

<p>1 Tuesday, 19 May 2015</p> <p>2 (10.30 am)</p> <p>3 Submissions by MR ZACAROLI (continued)</p> <p>4 MR ZACAROLI: My Lord, I am just about to go to BCCI v Ali,</p> <p>5 which is in bundle 1A of the authorities at tab 27.</p> <p>6 MR JUSTICE DAVID RICHARDS: I have looked at this overnight</p> <p>7 so I'm sort of familiar with the territory.</p> <p>8 MR ZACAROLI: So my Lord will remember that it's a case</p> <p>9 about a settlement hadn't been reached with employees of</p> <p>10 BCCI before its collapse. The issue was whether that</p> <p>11 had successfully compromised what came to be called</p> <p>12 stigma claims, which weren't recognised in law at all</p> <p>13 at the time, but became recognised through a subsequent</p> <p>14 House of Lords decision.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR ZACAROLI: And the terms of the release clause in that</p> <p>17 case are to be found at paragraph 3 of the judgment of</p> <p>18 Lord Bingham. I know my Lord's seen the release clause,</p> <p>19 probably a number of times by now, we'll come to it in</p> <p>20 greater detail in a moment, ie the release clause in our</p> <p>21 case. It is of course in substantially wider terms than</p> <p>22 this and, in particular, expressly contemplates matters</p> <p>23 that are not contemplated.</p> <p>24 MR JUSTICE DAVID RICHARDS: I think it includes wording</p> <p>25 included no doubt as a result of this case.</p> <p style="text-align: center;">Page 1</p>	<p>1 language" that obviously we pick up on there.</p> <p>2 Finally in Lord Bingham's judgment, paragraph 17,</p> <p>3 having been through those authorities which he says</p> <p>4 leads the court to be slow to make inferences about</p> <p>5 waiver or release of non-contemplated claims, he then at</p> <p>6 paragraph 17 refers to Sir Richard Scott's judgment in</p> <p>7 the Court of Appeal in the BCCI v Ali case, talking</p> <p>8 about there being no such thing as equitable rules of</p> <p>9 construction, "It's all the same now".</p> <p>10 And then in paragraph 17, just below halfway down he</p> <p>11 says -- first of all, he says:</p> <p>12 "Some of the cases, I think, contain statements more</p> <p>13 dogmatic and unqualified than would now be acceptable</p> <p>14 ...(Reading to the words)... I think these authorities</p> <p>15 justify the proposition advanced in paragraph 10 above."</p> <p>16 Which we have just seen. It's a cautionary</p> <p>17 principle.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR ZACAROLI: The conclusion is in paragraph 19 just below</p> <p>20 C:</p> <p>21 "On a fair construction of this document, I cannot</p> <p>22 conclude the parties intended to provide for the lease</p> <p>23 of rights and the surrender of claims, which they could</p> <p>24 never have had in contemplation at all. They should</p> <p>25 have used language which left no room for doubt."</p> <p style="text-align: center;">Page 3</p>
<p>1 MR ZACAROLI: No doubt. That's probably a market-wide</p> <p>2 reaction.</p> <p>3 MR JUSTICE DAVID RICHARDS: I imagine, yes.</p> <p>4 MR ZACAROLI: If I can skip over the facts and the issues,</p> <p>5 my Lord is familiar with those, they are set out in</p> <p>6 summary form in paragraph 6 of Lord Bingham's judgment,</p> <p>7 quoting from Lord Justice Chadwick, but I think my Lord</p> <p>8 has all of that.</p> <p>9 So the key passages then, and I'm going to take</p> <p>10 my Lord to two judgments -- sorry, they are speeches,</p> <p>11 aren't they, House of Lords -- that of Lord Bingham and</p> <p>12 Lord Nicholls. Lord Hoffmann was in this case in the</p> <p>13 minority so I needn't go to him.</p> <p>14 Lord Bingham at paragraph 8, perhaps if my Lord</p> <p>15 reads paragraph 8 and paragraph 9. (Pause).</p> <p>16 MR JUSTICE DAVID RICHARDS: I have done that because I have</p> <p>17 read those.</p> <p>18 MR ZACAROLI: I'm grateful. The key point we say is</p> <p>19 paragraph 10:</p> <p>20 "A long and, in my view, salutary line of authority</p> <p>21 shows that in the absence of clear language the court</p> <p>22 will be very slow to infer that a party intended to</p> <p>23 surrender rights and claims of which he was unaware and</p> <p>24 could not have been aware."</p> <p>25 And it's the words "in the absence of clear</p> <p style="text-align: center;">Page 2</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: Those points are echoed in the speech of Lord</p> <p>3 Nicholls, paragraphs 26 to 28. I imagine my Lord's read</p> <p>4 those as well, they are referred to in the skeletons.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR ZACAROLI: Just to make this point in paragraph 28, where</p> <p>7 Lord Nicholls talks about the approach that of course</p> <p>8 parties can release whatever they want, being taken too</p> <p>9 far:</p> <p>10 "It does not mean that once the possibility of</p> <p>11 further claims has been foreseen a newly emergent claim</p> <p>12 will always be regarded as caught by a general release</p> <p>13 whatever the circumstances in which it arises and</p> <p>14 whatever its subject matter may be. However widely</p> <p>15 drawn the language, the circumstances in which the</p> <p>16 release is given may suggest, and frequently do suggest,</p> <p>17 the parties intended or, more precisely, the parties</p> <p>18 have reasonably taken to have intended the release</p> <p>19 should apply only to claims known or unknown relating to</p> <p>20 a particular subject matter. The court has to consider</p> <p>21 therefore what was the type of the claims of which the</p> <p>22 release was directed."</p> <p>23 And it gives the example of a partnership business</p> <p>24 and a release in final accounts and makes the comment</p> <p>25 that:</p> <p style="text-align: center;">Page 4</p>

<p>1 "It could not reasonably be taken to preclude a 2 claim if it later came to light that encroaching tree 3 roots from one party's property had caused damage to the 4 other property." 5 My Lord, whatever one may say about the width of the 6 release in our case, it undoubtedly covers anything to 7 do with the underlying contracts, and the type of claims 8 that we're concerned with in this case are claims which 9 arise out of the underlying contracts. 10 With that introduction on the law, I'm going to dive 11 straight in now to the language, starting, as I said, 12 with the admitted claims CDD. The example which all the 13 parties have referred to is at tab 7 of bundle 11. 14 Mr Trower took you to this document yesterday, but 15 I shall take you through it in much more detail than he 16 did. To remind my Lord of our case on this document, we 17 say that it releases all currency conversion claims, and 18 it releases all non-provable claims to interest. The 19 evidence is that all admitted claims CDDs had the agreed 20 claim amount as defined denominated in sterling. 21 They're all in this form. Obviously the variants over 22 time for carve-outs occurred, but we are looking at the 23 document without any carve-outs to preserve such claims. 24 So starting at the beginning of the document with 25 the recitals, the second recital, B, is a good starting</p> <p style="text-align: center;">Page 5</p>	<p>1 in a scheme of arrangement. 2 The next but one definition, as you'll see, is 3 defined in a sterling amount. 4 Then claim, simply to note that the claims, capital 5 C claims, are defined very broadly, claims of whatsoever 6 nature and, in particular, we'll come back to this, but 7 sub-paragraph 4 over the page, it includes a proprietary 8 claim. And proprietary claim is a defined term itself 9 at the top of page 3. It's: 10 "A claim, whether actual, prospective or contingent 11 and whether arising by statute, at common law, in equity 12 or otherwise, against the company ... that the creditor 13 is the legal and/or beneficial owner of an asset" -- 14 MR JUSTICE DAVID RICHARDS: Sorry, where are you reading? 15 MR ZACAROLI: The foot of page 3, definition of proprietary 16 claim. 17 MR JUSTICE DAVID RICHARDS: Yes, thank you. 18 MR ZACAROLI: So sub-paragraph 1: 19 "The creditor is the legal and/or beneficial owner 20 of an asset. Secondly, for the delivery and/or transfer 21 of such asset." 22 And reference to asset includes: 23 "Present and future properties, revenues and rights 24 of every description." 25 So any type of proprietary claim.</p> <p style="text-align: center;">Page 7</p>
<p>1 point to understand the purpose of the parties entering 2 into the agreement. It is: 3 "In consideration of the company and the creditor 4 agreeing that the creditor's claims under the creditor 5 agreement against the company are fixed at the agreed 6 claim amount." 7 All those are defined terms we'll come to: 8 "The company and the creditor wish to release and 9 discharge each other in respect of any and all other 10 claims [very broadly stated] ... howsoever arising." 11 So that's the starting point, that's what the 12 parties were setting out to do. 13 Picking up the key definitions, the first is: 14 "Admitted claim." 15 On the top of page 2 of the document: 16 "An unsecured claim of a creditor of the company 17 which qualifies for dividends from the estate of the 18 company available to its unsecured creditors pursuant to 19 the Insolvency Rules and the Insolvency Act (or, if 20 applicable, as amended or replaced pursuant to the terms 21 of inter alia a scheme of arrangement or a company 22 voluntary arrangement." 23 So the first point to pick up there is it's not just 24 about claims that will be proved in a winding up or 25 administration, it includes claims that will be advanced</p> <p style="text-align: center;">Page 6</p>	<p>1 Going back to page 3 again for the definition of 2 "creditor agreement", in this case it was an FBF master 3 agreement entered into between the company and the 4 creditor. I believe that's a Federation Bancaire 5 Française master agreement. 6 So those are the only definitions I need to take 7 my Lord to. We then go straight to clause 2, which is 8 the key operative provision. I take it my Lord's read 9 this clause? 10 MR JUSTICE DAVID RICHARDS: Yes, but I'm happy to look at it 11 in close detail. 12 MR ZACAROLI: I'll identify each point I want to make from 13 it as I go through it. 14 First of all, the preamble: 15 "The company and the creditor irrevocably and 16 unconditionally agree that notwithstanding the terms of 17 any contract to which the creditor and the company are 18 a party, including the creditor agreement ..." 19 So the first point to note is it's deliberately 20 departing from varying and changing to some extent the 21 rights under the existing agreement. It acknowledges 22 this applies whatever the contract may otherwise say. 23 2.1: 24 "The creditor shall have an admitted claim [that is 25 a claim that qualifies for dividends and a winding up or</p> <p style="text-align: center;">Page 8</p>

<p>1 a scheme of arrangement] in an amount equal to the 2 agreed claim amount, the sterling sum." 3 2.2: 4 "The admitted claim shall be fixed at the agreed 5 claim amount [namely the sterling sum] and shall 6 constitute the creditor's entire claim against the 7 company." 8 Reinforcing the fact that coming out of this 9 agreement, that's all you have left; all you have left 10 is whatever you've agreed to be the agreed claim amount 11 which is in sterling. 12 2.3: 13 "Save solely for the admitted claim ..." 14 Ie, my Lord, that means save for what's just been 15 discussed above as your only claim, the admitted claim 16 in the agreed claim amount, namely your sterling amount. 17 save for that: 18 "... the company and the administrators are hereby 19 each irrevocably and unconditionally released." 20 Now, the first point to note there is they're each 21 released. This is a mutual release, it works both ways. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: And they are released irrevocably, 24 unconditionally, and forever discharged. So this is not 25 only temporary or limited or qualified purpose, it's</p> <p style="text-align: center;">Page 9</p>	<p>1 matters, claims, which arise under the creditor 2 agreement. 3 Then it goes on: 4 "Whether in existence now [that is at the time of 5 this agreement, and this agreement of course is 6 potentially many years after the date of administration, 7 so it's including any claim which will have arisen since 8 the date of administration providing it exists now] or 9 coming into existence at some time in the future." 10 It even contemplates claims which do not yet exist. 11 Then finally, those words I pre-echoed when looking 12 at BCCI v Ali: 13 "Whether or not in the contemplation of the creditor 14 and/or the company and/or the administrators on the date 15 hereof." 16 There's one line I forgot to highlight, I'm sure 17 my Lord's seen it, the fifth line in the brackets: 18 "It includes those claims which arise hereafter upon 19 a change in the relevant law." 20 MR JUSTICE DAVID RICHARDS: That's the BCCI v Ali case. 21 MR ZACAROLI: Yes. 22 Then moving on to 2.4: 23 "The creditor agrees he will not take any steps to 24 prove for or to claim for any debt in the administration 25 or other insolvency process of the company or otherwise</p> <p style="text-align: center;">Page 11</p>
<p>1 very clear they're doing this forever and for all 2 purposes. 3 Then the description of the matters which are 4 released, losses, costs, charges, expenses, capital C 5 claims, demands, actions. In short, it could not be 6 broader. I don't think anyone in court could think of 7 a particular type of claim, loss, cost, which didn't 8 fall within that wording. 9 In the parentheses on the fourth line "it includes 10 all claims for interest", and we'll come back to that 11 in relation to non-provable claims for interest. 12 Then picking up after the long list of types of 13 things that are released, actions, et cetera, then on 14 the seventh line: 15 "Howsoever arising." 16 And then we have the words: 17 "Whether known or unknown, whether arising in equity 18 or under common law or statute or by reason of breach of 19 contract or in respect of any tortious or negligent act 20 or omission, whether or not loss or damage caused 21 thereby has yet been suffered or otherwise." 22 And then these important words: 23 "Whether arising under the creditor agreement or 24 not." 25 So it clearly contemplates that the release includes</p> <p style="text-align: center;">Page 10</p>	<p>1 bring any claim, action, demand, issue or continue any 2 proceedings against the company in any jurisdiction." 3 So it's a complete bar on any action anywhere, and 4 the definition of "claim" goes back to claims. 5 And the promise not to take any proceedings, that's 6 a defined term as well, I skipped over that, on page 3 7 of the document. Again, it's the widest class of types 8 of proceeding, demands, actions, et cetera, including 9 enforcing liens, for example, at the very end. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: Although the document goes on for a few more 12 pages, there is in fact very little else I want to draw 13 to my Lord's attention. Most of our argument focuses on 14 clause 2. But just to note that in clause 3.3, well, 15 clause 3 is dealing with transfer and it allows parties 16 to transfer -- sorry: 17 "Save as set out in clause 3.2 [I'm starting back at 18 3.1] the creditors ...(Reading to the words)... not 19 transfer its admitted claim." 20 3.2: 21 "It may, however, transfer, subject to clause 3.3, 22 its interests in the admitted claim and its right to 23 receive dividends." 24 Then 3.3: 25 "Any assignment shall not be valid and the</p> <p style="text-align: center;">Page 12</p>

<p>1 administrators of the company shall not be bound to 2 recognise the transferee unless and until the transferor 3 and transferee sign and deliver to the company the 4 letter agreement substantially in the form of a note set 5 out in the appendix." 6 So if you want the transfer, you must do it via the 7 transfer notice. 8 The appendix begins at page 18 of the document. 9 Clause 4.2 is the key operative provision: 10 "The whole of the admitted claim and the whole of 11 the transferor's right to receive any and all dividends 12 in respect of or in connection with the admitted claim 13 shall be unconditionally and immediately assigned to the 14 transferee." 15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR ZACAROLI: And then debt will stand as the transferee's 17 proof of debt and dividends paid shall constitute a good 18 discharge in respect of the admitted claim. 19 This shows that the parties clearly contemplated 20 that the only thing the creditor had, having entered 21 into this agreement, was the admitted claim. It just 22 reinforces that point. 23 MR JUSTICE DAVID RICHARDS: The rules contain provision, 24 don't they, for ability to transfer the right to receive 25 dividends? Am I right about that? The Insolvency Rules</p> <p style="text-align: center;">Page 13</p>	<p>1 It's confirmation by the creditor it's made its own 2 independent decision to enter into the deed, as to 3 whether it's appropriate for it, et cetera. 4 MR JUSTICE DAVID RICHARDS: Yes. 5 MR ZACAROLI: And finally, clause 12: 6 "A standard whole agreement clause, excluding any 7 other contract, supersedes any previous written or oral 8 agreement." 9 And: 10 "The creditor agrees [by 12.2] it has not been 11 induced to enter into the deed by any representation of 12 warranty or undertaking not expressly incorporated in to 13 it." 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR ZACAROLI: So my Lord, the argument is very 16 straightforward, in fact. In relation to currency 17 conversion claims there is an unambiguous intention to 18 restrict the creditor to a single claim, fixed under 19 this agreement in a sterling denominated sum. There is 20 a complete release and discharge of all and any other 21 possible claims. That release expressly envisages the 22 possibility that it's releasing claims that were not 23 contemplated by anyone at the time. 24 MR JUSTICE DAVID RICHARDS: Including tree root claims? 25 MR ZACAROLI: Tree root?</p> <p style="text-align: center;">Page 15</p>
<p>1 or the Act. 2 MR ZACAROLI: I think that's right. I'll just check where 3 they are precisely. There's something in the evidence 4 as to why this is there. In essence it's because some 5 of the underlying contracts contained restrictions on 6 assignment without the consent of LBIE and, as is stated 7 in one of the progress reports that I'll come to, the 8 administrators identified this as a way enabling 9 creditors to transfer without the need for the consent 10 of the administrators. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR ZACAROLI: So it's to get over that contractual 13 restriction. 14 MR JUSTICE DAVID RICHARDS: Yes, right. 15 MR DICKER: Just so your Lordship has the reference, it's 16 2.104. 17 MR JUSTICE DAVID RICHARDS: Thank you very much. 18 Yes, so this goes much further because it enables 19 the claim itself to be assigned, not just the right to 20 receive the dividend. 21 MR ZACAROLI: Yes. 22 My Lord, just two further clauses in the contract to 23 look at. Page 11, clause 8.2. I think Mr Trower took 24 you to this clause. It's not so relevant in a sense for 25 construction, but may be relevant for the 36A argument.</p> <p style="text-align: center;">Page 14</p>	<p>1 MR JUSTICE DAVID RICHARDS: You'll recall BCCI v Ali and 2 Lord Nicholls. Something wholly unrelated to financial 3 contracts. 4 MR ZACAROLI: I see. Whether or not it goes that far 5 I needn't be concerned with, in fact, because on any 6 view the claims within this case fall within the class 7 of claims that are covered. 8 MR JUSTICE DAVID RICHARDS: Well, Lord Nicholls thought it 9 relevant that in BCCI v Ali the clause could not be read 10 literally. He instanced that it was accepted on behalf 11 of the liquidators that there were implicit limitations 12 on the extent of the clause, which is why I raised it 13 with you. 14 MR ZACAROLI: In which case if I had to deal with it I'd say 15 it does cover everything, absolutely everything. 16 MR JUSTICE DAVID RICHARDS: Tree root claims and all? 17 MR ZACAROLI: Indeed. It's a sort of, if I may say so, 18 a fanciful test or example to test this contract with, 19 given the nature of the dealings between the parties, 20 but still -- 21 MR JUSTICE DAVID RICHARDS: I'd be reluctant to say that 22 anything that Lord Nicholls pens is fanciful. The point 23 he was illustrating is that virtually no contract can be 24 read literally. That's the point. 25 MR ZACAROLI: Yes.</p> <p style="text-align: center;">Page 16</p>

<p>1 MR JUSTICE DAVID RICHARDS: The question is: what is the 2 extent of the limitation that the words of contract are 3 subject to? Which is what this case is all about. 4 That's perhaps the point. You're perfectly entitled, 5 Mr Zacaroli, to make the submission that it covers 6 absolutely everything, irrespective of the subject. 7 MR ZACAROLI: Yes. I do, my Lord, but I don't -- that is, 8 as it were, not central to my argument. 9 MR JUSTICE DAVID RICHARDS: I follow. 10 MR ZACAROLI: Because it isn't necessary for the purposes of 11 the claim. 12 MR JUSTICE DAVID RICHARDS: You say it covers everything 13 arising out of the financial contracts that may exist 14 between the creditor and LBIE? 15 MR ZACAROLI: Yes. And that is clear from the words 16 "whether arising under the creditor agreement or not". 17 It clearly contemplates a release of claims arising 18 under the creditor agreement, which is the only 19 relationship said to give rise to any claim at all. 20 MR JUSTICE DAVID RICHARDS: I follow that. I see the point 21 there. 22 MR ZACAROLI: Just to make good a point I made briefly in 23 opening or earlier this morning, the claims we are 24 considering in this case that we say are released both 25 undoubtedly stem from the creditor agreement, because</p> <p style="text-align: center;">Page 17</p>	<p>1 skeleton, that this document, which does not say 2 anything in terms about statutory interest, under this 3 document nevertheless creditors are entitled to 4 statutory interest, notwithstanding those words that it 5 includes all claims for interest. And the reason for 6 that is because statutory interest is, to borrow 7 a phrase from my learned friend Mr Dicker's skeleton, an 8 incidence or attribute of the admitted claim because the 9 admitted claim is one which qualifies for distributions 10 from the insolvency estate under the Insolvency Act and 11 Rules. So the admitted claim carries with it the right 12 given by statute to interest. 13 I'm going to come on in a while to deal with what we 14 say is the mischaracterisation of the currency 15 conversion claim or the non-provable interest claim as 16 incidence and attributes of the admitted claim, they're 17 not at all, but we accept that statutory interest is an 18 incidence or attribute of the admitted claim. So the 19 release being save for the admitted claim, it's save for 20 the admitted claim and the incidence and attributes that 21 that carries with it. 22 MR JUSTICE DAVID RICHARDS: So that's language -- I'm trying 23 to work out how as a matter of construction the clause 24 achieves that result. 25 MR ZACAROLI: It comes from the saving, so save for the</p> <p style="text-align: center;">Page 19</p>
<p>1 the currency conversion claim is the right to be paid in 2 dollars under your current credit agreement, assuming 3 that's the currency here. And the non-provable claim to 4 interest is those parts of your contractual right to 5 interest which are not satisfied, if they are not, by 6 the statutory scheme. 7 So the essential prerequisite of the currency 8 conversion claim being a continuing entitlement to be 9 paid in dollars is simply not there. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: That right having been released, compromised, 12 if you asked the creditor, having been paid everything 13 that you've said you want to be paid under this 14 agreement, is there any part of it you haven't been 15 paid, the answer's obviously no. Once it gets paid, in 16 this case \$18 million-odd -- sorry, pounds -- that's the 17 end of it, it has been satisfied in full, its 18 contractual rights are satisfied in full now. And the 19 same is true in relation to interest, given the very 20 clear wording on the fourth line of 2.3 that the release 21 includes all claims for interest, including those 22 arising out of the creditor agreement, again squarely 23 covering the foundation of a right to non-provable 24 interest. 25 My Lord, we accept, as you'll have seen from our</p> <p style="text-align: center;">Page 18</p>	<p>1 admitted claim, and the admitted claim is an unsecured 2 claim which qualifies for dividends from the estate of a 3 company available to the unsecured creditors pursuant to 4 the Insolvency Rules and the Insolvency Act, which is 5 the definition on page 2. 6 So as a matter of construction, this whole exception 7 comes from the phrase "save for the admitted claim". 8 MR JUSTICE DAVID RICHARDS: Right. 2.1, though, says that 9 the admitted claim is an amount equal to the agreed 10 claim amount. 11 MR ZACAROLI: Yes. 12 MR JUSTICE DAVID RICHARDS: Which clearly doesn't include 13 statutory interest. 14 MR ZACAROLI: Correct, but we accept that it's an incidence 15 or attribute of that admitted claim. It stems from, we 16 say, the definition of admitted claim, which is 17 something which qualifies for your dividends under the 18 estate -- anything which qualifies as dividends under 19 the estate, the insolvency estate, necessarily qualifies 20 for the additional dividends, rights, by way of 21 statutory interest under the statutory scheme. 22 MR JUSTICE DAVID RICHARDS: Could the creditor release that? 23 MR ZACAROLI: Yes. 24 MR JUSTICE DAVID RICHARDS: By express words? 25 MR ZACAROLI: I don't see why not.</p> <p style="text-align: center;">Page 20</p>

<p>1 MR JUSTICE DAVID RICHARDS: I can't see why not either.</p> <p>2 MR ZACAROLI: They could relinquish a right to prove so they</p> <p>3 could relinquish a right to statutory interest.</p> <p>4 MR JUSTICE DAVID RICHARDS: I'm just wondering, it's 2.88.</p> <p>5 MR ZACAROLI: Yes.</p> <p>6 My Lord, the first variant, as it were, to the CDDs</p> <p>7 was language to make it clear for the avoidance of</p> <p>8 doubt.</p> <p>9 MR JUSTICE DAVID RICHARDS: Sorry, just to focus on this for</p> <p>10 a moment, what I'm not quite clear is the fact that the</p> <p>11 release does not extend to the incidence or attributes</p> <p>12 of an admitted claim, what is the process by which one</p> <p>13 reaches that as a matter of construction? Clause 2.3,</p> <p>14 as you say, says "save solely for the admitted claim"</p> <p>15 and the admitted claim is an agreed claim in the amount</p> <p>16 of 18 million-odd. So are you reading in the words</p> <p>17 "save solely for the admitted claim and its incidence</p> <p>18 and attributes"?</p> <p>19 MR ZACAROLI: Well, I'm reading in the definition of</p> <p>20 admitted claim.</p> <p>21 MR JUSTICE DAVID RICHARDS: All right. Let me just go back</p> <p>22 to that. It's an unsecured claim, which qualifies for</p> <p>23 dividends. Well, that doesn't describe statutory</p> <p>24 interest.</p> <p>25 MR ZACAROLI: I can see perhaps strictly read, maybe it</p> <p style="text-align: center;">Page 21</p>	<p>1 bundle which is the first variant.</p> <p>2 I'm not going to take my Lord to any of this</p> <p>3 agreement on the basis that it in substance is exactly</p> <p>4 the same as the first one we've seen, except for the</p> <p>5 inclusion of a new clause. The numbering of the clauses</p> <p>6 is done differently, but the substance is the same. The</p> <p>7 new clause is now 2.2 on page 6, tab 8:</p> <p>8 "For the avoidance of doubt, this deed shall not</p> <p>9 prejudice, affect or restrict [et cetera] any rights or</p> <p>10 claims that the creditor may have for or in respect of</p> <p>11 interest under [those rules]."</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes, thank you.</p> <p>13 MR ZACAROLI: We say that doesn't affect the argument</p> <p>14 in relation to non-provable claims at all, indeed in one</p> <p>15 sense it re-enforces it, because the fact that the</p> <p>16 parties have seen the need to carve out that specific</p> <p>17 exception or make it clear that that specific exception</p> <p>18 from claims of interest is not released indicates that</p> <p>19 any other claim for interest is still released in</p> <p>20 accordance with the operative provision.</p> <p>21 My Lord, one of the principal points made against us</p> <p>22 is that the release is intended to be limited to claims</p> <p>23 which are provable. So although it's in apparently</p> <p>24 broad language, the context that this takes place within</p> <p>25 the parameters of an administration which is primarily</p> <p style="text-align: center;">Page 23</p>
<p>1 doesn't. But we say that the fact that the parties</p> <p>2 accepted that the claim could qualify for the dividends</p> <p>3 from the estate of the company available to its</p> <p>4 unsecured creditors is to be read as including -- the</p> <p>5 fact the parties recognised that, that this claim was</p> <p>6 one which you would then carry with you into the proof</p> <p>7 process in an administration or into a scheme, carries</p> <p>8 with it necessarily the acceptance that you've got</p> <p>9 whatever rights that scheme gave you. So although on</p> <p>10 a strict reading of the word "dividends", you might say</p> <p>11 that's only dividends in relation to provable debts,</p> <p>12 it's to be read slightly more broadly as dividends which</p> <p>13 the statutory scheme gives you generally, so including</p> <p>14 the dividend under a provable debt and the right to</p> <p>15 interest on that.</p> <p>16 MR JUSTICE DAVID RICHARDS: Right.</p> <p>17 MR ZACAROLI: In a sense, I'm arguing against myself here</p> <p>18 because if it excluded interest, we in a sense would be</p> <p>19 happy with that conclusion in the sense that on this</p> <p>20 side of court, but we accept it doesn't go that far for</p> <p>21 that reason.</p> <p>22 The first variant to the CDD was to include a clause</p> <p>23 which made it clear that the right to statutory interest</p> <p>24 was not relinquished. It's worth just turning to that</p> <p>25 immediately at this point. It's the next tab in the</p> <p style="text-align: center;">Page 22</p>	<p>1 concerned with identifying provable claims, because it</p> <p>2 takes place within those parameters then the release</p> <p>3 should be construed down as relating only to provable</p> <p>4 claims. We say there are very clear indications in</p> <p>5 clause 2.2 and the document as a whole which make that</p> <p>6 argument untenable.</p> <p>7 The first is, and I have shown my Lord these points,</p> <p>8 but the first is that clause 2.3, third line from the</p> <p>9 end, releases claims whether in existence now or coming</p> <p>10 into existence at some time in the future. It clearly</p> <p>11 contemplates claims which wouldn't be provable on any</p> <p>12 basis.</p> <p>13 Secondly, it releases claims defined so broadly as</p> <p>14 to include proprietary claims, again claims which on any</p> <p>15 view would not be provable.</p> <p>16 Thirdly, the purpose of identifying the fixed amount</p> <p>17 which your claim now stands at is to enable you to have</p> <p>18 that claim not only in a provable context, but also in</p> <p>19 a scheme of arrangement, and I'm sure my Lord remembers</p> <p>20 from the T&amp;N case that claims in a scheme of arrangement</p> <p>21 are much broader than claims which will be provable</p> <p>22 under the rules in the Act.</p> <p>23 Fourthly, and this is a point I will develop at more</p> <p>24 length, the release is mutual. LBIE is released in all</p> <p>25 claims, including claims not in existence, against the</p> <p style="text-align: center;">Page 24</p>

<p>1 creditor. There is no basis on which the claims 2 released by LBIE could be cut down to some class of 3 claim which is either provable in whatever insolvency 4 process might relate to the counterparty in whichever 5 jurisdiction that arises, or would otherwise be provable 6 in the reverse case against LBIE. There's no basis for 7 that sort of cutting down the width of the release. 8 MR JUSTICE DAVID RICHARDS: So that would extend to the tree 9 roots claim? 10 MR ZACAROLI: Yes. 11 MR JUSTICE DAVID RICHARDS: Supposing one of the 12 counterparties happened to have offices above Lehman's 13 offices and as a result of the negligence of the staff 14 of the counterparty there was a flood, damaging the 15 Lehman's premises. Released? 16 MR ZACAROLI: Yes, but if not, it doesn't -- however you 17 might define at the peripheries types of claim which are 18 not released, it doesn't get anywhere near the sorts of 19 claims we're concerned with here, but I would go as far 20 as to say that it would be released. 21 This mutual release stems, we suggest, from the key 22 core purposes of the agreement as that was expressed to 23 creditors in the progress reports the administrators put 24 out. So for this purpose, it's necessary to go back to 25 the fourth progress report.</p> <p style="text-align: center;">Page 25</p>	<p>1 But it seemed to be a slightly two-stage process. The 2 paragraph which, as so often with Lord Bingham, seems to 3 encapsulate in a few sentences an immense amount of 4 prior learning, is paragraph 8. One almost wonders why 5 anybody ever does anything other than simply quote these 6 few sentences of paragraph 8 on the basic point: 7 "Their natural and ordinary meaning in the context 8 of the agreement, the parties' relationship and all the 9 relevant facts surrounding the transaction so far as 10 known to the parties." 11 To which one might add "or should reasonably be 12 known to the parties". You accept that? 13 MR ZACAROLI: I do. 14 MR JUSTICE DAVID RICHARDS: It may be that's what Mr Trower 15 was meaning, but it was just slightly -- it seemed to 16 start with a sort of disembodied exercise of parsing 17 followed by looking at the facts. 18 MR ZACAROLI: I think it was probably me actually. 19 MR JUSTICE DAVID RICHARDS: Was it? Forgive me. Oh, 20 Mr Trower, I owe you a complete apology. I am sorry. 21 I didn't check the transcript. 22 MR ZACAROLI: If I gave that impression, I was overstating 23 it. I am standing in the position Mr Trower was 24 standing in yesterday. 25 MR JUSTICE DAVID RICHARDS: I am sorry. Anyway, that</p> <p style="text-align: center;">Page 27</p>
<p>1 MR JUSTICE DAVID RICHARDS: Could I just ask you a very 2 general question, Mr Zacaroli, because it's triggered by 3 what you're about to take me to. Mr Trower in 4 summarising the approach to construction I think put it 5 this way, that you start with the words of the contract 6 and you give them their ordinary and natural meaning and 7 you then engage in an iterative process, he described 8 it, probably reciting from a judgment, by reference to 9 the background, the context and so on and so forth. 10 Now, when Mr Trower made that submission to me, I wasn't 11 wholly convinced by it, but looking at the way it's put 12 by Lord Bingham in BCCI v Ali, it doesn't seem to me to 13 be quite the right way of approaching it because what he 14 says is that you try and identify the ordinary and 15 natural meaning of the contract, the words used, in the 16 context of the agreement, the background facts -- 17 I forget exactly how he puts it. 18 So rather than it being a two-stage process, it's 19 a one-stage process; you don't look at the clause as 20 a piece of prose on its own and you're asked to derive 21 a meaning from it, you derive the ordinary and natural 22 meaning of the words having regard to all those other -- 23 MR ZACAROLI: I entirely accept that. 24 MR JUSTICE DAVID RICHARDS: It may be that I've 25 misunderstood really the way Mr Trower was putting it.</p> <p style="text-align: center;">Page 26</p>	<p>1 clarifies it for me. 2 MR ZACAROLI: It's a unitary process. 3 MR JUSTICE DAVID RICHARDS: Exactly. 4 MR ZACAROLI: Nevertheless, one has to start with the 5 language in the sense of -- 6 MR JUSTICE DAVID RICHARDS: Well, yes. 7 MR ZACAROLI: -- what's the first thing you look at? It's 8 the language the parties have actually used. So it may 9 be only a small point, but you have to start somewhere. 10 MR JUSTICE DAVID RICHARDS: Well, you start with the 11 language of contract and the surrounding circumstances. 12 MR ZACAROLI: Yes, you start with the language in the 13 surrounding circumstances, but the very -- if ever one 14 was construing a contract, the very first thing one 15 would have to do is look at the words the parties have 16 chosen to use. 17 MR JUSTICE DAVID RICHARDS: I agree, you'd naturally start 18 there. You'd be wrong to reach some view as to its 19 meaning without looking at the other matters, wouldn't 20 you? 21 MR ZACAROLI: I accept that. You have to look at it in 22 a unitary sense. 23 MR JUSTICE DAVID RICHARDS: I'm glad that's clear, yes. 24 MR ZACAROLI: But I would stress that -- I think some of the 25 passages I took my Lord to yesterday show that one does</p> <p style="text-align: center;">Page 28</p>

<p>1 have to pay some quite important regard to the words the 2 parties have chosen to use. That is a very important 3 part of the context itself. 4 MR JUSTICE DAVID RICHARDS: Absolutely, yes. Yes, it's 5 a very important part of the exercise. 6 MR ZACAROLI: Yes, they've chosen to use those words. 7 MR JUSTICE DAVID RICHARDS: Absolutely. 8 MR ZACAROLI: And here the fact that the parties have chosen 9 to use words of such weight and breadth and completeness 10 is itself a very important factor. 11 MR JUSTICE DAVID RICHARDS: Thank you, good. So yes, the 12 key purposes, the progress report. 13 MR ZACAROLI: Yes. I'd marked it up in a different bundle, 14 I think, and Mr Trower had a different one. Can I just 15 remind us where he took us to yesterday which I then 16 marked up on the way through. It was bundle 5, my Lord. 17 The particular section begins on page 29 of the bundle 18 under the heading "Section 6 unsecured creditors". 19 Under the highlights section, the first bullet 20 point: 21 "A key objective of the administrators in the period 22 has been to expedite the agreement of unsecured 23 creditors' claims." 24 So that's a key objective. That's repeated on 25 page 31 in the first bullet point in the highlights box</p> <p style="text-align: center;">Page 29</p>	<p>1 substantial and evidentiary documentation." 2 MR JUSTICE DAVID RICHARDS: Sorry, where is that? 3 MR ZACAROLI: Under the first bullet point under the heading 4 of "benefits", page 32. They're all in that first 5 bullet point: 6 "It avoids the need for substantial further 7 documentation and interaction in support of claims that 8 would become protracted claims agreement process, 9 especially with regard to more complex claims. It 10 reduces the costs of claim determination and assists in 11 accelerating, where possible, the distribution process 12 on the basis that more claims shall be determined sooner 13 than if the approach was not followed." 14 Then just after the bullet points is the passage 15 that I foreshadowed earlier about the contractual 16 restrictions on assignability, and the point is being 17 made in the last four lines: 18 "Creditors who avail themselves of the consensual 19 approach note that LBIE currently intends to permit 20 agreed claims to be transferred in whole without 21 requiring further consent." 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: And then the section headed "Progress", 24 my Lord was taken to this by Mr Trower, but just to pick 25 up at the very end of that section on page 33, the last</p> <p style="text-align: center;">Page 31</p>
<p>1 again. Then under the heading "Consensual approach", 2 page 31, the right-hand column: 3 "The administrators draw attention to the fact that 4 their experience suggests the resolution of LBIE's 5 unsecured creditor claims outside of the consensual 6 approach is likely to make many years to conclude, 7 requiring significant time and resources for both 8 creditors and the insolvent estate. In cases of 9 material disagreement, litigation may be necessary to 10 resolve claims with significant costs and delay. To 11 avoid this protracted agreement process, the 12 administrators announced to creditors that they were 13 considering the establishment of a more expedient claims 14 determination mechanism for consensual approach." 15 And they say they've engaged with a number of street 16 creditors, those with the largest claims. 17 Under the heading "Overview": 18 "It is an optional determination process available 19 to street creditors designed primarily to accelerate the 20 agreement of creditor claims." 21 Then under the heading "Benefits", the left-hand 22 column of page 32: 23 "The benefits include to provide finality and 24 certainty regarding street creditors' financial claims 25 against LBIE. It avoids the need for further</p> <p style="text-align: center;">Page 30</p>	<p>1 five lines: 2 "Given the length of time required for any bilateral 3 claim negotiation and agreement, any material number of 4 creditors opting to accept the LBIE determination will 5 significantly shorten the life and therefore cost to 6 creditors of the administration." 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR ZACAROLI: My Lord, there is also one other document just 9 to remind my Lord of in this context. It's the website 10 update of 16 June 2010, bundle 4A, page 441. 11 The second paragraph under the heading "Background" 12 on page 441, I believe my Lord was taken to this. I'm 13 just going to highlight the last few lines or half of 14 that paragraph: 15 "Drawing upon their experience of other major 16 insolvencies and following a careful evaluation of the 17 claims profile of this estate, the joint administrators 18 have concluded the conventional procedure for 19 determining claims, whether using their existing powers 20 under a distribution agreement to the administration 21 alone or in conjunction with the scheme of arrangement 22 or a company voluntary arrangement, will involve 23 a time-consuming and expensive adjudication process 24 likely to involve extensive disputes and potential 25 litigation. This in turn means that it is likely to be</p> <p style="text-align: center;">Page 32</p>



<p>1 many years before a material interim dividend can be 2 paid to unsecured creditors." 3 It follows that part of the process would involve 4 the administrators undertaking a far less extensive 5 review of the documentary evidence, and indeed the whole 6 relationship between LBIE and its client/creditors, than 7 it would otherwise do under a normal claims 8 determination process. So it would not be looking, as 9 it were, to the nth degree for all possible matters both 10 ways. And that is a point which does cut both ways 11 because, in so doing, they might be missing claims that 12 LBIE had against the creditor or missing arguments that 13 will reduce the creditor's claim by way of set-off or 14 otherwise. 15 So the mutuality of the release is very important 16 because LBIE is clearly stating in the CDD "we're going 17 to release any such claim we might have against you in 18 return for you releasing claims against us". So the 19 benefits to creditors isn't just -- one major benefit 20 of course is the advantage -- 21 MR JUSTICE DAVID RICHARDS: What you're envisaging there are 22 claims which would result in a potential for set-off. 23 MR ZACAROLI: Yes. 24 MR JUSTICE DAVID RICHARDS: You're really looking at the 25 obverse of provable claims. So the financial contracts</p> <p style="text-align: center;">Page 33</p>	<p>1 MR JUSTICE DAVID RICHARDS: That's not the focus of what 2 you're pointing out to me. At the stage that the 3 administrators are doing this exercise, we haven't got 4 any question of non-provable claims, by the way 5 we haven't got to any dividends yet. The point that you 6 were making, perfectly reasonably, was that because this 7 is going to be a faster and therefore it might be 8 thought slightly rougher and readier approach, not only 9 were creditors giving up the possibility of a higher 10 claim against the company, but equally the company was 11 giving up the possibility of higher or other claims 12 against the creditor. But the focus of all that is on 13 the financial contracts between the parties. I mean, at 14 this stage, in 2010, the administrators would not be -- 15 we know, we have their evidence, but in any event they 16 wouldn't conceivably have been thinking about 17 calculating currency gains or losses 18 post-administration. 19 MR ZACAROLI: I accept that the administrators were not 20 thinking about that. 21 MR JUSTICE DAVID RICHARDS: Anyway, I just felt that the 22 point you were making, perfectly reasonably, was one 23 which naturally arises in the context of looking at the 24 position, as it were, in relation to obligations as at 25 the date of administration.</p> <p style="text-align: center;">Page 35</p>
<p>1 give rise to the potential for claims by the 2 counterparties, but equally they give rise to the 3 potential for claims by LBIE against the counterparty. 4 MR ZACAROLI: Yes. 5 MR JUSTICE DAVID RICHARDS: Isn't that what you're 6 envisaging? I'm just thinking about claims that arise 7 post-administration. The point you've just made is 8 really a good point, isn't it, as regards 9 pre-administration or claims arising out of 10 pre-administration obligations? 11 MR ZACAROLI: Can I take an example, which my Lord may say 12 is fanciful, given the way the law has developed? Take 13 the currency conversion claims. There may be payments 14 either way in dollars. The creditor may have a dollar 15 claim, an ultimate net claim of dollars against the 16 estate. The way the law has developed is that the 17 creditor has a claim against the estate by reason of its 18 contractual entitlement to dollars, to the extent that 19 it suffered any shortfall. 20 MR JUSTICE DAVID RICHARDS: Since the administration? 21 MR ZACAROLI: Yes. But the law has not developed, but it 22 might have developed, in the opposite direction to say 23 that where a creditor has enjoyed a gain by reason of 24 currency conversions or currency fluctuations 25 post-administration, it should disgorge that benefit.</p> <p style="text-align: center;">Page 34</p>	<p>1 MR ZACAROLI: Well, except for this, that the 2 administrators, the release the administrators give the 3 creditor is clearly in wholly unlimited terms, so the 4 creditor is getting the benefit of a wholly unlimited 5 release against it, which is one of the consequences of 6 the rough and ready approach, that if there were any 7 other claim against the creditors -- 8 MR JUSTICE DAVID RICHARDS: I see, so I take the point, 9 there's a mutuality. So if the release -- it's sauce 10 for the goose and the gander, as it were, the releases 11 should match each other. 12 MR ZACAROLI: Yes. 13 MR JUSTICE DAVID RICHARDS: I see. 14 MR ZACAROLI: For example, if a claim by the administrators, 15 a company against the creditor, arose after 16 administration, then it would be contrary to the 17 mutuality of the release that that claim had been 18 released, but the claim by the creditor, for example 19 a currency conversion claim which only arose 20 subsequently against the company, was not released, the 21 mutuality must extend for all purposes. 22 MR JUSTICE DAVID RICHARDS: Quite. 23 MR ZACAROLI: That's the point I'm making. 24 MR JUSTICE DAVID RICHARDS: Okay. That's not got a great 25 deal to do with the rough and ready approach to valuing</p> <p style="text-align: center;">Page 36</p>

<p>1 claims though, has it? Speeding up the process?</p> <p>2 MR ZACAROLI: Well --</p> <p>3 MR JUSTICE DAVID RICHARDS: Because the focus of that, as</p> <p>4 you rightly say, is on, as I say, the position</p> <p>5 in relation to pre-administration contracts. So it's</p> <p>6 going to be rougher and readier both ways.</p> <p>7 MR ZACAROLI: Yes, but part of that rough and ready approach</p> <p>8 is to fix an amount and then leave it at that, waive</p> <p>9 everything else. It's focusing on that alone and saying</p> <p>10 anything else there might be out there we're agreeing</p> <p>11 we will just leave, it will be released both ways.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes, right.</p> <p>13 MR ZACAROLI: But for the purposes of the argument that this</p> <p>14 can't be limited to provable claims, the point that</p> <p>15 really matters here is because the administrators' or</p> <p>16 company's release was unlimited, mutuality requires the</p> <p>17 release the other way to be of a similar nature.</p> <p>18 MR JUSTICE DAVID RICHARDS: Right.</p> <p>19 MR ZACAROLI: My Lord, just a short point here. The Senior</p> <p>20 Creditor Group's skeleton is replete with the assertion</p> <p>21 that the purpose of the CDDs was to provide a degree of</p> <p>22 finality. We take issue with that formulation of the</p> <p>23 concept of finality. It is clear from the terms of the</p> <p>24 document itself, but also from this rough and ready</p> <p>25 approach to arriving at claims and waiving everything</p> <p style="text-align: center;">Page 37</p>	<p>1 claim. So one has to draw a distinction between the</p> <p>2 underlying contractual rights, on the one hand, and the</p> <p>3 rights which are -- which are the rights which come out</p> <p>4 of the CDD, the only rights which remain after the CDD,</p> <p>5 namely the admitted claim.</p> <p>6 MR JUSTICE DAVID RICHARDS: Is the point here that the right</p> <p>7 to statutory interest does not arise under the contract,</p> <p>8 it arises under the legislation?</p> <p>9 MR ZACAROLI: Yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: Whereas the currency conversion</p> <p>11 claims and a non-provable claim for interest is</p> <p>12 enforcement of a term of the contract.</p> <p>13 MR ZACAROLI: Yes.</p> <p>14 MR JUSTICE DAVID RICHARDS: In one sense, the currency</p> <p>15 conversion claim is an incidence or attribute of the</p> <p>16 admitted claim because it arises from the conversion of</p> <p>17 the contractual debt into sterling at the date of the</p> <p>18 administration.</p> <p>19 MR ZACAROLI: I would take issue with that because there is</p> <p>20 an important distinction drawn throughout the document</p> <p>21 between the admitted claim and that out of which it</p> <p>22 arose, the underlying creditor agreement. So let's go</p> <p>23 back to tab 7, if we may, because this requires slightly</p> <p>24 closer analysis of the language. In this example, the</p> <p>25 underlying contractual entitlement of this creditor</p> <p style="text-align: center;">Page 39</p>
<p>1 else, that the purpose was to achieve finality,</p> <p>2 certainty and finally. The phrase itself appears in the</p> <p>3 fourth progress report, as my Lord has seen.</p> <p>4 Once you introduce them to a concept such as</p> <p>5 finality and certainty, and the phrase "degree", it's no</p> <p>6 longer final, no longer certain. The point was to</p> <p>7 achieve finality and certainty.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR ZACAROLI: Another point made against us, and I again</p> <p>10 foreshadow this point, by the Senior Creditor Group is</p> <p>11 the idea that the non-provable currency conversion claim</p> <p>12 and claims to interest are incidence and attributes of</p> <p>13 the claims which are agreed and admitted to proof.</p> <p>14 Again, there are many references to that concept that</p> <p>15 these claims are themselves incidence and attributes of</p> <p>16 the claims admitted to proof.</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR ZACAROLI: My Lord, that, we submit, is wrong for two</p> <p>19 reasons. They say that there's no release of such</p> <p>20 matters, and that's wrong for two reasons. First of</p> <p>21 all, a currency conversion claim and a non-provable</p> <p>22 claim to interest, neither of those is an incidence or</p> <p>23 attribute of the claim admitted to proof. Secondly, the</p> <p>24 CDD clearly does expressly waive matters which would be</p> <p>25 incidence and attributes of the underlying contractual</p> <p style="text-align: center;">Page 38</p>	<p>1 arose under the creditor agreement as defined on page 3,</p> <p>2 namely the FBF master agreement.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR ZACAROLI: That will vary between creditors, but that is</p> <p>5 the creditor agreement. So one starts with that and</p> <p>6 then clause 2, as I pointed out, first of all says</p> <p>7 notwithstanding any other term in the creditor</p> <p>8 agreement, your claim is limited to and fixed at the</p> <p>9 agreed claim amount, which is your admitted claim. And</p> <p>10 that's the sterling sum. So you've compromised all</p> <p>11 rights under the creditor agreement in exchange for the</p> <p>12 admitted sum, which is a sterling debt.</p> <p>13 Then the release in 2.3 expressly includes any</p> <p>14 claim, et cetera, arising under the creditor agreement.</p> <p>15 That I have shown my Lord before, it's four lines from</p> <p>16 the end.</p> <p>17 MR JUSTICE DAVID RICHARDS: Sorry, clause 3?</p> <p>18 MR ZACAROLI: 2.3.</p> <p>19 MR JUSTICE DAVID RICHARDS: 2.3, exactly, yes.</p> <p>20 MR ZACAROLI: The currency conversion claim -- in a sense</p> <p>21 the phrase "currency conversion claim" is a misleading</p> <p>22 label because all it is is the right to be paid in</p> <p>23 dollars, which the creditor agreement provided for, to</p> <p>24 the extent that you haven't got that payment through the</p> <p>25 statutory process.</p> <p style="text-align: center;">Page 40</p>

