE DAVID RICHARDS: Are you going to deal with
 7 hybrid case where you know, because of the terms of the
 8 contract giving rise to the contingent debt, that it
 9 cannot fall due for payment for at least five years?
 10 MR ZACAROLI: Well, clearly on that I'm sort of twisting
 11 between both of extreme positions. My argument would be
 12 that that particular -- my first argument would be that
 13 particular debt should be treating it the same way as
 14 a contingent -- a pure contingent debt because it is
 15 actually still a contingent debt and doesn't bear the
 16 same characteristics as a future debt.
 17 MR JUSTICE DAVID RICHARDS: But, I mean --
 18 MR ZACAROLI: I accept it's more difficult then.
 19 MR JUSTICE DAVID RICHARDS: There's nothing in 2.81(1) which
 20 would prevent the administrator taking account of the
 21 futurity element, is there?
 22 MR ZACAROLI: There isn't. The point I would say is
 23 this: if you don't discount for futurity in relation to
 24 the pure contingent debt, if this is within the same
 25 category as contingent debts, i.e. it is a contingent

Page 19

1 debt, you wouldn't discount for futurity either. It may
 2 be -- my fall back would be you regard that as something
 3 which is also a future debt and therefore applied same
 4 rule --
 5 MR JUSTICE DAVID RICHARDS: It isn't a future debt. It is
 6 a contingent debt but with a future element and if the
 7 administrator were to -- given that there is no
 8 equivalent of 2.105 for contingent debts, you could
 9 achieve the equivalence for which you contend where the
 10 debt has fallen due in the case of the contingent debt
 11 where the contingency has not yet occurred by a discount
 12 for futurity.
 13 MR ZACAROLI: I accept that, my Lord, and therefore it
 14 really is a -- it's more difficult --
 15 MR JUSTICE DAVID RICHARDS: But your submission would be
 16 that once the contingency has occurred and it's matured
 17 into an actual liability, that's what you substitute for
 18 the original estimate, not a discounted figure. That's
 19 your submission.
 20 MR ZACAROLI: Yes, indeed.
 21 MR JUSTICE DAVID RICHARDS: Yes, I see.
 22 MR ZACAROLI: So that is the argument in relation -- looking
 23 at the regime as it exists today. I'm now going to have
 24 to deal with the authorities.
 25 MR JUSTICE DAVID RICHARDS: Yes.

Page 20

<p>1 MR ZACAROLI: My overall point is one that I think my Lord 2 predicted yesterday, that these authorities are 3 addressing previous regimes which did not have the 4 features that I'm now -- I've now identified. In 5 particular, none of the cases are in relation to 6 a regime where there was a rule in relation to future 7 debts which did not require discounting back once it had 8 fallen in. That's a key distinction. 9 MR JUSTICE DAVID RICHARDS: Yes. 10 MR ZACAROLI: The first case to look at is the case of 11 Hill v Bridges. It's in tab 1A -- sorry, bundle 1A, 12 tab 40A. This is the case of an annuity -- a payment of 13 £5,000 covenanted by the testator to his wife -- to his 14 daughter within one month of the death of his wife and 15 also an annuity of £100. The court held that applying 16 the rule in bankruptcy as to contingent liabilities by 17 reason of the Judicature Act applying bankruptcy rules 18 to companies -- no, sorry. Applying the rule in 19 contingent rules in bankruptcy, the daughter was 20 entitled to prove for the full amount of the 21 £5,000 less a rebate of interest at 4 per cent per annum 22 for the period between the date of judgment and the date 23 of the death of the widow, and the annuity must be 24 treated on the same basis. 25 In the argument of Mr Chitty Queen's Counsel on</p> <p style="text-align: center;">Page 21</p>	<p>1 upon which it was contracted." 2 That's the similar rule to rule 2.105 but it doesn't 3 distinguish between when -- if you're paying a dividend 4 before or after the debt has fallen due. 5 MR JUSTICE DAVID RICHARDS: No. No. 6 MR ZACAROLI: There's a standard 4 per cent discount -- 7 sorry, 5 per cent discount. 8 MR JUSTICE DAVID RICHARDS: Hold on. Just give me a moment. 9 (Pause) 10 MR ZACAROLI: It's different as well because the discount is 11 back to the date of the dividend, not -- 12 MR JUSTICE DAVID RICHARDS: That's the main difference, 13 isn't it? Is there any other difference? 14 MR ZACAROLI: It doesn't say, as rule 2.105 does, that it 15 only applies where -- let me remind myself of the rule 16 in 2.105. 2.105 only applies where the creditor has 17 proved for a debt of which payment is not due at the 18 date of the declaration of the dividend, whereas this is 19 about debts not payable in the bankruptcy committed as 20 an act of bankruptcy. 21 So the peculiar feature of 2.105, that it only 22 applies at all when you're asking the question whilst -- 23 at the time of the declaration of the dividend is the 24 debt still outstanding was not a feature of this rule. 25 MR JUSTICE DAVID RICHARDS: Well, I'm not sure because the</p> <p style="text-align: center;">Page 23</p>
<p>1 page 344, he first of all, at the bottom of the page, 2 344, refers to the fact that. 3 "... neither the present Bankruptcy Act nor the 4 general rules in bankruptcy contain any directions to 5 the valuation of contingent debts, though under the 6 177th section of the old Bankruptcy Act of 1849 if the 7 contingency happened during bankruptcy proof for the 8 full amount of the debt was allowed." 9 Then, over the page, the argument carries on: 10 "Apparently the proper course is for the claimant 11 now to bring in a fresh proof for the actual debt, 12 a rebate of interest being deducted for the in the fee 13 between the judgment and the widow's death referring to 14 the Bankruptcy Rules 1870, rule 77." 15 That rule is in the bundles at 3D, tab 56. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR ZACAROLI: Page 133 you will see rule 77. This relates 18 to future debts: 19 "Upon all debts or sums certain payable at certain 20 time or otherwise ...(reading to the words)... when such 21 debts or sum certain were payable." 22 Then moving on a few lines: 23 "Any creditor may prove for a debt not payable when 24 the bankrupt committed an act of bankruptcy ...(reading 25 to the words)... become payable according to the terms</p> <p style="text-align: center;">Page 22</p>	<p>1 5 per cent discount is from the date when the dividend 2 is declared to the time when the debt would have become 3 payable. 4 MR ZACAROLI: My Lord, I think that's right, yes. So the 5 discount wouldn't have applied. 6 MR JUSTICE DAVID RICHARDS: Yes. 7 MR ZACAROLI: I think that must be right. 8 Now, there's a slight oddity in the case because, as 9 you will see, the rate there is £5 per annum, whereas 10 the rate in the first part of the rule was 4 per cent. 11 The discount in relation to interest is 4 per cent at 12 the bottom of page 133. 13 MR JUSTICE DAVID RICHARDS: Ah, yes. 14 MR ZACAROLI: In Master of the Rolls Lord Jessel's judgment, 15 he proceeds on the basis that the discount shall be one 16 of 4 per cent. It's not entirely clear that it's 17 4 per cent when -- the rule that was cited to him for 18 the purposes of a discount would seem to be the rule at 19 5 per cent not 4 per cent. Anyway, it looks like he was 20 applying that specific rule relating to future debts. 21 MR JUSTICE DAVID RICHARDS: Yes, I see. So the 4 per cent 22 is -- 23 MR ZACAROLI: It's the right to prove interest. 24 MR JUSTICE DAVID RICHARDS: Exactly. So it's interest for 25 the period up to -- is this right -- the date of</p> <p style="text-align: center;">Page 24</p>

<p>1 adjudication?</p> <p>2 MR ZACAROLI: Yes.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes, all right. So it's proving</p> <p>4 for interest. Yes, I see, so the point here is that ...</p> <p>5 (Pause)</p> <p>6 I mean, I wasn't sure whether -- I mean, they seem</p> <p>7 to approach rule 77 as, is this right, do you think, as</p> <p>8 applicable in this case?</p> <p>9 MR ZACAROLI: Well --</p> <p>10 MR JUSTICE DAVID RICHARDS: I'm not sure on it terms I would</p> <p>11 have thought it was.</p> <p>12 MR ZACAROLI: No, I don't think it is. My point was they do</p> <p>13 seem to have approached the case as if it were a future</p> <p>14 debt or at least as if the rule applied.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR ZACAROLI: There's no other basis upon which the</p> <p>17 4 per cent or a rebate/discount of 4 per cent seems to</p> <p>18 be based on -- it seems to be only on that submission.</p> <p>19 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>20 MR ZACAROLI: So, yes, the court there appeared to treat it</p> <p>21 as a future debt not a contingent debt.</p> <p>22 The second case is 1A, tab 39. I referred to this</p> <p>23 in particular because the Master of the Rolls decided</p> <p>24 the case "upon the principle I adopted in McFarlane's</p> <p>25 claim", he says at 345 of his judgment in the Bridges</p> <p style="text-align: center;">Page 25</p>	<p>1 bottom of the page, 340:</p> <p>2 "Now substituting winding up for the bankruptcy,</p> <p>3 which I suppose you must do ...(reading to the words)...</p> <p>4 full amount of the damage caused by the fire."</p> <p>5 Then the next paragraph:</p> <p>6 "Then if the case depended on the Companies Act 1852</p> <p>7 ...(reading to the words)... which would otherwise not</p> <p>8 be provable."</p> <p>9 It might just be worth reminding my Lord of that</p> <p>10 section.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: It's in bundle 3A. It's in tab 18, page 818</p> <p>13 of the book it comes from. It's section 158.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR ZACAROLI: It's the forerunner of our rule 2.81.</p> <p>16 MR JUSTICE DAVID RICHARDS: Thank you. (Pause)</p> <p>17 MR ZACAROLI: So he says it's only applicable to contingent</p> <p>18 debts, you don't need a rule allowing you to prove</p> <p>19 otherwise because it's assumed you can for ordinary</p> <p>20 debts. So this only applies to contingent debts.</p> <p>21 Then a few lines --</p> <p>22 MR JUSTICE DAVID RICHARDS: Sorry, can I just ... (Pause)</p> <p>23 I find that surprising, but, there we are, it</p> <p>24 doesn't really matter because it does say "all claims</p> <p>25 against the company, present or future, certain or</p> <p style="text-align: center;">Page 27</p>
<p>1 case.</p> <p>2 MR JUSTICE DAVID RICHARDS: I see.</p> <p>3 MR ZACAROLI: That is at tab 39. I think my Lord looked at</p> <p>4 this case yesterday.</p> <p>5 MR JUSTICE DAVID RICHARDS: I did. I just glanced at it.</p> <p>6 It wasn't cited, but --</p> <p>7 MR ZACAROLI: I see. This was the case of the insurance</p> <p>8 policy in relation to a fire.</p> <p>9 MR JUSTICE DAVID RICHARDS: Indeed.</p> <p>10 MR ZACAROLI: Sum of £500 was the sum insured. The</p> <p>11 liquidation was in December 1879. The fire occurred at</p> <p>12 the end of January 1880, so one month later.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR ZACAROLI: In the judgment of the Master of the Rolls in</p> <p>15 this case, he starts off by saying:</p> <p>16 "I have no doubt about this case ..."</p> <p>17 He notes at the top of --</p> <p>18 MR JUSTICE DAVID RICHARDS: Maybe I should begin the</p> <p>19 judgment in this case with that sentence, when I give it</p> <p>20 extemporary.</p> <p>21 MR ZACAROLI: We look forward to that, tomorrow at</p> <p>22 2 o'clock!</p> <p>23 At the top of page 340 he notes the rules applicable</p> <p>24 are the same in relation to valuing future and</p> <p>25 contingent debts in winding up as in bankruptcy. At the</p> <p style="text-align: center;">Page 26</p>	<p>1 contingent". Anyway, there it is.</p> <p>2 MR ZACAROLI: Certainly the estimation part of it clearly</p> <p>3 only relates to contingent debts.</p> <p>4 MR JUSTICE DAVID RICHARDS: Of course, yes. Of course.</p> <p>5 MR ZACAROLI: It may be just worth looking at rule 25 that</p> <p>6 he refers into the next sentence which is two pages on</p> <p>7 in the same tab, in bundle 3A. Rule 25:</p> <p>8 "The value of such debts and claims as are made</p> <p>9 admissible ...(reading to the words)... at the date of</p> <p>10 the order to wind up the company."</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: Reading on in the judgment of the Master of</p> <p>13 the Rolls, a few lines further on, six lines from the</p> <p>14 bottom of 341:</p> <p>15 "I may then make a further observation that even if</p> <p>16 that were not the true view of the Act, I think the view</p> <p>17 of the 25th rule ...(reading to the words)... because</p> <p>18 the amount of the debt can be ascertained without it."</p> <p>19 That echoes the submission I made about rule 2.81.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR ZACAROLI: As a matter of reasoning supports the</p> <p>22 conclusion, over the page, that it is the full amount of</p> <p>23 the debt which is proved.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR ZACAROLI: Although I accept it's only a month.</p> <p style="text-align: center;">Page 28</p>

<p>1 Nevertheless, that reasoning supports the conclusion. 2 MR JUSTICE DAVID RICHARDS: Yes. 3 MR ZACAROLI: The next case is re Law Car v General 4 Insurance, bundle 1B at tab 60A. My learned friend 5 Mr Dicker took you to this case yesterday. 6 MR JUSTICE DAVID RICHARDS: Yes. 7 MR ZACAROLI: It is, I would suggest, the high point of the 8 dicta against our argument, but I use the word "dicta" 9 there advisedly because the comments of the Master of 10 the Rolls, I think he was, Cozens-Hardy, were obiter 11 because he in fact found that the approach to valuation 12 by valuing a contingency had no application on the facts 13 of the case. 14 MR JUSTICE DAVID RICHARDS: Yes, I see. 15 MR ZACAROLI: The comments of Lord Justice Buckley are to be 16 somewhat discounted because he was dissenting. So 17 Master of the Rolls Cozens-Hardy and 18 Lord Justice Kennedy were the majority. 19 Lord Justice Buckley dissented. 20 MR JUSTICE DAVID RICHARDS: I see. 21 MR ZACAROLI: The reason the case was decided as it was was 22 because it was found that the new rules in relation to 23 the employer's insurance contracts required you to value 24 a policy in a liquidation based upon the premiums, as 25 opposed to the likelihood of the contingency arising.</p> <p style="text-align: center;">Page 29</p>	<p>1 fifth line down: 2 "The relevant words are a just estimate being 3 made ...", et cetera. 4 He refers to a decision of Vice-Chancellor James. 5 Just in the middle of the page: 6 "The reasons given by the Vice-Chancellor were that 7 the dropping of the life ...(reading to the words)... of 8 the policy at the time of the taking of the claim." 9 MR JUSTICE DAVID RICHARDS: Just let me read this to myself, 10 please. (Pause) 11 Yes. 12 MR ZACAROLI: Then the key passage is at the very bottom of 13 the page, where he refers to: 14 "No one seems to suggest the proper amount was not 15 the sum assured but the present value of the sum 16 assured. The latter, however, is the accurate 17 amount...", and it follows from the Vice-Chancellor's 18 language. 19 So that is the point that is against us. 20 MR JUSTICE DAVID RICHARDS: Why -- sorry, the passage you 21 have read, "The reasons given by" -- sorry ... (Pause) 22 Oh, I think -- I'm not quite sure. I may have 23 misunderstood this reason: 24 "The reasons given by the Vice-Chancellor is that 25 the dropping of the life before proof, though it would</p> <p style="text-align: center;">Page 31</p>
<p>1 MR JUSTICE DAVID RICHARDS: Yes, I see. 2 MR ZACAROLI: That's clear from the headnote. 3 MR JUSTICE DAVID RICHARDS: Right. 4 MR ZACAROLI: If you read halfway through the headnote, 3: 5 "For the value of a policy as a contract of 6 indemnity ...(reading to the words)... date of the 7 winding-up order and the date of proving." 8 MR JUSTICE DAVID RICHARDS: Yes. 9 MR ZACAROLI: The other point to make about the Master of 10 the Rolls's comments on page 116 and 117, you will see 11 at the bottom of page 16, the very last line: 12 "But if, during the currency of the policy, an 13 accident occurred which if the contract of indemnity had 14 not been repudiated ...(reading to the words)... of 15 Sir George Jessel's decision in McFarlane's claim." 16 The point to make is that the reference to 17 a discount was certainly not any part of the decision of 18 Sir George Jessel. 19 MR JUSTICE DAVID RICHARDS: Yes, I see. (Pause) 20 MR ZACAROLI: To remind my Lord of the comment of 21 Lord Justice Buckley, which is against us at page 121, 22 in fact he starts at page 120 with the reference to 23 section 158 of the Companies Act 1862. 24 MR JUSTICE DAVID RICHARDS: Yes. 25 MR ZACAROLI: Then he refers to the wording on page 121, the</p> <p style="text-align: center;">Page 30</p>	<p>1 not entitle the policyholder for full payment, would be 2 taken into consideration as affording evidence of the 3 value." 4 The "though it would not entitle the policyholder to 5 full payment" means payment under the contract as 6 opposed to by way of proof. It doesn't affect the 7 amount for which he could prove. 8 MR ZACAROLI: It doesn't seem to, because he goes on to say 9 "the full amount". 10 MR JUSTICE DAVID RICHARDS: He does. I just couldn't quite 11 follow that sentence, but I understand it now, if that's 12 what it means anyway. 13 MR ZACAROLI: It certainly clear that in that the case full 14 amount was taken in and Lord Justice Buckley comments 15 that he thinks -- 16 MR JUSTICE DAVID RICHARDS: So he thinks that was wrong. 17 MR ZACAROLI: He thinks that was wrong. It's a short 18 sentence: 19 "No one seems to have suggested the proper sum was 20 not the sum assured." 21 MR JUSTICE DAVID RICHARDS: Yes, I see. 22 MR ZACAROLI: He was, however, in the result in the case, 23 dissenting. 24 MR JUSTICE DAVID RICHARDS: He was, yes. 25 MR ZACAROLI: Of course what falls from the lips of</p> <p style="text-align: center;">Page 32</p>

<p>1 Lord Justice Buckley and Master of the Rolls 2 Cozens-Hardy must be taken with great authority. 3 However, I do make those points that it does somewhat 4 diminish the authority of the comments which were obiter 5 on any view in that case. 6 MR JUSTICE DAVID RICHARDS: Yes. 7 MR ZACAROLI: The last case cited against us on this point 8 was in the same bundle at tab 63A, Ellis & Company's 9 Trustee v Dixon-Johnson. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: The passage cited begins at page 356 of the 12 judgment of PO Lawrence. He recites, at the bottom two 13 lines of the page: 14 "Further, there is no doubt that a contingent claim 15 for unliquidated damages is a provable debt ...(reading 16 to the words)... on the basis of the contingency having 17 happened on the day of the receiving order." 18 MR JUSTICE DAVID RICHARDS: I'm sorry, you are ahead of me 19 Where are you reading? 20 MR ZACAROLI: Page 356, the bottom two lines. 21 MR JUSTICE DAVID RICHARDS: Hold on. (Pause) 22 Just tell me where you would like me to read to. 23 MR ZACAROLI: The bottom two lines until the end of the 24 first paragraph on the next page. 25 MR JUSTICE DAVID RICHARDS: All right, I'll read it.</p> <p style="text-align: center;">Page 33</p>	<p>1 So he also cites McFarlane's claim, again with 2 apparent approval. 3 At the bottom of the page: 4 "The fire taking place later is relevant to value 5 ...(reading to the words)... a subsequent fire is 6 admissible evidence." 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR ZACAROLI: A couple of pages further on, 126, at the 9 bottom, he refers in the last sentence to: 10 "The doctrine of in the executor's case and 11 McFarlane's claim is applicable, I think ..." 12 So the cases do not speak with one voice and, as 13 I mentioned before, the reasoning in McFarlane's claim 14 does support the conclusion that you do include the full 15 amount, not just a discounted amount. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR ZACAROLI: My Lord, those are the cases that are cited 18 against us on this question of discounting back. We 19 rely upon the rules as of today and we rely upon the way 20 that the matter is put in Stein v Blake and in 21 Wight v Eckhardt. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: Now, I'm going to turn to deal very briefly 24 with future debts. 25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 35</p>
<p>1 (Pause) 2 Yes. 3 MR ZACAROLI: So he's citing both McFarlane's claim and the 4 Law Car and General Insurance Company, apparently with 5 approval. Then he says also, at the bottom of the 6 page -- this is the passage you were shown yesterday: 7 "The damages for which the defendant would be 8 entitled to proof are the damages result from the 9 non-return of the shares at the agreed time with 10 a discount for the period between that day and the 11 receiving order." 12 So undoubtedly that comment is against us. It is, 13 as I say, my overall submission is this relates to 14 regimes which were different. We're looking to construe 15 the words of the rules now. He appears to have 16 cited/approved McFarlane's claim as well as the Law Car 17 and General Insurance Company. In McFarlane's claim 18 there wasn't a discount for early receipt. 19 MR JUSTICE DAVID RICHARDS: No. 20 MR ZACAROLI: Just one point to go back to, if I may, in the 21 bundle to 60A, a case we've just finished looking at, to 22 make the comment that Lord Justice Buckley, at page 122, 23 just three lines above the second hole-punch, at the end 24 of the line: 25 "In 1880 there arose in McFarlane's claim ..."</p> <p style="text-align: center;">Page 34</p>	<p>1 MR ZACAROLI: Really just explain why we say there is 2 a difference between future debts and contingent debts. 3 The difference is based on the three characteristics of 4 a future debt which are not there in relation to 5 a contingent debt. They are, first of all, that it's 6 certain to become payable; secondly, and linked to that 7 fact, on an insolvency there is in substance an 8 acceleration of the amount that was due in the future to 9 become due at the date of the winding up or 10 administration. 11 MR JUSTICE DAVID RICHARDS: Well, I'll let you develop that 12 yes. 13 MR ZACAROLI: Thirdly, to compensate for that acceleration, 14 there is a discount for early receipt specifically 15 provided by the rules at least where the debt has not 16 fallen due by the time a dividend is paid. 17 I accept that the distinction is damaged partially 18 by the fact that 2.105 doesn't apply to discount back 19 where the dividend is paid after the debt has fallen 20 due. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR ZACAROLI: But at least the combination of the factors 23 and, in particular, the first two factors are enough to 24 make the distinction. 25 Just standing back and looking at this as a matter</p> <p style="text-align: center;">Page 36</p>

<p>1 of ordinary language, if A loans B £100 but repayable in 2 a year's time, it is not an abuse of language at all to 3 regard the loan, the debt, as outstanding from the 4 moment it is paid, but if B is liable to pay A, say, 5 £100, say, if sterling moves above \$1.75 within the next 6 five years, to say that that debt is outstanding at any 7 time until you know that sterling has moved above the 8 relevant threshold.</p> <p>9 Now, so far as acceleration is concerned, there are 10 two points. The first is the Hodson v Tea Company case 11 which we submit on a proper analysis does say that the 12 effect of the insolvency generally is to advance, 13 accelerate payments under a loan which is otherwise due 14 in the future, if nothing else is said in the contract 15 about it.</p> <p>16 MR JUSTICE DAVID RICHARDS: Right.</p> <p>17 MR ZACAROLI: But, secondly, and in any event, there's no 18 doubt that the statute or the rules, rather, have that 19 effect.</p> <p>20 MR JUSTICE DAVID RICHARDS: That is true. I mean, it seems 21 to me that the question of acceleration -- you're saying 22 that it accelerates it because you're entitled to prove 23 and receive dividends on the debt, the full amount of 24 the debt. You're entitled to prove for the full amount 25 of the debt so that's an acceleration, but if it's not</p> <p style="text-align: center;">Page 37</p>	<p>1 MR ZACAROLI: But that's only referring to discounting. The 2 right to prove is 2.89.</p> <p>3 MR JUSTICE DAVID RICHARDS: I know, but the point I'm making 4 is that 2.105 does not make sense if the debts have 5 fallen due -- have fallen -- are, as a matter of 6 contract, due at the date of administration or it has no 7 application. Isn't that right, or am I misreading 8 2.105? Maybe I am.</p> <p>9 MR ZACAROLI: Well, I'm not sure that's right because the 10 rule is simply applying a discount from the date the 11 debt would otherwise be due. So I would have -- the 12 discount you can see in the formula so it's in the --</p> <p>13 MR JUSTICE DAVID RICHARDS: But it applies where a creditor 14 has proved for a debt of which payment is not due at the 15 date of declaration of the dividend.</p> <p>16 MR ZACAROLI: I see the point my Lord is making, yes. Well, 17 one has to read that as it is not due in accordance with 18 the terms of the contract.</p> <p>19 MR JUSTICE DAVID RICHARDS: Precisely. I think that's the 20 only point that was being made against you.</p> <p>21 MR ZACAROLI: I see.</p> <p>22 MR JUSTICE DAVID RICHARDS: But it was rebutting the point 23 that you made, that as a matter of contract the debt was 24 accelerated and that depends the contract.</p> <p>25 MR ZACAROLI: Yes, I don't really need that point because</p> <p style="text-align: center;">Page 39</p>
<p>1 yet fallen due for payment by the time a dividend is 2 declared you have the discounting back.</p> <p>3 So in terms of the insolvency regime, there's an 4 acceleration in the sense that you can prove for the 5 full amount of the debt, but I don't think it is 6 possible to contend that the debt is accelerated if it 7 hasn't otherwise fallen due for payment, is it?</p> <p>8 MR ZACAROLI: Well, let me just --</p> <p>9 MR JUSTICE DAVID RICHARDS: If by its terms, express or 10 implied, it falls due for payment on the date of 11 administration, which seems to be the effect of the 12 cases that you have relied on, well, fine, clearly it 13 has fallen due for payment on the terms of the contract 14 on the date of administration, but if that's not the 15 effect of the contract then it's not accelerated in 16 a contractual sense.</p> <p>17 MR ZACAROLI: I understand the distinction. There is a -- 18 I'll try once more with Hodson.</p> <p>19 MR JUSTICE DAVID RICHARDS: By all means, but 105 makes 20 clear, doesn't it, that the effect of the insolvency 21 rules is not to accelerate the debts as a matter of 22 contract? It only applies where the debt has not yet 23 fallen due for payment.</p> <p>24 MR ZACAROLI: That's 105, but that's the discounting --</p> <p>25 MR JUSTICE DAVID RICHARDS: I know, but it's part of the --</p> <p style="text-align: center;">Page 38</p>	<p>1 the point is --</p> <p>2 MR JUSTICE DAVID RICHARDS: Just as well.</p> <p>3 MR ZACAROLI: The scheme as a whole operates so as to 4 accelerate the future debt. The debt which was 5 payable -- where you have a date payable on a certain 6 date in the future, the scheme operates on the basis 7 that that is treated as accelerated.</p> <p>8 Now, that's different from a contingency because the 9 contingency is not treated as having happened, as we saw 10 from McFarlane's case. That's not how it's ever worked, 11 but the debt that was payable in the future is treated 12 as being payable immediately, so that the creditor can 13 be paid in full and have a complete discharge of that 14 claim by being paid on the date of administration. So 15 in the case of an immediate distribution of assets on 16 day one or two, that creditor's claim would be paid -- 17 there would be a discount and then the claim would be 18 paid and its contractual entitlement must have been 19 discharged in full.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR ZACAROLI: That's really the only point; that's the 22 distinction between a future debt and a contingent debt 23 for the purposes of my argument. The same does not 24 apply to a contingent debt where the debt remains 25 contingent.</p> <p style="text-align: center;">Page 40</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: And if it never happens, then in fact if it</p> <p>3 never happens, any amounts that have been paid in the</p> <p>4 meantime would be clawed back from the creditor.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR ZACAROLI: So it makes no substantive change to the</p> <p>7 contingent nature of the debt, whereas there is</p> <p>8 a substantive change caused by the scheme for the future</p> <p>9 nature of the future debt.</p> <p>10 As I made clear at the beginning, if my Lord doesn't</p> <p>11 think that the distinction is maintainable, then we say</p> <p>12 that the submissions I've made in relation to contingent</p> <p>13 debts apply also to future debts for reasons which will</p> <p>14 be advanced by Mr Trower and I won't trespass on that</p> <p>15 ground.</p> <p>16 MR JUSTICE DAVID RICHARDS: Right.</p> <p>17 MR ZACAROLI: My Lord, unless I can assist further, those</p> <p>18 are our submissions.</p> <p>19 MR JUSTICE DAVID RICHARDS: The only thing that occurs to me</p> <p>20 is this, that it does seem to me that it's important to</p> <p>21 focus, when looking at 2.88, at what the word "debt"</p> <p>22 means. The word "debt" is used in many of the</p> <p>23 paragraphs of 2.88. Reading through them, it seems to</p> <p>24 me that the word "debt" is being used in the sense of</p> <p>25 the debt which is the subject of proof, rather than the</p> <p style="text-align: center;">Page 41</p>	<p>1 enabling creditors to be compensated for being kept out</p> <p>2 of their money, in which case in that context you</p> <p>3 wouldn't regard the debt as being outstanding.</p> <p>4 MR JUSTICE DAVID RICHARDS: But nor would you with a future</p> <p>5 debt, would you, because you're not kept out of your</p> <p>6 money until the date for payment has arisen?</p> <p>7 MR ZACAROLI: Except for the fact that you're paid early,</p> <p>8 and essentially in full paid early, because the discount</p> <p>9 merely reflects the fact that you are being paid the</p> <p>10 full amount early. So with the future debt --</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes, but the question is whether</p> <p>12 you should get statutory interest for the period between</p> <p>13 the date of administration and the date of due payment,</p> <p>14 isn't it?</p> <p>15 MR ZACAROLI: Indeed. I do -- I have to repeat that the</p> <p>16 distinction is not entirely clear but it's one we make</p> <p>17 really on the meaning of the word "outstanding" between</p> <p>18 contingent and future, but, if we're wrong, then the</p> <p>19 submissions apply equally to both.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes, all right.</p> <p>21 MR ZACAROLI: I can't put it any higher than that.</p> <p>22 MR JUSTICE DAVID RICHARDS: Thank you very much,</p> <p>23 Mr Zacaroli.</p> <p>24 Mr Trower?</p> <p>25 MR TROWER: My Lord just looking at the time, I am very</p> <p style="text-align: center;">Page 43</p>
<p>1 debt which could be said to be the proof; in other</p> <p>2 words, it's not looking -- the debt is not meaning the</p> <p>3 proved debt, but the debt before proof.</p> <p>4 Now, how does your submission on future debts hang</p> <p>5 with that approach? If one is saying that the debt is</p> <p>6 the debt which is the subject of proof and you have</p> <p>7 a future debt which is not yet payable, then it is</p> <p>8 outstanding, isn't it? Then it's not outstanding,</p> <p>9 unless -- you say, well, outstanding is being used in</p> <p>10 the sense of it's a perfectly proper use of language to</p> <p>11 say that a future debt is outstanding before it's due</p> <p>12 for payment.</p> <p>13 MR ZACAROLI: It's a narrow distinction but that's it.</p> <p>14 MR JUSTICE DAVID RICHARDS: That's it?</p> <p>15 MR ZACAROLI: Yes. The point -- my Lord's point works in</p> <p>16 our favour on contingent debts.</p> <p>17 MR JUSTICE DAVID RICHARDS: It works in your favour on</p> <p>18 contingent debts, but Mr Dicker submits that the word</p> <p>19 "outstanding" can properly include contingent debts as</p> <p>20 well and he refers to the football contract case.</p> <p>21 MR ZACAROLI: As a matter of -- I understand -- of course,</p> <p>22 as a matter of language, depending on the context,</p> <p>23 "outstanding" can mean a number of things.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR ZACAROLI: Our key point there is the context here is</p> <p style="text-align: center;">Page 42</p>	<p>1 happy to start now ...</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes. We'll break at about</p> <p>3 11.30, if that's all right.</p> <p>4 MR TROWER: That's fine.</p> <p>5 Submissions by MR TROWER</p> <p>6 MR TROWER: My Lord, it won't surprise your Lordship to hear</p> <p>7 that quite a few of the areas I was going to cover have</p> <p>8 been covered by Mr Zacaroli or indeed in relation to</p> <p>9 that last point by your Lordship, but can I just explain</p> <p>10 at the outset what the joint administrators' position</p> <p>11 is, just so there's absolutely no uncertainty about it.</p> <p>12 For both future debts and contingent debts the</p> <p>13 periods during which the debts proved have been</p> <p>14 outstanding since the date the company entered</p> <p>15 administration are the periods which commence with the</p> <p>16 time that the creditor's cause of action is complete and</p> <p>17 end with the time that the debt has been discharged by</p> <p>18 payment in full.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TROWER: Now, just so I can get it out of the way at the</p> <p>21 beginning because of the meal that was made of it by my</p> <p>22 learned friends, the qualification that was added into</p> <p>23 our skeleton at paragraph 142 is ultimately an issue 6</p> <p>24 point, although it bears on issue 7 and 8, which is why</p> <p>25 we put it in. It's simply this: statutory interest will</p> <p style="text-align: center;">Page 44</p>

<p>1 not be payable at a rate applicable to the debt, apart 2 from the administration, if and for so long as that 3 interest is not payable at the due date when the cause 4 of action in relation to the underlying debt is 5 complete, but -- and it posits the possibility that it 6 only becomes payable at some time thereafter. 7 So that's the only point that was being dealt with 8 in that bit of our skeleton. 9 Now, my Lord, your Lordship's approach to 10 construction of 2.88 and, in particular, its 11 relationship with the rules and principles of law 12 applicable to proving contingent and future debts and 13 paying dividends on them is something that we submit 14 your Lordship should approach against the background of 15 a number of rather distinct purposes which the relevant 16 rules and principles of law fulfil. Some of my learned 17 friend's submissions, we respectfully suggest, rather 18 muddle up the purposes of the principles which are 19 coming into play. 20 The first purpose, and we agree with Mr Zacaroli, 21 and I'm not sure there's a huge amount of debate with 22 the SCG and York about the actual purpose, is that the 23 purpose of paying interest is to compensate a creditor 24 for being kept out of the money to which it would 25 otherwise have been entitled if the administration had</p> <p style="text-align: center;">Page 45</p>	<p>1 Your Lordship made that point in Waterfall 1. 2 Your Lordship made it in Storm Funding as your Lordship 3 may recall, and the most -- again, I don't think we need 4 to turn it up because one can see the most acute case in 5 which it's recently been considered is the Danka case. 6 MR JUSTICE DAVID RICHARDS: Lord Justice Patten is very 7 clear on that. 8 MR TROWER: He's very clear on that. My Lord has seen that 9 so I'm not going to turn it up. It's tab 162 of the 10 bundle. 11 The final purpose that's relevant for present 12 purposes is the purpose of discounting. It's to 13 reflect, we respectfully suggest, in an appropriate, 14 albeit often rough and ready, manner the fact that 15 payment may be made before time. That's what 16 discounting is about. 17 Now, I'll come at look, if I may, at how this all 18 fits with the estimation process and the position in 19 relation to contingent debts and future debts which is 20 at the core of Mr Dicker's and Mr Smith's submissions 21 a moment, but can I start with rule 2.88(7) because, as 22 your Lordship knows and indicated just now, the exercise 23 that we're carrying out here is a construction of that 24 rule. 25 Now, as I said, if we go to rule 2.88(7), we say</p> <p style="text-align: center;">Page 47</p>
<p>1 not intervened, with the consequential delay and 2 inability to obtain judgment. 3 Your Lordship makes that point in the Waterfall 1 4 judgment at paragraph 163. We don't need to go back 5 to it. 6 The second purpose which your Lordship needs to bear 7 in mind, is the purpose of valuing claims as at the 8 administration winding-up date. What's that about is 9 ensuring a fair distribution to creditors so that 10 a dividend can be paid on their claims pari passu. It 11 facilitates distribution of the estate where there is 12 a shortfall, but, as Lord Hoffmann says in 13 Wight v Eckhardt, and your Lordship has seen this 14 passage, care must be taken applying the principle as 15 a rigid rule across the board in relation to all other 16 parts of the code which are dealing with something 17 different. 18 The third purpose that your Lordship needs to bear 19 in mind is the purpose of estimation which is dealt with 20 under rule 2.81. I'm going to return to it just to fill 21 in one or two of the small gaps that have been left my 22 Mr Zacaroli in relation to his submissions on contingent 23 debts, but it's to enable an administrator or liquidator 24 to proceed to a conclusion as speedily as may be 25 reasonable in the circumstances.</p> <p style="text-align: center;">Page 46</p>	<p>1 that for a debt proved to be outstanding under 2.87, the 2 cause of action in respect of it must be complete. 3 Mr Smith says that the word "outstanding" is used in the 4 rules to mean something other than "due" and, in 5 particular, to describe a future liability and the 6 Crystal Palace case has been relied on as well. 7 Now, of course we accept that in different contexts 8 the word "outstanding" could have a different meaning. 9 The Crystal Palace case really doesn't take one very far 10 at all, apart from to indicate that as a matter of pure 11 language it's capable of having a different meaning. 12 I think your Lordship has the point, but so far, rule 13 2.105(2) is concerned, which was the point that was 14 relied on by Mr Smith, and if your Lordship turns up to 15 2.105(2) it talks about -- in parenthesis -- the amount 16 remaining outstanding in respect of his admitted proof. 17 Now, it really doesn't take matters very far at all 18 because it's plain that what it's being used to do in 19 that case is qualify the amount of the proof. It's not 20 being used for any other purpose. 21 In rule 2.88 the context is different because the 22 issue is whether the debt is outstanding for the purpose 23 of paying interest on it. What is interest for? It's 24 for compensation for being kept out of money which 25 a creditor would otherwise be entitled to receive. In</p> <p style="text-align: center;">Page 48</p>

<p>1 that context the question of whether a debt is 2 outstanding at any moment or for any period is whether 3 at the relevant time the creditor claiming the interest 4 has been kept out of its money. The earliest moment 5 a creditor has been kept out of its money is the date 6 the cause of action for its recovery is complete. 7 So that's the core submission in relation to the way 8 "outstanding" works in the rule. 9 What else does one get out of the word that are in 10 there? The next construction point is that the 11 draughtsman refers to the periods during which the debts 12 have been outstanding since the relevant date. Now, 13 it's a strange form of words -- two points really. It's 14 a strange form of words to use if the periods always 15 commence as they do on the SCG's case with the relevant 16 date. Why didn't he just say "paying interest on those 17 debts from the relevant date"? I quite understand that 18 one can criticise drafting and come up with more simple 19 forms of language, but it is striking that it could have 20 been dealt with in so much simpler a manner. 21 MR JUSTICE DAVID RICHARDS: Well, there is the point though 22 isn't there, about successive distributions? 23 MR TROWER: Yes. My Lord, there certainly is the point 24 about successive -- 25 MR JUSTICE DAVID RICHARDS: That is one explanation for this</p> <p style="text-align: center;">Page 49</p>	<p>1 distribution would be the same for everyone. 2 MR JUSTICE DAVID RICHARDS: Yes, but they're not contenting 3 for interest to be payable under this paragraph on that 4 basis. 5 MR TROWER: Oh, no, I'm not suggesting that for one moment. 6 I'm just explaining why it is that the language is 7 rather odd language to use in circumstances when you're 8 looking at the totality of the period, which for 9 everybody will be a single period in respect of which 10 there is at least some interest outstanding, because it 11 starts at the commencement date and ends with the date 12 of the final payment of the dividend. 13 That's the only point. 14 MR JUSTICE DAVID RICHARDS: I see. (Pause) 15 MR TROWER: So, if you like, you have an envelope -- 16 MR JUSTICE DAVID RICHARDS: You would say that the meaning 17 of which they contend would be at any rate clearer if it 18 said "in respect of the periods during which they or 19 part of them have been outstanding". 20 MR TROWER: Yes. 21 MR JUSTICE DAVID RICHARDS: I mean, I must say my view of 22 these words, I have to say, is this, that I think they 23 are -- there's no -- first of all, as presently advised, 24 I think they are capable of bearing the meaning of which 25 the Senior Creditor Group -- but it doesn't mean that's</p> <p style="text-align: center;">Page 51</p>
<p>1 formula. 2 MR TROWER: For this formula. One accepts that. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR TROWER: I don't -- but what we do suggest is that there 5 are two things going on in the language here. The 6 reference to "since the relevant date" is simply to make 7 clear that the statutory interest is not payable in 8 respect of any debt which may have fallen due before the 9 administration date. In other words, it doesn't give 10 creditors a general right to pre-commencement date 11 interest where they don't qualify for provable interest 12 under rule 2.88(1) to (5). So that's what "the since 13 the relevant date" bit is doing and it's not doing any 14 more than that. 15 Now, so far as the dividends point is concerned, 16 I mean, and the word "periods" is used for that reason, 17 of course one accepts there will be separate periods 18 during which interest is payable on different amounts 19 outstanding because the debt proved will have been 20 reduced by the receipt of the dividends. I accept that. 21 But it remains the case that on the SCG's argument the 22 totality of the period for which all debts proved are 23 outstanding to a greater or lesser extent, in a single 24 period of time, commences with the relevant date and 25 ends with the payment in full, which with the pari passu</p> <p style="text-align: center;">Page 50</p>	<p>1 the only meaning. That's the only thing. You have 2 a phrase which may cover more than one -- it may cover 3 one -- it may cover just that eventuality or it may 4 cover two eventualities. And you would say, I think, 5 probably, well, whether or not Mr Dicker is right about 6 the first eventuality, they are words capable of 7 covering what you say, namely -- 8 MR TROWER: My Lord, this is not one of those cases -- 9 MR JUSTICE DAVID RICHARDS: If it does achieve that and 10 you're right generally, then the draughtsman's been 11 quite clever about the choice of language. 12 MR TROWER: Well, my Lord, you know, it's obviously not one 13 of those cases where one can submit that the 14 construction being put forward by the other side is 15 a hopeless construction on the language. It's clearly 16 not that and I wouldn't put it that high. 17 MR JUSTICE DAVID RICHARDS: No. 18 MR TROWER: What I'm seeking to do is look at the language 19 for the purposes of identifying pointers that point in 20 favour of our construction. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR TROWER: The next construction point is to pick up the 23 point your Lordship made to Mr Zacaroli at the very end 24 of his submissions. And, just to put little bit of 25 flesh on it, what does the rule contemplate has to be</p> <p style="text-align: center;">Page 52</p>

<p>1 outstanding? What is the subject matter of being 2 outstanding? We submit that the subject matter is the 3 debt which was proved, i.e. the original underlying 4 debt, not what I helpfully or not would characterise as 5 the intangible constituted by the admission of that 6 underlying debt to proof, which might in any event be 7 more happily described as the "proved debt", if you 8 wanted to use that language, rather than the "debt 9 proved", but it doesn't really matter. That may be 10 a distinction without a difference.</p> <p>11 There are actually a number of reasons for this, 12 again as a matter of language. The phrase used is the 13 debt proved.</p> <p>14 MR JUSTICE DAVID RICHARDS: I suppose the draughtsman 15 himself had to grapple with this.</p> <p>16 MR TROWER: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: He came up with the formula in 18 2.105, "the amount remaining outstanding in respect of 19 his admitted proof". That clearly is looking at the 20 proof.</p> <p>21 MR TROWER: My Lord, indeed. That's a very good comparator.</p> <p>22 MR JUSTICE DAVID RICHARDS: So --</p> <p>23 MR TROWER: And one can see within 2.88 itself some very 24 strong pointers to the fact that the debt proved means 25 the underlying debt. It's the debt proved on which the</p> <p style="text-align: center;">Page 53</p>	<p>1 what we do respectfully suggest is a flaw at the heart 2 of the SCG's case and York's case, based on that point.</p> <p>3 What they effectively contend is that the reason 4 that the debt proved must be treated as outstanding as 5 at the commencement date, whether or not the creditor is 6 being kept out of his money, is that the contingent and 7 future debts are valued as at that date. That's at the 8 root of what they say. That's what they say best gives 9 effect to the doctrine of simultaneous realisation and 10 distribution.</p> <p>11 We say this simply isn't the right way of looking at 12 it because there is -- there is no notional doctrine of 13 that sort for all purposes. That's why I made the 14 submission that I made in relation to purposes at the 15 beginning. A requirement for a single valuation date is 16 necessary to achieve a pari passu distribution but it's 17 not necessary for the purpose of ascertaining rights to 18 the receipt of statutory interest. It's particularly 19 unhelpful when the purpose for which the image was 20 originally evoked, which was by Lord Hoffmann -- or not 21 by Lord Hoffmann but he summarised it -- has been 22 achieved by distribution of 100p in the pound. It's 23 neither required nor necessary to regulate the process 24 by which creditors are compensated for being kept out of 25 their money once that process has been given effect.</p> <p style="text-align: center;">Page 55</p>
<p>1 interest to be paid, and it's them which must have been 2 outstanding, and the phrase "the debt proved" is the 3 same phrase used to describe the asset which bears 4 interest in 2.88(1), if you go to the beginning of rule 5 2.88, "where a debt proved". So that same phrase where 6 it plainly means the underlying debt; it must do.</p> <p>7 MR JUSTICE DAVID RICHARDS: Certainly.</p> <p>8 MR TROWER: It's consistent, that concept, with the 9 underlying rationale for paying statutory interest which 10 is to compensate creditors for being kept out of their 11 money on the underlying claim. That's what this is all 12 about.</p> <p>13 The consequence of that is, as it's the underlying 14 debt which must be outstanding, there isn't really any 15 warrant for looking at the characteristics of the new 16 intangible which comes into existence on the uno flatu 17 exercise which Lord Hoffmann described for proving and 18 valuation purposes. What matters is whether the 19 underlying debt can be said to be outstanding, not the 20 thing which is the product of the valuation exercise 21 carried out.</p> <p>22 My Lord, can I just move on then, before I come to 23 the question of contingent debts and future debts for 24 valuation purposes and the impact that has on the 25 analysis, to just make a couple of points in relation to</p> <p style="text-align: center;">Page 54</p>	<p>1 So, my Lord, we do say that looking at it through 2 the spectacles that the Senior Creditor Group and York 3 look at it is flawed on that rather basic conceptual 4 basis.</p> <p>5 Now, just before I get on, there is one more point 6 before we move specifically into the rules on future and 7 contingent debts and their valuations. That's just 8 this: these rules that your Lordship is being invited to 9 construe are all in chapter 10 of the rules which only 10 apply in their terms where a distribution notice under 11 rule 2.95 has been given. You get that from rule 12 2.68(1).</p> <p>13 Now, what this highlights in an administration 14 context in particular, but it also arises -- the same 15 point -- in a liquidation context for a reason that was 16 alluded to by Mr Zacaroli; that there will often be 17 a significant period of time which expires between the 18 commencement of the administration and the date that 19 chapter 10 of the rules is engaged at all. It applies 20 obviously in a slightly less acute form in relation to 21 liquidation but there may well be a material period of 22 time which expires between the commencement of the 23 liquidation and the time at which the proving process is 24 actually initiated by the liquidator. It's not built 25 within the rules in quite the same way but it's still</p> <p style="text-align: center;">Page 56</p>

<p>1 there.</p> <p>2 So this, we respectfully suggest, does become</p> <p>3 relevant when thinking about what the draughtsman</p> <p>4 envisaged should happen, particularly where debts become</p> <p>5 due, payable, the cause of action is complete, between</p> <p>6 the commencement of the process and the underlying</p> <p>7 process, the insolvency process, and the commencement of</p> <p>8 the proving process in respect of which this distinction</p> <p>9 between contingent and future debts, how one values them</p> <p>10 and so on and so forth, becomes relevant.</p> <p>11 MR JUSTICE DAVID RICHARDS: That would be a very good</p> <p>12 moment. On the dot of 11.30. Thank you. Five minutes.</p> <p>13 (11.30 am)</p> <p>14 (Short break)</p> <p>15 (11.36 am)</p> <p>16 MR JUSTICE DAVID RICHARDS: Mr Trower.</p> <p>17 MR TROWER: My Lord, we can see that your Lordship may find</p> <p>18 it helpful when analysing the position in relation to</p> <p>19 future debts and contingent debts to start with future</p> <p>20 debts.</p> <p>21 MR JUSTICE DAVID RICHARDS: Right.</p> <p>22 MR TROWER: We don't need to go through this in any detail</p> <p>23 at all because Mr Zacaroli has covered it, but just to</p> <p>24 summarise the position. The creditor proves for the</p> <p>25 full amount of a future debt under rule 2.89.</p> <p style="text-align: center;">Page 57</p>	<p>1 so it's still plainly provable in accordance with rule</p> <p>2 2.89 for the full amount. There is no discount applied</p> <p>3 under rule 2.105 which, again, is readily explicable as</p> <p>4 a matter of principle because the creditor is not</p> <p>5 receiving his money early in those circumstances. The</p> <p>6 debt has fallen due and so he's entitled to payment, if</p> <p>7 the money is available, without discount.</p> <p>8 Now, this structure is consistent, as a matter of</p> <p>9 general theory, with how the law has always worked</p> <p>10 because it's consistently been the law that a discount</p> <p>11 is applied where a dividend is paid on a future debt</p> <p>12 before the maturity date but not where the debt accrues</p> <p>13 before dividend. In that case, he can prove for the</p> <p>14 full amount without discount. That has been consistent.</p> <p>15 Your Lordship -- again, we don't need to turn any of</p> <p>16 these up, but just so your Lordship gets a feel for it.</p> <p>17 In bankruptcy that concept goes right back to the</p> <p>18 1720 Bankruptcy Act which your Lordship does have in the</p> <p>19 bundles at 3A/6. You can see it flowing through the</p> <p>20 bankruptcy legislation thereafter. In liquidations, the</p> <p>21 bankruptcy rules were applied by section 10 of the</p> <p>22 Judicature Act in the first instance, but the point --</p> <p>23 this particular point was then specifically picked up,</p> <p>24 the first time there were a series of companies</p> <p>25 winding-up rules. We have just for a reason that will</p> <p style="text-align: center;">Page 59</p>
<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: The liquidation equivalent of which is 4.94.</p> <p>3 The amount for which he proves is the face value of the</p> <p>4 debt even though it's not fallen due.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: Just for your Lordship's note it makes that</p> <p>7 point in terms in Park Air at page 186.</p> <p>8 MR JUSTICE DAVID RICHARDS: You are going quite fast,</p> <p>9 Mr Trower.</p> <p>10 MR TROWER: I will go slower.</p> <p>11 MR JUSTICE DAVID RICHARDS: Good. Well done.</p> <p>12 MR TROWER: That the first point.</p> <p>13 There is no discount, as your Lord knows, applied to</p> <p>14 amount for which the debt is to be proved to reflect</p> <p>15 futurity for the provable amount. The only discount is</p> <p>16 in relation to -- is in reduction for the purposes of</p> <p>17 a dividend only which makes clear, we respectfully</p> <p>18 suggest, that the discount reflects the fact that the</p> <p>19 creditor is receiving his proportionate share of what is</p> <p>20 available early. That's what discounting must be about</p> <p>21 in that context.</p> <p>22 Now, the position is quite different, as</p> <p>23 your Lordship knows, once the future debt has fallen</p> <p>24 due. It remains caught by rule 2.89, as it wasn't as</p> <p>25 a matter of construction due at the administration date,</p> <p style="text-align: center;">Page 58</p>	<p>1 become apparent in a moment put in a small supplemental</p> <p>2 bundle which has the companies winding-up rules in them</p> <p>3 because I just want to show your Lordship two things.</p> <p>4 If we go to tab 1, these are the 1890 rules.</p> <p>5 Rule 105 is the rule that is applicable.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: What is interesting about that is that the</p> <p>8 computation of the discount is from the date of the</p> <p>9 winding up to the time the debt would have become</p> <p>10 payable according to the terms on which it was</p> <p>11 contracted. So that was the very first iteration of the</p> <p>12 discounting.</p> <p>13 MR JUSTICE DAVID RICHARDS: That's rule, sorry, just give me</p> <p>14 it again?</p> <p>15 MR TROWER: 105.</p> <p>16 MR JUSTICE DAVID RICHARDS: 105. Thank you.</p> <p>17 MR TROWER: But that was what we would respectfully suggest</p> <p>18 was corrected in the 2003 rules, which you have in the</p> <p>19 next tab -- sorry, the 1903 rules which you have in the</p> <p>20 next tab, rule 101, where your Lordship sees that the</p> <p>21 discounting period is between the time the debt would</p> <p>22 have become payable and the declaration of the dividend.</p> <p>23 So one gets to a dividend discounting concept fairly</p> <p>24 quickly in 1903.</p> <p>25 That continues to be the form of the rules through</p> <p style="text-align: center;">Page 60</p>