<p>1 So the right to be paid in dollars is undoubtedly an 2 attribute of the creditor agreement. That claim is 3 released. But that right to be paid in dollars is not 4 in any sense an incidence or attribute of the admitted 5 claim, which is the only thing which you have as 6 a creditor once you've signed this agreement. 7 MR JUSTICE DAVID RICHARDS: Yes. In a sense there's 8 a closer link -- you'll say it's not sufficient, but 9 there's a closer link between a currency conversion 10 claim and the admitted claim than there is between the 11 admitted claim and a claim for non-provable interest, 12 because the currency conversion claim stems solely from 13 the denomination of the creditor's claim in sterling at 14 an exchange rate as at the date of administration in 15 accordance with the Insolvency Rules. 16 So whether that makes it an attribute or incidence 17 of the admitted claim is another matter, but it is the 18 result of the admitted claim or the result of the 19 application of the Insolvency Rules and so on to the 20 creditor's contractual claim. 21 MR ZACAROLI: My Lord, I can see that point in a sort of 22 descriptive sense, but in an analytical sense they are 23 very different things, because the currency conversion 24 claim is not caused by conversion. 25 MR JUSTICE DAVID RICHARDS: That's right. The underlying --</p> <p style="text-align: center;">Page 41</p>	<p>1 be realistic because would the administrators been able 2 to pay in anything other than sterling -- I mean, they 3 were really bound to pay by reference to the exchange 4 rate at the administration date. 5 MR ZACAROLI: That's correct. 6 MR JUSTICE DAVID RICHARDS: They might have paid in dollars, 7 but it was fixed as at the administration date, wasn't 8 it. 9 MR ZACAROLI: Two points. First of all, I perhaps misspoke 10 in saying, "Paid". You have agreed that your only 11 entitlement is denominated in sterling. That's one 12 point. The second point is of course the administrators 13 could have paid in a non-sterling currency through 14 a scheme of arrangement. You're not bound to pay under 15 an alternative distribution system like a scheme of 16 arrangement in sterling, you could have paid in some 17 other currency. But the point is not that you've agreed 18 to be paid, you've agreed that your only entitlement is 19 a sterling sum. That's the key point. 20 The same submission works for non-provable claims to 21 interest. I think my Lord accepts there's less to 22 debate there. That clearly is something which arises 23 under the original contractual rights. 24 MR JUSTICE DAVID RICHARDS: Yes. 25 MR ZACAROLI: But the second point is, I said that the</p> <p style="text-align: center;">Page 43</p>
<p>1 I agree. It results from the contractual entitlement -- 2 MR ZACAROLI: Yes. 3 MR JUSTICE DAVID RICHARDS: -- to payment in the foreign 4 currency. It does not result from the legislation. 5 MR ZACAROLI: Exactly. And the fact that you've agreed to 6 be paid in sterling means you can't suffer a currency 7 conversion claim, so-called, because by definition 8 you'll be paid in the same currency as the currency 9 you've agreed to be paid in. The proof in the 10 liquidation administration will be in sterling and 11 therefore it will satisfy your claim in full. So 12 properly analysed, the currency conversion claim is the 13 opposite of an incidence or attribute of the provable 14 claim; it's what's left of your underlying contractual 15 rights once the provable claim has been satisfied in 16 full. 17 MR JUSTICE DAVID RICHARDS: Yes. 18 MR ZACAROLI: So although there's a link, the fact is that 19 because you chose to be paid this sterling or agreed to 20 be paid in sterling under this agreement, because of 21 that and because you've limited every other claim under 22 the creditor agreement, it means you can no longer claim 23 for your -- 24 MR JUSTICE DAVID RICHARDS: I'm just wondering, to say that 25 they have agreed to be paid in sterling may not really</p> <p style="text-align: center;">Page 42</p>	<p>1 agreement expressly contemplates releasing attributes of 2 your underlying contractual right. That's clear from 3 the words in clause 2.3, that the rights that you're 4 releasing and discharging include those arising under 5 the creditor agreement, so it clearly contemplates that 6 possibility. 7 MR JUSTICE DAVID RICHARDS: Yes. I will be giving the 8 transcribers a break. Is that a convenient place? 9 MR ZACAROLI: It is, I'm about to turn to some different 10 topics. 11 MR JUSTICE DAVID RICHARDS: We'll take five minutes then 12 (11.43 am) 13 (A short break) 14 (11.48 am) 15 MR ZACAROLI: I was going to turn to various aspects of the 16 background, which it is said against us mean that the 17 words have to be read down in some way. There are five 18 different aspects. First of all, the point made against 19 us that the CDDs were not arm's length bargains, but 20 were made by administrators with duties to creditors and 21 the creditors relied on the administrators to look after 22 their interests. That's the first batch of points. 23 Secondly, the point that there was no contemplation 24 at the time the CDDs were entered into of there being 25 any surplus or even a right to claim currency conversion</p> <p style="text-align: center;">Page 44</p>

<p>1 claims.</p> <p>2 The third is that the context starts with the</p> <p>3 admission of provable claims. It's the speeding up the</p> <p>4 process of paying those which are provable.</p> <p>5 The fourth is that if we're right, then it just</p> <p>6 means that members will benefit.</p> <p>7 The final point is that the progress reports made it</p> <p>8 clear that the amounts would need to be converted into</p> <p>9 sterling because of course rule 2.86 requires that.</p> <p>10 Those are the five, I think, key points of contextual</p> <p>11 background that are said to lead to a reading down of</p> <p>12 the agreement.</p> <p>13 The first one, and the best place to see where this</p> <p>14 is set out, is the Senior Creditor Group's skeleton</p> <p>15 argument at paragraphs 4 to 7, tab 1 of bundle 10.</p> <p>16 Paragraph 4, they say that they are not simply arm's</p> <p>17 length bargains between two commercial parties, each of</p> <p>18 which is motivated by self-interest.</p> <p>19 Paragraph 5:</p> <p>20 "[The process is] initiated by the administrators to</p> <p>21 facilitate the return of trust assets and the</p> <p>22 quantification of claims against the estate. Both</p> <p>23 processes operate within the context and framework of</p> <p>24 the statutory regime contained in the Insolvency Act and</p> <p>25 Rules. That regime requires the administrators to</p> <p style="text-align: center;">Page 45</p>	<p>1 paragraph 3 first of all:</p> <p>2 "The administrator must perform its functions with</p> <p>3 the objective of ..."</p> <p>4 And in this case the objective of the administration</p> <p>5 is B:</p> <p>6 "Achieving a better result for the company's</p> <p>7 creditors as a whole than would be likely if the company</p> <p>8 were wound up without first [inaudible] administration."</p> <p>9 Sub-paragraph 2:</p> <p>10 "Subject to sub-paragraph 4 the administrator must</p> <p>11 perform its functions in the interests of the company's</p> <p>12 creditors as a whole."</p> <p>13 And paragraph 4 in particular:</p> <p>14 "The administrators of the company must perform its</p> <p>15 functions as quickly and efficiently as is reasonably</p> <p>16 practicable."</p> <p>17 And then just one other power of administrators from</p> <p>18 schedule 1. My Lord will be familiar with this, but</p> <p>19 they have a power, under paragraph 18, to make any</p> <p>20 arrangement or compromise on behalf of the company.</p> <p>21 Paragraph 18 of schedule 1, not schedule B1.</p> <p>22 MR JUSTICE DAVID RICHARDS: Forgive me, yes.</p> <p>23 MR ZACAROLI: My Lord will be familiar with the paragraph.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR ZACAROLI: So they actually have a duty to admit only</p> <p style="text-align: center;">Page 47</p>
<p>1 return trust assets ... and imposes duties on the</p> <p>2 administrators to ... [act] in a quasi-judicial capacity</p> <p>3 and distribute assets pari passu."</p> <p>4 Paragraph 6 points to the administrators'</p> <p>5 experience:</p> <p>6 "... who have at all times had the benefit of</p> <p>7 extensive specialist insolvency legal advice. In</p> <p>8 contrast, general unsecured creditors, most of whom have</p> <p>9 little, if any, experience in relation to insolvency</p> <p>10 proceedings and in any event are likely to have been</p> <p>11 disinclined to incur large irrecoverable legal costs</p> <p>12 will have relied, and were entitled to rely, on the</p> <p>13 administrators [essentially to look after their</p> <p>14 interests]."</p> <p>15 And 7:</p> <p>16 "The regime contained, along with the duties and</p> <p>17 functions, processes, which provide the basic context</p> <p>18 against which the provisions are to be construed.</p> <p>19 Documents were intended to operate in a way that is</p> <p>20 consistent with that statutory regime and the duties and</p> <p>21 functions of the administrators."</p> <p>22 We suggest that's an oversimplification of the</p> <p>23 functions and duties of administrators in a case like</p> <p>24 this.</p> <p>25 Turning to schedule B1 of the Insolvency Act,</p> <p style="text-align: center;">Page 46</p>	<p>1 such claims and in such amount as is proper, and they</p> <p>2 have a duty to exercise their functions as quickly and</p> <p>3 expeditiously and cheaply as possible. In exercising</p> <p>4 their duty to admit or reject claims of creditors, which</p> <p>5 is what this is all about, they are in essence on the</p> <p>6 opposite side of that transaction to each individual</p> <p>7 creditor. So you might say a creditor is seeking to</p> <p>8 maximise the amount of its claim; the administrator is</p> <p>9 seeking, not necessarily to minimise, but to arrive</p> <p>10 at the proper value for that claim.</p> <p>11 Their duty to do so is based on their duty to act</p> <p>12 in the interests of all creditors to ensure that only</p> <p>13 properly maintainable claims are accepted. But that</p> <p>14 can't possibly mean that they have a duty to act in the</p> <p>15 interests of the particular creditor who is seeking to</p> <p>16 maximise the value of its claim. And we suggest it's</p> <p>17 perfectly consistent with the statutory regime and those</p> <p>18 powers that we've just looked at briefly for the</p> <p>19 administrators to reach a rough and ready compromise</p> <p>20 with creditors, in so doing to enter into a mutual</p> <p>21 release of all claims to achieve that end so as to speed</p> <p>22 up distributions. That's a perfectly proper thing for</p> <p>23 them to be doing and doesn't in any way indicate that</p> <p>24 the terms of these documents should bear any meaning</p> <p>25 other than what their words would suggest.</p> <p style="text-align: center;">Page 48</p>

<p>1 Allied to this point is the point made in one of 2 those paragraphs in the skeleton that creditors are 3 somehow unsophisticated compared with the 4 administrators. Now, this is clearly not a case where 5 we are dealing with, on the one hand, a party with 6 unfair bargaining power or inappropriate or unbalanced 7 bargaining power, and widows and orphans on the other. 8 That is clearly not this case.</p> <p>9 The general nature of LBIE's creditors was 10 summarised in the third progress report. This is in 11 volume 4A and it's at page 373, which is the particular 12 passage. The heading on the right-hand column is 13 "street creditors", and my Lord was told yesterday or 14 shown other evidence that street creditors, essentially 15 those with financial contracts, constitute many billions 16 of creditors compared with 60 million of everybody else. 17 It's by far the most creditors:</p> <p>18 "This category of liabilities relates to dealings 19 with a wide spectrum of counterparties, ranging from 20 banks, corporate clients, financial intermediaries, 21 insurance companies and investment banking clients. 22 LBIE had only a very modest number of private clients." 23 So we're generally dealing with sophisticated 24 parties.</p> <p>25 The administrators' skeleton argument, which is in Page 49</p>	<p>1 administration.</p> <p>2 The Senior Creditor Group rely upon a case called re 3 WW Duncan from the late 19th Century for the proposition 4 that the context within which these documents must be 5 construed includes duties and attributes of the 6 liquidator, the administrators. We have dealt with that 7 fully in paragraph 6 of our reply skeleton. I don't 8 propose to deal with it now but see what's made of it by 9 my learned friend Mr Dicker in his submissions, and I 10 will come back to it, if I may, in reply. At the moment 11 we just make the point that it's a million miles away 12 from this case.</p> <p>13 Sorry, it's not 19th Century. Early 20th?</p> <p>14 MR JUSTICE DAVID RICHARDS: I think so. Mr Justice Buckley, 15 MR ZACAROLI: Quite a long time ago. Not that that's 16 relevant.</p> <p>17 MR JUSTICE DAVID RICHARDS: It goes back to the days when 18 there were partly paid shares.</p> <p>19 MR ZACAROLI: Turning to the second aspect of the background 20 context, that is that the progress reports from the 21 administrators did not indicate potential surplus 22 until April 2013, and the possibility of the currency 23 conversion claims were not in the administrators' 24 contemplation and not discussed with the joint 25 administrators by any creditor until March 2013. We Page 51</p>
<p>1 volume 10, tab 3, page 6, this is paragraph 8, 2 sub-paragraph 10, which is reciting the contact which 3 was had with creditors in developing the process. They 4 say:</p> <p>5 "As with the development of the CRA, LBIE's 6 potential stakeholders, including the working groups, 7 the creditors committee, representative creditors and 8 the aggregators, ie those funds actively purchasing 9 claims in the market, were consulted throughout the 10 administrators' development of the consensual approach 11 culminating in the CV. The SCG, for example, 12 themselves, aggregated through their various affiliates, 13 together hold unsecured claims in excess of 14 £2.75 billion, and those creditors who sat on the 15 working groups and the Unsecured Creditors Resolution 16 Working Group were also substantial entities with access 17 to independent legal advice."</p> <p>18 I don't pray in aid the sophistication of the 19 creditors in any positive way. This point is really 20 that my Lord can't draw any conclusion negatively 21 against us from the assertion that creditors were in 22 some way unsophisticated, reliant on the administrators 23 to look after their interests. There were undoubtedly 24 many creditors who were well capable of looking after 25 their own interests and have done so throughout this Page 50</p>	<p>1 needn't turn them up, but the references in the SCG 2 skeletons are 20 and 61 for those two points.</p> <p>3 Taking them together, at their highest they are 4 really part of a single point that the currency 5 conversion claim isn't within the release because it 6 wasn't in the parties' contemplation at the time the 7 CDDs were entered into. My Lord, even if it's true that 8 the currency conversion claim and the non-provable claim 9 to interest were not in anyone's contemplation at the 10 time any CDD was entered into, even assuming that for 11 the moment, that simply means that those claims fall 12 squarely within the definition of claims released 13 because, as we've seen, the parties have deliberately 14 considered the possibility of there being claims that 15 they haven't contemplated and agreed to release them. 16 So it really takes the Senior Creditor Group nowhere to 17 point out what is obviously within the clause.</p> <p>18 In any event, it's unsafe for the court to reach any 19 general conclusion about what any particular creditor 20 may have thought about currency conversion claims or 21 non-provable claims to interest. There is no evidence 22 at all about creditors' attitude towards non-provable 23 claims to interest. To be fair to creditors we don't 24 yet know whether there are any, it's a matter that will 25 arise out of part 2A of the waterfall application, but Page 52</p>

<p>1 there's no evidence at all about whether creditors 2 thought there might be, whether they had been to their 3 own lawyers to ask them about that question some time 4 ago, we just don't know. So the court can't make any 5 generalisation about that fact anyway, but that doesn't 6 matter because even if it were true, it doesn't take the 7 argument anywhere. I will come back to develop this 8 in relation to 36A, but it's an entirely wrong approach 9 to ask, well, if this claim had been thought about 10 at the time, would there have been some other provision 11 made for it? Because the whole point is it wasn't 12 thought about and they released any claim that was not 13 thought about.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes. The CDDs were made with 15 creditors, many of whom have of course assigned their 16 claims to -- as I understand it, most of the claims are 17 now held by funds, which deal in distress debt and so 18 on.</p> <p>19 MR ZACAROLI: Yes.</p> <p>20 MR JUSTICE DAVID RICHARDS: Was the sequence generally that 21 you had the original creditor, if I can call it that, 22 who entered into one of these deeds, who then assigned 23 their claim to funds which now really constitute the 24 Senior Creditor Group?</p> <p>25 MR ZACAROLI: It's not clear. I don't know the answer to</p> <p style="text-align: center;">Page 53</p>	<p>1 compromise by not having to look at extensive 2 documentation, providing finality as between the claims 3 of the creditors and LBIE, enabling speedy 4 distributions, enabling the easier transfer of claims to 5 avoid having to go and get consent of the administrators 6 each time, and ultimately bringing the administration to 7 an earlier end and saving costs for all.</p> <p>8 My Lord, all those objectives are wholly consistent 9 with the unlimited release language in the document, 10 extending to claims that went beyond provable claims. 11 We say it would be inconsistent with those purposes to 12 limit the release only to provable claims because 13 it would in particular frustrate the objective of saving 14 costs because the administrators would find that having 15 come to an agreement, so they thought, to end the 16 relationship between them and that creditor, reach 17 finality in that relationship, they had to 18 re-investigate, re-open that relationship at some second 19 or third round of distributions later on. And that, 20 we would say, is inconsistent with the whole idea of 21 saving costs for the benefit of everybody.</p> <p>22 I've made the textual points based on the CDDs 23 themselves as to why they can't have been limited to 24 a release of provable claims, and I won't repeat those. 25 It included the point, however, that these claims were</p> <p style="text-align: center;">Page 55</p>
<p>1 that. We know it happened both ways around because 2 there are aggregated CDDs. The aggregated CDDs are 3 entered into for the first time by the aggregator, like 4 the Senior Creditor Group, after they've had underlying 5 claims transferred.</p> <p>6 MR JUSTICE DAVID RICHARDS: So claims were transferred to 7 them otherwise than under the terms of transfer 8 contained in the --</p> <p>9 MR ZACAROLI: Yes. I don't know the weight of either side 10 of that process, maybe someone does, but I certainly 11 don't. But both happened.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: My Lord, the third point or group of points 14 was that the consensual approach was presented to 15 creditors as something to facilitate payment of 16 dividends. It's perhaps just worth looking at the SCG 17 skeleton, paragraph 11.1, for that point shortly.</p> <p>18 It's a point which is developed at some length, but 19 I'm just highlighting the core points. I have shown 20 my Lord the fourth progress report, which is what 21 explained to creditors what the administrators were 22 setting out to do by this process. We won't look at it 23 again, but to remind my Lord the benefits were set out 24 as including saving costs for the estate, saving costs 25 for the creditor, reaching a more rough and ready</p> <p style="text-align: center;">Page 54</p>	<p>1 to be admitted not only in a winding up or 2 administration but a scheme of arrangement, which is far 3 broader, enables claims of a far broader category to be 4 included than in a winding up or administration.</p> <p>5 MR JUSTICE DAVID RICHARDS: Just thinking about that, if you 6 put it that way, in order to be an admitted claim it 7 surely has to qualify for dividends under the Insolvency 8 Rules. If it was a claim which would be capable of 9 being treated as a claim of a creditor under a scheme 10 but would not be admitted to proof in an administration 11 or liquidation, it wouldn't be an admitted claim, would 12 it, as defined?</p> <p>13 MR ZACAROLI: Well, except that the words in parentheses are 14 an alternative to the words which go before.</p> <p>15 MR JUSTICE DAVID RICHARDS: In order to be an admitted 16 claim, does it not have to satisfy the first --</p> <p>17 MR ZACAROLI: No, because it qualifies for dividends from 18 the estate of the company available to its unsecured 19 creditors pursuant to the Insolvency Rules and Act or, 20 if applicable, as amended or replaced pursuant to --</p> <p>21 MR JUSTICE DAVID RICHARDS: How does this work? Supposing 22 you had a claim of a creditor which was not provable but 23 which was capable of being a claim to which a scheme 24 could apply, the effect of this deed would be to admit 25 it to a distribution, because the whole point of the</p> <p style="text-align: center;">Page 56</p>

<p>1 agreement is that the admitted claim will be admitted 2 distributions. 3 MR ZACAROLI: Sorry, I'm not quite following. 4 MR JUSTICE DAVID RICHARDS: All right. I'm a creditor and 5 I agree my claim as £18 million under the terms of this 6 agreement. 7 MR ZACAROLI: Yes. 8 MR JUSTICE DAVID RICHARDS: The effect of this agreement 9 is that that claim will be admitted for distribution 10 purposes in the administration. The administrators 11 couldn't do that if it was a claim which was not 12 admissible to proof as a matter of law in the 13 administration. 14 MR ZACAROLI: I see, it's a sort of reverse point. 15 MR JUSTICE DAVID RICHARDS: I think you're making the point 16 that this deed is wide enough to include claims which 17 are not admissible to proof in a liquidation but are 18 capable of being subject to a scheme. 19 MR ZACAROLI: I'm making the slightly different point that 20 because the purpose of this was to enable the claim to 21 be admitted without any further requirements in either 22 a liquidation or a scheme of arrangement, and that would 23 be the whole of your claim in those circumstances, it 24 was clearly intended to release any other claim that 25 might otherwise have been admissible in any of those</p> <p style="text-align: center;">Page 57</p>	<p>1 MR JUSTICE DAVID RICHARDS: Capable of proof. Capable as 2 a matter of law. 3 MR ZACAROLI: But I wanted to think about that because 4 having made this new agreement, it's possible -- 5 MR JUSTICE DAVID RICHARDS: I don't see how the 6 administrators could act outside the insolvency 7 legislation. 8 MR ZACAROLI: Let me come back to that. 9 MR JUSTICE DAVID RICHARDS: Sorry, I may have misunderstood 10 then the point you were making. 11 MR ZACAROLI: I have a claim for £18 million. By this 12 agreement I'm accepting that it's my only claim. 13 I can't bring any other claim in either a winding-up or 14 a scheme of arrangement. Now, a scheme of arrangement 15 might have allowed me to bring other claims. 16 MR JUSTICE DAVID RICHARDS: I see. So that is the point. 17 You say the effect is to release claims which, though 18 not admissible to proof, could be the subject of 19 a scheme? 20 MR ZACAROLI: Yes. 21 MR JUSTICE DAVID RICHARDS: Okay, I understand. 22 MR ZACAROLI: So my Lord, it is correct to say that at the 23 time the CDD was entered into in accordance with the 24 fourth progress report, the earlier distributions, the 25 earlier distributions to which creditors would be</p> <p style="text-align: center;">Page 59</p>
<p>1 processes. So if you have your claim for 18 million -- 2 MR JUSTICE DAVID RICHARDS: So if you have a claim which is 3 not admissible to proof in a liquidation or 4 administration and therefore cannot be an admitted claim 5 for the purposes of this deed, cannot be -- forget about 6 Nortel. I was just going to give that as an instance, 7 but there are other instances one could take. 8 So that cannot be an admitted claim for the purposes 9 of this deed, I think that much is clear. Is that 10 right? 11 MR ZACAROLI: It can't be admitted to proof in 12 a liquidation, yes, that's correct. 13 MR JUSTICE DAVID RICHARDS: Therefore you must -- the effect 14 of this agreement is that you release any claim which 15 would not be admissible to proof, even though it could 16 be the subject of a scheme of arrangement. 17 MR ZACAROLI: Well, the effect of this deed is to release 18 any claims, yes. 19 MR JUSTICE DAVID RICHARDS: Unless it is an admitted claim 20 and in order to be an admitted claim, it must be 21 dismissible to proof under the Insolvency Rules. 22 MR ZACAROLI: I think that's right. I just want to think 23 further about that perhaps if I may, but I think it's 24 correct to say that a claim to be an admitted claim must 25 be --</p> <p style="text-align: center;">Page 58</p>	<p>1 entitled by reason of entering into a CDD, would be 2 distributions by way of payments of dividends in respect 3 of provable claims because that was the context. To get 4 an early distribution it had to be a claim that was one 5 that could qualify for dividends. 6 MR JUSTICE DAVID RICHARDS: Yes. 7 MR ZACAROLI: That's true, but that does not affect the fact 8 and doesn't assist you in understanding the parameters 9 of the trade-off for that, and the trade-off for that 10 benefit was the release of all claims. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR ZACAROLI: Again, with mutuality. All claims either way. 13 And it's that mutual release of all claims which 14 produces finality, not a degree of finality but finality 15 in the relationship between the creditor and LBIE. 16 So the ultimate point here is that following the 17 iterative process, you start as a matter of chronology 18 with the wording and then ask yourself, does the fact 19 that this took place in the context of achieving earlier 20 distributions of dividends, does that mean we can't read 21 these words in the broad way that they seem to be read? 22 The answer is no. 23 MR JUSTICE DAVID RICHARDS: That's not, I think, what 24 Lord Bingham told us to do. I think he told us to look 25 at the words, look at the context, and then discern what</p> <p style="text-align: center;">Page 60</p>

<p>1 the words mean.</p> <p>2 MR ZACAROLI: I think I'm -- I understand the point.</p> <p>3 MR JUSTICE DAVID RICHARDS: Okay.</p> <p>4 MR ZACAROLI: One comes to the same conclusion. When</p> <p>5 looking at those words, does the fact that you're</p> <p>6 looking at it in that context mean that you would read</p> <p>7 those words in the way that the SCG would suggest, and</p> <p>8 we say no it doesn't, it doesn't provide any reason for</p> <p>9 reading down what is otherwise the obvious express</p> <p>10 intention. And one can't quibble with the fact that the</p> <p>11 expressed intention in the document is to waive claims</p> <p>12 which are clearly not provable for all the reasons I've</p> <p>13 explained, or the examples I've shown.</p> <p>14 So the question is, when the document clearly says</p> <p>15 on its terms that you're releasing everything including</p> <p>16 claims which wouldn't be provable, are we somehow to</p> <p>17 ignore those words or read them down because the context</p> <p>18 would suggest that actually it was meant to be less</p> <p>19 broad than that? What I'm saying is that the context in</p> <p>20 this aspect doesn't lead to that conclusion.</p> <p>21 MR JUSTICE DAVID RICHARDS: Right.</p> <p>22 MR ZACAROLI: And the final point was the fact that the</p> <p>23 claims would have to have been converted into sterling</p> <p>24 for the purposes of there being a distribution from</p> <p>25 a winding-up or an administration, which is clearly</p> <p style="text-align: center;">Page 61</p>	<p>1 "Accordingly, applying rule 2.86 and general</p> <p>2 principles of UK insolvency law, all unsecured</p> <p>3 creditors' claims (which include any unsecured claims</p> <p>4 relating to CRA signatories) are to be converted into</p> <p>5 sterling as at 15 September 2008 for the purposes of</p> <p>6 having a proven claim against LBIE.</p> <p>7 "Specifically for CRA claimants, under the CRA, any</p> <p>8 claim which is not already denominated in US dollars is</p> <p>9 converted into US dollars using the exchange rate as at</p> <p>10 15 September 2008. In addition, any netting off claims</p> <p>11 and set-off is calculated in US dollars. Once this</p> <p>12 calculation has been made any ascertained claim which is</p> <p>13 so derived will then be converted into sterling, also</p> <p>14 using the exchange rate as at 15 September."</p> <p>15 Second bullet point:</p> <p>16 "Similarly, for all other unsecured creditors whose</p> <p>17 claims are derived from contracts and currencies other</p> <p>18 than sterling, their unsecured claims are also converted</p> <p>19 to sterling using exchange rates as at 15 September</p> <p>20 2008.</p> <p>21 "To assist creditors, the claims portal contains</p> <p>22 relevant exchange rates as at 15 September [for other</p> <p>23 currencies].</p> <p>24 "In order to be able to determine the entitlements</p> <p>25 of creditors to a share in the estate, all claims must</p> <p style="text-align: center;">Page 63</p>
<p>1 right. My Lord should see in this context part of the</p> <p>2 fourth progress report which my learned friend Mr Trower</p> <p>3 did not go on to read. It's volume 5, my Lord.</p> <p>4 This is page 35 of bundle 5. The heading is</p> <p>5 "Section 6.2. Currency matters and dividend prospects".</p> <p>6 In the left-hand column at the top:</p> <p>7 "Impact on creditor claims. In the last report to</p> <p>8 creditors the administrators explained that all</p> <p>9 unsecured claims would be proved in sterling. Over the</p> <p>10 period the administrators have received a number of</p> <p>11 currency-related queries, which are addressed below.</p> <p>12 For the avoidance of doubt the administrators' comments</p> <p>13 below relate to all unsecured claims including those of</p> <p>14 any CRA signatories."</p> <p>15 They refer to the order of 2 December:</p> <p>16 "Admitting to make a distribution. Note of</p> <p>17 distribution followed. The effect of this order was to</p> <p>18 convert LBIE's administration to a distributing</p> <p>19 administration and it could secure an efficient means of</p> <p>20 distributing assets without requiring another insolvency</p> <p>21 process. This also meant that there would be no mutual</p> <p>22 set-offs thereafter and it brought into effect the</p> <p>23 provisions of rule 2.86 of the Insolvency Rules, which</p> <p>24 stipulates that ..."</p> <p>25 And there they set out the rule:</p> <p style="text-align: center;">Page 62</p>	<p>1 be expressed in a single common currency and currency</p> <p>2 translation must be calculated at a common date. UK</p> <p>3 insolvency law requires the common date to be the date</p> <p>4 of administration. Although the law also prescribes</p> <p>5 that creditors' claims are to be converted into</p> <p>6 sterling, the relative share that an individual creditor</p> <p>7 will have is unaffected either by which common currency</p> <p>8 is adopted or the original currency denomination of the</p> <p>9 creditor's claim."</p> <p>10 And I think that's all we need to read. The</p> <p>11 following heading is about dividend prospects and</p> <p>12 timing, which doesn't affect this point.</p> <p>13 My Lord, that shows the reason why the claims in the</p> <p>14 admitted claims CDDs, which are in sterling, why the</p> <p>15 agreed claim amount has been converted into sterling</p> <p>16 before the agreement is entered into. The agreement</p> <p>17 itself doesn't affect any conversion, the agreement is</p> <p>18 entered into once that claim has been converted. But</p> <p>19 the reason why that conversion has taken place is, we</p> <p>20 submit, irrelevant to the construction of the CDD,</p> <p>21 because under the CDD the creditor starts with the</p> <p>22 proposition that: my claim has been converted into</p> <p>23 sterling for the purposes of this agreement and I now</p> <p>24 agree that that is my only remaining claim against the</p> <p>25 estate for any purpose.</p> <p style="text-align: center;">Page 64</p>



<p>1 But it goes much further therefore than rule 2.86. 2 Rule 2.86, as my Lord will remember and as the Court of 3 Appeal have affirmed, doesn't prevent currency 4 conversion claims arising because that conversion takes 5 place for a limited purpose only, for the purposes of 6 proof. And those words are critical both to my Lord's 7 judgment and to the majority in the Court of Appeal. 8 The CDD starts from a sterling claim and accepts that 9 that is the claim for all purposes. 10 It's the entire claim against the company, it's 11 fixed at that amount and everything else is released, 12 including any right under the original contracts. This 13 goes back to the crux of a currency conversion claim. 14 Once the creditor has accepted that its only entitlement 15 is a sum denominated in sterling, then once it has paid 16 that amount, its full contractual rights have been 17 respected. 18 My Lord, I think I said finally, but I'd skipped 19 over my fourth point, which was the one about it's only 20 members that benefit. 21 MR JUSTICE DAVID RICHARDS: So the one we've just addressed 22 was your fifth? 23 MR ZACAROLI: Yes, sorry about that. Going back to my 24 fourth point, it's worth picking up the Senior Creditor 25 Group skeleton at paragraph 112 for this. This is</p> <p style="text-align: center;">Page 65</p>	<p>1 were sufficient assets to pay all proved debts, all 2 interest and all non-provable claims in full. It's only 3 in those circumstances that it's the members, and the 4 subordinated creditors here, that would benefit. In any 5 other case, the benefit of a release by one creditor 6 would be felt by whoever it is that shares in the 7 remainder of the estate. It could be all proving 8 creditors. It could be those entitled to interest. It 9 could be non-proving creditors, we just don't know. 10 Secondly, the argument proves far too much because 11 it is equally the case that a release in respect of any 12 provable claim could, in certain circumstances, benefit 13 only the members. Because if a creditor, one creditor, 14 released its provable claims and it turns out there's 15 enough in the estate to pay everybody else, all interest 16 and/or non-provable claims, then the benefit of that 17 release will ultimately end up with the members. 18 So for those two reasons, it's irrelevant where the 19 benefit in fact is felt at the end of the day because of 20 the releases in this case. 21 So to sum up on the admitted claims CDD, I go back 22 to the very simple way we put the case at the beginning 23 of this. Each of the non-provable claims that are under 24 discussion at this hearing are attributes, rights, that 25 exist under the original contract, the creditor</p> <p style="text-align: center;">Page 67</p>
<p>1 a theme of the Senior Creditor Group's arguments, not 2 only at this hearing but also in part A, which is that 3 the administrator shouldn't be doing anything which has 4 the effect only of benefiting members or the 5 subordinated creditors. That's paragraph 112: 6 "Admitting claims to proof through the CDD process 7 on the basis that they are not entitled to statutory 8 interest on payments in respect of non-provable claims 9 would be inconsistent with the purpose of administration 10 and with the duties of the administrator. Such a result 11 is not necessary to achieve the purpose." 12 And the final sentence: 13 "There is no proper reason for the administrators to 14 have intended such a result as it only 15 benefits subordinated creditors and shareholders at the 16 expense of other creditors." 17 We make two points in answer to that basic theme. 18 The first point is that you couldn't know which 19 particular stakeholders in the estate would benefit from 20 the release of claims by any one creditor. Indeed, we 21 still don't know. It depends entirely on the extent of 22 the assets compared with the extent of the liabilities. 23 It's only the case that members benefit if it 24 subsequently turned out at the time you entered into the 25 contract, so subsequent to that, turns out that there</p> <p style="text-align: center;">Page 66</p>	<p>1 agreement as defined. They are not any part of the 2 admitted claim. The creditor having agreed to enter 3 into a CDD agrees that its only claim, its entire claim 4 now is measured by the admitted claim, which is in 5 sterling, and any rights under the contract which would 6 have given rise to top-up currency conversion or 7 interest are simply gone. 8 My Lord, with that I turn to the remainder of the 9 contracts. The bulk of the arguments that are ranged 10 against us I've dealt with in relation to that document. 11 MR JUSTICE DAVID RICHARDS: One thing I'm not quite clear 12 about is on statutory interest, which you accept is 13 payable, do you have submissions as to the rate of the 14 statutory interest? 15 MR ZACAROLI: I do. That's issue 35, which I -- 16 MR JUSTICE DAVID RICHARDS: You're holding that back, that's 17 fine. 18 MR ZACAROLI: It is a relatively small point. 19 MR JUSTICE DAVID RICHARDS: That's fine. Thank you. 20 MR ZACAROLI: So I was going to turn next to the CRA. I'm 21 hoping that we can take the remainder of the documents 22 more quickly. The CRA will take a bit of time, but the 23 remainder of the CDDs more quickly because the essential 24 arguments are the same. 25 The CRA is to be found in bundle 3. To remind</p> <p style="text-align: center;">Page 68</p>

<p>1 my Lord of the overview of our case on this, on the CRA, 2 it is that, first of all, any non-provable claim to 3 interest has been released as a result of the CRA. And 4 secondly, that only in those cases where the underlying 5 contractual claims were in, for example, euro or yen, 6 then the creditors' right to a currency conversion 7 claim, based on the fact it may not have got ultimately 8 the full amounts of euro and yen that it was entitled 9 to, has been released. And also where its claim would 10 have been in sterling to start with. Sorry, there's 11 obviously no currency conversion claim there, sorry. 12 It's only where it had a foreign currency other than in 13 dollars. 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR ZACAROLI: So starting with the CRA itself, and my Lord 16 has seen all of the clauses I need to take you to, the 17 basic structure so far as the release of claims is 18 concerned is in paragraph 4 at page 325 of the bundle. 19 In particular, it's paragraph 4.2, the claims 20 released by signatories, both TA and non-TA signatories. 21 4.2.3 is the key one: 22 "Each signatory shall waive and release the 23 following claims ... including all claims in respect of 24 any financial contract." 25 And financial contract is very broadly defined to</p> <p style="text-align: center;">Page 69</p>	<p>1 "A net contractual position in respect of 2 a signatory expressed as a positive number will 3 represent an amount due and owing by the company ... 4 [which is the net financial claim]." 5 So in essence, what the creditors are getting in 6 exchange for their release of all claims under the 7 existing contracts is a net financial claim, which is 8 of course a principal sum. 9 MR JUSTICE DAVID RICHARDS: Yes. 10 MR ZACAROLI: And our case about interest is based upon the 11 following sentence. The net financial claim is the only 12 right so far considered which comes out of this 13 agreement because everything else has been released; 14 every claim broadly defined under their original 15 contracts has been released and all they have coming out 16 of this agreement so far is the net financial claim, 17 which is the aggregate of the close-out amounts. 18 The next sentence in 25.1 then says: 19 "For the avoidance of doubt --" 20 MR JUSTICE DAVID RICHARDS: Sorry, just forgive me. 21 (Pause). 22 MR ZACAROLI: "No interest shall accrue on any net financial 23 claim save to the extent provided in rule 2.88 of the 24 Insolvency Rules." 25 And those words "to the extent provided" are</p> <p style="text-align: center;">Page 71</p>
<p>1 include the sort of contracts that are in issue here, 2 including master agreements. 3 Then in exchange for that, paragraph 4.4.2: 4 "All released claims are exchanged for the 5 following: the right to have their net contractual 6 position, allocations, distributions and appropriations 7 determined on the basis set out in the agreement; the 8 right to claim as a new obligation of the company their 9 net financial claim and an ascertained claim for such 10 amount as to be determined under this agreement." 11 And just to remind my Lord how that happens as 12 a matter of mechanics, the net contractual position is 13 determined under clause 24, page 361. In essence, 14 24.2.1, if there's one contract, it's the close-out 15 amount, that's the net contractual position. And the 16 close-out amount is of course the principal amount owing 17 after netting off amounts either way under the master 18 agreement, for example. So it's arriving at the claim 19 amount, it has nothing to do with interest, it's just 20 the basic principal sum. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR ZACAROLI: And then if there are multiple agreements 23 it's the aggregate of those close-out amounts. 24 Then if that's a positive number, 25.1 tells us 25 that:</p> <p style="text-align: center;">Page 70</p>	<p>1 important. So whatever rate, whatever amount, you get 2 pursuant to 2.88, that is the extent of your 3 entitlement. 4 MR JUSTICE DAVID RICHARDS: Yes. 5 MR ZACAROLI: My Lord, it's as simple as that. The point 6 about the release and the new claims, we don't go so far 7 as my learned friend Mr Trower was suggesting to say 8 that these are entirely new claims, but the choice of 9 that structure, that mechanics, confirms that it's the 10 intention of the parties to the contract that they come 11 away, as it were, they wipe the slate clean of their old 12 claims and come away with only what is defined in this 13 agreement as their now existing claim. Clearly, it 14 arises out of their existing rights, it's a compromise 15 of those existing rights, but the way in which it's 16 defined in those terms by release and exchange simply 17 goes to reinforce the intention that everything you get 18 out of the CRA is wholly defined by the terms of the 19 CRA. 20 MR JUSTICE DAVID RICHARDS: Right. 21 MR ZACAROLI: And we say that a provision restricting 22 interest to what you get out of the statute couldn't be 23 in any clearer terms. Interest will not accrue unless 24 and except to the extent provided by rule 2.88. 25 Therefore, the essential foundation of</p> <p style="text-align: center;">Page 72</p>

<p>1 a non-provable claim to such interest as you might not 2 get through the statutory process is missing. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR ZACAROLI: And that again -- the definition of 5 "ascertained claim" is broad enough to cover, at 6 page 443 of the bundle: 7 "An ascertained unsecured claim and the winding-up 8 of the company or any distribution of the company's 9 assets generally to its unsecured creditors." 10 And my Lord was told by Mr Trower yesterday that one 11 of the possibilities envisaged at the time of the CRA 12 for unsecured creditors was some other scheme of 13 arrangement to deal with them. So that phraseology is 14 broad enough to cover a scheme. And I make a similar 15 point here to one I made earlier: this is envisaging 16 that your ascertained claim is all that you get coming 17 out of the CRA, would be all that you're entitled to in 18 a scheme of arrangement. In that scheme of arrangement 19 you'd be entitled to only interest insofar as you would 20 have got it under 2.88. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR ZACAROLI: Now, dealing with the currency conversion 23 aspect of the CRA, so imagining a creditor who had 24 a contractual right to be paid in euros under its 25 financial contract, that claim is undoubtedly released</p> <p style="text-align: center;">Page 73</p>	<p>1 the one I've addressed my Lord on as to the meaning of 2 25.1 and the meaning of the release of all claims under 3 your financial contract so far as currency conversion 4 claims are concerned. 5 Putting it very broadly, the purpose of the CRA was, 6 in a similar way to the CDDs, to achieve finality in the 7 relationship between LBIE and its creditors. And just 8 to pick up on a few of the passages in the documents 9 with which the CRA was circulated, the position -- the 10 CRA was somewhat similar to a scheme in the way it was 11 promulgated in that it had an explanatory statement for 12 all intents and purposes, which is undoubtedly something 13 of relevance to construction. I think my Lord's seen 14 every passage I'm about to take my Lord to again, so I 15 can do it quickly, but 217 first of all, which is the 16 second page of the letter sent to creditors. 17 Under the heading 4, "What does the agreement do?": 18 "The objective of the agreement is to establish 19 standard methods for the termination and valuation of 20 financial contracts and to expedite the process of asset 21 distribution in order to bring finality to signatories 22 in respect of these positions." 23 And then page 219, under the heading "4.3": 24 "The agreement establishes a mechanism for the 25 termination and close-out of all financial contracts</p> <p style="text-align: center;">Page 75</p>
<p>1 because of clause 4.2.3. It's exchanged for a claim 2 which is denominated in dollars under clause 24.1, 3 because to the extent that a close-out amount is 4 denominated is, for example, euro, then it shall be 5 converted into dollars. 6 So the only claim you have coming out of the CRA is 7 a claim which is denominated now in dollars, and you've 8 released entirely your rights under your existing 9 financial contract. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: And again, the argument is that simple because 12 having released your right to be paid in euros, you 13 can't then complain that you didn't get paid the full 14 amount in your euro entitlement. 15 My Lord, there is a further question, which is issue 16 38. Again, I'll park that for the moment. The further 17 question is, let's say that you had a sterling 18 entitlement under your financial contract and you enter 19 into the CRA, does the CRA have the effect of creating 20 a currency conversion claim? That's issue 38 and if 21 I may I will park it, but we say it doesn't. 22 MR JUSTICE DAVID RICHARDS: Yes, thank you. 23 MR ZACAROLI: Again, looking at the background to the CRA, 24 our short submission is that there's nothing in that 25 background which leads to any different conclusion than</p> <p style="text-align: center;">Page 74</p>	<p>1 between a signatory and the company. The claims or 2 liabilities under each such contract are netted off 3 under the agreement to determine a single net claim 4 against or liability to the company. In the event that 5 the net figure is a claim against the company this will 6 be an ascertained unsecured claim." 7 Then in respect of TA signatories: 8 "Any such liabilities due to the [inaudible] will be 9 applied against a TA signatory's entitlement to 10 available trust assets." 11 The point there again is -- there are many 12 references in the document that reinforce this, but the 13 point being that there's intended to be an offset 14 between the proprietary trust asset claim and any 15 liabilities the creditor had, for which purpose you need 16 to understand the full range of liabilities, not just 17 those that might be provable. 18 Then advantages of accepting the offer under 19 paragraph 5, it's the most efficient solution for the 20 return of trust assets in terms of both time and cost. 21 In particular, it expedites the return of trust assets, 22 provides finality and certainty regarding the financial 23 position between signatories and the company and reduces 24 costs, et cetera. 25 The corollary is the benefits to creditors, which</p> <p style="text-align: center;">Page 76</p>

<p>1 are set out at the top of page 220:</p> <p>2 "Speed up the agreement of unsecured claims because</p> <p>3 all unsecured claims are determined by the operation,</p> <p>4 expedite distribution and reduce the level of unsecured</p> <p>5 claims as certain claims for consequential indirect</p> <p>6 losses are compromised."</p> <p>7 Then one other reference within the reader's guide,</p> <p>8 which starts at page 229, under the summary of agreement</p> <p>9 on page 234, the two sub-paragraphs I think highlighted</p> <p>10 by Mr Trower, sub-paragraphs 4.1 (v) and (vi):</p> <p>11 "... obtain a release from the signatories to claims</p> <p>12 they might otherwise have against the company and the</p> <p>13 administrators, including any claims for consequential</p> <p>14 damages."</p> <p>15 And then (vi):</p> <p>16 "The agreement also provides that the company will,</p> <p>17 subject to certain exceptions, release claims it may</p> <p>18 have against signatories ..."</p> <p>19 The short point I make is this, that there is</p> <p>20 nothing in that context which we submit has any bearing</p> <p>21 on the meaning of clause 25.1. The last line of</p> <p>22 sub-paragraph 5 refers to the fact that in exchange for</p> <p>23 the release, the signatories receive their new claims,</p> <p>24 which is the structure I've been through.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 77</p>	<p>1 including those arising under the other agreements.</p> <p>2 Actually, that's a slightly different one, I'll come to</p> <p>3 that.</p> <p>4 You then have the same definition of admitted claim</p> <p>5 on page 2, and a slight variation on the definition of</p> <p>6 agreed claims:</p> <p>7 "The creditor's claim (or claims as the case may be)</p> <p>8 against the company under and in connection with the</p> <p>9 creditor agreement, including for the avoidance of doubt</p> <p>10 any client money claim ... but excluding trust asset</p> <p>11 claims."</p> <p>12 And then the agreed claim amount. Now, I should</p> <p>13 have reminded my Lord of our overview position here.</p> <p>14 We are only concerned with currency conversion claims</p> <p>15 under this document where the agreed claim amount is</p> <p>16 either in sterling or it's in a different foreign</p> <p>17 currency to the one which appears here.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR ZACAROLI: And the background is that the general rule,</p> <p>20 general practice, was for the agreed claim amount to be</p> <p>21 denominated in the underlying contractual currency.</p> <p>22 MR JUSTICE DAVID RICHARDS: Right.</p> <p>23 MR ZACAROLI: So currency conversion claims would never be</p> <p>24 an issue on our case, save to the extent that it's in</p> <p>25 a different currency to some part of the underlying</p> <p style="text-align: center;">Page 79</p>
<p>1 MR ZACAROLI: My Lord, that in a nutshell is our submission</p> <p>2 on the CRA.</p> <p>3 Turning next then to the agreed claims CDD, we had</p> <p>4 been working off the version at tab 4 of the bundle. My</p> <p>5 learned friend Mr Dicker in his skeleton has been</p> <p>6 dealing with a different version, which is now at tab 1A</p> <p>7 of the bundle.</p> <p>8 MR JUSTICE DAVID RICHARDS: This is 11, isn't it?</p> <p>9 MR ZACAROLI: Sorry, bundle 11, yes.</p> <p>10 Mr Trower, without any pre-discussion, took you to</p> <p>11 the one at 1A. Having already noted that one, I'm happy</p> <p>12 to deal with that one.</p> <p>13 MR JUSTICE DAVID RICHARDS: Right.</p> <p>14 MR ZACAROLI: There are no material differences so far as</p> <p>15 we are concerned. There are some differences because</p> <p>16 they are entered into at different times and there have</p> <p>17 been some amendments agreed with creditors in the</p> <p>18 meantime, so they are different in some of the language,</p> <p>19 but we don't submit that any different interpretation</p> <p>20 arises as a result of that.</p> <p>21 So picking up the one at tab 1A, most of it will be</p> <p>22 very familiar to my Lord because it's very similar to</p> <p>23 the admitted claims CDD. So you have exactly the same</p> <p>24 recital B: in consideration for the agreement of the</p> <p>25 claims, all other claims are released and discharged,</p> <p style="text-align: center;">Page 78</p>	<p>1 contractual entitlement.</p> <p>2 MR JUSTICE DAVID RICHARDS: Right.</p> <p>3 MR ZACAROLI: So perhaps we'll make the assumption -- this</p> <p>4 has been blanked out entirely. I think my learned</p> <p>5 friend Mr Trower produced this as a claim in dollars.</p> <p>6 We don't know what the amount is because it has been</p> <p>7 blanked out, but let's assume that's in sterling. The</p> <p>8 one at tab 4 is in fact in sterling. Let's assume that</p> <p>9 part of the underlying claim is in some other currency.</p> <p>10 So we say that it only has an effect in relation to</p> <p>11 currency conversion in that more limited circumstance.</p> <p>12 Our case on interest is the same, however, because the</p> <p>13 terms are materially the same. The purpose of this</p> <p>14 agreement, the purpose of the -- one of the purposes of</p> <p>15 the agreement was that the parties wanted to agree</p> <p>16 finally the amount to which the creditor was entitled</p> <p>17 from LBIE, but wanted to leave open the question of</p> <p>18 whether that was a claim which was maintainable against</p> <p>19 the general estate or was maintainable as a client money</p> <p>20 claim.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: That was the reason you have these agreements</p> <p>23 entered into.</p> <p>24 Turning over the page in the document to page 3,</p> <p>25 client money claim:</p> <p style="text-align: center;">Page 80</p>

<p>1 "Any claim by the creditor in relation to client 2 money." 3 And client money is defined as that held pursuant to 4 the FSA rules. And then picking up an important 5 definition on page 4, first of all creditor agreement is 6 in this case an ISDA master agreement. Exchange rate, 7 the official exchange rate is set out in rule 2.86 (ii): 8 "For the purpose of converting US dollars to pounds 9 sterling it should be the following exchange rate ..." 10 And then there's an appendix to the fourth progress 11 report, which sets out the other exchange rates that 12 will be used. In essence, it's the administration date. 13 At the bottom of the page, "Other agreements". Just 14 so my Lord knows, this particular nuance is not in the 15 version at tab 4. There were no other agreements. So 16 here it refers to some other -- "a master institutional 17 futures customer agreement", et cetera. There's a whole 18 series of different agreements mentioned there. 19 Now, those claims under the other agreements are all 20 released. We'll see that. That's said in the recital 21 as well. They're all being released. The only claim 22 that comes out of this are claims relating to the 23 underlying creditor agreement. 24 Page 6, one more definition, trust asset claim: 25 "With respect to an asset in the possession and/or</p> <p style="text-align: center;">Page 81</p>	<p>1 shall constitute the creditor's entire claim against the 2 company [and save in respect thereof]." 3 And then there's the waiver. You'll see on the 4 fourth line it includes a waiver of trust asset claims 5 and client money claims. It has the same reference to 6 claims for interest, and then five lines from the 7 bottom, it includes: 8 "Whether arising under the creditor agreement, the 9 other agreements or not." 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR ZACAROLI: And then clause 3 deals with the entitlement 12 to an admitted claim. 13 3.2: 14 "Where the creditor has either assigned to a nominee 15 or waived any and all client money claims in 3.2.1, then 16 the agreed claim shall be the admitted claim, converted 17 to pounds sterling at the exchange rate." 18 3.2.2: 19 "Where the creditor has waived any part of a client 20 money claim then the creditor has an admitted claim for 21 the remainder." 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: And 3.3: 24 "Where a no client money confirmation has not been 25 provided [so there hasn't been a waiver] and all issues</p> <p style="text-align: center;">Page 83</p>
<p>1 custody of, held in the name of, or otherwise held to 2 the order of, the company, a claim, against the company 3 and/or the administrators (i) that the creditor is the 4 legal and/or beneficial owner of that asset ... (ii) for 5 delivery and/or transfer of such asset (or to the order 6 of) a creditor ... includes present and future 7 properties, revenues and rights of every description, 8 but excludes money and specifically client money." 9 So the reason for showing my Lord that provision 10 is that the release -- there's no release of proprietary 11 claims here because proprietary claims are not included 12 in the definition of claims under this agreement, but 13 there is a release of trust asset claims, so it's dealt 14 with in that way. So you get the same point but the 15 release goes beyond provable claims because it includes 16 proprietary claims, but the mechanics are different. 17 Then clause 2 on page 7. Essentially the same broad 18 release clause that my Lord's seen in relation to the 19 admitted claims CDD. The opening words are slightly 20 different: 21 "The company and the creditor irrevocably and 22 unconditionally agree that, notwithstanding the terms of 23 any contract (including the agreements) to which the 24 creditor and the company are party, the agreed claim 25 shall be limited to ... the agreed claim amount and</p> <p style="text-align: center;">Page 82</p>	<p>1 regarding the existence and validity of, and any rights 2 and remedies for or in respect of, all potential 3 clients' money claims ... the amounts ... which the 4 creditor shall recover in respect of any such client 5 money claims ... have been finally determined." 6 Then there is a provision in A and B for a shortfall 7 claim against the estate for the shortfall between what 8 you got out of the client money distribution and your 9 claim against the company. 10 MR JUSTICE DAVID RICHARDS: Right. 11 MR ZACAROLI: So perhaps neatly achieving, I think, the 12 similar result my Lord achieved in MF Global in two 13 paragraphs here. 14 MR JUSTICE DAVID RICHARDS: Right. 15 MR ZACAROLI: By agreement. 16 MR JUSTICE DAVID RICHARDS: Right, okay. 17 MR ZACAROLI: In each case you'll see at the bottom that to 18 the extent that the claim so far is in the foreign 19 currency and it's to be converted back into pounds 20 sterling at the exchange rate for the purposes of 21 identifying the admitted claim. 22 So, as I say, we make no distinction in our argument 23 so far as non-provable claims to interest are concerned; 24 it's exactly the same wording. So far as the currency 25 conversion claim in the limited circumstances I've</p> <p style="text-align: center;">Page 84</p>

<p>1 mentioned are concerned, the release in 2.1 is in 2 materially the same language. All that is preserved is 3 the agreed claim in the agreed claim amount. That's the 4 preamble in 2.1. And it's save for that, save in 5 respect thereof. All claims including claims under the 6 creditor agreement, which would be where the right to 7 claim in foreign currency arises, all such claims are 8 released.</p> <p>9 MR JUSTICE DAVID RICHARDS: Right.</p> <p>10 MR ZACAROLI: There's a couple of additional minor 11 supportive points to make on the terms of this document, 12 so for example one reason why the release of claims 13 isn't limited to provable claims under this document 14 is that clearly the right which exists under the 15 agreement is a right either to prove or to claim against 16 the client money pool. And if the client money pool was 17 to pay out in full so that clause 3.3 is not engaged -- 18 3.3 only is engaged where there's a payout in the client 19 money pool which leaves a shortfall.</p> <p>20 MR JUSTICE DAVID RICHARDS: Right.</p> <p>21 MR ZACAROLI: If there's a full payment under the client 22 money pool from the client money pool then nothing else 23 exists, there is no admitted claim at all. So it 24 reinforces the idea that it's only the admitted claim 25 in that amount which survives the entry into this CDD.</p> <p style="text-align: center;">Page 85</p>	<p>1 claim against the company shall be limited to, in terms 2 that is either in a foreign currency or in sterling. 3 And it's only when you've agreed that that claim is 4 limited to an amount in sterling in unqualified way that 5 your currency conversion claim based on another currency 6 has no prospect of surviving.</p> <p>7 So the key difference in fact between the two forms 8 of CDD is not the one-stage or two-stage process but is 9 entirely the denomination in which the agreement 10 expresses your sole surviving claim against the company 11 because the admitted claims CDD across the board defines 12 your sole surviving claim as one in sterling.</p> <p>13 MR JUSTICE DAVID RICHARDS: Because it's an admitted claim.</p> <p>14 MR ZACAROLI: Yes.</p> <p>15 MR JUSTICE DAVID RICHARDS: Whereas it's the result of the 16 function of the agreement, isn't it? Because the 17 admitted claim agreement is designed to produce finality 18 in the amount of the admitted claim, which necessarily 19 is an amount in sterling.</p> <p>20 MR ZACAROLI: Yes. Well, it is an amount in sterling.</p> <p>21 MR JUSTICE DAVID RICHARDS: It has to be. You can't be 22 admitted to proof in an amount in a foreign currency.</p> <p>23 MR ZACAROLI: In a liquidation that's true. It could have 24 been admitted to proof in a scheme in a foreign 25 currency, I made that point before, but it's correct</p> <p style="text-align: center;">Page 87</p>
<p>1 The Senior Creditor Group make a substantial point 2 about the difference between the agreed claims CDD and 3 the admitted claims CDD in that they say the agreed 4 claims CDD has a two-stage process, whereas the admitted 5 claims CDD is just in one process, one stage, because 6 the conversion's already happened in the admitted claims 7 CDD, therefore there's no further need for any 8 conversion into sterling, you just agree that that's 9 a sterling amount and that's the end of it.</p> <p>10 The agreed claims CDD works, however, in relation to 11 admitted claims, I accept, in two stages. That is that 12 the agreed claim amount is in -- let's assume it was 13 a dollar entitlement, so it's in dollars, and it only 14 gets converted into sterling at the second stage.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR ZACAROLI: We do not suggest that the conversion into 17 sterling under clause 3.2, which is how you get your 18 admitted claim, we don't suggest that that bars the 19 currency conversion claim which may exist if you didn't 20 get paid the full amount of your agreed claim in the 21 agreed claim amount, which was in dollars.</p> <p>22 The reason for that is because the core part of the 23 agreement, which prevents the currency conversion claim 24 being maintained, is not the conversion under 3.2, it's 25 the fact that you've agreed in 2.1 what your entire</p> <p style="text-align: center;">Page 86</p>	<p>1 that in order to qualify for dividends under -- well, in 2 order to qualify for dividends without further 3 conversion, it needs to be in sterling. But just to 4 take a different example, had the admitted claims CDD 5 been in a foreign currency, then it could still be said 6 to be some which qualifies for dividends but would have 7 to be converted for that purpose.</p> <p>8 MR JUSTICE DAVID RICHARDS: Well, it wouldn't fix the amount 9 which was admitted to proof in that case, in a number at 10 any rate.</p> <p>11 MR ZACAROLI: No, it wouldn't.</p> <p>12 MR JUSTICE DAVID RICHARDS: It could formulaically, it's 13 true.</p> <p>14 MR ZACAROLI: Yes. Anyway, that's the key distinction, that 15 the admitted claims CDD starts with the claim having 16 been converted.</p> <p>17 MR JUSTICE DAVID RICHARDS: Is not the reason for that the 18 purpose of the agreement? Whereas the agreed claims CDD 19 is looking at a earlier position because of the --</p> <p>20 MR ZACAROLI: I accept that, yes, that is a distinction.</p> <p>21 MR JUSTICE DAVID RICHARDS: Okay.</p> <p>22 MR ZACAROLI: But for the purposes of an argument whether 23 a currency conversion claim survives or not, one has to 24 focus on what the parties have agreed is their only 25 claim.</p> <p style="text-align: center;">Page 88</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: That was all I wanted to say about the agreed</p> <p>3 claims CDD. We move now to the other variants, which</p> <p>4 I can take pretty quickly, although not, I think, in two</p> <p>5 minutes.</p> <p>6 MR JUSTICE DAVID RICHARDS: We'll rise now and resume at</p> <p>7 2 o'clock.</p> <p>8 (12.58 pm)</p> <p>9 (The Short Adjournment)</p> <p>10 (2.00 pm)</p> <p>11 MR ZACAROLI: My Lord, I was turning next to aggregator</p> <p>12 CDDs. The version we're going to look at is at</p> <p>13 volume 11, tab 14.</p> <p>14 The purpose of these contracts was to enable</p> <p>15 aggregators who had bought up claims to enter into</p> <p>16 a single CDD covering all those transferred claims, and</p> <p>17 the purpose was to release all the transferred claims.</p> <p>18 Apart from that difference, they work in exactly the</p> <p>19 same way as the admitted claims CDD or the agreed claims</p> <p>20 CDD, depending on which version they were based.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: The one at tab 14 is an admitted claims CDD.</p> <p>23 No one is suggesting that there's any different result</p> <p>24 to the particular construction arguments for these</p> <p>25 documents, so I'll take it very shortly. This is in</p> <p style="text-align: center;">Page 89</p>	<p>1 admitted claim in the amounts equal to the agreed claim</p> <p>2 amount, ie in sterling, and save solely for that, the</p> <p>3 creditor irrevocably and unconditionally releases and</p> <p>4 forever discharges from the original claims.</p> <p>5 That's very broadly defined, except it doesn't refer</p> <p>6 to interest.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR ZACAROLI: We say that the language is in any event broad</p> <p>9 enough to exclude --</p> <p>10 MR JUSTICE DAVID RICHARDS: So if I compare this with 1A --</p> <p>11 MR ZACAROLI: In 7.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes. (Pause).</p> <p>13 Yes, I see. So the defined term "original claims"</p> <p>14 is new to this agreement.</p> <p>15 MR ZACAROLI: That's correct, yes.</p> <p>16 MR JUSTICE DAVID RICHARDS: But then feeds into -- it</p> <p>17 shortens 2.1.2.</p> <p>18 MR ZACAROLI: Sorry?</p> <p>19 MR JUSTICE DAVID RICHARDS: It probably shortens 2.1.2.</p> <p>20 MR ZACAROLI: Yes. I'm not sure about that.</p> <p>21 MR JUSTICE DAVID RICHARDS: I think it is, but whether</p> <p>22 that's because --</p> <p>23 MR ZACAROLI: It is shorter. I don't think it's because of</p> <p>24 that.</p> <p>25 MR JUSTICE DAVID RICHARDS: It's not because of that, all</p> <p style="text-align: center;">Page 91</p>
<p>1 materially the same terms as the admitted claims CDD,</p> <p>2 but I'll show my Lord where the changes are. First of</p> <p>3 all, in the recitals there is now B and C. B recites</p> <p>4 the transfer of the claims.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR ZACAROLI: C is in consideration of agreeing the agreed</p> <p>7 claims amount. The creditor wishes to release and</p> <p>8 discharge the client from all and any claims which were</p> <p>9 transferred from the original creditors to the creditor.</p> <p>10 Admitted claim has the same basic definition as</p> <p>11 we've seen before. Agreed claim amount is here in</p> <p>12 sterling, and claim has the same broad definition</p> <p>13 including proprietary claim over on page 3. The</p> <p>14 creditor agreement is here defined as the ISDA master</p> <p>15 agreement entered into between the original creditor and</p> <p>16 the company, dated as of. And original claims is the</p> <p>17 original claims -- claims against the company</p> <p>18 transferred from the original creditor to the creditor,</p> <p>19 including any and all claims arising under or in</p> <p>20 connection with the creditor agreement and any</p> <p>21 proprietary claims.</p> <p>22 Then paragraph 2.1 contains the release clause in</p> <p>23 materially similar language. The one difference in the</p> <p>24 aggregator CDDs is there is no express wording releasing</p> <p>25 all claims to interest. So in 2.1.1, they agree the</p> <p style="text-align: center;">Page 90</p>	<p>1 right.</p> <p>2 MR ZACAROLI: So for example, there are seven or eight words</p> <p>3 in the fourth line of the clause in tab 7, "Including</p> <p>4 all claims for interest costs and orders for costs",</p> <p>5 those words are not replicated.</p> <p>6 MR JUSTICE DAVID RICHARDS: Right.</p> <p>7 MR ZACAROLI: I haven't done a word-for-word comparison to</p> <p>8 see what else is missing, but you'll see broadly the</p> <p>9 same elements of width are here.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes, okay.</p> <p>11 MR ZACAROLI: So claims not in contemplation, claims arising</p> <p>12 under the creditor agreement are included within the</p> <p>13 release. The creditor agreement is of course the</p> <p>14 creditor agreement underlying the original claim.</p> <p>15 So, so far as the argument on currency conversion</p> <p>16 goes, there is no material difference because this has</p> <p>17 exactly the same effect of limiting the claim to an</p> <p>18 amount in sterling and releasing everything else that</p> <p>19 has been transferred to this creditor.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes, right. 2.2 has gone too.</p> <p>21 MR ZACAROLI: That's correct, yes.</p> <p>22 MR JUSTICE DAVID RICHARDS: Anyway, there it is.</p> <p>23 MR ZACAROLI: Yes, although the essence of 2.2 is in any</p> <p>24 event in what was 2.1 and is now 2.1.1:</p> <p>25 "The creditor ...(reading to the words)... in the</p> <p style="text-align: center;">Page 92</p>

<p>1 amount equal to the agreed claim amount."  2 MR JUSTICE DAVID RICHARDS: There isn't a mutual release.  3 The differences are beginning to become more apparent  4 now.  5 MR ZACAROLI: Yes, my Lord, that's right, but that would  6 be --  7 MR JUSTICE DAVID RICHARDS: Why should a transferee have any  8 claim anyway?  9 MR ZACAROLI: Yes, exactly. This is envisaging the  10 claims -- yes, the transferee would not have transferred  11 to it any liabilities. What this isn't doing is  12 releasing claims between LBIE and the transferee, ie the  13 creditor, other than in relation to the transferred  14 claims.  15 MR JUSTICE DAVID RICHARDS: Yes.  16 MR ZACAROLI: So for example, if this creditor itself had  17 other claims --  18 MR JUSTICE DAVID RICHARDS: This creditor being?  19 MR ZACAROLI: The person entering into this CDD, the  20 aggregator, there is no release of any of those claims.  21 MR JUSTICE DAVID RICHARDS: No release of?  22 MR ZACAROLI: Any claims of that creditor.  23 MR JUSTICE DAVID RICHARDS: Of the aggregator.  24 MR ZACAROLI: Of the aggregator, correct. This is only  25 dealing with the release insofar as it concerns the</p> <p style="text-align: center;">Page 93</p>	<p>1 MR ZACAROLI: What we haven't got is the document by which  2 the original creditor transferred its rights to the  3 aggregator, so one doesn't know the extent to which any  4 claims may have been left behind.  5 MR JUSTICE DAVID RICHARDS: I see, it simply doesn't tell us  6 what's been transferred.  7 MR ZACAROLI: Well, it doesn't --  8 MR JUSTICE DAVID RICHARDS: We know, recital B tells us it's  9 a transfer of a claim arising out of an ISDA master  10 agreement.  11 MR ZACAROLI: That's right. We know what was transferred,  12 we don't know the terms of the transfer.  13 MR JUSTICE DAVID RICHARDS: But you, of course -- you point  14 to the definition of "original claims" because they are  15 claims including any and all claims arising under or in  16 connection with the creditor agreement?  17 MR ZACAROLI: Correct. Of course, the important word  18 there is "transferred" from the original creditor.  19 MR JUSTICE DAVID RICHARDS: Quite. Yes. I think the point  20 I was making was in relation to your case on the  21 currency conversion claims and any claim for  22 non-provable interest. They are, you would say, claims  23 arising or in connection with the creditor agreement and  24 therefore fall within original claims.  25 MR ZACAROLI: Yes.</p> <p style="text-align: center;">Page 95</p>
<p>1 claims as between LBIE and the original creditor.  2 MR JUSTICE DAVID RICHARDS: I see.  3 MR ZACAROLI: It's clear enough from 2.1.2 itself.  4 MR JUSTICE DAVID RICHARDS: Yes, absolutely. So in the case  5 of these aggregator CDDs, would the original creditor  6 have itself entered into a CDD?  7 MR ZACAROLI: My Lord, I doubt it, but I don't know whether  8 that may have happened. It's not envisaged -- I think  9 I can say safely it's not envisaged it always happened.  10 It's not envisaged it happened at all in the document,  11 it doesn't refer to that. Whether it happened or not  12 I don't know.  13 MR JUSTICE DAVID RICHARDS: So the scope of this document is  14 rather less than the scope of the document we see at  15 tab 7 on your submissions?  16 MR ZACAROLI: As between the aggregator and LBIE, yes.  17 MR JUSTICE DAVID RICHARDS: And if there is no CDD as  18 between the original creditor and LBIE, then their  19 rights as against each other, save under the original  20 agreement, are unaffected?  21 MR ZACAROLI: Yes, this has no effect on whatever rights may  22 have been left behind.  23 MR JUSTICE DAVID RICHARDS: Quite.  24 MR ZACAROLI: As between LBIE and the original creditor.  25 MR JUSTICE DAVID RICHARDS: Quite. Yes, I see.</p> <p style="text-align: center;">Page 94</p>	<p>1 MR JUSTICE DAVID RICHARDS: Whatever the other limitations  2 may be of this agreement.  3 MR ZACAROLI: Yes. In order for a currency conversion claim  4 to be asserted by the aggregator, one has to start from  5 the assumption that such right under the original  6 agreement was transferred to it.  7 MR JUSTICE DAVID RICHARDS: Oh indeed. Yes, indeed. I'm  8 making that assumption. But your submission is that  9 that is within the definition of original claims and is  10 therefore released by this agreement.  11 MR ZACAROLI: Yes, that's it, my Lord.  12 MR JUSTICE DAVID RICHARDS: Whatever might be the position  13 in relation to flood claims in respect of adjacent  14 property owners?  15 MR ZACAROLI: Yes. There was an issue, my Lord may remember  16 an issue that was mooted, it was in the list but then  17 taken out due to lack of ability to find a particular  18 example, which was a case where the original creditor  19 had transferred less than the whole of its rights under  20 the agreement.  21 MR JUSTICE DAVID RICHARDS: I see.  22 MR ZACAROLI: And then you have the question: what's left in  23 whose name? But that's been parked.  24 MR JUSTICE DAVID RICHARDS: Right.  25 MR ZACAROLI: And it's not before the court.</p> <p style="text-align: center;">Page 96</p>



<p>1 MR JUSTICE DAVID RICHARDS: Yes, I see, thank you.</p> <p>2 MR ZACAROLI: That simply is how this works.</p> <p>3 There are other versions. There's no material</p> <p>4 difference between this and others, and I don't propose</p> <p>5 to take my Lord to them unless and until someone says</p> <p>6 there's a difference.</p> <p>7 MR TROWER: I have taken instructions from behind</p> <p>8 in relation to the aggregator CDD position. Where there</p> <p>9 is an aggregator CDD there is not also an original CDD</p> <p>10 with the original creditor. The original creditor will</p> <p>11 have assigned his rights and will sign an assignor</p> <p>12 release releasing LBIE prior to LBIE then dealing with</p> <p>13 the aggregator. So that's the way it worked.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR ZACAROLI: I'm grateful.</p> <p>16 My Lord, that just leaves the CRA CDDs and there are</p> <p>17 two versions we need to look at here. The first is at</p> <p>18 tab 15, which is a CRA CDD which contains wide release</p> <p>19 language, ie basically the same language we've already</p> <p>20 seen. And remembering that our case here is related</p> <p>21 solely to currency conversion claims because we say</p> <p>22 interest has already been released by the CRA.</p> <p>23 But if we're wrong about that, these CDDs in any</p> <p>24 event make that clear.</p> <p>25 MR JUSTICE DAVID RICHARDS: Right.</p> <p style="text-align: center;">Page 97</p>	<p>1 Insolvency Rules."</p> <p>2 Which for the purposes of converting US dollars</p> <p>3 is that exchange rate.</p> <p>4 Then turning on to the operative clause at clause 2,</p> <p>5 this is similar wording about irrevocably and</p> <p>6 unconditionally agreeing that:</p> <p>7 "... notwithstanding any terms of the contract,</p> <p>8 including the CRA and/or the creditor agreements, the</p> <p>9 creditor's aggregate net financial claim shall be</p> <p>10 limited to and in amount equal to the net financial</p> <p>11 claim amount and shall constitute the creditors' entire</p> <p>12 claim against the company. The creditor hereby</p> <p>13 irrevocably waives any and all rights to dispute the</p> <p>14 calculation of its net financial position and/or net</p> <p>15 financial claim."</p> <p>16 2.1.3:</p> <p>17 "The creditor's net financial claim in an amount</p> <p>18 equal to the net financial claim amount shall constitute</p> <p>19 an asset owned(?) claim and shall qualify for</p> <p>20 dividends."</p> <p>21 Similar wording we've seen under the actual rules or</p> <p>22 under a scheme of arrangement (inaudible) arrangement.</p> <p>23 Then 2.1.4:</p> <p>24 "Save solely for the net financial claim and subject</p> <p>25 to clauses 2.2 and 2.3, the creditor and the company and</p> <p style="text-align: center;">Page 99</p>
<p>1 MR ZACAROLI: So at tab 15, looking at the recitals, B, this</p> <p>2 is at page 2 of the document:</p> <p>3 "The creditor became a signatory of the CRA on [a</p> <p>4 particular date]. In accordance with the CRA the</p> <p>5 company has returned certain trust assets to the</p> <p>6 creditor in satisfaction of the modified claims. The</p> <p>7 company and the creditor now wish to finally resolve and</p> <p>8 determine their remaining claims against each other.</p> <p>9 The company and the creditor wish to agree the quantum</p> <p>10 of the creditor's net financial claim but agree that</p> <p>11 such net financial claim qualifies for dividends from</p> <p>12 the estate of the company available to unsecured</p> <p>13 creditors. In consideration thereof the company and the</p> <p>14 creditor wish to release and discharge each other from</p> <p>15 [all those claims] howsoever arising."</p> <p>16 Claim is defined on page 3 in the similar broad</p> <p>17 language that we've seen already.</p> <p>18 Creditor agreement here identifies two, an ISDA</p> <p>19 master agreement and a master custody agreement.</p> <p>20 Then a new definition that we haven't seen before is</p> <p>21 "net financial claim amount" on page 4. That is defined</p> <p>22 as:</p> <p>23 "The sterling amount being the value of the net</p> <p>24 financial claim converted to pounds sterling at the</p> <p>25 official exchange rate set out in rule 2.86 of the</p> <p style="text-align: center;">Page 98</p>	<p>1 the administrators hereby irrevocably and</p> <p>2 unconditionally release and forever discharge each other</p> <p>3 from any and all losses, costs, charges, expenses,</p> <p>4 including ..."</p> <p>5 And then the wording there I think is materially the</p> <p>6 same as we've seen before, including the width of</p> <p>7 wording, such as whether arising under the CRA and/or</p> <p>8 the creditor agreements, whether in existence now,</p> <p>9 coming into existence later, whether or not in the</p> <p>10 contemplation of the creditor and/or the company and/or</p> <p>11 the administrators on the date hereof.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR ZACAROLI: So the argument is as follows: where the</p> <p>14 amount that was defined in the CRA as owing to the</p> <p>15 creditor was in dollars, this agreement crystallises now</p> <p>16 in sterling and then the creditor agrees that that</p> <p>17 sterling amount is its sole remaining claim and releases</p> <p>18 everything else including under the CRA and/or under the</p> <p>19 creditor agreements. So the argument is the same,</p> <p>20 effectively.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR ZACAROLI: The position is more complicated in relation</p> <p>23 to the other CDD example at tab 21. This CDD at tab 21</p> <p>24 was used for circumstances where there were certain</p> <p>25 outstanding questions as between the creditor and LBIE</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 under the CRA. In particular, whether certain 2 instructions given either by the company or by the 3 creditor for the purchase or delivery of securities or 4 for the rehypothecation of certain securities, whether 5 those had been settled. 6 They're defined in this agreement as pending 7 transactions and they are carved out from this document, 8 and what happened was once there was determination 9 in relation to those outstanding issues, a further CDD 10 was entered into. Nothing turns on the language of that 11 CDD, it doesn't contain release language of any sort, it 12 simply closed off those remaining claims. So if you 13 look at the recitals on page 1, it recites at B when the 14 signatory became a signatory on the CRA. 15 At C, it recites the point I have just mentioned 16 about: 17 "Prior to the administration date, the creditor had 18 given instructions for the purchase, sale, delivery of 19 certain securities. The company had given instructions 20 to rehypothecate for the company had given instructions 21 for return of certain rehypothecated securities, which 22 were transactions to be settled through LBIE. And those 23 are pending transactions and there's not enough 24 information to settle those claims." 25 Then D:</p> <p style="text-align: center;">Page 101</p>	<p>1 important one is "certain excluded claims". Now, at 2 this point my Lord will also need to turn up the CRA, 3 which is in bundle 3. At page 452 of that bundle there 4 is a definition of excluded claims. 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR ZACAROLI: Paragraphs 1, 2, 3 and 5 are not material for 7 present purposes. 1, for example, is claims in respect 8 of excluded property and it includes retention claims. 9 4 is the important one to pick up on: 10 "They are claims against the company for breach of 11 any of the terms of this agreement, ie the CRA, or for 12 any failure on the part of the company to discharge 13 their obligations under this agreement." 14 When one looks at the definition of certain excluded 15 claims, it picks up in A -- this is now in the CDD -- 1, 16 2, 3 and 5. 17 MR JUSTICE DAVID RICHARDS: I see, but not 4. 18 MR ZACAROLI: 4 is picked up by B: 19 "To the extent that those claims arise as 20 a consequence of the company and the creditor entering 21 into this deed." 22 MR JUSTICE DAVID RICHARDS: Yes, I see. 23 MR ZACAROLI: Claim has the same broad definition that we've 24 seen many times. 25 Creditor agreements on the next page, page 3, is</p> <p style="text-align: center;">Page 103</p>
<p>1 "The company has been reconciling its books and 2 records in respect of each pending transaction with any 3 relevant information relating to those transactions 4 received from LBIE and the creditor. It has been unable 5 to determine and therefore those are left open." 6 In E: 7 "Notwithstanding those uncertainties, the company 8 and the creditor now wish to agree the quantum of the 9 creditors' minimum net financial claim determined on the 10 basis of certain settlement assumptions made in respect 11 of the pending transactions and agree that the same 12 qualifies for dividends from the estate of the company 13 available as unsecured creditors." 14 F: 15 "The ultimate quantum may exceed the minimum net 16 financial claims to the extent that [as explained 17 there]." 18 Then G: 19 "In consideration of having its minimum net 20 financial claim quantified and admitted for dividend, 21 the creditor will waive, release and discharge certain 22 claims against the company including pre-administration 23 client money claims and certain excluded claims." 24 MR JUSTICE DAVID RICHARDS: Yes. 25 MR ZACAROLI: Then looking at the definitions, the first</p> <p style="text-align: center;">Page 102</p>	<p>1 here an ISDA master agreement, (inaudible) brokerage and 2 an institutional futures customer agreement. 3 MR JUSTICE DAVID RICHARDS: Sorry, where was that? 4 MR ZACAROLI: That was page 3, about the middle of the page, 5 creditor agreements. 6 MR JUSTICE DAVID RICHARDS: Oh yes. 7 MR ZACAROLI: Page 4, the third definition down, minimum net 8 financial claim, the creditor's net financial claim, 9 obviously defined in the CRA, determined on the basis of 10 settlement assumptions in respect of the pending 11 transactions. Minimum net financial claim amount is in 12 this case £22 million-odd, being the value of the 13 minimum net financial claim converted to pounds sterling 14 as there provided. 15 Then turning to the operative release clause, it's 16 clause 2, page 7. It starts off by following the 17 language that my Lord will be familiar with: 18 "The company and the creditor irrevocably and 19 unconditionally agree that the minimum net financial 20 claim shall be limited to and an amount equal to the 21 minimum net financial claim amount." 22 And then 2.1.2: 23 "That which shall qualify as the dividends from the 24 estate as an ascertained claim." 25 2.1.4:</p> <p style="text-align: center;">Page 104</p>

<p>1 "The creditor hereby irrevocably and 2 unconditionally ..."</p> <p>3 Does a number of things. In (i) it waives any and 4 all right to dispute the calculation of its net 5 contractual position and/or net financial claim.</p> <p>6 At (ii) it waives any right to require that a net 7 contractual position statement is served. (iii), waives 8 any right it may have to be provided with access to 9 copies of calculations. (iv), to the extent they don't 10 compromise (inaudible) discharges and/or 11 pre-administration client money claims.</p> <p>12 And then (v) is the important one: 13 "Irrevocably releases and discharges the certain 14 excluded claims. And in each case howsoever those 15 claims or rights arise including those which arise 16 hereafter upon a change in the relevant law, whether 17 known or unknown, whether arising in equity or under the 18 common law statute or by reason of breach of contract or 19 in respect of any tortious or negligent act or omission, 20 whether or not the loss and damage caused thereby has 21 yet been suffered or otherwise whether arising under the 22 CRA and/or the creditor agreements or not, whether in 23 existence now or coming into existence at some time 24 in the future and whether or not in contemplation of the 25 creditor and/or the company and/or the administrator on</p> <p style="text-align: center;">Page 105</p>	<p>1 to be discharged as a consequence of the CDD; but any 2 claim arising out of that is released by (v) on page 8.</p> <p>3 My Lord, that is all I propose to show you from the 4 other CDDs. But can my Lord keep open the CRA because 5 we're going to turn back to that for the next part of my 6 submissions, which deals with issue 38.</p> <p>7 The question here is whether the entry into the CRA 8 creates a currency conversion claim for a creditor, for 9 example, who had a sterling underlying right that's now 10 agreed to be paid in dollars. And precisely the same 11 issue arises in relation to the agreed claims CDD, for 12 example if your underlying claim is in sterling but the 13 agreed claims CDD denominates the agreed claim amount in 14 dollars because that was the predominant underlying 15 currency. It's the same point but in a different 16 context.</p> <p>17 Going back to the CRA, and these are familiar 18 clauses, I know, one starts at 24.1 for this purpose. 19 Close-out amounts, and remember close-out amounts are 20 the foundation of net contractual positions, which are 21 the foundation of net financial claims.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: And the close-out amounts are denominated in 24 US dollars, so to the extent that a close-out amount is 25 otherwise denominated it shall be converted as at the</p> <p style="text-align: center;">Page 107</p>
<p>1 the date hereof."</p> <p>2 Then 2.1.5 is a similar undertaking not to take 3 steps to prove or otherwise claim anywhere for the 4 matters that have been released.</p> <p>5 Now, one difference my Lord will see again, it's not 6 a mutual release here, this is the creditor releasing 7 its claims.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes. 9 MR ZACAROLI: How this works in relation to currency 10 conversion claims is as follows. The CRA gave the 11 creditor a right -- one of the new claims, as you will 12 know, is defined as the right to claim its net financial 13 claim. That is a right which was denominated in US 14 dollars under the CRA.</p> <p>15 The fourth excluded claim includes any failure on 16 the part of the company. They are claiming for 17 a failure on the part of the company to discharge its 18 obligations under the CRA. So (v) in the CDD on page 8 19 releases that excluded claim to the extent that, as 20 provided in the definition, that claim would arise as 21 a consequence of the company and the creditor entering 22 into this deed. The consequence of entering into the 23 deed is they're agreeing that the entitlement to be paid 24 is now denominated in sterling, so to that extent the 25 right to be paid in dollars under the CRA is not going</p> <p style="text-align: center;">Page 106</p>	<p>1 date of administration.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes. 3 MR ZACAROLI: That becomes a net financial claim, which is 4 defined in 25.1 as: 5 "A claim which shall constitute an ascertained 6 unsecured claim of that signatory in the winding-up of 7 the company or any distribution that covers assets to 8 its unsecured creditors."</p> <p>9 Our position is that that does not create a currency 10 conversion claim and the key distinction, for example 11 between that and the admitted claims CDD, is in the 12 admitted claims CDD there is an unqualified discharge of 13 any right to be paid in dollars and an unqualified 14 acceptance that the only right hereafter is a right 15 denominated in sterling. So that part of the admitted 16 claims CDD is unqualified. It's a forever permanent 17 change of rights.</p> <p>18 However, the context of the CRA, particularly from 19 the definition of net financial claim, is that the 20 purposes of the conversion in the CRA are to enable the 21 CRA to work its way through, and that includes, for 22 example, most importantly, offsetting dollar denominated 23 trust claims against liabilities of the client, which 24 need to be in the same currency for that purpose. But 25 against a background that once it becomes a net</p> <p style="text-align: center;">Page 108</p>

<p>1 financial claim, so in other words after that process 2 has been gone through, if an amount is owing to the 3 creditor, that shall then stand as an ascertained claim 4 for the purposes of proof in the liquidation or some 5 other distribution.</p> <p>6 A necessary attribute of that is that it must be 7 converted back into sterling. So at the time that the 8 CRA was entered into, it was known to both parties that 9 the conversion into dollars was not to be permanent and 10 unqualified but would result in a reconversion back to 11 sterling as at exactly the same conversion date, ie the 12 date of administration, for the purposes of it being 13 a claim in the liquidation or the administration. So 14 it's a qualified conversion, not an unqualified one as 15 took place in the case of the admitted claims CDDs.</p> <p>16 MR JUSTICE DAVID RICHARDS: I see. So in this agreement, in 17 the CRA -- yes, I see. In order to give effect to 25.1, 18 the claim must be converted into sterling.</p> <p>19 MR ZACAROLI: Yes. My Lord, the same argument applies 20 in the agreed claims CDD. We'll turn it up, it's at 21 tab 1A of bundle 11. The argument here is exactly the 22 same but in a sense it's even clearer because the 23 agreement here is -- let's assume it was an agreement, 24 agreed claim amount in dollars, whereas you had an 25 underlying part of your claim in sterling. That</p> <p style="text-align: center;">Page 109</p>	<p>1 no longer complain, as I've already submitted, it can't 2 then complain about not being paid the full amount of 3 euros (inaudible) agreed that that claim is released.</p> <p>4 In that case, we also submit that the agreement to 5 be paid in dollars is nevertheless not an unqualified 6 agreement to denominate its claim in dollars, but it's 7 qualified in exactly the same way as applies to the 8 sterling creditor example I dealt with originally.</p> <p>9 My Lord, if we're wrong about that position, the 10 fallback position in relation to the euro or the yen 11 creditor is consistent with the argument that the CRA 12 does not create currency conversion claims because the 13 conversion to dollars is for a qualified purpose, then 14 we would accept that the original euro or yen claim 15 survives, not that it has created some new claim in 16 dollars. So my first proposition is it's lost its euro 17 currency conversion claim and it hasn't been granted 18 a dollar currency conversion claim, but if we're wrong 19 about that the fallback is it hasn't lost its euro or 20 yen currency conversion claim as opposed to being given 21 the new one.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR ZACAROLI: That leaves just issue 35, which is the 24 question whether the release of interest provisions 25 in the CDDs, where there is no express language</p> <p style="text-align: center;">Page 111</p>
<p>1 agreement to be paid in dollars is expressly on the 2 basis that to become an admitted claim, it gets 3 reconverted into sterling.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR ZACAROLI: Paragraph 3.2 of the agreement says just that, 6 that's page 8, tab 1A.</p> <p>7 MR JUSTICE DAVID RICHARDS: Give me a moment. (Pause). So 8 that's clause?</p> <p>9 MR ZACAROLI: Clause 3.2 is how you get an admitted claim, 10 where the creditor has, for example, waived its entire 11 client money claim, then the agreed claim at the agreed 12 claim amount is converted into pounds sterling to be 13 accepted as an admitted claim.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes, I see.</p> <p>15 MR ZACAROLI: There's one little corner that -- I've 16 recognised that none of this was dealt with in position 17 papers as this is a slightly (inaudible) would envisage, 18 but the corner is this, that if you had -- take the CRA. 19 If you had a claim in euros that is then converted into 20 dollars for the purposes of the CRA on the basis it's 21 converted into sterling, we do say two things. First of 22 all, because your underlying contractual claim to be 23 paid in euros has been released in its entirety by 24 clause 4.2.3, because that's how the CRA works, it 25 releases all of your underlying claims, the creditor can</p> <p style="text-align: center;">Page 110</p>	<p>1 preserving the right to statutory interest, so where 2 that language does not appear, so it's the early group 3 CDDs, does the clause releasing all claims to interest 4 have the consequence that when the creditor comes to 5 claim statutory interest, which we accept for reasons 6 I've been through this morning it still has, whether 7 that claim for statutory interest can only be at the 8 judgments rate.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR ZACAROLI: We deal with this at paragraph 170 of our 11 skeleton. I propose to do little more than repeat the 12 argument there. There is not much I can add to it.</p> <p>13 MR JUSTICE DAVID RICHARDS: Let's just have a look at that.</p> <p>14 MR ZACAROLI: Page 53 it starts at. (Pause).</p> <p>15 The crux of the argument is really an interpretation 16 of 2.88.9, the words "the rates applicable apart from 17 administration". We say that rate is now nil because 18 apart from the administration, the contractual right has 19 been waived, released, and therefore it is to be treated 20 as if it had no right to interest.</p> <p>21 MR JUSTICE DAVID RICHARDS: If there was no administration 22 there would be no CDDs or CRAs.</p> <p>23 MR ZACAROLI: I accept that.</p> <p>24 My Lord, the reason we accept that it doesn't 25 operate where the statutory interest language was</p> <p style="text-align: center;">Page 112</p>

<p>1 incorporated is because you've got the two propositions.  2 One, statutory interest is implicitly allowed where  3 there's no such language, but that implicit acceptance  4 of statutory interest is subject to the proposition that  5 contractually there is no right to interest. That's  6 without the language.  7 When the language comes in, there's an express  8 reference to rule 2.88, 7 to 9, and reference to 9 we  9 accept can't really be interpreted other than as  10 acceptance that the contractual rate that otherwise  11 would have applied is brought back in.  12 MR JUSTICE DAVID RICHARDS: I see.  13 MR ZACAROLI: My Lord, unless I can assist further those are  14 my submissions on issues 34, 35 and 38.  15 MR JUSTICE DAVID RICHARDS: Thank you very much,  16 Mr Zacaroli.  17 Mr Dicker?  18 MR DICKER: I wonder if your Lordship would give me two  19 moments just to move my files and enable me to have  20 Mr Fisher sitting next to me.  21 MR JUSTICE DAVID RICHARDS: If I take a break now -- it's  22 a little early for the transcribers -- we'll then be  23 okay to continue to the end of the afternoon I hope.  24 (2.45 pm)  25 (A short break)</p> <p style="text-align: center;">Page 113</p>	<p>1 detail, so far as the CRA is concerned we say the  2 primary purpose of the CRA was to return trust assets.  3 Quantifying and agreeing claims was a necessary but  4 incidental part of that exercise. And your Lordship,  5 I think, commented on the way in which that exercise  6 effectively came into the process. Obviously, the  7 administrators couldn't return trust assets without  8 satisfying themselves that they wouldn't be prejudicing  9 LBIE in respect of any security it held if it turned out  10 that the creditor actually was a debtor of LBIE.  11 So that in a sense was the first stage. The second  12 stage was, you can't work out whether a creditor is  13 a debtor of LBIE without ascertaining what the net  14 position between the parties is. In other words, also  15 taking account of any claims which the creditor may have  16 against LBIE. I know your Lordship has the point, but  17 can I show your Lordship one reference in Mr Pearson's  18 witness statement that deals with that point? It's in  19 bundle 2, tab 7, and it's paragraph 20.  20 Paragraph 20 at the bottom of page 6. Mr Pearson  21 says:  22 "In the case of the development of the scheme, it  23 soon became apparent that in order to establish  24 a claimant's entitlement to the return of trust assets  25 through and prior to making any distribution of trust</p> <p style="text-align: center;">Page 115</p>
<p>1 (2.50 pm)  2 Submissions by MR DICKER  3 MR DICKER: The CRA and the CDDs were originally devised by  4 the administrators to enable them to carry out their  5 duties in the interests of creditors. The primary  6 purpose, as your Lordship will see, of those agreements  7 has been achieved. The question is whether they go  8 further. Wentworth's position is that the effect of  9 those agreements was that creditors gave up claims to  10 interest and currency conversion claims, which may be  11 worth as much as 1 billion. We say that is something  12 which the parties cannot sensibly have intended and  13 it is not the effect of those agreements.  14 Such a consequence would be to bring about what the  15 Court of Appeal described in a slightly different  16 context as a wholly unnecessary injustice.  17 Your Lordship knows we also say that if this is what the  18 agreements do mean, then pursuant to the answer to  19 question 36A, we say it would be unfair and unjust for  20 the administrators to be permitted to enforce them.  21 Obviously we're dealing with that question separately.  22 Your Lordship, we say, needs to deal with the CRA  23 and the CDD separately because the analysis in relation  24 to each is slightly different. Just summarising our  25 position in relation to each before I get on to the</p> <p style="text-align: center;">Page 114</p>	<p>1 assets in accordance with the scheme, it would be  2 necessary for any liabilities a claimant owed to LBIE  3 under any financial contracts with LBIE to be  4 ascertained in order to protect LBIE's position."  5 Et cetera.  6 So one starts with a primary purpose of returning  7 trust assets. To do that, you need, in the first  8 instance, to work out what claims LBIE has against,  9 I call them creditors, but counterparties is probably  10 more accurate here, and also therefore claims by the  11 counterparties against LBIE.  12 The net outcome of that process could be a net claim  13 owed by LBIE to the signatory, and in that event  14 a further incidental benefit was the claim could then be  15 "fed into", to use Mr Pearson's words, any subsequent  16 distribution mechanism. Your Lordship will see later in  17 a little more detail how that works.  18 So far as the effect of the CRA is concerned,  19 we have two short points, which I will develop in due  20 course. The first point concerns the currency of  21 payment. We say all obligations quantified by the CRA  22 are quantified and agreed in US dollars, and  23 clause 4.4.2, which your Lordship has seen, goes as far  24 as to state that signatories acquire the right to claim  25 that sum as a new obligation of LBIE.</p> <p style="text-align: center;">Page 116</p>