<p>1 1909, 1929 and 1949.</p> <p>2 MR JUSTICE DAVID RICHARDS: Right.</p> <p>3 MR TROWER: Would your Lordship just particularly note,</p> <p>4 because of a point that I'll be making in a very point</p> <p>5 on Law Car, that it was the law under the 1909 rules</p> <p>6 which was the law in force at the time of Law Car.</p> <p>7 MR JUSTICE DAVID RICHARDS: Right.</p> <p>8 MR TROWER: That concept was then initially carried through</p> <p>9 in its entirety effectively, subject to some wrinkles</p> <p>10 that I'll come on to, into the first form of the</p> <p>11 Insolvency Rules 1986, before they were amended after</p> <p>12 Park Air.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR TROWER: It was at that stage still discounting for</p> <p>15 dividend purposes only and only to the extent that the</p> <p>16 debt had not already matured. So you had those two</p> <p>17 concepts. The discounting provision in the original</p> <p>18 form of rule 11.13 and the original form of 2.105</p> <p>19 discounted back only to the date of the dividend, not to</p> <p>20 the commencement of the winding up.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: Now, what then happened was that in Park Air,</p> <p>23 which your Lordship will see behind tab 1D -- tab 128,</p> <p>24 volume 1D, is that the drafting was -- of the rule was</p> <p>25 criticised by Lord Millett.</p> <p style="text-align: center;">Page 61</p>	<p>1 reduced for dividend -- there is a reduction for</p> <p>2 dividend purposes quantified, although the formula was</p> <p>3 criticised, but quantified, by reference to the time</p> <p>4 that expires between the declaration of the dividend and</p> <p>5 the date when payment of the debt would otherwise be</p> <p>6 due. So still the same concept --</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR TROWER: -- as underpinned the original rules that go</p> <p>9 back a very long way. Just so your Lordship can note,</p> <p>10 the problem that arose was the use of the formula.</p> <p>11 Then there's a sub-rule 3, which disappears from the</p> <p>12 new drafting of the rule, which excludes creditors'</p> <p>13 entitlement to interest out of surplus funds under 189,</p> <p>14 i.e. statutory interest, until any creditor to whom 1</p> <p>15 and 2 apply has been paid the full amount of his debt.</p> <p>16 So there seems to be a rather -- there's a sort of</p> <p>17 reversal by way of subordinated claim of the amount to</p> <p>18 which creditors -- of the amount in respect of which</p> <p>19 there's been a discount on the proved claim for dividend</p> <p>20 purposes.</p> <p>21 Then you have the little passage which I identified</p> <p>22 a few moments ago about how rule 4.94 works.</p> <p>23 MR JUSTICE DAVID RICHARDS: Hmm, hmm.</p> <p>24 MR TROWER: Lord Millett criticises 11.13(3) as being</p> <p>25 a rather curious provision.</p> <p style="text-align: center;">Page 63</p>
<p>1 MR JUSTICE DAVID RICHARDS: That's tab, sorry?</p> <p>2 MR TROWER: Tab 128. The issue in Park Air, as</p> <p>3 your Lordship will recall, was a disclaimer issue and</p> <p>4 how you went about valuing a statutory claim for</p> <p>5 statutory damages where a disclaimer had taken place.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: It was in that context that Lord Millett was</p> <p>8 looking at the rules. If we can just pick it up at</p> <p>9 page 186 because -- and your Lordship sees there,</p> <p>10 between D and E:</p> <p>11 "The Court of Appeal in Park Air applied rule 11.13</p> <p>12 in the form of discounting rule to the respondent's</p> <p>13 proof of debt which had been submitted pursuant to the</p> <p>14 statutory claim for loss suffered as result of the</p> <p>15 disclaimer."</p> <p>16 Your Lordship there sees set out between D to E</p> <p>17 and G the then form of rule 11.13.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: It has the characteristics that a creditor is</p> <p>20 proving for a debt of which payment is not due at the</p> <p>21 date of the declaration. So it has that characteristic.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: It has the characteristic that it only applies</p> <p>24 for the purpose of the dividend and for no other</p> <p>25 purpose. It has a characteristic that the dividend is</p> <p style="text-align: center;">Page 62</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: Then he explains why the judge had been right to</p> <p>3 hold that rule had no application to proof submitted by</p> <p>4 a landlord pursuant to 1786, which was the centre of the</p> <p>5 case. But if you could then go down to H and read to</p> <p>6 the end of D, just after D on page 188, if your Lordship</p> <p>7 would.</p> <p>8 MR JUSTICE DAVID RICHARDS: So start at ...?</p> <p>9 MR TROWER: "It would be wrong for me to leave ..." Go on</p> <p>10 to D on the next page.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes. (Pause)</p> <p>12 Yes.</p> <p>13 MR TROWER: Now, so what he's done is two things --</p> <p>14 explaining there is two things. First of all, it's that</p> <p>15 the discounting formula doesn't work in the way it ought</p> <p>16 to because it's applied to the -- every time you apply</p> <p>17 it, you apply it to the undiscounted amount of the debt</p> <p>18 so you get to zero after 20 years. That's his first</p> <p>19 criticism.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR TROWER: His second criticism is a criticism in relation</p> <p>22 to the way sub-rule 3 works.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: Neither of the criticisms are specifically</p> <p>25 directed at the question of where you discount back to</p> <p style="text-align: center;">Page 64</p>

<p>1 for the purposes of discounting as a matter of</p> <p>2 principle. Do you discount back to the declaration of</p> <p>3 the dividend or do you discount back to the commencement</p> <p>4 of the process?</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: Then if your Lordship would just read the last</p> <p>7 paragraph -- two paragraphs under, "Two subsidiary</p> <p>8 issues ..."</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes. (Pause)</p> <p>10 Yes.</p> <p>11 MR TROWER: Now, so far as the second issue is concerned, he</p> <p>12 is obviously moving into the question of statutory</p> <p>13 interest and outstanding. It's not directly applicable,</p> <p>14 obviously, to what we're concerned with here, but it</p> <p>15 gives your Lordship some sense of the approach which</p> <p>16 Lord Millett seems to think was the appropriate approach</p> <p>17 in relation to the construction of this provision which</p> <p>18 is looking at the underlying debt and the underlying</p> <p>19 obligations that arise under the statute, but I don't</p> <p>20 take the point any further than that. It's entirely</p> <p>21 consistent with what we say "debt proved" means.</p> <p>22 Now, we then get to the new rule, which</p> <p>23 your Lordship obviously is faced with having to</p> <p>24 construe, 2.105, insofar as it is relevant to the core</p> <p>25 construction point for your Lordship under 2.88. We</p> <p style="text-align: center;">Page 65</p>	<p>1 estimation rule, is not simply dealing with purely</p> <p>2 contingent debts. What I mean by that is this: it's</p> <p>3 dealing with any debt where it doesn't bear a certain</p> <p>4 value. It may well be the case that at the time</p> <p>5 a liquidator is looking at the position, or an</p> <p>6 administrator is looking at the position, there is</p> <p>7 a complete cause of action in respect of a debt.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: But it still doesn't bear a certain value for</p> <p>10 estimation purposes.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR TROWER: I just remind your Lordship, our case is that</p> <p>13 the outstanding arises at the moment in time at which</p> <p>14 the cause of action is complete. That's the relevant</p> <p>15 time.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR TROWER: Now --</p> <p>18 MR JUSTICE DAVID RICHARDS: So, I mean, if you have a claim</p> <p>19 for damages for personal injuries, the claim is</p> <p>20 unascertained but you have a complete cause of action.</p> <p>21 MR TROWER: You have a complete cause of action. There's no</p> <p>22 reason in principle why statutory interest should not be</p> <p>23 paid from that moment in time. You have been kept out</p> <p>24 of your ability to go off and get an immediate judgment,</p> <p>25 which is one of the statutory bases for --</p> <p style="text-align: center;">Page 67</p>
<p>1 simply make this submission in relation to it: we don't</p> <p>2 shrink from the submission that the new form of the rule</p> <p>3 is internally inconsistent. It's plain that it's</p> <p>4 intended only to apply to debts, payment of which is not</p> <p>5 due at the date of the dividend. It does not apply to</p> <p>6 future debts which have fallen due.</p> <p>7 MR JUSTICE DAVID RICHARDS: No.</p> <p>8 MR TROWER: As a matter of principle, therefore, there could</p> <p>9 be no warrant for discounting the unmatured debts back</p> <p>10 to the date of the commencement of the insolvency while</p> <p>11 applying no discount to the matured debts. That doesn't</p> <p>12 make sense. The discount, if it's doing the job it</p> <p>13 ought to be doing, should only be to the date of the</p> <p>14 dividend. We don't shrink from that submission.</p> <p>15 Your Lordship doesn't actually have to decide this</p> <p>16 point, but we respectfully suggest that something has</p> <p>17 gone a bit wrong with the drafting.</p> <p>18 Now, what are the consequences so far as contingent</p> <p>19 debts are concerned on the submissions that we make in</p> <p>20 relation to future debts? We do respectfully, like</p> <p>21 Mr Zacaroli, suggest that your Lordship is assisted by</p> <p>22 looking at this in respect of contingencies which have</p> <p>23 not yet accrued into a complete cause of action and</p> <p>24 contingencies which have, although keeping at the back</p> <p>25 of your Lordship's mind the fact that 2.81, which is the</p> <p style="text-align: center;">Page 66</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes. What about mesothelioma</p> <p>2 claims? You might want to ...</p> <p>3 MR TROWER: I'll think about that, if I may.</p> <p>4 If the debt still doesn't bear a certain value at</p> <p>5 the time a dividend is declared and paid, the creditor</p> <p>6 is entitled to receive it in the full amount of the</p> <p>7 estimate whatever that estimate may be. That's plainly</p> <p>8 right. I am sure your Lordship -- I know your Lordship</p> <p>9 has this point, but rule 2.105 simply can't be applied</p> <p>10 because the formula requires there to be a date certain</p> <p>11 on which payment of the creditor's debt will fall due.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR TROWER: So if you have any taking into account, any</p> <p>14 uncertainty, it all has to go into the estimation</p> <p>15 process. That's always been the case.</p> <p>16 Now, the form of the estimate, and we accept that</p> <p>17 the form of the estimate is an estimate of present value</p> <p>18 in the sense that it's all about valuing at the time of</p> <p>19 the estimate, the prospects of the debt accruing and</p> <p>20 treating that as the value as at the date the company</p> <p>21 entered administration. That's consistent with the</p> <p>22 whole approach that's taken in relation to the uno flatu</p> <p>23 principle. It's consistent with things like the way in</p> <p>24 which you actually have to articulate your proof, which</p> <p>25 I think your Lordship was taken to by one of my learned</p> <p style="text-align: center;">Page 68</p>

<p>1 friends; I can't remember who it was.</p> <p>2 As your Lordship pointed out, the estimation process</p> <p>3 will often not include any form of futurity because the</p> <p>4 question when something might happen will often not be</p> <p>5 a relevant factor. The only question will often be what</p> <p>6 are the prospects of it happening at all, whether it's</p> <p>7 going to happen, and one can conceive of lots of</p> <p>8 circumstances in which it's clear that the debt is not</p> <p>9 going to arise at any stage -- until some stage in the</p> <p>10 future but it's completely unclear as to when that might</p> <p>11 be. So it's not helpful to think of it in terms of</p> <p>12 a discount for futurity in those circumstances.</p> <p>13 Now, what then happens when the liability accrues</p> <p>14 between the commencement date and the date of the</p> <p>15 dividend, because that's where we respectfully suggest</p> <p>16 to your Lordship is most assisted by the comparison</p> <p>17 between the position in relation to future debts and the</p> <p>18 position in relation to contingent debts? As</p> <p>19 I indicated at the outset, in an administration it may</p> <p>20 well happen before chapter 10 of the rules is engaged at</p> <p>21 all. So you could well have this event occurring after</p> <p>22 the commencement of the administration but long before</p> <p>23 one is into chapter 10.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR TROWER: Now, one point that Mr Smith made was that</p> <p style="text-align: center;">Page 69</p>	<p>1 being some form of discount for futurity built into the</p> <p>2 estimation process once the contingency has accrued.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR TROWER: Now, like Mr Zacaroli, of course I accept that</p> <p>5 that wasn't at the core of the argument in relation to</p> <p>6 any of the cases in which either your Lordship expressed</p> <p>7 views as to how it works in MF Global and Storm Funding</p> <p>8 or Lord Hoffmann expressed views as to how it worked in</p> <p>9 Stein v Blake and Wight v Eckhardt, but it is quite</p> <p>10 striking that in none of those modern cases is there any</p> <p>11 reference to the debt assessed by the hindsight</p> <p>12 principle being further discounted to reflect an element</p> <p>13 of futurity. It's consistent, we respectfully suggest,</p> <p>14 with the approach to future claims that no such discount</p> <p>15 should be applied because the claim has been rendered</p> <p>16 certain in amount so that it shares all of the essential</p> <p>17 characteristics of a future debt which has matured.</p> <p>18 That's exactly the position that you are in.</p> <p>19 And so we respectfully suggest that it would be</p> <p>20 strange to adopt an approach merely because a debt at</p> <p>21 some stage could be characterised as having been</p> <p>22 contingent and therefore subject to the estimation</p> <p>23 provisions in rule 2.81, which ends up with an</p> <p>24 inconsistent answer to the position in relation to</p> <p>25 future debts where the debt has matured.</p> <p style="text-align: center;">Page 71</p>
<p>1 rule 2.81 will always apply so long as the debt doesn't</p> <p>2 bear a certain value as at the administration date with</p> <p>3 a particular focus on "as at the administration date".</p> <p>4 I'm not going to go over the ground that your Lordship</p> <p>5 went over with Mr Zacaroli because we respectfully</p> <p>6 submit that rule 2.81 does not apply at all once you are</p> <p>7 in a situation in which the debt does bear a certain</p> <p>8 value. The opening line and a half is simply not</p> <p>9 engaged.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes, I see.</p> <p>11 MR TROWER: Now, the consequence -- we do respectfully</p> <p>12 submit that a construction of rule 2.81 which requires</p> <p>13 the administrator to go through an estimation process,</p> <p>14 because historically the debt was uncertain at some</p> <p>15 stage between the administration date and the date of</p> <p>16 the dividend, is a deeply uncommercial approach. Our</p> <p>17 approach, we suggest, is entirely consistent with the</p> <p>18 operation of the hindsight principle. Once the</p> <p>19 contingency has occurred, the claim is quantified and</p> <p>20 that is the amount that is treated as having been due at</p> <p>21 the bankruptcy date.</p> <p>22 Your Lordship has been taken to the passages in</p> <p>23 Stein v Blake, MF Global and Wight v Eckhardt, all of</p> <p>24 which look at this concept in the context of -- without</p> <p>25 making any reference at all to the concept of there</p> <p style="text-align: center;">Page 70</p>	<p>1 Now, Mr Zacaroli went to some of the old cases which</p> <p>2 he frankly accepted, and I certainly agree, are</p> <p>3 inconsistent anyway in some respects with that analysis</p> <p>4 and he -- I respectfully adopt a number of the</p> <p>5 submissions that he made in relation to them, but can</p> <p>6 I just add a few short points.</p> <p>7 Your Lordship may recollect there was a cause called</p> <p>8 Trent that was referred to in McFarlane's case.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes, I did see that.</p> <p>10 MR TROWER: We have dug it out and put it in our</p> <p>11 supplemental bundle.</p> <p>12 MR JUSTICE DAVID RICHARDS: Right.</p> <p>13 MR TROWER: Your Lordship may find it helpful. It's behind</p> <p>14 tab 5. What there is here is there are two first</p> <p>15 instance decisions, one of which is partially reported</p> <p>16 and the other of which is fully reported, and a decision</p> <p>17 of the Chancellor, Lord Cairns, on appeal. The decision</p> <p>18 that we need for present purposes is the decision of</p> <p>19 Sir William Page Wood which you only get a bit of the</p> <p>20 judgment reported in the footnote, starting at page 399.</p> <p>21 Now, what Trent was all about was a measure of -- of</p> <p>22 a valuation of a damages claim for the purposes of</p> <p>23 proving. That's what the issue was. Would</p> <p>24 your Lordship turn to page 399 and read from the</p> <p>25 beginning of the judgment to about most of the way down</p> <p style="text-align: center;">Page 72</p>

<p>1 the first column.</p> <p>2 MR JUSTICE DAVID RICHARDS: Right. I'll tell you what,</p> <p>3 I will just read the headnote of the main judgment, if</p> <p>4 I may, just to give the background.</p> <p>5 MR TROWER: Yes. (Pause)</p> <p>6 Just for your Lordship's note, 158 which is referred</p> <p>7 to in the headnote, was the then extant provision in the</p> <p>8 1862 Companies Act which dealt with valuation of</p> <p>9 contingent claims.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes, which we've looked at</p> <p>11 Thank you. (Pause)</p> <p>12 Where do you want me to finish?</p> <p>13 MR TROWER: We get what I need out of it, I think, actually,</p> <p>14 probably just before he starts the discussion on proper</p> <p>15 mode of ascertaining this particular debt, because the</p> <p>16 point -- the submission that I make a based on this is</p> <p>17 that clearly Sir William Page Wood considered that it</p> <p>18 was open to a creditor to wait for the contingency to</p> <p>19 arise and then to prove the debt, the contingent debt.</p> <p>20 That appears to be what he's saying.</p> <p>21 I am not --</p> <p>22 MR JUSTICE DAVID RICHARDS: Qualified by this:</p> <p>23 "... unless the time for bringing in claims has</p> <p>24 expired."</p> <p>25 So I don't think actually it's contrary to Danka.</p> <p style="text-align: center;">Page 73</p>	<p>1 are behind tab 13 of 3A, but if your Lordship would also</p> <p>2 turn up Hill v Bridges, which --</p> <p>3 MR JUSTICE DAVID RICHARDS: It must be in 1A, presumably?</p> <p>4 MR TROWER: I am sorry, I have made the wrong note. It's to</p> <p>5 be found behind tab 40A.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: The passage at the bottom of page 344 in</p> <p>8 Mr Chitty's argument, there's a reference to the 17</p> <p>9 seventh section of the 1849 Act.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes, this --</p> <p>11 MR TROWER: Which I don't think your Lordship has seen,</p> <p>12 but --</p> <p>13 MR JUSTICE DAVID RICHARDS: No. Here it is.</p> <p>14 MR TROWER: Here it is. It's behind tab 15.</p> <p>15 MR JUSTICE DAVID RICHARDS: Oh, sorry, is it?</p> <p>16 MR TROWER: It's behind tab 13.</p> <p>17 MR JUSTICE DAVID RICHARDS: 1849 is behind tab 15.</p> <p>18 MR TROWER: It's the 1849 Act your Lordship should have.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes, that's tab 15. Someone</p> <p>20 has -- I've marked this.</p> <p>21 MR TROWER: Your Lordship may have been to this section</p> <p>22 already.</p> <p>23 MR JUSTICE DAVID RICHARDS: Sorry, which section are we</p> <p>24 after?</p> <p>25 MR TROWER: We're looking for section 177 and section 178 of</p> <p style="text-align: center;">Page 75</p>
<p>1 MR TROWER: No, I think -- I see that. I see that. I see</p> <p>2 that.</p> <p>3 It adds nothing at all, but on page 115 of the</p> <p>4 report --</p> <p>5 MR JUSTICE DAVID RICHARDS: Sorry?</p> <p>6 MR TROWER: It's a new report.</p> <p>7 MR JUSTICE DAVID RICHARDS: There's a second case.</p> <p>8 MR TROWER: There's a second case which is the</p> <p>9 Court of Appeal -- well, it's the Lord Chancellor.</p> <p>10 MR JUSTICE DAVID RICHARDS: Right.</p> <p>11 MR TROWER: He just, in the first paragraph, clearly doesn't</p> <p>12 disagree with the approach that Vice-Chancellor</p> <p>13 Page Wood takes.</p> <p>14 So I just wanted your Lordship to see that because</p> <p>15 that's slightly moving away from the approach that seems</p> <p>16 to have been adopted in the other cases, or not entirely</p> <p>17 consistent with it.</p> <p>18 The second thing I wanted to do was Mr Zacaroli took</p> <p>19 you to Hill v Bridges. I just wanted to draw attention</p> <p>20 to the fact, which is behind tab 13 of 3A --</p> <p>21 MR JUSTICE DAVID RICHARDS: Sorry, where, you?</p> <p>22 MR TROWER: Sorry, not 13. Your Lordship will just need 3A,</p> <p>23 tab 13, just for this point so keep it out.</p> <p>24 MR JUSTICE DAVID RICHARDS: Right.</p> <p>25 MR TROWER: Sections 177 and 178 of the Bankruptcy Act 1849</p> <p style="text-align: center;">Page 74</p>	<p>1 the 1849 --</p> <p>2 MR JUSTICE DAVID RICHARDS: Right.</p> <p>3 MR TROWER: -- Act. For some reason, mine --</p> <p>4 MR JUSTICE DAVID RICHARDS: What we have in tab 15 is what</p> <p>5 I've looked at before. I'm not sure who -- it's 197,</p> <p>6 section 197 of the 1849 Act.</p> <p>7 MR TROWER: Yes.</p> <p>8 MR JUSTICE DAVID RICHARDS: But we want 177.</p> <p>9 MR TROWER: For some reason, mine seems to have disappeared.</p> <p>10 I thought it was behind tab 13.</p> <p>11 MR JUSTICE DAVID RICHARDS: It seems to be 1843 Act.</p> <p>12 MR TROWER: Do you have the 1849 Act behind tab 15?</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes, but not -- only a bit.</p> <p>14 MR TROWER: Yes.</p> <p>15 MR JUSTICE DAVID RICHARDS: Not the bit you want.</p> <p>16 MR TROWER: I am just wondering whether it has been put</p> <p>17 behind the wrong tab actually. Yes, it has.</p> <p>18 MR JUSTICE DAVID RICHARDS: Ah.</p> <p>19 MR TROWER: What has happened is that it's been put behind</p> <p>20 tab 13 with the 1843 Act.</p> <p>21 MR JUSTICE DAVID RICHARDS: Oh, I see. The 1843 Act is</p> <p>22 a Canadian Act.</p> <p>23 MR TROWER: Yes. It shouldn't be there at all. It should</p> <p>24 be behind tab 15.</p> <p>25 MR JUSTICE DAVID RICHARDS: Just hold on.</p> <p style="text-align: center;">Page 76</p>

<p>1 MR TROWER: If your Lordship extracts three pages --</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes, I have them now. Thank</p> <p>3 you. Right.</p> <p>4 MR TROWER: I am sorry about that. It got put in the wrong</p> <p>5 tab. That's what has happened there.</p> <p>6 What we need is the last page, 177 and 178.</p> <p>7 MR JUSTICE DAVID RICHARDS: Right.</p> <p>8 MR TROWER: If your Lordship would just read those sections.</p> <p>9 (Pause)</p> <p>10 MR JUSTICE DAVID RICHARDS: So 177 and also 178?</p> <p>11 MR TROWER: Yes.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes. (Pause)</p> <p>13 Yes.</p> <p>14 MR TROWER: So what appears to have happened is that the</p> <p>15 submission was made to the Master of the Rolls that</p> <p>16 there had been a section which entitled someone to prove</p> <p>17 for the full amount once the contingency had occurred</p> <p>18 which is what 177 and 178 seem to do.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TROWER: But that wasn't there anymore, but the proper</p> <p>21 purpose -- the proper course was to apply, so it is</p> <p>22 said, what we would now characterise as the future debt</p> <p>23 discounting provision, which is contained in rule 77,</p> <p>24 which is the rule that my learned friend Mr Zacaroli</p> <p>25 took you to. Although it's rather unclear exactly what</p> <p style="text-align: center;">Page 77</p>	<p>1 period from the date the debt would have fallen due to</p> <p>2 the date of the dividend.</p> <p>3 Now, on this hypothesis, the debt had already --</p> <p>4 this contingent liability had already fallen in. What</p> <p>5 Mr Chitty seems to have submitted is he says:</p> <p>6 "Apparently the proper course is for the claimant</p> <p>7 now to bring a fresh proof for the actual debt</p> <p>8 ...(reading to the words)... interval between the</p> <p>9 judgment and the widow's death."</p> <p>10 Which is a slightly -- the judgment being an</p> <p>11 insolvency judgment.</p> <p>12 MR JUSTICE DAVID RICHARDS: Right.</p> <p>13 MR TROWER: So there is some -- there seems to be some</p> <p>14 confusion on the face of this authority as to what was</p> <p>15 actually going on and what application was being or what</p> <p>16 legislation was being applied and for what purpose.</p> <p>17 MR JUSTICE DAVID RICHARDS: Right.</p> <p>18 MR TROWER: Which we respectfully suggest slightly</p> <p>19 undermines the authority which it may have, persuasive</p> <p>20 or otherwise, for the purposes of construing the present</p> <p>21 statutory code.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: My Lord, the only other point I want to touch on</p> <p>24 arising out of the old cases was Law Car. I just wanted</p> <p>25 to make the additional point, in addition to the one</p> <p style="text-align: center;">Page 79</p>
<p>1 then happened, it's very difficult to see how rule 77</p> <p>2 could have been applied because, even if you applied it</p> <p>3 to contingencies -- well, the reason you couldn't have</p> <p>4 applied it or it's very difficult to see how it could</p> <p>5 have been applied is because it only applies in its</p> <p>6 terms from the date of the declaration to the date of</p> <p>7 the time the debt would have become payable according to</p> <p>8 the terms upon which it was contracted. So once the</p> <p>9 contingency has fallen in, it's very difficult to see</p> <p>10 how rule 77 can have any application.</p> <p>11 MR JUSTICE DAVID RICHARDS: Rule 77 being ...?</p> <p>12 MR TROWER: Mr Zacaroli took you to that behind tab 56 in</p> <p>13 3D, which is the discounting rule in relation to future</p> <p>14 debts.</p> <p>15 MR JUSTICE DAVID RICHARDS: 3D, yes.</p> <p>16 MR TROWER: 3D, tab 56.</p> <p>17 What Mr Chitty --</p> <p>18 MR JUSTICE DAVID RICHARDS: So 77 --</p> <p>19 MR TROWER: It's the bit over the page that matters:</p> <p>20 "Any creditor may prove for a debt ..."</p> <p>21 (Pause)</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes. Sorry, okay, yes.</p> <p>23 MR TROWER: What is odd about this is that the way rule 77</p> <p>24 worked, and lots of rules up until the 1986 rules worked</p> <p>25 in the same way, was to apply the discount for the</p> <p style="text-align: center;">Page 78</p>	<p>1 that Mr Zacaroli made, is that at that stage, as</p> <p>2 I showed your Lordship a short while ago, the relevant</p> <p>3 rule in relation to contingent liabilities and future</p> <p>4 debts was rule 98 of the Companies (Winding Up) Rules</p> <p>5 1909, which was in our supplemental authorities bundle</p> <p>6 behind tab 3.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR TROWER: So when I said that -- I think I slightly</p> <p>9 misspoke there. The relevant rule in relation to</p> <p>10 discounting in respect of future debts was rule 98 of</p> <p>11 the Companies (Winding Up) Rules 1909. So there was</p> <p>12 a rule in place which made provision for discounting</p> <p>13 from the time that a future debt falls due until the</p> <p>14 date of declaration of a dividend. It doesn't appear</p> <p>15 that any argument was advanced before the</p> <p>16 Court of Appeal in Law Car that once a contingent</p> <p>17 liability has accrued, one ought conceptually to think</p> <p>18 about it in the same terms, a future liability for the</p> <p>19 discounting purposes. So the theme that I addressed</p> <p>20 your Lordship on at the very beginning of my</p> <p>21 submissions.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: So that sort of point wasn't made. That's</p> <p>24 really just an additional reason why your Lordship needs</p> <p>25 to treat Law Car with a little bit of circumspection.</p> <p style="text-align: center;">Page 80</p>

<p>1 MR JUSTICE DAVID RICHARDS: Right.</p> <p>2 MR TROWER: My Lord, can I just address your Lordship next</p> <p>3 on a couple of provisions which your Lordship needs to</p> <p>4 be aware of and which we say helps the construction</p> <p>5 process.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: The first is the catch-up provision in</p> <p>8 rule 2.101 which I'm not sure whether your Lordship has</p> <p>9 looked at yet. Both these points are consistency points</p> <p>10 with our argument, if I can put it that way. The way</p> <p>11 the catch-up provision works, if your Lordship will just</p> <p>12 read the rule.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes. (Pause)</p> <p>14 Yes.</p> <p>15 MR TROWER: So where a creditor's proof is increased on</p> <p>16 a contingency accruing, he's entitled to catch-up in</p> <p>17 respect of dividends already paid.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: Which reflects the fact that the original</p> <p>20 estimate didn't reflect what can now be seen to be the</p> <p>21 true value of his claim.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: A future creditor is not entitled to receive</p> <p>24 catch-up dividends in respect of the part of the proof</p> <p>25 on which it didn't receive a dividend. Something to</p> <p style="text-align: center;">Page 81</p>	<p>1 simply isn't a problem because all you have is a balance</p> <p>2 which will still be outstanding to the extent that it</p> <p>3 represents a contingent claim against the company, even</p> <p>4 after the set-off account has been taken. So that, we</p> <p>5 say, there's no problem with.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: Now, there's nothing odd about the fact that the</p> <p>8 net balance which arises on the set-off account is</p> <p>9 provable. That doesn't mean to say it's outstanding.</p> <p>10 It may or may not be, depending on whether or not the</p> <p>11 net balance is to be derived from the underlying debt</p> <p>12 which is contingent or future, or not.</p> <p>13 What about though the situation where part of the</p> <p>14 debt proved is accrued and part is contingent? I think</p> <p>15 that was the example your Lordship put to Mr Smith. We</p> <p>16 say you simply approach the question on the basis that</p> <p>17 the set-off is applied pro rata, as it would be if the</p> <p>18 two claims had any other differences in their</p> <p>19 characteristics. So it's exactly the same situation as</p> <p>20 arises where a set-off problem arises with a creditor</p> <p>21 who has a preferential claim and an unsecured claim and</p> <p>22 you have to work out how set-off is applied.</p> <p>23 MR JUSTICE DAVID RICHARDS: I see.</p> <p>24 MR TROWER: Unit 2 Windows, which deals with this point,</p> <p>25 which your Lordship may be familiar with, is in the</p> <p style="text-align: center;">Page 83</p>
<p>1 that effect was sitting there in rule 2.101(3) in its</p> <p>2 original form, that subordinated provision which allowed</p> <p>3 them to come in.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR TROWER: But there's no catch-up provision in relation to</p> <p>6 dividends. What we say this demonstrates is that the</p> <p>7 proof has always been for the full amount and the</p> <p>8 discount is simply to reflect the fact that it's</p> <p>9 received its money -- the creditor has received its</p> <p>10 money earlier than it should have done in respect of</p> <p>11 future debts. That's all the discount provision is</p> <p>12 doing.</p> <p>13 The second provision that I just wanted to mention</p> <p>14 was set-off. Mr Smith made submissions to your Lordship</p> <p>15 about set-off and said that where contingent and future</p> <p>16 debts were included in the set-off account, that would</p> <p>17 lead to a net balance being outstanding from the set-off</p> <p>18 date, which is the commencement of the administration.</p> <p>19 And one understands that. And I think he then went on</p> <p>20 to submit that it would be odd if the date was different</p> <p>21 to the date from which a contingent or future debt was</p> <p>22 otherwise outstanding. I think that's the way I read</p> <p>23 his submission. There is a point of disaggregation as</p> <p>24 well, but just on the core point.</p> <p>25 Now, in principle as a starting point we say there</p> <p style="text-align: center;">Page 82</p>	<p>1 bundles at 1C, tab 97, and it simply stands as authority</p> <p>2 for the proposition that the pro rata approach is the</p> <p>3 right approach.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR TROWER: We say that that simply answers any issues that</p> <p>6 might otherwise arise in relation to the set-off</p> <p>7 account.</p> <p>8 So just to apply that in the statutory interest</p> <p>9 context. That part of the balance which is treated as</p> <p>10 the unpaid element of the actual present debt is what is</p> <p>11 outstanding for the purposes of rule 2.88 from the</p> <p>12 moment in time which the account is taken.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR TROWER: We say that's an entirely consistent and</p> <p>15 principled approach in relation to the way set-off fits</p> <p>16 in with the concept of a liability being outstanding as</p> <p>17 and when the contingency has accrued.</p> <p>18 Can I, and I think I'm coming to the end of my</p> <p>19 submissions -- subject to questions which your Lordship</p> <p>20 has -- just deal with some issues in relation to the</p> <p>21 facts. I feel I have to in the light of the way it's</p> <p>22 been put, although we do start by saying that</p> <p>23 your Lordship is here to decide points of principle --</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR TROWER: -- with the greatest of respect, and not to get</p> <p style="text-align: center;">Page 84</p>

<p>1 drawn too deeply in to what may be contentious questions 2 of fact in relation to what's actually been happening, 3 but the reason I want to do it is just this: the Senior 4 Creditor Group gave some close-out examples in their 5 skeleton. The issue raised on the facts is a situation 6 in which a creditor may have had a claim for damages at 7 the commencement of the administration, for example for 8 failure to deliver securities, and then subsequently 9 there's then a claim made in respect of a close-out 10 amount. That's the sort of typical kind of situation. 11 The question we respectfully suggest as a matter of 12 principle is what is the debt which has been proved? 13 What is the debt proved at the time the court has to 14 consider the question of what is outstanding? It's 15 still the same one -- the answer is still the same: when 16 was the cause of action complete in respect of the debt 17 proved? 18 If the debt proved is the close-out amount, the 19 cause of action is complete at the close-out date. If 20 an accrued claim for damages existed at the commencement 21 date, as a result of a failure to deliver at that stage, 22 or some other stage later on, the cause of action will 23 have been complete then, but if that isn't the proved 24 debt, interest won't be payable from that time but the 25 reason is because the claim for the close-out debt has</p> <p style="text-align: center;">Page 85</p>	<p>1 have anyway, to engage too much in questions of fact and 2 what may or may not have happened. 3 I think, finally, it's linked to this point, 4 although it comes into the legal argument about how it 5 is that you -- the contingent debt claims and the future 6 debt claims fit together. We do have a section in our 7 skeleton which deals with what one might describe as the 8 windfall arguments on the facts and how they -- we give 9 some examples, of which there was much complaint made 10 about by the Senior Creditor Group. 11 It's in paragraphs 146 to 150. What it seeks to do 12 is to draw a little bit out by way of example of 13 referring to creditors who may be advantaged or 14 disadvantaged by whatever answer your Lordship reaches 15 on this question in relation to "outstanding". So it's 16 behind tab 4, paragraphs 146 to 150. 17 MR JUSTICE DAVID RICHARDS: Yes. 18 MR TROWER: Now, what it does is identify windfalls which we 19 say arise on the Senior Creditor Group's and York's 20 case. If your Lordship would read 147. 21 MR JUSTICE DAVID RICHARDS: Yes. (Pause) 22 MR TROWER: Then 150 are the two bits. (Pause) 23 MR JUSTICE DAVID RICHARDS: Sorry, where? 24 MR TROWER: Then there's another -- 25 MR JUSTICE DAVID RICHARDS: Sorry, I misunderstood. You are</p> <p style="text-align: center;">Page 87</p>
<p>1 replaced the original claim for damages for failure to 2 deliver. It's as simple as that. If it still subsists, 3 there may be interest in respect of it. 4 Mr Smith also made a submission, which I need to 5 just deal with, that this particular case is 6 a particularly egregious case because the contingency 7 was something that was controlled by the joint 8 administrators in some way. 9 I hesitate to deal with it but I feel I need to, 10 because from a legal perspective we simply don't accept 11 either the premise or the consequence. 12 The fact that it wasn't in a creditor's economic 13 interest to take a particular step at the time it did is 14 neither here nor there on the legal question which 15 your Lordship is being asked to decide. If it really 16 was unfair in any legally relevant sense that the joint 17 administrators either took a step they should have -- 18 shouldn't have taken or didn't take a step they should, 19 then it's always open to the creditor in the usual way 20 to come to court and complain about it. There are 21 plenty of remedies, as your Lordship knows, given under 22 the code for precisely that purpose. 23 So we respectfully suggest that that complaint goes 24 absolutely nowhere and that your Lordship should resist 25 the temptation, which your Lordship probably doesn't</p> <p style="text-align: center;">Page 86</p>	<p>1 talking about windfalls. I have read 146 and 147. 2 MR TROWER: Yes. 3 MR JUSTICE DAVID RICHARDS: That doesn't seem particularly 4 to be directed to that. 5 MR TROWER: Well, 147.2. 6 MR JUSTICE DAVID RICHARDS: "Because the claim remains 7 contingent ..." 8 MR TROWER: "... the debt remains outstanding ...(reading to 9 the words)... it would be received, a windfall." 10 MR JUSTICE DAVID RICHARDS: I see. Fair enough. 11 MR TROWER: Then we deal with the position in relation to 12 future debts at 150. 13 MR JUSTICE DAVID RICHARDS: Yes, I see. Right. 14 MR TROWER: Now, in a sense the point here obviously is 15 a point of principle and your Lordship can see it 16 illustrated in any number of different ways as to how 17 the inter-relationship works, but, my Lord, so that's 18 the way we see this debate. We come at it from a very 19 similar position to the position of Mr Zacaroli, but we 20 respectfully suggest where we slightly part company from 21 him is we start with the future debts position and say 22 that that helps inform the whole approach that the court 23 should take to what to do about contingent debts. 24 So on that aspect of the case we part company from 25 Mr Zacaroli in emphasis. And we say that the</p> <p style="text-align: center;">Page 88</p>

<p>1 distinction that Mr Zacaroli seeks to draw between 2 contingent debts and future debts, based on the very 3 narrow point on rule 2.105, doesn't actually, on 4 analysis, work; and we don't shrink from the submission 5 that something has gone a little bit wrong with the 6 wording of rule 2.105 in its existing form.</p> <p>7 MR JUSTICE DAVID RICHARDS: Is that how you meet the 8 apparent unfairness of discounting, admittedly for the 9 purposes of the dividend, but not getting interest on 10 the discounted amount?</p> <p>11 MR TROWER: Yes.</p> <p>12 MR JUSTICE DAVID RICHARDS: Something has gone a bit wrong 13 with the wording of 105?</p> <p>14 MR TROWER: With 105, yes.</p> <p>15 MR JUSTICE DAVID RICHARDS: 2.105. I see. Thank you.</p> <p>16 MR TROWER: My Lord, unless I can assist your Lordship 17 further?</p> <p>18 MR JUSTICE DAVID RICHARDS: No, thank you very much, 19 Mr Trower.</p> <p>20 Mr Dicker?</p> <p>21 Reply submissions by MR DICKER</p> <p>22 MR DICKER: My Lord, your Lordship is again concerned with 23 the construction of rules -- in this case -- 2.81, 2.89 24 and 2.105. We, as before, say that your Lordship needs 25 to construe the relevant rules, having in mind the</p> <p style="text-align: center;">Page 89</p>	<p>1 payable rank equally".</p> <p>2 My Lord, my learned friend's submissions, in our 3 respectful submission, ignored in large part the context 4 within which the rules are found and focused far too 5 heavily on the language of the rules themselves. We say 6 that's to fall into the error that Mr Justice Norris 7 effectively fell into in the Kaupthing case.</p> <p>8 Your Lordship may recall Lord Justice Etherton's 9 response to that, to approach matters in this way and to 10 reach the conclusion that he did in that case was 11 inconsistent with basic principles and objectives of 12 insolvency administration.</p> <p>13 MR JUSTICE DAVID RICHARDS: I do.</p> <p>14 MR DICKER: Now, so far as the wording of 2.88 is concerned 15 can I just address one point, and that's what is meant 16 by the phrase "the debt".</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR DICKER: My Lord, one starts, we say, with 2.88(7) which 19 provides that any surplus remaining after payment of the 20 debts proved. We say that must mean the debts proved, 21 taking into account, for example, the set-off, 22 estimation or any other effect the rules may have on the 23 underlying debts. Interest is then paid on those debts; 24 in other words, the proved debts, in respect of the 25 periods during which they, i.e. the proved debts, have</p> <p style="text-align: center;">Page 91</p>
<p>1 nature and effect of the scheme in which they are to be 2 found. Obviously that includes the fact that debts are 3 ascertained as at the date of administration. We say 4 that requires the value of those debts to be given their 5 present value. That's fundamental to ensure pari passu 6 distribution.</p> <p>7 That aspect of the scheme has existed right from the 8 start. The Insolvency Act did not change it and nothing 9 but express language would have been sufficient to do 10 so.</p> <p>11 Now, I think at one stage my learned friend 12 Mr Trower suggested that references in authorities to 13 "present value" simply referred to the time at which you 14 did the valuation but said nothing about the nature of 15 the exercise that you were doing. My Lord, in our 16 submission, if he did say that, he was wrong. The 17 exercise of valuing as at the date of administration 18 does involve putting a present value on the debts and to 19 the extent they are future or contingent, doing so in 20 accordance with the rules.</p> <p>21 My Lord, we say that pari passu is a principle which 22 continues to apply in the context of distribution of the 23 surplus. Your Lordship has seen that from rule 2.88(8) 24 which refers to all interest payable under paragraph 7 25 ranking equally "whether or not the debts on which it is</p> <p style="text-align: center;">Page 90</p>	<p>1 been outstanding since the relevant date.</p> <p>2 My Lord, we also say that if that were incorrect and 3 one was looking at the underlying debt for this purpose, 4 then one consequence would be that you would be entitled 5 to Judgments Act interest on a foreign currency debt. 6 If the reference to "debt" is to the underlying debt and 7 if the underlying debt is a foreign currency debt, then 8 you are entitled to interest on the foreign currency 9 debt. That would obviously be inconsistent with the 10 conclusion reached in Lines Brothers number 2.</p> <p>11 MR JUSTICE DAVID RICHARDS: Just explain that to me.</p> <p>12 MR DICKER: There's an issue as to what is meant by the 13 phrase "the debt".</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR DICKER: Are we talking about interest on proved debts by 16 reference to proved debts or are we talking of interest 17 by reference to the underlying debt? We say it's the 18 former, not the latter.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR DICKER: It's the former, taking into account the 21 consequences of the rules on the underlying debt; in 22 other words, set-off, estimation, et cetera, and the 23 supporting point, if I may, if that wasn't the case and 24 what this said was: 25 "Any surplus remaining after payment of the</p> <p style="text-align: center;">Page 92</p>

<p>1 underlying debts proved shall ...(reading to the 2 words)... which they have been outstanding since the 3 relevant date." 4 In other words, if you pretend that the insolvency 5 rules have had no effect on the underlying debts and 6 you're effectively going back to the underlying debts 7 and paying interest on those, then if you have a claim 8 denominated in a foreign currency and you're paying 9 interest on that underlying debt, and you're paying it 10 either at rate applicable to it or at 8 per cent, that's 11 doing exactly what Mr Justice Mervyn Davies held the 12 rules, certainly under the old regime, did not provide. 13 MR JUSTICE DAVID RICHARDS: I see. 14 MR DICKER: My Lord, a subsidiary point is obviously the 15 underlying debts, we know, will not necessarily have 16 been paid in full in any event. That's why 17 your Lordship held in Waterfall 1 that there was the 18 possibility of a currency conversion claim in respect of 19 the shortfall. So if it was referring to the underlying 20 debts, potentially you wouldn't get to the interest 21 provision until you had paid the non-provable currency 22 conversion claim and the statutory ranking would be 23 inverted. 24 So one has to approach the rules by reference to the 25 features of the scheme.</p> <p style="text-align: center;">Page 93</p>	<p>1 My Lord, so we say the basic idea of -- in relation 2 to certainly contingent claims, before the contingency 3 occurs, is to give them a present value and, in that 4 sense, one may say to accelerate the debts, i.e. permit 5 the creditor to prove for them and to receive a payment 6 in respect of them. 7 To what then in relation to contingent claims after 8 the contingency occurs? As your Lordship knows, we say 9 it's simply the same exercise but with the benefit of 10 hindsight. My learned friends say there's no provision 11 for discounting to futurity and it's obviously true that 12 in this situation, as in the last, there is no statutory 13 formula for discounting. They also say, well, rule 2.81 14 cannot apply in this situation. My Lord, we say that's 15 wrong for the reasons your Lordship identified. 16 My learned friends referred to some authorities. 17 Mr Zacaroli -- 18 MR JUSTICE DAVID RICHARDS: Just remind me, looking at 19 2.81(1) -- I mean, I see as a matter of the language of 20 the rule why Mr Trower makes the submission he does, 21 because where it says "... the administrators shall 22 estimate the value of any debt which, by reason of its 23 being subject to any contingency or for any other 24 reason, does not bear a certain value", as a matter of 25 language that looks as if you're looking at the time</p> <p style="text-align: center;">Page 95</p>
<p>1 Can I turn to contingent claims and deal, firstly, 2 with estimation before the contingency occurs. Now, my 3 learned friend Mr Zacaroli said, well, there's no 4 formula for discounting. That is obviously true. 5 That's because generally there will not be a specific 6 date when the contingency will occur. If you are going 7 to have a formula, unless the formula is particularly 8 sophisticated or complicated you are going to need 9 a date from which you then discount back. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR DICKER: My learned friend then said you cannot apply 12 a formula to a pure contingent debt. That is also true, 13 but it does not follow that you cannot estimate 14 a contingent debt in the sense of seek to put a present 15 value on that contingent debt. It just means that the 16 process may need to be more rough and ready than it is 17 in relation to a future debt. There may be cases in 18 which it's easy: there is a specific date, subject to 19 a contingency. There may be cases in which, if the 20 contingency occurs, it's perfectly plain it can only 21 occur during a relatively narrow range of dates. There 22 may be cases in which that's not possible. Those 23 differences are not reasons why it is impossible to seek 24 to put a present value on a debt. They merely affect 25 how you will go about it.</p> <p style="text-align: center;">Page 94</p>	<p>1 when the administrator is considering the proof. 2 MR DICKER: Yes, but what is the administrator trying to do? 3 We say to work out what the present value is. 4 MR JUSTICE DAVID RICHARDS: No, sorry, does he get -- if the 5 contingency has occurred so that there is a sum certain 6 due, does 2.81(1) apply? 7 MR DICKER: Yes, because one's still in the area of the 8 following words "... or for any other reason does not 9 bear a certain value". If you are asking -- 10 MR JUSTICE DAVID RICHARDS: It does bear a certain value, 11 doesn't it? 12 MR DICKER: It bears a certain value as at the date the 13 contingency occurs, but that's not the question that the 14 administrators are being asked to answer. The question 15 that they are being asked to answer is: what is the 16 value of this debt as at the date of administration? 17 Because that is the date on which debts require to be 18 ascertained. 19 MR JUSTICE DAVID RICHARDS: I understand. So what you're 20 saying is that the words "does not bear a certain value" 21 properly construed mean does or did not at the date of 22 administration bear a certain value? 23 MR DICKER: Yes, or still doesn't bear a certain value -- 24 MR JUSTICE DAVID RICHARDS: That's why I said "does or did 25 not at the date of administration".</p> <p style="text-align: center;">Page 96</p>

<p>1 MR DICKER: If you look at the position of the 2 administrators, the contingency having occurred, and 3 they are asked, "How much was this debt worth as at the 4 date of administration?" That's not a certain sum. 5 MR JUSTICE DAVID RICHARDS: I follow that. I see. 6 MR DICKER: My learned friends referred to various 7 authorities. Northern Counties, MS Fashions and 8 Stein v Blake. Mr Zacaroli fairly conceded that the 9 question was not an issue in the authorities but said, 10 nevertheless, the wording was consistent with his case. 11 Can I just show your Lordship one -- the passage from 12 Lord Hoffmann's speech in Stein v Blake, just so 13 your Lordship sees -- 14 MR JUSTICE DAVID RICHARDS: I mean, yes. If there is 15 something that takes it further. It seems to me that 16 the phraseology in those extracts doesn't actually 17 advance the debate very much in the absence of any 18 consideration of this point, but if there is something 19 more than that you want to show me, by all means do. 20 MR DICKER: I was going to show your Lordship the way in 21 which in fact Lord Hoffmann did phrase it. 22 MR JUSTICE DAVID RICHARDS: Okay. Go on. 23 MR DICKER: It's 1 C, tab 120. It's one sentence on 24 page 252, at letter F, where he says: 25 "If, by that time, the contingency has occurred and</p> <p style="text-align: center;">Page 97</p>	<p>1 the contingent debt which had fallen due because rule 77 2 of the Bankruptcy Rules 1870 applied and that is what 3 those rules required. Can I just show your Lordship 4 again Hill v Bridges. It's 1A, tab 40A. If 5 your Lordship goes to page 345, it's the judgment of the 6 Master of the Rolls. He says: 7 "The claimant is entitled to prove for the full 8 amount less a rebate or discount of 4 per cent for the 9 period between the date of the judgment and the widow's 10 death." 11 Your Lordship will recall the discount applied under 12 rule 77 was 5 per cent. 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR DICKER: Now, 4 per cent was applied for the simple 15 reason, if your Lordship goes back to 342, in the facts 16 at the start, the testator's covenant was for £5,000 17 with interest at 4 per cent. 18 MR JUSTICE DAVID RICHARDS: Yes, I see. 19 MR DICKER: So the Master of the Rolls has effectively said 20 "It's easy to give it a present value. I'll simply 21 strip out the compensation for the time value of money 22 which you contracted for and that will give me a present 23 value, and certainly one that you can't complain about". 24 My Lord, one then next turns to the purpose of the 25 rule. Both my learned friends say the purpose of the</p> <p style="text-align: center;">Page 99</p>
<p>1 the claim has been quantified, then that is the amount 2 which is treated as having been due at the bankruptcy 3 date." 4 252, letter F. 5 So he doesn't simply say it's the amount of the 6 contingent debt. He says: 7 "If, by that time, the contingency has occurred and 8 the claim has been quantified ..." 9 So something over and above simply working out how 10 much the amount of the debt now established is has taken 11 place, then that is the amount which is treated as 12 having been due at the bankruptcy date. We say that's 13 perfectly consistent with -- 14 MR JUSTICE DAVID RICHARDS: When you say "and the claim has 15 been quantified", what are you saying? 16 MR DICKER: We say that's perfectly consistent with an 17 estimation being made to ensure that the amount for 18 which it's admitted as at the date of administration -- 19 MR JUSTICE DAVID RICHARDS: So you're saying "and the claim 20 has been quantified", Lord Hoffmann's referring to the 21 process of estimation by the administrator? 22 MR DICKER: Yes. 23 MR JUSTICE DAVID RICHARDS: I see. 24 MR DICKER: Now, Hill v Bridges. My learned friend 25 Mr Zacaroli submitted that the court applied a rebate to</p> <p style="text-align: center;">Page 98</p>	<p>1 rule is to compensate a creditor for being kept out of 2 his money and you don't pay interest where a creditor is 3 not in fact being kept out of his money, but Wentworth 4 obviously accept in relation to future debts that in 5 assessing whether, in substance, the creditor has been 6 kept out of his money and whether he should receive 7 interest, you have to take into effect the statutory 8 scheme as a whole, including the fact that the debt has 9 been discounted in accordance with rule 2.105. In 10 effect, it's treated as having been accelerated. 11 One has to ask why doesn't the same approach also 12 apply to contingent claims? Why are they being treated 13 in a different way so as to produce a different result? 14 We say if contingent claims do require to be estimated, 15 giving their present value, the logic has to be the same 16 as that for future debts. 17 We say Wentworth's attempt to straddle questions 7 18 and 8 simply does not work. There can't be a sensible 19 reason between having a different approach to the two. 20 One can illustrate that perfectly straightforwardly. In 21 relation to a future debt, it is discounted. In 22 relation to a contingency debt, a contingent debt, when 23 the contingency occurs you apply hindsight and you can 24 at that stage see that what you have in fact got, 25 applying hindsight, was a future debt.</p> <p style="text-align: center;">Page 100</p>

<p>1 Wentworth says you discount the first and you 2 therefore apply interest to it. They also say, under 3 the rules, you don't discount the second and you don't 4 apply interest to it. My Lord, there can't be any 5 sensible reason for that distinction. One could easily 6 imagine extreme hypothetical examples. Take, for 7 example, a loan of £10,000 to B, repayable after five 8 years, unless on that date A wins the lottery; A being 9 an individual who would never dream of buying a lottery 10 ticket. My Lord, one can describe that as a contingent 11 debt, but it is in a sense a future debt, subject to 12 a contingency which is improbable, remote and in 13 commercial terms irrelevant. The reason for drawing 14 a distinction between the two, we say, can't make sense. 15 MR JUSTICE DAVID RICHARDS: That may be true whether or not 16 he buys a lottery ticket, I suppose. 17 MR DICKER: My Lord, turning to future debts. What reasons 18 did my learned friend Mr Zacaroli give for saying that 19 they should be treated differently? He made three 20 points. 21 The first is they're certain to become available. 22 In a sense, I've just illustrated that. That's a matter 23 of ultimately decree only. 24 Secondly, he says on insolvency in substance there 25 is an acceleration. My Lord, your Lordship, I think,</p> <p style="text-align: center;">Page 101</p>	<p>1 carry interest for the whole period thereafter until 2 payment." 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR DICKER: My Lord, it's important to remember that the 5 disclaimer claim in Park Air Services was not a future 6 debt. That was the reason why Lord Millett said the 7 Court of Appeal had gone wrong in applying 11.3. 8 Now, it wasn't a future debt for the simple reason, 9 if your Lordship goes back to the facts at 172, between 10 E, just starting at E: 11 "On 9 December 1994 the company entered into 12 a members' voluntary winding up and the joint 13 liquidators were appointed who, on the same date, gave 14 notice under section 178 of the Insolvency Act 1986 of 15 disclaimer of the lease as onerous property." 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR DICKER: So when one reads the passage at 188G the 18 reference to "the discounted amount is the loss assessed 19 as due at the date of liquidation", and as a matter of 20 damages assessment loss, of course, is quantified by 21 reference to future receipts which are discounted. 22 In short, the amount was outstanding as from that 23 date simply because it was a current debt then due. So 24 the passage tells you nothing about the meaning of 25 "outstanding".</p> <p style="text-align: center;">Page 103</p>
<p>1 described the effect of the Hill and the Wallace cases 2 correctly, and I don't need to deal with that any 3 further. 4 Thirdly, he says, well, future debts are discounted. 5 We say so also are contingent debts. 6 Now, my learned friend Mr Trower referred to 7 Lord Millett in Park Air Services and sought to derive 8 some comfort, although he admitted he couldn't derive 9 much, from one paragraph in Lord Millett's speech. If 10 your Lordship has the case, it's bundle 1D, at tab 128. 11 I just remind your Lordship of the passage between G and 12 H: 13 "There was a second issue which concerned the date 14 from which interest should run under section 189 ... It 15 is now common ground that if the value of the 16 respondent" -- 17 MR JUSTICE DAVID RICHARDS: Sorry, which page are we on? 18 MR DICKER: I am sorry, page 188. 19 MR JUSTICE DAVID RICHARDS: Thank you. 20 MR DICKER: "... a second issue which concerned the date 21 from which interest should run under section 189 of the 22 Insolvency Act 1986. It is now common ground that if 23 the value of the respondent's loss is to be assessed at 24 the date of disclaimer, then the discounted amount can 25 properly be treated as outstanding at that date and</p> <p style="text-align: center;">Page 102</p>	<p>1 MR JUSTICE DAVID RICHARDS: The discounted amount is the -- 2 was this a lease? Yes. 3 MR DICKER: Yes. 4 MR JUSTICE DAVID RICHARDS: The rental payments due under 5 the lease over the rest of the term. 6 MR DICKER: So we have a disclaimer on the date of 7 liquidation which is an outstanding debt simply because 8 it's due and owing on that date. 9 MR JUSTICE DAVID RICHARDS: Yes. 10 MR DICKER: It has to be quantified. The process of 11 quantification of damages does include a discount for 12 futurity. 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR DICKER: That's all Lord Millett was saying. When he was 15 saying it's outstanding from the date of liquidation, 16 he's saying it was outstanding because it had been 17 disclaimed. 18 MR JUSTICE DAVID RICHARDS: He says as at the date of 19 disclaimer. 20 MR DICKER: Which was the date of liquidation. 21 MR JUSTICE DAVID RICHARDS: Which was, happened to be, the 22 date -- it wouldn't have made a difference, would it? 23 If it had been later, presumably it would have been -- 24 I think the point that Mr Trower was making -- I hadn't, 25 I'm afraid, cottoned on to the fact that date of</p> <p style="text-align: center;">Page 104</p>