<p>1 That, we say, suggests that all signatories are to 2 be entitled to payment in full of the relevant US dollar 3 amount because that is what has been agreed. And any 4 currency conversion claim is no more than a consequence 5 of that. Whether or not that is right, and I'll come to 6 that, the important point we say is that a creditor 7 whose original claim was in US dollars cannot have lost 8 his right to payment of that sum merely by having had it 9 restated in the CRA in US dollars. Nor equally can he 10 therefore have lost any currency conversion claim that 11 he might otherwise have. You can't lose a right to 12 payment in US dollars by having your claim restated in 13 US dollars. It simply doesn't make sense.</p> <p>14 My Lord, the second point concerns statutory 15 interest. Your Lordship has seen the CRA expressly 16 provides that creditors will be entitled to interest to 17 the extent provided in rule 2.88 of the Insolvency 18 Rules. We say, well, 2.88 includes 2.88.9, which 19 entitles you to interest at the greater of the Judgments 20 Act rate and the rate applicable to the debt apart from 21 the administration. So one asks, what is the rate 22 applicable to the debt apart from the administration? 23 And the answer we say is the rate under the financial 24 contract, which has just been quantified and compromised 25 by the CRA.</p> <p style="text-align: center;">Page 117</p>	<p>1 they all operated in essentially the same basic way and 2 had the same basic effect. They didn't result in 3 creditors waiving either claims to statutory interest or 4 currency conversion claims.</p> <p>5 When one talks about achieving finality, we say it's 6 essential to be clear what finality the CDDs were 7 intended to achieve. If the ordinary proof process had 8 been adopted, creditors would have been entitled to 9 challenge the administrator's adjudication, to modify 10 their proof or to submit new proofs, and the CDDs 11 obviously prevented them from doing so. The reason for 12 that of course was to enable the administrators to know 13 the likely quantum of the claims against LBIE so that 14 they could make earlier and no doubt potentially larger 15 distributions than they might otherwise have done.</p> <p>16 It's easiest to explain precisely what we mean if 17 I give your Lordship a very simple illustration. 18 Imagine a creditor with ten possible claims against 19 LBIE, claims number 1 through to 10. The administrators 20 invite creditors to submit proofs of debt and the 21 creditor chooses to missubmit a proof in relation to 22 claims 1 to 10, in relation to claim 1, and for whatever 23 reason he chooses not to submit a proof in relation to 24 claims 2 through 10.</p> <p>25 So if one just focuses on the position in relation</p> <p style="text-align: center;">Page 119</p>
<p>1 My Lord, again I will come back to this, but 2 your Lordship, I think, noted a reference in the 3 reader's guide to signatories being entitled to interest 4 in accordance with standard Insolvency Rules. We say it 5 was never suggested that the standard Insolvency Rules 6 would entitle you to interest in a non-standard way. We 7 also say the CRA did not deprive creditors of any 8 non-provable right to interest they would otherwise have 9 had. The important right in this context, I'm sure 10 your Lordship is aware, is the right to appropriate 11 payments first to interest. Again, I'll develop this in 12 due course, but we say it's either within the scope of 13 the preserved right under rule 2.88, that's effectively 14 the argument we had in front of your Lordship as part of 15 part A; alternatively, we say a signatory who acquired 16 a net financial claim has the same contractual right as 17 anyone else to appropriate sums that he receives first 18 to interest and secondly to principal. Again, I'll 19 develop that.</p> <p>20 Turning then briefly to the effect of the CDDs, we 21 say the analysis is slightly different. The CDDs were 22 no more than a simplified and more final mechanism for 23 admitting claims to proof, which were devised to enable 24 the administrators to make earlier distributions. 25 Although there are a variety of different kinds of CDDs,</p> <p style="text-align: center;">Page 118</p>	<p>1 to claim 1, creditors' proof is dealt with by the 2 administrators in accordance with their modified proof 3 process. Again, we'll look at the detail later. But 4 the end result is that the amount of that claim is 5 agreed between the administrators and the creditor and 6 converted into sterling for the purposes of proof. We 7 say there is absolutely nothing in that process so far 8 as claim 1 is concerned, in other words the claim which 9 the creditor has advanced, agreed and is admitted to 10 proof, which has any consequence different from the 11 consequence that would apply to any claim advanced, 12 agreed and admitted to proof in the ordinary way, save 13 that having gone through this process, the creditor 14 can't subsequently turn round and say, "I'd like to 15 amend my proof, I'd like to submit an additional proof 16 or I'd like to challenge the administrator's 17 adjudication".</p> <p>18 So, so far as claim 1 is concerned, it did, in 19 a slightly more rough and ready way, exactly what any 20 other claim for proof would do. If an ordinary claim 21 for proof would entitle you to statutory interest, so 22 too does this process. If an ordinary claim to proof 23 would leave you with a currency conversion claim, so too 24 does this process.</p> <p>25 Now, the position in relation to claims 2 to 10 is</p> <p style="text-align: center;">Page 120</p>

<p>1 obviously different. Creditor never submitted proofs in 2 respect of those claims, so those claims are gone, both 3 the provable and the non-provable aspects of those 4 claims.</p> <p>5 My Lord, again, I'll deal with the language of the 6 CDDs in due course, but as your Lordship, I think, 7 observed, there are a number of reasons why, even if one 8 ignores the context, one cannot read the CDDs in the 9 literal way for which my learned friend contends. 10 Your Lordship, I think, identified one of those points 11 being that if you do so, you end up with a claim 12 apparently not carrying interest at all, and my learned 13 friend accepts that that can't be right.</p> <p>14 My Lord, just to ensure our submissions are clear, 15 because some of Wentworth's written submissions I think 16 misunderstand our case. We are not submitting that the 17 effect of the release was essentially to release all 18 provable claims but not touch any non-provable claims. 19 That's not the distinction we are drawing. The 20 distinction we are drawing is between the claim which is 21 agreed and admitted where we say both provable and 22 non-provable elements remain, and all other claims, what 23 I refer to as claims 2 through to 10, which are 24 released.</p> <p>25 My Lord, that by way of summary. Next, briefly, the</p> <p style="text-align: center;">Page 121</p>	<p>1 My Lord, the facts, if one looks into the detail of 2 WW Duncan, are slightly different from this case. We 3 say it does illustrate a simple point that apparently 4 broad and, if read literally, unambiguous words don't in 5 fact operate to release all claims, as one might expect. 6 Your Lordship sees this from BCCI v Ali, to which my 7 learned friend took you. Can I just refer to a couple 8 of passages in that? It's bundle 1A at tab 27 if 9 your Lordship has that.</p> <p>10 The point I'm taking your Lordship to this case for 11 is the point that context is particularly important 12 in the context of release provisions. Starting with 13 Lord Nicholls' speech at page 264, the relevant 14 paragraphs, if your Lordship wouldn't mind glancing at 15 them, are, firstly, paragraph 23 at the bottom of 264. 16 (Pause).</p> <p>17 And obviously the last sentence: 18 "The question is whether the context in which the 19 general release was given is apt to cut down the 20 apparently all-embracing scope of the words or release." 21 Then paragraph 27, if my Lord would remind my Lord 22 of that. (Pause).</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes. 24 MR DICKER: Then 28, where he says: 25 "This approach, however, should not be pressed too</p> <p style="text-align: center;">Page 123</p>
<p>1 law. I'm going to say very little about the law. Can 2 I just make three points? The first is, context, we 3 say, is particularly important in relation to the effect 4 of release provisions. It appears to be extremely 5 common for parties to express releases very widely 6 indeed, although they in fact only intend those releases 7 to operate in a particular context. There are numerous 8 examples your Lordship has seen of cases where the 9 context has led to a construction different from that 10 which one would get to if you simply followed the 11 literal meaning of the words.</p> <p>12 WW Duncan is in fact a very, on one view, simple 13 example of that. Your Lordship may recall that case 14 involved a liquidator paying dividends which in the end 15 amounted to 100p in the pound on creditors' provable 16 debts, and when he made the final payment the creditors 17 provided him with a document that said that payment was 18 received in full and final settlement of their claims. 19 And Mr Justice Buckley said when it turned out there was 20 in fact a surplus, the creditors cannot conceivably have 21 intended to waive their rights in a surplus and, in the 22 circumstances of that case, went so far as to say indeed 23 it would have been dishonest of the liquidator 24 appreciating that the issue arose to effectively get 25 them to agree to do so.</p> <p style="text-align: center;">Page 122</p>	<p>1 far. It does not mean that once the possibility of 2 further claims has been foreseen, a newly emergent claim 3 would always be regarded as caught by a general lease. 4 Whatever the circumstances in which it arises and 5 whatever its subject matter may be, however widely drawn 6 the language, the circumstances in which the release was 7 given may suggest, and frequently do suggest, the 8 parties intended or, more precisely, the parties are 9 reasonably to be taken to have intended the release 10 should apply only to claims known or unknown relating to 11 a particular subject matter."</p> <p>12 And that point is repeated effectively in the last 13 two sentences of paragraph 29 just at E, if 14 your Lordship would just glance at that. (Pause).</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR DICKER: My Lord, my learned friend mentioned, and 17 of course it's correct, that Lord Hoffmann dissented in 18 this case, but he didn't dissent on the point that 19 background is very important. Indeed, your Lordship 20 will see that at the start of paragraph 39 of his speech 21 on page 269.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR DICKER: Lord Clyde dealt with it rather more by 24 reference to the particular facts, but the conclusion he 25 came to your Lordship will see at paragraph 82,</p> <p style="text-align: center;">Page 124</p>

<p>1 page 283. He says in the last sentence, this is four 2 lines down paragraph 82: 3 "It seems to me the context of the agreement is that 4 termination of the employment and the desire of the 5 employer to finalise any contractual debts due to the 6 employees whose employment was being terminated together 7 with all statutory or common law obligations arising 8 from the termination of the contract." 9 My Lord, we say that the points in particular made 10 by Lord Nicholls as to the difficulty that release 11 clauses offer courts, in other words draftsmen drafting 12 over-enthusiastically, and using language which would 13 appear to cover everything but they merely meant 14 everything within a particular context, also led to 15 Lord Bingham's reference to a cautionary principle. 16 Again, your Lordship's seen these from my learned 17 friend's submissions, but Lord Bingham, paragraph 10, 18 says: 19 "The court were very slow to infer that the party 20 intended to surrender rights and claims. She was 21 unaware and could not have been aware." 22 And the reference to cautionary principle halfway 23 down paragraph 17 on page 263. 24 MR JUSTICE DAVID RICHARDS: Yes. 25 MR DICKER: So that's the first submission on the law.</p> <p style="text-align: center;">Page 125</p>	<p>1 authorities bundle, if one puts them at the end. 2 I think I suggested the second judgment first, Privy 3 Council first and then McKillen. So that's tab 15 and 4 McKillen is tab 16. 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR DICKER: My Lord, just a couple of paragraphs from the 7 Court of Appeal in McKillen. If your Lordship goes to 8 paragraph 37, as the judge said: 9 "Although the issue is to be decided by reference to 10 the wording and meaning of the facilities agreement, the 11 Act is part of the admissible context when interpreting 12 not least because NAMA's involvement is explicable only 13 by reference to its function and powers under the Act 14 and the Act contains powers and provisions which may be 15 directly relevant to the clauses to be construed." 16 And the Court of Appeal agreed with your Lordship 17 in relation to that, and your Lordship will see 18 beginning above paragraph 40, a lengthy section running 19 through to 48, dealing with the statutory context. 20 MR JUSTICE DAVID RICHARDS: Yes. 21 MR DICKER: And paragraphs 42 and 43, your Lordship will see 22 the emphasis placed by the Court of Appeal on that 23 statutory context, particularly the last half, if 24 your Lordship would just glance at that, in 25 paragraph 43. (Pause).</p> <p style="text-align: center;">Page 127</p>
<p>1 The second submission should be uncontroversial. 2 The context includes the statutory background within 3 which a particular contract is designed to operate. Can 4 I just show your Lordship two things here? Firstly, an 5 extract from Lewison on the Interpretation of Contracts, 6 which your Lordship has in authorities bundle 2, tab 1. 7 If your Lordship would perhaps read the passage on 8 page 188 under the heading "B. Statute law", just to 9 the bottom of that page. 10 MR JUSTICE DAVID RICHARDS: Just that last three lines? 11 188? 12 MR DICKER: Page 188 under the heading "Statute law" down to 13 the bottom of the page. 14 MR JUSTICE DAVID RICHARDS: I'm sorry. (Pause). 15 Yes. 16 MR DICKER: My Lord, one other reference in this context not 17 presently in the bundles, so if I can hand up a copy. 18 There's one other authority I'll hand up at the same 19 time, if I may. (Handed). 20 The first is, if your Lordship has it, a decision 21 with which your Lordship will be familiar. It's 22 McKillen v NAMA in the Court of Appeal. 23 MR JUSTICE DAVID RICHARDS: Yes. 24 MR DICKER: I will not take your Lordship through the facts, 25 the facts are obviously irrelevant. Bundle 3 of the</p> <p style="text-align: center;">Page 126</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes. 2 MR DICKER: My Lord, the third point is a submission about 3 ambiguity. It's simply to give your Lordship 4 a reference to a decision of the Privy Council, 5 particularly a judgment of Lord Sumption, confirming the 6 point your Lordship put to my learned friend that 7 ambiguity is not simply concerned with language. In 8 other words, you aren't limited to looking for 9 linguistic ambiguity. Ambiguity is something which may 10 or may not exist when you have done the exercise 11 required by Lord Bingham, in other words looking at the 12 background, looking at the wording of the agreement. Is 13 there, taking all of that into account, doubt as to the 14 intended effect of the agreement? 15 So if your Lordship would just look at Sans Souci 16 Ltd v VRL Services Ltd, which was the second judgment 17 I handed up to your Lordship. 18 MR JUSTICE DAVID RICHARDS: So this goes in the same bundle? 19 MR DICKER: Yes, at the end of bundle 3. 20 My Lord, the context is very different, although the 21 principle, I'll show your Lordship, is expressed 22 generally. The context your Lordship will see, 23 paragraph 1: 24 "The appeal is concerned with the scope and order 25 made by the Court of Appeal of Jamaica, remitting the</p> <p style="text-align: center;">Page 128</p>



<p>1 award to the arbitrators." 2 The order remitting the award to the arbitrators, 3 your Lordship will see set out on the next page at the 4 bottom of paragraph 7 where it says in the last 5 sentence: 6 "They remitted the award to the arbitrators in the 7 following terms: the appeal against the award of damages 8 is allowed but the matter is remitted to the arbitrators 9 to determine the issue of damages only." 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR DICKER: The argument is at paragraph 12: 12 "The proprietor's response is simple, perhaps too 13 simple. It is that the scope of the remission is 14 determined by the Court of Appeal's order. The order 15 allowed the appeal against the award of damages and 16 remitted the award to the arbitrators to determine the 17 issue of damages. In the absence of any words of 18 limitation, it is said that this unambiguously means the 19 entire issue as to damages has formulated in the 20 arbitrators' terms of reference. In the absence of any 21 ambiguity in the language of the order, it should not be 22 construed by reference to the limited reasons given for 23 making it." 24 Then if your Lordship would just read paragraphs 13 25 and 14. (Pause).</p> <p style="text-align: center;">Page 129</p>	<p>1 shareholders. Indeed, to the contrary, their duty to 2 adjudicate on proofs, a quasi-judicial duty, is the very 3 antithesis of this. And the administrators were also 4 under a duty to treat creditors fairly and equally. Put 5 another way, not arbitrarily to create unjustified 6 distinctions between them. 7 So when you come to construe the agreements, we say 8 one should proceed on the assumption that the 9 administrators were intending to act consistently with 10 these duties. Put the other way, if they had intended 11 to produce a result which departed from the statutory 12 regime, that would be for good reason and made clear. 13 The second point concerns the purpose -- 14 MR JUSTICE DAVID RICHARDS: I noticed you used the 15 expression "quasi-judicial duty" in your skeleton. 16 Is that a phrase that's used in authorities? 17 MR DICKER: Yes, it is. 18 MR JUSTICE DAVID RICHARDS: If at some point you could just 19 show me the highest authority on that, as it were. 20 MR DICKER: My Lord, the second point concerns the purposes 21 of the CRA and the CDDs. We say the purposes of those 22 agreements did not require creditors to give up 23 potentially valuable rights which they had in the event 24 of a surplus. We'll look at the purposes of those 25 agreements obviously in due course, but what we say is</p> <p style="text-align: center;">Page 131</p>
<p>1 The context is obviously very different, but 2 Lord Sumption refers in the middle of paragraph 13 to 3 construction of a judicial order being a single coherent 4 process, and he says: 5 "Like that of any other legal instrument." 6 Put another way, we don't have in this jurisdiction 7 what I understand they do have in the United States, 8 namely a rule that you have to find ambiguity within the 9 four corners of the document. 10 My Lord, next a few general background points before 11 I come to the CRA. Those four points are these. The 12 first concerns the administrators' functions and duties. 13 As I've already said, the agreements in this case were 14 devised by the administrators to assist them in carrying 15 out their functions and complying with their duties. 16 Those functions and duties formed the backdrop against 17 which the agreements have to be construed. 18 The administrators were under a duty to return trust 19 assets to those entitled to them. They were also under 20 a duty to realise the assets of the estate and 21 distribute them pari passu to creditors in accordance 22 with their claims and the statutory waterfall. 23 Neither of those duties required or indeed permitted 24 the administrators to try and minimise the amount 25 recovered by beneficiaries or creditors so as to benefit</p> <p style="text-align: center;">Page 130</p>	<p>1 plain, if for example one takes the CDDs, is they could 2 have achieved what the administrators wanted to achieve 3 without such claims being released. Indeed, on one view 4 there can't be a sensible dispute about this given that 5 subsequently the administrators entered into CDDs with 6 preservation language, or indeed admitted claims 7 pursuant to admittance letters, which didn't include any 8 releases at all. 9 The third point is that if such claims were 10 nevertheless released, it is plain from the background 11 material this was entirely inadvertent in the sense that 12 no specific thought appears to have been given as to 13 whether or not they should be released. The 14 administrators never suggested this might be their 15 effect, although it was they who devised the agreements 16 and encouraged creditors to sign them, and there's no 17 suggestion of any such releases in any of the documents 18 explaining the genesis or purpose of the agreements. 19 Now, one might say, again, that's hardly surprising. 20 When LBIE went into administration, the administrators 21 didn't anticipate a surplus and neither, one expects, 22 did any creditors. Everyone appears to have thought 23 that it was likely that there would be a very 24 substantial shortfall in respect of ordinary unsecured 25 claims. So if no one focused on creditors' rights in</p> <p style="text-align: center;">Page 132</p>

<p>1 respect of a surplus, there was no discussion about what 2 should happen in that situation. That's hardly 3 surprising. 4 My Lord, the fourth point is this: no sensible 5 reason has been provided why, although the parties never 6 consciously thought about them, creditors should 7 nevertheless now be taken to have agreed to release 8 claims to statutory interest and currency conversion 9 claims. Why, for example, should any creditor with 10 a right to interest in the event of a surplus have 11 agreed to limit itself to interest at the Judgments Act 12 rate, and release any right to contractual interest. 13 One can say that appears to be the literal effect of the 14 wording of the agreements they entered into, I'll come 15 to that, but that's not providing a reason as to why it 16 made sense for the parties to reach such an agreement. 17 Similarly, why should any creditor with a US dollar 18 claim have agreed to release any currency conversion 19 claims that he might otherwise have? Even more 20 striking, we say, why should the parties be taken to 21 have intended the entirely, and in our submission 22 irrational, distinctions which on Wentworth's case 23 result from the particular agreement that a creditor 24 happens to have entered into? And why should the 25 administrators be taken to have intended to treat</p> <p style="text-align: center;">Page 133</p>	<p>1 MR JUSTICE DAVID RICHARDS: Like some oil companies do, 2 I think. 3 MR DICKER: Yes, and, my Lord, so natural was it to think 4 about US dollars in the context of LBIE that the 5 administrators in their initial proposal to creditors 6 indicated that they would require creditors to submit 7 their claims in US dollars and be paid in US dollars. 8 Can I just show your Lordship that? It's bundle 6 at 9 page 70. It's just an extract from joint 10 administrators' proposals for achieving the purpose of 11 the administration. It starts, just so your Lordship 12 sees where the document begins, at page 30. 13 The extract I was going to show your Lordship is on 14 page 70. It's in the top right-hand corner, (xi), where 15 what the administrators propose is: 16 "The primary currency for the administration will be 17 US dollars and funds will be maintained in US dollars 18 except to the extent that monies are needed to meet 19 administration expenses payable in other currencies or 20 monies are held in trust for the benefit of a third 21 party. The administrators will require creditors to 22 submit their claims in US dollars and dividends will be 23 paid in US dollars in the chosen exit route from the 24 administration." 25 MR JUSTICE DAVID RICHARDS: The date of this is?</p> <p style="text-align: center;">Page 135</p>
<p>1 creditors unequally in this way? In other words, why 2 did the administrators intend to get some creditors to 3 give up rights to currency conversion claims, for 4 example, and not others? What was the rationale for 5 that? 6 My Lord, one further background point just concerns 7 US dollars. There is a temptation to assume that 8 a creditor with a US dollar claim in an English 9 administration is in some way anomalous or as an 10 exception to the norm. That would obviously be entirely 11 wrong in relation to LBIE. As your Lordship knows, 12 LBIE's functional currency before it went into 13 administration was US dollars as that was the currency 14 that directors considered to be the most appropriate 15 currency. That's in the statement of agreed facts for 16 34 and 35 at paragraph 49. And that's also true of 17 LBIE's assets, the majority of those were also in US 18 dollars. 19 So there is nothing remotely surprising, we say, in 20 creditors who have claims in US dollars expecting to 21 have those claims satisfied in full if LBIE had 22 sufficient money to do so. 23 MR JUSTICE DAVID RICHARDS: I wonder whether LBIE drew up 24 its accounts in US dollars. 25 MR DICKER: As I understand it, yes.</p> <p style="text-align: center;">Page 134</p>	<p>1 MR DICKER: If your Lordship goes back to page 30, it's 2 28 October 2008. 3 MR JUSTICE DAVID RICHARDS: I see, right at the start. 4 MR DICKER: Yes. And this, to be clear, was subsequently 5 modified. When the administrators sent it out to 6 creditors, they weren't sure whether this was 7 necessarily a sensible idea. 8 MR JUSTICE DAVID RICHARDS: So what am I looking at here? 9 MR DICKER: This is the administrators' initial proposals 10 for achieving the purpose of the administration. If 11 your Lordship goes back to page 30. 12 MR JUSTICE DAVID RICHARDS: This went out to creditors? 13 MR DICKER: Creditors then responded effectively by saying, 14 "We're not sure whether this is necessarily a sensible 15 idea". 16 MR JUSTICE DAVID RICHARDS: To do it in dollars? 17 MR DICKER: To do it in dollars, and the issue was then left 18 open. 19 MR JUSTICE DAVID RICHARDS: I see. 20 MR DICKER: The reason I'm showing your Lordship this is 21 simply to illustrate how natural it was for everyone 22 dealing with LBIE to think in US dollar terms. 23 MR JUSTICE DAVID RICHARDS: I see. 24 MR DICKER: It would be wrong to think of US dollar 25 creditors as in some way anomalous or outliers in this</p> <p style="text-align: center;">Page 136</p>

<p>1 process.</p> <p>2 I mentioned that proposal wasn't the end of it, and</p> <p>3 just so your Lordship has the reference, this is dealt</p> <p>4 with in Mary Nell Browning's witness statement,</p> <p>5 bundle 2, tab 6. It's paragraph 12 through to 16, just</p> <p>6 so your Lordship knows and can see how matters</p> <p>7 developed.</p> <p>8 So having summarised our case in relation to both,</p> <p>9 I have dealt with the law and made a few background</p> <p>10 points, can I now turn to the CRA? My Lord, I'm doing</p> <p>11 it in this order because it seems appropriate to us that</p> <p>12 your Lordship should construe the documents in the order</p> <p>13 in which they were created. It's not as if, as my</p> <p>14 learned friend might have wished, that the first</p> <p>15 document creditors ever came across was an admitted CDD.</p> <p>16 Indeed, to the contrary. By the time they came across</p> <p>17 an admitted CDD, agreed CDDs had already been devised by</p> <p>18 the administrators and were being used, and the admitted</p> <p>19 CDDs were in development of that. We say it's very</p> <p>20 important that your Lordship looks at the way matters</p> <p>21 developed.</p> <p>22 So starting with the CRA, my Lord, I'm going to do</p> <p>23 three things. First of all, say a few words about the</p> <p>24 purpose and genesis of the CRA in the light of the</p> <p>25 evidence. Secondly, to deal with its terms. And then,</p> <p style="text-align: center;">Page 137</p>	<p>1 extent to which it varied the contractual position.</p> <p>2 My Lord, I don't think the debate matters for present</p> <p>3 purposes. Your Lordship has seen from the CRA the</p> <p>4 starting point and the basic valuation methodology was</p> <p>5 intended to mirror the valuation methodology in</p> <p>6 financial contracts, save in certain respects. Either</p> <p>7 way that's inappropriate or impossible.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR DICKER: The fourth point is to carry out the exercise of</p> <p>10 determining the net contractual position, you obviously</p> <p>11 need a common currency, which was also necessary to</p> <p>12 ensure that if there was a shortfall, everyone</p> <p>13 effectively got a fair share of the trust assets. And</p> <p>14 as I've already said, given the majority of LBIE's</p> <p>15 assets and the majority of its claims were in US</p> <p>16 dollars, US dollars was the obvious currency.</p> <p>17 My Lord, the fifth point is that the CRA did not</p> <p>18 contain a distribution mechanism in respect of any net</p> <p>19 financial claim that a signatory may have against LBIE.</p> <p>20 The idea was that a net financial claim could be "fed</p> <p>21 into" the distribution process at a later date. In</p> <p>22 other words, it was yet another, further down the line,</p> <p>23 incidental consequence of returning trust assets.</p> <p>24 I use the phrase "fed into", and that is</p> <p>25 Mr Pearson's phrase. If your Lordship turns up</p> <p style="text-align: center;">Page 139</p>
<p>1 thirdly, to look briefly at some of the background</p> <p>2 material, including the reader's guide and the circular.</p> <p>3 Starting with background facts. My Lord, they're</p> <p>4 largely set out in the statement of agreed facts at</p> <p>5 paragraph 29 to 49, but not exclusively. And my Lord,</p> <p>6 our --</p> <p>7 MR JUSTICE DAVID RICHARDS: Paragraphs, what was that again?</p> <p>8 MR DICKER: Paragraphs 29 to 49 in the statement of agreed</p> <p>9 facts.</p> <p>10 The five points which we would emphasise are these.</p> <p>11 First of all, the primary purpose of the CRA was to</p> <p>12 create a consensual contractual mechanism to enable the</p> <p>13 administrators to return trust property to its owners.</p> <p>14 That's paragraph 43.</p> <p>15 The second point, one I've already made,</p> <p>16 ascertaining the amount of any claims that existed</p> <p>17 between LBIE and its counterparties was a necessary but</p> <p>18 incidental part of the process of returning trust</p> <p>19 assets.</p> <p>20 The third point is the net contractual position was</p> <p>21 calculated by reference to the contractual valuation</p> <p>22 provisions subject to a number of overriding valuation</p> <p>23 provisions. Your Lordship has seen those.</p> <p>24 There's some debate in the evidence and in the</p> <p>25 skeleton as to what precisely this involved and the</p> <p style="text-align: center;">Page 138</p>	<p>1 bundle 2, tab 7, it's paragraph 23, page 7. Again, if</p> <p>2 your Lordship could read paragraph 23. (Pause).</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes. It is actually talking</p> <p>4 about a scheme. You say it applies equally to the CRA?</p> <p>5 MR DICKER: Which was based on the scheme. So that the CRA</p> <p>6 didn't itself contain a distribution mechanism.</p> <p>7 MR JUSTICE DAVID RICHARDS: Is that true of the CDDs as</p> <p>8 well, actually? Because don't they contain the language</p> <p>9 that Mr Zacaroli wanted me to focus on, the admitted</p> <p>10 claim was a claim admissible in a distribution in the</p> <p>11 administration or winding-up or in a scheme?</p> <p>12 MR DICKER: Well, the context, we say, of the CRA and the</p> <p>13 CDDs was obviously different because the CRA was</p> <p>14 concerned with returning trust property and the</p> <p>15 ascertainment of the net contractual position was all</p> <p>16 part of that process. When one gets to the CDDs, what's</p> <p>17 going on is very different. The administrators give</p> <p>18 notice of intention to make a distribution and the only</p> <p>19 way, obviously, of making a distribution is to get</p> <p>20 creditors to submit proofs, to ascertain the amount of</p> <p>21 their claims, to agree them and have them admitted. So</p> <p>22 it's a different process, which is essentially --</p> <p>23 MR JUSTICE DAVID RICHARDS: Well, it is a different one.</p> <p>24 I think I was just making the point that even with the</p> <p>25 CDDs there was express contemplation that there might be</p> <p style="text-align: center;">Page 140</p>

<p>1 a distribution by means of a scheme.  2 MR DICKER: Yes, your Lordship's --  3 MR JUSTICE DAVID RICHARDS: I mean, that's -- so to that  4 extent, yes.  5 The other point -- you may well be coming to this,  6 but it's a point that Mr Trower made to me, and I'm  7 quite sure on this occasion he did make it to me -- was  8 that the CRA was drafted in a way which, if a sufficient  9 percentage of NTA signatories signed up to it, would  10 provide a mechanism for ascertaining their claims or  11 their net financial positions. Now, in fact, because,  12 as I understand it, that condition wasn't satisfied, it  13 never took effect in that way. But unlike the scheme --  14 I think this was the point Mr Trower got over to  15 me --the CRA did have a wider purpose.  16 MR DICKER: My Lord, and that's right in the sense that it  17 was also offered to creditors as a way of agreeing their  18 claims whether or not they had a trust claim. There is  19 a certain amount of -- one of the points in fact made  20 in the evidence concerns the administrators' enthusiasm  21 for accepting such claims. Mary Nell Browning in her  22 witness statement refers to claims which weren't trust  23 claims in which the administrators, on her evidence,  24 effectively weren't interested in dealing with.  25 In any event, it's obviously very much a subsidiary</p> <p style="text-align: center;">Page 141</p>	<p>1 MR DICKER: The three rights are, firstly, (i), to have  2 their net contractual position, et cetera, determined on  3 the basis set out in this agreement, in other words  4 a right to have the valuation mechanism operated.  5 Secondly, the right to claim as a new obligation of the  6 company their net financial claim, if any. Thirdly, an  7 ascertained claim, if any, for such amount as determined  8 under this agreement.  9 Just to say a few words about each of those rights.  10 So far as 4.4.2 (i) is concerned, the rights to have  11 their net contractual position determined on the basis  12 set out in this agreement, as your Lordship has seen,  13 I think, from my learned friend Mr Trower's submissions,  14 that takes one to, firstly, clause 24.2.1 and 24.2.2.  15 So they have the right to have their net contractual  16 position determined on the basis set out in this  17 agreement, and 24.2, headed "Determining the net  18 contractual position", says that you look to the  19 close-out amount in respect of the financial contract or  20 the aggregate of close-out amounts.  21 Close-out amounts, and your Lordship has seen this,  22 are dealt with in clause 20. 20.1 says:  23 "The close-out amount shall be determined by the  24 relevant determining party in accordance with the  25 applicable financial contract valuation methodology."</p> <p style="text-align: center;">Page 143</p>
<p>1 matter as compared to the primary purpose of returning  2 trust assets, and your Lordship will remember the  3 conditions before it would ever even take effect.  4 That's schedule 1, paragraph 9, we'll come back to  5 those.  6 MR JUSTICE DAVID RICHARDS: Okay.  7 MR DICKER: So turning then to the CRA itself, which  8 your Lordship has in bundle 3, starting at page 315, the  9 first point, as your Lordship knows, is that the CRA had  10 an effect both on signatories' claims against LBIE and  11 also any claims which LBIE may have against signatories.  12 and they're dealt with separately in clauses 4 and 5.  13 I was going to start with the effect of the  14 agreement on signatories' claims, which is clause 4.  15 I think I can deal with this fairly quickly given that  16 your Lordship has seen these provisions before. One  17 starts, obviously, with 4.2, in particular 4.2.3:  18 "Signatories waive and release the following claims  19 against the released parties, which include all claims  20 apart from, for the avoidance of doubt, modified claims  21 in respect of any financial contract."  22 And what they get in exchange is identified in  23 4.4.2, namely three rights, being those identified in  24 (i), (ii) and (iii).  25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 142</p>	<p>1 And that's then set out. So your Lordship knows,  2 one starts essentially with, in 20.2, contractual  3 valuation methodology. Then agreed, then fallback, all  4 subject to the overriding valuation provisions in 20.4.  5 Obviously the point to note at this stage is the  6 close-out amounts are denominated in US dollars. If  7 your Lordship goes back to 24, that's 24.1, again you  8 were shown this.  9 MR JUSTICE DAVID RICHARDS: Yes.  10 MR DICKER: "All close-out amounts denominated in US  11 dollars. To the extent the close-out amount is  12 denominated in a currency other than US dollars it is  13 converted into US dollars at the spot rate as of the  14 relevant FX conversion time."  15 And the relevant FX conversion time is defined on  16 page 464.  17 MR JUSTICE DAVID RICHARDS: I've got noted down that it's  18 the close of business on the administration date.  19 MR DICKER: Correct. I think my learned friend Mr Trower  20 said asset valuation date or date of administration.  21 But your Lordship is quite right, 464 (ii) says for the  22 purposes of clause 24.1, it's the close of business in  23 London on the administration date. So that gives you  24 your net contractual position. In other words,  25 creditors have a right to have this valuation mechanism</p> <p style="text-align: center;">Page 144</p>

<p>1 done, done in US dollars, and it produces a net 2 contractual position denominated in US dollars. 3 As I said, none of that would have been of any 4 surprise to the overwhelming majority of creditors of 5 LBIE whose claims were already denominated in US 6 dollars. 7 The second right one is given under clause 4.4.2 is 8 the right to claim as a new obligation of the company 9 their net financial claim, if any. This second right is 10 also reflected in the first part of 25.1, if 11 your Lordship just goes on to 362. It's the first two 12 lines: 13 "Net contractual position in respect of a signatory 14 expressed as a positive number will represent an amount 15 due and owing by the company to that signatory." 16 So your second right is a right to the US dollar 17 sum, if a positive number, which will represent an 18 amount due and owing by the company to that signatory. 19 My Lord, we respectfully agree with your Lordship 20 that one has to be a little careful about the reference 21 to a new obligation because in one sense, certainly so 22 far as creditors whose claims are denominated in US 23 dollars are concerned, it is not really a new 24 obligation, it's a compromise of their existing 25 obligations in accordance with a specified valuation</p> <p style="text-align: center;">Page 145</p>	<p>1 page 330. What LBIE gets in exchange is expressed in 2 a broadly similar way to what the creditor gets, 5.2.1, 3 the right to determine the net contractual position 4 allocations, appropriations, et cetera. 5 5.2.2, the right to claim as a new obligation the 6 signatory distribution liabilities as calculated under 7 this agreement from the signatory. Obviously, it 8 doesn't include an ascertained claim because one 9 obviously isn't concerned also with LBIE proving in some 10 winding-up of a signatory. If one was, this agreement 11 wasn't intending to deal with that. 12 My learned friend referred, I think, to 5 as 13 effectively the mirror image or opposite side of the 14 coin to 4, and one can certainly see the broad 15 similarity. 16 My Lord, so far as claims by LBIE are concerned, 17 because there was no issue as to how those could be 18 pursued or when they would be paid, there is an express 19 reference to simply payment in US dollars, which 20 your Lordship has seen in clause 85, page 436. 21 MR JUSTICE DAVID RICHARDS: Right. Yes. 22 MR DICKER: That's the broad effect of the provisions. If 23 one then turns to currency conversion claims. My Lord, 24 we say that 4.4.2 (ii) would appear to give all 25 signatories the right to claim as a new obligation of</p> <p style="text-align: center;">Page 147</p>
<p>1 methodology. It's not, we say, realistic to regard this 2 as effectively an entirely new right which comes into 3 existence for the first time one enters into the CRA. 4 The third right under 4.4.2 is a right to an 5 ascertained claim for such amount as is determined under 6 this agreement. Again, your Lordship has seen this 7 before. 4.4.3 defines ascertained claim as an 8 ascertained unsecured claim in the winding-up of the 9 company or any distribution of the company's assets 10 generally to its unsecured creditors, so that's 11 confirmation that you also are entitled to have the 12 claim treated in that way, and again that's reflected in 13 clause 25.1, page 362, it's lines 3 and 4. 14 MR JUSTICE DAVID RICHARDS: Just repeat that reference, 15 sorry? 16 MR DICKER: My Lord, 25.1. 25.1 effectively wraps up 4.4.2, 17 (ii) and (iii). (ii) is reflected in the first two 18 lines, (iii) is reflected in lines 3 and 4. 19 MR JUSTICE DAVID RICHARDS: Yes, I see, yes. 20 MR DICKER: Now, my Lord, that's claims by signatories 21 against LBIE, but, as your Lordship knows, the CRA also 22 dealt with claims by LBIE against signatories, and those 23 are dealt with in clause 5. Then my learned friend 24 showed you these provisions. A point I draw 25 your Lordship's attention to is in clause 5.2 at</p> <p style="text-align: center;">Page 146</p>	<p>1 the company their net financial claim, which in 25.1 is 2 expressed to be an amount due and owing by the company 3 to that signatory. 4 We submit that suggests the signatory is entitled to 5 be paid the relevant US dollar amount and his claim 6 will not have been satisfied in full until that occurs. 7 And if it's not satisfied in full because the dividends 8 he receives in sterling aren't sufficient to do so, he 9 would have a non-provable claim by way of a currency 10 conversion claim. 11 Now, on that basis, the agreement would appear to 12 suggest that all signatories under the agreement are 13 entitled to be paid in US dollars and therefore those 14 who are not paid, regardless of the underlying currency 15 of their claim, would have a currency conversion claim. 16 My Lord, there are two ways of responding to that. 17 The first point is this: for the overwhelming majority 18 of signatories there's nothing remotely surprising in 19 this; their claims are already denominated in US dollars 20 and clause 24.1 had no substantive effect on them at 21 all. They would have had a currency conversion claim 22 absent the CRA, and the fact that the CRA simply 23 restated their claims in US dollars cannot possibly have 24 led to them releasing currency conversion claims. 25 We do make the point that that is particularly so if</p> <p style="text-align: center;">Page 148</p>

<p>1 you bear in mind the position when the CRA was entered 2 into. Sterling, as your Lordship knows, had already 3 depreciated by then against the US dollar. So if this 4 did involve creditors agreeing to convert their existing 5 US dollar claim into sterling, converted as at the date 6 of the administration, they were at that stage 7 effectively agreeing to take less than they were at that 8 stage owed. This wasn't on any basis a conversion which 9 would take place at the exchange rate at the date of the 10 agreement. So if there was an exchange, it necessarily 11 involved creditors releasing value which, although not 12 realised, was reflected in the different exchange rate 13 between US dollars and sterling on the date they entered 14 into the agreement and the exchange rate on the date of 15 administration.</p> <p>16 Now, my Lord, obviously the position is different 17 in relation to the minority of creditors who were not 18 previously in US dollars. On this construction it would 19 appear they would end up with a currency conversion 20 claim, in other words a right to payment in US dollars, 21 even if they didn't previously have one. One approach 22 is to say, well, that may not be an entirely surprising 23 outcome for the simple reason that these were only 24 a minority of creditors, and the extent to which anyone 25 focused on them is unclear.</p> <p style="text-align: center;">Page 149</p>	<p>1 "US dollar assumed where currency not known, 2 reflecting Lehman functional currency." 3 Now, this is obviously very much later.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR DICKER: But if one looks back to the CRA and asks 6 what was its intended effect, and if one assumes that 7 either the number of creditors whose claims were not 8 denominated in US dollars was regarded as extremely 9 small or, as this suggests, it may not have been 10 appreciated there were any at all, then perhaps it's not 11 surprising that for those tiny minority their claims are 12 denominated in US dollars with the consequences that 13 would flow.</p> <p>14 MR JUSTICE DAVID RICHARDS: I suppose, just a practical 15 point, but do we know whether there are any creditors in 16 this position, ie who had underlying claims in 17 a currency other than US dollars which were then 18 converted into US dollars for the purposes of the CRA?</p> <p>19 MR DICKER: Your Lordship, I think, correctly is looking to 20 my learned friend Mr Trower.</p> <p>21 MR JUSTICE DAVID RICHARDS: It may be, Mr Trower, you're not 22 quite sure, in which case --</p> <p>23 MR TROWER: I certainly can't answer that question for sure 24 now, but I'll ask over the adjournment.</p> <p>25 MR JUSTICE DAVID RICHARDS: In any case, Mr Dicker, I think</p> <p style="text-align: center;">Page 151</p>
<p>1 I say that because of this: if your Lordship goes to 2 bundle 6, page 1 is interestingly a recent document. 3 It's what's described in the skeleton argument as the 4 administrator's surplus entitlement proposal, dated 5 10 March 2014. Your Lordship sees that from bundle 6, 6 page 1.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR DICKER: The relevant page I was going to show 9 your Lordship is page 26. It's headed "Claims by 10 agreement type. Currency and termination date CRA". 11 And then as at 14 February 2014, those claims are 12 identified and the currencies are set out along the top, 13 US dollars, euro, GBP, other. And what your Lordship 14 will see, interestingly, is that 100 per cent of the 15 claims are referred to as being in US dollars. And if 16 you go down to the key assumptions, the last two key 17 assumptions are, firstly:</p> <p>18 "Currency refers to currency of master agreement, 19 balance, underlying net claim, not deed currency." 20 In other words, when it says 100 per cent of US 21 dollar claims, this isn't simply because everyone 22 pursuant to the CRA is entitled to US dollars, this 23 appears to be saying, "We think everyone's underlying 24 claim was a US dollar claim". The only exception to 25 that is from the last bullet point:</p> <p style="text-align: center;">Page 150</p>	<p>1 we can be confident that nobody thought about this 2 because we know that the administrators gave no thought 3 at all to currency conversion claims. It just wasn't in 4 their minds at all. So I think your point is as 5 a matter of evidence quite correct.</p> <p>6 MR DICKER: And I suppose I'm going slightly further in the 7 sense that one's trying to determine what the parties 8 are to be taken as having intended.</p> <p>9 MR JUSTICE DAVID RICHARDS: Of course, in which case we 10 can't really have regard to what the administrators' 11 evidence is now as to what was going through their 12 minds.</p> <p>13 MR DICKER: Absolutely. On that point, objectively, one 14 might say, if by the material that was available, 15 properly available, it was obvious that the functional 16 currency of LBIE was US dollars, the overwhelming 17 majority of claims against LBIE were in US dollars, the 18 assets were in US dollars, and one was only talking 19 about a minority of creditors, one might perhaps reach 20 the conclusion that objectively, if the price of 21 achieving a common currency which was required 22 effectively to ensure the trust assets were fairly 23 distributed, et cetera, was that you had to restate 24 everyone into a currency, you did it in US dollars and 25 if the consequence of that was that a small minority got</p> <p style="text-align: center;">Page 152</p>