<p>1 disclaimer was also the date of liquidation, but 2 supposing it had been a later date, as normally it would 3 or often it would be, would not -- what Mr Trower is 4 saying is that passage would still apply. 5 MR DICKER: And we would say not so because what 6 Lord Millett would no doubt have done in that situation 7 is exactly the same exercise as we suggest to 8 your Lordship needs to be done, namely to say that's 9 fine, if one looks at the underlying debt it only became 10 due after the date of administration on your Lordship's 11 hypothesis, but, nevertheless, applying the effect of 12 the statutory scheme, when one discounts it back to the 13 date of administration, it's then treated as outstanding 14 from that date. 15 That issue -- 16 MR JUSTICE DAVID RICHARDS: The point here is it wasn't 17 actually an issue on the facts. He might have said the 18 date of liquidation, he might have said the date of 19 disclaimer. They happen to be the same date. 20 MR DICKER: Yes. So what we say is my learned friend gets 21 absolutely nothing at all out of this passage. 22 MR JUSTICE DAVID RICHARDS: Very well. 23 Mr Dicker, would that be a convenient moment? 24 MR DICKER: Yes, it would. 25 MR JUSTICE DAVID RICHARDS: Do you have a little?</p> <p style="text-align: center;">Page 105</p>	<p>1 underlying point and it doesn't answer the point in 2 relation to contingent debts where 2.105 is obviously 3 irrelevant. 4 What is the answer to the basic unfairness of 5 discounting and then not paying interest? 6 My Lord, the connected point is this: during opening 7 I made various submissions about the consequences of 8 2.105 in relation to the future debts which do not carry 9 interest and future debts which do carry interest. 10 Your Lordship may recall those. My Lord heard no answer 11 in relation to those submissions. It wasn't suggested 12 that the consequences for which we said flowed from the 13 administrators' construction did not in fact flow. So, 14 as we understand it, my learned friend accepts, for 15 example, that in the case of a future debt which carries 16 interest, on his construction you discount back in 17 accordance with the statutory formula, but you don't 18 apply statutory interest until you get to the date when 19 the future debt would otherwise have been payable, and 20 you don't actually compensate a creditor for the 21 interest which he would have earned on his future debt 22 in the period up to the date when it became payable. 23 So on their case, as I said in -- submitted in 24 opening, the creditor effectively suffers a double loss. 25 My Lord, the final point concerns what I referred to</p> <p style="text-align: center;">Page 107</p>
<p>1 MR DICKER: I do not have much but it would probably be 2 sensible at 2 o'clock. 3 MR JUSTICE DAVID RICHARDS: Very well. 2 o'clock. 4 (1.03 pm) 5 (Luncheon Adjournment) 6 (2.00 pm) 7 MR JUSTICE DAVID RICHARDS: Mr Dicker. 8 MR DICKER: My Lord, I have a few very short further points 9 on 6 to 8 and then if your Lordship will permit me, just 10 a couple of housekeeping points it may be convenient to 11 deal with at this stage. 12 MR JUSTICE DAVID RICHARDS: Yes. 13 MR DICKER: My Lord, so far as 6 to 8 is concerned, 14 your Lordship asked my learned friend Mr Trower what the 15 answer to the basic unfairness point was; in other words 16 if you discount back to the date of administration and 17 don't pay interest, why is that fair? 18 My Lord, as we understand it, your Lordship didn't 19 get a response, as it were, to that general issue. What 20 your Lordship got was a response dealing with the 21 limited effect of rule 2.105 and the nature of that 22 response was effectively to say, well, this is what the 23 rules provide, something appears to have gone wrong. 24 That may or may not be a satisfactory response in 25 relation to 2.105 but it doesn't answer the basic</p> <p style="text-align: center;">Page 106</p>	<p>1 as the alternative argument. My Lord, it obviously 2 doesn't arise if we're right on question 6 to 8 and it's 3 not in any event an issue for today. This is the 4 argument about whether all claims are necessarily 5 contingent, but my learned friend Mr Trower made the 6 administrators' position fairly plain. I just want to 7 ensure your Lordship understands why there may be an 8 issue that needs subsequently to be determined. I can 9 do that in the space of about a minute. 10 My Lord, my learned friend accepts, as I understand 11 it, that if -- a creditor had a claim for damages as at 12 the debt of administration, the cause of action was 13 complete, that claim would potentially attract statutory 14 interest from the date of administration, but the 15 administrators' position appears to be that if you 16 subsequently close out that claim and submit a proof by 17 reference to the close-out amount, that claim is 18 a contingent claim that only crystallises on close-out 19 and will only attract interest from the date of 20 close-out, even if the close-out mechanism simply said 21 what was the amount of your claim as at the date of 22 administration. 23 My Lord, we say that cannot be right. The problem 24 isn't limited simply to that stark situation, as we 25 explain in our reply skeleton. There are various other</p> <p style="text-align: center;">Page 108</p>

<p>1 similar examples one can provide. I just wanted to flag 2 the point, I'm conscious it's not an issue for today, 3 but if we're wrong about 6 to 8 it may well be an issue 4 that need to be determined later. 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR DICKER: Then one very small point. My learned friend 7 Mr Zacaroli referred you to a comment I made as to the 8 meaning of the word "outstanding" in the transcript, 9 Day 6, page 92. My Lord, I won't take your Lordship to 10 it, but at Day 6, page 93, lines 8 to 12, I expressly 11 made the point that nothing I'm saying is inconsistent 12 with our approach on question 2. We have the word 13 "outstanding". The question is how do you work out -- 14 on what notional basis do you work out whether a debt is 15 outstanding or not? Depending on the answer to that, 16 one then applies the rules. 17 My Lord, then two housekeeping matters, if 18 your Lordship will forgive me. First, 19 MacKenzie Chalmers. 20 MR JUSTICE DAVID RICHARDS: Oh, yes. 21 MR DICKER: MacKenzie Dalzell Edward Stewart Chalmers was 22 the draughtsman of the Bills of Exchange Act 1882 and 23 the Sales of Goods Act 1893. He was also the author of 24 the book that I showed your Lordship and he was indeed, 25 our researches indicate, someone who assisted in</p> <p style="text-align: center;">Page 109</p>	<p>1 isn't, it's doing it notionally. 2 MR JUSTICE DAVID RICHARDS: Very well. 3 MR DICKER: My Lord, that the short answer to that. 4 MR JUSTICE DAVID RICHARDS: Thank you very much. 5 MR DICKER: My Lord, again, unless I can help your Lordship 6 further, those are submissions in reply. 7 MR JUSTICE DAVID RICHARDS: No, thank you. Thank you, 8 Mr Dicker. 9 Mr Smith? 10 Reply submissions by MR SMITH 11 MR SMITH: My Lord, can I just respond to my learned friend 12 Mr Trower's submissions on the set-off point. 13 My Lord as I understand it, on that point my learned 14 friend Mr Trower accepted that insolvency set-off 15 applies to claims which were contingent or future as at 16 the date of the administration. He also accepted that 17 the effect of the set-off was to produce a net balance 18 as at the date of the administration, but then, as 19 I understand it, his position is that, firstly, where 20 the creditor's claim against the company is only 21 a contingent claim, the net balance in favour of the 22 creditor is not outstanding for the purposes of 2.88(7) 23 until the contingent has occurred. When you have the 24 slightly more complicated situation where a creditor has 25 two claims against the company, one presently due and</p> <p style="text-align: center;">Page 111</p>
<p>1 drafting the Bankruptcy Act 1883. 2 MR JUSTICE DAVID RICHARDS: Right. Thank you. 3 MR DICKER: So when your Lordship comes to construe the 4 words "payment in full", your Lordship may bear in mind 5 that Mr Mackenzie Chalmers had a role in that statute. 6 MR JUSTICE DAVID RICHARDS: Thank you. 7 MR DICKER: Finally, your Lordship asked a question about 8 the mathematical example. 9 MR JUSTICE DAVID RICHARDS: Yes. 10 MR DICKER: What we have done to answer that is set out our 11 answer in a letter which we have circulated to the 12 parties. It's in your Lordship's bundle, bundle 5, 13 tab 1 at page 60. 14 MR JUSTICE DAVID RICHARDS: I'm not going to read it now. 15 I'm just going to mark it. 16 MR DICKER: The basic thrust -- I'm not even sure your 17 Lordship needs to take up the letter -- is essentially 18 three-fold. (i) we agree that the example given by 19 Wentworth is mathematically accurate. We're not sure 20 it's necessarily the clearest or most helpful example, 21 and we give our own. The third is we don't accept the 22 characterisation of the payment which are being made. 23 The characterisation obviously reflects Wentworth's 24 submissions, Bower v Marris doing something actually. 25 We say you need to rephrase it to reflect the fact it</p> <p style="text-align: center;">Page 110</p>	<p>1 one contingent, you would effectively disaggregate the 2 net balance in favour of the creditor, resulting from 3 the set-off and treat the part somehow attributable to 4 the present debt as outstanding for the purposes of 5 2.88(7) and the part attributable to the contingent debt 6 as not. My Lord, we say that's wrong. It doesn't 7 reflect how insolvency set-off works on the authorities. 8 There's a decision in Stein v Blake which we 9 referred to in our skeleton argument, indeed in our 10 position paper, which describes how it works. It's in 11 authorities bundle 1C, tab 120. 12 MR JUSTICE DAVID RICHARDS: Are you wanting me to get that 13 out? 14 MR SMITH: If I could ask your Lordship to turn to that, if 15 you Lordship wouldn't mind. It's at the back of 16 bundle 1C, tab 120. The relevant page is page 255 in 17 the speech of Lord Hoffmann. He's here dealing with 18 bankruptcy set-off or insolvency set-off in bankruptcy 19 but in our submission there's no material distinction 20 for these purposes with insolvency set-off in 21 administration. 22 Your Lordship will see, on page 255, he begins 23 a section under the heading "Do the causes of action 24 survive?" 25 He says this:</p> <p style="text-align: center;">Page 112</p>

<p>1 "The principles so far discussed should provide an 2 answer to the first ...(reading to the words)... 3 understand how the cross-claims can as chose in action 4 each continue to exist." 5 So he's saying the two chose of action which go into 6 the set-off effectively extinguish and they result in 7 a net balance which, as your Lordship sees, is owing as 8 at the bankruptcy date. 9 Now, he then continues slightly further down on 10 page 255. He refers to a decision of Mr Justice Neale 11 in the Farley case, where Mr Justice Neale was 12 considering a question which had been stated by an 13 arbitrator. Your Lordship sees: 14 "The question is whether by reason of the provisions 15 of section 323 ...(reading to the words)... ascertaining 16 the balance for that purpose they are treated as if they 17 continued to exist." 18 Then he goes on and refers to how they were dealt 19 with in the litigation. Then just picking it up in the 20 final sentence, he says: 21 "But litigation is merely part of the process of 22 retrospective calculation from which it will appear that 23 from the date of bankruptcy the only chose in action 24 which continued to exist as an assignable item of 25 property was the claim to a net balance."</p> <p style="text-align: center;">Page 113</p>	<p>1 set-off ...(reading to the words)... remains owing one 2 way or the other (see Stein v Blake)." 3 My Lord we say, therefore, the effect of insolvency 4 set-off in the administration, likewise, is to 5 extinguish the original cause of action and replace it 6 with a net balance owing as at the date of the 7 administration. 8 MR JUSTICE DAVID RICHARDS: Yes. 9 MR SMITH: So if one thinks how that works in relation to 10 contingent or future debts owed to a creditor, those 11 debts are valued at the date of administration. For 12 those purposes one applies the machinery in 2.81, 2.105, 13 to bring them to present value. There's then the 14 account taken that results in a single net balance owing 15 by the company as at the date of the administration. 16 That is the proved debt. In our submission that proved 17 debt is the outstanding from the date of the 18 administration. 19 So, my Lord, that's the position how we submit 20 insolvency set-off actually works. 21 MR JUSTICE DAVID RICHARDS: Well -- 22 MR SMITH: In relation to contingent or future debts. 23 MR JUSTICE DAVID RICHARDS: But Stein v Blake -- one has to 24 be careful there because Stein v Blake does not have the 25 effect of destroying the contingent right of the</p> <p style="text-align: center;">Page 115</p>
<p>1 So the original chose of action goes and that's 2 replaced by a net balance owing as at the date of the 3 bankruptcy. 4 That -- 5 MR JUSTICE DAVID RICHARDS: It's interesting to read what 6 Lord Hoffmann says in Wight v Eckhardt in light of that. 7 MR SMITH: Yes. 8 MR JUSTICE DAVID RICHARDS: Stein v Blake was not actually 9 cited in Wight v Eckhardt. 10 MR SMITH: Indeed. 11 MR JUSTICE DAVID RICHARDS: But it clearly is 12 a qualification to what -- to the breadth of what he 13 said in Wight v Eckhardt. 14 MR SMITH: I agree with that. 15 My Lord the other bit of Lord Hoffmann I was going 16 to show your Lordship was not Wight v Eckhardt but was 17 BCCI number 8, which your Lordship has in authorities 18 bundle 1D. That's at tab 125. It was just a short 19 passage at page 223 against letter B -- 20 MR JUSTICE DAVID RICHARDS: Sorry, tab 125? 21 MR SMITH: Tab 125 of authorities bundle 1D. It's a short 22 passage on page 223 against letter B. My Lord, he 23 essentially summarises what he had earlier said in 24 Stein v Blake: 25 "When the conditions of the rule are satisfied, the</p> <p style="text-align: center;">Page 114</p>	<p>1 creditor. What it does is to -- I mean, to that 2 extent -- I'd have to go back to Stein v Blake and look 3 at the terms, but if you have -- if you're a creditor 4 with the benefit of a guarantee given by the company in 5 administration, the guarantee -- the principal debt 6 hasn't been caught so you -- or isn't payable -- so 7 you're a contingent, you're a contingent creditor. You 8 have -- there is then -- the administrator gives the 9 relevant notice. There is then a valuation of claim. 10 Set-off is applied. If subsequently the creditor 11 becomes entitled to call the guarantee, he's entitled to 12 prove for the excess which hasn't been allowed in the 13 first proof. 14 MR SMITH: Well, my Lord, that may be a question of 15 valuation of his net balance applying the principle of 16 hindsight. 17 MR JUSTICE DAVID RICHARDS: It's not -- I'm not sure 18 MR SMITH: That's how I would submit that is dealt with. 19 MR JUSTICE DAVID RICHARDS: I see. 20 MR SMITH: If you go back to Stein v Blake and BCCI 21 number 8, the passages I showed your Lordship, 22 Lord Hoffmann in my submission is very clear that 23 cross-claims cease to exist. He says: 24 "The only chose in action which continued to exist 25 is the net balance."</p> <p style="text-align: center;">Page 116</p>

<p>1 MR JUSTICE DAVID RICHARDS: I follow that with, as it were, 2 presently payable debts and maybe future debts, but 3 I don't think that's right with contingent claims. 4 MR SMITH: My Lord, in my submission -- 5 MR JUSTICE DAVID RICHARDS: I think there's authority on it. 6 MR TROWER: My Lord, it's Kaupthing. 7 MR JUSTICE DAVID RICHARDS: It's Kaupthing. Thank you. 8 MR DICKER: I think what I referred to earlier as the Fisher 9 fallacy. 10 MR SMITH: I was going to come to Kaupthing because that's 11 a slightly different point. 12 MR JUSTICE DAVID RICHARDS: You say that's a different 13 point. Maybe we're getting too subtle. 14 MR SMITH: Mr Dicker, Mr Fisher and I all had great fun in 15 the Kaupthing case, but that was dealing with a separate 16 point I'm going to come to next. Because the question 17 is the position where the balance wasn't owed by the 18 company, it was owed to the company. The position in 19 relation to that is a specific provision -- 20 MR JUSTICE DAVID RICHARDS: I think, Mr Smith, this isn't 21 really in the end going to assist us -- or assist me, 22 rather, in deciding what the true construction of 2.88 23 is when applied to contingent liabilities. 24 MR SMITH: Well, it is because there's really two points, to 25 cut to the chase. The first is that where mandatory</p> <p style="text-align: center;">Page 117</p>	<p>1 the date of the administration and accruing interest 2 accordingly. 3 So there's the two points. There's one, how 4 insolvency set-off actually works in practice and then, 5 secondly, there's the comparison between cases where 6 there is set-off and cases where there aren't. 7 My Lord, just to deal with the Kaupthing point which 8 my learned friend Mr Dicker referred to. That, my Lord, 9 turned on rule 2.858 of the insolvency rules, if your 10 Lordship has that. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR SMITH: Perhaps I could just ask your Lordship to read 13 2.85(8). I did take your Lordship to this very briefly 14 yesterday. 15 MR JUSTICE DAVID RICHARDS: Yes. (Pause) 16 Yes. 17 MR SMITH: So, my Lord, that distinguishes between the two 18 situations where the account is owed to the creditor, 19 so, in other words, it's owed by the company. That's 20 dealt with by the first sentence. 21 Then if the account is owed the other way, so it's 22 owed to the creditor, then effectively there's 23 a statutory reversal of Stein v Blake and it then 24 reverts back to its contractual terms which may provide 25 for it to be payable in the future, but that statutory,</p> <p style="text-align: center;">Page 119</p>
<p>1 set-off applies in respect of a contingent or future 2 claim, we submit the effect of that is to produce 3 a single net balance owing by the company as at the date 4 of the administration, which on any view is outstanding. 5 So leaving aside the question where there isn't set-off, 6 we submit that is the effect of set-off and on any view 7 that single net balance is outstanding from the date of 8 the administration. So that's the first point dealing 9 with the position where there is set-off. 10 The second point we then make on the back of that is 11 to say if that's the position where one does have 12 set-off, because there happens to be a cross-claim 13 against the creditor, it would be very odd if the 14 position was different where there didn't happen to be 15 a cross-claim. So if your Lordship posits an example of 16 a creditor who has a contingent claim for £100 and 17 there's a cross-claim for £1, in that case insolvency 18 set-off would apply. In our submission there would be 19 a net balance owing to the creditor, pursuant to the 20 set-off, which would be outstanding and would accrue 21 interest from the date of the administration. Now, take 22 that example, compare it with the position where there's 23 a creditor who has a contingent claim for £100 but no 24 cross-claim. Well, we submit it would be very odd if 25 his claim is not also outstanding under the schemes from</p> <p style="text-align: center;">Page 118</p>	<p>1 in effect, reversal of Stein v Blake doesn't apply where 2 the account is owed by the company to the creditor. So 3 there's a distinction. And indeed one can go on and 4 make the point that the fact there isn't that 5 modification in the case of the account owed to the 6 creditor by the company rather supports the proposition 7 that it doesn't revert back to its contractual terms. 8 So, my Lord, that was all I was going to say on that 9 point. 10 MR JUSTICE DAVID RICHARDS: Yes. Right. Thank you very 11 much, Mr Smith. 12 Now -- 13 MR TROWER: My Lord, before we move on, just as Kaupthing 14 was mentioned, I'm not going to address your Lordship on 15 it, but Mr Smith relied on BCCI number 8. I'm just 16 going to give your Lordship the reference. It's 17 Kaupthing, paragraphs 35 to 37, which deals with 18 Stein v Blake and how far it goes in the context of rule 19 2.105. Your Lordship might find that helpful. 20 MR JUSTICE DAVID RICHARDS: Thank you very much. 21 Now, we move on to -- 22 MR ZACAROLI: My Lord, we're moving on to issues 28 to 30. 23 Submissions by MR ZACAROLI 24 MR ZACAROLI: At this point, my Lord, we're in a sense 25 leaving harbour, dropping anchor and entering</p> <p style="text-align: center;">Page 120</p>

<p>1 uncharted territory because in the year since my Lord 2 decided Waterfall 1 there has been not a single case 3 which has considered the ramifications of it and the 4 interchange with -- interplay with interest. 5 MR JUSTICE DAVID RICHARDS: Right. 6 MR ZACAROLI: On this one in a sense to stretch the analogy 7 further, I am leaving port first and all other three 8 parties are chasing after me. 9 MR JUSTICE DAVID RICHARDS: Right. 10 MR ZACAROLI: Seeking to shoot me down. 11 To put it shortly, Wentworth has its position on 12 this which is opposed by everybody else. 13 MR JUSTICE DAVID RICHARDS: Right. 14 MR ZACAROLI: My Lord, the starting point for this is 15 my Lord's judgment. And it's worth my Lord reminding 16 himself of what the currency conversion claim is and how 17 it comes about. The Waterfall 1 judgment is at tab 167 18 of bundle 1E. Assuming my Lord hasn't had a chance to 19 read over this in the recent past -- 20 MR JUSTICE DAVID RICHARDS: I've glanced at it from time to 21 time. Funnily enough I did look at this bit, I think 22 I was dealing with foreign currency conversion claims 23 quite recently, so I think you can take this point quite 24 quickly. 25 MR ZACAROLI: I'm grateful. The relevant bit of the</p> <p style="text-align: center;">Page 121</p>	<p>1 Lord Justice Oliver in Lines Brothers itself. That's 2 cited at paragraphs 91 and 92. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR ZACAROLI: Then paragraph 94. 5 "In submitting that foreign currency creditors who 6 have suffered ...(reading to the words)... for the 7 purpose of proving a debt." 8 That figures large in the reasoning that it was just 9 for the purposes of proving that there was a conversion. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: Then my Lord dealt with various arguments of 12 Mr Wolfson in opposition and, in particular, at 13 paragraph 97, that's the case where Mr Wolfson was 14 contrasting the case with a situation where sterling 15 appreciates against the relevant foreign currency, so 16 the creditor receives in sterling an amount which, when 17 converted, is greater than the amount to which he was 18 contractually entitled: 19 "There is no suggestion by anyone that in those 20 circumstances ...(reading to the words)... loss was in 21 effect a one-way bet." 22 At 98: 23 "That led on to the submissions by Mr Wolfson and 24 others that ...(reading to the words)... when they are 25 in competition only with the debtor."</p> <p style="text-align: center;">Page 123</p>
<p>1 judgment starts at page 35 of the report. It's 2 paragraph 88. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR ZACAROLI: My Lord recited the history up to Miliangos. 5 the question arising in Lines Brothers and then quoted 6 from Lord Justice Brightman in paragraph 90. The 7 particular bit to pick up on is letter B on the next 8 page: 9 "If the state amount of the reason behind the 10 Miliangos decision is correct clearly it ...(reading to 11 the words)... creditors are not in default" -- 12 MR JUSTICE DAVID RICHARDS: Sorry, where are you? 13 MR ZACAROLI: Page 36, letter B. 14 MR JUSTICE DAVID RICHARDS: Thank you. 15 MR ZACAROLI: It's probably best to start at the beginning 16 of the quote which is: 17 "The policy behind the decision in Miliangos was the 18 foreign currency ...(reading to the words)... sterling 19 creditors and the foreign currency creditors." 20 Picking up the paragraph just below the quotation: 21 "This underlying rationale loses its force once all 22 ...(reading to the words)... decision in Miliangos 23 re-assert themselves." 24 Then there was, as my Lord noted, some support 25 obiter for that from Lord Justice Brightman and</p> <p style="text-align: center;">Page 122</p>	<p>1 I will come back to this. One important aspect of 2 that is the idea that creditors, where their contractual 3 rights have not been satisfied, can't complain that 4 others have done better. Here we are concerned with 5 a case where part of the creditor's claim has done 6 better by conversion, part of it has done worse. 7 MR JUSTICE DAVID RICHARDS: Right. 8 MR ZACAROLI: At paragraph 99, Mr Wolfson raised the example 9 of a currency creditor with a contractual debt due in 10 the future and carrying a low contractual rate of 11 interest. Perhaps my Lord could read paragraph 99. 12 MR JUSTICE DAVID RICHARDS: I will. (Pause) 13 MR ZACAROLI: The point really here is that we're now indeed 14 facing the problems my Lord identified there. 15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR ZACAROLI: The remainder of the arguments that were 17 asserted against the existence of the currency 18 conversion claim I don't need to take my Lord through, 19 so we can go to the conclusion at paragraph 110. 20 My Lord has been shown the Law Commission's reports 21 on this question, and at 110 those reports didn't take 22 the matter very much further. And perhaps my Lord will 23 just read paragraph 110. 24 MR JUSTICE DAVID RICHARDS: Yes. (Pause) 25 Yes.</p> <p style="text-align: center;">Page 124</p>

<p>1 MR ZACAROLI: My Lord, that's all we need from that 2 judgment. There frankly isn't any other authority which 3 really helps on this, nor do the rules help. We're, at 4 this point, moving away from construction of the rules. 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR ZACAROLI: If I can summarise what the currency 7 conversion claim is then from our perspective. 8 MR JUSTICE DAVID RICHARDS: Yes. 9 MR ZACAROLI: In order to participate in the statutory 10 scheme for distribution of the assets at all, the 11 foreign currency creditor must convert its claim into 12 sterling. That's the prerequisite. The statutory 13 scheme involves numerous elements, valuation, 14 estimation, discounts for futurity, set-off and 15 interest, all of which apply only to a proved debt. So 16 to get the advantage of all of those aspects, you must 17 convert your debt into sterling first of all. 18 The foreign currency creditor with a debt -- and I'm 19 going to use a dollars as the foreign currency 20 throughout my example -- comes along with a dollar debt 21 wants to participate, his debt's converted, all the 22 elements of the scheme apply to that debt as converted 23 and, generally speaking, as my Lord noted in 24 Waterfall 1, those elements of estimation, discounts for 25 futurity, they relate to the requirement to ensure</p> <p style="text-align: center;">Page 125</p>	<p>1 MR ZACAROLI: But, other than that, he disagrees with this. 2 The others say it's necessary to analyse separately 3 a currency conversion claim relating to the amount of 4 principal shortfall and, secondly, with the amount of 5 interest shortfall. 6 In very short order we say the essence of the 7 currency conversion claim is that there is a shortfall 8 suffered by the foreign currency creditor in payment of 9 its foreign currency debt by reason of the conversion of 10 the debt into sterling. Now, in other words, if there's 11 a shortfall in the amount it receives because of 12 a reason other than the conversion of its debt into 13 sterling, that does not give rise to a currency 14 conversion claim because the cause of the shortfall is 15 something different. 16 Now, our case on this does to some extent depend 17 upon the answer to issue 39 and the way we put the case 18 will depend to some extent on the way my Lord is to 19 determine issue 39 because -- when I say "issue 39" 20 I mean the non-provable claim for the contractual rights 21 that weren't satisfied by way of interest. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: That's the only part of issue 39 we're really 24 concerned with on this topic. 25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 127</p>
<p>1 a pari passu distribution amongst all the creditors. 2 Once the scheme has run its course, the dollar creditor 3 will have received numerous payments in sterling -- both 4 by way of dividends and then, assuming it runs its 5 course with a surplus, by way of interest thereafter -- 6 which, translated into dollars at the date of receipt, 7 will mean that he's either received more or less on each 8 payment date than the dollar equivalent as at that date. 9 MR JUSTICE DAVID RICHARDS: Yes. 10 MR ZACAROLI: Where overall he has recovered -- received 11 less, then that's where he has his currency conversion 12 claim. 13 The dispute between Wentworth and the others on this 14 boils down to the following, that we say, when 15 calculating that shortfall, it's necessary to take the 16 aggregate on the one hand, the aggregate of the amount 17 of the creditor's contractual right to both principal 18 and interest and compare that with the aggregate amount 19 of principal and interest he has obtained from the 20 insolvency estate at the end of the estate working its 21 way through. 22 Everyone else's case -- and I should qualify that; 23 I think Mr Smith does agree with us but only if he's 24 right on issue 4. 25 MR JUSTICE DAVID RICHARDS: Right.</p> <p style="text-align: center;">Page 126</p>	<p>1 MR ZACAROLI: Because if we're right on issue 39, then the 2 reason -- the fact the creditor received less than its 3 contractual entitlement, because it didn't get as much 4 interest, does not give rise to a non-provable claim. 5 So when you have a foreign currency creditor who comes 6 along and says, "I should have received \$100, I've only 7 had 90" and it can be shown that the reason why it 8 received 90 and not 100 was wholly to do with the fact 9 that interest rates fell -- sorry, received less by way 10 of interest, then there is no currency conversion claim 11 because it hasn't suffered anything by reason of having 12 to convert its claim into sterling. 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR ZACAROLI: If we're wrong on issue 39, then the matter 15 can be put more broadly, and we would say we are sort of 16 a fortiori right about this question on issue 28 to 30. 17 MR JUSTICE DAVID RICHARDS: But if -- I was just thinking 18 about this, because your position on issue 39, as 19 I understand it, is that rule 2.88 provides an exclusive 20 code for interest so it replaces any contractual rights 21 or other legal rights to interest post-administration. 22 MR ZACAROLI: Yes. 23 MR JUSTICE DAVID RICHARDS: In which case, for the purposes 24 of this debate, you would have to ignore the contractual 25 or other interest on the foreign currency claim,</p> <p style="text-align: center;">Page 128</p>

<p>1 wouldn't you?</p> <p>2 MR ZACAROLI: Well, the way we explain -- this comes to the</p> <p>3 point my Lord raised at the very beginning, which is the</p> <p>4 potential conflict between issue 30, which is the</p> <p>5 foreign currency claim for interest alone, and issue 39.</p> <p>6 What we say about that -- I was going to do this last</p> <p>7 but I can deal with it first. It's the -- because</p> <p>8 a currency conversion claim relates solely to, and this</p> <p>9 is if we're right on 39, the extent to which a shortfall</p> <p>10 is caused by the conversion, so the inability to recover</p> <p>11 in dollars rather than sterling, so to the extent --</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes. Inability to recover what?</p> <p>13 MR ZACAROLI: Well, let me move on. Because that's what</p> <p>14 underlies the currency conversion. One is focusing on</p> <p>15 shortfall or loss suffered because of the conversion.</p> <p>16 It doesn't relate to the loss arising out of</p> <p>17 insufficiency of interest.</p> <p>18 We square that with the issue 39 point by saying</p> <p>19 that the right to -- the right of the creditor to</p> <p>20 receive interest at its contractual rate is part of the</p> <p>21 statutory code, because the rule 2.88(9) incorporates</p> <p>22 the contractual rate of interest into the ability to</p> <p>23 recover --</p> <p>24 MR JUSTICE DAVID RICHARDS: Let me pause you there. The</p> <p>25 contractual rate of interest on any footing has a part</p> <p style="text-align: center;">Page 129</p>	<p>1 out of the fact that it doesn't get as much interest.</p> <p>2 So we say that its claim is converted both for the</p> <p>3 purposes of the principal and interest.</p> <p>4 MR JUSTICE DAVID RICHARDS: But that's the bit I don't</p> <p>5 understand. If you're right that 2.88 is a complete</p> <p>6 code as to interest, you're not doing anything with his</p> <p>7 claim for interest because that's ignored.</p> <p>8 MR ZACAROLI: Except for the fact that -- and this goes back</p> <p>9 to the point I made before -- that his right to interest</p> <p>10 is reflected within the code --</p> <p>11 MR JUSTICE DAVID RICHARDS: I see that.</p> <p>12 MR ZACAROLI: -- at a contractual rate. And that</p> <p>13 contractual rate was one which applied to his dollar</p> <p>14 claim and now it's being applied to a sterling claim.</p> <p>15 MR JUSTICE DAVID RICHARDS: But the statutory code says you</p> <p>16 apply a rate of interest to a sterling amount. He</p> <p>17 doesn't have a right to interest on his foreign currency</p> <p>18 amount, if you're right on issue 39.</p> <p>19 MR ZACAROLI: That's correct because that right was taken</p> <p>20 away because the -- well, on this aspect the right was</p> <p>21 removed because his claim was converted. So, rather</p> <p>22 than a claim -- the contractual claim applied to his</p> <p>23 dollar claim, it's now applied to his sterling claim so</p> <p>24 if he suffers any shortfall as a result of that</p> <p>25 conversion, then that conversion loss is recoverable.</p> <p style="text-align: center;">Page 131</p>
<p>1 to play in rule 2.88 for precisely the reason you give,</p> <p>2 but all as I see that as doing is setting the relevant</p> <p>3 rate for the purposes of rule 2.88. It's not enforcing</p> <p>4 a contractual right to interest.</p> <p>5 MR ZACAROLI: No, I agree.</p> <p>6 MR JUSTICE DAVID RICHARDS: We agree.</p> <p>7 MR ZACAROLI: I accept that, indeed.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes. So it leaves entirely open</p> <p>9 the question raised by issue 39 as to whether 2.88</p> <p>10 replaces rights to contractual or other interest,</p> <p>11 doesn't it?</p> <p>12 MR ZACAROLI: It does -- it doesn't -- it doesn't -- I am</p> <p>13 sorry, I'm not quite sure I understand the position.</p> <p>14 MR JUSTICE DAVID RICHARDS: As I understand your position on</p> <p>15 rule 39, you say 2.88 is an exhaustive code as to the</p> <p>16 right to interest post-liquidation.</p> <p>17 MR ZACAROLI: Yes.</p> <p>18 MR JUSTICE DAVID RICHARDS: Administration. I see, sorry --</p> <p>19 anyway, so that being the case, what right does</p> <p>20 a foreign currency creditor have to a non-provable claim</p> <p>21 which is related to the interest he hasn't received</p> <p>22 under his contract post-administration?</p> <p>23 MR ZACAROLI: Well, this is again -- it's a very subtle</p> <p>24 distinction between the claim arising out of the fact</p> <p>25 that his claim is converted and any shortfall arising</p> <p style="text-align: center;">Page 130</p>	<p>1 MR JUSTICE DAVID RICHARDS: But that's the bit I'm not</p> <p>2 following. I follow it in relation to principal but</p> <p>3 I don't follow it in relation to interest at the moment,</p> <p>4 if you're right about issue 39.</p> <p>5 MR ZACAROLI: Perhaps I can come back to this when I've been</p> <p>6 through the rest of the case, because if my Lord is</p> <p>7 against us on that, then --</p> <p>8 MR JUSTICE DAVID RICHARDS: Remember you may or may not be</p> <p>9 right about issue 39.</p> <p>10 MR ZACAROLI: Of course, and that's why I was about to deal</p> <p>11 with the case if we're wrong on issue 39, but if</p> <p>12 we're --</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR ZACAROLI: The point I was about to make has gone from my</p> <p>15 head completely.</p> <p>16 MR JUSTICE DAVID RICHARDS: You take it in your own way but</p> <p>17 at moment I don't follow how you reconcile this.</p> <p>18 MR ZACAROLI: What I was going to say was if -- the fact</p> <p>19 that there isn't a separate currency conversion claim in</p> <p>20 relation to interest or, indeed, that does not form part</p> <p>21 of a composite currency conversion claim, well, that</p> <p>22 means that the parties are wrong in agreeing what issue</p> <p>23 30 says. My Lord isn't bound by the agreement the</p> <p>24 parties have reached on this, but it doesn't mean that</p> <p>25 we're wrong in saying that benefits received from the</p> <p style="text-align: center;">Page 132</p>

<p>1 statutory scheme must be offset against the principal 2 currency conversion claim, which is where I'm heading 3 next. 4 MR JUSTICE DAVID RICHARDS: That's a different point. 5 MR ZACAROLI: It is. 6 MR JUSTICE DAVID RICHARDS: Yes, yes. Okay. 7 MR ZACAROLI: To be absolutely clear, that's the -- from our 8 perspective that's the important point. The important 9 point is the extent to which benefits in relation to 10 interest received under the statutory scheme are to be 11 offset against any currency conversion claim. 12 MR JUSTICE DAVID RICHARDS: You say they're not. 13 MR ZACAROLI: We say they are. We say any benefits received 14 from the statutory scheme are to be offset against the 15 currency conversion claim, however that is put. 16 MR JUSTICE DAVID RICHARDS: That's where I have the 17 difficulty, as you will have gathered. 18 MR ZACAROLI: Okay. I was going to go on then to the 19 position -- the description of the currency conversion 20 claim that I have just set out; that is, it is a claim 21 based upon the shortfall arising only from conversion. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: That applies particularly if we're right on 24 issue 39 because then you need to exclude that part of 25 the shortfall that arises from other causes.</p> <p style="text-align: center;">Page 133</p>	<p>1 MR JUSTICE DAVID RICHARDS: No, I follow that, but slightly 2 more generally -- there are so many layers of this, this 3 is the trouble. I mean, on one view, though, if you 4 have -- let me put it simply. If you have a sterling 5 debt, leaving aside Bower v Marris, then the creditor 6 will recover at least everything he's entitled to in 7 respect of the period during which -- for which interest 8 is paid. 9 MR ZACAROLI: Yes, yes. 10 MR JUSTICE DAVID RICHARDS: That is not necessarily the case 11 if your underlying debt is a foreign currency debt. 12 MR ZACAROLI: Yes, indeed. 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR ZACAROLI: But what I'm dealing with is the possibility 15 that because we're wrong on issue 39 that means 16 a creditor has a shortfall -- 17 MR JUSTICE DAVID RICHARDS: A shortfall claim that takes 18 account of the shortfall on interest. 19 MR ZACAROLI: Yes. 20 MR JUSTICE DAVID RICHARDS: I follow that. 21 MR ZACAROLI: If it happens to be a foreign currency 22 creditor that suffers that shortfall, then -- 23 MR JUSTICE DAVID RICHARDS: That's what I mean, yes. 24 MR ZACAROLI: Yes. Then it's suffering -- it could suffer 25 because --</p> <p style="text-align: center;">Page 135</p>
<p>1 MR JUSTICE DAVID RICHARDS: Yes. 2 MR ZACAROLI: If we're wrong on issue 39, then the argument 3 for including all benefits from the statutory scheme 4 are -- it's much easier, it's much more straightforward. 5 Because you're simply comparing -- you're simply asking 6 what contractual rights were not fully satisfied by the 7 scheme. 8 MR JUSTICE DAVID RICHARDS: Yes. Then I can see -- I mean, 9 if there is a non-provable claim in respect of an 10 interest shortfall following the application of the 11 statutory rate, then I can see that you would have 12 a foreign -- I can understand why you would have 13 a foreign currency loss. 14 MR ZACAROLI: Yes. 15 MR JUSTICE DAVID RICHARDS: It almost wouldn't apply if the 16 underlying debt is in sterling because you're getting 17 the higher of 8 per cent and -- or the rate to which 18 you're otherwise entitled, so if your underling debt is 19 in sterling you always come out okay, don't you? 20 MR ZACAROLI: Well -- 21 MR JUSTICE DAVID RICHARDS: Either better or equal to your 22 rights; no? 23 MR ZACAROLI: I'm not quite sure I follow that. Because if 24 you have a sterling claim there's no conversion that 25 takes place.</p> <p style="text-align: center;">Page 134</p>	<p>1 MR JUSTICE DAVID RICHARDS: It could suffer in respect of 2 interest. 3 MR ZACAROLI: It could. 4 MR JUSTICE DAVID RICHARDS: Which the sterling creditor 5 could not. The sterling creditor cannot suffer, I don't 6 think, can he, in respect of interest? 7 MR ZACAROLI: Because of the rate of interest, absolutely. 8 MR JUSTICE DAVID RICHARDS: Exactly. 9 MR ZACAROLI: In a sense, there are two different ways the 10 foreign currency creditor can suffer in respect of the 11 interest; one because of the rate and, secondly, because 12 of Bower v Marris or because the compounding ceases as 13 at the date the debt is paid. 14 So the point I'm on is that again if I'm wrong on 15 39, so that the creditor has a claim based on 16 Bower v Marris, it can say, "Had I applied 17 Bower v Marris to my contractual claim" -- let's say 18 it's dollar claimant -- "I would have been able to claim 19 even more interest, and I've suffered because the 20 currency has been converted and even the rate has been 21 applied to sterling rather than to a dollar debt, so 22 those three reasons have created a difference in the 23 amount I'm getting from the statutory scheme". We say 24 in that circumstance it is clear really beyond argument 25 that you must compare the totality of the contractual</p> <p style="text-align: center;">Page 136</p>

<p>1 rights both in relation to interest, foreign currency, 2 et cetera, with the totality of the benefits received 3 under the scheme. 4 MR JUSTICE DAVID RICHARDS: Yes. 5 MR ZACAROLI: Therefore, a better result on a foreign 6 currency aspect, a conversion aspect would offset the 7 reduction in the amount it received because of 8 Bower v Marris or the rate applied and vice versa. So 9 if we're wrong on issue 39, we would say the answer to 10 this question is very straightforward. If we're right 11 on issue 39, we accept it's more nuanced. 12 MR JUSTICE DAVID RICHARDS: Yes. 13 MR ZACAROLI: So the structure of my submissions is really 14 going to assume now that we're right on issue 39 -- 15 I have made the point if we're wrong. 16 MR JUSTICE DAVID RICHARDS: Thank you. I understand. 17 MR ZACAROLI: The point would be a fortiori on issue 39 if 18 we're wrong. So the assumption now is -- 19 MR JUSTICE DAVID RICHARDS: -- is you're right on 39, yes. 20 Thank you. 21 MR ZACAROLI: That, as I say, the critical starting point 22 then is that leads to the step that the currency 23 conversion claim is only that part of the shortfall that 24 results from the debt being converted. 25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 137</p>	<p>1 interest is an integral part of that; that single 2 contractual right, absent the insolvency. 3 All the payments made to it come from the same 4 source, namely the debtor's insolvent estate. If you're 5 paying, as I made the point at the beginning, 6 a number of instalments over time, then some of those 7 instalments could give rise to more dollars and some 8 less. You don't know until the final payment has been 9 made whether actually a gain or a loss has been made. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: We say there's no reason to draw a line 12 between payments that are made in discharge of principal 13 or interest for that purpose. 14 MR JUSTICE DAVID RICHARDS: Even if you're right on 15 issue 39? 16 MR ZACAROLI: Even if we're right. 17 Now, there are two different categories to consider 18 and one of them I fully -- I follow is more of an 19 interference with issue 39, the second is less. 20 The first is where the creditor has a right to 21 principal and interest and, therefore, on the common 22 position on issue 30, there is a right -- there is 23 a currency conversion claim relating to both the 24 principal and interest. The second example is where 25 taking the case of a creditor who has no right currency</p> <p style="text-align: center;">Page 139</p>
<p>1 MR ZACAROLI: The common ground that existed at Waterfall 1, 2 and I think still exists, is that there is no 3 possibility for the estate to claw back from a foreign 4 currency creditor a gain made because of currency 5 conversion. 6 The case of the administrators, the Senior Creditor 7 Group and potentially York is that they go further and 8 say that such a currency gain, if made on the principal 9 part of the creditor's debt, is not to be taken into 10 account when calculating whether it suffered a currency 11 loss overall in respect of payments made for principal 12 and interest. 13 We disagree with that on the basis essentially that 14 the currency conversion claim is based upon the failure 15 to pay an amount in dollars, in this case, it's the 16 non-payment in dollars which give rise to the claim. It 17 doesn't matter for the purposes of the currency 18 conversion claim what part of the creditor's rights were 19 not paid in dollars. It's only complaining that it 20 wasn't paid the amount in dollars. It's not receiving 21 the same amount in dollars. We say it's therefore wrong 22 to separate the claim into principal and interest. 23 In summary, the creditor has only one claim, apart 24 from the administration, and that is the -- its 25 contractual right to be paid in the foreign currency and</p> <p style="text-align: center;">Page 138</p>	<p>1 conversion claim, other than in relation to principal. 2 So taking the first example first. Our main point 3 is this, that what we -- if we know anything from the 4 debate on issue 2, it's that payments made pursuant to 5 a statutory scheme are not appropriated to one or other 6 part of the overall rights -- of the contractual rights 7 of the creditor. They are treated as being made on 8 account. So dividends in respect of proved debts are 9 treated as payments on account of principal and accrued 10 interest. Looking at this from the perspective of the 11 creditor's right to be paid its dollar entitlement, 12 dividends are paid on an account of its aggregate claim 13 to principal and interest payment in dollars. 14 So looking at just this question of what's it's not 15 getting in dollars that it said it was entitled to: it 16 has an overall claim to be paid principal and interest 17 in dollars and it's not getting that payment because -- 18 well, for whatever reason, but because on aggregate 19 payments made throughout the statutory process, made on 20 account of both, are not satisfying that claim. Both 21 payments, dividends and statutory interest, are paid 22 from the same estate. They are both paid pursuant to 23 law in process of law. Neither of them are appropriated 24 to one particular aspect of the creditor's contractual 25 rights or another.</p> <p style="text-align: center;">Page 140</p>

<p>1 So looking at it overall, we say the currency 2 surplus on some of those payments, whether they are 3 referable to the creditor's contractual right to 4 interest or principal, should be offset against those 5 payment which are referable to principal, as opposed to 6 interest. So if there's a gain on some and a loss on 7 others; they should all be aggregated together. 8 Now, the proved debt itself of course -- this is 9 a simpler point -- can include both principal and 10 interest. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR ZACAROLI: So to that extent I suspect it's common ground 13 there can't be serious argument that any dividends -- 14 any payments from the estate referable to that proved 15 debt must be taken as being paid on account of it and 16 therefore a gain made -- if the creditor chooses to 17 appropriate part of it to interest and part to 18 principal, a gain made on one must be offset against the 19 loss on the other. You can't know where there's 20 a currency conversion claim in relation to the proved 21 debt until all payments in respect of the proved debt, 22 whether principal or interest, have been received. 23 MR JUSTICE DAVID RICHARDS: Right. I am still -- I am 24 terribly sorry, Mr Zacaroli, I am having great 25 difficulty in following how any of this follows if</p> <p style="text-align: center;">Page 141</p>	<p>1 MR ZACAROLI: The way I put it is as a matter of 2 construction of the statute there is not intended to be 3 any further claim for interest because the statutory 4 code, 2.88(7), in administration, is the way in which 5 interest to be -- the creditors are compensated for the 6 time value of money. 7 MR JUSTICE DAVID RICHARDS: So that's that. So why are we 8 interested in anything to do with interest on the debt 9 which would run, according contractual terms, if there 10 hadn't been an administration? 11 MR ZACAROLI: I'm not sure I can put the point any 12 differently and it may be that I won't persuade my Lord 13 of it. 14 MR JUSTICE DAVID RICHARDS: I'll have to have a look at the 15 transcript. 16 MR ZACAROLI: It is simply this, that, yes, the only 17 recompense for delayed payment -- a delay in payment 18 that is allowed under the statute is that which is under 19 rule 2.88(7). However, that does not affect that 20 someone entitled to be paid in a foreign currency has 21 not in fact been paid -- 22 MR JUSTICE DAVID RICHARDS: But that's the problem. Sorry 23 to stop you. You're not entitled to be paid in 24 a foreign currency. Once the company is in 25 administration, your only entitlement -- this is if</p> <p style="text-align: center;">Page 143</p>
<p>1 you're right on issue 39. If you began this by saying, 2 you're wrong on issue 39, then I'm following it. But 3 you're confusing me. I just cannot understand. I am 4 missing something, I feel sure. 5 If rule 2.88 is a complete code which supplants 6 contractual or other rights to interest, well, that's 7 it. We're not concerned with post-liquidation interest, 8 whether in sterling or a foreign currency, but if you're 9 wrong on that, then of course I'm seeing what you're 10 saying. 11 MR ZACAROLI: Yes. It may be the word "complete code" 12 because that's not the way -- I didn't put it in 13 terms -- 14 MR JUSTICE DAVID RICHARDS: My understanding of your 15 submission, and this perhaps underlines the point I made 16 a little earlier that maybe I need a little more help on 17 issue 39, but my understanding of your position is that 18 once the company goes into administration the rights of 19 creditors, including creditors with interest-bearing 20 debts, is exhaustively stated in rule 2.88. 21 MR ZACAROLI: Correct, yes. 22 MR JUSTICE DAVID RICHARDS: So by operation of statute 23 contractual and other legal rights to interest are gone, 24 irrespective of whether the company subsequently 25 transpires to be completely solvent.</p> <p style="text-align: center;">Page 142</p>	<p>1 you're right on issue 39 -- is to be paid interest in 2 sterling on a sterling debt. That is as I see your 3 answer to issue 39. 4 MR ZACAROLI: Yes. 5 MR JUSTICE DAVID RICHARDS: Now that could work both ways 6 for you because it might be that -- it might be that if 7 you look at the interest payments when we get there you 8 have actually done better by receiving it in sterling, 9 rather than in the contractual currency because of 10 movements in exchange rates. That's ignored. That 11 doesn't -- you're not required -- there's not, as it 12 were, some -- you're not required to give the benefit of 13 that, reduce your foreign currency claim because of 14 that. It would follow because there would be no cause 15 for -- so it could work. It could work to a creditor's 16 advantage, as well as disadvantage. 17 MR ZACAROLI: We understand. 18 MR JUSTICE DAVID RICHARDS: Yes. So, anyway, that's the 19 real difficulty I am having with this. 20 MR ZACAROLI: I'm not sure -- 21 MR JUSTICE DAVID RICHARDS: By all means restate it and 22 I won't interrupt you and I will look at the transcript. 23 MR ZACAROLI: My Lord, I've done it. 24 MR JUSTICE DAVID RICHARDS: You have done it. 25 MR ZACAROLI: There's no point, I don't think. If my Lord</p> <p style="text-align: center;">Page 144</p>

<p>1 is not persuaded of it, I don't think --</p> <p>2 MR JUSTICE DAVID RICHARDS: My difficulty is understanding</p> <p>3 the proposition. Have you stated the proposition?</p> <p>4 MR ZACAROLI: I have stated the proposition.</p> <p>5 MR JUSTICE DAVID RICHARDS: Fine. I will certainly read it</p> <p>6 on the transcript.</p> <p>7 MR ZACAROLI: Can I move on to the issue of where the</p> <p>8 creditor doesn't have a right to interest so that you</p> <p>9 have a creditor who is -- maybe this is the example</p> <p>10 my Lord was just giving. You have a creditor who is</p> <p>11 entitled only to a principal -- he's entitled to</p> <p>12 statutory interest because everyone is -- but he's only</p> <p>13 entitled to principal. Here, my Lord, we say that</p> <p>14 the -- the analysis is similar but in this case one</p> <p>15 isn't starting with a creditor who has any right to</p> <p>16 interest, but one is comparing its entitlement to be</p> <p>17 paid in dollars, because that's the currency conversion</p> <p>18 claim, with the amounts it gets under the statutory</p> <p>19 scheme.</p> <p>20 This goes back to the point that in order to</p> <p>21 participate in the statutory scheme, its claim has to be</p> <p>22 converted into sterling and therefore in calculating the</p> <p>23 amount of its currency shortfall, you should take into</p> <p>24 account the ramifications of that conversion which not</p> <p>25 only includes the specific currency loss but also takes</p> <p style="text-align: center;">Page 145</p>	<p>1 MR ZACAROLI: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: How do you bring in the -- it's</p> <p>3 easy if we just look at the \$1 million converted into</p> <p>4 sterling at the date of payment, it goes a sterling sum</p> <p>5 which converts into dollars and produces \$900,000. You</p> <p>6 have the shortfall claim for \$100,000.</p> <p>7 MR ZACAROLI: Yes, but that's not all it gets as</p> <p>8 a consequence of having its debt converted, because as</p> <p>9 a consequence of having its debt converted to</p> <p>10 participate in the statutory scheme, it also gets, if</p> <p>11 there's a surplus, interest.</p> <p>12 Of course this question of a currency conversion</p> <p>13 claim only ever arises at the end of that second stage.</p> <p>14 So you will never have a currency conversion claim that</p> <p>15 could ever be asserted against the company until such</p> <p>16 time as you have reached the end of stage 2, the</p> <p>17 interest payment.</p> <p>18 MR JUSTICE DAVID RICHARDS: Absolutely.</p> <p>19 MR ZACAROLI: Once you have reached that stage, you're</p> <p>20 comparing what the creditor was contractually entitled</p> <p>21 to in its foreign currency, which was \$1 million, and</p> <p>22 what it has received as a result of putting its debt,</p> <p>23 and it were, thorough the washing machine on the</p> <p>24 insolvency estate. What comes out at the other end is</p> <p>25 a number of payments in sterling, some referable to</p> <p style="text-align: center;">Page 147</p>
<p>1 into account fact that it's getting interest under the</p> <p>2 statutory scheme.</p> <p>3 So if you start with that creditor at the beginning</p> <p>4 of the process entitled to \$100 and look at it at the</p> <p>5 end of the process, let's say it only got \$60 after you</p> <p>6 had calculated -- if you paid dividends in sterling and</p> <p>7 then recalculated it into dollars at the date of</p> <p>8 payment, but once it got statutory interest it had \$120</p> <p>9 in total at the dates of conversion of the relevant</p> <p>10 payments, then we would say it suffered no currency</p> <p>11 conversion claim because the consequence of conversion</p> <p>12 was to lead to it being entitled to participate in</p> <p>13 a statutory scheme which gave it this outcome and that</p> <p>14 outcome, once converted into dollars, was greater than</p> <p>15 its original dollar entitlement.</p> <p>16 Now, true it is that some of that benefit arose</p> <p>17 because the statute gave it interest, where it didn't</p> <p>18 otherwise have an entitlement to, but we say that's an</p> <p>19 irrelevant difference. The fact is it's a benefit it</p> <p>20 received from participating in the statutory scheme.</p> <p>21 MR JUSTICE DAVID RICHARDS: So what's the comparison here?</p> <p>22 You have the principal debt, which is in dollars.</p> <p>23 MR ZACAROLI: Yes.</p> <p>24 MR JUSTICE DAVID RICHARDS: So that's, let's say,</p> <p>25 \$1 million.</p> <p style="text-align: center;">Page 146</p>	<p>1 dividends, some referable to statutory interest, but</p> <p>2 ultimately it receives amounts which are converted back</p> <p>3 into dollars on the date each of them is paid and you</p> <p>4 can see at the end of the process whether it's still</p> <p>5 suffering a shortfall in its dollar entitlement. And if</p> <p>6 it's not --</p> <p>7 MR JUSTICE DAVID RICHARDS: What do you put into the</p> <p>8 equation to -- I can see you put into one side the</p> <p>9 sterling figure in respect of the principal debt plus</p> <p>10 the sterling interest amounts. Is that what you're</p> <p>11 doing?</p> <p>12 MR ZACAROLI: No, the two sides of the equation --</p> <p>13 MR JUSTICE DAVID RICHARDS: But what's in dollars?</p> <p>14 MR ZACAROLI: The contractual right.</p> <p>15 MR JUSTICE DAVID RICHARDS: Which is what?</p> <p>16 MR ZACAROLI: \$1 million.</p> <p>17 MR JUSTICE DAVID RICHARDS: But nothing for interest?</p> <p>18 MR ZACAROLI: No, because it doesn't have a contractual</p> <p>19 right to interest.</p> <p>20 MR JUSTICE DAVID RICHARDS: I see. Sorry, this is this one.</p> <p>21 I see, yes.</p> <p>22 MR ZACAROLI: \$1 million. On the other side it's, let's</p> <p>23 say, £800,000 and dividends of £400,000 interest.</p> <p>24 MR JUSTICE DAVID RICHARDS: I see, yes.</p> <p>25 MR ZACAROLI: The numbers in pounds don't matter. It's when</p> <p style="text-align: center;">Page 148</p>

<p>1 they are converted back into dollars at the end of that 2 process, has the creditor received less or more than its 3 contractual entitlement? We say if it's received less 4 overall, then it has a currency conversion claim but if, 5 because of the benefit of getting statutory interest out 6 of the estate -- as a consequence of having its debt 7 converted, it's actually done better or no worse, then 8 it doesn't have a currency conversion claim. 9 MR JUSTICE DAVID RICHARDS: I see. 10 MR ZACAROLI: Now, this is in a sense the really important 11 part of the argument. I think, as we said in our 12 skeleton, the difference between our view and everyone 13 else's view is not particularly important or is unlikely 14 to be important where a creditor in fact has 15 a contractual right to interest. 16 MR JUSTICE DAVID RICHARDS: I see it's where they don't 17 MR ZACAROLI: It's where they don't. 18 MR JUSTICE DAVID RICHARDS: Hmm, hmm. 19 MR ZACAROLI: Now, I think one of the key points taken 20 against us on this is to be found at paragraph 364 of 21 the Senior Creditor Group's skeleton argument. Perhaps 22 if we start at paragraph 362 on page 133. 23 MR JUSTICE DAVID RICHARDS: Yes. 24 MR ZACAROLI: I believe this is considering the claim of 25 a creditor without a contractual right to interest, so</p> <p style="text-align: center;">Page 149</p>	<p>1 no sense in which the foreign currency creditor is 2 receiving less by way of statutory interest than the 3 sterling creditor. It's getting full entitlement. So 4 the only sense in which there might be getting not less 5 than its full entitlement is in relation to the currency 6 conversion claim. There is never a circumstance in 7 which it gets less to its entitlement to statutory 8 interest. 9 When one comes to the currency conversion claim, the 10 question is a completely different one because one is 11 not looking at how much is to be paid from the estate to 12 this person according to some rule that defines, by 13 a rate applied to its amount, the amount that should be 14 paid. You're now looking at the question, well, looking 15 at this creditor's contractual entitlement before this 16 insolvency, which was to receive something in dollars, 17 \$1 million in our example, has it actually received 18 that? It's a distraction -- unhelpful, we say -- to ask 19 which part of statutory process that -- the benefits it 20 received came from, because one is simply ultimately 21 comparing its rights before and its right after the 22 process to understand whether those rights before in the 23 foreign currency have been properly vindicated. 24 Therefore, if it gets the dollar equivalent of 25 \$1 million or more, as a result of dividends and</p> <p style="text-align: center;">Page 151</p>
<p>1 the example I've just given. 2 MR JUSTICE DAVID RICHARDS: So 361 quotes your position 3 paper. I'll just read that to myself. 4 MR ZACAROLI: Yes. (Pause) 5 MR JUSTICE DAVID RICHARDS: I see. 6 MR ZACAROLI: Has my Lord read to the end of 364? 7 MR JUSTICE DAVID RICHARDS: No, I haven't. 8 MR ZACAROLI: It's perhaps worth seeing the argument 9 against us. 10 MR JUSTICE DAVID RICHARDS: Okay. (Pause) 11 Yes. 12 MR ZACAROLI: The essential complaint, I think, is that the 13 foreign currency creditor is being deprived either of 14 its right to statutory interest to be paid in full or its 15 currency conversion claim to be paid in full. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR ZACAROLI: Our response is that's to mix apples and 18 pears. That is because if one compares, first of all, 19 the foreign currency creditor with the sterling 20 creditor, they're both entitled to have their dividends 21 paid and they're entitled to statutory interest. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: Statutory interest is always only ever payable 24 on the proved debt and the proved debt has to be in 25 sterling. Therefore, there's no sense -- there can be</p> <p style="text-align: center;">Page 150</p>	<p>1 statutory interest it wasn't otherwise entitled to, then 2 it has no currency conversion claim. 3 MR JUSTICE DAVID RICHARDS: Right. 4 MR ZACAROLI: That is it in a nutshell. 5 That's the important part of the argument and I'll 6 perhaps, if I can, in the five-minute break in a moment, 7 see whether it's possible to revisit the question of the 8 creditor with the interest claim, but let me park that 9 for a moment. We're dealing with this issue; that's the 10 core of the argument. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR ZACAROLI: The other thing said against us -- and this is 13 best found in the administrators' skeleton, at 14 paragraph 189. 15 Here the argument essentially is that the reason you 16 don't offset statutory interest entitlements against the 17 provable -- against the currency conversion claim is 18 that the payments have been made for different purposes. 19 The payment of statutory interest is there to compensate 20 all the creditors for being kept out of their money. 21 My Lord, we say it's irrelevant what purpose the 22 payment was made for in the context of asking have 23 I suffered a currency loss. The only question is: from 24 this insolvency process, was I paid more or less than 25 I was entitled to in dollars? The administrators</p> <p style="text-align: center;">Page 152</p>

<p>1 accept, at least they accept it's arguable, at 2 paragraph 198 of the skeleton, that gains made from 3 a different part of the process, and they're here 4 dealing with a currency -- a foreign currency creditor 5 whose debt is also payable in the future, but where, in 6 paragraph 198.1, the discount rates applied would have 7 been less advantageous to the creditor than a statutory 8 discount rate, and therefore they get a benefit from the 9 operation of rule 2.105. You'll see, at paragraphs -- 10 sub-paragraphs 1, 2 and 3, they accept it is at least 11 arguable that that would be offset. 12 MR JUSTICE DAVID RICHARDS: Right. 13 MR ZACAROLI: And what we say about that is that that -- the 14 purpose of rule 2.105 is there rather for the benefit of 15 all the creditors, whether they have a foreign currency 16 claim or not. It affects all creditors. Its purpose is 17 to deal with all creditors, in the same way that 18 interest is to deal with all creditors, but that doesn't 19 stop that part being offset against the currency 20 conversion claim. So the fact it's for a different 21 statutory purpose or comes from a different part of 22 a statutory scheme is irrelevant. It's all part of the 23 statutory scheme which only applies to this creditor 24 because its debt has been converted. 25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 153</p>	<p>1 matter ultimately because the same principles ought to 2 apply in quantifying it. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR ZACAROLI: But if one put it in terms of damages, and the 5 reason it could be a damages claim is really based on 6 Sempra Metals. 7 MR JUSTICE DAVID RICHARDS: It's a debts claim, isn't it? 8 MR ZACAROLI: That's how it was analysed by Mr Justice Slade 9 in Lines Brothers and, indeed I think the -- in the 10 Milliangos itself, it's said to be -- there's only 11 a claim in debt. It was the passage about currency not 12 being a commodity like cows. But why cows, I'm not 13 sure. 14 MR JUSTICE DAVID RICHARDS: You can't get judgment in cows 15 MR ZACAROLI: Yes, or you can't claim damages for not having 16 been paid -- not having delivered the cows, so you could 17 get damages. 18 MR JUSTICE DAVID RICHARDS: Yes, but -- I mean, yes. Does 19 Lord Justice Brightman deal with this at all? 20 MR ZACAROLI: No. They don't -- 21 MR JUSTICE DAVID RICHARDS: Isn't the theory this, that once 22 the -- once you get to non-provable claims, then it is 23 as if -- leaving aside the effect of 2.88 and other 24 things, I mean, it is as if the company was not in 25 liquidation, apart from contingent liabilities and so on</p> <p style="text-align: center;">Page 155</p>
<p>1 MR ZACAROLI: My Lord, would that be a convenient moment to 2 take a short break? 3 MR JUSTICE DAVID RICHARDS: Yes, certainly. I'll rise for 4 five minutes. 5 (3.13 pm) 6 (Short break) 7 (3.23 pm) 8 MR ZACAROLI: My Lord, with the benefit of a five-minute 9 break, I'm afraid I'm not going to be able to persuade 10 my Lord of the point I was trying to make. 11 I'm not going to pursue that any further. I have 12 said what I have said. 13 MR JUSTICE DAVID RICHARDS: Right. 14 MR ZACAROLI: The only thing to add on the point I am 15 making, which is to compare the creditor without a right 16 to interest, so -- 17 MR JUSTICE DAVID RICHARDS: Yes. 18 MR ZACAROLI: -- is to make the point we've developed 19 a little in our skeleton. It's paragraphs 206 to 211 of 20 the skeleton. As to the nature of the claim, whether 21 it's -- 22 MR JUSTICE DAVID RICHARDS: Sorry, I was looking the wrong 23 place. Yes. 24 MR ZACAROLI: Whether it's a debt or a damages claim, 25 i.e. the currency conversion claim, we say it doesn't</p> <p style="text-align: center;">Page 154</p>	<p>1 which have been dealt with. 2 MR ZACAROLI: Yes. 3 MR JUSTICE DAVID RICHARDS: In which case, you have a dollar 4 debt which you're entitled to enforce but you have to 5 give credit for sums which you have received. 6 MR ZACAROLI: Yes. 7 MR JUSTICE DAVID RICHARDS: Which is an amount in sterling 8 which is less than your dollar debt at the date you 9 received the sterling. 10 MR ZACAROLI: Yes. 11 MR JUSTICE DAVID RICHARDS: I must say, I would have thought 12 it was a debt claim. Certainly in that sense. 13 MR ZACAROLI: It certainly is a debt claim. Whether it's 14 also a damages claim on the basis that I have 15 a contractual right to be paid in dollars and there's 16 been a breach of that contract because I've been paid in 17 something else. 18 MR JUSTICE DAVID RICHARDS: Right. 19 MR ZACAROLI: That would follow from the argument that I'm 20 entitled -- 21 MR JUSTICE DAVID RICHARDS: That seems a bit back to front 22 really, doesn't it? There might be a Sempra Metals 23 claim but that's a separate claim for an additional sum. 24 MR ZACAROLI: It's a claim for damages based on the breach 25 of contract and the breach of contract is not paying on</p> <p style="text-align: center;">Page 156</p>

<p>1 the particular date in Sempra Metals. 2 MR JUSTICE DAVID RICHARDS: That's the Sempra Metals claim, 3 yes. 4 MR ZACAROLI: Or not being paid in the right currency in 5 this example. 6 MR JUSTICE DAVID RICHARDS: That's where I'm -- 7 MR ZACAROLI: I needn't persuade my Lord of it because the 8 principles must be the same. But we have referred by 9 analogy, and it is by analogy, to the principles of 10 mitigation in fact that if you are -- if there is 11 a breach of contract, then you bring into account 12 benefit which flowed from the breach which arose because 13 of the breach and it's in a similar way we say that 14 the -- when you're comparing the creditor without any 15 right to interest with your asking, "Has it been paid 16 its debt?", you take account of everything that it has 17 in fact received referable to that debt through the 18 insolvency process. 19 MR JUSTICE DAVID RICHARDS: Right. 20 MR ZACAROLI: That why you include -- the analogy is that 21 interest under the statute is a benefit received because 22 of the conversion of the debt into sterling. It's only 23 because the debt was converted do you get interest. You 24 wouldn't be entitled to it if you hadn't converted your 25 debt because you couldn't have proved in those</p> <p style="text-align: center;">Page 157</p>	<p>1 because of reason A, B or C, but -- sorry, it's not 2 shortfall because of reason A, B or C, you're simply 3 asking the question, once the statutory scheme has run 4 its course, up to the end of paying statutory interest, 5 a creditor comes along and says, "But I was entitled to 6 be paid more for a number of reasons". 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR ZACAROLI: "My total payment entitlement is", let's say, 9 "\$1,100,000 and I've only received 1 million through the 10 process". That's the non-provable claim for not 11 receiving what he was entitled to, absent the insolvency 12 pursuant to its various contractual rights relating to 13 being paid in a foreign currency, being paid interest on 14 some different basis, or Bower v Marris applying, 15 whatever it might be. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR ZACAROLI: So it applies equally to the creditor who did 18 have a contractual entitlement to interest and one who 19 did not. It's exactly the same question. It's just, 20 well, I was entitled to be paid X. I've been paid less 21 than X at therefore I have a non-provable claim for the 22 difference. 23 MR JUSTICE DAVID RICHARDS: Right. Yes. 24 MR ZACAROLI: So the argument is even stronger to include 25 offset, benefits received for the foreign currency</p> <p style="text-align: center;">Page 159</p>
<p>1 circumstances. So a benefit that flows from the 2 conversion is the interest you get under rule 2.88(7). 3 MR JUSTICE DAVID RICHARDS: I see. 4 MR ZACAROLI: So it's an analogous way of supporting the 5 conclusion that you should take that into account. 6 Just to repeat the point and develop it a little 7 that if we are wrong on issue 39, then the whole 8 question is a lot easier because you are simply 9 comparing what you had before with what you get after. 10 But that applies equally to the creditor with an 11 interest-bearing debt as to one without an 12 interest-bearing debt. 13 MR JUSTICE DAVID RICHARDS: So the one with an 14 interest-bearing debt, I can see that he -- the creditor 15 with an interest-bearing debt will have -- I see. So he 16 has a potential claim for the shortfall in interest, 17 looking at what he received by way of statutory interest 18 and what he was entitled to under his contract. 19 MR ZACAROLI: Yes. 20 MR JUSTICE DAVID RICHARDS: But you're saying for the 21 purposes of this argument, assume that's right, you have 22 to bring everything into the pot and see what his 23 overall dollar position is as a result of that. 24 MR ZACAROLI: Yes. The point is this really, if we're wrong 25 on 39, then this claim is not really non-provable</p> <p style="text-align: center;">Page 158</p>	<p>1 creditor through payments of interest where issue 39 is 2 decided against us. Because it's a much broader 3 question one is asking; one doesn't have to pare down 4 the reasons why the shortfall arises. You're simply 5 asking the question: is there a shortfall? 6 My Lord, those are shortly put our submissions on 7 this issue. 8 MR JUSTICE DAVID RICHARDS: Thank you. 9 MR ZACAROLI: Unless I can assist further? 10 MR JUSTICE DAVID RICHARDS: Thank you very much indeed. 11 Mr Dicker? 12 Submissions by MR DICKER 13 MR DICKER: My Lord, question 28 concerns the relationship 14 between, on the one hand, a creditor's right to interest 15 out of a surplus in accordance with rule 2.88(7) and (9) 16 and, on the other, a non-provable claim for the balance 17 of any sum to which the creditor is entitled, apart from 18 the administration, which it has not received as result 19 of having been paid in sterling, rather than the 20 currency of its claim. The question is whether the 21 creditor must give credit for interest that he's 22 received under the first part when he calculates the 23 amount of his non-provable claim under the second. 24 My Lord, we say in answering that question 25 your Lordship needs to bear in mind the different nature</p> <p style="text-align: center;">Page 160</p>

<p>1 of the rights at play. On the one hand there are the 2 creditor's underlying rights, apart from the 3 administration. Those are obviously dealt with in 4 different ways under the statutory scheme. Firstly, any 5 claim for principal and interest to the date of 6 administration is provable. Secondly, if the creditor 7 is also entitled to interest, any interest in respect of 8 the period after administration is only paid in the 9 event of a surplus. Thirdly, any shortfall gives rise 10 to a non-provable claim on the basis the creditor is 11 entitled to have his claim satisfied in full before any 12 distribution is made to shareholders.</p> <p>13 So that's how the underlying claim is dealt with on 14 the statutory scheme.</p> <p>15 On the other hand, as your Lordship knows, creditors 16 are also given a separate statutory right to 17 compensation for delay whether or not they are otherwise 18 entitled to such compensation.</p> <p>19 Now, answering the question as to how these two 20 interrelate is most easily done by the use of examples. 21 We have taken and tried to boil it down to the two most 22 simple cases. The first case involves a creditor with 23 a claim denominated in a foreign currency who is not 24 entitled to interest. In relation to that, for reasons 25 I'll explain, we say there is no offset.</p> <p style="text-align: center;">Page 161</p>	<p>1 The third stage, we say the creditor has 2 a non-provable claim for the shortfall that arises 3 because the dividends paid on his proof are less than 4 the foreign currency sum that he is owed. We say he 5 doesn't have to give credit for the Judgments Act rate 6 interest that he has received because he was entitled to 7 receive it pursuant to a separate and additional right 8 granted by the 1986 Act and rules. The sum that he 9 received was paid in satisfaction of LBIE's obligation 10 to pay statutory interest by way of compensation for 11 delay caused by the insolvency process. That sum was 12 not paid in satisfaction or discharge of the creditor's 13 contractual claim for principal, and it did not 14 discharge or satisfy that entitlement.</p> <p>15 So the result is, we say, that the creditor, as one 16 would expect, gets both the full amount of his claim and 17 compensation for delay in accordance with the statutory 18 scheme before any sums are distributed to shareholders. 19 We say you can see that is the right result by comparing 20 the sterling creditor with the foreign currency 21 creditor. The sterling creditor receives the full 22 amount of the principal he's owed. He also receives 23 interest at the Judgments Act rate. There's no question 24 of him having to set off one against the other. 25 According to Wentworth, however, the position of the</p> <p style="text-align: center;">Page 163</p>
<p>1 The second involves a creditor with a claim 2 denominated in a foreign currency who is entitled to 3 interest. Now, assume that because sterling has 4 depreciated, the amount he receives by way of interest 5 under 2.88(7) and (9) is less than the contractual 6 amount of interest he was entitled to receive in his 7 foreign currency. The question is, in relation to that 8 second example, the same, but the answer is different. 9 We accept in that situation there is an offset 10 essentially because what the creditor is claiming is 11 interest and what he has received under the statutory 12 scheme is interest, albeit in terms of section 2.88(7) 13 and (9).</p> <p>14 So just dealing with those two examples.</p> <p>15 Firstly, the claim for principal and no contractual 16 right to interest. So, so far as the scheme is 17 concerned, we say at the first stage he receives 18 dividends on his proof, the total amount when converted 19 into the foreign currency at the date of receipt is less 20 than the foreign denominated sum to which he's entitled 21 because sterling has depreciated. That's the first 22 point.</p> <p>23 Secondly, because he has no contractual right to 24 interest, at the second stage he receives interest at 25 the Judgments Act rate.</p> <p style="text-align: center;">Page 162</p>	<p>1 creditor with the foreign currency claim is different. 2 The balance of the foreign currency claim somehow is 3 offset by the separate statutory entitlement to 4 Judgments Act rate interest which the creditor receives. 5 As I said, on Wentworth's case the foreign currency 6 creditor doesn't get paid in full and he doesn't receive 7 compensation for delay. He doesn't get both.</p> <p>8 Wentworth, in its position paper, describes the 9 Senior Creditor Group's position as "absurd". My Lord 10 I won't respond with the same word but we do say 11 Wentworth's approach is the approach that's contrary to 12 principle for the reasons that are obvious to 13 your Lordship. Payments before any surplus is 14 attributed to shareholders, creditors' claims should be 15 satisfied in full, and any rights which they have under 16 the statutory scheme by way of compensation for delay 17 also need to be satisfied.</p> <p>18 We say the flaw in Wentworth's approach is perfectly 19 clear from their own written argument. I can show 20 your Lordship this perhaps most clearly in its reply 21 skeleton, if your Lordship has that. My Lord, just 22 before your Lordship tons to that, would you mind 23 starting with Wentworth's reply position paper which is 24 in bundle 1, tab 9, paragraph 59, where they say: 25 "Since the currency conversion claim can only arise</p> <p style="text-align: center;">Page 164</p>

<p>1 once all payments in respect of principal and interest 2 have been made and any such payments can only be applied 3 in reduction of the single foreign currency debt. It 4 follows the dividends on the provable debt and statutory 5 interest should be taken to reduce the quantum of the 6 currency conversion claim."</p> <p>7 If one focuses on the critical words, where they say 8 "and any such payments can only be applied in reduction 9 of the single foreign currency debt". My Lord, we say 10 not so. The payment of interest can instead be treated, 11 as the legislature intended, as a separate right granted 12 to all creditors, whether they're entitled to -- to 13 which they are entitled to receive in addition to their 14 debts as compensation for delay.</p> <p>15 There's a similar echo of this in Wentworth's 16 skeleton argument. I mentioned their reply. That was 17 incorrect, it's their skeleton argument, if your 18 Lordship has that, paragraph 211. They say, in 211: 19 "As noted above, the same result should be reached 20 if the claim is analysed in debt. The question then is 21 the extent to which the foreign currency debt has been 22 discharged by payments from the insolvency estate. 23 Every payment from the insolvency estate, irrespective 24 of the characterisation placed upon the payment for the 25 purposes of the statutory scheme, is a payment from the</p> <p style="text-align: center;">Page 165</p>	<p>1 currency at the date of proof, will be more than the 2 foreign currency amount that was owed.</p> <p>3 So we have a claim denominated in a foreign 4 currency, but this foreign currency depreciates against 5 sterling. So when he gets his sterling payments, he 6 converts them and he finds he has more than his 7 contractual entitlement. That creditor will also 8 receive interest at the Judgments Act rate on his claim 9 converted into sterling. It was not suggested in 10 relation to Waterfall 1, and it is not suggested here, 11 that in some way that creditor has to give credit for 12 the foreign currency gain he made at the first stage 13 when assessing the statutory interest that he should 14 receive at the second.</p> <p>15 My Lord, again, it's another example of no offset, 16 indeed no one is contending for an offset in that 17 situation. There's no reason in principle why that 18 outcome should be any different in relation to the 19 example that your Lordship's dealing with now.</p> <p>20 My Lord, the same analysis obviously applies where 21 a creditor has a contractual right to interest but is 22 nevertheless entitled to Judgments Act rate interest on 23 the basis that's greater than his contractual right. 24 The analysis is essentially the same. Because the 25 Judgments Act rate is higher than his contractual right</p> <p style="text-align: center;">Page 167</p>
<p>1 property of the debtor to the creditor [my Lord, so far 2 so good, but then this] referable to the single debt ... 3 and has thus pro tanto discharged that debt."</p> <p>4 My Lord, again, we say not so. Just as for 5 a sterling creditor who receives interest at the 6 Judgments Act rate but whose receipt doesn't pro tanto 7 discharge his debt, so also in relation to the foreign 8 currency creditor.</p> <p>9 Now, it may be said that the effect of this is that 10 the creditor receives more than 100 per cent of the 11 principal amount of his claim, and that may well be the 12 result, but it is irrelevant in the same way as it's 13 equally irrelevant for the sterling creditor. Indeed in 14 relation to the sterling creditor, the whole point of 15 the entitlement to interest at the Judgments Act rate is 16 to ensure that he receives more than 100 per cent on his 17 underlying claim.</p> <p>18 In our skeleton argument we also give the example of 19 a third creditor who also has a claim denominated in 20 a foreign currency. The difference is that his claim 21 depreciates against sterling since the date of 22 administration. In other words, sterling works in his 23 favour. The effect of the statutory scheme on the 24 creditor is that the total amount of the dividends 25 received on the proof, when converted into the foreign</p> <p style="text-align: center;">Page 166</p>	<p>1 he's relying on a separate and additional right to 2 interest which he has under the statute. His underlying 3 contractual rights are effectively irrelevant. Again, 4 the interest that he was paid, just as with the previous 5 creditor, is paid in satisfaction of LBIE's obligation 6 to pay statutory interest in accordance with rule 2.88 7 as compensation for delay caused by the insolvency 8 process. Such sums were not paid in satisfaction or 9 discharge of his contractual entitlement to principal.</p> <p>10 Again, equally with the first example, if the 11 creditor had to give credit for such interest in 12 calculating the amount of his foreign currency claim, 13 then he won't end up receiving both payment in full of 14 his underlying debt and the compensation which the 15 statute intends him to receive.</p> <p>16 My Lord, that's, we say, a simple example giving 17 rise to a simple answer.</p> <p>18 The second example we have taken, again to try and 19 keep the position as simple as possible, is one where 20 the underlying claim is denominated in foreign currency. 21 The creditor does have a contractual entitlement to 22 interest. I mentioned that in this situation we accept 23 that there is an offset.</p> <p>24 The short reason is that this creditor's claim is 25 that he's not received all of the interest to which he</p> <p style="text-align: center;">Page 168</p>

<p>1 is entitled on his foreign currency denominated claim. 2 There's a shortfall between that and the sterling 3 interest sums which he receives, but what he has 4 received pursuant to 2.88 is, nevertheless, interest. 5 And there's no difficulty in saying that that payment, 6 being essentially payment of the same thing as he is 7 claiming, does have to be taken into account. 8 My Lord, that equally makes sense if one imagines 9 the creditor saying, "I've got a claim denominated in 10 a foreign currency. I've got a right to interest. 11 I haven't received all of the interest to which I'm 12 contractually entitled". It obviously follows that the 13 creditor has to take into account the interest he has 14 received under rule 2.88. It may be payable in 15 accordance with the statute, but it's nevertheless the 16 same thing, a compensation for delay. 17 We say the answers to those two examples effectively 18 can be applied in the more complicated examples. 19 However, it gets rather more difficult to actually 20 certainly discuss. It's more an exercise that's easier 21 to work through and see which bit needs to apply to 22 each. 23 Now, a couple of further points in relation to or in 24 response to Wentworth's skeleton. If your Lordship can 25 just take that, starting at paragraph 182.</p> <p style="text-align: center;">Page 169</p>	<p>1 "This suggests that in addressing the first side of 2 the comparison -- what the creditor would have been 3 entitled to in the foreign currency -- the aggregated 4 approach is correct." 5 My Lord, it's the next bit again which we say shows 6 the flaw in the argument. They then say: 7 "And it follows that the other side of the 8 comparison -- the payments received from the insolvency 9 estate -- is also to be approached on the aggregated 10 basis: if the only characteristic of the creditor's 11 contractual rights that is relevant to the claim is the 12 right to be paid in the foreign currency, then the 13 characteristics of the payments made from the insolvency 14 estate in respect of the creditor's claim ought not to 15 matter apart from the fact that they are paid in 16 sterling." 17 My Lord, we say that ignores the distinction between 18 payments made from the insolvency estate in respect of 19 one's underlying claim on the one hand, and payments 20 made by the insolvency estate in respect of your 21 separate statutory right to Judgments Act rate interest 22 on the other. 23 My Lord, at 190 to 198 Wentworth deal with more -- 24 various other more potentially more complicated 25 situations.</p> <p style="text-align: center;">Page 171</p>
<p>1 My Lord, I draw your Lordship's attention to 2 paragraph 182 which is expressed, "to summarise our and 3 the other parties' contentions"; I can't speak for the 4 other parties, but this does not accurately represent 5 our position. As I've just explained, we do accept that 6 there is an offset where the payment is made in respect 7 of the same thing. So it's not right to say that we 8 contend the calculation of the currency conversion claim 9 in respect of provable debt takes no account of 10 statutory interest. It may or it may not. 11 My Lord, then 185 to 187. Wentworth says, at 185: 12 "In considering which of the aggregated approach or 13 severable approach is correct, it is important to bear 14 in mind that the essence of the claim is the extent to 15 which a shortfall arises between the creditor's 16 contractual right to be paid in the foreign currency and 17 the amounts distributed from the insolvency estate, by 18 reason of the conversion of the claim into sterling for 19 the purposes of proof. 20 "Thus, the essential characteristic of the 21 creditor's rights, which give rise to the claim, is the 22 entitlement to be paid in the foreign currency. It 23 matters not whether the amount to which the creditor was 24 entitled relates to principal, interest or something 25 else ...</p> <p style="text-align: center;">Page 170</p>	<p>1 Just if your Lordship notes at 190, one of these is 2 where there are wide movements in the foreign exchange 3 markets over time, for example. 4 "A foreign currency creditor may, in respect of its 5 proved debts, receive sterling which when converted into 6 foreign currency produces a return of 120 per cent. 7 "Between the date of payment of the final dividend 8 and payment of statutory interest, the exchange rate 9 moves against the creditor such that it receives 10 sterling which when converted into the foreign currency 11 produces a return of 80 per cent in relation to 12 interest." 13 So this is essentially a gain on one part and a loss 14 on the other. 15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR DICKER: My Lord, as I say, one can resolve those issues 17 by applying the answers to our two examples, but just as 18 a matter of note, as we understand it, to date at least, 19 such situations are unlikely to be material, 20 particularly in relation to US dollar claims which form 21 the big majority of claims. That's simply because, on 22 the facts, we don't have a situation in which large 23 gains were made on the US dollar during one period and 24 large losses were suffered on the US dollar during 25 another.</p> <p style="text-align: center;">Page 172</p>

<p>1 Now, Wentworth deals with the first example 2 I discussed at paragraphs 199 to 211. At 199.3, I think 3 is the crux of the answer to our first example. They 4 say: 5 "Statutory interest is payable to the foreign 6 currency creditor only because its debt is converted for 7 the purposes of proof. As noted under issue 4 above, 8 the Judgments Act rate is a sterling rate applicable on 9 the basis it is the appropriate rate of debts payable in 10 sterling and is thus applied to a foreign currency 11 creditor as a direct consequence of the conversion of 12 its claim into sterling." 13 Now, it's true that before a foreign currency 14 creditor is entitled to Judgments Act interest, his 15 claim needs to be converted into sterling. But it's not 16 right to say statutory interest is payable to the 17 foreign currency creditor only because its debt is 18 converted for the purposes of proof in the sense for 19 which my learned friend contends. What he says is 20 effectively it's quid pro quo for converting your claim 21 into sterling. We say it's nothing of the sort. And 22 you can tell that because it's not given simply to 23 creditors with claims denominated in a foreign currency. 24 It's given to everyone, including sterling creditors. 25 Put another way: statutory interest is not</p> <p style="text-align: center;">Page 173</p>	<p>1 \$100 million and I haven't received it". 2 My Lord, finally, at 212 to 214, Wentworth addresses 3 the argument that a claim for statutory interest is 4 a separate right. Paragraph 214, we say, misses the 5 point. If your Lordship goes to sub-paragraph 4 and 6 sub-paragraph 5, in 4 they say: 7 "The foreign currency creditor without an 8 interest-bearing debt therefore receives same measure of 9 compensation for the delay in payment of its proved debt 10 as every other creditor with a non-interest-bearing 11 debt. It is wrong suggest that he does or may not 12 receive any compensation for delay. The absence of any 13 further or additional compensation for delay for the 14 foreign currency creditor with a non-interest-bearing 15 debt is not a consequence of the conversion of its debt 16 because, but for that conversion, it would have had no 17 contractual entitlement to compensation for delay. 18 Accordingly, there is no basis on which the lack of any 19 further or addition compensation for delay is caused by 20 the conversion of its debt into sterling." 21 So the argument essentially is: you have received 22 your compensation for delay; there's no basis on which 23 you should be entitled to further compensation for 24 delay. To which the foreign currency creditor's 25 response is, "When I get to my non-provable claim, I'm</p> <p style="text-align: center;">Page 175</p>
<p>1 compensation for having been deprived of your right to 2 complain about a shortfall due to currency movements. 3 My Lord, then at paragraphs 200 to 211, Wentworth 4 tries to support this argument with the analogy based on 5 cases dealing with damages for breach of contract. They 6 say, in 200: 7 "There is support for this approach in the 8 authorities relating to 'mitigation in fact' (which 9 require certain benefits received by a claimant to be 10 offset against loss incurred in calculating damages for 11 breach of contract)." 12 My Lord, in response to that, first of all, the 13 doctrine of mitigation in fact obviously has no 14 application to a debt claim. You don't have to mitigate 15 if you're entitled to a sum certain. 16 Secondly, the argument doesn't even work in the 17 context of a damages claim. What you have to give 18 credit for, when you're making a claim for damages, is 19 benefits which you receive as a result of the breach on 20 which you sue. Now, again, that takes us back to the 21 same point. We say it's simply not right to regard the 22 foreign currency creditor as making a claim for damages 23 let alone a claim for damages based on the fact that his 24 claim has been converted into sterling. It's not doing 25 anything of the sort. He's just saying, "I was owed</p> <p style="text-align: center;">Page 174</p>	<p>1 not talking about compensation for delay, I'm talking 2 about the fact that I haven't had my principal debt 3 repaid in full". 4 My Lord, there's an element -- I was always told 5 never to participate in such games, but of the 6 individual on the street with the three cups, the egg 7 under one, and you have to identify which one, there's 8 a slight element in my learned friend's submissions of 9 saying, "Well, you do receive the compensation you're 10 entitled to under the statute. Here's the sum of 11 money". When the creditor says, "But I haven't received 12 by debt in full", the response is effectively to 13 reallocate that sum of money and say, "Well, hang on, 14 but you've received it". 15 My Lord, our short point is the Act entitles you to 16 both, and the money can't be effectively applied to 17 satisfy both. 18 Now, my Lord, just so your Lordship is clear. York, 19 as we understand it, takes a slightly different approach 20 and I'll leave my learned friend to explain that. In 21 short, just so your Lordship understands the difference 22 between their approach and ours, we say you start with 23 a creditor with a claim denominated in a foreign 24 currency who does not have a contractual right to 25 interest, and we say you need to distinguish between, on</p> <p style="text-align: center;">Page 176</p>

<p>1 the one hand, the principal and, on the other, the 2 separate and additional statutory right. York performs 3 a similar comparison but its starting point is slightly 4 different. When it looks at the creditor's underlying 5 rights, it doesn't just start with principal and no 6 interest in that situation. It piggybacks off its 7 answer -- suggested answer to question 4, and says the 8 starting point when you make the comparison should be 9 the principal amount of the debt, together with the 10 interest, in accordance with a foreign judgment that the 11 creditor would have been entitled to.</p> <p>12 My Lord, I think the result is similar but the 13 starting point and thus the resulting analysis is 14 slightly different.</p> <p>15 As I say, that's not the approach we suggest to your 16 Lordship.</p> <p>17 My Lord, obviously I'm not going to say anything in 18 relation to my learned friend's submissions on 19 question 39 and the complete code. My Lord, I confess 20 I was in a similar position to your Lordship listening 21 to them but, again, I'm sure it was me.</p> <p>22 The only thing I would add is of course although 23 we're focusing in question 28 to issues of foreign 24 currency claims, there are, as your Lordship knows, 25 other ways in which there may be a shortfall in respect</p> <p style="text-align: center;">Page 177</p>	<p>1 I don't have anything particularly new to add but just 2 to remind my Lord of the point we make that such 3 a creditor with no right to interest is receiving from 4 the statutory process which follows from the conversion 5 of its debt in the example that we're positing, namely 6 a greater return thorough the statutory interest 7 process, more in dollars than it was ever entitled to.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 Can I just on that say, just so you see how you 10 respond to this example: supposing the Insolvency Act 11 and rules had been differently drafted to say that 12 foreign currency debts should be paid in an amount in 13 sterling calculated by reference to an exchange rate at 14 the date of declaration of the dividend, let's say, so 15 at a later -- at a much later date than is the case 16 under the rules, and ignore for the moment that there 17 might be a movement between the declaration of the 18 dividend and the payment, but assume that -- so on that 19 basis ignoring that sort of possibility of that 20 movement, there would be no foreign currency exchange 21 loss and non-provable claim in respect of that, but 22 supposing the regime nonetheless said that it had 23 something like 2.88 for the payment of interest, and, 24 for those purposes, foreign currency claims were 25 converted into sterling at the date of administration</p> <p style="text-align: center;">Page 179</p>
<p>1 of contractual entitlement so far as interest is 2 concerned, whether as result of non-application of 3 Bower v Marris, the rate applicable under 3 or question 4 6 and 8.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR DICKER: My Lord, again, unless I can help your Lordship 7 further.</p> <p>8 MR JUSTICE DAVID RICHARDS: Thank you very much, Mr Dicker. 9 Mr Smith?</p> <p>10 MR SMITH: My Lord, I wasn't going to add anything on this 11 topic.</p> <p>12 MR JUSTICE DAVID RICHARDS: Thank you very much. 13 Mr Trower?</p> <p>14 MR TROWER: My Lord, no. I have nothing to add either.</p> <p>15 MR JUSTICE DAVID RICHARDS: Mr Zacaroli? 16 Reply submissions by MR ZACAROLI</p> <p>17 MR ZACAROLI: My Lord, if I can deal briefly with two 18 aspects. The first is the question of the creditor with 19 no interest entitlement, so leaving aside -- this is on 20 the basis we're right on issue 39 at the moment.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: And therefore dealing with -- only with the 23 creditor who had no right to interest.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR ZACAROLI: In a sense, my Lord, the short point is this:</p> <p style="text-align: center;">Page 178</p>	<p>1 and interest was calculated in accordance with 2.88 on 2 that basis. And assume this is the case you've just 3 mentioned, of there being no contractual right to or 4 other legal right to interest on the foreign currency 5 loss -- foreign currency claim; okay?</p> <p>6 So, in other words, I'm a creditor for \$1 million. 7 I receive \$1 million or, for the sake of argument, 8 I actually receive \$1 million by reference to 9 a calculation as at the date of payment but I'm also 10 entitled to interest calculated on a sterling sum over 11 the -- from the date of administration to the date of 12 payment of the distribution -- there's a single regime 13 for compensating for delay, like -- as is in 2.88. Just 14 assume that.</p> <p>15 There -- this is really just a way of putting the 16 same point to you but really want to get your 17 reaction -- there is no currency loss, no currency 18 claim, but the creditor would have received his 19 \$1 million, would have received the interest, there's no 20 sense in which he somehow has to give credit for the 21 interest he's received?</p> <p>22 MR ZACAROLI: No, but there is no currency conversion claim.</p> <p>23 MR JUSTICE DAVID RICHARDS: I appreciate that.</p> <p>24 MR ZACAROLI: My argument depends entirely upon --</p> <p>25 MR JUSTICE DAVID RICHARDS: There being one.</p> <p style="text-align: center;">Page 180</p>

<p>1 MR ZACAROLI: Well, it's a pre-question. Is there 2 a currency conversion claim, because can we say in these 3 circumstances the creditor has not actually received the 4 million dollars to which it was entitled? So the rules, 5 as we have them, the possibility arises that it does get 6 full \$1 million that it's entitled, to even though -- 7 MR JUSTICE DAVID RICHARDS: I see. So in circumstances 8 where -- so let us take the current rules as they are. 9 Sterling appreciates against dollars -- against the 10 dollar between the date of the administration and the 11 date of distribution. The creditor gets his -- actually 12 gets more than \$1 million, so no loss and he's also got 13 interest, admittedly paid in sterling but he can 14 convert it. 15 MR ZACAROLI: Yes, because they are two different things. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR ZACAROLI: He is getting interest with everybody on the 18 proved debt but then, as I mentioned before, you only 19 get to the question of whether there's a currency 20 conversion claim, if there's any loss arising out of 21 conversion, at the latest stage after interest has been 22 paid so you only have to ask the question at that point. 23 MR JUSTICE DAVID RICHARDS: I see. 24 MR ZACAROLI: That's why, in the example my Lord is giving 25 that's why there is no loss, because ultimately he has</p> <p style="text-align: center;">Page 181</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes. 2 MR ZACAROLI: It isn't -- there's no loss or no shortfall 3 issue at all. It's just you have to pay that. 4 MR JUSTICE DAVID RICHARDS: Yes. 5 MR ZACAROLI: So when one comes to the currency conversion 6 claim, it is all about shortfall. In fact the only 7 question is: is there a shortfall? 8 MR JUSTICE DAVID RICHARDS: Thank you. 9 MR ZACAROLI: My Lord, the other point was to deal with the 10 other world where we're wrong on issue 39 and 11 I didn't -- I understood my learned friend's submissions 12 to be saying that exactly the same answers apply if 13 we're wrong on issue 39. I would say that the -- our 14 overall submission on that is if we're wrong on 15 issue 39, the way we put the question in our skeleton is 16 now out of the picture. One isn't asking the 17 question: what was the loss caused by currency 18 conversion alone or what was the shortfall due to the 19 conversion? One is simply asking the question: is there 20 a shortfall in the overall contractual rights of the 21 creditor, compared with the overall benefits he gets 22 from statutory scheme. 23 MR JUSTICE DAVID RICHARDS: Yes. 24 MR ZACAROLI: In those circumstances, there is simply no way 25 of excluding the benefits he get from the scheme as</p> <p style="text-align: center;">Page 183</p>
<p>1 received in dollars exactly or more than he was entitled 2 to in dollars. 3 MR JUSTICE DAVID RICHARDS: But in one sense he's lost part 4 of his interest, hasn't he, his interest entitlement? 5 MR ZACAROLI: No, and that's because the interest 6 entitlement is on the sterling debt. 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR ZACAROLI: I think my learned friend cited the part in 9 our skeleton which we say provides the answer, that is 10 that he gets the interest on the sterling debt. He was 11 never entitled to interest on his non-sterling debt. 12 That was -- so when you're looking at his dollar 13 entitlement, his contractual entitlement, there was no 14 right to interest at all. So it's permissible to take 15 account of the benefits in relation to interest which he 16 otherwise never had in asking the question when it comes 17 to the third stage, have I got the dollars I was 18 originally entitled to? The answer is, yes, he has. 19 MR JUSTICE DAVID RICHARDS: Clearly you don't reduce the 20 amount of interest to take account of the exchange gain 21 he has made, if that's what he has made? 22 MR ZACAROLI: No, because they're completely different 23 questions. Interest is payable pursuant to a statutory 24 requirement to paid at 8 per cent on the amount of the 25 debt.</p> <p style="text-align: center;">Page 182</p>	<p>1 a whole, including in relation to interest to which he 2 wasn't otherwise entitled in this example of that 3 creditor, the creditor with no interest entitlement. He 4 is getting, under the statutory scheme, a sum of money 5 in dollars. The only question is: is that less than his 6 entitlement? One has to take into account every aspect 7 of the scheme in answering that question. It's a much 8 simpler question. 9 MR JUSTICE DAVID RICHARDS: Thank you. 10 MR ZACAROLI: The same follows for the creditor who has 11 a right to interest. I think my learned friend does not 12 agree that one can take account of benefits received in 13 relation to the proved part of that debt. Again, if I'm 14 wrong on 39. My learned friend said you can't take 15 account of benefits received on the proved part of the 16 debt in offsetting against a currency loss on the second 17 aspect of the debt -- of the interest. 18 MR JUSTICE DAVID RICHARDS: Interest, yes. 19 MR ZACAROLI: Whereas we say clearly you must. If you stand 20 back from that a moment, you have a contractual right, 21 the creditor has a contractual right to include -- to 22 receive a debt, plus interest. 23 MR JUSTICE DAVID RICHARDS: Yes. 24 MR ZACAROLI: That's what exists outside the insolvency 25 scheme.</p> <p style="text-align: center;">Page 184</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: A number of payments are made, all of which</p> <p>3 are made in respect of that contractual right.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR ZACAROLI: By dividend or by statutory interest, but</p> <p>6 they're all referable to his contractual right which is</p> <p>7 a single contractual right to principal and interest.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR ZACAROLI: Some payments will reduce -- produce a greater</p> <p>10 dollar equivalent, some will produce less. That's the</p> <p>11 assumption here. And it could be either way.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: Whilst we accept, as I mentioned, it is common</p> <p>14 ground, that a creditor who overall does better -- does</p> <p>15 not have to disgorge that benefit for the benefit of all</p> <p>16 other creditors for the estate, we do say that it would</p> <p>17 be absurd if this creditor, with a single right absent</p> <p>18 the scheme to principal interest, who made more on some</p> <p>19 payments relating to principal but did worse on some</p> <p>20 payments relating to interest, wasn't required to</p> <p>21 aggregate those into a single amount at the end of the</p> <p>22 process and say, "Well, at the end of the process what</p> <p>23 have I received? Is it greater or less than my</p> <p>24 contractual entitlement?"</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 185</p>	<p>1 Housekeeping</p> <p>2 MR ALLISON: My Lord, I think the short point is perhaps,</p> <p>3 thankfully, for the purpose at this stage, that we're</p> <p>4 not asking your Lordship to decide those issues of</p> <p>5 construction within this hearing. Indeed, as your</p> <p>6 Lordship observed, I think last Wednesday at the very</p> <p>7 outset, that parties' submissions rather petered out</p> <p>8 towards the end of the issues.</p> <p>9 MR JUSTICE DAVID RICHARDS: Even if they didn't, the judge</p> <p>10 perhaps did!</p> <p>11 MR ALLISON: Issues 31 to 33 do look further than the</p> <p>12 principal of a currency conversion claim and look in</p> <p>13 particular at the underlying agreements and posit the</p> <p>14 question whether on those agreements the currency</p> <p>15 conversion claim can arise.</p> <p>16 What I was going to respectfully suggest to my Lord</p> <p>17 and I don't think that's opposed, although Mr Dicker</p> <p>18 I think would like to say something, is that the</p> <p>19 question of if and when these issues are resolved</p> <p>20 including whether further material are required for the</p> <p>21 court to answer them finally is stood over to the CMC</p> <p>22 that's for a week on Monday.</p> <p>23 MR JUSTICE DAVID RICHARDS: Right.</p> <p>24 MR ALLISON: Next Monday.</p> <p>25 MR JUSTICE DAVID RICHARDS: When you say next Monday, you</p> <p style="text-align: center;">Page 187</p>
<p>1 MR ZACAROLI: My Lord, unless I can assist further, those</p> <p>2 are our submissions.</p> <p>3 MR JUSTICE DAVID RICHARDS: Thank you very much,</p> <p>4 Mr Zacaroli.</p> <p>5 Mr Trower, where does that leave us?</p> <p>6 MR TROWER: My Lord, I think we're making -- we have caught</p> <p>7 up quite satisfactorily in terms of the issues.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: Because, I mean, we've now reached the stage</p> <p>10 where we've done -- we're on to 30 and 31.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR TROWER: 30 has been essentially agreed and 31 -- hang</p> <p>13 on. I'm just ... 31, as I understand it, I think</p> <p>14 Mr Allison is going to deal with 31 on behalf of</p> <p>15 Wentworth.</p> <p>16 MR JUSTICE DAVID RICHARDS: Those in the timetable were</p> <p>17 taken together. The trouble with this is this is going</p> <p>18 to require looking at these agreements, isn't it?</p> <p>19 MR TROWER: I think matters have developed somewhat, if</p> <p>20 I can put it that way, since this was first formulated.</p> <p>21 I think Mr Allison is in the best position to</p> <p>22 explain because this is slightly a Wentworth-driven</p> <p>23 issue.</p> <p>24 MR JUSTICE DAVID RICHARDS: Mr Allison, yes.</p> <p>25</p> <p style="text-align: center;">Page 186</p>	<p>1 mean a week on Monday?</p> <p>2 MR ALLISON: I do mean a week on Monday. If it would assist</p> <p>3 my Lord I can give a brief explanation of those issues.</p> <p>4 MR JUSTICE DAVID RICHARDS: Not at the moment. I'll hear</p> <p>5 what Mr Dicker has to say about it and if I need a brief</p> <p>6 explanation, I'll ask you for it, if I can put it that</p> <p>7 way.</p> <p>8 MR ALLISON: My Lord, thank you.</p> <p>9 MR JUSTICE DAVID RICHARDS: Mr Dicker?</p> <p>10 MR DICKER: My Lord, simply four points.</p> <p>11 First of all, so far as question 31 is concerned,</p> <p>12 the issue originally was whether or not, in accordance</p> <p>13 with these agreements, a currency conversion claim could</p> <p>14 arise. Wentworth said "no". In our response we said,</p> <p>15 well, of course one can arise. There may be an</p> <p>16 obligation to return collateral and depending on the</p> <p>17 currency in which that collateral is denominated or for</p> <p>18 any other reason, there may end up with a currency</p> <p>19 conversion claim. As I understand it, that is now</p> <p>20 accepted by Wentworth. The question however appears to</p> <p>21 have turned into a slightly different one which is</p> <p>22 whether or not, all -- a damages claim giving rise to</p> <p>23 a currency conversion claim can exist, whether or not</p> <p>24 there can be a contractual debt claim.</p> <p>25 My Lord, for our part we simply don't understand the</p> <p style="text-align: center;">Page 188</p>

<p>1 relevance or importance of that issue. So that's the 2 first point.</p> <p>3 The second point is when Wentworth wrote to us, 4 I think shortly before this hearing started, to say that 5 this issue would be better dealt with as part of 6 tranche 3, they said that was because New York law may 7 be required to determine it. It would be quite helpful 8 to know in what respect it's said New York law may be 9 different from English law so we can understand the 10 reason for that.</p> <p>11 The third point is simply this: there is a question 12 as to whether this is an entirely satisfactory approach 13 to dealing with these sorts of issues. What 14 your Lordship has been given are three standard form 15 agreements, prime brokerage, (inaudible) and another 16 agreement. They were all apparently entered into as 17 part of a composite transaction. The bespoke schedule 18 to one of the agreements disappplied various obligations 19 in the other agreements, effectively as a result -- 20 issues that arise do so as a result of that bespoke 21 schedule.</p> <p>22 We have no idea who entered into these agreements. 23 We have no idea why the schedule was amended. We have 24 no understanding as to whether or not there may be 25 a factual matrix which would assist interpreting what</p> <p style="text-align: center;">Page 189</p>	<p>1 currency in which the loss was truly being sustained in. 2 We say that could be a materially different question 3 when one is looking at the underlying securities that 4 form the subject matter of the transaction versus 5 whether a US dollar debt claim can be claimed under the 6 terms of the agreement. That's why it may well be very 7 relevant whether a party can assert a contractual debt 8 claim in US dollars versus whether there is 9 a fact-sensitive enquiry to see which currency, if any, 10 apart from sterling, they can assert a damages claim in 11 respect of. So that's the first point. It could be 12 very relevant.</p> <p>13 The second point in relation to New York law, these 14 three agreements are governed by New York law. At the 15 moment it's not understood on the way the parties have 16 presented their argument that there is any difference in 17 the principles of New York law, but that said, my Lord 18 will be well aware that part C of the application does 19 include New York law-governed agreements. In 20 particular, New York law-governed ISDA master 21 agreements. And as part and parcel of part C all 22 parities have agreed that the relevant principles of 23 interpretation as a matter of New York law will be 24 before the court so at the moment there's no dispute on 25 it, but we thought that it may be a case in which</p> <p style="text-align: center;">Page 191</p>
<p>1 the effect of the agreements as a result is and nor do 2 we actually know whether or not these agreements are 3 one-off, common or anything of that sort.</p> <p>4 My Lord, just to inform your Lordship we're not, as 5 it were, adverse to this going off but it would be very 6 helpful to know, firstly, why it matters, whether or not 7 there may be a debt claim giving rise to a currency 8 conversion claim; secondly, if there is a new issue of 9 New York law, what it is; and, thirdly, some thought 10 being given as to whether there is any relevant factual 11 matrix and, if so, how that would be provided to your 12 Lordship.</p> <p>13 As I say, we weren't parties to these agreements and 14 we have no idea of the context in which they were 15 entered into.</p> <p>16 My Lord, I think that is all I need to say.</p> <p>17 MR JUSTICE DAVID RICHARDS: Mr Smith, is there anything you 18 want to say about this?</p> <p>19 MR SMITH: No, there isn't, my Lord.</p> <p>20 MR JUSTICE DAVID RICHARDS: Perhaps Mr Allison and then, if 21 I may, I'll hear you, Mr Trower.</p> <p>22 MR ALLISON: My Lord, just responding quickly maybe on the 23 three points. First the relevance of debt versus 24 damages. The key point in relation to that is when 25 damages is being considered, the court looks to the</p> <p style="text-align: center;">Page 190</p>	<p>1 my Lord might be assisted to have that evidence before 2 these very agreements are construed. So that was the 3 relevance of that point.</p> <p>4 The third point, the factual matrix. Insofar as we 5 are aware, there is nothing further that is required.</p> <p>6 Insofar as we are aware, the administrators are 7 content that this is a general application, therefore it 8 is within the Waterfall 2 application for that purpose. 9 It could apply over counterparties at a general level.</p> <p>10 That said, in the period of course between now and 11 the CMC a week on Monday we can explore that further 12 with both the SCG and with the joint administrators to 13 check that understanding is correct. And, to the extent 14 that further information is required, then that can be 15 supplemented for the purposes of the court.</p> <p>16 I think that really explains our position on those 17 key points, but -- we hear them, but we still think that 18 the issue does remain suitable for determination at 19 a general level within the Waterfall 2 application.</p> <p>20 MR JUSTICE DAVID RICHARDS: Thank you very much. 21 Mr Trower?</p> <p>22 MR TROWER: My Lord, the general position of the 23 administrators on this is that as there plainly is an 24 issue between the parties in relation to these 25 particular questions, they are keen that, if possible,</p> <p style="text-align: center;">Page 192</p>