<p>1 a currency conversion claim, so be it.</p> <p>2 Now, the other approach, we say the only other</p> <p>3 approach, is to say, well, although it uses the</p> <p>4 expression "new claim", you don't give full force and</p> <p>5 effect to that because this wasn't really a new, an</p> <p>6 entirely new claim, it was essentially a compromise of</p> <p>7 existing claims. And as I'll show your Lordship, there</p> <p>8 are circumstances in which the agreement certainly</p> <p>9 envisages you continuing to refer to the provisions of</p> <p>10 your underlying existing claims for the purposes of</p> <p>11 various aspects of the agreement.</p> <p>12 So our submissions are essentially either the</p> <p>13 agreement does what it says and it's in US dollars. If</p> <p>14 it isn't, the alternative is effectively you go back to</p> <p>15 the currency of their underlying entitlements. Now,</p> <p>16 in that situation, the underlying entitlements of a US</p> <p>17 dollar claimant mean that he would have kept his US</p> <p>18 dollar currency conversion claim, but equally, in this</p> <p>19 situation, underlying entitlements of a euro or a yen</p> <p>20 creditor, which also appreciated against sterling, they</p> <p>21 would effectively retain their currency conversion claim</p> <p>22 under the CRA. That's essentially by going backwards.</p> <p>23 What we say is impermissible, and I'll deal with</p> <p>24 this in a few moments, is essentially to say the answer</p> <p>25 is to be found in construing the CRA as effectively</p> <p style="text-align: center;">Page 153</p>	<p>1 something similar. They say at paragraph 180, sub 3 and</p> <p>2 4, that although it is a new claim, it is granted in</p> <p>3 circumstances where it is known that the right will be</p> <p>4 converted into sterling. So the same sort of argument</p> <p>5 would run. We say that's incorrect for three reasons.</p> <p>6 Firstly, the CRA is not limited to distributions by</p> <p>7 means of proof. It could have included a scheme of</p> <p>8 arrangement or CVA. Your Lordship's already had that</p> <p>9 point. The consequence is that when you say it's only</p> <p>10 for the purposes of proof, not necessarily.</p> <p>11 Distributions could have been made by way of a scheme.</p> <p>12 My learned friend, I think, informed you at the time of</p> <p>13 the CRA certainly the administrators were still thinking</p> <p>14 in terms of a scheme or arrangement or CVA, and</p> <p>15 obviously one possibility is that the scheme or</p> <p>16 arrangement could have been in US dollars as indeed the</p> <p>17 original trust proposed scheme was in US dollars.</p> <p>18 The second point concerns the reverse position</p> <p>19 in relation to a net financial liability, which is owed</p> <p>20 by a signatory to LBIE. This argument essentially</p> <p>21 assumes that one is talking effectively about the other</p> <p>22 side of the coin. So it's worth looking at the nature</p> <p>23 of LBIE's claim against a signatory. Now, in that</p> <p>24 respect I've already made the point there's no provision</p> <p>25 for conversion of the net financial liability into</p> <p style="text-align: center;">Page 155</p>
<p>1 rolling everyone forward, as my learned friend Mr Trower</p> <p>2 suggested, into some form of sterling claim, because</p> <p>3 it's perfectly plain, we submit, that was not what the</p> <p>4 CRA did.</p> <p>5 So the two options are either everyone gets a US</p> <p>6 dollar claim, and for better or worse everyone has</p> <p>7 a currency conversion claim; it may in practice simply</p> <p>8 not matter given the amounts at stake so far as those</p> <p>9 not denominated in US dollars are concerned. The</p> <p>10 alternative is that's not the effect of the agreement</p> <p>11 and one can still look through to underlying</p> <p>12 entitlements.</p> <p>13 So far as the second is concerned, it's easier,</p> <p>14 I think, to form a view on that after your Lordship has</p> <p>15 seen some more provisions of the CRA.</p> <p>16 Now, one argument that is made in slightly different</p> <p>17 ways by the administrators and Wentworth is that any</p> <p>18 currency conversion only exists for the purposes of</p> <p>19 receiving a dividend out of the estate, and that</p> <p>20 essentially, I think, was the foundation of my learned</p> <p>21 friend Mr Trower's submission as to why everyone lost</p> <p>22 their currency conversion claims, because essentially</p> <p>23 you look forward to a sterling claim which you're only</p> <p>24 ever going to get out of the estate.</p> <p>25 Wentworth also says in its skeleton argument</p> <p style="text-align: center;">Page 154</p>	<p>1 sterling even in any embryonic sense. There's simply</p> <p>2 clause 85, which requires any payment to LBIE to be made</p> <p>3 in US dollars.</p> <p>4 There is one provision which may be relevant, as</p> <p>5 I said, to the second way of approaching this, and it's</p> <p>6 clause 33 of the CRA. Your Lordship has that at</p> <p>7 page 371.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR DICKER: Dealing with non-financial contract liabilities.</p> <p>10 I'll come back to these, but just picking up the point</p> <p>11 at this stage. It's in 33.3:</p> <p>12 "Conversion of ascertained non-financial contract</p> <p>13 liabilities into US dollars. For the purposes of</p> <p>14 part 11 ascertained non-financial contract liabilities</p> <p>15 shall be denominated in US dollars. To the extent that</p> <p>16 any such liability is denominated in a currency other</p> <p>17 than US dollars, the company shall convert such</p> <p>18 ascertained non-financial contract liabilities into US</p> <p>19 dollars using the spot rate as at the relevant FX</p> <p>20 conversion time."</p> <p>21 Then this:</p> <p>22 "For the avoidance of doubt the conversion of such</p> <p>23 ascertained non-financial contract liabilities into US</p> <p>24 dollars for the purposes of part 11 shall not prejudice</p> <p>25 any of the company's rights to take any action against</p> <p style="text-align: center;">Page 156</p>

<p>1 the signatory outside this agreement in respect of any 2 non-financial contract liabilities denominated in their 3 original currency." 4 So that appears to envisage a situation in which 5 LBIE, despite the provisions of clause 5, despite having 6 released and got in exchange effectively the negative 7 net financial liability denominated in US dollars, 8 nevertheless can take action against the signatory 9 outside this agreement in respect of any non-financial 10 contract liabilities denominated in their original 11 currency. 12 MR JUSTICE DAVID RICHARDS: Yes. 13 MR DICKER: My Lord, the third point concerns the 14 distribution and appropriation provisions that my 15 learned friend Mr Trower took you to. Our short point 16 in relation to this is, these demonstrate that the net 17 financial claim does not exist only for the purposes of 18 receiving dividends from the estate. 19 Your Lordship has seen the way in which the 20 close-out amount produces a net contractual position, 21 which becomes your net financial claim, either positive 22 or negative. But there are then provisions dealing with 23 allocations and distributions which operate before, as 24 my learned friend Mr Trower mentioned, you ever get to 25 the stage of an ascertained claim being fed into some</p> <p style="text-align: center;">Page 157</p>	<p>1 assets to reduce such signatory's distribution 2 liabilities to the company in full or in part." 3 And part 11 contains complicated provisions dealing 4 with how such appropriations towards distribution 5 liabilities can occur. 6 My Lord, then if your Lordship goes to 54.3.6, 54.3: 7 "Effect of appropriation of distribution assets. 8 The effect of appropriation of distribution assets 9 differs depending on the type of distribution asset. 10 The effect of appropriation for each type of 11 distribution asset shall be." 12 And then 54.3.6: 13 "For any net financial claim to reduce the net 14 financial claim of the relevant TA signatory by such 15 amount as is equal to the appropriated amount of the net 16 financial claim." 17 MR JUSTICE DAVID RICHARDS: Just hold on. 18 (Pause). 19 MR DICKER: My Lord, I think the point will become clearer 20 if your Lordship goes on to 60. 60 is appropriation of 21 distribution assets to reduce distribution liabilities. 22 So again, this idea, the signatory is owed 23 a distribution asset, LBIE can apply that but 24 appropriate it in discharge of a distribution liability 25 owed by the signatory to LBIE.</p> <p style="text-align: center;">Page 159</p>
<p>1 form of winding-up or other process. 2 My Lord, it'll take me a couple of minutes to deal 3 with this. 4 MR JUSTICE DAVID RICHARDS: Certainly. 5 MR DICKER: Is your Lordship happy to do it? 6 MR JUSTICE DAVID RICHARDS: Yes. 7 MR DICKER: If your Lordship goes to clause 54, there's in 8 54 a provision dealing with distribution assets, and the 9 essence is that a signatory is entitled to receive 10 assets or payments from the estate, and they're called 11 distribution assets. There's also a concept of 12 distribution liabilities, which is clause 55. These are 13 obligations of a signatory to make payments to LBIE. So 14 you have both distribution assets, which is what 15 a signatory can get by way of assets from LBIE, and the 16 concept of distribution liabilities, which are 17 obligations which the signatory owes to LBIE. 18 Distribution assets are distributed to the signatory 19 subject to the right of LBIE to appropriate such assets 20 towards the distribution liabilities. In other words, 21 effectively an appropriation and discharge. 22 Your Lordship sees that from clause 52.1, page 390: 23 "The company will determine distribution as 24 a distribution asset to a signatory subject to any 25 rights of the company to appropriate any distribution</p> <p style="text-align: center;">Page 158</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes. 2 MR DICKER: 60.1.5 at the top of 405: 3 "If the net financial claim exceeds the limited 4 ascertained non-financial contract liabilities then the 5 limited ascertained non-financial contract liabilities 6 will reduce in full in accordance with clause 60.1.4 and 7 any remaining amount of net financial claim after 8 appropriation in accordance with 60.1.4 shall become an 9 ascertained claim." 10 So the concept -- what's going on here is you can 11 have a non-financial contract liability and effectively 12 that can be set off against your net financial claim to 13 produce an ascertained claim, which is then all that's 14 eligible, obviously, for any distribution to be fed in 15 any subsequent distribution mechanism. Obviously, this 16 intermediate stage under the CRA would also appear to be 17 something which the CRA envisages occurring in US 18 dollars because everything under the CRA is in US 19 dollars. So when Wentworth and the administrators say 20 that the only function of a net financial claim is -- 21 the only thing that can happen to it is that it ends up 22 in a winding-up, that does ignore this intermediate 23 stage, which is your US dollar net financial claim can 24 effectively be set off against a limited ascertained 25 non-financial contract liability.</p> <p style="text-align: center;">Page 160</p>



<p>1 MR JUSTICE DAVID RICHARDS: And they too are all converted                  2 into US dollars?                  3 MR DICKER: As I understand it, yes.                  4 MR JUSTICE DAVID RICHARDS: So your point is that the net                  5 financial claim, being a figure denominated in US                  6 dollars, exists for the purposes of set-off as well as                  7 distribution?                  8 MR DICKER: Yes. In other words, what comes out of -- you                  9 don't have your close-outs on net contractual position,                  10 net financial claim, and then effectively say, okay,                  11 I've got something, but the only thing I can ever do                  12 with that is convert it into sterling for the purposes                  13 of being fed into the subsequent distribution process.                  14 There's actually something in the CRA which may occur                  15 before you get to that stage.                  16 MR JUSTICE DAVID RICHARDS: Is a set-off?                  17 MR DICKER: Yes.                  18 MR JUSTICE DAVID RICHARDS: Under the Insolvency Rules, if                  19 you have cross-claims in that way, which happen to be in                  20 US dollars, do you set them off in US dollars, arrive at                  21 a dollar figure, and then that's the amount which is                  22 admitted to proof and converted into sterling? Is that                  23 how --                  24 MR DICKER: My Lord, I don't know the answer to that.                  25 MR JUSTICE DAVID RICHARDS: It is the net amount, isn't it,</p> <p style="text-align: center;">Page 161</p>	<p style="text-align: center;">INDEX</p> <p style="text-align: right;">PAGE</p> <p>3 Submissions by MR ZACAROLI .....1                  (continued)                  4                  5 Submissions by MR DICKER .....114                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 163</p>
<p>1 after set-off which is admitted to proof? I think I'm                  2 right in saying. And 2.86 says for the purpose of                  3 proving a debt in the currency other than sterling. I'm                  4 sorry, it's probably an irrelevant question.                  5 MR DICKER: There may also be issues given the CRA                  6 post-administration.                  7 MR JUSTICE DAVID RICHARDS: I see the point you make there.                  8 yes.                  9 MR DICKER: My Lord, I wonder if that might be a convenient                  10 moment.                  11 MR JUSTICE DAVID RICHARDS: Certainly. Very well. 10.30                  12 tomorrow morning.                  13 (4.22 pm)                  14 (The hearing adjourned until 10.30 am the following day)                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 162</p>	

<b>A</b>	<b>accepts</b>	127:11,13	56:2,4,10	55:14	9:4,13,15	137:15,17
<b>ability</b> 13:24	43:21 65:8	127:14	57:10,13	57:10 59:6	12:19,22	137:18
96:17	121:13	131:9	58:4 61:25	62:8,10,12	13:10,12	140:9,21
<b>able</b> 43:1	<b>access</b> 50:16	133:11	62:18,19	66:13	13:18,21	161:22
63:24	105:8	<b>action</b> 12:1,3	64:4 66:9	77:13 82:3	19:8,9,11	162:1
<b>absence</b> 2:21	<b>account</b>	156:25	81:12	100:1,11	19:16,18	<b>admitting</b>
2:25	115:15	157:8	101:17	114:4,20	19:19,20	62:16 66:6
129:17,20	128:13	<b>actions</b> 10:5	108:1	115:7	20:1,1,7,9	118:23
<b>absent</b>	<b>accounts</b>	10:13 12:8	109:12,13	118:24	20:15,16	<b>adopted</b>
148:22	4:24	<b>actively</b> 50:8	112:17,18	119:12,19	21:12,14	64:8 119:8
<b>absolutely</b>	134:24	<b>actual</b> 7:10	112:21	120:2,5	21:15,17	<b>advanced</b>
16:15 17:6	<b>accrue</b> 71:22	99:21	117:21,22	130:12,14	21:20	3:15 6:25
29:4,7 94:4	72:23	<b>add</b> 27:11	132:20	130:18,24	38:13,16	120:9,11
120:7	<b>accurate</b>	112:12	134:9,13	131:3,9	38:23 39:5	<b>advantage</b>
152:13	116:10	<b>addition</b>	135:11,16	132:2,5,14	39:16,21	33:20
<b>accelerate</b>	<b>achieve</b> 38:1	63:10	135:19,24	132:20	40:9,12	<b>advantages</b>
30:19	38:7 48:21	<b>additional</b>	136:10	133:25	41:4,10,11	76:18
<b>accelerating</b>	66:11 75:6	20:20	140:11	134:2	41:17,18	<b>advice</b> 46:7
31:11	119:7	85:10	144:18,20	135:5,10	56:1,6,10	50:17
<b>accept</b> 18:25	132:2	120:15	144:23	135:15,21	56:11,15	<b>affect</b> 23:9
19:17	<b>achieved</b>	<b>addressed</b>	149:6,15	136:5,9	57:1,1,9,21	23:13 60:7
20:14	84:12	62:11	<b>administr...</b>	137:18	58:4,8,11	64:12,17
22:20	114:7	65:21 75:1	47:2,10	138:13	58:19,20	<b>affiliates</b>
26:23	132:2	<b>adjacent</b>	48:8 66:3	140:17	58:24	50:12
27:12	<b>achieves</b>	96:13	66:10	141:20,23	64:14	<b>affirmed</b>
28:21 32:4	19:24	<b>adjourned</b>	105:25	152:2,10	67:21 68:2	65:3
35:19	<b>achieving</b>	162:14	<b>administr...</b>	154:17	68:4 78:23	<b>afternoon</b>
68:12	47:6 60:19	<b>adjournm...</b>	9:18 11:14	155:13	79:4 82:19	113:23
86:11	84:11	89:9	13:1 14:8	160:19	83:12,16	<b>aggregate</b>
88:20	119:5	151:24	14:10	<b>administr...</b>	83:20	70:23
111:14	135:10	<b>adjudicate</b>	25:23	119:9	84:21	71:17 99:9
112:5,23	136:10	131:2	29:21 30:3	120:16	85:23,24	143:20
112:24	152:21	<b>adjudicati...</b>	30:12	150:4	86:3,4,6,11	<b>aggregated</b>
113:9	<b>acknowled...</b>	32:23	32:17 33:4	<b>admissible</b>	86:18	50:12 54:2
<b>acceptable</b>	8:21	119:9	35:3,14,19	57:12,17	87:11,13	54:2
3:13	<b>acquire</b>	120:17	36:2,2,14	57:25 58:3	87:17,18	<b>aggregator</b>
<b>acceptance</b>	116:24	<b>administr...</b>	37:15 43:1	58:15	87:22,24	54:3 89:11
22:8	<b>acquired</b>	6:25 11:6,8	43:12	59:18	88:4,9,15	90:24
108:14	118:15	11:24 22:7	44:20,21	127:11	89:19,22	93:20,23
113:3,10	<b>act</b> 6:19	23:25 32:6	45:20,25	140:10	90:1,10	93:24 94:5
<b>accepted</b>	10:19 14:1	32:20	46:2,4,13	<b>admission</b>	91:1	94:16 95:3
16:10 22:2	19:10 20:4	34:20	46:21,23	45:3	102:20	96:4 97:8,9
48:13	24:22	35:25	47:14,17	<b>admit</b> 47:25	108:11,12	97:13
65:14	45:24 46:2	36:16	48:19 49:4	48:4 56:24	108:15	<b>aggregators</b>
110:13	46:25	39:18	49:25	<b>admittance</b>	109:15	50:8 89:15
<b>accepting</b>	48:11,14	41:14	50:10,22	132:7	110:2,9,13	<b>ago</b> 51:15
59:12	56:19 59:6	42:10 43:4	51:6,21,23	<b>admitted</b>	120:9,12	53:4
76:18	105:19	43:7 47:4,8	51:25	5:12,19	121:21	<b>agree</b> 8:16
141:21	117:20	51:1 55:6	54:21 55:5	6:14 8:24	132:6	28:17 42:1

57:5 64:24	138:4,8	82:12 83:8	103:25	6:6 7:3 9:1	148:2,5	153:24
80:15	144:3	84:15 85:6	104:5	9:2,5,10,16	157:20	161:24
82:22 86:8	<b>agreeing</b> 6:4	85:15	105:22	9:16 20:9	159:15,15	<b>answer's</b>
90:25 98:9	37:10 90:6	86:23 87:9	114:6,9,13	20:10	160:7	18:15
98:10	99:6	87:16,17	114:18	21:15	161:21,25	<b>anticipate</b>
102:8,11	106:23	88:18	130:13,17	24:16 27:3	<b>amounted</b>	132:21
104:19	115:3	90:14,15	131:7,22	37:8 40:9	122:15	<b>antithesis</b>
122:25	141:17	90:20	131:25	48:1,8	<b>amounts</b>	131:3
140:21	149:4,7	91:14	132:15,18	64:15	45:8 69:8	<b>anybody</b>
145:19	<b>agreement</b>	92:12,13	133:14	65:11,16	70:17,23	27:5
<b>agreed</b> 5:19	6:2,5 8:2,3	92:14	<b>agrees</b> 11:23	70:10,15	71:17 84:3	<b>anyone's</b>
6:5 9:2,4	8:5,18,21	94:20	15:10 68:3	70:16,16	91:1	52:9
9:10,10,16	9:9 10:23	95:10,16	100:16	70:19 71:3	107:19,19	<b>anyway</b>
20:9 21:15	11:2,5,5	95:23 96:2	<b>aid</b> 50:18	72:1 74:3	107:23	27:25
31:20	13:4,21	96:6,10,20	<b>Ali</b> 1:4 3:7	74:14	143:20,21	35:21 53:5
38:13 40:9	15:6,8,19	98:18,19	11:12,20	79:12,15	144:6,10	88:14
42:5,9,19	17:16,18	98:19	16:1,9	79:20 80:6	154:8	92:22 93:8
42:25	17:25 18:2	100:15	26:12	80:16	<b>analysed</b>	<b>apart</b> 89:18
43:10,17	18:14,22	101:6	123:6	82:25 85:3	42:12	112:16,18
43:18	23:3 25:22	103:11,13	<b>alia</b> 6:21	85:25 86:9	<b>analysis</b>	117:20,22
52:15	26:16 27:8	104:1,2	<b>Allied</b> 49:1	86:12,20	39:24	142:20
64:15 68:2	29:22	109:16,23	<b>allocations</b>	86:21 87:4	114:23	<b>apology</b>
78:3,17	30:11,20	109:23	70:6 147:4	87:18,19	118:21	27:20
79:6,12,15	31:8 32:3	110:1,5	157:23	87:20,22	<b>analytical</b>	<b>apparent</b>
79:20	32:20	111:4,6	<b>allowed</b>	88:8 90:7	41:22	93:3
82:24,25	39:22 40:1	125:3	59:15	90:11 91:2	<b>and/or</b> 7:13	115:23
83:16 85:3	40:2,5,8,11	127:10	113:2	92:18 93:1	7:19,20	<b>apparently</b>
85:3 86:2,3	40:14,23	128:12,14	129:8,15	93:1 98:21	11:14,14	23:23
86:10,12	41:2,6	133:16,23	<b>allows</b> 12:15	98:23	67:16	121:12
86:20,21	42:20,22	142:14	<b>all-embra...</b>	99:10,11	81:25 82:3	123:3,20
86:25 87:3	44:1,5	143:3,8,12	123:20	99:17,18	82:4,5 99:8	<b>appeal</b> 3:7
88:18,24	45:12	143:17	<b>alternative</b>	100:14,17	99:14	65:3,7
89:2,19	55:15 57:1	146:6	43:15	104:11,20	100:7,10	114:15
90:6,11	57:6,8	147:7,10	56:14	104:21	100:10,18	126:22
91:1 93:1	58:14 59:4	148:11,12	153:14	107:13,24	105:5,10	127:7,16
107:10,11	59:12	149:10,14	154:10	109:2,24	105:22,25	127:22
107:13,13	64:16,16	150:10,18	<b>alternativ...</b>	110:12	105:25	128:24,25
109:20,24	64:17,23	153:8,11	118:15	111:2	<b>announced</b>	129:7,15
110:11,11	68:1 70:7	153:13	<b>ambiguity</b>	117:3	30:12	<b>Appeal's</b>
111:3	70:10,18	154:10	128:3,7,9,9	120:4	<b>anomalous</b>	129:14
116:22	71:13,16	157:1,9	129:21	130:24	134:9	<b>appear</b>
117:3	72:13	<b>agreements</b>	130:8	138:16	136:25	112:2
120:5,9,12	75:17,18	70:2,22	<b>amend</b>	140:20	<b>answer</b>	125:13
121:21	75:24 76:3	79:1 80:22	120:15	141:19	53:25	147:24
127:16	77:2,8,16	81:13,15	<b>amended</b>	143:7,19	60:22	148:11
133:7,11	78:24 79:9	81:18,19	6:20 56:20	143:23	66:17	149:19
133:18	80:14,15	82:23 83:9	<b>amendme...</b>	144:11	114:18	160:16
134:15	81:5,6,17	99:8 100:8	78:17	145:14,18	117:23	<b>appears</b>
137:17	81:23	100:19	<b>amount</b> 5:20	146:5	151:23	38:2 79:17

122:4	<b>appropriate</b>	<b>arguments</b>	155:16	76:14	<b>assume</b> 80:7	22:3 30:18
132:12,22	15:3	33:12 66:1	<b>arrive</b> 48:9	79:10	80:8 86:12	56:18
133:13	118:10,17	68:9,24	161:20	81:24,25	109:23	76:10
150:23	134:14	89:24	<b>arriving</b>	82:4,5,13	134:7	98:12
157:4	137:11	<b>arisen</b> 11:7	37:25	83:4 99:19	<b>assumed</b>	102:13
<b>appendix</b>	158:19,25	<b>arises</b> 4:13	70:18	144:20	151:1	152:14,15
13:5,8	159:24	25:5 35:23	<b>ascertain</b>	158:24	<b>assumes</b>	<b>avoid</b> 30:11
81:10	<b>appropria...</b>	39:8,16	140:20	159:9,11	151:6	55:5
<b>applicable</b>	159:15	43:22	<b>ascertained</b>	159:23	155:21	<b>avoidance</b>
6:20 56:20	<b>appropria...</b>	72:14	63:12 70:9	<b>assets</b> 45:21	<b>assuming</b>	21:7 23:8
112:16	157:14	78:20 85:7	73:5,7,16	46:1,3	18:2 52:10	62:12
117:20,22	158:21	107:11	76:6	62:20	<b>assumption</b>	71:19 79:9
143:25	159:7,8,10	124:4	104:24	66:22 67:1	80:3 96:5,8	142:20
<b>application</b>	159:20	<b>arising</b> 6:10	108:5	73:9 76:10	131:8	156:22
41:19	160:8	7:11 10:15	109:3	76:20,21	<b>assumptions</b>	<b>avoids</b> 30:25
52:25	<b>appropria...</b>	10:17,23	116:4	98:5 108:7	102:10	31:6
<b>applied</b> 76:9	70:6 147:4	17:13,16	143:7	115:2,7,24	104:10	<b>award</b> 129:1
113:11	159:4	17:17	146:5,7,8	116:1,7	150:16,17	129:2,6,7
<b>applies</b> 8:22	<b>April</b> 51:22	18:22 34:9	147:8	130:19,20	<b>attention</b>	129:15,16
109:19	<b>apt</b> 123:19	40:14 44:4	156:12,14	134:17	12:13 30:3	<b>aware</b> 2:24
111:7	<b>arbitrarily</b>	65:4 79:1	156:18,23	138:19	146:25	118:10
140:4	131:5	83:8 90:19	157:25	139:13,15	<b>attitude</b>	125:21
<b>apply</b> 4:19	<b>arbitrators</b>	92:11 95:9	160:4,5,9	139:23	52:22	
56:24	129:1,2,6,8	95:15,23	160:13,24	142:2	<b>attribute</b>	<b>B</b>
120:11	129:16,20	98:15	<b>ascertaining</b>	146:9	19:8,18	<b>B</b> 5:25 47:5
124:10	<b>arguing</b>	100:7	115:13	152:18,22	20:15	78:24 84:6
159:23	22:17	105:17,21	138:16	158:8,10	38:23	90:3,3 95:8
<b>applying</b>	<b>argument</b>	107:2	141:10	158:11,14	39:15 41:2	98:1
63:1	12:13	125:7	<b>ascertain...</b>	158:15,18	41:4,16	101:13
<b>appreciated</b>	14:25	<b>arm's</b> 44:19	140:15	158:19	42:13	103:18
151:10	15:15 17:8	45:16	<b>asked</b> 18:12	159:1,7,8	109:6	126:8
153:20	23:13 24:6	<b>arose</b> 36:15	26:20	159:21	<b>attributes</b>	<b>back</b> 7:6 8:1
<b>appreciati...</b>	37:13	36:19	<b>asks</b> 117:21	<b>assignability</b>	19:16,20	10:10 12:4
122:24	45:15	39:22 40:1	151:5	31:16	21:11,18	12:17
<b>approach</b>	49:25 53:7	122:24	<b>aspect</b> 51:19	<b>assigned</b>	38:12,15	21:21
4:7 26:4	67:10	<b>arrangem...</b>	61:20	13:13	38:25 44:1	25:24
30:1,6,14	74:11	6:21,22 7:1	73:23	14:19	51:5 67:24	39:23
31:13,19	84:22	9:1 24:19	<b>aspects</b>	53:15,22	<b>authorities</b>	51:10,17
35:8 36:6	88:22	24:20	44:15,18	83:14	1:5 3:3,14	53:7 59:8
36:25 37:7	92:15	32:21,22	121:3	97:11	126:6	65:13,23
37:25	100:13,19	43:14,16	153:11	<b>assignment</b>	127:1	67:21
50:10 53:8	109:19,21	47:20 56:2	<b>asserted</b>	12:25 14:6	131:16	68:16
54:14	111:11	57:22	96:4	<b>assignor</b>	<b>authority</b>	84:19
123:25	112:12,15	58:16	<b>assertion</b>	97:11	2:20	107:5,17
149:21	118:14	59:14,14	37:20	<b>assist</b> 60:8	126:18	109:7,10
153:2,3	129:11	73:13,18	50:21	63:21	131:19	113:11
<b>approachi...</b>	150:3	73:18	<b>asset</b> 7:13,20	113:13	<b>avail</b> 31:18	118:1
26:13	154:16,25	99:22,22	7:21,22	130:14	<b>available</b>	136:1,11
156:5	155:4,20	155:8,14	75:20	<b>assists</b> 31:10	6:18 20:3	142:4

144:7	119:1,2	67:4,5,12	<b>bound</b> 13:1	113:11	138:21	24:20 25:6
151:5	139:4	67:16,19	43:3,14	<b>Browning</b>	147:6	46:23 47:4
153:14	<b>basically</b>	116:14	<b>box</b> 29:25	141:21	<b>calculating</b>	49:4,8 51:2
156:10	97:19	130:25	<b>brackets</b>	<b>Browning's</b>	35:17	51:12
<b>backdrop</b>	<b>basis</b> 23:3	135:20	11:17	137:4	<b>calculation</b>	66:23 67:5
130:16	24:12 25:1	<b>benefiting</b>	<b>breach</b>	<b>Buckley</b>	63:12	67:11,20
<b>background</b>	25:6 31:12	66:4	10:18	51:14	99:14	67:22 69:1
26:9,16	66:7 70:7	<b>benefits</b>	103:10	122:19	105:4	71:10 79:7
32:11	102:10	30:21,23	105:18	<b>bulk</b> 68:9	<b>calculations</b>	79:24
44:16	104:9	31:4 33:19	<b>breadth</b>	<b>bullet</b> 29:19	105:9	80:12 81:6
45:11	110:2,20	54:23	29:9	29:25 31:3	<b>call</b> 53:21	84:17 88:9
51:19	143:3,11	66:15	<b>break</b> 44:8	31:5,14	116:9	94:4 95:20
74:23,25	143:16	76:25	44:13	63:15	<b>called</b> 1:11	96:18
79:19	148:11	<b>best</b> 45:13	113:21,25	150:25	51:2	97:20
108:25	149:8	<b>better</b> 47:6	<b>briefly</b> 17:22	<b>bundle</b> 1:5	158:10	104:12
124:19	<b>batch</b> 44:22	154:6	48:18	5:13 23:1	<b>capable</b>	105:14
126:2	<b>BCCI</b> 1:4,10	<b>beyond</b>	118:20	29:13,16	50:24 56:8	109:15
128:12	3:7 11:12	55:10	121:25	29:17	56:23	111:4
130:10	11:20 16:1	82:15	138:1	32:10	57:18 59:1	115:22
132:10	16:9 26:12	<b>bilateral</b>	<b>bring</b> 12:1	45:15 62:4	59:1	121:16
134:6	123:6	32:2	59:13,15	68:25	<b>capacity</b>	122:13,22
137:9	<b>bear</b> 48:24	<b>billion</b> 50:14	75:21	69:18 73:6	46:2	123:2,10
138:1,3	149:1	114:11	114:14	78:4,7,9	<b>capital</b> 7:4	124:18
<b>backwards</b>	<b>bearing</b>	<b>billions</b>	<b>bringing</b>	103:3,3	10:4	130:13
153:22	77:20	49:15	55:6	109:21	<b>careful</b>	133:22
<b>balance</b>	<b>beginning</b>	<b>Bingham</b>	<b>broad</b> 23:24	115:19	32:16	137:8
150:19	5:24 67:22	1:18 2:11	60:21	123:8	145:20	151:22,25
<b>Bancaire</b> 8:4	93:3	2:14 26:12	61:19 73:5	126:6,25	<b>carries</b>	152:9
<b>banking</b>	127:18	27:2 60:24	73:14	127:1	19:11,21	<b>cases</b> 3:12
49:21	<b>begins</b> 13:8	125:17	82:17	128:18,19	22:7	30:8 69:4
<b>banks</b> 49:20	29:17	128:11	90:12 91:8	135:8	<b>carry</b> 22:6	122:8
<b>bar</b> 12:3	135:12	<b>Bingham's</b>	98:16	137:5	114:4	<b>category</b>
<b>bargaining</b>	<b>behalf</b> 16:10	2:6 3:2	103:23	140:1	139:9	49:18 56:3
49:6,7	47:20	125:15	123:4	142:8	<b>carrying</b>	<b>caught</b> 4:12
<b>bargains</b>	<b>believe</b> 8:4	<b>bit</b> 68:22	147:14,22	150:2,5	121:12	124:3
44:19	32:12	<b>blanked</b>	<b>broader</b>	<b>bundles</b>	130:14	<b>caused</b> 5:3
45:17	<b>beneficial</b>	80:4,7	10:6 24:21	126:17	<b>carve</b> 23:16	10:20
<b>bars</b> 86:18	7:13,19	<b>board</b> 87:11	56:3,3	<b>business</b>	<b>carved</b>	41:24
<b>based</b> 48:11	82:4	<b>books</b> 102:1	<b>broadly</b> 6:10	4:23	101:7	105:20
55:22 69:7	<b>beneficiari...</b>	<b>borrow</b> 19:6	7:5 22:12	144:18,22	<b>carve-outs</b>	<b>cautionary</b>
71:10 87:5	130:25	<b>bottom</b>	24:13	<b>B1</b> 46:25	5:22,23	3:16
89:20	<b>benefit</b>	81:13 83:7	69:25	47:21	<b>case</b> 1:8,17	125:15,22
140:5	33:19	84:17	71:14 75:5		1:21,25	<b>CDD</b> 5:12
<b>basic</b> 27:6	34:25 36:4	115:20	91:5 92:8	<b>C</b>	2:12 3:7	22:22
46:17	45:6 46:6	123:15	147:2	<b>C</b> 3:20 7:5	5:6,8,16	33:16
66:17	55:21	126:9,13	<b>brokerage</b>	10:4 90:3,6	8:2 11:20	38:24 39:4
69:17	60:10	129:4	104:1	101:15	16:6,14	39:4 52:10
70:20	65:20	<b>bought</b>	<b>brought</b>	<b>calculated</b>	17:3,24	59:23 60:1
90:10	66:19,23	89:15	62:22	63:11 64:2	18:16	64:20,21

65:8 66:6	140:16,25	<b>changes</b>	14:19	57:20,23	92:14,17	139:19,20
67:21 68:3	<b>cent</b> 150:14	90:2	15:18	57:24 58:1	93:1,8 95:9	140:10,10
78:3,23	150:20	<b>changing</b>	17:11,19	58:2,4,8,14	95:21 96:3	141:18
82:19	<b>central</b> 17:8	8:20	18:1,3,8	58:19,20	98:10,11	143:5,6,7
85:25 86:2	<b>Century</b>	<b>charges</b> 10:4	19:8,9,11	58:24,24	98:16,21	145:8,9
86:3,4,5,7	51:3,13	100:3	19:15,15	59:11,12	98:24 99:9	146:5,7,8
86:10 87:8	<b>certain</b> 38:6	<b>cheaply</b> 48:3	19:16,18	59:13 60:4	99:11,12	146:12
87:11 88:4	67:12 77:5	<b>check</b> 14:2	19:19,20	63:6,8,12	99:15,17	147:5,8,25
88:15,18	77:17 98:5	27:21	20:1,1,2,7	64:9,15,18	99:18,19	148:1,5,9
89:3,16,19	100:24	<b>choice</b> 72:8	20:9,10,15	64:22,24	99:24	148:10,15
89:20,22	101:1,4,19	<b>chooses</b>	20:16	65:8,9,10	100:17	148:15,21
90:1 93:19	101:21	119:21,23	21:12,14	65:13	102:9,20	149:5,20
94:6,17	102:10,21	<b>chose</b> 42:19	21:15,15	67:12 68:2	103:23	150:19,24
97:8,9,9,18	102:23	<b>chosen</b>	21:17,20	68:3,3,4	104:8,8,11	150:24
100:23,23	103:1,14	28:16 29:2	21:22 22:2	69:2,7,9,11	104:13,20	153:1,4,6
101:9,11	105:13	29:6,8	22:5 23:19	70:8,9,9,18	104:21,24	153:18,21
103:15	139:6	135:23	24:17,18	71:4,7,11	105:5	154:2,6,7
106:18	141:19	<b>chronology</b>	25:3,9,17	71:14,16	106:3,12	154:23
107:1,11	<b>certainly</b>	60:17	31:10 32:3	71:23	106:13,15	155:2,23
107:13	54:10	<b>circular</b>	33:13,17	72:13 73:1	106:19,20	157:17,21
108:11,12	145:21	138:2	34:15,15	73:5,7,16	107:2,8,12	157:25
108:16	147:14	<b>circulated</b>	34:17	73:25 74:1	107:13	159:13,14
109:20	151:23	75:9	35:10 36:7	74:6,7,20	108:3,5,6	159:16
114:23	153:8	<b>circumsta...</b>	36:14,17	76:3,5,6,14	108:10,19	160:3,7,9
137:15,17	155:13	80:11	36:18,19	79:4,7,10	109:1,3,13	160:12,13
<b>CDDs</b> 5:19	158:4	<b>circumsta...</b>	38:11,21	79:12,15	109:18,24	160:20,23
21:6 37:21	162:11	4:13,15	38:22,23	79:20 80:5	109:25	161:5,10
44:19,24	<b>certainty</b>	28:11,13	39:1,5,11	80:9,18,20	110:2,9,11	<b>claimant</b>
52:7 53:14	30:24 38:2	57:23 67:3	39:15,16	80:25 81:1	110:11,12	116:2
54:2,2	38:5,7	67:12	39:21 40:8	81:21,24	110:13,19	153:17
55:22	76:22	84:25	40:9,9,14	82:2,24,25	110:22	<b>claimants</b>
64:14	<b>cetera</b> 10:13	100:24	40:20,21	83:1,12,16	111:3,6,14	63:7
68:23 75:6	12:8 15:3	122:22	41:2,5,10	83:16,20	111:15,17	<b>claimant's</b>
89:12	23:9 40:14	124:4,6	41:10,11	83:20 84:7	111:18,20	115:24
90:24 94:5	76:24	153:8	41:11,12	84:9,18,21	112:5,7	<b>claiming</b>
97:16,23	81:17	155:3	41:13,17	84:25 85:3	116:12,14	106:16
107:4	116:5	<b>claim</b> 4:11	41:18,20	85:3,7,15	116:24	<b>claims</b> 1:12
109:15	143:2	5:2,20 6:6	41:24 42:7	85:23,24	117:4,7,10	2:23 3:5,23
111:25	147:4	6:14,16 7:4	42:11,12	86:12,18	117:12	4:11,19,21
112:3,22	152:23	7:8,8,10,16	42:14,15	86:19,20	118:16	5:7,8,12,17
114:3	<b>Chadwick</b>	7:25 8:24	42:21,22	86:21,23	119:22	5:18,19,23
118:20,21	2:7	8:25 9:2,4	44:25 48:8	87:1,3,5,10	120:1,4,8,8	6:4,10,24
118:25	<b>challenge</b>	9:5,6,10,13	48:10,16	87:12,13	120:11,18	6:25 7:4,5
119:6,10	119:9	9:15,15,16	52:5,8,8	87:17,18	120:20,20	7:5 10:5,10
121:6,8	120:16	10:7 11:7	53:9,12,23	88:15,23	120:22,23	10:11 11:1
131:21	<b>change</b>	11:24 12:1	56:6,8,9,11	88:25	121:11,20	11:10,18
132:1,5	11:19	12:4,19,22	56:16,22	90:10,11	124:2	12:4 15:17
137:17,19	105:16	13:10,12	56:23 57:1	90:12,13	133:18	15:21,22
140:7,13	108:17	13:18,21	57:5,9,11	91:1,1	134:8	15:24 16:6

16:7,16	63:3,3,10	96:9,13	142:10,11	144:22	57:24	<b>collapse</b>
17:17,23	63:17,18	97:21 98:6	142:14,18	145:7	61:12,14	1:10
18:21 19:5	63:21,25	98:8,15	142:19,20	146:13,23	61:25	<b>column</b> 30:2
23:10,14	64:5,13,14	101:12,24	145:5,22	146:25	72:13	30:22
23:18,22	65:4 66:6,8	102:16,22	146:20,22	147:20	85:14	49:12 62:6
24:1,4,9,11	66:20 67:2	102:23,23	147:16,23	148:20	<b>client</b> 79:10	<b>come</b> 1:19
24:13,14	67:14,16	103:1,4,7,8	148:19,23	156:2,6	80:19,25	6:7 7:6
24:14,20	67:21,23	103:10,15	148:24	157:5	81:1,3 82:8	10:10 14:7
24:21,25	69:5,17,19	103:19	150:9,11	158:7,12	83:5,15,19	19:13 39:3
24:25 25:1	69:23,23	105:11,14	150:15,21	158:22	83:24 84:4	51:10 53:7
25:19	70:4 71:6	105:15	151:7,11	160:6	84:8 85:16	55:15 59:8
29:23 30:5	72:6,8,12	106:7,10	151:16	<b>clauses</b>	85:16,18	72:10,12
30:10,13	75:2,4 76:1	106:11	152:3,17	14:22 23:5	85:21,22	79:2 117:5
30:16,20	77:2,3,5,5	107:11,13	153:7,10	69:16	90:8	118:1
30:24 31:7	77:11,13	107:21	154:22	99:25	102:23	130:11
31:8,9,12	77:17,23	108:11,12	<b>clarifies</b>	107:18	105:11	131:7
31:20	78:3,23,25	108:16,23	28:1	125:11	108:23	133:14
32:17,19	78:25 79:6	109:15,20	<b>class</b> 12:7	127:15	110:11	142:4
33:7,11,18	79:7,11,14	110:25	16:6 25:2	142:12	<b>clients</b> 49:20	156:10
33:22,25	79:23	111:12	<b>clause</b> 1:16	<b>clean</b> 72:11	49:21,22	<b>comes</b> 19:25
34:1,3,6,9	81:19,22	112:3	1:18,20 8:7	<b>clear</b> 2:21,25	84:3	20:7 61:4
34:13 35:4	82:11,11	114:9,10	8:9 12:14	10:1 17:15	<b>client/cred...</b>	71:12
35:11 37:1	82:12,13	115:3,15	12:14,15	18:20 21:7	33:6	81:22
37:14,25	82:15,16	116:8,10	12:17,21	21:10	<b>close</b> 8:11	112:4
38:12,13	82:19 83:4	118:23	13:9 14:23	22:23	144:18,22	113:7
38:15,16	83:5,6,15	119:3,4,13	14:24 15:5	23:17 24:4	<b>closed</b>	146:2
39:11	84:3,5,23	119:18,19	15:6 16:9	28:23	101:12	161:8
43:20 45:1	85:5,5,7,12	119:22,24	16:12	37:23 44:2	<b>closer</b> 39:24	<b>coming</b> 9:8
45:3,22	85:13 86:2	120:25	19:23	45:8 53:25	41:8,9	11:9 24:9
48:1,4,13	86:3,4,5,6	121:2,2,4	21:13	58:9 68:11	<b>close-out</b>	71:15
48:21 50:9	86:10,11	121:18,18	22:22 23:5	94:3 97:24	70:14,16	73:16 74:6
50:13	87:11 88:4	121:22,23	23:7 24:5,8	119:6	70:23	100:9
51:23	88:15,18	122:18	26:19 40:6	121:14	71:17 74:3	105:23
52:11,12	89:3,15,16	123:5	40:17 44:3	131:12	75:25	141:5
52:14,20	89:17,19	124:2,10	52:17	136:4	107:19,19	<b>comment</b>
52:21,23	89:19,22	125:20	70:13 74:1	<b>clearer</b>	107:23,24	4:24
53:16,16	90:1,4,7,8	130:22	74:2 77:21	72:23	143:19,20	<b>commented</b>
54:5,6 55:2	90:16,17	132:3,6,9	82:17,18	109:22	143:21,23	115:5
55:4,10,10	90:17,19	132:25	83:11	159:19	144:6,10	<b>comments</b>
55:12,24	90:21,25	133:8,9,19	85:17	<b>clearly</b>	144:11	62:12
55:25 56:3	91:4,13	134:3,20	86:17	10:25	157:20	<b>commercial</b>
57:16	92:4,11,11	134:21	90:22 92:3	13:19	<b>close-outs</b>	45:17
58:18	93:10,12	135:7,22	99:4,4	17:17	161:9	<b>committee</b>
59:15,17	93:14,17	138:16	104:15,16	20:12	<b>Clyde</b>	50:7
60:3,10,12	93:20,22	139:15	110:8,9,24	24:10	124:23	<b>common</b>
60:13	94:1 95:4	140:21	112:3	33:16 36:3	<b>coherent</b>	7:11 10:18
61:11,16	95:14,15	141:10,18	116:23	38:24	130:3	64:1,2,3,7
61:23 62:7	95:15,21	141:21,22	142:14	43:22 44:5	<b>coin</b> 147:14	105:18
62:9,13	95:22,24	141:23	143:14,22	49:4,8	155:22	122:5

125:7	158:23,25	<b>concerned</b>	<b>confirms</b>	46:20	127:14	140:12
139:11	159:2	5:8 16:5	72:9	48:17 55:8	159:3	<b>contextual</b>
152:21	<b>company's</b>	24:1 25:19	<b>conjunction</b>	111:11	<b>contempla...</b>	45:10
<b>companies</b>	37:16 47:6	69:18 75:4	32:21	<b>consistently</b>	1:23 13:19	<b>contingent</b>
49:21	47:11 73:8	78:15	<b>connection</b>	131:9	15:23	7:10
135:1	146:9	79:14	13:12 79:8	<b>constitute</b>	52:15	<b>continue</b>
<b>company</b>	156:25	84:23 85:1	90:20	9:6 13:17	<b>contempla...</b>	12:1
6:3,5,8,16	<b>compare</b>	115:1	95:16,23	49:15	1:22 10:25	113:23
6:18,21	91:10	116:18	<b>consciously</b>	53:23 83:1	11:10	<b>continued</b>
7:12 8:3,15	<b>compared</b>	120:8,18	133:6	99:11,18	17:17	1:3 163:3
8:17 9:7,18	49:3,16	128:7,24	<b>consensual</b>	108:5	24:11 44:1	<b>continuing</b>
11:14,25	66:22	140:14	30:1,5,14	<b>construction</b>	44:5	18:8 153:9
12:2 13:1,3	142:1	143:10	31:18	3:9,21	<b>contempla...</b>	<b>contract</b>
20:3 22:3	<b>comparison</b>	145:23	50:10	14:25	3:24 11:13	8:17,22
32:22	92:7	147:9,16	54:14	19:23 20:6	44:23	10:19
35:10,10	<b>complain</b>	154:9,13	138:12	21:13 26:4	51:24 52:6	14:22 15:7
36:15,20	74:13	<b>concerns</b>	<b>consent</b> 14:6	64:20	52:9 92:11	16:18,23
47:7,14,20	111:1,2	93:25	14:9 31:21	75:13	100:10	17:2 26:5
56:18	<b>complete</b>	116:20	55:5	89:24	105:24	26:15
65:10 70:8	12:3 15:20	117:14	<b>consequence</b>	122:9	140:25	28:11,14
71:3 73:8	27:20	130:12	103:20	130:3	<b>contends</b>	39:7,12
76:1,4,5,23	<b>completen...</b>	131:13,20	106:21,22	149:18	121:9	66:25
77:12,16	29:9	134:6	107:1	<b>construe</b>	<b>context</b>	67:25 68:5
79:8 82:2,2	<b>complex</b>	141:20	112:4	131:7	23:24	69:24,25
82:21,24	31:9	155:18	114:14	137:12	24:18 26:9	70:14
83:2 84:9	<b>complicated</b>	157:13	117:4	<b>construed</b>	26:16 27:7	72:10
87:1,10	100:22	<b>conclude</b>	120:10,11	24:3 46:18	29:3 32:9	73:25 74:9
90:16,17	159:3	3:22 30:6	139:23	51:5	35:23 45:2	74:18 75:3
98:5,7,9,12	<b>complying</b>	<b>concluded</b>	152:25	127:15	45:23	76:2 82:23
98:13	130:15	32:18	155:9	129:22	46:17 51:4	99:7
99:12,25	<b>compromise</b>	<b>conclusion</b>	<b>consequen...</b>	130:17	51:20 60:3	105:18
100:10	47:20	3:19 22:19	36:5	<b>construing</b>	60:19,25	117:24
101:2,19	48:19 55:1	50:20	151:12	28:14	61:6,17,19	125:8
101:20	72:14	52:19 61:4	<b>consequen...</b>	153:25	62:1 77:20	126:3
102:1,7,12	105:10	61:20	77:5,13	<b>consulted</b>	107:16	142:21
102:22	145:24	74:25	<b>consider</b>	50:9	108:18	143:19,25
103:10,12	153:6	124:24	4:20	<b>contact</b> 50:2	114:16	156:9,12
103:20	<b>compromi...</b>	152:20	<b>considerat...</b>	<b>contain</b> 3:12	118:9	156:14,18
104:18	1:11 18:11	<b>condition</b>	6:3 78:24	13:23	121:8	156:23
105:25	40:10 77:6	141:12	90:6 98:13	101:11	122:2,7,9	157:2,10
106:16,17	117:24	<b>conditions</b>	102:19	139:18	123:11,12	160:4,5,11
106:21	<b>conceivably</b>	142:3	<b>considered</b>	140:6,8	123:18	160:25
108:7	35:16	<b>confident</b>	52:14	<b>contained</b>	125:3,14	<b>contracts</b>
143:6	122:20	152:1	71:12	14:5 45:24	126:2,16	5:7,9 14:5
145:8,15	<b>concept</b>	<b>confirmati...</b>	134:14	46:16 54:8	127:11,19	16:3 17:13
145:18	37:23 38:4	15:1 83:24	<b>considering</b>	<b>contains</b>	127:23	33:25
146:9	38:14	146:11	17:24	63:21	128:20,22	35:13 37:5
148:1,2	158:11,16	<b>confirming</b>	30:13	90:22	130:1	49:15
156:17	160:10	128:5	<b>consistent</b>	97:18	135:4	63:17