<p>1 it is determined on this application; that a way can be 2 found for doing it. That is their optimum position. 3 We quite see that where the parties are at the 4 moment may make it quite difficult for the court to 5 resolve exactly what to do here and now, and do suggest 6 that it may be that, having heard what my learned 7 friends have said about what may or may not be possible 8 to achieve over the course of the next week or so, this 9 is something that we can revert to in 10 days' time, and 10 invite your Lordship to give further directions that may 11 be required. 12 One can quite see how the concentration which the 13 parties have adopted in relation to the interest issues 14 may have meant that this has -- 15 MR JUSTICE DAVID RICHARDS: Clouded this one a little -- 16 I don't mean clouded, I mean -- 17 MR TROWER: Perhaps a lack of focus on it. 18 MR JUSTICE DAVID RICHARDS: Eclipsed it. 19 MR TROWER: Indeed. 20 MR JUSTICE DAVID RICHARDS: Mr Trower, you say there's 21 clearly an issue between the parties. Having heard 22 Mr Dicker, I'm actually not quite sure -- 23 MR TROWER: What I mean I think by that is we -- the parties 24 are plainly not ad idem as to exactly what to do with 25 these issues at the moment.</p> <p style="text-align: center;">Page 193</p>	<p>1 MR JUSTICE DAVID RICHARDS: That's a CDD. 2 MR TROWER: It is, my Lord, although it's a rather sort of 3 specific one. As it happens, we have dealt with it in 4 sufficient -- on pages 81 to 89 of our skeleton and 5 Mr Dicker, I think, addresses it at some length in his 6 skeleton. We -- 7 MR JUSTICE DAVID RICHARDS: I don't really want to look at 8 this without looking at the CDD, I don't think. 9 MR TROWER: Well, the thing is there are a whole range of 10 CDDs to which this issue is capable of applying. 11 MR JUSTICE DAVID RICHARDS: Oh, yes, hold on. Let me just 12 focus a bit more on it. So let's assume there has been 13 a compromise between creditors and the administrators of 14 a number of claims but they have differing rates of 15 interest or in different currencies without indicating 16 how the agreed or admitted claim derives from and 17 relates to, is this the aggregation and disaggregation 18 issue? 19 MR TROWER: The issue arises in circumstances where there 20 was a global compromise and in a sense it doesn't matter 21 whether it's a CDD or any compromise, and obviously the 22 starting point is that it's a question of construction 23 of the compromise as to whether or not you can identify 24 anything on the face of the compromise as to how to 25 appropriate or disaggregate in respect of claims, but</p> <p style="text-align: center;">Page 195</p>
<p>1 MR JUSTICE DAVID RICHARDS: Indeed, what the issues are. 2 I think probably in the end, I mean, this is -- 3 Mr Dicker was saying we don't know -- these are put in 4 very generic terms but they may be issues which arise on 5 particular contracts; I don't know. I think ultimately 6 this is your client's application so the responsibility 7 for identifying the issue which needs to be decided 8 ultimately is with you. 9 MR TROWER: Yes, indeed. 10 MR JUSTICE DAVID RICHARDS: Rather than with any particular 11 creditor group. So I'm hoping that you will try and 12 tease out from the parties what it is that really needs 13 to be decided on these matters. 14 MR TROWER: No, we are only too well aware of our 15 responsibility on that and there have been efforts made 16 to try and make progress, but we will hopefully see our 17 way to getting some sort of resolution of this for the 18 CMC next week. 19 MR JUSTICE DAVID RICHARDS: So I have a couple of matters 20 I want to raise, but, leaving that aside, that actually 21 concludes the submissions on this application; is that 22 right? 23 MR TROWER: There are two things we haven't made oral 24 submissions on yet that I'm aware of. There's issue 37 25 which there is a little bit to say on, although if --</p> <p style="text-align: center;">Page 194</p>	<p>1 there are -- the question which arises is where the 2 creditor concerned asserted rights in a particular 3 manner and the liquidators' approach to reaching the 4 compromise in another manner and there was no consensus 5 ad idem in respect of the appropriation between the 2. 6 MR JUSTICE DAVID RICHARDS: No. 7 MR TROWER: The liquidators -- the administrators' short 8 position in relation to it is that they did adopt an 9 approach as to how it was that they were going to be 10 considering the claim and its component parts for the 11 purposes of admitting the claim to proof. That's what 12 will have happened, but that may not be the same 13 approach as the approach that was adopted by the 14 relevant creditors. 15 The question is then when you have claims which have 16 different component parts what approach one takes in 17 relation to that when determining the appropriation of 18 interest entitlements. So where there is no unanimity 19 of approach which is discernible on the face of the 20 agreement between the claiming creditor and the 21 administrators in relation to the appropriation of 22 a particular aspect of the claim to a particular figure 23 within the final settlement amount, what approach ought 24 to be taken? Do you look at it from the claimant's 25 point of view? Do you look at it from the</p> <p style="text-align: center;">Page 196</p>

<p>1 administrators' point of view or do you take some other 2 approach? 3 MR JUSTICE DAVID RICHARDS: The different claims are -- 4 these are quite separate claims -- 5 MR TROWER: They are separate claims with different interest 6 entitlements in respect of them but you have them 7 admitted as a single amount in respect -- 8 MR JUSTICE DAVID RICHARDS: But they're admitted for the 9 purposes of proof so we're talking about the principal 10 plus pre-administration interest. 11 MR TROWER: Yes. 12 MR JUSTICE DAVID RICHARDS: And the reason for asking about 13 appropriation is what? 14 MR TROWER: Is in order to ensure that one knows the 15 entitlement in respect of statutory interest. 16 MR JUSTICE DAVID RICHARDS: I see. 17 MR TROWER: As an appropriation against the various elements 18 of the claim. 19 MR JUSTICE DAVID RICHARDS: Do you mean whether it's going 20 to be 8 per cent or a higher rate? 21 MR TROWER: Yes. 22 MR JUSTICE DAVID RICHARDS: If there is a higher rate. So, 23 is this right, it would only arise if there was one of 24 the elements carried interest the a higher rate than the 25 judgment rate?</p> <p style="text-align: center;">Page 197</p>	<p>1 through the joint administrators' perspective. Where 2 that's not possible to reach that conclusion, then there 3 should be some form of pro rata approach. 4 My understanding is one's unlikely to get to that 5 last stage in the analysis on the facts. 6 MR JUSTICE DAVID RICHARDS: I see. 7 MR TROWER: Although one -- there is a possibility that that 8 might arise but I think my understanding is that's 9 unlikely to arise. 10 York, as I understand it, take no position on this. 11 I'm not quite sure where Wentworth ended up on it as to 12 whether they took a positive position one way or the 13 other. 14 MR ALLISON: My Lord, the short answer is we are content 15 with the approach which is suggested in the 16 administrators' skeleton argument and we draw comfort 17 from them from what Mr Trower has said orally and what 18 they say in writing, which is they believe it most 19 unlikely that there will be any case where they cannot 20 identify from their records the way in which the claim 21 was agreed in its component parts. 22 MR JUSTICE DAVID RICHARDS: Either -- so effectively -- 23 there's nothing on the face of the agreement that tells 24 you how it's being allocated. The approach that 25 Mr Dicker's clients have taken, as I understand it, is,</p> <p style="text-align: center;">Page 199</p>
<p>1 MR TROWER: I think that is right, yes. 2 MR JUSTICE DAVID RICHARDS: That actually -- 3 MR TROWER: It will arise as well or may arise as well in 4 relation to currency conversion claims. 5 MR JUSTICE DAVID RICHARDS: Yes, I can see that. 6 MR TROWER: Indeed, it will. 7 So, my Lord, there's a level of conceptualism and if 8 I can put it like that, about this question, which we 9 all appreciate that in an ideal world one would simply 10 approach a question like this as a matter of 11 construction of the agreements, but the court is being 12 asked the question on the assumption that you simply 13 can't discern -- 14 MR JUSTICE DAVID RICHARDS: I follow that. There's nothing 15 in the agreements, so what do you do? 16 MR TROWER: So what do we do in those circumstances? That's 17 what question 37 asks. 18 MR JUSTICE DAVID RICHARDS: Right. 19 MR TROWER: In fact, I am not sure that there is any 20 material disagreement about what the answer is. The 21 parties' position is that the way the Senior Creditor 22 Group adopt it is they say obviously if it is possible 23 to identify a consensus, that must prevail. If not, the 24 basis on which the joint administrators did in fact 25 admit the claim should prevail. So you look at it</p> <p style="text-align: center;">Page 198</p>	<p>1 well, if they have indicated and presumably communicated 2 to the administrators, is this right, a particular 3 appropriation, then that should bind it? If not, then 4 the manner in which the administrators have treated the 5 agreement and the individual component claims should be 6 binding, is that right? 7 MR ALLISON: My Lord, I'm not so sure about the way you put 8 the second point of the agreement. What we are content 9 with is the approach that identified at paragraphs 230 10 onwards of Mr Trower's skeleton argument -- 11 MR JUSTICE DAVID RICHARDS: Let me just have a look at that 12 MR ALLISON: It start at page 84, underneath the subheading, 13 "Administrators' view". 14 MR JUSTICE DAVID RICHARDS: Thank you. (Pause) 15 I won't read thorough all that now, but you're 16 saying, Mr Allison, that that's -- so pages 229 -- 17 paragraphs 229 to 232, is that right? 18 MR ALLISON: My Lord, precisely. We are content with the 19 way the administrators wish to undertake the exercise; 20 is that right for you, Mr Dicker? 21 MR DICKER: My Lord, I think that is. Just to be clear, we 22 have three parts. First of all, if the apportionment or 23 whatever word one uses, was agreed then that should 24 govern. If not, it's what the administrators did at the 25 time.</p> <p style="text-align: center;">Page 200</p>

<p>1 MR JUSTICE DAVID RICHARDS: Sorry, I misunderstood what you 2 said there.</p> <p>3 MR DICKER: Thirdly, if not, then some form of pro rata is 4 required.</p> <p>5 MR JUSTICE DAVID RICHARDS: Okay, that fine. I did misstate 6 your position before.</p> <p>7 It seems as if there is agreement on this.</p> <p>8 MR TROWER: Yes.</p> <p>9 MR JUSTICE DAVID RICHARDS: You would like a direction.</p> <p>10 MR TROWER: My Lord, we would. So what we would suggest is 11 that if when your Lordship has had a chance to read 12 those paragraphs of the skeleton your Lordship need any 13 further help --</p> <p>14 MR JUSTICE DAVID RICHARDS: That the best way of dealing 15 with it. I think that's fine.</p> <p>16 MR TROWER: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: Now, anything --</p> <p>18 MR DICKER: Only to mention in that context, from time to 19 time the administrators have identified supplemental 20 issues and asked us to think hard about them. They did 21 so in relation to question 37 as well as others and we 22 dealt widths in 441 to 444 of our skeleton. I don't 23 know what the position is in relation to that so far as 24 the administrators are concerned.</p> <p>25 MR TROWER: I can't remember, I'm afraid, my Lord, what they</p> <p style="text-align: center;">Page 201</p>	<p>1 MR JUSTICE DAVID RICHARDS: Who says that, "The 2 administrators concluded" ...</p> <p>3 So York say you ignore a leap year, you say you take 4 account of it.</p> <p>5 MR TROWER: You take account of a leap year. We have given 6 the reasons in the sub-paragraphs under paragraph 22.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes, right.</p> <p>8 MR TROWER: The essential point is, in our submission, that 9 the expression "per annum" is whatever the relevant year 10 happens to be. We have identified section 2 of the 11 Calendar (New Style) Act 1750.</p> <p>12 MR JUSTICE DAVID RICHARDS: That was when the new calendar 13 came in.</p> <p>14 MR TROWER: Indeed it was. That is actually in the bundles.</p> <p>15 MR JUSTICE DAVID RICHARDS: That statute is still in force?</p> <p>16 MR TROWER: It is still in force, my Lord.</p> <p>17 MR JUSTICE DAVID RICHARDS: Splendid. Good.</p> <p>18 MR TROWER: Rather bizarrely it does actually have 19 a reference to the leap year.</p> <p>20 MR JUSTICE DAVID RICHARDS: Don't worry, I will look at it.</p> <p>21 MR TROWER: I was just going to give your Lordship the 22 reference.</p> <p>23 MR JUSTICE DAVID RICHARDS: Please, yes.</p> <p>24 MR TROWER: Tab 7.</p> <p>25 MR JUSTICE DAVID RICHARDS: So this is volume ...?</p> <p style="text-align: center;">Page 203</p>
<p>1 were, but I'm pretty sure that we agreed with the 2 reaction that the SCG had to those issues.</p> <p>3 MR JUSTICE DAVID RICHARDS: You might like just to.</p> <p>4 MR TROWER: Can we check?</p> <p>5 MR JUSTICE DAVID RICHARDS: You check that and let me know 6 what that is.</p> <p>7 MR TROWER: Which leaves only a tiny issue outstanding that 8 I'm aware of which is -- issue 1 was agreed and there 9 was a little tiny sub-issue in relation to leap years.</p> <p>10 MR JUSTICE DAVID RICHARDS: Oh, leap years, yes.</p> <p>11 MR TROWER: Which is a suitably eccentric basis on which to 12 finish today.</p> <p>13 MR JUSTICE DAVID RICHARDS: Where is that dealt with in 14 the --</p> <p>15 MR TROWER: Where it's dealt with, my Lord, is it's only 16 dealt with by us and Mr Smith. I don't think anyone 17 else makes any positive points in relation to it. We 18 deal with it starting at page 10 of our skeleton 19 argument. The bit in relation to leap years starts at 20 20, paragraph 20.</p> <p>21 MR JUSTICE DAVID RICHARDS: Sorry, I was looking again at 22 the wrong part. Let me start again. I was looking in 23 the wrong place.</p> <p>24 So you tell with it starting at paragraph 20.</p> <p>25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 202</p>	<p>1 MR TROWER: Volume 3A, tab 7 and it's section 2 of the 2 statute that adopted the Gregorian calendar.</p> <p>3 MR JUSTICE DAVID RICHARDS: Excellent. Then Mr Smith deals 4 with this at -- where does he deal with this?</p> <p>5 MR TROWER: He deals with it in his skeleton argument at 6 page 8. He relies on some market materials essentially.</p> <p>7 MR JUSTICE DAVID RICHARDS: Right. Okay. So that's it and 8 that issue remains live, is that right?</p> <p>9 MR TROWER: Yes.</p> <p>10 MR SMITH: It does, my Lord. It's obviously not the biggest 11 issue in the case, particularly at 4.30 on a Thursday.</p> <p>12 My Lord, we haven't set out --</p> <p>13 MR JUSTICE DAVID RICHARDS: On billions of pounds it could 14 make a tidy sum!</p> <p>15 MR SMITH: It possibly could be. My Lord, we have set out 16 our position in the skeleton argument. There's really 17 the two pieces of material which your Lordship will see 18 at volume 4 of the authorities bundle.</p> <p>19 MR JUSTICE DAVID RICHARDS: I'll tell you what, why don't 20 I -- are you all going to -- what's the position on the 21 CMC? Who is going to be -- all the parties here today 22 are going to be represented there?</p> <p>23 MR TROWER: Yes, as I understand it.</p> <p>24 MR JUSTICE DAVID RICHARDS: I am thinking both on this 25 and 37 I've said I'll have a look at it. Why don't</p> <p style="text-align: center;">Page 204</p>

<p>1 I have a look at this? It may well be your written 2 submissions completely adequately deal with the point 3 and I don't need oral submissions, but if I do I could 4 ask for them. 5 MR SMITH: Yes, grateful, my Lord. 6 MR JUSTICE DAVID RICHARDS: So, Mr Trower, does that deal 7 with everything so far as you're aware? 8 MR TROWER: I think it does. We have now gone through 9 I think all the issues that were listed for hearing over 10 this last eight days. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR TROWER: My Lord, so it's really whether your Lordship 13 has any further questions. 14 MR JUSTICE DAVID RICHARDS: There are two points I wanted to 15 raise at the moment. 16 One was just to go back to this business about 17 interest rates on foreign currencies and what, if any, 18 part that has to play. It is difficult for me to work 19 out whether it does but I have a sense that it could 20 have a part to play on some of the things that we've 21 been discussing today. I just am not sure. 22 MR TROWER: Yes. 23 MR JUSTICE DAVID RICHARDS: I mean, if it's not an issue 24 that arises -- that needs to be decided, then I shan't 25 decide it.</p> <p style="text-align: center;">Page 205</p>	<p>1 obviously that's going to be interest on a sterling 2 denominated sum so there isn't, as it were, a Ruritanian 3 problem at least in relation to that. 4 MR JUSTICE DAVID RICHARDS: Correct. 5 MR DICKER: I confess, having sought to consider the point 6 prior to making my submissions in relation to question 7 28, I couldn't immediately identify any other example 8 which, as it were, in this case would necessitate an 9 answer from your Lordship. 10 So we would respectfully invite, unless during the 11 course of your Lordship preparing your judgment you 12 decide it turns out to be necessary, it may be an issue 13 that doesn't need to be added to the long list already 14 in front of your Lordship. 15 MR JUSTICE DAVID RICHARDS: I follow. 16 Mr Zacaroli? 17 MR ZACAROLI: I don't dissent from that. 18 MR JUSTICE DAVID RICHARDS: That's very helpful. Thank you 19 very much. I will keep it under review and if I reach 20 the point of thinking I simply can't in good conscience 21 decide an issue without broaching that one, I'll have to 22 come back to you on it. 23 The only other thing is did say I would look at the 24 submissions issue 39, which I have done to some extent. 25 Although I had hoped to, but haven't, read the</p> <p style="text-align: center;">Page 207</p>
<p>1 MR TROWER: Yes. 2 MR JUSTICE DAVID RICHARDS: But if it's an issue that needs 3 to be decided, I do need to consider that and consider 4 how best it is approached. 5 MR TROWER: My Lord, where the administrators are on that, 6 so far as need, is they don't take the view there is an 7 a necessity for the answer based on the position which 8 arises in fact on the ground in relation to this 9 administration. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR TROWER: However, they quite appreciate that 12 your Lordship may want to consider the point as part of 13 a reasoning of analysis that your Lordship goes 14 thorough. If your Lordship does, so be it. We quite -- 15 MR JUSTICE DAVID RICHARDS: I follow that. I think that 16 would be so if it was really -- if really it was, if you 17 like, necessary to address it, which I suppose it might 18 or might not be. 19 MR TROWER: Yes. We don't need it for the purposes of 20 administering this estate. Let me put it that way. 21 MR JUSTICE DAVID RICHARDS: Mr Dicker. 22 MR DICKER: Can I just add one point, which is the example 23 my learned friend Mr Zacaroli described as the most 24 important one, and I dealt with it first, where one is 25 concerned with interest under the Judgments Act rate,</p> <p style="text-align: center;">Page 206</p>	<p>1 transcripts of what you all said specifically on that. 2 The one issue that I did just want to touch on, I think, 3 related to Sempra Metals. 4 MR TROWER: Yes. 5 MR JUSTICE DAVID RICHARDS: Now, Mr Dicker, I think, accepts 6 that you can't -- that there could not be used by 7 a creditor a Sempra Metals-type claim just to get 8 interest for the time value of money. There is, 9 I think, a statement to that effect in your skeleton. 10 Mr Dicker looks a little puzzled by that. 11 MR DICKER: My Lord, it wouldn't be provable. 12 MR JUSTICE DAVID RICHARDS: No, I think we were talking 13 about non-provable -- I may be wrong. Oh, I see. This 14 comes on to another point. I mean, my understanding -- 15 who should I address? I'm not sure. Maybe it doesn't 16 really matter. Mr Trower, I'll address you for the 17 moment. 18 My understanding of Sempra Metals is that it's 19 actually a claim for loss served by the claimant. 20 MR TROWER: Yes. 21 MR JUSTICE DAVID RICHARDS: So it's not a claim for interest 22 on the debt that was outstanding. 23 MR TROWER: No. 24 MR JUSTICE DAVID RICHARDS: You say you should have paid me 25 this money on a particular date, anyway before now, and</p> <p style="text-align: center;">Page 208</p>

<p>1 you didn't and I have suffered loss, which is not too 2 remote and all the rest of it, or subject to all the 3 constraints on the recovery of damages at common law. 4 Of course it may depend whether it's a contractual claim 5 or a tort claim, I suppose. 6 So I'm not quite sure how that really plays out on 7 any particular facts actually, but what I did wonder was 8 this -- and that's part of the difficulty with 9 Sempra Metals claim because it's rather elusive in 10 a sense. 11 MR TROWER: Yes. 12 MR JUSTICE DAVID RICHARDS: But it's certainly -- what you 13 certainly can't do is to say, "I've been out of my money 14 for a year and therefore I should have interest". 15 That's not what the claim is about at all. 16 MR TROWER: Yes. 17 MR JUSTICE DAVID RICHARDS: But is it -- if there is such 18 a claim, is it a provable claim? 19 MR TROWER: I probably ought to sit down at this stage and 20 leave it to the parties just to make the points on this 21 because I think it's -- I'll come in after. 22 MR JUSTICE DAVID RICHARDS: All right. Mr Dicker. 23 MR DICKER: My Lord, the short answer to your Lordship's 24 last point is, no, it's not. 25 MR JUSTICE DAVID RICHARDS: Right.</p> <p style="text-align: center;">Page 209</p>	<p>1 Lord Hope and Lord Nicholls both express, on one view, 2 slightly divergent opinions as to what evidence is 3 required, but take an example where a creditor has had 4 to go out and borrow at, say, market interest rates. 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR DICKER: The interest which he would have to pay is 7 capable of giving rise to a claim for damages at loss, 8 represented by the amount he's had to borrow in the 9 interest on that amount within the concept of 10 Sempra Metals. 11 MR JUSTICE DAVID RICHARDS: Would he have had to notify his 12 contracting party that he was doing that? You have 13 questions of, you know, if it's a contractual claim, if 14 it's a breach of contract claim it has to be in the 15 contemplation of the parties. It might be said it is in 16 the contemplation of the parties that I will be 17 borrowing funds in order to undertake my -- or in the 18 period before I'm due payment, I suppose. 19 MR DICKER: And, again, to some extent that's addressed in 20 the speeches of their Lordships in Sempra Metals and, 21 again, there is a slight difference between Lord Hope 22 and Lord Nicholls. Lord Hope appears to take an 23 approach that it's almost as a matter of common sense if 24 money is not paid a party will suffer loss. 25 Lord Nicholls is slightly more insistent on bringing any</p> <p style="text-align: center;">Page 211</p>
<p>1 MR DICKER: Because it is in substance a claim for the time 2 value of money. 3 MR JUSTICE DAVID RICHARDS: Well, is it? 4 MR DICKER: To the extent it's post-insolvency it would not 5 be provable; that's certainly -- 6 MR JUSTICE DAVID RICHARDS: Right. 7 MR DICKER: -- the approach we took in our skeleton at 8 458 -- 9 MR JUSTICE DAVID RICHARDS: That may be what I misread. 10 458. 11 MR DICKER: It's 458, sub-paragraph 2, the first sentence. 12 MR JUSTICE DAVID RICHARDS: Yes, I see, excluded from proof. 13 MR DICKER: Now, there is, and I don't have it to hand, some 14 authority in bankruptcy arising out of the old 15 Bankruptcy Act which talked about interest or a claim 16 akin to interest which deals with sums, although not 17 formally interest, nevertheless to be regarded within 18 the scope of that provision. We have therefore, as it 19 were, almost conceded that this not a provable claim 20 entitled to come out at level 1. 21 MR JUSTICE DAVID RICHARDS: Because what you say there, 22 which is measured solely by the time value of money. 23 MR DICKER: And to take an example. Your Lordship is quite 24 right, on one day it's not entirely easy to tease out of 25 Sempra Metals precisely when the claim will exist and</p> <p style="text-align: center;">Page 210</p>	<p>1 claim within the sort of old-fashioned 2 Hadley v Baxendale contemplation of the parties and some 3 sort of evidence to demonstrate it. 4 My Lord, I didn't take your Lordship through the 5 details -- 6 MR JUSTICE DAVID RICHARDS: What I don't fully understand, 7 and I will read Sempra, is what Lord Hope is talking 8 about there would normally be -- that's why you have the 9 statutory power to award interest, to take account of 10 the sort of generally the loss that might be anticipated 11 a party has suffered by being out of their money. It's 12 not general damages but that's the point of that. 13 MR DICKER: My Lord, that was certainly at least the benefit 14 of the statute whilst prior to the decision in 15 Sempra Metals. Obviously it required a creditor 16 actually to go out, commence proceedings and get 17 judgment, and his Judgments Act rate interest would only 18 stem from the date of interest. 19 MR JUSTICE DAVID RICHARDS: From the date of breach, from 20 when -- he would get judgment rate from the judgment, 21 but he asks the court in its discretion to award him 22 interest from a breach. 23 MR DICKER: Yes. Your Lordship's question is whether or 24 not, therefore, Sempra Metals operates in this area at 25 all and, if so, to what extent?</p> <p style="text-align: center;">Page 212</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR DICKER: It plainly operates in this area.</p> <p>3 MR JUSTICE DAVID RICHARDS: I can see it operates in an area</p> <p>4 where there's some unusual loss that the innocent party</p> <p>5 suffers which is obviously not compensated by the sort</p> <p>6 of award of interest which the courts would normally</p> <p>7 make.</p> <p>8 So, I mean, for example -- I don't know -- some</p> <p>9 clause in the loan agreement that the successful party</p> <p>10 had taken out which provided that if repayment were not</p> <p>11 made on a particular date some particular -- I won't use</p> <p>12 the word "penalty" -- payment had to be made which</p> <p>13 wouldn't be compensated by an award of damages. In</p> <p>14 those circumstances, I suspect that would come within</p> <p>15 the second limb of Hadley v Baxendale so it would be</p> <p>16 dependent upon the contract-breaker having knowledge of</p> <p>17 that, but in those circumstances it may well be you</p> <p>18 would have a Sempra Metals claim.</p> <p>19 MR DICKER: My Lord, yes. The question, however, is whether</p> <p>20 it's only in unusual circumstances, as described by your</p> <p>21 Lordship, and there's certainly no suggestion -- the</p> <p>22 word "unusual", to my recollection, doesn't appear in</p> <p>23 any of the speeches as a requirement for damages.</p> <p>24 My Lord, I am conscious we could --</p> <p>25 MR JUSTICE DAVID RICHARDS: Would the best thing be, shall</p> <p style="text-align: center;">Page 213</p>	<p>1 Sempra Metals, if that's what you would wish.</p> <p>2 MR DICKER: My Lord, can I suggest perhaps, subject to my</p> <p>3 learned friends, if your Lordship in the first instance</p> <p>4 would have a read, as your Lordship I think indicated,</p> <p>5 of Sempra Metals and considers whether or not anything</p> <p>6 more is required. I'm just concerned that if we are to</p> <p>7 make full and proper submissions to your Lordship on</p> <p>8 this issue, I certainly wouldn't be in a position to do</p> <p>9 so tomorrow morning.</p> <p>10 MR JUSTICE DAVID RICHARDS: Right.</p> <p>11 MR TROWER: Because I was going to suggest that</p> <p>12 your Lordship's suggestion was a good one because --</p> <p>13 MR JUSTICE DAVID RICHARDS: That I --</p> <p>14 MR TROWER: That we should deal with it while we're going.</p> <p>15 I know it's very tempting to stop. We do have tomorrow</p> <p>16 but if my learned friend isn't in a position to do it,</p> <p>17 so be it, but we are -- the only other real -- if</p> <p>18 there's a realistic prospect that we're going to have</p> <p>19 a bit more oral argument, the only other realistic way</p> <p>20 of doing it is putting it off for ten days until the</p> <p>21 next CMC which then rather clogs it up. Ultimately, of</p> <p>22 course, I'm in your Lordship's hands but we would have</p> <p>23 a preference for dealing with it tomorrow if the parties</p> <p>24 are in a position to deal with it.</p> <p>25 MR JUSTICE DAVID RICHARDS: Mr Dicker has some hesitation on</p> <p style="text-align: center;">Page 215</p>
<p>1 we -- I mean, I am anxious not to bring everyone back</p> <p>2 tomorrow for what transpires to be just a few minutes.</p> <p>3 As I said to you, I have read your written submissions</p> <p>4 on this but I haven't read the transcripts on this,</p> <p>5 which I very much want to, nor have I read Sempra Metals</p> <p>6 or any commentary on -- I haven't read Sempra Metals</p> <p>7 from the full judgment, nor any commentary that there's</p> <p>8 been on it. It may be if I did all that I wouldn't need</p> <p>9 any more help; maybe I would.</p> <p>10 MR DICKER: Can I just add this: the reason I didn't take</p> <p>11 your Lordship through it -- actually there were two</p> <p>12 reasons.</p> <p>13 First of all, it seemed to us the issue</p> <p>14 your Lordship in a sense needs to decide was whether if</p> <p>15 there is a damages claim, how that would operate within</p> <p>16 the insolvency regime, rather than to set out the test</p> <p>17 for when a damages claim might exist.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR DICKER: The second point is if we do need to address the</p> <p>20 second, there is an issue under Sempra Metals as to</p> <p>21 precisely what is covered and it may not be something</p> <p>22 that can be done in the course of ten minutes of short</p> <p>23 oral submissions.</p> <p>24 MR JUSTICE DAVID RICHARDS: I'm perfectly content to come</p> <p>25 back tomorrow for a more extended exposition of</p> <p style="text-align: center;">Page 214</p>	<p>1 that.</p> <p>2 MR DICKER: It's a potentially big issue and, as I said,</p> <p>3 I didn't prepare for it. I'm not sure that anyone else</p> <p>4 did and I don't want to make submissions off-the-cuff</p> <p>5 which may not provide your Lordship with the assistance</p> <p>6 your Lordship deserves.</p> <p>7 MR JUSTICE DAVID RICHARDS: Mr Zacaroli, do you want to say</p> <p>8 anything about this?</p> <p>9 MR ZACAROLI: My Lord, the position we took on this was that</p> <p>10 the Sempra Metals claim could cover a variety of</p> <p>11 possibilities. To say that a Sempra Metals claim is or</p> <p>12 isn't provable is rather difficult. It entirely depends</p> <p>13 on what the substance of that claim is. However, the</p> <p>14 particular way in which it's asserted that Sempra Metals</p> <p>15 helps the creditor funds is solely to create a damages</p> <p>16 claim to reflect the time value of money after the</p> <p>17 administration. That's the way the claim is described</p> <p>18 in my learned friend's written submissions. My learned</p> <p>19 friend read that, 458.2 of the skeleton:</p> <p>20 "It is a claim for damages for compensation for loss</p> <p>21 caused by late payment in respect of the period after</p> <p>22 the commencement of the insolvency which is measured</p> <p>23 solely by the time value of money."</p> <p>24 So on that premise, assuming that there is such</p> <p>25 a claim, our response was a short one which is that it</p> <p style="text-align: center;">Page 216</p>

<p>1 can't possibly be the draughtsman of the Act's intention 2 that such a claim survives because the -- 3 MR JUSTICE DAVID RICHARDS: You made that point. 4 MR ZACAROLI: That's our response. 5 MR JUSTICE DAVID RICHARDS: All right. Look, I think what 6 I would find most useful is not to deal with it 7 tomorrow. The reason for that is -- I mean, partly 8 because of course I do want counsel to be in as best 9 position as they can be to address it, but partly 10 because I think I would be in a better position to hear 11 submissions on this once I have done the homework that 12 I've suggested. Indeed, having done that, I may say 13 I don't need to hear further submissions but would we be 14 able to have submissions on that effectively at the CMC? 15 I would obviously give you -- I'll look at this tomorrow 16 and I'll give you notice as to whether I thought I 17 needed further assistance. 18 MR TROWER: In principle I'm sure we can. My only 19 hesitation is that we're not yet sure what the ambit of 20 the dispute is going to be at the CMC so we don't know 21 how much time we need for what has got to be decided at 22 the CMC. 23 MR JUSTICE DAVID RICHARDS: From the court's point of view 24 that may not be a great problem. 25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 217</p>	<p>1 anything else that, on going through everything on 2 issue 39, I need more help about, but I would give you 3 warning of that. Also the parties will give 4 consideration to the issues which were listed for this 5 hearing but which have been parked, the ones relating to 6 those various agreements and so on. 7 MR TROWER: Indeed, 31 -- yes, indeed. 8 MR JUSTICE DAVID RICHARDS: Yes. But, on that basis, that 9 then concludes this hearing. 10 MR TROWER: My Lord, I think it does, yes. 11 MR JUSTICE DAVID RICHARDS: Very good. A day early. 12 MR SMITH: My Lord, sorry, could I mention one matter? 13 Sorry to go back to the leap year point. I'm just 14 reminded there is a case that has some bearing on it 15 which isn't referred to in the paragraphs of our 16 skeleton argument because we found it subsequently. 17 Your Lordship won't see the reference there. It's 18 a decision of Irish High Court called 19 Harrahill v Kennedy. Just to give your Lordship the 20 reference. It's in tab -- 21 MR JUSTICE DAVID RICHARDS: It will get on the transcript 22 but what I might just do is note it in your -- 23 MR SMITH: The relevant passages are in our skeleton 24 argument. 25 MR JUSTICE DAVID RICHARDS: Which paragraph again?</p> <p style="text-align: center;">Page 219</p>
<p>1 MR JUSTICE DAVID RICHARDS: I'm not absolutely confident of 2 that, but I'll have to ask and find out what the 3 position is there because it may affect some of you; 4 I don't know. 5 MR TROWER: Yes, no, it may be that it does, but is the best 6 way of leaving it then that your Lordship anyway on 7 a provisional basis would either hear further argument 8 at the CMC, unless it becomes apparent we need the CMC 9 for other arguments? 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR TROWER: Or will notify us that your Lordship doesn't 12 require -- 13 MR JUSTICE DAVID RICHARDS: I will try and notify you one 14 way or the other. I also think that once I've read the 15 materials I've referred to, any further submissions 16 I need would be fairly focused, as it were. I think it 17 would certainly greatly shorten any submissions if 18 I have done that. 19 MR TROWER: Yes. 20 MR JUSTICE DAVID RICHARDS: All right. Then just to be 21 clear about it, so far as the CMC is concerned, we have 22 whatever the issues are on the CMC. 23 MR TROWER: Yes. 24 MR JUSTICE DAVID RICHARDS: And we have this possibility of 25 further submissions on Sempra Metals and possibly</p> <p style="text-align: center;">Page 218</p>	<p>1 MR SMITH: I think it began at paragraph 20 or thereabouts. 2 MR JUSTICE DAVID RICHARDS: Hold on. I think you're right. 3 Let me just go there. 4 MR SMITH: Yes, it's paragraph 22 onwards. 5 MR JUSTICE DAVID RICHARDS: 22. 6 MR SMITH: It's a decision of the Irish High Court called 7 Harrahill v Kennedy and it's in authorities bundle 1E, 8 tab 168 -- sorry, 163A. 9 MR JUSTICE DAVID RICHARDS: Ill tell you what, I'll just 10 have a look at it to make sure. Harrahill v Kennedy. 11 Mr Trower, have you commented on this decision at 12 all? 13 MR TROWER: I'm not sure I have, my Lord. 14 MR JUSTICE DAVID RICHARDS: If you want to say anything, let 15 me have a paragraph in writing. 16 MR TROWER: We'll deal with this in writing, if we may. 17 MR JUSTICE DAVID RICHARDS: Yes. Good. Very well. Thank 18 you very much, Mr Smith. 19 Thank you all very much. I will reserve judgment. 20 (4.55 pm) 21 (The court concluded) 22 23 24 25</p> <p style="text-align: center;">Page 220</p>

1	INDEX	
2	Submissions by MR ZACAROLI	1
3	Submissions by MR TROWER	44
4	Reply submissions by MR DICKER	89
5	Reply submissions by MR SMITH	111
6	Submissions by MR ZACAROLI	120
7	Submissions by MR DICKER	160
8	Reply submissions by MR ZACAROLI	178
9	Housekeeping	187
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
	Page 221	

A	120:2,5 135:18 138:10 140:8 140:9,12,20 141:15 145:24 146:1 157:11,16 158:5 169:7 169:13 170:9 182:15,20 184:6,12,15 203:4,5 212:9	66:23 67:7 67:14,20,21 85:16,19,22 108:12 112:23 113:3 113:5,23 114:1 115:5 116:24 actual 8:9 17:22,23 20:17 22:11 45:22 79:7 84:10 Act's 217:1 acute 47:4 56:20 ad 193:24 196:5 add 72:6 154:14 177:22 178:10,14 179:1 206:22 214:10 added 44:22 207:13 addition 79:25 165:13 175:19 additional 79:25 80:24 156:23 163:7 168:1 175:13 177:2 address 81:2 91:15 120:14 206:17 208:15,16 214:19 217:9 addressed 80:19 211:19 addresses 175:2 195:5 addressing 21:3 171:1 adds 74:3 adequately 205:2 Adjournment 106:5 adjudication 25:1 administering 8:8 206:20 administration 1:9 4:23 5:6 5:15,24 6:5 9:2,23 11:13 11:17 15:11 16:11,20,25 18:6 36:10	38:11,14 39:6 40:14 43:13 44:15 45:2,25 46:8 50:9 56:13 56:18 58:25 68:21 69:19 69:22 70:2,3 70:15 82:18 85:7 90:3,17 91:12 96:16 96:22,25 97:4 98:18 105:10,13 106:16 108:12,14,22 111:16,18 112:21 115:4 115:7,11,15 115:18 116:5 118:4,8,21 119:1 130:18 138:24 142:18 143:4 143:10,25 160:18 161:3 161:6,8 166:22 179:25 180:11 181:10 206:9 216:17 administrator 17:19 19:20 20:7 46:23 67:6 70:13 96:1,2 98:21 116:8 administrators 3:18,25 11:6 44:10 86:8 86:17 95:21 96:14 97:2 107:13 108:6 108:15 138:6 152:13,25 192:6,12,23 195:13 196:7 196:21 197:1 198:24 199:1 199:16 200:2 200:4,13,19 200:24 201:19,24 203:2 206:5 admissible 28:9 35:6 admission 53:5 admit 198:25 admitted 48:16 53:19 98:18	102:8 195:16 197:7,8 admittedly 89:8 181:13 admitting 196:11 adopt 71:20 72:4 196:8 198:22 adopted 25:24 74:16 193:13 196:13 204:2 adopts 9:9 advance 4:1 37:12 97:17 advanced 41:14 80:15 advantage 125:16 144:16 advantaged 87:13 advantageous 153:7 adverse 190:5 advised 51:23 advisedly 29:9 affect 1:24 32:6 94:24 143:19 218:3 affording 32:2 afraid 104:25 154:9 201:25 aggregate 126:16,16,18 140:12,18 185:21 aggregated 141:7 170:12 171:3,9 aggregation 195:17 ago 63:22 80:2 agree 3:18,20 5:5 7:8 45:20 72:2 110:18 114:14 126:23 130:5 130:6 184:12 agreed 34:9 186:12 191:22 195:16 199:21 200:23 202:1 202:8 agreeing 132:22 agreement 132:23 189:16 191:6	196:20 199:23 200:5 200:8 201:7 213:9 agreements 186:18 187:13,14 188:13 189:15,18,19 189:22 190:1 190:2,13 191:14,19,21 192:2 198:11 198:15 219:6 Ah 24:13 76:18 ahead 33:18 Air 58:7 61:12 61:22 62:2 62:11 102:7 103:5 akin 210:16 albeit 47:14 162:12 Allison 186:14 186:21,24 187:2,11,24 188:2,8 190:20,22 199:14 200:7 200:12,16,18 allocated 199:24 allowed 22:8 82:2 116:12 143:18 allowing 27:18 allows 16:14 alluded 56:16 alternative 108:1 ambit 217:19 amended 61:11 189:23 amount 5:14 5:17 7:3 9:1 9:25 12:3 13:21 14:23 15:25 16:13 16:24 17:7 17:10 21:20 22:8 27:4 28:18,22 31:14,17 32:7,9,14 35:15,15 36:8 37:23 37:24 38:5 43:10 45:21 48:15,19 53:18 57:25 58:3,14,15	59:2,14 63:15,17,18 64:17 68:6 70:20 71:16 77:17 82:7 85:10,18 89:10 98:1,5 98:10,11,17 99:8 102:24 103:18,22 104:1 108:17 108:21 122:9 123:16,17 126:16,18 127:3,4,11 131:16,18 136:23 137:7 138:15,20,21 145:23 151:13,13 156:7 160:23 162:4,6,18 163:16,22 166:11,24 167:2 168:12 170:23 177:9 179:12 182:20,24 185:21 196:23 197:7 211:8,9 amounts 41:3 50:18 145:18 148:2,10 170:17 analogous 158:4 analogy 121:6 157:9,9,20 174:4 analyse 127:2 analysed 155:8 165:20 analysing 57:18 analysis 37:11 54:25 72:3 89:4 145:14 167:20,24 177:13 199:5 206:13 anchor 120:25 annuity 21:12 21:15,23 annum 21:21 24:9 203:9 answer 1:25 71:24 85:15 87:14 96:14 96:15 106:15 106:25 107:1
----------	--	---	---	---	--	--

107:4,10 109:15 110:10,11 111:3 113:2 127:17 137:9 144:3 162:8 168:17 173:3 177:7,7 182:9,18 187:21 198:20 199:14 206:7 207:9 209:23 answering 160:24 161:19 184:7 answers 84:5 169:17 172:17 183:12 anticipated 212:10 anxious 214:1 anymore 77:20 anyway 24:19 28:1 32:12 72:3 87:1 130:19 144:18 208:25 218:6 apart 45:1 48:10 138:23 155:25 160:17 161:2 171:15 191:10 apparent 35:2 60:1 89:8 218:8 apparently 22:10 34:4 79:6 189:16 appeal 2:7,15 62:11 72:17 74:9 80:16 103:7 appear 14:21 80:14 113:22 213:22 appeared 3:1 25:20 appears 34:15 73:20 77:14 106:23 108:15 188:20 211:22 apples 150:17 applicable 25:8 26:23 27:17 35:11 45:1	45:12 60:5 65:13 93:10 173:8 178:3 application 15:9 29:12 39:7 64:3 78:10 79:15 134:10 174:14 191:18 192:7 192:8,19 193:1 194:6 194:21 applied 11:15 20:3 24:5 25:14 58:13 59:2,11,21 62:11 64:16 68:9 71:15 78:2,2,4,5 79:16 83:17 83:22 98:25 99:2,11,14 116:10 117:23 131:13,14,22 131:23 136:16,21 137:8 151:13 153:6 165:2 165:8 169:18 173:10 176:16 applies 1:23 15:17 23:15 23:16,22 27:20 38:22 39:13 56:19 62:23 78:5 109:16 111:15 115:12 118:1 133:23 153:23 158:10 159:17 167:20 apply 12:15 36:18 40:24 41:13 43:19 56:10 63:15 64:16,17 66:4,5 70:1,6 77:21 78:25 84:8 90:22 94:11 95:14 96:6 100:12 100:23 101:2 101:4 105:4 107:18 118:18 120:1	125:15,22 131:16 134:15 155:2 169:21 183:12 192:9 applying 16:23 21:15,17,18 24:20 39:10 46:14 66:11 100:25 103:7 105:11 116:15 159:14 172:17 195:10 appointed 103:13 apportionment 200:22 appreciate 180:23 198:9 206:11 appreciates 123:15 181:9 approach 6:1 10:9,22 11:4 12:25 14:6 16:24 25:7 29:11 42:5 45:9,14 65:15,16 68:22 70:16 70:17 71:14 71:20 74:12 74:15 83:16 84:2,3,15 88:22 91:9 93:24 100:11 100:19 109:12 164:11,11,18 170:12,13 171:4 174:7 176:19,22 177:15 189:12 196:3 196:9,13,13 196:16,19,23 197:2 198:10 199:3,15,24 200:9 210:7 211:23 approached 25:13 171:9 206:4 appropriate 47:13 65:16 141:17 173:9 195:25 appropriated 140:5,23	appropriately 1:5 appropriation 196:5,17,21 197:13,17 200:3 approval 34:5 35:2 arbitrator 113:13 area 7:6 96:7 212:24 213:2 213:3 areas 44:7 arguable 153:1 153:11 argument 2:25 15:8 18:12 19:5,11,12 20:22 21:25 22:9 29:8 40:23 50:21 71:5 75:8 80:15 81:10 87:4 108:1,4 112:9 134:2 136:24 141:13 149:11,21 150:8 152:5 152:10,15 156:19 158:21 159:24 164:19 165:16,17 166:18 171:6 174:4,16 175:3,21 180:7,24 191:16 199:16 200:10 202:19 204:5 204:16 215:19 218:7 219:16,24 arguments 87:8 123:11 124:16 218:9 arisen 43:6 arises 56:14 67:13 83:8 83:20,20 133:25 147:13 160:4 163:2 170:15 181:5 195:19 196:1 205:24 206:8 arising 12:19	29:25 79:24 122:5 129:16 130:24,25 133:21 181:20 210:14 arose 1:6 34:25 63:10 146:16 157:12 arrive 11:16 articulate 68:24 ascertained 28:18 90:3 96:18 ascertaining 55:17 73:15 113:15 ascertainment 4:24 aside 118:5 135:5 155:23 178:19 194:20 asked 1:8,21 86:15 96:14 96:15 97:3 106:14 110:7 198:12 201:20 asking 23:22 96:9 134:5 152:22 157:15 159:3 160:3,5 182:16 183:16,19 187:4 197:12 asks 16:9 198:17 212:21 aspect 88:24 90:7 124:1 131:20 137:6 137:6 140:24 184:6,17 196:22 aspects 125:16 178:18 assert 191:7,10 asserted 124:17 147:15 196:2 216:14 assessed 2:16 71:11 102:23 103:18 assessing 100:5 167:13 assessment 103:20	asset 54:3 assets 5:7 40:15 125:10 assignable 113:24 assist 41:17 89:16 117:21 117:21 160:9 186:1 188:2 189:25 assistance 216:5 217:17 assisted 66:21 69:16 109:25 192:1 assume 137:14 158:21 162:3 179:18 180:2 180:14 195:12 assumed 27:19 assuming 121:18 126:4 216:24 assumption 137:18 185:11 198:12 assured 31:15 31:16 32:20 attempt 100:17 attention 74:19 170:1 attract 108:13 108:19 attributable 112:3,5 attributed 164:14 author 109:23 authorities 4:18 11:10 20:24 21:2 80:5 90:12 95:16 97:7,9 112:7,11 114:17,21 174:8 204:18 220:7 authority 2:6 7:23 8:2,4 33:2,4 79:14 79:19 84:1 117:5 125:2 210:14 available 58:20 59:7 101:21 award 212:9 212:21 213:6 213:13 awarded 2:18	aware 81:4 191:18 192:5 192:6 194:14 194:24 202:8 205:7 <hr/> B B 37:1,4 101:7 114:19,22 122:7,13 159:1,2 back 1:5 3:9 4:16 6:10 9:25 10:9,14 10:22 11:1,2 12:21 13:2 13:12 14:12 14:14,20 15:5 16:18 16:25 18:5 18:15 20:2 21:7 23:11 34:20 35:18 36:18,25 38:2 41:4 46:4 59:17 61:19 63:9 64:25 65:2,3 66:9,24 93:6 94:9 99:15 103:9 105:12 106:16 107:16 112:15 116:2 116:20 118:10 119:24 120:7 124:1 131:8 132:5 138:3 145:20 148:2 149:1 156:21 174:20 184:20 205:16 207:22 214:1 214:25 219:13 background 45:14 73:4 balance 82:17 83:1,8,11 84:9 111:17 111:21 112:2 113:7,16,25 114:2 115:6 115:14 116:15,25 117:17 118:3 118:7,19 160:16 164:2 bankrupt
---	--	--	--	---	--	---

22:24	170:13	binding 200:6	25:25 74:19	146:6 179:13	68:15 72:8	216:21
bankruptcy	bearing 51:24	bit 45:8 50:13	75:2 98:24	180:1,10	74:7,8 86:5,6	causes 112:23
21:16,17,19	219:14	52:24 66:17	99:4	calculates	87:20 88:24	133:25
22:3,4,6,7,14	bears 44:24	72:19 76:13	brief 188:3,5	160:22	89:23 91:7	CDD 195:1,8
22:24 23:19	54:3 96:12	76:15 78:19	briefly 35:23	calculating	91:10 92:23	195:21
23:20 26:25	began 142:1	80:25 87:12	119:13	126:15	97:10 102:10	CDDs 195:10
27:2 59:17	220:1	89:5,12	178:17	138:10	107:15,23	cease 116:23
59:18,20,21	beginning 2:25	114:15	Brightman	145:22	113:11	ceases 6:14
70:21 74:25	41:10 44:21	121:21,25	122:6,25	168:12	117:15	136:12
98:2,12 99:2	54:4 55:15	122:7 131:4	155:19	174:10	118:17 120:5	cent 21:21 23:6
110:1 112:18	72:25 80:20	132:1 156:21	bring 22:11	calculation	121:2 123:13	23:7 24:1,10
112:18 113:8	122:15 129:3	169:21 171:5	79:7 115:13	113:22 170:8	123:14 124:5	24:11,16,17
113:23 114:3	139:5 146:3	194:25	147:2 157:11	180:9	126:22	24:19,19,21
210:14,15	begins 33:11	195:12	158:22 214:1	calendar	127:16,17	25:17,17
based 5:22	112:22	202:19	bringing 73:23	203:11,12	128:23	93:10 99:8
25:18 29:24	behalf 186:14	215:19	211:25	204:2	130:19 132:6	99:12,14,17
36:3 55:2	believe 2:10	bits 87:22	brings 9:18	call 116:11	132:11	134:17
73:16 89:2	149:24	bizarrely	broaching	called 2:9 72:7	135:10 138:6	166:10,16
133:21	199:18	203:18	207:21	219:18 220:6	138:15	172:6,11
136:15	benefit 16:9	Blake 14:16,19	broader 12:24	Canadian	139:25	182:24
138:14 155:5	17:16 18:2	35:20 70:23	12:25 160:2	76:22	145:14 156:3	197:20
156:24 174:4	95:9 116:4	71:9 97:8,12	broadly 128:15	capable 48:11	161:22 164:5	centre 64:4
174:23 206:7	144:12	112:8 114:8	brokerage	51:24 52:6	179:15 180:2	certain 11:8
bases 67:25	146:16,19	114:24 115:2	189:15	195:10 211:7	191:25	12:4 16:12
basic 56:3	149:5 153:8	115:23,24	Brothers 92:10	Car 29:3 34:4	199:19	16:13,14
91:11 95:1	153:14 154:8	116:2,20	122:5 123:1	34:16 61:5,6	204:11 207:8	22:19,19,21
106:15,25	157:12,21	119:23 120:1	155:9	79:24 80:16	219:14	27:25 36:6
107:4 110:16	158:1 185:15	120:18	brought 9:10	80:25	cases 21:5	40:5 67:3,9
basis 4:3,24	185:15	board 4:14	Buckley 29:15	care 46:14	35:12,17	68:4,10 70:2
10:17 11:16	212:13	46:15	29:19 30:21	careful 115:24	38:12 52:8	70:7 71:16
11:21 12:21	benefits 132:25	boil 161:21	32:14 33:1	carried 54:21	52:13 71:6	95:24 96:5,9
21:24 24:15	133:9,13	boils 126:14	34:22	61:8 197:24	71:10 72:1	96:10,12,20
25:16 33:16	134:3 137:2	book 27:13	built 56:24	carries 22:9	74:16 79:24	96:22,23
40:6 51:4	151:19	109:24	71:1	107:15	94:17,19,22	97:4 101:21
56:4 83:16	159:25 174:9	borrow 211:4,8	bundle 3:10	carry 103:1	102:1 119:5	174:9,15
109:14	174:19	borrowing	13:8 21:11	107:8,9	119:6 161:22	certainly 28:2
138:13	182:15	211:17	27:12 28:7	carrying 47:23	174:5	30:17 32:13
156:14	183:21,25	bottom 6:22	29:4 33:8	124:10	catch-up 81:7	49:23 54:7
159:14	184:12,15	22:1 24:12	34:21 47:10	case 2:7,19 4:8	81:11,16,24	72:2 93:12
161:10	bespoke 189:17	27:1 28:14	60:2 72:11	5:6,21 6:8	82:5	95:2 99:23
167:23	189:20	30:11 31:12	80:5 102:10	9:3 12:2,5	categories	145:5 154:3
171:10 173:9	best 55:8	33:12,20,23	110:12,12	14:10 15:22	139:17	156:12,13
175:18,22	122:15	34:5 35:3,9	112:11,16	15:23 19:7	category 19:25	169:20
178:20	152:13	75:7	114:18,21	20:10 21:10	caught 58:24	209:12,13
179:19 180:2	186:21	bound 132:23	121:18	21:10,12	116:6 186:6	210:5 212:13
198:24	201:14 206:4	Bower 7:11	164:24	24:8 25:8,13	cause 44:16	213:21 215:8
202:11 218:7	213:25 217:8	110:24 135:5	204:18 220:7	25:22,24	45:3 48:2	218:17
219:8	218:5	136:12,16,17	bundles 22:15	26:1,4,7,15	49:6 57:5	cetera 31:3
Baxendale	bet 123:21	137:8 159:14	59:19 84:1	26:16,19	66:23 67:7	92:22 137:2
212:2 213:15	better 124:4,6	178:3	203:14	27:6 29:3,5	67:14,20,21	Chalmers
BCCI 114:17	134:21 137:5	breach 2:17	business	29:13,21	72:7 85:16	109:19,21
116:20	144:8 149:7	156:16,24,25	205:16	32:13,22	85:19,22	110:5
120:15	185:14 189:5	157:11,12,13	buying 101:9	33:5,7 34:21	108:12 115:5	chance 121:18
bear 11:7	217:10	174:5,11,19	buys 101:16	35:10 37:10	127:14	201:11
19:15 46:6	beyond 136:24	211:14		40:10,15	144:14	Chancellor
46:18 67:3,9	big 172:21	212:19,22	C	42:20 43:2	caused 5:14	72:17 74:9
68:4 70:2,7	216:2	breadth 114:12	C 97:23 159:1	47:4,5 48:6,9	27:4 41:8	chances 12:19
95:24 96:9	biggest 204:10	break 44:2	159:2 191:18	48:19 49:15	129:10	change 41:6,8
96:10,20,22	billions 204:13	57:14 152:6	191:21	50:21 55:2,2	163:11 168:7	90:8
96:23 110:4	Bills 109:22	154:2,6,9	Cairns 72:17	59:13 64:5	175:19	changes 1:24
160:25	bind 200:3	Bridges 21:11	calculated	67:4,12	183:17	chapter 56:9