65:12 68:9	<b>convenient</b>	134:3	<b>copies</b> 105:9	<b>couple</b> 85:10	69:3,15	156:6
70:1 71:7	44:8 162:9	144:14,15	<b>copy</b> 126:17	123:7	72:18,19	160:16,17
71:15	<b>conventio...</b>	147:23	<b>core</b> 25:22	127:6	73:11,17	160:18
75:20,25	32:18	148:10,15	54:19	158:2	73:23 74:6	161:14
89:14	<b>conversion</b>	148:21,24	86:22	<b>course</b> 1:21	74:19,19	162:5
116:3	5:17 15:17	149:8,19	<b>corner</b>	4:7 11:5	74:23 75:5	<b>CRA</b> s
126:5	18:1,8	152:3	110:15,18	33:20	75:9,10	112:22
139:6	19:15	153:1,18	135:14	43:12 45:9	78:2 97:16	<b>create</b> 108:9
<b>contractual</b>	34:13	153:21	<b>corners</b>	53:15	97:18,22	111:12
14:12 18:4	36:19	154:7,18	130:9	70:16 71:8	98:3,4 99:8	131:5
18:18	38:11,21	154:22	<b>corollary</b>	92:13	100:7,14	138:12
31:15	39:10,15	155:25	76:25	95:13,17	100:18	<b>created</b>
34:18	39:16	156:12,20	<b>corporate</b>	116:20	101:1,14	111:15
38:25 39:2	40:20,21	156:22	49:20	118:12	103:2,11	137:13
39:17,25	41:9,12,23	<b>conversions</b>	<b>correct</b>	119:12	104:9	<b>creates</b>
41:20 42:1	41:24 42:7	34:24	20:14 43:5	121:6	105:22	107:8
42:14	42:12	<b>conversion's</b>	58:12,24	124:17	106:10,14	<b>creating</b>
43:23 44:2	44:25	86:6	59:22	131:25	106:18,25	74:19
65:16 69:5	51:23 52:5	<b>convert</b>	87:25	152:9	107:4,7,17	<b>credit</b> 18:2
70:5,12,15	52:8,20	62:18	91:15	<b>court</b> 2:21	108:18,20	<b>creditor</b> 6:3
71:1 73:24	64:17,19	149:4	92:21	3:4,7 4:20	108:21	6:4,8,16
79:21 80:1	65:4,4,13	156:17	93:24	10:6 22:20	109:8,17	7:12,19 8:2
105:5,7	68:6 69:6	161:12	95:17	52:18 53:4	110:18,20	8:4,15,17
107:20	69:11	<b>converted</b>	124:17	65:2,7	110:24	8:18,24
110:22	73:22	45:8 61:23	144:19	96:25	111:11	10:23 11:1
112:18	74:20 75:3	63:4,9,13	152:5	114:15	114:3,22	11:13,23
113:10	79:14,23	63:18 64:5	<b>correctly</b>	125:19	115:1,2	13:20 15:1
118:16	80:11	64:15,18	151:19	126:22	116:18,21	15:10,18
125:5	84:25 86:8	64:22 74:5	<b>cost</b> 10:7	127:7,16	117:9,15	17:14,16
133:12	86:16,19	83:16	32:5 76:20	127:22	117:25	17:18,25
138:12,20	86:23,24	84:19	<b>costs</b> 10:4	128:25	118:7	18:12,22
138:21	87:5 88:3	86:14 88:7	30:10	129:14	130:11	20:22
139:1,10	88:23	88:16	31:10	<b>courts</b>	131:21	23:10 25:1
140:15	92:15	98:24	46:11	125:11	137:10,22	30:5,20
143:2,11	95:21 96:3	104:13	54:24,24	<b>cover</b> 16:15	137:24	33:12
143:15,18	97:21	107:25	55:7,14,21	73:5,14	138:11	34:14,17
144:2,24	106:10	109:7,18	76:24 92:4	125:13	139:3,17	34:23
145:2,13	107:8	110:12,19	92:4 100:3	<b>covered</b> 16:7	140:4,5,12	35:12 36:3
147:3	108:10,20	110:21	<b>Council</b>	<b>covering</b>	140:13	36:4,15,18
157:20	109:9,11	120:6	127:3	18:23	141:8,15	37:20
161:9	109:14	144:13	128:4	89:16	142:7,9	38:10
<b>contractu...</b>	111:12,13	149:5	<b>counterpa...</b>	<b>covers</b> 5:6	146:3,21	39:22,25
113:5	111:17,18	151:18	25:12 34:2	17:5,12	148:22,22	40:1,5,7,11
<b>contrary</b>	111:20	155:4	49:19	108:7	149:1	40:14,23
36:16	114:10	161:1,22	116:9,11	<b>CRA</b> 50:5	150:10,22	41:2,6
131:1	117:4,10	<b>converting</b>	138:17	62:14 63:4	151:5,18	42:22 44:5
137:16	119:4	81:8 99:2	<b>counterpa...</b>	63:7,7	153:22,25	45:14 48:7
<b>contrast</b>	120:23	<b>convinced</b>	25:4,14	68:20,22	154:4,15	48:7,15
46:8	133:8,18	26:11	34:3	68:25 69:1	155:6,13	51:2,25

52:16,19	109:3	76:25	50:11	117:4,10	<b>damages</b>	25:11 26:1
53:21,24	110:10,25	78:17 90:9	<b>currencies</b>	119:4	77:14	26:24
54:4,25	111:8,11	98:13	63:17,23	120:23	129:7,9,15	27:14,19
55:16 56:9	112:4	99:11	135:19	133:8,18	129:17,19	27:25 28:3
56:22 57:4	115:10,12	102:9,13	150:12	134:3,12	<b>damaging</b>	28:6,10,17
60:15 62:7	115:15	108:8	<b>currency</b>	134:13,15	25:14	28:23 29:4
64:6,21	117:6	114:5,9	5:17 15:16	135:16	<b>date</b> 11:6,8	29:7,11
65:14,24	119:18,21	116:9	18:1,3,7	139:11,16	11:14	31:2,22
66:1,20	120:5,9,13	117:16	19:14	144:12	35:25	32:7 33:21
67:5,13,13	121:1	118:7	34:13,24	147:23	39:17	33:24 34:5
67:25 68:2	133:9,17	119:3,8,20	34:24	148:9,14	41:14 43:4	34:20 35:1
73:23	133:23	120:1	35:17	148:15,21	43:7 64:2,3	35:21 36:8
76:15 79:9	134:8	122:15,16	36:19	148:24	64:3 81:12	36:13,22
80:16 81:1	147:2	122:20	38:11,21	149:19	98:4	36:24 37:3
81:5,23	153:20	130:21,25	39:10,14	150:10,18	100:11	37:12,18
82:3,6,21	<b>creditors</b>	131:4,22	40:20,21	150:18,19	101:17	38:8,17
82:24 83:8	6:18 12:18	132:16,22	41:9,12,23	151:1,2,17	106:1	39:6,10,14
83:14,19	14:9 19:3	132:25	42:4,6,8,8	152:3,16	108:1	40:3,17,19
83:20 84:4	20:3 22:4	133:6	42:12	152:21,24	109:11,12	41:7,25
85:6 86:1	25:23	134:1,2,20	43:13,17	153:1,15	135:25	42:3,17,24
90:7,9,14	29:18,23	135:5,6,21	44:25	153:18,21	139:21	43:6,24
90:15,18	30:8,12,16	136:6,12	51:22 52:4	154:7,18	144:18,20	44:7,11
90:18,20	30:19,24	136:13,25	52:8,20	154:22	144:20,23	47:22,24
91:3 92:12	31:18 32:4	137:15	62:5 64:1,1	156:16	149:5,9,13	51:14,17
92:13,14	32:6 33:2	140:20	64:7,8 65:3	157:3,11	149:14	53:14,20
92:19,25	33:19 35:9	141:17	65:13 68:6	162:3	150:10	54:6,12
93:13,16	36:7 40:4	144:25	69:6,11,12	<b>currency-...</b>	<b>dated</b> 90:16	56:5,15,21
93:18,22	44:20,21	145:4,22	73:22	62:11	150:4	57:4,8,15
94:1,5,18	46:8 47:7	146:10	74:20 75:3	<b>current</b> 18:2	<b>DAVID</b> 1:6	58:2,13,19
94:24 95:2	47:12 48:4	149:4,11	79:14,17	<b>currently</b>	1:15,24 2:3	59:1,5,9,16
95:16,18	48:12,20	149:17,24	79:21,23	31:19	2:16 3:18	59:21 60:6
95:23	49:2,9,13	151:7,15	79:25 80:9	<b>custody</b> 82:1	4:1,5 7:14	60:11,23
96:18	49:14,16	152:19	80:11	98:19	7:17 8:10	61:3,21
97:10,10	49:17 50:3	<b>creditor's</b>	84:19,24	<b>customer</b>	9:22 11:20	65:21
98:3,6,7,9	50:7,7,14	6:4 9:6	85:7 86:19	81:17	12:10	68:11,16
98:14,18	50:15,19	33:13	86:23 87:2	104:2	13:15,23	68:19
99:8,12,25	50:21,24	41:13,20	87:5,5,22	<b>cut</b> 25:2	14:11,14	69:14
100:8,10	52:22,23	64:9 79:7	87:25 88:5	33:10	14:17 15:4	70:21 71:9
100:15,16	53:1,15	83:1 98:10	88:23	123:19	15:14,24	71:20 72:4
100:19,25	54:15,21	99:9,17	92:15	<b>cutting</b> 25:7	16:1,8,16	72:20 73:3
101:3,17	55:3 56:19	104:8	95:21 96:3	<b>CV</b> 50:11	16:21 17:1	73:21
102:4,8,21	59:25 62:8	<b>critical</b> 65:6	97:21	<b>CVA</b> 155:8	17:9,12,20	74:10,22
103:20,25	63:3,16,21	<b>cross-claims</b>	106:9	155:14	18:10	77:25 78:8
104:5,18	63:25 64:5	161:19	107:8,15		19:22 20:8	78:13
105:1,22	66:5,15,16	<b>crux</b> 65:13	108:9,24	<b>D</b>	20:12,22	79:18,22
105:25	67:4,8,9	112:15	111:12,17	<b>D</b> 101:25	20:24 21:1	80:2,21
106:6,11	69:6 71:5	<b>crystallises</b>	111:18,20	<b>damage</b> 5:3	21:4,9,21	83:10,22
106:21	73:9,12	100:15	114:10	10:20	22:16	84:10,14
107:8	75:7,16	<b>culminating</b>	116:20	105:20	23:12 25:8	84:16 85:9

85:20	136:16,19	156:9	57:16 58:5	60:14	149:3	143:2,7,11
86:15	136:23	157:22	58:9,17	<b>delay</b> 30:10	<b>deprive</b>	143:16,23
87:13,15	138:7	158:8	103:21	<b>deliberately</b>	118:7	146:5
87:21 88:8	139:8	159:3	106:22,23	8:19 52:13	<b>derive</b> 26:20	<b>determining</b>
88:12,17	140:3,7,23	<b>dealings</b>	150:19	<b>deliver</b> 13:3	26:21	32:19
88:21 89:1	141:3	16:19	<b>deeds</b> 53:22	<b>delivery</b>	<b>derived</b>	139:10
89:6,21	142:6,25	49:18	<b>define</b> 25:17	7:20 82:5	63:13,17	143:17,24
90:5 91:7	144:9,17	<b>deals</b> 83:11	<b>defined</b> 5:20	101:3,18	<b>describe</b>	<b>develop</b>
91:10,12	146:14,19	107:6	6:7 7:3,5,8	<b>demand</b>	21:23	24:23 53:7
91:16,19	147:21	115:18	12:6 24:13	12:1	<b>described</b>	116:19
91:21,25	150:7	<b>dealt</b> 51:6	40:1 56:12	<b>demands</b>	26:7	118:11,19
92:6,10,20	151:4,14	68:10	68:1 69:25	10:5 12:8	114:15	<b>developed</b>
92:22 93:2	151:21,25	82:13	71:14	<b>demonstrate</b>	150:3	34:12,16
93:7,15,18	152:9	110:16	72:12,16	157:16	<b>description</b>	34:21,22
93:21,23	156:8	111:8	72:18 81:3	<b>denominate</b>	7:24 10:3	54:18
94:2,4,13	157:12	120:1	90:14 91:5	111:6	82:7	137:7,21
94:17,23	158:4,6	124:23	91:13	<b>denominat...</b>	<b>descriptive</b>	<b>developing</b>
94:25 95:5	159:17	137:3,9	98:16,21	5:20 15:19	41:22	50:3
95:8,13,19	160:1	142:12	100:14	43:11 63:8	<b>designed</b>	<b>developme...</b>
96:1,7,12	161:1,4,16	143:22	101:6	65:15 74:2	30:19	50:5,10
96:21,24	161:18,25	146:22,23	104:9	74:4,7	87:17	115:22
97:1,14,25	162:7,11	<b>debate</b> 43:22	106:12	79:21	126:3	137:19
100:12,21	<b>day</b> 67:19	138:24	108:4	106:13,24	<b>desire</b> 125:4	<b>devised</b>
102:24	162:14	139:2	144:15	107:23,25	<b>despite</b>	114:3
103:5,17	<b>days</b> 51:17	<b>debt</b> 11:24	<b>defines</b>	108:15,22	157:5,5	118:23
103:22	<b>deal</b> 16:14	13:16,17	87:11	144:6,10	<b>detail</b> 1:20	130:14
104:3,6	19:13	22:14	146:7	144:12	5:15 8:11	132:15
106:8	36:25 51:8	39:17	<b>definition</b>	145:2,5,22	115:1	137:17
107:22	53:17	40:12	7:2,15 8:1	148:19	116:17	<b>Dicker</b>
108:2	73:13	53:17	12:4 20:5	151:8,12	120:3	14:15 51:9
109:16	78:12	117:20,22	20:16	154:9	123:1	78:5
110:4,7,14	112:10	119:20	21:19 42:7	156:15,16	<b>determina...</b>	113:17,18
111:22	114:22	162:3	52:12 73:4	157:2,7,10	30:14,18	114:2,3
112:9,13	121:5	<b>debtor</b>	79:4,5 81:5	161:5	31:10 32:4	123:24
112:21	137:25	115:10,13	81:24	<b>denominat...</b>	33:8 101:8	124:16,23
113:12,15	142:15	<b>debts</b> 22:11	82:12	107:13	<b>determine</b>	125:25
113:21	147:11	67:1	90:10,12	<b>denominat...</b>	63:24 76:3	126:12,16
123:23	153:23	122:16	95:14 96:9	41:13 64:8	98:8 102:5	126:24
124:15,22	158:2	125:5	98:20	87:9	129:9,16	127:6,21
125:24	<b>dealing</b>	<b>December</b>	103:4,14	<b>departed</b>	147:3	128:2,19
126:10,14	12:15 49:5	62:15	103:23	131:11	152:7	129:11
126:23	49:23	<b>decided</b>	104:7	<b>departing</b>	158:23	131:17,20
127:5,20	73:22 78:6	127:9	106:20	8:20	<b>determined</b>	134:25
128:1,18	93:25	<b>decision</b>	108:19	<b>depending</b>	31:12 70:7	135:3
129:10	97:12	1:14 15:2	<b>definitions</b>	89:20	70:10,13	136:1,4,9
131:14,18	114:21	126:20	6:13 8:6	159:9	77:3 84:5	136:13,17
134:23	127:19	128:4	102:25	<b>depends</b>	102:9	136:20,24
135:1,25	136:22	<b>deed</b> 15:2,11	<b>degree</b> 33:9	66:21	104:9	138:8
136:3,8,12	141:24	23:8 56:24	37:21 38:5	<b>depreciated</b>	129:14	139:9

140:5,12	123:2	27:16	115:25	60:5,20	119:11	144:6,11
141:2,16	128:20	<b>disgorge</b>	116:16	88:1,2,6	137:10	144:12,13
142:7	130:1	34:25	139:18,21	98:11	<b>dollar</b> 34:14	145:1,2,6
143:1	140:13,17	<b>dishonest</b>	140:6,10	99:20	86:13	145:23
144:10,19	140:22,23	122:23	140:18,19	102:12	108:22	147:19
146:16,20	149:12,16	<b>disinclined</b>	141:1	104:23	111:18	148:13,19
147:22	154:16	46:11	146:9	122:14	117:2	148:23
150:8	<b>differently</b>	<b>dismissible</b>	147:6	135:22	133:17	149:13,18
151:5,19	23:6	58:21	157:14	148:7	134:8	149:20
151:25	<b>differs</b> 159:9	<b>dispute</b>	158:8,11	157:18	136:22,24	150:13,15
152:6,13	<b>difficulty</b>	99:13	158:12,14	<b>document</b>	145:16	150:22
156:9	125:10	105:4	158:16,18	3:21 5:14	148:5	151:8,12
157:13	<b>directed</b>	132:4	158:20,23	5:16,23,24	149:3,5	151:17,18
158:5,7	4:22	<b>disputes</b>	158:24,25	6:15 12:7	150:21,24	152:16,17
159:19	<b>direction</b>	32:24	159:1,4,7,8	12:11 13:8	151:1	152:18,24
160:2	34:22	<b>dissent</b>	159:9,11	19:1,3 24:5	153:17,18	153:13
161:3,8,17	<b>directly</b>	124:18	159:21,21	32:8 37:24	154:6	154:9
161:24	127:15	<b>dissented</b>	159:23,24	39:20 55:9	160:23	155:16,17
162:5,9	<b>directors</b>	124:17	160:14,15	61:11,14	161:21	156:3,13
163:4	134:14	<b>distinction</b>	161:7,13	68:10	<b>dollars</b> 18:2	156:15,17
<b>Dicker's</b>	<b>disagreem...</b>	39:1,20	<b>distributio...</b>	76:12	18:9 34:14	156:19,24
19:7	30:9	84:22	19:9 48:22	79:15	34:15,18	157:7
<b>difference</b>	<b>discern</b>	88:14,20	55:4,19	80:24	40:23 41:1	160:18,19
86:2 87:7	60:25	108:10	57:2 59:24	85:11,13	41:3 43:6	161:2,6,20
89:18	<b>discharge</b>	121:19,20	59:25 60:2	94:10,13	63:8,9,11	161:20
90:23	6:9 13:18	<b>distinctions</b>	60:20 70:6	94:14 95:1	69:13 74:2	<b>doubt</b> 1:25
92:16 97:4	15:20 90:8	131:6	118:24	98:2 101:7	74:5,7 80:5	2:1 3:25
97:6 106:5	98:14	133:22	119:15	122:17	81:8 86:13	21:8 23:8
<b>differences</b>	100:2	<b>distress</b>	155:6,11	130:9	86:21 99:2	62:12
78:14,15	102:21	53:17	157:23	135:12	100:15	71:19 79:9
93:3	103:12	<b>distribute</b>	<b>dive</b> 5:10	137:15	106:14,25	94:7
<b>different</b>	106:17	46:3	<b>dividend</b>	150:2	107:10,14	119:14
29:13,14	108:12	130:21	14:20	<b>document...</b>	107:24	128:13
41:23 44:9	158:21	<b>distributed</b>	22:14 33:1	33:5	108:13	142:20
44:18	159:24	152:23	62:5 64:11	<b>document...</b>	109:9,24	156:22
57:19	<b>discharged</b>	158:18	102:20	31:1,7 55:2	110:1,20	<b>drafted</b>
74:25 78:6	9:24 78:25	<b>distributing</b>	154:19	<b>documents</b>	111:5,6,13	141:8
78:16,18	107:1	62:18,20	<b>dividends</b>	46:19	111:16	<b>drafting</b>
78:19 79:2	<b>discharges</b>	<b>distribution</b>	6:17 8:25	48:24 51:4	116:22	125:11
79:16,25	91:4	31:11	12:23	68:21 75:8	117:7,9,12	<b>draftsmen</b>
81:18	105:10,13	32:20	13:11,17	89:25	117:13	125:11
82:16,20	<b>discharging</b>	43:15	13:25 20:2	132:17	134:7,13	<b>draw</b> 12:12
88:4 89:23	44:4	56:25 57:9	20:17,18	137:12	134:18,20	30:3 39:1
107:15	<b>discussed</b>	60:4 61:24	20:20	<b>dogmatic</b>	134:24	50:20
114:15,24	9:15 51:24	62:16,17	21:23 22:2	3:13	135:4,7,7	146:24
118:21,25	<b>discussion</b>	73:8 75:21	22:10,11	<b>doing</b> 10:1	135:17,17	<b>drawing</b>
120:10	67:24	77:4 84:8	22:12 35:5	33:11 35:3	135:22,23	32:15
121:1	133:1	108:7	54:16 56:7	48:20,23	136:16,17	121:19,20
122:9	<b>disembodi...</b>	109:5	56:17 60:2	66:3 93:11	139:16,16	<b>drawn</b> 4:15

39:20	<b>effect</b> 56:24	62:19	138:12	133:14,24	43:11,18	<b>especially</b>
124:5	57:8 58:13	76:19	<b>enables</b>	149:1,13	65:14 72:3	31:9
<b>drew</b> 134:23	58:17	<b>efficiently</b>	14:18 56:3	<b>entering</b> 6:1	74:14,18	<b>essence</b> 14:4
<b>due</b> 71:3	59:17	47:15	<b>enabling</b>	60:1 93:19	76:9 80:1	48:5 70:13
76:8 96:17	62:17,22	<b>eight</b> 92:2	14:8 55:3,4	103:20	83:11	71:5 81:12
116:19	66:4 74:19	<b>either</b> 21:1	<b>encapsulate</b>	106:21,22	86:13	92:23
118:12	80:10	25:3 34:14	27:3	<b>enters</b> 146:3	106:23	158:9
121:6	92:17	54:9 57:21	<b>encouraged</b>	<b>enthusiasm</b>	115:24	<b>essential</b>
125:5	94:21	59:13	132:16	141:20	150:4	18:7 68:23
131:25	109:17	60:12 64:7	<b>encroaching</b>	<b>entire</b> 9:6	<b>entitlements</b>	72:25
145:15,18	114:8,13	70:17	5:2	65:10 68:3	63:24	119:6
148:2	116:18	79:16	<b>ends</b> 160:21	83:1 86:25	153:15,16	<b>essentially</b>
<b>Duncan</b> 51:3	118:20	83:14	<b>enforce</b>	99:11	153:19	46:13
122:12	119:2	85:15 87:2	114:20	110:10	154:12	49:14
123:2	121:17	101:2	<b>enforcement</b>	129:19	<b>entitles</b>	82:17
<b>duties</b> 44:20	122:3	118:12	39:12	<b>entirely</b>	117:19	119:1
46:1,16,20	128:14	119:3	<b>enforcing</b>	26:23 53:8	<b>entry</b> 85:25	121:17
46:23 51:5	132:15	139:6	12:9	66:21 72:8	107:7	140:22
66:10	133:13	151:7	<b>engage</b> 26:7	74:8 80:4	<b>envisage</b>	144:2
114:5	141:13	153:12	<b>engaged</b>	87:9	110:17	153:6,12
130:12,15	142:3,10	154:5	30:15	132:11	157:4	153:22,24
130:16,23	142:13	157:21	85:17,18	133:21	<b>envisaged</b>	154:20,22
131:10	147:22	<b>elements</b>	<b>English</b>	134:10	73:11 94:8	155:20
<b>duty</b> 47:25	148:20	92:9	134:8	146:2	94:9,10	<b>establish</b>
48:2,4,11	151:6	121:22	<b>enjoyed</b>	149:22	<b>envisages</b>	75:18
48:11,14	153:5	<b>eligible</b>	34:23	153:6	15:21	115:23
130:18,20	154:10	160:14	<b>ensure</b> 48:12	<b>entirety</b>	153:9	<b>establishes</b>
131:1,2,4	159:7,8,10	<b>embryonic</b>	121:14	110:23	160:17	75:24
131:15	<b>effectively</b>	156:1	139:12	<b>entities</b>	<b>envisaging</b>	<b>establishm...</b>
<b>E</b>	100:20	<b>emergent</b>	152:22	50:16	33:21 34:6	30:13
<b>E</b> 102:6	115:6	4:11 124:2	<b>enter</b> 15:2	<b>entitle</b> 118:6	73:15 93:9	<b>estate</b> 6:17
124:13	118:13	<b>emphasis</b>	15:11	120:21	<b>equal</b> 9:1	19:10 20:2
<b>earlier</b> 17:23	122:24	127:22	48:20 68:2	<b>entitled</b> 17:4	20:9 91:1	20:18,19
31:15 55:7	124:12	<b>emphasise</b>	74:18	19:3 46:12	93:1 99:10	20:19 22:3
59:24,25	136:13	138:10	89:15	60:1 66:7	99:18	30:8 32:17
60:19	139:13	<b>employees</b>	<b>entered</b> 8:3	67:8 69:8	104:20	34:16,17
73:15	141:24	1:9 125:6	13:20	73:17,19	159:15	45:22
88:19	146:2,16	<b>employer</b>	44:24 52:7	80:16	<b>equally</b> 34:2	54:24
118:24	147:13	125:5	52:10	117:2,16	35:10	56:18
119:14	149:7	<b>employment</b>	53:22 54:3	118:3	67:11	63:25
<b>early</b> 51:13	152:22	125:4,6	59:23	119:8	117:9	64:25
60:4 112:2	153:14,21	<b>enable</b> 24:17	64:16,18	130:19	131:4	66:19 67:7
113:22	153:25	57:20	66:24	146:11	140:4	67:15
<b>easier</b> 55:4	155:21	89:14	78:16	148:4,13	153:18	80:19 84:7
154:13	157:6	108:20	80:23	150:22	<b>equitable</b>	98:12
<b>easiest</b>	158:21	113:19	90:15 94:6	158:9	3:8	102:12
119:16	160:11,24	114:4	101:10	<b>entitlement</b>	<b>equity</b> 7:11	104:24
<b>echoed</b> 4:2	161:10	118:23	109:8	18:8 34:18	10:17	130:20
	<b>efficient</b>	119:12	132:5	39:25 42:1	105:17	154:19,24

157:18	<b>exactly</b> 23:3	63:9,14,19	100:9	<b>explicable</b>	106:19,24	138:3,4,9
158:10	26:17 28:3	63:22 70:3	105:23,23	127:12	107:24	<b>failure</b>
<b>et</b> 10:13 12:8	40:19 42:5	71:6 72:16	146:3	<b>express</b>	117:17	103:12
15:3 23:9	78:23	77:22 81:6	<b>existing</b> 8:21	20:24 61:9	135:18	106:15,17
40:14	84:24	81:7,9,11	32:19 71:7	90:24	139:1	<b>fair</b> 3:21
76:24	89:18	83:17	72:13,14	111:25	141:4	52:23
81:17	92:17 93:9	84:20	72:15 74:8	113:7	144:11	139:13
116:5	109:11,21	98:25 99:3	145:24	122:5	149:24	<b>fairly</b> 131:4
143:2	111:7	142:22	149:4	140:25	156:15	142:15
147:4	120:19	147:1	153:7,10	147:18	<b>extract</b>	152:22
152:23	<b>example</b>	149:9,10	<b>exists</b> 11:8	<b>expressed</b>	126:5	<b>fall</b> 10:8
<b>euro</b> 69:5,8	4:23 5:12	149:12,14	85:14,23	25:22	135:9,13	16:6 52:11
74:4,14	12:9 16:18	157:6	154:18	61:11 64:1	<b>extremely</b>	95:24
111:10,14	34:11	<b>exchanged</b>	161:6	71:2	122:4	<b>fallback</b>
111:16,19	36:14,18	70:4 74:1	<b>exit</b> 135:23	128:21	151:8	111:10,19
150:13	39:24	<b>exclude</b> 91:9	<b>expect</b> 123:5	145:14		144:3
153:19	50:11 69:5	<b>excluded</b>	<b>expecting</b>	147:1	<b>F</b>	<b>familiar</b> 1:7
<b>euros</b> 73:24	70:18 74:4	22:18	134:20	148:2	<b>F</b> 102:14	2:5 47:18
74:12	85:12 88:4	102:23	<b>expects</b>	<b>expresses</b>	<b>facilitate</b>	47:23
110:19,23	92:2 93:16	103:1,4,8	132:21	87:10	45:21	78:22
111:3	96:18	103:14	<b>expedient</b>	<b>expression</b>	54:15	104:17
<b>evaluation</b>	100:23	105:14	30:13	131:15	<b>facilities</b>	107:17
32:16	103:7	106:15,19	<b>expedite</b>	153:4	127:10	126:21
<b>event</b> 35:15	107:9,12	<b>excludes</b>	29:22	<b>expressly</b>	<b>fact</b> 9:8	<b>fanciful</b>
46:10	108:10,22	82:8	75:20 77:4	1:22 15:12	12:12	16:18,22
52:18 76:4	110:10	<b>excluding</b>	<b>expedites</b>	15:21	15:16 16:5	34:12
91:8 92:24	111:8	15:6 79:10	76:21	38:24	21:10 22:1	<b>far</b> 4:9 16:4
97:24	122:13	<b>exclusively</b>	<b>expedition...</b>	40:13 44:1	22:5 23:15	22:20
116:13	132:1	138:5	48:3	110:1	29:8 30:3	25:19 27:9
131:23	133:9	<b>exercise</b>	<b>expense</b>	117:15	42:5,18	33:4 49:17
133:10	134:4	27:16 29:5	66:16	<b>extend</b> 21:11	53:5 60:7	56:2,3
141:25	<b>examples</b>	35:3 48:2	<b>expenses</b>	25:8 36:21	60:18 61:5	67:10
<b>everybody</b>	61:13	115:4,5	10:4 100:3	<b>extending</b>	61:10,22	69:17
49:16	122:8	128:10	135:19	55:10	67:19 69:7	71:12,16
55:21	<b>exceed</b>	139:9	<b>expensive</b>	<b>extensive</b>	77:22 80:8	72:6 75:3
67:15	102:15	<b>exercising</b>	32:23	32:24 33:4	86:25 87:7	78:14
<b>everyone's</b>	<b>exceeds</b>	48:3	<b>experience</b>	46:7 55:1	122:6,12	84:18,23
150:23	160:3	<b>exist</b> 11:10	30:4 32:15	<b>extent</b> 8:20	122:20	84:24
<b>evidence</b>	<b>exception</b>	17:13	46:5,9	16:12 17:2	123:5	92:15
5:19 14:3	20:6 23:17	67:25	<b>explain</b>	34:18	141:11,19	115:1
33:5 35:15	23:17	86:19	119:16	40:24	148:22	116:18,23
49:14	134:10	128:10	<b>explained</b>	66:21,22	<b>factor</b> 29:10	120:7,18
52:21 53:1	150:24	157:17	54:21	71:23,25	<b>facts</b> 2:4	122:22
137:25	<b>exceptions</b>	<b>existed</b>	61:13 62:8	72:2,24	26:16 27:9	124:1
138:24	77:17	138:16	102:16	74:3 79:24	27:17	143:10
141:20,23	<b>excess</b> 50:13	<b>existence</b>	<b>explaining</b>	84:18 95:3	123:1	145:22
152:5,11	<b>exchange</b>	11:4,9 24:9	132:18	102:16	124:24	147:16
<b>evidentiary</b>	40:11	24:10,25	<b>explanatory</b>	103:19	126:24,25	154:8,13
31:1	41:14 43:3	84:1 100:8	75:11	105:9	134:15	<b>faster</b> 35:7

<b>FBF</b> 8:2 40:2	49:15,20 69:24,25	8:14,19 9:20 21:6	43:7 65:11 <b>flood</b> 25:14	38:10 <b>foreshado...</b>	92:3 106:15	160:6 <b>fully</b> 51:7
<b>February</b> 150:11	70:9 71:4,7 71:11,16	22:22 23:1 23:4 24:7,8	96:13 <b>flow</b> 151:13	31:15 <b>forever</b> 9:24	133:4 139:9	<b>function</b> 87:16
<b>fed</b> 116:15 139:20,24	71:22 73:25 74:9	28:7,14 29:19,25	<b>fluctuations</b> 34:24	10:1 91:4 100:2	<b>Fourthly</b> 24:23	127:13 160:20
157:25 160:14	74:18 75:3 75:20,25	31:3,4 38:20 40:6	<b>focus</b> 21:9 35:1,12	108:16 <b>forget</b> 26:17	<b>framework</b> 45:23	<b>functional</b> 134:12
161:13 <b>Federation</b>	76:22 98:10,11	43:9 44:18 44:22	37:3 88:24 140:9	58:5 <b>forgive</b>	<b>Française</b> 8:5	151:2 152:15
8:4 <b>feeds</b> 91:16	98:21,24 99:9,10,14	45:13 47:1 47:8 54:3	<b>focused</b> 132:25	27:19 47:22	<b>frequently</b> 4:16 124:7	<b>functions</b> 46:17,21
<b>felt</b> 35:21 67:6,19	99:15,17 99:18,24	56:16 66:18 69:2	149:25 <b>focuses</b>	71:20 <b>forgot</b> 11:16	<b>friend</b> 19:7 51:9 62:2	46:23 47:2 47:11,15
<b>fifth</b> 11:17 65:22	102:9,16 102:20	75:15 81:5 90:2 97:17	12:13 119:25	<b>form</b> 2:6 5:21 13:4	72:7 78:5 80:5 121:9	48:2 130:12,15
139:17 <b>figure</b> 76:5	104:8,8,11 104:13,19	102:25 110:21	<b>focusing</b> 37:9	154:14 158:1	121:13 123:7	130:16 <b>funds</b> 50:8
161:5,21 <b>files</b> 113:19	104:21 105:5	111:16 115:11	<b>follow</b> 17:9 17:20	<b>formed</b> 130:16	124:16 128:6	53:17,23 135:17
<b>final</b> 4:24 38:6 45:7	106:12 107:21	116:7,20 118:11,17	<b>followed</b> 27:17	<b>forms</b> 87:7 <b>formulaic...</b>	137:14 143:13	<b>further</b> 4:11 14:18,22
61:22 66:12	108:3,19 109:1	122:2 125:25	31:13 62:17	88:12 <b>formulated</b>	144:19 146:23	30:25 31:6 31:21
118:22 122:16,18	116:3 117:23	126:20 127:2,3	122:10 <b>following</b>	129:19 <b>formulation</b>	147:12 151:20	57:21 58:23 65:1
<b>finalise</b> 125:5	118:16 139:6,19	130:12 137:14,23	32:16 57:3 60:16	37:22 <b>forth</b> 26:9	154:1,21 155:12	74:15,16 86:7 88:2
<b>finality</b> 30:23	139:20 141:11	138:11 142:9	64:11 69:23 70:5	<b>forward</b> 154:1,23	157:15,24 <b>friend's</b>	101:9 113:13
37:22,23 38:1,5,7	142:21 143:6,19	145:10,11 146:3,17	71:11 81:9 104:16	<b>found</b> 1:17 68:25	125:17 <b>front</b> 118:14	114:8 116:14
55:2,17 60:14,14	143:25 145:9	148:17 <b>firstly</b>	129:7 142:18	153:25 <b>foundation</b>	146:23 147:12	124:2 134:6
60:14 75:6 75:21	148:1 155:19,25	123:15 126:4	162:14 <b>follows</b> 33:3	18:23 72:25	151:20 154:1,21	139:22 152:6
76:22 87:17	157:7,17 157:21	143:1,14 150:17	100:13 106:10	107:20,21 154:20	155:12 157:15,24	<b>future</b> 7:23 11:9 24:10
119:5,6 <b>finally</b> 3:2	159:13,14 159:16	155:6 <b>Fisher</b>	<b>foot</b> 7:15 <b>force</b> 153:4	<b>four</b> 31:17 40:15	157:15,24 <b>friend's</b>	82:6 105:24
11:11 15:5 38:2 65:18	160:3,7,12 160:20,23	113:20 <b>five</b> 32:1	<b>foreign</b> 42:3 69:12	125:1 130:9,11	125:17 <b>front</b> 118:14	114:8 116:14
80:16 84:5 98:7	161:5,10 <b>find</b> 55:14	44:11,17 45:10 83:6	79:16 84:18 85:7	<b>fourth</b> 10:9 18:20	146:23 147:12	124:2 134:6
<b>financial</b> 16:2 17:13	96:17 130:8	138:10 <b>fix</b> 37:8 88:8	87:2,22,24 88:5	25:25 38:3 45:5 54:20	151:20 154:1,21	139:22 152:6
30:24 33:25	<b>fine</b> 68:17,19 <b>first</b> 3:11	<b>fixed</b> 6:5 9:4 15:18	88:5 <b>foreseen</b>	59:24 62:2 65:19,24	155:12 157:15,24	86:7 88:2 101:9
35:13	6:13,23	24:16 40:8	4:11 124:2 <b>foreshadow</b>	81:10 83:4	157:15,24 <b>friend's</b>	113:13 114:8
					157:15,24 <b>front</b> 118:14	116:14 124:2
					55:13 <b>FSA</b> 81:4	134:6 139:22
					<b>full</b> 18:17,18 42:11,16	139:22 152:6
					65:16 67:2 69:8 74:13	<b>future</b> 7:23 11:9 24:10
					76:16 85:17,21	82:6 105:24
					86:20 111:2	<b>futures</b> 81:17
					117:2 122:18	104:2 <b>FX</b> 144:14
					134:21 148:6,7	144:15 156:19
					153:4 159:2	156:19
						<b>G</b>
						<b>G</b> 102:18

<b>gain</b> 34:23	124:7	<b>going</b> 2:9	138:2	135:20	26:14	103:1,9
<b>gains</b> 35:17	129:22	5:10 8:1		<b>hereof</b> 11:15	<b>identifying</b>	105:12
<b>gander</b>	132:4,12	19:13 23:2	<b>H</b>	100:11	24:1,16	117:6
36:10	139:14	32:13	<b>half</b> 32:13	106:1	84:21	118:9
<b>GBP</b> 150:13	142:15	33:16 35:7	127:23	<b>higher</b> 35:9	<b>ignore</b> 61:17	122:3
<b>general</b> 4:12	145:7	37:6 44:15	<b>halfway</b>	35:11	160:22	123:11
26:2 46:8	154:8	58:6 65:23	3:10	<b>highest</b> 52:3	<b>ignores</b>	124:19
49:9 52:19	162:5	68:20	125:22	131:19	121:8	137:20
63:1 79:19	<b>gives</b> 4:23	89:12	<b>hand</b> 39:2	<b>highlight</b>	<b>ii</b> 81:7 82:4	<b>importantly</b>
79:20	22:13	106:25	49:5	11:16	105:6	108:22
80:19	144:23	107:5,17	126:17,18	32:13	142:24	<b>imposes</b>
123:19	<b>giving</b> 35:9	122:1	<b>handed</b>	<b>highlighted</b>	144:21	46:1
124:3	35:11 44:7	135:13	126:19	77:9	146:17,17	<b>impossible</b>
130:10	<b>glad</b> 28:23	137:22	128:17	<b>highlighting</b>	147:24	139:7
<b>generalisa...</b>	<b>glance</b>	140:17	<b>happen</b>	54:19	<b>iii</b> 105:7	<b>impression</b>
53:5	124:14	142:13	133:2	<b>highlights</b>	142:24	27:22
<b>generally</b>	127:24	150:8	160:21	29:19,25	146:17,18	<b>inadvertent</b>
22:13	<b>glancing</b>	152:6,11	161:19	<b>Hoffmann</b>	<b>illustrate</b>	132:11
49:23	123:14	153:22	<b>happened</b>	2:12	123:3	<b>inappropri...</b>
53:20 73:9	<b>Global</b>	154:24	25:12 54:1	124:17	136:21	49:6 139:7
128:22	84:12	160:10	54:11 86:6	<b>hold</b> 50:13	<b>illustrating</b>	<b>inaudible</b>
146:10	<b>go</b> 1:4 2:13	<b>good</b> 5:25	94:8,9,10	159:17	16:23	47:8 76:8
<b>genesis</b>	8:7,13	13:17	94:11	<b>holding</b>	<b>illustration</b>	99:22
132:18	21:21	17:22	101:8	68:16	119:17	104:1
137:24	22:20	29:11 34:8	<b>happens</b>	<b>hope</b> 113:23	<b>image</b>	105:10
<b>getting</b> 36:4	25:19,24	131:12	70:11	<b>hoping</b>	147:13	110:17
71:5	39:22 55:5	<b>goose</b> 36:10	133:24	68:21	<b>imagine</b> 2:3	111:3
<b>give</b> 17:19	56:14 62:3	<b>granted</b>	<b>happy</b> 8:10	<b>House</b> 1:14	4:3 119:18	<b>incidence</b>
26:6 34:1,2	67:21 72:6	111:17	22:19	2:11	<b>imagining</b>	19:8,16,18
36:2 58:6	114:7	155:2	78:11	<b>howsoever</b>	73:23	19:20
109:17	150:16	<b>grateful</b>	158:5	6:10 10:15	<b>immediately</b>	20:14
110:7	153:14	2:18 97:15	<b>headed</b>	98:15	13:13	21:11,17
113:18	<b>goes</b> 11:3	<b>great</b> 36:24	31:23	105:14	22:25	38:12,15
119:17	12:4,11	<b>greater</b> 1:20	143:17		<b>immense</b>	38:22,25
128:3	14:18 16:4	117:19	150:9	<b>I</b>	27:3	39:15 41:4
131:22	51:17 65:1	<b>group</b> 38:10	<b>heading</b>	<b>idea</b> 38:11	<b>Impact</b> 62:7	41:16
134:3	65:13	50:16 51:2	29:18 30:1	55:20	<b>impermiss...</b>	42:13
140:17	72:17	52:16	30:17,21	85:24	153:23	<b>incidental</b>
147:24	82:15	53:24 54:4	31:3 32:11	136:7,15	<b>implicit</b>	115:4
153:4	92:16	54:13	49:12 62:4	139:20	16:11	116:14
<b>given</b> 4:16	116:23	65:25 86:1	64:11	159:22	113:3	138:18
16:19	127:7	112:2	75:17,23	<b>identified</b>	<b>implicitly</b>	139:23
18:19	128:18	<b>groups</b> 50:6	126:8,12	14:8	113:2	<b>include</b>
19:12 32:2	136:1,11	50:15	<b>hearing</b> 66:2	121:10	<b>important</b>	20:12
34:12 68:6	144:7	<b>Group's</b>	67:24	142:22,23	10:22 29:1	22:22
101:2,18	145:11	37:20	162:14	150:12	29:2,5,10	24:14
101:19,20	150:1	45:14 66:1	<b>held</b> 53:17	<b>identifies</b>	33:15	30:23 44:4
111:20	158:7	<b>guide</b> 77:7	81:3 82:1,1	98:18	39:20 72:1	57:16 63:3
123:19	159:6,20	118:3	115:9	<b>identify</b> 8:12	81:4 95:17	70:1 132:7



142:19	<b>incorrect</b>	45:24 46:7	152:8	113:2,4,5	138:25	<b>it'll</b> 158:2
147:8	155:5	46:9,25	<b>intending</b>	114:10	149:11	<b>iv</b> 105:9
<b>included</b>	<b>incur</b> 46:11	56:7,19	131:9	117:15,16	<b>involvement</b>	
1:25 55:25	<b>independent</b>	58:21 59:6	147:11	117:19	127:12	<b>J</b>
56:4 82:11	15:2 50:17	62:20,23	<b>intends</b>	118:3,6,8	<b>irrational</b>	<b>Jamaica</b>
92:12	<b>INDEX</b>	63:2 64:3	31:19	118:11,18	133:22	128:25
155:7	163:1	71:24 99:1	<b>intention</b>	119:3	<b>irrecovera...</b>	<b>joint</b> 32:17
<b>includes</b>	<b>indicate</b>	117:17	15:17	120:21	46:11	51:24
1:24 6:25	48:23	118:4,5	61:10,11	121:12	<b>irrelevant</b>	135:9
7:7,22 10:9	51:21	161:18	72:10,17	133:8,10	64:20	<b>judge</b> 127:8
10:25	<b>indicated</b>	<b>insolvent</b>	140:18	133:11,12	67:18	<b>judgment</b>
11:18	135:6	30:8	<b>intents</b>	<b>interested</b>	126:25	1:17 2:6
18:21 19:5	<b>indicates</b>	<b>instance</b>	75:12	141:24	162:4	3:2,6 26:8
40:13 51:5	23:18	58:6 116:8	<b>inter</b> 6:21	<b>interestingly</b>	<b>irrespective</b>	65:7 127:2
82:6,15	<b>indications</b>	<b>instanced</b>	<b>interaction</b>	150:2,14	17:6	128:5,16
83:4,7	24:4	16:10	31:7	<b>interests</b>	<b>irrevocably</b>	<b>judgments</b>
103:8	<b>indirect</b> 77:5	<b>instances</b>	<b>interest</b> 5:18	12:22	8:15 9:19	2:10 112:8
106:15	<b>individual</b>	58:7	10:10,11	44:22	9:23 82:21	117:19
108:21	48:6 64:6	<b>institutional</b>	18:4,5,19	46:14	91:3 99:5	133:11
117:18	<b>induced</b>	81:16	18:21,24	47:11	99:13	<b>judicial</b>
126:2	15:11	104:2	19:2,4,5,6	48:12,15	100:1	130:3
<b>including</b>	<b>infer</b> 2:22	<b>instructions</b>	19:12,15	50:23,25	104:18	<b>June</b> 32:10
8:18 11:7	125:19	97:7 101:2	19:17	114:5	105:1,13	<b>jurisdiction</b>
12:8 15:24	<b>inferences</b>	101:18,19	20:13,21	<b>interim</b> 33:1	<b>ISDA</b> 81:6	12:2 25:5
18:21 22:4	3:4	101:20	21:3,24	<b>intermedi...</b>	90:14 95:9	130:6
22:13	<b>information</b>	<b>instrument</b>	22:15,18	49:20	98:18	<b>Justice</b> 1:6
24:25 50:6	101:24	130:5	22:23	<b>intermedi...</b>	104:1	1:15,24 2:3
54:24	102:3	<b>insurance</b>	23:11,18	160:16,22	<b>issue</b> 1:10	2:7,16 3:18
61:15	<b>informed</b>	49:21	23:19	<b>interpreta...</b>	12:1 37:22	4:1,5 7:14
62:13	155:12	<b>intend</b> 122:6	38:12,22	78:19	39:19	7:17 8:10
65:12	<b>initial</b> 135:5	134:2	39:7,11	112:15	68:15 70:1	9:22 11:20
69:23 70:2	136:9	<b>intended</b>	41:11	126:5	74:15,20	12:10
77:13 79:1	<b>initiated</b>	2:22 3:22	43:21 52:9	<b>interpreted</b>	79:24	13:15,23
79:9 82:23	45:20	4:17,18	52:21,23	113:9	96:15,16	14:11,14
85:5 90:13	<b>injustice</b>	23:22	66:8 67:2,8	<b>interpreting</b>	107:6,11	14:17 15:4
90:19 92:3	114:16	46:19	67:15 68:7	127:11	111:23	15:14,24
95:15 99:8	<b>insofar</b>	57:24	68:12,14	<b>introduce</b>	122:24	16:1,8,16
100:4,6,18	73:19	66:14	69:3 70:19	38:4	127:9	16:21 17:1
102:22	93:25	76:13	71:10,22	<b>introduction</b>	129:9,17	17:9,12,20
105:15	<b>insolvencies</b>	114:12	72:22,23	5:10	129:19	18:10
138:2	32:16	119:7	73:1,19	<b>investment</b>	136:17	19:22 20:8
<b>inclusion</b>	<b>insolvency</b>	122:21	80:12 83:6	49:21	147:17	20:12,22
23:5	6:19,19	124:8,9	84:23	<b>invite</b>	<b>issues</b> 2:4	20:24 21:1
<b>inconsistent</b>	11:25	125:20	90:25 91:6	119:20	83:25	21:4,9,21
55:11,20	13:25	128:14	92:4 95:22	<b>involve</b>	101:9	22:16
66:9	19:10,10	131:10	97:22	32:22,24	113:14	23:12 25:8
<b>incorporat...</b>	20:4,4,19	133:21,25	111:24	33:3 149:4	162:5	25:11 26:1
15:12	25:3 41:15	139:5	112:1,3,5,7	<b>involved</b>	<b>iterative</b>	26:24
113:1	41:19	151:6	112:20,25	122:14	26:7 60:17	27:14,19

27:25 28:3	87:13,15	136:23	115:16	<b>largely</b>	138:17	120:23
28:6,10,17	87:21 88:8	138:7	119:12	138:4	139:19	<b>leaves</b> 85:19
28:23 29:4	88:12,17	139:8	151:15	<b>larger</b>	142:10,11	97:16
29:7,11	88:21 89:1	140:3,7,23	152:2	119:14	145:5	111:23
31:2,22	89:6,21	141:3	161:24	<b>largest</b>	146:21,22	<b>led</b> 122:9
32:7 33:21	90:5 91:7	142:6,25	<b>known</b> 4:19	30:16	147:1,9,16	125:14
33:24 34:5	91:10,12	144:9,17	10:17	<b>late</b> 51:3	152:16,17	148:24
34:20 35:1	91:16,19	146:14,19	27:10,12	<b>law</b> 1:12	155:20	<b>left</b> 3:25 9:9
35:21 36:8	91:21,25	147:21	105:17	5:10 7:11	156:2	9:9 42:14
36:13,22	92:6,10,20	150:7	109:8	10:18	157:5	94:22 95:4
36:24 37:3	92:22 93:2	151:4,14	124:10	11:19	158:13,15	96:22
37:12,18	93:7,15,18	151:21,25	151:1	34:12,16	158:17,19	102:5
38:8,17	93:21,23	152:9	155:3	34:21	159:23,25	136:17
39:6,10,14	94:2,4,13	156:8	<b>knows</b> 81:14	57:12 59:2	<b>LBIE's</b> 30:4	<b>left-hand</b>
40:3,17,19	94:17,23	157:12	114:17	63:2 64:3,4	49:9 50:5	30:21 62:6
41:7,25	94:25 95:5	158:4,6	134:11	105:16,18	62:18	<b>legal</b> 7:13,19
42:3,17,24	95:8,13,19	159:17	137:6	122:1,1	116:4	46:7,11
43:6,24	96:1,7,12	160:1	142:9	125:7,25	134:12,17	50:17 82:4
44:7,11	96:21,24	161:1,4,16	144:1	126:8,12	139:14	130:5
47:22,24	97:1,14,25	161:18,25	146:21	137:9	155:23	<b>legislation</b>
51:14,14	100:12,21	162:7,11	149:2	<b>lawyers</b> 53:3	<b>lead</b> 45:11	39:8 42:4
51:17	102:24	<b>justify</b> 3:15		<b>LBIE</b> 14:6	61:20	59:7
53:14,20	103:5,17		<b>L</b>	17:14	<b>leads</b> 3:4	<b>Lehman</b>
54:6,12	103:22	<b>K</b>	<b>label</b> 40:22	24:24 25:2	74:25	151:2
56:5,15,21	104:3,6	<b>keep</b> 107:4	<b>lack</b> 96:17	25:6 30:25	<b>learned</b> 19:7	<b>Lehman's</b>
57:4,8,15	106:8	<b>kept</b> 153:17	<b>language</b>	31:19 32:4	51:9 62:2	25:12,15
58:2,13,19	107:22	<b>key</b> 2:9,18	2:21 3:1,25	33:6,12,16	72:7 78:5	<b>length</b> 24:24
59:1,5,9,16	108:2	6:13 8:8	4:15 5:11	34:3 49:22	80:4 121:9	32:2 44:19
59:21 60:6	109:16	13:9 25:21	19:22 21:7	55:3 60:15	121:12	45:17
60:11,23	110:4,7,14	29:12,21	23:24 28:5	63:6 75:7	123:7	54:18
61:3,21	111:22	29:24	28:8,11,12	80:17	124:16	<b>lengthy</b>
65:21	112:9,13	43:19	39:24 55:9	93:12 94:1	125:16	127:18
68:11,16	112:21	45:10	78:18 85:2	94:16,18	128:6	<b>letter</b> 13:4
68:19	113:12,15	69:21 87:7	90:23 91:8	94:24	137:14	75:16
69:14	113:21	88:14	97:19,19	97:12,12	143:13	<b>letters</b> 132:7
70:21 71:9	122:19	108:10	98:17	100:25	144:19	<b>let's</b> 39:22
71:20 72:4	123:23	150:16,16	101:10,11	101:22	146:23	74:17 80:7
72:20 73:3	124:15,22	<b>kinds</b> 118:25	104:17	102:4	147:12	80:8 86:12
73:21	125:24	<b>know</b> 1:18	111:25	115:9,10	151:20	109:23
74:10,22	126:10,14	35:15	112:2,25	115:13,16	154:1,20	112:13
77:25 78:8	126:23	52:24 53:4	113:3,6,7	116:2,3,8	155:12	<b>level</b> 77:4
78:13	127:5,20	53:25 54:1	121:5	116:11,13	157:15,24	<b>Lewison</b>
79:18,22	128:1,18	54:9 66:18	124:6	116:25	<b>learning</b>	126:5
80:2,21	129:10	66:21 67:9	125:12	119:13,19	27:4	<b>liabilities</b>
83:10,22	131:14,18	80:6 94:7	128:7	132:20	<b>lease</b> 3:22	49:18
84:10,14	134:23	94:12 95:3	129:21	134:11,21	124:3	66:22 76:2
84:16 85:9	135:1,25	95:8,11,12	132:6	134:23	<b>leave</b> 37:8	76:8,15,16
85:20	136:3,8,12	106:12	140:8	135:4	37:11	93:11
86:15	136:16,19	107:18	<b>large</b> 46:11	136:22	80:17	108:23

116:2	92:3	<b>longer</b> 38:6	2:14 3:2	111:9	119:17	<b>Lord's</b> 1:18
147:6	139:22	38:6 42:22	4:2,7 5:5	112:24	121:6,10	4:3 8:8
156:9,13	<b>lines</b> 31:17	111:1	5:16 8:7	113:13	122:8,13	11:17
156:14,18	32:1,13	<b>look</b> 8:10	9:14 14:22	117:14	123:6,9,10	12:13 65:6
156:23	40:15 83:6	14:23	15:15 16:2	118:1	123:14	75:13
157:2,10	125:2	26:19 28:7	16:8,22	121:5,14	124:14,19	82:18
158:12,16	126:10	28:15,21	17:7 18:25	121:25	124:25	<b>lose</b> 117:11
158:20	145:12	44:21	21:6 23:2	123:1,13	126:4,6,7	<b>loss</b> 10:7,20
159:2,5,21	146:13,18	46:13	23:21 24:7	123:21,21	126:20,21	105:20
160:4,5	146:18	50:23	24:19	124:16,17	126:24	<b>losses</b> 10:4
<b>liability</b> 76:4	<b>linguistic</b>	54:22 55:1	26:12 27:2	124:23	127:7,16	35:17 77:6
155:19,25	128:9	60:24,25	28:25	125:9,10	127:17,21	100:3
156:16	<b>link</b> 41:8,9	89:12	29:16	125:15,17	127:24	<b>lost</b> 111:16
157:7	42:18	97:17	31:24 32:8	126:16	128:3,6,15	111:19
159:24	<b>liquidation</b>	101:13	32:9,12	127:6	128:17,21	117:7,10
160:11,25	42:10	112:13	34:11	128:2,5,11	128:22	154:21
<b>liens</b> 12:9	56:11	120:3	37:19 38:3	128:20	129:3,24	
<b>life</b> 32:5	57:17,22	128:15	38:18	130:2,10	134:11	<b>M</b>
<b>light</b> 5:2	58:3,12	131:24	40:15	131:20	135:8,11	<b>maintaina...</b>
137:24	87:23	138:1	41:21	133:4	135:13	48:13
<b>limit</b> 55:12	109:4,13	143:18	43:21	134:6	136:1,11	80:18,19
133:11	<b>liquidator</b>	154:11,23	47:18,23	135:3	136:20	<b>maintained</b>
<b>limitation</b>	51:6	<b>looked</b> 1:6	49:13	137:10,22	137:3,6,12	86:24
17:2	122:14,23	48:18	50:20 52:7	138:3,5	137:20	135:17
129:18	<b>liquidators</b>	<b>looking</b> 5:22	54:13,20	139:2,17	138:23	<b>major</b> 32:15
<b>limitations</b>	16:11	11:11	54:23 55:8	141:16	139:3,25	33:19
16:11 96:1	<b>list</b> 10:12	26:11	59:22	145:19	140:2	<b>majority</b>
<b>limited</b> 9:25	96:16	27:17	60:24 62:1	146:16,20	142:2,8,9	65:7
23:22	<b>literal</b> 121:9	28:19 33:8	62:3 64:13	147:16,23	142:16	134:17
37:14 40:8	122:11	33:24	65:2,18	148:16	143:12,21	139:14,15
42:21	133:13	35:23	68:8 69:1	149:16	144:1,7,21	145:4
55:23 65:5	<b>literally</b>	50:24	69:15	157:13	145:11,19	148:17
80:11	16:10,24	54:16 61:5	70:11 72:5	158:2	146:6,21	152:17
82:25	123:4	61:6 74:23	73:10	159:6,19	147:20	<b>making</b> 35:6
84:25	<b>litigation</b>	88:19 98:1	74:15 75:1	161:24	149:2	35:22
85:13 87:1	30:9 32:25	102:25	75:14 78:1	162:9	150:1,5,9	36:23
87:4 99:10	<b>little</b> 12:12	128:8,11	78:22	<b>Lords</b> 1:14	150:13	57:15,19
104:20	46:9	128:12	79:13	2:11	151:19	59:10
128:8	110:15	136:8	81:14 82:9	<b>Lordship</b>	153:7	95:20 96:8
129:22	112:11	151:19	84:12	14:15	154:14	115:25
155:6	113:22	155:22	89:11 90:2	113:18	156:6	129:23
160:3,5,24	116:17	<b>looks</b> 103:14	93:5 94:7	114:6,17	157:19	140:19,24
<b>limiting</b>	122:1	123:1	96:11,15	114:22	158:5,7,22	<b>March</b>
92:17	145:20	137:20	97:5,16	115:4,16	159:6,20	51:25
<b>line</b> 2:20	<b>London</b>	151:5	103:2	115:17	<b>Lordship's</b>	150:5
10:9,14	144:23	<b>Lord</b> 1:4,8	104:17	116:16,23	125:16	<b>marked</b>
11:16,17	<b>long</b> 2:20	1:18 2:5,6	106:5	117:15	141:2	29:13,16
18:20 24:8	10:12	2:7,7,10,11	107:3,4	118:2,10	146:25	<b>market</b> 50:9
77:21 83:4	51:15	2:12,12,14	109:19	118:14	155:8	<b>market-wi...</b>

2:1	127:3,4,7	<b>meet</b> 135:18	2:13	84:5,8	28:17	<b>negotiation</b>
<b>Mary</b> 137:4	<b>mean</b> 4:10	<b>members</b>	149:17,24	85:16,16	35:23	32:3
141:21	35:13 43:2	45:6 65:20	151:11	85:19,22	<b>nature</b> 7:6	<b>neither</b>
<b>master</b> 8:2,5	44:16	66:4,23	152:19,25	85:22	16:19	38:22
40:2 70:2	48:14	67:3,13,17	<b>minutes</b>	102:23	37:17 49:9	130:23
70:17 81:6	60:20 61:1	<b>mentioned</b>	44:11 89:5	105:11	155:22	132:21
81:16	61:6	81:18 85:1	158:2	110:11	<b>near</b> 25:18	<b>Nell</b> 137:4
90:14 95:9	114:18	101:15	<b>mirror</b>	134:22	<b>neatly</b> 84:11	141:21
98:19,19	119:16	124:16	139:5	<b>monies</b>	<b>necessarily</b>	<b>net</b> 34:15
104:1	124:1	137:2	147:13	135:18,20	20:19 22:8	70:5,9,12
150:18	141:3	157:24	<b>mischarac...</b>	<b>mooted</b>	48:9 87:18	70:15 71:1
<b>match</b> 36:11	153:17	<b>merely</b>	19:14	96:16	136:7,14	71:4,7,11
<b>material</b>	<b>meaning</b>	117:8	<b>misleading</b>	<b>morning</b>	149:10	71:16,22
30:9 32:3	26:6,15,21	125:13	40:21	17:23	155:10	76:3,5
33:1 78:14	26:22 27:7	<b>methodolo...</b>	<b>missing</b>	112:6	<b>necessary</b>	98:10,11
92:16 97:3	27:15	139:4,5	33:11,12	162:12	17:10	98:21,23
103:6	28:19	143:25	73:2 92:8	<b>motivated</b>	25:24 30:9	99:9,10,14
132:11	48:24 75:1	144:3	<b>misspoke</b>	45:18	66:11	99:14,17
138:2	75:2 77:21	146:1	43:9	<b>move</b> 89:3	109:6	99:18,24
152:14	122:11	<b>methods</b>	<b>missubmit</b>	113:19	115:3	102:9,15
<b>materially</b>	127:10	75:19	119:21	<b>moving</b>	116:2	102:19
80:13 85:2	<b>means</b> 9:14	<b>MF</b> 84:12	<b>misunders...</b>	11:22	138:17	104:7,8,11
90:1,2,3	32:25 42:6	<b>middle</b>	121:16	<b>multiple</b>	139:11	104:13,19
100:5	42:22 45:6	104:4	<b>misunders...</b>	70:22	<b>need</b> 8:6	104:21
<b>matter</b> 4:14	52:11	130:2	26:25 59:9	<b>mutual</b> 9:21	14:9 23:16	105:4,5,6
4:20 19:23	62:19	<b>miles</b> 51:11	<b>modest</b>	24:24	30:25 31:6	106:12
20:6 21:13	129:18	<b>million</b>	49:22	25:21	45:8 64:10	107:20,21
41:17	141:1	49:16	<b>modified</b>	48:20	69:16	108:3,19
52:24 53:6	155:7	51:11 57:5	98:6 120:2	60:13	76:15 86:7	108:25
57:12 59:2	<b>meant</b> 61:18	58:1 59:11	136:5	62:21 93:2	97:17	115:13
60:17	62:21	<b>million-odd</b>	142:20	106:6	103:2	116:12,12
70:12	125:13	18:16	<b>modify</b>	<b>mutuality</b>	108:24	118:16
124:5,11	<b>measured</b>	21:16	119:9	33:15 36:9	116:7	138:20
129:8	68:4	104:12	<b>moment</b>	36:17,21	139:11	139:10,18
142:1	<b>mechanics</b>	<b>mind</b> 123:14	1:20 21:10	37:16	<b>needed</b>	139:20
152:5	70:12 72:9	149:1	51:10	60:12	135:18	140:15
154:8	82:16	<b>minds</b> 152:4	52:11		<b>needn't</b> 2:13	141:11
<b>matters</b> 1:22	<b>mechanism</b>	152:12	74:16	<b>N</b>	16:5 52:1	143:2,6,11
10:3 11:1	30:14	<b>minimise</b>	110:7	<b>NAMA</b>	<b>needs</b> 88:3	143:15,17
28:19 33:9	75:24	48:9	162:10	126:22	114:22	144:24
37:15	116:16	130:24	<b>moments</b>	<b>NAMA's</b>	<b>negative</b>	145:1,9,13
38:20,24	118:22	<b>minimum</b>	113:19	127:12	157:6,22	147:3
62:5 106:4	138:12	102:9,15	153:24	<b>name</b> 82:1	<b>negatively</b>	148:1
137:6,20	139:18	102:19	<b>money</b> 79:10	96:23	50:20	150:19
139:2	140:6	104:7,11	80:19,25	<b>natural</b> 26:6	<b>negligence</b>	155:19,25
<b>maximise</b>	141:10	104:13,19	81:2,3 82:8	26:15,21	25:13	157:7,16
48:8,16	143:4	104:21	82:8 83:5	27:7 135:3	<b>negligent</b>	157:20,21
<b>McKillen</b>	144:25	<b>minor</b> 85:10	83:15,20	136:21	10:19	159:13,13
126:22	160:15	<b>minority</b>	83:24 84:3	<b>naturally</b>	105:19	159:15

160:3,7,12	3:5	131:14	116:21	125:11	123:5	53:21 64:8
160:20,23	<b>non-finan...</b>	<b>notwithsta...</b>	125:7	<b>offered</b>	126:3	65:12
161:4,9,10	156:9,12	8:16 19:4	145:25	141:17	157:23	67:25
161:25	156:14,18	40:7 82:22	158:13,17	<b>offices</b> 25:12	<b>operated</b>	71:14 90:9
<b>netted</b> 76:2	156:23	99:7 102:7	<b>observed</b>	25:13	119:1	90:15,16
<b>netting</b>	157:2,9	<b>NTA</b> 141:9	121:7	<b>official</b> 81:7	143:4	90:17,18
63:10	160:4,5,11	<b>nth</b> 33:9	<b>obtain</b> 77:11	98:25	<b>operation</b>	91:4,13
70:17	160:25	<b>nuance</b>	<b>obverse</b>	<b>offset</b> 76:13	77:3	92:14 94:1
<b>never</b> 3:24	<b>non-prova...</b>	81:14	33:25	<b>offsetting</b>	<b>operative</b>	94:5,18,19
79:23	5:18 10:11	<b>number</b>	<b>obvious</b> 61:9	108:22	8:8 13:9	94:24 95:2
118:5	18:3,23	1:19 30:15	139:16	<b>Oh</b> 27:19	23:20 99:4	95:14,18
121:1	19:15	32:3 49:22	152:15	96:7 104:6	104:15	95:24 96:5
132:14	23:14 35:4	62:10	<b>obviously</b>	<b>oil</b> 135:1	<b>opposed</b>	96:9,18
133:5	38:11,21	70:24 71:2	3:1 5:21	<b>okay</b> 36:24	111:20	97:9,10,10
141:13	39:11	88:9 105:3	18:15	59:21 61:3	<b>opposite</b>	111:14
<b>nevertheless</b>	41:11	119:19	52:17	84:16	34:22	117:7
19:3 28:4	43:20 52:8	121:7	69:11	88:21	42:13 48:6	155:17
111:5	52:21,22	138:22	104:9	92:10	147:13	157:3,10
132:10	66:8 67:2	145:14,17	114:21	113:23	<b>opting</b> 32:4	<b>originally</b>
133:7	67:16,23	151:7	115:6	142:6	<b>optional</b>	111:8
157:8	69:2 73:1	<b>numbering</b>	119:11	161:10	30:18	114:3
<b>new</b> 23:5,7	84:23	23:5	121:1	<b>old</b> 72:11	<b>options</b>	<b>orphans</b>
59:4 70:8	95:22	<b>numerous</b>	123:17	<b>omission</b>	154:5	49:7
72:6,8	118:8	122:7	126:25	10:20	<b>oral</b> 15:7	<b>outcome</b>
77:23	121:3,18	<b>nutshell</b>	130:1	105:19	<b>order</b> 56:6	116:12
91:14	121:22	78:1	131:25	<b>once</b> 4:10	56:15	149:23
98:20	148:9	<b>O</b>	134:10	18:15 38:4	58:20	<b>outliers</b>
106:11	<b>non-proving</b>	<b>objective</b>	139:10	41:6 42:15	62:15,17	136:25
111:15,21	67:9	29:21,24	140:13,19	63:11	63:24	<b>outside</b> 30:5
116:25	<b>non-stand...</b>	47:3,4	141:25	64:18	75:21 82:2	59:6 157:1
119:10	118:6	55:13	142:17	65:14,15	82:5 88:1,2	157:9
143:5	<b>non-sterling</b>	75:18	144:5	101:8	96:3	<b>outstanding</b>
145:8,21	43:13	<b>objectively</b>	147:7,9	108:25	109:17	100:25
145:23	<b>non-TA</b>	152:13,20	149:16	124:1	115:23	101:9
146:2	69:20	<b>objectives</b>	151:3	<b>one's</b> 152:7	116:4	<b>overnight</b>
147:5,25	<b>norm</b> 134:10	55:8	155:15	<b>one-stage</b>	128:24	1:6
153:4,5,6	<b>normal</b> 33:7	<b>obligation</b>	160:14,15	26:19 87:8	129:2,14	<b>overriding</b>
155:2	<b>Nortel</b> 58:6	70:8	<b>occasion</b>	<b>open</b> 80:17	129:14,21	138:22
<b>newly</b> 4:11	<b>note</b> 7:4 8:19	116:25	141:7	102:5	130:3	144:4
124:2	9:20 12:14	143:5	<b>occur</b> 159:5	107:4	137:11,12	<b>oversimpli...</b>
<b>Nicholls</b>	13:4 31:19	145:8,21	161:14	136:18	<b>orders</b> 92:4	46:22
2:12 4:3,7	62:16	145:24	<b>occurred</b>	<b>opening</b>	<b>ordinary</b>	<b>overstating</b>
16:2,8,22	144:5	147:5,25	5:22	17:23	26:6,14,21	27:22
123:13	<b>noted</b> 78:11	147:5,25	<b>occurring</b>	82:19	27:7 119:7	<b>overview</b>
125:10	118:2	<b>obligations</b>	160:17	<b>operate</b>	120:12,20	30:17 69:1
<b>nil</b> 112:17	144:17	34:10	<b>occurs</b> 148:6	45:23	120:22	79:13
<b>nominee</b>	<b>notice</b> 13:7	35:24	<b>October</b>	46:19	132:24	<b>overwhel...</b>
83:14	140:18	103:13	136:2	112:25	<b>original</b>	145:4
<b>non-conte...</b>	<b>noticed</b>	106:18	<b>offer</b> 76:18	122:7	43:23	148:17

152:16	104:4,4,7	148:14	60:8	124:11,24	<b>passage</b>	115:20
<b>over-enth...</b>	104:16	<b>papers</b>	<b>parentheses</b>	125:9,14	31:14	<b>Pearson's</b>
125:12	106:18	110:17	10:9 56:13	126:3	49:12	115:17
<b>owe</b> 27:20	107:2	<b>paragraph</b>	<b>pari</b> 46:3	133:23	75:14	116:15
<b>owed</b> 116:2	110:6	1:17 2:6,14	130:21	142:17	126:7	139:25
116:13	112:14	2:15,15,19	<b>park</b> 74:16	<b>particularly</b>	<b>passages</b> 2:9	<b>pending</b>
149:8	115:20	3:2,6,10,15	74:21	108:18	28:25 75:8	101:6,23
155:19	123:13	3:19 4:6	<b>parked</b>	122:3	123:8	102:2,11
159:22,25	124:21	27:2,4,6	96:23	123:11	<b>passu</b> 46:3	104:10
<b>owes</b> 158:17	125:1,23	32:11,14	<b>parsing</b>	127:23	130:21	<b>pens</b> 16:22
<b>owing</b> 70:16	126:8,9,12	45:16,19	27:16	128:5	<b>Pause</b> 2:15	<b>percentage</b>
71:3	126:13	46:4 47:1	<b>part</b> 18:14	148:25	71:21	141:9
100:14	129:3	47:13,19	29:3,5 33:3	<b>parties</b> 3:22	91:12	<b>perfectly</b>
109:2	135:9,12	47:21,23	37:7 52:4	4:8,17,17	110:7	17:4 35:6
145:15,18	135:14	50:1 51:7	52:25 62:1	5:13 6:1,12	112:14	35:22
148:2	136:1,11	54:17	66:2 68:1	12:15	123:16,22	48:17,22
<b>owned</b> 99:19	140:1	65:25 66:5	79:25 80:9	13:19	124:14	154:3
<b>owner</b> 7:13	142:8	69:18,19	83:19	16:19 22:1	126:14	<b>perform</b>
7:19 82:4	144:16	70:3 76:19	86:22	22:5 23:16	127:25	47:2,11,14
<b>owners</b>	146:13	90:22	103:12	27:8,10,12	129:25	<b>period</b> 29:21
96:14	147:1,20	110:5	106:16,17	28:8,15	140:2	62:10
138:13	150:2,6,8,9	112:10	107:5	29:2,8	159:18	<b>peripheries</b>
<b>o'clock</b> 89:7	156:7	115:19,20	108:15	35:13	<b>pay</b> 29:1	25:17
	158:22	123:15,21	109:25	45:17	43:2,3,14	<b>permanent</b>
<b>P</b>	163:2	124:13,20	115:4	49:24 52:6	67:1,15	108:16
<b>page</b> 6:15	<b>pages</b> 12:12	124:25	118:14,15	52:13	85:17	109:9
7:7,9,15	<b>paid</b> 13:17	125:2,17	127:11	72:10	<b>payable</b>	<b>permit</b>
8:1 12:6	18:1,9,12	125:23	138:18	80:15	68:13	31:19
13:8 14:23	18:13,15	127:8,18	140:16	88:24	135:19	<b>permitted</b>
20:5 23:7	18:15 33:2	127:25	145:10	109:8	<b>paying</b> 45:4	114:20
29:17,25	40:22 41:1	128:23	156:14,24	114:12	122:14	130:23
30:2,22	41:3 42:6,8	129:4,11	159:2,3	115:14	<b>payment</b>	<b>person</b>
31:4,25	42:9,19,20	130:2	<b>particular</b>	122:5	40:24 42:3	93:19
32:10,12	42:25 43:6	134:16	1:22 4:20	124:8,8	54:15	<b>phrase</b> 19:7
40:1 49:11	43:10,13	137:5	7:6 10:7	133:5,16	85:21	20:7 38:2,5
50:1 62:4	43:16,18	138:5,14	29:17	133:20	116:21	40:21
69:18	51:18	140:1,2	47:13	142:19	117:2,8,12	131:16
70:13 73:6	65:15	142:4	48:15	152:7	122:16,17	139:24,25
75:16,23	73:24	155:1	49:11	<b>partly</b> 51:18	147:19	<b>phraseology</b>
77:1,8,9	74:12,13	<b>paragraphs</b>	52:19	<b>partnership</b>	149:20	73:13
79:5 80:24	86:20	4:3 45:15	55:13	4:23	156:2	<b>pick</b> 3:1 6:23
80:24 81:5	106:23,25	49:2 84:13	66:19	<b>parts</b> 18:4	<b>payments</b>	31:24 75:8
81:13,24	107:10	103:6	69:19	<b>party</b> 2:22	34:13 60:2	103:9
82:17	108:13	123:14	76:21	8:18 49:5	66:8	<b>picked</b>
90:13 98:2	110:1,23	127:6,21	81:14	82:24	118:11	103:18
98:16,21	111:2,5	129:24	89:24	125:19	158:10,13	<b>picking</b> 6:13
101:13	135:7,23	138:7,8	96:17 98:4	135:21	<b>payout</b>	10:12
103:3,25	147:18	<b>parameters</b>	101:1	143:24	85:18	65:24
103:25	148:5,13	23:25 24:2	122:7	<b>party's</b> 5:3	<b>Pearson</b>	78:21 81:4

156:10	55:25	161:4	140:15	11:6	<b>present</b> 7:23	23:21
<b>picks</b> 103:15	56:25	162:7	143:2,11	119:14	82:6 103:7	70:16,20
<b>piece</b> 26:20	57:14,15	<b>pointed</b> 40:6	143:16,18	131:23	139:2	71:8
<b>place</b> 23:24	57:19	<b>pointing</b>	144:24	<b>pound</b>	<b>presented</b>	118:18
24:2 44:8	59:10,16	35:2	145:2,13	122:15	54:14	<b>principle</b>
45:13	60:16 61:2	<b>points</b> 4:2	147:3	<b>pounds</b>	<b>presently</b>	3:17
60:19	61:22	23:21 24:7	149:1,16	18:16 81:8	126:17	125:15,22
64:19 65:5	63:15	31:14 43:9	151:16	83:17	<b>preservati...</b>	128:21
109:15	64:12	44:22	155:18	84:19	132:6	<b>principles</b>
149:9	65:19,24	45:10 46:4	157:20	98:24	<b>preserve</b>	63:2
<b>placed</b>	66:18	52:2 54:13	161:9	104:13	5:23	<b>prior</b> 27:4
127:22	68:18 72:5	54:19	<b>positions</b>	110:12	<b>preserved</b>	97:12
<b>plain</b> 132:1	73:15	55:22	75:22	<b>power</b> 47:17	85:2	101:17
132:10	76:11,13	66:17	107:20	47:19 49:6	118:13	115:25
154:3	77:19	85:11	141:11	49:7	<b>preserving</b>	<b>private</b>
<b>pm</b> 89:8,10	82:14 86:1	116:19	<b>positive</b>	<b>powers</b>	112:1	49:22
113:24	87:25	121:10	50:19	32:19	<b>pressed</b>	<b>Privy</b> 127:2
114:1	95:13,19	122:2	70:24 71:2	48:18	123:25	128:4
162:13	101:15	125:9	145:14,17	127:13,14	<b>pretty</b> 89:4	<b>probably</b>
<b>point</b> 2:18	103:2	130:10,11	157:21	<b>practicable</b>	<b>prevent</b> 65:3	1:19 2:1
4:6 6:1,11	107:15	137:10	<b>possession</b>	47:16	<b>prevented</b>	26:8 27:18
6:23 8:12	115:16,18	138:10	81:25	<b>practical</b>	119:11	91:19
8:19 9:20	116:20	141:19	<b>possibilities</b>	151:14	<b>prevents</b>	116:9
13:22	117:6,14	<b>pool</b> 85:16	73:11	<b>practice</b>	86:23	162:4
16:22,24	123:3,10	85:16,19	<b>possibility</b>	79:20	<b>previous</b>	<b>procedure</b>
17:4,20,22	123:11	85:22,22	4:10 15:22	154:7	15:7	32:18
22:25	124:12,18	<b>portal</b> 63:21	35:9,11	<b>pray</b> 50:18	<b>previously</b>	<b>proceed</b>
24:23 27:6	128:2,6	<b>position</b>	44:6 51:22	<b>preamble</b>	149:18,21	131:8
28:9 29:20	131:13,18	27:23	52:14	8:14 85:4	<b>pre-admin...</b>	<b>proceeding</b>
29:25 31:3	131:20	35:24 37:4	124:1	<b>precisely</b>	34:9,10	12:8
31:5,16	132:9	70:6,12,15	155:15	4:17 14:3	37:5	<b>proceedings</b>
33:10 34:7	133:4	71:1 75:9	<b>possible</b>	107:10	102:22	12:2,5
34:8 35:5	134:6	76:23	15:21	119:16	105:11	46:10
35:22 36:8	138:15,20	79:13	31:11 33:9	124:8	<b>pre-discus...</b>	<b>process</b>
36:23	139:4,9,17	88:19	48:3 59:4	138:25	78:10	11:25
37:14,19	140:24	96:12 97:8	119:18	<b>preclude</b> 5:1	<b>pre-echoed</b>	21:12 22:7
38:6,9,10	141:5,6,14	99:14	<b>possibly</b>	<b>predomin...</b>	11:11	25:4 26:7
39:6 41:21	142:9	100:22	48:14	107:14	<b>price</b> 152:20	26:18,19
43:12,12	144:5	105:5,7	148:23	<b>prejudice</b>	<b>primarily</b>	27:1 28:2
43:17,19	146:24	108:9	<b>post-admi...</b>	23:9	23:25	30:11,18
43:25	148:17,25	110:16	34:7,25	156:24	30:19	31:8,11
44:18,23	150:25	111:9,10	35:18	<b>prejudicing</b>	<b>primary</b>	32:23 33:3
45:7 49:1,1	151:15	114:8,25	162:6	115:8	114:5	33:8 37:1
50:19	152:4,13	115:14	<b>potential</b>	<b>premises</b>	115:2	40:25 45:4
51:11 52:4	155:9,18	116:4	32:24	25:15	116:6	45:20 50:3
52:17	155:24	119:25	33:22 34:1	<b>prerequisite</b>	135:16	54:10,22
53:11	156:10	120:25	34:3 50:6	18:7	138:11	60:17
54:13,17	157:13,15	138:20	51:21 84:2	<b>prescribes</b>	142:1	62:21 66:6
54:18	159:19	139:1,10	<b>potentially</b>	64:4	<b>principal</b>	73:2 75:20

86:4,5 87:8	59:18 65:6	3:15 51:3	106:3	144:4	65:5,9	19:9 20:2
109:1	66:6 87:22	64:22	<b>proved</b> 6:24	146:24	75:12	20:17,18
115:6	87:24 88:9	111:16	62:9 67:1	147:22	80:14	20:19
116:12	109:4	113:4	<b>proven</b> 63:6	153:9	84:20	21:22
119:7	118:23	<b>propositions</b>	<b>proves</b> 67:10	154:15	88:22 99:2	56:17 88:6
120:3,7,13	119:7,10	113:1	<b>provide</b> 3:22	157:5,14	103:7	98:11
120:22,24	119:21,23	<b>proprietary</b>	30:23	157:22	108:20	102:12
130:4	120:1,2,6	7:7,8,15,25	37:21	159:3	109:4,12	<b>qualify</b> 22:2
137:1	120:10,12	24:14	46:17 61:8	<b>purchase</b>	110:20	56:7 60:5
138:18	120:15,15	76:14	141:10	101:3,18	120:6	88:1,2
139:21	120:20,21	82:10,11	<b>provided</b>	<b>purchasing</b>	131:20,21	99:19
140:16,22	120:22	82:16	40:23	50:8	131:24	104:23
158:1	155:7,10	90:13,21	71:23,25	<b>purpose</b> 6:1	139:3	<b>quantifica...</b>
161:13	161:22	<b>proprietor's</b>	72:24	9:25 24:16	144:22	45:22
<b>processes</b>	162:1	129:12	83:25	25:24	151:18	<b>quantified</b>
45:23	<b>proofs</b>	<b>prose</b> 26:20	104:14	37:21 38:1	153:10	102:20
46:17 58:1	119:10,20	<b>prospect</b>	105:8	57:20	154:18	116:21,22
<b>produce</b>	121:1	87:6	106:20	64:25 65:5	155:10	117:24
87:17	131:2	<b>prospective</b>	117:17	66:9,11	156:13,24	<b>Quantifying</b>
131:11	140:20	7:10	122:17	75:5 76:15	157:17	115:3
160:13	<b>proper</b> 48:1	<b>prospects</b>	133:5	80:13,14	161:6,12	<b>quantum</b>
<b>produced</b>	48:10,22	62:5 64:11	<b>provides</b>	81:8 88:7	<b>pursuant</b>	98:9 102:8
80:5	66:13	<b>protect</b>	76:22	88:18	6:18,20	102:15
<b>produces</b>	<b>properly</b>	116:4	77:16	89:14,17	20:3 56:19	119:13
60:14	42:12	<b>protracted</b>	117:16	107:18	56:20 72:2	<b>quasi-judi...</b>
145:1	48:13	30:11 31:8	<b>providing</b>	108:24	81:3	46:2 131:2
157:20	152:15	<b>provable</b>	11:8 55:2	111:13	114:18	131:15
<b>profile</b> 32:17	<b>properties</b>	22:11,14	133:15	114:6	132:7	<b>queries</b>
<b>progress</b>	7:23 82:7	23:23 24:1	<b>proving</b> 67:7	115:2	150:22	62:11
14:7 25:23	<b>property</b> 5:3	24:3,11,15	147:9	116:6	<b>pursued</b>	<b>question</b>
25:25	5:4 96:14	24:18,21	162:3	131:13	147:18	17:1 26:2
29:12	103:8	25:3,5	<b>provision</b>	132:18	<b>put</b> 25:23	35:4 53:3
31:23 38:3	138:13	33:25	8:8 13:9,23	135:10	26:4,11	61:14
45:7 49:10	140:14	37:14	23:20	136:10	56:6 67:22	74:15,17
51:20	<b>proposal</b>	42:13,15	53:10	137:24	128:6	80:17
54:20	135:5	45:3,4	72:21 82:9	138:11	130:6	96:22
59:24 62:2	137:2	55:10,12	84:6	141:15	131:4,10	107:7
81:10	150:4	55:24	155:24	142:1	<b>puts</b> 26:17	111:24
<b>promise</b>	<b>proposals</b>	56:22 60:3	156:4	162:2	127:1	114:7,19
12:5	135:10	61:12,16	158:8	<b>purposes</b>	<b>putting</b>	114:21
<b>promulgat...</b>	136:9	67:12,14	<b>provisions</b>	10:2 17:10	26:25 75:5	123:18
75:11	<b>propose</b>	76:17	46:18	25:22		151:23
<b>proof</b> 13:17	51:8 97:4	82:15	62:23	29:12	<b>Q</b>	162:4
22:6 38:13	107:3	85:13	111:24	36:21	<b>qualified</b>	<b>questions</b>
38:16,23	112:11	121:3,18	122:4	37:13	9:25	100:25
42:9 56:10	135:15	121:21	123:12	55:11	109:14	<b>quibble</b>
57:12,17	<b>proposed</b>	122:15	127:14	57:10 58:5	111:7,13	61:10
58:3,11,15	155:17	<b>prove</b> 11:24	138:22,23	58:8 61:24	<b>qualifies</b>	<b>quickly</b>
58:21 59:1	<b>proposition</b>	21:2 85:15	142:16	63:5 64:23	6:17 8:25	47:15 48:2



68:22,23	52:18	33:24 34:8	158:9	123:7	76:22 84:1	100:22
75:15 89:4	55:16	37:15	<b>received</b>	153:9	<b>regardless</b>	101:9
142:15	133:16	42:25 43:3	62:10	<b>reference</b>	148:14	106:9
<b>quite</b> 21:10	152:19	50:19 52:4	102:4	7:22 14:15	<b>regards</b> 34:8	107:11
26:13 29:1	<b>reached</b> 1:9	52:16	122:18	26:8 43:3	<b>regime</b>	111:10
36:22	<b>reaches</b>	53:23	<b>receives</b>	77:7 83:5	45:24,25	114:23,25
51:15 57:3	21:13	112:15	118:17	113:8,8	46:16,20	119:21,22
68:11	<b>reaching</b>	113:9	148:8	115:17	48:17	119:23,25
94:23,25	54:25	145:23	<b>receiving</b>	118:2	131:12	120:25
95:19	<b>reaction</b> 2:2	152:10	154:19	124:24	<b>rehyothe...</b>	122:3
141:7	<b>read</b> 2:17	153:5	157:18	125:15,22	101:20	127:17
144:21	4:3 8:8	<b>reason</b> 10:18	<b>recital</b> 5:25	126:16	<b>rehyothe...</b>	134:11
151:22	16:9,24	19:5 22:21	78:24	127:9,13	101:21	137:8
152:5	21:25 22:4	34:17,23	81:20 95:8	128:4	<b>rehyothe...</b>	149:17
<b>quote</b> 27:5	22:12	60:1 61:8	<b>recitals</b> 5:25	129:20,22	101:4	155:19
<b>quoting</b> 2:7	44:17	64:13,19	90:3 98:1	137:3	<b>reinforce</b>	157:16
	60:20,21	66:13	101:13	138:21	72:17	<b>relationship</b>
<b>R</b>	61:6,17	80:22 82:9	<b>recites</b> 90:3	145:20	76:12	17:19 27:8
<b>raised</b> 16:12	62:3 64:10	85:12	101:13,15	146:14	<b>reinforces</b>	33:6 55:16
<b>range</b> 76:16	121:8	86:22	<b>reciting</b> 26:8	147:19	13:22	55:17,18
<b>ranged</b> 68:9	123:4	88:17	50:2	<b>references</b>	85:24	60:15 75:7
<b>ranging</b>	126:7	105:18	<b>recognise</b>	38:14 52:1	<b>Reinforcing</b>	<b>relative</b> 64:6
49:19	129:24	112:24	13:2	76:12	9:8	<b>relatively</b>
<b>rate</b> 41:14	140:2	119:11,23	<b>recognised</b>	<b>referred</b> 4:4	<b>reject</b> 48:4	68:18
43:4 63:9	<b>reader's</b>	131:12	1:12,13	5:13	<b>relate</b> 25:4	<b>release</b> 1:16
63:14	77:7 118:3	133:5,15	22:5	147:12	62:13	1:18,20 3:5
68:13 72:1	138:2	136:20	110:16	150:15	<b>related</b>	4:8,12,16
81:6,7,9	<b>readier</b> 35:8	149:23	<b>reconciling</b>	<b>refers</b> 3:6	97:20	4:18,22,24
83:17	37:6	<b>reasonably</b>	102:1	77:22	<b>relates</b> 49:18	5:6 6:8
84:20	<b>reading</b> 3:14	4:18 5:1	<b>reconversi...</b>	81:16	<b>relating</b> 4:19	9:21 10:25
88:10	7:14 12:18	27:11 35:6	109:10	130:2	24:3 63:4	15:20,21
98:25 99:3	21:16,19	35:22	<b>reconverted</b>	141:22	81:22	17:17
112:8,17	22:10	47:15	110:3	150:18	102:3	18:20
113:10	45:11 61:9	124:9	<b>records</b>	<b>reflected</b>	124:10	19:19
117:20,20	92:25	<b>reasons</b>	102:2	145:10	<b>relation</b>	20:22
117:21,23	<b>reads</b> 2:15	38:19,20	<b>recover</b> 84:4	146:12,17	10:11	21:11
133:12	<b>ready</b> 36:6	61:12	<b>recovered</b>	146:18	15:16	23:22 24:2
144:13	36:25 37:7	67:18	130:25	149:12	18:19	24:24 25:7
149:9,12	37:24	112:5	<b>reduce</b>	<b>reflecting</b>	22:11	25:21
149:14	48:19	121:7	33:13 77:4	151:2	23:14	33:15,17
156:19	54:25	129:22	159:1,13	<b>regard</b>	35:24 37:5	36:2,5,9,17
<b>rates</b> 63:19	120:19	155:5	159:21	26:22 29:1	46:9 53:8	37:16,17
63:22	<b>realise</b>	<b>recall</b> 16:1	160:6	31:9 146:1	68:10	38:19
81:11	130:20	122:13	<b>reduces</b>	152:10	80:10 81:1	40:13
112:16	<b>realised</b>	<b>receive</b>	31:10	<b>regarded</b>	82:18	48:21 52:5
<b>rationale</b>	149:12	12:23	76:23	4:12 124:3	86:10	52:15 55:9
134:4	<b>realistic</b>	13:11,24	<b>refer</b> 62:15	151:8	93:13	55:12,24
<b>reach</b> 28:18	43:1 146:1	14:20	91:5 94:11	<b>regarding</b>	95:20	57:24
48:19	<b>really</b> 26:25	77:23	121:23	30:24	96:13 97:8	58:14,17