69:23 characterisat... 110:22,23 165:24 characterise 53:4 77:22 characterised 71:21 characteristic 62:21,23,25 170:20 171:10 characteristics 17:4,13 18:1 18:3 19:1,16 36:3 54:15 62:19 71:17 83:19 171:13 chase 117:25 chasing 121:8 check 192:13 202:4,5 Chitty 21:25 78:17 79:5 Chitty's 75:8 choice 52:11 chooses 141:16 chose 113:3,5 113:23 114:1 116:24 circulated 110:11 circumspecti... 80:25 circumstance 136:24 151:6 circumstances 46:25 51:7 59:5 69:8,12 123:20 158:1 181:3,7 183:24 195:19 198:16 213:14,17,20 cite 14:9 cited 24:17 26:6 33:7,11 35:17 114:9 123:2 182:8 cited/approved 34:16 cites 14:8 35:1 citing 34:3 claim 2:17 5:11 8:19 14:10 15:6,6 17:20 25:25 30:15 31:8 33:14 34:3,16,17,25 35:1,11,13	40:14,16,17 54:11 62:4 62:14 63:17 63:19 67:18 67:19 70:19 71:15 72:22 81:21 83:3 83:21,21 85:6,9,20,25 86:1 88:6 93:7,18,22 98:1,8,14,19 103:5 108:11 108:13,16,17 108:18,21 111:20,21 113:25 116:9 118:2,16,23 118:25 121:16 124:5 124:18 125:7 125:11 126:12 127:3 127:7,14,20 128:4,10,12 128:25 129:5 129:8 130:20 130:24,25 131:2,7,14,14 131:21,22,22 131:23,23 132:19,21 133:2,11,15 133:20,20 134:9,24 135:17 136:15,17,18 137:23 138:14,16,18 138:22,23 139:23 140:1 140:12,16,20 141:20 143:3 144:13 145:18,21 146:11 147:6 147:13,14 149:4,8,24 150:15 151:6 151:9 152:2 152:8,17 153:16,20 154:20,24,25 155:5,7,11,15 156:12,13,14 156:23,23,24 157:2 158:16 158:25 159:10,21 160:16,20,23 161:5,10,11	161:13,23 162:1,15 163:2,13,16 164:1,2,25 165:6,20 166:11,17,19 166:20 167:3 167:8 168:12 168:20,24 169:1,9 170:8,14,18 170:21 171:11,14,19 173:12,15,20 174:14,17,18 174:22,23,24 175:3,25 176:23 179:21 180:5 180:18,22 181:2,20 183:6 187:12 187:15 188:13,19,22 188:23,24 190:7,8 191:5,8,10 195:16 196:10,11,22 197:18 198:25 199:20 208:7 208:19,21 209:4,5,9,15 209:18,18 210:1,15,19 210:25 211:7 211:13,14 212:1 213:18 214:15,17 216:10,11,13 216:16,17,20 216:25 217:2 claimant 22:10 79:6 99:7 136:18 174:9 208:19 claimant's 196:24 claimed 15:25 191:5 claiming 49:3 162:10 169:7 196:20 claims 27:24 28:8 46:7,10 68:2 71:14 73:9,23 83:18 87:5,6 94:1 95:2,7 100:12,14	108:4 111:15 111:25 117:3 121:22 155:22 164:14 172:20,21 173:23 177:24 179:24 195:14,25 196:15 197:3 197:4,5 198:4 200:5 clause 213:9 claw 138:3 clawed 41:4 clear 2:7 3:22 24:16 30:2 32:13 38:20 41:10 43:16 47:7,8 50:7 58:17 69:8 116:22 133:7 136:24 164:19 176:18 200:21 218:21 clearer 51:17 clearest 110:20 clearly 4:19 11:23 19:10 28:2 38:12 52:15 53:19 73:17 74:11 114:11 122:10 164:20 182:19 184:19 193:21 clever 52:11 clients 199:25 client's 194:6 clogs 215:21 close 108:16 close-out 85:4 85:9,18,19,25 108:17,18,20 108:20 clouded 193:15 193:16 CMC 187:21 192:11 194:18 204:21 215:21 217:14,20,22 218:8,8,21,22 code 46:16 79:21 86:22	128:20 129:21 130:15 131:6 131:10,15 142:5,11 143:4 177:19 collateral 188:16,17 column 73:1 combination 36:22 come 1:5,9 6:10 13:12 47:17 49:18 54:22 61:10 82:3 86:20 88:18 117:10 117:16 124:1 132:5 134:19 139:3 207:22 209:21 210:20 213:14 214:24 comes 15:19 27:13 54:16 87:4 110:3 121:17 125:20 128:5 129:2 147:24 151:9 153:21 159:5 182:16 183:5 208:14 comfort 102:8 199:16 coming 2:13 45:19 84:18 commence 44:15 49:15 212:16 commencem... 4:25 51:11 55:5 56:18 56:22 57:6,7 61:20 65:3 66:10 69:14 69:22 82:18 85:7,20 216:22 commences 50:24 comment 8:1 30:20 34:12 34:22 109:7 commentary 214:6,7 commented 220:11 comments 29:9 29:15 30:10 32:14 33:4	commercial 101:13 Commission's 124:20 committed 22:24 23:19 commodity 155:12 common 4:22 5:1,17 6:16 102:15,22 138:1 139:21 141:12 185:13 190:3 209:3 211:23 communicated 200:1 companies 21:18 27:6 30:23 59:24 60:2 73:8 80:4,11 company 5:20 27:25 28:10 34:4,17 37:10 44:14 68:20 83:3 88:20,24 103:11 111:20,25 115:15 116:4 117:18,18 118:3 119:19 120:2,6 142:18,24 143:24 147:15 155:24 Company's 33:8 comparator 53:21 compare 118:22 126:18 136:25 154:15 compared 9:12 183:21 compares 150:18 comparing 134:5 145:16 147:20 151:21 157:14 158:9 163:19 comparison 69:16 119:5 146:21 171:2 171:8 177:3	177:8 compensate 6:5 7:25 36:13 45:23 54:10 100:1 107:20 152:19 compensated 10:3 43:1 55:24 143:5 213:5,13 compensating 180:13 compensation 48:24 99:21 161:17,18 163:10,17 164:7,16 165:14 168:7 168:14 169:16 174:1 175:9,12,13 175:17,19,22 175:23 176:1 176:9 216:20 compensatory 8:3 competition 123:25 complain 86:20 99:23 124:3 174:2 complaining 138:19 complaint 86:23 87:9 150:12 complaints 2:18 complete 40:13 44:16 45:5 48:2 49:6 57:5 66:23 67:7,14,20,21 85:16,19,23 108:13 131:5 142:5,11 177:19 completely 7:10 69:10 132:15 142:25 151:10 182:22 205:2 complicated 94:8 111:24 169:18 171:24 component 196:10,16 199:21 200:5
--	---	---	--	---	--	---

composite 132:21 189:17	218:1 conflict 129:4 confusing 142:3 confusion 79:14 connected 107:6 conscience 207:20 conscious 109:2 213:24 consensus 196:4 198:23 consequence 54:13 70:11 86:11 92:4 146:11 147:8 147:9 149:6 173:11 175:15 consequences 66:18 92:21 107:7,12 consequential 46:1 consider 15:19 85:14 139:17 206:3,3,12 207:5 consideration 32:2 97:18 219:4 considered 13:9 47:5 73:17 121:3 190:25 considering 18:16 96:1 113:12 149:24 170:12 196:10 concerns 107:25 160:13 concluded 203:2 220:21 concludes 194:21 219:9 conclusion 28:22 29:1 35:14 46:24 91:10 92:10 124:19 158:5 199:2 conditions 114:25 confess 177:19 207:5 confident	construction 4:10 5:23 6:2 45:10 47:23 49:10 52:14 52:15,20,22 58:25 65:17 65:25 70:12 81:4 89:23 107:13,16 117:22 125:4 143:2 187:5 195:22 198:11 construe 5:24 34:14 56:9 65:24 89:25 110:3 construed 4:13 9:17 96:21 192:2 construing 79:20 contain 22:4 contained 77:23 contemplate 52:25 contemplation 211:15,16 212:2 contend 20:9 38:6 51:17 55:3 170:8 contending 167:16 contends 173:19 content 192:7 199:14 200:8 200:18 214:24 contenting 51:2 contentions 170:3 contentious 85:1 context 4:14 5:25 7:16 42:22,25 43:2 48:21 49:1 56:14 56:15 58:21 62:7 70:24 84:9 90:22 91:3 120:18 152:22 174:17 190:14 201:18 contexts 48:7	contingencies 66:22,24 78:3 contingency 3:19 7:20 8:10,15 9:14 12:9,19 14:1 14:5 15:7,17 15:20 16:10 17:15,21 18:20,24,24 20:11,16 22:7 29:12 29:25 33:16 40:8,9 70:19 71:2 73:18 77:17 78:9 81:16 84:17 86:6 94:2,6 94:19,20 95:2,8,23 96:5,13 97:2 97:25 98:7 100:22,23 101:12 contingent 3:19 5:4,9 6:9 7:19 8:6 9:10 10:10 10:23,24 11:11,24 12:3,3,6,15 15:6,13 17:2 17:15,20 18:15,20 19:8,14,14,15 19:24,25,25 20:6,8,10 21:16,19 22:5 25:21 26:25 27:17 27:20 28:1,3 33:14 36:2,5 40:22,24,25 41:7,12 42:16,18,19 43:18 44:12 45:12 46:22 47:19 54:23 55:6 56:7 57:9,19 66:18 67:2 69:18 71:22 73:9,19 79:4 80:3,16 82:15,21 83:3,12,14 87:5 88:7,23 89:2 90:19 94:1,12,14,15 95:2,7 98:6	99:1 100:12 100:14,22 101:10 102:5 107:2 108:5 108:18 111:15,21,23 112:1,5 115:10,22,25 116:7,7 117:3,23 118:1,16,23 155:25 continue 113:4 continued 113:17,24 116:24 continues 60:25 90:22 113:9 contract 19:8 30:5,13 32:5 37:14 38:13 38:15,22 39:6,18,23,24 42:20 130:22 156:16,25,25 157:11 158:18 174:5 174:11 211:14 contracted 23:1 60:11 78:8 99:22 contracting 211:12 contracts 29:23 194:5 contractual 8:24 9:13 38:16 40:18 119:24 120:7 124:2,9,10 126:17 127:20 128:3 128:20,24 129:20,22,25 130:4,10 131:12,13,22 134:6 136:17 136:25 138:25 139:2 140:6,24 141:3 142:6 142:23 143:9 144:9 148:14 148:18 149:3 149:15,25 151:15 156:15 159:12,18 162:5,15,23	163:13 167:7 167:21,23,25 168:3,9,21 170:16 171:11 175:17 176:24 178:1 180:3 182:13 183:20 184:20,21 185:3,6,7,24 188:24 191:7 209:4 211:13 contractually 123:18 147:20 169:12 contract-bre... 213:16 contradicts 7:9 contrary 15:8 73:25 164:11 contrasting 123:14 controlled 86:7 convenient 105:23 106:10 154:1 converse 9:14 conversion 1:9 93:18,22 121:16,22 123:9 124:6 124:18 125:7 126:11 127:3 127:7,9,12,14 128:10 129:8 129:10,14,15 131:25,25 132:19,21 133:2,11,15 133:19,21 134:24 137:6 137:23 138:5 138:14,18 139:23 140:1 141:20 145:17,24 146:9,11,11 147:12,14 149:4,8 150:15 151:6 151:9 152:2 152:17 153:20 154:25 157:22 158:2 164:25 165:6 170:8,18 173:11 175:15,16,20	179:4 180:22 181:2,20,21 183:5,18,19 187:12,15 188:13,19,23 190:8 198:4 convert 125:11 125:17 128:12 181:14 converted 123:17 125:21,22 130:25 131:2 131:21 136:20 137:24 145:22 146:14 147:3 147:8,9 148:2 149:1 149:7 153:24 157:23,24 162:18 166:25 167:9 172:5,10 173:6,15,18 174:24 179:25 converting 173:20 converts 147:5 167:6 copy 2:10 core 47:20 49:7 65:24 71:5 82:24 152:10 correct 16:21 122:10 131:19 142:21 170:13 171:4 192:13 207:4 corrected 60:18 correctly 102:2 cottoned 104:25 counsel 21:25 217:8 counterparties 192:9 Counties 14:10 97:7 couple 35:8 54:25 81:3 106:10 169:23 194:19 course 2:25 3:17 8:16
--------------------------------------	--	---	--	---	--	--

9:14,15 22:10 28:4,4 32:25 42:21 48:7 50:17 71:4 77:21 79:6 103:20 126:2,5 132:10 141:8 142:9 147:12 159:4 177:22 188:15 192:10 193:8 207:11 209:4 214:22 215:22 217:8 court 2:7 21:15 25:20 62:11 74:9 80:16 85:13 86:20 88:22 98:25 103:7 187:21 190:25 191:24 192:15 193:4 198:11 212:21 219:18 220:6 220:21 courts 213:6 court's 217:23 covenant 99:16 covenanted 21:13 cover 44:7 52:2 52:2,3,4 216:10 covered 44:8 57:23 214:21 covering 52:7 cows 155:12,12 155:14,16 Cozens-Hardy 29:10,17 33:2 create 216:15 created 136:22 credit 156:5 160:21 163:5 167:11 168:11 174:18 180:20 creditor 3:20 4:23 5:9,10 6:8,17 8:6,11 9:4 10:1,16 22:23 23:16 39:13 40:12 41:4 45:23 48:25 49:3,5 51:25 55:5	56:2 57:24 58:19 59:4 62:19 63:14 68:5 73:18 78:20 81:23 82:9 83:20 85:4,6 86:19 87:10,19 95:5 100:1,2 100:5 107:20 107:24 108:11 111:22,24 112:2 115:10 116:1,3,7,10 118:13,16,19 118:23 119:18,22 120:2,6 123:16 124:9 125:11,18 126:2 127:8 128:2,5 129:19 130:20 135:5 135:16,22 136:4,5,10,15 138:4,6,23 139:20,25 140:7 141:16 145:8,9,10,15 146:3 147:20 149:2,14,21 149:25 150:13,19,20 151:1,3 152:8 153:4 153:7,23 154:15 157:14 158:10,14 159:5,17 160:1,17,21 161:6,10,22 162:1,10 163:1,15,20 163:21,21 164:1,4,6,9 166:1,5,8,10 166:13,14,19 166:24 167:7 167:11,21 168:5,11,21 169:9,13 170:23 171:2 172:4,9 173:6,11,14 173:17 174:22 175:7 175:10,14 176:11,23	177:11 178:18,23 179:3 180:6 180:18 181:3 181:11 183:21 184:3 184:3,10,21 185:14,17 194:11 196:2 196:20 198:21 208:7 211:3 212:15 216:15 creditors 6:6 7:25 10:3 43:1 46:9 50:10 54:10 55:24 63:12 63:18 87:13 122:11,19,19 123:5 124:2 126:1 142:19 142:19 143:5 152:20 153:15,16,17 153:18 161:15 164:14 165:12 173:23,24 185:16 195:13 196:14 creditor's 40:16 44:16 68:11 81:15 86:12 111:20 124:5 126:17 138:9,18 140:11,24 141:3 144:15 151:15 160:14 161:2 163:12 168:24 170:15,21 171:10,14 175:24 177:4 critical 137:21 165:7 criticise 49:18 criticised 61:25 63:3 criticises 63:24 criticism 64:19 64:21,21 criticisms 64:24 cross-claim 118:12,15,17 118:24	cross-claims 113:3 116:23 crux 173:3 Crystal 48:6,9 crystallises 108:18 cups 176:6 curious 63:25 currencies 195:15 205:17 currency 30:12 92:5,7,8 93:8 93:18,21 121:16,22 122:18,19 123:5,15 124:9,17 125:6,11,18 125:19 126:11 127:3 127:7,8,9,13 128:5,10,25 129:5,8,14 130:20 131:17 132:19,21 133:2,11,15 133:19 134:13 135:11,21 136:10,20 137:1,6,22 138:4,4,8,10 138:14,17,25 139:23,25 141:1,20 142:8 143:20 143:24 144:9 144:13 145:17,23,25 146:10 147:12,14,21 149:4,8 150:13,15,19 151:1,5,9,23 152:2,17,23 153:4,4,15,19 154:25 155:11 157:4 159:13,25 160:20 161:23 162:2 162:7,19 163:4,20 164:1,2,5,25 165:3,6,9,21 166:8,20 167:1,2,4,4 167:12 168:12,20	169:1,10 170:8,16,22 171:3,12 172:4,6,10 173:6,10,13 173:17,23 174:2,22 175:7,14,24 176:24 177:24 179:12,20,24 180:4,5,17,17 180:22 181:2 181:19 183:5 183:17 184:16 187:12,14 188:13,17,18 188:23 190:7 191:1,9 198:4 current 4:9 5:22 103:23 181:8 cut 117:25 <hr/> D D 62:10,16 64:6,6,10 Dalzell 109:21 damage 27:4 damaged 36:17 damages 2:16 33:15 34:7,8 62:5 67:19 72:22 85:6 85:20 86:1 103:20 104:11 108:11 154:24 155:4 155:5,15,17 156:14,24 174:5,10,17 174:18,22,23 188:22 190:24,25 191:10 209:3 211:7 212:12 213:13,23 214:15,17 216:15,20 Danka 47:5 73:25 date 2:2 3:19 5:3,11,23 6:4 6:25 7:2,4 9:1,23 11:12 11:17 12:4,8 12:11,13,24 15:11 16:11	16:13,19,25 18:5 21:22 21:22 23:11 23:18 24:1 24:25 28:9 30:6,7 36:9 38:10,14 39:6,10,15 40:5,6,14 43:6,13,13 44:14 45:3 46:8 49:5,12 49:16,17 50:6,9,10,13 50:24 51:11 51:11 55:5,7 55:15 56:18 58:25 59:12 60:8 61:19 62:21 63:5 66:5,10,13 68:10,20 69:14,14 70:2,3,15,15 70:21 78:6,6 79:1,2 80:14 82:18,20,21 85:19,21 90:3,17 92:1 93:3 94:6,9 94:18 96:12 96:16,17,21 96:25 97:4 98:3,12,18 99:9 101:8 102:13,20,24 102:25 103:13,19,23 104:6,8,15,18 104:20,22,25 105:1,2,10,13 105:14,18,18 105:19 106:16 107:18,22 108:14,19,21 111:16,18 113:8,23 114:2 115:6 115:11,15,17 118:3,7,21 119:1 126:6 126:8,8 136:13 146:7 147:4 148:3 156:8 157:1 161:5 162:19 166:21 167:1 172:7,18 179:14,15,25 180:9,11,11	181:10,11 208:25 212:18,19 213:11 dates 94:21 146:9 daughter 21:14 21:19 DAVID 1:11 1:16,19 2:2,5 2:11,14 3:4,8 3:11,14 4:2,5 4:12,17,21 5:8,12,19 6:15,21 7:12 7:14,21 8:5 8:21,23 10:6 10:11,13,19 11:25 13:11 13:16 14:2 14:18 15:3 15:15,21 16:1,8,16,21 17:5,18 18:7 18:10,13 19:3,6,17,19 20:5,15,21,25 21:9 22:16 23:5,8,12,25 24:6,13,21,24 25:3,10,15,19 26:2,5,9,13 26:18 27:11 27:14,16,22 28:4,11,20,24 29:2,6,14,20 30:1,3,8,19 30:24 31:9 31:20 32:10 32:16,21,24 33:6,10,18,21 33:25 34:19 35:7,16,22,25 36:11,21 37:16,20 38:9,19,25 39:3,13,19,22 40:2,20 41:1 41:5,16,19 42:14,17,24 43:4,11,20,22 44:2,19 47:6 49:21,25 50:3 51:2,14 51:16,21 52:9,17,21 53:14,17,22 54:7 57:11 57:16,21 58:1,5,8,11 60:6,13,16
---	---	--	---	---	---	---

61:2,7,13,21 62:1,6,18,22 63:7,23 64:1 64:8,11,20,23 65:5,9 66:7 67:8,11,16,18 68:1,12 69:24 70:10 71:3 72:9,12 73:2,10,22 74:5,7,10,21 74:24 75:3,6 75:10,13,15 75:17,19,23 76:2,4,8,11 76:13,15,18 76:21,25 77:2,7,10,12 77:19 78:11 78:15,18,22 79:12,17,22 80:7,22 81:1 81:6,13,18,22 82:4 83:6,23 84:4,13,24 87:17,21,23 87:25 88:3,6 88:10,13 89:7,12,15,18 91:13,17 92:11,14,19 93:13 94:10 95:18 96:4 96:10,19,24 97:5,14,22 98:14,19,23 99:13,18 101:15 102:17,19 103:3,16 104:1,4,9,13 104:18,21 105:16,22,25 106:3,7,12 109:5,20 110:2,6,9,14 111:2,4,7 112:12 114:5 114:8,11,20 115:8,21,23 116:17,19 117:1,5,7,12 117:20 119:11,15 120:10,20 121:5,9,13,20 122:3,12,14 123:3,10 124:7,12,15 124:24 125:5 125:8 126:9	126:25 127:22,25 128:13,17,23 129:12,24 130:6,8,14,18 131:4,11,15 132:1,8,13,16 133:4,6,12,16 133:22 134:1 134:8,15,21 135:1,10,13 135:17,20,23 136:1,4,8 137:4,12,16 137:19,25 139:10,14 141:11,23 142:14,22 143:7,14,22 144:5,18,21 144:24 145:2 145:5 146:21 146:24 147:2 147:18 148:7 148:13,15,17 148:20,24 149:9,16,18 149:23 150:2 150:5,7,10,16 150:22 152:3 152:11 153:12,25 154:3,13,17 154:22 155:3 155:7,14,18 155:21 156:3 156:7,11,18 156:21 157:2 157:6,19 158:3,13,20 159:7,16,23 160:8,10 172:15 178:5 178:8,12,15 178:21,24 179:8 180:23 180:25 181:7 181:16,23 182:3,7,19 183:1,4,8,23 184:9,18,23 185:1,4,8,12 185:25 186:3 186:8,11,16 186:24 187:9 187:23,25 188:4,9 190:17,20 192:20 193:15,18,20 194:1,10,19	195:1,7,11 196:6 197:3 197:8,12,16 197:19,22 198:2,5,14,18 199:6,22 200:11,14 201:1,5,9,14 201:17 202:3 202:5,10,13 202:21 203:1 203:7,12,15 203:17,20,23 203:25 204:3 204:7,13,19 204:24 205:6 205:11,14,23 206:2,10,15 206:21 207:4 207:15,18 208:5,12,21 208:24 209:12,17,22 209:25 210:3 210:6,9,12,21 211:5,11 212:6,19 213:1,3,25 214:18,24 215:10,13,25 216:7 217:3 217:5,23 218:1,10,13 218:20,24 219:8,11,21 219:25 220:2 220:5,9,14,17 Davies 93:11 day 1:4 5:7 6:19 8:18 33:17 34:10 40:16 109:9 109:10 210:24 219:11 days 193:9 205:10 215:20 deal 1:6 4:6,7 13:12 19:6 20:24 35:23 84:20 86:5,9 88:11 94:1 102:2 106:11 119:7 129:7 132:10 153:17,18 155:19 171:23 178:17 183:9 186:14	202:18 204:4 205:2,6 215:14,24 217:6 220:16 dealing 1:9 4:9 6:11 46:16 67:1,3 106:20 112:17 117:15 118:8 121:22 135:14 152:9 153:4 162:14 167:19 174:5 178:22 189:13 201:14 215:23 deals 83:24 87:7 120:17 173:1 204:3 204:5 210:16 dealt 45:7 46:19 49:20 73:8 113:18 116:18 119:20 123:11 156:1 161:3,13 189:5 195:3 201:22 202:13,15,16 206:24 death 21:14,23 22:13 79:9 99:10 debate 45:21 88:18 97:17 128:24 140:4 debt 3:19 6:9 7:3,19 8:13 8:14 9:21,24 10:23,25 11:3,7,12,15 12:3,6,10,16 13:3 14:7 15:10,12,24 16:12,19,19 16:25 17:1,2 17:7,14,14,15 18:2,3,5,15 18:18,19,20 19:8,13,14,15 19:16,24 20:1,3,5,6,10 20:10 22:8 22:11,23 23:4,17,24 24:2 25:14 25:21,21 28:18,23	33:15 36:4,5 36:15,19 37:3,6,23,24 37:25 38:5,6 38:22 39:11 39:14,23 40:4,4,11,22 40:22,24,24 41:7,9,21,22 41:24,25 42:1,2,3,3,5 42:6,7,11 43:3,5,10 44:17 45:1,4 48:1,22 49:1 50:8,19 53:3 53:4,6,7,8,13 53:24,25,25 54:2,5,6,14 54:19 55:4 57:25 58:4 58:14,23 59:6,11,12 60:9,21 61:16 62:13 62:20 63:5 63:15 64:17 65:18,21 67:3,7 68:4 68:11,19 69:8 70:1,7 70:14 71:11 71:17,20,25 73:15,19,19 77:22 78:7 78:20 79:1,3 79:7 80:13 82:21 83:11 83:14 84:10 85:12,13,16 85:18,24,25 87:5,6 88:8 91:16 92:3,5 92:6,6,7,7,9 92:13,17,21 93:9 94:12 94:14,15,17 94:24 95:22 96:16 97:3 98:6,10 99:1 100:8,21,22 100:22,25 101:11,11 103:6,8,23 104:7 105:9 107:15,19,21 108:12 109:14 112:4 112:5 115:16 115:17 116:5 123:7 124:9	125:15,17,18 125:20,22 127:9,10,12 134:16,18 135:5,11,11 136:13,21 137:24 138:9 141:8,15,21 141:21 143:8 144:2 146:22 147:8,9,22 148:9 149:6 150:24,24 153:5,24 154:24 155:11 156:4 156:8,12,13 157:16,17,22 157:23,25 158:11,12,14 158:15 165:3 165:4,9,20,21 166:2,3,7 168:14 170:9 173:6,17 174:14 175:8 175:9,11,15 175:15,20 176:2,12 177:9 179:5 181:18 182:6 182:10,11,25 184:13,16,17 184:22 188:24 190:7 190:23 191:5 191:7 208:22 debtor 123:25 166:1 debtor's 139:4 debts 3:21 4:25 5:3 9:10 10:10 11:11 11:11,24 19:25 20:8 21:7 22:5,18 22:19,21 23:19 24:20 26:25 27:18 27:20,20 28:3,8 35:24 36:2,2 38:21 39:4 41:13 41:13 42:4 42:16,18,19 44:12,12,13 45:12 46:23 47:19,19 49:11,17 50:22 54:23 54:23 55:7	56:7 57:4,9 57:19,19,20 66:4,6,9,11 66:19,20 67:2 69:17 69:18 71:25 78:14 80:4 80:10 82:11 82:16 88:12 88:21,23 89:2,2 90:2,4 90:18,25 91:20,20,23 91:23,24,25 92:15,16 93:1,5,6,15 93:20 95:4 96:17 100:4 100:16 101:17 102:4 102:5 107:2 107:8,9 115:10,11,22 117:2,2 140:8 142:20 155:7 165:14 172:5 173:9 179:12 debt's 13:13 125:21 December 26:11 103:11 decide 66:15 84:23 86:15 187:4 205:25 207:12,21 214:14 decided 25:23 29:21 121:2 160:2 194:7 194:13 205:24 206:3 217:21 deciding 117:22 decision 2:15 30:15,17 31:4 72:16 72:17,18 112:8 113:10 122:10,17,22 212:14 219:18 220:6 220:11 decisions 72:15 declaration 17:9 23:18 23:23 39:15 60:22 62:21 63:4 65:2 78:6 80:14
---	--	---	---	--	--	--

179:14,17 declared 24:2 38:2 68:5 decree 101:23 deducted 22:12 deeply 70:16 85:1 default 122:11 defendant 34:7 defines 151:12 delay 5:14,14 5:16 8:7 46:1 143:17 161:17 163:11,17 164:7,16 165:14 168:7 169:16 175:9 175:12,13,17 175:19,22,24 176:1 180:13 delayed 143:17 delineating 7:17 deliver 85:8,21 86:2 delivered 155:16 demonstrate 212:3 demonstrates 82:6 denominated 93:8 161:23 162:2,20 166:19 167:3 168:20 169:1 169:9 173:23 176:23 188:17 207:2 depend 127:16 127:18 209:4 depended 27:6 dependent 213:16 depending 10:25 42:22 83:10 109:15 188:16 depends 15:18 39:24 180:24 216:12 depreciated 162:4,21 depreciates 166:21 167:4 deprived 150:13 174:1 derive 102:7,8 derived 83:11 derives 195:16	describe 48:5 54:3 87:7 101:10 described 14:15 53:7 54:17 102:1 206:23 213:20 216:17 describes 112:10 164:8 description 133:19 deserves 216:6 desk 2:10 destroying 115:25 detail 57:22 details 2:19 212:5 determination 192:18 determine 127:19 189:7 determined 108:8 109:4 193:1 determining 196:17 develop 36:11 158:6 developed 154:18 186:19 Dicker 29:5 42:18 52:5 89:20,21,22 91:14,18 92:12,15,20 93:14 94:11 96:2,7,12,23 97:1,6,20,23 98:16,22,24 99:14,19 101:17 102:18,20 103:4,17 104:3,6,10,14 104:20 105:5 105:20,23,24 106:1,7,8,13 109:6,21 110:3,7,10,16 111:3,5,8 117:8,14 119:8 160:11 160:12,13 172:16 178:6 178:8 187:17 188:5,9,10 193:22 194:3	195:5 200:20 200:21 201:3 201:18 206:21,22 207:5 208:5 208:10,11 209:22,23 210:1,4,7,11 210:13,23 211:6,19 212:13,23 213:2,19 214:10,19 215:2,25 216:2 221:4 221:7 Dicker's 6:20 47:20 199:25 dicta 29:8,8 difference 23:12,13 36:2,3 53:10 104:22 136:22 146:19 149:12 159:22 166:20 176:21 191:16 211:21 differences 83:18 94:23 different 14:3 16:24 17:5 17:12 23:10 34:14 40:8 46:17 48:7,8 48:11,21 50:18 58:22 82:20 88:16 100:13,13,19 117:11,12 118:14 127:15 133:4 136:9 139:17 151:10 152:18 153:3 153:20,21 159:14 160:25 161:4 162:8 164:1 167:18 176:19 177:4 177:14 181:15 182:22 188:21 189:9 191:2 195:15 196:16 197:3 197:5	differently 101:19 143:12 179:11 differing 195:14 difficult 19:18 20:14 78:1,4 78:9 169:19 193:4 205:18 216:12 difficulty 133:17 141:25 144:19 145:2 169:5 209:8 diminish 33:4 direct 173:11 directed 64:25 88:4 direction 201:9 directions 22:4 193:10 directly 65:13 disadvantage 144:16 disadvantaged 87:14 disaggregate 112:1 195:25 disaggregation 82:23 195:17 disagree 16:4 74:12 138:13 disagreement 198:20 disagrees 3:24 127:1 disappeared 76:9 disappears 63:11 disapplied 189:18 discern 198:13 discernible 196:19 discharge 40:13 139:12 163:12,14 166:7 168:9 discharged 40:19 44:17 165:22 166:3 disclaimed 104:17 disclaimer 62:3,5,15 102:24 103:5 103:15 104:6 104:19 105:1	105:19 discount 11:15 11:20 12:10 12:21 13:2,4 17:23 18:5 18:15,21,21 19:1,2,23 20:1,11 23:6 23:7,10 24:1 24:5,11,15,18 30:17 34:10 34:18 36:14 36:18 39:10 39:12 40:17 43:8 58:13 58:15,18 59:2,7,10,14 60:8 63:19 64:25 65:2,3 66:11,12 69:12 71:1 71:14 78:25 82:8,11 94:9 99:8,11 101:1,3 104:11 106:16 107:16 153:6 153:8 discounted 9:21 12:13 20:18 29:16 35:15 61:19 71:12 89:10 100:9,21 102:4,24 103:18,21 104:1 discounting 4:16 9:19 10:9,14,22 11:1,2,4 12:16 13:24 14:12,14,20 15:5 16:18 16:24 21:7 35:18 38:2 38:24 39:1 47:12,16 58:20 60:12 60:21,23 61:14,17 62:12 64:15 65:1 66:9 77:23 78:13 80:10,12,19 89:8 94:4 95:11,13 107:5 discounts 105:12	125:14,24 discretion 212:21 discuss 169:20 discussed 113:1 173:2 discussing 205:21 discussion 73:14 disgorge 185:15 dispute 126:13 191:24 217:20 dissent 207:17 dissented 29:19 dissenting 29:16 32:23 distinct 45:15 distinction 3:23 16:18 18:19,23 21:8 36:17 36:24 38:17 40:22 41:11 42:13 43:16 53:10 57:8 89:1 101:5 101:14 112:19 120:3 130:24 171:17 distinguish 10:24 23:3 176:25 distinguishes 119:17 distraction 151:18 distributed 163:18 170:17 distribution 5:2 9:8 11:19 18:8 40:15 46:9,11 51:1 55:10,16,22 56:10 90:6 90:22 125:10 126:1 161:12 180:12 181:11 distributions 49:22 divergent 211:2 dividend 11:3 17:8,10 23:3 23:11,18,23	24:1 36:16 36:19 38:1 39:15 46:10 51:12 58:17 59:11,13 60:22,23 61:15,19 62:24,25 63:1,2,4,19 65:3 66:5,14 68:5 69:15 70:16 79:2 80:14 81:25 89:9 172:7 179:14,18 185:5 dividends 7:1 11:18 37:23 45:13 50:15 50:20 81:17 81:24 82:6 126:4 140:8 140:12,21 141:13 146:6 148:1,23 150:20 151:25 162:18 163:3 165:4 166:24 Dixon-Johnson 33:9 doctrine 35:10 55:9,12 174:13 doing 17:1,2 50:13,13 66:12,13 82:12 90:15 90:19 93:11 110:24 111:1 130:2 131:6 148:11 174:24 193:2 211:12 215:20 dollar 125:20 126:2,8 131:13,23 136:18,21 140:11 146:15 148:5 151:24 156:3 156:8 158:23 172:20,23,24 181:10 182:12 185:10 191:5 dollars 125:19 126:6 129:11 138:15,16,19 138:20,21
---	--	--	---	---	---	--

139:7 140:13 140:15,17 145:17 146:7 146:14,22 147:5 148:3 148:13 149:1 151:16 152:25 156:15 179:7 181:4,9 182:1,2,17 184:5 191:8 dot 57:12 double 107:24 double-count... 10:16 doubt 10:20 26:16 33:14 37:18 105:6 drafted 179:11 drafting 49:18 61:24 63:12 66:17 110:1 draughtsman 49:11 53:14 57:3 109:22 217:1 draughtsman's 52:10 draw 74:19 87:12 89:1 139:11 170:1 199:16 drawing 101:13 drawn 85:1 dream 101:9 dropping 31:7 31:25 120:25 due 3:20 5:4 11:1,1,2,3 12:11 13:3 15:11,12 17:9 18:23 19:9 20:10 23:4,17 36:8 36:9,16,20 37:13 38:1,7 38:10,13,23 39:5,6,11,14 39:17 42:11 43:13 45:3 48:4 50:8 57:5 58:4,24 58:25 59:6 62:20 63:6 66:5,6 68:11 70:20 79:1 80:13 96:6 98:2,12 99:1 103:19,23	104:4,8 105:10 111:25 124:9 174:2 183:18 211:18 dug 72:10 duty 2:17 <hr/> E E 13:8 62:10 62:16 103:10 103:10 earlier 4:19 82:10 114:23 117:8 142:16 earliest 49:4 early 8:20,23 9:6,6,12 34:18 36:14 43:7,8,10 58:20 59:5 219:11 earned 107:21 easier 134:4 158:8 169:20 easily 101:5 161:20 easy 94:18 99:20 147:3 210:24 eccentric 202:11 echo 165:15 echoes 28:19 Eckhardt 14:25 35:21 46:13 70:23 71:9 114:6,9 114:13,16 Eclipsed 193:18 economic 86:12 Edward 109:21 effect 1:10,15 1:17 37:12 37:19 38:11 38:15,20 55:9,25 82:1 90:1 91:22 93:5 100:7 100:10 102:1 105:11 106:21 111:17 115:3 115:25 118:2 118:6 120:1 123:21 155:23 166:9 166:23 190:1	208:9 effected 5:2 effectively 55:3 61:9 91:7 93:6 99:19 106:22 107:24 112:1 113:6 119:22 168:3 169:17 173:20 176:12,16 189:19 199:22 217:14 efforts 194:15 egg 176:6 egregious 86:6 eight 205:10 either 20:1 71:6 86:11 86:17 93:10 126:7 134:21 150:13 178:14 185:11 199:22 218:7 element 10:15 19:21 20:6 71:12 84:10 176:4,8 elements 125:13,22,24 197:17,24 Ellis 33:8 else's 126:22 149:13 elusive 209:9 emphasis 88:25 employer's 29:23 enable 5:2 9:9 46:23 enabling 43:1 ended 199:11 ends 50:25 51:11 71:23 enforce 156:4 enforcing 130:3 engage 87:1 engaged 56:19 69:20 70:9 English 189:9 enquiry 191:9 ensure 9:7 11:18 90:5 98:17 108:7 125:25 166:16 197:14	ensuring 46:9 entered 44:14 68:21 103:11 189:16,22 190:15 entering 120:25 Enterprise 1:18 entirely 7:8 24:16 43:16 65:20 70:17 74:16 84:14 130:8 180:24 189:12 210:24 216:12 entirety 61:9 entitle 32:1,4 entitled 8:11 8:18 21:20 21:20 34:8 37:22,24 45:25 48:25 59:6 68:6 77:16 81:16 81:23 92:4,8 99:7 116:11 116:11 123:18 134:18 135:6 140:15 143:20,23 145:11,11,13 146:4,12 147:20 150:20,21 152:1,25 156:4,20 157:24 158:18 159:5 159:11,20 160:17 161:7 161:11,18,24 162:2,6,20 163:6 165:12 165:13 167:22 169:1 169:12 170:24 171:3 173:14 174:15 175:23 176:10 177:11 179:7 180:10 181:4 181:6 182:1 182:11,18 184:2 210:20 entitlement 40:18 63:13	128:3 140:11 143:25 145:16 146:15,18 148:5 149:3 151:3,5,7,15 159:8,18 163:14 164:3 166:15 167:7 168:9,21 170:22 175:17 178:1 178:19 182:4 182:6,13,13 184:3,6 185:24 197:15 entitlements 152:16 196:18 197:6 entitles 176:15 envisaged 57:4 equal 134:21 equally 43:19 90:25 91:1 158:10 159:17 166:13 168:10 169:8 equation 148:8 148:12 equivalence 20:9 equivalent 11:23 17:11 20:8 58:2 126:8 151:24 185:10 error 91:6 essence 19:4 127:6 170:14 essential 12:9 12:12 17:13 18:1,11 71:16 150:12 170:20 203:8 essentially 13:22 17:3 18:25 43:8 110:17 114:23 138:13 152:15 162:10 167:24 169:6 172:13 175:21 186:12 204:6 established 98:10	estate 5:15 8:8 46:11 126:20 126:20 138:3 139:4 140:22 141:14 147:24 149:6 151:11 165:22,23 170:17 171:9 171:14,18,20 185:16 206:20 estimate 11:6,8 13:1 14:1 16:6 17:21 20:18 31:2 68:7,7,16,17 68:17,19 81:20 94:13 95:22 estimated 5:11 5:17 8:19 100:14 estimating 17:20 estimation 12:17,24 13:20 16:7 28:2 46:19 47:18 67:1 67:10 68:14 69:2 70:13 71:2,22 91:22 92:22 94:2 98:17 98:21 125:14 125:24 et 31:3 92:22 137:2 Etherton's 91:8 event 37:17 53:6 69:21 93:16 108:3 161:9 events 13:23 eventualities 52:4 eventuality 52:3,6 everybody 9:8 11:19 51:9 121:12 181:17 evidence 32:2 35:6 192:1 211:2 212:3 evoked 55:20 exactly 1:14 8:25 16:23 24:24 71:18	77:25 83:19 93:11 105:7 136:8 159:19 182:1 183:12 193:5,24 example 83:15 85:7 87:12 91:21 101:7 107:15 110:8 110:18,20 118:15,22 124:8 125:20 139:24 140:2 145:9 150:1 151:17 157:5 162:8 166:18 167:15,19 168:10,16,18 172:3 173:1 173:3 179:5 179:10 181:24 184:2 206:22 207:7 210:23 211:3 213:8 examples 85:4 87:9 101:6 109:1 161:20 162:14 169:17,18 172:17 Excellent 204:3 excess 116:12 exchange 109:22 144:10 172:2 172:8 179:13 179:20 182:20 exclude 133:24 excluded 210:12 excludes 63:12 excluding 183:25 exclusive 128:19 executor's 35:10 exercise 14:3 16:2 17:1,6 47:22 54:17 54:20 90:15 90:17 95:9 105:7 169:20 200:19 exercises 17:12 exhaustive 130:15 exhaustively
---	---	--	--	---	---	---

142:20 exist 113:4,17 113:24 116:23,24 188:23 210:25 214:17 existed 85:20 90:7 138:1 existence 12:4 54:16 124:17 existing 89:6 exists 4:14 20:23 138:2 184:24 expect 163:16 expired 73:24 expires 56:17 56:22 63:4 explain 36:1 44:9 92:11 108:25 129:2 161:25 176:20 186:22 explained 170:5 explaining 51:6 64:14 explains 64:2 192:16 explanation 49:25 188:3 188:6 explicable 59:3 explore 192:11 exposition 214:25 express 38:9 90:9 211:1 expressed 14:22 71:6,8 170:2 expression 203:9 expressly 109:10 extant 73:7 extemporary 26:20 extend 6:7 extended 214:25 extent 5:10,13 8:17 17:8 50:23 61:15 83:2 90:19 116:2 127:16 127:18 129:9 129:11 133:9 141:12	165:21 170:14 192:13 207:24 210:4 211:19 212:25 extinguish 113:6 115:5 extracts 77:1 97:16 extreme 3:16 19:11 101:6 F F 97:24 98:4 face 58:3 79:14 195:24 196:19 199:23 faced 65:23 facilitates 46:11 facing 124:14 fact 6:8 7:1 8:11 12:9 22:2 29:11 30:22 36:7 36:18 41:2 43:7,9 47:14 53:24 58:18 66:25 74:20 81:19 82:8 83:7 85:2 86:12 87:1 90:2 97:21 100:3,8,24 104:25 107:13 110:25 120:4 128:2,8 130:24 131:1 131:8 132:18 143:21 146:1 146:19 149:14 153:20 157:10,17 171:15 174:8 174:13,23 176:2 183:6 198:19,24 206:8 factor 69:5 factors 36:22 36:23 facts 29:12 84:21 85:5 87:8 99:15 103:9 105:17 172:22 199:5 209:7	factual 189:25 190:10 192:4 fact-sensitive 191:9 failure 85:8,21 86:1 138:14 fair 10:2 46:9 88:10 106:17 fairly 60:23 97:8 108:6 218:16 fall 3:25 4:3 5:4 12:11 18:22 19:9 20:2 68:11 91:6 fallacy 117:9 fallen 10:25 11:1,2,3 13:6 13:13 14:6 15:7,11,12,20 16:10 17:1,2 17:9,14,15 18:16,25 20:10 21:8 23:4 36:16 36:19 38:1,7 38:13,23 39:5,5 50:8 58:4,23 59:6 66:6 78:9 79:1,4 99:1 falling 18:21 18:24 falls 3:20 16:2 32:25 38:10 80:13 familiar 83:25 far 4:15 7:22 15:4,9 37:9 48:9,12,17 50:15 65:11 66:18 91:4 91:14 106:13 113:1 120:18 162:16 166:1 178:1 188:11 201:23 205:7 206:6 218:21 Farley 113:11 Fashions 14:8 14:14 97:7 fast 58:8 favour 42:16 42:17 52:20 111:21 112:2 166:23 feature 23:21 23:24 features 21:4 93:25	February 1:1 feel 22:12 59:16 84:21 86:9 142:4 fell 91:7 128:9 fifth 31:1 figure 20:18 148:9 196:22 figures 123:8 fill 46:20 final 47:11 51:12 107:25 113:20 139:8 172:7 196:23 finally 87:3 110:7 175:2 187:21 find 27:23 57:17 72:13 120:19 217:6 218:2 finds 3:23 167:6 fine 38:12 44:4 105:9 145:5 201:5,15 finish 73:12 202:12 finished 34:21 fire 14:12 26:8 26:11 27:4 35:4,5 first 1:8 2:22 4:6 6:11 8:12 14:8 15:19 16:3 19:12 21:10 22:1 24:10 33:24 36:5,23 37:10 45:20 51:23 52:6 58:12 59:22 59:24 60:11 61:10 64:14 64:18 72:14 73:1 74:11 81:7 101:1 101:21 109:18 113:2 116:13 117:25 118:8 119:20 121:7 125:17 129:7 139:20 140:2 140:2 150:18 160:22 161:22 162:17,21 167:12 168:10 171:1 173:1,3	174:12 178:18 186:20 188:11 189:2 190:23 191:11 200:22 206:24 210:11 214:13 215:3 firstly 94:1 111:19 161:4 162:15 190:6 Fisher 117:8 117:14 fit 87:6 fits 47:18 84:15 five 3:6 19:9 37:6 57:12 101:7 154:4 five-minute 152:6 154:8 fixed 2:2 flag 109:1 flatu 54:16 68:22 flaw 55:1 164:18 171:6 flawed 56:3 flesh 52:25 flow 107:13 flowed 107:12 157:12 flowing 59:19 flows 158:1 focus 41:21 70:3 193:17 195:12 focused 91:4 218:16 focuses 165:7 focusing 129:14 177:23 folder 2:12 follow 16:8 19:3 32:11 94:13 97:5 117:1 132:2 132:3,17 134:23 135:1 135:20 139:18 144:14 156:19 198:14 206:15 207:15 following 13:10 96:8 126:14 132:2 134:10	141:25 142:2 follows 1:14 31:17 141:25 165:4 169:12 171:7 179:4 184:10 football 42:20 footing 129:25 footnote 72:20 force 61:6 122:21 203:15,16 foreign 92:5,7 92:8 93:8 121:22 122:18,19 123:5,15 125:11,18,19 127:8,9 128:5,25 129:5 130:20 131:17 134:12,13 135:11,21 136:10 137:1 137:5 138:3 138:25 142:8 143:20,24 144:13 147:21 150:13,19 151:1,23 153:4,15 159:13,25 161:23 162:2 162:7,19,20 163:4,20 164:1,2,5 165:3,9,21 166:7,20,25 167:2,3,4,12 168:12,20 169:1,10 170:16,22 171:3,12 172:2,4,6,10 173:5,10,13 173:17,23 174:22 175:7 175:14,24 176:23 177:10,23 179:12,20,24 180:4,5 205:17 forerunner 27:15 forgive 109:18 form 49:13,14 56:20 60:25 61:10,18,18	62:12,17 66:2 68:16 68:17 69:3 71:1 82:2 89:6 132:20 172:20 189:14 191:4 199:3 201:3 formally 210:17 former 92:18 92:20 forms 49:19 formula 12:12 12:15 39:12 50:1,2 53:17 63:2,10 64:15 68:10 94:4,7,12 95:13 107:17 formulated 186:20 formulation 14:25 forth 57:10 fortiori 128:16 137:17 forward 26:21 52:14 found 29:11,22 75:5 90:2 91:4 149:20 152:13 193:2 219:16 four 188:10 fourthly 6:23 frankly 72:2 125:2 fresh 22:11 79:7 friend 4:4,20 29:4 77:24 90:11 94:3 94:11 98:24 101:18 102:6 105:20 106:14 107:14 108:5 108:10 109:6 111:11,14 119:8 173:19 176:20 182:8 184:11,14 206:23 215:16 216:19 friends 44:22 69:1 95:10 95:16 97:6 99:25 193:7 215:3
---	--	---	---	---	--	---

91:2 176:8 177:18 183:11 216:18 front 156:21 207:14 fulfil 45:16 full 5:10 7:2,4 10:16,18 14:23 17:7 21:20 22:8 27:4 28:22 32:1,5,9,13 35:14 37:23 37:24 38:5 40:13,19 43:8,10 44:18 50:25 57:25 59:2 59:14 63:15 68:6 77:17 82:7 93:16 99:7 110:4 150:14,15 151:3,5 161:11 163:16,21 164:6,15 168:13 176:3 176:12 181:6 214:7 215:7 fully 72:16 134:6 139:18 212:6 fun 117:14 function 6:13 7:17 fundamental 90:5 Funding 47:2 71:7 funds 63:13 211:17 216:15 Funnily 121:21 further 28:13 28:15 33:14 35:8 41:17 65:20 71:12 89:17 97:15 102:3 106:8 111:6 113:9 121:7 124:22 138:7 143:3 154:11 160:9 169:23 175:13,19,23 178:7 186:1 187:11,20 192:5,11,14 193:10	201:13 205:13 217:13,17 218:7,15,25 future 3:21 5:4 5:9 11:22 12:6,7,22 13:23 16:12 16:19 17:1,7 17:14 18:3,5 18:18,19 19:16 20:3,5 20:6 21:6 22:18 24:20 25:13,21 26:24 27:25 35:24 36:2,4 36:8 37:14 40:4,6,11,22 41:8,9,13 42:4,7,11 43:4,10,18 44:12 45:12 47:19 48:5 54:23 55:7 56:6 57:9,19 57:19,25 58:23 59:11 66:6,20 69:10,17 71:14,17,25 77:22 78:13 80:3,10,13,18 81:23 82:11 82:15,21 83:12 87:5 88:12,21 89:2 90:19 94:17 100:4 100:16,21,25 101:11,17 102:4 103:5 103:8,21 107:8,9,15,19 107:21 111:15 115:10,22 117:2 118:1 119:25 124:10 153:5 futurity 11:16 12:10 13:4 19:21,23 20:1,12 58:15 69:3 69:12 71:1 71:13 95:11 104:12 125:14,25	G 62:17 102:11 gain 138:4,8 139:9 141:6 141:16,18 167:12 172:13 182:20 gains 153:2 172:23 games 176:5 gaps 46:21 gathered 133:17 general 2:20 10:3 22:4 29:3 34:4,17 50:10 59:9 106:19 192:7 192:9,19,22 212:12 generality 10:15 generally 37:12 52:10 94:5 125:23 135:2 212:10 generic 194:4 George 30:15 30:18 getting 9:3,3,5 9:6 89:9 117:13 134:16 136:23 140:15,17 146:1 149:5 151:3,4 181:17 184:4 194:17 Gibson 2:23 give 23:8 26:19 50:9 60:13 73:4 87:8 95:3 99:20 99:22 101:18 110:21 120:16 127:13 128:4 130:1 138:16 139:7 144:12 156:5 160:21 163:5 166:18 167:11 168:11 170:21 174:17 180:20 188:3 193:10 203:21 217:15,16 219:2,3,19	given 20:7 31:6 31:21,24 55:25 56:11 86:21 90:4 110:18 116:4 150:1 161:16 173:22,24 189:14 190:10 203:5 gives 55:8 65:15 116:8 161:9 giving 19:8 100:15 145:10 168:16 181:24 188:22 190:7 211:7 glanced 26:5 121:20 global 13:7 14:20 70:23 71:7 195:20 go 4:18 34:20 46:4 47:25 54:4 57:22 58:10 60:4 63:8 64:5,9 67:24 68:14 70:4,13 94:25 97:22 113:5 116:2 116:20 120:3 124:19 133:18 138:7 205:16 211:4 212:16 219:13 220:3 goes 32:8 59:17 86:23 99:5 99:15 103:9 113:18 114:1 120:18 131:8 142:18 145:20 147:4 175:5 206:13 going 4:1,7 14:5 18:22 19:6 20:23 35:23 44:7 46:20 47:9 50:5 58:8 69:7,9 70:4 79:15 93:6 94:6,8 97:20 110:14,15 114:15 117:10,16,21 120:8,14,16 125:19 129:6	132:18 133:18 137:14 154:9 154:11 177:17 178:10 186:14,17 187:16 190:5 196:9 197:19 203:21 204:20,21,22 207:1 215:11 215:14,18 217:20 219:1 good 1:19 2:9 12:1 53:21 57:11 58:11 166:2 203:17 207:20 215:12 219:11 220:17 Goods 109:23 govern 200:24 governed 191:14 granted 163:8 165:11 grapple 53:15 grateful 121:25 205:5 great 33:2 117:14 141:24 217:24 greater 50:23 123:17 146:14 167:23 179:6 185:9,23 greatest 84:25 greatly 218:17 Gregorian 204:2 ground 4:22 5:1,18 6:16 41:15 70:4 102:15,22 138:1 141:12 185:14 206:8 group 3:21 4:23 6:18 51:25 56:2 85:4 87:10 138:7 194:11 198:22 Group's 87:19 149:21 164:9 guarantee 116:4,5,11	H H 64:5 102:12 Hadley 212:2 213:15 half 16:2 70:8 halfway 30:4 hand 126:16 160:14 161:1 161:15 171:19 177:1 210:13 Handed 2:13 hands 215:22 hang 42:4 176:13 186:12 happen 13:5 57:4 69:4,7 69:20 105:19 118:14 happened 22:7 33:17 40:9 61:22 76:19 77:5,14 78:1 87:2 104:21 196:12 happening 69:6 85:2 happens 4:15 5:6 14:23 41:2,3 69:13 118:12 135:21 195:3 203:10 happily 53:7 happy 44:1 harbour 120:25 hard 201:20 Harrahill 219:19 220:7 220:10 head 132:15 heading 112:23 133:2 headnote 30:2 30:4 73:3,7 hear 44:6 188:4 190:21 192:17 217:10,13 218:7 heard 15:9 107:10 193:6 193:21 hearing 187:5 189:4 205:9 219:5,9 heart 55:1 heavily 91:5 held 21:15	93:11,17 help 111:5 125:3 142:16 178:6 201:13 214:9 219:2 helpful 10:24 57:18 69:11 72:13 110:20 120:19 189:7 190:6 207:18 helpfully 53:4 helps 81:4 88:22 125:3 216:15 hesitate 86:9 hesitation 215:25 217:19 high 2:19 29:7 52:16 219:18 220:6 higher 43:21 134:17 167:25 197:20,22,24 highlights 56:13 Hill 21:11 74:19 75:2 98:24 99:4 102:1 hindsight 13:9 14:15 16:10 16:13 17:16 18:2 70:18 71:11 95:10 100:23,25 116:16 historically 70:14 history 1:12 122:4 hmm 63:23,23 149:18,18 Hodson 37:10 38:18 Hoffmann 14:14,17 15:1 46:12 54:17 55:20 55:21 71:8 97:21 112:17 114:6,15 116:22 Hoffmann's 97:12 98:20 hold 3:24 23:8 33:21 64:3 76:25 195:11 220:2 hole-punch
	G					