59:17	67:14 69:3	51:16	68:25	<b>required</b>	<b>respects</b>	138:13
60:10,13	69:9,20	63:22	70:11	32:2	139:6	<b>returned</b>
66:20 67:5	70:4 71:13	102:3	123:21	128:11	<b>responded</b>	98:5
67:11,17	71:15	105:16	<b>reminded</b>	130:23	136:13	<b>returning</b>
69:17,22	73:25 74:8	117:2	79:13	152:21	<b>responding</b>	116:6
71:6 72:6	74:12	123:13	<b>remission</b>	<b>requireme...</b>	148:16	138:18
72:16 75:2	78:25	127:15	129:13	57:21	<b>response</b>	139:23
77:11,17	81:20,21	143:24	<b>remitted</b>	<b>requires</b>	129:12	140:14
77:23	85:8 96:10	144:14,15	129:6,8,16	37:16	<b>restate</b>	142:1
82:10,10	97:22	148:5	<b>remitting</b>	39:23 45:9	152:23	<b>revenues</b>
82:13,15	106:4	150:8	128:25	45:25 64:3	<b>restated</b>	7:23 82:7
82:18 85:1	107:2	156:4,19	129:2	156:2	117:9,12	<b>reverse</b> 25:6
85:12	110:23	159:14	<b>remotely</b>	<b>requiring</b>	148:23	57:14
89:17 90:7	111:3	<b>reliant</b> 50:22	134:19	30:7 31:21	<b>restrict</b>	155:18
90:22	112:19	<b>relied</b> 44:21	148:18	62:20	15:18 23:9	<b>review</b> 33:5
92:13 93:2	121:24	46:12	<b>repeat</b> 55:24	<b>resolution</b>	<b>restricting</b>	<b>re-enforces</b>
93:20,21	132:3,10	<b>relinquish</b>	112:11	30:4 50:15	72:21	23:15
93:25	132:13	21:2,3	146:14	<b>resolve</b>	<b>restriction</b>	<b>re-investig...</b>
97:12,18	142:19	<b>relinquished</b>	<b>repeated</b>	30:10 98:7	14:13	55:18
98:14	157:6	22:24	29:24	<b>resources</b>	<b>restrictions</b>	<b>re-open</b>
100:2	<b>releases</b> 5:17	<b>reluctant</b>	124:12	30:7	14:5 31:16	55:18
101:11	5:18 24:9	16:21	<b>replaced</b>	<b>respect</b> 6:9	<b>result</b> 1:25	<b>Richard</b> 3:6
102:21	24:13	<b>rely</b> 46:12	6:20 56:20	10:19	19:24	<b>RICHARDS</b>
104:15	36:10	51:2	<b>replete</b>	13:12,18	25:13	1:6,15,24
106:6	67:20 91:3	<b>remain</b> 39:4	37:20	23:10 60:2	33:22	2:3,16 3:18
111:24	100:17	121:22	<b>replicated</b>	66:8 67:11	41:18,18	4:1,5 7:14
121:17,17	105:13	<b>remainder</b>	92:5	69:23 71:1	42:4 47:6	7:17 8:10
122:4	106:19	67:7 68:8	<b>reply</b> 51:7	75:22 76:7	66:10,14	9:22 11:20
123:5,12	110:25	68:21,23	51:10	81:25 83:2	69:3 78:20	12:10
123:19,20	122:5,6	83:21	<b>report</b> 25:25	84:2,4 85:5	84:12	13:15,23
124:6,9	132:8,17	<b>remaining</b>	29:12 38:3	96:13	87:15	14:11,14
125:10	<b>releasing</b>	64:24 98:8	49:10	102:2,10	89:23	14:17 15:4
133:7,12	15:22	100:17	54:20	103:7	109:10	15:14,24
133:18	33:18 44:1	101:12	59:24 62:2	104:10	119:2	16:1,8,16
142:18	44:4 61:15	160:7	62:7 81:11	105:19	120:4	16:21 17:1
<b>released</b>	90:24	<b>remedies</b>	<b>reports</b> 14:7	115:9	131:11	17:9,12,20
9:19,21,23	92:18	84:2	25:23 45:7	121:2	133:23	18:10
10:4,13	93:12	<b>remember</b>	51:20	132:24	<b>results</b> 42:1	19:22 20:8
17:24	97:12	1:8 65:2	<b>represent</b>	133:1	<b>resume</b> 89:6	20:12,22
18:11	106:6	96:15	71:3	139:18	<b>retain</b>	20:24 21:1
23:18,19	112:3	107:19	145:14,17	142:21	153:21	21:4,9,21
24:24 25:2	148:24	142:2	<b>representa...</b>	143:19	<b>retention</b>	22:16
25:15,18	149:11	<b>remember...</b>	15:11	145:13	103:8	23:12 25:8
25:20	<b>relevance</b>	97:20	<b>representa...</b>	155:24	<b>return</b> 33:18	25:11 26:1
36:18,20	75:13	<b>remembers</b>	50:7	157:1,9	45:21 46:1	26:24
37:11 41:3	<b>relevant</b>	24:19	<b>require</b>	<b>respected</b>	76:20,21	27:14,19
52:12	11:19	<b>remind</b> 5:16	105:6	65:17	101:21	27:25 28:3
53:12	14:24,25	29:15 32:9	131:22	<b>respectfully</b>	115:2,7,24	28:6,10,17
65:11	16:9 27:9	54:23	135:6,21	145:19	130:18	28:23 29:4

29:7,11	89:6,21	142:6,25	97:25	108:17	23:11	54:24,24
31:2,22	90:5 91:7	144:9,17	105:4,6,8	122:21	24:22	55:7,13,21
32:7 33:21	91:10,12	146:14,19	106:11,12	125:20	41:15,19	<b>saying</b> 37:9
33:24 34:5	91:16,19	147:21	106:13,25	131:23	45:25 56:8	43:10
34:20 35:1	91:21,25	150:7	107:9	132:25	56:19	61:19
35:21 36:8	92:6,10,20	151:4,14	108:13,14	134:3	58:21	136:13
36:13,22	92:22 93:2	151:21,25	108:14	142:23	62:23	150:23
36:24 37:3	93:7,15,18	152:9	112:1,18	143:1,9,10	71:24 81:4	162:2
37:12,18	93:21,23	156:8	112:20	156:25	99:1,21	<b>says</b> 3:3,11
38:8,17	94:2,4,13	157:12	113:5	158:25	117:18	3:11 20:8
39:6,10,14	94:17,23	158:4,6	116:24	<b>right-hand</b>	118:4,5	21:14
40:3,17,19	94:25 95:5	159:17	117:5,8,11	30:2 49:12	161:18	26:14 40:6
41:7,25	95:8,13,19	160:1	118:8,9,10	135:14	<b>run</b> 155:5	61:14
42:3,17,24	96:1,7,12	161:1,4,16	118:13,16	<b>rise</b> 17:19	<b>running</b>	71:18 97:5
43:6,24	96:21,24	161:18,25	121:13	34:1,2 68:6	127:18	110:5
44:7,11	97:1,14,25	162:7,11	133:10,12	89:6		115:21
47:22,24	100:12,21	<b>right</b> 12:22	136:3	<b>rolling</b> 154:1	<b>S</b>	123:24
51:14,17	102:24	13:11,24	141:16	<b>room</b> 3:25	<b>safely</b> 94:9	125:1,18
53:14,20	103:5,17	13:25 14:2	143:4,5,15	<b>root</b> 15:24	<b>sale</b> 101:18	129:4
54:6,12	103:22	14:14,19	144:21,25	15:25	<b>salutary</b>	130:4
56:5,15,21	104:3,6	18:1,4,11	145:7,8,9	16:16	2:20	143:18,22
57:4,8,15	106:8	18:23	145:16,16	<b>roots</b> 5:3	<b>Sans</b> 128:15	144:21
58:2,13,19	107:22	19:11 20:8	146:2,4,4	25:9	<b>sat</b> 50:14	150:20
59:1,5,9,16	108:2	21:2,3,21	147:3,5,21	<b>rough</b> 36:6	<b>satisfaction</b>	153:13
59:21 60:6	109:16	22:14,16	147:25	36:25 37:7	98:6	154:25
60:11,23	110:4,7,14	22:23	149:20	37:24	<b>satisfied</b>	162:2
61:3,21	111:22	26:13	155:3	48:19	18:5,17,18	<b>SCG</b> 50:11
65:21	112:9,13	37:12,18	158:19	54:25	42:15	52:1 54:16
68:11,16	112:21	39:6 40:22	162:2	120:19	134:21	61:7
68:19	113:12,15	41:1,3,25	<b>rightly</b> 37:4	<b>rougher</b>	141:12	<b>schedule</b>
69:14	113:21	44:2,25	<b>rights</b> 2:23	35:8 37:6	148:6,7	46:25
70:21 71:9	123:23	45:5 57:4	3:23 7:23	<b>round</b> 55:19	<b>satisfy</b> 42:11	47:18,21
71:20 72:4	124:15,22	58:10,22	8:21 18:18	120:14	56:16	47:21
72:20 73:3	125:24	61:21 62:1	20:20 22:9	<b>route</b> 135:23	<b>satisfying</b>	142:4
73:21	126:10,14	65:12 69:6	23:9 39:2,3	<b>rule</b> 45:9	115:8	<b>scheme</b> 6:21
74:10,22	126:23	70:5,8	39:3,4	62:23,25	<b>sauce</b> 36:9	7:1 9:1
77:25 78:8	127:5,20	71:12	40:11	63:1 65:1,2	<b>save</b> 9:13,14	18:6 20:21
78:13	128:1,18	72:20	42:15	71:23	9:17 12:17	22:7,9,13
79:18,22	129:10	73:24	43:23 44:3	72:24	19:19,19	24:19,20
80:2,21	131:14,18	74:12	65:16	79:19 81:7	19:25 20:7	32:21
83:10,22	134:23	78:13	67:24 68:5	98:25	21:14,17	43:14,15
84:10,14	135:1,25	79:22 80:2	72:14,15	113:8	71:23	56:2,9,23
84:16 85:9	136:3,8,12	84:10,14	74:8 82:7	117:17	79:24 83:2	57:18,22
85:20	136:16,19	84:16 85:6	84:1 94:19	118:13	85:4,4 91:2	58:16
86:15	136:23	85:9,14,15	94:21 95:2	130:8	94:19	59:14,14
87:13,15	138:7	85:20 92:1	96:19	<b>rules</b> 3:8	99:24	59:19
87:21 88:8	139:8	92:6,20	97:11	6:19 13:23	120:12	73:12,14
88:12,17	140:3,7,23	93:5 95:11	99:13	13:25	139:6	73:18,18
88:21 89:1	141:3	96:5,24	105:15	19:11 20:4	<b>saving</b> 19:25	75:10

87:24	<b>secure</b> 62:19	82:18	<b>sensible</b>	<b>settlement</b>	135:8,13	145:18
99:22	<b>securities</b>	90:11	132:4	1:9 102:10	150:8	147:6,7,10
115:22	101:3,4,19	97:20	133:4	104:10	153:7	148:3,4
116:1	101:21	98:17,20	136:7,14	122:18	<b>showed</b>	155:20,23
140:4,5,11	<b>security</b>	99:21	<b>sensibly</b>	<b>set-off</b> 33:13	146:24	157:1,8
141:1,13	115:9	100:6	114:12	33:22	<b>showing</b>	158:9,13
155:7,11	<b>see</b> 7:2 16:4	103:24	<b>sent</b> 75:16	63:11	82:9	158:15,17
155:14,15	17:20	116:23	136:5	161:6,16	136:20	158:18,24
155:17	20:25 21:1	117:15	<b>sentence</b>	162:1	<b>shown</b> 24:7	159:14,22
<b>scope</b> 94:13	21:25 36:8	122:8	66:12	<b>set-offs</b>	40:15	159:25
94:14	36:13	125:16	71:11,18	62:22	49:14	<b>signatory's</b>
118:12	41:21	138:23	123:17	<b>seven</b> 92:2	54:19	76:9 159:1
123:20	45:13 51:8	139:3	125:1	<b>seventh</b>	61:13	<b>signed</b> 41:6
128:24	57:14 59:5	142:16	129:5	10:14	144:8	141:9
129:13	59:16 62:1	143:12,21	<b>sentences</b>	<b>share</b> 63:25	<b>shows</b> 2:21	<b>significant</b>
<b>Scott's</b> 3:6	81:20 83:3	146:6	27:3,6	64:6	13:19	30:7,10
<b>second</b> 5:25	84:17	147:20	124:13	139:13	64:13	<b>significantly</b>
32:11	91:13 92:8	154:15	<b>separately</b>	<b>sharehold...</b>	<b>side</b> 22:20	32:5
43:12,25	92:8 94:2	157:19	114:21,23	66:15	48:6 54:9	<b>similar</b>
51:19	94:14,25	<b>sees</b> 123:6	142:12	131:1	147:13	37:17
55:18	95:5 96:21	135:12	<b>September</b>	<b>shares</b> 51:18	155:22	73:14 75:6
63:15	97:1	150:5	63:5,10,14	67:6	<b>sign</b> 13:3	75:10
75:16	103:17,22	158:22	63:19,22	<b>short</b> 10:5	97:11	78:22
86:14	106:5	<b>self-interest</b>	<b>sequence</b>	37:19	132:16	84:12
115:11	109:16,17	45:18	53:20	44:13	<b>signatories</b>	90:23
117:14	110:14	<b>Senior</b> 37:19	<b>series</b> 81:18	74:24	62:14 63:4	98:16 99:5
126:1	113:12	38:10	<b>served</b> 105:7	77:19 89:9	69:20,20	99:21
127:2	114:6	45:14 51:2	<b>Services</b>	113:25	75:21 76:7	106:2
128:16	116:16	52:16	128:16	116:19	76:23	147:2
131:13,20	124:20,25	53:24 54:4	<b>set</b> 2:5 12:17	157:15	77:11,18	155:1
138:15	127:17,21	65:24 66:1	13:4 45:14	<b>shorten</b> 32:5	77:23	<b>similarity</b>
145:7,9,16	128:22	86:1	54:23	<b>shortens</b>	116:24	147:15
154:13	129:3	<b>sense</b> 14:24	62:25 70:7	91:17,19	117:1	<b>Similarly</b>
155:18	136:3,19	22:17,18	77:1 81:7	<b>shorter</b>	118:3	63:16
156:5	136:23	22:19	98:25	91:23	141:9	133:17
<b>secondly</b>	137:6	23:15 28:5	129:3	<b>shortfall</b>	142:10,11	<b>simple</b> 67:22
7:20 24:13	146:19	28:22	138:4	34:19 84:6	142:14,18	72:5 74:11
38:23	147:14	39:14	143:3,12	84:7 85:19	146:20,22	119:17
44:23	150:14	40:20 41:4	143:16	132:24	147:25	122:12
67:10 69:4	162:7	41:7,22,22	144:1	139:12	148:12,18	123:3
118:18	<b>seeking</b> 48:7	109:22	150:12	<b>shortly</b>	<b>signatory</b>	129:12,13
137:25	48:9,15	115:11	160:12,24	54:17	69:22 71:2	149:23
143:5	<b>seen</b> 1:18	117:13	161:20	89:25	76:1 98:3	<b>simplified</b>
<b>section</b>	3:16 11:17	132:11	<b>sets</b> 81:11	<b>show</b> 28:25	101:14,14	118:22
29:17,18	18:25 23:4	133:16	<b>setting</b> 6:12	90:2 107:3	108:6	<b>simply</b> 7:4
29:19	23:16 38:3	141:16	54:22	115:17	116:13	18:9 27:5
31:23,25	52:13	145:21	<b>settle</b> 101:24	126:4	118:15	45:16
62:5	69:16	152:7	<b>settled</b> 101:5	128:21	139:19	52:11 68:7
127:18	75:13	156:1	101:22	131:19	145:13,15	72:16 95:5

97:2	118:21	<b>sorts</b> 25:18	118:4,5	<b>statute</b> 7:11	63:19 64:6	<b>striking</b>
101:12	120:19	<b>Souci</b> 128:15	<b>standing</b>	10:18	64:14,15	133:20
117:13	123:2	<b>so-called</b>	27:23,24	19:12	64:23 65:8	<b>structure</b>
122:10	152:6	42:7	<b>stands</b> 24:17	72:22	65:15 68:5	69:17 72:9
128:3,7	154:16	<b>specialist</b>	<b>start</b> 26:5	105:18	69:10	77:24
136:21	<b>slow</b> 2:22	46:7	27:16 28:4	126:8,12	74:17	<b>sub</b> 155:1
147:19	3:4 125:19	<b>specific</b>	28:9,10,12	<b>statutory</b>	79:16 80:7	<b>subject</b> 4:14
148:22	<b>small</b> 28:9	23:16,17	28:17	18:6 19:2,4	80:8 81:9	4:20 12:21
150:21	68:18	132:12	60:17	19:6,17	83:17	17:3,6
154:7	151:9	<b>specifically</b>	69:10 96:4	20:13,21	84:20 86:8	47:10
156:1	152:25	63:7 82:8	124:20	20:21 21:3	86:9,14,17	57:18
<b>single</b> 15:18	<b>sole</b> 87:10,12	<b>specified</b>	136:3	21:23	87:2,4,12	58:16
52:4 64:1	100:17	145:25	142:13	22:13,23	87:19,20	59:18
76:3 89:16	<b>solely</b> 9:13	<b>spectrum</b>	<b>starting</b> 5:11	39:7 40:25	88:3 90:12	77:17
130:3	21:14,17	49:19	5:24,25	45:24	91:2 92:18	99:24
<b>Sir</b> 3:6	41:12 91:2	<b>speech</b> 4:2	6:11 12:17	46:20	98:23,24	113:4
<b>sitting</b>	97:21	123:13	69:15	48:17 66:7	100:16,17	124:5,11
113:20	99:24	124:20	123:12	68:12,14	104:13	138:22
<b>situation</b>	<b>solution</b>	<b>speeches</b>	137:22	73:2 112:1	106:24	144:4
133:2	76:19	2:10	138:3	112:5,7,25	107:9,12	158:19,24
153:16,19	<b>somewhat</b>	<b>speed</b> 48:21	139:4	113:2,4	108:15	<b>submission</b>
157:4	75:10	77:2	142:8	117:14	109:7,11	17:5 26:10
<b>skeleton</b>	<b>soon</b> 115:23	<b>speeding</b>	<b>starts</b> 40:5	119:3	109:18,25	43:20
19:1,7	<b>sooner</b> 31:12	37:1 45:3	45:2 64:21	120:21	110:3,12	74:24 78:1
37:20	<b>sophisticat...</b>	<b>speedy</b> 55:3	65:8 77:8	125:7	110:21	96:8
45:14 49:2	49:23	<b>spot</b> 144:13	88:15	126:2	111:8	125:25
49:25 51:7	<b>sophisticat...</b>	156:19	104:16	127:19,23	120:6	126:1
54:17	50:18	<b>squarely</b>	107:18	130:22	148:8	128:2
65:25 78:5	<b>sorry</b> 2:10	18:22	112:14	131:11	149:2,5,13	133:21
112:11	7:14 12:16	52:12	116:6	133:8	153:20	154:21
131:15	18:16 21:9	<b>staff</b> 25:13	135:11	<b>stem</b> 17:25	154:2,23	<b>submissions</b>
138:25	27:20,25	<b>stage</b> 35:2	142:17	<b>stems</b> 20:15	155:4	1:3 51:9
150:3	31:2 40:17	35:14 86:5	144:2	25:21	156:1	68:13
154:25	51:13 57:3	86:14	<b>state</b> 116:24	41:12	161:12,22	94:15
<b>skeletons</b>	59:9 65:23	115:11,12	<b>stated</b> 6:10	<b>steps</b> 11:23	162:3	107:6
4:4 52:2	69:10,11	144:5	14:6	106:3	<b>stigma</b> 1:12	113:14
<b>skip</b> 2:4	71:20 78:9	149:6,8	<b>statement</b>	<b>sterling</b> 5:20	<b>stipulates</b>	114:2
<b>skipped</b> 12:6	91:18	156:11	75:11	7:3 9:2,5	62:24	121:14,15
65:18	104:3	157:25	105:7	9:11,16	<b>straight</b> 5:11	125:17
<b>slate</b> 72:11	126:14	160:16,23	115:18	15:19	8:7	143:13
<b>slight</b> 79:5	146:15	161:15	134:15	39:17	<b>straightfo...</b>	153:12
<b>slightly</b>	162:4	<b>stages</b> 86:11	137:4	40:10,12	15:16	163:3,4
22:12 27:1	<b>sort</b> 1:7	<b>stake</b> 154:8	138:4,8	41:13 42:6	<b>street</b> 30:15	<b>submit</b>
27:15 35:8	16:17 25:7	<b>stakeholde...</b>	141:22	42:10,19	30:19,24	38:18
39:23	27:16	50:6 66:19	<b>statements</b>	42:20,25	49:13,14	64:20
57:19 79:2	41:21	<b>stand</b> 13:16	3:12	43:2,11,16	<b>stress</b> 28:24	77:20
82:19	57:14 70:1	109:3	<b>States</b> 130:7	43:19 45:9	<b>strict</b> 22:10	78:19
110:17	101:11	<b>standard</b>	<b>stating</b>	61:23 62:9	<b>strictly</b>	111:4
114:15,24	155:4	15:6 75:19	33:16	63:5,13,18	21:25	119:10,20

119:23	105:21	<b>sums</b> 118:17	<b>system</b>	32:12	129:7,20	80:4 84:11
120:15	<b>sufficient</b>	<b>supersedes</b>	43:15	64:19	136:22	89:4 91:21
135:6,22	41:8 67:1	15:7		96:17 97:7	137:25	91:23 94:8
140:20	134:22	<b>support</b> 31:7	<b>T</b>	124:9	155:14	95:19
148:4	141:8	<b>supportive</b>	<b>TA</b> 69:20	133:7,20	<b>territory</b> 1:7	100:5
154:3	148:8	85:11	76:7,9	133:25	<b>test</b> 16:18,18	115:5
<b>submitted</b>	<b>suggest</b> 4:16	<b>suppose</b>	159:14	152:8	<b>textual</b>	118:2
111:1	4:16 25:21	151:14	<b>tab</b> 1:5 5:13	<b>takes</b> 23:24	55:22	121:6,10
121:1	46:22	152:6	22:25 23:7	24:2 52:16	<b>thank</b> 7:17	121:15
<b>submitting</b>	48:16,25	<b>Supposing</b>	39:23	65:4 132:1	14:17	127:2
121:16	61:7,18	25:11	45:15 50:1	143:14	23:12	135:2,3
<b>subordina...</b>	86:16,18	56:21	78:4,6,21	<b>talking</b> 3:7	29:11	136:22,24
66:5,15	124:7,7	<b>sure</b> 11:16	80:8 81:15	140:3	68:19	139:2
67:4	148:12	24:19	89:13,22	152:18	74:22 97:1	140:24
<b>subsequent</b>	<b>suggested</b>	91:20	92:3 94:15	155:21	113:15	141:14
1:13 66:25	118:5	118:9	97:18 98:1	<b>talks</b> 4:7	<b>theme</b> 66:1	142:15
116:15	127:2	136:6,14	100:23,23	119:5	66:17	143:13
160:15	132:14	141:7	109:21	<b>tell</b> 95:5	<b>thereof</b> 83:2	144:19
161:13	154:2	151:22,23	110:6	<b>tells</b> 70:24	85:5 98:13	147:12
<b>subsequen...</b>	<b>suggesting</b>	<b>surely</b> 56:7	115:19	95:8	<b>thing</b> 3:8	150:23
36:20	72:7 89:23	<b>surplus</b>	123:8	<b>temporary</b>	13:20 28:7	151:19,25
66:24	<b>suggestion</b>	44:25	126:6	9:25	28:14 41:5	152:4
120:14	132:17	51:21	127:3,4	<b>temptation</b>	48:22	154:14,20
132:5	<b>suggests</b>	122:20,21	137:5	134:7	68:11	155:12
136:4	30:4 117:1	131:24	140:1	<b>ten</b> 119:18	160:21	159:19
<b>subsidiary</b>	148:4	132:21	<b>take</b> 2:9 5:15	<b>term</b> 7:8	161:11	162:1
141:25	151:9	133:1,10	8:6,8 11:23	12:6 39:12	<b>things</b> 10:13	<b>thinking</b>
<b>substance</b>	<b>sum</b> 9:2,5	150:4	12:5 23:2	40:7 91:13	41:23	34:6 35:16
23:3,6	15:19	<b>surprise</b>	26:3 34:11	<b>terminated</b>	105:3	35:20 56:5
<b>substantial</b>	40:10,12	145:4	34:12 36:8	125:6	110:21	155:13
31:1,6	43:19	<b>surprising</b>	37:22	<b>termination</b>	126:4	<b>third</b> 24:8
50:16 86:1	65:15	132:19	39:19	75:19,25	137:23	45:2 49:10
132:24	67:21	133:3	44:11 53:6	125:4,8	<b>think</b> 1:24	54:13
<b>substantia...</b>	70:20 71:8	134:19	58:7 68:21	150:10	2:7 3:12,14	55:19
1:21 13:4	116:25	148:18	68:22	<b>terms</b> 1:16	10:6,6 14:2	104:7
<b>substantive</b>	117:8	149:22	69:16	1:21 6:7,20	14:23 26:4	128:2
148:20	145:17	151:11	75:14 88:4	8:16 19:2	27:18	132:9
<b>sub-parag...</b>	<b>summarised</b>	<b>surrender</b>	89:4,25	36:3 37:23	28:24	135:20
7:7,18 47:9	49:10	2:23 3:23	97:5 106:2	48:24 54:7	29:14	138:20
47:10 50:2	137:8	125:20	110:18	57:5 61:15	43:21	146:4
77:22	<b>summarisi...</b>	<b>surrounding</b>	113:21	72:16,18	45:10	157:13
<b>sub-parag...</b>	26:4	27:9 28:11	126:24	72:23	51:14	<b>thirdly</b>
77:9,10	114:24	28:13	142:3	76:20	57:15 58:9	24:16
<b>successfully</b>	<b>summary</b>	<b>survives</b>	149:7,9	80:13	58:22,22	138:1
1:11	2:6 77:8	85:25	156:25	82:22	58:23 59:3	143:6
<b>suffer</b> 42:6	121:25	88:23	157:8	85:11 87:1	60:23,24	<b>thought</b> 16:8
<b>suffered</b>	<b>Sumption</b>	111:15	158:2	90:1 95:12	61:2 64:10	35:8 52:20
10:21	128:5	<b>surviving</b>	<b>taken</b> 4:8,18	99:7	65:18	53:2,9,12
34:19	130:2	87:6,10,12	5:1 31:24	103:11	75:13 77:9	53:13

55:15	<b>top-up</b> 68:6	<b>translation</b>	116:7	86:11 87:7	102:7	75:12
132:12,22	<b>tortious</b>	64:2	130:18	89:4 97:17	<b>unclear</b>	<b>unequally</b>
133:6	10:19	<b>treat</b> 131:4	135:20	98:18	149:25	134:1
152:1,2	105:19	133:25	138:13,18	110:21	<b>unconditio...</b>	<b>unfair</b> 49:6
<b>three</b> 122:2	<b>touch</b>	<b>treated</b> 56:9	139:13,23	113:1,18	8:16 9:19	114:19
126:10	121:18	112:19	140:14	116:19	9:24 13:13	<b>unitary</b> 28:2
137:23	<b>trade-off</b>	146:12	141:18,22	124:13	82:22 91:3	28:22
142:23	60:9,9	<b>tree</b> 5:2	142:2	126:4	99:6 100:2	<b>United</b>
143:1	<b>transaction</b>	15:24,25	152:22	145:11	104:19	130:7
155:5	27:9 48:6	16:16 25:8	155:17	146:17	105:2	<b>unjust</b>
<b>time</b> 1:13	102:2	<b>triggered</b>	<b>try</b> 26:14	148:16	<b>uncontrov...</b>	114:19
5:22 11:4,9	<b>transactions</b>	26:2	130:24	150:16	126:1	<b>unjustified</b>
15:23	101:7,22	<b>Trower</b> 5:14	<b>trying</b> 19:22	154:5	<b>underlying</b>	131:5
24:10 30:7	101:23	14:23 26:3	152:7	<b>two-stage</b>	5:7,9 14:5	<b>unknown</b>
32:2 44:24	102:3,11	26:10,25	<b>Tuesday</b> 1:1	26:18 27:1	38:25 39:2	4:19 10:17
51:15 52:6	104:11	27:14,20	<b>turn</b> 32:25	86:4 87:8	39:22,25	105:17
52:10 53:3	<b>transcribers</b>	27:23	44:9,15	<b>type</b> 4:21 5:7	41:25	124:10
53:10 54:3	44:8	29:14	52:1 68:8	7:25 10:7	42:14 44:2	<b>unlimited</b>
55:6 59:23	113:22	31:24 62:2	68:20	150:10	54:4 69:4	36:3,4
66:24	<b>transcript</b>	72:7 73:10	103:2	159:9,10	79:21,25	37:16 55:9
68:22	27:21	77:10	107:5	<b>types</b> 10:12	80:9 81:23	<b>unnecessary</b>
73:11	<b>transfer</b>	78:10 80:5	109:20	12:7 25:17	92:14	114:16
76:20	7:20 12:15	97:7 141:6	120:14	<b>T&amp;N</b> 24:20	107:9,12	<b>unqualified</b>
105:23	12:16,19	141:14	137:10		107:14	3:13 87:4
109:7	12:21 13:6	144:19	<b>turned</b>	<b>U</b>	109:25	108:12,13
126:19	13:7,24	151:20,21	66:24	<b>UK</b> 63:2	110:22,25	108:16
137:16	14:9 54:7	151:23	115:9	64:2	148:14	109:10,14
144:14,15	55:4 82:5	154:1	122:19	<b>ultimate</b>	150:19,23	111:5
146:3	90:4 95:9	157:15,24	<b>turning</b>	34:15	151:16	<b>unrelated</b>
155:12	95:12	<b>Trower's</b>	22:24	60:16	153:10,15	16:2
156:20	<b>transferee</b>	143:13	46:25	102:15	153:16,19	<b>unsafe</b> 52:18
<b>times</b> 1:19	13:2,3,14	154:21	51:19 78:3	<b>ultimately</b>	154:11	<b>unsecured</b>
46:6 78:16	93:7,10,12	<b>true</b> 18:19	80:24	55:6 67:17	<b>understand</b>	6:16,18
103:24	<b>transferee's</b>	52:7 53:6	89:11 99:4	69:7	6:1 53:16	20:1,3
<b>time-cons...</b>	13:16	60:7 87:23	104:15	<b>unable</b>	59:21 61:2	21:22 22:4
32:23	<b>transferor</b>	88:13	118:20	102:4	76:16	29:18,22
<b>timing</b> 64:12	13:2	134:16	142:7	<b>unaffected</b>	130:7	30:5 33:2
<b>tiny</b> 151:11	<b>transferor's</b>	140:7	<b>turns</b> 66:25	64:7 94:20	134:25	46:8 50:13
<b>told</b> 49:13	13:11	<b>trust</b> 45:21	67:14	<b>unambigu...</b>	141:12	50:15
60:24,24	<b>transferred</b>	46:1 76:10	101:10	15:17	161:3	56:18 62:9
73:10	31:20 54:5	76:14,20	139:25	123:4	<b>understan...</b>	62:13 63:2
<b>tomorrow</b>	54:6 89:16	76:21	147:23	<b>unambigu...</b>	60:8	63:3,16,18
162:12	89:17 90:9	79:10	<b>two</b> 2:10	129:18	<b>undertaking</b>	73:7,9,12
<b>top</b> 6:15 7:9	90:18	81:24	14:22	<b>unaware</b>	15:12 33:4	76:6 77:2,3
62:6 77:1	92:19	82:13 83:4	38:18,20	2:23	106:2	77:4 98:12
135:14	93:10,13	98:5	43:9 45:17	125:21	<b>undoubte...</b>	102:13
150:12	95:2,6,11	108:23	52:2 66:17	<b>unbalanced</b>	5:6 17:25	108:6,8
160:2	95:18 96:6	115:2,7,24	67:18 77:9	49:6	41:1 50:23	132:24
<b>topics</b> 44:10	96:19	115:25	84:12	<b>uncertaint...</b>	73:25	146:8,10

<b>unsophisti...</b> 49:3 50:22	<b>varied</b> 139:1	<b>want</b> 4:8	120:12,19	113:22	56:1,4	21:16 26:5
<b>untenable</b> 24:6	<b>variety</b> 118:25	8:12 12:12	121:9,25	120:3	<b>winding-up</b> 59:13	26:15,22
<b>update</b> 32:10	<b>various</b> 44:15	13:6 18:13	130:6	131:24	61:25 73:7	28:15 29:1
<b>use</b> 28:16	50:12	58:22	131:5,10	142:4	108:6	29:6,9 44:3
29:2,6,9	<b>vary</b> 40:4	<b>wanted</b> 59:3	134:1,9	<b>we're</b> 5:8	140:11	44:17
116:15	<b>varying</b> 8:20	80:15,17	136:25	25:19	146:8	48:25
139:24	<b>version</b> 78:4	89:2 132:2	137:20	33:16	147:10	56:13,14
<b>uses</b> 153:3	78:6 81:15	140:9	139:7	37:10 45:5	158:1	60:21,25
	89:12,20	<b>warranty</b>	140:19	49:23	160:22	61:1,5,7,17
<b>V</b>	<b>versions</b>	15:12	141:8,13	89:12	<b>wipe</b> 72:11	65:6 71:25
<b>v</b> 1:4 3:7	97:3,17	<b>wasn't</b> 26:10	141:17	97:23	<b>wish</b> 6:8	82:19 92:2
11:12,20	<b>vi</b> 77:10,15	43:7 52:6	146:12	107:5	98:7,9,14	92:5,25
16:1,9	<b>view</b> 2:20	53:11	147:2	111:9,18	102:8	109:1
26:12	16:6 24:15	137:2	148:9	114:21	<b>wished</b>	112:16
77:10	28:18	141:12	155:11	136:14	137:14	115:14
105:12	122:12	147:11	156:5	<b>we've</b> 23:4	<b>wishes</b> 90:7	116:15
106:18	132:3	149:8	157:19	48:18	<b>witness</b>	120:8
107:2	154:14	152:3	158:15	52:13	115:18	122:11
123:6	<b>virtually</b>	153:5	161:19	65:21	137:4	123:4,20
126:22	16:23	<b>waterfall</b>	<b>ways</b> 9:21	90:11	141:22	125:11
128:16	<b>volume</b>	52:25	33:10,10	97:19	<b>wonder</b>	128:8,11
<b>valid</b> 12:25	49:11 50:1	130:22	37:6,11	98:17	113:18	129:17
<b>validity</b> 84:1	62:3 89:13	<b>way</b> 14:8	54:1	99:21	100:6	134:1
<b>valuable</b>	<b>voluntary</b>	20:20 26:5	148:16	100:6	103:23	137:23
131:23	6:22 32:22	26:11,13	154:17	<b>whatsoever</b>	<b>wondering</b>	139:22
<b>valuation</b>	<b>VRL</b> 128:16	26:25	<b>website</b> 32:9	7:5	21:4 42:24	143:3,9
75:19		29:16	<b>weight</b> 29:9	<b>whichever</b>	<b>wonders</b>	144:24
138:21,22	<b>W</b>	33:13	54:9	25:4	27:4	149:20
139:4,5	<b>waive</b> 37:8	34:12,14	<b>went</b> 55:10	<b>wholly</b> 16:2	<b>word</b> 22:10	150:20
143:4,25	38:24	34:16 35:4	122:22	26:11 36:3	95:17	158:20
144:3,4,20	61:11	37:17	132:20	36:4 55:8	<b>wording</b>	161:8
144:25	69:22	44:17	134:12	72:18	1:24 10:8	<b>word-for...</b>
145:25	102:21	46:19	136:12	114:16	18:20	92:7
<b>value</b> 48:10	122:21	48:23	<b>Wentworth</b>	<b>wide</b> 49:19	60:18	<b>work</b> 19:23
48:16	142:18	50:19,22	154:17,25	57:16	84:24	56:21
98:23	<b>waived</b>	56:6 60:2	160:19	97:18	90:24 99:5	89:18
104:12	83:15,19	60:12,21	<b>Wentwort...</b>	<b>widely</b> 4:14	99:21	108:21
149:11	110:10	61:7 67:22	114:8	122:5	100:5,7	115:12
<b>valuing</b>	112:19	70:17	121:15	124:5	127:10	116:8
36:25	<b>waiver</b> 3:5	72:15 75:6	133:22	<b>wider</b> 1:21	128:12	<b>worked</b>
<b>variant</b> 21:6	83:3,4,25	75:10	<b>weren't</b> 1:12	141:15	133:14	97:13
22:22 23:1	105:3,6,7	82:14 87:4	136:6	<b>widest</b> 12:7	<b>words</b> 2:25	<b>working</b>
<b>variants</b>	<b>waives</b> 99:13	89:19	141:22,24	<b>widows</b> 49:7	3:14 10:16	50:6,15,16
5:21 89:3	105:3,6,7	97:13	<b>we'll</b> 1:19	<b>width</b> 5:5	10:22	78:4
<b>variation</b>	<b>waiving</b>	108:21	6:7 7:6	25:7 92:9	11:11	<b>works</b> 9:21
79:5	37:25	111:7	10:10	100:6	12:18 17:2	43:20
	119:3	115:5	44:11 80:3	<b>winding</b>	17:15 19:4	86:10 97:2
		118:6	81:20 89:6	6:24 8:25	20:24	106:9
		119:1	109:20			110:24



116:17	<b>Zacaroli</b> 1:3	57:3,7,14	103:23	150:20	40:6 47:9	<b>2.88</b> 21:4
<b>worse</b> 154:6	1:4,8,16	57:19	104:4,7	<b>100p</b> 122:15	62:15 79:5	71:23 72:2
<b>worth</b> 22:24	2:1,4,18	58:11,17	106:9	<b>11</b> 5:13	82:17 89:7	72:24
54:16	3:19 4:2,6	58:22 59:3	107:23	14:23 78:8	98:2 99:4	73:20
65:24	7:15,18	59:8,11,20	108:3	78:9 89:13	103:6,16	113:8
114:11	8:12 9:23	59:22 60:7	109:19	109:21	104:16	117:17,18
155:22	11:21	60:12 61:2	110:5,9,15	156:14,24	115:19	118:13
<b>wouldn't</b>	12:11	61:4,22	111:23	159:3	119:24	<b>2.88.9</b>
24:11	13:16 14:2	65:23	112:10,14	<b>11.1</b> 54:17	120:25	112:16
28:19	14:12,21	68:15,18	112:23	<b>11.43</b> 44:12	121:23	117:18
35:16	15:5,15,25	68:20	113:13,16	<b>11.48</b> 44:14	126:6	<b>20</b> 52:2
56:11	16:4,14,17	69:15	140:9	<b>112</b> 65:25	137:5	115:19,20
61:16 88:8	16:25 17:5	70:22	163:3	66:5	140:1	143:22
88:11	17:7,10,15	71:10,22		<b>114</b> 163:4	<b>2A</b> 52:25	<b>20th</b> 51:13
115:8	17:22	72:5,21	\$	<b>12</b> 15:5	<b>2.00</b> 89:10	<b>20.1</b> 143:22
123:14	18:11	73:4,22	<b>\$18</b> 18:16	129:11	<b>2.1</b> 8:23 20:8	<b>20.2</b> 144:2
<b>wound</b> 47:8	19:25	74:11,23		137:5	85:1,4	<b>20.4</b> 144:4
<b>wraps</b>	20:11,14	78:1,9,14	1	<b>12.2</b> 15:10	86:25	<b>2008</b> 63:5,10
146:16	20:23,25	79:19,23	<b>1</b> 7:18 45:15	<b>12.58</b> 89:8	90:22	63:20
<b>written</b> 15:7	21:2,5,19	80:3,22	47:18,21	<b>13</b> 129:24	92:24	136:2
121:15	21:25	83:11,23	101:13	130:2	<b>2.1.1</b> 90:25	<b>2010</b> 32:10
<b>wrong</b> 28:18	22:17	84:11,15	103:6,7,15	<b>14</b> 89:13,22	92:24	35:14
38:18,20	23:13	84:17	114:11	129:25	<b>2.1.2</b> 91:17	<b>2013</b> 51:22
53:8 97:23	25:10,16	85:10,21	119:19,22	150:11	91:19 94:3	51:25
111:9,18	26:2,23	86:16	119:22	<b>15</b> 63:5,10	104:22	<b>2014</b> 150:5
134:11	27:13,18	87:14,20	120:1,8,18	63:14,19	<b>2.1.3</b> 99:16	150:11
136:24	27:22 28:2	87:23	126:6	63:22	<b>2.1.4</b> 99:23	<b>2015</b> 1:1
<b>WW</b> 51:3	28:4,7,12	88:11,14	128:23	97:18 98:1	104:25	<b>21</b> 100:23,23
122:12	28:21,24	88:20,22	142:4	127:3	<b>2.1.5</b> 106:2	<b>217</b> 75:15
123:2	29:6,8,13	89:2,11,22	150:2,6	<b>16</b> 32:10	<b>2.104</b> 14:16	<b>219</b> 75:23
	31:3,23	90:6 91:8	163:3	127:4	<b>2.2</b> 9:3 23:7	<b>22</b> 104:12
<b>X</b>	32:8 33:23	91:11,15	<b>1A</b> 1:5 78:6	137:5	24:5 92:20	<b>220</b> 77:1
<b>xi</b> 135:14	34:4,11,21	91:18,20	78:11,21	<b>17</b> 3:2,6,10	92:23	<b>229</b> 77:8
	35:19 36:1	91:23 92:2	91:10	125:23	99:25	<b>23</b> 123:15
<b>Y</b>	36:12,14	92:7,11,21	109:21	<b>170</b> 112:10	<b>2.3</b> 9:12	140:1,2
<b>years</b> 11:6	36:23 37:2	92:23 93:5	110:6	<b>18</b> 13:8	18:20	<b>234</b> 77:9
30:6 33:1	37:7,13,19	93:9,16,19	123:8	21:16	21:13 24:8	<b>24</b> 70:13
<b>yen</b> 69:5,8	38:9,18	93:22,24	<b>10</b> 2:19 3:15	47:19,21	40:13,18	144:7
111:10,14	39:9,13,19	94:3,7,16	45:15 50:1	57:5 58:1	40:19 44:3	<b>24.1</b> 74:2
111:20	40:4,18,20	94:21,24	50:2	59:11	99:25	107:18
153:19	41:21 42:2	95:1,7,11	119:19,22	<b>180</b> 155:1	<b>2.4</b> 11:22	144:7,22
<b>yesterday</b>	42:5,18	95:17,25	119:24	<b>188</b> 126:8,11	<b>2.45</b> 113:24	148:20
5:14 27:24	43:5,9,25	96:3,11,15	120:25	126:12	<b>2.50</b> 114:1	<b>24.2</b> 143:17
28:25	44:9,15	96:22,25	121:23	<b>19</b> 1:1 3:19	<b>2.75</b> 50:14	<b>24.2.1</b> 70:14
29:15	47:23,25	97:2,15	125:17	<b>19th</b> 51:3,13	<b>2.86</b> 45:9	143:14
49:13	51:15,19	98:1	150:5		62:23 63:1	<b>24.2.2</b>
73:10	53:19,25	100:13,22	<b>10.30</b> 1:2	2	65:1,2 81:7	143:14
	54:9,13	102:25	162:11,14	<b>2</b> 6:15 8:7	98:25	<b>25.1</b> 70:24
<b>Z</b>	56:13,17	103:6,18	<b>100</b> 150:14	12:14 20:5	162:2	71:18 75:2

77:21	83:23	146:13,18	<b>5.2.1</b> 147:2	<b>82</b> 124:25		
108:4	85:17,18	147:14	<b>5.2.2</b> 147:5	125:2		
109:17	<b>30</b> 135:12	155:2	<b>52.1</b> 158:22	<b>85</b> 147:20		
145:10	136:1,11	<b>4A</b> 32:10	<b>53</b> 112:14	156:2		
146:13,16	<b>31</b> 29:25	49:11	<b>54</b> 158:7,8			
146:16	30:2	<b>4.1</b> 77:10	<b>54.3</b> 159:6	<b>9</b>		
148:1	<b>315</b> 142:8	<b>4.2</b> 13:9	<b>54.3.6</b> 159:6	<b>9</b> 2:15 113:8		
<b>26</b> 4:3 150:9	<b>32</b> 30:22	69:19	159:12	113:8		
<b>263</b> 125:23	31:4	142:17	<b>55</b> 158:12	142:4		
<b>264</b> 123:13	<b>325</b> 69:18	<b>4.2.3</b> 69:21				
123:15	<b>33</b> 31:25	74:1	<b>6</b>			
<b>269</b> 124:21	156:6	110:24	<b>6</b> 2:6 23:7			
<b>27</b> 1:5 123:8	<b>33.3</b> 156:11	142:17	29:18 46:4			
123:21	<b>330</b> 147:1	<b>4.22</b> 162:13	50:1 51:7			
<b>28</b> 4:3,6	<b>34</b> 113:14	<b>4.3</b> 75:23	81:24			
123:24	134:16	<b>4.4.2</b> 70:3	115:20			
136:2	<b>35</b> 62:4	116:23	135:8			
<b>283</b> 125:1	68:15	142:23	137:5			
<b>29</b> 29:17	111:23	143:10	150:2,5			
124:13	113:14	145:7	<b>6.2</b> 62:5			
138:5,8	134:16	146:4,16	<b>60</b> 49:16			
<b>3</b>	<b>36A</b> 14:25	147:24	159:20,20			
<b>3</b> 1:17 7:9,15	53:8	<b>4.4.3</b> 146:7	<b>60.1.4</b> 160:6			
8:1 12:6,15	114:19	<b>40</b> 127:18	160:8			
40:1,17	<b>361</b> 70:13	<b>405</b> 160:2	<b>60.1.5</b> 160:2			
47:1 50:1	<b>362</b> 145:11	<b>42</b> 127:21	<b>61</b> 52:2			
68:25	146:13	<b>43</b> 127:21,25	<b>7</b>			
80:24	<b>37</b> 127:8	138:14	<b>7</b> 5:13 39:23			
83:11	<b>371</b> 156:7	<b>436</b> 147:20	45:15			
90:13	<b>373</b> 49:11	<b>441</b> 32:10,12	46:15			
98:16	<b>38</b> 74:16,20	<b>443</b> 73:6	82:17			
103:3,6,16	107:6	<b>452</b> 103:3	91:11 92:3			
103:25	113:14	<b>464</b> 144:16	94:15			
104:4	<b>39</b> 124:20	144:21	104:16			
126:25	<b>390</b> 158:22	<b>48</b> 127:19	113:8			
128:19	<b>4</b>	<b>49</b> 134:16	115:19			
142:8	<b>4</b> 7:7 45:15	138:5,8	129:4			
146:13,18	45:16	<b>5</b>	140:1,1			
155:1	47:10,13	<b>5</b> 29:16	<b>70</b> 135:9,14			
<b>3.1</b> 12:18	69:18	45:19 62:3	<b>8</b>			
<b>3.2</b> 12:17,20	75:17 78:4	62:4 76:19	<b>8</b> 2:14,15			
83:13	80:8 81:5	77:22	23:7 27:4,6			
86:17,24	81:15	103:6,16	50:1			
110:5,9	98:21	142:12	106:18			
<b>3.2.1</b> 83:15	103:9,17	146:23	107:2			
<b>3.2.2</b> 83:18	103:18	147:12	110:6			
<b>3.3</b> 12:14,21	104:7	157:5	<b>8.2</b> 14:23			
12:24	142:12,14	<b>5.2</b> 146:25				