34:23 hole-punches 2:24 homework 217:11 Hope 211:1,21 211:22 212:7 hoped 207:25 hopefully 194:16 hopeless 52:15 hoping 194:11 housekeeping 106:10 109:17 187:1 221:9 huge 45:21 hybrid 12:5 19:7 hypothesis 79:3 105:11 hypothetical 101:6	immediately 5:11,17 40:12 207:7 impact 54:24 implied 38:10 importance 189:1 important 6:13 41:20 103:4 124:1 133:8 133:8 149:10 149:13,14 152:5 170:13 206:24 importantly 4:15 impossible 94:23 improbable 101:12 inability 46:2 129:10,12 inaudible 189:15 include 35:14 42:19 69:3 104:11 141:9 157:20 159:24 184:21 191:19 included 10:4 82:16 includes 90:2 145:25 including 4:15 5:3 100:8 134:3 142:19 173:24 184:1 187:20 inconsistent 66:3 71:24 72:3 91:11 92:9 109:11 incorporates 129:21 incorrect 92:2 165:17 increased 81:15 incurred 174:10 indemnity 30:6 30:13 INDEX 221:1 indicate 48:10 109:25 indicated 47:22 69:19 200:1 215:4 indicating	195:15 individual 101:9 176:6 200:5 inform 88:22 190:4 information 192:14 initially 61:8 initiated 56:24 injuries 67:19 innocent 213:4 insistent 211:25 insofar 65:24 192:4,6 insolvency 36:7 37:12 38:3,20 57:7 61:11 66:10 79:11 90:8 91:12 93:4 101:24 102:22 103:14 111:14 112:7 112:18,20 115:3,20 118:17 119:4 119:9 126:20 139:2 147:24 151:16 152:24 157:18 159:11 163:11 165:22,23 168:7 170:17 171:8,13,18 171:20 179:10 184:24 214:16 216:22 insolvent 139:4 instalments 139:6,7 instance 59:22 72:15 215:3 insufficiency 129:17 insurance 26:7 29:4,23 34:4 34:17 insured 26:10 intangible 53:5 54:16 integral 139:1 intended 6:25 66:4 143:2 165:11	intention 217:1 intents 168:15 interchange 121:4 interest 1:25 2:18 3:18 6:4 6:14 7:18 8:3 9:16,22 10:17 21:21 22:12 24:11 24:23,24 25:4 43:12 44:25 45:3 45:23 48:23 48:23 49:3 49:16 50:7 50:11,11,18 51:3,10 54:1 54:4,9 55:18 63:13,14 65:13 67:22 84:8 85:24 86:3,13 89:9 90:24 91:23 92:5,8,15,16 93:7,9,20 99:17 100:2 100:7 101:2 101:4 102:14 102:21 103:1 106:17 107:5 107:9,9,16,18 107:21 108:14,19 118:21 119:1 121:4 124:11 125:15 126:5 126:18,19 127:5,21 128:4,9,10,20 128:21,25 129:5,17,20 129:22,25 130:4,10,16 130:21 131:1 131:3,6,7,9 131:16,17 132:3,20 133:10 134:10 135:7 135:18 136:2 136:6,7,11,19 137:1 138:12 138:22 139:1 139:13,21,24 140:10,13,16 140:21 141:4 141:6,10,17 141:22 142:6 142:7,23 143:3,5,8	144:1,7 145:8,12,16 146:1,8,17 147:11,17 148:1,10,17 148:19,23 149:5,15,25 150:14,21,23 151:2,8 152:1,8,16,19 153:18 154:16 157:15,21,23 158:2,16,17 159:4,13,18 160:1,14,21 161:5,7,7,24 162:3,4,6,11 162:12,16,24 162:24 163:6 163:10,23 164:4 165:1 165:5,10 166:5,15 167:8,13,21 167:22 168:2 168:4,6,11,22 168:25 169:3 169:4,10,11 169:13 170:10,24 171:21 172:8 172:12 173:5 173:14,16,25 175:3 176:25 177:6,10 178:1,19,23 179:3,6,23 180:1,4,10,19 180:21 181:13,17,21 182:4,4,5,10 182:11,14,15 182:20,23 184:1,3,11,17 184:18,22 185:5,7,18,20 193:13 195:15 196:18 197:5 197:10,15,24 205:17 206:25 207:1 208:8,21 209:14 210:15,16,17 211:4,6,9 212:9,17,18 212:22 213:6 interested 143:8	interesting 60:7 114:5 interest-bear... 142:19 158:11,12,14 158:15 175:8 interference 139:19 internally 66:3 interplay 121:4 interpretation 191:23 interpreting 189:25 interrelate 7:7 161:20 interrupt 144:22 interval 79:8 intervened 46:1 inter-relatio... 88:17 inverted 93:23 invite 193:10 207:10 invited 56:8 involve 90:18 involves 125:13 161:22 162:1 Irish 219:18 220:6 irrelevant 101:13 107:3 146:19 152:21 153:22 166:12,13 168:3 irrespective 142:24 165:23 ISDA 191:20 issue 1:4,5 3:12 4:1,7 6:12,20 7:9,13 10:21 14:21 44:23 44:24 48:22 62:2,3 65:11 72:23 85:5 92:12 97:9 102:13,20 105:15,17 106:19 108:3 108:8 109:2 109:3 126:24 127:17,19,19 127:23 128:1 128:14,16,18 129:4,5,18	130:9 131:18 132:4,9,11,22 133:24 134:2 135:15 137:9 137:11,14,17 139:15,19,22 140:4 142:1 142:2,17 144:1,3 145:7 152:9 158:7 160:1 160:7 173:7 178:20 183:3 183:10,13,15 186:23 188:12 189:1 189:5 190:8 192:18,24 193:21 194:7 194:24 195:10,18,19 202:7,8 204:8,11 205:23 206:2 207:12,21,24 208:2 214:13 214:20 215:8 216:2 219:2 issues 3:12 7:7 65:8 84:5,20 120:22 172:16 177:23 186:7 187:4,8,11,19 188:3 189:13 189:20 193:13,25 194:1,4 201:20 202:2 205:9 218:22 219:4 item 113:24 iteration 60:11 Its's 116:17 i.e 19:25 53:3 63:14 91:25 95:4 154:25
I						
idea 7:10 95:1 124:2 189:22 189:23 190:14 ideal 198:9 idem 193:24 196:5 identified 11:21 13:19 21:4 63:21 95:15 124:14 200:9 201:19 203:10 identify 87:18 176:7 195:23 198:23 199:20 207:7 identifying 52:19 194:7 ignore 128:24 179:16 203:3 ignored 91:3 131:7 144:10 ignores 171:17 ignoring 179:19 Ill 220:9 illustrate 100:20 illustrated 88:16 101:22 image 55:19 imagine 101:6 imagines 169:8 immediate 40:15 67:24						
						J
						James 31:4 January 26:12 Jessel 30:18 Jessel's 24:14 30:15 job 66:12 joint 44:10 86:7,16 103:12 192:12 198:24 199:1 judge 64:2

judgment 1:13 1:23,25 2:3 2:22 13:7,8 14:8 21:22 22:13 24:14 25:25 26:14 26:19 28:12 33:12 46:2,4 67:24 72:20 72:25 73:3 79:9,10,11 99:5,9 121:15,17 122:1 125:2 155:14 177:10 197:25 207:11 212:17,20,20 214:7 220:19	29:18,19,20 30:1,3,8,19 30:21,24 31:9,20 32:10,14,16 32:21,24 33:1,6,10,18 33:21,25 34:19,22 35:7,16,22,25 36:11,21 37:16,20 38:9,19,25 39:3,13,19,22 40:2,20 41:1 41:5,16,19 42:14,17,24 43:4,11,20,22 44:2,19 47:6 47:6 49:21 49:25 50:3 51:2,14,16,21 52:9,17,21 53:14,17,22 54:7 57:11 57:16,21 58:1,5,8,11 60:6,13,16 61:2,7,13,21 62:1,6,18,22 63:7,23 64:1 64:8,11,20,23 65:5,9 66:7 67:8,11,16,18 68:1,12 69:24 70:10 71:3 72:9,12 73:2,10,22 74:5,7,10,21 74:24 75:3,6 75:10,13,15 75:17,19,23 76:2,4,8,11 76:13,15,18 76:21,25 77:2,7,10,12 77:19 78:11 78:15,18,22 79:12,17,22 80:7,22 81:1 81:6,13,18,22 82:4 83:6,23 84:4,13,24 87:17,21,23 87:25 88:3,6 88:10,13 89:7,12,15,18 91:6,8,13,17 92:11,14,19 93:11,13 94:10 95:18	96:4,10,19,24 97:5,14,22 98:14,19,23 99:13,18 101:15 102:17,19 103:3,16 104:1,4,9,13 104:18,21 105:16,22,25 106:3,7,12 109:5,20 110:2,6,9,14 111:2,4,7 112:12 113:10,11 114:5,8,11,20 115:8,21,23 116:17,19 117:1,5,7,12 117:20 119:11,15 120:10,20 121:5,9,13,20 122:3,6,12,14 122:25 123:1 123:3,10 124:7,12,15 124:24 125:5 125:8 126:9 126:25 127:22,25 128:13,17,23 129:12,24 130:6,8,14,18 131:4,11,15 132:1,8,13,16 133:4,6,12,16 134:8,15,21 135:1,10,13 135:17,20,23 136:1,4,8 137:4,12,16 137:19,25 139:10,14 141:11,23 142:14,22 143:7,14,22 144:5,18,21 144:24 145:2 145:5 146:21 146:24 147:2 147:18 148:7 148:13,15,17 148:20,24 149:9,16,18 149:23 150:2 150:5,7,10,16 150:22 152:3 152:11	153:12,25 154:3,13,17 154:22 155:3 155:7,8,14,18 155:19,21 156:3,7,11,18 156:21 157:2 157:6,19 158:3,13,20 159:7,16,23 160:8,10 172:15 178:5 178:8,12,15 178:21,24 179:8 180:23 180:25 181:7 181:16,23 182:3,7,19 183:1,4,8,23 184:9,18,23 185:1,4,8,12 185:25 186:3 186:8,11,16 186:24 187:9 187:23,25 188:4,9 190:17,20 192:20 193:15,18,20 194:1,10,19 195:1,7,11 196:6 197:3 197:8,12,16 197:19,22 198:2,5,14,18 199:6,22 200:11,14 201:1,5,9,14 201:17 202:3 202:5,10,13 202:21 203:1 203:7,12,15 203:17,20,23 203:25 204:3 204:7,13,19 204:24 205:6 205:11,14,23 206:2,10,15 206:21 207:4 207:15,18 208:5,12,21 208:24 209:12,17,22 209:25 210:3 210:6,9,12,21 211:5,11 212:6,19 213:1,3,25 214:18,24 215:10,13,25 216:7 217:3	217:5,23 218:1,10,13 218:20,24 219:8,11,21 219:25 220:2 220:5,9,14,17	161:15 177:24 197:14	119:8 173:19 176:8,20 177:18 182:8 183:11 184:11,14 193:6 206:23 215:3,16 216:18,18 lease 103:15 104:2,5 leave 64:9 176:20 186:5 209:20 leaves 130:8 202:7 leaving 118:5 120:25 121:7 135:5 155:23 178:19 194:20 218:6 led 123:23 left 3:16 46:21 legal 86:10,14 87:4 128:21 142:23 180:4 legally 86:16 legislation 59:20 79:16 legislature 165:11 length 195:5 lesser 50:23 letter 97:24 98:4 110:11 110:17 114:19,22 122:7,13 let's 12:18,21 13:1 136:17 146:5,24 148:22 159:8 179:14 195:12 level 192:9,19 198:7 210:20 liabilities 21:16 80:3 117:23 155:25 liability 17:22 17:23 20:17 48:5 69:13 79:4 80:17 80:18 84:16 liable 37:4 life 31:7,25 light 84:21 114:6 likelihood 13:20 29:25 likewise 115:4 limb 213:15
judgments 1:22,23,24 2:21 92:5 162:25 163:5 163:23 164:4 166:6,15 167:8,22,25 171:21 173:8 173:14 206:25 212:17	51:2,14,16,21 52:9,17,21 53:14,17,22 54:7 57:11 57:16,21 58:1,5,8,11 60:6,13,16 61:2,7,13,21 62:1,6,18,22 63:7,23 64:1 64:8,11,20,23 65:5,9 66:7 67:8,11,16,18 68:1,12 69:24 70:10 71:3 72:9,12 73:2,10,22 74:5,7,10,21 74:24 75:3,6 75:10,13,15 75:17,19,23 76:2,4,8,11 76:13,15,18 76:21,25 77:2,7,10,12 77:19 78:11 78:15,18,22 79:12,17,22 80:7,22 81:1 81:6,13,18,22 82:4 83:6,23 84:4,13,24 87:17,21,23 87:25 88:3,6 88:10,13 89:7,12,15,18 91:6,8,13,17 92:11,14,19 93:11,13 94:10 95:18	119:11,15 120:10,20 121:5,9,13,20 122:3,6,12,14 122:25 123:1 123:3,10 124:7,12,15 124:24 125:5 125:8 126:9 126:25 127:22,25 128:13,17,23 129:12,24 130:6,8,14,18 131:4,11,15 132:1,8,13,16 133:4,6,12,16 134:8,15,21 135:1,10,13 135:17,20,23 136:1,4,8 137:4,12,16 137:19,25 139:10,14 141:11,23 142:14,22 143:7,14,22 144:5,18,21 144:24 145:2 145:5 146:21 146:24 147:2 147:18 148:7 148:13,15,17 148:20,24 149:9,16,18 149:23 150:2 150:5,7,10,16 150:22 152:3 152:11	155:12,25 154:3,13,17 154:22 155:3 155:7,8,14,18 155:19,21 156:3,7,11,18 156:21 157:2 157:6,19 158:3,13,20 159:7,16,23 160:8,10 172:15 178:5 178:8,12,15 178:21,24 179:8 180:23 180:25 181:7 181:16,23 182:3,7,19 183:1,4,8,23 184:9,18,23 185:1,4,8,12 185:25 186:3 186:8,11,16 186:24 187:9 187:23,25 188:4,9 190:17,20 192:20 193:15,18,20 194:1,10,19 195:1,7,11 196:6 197:3 197:8,12,16 197:19,22 198:2,5,14,18 199:6,22 200:11,14 201:1,5,9,14 201:17 202:3 202:5,10,13 202:21 203:1 203:7,12,15 203:17,20,23 203:25 204:3 204:7,13,19 204:24 205:6 205:11,14,23 206:2,10,15 206:21 207:4 207:15,18 208:5,12,21 208:24 209:12,17,22 209:25 210:3 210:6,9,12,21 211:5,11 212:6,19 213:1,3,25 214:18,24 215:10,13,25 216:7 217:3	217:5,23 218:1,10,13 218:20,24 219:8,11,21 219:25 220:2 220:5,9,14,17	161:15 177:24 197:14	L lack 175:18 193:17 landlord 64:4 language 8:12 31:18 37:1,2 42:10,22 48:11 49:19 50:5 51:6,7 52:11,15,18 53:8,12 90:9 91:5 95:19 95:25 large 91:3 123:8 172:22 172:24 late 216:21 latest 181:21 law 14:6 29:3 34:4,16 45:11,16 59:9,10 61:5 61:5,6,6 79:24 80:16 80:25 124:20 140:23,23 189:6,8,9 190:9 191:13 191:14,17,23 209:3 Lawrence 33:12 law-governed 191:19,20 layers 135:2 LBIE's 163:9 168:5 lead 82:17 146:12 leads 137:22 leap 202:9,10 202:19 203:3 203:5,19 219:13 learned 4:4,20 29:4 44:22 45:16 68:25 77:24 90:11 91:2 94:3,11 95:10,16 97:6 98:24 99:25 101:18 102:6 105:20 106:14 107:14 108:5 108:10 109:6 111:11,13

limited 106:21 108:24	52:18 56:3 70:24 97:1	39:16 41:10 41:17 43:25	171:5,17,23 172:16 174:3	88:15 89:16 89:22,24	2:10 13:6 14:7 42:15	196:4 200:4
line 3:2 30:11 31:1 34:24	116:2 121:21 143:14 144:7	44:6 45:9 46:12 47:6,8	174:12 175:2 176:4,15,18	90:23 91:8 93:17 95:8	121:15	mark 110:15
70:8 139:11	144:22 146:4 147:3 187:11	49:23 52:8 52:12 53:21	177:12,17,19 178:6,10,14	95:15 97:11 97:13,20	loses 122:21 loss 62:14	marked 75:20
lines 3:6 22:22 27:21 28:13	187:12 195:7 196:24,25	54:17,22 55:20,21	178:17,25 179:2 181:24	99:3,5,11,15 101:25	102:23 103:18,20	market 204:6
28:13 33:13 33:20,23	198:25 200:11	56:1 57:17 58:13 61:25	183:9 186:1 186:6 187:2	102:10,11 103:9 105:8	107:24 123:20	211:4
34:23 92:10 109:10 122:5	203:20 204:25 205:1	62:7 63:24 65:16 71:8	187:16 188:3 188:8,10,25	106:9,14,18 106:20	129:15,16 131:25	markets 172:3
linked 36:6 87:3	207:23 217:5 217:15	72:17 74:9 79:23 81:2	190:4,16,19 190:22	107:10 108:7 109:9,18,24	134:13 138:11 139:9	Marris 7:11
lips 32:25	220:10	88:17 89:16 89:22 90:15	191:17 192:1 192:22 195:2	110:3,4,7,17 111:5 112:14	141:6,19 145:25	110:24 135:5
liquidation 1:15 4:24	looked 10:8 13:14 18:3	90:21 91:2,8 91:18 92:2	198:7 199:14 200:7,18,21	112:15,22 113:7,13	152:23 172:13	136:12,16,17
11:13 14:13 26:11 29:24	26:3 73:10 76:5 81:9	93:14 95:1 95:14 97:12	201:10,25 202:15	114:16,17 116:21	174:10 179:21 180:5	137:8 159:14
56:15,21,23 58:2 103:19	looking 9:24 15:6 17:10	97:21 98:20 99:24 101:4	203:16 204:10,12,15	118:15 119:10,12,13	180:17 181:12,20,25	178:3
104:7,15,20 105:1,18	20:22 28:5 34:14,21	101:10,17,25 102:7,9	205:5,12 206:5 208:11	120:14,16,19 160:25	183:2,17 184:16 191:1	master 24:14
155:25	36:25 41:21 42:2 43:25	103:4,6 104:14 105:6	209:23 211:1 211:1,21,22	161:15 164:13,20,21	208:19 209:1 211:7,24	25:23 26:14
liquidations 59:20	51:8 53:19 54:15 55:11	106:8,13,18 107:6,10,25	211:22,25 212:4,7,13	164:22 165:18	212:10 213:4 216:20	28:12 29:9
liquidator 46:23 56:24	56:1 62:8 65:18 66:22	108:1,10,23 109:9,17	213:19,24 215:2 216:9	169:24 172:1 175:5 176:18	losses 172:24 lost 182:3	29:17 30:9
67:5	67:5,6 75:25 92:3 95:18	111:3,5,11,13 112:6,17	219:10,12 220:13	176:21 177:16,20,24	lot 10:20 158:8 lots 69:7 78:24	33:1 77:15
liquidators 103:13 196:3	95:25 140:10 140:14 141:1	114:6,15,15 114:22 115:3	Lordship 44:6 44:9 45:14	178:6 187:4 187:6 189:14	lottery 101:8,9 101:16	99:6,19
196:7	151:11,14,14 154:22	115:19 116:14,22	46:3,6,13,18 47:1,2,2,22	190:4,12 193:10	low 124:10 Luncheon	191:20
list 207:13 listed 205:9	158:17 182:12	117:4,6 119:7,8,17	48:12,14 52:23 56:8	201:11,12 203:21	106:5	material 56:21
219:4	186:18 191:3 195:8 202:21	120:8,13,22 120:24 121:1	57:17 58:23 59:15,16,18	204:17 205:12	materially 191:2	112:19
listening 177:20	202:22	121:14,15,18 122:4,6,24,25	60:3,20 61:3 61:23 62:3,9	206:12,13,14 207:9,11,14	materials 204:6 218:15	172:19
litigation 113:19,21	looks 24:19 95:25 105:9	123:1,11 124:11,14,18	62:16 63:9 64:6 65:6,15	210:23 212:4 213:21	mathematical 110:8	187:20
little 52:24 63:21 80:25	108:10 Lord 1:4,8,21	124:20,22 125:1,23	65:23,25 66:15,21	214:11,14 215:3,4,7	mathematica... 110:19	198:20
87:12 89:5	2:6,8,23,24 3:2,5,10,15	127:18 129:3 132:6,23	67:12 68:8,8 68:25 69:2	216:5,6 218:6,11	matter 2:19 4:8 5:21 9:11	199:6,19
105:25	3:22,24 4:20 6:12,18,23	143:12 144:23,25	69:16 70:4 70:22 71:6	219:17,19	10:15 27:24 28:21 35:20	204:17
142:16,16	7:23 8:1,4,19 13:6,7,8,14	145:10,13 150:6 152:21	72:7,13,24 74:14,22	loss 122:21 loss 62:14	36:25 38:21 39:5,23	204:17
154:19 158:6	13:15,19,22 14:8,11,14,17	154:1,8,10 155:19 157:7	75:1,11,18,21 77:1.8 80:2	161:15 164:13,20,21	42:21,22 48:10 53:1,2	204:17
193:15	15:1,9 19:4 20:13 21:1	160:6,13,24 164:9,21	80:20,24 81:2,3,8,11	164:22 165:18	53:9,12 58:25 59:4,8	204:17
194:25 202:9	24:4,14 26:3 27:9 29:15	165:9 166:1 166:4 167:15	82:14 83:15 83:25 84:19	165:18 169:24 172:1	59:6,19 65:1 66:8	204:17
208:10	29:18,19 30:20,21	167:20 168:16 169:8	84:23 86:15 86:21,24,25	172:1 178:6 187:4	65:11 95:19 95:24 101:22	204:17
live 204:8 loan 37:3,13	34:22 35:17	170:1,11	87:14,20	187:6 189:14 190:4,12	110:16 110:19	204:17
101:7 213:9				193:10 201:11,12	matrix 189:25 190:11 192:4	204:17
loans 37:1 logic 16:23				203:21 204:17	190:11 192:4 192:2	204:17
100:15				205:12 206:12,13,14	192:4 195:20	204:17
long 45:2 63:9 69:22 70:1				207:9,11,14 210:23 212:4	195:20 198:10	204:17
207:13				213:21 214:11,14	198:10 208:16	204:17
longer 15:13 15:24 16:5				215:3,4,7 216:5,6	208:16 211:23	204:17
look 21:10 26:21 47:17				218:6,11 219:17,19	211:2 212:10 213:4	204:17
				Lordships 211:20	212:10 213:4 216:20	204:17
				Lordship's 45:9 58:6	217:16,20,24 218:6 187:4	204:17
				66:25 73:6 105:10	178:6 187:4 187:6 189:14	204:17
				110:12 167:19 170:1	187:6 189:14 190:4,12	204:17
				209:23 212:23	190:4,12 193:10	204:17
				215:12,22 Lord's 1:7,13	201:11,12 203:21	204:17
					204:17 205:12	204:17
					206:12,13,14 207:9,11,14	204:17
					210:23 212:4 213:21	204:17
					214:11,14 215:3,4,7	204:17
					216:5,6 218:6,11	204:17
					219:17,19	204:17
					Lordships 211:20	204:17
					Lordship's 45:9 58:6	204:17
					66:25 73:6 105:10	204:17
					110:12 167:19 170:1	204:17
					209:23 212:23	204:17
					215:12,22 Lord's 1:7,13	204:17
						204:17

48:17 54:18 78:19 91:9 109:17 170:23 186:19 190:6 194:13,19 matured 20:16 61:16 66:11 71:17,25 maturity 59:12 McFarlane 14:10 McFarlane's 25:24 30:15 34:3,16,17,25 35:1,11,13 40:10 72:8 meal 44:21 mean 6:3 10:7 11:20 13:24 17:5 19:17 25:6,6 37:20 42:23 48:4 50:16 51:21 51:25 67:2 67:18 83:9 91:20 95:19 96:21 97:14 116:1 126:7 127:20 132:24 134:8 135:3,23 155:18,24 186:9 188:1 188:2 193:16 193:16,23 194:2 197:19 205:23 208:14 213:8 214:1 217:7 meaning 42:2 43:17 48:8 48:11 51:16 51:24 52:1 103:24 109:8 means 7:10 11:14 32:5 32:12 38:19 41:22 53:24 54:6 65:21 94:15 97:19 132:22 135:15 144:21 meant 91:15 92:12 193:14 measure 72:21 175:8 measured 210:22 216:22	mechanism 108:20 meet 89:7 members 103:12 mention 12:1 82:13 201:18 219:12 mentioned 9:17 35:13 120:14 165:16 168:22 180:3 181:18 185:13 merely 43:9 71:20 94:24 113:21 Mervyn 93:11 mesothelioma 68:1 Metals 155:6 156:22 157:1 157:2 208:3 208:18 209:9 210:25 211:10,20 212:15,24 213:18 214:5 214:6,20 215:1,5 216:10,11,14 218:25 Metals-type 208:7 MF 13:7 14:20 70:23 71:7 middle 3:17 31:5 Milliangos 122:4,10,17 122:22 Millett 61:25 62:7 63:24 65:16 102:7 103:6 104:14 105:6 Millett's 102:9 Milliangos 155:10 million 146:25 147:3,21 148:16,22 151:17,25 159:9 175:1 180:6,7,8,19 181:4,6,12 mind 46:7,19 66:25 89:25 110:4 112:15 160:25	164:22 170:14 mine 76:3,9 minute 108:9 minutes 57:12 154:4 214:2 214:22 misread 210:9 misreading 39:7 misses 175:4 missing 142:4 misspoke 80:9 misstate 201:5 misunderstood 31:23 87:25 201:1 misuse 8:12 mitigate 174:14 mitigation 157:10 174:8 174:13 mix 150:17 mode 73:15 modern 71:10 modification 120:5 moment 23:8 37:4 47:21 49:2,4 51:5 57:12 60:1 67:13,23 84:12 105:23 132:3,17 152:6,9 154:1 178:20 179:16 184:20 188:4 191:15,24 193:4,25 205:15 208:17 moments 63:22 Monday 187:22,24,25 188:1,2 192:11 money 6:6,9 8:1,7,11 9:4 9:15 10:2,4 17:24 43:2,6 45:24 48:24 49:4,5 54:11 55:6,25 59:5 59:7 82:9,10 99:21 100:2 100:3,6 143:6 152:20 176:11,13,16 184:4 208:8	208:25 209:13 210:2 210:22 211:24 212:11 216:16,23 month 14:13 21:14 26:12 28:25 morning 215:9 move 13:5 54:22 56:6 120:13,21 129:13 145:7 moved 37:7 movement 179:17,20 movements 144:10 172:2 174:2 moves 37:5 172:9 moving 22:22 65:12 74:15 120:22 125:4 muddle 45:18 <hr/> N <hr/> narrow 42:13 89:3 94:21 nature 41:7,9 90:1,14 106:21 154:20 160:25 Neale 113:10 113:11 necessarily 11:14,20 93:15 108:4 110:20 135:10 necessary 9:7 55:16,17,23 126:15 127:2 206:17 207:12 necessitate 207:8 necessity 206:7 need 8:3 11:20 15:14 16:5 27:18 39:25 46:4 47:3 57:22 59:15 72:18 73:13 74:22 77:6 86:4,9 94:8 94:16 102:2 109:4 110:25 124:18 125:1	133:24 142:16 164:17 176:25 188:5 190:16 201:12 205:3 206:3,6,19 207:13 214:8 214:19 217:13,21 218:8,16 219:2 needed 217:17 needn't 157:7 needs 7:23 10:8 46:6,18 80:24 81:3 89:24 105:8 108:8 110:17 160:25 169:21 173:15 194:7 194:12 205:24 206:2 214:14 neither 14:19 22:3 55:23 64:24 86:14 140:23 net 82:17 83:8 83:11 111:17 111:21 112:2 113:7,25 114:2 115:6 115:14 116:15,25 118:3,7,19 never 41:2,3 101:9 147:14 151:6 176:5 182:11,16 nevertheless 29:1 97:10 105:11 167:22 169:4 169:15 210:17 new 29:22 54:15 63:12 65:22 66:2 74:6 179:1 189:6,8 190:8,9 191:13,14,17 191:19,20,23 203:11,12 Nicholls 3:5 211:1,22,25 non-applicati... 178:2 non-interest...	175:10,14 non-payment 138:16 non-provable 93:21 127:20 128:4 130:20 134:9 155:22 158:25 159:10,21 160:16,23 161:10 163:2 175:25 179:21 208:13 non-return 34:9 non-sterling 182:11 normally 105:2 212:8 213:6 Norris 91:6 Northern 14:10 97:7 note 58:6 61:3 63:9 73:6 75:4 172:18 219:22 noted 122:24 125:23 165:19 173:7 notes 26:17,23 172:1 notice 56:10 103:14 116:9 217:16 notify 211:11 218:11,13 notional 55:12 109:14 notionally 111:1 nuanced 137:11 number 11:18 11:21 42:23 45:15 53:11 72:4 88:16 92:10 114:17 116:21 120:15 139:6 147:25 159:6 185:2 195:14 numbers 148:25 numerous 11:10 125:13 126:3 nutshell 152:4 <hr/> O <hr/> obiter 29:10	33:4 122:25 objectives 91:11 obligation 163:9 168:5 188:16 obligations 65:19 189:18 observation 28:15 observed 187:6 obtain 46:2 obtained 126:19 obvious 8:9 9:24 164:12 obviously 5:1 52:12 56:20 65:12,14,23 88:14 90:2 92:9 93:14 94:4 95:11 100:4 107:2 108:1 110:23 161:3 167:20 169:12 174:13 177:17 195:21 198:22 204:10 207:1 212:15 213:5 217:15 occur 94:6,21 occurred 20:11 20:16 26:11 30:13 70:19 77:17 96:5 97:2,25 98:7 111:23 occurrence 8:10 occurring 13:21 69:21 occurs 7:20 8:15 9:14 15:17 17:21 41:19 94:2 94:20 95:3,8 96:13 100:23 odd 51:7 78:23 82:20 83:7 118:13,24 oddity 24:8 officeholder 15:16 offset 133:1,11 133:14 137:6 141:4,18 152:16 153:11,19
---	---	--	---	--	--	--

159:25 161:25 162:9 164:3 167:15 167:16 168:23 170:6 174:10 offsetting 184:16 off-the-cuff 216:4 Oh 31:22 51:5 75:15 76:21 109:20 195:11 202:10 208:13 okay 78:22 97:22 133:6 133:18 134:19 150:10 180:5 201:5 204:7 old 22:6 72:1 79:24 93:12 210:14 old-fashioned 212:1 Oliver 123:1 once 9:14 12:20 13:5,6 13:12 14:5 14:23 15:11 15:20 16:10 18:16 20:16 21:7 38:18 55:25 58:23 70:6,18 71:2 77:17 78:8 80:16 122:21 126:2 142:18 143:24 146:8 146:14 147:19 155:21,22 159:3 165:1 217:11 218:14 onerous 103:15 ones 219:5 oneself 16:9 18:14 one's 96:7 171:19 199:4 one-off 190:3 one-way 123:21 onwards 200:10 220:4 open 14:4 73:18 86:19 130:8	opening 70:8 107:6,24 operate 214:15 operates 4:24 40:3,6 212:24 213:2 213:3 operation 70:18 142:22 153:9 opinions 211:2 opposed 29:25 32:6 121:12 141:5 187:17 opposition 123:12 optimum 193:2 oral 194:23 205:3 214:23 215:19 orally 199:17 order 5:1 9:7 12:10 28:10 30:7 33:17 34:11 125:9 127:6 145:20 197:14 211:17 ordinary 27:19 37:1 original 20:18 53:3 61:17 61:18 63:8 81:19 82:2 86:1 114:1 115:5 146:15 originally 55:20 182:18 188:12 ought 64:15 66:13 80:17 155:1 171:14 196:23 209:19 outcome 146:13,14 167:18 outcomes 13:23 outset 3:22 5:21 44:10 69:19 187:7 outside 184:24 outstanding 5:23 6:11,24 7:3,10,10,19 8:13 9:1 23:24 37:3,6 42:8,8,9,11 42:19,23 43:3,17	44:14 48:1,3 48:8,16,22 49:2,8,12 50:19,23 51:10,19 53:1,2,18 54:2,14,19 55:4 65:13 67:13 82:17 82:22 83:2,9 84:11,16 85:14 87:15 88:8 92:1 93:2 102:25 103:22,25 104:7,15,16 105:13 109:8 109:13,15 111:22 112:4 115:17 118:4 118:7,20,25 202:7 208:22 overall 21:1 34:13 126:10 138:11 140:6 140:16 141:1 149:4 158:23 183:14,20,21 185:14 owed 115:10 117:17,18 119:18,19,21 119:22 120:2 120:5 163:4 163:22 167:2 174:25 owing 104:8 113:7 114:2 115:1,6,14 118:3,19 o'clock 26:22 106:2,3 P page 2:23 3:5,6 6:18,19,22 22:1,1,9,17 24:12 26:23 27:1,12 28:22 30:10 30:11,21,22 30:25 31:5 31:13 33:11 33:13,20,24 34:6,22 35:3 58:7 62:9 64:6,10 72:19,20,24 73:17 74:3 74:13 75:7 77:6 78:19	97:24 99:5 102:17,18 109:9,10 110:13 112:16,16,22 113:10 114:19,22 122:1,8,13 149:22 200:12 202:18 204:6 pages 28:6 35:8 77:1 195:4 200:16 paid 5:7,10,16 7:2 8:9 9:12 10:1,16 11:3 11:18,22 36:16,19 37:4 40:13 40:14,16,18 41:3 43:7,8,9 46:10 54:1 59:11 63:15 67:23 68:5 81:17 91:23 93:16,21 135:8 136:13 138:19,20,25 140:11,12,16 140:21,22 141:15 143:20,21,23 144:1 145:17 146:6 148:3 150:14,15,21 151:11,14 152:24 155:16 156:15,16 157:4,15 159:6,13,13 159:20,20 160:19 161:8 163:3,9,12 164:6 168:4 168:5,8 170:16,22 171:12,15 179:12 181:13,22 182:24 208:24 211:24 Palace 48:6,9 paper 112:10 150:3 164:8 164:23 paragraph 1:13 2:25 13:9,14,15	14:4,9 27:5 33:24 44:23 46:4 51:3 65:7 74:11 90:24 102:9 122:2,6,20 123:4,13 124:8,11,19 124:23 149:20,22 152:14 153:2 153:6 164:24 165:18 169:25 170:2 175:4 202:20 202:24 203:6 219:25 220:1 220:4,15 paragraphs 41:23 65:7 87:11,16 120:17 123:2 153:9 154:19 173:2 174:3 200:9,17 201:12 219:15 parcel 191:21 pare 160:3 parenthesis 48:15 pari 5:2 9:7 11:19 46:10 50:25 55:16 90:5,21 126:1 parities 191:22 211:16 park 58:7 61:12,22 62:2,11 102:7 103:5 152:8 parked 219:5 part 5:20 7:4 12:12,20,23 24:10 28:2 30:17 38:25 51:19 81:24 83:13,14 84:9 88:20 88:24 91:3 112:3,5 113:21 124:5 124:6 127:23 129:20,25 132:20 133:24 137:23 138:9 138:18 139:1 140:6 141:17	141:17 151:19 152:5 153:3,19,21 153:22 160:22 172:13 182:3 182:8 184:13 184:15 188:25 189:5 189:17 191:18,21,21 202:22 205:18,20 206:12 209:8 partially 36:17 72:15 participate 125:9,21 145:21 146:12 147:10 176:5 participating 146:20 particular 4:10 5:25 10:8 19:12,13 21:5 25:23 36:23 45:10 48:5 56:14 59:23 70:3 73:15 86:5 86:13 122:7 123:12 140:24 157:1 187:13 191:20 192:25 194:5 194:10 196:2 196:22,22 200:2 208:25 209:7 213:11 213:11 216:14 particularly 55:18 57:4 61:3 86:6 88:3 94:7 133:23 149:13 172:20 179:1 204:11 parties 6:17 10:21 110:12 121:8 132:22 132:24 170:3 170:4 187:7 190:13 191:15 192:24 193:3 193:13,21,23 194:12	198:21 204:21 209:20 211:15 212:2 215:23 219:3 partly 217:7,9 parts 12:18 46:16 196:10 196:16 199:21 200:22 party 191:7 211:12,24 212:11 213:4 213:9 passage 14:7 14:17 15:2 31:12,20 33:11 34:6 46:14 63:21 75:7 97:11 102:11 103:17,24 105:4,21 114:19,22 155:11 passages 70:22 116:21 219:23 passu 5:2 9:7 11:19 46:10 50:25 55:16 90:5,21 126:1 pat 149:11 Patten 47:6 pause 3:3,8 13:17 23:9 25:5 27:16 27:22 30:19 31:10,21 33:21 34:1 51:14 64:11 65:9 73:5,11 77:9,12 78:21 81:13 87:21,22 119:15 124:12,24 129:24 150:4 150:10 200:14 pay 37:4 100:2 106:17 138:15 163:10 168:6 183:3 211:6 payable 7:18 12:7,7,14 13:21 16:12 22:19,21,23
---	--	---	---	--	--	--

22:25 23:19 24:3 36:6 40:5,5,11,12 42:7 45:1,3,6 50:7,18 51:3 57:5 60:10 60:22 78:7 85:24 90:24 91:1 107:19 107:22 116:6 117:2 119:25 150:23 153:5 169:14 173:5 173:9,16 182:23 paying 23:3 45:13,23 48:23 49:16 54:9 93:7,8,9 107:5 139:5 156:25 159:4 payment 5:14 8:18,20 9:6,6 17:9 19:9 21:12 23:17 32:1,5,5 38:1 38:7,10,13,23 39:14 42:12 43:6,13 44:18 47:15 50:25 51:12 59:6 62:20 63:5 66:4 68:11 91:19 92:25 95:5 103:2 110:4 110:22 126:8 127:8 139:8 140:13,17 141:5 143:17 143:17 146:8 147:4,17 152:19,22 159:8 165:10 165:23,24,25 168:13 169:5 169:6 170:6 172:7,8 175:9 179:18 179:23 180:9 180:12 211:18 213:12 216:21 payments 9:22 37:13 104:4 126:3 138:11 139:3,12 140:4,9,19,21 141:2,14,21 144:7 146:10	147:25 152:18 160:1 164:13 165:1 165:2,8,22 167:5 171:8 171:13,18,19 185:2,9,19,20 pears 150:18 peculiar 23:21 penalty 213:12 perfectly 42:10 94:20 98:13 98:16 100:20 164:18 214:24 performs 6:13 177:2 period 6:7 7:4 7:5 21:22 24:25 34:10 43:12 49:2 50:22,24 51:8,9 56:17 56:21 60:21 79:1 99:9 103:1 107:22 135:7 161:8 172:23 192:10 211:18 216:21 periods 6:23 44:13,15 49:11,14 50:16,17 51:18 91:25 permissible 182:14 permit 95:4 106:9 person 151:12 personal 67:19 perspective 86:10 125:7 133:8 140:10 199:1 persuade 143:12 154:9 157:7 persuaded 145:1 persuasive 79:19 pervasive 14:15 petered 187:7 phrase 5:23 52:2 53:12 54:2,3,5 91:16 92:13 97:21	phraseology 97:16 pick 52:22 62:8 122:7 picked 59:23 picking 113:19 122:20 picture 183:16 pieces 204:17 piggybacks 177:6 Pinnock 2:9 place 14:12 35:4 62:5 80:12 98:11 134:25 154:23 202:23 placed 165:24 plain 48:18 66:3 94:20 108:6 plainly 54:6 59:1 68:7 192:23 193:24 213:2 play 45:19 130:1 161:1 205:18,20 plays 209:6 please 31:10 203:23 plenty 8:2 86:21 plus 148:9 184:22 197:10 pm 106:4,6 154:5,7 220:20 PO 33:12 point 2:9 6:14 7:13,17 8:9 10:12 17:13 18:1,4,11,18 19:22 21:1 25:4,12 29:7 30:9,16 31:19 33:7 34:20 39:3 39:16,20,22 39:25 40:1 40:21 42:15 42:15,25 44:9,24 45:7 46:3 47:1 48:12,13 49:10,21,23 50:15 51:13 52:19,22,23 55:2 56:5,15	58:7,12 59:22,23 61:4,4 65:20 65:25 66:16 68:9 69:25 73:16 74:23 79:23,25 80:23 82:23 82:24,25 83:24 87:3 88:14,15 89:3 91:15 92:23 93:14 97:18 104:24 105:16 106:15 107:1 107:1,6,25 109:2,6,11 111:12,13 117:11,13,16 118:8,10 119:7 120:4 120:9,24 121:14,23 124:13 125:4 129:3,18 131:9 132:14 133:4,8,9 136:14 137:15,17,21 139:5 140:2 141:9 142:15 143:11 144:25 145:20 154:10,14,18 158:6,24 162:22 166:14 174:21 175:5 176:15 177:3 177:8,13 178:25 179:2 180:16 181:22 183:9 187:2 189:2 189:3,11 190:24 191:11,13 192:3,4 195:22 196:25 197:1 200:8 203:8 205:2 206:12 206:22 207:5 207:20 208:14 209:24 212:12 214:19 217:3 217:23	219:13 pointed 14:11 69:2 pointers 52:19 53:24 points 1:6 33:3 37:10 49:13 54:25 72:6 81:9,9 84:23 101:20 106:8 106:10 117:24 119:3 149:19 169:23 188:10 190:23 192:17 202:17 205:14 209:20 policy 26:8 29:24 30:5 30:12 31:8 122:17 policyholder 32:1,4 port 121:7 posit 187:13 positing 179:5 position 44:10 47:18 57:18 57:24 58:22 67:5,6 69:17 69:18 71:18 71:24 88:11 88:19,19,21 97:1 108:6 108:15 111:19 112:10 115:19 117:17,18 118:9,11,14 118:22 121:11 128:18 130:13,14 133:19 139:22 142:17 150:2 158:23 163:25 164:8 164:9,23 168:19 170:5 177:20 186:21 192:16,22 193:2 196:8 198:21 199:10,12 201:6,23	204:16,20 206:7 215:8 215:16,24 216:9 217:9 217:10 218:3 positions 3:16 19:11 positive 199:12 202:17 posits 45:5 118:15 possibilities 15:18 216:11 possibility 45:5 93:18 135:14 138:3 179:19 181:5 199:7 218:24 possible 13:23 38:6 94:22 152:7 168:19 192:25 193:7 198:22 199:2 possibly 204:15 217:1 218:25 post-adminis... 128:21 130:22 post-insolven... 210:4 post-liquidat... 130:16 142:7 pot 158:22 potential 129:4 158:16 potentially 93:20 108:13 138:7 171:24 216:2 pound 55:22 pounds 148:25 204:13 power 212:9 practical 9:9 practice 119:4 precisely 39:19 86:22 130:1 200:18 210:25 214:21 predicted 21:2 preference 215:23 preferential 83:21 premise 86:11 216:24 premiums 29:24 prepare 216:3	preparing 207:11 prerequisite 125:12 present 13:13 13:23,25 22:3 27:25 31:15 47:11 68:17 72:18 79:20 84:10 90:5,13,18 94:14,24 95:3 96:3 99:20,22 100:15 112:4 115:13 presented 191:16 presently 51:23 111:25 117:2 presumably 75:3 104:23 200:1 pretend 93:4 pretty 202:1 prevail 198:23 198:25 prevent 19:20 previous 21:3 168:4 previously 11:8 16:15 pre-administ... 197:10 pre-commen... 50:10 pre-question 181:1 prime 189:15 principal 116:5 126:17,19 127:4 131:3 132:2 133:1 138:8,11,22 139:12,21,24 140:1,9,13,16 141:4,5,9,18 141:22 145:11,13 146:22 148:9 161:5 162:15 163:13,22 165:1 166:11 168:9 170:24 176:2 177:1 177:5,9 185:7,18,19 187:12 197:9 principle 4:8 5:21 13:9
---	---	--	--	---	---	---

14:15 16:10	157:18	58:15 59:1	81:11 82:2,5	64:4 118:19	85:14 86:14	209:6 210:23
16:14 25:24	159:10	83:9 152:17	82:11,13	140:4,22	87:15 96:13	quo 173:20
46:14 59:4	163:11 168:8	161:6 165:4	93:21 95:10	159:12 163:7	96:14 97:9	quotation
65:2 66:8	179:4,7	170:9 208:11	117:19	169:4 182:23	108:2 109:12	14:17 122:20
67:22 68:23	185:22,22	209:18 210:5	210:18	pursue 154:11	109:13 110:7	quote 122:16
70:18 71:12	produce	210:19	provisional	put 2:10,11 3:9	113:12,14	quoted 15:2
82:25 84:23	100:13	216:12	218:7	35:20 43:21	116:14	122:5
85:12 88:15	111:17 118:2	prove 17:7	provisions	44:25 52:14	117:16 118:5	quotes 150:2
90:21 116:15	185:9,10	21:20 22:23	71:23 81:3	52:16,24	122:5 124:21	
164:12	produces 147:5	24:23 27:18	113:14	60:1 72:10	128:16 130:9	<hr/> R <hr/>
167:17	172:6,11	32:7 37:22	pure 12:15	76:16,19	137:10	raise 194:20
217:18	product 54:20	37:24 38:4	19:14,24	77:4 81:10	140:14	205:15
principled	progress	39:2 59:13	48:10 94:12	83:15 84:22	147:12	raised 85:5
84:15	194:16	73:19 77:16	purely 67:1	94:14,24	151:10,14	124:8 129:3
principles	proof 9:21,22	78:20 95:5	purpose 6:3,5	121:11	152:7,23	130:9
45:11,16,18	17:11 22:7	99:7 116:12	6:7 7:16,22	127:17	158:8 159:3	Ralph 2:23
91:11 113:1	22:11 31:25	proved 23:17	7:24 8:2	128:15	159:19 160:3	ramifications
155:1 157:8	32:6 34:8	28:23 39:14	16:22 45:20	133:15 135:4	160:5,13,20	121:3 145:24
157:9 191:17	41:25 42:1,3	42:3 44:13	45:22,23	142:12 143:1	160:24	range 94:21
191:22	42:6 48:16	48:1 50:19	46:6,7,18,19	143:11 148:7	161:19 162:7	195:9
prior 8:9 10:18	48:19 53:6	50:22 53:3,7	47:11,12	148:8 155:4	163:23	rank 91:1
18:20,23	53:19,20	53:9,13,24,25	48:20,22	160:6 173:25	165:20 177:7	ranking 90:25
207:6 212:14	62:13 64:3	54:2,5 55:4	55:17,19	183:15	177:19,23	93:22
pro 83:17 84:2	68:24 79:7	58:14 63:19	62:24,25	186:20 188:6	178:3,18	rata 83:17 84:2
166:3,6	81:15,24	65:21 83:14	77:21 79:16	194:3 198:8	181:19,22	199:3 201:3
173:20 199:3	82:7 96:1	85:12,13,17	86:22 92:3	200:7 206:20	182:16 183:7	rate 1:23,24
201:3	108:16	85:18,23	99:24,25	putting 13:22	183:15,17,19	2:2,18 24:9
probably 3:9	116:13	91:20,20,24	113:16 123:7	13:25 90:18	184:5,7,8	24:10 45:1
11:5 52:5	162:18 163:3	91:25 92:15	139:13	147:22	187:14,19	51:17 93:10
73:14 86:25	166:25 167:1	92:16 93:1	152:21	180:15	188:11,20	124:10
106:1 122:15	170:19 173:7	115:16,16	153:14,16,21	215:20	189:11 191:2	129:20,22,25
194:2 209:19	173:18	125:15 140:8	187:3 192:8	puzzled 208:10	195:22 196:1	130:3 131:12
problem 63:10	196:11 197:9	141:8,14,20	purposes 9:21		196:15 198:8	131:13,16
83:1,5,20	210:12	141:21	12:16 13:13	<hr/> Q <hr/>	198:10,12,17	134:11,17
108:23	proofs 15:19	150:24,24	16:17 18:7	qualification	201:21 207:6	136:7,11,20
143:22 207:3	proper 22:10	157:25 172:5	24:18 40:23	44:22 114:12	212:23	137:8 151:13
217:24	31:14 32:19	175:9 181:18	45:15,18	Qualified	213:19	153:8 162:25
problems	37:11 42:10	184:13,15	47:12 52:19	73:22	questions 1:7	163:5,23
124:14	73:14 77:20	proves 57:24	54:18,24	qualify 48:19	16:17 84:19	164:4 166:6
proceed 46:24	77:21 79:6	58:3	55:13,14	50:11 126:22	85:1 87:1	166:15 167:8
proceedings	215:7	provide 93:12	58:16 61:15	quantification	100:17	167:22,25
212:16	properly 42:19	106:23 109:1	63:2,20 65:1	104:11	182:23	171:21 172:8
proceeds 24:15	96:21 102:25	113:1 119:24	67:10 72:18	quantified 63:2	192:25	173:8,8,9
process 4:25	151:23	216:5	72:22 79:20	63:3 70:19	205:13	178:3 179:13
9:10 10:4	property	provided 36:15	80:19 84:11	98:1,8,15,20	211:13	197:20,22,24
12:17 13:19	103:15	190:11	89:9 111:22	103:20	quickly 60:24	197:25
13:22 15:5	113:25 166:1	213:10	112:4,20	104:10	121:24	206:25
16:6 47:18	proportionate	provides 6:4	115:12 123:9	quantifying	190:22	212:17,20
55:23 56:23	58:19	91:19 128:19	128:23 130:3	155:2	quid 173:20	rates 128:9
57:6,7,7,8	propose 4:6	182:9	131:3 138:17	quantum 165:5	quite 31:22	144:10 153:6
65:4 68:15	proposition	proving 25:3	152:18	Queen's 21:25	32:10 44:7	195:14
69:2 70:13	7:24 84:2	30:7 45:12	158:21	question 1:21	49:17 52:11	205:17 211:4
71:2 81:5	120:6 145:3	54:17 56:23	165:25	4:10 5:22	56:25 58:8	rationale 54:9
94:16 98:21	145:3,4	57:8 62:20	170:19 173:7	9:22 10:22	58:22 71:9	122:21
104:10	proses 55:25	72:23 123:7	173:18	10:25 14:20	121:23,23	reach 91:10
113:21	prospect	123:9	179:24	15:10 23:22	130:13	199:2 207:19
140:19,23	215:18	provision	192:15	35:18 37:21	134:23 186:7	reached 92:10
146:4,5	prospects	15:16 61:17	196:11 197:9	43:11 49:1	189:7 193:3	132:24
148:4 149:2	68:19 69:6	63:25 65:17	206:19	54:23 64:25	193:4,12,22	147:16,19
151:19,22	provable 27:8	73:7 77:23	purposive 6:1	65:12 69:4,5	197:4 199:11	165:19 186:9
152:24 153:3	33:15 50:11	80:12 81:7	pursuant 62:13	83:16 85:11	206:11,14	reaches 87:14

reaching 196:3	136:24	39:22	175:8	107:25 109:7	29:22 36:4	92:1 93:3
reaction	137:13	recalculated	receiving 33:17	112:9 117:8	41:12 44:8	112:16 116:9
180:17 202:2	149:10 155:5	146:7	34:11 58:19	119:8 157:8	45:4 46:15	121:25
read 3:2 13:16	156:22	recall 47:3 62:3	59:5 138:20	218:15	46:22 47:19	123:15 130:2
30:4 31:9,21	158:24,25	91:8 99:11	144:8 151:2	219:15	49:7 54:25	146:9 171:11
33:22,25	180:15,16	107:10	159:11	referring 22:13	55:14 56:20	190:10 191:7
39:17 64:5	192:16	receipt 34:18	168:13 179:3	39:1 87:13	57:18 58:16	191:12,22
65:6 72:24	194:12 195:7	36:14 50:20	recited 122:4	93:19 98:20	64:21 65:17	196:14 203:9
73:3 77:8	204:16	55:18 126:6	recites 33:12	refers 2:7	66:1,20	219:23
81:12 82:22	205:12	162:19 166:6	recollect 72:7	13:22 22:2	68:22 69:17	relied 38:12
87:20 88:1	206:16,16	receipts 103:21	recollection	28:6 30:25	69:18 71:5	48:6,14
110:14 114:5	208:16 209:6	receive 37:23	213:22	31:4,13 35:9	71:24 72:5	120:15
119:12	reason 8:7,25	48:25 68:6	recompense	42:20 49:11	78:13 80:3,9	relies 204:6
121:19	9:24 12:2,22	81:23,25	143:17	90:24 113:10	82:5 84:6,15	rely 14:16
124:11,23	17:25 21:17	95:5 100:6	reconcile	113:18	84:20 85:2	15:14 35:19
145:5 150:3	29:21 31:23	129:20	132:17	reflect 47:13	87:15 88:11	35:19
150:6 200:15	50:16 55:3	151:16 162:6	records 199:20	58:14 71:12	94:17 95:1,7	relying 168:1
201:11	56:15 59:25	163:7 164:6	recover 129:10	81:20 82:8	100:4,21,22	remain 192:18
207:25 212:7	67:22 76:3,9	165:13 167:8	129:12,23	110:25 112:7	106:25 107:2	remainder
214:3,4,5,6	78:3 80:24	167:14	135:6	216:16	107:8,11	124:16
215:4 216:19	85:3,25	168:15 172:5	recoverable	reflected	115:9,22	remaining
218:14	95:22,24	174:19	131:25	131:10	117:19 132:2	48:16 53:18
readily 59:3	96:8 99:15	175:12 176:9	recovered	reflects 43:9	132:3,20	91:19 92:25
reading 11:7	100:19 101:5	180:7,8	126:10	58:18 81:19	133:9 137:1	remains 40:24
22:20,24	101:13 103:6	184:22	recovery 49:6	110:23	140:1 141:20	50:21 58:24
27:3,7 28:9	103:8 113:14	received 82:9,9	209:3	regard 20:2	151:5 161:24	88:6,8 115:1
28:12,17	122:9 127:9	88:9 126:3,7	reduce 144:13	37:3 43:3	162:7 166:7	204:8
30:6,14 31:7	127:12 128:2	126:10 128:2	165:5 182:19	174:21	166:14	remedies 86:21
33:15,19	128:7,11	128:6,8,9	185:9	regarded 12:5	167:10,18	remember
35:5 41:23	130:1 139:11	130:21	reduced 10:1	210:17	169:23	69:1 103:4
79:8 88:8	140:18	132:25	17:8 50:20	regime 4:9	172:11,20	132:8 201:25
93:1 113:2	152:15 155:5	133:10,13	63:1	5:22 9:9 10:7	177:18	remind 3:15
113:15 115:1	159:1,2	137:2,7	reduction	10:9 18:4,14	182:15 184:1	13:15 23:15
122:10,18,22	167:17	141:22	58:16 63:1	20:23 21:6	184:13	30:20 67:12
123:6,20,24	168:24	146:20	137:7 165:3	38:3 93:12	190:24	95:18 102:11
reads 2:24	170:18	147:22 149:2	165:8	179:22	191:13	179:2
103:17	188:18	149:3 151:17	refer 14:16	180:12	192:24	reminded
ready 47:14	189:10	151:20 156:5	referable 141:3	214:16	193:13 196:8	219:14
94:16	197:12	156:9 157:17	141:5,14	regimes 4:19	196:17,21	reminding 27:9
real 9:15	214:10 217:7	157:21	147:25 148:1	21:3 34:14	198:4 201:21	121:15
144:19	reasonable	158:17 159:9	157:17 166:2	regulate 55:23	201:23 202:9	remote 101:12
215:17	46:25	159:25	185:6	relate 125:25	202:17,19	209:2
realisation	reasoning	160:18,22	reference 4:8	129:16	206:8 207:3	removed
55:9	28:21 29:1	162:11 163:6	6:23 30:16	related 130:21	207:6	131:21
realised 5:7	35:13 123:8	163:9 166:25	30:22 50:6	208:3	relationship	rendered 71:15
realistic 215:18	206:13	168:25 169:4	63:3 70:25	relates 22:17	45:11 160:13	rental 104:4
215:19	reasons 31:6	169:11,14	71:11 75:8	28:3 34:13	relatively	repaid 176:3
reallocate	31:21,24	171:8 174:9	92:6,16,17	129:8 170:24	94:21	repayable 37:1
176:13	41:13 53:11	175:1,21	93:24 103:18	195:17	relevance	101:7
really 2:19	94:23 95:15	176:11,14	103:21	relating 24:20	189:1 190:23	repayment
10:3 19:4	101:17	180:18,19,21	108:17	127:3 139:23	192:3	213:10
20:14 27:24	136:22 159:6	181:3 182:1	120:16	159:12 174:8	relevant 6:25	repeat 43:15
36:1 39:25	160:4 161:24	184:12,15	179:13 180:8	185:19,20	7:2,4 31:2	158:6
40:21 43:17	164:12 203:6	185:23	203:19,22	219:5	35:4 37:8	rephrase
48:9,17	214:12	receives 123:16	219:17,20	relation 1:22	45:15 47:11	110:25
49:13 53:9	rebate 21:21	127:11 148:2	references	3:21 4:15 5:3	49:3,12,15,17	replace 115:5
54:14 80:24	22:12 98:25	162:4,17,24	90:12	6:12 9:19,23	50:6,13,24	replaced 86:1
86:15 117:21	99:8	163:21,22	referred 25:22	10:9 11:24	57:3,10	114:2
117:24	rebate/disco...	164:4 166:5	72:8 73:6	19:23 20:22	65:24 67:14	replaces
124:13 125:3	25:17	166:10,16	90:13 95:16	21:5,6 24:11	69:5 80:2,9	128:20
127:23	rebutting	169:3 172:9	97:6 102:6	26:8,24	86:16 89:25	130:10

reply 89:21 108:25 111:6 111:10 164:20,23 165:16 178:16 221:4 221:5,8 report 74:4,6 122:1 reported 72:15 72:16,20 reports 124:20 124:21 represent 170:4 represented 204:22 211:8 represents 83:3 repudiated 30:14 require 18:5,15 18:17 21:7 96:17 100:14 174:9 186:18 218:12 required 29:23 55:23 99:3 144:11,12 185:20 187:20 189:7 192:5,14 193:11 201:4 211:3 212:15 215:6 requirement 55:15 125:25 182:24 213:23 requires 15:5 68:10 70:12 90:4 researches 109:25 reserve 220:19 resist 86:24 resolution 194:17 resolve 172:16 193:5 resolved 187:19 respect 3:17 48:2,16 50:8 51:9,18 53:18 57:8 63:18 66:22 67:7 80:10 81:17,24 82:10 84:25 85:9,16 86:3	91:24 93:18 95:6 118:1 134:9 135:7 136:1,6,10 138:11 140:8 141:21 148:9 161:7 165:1 170:6,9 171:14,18,20 172:4 177:25 179:21 185:3 189:8 191:11 195:25 196:5 197:6,7,15 216:21 respectful 91:3 respectfully 45:17 47:13 55:1 57:2 58:17 60:17 66:16,20 69:15 70:5 70:11 71:13 71:19 72:4 79:18 85:11 86:23 88:20 187:16 207:10 respects 72:3 respond 111:11 164:10 179:10 respondent 102:16 respondent's 62:12 102:23 responding 190:22 response 91:9 106:19,20,22 106:24 150:17 169:24 174:12 175:25 176:12 188:14 216:25 217:4 responsibility 194:6,15 rest 104:5 132:6 209:2 restate 144:21 result 32:22 34:8 62:14 85:21 100:13 113:6 131:24 137:5 147:22 151:25 158:23	160:18 163:15,19 165:19 166:12 174:19 177:12 178:2 189:19,20 190:1 resulting 112:2 177:13 results 115:14 137:24 retrospective 113:22 return 46:20 172:6,11 179:6 188:16 reversal 63:17 119:23 120:1 revert 120:7 193:9 reverts 119:24 review 207:19 revise 11:8 15:24 revision 15:16 15:23 revisit 152:7 re-assert 122:23 RICHARDS 1:11,16,19 2:2,5,11,14 3:4,8,11,14 4:2,5,12,17 4:21 5:8,12 5:19 6:15,21 7:12,14,21 8:5,21,23 10:6,11,13,19 11:25 13:11 13:16 14:2 14:18 15:3 15:15,21 16:1,8,16,21 17:5,18 18:7 18:10,13 19:3,6,17,19 20:5,15,21,25 21:9 22:16 23:5,8,12,25 24:6,13,21,24 25:3,10,15,19 26:2,5,9,13 26:18 27:11 27:14,16,22 28:4,11,20,24 29:2,6,14,20 30:1,3,8,19 30:24 31:9 31:20 32:10	32:16,21,24 33:6,10,18,21 33:25 34:19 35:7,16,22,25 36:11,21 37:16,20 38:9,19,25 39:3,13,19,22 40:2,20 41:1 41:5,16,19 42:14,17,24 43:4,11,20,22 44:2,19 47:6 49:21,25 50:3 51:2,14 51:16,21 52:9,17,21 53:14,17,22 54:7 57:11 57:16,21 58:1,5,8,11 60:6,13,16 61:2,7,13,21 62:1,6,18,22 63:7,23 64:1 64:8,11,20,23 65:5,9 66:7 67:8,11,16,18 68:1,12 69:24 70:10 71:3 72:9,12 73:2,10,22 74:5,7,10,21 74:24 75:3,6 75:10,13,15 75:17,19,23 76:2,4,8,11 76:13,15,18 76:21,25 77:2,7,10,12 77:19 78:11 78:15,18,22 79:12,17,22 80:7,22 81:1 81:6,13,18,22 82:4 83:6,23 84:4,13,24 87:17,21,23 87:25 88:3,6 88:10,13 89:7,12,15,18 91:13,17 92:11,14,19 93:13 94:10 95:18 96:4 96:10,19,24 97:5,14,22 98:14,19,23 99:13,18 101:15 102:17,19	103:3,16 104:1,4,9,13 104:18,21 105:16,22,25 106:3,7,12 109:5,20 110:2,6,9,14 111:2,4,7 112:12 114:5 114:8,11,20 115:8,21,23 116:17,19 117:1,5,7,12 117:20 119:11,15 120:10,20 121:5,9,13,20 122:3,12,14 123:3,10 124:7,12,15 124:24 125:5 125:8 126:9 126:25 127:22,25 128:13,17,23 129:12,24 130:6,8,14,18 131:4,11,15 132:1,8,13,16 133:4,6,12,16 133:22 134:1 134:8,15,21 135:1,10,13 135:17,20,23 136:1,4,8 137:4,12,16 137:19,25 139:10,14 141:11,23 142:14,22 143:7,14,22 144:5,18,21 144:24 145:2 145:5 146:21 146:24 147:2 147:18 148:7 148:13,15,17 148:20,24 149:9,16,18 149:23 150:2 150:5,7,10,16 150:22 152:3 152:11 153:12,25 154:3,13,17 154:22 155:3 155:7,14,18 155:21 156:3 156:7,11,18 156:21 157:2 157:6,19	158:3,13,20 159:7,16,23 160:8,10 172:15 178:5 178:8,12,15 178:21,24 179:8 180:23 180:25 181:7 181:16,23 182:3,7,19 183:1,4,8,23 184:9,18,23 185:1,4,8,12 185:25 186:3 186:8,11,16 186:24 187:9 187:23,25 188:4,9 190:17,20 192:20 193:15,18,20 194:1,10,19 195:1,7,11 196:6 197:3 197:8,12,16 197:19,22 198:2,5,14,18 199:6,22 200:11,14 201:1,5,9,14 201:17 202:3 202:5,10,13 202:21 203:1 203:7,12,15 203:17,20,23 203:25 204:3 204:7,13,19 204:24 205:6 205:11,14,23 206:2,10,15 206:21 207:4 207:15,18 208:5,12,21 208:24 209:12,17,22 209:25 210:3 210:6,9,12,21 211:5,11 212:6,19 213:1,3,25 214:18,24 215:10,13,25 216:7 217:3 217:5,23 218:1,10,13 218:20,24 219:8,11,21 219:25 220:2 220:5,9,14,17 right 1:16 3:17 4:5 8:9 10:13	17:19 24:4,7 24:23,25 25:3,7 30:3 33:25 37:16 33:25 37:16 39:2,7,9 41:16 43:20 44:3 50:10 52:5,10 55:11 57:21 59:17 61:2,7 64:2 68:8 72:12 73:2 74:10,24 76:2 77:3,7 79:12,17 81:1 84:3 88:13 90:7 108:2,23 110:2 115:25 117:3 120:10 121:5,9,13 124:7 126:17 126:24,25 128:1,16 129:9,19,19 130:4,16,19 131:5,9,17,18 131:19,20 132:4,9 133:23 137:10,14,19 138:25 139:2 139:14,16,20 139:22,25 140:11 141:3 141:23 142:1 144:1 145:8 145:15 148:14,19 149:15,25 150:14 151:21 152:3 153:12 154:13,15 156:15,18 157:4,15,19 158:21 159:23 160:14 161:16 162:16,23 163:7,19 165:11 167:21,23,25 168:1 169:10 170:7,16 171:12,21 173:16 174:1 174:21 175:4 176:24 177:2 178:20,23
--	---	---	---	--	--	---

179:3 180:3 180:4 182:14 184:11,20,21 185:3,6,7,17 187:23 194:22 197:23 198:1 198:18 200:2 200:6,17,20 203:7 204:7 204:8 209:22 209:25 210:6 210:24 215:10 217:5 218:20 220:2 rights 8:24 9:13 55:17 124:3 127:20 128:20,21 130:10 134:6 134:22 137:1 138:18 140:6 140:6,25 142:6,18,23 151:21,22 159:12 161:1 161:2 164:15 168:3 170:21 171:11 177:5 183:20 196:2 rigid 46:15 rise 19:8 127:13 128:4 138:16 139:7 154:3 161:9 168:17 170:21 188:22 190:7 211:7 role 110:5 Rolls 24:14 25:23 26:14 28:13 29:10 29:17 33:1 77:15 99:6 99:19 Rolls's 30:10 root 55:8 rough 47:14 94:16 rule 1:8,14,17 4:11 6:4 7:11 7:16,22,24 9:2,3 11:5,5 11:23 12:12 15:5,8,14,22 20:4 21:6,16 21:18 22:14 22:15,17 23:2,2,14,15 23:24 24:10	24:17,18,20 25:7,14 27:15,18 28:5,7,17,19 39:10 46:15 46:20 47:21 47:24,25 48:12,21 49:8 50:12 52:25 54:4 56:11,11 57:25 58:24 59:1,3 60:5,5 60:13,20 61:18,24 62:11,12,17 63:12,22 64:3 65:22 66:2 67:1 68:9 70:1,6 70:12 71:23 77:23,24 78:1,10,11,13 78:23 80:3,4 80:9,10,12 81:8,12 82:1 84:11 89:3,6 90:23 95:13 95:20 99:1 99:12,25 100:1,9 106:21 114:25 119:9 120:18 128:19 129:21 130:1 130:3,15 142:5,20 143:19 151:12 153:9 153:14 158:2 160:15 168:6 169:14 rules 9:17,18 15:4 21:17 21:19 22:4 22:14 26:23 29:22 34:15 35:19 36:15 37:18 38:21 45:11,16 48:4 56:6,8,9 56:19,25 59:21,25 60:2,4,18,19 60:25 61:5 61:11 62:8 63:8 69:20 78:24,24 80:4,11 89:23,25	90:20 91:4,5 91:22 92:21 93:5,12,24 99:2,3 101:3 106:23 109:16 119:9 125:3,4 163:8 179:11 179:16 181:4 181:8 run 6:14 9:23 102:14,21 126:2 143:9 159:3 running 1:25 runs 3:18 9:16 126:4 Ruritanian 207:2 S sake 180:7 Sales 109:23 satisfaction 163:9,12 168:5,8 satisfactorily 186:7 satisfactory 106:24 189:12 satisfied 114:25 124:3 127:21 134:6 161:11 164:15,17 satisfy 163:14 176:17 satisfying 140:20 save 12:2,4,7 saw 40:9 saying 16:5 26:15 37:21 42:5 73:20 84:22 96:20 98:15,19 101:18 104:14,15,16 105:4 109:11 113:5 129:18 132:25 142:1 142:10 158:20 169:5 169:9 174:25 176:9 183:12 194:3 200:16 says 3:6 6:22 25:25 27:17 34:5 46:12 48:3 79:5	95:21 97:24 98:6 99:6 101:1,24 102:4 104:18 112:25 113:20 114:6 116:23 128:6 131:15 132:23 159:5 170:11 173:19 176:11 177:7 203:1 SCG 45:22 192:12 202:2 SCG's 49:15 50:21 55:2 schedule 189:17,21,23 scheme 4:14 5:25 9:5 40:3 40:6 41:8 90:1,7 93:25 100:8 105:12 125:10,13,22 126:2 133:1 133:10,14 134:3,7 136:23 137:3 140:5 145:19 145:21 146:2 146:13,20 147:10 153:22,23 159:3 161:4 161:14 162:12,16 163:18 164:16 165:25 166:23 183:22,25 184:4,7,25 185:18 schemes 118:25 scope 210:18 second 1:21 12:23 15:23 16:2 25:22 34:23 46:6 64:21 65:11 74:7,8,18 82:13 101:3 102:13,20 118:10 139:19,24 147:13 160:23 162:1 162:8,24 167:14	168:18 184:16 189:3 191:13 200:8 213:15 214:19,20 secondly 4:18 8:14 36:6 37:17 101:24 119:5 127:4 136:11 161:6 162:23 174:16 190:8 section 22:6 27:10,13 30:23 59:21 75:9,21,23,25 75:25 76:6 77:16 87:6 102:14,21 103:14 112:23 113:15 162:12 203:10 204:1 sections 74:25 77:8 securities 85:8 191:3 see 15:15 18:10 18:13,13 20:21 22:17 24:9,21 25:4 26:2,7 29:14 29:20 30:1 30:10,19 32:21 39:12 39:16,21 47:4 51:14 53:23 57:17 59:19 61:23 70:10 72:9 74:1,1,1,14 76:21 78:1,4 78:9 83:23 88:10,13,15 88:18 89:15 93:13 95:19 97:5 98:23 99:18 100:24 112:22 115:2 116:19 130:2 130:18 131:11 134:8 134:11 144:2 148:4,8,20,21 148:24 149:9 149:16 150:5 152:7 153:9 158:3,14,15 158:22 163:19	169:21 179:9 181:7,23 191:9 193:3 193:12 194:16 197:16 198:5 199:6 204:17 208:13 210:12 213:3 219:17 seeing 2:8 142:9 150:8 seek 94:14,23 seeking 52:18 121:10 seeks 87:11 89:1 seen 13:7 46:13 47:8 75:11 81:20 90:23 sees 2:20 60:20 62:9,16 97:13 113:7 113:13 Sempre 155:6 156:22 157:1 157:2 208:3 208:7,18 209:9 210:25 211:10,20 212:7,15,24 213:18 214:5 214:6,20 215:1,5 216:10,11,14 218:25 Senior 3:20 4:23 6:17 51:25 56:2 85:3 87:10 87:19 138:6 149:21 164:9 198:21 sense 1:19 9:1 9:8,16 38:4 38:16 39:4 41:24 42:10 65:15 66:12 68:18 86:16 88:14 94:14 95:4 101:11 101:14,22 120:24 121:6 136:9 149:10 150:25 151:1 151:4 156:12 169:8 173:18 178:25 180:20 182:3 195:20 205:19	209:10 211:23 214:14 sensible 100:18 101:5 106:2 sensibly 3:24 sentence 14:16 15:2 16:3 26:19 28:6 32:11,18 35:9 97:23 113:20 119:20 210:11 separate 50:17 117:15 132:19 138:22 156:23 161:16 163:7 164:3 165:11 168:1 171:21 175:4 177:2 197:4,5 separately 127:2 series 59:24 serious 141:13 served 208:19 Services 102:7 103:5 set 1:12 4:7 62:16 110:10 133:20 163:24 204:12,15 214:16 setting 130:2 settlement 196:23 set-off 82:14,15 82:16,17 83:4,8,17,20 83:22 84:6 84:15 91:21 92:22 111:12 111:14,17 112:3,7,18,18 112:20 113:6 115:1,4,20 116:10 118:1 118:5,6,9,12 118:18,20 119:4,6 125:14 seventh 75:9 severable 170:13 shan't 205:24 share 58:19 shareholders
--	---	--	---	--	---	---

161:12	significant	123:14 162:9	204:10,15	117:19	30:22 51:11	173:5,16,25
163:18	56:17	167:17	205:5 219:12	145:25 195:3	73:14 91:18	175:3 177:2
164:14	similar 23:2	168:22	219:23 220:1	specifically	122:1 202:19	179:4,6
shares 34:9	88:19 109:1	172:22 177:6	220:4,6,18	36:14 56:6	state 122:9	182:23
71:16	145:14	situations	221:5	59:23 64:24	stated 113:12	183:22 184:4
Sheen 2:16	157:13	119:18	Smith's 47:20	208:1	142:20 145:3	185:5 197:15
shoot 121:10	165:15 177:3	171:25	solely 129:8	spectacles 56:2	145:4	212:9
short 32:17	177:12,20	172:19	210:22	speech 97:12	statement 2:20	stays 2:4
57:14 72:6	similarly 11:4	six 28:13	216:15,23	102:9 112:17	208:9	steer 3:17
80:2 103:22	simple 7:1	sixth 3:2	solicitor 2:17	speeches	statute 37:18	Stein 14:16,19
106:8 111:3	49:18 86:2	skeleton 12:1	solution 9:9	211:20	65:19 110:5	35:20 70:23
114:18,21	99:14 103:8	44:23 45:8	solvent 8:8	213:23	142:22 143:2	71:9 97:8,12
127:6 154:2	161:22	85:5 87:7	142:25	speedily 46:24	143:18	112:8 114:8
154:6 168:24	168:16,17,19	108:25 112:9	somewhat	Splendid	146:17	114:24 115:2
176:15,21	simpler 49:20	149:12,21	29:16 33:3	203:17	157:21 168:2	115:23,24
178:25 187:2	141:9 184:8	152:13 153:2	186:19	split 12:18	168:15	116:2,20
196:7 199:14	simply 39:10	154:19,20	sophisticated	splitting 13:1	169:15	119:23 120:1
209:23	44:25 50:6	164:21	94:8	square 129:18	176:10	120:18
214:22	55:11 66:1	165:16,17	sorry 17:18	stage 61:14	203:15 204:2	stem 212:18
216:25	67:1 68:9	166:18	21:11,18	69:9,9 70:15	212:14	step 86:13,17
shorten 218:17	70:8 82:8	169:24 182:9	23:7 27:22	71:21 80:1	statutory 9:5	86:18 137:22
shortfall 46:12	83:1,16 84:1	183:15 195:4	31:20,21	85:21,22	43:12 44:25	sterling 37:5,7
93:19 126:15	84:5 86:10	195:6 199:16	33:18 60:13	90:11 100:24	50:7 54:9	122:18
127:4,5,7,11	90:13 95:9	200:10	60:19 62:1	106:11	55:18 62:4,5	123:14,16
127:14 129:9	98:5,9 99:20	201:12,22	74:5,21,22	147:13,16,19	62:14 63:14	125:12,17
129:15	100:18	202:18 204:5	75:4,15,23	162:17,24	65:12 67:22	126:3 127:10
130:25	103:23 104:7	204:16 208:9	77:4 78:22	163:1 167:12	67:25 79:21	127:13
131:24	108:20,24	210:7 216:19	87:23,25	181:21	84:8 93:22	128:12
133:21,25	134:5,5	219:16,23	96:4 102:17	182:17 186:9	95:12 100:7	129:11
134:10	135:4 143:16	Slade 155:8	102:18	187:3 199:5	105:12	131:14,16,23
135:16,17,18	151:20 158:8	slight 24:8	114:20	209:19	107:17,18	134:16,19,24
135:22	159:2 160:4	176:8 211:21	122:12 128:9	stance 3:15 7:6	108:13	135:4 136:4
137:23	172:21	slightly 56:20	130:13,18	stand 184:19	119:23,25	136:5,21
145:23 147:6	173:22	74:15 79:10	141:24	standard 23:6	125:9,12	142:8 144:2
148:5 158:16	174:21	79:18 80:8	143:22	189:14	129:21	144:2,8
159:2 160:4	183:19,24	88:20 111:24	148:20	standing 9:25	131:15 133:1	145:22 146:6
160:5 161:9	188:10,25	113:9 117:11	154:22 159:1	36:25	133:10,14	147:4,4,25
163:2 169:2	189:11 198:9	135:1 176:19	201:1 202:21	stands 84:1	134:3,11	148:9,10
170:15 174:2	198:12	177:3,14	219:12,13	stark 108:24	136:23 140:5	150:19,25
177:25 183:2	207:20	186:22	220:8	start 7:17 14:9	140:19,21	151:3 156:7
183:6,7,18,20	simultaneous	188:21 211:2	sort 19:10	44:1 47:21	143:3 145:12	156:9 157:22
shortly 121:11	55:9	211:25	55:13 63:16	57:19 64:8	145:18,21	160:19 162:3
160:6 189:4	single 50:23	slower 58:10	80:23 85:10	84:22 88:21	146:2,8,13,20	162:21
show 6:18 13:6	51:9 55:15	small 46:21	128:15	90:8 99:16	147:10 148:1	163:20,21
60:3 97:11	115:14 118:3	60:1 109:6	173:21	122:15 146:3	149:5 150:14	166:5,13,14
97:19,20	118:7 121:2	Smith 48:3,14	174:25	149:22	150:21,23	166:21,22
99:3 114:16	139:1 165:3	69:25 82:14	179:19 190:3	176:22 177:5	151:2,7,19	167:5,5,9
164:19	165:9 166:2	83:15 86:4	194:17 195:2	200:12	152:1,16,19	169:2 170:18
showed 80:2	180:12 185:7	111:9,10,11	212:1,3,10	202:22	153:7,21,22	171:16 172:5
109:24	185:17,21	112:14 114:7	213:5	started 189:4	153:23	172:10 173:8
116:21	197:7	114:10,14,21	sorts 189:13	starting 72:20	158:17 159:3	173:10,12,15
shown 34:6	Sir 30:15,18	115:9,22	sought 102:7	82:25 103:10	159:4 161:4	173:21,24
124:20 128:7	72:19 73:17	116:14,18,20	207:5	121:14	161:14,16	174:24
shows 171:5	sit 209:19	117:4,10,14	source 139:4	137:21	162:11	175:20
shrink 66:2,14	sitting 82:1	117:20,24	space 108:9	145:15	163:10,17	179:13,25
89:4	situation 70:7	119:12,17	speak 35:12	164:23	164:3,16	180:10 181:9
shy 10:5	83:13,19	120:11,15	170:3	169:25 177:3	165:4,25	181:13 182:6
side 52:14	85:5,10	126:23 178:9	speaking	177:8,13	166:23	182:10
148:8,22	95:12,14	178:10	125:23	195:22	167:13 168:6	191:10 207:1
171:1,7	105:6 108:24	190:17,19	specific 24:20	202:18,24	170:10	Stewart 109:21
sides 148:12	111:24	202:16 204:3	94:5,18	starts 26:15	171:21 172:8	stood 187:21

153:19 215:15 Storm 47:2 71:7 straddle 100:17 straightforw... 134:4 137:10 straightforw... 100:20 strange 49:13 49:14 71:20 street 176:6 stretch 121:6 striking 49:19 71:10 strip 99:21 stronger 53:24 159:24 structure 59:8 137:13 Style 203:11 subheading 200:12 subject 41:25 42:6 53:1,2 61:9 71:22 84:19 94:18 95:23 101:11 191:4 209:2 215:2 submission 7:9 20:15,19 25:18 28:19 34:13 42:4 49:7 55:14 66:1,2,14 73:16 77:15 82:23 86:4 89:4 90:16 91:3 95:20 112:19 115:16 116:22 117:4 118:18 142:15 183:14 203:8 submissions 1:3 4:1 6:20 41:12,18 43:19 44:5 45:17 46:22 47:20 52:24 66:19 72:5 80:21 82:14 84:19 89:21 91:2 107:7 107:11 110:24 111:6 111:10,12	120:23 123:23 137:13 160:6 160:12 176:8 177:18 178:16 183:11 186:2 187:7 194:21 194:24 205:2 205:3 207:6 207:24 214:3 214:23 215:7 216:4,18 217:11,13,14 218:15,17,25 221:2,3,4,5,6 221:7,8 submit 6:12 10:24 13:3 13:24 15:8 37:11 45:13 52:13 53:2 70:6,12 82:20 108:16 115:19 116:18 118:2 118:6,24 submits 42:18 submitted 62:13 64:3 79:5 98:25 107:23 submitting 123:5 subordinated 63:17 82:2 subsequent 35:5 subsequently 85:8 108:8 108:16 116:10 142:24 219:16 subsidiary 65:7 93:14 subsists 86:2 substance 9:11 36:7 100:5 101:24 210:1 216:13 substantive 41:6,8 substitute 17:22 20:17 substituted 14:23 substituting 27:2 subtle 117:13 130:23	sub-issue 202:9 sub-paragraph 175:5,6 210:11 sub-paragra... 153:10 203:6 sub-rule 63:11 64:22 successful 213:9 successive 49:22,24 sue 174:20 suffer 135:24 136:1,5,10 211:24 suffered 62:14 123:6 127:8 128:11 129:15 136:19 138:10 146:10 152:23 172:24 209:1 212:11 suffering 135:24 148:5 suffers 107:24 131:24 135:22 213:5 sufficient 90:9 195:4 suggest 29:7 31:14 45:17 47:13 50:4 55:1 57:2 58:18 60:17 66:16,21 69:15 70:17 71:13,19 79:18 85:11 86:23 88:20 105:7 175:11 177:15 187:16 193:5 201:10 215:2 215:11 suggested 32:19 90:12 107:11 167:9 167:10 177:7 199:15 217:12 suggesting 51:5 suggestion 123:19 213:21 215:12 suggests 171:1	suitable 192:18 suitably 202:11 sum 22:21 26:10,10 31:15,15 32:19,20 96:5 97:4 147:4 156:23 160:17 162:20 163:4 163:8,11 174:15 176:10,13 180:10 184:4 204:14 207:2 summarise 57:24 125:6 170:2 summarised 55:21 summarises 114:23 summary 138:23 sums 22:19 156:5 163:18 168:8 169:3 210:16 supplants 142:5 supplemental 3:10 60:1 72:11 80:5 201:19 supplemented 192:15 support 35:14 122:24 174:4 174:7 supporting 92:23 158:4 supports 28:21 29:1 120:6 suppose 27:3 53:14 101:16 206:17 209:5 211:18 supposing 105:2 179:10 179:22 sure 23:25 25:6 25:10 31:22 39:9 45:21 68:8 76:5 81:8 110:16 110:19 116:17 130:13 134:23 142:4 143:11 144:20	155:13 177:21 193:22 198:19 199:11 200:7 202:1 205:21 208:15 209:6 216:3 217:18 217:19 220:10,13 surplus 63:13 90:23 91:19 92:25 126:5 141:2 147:11 160:15 161:9 164:13 surprise 44:6 surprising 27:23 survive 112:24 survives 217:2 suspect 141:12 213:14 sustained 191:1 symmetry 9:20 <hr/> T <hr/> tab 13:8 21:11 21:12 22:15 25:22 26:3 27:12 28:7 29:4 33:8 47:9 60:4,19 60:20 61:23 61:23 62:1,2 72:14 74:20 74:23 75:1,5 75:14,16,17 75:19 76:4 76:10,12,17 76:20,24 77:5 78:12 78:16 80:6 84:1 87:16 97:23 99:4 102:10 110:13 112:11,16 114:18,20,21 121:17 164:24 203:24 204:1 219:20 220:8 take 3:15 6:1 8:3 10:1 48:9 48:17 65:20 86:13,18 88:23 100:7 101:6 109:9 110:17	118:21 119:13 121:23 124:18,21 126:15 132:16 145:23 154:2 157:16 158:5 169:13,25 181:8 182:14 182:20 184:6 184:12,14 197:1 199:10 203:3,5 206:6 210:23 211:3,22 212:4,9 214:10 taken 4:20 7:6 32:2,14 33:2 46:14 62:5 68:22,25 70:22 83:4 84:12 86:18 98:10 115:14 131:19 138:9 141:15 149:19 161:21 165:5 168:18 169:7 186:17 196:24 199:25 213:10 takes 74:13 97:15 134:25 135:17 145:25 170:9 174:20 176:19 196:16 talked 210:15 talking 88:1 92:15,16 176:1,1 197:9 208:12 212:7 talks 48:15 tanto 166:3,6 Tea 37:10 tease 194:12 210:24 tell 33:22 73:2 173:22 202:24 204:19 220:9 tells 103:24 199:23 temping 215:15 temptation	86:25 ten 214:22 215:20 term 104:5 terms 1:15 2:8 19:7 22:25 25:10 38:3,9 38:13 39:18 56:10 58:7 60:10 69:11 78:6,8 80:18 101:13 116:3 119:24 120:7 142:13 143:9 155:4 162:12 186:7 191:6 194:4 terribly 141:24 territory 121:1 test 214:16 testator 21:13 testator's 99:16 thank 1:19 2:5 2:14 3:8,11 25:19 27:16 43:22 57:12 60:16 73:11 77:2 89:15 89:18 102:19 110:2,6 111:4,7,7 117:7 120:10 120:20 122:14 137:16,20 160:8,10 178:8,12 183:8 184:9 186:3 188:8 192:20 200:14 207:18 220:17,19 thankfully 187:3 theme 80:19 theoretical 5:6 theoretically 8:18 theory 9:20 59:9 155:21 thereabouts 220:1 thing 3:7 12:25 18:17 41:19 52:1 54:20 74:18 152:12 154:14 169:6 169:16 170:7 177:22 195:9
---	--	---	---	--	---	---

207:23	32:17 115:9	193:9 200:25	200:4	192:21,22	12:18 13:20	45:4 53:3,6
213:25	third 46:18	201:18,19	treating 19:13	193:17,19,20	15:18 18:23	53:25 54:6,9
things 13:20	110:21 163:1	208:8 210:1	68:20	193:23 194:9	28:6 33:12	54:11,13,19
42:23 50:5	166:19	210:22	Trent 72:8,21	194:14,23	33:20,23	57:6 65:18
60:3 64:13	182:17	216:16,23	trespass 41:14	195:2,9,19	36:23 37:10	65:18 83:11
64:14 68:23	189:11 192:4	217:21	tried 161:21	196:7 197:5	40:16 46:21	91:23 92:3,6
155:24	thirdly 36:13	timetable	tries 174:4	197:11,14,17	49:13 50:5	92:7,17,21
181:15	102:4 161:9	186:16	trouble 135:3	197:21 198:1	52:4 60:3	93:1,5,6,9,15
194:23	190:9 201:3	tiny 202:7,9	186:17	198:3,6,16,19	61:16 64:13	93:19 105:9
205:20	thorough	today 20:23	Trower 4:4	199:7,17	64:14 65:7,7	107:1 122:21
think 7:8,23	147:23 179:6	35:19 108:3	41:14 43:24	201:8,10,16	72:14 83:18	134:16
21:1 24:4,7	200:15	109:2 202:12	43:25 44:4,5	201:25 202:4	87:22 100:19	135:11 161:2
25:7,12 26:3	206:14	204:21	44:6,20 47:8	202:7,11,15	101:14	161:13
28:16 29:10	thought 2:8	205:21	49:23 50:2,4	202:25 203:5	109:17	166:17 168:2
31:22 35:11	25:11 76:10	told 176:4	51:5,15,20	203:8,14,16	111:25 113:5	168:14,20
38:5 39:19	156:11 190:9	tomorrow	52:8,12,18,22	203:18,21,24	117:24 119:3	171:19 177:4
41:11 47:3	191:25	26:21 214:2	53:16,21,23	204:1,5,9,23	119:17 136:9	187:13 191:3
48:12 51:22	217:16	214:25 215:9	54:8 57:16	205:6,8,12,22	139:17	undermines
51:24 52:4	three 34:23	215:15,23	57:17,22	206:1,5,11,19	148:12	79:19
65:16 68:3	36:3 77:1	217:7,15	58:2,6,9,10	208:4,16,20	161:19,21	underneath
68:25 69:11	101:19 121:7	tons 164:22	58:12 60:7	208:23	162:14	200:12
73:13,25	136:22 176:6	top 3:3,6 26:17	60:15,17	209:11,16,19	169:17	underpinned
74:1 75:11	189:14	26:23	61:3,8,14,22	215:11,14	172:17	63:8
80:8,17	190:23	topic 127:24	62:2,7,19,23	217:18,25	178:17	understand
82:19,22	191:14	178:11	63:8,24 64:2	218:5,11,19	181:15	32:11 38:17
83:14 84:18	200:22	tort 209:5	64:9,13,21,24	218:23 219:7	194:23	42:21 49:17
87:3 90:11	three-fold	total 146:9	65:6,11 66:8	219:10	204:17	96:19 106:18
101:25	110:18	159:8 162:18	67:9,12,17,21	220:11,13,16	205:14	107:14
104:24 117:3	threshold 37:8	166:24	68:3,13	221:3	214:11	108:10
117:5,8,20	thrust 110:16	totality 50:22	69:25 70:11	Trower's	typical 85:10	111:13,19
121:21,23	Thursday 1:1	51:8 136:25	71:4 72:10	111:12	U	113:3 128:19
126:23 136:6	204:11	137:2	72:13 73:5	200:10	ultimately	130:13,14
138:2 144:25	ticket 101:10	touch 79:23	73:13 74:1,6	true 13:21	44:23 101:23	131:5 134:12
145:1 149:11	101:16	208:2	74:8,11,22,25	14:12 28:16	148:2 151:20	137:16 142:3
149:19	tidy 204:14	tranche 189:6	75:4,7,11,14	37:20 81:21	155:1 181:25	144:17
150:12 155:9	time 8:13 10:2	transaction	75:16,18,21	94:4,12	194:5,8	151:22
173:2 177:12	12:22 15:19	189:17 191:4	75:25 76:3,7	95:11 101:15	215:21	172:18
182:8 184:11	17:20,24	transcript 2:23	76:9,12,14,16	117:22	unanimity	176:19
186:6,13,19	18:4 22:20	3:6 6:19	76:19,23	146:16	196:18	186:13
186:21 187:2	23:23 24:2	109:8 143:15	77:1,4,8,11	173:13	unascertained	188:19,25
187:6,17,18	31:8 34:9	144:22 145:6	77:14,20	truly 191:1	67:20	189:9 199:10
189:4 190:16	36:16 37:2,7	219:21	78:12,16,19	Trustee 33:9	uncertain	199:25
192:16,17	38:1 43:25	transcripts	78:23 79:13	try 38:18	15:13,24	204:23 212:6
193:23 194:2	44:16,17	208:1 214:4	79:18,23	168:18	70:14	understanding
194:5 195:5	45:6 47:15	translated	80:8,23 81:2	194:11,16	uncertainty	142:14,17
195:8 198:1	49:3 50:24	126:6	81:7,15,19,23	218:13	16:15 44:11	145:2 189:24
199:8 200:21	56:17,22,23	transpires	82:5 83:7,24	trying 96:2	68:14	192:13 199:4
201:15,20	59:24 60:9	142:25 214:2	84:5,14,25	154:10	unchartered	199:8 208:14
202:16 205:8	60:21 61:6	treat 25:20	87:18,22,24	turn 14:5 35:23	121:1	208:18
205:9 206:15	63:3 64:16	80:25 112:3	88:2,5,8,11	47:4,9 59:15	unclear 69:10	understands
208:2,5,9,12	67:4,13,15,23	treated 16:23	88:14 89:11	72:24 75:2	77:25	82:19 108:7
209:21 215:4	68:5,18	21:24 40:7,9	89:14,16,19	94:1 112:14	uncommercial	176:21
217:5,10	73:23 78:7	40:11 55:4	90:12 95:20	turned 119:9	70:16	understood
218:14,16	80:13 84:12	70:20 84:9	102:6 104:24	188:21	underlies	183:11
219:10 220:1	85:13,24	98:2,11	105:3 106:14	turning 3:12	129:14	191:15
220:2	86:13 90:13	100:10,12	108:5 111:14	11:5 101:17	underlines	undertake
thinking 57:3	95:25 97:25	101:19	117:6 120:13	turns 48:14	142:15	200:19
128:17	98:7 99:21	102:25	178:13,14	99:24 207:12	underling	211:17
204:24	121:20,21	105:13	186:5,6,9,12	twisting 19:10	134:18	undiscounted
207:20	139:6 143:6	113:16 140:7	186:19	two 1:6 2:24	underlying	64:17
thinks 32:15,16	147:16 172:3	140:9 165:10	190:21	10:17,18	undoubtedly	

34:12 unfair 86:16 unfairness 89:8 106:15 107:4 unhelpful 55:19 151:18 Unit 83:24 unliquidated 33:15 unmatured 66:9 uno 54:16 68:22 unpaid 84:10 unsecured 83:21 unusual 213:4 213:20,22 use 29:8 42:10 49:14 51:7 53:8 63:10 125:19 161:20 213:11 useful 217:6 uses 200:23 usual 86:19	valuations 56:7 value 8:19 10:2 10:16,18 11:6,8,12,16 12:19 13:2 13:23,25,25 15:6,10,13,24 17:22,24 18:16 28:8 29:23 30:5 31:15 32:3 35:4 58:3 67:4,9 68:4 68:17,20 70:2,8 81:21 90:4,5,13,18 94:15,24 95:3,22,24 96:3,9,10,12 96:16,20,22 96:23 99:20 99:21,23 100:15 102:15,23 115:13 143:6 208:8 210:2 210:22 216:16,23 valued 55:7 115:11 values 57:9 valuing 26:24 29:12 46:7 62:4 68:18 90:17 variety 216:10 various 7:7 97:6 107:7 108:25 123:11 159:12 171:24 189:18 197:17 219:6 versa 137:8 versus 190:23 191:4,8 vice 137:8 Vice-Chance... 31:4,6,24 74:12 Vice-Chance... 31:17 view 8:20 28:16,16 33:5 51:21 118:4,6 135:3 149:12 149:13 196:25 197:1 200:13 206:6	211:1 217:23 views 71:7,8 vindicated 151:23 voice 35:12 volume 61:24 203:25 204:1 204:18 voluntary 103:12	63:9,17 64:15,22 68:23 72:25 78:23,25 81:10,10 82:22 84:15 84:21 86:8 86:19 87:12 88:18 91:9 97:20 100:13 115:2 119:21 126:4,5,21 127:17,18,21 128:9 129:2 132:16 142:12 143:1 143:4 151:2 153:17 157:13 158:4 158:17 162:4 163:10 164:16 166:12 167:11 173:25 180:15 183:15,24 185:11 186:20 188:7 191:15 193:1 194:17 198:21 199:12,20 200:7,19 201:14 206:20 215:19 216:14,17 218:6,14 ways 10:12 88:16 136:9 144:5 161:4 177:25 Wednesday 187:6 week 187:22 188:1,2 192:11 193:8 194:18 went 62:4 70:5 72:1 82:19 Wentworth 100:3 101:1 110:19 121:11 126:13 163:25 164:8 170:11 171:23 173:1 174:3 175:2 186:15	188:14,20 189:3 199:11 Wentworth's 100:17 110:23 164:5 164:11,18,23 165:15 169:24 Wentworth-... 186:22 weren't 5:16 127:21 190:13 We'll 44:2 220:16 we're 1:4 4:3 34:14 43:18 47:23 65:14 75:25 108:2 109:3 110:19 117:13 120:22,24 124:13 125:3 127:23 128:1 128:14 129:9 132:11,12,25 133:23 134:2 135:15 137:9 137:10,14,15 137:18 139:16 142:7 152:9 158:24 177:23 178:20 179:5 183:10,13,14 186:6,10 187:3 190:4 197:9 215:14 215:18 217:19 we've 12:20 34:21 73:10 154:18 186:9 186:10 205:20 whilst 23:22 185:13 212:14 wholly 128:8 wide 172:2 widow 21:23 widow's 22:13 79:9 99:9 widths 201:22 wife 21:13,14 Wight 14:25 35:21 46:13 70:23 71:9 114:6,9,13,16 Wilkins 2:9 William 72:19	73:17 wind 28:10 windfall 87:8 88:9 windfalls 87:18 88:1 winding 26:25 27:2 36:9 60:9 61:20 80:4,11 103:12 winding-up 30:7 46:8 59:25 60:2 Windows 83:24 wins 101:8 wish 200:19 215:1 Wolfson 123:12,13,23 124:8 wonder 209:7 wondering 76:16 Wood 72:19 73:17 74:13 word 4:10,13 6:11,13 7:15 29:8 41:21 41:22,24 42:18 43:17 48:3,8 49:9 50:16 109:8 109:12 142:11 164:10 200:23 213:12,22 wording 30:25 89:6,13 91:14 97:10 words 2:1 7:2 11:7 15:1 22:20,25 27:3,7 28:9 28:17 30:6 30:14 31:2,7 33:16 34:15 35:5 42:2 49:13,14 50:9 51:22 52:6 79:8 88:9 91:24 92:22 93:2,4 96:8,20 106:15 110:4 113:2,15 115:1 119:19 122:11,18,22 123:6,20,24	127:10 165:7 166:22 180:6 work 12:18 64:15 83:22 89:4 96:3 100:18 109:13,14 144:5,15,15 169:21 174:16 205:18 worked 40:10 59:9 71:8 78:24,24 working 98:9 126:20 works 10:12 42:15,17 49:8 63:22 64:22 71:7 81:11 88:17 112:7,10 115:9,20 119:4 166:22 world 183:10 198:9 worry 203:20 worse 124:6 149:7 185:19 worth 2:8 11:5 14:4 27:9 28:5 97:3 121:15 150:8 wouldn't 19:1 20:1 24:5 43:3 52:16 93:20 104:22 112:15 129:1 134:15 157:24 208:11 213:13 214:8 215:8 wrinkles 61:9 writing 199:18 220:15,16 written 164:19 205:1 214:3 216:18 wrong 4:3 32:16,17 43:18 64:9 66:17 75:4 76:17 77:4 89:5,12 90:16 95:15 103:7 106:23 109:3 112:6 128:14 132:11,22,25 134:2 135:15
--	---	---	---	---	--	--

136:14 137:9 137:15,18 138:21 142:2 142:9 154:22 158:7,24 175:11 183:10,13,14 184:14 202:22,23 208:13 wrote 189:3	19:4,10,18,22 20:13,20,22 21:1,10 22:17 23:6 23:10,14 24:4,7,14,23 25:2,9,12,16 25:20 26:3,7 26:10,14,21 27:12,15,17 28:2,5,12,21 28:25 29:3,7 29:15,21 30:2,4,9,20 30:25 31:12 32:8,13,17,22 32:25 33:7 33:11,20,23 34:3,20 35:8 35:17,23 36:1,13,22 37:17 38:8 38:17,24 39:1,9,16,21 39:25 40:3 40:21 41:2,6 41:17 42:13 42:15,21,25 43:7,15,21,23 44:8 45:20 46:22 52:23 56:16 57:23 66:21 70:5 71:4 72:1 74:18 77:24 78:12 80:1 88:19,25 89:1 94:3 95:17 97:8 98:25 101:18 109:7 120:22 120:23,24 121:6,10,14 121:25 122:4 122:13,15 123:4,11 124:8,13,16 125:1,6,9 126:10 127:1 127:23 128:1 128:14,22 129:2,13 130:5,7,12,17 130:23 131:8 131:12,19 132:5,10,14 132:18 133:5 133:7,13,18 133:23 134:2 134:14,20,23 135:9,12,14	135:19,21,24 136:3,7,9 137:5,13,17 137:21 138:1 139:11,16 141:12,24 142:11,21 143:1,11,16 144:4,17,20 144:23,25 145:4,7 146:23 147:1 147:7,19 148:12,14,16 148:18,22,25 149:10,17,19 149:24 150:4 150:6,8,12,17 150:23 152:4 152:12 153:13 154:1 154:8,14,18 154:24 155:4 155:8,15,20 156:2,6,10,13 156:19,24 157:4,7,20 158:4,19,24 159:8,17,24 160:9 178:15 178:16,17,22 178:25 180:22,24 181:1,15,17 181:24 182:5 182:8,22 183:2,5,9,24 184:10,19,24 185:2,5,9,13 186:1,4 206:23 207:16,17 216:7,9 217:4 221:2 221:6,8 zero 64:18	\$60 146:5 \$900,000 147:5 <hr/> 1 1 1:13 8:1 13:8 46:3 47:1 60:4 63:14 93:17 97:23 110:13 118:17 121:2 121:17 125:24 138:1 153:10 159:9 164:24 167:10 202:8 210:20 221:2 1A 21:11,11 25:22 75:3 99:4 1B 29:4 1C 84:1 112:11 112:16 1D 61:23,24 102:10 114:18,21 1E 121:18 220:7 1.03 106:4 10 56:9,19 59:21 69:20 69:23 193:9 202:18 10,000 101:7 10.00 1:2 100 21:15 37:1 37:5 118:16 118:23 128:8 166:10,16 100p 55:22 101 60:20 105 38:19,24 60:5,15,16 89:13,14 11.13 61:18 62:11,17 11.13(3) 63:24 11.3 103:7 11.30 44:3 57:12,13 11.36 57:15 110 124:19,21 124:23 111 221:5 115 74:3 116 30:10 117 30:10 12 109:10 120 30:22 97:23 112:11 112:16 172:6 221:6	121 30:21,25 122 34:22 125 114:18,20 114:21 126 35:8 128 61:23 62:2 102:10 13 74:20,22,23 75:1,16 76:10,20 133 22:17 24:12 149:22 14 3:5 142 44:23 146 87:11,16 88:1 147 87:20 88:1 147.2 88:5 15 75:14,17,19 76:4,12,24 150 87:11,16 87:22 88:12 158 27:13 30:23 73:6 16 30:11 160 221:7 161 13:8 162 47:9 163 46:4 163A 220:8 167 121:17 168 220:8 177:5:8 172 103:9 1720 59:18 1750 203:11 177 74:25 75:25 76:8 77:6,10,18 177th 22:6 178 74:25 75:25 77:6 77:10,18 103:14 221:8 1786 64:4 18 27:12 182 169:25 170:2 1843 76:11,20 76:21 1849 22:6 74:25 75:9 75:17,18 76:1,6,12 185 170:11,11 1852 27:6 186 58:7 62:9 1862 30:23 73:8 187 170:11 221:9	1870 22:14 99:2 1879 26:11 188 64:6 102:18 188G 103:17 1880 26:12 34:25 1882 109:22 1883 110:1 189 63:13 102:14,21 152:14 1890 60:4 1893 109:23 190 171:23 172:1 1903 60:19,24 1909 61:1,5 80:5,11 1929 61:1 1949 61:1 197 76:5,6 198 153:2 171:23 198.1 153:6 1986 1:15 61:11 78:24 102:22 103:14 163:8 199 173:2 199.3 173:2 1994 103:11	153:14 2.105(2) 48:13 48:15 2.68(1) 56:12 2.81 11:5 15:8 15:14 16:3 27:15 28:19 46:20 66:25 70:1,6,12 71:23 89:23 95:13 115:12 2.81(1) 15:16 19:19 95:19 96:6 2.85(8) 119:13 2.858 119:9 2.86 1:8,17 2.87 48:1 2.88 4:11 41:21 41:23 45:10 48:21 53:23 54:5 65:25 84:11 91:14 117:22 128:19 130:1 130:3,9,15 131:5 142:5 142:20 155:23 168:6 169:4,14 179:23 180:1 180:13 2.88(1) 50:12 54:4 2.88(7) 47:21 47:25 91:18 111:22 112:5 143:4,19 158:2 160:15 162:5,12 2.88(8) 90:23 2.88(9) 129:21 2.89 39:2 57:25 58:24 59:2 89:23 2.95 56:11 20 64:18 202:20,20,24 220:1 200 174:3,6 2003 1:17 60:18 2015 1:1 206 154:19 211 154:19 165:18,18 173:2 174:3 212 175:2 214 175:2,4 22 203:6 220:4 220:5	
<hr/> X X 159:20,21							
<hr/> Y							
year 121:1 203:3,5,9,19 209:14 219:13 years 10:17,18 19:9 37:6 64:18 101:8 202:9,10,19 year's 37:2 yesterday 1:6 13:15 14:11 21:2 26:4 29:5 34:6 119:14 yesterday's 6:19 York 3:21 6:18 45:22 56:2 138:7 176:18 177:2 189:6 189:8 190:9 191:13,14,17 191:19,20,23 199:10 203:3 York's 55:2 87:19							
<hr/> Z							
Zacaroli 1:3,4 1:12,17,21 2:4,6,13,15 3:5,10,12,15 4:3,6,13,18 4:22 5:9,13 5:20 6:16,22 7:13,15,22 8:6,22,25 10:7,12,14,20 12:1 13:12 13:19 14:3 14:19 15:4 15:18,22 16:4,9,17,22 17:12,25 18:9,11,14		\$ \$1 146:25 147:3,21 148:16,22 151:17,25 180:6,7,8,19 181:6,12 \$1,100,000 159:9 \$1.75 37:5 \$100 128:6 146:4 175:1 \$100,000 147:6 \$120 146:8	<hr/> \$ \$1 146:25 147:3,21 148:16,22 151:17,25 180:6,7,8,19 181:6,12 \$1,100,000 159:9 \$1.75 37:5 \$100 128:6 146:4 175:1 \$100,000 147:6 \$120 146:8				

<p>223 114:19,22 229 200:16,17 230 200:9 232 200:17 25 28:5,7 25th 28:17 252 97:24 98:4 255 112:16,22 113:10 26 1:1 28 120:22 128:16 160:13 177:23 207:7</p> <hr/> <p style="text-align: center;">3</p> <p>3 30:4 63:11 64:22 80:6 153:10 178:3 189:6 3A 27:12 28:7 74:20,22 75:1 204:1 3A/6 59:19 3D 22:15 78:13 78:15,16 3.13 154:5 3.23 154:7 30 120:22 128:16 129:4 132:23 139:22 186:10,12 31 186:10,12 186:13,14 187:11 188:11 219:7 323 113:15 33 187:11 340 26:23 27:1 341 28:14 342 99:15 344 22:1,2 75:7 345 25:25 99:5 35 120:17 122:1 356 33:11,20 36 122:13 361 150:2 362 149:22 364 149:20 150:6 37 120:17 194:24 198:17 201:21 204:25 39 25:22 26:3 127:17,19,19 127:23 128:1 128:14,18</p>	<p>129:5,9,18 130:9,15 131:18 132:4 132:9,11 133:24 134:2 135:15 136:15 137:9 137:11,14,17 137:19 139:15,19 142:1,2,17 144:1,3 158:7,25 160:1 177:19 178:20 183:10,13,15 184:14 207:24 219:2 399 72:20,24</p> <hr/> <p style="text-align: center;">4</p> <p>4 21:21 23:6 24:10,11,16 24:17,19,21 25:17,17 87:16 99:8 99:14,17 126:24 173:7 175:5,6 177:7 204:18 4.30 204:11 4.55 220:20 4.91(1) 1:14 4.94 58:2 63:22 40A 21:12 75:5 99:4 400,000 148:23 44 221:3 441 201:22 444 201:22 458 210:8,10 210:11 458.2 216:19 48 13:9</p> <hr/> <p style="text-align: center;">5</p> <p>5 23:7 24:1,9 24:19 50:12 72:14 99:12 110:12 175:6 5,000 21:13,21 99:16 50 14:9 500 26:10 54 13:14,15 56 22:15 78:12 78:16 59 164:24</p> <hr/> <p style="text-align: center;">6</p> <p>6 2:23 3:12</p>	<p>6:19 44:23 106:9,13 108:2 109:3 109:9,10 178:4 60 110:13 60A 29:4 34:21 63A 33:8</p> <hr/> <p style="text-align: center;">7</p> <p>7 1:4,4,5 3:12 3:12 4:7 6:20 44:24 90:24 100:17 203:24 204:1 77 22:14,17 25:7 77:23 78:1,10,11,18 78:23 99:1 99:12</p> <hr/> <p style="text-align: center;">8</p> <p>8 3:13 4:1 44:24 93:10 100:18 106:9 106:13 108:2 109:3,10 114:17 116:21 120:15 134:17 178:4 182:24 197:20 204:6 80 172:11 800,000 148:23 81 195:4 818 27:12 84 200:12 88 122:2 89 195:4 221:4</p> <hr/> <p style="text-align: center;">9</p> <p>9 103:11 160:15 162:5 162:13 164:24 90 122:6 128:7 128:8 91 123:2 92 6:19,22 109:9 123:2 93 1:13 109:10 94 123:4 97 84:1 123:13 98 80:4,10 123:22 99 124:8,11</p>			
---	--	--	--	--	--